

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

G Thomas Cooper, Jr Post-conviction Relief Judge
Clifton B Newman Trial Judge

Case No 2008-CP-43-1858

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MAR 07 2011

SC Supreme Court

ORIGINAL

Reginald Tyrell Clea, #309063,

Petitioner,

v

State of South Carolina,

Respondent

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
VOL I

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IN THE SUPREME COURT

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

G Thomas Cooper, Jr , Post-conviction Relief Judge
Clifton B Newman, Trial Judge

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Reginald Clea, #309063,

Applicant,

v

State of South Carolina,

Respondent

RECORDED

2010 FEB 16 PM 2:40

JAMES C CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S C

2008-CP-43-1858

COPY

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED
[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 7, 2008, and amended March 18, 2009. The Respondent made its Return and Motion to Dismiss on February 3, 2009, and an amended Return on March 24, 2009.¹ An evidentiary hearing into the matter was convened on November 4, 2009, at the Richland County Courthouse.² The Applicant was present at the hearing and was represented by Ernest A. Finney, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Joseph Savitz, Esquire. This Court had before it the records of the Sumter County Clerk of Court, the trial transcript, the appellate records and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South

¹ Respondent initially moved for summary dismissal of the application on the basis that Applicant had failed to set forth grounds cognizable at PCR. S.C. Code §17-27-20. Following the amendment to the application to allege ineffective assistance of appellate counsel, the matter was scheduled for an evidentiary hearing.

² The case was originally scheduled for the week of October 26, 2009, in the Third Circuit. By consent of both parties, the

Carolina Department of Corrections pursuant to orders of the Sumter County Clerk of Court Applicant was indicted for two (2) counts of Murder and one (1) count of Possession of a Weapon During Commission of a Crime of Violence (2004-GS-43-0956) John D Clark, Esquire, represented him On May 2-5, 2005, Applicant proceeded to a jury trial before the Honorable Clifton Newman Applicant was acquitted of one (1) count of Murder (Count One, victim John C Jackson) but was convicted of the other count of Murder (Count Two, victim James Pollard) and Possession of a Weapon During Commission of a Crime of Violence (Count Three) Applicant was sentenced to thirty (30) years imprisonment for Murder and to a concurrent term of five (5) years imprisonment for Possession of a Weapon During Commission of a Crime of Violence

A notice of appeal was filed and an appeal perfected Applicant's conviction and sentence were affirmed State v Clea, Op No 2007-UP-552 (S C Ct App filed December 14, 2007) The remittitur was sent on January 2, 2008

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of appellate counsel
 - a "Trial counsel objected to and preserved in the record the trial court's jury instructions on the issue of 'permissive inference' of malice where there is use of a deadly weapon by the defendant Appellate counsel was deficient in failing to raise this preserved issue on appeal directly, thereby prejudicing the appellant from having the appellate court consider a potentially reversible issue "

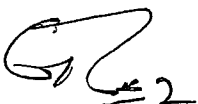
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing This Court has further had the opportunity to observe

case was rescheduled in Richland County on November 3, 2009

2 of 7

0002



the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S C Code Ann §17-27-80

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to the effective assistance of appellate counsel Evitts v Lucey, 469 U S 387, 105 S Ct 830 (1985) To show ineffective assistance of appellate counsel, a PCR applicant must show that (1)"counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms" and (2) he or she was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different " Southerland v State, 337 S C 610, 616, 524 S E 2d 833, 836 (1999) Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record Id Appellate counsel has a professional duty to choose among potential issues according to their merit Jones v Barnes, 463 U S 745, 103 S Ct 3308 (1983) Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel Griffin v Aiken, 775 F 2d 1226 (4th Cir 1985)

Applicant argues that appellate counsel failed to raise the issue of the trial court's jury charge on inferred malice from the use of a weapon The trial court charged

Malice aforethought may be express or implied These terms, express and inferred or implied, do not mean different kinds of malice but merely the manner in which the malice can be shown to exist This is merely the manner in which malice may be shown to exist

Malice may be inferred from conduct showing a total disregard for human life Inferred malice may also arise when the deed is done with a deadly weapon Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case

(Tr p 728, line 22 - p 729, line 12) Trial counsel made the following objection

The Defendant objects to the Court's charge on inferred malice and use of a deadly weapon *We believe that s the appropriate charge*, Your Honor, but we believe also when that charge is given the Court should charge that inferred malice can be rebutted by competent evidence And we would ask the court to recharge the jury, include a charge that inferred malice from the use of a deadly weapon can be rebutted and also if the Court's going to give the jury written jury instructions, that that be added to the written instructions, your Honor

[Emphasis supplied] (Tr p 737, lines 12-22) Trial counsel added, "the charge as stated impermissibly shifts the burden to the Defendant, unlawfully, unconstitutionally shifts the burden "

(Tr p 737, line 25 – p 738, line 3) The trial court denied the request for the additional instruction, finding that the jury had been charged that the State had to prove beyond a reasonable doubt that the defendant killed with malice aforethought and that the inferred malice charge given was correct (Tr p 738, lines 4-13)

On appeal, appellate counsel (hereinafter "Counsel") raised the following issue

The trial judge committed reversible error by refusing to instruct the jury on the lesser-included offense of voluntary manslaughter

(Brief of Appellant, p 3) At PCR hearing, Counsel testified that based on his review of the transcript, he believed this issue to be the strongest issue Counsel fully explained his reasoning for asserting the issue

Counsel testified that he did not raise the issue of the implied malice charge for several reasons First, Counsel testified that the portion of the charge allowing a permissive inference of malice from the use of a gun was the charge that was routinely given in South Carolina until the recent decision of State v Belcher, Op No 26729 (S C Sup Ct filed October 12, 2009) (Shearouse

Adv Sh No 44 at 14) Counsel further explained that because trial counsel had stated in his objection that the charge was an appropriate one, any challenge on that basis would not be preserved under South Carolina's strict issue preservation rules Counsel also explained that he did not feel that trial counsel's request for an additional charge was a stronger issue on appeal Counsel testified that, based on the law at the time, he did not feel that the charge given by the trial court was reversible error nor did he feel that the court's failure to supplement the charge with the additional language requested constituted reversible error Counsel based his opinion on authorities valid at the time such as State v Mattison, 276 S C 235, 237-238, 277 S E 2d 598, 599 - 600 (1981) (overruled by State v Belcher, *supra*)

With regard to Applicant's assertion that Counsel should have challenged the portion of the charge permitting the inference of malice from the use of a deadly weapon, this Court finds that the claim is without merit Trial counsel's objection requested additional language that the presumption was a rebuttable one, but the objection conceded that the charge was correct that an inference from a weapon may be drawn Therefore the issue was not preserved for appeal Counsel will not be deemed ineffective for failing to raise an issue not preserved for appeal Legge v State, 349 S C 222, 562 S E 2d 618 (2002) Further, this Court finds that even if the issue were preserved, Counsel's decision not to pursue such a claim would not have been unreasonable under professional norms at the time of the appeal In Belcher v State, *supra* , the court noted that "[i]t has long been the practice for trial courts in South Carolina, as sanctioned by this court, to charge juries in any murder prosecution that the jury may infer malice from the use of a deadly weapon " Belcher expressly overruled extensive South Carolina authority approving of the charge Therefore, at the time of the appeal, Counsel could not have foreseen the change in the law, and his reasoning was sound under the law at the time See

for example Brightman v. State, 336 S C 348, 520 S E 2d 614 (1999) (counsel not required to anticipate change in the law which were not in existence at the time of trial) Moreover, Belcher expressly states that its ruling "will not apply to convictions challenged on post-conviction relief" (citing Teague v. Lane, 489 U S 288, 109 S Ct 1060, 103 L Ed 2d 334 (1989))

This Court further finds Applicant's claim that Counsel should have raised the trial court's denial of his request for additional language that the inference of malice may be rebutted is without merit "[A]ppellate counsel is not required to raise every nonfrivolous issue that is presented by the record" Thrift v. State 302 S C 535, 539, 397 S E 2d 523, 526 (1990) Here, Counsel explained that the charge as given was correct law at the time, and Counsel further felt that the requested charge was not a correct statement of the law at the time of the trial State v. Mattison, *supra* Counsel explained that the issue he chose, in his opinion, was more likely to constitute a reversible error This Court finds that Counsel articulated a reasonable for his decision to pursue the issue raised, and Applicant failed to satisfy his burden of proof to demonstrate otherwise This court further finds that based on the law at the time of the trial and appeal, Applicant has failed to demonstrate that the outcome of the proceeding would have been different had Counsel asserted that the trial court erred in refusing to charge additional language that the use of a weapon could be rebutted Moreover, the facts adduced at trial indicated that Applicant first shot at Charles Jackson ("Jackson") Applicant testified that he believed Jackson was about to draw a gun from a box in his truck when he fired Applicant was acquitted of the murder of Jackson However, the evidence at trial was that Applicant then fired upon James Pollard ("Pollard") No evidence at trial indicated that Pollard was armed other than Applicant's testimony that Pollard reached toward his waist, Applicant never saw Pollard's hands before firing Pollard was shot nine (9) times The appellate court found

that the trial court correctly denied Applicant's request for a charge on voluntary manslaughter. Given the evidence, even if the additional charge was appropriate, the outcome of the proceeding would have been no different.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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 advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR,³ for appropriate procedures after notice has been timely filed.

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 Respondent.

AND IT IS SO ORDERED this 9 day of FEBRUARY, 2010


G. THOMAS COOPER, JR.
Presiding Judge

COLUMBIA, South Carolina

³ Formerly Rule 227 SCACR. Rules 224 through 230 SCACR were renumbered as Rules 240 through 246, SCACR by order of the South Carolina Supreme Court dated April 29, 2009.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2010 FEB 16 PM 3 10

JUDGMENT IN A CIVIL CASE

CASE NO 2008CP4301858

IN THE COURT OF COMMON PLEAS JAMES C CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S C

Reginald Tyrell Clea vs South Carolina State of

CHECK ONE

- ☐ JURY VERDICT This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- ☒ DECISION BY THE COURT This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered
- ☐ ACTION DISMISSED (CHECK REASON) ☐ Rule 12(b) SCRPC, ☐ Rule 41(a)
SCRPC (Vol Nonsuit) ☐ Rule 43(k), SCRPC (Settled) ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON) ☐ Rule 40(j) SCRPC ☐ Bankruptcy
- ☐ Binding arbitration subject to right to restore to confirm vacate or modify arbitration award
- ☐ Other _____

IT IS ORDERED AND ADJUDGED

☐ See attached order,

☐ Statement of Judgment by the Court

see attached Order of Dismissal

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Chloe L. Hoff
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Dated at Sumter, South Carolina, this 16th day of February 2010

Court Reporter

PRESIDING JUDGE G Thomas Cooper, Jr

This judgment was entered on the 9th day of February 2010 and a copy mailed first class this 16th day of February 2010 to attorneys of record or to parties (when appearing pro se) as follows

Reginald Tyrell #309063 Clea Kirkland R &
E Center B2/17 4344 Broad River Road
Columbia SC 29210
Ernest A Finney III Attorney At Law P O
Box 836 Sumter SC 29151

Henry Dargan McMaster S C Attorney
General'S Ofc /Williams P O Box 11549
Columbia SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP 24/FORM 4

James C Campbell
James C Campbell Clerk of Court

STATE OF SOUTH CAROLINA	)	
COUNTY OF SUMTER	)	IN THE COURT OF COMMON PLEAS
	)	
Reginald Tyrell Clea, #309063,	)	2008-CP-43-1858
	)	
Applicant,	)	
	)	
v	)	CONDITIONAL ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent	)	
	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 7, 2008 In its Return, Respondent requested that the application be summarily dismissed

PROCEDURAL HISTORY

This Court has before it a copy of the records of the Sumter County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, and the appellate records The records before this Court indicate that The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County Applicant was indicted during the October 2004 term of the Sumter County Grand Jury in a multi-count indictment for (1) Murder, (2) Murder, and (3) Possession of a Firearm During Commission of Crime of Violence (2004-GS-43-0956) Applicant was represented by John D Clark, Esquire On May 2-5, 2005, Applicant proceeded to a jury trial before the Honorable Clifton Newman Applicant was found guilty of Counts Two and Three and acquitted of Count One On May 5, 2005, Judge Newman sentenced Applicant to thirty (30) years incarceration for Murder and to five (5) years incarceration for Possession of a Firearm

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of

Appeals affirmed Applicant's conviction and sentence State v Clea, Op No 2007-UP-552 (S C Ct App filed Dec 14, 2007) The remittitur was sent on January 2, 2008

In his Application, the Applicant alleges

- 1 "The trial judge erred by giv[ing] the jury a burden shifting instruction at trial "
- 2 "Judge err[ed] for failing to instruct the jury on the less[er] included offense of voluntary manslaughter "
- 3 "The State failed to prove beyond a reasonable doubt that defendant did not act in self-defense "

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents Pursuant to S C Code Ann § 17-27-70(b) (2003), the Court makes the following findings of fact and conclusions of law

This Court finds that this matter should be summarily dismissed because Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act S C Code Ann § 17-27-10 to -160 (2003) An Applicant may commence a post-conviction relief action on the following grounds

- 1 That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State,
- 2 That the court was without jurisdiction to impose sentence,
- 3 That the sentence exceeds the maximum authorized by law,
- 4 That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice,
- 5 That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint, or

- 6 That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy S C Code Ann § 17-27-20 (1976)

The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S C Code Ann § 17-27-20(b) (1985) Post-conviction relief is not a substitute for a direct appeal Simmons v State, 264 S C 417, 215 S E 2d 883 (1974) A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal Ashley v State, 260 S C 436, 196 S E 2d 501 (1973) The Applicant could have raised these issues at trial or on appeal, and his failure to do so has waived these allegations as grounds for relief Further, the issue of whether the trial judge erred in failing to charge the jury on voluntary manslaughter was decided on appeal

CONCLUSION

S C Code Ann § 17-27-70(b) states in pertinent part

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing Applicant shall be given an opportunity to reply to the proposed dismissal

Pursuant to S C Code Ann § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final The Applicant shall file any reasons he may have with the Sumter County Clerk of Court and shall serve opposing counsel at the following address

Office of the Attorney General
Attn Mary S Williams, Esquire
P O Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this _____ day of _____, 2009

5/
R Ferrell Cothran, Jr
Chief Judge for Administrative Purposes
Third Judicial Circuit Court

_____, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Reginald Tyrell Clea, #309063,

Applicant,

v

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS

2008-CP-43-1858

**ORDER VACATING CONDITIONAL ORDER
OF DISMISSAL AND SETTING CASE FOR
EVIDENTIARY HEARING**

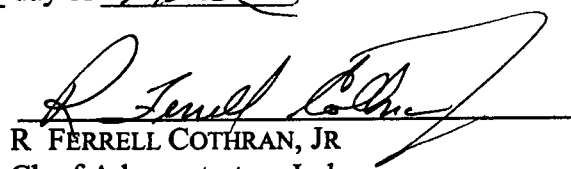
This matter comes before the Court by way of an Application for post-conviction relief filed August 7, 2008. The State made its Return and Motion to Dismiss dated February 3, 2009, requesting that the Application be summarily dismissed for failure to comply with the Uniform Post-Conviction Procedure Act S C Code Ann §17-27-10 to -160 in that Applicant listed only direct appeal issues as grounds for relief. Thereafter, this Court issued a Conditional Order of Dismissal, provisionally denying and dismissing the action, but giving the Applicant twenty days from the date of service in which to provide reasons why the case should not be summarily dismissed without a hearing. By and through his attorney of record, Ernest A. Finney, III, Esquire, Applicant submitted an amended application, which was filed on March 18, 2009.

This Court finds that the amended application contains grounds to be sufficient to show why the action for post-conviction relief should not be summarily dismissed without a hearing. Applicant has amended his application to allege ineffective assistance of appellate counsel, a claim which is cognizable in a post-conviction relief action.

Accordingly, the Conditional Order of Dismissal is hereby **VACATED**, and the matter is to be scheduled for an evidentiary hearing.

0013

IT IS SO ORDERED this 30 day of March, 2009


R. FERRELL COTHRAN, JR
Chief Administrative Judge
Third Judicial Circuit

Manning, South Carolina

0014

STATE OF SOUTH CAROLINA)

County of SUMTER)

REGINALD TYRELL CLEA #304063)

Full name and prison number if any of applicant.)

v)

STATE OF SOUTH CAROLINA)

Name of Respondent)

In the Court of Common Pleas

RECORDED

2008 AUG -7 PM 12 21

008 CP 43

1858

JAMES F CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
APPLICATION FOR

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Shaper

POST-CONVICTION RELIEF
CERTIFICATE OF COURT
SUMTER COUNTY
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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

- 1 Place of detention KIRKLAND R & E CENTER 4344 BROAD RIVER RD,
COLUMBIA, S.C. 29210
- 2 Name and location of Court which imposed sentence SUMTER COUNTY COURTHOUSE,
SUMTER, S.C. 29150
- 3 The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed
 - (a) 2004-GS-43-956 TWO (2) COUNTS OF MURDER AND
 - (b) POSSESSION OF FIREARM DURING COMMISSION OF CRIME OF VIOLENCE
 - (c) _____
- 4 The date upon which sentence was imposed and the terms of the sentence
 - (a) MAY 5, 2005 THIRTY (30) YRS. AND FIVE (5) YRS. FOR POSS. OF FIREARM
 - (b) _____
 - (c) _____

0015

5 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 _____

6 Did you appeal from the judgment of conviction or the imposition of sentence? YES

7 If you answered "yes" to (6), list

(a) the name of each Court to which you appealed

I SC COURT OF APPEALS

II _____

III _____

(b) the result in each such Court to which you appealed

I AFFIRMED CONVICTION

II _____

III _____

(c) the date of each such result

I DEC 14, 2007

II _____

III _____

(d) if known, citations of any written opinion or orders entered pursuant to such results

I DK

II _____

III _____

8 If you answered "no" to (6), state your reasons for not so appealing

(a) N/A

(b) _____

(c) _____

9 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

(a) The trial Judge erred by given the jury a burden shifting instruction at trial

(b) Judge erred for failing to instruct ^{the jury} on the less include offence

(c) The State failed to prove beyond a reasonable doubt that ~~the~~ defendant did not act in self-defense

0016

10 State concisely and in the same order the facts which support each of the grounds set out in (9)
(a) SEE ATTACHMENT(S)

(b) _____

(c) _____

11 Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

NONE OTHER THAN DIRECT APPEAL

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12 If you answered "yes" to any part of (11), list with respect to each petition, motion or application

(a) the specific nature thereof

I

DIRECT APPEAL

II

III

IV

(b) the name and location of the Court in which each was filed

I

S.C COURT OF APPEALS, COLUMBIA, S C

II

III

IV

(c) the disposition thereof

I

CONVICTION AFFIRMED

II

III

IV

0017

(d) the date of each such disposition

I DEC. 14, 2007
II _____
III _____
IV _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition

I DK
II _____
III _____
IV _____

13 Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14 If you answered "yes" to (13), 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 _____

15 If any ground set forth in (9) 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) NOT PROPER TIME TO RAISE THE ISSUE (grounds)

(b) _____

(c) _____

16 Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? _____

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

YES

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? YES

0018

17 If you answered "yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you

1 JOHN CLARK, SUMTER, SC

11 _____

111 _____

(b) the proceedings at which each such attorney represented you

1 AT TRIAL & SENTENCING

11 _____

111 _____

18 State clearly the relief you seek in filing this application

A NEW TRIAL

19 Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
)
COUNTY OF Richland) VERIFICATION

I, REGINALD TYRELL CLEA #309063, 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

* Reginald Clea

Sworn to and subscribed before me

This 5th day of Aug, 2008

Albert W. Carter L S

Notary Public for South Carolina

My Commission Expires Sept 4, 2011
Lexington Co. S.C.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, REGINALD TYRELL CLEA #309063, 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 proceeding or give security therefor

* Reginald Clea
Applicant

Sworn to and subscribed before me

This 5th day of Aug, 2008

Albert W. Carter L S

Notary Public for South Carolina

My Commission Expires Sept 4, 2011
Lexington Co. S.C.

0020

Attachments:

1.) The instruction is unconstitutional under the 14th Amend. because it creates for the jury a mandatory presumption, which violates defendant 14th Amend. Due-Process Rights. The find the defendant guilty on that malice exist from the use of a deadly weapon. The court should have ^{the} jury that inferred malice can be rebutted by competent evidence. Include a charge that ~~the~~ inferred malice from the use of a deadly weapon can be rebutted. The way the charge is stated impermissibly shifts the burden to the defendant, unlawfully, and unconstitutionally shifts the burden

2.) The trial judge committed error by refusing to instruct the jury on the lesser-included offense of voluntary manslaughter. Which defendant trial testimony was sufficient to show evidence to relieve the lesser-included offense. Both self defense and the lesser-included offense of voluntary manslaughter should be submitted to the jury if supported by the evidence.

3.) The State failed to prove beyond a reasonable doubt that defendant did not act in self-defense violating defendant 14th ~~Amend~~ Amend. Due-Process Right.

STATE OF SOUTH CAROLINA	)	
COUNTY OF SUMTER	)	IN THE COURT OF COMMON PLEAS
	)	
	)	2008-CP-43-1858
Reginald Tyrell Clea, #309063,	)	
Applicant,	)	
v	)	RETURN AND MOTION TO DISMISS
State of South Carolina,	)	
Respondent	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed August 7, 2008, would respectfully show this Court

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. Applicant was indicted during the October 2004 term of the Sumter County Grand Jury in a multi-count indictment for (1) Murder, (2) Murder, and (3) Possession of a Firearm During Commission of Crime of Violence (2004-GS-43-0956). Applicant was represented by John D. Clark, Esquire. On May 2-5, 2005, Applicant proceeded to a jury trial before the Honorable Clifton Newman. Applicant was found guilty of Counts Two and Three and acquitted of Count One. On May 5, 2005, Judge Newman sentenced Applicant to thirty (30) years incarceration for Murder and to five (5) years incarceration for Possession of a Firearm.

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Clea, Op. No.

0022

2007-UP-552 (S C Ct App filed Dec 14, 2007) The remittitur was sent on January 2, 2008

Attached herewith and incorporated herein by reference are the records of the Sumter County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records

II

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons

- 1 "The trial judge erred by giv[ing] the jury a burden shifting instruction at trial "
- 2 "Judge err[ed] for failing to instruct the jury on the less[er] included offense of voluntary manslaughter "
- 3 "The State failed to prove beyond a reasonable doubt that defendant did not act in self-defense "

III

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S C Code Ann § 17-27-10 to -160 (2003) An Applicant may commence a post-conviction relief action on the following grounds

- 1 That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State,
- 2 That the court was without jurisdiction to impose sentence,
- 3 That the sentence exceeds the maximum authorized by law,
- 4 That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice,

0023

- 5 That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint, or
- 6 That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy S C Code Ann § 17-27-20 (1976)

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S C Code Ann § 17-27-20(b) (1985) Post-conviction relief is not a substitute for a direct appeal Simmons v State, 264 S C 417, 215 S E 2d 883 (1974) A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal Ashley v State, 260 S C 436, 196 S E 2d 501 (1973) The Applicant could have raised these issues at trial or on appeal, and his failure to do so has waived these allegations as grounds for relief Further, the issue of whether the trial judge erred in failing to charge the jury on voluntary manslaughter was decided on appeal Therefore, the Court should summarily dismiss this application for post-conviction relief

IV

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied

V

WHEREFORE, having made its Return, the Respondent requests that the application be summarily dismissed

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT
Assistant Deputy Attorney General

MARY S WILLIAMS
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P O Box 11549
Columbia, SC 29211
Telephone (803) 734-3737

Feb 3, 2009

RECORDED

2009 MAR 18 PM 2 50

JAMES C. BELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA

County of Sumter

In the Court of Common Pleas

Reginald Tyrell Clea # 309063

Full name and prison number (if any) of Applicant

vs

State of South Carolina

Name of Respondent

AMENDED

APPLICATION FOR

POST-CONVICTION RELIEF
CASE NO 2008-CP-43-1858

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1 Place of detention Kirkland Correctional Institution

2 Name and location of Court which imposed sentence Sumter County Court of General Sessions

3 The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed

(a) 2004-UP-43-0956

(b) _____

(c) _____

4 The date upon which sentence was imposed and the terms of the sentence

(a) May 5 2005

(b) _____

(c) _____

0026

5 Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty X

(c) after a plea of nolo contendere _____

6 Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____

7 If you answered "yes" to (6) list

(a) the name of each Court to which you appealed

i _____ S C Court of Appeals

ii _____

iii _____

(b) the result in each such Court to which you appealed

i _____ Affirmed conviction

ii _____

iii _____

(c) the date of each such result

i _____ December 14, 2007

ii _____

iii _____

(d) if known, citations of any written opinion or orders entered pursuant to such results

i _____ Op No 2007-UP-552 (S C Ct of App Filed Dec 14, 2007)

ii _____

iii _____

8 If you answered "no" to (6), state your reasons for not so appealing

(a) _____ N/A

(b) _____

(c) _____

9 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

(a) _____ Ineffective Assistance of Counsel (Appellate)

(b) _____

(c) _____

10 State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) _____ Trial counsel objected to and preserved in the record the trial court's jury instructions on the issue of "permissive inference" of malice where there is use of a

(b) ~~deadly weapon by the defendant. Appellate counsel was deficient in failing to raise~~

(c) ~~this preserved issue on appeal directly, thereby prejudicing the appellant from having the appellate court consider a potentially reversible issue~~

- 11 Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? None other than direct appeal
- (b) any petitions in State or Federal Courts for habeas corpus or post convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

- 12 If you answered "yes" to any part of (11) list with respect to each petition motion or application
- (a) the specific nature thereof

I Direct Appeal

II _____

III _____

IV _____

- (b) the name and location of the Court in which each was filed

I S C Court of Appeals, Columbia S C

II _____

III _____

IV _____

- (c) the disposition thereof

I Affirmed conviction

II _____

III _____

IV _____

- (d) the date of each such disposition

I December 14, 2007

II _____

III _____

IV _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition

I Op No 2007-up-552 (S C Ct of App Filed Dec 14 2007)

II _____

III _____

IV _____

- 13 Has any ground set forth in (9) been previously presented to this or any other Court State or Federal, in any petition, motion or application which you have filed?

N/A

0028

14 If you answered "yes" to (13), 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 _____

15 If any ground set forth in (9) 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) Appellate Counsel failed to raise the issue on direct appeal

(b) _____

(c) _____

16 Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? _____

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

17 If you answered "yes" to one or more parts of (16) list

(a) the name and address of each attorney who represented you

I John Clark Esquire

II Joseph L. Savitz III, Esquire

III _____

(b) the proceedings at which each such attorney represented you

I At trial and sentencing

II On direct appeal

III _____

18 State clearly the relief you seek in filing this application

A decision by this court that my appellate counsel was ineffective and a grant of a new trial and/or appeal

19 Are you now under sentence from any other court that you have not challenged?

No

0029

STATE OF SOUTH CAROLINA

County of Sumter

VERIFICATION

I, Reginald Tyrell Clea, #309063, 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

Reginald Clea

SWORN to and subscribed before me this 17th

day of March, 2009

Ernest F. [Signature] (L S)
Notary Public

My Commission Expires July 15, 2018

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I Reginald Tyrell Clea, # 309063, 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 therefor

Reginald Clea
Applicant

SWORN or affirmed to and subscribed before me this

17th day of March, 2009

Ernest F. [Signature]
Notary Public

0030

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
) IN THE COURT OF COMMON PLEAS
) 2008-CP-43-1858
Reginald Tyrell Clea, #309063,)
Applicant,)
v) AMENDED RETURN
State of South Carolina,)
Respondent)

The Respondent, making its Return to the Application for Post-Conviction Relief filed August 7, 2008, would respectfully show this Court

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Sumter County. Applicant was indicted during the October 2004 term of the Sumter County Grand Jury in a multi-count indictment for (1) Murder, (2) Murder, and (3) Possession of a Firearm During Commission of Crime of Violence (2004-GS-43-0956). Applicant was represented by John D. Clark, Esquire. On May 2-5, 2005, Applicant proceeded to a jury trial before the Honorable Clifton Newman. Applicant was found guilty of Counts Two and Three and acquitted of Count One. On May 5, 2005, Judge Newman sentenced Applicant to thirty (30) years incarceration for Murder and to five (5) years incarceration for Possession of a Firearm.

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Clea, Op. No.

0031

2007-UP-552 (S C Ct App filed Dec 14, 2007) The remittitur was sent on January 2, 2008

Attached herewith and incorporated herein by reference are the records of the Sumter County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records

II

In his original Application, the Applicant alleged that he is being held in custody unlawfully for the following reasons

- 1 "The trial judge erred by giv[ing] the jury a burden shifting instruction at trial "
- 2 "Judge err[ed] for failing to instruct the jury on the less[er] included offense of voluntary manslaughter "
- 3 "The State failed to prove beyond a reasonable doubt that defendant did not act in self-defense "

Respondent submitted a Return and Motion to Dismiss asserting that the matter should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S C Code Ann § 17-27-10 to -160 in that Applicant alleged only direct appeal claims

~~Applicant filed an~~ amended application on March 18, 2009, alleging the following grounds for relief

- 1 Ineffective assistance of appellate counsel
 - a "Trial counsel objected to and preserved in the record the trial court's jury instructions on the issue of 'permissive inference' of malice where there is use of a deadly weapon by the defendant Appellant counsel was deficient in failing to raise this preserved issue on appeal directly, thereby prejudicing the appellant from having the appellate court consider a potentially reversible issue "

III

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v Lucey, 469 U S 387, 105 S Ct 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient, and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v State, 337 S C 610, 524 S E 2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v Barnes, 463 U S 745, 103 S Ct 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v Aiken, 775 F 2d 1226 (4th Cir 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v Greer, 800 F 2d 644, 646 (7th Cir 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

0033

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v State, 279 S C 264, 305 S E 2d 247 (1983)

IV

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V

WHEREFORE, having made its Amended Return, the Respondent requests that an evidentiary hearing be held.

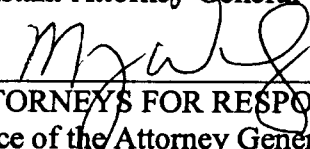
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P O Box 11549
Columbia, SC 29211
Telephone (803) 734-3737

3/24/09, 2009

0034

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

) COURT OF COMMON PLEAS
) 2008-CP-43-1858

Reginald T Clea,

)
)

Applicant

)

vs

)

TRANSCRIPT OF RECORD
(Post Conviction Relief)

)

State of South Carolina,

)

)

Respondent

)

November 4, 2009
Columbia, South Carolina

BEFORE

THE HONORABLE G THOMAS COOPER, JR , JUDGE

APPEARANCES

ERNEST A FINNEY, III, ATTORNEY AT LAW
Attorney for the Applicant

MARY WILLIAMS, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

JENNY H WILLIAMS
Official Circuit Court Reporter
(803) 576-1743

1 INDEX OF WITNESSES

2 JOSEPH L SAVITZ, III

3 Direct Examination by Mr Finney 7

4 Cross Examination by Ms Williams 37

5 REGINALD T CLEA

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7 Cross Examination by Ms Williams 50

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1 Wednesday, November 4, 2009

2 **THE COURT** Ms Williams

3 **MS WILLIAMS** May it please the Court This is
4 Reginald Clea, 2008-CP-43-1858 This is a Sumter
5 County case and we are here today by consent in order
6 to -- due to some scheduling issues Mr Clea was
7 convicted in May of 2005 for one count of murder and
8 one count of possession of a weapon during a violent
9 crime He was sentenced to a term of 30 years for
10 murder and a concurrent term of five years for
11 possession of a firearm

12 There was an appeal That appeal, the
13 conviction sentences were affirmed and the remittitur
14 sent on January 2nd of 2008 with Mr Clea's
15 application timely filed on August the 7th of 2008
16 Today he has alleged that he received ineffective
17 assistance of appellate counsel and he is represented
18 by Mr Finney

19 **THE COURT** Mr Finney

20 **MR FINNEY** Thank you, Your Honor Good
21 morning First of all, I'd like to thank the State
22 and the Court for giving us the opportunity to argue
23 the case in Columbia rather than waiting several
24 weeks to argue again in Sumter

25 **THE COURT** No objection to the jurisdiction of

1 this Court?

2 **MR FINNEY** No objection

3 **THE COURT** All right

4 **MR FINNEY** Your Honor, by way of just a little
5 bit of background, Mr Clea was charged arising out
6 of an incident, February -- February 25th, 2004 in
7 Sumter County where he and two or three other people
8 that he was well aware of had some type of
9 disagreement ending in a shooting where two people
10 were killed, a Mr Jackson and a Mr Pollard

11 Mr Jackson from the transcript would be the
12 first person who was fired upon He died Mr
13 Pollard was the second person who was fired upon He
14 also died The trial occurred in May, May 2nd
15 through the 5th of 2005 in Sumter County He was
16 represented at trial by Mr John Clark, a private
17 attorney from the Sumter area

18 At the conclusion of the trial the jury found
19 him not guilty of shooting Mr Jackson, the first man
20 who was fired upon They found him guilty of murder
21 in the case of Mr Pollard, the second man who was
22 fired upon

23 **THE COURT** Were they co-defendants or just Mr
24 Clea?

25 **MR FINNEY** No co-defendants, just Mr Clea

1 During trial counsel's presentation of the case, an
2 objection was made by Judge Clifton Newman's jury
3 instruction regarding the issue of the
4 lesser-included offense of manslaughter Also trial
5 counsel made an objection as to the implied malice
6 charge under the presumption of using a deadly
7 weapon, raising the inference of malice

8 Those two objections were preserved in the
9 record during the trial of the case and we are here
10 today on the issue of whether or not it was error for
11 the appellate counsel to not argue the second issue,
12 which is the implied malice issue An appeal was
13 taken up to the Court of Appeals on the issue of the
14 involuntary manslaughter charge which was objected
15 to The trial judge declined to charge it

16 **THE COURT** Declined to charge involuntary?

17 **MR FINNEY** Involuntary There was no --

18 **THE COURT** He charged murder and voluntary?

19 **MR FINNEY** Murder only

20 **THE COURT** Murder straight up?

21 **MR FINNEY** That's it, and --

22 **THE COURT** Was a voluntary requested?

23 **MR FINNEY** Yes, sir And the appeal by the
24 appellate counsel today was perfected on that issue
25 alone whether or not it was error to fail to charge

1 involuntary or lesser included

2 **THE COURT** So he asked for involuntary also?

3 **MR FINNEY** Well, it was voluntary I'm
4 feeling trial counsel asked for both But voluntary
5 was requested and turned down by the judge, so he
6 never got to request --

7 **THE COURT** Never got the involuntary?

8 **MR FINNEY** Yes, sir

9 **THE COURT** Okay

10 **MR FINNEY** We would like to ask Mr Savitz to
11 take the stand as our first witness

12 **THE COURT** Let me just before -- all right
13 Come on, Mr Savitz Let me just be clear before the
14 direct examination starts

15 JOSEPH L SAVITZ, III, after being duly sworn,
16 testifies as follows

17 **THE COURT** Have a seat in the witness box
18 State your full name for the record

19 **THE WITNESS** Okay My name is Joseph L
20 Savitz, S-A-V-I-T-Z, III

21 **THE COURT** Mr Finney, you're going forward on
22 which issue? Both?

23 **MR FINNEY** The issue of failure to argue and
24 raise in the appeal the implied malice presumption
25 that was charged by the trial judge

1 **THE COURT** Is that the only issue?

2 **MR FINNEY** That's the only issue

3 **THE COURT** You're not worried about the --

4 **MR FINNEY** The voluntary manslaughter issue
5 was taken on direct appeal and was turned down by the
6 court

7 **THE COURT** I see

8 **MR FINNEY** And so we are not arguing that
9 issue

10 **THE COURT** Go ahead You may proceed

11 DIRECT EXAMINATION

12 **BY MR FINNEY**

13 **Q** Good morning, sir

14 **A** Good morning How are you?

15 **Q** Fine Mr Savitz, where are you employed?

16 **A** I'm employed at the Division of Appellate Defense
17 which is part of the Office of Indigent Defense here
18 in Columbia

19 **Q** How long have you been so employed?

20 **A** I've been with Appellate since January of 1985

21 **Q** And I understand, sir, that you are Chief Counsel
22 Is that --

23 **A** I used to be until two weeks ago I was Chief
24 Attorney I am now Senior Appellate Defender I
25 don't do any of the administrative stuff any more

1 Q Very good How long have you been connected with the
2 office?

3 A Since 1985

4 Q All right, sir Over 20 years?

5 A Yes

6 Q Yes, sir You would normally, sir, get cases from
7 South Carolina courts by way of persons having been
8 found guilty in trial courts and they would ask your
9 office to handle their appeals?

10 A We represent indigent defendants that have been
11 convicted either on direct appeal or post conviction
12 relief

13 Q All right, sir Mr Savitz, do you remember the case
14 of Mr Clea from Sumter County being appealed through
15 your office back in I believe 2005 or 2006?

16 A Yes, I do

17 Q All right Have you ever met Mr Clea?

18 A I don't believe I have Not in person I don't know
19 if we've talked on the phone or not

20 Q All right You don't have any recollection of ever
21 talking with him?

22 A No, I do not

23 Q All right Do you have any recollection of ever
24 having received any correspondence from him or
25 sending any correspondence?

1 **A** I mean, I am sure we sent him, you know, just the
2 letters that we send everybody But as far as -- and
3 I have not reviewed the file I couldn't get it from
4 archives So, you know, we sent him probably the
5 form letters But as far as sitting down writing him
6 a letter, I have no recollection of that

7 **Q** All right The statement of facts that I gave the
8 judge just now, does it seem to be--

9 **A** Yeah

10 **Q** -- what you recollect about the issues that were
11 present in the --

12 **A** Yeah The only thing that I would add is that his
13 defense was self-defense And that's really why I
14 raised the voluntary manslaughter, the failure to
15 give it, because I felt like if it was provocation
16 for self-defense, then it was probably provocation
17 for voluntary manslaughter And it doesn't help Mr
18 Clea, but I still disagree with the opinion that came
19 out in the case I think voluntary manslaughter
20 should have been charged

21 **Q** All right, sir Based on -- would you have ordered
22 and read the transcript of the trial?

23 **A** Yeah We get the transcript That's the first thing
24 we do, is we get the transcript and we send a copy to
25 the client And then we read through it and decide

1 what issues we're going to raise and research those
2 and then write the brief

3 **Q** Is it your recollection, sir, that Mr John Clark,
4 the trial counsel from Sumter County, preserved in
5 the transcript the two main issues, one being the
6 lesser-included charge?

7 **A** Right That's correct

8 **Q** He requested a lesser-included charge?

9 **A** That's right

10 **Q** The trial judge turned him down?

11 **A** That's right

12 **Q** He also requested that the trial judge give a fuller
13 explanation on the charge of implied malice?

14 **A** If I remember correctly, he said that while the
15 charge that the judge gave on implied malice was
16 correct, he wanted an additional charge that that
17 could be rebutted, the inference of malice from the
18 use of a deadly weapon could be rebutted

19 **MR FINNEY** Your Honor, I want to hand up to
20 the witness some pages I've Xeroxed from the trial
21 transcript The pages are 729, 737, 738, 744, 746
22 If you would just look at those I have a copy for
23 the Court and I've given counsel one

24 **MS WILLIAMS** These pages are part of the
25 complete transcript which has been provided to the

1 Court

2 Q Mr. Savitz, on page 729 --

3 A Okay

4 Q -- we are talking only about the issue of the implied
5 malice. Do you see where the trial judge in the
6 first 14 lines on that page charged the jury that
7 they had a -- that the law in South Carolina was that
8 the expressed malice is shown when a person speaks
9 words or expresses hatred or ill will for another?

10 A Right. Yes, sir.

11 Q And then the judge went on to say -- he gave some
12 examples of lying in wait or doing other things to
13 show what would be in the defendant's mind?

14 A Right.

15 Q Then starting at line 10 on page 729 he said, "Malice
16 may be inferred from conduct showing a total
17 disregard--

18 A Right.

19 Q -- of human life"?

20 A Mm-hmm (affirmative)

21 Q And then the next sentence I think is the key
22 sentence of our case. It says "Inferred malice may
23 also arise when the deed is done with a deadly
24 weapon"?

25 A Right.

1 Q And then he goes on to describe what a deadly weapon
2 is?

3 A Yes

4 Q And after the judge's charge to the jury -- and I
5 think you'll see the pages that are attached in that
6 little handout -- the trial judge was asked by
7 counsel to tell the jury that that language he had
8 used about inferred malice was a rebuttal presumption
9 in that they had to -- the jury had to find that
10 there was no evidence otherwise?

11 A Okay I see it

12 Q The judge refused to -- have you ever had that issue
13 come before you as an appellate lawyer before, Mr
14 Savitz?

15 A Not -- I mean, that charge was routinely given up
16 until the Belcher decision came out two weeks ago

17 Q And that would have been about a month ago?

18 A Yeah A month ago, two weeks, something like that

19 Q You are referring to State v Belcher which was a
20 Supreme Court decision, October 12th, 2009?

21 A Mm-hmm (affirmative)

22 Q Well, since we're there, would you tell the Court
23 just for the record what the Belcher decision says
24 and your understanding?

25 A Well, what the Belcher decision says is if the charge

1 that was given in this case were given today when
2 there is evidence of voluntary manslaughter or
3 self-defense, if that charge, an inference of malice
4 from the use of a deadly weapon, that you shouldn't
5 give that charge unless it's murder or nothing When
6 there's evidence that it's something less than
7 murder, you should not charge the evidentiary, the
8 inference of malice, you know, from the use of a
9 deadly weapon

10 **Q** All right, sir And the case in Belcher, it does
11 also say that if a person is using self-defense or
12 some other defense, then the implied malice jury
13 charge would not be proper?

14 **A** Right Right

15 **Q** All right, sir

16 **THE COURT** Just -- I just read it last week I
17 had it But what's the retroactivity of that? I
18 know they commented about that

19 **MR SAVITZ** Well, that's definitely after
20 Belcher This is definitely a bad charge The
21 problem with this case is it occurred prior to
22 Belcher And there is a -- first let me say if this
23 is an issue that I missed, then I missed it I did
24 not raise it for a strategic reason I always say
25 that there's no reason to abandon a winning issue

1 So if I'm wrong about this, then I am just wrong

2 But what I understand Belcher to say is that it
3 only applies prospectively to cases tried after
4 Belcher and cases pending on direct appeal at the
5 time Belcher was decided Also, well, then it
6 becomes a question, if you got that, then it becomes
7 a question about whether or not if it is retroactive,
8 whether or not the objection that the trial counsel
9 made at trial was sufficient to preserve it for post
10 conviction relief

11 In this case the lawyer said -- I'm not trying
12 to blame the trial lawyer, he's not here to defend
13 himself Like I say, if I missed an issue, I missed
14 it But what he said is I think the inference of
15 malice is the right charge but I want it to be
16 rebuttal I want him to charge that this inference
17 of malice can be rebutted

18 Well, that kind of charge is actually what puts
19 a burden on the defendant to rebut the inference of
20 malice, and that charge has been -- that's not a
21 correct statement of the law And that hasn't been a
22 correct statement of the law for years, since in
23 probably State v Elmore and cases like that

24 So I don't -- I disagree that he adequately
25 preserved the -- even if you get around the

1 retroactivity question, I don't agree that he
2 adequately preserved the issue for appeal

3 Q I would refer the Court to page 737 in the
4 transcript I may have handed up a copy May I ask
5 you, sir, do you have page 737 and 738?

6 A Yes, I do

7 Q Would you start at page 737, line 12, Mr Clark
8 speaking to the Court?

9 A Right He says The defendant objects to the
10 Court's charge on inferred malice and use of a deadly
11 weapon We believe that's the appropriate charge but
12 we believe also that when that charge is given the
13 Court should charge that inferred malice can be
14 rebutted by competent evidence We would ask the
15 Court to recharge the jury, include the charge that
16 inferred malice from the use of a deadly weapon can
17 be rebutted and that it be given to the jury in
18 writing

19 Q All right, sir And go on please, sir, down at page
20 20 Excuse me Page 737, line 25

21 A Yes

22 Q Go on over to the next page Would you read the next
23 four lines?

24 A Just if I may, we believe the way the charge is
25 stated impermissibly shifts the burden to the

1 defendant, unlawfully, unconstitutionally shifts the
2 burden

3 **Q** All right, sir So Mr Clark preserved in the record
4 that he thought that the inferred malice charge that
5 the judge gave was an unconstitutional burden
6 shifting instruction and he asked the Court to charge
7 some additional language about rebutability [sic]?

8 **A** That's correct

9 **Q** All right, sir And would you agree with me, sir,
10 that that charge -- excuse me -- that that objection
11 was re-made by Mr Clark at page 744 and 745 after
12 the jury's verdict had been returned?

13 **A** Yes He made the same objection

14 **MR FINNEY** Your Honor, if the transcript is
15 part of the record, I'll just refer to that instead
16 of introducing anything at this point

17 **THE COURT** I have a complete record

18 **MR FINNEY** All right, sir Very good

19 **Q** Mr Savitz, did you see that issue in the record when
20 you reviewed the transcript?

21 **A** I'll be honest with you I'm sure I did, but I think
22 Belcher surprised a lot of people when it came out
23 that it was decided I think it was an excellent
24 opinion Judge Kittredge wrote it I think it
25 surprised a lot of people I don't remember

1 considering it as an appellate issue It's not like
2 I-- I don't have any conscious recollection of
3 thinking this is an issue, this is a possible issue,
4 I'm not going to raise it

5 Q My understanding, sir, from reviewing the opinion of
6 the Court of Appeals, their decision was published in
7 December of 2007?

8 A That's right

9 Q And that would have been two years before Belcher?

10 A That's right

11 Q So what we're talking about is the state of the law
12 in 2007 as it applies to this transcript?

13 A That's right

14 Q Mr Clark preserved an issue regarding the malice for
15 your review as appellate counsel?

16 A Even assuming his objection is the right objection,
17 the charge was not objectionable at the time--

18 Q All right, sir

19 A -- that it was given

20 Q Now, did you -- were you aware, sir, that in 2007 the
21 South Carolina Supreme Court had decided State v
22 Lowery and also in 1981 they had decided State v
23 Madison?

24 A Yes, I was

25 Q Are you familiar with those cases?

1 **A** Mm-hmm (affirmative)

2 **Q** All right, sir

3 **A** Yes, sir

4 **Q** Both of those cases have the issue of the implied
5 malice charge involved Is that correct?

6 **A** Right

7 **Q** All right, sir And the Madison case had kind of
8 been the standard case in the field of criminal law
9 Is that correct?

10 **A** That's -- that's correct

11 **Q** All right, sir In the Madison case, if I may just
12 paraphrase, and that's at 277 se2d 598, do you agree
13 that the court found that even though the no reversal
14 error was present that they strongly recommended to
15 the trial bench that they not talk about implied
16 malice except in the nature of an evidentiary tool?

17 **A** Yeah

18 **Q** For the jury?

19 **A** Right

20 **Q** Would you also agree, sir -- and maybe I can just do
21 this simply by putting it on the record if you
22 disagree The jury charge in the Madison case
23 stated -- the trial judge stated Now, if the facts
24 are proved sufficient to raise a presumption of
25 malice to your satisfaction and such a presumption

1 would be rebuttal and it is always for the jury to
2 determine from all the evidence in the case whether
3 or not malice has been proved beyond a reasonable
4 doubt, that was a statement by the trial judge to the
5 jury?

6 **A** Right

7 **Q** That statement in Madison was disapproved of by the
8 Supreme Court Would you say, sir, based on your
9 knowledge that that statement to the Madison jury was
10 more detailed than the statement that the trial judge
11 gave in Mr Clea's case?

12 **A** Are you asking me do I think that's a worse charge
13 than the one that was given in his case?

14 **Q** I'm asking you--

15 **A** Yes

16 **Q** -- does it give more of a statement of the law?

17 **A** Well, I mean, what you've got to look at is, there
18 are two different things One is like an implication
19 of malice from the use of a deadly weapon The jury
20 is not given any discretion If they find the
21 defendant used a deadly weapon, they've got to find
22 malice, because the charge says malice is implied
23 through the use of a deadly weapon

24 Well, the Court said you can't charge that You
25 can't charge-- you've got to find malice from the use

1 of a deadly weapon You've got to tell the jury that
2 an inference of malice may arise from the use of a
3 deadly weapon, but they're free to reject that or
4 not That was the law up until Belcher came out
5 Belcher is a significant break--

6 Q I understand that

7 A -- with that because it says you don't charge even
8 that the jury may find, may infer malice--

9 Q I understand

10 A -- when there is lesser-included offenses or
11 self-defense or things like that So, I mean, we're
12 talking Belcher is a significant break with the law
13 of malice

14 Q And I agree But in 1981, Madison was placed on the
15 record as the new standard in South Carolina

16 A That's right

17 Q And in 2007 when Mr Clea's case came before you --

18 A Right

19 Q -- at the Court of Appeals, Madison was still the
20 law--

21 A That's right

22 Q -- or it had been just changed by State v Lowery
23 which was also decided in February of 2008?

24 A Mm-hmm (affirmative)

25 Q So that hadn't become the law yet?

1 **A** Right

2 **Q** Is that correct?

3 **A** That's right

4 **Q** Because Mr Clea's appeal was filed December 14th,
5 2007?

6 **A** Right

7 **Q** So Lowery wasn't in effect yet officially, but
8 Madison was?

9 **A** That's right

10 **Q** All right, sir Now, you say you looked at the issue
11 but you didn't think it was a genuine or good issue
12 to go up on, so you did not appeal Mr Clea's case to
13 the Court of Appeals on the issue of the implied
14 malice?

15 **A** No, I did not

16 **Q** Were you aware, sir, that in 2007 that other states
17 in our vicinity, Georgia, Texas, Maryland, had
18 decided the issue against allowing the trial judge to
19 appeal -- or excuse me -- charge the jury on the
20 issue of malice?

21 **A** On the inference of malice from the use of a deadly
22 weapon?

23 **Q** Yes, sir

24 **A** I probably was aware I don't remember if I -- I
25 haven't researched it outside of South Carolina

1 Q I want to know if you are aware of the case of 1974,
2 a Michigan case called People vs Martin, a 2001
3 Georgia case, Harris vs State, 2003 Texas case,
4 Brown v State, all standing for the proposition that
5 the Court would not be proper in submitting implied
6 malice to the jury?

7 A No That's the first time I've ever heard of those
8 cases

9 Q All right, sir And, sir, you would agree that from
10 what you've testified that you did not routinely
11 bring this issue in your appeals to the Court of
12 Appeals?

13 A Well, no I mean, I've never -- I raise it now after
14 Belcher, but--

15 Q No No, sir I'm talking about 2007

16 A I mean, we're talking about two different things
17 You're presuming that the objection that was made at
18 trial is proper I'm saying there's a problem with
19 the objection at trial What he said is I don't
20 have any problem with you charging that malice may be
21 inferred from the use of a deadly weapon I want you
22 to charge that that's rebuttable though That hasn't
23 been good law since the 80's

24 Q Mr Savitz

25 A Yes

1 Q There's no place in the record that Mr Clark told
2 the trial judge he didn't have any problem with the
3 charge?

4 A I beg to differ What he said is--

5 Q Show me the page, please, sir

6 A It's on page 737 The defendant objects to the
7 Court's charge on inferred malice and use of a deadly
8 weapon We believe that's an appropriate charge,
9 Your Honor, but we believe also that when that charge
10 is given the Court should charge inferred malice can
11 be rebutted by competent evidence

12 Q And, sir, isn't that the same language that we just
13 read in Madison which was decided in 1981?

14 A That's the same language the Court said was bad in
15 Madison

16 Q Well, sir, did the judge in the Sumter case charge
17 anywhere near the information that was given in
18 Madison? Look at the transcript on page --

19 A Are you asking me if it's worse than Madison?

20 Q Yes, sir I'm saying--

21 A No, it's not

22 Q -- based on page 729, what the trial judge gave in
23 Mr Clea's case, did he give any language to the jury
24 in Sumter County that would have met the Madison
25 standard?

1 **A** Yes What he charged met the Madison standard What
2 he charged is no longer good law What the trial
3 lawyer--

4 **Q** That was in 2007, Mr. Savitz

5 **A** Yes

6 **Q** That's the point

7 **A** Yes Yes, yes, yes I am saying yes What he
8 charged in 2007 was the law What the trial lawyer
9 objected to was not the law The trial lawyer said
10 I don't have any problem I think the inferred
11 malice charge is appropriate That means it's okay
12 What he said is I want you to charge that's
13 rebuttable That's not the law That is not okay

14 **Q** All right, sir

15 **A** What I am saying is even if Belcher had been the law
16 in 2007, the objection made by trial counsel did not
17 preserve the issue for appeal

18 **Q** Sir, is it your understanding that the reason that
19 the Court in Belcher overturned Madison and at least
20 25 other cases that had been the rule of law in this
21 state was that it was an unconstitutional shift in
22 the burden?

23 **A** My understanding is they didn't say that it was
24 unconstitutional They just said -- I mean, they
25 said some of the rebuttable presumptions and stuff

1 like that that were unconstitutional The Court can
2 craft any kind of charge they want And in Belcher
3 they just said in these cases you shouldn't give this
4 charge any more And, you know, because it's such a
5 radical break with prior precedent, we're just going
6 to apply it prospectively onto cases that are pending
7 on appeal

8 **Q** All right, sir Well, let me ask you this If Mr
9 Clea and his lawyer raised this issue, let's just
10 assume for the argument of the moment that it was
11 raised properly and it was placed in the record

12 **A** Right

13 **Q** You saw the record?

14 **A** Mm-hmm (affirmative)

15 **Q** You did not raise it?

16 **A** That's right

17 **Q** All right So if Belcher applies to cases that are
18 in the system, in the pipeline--

19 **A** Right

20 **Q** -- would Mr Clea have been able to raise it on his
21 direct appeal? If it had been preserved and you had
22 argued it, would it have been an issue that the Court
23 could have considered on his direct appeal?

24 **A** I mean, not unless we could have -- I mean, I don't
25 see how it could have been since his case was decided

1 like, you know, a couple of years before Belcher came
2 out

3 **Q** I understand that But what I'm saying is, there
4 wouldn't have been anything to prevent you as
5 appellate counsel from raising the issue if it had
6 been preserved properly in the record?

7 **A** No, not at all

8 **Q** Is that correct?

9 **A** That's correct

10 **Q** And you would agree that there were other states that
11 had listened to the evidence, listened to the issue
12 and decided that the inference -- malice, the
13 presumed inference malice charge was bad law?

14 **A** Right

15 **Q** All right But you didn't argue that on appeal?

16 **A** Hmm-mm (negative)

17 **Q** Now, Mr Clea has never had an opportunity to have
18 that issue addressed by a court Is that correct?

19 **A** I guess today

20 **Q** Well, before today?

21 **A** No

22 **Q** All right, sir So, is his case -- I don't want
23 to -- let me not do it that way This would be the
24 first opportunity today for Mr Clea to argue that
25 that issue should have been brought to a court's

1 attention?

2 **A** That is right

3 **Q** All right And the way he did that was by post
4 conviction today?

5 **A** Right

6 **Q** Because the issue was not taken up on appeal in 2007?

7 **A** Yeah

8 **Q** All right Now, let me ask you this This is just
9 for the record, sir, please Give me a little time
10 to kind of go through this

11 **A** Okay

12 **Q** In the Belcher case, there is language from the Court
13 that states that it is important for the Court to
14 look at whether or not an issue is legally
15 significant?

16 **A** Mm-hmm (affirmative)

17 **Q** It seems to be that the Court is looking to see
18 whether the absence of the charge or the charge,
19 whether it was made or not made, had an impact on the
20 jury's decision?

21 **A** Right

22 **Q** All right Were you able to find, sir, anything in
23 the record of Mr Clea's case that showed any
24 evidence of malice other than his possessing a weapon
25 at the time?

1 **A** I can't-- I mean, I haven't read the transcript I
2 don't remember I mean, there may not be I don't
3 know

4 **Q** And so if there were, sir, no evidence of any bad
5 blood between the deceased gentleman in Sumter and
6 Mr Clea, that would support a finding that there was
7 no malice?

8 **MS WILLIAMS** I would object on this It calls
9 for speculation It's a leading question and it's
10 been answered that he does not know what's in the
11 transcript

12 **THE COURT** I'll allow it Go ahead

13 **Q** I'm just going to ask you some questions and you give
14 me your best answer, sir

15 **A** Okay

16 **Q** Were there any facts introduced about the events
17 before the crime occurred--

18 **A** Mm-hmm (affirmative)

19 **Q** -- that showed any bad words between these people
20 that were involved, the defendant and the victim?

21 **A** I mean, I'll be honest with you If the record shows
22 there weren't, then there weren't I mean, I
23 don't --

24 **Q** To your knowledge, was there any preparation by the
25 defendant before the violence occurred?

1 **A** I think he went and got a gun, I mean, if you want to
2 count that as preparation
3 **Q** Is there anything else?
4 **A** Not to my -- I mean, I don't remember the record
5 **Q** All right, sir Was there any alcohol or drug use?
6 **A** I don't know
7 **Q** All right, sir Was there any prior record of
8 criminal activities on the part of the defendant?
9 **A** I have no idea
10 **Q** All right, sir Was there any motive given
11 throughout the trial transcript for the shooting?
12 **A** Self-defense
13 **Q** Other than self-defense That would be a defense
14 Any motive for him taking --
15 **A** Involuntary manslaughter
16 **Q** Sir?
17 **A** Involuntary manslaughter
18 **Q** No, sir
19 **A** That was provoking
20 **Q** Any motive given on the defendant's part?
21 **A** Provocation would be a motive
22 **Q** All right Provocation would be a motive?
23 **A** Yeah
24 **Q** All right Okay
25 **A** I mean, that's involuntary manslaughter

1 Q To your knowledge, there was no revenge motive or
2 anything like that?

3 A I mean, I'll be honest with you I don't remember
4 anything about the record So me not knowing is not
5 proof Absence of me knowing anything about the
6 record doesn't mean -- I mean, the record says what
7 it says I don't remember

8 Q If the record is void of any other evidence of
9 motive--

10 A Right

11 Q -- or malice, then is it more -- is it possible, sir,
12 that that makes the issue of the charge, the jury
13 charge more important in this case than in most
14 cases, because there is nothing else for the jury to
15 look at to find malice except the judge's charge that
16 they may imply malice from the deadly weapon?

17 A I say that's fair That's a fair statement

18 Q All right Would that mean you, sir, as appellate
19 counsel, would have a higher duty to argue in this
20 case that that charge is bad because the jury has
21 nothing else to hang their hat on?

22 A If the charge -- well, at the time the charge wasn't
23 bad Okay If the error, if it had been bad and it
24 had been properly objected to, then I was
25 ineffective Okay If the charge is bad and it was

1 properly preserved, then I was ineffective on appeal
2 I don't know any other way to put it than that But
3 the charge was not bad and it was not properly
4 objected to at the time

5 Q All right, sir Let me ask you this Sometimes in
6 the case law we have seen the courts argue that in
7 the case of appellate counsel one of the issues that
8 they look at is whether or not the issue that was
9 raised or not raised was a stronger issue Did you
10 have a conversation or a thought process about
11 whether or not one of the issues that was raised by
12 trial counsel was stronger than the other issue?

13 A Of the two issues we're talking about?

14 Q Yes, sir

15 A Oh, yeah I thought the voluntary manslaughter issue
16 was a winner I still think we should have won

17 Q All right, sir And so, can you tell the judge --
18 I'm going to hand you up the Court of Appeal's
19 decision affirming the conviction I know you
20 probably haven't had a chance to look at it

21 A I haven't seen it in a while

22 Q My question is going to be, what did you find in the
23 transcript that made that a stronger issue?

24 A Well, first thing, you had self-defense being
25 charged So you had some element -- I mean, with

1 self-defense, you've got some element of provocation
2 and him being without fault So you're already
3 halfway there To me, to my mind, when you've got
4 self-defense, you probably ought to get voluntary,
5 because self-defense, you're halfway there

6 They provoked you to doing it, there is evidence
7 you've been provoked, that could be provocation
8 sufficient for voluntary manslaughter The problem,
9 he over-testified If you're asking me what the
10 problem is with the voluntary manslaughter, he said,
11 instead of -- he said I wasn't mad when I shot him,
12 which was -- kind of takes away the heat of passion
13 that you need for voluntary manslaughter That's why
14 we lost I still think there was sufficient evidence
15 in the case that voluntary manslaughter -- I think I
16 should have won the case Okay

17 Q Did you appeal the case up to a higher court?

18 A No

19 Q All right Was that an option for you once you read
20 the opinion?

21 A Yes It's always an option

22 Q Okay But that wasn't done?

23 A No I didn't do it

24 Q All right, sir Now, the Court of Appeals gave
25 detailed examples throughout the transcript of their

1 opinion as to why voluntary manslaughter would not be
2 properly charged in his trial?

3 **A** That's right

4 **Q** And they affirmed the conviction based on those
5 examples given?

6 **A** Mm-hmm (affirmative)

7 **Q** All right And those examples were taken from the
8 transcript?

9 **A** That's right

10 **Q** That you read?

11 **A** Right

12 **Q** But your testimony today is that that was a better
13 issue than the implied malice?

14 **A** That's right

15 **Q** And so you abandoned the implied malice and went with
16 what you thought was the stronger issue?

17 **A** That's right

18 **Q** Although both issues were in the transcript?

19 **A** Yeah

20 **Q** As being objectionable by the trial counsel?

21 **A** Both -- he made a type of objection that probably did
22 not preserve the issue So, I mean, in terms of them
23 being both equally valid issues, I would disagree
24 with that

25 **Q** All right I may have asked this, but did you do any

1 research on the burden shifting issue?

2 **A** I have

3 **Q** In the past?

4 **A** Yeah

5 **Q** In this case did you do any?

6 **A** No

7 **Q** All right Let me just cover this with you There
8 is a decision called Yates vs Aiken?

9 **A** Mm-hmm (affirmative)

10 **Q** It's a United States Supreme Court case that came out
11 of South Carolina

12 **A** That's right

13 **Q** In that case there was an issue of a Constitutional
14 violation and the court set up what they call a
15 two-step process Is that correct?

16 **A** I haven't read it in a while, but --

17 **Q** And the first part of the two-step process is that
18 the court looks at what evidence the jury actually
19 considered and the second step is the court weighs
20 the force of evidence against the force of the
21 presumption standing alone That's language from the
22 Yates case, if I am --

23 **A** Right

24 **Q** All right And that's a two-step process where the
25 Court looks at it to see what the jury considered

1 other than the jury charge?

2 **A** Right

3 **Q** All right, sir. And you've already told me for the
4 record that you haven't had a chance to look at the
5 transcript, so you don't exactly remember what was in
6 it. But you're not aware of any other evidence that
7 you can offer the Court today of malice on the part
8 of the defendant that came out at trial?

9 **A** No. I don't remember anything about the transcript.

10 **Q** Okay. And so, all right. Let me ask you this. Is
11 it your contention, sir, that Belcher, which has been
12 decided 30 days ago, well before this PCR -- well,
13 after this PCR was filed by this defendant -- that
14 Belcher would not apply according to your reading of
15 the case?

16 **A** Right.

17 **Q** To a person who did not have the issue raised on
18 direct appeal because his appellate lawyer did not
19 take it to the Court of Appeals?

20 **A** Since I am probably going to be raising that issue, I
21 don't know if I want to state my opinion about it.
22 But the Court appears to say that it will only apply
23 to people who have direct appeals or are coming to
24 trial now.

25 **Q** All right.

1 **A** There is a gray area about whether or not if you were
2 in the same group of people, like Belcher, that were
3 going to trial and your lawyer didn't object as
4 Belcher's lawyer did, was he ineffective? So there
5 is still that kind of gray area that hasn't been
6 decided. The Court appears to say though that it
7 will not apply to those people. I hope that's right.

8 **Q** The Court does not specifically say that persons
9 cannot raise Belcher issues on their PCR when they
10 haven't had their PCR decided?

11 **A** No. They have not said that yet.

12 **Q** So, if the court says in Belcher that we will not
13 grant PCR's, second PCR's, and I'll just -- I'll save
14 this for my argument to the Court -- you don't have
15 any opinion on whether this case right now meets the
16 Belcher test?

17 **A** To me, the issue in this case is whether trial
18 counsel is ineffective in failing to properly object

19 **Q** Trial counsel?

20 **A** Trial counsel, yes, was ineffective in failing to
21 properly object to the charge. And that's the issue
22 that's in the -- I mean, that to me as just an
23 appellate lawyer, that's the issue I'm going to raise
24 in some case. And it is not whether or not I was
25 ineffective in failing to raise this on appeal,

1 because I was not But my opinion doesn't matter
2 If I am wrong about it, then I am wrong and I was
3 ineffective and he deserves a new trial

4 **Q** Did you in your appeal -- did you bring up any
5 argument concerning how the jury reached their
6 verdict of finding him guilty on one and not guilty
7 on one or the other?

8 **A** No I don't believe so

9 **Q** All right

10 **MR FINNEY** Thank you, Your Honor

11 **THE COURT** Ms Williams

12 CROSS EXAMINATION

13 **BY MS WILLIAMS**

14 **Q** Mr Savitz, does South Carolina employ a plain error
15 standard in appeals?

16 **A** No Well, you know, no The real answer is no,
17 unless you're talking about race, gender, things like
18 that, kind of suspect class type stuff where State v
19 Beyonde Pace (ph) and cases like that But generally
20 speaking, on just like an error like this, a charging
21 error, no

22 **Q** Can you tell me how you go about deciding whether to
23 continue to appeal a case once it's been decided by
24 the Court of Appeals, how you decide whether to
25 pursue it to the Supreme Court?

1 **A** Well, what the Supreme Court has said to us is that
2 they really don't want us appealing beyond the Court
3 of Appeals because all you're really entitled to is
4 the one appeal and all that I don't agree with
5 that I appeal most, as does the State, when they
6 lose

7 We usually -- you've got to win these in the
8 Supreme Court ultimately So what you look at is the
9 opinion and the reasoning of the opinion and whether
10 or not the reasoning is, you know, if you've got like
11 a two-to-one decision, all you've got to do is get
12 one person to change their mind You look at the
13 reasoning of the decision and see whether or not it's
14 sound enough

15 And in this case it's based on, you know, they
16 quoted extensively from his own testimony in the
17 record And his own testimony in the record is when
18 they asked him Were you mad when you shot him, you
19 say Yes, I was furious Because, you know, heat of
20 passion is what voluntary manslaughter is about You
21 don't say No, I wasn't mad at all So that's why I
22 didn't appeal it

23 **Q** Thank you very much

24 **THE COURT** Anything further?

25 **MR FINNEY** No, sir

1 **THE COURT** All right You may come down

2 **THE WITNESS** Thank you

3 **MR FINNEY** I'd like to call Mr Reggie Clea

4 **THE COURT** Come around, sir Witness be
5 excused?

6 **MR FINNEY** No objection

7 **MS WILLIAMS** I object I would ask that he
8 stay around because I don't know what other issues
9 may be raised by the Applicant

10 **THE COURT** All right That's fine

11 **MS WILLIAMS** Sorry

12 REGINALD T CLEA, after being duly sworn,
13 testifies as follows

14 **THE COURT** Have a seat in the witness box
15 State your full name for the record

16 **APPLICANT** My name is Reginald Terrell Clea

17 DIRECT EXAMINATION

18 **BY MR FINNEY**

19 **Q** How do you spell your last name?

20 **A** C-L-E-A

21 **Q** All right How old are you, Reggie?

22 **A** Twenty-nine

23 **Q** And you were born in Sumter?

24 **A** Yes, sir

25 **Q** All right And you went to school in Sumter all your

1 life?

2 **A** Yes, sir

3 **Q** All right You had a trial in 2005, May 2005 You
4 had a three-day trial in Sumter County?

5 **A** Four-day trial

6 **Q** Four-day trial And as a result of that, was that
7 the first time you'd ever been to court?

8 **A** Yes, sir

9 **Q** Charged with anything?

10 **A** Yes, sir

11 **Q** All right, sir You had a local lawyer, Mr John
12 Clark, who tried your case?

13 **A** Yes, sir

14 **Q** All right And during that trial, were you talked to
15 by the lawyer and involved with decisions about how
16 the case was going to be tried?

17 **A** Yes, sir

18 **Q** All right Did you tell Mr Clark that you thought
19 you had a defense to the charges?

20 **A** Yes, sir

21 **Q** And did you testify at that trial in Sumter?

22 **A** Yes, sir

23 **Q** What did you tell the jury just in summary of what
24 happened that day? Did you tell them that you
25 intended to harm somebody, that you were mad, that

1 you were drunk, that you were high? Did something
2 like that happen?

3 **MS WILLIAMS** Your Honor, I object to this
4 questioning because the transcript is in the record
5 and the transcript is the best reflection of what he
6 testified to

7 **THE COURT** Well, he can summarize I'll allow
8 him to summarize just for the record

9 **Q** Just summarize, sir

10 **A** Yes, sir

11 **THE COURT** We're not trying the case again

12 **MR FINNEY** I understand, sir

13 **A** Yes I testified that I acted in self-defense, that
14 I was provoked And when he asked me those questions
15 about was I mad, to tell you the truth, I didn't know
16 what to say because I didn't even know what was going
17 to hurt me or going to harm me That's what I said,
18 whoever said I was mad, you know

19 **Q** You're talking about when the solicitor was asking
20 you questions?

21 **A** Yes, sir

22 **Q** Now, during the trial, did you have occasion to hear
23 Mr Clark object to the trial judge about the issue
24 of the involuntary manslaughter being taken to the
25 jury?

1 **A** Yes

2 **Q** Did you understand that?

3 **A** Yes I understand it

4 **Q** All right He was asking the judge to put some
5 language in the charge for the jury to understand
6 that they could consider a lesser charge?

7 **A** Yes, sir

8 **Q** All right Did you also understand later on after
9 the jury was charged the law that Mr Clark made an
10 objection about the presumption using a firearm?

11 **A** Yes Because he argued that charge more than he
12 spend [sic] arguing the manslaughter

13 **Q** All right, sir And after the jury came back and you
14 were convicted, you got Mr Clark to file an appeal?

15 **A** Yes, sir

16 **Q** All right Did you have knowledge that the appeal
17 had been handed off to the lawyers in Columbia at the
18 Appellate Defense Office?

19 **A** Yes Because I wrote Ms Laura [sic] French and I
20 asked her inquiring about who was my lawyer and about
21 the issues he was going to raise, because I know
22 that -- because me and Mr Clark after my trial knew
23 that the judge made some mistakes on that because
24 that's all he kept harping about, was the burden
25 shifting jury instruction

1 Q All right You're talking about that's all Mr Clark
2 kept talking about?

3 A Yes, sir

4 Q All right Now, did you ever have a chance to find
5 out who your appellate lawyer was?

6 A Yes About eight, nine months later, Mr Savitz, he
7 wrote me a letter stating how he can go about doing
8 this and that and the third about my case And he
9 said that he was going to file the best issues that
10 he thought was sufficient for my case, you know,
11 whatever he decided, and that--

12 Q All right He sent you a letter saying that?

13 A Yeah With my trial transcript

14 Q Did you ever write Mr Savitz back?

15 A Yes, sir

16 Q Did you ever talk about what you wanted him to do as
17 far as in your brief?

18 A Yes, sir

19 Q All right What did you tell him you wanted him to
20 do?

21 A I told him briefly about the voluntary manslaughter
22 at first I asked him why was he using the same
23 case, State v Gilliam, because the judge took it
24 home to look at If he ain't ruled on it, I didn't
25 feel as though that that charge was strong enough

1 And I asked him about the burden shifting jury
2 instruction, why you ain't raising that But he
3 never got back in contact with me

4 Q Did you ever meet Mr Savitz face-to-face?

5 A No, sir

6 Q Is today the first day you've ever seen him?

7 A Yes, sir

8 Q All right Did you ever talk with him on the phone?

9 A No, sir

10 Q All right Did you ever get more than that first
11 letter from him?

12 A Not -- no Not from him I got a letter probably
13 about a year and a half later stating that -- well,
14 first he sent me a copy of my brief

15 Q All right Which brief did he send you?

16 A The initial brief

17 Q The initial brief of the appellate?

18 A Yes

19 Q Did you read it?

20 A Yes

21 Q How many issues did he raise in the initial brief?

22 A One

23 Q What was that issue?

24 A The involuntary manslaughter, the lesser-included
25 offense

1 **Q** All right And did he raise any other issues in that
2 initial brief?

3 **A** No, sir

4 **Q** As a result of reading that brief, what did you do,
5 if anything?

6 **A** I wrote him back and asked him about the case he was
7 using, because that was my whole concern I'm like,
8 if the judge is -- if Judge Newman took the case
9 overnight and read it, even from my perspective, the
10 guy getting shot at, getting this, that, and the
11 third and he didn't rule in my favor So I was
12 telling him that how--

13 **Q** Telling who?

14 **A** -- telling Mr Savitz how the Supreme Court going to
15 rule in my favor?

16 **Q** How did you tell Mr Savitz this?

17 **A** I wrote him

18 **Q** All right So you wrote your concerns in a letter
19 after you read the initial brief?

20 **A** Yeah And I asked for my final brief once he --
21 about a couple of months later he sent me some little
22 about one-line letter saying that my case is
23 submitted on a written record I'm like, what is
24 this?

25 **Q** Did you ever receive your final brief from Mr

1 Savitz?

2 **A** No, sir

3 **Q** Did you ever know what issues were raised in the
4 final brief?

5 **A** No, sir

6 **Q** After you got the letter from Mr Savitz that said
7 that your case had been submitted to the court, did
8 you ever hear back from him again?

9 **A** Yeah Once my case got denied

10 **Q** And they sent you a copy of the decision of the
11 Appeals Court?

12 **A** Yes, sir

13 **Q** Is that what he sent you?

14 **A** Yes, sir

15 **Q** And your case had been affirmed?

16 **A** Yeah By the Appeals Court

17 **Q** What issue had been raised?

18 **A** Voluntary manslaughter

19 **Q** Any others?

20 **A** That's it

21 **Q** After you found out that your appeal had been turned
22 down, did you file a PCR application on your own?

23 **A** Yeah Because in the letter -- not trying to dog Mr
24 Savitz, because I can't go by his expertise, but my
25 own research, getting in the law library, standing up

1 on my case, I saw the issue at the same time So I
2 said I'm going to raise the issue And I raised
3 the voluntary manslaughter issue again just to have
4 something to put on there So once I raised that,
5 that's when Ms Mary Williams sent me an Order to
6 dismiss me out of court because she said these issues
7 shouldn't have been raised on direct appeal

8 **Q** All right Is this-- I'm going to hand you a
9 document What is that document?

10 **A** A PCR application

11 **Q** And did you fill this out?

12 **A** Yes, sir

13 **Q** Did you have a lawyer?

14 **A** No I filled it out myself

15 **Q** All right And what's the date that it was filed in
16 the Clerk of Court's office in Sumter?

17 **A** August the 7th, 2008

18 **Q** All right, sir

19 **MR FINNEY** Do you have that?

20 **THE COURT** I have it Do you have it?

21 **MS WILLIAMS** I have it The original
22 application?

23 **MR FINNEY** Yes The original application

24 **MS WILLIAMS** There was an original application
25 and an amended one

1 **MR FINNEY** Yes I filed an amended
2 application later

3 **THE COURT** I've got both

4 **Q** This is your first filing of the PCR?

5 **A** Yes And then in February she sent me the Order of
6 Dismissal, and she was saying that, I'm not saying
7 that the charge ain't no good but it should have been
8 raised on direct appeal You cannot substitute --

9 **Q** All right

10 **A** -- the direct appeal for a PCR

11 **Q** All right In number 9, question 9 on the PCR
12 application, can you read to the Court what the
13 question is?

14 **A** State consistently the grounds on which you base your
15 allegation that you are being held in custody
16 unlawfully

17 **Q** What was the first thing you wrote down?

18 **A** The charge judge errored (ph) by giving a
19 burden-shifting jury instruction at trial Number --
20 I mean, B, charge judge errored (ph) for failing to
21 instruct on the lesser-included offense, C, the State
22 failed to prove beyond a reasonable doubt that the
23 defendant did not act in self-defense

24 **Q** All right So the issue of the burden shifting was
25 raised by you in PCR in 2008?

1 **A** No 2007 Well, yeah, August 2007 No August the
2 7th of 2008

3 **Q** Yes, sir All right

4 **A** And she wrote me Which I thought I was going to get
5 a PCR lawyer I got the letter from her stating that
6 her and Henry Dargan McMaster, saying that I've got
7 20 days to hear back on this charge And I'm looking
8 like -- but I read it, and what she was saying made
9 sense How can I raise an issue that should have
10 been raised on my appeal, you know, in PCR?

11 So that was the lack of my knowledge And then
12 that's when I got my father to hire you to explain it
13 to me, at first I didn't want you to argue it because
14 I wanted to argue it myself And then that's when
15 you said I'll go ahead and take your case

16 **Q** All right And so after you filed your initial
17 application your family hired a lawyer for you and
18 you filed an amended application?

19 **A** Yes, sir

20 **Q** That brought us here today?

21 **A** Yes, sir

22 **Q** All right, sir Mr Clea, what sentence was given to
23 you?

24 **A** A 30-year sentence to run concurrent with a 5-year
25 sentence

1 Q All right And you're presently serving that now?

2 A Yes, sir

3 Q All right, sir Answer any questions this lawyer may
4 have for you

5 A Yes, sir

6 CROSS EXAMINATION

7 **BY MS WILLIAMS**

8 Q Mr Clea, do you have any legal training, any legal
9 schooling?

10 A No Not -- from trial and my own study of law, the
11 knowledge of the law, just reading it, understanding
12 it

13 Q Okay And you were saying something about the
14 solicitor You didn't know what to say because you
15 didn't know what would help you or hurt you Is that
16 right?

17 A Yes, sir Yes, ma'am

18 Q Would you have said anything that it took to help
19 yourself at that point? Is that what you're trying
20 to say?

21 A No What I'm trying to say is that he already -- we
22 already got in a match back and forth, as you can see
23 in the transcript, because he was asking me five
24 different questions at one time And I asked Judge
25 Newman -- I told the solicitor I wasn't going to say

1 nothing else to him until he take [sic] his time with
2 me, just like I got shafted with my statement because
3 they didn't took [sic] the time with me So I asked
4 him could he please take his time But every time I
5 go to explain myself, here he come [sic] with another
6 question And I explained to the jury, I said
7 Ladies and gentlemen of the jury, I think he's trying
8 to trip me up or something

9 So I didn't know what to say at the time I'm
10 not making it as an excuse, but that's just, you
11 know, you know, how it goes You all say some things
12 and make something happen and just this, that, and
13 the third I just didn't know what to say

14 Q Thank you

15 THE COURT Anything further?

16 MR FINNEY Nothing further

17 THE COURT All right You may come down

18 Thank you very much

19 THE WITNESS Yes, sir

20 MR FINNEY No further witnesses, Your Honor

21 I would like to make a closing statement

22 THE COURT Anything from the State?

23 MS WILLIAMS Nothing further from the State

24 Thank you And Mr Savitz may be excused at this
25 point?

1 **MR FINNEY** No objection

2 **MR SAVITZ** Thank you

3 **MR FINNEY** Your Honor, please, I do appreciate
4 the Court's time Your Honor, when I got to meet Mr
5 Clea six, eight months ago, nobody had ever heard of
6 Belcher Obviously we were working on the situation
7 that we found at the time which was that there had
8 been a good trial in Sumter County

9 This young man had been found not guilty of one
10 of the two homicides and that the trial judge --
11 trial counsel had done a good job of preserving the
12 record It appeared to me that the objection and
13 that the issue of the implied malice was a viable
14 issue

15 It would seem, Your Honor, that there was only
16 one sentence issued by the trial Court at the time
17 and that the language certainly would have been
18 susceptible by the jury of saying to them that you
19 may infer malice from the use of a weapon That's
20 what it says You may infer malice when the deed is
21 done with a deadly weapon

22 There wasn't any other explanation given by the
23 Court The trial counsel objected to it and said
24 Your Honor, you need to at least let me ask you to
25 charge rebuttable presumption And we think it's bad

1 because it's burden shifting The judge declined,
2 renewed again after the jury verdict, put in the
3 transcript, sent to Mr Savitz's office

4 It appears, Your Honor, that the court
5 throughout the development was allowing the judges to
6 try to do this in a way that, first of all, it
7 couldn't be mandatory, it had to be permissive Then
8 it had to be rebuttable But it was always that it
9 needed something added to it

10 The trial Court in this case didn't add anything
11 to it Trial counsel objected We think the issue
12 was preserved We think it was a very important
13 issue because, Your Honor, if you as an appellate
14 court, if you look at the record, there was no other
15 evidence of malice in the record

16 These people knew each other Whatever started
17 this spark that afternoon was not based on bad words,
18 bad blood, malice, premeditation, preparation by the
19 defendant, nothing of that sort The only thing that
20 you can look to in the record to show the jury that
21 there was malice would be the fact that he armed
22 himself with a weapon

23 And for that reason we think Mr Savitz's office
24 should have argued it They should have taken it up
25 and used the research that was available In the

1 Belcher case there are cites to at least four other
2 cases, and I think there are at least six other cases
3 that are set out in the court that were already in
4 existence in other jurisdictions saying Do not use
5 this implied malice, it's bad

6 And Belcher came along last month while we were
7 waiting for our hearing And here it is, low and
8 behold, a case that says exactly what we are saying
9 The State's position, I believe, is that it doesn't
10 say that you can use it in this situation

11 Our argument is this is this young man's first
12 time getting to use the theory of Belcher because he
13 didn't have his appellate counsel take it up at the
14 time of the appeal

15 **THE COURT** So, is that your response?

16 **MR FINNEY** If you look at that last line, Your
17 Honor, if Belcher--

18 **THE COURT** I'm getting ready to read it

19 **MR FINNEY** Yes, sir Yes, sir

20 **THE COURT** Our ruling, however, will not apply
21 to convictions challenged on post conviction relief

22 **MR FINNEY** My theory is that the Court is
23 saying that if you have a PCR and you were turned
24 down, you cannot come back now with the Belcher
25 decision and say I want a new PCR But a fellow

1 like Mr Clea who never had his PCR hearing until
2 today and was trying to get his issue of the malice
3 taken to a higher court, his counsel didn't take it
4 up, he is now in a position where this is the only
5 avenue that he is going to have to take that issue
6 up

7 And Belcher in my opinion does not preclude him
8 because he's never had it taken up before Now is
9 his day and Belcher fits Belcher is kind of like
10 icing on the cake for us We believe that the cake
11 is that the judge's charge was not good to begin
12 with It was preserved It should have been taken
13 up If it had been taken up, it could have been
14 argued

15 Based on the burden shifting, based on the fact
16 that the judge's charge did not use the extra words
17 that needed to be used, based on the fact that other
18 states said you can't use this at all and that would
19 have been grounds for the appellate office to try to
20 get the attention of the Court

21 Your Honor, if you look at the progeny of cases
22 that came down, Sandstrom was a 1979 case that talked
23 about the inference That was a U S Supreme Court
24 case From '79 all the way through Lowery in 2008,
25 the Courts constantly were refining and changing

1 their view In 2007, when this gentleman --

2 **THE COURT** They just didn't like it They just
3 didn't like it

4 **MR FINNEY** They didn't like it Yes, sir
5 And they couldn't make it fit Because every time
6 they tried to make it like presumption or rebuttable
7 or not mandatory, I mean, Your Honor, all of the
8 cases that we've read, Madison, Gibson, Yates, all of
9 them at least tell the judge if you're going to
10 charge it, you've got to add some things to it

11 The judge in this case didn't do anything He
12 just laid it on the line with one sentence and left
13 it And the lawyer tried to get him to do something
14 He wouldn't do it That's our case, Your Honor

15 **THE COURT** Thank you Ms Williams

16 **MR FINNEY** Thank you, sir

17 **MS WILLIAMS** I will be brief in that I
18 disagree that there is no evidence of malice There
19 was some testimony that there was no weapon on
20 Pollard and one witness that said there was no
21 indication that Pollard was armed I believe the
22 other victim was shot at first That was the victim
23 that was acquitted

24 The second victim was the victim that gave rise
25 to the conviction of the murder With regard to

1 Belcher, Belcher is very clear in that it is a
2 significant break in what has been a fixture of law
3 in this state for quite some time The Circuit Court
4 bench book propagated by the courts had this charge
5 in it for many, many, many years up until Belcher
6 very recently

7 So I think you also have an issue with Mr
8 Savitz who has been doing this for about 25 years
9 So this issue is not properly preserved He had some
10 grave concerns about the preservation And with our
11 state's strike preservation rules, he felt that this
12 was not the strongest issue for him to raise And I
13 believe that his opinion was a correct one

14 I believe that this claim fails on both prongs
15 because there has been no deficient performance for
16 failing to raise what is a novel issue prior to the
17 issuance of Belcher and there would be no prejudice
18 because this issue was not properly preserved by the
19 Court either So that's the State's case

20 **THE COURT** Well, what about this post
21 conviction relief issue stated in Belcher, the last
22 line? Mr Finney says that he believes that applies
23 to only post conviction relief matters that have
24 already been decided, that they can't come back and
25 raise it now What about this one, this issue where

1 in the interim, in the process of a post conviction
2 relief? Does the State have a position?

3 **MS WILLIAMS** My position is just that because
4 this is a new -- this is one of those new law
5 announcements, it is subject to the rule that an
6 attorney is not required to anticipate a change in
7 the law It's not required to be foreseen that
8 something like this would come out And he is only
9 judged by what was the law at the time of the appeal
10 I believe that's the appropriate standard

11 **THE COURT** All right

12 **MR FINNEY** Your Honor, I do have a proposed
13 Order

14 **THE COURT** Well, I was going to say I need some
15 proposed Orders Is the State -- is this one of many
16 cases you have on the roster, or is this sort of the
17 singular case?

18 **MS WILLIAMS** Oh I had a term of court last
19 week with about -- I think it was about 30 cases that
20 I did last week And Judge Cothran has given me a
21 date of December 18th as the due date of those cases
22 I'm happy to prepare an Order entered whenever you
23 tell me If you want to give me ten or fifteen days,
24 that would be plenty I believe

25 **THE COURT** I mean, you got in front of Judge

1 Cothran first He's got you first So how about
2 December 31st?

3 **MS WILLIAMS** Thank you, sir

4 **THE COURT** You can work on it over Christmas

5 **MS WILLIAMS** Thank you, sir

6 **THE COURT** Thank you very much

7 **MR FINNEY** Thank you, Your Honor

8 (Whereupon, the proceedings are concluded)

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STATE OF SOUTH CAROLINA]
COUNTY OF SUMTER]

IN THE COURT
OF GENERAL SESSIONS
CASE NO 2004-GS-43-956

STATE OF SOUTH CAROLINA,]

VS]

REGINALD TYRELL CLEA,]

DEFENDANT]

TRANSCRIPT OF RECORD

(VOLUME ONE)

MAY 2, 3, 4 AND 5, 2005
SUMTER, SOUTH CAROLINA

B E F O R E

HONORABLE CLIFTON B NEWMAN, JUDGE

A P P E A R A N C E S

DUDLEY SALEEBY, JR , ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

JOHN D CLARK, ESQUIRE
ATTORNEY FOR THE DEFENDANT

CRYSTAL T JACKSON
CERTIFIED COURT REPORTER

WITNESS

VOLUME ONE

Monday, May 2, 2005

Jury Selection

James R Turner

By Mr Saleeby

Opening Statements

By Mr Saleeby

By Mr Clark

Richard N Nelson

By Mr Saleeby

By Mr Clark

Raymond Mackessy

By Mr Saleeby

By Mr Clark

Tuesday, May 3, 2005

John Lee Powell

By Mr Saleeby

By Mr Clark

Maurice Young

By Mr Saleeby

By Mr Clark

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
2	VOLUME TWO				
3	Julia Knox				
4	By Mr Saleeby	253			
5	By Mr Clark		265		
6	Helen Jackson				
7	By Mr Saleeby	288			
8	Wesley Gardner				
9	By Mr Saleeby	296			
10	By Mr Clark		299		
11	Robert Burnish				
12	By Mr Saleeby	303			
13	Janice E Ross				
14	By Mr Saleeby	308			
15	By Mr Clark		330		
16	Ila N Simmons				
17	By Mr Saleeby	333		346	
18	By Mr Clark		342		346
19	Vello Paavel				
20	By Mr Saleeby	347			
21	<u>Wednesday, May 4, 2005</u>				
22	Reginald Tyrell Clea				
23	By Mr Clark	381		528	
24	By Mr Saleeby		460		538
25					

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
2	VOLUME THREE				
3	Council Hunter				
4	By Mr Clark	543		555	
5	By Mr Saleeby		554		
6	Charles H Davis				
7	By Mr Clark	556			
8	By Mr Saleeby		559		
9	Michael Clea				
10	By Mr Clark	560		582	
11	By Mr Saleeby		575		
12	Steven Clea				
13	By Mr Clark	584		592	
14	By Mr Saleeby		589		
15	Floyd Drakeford				
16	By Mr Clark	595			
17	By Mr Saleeby		602		
18	Richard A Bledsoe				
19	By Mr Clark	603			
20	By Mr Saleeby		605		
21	Jermaine Diggs				
22	By Mr Clark	606		619	
23	By Mr Saleeby		610/618		
24					
25					

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	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1	Bertha L Drakeford				
2					
3	By Mr Clark	612			
4	By Mr Saleeby		617		
5	Carl Holmes				
6	By Mr Clark	620			
7	By Mr Saleeby		627		
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	<u>NO</u>	<u>DESCRIPTION</u>	<u>I D</u>	<u>EVD</u>
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VOLUME ONE

Monday, May 2, 2005

MR SALEEBY May it please the Court

THE COURT Yes, sir

MR SALEEBY Your Honor at this time the State calls indictment 2004-956, the State against Reginald Tyrell Clea He is charged with the murder of John C Jackson, the second murder of James Pollard and the possession of firearm during the commission of a crime of violence

He's represented by Mr Clark and I'm told that this is a jury trial

THE COURT Ladies and gentlemen of the jury, the State has called to trial the case of the State versus Reginald Tyrell Clea It is the indictment returned by the grand jury of Sumter County charging Mr Clea with murder two counts, and possession of a weapon during commission of a crime of violence He has pled not guilty to the charges contained in this indictment He is presumed to be not guilty of these charges unless the State proves that he is guilty by presenting evidence which convinces a jury of his guilt beyond a reasonable doubt We are here for trial of this matter

Mr Reginald Tyrell Clea, if you would stand and face the jury panel?

The State v Reginald Tyrell Clea

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1 THE COURT All right, thank you very much Is
2 any member of the jury panel related by blood or connected
3 by marriage, friendship or any other close association
4 with Reginald Tyrell Clea? If so, please stand

5 Yes, ma'am? Your name please?

6 JUROR NaTasha Jenkins

7 THE COURT And Mrs Jenkins what is that
8 relationship?

9 JUROR We attended school together

10 THE COURT And would that fact affect your
11 ability to sit as a fair and impartial juror?

12 JUROR Yes, sir

13 THE COURT Okay, madam, we will not consider
14 you for selection as a juror in this case That juror's
15 number is juror number 54 Please stay with us You may
16 be seated

17 The State in this case is represented by the
18 Solicitor, C Kelly Jackson and also Assistant Solicitor
19 Dudley Saleeby The Defense is represented by
20 John Clark Mr Clark are you being assisted by counsel?

21 MR CLARK Yes, Your Honor, Mr Richard Turner

22 THE COURT Mr Richard?

23 MR CLARK Turner

24 THE COURT Turner, thank you very much Is any
25 member of the jury panel a client of Mr Clark or his law

The State v Reginald Tyrell Clea

1 firm or Mr Turner or if you are being represented by the
2 Solicitor's office of this circuit or if you have been
3 represented in the past five years by Mr Clark or Mr
4 Turner or by the Solicitor's office? If so, please stand
5 (No response)

6 THE COURT This matter alleges the murder of
7 one John C Jackson and one James Pollard on or about
8 February 25th, 2004 In what area of Sumter County,
9 Solicitor?

10 MR SALEEBY In the Rembert area

11 THE COURT In the Rembert area of Sumter
12 County If any juror knows anything about this case, or
13 if you have heard anything about this case, please stand
14 If you know anything about this case or if you have heard
15 anything about this case, please stand

16 (No response)

17 THE COURT If you have formed an opinion at
18 this point in time concerning the guilt or the innocence
19 of the Defendant, please stand

20 (No response)

21 THE COURT Witnesses who may testify in this
22 case include the following individuals, and if you are
23 here, please stand and turn and face the jury panel

24 Robert Burnish with the Sheriff's office
25 Wesley Gardner with the Sheriff's office

The State v Reginald Tyrell Clea

100 0103

1 Gwen Herod of the Sheriff's office
2 Robert Mackessy of the Sheriff's office,
3 Richard Nelson of the Sheriff's office
4 James Turner of the Sheriff's office
5 Thank you very much You all may be seated
6 Additional witnesses include the following
7 Dr Vello Paavel or Paavel, Dr Janice Ross and
8 Dr Ila N Simmons

9 Other witnesses include the following people and
10 if you are here, please stand and face the jury panel

11 Frank Clea, Jr , Council Hunter, Helen Jackson,
12 Julia Knox, John Lee Powell, Maurice Young

13 Thank you all, you may be seated

14 If any juror is related by blood or connected by
15 marriage or employment or a close personal acquaintance
16 with any of the witnesses whose names I have called,
17 please stand

18 Yes, ma'am, in the back?

19 JUROR Lillie Williams

20 THE COURT And, Ms Williams, the basis for
21 your standing?

22 JUROR Hunter, one of the witnesses

23 THE COURT What about him?

24 JUROR His first cousin married my brother

25 THE COURT All right, Mr Hunter's first cousin

The State v Reginald Tyrell Clea

0104

1 married your brother And would that fact affect your
2 ability to be a fair and impartial juror?

3 JUROR No, sir

4 THE COURT And what is your name, please?

5 JUROR Lilly Williams

6 THE COURT Lilly Williams Juror number 122 is
7 qualified to serve Thank you very much, Ms Williams

8 Yes, ma'am?

9 JUROR Rick Nelson is maintenance man at my
10 complex

11 THE COURT All right

12 JUROR I don't know if that would disqualify
13 me

14 THE COURT Mr Rick Nelson is the maintenance
15 man at your complex?

16 JUROR Yes

17 THE COURT And your name, please?

18 JUROR Robin Sherman---

19 THE COURT Juror number---

20 JUROR 101

21 THE COURT 101 Juror number 101 and, Ms
22 Sherman, would that fact affect your ability to sit as a
23 fair and impartial juror if selected in this case?

24 JUROR No

25 THE COURT Okay Thank you very much for

The State v Reginald Tyrell Clea

20105

1 bringing that to our attention The juror is qualified
2 based on her responses

3 If you are aware of any reason why you could
4 not give both the State and the Defendant a fair and
5 impartial trial, please stand

6 (No response)

7 THE COURT If you or any member of your family
8 or any family members have been a victim or victims of a
9 violent crime, please stand If you or any member of your
10 family has been a victim of a violent crime at any time in
11 the past, please stand

12 Yes, ma'am, in the---

13 JUROR Mary Gainey, 126

14 THE COURT Ms Gainey?

15 JUROR My mom was robbed at gun point at her
16 work

17 THE COURT And would that fact affect your
18 ability to sit as a fair and impartial juror?

19 JUROR No

20 THE COURT All right, thank you for bringing
21 that to our attention Juror number 126

22 Yes, ma'am?

23 JUROR My name is Fredericka Harris My son
24 was shot and killed

25 THE COURT And, Ms Harris, would that fact

The State v Reginald Tyrell Clea

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1 affect your ability to be fair and impartial?
2 JUROR (No response)
3 THE COURT All right, Ms Harris, if you would
4 come forward, please?
5 JUROR Yes, sir
6 THE COURT Ma'am? It would?
7 JUROR Yes, sir
8 THE COURT Thank you very much, Ms Harris, for
9 bringing that to our attention and we certainly understand
10 and would not have you serve on this case Thank you very
11 much Juror number 43
12 If you know of any reason whatsoever why you
13 should not be called upon to serve as juror in this case,
14 if there is any reason that you know of, any family
15 emergencies, any situation that you may have going on in
16 your lives that you think might affect your ability to sit
17 as a fair and impartial juror in this case or any other
18 reason why you should not be called to serve on this case,
19 please stand
20 (No response)
21 THE COURT Any additional voir dire questions
22 that the Defense would like for me to ask, or the State?
23 MR CLARK Yes, Your Honor Your Honor, you
24 may have covered some of them, but
25 (Pause)

1 THE COURT Okay Counsel approach, please?

2 (Whereupon, a bench conference was held off the
3 record in the presence of the jury panel, but out of
4 hearing of the jury panel)

5 THE COURT All right, ladies and gentlemen, is
6 there any member of the jury panel that is -- who is so
7 religiously or morally opposed to the possession of guns
8 that they could not be fair and impartial in a case
9 involving the use of a gun? If so, please stand

10 (No response)

11 THE COURT Is there any member of the jury
12 panel who is a member of any organization that supports
13 the use and ownership of guns? If so, please stand

14 Yes, sir, your name, sir?

15 JUROR Sheldon Coker

16 THE COURT And what, sir?

17 JUROR NRA

18 THE COURT And would that fact, do you think,
19 sir, affect your ability to be fair and impartial to serve
20 as a juror in this case

21 JUROR No

22 THE COURT All right thank you for bringing
23 that to our attention

24 The Defendant has been indicted by the grand
25 jury of Sumter County charging him with committing these

The State v Reginald Tyrell Clea

0108

1 criminal offenses He has pled not guilty to these
2 charges The State has the burden of proving each and
3 every element of the offense that he is charged with
4 beyond a reasonable doubt If you cannot accept that
5 principle of law and follow that principle of law, please
6 stand

7 (No response)

8 THE COURT If you are a member or if any one of
9 your immediate family members are members of any group who
10 are involved in or who make contributions in support of
11 the prosecution of crimes, or any group which takes a
12 position on the subject of crimes or the judicial system,
13 if so, please stand

14 (No response)

15 THE COURT If you are a member of any such
16 group such as Citizen Against Violent Crime or any other
17 such group that takes a position on the subject of crime
18 or the judicial system, if so, please stand

19 (No response)

20 THE COURT If you or any of your immediate
21 family members are employed or have been employed
22 as a police or law enforcement officer, any family members
23 employed or in the past employed as law enforcement
24 officers, please stand

25 Yes, sir, Mr

The State v Reginald Tyrell Clea

1 JUROR Curtis Burgess

2 THE COURT Burgess?

3 JUROR Yes

4 THE COURT And would that fact affect your
5 ability to be a fair an impartial juror?

6 JUROR No

7 THE COURT Thank you for telling us
8 Yes, sir?

9 JUROR My cousin is a -- I believe he's with
10 the city, Mr Jimmy Baker (phonetic)

11 THE COURT All right and what is your name sir?

12 JUROR Michael Stevens

13 THE COURT And would that fact affect your
14 ability to be a fair and impartial juror?

15 JUROR No, sir

16 THE COURT All right, thank you for bringing
17 that to our attention

18 Yes, ma'am?

19 JUROR My niece, Norma Jean Seigler (phonetic),
20 she's with the Sumter Police Department

21 THE COURT Okay and what is your name, ma'am?

22 JUROR Katie Washington

23 THE COURT All right and would that fact affect
24 your ability to sit as a fair and impartial juror, Ms
25 Washington?

The State v Reginald Tyrell Clea

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1 JUROR No, sir

2 THE COURT Okay, thank you for bringing that to
3 our attention

4 Yes, sir?

5 JUROR My name is David Joslin and my son was a
6 State Trooper

7 THE COURT And would that fact affect your
8 ability to sit as a fair and impartial juror, in your
9 opinion?

10 JUROR No, sir

11 THE COURT All right, thank you for bring
12 that to our attention

13 If there are any members of the jury panel who
14 would accept the testimony of one witness over the
15 testimony of another witness based on the occupation of
16 that witness, if so, please stand If you would
17 automatically accept the testimony of one witness over the
18 testimony of another witness based on the occupation of a
19 particular witness, if so, please stand

20 (No response)

21 THE COURT Any additional voir dire questions
22 proposed by the State or the Defense?

23 MR SALEEBY None other than we've already
24 mentioned, sir

25 MR CLARK None, Your Honor

The State v Reginald Tyrell Clea

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1 THE COURT All right, ladies and gentlemen, the
2 panel's now qualified I'll give Mr Herring, the Clerk

3 ---

4 THE BAILIFF Your Honor, you have got one juror
5 standing

6 THE COURT Yes, ma'am Come forward, ma'am,
7 along with counsel

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

11 THE COURT All right, the panel is now
12 qualified You may proceed, Mr Herring

13 THE CLERK Ladies and gentlemen, when your name
14 is called, bring your personal belongings with you and
15 come through the double gates here or the single one on
16 this side Come up her to the rail, turn around and face
17 the back of the courtroom, please

18 Juror number 82, Angeleta Pack

19 (Angeleta Pack, a black female, now comes
20 forward)

21 THE CLERK What sayeth the State?

22 MR SALEEBY Present Mrs Pack

23 THE CLERK What sayeth the Defendant?

24 MR CLARK You can swear Ms Pack

25 THE CLERK Have a seat over here in the jury

The State v Reginald Tyrell Clea

100 0112

1 box, please, ma'am

2 Juror number 2, Deanna Alvarez

3 (Deanna Alvarez, a white female, now comes
4 forward)

5 THE CLERK What sayeth the State?

6 MR SALEEBY Present Ms Alvarez

7 THE CLERK What sayeth the defendant?

8 MR CLARK Please excuse Ms Alvarez from this
9 trial

10 THE CLERK Have a seat back in the jury panel
11 You've been excused from this trial, please, ma'am

12 Juror number 112, Michael Stephens

13 (Michael Stephens, a white male, now comes
14 forward)

15 THE CLERK What sayeth the State?

16 MR SALEEBY Present Mr Stephens

17 THE CLERK What sayeth the Defendant?

18 MR CLARK Please excuse Mr Stephens from this
19 trial

20 THE CLERK Have a seat back in the jury panel
21 You've been excused from this trial, please, sir

22 Juror number 59, David Joslin

23 (David Joslin, a white male, now comes forward)

24 THE CLERK What sayeth the State?

25 MR SALEEBY Please present Mr Joslin

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1 THE CLERK What sayeth the Defendant?

2 MR CLARK Please excuse Mr Joslin from this
3 trial

4 THE CLERK Have a seat back in the jury panel
5 You've been excused from this trial, please, sir

6 Juror number 36, Elizabeth Gadson

7 (Elizabeth Gadson, a black female, now comes
8 forward)

9 THE CLERK What sayeth the State?

10 MR SALEEBY Please excuse Ms Gadson

11 THE CLERK Have a seat back in the jury panel
12 You've been excused from this trial, please, ma'am

13 Juror number 30, Betty Epps

14 (Betty Epps, a black female, now comes forward)

15 THE CLERK What sayeth the State?

16 MR SALEEBY Please present Ms Epps

17 THE CLERK What sayeth the Defendant?

18 MR CLARK Please swear Ms Epps

19 THE CLERK Have a seat in the jury box, please,
20 ma'am

21 Juror number 122, Lillie Williams

22 (Lillie Williams, a black female, now comes
23 forward)

24 THE CLERK What sayeth the State?

25 MR SALEEBY Please excuse Mrs Williams

The State v Reginald Tyrell Clea

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1 THE CLERK Have a seat back in the jury panel
2 You've have been excused from this trial, please, ma'am
3 Juror number 38, Sybil Gundrum
4 (Sybil Gundrum, a black female, now comes
5 forward)

6 THE CLERK What sayeth the State?

7 MR SALEEBY Please present Ms Parrott
8 (phonetic)

9 THE CLERK What sayeth the Defendant?

10 MR CLARK Please swear Ms Parrott

11 THE CLERK Juror number 38?

12 MR SALEEBY She's had a name change

13 THE CLERK I'm sorry, excuse me, name change
14 Have a seat in the jury panel, please, ma'am, in the jury
15 box

16 Juror number 79, Jennifer Mooneyhan

17 (Jennifer Mooneyhan, white female, now comes
18 forward)

19 THE CLERK What sayeth the State?

20 MR SALEEBY Please present Ms Mooneyhan

21 THE CLERK What sayeth the Defendant?

22 MR CLARK Please excuse Ms Mooneyhan from
23 this trial

24 THE CLERK Have a seat back in the jury panel
25 You've been excused from this trial, please, ma'am

The State v Reginald Tyrell Clea

0115

1 Juror number 118, Andrew Turnbull

2 (Andrew Turnbull, a white male, now comes
3 forward)

4 THE CLERK What sayeth the State?

5 MR SALEEBY Please present Mr Turnbull

6 THE CLERK What sayeth the Defendant?

7 MR CLARK Please swear Mr Turnbull

8 THE CLERK Have a seat in the jury box, please,
9 sir

10 Juror number 14, Martha Brown

11 (Martha Brown, a white female, now comes
12 forward)

13 THE CLERK What sayeth the State?

14 MR SALEEBY Please present Ms Brown

15 THE CLERK What sayeth the Defendant?

16 MR CLARK Please excuse Ms Brown from this
17 trial

18 THE CLERK Have a seat back in the jury panel
19 You've been excused from this trial, please, ma'am

20 Juror number 58, Yvonne Jones

21 (Yvonne Jones, a black female, now comes
22 forward)

23 THE CLERK What sayeth the State?

24 MR SALEEBY Please present Ms Jones

25 THE CLERK What sayeth the Defendant?

The State v Reginald Tyrell Clea

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1 MR CLARK Please swear Ms Jones
2 THE CLERK Have seat in the jury box, please,
3 ma'am
4 Juror number 21, Katie Washington
5 (Katie Washington, a black female, now comes
6 forward)
7 THE CLERK What sayeth the State?
8 MR SALEEBY Please present Ms Washington
9 THE CLERK What sayeth the Defendant?
10 MR CLARK Please swear Ms Washington
11 THE CLERK Have a seat in the jury box, please,
12 ma'am
13 Juror number 101, Robin Sherman
14 (Robin Sherman, a white female, now comes
15 forward)
16 THE CLERK What sayeth the State?
17 MR SALEEBY Please present Ms Sherman
18 THE CLERK What sayeth the Defendant?
19 MR CLARK Please excuse Ms Sherman from this
20 trial
21 THE CLERK Have a seat back in the jury panel
22 You've been excused from this trial, please, ma'am
23 Juror number 86, Robert Pugh
24 THE COURT I think I excused him He's excused
25 THE CLERK Okay He was dismissed

The State v Reginald Tyrell Clea

0117

1 Juror number 76, Michael McGee
2 (Michael McGee, a white male, now comes
3 forward)
4 THE CLERK What sayeth the State
5 MR SALEEBY Please present Mr McGee
6 THE CLERK What sayeth the Defendant?
7 MR CLARK Please swear Mr McGee
8 THE CLERK Have a seat in the jury box, please,
9 sir
10 Juror number 63, Jessica Ketter
11 THE CLERK What sayeth the State?
12 MR SALEEBY Please present Ms Ketter
13 THE CLERK What sayeth the Defendant?
14 MR CLARK Please swear Ms Ketter
15 THE CLERK Have a seat in the jury box, please,
16 ma'am
17 Juror number 9, Bruce Berry
18 (Bruce Berry, a white male, now comes forward)
19 THE CLERK What sayeth the State?
20 MR SALEEBY Please present Mr Berry
21 THE CLERK What sayeth the Defendant?
22 MR CLARK Please excuse Mr Berry from this
23 trial
24 THE CLERK Have seat back in jury panel You
25 have been excused from this trial, please, sir

The State v Reginald Tyrell Clea

1 Juror number 95, Tomaki Robertson

2 (Tomaki Robertson, a black female, now comes
3 forward)

4 THE CLERK What sayeth the State?

5 MR SALEEBY Please present Ms Robertson

6 THE CLERK What sayeth the Defendant?

7 MR CLARK Please swear Ms Robertson

8 THE CLERK Have a seat in the jury box, please,
9 ma'am

10 Juror number 126, Mary Gainey

11 (Mary Gainey, a white female, now comes
12 forward)

13 THE CLERK What sayeth the State?

14 MR SALEEBY Please present Ms Gainey

15 THE CLERK What sayeth the Defendant?

16 MR CLARK Please excuse Ms Gainey from this
17 trial

18 THE CLERK Have a seat back in the jury panel
19 You've been excused from this trial, please, ma'am

20 Juror number 3, Ammie Anderson

21 (Ammie Anderson, a black female, now comes
22 forward)

23 THE CLERK What sayeth the State?

24 MR SALEEBY Please present Ms Anderson

25 THE CLERK What sayeth the Defendant?

The State v Reginald Tyrell Clea

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1 MR CLARK Please swear Ms Anderson

2 THE CLERK Have a seat in the jury box, please,

3 ma'am

4 Juror number 37, Christopher Geddings

5 (Christopher Geddings, a white male, now comes

6 forward)

7 THE CLERK What sayeth the State?

8 MR SALEEBY Please present Mr Geddings

9 THE CLERK What sayeth the Defendant?

10 MR CLARK Please swear Mr Geddings

11 THE CLERK Have a seat in the jury box, please,

12 sir

13 Juror number 39, Julia Hair

14 (Julia Hair, a white female, now comes forward)

15 THE CLERK What sayeth the State?

16 MR SALEEBY Please present Ms Hair

17 THE CLERK What sayeth the Defendant?

18 MR CLARK Please excuse Ms Hair from this

19 trial

20 THE CLERK Have a seat in the jury panel You

21 have been excused from this trial

22 Juror number 26, Francina Dix

23 (Francina Dix, a black female, now comes

24 forward)

25 THE CLERK What sayeth the State?

The State v Reginald Tyrell Clea

1 MR SALEEBY Please present the juror
2 THE CLERK What sayeth the Defendant?
3 MR CLARK Please swear Ms Dix
4 THE CLERK Have a seat in the jury box, please,
5 ma'am
6 THE COURT Select two alternates The strikes
7 are one and two
8 THE CLERK Juror number 94, Steven Robertson
9 (Steven Robertson, a white male, now comes
10 forward)
11 THE CLERK What sayeth the State?
12 MR SALEEBY Please present Mr Robertson
13 THE CLERK What sayeth the Defendant?
14 MR CLARK Please swear Mr Robertson
15 THE CLERK Have a seat in the jury box, please,
16 sir
17 Juror number 56, James Johnson
18 (James Johnson, a black male, now comes
19 forward)
20 THE CLERK What sayeth the State?
21 MR SALEEBY Please present Mr Johnson
22 THE CLERK What sayeth the Defendant?
23 MR CLARK Please swear Mr Johnson
24 THE CLERK Have a seat in the jury box, please,
25 sir

The State v Reginald Tyrell Clea

0121

1 THE COURT Are there any matters of law
2 regarding jury selection?

3 MR SALEEBY There is on behalf of the State,
4 Your Honor

5 THE COURT By the Defense?

6 MR CLARK No, sir, Your Honor

7 THE COURT All right Ladies and gentlemen,
8 I'll need you to go to the jury room You're not
9 permitted to discuss this case at all while in the jury
10 room Please go to the jury room and we'll have you come
11 back as soon as possible

12 (Jury exits the courtroom)

13 THE COURT Ladies and gentlemen, those of you
14 who were not selected, we will need to take up some
15 matters outside of your presence So I need all jurors to
16 leave the courtroom I need all jurors to leave the
17 courtroom This matter will take probably 15 minutes or
18 so So if you'll leave and begin kind of getting back
19 outside the courtroom doors in about 15 minutes

20 All jurors must leave the courtroom

21 (Remaining jury panel exits the courtroom)

22 THE COURT We will be at ease for just a couple
23 of minutes

24 (Whereupon, a recess was taken)

25 THE COURT What says The State?

The State v Reginald Tyrell Clea

1 MR SALEEBY Your Honor I think there's a
2 pattern of strikes that needs to be addressed under the
3 Batson decision

4 THE COURT All right, the State has raised the
5 issue of juror strikes by the Defense in violation of
6 Batson versus Kentucky The trial judge is required to
7 hold a hearing when such an issue is raised when members
8 of a cognizable racial group or gender are struck, then
9 the opposing counsel requests a hearing

10 And the cognizable racial group or gender is
11 struck by the Defense in this case include who, Mr
12 Solicitor?

13 MR SALEEBY Your Honor, it would be all nine
14 of the strikes, all Caucasian

15 THE COURT All right, the Defense -- the State
16 has proffered that the Defense has struck all -- utilized
17 all strikes in striking Caucasians What says the
18 Defense?

19 MR CLARK Thank you, Your Honor, if it please
20 the Court Your Honor, I would point out that although we
21 are doing the Batson motion, the State's, both of the
22 jurors the State struck, were black females and the
23 Defendant in this case is black

24 Your Honor, we struck juror number 2, the first
25 juror that we struck was a white female We struck her

The State v Reginald Tyrell Clea

1 because she indicated that she was employed at a child
2 care and we tend to strike every juror so employed We
3 believe that they may be particularly sensitive to issues
4 involving violence

5 We struck the second juror, number 112, white
6 male He indicated that his cousin was a police officer

7 The third juror to be struck, number 59, white
8 male, he indicated that his son was a police officer

9 We struck number ---

10 THE COURT Just a moment Just a moment

11 MR CLARK Yes, sir

12 (Pause)

13 THE COURT Identify juror numbers when you are
14 explaining your strikes, please This particular juror
15 that you are referring to is which juror?

16 MR CLARK Number 59 was the last one that I
17 referred to, Your Honor

18 THE COURT His cousin was a police officer
19 The next one?

20 MR CLARK The next one would be juror number
21 79 She indicated that she was employed or attended the
22 U S C School of Public Health or her husband I believe
23 she indicated that she attended U S C School of Public
24 Health or is employed there This case involves death
25 which we would consider certainly health issues and

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0124

1 that's why we struck her

2 The next juror we struck was number 14

3 She's employed at a health center, the Dorn V A Medical
4 Center

5 The next juror was number 101 She indicated
6 that she knows one of the investigators in the case,
7 Lieutenant Rick Nelson She indicated that he was her
8 maintenance man at her apartment complex

9 We struck number 9 He indicated on his juror
10 card that he's employed with the U S C School of
11 Medicine Because of the allegations in this case, we
12 struck him

13 Juror number 126, she indicated that her mother
14 was a victim of a violent crime I believe she said her
15 mother was robbed at gunpoint

16 And number 39, we struck her because the
17 Defendant has some personal dealings with her husband, Mr
18 John Hair, who runs an auto sales business here in Sumter
19 And the Defendant has indicated that he's had a prior
20 relationship with this man

21 THE COURT What says the State?

22 MR SALEEBY Just a moment, Your Honor I'm
23 trying to get this information straight

24 (Pause)

25 MR SALEEBY Your Honor, first of all the

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1 information is that juror number 79 worked at Westinghouse
2 Electric And first of all, one of the strikes that were
3 on the basis of they had some sort of affiliation with the
4 medical field, I couldn't see the logic of that I could
5 understand the lady who knew Mr Nelson, or I could
6 understand the individual who knew a deputy, or the man
7 who's son was a trooper But the rational basis for a
8 strike on the basis that they might have something to do
9 with the health business, seems to me to be superficial
10 and perfunctory

11 And of course the one I've got that's the most
12 obvious, whether or not it's the basis or not is juror
13 number 79, there was no health relationship I don't see
14 where the health relationship is a valid neutral grounds
15 for doing anything But when it's alleged that it is not
16 the purpose behind what that juror does, it's certainly
17 not relevant

18 That's right And also juror number 9 wasn't in
19 the medical business but a network apparently computer
20 person at Carolina School of Medicine, a computer
21 technology is what the juror card shows

22 So the overall basis for saying there's some
23 connection with childcare or there's some tenuous
24 connection with a profession like the medical as a basis
25 for striking somebody on race neutral basis appears to me

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1 to be perfunctory

2 And secondly, striking somebody because they're
3 a computer specialist at a medical school hardly seems to
4 be relevant

5 The lady, juror number 14, the Dorn V A was a
6 correspondence clerk So these people are hardly health
7 care professionals

8 THE COURT As to juror number 79, what says the
9 Defense? The juror card says Westinghouse

10 MR CLARK Your Honor, juror number 79

11 THE COURT Mrs Jennifer Mooneyhan

12 MR CLARK Her card does say 79, Your Honor

13 But at some point, I believe this juror made a statement
14 and I wrote a note on my juror card, U S C Public Health
15 So, I'm not contending it's information from her card,
16 it's information that she provided

17 THE COURT At what point?

18 MR CLARK When the jurors were being -- were
19 asked to give this information before Your Honor was
20 present in the courtroom This was done by the Clerk
21 before Your Honor arrived And I believe she gave that
22 information at that time and I wrote it down in my notes

23 THE COURT What did she say?

24 MR CLARK I believe she said she was employed
25 with the -- at the U S C School of Public Health or that

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1 she attends the U S C School of Public Health I wrote
2 down U S C Public Health

3 THE COURT All right What does the State's
4 information show regarding employment?

5 MR SALEEBY Your Honor, I was present at the
6 same time and I don't recall such information being given
7 out

8 MR CLARK Your Honor, I have that note on my
9 card I don't know if there was a record of that But I
10 believe that's what that juror said And she indicates
11 that she's single, so I believe that was about her
12 Either she's employed there are she goes to school there
13 And that's why we struck her

14 THE COURT Well, we can bring her in and ask
15 her Mr Holmes, if you would see if Ms Mooneyhan is out
16 there and have her come in

17 THE BAILIFF Yes, sir

18 (Pause)

19 (Ms Mooneyhan returns to the courtroom)

20 THE COURT Ma'am, if you would come right here
21 for me? Right here is fine Thank you for coming in

22 Ms Mooneyhan, where are you employed?

23 JUROR At the University of South Carolina

24 THE COURT In what department?

25 JUROR Public health

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1 THE COURT All right, thank you very much

2 (Ms Mooneyhan leaves the courtroom)

3 THE COURT Anything further from the State or
4 the Defense?

5 MR SALEEBY No, sir

6 THE COURT All right, where the party objects,
7 the opponent of the strike must offer a facially race or
8 gender neutral explanation As our case law has evolved,
9 the explanation's not required to be persuasive or even
10 plausible The Defense in this case has offered, in the
11 Court's opinion, a facially race or gender neutral
12 explanation for each strike

13 I therefore deny the State's Batson motion

14 Anything else before we bring the jury back in?

15 MR SALEEBY Just administrative stuff, Judge
16 I am thinking that we will have some pretrial matters to
17 do There's a Jackson versus Denno hearing We've got
18 some exhibits we can have marked I'm just thinking ahead
19 because we don't want to bounce them back and forth too
20 much That's according to whatever schedule suits you
21 best If we satisfy this as the jury, we can excuse the
22 rest of the panel, excuse this 14 to come back later this
23 afternoon after we've taken care of all the housekeeping
24 THE COURT All right So we have 12 30 at this
25 point We'll take lunch at about 1, 1 to 2 15 I'm going

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1 to have the jurors come back at 2 45

2 MR SALEEBY It may take us more than 30
3 minutes, Judge, is what I'm thinking

4 THE COURT All right, 3 00?

5 MR SALEEBY If you have us come back at 2 15,
6 it may take us -- just to get the hearing, it may take us
7 at least 45 minutes I think that 3 is probably safer

8 THE COURT All right, we'll have them come back
9 at 3 00

10 If you'll bring the jury in, this jury
11 (Jury enters the courtroom)

12 THE BAILIFF Your Honor, all of the jurors and
13 alternates are present in the courtroom

14 THE COURT All right, ladies and gentlemen, you
15 have been selected now to be the jury in the trial of this
16 case We're going to deal with some additional
17 preliminary matters and we're going to start this case
18 this afternoon about 3 00 So we need you to -- we're
19 going to have you all take a break and come back and be in
20 the jury room at 3 00

21 As I said to you right before going out, you are
22 not to discuss the case I will give a more detailed
23 instruction concerning that but you should remember that
24 once you are selected on a jury, you must decide the case
25 solely based on the evidence presented in the courtroom

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1 You cannot discuss the case outside of the courtroom or
2 allow anyone to discuss it in your presence

3 So, for the time being, I'm simply going to let
4 you all go If you all will follow the Bailiff's
5 instructions as to where to come back in You do not come
6 in through the courtroom but you come in through the
7 stairway that they designate, directly to the jury room

8 And we'll see you all at 3 00 Thank you very
9 much

10 (Jury exits the courtroom)

11 THE COURT If you'll have the other jurors come
12 in as well at this time

13 (Remaining jury panel return to the courtroom)

14 THE BAILIFF Your Honor all of the jurors are
15 in

16 THE COURT Thank you very much Ladies and
17 gentlemen, as you can see, we have selected the jury in
18 the trial of this case And this case may take some time
19 We're not certain about that Due to the uncertainties of
20 how cases develop, we don't know when we might need you
21 back but it will not be today

22 So what we do in these instances is we have the
23 jurors call in after 6 p m and there will be a message on
24 the machine to tell you when you are to come back and --
25 or when you are to call back

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1 Now if you work you can certainly -- and if you
2 have the flexibility you can certainly return to your
3 jobs And because whenever there is a message, if it's
4 during the course of the day for you to come back, you
5 will always be given at least two hours notice as far as
6 having to come back

7 But if you will follow the instructions on the
8 answering machine when you call in, it will help guide you
9 as to when you need to call back or to come back

10 I certainly want to thank you for your
11 cooperation here today We need for you to call back
12 after 6 p m for additional instructions

13 Thank you very much and the jury is excused, the
14 jury panel is excused

15 (Remaining jury panel exits the courtroom)

16 THE COURT Pretrial matters?

17 MR SALEEBY Do you want to have them now or
18 can we come back at 2 15?

19 THE COURT Right now

20 MR SALEEBY Do you want to do the Jackson
21 versus Denno hearing or exhibits?

22 THE COURT I don't know what you have

23 MR SALEEBY I think we need a Jackson versus
24 Denno hearing We've got some exhibits I think Mr
25 Clark has seen most of them Perhaps we would get him to

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1 agree on those marking the introduction and that should
2 save us some time when the jury came

3 I don't have anything other than two items that
4 I'm aware of

5 THE COURT Mr Clark?

6 MR CLARK Your Honor, I have a motion to
7 sequester the witnesses Your Honor, this is a double
8 murder case with highly contested factual issues And
9 that State has named five factual, we'd ask that they be
10 excluded from the courtroom during the testimony of the
11 other witnesses We don't have any fact witnesses We
12 will certainly not allow any fact witnesses that we become
13 aware of, not allow them into the courtroom

14 We would ask that these witnesses be excluded
15 from the courtroom during testimony of the other witnesses
16 so as not to tailor their testimony to what the witnesses
17 testify to

18 Your Honor, as I understand, these are the only
19 fact witnesses in this case And this case, I believe,
20 will turn on what they have to say

21 In fairness to my client, I would ask that they
22 be excluded from the courtroom while the other witnesses
23 testify, just the fact witnesses I've identified the
24 five of them I will be happy to advise the Court of
25 their names

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1 THE COURT All right, what are their names?

2 MR CLARK Council Hunter, Helen Jackson, Julia
3 Knox, John Lee Powell and Maurice Young

4 THE COURT What says the State?

5 MR SALEEBY Your Honor, I usually think the
6 law says there's some burden to say something other than
7 they might listen to what the other person says, that
8 there's more than merely making that superficial
9 allegation to be able to carry the burden and move forward
10 and that that's there in every case

11 MR CLARK May I respond, Your Honor

12 THE COURT Yes, sir

13 MR CLARK I don't believe that is the law,
14 Your Honor I believe the law is that it is in the
15 Court's discretion I could go through these witnesses'
16 statements and point out inconsistencies but then I'd be
17 showing my hand which I really don't believe I have to do
18 at this point

19 THE COURT It is in the Court's discretion but
20 I do not favor routine exclusion of witnesses

21 MR CLARK Your Honor I will be happy to go
22 further, if the Court ---

23 THE COURT You have not -- I mean if you want
24 me to rule on your motion and I don't favor routine
25 exclusion motions, so you must give me a basis to side

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1 with you

2 MR CLARK Your Honor, there is the question in
3 this case about who the aggressor was in this case, about
4 how many shots may have been fired by who Mr Council
5 Hunter has given a statement regarding the number of
6 shots, the number of guns that may have been involved in
7 this case

8 Ms Julia Knox, we've been provided evidence
9 that she actually removed some items from the crime scene
10 and that, we believe, ties in to what Mr Hunter has said
11 as well

12 John Lee Powell was a witness on the scene We
13 have been provided a statement by him which goes to who
14 was the aggressor and who may have been armed

15 And we simply feel that these witnesses -- and
16 Mr Young, I believe, may have been on the scene as well
17 and has given a statement about the number of shots and
18 who may have been armed, etcetera

19 So we think there's tremendous opportunity for
20 these witnesses to tailor their testimony to the prejudice
21 of my client

22 That's the basis that we ask that they be
23 removed from the courtroom, Your Honor

24 THE COURT What says the State?

25 MR SALEEBY Your Honor, were that the case,

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1 and certainly we don't think it is, he has the statements
2 If they change in any way, shape or form, he's going to be
3 able to cross examine them and point out any
4 inconsistencies are alleged inconsistencies

5 MR CLARK We simply want their testimony to be
6 their testimony and not that of a witness that they hear
7 testify, Your Honor

8 MR SALEEBY That is the generic argument

9 MR CLARK But I don't think there's any
10 prejudice to the State at all, Your Honor They are well
11 represented here, no prejudice The only prejudice that
12 could be suffered would be by Mr Clea And in the nature
13 and severity of this case, we would ask the Court to take
14 every precaution that that doesn't happen

15 THE COURT Anything further?

16 MR SALEEBY No, sir

17 THE COURT Pursuant to Rule 615 of the South
18 Carolina Rules of Evidence, which states in part that at
19 the request of a party the Court can order witnesses
20 excluded so they cannot hear the testimony of other
21 witnesses, this rule is not to authorize the exclusion of
22 a party, an officer or employee, who is not a natural
23 person or a person whose presence is shown by a party to
24 be essential to the presentation of the party's cause

25 And based on the arguments of counsel, I am

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1 granting the Defense's motion to sequester the fact
2 witnesses in this case And that order applies to both
3 the State and the Defense And that would be done after
4 we recess this morning and before we start in the
5 afternoon

6 MR SALEEBY Judge, sequestered for the whole
7 trial or just from each other?

8 THE COURT Say it again

9 MR SALEEBY Sequestered for everybody's
10 testimony including the experts and law enforcement or
11 just from each other testifying?

12 THE COURT What says the Defense?

13 MR CLARK I would ask that they be she
14 sequestered until they testify

15 THE COURT Sequestration will be until they
16 testify

17 MR SALEEBY All right

18 THE COURT Anything else from the Defense?

19 MR CLARK Your Honor, we had just one other
20 thing This case, as you know, involves deaths I
21 understand there are a large number of family members
22 here I know this is an emotional case I would simply
23 ask for an instruction to everybody in the courtroom
24 against any outbursts of emotion at any time during this
25 case We feel that that may be somewhat prejudicial to

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1 the jury -- to my client's case

2 THE COURT The Court will control the flow of
3 the trial If there's any indication of such, the Court
4 will deal with it accordingly

5 MR CLARK Thank you, Your Honor

6 THE COURT All right, anything else from the
7 Defense?

8 MR CLARK No, sir, Your Honor

9 THE COURT All right, regarding the Jackson v
10 Denno, we'll take that up after we return And I think
11 there are some -- so we'll -- that's the only other
12 pretrial issue, Jackson v Denno?

13 MR SALEEBY Again the exhibits observed and
14 perhaps introduced and get that behind us

15 THE COURT All right, sir You all can deal
16 with that between now and then or between now and 3 00 or
17 some other point in time

18 MR SALEEBY I will be glad to show them to him
19 just as soon as we're through here We would like to say
20 that we have made discovery and that we have filed a
21 motion for reciprocal discovery and have not received
22 anything at this point in time And if there is something
23 to be produced, we would ask it be produced

24 THE COURT All right

25 MR CLARK Your Honor, in that regard, my

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1 review of the rule, I don't believe there is anything that
2 we have that requires disclosure to the State at this
3 point

4 I would like to point out or make a part of the
5 record what has been provided to me in the State's
6 response to my discovery request in the event something
7 comes up that I was not made aware of or was not provided

8 So I would like to make their Rule 5 disclosure
9 Form, copy of, a part of the record

10 THE COURT All right

11 MR CLARK I'll have to make that copy, Your
12 Honor I'd like to do that when we come back if that's
13 okay

14 THE COURT Yes, sir

15 MR CLARK Thank you

16 THE COURT All right We will recess as it
17 relates to this case and take up the matter -- Mr Lowery
18 is here on some kind of matter, aren't you Mr Lowery?

19 MR LOWERY Yes, sir

20 THE COURT All right, is the State here with
21 someone to deal with that?

22 MS FANT Yes, Your Honor

23 THE COURT All right, we'll be in recess in
24 this case and we'll address the issues involving Mr
25 Lowery and anything else we can finish in a few minutes

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1 We'll reconvene at 2 15 in this case

2 (Whereupon, a recess was taken concluding at
3 2 15 p m)

4 THE COURT Back on the record, Jackson versus
5 Denno hearing

6 MR SALEEBY Your Honor, before we do that I
7 think if we could, if you'd go ahead and perhaps have some
8 of these item of evidence stipulated and admitted into
9 evidence to save us time in front of jury

10 THE COURT All right

11 MR SALEEBY I'll mention them one at the time
12 and then Mr Clark can state his position State's
13 Exhibit Number 1 being aerial photograph

14 MR CLARK Do not object to that photograph

15 THE COURT All right It is admitted

16 (Whereupon, State's Exhibit Number 1 is marked
17 for identification and received into evidence)

18 MR SALEEBY State's Exhibit Number 2 is a
19 diagram just representing the backyard of this mobile
20 home

21 MR CLARK Your Honor, I would reserve my
22 position on that

23 THE COURT Not admitted

24 MR SALEEBY State's Exhibit 3-A to M are
25 photographs of the outside of the mobile home

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1 MR CLARK Do not object to these photographs

2 THE COURT They are admitted

3 (Whereupon, State's Exhibit Number 3-A through M
4 are marked for identification and received into evidence)

5 MR SALEEBY State's Exhibit 4-A through D of
6 the mobile home outside, three outside and one inside

7 MR CLARK I do object to the inside
8 photograph

9 MR SALEEBY That would be 4-D

10 THE COURT All right 3 (sic)-A through C are
11 admitted

12 (Whereupon, State's Exhibit Number 4-A through C
13 are marked for identification and received into evidence)

14 MR SALEEBY State's Exhibit Number 5-A to K
15 photographs of Pontiac Grand Am

16 MR CLARK Do not object to these photographs

17 THE COURT They are admitted

18 (Whereupon, State's Exhibit Number 5-A through K
19 are marked for identification and received into evidence)

20 MR SALEEBY State's Exhibit Number 6 is a
21 photograph of a Chevrolet truck And Number 7 a
22 photograph of a weapon

23 MR CLARK No objection, to those photographs
24 Your Honor

25 THE COURT 6 and 7 are admitted

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1 (Whereupon, State's Exhibit Numbers 6 and 7 are
2 marked for identification and received into evidence)

3 MR SALEEBY State's Exhibit Number 8 is a
4 semi-automatic weapon I would like to Court note that
5 it's got a trigger lock in here that was added by the
6 Sheriff's Department for safety reasons

7 MR CLARK No objection to the weapon, Your
8 Honor

9 THE COURT It is admitted

10 (Whereupon, State's Exhibit Number 8 is marked
11 for identification and received into evidence)

12 MR SALEEBY State's Exhibit Number 9 are two
13 cartridges that were taken out of the clip of a weapon
14 One's -- both were unfired One was test fired
15 These came out of the weapon

16 MR CLARK Your Honor, I'd rather wait on
17 stipulating to those exhibits until the testimony's given
18 regarding it

19 THE COURT Number 9 not admitted

20 MR SALEEBY Your Honor, State's Exhibit Number
21 10 is a box of fired cartridge cases that were recovered
22 from the yard Each cartridge case has been numbered
23 separately and they're all in this box in separate boxes
24 I decided to keep it that way

25 MR CLARK Your Honor, I'd rather wait until

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1 testimony is given about those as well

2 THE COURT Not admitted through stipulation

3 MR SALEEBY 11-A and B are fragments of
4 bullets projected and recovered from the scene

5 MR CLARK Do not admit to those -- do not
6 stipulate to their admissibility

7 THE COURT Not admitted through stipulation

8 MR SALEEBY State's exhibit 12-A and 12-B are
9 bullet fragments recovered from the Pontiac

10 MR CLARK Your Honor, I'll wait for testimony
11 on those as well

12 THE COURT They are not admitted

13 MR SALEEBY State's exhibit 13-A and 13-B are
14 bullet fragments or projectiles that were recovered from
15 Mr Jackson's body at the autopsy

16 MR CLARK Wait until testimony on those, Your
17 Honor, as well

18 THE COURT Not admitted

19 MR SALEEBY State's Exhibit 14-A, 14-B and 14-
20 C are fragments recovered from the autopsy from Mr
21 Pollard

22 MR CLARK Wait for testimony on those as well,
23 Your Honor

24 THE COURT They are not admitted

25 MR SALEEBY State's Exhibit Number 15 is a

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1 Timberland shoebox

2 MR CLARK We'll stipulate to the admissibility
3 of the shoebox

4 THE COURT Is there anything in it or just an
5 empty box?

6 MR CLARK As far as I understand it, it's
7 empty

8 MR SALEEBY I think there's a sale slip in
9 there, a receipt

10 THE COURT It is admitted

11 (Whereupon, State's Exhibit Number 15 is marked
12 for identification and received into evidence)

13 MR SALEEBY State's Exhibit Number 16 is a
14 blank anatomical diagram that will be used to illustrate
15 the testimony of the pathologist State's Exhibit Number
16 17 is another anatomical diagram to be used for the other
17 gentleman

18 MR CLARK If they're blank, we don't object to
19 them, Your Honor

20 THE COURT You do not object?

21 MR CLARK No, sir

22 THE COURT They are admitted without objection,
23 16 and 17

24 (Whereupon, State's Exhibit Numbers 16 and 17
25 are marked for identification and received into evidence)

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1 MR SALEEBY All right, Judge if you'd just
2 give me a minute to move these, we'll be ready to proceed
3 with the Jackson versus Denno hearing

4 (Pause)

5 MR SALEEBY Your Honor, at this time we'd like
6 to call James Turner with the Sheriff's Department for the
7 purpose of the Jackson versus Denno hearing

8 THE COURT Mr Turner?

9 JAMES R TURNER, after being first duly
10 sworn, testified as follows

11 THE CLERK Have seat up here, please State
12 your full name, spell your last name, please

13 THE WITNESS James R Turner, T-u-r-n-e-r

14 **DIRECT EXAMINATION BY MR SALEEBY**

15 Q Mr Turner, tell the court who you work with,
16 how long you've been working with them

17 A I work for the Sumter County Sheriff's
18 Department, Criminal Investigation Division I've been
19 with the Sheriff's Department 15 years and in
20 investigations a little over 10

21 Q Other than on the job training for 10 years,
22 what other training have you had with law enforcement,
23 particularly in the field of investigation?

24 A I have approximately 450 hours of forensic and
25 advanced training in criminal investigations

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1 Q Were you assigned to investigate the homicides
2 which occurred on February the 25th, 2004 in the Rembert
3 area off of Dinkins Mill Road?

4 A I was

5 Q What time did you arrive there, approximately?

6 A A little after 3 p m

7 Q And who was there when you arrived there?

8 A Several officers from the Sumter Sheriff's

9 Office I don't -- I can't call them by name

10 Q Was Mr Clea present at that time?

11 A No, Sir

12 Q Did you subsequently find -- was he identified
13 as having been there?

14 A Yes, sir

15 Q And he was identified by whom?

16 A Witnesses at the scene, on information provided
17 to me by other officers

18 Q All right, as the result of that information,
19 was anything made to -- any steps made to apprehend him?

20 A He was entered, basically it's called an all
21 points bulletin but it's a notification statewide that he
22 is wanted in questioning in reference to a homicide

23 Q To your knowledge, was he arrested later that
24 day?

25 A He was

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1 Q And can you tell me approximately when and by
2 whom?

3 A He turned himself in to I believe it was Wesley
4 Gardner later on that night probably around 9 00

5 Q All right, and after that where was he taken to
6 and what did -- what was done with him?

7 A He came to the Sumter County Sheriff's office
8 and at that point in time we conducted an interview with
9 him

10 Q All right, now who was present when you were
11 interviewing him?

12 A Initially myself, Wesley Gardner, the Chief
13 Deputy, now Sheriff, Anthony Dennis and a few others But
14 primarily it was myself and Wesley -- Mr Gardner and
15 Chief Dennis, the initial interview

16 Q All right, and prior to interviewing initially,
17 did you advise him of any rights?

18 A Actually once I advised him of his rights
19 verbally, he said he would talk And then I -- the next
20 thing -- my next step is to do a Waiver of Rights form
21 which is written documentation of his rights

22 Q And did you do both the written -- both the
23 verbal and then give him his rights in the written waiver
24 before you conducted the interview?

25 A I did

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1 Q All right, I'll show you what's been marked for
2 identification as State's Number 19 and I will ask you
3 what that is

4 A That's a Miranda warning, Waiver of Rights form

5 Q All right Would you please tell the Court what
6 you did, how you went about executing that form before you
7 interrogated him?

8 A What I do is I fill in the blanks up to the
9 point as far as the signature line It's just basically
10 who this person is, their age We just basically go over
11 with it and then I actually read it to him and then allow
12 him to read it and tell him that if you have any questions
13 or if you don't understand anything on this form, please
14 let me know, I'll try to explain them to you

15 And if he's in agreement, that I understand
16 what's on this form and wishes to proceed, he signs it and
17 then I witnessed it and also I get another witness who was
18 in this case Gwen Herod

19 Q All right, now on this date, did you in fact
20 verbally give him his Miranda warning?

21 A Yes, sir

22 Q All right, now as to Mr Clea, prior to talking
23 with him further, did you read this form to him?

24 A It was read to him and he read it

25 Q All right, that's my second question After you

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1 read it to him, did he read it himself?

2 A He read it himself

3 Q Did he indicate to you that he understand that
4 questions?

5 A He did

6 Q When it was done, did he in fact sign it?

7 A He did

8 Q And who was it witnessed by?

9 A Myself and Gwen Herod

10 Q And just identify for the Court Ms Herod and
11 what her position is with the Sheriff's Department

12 A She's our victim advocate

13 Q All right, and did she participate in the
14 interrogation after Mr -- in addition to Sheriff Dennis,
15 then Chief Deputy Dennis, and Investigator Gardner?

16 A She actually wrote -- typed the statement for
17 us

18 Q All right, and tell us, after you advised him of
19 his rights, did he agree to talk to you?

20 A Yes, he did

21 Q Was he threatened by you or anybody else in his
22 presence?

23 A No, sir

24 Q Was he promised anything by you or anybody else
25 in his presence?

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1 A No, sir

2 Q Did he appear to understand what was happening?

3 A Yes, he did

4 Q Did he appear to be under the influence of any
5 alcohol or drugs?

6 A No, sir

7 Q All right, after you gave him the rights, how
8 did you -- how did you go about taking the actual
9 statement which is now marked for identification as
10 State's Exhibit Number 19?

11 A Basically what I do is I have him tell me what
12 happened And then once he goes verbally through it, then
13 I'll actually sit him down And the reason I got Ms
14 Herod involved is because Ms Herod types as fast as a
15 person can talk So it's a lot faster for that -- to have
16 her do that

17 And she just basically, as he tells it to her,
18 she types the information Once we get to the end, then
19 we actually read it back to him and if there's any changes
20 or anything he doesn't agree with, then we make those
21 changes until we come to the point that he's in agreement
22 with what's on -- in the statement

23 And then at that time it's printed out and
24 signed off

25 Q And did -- after you talked with him initially,

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1 did you then talk with him further and have Ms Herod type
2 it?

3 A Yes, sir

4 Q And did you allow him to -- did you read it to
5 him?

6 A It was read to him

7 Q Was he given the opportunity to read it himself?

8 A Yes, sir and make any corrections, yes, sir

9 Q And after he did that, did he sign it at 10 40
10 p m ?

11 A He did

12 Q And who was it witnessed by?

13 A Myself and Ms Herod

14 Q And after completing that, did you ask him any
15 additional questions?

16 A Well, I actually asked him before he signed
17 them, one of the questions he referred to in his statement
18 was is he thought he saw a gun And I asked him
19 specifically, did you see a gun? And he said, no, I just
20 thought there was a gun

21 MR SALEEBY Please answer any questions that
22 Mr Clark has

23 MR CLARK I don't have any questions, Your
24 Honor

25 THE COURT All right, you may step down

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1 MR SALEEBY You may come down, sir

2 (Witness leaves the witness stand)

3 MR SALEEBY That's the showing for the State

4 THE COURT Any evidence the Defense would like
5 to offer?

6 MR CLARK No, sir, Your Honor

7 THE COURT All right, I find that the Defendant
8 received his Miranda warning, that he understood his
9 rights and he waived his rights and that any confession
10 given by him was freely, voluntarily and intelligently
11 given

12 The statements by him therefore will be admitted
13 into evidence and the jury then must determine beyond a
14 reasonable doubt whether or not the statements were freely
15 and voluntarily given

16 MR SALEEBY That's all we have, as pretrial

17 THE COURT Any additional pretrial matters from
18 the Defense?

19 MR CLARK No, sir, Your honor

20 THE COURT All right, we will -- the jury's due
21 back at what time did I say?

22 MR SALEEBY I think you said 3 00

23 THE COURT 3 00, okay

24 THE BAILIFF Yes, sir

25 THE COURT Okay

1 (Pause)

2 (Whereupon a recess was taken concluding at 3 08
3 p m)

4 (Jury enters the courtroom)

5 THE BAILIFF Your Honor, all of the jurors are
6 present in the courtroom

7 THE COURT Ladies and gentlemen, if you will
8 stand and be sworn at this time

9 (Whereupon, the jury was duly sworn)

10 THE COURT Ladies and gentlemen, you have
11 appeared for jury duty, you are qualified to serve on jury
12 duty and you have now been selected and sworn to be the
13 jury in the case of the State versus Reginald Tyrell Clea

14 He's in court as the result of indictments
15 returned by the Grand Jury here in Sumter County charging
16 him with two counts of murder and possession of a firearm
17 during the commission of a crime of violence

18 You should clearly understand, the fact that the
19 Defendant has been indicted and brought into court on
20 these charges does not evidence his guilt He has pled
21 not guilty to these charges and he is presumed to be not
22 guilty of these charges unless the State proves him
23 guilty And the State must prove him guilty by presenting
24 evidence which convinces you of his guilt beyond a
25 reasonable doubt

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1 And before this trial begins, I want to tell you
2 that this trial will probably be different than -- from
3 what you might expect Many people do not have the chance
4 to attend actual court sessions as you are doing now And
5 then they think from watching television or movies or
6 reading books that trials are always full of high drama
7 and intense action and riveting circumstances

8 And while all these things may be true at times,
9 this trial is not for the purpose of entertainment It is
10 a fundamental part of our democracy and a search for the
11 truth in an effort to make sure that justice is done
12 between the parties before the Court

13 In searching for the truth and making sure that
14 justice is done, it is often a slow, deliberate and
15 repetitive process, in many instances the opposite of what
16 you may have seen on television or in movies or read in
17 books

18 The courtroom is a place of honor dedicated to
19 the protection and preservation of citizens' rights
20 through what many have called the greatest justice system
21 in the world The attorneys appearing before you are
22 advocates for the parties they represent But first and
23 foremost they are officers of the Court and they are sworn
24 to uphold the integrity and fairness of our judicial
25 system and to help you in your search for the truth

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1 You should expect them to be professional,
2 competent and ethical in the representation of their
3 clients and their respective interests and sides in this
4 case

5 And remember also that you have just taken an
6 oath to try this case and reach a verdict that is fair and
7 just And you are also expected to be professional,
8 reasonable and ethical

9 I certainly want to thank you for accepting this
10 important responsibility of jury service Though you
11 didn't volunteer for it, you've been summoned and you have
12 accepted it and also for making this contribution to our
13 justice system

14 In just a moment you will hear opening
15 statements, first by the State and then followed by
16 opening statements by the Defense, if Mr Clark chooses to
17 give one, to be followed by testimony in this case And
18 after you have heard all of the testimony and you'll hear
19 closing arguments and I will charge you the law that
20 applies to this

21 I want to emphasize to you that you and I have
22 different roles to play in this process As the jurors,
23 you have been selected to decide and to determine the
24 facts of this case And out of all the other people in
25 the world, in Sumter County, in the United States, in this

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1 state, out of all of the other people, only the 12 of you
2 who will sit in deliberation can decide the facts of this
3 case You have an important task to do and therefore you
4 must give it your best

5 As the trial judge, I cannot suggest, intimate
6 or to make any comment concerning the facts of this case
7 because this is a case for you to decide And just as I
8 am the judge of the facts of this -- you are the judge of
9 the facts of this case, or the judges of the facts of this
10 case, I cannot tell you how to find the facts, you must
11 accept under your oath that I am the judge of the law of
12 this case

13 And as the judge, it is my responsibility to
14 preside over the trial and also to instruct you as to the
15 law that applies in this matter You must accept the law
16 and apply the law exactly as I state it to you at this
17 time, during the trial and at the end of trial

18 I want to emphasize to you equally that under
19 our rules you are not allowed to discuss the case while
20 it's going on You're not allowed to have anyone discuss
21 it with you or in your presence It would be a violation
22 of your oath as jurors to engage in any form of premature
23 deliberations, to discuss the case in any form or fashion
24 before I authorize you to do so And that will be done at
25 the end of the case, after you have heard all of the

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1 evidence, arguments of the lawyers as well as my jury
2 instructions to you

3 Now I trust that this case will be one in which
4 you will not get too worn out and we'll take appropriate
5 breaks I'll do all that I can to keep it moving and keep
6 you fresh as far as not sitting and listening too long
7 without taking some sort of break because we want to keep
8 your minds fresh and keep you alert and move the case
9 along

10 With that, we're going to proceed into opening
11 statements, Mr Saleeby

12 MR SALEEBY May it please the Court

13 THE COURT Yes, sir

14 **OPENING STATEMENT BY MR SALEEBY ON BEHALF OF THE STATE**

15 Ladies and gentlemen, this is State's Exhibit
16 Number 8 It is the Romanian version of the AK-47, the
17 preferred standard weapon of what was the Soviet Block
18 countries

19 It's a semi-automatic weapon It carries a 30
20 round clip It's intended for the purpose of shooting
21 people It carries ammo that shoots people It's a
22 powerful weapon

23 It can penetrate both sides of a mobile home as
24 it did this day It can penetrate a motor vehicle as it
25 did this day

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1 14 months ago in February of 2004, Reggie Clea
2 used this weapon to kill two men, Charles Jackson known as
3 Bubba (phonetic), and James Pollard known as BoBo
4 (phonetic)

5 All of these men and the two people who were
6 there with them were friends, they were associates, many
7 of them related But on that day, Mr Clea shot Mr
8 Pollard at point blank range nine times He shot Mr
9 Jackson twice, breaking his left leg in two places so he
10 couldn't put weight on it And then while he was crawling
11 on the ground, he shot him in the top of the head one more
12 time

13 And why? You'll never know And why? We'll
14 never know, not what makes sense These people were
15 friends, they were associates, they were family members
16 They all lived in the Rembert community and had for a long
17 time

18 And all this afternoon, all they were doing was
19 taking dog houses that Mr Clea had sold to Mr Pollard
20 and they were putting them in Mr Pollard's yard No
21 indication whatsoever from those people No indication
22 from a man by the name of Lee Powell who was there helping
23 them or Maurice Young who was there helping them, that
24 there was any history of bad blood, any hostility, any
25 fights, any threats, nothing It was not there And then

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1 out of the blue, out of the blue, this happens

2 And why? Well, as Mr Clea is driving away and
3 getting away, he picks up Mr Powell, Mr Powell who has
4 run away from the scene and says, get in And Mr Powell
5 gets in because Mr Clea is driving away, he's got this
6 weapon in his hand

7 And he says -- he says, why did you do it, why
8 did you do it? He said, I thought -- I thought he had a
9 gun Who? Jackson You thought, did you see a gun? No
10 answer

11 Well, you know what? The police showed up and
12 they didn't find a gun And they didn't find cartridges
13 but from this one gun And Mr Powell who was there never
14 saw a gun on either Mr Jackson or Mr Pollard

15 And Mr Young who was there, never saw a gun on
16 Mr Jackson or Mr Pollard And the police officers who
17 came there didn't find any projectiles or any cartridges
18 from any other weapon No, just this weapon

19 We all want what happens in front of us to make
20 sense We all want homicides to make sense but sometimes
21 homicides don't make sense So what we're required to do
22 is what we're going to do, prove how this man killed those
23 other two men

24 And by pleading not guilty he says to you, I'm
25 not accountable, I'm not responsible for these two deaths

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1 And we say to you, the entire purpose of these proceedings
2 is to make sure that he is accountable, that he is held
3 responsible And at the end of this case, that's what
4 we'll be speaking of

5 Thank you

6 THE COURT Mr Clark

7 MR CLARK Thank you, Your Honor, may it please
8 the court

9 THE COURT Yes, sir

10 **OPENING STATEMENT BY MR CLARK ON BEHALF OF THE DEFENDANT**

11 Mr Saleeby, ladies and gentlemen of the jury,
12 good afternoon My name is John Clark and I represent Mr
13 Reginald Clea in this case

14 The first thing I will tell you, ladies and
15 gentlemen, is that what Mr Saleeby tells you or just told
16 you is not evidence It's what he thinks, what he
17 believes and the way that he has characterized the
18 evidence

19 But what you have to do is decide this case
20 based on the evidence that comes from this witness stand
21 because I'm telling you, it's not about which lawyer can
22 make the best argument or which lawyer can arouse the
23 passions and emotions of the jury, it's about the evidence
24 in this case

25 And I will tell you, ladies and gentlemen,

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1 Reginald Clea strongly disagrees with the characterization
2 that Mr Saleeby made to you a few minutes ago. And I
3 will submit to you that you will not hear any evidence
4 that Reginald Clea shot Mr Jackson in his leg so he
5 couldn't move and then shot him in the head. That is not
6 what the evidence is going to show in this case.

7 So, ladies and gentlemen, that's the first thing
8 I want to tell you, you cannot decide this case on how
9 well Mr Saleeby argues his opening statement to you
10 because it's not evidence. You have to decide this case
11 on what comes from the jury's -- jury -- from the witness
12 stand.

13 Now, ladies and gentlemen, I will be the first
14 to tell you that this is an unfortunate occasion. It's
15 unfortunate because you have two young men that are
16 deceased and you have another young man on trial for two
17 counts of murder.

18 And anytime death is involved, ladies and
19 gentlemen, it's easy to be overcome with the emotion and
20 the sympathy and automatically want to blame somebody.
21 But, ladies and gentlemen, we're going to ask you to set
22 aside the emotion, set aside the sympathy and decide this
23 case on the facts.

24 In essence, we're going to ask you to be like
25 Lady Justice. A lot of you've seen the picture of Lady

1 Justice and she has a rag or something across her eyes
2 She can't even see the parties And then you see the
3 scales evenly balanced You have to decide, you have to
4 cover your eyes to the emotion and the sympathy that two
5 people are dead and you have to judge this case on the
6 facts and the law That's what we ask you to do

7 If you do that, ladies and gentlemen, then you
8 will conclude at the end, I believe, that although these
9 two men are deceased, that Reginald Clea shot them in
10 self-defense And if he had not, he believed, and I think
11 the evidence is going to show, that they would have taken
12 his life That's what I believe the evidence is going to
13 show

14 Now, ladies and gentlemen, that doesn't make the
15 situation any less tragic I'll admit to that These
16 young men are deceased This is a terrible set of facts
17 But what it means is that Reginald Clea is not guilty of
18 murder, that's what it will mean It won't make it any
19 less painful, it won't make it any less tragic

20 But under South Carolina law, and Judge Newman
21 is the judge of the law, he's going to tell you the law at
22 the end of this case But I believe what he's going to
23 tell you that that South Carolina law recognizes self-
24 preservation If someone you believe reasonably that they
25 are out to take your life, you can take theirs And

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1 that's what this case is all about

2 South Carolina law, as Judge Newman I believe is
3 going to tell you, you don't have to wait until someone
4 pulls out a gun and shoots you If that were the law it
5 wouldn't make a lot of sense But what it says, if you
6 reasonably believe that someone is going to kill you, you
7 have the -- you don't have to wait for them to get the
8 jump on you And that's what happened in this case

9 Ladies and gentlemen, Reginald Clea, as he sits
10 over there at that defense table is presumed innocent
11 under the law He's presumed innocent The only way he
12 will be determined to be guilty is if Mr Saleeby and the
13 State of South Carolina proves beyond a reasonable doubt,
14 beyond a reasonable doubt, that he is in fact guilty of
15 murder and that he did not act in self-defense

16 Reginald Clea doesn't have anything to prove
17 He has no burden of proof The burden is on the State of
18 South Carolina and once Reginald Clea establishes that
19 this is self-defense, it's on the State to prove beyond a
20 reasonable doubt that it wasn't

21 And I submit to you, ladies and gentlemen, that
22 proof beyond a reasonable doubt is a very high standard
23 And I think Judge Newman is going to define it for you at
24 the right time and I believe what he is going to tell you
25 is that it is proof of such a convincing character that

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1 you would be willing to rely on it and act on it without
2 hesitation in your most important matters

3 But that's what the level that the evidence has
4 to be at, of such a convincing nature that you would be
5 willing to rely on it and act on it in your most important
6 of matters

7 And I submit to you, ladies and gentlemen, that
8 what this evidence is going to show is that this young man
9 acted to save his life

10 Now, ladies and gentlemen, I've represented
11 Reginald Clea for about a year now and I've had a lot of
12 time to study this evidence and analyze it And I want to
13 take a few minutes to tell you what I think it's going to
14 show

15 Ladies and gentlemen, the evidence in this case,
16 I believe will show, that Mr Jackson and Mr Pollard had
17 reputations for violence I believe the evidence is going
18 to show that

19 It's also going to show that they threatened Mr
20 Clea since April of 2002 -- 2003, I'm sorry This
21 incident happened in February, February 25 of 2004 The
22 evidence is going to show that they had threatened since
23 April of 2003

24 The evidence is also going to show that Reginald
25 Clea knew -- believed these people were violent and was

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1 afraid of them, what they would do

2 The evidence is going to show that he was so
3 afraid of them and what they might do, before this
4 incident he went to the home of a local Sumter County
5 Sheriff's Deputy You'll hear about that He went to the
6 Sheriff's Deputy to talk to him about what was going on he
7 was so afraid

8 Importantly, ladies and gentlemen, the evidence
9 is going to show that these young men were most probably
10 armed with weapons

11 Now, the evidence is not going to show that when
12 the police got to the scene they found the weapon But
13 what it's going to show is that a family member had
14 already tampered with this scene and taken items away
15 before law enforcement got there That's what it's going
16 to show

17 The evidence is going to show by witnesses that
18 the State has investigated that there may have been more
19 than one gun fired at this scene

20 And finally, it's going to show that Reginald
21 Clea reasonably believed that he was going to lose his
22 life and this was the only thing that he thought he could
23 do to save his life

24 That's what the facts are going to show, ladies
25 and gentlemen And with that being the case, there's no

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1 way that this evidence proves beyond a reasonable doubt
2 that he committed murder

3 It doesn't mean that two people aren't dead, it
4 doesn't mean he didn't shoot them But it means that he
5 is not guilty

6 Ladies and gentlemen, all we ask that you do is
7 give him the fair trial that you said you would when you
8 took the oath That's all that we ask because we realize
9 that with the emotion involved, it's easy to get caught up
10 in that and not look at the law and the facts

11 Finally, ladies and gentlemen, what I would ask
12 you to do is not make up your mind until you've heard all
13 the evidence It's easy sometimes, when you hear the
14 first person talk, you tend to think, oh my goodness, you
15 know, this must be the facts in this case But I ask you
16 not to do that In fact, your oath is that you won't even
17 discuss this case until your hear all the evidence

18 The reason why I ask that is because somebody's
19 got to go first and somebody's got to go second We wish
20 we could go first but we can't The State has the right
21 to go first And if you jump to the conclusion in your
22 mind after hearing just one side, then you haven't weighed
23 all the evidence carefully

24 But that's what we ask you to do, put the
25 emotion aside, decide the facts of this case on the facts

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1 And if you do that, your verdict will be one of not guilty
2 in the end

3 Thank you very much I look forward to working
4 with you during this trial

5 THE COURT Ladies and gentlemen, lets stand for
6 a moment

7 (The jury stands)

8 THE COURT Call your first witness please

9 MR SALEEBY Your Honor, we would call Richard
10 Nelson to the stand

11 RICHARD N NELSON, after being first duly
12 sworn, testified as follows

13 THE CLERK Have seat up here, please State
14 your full name, spell your last name please

15 THE WITNESS Richard H Nelson, Jr , N-e-l-s-o-
16 n

17 DIRECT EXAMINATION BY MR SALEEBY

18 Q Mr Nelson, tell us where you live, what county
19 you live in and how long you've lived here

20 A I live off of 441 in Sumter County I've lived
21 here probably about 32 years

22 Q How long have you been in law enforcement?

23 A I've been in law enforcement about 19 years

24 Q And what agencies have you been with?

25 A I've been with the Sumter City Police and I'm

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1 currently with the Sumter Sheriff's office

2 Q How long have you been with our Sheriff's
3 office?

4 A Going on 17 years

5 Q And what type of duties and assignments have you
6 had prior to February of 2004?

7 A I was assigned to the patrol division of the
8 Sheriff's Department I've worked animal control I've
9 worked juvenile investigations Then I got put in
10 criminal investigations I've worked in narcotics since
11 '95 and I've been back on patrol for about four years

12 Q Were you on patrol on Wednesday, February the
13 25th of 2004?

14 A Yes I was

15 Q And what were your -- what was your job on that
16 day and what was your rank?

17 A I was lieutenant with the patrol division
18 assigned to a shift

19 Q And as a lieutenant shift -- shift lieutenant,
20 what were your duties and responsibilities?

21 A I run a shift that patrols the county We work
22 rotating shifts and at this time I was on day shift

23 Q What parts of the county were you responsible
24 for?

25 A I was responsible for the whole county at the

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1 time

2 Q Did you receive a call to respond to Dinkins

3 Mill Road?

4 A Yes, we did

5 Q And approximately what time of day was that?

6 A I have to refer back to my report

7 Q That's fine

8 A According to the report, we were dispatched

9 about 14 53 which would have been about 2 53 in the

10 afternoon

11 Q Civilian time 2 53?

12 A Yes, sir

13 Q All right, and what part of the county were you

14 in when you received the call?

15 A I was in the 441 area

16 Q And how far would that be from Dinkins Mill Road

17 for people who aren't familiar with the county?

18 A Maybe seven or eight miles

19 Q Was there -- were you by yourself or were you

20 with any other deputy?

21 A I was by myself in my patrol vehicle

22 Q All right, tell us what you did once you got the

23 call at about 2 53, 2 54?

24 A Once I got the call, I started heading towards

25 Rembert, running code I arrived on the scene maybe six

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1 or seven minutes after the call came out

2 Q All right, when you say running code, do you
3 mind explaining to us what that means?

4 A Running -- I had my blue lights and my siren,
5 all my emergency equipment operating

6 Q And it took you approximately how long after
7 receiving the dispatch of the call to arrive there?

8 A Six, seven, maybe eight minutes at the most

9 Q Please tell us what you did when you got to 5555
10 Dinkins Mill Road

11 A When I pulled up, I noticed a mobile home
12 There was no mobile home skirting or anything on the
13 trailer I could see underneath it and as I approached
14 it, I saw a body laying in the back yard

15 I then pulled my vehicle up to the right front
16 of the residence and I walked around the back of the house
17 from the front

18 Q All right, tell us what you saw when you got in
19 the backyard

20 A The first thing I saw when I got to the back,
21 there was a body laying a little bit to my left --
22 correction, to my right It had a pit bulldog on top of
23 it The dog was either sitting or laying across the guy's
24 chest

25 I went a little further and I saw another body

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1 over to the right And this body had a black female
2 leaning over it -- the body when I got there and I removed
3 her from the scene

4 Q What was her condition?

5 A She was very hysterical, crying and hollering

6 Q Were you able to make any sense out of her at
7 that time?

8 A No, sir, not at that time I was not

9 Q Now, who else was arriving about the same time
10 that you arrove -- arrived?

11 A A few seconds, in just a matter of seconds
12 behind me Deputy Skinner showed up and then Deputy Brail
13 -- Corporate Brailsford showed up

14 Q All right, this is a corporal and a deputy
15 They were under your command?

16 A Yes, sir, they were

17 Q And they arrived after you did?

18 A Yes, sir, within seconds

19 Q So as the first officer on the scene and as a
20 lieutenant, you would have been the commanding officer of
21 this scene?

22 A Yes, sir, I was

23 Q All right, you went around the trailer and you
24 saw one body Where was it located?

25 A The first body I saw actually after I went

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1 around the trailer was located to my right a little bit
2 The next body I saw was to the left It was kind of
3 between the trailer and, I believe, a car

4 Q All right, sir What was the dog doing on the
5 body that was furthest from the trailer?

6 A It appeared that the dog was licking blood or
7 something to me I wasn't sure whether the dog was
8 attacking the person or not But it didn't appear to be
9 It was just laying on the guy really

10 Q What did you do with the dog?

11 A The dog, if I remember correctly, was on a
12 chain And when I scared it off it ran back over to the
13 dog house and I called animal control to come get that
14 dog

15 Q All right, what else did you do with the
16 deputies who were there in terms of taking charge of the
17 scene?

18 A The deputies helped me take charge of the lady
19 that was there We also -- I had them rope off the front
20 of the house, put one at each end of the house Nobody
21 else was allowed in that backyard except for the E M S
22 people

23 Q All right, if you would please, what else did
24 you do besides call for animal control and put a deputy at
25 either end of the trailer?

1 A I swept the area, made sure I didn't see
2 anything There were no weapons I saw several shell
3 casings laying down I noticed there were some bullet
4 holes in a vehicle and in a trailer

5 The trailer was locked We didn't know if
6 anybody was in it, anybody was hurt Another
7 investigator, Investigator Jeffcoat, arrived on the scene

8 When he arrived we forced entry into the
9 residence and cleared the residence to make sure there
10 were no other victims in that house

11 Q Would you tell us the position of the two
12 bodies?

13 A One body was laid on its back facing up The
14 other body was laying down faced to the -- I don't
15 remember if it was left or right but the face was up kind
16 of turned

17 Q All right, the body that was furthest away from
18 the trailer, closer to the dog house, what was its
19 position?

20 A It was laid straight back and the dog was on his
21 chest

22 Q And that would turn out to be Mr James Pollard?

23 A I don't remember the names, sir

24 Q All right, on his back, chest up?

25 A Yes, sir

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1 Q And the body closest to the car -- between the
2 car and the trailer that's going to turn out to be Mr
3 Jackson, show us his position?

4 A He was laying face down -- or his body was on
5 its front and the head was kind of cocked to the side

6 Q All right, did you have a chance to observe his
7 head and tell us what condition it was in?

8 A His head to me appeared like it had been maybe
9 run over, kind of flattened to the side a little bit, a
10 good bit of blood laying around the head area

11 Q Did you move either body?

12 A No, sir, I did not

13 Q How long was it after you got there and took
14 charge of the scene that E M S arrived?

15 A I'm not sure on that, sir Minutes, could be 10
16 minutes, could have been five minutes

17 Q Were you there when E M S arrived?

18 A Yes, sir, I was

19 Q Were they allowed into the backyard?

20 A Yes, sir Two of the E M S attendants came in
21 They rolled the one body over on his back and checked him
22 And then they proceeded to check the next victim

23 Q And that would be the person furthest away?

24 A Yes, sir

25 Q All right, you said you observed cartridges?

1 A Yes, sir

2 Q Where? What part of the yard did you observe
3 cartridges?

4 A They were, if I remember, right on the back side
5 of the car, kind of in between both bodies And they were
6 all over the place

7 Q And did you look at the cartridges?

8 A Yes, sir, I did

9 Q Did you move them or anything?

10 A No, sir, I did not touch them

11 Q What could you tell about the cartridges just
12 from a visual examination?

13 A From what I saw, I believe they were from a high
14 powered rifle

15 Q And you say you saw the car out there?

16 A Yes, sir

17 Q Did you see anybody in the car or cars?

18 A No, sir, I checked the cars and there was nobody
19 in the vehicles

20 Q Did you notice bullet holes in either car?

21 A Yes, sir, I did

22 Q Did you see any weapons on the scene?

23 A No, sir, I never saw any weapons at all

24 Q And by that I'll ask you specifically, a
25 shotgun, a rifle, handgun of any sort?

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1 A No, sir

2 Q You looked closely at the body of the person
3 furthest away, Mr Pollard, did you see any weapons around
4 him?

5 A No, sir, I did not

6 Q When you lifted the body with his face down by
7 the car, Mr Jackson, did you see any weapons around him?

8 A No, sir, I did not

9 Q Did more E M S people arrive?

10 A Yes, sir, I believe two more arrived and they
11 walked around the back of the trailer and I asked them to
12 leave, they didn't need to come into the crime scene

13 Q All right, two other people had already come to
14 Mr Jackson?

15 A Yes

16 Q And they turned him down from being face down to
17 face up?

18 A They rolled him over on his back, yes, sir

19 Q All right, did anybody else arrive?

20 A Investigator Jeffcoat had arrived and then
21 several other deputies arrived because I had called for
22 backup for crowd control

23 Q Did you get the backup?

24 A Yes, sir, we did

25 Q All right, once the backup arrived, what were

1 your duties?

2 A My duties was just to secure the scene and then
3 Investigator Mackessy's got on the scene and other
4 investigators and I explained to them what we had and what
5 I knew and what I saw and then they took over the scene

6 Q All right, I want to ask you about that to make
7 sure You refer to Mackessy Is that the gentleman here
8 in the fatigues like?

9 A Yes

10 Q Were you there when they arrived?

11 A Yes

12 Q Was anybody other than E M S allowed to come on
13 to the scene after you arrived there other than law
14 enforcement personnel?

15 A There were one or two family members had come up
16 and tried to get back into the crime scene but we stopped
17 them But they did not get into the scene, the actual
18 crime scene area

19 Q You mean the back of the trailer?

20 A Yes, sir They tried to come to the back of the
21 trailer but they were not allowed to

22 Q They were at the front of trailer?

23 A Yes, sir

24 Q Were there people in the adjacent yard?

25 A There were people in the adjacent yard when I

1 drove up

2 Q Were they allowed on the scene?

3 A No they were not

4 Q And Mr Mackessy's job, I believe, he does what
5 kind of job with the Sheriff's Department

6 A He processes crime scenes

7 Q The crime scene, had there been any change in it
8 other than the body of Mr Jackson turned over, from the
9 time you got there until Mr Mackessy got there?

10 A No, sir

11 Q And were you there when Mr Turner got there?

12 A I don't recall if I was there when Mr Turner
13 got there or not I do -- I think I remember seeing him
14 later but I'm not sure what time he got there

15 Q Other than those two individuals, there are a
16 lot of law enforcement people showing up?

17 A Yes, sir

18 Q All right, I'm going to show you a couple of
19 things and just ask you if you can orient us

20 (Pause)

21 Q Mr Nelson, just hold on a second I'm going to
22 set this up and I'm going to ask you to step down and just
23 orient us on two items

24 MR SALEEBY Your Honor, may it please the
25 court

1 Q Step down now, sir, and I'm going to show you
2 State's Exhibit Number 1

3 (The witness steps down from the witness stand)

4 Q And I will ask you if you can recognize that
5 diagram or aerial photograph

6 A Yes, sir

7 Q Here you can use this pointer Tell us what
8 we're looking at Step back over here so this juror can
9 see, please

10 A All right, this right here is the residence that
11 was the crime scene This is the backyard Right about
12 in here is where I parked This area right over here
13 would be where the people were that I saw when I first
14 drove up

15 Q To the right in the woods?

16 A To the right in the woods like right here

17 Q All right, let me ask you, what road is this
18 we're looking at?

19 A That is Dinkins Mill Road

20 Q And, of course, this shows orientation being
21 north so that would be west What road is down to the
22 west?

23 A It would be Highway 521

24 Q What road did you come in on?

25 A I came in on 521

1 Q All right, down this way?

2 A Yes, sir

3 Q All right and this is -- this trailer is back
4 behind?

5 A Yes, it is

6 Q Okay and show me again where you parked?

7 A I came in, came up this way About right in
8 here is where I could see underneath the trailer I saw
9 the body laying right back in here somewhere and I pulled
10 up right here

11 Q Mr Nelson, this is State's Exhibit Number 2 for
12 identification Can you use this to illustrate your
13 testimony?

14 A It appears that this is probably the trailer and
15 the wood line right here, kind of semi-curve around the
16 back of the house

17 Q All right, it's not to scale representation ---

18 A No, it is not

19 Q But can you use it to generally show where
20 things were?

21 A Yes, sir

22 MR SALEEBY Your Honor, we move this
23 introduction at this time

24 THE COURT Any objection

25 MR CLARK No, objection, Your Honor

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1 THE COURT It's admitted

2 (Whereupon, State's Exhibit Number 2 is marked
3 for identification and received into evidence)

4 Q We will mark on it later but if you would,
5 please show us where the first body you saw where it was,
6 in relation to the trailer

7 A Okay, when I drove up and looked under the
8 trailer, the first body would have been right in here
9 somewhere I'm not sure on the trailer I don't remember
10 myself seeing where that backdoor was

11 But the body would have been laying in here
12 somewhere and there was another vehicle between or on the
13 other side of the body

14 Q All right

15 A I came around from the front of the trailer
16 There was a body right here somewhere, the dog on it

17 Q To the back or right of the trailer?

18 A Yes ---

19 Q As you're facing it And this body was in what
20 position?

21 A Laying on its back

22 Q All right and now Mr Pollard -- Mr Jackson was
23 lying how?

24 A He was laying on his stomach

25 Q All right and was there another vehicle in the

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1 yard?

2 A I want to say there was another vehicle right
3 back in here somewhere but I don't remember what kind it
4 was

5 Q You may take the stand

6 (The witness returns to the witness stand)

7 Q Mr Nelson, take a look at these photographs,
8 please, sir, while I'm moving this

9 (Pause)

10 Q Did you have a chance to look at those
11 photographs?

12 A Yes, sir

13 Q I'm going to ask you if those photographs
14 accurately depict the scene as you saw it on that day
15 other than the markers placed there by Mr Mackessy and
16 Mr Turner and other Sheriff's Department's investigators?

17 A Yes, sir, it does

18 Q All right, we're going to get an opportunity to
19 see those with Mr Mackessy probably in greater scale and
20 dimensions I'm just going to show you a couple of
21 photographs and have you come down and step in front of
22 the jury to make sure they can see it

23 (The witness steps down from the witness stand)

24 Q I'm going to show it to you and then I'll turn
25 it around and you tell the members of the jury what it is

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1 they're looking at

2 This is State's Exhibit Number 3-A Have you
3 got that?

4 A Yes, sir

5 Q What are we looking at?

6 A We're looking at the mobile home that the crime
7 scene was behind

8 Q 3-A is the front?

9 A Of the crime scene, yes, sir

10 Q State's 3-C, do you know what we're looking at
11 there?

12 A We're looking at the back of the trailer

13 Q All right, we see two objects in there Can you
14 tell us what those objects were?

15 A I believe that's going to be the victims where
16 they were covered up and a vehicle Yes, you see one
17 vehicle and one body at this point with that
18 photo

19 Q All right and on this photo, 3-C, where's the
20 second body, the one that's not covered by a sheet?

21 A Between the door and the trailer

22 Q All right, let me show you this one now, State's
23 Exhibit 3-D

24 A And that one shows the vehicle and both bodies
25 where they're covered up with sheets

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1 Q Okay, Mr Nelson, I'll let you have a seat back
2 up there

3 (The witness returns to the witness stand)

4 MR SALEEBY Please answer any questions Mr
5 Clark has for you

6 **CROSS EXAMINATION BY MR CLARK**

7 Q Mr Nelson, you don't know what occurred at that
8 scene before you got there, do you?

9 A No, sir, I do not

10 Q You don't know who was the aggressor, do you?

11 A No, sir

12 Q You don't even know why those people were there,
13 do you?

14 A No, sir

15 Q You don't know who was armed at that scene?

16 A No, sir

17 Q You just simply was the first officer on call?

18 A Yes, sir

19 Q And when you got there you said a young lady was
20 there?

21 A Yes

22 Q Did she say who she was?

23 A I believe it was a Ms Knox

24 Q Ms Knox, okay And she was leaning -- she was
25 leaned over one of the bodies?

1 A Yes , , ,

2 Q And did she tell you whether she moved anything
3 when you go there?

4 A No, sir, she was hysterical and crying I
5 couldn't get anything from her

6 Q How long did you stay there?

7 A How long did I stay there?

8 Q Yes, sir

9 A Several hours

10 Q Several hours And in the several hours that
11 you were there, did Ms Knox ever tell you she moved
12 anything from that scene?

13 A No, she did not tell me anything I did not
14 talk to her after that point

15 Q But she had an opportunity to tell you, didn't
16 she?

17 A If she wasn't hysterical she could have, yes,
18 sir

19 Q Now, you talked about your years and experience
20 in investigation, right?

21 A Yes, sir

22 Q How long -- how many years you have?

23 A I've got a total of almost 19 years in law
24 enforcement

25 Q And how many hours of training do you have?

1 A Several, a lot

2 Q Been to a lot of crime scenes?

3 A Yes, sir

4 Q And I believe you said that you secured the
5 scene?

6 A Yes, sir, the best we could

7 Q And the reason why securing the scene is
8 important is because you don't want anything moved, right?

9 A Yes, sir

10 Q And that's because if you can discover the
11 evidence you can analyze what might have happened?

12 A Yes, sir

13 Q And isn't it true that if things are moved from
14 the scene, that makes it very difficult, doesn't it?

15 A Yes, sir, it does

16 Q And if things are removed from the scene, it's
17 almost impossible to tell what was there at the time of
18 the crime, isn't it?

19 A If it's gone I can't tell you what was there

20 Q Right And you made great efforts to make sure
21 that once you got there nothing was moved, right?

22 A Yes, sir, I did

23 Q And you said Ms Knox was on that scene when you
24 got there?

25 A Yes, sir

- 1 Q And she was hysterical?
- 2 A Yes, sir
- 3 Q And in the four hours that you were there she
- 4 never told you that she moved something from that scene,
- 5 did she?
- 6 A No, she did not tell me anything
- 7 Q And if she had told you, you would have made a
- 8 note of that, wouldn't you?
- 9 A Yes, sir, I would have
- 10 Q Because that's very important, isn't it?
- 11 A Yes, sir, it is
- 12 Q In fact, at some point, you wouldn't even let
- 13 E M S people on that scene, right?
- 14 A Yes, sir, after the bodies were once checked,
- 15 there was no need for another team to come back there
- 16 Q Right And you wouldn't let the family in that
- 17 scene either, would you?
- 18 A No, sir
- 19 Q And that was because you wanted to preserve the
- 20 scene just as it was when this incident happened, right?
- 21 A Yes, sir
- 22 Q And you have no way of knowing when you get
- 23 there whether something's been moved or not, do you?
- 24 A No, sir
- 25 Q If you did know that something was moved, you

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1 would have investigated it right then, wouldn't you?

2 A Yes, sir

3 Q But you didn't know that, did you?

4 A I did not know that

5 Q Did you know these individuals?

6 A No, sir

7 Q Didn't know Mr Jackson or Mr Pollard?

8 A No, sir

9 MR CLARK Thank you, Mr Nelson, that's all I
10 have

11 MR SALEEBY I don't have anything

12 THE COURT All right, thank you, sir

13 THE WITNESS Thank you

14 (The witness is excused from the witness stand)

15 MR SALEEBY We would call Raymond Mackessy to
16 the stand

17 **RAYMOND MACKESSY**, after being first duly
18 sworn, testified as follows

19 THE CLERK Have seat up here, please State
20 your full name and spell your name for us, please

21 THE WITNESS Raymond Mackessy, M-a-c-k-e-s-s-y

22 **DIRECT EXAMINATION BY MR SALEEBY**

23 Q Mr Mackessy, where do you live, sir?

24 A Sumter, South Carolina or Dalzell, South
25 Carolina

1 Q And how long have you lived here in the county?

2 A I've lived here for nearly 20 years

3 Q And who do you work with?

4 A Sumter County Sheriff's office

5 Q And how long have you worked with the Sumter
6 County Sheriff's office?

7 A Just over 19 years

8 Q And what kind of duties and responsibilities
9 have you had with our Sheriff's office?

10 A I started out in the patrol division, worked
11 that for about 18 months, and then went into
12 investigations where I've been every since

13 Q And do you have any particulate specialty in
14 terms of investigations?

15 A Yes, sir, I'm a crime scene investigator

16 Q What kind of training have you had in the field
17 of crime scene investigation?

18 A I've gone through training I was with -- I
19 started in crime scene investigation when I was with the
20 Baltimore Police Department I was with them for 15 years
21 prior to moving here to Sumter

22 I started out there being trained by the
23 Baltimore Police, the FBI and various private forensic
24 firms in Baltimore

25 After moving here to South Carolina, I received

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1 additional training from State Law Enforcement Division,
2 the FBI and other private forensic firms around the
3 southeast

4 Q And how long have you been in charge of
5 processing crime scenes for our Sheriff's Department?

6 A Since 1987

7 Q And how many years do you think you have worked?

8 A Have worked in crime scene?

9 Q Yeah, how many scenes you work in a month, in a
10 year?

11 A I generally do about -- it can range 30 scenes a
12 month or more Per year, it's hard to say It's -- the
13 total amount of scenes that I've done over my career has
14 got to be in the thousands

15 MR SALEEBY Your Honor, we would submit that
16 Mr Mackessy would be well qualified to testify in an
17 expert -- as an expert in the field of crime scene
18 processing

19 THE COURT What says the Defense?

20 MR CLARK No objection, Your Honor

21 THE COURT Okay, he's admitted as an expert
22 witness ---

23 Q All right, Mr Mackessy, we've talked about
24 crime scene processing ---

25 MR SALEEBY Does Your Honor want to give an

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1 instruction at this time?

2 THE COURT Yes, sir Ladies and gentlemen of
3 the jury, a witness cannot offer opinions concerning
4 matters that the witness testifies to except under certain
5 limited circumstances as provided in the rules There is
6 an exception, however, where a witness is qualified to
7 offer an opinion based on some level of expertise which
8 the Court accepts to be sufficient In those instances,
9 the witness can offer an opinion provided that the opinion
10 is supported by sufficient -- a sufficient basis as
11 provided in our rules

12 You may proceed

13 Q Mr Mackessy, if you would please, explain to
14 the members of the jury what crime processing -- crime
15 scene processing is and what it means And I'm talking
16 about in the real world, not like they do on TV, on CSI

17 A Okay The job of a crime scene investigator and
18 processing the crime scene is the preservation of evidence
19 and the documentation of that evidence for later
20 presentation here in court

21 It aids in presenting a story or showing you,
22 the jury, the Judge and the Defense and State, exactly
23 what the crime scene looked like

24 The crime scene, like I say, is documented with
25 photographs, it's documented with sketches Then I --

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1 after everything is documented, then that evidence is
2 collected for later submission to the State Law
3 Enforcement Division lab

4 Q Does it consist of observations, photographing,
5 measurements, collection?

6 A Yes, that's what it consists of

7 Q Were you summoned to 5555 Dinkins Mill Road on
8 February the 25th of 2004?

9 A Yes, sir

10 Q Do you remember approximately what time you got
11 there and who was there when you got there?

12 A I think it was about -- it was a little after
13 3 00, 3 09, somewheres in that area, in that timeframe
14 When I got there, there was Lieutenant Nelson was there
15 I believe there was an E M S crew standing by but not
16 inside the crime -- the taped area The Coroner was there
17 and other investigators

18 Q What did you do initially?

19 A Initially I do what's called a cursory search,
20 that means a limited search And then I go into a more
21 extended search after that

22 I was assisted by Lieutenant James Turner

23 Q This gentleman right here ---

24 A Yes, sir

25 Q --- tan coat?

1 A Yes, sir

2 Q All right, sir

3 A After doing a more extensive search of the crime
4 scene, Lieutenant Nelson was assisting, he was showing me
5 various things he had located When I got there, the
6 victims were covered with a white sheet and I -- the first
7 thing I do is I document the scene as I find it with
8 photographs I take pictures of the things just as I find
9 it when I get there, which I did in this case

10 Q All right, what -- what was being done with
11 regard to the victims when you were there?

12 A When I was there, of course they were covered
13 with the white sheet I was photographing the victim, I
14 asked that the sheets be removed I then photographed the
15 victims as I found them and then I turned -- I have the
16 victims turned over so I could photograph the other side
17 of the victims

18 Q All right, sir, how did you and Mr Turner work
19 together on this process?

20 A Lieutenant Turner and myself generally -- he'll
21 go ahead and lay the markers I assisted him somewhat in
22 laying the markers down, the numbered crime scene markers
23 That marks the evidence at the scene

24 I assisted him with that and then I took over
25 photography and he was doing the measuring of the various

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1 articles of evidence found at the scene

2 Q So you were working both sides of the same
3 street?

4 A Pretty much, yes

5 Q All right, sir, what sort of items did you
6 number and photograph?

7 A The items that I numbered were approximately, I
8 think it was exactly 27 fired SKS ammunition that was
9 found around the scene I also marked or assisted in
10 marking bullet holes that were found in a Pontiac at the
11 rear of the trailer and also bullet holes in the rear wall
12 of the trailer

13 Q Did you number the photographs of the bodies?

14 A Yes, sir, they were numbered and photographed

15 Q And do you have photographs that we'll later
16 display to show what you're talking about?

17 A Yes, sir Yes, sir

18 Q Did you ever locate any weapons outside the
19 trailer on the scene?

20 A No, sir

21 Q Any around the body of Mr Pollard or Mr
22 Jackson?

23 A No, sir

24 Q Any in either weapon -- any in either vehicle,
25 excuse me?

1 A No, sir, there was no weapons in the vehicles

2 Q Did you ultimately go inside the trailer? I
3 understand there was testimony from Mr Nelson that it was
4 broken into by the police to make sure nobody was inside?

5 A Yes, sir, that's correct, I did enter the
6 trailer later on

7 Q And what did you find inside?

8 A I found a Mossberg shotgun inside

9 Q Did you find any connection with it with the
10 outside of the trailer or was it locked in the trailer?

11 A It was in the trailer I found no shotgun --
12 fired shotgun shells laying around outside the trailer

13 Q What did you do in terms of examining the mobile
14 home?

15 A The mobile home was examined for any kind of
16 ballistic evidence We were looking at the bullet holes
17 that were in the wall, the trajectories of the bullets,
18 how they came into the trailer, at what angles, was there
19 any actual tangible ballistic evidence inside such as
20 fragments or bullets

21 Q All right, Mr Mackessy, I think to illustrate
22 your testimony to keep from having to repeat it, the best
23 thing to do now is to bring the TV around and set up the
24 easel and ask you to step down So bear with us a moment
25 while we set that up

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1 (Pause)

2 THE COURT All right

3 (The witness steps down from the witness stand)

4 Q All right, Mr Mackessy, in Exhibit Number 1,
5 previously testified to by Mr -- Lieutenant Nelson as
6 being the mobile home at 5555 Dinkins Mill Road, back here
7 behind this other trailer, is that the area you went to?

8 A Yes, sir

9 Q All right, and in terms of securing the scene,
10 how was it secured?

11 A The scene was secured with yellow crime scene
12 tape that says, do not enter Sheriff's crime scene

13 Q From the time you got there, followed by the
14 time you were doing your work, either the E M S , Coroner
15 or law enforcement, was there anybody else in this area?

16 A No, sir

17 Q Put that one up, please, sir, Exhibit Number 2
18 Is that a not to scale representation of the scene?

19 A Yes, sir, it is

20 Q What I want you to do in black is I want you to
21 show the vehicles which you observed on the scene and
22 their approximate location

23 (Witness complied)

24 Q Can you tell us what make and model these
25 vehicles were?

1 A This vehicle here is a 1997 Honda And the
2 other vehicle is a Pontiac The Pontiac Grand Am, I don't
3 see a year on it This was a Pontiac Grand Am

4 Q All right, if you would just note over there
5 Honda and then the other Pontiac

6 (Witness complied)

7 Q All right, that was the Grand Am I'd like you
8 to show us the location of the two bodies you saw And
9 I'll ask you to first indicate Mr Pollard's body or
10 whichever you had marked first, whichever marker you
11 identified first

12 (Witness complied)

13 Q And if you would write underneath there the
14 names, please, just the last name

15 (Witness complied)

16 Q All right, Mr Mackessy, what we're going to do
17 now, if you will step over here to make sure all the
18 jurors can see We're going to show some photographs, and
19 step back over this way so you and I can see, and ask you
20 to relate the photographs to the diagram that we're
21 looking at, State's 2

22 The first is State's Exhibit 3-A What is that,
23 Mr Mackessy?

24 A 3-A is the front of the mobile home

25 Q All right, if you would please, now turn to

1 State's Exhibit 3-B What are we looking at there?

2 A That is the photograph taken to show the side,
3 the front and the rear of the mobile home

4 Q What are we looking at there where the pointer
5 is?

6 A That's the Pontiac and you can see the victim,
7 Mr Jackson, there right next to ---

8 Q Between the Pontiac and ---

9 A And the mobile home

10 Q All right State's Exhibit 3-C?

11 A 3-C is the photograph of the rear of the trailer
12 showing the Pontiac and that would be the body of Mr
13 Pollard there that's covered

14 Q To the left?

15 A To the left ---

16 Q Can you see the item beside Mr Pollard, to his
17 left?

18 A That's a dog house

19 Q All right, sir

20 A And the numbered markers which you see here are
21 the ones, the yellow crime scene markers, the numbered
22 markers that mark various items

23 Q All right, State's Exhibit 3-D?

24 A That's another view of the scene It shows Mr
25 Pollard there, Mr Jackson down next to the Pontiac, and

1 in the distance is the Honda

2 Q And was the driver's door open when you arrived?

3 A Yes, sir, that's how I found the vehicle when I
4 arrived

5 Q And the passenger door cracked?

6 A Yes, sir

7 Q And is this a dog house that we're looking at?

8 A Yes, that's a dog house

9 Q 3-E, all right, what are we looking at there?

10 A This is a view of the dog house in the corner

11 Q This is the second dog house here?

12 A Yes Yes, the other one's over here You can
13 see it There's another dog house there right by the tree
14 -- behind the tree

15 The Pontiac, Mr Pollard's body was laying
16 there

17 Q 3-F?

18 A This is a view showing the Honda, the Pontiac
19 and, of course, the numbered markers there on the ground
20 indicating evidence

21 Q 3-G?

22 A This is a view of the Honda There's markers on
23 this side indicating fired cartridge casings and over here
24 under the car you can see some markers That also
25 indicates cartridge casings I found under the car

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1 Q What did you do with all the cartridge casings
2 that you see?

3 A They were photographed and then later collected
4 and sent to SLED

5 Q How many total cartridges did you receive?

6 A 27

7 Q You picked these up from the scene?

8 A Yes, sir, I picked them up

9 Q And what did you do with them once you picked
10 them up?

11 A I placed them in ballistic boxes, white
12 cardboard boxes

13 Q Is that what we're looking at here?

14 A Yes, sir

15 Q Are these the boxes you put them in?

16 A Yes, sir I put the label on the box

17 MR SALEEBY Your Honor, we'd move the
18 introduction at this time

19 THE COURT Any objection?

20 MR CLARK No objection, Your Honor

21 THE COURT They're admitted without objection

22 MR SALEEBY I beg your pardon, excuse me, S-

23 10

24 (Whereupon, State's Exhibit Number 10 is marked
25 for identification and received into evidence)

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1 Q Mr Mackessy, I'm not going to ask you to open
2 all of these but I will ask you to open a couple of them
3 and show to the jury what we're looking at and I'll ask
4 Mr Green to put another one on the viewer here so we can
5 get a big picture

6 (Witness complied)

7 A Okay, this is commonly known as a 7 62, I
8 believe, ammunition, SKS ammunition, AK47 type ammunition
9 This is a fired cartridge casing, there is no bullet
10 And you see on the back it has a little dot
11 there That's the firing pin -- that is the firing pin
12 mark The firing pin, the base -- hits the base of the
13 shell

14 Q Let's go to State's 3-H What do we have there?

15 A That's a photograph of Mr Jackson next to the
16 Pontiac along with the yellow crime scene markers
17 indicating where I found the fired SKS ammunition

18 Q All right and these are the woods over to what
19 would be the right or I suppose the ---

20 A It would be the east side of the trailer

21 Q Okay and what are we looking through at?

22 A There's another lot on the other side here and
23 there were some dog houses, one here, one further back I
24 believe that's one over in here somewhere

25 Q All right, 3-I?

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1 A This is a view of the Pontiac Mr Pollard --
2 or Mr Jackson's body is on the other side

3 Q Would this be the Coroner?

4 A That's the Coroner She generally is allowed in
5 the scene to take photographs she needs to take for her
6 purposes

7 Q 3-J?

8 A 3-J is a view of the rear of the Pontiac
9 There's the body of Mr Jackson

10 Q 3-K?

11 A This is a view of the interior of the Pontiac,
12 front interior, taken through the driver's door

13 Q 3-L?

14 A Another view of the interior of the Pontiac, the
15 rear of the vehicle And that's a bag of dog food in the
16 backseat

17 Q This is -- go ahead, 3-M?

18 A 3-M is another view of the interior of the
19 Pontiac taken through the passenger door There's an
20 empty Timberland box on the floor That's how I found the
21 box

22 Q And you recovered the box, did you not?

23 A Yes, sir, I removed the box out of there

24 Q And would State's Exhibit Number 15 be that box,
25 Mr Mackessy?

1 A Yes, sir, it is, sir

2 Q All right, now we're going to look at State's
3 Exhibit Number -- S-4 All right, what is S-4? When
4 we're looking at S-4-A, what are we looking at here, Mr
5 Mackessy?

6 A These are actually index cards that I placed on
7 them and that indicates where bullet holes were found in
8 the rear of the trailer

9 Q Can we get a little closer?

10 (Witness complied)

11 Q And that's 4-A?

12 A Next to each one of these is -- you might be
13 able to see this These are actually two inch scales that
14 I put below the bullet holes These are scales here,
15 these little markings Now the one up here at the top, I
16 believe that was a piece of a bullet fragment stuck in the
17 wall

18 Q Can you show us on State's Exhibit S-2 the
19 approximate location of these entry wounds -- or entry
20 marks on the trailer itself? Can you show us on the
21 diagram?

22 Well, wait a minute, let me ask you to do one
23 thing before -- I've gotten ahead of myself Let's go to
24 State's Exhibit 4-B, what's that?

25 A That's the bullet holes ---

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1 Q All right, 4-C, what is that?

2 A 4-C is actually an exit hole, so it's in the
3 front up here That's where the bullet came through the
4 trailer and exited out of the front wall of the trailer

5 Q And what are these items sticking out of the
6 holes?

7 A These are trajectory rods That shows the
8 angle, approximate angle, the bullet came out

9 Q All right I would like for you to show the
10 approximate location and the trajectory on the front and
11 back of the -- back and front of the trailer And if you
12 need to refer to your notes, please do

13 A There was another sketch I don't have with me
14 It's in the box

15 Q I will get it

16 (Pause)

17 Q All right and that's entering the back Can you
18 show us exiting the front, approximately?

19 A The front is in the other sketch

20 (Pause)

21 MR SALEEBY Bear with us, Your Honor

22 A They came at an angle straight across, this way

23 Q Just draw a dotted line to kind of show us the
24 angle, Mr Mackessy

25 (Witness complied)

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1 Q Did you do rods inside of the trailer to track
2 the trajectory path?

3 A Yes, sir, I used the rods

4 Q Is State's Exhibit Number 4-D such a picture?

5 A Yes, sir

6 MR SALEEBY Your Honor, we would move this
7 introduction at this time

8 MR CLARK No objection, Your Honor

9 THE COURT It's admitted

10 (Whereupon, State's Exhibit Number 4-D is marked
11 for identification and received into evidence)

12 Q All right, sir, what are we looking at there?

13 A Okay, these are trajectory rods What I do with
14 those is I stick them in the holes that I find and that
15 tells me the approximate angle that the bullet came in
16 These bullets here are hard to see the numbers 45, 44
17 and 43, these are where bullets -- I believe that's an
18 exit That's where they came across and exited out of the
19 trailer

20 Q And those are the rods that you use to track the
21 path of what happened?

22 A Yes, sir, once the bullet enters a residence, I
23 try to find where did it come in, what did it hit on its
24 way there and how did it exit And that's what the
25 trajectory rods help me do

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1 Q And did you recover any bullet fragments from
2 the scene?

3 A No ballistic evidence of any sort was found
4 inside the mobile home

5 Q All right but did you actually find any
6 fragments in the yard?

7 A Yes, I found -- there was fragments -- as I
8 testified to, one of the fragments in the back here was
9 actually a fragment stuck into the wall And there was
10 also fragments found -- fired cartridge casings found
11 around

12 Q All right, we brought the cartridge casings
13 around

14 A Okay

15 Q And this shows generally 27 of them I'm not
16 going to ask you to mark where all 27 of them were But I
17 will ask you, generally speaking, to show us the part of
18 the yard where they were

19 A There were some found over in here and some here
20 in this area

21 Q And were there others beyond those areas?

22 A There was I'm trying

23 (Pause)

24 A There were some fragments over in this area

25 Fragments -- not fragments but ballistic evidence right

1 there, both under the car and over in this area here also,
2 ballistic evidence found by the car

3 Q This is State's Exhibit Number 11-A It's
4 marked, fragment off ground at scene I'll show that to
5 you and ask you if you collected it?

6 A Yes, sir, I did

7 Q Where did you collect it from?

8 A Next to the body of Mr Pollard

9 Q Would you put 11-A by Mr Pollard, please?

10 (Witness complied)

11 MR SALEEBY Your Honor, we would move this
12 introduction at this time

13 THE COURT The number?

14 MR SALEEBY 11-A

15 THE COURT What says the Defense?

16 MR CLARK No objection, Your Honor

17 THE COURT Admitted without objection

18 (Whereupon, State's Exhibit Number 11-A is
19 marked for identification and received into evidence)

20 Q And I also see that you have something here
21 marked as State's Exhibit Number 11-B Did you recover
22 another fragment from the outside?

23 A Yes, sir, that's the fragment imbedded in the
24 exterior side of the rear wall

25 Q Would you put 11-B there?

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1 (Witness complied)

2 MR SALEEBY Your Honor, we move 11-B as
3 introduction at this time

4 THE COURT What says the Defense?

5 MR CLARK No objection, Your Honor

6 THE COURT Admitted without objection

7 (Whereupon, State's Exhibit Number 11-B is
8 marked for identification and received into evidence)

9 Q Now, did you collect anything else or did you
10 have -- other than these things at the scene showing right
11 here? Is this the items you collected?

12 A Yes, sir

13 Q All right, now what did you do with regard to
14 this Pontiac Trans (sic) Am?

15 A The Pontiac Trans (sic) Am was towed to the
16 evidence building at Public Works and secured inside that
17 building

18 Q And when did you process it?

19 A That vehicle was processed on the 26th of
20 February

21 Q All right, I'm going to show you a series of
22 photographs of the vehicle and ask you to identify them
23 from State's Exhibit S-5, A through K

24 (Pause)

25 Q All right, we're looking at 5-A, what are we

1 looking at?

2 A On 5-A I was showing where I found four bullet
3 holes in the left side of the vehicle and I've numbered
4 them 1, 2, 3, and 4 and that being the door handle

5 Q All right, let me get the pointer for you 5 --
6 4 -- 5-B?

7 A This is what I characterize as bullet grazings,
8 number 5 and 6, where bullets skimmed off the top of the
9 roof of the Pontiac I checked the interior and I didn't
10 see where they entered the vehicle at all So I
11 characterize these as bullet grazings

12 Q And that's -- is that the total number of marks
13 -- markings you saw on the trailer -- I mean, on the
14 vehicle?

15 A On the outside, yes, sir

16 Q All right, let's go to C

17 A Okay, this is a photograph of the trajectory
18 rods that I referred to earlier, in the vehicle It shows
19 an approximate trajectory of the bullet as it entered the
20 vehicle And that's trajectories on 1, 2 and 4 4 never
21 entered the vehicle 1 and 2 will explain ---

22 Q Let's go back to the previous photograph All
23 right, these are marked as 5 and 6

24 A Yes, sir

25 Q They're on the outside What type of -- we can

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1 blow those up and you should get a little closer and tell
2 us what kind of markings these were

3 A These are grazings where the bullet just grazed
4 the top of the vehicle, almost just making a slice in the
5 vehicle, not actually -- not entering but just cutting the
6 metal as it skims across the top of the vehicle

7 Q These 5 and 6 do not penetrate the car?

8 A No, I checked inside and I didn't see any
9 penetration

10 Q All right, go back before that Let's see, 4,
11 any evidence it entered the car?

12 A No, sir, no evidence it entered the vehicle

13 Q Looking at 5-A, 4, no evidence that it entered
14 the car?

15 A No evidence it entered the car

16 Q What about number 3, the quarter panel?

17 A It did come through the quarter panel It hit
18 something in the engine compartment I'm not a mechanic
19 so I couldn't tell you what it was It hit something
20 inside the engine compartment and probably just shattered
21 the bullet itself

22 Q It penetrated the exterior skin of the car?

23 A Yes, sir

24 Q But not the passenger?

25 A Not the passenger

1 Q How about 1 and 2?

2 A 1 and 2 did come through the door but I found no
3 evidence inside the -- in it

4 Q No evidence inside that it hit anything?

5 A It didn't hit the car, the interior of the car

6 Q Did you trace on the inside the path of 1 and 2,
7 shots 1 and 2?

8 A Shot number 1, it entered the driver's door
9 about 31 and a half inches off the ground at a 2 degree
10 angle It was going to the left and slightly down It
11 did pass through the door but there's no visible signs
12 that it struck anything inside the vehicle

13 Q Let's look at 5-D

14 A Okay, here is where I had -- I photographed it
15 coming through with the door closed The bullet -- if 1
16 and 2 had come through it would have -- I would have seen
17 some sort of visible evidence inside the vehicle where it
18 struck

19 Q Now you closed the door and took this photograph
20 5, didn't you?

21 A Yes, sir

22 Q But when you got there the vehicle door was
23 open?

24 A The vehicle was open when I found the vehicle

25 Q And when you closed the door and did the

1 trajectory rods, you did not see any evidence inside where
2 it hit the inside?

3 A No

4 Q All right, let's look at 5-E

5 A 5-E is a photograph primarily showing number 1
6 Number 2 is in the photograph But this is where it comes
7 through the driver's door handle

8 Like I say, this particular shot came in off the
9 ground 31 and a half inches up and it's not striking
10 anything I don't find where it struck anything

11 Q It penetrated the door but there's no indication
12 it hit?

13 A Hit anything, that's right

14 Q All right, and what is -- how far off the
15 ground?

16 A 31 and a half inches

17 Q And the other one, 2, is how far off the ground?

18 A 26 and a half

19 Q And neither one of these struck anything?

20 A No

21 Q You don't have a ruler with you, do you? All
22 right, 31 inches would be about what from your toe?

23 (Witness indicates)

24 Q And the other one?

25 (Witness indicates)

- 1 Q About your thighs?
- 2 A Yes, sir
- 3 Q All right, let's go to the next photograph
- 4 It's F?
- 5 A This is ---
- 6 Q All right, F shows projectiles you show 7 and 8
- 7 Is there any evidence that 7 and 8 hit the outside of this
- 8 car?
- 9 A No
- 10 Q All right, what are we looking at?
- 11 A The driver's door window was open And I'm
- 12 estimating that the bullet 7 and 8 came into the --
- 13 through the open window and hit the front passenger seat
- 14 on the side
- 15 Q 7 and 8 are higher off the ground than 1 and 2,
- 16 is that correct?
- 17 A Yes, sir
- 18 Q And they hit something inside?
- 19 A Yes, sir
- 20 Q They didn't go through the outside of the door?
- 21 A No, sir
- 22 Q 1 and 2 went through the outside of the door but
- 23 didn't hit anything in the car?
- 24 A Right
- 25 Q Not a part of the car?

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1 A Nothing that was part of the car, no

2 Q And whether it hit Mr Jackson or not, you can't
3 say?

4 A No, sir

5 Q All right, let's go to the next one, F -- G
6 What are we looking at there?

7 A Okay, this shows the trajectories of 7 and 8
8 Number 7, which I believe came through the open window of
9 the car because the bullet trajectories are higher, came
10 through the open window of the car, went through the seat,
11 number 7 did, and out the right rear passenger door

12 Number 8 came through the front passenger seat
13 and out the back I saw no evidence where it struck
14 anything I'm looking over in this general area over here
15 for any kind of marks that the bullet might have left I
16 couldn't find any

17 There was a fragment found on the floor of this
18 vehicle later on I believe that probably would be it

19 Q This is State's Exhibit Number 12-B for
20 identification Can you tell us what this is, Mr
21 Mackessy?

22 A Yes, sir, that's the fragment that was taken off
23 of the floor of this vehicle

24 Q And can you show us with this pointer where off
25 the floor you collected this fragment?

1 A I believe it was over in this -- this general
2 area right here, almost under the seat, I believe I
3 can't remember where I got that bullet from

4 Q All right, sir,

5 MR SALEEBY Your Honor, we would move at this
6 time for the introduction of State's Exhibit 12-B

7 THE COURT What says the Defense?

8 MR CLARK Is it 12-B?

9 MR SALEEBY It's 12-B

10 MR CLARK No objection, Your Honor

11 THE COURT Admitted without objection

12 (Whereupon, State's Exhibit Number 12-B is
13 marked for identification and received into evidence)

14 Q And did you also collect another fragment from
15 the car?

16 A Yes, sir

17 Q And where -- what part of the car?

18 A The right front door molding of the car

19 MR SALEEBY Your Honor, we'd move the
20 introduction of State's Exhibit 12-A

21 MR CLARK No objection

22 THE COURT It's admitted without objection

23 (Whereupon, State's Exhibit Number 12-A is
24 marked for identification and received into evidence)

25 Q Right front door molding?

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1 A Yes, sir

2 Q Driver's side or passenger side?

3 A Passenger side

4 Q All right, move to the next photograph That's
5 I, 5-I, what are we looking at there?

6 A That's the trajectory for bullet number 7
7 That's where it exited the right side of the Pontiac

8 Q Is that where you got this fragment from?

9 A Yes, sir Well, I didn't get it from that
10 location Those fragments were found in the floor
11 molding

12 Q Okay, that side And is this in fact the actual
13 -- I know this is blown up now but that's the size of the
14 exit mark on this ---

15 A Yes, sir

16 Q Next, that is?

17 A That is a photograph of the Timberland boot box
18 that was on the right front floor of the Pontiac That
19 was photographed at the evidence building at Public Works
20 It shows it in the same position I found it at the scene

21 MR CLARK What photograph was that?

22 Q If you could help us orient it, I would ask you
23 to go over here now to the diagram of S-2, and ask you on
24 S-2 if you could tell us the approximate length of that
25 trailer and how far it was from the trailer to that tree

1 y'all have used as a marker?

2 A The trailer itself was 66 feet long From this
3 end to this end was 66 feet What was the other question,
4 Mr Saleeby?

5 Q How far it was from the trailer to the this tree
6 on the other side of Mr Pollard?

7 A Okay, from the edge of the ---

8 Q Write in that amount there, 66 feet

9 (Witness complied)

10 A From the side of the trailer to the tree was 38
11 feet 4 and a half inches

12 Q And can you tell us how far it would be from
13 this tree to the steps?

14 A 42 feet, 1 inch

15 Q Thank you, Mr Mackessy, you can have a seat
16 We'll take these things down and let Mr Clark ask you a
17 few questions

18 (The witness returns to the witness stand)

19 MR CLARK Your Honor, may we approach

20 THE COURT Ladies and gentlemen, please go to
21 the jury room for a break Please do not discuss the
22 case We'll have you come back soon

23 (Jury exits the courtroom)

24 THE COURT Yes, sir, Mr Clark?

25 MR CLARK Your Honor, I didn't time how long

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1 Mr Mackessy's testimony was but I believe it was in
2 excess of a half hour It involved very detailed
3 testimony by photographs and distances, bullet holes I
4 would expect my cross examination of him to be maybe not
5 quite a half hour but I think it's going to be 'a little --
6 a while

7 And, Your Honor, quite frankly I would like to
8 review those photographs with the numbers to assist me in
9 cross examining him, Your Honor So I would move for a
10 short time to do that, or in the alternative, allow me to
11 cross examine him in the morning, Your Honor, is what I
12 would request, considering it's very close to the 5 00
13 hour

14 Considering it's very close to 5 00, I ---

15 THE COURT It started at 3

16 MR CLARK I understand

17 THE COURT We'll take a 5 minute break and
18 press ahead

19 MR CLARK Your Honor, during the break I'd
20 like to review the photographs that have been put into
21 evidence

22 THE COURT They're in evidence ---

23 MR CLARK Are they here or do you have them at
24 the table is what I'm asking

25 THE COURT All of the evidence should remain

1 with the court reporter

2 MR CLARK She's saying she doesn't have all
3 the photographs, Your Honor

4 MR SALEEBY We'll get them, right here We
5 couldn't use and have them up there at the same time

6 MR CLARK Well I understand but I need to look
7 at them

8 (Whereupon, a recess was taken concluding at
9 5 00 p m)

10 THE BAILIFF Your Honor, all of the jurors are
11 present in the courtroom

12 THE COURT All right, very well, cross
13 examination, Mr Clark

14 MR CLARK Thank you, Your Honor

15 **CROSS EXAMINATION BY MR CLARK**

16 Q Mr Mackessy, you've been designated as a crime
17 scene investigation expert, correct?

18 A Yes, sir

19 Q That's your expertise, right?

20 A Yes, sir

21 Q And you testified that that involves
22 preservation and documentation of the scene so that you
23 can present a story to the jury or whenever you need to?

24 A Yes, sir

25 Q In handling or prosecuting the case, whatever

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1 needs to be done, right?

2 A Right

3 Q And I think you said you wanted to preserve it
4 so it would look exactly -- I think you said, exactly what
5 it looked like?

6 A When I arrived at the scene

7 Q Right And so your efforts to document and
8 preserve tells a story about what the scene look liked
9 when you arrived, right?

10 A Yes, sir

11 Q And isn't true that if something was removed or
12 tampered with at that scene, the story you're telling is
13 not really what the scene looked like when the incident
14 happened, isn't that true?

15 A I'm only telling what I saw ---

16 Q Right

17 A --- when I got there

18 Q And what I'm asking you, is if something was
19 moved between the time of the incident and the time you
20 got there, the story you're telling is not really what the
21 crime scene looked like when the incident happened,
22 wouldn't that be true?

23 A Yes, sir, that would be true

24 Q And you weren't there when this incident
25 happened, were you?

- 1 A No, sir
- 2 Q You don't know who the aggressor was or who was
3 armed or anything like that, do you?
- 4 A No, sir, at the time I didn't
- 5 Q Now, when you were there, was Julia Knox there?
- 6 A I don't know Julia Knox
- 7 Q Did anyone -- did she ever tell you -- did you
8 ever speak with a lady at the scene?
- 9 A No, sir
- 10 Q So you never talked with her at the scene?
- 11 A No, sir
- 12 Q And when you processed this scene, you didn't
13 have any information that anyone else had been there
14 before law enforcement, did you?
- 15 A Not at the time I was there, no one told me
16 about Ms Knox
- 17 Q If they had, what would that have meant to you?
- 18 A That could have changed what the body -- the
19 position of the body if it was moved
- 20 Q And it could have also changed what was there,
21 right, what was on the scene?
- 22 A What was there prior to my arrival and what was
23 there when I got there
- 24 Q Right Mr Saleeby asked you whether you found
25 any guns on the scene, right, by these bodies?

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- 1 A Yes, sir, he asked me that
- 2 Q And you said, no?
- 3 A Correct
- 4 Q But, of course, if someone had moved this --
- 5 moved guns or anything else, there would have been no way
- 6 for you to know that, would there?
- 7 A Not from a visual examination, no
- 8 Q Right All right, so the story you're telling
- 9 from your crime scene documentation and photography, is
- 10 what it looked like when you got there ---
- 11 A Yes, sir
- 12 Q --- right?
- 13 A That's correct
- 14 Q You have no way of knowing what it looked like
- 15 before you go there, do you?
- 16 A No, sir, I wasn't there before
- 17 Q Right
- 18 A So I don't know
- 19 Q Okay, now, you said you collected 27 cartridges,
- 20 correct?
- 21 A Yes, sir, that's correct
- 22 Q And I believe you showed it to me last week, I
- 23 came over and looked at them, right?
- 24 A Yes, sir
- 25 Q And -- but the fact of the matter is, you don't

1 know when these cartridges were expelled onto that ground,
2 do you?

3 A I would surmise shortly before I got there due
4 to the condition of the cartridges when I found them

5 Q Right, but you don't know if they were expelled
6 on the ground there that day, the day before, a week
7 before or whenever, do you?

8 A I would say that day based on my experience

9 Q Well, but that's just guessing, isn't it, Mr
10 Mackessy?

11 A Well, when you look at the condition of the
12 cartridge casings and the fact that the weather that we
13 were having that night was ice

14 Q What about the night before that?

15 A The night before that, I don't know what the
16 weather was but if the cartridge cases had been there the
17 night before, there would have been some deterioration on
18 those cartridge casings to show that There would have
19 been almost like an oxidation on the surface of that
20 cartridge casing

21 Q Do you know that there was not?

22 A I didn't see any

23 Q But that's not necessarily a fact, is it?

24 That's just what you think, you think ---

25 A My training tells me that

1 Q Your what?

2 A My training

3 Q Did you do any testing on the bullets to see
4 when they -- how long they've been exposed to the air --
5 to the conditions?

6 A I don't know of a test that can be run on a
7 cartridge case that tell how long it had been there It's
8 usually a visual examination of the cartridge casings

9 Q So you just assumed that they were put there
10 that day?

11 A Based on my experience

12 Q Right, but no way to actually tell that?

13 A I don't know of a test that can tell me that
14 other than to look at them and say they've been exposed to
15 the elements and that's just something that you get over
16 time through experience

17 Q Do you know if they were expelled there that
18 morning before these individuals were shot?

19 A I say they were expelled that day

20 Q Yeah

21 A I couldn't tell you what time of day ---

22 Q Right

23 A --- but that's what I found when I got there

24 Q Right, okay, and so the fact is you don't
25 actually know when exactly they were expelled on the

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1 ground?

2 A Other than to say it was that day, no, I
3 couldn't tell you what time

4 Q And you don't know if they were expelled on the
5 ground at the same time, do you? There's no way to tell
6 that, is there?

7 A Not really I looked at the pattern that was
8 present at the scene and I could tell it was a -- more or
9 less a movement, the person that was firing was moving and
10 rapidly firing, not in a full automatic mode

11 Q Now, Mr Mackessy, you don't know what kind of
12 pattern this gun ejects these cartridges in, do you?

13 A I'm not a ballistic expert, no, sir

14 Q Right, so you're just guessing when you say this
15 person was moving, right, because you're not a ballistics
16 expert

17 A I'm not a ballistic expert but I do -- I have
18 training in crime scene that can show me how the bullets
19 are being expelled from the weapon and what pattern
20 they're being expelled

21 Q Tell the ladies and gentlemen of the jury what
22 angle the bullets are ejected from this gun

23 A From the right

24 Q Can you do any better than that as far as
25 degrees?

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1 A No, I didn't measure degrees I'm just saying I
2 -- the -- I indicated on the map by drawing the circles
3 the areas in which these cartridge casings were found

4 Q Right, so the fact of the matter is you don't
5 know the exact angle that this gun ejects, do you?

6 A No, I don't know the exact angle I'm not a
7 ballistic expert to tell you that

8 Q Right, and you don't know the distance either,
9 do you?

10 A No, I don't

11 Q And you don't know whether it ejects at a
12 different angle if the gun is pointed up or down, do you?

13 A No, sir

14 Q So really what you're talking about is just
15 conjecture and surmise and speculation on your part about
16 where the person who was firing the weapon might have
17 been, right?

18 A Yes, sir, just based on experience that I have
19 seen in other cases

20 Q Nothing definite, right?

21 A Not -- I couldn't tell you anything about the
22 weapon or anything I'm not a ballistic expert

23 Q Right, right Okay, now bullet holes that you
24 found in the trailer, you don't know what gun caused those
25 bullet holes, do you?

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- 1 A No, sir
- 2 Q You talked about a fragment on the ground by
- 3 Pollard I think that's -- might be Exhibit 11-A or
- 4 photograph 11-A?
- 5 A Yes, sir
- 6 Q You don't know what gun where that fragment came
- 7 from, do you?
- 8 A No, sir
- 9 Q You're not here to say that fragment came from
- 10 this gun, are you?
- 11 A No, sir
- 12 Q You talk about 11-B, a fragment on the rear
- 13 wall?
- 14 A Yes, sir
- 15 Q You don't know where that came from either, do
- 16 you?
- 17 A No, sir
- 18 Q Don't know what gun shot that bullet or that
- 19 fragment, do you?
- 20 A No, sir
- 21 Q Now, you testified about bullet holes that you
- 22 observed on the car And I think ---
- 23 MR CLARK May I approach the witness, Your
- 24 Honor?
- 25 THE COURT Certainly

1 Q These are photographs, I think, 5 -- 5-A through

2 5 -- 5-K I'm going to let you take a look at those

3 You testified about your examination of those

4 bullet holes, right?

5 A Yes, sir

6 Q And isn't it true, Mr Mackessy, that most of

7 those bullet holes that you found in that car never hit

8 anybody? And you know that for a fact, don't you?

9 A I would say most of the bullet holes, no, did
10 not hit anybody But 1 and 2 is possible

11 Q I beg your pardon?

12 A 1 and 2 would be possible

13 Q Right Well, let's look at that The fragment

14 11-A that was found on the ground by Pollard, you don't

15 know if that hit anybody, do you?

16 A No, sir, I don't know if it hit anybody

17 Q And the fragment on the rear wall, you don't

18 know if that hit anybody either, do you?

19 A No, sir, I don't know

20 Q All right, and then you talk about four bullet
21 holes in the door, Exhibit 5-A You have that photograph,
22 don't you?

23 A 5-A, yes, sir

24 Q And that's this photograph right here with the

25 bullet holes in the door, right?

1 A Right

2 Q How many bullet holes -- how many do you have
3 tagged, four?

4 A There's four There's one in the quarter panel,
5 three in the door One of those, number 4, is in the
6 handle of the door, hit the handle

7 Q And did you say those bullets never penetrated?

8 A Number 3 penetrated the engine compartment from
9 the quarter panel Number 4 did not It hit the handle
10 and bounced off That could be the one that -- we never
11 did find that fragment

12 Q Never did?

13 A Number 4, we didn't find that fragment 1 and 2
14 passed through the door but did not strike anything in the
15 vehicle

16 Q So 1, 2, 3 and 4, you can account for as not
17 striking anybody in that car, correct?

18 A 1 and 2 could have struck someone

19 Q Well, let me see the photograph, sir So 1 and
20 2 passed through the door?

21 A 1 and 2 passed through the door but did not
22 strike anyone in or anything inside the vehicle Now, if
23 Mr Jackson was standing up behind that door, it could
24 have struck him And based on my measurements from ground
25 to bullet hole, they could be in the approximate area

1 where he was shot at in the leg

2 Q Okay, so 3 and 4 didn't pass through?

3 A 3 and 4 didn't, no, sir

4 Q But 1 and 2 you think did?

5 A 1 and 2 did pass through the door

6 Q Now, did you find their -- where they landed
7 inside the car?

8 A 1 and 2?

9 Q Yes

10 A No, sir

11 Q No, okay So 3 and 4 we know didn't pass
12 through, right?

13 A Right

14 Q All right, 5 and 6-B, can you pull that one?

15 A 5-B

16 Q All right

17 A Did you say 6-B?

18 Q Well, I guess it was -- would be 5 and 6

19 A 5 and 6, yes, uh-huh

20 Q That's this photograph that shows the top of the
21 car?

22 A Yes, sir

23 Q And in your opinion, in your expertise, those
24 represent grazings, right?

25 A Yes, sir

The State v Reginald Tyrell Clea

0230

0230

1 Q Didn't enter the passenger compartment of that
2 car?

3 A No, I checked, did not enter

4 Q And by the way, Mr Mackessy, when you arrived
5 the door was open, right?

6 A Yes, sir

7 Q So -- and you have -- do you have a photograph
8 which shows the door being open, the way it was when you
9 arrived? Because in these photographs you had actually
10 closed the door, right?

11 A Yes, sir, they were taken -- they were taken at
12 our evidence facility No, sir, I don't have one taken at
13 the evidence facility When I was doing my trajectory
14 work, I don't have one with the door open

15 Q Okay

16 A I just failed to photograph it at that angle

17 Q Okay, without getting these exhibits mixed up,
18 I'm going to show you 5, 3-E Is that how that driver's
19 door looked with you arrived?

20 A Yes, sir

21 Q The door was open, right?

22 A The door was open

23 Q And the trajectory of these bullets that you
24 found in the holes in the wall -- in the door, for it to
25 have hit anyone they would have had to be standing by the

The State v Reginald Tyrell Clea

1 door, right, because of the way the door was open?

2 A The way the door was open, yes The person who
3 -- the person who was shot or doing the shooting? I don't
4 understand your question

5 Q If a person was sitting inside the car

6 A Sitting inside?

7 Q Yes, sir The bullets have a trajectory in a
8 direction that would not have passed through the passenger
9 compartment, right?

10 A Right

11 Q So even though you said 1 and 2 penetrated, if
12 the door was open, it would not have -- they would not
13 have passed through the passenger compartment

14 A If 1 and 2 with the door open and no one
15 standing there ---

16 Q Right

17 A --- if they went through that door with the door
18 open, there would have been an indication inside the
19 vehicle where those bullets struck, and I couldn't find
20 them

21 Q Right, but what I'm asking you is, with the door
22 open and the angle of entry of the bullets, in your
23 opinion, they didn't enter the passenger compartment, did
24 they?

25 A No, because in my belief, I believe they struck

1 Mr Jackson before they -- and didn't enter into the car
2 at all

3 Q Well, how do you think you know that?

4 A Just by the measurements from the ground to the
5 hole And looking at the wounds on Mr Jackson's body, he
6 could have been standing there behind that door and the
7 bullets passed through

8 Q All right, well tell the ladies and gentlemen
9 what evidence you collected on the ground by that door
10 Was there any blood on the ground by that door?

11 A No

12 Q Any tissue fragments, anything like that?

13 A I didn't see any, no

14 Q Any clothing or anything?

15 A No

16 Q Did you see any evidence on the ground where
17 someone might have fallen on that side of the car?

18 A No, sir

19 Q Well, the bottom line is in order for it to hit
20 anybody, they would have to be standing by the door and
21 not sitting in the car?

22 A That's my belief, yes, sir

23 Q And you didn't find anything behind the door
24 where a person would have been standing, like blood or
25 tissue or anything in that particular spot, right?

1 A No, sir, not on the door or on the ground below
2 the door, I did not find any

3 Q In fact, all the blood was found on the other
4 side of the car, right?

5 A Yes, sir, the passenger door was open, partially
6 open on that side

7 Q All right and -- but 5 and 6 on the top, didn't
8 enter the compartment, right?

9 A No, sir, it didn't enter

10 Q So at this point at least four of the six shots
11 that you're saying didn't enter the car?

12 A 3, 4, 5 and 6 did not enter

13 Q Right, now, I believe you said number 4 never
14 entered -- well, you just told me that

15 A Uh-huh

16 Q And I believe you said 7 and 8 didn't hit the
17 car and those are the ones you found holes in the seat,
18 right?

19 A Right front passenger seat They passed, I
20 believe, through the window

21 Q And into the seat, right?

22 A And into the seat, yes

23 Q So 7 and 8 didn't hit anybody, as far as you
24 know?

25 A No

- 1 Q All right and 12-B is a fragment on the floor?
- 2 A Right
- 3 Q Didn't hit anybody?
- 4 A I don't think so, no
- 5 Q 12-A you found on the front door molding, right?
- 6 A Yes, sir
- 7 Q So 12-A, 7 and 8, 5 and 6, and 3 and 4, in your
- 8 opinion, never hit anybody, right?
- 9 A In my opinion
- 10 Q And that would be six total, Mr Mackessy, that
- 11 in your opinion never hit anybody, six total?
- 12 A Yes
- 13 Q Now, the holes in the trailer, you don't know
- 14 what gun caused those holes, do you?
- 15 A No, sir
- 16 Q You don't even know when those holes were made,
- 17 do you, without guessing?
- 18 A I could just guess that they were made that day
- 19 I could say they probably were made that day but I
- 20 couldn't give you a definite answer on that
- 21 Q I mean that's not ---
- 22 A Not in the trailer, no
- 23 Q Right, and you don't know when they were made
- 24 and what gun caused them, do you?
- 25 A That's right

The State v Reginald Tyrell Clea

0235

1 Q But looking at State's Exhibit Number S-2 or --
2 State's 2, this diagram -- let me get the easel

3 (Pause)

4 Q The Pontiac right here with the door -- this is
5 the vehicle with the door open, right?

6 A Yes, sir

7 Q And aren't the bullet holes in the door that you
8 talked about, isn't it conceivable that those holes came
9 from an angle in the area where Mr Pollard was?

10 A (No response)

11 Q With the door being open, sir?

12 A Not quite to Mr Pollard but in the general
13 direction over that way

14 Q In the general direction ---

15 A More this way

16 Q This way?

17 A Where these purple circles that I have drawn

18 there ---

19 Q Right

20 A --- approximately in that area

21 Q Right, and Mr Pollard's body was found right
22 next to it, right?

23 A Yes, sir

24 Q In that same area?

25 A Yes, sir

The State v Reginald Tyrell Clea

0230

0236

1 Q So the bullet holes in the side of this car, in
2 your opinion, are consistent with coming from this area,
3 right?

4 A Yes, sir

5 Q And they're not consistent with coming from over
6 here, are they, with that door being open?

7 A Not at the angle I'm looking at, no, no

8 Q And the same thing holds true for the bullet
9 holes in the trailer In fact, you drew a little angle
10 there Can you see that, sir?

11 A Yes, sir, uh-huh

12 Q These are the rods, these little lines here
13 represent the rods?

14 A Approximate trajectory, yeah

15 Q Right

16 A That those bullets went

17 Q And isn't that trajectory consistent coming from
18 over here?

19 A No, sir, I -- they could have come -- 7 -- let's
20 see, 7 passed through the vehicle, passed through the
21 front passenger seat, exited the vehicle

22 Q Well, I'm talking about the trailer now

23 A Right, I'm trying to carry you beyond where the
24 vehicle is into the trailer

25 Q Okay

1 A Number 7 exited the car and it could have struck
2 that trailer

3 Q Right

4 A Okay? I believe it's on the roof it's 5 and 6
5 as I characterize as grazings

6 Q Right

7 A It's possible that the grazing -- that the
8 bullets could have grazed the top of the vehicle and the
9 fragments hit the trailer In fact, one of the fragments
10 imbedded in that wall could have come from 5 or 6, it's
11 possible

12 Q All right, and the grazings are actually on the
13 front of the car?

14 A The front of the car

15 Q You don't know if they were made from a gunshot
16 from this direction or this direction, do you?

17 A Once a bullet is fired and it hits an object

18 such as a car, a hard car, the fragment from that bullet
19 or the bullet itself can go off in another direction, so
20 to speak, once it hits that metal

21 Q The fact of the matter, the bullet holes in the
22 trailer were on an angle just like you've got it drawn
23 here, right?

24 A From that just about at the edge of that circled
25 area up there, yeah

1 Q So if you took a straight line, it would be up
2 in this area, right?

3 A I didn't draw that to scale I'm drawing
4 approximately, you know

5 Q I understand but it angles back this way,
6 doesn't it?

7 A Yes, sir, based on the angles And like I say,
8 I'm just drawing it approximately as I remember it

9 Q All right, it could be a little more this way or
10 a little more that way, right, because this is not to
11 scale?

12 A It's not to scale but that's as close as I can
13 guesstimate it, I guess

14 Q So is there any way for you to tell, can you
15 look at your notes and look at the photographs and tell
16 how many bullets you concluded didn't enter the
17 compartment or entered but never struck anyone?

18 A Okay Two did not enter the compartment in the
19 vehicle

20 Q Okay

21 A Okay? Now what other ones are you talking
22 about, Mr Clark?

23 Q Well, I want you to look at the photographs that
24 you took

25 A Uh-huh

1 Q And your notes and tell the ladies and gentlemen
2 of the jury how many bullets did you conclude didn't --
3 either didn't enter the vehicle or didn't strike anyone in
4 the vehicle

5 A Three

6 Q Three?

7 A Did not enter Three did not enter

8 Q All right, and how many did enter?

9 A I would say two -- four entered the vehicle

10 Q And which would they be?

11 A 1 and 2 through the driver's door, 7 and 8 came
12 through the window and struck the front right passenger
13 seat

14 Q And you say 2 -- 1 and 2 came through the
15 driver's door?

16 A 1 and 2 through the driver's door

17 Q 7 and 8 came through the window?

18 A 7 and 8, I'm guessing, came through that window,
19 the driver's door window

20 Q All right

21 A That's what it looked like from the trajectories
22 that I saw

23 Q All right So you said four entered and how
24 many did not enter?

25 A Did not enter would be -- four did not enter the

The State v Reginald Tyrell Clea

ALSO

0240

1 vehicle

2 Q And what -- and also, Mr Mackessy, of the four
3 that you said entered, 1 and 2 came through the door and
4 the door was open?

5 A That's correct

6 Q So in order for 1 and 2 to hit anybody, they
7 would have had to be standing behind the door and not
8 sitting in the car?

9 A Yes, sir

10 Q All right, so of all the bullet holes that you
11 found and you testified to, only two would have hit
12 somebody sitting in the car, isn't that true?

13 A Yes, sir

14 Q And the others would have either -- either
15 missed or not even entered the car?

16 A Correct

17 MR CLARK Thank you, Mr Mackessy, that's all

18 I have

19 THE WITNESS Thank you, sir

20 **REDIRECT EXAMINATION BY MR SALEEBY**

21 Q Mr Mackessy, a couple of questions and I'll let
22 you down

23 First of all, I would like to ask you if you
24 ever came in possession of State's Exhibit Number 8, the
25 semi-automatic weapon?

The State v Reginald Tyrell Clea

Q130

0241

1 A Yes, sir

2 Q And was the banana clip with the weapon but
3 removed?

4 A Yes, sir

5 Q And I have here State's Exhibit Number 9, a
6 fired projectile and an unfired projectile Did you unload
7 the magazine?

8 A Yes, sir, I did

9 Q All right, when you did what condition were
10 those in ---

11 ~~MR. CLARK: Your honor, I don't know that that's~~
12 ~~proper for redirect and I object to it and I didn't --~~

13 ~~bringing in new evidence that wasn't gone into on direct~~
14 ~~I didn't ask him about that on cross and it's improper for~~
15 ~~him to ask it at this point and I object to it~~

16 THE COURT What says the State?

17 MR. SALEEBY Your Honor, it's just a matter of
18 when I was going over the evidence, I didn't ask him about
19 that particular item. It's just a matter of he's in the
20 chain. And since it wasn't stipulated to, I had to get it
21 in.

22 THE COURT I'm going to overrule the objection.

23 Q What have we got here?

24 A We have one fired cartridge casing, SKS, and one
25 live bullet These are the two that I took out of the

1 magazine Of course, one of them's been fired

2 MR SALEEBY All right, now we've this
3 introduction, sir

4 THE COURT Any objection?

5 MR CLARK I didn't hear him, Your Honor. Did
6 he say, move it into evidence?

7 THE COURT Yes

8 MR CLARK I would object based on my prior
9 objection, Your Honor, the question not being proper at
10 this point in the examination of this witness

11 THE COURT The item is admitted over objection
12 (Whereupon, State's Exhibit Number 9 is marked
13 for identification and received into evidence)

14 MR SALEEBY This will only take a second

15 Q 7 and 8 passed through which way?

16 A 7 ---

17 Q Give me an approximate angle

18 A 7 and 8 passed ---

19 Q Dotted line, please

20 (Witness complied)

21 Q Put the 7 and 8 there

22 (Witness complied)

23 Q And we have a couple that hit the front And
24 they were traveling what direction?

25 (Witness complied)

The State v Reginald Tyrell Clea

3180 0243

1 Q And 1 and 2, you indicate the door was open?

2 A Yes, sir

3 Q And somebody was behind the door?

4 A Yes, sir

5 Q Whether standing, crouching, kneeling, you don't

6 ---

7 A I don't know

8 MR SALEEBY Thank you, sir, that's all the

9 questions I have for Mr Mackessy

10 THE COURT Anything further from the Defense?

11 MR CLARK Just briefly, Your Honor

12 **RECROSS EXAMINATION BY MR CLARK**

13 Q Mr Mackessy, did you say somebody was standing
14 behind the door?

15 A Yes, sir

16 Q How do you know that?

17 A I'm assuming that someone's standing behind the
18 door because of the wounds on Mr Jackson

19 Q Now, are you some type of pathologist? Have you
20 got the expertise to render that opinion, sir?

21 A No, sir

22 Q You're just guessing, right?

23 A I'm just guessing at that point

24 Q You've got no background at all to render that
25 opinion, do you?

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7:50

0244

1 A No background in forensic pathology

2 Q And there's nothing physical to corroborate that
3 somebody was standing behind that door, is there?

4 A I'm assuming that bullets 1 and 2 struck Mr
5 Jackson in the leg based on the measurements that I took

6 Q You're assuming that?

7 A I'm assuming that that's what happened

8 ~~MR. CLARK~~ Your Honor, there's a matter that I
9 want to take up with the Court That's all the questions
10 I have of this witness

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

12 THE WITNESS Thank you

13 *(Witness leaves the witness stand*)

14 THE COURT Now, ladies and gentlemen, that will
15 be it for this day We are going to recess for the day
16 and start back tomorrow morning at 9 45 We need you in
17 the jury room at 9 45 tomorrow morning

18 Have a good evening -- jurors, come back in for
19 a second

20 I want to reemphasize the admonition about
21 allowing anyone to talk with you or converse with anyone
22 about the case And I extend that to reading any
23 newspaper account, should there be any Do not read any
24 newspapers that may have any articles regarding this case,
25 or watch any TV news programs that may have any stories

The State v Reginald Tyrell Clea

AASQ 0245

1 concerning this case

2 Thank you, very much, we'll see y'all tomorrow

3 (Jury exits the courtroom)

4 THE COURT Yes, sir, Mr Clark

5 MR CLARK Your Honor, I move to strike Mr
6 Mackessy's last testimony that he gave regarding his
7 assumptions and where this individual was standing, in
8 light of his testimony that it was only an assumption He
9 is not an expert in those fields and I move to strike that
10 from the record, Your Honor

11 THE COURT What says the State?

12 MR SALEEBY I believe it's not a matter of
13 admissibility but a matter of credibility He's certainly
14 entitled to render the opinion based on his experience as
15 a crime scene expert There's something stopping this
16 happening, having looked at the body And Mr Clark has
17 the right to say that he's not an expert in forensic
18 pathology, so he shouldn't be believed

19 It is credibility, not admissibility

20 MR CLARK Your Honor, if I could just briefly
21 respond

22 THE COURT Yes, sir

23 MR CLARK It certainly does go to
24 admissibility because if he's not an expert in the field
25 he's not qualified to render his opinion He can only

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7150 0246

1 give opinions about what he is an expert in and has been
2 qualified and judged to be -- deemed to be an expert by
3 the Court

4 The only other testimony he can give is his
5 observations And I think that that's prejudicial and
6 confusing to the jury And I'd ask the Court, in its
7 discretion, to strike that from the record and give the
8 jury instruction in the morning

9 THE COURT The witness was questioned
10 extensively on direct and more extensively on cross
11 examination as to the basis for his opinions concerning
12 location of individuals as well as trajectory --
13 trajectory points of bullets and so forth He
14 acknowledged that he was not an expert in any field of
15 forensic pathology, as questioned by the Defense

16 He stated that he has his opinion based on
17 measurements that he took regarding the wound on the body
18 and the height He acknowledged that it was merely his
19 opinion and the Court overrules the motion to strike and
20 the testimony is entered for what it's worth It's up to
21 the jury to evaluate his credibility as well as the
22 credibility of all the witnesses

23 Anything further?

24 MR SALEEBY Nothing, sir

25 MR CLARK Nothing, Your Honor

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2150 0247

1 THE COURT All right, we'll be in recess until
2 9 45

3 (Whereupon, court was adjourned for the day)

4 Tuesday, May 3, 2005

5 THE COURT Is there anything before we bring
6 in the jury?

7 MR CLARK Not for the Defense, Your Honor

8 MR SALEEBY Your Honor, we just asked if he
9 had fact witnesses I'm not sure we didn't find that out
10 but that would be the question, if he has people who are
11 potentially, we'd like to be identified and have the jury
12 asked if they have any prior knowledge and we'd certainly
13 like them to be sequestered as well

14 THE COURT Mr Clark?

15 MR CLARK Yes, just in response we don't have
16 any fact witnesses, any potential fact witnesses The
17 only witness that was at the scene that we perhaps may
18 call is the Defendant himself If we develop any or
19 become aware of any, we certainly will sequester them

20 MR SALEEBY Well, Judge, if there are any
21 witnesses that he's thinking might be at the scene, I'd
22 like to have them sequestered as well I want the same
23 thing of them, not being in a position to go on, his
24 people, I just don't know what's there

25 There seems to be differentiation between fact

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EP50

0248

1 witness and other witnesses We don't want to get
2 blindsided

3 MR CLARK Well, Your Honor, yesterday when I
4 made the motion, we specifically talked about fact
5 witnesses, people that would testify about the fact that
6 this happened at the crime scene Now we may call
7 witnesses that talk about prior incidents but we
8 certainly don't intend to call anybody to talk about the
9 facts And that's why we specifically said that
10 yesterday

11 We do have -- there may be other witnesses to
12 talk about prior instances and those kinds of things,
13 nobody to talk about the facts

14 MR SALEEBY Judge, if we have got people
15 that's going to be talking about prior instances, we may
16 have more than one person talking about the same
17 instances and they should not be allowed to watch each
18 other while any will be testifying

19 THE COURT The Court will order sequestration
20 of all lay witnesses All lay witnesses are sequestered

21 MR CLARK May I have just one moment, Your
22 Honor?

23 THE COURT Yes, sir

24 MR CLARK Thank you

25 THE COURT Okay bring the jury

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0249
8180

1 (Jury enters the courtroom)

2 THE BAILIFF Your Honor, all of the jurors and
3 alternates are present in the courtroom

4 THE COURT Good morning to you

5 JURORS Good morning

6 THE COURT Welcome back Day two, Mr
7 Saleeby, you may call your next witness

8 MR SALEEBY We would call John Lee Powell

9 JOHN LEE POWELL, after being first duly
10 sworn, testified as follows

11 **DIRECT EXAMINATION BY MR SALEEBY**

12 Q Mr Powell, where do you live?

13 A Rembert

14 Q Rembert?

15 A Yes

16 Q How long have you lived in the Rembert part of
17 the county?

18 A Well, I haven't lived in Rembert very long
19 I'm originally from Camden but my dad's been living in
20 Rembert all of his life So, I was pretty much in and
21 out of Rembert all of my life

22 Q Have you lived in Kershaw County?

23 A Yes, sir

24 Q Where do you work and what type of work do you
25 do?

The State v Reginald Tyrell Clea

1280

0250

1 A I work with my brother Charlie I do mechanic
2 work

3 Q What's Charlie's last name?

4 A Clea

5 Q Clea I'm going to ask you to tell us that in
6 a minute I'd ask you in 1997 if you were convicted of
7 pled guilty to assault with intent?

8 A Yes

9 Q All right, now, I'm going to ask you to
10 introduce some people to us, not literally, so we'll
11 understand who they are Your full name is what?

12 A John Lee Powell

13 Q And what name do people usually call you by?

14 A Lee

15 Q All right, Charles Jackson, one of the
16 gentlemen who's deceased in this case, what name was he
17 known by in the Rembert area?

18 A Bubba

19 Q Bubba James Pollard, the other deceased
20 gentleman, what name was he known by?

21 A BoBo

22 Q BoBo All right, there are other folks
23 involved, Mr Clea, Reginald Tyrell Clea Can you tell
24 us, did you know him and what name he went by?

25 A Reggie

The State v Reginald Tyrell Clea

CCSD

0251

1 Q Okay, and Maurice Young, we'll be hearing from
2 him, did you know him?

3 A Yes, sir

4 Q And what nickname did he go by?

5 A Pooh (phonetic)

6 Q Pooh Okay, sir, and you may use those
7 nicknames and I may have to stop and ask you to clarify
8 which person you are talking about

9 A Yes, sir

10 Q And at the risk of confusion, is there any more
11 -- can you tell us who Frank Clea, Sr is and what his
12 nickname is?

13 A That's my father Everybody calls him Sandy

14 Q All right, and how about Frank Clea, Jr ?

15 A That's my brother

16 Q And what name is he called by?

17 A BooBoo (phonetic)?

18 Q So we've got a Bubba, a BoBo and a BooBoo?

19 A Yes, sir

20 Q All right, now, the people we're talking about,
21 Charles Jackson, Bubba and James Pollard, BoBo, what part
22 of the county did these gentlemen live in?

23 A Rembert

24 Q Does most of the extended family live in that
25 part of the county?

The State v Reginald Tyrell Clea

AGCFC

0252

- 1 A Yes, sir
- 2 Q Have they so for many years?
- 3 A Yes, sir
- 4 Q All right, I need to ask you your relationship
5 to some of these people Now, you have told us that
6 Frank Clea, Sr , whose known as Sandy, is what kin to
7 you?
- 8 A That's my father
- 9 Q Frank Clea, Jr , his son, known as BooBoo, what
10 kin is he to you?
- 11 A That's my brother
- 12 Q All right, James Pollard, BoBo, with this thing
13 that happened at the trailer, what kin is he to you?
- 14 A That's my nephew
- 15 Q And the Defendant in this case, Reggie Clea,
16 what kin is he to you?
- 17 A He's my cousin
- 18 Q Now, Charles Jackson, Bubba, what was your
19 relationship with him?
- 20 A He's real close I mean, we got the same older
21 sister, so we kind of grew up like brothers
- 22 Q Same older sister?
- 23 A Yes
- 24 Q What is her name?
- 25 A Laura Jean

The State v Reginald Tyrell Clea

0253

8790

1 Q And you are like brothers?

2 A Yes, we have all been around each other all our
3 life

4 Q What was his connection to James Pollard? What
5 relationship was he to the deceased?

6 A Uncle and nephew

7 Q Which one was the uncle?

8 A Charles, Bubba

9 Q Mr Jackson was Mr Pollard's Uncle Now,
10 prior to February the 25th of 2004, what kind of
11 relationship did you have with Reggie Clea, Charles
12 Jackson and James Pollard?

13 A Pretty much the same as always been You know,
14 just -- it was -- you know, it was fine I mean it
15 wasn't no problem

16 Q Did you observe any problem or have knowledge
17 of any problem between Mr Clea and Mr Pollard?

18 A Not that I know of

19 Q Did you have any knowledge of or observe any
20 problems between Mr Jackson and Mr Clea?

21 A Not that I know of

22 Q Did you and they do any activities together?

23 A We hung around every now and then That's
24 about it

25 Q Where would you hang around together?

The State v Reginald Tyrell Clea

0254

2230

1 A If I see them -- I would probably see them --
2 it is a little store in Rembert called Calvin's
3 (phonetic) or we might go by BoBo's house sometime

4 Q Did any of these gentlemen raise dogs together?

5 A I don't know if they raised them together I
6 know Reggie had some dogs and BoBo had some dogs Me and
7 BoBo didn't have no dogs

8 Q They both had dogs Do you know what kind of
9 vehicle Mr Reggie Clea usually drove?

10 A A truck

11 Q What kind of truck?

12 A A Chevrolet truck

13 Q I show you State's Exhibit Number 8 and ask you
14 if prior to February the 25th of last year you ever saw
15 this weapon in Reggie Clea's possession?

16 A Yeah

17 Q Yes?

18 A Yes

19 Q Had you ever handled it?

20 A Yes, I had done handled it

21 Q You ever fired it?

22 A No

23 Q You ever seen him fire it?

24 A No, not until that day

25 Q Ever seen it in his truck?

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0255

1 A Yeah

2 Q Kept it behind the seat?

3 A No -- you know, he didn't just ride around with
4 it all the time I have seen him with it before but he
5 didn't just ride around with it

6 Q Mr Powell, on February 24th of 2004, in the
7 morning, where were you staying and what were you doing?

8 A Well, I was at my cousin Mike Clea's house and
9 I was asleep And BoBo came by and woke me up

10 Q BoBo, Mr Pollard?

11 A Yes

12 Q About what time was this?

13 A Probably somewhere around -- it was like noon
14 time, probably in between like 1, 1 30, 12 30, something
15 like that

16 Q What did you and Mr Pollard do next -- excuse
17 me, how was Mr Pollard traveling?

18 A He was in a little Honda

19 Q A Honda?

20 A Yes, he was in a Honda

21 Q After he came and woke you up, what did the two
22 of you do? Where did you go?

23 A Well, first we came down here toward Sumter and
24 he paid a water bill or something And then we rode back
25 into Rembert We went out on 261 It is a store out

1 there I can't remember the name of it And we went and
2 ate lunch at the store on 261

3 And then we came back to Rembert and he was
4 looking for Reggie because he wanted to get some dog
5 houses or something from Reggie

6 And so we rode down there -- this guy named
7 Danger's (phonetic) house I don't know his real name
8 That's all I know him by And Reggie was there

9 And, so BoBo told him -- you know, he gave
10 Reggie a hundred dollars And then we left Well, BoBo
11 left in front of us and we left maybe about 10 minutes
12 behind, maybe about, what, 5 or 10 minutes behind

13 Q Who was traveling with BoBo?

14 A Pooh

15 Q All right, Mr Young?

16 A Yes

17 Q Had Mr Young -- was he, Mr Young, with Mr
18 Pollard?

19 A Yes, we picked -- he picked -- me and BoBo
20 picked -- we picked Pooh up after we left 261 after we
21 ate, picked Pooh up from his uncle's house

22 Q Okay, so after you ate, you and Mr Pollard
23 picked up Pooh, Mr Young?

24 A Yes

25 Q And went to Mr Clea's grandmother's house?

The State v Reginald Tyrell Clea

0257

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1 A No, we went to Danger's house together

2 Q All right, you went to this other gentleman's
3 house?

4 A Yes, that's when we saw Reggie And when we
5 saw Reggie, him and BoBo spoke briefly And I know BoBo
6 gave him a hundred dollars I guess it was for the dog
7 house And he left about 5, maybe 10 minutes in front of
8 us

9 Q BoBo left traveling in what vehicle?

10 A In the Honda

11 Q Who was with him?

12 A Pooh

13 Q Okay, so that's Mr Pollard and Mr Young in
14 Mr Pollard's Honda?

15 A Yes

16 Q What did you and Mr Clea do?

17 A Me and Mr Clea, we left -- well, we stand
18 around maybe about 5 or 10 minutes then we left

19 And then we go down 521 first, turn on Dinkins
20 Mill BoBo was coming down 521, Dinkins Mill So we
21 asked about the dog house BoBo turned around and
22 followed us to Reggie's grandmother's house All of us,
23 me, him -- me, Reggie, Pooh and BoBo, we loaded the dog
24 houses on the truck, you know, just leisurely talking
25 Wasn't nobody talking Wasn't nobody arguing or nothing,

The State v Reginald Tyrell Clea

0258

CCSO

1 just leisurely talking Then we took the dog houses back
2 to BoBo's house

3 Q All right, let me make sure I have got this
4 straight The transaction between Mr Pollard and Mr
5 Clea about the dog house is the exchange of money took
6 place at another person's house

7 A Yes, at the guy Danger's house

8 Q All right, and then after that, when the two
9 vehicles met on the road, you went to Mr Clea's
10 grandmother's house and actually picked up the dog
11 houses?

12 A Yes

13 Q How many was it?

14 A Three

15 Q Was there anything out of the ordinary about
16 the transaction?

17 A Not that I -- not that I seen

18 Q Were there any arguments or hard -- hard words
19 or anything like that that you observed between Mr Clea
20 and Mr Pollard?

21 A No, sir

22 Q Was there anything at all out of the ordinary?

23 A No, nothing out of the ordinary Nothing
24 didn't seem out of the ordinary to me

25 Q All right, now, after you got the dog house

The State v Reginald Tyrell Clea

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1 loaded -- they were loaded on what vehicle?

2 A On the back of Reggie's truck

3 Q All right, once that happened, who went where?

4 A All of us went to BoBo's house

5 Q How were you all traveling?

6 A Me and Reggie was riding in the truck and BoBo
7 and Pooh was riding in the Honda

8 Q Okay, tell us what you did then?

9 A We went to BoBo's house, unloaded the dog
10 house, you know, took the dog houses off the truck and
11 sat them on the ground Then we started like -- because
12 he had like three dogs and they were tied like ---

13 Q Let me stop you there just a second and make
14 sure that we got things focused here I'll show you this,
15 State's Exhibit Number 1 I will show you Number 2 at a
16 later point in time Can you recognize what's on this
17 aerial photograph?

18 A Yes

19 Q Do you recognize the features?

20 A Uh-huh

21 Q You know Dinkins Mill Road?

22 A Uh-huh

23 Q And is Mr Pollard's trailer back off the road
24 down this driveway?

25 A Yes

The State v. Reginald Tyrell Clea

0260

1 Q And what part of the road did the -- you park
2 the Honda and the pickup truck into, what part of the
3 yard?

4 A In the back

5 Q In the back?

6 A Yes, we parked in the back

7 Q And can you tell us, if you know, who lives
8 next door over here?

9 A I mean -- I know them when I see them but I
10 don't know them people like that

11 Q You don't know their names?

12 A Yes, sir

13 Q All right, now, when you get into the backyard
14 where does Mr Pollard pull the Honda and where does Mr
15 Clea pull his pickup truck?

16 A Well, BoBo kind of pulled like pretty much like
17 straight in the driveway like when you come up behind
18 this trailer, the trailer sitting like this or you can
19 pull straight or turn like coming behind it He kind of
20 parked it coming straight You could see his car from
21 passing the road

22 Q You could?

23 A And we parked like more behind the house but we
24 was trying to get the dog house as close where we was
25 taking them, as close as we could, you know, to the

The State v Reginald Tyrell Clea

0261

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1 truck

2 Q All right, sir, who helped unload the dog
3 houses?

4 A All of us took them off of the truck, you know,
5 all of us helped take them off of the truck

6 Q Let me set this up in case I need it later

7 All right, Mr Clea, this is State's Exhibit Number 2

8 It is a micro-scale diagram It already has on it the
9 location of the Pontiac and location of the Honda, not to
10 scale

11 Could you come down and show the approximate
12 location of where Mr Clea pulled his truck into?

13 (Witness leave the witness stand)

14 Q Could you draw one of these pointed objects,
15 approximate, not to scale?

16 (Witness complied)

17 Q All right, and if you would, just put the word
18 truck?

19 (Witness complied)

20 Q All right, fine, go back and take a seat

21 (Witness returns to the witness stand)

22 Q Once these two vehicles pulled up, what do you
23 four gentlemen do, you, Mr Pollard, Mr Young and Mr
24 Clea?

25 A Take the dog houses off the truck

The State v Reginald Tyrell Clea

0262

6837

1 Q And where are you putting the dog houses?

2 A Like next to the trees -- it is -- you know, he
3 had the dogs tied to trees so we was just placing dog
4 houses just next to the trees where the dogs could get in
5 the dog houses

6 Q Does anyone else arrive in a few minutes?

7 A Yes, Mr Jackson

8 Q Charles Jackson, the gentleman known as Bubba?

9 A Bubba

10 Q How much time passes approximately when he
11 pulls up?

12 A We probably been there 10 or 15 minutes,
13 something like that

14 Q And where does he pull up?

15 A He pulled up and parked like right in front of
16 the door -- in front of the backdoor of the house

17 Q All right, just tell us, in your words, what
18 happens after Mr Jackson pulls up

19 A Well, when he pulled up, I was in the corner
20 dragging the dog house to the corner side over there
21 And so, when he pulled up and when he got out of the car,
22 I didn't actually know he had pulled up yet because we
23 had some music playing and I didn't actually know he had
24 pulled up yet until I heard the door -- like the car door
25 shut and I looked back

1 When I looked back, he got out of the car and
2 he said, what's up Lee?

3 Q If you need to show a place on this diagram, if
4 you push that little red button If you need to show
5 where you were, somebody else was, you can use that

6 All right -- don't point it at anybody, please
7 All right, show us where he pulled up

8 A He pulled up right, you know, right in front of
9 the -- like right in front of the back step of the house

10 Q All right, and just tell us now, if you will,
11 before you use the pointer, what happened next?

12 A And he got out of the car and he spoke And I
13 threw my hand up at him and he was like, what's up, Lee?
14 and I was like, what's up, Bubba, and I kept doing what I
15 was doing

16 Q Which was what?

17 A At the time I was unraveling a dog chain
18 because the chain had got kind of wind up So I was
19 unraveling and then, you know, we closed the door of the
20 car and he walked over to like where BoBo was

21 Q Where was that?

22 A BoBo was like over here like, you know, over
23 here

24 Q All right

25 A He was like right in here

The State of Reginald Tyrell Clea

0264

1 Q On the right side of the diagram?

2 A Yes, he was like right in here messing with the
3 dog that was right over in here And, you know, they
4 went over and, you know, and they talked, you know I
5 couldn't hear what they were saying because I wasn't that
6 close to them But, you know, I could hear them talking
7 but it didn't seem like nothing out of the ordinary, just
8 how we do when we come around

9 Q Just conversation between Reggie and BoBo?

10 A Yes

11 Q Okay -- oh, go ahead?

12 A Me and Pooh -- Young came over there where I
13 was And, you know, he fumbled around over there for a
14 minute And Reggie was standing like a little closer,
15 like right in here, you know what I'm saying? I was over
16 here Me and Young was like in this area And Reggie
17 was like in here And BoBo and Bubba was over in here

18 And so, after everybody was talking a little
19 bit and me and Pooh was over there cutting the fool with
20 each other and then he walked up and then I heard Bubba
21 call Reggie

22 He said, come here, Reggie Clea He said, I
23 got something for you Let me show you something He
24 said, come over here to the car

25 And then, after that, you know, I was facing

The State v Reginald Tyrell Clea

0265

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1 him when he said that, you know what I'm saying, but not
2 facing him looking because he didn't say it in a harsh
3 way or nothing I just happened to be looking the
4 general direction and I didn't take it as nothing was
5 wrong because he didn't say it like, you know -- I didn't
6 take it like he was saying it in a nasty way You could
7 tell when somebody's mad You could hear it in their
8 voice He wasn't saying it like, you know, let me show
9 you something I got something in my car

10 Q Good nature?

11 A Yes, you know, to me I thought it was good
12 nature You know, he didn't seem to me like, you know,
13 it was nothing hostile to me And he walked over to the
14 car And so, you know, I glanced at him I saw him when
15 he sat down this -- the car

16 And then I turned my back I turned my back
17 because Pooh told me, said, Lee -- he said, you got the
18 dog house sitting on the chain

19 So I went to move the dog house off the chain
20 I was sliding it off the chain because I had the dog kind
21 of stuck where he couldn't move because I had the dog
22 house sitting on the chain

23 So, when I moved the dog house off the chain --
24 I mean -- and it happened so fast I mean, I didn't know
25 what was going on because I heard bam, bam, bam

The State v Reginald Tyrell Clea

0266

1 So, I spun around to see where it was coming
2 from, you know, because I didn't really want to move I
3 wanted to make sure I knew where it was coming from

4 Q That's the first set of shots you heard?

5 A Yes, and my general thoughts was, you know, us
6 being who we are, you know, one of them might be shooting
7 down in the woods playing with a gun You know what I'm
8 saying?

9 So, that's when I turned around, actually with
10 nothing on my mind but like, who's playing, something,
11 you know

12 But when I looked, I saw he had the gun
13 pointing towards Bubba's car

14 Q Who had the gun?

15 A Reggie

16 Q And what gun did he have?

17 A That gun

18 Q State's Exhibit Number 8?

19 A Yes

20 Q How was he holding it?

21 A Pretty much ---

22 Q Stand up and show us Don't point it at them

23 A He was holding it like this

24 Q All right, and who was it pointed towards?

25 A It was pointed towards Bubba

The State v Reginald Tyrell Clea

1 Q All right, go ahead and tell us what else you
2 saw there

3 A And then, you know, when he fired the first
4 couple of shots, you know, and when he spun around and
5 when I -- when I actually realized, you know, like dog,
6 he's shooting at Bubba, and I started hollering like,
7 hold up, what happened? Why are you shooting at Bubba?

8 And I said, hold up, what happened? And he
9 said, Bubba got a gun

10 And when he said, he got a gun, I kind of
11 stepped back by the tree because I didn't know whether
12 Bubba had a gun for real or not You know, he said Bubba
13 had a gun I didn't see the gun

14 Q Did you see any gun involved?

15 A No, but you know, when he said it, I didn't
16 have a reason to really truly doubt it because I know
17 Bubba good He's like me, I ain't no angel

18 So, I didn't know whether he had one So, I
19 kind of stepped back because I didn't want to get caught
20 in the crossfire I didn't know whether ---

21 Q You didn't know one way or the other?

22 A Yes, I wasn't positive whether Bubba had one
23 and wasn't positive that he didn't So, I said, if he
24 saw a gun, let me step back, you know, before I get
25 caught in the crossfire, you know

The State v Reginald Tyrell Clea

1 So I'm steady telling him, telling him, put the
2 gun down, said, man, what's wrong with you all And he
3 said, Bubba got a gun, Bubba got a gun

4 So he shot like a couple more shots ---

5 Q And Bubba?

6 A I saw Bubba crawling out of the car

7 Q Which side?

8 A He was crawling from the driver's side, inside
9 the car trying to get out and he was getting out on the
10 passenger's side of the car

11 And so, when he got out on the passenger's side
12 of the car, I had done moved around to the side ways of
13 the trees because I was trying to stay behind the tree
14 because I didn't really know if he had a gun, you know

15 And I figured him being who he is, like me, if
16 he had a gun, if he was going to shoot back, if that
17 meant to save him, you know what I mean?

18 Q Did you ever see a gun on him?

19 A No, I never saw a gun

20 Q Did you ever hear a gun fired from his
21 direction?

22 A No

23 Q You ever see that happen?

24 A No

25 Q Okay, so he's outside on the ground now and you

The State v Reginald Tyrell Clea

1 are moving through the woods?

2 A Okay, and so at this time, to be honest with
3 you, I don't know where Mr Young went I don't even --
4 I don't know where he was at, you know, because I done
5 lost focus because, I mean, I'm trying to keep my eye on
6 the gun I'm not spotting everybody I'm watching the
7 gun, you know, because everybody else -- now to me, I
8 ain't really worried about nobody else until I see you
9 with a gun, you know

10 And then about that time I went -- when I made
11 my way around these trees over here like up in here, I
12 seen Bubba look like he was going to run like -- I don't
13 know whether he was going to run from around the car to
14 run around the trailer But he had a motion to run that
15 way

16 Then I don't know whether he just thought maybe
17 I better not get from behind the cover of the car or what
18 and he came back or if he was already hit and hurt that
19 made him stop and come back I don't know

20 So by that time, I'm just still yelling at him,
21 stop shooting, put the gun down And he kept saying,
22 Bubba -- that's all he kept repeating to me, Bubba had
23 had that gun

24 And so, BoBo was standing like right here

25 Q Who was?

- 1 A BoBo
- 2 Q BoBo?
- 3 A He was standing right in here and like Reggie
- 4 was standing right in the doorway of his truck And BoBo
- 5 was standing right in here
- 6 Q About how far from each other, as far as I am
- 7 from where you are?
- 8 A Yes
- 9 Q Okay
- 10 A About like that And so, BoBo never moved
- 11 Q And how far would the car have been from where
- 12 Reggie was standing? If I'm ---
- 13 A Maybe like where the officers are, right there
- 14 Q The car stopped -- where from the car would be
- 15 from where Reggie was?
- 16 A Yes, about where probably maybe about four or
- 17 five feet farther from where you are now
- 18 Q Here?
- 19 A Yes
- 20 Q All right, go ahead
- 21 A And like I said, BoBo was standing here But
- 22 he never moved He never moved He stayed there And
- 23 you know, Reggie never turned toward me or anything You
- 24 know -- you know -- at first, until BoBo said something
- 25 Q What did BoBo say?

The State v Reginald Tyrell Clea

Q780

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1 A He asked him why the hell he was shooting at
2 Bubba

3 Q That's when Reggie turned toward him He
4 didn't turn the gun at him when he turned it first time
5 BoBo said, what the hell are you shooting at Bubba for?
6 And he turned and looked at BoBo And so, he turned -- I
7 was focused back toward the car And that's when BoBo
8 said it again

9 And BoBo said, what the hell you shooting at
10 Bubba for? And that's when he turned the gun toward him
11 And you know, BoBo made a motion like, you know, I ain't
12 scared, you know what

13 And he walked on toward Reggie like, what the
14 hell you shooting at Bubba for?

15 Q Like this?

16 A And I actually think he did like that because I
17 don't think he thought he would have shot him, I guess,
18 because, you know, he did it, he was like, you heard me,
19 what the hell you shooting at Bubba for

20 And he started walking toward him, he started
21 shooting And when he hit him, I said, oh, damn I
22 said, what the hell is he doing?

23 Q Did you see any weapon on Mr Pollard?

24 A No

25 Q Okay, did you see him shoot at all?

The State v Reginald Tyrell Clea

80 30

0272

1 A No

2 Q When he started shooting at Mr Pollard and
3 BoBo, how many times did he shoot?

4 A Man, I couldn't tell you It was just rapid
5 That's all I could tell It was too rapid They was so
6 close together, I couldn't tell you how many times he
7 shot

8 Q All right, sir, go ahead

9 A Then after that, you know, after he shot BoBo,
10 now I'm really, you know ---

11 Q Was this the second set of shots?

12 A Yes

13 Q Headed towards BoBo?

14 A Yeah because I'm only about from here to him
15 from BoBo when he hits So, now you know, I'm kind of
16 leery now, you know You know, I'm -- you know, I'm kind
17 of leery now, you know what I'm saying, not so scared
18 that I just took off running, but I'm kind of leery now,
19 you know

20 Hey, so I started making my way around that
21 way Now I'm trying to get close to the trees, you know,
22 if I need the cover of the trees, at least, I hope, you
23 know, I can get through the trees, you know, if he do
24 decide

25 But the same time, he started walking towards

The State v Reginald Tyrell Clea

5' 00

0273

1 this way like where I -- like where, you know, BoBo was
2 He started come ---

3 Q Who starts walking that way?

4 A Reggie started coming toward this way and I'm
5 like, cuz (phonetic), what's wrong, what happened man?

6 And he kept saying, Bubba had a gun Bubba got a gun

7 So about this time I see Bubba laying on the
8 ground over here And he calling BoBo He's saying,
9 BoBo, tell him I ain't got no gun BoBo, tell him I
10 ain't got no gun

11 And -- but at this time, you know, BoBo shot
12 I don't know whether he thought the shots he heard was
13 still coming towards his way but, you know, BoBo was
14 shot And he was steady hollering, you all tell him I
15 ain't got no gun

16 Q That's Bubba on the ground beside the car?

17 A Yes, hollering toward BoBo saying, tell him I
18 ain't got no gun, tell him I ain't got no gun So, he
19 can't see BoBo So, he don't know BoBo shot He don't
20 already know BoBo already -- you know, BoBo shot

21 So now, I'm making my way around this way and
22 I'm steady saying, man, put the gun down, stop shooting
23 I said, what happened, man, what's wrong?

24 I'm kind of confused because I'm like, all of
25 us was talking like, all of us was talking just minutes

The State v Reginald Tyrell Clea

0274

1 ago What could have transpired between, you know, us,
2 who we are to each other, that would have made you
3 actually pull out a gun?

4 You know, I'm kind of puzzled So, I'm kind of
5 worried now So, I'm making my way over here And at
6 the time I had done lost -- I had done lost true focus on
7 Mr Young I actually don't know where Pooh was at the
8 time

9 And so, about that time when I seen him get
10 about right in here, I'm going on through the trees now

11 Q Where do you see him now?

12 A He's about right up in here, just passed BoBo

13 Q Moving around from the driver's side toward the
14 passenger's side of Mr Jackson's car?

15 MR CLARK Your Honor, I object to the leading
16 question

17 Q Just tell us what direction he's moving with
18 regard to Mr Jackson's car

19 A He came from right here He was coming this
20 way And when he got about right in here, I was -- you
21 know, I was farther -- I was farther in these trees right
22 now and here I'm standing in these trees and I'm still
23 yelling at him, put the gun down, stop shooting

24 And I go around and then like -- I go on around
25 I go ahead on through -- it's like a little path right

The State v Reginald Tyrell Clea

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0275

1 there I go on through the path I'm about at that house
2 where you was talking about I'm about right there now
3 But you know through the trees you could still see the
4 yard But I can't see him or Bubba anymore

5 So, I get on farther down the road And I, you
6 know -- you know, I'm just -- you know, I mean, I'm in
7 awe I was just close to him and I seen what happened to
8 him so I ain't know whether to just leave or try to stay,
9 see if I could go back because I was -- and then that's
10 when I realized Mr Young was -- he was -- you know,
11 that's the next time I -- I recollect I done caught
12 back focus with Mr Young

13 And so Mr Young, he was -- he was coming from
14 -- I don't know where he had been ducking at but he came
15 running from like by the trees And he was running by me
16 and he was running king of fast

17 And I was like, man, Pooh, I got to go back
18 And he said, man, I ain't going back, he might kill all
19 of us

20 So, I kind of stayed right there in the yard
21 kind of turning around in the circle He is like, oh,
22 man, what am I supposed to do? And then I hear some more
23 shots I walked off

24 Q You heard the third set of shots?

25 A Yes, I heard it, was only like I don't know

The State v Reginald Tyrell Clea

1 whether it was a single or a double I heard like a bam,
2 so I walked on So, I started walking on through the
3 yard and when I got right there by Dinkins Mill Road, you
4 know, like out in people's yard

5 Q I may have used the wrong terminology, excuse
6 me The first shot you heard is when your back was
7 turned ---

8 A Yes

9 Q And then when you turned around, a couple more
10 shots were fired toward Mr Jackson and the car?

11 A Yes

12 Q And then the third set of shots were at Mr
13 Pollard?

14 A Yes

15 Q And then when you got further out in the woods
16 -- and you say Mr Clea was in this area?

17 A Yes, he was Yes, he was about in here, you
18 know, somewhere in here because he was -- he had got all
19 the way around here to no car or nothing He was --
20 because he was still holding a little distance like, you
21 know, being caution or cautious, you know, how somebody
22 would walk cautiously if they think ---

23 Q After you got over here, you have heard a
24 fourth set of shots?

25 A Yes, but I -- but I wasn't in view when I heard

The State v Reginald Tyrell Clea

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0277

1 that

2 Q Yes, sir, I understand You heard but you
3 didn't see them being fired?

4 A No

5 Q All right, go ahead and tell what you did

6 A Then after that point we -- I walked on, you
7 know, like I say, I stood there in the road, you know,
8 kind of procrastinating because I didn't really -- I
9 didn't know what to do because I didn't really know any
10 of the people that lived around right up there

11 So I'm like, oh, man So I'm kind of
12 procrastinating right now I don't know what to think, I
13 don't know what to do

14 So I'm kind of standing at the driveway of the
15 road, you know And then I see the truck coming ---

16 Q Driveway of the road?

17 A Huh?

18 Q Driveway of the road?

19 A Of the house It is a house like right up in
20 here

21 Q All right

22 A When you go through the path

23 Q Next door?

24 A Yes

25 Q All right, sir

- 1 A So I'm in their driveway now
- 2 Q All right, hold on This might help you,
3 State's Exhibit Number 1
- 4 A See this house right here?
- 5 Q Yes, sir
- 6 A See, when you come from behind their house --
7 this is where the house is right here When you come
8 from behind the house, it is a path that's in here
- 9 Q All right, sir
- 10 A And you come out into their yard So I done
11 came from behind the house So I'm about up in here now
12 when I hear the last shots So I'm totally out of view
13 of -- I'm totally out of view, you know I'm totally out
14 of view, I can't see
- 15 So I walk on the hill I'm, you know -- I'm
16 kind of procrastinating up here and I'm like, man, what
17 can I do And that's when Mr Young came and he
18 disappeared on me and he left
- 19 So I was standing right here So I see the
20 truck come through -- the truck come through right here
21 and he slammed on brakes
- 22 Q Which way, direction did this truck come from?
- 23 A Like right up in here
- 24 Q And that shows to be a wooded area?
- 25 A Yes, but -- but -- it shows to be a wooded area

The State v Reginald Tyrell Clea

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0279

1 but if you know the area you can drive, you know -- you
2 can drive through that

3 Q All right, sir

4 A You know, because the trees are kind of spaced
5 enough where you can drive through it

6 Q All right, sir, go ahead

7 A So I'm up in here So he come around

8 Q He who?

9 A Reggie -- Reggie come around in the truck

10 Q He's driving his truck?

11 A Yes, he slams on brakes about right up in' here

12 and kind of slide too and he got the gun -- the truck,

13 you know what I'm saying, and he said, come on, cuz

14 Q An how was he -- how was he driving and how
15 does he have the gun in the truck, can you' show us?

16 A Well, he's sitting in the seat and the gun is
17 like this, beside him like this and he drives

18 Q All right

19 A And it's kind of like this And so -- and so,
20 you know, I was like, oh, cuz, what's going on? He said,
21 man, Bubba had a gun, Bubba had a gun, he was going to
22 kill me

23 Q What did you ask him? What did you ask him
24 when you said he had a gun?

25 A I asked him -- I asked him did Bubba have gun

1 And he just kept saying Bubba had a gun, he had the gun

2 Q Did you ask him if he saw a gun?

3 A Yeah, I asked him did he see a gun

4 Q Did he answer that?

5 A He didn't answer He just said he had a gun,
6 he had a gun

7 So, you know, I ain't -- you know, I ain't -- I
8 couldn't say whether he did or he didn't because I didn't
9 see it but I didn't see the gun

10 Q And you sure didn't see any gun?

11 MR CLARK Objection, Your Honor, leading
12 question

13 MR SALEEBY He's answered it

14 A I didn't see neither one of them with a gun,
15 period

16 Q All right, so when he stops the truck, with one
17 hand on the wheel and the gun beside him, tell us what he
18 does then?

19 A He tells me to come on He said, come on, cuz
20 And I was like, oh, man He said, come on, cuz, don't
21 leave me man He said, come on, man, don't do me like
22 that, come on

23 And he said, take me up to Uncle Sandy's house

24 Q All right

25 A Which is my daddy

1 Q Okay, sir

2 A So I was kind of in my mind thinking, why do you
3 want to go there, you know, and so -- but we went, you
4 know, what I'm saying

5 So I got in the truck We went to my dad's
6 house We went to my dad's house My main thing was to
7 get the gun out of the truck, you know -- you know,
8 because I know when -- you know, like whenever somebody is
9 in an outrage or they're in an irate state of mind, you
10 don't know what can happen

11 But I ain't worried -- or I -- and scared of him
12 or worried once I got the gun out of his hand, it is all
13 right now, just calm down and, you know, you got to think
14 through what you've done, what you're going to do now, you
15 know what I'm saying

16 He just kept telling me, I couldn't think He
17 said, cuz, don't leave me right now, I can't think He
18 was trying, you know -- I can't tell you whether he was
19 hurt or nothing but he was crying He was telling me that
20 he couldn't think good He was like, man, cuz He said,
21 just hold on, man, I just can't think I said, I know,
22 man I said, I know

23 So, I was mad about what happened but I can't
24 tell you that, you know, you know Reggie my cousin I got
25 love for him I was like, you know, there ain't anything

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1 we can do to change what done happened You know like,
2 just hold on, cuz You know, I was telling him it's going
3 to be all right I was just telling him what I thought he
4 needed to hear at the moment because, you know, he like --
5 he was real confused, you know what I'm saying

6 And so, he was just like, man, I got to get
7 away, I got to get away And I was like, where are you
8 going to go? And he said, I don't know I don't know

9 So we went to dad's house and he got the gun out
10 of the truck We got the gun out of the truck and once my
11 daddy wasn't there, he didn't want to stay anymore then

12 Q Who was there?

13 A My brother BooBoo was there

14 Q Mr Frank Clea, Jr ?

15 A Yes

16 Q He was there?

17 A Yes

18 Q And tell us what happened there with him?

19 A Pretty much I told my brother what happened

20 Q What did you tell your brother?

21 A I told him, I said Reggie just shot BoBo I
22 said, I don't know if he killed Bubba or not I said but
23 he shot BoBo I said I know he killed BoBo but I didn't
24 know, you know, because I didn't see I didn't know, you
25 know That last time I saw Bubba, he -- you know, he was

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1 still telling BoBo, so I didn't know

2 Q The last time you saw Bubba, where was he and
3 what was he doing?

4 A He was laying on the ground behind his car

5 Q And what was he saying?

6 A He was telling -- he was still telling BoBo to
7 tell Reggie, I didn't have a gun And so at that time,
8 you know, I was out of sight because Reggie was coming
9 around farther So, you know, I'm inching back too You
10 know?

11 So -- so around about that time, you know, like
12 I said, the last time I saw him, you know, I didn't know
13 whether he had actually shot him or not

14 And so, we get in the truck You know, like I
15 say, after my dad -- after my dad wasn't there, he wanted
16 -- you know, he didn't want to stay

17 And so we left and we rode, you know, we just

18 ---

19 Q Let me stop you there just one moment, and just
20 for the purpose of the record, show you State's Exhibit
21 Number 6 and tell us, if you can, tell us what that is?

22 A That's Reggie's truck

23 Q This is State's Exhibit 7, can you tell us what
24 that is?

25 A That's the gun

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1 Q All right, do you know where the gun is?

2 A Yes, it is on the floor of my dad's shop

3 Q All right, so you took the gun out and placed it
4 where, when you got the gun away from Mr Clea?

5 A I placed it on the ground behind a car and I
6 told my brother where it was at and I guess my brother
7 must have put it there

8 Q All right, so since your father wasn't there,
9 since Sandy Clea wasn't there, where did you go then and
10 what did you do?

11 A We left and basically, to be honest with you, we
12 was too confused, I mean, and we was just riding around
13 And we talked -- talking about, man, what are you going to
14 do? You know, and he said, I don't know, cuz I can't
15 think, man I don't know

16 I said, we need to get out of this truck, I
17 said, because I know they've probably got -- they -- every
18 police in America is probably looking for this truck And
19 I said, we're going to get killed in this truck

20 So we went to my brother James' house in
21 Columbia

22 Q You went to another family member's house, James
23 who?

24 A James Neal, my brother

25 Q James Neal and he lives in Richland County?

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1 A Yes, he lives in ---

2 Q Does he live in the City of Columbia or the ---

3 A He stays in the Spring Valley area

4 Q All right, sir, go ahead

5 A So we went there and we just kind of sat there

6 We sat on the porch and we was just talking I was

7 telling him, man, we got to go back I say for something

8 like that, I said, the police won't sleep They won't

9 sleep until we locked up I said, if you -- if you would

10 have done something simple, they'll wait until they catch

11 us I said this, they ain't going to sleep, they ain't

12 going to sleep until they catch us

13 And I said more like, one of them trigger happy

14 cat's going to kill us in the streets We got to go back

15 So I called my dad and I finally got in touch with my dad

16 Q Frank Clea, Sr ?

17 A And I told him where we was at and he said, you

18 come on back And I said, well, I'm trying to get Reggie

19 to come on back with me, daddy, because I don't want them

20 to kill him out here

21 And I said -- he said, let me talk to him And

22 my daddy talked to Reggie And so I guess my dad, you

23 know, kind of convinced him, well, you know, for us to

24 come on back

25 And so I told my brother James, I said, I'm not

1 driving back in that truck So we got my brother James

2 ---

3 Q James Neal, your brother in Spring Valley?

4 A We got him to drive us back to Camden because
5 we was going to meet my dad and my dad was going to drive
6 us down to the police station but we ran into his father

7 Q Whose father?

8 A His

9 Q Where did you transfer from your brother's
10 vehicle?

11 A In Camden

12 Q And you got out of your brother's vehicle and
13 got in whose vehicle?

14 A In Reggie's father's vehicle and he brought us
15 back

16 Q And where did he bring you to?

17 A He brought us back to meet Mr Gardner

18 Q Mr Wesley Gardner?

19 A Yes

20 Q And where did you meet Mr Gardner?

21 A At Reggie's mother's house

22 Q And when you met him there, what happened?

23 A He have just -- he just brought us down town

24 Q Did he take you into custody?

25 A Yes

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1 Q Were you a suspect at that time?

2 A Yes

3 Q All right, where did he bring you, sir?

4 A You know, to the jailhouse

5 Q All right, when you got to the jailhouse, did
6 you have any conversation with Mr Clea, did he ask you
7 to do anything?

8 A Well, we was just talking, you know --

9 basically, you know, I was just trying to tell him, you
10 know, you are going to -- you got to hold on now, it is
11 going to be a hard road, you know, I said, you know what
12 I'm saying I said, I know you might be sorry you done
13 it now but it is going to be a long ride, you know I
14 done been up and down this road with this trouble

15 I said, you are in for a ride, man It is
16 going to be a long hard ride, you got to hold your head
17 up I was trying to give him encouragement That, you
18 know, even though he had done it, you know, I was still,
19 you know, trying to give him encouragement It might be
20 all right, but I know, you know what I'm saying

21 Q Did you have a conversation about the gun?

22 A Yeah

23 Q Who all was there?

24 A It was more so, you know, he asked me, more so,
25 like as if you know, did I, you know, pretty much point

1 blank, he talking but saying -- because, you know, Bubba
2 had a gun, you know, pretty much saying, you know But
3 no, I don't know Bubba had a gun I don't know

4 Q Was he trying to persuade you?

5 A I ain't going to say he literally just came out
6 and said to me Bubba had a gun No, he didn't do it like
7 that It was more we talking, he was like, you know,
8 yeah, you know, because I ain't had no choice because
9 Bubba had a gun, you know what I'm saying, because you
10 know he had a gun

11 And I was like, I don't know he had it I
12 don't know he had it

13 Q What did you tell him in response?

14 A I said, I ain't going to lie on Bubba and say
15 he had the gun, I said But I ain't going to lie on him
16 or I ain't going to lie for him because I really, you
17 know -- you say you saw a gun I didn't see a gun And
18 if he had a gun, I don't know I ain't see it though

19 MR SALEEBY Thank you, please answer any
20 question counsel may have for you

21 **CROSS EXAMINATION BY MR CLARK**

22 Q Mr Powell, Reginald Clea thought Bubba had a
23 gun, didn't he?

24 A Seems to be, you know, from how he was saying
25 to me because he kept repeating he had a gun there

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1 Q He kept repeating it over and over again,
2 didn't he?

3 A Yes

4 Q Even before he left the yard, isn't it true,
5 sir?

6 A Yes

7 Q Even while this incident was going on, he kept
8 yelling, Bubba's got a gun, didn't he?

9 A Yes

10 Q And, Mr Powell, you knew Bubba, Charles
11 Jackson, right?

12 A Yes

13 Q You knew him well, didn't you?

14 A Yes

15 Q And you knew James Pollard?

16 A Yes

17 Q And you knew Reginald Clea?

18 A Yes

19 Q And isn't it a fact that James Pollard and
20 Charles Jackson had a reputation for violence in this
21 county, didn't they?

22 A I don't really -- you know, I know they were
23 not too stand -- pretty much like me, stand up guy, you
24 know You ain't going to just push me around, you know I
25 ain't going to go looking for it but you ain't going to

1 just push me around

2 Q So did you know if they had a reputation of
3 violence or not, Mr Pollard ---

4 MR SALEEBY I think he answered the question
5 that they were stand up guys, Your Honor He can answer
6 the question but he's testifying I object to that

7 MR CLARK That wasn't responsive to my
8 question

9 MR SALEEBY Your Honor, I believe he's trying
10 to answer it honestly

11 THE COURT Just a moment, the objection is
12 sustained, next question

13 Q Well, Mr Powell, did you know that Charles
14 Jackson ---

15 MR SALEEBY Objection, Your Honor, objection
16 We need to approach the bench

17 THE COURT All right, ladies and gentlemen,
18 we're going to have you go to the jury room at this time
19 Please do not discuss the case while you are in the jury
20 room It's time for you to take a short break

21 (Jury exits the courtroom)

22 THE COURT Okay, objection by the State What
23 says the State?

24 MR SALEEBY Yes, Your Honor, what Mr Clark is
25 attempting to do, it needs to be stopped, is trying to ask

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1 questions of this witness as to the prior criminal record
2 of the deceased I think the case law in Rule 404 are
3 quite clear

4 It does not allow him to go into listing
5 somebody's record to somebody else, 404(a)(2), talking
6 about the character of the victim There's supposed to be
7 evidence of the character trait otherwise to show who
8 could have been the aggressor

9 I also have case law here -- I have to find it
10 Here we go And case law says that if you are going to
11 get into actions -- and the cases I'm looking at are State
12 versus Taylor, 333 S C 159, 508 S E 2nd 870 and State
13 versus Brown and Supreme Court decision, Opinion Number
14 25258 in March of 2001

15 We say that as much as he can go into would be
16 to show that there was some ill will between the two
17 people He's not permitted to go into the prior criminal
18 record of the deceased

19 MR CLARK Your Honor, if I could be heard on
20 that?

21 THE COURT You could be heard when I recognize
22 you, Mr Clark You all are -- any time one side is
23 arguing an issue, the other side will have an opportunity
24 to respond

25 MR CLARK Yes, sir, Your Honor, I apologize

1 (Pause)

2 THE COURT All right, Mr Clark?

3 MR CLARK Your Honor, I'm -- Mr Saleeby
4 offered cites but he never quoted any holding that said
5 specific instances weren't permitted on cross examination

6 This is cross examination, Your Honor And I
7 would rely on Rule 405, specifically (a) and (b) as well
8 as the case of State v Major, which indicates -- and
9 also, as well, Major is 391 S E 2nd 235, a 1990 case and
10 State v Amburgey, 34 S E 2nd 779 and 405(b) specifically
11 says in cases in which character or trait -- or a trait of
12 character of a person is an essential element of a charge,
13 claim or defense, proof may also be made of specific
14 instances of that person's conduct

15 And when I asked Mr Powell whether he knew of
16 his reputation for violence, Mr Saleeby -- Mr Powell
17 said -- he never said he knew or he didn't know He said
18 he was a stand up guy and he wasn't like himself And he
19 wasn't going to let somebody push him around

20 Mr Saleeby objected at that point and the Court
21 stopped me on cross examination from eliciting a more
22 specific answer from this witness

23 THE COURT The court sustained the objection

24 MR CLARK Yes, sir

25 THE COURT How did that stop you from doing

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1 anything? How did the Court stop you from doing anything
2 when there's an objection and I sustained the objection?

3 MR CLARK Well, Judge, I asked him about
4 reputation and the answer he gave me -- I wanted to
5 inquire into it further because the answer was not
6 responsive

7 THE COURT That may be the case but you say the
8 Court stopped you from doing thus and so I want to know
9 in what way did I do so?

10 MR CLARK Well, Judge, I -- when you sustained
11 the objection, when I was asking him the follow-up
12 questions about his response, I took that to mean that I
13 couldn't ask him anymore questions about that

14 THE COURT You made the objection and I
15 sustained the objection which means that I agreed with
16 you

17 MR CLARK No, sir, I was on cross examination
18 Mr Saleeby made the objection And I may have
19 misunderstood Your Honor, and I don't mean to argue with
20 the Court

21 THE COURT You objected to Mr Saleeby's
22 interjection is what I thought, but go ahead
23 Nevertheless, go ahead

24 MR CLARK Maybe I misunderstood But whether
25 that is the case, Judge, I would ask to be permitted to

1 follow-up with this on cross examination with this witness
2 about his knowledge of these individuals' character

3 And under 405(b), I am permitted to go into
4 specifics because character is a specific element in the
5 defense of this case And, Judge, my understanding is
6 that if the witness says he is not aware of a reputation
7 for violence, that's the exact point where I can go into
8 instances, specific instances, under 405(b) and State v
9 Major and State v Amburgey

10 THE COURT What says the State?

11 MR SALEEBY (No response)

12 THE COURT Mr Saleeby?

13 MR SALEEBY Your Honor, the State versus Major
14 says that when the accused offers evidence of his good
15 character, specific character traits, then it can be gone
16 into But neither of these rules -- what the law allows
17 in evidence is specific instances of ill will, hostility
18 between this Defendant and the people who are deceased,
19 one or both

20 However, it does not permit trying in essence to
21 impeach the person who is now deceased with a wide gambit
22 of crimes that aren't related to this person He could
23 have been convicted of numerous drug offenses, he could
24 have been convicted of other crimes that would not be
25 relevant to the particular transaction between these two

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1 people

2 There's nothing -- if he wants to prove that and
3 came in and says a certain date and time something
4 happened But to say that this man stole a car from
5 somebody else or this man did drugs over here or that this
6 man committed any other crime, it does not have to do with
7 these two people, it is irrelevant, inadmissible

8 That's why Rule 404 is what is specifically
9 applicable evidence of a trait character of the victim
10 And other crimes or wrong doings, 404(b), is not
11 admissible to prove the character of a person in order to
12 show action in conformity therewith

13 MR CLARK That's why 404(b) is not relevant
14 We're not trying to show action in conformity therewith
15 405(b) is relevant when it talks about specific instances
16 of conduct And Mr Saleeby has yet to address that

17 MR SALEEBY I'm addressing ---

18 MR CLARK If I could finish, Your Honor ---

19 THE COURT We're off the record at this point
20 since both persons are talking at the same time We're
21 off the record at this point since you're both speaking
22 at the same time

23 (Pause)

24 MR SALEEBY Judge, I have one more cite if I
25 might whenever you are ready

1 (Pause)

2 THE COURT We're going to take a short recess
3 at this time If you will step down, sir You are not
4 allowed to discuss your testimony Anything that anyone
5 wants me to look at, you can submit them to the Court

6 (The witness leaves the witness stand)

7 (Whereupon, a recess was taken concluding at
8 11 11 a m)

9 THE COURT Anything further on this issue from
10 the State?

11 MR SALEEBY No, Your Honor We submitted
12 what we had and Mr Powell apparently went out to the
13 bathroom for a cigarette break I apologize for that

14 We don't have anything else to offer with the
15 Court on this particular issue

16 THE COURT Anything further on this issue by
17 Defense?

18 MR CLARK No, sir, Your Honor

19 THE COURT I'll have the Defense proffer
20 testimony on this issue then I will rule after this
21 hearing I will hear his testimony outside the presence
22 of the jury when he comes back

23 (Pause)

24 (The witness returns to the witness stand)

25 THE COURT Mr Clark?

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1 MR CLARK Thank you, Your Honor

2 CROSS EXAMINATION BY MR CLARK (IN CAMERA)

3 Q Mr Powell, when you said that you knew Mr
4 Jackson and Mr Pollard were stand up guys, did you know
5 whether they had a reputation for violence, sir?

6 A I knew if you put your hands on them, they'll
7 fight you

8 Q Well, did you know whether they had a
9 reputation for violence if you didn't put your hands on
10 them?

11 A I guess, it all depends on what you did, you
12 know

13 Q I'm saying ---

14 A You going to have to do something for them to
15 just be violent with you I mean, it ain't no more than
16 me You going to have to do something They ain't going
17 to just walk up to you and just be violent to you for no
18 reason

19 Q Do you understand what I'm saying when I say,
20 reputation for violence?

21 A Are they known for doing it?

22 Q Right, that's what I mean, sir

23 A That's what I'm telling you, they known for if
24 you bother them, they will bother you

25 Q All right Now, so is your answer that they

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1 did not have a reputation for violence or they did have a
2 reputation for violence?

3 A Yes, they could be violent

4 Q Okay, so they did have a -- and I'm not asking
5 you to tell me what they could do We need to stick to
6 reputation Did they have a reputation for violence?

7 A I'll tell you what I know

8 Q And you knew?

9 A Yes, that they can be violent if the situation
10 called for them to be violent

11 Q All right, could be violent, all right And
12 did you know that about Mr Jackson, that on -- in 1999
13 he was convicted of pointing and presenting a firearm,
14 did you know that?

15 A No, I didn't

16 Q You did not?

17 A I was in prison, I don't know

18 Q All right, did you know at the same time he was
19 convicted of carrying a pistol?

20 A No, I didn't

21 Q Did you know that in February of 2000, that he
22 was convicted of assault and battery?

23 A No, I didn't

24 Q Did you know that in March of 2000, he was
25 again convicted of assault and battery, did you know

1 that?

2 A No, I didn't

3 Q And did you know that in August of 2000, he was
4 again convicted of carrying a pistol?

5 A No, I didn't

6 Q You didn't know that

7 MR CLARK Your Honor, that would be the
8 questions on that particular issue

9 THE COURT Any objection to any of those
10 questions, Mr Saleeby?

11 MR SALEEBY Yes, sir, to all of them

12 THE COURT All right, what additional
13 questions do you have for him?

14 MR CLARK Well, Your Honor ---

15 THE COURT On the issue of character,
16 reputation of the deceased?

17 MR CLARK Well, I did forget to ask one, Your
18 Honor

19 Q Now, as far as Mr Pollard is concerned,
20 because I was asking -- do you know whether Mr Pollard
21 had a reputation for violence or not?

22 A Pretty much the same

23 Q All right, did you know that in January of
24 2003, he was charged with discharging a firearm into a
25 dwelling, did you know that?

1 A No, I didn't

2 Q And did you know that in January of 2003, he
3 was charged with lynching, did you know that?

4 A No

5 Q You did not?

6 A No, I didn't

7 MR CLARK That's all I will ask, Your Honor,
8 on that issue

9 THE COURT What says the State? What says the
10 State as to why those are not admissible?

11 MR SALEEBY Well, Judge, I cannot add
12 subsequently to the rule that I've cited and the case law
13 that I have given you

14 First of all, the charges, whether or not these
15 charges resulted in any conviction are really irrelevant
16 This man can't answer that, any of these questions And
17 again, the rule talks about what you are allowed to do in
18 specific instances of ill will between this man and the
19 Defendant or the Defendant and both victims individually
20 And that's not what this is aimed at one bit whatsoever

21 And what his response was, is that he knows of
22 no reputation Unless they are provoked, they don't get
23 engaged in things

24 So that's our argument

25 (Pause)

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1 MR SALEEBY Your Honor, can I add one other
2 thing?

3 THE COURT Yes, sir

4 MR SALEEBY I just happened to notice, and I
5 apologize for not bringing this to your attention, that
6 the charges that he made reference to, as to lynching,
7 discharge of a firearm into a dwelling, all of those were
8 non-convictions

9 MR CLARK They don't have to be conviction to
10 go to reputation, Your Honor That conviction goes to
11 the impeachment and credibility level Reputation, if he
12 knew about them, that could change his opinion of the
13 reputation one way or the other, because the rule talks
14 about specific acts It doesn't talk about convictions,
15 etcetera

16 (Pause)

17 THE COURT The Court's reference in the case
18 where -- a homicide case or murder case where the
19 Defendant pled self-defense, the Court held the evidence
20 of specific instances of violence on the part of the
21 deceased are not admissible unless they were directly
22 against the Defendant or if directed against others which
23 are so closely connected at a point in time or occasion
24 with a homicide that would reasonably lead to indicate
25 the state of mind of the deceased at the time of the

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1 homicide or to produce reasonable apprehension of great
2 bodily harm

3 That case cites State versus Brown and State
4 versus Amburgey The Rule 404(b) provides that evidence
5 of other crimes and wrongs or acts are not admissible to
6 prove the character of a person in order to show the
7 action in conformity therewith

8 Rule 405 states that in all cases in which the
9 evidence of character or a trait of character is
10 admissible, proof may be made by testimony as to
11 reputation or by testimony in the form of an opinion On
12 cross examination, inquiry is allowable into relevant
13 specific instances of conduct

14 In order for Rule 405 to permit inquiry into
15 relevant specific instances of conduct, the evidence must
16 first be admissible

17 I find that as proffered through this witness,
18 the -- his testimony is inadmissible under Rule 404 and is
19 an attempt to offer evidence of other crimes for which
20 this Defendant (sic) has no knowledge and which does not
21 specifically satisfy the test of Day, so the State's
22 objection is sustained

23 If you would bring the jury back

24 (Jury enters the courtroom)

25 THE BAILIFF Your Honor, all of the jurors and

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1 alternates are present in the courtroom

2 THE COURT State's objection is sustained

3 Mr Clark, you may proceed

4 MR CLARK Thank you, Your Honor

5 Q Mr Powell, I was asking you about whether you
6 knew whether Mr Jackson had a reputation for violence
7 Did you know whether he had a reputation for violence,
8 sir?

9 A I knew he had the potential to be

10 Q All right, and I'm going to ask you the same
11 question about Mr Pollard Did you know if he had a
12 reputation for violence?

13 A Pretty much the same

14 Q Pretty much the same? And so your answer is
15 they both had the potential to be violent?

16 A Yeah, if you did something to them

17 Q Okay ---

18 MR SALEEBY Excuse me, what did he say?

19 A If you did something to them pretty much

20 Q And you knew this from knowing them many years,
21 right? Is that correct, sir?

22 A Yes, sir

23 Q All right, now, Mr Powell, isn't it true that
24 at no time prior to going to this mobile home did
25 Reginald Clea plan to hurt people?

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1 A No

2 Q There was no forethought about shooting anyone,
3 was there, sir?

4 A No, not that I know of

5 Q And you testified about seeing Reginald Clea
6 with this gun, he never indicated he was going to use it
7 to hurt anybody, did he?

8 A No

9 Q In fact, he had it mostly for self-defense, as
10 far as you knew, right?

11 A Yes

12 Q Because prior to going to the mobile home that
13 was referred to and taking the dog houses that day, even
14 though Mr Clea had seen Pollard, the individual referred
15 to as BoBo, he never told you he was going to do anything
16 to him that day, did he?

17 A No

18 Q And he never told you he was going to do
19 anything to Jackson that day, did he?

20 A No

21 Q And Mr Clea never even planned this meeting,
22 did he?

23 A No, no he didn't plan it

24 Q He didn't plan even to see these guys that day,
25 did he?

1 A No

2 Q In fact, he never planned to go to this trailer
3 until Mr Pollard asked him to bring those dog houses
4 there, isn't that true?

5 A Yes

6 Q And nobody expected Mr Jackson to show up, did
7 they?

8 A No, we wasn't looking for him, hadn't talked to
9 him and he said he was coming, or nothing like that

10 Q So, it is pretty clear that Mr Clea never had
11 any -- prior to going to this site, any aforethought to
12 kill anybody?

13 A No, not that I know of

14 Q And it's also pretty clear that he thought in
15 his mind that Bubba, Mr Jackson, had a gun, isn't that
16 true?

17 A Yeah, it seemed that he thought -- but like I
18 say, I didn't see it I don't know

19 Q And you don't know what he saw, do you?

20 A No, I can't say what he saw

21 Q Right, and you don't know the exact
22 conversation between him and Mr Jackson, do you?

23 A No, because they were standing by the truck and
24 I was off to the side

25 Q Right, so you don't know what Jackson said to

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1 him, do you?

2 A No, I mean, but I know when he -- you know,
3 like when they was talking, it didn't seem like anything
4 harsh, that they was -- they were smiling, you know

5 Q Right, and you couldn't see inside of that car,
6 could you?

7 A No, I couldn't see inside that car

8 Q And did you ever see this box that day?

9 A I didn't see it

10 Q You never saw the box the entire time, did you?

11 A No

12 Q You don't know where this box came from, do
13 you?

14 A Honestly, no

15 Q And you couldn't see inside Mr Jackson's car,
16 could you?

17 A No

18 Q So if he had a gun in there, you wouldn't have
19 been able to see it, isn't that true?

20 A No

21 Q Because you never looked in the car?

22 A No, I never looked in the car

23 Q But the fact of the matter is, Mr Clea kept
24 saying, Bubba's got a gun, didn't he keep saying that?

25 A Yeah, he kept saying that

1 Q He said that while this incident was going on,
2 right?

3 A Yes

4 Q He said this incident after it was over -- I
5 mean, he said that after the incident was over?

6 A Yes

7 Q He said it while you were driving to your
8 father's house?

9 A Yes

10 Q He said it while you were going to Columbia?

11 A Yes

12 Q He said it when you got back, right?

13 A Yes

14 Q He never wavered from that, did he?

15 A No

16 Q And he was emotional, wasn't he?

17 A Yeah, he was crying

18 Q Yes, he was emotional And didn't he have a
19 certain amount of sincerity in the way he was saying
20 that?

21 A Saying what?

22 Q Bubba had a gun?

23 A Yeah, he just kept -- he just kept repeating
24 that he had a gun

25 Q Kept saying that?

1 A Yes

2 Q Over -- and you -- I believe your testimony on
3 direct examination was you had no reason to doubt him,
4 isn't that what you said earlier?

5 A Well, I didn't put it past whether -- any of us
6 would have a gun at any given moment I mean, but like I
7 say, I didn't see Bubba with a gun I didn't -- you
8 know, he didn't pull it out where, you know, I saw it or
9 anything like that

10 Like I said, when the first shots were fired,
11 my back was turned

12 Q Right

13 A So I don't know whether, you know -- so I can't
14 say what he saw while my back was turned

15 Q Right

16 A But I know what I seen, I didn't see a gun

17 Q And you wouldn't put it past Bubba to carry a
18 gun, would you?

19 A I mean I wouldn't say that he wouldn't

20 Q Okay

21 A I ain't saying that he had it but I ain't
22 saying that he wouldn't

23 Q Okay, all right, now, Mr Powell, isn't it also
24 true that Reginald Clea did not have a reputation for
25 violence?

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1 A No

2 Q He didn't, did he?

3 A No

4 Q And isn't it also true, Mr Powell, that while
5 this shooting was going on, while you say you saw Mr
6 Clea with his weapon, you saw Bubba make a waving motion
7 for his waist, didn't you?

8 A Put it like this, like what I told them ---

9 Q Can you answer yes or no first then you can
10 explain, sir? Didn't you see Bubba make a waving ---

11 A I ain't say from his waist I say I saw his
12 hands out in front of him and he was either making a
13 running motion or he was coming back or he was holding
14 himself

15 Q All right, now, Mr Powell, do you remember
16 giving a sworn statement to the Sheriff's Department on
17 that day?

18 A Yeah

19 Q On -- what is the date on this, when you were
20 taken to what you call the jailhouse?

21 A I remember

22 Q Right, you remember giving a written statement

23 ---

24 A Yes, I do

25 Q You signed it and I believe the bottom of it

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1 says, I have read each page of this statement consisting
2 of five pages, each page which bears my signature and I
3 certify that the facts contained herein are true and
4 correct?

5 A Uh-huh

6 Q Do you remember giving that statement?

7 A (No response)

8 MR CLARK May I approach the witness, Your
9 Honor?

10 MR SALEEBY Your Honor, we have no objection
11 to its admission if he wants to put it in

12 Q I'm going to ask you to take a look at page 3

13 A Uh-huh

14 Q And I put a little star by the line that I'm --
15 that's relevant to my question

16 A Uh-huh

17 Q Didn't you say in that statement that, I saw
18 Bubba ---

19 A Make a waving motion from his waist

20 Q Period

21 A Yeah

22 Q Right, isn't that what you said on that date?

23 A But right under there it says, I did not see a
24 gun

25 Q Right, and I'm not asking you whether you saw a

1 gun But the fact is, you wrote in this statement that,
2 Bubba made a waving motion from his waist, didn't you say
3 that?

4 A Yes, she asked me what was he doing And I
5 told her when I saw him his hands were down by his waist
6 side

7 Q All right

8 A And he was looking like he was fixing to run
9 Then he took his hands off his side and turned around and
10 put them down in front of him so he could lay down

11 Q Okay

12 A And that's where his hands came from

13 Q All right Point out to the ladies and
14 gentlemen of the jury where you said he put his hands
15 down so he could lay down?

16 A What? I mean ---

17 Q Well, can you point that out in this statement?

18 A No, well, I can't point that down in the
19 statement I mean, this was just an hour or two right
20 after it happened

21 Q Right and the events were fresh in your mind
22 then, weren't they?

23 A Yeah, they were fresh

24 Q More fresh than they are more than a year
25 later?

1 A Well, I put down that he laid down behind the
2 car but I might of not told her that he took his hands
3 down But, I mean, but naturally you would assume that,
4 you know, you're not going to drop yourself face down on
5 the ground You're going to put your hands down to lay
6 down

7 Q But the fact of the matter, you said that he
8 made a waving motion from his waist?

9 A Yeah, he had his hands -- he had his hands down
10 like this, on his waist side And he went to run, I
11 guess, I don't know whether he thought better or whether
12 he was hurt He took his hands down, like this, from his
13 waist

14 Q Tell the ladies and gentlemen of the jury where
15 you told them he went to run, the day that you made that
16 statement?

17 A It looked like he was fixing to run around the
18 trailer

19 Q Show us where you said that
20 (Pause)

21 A I don't see it

22 Q So you never said that on that day of this
23 incident, did you?

24 A No

25 Q You never said -- and in your statement ---

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1 A Because she was typing it as I was telling it
2 to her

3 Q Okay, and you think she typed what you told
4 her?

5 A Pretty much, I see everything she -- you know

6 Q Right, and it's a five page statement?

7 A Uh-huh

8 Q And in five pages you never said he ran around
9 -- was trying to run, did you?

10 A I didn't say -- I said that's what my
11 interpretation ---

12 Q Right

13 A --- that he might be trying to do, you know,
14 that he might be trying to run

15 Q You never said that in this statement, did you?
16 And I can show it to you?

17 A I guess not, I mean ---

18 Q You never said ---

19 A --- if you say it ain't in there

20 Q Never said that, did you?

21 A Probably didn't, I don't know

22 Q Well look and see Take as much time as you
23 need to look and see

24 (Pause)

25 A I don't see it

1 Q So you never said that in your statement right
2 after this happened, did you?

3 A No

4 Q And you never said that you saw this man
5 crawling, did you?

6 A (No response)

7 Q Well, let me let you ---

8 A You talking about crawling on the ground?

9 Q Yes, sir

10 A I didn't say he was crawling, I said he laid
11 down

12 Q Where did you say that in that statement?

13 A It might not be in the statement, but that's
14 what he did, laid down

15 Q So the testimony you're giving here today is
16 different from what you told the officers right after
17 this happened, isn't it?

18 A Well, not different, it's just probably like,
19 you know, because as I was telling it to her she was --
20 you know, she was more like, you know, we just take the
21 facts and not what you think

22 Q Right, and that's all I'm asking you about, the
23 facts

24 A You know what I'm saying, and when I said he
25 was looking like he was fixing to run, that was a -- you

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1 know, I can't prove that that's what he was fixing to do
2 You know, so I don't know whether that was what was on
3 his mind at the time

4 Q But you did say he made a waving motion from
5 his waist, didn't you?

6 A Yes, I said he had his hands down by his waist

7 Q You said a waving motion?

8 A Well, had his hands down by his waist side and
9 he took his hands from them when he turned around and
10 that's how your hand -- it's a waving motion I didn't
11 say like reached in ---

12 Q But you said waving motion ---

13 MR SALEEBY Your Honor, I believe he's asked
14 him that question 10 times If he could ask him another
15 one

16 A Because she asked me specifically was he
17 reaching and I said it was more like a waving motion, its
18 wasn't like, you know, you reaching down in for something
19 It's more like when you got your hands here and you take
20 them down, you know Because she was asking me specifics,
21 you know, like where was his hands, what was he doing? You
22 know what I'm saying?

23 Q All right, and BoBo, you couldn't see if he was
24 reaching for a gun or not, could you?

25 A Do what now?

1 Q You couldn't see whether he was reaching for a
2 gun or not, could you?

3 A He had his hands like this and then -- and then
4 -- and then while he was talking, you know, his hands, you
5 know, they went in but they didn't go like downward They
6 was like this because he was like, what you shooting at
7 Bubba for? Bubba got a gun? And his hands was like that

8 Q Mr Powell, I'm going to ask you to look at your
9 statement again on page 3

10 A Okay

11 Q Didn't you say when you gave that sworn
12 statement, that you couldn't say ---

13 A I said Bobo ---

14 Q Let me finish the question, sir, okay?

15 A Uh-huh

16 Q Didn't you say that you couldn't say whether
17 Bubba was reaching in his jacket or not? Didn't you say
18 that?

19 A Yes

20 Q And you swore to it?

21 A Because she asked me could I actually see it,
22 you know, when his hands folded, where did his hands
23 actually go And I couldn't see it because I'm behind
24 him

25 Q Right, so ---

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1 A But I know when his hands came back out that
2 they were back out like this

3 Q All right, now, but you never told them when you
4 wrote that statement that you could see his hand when he
5 came out of his jacket and that he didn't have a weapon
6 You never said that in that statement, did you?

7 (Pause)

8 A I didn't say, you know ---

9 Q Did you say it or not?

10 A Basically I was telling her what was she asking
11 me of the situation

12 Q All right

13 A You understand what I'm saying? That's
14 basically what I was doing, you know, because when we was
15 walking through what happened and this and that I might
16 not have gave her every depth down to the, you know, every
17 incident, whether your hand went to the left or right type
18 thing, in the statement You know what I'm saying? I
19 might not have gave her every depth detail of it like
20 that

21 Q But you said, I then saw his hands kind of fold

22 ---

23 A Yeah

24 Q I can't say he reached in his jacket or not,
25 right, isn't that what you told her in this statement?

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1 A Yeah, because that's what she asked me Did he
2 reach for something and I said when his hands folded I
3 couldn't see whether he did or not

4 Q But you never told her that you saw his hands
5 open with no weapon, did you?

6 A Yeah, because I told her how he was reacting I
7 told her what he was saying and I told her he was kind of
8 demonstrative like this, like what is -- what you shooting
9 at Bubba for

10 Q That's what I'm asking you, show me where you
11 told her that his hands were open and demonstrative, what
12 you shooting at Bubba for Show me where you ---

13 A Like I said, you know, we were talking and
14 basically -- like I said, I might not wrote -- it might
15 not have been putting down every depth detail of
16 everything that happened You've got to think, you know,
17 this is just two or three hours after this happened and,
18 you know, and I probably -- I was just giving her what
19 happened I didn't give her, I mean, down to the detail
20 how many steps were made, well, you know

21 Q Well, I'm not asking you how many steps were
22 made I'm asking you about what was in this man's hands

23 A Nothing as far as I saw When I saw his hands,
24 his hands were clear

25 Q But you never said that on the day that this

1 happened?

2 A Yeah When I saw his hands, his hands were
3 clear and when he was talking he kind of was doing his
4 hands like this, and he folded his hands, when his hands
5 went in front of him And she asked me, well, when they
6 went in the front of him, did he reach for something? And
7 I said, with his back to me, I couldn't tell ---

8 Q Right

9 A --- but I know when he kept going like this he
10 didn't pull nothing out That's all I could say

11 Q But that's not in this statement, you admit
12 that?

13 A Sure

14 Q You admit that?

15 A Yeah

16 Q Right?

17 A Yeah

18 Q And you admit this is the day -- more than a
19 year after this incident, it's the first time you're
20 saying you saw his hands with nothing in them but you
21 never said it in this statement?

22 A I never talked to a police or anybody else
23 until last week ---

24 Q Right

25 A --- from that day that it happened

1 Q Right, so if it's not in this statement,
2 because this is the only statement you gave, more than a
3 year has gone by and then last week is the first time you
4 mentioned that you saw his hands clear, right, because
5 it's not in this statement?

6 A Because I never talked to anybody else, I mean,
7 you know I mean, I -- at the moment I was giving the
8 statement, you know, I told her basically what I'd seen
9 But, you know, after time when you sit down, you can
10 visualize everything from sight to sight that happened

11 At that moment I wasn't, you know -- you know
12 what I'm saying, you know, I was just giving her, you
13 know, what had happened You know what I'm saying? I
14 didn't actually think all -- every depth detail, you know
15 what I'm saying, I mean

16 Q So more than a year later, now you can think of
17 every detail that you didn't think of the day that the
18 police ---

19 A I mean, I thought of it just days afterwards
20 but, you know, I had done gave the statement and I wasn't
21 about to come back down here, I mean, I really didn't
22 want anything ---

23 Q And you knew it was important?

24 A I mean, not at the time, like that, I mean

25 Q You didn't know it was important whether he had

1 a weapon or not?

2 A Yeah, I knew it was important whether he had a
3 weapon You know what I'm saying? And like I told her,
4 I gave her all the accounts of when I seen -- you know,
5 seen them and when I could visualize and see the entire
6 body, I never saw a gun

7 Q Okay

8 A I mean, you know what I'm saying?

9 Q But you don't know where he was reaching or not
10 is what you said in this statement, right? Isn't that
11 what you said?

12 A Yeah, that's what I said

13 Q All right, and you also said that Bobo said,
14 oh, Bubba -- oh, does Bubba got a gun?

15 A Yeah, he asked Reggie that when he was coming
16 -- Reggie kept saying, Bubba got a gun He asked Reggie,
17 oh, Bubba got a gun?

18 Q Right, right

19 A Like that

20 Q All right, and now, Mr Powell, isn't it true
21 that when you heard the first shots fired, you turned
22 around, right?

23 A Uh-huh

24 Q Mr Jackson was inside of his car, wasn't he?

25 A He wasn't standing by the door, was he?

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- 1 A No, he was sitting in the car
- 2 Q Right, when the first shots were fired?
- 3 A Yes
- 4 Q And the car door was open, right?
- 5 A Yes
- 6 Q He wasn't standing behind that door, was he?
- 7 A No, he was sitting in the seat -- sitting in
- 8 the seat like with the door open
- 9 Q Okay, all right, and you never -- could you
- 10 hear whether Mr Clea was saying, show me your hand?
- 11 A I think I do remember him saying that
- 12 Q Right, you remember hearing Mr Clea say, show
- 13 me your hand, right?
- 14 A Yeah, I do remember him saying that
- 15 Q And you remember him saying, put the gun down?
- 16 A No, I don't remember that
- 17 Q Could you hear everything?
- 18 A At this point I could, you know, because --
- 19 yeah, you know, because at this point because all of the
- 20 voices are at a much higher level now
- 21 Q He said, put the gun down -- show me your
- 22 hand?
- 23 A Yeah, I heard him say, let me see your hand I
- 24 never heard him say, you know, put the gun down
- 25 Q All right, now did you ever see Mr Jackson

1 showing his hand?

2 A No, I mean, he was on the other side of the
3 car

4 Q Mr Jackson never said, hey, I don't have a
5 weapon, here's my hand?

6 A No, he was laying down on the other side of the
7 car because he was shooting

8 Q But this man kept saying, show me your hand?

9 A Well, he didn't keep saying it, he just said --
10 I remember him just saying it one time

11 Q Show me your hand

12 A He said that, show me your hand

13 Q Right, and after the fact, he kept telling you
14 Bubba had a gun?

15 A Yeah

16 Q And, going back to Mr Pollard, you said that
17 you could tell -- in your statement you said you
18 couldn't tell if he was reaching in his jacket or not,
19 right?

20 A Yes

21 Q Right?

22 A Yeah

23 Q And when he was making this movement with his
24 hands, wasn't he walking towards Mr Clea?

25 A Yeah

- 1 Q So, Mr Clea's got this gun and Mr Pollard is
2 making a motion with his hands but you couldn't tell if
3 he was going in his jacket or not, and walking towards
4 this man with a gun, right?
- 5 A He made steps towards him
- 6 Q Right, and looking at State's Exhibit -- excuse
7 me, Number 2, he was over -- Mr Pollard -- well, you
8 took cover in the woods, right, at some point?
- 9 A Yeah
- 10 Q And you felt that if you could hide in those
11 woods, you wouldn't be in danger, right, isn't that why?
- 12 A You know, I wasn't in the woods I was just
13 standing at the edge of the wood line but I wasn't in the
14 woods I was still standing in the clear, I wasn't in
15 the woods yet
- 16 Q And Mr Pollard was over near the trees when
17 all this began, right?
- 18 A He was like where the -- like where the upper
19 dog house is, yeah
- 20 Q Right here? Right here?
- 21 A In this area
- 22 Q This one?
- 23 A Yeah
- 24 Q The trees were right there behind him, right?
- 25 A Uh-huh, and it was like one single tree just

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1 like that that stands out a little farther than the rest
2 of the trees

3 Q This one here?

4 A Yeah, it was that little area

5 Q And this is the tree line, right?

6 A Yeah

7 Q So instead of running to the trees, he turns
8 toward Mr Clea, right?

9 A Well, he -- when Reggie first started shooting,
10 he didn't move He stood there He didn't move

11 Q And he turned toward Mr Clea?

12 A And he asked him why was he shooting at Bubba

13 Q And that's when Mr Clea said, Bubba got a gun,
14 right?

15 A Yeah

16 Q And that's when you didn't know if Mr Pollard
17 was reaching in his jacket or not, right?

18 A Yeah, because I'm trying to watch -- I mean,
19 you know, I'm trying to watch so much

20 Q And it's difficult to see everything, isn't it?

21 A Yeah, because I'm trying to watch so much, I
22 mean, I don't know who's doing what

23 Q And all this happened very quickly, didn't it?

24 A Yeah, it happened fast

25 Q Real quickly But my question is, instead of

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1 Mr Pollard -- Mr Pollard didn't run to the trees, the
2 woods?

3 A No, he didn't

4 Q He turned toward Mr Clea, right?

5 A Yes

6 Q And that's when you didn't know if he was going
7 in his jacket or not, right?

8 A He didn't have on a jacket He had just a
9 shirt and it was open

10 Q All right, in your statement you said jacket,
11 right?

12 A No, I believe -- because he had on a shirt It
13 was just a shirt that's open It was like a button-down
14 shirt but he didn't have the buttons closed on it

15 Q Mr Powell, didn't you say ---

16 A She might have said jacket but I'm telling you,
17 it wasn't a jacket

18 Q But isn't that what your sworn statement says,
19 where I have the star down there? You want me to show it
20 to you what I'm talking about? I'm talking about here

21 A Yeah

22 Q Can you read that?

23 A I see it right here

24 Q Can you read that?

25 A Maybe she might have mistaken the jacket for a

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1 shirt but it wasn't -- it was a button-down shirt but the
2 buttons wasn't closed I mean, he didn't have none of
3 the buttons snapped It was open It was wide open

4 Q You said, I then saw his hands kind of fold I
5 couldn't say whether he reached in his jacket or not,
6 right? That's what you said And when you signed this
7 statement at the end, can you read what it says just
8 above your signature? Read it out loud what it says

9 A What like right above my signature -- I have
10 read each of these statements consisting of these pages,
11 each page of which bears my signature and corrections if
12 any bear my initials and I certify that the facts
13 contained herein are true and correct This statement
14 was completed on

15 Q So, you signed below that statement, right,
16 saying that what's in this statement is true and correct?

17 A Yes

18 Q Now you're saying it's not true and correct?

19 A Well, the jacket, the shirt, I mean If you
20 won't to take it like that, then hey

21 Q Beg your pardon

22 A I mean, the only thing I can tell you, you
23 know, when me and her was talking I told her it was --
24 because he had a t-shirt on up under -- under a big --
25 button-down shirt but it was open

1 And I, you know, I might have said a jacket I
2 mean, you know what I'm saying But it was ---

3 Q Well ---

4 A --- you know, because it was flared open

5 Q Okay, and Mr Clea never asked you to lie, did
6 he?

7 A I mean he didn't come out and ask me to lie

8 Q He never told you to say something that you
9 didn't see, did he?

10 A No, not bluntly, he didn't say that to me

11 Q And Mr Clea, you never saw him shoot anybody
12 after they stopped moving, did you?

13 A No, I mean

14 Q He only shot while he thought there was a
15 threat, isn't that true?

16 A I guess I don't know what he was thinking

17 Q You never saw him run up on anybody on the
18 ground and shoot them at point blank range, did you?

19 A No, I didn't -- No, I didn't see that part, I
20 was gone

21 Q In fact, all the shots, he was away from these
22 individuals, wasn't he?

23 A All the shots I seen, yes, sir

24 Q He never ran around Mr Jackson's car and shoot
25 him while he was crawling on the ground, did he? You

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1 never saw that, did you?

2 A No, I didn't see -- I saw him walking around
3 that way When I saw him walking around that way, I
4 figured it was pretty much high time for me to pull up

5 Q But you never saw him pull up around that car?

6 A I saw him walk around the car -- I'd be lying
7 if I said I actually saw him walk around the car

8 Q Right, and did you see what Mr Jackson was
9 doing then?

10 A Like I said, when I -- you know, when I left,
11 he was telling Bobo to tell Reggie he didn't have a gun
12 and he was laying -- he was laying like face down on the
13 ground That was my last vision of him before I got too
14 far over, you know, in the wood line that I couldn't see

15 Q But when he said that he was 'already' laying on
16 the ground, right?

17 A Yes

18 Q Okay, and he was talking when he was laying on
19 the ground

20 A Yes

21 MR CLARK Thank you, Mr Powell, that's all I
22 have

23 **REDIRECT EXAMINATION BY MR SALEEBY**

24 Q And what was, I believe you told me before,
25 that Mr Pollard was about this far away from Mr Jackson

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1 when he started shooting?

2 A Uh-huh

3 Q And did he get as close as this before Mr
4 Pollard (sic) shot him?

5 A Before Reggie shot him?

6 Q That's right

7 A He only took maybe about two, maybe three steps
8 at most, you know

9 Q And what positions were his hands in?

10 A His hands were in front of him then His hands
11 were in front of him then

12 Q All right

13 A By the time the actual shooting -- by the time
14 he actually fired the shot -- first shot, I could see
15 BoBo's hands then but when he was going toward them, when
16 he was talking, you know, because he's at an angle from
17 me, and yes, his hands when they came in, you know, they
18 disappeared enough

19 But by the time he actually, you know --

20 because he was like this, like what he shooting Bubba
21 for And he started walking toward -- and he took maybe
22 one, two, three steps toward him

23 Q His hands were out like this when they got
24 shot?

25 A When the shots were fired I could see his

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1 hands

2 Q And he didn't have a weapon in his hands?

3 A No, I didn't -- no, he didn't

4 Q And the last time you saw Charles Jackson, he
5 was where?

6 A Behind the car laying on the ground and he was
7 telling BoBo that he didn't have a gun

8 Q And where was Reggie headed?

9 A He was walking towards -- and when he started
10 walking towards -- and now he coming close to where I'm
11 at now and now I'm steady moving farther but, you know,
12 and I'm still talking to him still telling him, put the
13 gun down, man Stop shooting, put the gun down

14 And when he kept coming, I went ahead on, you
15 know, I went ahead on

16 Q And did you hear more shots after that?

17 A Yes

18 MR SALEEBY Thank you

19 MR CLARK May I briefly, Your Honor

20 THE COURT Yes, sir

21 **RECROSS EXAMINATION BY MR CLARK**

22 Q The last set of shots you couldn't see who was
23 shooting, could you?

24 A No, I couldn't

25 Q And, Mr Powell, can you say for certain that

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1 only one gun was shot out there that day?

2 A I could say for certain I only seen one gun

3 MR CLARK All right, thank you, sir That's

4 all I have

5 MR SALEEBY I don't have anything

6 THE COURT Step down

7 MR SALEEBY I'd ask if he could be excused

8 THE COURT Objection to this witness being

9 excused?

10 MR CLARK No, sir

11 THE COURT Thank you, sir, you may leave

12 (The witness leaves the witness stand)

13 THE COURT Next witness

14 MAURICE YOUNG, after being first duly

15 sworn, testified as follows

16 DIRECT EXAMINATION BY MR SALEEBY

17 Q Mr Young, where do you live?

18 A Cotton Acres

19 Q Where?

20 A Cotton Acres

21 Q And is that in Sumter County?

22 A Yes

23 Q How long have you lived in Sumter?

24 A All my life

25 Q Where did you go to school?

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- 1 A Crestwood
- 2 Q What kind of work do you do?
- 3 A No work
- 4 Q When you were last employed, what kind of work
- 5 did you do?
- 6 A Construction
- 7 Q What is your nickname?
- 8 A Pooh
- 9 Q Pooh?
- 10 A Yeah
- 11 Q I want to ask you what your relationship is to
- 12 some people here The gentleman who just testified, Lee
- 13 Powell, what kin is he to you?
- 14 A Cousin
- 15 Q How about the Defendant in this case, Mr
- 16 Reginald Clea, what kin is he to you?
- 17 A Cousin
- 18 Q James Pollard who is known as BoBo?
- 19 A My cousin too
- 20 Q And what about Charles Jackson?
- 21 A He's my friend
- 22 Q What?
- 23 A Friend
- 24 Q Okay, I'm going to ask you to speak up just a
- 25 bit so we can hear you Prior to February the 25th of

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1 last year, 2004, did you know of any ill will or bad
2 blood among any of the four or five of you?

3 A No

4 Q Had you observed any occasions of threats of
5 harm on anybody by anybody else?

6 A No

7 Q Particularly Mr Jackson or Mr Clea?

8 A No

9 Q Or Mr Pollard toward Mr Clea?

10 A No

11 Q Did they seem to get along real well?

12 A Yes

13 Q On that day, that Wednesday when and where did
14 you see Mr Pollard?

15 A That morning -- it was afternoon when he came
16 to pick me up

17 Q What time of day?

18 A Around about 12 or 1

19 Q The middle part of the day?

20 A Yes

21 Q Mr Pollard picked you up?

22 A Yes

23 Q Where?

24 A From my uncle's house

25 Q What part of the county does your uncle live

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- 1 in?
- 2 A Over there by Hillcrest
- 3 Q That's not too far from Rembert?
- 4 A Uh-huh
- 5 Q Okay, when he picked you up, where did you go
- 6 and what did you do?
- 7 A We went to -- down the road because me and --
- 8 well, Pollard and Lee was together
- 9 Q Yes Can you lean a little bit closer so we
- 10 can hear you a little better?
- 11 A Pollard and Lee was together and we went to
- 12 Danger's house for a minute
- 13 Q Pollard ---
- 14 A Yeah
- 15 Q --- and who were together?
- 16 A Lee
- 17 Q And how were they traveling?
- 18 A In the Honda
- 19 Q Whose Honda was that?
- 20 A I can't remember
- 21 Q All right, and you went where?
- 22 A To Danger's House
- 23 Q You went to this other gentleman's house and
- 24 who did you see there?
- 25 A Mr Clea

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- 1 Q And how was he traveling?
- 2 A In a black truck
- 3 Q All right, you went from that gentleman's
- 4 house, where did you go?
- 5 A Well, me and Pollard -- Lee got in the truck
- 6 with Reggie and me and Pollard left
- 7 Q Okay, you and Pollard left in what vehicle?
- 8 A In the Honda
- 9 Q What did Lee and Reggie do?
- 10 A I mean, we left them there
- 11 Q All right, where did you go?
- 12 A We rode around for a minute and then we went to
- 13 Reggie's grandmother's house
- 14 Q When you go there, who was there?
- 15 A Nobody, we just looked at the dog houses
- 16 Q You looked at the dog houses, you and Mr
- 17 Pollard?
- 18 A Yeah
- 19 Q And then where did you go and what did you do?
- 20 A We was going back to BoBo's house
- 21 Q BoBo would have been Mr Pollard?
- 22 A Yeah
- 23 Q The place we're talking about, 5555 Dinkins
- 24 Road (sic)?
- 25 A Uh-huh

- 1 Q Okay, that's you and Mr Pollard in his Honda?
- 2 A Yeah
- 3 Q Tell us what happened as you were headed back
- 4 to his house
- 5 A We saw Mr Clea and Lee in the truck on Dinkins
- 6 Mill
- 7 Q All right, what did you do?
- 8 A He asked him could he get the dog houses
- 9 Q Who asked who if he could get the dog houses?
- 10 A Bobo -- Mr Pollard asked Mr Clea could he get
- 11 the dog houses
- 12 Q And what else transpired then?
- 13 A He said, yes So we went back to Mr Clea's
- 14 grandmother's house and got the dog houses
- 15 Q How many of you went back and what vehicles
- 16 were you traveling in?
- 17 A Just to the two of us
- 18 Q Who was that?
- 19 A The Honda and the tuck
- 20 Q All right, when you got back to Mr Clea's
- 21 grandmother's house what did you do?
- 22 A Load the dog houses on the truck
- 23 Q All right, and then where did you go?
- 24 A Back to Mr Pollard's house
- 25 Q When you got to Mr Pollard's house, where did

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- 1 y'all -- what did y'all do?
- 2 A We parked in the back and started unloading the
- 3 dog houses
- 4 Q All right, was the Honda parked in the back?
- 5 A Yeah
- 6 Q And was the truck parked in the back too?
- 7 A Yeah
- 8 Q All right, who was unloading the dog houses?
- 9 A Me, Lee and Mr Pollard
- 10 Q And what was Mr Clea doing?
- 11 A Just -- he was just standing around
- 12 Q Did anybody else arrive after that?
- 13 A Yeah, Mr Jackson
- 14 Q About how long after y'all had been there,
- 15 approximately?
- 16 A He like pulled in like almost like right behind
- 17 us
- 18 Q Minutes?
- 19 A Yeah
- 20 Q Okay, what happened -- what were you doing when
- 21 he pulled up?
- 22 A Taking the dog houses off the truck
- 23 Q All right, and once Mr Jackson pulled up, just
- 24 tell us what you heard and what you saw
- 25 A When he pulled up, I mean, he spoke to us and

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1 everything And he just was like, you know, I was going
2 to get something out of the car

3 Q Who was that?

4 A Mr Jackson

5 Q Did Mr Jackson have -- say anything else or
6 did he talk to anybody that you overheard the
7 conversation about?

8 A No

9 Q Did you hear anything that seemed out of the
10 ordinary in terms of anybody?

11 A No

12 Q All right, after Mr Jackson starts heading
13 back to the car, what do you hear or what do you see?

14 A Then that's when I heard the gunshot

15 Q You heard the gunshots?

16 A Yeah, when he got to the car

17 Q All right, and when you heard the gunshots,
18 what did you do?

19 A I ran

20 Q All right, did you ever turn around and look?

21 A Yeah, one time

22 Q All right, when you looked back, who did you
23 see and what were they doing?

24 A I saw Mr Clea shoot

25 Q Who was he shooting at?

- 1 A Bubba
- 2 Q And where was Bubba?
- 3 A By the car
- 4 Q Let me show you State's Exhibit Number 8 and
- 5 ask you if you recognize this?
- 6 A Yeah
- 7 Q And what's that?
- 8 A A rifle
- 9 Q All right, did you see it that day?
- 10 A I saw it, yeah
- 11 Q And who was firing it?
- 12 A Mr Clea
- 13 Q Had you seen it before in Mr Clea's
- 14 possession?
- 15 A No
- 16 Q This is the first time So, when you hear the
- 17 shots you turned around and you saw Mr Clea and he was
- 18 shooting at Mr Jackson?
- 19 A Yeah
- 20 Q Was Mr Jackson shooting back at him?
- 21 A No
- 22 Q Did you see any other weapons other than this
- 23 State's Exhibit 8?
- 24 A No
- 25 Q What did you do then?

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- 1 A Ran to Council's house
- 2 Q And Council would be who?
- 3 A Council Hunter
- 4 Q Is he somebody who lives in the area?
- 5 A Yeah
- 6 Q As you were getting out of the area, do you
- 7 hear anything else? Do you hear anybody say anything?
- 8 Did you hear any more gunshots?
- 9 A No, I just heard Reggie saying, you're going to
- 10 get a gun, Bubba, you're going to get a gun
- 11 Q Did you hear anybody say anything in response?
- 12 A Lee was telling him to put the gun down, and
- 13 that was it
- 14 Q Did you hear any more gunshots?
- 15 A As I was running
- 16 Q How many or could you tell?
- 17 A I don't know
- 18 Q Did you ever go back close to that -- to the
- 19 trailer?
- 20 A I went back close enough to see BoBo's body
- 21 Q Did you go into the yard?
- 22 A No, I was like halfway, like I could have look
- 23 over and like, you know, see him
- 24 Q And what did you see?
- 25 A I just seen him laying down

- 1 Q And where was he?
- 2 A On his back
- 3 Q And that's Bobo Pollard?
- 4 A Yeah
- 5 Q Were you in a position where you could also see
- 6 Mr Jackson?
- 7 A From a distance
- 8 Q Was anybody with you went and stood and looked
- 9 from the adjacent yard and looked over there?
- 10 A Julia was close by me
- 11 Q Julia Knox?
- 12 A Yeah
- 13 (Pause)
- 14 Q This is State's Exhibit Number 1 Could you
- 15 identify that as the trailer?
- 16 A Yeah
- 17 Q Can you tell us which one of these would be
- 18 Council Hunter's place?
- 19 A This one right here
- 20 Q That's where you were running towards?
- 21 A Yeah
- 22 Q And when you ran back -- when you went back
- 23 over there, where did you go?
- 24 A Right here
- 25 Q And that's -- that's as close as you got in

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1 there?

2 A Yeah

3 MR SALEEBY Please answer any questions that
4 Mr Clark has for you

5 **CROSS EXAMINATION BY MR CLARK**

6 Q Mr Young, you said you were with Mr Pollard,
7 you rode to the trailer with Mr Pollard?

8 A Yeah

9 Q And did you talk to Mr Clea at any time before
10 you got to that trailer?

11 A Yeah, we spoke at his grandmother's house

12 Q Was Mr Jackson there -- I mean, Mr Jackson
13 wasn't there?

14 A No

15 Q Was Mr Pollard there?

16 A Yeah

17 Q Did you hear Mr Clea indicate that he had
18 planned on doing anything to anybody that day?

19 A No

20 Q When you got to the trailer, did you hear him,
21 before the shooting started, that he planned on hurting
22 anyone?

23 A No

24 Q Did he ever threaten anybody?

25 A No

1 Q Mr Clea has a reputation for peacefulness,
2 doesn't he?

3 A Yeah

4 Q Mr Pollard and Mr Jackson had a reputation
5 for violence, didn't they?

6 A No

7 Q They did not?

8 A No

9 Q All right ---

10 MR CLARK Your Honor, at this point, I would
11 ask him further questions except for the Court's earlier
12 ruling I just

13 THE COURT What's your question?

14 MR CLARK Well, you want me to ask him in
15 front of the jury?

16 MR SALEEBY No, sir, I would object

17 MR CLARK I would be happy to present the
18 question to him if the Court ---

19 MR SALEEBY Your Honor, I think we need to
20 approach before he makes a mistake

21 THE COURT All right

22 MR CLARK Well, I'm not going to make a
23 mistake

24 (Whereupon, a bench conference was held off the
25 record in the presence of the jury, but out of hearing of

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1 the jury)

2 THE COURT Yes, sir, Mr Clark

3 Q Mr Young, did you ever see this box that day?

4 A No

5 Q Did you ever look inside of Mr Jackson's car?

6 A No

7 Q And do you know what was in that box? I guess
8 not if you never saw it?

9 A No

10 Q Okay, and I believe you testified that you
11 actually heard Mr Clea say, Bubba's going to get a gun?

12 A Yeah

13 Q You heard him say that?

14 A Yeah

15 Q How many times did you hear him say that?

16 A Like two times

17 Q Two times, and did you ever hear a response to
18 that?

19 A I did hear Bubba say, no, I ain't got no gun, I
20 ain't got no gun

21 Q You heard him say that?

22 A Yeah

23 Q Did you ever hear Mr Clea say, show me your
24 hands?

25 A I don't think so

1 Q Now, when you came -- and after when you saw
2 Mr Clea shooting, that was the first set of shots that
3 you heard?

4 A Yeah

5 Q And you said Mr Jackson was actually in the
6 car, right?

7 A Yeah, he had his head like in there, the back
8 side of the passenger side

9 Q The passenger side?

10 A Yeah on -- yeah, in the back, the backdoor

11 Q He wasn't standing on the driver's side by the
12 open door, was he?

13 A No, no, no

14 Q And you heard Mr Clea say, he's got a gun,
15 twice?

16 A Yeah

17 Q All right, and could you see Mr Jackson's
18 hands?

19 A Yeah, I could have seen them?

20 Q Both of them?

21 A Yeah -- well, I can't remember I can't
22 remember

23 Q You can't remember whether you saw his hand or
24 not?

25 A No, no

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1 Q And you can't really say what he might have
2 had, could you?

3 A No

4 Q Because you couldn't see it?

5 A No

6 Q All right, and you said when you came back,
7 Julia Mae (phonetic) -- what's her name, Julia Knox?

8 A Yeah

9 Q She was at the scene already?

10 A When I came back, yes

11 Q And she was there by herself, wasn't she?

12 A Yeah

13 Q And do you know how long she had been there by
14 herself?

15 A No

16 Q How long after the shooting stopped did you
17 come back?

18 A Like 5 to 7 minutes

19 Q 5 to 7 minutes, the shooting had stopped, and
20 that's when you came back And you said Julia Knox was
21 there, she was the only person there when you got back?

22 A Yeah

23 Q And what did you see -- what did you see her
24 do?

25 A I just saw her just looking at BoBo

- 1 Q All right
- 2 A Mr Pollard's body
- 3 Q Do you know whether she had been in the car or
- 4 not or anywhere over there?
- 5 A No
- 6 Q You don't know, do you? Nobody else was there,
- 7 were they?
- 8 A No
- 9 Q Looking at State's Exhibit -- I believe it's 1,
- 10 this is the trailer that you guys were at, right?
- 11 A Yeah
- 12 Q The dog houses were back near these trees?
- 13 A Uh-huh
- 14 Q And you said you ran where, Council's house?
- 15 A Yeah
- 16 Q What's his last name?
- 17 A Hunter
- 18 Q Council Hunter?
- 19 A Yeah
- 20 Q Is his house shown on this picture?
- 21 A Yeah
- 22 Q Is it this one?
- 23 A Yeah
- 24 Q How far of a distance is that, do you know?
- 25 A No, not exactly, no

- 1 Q How long did it take you to run from here to
2 Council's house?
- 3 A Not that long
- 4 Q Not that long?
- 5 A Not that long
- 6 Q You were running pretty fast?
- 7 A Yeah
- 8 Q How old are you?
- 9 A 24
- 10 Q 24, you were 22 when this happened or 23?
- 11 A (No response)
- 12 Q You were a little bit younger?
- 13 A Yeah
- 14 Q Okay, so you ran over to Council's house, and
15 when you came back you said Julia Knox was at the scene
16 by herself?
- 17 A Yeah
- 18 Q And when you got back, what did you see her do,
19 if anything?
- 20 A No, she was just looking at the body
- 21 Q Okay
- 22 A Yeah
- 23 Q And you said the gunshots had stopped, 5 to 7,
24 before you came back?
- 25 A Yeah

1 Q All right, and was there anybody else over
2 there?

3 A No

4 Q All right, and at 3 16 you gave a statement to
5 Wesley Gardner, didn't you?

6 A Yeah

7 Q And you wrote it out, right?

8 A The next day, right?

9 Q Is that the next day?

10 A Yeah

11 Q The 26th is when you gave the statement?

12 A Yeah

13 Q And you don't know what Julia Mae Young (sic)
14 -- or what is her name again, Knox, right?

15 A Yeah

16 Q You don't know what she was doing at the scene
17 before you got there, do you?

18 A No

19 MR CLARK Okay, thank you, sir I think
20 that's all

21 MR SALEEBY Leave it up there

22 MR CLARK You want to use that?

23 MR SALEEBY Yes

24 MR CLARK That's all I have, Your Honor

25 REDIRECT EXAMINATION BY MR SALEEBY

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1 Q When you came back over there, was she behind
2 the trailer or next to the property on the woods

3 A She was like standing right next to me about to
4 walk across over the line

5 Q Right in here?

6 A Yeah

7 Q Do y'all go in the backyard?

8 A No, she did

9 Q While you were there?

10 A Yeah

11 Q Okay, and I believe you said you heard Mr Clea
12 say, Bubba's going to get a gun and you heard Bubba say
13 something in response twice, didn't he?

14 A Yeah, he said, I don't have no gun

15 Q He said that twice?

16 A Yeah

17 MR SALEEBY Okay, that's all I ask if this
18 witness could be excused

19 THE COURT Any further examination of this
20 witness?

21 MR CLARK No, sir

22 THE COURT All right, sir, you may step down
23 There is no objection, you may be excused

24 (The witness leaves the witness stand)
25

--- END OF VOLUME ONE ---

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VOLUME TWO

MR SALEEBY Summon our next witness

JULIA KNOX, after being first duly sworn,
testified as follows

THE CLERK Have seat up here, please State
your full name, spell your last name, please, ma'am

THE WITNESS Julia Knox

THE CLERK Spell your last name

THE WITNESS K-n-o-x

DIRECT EXAMINATION BY MR SALEEBY

Q Ms Knox, I want you to get close to the
microphone and speak up so the members of the jury can
hear you

A Yes, sir

Q Where do you live?

A 4520 Lizzard (phonetic) Drive

Q What part of the county is that?

A Rembert

Q How long have you lived in Rembert?

A I'd say about -- I born in Rembert but I went to
New York So, therefore, I was back here about 20 years

Q All right, what kin were you to James Pollard?

A Auntie

Q And what kin to Charles Jackson?

A Auntie

1 Q Did you know Lee Powell -- do you know him?

2 A No, sir, I don't know him

3 Q Did you know Maurice Young?

4 A Yes, sir

5 Q Is he any kin to you?

6 A No, sir

7 Q Do you know Reggie Clea?

8 A Yes, sir

9 Q Any kin to you?

10 A No, sir

11 Q All right, I want to ask you about the afternoon
12 of Wednesday, February the 25th of last year, 2004 Did
13 you have the occasion to be on Dinkins Mill Road close to
14 Mr Pollard's trailer, out on the road?

15 A I was not near the trailer but I was on the road
16 where the trailer was Yes, sir, I was on the road but
17 not at the trailer

18 Q Okay, did you have -- why were you out on the
19 road? What were you getting -- what were you doing?

20 A I was trying to catch a ride home

21 Q All right, and how far away did you live at the
22 time?

23 A From where

24 Q From where you were

25 A I'd say less than a mile

1 Q Did you happen to see any vehicles turn into
2 that driveway to go to Mr Pollard's trailer?

3 A I saw Reggie Clea, Lee, in the truck and the dog
4 on the back of the truck

5 Q Dogs or dog houses?

6 A Dog houses and James Pollard and Maurice in the
7 car behind them, while I was out on the road

8 Q And where did they -- where did they head to in
9 those two vehicles?

10 A They head back of the trailer

11 Q Did you stand on the road still trying to get a
12 ride?

13 A Well, I wasn't standing there When they was
14 coming from 521, I moved back and let them turn in and
15 then in And then I walked over and I went to look back,
16 being nosey, and then Charlie Jackson came

17 Q Was that a few minutes after the other vehicles
18 had gone by?

19 A Yes, sir

20 Q All right, when Mr Jackson pulled up, do you
21 remember what he was driving?

22 A He was driving a green car about -- I didn't
23 pay no attention of the name of the car

24 Q All right, when he -- when he pulled up on
25 Dinkins Mill Road, what did you do?

1 A I jumped in the car and said, take me home He
2 said, I can't take you home now, Auntie, I got to talk to
3 someone, like that

4 And so he said, you go to Charlie Jr 's house
5 and wait for me and I'll take you home

6 Q And does Charlie Jr live next door?

7 A Yes, sir

8 Q This is State's Exhibit Number 1 Mr
9 Pollard's trailer here, does this house right here belong
10 to Charlie Hunter, Jr ?

11 A Yes, sir

12 Q That's different from Council Hunter, he lives
13 in this trailer right here, is that right?

14 A Yes, sir

15 Q All right, so did you go next door to Mr
16 Hunter's house?

17 A Yes, sir, I did

18 Q And who all was there?

19 A It was Charlie Jr , Paul Jenkins and Sheila
20 Portee

21 Q Now, how long was it before you heard something
22 next door at the Pollard house, something unusual?

23 A Before -- I set on the porch and I thought
24 Charles Jackson would come right on back and pick me up
25 And so about less than 15 minutes, you know -- 15 minutes

1 after I came back to Charles

2 Q All right, a few minutes after -- 5 minutes,
3 you say, after you have been over there at the Hunter's
4 house, what did you hear next door?

5 A Shooting

6 Q Shooting?

7 A Yes, sir

8 Q All right, when you heard the shooting, where
9 did you go and what did you do?

10 A I didn't do anything I, you know, I said,
11 wow, I wonder what they're shooting like that for, you
12 know I didn't look or nothing And ain't nobody come
13 in while I was sitting on the porch at Charlie Jr 's
14 house

15 So I thought somebody was just shooting, you
16 know And so

17 Q All right, after the shooting, did you stay in
18 the house or did you go on the porch?

19 A After the shooting? I never moved I was
20 still waiting for Charlie Jackson to come pick me up And
21 then that's when Maurice came running from over there and
22 then I still was on the porch I hollered out and I
23 said, Maurice, what going on? And he kept looking back
24 into the back

25 And so I said, Maurice, what going on? So he

1 went to Council Hunter house

2 Q And were you on the porch when you saw Mr
3 Young?

4 A Coming from over there

5 Q Coming from Mr Pollard's?

6 A Yes, sir, I never look over there or nothing

7 Q And headed toward Council Hunter's place?

8 A Yes, sir

9 Q All right, you hollered at him but he didn't
10 answer?

11 A No, sir

12 Q All right, then what did you do and what did
13 you see?

14 A So that when Sheila Portee called me She was
15 in the backroom, a bedroom that you can see right over
16 there in the trailer

17 Q Did you go back into that bedroom?

18 A Yes, I went over there and she said ---

19 MR CLARK Objection, Your Honor

20 Q Don't tell me what she said, but did you look
21 into the Pollard's yard?

22 A Yes, sir

23 Q What could you see when you looked out the
24 backdoor of Charlie Hunter, Jr 's house and looked into
25 Mr Pollard's yard? What did you see?

1 A I saw BoBo laying down there And I was saying,
2 I can't see Charlie Jackson car I said, I hope he's not
3 there So, I

4 Q Okay, take a minute

5 (Pause)

6 Q Just hold on You need that? Now, I'm going to
7 ask you -- you answered the one question, I'm going to ask
8 you another one

9 When you went to that back bedroom and you
10 looked over into Mr Pollard's backyard, who did you see?

11 A I saw BoBo on the ground, face up And I kept
12 looking and I kept saying, Charlie Jackson, I didn't see
13 no car, where it at And then

14 Q All right, let me ask you this You could see
15 BoBo, your nephew ---

16 A Yes, sir

17 Q --- lying on the ground And was he face up or
18 face down?

19 A BoBo was face up

20 Q At that point could you see Bubba, see Charles
21 Jackson, could you see his car?

22 A No, sir, I couldn't

23 Q All right, did you leave that room and go some
24 place else?

25 A I -- she kept talking to me And I wanted to

1 run and see if I can see Charlie Jackson's car was still
2 there, and if it really was James Pollard was -- that was
3 him on the ground

4 But then that's when Lee came running from back
5 there

6 Q All right, and when you say Lee ---

7 A And then he told me ---

8 Q All right, wait a minute Where were you when
9 you saw Lee Powell?

10 A I was heading out the door to go over there and
11 I asked him ---

12 Q All right, and where did Lee Powell come from?

13 A He come from the other -- back of Charlie Jr 's
14 He came from the trailer Therefore, I was at Charlie
15 Hunter's house, so he had to pass through there And so
16 I holler -- I opened the door and Lee was screaming out
17 And then that's when ---

18 Q When you saw Lee, was he saying anything?

19 A Yes, sir, he said, Reggie ---

20 MR CLARK Objection, Your Honor, objection

21 MR SALEEBY I asked if she overheard
22 something, Your Honor, Lee Powell who's already testified

23 MR CLARK He's talking to her I didn't
24 understand this is something she overheard I understood
25 it to be a conversation ---

1 MR SALEEBY No, sir

2 THE COURT Objection is overruled, you may
3 answer

4 Q What did you hear Lee Powell say?

5 A He was moving and so he said, Reggie, man,
6 you're going crazy That's enough shooting

7 And then, I said, Lee, Lee, Lee And he
8 couldn't hear me He was heading to the road out there
9 And so, I just couldn't walk, I couldn't go out there, I
10 don't know why

11 Q What was the next thing you saw?

12 A I went back in the bedroom to make sure is it
13 real And then, oh, God, that's when I saw Reggie came
14 out with the truck and ran over James Pollard

15 Q Reggie left

16 A Yes, sir

17 Q In his truck?

18 A Yes, sir

19 Q And where did he come from?

20 A Come from the other side near through by Charlie
21 Jr and pick up Lee

22 Q And picked up Lee, and then where did he go,
23 where did they go together?

24 A They went left Where they went, I don't know,
25 sir

1 Q After Reggie Clea left the trailer, did you go
2 over to Mr Pollard's yard?

3 A Yes, sir, yes

4 Q Were you by yourself or was anybody with you the
5 first time you went over there?

6 A I went by myself the first time

7 Q And when you went over there, tell us what you
8 did and what you saw?

9 A I went over there the first time, I sit there
10 and I looked I said, oh, Charlie -- Charlie -- my
11 nephew, Charlie Jackson, I said, oh, God, two of them,
12 like that, two of them

13 And I stand by Bobo and I looked at him and I
14 said, BoBo? There were all those bullets and no blood

15 And I looked over at Charlie Jackson and I seen
16 he was face down

17 Q Charles Jackson was face down?

18 A And I said ---

19 Q Ma'am, was Charles Jackson face down?

20 A Yes, sir

21 Q And Bobo was face up?

22 A And I said, two of them So I walked -- Bubba
23 -- I was from back and forth and back and forth so I ran

24 Q Did you leave and try to get help?

25 A Yes, sir, I ran and I said, somebody help me,

1 help me, help me Call the police Call the police
2 Everybody was scared to come out
3 Q Were you able to get any help next door?
4 A None
5 Q Did you go back to the trailer, Mr Pollard's
6 trailer?
7 A I went to Council Hunter's house
8 Q All right, did you get any help there? Did
9 anybody help you?
10 A Maurice and this other guy, he -- they came with
11 me back over there So, I ran ---
12 Q Did anybody at Council Hunter's help you call
13 the police is my question?
14 A No, sir, no
15 Q So you went back to Mr Pollard's trailer?
16 A Yes, not by myself
17 Q All right, when you got there what did you do?
18 A I went back out again, you know, looking at both
19 of them trying to get my head together And then I saw
20 the cell
21 Q You saw what?
22 A The telephone
23 Q The cell phone?
24 A And the money
25 Q And where was it?

1 A It was between there and then -- and the money

2 Q Where was it, ma'am?

3 A It wasn't so close to BoBo It was about from
4 this, about that from here

5 Q From where to where? You saw a cell phone and
6 some money, how close to Bobo?

7 A I say from

8 Q Show us

9 A BoBo was this -- BoBo was here and about that
10 farther I saw the cell and the money And I snatched it
11 up and I ran and I called 911 off the cell phone And
12 then after that I called my family and tell them to come

13 Q Did you call Helen Jackson?

14 A Yes, sir

15 Q And what did you do with the cell phone and the
16 money?

17 A I put it in my coat pocket and I went and called
18 Helen -- Helen that So, I went back over there And so
19 more -- more people was over there then

20 Q And you were charged with the theft of that
21 cell phone and that money, weren't you?

22 A Yes, that's the only way I could call 911, you
23 know

24 Q But you kept it, you didn't turn it back in,
25 did you?

1 A. No, sir, I didn't kept it
2 Q Did you take anything else from the scene?
3 A No, sir
4 Q Did you take any weapons from the scene?
5 A No, sir
6 Q Did you take any cartridge casings from the
7 scene?
8 A No, sir
9 Q Did you see any weapons on the scene?
10 A No, sir
11 MR SALEEBY Please answer any questions Mr
12 Clark has for you
13 THE WITNESS Okay
14 **CROSS EXAMINATION BY MR CLARK**
15 Q Ms Knox, you said both of these young men were
16 your nephews?
17 A Yes, sir
18 Q And even though you were upset, you tampered
19 with this scene, didn't you, before the police got there,
20 didn't you?
21 A I didn't tamper it I was reaching for a
22 telephone to call 911 for help and ---
23 Q And you -- go ahead, ma'am
24 A It was one, you know, I didn't tamper I pick
25 it up and I ---

1 Q Isn't it true that while you were there -- you
2 were there a long time by yourself before anybody came,
3 weren't you?

4 A No, sir

5 Q You deny that you were there 5 to 7 minutes by
6 yourself?

7 A No, I never -- no, I was ---

8 Q You weren't there?

9 A No, sir

10 Q All right, and isn't it true, Ms Knox, that
11 you took weapons away from that scene?

12 A No, sir

13 Q Isn't it true that you went in this box and
14 took a gun out this box away from the scene?

15 A No, sir

16 Q Well, Ms Knox, you have a history of
17 dishonesty, don't you?

18 A (No response)

19 Q Weren't you convicted in 1991 for shoplifting?

20 A Yes, sir

21 Q Now weren't you convicted -- that was in August
22 of '91 Then in October -- December of '91 you were
23 convicted again of shoplifting?

24 MR SALEEBY Your Honor, I believe we're
25 supposed to stay within 10 years, we don't object

nov 11 A And brown Yes, sir

12 Q You were convicted twice in 1991 for

13 shoplifting, weren't you?

14 A Yes, sir

15 Q And then you were convicted again in 1994 for

16 shoplifting, weren't you?

17 A Yes, sir

18 Q And then you were convicted again in 1997, in

19 August, for shoplifting, weren't you?

20 A Yes, sir

21 Q And then you were convicted again in October for

22 shoplifting, 1997, weren't you?

23 A Well -- yes, I said, yes, sir but I didn't do it

24 but yes

25 Q But you were convicted in a court of law for

stealing basically, weren't you?

26 A Taking -- yes, stealing, yeah, yeah

27 Q Is there any difference?

28 A Well ---

29 Q There's no difference, is there?

30 A No, but ---

31 Q Right And then in 2001 you were convicted

32 again of shoplifting, weren't you?

33 A Not -- no You have that one wrong Five times

34 I was convicted

1 Q You deny that in June of 2001 you were charged
2 with shoplifting and you were convicted, sentenced to
3 \$845 00 and 30 days in jail, you deny that, in 2001?

4 A Yes, if you say, yes

5 Q You admit it now, right?

6 A Well, I just want to get on with it, you know

7 Q Right, you want to get past that part of this
8 case, right?

9 A No, sir, I don't ---

10 Q But you admit ---

11 A I ---

12 MR SALEEBY Let her finish

13 Q I'm sorry, go ahead Are you done?

14 A I want to get on about what you talking about a
15 pistol and all that What that got to do with shoplifting
16 and -- and me taking a pistol, you know, that's different
17 when two people have got killed the way they got killed,
18 like dogs

19 Q Right, but you don't know what happened at that
20 scene, do you, because you weren't there, were you?

21 A I wasn't there

22 Q Right

23 A But I, you know -- I was near there

24 Q But you couldn't see what was happening, Ms
25 Knox, could you?

- 1 A I couldn't see that shooting but I saw two my
2 nephews down on the ground
- 3 Q Right
- 4 A One head up and one down, one pleading for his
5 life
- 6 Q Did you ever hear him say that?
- 7 A No, but anybody head is down like that and shot
8 in his head, they are pleading for their life
- 9 Q Ms Knox, the fact of the matter, you weren't
10 there, you don't know what happened, do you?
- 11 A No, I don't know but I'm just saying like, you
12 know
- 13 Q But you do admit you were convicted at least
14 five times for shoplifting, right?
- 15 A Yes, that's -- yes, sir
- 16 Q Right, and you also admitted that you were
17 convicted on March 17 of 2004 of grand larceny or larceny,
18 petit larceny, for stealing from this crime scene, weren't
19 you?
- 20 A I didn't steal
- 21 Q Okay
- 22 A I tell what I took
- 23 Q All right You were convicted of larceny
24 though, weren't you?
- 25 A Petit larceny, yes, sir

1 Q Right, and that's involving this crime scene,
2 right?

3 A Yes, sir, I needed the phone My mind wasn't
4 right

5 Q All right, and ---

6 A But I give it back

7 Q All right, now, when -- you were there when the
8 officers got on the scene, didn't you? You were there
9 when the officers came, weren't you?

10 A Yes, sir

11 Q And you didn't tell them that you took stuff and
12 put it in your pocket, did you, at that time when they
13 came?

14 A No, sir, I didn't -- I didn't ---

15 Q You didn't tell them ---

16 A --- because I didn't know that I had any You
17 know, my mind was on my two nephews, you know

18 Q You're telling this jury that you picked up
19 things from this crime scene and when the police got
20 there, you didn't know you had it? Is that what you are
21 saying, ma'am?

22 A I didn't leave the scene, that's what you say
23 So if I had took the pistol, would I have been showing --
24 how many pistol it was?

25 Q Well, Ms -- well, if you want to, I'm going to

1 ask you about that right now, then

2 When the police first got there, you didn't tell
3 them you had taken things from that scene, did you?

4 A They didn't ask I ain't know, I was right
5 there

6 Q So, they didn't ask you if you had all that
7 stuff in your pockets and you never told them, right?

8 A Stuff, pistol?

9 Q Right, pistol

10 A I don't know about that, sir

11 Q All right, you asked me where could you have
12 taken it Is this the trailer? Can you see this from
13 where you are, ma'am?

14 A (No response)

15 Q Can you see it? If you can't -- can you see
16 this trailer, ma'am?

17 A I -- I -- I see it

18 Q All right, and you were at another house close
19 by there, weren't you?

20 A Yes

21 Q And who -- was that Council Hunter's house?

22 A His brother, Charlie Jr

23 Q Right, and so you could have very easily taken
24 guns, money, cell phones, anything you wanted from that
25 scene and taken it to Charlie Jr 's house and been back

1 before the police got there, couldn't you?

2 A Yes, I could have but I -- while two of my
3 nephews is death, I ain't been thinking right on no gun or
4 nothing

5 Q But you're telling this jury you were thinking
6 about putting the money in your pocket that you found,
7 right?

8 A Well, found, I just -- the phone, I needed the
9 telephone to make a call

10 Q Didn't none of these people have phones in their
11 house?

12 A No, sir

13 Q All right, and why did you need the money that
14 you admit to stealing from these dead bodies? Why did you
15 need that? Did you need that to call the police too?

16 A Because at the time when I was there, when I
17 took the phone and the money, I wasn't by myself then

18 Q Who was with you?

19 A It was Maurice, Paul Jenkins, they was right
20 there right behind my back

21 Q So all these people were there?

22 A Yes, they -- that's the second time and they --
23 that's when I asked for help and I look around that's when
24 I saw the phone

25 Q And the money?

1 A And the money No, I saw the phone The phone
2 was on my mind calling 911, like that

3 Q And the money?

4 A And the money

5 Q And the guns, right?

6 A No guns, sir

7 Q And you're saying that someone was there when
8 you picked up these items? You're saying Maurice Young
9 was with you, is that your testimony?

10 A He was with me He -- he was behind me I
11 been hollering out for help

12 Q You were there for a while by yourself, weren't
13 you?

14 A No, sir

15 Q He was with you at all times?

16 A Not the first time I ran over there

17 Q Right, and that's what I'm saying You went
18 there one time, picked up these items, money, cell phone
19 ---

20 A I didn't pick up nothing then I ran -- I ran
21 -- I couldn't stop running I ran for help

22 Q All right, and then you went back, right?

23 A Not by myself

24 Q Who was with you?

25 A Maurice and Paul Jenkins

1 Q And where did you all leave from, ma'am? Where
2 did you and Maurice and Paul Jenkins leave from?

3 A I was begging people to help me

4 Q All right

5 A Help me, help me

6 Q Maurice went with you back to that scene,
7 right?

8 A He -- yes and -- yes

9 Q So you deny that you were already there when
10 Maurice got there? You deny that?

11 A I didn't say I been there I said, he went
12 back with me

13 Q Right

14 A They went back with me I ran and asked for
15 help, somebody to help, help, help me

16 Q And did you steal the first time or the second
17 time from this crime scene where two people are laying on
18 the ground? Was it the first time or the second time
19 that you committed the theft?

20 A If you call it theft, the second time, sir

21 Q The second time, and you were there by
22 yourself, weren't you?

23 A No, Maurice and Paul Jenkins came with me and
24 helped me

25 Q So, Maurice -- they saw you take this stuff?

1 A Well, I was all on the ground moving and
2 crawling from one to that one and crying And then I
3 brought myself together and Charlie Jr came over and
4 said, I can't call no 911, I can't get to no phone

5 And so, I kept looking around and looking
6 around, boom, there's a phone right there in my eyes

7 Q And boom, there was money, right?

8 A Money

9 Q That you took?

10 A Yeah

11 Q And put in your pocket, right?

12 A I don't know how I did it or what, but all I
13 wanted is that telephone for to call 911

14 Q But all you wanted was the telephone but you
15 got the money as well, right? You don't deny that, do
16 you? Do you deny to this jury that you took money off
17 those bodies? Do you deny that?

18 A I didn't took it off the body It was near the
19 phone

20 Q It was near the phone?

21 A Yes, I picked it up and went running back over
22 there because I couldn't call because it was near the
23 woods I couldn't get the sign So, I ran back over to
24 Charlie Jr them in the open and called 911

25 Q Now, was this money spread out? Was it in a

1 wallet or was it in a pocket? Where did you get it from,
2 Ms Knox? Where did you get it from?

3 A I get it from?

4 Q That's what I'm asking you, ma'am, where did
5 you get this money from at this crime scene? Where was
6 it? Can you show me? Can you tell me where it was in
7 relation to these people?

8 A I told you where it was

9 Q Where?

10 A It was -- it was -- it was on the ground

11 Q Okay

12 A And the telephone too and, you know

13 Q All right, on the ground, all right

14 MR CLARK May I ask the witness to step down,
15 Your Honor

16 THE COURT Yes

17 Q Ms Knox, I'm going to ask you to come around
18 here for a minute, please

19 (The witness steps down from the witness stand)

20 Q This is State's Exhibit Number 2 showing the
21 trailer and showing where Mr Jackson was found and where
22 Mr Pollard was found

23 I want you to tell the ladies and gentlemen of
24 the jury where was that money that you stole from this
25 scene Where was it?

- 1 A About well this is ---
- 2 Q Can you speak up so the jury can hear you
- 3 A I said, I was in between them So, the money
- 4 was there at Pollard's body, like that far, and the
- 5 telephone
- 6 Q How much of a distance was it from you, this
- 7 wall over here, was it that much distance between Pollard
- 8 and where you found this money?
- 9 A Near that wall?
- 10 Q Yes, ma'am, how far? Was it 10 feet, 20 feet?
- 11 A I don't -- you know, but I'm just -- just like
- 12 you got me back on another track, why you brought me down
- 13 here and then ---
- 14 Q Well, I'm asking you how far was the money away
- 15 from these victims, where was it? Was it on this side,
- 16 in his pocket, in front of him, on the left side, in
- 17 between? Where was it when you picked up this money that
- 18 you admit to stealing?
- 19 A It was about over -- over that -- over this
- 20 side here where the phone and the money because I was in
- 21 between this -- both of them and I then all I know -- the
- 22 phone
- 23 Q All right, so the money was on the right side
- 24 near the woods, right, is that what you're saying?
- 25 A It wasn't over in the woods

1 Q Well, tell us where it was, Ms Knox I'm
2 asking you ---

3 A All I did was try to get that phone to call
4 911 That's all, sir

5 Q All right, you've already told me about the
6 phone but I'm asking you about the money that you put in
7 your pocket that you admit to Where was it?

8 A It was near the phone

9 Q Where -- can you tell -- I'm asking you to
10 point out on here where it was

11 A (Witness complied)

12 Q So you're saying the money that you took was
13 behind the tree over here?

14 A The tree

15 Q These green marks?

16 A Yes, sir, it ain't been this -- it was, I
17 believe

18 Q I can't hear you, ma'am, what did you say?

19 A It wasn't that further up but I could see it
20 and the wind was blowing the money I picked it up I
21 picked it up

22 Q All right

23 A And I called 911, sir

24 Q Okay, will you have a seat back up there,
25 please

1 (The witness returns to the witness stand)

2 Q So, you admit picking up the phone and the
3 money?

4 A Yes, sir

5 Q But you deny taking guns away from that scene?

6 A I didn't take no gun I ain't see no gun, sir

7 Q Did the deputies ever do a gunshot residue test
8 on your hands to see if you handled the weapon that day?

9 A Yes, sir

10 Q They did?

11 A Say what now?

12 Q Did they ever swab your hands to see if you
13 handled the gun that day?

14 A Oh, I thought you are talking about did I take
15 a lie detector, that's what I thought you said No

16 Q Now, Ms Knox, you were -- so, you found both
17 your relatives on the ground dead and all you could think
18 of was to steal and take things away from the scene?

19 A The telephone

20 Q The money too according to your admission,
21 right?

22 A The telephone

23 Q You didn't take the money?

24 A I picked up the telephone and the money The
25 telephone was on my mind

1 Q Right

2 A The telephone brought me back to my senses
3 because ---

4 Q Okay

5 A --- all that

6 Q All right, and when Officer Turner got there,
7 you surely told him that you had taken things from that
8 scene, didn't you? When they got there you immediately
9 went to them and said, hey look, I moved this stuff,
10 didn't you?

11 A He been to the scene?

12 Q I'm asking you, I wasn't there When the
13 officer, any officer -- were you there when any police
14 officer got there?

15 A They had to move me from the body and took me
16 and they asked me no question like that over that

17 Q I understand because they had no way of
18 knowing, did they?

19 A Well, hey, I -- they set me in the police car

20 Q Right, and when they ---

21 A And for the, you know -- I was scared to saw
22 who -- who did it because it was so many people was out
23 there I was scared of my life too

24 Q Right, my question to you is, you surely told
25 law enforcement, the first opportunity that you got, that

1 you tampered with this scene, didn't you?

2 A I been done forgot about it, sir, honest to
3 God

4 Q So, in a few minutes that -- how long did it
5 take for the officers to get there, ma'am? How long did
6 it take?

7 A How long did it take?

8 Q Yes, ma'am

9 A I say about seven minutes or less or more

10 Q And you forgot about the fact that you had
11 picked up these items and you forgot -- you didn't tell
12 them, did you?

13 A No, sir, I did not -- I did not tell them

14 Q And you were hysterical when they got there,
15 you were very upset, weren't you?

16 A Yes, sir, I was

17 Q All right, and at the same time you admit you
18 had the man who was -- you had his money in your pocket,
19 right?

20 A Yes, I told this police who -- when I give it
21 to them I said, I didn't know I had it I game them the
22 money and then I said, oh, I got the telephone too

23 Q Ms Knox, isn't it true that you didn't admit
24 to tampering with this scene until after 6 00 when
25 Captain Dennis, who is the Sheriff now but was a Chief

1 Deputy then, approached you about it? Isn't it true they
2 had to approach you about what you did? You didn't
3 voluntarily tell them anything, isn't it true?

4 A I didn't know I had the phone

5 Q You didn't know you had it?

6 A I swear I didn't

7 Q I guess you don't know you moved the guns too,
8 right?

9 A I didn't move no guns I ain't see no gun

10 Q Okay

11 A I still was there So, you know, I didn't
12 move no gun I didn't know nothing about no gun

13 Q Did you admit, Ms Knox, that you were
14 dishonest about what you did that day? Do you admit
15 that, ma'am?

16 A Repeat that

17 Q Do you, Julia Knox, admit that you were
18 dishonest about what you did at the crime scene? With
19 Charles Jackson's family, James Pollard's family, Jamie
20 Turner, Rick Nelson, all the other officers that were
21 there, don't you admit that you were dishonest about what
22 you did at the scene?

23 A How can you and then you -- you -- you can't be
24 yourself I was just like I was going faint I look
25 around this way and there two -- there -- they were two

1 my nephews there All I want was the phone

2 Q You didn't even give that back until they
3 demanded it from you, did you?

4 A They didn't demand it They asked just for the
5 money and I give the money and I said, I also have the
6 cell phone too that I called 911, all of it

7 Q All right, so what really happened was when law
8 enforcement got there, they secured the scene, they put
9 you in the police car, they talked to you, right? Is
10 that right, ma'am?

11 A No Really they didn't put me in the police
12 car

13 Q Well, that's what you said earlier?

14 A That's when after I -- after I give back the
15 phone and the money

16 Q Right When do you remember that this incident
17 happened, about midday about 2 00? Wasn't it about 2 00
18 or so when this happened?

19 A Sir, I right now, I don't know what time it
20 was

21 Q The fact of the matter, it was several hours
22 later when Mr Dennis came and talked to you about what
23 you did, didn't he? Wasn't it?

24 A Wasn't -- I wasn't paying no attention of the
25 time If you think that was -- Mr Dennis say that to

1 you, it is there I was -- I was not myself

2 Q The fact of the matter is, after this incident
3 and after the crime scene was roped off, you went on
4 about your business, didn't you?

5 A No, sir

6 Q Well, where were you when they came back after
7 6 00 and said, hey, Ms Knox, you have taken things from
8 this crime scene? Where were you then?

9 A I was -- I was -- I was right there So, hey

10

11 Q You were back there, right?

12 A Back then?

13 Q Well, where were you? I'm asking you the
14 question, where were you?

15 A To tell you the truth, I was moved this way and
16 that way and that way, and I don't know, you know, about
17 people trying to get me together

18 Q Right, the fact of the matter is, today you
19 don't know what you did at the crime scene, do you?

20 A I know what I did But I didn't take no -- no
21 whatever gunshot -- gun or whatever you all saying But
22 hey, for what?

23 Q Well, to protect your relatives, that's why you
24 did it?

25 A For what?

1 Q To protect them, isn't that why you did it?

2 A For what, and protect them? They dead Wasn't
3 they shot? Two of them shot If they been -- oh, I don't
4 know

5 Q You took the guns to make it seem like they
6 were unarmed, didn't you?

7 A (No response)

8 Q Isn't that why you did it, Ms Knox?

9 A They wasn't armed

10 MR CLARK Ms Knox, that's all I have, thank
11 you, ma'am

12 MR SALEEBY I don't have any questions I ask
13 that she be excused

14 THE COURT Thank you, ma'am, you may step down
15 (The witness leaves the witness stand)

16 THE COURT Ladies and gentlemen, we will break
17 for lunch at this time I will be back at 2 15 Please
18 remember not to talk about the case

19 THE BAILIFF Remain seated Court's still in
20 session

21 THE COURT Remember you are not to discuss the
22 case or allow anyone to talk in your presence about the
23 case

24 The jury only is excused Be back at 2 15
25 (Jury exits the courtroom)

1 THE COURT We will be in recess until 2 15

2 MR CLARK Your Honor, may it please the Court
3 May I put on the record -- I want to put on the record
4 when we come back what I was going to ask Mr Maurice
5 Young

6 THE COURT Yes, sir

7 MR CLARK All right

8 (Whereupon, a recess was taken concluding at
9 2 20 p m)

10 THE COURT Mr Clark?

11 MR CLARK Thank you, Your Honor, may it please
12 the Court

13 THE COURT Yes, sir

14 MR CLARK I just want to put on the record
15 that I intended to question, I believe, Mr Hunter --
16 Maurice Young about the reputation -- well, I asked him
17 about the reputation for violence of the decedents in this
18 case And I intended to ask him about specific details
19 regarding prior violent acts that they had committed

20 And I advised the Court that I would have asked
21 him the same questions and I asked Mr Powell earlier I
22 just wanted to put that on the record

23 THE COURT All right, the record will so
24 reflect that there was a sidebar conversation and the
25 court sustained the State's objection

1 MR CLARK Thank you, Your Honor

2 THE COURT Anything else before we bring the
3 jury in?

4 MR SALEEBY No, sir

5 MR CLARK No, sir, Your Honor

6 THE COURT Bring them on

7 (Jury returns to the courtroom)

8 THE COURT Ladies and gentlemen, during the
9 next break I want you all to elect one of you to serve as
10 the foreperson of the jury And from the -- any of you
11 who were among the first 12 selected would qualify to
12 serve as foreperson of the jury The alternates do not
13 qualify to serve as the foreperson, only you all

14 So during the next break, among other things I
15 want you all to select a foreperson and then announce the
16 foreperson who will sit in the first seat here when you
17 all return to the courtroom

18 The job of the foreperson is to serve as the
19 spokesperson for the jury, to preside over the jury
20 deliberations and to write the verdict form representing
21 the unanimous verdict of the jury when the jury reaches a
22 unanimous verdict

23 Next witness

24 MR SALEEBY Your Honor, we call Helen Jackson
25 to the stand Please come and be sworn

The State v Reginald Tyrell Clea

0387

1 HELEN JACKSON, after being first duly
2 sworn, testified as follows

3 MR CLERK Have seat up here, please State
4 your full name, spell your last name, please

5 THE WITNESS Helen Jackson, J-a-c-k-s-o-n

6 **DIRECT EXAMINATION BY MR SALEEBY**

7 Q Ms Jackson, where do you live?

8 A 6365 Dinkins Mill Road, Rembert, South Carolina

9 Q Dinkins Mill road?

10 A Yes, sir

11 Q How long have you lived in Sumter County?

12 A 34 years

13 Q And how long have you lived in the Rembert
14 section of Sumter County?

15 A 34 years

16 Q Please tell us what your relationship was to the
17 deceased in this case, Charles Jackson also known as
18 Bubba?

19 A My brother

20 Q Older or younger?

21 A Older

22 Q How old was he?

23 A 35

24 Q And where did he work and what did he do?

25 A He didn't work

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- 1 Q When he last worked, where did he work, if you
2 recall?
- 3 A He didn't work
- 4 Q It is hard What kin was James Pollard to you?
- 5 A Nephew
- 6 Q Do you know how old James Pollard was?
- 7 A 19
- 8 Q He was known as BoBo?
- 9 A Yes, sir
- 10 Q And your brother Charles would have been his
11 uncle?
- 12 A Yes, sir
- 13 Q As hard as this is, ma'am, I'd like you to
14 recall last February, 2004, Wednesday, February the 25th
15 Do you recall that day?
- 16 A Yes, sir
- 17 Q Where were you living on that day?
- 18 A 6365 Dinkins Mill Road
- 19 Q The same place you live now?
- 20 A Yes, sir
- 21 Q Did you have an occasion to see your brother
22 some time that afternoon?
- 23 A Yes, sir
- 24 Q Approximately what time?
- 25 A About right at 2 30

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1 Q Approximately 2 30?

2 A Yes, sir

3 Q And what is it that fixes 2 30 in your mind on
4 that day?

5 A Because I had just got back from getting my son
6 from school and he came right at that time

7 Q And half an hour after that did something out of
8 the ordinary happen?

9 A Yes, sir, that's when I got a phone call that my
10 brother and my nephew were gunned down

11 Q All right, we'll get to that next But I'll ask
12 you about your brother at your home You say he got there
13 around 2 30, about the same time you and your son got
14 home?

15 A Yes, sir

16 Q And how many children do you have?

17 A Two

18 Q A boy and a girl or

19 A My daughter is 18 and my son is 10

20 Q Your son is 10

21 A Yes, sir

22 Q And where was he going to school at?

23 A High Hills Elementary

24 Q You pick him up or meet him at the bus stop, how
25 do you get him home?

- 1 A Picks him up
- 2 Q How was your brother traveling?
- 3 A He was driving
- 4 Q And what kind of vehicle was he driving?
- 5 A A green Grand Am
- 6 Q Ma'am?
- 7 A A green Grand Am
- 8 Q A Pontiac Grand Am?
- 9 A Yes, sir
- 10 Q How long did he stay at your house?
- 11 A Probably about 5 -- 5 or 10 minutes, not --
- 12 about 5 minutes at the most
- 13 Q Did anything -- did he -- can you describe his
- 14 demeanor? Was he his normal self or was anything out of
- 15 the ordinary about him?
- 16 A He was his normal self
- 17 Q Before he left, did he do anything or take
- 18 anything?
- 19 A Well, when he left, I walked to the door with
- 20 him That's when he went to the trash pile and retrieved
- 21 that Timberland shoebox off of my trash pile
- 22 Q It was a trash pile Where was that in
- 23 relationship to your house?
- 24 A In my backyard
- 25 Q And what were you doing with that pile other

1 than -- whey did you have a pile of trash there, why
2 wasn't it hauled off? What did you have kept there?

3 A It was like in a little cage and I burn trash in
4 it every now and then

5 Q Now you recall a Timberland shoebox?

6 A Yes, sir

7 Q What made you recall that particular shoebox?

8 A Because I had just cleaned my son room up
9 earlier that day and put the trash out there

10 Q And did you in fact buy some shoes, some
11 Timberland shoes for your son?

12 A Yes, sir, I did

13 Q I'm going to show you State's Exhibit Number 15
14 Do you recognize this?

15 A Yes, sir, I do

16 Q What do you recognize it to be?

17 A A Timberland shoebox

18 Q All right, and there's an item inside the box
19 Can you tell us what that is?

20 A It's a receipt from where I bought the
21 Timberland shoes -- boots and two pair of sneakers for my
22 daughter

23 Q All right, this is the receipt that you got from
24 the purchase?

25 A Yes, sir

1 Q Size 7, is that your son's size?

2 A Yes, sir

3 Q Last year?

4 A Yes, sir

5 Q And there's two other items on this receipt,
6 what are those?

7 A Two pair of sneakers for my daughter

8 Q Did Bubba make any mention to you what he was
9 doing with this or where he was going?

10 A No, sir

11 Q Approximately 30 minutes later, what happened?

12 A I got a phone call

13 Q You received a phone call?

14 A Yes, sir

15 Q Who was it from?

16 A My aunt

17 Q And who is your aunt?

18 A Julia Knox

19 Q All right, and can you tell me what time the
20 phone call came and if your caller I D gave you any more
21 information?

22 A It came in at like 2 54

23 Q And what else could you tell from the caller

24 I D ?

25 A Oh, I can't remember the number at the time that

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1 came up

2 Q Could you tell whose number it was?

3 A It only showed Sumter, South Carolina It
4 didn't show the name or anything

5 Q Did you recall the number or know the number at
6 that time?

7 A No, sir, I didn't

8 Q All right, what kind of condition was she in and
9 what was she telling you?

10 A She was real upset She keep shouting, Helen
11 come up, come up Bubba and Bobo done been gunned down
12 And I keep asking her, where? And she said, up here at
13 BoBo house

14 Q And then where did you go and what did you do?

15 A That's when me and my son left and we went on up
16 there

17 Q And when you got to the trailer, what did you
18 see?

19 A When I pulled up in the yard I could have seen
20 from under the trailer that my brother and my nephew was
21 laying out on the ground My brother was face down, my
22 nephew was face up

23 Q Your brother, Charles Jackson, was face down?

24 A Yes, sir

25 Q And your brother (sic) was face up?

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1 A My nephew was -- my brother was face down, my
2 nephew was face up
3 Q Was there anybody in the backyard when you got
4 there?
5 A When I got there, no, sir It was only like
6 Maurice is standing on the edge of the trailer Like when
7 other people started coming up, then he came back on --
8 into the trailer
9 Q Maurice was in the yard next door?
10 A Yes, sir
11 Q You went to the back and looked then?
12 A Yes, sir
13 Q Did you come back to the front?
14 A Yes, sir
15 Q And did you stay in the front until the police
16 arrived?
17 A Yes, sir
18 MR SALEEBY Please answer any questions Mr
19 Clark has
20 MR CLARK No questions of this witness, Your
21 Honor, thank you
22 THE COURT Okay, ma'am, you may step down
23 MR SALEEBY You may step down and you're free
24 to remain in the courtroom or you can leave if you wish
25 Mr Gardner, come around, Mr Gardner

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1 WESLEY GARDNER, after being first duly
2 sworn, testified as follows

3 THE CLERK Have seat up here, please State
4 your full name, spell your last name, please, sir

5 THE WITNESS Wesley Gardner, G-a-r-d-n-e-r

6 **DIRECT EXAMINATION BY MR SALEEBY**

7 Q Mr Gardner, where do you live?

8 A The Rembert section of Sumter County

9 Q How long you been living in Sumter County?

10 A 48 years

11 Q Who do you work with?

12 A Sumter County Sheriff's office

13 Q How long have you worked with them?

14 A 22 years

15 Q What's your particular job and duties and
16 responsibilities?

17 A On that day I was Lieutenant of Investigations
18 and my responsibilities are to supervise other
19 investigators at that time and also work major crimes

20 Q Did you respond to 5555 Dinkins Road (sic)?

21 A Yes, sir, I did

22 Q Were you the investigator charged with
23 processing the scene or did others do that?

24 A Others processed the scene

25 Q Did you participate in photographing and marking

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1 and measurements or anything like that?

2 A No, I did not

3 Q Did you have the occasion later that day to
4 participate in bringing Lee Powell and Reggie Clea back to
5 the Law Enforcement Center?

6 A Yes, sir, that's correct I received the call
7 from Mr Frank Clea who was Mr Lee Powell's father and
8 say that they were at Mr Reggie Clea's mother's house

9 Q And did you go there?

10 A Yes, sir, I did

11 Q And who was there?

12 A Reggie was there, Lee Powell was there and
13 several family members

14 Q And what did you do with Mr Powell and Mr
15 Clea?

16 A I got them out of the house I put them in my
17 patrol car and we came back down to the Law Enforcement
18 Center

19 Q At the Law Enforcement Center, did you turn Mr
20 Clea over to Mr Turner and I believe, Gwen Herod?

21 A That's correct

22 Q And did they take -- did they -- what did you do
23 -- who did you deal with?

24 A I dealt with Mr Powell

25 Q All right, so whatever dealings were done with

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1 Mr Clea, would be Mr Turner and you dealt with Mr
2 Powell?

3 A Yes, sir

4 Q Did you have the occasion to see what we're
5 looking at right here, State's Exhibit Number 8?

6 A Yes, sir

7 Q Where and when did you see that?

8 A Mr Frank Clea called me about 6 45 the day of
9 the murder and said that he needed to talk to me and that
10 he had the weapon that was used in the crimes at his
11 house, at his residence

12 Q Did you go there?

13 A Yes, sir, I did

14 Q Where was this weapon there?

15 A This weapon was in his -- he owns a mechanic
16 garage It was inside the garage

17 Q All right, and is State's Exhibit Number S-7 a
18 picture of the weapon in the garage?

19 A Yes, sir, it is

20 Q All right, just tell us about taking this weapon
21 and what was done

22 A The weapon was photographed -- well, I called
23 Investigator Robert Burnish to the scene He photographed
24 the weapon I turned the weapon over to him

25 I stayed at the residence because Mr Clea told

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1 me that he was talking to Mr Powell on the cell phone
2 He was trying to get him to turn himself in over at his
3 house, so I waited there I was waiting there until they
4 could come to Mr Frank Clea's house

5 Q All right, sir, that's all the questions I have,
6 thank you -- this weapon you turned over to Mr Burnish?

7 A That's correct

8 MR SALEEBY All right, that's the only
9 questions I have, thank you

10 **CROSS EXAMINATION BY MR CLARK**

11 Q Mr Gardner, you lived in the community with Mr
12 Clea, don't you?

13 A That's correct

14 Q You have known him a long time?

15 A Yes

16 Q You know his family?

17 A Yes

18 Q His mother and father?

19 A That's correct

20 Q And is it correct that Mr Reginald Clea -- and
21 how long ago have you been a police officer?

22 A Well, I have been in law enforcement 26 years

23 Q And is it correct that Reginald Clea has a
24 reputation for peacefulness?

25 A That's correct, you could say that

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1 Q And you knew Mr Jackson and Mr Pollard?

2 A Yes

3 Q Knew them well?

4 A Yes, I know them pretty good

5 Q Do you know whether they had a reputation for
6 violence?

7 A No

8 Q You don't know?

9 A No

10 Q Okay All right, Mr Gardner, you are aware of
11 an incident that occurred at Mr -- Ms Bertha Drakeford's
12 house, who is Reginald Clea's mother, in April of 2003,
13 aren't you?

14 A Yes, that's correct

15 Q And I've talked to you about it and you know
16 exactly what I'm talking about, right?

17 A Right

18 Q And is it correct that at some point in April of
19 2003, Ms Drakeford ---

20 MR SALEEBY I have to object here I think we
21 probably have to deal with this out of the presence of the
22 jury

23 THE COURT All right, parties approach

24 (Whereupon, a bench conference was held off the
25 record in the presence of the jury, but out of hearing of

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1 the jury)

2 THE COURT All right, ladies and gentlemen of
3 the jury, I need you to go to the jury room I'll have
4 you come back relatively soon Please do not discuss the
5 case

6 You can elect a foreperson now or start thinking
7 about it now, either one

8 (Jury exits the courtroom)

9 THE COURT All right, there's an objection by
10 the State State the objection, please

11 MR SALEEBY Your Honor, he's going into a
12 matter that's not been connected either in time to this
13 Defendant and to victims involved And I think there's
14 got to be a large degree of specificity I think that
15 what the Day case mandates And if he tried to go down
16 that road and doesn't meet those things, the jury
17 already heard it

18 So we're asking that the matter be ~~valued~~ out of
19 the presence of the jury

20 THE COURT Your Honor, Mr Clark, your first
21 question

22 MR CLARK Your Honor, my question does not go
23 to prior acts of violence or reputation of violence. But
24 in light of Mr Saleeby's objection, what I would do, Your
25 Honor, is I'd like to reserve the right to recall Mr.

The State v Reginald Tyrell Clear

1 Gardner in our case

2 MR SALEEBY No problem

3 MR CLARK I think that would connect the
4 issues more appropriately, Your Honor

5 THE COURT All right Do you have any
6 additional questions then for ---

7 MR CLARK No, sir, not at this time But I
8 would -- well, he's not under subpoena but I think he
9 indicated he would be available

10 THE COURT You will be here during the entire
11 trial, won't you?

12 THE WITNESS Yes, sir, thank you

13 THE COURT All right, since we sent the jury
14 out, we'll give them a few minutes to be out So we'll
15 take a short break, about 3 minutes

16 Step down

17 (The witness leaves the witness stand)

18 (Whereupon, a recess was taken concluding at
19 2 50 p m)

20 (The witness returns to the witness stand)

21 THE COURT All right, you can bring them back

22 (Jury returns to the courtroom)

23 THE BAILIFF Your Honor, all of the jurors and
24 alternates are present in the courtroom

25 THE COURT Okay, Madam forelady, who are you?

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1 FOREPERSON My name is Yvonne Jones.

2 THE COURT Ms Yvonne Jones Okay, Ms. Jones,

3 I appoint you to be the foreperson in confirmation of the
4 jurors, your election in the jury room

5 As foreperson you will serve as the spokesperson
6 for the jury It will be your responsibility to preside
7 over the jury deliberations and to complete the verdict
8 form representing the unanimous verdict of the jury when
9 the jury reaches a unanimous verdict

10 Mr Clark, you may continue

11 MR CLARK No, further questions at this time
12 for this witness, Your Honor

13 THE COURT Any redirect?

14 MR SALEEBY No redirect

15 THE COURT Okay, you may step down, sir

16 (The witness leaves the witness stand)

17 MR SALEEBY Your Honor, we call Robert Burnish
18 to the stand

19 ROBERT BURNISH, after being first duly
20 sworn, testified as follows

21 THE CLERK Have seat up here, please State
22 your full name, spell your last name, please, sir. (S)

23 THE WITNESS Robert Burnish, B-u-r-n-i-s-h.

24 DIRECT EXAMINATION BY MR SALEEBY

25 Q Where do you live, sir?

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1 A I live here in Sumter County near the McCray's
2 Mill Road area

3 Q How long have you lived here?

4 A 25 years

5 Q Who do you work with?

6 A The Sheriff's Department

7 Q How long you been working at the Sheriff's
8 Department?

9 A For the last 13

10 Q What kind of duties and responsibilities have
11 you had over the 13 years?

12 A The first eight years, I was in the Patrol
13 Division And then for the last five I've been in the
14 Investigative Division

15 Q And as an investigator, what particular
16 responsibilities have you had?

17 A I am right now in the Financial Crimes
18 Investigations and I also assist in any other crimes

19 Q Were you called to assist at 5555 Dinkins Mill
20 Road February 25, 2004?

21 A Yes, sir, I did

22 Q Tell us about that?

23 A I was in the office I want to say it was
24 around 3 00 and received a message of any investigators
25 that are currently available to go to that area and assist

1 on the scene

2 Q And when you got there, were other investigators
3 on the scene?

4 A Yes, sir

5 Q And what was your responsibility, if any, at the
6 scene?

7 A When I got there I was asked to assist
8 Lieutenant James Turner and Sergeant Mackessy on the
9 scene

10 Q And what sort of assistance did you give to Mr
11 Turner and Mr Mackessy?

12 A As far as helping to process the scene

13 Q What ---

14 A I assisted Lieutenant Turner in taking the
15 measurements and doing some other odds and ends, whatever
16 they needed

17 Q You were assisting, not in charge of that?

18 A No, sir, I was not in charge

19 Q Were you asked by Mr Gardner later that day to
20 assist him with particular things?

21 A Yes, sir, I was

22 Q What was that?

23 A To photograph the weapon and seize the weapon
24 and turn it over to Sergeant Mackessy

25 Q And where did you go to accomplish these things?

1 A To the garage Investigator Gardner had spoken of
2 earlier

3 Q Is State's Exhibit S-7 a photograph that you
4 took at Clea's Garage?

5 A Yes, sir, it is

6 Q Is that a photograph of State's Exhibit Number 8
7 that's here in my right hand?

8 A Yes, sir, it is

9 Q And was this clip in the weapon when you picked
10 it up?

11 A Yes, sir

12 Q Did you check the clip to find out whether or
13 not the weapon had any rounds in it?

14 A No, sir, I did not

15 Q Did you leave that to Sergeant Mackessy?

16 A Yes, sir

17 Q And you took this weapon and the clip and you
18 brought them where and did what with them?

19 A I took possession of it and I placed in the
20 backseat of my patrol vehicle I called Sergeant Mackessy
21 on our radio and we met at the Plantation Restaurant there
22 in Dalzell It's at the intersection of Charles Jackson
23 and Highway 521, where I turned it over to him

24 Q The next day did you perform any other
25 responsibilities in regard to this case?

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1 A Yes, sir, I attended the autopsy

2 Q All right, were you there for both autopsies,

3 Mr Pollard and Mr Jackson?

4 A Yes, sir, I was

5 Q And where were these autopsies conducted?

6 A They were conducted in Newberry

7 Q By Newberry Pathology?

8 A Yes, sir

9 Q And do you recall Dr Ross as being the

10 pathologist in charge the autopsies?

11 A That's correct

12 Q Did -- what was your responsibility with regard

13 to the items collected at the autopsy? What did you do

14 with those items?

15 A I brought those back here to Sumter to the

16 Sheriff's Department and turned those into the evidence

17 custodian

18 Q And that, generally speaking, consists of what

19 sort of things?

20 A They were to be ---

21 Q What sort of things were collected that you

22 brought back?

23 A I'm sorry, clothing, bullet fragments, and so

24 forth

25 MR SALEEBY Please answer any questions

1 counsel may have

2 THE WITNESS Thank you

3 MR CLARK No questions of this witness, Your
4 Honor

5 MR SALEEBY We would ask if he could be
6 excused

7 MR CLARK No objection

8 THE COURT Sir, you can be excused

9 (The witness leaves the witness stand)

10 MR SALEEBY We call Dr Janice Ross

11 DR JANICE E ROSS, after being first duly
12 sworn, testified as follows

13 THE CLERK Have seat up here, please State
14 your full name, spell your last name, please

15 THE WITNESS Janice Edwards Ross, R-o-s-s

16 **DIRECT EXAMINATION BY MR SALEEBY**

17 Q Dr Ross, where do you live?

18 A Newberry, South Carolina

19 Q And how long have you lived in Newberry?

20 A Five years

21 Q What do you do in Newberry?

22 A I am a forensic pathologist and work with
23 Newberry Pathology Associates

24 Q If you would, please, tell us what your training
25 experience has been, first of all in the field of

1 pathology and then in the field of forensic pathology

2 A Yes, I received a bachelor's degree at the
3 University of South Carolina and then an M D from Upstate
4 Medical Center in Syracuse, New York in 1972 I then did
5 further training in pathology which is the study of
6 disease and how to diagnose it, at Upstate Medical Center
7 and was board certified in general pathology in 1976

8 And then I did further training in forensic
9 pathology and was board certified in that in 1985

10 Q And since 1985, have you been steadily occupied
11 as a forensic pathologist?

12 A Yes

13 Q Please explain to the members of the jury, if
14 you will, what the medical specialty of pathology
15 involves

16 A Yes, sir Pathology is the study of disease
17 We learn how to diagnose cancers or leukemias by looking
18 at tissue that comes out of people from surgery and
19 looking at their blood work and running a laboratory in
20 general

21 What we use in forensic pathology, the word
22 forensic means legal So from that we learn how to use our
23 pathology in the field of legal work and how to diagnose
24 patterns of injury in homicides, suicides and accidents

25 A pathologist is trained in detail on how to do

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1 an autopsy Also a general pathologist will do hospital
2 autopsies A forensic pathologist will do the legal type
3 of autopsy

4 MR SALEEBY Your Honor, we would submit that
5 Dr Ross would be well qualified to testify to this jury
6 in the field of forensic pathology

7 THE COURT Any voir dire?

8 MR CLARK No, sir, Your Honor

9 THE COURT Ladies and gentlemen, this witness
10 is an expert in the field of forensic pathology

11 Q Dr Ross, would you explain generically how you
12 go about conducting an autopsy, external and internal
13 examination, before we deal with these two very specific
14 autopsies

15 Q Yes, externally we look at clothing, take the
16 clothing off, look at the external part of the body and
17 see if there is evidence of injury, bruises, lacerations,
18 contact wounds, knife wounds, or evidence of natural
19 disease

20 Then we do an internal examination by looking at
21 each organ inside to again see if there's any natural
22 disease or to see if there's any evidence of injury from
23 gunshot wounds or stab wounds or whatever

24 Q All right, I will ask you if you had the
25 occasion to conduct autopsies in Newberry on February the

1 26th on Mr Charles Jackson and Mr James Pollard?

2 A Yes

3 Q And do you recall if the gentleman who
4 testified, Mr Burnish, was there as a representative of
5 the Sheriff's Department?

6 A Yes

7 Q And is it standard operating procedure to have a
8 member of the investigating agency present?

9 A Yes

10 Q Can you tell us why that is?

11 A We need to know some idea of the scene work,
12 what was found there, what kind of shells, what kind of
13 ballistics were available, where the people -- the persons
14 involved were supposed to be sitting or standing or
15 whatever And also, how much blood was around, what other
16 evidence of where the bullets might have gone, if it
17 entails a bullet wound, whether there was evidence of
18 bullet hitting a piece of metal before it hit the body or
19 if it went straight in If it went straight through, if
20 they found the bullets

21 Q All right, I will ask you specifically with
22 regard to Mr John Jackson -- Mr Charles Jackson, excuse
23 me, if you could tell us what his size was, what kind of
24 clothing he had on, what personal items and what condition
25 all these items were in

1 A This young man was 71 inches tall He had
2 clothing on including t-shirts, blue jeans, on which was a
3 belt, a pair of shorts -- underwear The -- he had
4 actually a couple of shirts on, a sweater and a white t-
5 shirt and a black t-shirt And these -- and a pair of
6 blue jeans The blue jeans had holes in them over gunshot
7 wounds

8 Q Did he have a cap?

9 A And a cap was in the -- in with him that had a
10 gunshot wound in it also, a hole over where a gunshot
11 would be

12 Q All right, I will ask you to briefly describe
13 the wounds and then we'll go back and talk about the
14 wounds in detail

15 How many wounds did you see on Mr Jackson?

16 A Three

17 Q And where were these wounds and how did you go
18 about designating them?

19 A One was in the head and two were in the right --
20 left leg We arbitrarily number the wounds It doesn't
21 mean the order in which they were gotten But we order --
22 number them for our own organization of describing them
23 when we got from basically top to bottom, front to back

24 So the wound in the head would be designated
25 wound number 1 It was actually in the right side of the

1 head And the wounds in the left leg, the upper one would
2 be number 2 and the lower one would be number 3

3 Q I'm going to put an anatomical diagram here
4 I'm going to ask you to show us those wounds and then you
5 will actually be able to sit and use this pointer to go
6 over the wounds in detail

7 This is State's Exhibit Number 16

8 (Pause)

9 (The witness steps down from the witness stand)

10 Q If you would number them and if I need to put
11 this down so you could put it up there after you mark it

12 A Again, we're numbering them from top to bottom
13 so the one in the head was in the right side of the head,
14 would be here And it is going downward You can't see
15 the side, you are going downward towards the left and
16 actually a little bit towards the back

17 Q How about, could you show on me where it would
18 be?

19 A You are going from here to about here And the
20 ---

21 Q Entering which side?

22 A Right side, I'm sorry Right side here, going
23 towards the left, slightly backwards and downward

24 And so the parts of the bullet, the bullet kind
25 of shattered or fragmented and that was found inside the

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1 head on the other side of from where it went in

2 Q If you would put a 1 and a circle on that and
3 somewhere on that right Jackson, anywhere on the top of
4 the diagram just so we know we're talking about Mr
5 Jackson

6 (Witness complied)

7 Q All right, if you'd show us -- I'll put this up
8 so you could show us the next one

9 A Number 2 came in the thigh about here It went
10 towards -- from left to right It fragmented the bone
11 here which is the femur And that bullet was found inside
12 the leg there

13 And this was -- this would be number 2 And it
14 was 43 inches below the top of the head We give
15 measurements so if we have to reenact this injury, we can
16 give an idea of exactly where it would have been

17 And number 3 likewise was in the left leg And
18 this one went slightly downward towards the front and it
19 came out So it went all the way through It also
20 fractured the leg, the femur in that area And that was
21 47 inches below the top of the head

22 Q And how far were the two from each other, or is
23 it showing 4 inches?

24 A 4 inches, yes, sir

25 Q Were they approximately in line with one

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1 another, did you show in there?

2 A Approximately

3 Q All right, I will let you be seated and if you
4 -- we need to refer to these, you can just simply use this
5 pointer and press that little button

6 (The witness returns to the witness stand)

7 Q Let's discuss, if we might, the wounds to the
8 leg first, State's Exhibit -- I'm sorry, number 2 and
9 number 3

10 All right, gunshot wound number 2, enters on
11 what thigh?

12 A Left

13 Q And moves in what direction?

14 A Towards the right and pretty much straight
15 across

16 Q Did you -- was there any gunshot residue on this
17 wound?

18 A No, there was not

19 Q All right, what damage did gunshot number 2 do
20 to Mr Jackson's left leg?

21 A It fractured the femur, the bone, the long bone
22 in the thigh

23 Q Is that the main bone between the knee and the
24 hip?

25 A Yes

1 Q All right, and you found something in that
2 wound, is that correct?

3 A Yes, we found pieces of the bullet

4 Q Now, what about the gunshot wound, could you
5 find anything else in addition to the pieces of the
6 bullet?

7 A The jacket of the bullet, the lead part and the
8 jacket part and the little -- it's a little -- that's it

9 Q All right, I'm going to show you State's
10 Exhibits Number 13-B and 13-A and ask you if you can tell
11 us which one of those is the item that you recovered from
12 the gunshot wound number 2

13 A It's this one

14 Q State's Exhibit 13-B?

15 A Yes

16 Q And tell the members of the jury, if you will,
17 please, about this pill bottle, is what we would call it,
18 how you document these things

19 A Yes, we take photographs of it That's what I'm
20 referring to when I look at these to make sure it's the
21 same that I took out We put it in a vile within some
22 cotton gauze like material and label it and then we seal
23 it in another piece of plastic, seal it and sign it

24 Q And that's 13-B that comes out of his inner left
25 thigh?

1 A Yes

2 Q All right, let me bag it back up Gunshot wound
3 number 3, if you could use the pointer and tell us about
4 that in terms of where it hits and the path of where it
5 goes through

6 A Again, it goes from the left side of the -- from
7 the side of the left thigh It goes towards the right but
8 goes a little bit front -- towards the front and it comes
9 out of the inside the thigh, a little bit towards the
10 front So there's an exit wound It's a perforating
11 wound

12 Q An exit wound and no projectile was recovered?

13 A Yes

14 Q All right, either of these wounds the sort to
15 produce what one calls blood spatter?

16 A You wouldn't see it in this incident ---

17 Q And what is blood spatter?

18 A Blood splatter is just that, splattered blood
19 Usually it's from high velocity blood For instance, if
20 you injure your neck and you get into the artery and
21 there's a sudden burst of blood outside of the body

22 In this case it hit vessels deep inside the
23 tissue plus there was clothing on so that you wouldn't get
24 a splatter

25 Q This didn't hit anything that would cause a

1 spurt?

2 A Correct

3 Q It would bleed obviously?

4 A Yes

5 Q But how rapidly or how profusely would be
6 difficult to determine, is that correct?

7 A Yes

8 Q All right, what would having the femur broken in
9 two places, what impact would that have on a person?

10 A The person wouldn't have been able to put weight
11 on that leg, wouldn't be able to stand on that leg

12 Q Would be able to put weight on the other leg, is
13 that correct?

14 A Yes

15 Q Would be able to move in other ways other than
16 putting weight on the left leg?

17 A Yes

18 Q Capable of standing on the right leg perhaps?

19 A Yes

20 Q Crawling?

21 A Yes, with difficulty

22 Q Tell us now, if you would, please, about gunshot
23 wound number 3

24 A Gunshot wound number 3 goes in from towards the
25 top of the right side of the head It goes backward

1 slightly and downward and towards the left It does not
2 go out of the head It stays in the head And it -- we
3 found pieces of the bullet inside the head

4 Q All right, if you would, please, I'm going to
5 ask you again to show on me where it would hit and tell
6 the members of the jury what the proximity of the barrel
7 of this weapon putting this projectile into this person's
8 head would be

9 Q The bullet's going into the right side of the
10 head, slightly towards the back and to the left Bullets
11 go straight, so the weapon would have to be above and to
12 the right of the victim

13 Now the victim could be lots of different
14 positions

15 Q Okay What impact did this projectile have on
16 Charles Jackson when it hit him in the head?

17 A This type of weapon, a high powered rifle, first
18 of all gives a specific appearance on x-rays We do x-
19 rays on all these gunshot wounds to find pieces of metal
20 And it gives like a snow storm appearance, the little
21 pieces of metal following the path of the bullet And
22 that's one characteristic of a high powered rifle wound

23 This also kind of wound, kind of gunshot wound
24 destroys tissue tremendously So we call it -- it
25 basically pulpified the brain, caused it to be broken up

1 into small pieces

2 Q It broke the brain up into small pieces?

3 A Yes

4 Q What other impact did it have on his head?

5 A It fractured the skull

6 Q Tell us what this wound would do, this shot to
7 the head that you have described in terms of
8 incapacitating Mr Jackson?

9 A It would be immediately incapacitating It
10 would cause immediate unconsciousness followed by quick
11 death

12 Q He would not move after being shot in the head,
13 is that correct?

14 A Correct

15 Q This is State's Exhibit Number 13-A Would you
16 examine that and tell us what that is, Dr Ross?

17 A These are fragments of the bullet and jacket of
18 the bullet found within the head from this gunshot wound

19 Q This was removed from Mr Jackson's head?

20 A Yes

21 Q There were bronze looking pieces there and some
22 gray looking pieces Can you tell us the difference?

23 A The gray is pieces of lead making up the bullet
24 The copper colored metal is the jacket of the bullet

25 Q Doctor, do you have an opinion satisfactory to

1 yourself as to what caused the death of Charles Jackson?

2 A I do

3 Q Please tell us what that is

4 A It is laceration of the brain due to the gunshot
5 wound to the head

6 Q Is this item I'm holding here, State's Exhibit

7 13 A ---

8 A Yes, it is

9 Q --- the shot that caused his death?

10 A Yes, sir

11 Q In addition to breaking his leg in two places
12 and keeping him from putting weight on his left leg, what
13 effect would that shot have on impact, the shot on Mr
14 Jackson?

15 A The gunshot wound to the head?

16 Q The two shots to the leg, excuse me

17 A It would incapacitate him as far as walking on
18 it or putting weight on it

19 Q All right, did you also collect some other
20 things off of Mr Jackson for the purpose of further
21 testing and sending back, in addition to projectiles,
22 body fluids?

23 A Yes

24 Q Tell us about that

25 A We collect fluids from the body including blood,

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1 bile, fluid from the eye, urine There was no gastric
2 content to send and then we send some brain tissue and
3 blood -- and liver tissue for purpose of toxicology
4 testing

5 Q Do you swab his hands for -- to determine if you
6 could find any gunshot residue?

7 A Yes

8 Q All right, was all that sent back with Mr
9 Burnish?

10 A Yes

11 Q Lets now talk about Mr Pollard You conducted
12 the autopsy of Mr Pollard the same day, is that correct?

13 A Yes, we did

14 Q Can you tell us about his external examination?

15 A Yes, he had some clothing on including a jacket
16 and a shirt, pants He measured 73 and a half inches in
17 height

18 Q About 6-2?

19 A Yes

20 Q All right, how many separate wounds did you find
21 on Mr Pollard?

22 A We found a total of nine gunshot wounds and then
23 some other injuries that were injuries consistent with
24 what we would call shrapnel injuries of the skin

25 Q What caused those?

1 A It's caused by fragmented anything Usually
2 it's either the bullet fragmented which would have to mean
3 that the bullet hit something hard before it got to the
4 body or more likely it hit -- the bullet hit the ground or
5 hit some object that would then splinter and cause little
6 fragments of stone or wood or whatever to hit the body

7 Q Did you collect any bullet fragments from Mr
8 Jackson?

9 A Yes

10 Q And were they sent back with Mr Burnish?

11 A Yes

12 Q Did you send back the tissue samples and the
13 fluid samples with Mr Burnish?

14 A Yes

15 Q And the gunshot residue?

16 A Yes

17 Q All right, I'm going to ask you to do the same
18 thing, to mark this exhibit If you'll put this as
19 State's Exhibit Number 17 I'm going to ask you to mark
20 it, to number the wounds Probably the best thing to do
21 is to mark -- number all of them and then I'll let you
22 have a seat and you can sit while you explain them to the
23 jury

24 (The witness steps down from the witness stand)

25 Q Can you just put Mr Pollard's name at the top?

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1 Why don't you just go ahead and use your picture, number
2 and mark the diagram and then you can go sit and I'll let
3 you talk about it I'd hate for you to be standing up
4 here for quite so long, all right

5 A All right, number 1 went in the left side of the
6 chest, went slightly downward and basically across and
7 then out of the chest It hit the -- both lungs and the
8 heart

9 Number 2 went into the left side of the chest,
10 went again downward and backward It went -- hit part of
11 the left lung and the liver and that bullet was found
12 inside the body

13 Q Would you put your numbers by them so we can
14 keep them straight?

15 A Number 1 and number 2

16 Q You may be able to do the rest of them from
17 here

18 A Yes, sir Number 3 hit the tip of the middle
19 finger on the right hand and then it continued upward like
20 a graze wound right through the skin, underneath the skin
21 Came out close to the elbow and went back in So this is
22 number 3

23 Number 4, I'll show on the back side from the
24 back side but again it's in the right arm I'm sorry, it
25 is the left arm It goes basically across like so, it

1 goes all the way through

2 Number 5, again, we're numbering these not in
3 the order they were shot but because it's from the top to
4 bottom Number 5 went in the right thigh, on the side of
5 the thigh It went and came downward and came out on the
6 front of the thigh

7 Number 6, it came in the right thigh and towards
8 the center of the body, went across and came out and that
9 one fractured the femur there, the long bone of the leg

10 Number 7 went right up into the kneecap, the
11 left leg It went up slightly underneath the skin and
12 came out

13 Number 8 went into the left leg towards -- right
14 above the ankle and went straight across, came out and
15 that one fractured the two bones of the lower leg called
16 the tibia and fibula

17 And number 9 that's shown from the back, that
18 went into the right buttock here, continued just
19 underneath the skin, came -- and came out below that, so
20 it went downward

21 Q All right I'll let you be seated and I'll ask
22 you some questions then

23 (The witness returns to the witness stand)

24 Q The gunshot wound number 1, can you show us
25 that?

1 MR CLARK Your Honor, may we approach

2 A In the chest

3 Q Just a moment

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

7 Q All right, I was asking you about the gunshot
8 wound number 1, and I was asking you what damage did it
9 do?

10 A It went through both lungs and through the heart
11 and caused blood to come out of those organs and bleed
12 freely in the chest cavity So it's a way of bleeding to
13 death but the blood stays inside

14 Q This would have been a fatal wound?

15 A Yes, sir

16 Q This is what we call a through and through
17 wound, it exited?

18 A Yes

19 Q Gunshot wound number 2 to the chest, tell us
20 about that

21 A It went from left to right and down -- slightly
22 downward It went through part of the left lung and it
23 also hit the liver Pieces of it were found in the liver
24 tissue and some pieces of it were found just to the right
25 of the backbone at that point

1 Q And would it have been fatal?

2 A Yes

3 Q All right, and a projectile or part of a
4 projectile was recovered later?

5 A Yes

6 Q All right, gunshot wound number 3, is that one
7 to the hand Is there -- is that the type of the wound
8 that in forensic pathology gets a specific name, type of
9 wound?

10 A Yes

11 Q Explain that to us

12 A It's called a defense wound The -- it appears
13 -- this is -- this body is depicted in what we call the
14 anatomic position, just for our organization again But
15 essentially the arm and the hand could be out -- extended
16 outward, could be in different positions But usually
17 defense are wounds on the arms and hands meaning just
18 that, they're trying -- where people are trying to defend
19 themselves They see something coming at them, they're
20 trying to defend themselves

21 Q How about wound number 4, how does that comport
22 to what we call defensive?

23 A That could also be a defense wound You're
24 trying to put your elbow up, your hands again out to stop
25 whatever's coming at you

1 Q All right, you recovered a projectile from wound
2 number 2 You got projectiles from what other wounds?

3 A There was some projectile in the clothing,
4 probably from wound number 1 We couldn't say
5 specifically but that's most likely In other words, the
6 bullet got out of the chest but it didn't get all the way
7 through the clothing

8 So we found pieces of bullet there and we found
9 a little fragment of metal in the area of gunshot wound
10 number 8

11 Q And that would be to the ankle?

12 A Yes

13 Q All right, let me show you State's Exhibit
14 Number 14-B and ask you if you can identify that as being
15 recovered from a particular wound

16 (Pause)

17 A This is a little fragment of metal we found from
18 wound labeled number 8

19 Q 14-B came from that?

20 A Yes, sir

21 Q All right, I'll show you another projectile
22 marked 14-A and ask if you could tell the members of the
23 jury where that was recovered from?

24 A This is from the wound we called number 2,
25 pieces we found from the liver and from around the

1 backbone

2 Q That's 14-A

3 A That is 14-A, yes

4 Q And that would have been a fatal wound?

5 A Yes, sir

6 Q And this would be State's Exhibit 14-C?

7 (Pause)

8 A Yes, these are the pieces of bullet and jacket

9 that we found within the clothing

10 Q And this was associated with which wound?

11 A Most likely number 1

12 Q And that's 14-A?

13 A Yes

14 Q I'm sorry ---

15 A 14-C

16 Q Based upon your examination and the recovery of

17 these projectiles, do you have an opinion as to what

18 caused the death of Mr Pollard?

19 A Yes, I do

20 Q And please tell us what it is?

21 A Exsanguination which means bleeding out,

22 bleeding to death due to the laceration of the lungs,

23 heart and liver, due to gunshot wounds of the chest

24 MR SALEEBY Thank you, Dr Ross, please answer

25 any questions counsel has for you

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1 CROSS EXAMINATION BY MR CLARK

2 Q Dr Ross, I just have a few questions for you

3 A Yes

4 Q Dr Ross, with regard to Mr Pollard, you
5 testified about finding evidence of nine bullet wounds?

6 A Yes

7 Q And isn't it true that of the nine, only two
8 were actually fatal shots?

9 A Yes

10 Q And with Mr Jackson, you testified about three
11 wounds, correct?

12 A Yes

13 Q And in his case, only one was a fatal shot?

14 A Yes

15 Q And considering both of these gentlemen, there
16 was only one shot that you testified was sustained in the
17 back and that was to the buttocks of Mr Pollard, correct?

18 A Yes

19 Q No other evidence of any other shots in the back
20 of these individuals?21 A There's some shrapnel so I don't know where that
22 came from in the back23 Q But you're not testifying you observed bullet
24 entry wounds ---

25 A Correct

1 Q That's what I'm getting at And Mr Jackson,
2 you did not observe any bullet wounds to his hands, did
3 you?

4 A No, I did not

5 Q Or arms?

6 A No, but I have to say that in each case the
7 wounds to the legs, to the femurs, could eventually have
8 caused bleeding out So they were essentially potentially
9 fatal

10 Q Right but you're going back to the question I
11 asked you ---

12 A Yes

13 Q --- at the beginning, right?

14 A Yes

15 Q But -- and you mean they were potentially fatal
16 in that if those were the only wounds and the person
17 didn't get some care, they would eventually be fatal?

18 A Correct

19 Q But what we're talking about is what caused the
20 death in these cases

21 A Okay

22 Q Right? So if you focus on what caused it in
23 this particular -- in these particular cases there would
24 be two fatal wounds with Mr Pollard and one with Mr
25 Jackson?

- 1 A Yes
- 2 Q Now, getting back to the question that I wanted
3 to ask you, you didn't find any wounds -- gunshot wounds
4 to Mr Jackson's hands at all, did you?
- 5 A Mr Jackson, no, I did not
- 6 Q And I believe you talked about what you called
7 gunshot wound number 3, with regard to Mr Pollard
- 8 A Yes
- 9 Q Was that the one to the right hand, ma'am?
- 10 A Yes
- 11 Q And you said that that gunshot wound entered --
12 where did you say it entered?
- 13 A It entered the middle finger ---
- 14 Q Right
- 15 A --- and kind of went underneath the skin
16 upwards
- 17 Q Where exactly did it enter the middle finger, do
18 you know?
- 19 A Right at the tip
- 20 Q At the tip?
- 21 A Uh-huh
- 22 Q Okay And it traveled up the arm?
- 23 A Yes
- 24 MR CLARK Thank you, Dr Ross, that's all I
25 have