

ORIGINAL

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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SC Supreme Court

Reginald Tyrell Clea, #309063,

Petitioner,

v

State of South Carolina,

Respondent

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
VOL II

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1 MR SALEEBY I don't have anything else We
2 would ask that Dr Ross be excused

3 THE COURT No objection?

4 MR CLARK No, sir

5 THE COURT Thank you, Dr Ross

6 THE WITNESS Thank you

7 (The witness leaves the witness stand)

8 MR SALEEBY We would call Ila N Simmons to
9 the stand

10 (Pause)

11 ILA N SIMMONS, after being first duly
12 sworn, testified as follows

13 THE CLERK Have seat up here, please State
14 your name, spell your last name, please

15 THE WITNESS Ila Simmons, S-i-m-m-o-n-s

16 **DIRECT EXAMINATION BY MR SALEEBY**

17 Q Ms Simmons, tell us where you live, please,
18 ma'am

19 A I live in Columbia, South Carolina

20 Q Where do you work?

21 A I'm employed by the South Carolina Law
22 Enforcement Division in the Forensics Division and the
23 Trace Evidence Department

24 Q How long have you worked with SLED in the Trace
25 Evidence Department?

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1 A A little over five years

2 Q And would you please give us the benefit of your
3 training and experience and education in the field of
4 analyzing trace evidence?

5 A Yes, I received a bachelor's of science in
6 chemistry I then began working at SLED where I went
7 through a three year in-house training program in the area
8 of trace evidence which includes gunshot residue,
9 gunpowder residue, the analysis of paints, fibers,
10 explosives and fire debris

11 Q And how long have you been qualified to testify
12 as you are testifying here today?

13 A Almost four years

14 MR SALEEBY Your Honor, we would submit that
15 she would be well qualified in the field of trace
16 evidence

17 MR CLARK No objection, Your Honor

18 THE COURT She is qualified as an expert in the
19 field of trace evidence

20 Q Now what I would like for you to do, Ms
21 Simmons, if you will, is tell the members of the jury in
22 as close to layman's terms as you can what the field of
23 trace evidence and examination consists of

24 A We analyze several areas of forensics We
25 analyze gunshot residue which is microscopic chemicals

1 that come out of a gun when it's fired, can help give a
2 determination as to whether or not someone has fired a
3 gun, been in the vicinity of a gun when it's fired

4 We also analyze fibers We analyze paints from
5 vehicles as well as architectural paints We analyze fire
6 debris which is debris collected in an arson
7 investigation And we also analyze explosive residue which
8 is anything that can be received from a bomb or explosions
9 of sorts

10 Q And you've referred to gunshot residue Tell us
11 what you can determine from gunshot residue and how you go
12 about making that analysis

13 A Gunshot residue is expelled from a weapon when
14 it's fired It's a combination of several chemicals
15 What can be determined is whether or not someone has fired
16 a weapon or has been in the vicinity of weapon when it was
17 fired or even has handled a weapon or an object that has
18 gunshot residue on it

19 Q How are you able to tell? What is it that you
20 look for when you're looking for gunshot residue? What's
21 got to be present?

22 A We look for three chemicals in the area of
23 gunshot residue We look for lead, barium and antimony

24 Q Lead, barium and antimony?

25 A Yes

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1 Q And if you find all three of those together,
2 what does that mean?

3 A That is consistent with having the metals on an
4 object that are consistent with gunshot residue

5 Q Is there a difference between gunshot residue
6 and gunpowder?

7 A Yes, there is

8 Q What's the difference?

9 A Gunpowder is -- gunshot residue generally comes
10 from the projectile and the primer of a cartridge that's
11 placed in a weapon that's fired The gunpowder is a
12 powder that's in the cartridge and burns And it is -- it
13 is a different composition

14 Q And that's different than the residue that is
15 expelled from the barrel?

16 A It is part of the residue that is expelled from
17 the barrel, yes

18 Q All right, and what form is the lead in when you
19 look at the lead in gunshot residue?

20 A When a gun is fired, the lead is heated so it's
21 in a molten state which means it's in a semi-liquid state
22 So when it is found and collected as gunshot residue, it
23 is in round particles

24 Q Now, what determines how much residue is
25 expelled from the barrel of a weapon and how far that

1 residue travels?

2 A That depends upon the caliber of the weapon and
3 the type of ammunition that's used The higher the
4 caliber weapon, the more gunshot residue is present and
5 the farther it's projected

6 Q Without referring to a specific weapon, for a
7 handgun, for a standard handgun

8 A In a handgun it could be like a 22 maybe around
9 half a foot to a foot and as the caliber increases it
10 could be up to 24 inches, up to five feet at the very
11 most

12 Q What about a high powered rifle, and I'm going
13 to show in particular State's Exhibit Number 8

14 A In a high powered rifle it could be 20 feet,
15 maybe farther, it can be projected

16 Q 20 feet or farther?

17 A That's a possibility, yes

18 Q All right, when you're looking for gunshot
19 residue, how is that you go about collecting your samples?

20 A Gunshot residue kits are used to collect the
21 samples These kits are made by a company called Tri-Tech
22 and they're distributed through SLED and through -- any
23 police agency can get them

24 They are -- the kits contain two parts They
25 contain particle lifts which are carbon -- carbon tape on

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1 a little particle lift, on a little metal disk, and it's
2 dabbed over the areas of interest and in most cases it's
3 of the hands

4 A particle lift is taken from the palm of the
5 right hand Another particle lift if taken from the back
6 of the right hand One is taken from the palm of the left
7 hand and one is taken from the back of the left hand

8 The second component of a gunshot residue kit
9 are swabs that are treated with a dilute acid Two swabs
10 are taken from the palm of the right hand They are
11 sealed in a tube, put in the kit, then two swabs are taken
12 from the back of the right hand and so on, left palm, left
13 back

14 Q These -- when -- when someone is deceased, who
15 normally performs the gunshot residue test?

16 A They're usually taken at an autopsy

17 Q All right, and if somebody's arrested in the
18 area, who usually takes those gunshot residue test and
19 sends them to you?

20 A The arresting officer or an agent of that
21 agency

22 Q Are there any guides or tests or limits on when
23 you would examine or not examine a gunshot residue test?

24 A Yes, after six hours after a shooting incident,
25 if a kit is collected on a living person six hours after

1 an incident, we will not analyze for gunshot residue

2 Q And why is that?

3 A Because we have conducted tests that have shown
4 that there would not be any gunshot residue on the hands
5 of the person firing the weapon after six hours

6 Q If they're deceased -- I mean ---

7 A If they are living, yes

8 Q And I will ask you in that regard, did you
9 receive some items that you were asked to test that you
10 did not test for that very reason?

11 A Yes, I did, in this particular case I received
12 a gunshot residue test from Reginald Tyrell Clea and also
13 from John Lee Powell And we could not analyze those two
14 kits because they were collected beyond six hours

15 Q I'll ask you if you received gunshot residue
16 kits for Mr Pollard and Mr Jackson, I guess they were
17 taken by Dr Ross at the autopsy?

18 A Yes, I did, I received a kit from both persons

19 Q And did you also have the occasion to test, I
20 believe, this box?

21 A Yes, I did

22 Q All right, that's State's Exhibit 25

23 Now, with regard to Mr Pollard, would you tell
24 the members of the jury what you found?

25 A With Mr Pollard, I found metals on the right

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1 palm that were associated with gunshot residue

2 Q All right, and please show us where that would
3 be

4 A That would be on -- it would be collected from
5 this area of the hand, on his right palm

6 Q And was there anything about the levels on it
7 that gave you a determination of how that gunshot residue
8 got there?

9 A Yes, when we're looking for lead in our gunshot
10 residue kits, we look for a certain concentration which is
11 about 200 particles of lead In this particular case, we
12 found 5,000 counts of lead and 28,000 counts of lead
13 That is much higher than what you would expect to find if
14 someone had fired a weapon and their hand had been behind
15 the gun when it was fired, in a position like this

16 It was much more consistent with someone's hand
17 being on the muzzle end of a gun in the position when a
18 gun is pointed at you if your hand were in the muzzle area
19 of the gun, the barrel end of the gun

20 Q As to Mr Jackson, what did you find?

21 A I found round lead particles on both palms and
22 on the back of the left hand

23 Q Both palms ---

24 A Yes

25 Q --- and the back?

1 A And here and on the back of the left hand

2 Q All right, how is that consistent or
3 inconsistent with what's called a defensive posture?

4 A That could possibly be a defense posture
5 situation But in this case, instead of the hand being
6 directly bladed so that just the palm was toward a weapon,
7 it would have to be where the palm was bladed, of the
8 right hand so that no gunshot residue could get on the
9 back because I didn't find any on the back, and this --
10 this hand would be bladed more so that gunshot residue
11 could get on the palm and the back of the hand

12 Q When you find gunshot residue on both the palm
13 and the back of the hand, what does that indicate to you?

14 A It can indicate one of two possibilities, that
15 the person fired a weapon or that a weapon was fired in
16 the vicinity of someone

17 Q Would you get that sort of marking simply from
18 handling a weapon and not firing it?

19 A No, because if you were to handle -- just handle
20 a weapon, you would pick the weapon up and it would make
21 contact with just the palms Therefore, the gunshot
22 residue would not be expelled onto the back of the hand

23 Q So your conclusion is Mr Jackson either was
24 fired at or he himself fired at someone?

25 A Yes

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1 Q Now, with regard to the box, did you test it?

2 A Yes, I did I collected the particle lifts from
3 the inside of the box, the sides of the box and then I
4 collected a particle lift from the bottom of the box
5 inside as well

6 Q You weren't asked to do the outside?

7 A No, I was not

8 Q And what did you find there?

9 A I found round lead particles on both samples

10 Q And could you tell if those lead particles were
11 the result of being fired at or a weapon being in the box
12 and having been fired?

13 A I could not tell I could not determine

14 Q So what are the options then?

15 A The options are that a weapon that had been
16 fired was placed in the box, therefore the gunshot residue
17 came off the weapon, got onto the box from it being placed
18 in the box Or that a weapon was fired in the vicinity of
19 the box, the box was open and the gunshot residue got in
20 the box that way

21 MR SALEEBY Thank you, ma'am, please answer
22 any question Mr Clark may have

23 **CROSS EXAMINATION BY MR CLARK**

24 Q Ms Simmons, just quickly You said the two
25 possibilities of the lead particles that you found in this

1 box would be if the box was open and a shot was fired in
2 the area of the box?

3 A That is one possibility, yes, sir

4 Q And the other possibility would be that there
5 was a gun in this box that had been fired?

6 A Yes, that is another possibility

7 Q Were you given any information about the posture
8 and configuration of that box as it was found?

9 A No, sir, I was not I was just submitted the
10 box

11 Q Were you ever shown State's Exhibit Number 3-M?

12 A No, sir, I never received this photo

13 Q Does it look like you see the box in that
14 photograph?

15 A Yes, I do

16 Q And in that photograph that box is not open, is
17 it?

18 A No, it is not

19 MR CLARK Thank you, Ms Simmons, that's all I
20 have -- oh, I'm sorry, may I ask her one question, Your
21 Honor?

22 MR SALEEBY That's fine, go ahead

23 Q Ms Simmons, you also -- item number 8

24 A Yes, sir

25 Q You -- tell the ladies and gentlemen of the jury

1 what item number 8 was

2 A It was an envelope that was labeled, shaved head
3 hair around gunshot entrance It was just an envelope
4 that had hair in it

5 Q Did it say who it was, who ---

6 A Hold on one moment and I'll just check real
7 quick

8 (Pause)

9 A No, it didn't, it just said around the entrance

10 Q All right, do you have -- can you show me what
11 you're looking at to say what it was?

12 A Yes, sir, this is just my note sheet I made a
13 note

14 Q Does it say who collected it and who sent it to
15 you for analysis?

16 A That was on the outside of the packaging and it
17 came from the autopsy

18 Q It came from the autopsy?

19 A Yes

20 Q Okay, and as you understand it, it was head hair
21 around a gunshot wound?

22 A It was head -- it was shaved hair from -- yes

23 Q And tell the ladies and gentlemen of the jury
24 why you would be asked to analyze hair around a wound?

25 A Generally why we're asked to analyze hair around

1 a wound is to determine if any gunpowder particles are
2 there Gunpowder particles can indicate that a shot was
3 very close to an area

4 Q All right, so basically when they asked you to
5 analyze the hair around a wound, to make a determination
6 of whether it was what we call a point blank shot, very
7 close or not very close, right?

8 A Yes, that is true

9 Q And what was your conclusion -- what were the
10 results of your testing, as you say, when you tested the
11 head hair?

12 A I did not find any gunpowder particles in the
13 hair

14 Q And that would be that the gun that caused that
15 wound was not very close when it was fired to the victim,
16 is that correct?

17 A Well, that's one possibility that it wasn't
18 close to the victim Another possibility is that if the
19 victim was bleeding, that the gunpowder could have been
20 washed away from the hair That's a possibility as well

21 Q But looking at what you can say with any degree
22 of certainty, you can't say that that shot was inflicted
23 from a very close range, can you?

24 A No, I could not find any gunpowder particles

25 Q And there are always all kind of possibilities

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1 but what -- you can't say that it was a close shot?

2 A No, I cannot

3 Q Even though there might be other possibilities,
4 right?

5 A Yes

6 MR CLARK Thank you, that's all I have

7 THE COURT Anything from the State?

8 **REDIRECT EXAMINATION BY MR SALEEBY**

9 Q Ms Simmons, if somebody was wearing a cap would
10 that have an impact on whether or not residue was left on
11 the head?

12 A Yes, if someone were wearing a hat the gunpowder
13 would have been caught in the hat and would not have
14 reached the hair around the wound

15 MR SALEEBY That's all I have

16 MR CLARK May I follow-up, sir?

17 **RECROSS EXAMINATION BY MR CLARK**

18 Q Were you ever asked to analyze a cap?

19 A No, sir, I didn't receive a cap

20 MR CLARK Thank you, ma'am

21 MR SALEEBY We ask that she be excused

22 MR CLARK No objection

23 THE WITNESS Thank you

24 (The witness leaves the witness stand)

25 MR SALEEBY We would call Vello Paavel to the

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1 stand

2 VELLO PAAVEL, after being first duly sworn,
3 testified as follows

4 THE CLERK Have seat up here, please State
5 your full name, spell your last name

6 THE WITNESS Vello Pavel, V-e-l-l-o P-a-a-v-e-
7 l

8 DIRECT EXAMINATION BY MR SALEEBY

9 Q Mr Paavel, tell us where you live and where you
10 work?

11 A I live in Lexington, South Carolina I work for
12 SLED, for the South Carolina Law Enforcement Division, in
13 the Forensic Services Laboratory, in the Firearms
14 Department

15 Q And please tell us what your education and
16 training experience has been in the area of firearms
17 identification

18 A Yes, sir, I attended the University of South
19 Carolina I received a bachelor's of science degree, I
20 majored in chemistry Prior to going into law
21 enforcement, I actually worked in a gun shop and managed
22 the gun shop for a while where I bought, sold and repaired
23 firearms

24 In 1980, I entered law enforcement I worked
25 for the Columbia Police Department Afterwards I worked

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1 for the Richland County Sheriff's Department Then in
2 1987, I started working at SLED in the Firearms
3 Department

4 During my initial employment at SLED, I had to
5 work under the supervision of court qualified examiners
6 and go through the training program that was administered
7 by SLED During that training program I had to study,
8 read and help other examiners work cases I was tested on
9 the information that I studied and read I was tested on
10 the cases that I helped prepare

11 I had an opportunity to attend Armorer's Schools
12 and other seminars in the area of firearms Also a
13 tremendous amount of on the job training is done as matter
14 of microscopic work and training That's how you learn to
15 compare bullets and cartridge cases is by actually doing
16 it under supervision of a qualified examiner

17 After I completed that training program, I was
18 allowed to work cases on my own and testify in court

19 Q Your Honor -- how long have you been court
20 qualified to testify in courts just like this one?

21 A I have been testifying since 1987 in some area,
22 some forensic field, whether it be latent fingerprints or
23 firearms identification I have testified in South
24 Carolina General Sessions Court and in Federal Court as an
25 expert in firearm and tool mark identification

1 approximately 270 times

2 MR SALEEBY Your Honor, we would submit that
3 Mr Paavel would be well qualified to testify in the area
4 of firearms identification

5 MR CLARK Without objection, Your Honor

6 THE COURT He is an expert in the field

7 Q Mr Paavel, what I would like you to do is tell
8 the members of the jury in layman's terms what the field
9 of firearms identification consists of

10 A Yes, sir Most of the time what I do is examine
11 firearms, fired bullets, fired cartridge cases, fired
12 shotgun shells, pellets, wads and try to determine whether
13 or not the bullets and cartridge cases were fired by those
14 particular guns

15 I also examine firearms to determine whether or
16 not they're working properly and do serial number
17 restorations And also, I'm involved in doing general
18 tool mark examination or simply looking at the markings
19 that are left on an object as a result of contact by some
20 other type of tool

21 For instance, someone burglarizes a house and
22 uses a pry bar to pry on a door or on a window I'll try
23 to look at those marks and determine whether or not a
24 particular tool made those marks

25 But most of the time, with what's going on in

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1 today's society, I'm looking at fired bullets, fired
2 cartridge cases and firearms and trying to determine
3 whether or not a particular firearm fired a particular
4 bullet or cartridge case

5 Q And how can you tell whether a particular
6 firearm fired a particular bullet?

7 A Over the years, firearms examiners have found
8 that a firearm will mark a bullet or a cartridge case
9 uniquely And that happens because the manufacturing
10 processes that are used to manufacture firearms will leave
11 unique markings on the firearm

12 Then when the bullet is fired and it travels
13 through the barrel, the inside of the barrel or the
14 rifling will actually mark or engrave the outside of the
15 bullet And those markings are unique to that particular
16 barrel

17 Other parts of the firearm, such as the firing
18 pin or the bolt or the breech face, the extractor, the
19 chamber, can also mark the cartridge case and leave unique
20 markings that can be used for identification purposes

21 And what I do is take the firearm, test fire it
22 into a recovery tank where I can recover bullets and
23 cartridge cases, and then I microscopically compare those
24 test specimens to the evidence specimens, looking for the
25 individual unique marks that are found on the bullets and

1 the cartridge cases, and then I make a determination as to
2 whether or not a particular bullet or cartridge case or
3 bullet fragment was fired by a particular gun

4 Q I'm going to show you a couple of items and ask
5 you if you can identify them as being items that you have
6 received at SLED and tested at the request of our
7 Sheriff's Department for this case

8 First is State's Exhibit Number 8 I would just
9 ask you yes or no right now And also, while I'm asking
10 you that, ask a second question, did you take a look at
11 these items before you testified so that you would be able
12 to move more expeditiously

13 A Yes, sir, I did look at them and, yes, sir, I do
14 recognize this

15 Q All right, and next I'm going to show you
16 State's Exhibit Number 10 which has previously been
17 identified as 27 cartridge cases recovered at 5555 Dinkins
18 Road (sic) by Mr Mackessy

19 A Yes, sir, I recognize these Again, there are
20 items I examined and I looked at these before I got on the
21 stand to testify

22 Q And State's Exhibit S-9, I'll ask if you got
23 that to look at?

24 A Yes, sir, these also are two items that I
25 examined in reference to this case I need to add that

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1 the condition of one of these items is not the same as
2 when I received it I actually fired one of these items
3 in this rifle for test purposes

4 Q This is State's Exhibit 12-B, 12-A, 11-B and 11-

5 A Did you have a chance to take a look at these?

6 A Yes, sir, I looked at these also I do
7 recognize these

8 Q All right, State's Exhibit 14-A, B and C, which
9 have been identified by Dr Ross as projectiles removed
10 from Mr Pollard and his clothing

11 A Yes, sir, I recognize these also

12 MR SALEEBY Your Honor, at this time we would
13 move their introduction I don't believe they have
14 previously been introduced

15 THE COURT What says the Defense?

16 MR CLARK No objection, Your Honor

17 THE COURT They are admitted Will you state
18 the numbers, please

19 MR SALEEBY 14-A, B and C

20 (Whereupon, State's Exhibit Numbers 14-A, 14-B
21 and 14-C, are marked for identification and received into
22 evidence)

23 Q I show you two more fragments identified as
24 State's Exhibits 13-A and 13-B Dr Ross identified those
25 as having been taken from Mr Jackson

1 A Yes, sir, I recognize these also

2 MR SALEEBY Your Honor, we would move their
3 introduction at this time I don't believe they've been
4 previously introduced

5 MR CLARK No, objection, Your Honor

6 THE COURT They are admitted

7 (Whereupon, State's Exhibit Numbers 13-A and 13-
8 B, are marked for identification and received into
9 evidence)

10 Q I'll ask you first, if I might, State's Exhibit
11 S-10, these cartridge casings, how did you go about
12 comparing these cartridge cases, S-10, with the weapon
13 there, S Number 8

14 A First of all what I do when I receive evidence
15 is document what I have, the condition of it and I
16 actually place an item number on that piece of evidence so
17 I can recognize it later

18 When evidence is submitted to SLED, a case
19 number is assigned by our evidence control people and item
20 numbers are assigned

21 Then when I receive the evidence, as I'm doing
22 my examination, I actual document what I have, what
23 caliber it is and then put an item number, initials and
24 case number on it

25 When I actually do the comparison or the actual

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1 determination of whether or not these items were fired by
2 a particular gun, what I do again is I have to take the
3 firearm and test fire it Normally it is fired into a
4 bullet recovery tank or it is fired into a cotton box
5 which is a large long box that has cotton in it that I can
6 shoot a bullet into

7 In this case, both of those types of methods
8 were used to recover bullets and cartridge cases

9 Then I use a device which is known as a
10 comparison microscope It is simply a microscope¹ that
11 allows me to put two pieces of evidence or it could be two^u
12 tests, two specimens, whatever I'd like to put up there, I
13 put them on to the stages of the microscope, I look
14 through what's known as a binocular eyepiece, and I can
15 see one item on one side and one item on the other side I
16 have magnifications that go anywhere from 10 up to
17 approximately 40 power

18 And what I can do is I can maneuver or
19 manipulate each one of these specimens so the image of one
20 is sitting beside the other or superimposed on top of the
21 other

22 Then what I do is rotate or move the cartridge
23 cases around and I look for those individual markings that
24 are left on the cartridge cases as a result of being fired
25 in the firearm

1 Now obviously first what I will do is I will
2 make sure that I have the same caliber of ammunition You
3 know, obviously I wouldn't necessarily be comparing a 22
4 caliber cartridge case to a 45 caliber firearm or the
5 other way around

6 But I look at class characteristics first,
7 making sure I have the same caliber If I have the same
8 caliber, I do a comparison, a microscopic comparison
9 And, again, I look for these individual markings that are
10 left on the cartridge cases

11 In this particular instance, with this type of
12 firearm and this type of cartridge case, what I look for
13 are markings that are left by the firing pin of the
14 firearm and that is a part of the firearm that actually
15 strikes the back of the cartridge case, striking the
16 primer which ignites the gunpowder which forces the bullet
17 out of the barrel of the gun

18 When that firing pin strikes the primer, it
19 will mark that primer, it will leave markings on it that
20 I can view for identification purposes

21 The rear of the cartridge case or the head is
22 also supported by the front part of the bolt, and it's
23 called a breech face Any machine marks, file marks or
24 irregularities that are left on that particular item as a
25 result of the manufacture or as a result of cleaning,

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1 abuse, misuse, can leave markings on the head of the
2 cartridge case I look for that type of markings

3 Also, when the cartridge case is fired and
4 extracted and ejected, meaning thrown from the firearm,
5 the cartridge case can actually strike the ejection port
6 area of the firearm, in this particular firearm, and it
7 can leave what's known as an ejection mark on the
8 cartridge case And I can use that for identification
9 purposes also

10 In this case I looked for all of those markings
11 on these cartridge cases in order to make a determination
12 as to whether or not any or all of these cartridge cases
13 were fired by this particular firearm

14 Q And what did you determine?

15 A I found that in this particular instance, 21 of
16 the 27 cartridge cases that were submitted to me, fired
17 cartridge cases, had sufficient markings on them that I
18 could conclude that they were fired by this particular
19 rifle that was submitted for examination

20 Six of the cartridge cases were inconclusive
21 which means I could not tell whether they were fired by
22 this gun positively They could have been fired by this
23 gun or they could have been fired by another similar
24 firearm

25 And that has to do with the fact that there

1 simply weren't sufficient number of markings or
2 sufficient clarity of markings present on those six
3 specimens so I could positively tell that they were fired
4 by this gun

5 Q All right, what could you tell about the
6 ammunition, was it consistent or inconsistent with the
7 rest of the ammunition?

8 A It was the same caliber, it was the same brand
9 and it was the same type or construction as the other 21
10 cartridge cases

11 Q And were all 27 consistent with this gun?

12 A Yes, sir, they were the proper caliber for this
13 particular firearm And, again, 21 of them were fired by
14 this gun, the other six could have been fired by this
15 gun

16 Q You were given some items called these 'bullet
17 fragments?

18 A Yes, sir

19 Q I'm looking here at State's Exhibit 11-A and
20 11-B recovered from the scene What were you able to
21 tell us about these fragments, 11-A being the one found
22 off the ground?

23 A May I see my item numbers on those, sir?

24 Q Yes, sir

25 A Yes, sir In reference to 11-A, the markings

1 that were present on this particular fragment, are
2 fragments, were unsuitable for identification purposes
3 What that means is these bullet fragments were
4 sufficiently damaged that I could not use them for any
5 sort of identification

6 This is common on bullets that receive a
7 tremendous amount of damage and this particular bullet is
8 damaged considerably So I could not identify or
9 determine whether or not this particular bullet was fired
10 by this gun or not

11 Q Did you make a determination whether it was
12 consistent with the ammunition that this gun fires?

13 A Yes, sir, there is a sufficient quantity of it
14 here The construction and type of material that is
15 present here is consistent or the same type that I would
16 find in these 27 cartridge cases that were submitted

17 Q State's Exhibit 11-B was identified as fragment
18 from the exterior rear wall of the trailer?

19 A Yes, sir, this one is the same as the fragment
20 I just discussed It also was unsuitable for
21 identification The markings that were left on this
22 particular fragment as the result of being fired through
23 the gun barrel were damaged sufficiently so I could not
24 tell whether or not they were fired by this particular
25 firearm

1 The material, again, is consistent for the same
2 type of material that I would expect to find in bullets
3 that would have been loaded in the type of cartridge
4 cases that were submitted for examination

5 Q State's Exhibit Number 12-A was identified as
6 two fragments from the Pontiac?

7 A These also were unsuitable for identification
8 due to their damaged condition. Again, the material and
9 construction of the material is consistent with the type
10 of bullets that I would expect to have found in the
11 cartridge cases that were submitted

12 Q State's Exhibit Number 12-B?

13 A 12-B also was damaged to the point that it was
14 unsuitable for identification purposes. Again, the
15 markings that I need to see to make an identification
16 were sufficiently damaged that I could not tell whether
17 it was fired by this particular firearm or another
18 firearm

19 The construction of this particular fragment
20 also is consistent with the type of bullets that I would
21 expect to find in these 27 cartridge cases

22 Q And what type of bullets were they? I don't
23 believe I asked you that

24 A These actually are steel jacketed copper plated
25 bullets that have a lead core. They also have in some of

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1 them a very small plastic disk This type of
2 construction is commonly found on Russian made bullets
3 and Russian made cartridges in this particular caliber
4 being 7 62 by 39 millimeter

5 Q All right, I'll ask you in a moment to describe
6 what the -- what those numbers mean

7 A Yes, sir

8 Q If you'd wait, take just one moment, I'm going
9 to ask Mr Green if he would set up our television so
10 that we can magnify these fragments and help you to
11 illustrate your testimony

12 A Yes, sir

13 (Pause)

14 Q You want to select one of these cartridge cases
15 for marking or will they show up?

16 A They are not going to show up, no, sir

17 Q Mr Paavel, if you would stand down -- perhaps
18 move that -- we'll move that tripod and ask you to use
19 this pointer Give us a little bit of information

20 (The witness steps down from the witness stand)

21 Q What I'm showing you first is State's Exhibit
22 Number 9 Can you tell us where you recovered these two
23 projectiles from?

24 A These actually were in the magazine of the
25 firearm when it was submitted to me The magazine is

1 the, in this particular instance, the metal box that I'm
2 pointing to right here This is the portion of the
3 firearm that holds cartridges It's called the magazine
4 Some people call it a clip In this particular firearm
5 it's correctly called a magazine

6 This particular one will hold up to 30
7 cartridges Again, when I received it there were 2
8 cartridges in that magazine And as I said earlier, I
9 actually test fired one of these in that firearm during
10 my examination Both of them looked like this unfired

11 And while we're talking about it, let's look at
12 this This is an unfired cartridge A lot of times
13 people will call this a bullet But this is an unfired
14 cartridge

15 This is a cartridge case This is the
16 container that that holds the gunpowder and the bullet
17 This copper looking thing is the bullet That's the
18 projectile or the part that comes out the barrel and
19 travels toward the target

20 Q Let me put that on the screen We may be able
21 to blow that up A little bigger, please?

22 (Pause)

23 A Again, what you are seeing on the screen is
24 what I just showed you, just enlarged The top one is an
25 unfired cartridge That's the piece of ammunition that

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1 will go into the firearm and be ready to fire

2 What's left over and what is ejected from this
3 type of firearm is a cartridge case, which is the bottom
4 The cartridge is composed of a cartridge case, a bullet
5 or projectile, and inside this cartridge is gunpowder

6 On this end, and you can't see it here, if you
7 flip it over so you're looking at the end of it, this
8 brass colored area, that is the primer That is a small
9 metal cap and inside that metal cap is an explosive
10 compound

11 If you remember, I talked about the firing pin
12 striking the back of the cartridge, that's what the
13 firing pin strikes It hits right about here in the
14 middle and it literally dents or dimples or smashes in
15 that primer causing that explosive priming compound to
16 ignite

17 And then what happens is it leaves a firing pin
18 impression and I can use the markings that are in this
19 impression, which you really can't see here It's a
20 microscopic marking usually

21 I also look at markings that are found on the
22 rest of the primer and there may sometimes be markings on
23 the rest of the head of the cartridge casing And I can
24 use those for comparison purposes

25 (Pause)

1 Q I'm going to show you now State's Exhibit
2 Number 13-A described by Dr Ross as items she recovered
3 from Mr Charles Jackson's head I would ask you to tell
4 us what we're looking at

5 A Mr Saleeby, does it have my item number on it
6 also, like item 53 or 54 or something?

7 Q 53

8 A All right, sir It makes it easier for me

9 Q You used the number 7 62 times 39 millimeter
10 What does that refer to for the people who aren't
11 familiar with firearms

12 A Yes, sir 7 62 by 39 millimeter is a cartridge
13 caliber designation It could be used in referring to
14 caliber of a particular cartridge or piece of ammunition
15 It also refers to the caliber of the firearm 7 62
16 refers to the diameter of the bullet in millimeters, and
17 that's approximate 39 refers to the length of the
18 cartridge case in millimeters

19 This cartridge case is also known as a 7 62 by
20 39 millimeter Russian or Russian short Again, it's a
21 name for the cartridge so you can designate what caliber
22 a cartridge maybe or the caliber a firearm may be

23 Q I was going to put that projectile up just so
24 you could show us what's the 7 62 measurement and what's
25 the 39 millimeter measurement?

1 A Yes, sir, approximately 7 62 will be the
2 diameter of the projectile from here to here at its
3 proper location The 39 millimeter would be measured
4 from the mouth, or one end of the cartridge casing, back
5 over to the head of the cartridge casing

6 Q All right, sir, now if you would look at what
7 we've called 13-A ---

8 A Yes, sir

9 Q --- recovered from Mr Jackson, what are we
10 looking at?

11 A You are looking at bullet fragments In
12 particular what you're looking at, this large copper
13 colored fragment you see here, is actually a piece of
14 steel It's a piece of steel that's been copper washed
15 or copper plated This is common in quite a few of the
16 European types of ammunition, they use steel jacketed
17 bullets, in particular in the military style of bullet,
18 because it's cheaper, and put a copper wash on it

19 This particular portion is the base or bottom
20 of the bullet that would be in the cartridge case You
21 can actually see a part of the rifling marks right over
22 here and right over here That 53 is the number --
23 that's my item number I placed on there That wasn't on
24 it when I received the evidence

25 You can see that this particular jacket is

1 torn, it's damaged And that's the result of it, coming
2 in contact with some particular target that was
3 sufficiently hard enough to cause this bullet to
4 literally fragment into pieces

5 The remaining fragments that you'll find here,
6 in particular these gray colored fragments, with the
7 exception of this one, the one over here that has my
8 initials on it upside down, V-P, that's a piece of
9 plastic That is a small plastic disk that is loaded in
10 some Russian hollow point bullets in 7 62 by 39
11 millimeter caliber

12 If you can zoom out a little bit and show me
13 the base of that bullet

14 (Complied)

15 A The gray disk that you see here is usually
16 loaded inside the bullet, near it's base These pieces
17 of lead normally are not pieces inside a bullet It will
18 be one large piece of lead which is called the core of
19 the bullet And it's approximately in the shape of the
20 bullet

21 The core, being made out of lead, gives the
22 bullet its weight If you made that bullet out of steel
23 or plastic it would be too light So the core, the lead
24 core, add to the weight of the bullet so it can travel
25 farther and create more damage on a target

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1 Q So normally, all of these pieces that you see
2 here would be a bullet jacket, a small plastic disk and
3 one large lead core And as a result of the bullet
4 striking a target, it fragmented and went to pieces and
5 this is what you have left over

6 Q Were you able to -- did you compare it with the
7 weapon and if so, what conclusion did you reach?

8 A Regarding this particular item, which is my
9 item number 53 or the bullet removed from the head, the
10 lead fragments and that plastic disk are unsuitable
11 There are no markings on those that I can use for
12 identification because they don't come in contact with
13 the inside of the barrel

14 Remember, those are inside the bullet so they
15 can't touch the barrel Remember in the picture I showed
16 you what were little rifling marks on there? The outside
17 of the bullet jacket is what comes in contact with the
18 inside of the gun barrel And the rifling that's inside
19 that barrel, the rifling is a series of parallel spiral
20 grooves that are placed inside the gun barrel in order to
21 make the bullet spin, because that's cut into or engraved
22 the outside of that bullet and leave small scratches on
23 the bullet called striations that I use for comparison
24 purposes

25 Again, the lead core fragments have no such

1 markings Those are unsuitable for identification The
2 actual jacket fragment itself, a comparison to those with
3 the test bullets that I filed out of this particular
4 rifle was inconclusive

5 That means again, this rifle could have been
6 fired by this gun or it could have been fired by another
7 firearm or a similar type of rifle, and the reason for
8 that is again, the damage that's present on the bullet
9 and also the fact the construction of the bullet These
10 bullets being made out of steel generally are not marked
11 as well as regular copper jacketed bullets are Steel
12 jackets are much much harder than copper jacketed
13 bullets

14 And as a result of that, when that steel is
15 rubbing inside that steel gun barrel, it is not marked as
16 well I usually have considerable difficulties in
17 identifying steel jacketed bullets in guns as compared to
18 copper jacketed bullets

19 But that particular bullet fragment jacket
20 could have been fired by this rifle

21 Q All right, I will show you State's Exhibit 13-B
22 which Dr Ross recovered from the leg of Mr Jackson and
23 I'll ask you if you were able to identify it with this
24 weapon or what capacity?

25 A Is that my item 54, sir? If you will look on

1 the

2 Q Yes, sir

3 A Item 54, that particular item was unsuitable
4 for identification Those fragments, in particular the
5 jacket fragment, in this case the jacket being on the
6 left, the markings that were present on this jacket as a
7 result of being in contact with the inside of the barrel,
8 were damaged sufficiently or was sufficiently not clear
9 enough for me to make an identification to a particular
10 gun

11 The remaining fragments again 'don't come in
12 contact with the inside of the gun barrel They have no
13 markings on it to be used for identification purposes

14 Q Three sets of fragments were recovered from Mr
15 Pollard These are 14-A, 14-B and 14-C We'll go at
16 them one at a time and I'll ask you in what condition
17 they were in, if you were able to make a comparison?

18 (Pause)

19 A Regarding 14-A, 14-A had fragments in it that
20 were unsuitable for identification Again, there were no
21 markings on it to be used for identification

22 There was one fragment on it that was
23 inconclusive with this particular gun barrel which means
24 there were some markings on it that could have been made
25 by this gun barrel but they were not sufficient for me to

1 say positively that they were fired by this particular
2 gun

3 In reference to ---

4 Q And 14-A would be from ---

5 A 14-A ---

6 Q --- Mr Pollard's ankle?

7 A --- is the one that says, on the container --
8 actually it says, bullet number 2, chest

9 Q Oh, okay, thank you

10 A 14-B, bear with me, this one was incon --
11 unsuitable for identification This is simply a small
12 lead fragment likely to be a piece of the core on the
13 inside of the bullet. It does not have any markings on
14 it that could be used for identification And that was
15 indicated as the left leg

16 And 14-C, 14-C had actually two portions, had a
17 jacket fragment, which is inconclusive which means it
18 could have been fired by this particular firearm but I
19 could not positively tell And had another portion which
20 is a substantially whole bullet, very damaged but it was
21 unsuitable for identification

22 Q This would be 14-C which I think was recovered
23 from clothing

24 (Pause)

25 A Yes, sir, you could see that there are two

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1 items in this particular exhibit The top one is a
2 substantially whole bullet as a matter of its weight but
3 it is substantially damaged also The rifling
4 impressions that I need for making a comparison are
5 sufficiently damaged that it is unsuitable for
6 identification

7 This smaller in weight jacket fragment, the
8 bottom one, actually, I believe if you flip it over, has
9 more markings on it than the other larger fragment does
10 These areas here are the rifling impressions Now you
11 won't be able to see the microscopic mark obviously on
12 this because we don't have enough magnification But
13 this particular fragment was inconclusive, meaning again
14 it could have been fired by this particular firearm and
15 there were some markings on it that indicate that it
16 could have been But I can't positively say that it was

17 All of these fragments and bullet specimens
18 that we have been talking about could have been fired by
19 this rifle There was nothing there to indicate that
20 they weren't fired by this rifle

21 Q All right, let's take the television down and
22 you can go ahead and take your seat

23 A Yes, sir

24 (Pause)

25 (The witness returns to the witness stand)

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1 Q You've identified 21 cartridge cases as
2 absolutely having been fired by this weapon and none
3 other?

4 A That's correct, sir

5 Q And six that were consistent but not marked
6 enough to be able to say conclusively?

7 A That's correct, sir

8 Q And the bullet fragments that were presented to
9 you, none -- all were damaged to the extent that you
10 could not positively identify them with that gun barrel?

11 A That's correct, sir

12 Q But you could identify them with the ammunition
13 fired, that type of ammunition?

14 A Yes, sir, the construction -- first of all, the
15 rifling impressions that were present on those fragments
16 that had rifling impressions, were consistent with the
17 rifling that's in this particular gun barrel It has the
18 same general characteristics

19 And the fragments that I talked about that were
20 inconclusive, that means there were markings present on
21 those fragments that indicated to me that those fragments
22 could have been fired by this particular rifle barrel but
23 I could not positively determine that they were

24 Q Is it usual or unusual to have this many
25 damaged, terribly damaged bullets with a weapon of this

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1 variety?

2 A With this particular type of firearm and
3 ammunition combination and the type of ammunition used,
4 it's very common for us to have bullets that are so badly
5 damaged that you cannot identify them to the gun

6 Q All right, I want to talk about the weapon and
7 the ammunition Let's talk about the ammunition first

8 What type of ammunition is this that we're
9 talking about? You given us the dimensions at 7 62
10 millimeters by 39, but what's its purpose, intent,
11 manufacture?

12 A Yes, sir, again this is a 7 62 by 39 millimeter
13 or sometimes called 7 62 Russian Short This particular
14 type of ammunition and brand of ammunition is Russian in
15 origin It is ammunition that originally was designed by
16 the Soviet Union for their military In the 1940's this
17 ammunition was designed for the expressed purpose of
18 being their new military cartridge So it is designed as
19 a moderately powerful cartridge It is a reliable
20 cartridge and in most cases, it's a fairly inexpensive
21 cartridge which is important to a military

22 Again, when I say moderately powerful, in
23 compared to other high powered rifle cartridges, this is
24 a very powerful cartridge if you were going to compare it
25 to say a pistol or some other firearm of that type For

1 those of you that hunt or shoot, this is a cartridge that
2 is similar in power to say a 30-30 but not quite as
3 powerful It is a little more powerful than the M-1
4 cartridge

5 Right now in the United States it also is a
6 very very popular cartridge because when the Soviet Union
7 and communism failed, all of those communist block
8 countries that had all of these manufacturing facilities
9 for firearms and ammunition ---

10 MR CLARK Your Honor, I object to this ongoing
11 commentary that's not responsive to the question and not
12 relative to the case

13 THE COURT What says the State?

14 MR SALEEBY I think he's just trying to
15 explain where the ammunition comes from which is what the
16 question was

17 THE COURT All right, the objection is
18 overruled

19 A Again, these former communist block countries
20 need an outlet for all this ammunition and firearms, a lot
21 of it came to the United States

22 Q I'd now like you to tell us about State's
23 Exhibit Number 8 What are we looking at here?

24 A State's Exhibit Number 8 is a semi-automatic
25 rifle This is a rifle that's made in Romania, one of the

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1 former communist block countries This particular rifle
2 is in 7 62 by 39 millimeter

3 This is a semi-automatic version of the was has
4 been manufactured for nearly 60 years, or 65 years, as an
5 AK-47 or an AKM type of rifle, which was the Soviet
6 military rifle Again, the facilities that are available
7 in Romania, where they were making the AK-47 and AKM
8 rifles, when they didn't have an outlet for those anymore,
9 they started to make semi-automatic versions of these for
10 export to other countries Quite a few of these come into
11 the United States

12 Q What's the difference between this and an AK-47?

13 A The primary difference in this and what would be
14 a true AK-47 is that this is not a fully automatic
15 firearm This is not a machine gun An AK-47 has the
16 ability to shoot as a selective fire firearm which means I
17 can pull the trigger on an AK-47 and hold it And if I
18 have the selector in the proper position, it will keep on
19 shooting just simply by holding the trigger Or I have
20 the choice of simply pulling the trigger and letting it
21 go

22 On this particular firearm, which is a semi-
23 automatic firearm, every time I pull the trigger, it
24 fires Then I have to let the trigger go forward and then
25 I have to pull it again to make it fire

1 So for each shot, you have to pull the trigger,
2 let it go That's a semi-automatic type of firearm

3 Now it will fire as fast as you can pull the
4 trigger and let it go So you can have a fairly rapid
5 rate of fire but it won't be as fast as a machine gun type
6 or fully automatic type of firearm

7 Q If you fired it 27 times, how many times would
8 you have to pull the trigger and let it go?

9 A If it's properly functioning and this one was,
10 you'd have to pull it 27 times and let it go 27 times

11 Q Does it have a safety?

12 A Yes, sir, it has a safety It is this lever
13 that's located on the right hand side When it is in the
14 up position, as it is now, that is the safe position In
15 order to fire it, you press the lever all the way down and
16 it's ready to fire, assuming that you have cartridges in
17 the magazine and have a cartridge loaded into the chamber
18 or barrel

19 Q This weapon is designed for military anti-
20 personnel purposes or for hunting purposes?

21 A The original firearm, the AK-47, again was a
22 Soviet military firearm and this is simply a semi-
23 automatic version of it Again, the original firearm is a
24 military firearm

25 You could conceivably hunt with a firearm like

1 this I think with this large magazine it would be -- I
2 don't know whether that's legal in South Carolina or not
3 I don't know what the laws are in hunting with a large
4 magazine

5 Q And that's a 30 capacity magazine?

6 A Yes, sir, it will hold 30 cartridges in the
7 magazine You could conceivably put one more in the
8 barrel so you could have a total of 31

9 MR SALEEBY Thank you, Mr Paaavel, please
10 answer any questions Mr Clark may have

11 MR CLARK No questions for Mr Paaavel, Your
12 Honor

13 THE COURT Okay, sir, you may step down

14 THE WITNESS All right, thank you, sir

15 (The witness leaves the witness stand)

16 MR SALEEBY May we approach, your honor?

17 THE COURT All right, ladies and gentlemen, I'm
18 going to have you go to the jury room at this time
19 Please do not discuss the case while you're there I will
20 have you come back shortly

21 (Jury exits the courtroom)

22 THE COURT Let's take about a five minute
23 break

24 (Whereupon, a recess was taken concluding at
25 4 50 p m)

1 (Jury returns to the courtroom)

2 THE BAILIFF Your Honor, all of the jurors and
3 alternates are present in the courtroom

4 THE COURT All right, Mr Solicitor

5 MR SALEEBY Your Honor, at this point the
6 State would rest

7 THE COURT Ladies and gentlemen, the State has
8 rested It is necessary that I now take up some matters
9 outside of your presence So we'll quit for the day, as
10 far as you're concerned And we'll need you back at 9 45
11 tomorrow morning

12 Thank you, very much We'll see you back
13 tomorrow Please remember you're not to talk about the
14 case or allow anyone to talk about it in your presence or
15 be exposed to any type of media accounts of this case

16 Thank you, very much We'll see you later

17 (Jury exits the courtroom)

18 THE COURT Yes, sir, Mr

19 MR CLARK Thank you, Your Honor, may it please
20 the court

21 At this time the Defendant would move for a
22 directed verdict on the grounds that there has been a
23 failure of competent evidence tending to prove the charge
24 in the indictment That motion would be under Rule 19 of
25 the Rules of Criminal Procedure, specifically the element

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1 required as known as malice aforethought, to sustain a
2 conviction for murder, Your Honor

3 That would be our motion at this time

4 THE COURT What says the State?

5 MR SALEEBY Of course, the use of a deadly
6 weapon would carry with it the inference, I know, we call
7 it implied malice but I think would appropriately be
8 called the inference of malice to the jury

9 THE COURT All right, at this stage of the
10 proceeding I am obliged to take the evidence in the light
11 most favorable to the State Taking that evidence in the
12 light most favorable to the State, the jury could
13 conclude, based on the evidence presented, that the
14 Defendant is guilty as charged to all of the counts in the
15 indictment

16 I therefore deny the motion for a directed
17 verdict

18 Is there any other matters that we need to take
19 up before we break for this day?

20 MR CLARK Not from the Defendant, Your Honor

21 MR SALEEBY No, sir

22 THE COURT All, right, we'll recess then until
23 9 45 tomorrow morning

24 MR CLARK Thank you, Your Honor

25 (Whereupon, court was adjourned for the day)

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2 THE COURT Is there anything before we bring
3 in the jury?

4 MR CLARK Not from the Defense, Your Honor

5 MR SALEEBY Your Honor, on behalf of the
6 State, if the Defense is going forward, Judge, we would
7 like to make sure that the Defense witnesses will be
8 identified so that we have the chance to check on a prior
9 criminal history for them, make sure that they've been
10 sequestered and are sequestered now

11 And that's the first matter we'd like to deal
12 with

13 THE COURT All right, Mr Clark

14 MR CLARK Your Honor, we have a list of
15 witnesses that we intend to call at this time

16 THE COURT If you will publish the names of
17 them

18 MR SALEEBY Can I have Mr Jackson make a copy
19 of it?

20 MR CLARK Sure, I mean, if it's all right with
21 you

22 THE COURT If you will publish the names ---

23 MR CLARK Yes, sir, Your Honor

24 THE COURT You can make copy and publish the
25 names at the same time

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1 MR CLARK All right, sir Reginald Clea,
2 Council Hunter, Michael Clea, Steven Clea, Rich Bledsoe,
3 Carl Holmes, Charles Davis, Elizabeth Clea, Tanisha Clea,
4 Floyd Drakeford, Tewana Loney and Timothy Brown And all
5 of these individuals with the exception of Mr Clea,
6 Reginald Clea, have been sequestered

7 MR SALEEBY If we could get a copy of that
8 list

9 THE COURT All right

10 MR CLARK And, Your Honor, I don't have the
11 social security number of these witnesses but I will get
12 it as soon as they arrive All of them aren't here yet

13 (Pause)

14 (Jury returns to the courtroom)

15 THE BAILIFF Your Honor, all of the jurors and
16 alternates are present in the courtroom ,

17 THE COURT Good morning

18 JURORS Good morning

19 THE COURT Ladies and gentlemen, you've heard
20 the State's case It's now the Defense's turn

21 Mr Clark, you may call your first witness

22 MR CLARK Thank you, Your Honor, may it please
23 the court We would call Reginald Tyrell Clea

24 **REGINALD TYRELL CLEA**, after being first
25 duly sworn, testified as follows

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1 THE CLERK Have seat up here, please name,
2 spell your last name, please

3 THE WITNESS Reginald Tyrell Clea, C-l-e-a

4 **DIRECT EXAMINATION BY MR CLARK**

5 Q Mr Clea, how are you this morning?

6 A Fine, and you, sir?

7 Q Oh, I'm fine, thank you You told the jury your
8 name Tell the ladies and gentlemen of the jury where
9 you're from?

10 A I'm from Rembert, South Carolina, 4978 Dennis
11 Road

12 Q All right, so how long have you lived in
13 Rembert, South Carolina?

14 A All my life

15 Q How old are you, sir?

16 A 25

17 Q All right, so at the time that this incident
18 occurred, how old were you?

19 A 24

20 Q 24, okay And so you've lived in the Rembert
21 Community your entire life?

22 A Yes, sir

23 Q All right, who is your -- tell us about your
24 mother and father, who are they?

25 A My mother ---

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1 Q She's not in the courtroom right now?

2 A She's not in the courtroom but that's my father

3 Q Right here in the plaid shirt?

4 A Yes, sir

5 Q The gentleman on the right?

6 A Yes

7 Q And what's his name?

8 A Lawrence Dinkins

9 Q And what's your mother's name?

10 A My mother's name is Bertha Drakeford

11 Q Okay Do you have any sisters and brothers?

12 A Yes, sir

13 Q How many do you have?

14 A Six

15 Q All right, now, Mr Clea, you said that you were
16 24 at the time that this occurred Had you ever been
17 convicted of a crime at that point in your life?

18 A Never

19 Q And so at this point you've never been convicted
20 of any type of crime?

21 A No, sir

22 Q And where did you go to high school at, Mr
23 Clea?

24 A Hillcrest High for one year, my 10th grade year,
25 Crestwood 11 and 12

- 1 Q All right, sir, did you graduate from high
2 school?
- 3 A Yes, sir
- 4 Q When did you graduate from high school?
- 5 A The year 1979 -- 1997 -- '98
- 6 Q Are you a little nervous?
- 7 A Nah
- 8 Q It wasn't 1979?
- 9 A No, that's my birthday
- 10 Q Okay, you were born in 1979?
- 11 A Yes, sir
- 12 Q And you graduated from high school in '97, did
13 you say?
- 14 A Yes, sir
- 15 Q All right, now, did you get a diploma?
- 16 A No, I received a certificate because I didn't
17 pass the math part of the exit exam
- 18 Q But you went for 12 years?
- 19 A Yes, sir
- 20 Q All right, now, did you focus on a career while
21 you were in high school?
- 22 A Yes, I took a brick mason for two years
- 23 Q Brick masonry?
- 24 A Yes, sir
- 25 Q And how -- tell us about that

The State v Reginald Tyrell Clea

1 A I went to Sumter County Career Center receiving
2 my apprenticeship through Thomas Felder (phonetic)

3 Q Okay, so you were an apprentice while you were
4 in high school?

5 A Yes

6 Q And did you get a certificate for that?

7 A Yes

8 Q All right, and were you involved in any other
9 activities while you were in high school, sir?

10 A Yes, I played football four years and I worked
11 every since I was 16 at Bojangles, throughout all my high
12 school life

13 Q Say you played football all four years?

14 A Yes, sir

15 Q What position did you play?

16 A Offensive guard

17 Q Now, while you were not playing football, what
18 did you -- what else did you do?

19 A I worked

20 Q So you worked while you were in high school?

21 A Yes

22 Q Where did you work, sir?

23 A At Bojangles

24 Q That's a fried chicken place?

25 A Yes, it's on Broad Street

1 Q And how old were you when you started working
2 for Bojangles?

3 A 16

4 Q All right, and what did you do for Bojangles?

5 A I started out as a kitchen -- as a chicken
6 breeder When I left I was a kitchen leader

7 Q So you got promoted while you were there?

8 A Yes

9 Q How long did you work for Bojangles, Mr Clea?

10 A Four years

11 Q Four straight years?

12 A Yes

13 Q And when you got out of high school, what did
14 you do then?

15 A I worked at Bojangles part time, two days out of
16 the week and one day on the weekend And I went to work
17 for Elijah Lewis Brick Mason Construction (phonetic)

18 Q All right, so when you got out of high school
19 you actually worked two jobs?

20 A Yes

21 Q How many days a week did you work?

22 A Six

23 Q And you worked five masonry and then you worked
24 three at Bojangles?

25 A Yes

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1 Q And how long did you do that?

2 A For about a year

3 Q And who were you living with then, Mr Clea?

4 A My mother and my step-father

5 Q Were you living with them at the time of the
6 occurrence? Who do you live with now?

7 A My mother and my step-father

8 Q Now, how long did you work for Elijah Lewis
9 Masonry?

10 A About a year

11 Q A year, okay, and what did you -- why did you
12 leave Elijah Lewis Masonry?

13 A Because the fact the work I was producing he
14 didn't want to pay me so I went to Roper Personnel in
15 Columbia and got a job through Roper Personnel through --
16 Farrow Road at Shakespeare Fishing, Bait and Tackle

17 Q Okay, so you went to a personnel agency?

18 A Yes, sir

19 Q Roper is who you used?

20 A Yes

21 Q And you're saying they referred you to
22 Shakespeare Fish and Tackle?

23 A Yes, because they didn't have any construction
24 jobs open right at the moment

25 Q So, that's in Columbia?

- 1 A Yeah, it's off Two Notch Road
- 2 Q And what do they do?
- 3 A It's like a -- it's like a warehouse where they
- 4 store fishing products and fishing rods and reels
- 5 Q So that's where they store these things at?
- 6 A Yes
- 7 Q What did you do for them?
- 8 A I worked on the loading dock, loading pallets,
- 9 using a pallet jack loading the 18 wheeler trucks
- 10 Q Okay, and how long did you work for Shakespeare?
- 11 A I worked there nine months
- 12 Q And why did you leave Shakespeare?
- 13 A Because it was getting an inconvenience riding
- 14 back and forth from Rembert to Columbia
- 15 Q How far is that, Mr Clea?
- 16 A It was about an hour drive
- 17 Q Okay, and that became a bit too much for you?
- 18 A Yes
- 19 Q And did you -- what did you do when you left
- 20 Shakespeare Company?
- 21 A I was unemployed for about three or four months
- 22 Then I went to Sears Roebuck right there at the mall,
- 23 Jasmine Mall
- 24 Q How long did you work for Sears and Roebuck?
- 25 A A little over a year

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1 Q And what did you do for them, Mr Clea?

2 A I was a tire and an oil change technician

3 Q All right, and how long did you work -- you said
4 you worked for them about a year?

5 A Yes

6 Q What did you do when you left Sears and Roebuck?

7 A I was unemployed for about two months and I got
8 a job at McLaughlin Ford

9 Q And what did you do at McLaughlin Ford?

10 A The same type of work

11 Q And that's a car dealership, right?

12 A Yes

13 Q All right, and how long did you work for them?

14 A For about seven months

15 Q All right, and where did you go after that?

16 A I went to Palmetto Tire for more pay

17 Q All right, and what did they do -- is that a
18 tire store?

19 A Yes

20 Q They sell tires and service them and that kind
21 of thing?

22 A Yes, sir

23 Q Was Rich Bledsoe one of your supervisors there?

24 A Yes, because he got -- he gave me the job

25 Q Okay All right, now, you worked for them for

- 1 about a year?
- 2 A Yes
- 3 Q All right, and why did you leave there?
- 4 A I went back in the field of working with my
- 5 step-father doing ---
- 6 Q Okay, now your step-father is who?
- 7 A Is Floyd Drakeford
- 8 Q All right, now he -- he's here but he's not in
- 9 the courtroom because he's on the witness list for this
- 10 case, right?
- 11 A Yes, sir
- 12 Q All right, so Floyd Drakeford is your step-
- 13 father, right?
- 14 A Yes
- 15 Q And what kind of business does Floyd Drakeford
- 16 run?
- 17 A A brick mason
- 18 Q Okay, so when you left Palmetto -- well, when
- 19 you left Palmetto Tire, you went to work for Floyd?
- 20 A Yes
- 21 Q And are you working with Floyd now?
- 22 A Yes, sir
- 23 Q Okay as a brick mason?
- 24 A Yes
- 25 Q Were you working with him when this event

1 occurred?

2 A Yes

3 Q Now, did you ever work for a Robert Hollings
4 (phonetic) Concrete Company?

5 A Yes, that was right in the midst of -- 'right
6 before I started working with my step-father'

7 Q All right, how long did you work for them?

8 A I worked for him driving trucks and bringing the
9 workers back and forth for about a year

10 Q Okay, and did you work for A P Bowden Company?

11 A Yes

12 Q And what do they do?

13 A They do roadwork and landscaping

14 Q Okay, and you worked -- how long did you work
15 for them?

16 A I worked for them eight months

17 Q And then after that you said you started working
18 with Floyd Drakeford?

19 A Yes, because he was working at DeRoyal and he
20 needed me to start up the company while he was at work and
21 he put in his month notice because he was a higher
22 supervisor there

23 Q And where was that now?

24 A DeRoyal

25 Q Okay, and so he started up his own masonry

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1 company?

2 A Yes

3 Q And you helped him do that?

4 A Yes

5 Q Okay, all right, and when you work for Floyd,
6 how much do you make?

7 A \$11 00 an hour

8 Q So all these jobs that you've told us about, you
9 had all these jobs between high school and being 24 years
10 old?

11 A Yes, sir

12 Q And you say you've never been convicted of a
13 crime?

14 A No, sir

15 Q Do you have any children, Mr Clea?

16 A Yes

17 Q How many children do you have?

18 A Three

19 Q And do you support those children?

20 A Yes

21 Q Now, do you support them because of a court
22 order or do you do it voluntarily?

23 A Voluntary

24 Q Has the court ever had to order you to support
25 these children?

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- 1 A No, sir
- 2 Q You always worked?
- 3 A Yes
- 4 Q No, do you have any hobbies or recreational
- 5 activities that you like to engage in?
- 6 A Yeah, football, baseball, going to car shows,
- 7 racetracks, riding four wheelers
- 8 Q Okay, so that's the kind of thing you do in your
- 9 spare time?
- 10 A Yes
- 11 Q Now, Mr Clea, did you know Charles Jackson?
- 12 A Yes
- 13 Q How long did you know Charles Jackson?
- 14 A All my life
- 15 Q Did you know whether Charles Jackson had a
- 16 reputation for violence?
- 17 A Yes
- 18 Q And did he have one?
- 19 A Yes
- 20 Q How long did you know that?
- 21 A All my life
- 22 Q Now, tell the ladies and gentlemen of the jury
- 23 how you knew Charles Jackson
- 24 A I know him through his sister and his brother
- 25 Half of his family used to stay next door to me

- 1 Q Okay
- 2 A And when I used to have little cookouts and
- 3 little get-togethers, we'd just be out there
- 4 Q Okay
- 5 A And him and my Uncle Steve used to hang during
- 6 their younger days
- 7 Q All right, so he used to hang out with your
- 8 Uncle Steve?
- 9 A Yeah
- 10 Q Now, was Mr Jackson your age or was he older
- 11 than you?
- 12 A He was older than me
- 13 Q So you knew him when you were a small kid?
- 14 A Yes
- 15 Q Did you associate with him then?
- 16 A No, sir
- 17 Q But you knew him from the family association?
- 18 A Yes
- 19 Q Do you know whether he worked or anything like
- 20 that?
- 21 A No, sir
- 22 Q You don't know or do you know?
- 23 A I know he don't work
- 24 Q Did he ever work as far as you know?
- 25 A Not to my knowledge

1 Q Now, did there become -- did there come a point
2 in time where you began associating with Mr Jackson?

3 A Yes

4 Q When was that?

5 A When I was about 18

6 Q All right, and so you were an adult then, right?

7 A Yes

8 Q And he was about 10 years older or 12 years
9 older than you?

10 A Yes

11 Q And how did you become associated with him when
12 you were about 17?

13 A Through my cousin Lorenzo Waterman (phonetic)
14 and through James Pollard

15 Q Okay, and so what kind of association did y'all
16 do?

17 A We just used to chill or go to his mother's
18 house and just hang out

19 Q Okay, all right, and did it come a time when
20 y'all stopped hanging out?

21 A Yes, at one point in time

22 Q And when was that, Mr Clea?

23 A During the month of August, 2003

24 Q All right, was it August?

25 A April

1 Q It was April of 2003?

2 A Yes

3 Q And this incident that we're here about today,
4 happened on February the 25th, 2004?

5 A Yes

6 Q And you stopped hanging out with him and
7 associating with him in April of 2003?

8 A Yes

9 Q And can you tell the ladies and gentlemen of the
10 jury why you stopped associating with him?

11 A Because ---

12 MR SALEEBY We'd have to object here

13 THE COURT Basis for the objection?

14 MR SALEEBY At this point there's indication
15 -- it's too far removed in time to this particular
16 incident

17 THE COURT All right, ladies and gentlemen, I'm
18 going to need you to go to the jury room If you will go
19 to the jury room Please do not discuss the case

20 (Jury exits the courtroom)

21 THE COURT Sir, you may answer the question

22 **DIRECT EXAMINATION BY MR CLARK (IN CAMERA)**

23 A Yes, because it was an incident that happened at
24 my mother's residence that I thought Mr Jackson had ties
25 in it, there was a robbing and tying up of my sister

1 Q And so an incident happened at your mother's
2 house?

3 A Yes

4 Q And is that when you stopped associating with
5 him?

6 A Yes, that night I confronted him about it and I
7 went to him like a man and I asked him did he had anything
8 to do with it and he just flied off the handle, you know

9 Q And did y'all stop associating then?

10 A Yeah, because when I asked him he called his
11 sister Helen Jackson and she called me -- 'no,' he didn't
12 call her, he went to his house, his sister right there
13 Helen, and she called me asking me what happened 'But he
14 went there and said it was between him and another fellow
15 but which it was, it was between me and him

16 Q Okay, all right, so there's nothing happened to
17 you with him at that point?

18 A No, sir

19 Q That's just when you stopped associating with
20 him?

21 A Yes, I told him I thought he had something to do
22 with it and I didn't appreciate it And we shouldn't be
23 getting down like we got down anymore

24 THE COURT Is there an objection from the
25 State?

1 MR SALEEBY Well, the basis of the objection
2 is this man's saying that there was an incident at his
3 sister's house that he was not present at that he thought
4 -- that he thought Mr Jackson might have had something to
5 do with That's hardly close to anywhere being relevant
6 or probative

7 If he wants to say there was an incident and he
8 decided not to have anything to do with him, that's fine
9 For him to say that he thought Mr Jackson was involved in
10 something which involved a home invasion or doing
11 something to his sister or anything like that, it would be
12 highly, highly improper

13 MR CLARK Well, Your Honor, I think we can go
14 into -- this leads into prior difficulties between this
15 individual and the deceased And this is offered for the
16 purpose of showing why he stopped associating with him and
17 as State v Day sets out, to show what produced a
18 reasonable apprehension of bodily harm by him

19 So I believe it's quite relevant It's only 10
20 months before the incident They involved an incident
21 that was four months before which the Court agreed was
22 certainly within a close proximity They cited a case,
23 the Brown Case which has an incident that was 23 years
24 prior The Court said that was too remote

25 THE COURT I agree with you that it's not -- I

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1 disagree with the State as far as the remoteness issue
2 because the point in time does not appear to be remote

3 The question however is concerning the
4 prohibition against going into the details of the
5 difficulty

6 MR CLARK Well, Your Honor, if I could
7 respond

8 THE COURT Specifically his testimony
9 concerning he thought that this gentleman went in and tied
10 up someone and so forth

11 MR CLARK Well, Your Honor, it's not offered
12 for the truth, it's offered to show a state of mind
13 That's what takes it out of the hearsay exception

14 But -- so ---

15 THE COURT Will you tell me what rule, what
16 case, what authority exists wherein the specific details
17 of a prior difficulty was admitted by the Court?

18 MR CLARK Well, I think Day says that In my
19 view, Your Honor, as I understand Day, the Defendant in
20 Day attempted to present testimony of basically a
21 kidnapping by the deceased to show that he was a vengeful
22 person The Trial Court denied it and the Supreme Court
23 said the Trial Court committed an error

24 So Day allows specific instances, if it's not
25 too remote, if it's against someone else, and if it's

1 against the Defendant, a specific act against the
2 Defendant, to show his reasonable apprehension of bodily
3 fear

4 So Day -- Day permits specific instances

5 MR SALEEBY Your Honor, may we respond?

6 Sir, we previously handed up the Supreme Court
7 decision of State versus Taylor, 333 S C 159, 508 S E 2nd
8 which states very clearly that the evidence of something
9 between the victim and the Defendant is admissible but
10 specific details of that incident were properly excluded

11 And this incident involving his sister had
12 nothing -- did not involve this man Now, what this man
13 thought when he talked to Mr Jackson, if he did, is
14 irrelevant If he wants to testify because an event which
15 occurred, I had some words with him and he got -- flew off
16 the handle towards me, that's as far as he can go

17 MR CLARK Well, Your Honor, State v Day says
18 that we can go into specific instances and it clearly sets
19 out the facts of what this Defendant wanted to admit,
20 testimony of a kidnapping that the deceased had committed
21 showing he was vengeful

22 But we simply offer it, Your Honor, for the
23 purpose of showing the reason that they stopped
24 associating We do intend to admit other specific
25 instances of violence or threats against this gentleman

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1 and violence that he witnessed by Mr Jackson

2 That's all we have on that point

3 MR SALEEBY If I could respond to that?

4 THE COURT Yes, sir

5 MR SALEEBY If it's something involving this
6 Defendant, that's fine If it's something involving
7 somebody else, we would object to it But that's not the
8 issue in front of us right now

9 MR CLARK And, Your Honor, I would also point
10 out that we intend to tie this in to why the Defendant had
11 an apprehension of the decedent and what the Defendant's
12 state of mind was at the time the shooting occurred And
13 it's very probative that -- for what he knew because
14 that's going to be an essential element of this self-
15 defense claim

16 THE COURT In the Day case, Day wasn't trying
17 to testify concerning a prior act of violence, violence
18 that he had with the decedent They complained that the
19 Court did not allow someone else to testify about the
20 prior incident that the other person, Mr Szumowicz --
21 Marva Szumowicz, had with the victim That would have
22 been direct -- an incident directly involving those two
23 people that the Court said that those -- that witness
24 should have been -- their testimony should have been
25 allowed

1 Now, you -- you're attempting, it appears, to
2 have first of all, Mr Clea speak to something that he was
3 not personally involved in, details of something that he
4 was not personally involved in, as a basis to form his
5 opinion regarding some reasonable apprehension of fear of
6 his person

7 MR CLARK Your Honor --

8 THE COURT Yes, sir

9 MR CLARK I intend to present the witness ---

10 THE COURT I'm not concerned about what you
11 intend to do later on I'm trying to -- I'm focusing on
12 this question to this witness at this time

13 MR CLARK I understand that, Your Honor
14 I

15 THE COURT I can't rule on anything later on
16 The objection is to what you had asked custom to this
17 witness

18 MR CLARK Well, Your Honor, like Day -- like
19 Day, Day attempted to present the actual victim of the
20 prior violence We intend to present that victim And if
21 the Court rules that we cannot go into details at this
22 point, I simply ask to be able to call him after that
23 witness

24 THE COURT You can call your witnesses in
25 whatever order you wish to but I must rule based on

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1 witnesses on the witness stand, not based on what you
2 promise that someone will say later on

3 MR CLARK Right

4 THE COURT And to -- for me to give any
5 advanced ruling as to whether or not whomever's coming
6 later on would be giving appropriate testimony

7 Anything further on this particular issue
8 involving this question to this witness?

9 MR CLARK Your Honor, I'd simply ask to at
10 least be able to talk about the confrontation he had with
11 this ---

12 THE COURT You can ask him any questions you
13 want to ask him but I must rule based on the specific
14 questions that are asked

15 MR CLARK Yes, sir ---

16 THE COURT As it relates to the last question,
17 that particular question and the response to that
18 question, the objection is sustained

19 And as to any other rephrasing of any questions
20 or if there's any other questions, I must rule as the
21 questions are presented

22 I cannot make an advanced ruling, ruling in and
23 ruling out any particular line of questioning except to
24 say that this witness, according to the Day case, can
25 testify concerning specific instances he had with the --

1 any other person that would give a basis for reasonable
2 apprehension that he may have He may or may not be able
3 to go into specific details of those based on whatever the
4 testimony and circumstances seem to suggest

5 He cannot give details concerning encounters
6 that the decedent had with someone else and give details
7 of those encounters

8 Anything else before we bring the jury back?

9 (No response)

10 THE COURT All right ---

11 MR CLARK Your Honor, there is one issue just
12 to -- and I'm not asking the Court to make an advanced
13 ruling But is the Court saying, even if he was present,
14 he could not testify about it?

15 THE COURT I'm not saying anything other than
16 what I said

17 MR CLARK I understand, Your Honor

18 THE COURT All right, let's stand for a moment
19 (Pause)

20 (Jury returns to the courtroom)

21 THE BAILIFF Your Honor, all of the jurors are
22 present in the courtroom

23 THE COURT All right, the objection is
24 sustained You may proceed

25 **DIRECT EXAMINATION BY MR CLARK CONTINUES**

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1 Q Mr Clea, was there a time -- you said it was in
2 April of 2003, you stopped associating with Mr Jackson?

3 A Yes, sir

4 Q All right, and did you have a conversation with
5 him then?

6 A Yes

7 Q All right, can you tell us about that and -- not
8 the details but about your conversation with him?

9 A Yes, I confronted him about a situation that was
10 going on with me And he flew off the handle, like what
11 you talking about, Reggie Clea? Don't even start putting
12 my name in nothing like that because you can't prove
13 nothing And you listen to everybody else around here,
14 how can you prove or put me at somewhere that I wasn't

15 I said -- and I told him, I said, then why was
16 you calling me all day from your sister-in-law Jean house
17 telling me everything that was going on?

18 And he was like, man, just get out my face, get
19 out my face, like that And he came between me -- we was
20 about knuckle up but my Uncle Mike break it up

21 And that when I left and went to my mother's
22 house and that when he left and went to his sister's
23 house

24 And that when his sister Helen Jackson called me
25 ---

1 MR SALEEBY Objection, what somebody else
2 said

3 Q Well, don't tell us what she said but did
4 someone call you?

5 A Yes

6 Q And that was Helen Jackson?

7 A Yes

8 Q Well, I think you can tell us what she said

9 A She just asked me ---

10 MR SALEEBY Objection ---

11 A She asked me ---

12 MR SALEEBY I object, Your Honor It's
13 hearsay

14 THE COURT Objection based on hearsay

15 MR CLARK Well, Your Honor, she's a witness
16 that testified

17 MR SALEEBY And he didn't ask her at all about
18 it

19 MR CLARK Well, she's available to be recalled
20 if the State wants to recall her

21 MR SALEEBY It's hearsay, we object

22 THE COURT The objection is sustained

23 Q So you have a conversation with Helen Jackson

24 A Yes

25 Q In that first conversation that you had with Mr

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1 Jackson, did he threaten you?

2 A Yes

3 Q Tell us how?

4 A He said, you better not put my name -- better
5 not call my name to the police If you do, it's going to
6 be me and you, furthermore I'm going to get you

7 Q Okay, so -- and that was in time how soon after
8 this incident that you confronted him about?

9 A The same day

10 Q When he told you he was going to get you, if you
11 didn't keep his name out of your mouth?

12 A Yes

13 Q And what did you take that to mean, Mr Clea?

14 A I just took it as it was going to blow over and
15 -- because in the first place, I didn't even call his
16 name I went to him like a man first and asked him about
17 the situation because I thought me and him was better than
18 that

19 And after that he just blew the whole situation
20 out of proportion

21 Q Okay, now, you said -- what happened the next
22 day, did anything happen the next day -- this was in April
23 of 2003, right?

24 A Yes

25 Q All right, what happened the next day?

1 A He took sick and went to Tuomey Hospital He
2 called me like three or four days later, ask me like,
3 Reggie Clea, you still on this bullshit And I was like,
4 what are you talking about man? I said, man, I'm going to
5 tell you like this, let's just leave each other alone and
6 just part our ways

7 And then he was like, nah, nah, it ain't going
8 down like that because I heard you got my street -- got my
9 name out in the street

10 I was like, well, if you feel as though that how
11 it is then, that how it is I said, I have no other words
12 for you

13 Q And then did he say anything in response to
14 that?

15 A Nah, he was just like, I'm going to see you when
16 I get out the hospital

17 Q He said he was going to see you when he gets out
18 the hospital?

19 A Yes

20 Q And what did you understand that to mean?

21 A As a threat

22 Q All right, now, did you have a conversation with
23 Michael Clea the next day?

24 A Yes

25 Q Who is Michael Clea?

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1 A My uncle

2 Q And was Michael friends with him?

3 A Yeah, him and Bubba used to ride around every
4 day

5 Q All right, and what was that conversation all
6 about?

7 MR SALEEBY Objection

8 MR CLARK Your Honor ---

9 THE COURT Tell us the general nature of the
10 conversation, nothing specific

11 A Yeah, it was about he -- Bubba confronted him
12 like, what's up with you ---

13 MR SALEEBY Objection

14 MR CLARK May we approach, Your Honor?

15 THE COURT Yes, sir

16 (Whereupon, a bench conference was held off the
17 record in the presence of the jury, but out of hearing of
18 the jury)

19 Q Sir, did you have a conversation with Michael
20 Clea the next day?

21 A Yes, sir

22 Q And as a result of that conversation, what did
23 you do?

24 A After what he told me, I thought about it and
25 about two weeks later I went to talk to Lieutenant Wesley

1 Gardner that stays right down the road from me

2 Q After what he told you, how did it make you feel
3 about Mr Jackson?

4 A It made me feel kind of shaded because he was
5 still on it I thought -- I told him to let it go and
6 then blow over But he was still -- he was still -- if
7 somebody still talking about it it must be still in his
8 heart

9 Q Did -- were -- were you fearful after you had
10 that conversation?

11 A Yes

12 Q And you were fearful of who?

13 A Jackson

14 Q All right, and then you went to Mr Gardner?

15 A Yes, Wesley

16 Q Mr Gardner the Sheriff's Deputy?

17 A Yeah, he stays on my same road

18 Q All right, and what did you do when you went to
19 his house?

20 A I went to his house to talk to him about two
21 different things

22 Q And what was that?

23 A The first thing, I talked to him about a
24 separate incident and then I talked to him about these
25 threats I was hearing and these verbal threats that I was

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1 receiving

2 Q Okay, and you talked to Mr Gardner about that?

3 A Yes

4 Q And you went to his house?

5 A Yes, on an early Sunday morning

6 Q And after you talked to him about these threats,
7 did anything happen? Did the Sheriff's Department -- were
8 they able to do anything to make you feel better?

9 A I don't know, when I got back with them he just
10 told -- he just kept telling me he would handle it

11 Q Okay

12 A Yeah

13 Q And why -- why were you going to his house, Mr
14 Clea?

15 A I went to his house because I don't really
16 indulge in too much trouble when it comes down, you know,
17 the type of person I was dealing with

18 Q Were you looking for help?

19 A Yeah, you can say that

20 Q All right, now, were there any times that Mr
21 Jackson actually threatened you?

22 A Yes

23 Q All right, now, tell us when was the first time
24 he threatened you?

25 A The first time he threatened me was days after I

1 confronted him about a situation that was going on

2 Q And he threatened you?

3 A Yes

4 Q And where -- where did this occur?

5 A I was on my cell phone at Red Lobster and he was
6 at the hospital

7 Q Okay, and so you told us about that, he called
8 you from the hospital?

9 A Yes

10 Q All right, and then when -- was there another
11 time?

12 A Yes, it was two more times It was once at a
13 neighborhood bootlegger

14 Q All right, and can you tell me how he threatened
15 you?

16 A When I rolled up he said, mister all that, you
17 think you're all that, but don't worry I've got something
18 for you I said, what do you mean by that? He said,
19 don't worry about it, Reggie Clea, I got something for
20 you Your time coming Just like that

21 Q Okay, and did that make you afraid

22 A It didn't really make me afraid, it made me
23 paranoid

24 Q Okay

25 A Just keep watching him and looking over my

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1 shoulder

2 Q And when he said that he was going to get you
3 that day, what did you understand that to mean?

4 A As a threat As, you know, I just better be on
5 my P's and Q's and keep my eyes open at all times

6 Q Okay, all right, now when he told you that after
7 you asked him what do you mean, did you say anything else
8 then?

9 A No, I walked off and went in the house

10 Q All right, okay, and so that was the second
11 time?

12 A Yes

13 Q That he actually threatened you directly?

14 A Yes

15 Q All right, and were you dealing with him at that
16 time?

17 A No, sir

18 Q Was there another time that he threatened you?

19 A Yes, it was about three or four months later

20 He asked me for a ride I was like ---

21 Q Where were you at?

22 A Oh, I was at 521 at Calvin's

23 Q Calvin's, what is that?

24 A A little neighborhood juke joint

25 Q Okay, that's a little gathering place?

1 A Yes

2 Q All right, and what happened?

3 A When I pulled up he come to the car, Reggie
4 Clea, give me a ride I was like, nah, I'm just getting
5 here And he was like, why you can't give me a ride I
6 was like, furthermore, I don't want to even have a
7 conversation with you I don't have nothing to say to
8 you Why furthermore should I give you a ride?

9 And he was like, so what are saying? I was
10 like, what are you saying? And then he was like, don't
11 worry about it You don't have to give me a ride but I'm
12 going to show you one day I'm going to show you one day

13 And that was it and I walked off

14 Q Okay, and what did you understand that to mean?

15 A I understand that to mean he still was on some
16 other stuff

17 Q Okay, all right, and now you testified that you
18 knew of Mr Jackson's reputation for violence?

19 A Yes

20 Q Have you ever seen him ever commit specific acts
21 of violence?

22 A Yes

23 Q Can you tell us about those?

24 MR SALEEBY Your Honor, it's not directed
25 towards him, I just have to object under the law, under

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1 the rules

2 THE COURT Mr Clark?

3 MR CLARK Well, Your Honor, that's -- we'd
4 offer that testimony under Day, witnessed by this
5 individual

6 THE COURT Ask the question again

7 Q Have you seen specific acts of violence by Mr
8 Jackson shortly before the incident occurred with him ---

9 A Yes

10 Q You have?

11 A Yes

12 Q Could you tell us about those specific acts of
13 violence that you saw Mr Jackson?

14 A Yes, we was just chillin' in -- in my homeboy
15 yard, Larry Brown

16 Q Uh-huh

17 A An my cousin Macho (phonetic) Diggs -- well,
18 Jermaine Diggs was just standing there and they got into
19 an argument He just hauled off and slap him, kept
20 kicking him because he wouldn't give him a ride

21 Q Any other ones that you saw?

22 A Plenty We was on 261 and he just tried to
23 deebo this dude named Joe And I think that's when he
24 went to the hospital because he started catching seizures
25 behind the situation

1 Q What happened?

2 A He came in the store demanding that he give him
3 a beer And the dude was like, if you ain't got the
4 money, I can't give you the beer So he snatched the beer
5 off the counter and that's when they started fighting

6 Q Have you ever seen him carry a pistol?

7 A Yes

8 Q When?

9 A One night we was at the Country Club and some
10 girls wouldn't talk to him He was intoxicated And he
11 jumped in the car with two other fellows and they ran down
12 the road and I saw gunshots And he was charged with that
13 charge

14 MR SALEEBY I believe the question was, had he
15 seen him with a gun, and he just said he didn't

16 THE WITNESS I said, yes

17 MR SALEEBY He said something happened down
18 the road, Your Honor It's not responsive We ask that
19 it be struck

20 THE COURT The last portion of the response is
21 stricken

22 Q Have you ever seen him -- I'm going to ask you
23 again, have you ever seen him with a gun at some other
24 point in time?

25 A Yeah, he mostly likely carry a gun every day

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1 Q All right, have you ever seen him pull a gun on
2 anyone?

3 A Yes

4 Q Who, when?

5 A It was at point blank range at Calvin's one
6 night, this fellow from the other side of Black River
7 Road

8 Q What happened?

9 A He told him to give him everything out of his
10 pocket

11 Q Did he use a gun?

12 A Yes

13 Q Any other acts of violence by Mr Jackson that
14 you witnessed that you can tell us about, that you
15 witnessed?

16 A Nothing other than fights an just fighting for
17 nothing and at clubs and stuff

18 Q Okay, so you believe he was a violent person?

19 A Yes

20 Q Did you fear him?

21 A No, I didn't fear him, I just feared what he
22 would do

23 Q So you were afraid of what he might do?

24 A Yes

25 Q What about James Pollard, how did you know him?

- 1 A I know him every since he was born
- 2 Q All right, and did y'all have a relationship?
- 3 A Yeah, at one point in time he was like a little
- 4 brother to me
- 5 Q And then what kind of things did y'all do?
- 6 A We used to hang out, chill, ride together
- 7 Q Okay, and was there some point in time that
- 8 y'all stopped associating?
- 9 A Yeah, about four months before this occurred we
- 10 got in an altercation in his yard
- 11 Q Okay, about what?
- 12 A About some things, some situations that was
- 13 going down between me and him
- 14 Q All right, now, do you know whether he had a
- 15 reputation for violence?
- 16 A Yes
- 17 Q And what was that reputation?
- 18 A He was just the type, he was a follower, he
- 19 would do anything
- 20 Q Was that a violent reputation?
- 21 A Yes because he jumped one of our homeboys and
- 22 send them to the hospital
- 23 Q Were there any other specific violent acts that
- 24 you witnessed?
- 25 A Yes, he was charged with some shooting in

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1 Camden

2 MR SALEEBY This is not anything he witnessed,
3 Judge I think he was set for that and we would ask that
4 it be struck and Mr Clark be admonished to follow the
5 rules

6 MR CLARK Well, Your Honor, I asked did he
7 witness it so I believe I'm following the rules, in
8 response to his comment

9 THE COURT The objection is sustained The
10 jury is to disregard the testimony of the witness
11 regarding Camden

12 MR CLARK I'm sorry, Your Honor
13 Q Any incidents that you witnessed---

14 A Yes

15 Q --- that James Pollard, violent acts that you
16 witnessed yourself?

17 A Yes

18 Q Can you tell the jury about that?

19 A Yes, I seen him choke some people out, pull some
20 pistols on some people and shot at some people before

21 Q And were you afraid of him?

22 A Nah, I was just afraid of what he'll do because
23 he was a follower

24 Q Okay, and did Mr Pollard -- whether -- do you
25 know whether he owned a weapon?

1 A Yeah, he always carried a gun?

2 Q You knew that for a fact?

3 A Yes

4 Q Did Mr Pollard ever threaten you, himself?

5 A No

6 Q Did he ever make any hostile remarks to you?

7 A Yeah, just little sly little comments

8 Q Like what?

9 A Like -- like -- like dealing with situations

10 It was like during the time when I was telling him to come
11 get his dogs and stuff And when I moved out from him
12 because his Aunt Katie Jackson kicked him out the house
13 and he came to me and he was like, could I stay with you
14 because I'm staying at my grandmother's house with no
15 heat, no water or nothing

16 And me and him got into it when I let him come
17 to stay to my house at the same trailer the incident
18 happened at because it was my trailer at first

19 And he just pushed me and I pushed him back We
20 swung on each other and that was it And every since then
21 he was just -- he wasn't never the same

22 Q Now, you mentioned raising dogs with Mr
23 Pollard?

24 A No, we didn't raise dogs together It was my
25 dogs He just had three dogs that he had on my yard

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1 Q And you were keeping them at your yard for him?

2 A Yes

3 Q Now, was there a point in time when you gave him
4 the dogs back?

5 A Yes, two days before this incident

6 Q Two days before this incident Tell us about
7 that, Mr Clea

8 A Yes, I took the dogs back because I wasn't -- I
9 didn't feel obligated of taking this young man's
10 responsibilities no more

11 Q So what did you do?

12 A I took them back to his house two days before
13 I didn't take them no dog houses because I paid for the
14 dog houses

15 Q Okay, so when you took the dogs back, what did
16 you do?

17 A Just left them in the yard tied to the trees

18 Q All right, now, at this point did you feel
19 threatened by these individuals?

20 A Yes, because he called me like, why you bring
21 the dogs back, you mother fucker, with no dog houses? I
22 was like, the simple fact I ain't messing with you no
23 more

24 Q Then what did he say?

25 A He was like, oh, that's what's up? I was like,

1 if that's the way you want it, that's what's up
2 Q And did he say anything else after that?
3 A Nah
4 Q All right, and then now were you working at this
5 time?
6 A Yes, sir
7 Q As a brick mason?
8 A Yes
9 Q Was James Pollard working?
10 A No, sir
11 Q Did you ever know him to work?
12 A No, sir
13 Q Do you know how he supported himself?
14 A No, sir
15 Q Now, two days before this were you thinking
16 about these individuals?
17 A Yes
18 Q In what way?
19 A In a harsh and cruel way
20 Q And can you explain that anymore, Mr Clea?
21 A Yes, because James kept calling me and I told
22 him I wasn't messing with him no more So he got Bubba to
23 call me I never wouldn't answer my phone
24 So my mother called me, was like, BoBo keep
25 calling around her -- calling over here ---

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1 MR SALEEBY I'd have to object to any hearsay,
2 what somebody else has said

3 THE COURT Objection sustained

4 MR CLARK Thank you, Your Honor

5 Q Can you tell us what you thought after your
6 mother ---

7 A My mother was like, BoBo keep calling ---

8 Q Don't tell us what she said, tell us what you
9 thought after or what you did after she said what she
10 said

11 Q Oh, I was like, I'm not messing with them no
12 more, mother -- ma And later on that night, I refused --
13 I received a phone call from someone else, was like, BoBo
14 ---

15 MR SALEEBY Objection ---

16 Q Don't tell us what that person -- what that
17 person said, tell us what you did after that

18 A What I did after that, I went to Mr Holmes

19 Q All right, and who is Mr Holmes?

20 A Carl Holmes, he was my girlfriend's at the time
21 father

22 Q Okay, and why did you go to talk to him?

23 A Because I feeled as though the situation had got
24 heated

25 Q And did you feel threatened?

1 A Yes

2 Q Were you afraid then?

3 A Yes, because she used to be with me like 24-7
4 I used to take her back and forth to school When she
5 come from school, me and her used to hang and I used to
6 take her home about 2 00

7 Q All right, did you go to Mr Holmes -- and who
8 was Mr Holmes in the neighborhood?

9 A Mr Holmes was the head of the NAACP

10 Q All right, and what did you think he could do?
11 Did you look for help from him?

12 A Yes, I went to him to see if he could talk to
13 Anthony Gardner for me -- I mean, Anthony Dennis because I
14 couldn't get in contact with him And I told him he
15 needed to start taking his granddaughter to school because
16 the simply fact there's verbal threats coming at me and I
17 don't want his granddaughter getting harmed in any kind of
18 way

19 Q Did you try to reach Anthony Dennis?

20 A Yes

21 Q How did you try to do that?

22 A I got a beeper number from somebody out the
23 neighborhood And he would never return my calls

24 Q Okay, and why -- he's a Sheriff's Deputy?

25 A No, he was Chief Deputy then

1 Q He was Chief Deputy and what did you want him to
2 do?

3 A Because I went to the investigator in my yard --
4 I mean, on my road and nothing didn't proceed after that,
5 you know, and things were still getting heated. So -- so
6 I tried to go a little higher authority So that's when I
7 went to Mr Holmes and asked Mr Holmes to talk to Anthony
8 Dennis for me

9 Q And was Mr Holmes able to help you?

10 A Nah, I talked to him the day before the incident
11 happened and he was like, by the end of the week we should
12 have everything under control

13 Q Okay, now, did you talk to anybody else trying
14 to get help?

15 A Yes, sir

16 Q Who else?

17 A Yes, sir, I went to talk to my father

18 Q And that's Lawrence Clea -- I mean, Lawrence
19 Dinkins sitting right here?

20 A Yes

21 Q You told him about your threats?

22 A Yes

23 Q Now, do you remember the day -- well, let me ask
24 you this The night before this incident, did you stay at
25 home?

1 A No, sir

2 Q Why not?

3 A Just to lay low, to stay out of the public's eye

4 view

5 Q And why were you trying to lay low? Why were

6 you staying out of the eye?

7 A Because, like I said, the situation was getting

8 real heated You know, I felt that some things wasn't

9 going to go -- wasn't going to go right

10 Q Did you feel somebody was going to harm you?

11 A Yes

12 Q And that's why you weren't at your mother's

13 house?

14 A Yes

15 Q That was the night before this incident?

16 A Yes

17 Q Was there another incident that happened at your

18 mother's house that night?

19 A Yes

20 Q What?

21 A BoBo kept calling and coming by

22 Q Did something happen to your car that night?

23 A Yes ---

24 MR SALEEBY Objection

25 THE COURT The basis of your objection?

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1 MR SALEEBY Relevance, no connection to any
2 individual involved

3 MR CLARK Goes to his state of mind, what he
4 was thinking, Your Honor

5 THE COURT Objection overruled, you may answer
6 Q Did something else happen there that night?

7 A Yes, I was -- I stopped driving my truck I
8 started driving my son's mother's car

9 Q Why did you stop driving your truck?

10 A Because I didn't want them to know what vehicle
11 I was riding in

12 Q Okay, and you didn't want Bubba and BoBo to know
13 that?

14 A Yeah

15 Q All right, and so you were driving your son's
16 mother's car?

17 A Yes

18 Q And anything -- what happened?

19 A The tires got flattened on it in my mother's
20 yard while I was in the house taking a shower

21 Q All four of them?

22 A Yes

23 Q Did that make you afraid?

24 A Yes

25 Q All right, so you didn't stay there that night?

1 A No, sir

2 Q Where did you stay that night?

3 A Scenic (phonetic) Lake

4 Q Scenic Lake, what's that?

5 A A housing area right there on -- right off U S

6 Highway 521

7 Q And who lives there?

8 A My son Mose (phonetic)

9 Q And you stayed there to be out of -- so nobody

10 wouldn't know where you were?

11 A Yes

12 MR SALEEBY Objection, leading, please

13 MR CLARK I'll refrain

14 Q Tell us why you stayed there, Mr Clea?

15 A Just to stay out of the public's eye view and

16 nobody know that she stayed there at the time

17 Q All right, and the next day, do you remember the

18 events of the next day?

19 A Yes

20 Q Did you go to work that next day?

21 A No, sir

22 Q Why not?

23 A Because she got up bickering and crying and

24 stuff about somebody flattened the tires so I told her I

25 was going to take half the day off and try to get the

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1 situation taken care of

2 Q All right, and did you eventually try to get
3 those tires repaired?

4 A Yes, at first I couldn't get a ride from the
5 trailer so I called one of my homeboys, Kevin, to come get
6 me

7 Q And was he able to come get you?

8 A No, sir

9 Q Don't tell us what he said, was he able to come
10 and get you?

11 A No, sir

12 Q All right, now, at a certain point did you
13 eventually get home and get your vehicle?

14 A Yes, my cell phone went dead because I didn't
15 have a charger because I don't live there My charger was
16 at my mother's house

17 Q All right

18 A I was just there for the night I went to the
19 landlord The landlord let me use his cell phone to call
20 my mother and my mother came and got me about 30 minutes
21 later

22 Q All right, now once you got your truck -- you
23 got your truck from your mother's house?

24 A Yes

25 Q And that was the truck you were driving at the

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1 time this incident occurred?

2 A Yes

3 Q What time in the morning did you get that truck?

4 A I got the truck about 10 00

5 Q All right, and when you got your truck, what did

6 you do, sir?

7 A I left the truck running, locked the doors and

8 took the key Went in the house, took a shower After I

9 took a shower, I called Danger and let him know I was

10 about to come pick him up, I want him to ride downtown

11 with me to get these tires fixed

12 Q Is Danger a friend of yours?

13 A Yes

14 Q What's his real name?

15 A Travis Yates

16 Q And he lives in the Rembert area?

17 A Yes

18 Q All right, so you called him And did you

19 eventually go and get him?

20 A Yes

21 Q And then what did y'all do?

22 A We rode downtown first We went to Palmetto

23 Tire to speak to Richard Bledsoe to get some tires but he

24 wasn't in at the moment So I left a message and gave him

25 my cell phone number and my beeper number to get in

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1 contact with me because I didn't want to leave the rims
2 down there with the ones that was there because I don't
3 know them like that

4 So rode around and got something to eat Came
5 back through, he still wasn't there He was out on a road
6 call

7 So we left Sumter and went back to Danger's
8 house

9 Q And that's Travis Yates?

10 A Yes

11 Q All right, now, what happened at Travis Yates's
12 house?

13 A We was just chillin' Danger was feeding the
14 cows, I was feeding the dogs

15 Q Danger has dogs as well?

16 A Yes

17 Q Okay, and then what happened?

18 A The next thing I know, Lee, Maurice Young --
19 well, Lee Powell, Maurice Young and James Pollard pulls
20 up

21 Q Okay, so Lee Powell who's the gentleman who
22 testified yesterday?

23 A Yes

24 Q Maurice Young and who else? And James Pollard?

25 A James Pollard

1 Q That's Bobo, right?

2 A Yes

3 Q They pulled up at Danger's house and what
4 happened?

5 A Lee get out the car and I ran the window down --
6 he was like, BoBo want to holler at you so I ran the
7 window down And Bobo like, what's up, cuz? Why you not
8 messing with me no more? Why you bring the dogs back?

9 I was like, I don't have to -- I don't have to
10 give you no explanation behind that I said, you a grown
11 man now, start taking care of your responsibilities

12 So he jumps out the car, throw a hundred dollars
13 in my lap He said, this is for the dog we had breed I
14 was like, that was good

15 And then him and Maurice pulled out the yard and
16 that was it

17 Q How did he drive out the yard?

18 A He kind of sped off

19 Q Did -- so after Bobo left, what did you do then?

20 A We was just chillin' and Danger was like he was
21 going to take a shower so we could go ahead and get
22 everything together I was like, man, it's after 1 now
23 I said, it's after 1, I said, I probably won't even go to
24 work today

25 And I was like, call me after you get dressed,

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1 I'm going to my mother's house I said, don't call me on
2 my mother's phone because I'm going to be outside in the
3 yard Just call me on my cell phone

4 WJ : So about that time me and Powell left, we went
5 down U'S Highway 521 And as I turned on Dinkins Mill,
6 here come Pollard and Young ---

7 Q All right, so ---

8 A : --- blinking their lights in the Honda

9 Q All right, so when you left Danger's house,
10 Travrs Yates, you were with -- James Powell was with you
11 -- John Lee Powell was with you?

12 A Yes

13 Q : All right, and you were going down 521?

14 A : Yes

15 Q : And you said that BoBo flashed his lights with
16 you?

17 A : Yes

18 Q And who was with him?

19 A : Maurice Young

20 Q That's the other gentleman that testified
21 yesterday?

22 A Yes

23 Q All right, and did you have a conversation with
24 BoBo?

25 A Nah, it wasn't really a conversation He jumped

- 1 -- he stepped out the car He was like, just go ahead and
2 sell me the dog houses and we going to call it like that
3 I was like, back -- back that up So he gave me
4 another hundred dollar bill I gave him two twenties
5 And he jumped back in his car and we left and went to my
6 grandma's house All three of us load the dog houses on
7 the truck
- 8 Q Now, so you loaded how many dog houses?
9 A Three
- 10 Q All right, now did you have -- were you upset
11 with them at that point?
12 A No
- 13 Q Was there any cross words between y'all?
14 A Nah, we -- we didn't really even speak to each
15 other We just -- he just asked me about the dogs and the
16 dog houses and that was it
- 17 Q All right, and then when you put the dog houses
18 on the back of your truck, where did you go from there?
19 A We went to the trailer on 5555 Dinkins Mill
20 Road
- 21 Q And that's the trailer that's involved in this
22 incident?
23 A Yes, sir
- 24 Q When you got there, what happened?
25 A Pollard pulled up first I pulled up second I

1 left my truck running because I was just going to drop the
2 dog houses and leave and go pick up -- and go back to my
3 mother's house and wait for Danger to call me

4 Q All right, hold on one second

5 (Pause)

6 Q I'm going to ask you to look at State's Exhibit
7 Number 2 Can you see that from there?

8 A Yes

9 MR CLARK May I ask the witness to step down,
10 Your Honor?

11 THE COURT Yes, sir

12 MR CLARK Come down here for minute, Mr Clea

13 (The witness steps down from the witness stand)

14 Q If you would stand right over there and take
15 this pointer, I'd like to ask you a couple of questions
16 Now, you've got to stand to the side so the jury can see
17 that

18 Now, where is the -- where is the trailer that
19 we've been talking about? Do you see it in this diagram?

20 A (Indicates)

21 Q That's the trailer right there, all right Can
22 you point out the other physical parts of this -- this
23 lot? Just kind of talk about what's on there

24 A This is the wood line

25 Q You've got to speak up

- 1 A This is the wood line that's back of it
- 2 Q Okay
- 3 A This is the wood line of the -- of the side of
- 4 the house that goes to Council house and Charlie Jr 's
- 5 house
- 6 Q Okay, where is Council's house and Charlie Jr 's
- 7 house? Where would it be? I know it's not on that
- 8 diagram Point to what direction it would be in
- 9 A It would be over here
- 10 Q On that side of the wood line?
- 11 A Yes, on this side of the wood line
- 12 Q Okay, now, this is a overhead, this is State's
- 13 Exhibit Number 1 That's actually a photograph of the
- 14 area Can you point out where the trailer is and where
- 15 the wood line is on that photograph?
- 16 A I think the trailer's right there
- 17 Q All right, that's the trailer And where is the
- 18 back wood line that you were just talking about?
- 19 A Right there
- 20 Q All right, and this is the side wood line right
- 21 here?
- 22 A The side
- 23 Q Okay, and this is the actual trailer right here?
- 24 A Yes, sir
- 25 Q Show the ladies and gentlemen of the jury how

1 you drive into that ---

2 A Well, I came in from this way, from the back
3 way I come around past this -- come in, there's a tree
4 that turn around a little curve and I parked right there

5 Q All right, so you parked right in that area?

6 A Right, right up in there ---

7 Q Okay, all right ---

8 A --- get closer to the trees so you don't have to
9 walk so far with the dog houses

10 Q Okay, all right Now, on State's Exhibit Number
11 2, your truck has been drawn on there Is that
12 approximately where your truck was?

13 A (Inaudible)

14 Q You've got to speak up, Mr Clea ---

15 A My truck was parked straight over here so you
16 don't have to walk so far with the dog houses over there
17 by the trees and stuff

18 Q So how was it different than the truck that's
19 drawn on there?

20 A That truck is turned that way

21 Q What angle was your truck?

22 A My truck was straight up

23 Q Okay, so you were straight facing the ---

24 A Because why would I turn my truck this way, the
25 dog houses were on the back

- 1 Q Okay
- 2 A Wouldn't make any sense if the truck was turned
- 3 this way I would have drove up and went this way so we
- 4 can just straight take the dog houses off the truck
- 5 Q So what you're saying is the way that truck was
- 6 drawn, you would have longer walking with the dog houses?
- 7 A Yes, sir
- 8 Q All right, and do you see where the Honda is
- 9 drawn on there?
- 10 A Yes
- 11 Q Is that about where the Honda was?
- 12 A No, it was much closer because there was a trash
- 13 pile There was an old trash bin in -- there was a trash
- 14 barrel It was messed up so he was parked right there
- 15 Q All right, but is the Honda on the right -- on
- 16 the side ---
- 17 A Yeah
- 18 Q All right ---
- 19 A In one of those pictures you can see the trash
- 20 barrel ---
- 21 Q Okay
- 22 A --- and the Honda was parked right there
- 23 Q All right and what about the Pontiac, is that
- 24 about where it was?
- 25 A Yeah, that's exactly where it was

INTENTIONALLY
BLANK

1 Q Okay, all right, thank you You can take the
2 witness stand back, please

3 (The witness returns to the witness stand)

4 Q Okay, Mr. Clea, you told us where -- where your
5 truck was and where the Honda was and where the Pontiac
6 was Was Mr -- who was driving the Pontiac?

7 A John Pollard

8 Q John?

9 A No, John Jackson

10 Q John Jackson, that's Bubba?

11 A Yes

12 Q And you pulled up first?

13 A Nah, the Honda pulled up first

14 Q The Honda pulled up first and then you pulled
15 your truck over in that area?

16 A Yes

17 Q All right, and what happened then? Tell us what
18 happened

19 A Well, I got out of the truck and left the truck
20 running Me, Lee, BoBo and Maurice was there Lee and
21 Bobo -- I mean, Lee and Maurice grabbed the first dog
22 house and went to the far end of the woods

23 Q And where would that have been, over in this
24 area?

25 A Yes

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1 Q All right, you and who?

2 A No, Lee and Maurice

3 Q Okay

4 A Went to the far end of the woods of the wood

5 line And BoBo grabbed -- me and BoBo grabbed a dog house

6 and went to the tree about right there were the dot at

7 Q This one?

8 A Yes

9 Q All right

10 A And when Jackson pulled up, I was waiting on

-11 BoBo to come back because he was -- because the dog house

12 was on the chain

13 Q Okay

14 A And Jackson pulled up, he jumped out ---

15 Q How was Jackson driving?

16 A He was driving normal

17 Q Okay, all right, so he pulled up and he parked

18 in that general area where the Pontiac is?

19 A Yes

20 Q All right, and where were you when he pulled up?

21 A I was standing waiting on James -- well, waiting

22 on BoBo to come back and help me to get the other dog

23 house

24 Q All right, and were you standing by the truck?

25 A Yes

- 1 Q And BoBo was still over in this area?
- 2 A Yes
- 3 Q All right, and what happened then?
- 4 A That when me and Jackson took the dog house and
- 5 went to the next tree over here where it's not on the
- 6 diagram
- 7 Q Is it further beyond this ---
- 8 A No, it's this way
- 9 Q This way?
- 10 A Yes
- 11 Q So y'all took the second dog house -- the third
- 12 dog house off ---
- 13 A Yeah
- 14 Q --- and took it over in this area?
- 15 A Yes, sir
- 16 Q All right, you and Jackson did that together?
- 17 A Yes
- 18 Q All right, then what happened?
- 19 A And then he spoke to everybody I was like, I'm
- 20 about to go Lee, you going back with me? And he was
- 21 like, no, I'm going to stay for a minute
- 22 Q All right, so Lee said he was going to stay
- 23 there?
- 24 A Yeah
- 25 Q All right, why did you leave your truck running,

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1 Mr Clea?

2 A Because I didn't have no intention of staying
3 there

4 Q And when you got there did you have any
5 intention of having a confrontation with anybody?

6 A No, sir

7 Q All right, and after you took that dog house off
8 and you talked to Mr John Lee Powell, that's who you're
9 calling Lee, right?

10 A Yes

11 Q He's the gentleman that testified yesterday?

12 A Yes

13 Q After you talked with him, what happened then?

14 A Bubba said some words to BoBo and BoBo walked
15 off And I was walking off, Bubba tapped me on my
16 shoulder like, hey, Reggie, I got something -- hey, Reggie
17 Clea, I need to holler at you

18 Q Now, could you hear what they were saying?

19 A No, sir

20 Q Did that make you suspicious?

21 A No, not right at the moment

22 Q All right, then what happened?

23 A As I was walking around the back of my truck and
24 go to the car, put my jacket on and cut the truck off to
25 see what he wanted, a chill went up my back So ---

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1 Q Wait a minute, now, where were you when -- when
2 Bubba said something to you?

3 A I was standing right there by my truck

4 Q On what side?

5 A Right in the back asking Lee was he going with
6 me or he going to stay here

7 Q Okay, and then Bubba walked up to you?

8 A Yeah

9 Q And what did he say?

10 A He said, come here, Reggie Clea, I need to
11 holler at you about something ;

12 Q All right, did he tap you on the shoulder?

13 A Yes

14 Q All right, and what did you say then?

15 A I was like, what you got to holler me about? He
16 was like, just come here and let me holler at you

17 So I went to go get in the truck so I could --
18 so I could leave because I don't have no words for him

19 Q You didn't want to talk to him?

20 A No

21 Q And did he say anything else to you?

22 A No

23 Q All right, he didn't tell you come back over?

24 A No, not at first When I -- when he went to the
25 car and I was at -- when he went to the car, I was -- I

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1 was about to sit in the truck I saw him reach in the
2 backseat and grab a shoebox and sat it in his lap This
3 right here

4 Q So you saw him grab this shoebox?

5 A Yes, sir

6 Q And you're sure it's this one?

7 A Timberland shoebox

8 Q All right, and what did you see him do with that
9 shoebox?

10 A Sit it in his lap

11 Q And where did he get it from?

12 A Out of the backseat

13 Q Can you show the jury the motion he made?

14 A This the backseat, did like this, it was sitting
15 like this

16 Q All right, and then what happened once he sat it
17 on his lap?

18 A When he sat it on his lap I saw him -- he opened
19 the box, I saw him took something out of it, sat it on his
20 left thigh

21 Q All right

22 A And that's when I got suspicious

23 Q All right

24 A And I went around the other side of the truck

25 Q Okay, and when he sat that on his left side, did

The State v Reginald Tyrell Clea

1 he say anything else to you?

2 A Nah, he sat the shoebox on the passenger floor

3 -- I don't know was it the passenger floor or the

4 passenger seat

5 Q But he sat it over there?

6 A Yeah

7 Q All right, and did you say anything to him the

8 A Nah, he just kept calling for me to come over

9 there I was stalling I was putting some Vaseline on

10 lips because it was cold and my lips was chapped from

11 working

12 Q All right, and then what happened?

13 A He just kept calling me And so -- so I saw h

14 reach up like this and he be like, come here, Reggie Cle

15 I got something to show you and that's when he got real

16 aggressive

17 Q So he was talking aggressive to you?

18 A Yeah, that's when he started talking aggressiv

19 Q All right, when you saw him get that shoebox a

20 put it on his lap and open it and take something out of

21 it, what did you think?

22 A Oh, I thought -- thought he was going in there

23 to get a gun

24 Q All right, and when he told you to come over

25 there, what did you say back to him?

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1 A I was like, if you -- if you want me to come
2 over there, why you don't come to me And that when he be
3 like, nah, I want you to come to me And that's when I
4 slammed my backseat back, threw on my jacket

5 Could I see the gun?

6 (The witness steps down from the witness stand)

7 Q This was your -- this was the gun?

8 A Yes, sir

9 Q And where did you have it?

10 A In the backseat of my truck

11 Q All right, and why were you carrying that?

12 A For protection

13 Q Okay, did you have any -- don't point it --
14 point it up in the air or down

15 Did you have any intention on using that weapon
16 that day?

17 A No, sir

18 Q All right, did you ever reach for that weapon
19 before you thought he had a gun?

20 A No, sir

21 Q All right, and when he -- so you put on your
22 jacket?

23 A Yes, I was stalling

24 Q You were stalling?

25 A To see what he was going to do, what type of

1 motion he was making

2 Q Okay, did you ever attempt to leave?

3 A Nah, at first when I went to sit in the car and
4 that when I saw him with the shoebox

5 Q All right, and why didn't you leave after you
6 saw him with the shoebox?

7 A Because, I thought -- when I saw what he did, I
8 said -- I figured he had a gun, it was in my head because
9 you know, why -- why -- the shoebox -- what's in the
10 shoebox ---

11 Q Okay

12 A --- the only thing I saw was the object

13 Q Okay

14 A And he didn't let me really see what it was

15 Q Okay

16 Q Now, once you saw that object were you afraid to
17 leave?

18 A No, I wasn't afraid, I was just paranoid

19 Q Okay, did you believe something would have
20 happened if you left?

21 A Yes

22 Q What?

23 A He probably would have shot me or something I
24 don't know what was going on ---

25 Q All right

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1 A --- because he started acting strange

2 Q All right, and would you have to pass by him to
3 leave?

4 A Yes, sir

5 Q Would you have had to turn your truck around?

6 A I would have had to turn my truck around then
7 the driver's side would have been facing him

8 Q Okay, you can have a seat

9 (The witness returns to the witness stand)

10 Q Now, tell us what happened then, Mr Clea

11 A Oh, okay, the next thing you know ain't nobody
12 saying nothing Maurice and Lee, they got their back
13 turned BoBo sitting there watching me And Bubba asked
14 BoBo, why -- why Reggie won't walk to the car? And BoBo
15 smirked and looked at me like, I don't know

16 Q Why wouldn't you walk to the car?

17 A Because I didn't see no shoes so whatever --
18 what else did he had in the box? Why he was calling me to
19 the car for?

20 Q You thought he had a gun?

21 A Not at first but me and this man don't get along
22 like that What he calling me to the -- if he had
23 something to show me, when he got out the car he would
24 have showed me then

25 Q All right, then what happened?

1 A Then that when he was like, Mr -- I mean he wa
2 like, Reggie Clea, come on to the car But then that whe
3 he kind of raised up I saw him do a hand motion like
4 this like he was -- like this, like he was clamping hold
5 to something

6 And that's when I -- I was like, man, what's
7 going on I was like, BoBo, Bubba got a gun? What Bubba
8 doing? What Bubba took out the shoebox

9 And Bubba -- and Bobo was like, I don't know,
10 walk over there and see

11 I'm like, nah, you go over there and see And
12 that's when he got hostile

13 And I'm like, man, forget that That's when I
14 shot in the front end of the car

15 Q All right, now, let me show you State's Exhibit
16 5-A, gunshot hole -- four gunshots to the side of the car
17 Is that what you did at first?

18 A Yes, because he had the car door open where I
19 couldn't see what was in his lap or what he was doing wit
20 his hands

21 Q All right, what -- were you trying to shoot him
22 when you shot that car?

23 A I was giving him some warning signs I told hi
24 to let me leave from the scene because I was about to
25 leave anyway

1 Q All right, and did you -- when you shot the car,
2 did you say anything to him?

3 A Yes, I said, let me see your hands If you
4 ain't got no gun, let me see your hands

5 Q Did he ever let you see his hands?

6 A No, he never let me see his hands

7 Q All right, and did he do it -- what did he say?

8 A He was like, Reggie Clea, put the gun down and
9 walk over here Walk over there I said, nah, I'll walk
10 over there when I -- when I -- when you let me see your
11 hands

12 Q All right, did he ever raise his hands and show
13 you he had nothing in ---

14 A Nah, he ain't never raised his hands He did
15 some little smirk, man, come on over here, in a real nasty
16 way He be like, BoBo, tell Reggie to walk to the car,
17 like that

18 Then the next thing I know, here come -- after
19 the first shots done fall off, Lee turned around, Reggie,
20 what you doing, what you doing?

21 Q That's what Lee was saying?

22 A Yeah, what's going on, what's going on?

23 Q And then did Mr Jackson do anything, did he
24 make any movements?

25 A Yeah, he tried to get up and that when I -- that

1 when I fired again

2 Q All right, did he make any movement with his
3 hands?

4 A Yeah

5 Q What did he do?

6 A He went to his waist

7 Q All right, and when you fired at the door, did
8 he get out of the car?

9 A No, he never got out of the car He was just --
10 and then that when me -- that when BoBo started like,
11 Reggie, what are you doing? Bubba got a gun? He just
12 been asking me, do Bubba got a gun? I said, he must be do
13 because he ain't want to let me see his hands

14 Q Okay, and then what did you do?

15 A And that when I was just -- I was just waiting,
16 waiting to see what he do And that when he -- he went to
17 go get up And then that when I started shooting again

18 Q Were you in fear of your life then?

19 A Yes, sir

20 Q Okay, and when he raised up, did he stay on the
21 driver's side?

22 A Yes

23 Q All right, did he ever move from the driver's
24 side?

25 A No, sir

1 Q All right, and when you shot the second time,
2 what did he do then?

3 A He tried to flee And then as he was fleeing
4 from the other side, he turned back around and did
5 something like this, looking, looking back towards me
6 And then he ---

7 Q And did he raise his hand?

8 A Yeah, he went to go raise his hand like this and
9 that when I -- and I kept shoting (sic) again

10 Q All right, now, did you feel that there was any
11 way that you could avoid ---

12 A Because if he -- yeah, because if he -- if he
13 ain't had to just run on out the passenger side door I
14 would have stopped shooting But no, he's gone stop and
15 turn back around and look at me ---

16 Q All right

17 A --- because if you got a -- if somebody's
18 shooting at you, why you gonna turn around and look back
19 at them? You could be trying to get out of the way,
20 right? The whole time he just sitting in the car seat

21 Q Did he make any motions while he was out of the
22 car?

23 A Yes, he kept getting up, looking over the car I
24 couldn't watch both of them Here come BoBo right here
25 saying something and here come Lee over here yelling,

1 Bubba saying something Shit, what I was supposed to do?
2 Both of the -- all three of them making motions

3 And I'm steadily telling Lee to go over there
4 and get the gun from Bubba because he never would let me
5 see his hand So I said he had a gun but he never did let
6 me see a gun That's why I told Jamie Turner that I never
7 saw a gun

8 Q All right, how many times did you tell him, let
9 me see your hands?

10 A Oh, plenty of times.

11 Q How many times did you ask him whether he had a
12 gun or not?

13 A More than once.

14 Q Okay, how many times did he make a motion like
15 he was going to raise up to shoot you?

16 A More than once.

17 Q Did he do it while he was in the car?

18 A Yes.

19 Q Did he do it while he was inside of the car?

20 A Yes.

21 Q All right, now, once he stopped making these
22 motions, did you ever shoot at him after that?

23 A Yes.

24 Q You shot again even after he stopped?

25 A Yeah, after the last motion.

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1 Q All right

2 A And that when -- and that was it I ain't heard
3 nothing else from Bubba then That when BoBo was like,

4 Reggie, what's wrong with you, what's wrong with you? And
5 the next thing I know I see him going in -- going towards
6 his waist with his hands like this But he's doing this
7 and then he did this And he ain't never -- when he came
8 back up, he -- his hands folded

9 Q Okay

10 A And I ain't give -- and I said, if you pull your
11 hands from outside your waist, I said, just let your hand
12 go But he wouldn't never let his hand out of his waist
13 So that when I hit him one time in his hand

14 Q And then what did he do?

15 A He went back to his waist

16 Q All right, then what did you do?

17 A I kept shoting (sic)

18 Q And then did he eventually fall?

19 A Yes

20 Q After he fell did you run up on him and shoot
21 him?

22 A Nah, for what?

23 Q After Mr Pollard fell, did you run up to him
24 and shoot him?

25 A No

1 Q Mr Clea, did you feel that there was any way
2 you could get out of this without them taking your life?

3 A How could I, and how my truck was parked, and I
4 had my passenger door open Pollard right here Pollard'
5 right here and Bubba was right here It was like a
6 triangle

7 Q Okay, did you believe they were armed?

8 A Yes, because if he wasn't armed why you making
9 -- why you reaching to your waist

10 Q Were you afraid of them then?

11 A Yes, how -- what do you mean? How could I? Why
12 shouldn't I, if they making all these motions and all
13 these things, and nobody want to walk to Bubba car to see
14 if he had a gun, He wouldn't never show me his hands
15 And even Maurice, and -- and John Lee Powell said it, that
16 I was -- instead of saying, Bubba got a gun, y'all go to
17 the car and get the gun from Bubba but nobody wouldn't
18 never move Why would I shoot them if I trying to defend
19 myself from this man and watching this man here at the
20 same time

21 Q Did you believe both of them were going for
22 weapons?

23 A Yes, why -- what type of question that is? It
24 like I asked Mr Turner, if you're arresting me, you see
25 me start -- and you see me reaching in my -- in my waist

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1 what you going to do? He said, I would have to take a
2 shot at you

3 Q Do you believe your actions were reasonable?

4 A Yes

5 Q Do you believe there was any other way you could
6 have avoided this?

7 A Yes, my actions was well reasonable because I
8 give him enough time to let him see -- let me see his
9 hand I started -- I started yelling, telling John Powell

10 because Maurice been done ran I started telling Lee to

11 go over there to the car and get the gun from Bubba but

12 nobody wouldn't never move It was like it was a setup

13 Q And did you ever go over to where this Pontiac
14 was? Did you ever go over to the side of the car?

15 A No, for what reason? I walked from my truck,
16 from the passenger side -- from the passenger side around
17 That's when Powell saw me walking I never went that way

18 Q How close were you to Jackson?

19 A I wasn't that close to Jackson If this is
20 Jackson car parked by the -- by the steps, my truck was
21 way over here

22 Q All right, so your truck was a good distance ---

23 A It wasn't a good distance because the backyard
24 ain't but so big

25 Q So ---

1 A It was about a good car and half a gap between
2 us

3 Q Okay, so if from the trailer to this tree is 42
4 feet, how many feet do you think you were from Jackson?

5 A From how my truck was parked? I've got a long
6 bed truck so I wouldn't even know

7 Q Okay, all right Now, after this happened, what
8 did you do?

9 A I jumped in the truck and left When I left, I
10 spun out this way, hit a tree, left and went the other way
11 and that's when I saw Lee running down the road He was
12 doing this, trying to stop me He asked me, cuz, what's
13 going on, what's going on I said, why you ain't never
14 went over there and asked me -- and went over to Bubba's
15 and see if he had a gun? I said, man, you -- like you
16 left me in the blind, like that

17 And he was like, man, you all right? You all
18 right, like that, he was like, come on, man, we got to do
19 something We got to do something, like that, and that
20 was it

21 Q Mr Clea, had you ever used that weapon before

22 A No, sir

23 Q Ever fired it before?

24 A Yes

25 Q In what situation did you fire it before?

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1 A Just to see if it worked?

2 Q Okay, but had you ever used it against anyone
3 before?

4 A Nah, I never did have no reason to

5 Q And when you -- so when you left, you and Mr
6 Pollard together?

7 A Yes

8 Q And where did you go then?

9 A We went to my uncle's house

10 Q And when you went to your uncle's house, what
11 happened?

12 A Powell took the gun and sat on the side of a --
13 I mean, sat it up under the car

14 Q All right, and then what happened?

15 A And then Powell was like -- when Frank Clea, Jr
16 came out, BooBoo, BooBoo was like, what's going on And
17 that's when Powell was telling what happened And he was
18 like, get his daddy and when daddy come home have him call
19 -- I'm going to call daddy once we get to a spot

20 Q All right, and did y'all go to Columbia after
21 that?

22 A Yes

23 Q And did y'all subsequently come back?

24 A Yes

25 Q And did you turn yourself in to ---

1 A Wesley Gardner
2 Q --- Wesley Gardner? Okay, and once you were
3 turned in, were you in the custody of Mr Turner right
4 here?
5 A Yes
6 Q On the right side here?
7 A Yes
8 Q And did you talk to Mr Turner about this
9 incident?
10 A Yes, the whole night
11 Q How long did you talk to him?
12 A About two hours
13 Q Did you tell him what you told this jury today
14 A Yes, sir
15 Q Gave a statement about that?
16 A Yes, sir
17 Q And again, is there anything else that you could
18 have done?
19 A How could I? If I had a ran in the woods, James
20 was right there
21 Q James who?
22 A BoBo
23 Q So you feel like if you had run this way, you
24 think BoBo would have done something to you?
25 MR SALEEBY Objection, leading

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1 MR CLARK Well ---

2 MR SALEEBY I object

3 MR CLARK Objection overruled

4 Q Did you feel like James was over here?

5 A Yes, because the back wood line is thick I
6 would have had to really struggle to get through there So
7 how if I had a tripped and fall or something

8 Q Okay

9 A Then I would have been really messed up

10 Q Okay Any doubt in your mind that Mr Jackson
11 had a gun?

12 A No, sir

13 Q Any doubt in your mind that Mr Pollard had a
14 gun?

15 A No, sir, because if there was any doubt, I would
16 never even shot because why, if a man didn't have a gun,
17 what is he going in his waist for? If a man didn't have a
18 gun, why wouldn't he show me his hands?

19 Q Do you know what happened at that scene after
20 you left?

21 A No, sir

22 Q Do know if anything was removed or anything from
23 there?

24 A No, sir

25 MR CLARK Mr Clea, I think that's all the

1 questions I have, thank you

2 THE WITNESS Thank you

3 THE COURT Now, ladies and gentlemen, we'll
4 take a short recess at this time Have a seat, sir
5 Please do not discuss the case

6 (Jury exits the courtroom)

7 THE COURT We'll be in recess for about 10
8 minutes Step down, sir You cannot discuss your
9 testimony

10 (The witness leaves the witness stand)

11 (Whereupon, a recess was taken)

12 (The witness returns to the witness stand)

13 THE COURT Bring the jury back

14 (Jury returns to the courtroom)

15 THE BAILIFF Your Honor, all of the jurors and
16 alternates are present in the courtroom

17 **CROSS EXAMINATION BY MR SALEEBY**

18 Q Mr Clea, I need you to help me with -- if you
19 don't mind ---

20 A Yes, sir

21 Q --- I need to ask you some questions about the
22 people that we're involved with here

23 Lee Powell ---

24 A Yes

25 Q --- your cousin, known him all of your life?

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1 A No, sir

2 Q How long have you known him?

3 A I know of him but he was in jail and he was
4 staying in and out of Camden And ---

5 Q You didn't know him very well even though he was
6 your cousin?

7 A Nah, because on that side of the family he
8 really didn't -- I got to know Lee over the period of a
9 year and a half personally

10 Q You had known him a year and a half?

11 A Well, I know of him and, you know, see him
12 around but -- but say to hold a conversation with him and
13 hang out and chill with him, it didn't start to over a
14 year and a half ago

15 Q For a year and a half before April -- excuse me,
16 February of last year, you had chilled out with him?

17 A Yes, sir

18 Q You had hung with him?

19 A Yes

20 Q You had gotten along well with him?

21 A Yes

22 Q Okay, Maurice Young, what relationship was he to
23 you?

24 A My cousin

25 Q How long had you known him?

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- 1 A All my life
- 2 Q Were y'all raised up together?
- 3 A No, sir
- 4 Q You visit each other?
- 5 A When we was going -- when we was in school
- 6 Q You went to school together?
- 7 A Yes
- 8 Q How many years did you go to school together?
- 9 A I graduated like a year before him
- 10 Q How long between when you graduated and last
- 11 February?
- 12 A I guess about six or seven years
- 13 Q Six or seven years?
- 14 A Yes
- 15 Q Do you know for sure?
- 16 A I'm 25 now Back in 1970 -- I mean, 1990, '97,
- 17 about six or seven years
- 18 Q I believe you said Charles Jackson, he's known
- 19 you his whole life?
- 20 A Yes
- 21 Q And you and BoBo Pollard were pretty much raised
- 22 up together?
- 23 A Yes
- 24 Q And went to school together?
- 25 A No, sir

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- 1 Q Ever do any work together?
- 2 A Yes, sir
- 3 Q You lived together?
- 4 A Yeah, for about two months
- 5 Q And that would have been in the summer of 2003?
- 6 A Yes
- 7 Q Everybody carried a weapon, didn't they?
- 8 A Yes
- 9 Q You carried one?
- 10 A Yes
- 11 Q You carried this one?
- 12 A No, sir, not at during that time
- 13 Q What were you carrying?
- 14 A A registered 380
- 15 Q A what?
- 16 A A registered 380
- 17 Q A registered 380?
- 18 A Yes
- 19 Q What kind of weapon that is?
- 20 A That's a handgun
- 21 Q A handgun, and where did you carry that?
- 22 A Everywhere I went
- 23 Q All right, where did you carry it?
- 24 A What do you mean, where did I carry it? It was
- 25 -- usually it would be in my glove compartment

- 1 Q All right, when it wasn't in your glove
2 compartment, where did you carry it?
- 3 A In the house
- 4 Q Did you carry it on your person?
- 5 A On my person?
- 6 Q That's right, in your clothes?
- 7 A Yeah, when I walking in the house or something
- 8 Q Okay, how long had you owned State's Exhibit
9 Number 8 here?
- 10 A About a year
- 11 Q Where did you buy it?
- 12 A Off the street
- 13 Q Off of what street?
- 14 A I don't feel as though I have to answer you that
15 on what street because I didn't even get the police that
16 type of information
- 17 Q Off of what street did you buy this gun?
- 18 A Off the streets of Sumter
- 19 Q What street?
- 20 A What do you mean, what street?
- 21 Q I'm asking you where you bought it, what
22 location?
- 23 A I don't feel though I have to answer that
24 because I didn't give the police that type of information
- 25 MR SALEEBY Your Honor, do I have to ask the

1 Court to tell the witness to ask the question -- answer
2 the question?

3 THE COURT Mr Clea, answer the question

4 A Walker (phonetic) Street

5 Q Who did you buy it from?

6 A I don't know his name

7 Q What's his nickname?

8 A Jeffrey Ackers (phonetic)

9 Q Is that his real name or is that his nickname?

10 A I believe that his real name, Jeffrey Ackers

11 Q Where did you buy the ammunition from?

12 A I bought the gun with the ammunition

13 Q How many rounds did you buy with it?

14 A 30

15 Q 30?

16 A 'Yeah

17 Q How many rounds did you buy after that for it?

18 A None

19 Q How long have you owned this weapon?

20 A Like 'I said, about a year

21 Q A year from now or a year from last February?

22 A It can't be a year from now if y'all had it

23 It's a year from February

24 Q You bought this gun in February of 2003, is that
25 right?

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- 1 A No, I bought it right after -- it was like at
2 the end of April
- 3 Q You bought it the end of April of 2003?
- 4 A Yes
- 5 Q Okay, and you bought 30 rounds of ammunition?
- 6 A I guess if that how much the clip carry
- 7 Q No, I'm asking
- 8 A Yes
- 9 Q If you know
- 10 A Yes
- 11 Q How much did you pay for it?
- 12 A I can't remember
- 13 Q How much approximately do you think you paid for
14 it?
- 15 A I can't remember If I can't -- I can't -- if I
16 can't remember how much exactly I paid for it, how would I
17 lie to you and say how approximately how much I paid for
18 it
- 19 Q How many times did you fire the weapon between
20 April of 2003 and February of 2004?
- 21 A One time just to see if it worked
- 22 Q One time?
- 23 A One shot
- 24 Q One shot?
- 25 A Yes, sir

1 Q I need to make sure I understand I'll put this
2 down so you can see Mr Clark

3 (Pause)

4 Q You bought this Romanian version of an AK-47
5 with all this firepower ---

6 A All the firepower?

7 Q --- 30 rounds and you went out one time and you
8 fired one shot?

9 A Yes, because if you go in any gun store they'll
10 sell you the same gun or a gun just like it with a 10
11 round clip You've got to be 18 years old, it's a rifle

12 Q Did you understand my question?

13 A Yes

14 Q What was my question?

15 A I said, yes

16 Q What was my question?

17 A You asked me did I fire the gun one time

18 Q One shot?

19 A One shot

20 Q Between 2003 and how many months would that be?
21 What's that, about 10 months?

22 A Yes

23 Q Are you sure?

24 A Positive

25 Q You want to hold that, that's your answer?

- 1 A Yes
- 2 Q Does this weapon have any safety mechanisms on
- 3 it?
- 4 A Yes
- 5 Q What's that?
- 6 A Right there
- 7 Q Where did you carry this weapon?
- 8 A What do you mean, where did I carry it?
- 9 Q Where did it stay?
- 10 A It stayed in my trunk
- 11 Q In the trunk?
- 12 A Of an old car
- 13 Q You kept this in the trunk of an old car? Okay,
- 14 where was that?
- 15 A What do you mean, where was that?
- 16 Q Where was this old car?
- 17 A In the back of my yard
- 18 Q You didn't carry it in your truck?
- 19 A Every now and then again
- 20 Q Every now and again And what decided when you
- 21 would keep it in the trunk of this old car in your
- 22 backyard and when you would carry it in the back of your
- 23 truck or behind the seat?
- 24 A Could you repeat the question again?
- 25 Q When did you put it in the backseat of your car

1 -- or backseat of your truck and when did you keep it in
2 this old car?

3 A I took it from out the old car I had it, I was
4 riding around with it

5 Q Did you do that every day?

6 A No, sir

7 Q How many days out of the week?

8 A What you mean, how many days out of the week?

9 Q How often did you carry this in your vehicle?

10 A A gun is for protection so whenever I felt
11 feared or a danger, I carry it

12 Q Well, between April and February of '04, how
13 many times did you feel fearful and carry it in your
14 truck?

15 A I can't remember I took it on some hunting
16 adventures but I never even killed nothing

17 Q You took it on some hunting adventures? ---

18 A Yes

19 Q And what did you hunt with this?

20 A Deer

21 Q Deer?

22 A Well, I'm not really a deer hunter That was
23 just something I was doing

24 Q Well, I remember when you said what you liked
25 doing for extracurricular activities, you said football

1 ---
2 A Fishing
3 Q --- I believe baseball, fishing, maybe driving
4 some cars?
5 A Yes
6 Q You're a hunter too?
7 A No, I just went with one of my associates one
8 day
9 Q You went with an associate?
10 A Yes
11 Q Hunting deer?
12 A He was hunting, I was just went with him
13 Q All right, I'm just trying to make sure I get
14 the picture
15 Your friend's hunting deer?
16 A Yes, he's a deer hunter
17 Q He's got a rifle?
18 A Yes
19 Q You're with him?
20 A Yes
21 Q You've got this assault weapon?
22 A Assault rifle, I've got a rifle
23 Q Is this it?
24 A Yes
25 Q Is this a semi-automatic rifle?

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- 1 A Yes, it's a semi-automatic rifle
- 2 Q You took it deer hunting?
- 3 A Yes
- 4 Q You never fired a shot?
- 5 A No, for what I didn't see a deer to shoot it
- 6 with
- 7 Q How many times did you go on hunting adventures
- 8 with this ---
- 9 A I said, one time
- 10 Q One time between April and between February of
- 11 2004?
- 12 A Yes
- 13 Q And never fired it?
- 14 A I didn't have no reason to
- 15 Q You never had any more bullets?
- 16 A No
- 17 Q Your 380 pistol, was it in your truck in
- 18 February?
- 19 A No, it was -- as a matter of fact, it got taken
- 20 from the same trailer that me and Pollard was staying at
- 21 Q It got taken from the same trailer?
- 22 A Yes
- 23 Q So this was the only weapon you had?
- 24 A No, sir
- 25 Q You had more?

- 1 A Yes, after that -- right after the pistol got
2 taken, I used -- I went to my father and he let me use
3 his -- he let me keep his 357 in my glove compartment
4 Q So did you have the 357 in your glove
5 compartment on this February the 25th of 2004?
6 A No, because I took it out because my step-father
7 used it -- used my truck to went somewhere and I didn't
8 want him to ride around with it in it and it's my father's
9 gun
10 Q How does this weapon operate?
11 A What do you mean, how does it operate?
12 Q How do you make it shoot?
13 A You pull the trigger
14 Q How many times did you pull that trigger that
15 afternoon?
16 A How many gun cases did you find?
17 Q No, I'm asking you how many times you pulled the
18 trigger?
19 A I don't know, I can't remember
20 Q Two?
21 A No, it was not two
22 Q 22?
23 A Like I said, I can't remember
24 Q You had to pull the trigger every time you fired
25 a shot, didn't you?

1 A Yes

2 Q And you're sure, you're sure you only fired one
3 shot out of this weapon between 19 -- April of 2003 and
4 February of 2004?

5 A Yes, because I didn't have no need to

6 Q Now let's talk about the people at the time that
7 you associated I believe Mr Clark asked you many times
8 about Mr Jackson and his reputation And you said that
9 he had a reputation and you had known about it your whole
10 life, is that right?

11 A Yes

12 Q But at age 18, I think you said you started
13 associating with him?

14 A Yeah, through -- him and my uncle used to hang
15 together and through James Pollard which me and him was
16 associated

17 Q But you didn't have to associate with Mr
18 Jackson, did you?

19 A No, but he was in my presence

20 Q And so you just chose to associate with him?

21 A No, all of us used to ride out together

22 Q You hung together?

23 A At times

24 Q At times Now, tell me if I'm wrong here, you
25 were asked about a number of times when Mr Jackson might

1 -- when you said you no longer had anything to do with Mr
2 Jackson after April of 2003 But then you mentioned
3 something that happened at Calvin's three or four months
4 later, is that right?

5 A Yes

6 Q That would have been in what month?

7 A I don't know exactly a month

8 Q Well, what day was it?

9 A It was like a Friday, I can't remember exactly
10 the month, I don't keep up --

11 Q Who was there besides you?

12 A What you mean, who was there? There was a lot
13 of people there

14 Q Who else witnessed what you said you saw?

15 A There was a lot of people there

16 Q Name them

17 A I don't have to name them because I can't
18 remember who it was it was so long ago

19 Q You only remember you and you only remember Mr
20 Jackson, is that right?

21 A Yeah, but I don't feel as though I have to call
22 nobody else name because they's not in this trial or in --
23 have anything to do with this matter

24 Q You're not going to answer my question, is that
25 what you're saying?

- 1 A No
- 2 Q Are you going to tell me who else was there?
- 3 A If Your Honor say I have to answer it, I will
- 4 Q You won't answer my question unless the Judge
- 5 tells you to answer my question?
- 6 A Yes, sir
- 7 Q Any other questions that I'm going to ask you
- 8 that you won't answer unless the Judge tells you to answer
- 9 it?
- 10 A It depends on what it is
- 11 Q Anything else you're hiding from us?
- 12 A What do I have to hide? I came in and turned
- 13 myself in, didn't give nobody no -- no -- no hard time I
- 14 told them everything ---
- 15 Q The people you say witnessed something between
- 16 you and Mr Jackson, aren't you?
- 17 A I ain't hiding nothing
- 18 Q Tell me who they were, tell the jury who they
- 19 were
- 20 A Well, one of them is out there in the jury (sic)
- 21 right now
- 22 Q Well, who is it?
- 23 A Jermaine
- 24 Q Jermaine who?
- 25 A Jermaine Diggs because matter of fact we was

- 1 riding together that night
- 2 Q Okay, who else?
- 3 A Greg Wells
- 4 Q Grady?
- 5 A Greg Wells
- 6 Q Sometime after that you said you were chillin'
- 7 in some homeboy's yard and there was an argument Whose
- 8 yard was that?
- 9 A Larry Brown
- 10 Q Larry Brown, and where does he live?
- 11 A In Rembert
- 12 Q And when was that?
- 13 A I can't exactly remember
- 14 Q Was Larry Brown there?
- 15 A Yeah, but he was in his house
- 16 Q Well, who was outside who saw something happen
- 17 between you and Mr Jackson?
- 18 A It wasn't between me and Mr Jackson
- 19 Q Well, who else was there that saw anything
- 20 happen between Mr Jackson and anybody else?
- 21 A The victim is sitting right there
- 22 Q The who?
- 23 A The victim that he did it to is sitting right
- 24 there in the audience
- 25 Q Well, who is that?

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- 1 A Jermaine Diggs
- 2 Q Okay, so Mr Diggs was there at Calvin's and Mr
- 3 Diggs is also there at homeboy's yard, is that right?
- 4 A Yes
- 5 Q Okay I believe you said something else
- 6 happened, did you say at 261?
- 7 A Yes
- 8 Q And what's 261?
- 9 A A neighborhood store
- 10 Q Okay, and who was there during that incident?
- 11 A There was a lot of people
- 12 Q Well, name them
- 13 A Robert Walker
- 14 Q Robert Walker
- 15 A Nathan Dennis, Gregory Hunter
- 16 Q Who Dennis?
- 17 A Nathan Dennis, Joe Dennis
- 18 Q And when did that happen?
- 19 A I cannot exactly remember
- 20 Q Now, you were raised up with Mr Pollard?
- 21 A Yes
- 22 Q You knew Mr Pollard well enough that you guys
- 23 lived together?
- 24 A Yes
- 25 Q Is that correct?

1 A Yes

2 Q The fact is the two of you lived together at
3 5555 Dinkins Mill Road ---

4 A For two months Well, he didn't really didn't
5 live there It was just that, like I said, he was living
6 in an abandoned trailer -- not really an abandoned
7 trailer, he was living in a trailer with no running water,
8 no lights

9 He came to me, he said he needed to get --
10 needed a place to stay until he get on his feet And a
11 matter of fact, me and my female friend was staying
12 together at that time

13 Q What was my question to you?

14 A I answered your question

15 Q What was my question?

16 A Did me and Mr -- was me and Mr Pollard staying
17 together

18 Q And was your answer yes or no?

19 A Yes

20 Q All right, so you were pretty familiar with each
21 other and he had dogs that stayed there?

22 A No, it was my dogs at the time

23 Q They were your dogs?

24 A He didn't have any dogs then

25 Q Did he have any dogs separate from your dogs?

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- 1 A I said, he didn't have any dogs at the time
- 2 Q Did he later get dogs?
- 3 A Yes
- 4 Q Where did he get those dogs from?
- 5 A I don't know
- 6 Q Did both of you have dogs?
- 7 A Not at that time
- 8 Q At anytime did the two of you participate in
- 9 raising dogs?
- 10 A Breeding
- 11 Q When was that?
- 12 A Sometime course during that year
- 13 Q You can't tell us when or can't tell us where?
- 14 A No, not really, I don't ---
- 15 Q Can you tell us of anybody who saw anything
- 16 occur between you and Mr Pollard?
- 17 A Yes
- 18 Q At that trailer or anywhere else?
- 19 A Yes
- 20 Q Who?
- 21 A Kievin Loney (phonetic)
- 22 Q Anybody else?
- 23 A Yach Austin (phonetic)
- 24 Q Wait a second, Kievin who?
- 25 A Loney

- 1 Q How do you spell that?
- 2 A K-i-e-v-i-n
- 3 Q Last name?
- 4 A Loney
- 5 Q Okay, who else?
- 6 A Willie Peay (phonetic)
- 7 Q Willie Peay?
- 8 A Yes
- 9 Q And which one of those was present at these
- 10 episodes that you said happened involving you and Mr
- 11 Pollard?
- 12 A All the names that I just called
- 13 Q All three episodes?
- 14 A Not all three episodes
- 15 Q You said that he choked somebody Tell us who
- 16 was there then
- 17 A Kieven Loney, Devin Dinkins (phonetic) and the
- 18 person who choked -- who he choked
- 19 Q Four months before that there was some sort of
- 20 altercation Was that involving you?
- 21 A No, it was not
- 22 Q Wasn't involving you?
- 23 A No, sir
- 24 Q You saw it happen?
- 25 A No, I didn't saw it He told me he was -- he

1 was locked up After he got locked up, he called me

2 Q Oh, so this is something that you didn't see and
3 you don't know anybody else who saw it?

4 A Not to my knowledge

5 Q Now, on February the 25th, there's no doubt
6 about the fact that sometime that afternoon before y'all
7 arrived at this trailer, that you were given some money by
8 Mr Pollard and that you agreed to sell him some dog
9 houses?

10 A That's matter of fact

11 Q That's correct And there is no doubt that
12 during most of what happened from that point forward, Mr
13 Maurice Pooh Young was there and Lee Powell was there ---

14 A Yes

15 Q --- is that correct? And your cousin Lee Powell
16 was riding with you?

17 A Yes

18 Q And Maurice Pooh Young was riding with Mr
19 Pollard?

20 A Yes

21 Q Had anything out of the ordinary happened when
22 Mr Pollard gave you the money at this other friend's
23 house, Mr Powell or Mr Young would have been in a
24 position to see it, would they not?

25 MR CLARK Objection, Your Honor ---

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1 MR SALEEBY I just asked if they would be in a
2 position to see it

3 MR CLARK Objection, Your Honor He doesn't
4 know what position they would have been in to see
5 anything

6 THE COURT Objection is overruled

7 Q Do you understand my question?

8 A It wasn't anything out of the ordinary because I
9 didn't say nothing to Mr Pollard Mr Pollard kept
10 asking me why did I bring the dogs back I felt as
11 though I didn't have no explanation to give him And that
12 when he gave me the hundred dollars because he know we
13 just paid \$200 00 to get a dog bred together

14 Q Y'all paid \$200 00 to get a dog bred together?

15 A Yes

16 Q Other than dog breeding, were the two of you in
17 any other kind of business together?

18 A Not to my knowledge

19 Q Is it possible you could have been in business
20 together and you not know about it?

21 A No, sir

22 Q Were you and Mr Jackson in any sort of business
23 together?

24 A No

25 Q What ever happened at this other person's house,

1 Danger's house, Mr Pollard was there, you were there, Mr
2 Maurice Young was there and Lee Powell was there?

3 A Maurice Young was in the car with the windows
4 wound up Lee Powell was in the truck with me with the
5 door -- he was -- matter of fact, he was feeding the dogs

6 Q Well, was he in the truck with you or was he
7 feeding the dogs?

8 A When he first -- when they first pulled up, he
9 came and sat in the truck Then he went out because
10 Danger asked him to feed the dogs And that's when me and
11 James conspired Well, he conspired to me I really
12 didn't have too much to say to him

13 Q You and James conspired?

14 A Yes

15 Q What did you conspire about?

16 A Like I said, he conspired with me I didn't
17 really have too much to say to him because I didn't feel
18 as though I had to give him any explanation for bringing
19 his dogs back with no dog houses

20 Q You didn't need to go to that house at all, did
21 you?

22 A No

23 Q You didn't have to do any business with Mr
24 Pollard, did you?

25 A No

- 1 Q You didn't have to use your truck to take those
2 dog houses down there, did you?
- 3 A No, but he asked me to and I told him the reason
4 why I did it, the simple fact, so he wouldn't have to --
5 he'd be out my hair
- 6 Q He'd be out of your hair?
- 7 A Yes
- 8 Q He could have been out of your hair if you
9 didn't sell anything to him?
- 10 A Yeah, he could have been out my hair if he ain't
11 had to blink me down
- 12 Q That's right, but you chose to go over to his
13 trailer?
- 14 A Yes
- 15 Q All right, and when you drove up in there, you
16 had this rifle behind your seat?
- 17 A Yes
- 18 Q The magazine was already in it?
- 19 A Yes
- 20 Q And was the safety on or off?
- 21 A It was off because there was nothing in the
22 chamber
- 23 Q You weren't concerned about him, is that right?
- 24 A (No response)
- 25 Q Now, what you recall or what you say happened in

1 the yard, Maurice Young was there for a fair amount,
2 wasn't he?

3 A For a fair amount of time, until he took off
4 running

5 Q Lee Powell was there almost all of the time,
6 wasn't he?

7 A Yeah, you could say

8 Q Let me back up, you mentioned speaking to Mr
9 Wesley Gardner This is Mr Gardner right here?

10 A Yes

11 Q And is it your testimony that you went to him to
12 file a complaint about Charles Jackson?

13 A Yes

14 Q You're sure about that?

15 A I'm positive

16 Q When you talked to him, did you accuse Mr
17 Jackson of having done something?

18 A I didn't accuse him of anything I told him and
19 I asked him about it He never denied it He -- and he
20 said I couldn't prove it

21 Q I'm asking you if you went to file a complaint

22 ---

23 A No

24 Q --- specifically mention the name of Charles
25 Bubba Jackson to Mr Gardner?

1 A Yeah, about a threat

2 Q All right, thank you Now, if you would,
3 please, let me ask you this now You referred to Mr
4 Jamie Turner On the 25th, the same day this occurred,
5 you gave a statement to Mr Turner, didn't you?

6 A Yes

7 Q He advised you of your rights on this form right
8 here, State's Exhibit Number 18, is that correct?

9 A Yes

10 Q And then you gave a statement and you signed it,
11 is that right?

12 A Yes, sir

13 MR SALEEBY Your Honor, at this time we would
14 move for the introduction of State's Number 18 and State's
15 Number 19

16 MR CLARK I object, Your Honor, and take up
17 the matter with the Court

18 (Whereupon, a bench conference was held off the
19 record in the presence of the jury, but out of hearing of
20 the jury)

21 MR CLARK And, Your Honor, I'd like to put my
22 grounds on the record at some point

23 (Whereupon, State's Exhibit Numbers 18 and 19
24 are marked for identification and received into evidence)

25 (Pause)

1 Q And, Mr Clea, let's talk a little bit, if we
2 can, about what you told Mr Turner and Gwen Herod while
3 these events are still fresh in your mind, shall we do
4 that?

5 A They've always been still fresh

6 MR CLARK Your Honor, I continue to object and
7 I'd look to put the grounds at some point ---

8 THE COURT All right, ladies and gentlemen, if
9 you'll go to the jury room for a moment, please Do not
10 discuss the case

11 (Jury exits the courtroom)

12 THE COURT According to the rules, the only
13 thing that's necessary to preserve the record is an
14 objection Certainly there cannot be a proffer in the
15 presence of the jury Any statements to the jury and to
16 the Court in the presence of the jury as to your
17 intentions or your desires concerning the proffer, in my
18 opinion, is inappropriate

19 Whenever there is an opportunity outside of the
20 presence of the jury, there can be a proffer But you
21 cannot make a proffer in the presence of the jury And
22 there is no need to make a statement to the jury as to
23 your desire to make a proffer or protect the record at any
24 related time or any opportune time because the record is
25 open

1 But the jury is now out so we'll hear your
2 statement, proffer, objection at this time

3 MR CLARK Thank you, Your Honor Your Honor,
4 it's my understanding that in order to protect the record,
5 if I object, I have to say what my basis for the objection
6 is and that's all I wanted to do

7 But, Your Honor, at this point I'd refer to Rule
8 of Evidence, Rule 613 Mr Clea can be impeached with a
9 prior inconsistent statement but I think it's improper for
10 Mr Saleeby to say, well, let's talk about -- about --
11 about your statement

12 And so that would be my basis for the objection
13 under Rule 613 That he can ask him about statements that
14 he's making today that is inconsistent but he cannot just
15 say, well, I'm going to admit this statement and I'm going
16 to ask you questions about it, if this witness is not
17 testifying inconsistent to that statement

18 THE COURT All right, what says the State?

19 MR SALEEBY Your Honor, I think we've put our
20 position on the record It has a Jackson versus Denno
21 It is admissible The jury's entitled to see it and we're
22 entitled to question him about it

23 THE COURT Yes, sir

24 MR CLARK Your Honor, I think the way that Mr
25 Saleeby would have to do that is put the witness who took

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1 the statement who he gave the statement to, he could
2 certainly put Mr Turner up and say, did he tell you this,
3 did he tell you that, did he tell you this But this
4 witness, I don't believe he can cross examine him unless
5 he testifies inconsistent

6 THE COURT The record is protected The Court
7 has ruled that the statement is admissible The Court
8 conducted a Jackson v Denno hearing in which the Defense
9 did not cross examine or challenge the testimony of the
10 State's witness concerning the voluntariness of the
11 statement

12 I have admitted the statement I ruled the
13 statement admissible as a result of the Jackson v Denno
14 hearing The State is given wide latitude in relation to
15 cross examination of the Defendant through -- as a result
16 of any prior statements And the statement can be
17 admitted through law enforcement or through the Defendant

18 So that objection is overruled and you have
19 protected the record concerning whatever you would like to
20 place on the record concerning that matter

21 Now there was a follow-up question, something
22 relating to some statement or conversation in the presence
23 of Gwen Herod, you made a further objection, at which time
24 you stated to the Court, in the presence of the jury, that
25 you would like to place something else on the record

1 MR CLARK Well, that was what I wanted to
2 place on the record, Your Honor, that I think it could be
3 used as an inconsistent statement or through the law
4 enforcement witnesses

5 THE COURT Anything further?

6 MR CLARK No, sir

7 THE COURT All right, let's stand for a minute
8 or two then bring the jury back

9 (Pause)

10 (Jury returns to the courtroom)

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

13 THE COURT All right, you may proceed

14 **CROSS EXAMINATION BY MR SALEEBY CONTINUES**

15 Q Mr Clea, at any time did Mr Bubba Jackson do
16 anything that made you mad or angry on this February 24 --
17 25?

18 A You mean -- what do you mean, did he make me
19 angry?

20 Q Was there anything that he did that provoked you
21 into a fight with him? Is there anything he did to make
22 you mad? Did he call you a name or do anything like that
23 that got you heated up?

24 A What got me heated up was he wouldn't show me
25 his hands

1 Q All right, what I'm trying to ask you is if
2 there was any hostility, if there was anything that got
3 you mad at him, angry at him, outraged at him?

4 A I never said I was mad

5 Q What's that?

6 A Whoever said I was mad?

7 Q I'm asking you that Are you telling me you
8 weren't mad?

9 A No, I was just precautionous

10 Q You were just precautionous?

11 A Paranoid, precautionous

12 Q Did Mr Pollard ever say anything or do anything
13 to you that made you mad or angry?

14 A Yeah, when he kept hollering to me and looking
15 for me, wanting me to give an explanation about something
16 that I didn't had no -- that I didn't had no right to give
17 him an explanation about

18 Q You got mad at him because of what?

19 A I didn't get mad at him I was just upset that
20 he kept calling me

21 Q And he was saying, why you shooting, why you
22 shooting?

23 A I'm talking about on previous

24 Q All right, I'm talking about this day

25 A Oh, nah

1 Q I'm asking you if Mr Jackson -- if Mr Pollard
2 on this day, ever said anything to you or did anything to
3 you that got you mad, that got you outraged?

4 A No, sir

5 Q Did he ever provoke you by calling you a name or
6 by doing anything else, provoke you into the point where
7 you just said you had to shoot him for no other reason?

8 A Yes

9 Q How did he provoke you?

10 A By reaching in his waist

11 Q That made you mad?

12 A No, it didn't make me mad but I'm not going to
13 let nobody draw down on me and my life is in danger

14 Q So you weren't made at him, you weren't outraged
15 at him, you were just trying to defend yourself, that's
16 your testimony?

17 A Exactly

18 Q And the same thing with Mr Jackson, there was
19 no anger and no hostility, no outrage towards him? You
20 just say you were trying to protect yourself?

21 A If it was I wasn't even never bring the dog
22 houses

23 Q My question is at the time of the shooting,
24 there was no anger or rage going through you? You were
25 acting purely out of what you thought was self-defense, is

1 that correct?

2 A Right and confused

3 Q Okay, and confused Anything in particular
4 adding to your confusion on that day?

5 A Just their actions

6 Q There wasn't anything that had gone on before?
7 You hadn't had any medication or any lack of sleep or
8 anything else that was causing you to be confused?

9 A Nah, there wasn't

10 Q All right, there is no doubt whatsoever that you
11 shot Charles Jackson three times, right?

12 A Yes

13 Q There is doubt about that?

14 A No, there isn't no doubt

15 Q No doubt that you killed him with this rifle?

16 A That what I told the police

17 Q But I'm asking you now That's exactly what
18 happened, you killed him with this rifle, didn't you?

19 A Yes

20 Q You killed BoBo Pollard with that rifle, didn't
21 you?

22 A Yes

23 Q You shot him nine times, didn't you?

24 A (No response)

25 Q Didn't you shoot him nine times?

- 1 A Yes, yes
- 2 Q And he was about as far away from you as where I
- 3 am now?
- 4 A Nah, a little farther, about to that table
- 5 Q About to here, he was that far away from you?
- 6 A Walking towards me
- 7 Q How many steps did he get towards you before you
- 8 dropped him?
- 9 A About three or four,
- 10 Q There?
- 11 A Yeah
- 12 Q And then you dropped him He didn't have
- 13 anything in his hands, did he?
- 14 A Nah, but as he was walking he was reaching in
- 15 his waist
- 16 Q Did he have anything in his hands?
- 17 A I couldn't see his hands
- 18 Q Did you ever see anything in his hands?
- 19 A How could I?
- 20 Q Did you ever see anything in his hands?
- 21 A No
- 22 Q No Did you ever see anything in Mr Jackson's
- 23 hands?
- 24 A He wouldn't never let me see his hands
- 25 Q Did you ever at any time see anything in Mr

- 1 Jackson's hands?
- 2 A Yes, when he took something from out the
3 shoebox It wasn't no shoes, I know that
- 4 Q And what was it?
- 5 A I don't know, you tell me
- 6 Q No, sir, I'm asking the questions You're
7 answering the questions
- 8 Now, you're standing how far away from Mr
9 Jackson?
- 10 A About from here to that
- 11 Q Here?
- 12 A Nah, back to that gate
- 13 Q Now, while you're shooting, you're moving,
14 right?
- 15 A Nah, I'm standing in the same position, moving
16 from left to right but not moving with my feet
- 17 Q And there's a car door between you and Mr
18 Jackson?
- 19 A Yes
- 20 Q But you're able to see through the car door to
21 see what's in his lap?
- 22 A If I'm standing up, if a car door ain't but this
23 high, with the window not wind down, the window don't have
24 no tints on it That how I know he grab the shoebox
- 25 Q Did he grab the shoebox from inside the

1 frontseat or inside the backseat?

2 A From inside the backseat

3 Q And what did he do with it?

4 A Sat it in his lap

5 Q And you could see all that from where you were
6 standing?

7 A Yes

8 Q And you could see something come out of the
9 shoebox, you say, from where you were standing?

10 A Yes

11 Q When you shot him, he crawled through the car,
12 didn't he?

13 A I don't know I didn't know if I shot him or
14 not

15 Q Didn't you see him move from the driver's side
16 to the passenger side?

17 A Well, if I shot him, then why he stand up?

18 Q I'm asking you if you saw him move, jump across
19 from the driver's side to the passenger side?

20 A No, he didn't jumped across

21 Q Crawl across Did you see him move --

22 A He crawled across, turned around -- he crawled
23 across, turned around, looked back like this and didn't
24 move and then he went to raise his hand I said, let me
25 see your hand He wouldn't never let me see his hand

1 His hand kept raising

2 Q He did move from the front driver's side over to
3 the front passenger side?

4 A Yes

5 Q And he did get out on that side?

6 A I guess so

7 Q How many times did he say to you, I ain't got a
8 gun, I ain't got a gun?

9 A I ain't never heard that

10 Q You never heard that?

11 A No

12 Q How many times when he was crawling on the
13 ground did you hear him say, BoBo, tell him I ain't got a
14 gun?

15 A I ain't never seen him crawling on the ground

16 Q He never crawled on the ground?

17 A No, I saw him looking up over the top of the
18 hood

19 Q Are you sure he never crawled on the ground?

20 A I ain't never seen him crawling on the ground
21 How could I? I ain't never went round there

22 Q Let's talk about what you said to Mr Turner
23 back in February

24 You gave a voluntary statement, right? They
25 asked you, tell us what you know, and you told them what

1 you knew, right? Is that correct?

2 A Yes

3 Q Reading along with me here, I just made a blowup
4 of what you had to say here Read it along with me It's
5 two pages It's not very much

6 First of all, after you made this statement, of
7 course, they had done their legal responsibilities They
8 told you what your rights were And you told them you
9 were willing to talk with them, is that not correct?

10 A Yes

11 (Pause)

12 Q All right, sir, your statement's up there I'll
13 have to tilt that a little bit, I'm sorry

14 You've got the opening stuff where you tell them
15 what your name is, where you live, that you live with your
16 sister and her husband is there with you That you work
17 for your step-father Paragraph number one, right?

18 A (No response)

19 Q Paragraph number two, you talked about last
20 night somebody flattened my mother's (sic) tires

21 Sometimes you stay with her I stayed with her
22 last night I didn't go into work this morning because I
23 was going to stay there and help her get her car straight

24 And of course at this point in time you didn't
25 say anything about Charles Jackson and Mr Pollard causing

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1 you any problems You didn't say that in this statement,
2 did you?

3 A Nah, because that's none of her business

4 Q That's none of whose business

5 A Ask the question again

6 Q You didn't say anything at this point about
7 either Mr Jackson or Mr Pollard causing you any
8 problems, did you?

9 A Nah, I didn't thought I had to

10 Q All right, sir Well, you knew this 'didn't you
11 -- let me see if I can get this

12 At this date and time you knew that you had
13 killed two people, right?

14 A (No response)

15 Q When they took this statement, you knew that you
16 had killed two people, didn't you?

17 A Yes

18 Q You knew that you had left the scene without
19 helping either one of them, didn't you?

20 A Yes

21 Q You knew you hadn't called 911, didn't you?

22 A No

23 Q You didn't call 911?

24 A Yes

25 Q You knew that you ran away, right?

1 A Yes

2 Q You knew that Mr Powell and your father had to
3 get you back, right?

4 A Yes

5 Q You knew it was important for you to tell these
6 people everything that was important to you about what
7 happened and how it happened and why it happened, didn't
8 you?

9 A Yeah, but if you got a lot of things going
10 through your mind at the time ---

11 Q Was anything more important in your mind than
12 telling what was helpful to you?

13 A Yes

14 Q What was more important at that point in time
15 than telling what was important for you?

16 A That this situation occurred and I was trying to
17 get it -- advise me and get it stopped by the end of this
18 week

19 Q Speak up again?

20 A About the situation that had occurred

21 Q What situation that occurred?

22 A That what happened I never been in nothing
23 like this a day before in my life This is my first time
24 ever being in trouble So how would I?

25 Q So it didn't occur to you that you needed to

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1 tell them the things that were helpful?

2 A Yes, I was telling her She was typing She
3 know what I said She didn't ---

4 Q You said what's on this statement ---

5 A --- put everything on there

6 Q --- did you not?

7 A Say it again? '

8 Q You said what's on this statement, did you not?

9 A Yes

10 Q All right, stay in that same paragraph You
11 indicate how you took -- you went home to get your truck
12 You left on Dennis Road driving your truck You left by
13 yourself Right after that you went to Travis Yates'
14 house That's the fellow you called Danger, right?

15 A Yes

16 Q He stays close to Officer Roosevelt Nelson I
17 was going to get him to help me with the tire He had
18 something else to do and couldn't go with me, so I left
19 his house

20 I stayed there and talked with him for a while
21 and my cousin Lee Powell was there too After we had all
22 talked, me and my cousin Lee left in my truck

23 Right so far, is that correct?

24 A Yes

25 Q You and your cousin Lee were together from this

1 point in time all the way up until the point in time that
2 you were arrested, isn't that correct?

3 A Yes

4 Q And you were brought down to the Sheriff's
5 Department together, weren't you?

6 A Yes

7 Q And at the Sheriff's Department that's when you
8 said, hey, Lee you know -- you know, I saw a gun And he
9 said, don't try to tell me that ---

10 A Nah ---

11 Q --- I didn't see any gun

12 A ---, I ain't tell Lee that

13 Q All right I was driving, we drove down old 521
14 and got on the new 521 We made a left on Dinkins Mill
15 Road I turned on Dinkins Mill Road I saw a car
16 flashing their lights It was a silverish Honda Accord
17 I recognized the driver as Jane Pollard -- James Pollard
18 I asked him and Maurice Young -- I also saw Maurice Young
19 in the passenger seat

20 I stopped and he asked me to sell him some dog
21 houses Me and James had raised some dogs together
22 That's what happened, didn't it?

23 A Yes

24 Q He asked you to sell him some dog houses Now,
25 at this point in time you said, I agreed to sell him the

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1 dog houses

2 You agreed to do business with this man that
3 you're telling us you're scared of, is that right?

4 A I didn't say I was scared of him I said I was
5 afraid things he would do

6 Q You weren't scared of him, you were afraid of
7 the things he would do, is that right?

8 A Yes

9 Q All right Me and James had raised some dogs
10 together So this is like you're talking about it before
11 Not only were you raised together, not only had you lived
12 together ---

13 A Two months

14 Q You'd been in the dog raising business together,
15 hadn't you?

16 A No, we had bred two dogs together

17 Q You bred -- you had dealings with each other
18 You hung out with each other, at your homeboys' places, up
19 in Rembert You and these folks were together on a
20 regular basis, were you not?

21 A Yeah, I had ---

22 Q You went to the same clubs?

23 A At one period of time

24 Q You went to the same hangouts?

25 A Yes

1 Q Gave him a hundred dollars, I gave him 40 back
2 and drove off, me and Lee in my truck, James and Maurice
3 in James' car

4 We went to my grandmother's car She lives on
5 Dennis Road That's where the dog houses were We all
6 left to pick up the dog houses and drove up Dinkins Mill
7 Road

8 We pulled into the backyard I got out to
9 unload the dog houses

10 COURT REPORTER Could you slow down ---

11 MR SALEEBY Excuse me ,

12 Q I left the truck running As I stepped out the
13 truck, a green Grand Am pulled up, Charles Jackson jumped
14 out and helped put the dog houses on the ground

15 So when Mr Jackson came, he helped, didn't he?

16 A Yeah, he helped me grab the dog house

17 Q He helped you Now, you didn't need to let him
18 help you, did you, if there was any ill will between the
19 two of you?

20 A Yeah, but if he grabbed it what -- what's the
21 point of that? I was ready to go

22 Q You could have turned around and left at that
23 point, couldn't you?

24 A (No response)

25 Q You could have said, Bubba Jackson, I don't like

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1 you, I don't know you, I don't want you, I'm afraid of
2 you, I'm leaving Don't touch me, don't touch these dog
3 houses

4 That didn't happen, did it?

5 A No, that didn't happen

6 Q Okay He helped you He could have helped
7 BoBo, he could have helped Lee He helped you

8 A How could he help BoBo or how could he help Lee?
9 The dog -- Maurice and Lee -- Maurice and Lee already took
10 the dog house to the edge of the woods I was waiting on
11 BoBo to come back Me and BoBo took one of the dog houses
12 off ---

13 Q He asked you to come to his car ---

14 MR CLARK Your Honor, I'd ask that he be
15 allowed to finish his answer

16 Q Are you finished?

17 A Me and BoBo took one of the dog houses And
18 BoBo was unwrapping one of the dogs from around the chain
19 because she was choking

20 And as I was waiting on BoBo to come get the
21 other dog house off the truck, that's when Bubba came up

22 Q And Bubba helped you?

23 A Yes

24 Q And you didn't leave?

25 A I was leaving after I dropped -- after I dropped

1 the dog houses I still had my truck running

2 Q He said he had something he wanted to show you,
3 is that right?

4 A Yes

5 Q And you walked towards the back of your truck
6 And then you said you felt a chill, is that right?

7 A Yes

8 Q And of course you told Mr Turner and you told
9 Ms Herod why you felt a chill, didn't you?

10 A Yes

11 Q What did you tell them, why you felt the chill?

12 A Because I saw Mr Jackson reach in the back of
13 his car and pull out a Timberland shoebox

14 Q Did you feel that chill before he did that or
15 after he did that?

16 A Before he did that

17 Q So, even while he was walking back to the car,
18 you're telling us there's something that you were thinking
19 about, is that right?

20 A Well, if his car is closer to him than me, then
21 of course he'll get to his car first

22 Q So at this point in time is when you told them,
23 I was afraid of Charles Jackson and had been for 10
24 months?

25 A Say it again?

1 Q Did you tell them at that point that you were
2 afraid of Charles Jackson, you had been for 10 months?

3 A I never tell anyone I was afraid of him I said
4 I was afraid of the things he'll do

5 Q Did you tell him at that point that you were
6 afraid of BoBo Pollard and had been for several months?

7 A I was never afraid of him I was afraid of the
8 things that he'll do

9 Q Well, did you ever tell them, here are the
10 things that I'm afraid that they'll do? Let me tell you
11 about them

12 Did you ever tell them that?

13 A No, because of the simple fact, they asked me
14 what happened They didn't ask me the prior things that
15 was related to this

16 Q You didn't want them to know that?

17 A I asked -- I answered the questions like they
18 wanted me to ask (sic) them

19 Q They told you what to say or did you tell them
20 what happened?

21 A No, she was writing down what she wanted to say
22 because she didn't wrote what exactly was coming out my
23 mouth?

24 Q Oh, this isn't a true and accurate statement, is
25 that right?

- 1 A No, I wouldn't say that
- 2 Q Are you saying it's true and accurate or it's
- 3 not, which is it?
- 4 A She was typing real fast
- 5 Q Is it true and accurate or is it not true and
- 6 accurate, which is it?
- 7 A It's true and not accurate
- 8 Q It is true and not accurate, what would be the
- 9 difference?
- 10 A It would be the difference because she typed it
- 11 and they took time with the other ones and they didn't
- 12 took time with me
- 13 Q They took time with what other ones?
- 14 A Lee, Maurice
- 15 Q Well how do you know they took time with them?
- 16 Were you in with the police officers when they were
- 17 interrogating ---
- 18 A Because, I told her ---
- 19 Q --- other people?
- 20 A I told her everything about Danger's house She
- 21 didn't put that on there
- 22 Q So this is not an accurate statement?
- 23 A I guess if that what you call it
- 24 Q And did you tell them also that you had some
- 25 sort of problem with Mr Jackson?

- 1 A No, they didn't ask me that
- 2 Q And you didn't think it was important for them
- 3 to know this is what had gone on?
- 4 A I told Anthony Dennis that before he -- before I
- 5 came in and got the statement
- 6 Q You told him that?
- 7 A Yeah, me and him was in the room for about 45
- 8 minutes before I even take the statement, before I even
- 9 talked to Jamie Turner, before I even talked to Wesley
- 10 Gardner
- 11 Q You told Mr Dennis basically everything you've
- 12 told us today about all these episodes that you said you
- 13 had in the past, is that right?
- 14 A No, I told Wesley about it coming up there
- 15 Q You told Wesley
- 16 A I said, Wesley, you remember I come to you about
- 17 them boys There go Wesley right there
- 18 Q Yes, sir, and we'll have a chance to hear from
- 19 him later
- 20 A Yes
- 21 Q And so you've said you told Wesley on the way to
- 22 the police station all these things you've told us today?
- 23 A I didn't say all them things I said ---
- 24 Q Any of these things, which of these things?
- 25 A About the -- about the thing when I came to his

1 house about they threatened me

2 Q All right, of all the other things that you told
3 us today, you didn't tell him Now, you say -- you say
4 him, he sits in the car, is that right?

5 A If that what the statement say

6 Q I'm asking you if that's what happened?

7 A That what the statement say

8 Q Is that what happened, did he sit?

9 A Yes

10 Q Did he ever stand up in the door?

11 A He tried to at one period of time

12 Q And is that when you shot at him?

13 A Yes, because he was reaching with his hands He
14 wouldn't never let me see his hands

15 Q He was reaching with his hands and trying to
16 stand up at the same time?

17 A No, he was standing up and he had his hands like
18 this so I couldn't see them

19 Q And was he standing up at the driver's door?

20 A What other door would he be standing up at?

21 Q I'm asking you, which door was he standing up
22 at?

23 A Yes

24 Q Where?

25 A At the driver's door

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- 1 Q Is that when you shot him?
- 2 A No, the door -- the shot was already appeared
- 3 then
- 4 Q How many times did you shoot at him?
- 5 A I can't remember
- 6 Q Two?
- 7 A I can't remember
- 8 Q Any guess?
- 9 A I can't remember
- 10 Q You don't remember that Now you remember how
- 11 many times he said, come over here, Reggie Clea And you
- 12 remember how many times you said, show me something And
- 13 you remember that but you don't remember how many shots
- 14 you fired, is that right?
- 15 A (No response)
- 16 Q Is that right?
- 17 A That what it says in the statement
- 18 Q Is that right?
- 19 A Is what right?
- 20 Q What I just asked you
- 21 A Repeat the question
- 22 Q Did you understand my question?
- 23 A No
- 24 Q You don't remember how many times you shot ---
- 25 A No, repeat ---

- 1 Q --- but you remember how many ---
- 2 A Repeat what you said before then ---
- 3 Q --- times you said something?
- 4 A Repeat what, you said before then
- 5 Q How many times did you shoot, do you remember?
- 6 A At what point in time?
- 7 Q The first time you shot at him?
- 8 A I shot -- I didn't shot at him, I shot at the
- 9 front of the car
- 10 Q All right, then the second time you shot at him,
- 11 right?
- 12 A Nah, I shot at the car
- 13 Q You never shot at him?
- 14 A Not at that point in given time
- 15 Q At what point in time did you decide it was time
- 16 to start shooting at him?
- 17 A When he started coming up with his hands
- 18 Q Standing up in the door?
- 19 A Yes
- 20 Q This is after you shot at him the first time?
- 21 A Yes
- 22 Q You never saw a gun in his hands, did you?
- 23 A He didn't let me see a gun in his hands
- 24 Q Did you ever see a gun in his hands?
- 25 A If he -- if he ---

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1 Q Did you ever see a gun in his hands?

2 A Let me answer the question

3 Q I'm asking you Answer my question then you can
4 explain it

5 MR CLARK Your Honor, I ask that he be allowed
6 to answer it and explain his answer

7 MR SALEEBY He hasn't answered it

8 THE COURT First answer the question, then
9 explain your answer, if you'd like

10 THE WITNESS Every time I'm about to answer the
11 question, he won't let me explain

12 THE COURT Listen to the question, then answer
13 the question ---

14 THE WITNESS No, I never see a gun in his hand

15 THE COURT --- you can explain -- sir ---

16 MR SALEEBY Thank you

17 THE COURT --- Mr Clea?

18 THE WITNESS Yes, sir

19 THE COURT The court reporter cannot take down
20 testimony when two people are speaking at one time

21 THE WITNESS Okay

22 THE COURT Therefore, you can't speak when the
23 Solicitor is speaking, you can't speak when I am speaking

24 THE WITNESS Yes, sir

25 THE COURT Listen to the question, then answer

1 the question and explain any answer you would like to

2 You may proceed, Solicitor

3 Q I notice in your statement you said, we were
4 walking back towards his car You never told ---

5 MR CLARK Your Honor, he never gave him a
6 chance to answer the question that he already posed to
7 him

8 MR SALEEBY He just answered it, didn't he?

9 MR CLARK You didn't give him a chance to
10 explain it

11 Q Have you got something to explain? Please
12 explain whatever it was

13 A Ask the question again

14 Q All right, here's my question You never told
15 Mr Turner and Mr (sic) Herod about BoBo and Bubba having
16 a conversation ---

17 A See, you're going back to ---

18 Q --- did you?

19 A You're going back to another question Ask me
20 the question that you ---

21 Q I'm asking you this question, answer it Did
22 you ever tell Ms Herod, did you ever tell Mr Turner, I
23 saw BoBo and Bubba over there talking about something?

24 A (No response)

25 Q Take your time

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1 A How can I take my time? I mean, you keep asking
2 me questions and questions after You're not giving me
3 time to answer the questions

4 Q Answer that one question Did you ever tell Mr
5 Turner or Ms Herod, I saw BoBo and Bubba talking to each
6 other before I walked off with Bubba?

7 A Yes

8 Q You did? Did you tell her that in the
9 statement?

10 A Like I said, she probably didn't write it down
11 in the statement I know I told her that

12 Q That's something you told her that she didn't
13 write down?

14 A Because if it wasn't, then why Lee would say the
15 same thing in his testimony?

16 Q Let's go to the next paragraph, you say you
17 pulled the seat back, you looked at Mr Jackson I eased
18 my gun up from behind the seat of my truck My gun was
19 some type of automatic rifle I'm not really sure exact
20 what kind it is

21 A No, my gun -- yeah, some type of automatic
22 rifle

23 Q Is that right?

24 A That's right

25 Q That's all you knew about the weapon?

1 A That's all it says in the statement

2 Q Is that all that you knew about the weapon?

3 A That's all it says in the statement

4 Q Is that all that you knew about the weapon?

5 A Yes

6 Q The weapon that you fired one time with the
7 original ammo that came to you?

8 A Yes,

9 Q As I pulled my seat up -- my rifle from behind
10 the seat, James, that would be Pollard, looked at me --
11 looked at me and Charles and stood up like a deer who had
12 just seen something?

13 Sounds like Mr Pollard was scared?

14 MR CLARK Your Honor, Your Honor, I ask that
15 he read the entire sentence and not just part of it and
16 stop in the middle of the sentence I think I'm entitled
17 to that

18 MR SALEEBY Your Honor ---

19 THE COURT The objection is overruled

20 Q Sounds like Mr Pollard was scared

21 A No, it said James looked at me, Charles stood up
22 like a -- like a deer, not James, Charles

23 Q Charles? You're saying Charles James looked
24 at me and Charles -- and who was it that stood up like a
25 deer?

1 A Charles

2 Q He stood up in the door?

3 A He -- no, he did like this looking at -- doing
4 like this asking me why! ---

5 Q When you stand up -- when you say stood up, did
6 he get off of his fanny and stand in the door?

7 A He stood up like this

8 Q In the door?

9 A Yes

10 Q And that's when you said you couldn't see his
11 hands?

12 A Yes

13 Q And you shot at him again?

14 A I asked him to let me see his hands He kept
15 moving something around on his lap

16 Q And that's when you shot him?

17 A Yes

18 Q How many times did you shoot this time?

19 A I guess about three or four

20 Q Three or four, and that's when he bolted across
21 the front seat, over the driver's seat, and tried to get
22 behind and crawl to the other side?

23 A No, sir

24 Q No? When did he do that?

25 A Afterwards when -- when he tried to stand up and

1 I shot again And that's when he started crawling and
2 that when I kept shooting because he turned around and did
3 like this, making a moving -- a motion with his hands

4 Q And he -- if I understand correctly, he's
5 standing up at the driver's side door and you shoot him a
6 couple of times, or shoot at him?

7 A Yeah

8 Q And these are the couple of shots that go
9 through and break his left leg, right?

10 A I don't know

11 Q And he crawls out over here on the other side of
12 the car?

13 A No, he ain't crawled out there

14 Q Did he get out the other side of the 'car?

15 A He turned before he started -- when he was
16 crawling, he turned around

17 Q He turned around inside the car?

18 A Yes

19 Q And did what?

20 A And looked back this way

21 Q And looked back at you?

22 A Yes

23 Q So is he laying in the front seat looking back
24 at you?

25 A In the passenger seat with his back to the door

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1 like this, making some hand movement

2 Q So he's trying to get away from you shooting at
3 him and he's looking back at you?

4 A Because I'm going to stop shooting The gun is
5 aimed down to the grounds

6 Q And he gets out on the other side?

7 A Yes

8 Q And now he's behind the car?

9 A Yes

10 Q And you shoot again?

11 A Yes, because he's on his knees looking back over
12 the car

13 Q He's on his knees?

14 A He wouldn't never let me 'sée his hands

15 Q He's on his knees like this?

16 A Yes

17 Q And he's looking over the car and you're
18 shooting at him?

19 A (No response)

20 Q You say, Bubba, put that gun down And he said,
21 what are you talking about? Is that what he said?

22 A Yes

23 Q Like he didn't know what you're talking about?

24 A Of course, if he didn't want me to know he had a
25 gun, why he ain't never let me see his hands

- 1 Q You heard him say, I ain't got no gun, didn't
2 you?
- 3 A I tell you the same thing too
- 4 Q Did you hear him say that?
- 5 A It's in the statement
- 6 Q Did you hear him say that?
- 7 A It's in the statement
- 8 Q Did you hear him say that?
- 9 A Yes
- 10 Q And did you hear him say, Bobo, tell him I ain't
11 got no gun?
- 12 A No, I didn't hear him say that
- 13 Q You didn't hear that? You'd already shot BoBo
14 by then, hadn't you?
- 15 A Nah
- 16 Q You said you shot the door and as Charles was
17 getting out, James was reaching in his waist and I thought
18 he was going for his gun, so I shot him
- 19 The same question, did you ever see James with a
20 gun in his hand?
- 21 A No, but he was reaching in his waist
- 22 Q Did you hear Mr Powell testify?
- 23 A Yes
- 24 Q All right, did you see him do a -- take a step
25 and said, why you shooting ---

1 MR CLARK Your Honor, I object He's pitting
2 the witness ---

3 MR SALEEBY I'm just asking if this is what he
4 saw?

5 MR CLARK I object to it ---

6 THE COURT The objection is overruled

7 Q Did you ever see him say, Reggie, why you
8 shooting at Bubba?

9 A No, I -- just what he said, he said, why you
10 shooting at Bubba I said, because he won't let me see
11 his hands and he got a gun what he took out the box

12 Q All right, and he took a step and his hands came
13 out again?

14 A No

15 Q And you said you shot him in his hand Did you
16 aim for his hand?

17 A No, I shot by his hand, by where he was going to
18 ---

19 Q By his hand ---

20 A He was going to his waist

21 Q I thought you said you hit him in the hand?

22 A Yeah, that what the diagram said, I hit him in
23 his hand

24 Q Were you -- with all this happening and as fast
25 and as quick as it's happening, you're satisfied that the

1 first shot that you hit him with was in his hand, is that
2 right?

3 A Yes, because he ---

4 Q Was his hand that way, that way, that way? Show
5 me what position his hand was in

6 A His hands was in his waist like this

7 Q Here?

8 A Yes

9 Q And this is how you shot him and this is when
10 you shot him?

11 A No, he did like this

12 Q Yeah

13 A Going in his waist

14 Q Uh-huh

15 A And when he came out, I shot him in his hand

16 Q All right ---

17 A And he was going back in his waist

18 Q --- what position was his hand in when you shot
19 him?

20 A I can't remember, it happened so quick

21 Q You recall the doctor testifying, don't you?

22 A Yes

23 Q One shot here, what was called a defensive, and
24 one shot here?

25 A No, she said fingertip

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- 1 Q Yeah, and through here And how could you shoot
2 him in his fingertip and go this way if his was down?
- 3 A If his hand coming like this
- 4 Q His hand come like this Did anybody ever fire
5 a weapon at you?
- 6 A No, sir
- 7 Q Now, you said, with the next paragraph, Charles was
8 trying to get up off the ground to get his weapon But
9 you had never seen a weapon; had you?
- 10 A No, but when he got out the car, he threw
11 something The same thing whatever he had in that box, he
12 threw it
- 13 Q He threw it Where did he throw it?
- 14 A Right next to the ground where he got out at
- 15 Q Which side of the car?
- 16 A The passenger side
- 17 (Pause)
- 18 Q This is State's Exhibit Number 13 How close to
19 the passenger side door you're saying he threw something?
- 20 A Right there, right up -- but I couldn't see
21 exactly I'm on the other side How can I see through
22 the car?
- 23 Q Was it toward the front of the car?
- 24 A Yes
- 25 Q How far away from where he was on the ground?

1 A I don't know, it wasn't out -- it was out my
2 eyes view, so close by the tire or something

3 Q So you're saying he threw something?

4 A A throw is a throw It probably wasn't not
5 throw, it was

6 Q So he's -- you shot him -- try to get it right
7 You shot him, he's crawling out, he turns and looks back
8 at you and throws something out and he gets on the ground
9 and looks over it and tells you, I ain't got a gun but you
10 say he also throws something away?

11 A No, I didn't say that My statement doesn't say
12 that

13 Q Is that what happened?

14 A No, that's not what happened

15 Q Did you ever see him crawling?

16 A Yes

17 Q Yes You say, he was probably shot when I shot
18 at the car I panicked when I saw him crawling towards
19 the gun

20 But you didn't see a gun, did you?

21 A If it wasn't a gun, then why he ain't never let
22 me see it Why he wouldn't ever let me ---

23 Q Did you ever see a ---

24 A --- see his hands?

25 Q --- gun?

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1 A No Then why he wouldn't let me never see his
2 hands? Why would he never let me see what was in the
3 shoebox? If he had something to show me, when I was
4 telling him to show it to me or let me see his hands, he
5 would just hold it up

6 Q Did you ever see a gun?

7 A I said, no

8 Q You know, after this was over and you got BoBo
9 laying on his back and you've got Bubba over here on his
10 face, you looked at them, didn't you?

11 A Nah, I took off

12 Q You didn't look at them?

13 A No, because I was in a frenzy

14 Q You were in a frenzy You didn't go to see what
15 you'd done to them and if you could help them, did you?

16 A No, for what, because I figured though they was
17 trying to kill me Why I'm going to help somebody who was
18 trying to kill me

19 Q Did anybody else ever fire a weapon?

20 A Not to my knowledge Everything happened so
21 quick, they probably did

22 Q They probably did? You told ---

23 A Lee screaming

24 Q You told the police the only shots fired were
25 the ones I fired

1 A Yeah

2 Q Is that the truth?

3 A Yes

4 Q Is that the truth?

5 A Yes, that what I told them I don't know was it
6 another gun fired or not I just told them what I saw and
7 what I heard

8 Q You never saw another gun?

9 A That's what I said

10 Q You never heard another gun shoot?

11 A I don't know because the simple fact, there was
12 so much yelling and confusion going on

13 Q Did you ever hear what you thought was another
14 gun shooting?

15 A No, sir

16 Q And did you ever see anybody shoot anything at
17 you?

18 A No, I didn't give them a chance to

19 Q Now, you shot at the car two or three times, is
20 that right, two or three separate times?

21 A Yeah -- no, at -- yes, at two or three separate
22 times

23 Q And you shot at and hit Mr Pollard, right?

24 A Yes

25 Q And then you moved around towards the front of

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- 1 Mr Jackson's car, didn't you?
- 2 A No, I didn't move around If I moved around,
3 then why y'all didn't find no shell casings over there?
- 4 Q Sir, I am asking you if you moved around ---
- 5 A I said, no
- 6 Q --- towards the front
- 7 A I said, no and why didn't y'all find no shell
8 casings over there?
- 9 Q Sir, you're going to answer my questions
- 10 A I already did, I said, no
- 11 Q All right, now, when did you shoot Mr Jackson
12 in the head?
- 13 A I don't know When I left, he was laying on the
14 ground I rode off
- 15 Q He was laying on the ground?
- 16 A Not making any movement or nothing I rode off
- 17 Q He was shot here?
- 18 A I don't know
- 19 Q You don't know?
- 20 A That's what y'all said
- 21 Q Did you ever stand over him?
- 22 A No, for what reason?
- 23 Q Did you ever stand in front of him and shoot him
24 while he was on the ground?
- 25 A No, for what reason?

1 Q Did you ever shoot at him when he was ever bent
2 over looking at you this way?

3 A Say it again?

4 Q Did he ever -- did you ever shoot at him when
5 his head was bent over that way?

6 A When was his head bent over that way?

7 Q I'm asking you if you ever shot at him when he
8 was in that position?

9 A No, sir

10 Q And you never heard him say, BoBo, tell him I
11 ain't got no weapon?

12 A No, because I was trying to get up out there
13 then

14 MR SALEEBY Thank you, sir

15 **REDIRECT EXAMINATION BY MR CLARK**

16 Q Mr Clea, did you choose how your statement was
17 going to be recorded?

18 A No, sir

19 Q Who chose how that was going to be done?

20 A I don't know who did it The only thing I know
21 is, after I told Anthony Dennis and Gregory Gardner
22 everything that happened, they brought that same lady in
23 there, she started typing and that's all I know

24 And she know it There she go sitting right
25 there

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1 Q Do you believe she took down exactly what you
2 said ---

3 A No, sir, and I told Jamie Turner after that that
4 she didn't put exactly everything I said on there She put
5 it in her own words

6 Q Okay

7 A And I asked her why she -- I asked her why was
8 she typing, and he said -- and Jamie said, because she
9 type real fast

10 Q Okay, did they ever offer to video tape your
11 statement?

12 A No, sir

13 Q Did they ever offer to tape record your
14 statement?

15 A No, sir

16 Q Now, your statement -- even though Mr Saleeby
17 only put up this one last page, it's actually three whole
18 pages, isn't it, or two pages?

19 A Two pages

20 Q And a third cover sheet on top of it?

21 A Yes, well he got that

22 Q How long did you -- did you talk to Mr Turner
23 before this was typed?

24 A No, sir

25 Q You didn't talk to him at all?

- 1 A No
- 2 Q You talked to Mr Dennis?
- 3 A Yes
- 4 Q For how long?
- 5 A For about 45 minutes
- 6 Q And do you think everything's in this statement
- 7 that you said in 45 minutes?
- 8 A No, sir
- 9 Q How long did it take her to type this?
- 10 A Not too long because she didn't even put about
- 11 Danger's house in the statement She said she going to
- 12 start from when you left -- when I left Scenic Lake
- 13 Q Okay Does it have anything about what happened
- 14 at Danger's house?
- 15 A No, sir
- 16 Q Mr Saleeby asked you about these prior acts of
- 17 violence, are you sure about that?
- 18 A Yes, I'm positive
- 19 Q And you told him who those people were there?
- 20 A Yes
- 21 Q Why didn't you want to tell him at first?
- 22 A Because, why I want to bring somebody else in
- 23 this mix He didn't want to bring up their prior records
- 24 Q Now, he asked you about your father and Mr
- 25 Powell taking you back to law enforcement Did they take

1 you back or did you voluntarily agree to come back?

2 A I voluntarily agreed to come back

3 Q Did they make you come?

4 A No

5 Q Could they have made you come?

6 A No, if I didn't wanted to

7 Q Was your father in Columbia to drive you back?

8 A No, in the first place I didn't want to go to

9 Columbia Lee --how I know, Lee brother stay in Columbia
10 I wasn't even driving and they got the photo -- pictures
11 from a store in the county where Lee was pumping the gas
12 and drive off in the truck

13 Q So Lee was actually driving All right, now,
14 Mr Saleeby asked you why -- when Bubba started helping
15 you take the dog houses off, why didn't you say, Bubba, I
16 don't want nothing to do with you I'm getting ready to
17 leave I'm afraid of you

18 Why didn't you say that?

19 A For what? He already -- I wasn't afraid He
20 know me and him didn't get along

21 Q Did that statement make any sense to you at all?

22 A How could it? And Lee came with me I asked --
23 I asked Lee was he going back with me He said, nah, I'm
24 going to stay here and chill for a minute

25 Q All right ---

1 A And he know I had something to do because that's
2 why I left the truck running

3 Q All right, now, Mr Saleeby asked you about his
4 statement -- about your statement but he only asked you
5 about selective parts I'm going to ask you about the
6 additional parts that he didn't ask you about

7 He asked you about -- look on the second page,
8 the first full paragraph At the top there, we walking
9 together around the back of my truck and I felt a chill go
10 up my back as we were walking towards the car

11 What did you mean when you said you felt a chill
12 go up your back?

13 A A chill, a fear

14 Q All right ---

15 A Like something wasn't wrong And I asked -- and
16 I asked the same Investigator Turner, I asked Wesley, I
17 asked Gardner, the other Gardner, y'all don't get chills
18 when y'all feel as though something is wrong?

19 Q Now, when you told Ms Herod that, did she ever
20 ask you, well, what do you mean by that?

21 A No, sir

22 Q Is there any explanation in your statement of
23 what that meant?

24 A No, sir

25 Q Then the next paragraph says, I was walking to

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1 the passenger door of my car And Mr Saleeby read the
2 part that says, I saw Charles Jackson reach in the back of
3 his car and pull out a Timberland box -- shoebox and take
4 something out of there and put it on his lap

5 But what was the next thing that you said after
6 you told them you saw him put something on his lap? Do
7 you have the statement with you?

8 A I knew he had been in trouble before

9 Q All right, but what's before that? What did you
10 say just before that?

11 A I saw Charles Jackson reach in the back of his
12 car and pull out a Timberland shoebox, take something out
13 and put it on his lap I figured it was a gun

14 Q Okay, so you said that as well Mr Saleeby
15 didn't ask you about that but ---

16 A Yes

17 Q --- you told them you figured it was a gun?

18 A Because if it wasn't a gun, he would have showed
19 it to me

20 Q Okay

21 A And didn't look like no sneakers It was a
22 black object

23 Q Okay, black ---

24 A That's why when I told Mr Turner -- well, he
25 asked me, did you see a gun? I said, no, I saw something

1 that I thought was a gun

2 Q All right, and then on that third paragraph, Mr
3 Saleeby read, as I pulled my rifle from behind the seat,
4 James looked at me and Charles and stood up like a deer
5 who had just seen something

6 But he didn't read the part where you said, I
7 shot up the front of the car Did you say that?

8 A Yes, sir

9 Q Were you trying to shoot Mr Jackson?

10 A Nah, for what at that point in time? I asked
11 him -- before then I asked him let me leave from the yard

12 Q All right, and when you said in here, James
13 looked at me and Charles and stood up like a deer, do you
14 mean he stood on his feet, sir?

15 A No

16 Q Or do you mean he sat up?

17 A He did just like this with his head and looked
18 this way and kept looking at me like, what's -- what am I
19 waiting on You ever see a deer on a commercial on
20 something when the deer hear something and he do like
21 this? Those were his exact motions

22 Q Okay, and so looking at State's Exhibit 5-A, the
23 holes in the door, that door was open, right?

24 A Yes, sir

25 Q When you said, stood up, do you mean stood up on

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- 1 the ground out -- in front of that door?
- 2 A No, stood up like this
- 3 Q So did he ever leave his seat?
- 4 A No, sir
- 5 Q Okay, so you didn't shoot him when he was
- 6 standing behind that door?
- 7 A So you didn't shoot him when he was standing
- 8 behind that door?
- 9 A No, sir
- 10 Q And you -- your statement said, I said, Bubba,
- 11 put the gun down Does your statement ever say that Bubba
- 12 told you he never had a gun?
- 13 A No, sir
- 14 Q Did he ever tell you, I don't have a gun?
- 15 A Not to my knowledge
- 16 Q And then the last thing you say is, James was
- 17 reaching in his waist I thought he was going for a gun
- 18 so I shot him
- 19 A Yes, sir
- 20 Q You told them that too, didn't you?
- 21 A Yes, sir
- 22 Q And I believe you told them you told Lee to
- 23 check and see if they had a gun?
- 24 A Yeah, but Bubba wouldn't never let Lee come
- 25 towards the car

- 1 Q Who wouldn't let him come?
- 2 A Bubba
- 3 Q Why not?
- 4 A I don't know
- 5 Q What did he do to prevent him from coming over
- 6 there?
- 7 A He told Lee -- he told Lee -- he started calling
- 8 BoBo, he told Bobo to come to the car But I told BoBo,
- 9 don't move because I couldn't watch both of them
- 10 Q So did he ever tell Lee not to come towards the
- 11 car?
- 12 A No Who, Bubba? Yeah, and I was then after
- 13 that, then I was saying, why you won't let -- Bubba --
- 14 then I said, let Maurice come to the car Then he
- 15 wouldn't never let come to the car So I said, man,
- 16 forget this Just show me your hands Show me what you
- 17 take out the shoebox
- 18 And he just keep saying, what you talking about,
- 19 Reggie Clea? What you talking about, Reggie Clea?
- 20 Q And did you ever talk to Jamie Turner?
- 21 A Yes
- 22 Q Was it before this statement was typed up?
- 23 A Yes
- 24 Q How long did you talk to him?
- 25 A I talked to him for a good minute after I talked

1 to Wesley Wesley went next door After I talked to
2 Anthony Dennis and Gardner, the other Gardner, and I can't
3 remember He used to be a cop out in -- Reagan
4 (phonetic), Mr Reagan, he came in there and talked to me
5 And then that when Turner came They turned me over to
6 Turner and that when Wesley turned me over to Turner

7 Q Does this statement have any details about how
8 far you were?

9 A No, sir

10 Q Does this statement have any details about what
11 you could see and what you couldn't see?

12 A No, sir

13 Q When you left that scene, were you trying to get
14 away from law enforcement?

15 A No, I was just trying to get away I was in
16 hysterics because Jamie said, yeah, I saw the jack, I saw
17 your things and I saw the sign where you hit the tree
18 trying to get away

19 Q So you actually had an accident trying to get
20 out of there?

21 A Yes, sir

22 Q Were you still afraid?

23 A Yeah

24 Q Why?

25 A Because I -- they -- they made it look like it

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1 seemed to me they was trying to kill me Bubba ain't
2 never raised his hand to let me see his hand And BoBo
3 when he kept going to his waist, what else I was supposed
4 to think? What else I supposed to do?

5 So in other words, they had a turned around on
6 me and I didn't protect myself, then what would they have
7 to say then?

8 Q Now, Mr Saleeby asked you why you associated
9 with BoBo on that day Did you ask to associate with him?

10 A No, he came looking for me I was at somebody
11 else house

12 Q All right

13 A Because matter of fact, when my mother come pick
14 me up she was like, Bobo done been by here about two or
15 three times I thought you ---

16 MR SALEEBY Object to anything anybody else
17 said

18 Q Don't tell us what your mother said

19 A Okay

20 Q Mr Clea

21 MR CLARK Thank you, sir, that's all I have

22 THE WITNESS Okay

23 MR SALEEBY Your Honor, could I?

24 THE COURT Yes, sir

25 **RECROSS EXAMINATION BY MR SALEEBY**

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1 Q I just heard a couple of things I haven't heard
2 before Are you saying now ---

3 MR CLARK Your Honor, I object to the
4 commentary That's not a question and I move to strike
5 it

6 THE COURT Objection sustained

7 Q Did you say you saw the object was black?

8 A Yes, and I told Turner that

9 Q You told Turner that?

10 A Yes

11 Q And did you testify to that in response to my
12 questions initially?

13 A No, you didn't ask me that

14 Q Okay

15 A He asked me what I saw I said I saw a black
16 object in his hand and I thought it was a gun And he
17 said that yesterday

18 Q You told Mr (sic) Herod?

19 A Turner

20 Q You never told Ms Herod?

21 A No

22 Q All right, did I just hear you say that you
23 asked Bubba to let you leave?

24 A Before -- before even any gunshots even
25 occurred, when he wouldn't never let me see his hands

1 That when I shot the front end of the car

2 Q Did you ask him could you leave?

3 A No, I said -- this is what I said I said, why
4 don't y'all just let me leave, let me leave from the yard,
5 just like this I said, I don't -- I don't want to walk
6 to your car

7 Q Did you tell Mr Turner and Ms Herod that?

8 A I told Jamie Turner that

9 Q And the details that you've told today that
10 aren't in your statement, you're telling us you told all
11 those to Wesley Gardner?

12 A What details? I can't say what -- what details?
13 Point them out to me and I'll give you a question -- I'll
14 answer you

15 Q The information that you've given today that you
16 said was not recorded in your statement, did you give all
17 that information to Mr Gardner?

18 A What information, I need to know what you're
19 talking about?

20 Q Did you give Mr Gardner a more complete
21 statement than was taken by Ms (sic) Turner and Mr (sic)
22 Herod?

23 A Yes Well, I really didn't even give Gardner no
24 statement Gardner didn't even really talk to me
25 Gardner -- Gardner -- the only thing Gardner did was let

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1 me made a phone call He was with Lee the whole time I
2 talked to the other Gardner, his cousin, Hampton Gardner

3 Q And it's Hampton Gardner and Sheriff Dennis that
4 you say you've given all this other information to?

5 A Yes

6 Q And you did, when you gave your statement, sign
7 the bottom of it I have read each page of this statement,
8 consisting of two pages, each page which bears my
9 signature and corrections if any bear my initials, and I
10 certify that the facts contained herein are true and
11 correct and that I have received a copy of my statement?

12 A Yes, like I told you, this is the first time I
13 ever been in trouble so I did what I thought was liable
14 and right to do

15 MR SALEEBY Thank you, sir

16 THE COURT Sir, you may step down

17 (The witness leaves the witness stand)

18 THE COURT The exhibit with the witness --
19 leave the exhibit with the court reporter

20 Ladies and gentlemen, we'll break for lunch at
21 this time Please be back in the jury room at 2 30

22 (Jury exits the courtroom)

23 MR CLARK I was just going to say that my next
24 witness -- I didn't know how the Court wanted to schedule,
25 was going to be a short one but I'll call him first thing

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INTENTIONALLY BLANK

1 after lunch

2 THE COURT All right, we're in recess until

3 2 30

4 (Whereupon, a recess was taken)

5 --- END OF VOLUME 2 ---

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VOLUME 3

(Jury returns to the courtroom.)

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

THE COURT Welcome back Mr. Clark, you may call your next witness

MR CLARK Thank you, Your Honor, I'd call Council Hunter

COUNCIL LEE HUNTER, after being first duly sworn, testified as follows

THE CLERK Have seat up here, please State your full name, spell your last name, please

THE WITNESS Council Lee Hunter I'm coming to witness -- to testify in this and speak the truth I'm Council Lee Hunter, C-o-u-n-c-i-l

DIRECT EXAMINATION BY MR CLARK

Q Mr Hunter, how are you today?

A All right, sir

Q You live in this Rembert area, don't you?

A Yes, sir

Q Do you live at 5161 Dinkins Mill Road?

A Yes, sir

Q And you've been here -- well, you know what case you're here about today, right?

A Yes, sir

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1 (Pause)

2 Q Can you see that from here, from where you are,
3 sir?

4 A I can see it somewhat here

5 Q You can see it somewhat? Okay, what you're
6 looking at is State's Exhibit Number 2 And are you
7 familiar with the mobile home that this incident occurred
8 at?

9 A No, sir

10 Q Have you ever been -- have you ever been over to
11 that trailer?

12 A Yeah, I been over there when -- when BoBo was
13 living over there

14 Q Okay, so you've been over there, right? And so
15 are you somewhat familiar with how that -- the yard is
16 laid out?

17 A Yes, sir

18 Q Okay, State's Exhibit Number 2 there supposed to
19 show the backyard?

20 A I believe

21 Q Can you see that? Can you -- are you oriented
22 to -- do you see this is supposed to be the trailer right
23 here?

24 A Yes, sir

25 Q And this is the backyard?

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- 1 A Yes, sir, next to the woods.
- 2 Q And these are the woods behind it?
- 3 A Right
- 4 Q And then there are trees on this side?
- 5 A Yes, sir
- 6 Q Is that how that backyard looks?
- 7 A It's in the form of
- 8 Q All right, it's in the form of the way it really
- 9 looks And you're a neighbor of this property, aren't
- 10 you?
- 11 A Well, no, sir, I live next to it
- 12 Q Right, you live next to the property How long
- 13 have you been living there?
- 14 A Oh, a long time, about fifty-something years
- 15 almost
- 16 Q Many years? Okay, now, I'm showing you State's
- 17 Exhibit Number 1, and I believe this is the trailer on it,
- 18 can you see that?
- 19 A Yes, sir
- 20 Q And do you see the driveway in there? Can you
- 21 see the trees around it just like the diagram I just
- 22 showed you?
- 23 A Yes, sir
- 24 Q Where do you live? Can you tell us -- give me
- 25 an idea where you live? Is it shown on this aerial?

- 1 photograph?
- 2 A No, sir, it ain't showing The trailers, I
3 think ---
- 4 Q You said you live in a trailer here?
- 5 A The trailer -- the trailer -- the blue and white
6 trailer I live in the blue and white trailer
- 7 Q Yours is blue and white
- 8 A Yeah, that's the one up
- 9 Q You think this is it here?
- 10 A No, that's not
- 11 Q It's not that close to it?
- 12 A No
- 13 Q Is it down here?
- 14 A It's way down here?
- 15 Q How far would you say it is away from -- from
16 the trailer that's the subject of this case?
- 17 A I think about a quarter of a mile -- it ain't
18 quite a quarter of a mile
- 19 Q Not quite a quarter of a mile?
- 20 A No
- 21 Q Okay, and were you home midday on this February
22 25th, 2003 -- 2004?
- 23 A Yes, sir, I was there I was home
- 24 Q Were you inside or outside?
- 25 A I was on the outside

- 1 Q Okay, and what were you doing outside?
- 2 A Working on my lawnmower
- 3 Q And was there any noise or anything going on in
- 4 your yard?
- 5 A No, sir
- 6 Q You weren't running your lawnmower, were you?
- 7 A No, sir
- 8 Q You were fixing it?
- 9 A I was fixing it
- 10 Q Okay, and did you hear somebody talking loudly
- 11 that you recognized that day?
- 12 A No, sir
- 13 Q You didn't hear anybody talking loudly that you
- 14 recognized?
- 15 A No, sir
- 16 Q Did you hear gunshots?
- 17 A I heard a gunshot one time
- 18 Q One time? Tell the ladies and gentlemen of the
- 19 jury how many guns you heard firing?
- 20 A It ain't been but one gunshot
- 21 Q One gunshot?
- 22 A That was it
- 23 Q Like pow?
- 24 A It just went off
- 25 Q All right, how many guns did you hear firing

1 though?

2 A It ain't been but one

3 Q One gun?

4 A One gun

5 Q All right, and how many shots did you hear, Mr
6 Council Hunter?

7 A I couldn't even count them

8 Q How many do you think you heard?

9 A It was a lot of them I couldn't even count
10 them

11 Q A lot of them, okay Mr Hunter, you talked
12 with police about this case, didn't you?

13 A Yes, sir

14 Q In fact, you talked to Officer Danny Holcolmb
15 (phonetic)?

16 A Yes, sir

17 Q That same day, right?

18 A That afternoon after ---

19 Q Right, and you gave a written statement that
20 day, didn't you?

21 A Yes, sir

22 Q And isn't it true, Mr Hunter -- well, let me
23 ask you this Is that your signature down at the bottom?

24 A Right here?

25 Q Yes, sir

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1 A Yes, sir

2 Q Council Lee Hunter?

3 A Yes, sir

4 Q And did you actually write this?

5 A No, sir

6 Q That's not your writing?

7 A No, sir

8 Q But this is your signature?

9 A My signature to the bottom

10 MR CLARK Your Honor, I'd move to admit this
11 as Defendant's Exhibit Number 1

12 MR SALEEBY No objection

13 THE COURT It's admitted

14 (Whereupon, Defendant's Exhibit Number 1 is
15 marked for identification and received into evidence)

16 Q Mr Hunter, isn't it true that when you signed
17 this statement you said that you heard BoBo say, y'all
18 leave my yard?

19 A That's the last thing he said

20 Q You heard him say that?

21 A I heard him say it

22 Q And isn't it also true, Mr Hunter, that you
23 signed this sworn statement that you said you heard more
24 than two guns shooting that day?

25 A No, sir, but one gun because I ran in the house

1 after then

2 Q Can you read this, sir?

3 A No, sir, I can't see ---

4 Q Well, you wear glasses, right?

5 A Yeah

6 Q Can you see it when you put your glasses on?

7 A Yes, sir

8 Q And doesn't the bottom of this say, I have read

9 each page, consisting of one page, each page which bears

10 my signature and corrections if any bear my initials and I

11 certify that the facts contained herein are true and

12 correct, and then you signed it?

13 A Yes ---

14 Q Did you sign it?

15 A Yes, sir

16 Q And you don't deny that it says, I heard more

17 than one gun shooting and I heard more than 10 shots, you

18 don't deny that, do you?

19 A No, I ain't denied it

20 Q And you said that on that particular day and you

21 swore to it in this statement, didn't you?

22 A Yes, sir

23 Q That you heard two guns shooting And how old

24 are you, Mr Hunter?

25 A 53

- 1 Q You ever been in the military?
- 2 A No, sir
- 3 Q And you weren't under the influence of any
- 4 medications or anything that caused you not to be thinking
- 5 properly that day, were you?
- 6 A No, sir
- 7 Q You weren't intoxicated or anything, were you?
- 8 A No, sir
- 9 Q You knew exactly what you were doing, right?
- 10 A Yes, sir
- 11 Q And this was about 3 -- it says 3 10 p m of
- 12 February 25th that you said you heard Bubba say -- BoBo
- 13 say, y'all leave my yard?
- 14 A That's the last thing he said
- 15 Q And then I heard more than one gun shooting and
- 16 I heard more than 10 shots, I looked up and I saw a small
- 17 black pickup come across the yard of Rick house wide open
- 18 There were two black males in the truck I didn't
- 19 recognize the men in the truck
- 20 A Yes, sir
- 21 Q You remember ---
- 22 A That's true
- 23 Q --- telling the officer that, right?
- 24 A Yes, sir
- 25 Q And your testimony today is different, right?

- 1 You're changing your -- you're changing from this what you
2 said in here?
- 3 A Nah, no, sir, I'm not ---
- 4 Q You're sticking with this?
- 5 A I'm sticking with that
- 6 Q You heard two guns shooting?
- 7 A I'm sticking -- one It was one gun, only one
- 8 Q You're changing from this, right?
- 9 A It was a machine gun It sounded like machine
10 gun That's what it
- 11 Q But that's not what you said, is it, in this?
12 You want to take a look at it?
- 13 A It ain't been but one gun shot
- 14 Q But that's not what you said on that day, is it?
- 15 A (No response)
- 16 Q Is it, sir? That's not what you said on that
17 day, is it?
- 18 A (No response)
- 19 Q Can you answer my question?
- 20 A Yes, sir, I can answer your question
- 21 Q On the day that this happened, just hours
22 afterwards, you said that you heard more than one gun
23 shooting, right? You signed it, right?
- 24 A (No response)
- 25 Q Right?

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1 A That he asked me how much shots it was -- how
2 much times he was shooting it

3 Q But when you read over it you didn't see that
4 that was wrong?

5 A No, sir

6 Q And at the bottom it said, I received a copy of
7 this statement on the above date and time He gave you a
8 copy, right?

9 A Yes, sir

10 Q And in the 14 months since this statement as
11 written, how many times have you attempted to tell
12 somebody that this isn't right?

13 A I ain't had time enough

14 Q 14 months and you didn't have time to come down
15 and tell them, look, this wasn't right?

16 A I was working

17 Q Okay, where were you working at?

18 A Concrete

19 Q For who?

20 A Albert Dinkins (phonetic)

21 Q Okay, and, Mr Hunter, just one other matter I
22 want to ask you about You and Julia Knox -- Julia Knox
23 is your girlfriend, isn't she?

24 A Friend girl

25 Q Friend girl?

1 A Yeah

2 Q Y'all have a good close relationship, right?

3 A Yes, sir

4 Q Would you say -- I mean, when you say friend
5 girl, do you mean something other than girlfriend? It's
6 the same thing, right?

7 A Same thing

8 Q Same thing, right, okay Julia Knox is your
9 girlfriend

10 MR CLARK Request permission to publish this,
11 Your Honor

12 MR SALEEBY I thought he just did, sir

13 MR CLARK Well, show it to the jury

14 (Pause)

15 MR CLARK Thank you, Mr Hunter, I think
16 that's all the questions I have for you right now

17 THE WITNESS All right, sir

18 THE COURT By the State

19 MR SALEEBY Your Honor, I wonder if they could
20 get through publishing it before I have to talk

21 THE COURT No, sir Ladies and gentlemen, you
22 will have all the exhibits in the jury room We will
23 proceed with the trial

24 **CROSS EXAMINATION BY MR SALEEBY**

25 Q Mr Hunter, do you have a telephone -- or did

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1 you have a telephone last February?

2 A No, sir

3 Q Charlie Hunter, Jr lived next door to you Is
4 that your brother?

5 A Yes, sir

6 Q Did he have a phone?

7 A No, sir

8 Q Do you ever have any problem reading or writing?

9 A Who, Charlie?

10 Q You?

11 A Yes, sir

12 Q And you're telling us truthfully today that you
13 only heard one gun and it sounded like a machine?

14 A One gun

15 MR SALEEBY Thank you, sir

16 THE COURT Anything further?

17 **REDIRECT EXAMINATION BY MR CLARK**

18 Q Mr Hunter, Mr Saleeby asked you did you have a
19 phone Did anybody ask you to use your phone that day?

20 A My phone was off

21 Q Okay So your phone was off Did you have the
22 need to use a phone that day?

23 A No, sir

24 Q Did Julia tell you she had tampered with the
25 scene after that?

1 A She didn't told me

2 Q Did you know she had gotten some things from
3 that scene?

4 A I don't know

5 MR CLARK Thank you, sir

6 MR SALEEBY No, more

7 THE COURT Step down, sir

8 THE WITNESS All right, thank you, sir

9 (The witness leaves the witness stand)

10 MR CLARK And, Your Honor, he was under
11 subpoena I would ask that he excused

12 MR SALEEBY No problem

13 THE COURT Next witness

14 MR CLARK Michael Clea, Your Honor He's been
15 sequestered He's on his way in the courtroom

16 **CHARLES H DAVIS**, after being first duly
17 sworn, testified as follows

18 THE CLERK Have seat up here, please State
19 your full name, spell your last name, please

20 THE WITNESS Charles H Davis, D-a-v-i-s

21 **DIRECT EXAMINATION BY MR CLARK**

22 Q Reverend Davis, how are you today?

23 A Doing fine, how about you?

24 Q I'm doing fine, thank you Tell the ladies and
25 gentlemen a little bit about yourself You're a minister,

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1 sir?

2 A Yes, I serve in the Rafting Creek Community,
3 Rafting Creek Baptist Church as pastor

4 Q And how long have you been pastor at Rafting
5 Creek Baptist Church?

6 A I'm in my 20th year come December

7 Q Okay, tell me a little about your background,
8 where did you go to school and that kind of thing?

9 A I grew up in the Sumter community, graduated
10 from Butler High School in Jacksonville Returned to the
11 Sumter community and matriculated from Morris College and
12 then from LaSalle, then from Slidell with a master and a
13 doctorate

14 Q Okay, and are you employed otherwise other than
15 a minister, sir?

16 A Just full time as pastor and a member of the
17 Trustee Board for Sumter School District 17

18 Q Reverend Davis, do you know Reginald Clea?

19 A Yes, I do

20 Q How do you know him?

21 A He grew up in the little 'children's choir and
22 the youth choir at Rafting Creek

23 Q And so has that been for a number of years?

24 A Yes, when he was real young

25 Q All right, do you know his parents?

1 A Yes, his mother is on the usher board She
2 serves as a member of the usher board

3 Q Have you had the opportunity to interact with
4 Reginald?

5 A During what period of time?

6 Q Well, just at any point Have you talked to
7 him, do you know him, do you ---

8 A Yes, I've talked with him and I visited him
9 while he was incarcerated and so forth

10 Q In this case?

11 A Yes

12 Q All right, did you know him before that though?

13 A Yes

14 Q Do you know whether -- do you know of whether he
15 has a reputation for peacefulness or not?

16 A He always was very quiet I always wanted him
17 to sing a little bit louder He was kind of soft

18 Q All right, but do you know whether he had a
19 reputation in the community for peacefulness or violence
20 is what I'm asking you?

21 A I don't -- I knew him from the church point of
22 view not from the community point of view, I never heard
23 of anything prior to this incident

24 Q All right, what about in the church community?

25 A Yeah, he's ---

1 Q What kind of reputation ---

2 A Very -- very peaceful

3 Q And you've known him how many years would you
4 say?

5 A I'm not exactly aware of how old is he but he
6 was a child when I went there, I believe I don't know if
7 he's about 25 or some or not But I've known him quite a
8 while

9 Q Okay, and you know his father Lawrence Dinkins?

10 A Yes

11 Q Do you know his mother Bertha Drakeford?

12 A Yes

13 Q And you know the whole family?

14 A Yes

15 Q They attend your church?

16 A Yes, quite a few of the faces I see in here
17 attend Rafting Creek

18 MR CLARK Thank you, Reverend Davis, that's
19 all I have

20 **CROSS EXAMINATION BY MR SALEEBY**

21 Q Reverend Davis, I understand you to say that you
22 knew his reputation at your church but not out in the
23 community?

24 A Well, I haven't heard of anything one way or the
25 other

1 Q That's what I was asking you

2 A Yes

3 Q When was the last time he attended church
4 regularly?

5 A I believe, if I'm not mistaken, it was a Sunday
6 prior to this incident

7 Q All right, and is Wesley Gardner in your church
8 too?

9 A Yes, he is

10 Q We will not hold that against you

11 (Laughter)

12 MR SALEEBY No more questions

13 MR CLARK Thank you, Reverend, that's all I
14 have

15 THE COURT Thank you, sir

16 THE WITNESS All right

17 (The witness leaves the witness stand)

18 MR CLARK We call Michael Clea now

19 **MICHAEL CLEA**, after being first duly sworn,
20 testified as follows

21 THE CLERK Have seat up here, please State
22 your full name, spell your last name, please

23 THE WITNESS Michael Clea, C-l-e-a

24 **DIRECT EXAMINATION BY MR CLARK**

25 Q Mr Clea, what is your relationship with

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- 1 Reginald Clea?
- 2 A That is my nephew
- 3 Q How is he your nephew?
- 4 A That is my sister's son
- 5 Q All right, and how old are you?
- 6 A 36
- 7 Q Where did you go to school at?
- 8 A Hillcrest High School
- 9 Q All right, are you employed?
- 10 A Yes, I am
- 11 Q Where are you employed?
- 12 A With Drakeford Masonry
- 13 Q Okay, and Drakeford Masonry, is that Reginald's
- 14 stepfather?
- 15 A Yes, it is
- 16 Q That's your sister Bertha's husband?
- 17 A Yes, it is
- 18 Q How big a company does Mr Drakeford have, how
- 19 many people does he have working for him?
- 20 A About 10, 10 or 11
- 21 Q And you do brick masonry for him?
- 22 A Yes
- 23 Q How long have you been doing that?
- 24 A A little over a year
- 25 Q What did you do before then?

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- 1 A A P Bowden Construction
- 2 Q That's the people who build the roads?
- 3 A Yes
- 4 Q How long did you work for them?
- 5 A About eight months
- 6 Q About eight months What about before then?
- 7 A I worked at a food processing plant
- 8 Q Which one is that?
- 9 A Pontiac Foods out of Columbia
- 10 Q How long did you work for them?
- 11 A 11 years
- 12 Q You worked for them 11 years Anywhere before
- 13 that particularly that you worked?
- 14 A I was in the Marine Corps
- 15 Q You were in the Marine Corps?
- 16 A Yes
- 17 Q How long were you in the Marine Corps?
- 18 A For almost five years
- 19 Q And where do you live now?
- 20 A Furman Field (phonetic) Road in Rembert
- 21 Q That is Rembert too?
- 22 A Yes
- 23 Q Is that right past Hill Crest High School?
- 24 A Yes
- 25 Q All right, did you know Charles John -- Charles

- 1 Jackson?
- 2 A Yes, I did
- 3 Q How long did you know Mr Jackson?
- 4 A Just about all my life
- 5 Q That would be about 30 years or more?
- 6 A Yes
- 7 Q Were you close in age?
- 8 A Yes, I think he may be two years younger than I
- 9 am, something like that
- 10 Q And did you associate with him?
- 11 A Yes, I did
- 12 Q All right, do you know his reputation for
- 13 violence in the community?
- 14 A Yes, sir, I -- yes, I do
- 15 Q And what was that?
- 16 A He had a violent nature We even fought two or
- 17 three times
- 18 Q Okay, so you had fights with him two or three
- 19 times?
- 20 A Yes
- 21 Q So your testimony's he had a violent reputation?
- 22 A Yes
- 23 Q All right, and how long do you know he had that
- 24 reputation?
- 25 A As long as I knew him

1 Q Do you know whether he carried a weapon?

2 A No, I didn't know him from carrying weapons

3 Q You didn't know him about that?

4 A No

5 Q All right, did you know of an incident that
6 caused some problem between Charles Jackson and Reggie?

7 A Yes

8 Q I'm not asking you about the incident -- tell me
9 about it, do you know of the incident?

10 A Yes

11 Q And did you know of a confrontation that
12 occurred between Reggie and Charles after the incident?

13 A Reggie told me about it

14 Q Reggie told you and it What did Reggie tell
15 you?

16 MR SALEEBY Objection

17 MR CLARK Well, Your Honor ---

18 THE COURT Sir?

19 MR CLARK I'll wait until the Court rules,
20 Your Honor

21 THE COURT The basis for the objection?

22 MR SALEEBY The basis for the objection is
23 hearsay, Your Honor

24 THE COURT Mr Clark?

25 MR CLARK Well, Your Honor, I don't think it's

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1 hearsay, if the client is available And it's not offered
2 for the truth solely It is offered to show what his
3 state of mind was therefore I don't think it would be
4 hearsay

5 MR SALEEBY No, it would be a self-serving
6 statement, have no bearing on what actually happened

7 THE COURT The objection is overruled You can
8 answer the questions, sir

9 MR CLARK Thank you, Your Honor

10 Q Do you know of confrontation -- did Reggie tell
11 you about a confrontation?

12 A Yes

13 Q What did he tell you, sir?

14 A He told me he confronted Mr Jackson about the
15 incident, a robbery took place

16 MR SALEEBY Objection

17 Q Don't tell us about the incident

18 THE COURT Your objection is sustained The
19 jury is to disregard the response

20 Q Don't tell us about the incident Tell us what
21 he -- what he told you about the confrontation

22 A Well, he told me he confronted him about it and
23 they got into some kind of argument or whatever

24 Q Okay

25 A And he said that BoBo was telling him about what

1 he was going to do to him if he didn't, you know, keep
2 stop trying to put his name in it

3 Q All right, now was there any time that you told
4 Reggie about any threat from Mr Jackson?

5 A Yes, I did

6 Q Can you tell us about that?

7 A We were at a lady's house in the neighborhood
8 and he called me off to the side and he told me that I'd
9 better get my nephew And he told me if he don't quit
10 calling my name, trying to put me in something that I
11 ain't had nothing to do with, he said I'm going to get
12 him

13 Q And did you tell Reggie that?

14 A Yes, I did

15 Q And when he told you he was going to get him,
16 what did that mean to you?

17 A That mean that he probably could have did
18 anything to him

19 Q Okay, was there any -- you told him that,
20 Reggie?

21 A Yes

22 Q What was Reggie's response?

23 A He told me, see, that's why I always kept
24 telling you to stop hanging around Bubba because he ain't
25 no good

1 Q Okay, all right Now, was there any other time
2 that you told Reggie about threats from Mr Jackson?

3 A Yes, a couple of other times like when we would,
4 you know, be in certain spots like at a club or something
5 and he starts drinking or something and then he'll start
6 bringing up Reggie's name again At one instance up to
7 Calvin's he told me -- he came up to me and he told me, he
8 said, Reggie was a dirty so and so

9 Q Well, Mr Clea, now I know we're in court, but I
10 want you to tell me exactly what he said

11 A Okay, we were at Calvin's and he came up to me
12 and he said -- he said, Reggie's a dirty mother fucker and
13 I'm going to get him

14 Q Okay, all right, and did you tell Reggie that?

15 A Yes, I did

16 Q All right, were there any other threats that you
17 told Reggie about?

18 A There was one other time We were riding
19 together and it was just basically the same thing

20 Q What did he say?

21 A Saying about how dirty Reggie was and that if he
22 doesn't keep his name out of his mouth, he was going to
23 get him

24 Q Okay, did you tell Reggie that?

25 A Yes, I did

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1 Q All right, did you -- were you ever the victim
2 of any violence by Mr Jackson?

3 A Yes, I had a ---

4 MR SALEEBY Objection, I don't believe that
5 would be relevant for this case

6 MR CLARK Well, I think that's what Day says,
7 Your Honor Under Day ---

8 THE COURT Objection's overruled

9 Q Can you tell us about that?

10 A I had a busted lip I had to get stitches in my
11 lip and I have a broken finger

12 Q How did that happen?

13 MR SALEEBY Objection

14 THE COURT Objection is sustained

15 Q All right, well, was there any other instances
16 of violence by Mr Jackson that you remember?

17 A For me or someone else?

18 Q With you?

19 A With me?

20 Q Yes

21 A Once -- a couple of other times we fought --
22 well once we fought -- we fought in my car

23 Q Okay

24 A He wanted me to take him somewhere and I told
25 him I was not going to take him And he started pushing

1 me in my head, pushing me in my face and told me -- and I
2 stopped the car in the middle of the road and we fought in
3 the car

4 Q Did you ever witness any violent acts against
5 anyone else?

6 A Yes, I did

7 Q Can you tell us about those?

8 MR SALEEBY That I don't think would be
9 relevant

10 MR CLARK That was the same -- well

11 THE COURT Pose that question, please?

12 Q Did you ever witness any other violent acts by
13 Mr Jackson?

14 THE COURT Objection overruled

15 MR SALEEBY He said or any other person

16 Q You can answer

17 A One day we were at a house on Lowrant (phonetic)
18 Road And one guy told -- was telling us that ---

19 MR SALEEBY I object to the hearsay, Your
20 Honor

21 Q Don't talk about the guy, just tell us ---

22 A Oh, he said that ---

23 MR SALEEBY Objection

24 Q Don't tell us what he said, just tell us what he
25 -- what happened

1 A Okay, he walked -- Charlie walked outside and he
2 jumped on this dude Antwan (phonetic) Diggs

3 Q When you say jumped on him what do you mean?

4 A I think he slapped him He might have hit him
5 once or twice, something like that

6 Q All right, do you know of any other incidents
7 that you witnessed?

8 A Yes, I did

9 Q Tell me about them

10 A We were at a club and ---

11 Q Don't tell me what anybody said, just what
12 happened

13 A Okay Me and Mr Jackson was sitting on the
14 hood of this lady's car -- well, she was my friend We
15 were sitting on the hood of her car And she came out and
16 she said she didn't want anybody sitting on the hood of
17 her mother's car

18 Q Don't say what anybody said, now

19 A Okay

20 Q Say what happened

21 A So she touched him on his arm like motioning him
22 to get off the car And he -- and he sat back down on the
23 car again and she grabbed him again And he turned around
24 and just started hitting her and they just started
25 fighting

1 Q Any other incidents that you know of?
2 A Uh
3 Q That you know of
4 A There were incidents, we were at a club, another
5 club, and he got into an altercation with one female and
6 she called all the rest of -- some of her friends And
7 they were acting like all of them were going to gang him
8 And he started picking up bottles and started throwing at
9 them and then he picked up a shovel and chased them, you
10 know, they kind of like ran away, scattered
11 Q All right, any other incidents of violence that
12 you know about, that you witnessed?
13 A Me -- me and Charlie, we were at another club, a
14 different club And he stole -- he stole something from
15 -- money or whatever from this guy And the guy kept
16 saying that he did it, he kept saying that he didn't do
17 it And they got into an altercation and they started
18 fighting and then he picked up bottles and started
19 throwing bottles at the guy
20 The guy -- the guy in turn picked up the bottles
21 and started throwing bottles at him And at the time, I
22 had had a flat and I had changed -- changed -- I was
23 changing my tire And the guy got the tire iron off --
24 because I left the tire iron on the wheel and he got that
25 off And he hit him in the back of the head, busted him

1 in the back of his head and they just fighting from back
2 and forth

3 Q Did you after that find what they were looking
4 for?

5 A No, they never did ---

6 MR SALEEBY Objection ---

7 THE COURT Objection sustained

8 Q I withdraw that Mr Jackson (sic), did you know
9 -- I'm sorry, Mr Clea, did you know James Pollard, BoBo?

10 A Yes, I did

11 Q How long did you know him?

12 A Know him all his life

13 Q What was his reputation for violence in the
14 community?

15 A He was a mean person

16 Q Was he violent?

17 A Yes

18 Q Violent reputation?

19 A Yes

20 Q Did he ever commit any violent acts against you?

21 A Yes, he did

22 Q Tell the ladies and gentlemen of the jury about
23 that

24 MR SALEEBY Same objection

25 THE COURT Objection overruled

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1 A One night he -- he accused me -- like I pay him
2 some money He accused me that I had owed him more money
3 I said, no, that's all I owe you So we argued back and
4 forth about that

5 So when we get ready to leave -- we were at a
6 lady's house, Glendora Trainor (phonetic), and as we were
7 about to leave, he jumped in my car And I told him, I
8 said, you're not -- I'm not taking you anywhere in my car
9 because, you know, you -- you threatening me about what he
10 was going -- he was going -- he was going to beat my you
11 know what

12 Q Tell us what he said

13 A I'm going to you -- he was telling me, I'm going
14 to beat your ass if you don't give me my money

15 Q Go ahead

16 A And I told him, I say -- I told him, I said, I'm
17 not taking you anywhere, you know, and you threatened to
18 beat me -- you know, do something to me I'm not taking
19 you anywhere

20 So we argued back and forth for a little while
21 and then he got out the car and he said, if you ain't
22 taking me, this goddamn car ain't moving And he shot my
23 tire out

24 Q He took a gun and shot your tire out?

25 A Yeah And after that, he -- he kept saying he

1 was going -- he was going to beat my ass And he was
2 coming after me and his daddy had to grab him and hold
3 him

4 Q Coming at you with a gun?

5 A He wasn't -- he wasn't threatening to shoot me
6 but he still had the gun in his hand

7 Q Were you afraid?

8 A Yes, I was I wasn't going to walk up on him
9 because he had the gun

10 Q Do you know whether he carried a gun?

11 A Yes, I did

12 Q Did he?

13 A Yes, I do -- yes, he did

14 Q Did he commit any other acts of violence against
15 you?

16 A No

17 Q Do you know if Reggie new about these acts?

18 A Yes, he did

19 Q All right, did you see him commit any other acts
20 of violence? Did you witness any other acts of violence
21 by Mr Pollard?

22 A No

23 Q No others?

24 A No

25 Q All right, what about Reggie? Does he have a

1 reputation for violence or peacefulness or what?

2 A No

3 Q Which one?

4 A Reggie's -- no -- no acts of violence He's a
5 real peaceful person I used to tell him myself I thought
6 he was a little too soft

7 Q Okay, you told him that?

8 A Yes

9 MR CLARK Mr Clea, I believe that's all the
10 questions I have for you, thank you

11 Oh, I do have one other question

12 Q The gun that Mr Pollard used to shoot the car,
13 was it a revolver?

14 MR SALEEBY Objection ,

15 THE COURT The objection is sustained

16 MR CLARK Thank you, sir No further
17 questions for Mr Clea

18 **CROSS EXAMINATION BY MR SALEEBY**

19 Q Mr Clea, the Defendant over here, Reggie, is
20 your nephew?

21 A Yes, he is

22 Q You've known him his whole life?

23 A Yes, I have

24 Q He is your sister's child?

25 A Yes, he is

- 1 Q Older sister or younger sister?
- 2 A Oldest
- 3 Q How much older than you is she?
- 4 A I'm 36 and she's 47
- 5 Q Did she kind of help raise you?
- 6 A Yes, she did
- 7 Q You're awfully close to her?
- 8 A Yes, I am
- 9 Q Y'all live close together?
- 10 A Maybe 10, 15 miles
- 11 Q Has she lived in the Rembert area her whole
- 12 life?
- 13 A Yes, she has
- 14 Q Have you lived in the Rembert area your whole
- 15 life?
- 16 A No, I haven't
- 17 Q Where else have you lived other than being in
- 18 the Marines?
- 19 A I lived in Columbia for about 12 years
- 20 Q Have you discussed this testimony with anybody
- 21 else other than Mr Clark?
- 22 A No, I haven't
- 23 Q Talked with any of the family members about it?
- 24 A No, I haven't
- 25 Q Which of the episodes that you've told us about

1 today did you report to the Sumter County Sheriff's
2 Department?

3 A None

4 Q Not a one?

5 A Not a one

6 Q Not when your tires were shot out?

7 A No

8 Q Not when your car was stopped and you had a
9 fight?

10 A Nope

11 Q None, none of those What kind of weapon does
12 Mr Clea have, your nephew?

13 A I don't know of him having any weapon

14 Q You've never known him to have a weapon?

15 A No

16 Q You ever seen him carry a pistol?

17 A No

18 Q You've never seen him carry a rifle?

19 A No

20 Q Do you see him very often before he was
21 arrested?

22 A Sometimes

23 Q Did he ever show you this?

24 A No

25 Q Did you hear about the word on the street that

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1 he had this?

2 MR CLARK Objection, Your Honor

3 THE COURT Objection is overruled

4 A No

5 Q You wouldn't know anything about this?

6 A Nope

7 Q If he carried a 380 pistol, you wouldn't know
8 anything about that?

9 A No

10 Q If he carried some other kind of pistol, you
11 wouldn't know anything about that?

12 A No

13 Q How often did you and he hang out together?

14 A Not that often

15 Q It seems to me like every time something
16 happened between you and Mr Jackson though, you might
17 have talked with him, is that right?

18 A Yes, I did

19 Q Now, you're saying Mr Jackson was a -- was a
20 bad guy, right?

21 A I wouldn't say he was a bad guy but he had a
22 violent reputation

23 Q But you hung around with him a lot, didn't you?

24 A Yes, I did

25 Q I mean, time after time after time?

1 A Towards the end before -- before he got killed,
2 we had kind of started weaning ourself away from each
3 other

4 Q I understand but knowing who he is and what he
5 does, you and he fight?

6 A Right

7 Q Then you'd show up at a joint together later
8 than that, right?

9 A Right

10 Q And then you'd fight and then you'd show up at
11 another joint sometime later, right?

12 A Right

13 Q Now, when you got in those fights, you gave him
14 as good as he gave you, didn't you?

15 A Yes, I did

16 Q You can hold your own?

17 A Yes, I can

18 Q A former Marine? As a matter of fact, you
19 probably got the better of him more times than he got the
20 better of you, didn't you?

21 A Yes, I did

22 Q Now, you consider yourself a violent person?

23 A No, I'm not

24 Q Y'all sometimes get together at the clubs and
25 drink a little bit too much?

1 A Yes

2 Q You start the problem sometime, he'd start the
3 problem sometime?

4 A I never started not once with him

5 Q But always finished it?

6 A Yes, I did

7 Q And if it -- once it was over, then the next
8 time y'all got together and you'd fight again, right?

9 A Something like that

10 Q Okay, now as I understand, the first time
11 something came to you was not because Mr Jackson had
12 accused Mr Reggie Clea of something, because Mr Reggie
13 Clea was accusing Mr Jackson of something, is that right?

14 A That wasn't the first time, no

15 Q But the confrontation that you talked about was
16 because Mr Clea went to Mr Jackson and accused him of
17 something?

18 A Yes

19 Q So this wasn't Mr Jackson initiating something
20 with Mr Reggie Clea, it was Mr Reggie Clea saying,
21 you've done something, accusing of something, is that
22 right?

23 A But that wasn't the first time

24 Q He had accused him of doing stuff before?

25 A No, Mr Jackson had threatened him before that

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1 Q This is before this confrontation that you're
2 talking about?

3 A Yes

4 Q Oh, I thought that was the first time something
5 happened was when Mr Clea went to Mr Jackson and said, I
6 think you've done something?

7 A No He had -- he had -- he had -- it would go
8 on a lot between myself, Reggie and BoBo and Mr Jackson

9 Q Y'all were all getting on each other, is that
10 right?

11 A Right

12 Q Sometimes one person was giving it to another?

13 A Right

14 Q Sometimes another person was giving it to
15 another person?

16 A Basically it was like they -- it would always be
17 like they were going to say those two like against me and
18 my nephew

19 Q All right, so ---

20 A Because they were uncle and nephew and we was
21 uncle and nephew

22 Q So we've got uncle and nephew over here and
23 uncle and nephew over here?

24 A Right

25 Q And you and Mr Reggie Clea are here and that

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1 uncle and nephew are dead?

2 A Right

3 MR CLARK Objection, Your Honor

4 MR SALEEBY No more questions

5 MR CLARK I move to strike that

6 THE COURT The objection is overruled Any

7 redirect?

8 **REDIRECT EXAMINATION BY MR CLARK**

9 Q Mr Clea, were you ever the aggressor with Mr
10 Jackson?

11 A No, I wasn't

12 Q Did you ever see Reggie be the aggressor against
13 him?

14 A No

15 Q Did you ever see Reggie use a gun?

16 A No

17 Q And why didn't you report these incidents to the
18 Sheriff's Department?

19 A Because we were family and basically, you know,
20 I -- it wasn't to me it wasn't -- it wasn't -- I always
21 felt if I had did anything like that it would have caused
22 more violence, it would have escalated into something
23 worse So that's why I never did anything like that

24 Q Now, Mr Saleeby asked you about the time that
25 y'all had spent as friends, the years that y'all were

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1 friends, and he asked about how many times y'all hung out
2 and that y'all would get together over and over again ---

3 A Right

4 Q --- about that? Were there any breaks in this
5 time?

6 A Always

7 Q And why were there -- why were there periods
8 when you didn't see him?

9 A Because we had fought and we just had animosity
10 towards each other

11 Q But were there times when you were away and he
12 was away?

13 A We kind of stayed away from each other but we
14 always got back together because he always came back to
15 me

16 MR CLARK All right, thank you, Mr Clea

17 THE COURT Anything further from the State?

18 MR SALEEBY Nothing, Your Honor, sorry Thank
19 you

20 THE COURT You can step down, sir

21 (The witness leaves the witness stand)

22 THE COURT Everybody stand for a second

23 (Pause)

24 STEVEN T CLEA, after being first duly
25 sworn, testified as follows

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1 THE CLERK Have seat up here, please State
2 your full name, spell your last name please

3 THE WITNESS Steven Thomas Clea, C-l-e-a

4 **DIRECT EXAMINATION BY MR CLARK**

5 Q Mr Clea, what's your relationship with Reggie?

6 A I'm his uncle

7 Q And how is it that you're his uncle?

8 A I'm his mother's brother

9 Q Okay, and how old are you?

10 A 34

11 Q All right, and did you know -- what's Reggie's
12 reputation for peacefulness or violence? Does he had a --
13 do you know?

14 A None that I know of He's very easygoing

15 Q Very easygoing And do you work with him?

16 A I used to work with him

17 Q All right, did you work with him at the time of
18 this incident?

19 A No, I wasn't working at the time of this
20 incident

21 Q All right, did you observe him? Did you spend
22 time with him during this incident -- I mean, during --
23 around this time that it happened?

24 A Yes

25 Q And how -- how did -- tell me about that

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- 1 A (No response)
- 2 Q Where -- where did you -- if you weren't working
- 3 with him, where would you see him?
- 4 A He usually came down to my mother's house
- 5 Q Came by your mother's house?
- 6 A Yeah
- 7 Q Okay, and that's down the street from his
- 8 mother's house?
- 9 A Yes
- 10 Q Okay, is that where you were living?
- 11 A Yeah
- 12 Q All right, where are you employed?
- 13 A Cooper Tools
- 14 Q That's in Sumter here?
- 15 A Yes, sir
- 16 Q How long have you worked there?
- 17 A Will be five years in October
- 18 Q Five years, all right, and did you ever tell
- 19 Reggie about the threats that may have come from -- that
- 20 came from Mr Jackson or Mr Pollard?
- 21 A No, I never did
- 22 Q Okay, all right, do you know -- did you know Mr
- 23 Jackson?
- 24 A Yes
- 25 Q And did you know Mr Pollard?

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1 A Yes, sir

2 Q Do you know whether -- what Mr Jackson's
3 reputation for violence was in the community?

4 A Well, he was one that would do what he had to
5 do If he said he was going to do it, he was going to do
6 it

7 Q Did he have a reputation or not?

8 A Yes

9 Q What about Mr Pollard?

10 A Yes

11 Q Have a reputation for violence?

12 A Yes, sir

13 Q Did you ever witness any violent acts by Mr
14 Jackson?

15 A No, I never witnessed any violent acts from Mr
16 Jackson

17 Q What about Mr Pollard?

18 A Yes, sir

19 Q Tell me about those?

20 A Well, on several incidents I've seen him hit,
21 strike a girl

22 Q Strike a girl, what else?

23 A I seen him one night, he jumped on a fellow

24 Q Okay, anything else?

25 A No, not really

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1 Q All right, and I believe this incident happened
2 on a Wednesday Did you see Reggie in the day or two
3 before that?

4 A Yeah, I seen Reggie that Monday

5 Q That Monday, okay And what was his demeanor
6 like that day?

7 A He was like paranoid

8 Q Paranoid, did he say anything to you?

9 A Yeah, he told me ---

10 MR SALEEBY Objection

11 THE COURT Objection sustained

12 Q Did you notice anything different about him?

13 A Yeah

14 Q What did you notice?

15 A He seemed sort of distant

16 Q Distant, did he talk to you about any threats or
17 anything that was going on in his life?

18 A He said some things but he ---

19 MR SALEEBY Objection

20 THE COURT Answer yes or no, sir

21 A Yes

22 Q And what did he -- what did he say about the
23 threats

24 MR SALEEBY Objection

25 THE COURT Objection sustained

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1 Q But you said he did tell you about some threats?

2 A Yes, he did

3 Q Was it involving these individuals?

4 MR SALEEBY Objection

5 MR CLARK Don't tell me what he said, I

6 believe was the Court's ruling

7 (Pause)

8 THE COURT Objection sustained -- I'm sorry,

9 objection's overruled

10 Q Did he tell you about any threats from these
11 individuals?

12 A Yes

13 Q Did he seem sincere when he told you about it?

14 A Yes, he did

15 Q And you said he seemed paranoid?

16 A Yes, sir

17 Q Tell us the occasion that you had this
18 conversation with him

19 A Well, he was taking me to work one day

20 Q And that was that Monday morning he took you to
21 work?

22 A That Monday afternoon And he was telling me
23 about the situation ---

24 MR SALEEBY Objection

25 Q Okay, don't tell me what he said But he did

1 tell you about some threats from these individuals?

2 A Yes, sir

3 Q And did you believe he was serious?

4 A Yes, sir

5 Q Did he appear to be afraid?

6 A Yes

7 MR CLARK Thank you, Mr Clea, that's all I
8 have

9 CROSS EXAMINATION BY MR SALEEBY

10 Q Mr Clea, what kind of weapons did Reggie
11 usually carry?

12 A He usually carried a handgun

13 Q What kind of handgun did Reggie usually carry?

14 A I'm not sure what kind it was

15 Q Had you seen it before?

16 A Not up close

17 Q Had you seen it at a distance?

18 A Yes

19 Q And where had you seen it?

20 A In his vehicle

21 Q In which vehicle?

22 A In the truck that he was driving at the time

23 Q The truck, where did he keep it in the truck?

24 A Well, when I seen it it was laying on the seat

25 Q Laying on the seat beside him?

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1 A Well, he wasn't in the truck when I seen the
2 gun

3 Q I see, laying in the truck What kind of --
4 what kind of weapon was it?

5 A A handgun, a pistol

6 Q Was it a revolver or was a semi-automatic?

7 A A semi-automatic

8 Q You were aware that he had this, were you not?

9 A No, I wasn't aware that he had that

10 Q Had you ever seen it before?

11 A No

12 Q Ever heard it being fired?

13 A No

14 Q Did any of the information that you said he gave
15 to you get reported to the police by you or by him, if you
16 know?

17 A He told me he told the police

18 Q And did he tell you he talked to Wesley Gardner
19 or did he tell you who he talked to?

20 A He didn't say who he talked to

21 Q And did he say when he did that?

22 A Well, he just told me that he did He said, I
23 already did that

24 Q And did he tell you he had also armed himself?

25 A No, not -- not armed himself but I knew he

1 carried a pistol.

2 Q All right, did he tell you he was prepared to
3 deal with whatever problems he thought might arise?

4 A No, he didn't say he was prepared to deal with
5 anything

6 Q And was he in any way giving you any other
7 information that you could give and pass on to somebody
8 else, to law enforcement or anywhere else?

9 A No

10 Q Was there anybody else with you when this
11 occurred?

12 A You talking about the conversation?

13 Q Yeah

14 A Yes

15 Q Who?

16 A John Powell

17 Q John Powell?

18 A Yes

19 Q Not John Pollard but John Powell?

20 A John Lee Powell

21 Q Oh, this took -- this conversation took place in
22 front of John Lee Powell?

23 A Yes, sir

24 Q And he would be your nephew, right?

25 A No, he's my first cousin

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1 Q He's your first cousin So it was you and John
2 Lee Powell and Reggie?

3 A Yes, sir

4 Q And this conversation about Reggie having some
5 problems with some people was in the presence of Mr
6 Powell?

7 A Yes, sir

8 Q He was there so he could hear it, hear
9 everything that Reggie said?

10 A We all was in the truck together

11 MR SALEEBY All right, thank you, sir

12 THE COURT Anything further of this witness?

13 **REDIRECT EXAMINATION BY MR CLARK**

14 Q Mr Clea, Mr Saleeby asked you whether Reggie
15 gave you any other information that you could pass on to
16 the police, didn't he ask you that?

17 A Yes, sir

18 Q You told him he did? You told him yes, that's
19 what you told -- I believe you told Mr Saleeby

20 MR SALEEBY I think the question was that he
21 did pass on

22 Q Yeah, that -- well, who did you pass it on to if
23 that was the question? You said, yes

24 A No, I didn't pass the information on to anyone

25 Q Okay, did Reggie pass any information on to you?

1 A He told me he did
2 Q On to you?
3 A On to me?
4 Q Yes
5 A Yes
6 Q All right, well what was that?
7 MR SALEEBY Objection
8 MR CLARK Your Honor ---
9 MR SALEEBY I didn't ask him the content
10 MR CLARK I believe he opened the door when he
11 asked him about that
12 THE COURT Objection sustained
13 MR CLARK Thank you, Mr Clea, that's all I
14 have
15 MR SALEEBY Nothing else
16 THE COURT You may step down
17 (The witness leaves the witness stand)
18 THE COURT Ladies and gentlemen, we're going to
19 take a very short break If you all would go to the jury
20 room, please do not discuss the case
21 (Jury exits the courtroom)
22 (Whereupon, a recess was taken)
23 MR SALEEBY Two questions, first of all is
24 there another matter that's going to require some court
25 time today ---

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1 THE COURT Yes, sir, a sexually violent
2 predator hearing

3 MR SALEEBY All right, sir, will that be --
4 will we interrupt this and then resume or that will be
5 after we finish for the day?

6 THE COURT It depends We're going to just
7 press with this one and then get them in when the moment
8 occurs that we can do that

9 MR SALEEBY All right, sir, the other thing
10 that I would call to the Court's attention is that Mr
11 Clark just handed me a slip of paper and said, this is my
12 next witness, he's not on the list

13 We haven't had the opportunity to see if there's
14 any background information on him I'm just going to ask
15 if he can call somebody else before he calls that person

16 THE COURT All right

17 MR SALEEBY We'd have an opportunity to make
18 the necessary checks

19 THE COURT Let's call another witness to give
20 the State an opportunity to check him out

21 MR CLARK Your Honor, there's one -- one
22 matter regarding that Can we approach just briefly, Your
23 Honor?

24 THE COURT Yes, sir

25 (Whereupon, a bench conference was held off the

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1 record)

2 (Jury returns to the courtroom)

3 THE BAILIFF Your Honor, all of the jurors and
4 alternates are present in the courtroom

5 THE COURT All right, your next witness please

6 MR CLARK We call Bertha Drakeford, Your
7 Honor

8 MR SALEEBY Your Honor, that's the matter we
9 needed ---

10 THE CLERK Place your ---

11 THE COURT All right

12 MR CLARK Call Floyd Drakeford at this time,
13 Your Honor

14 (Pause)

15 **FLOYD E DRAKEFORD**, after being first duly
16 sworn, testified as follows

17 THE CLERK Have a seat up there, please, sir
18 State your full name, spell your last name, please

19 THE WITNESS Floyd Edward Drakeford, D-r-a-k-e-
20 f-o-r-d

21 **DIRECT EXAMINATION BY MR CLARK**

22 Q Mr Drakeford, how you doing?

23 A Okay

24 Q What's your relationship with Reggie?

25 A That's my stepson

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- 1 Q And so you are married to his mother?
- 2 A Right
- 3 Q The lady in the yellow shirt that just stepped
- 4 back out?
- 5 A Uh-huh
- 6 Q And how long has he been your stepson?
- 7 A '99
- 8 Q Since '99?
- 9 A Yeah
- 10 Q And have you got to know him since that time?
- 11 A Yes, sir
- 12 Q Does he live with you?
- 13 A Uh-huh
- 14 Q During that time have you become aware of his
- 15 reputation, whether he has a reputation for peacefulness
- 16 or violence?
- 17 A Yes, sir
- 18 Q What kind -- which one does he have?
- 19 A He always seemed to me he got along well with
- 20 other people
- 21 Q So your -- you think he has a reputation for
- 22 peacefulness?
- 23 A Uh-huh
- 24 Q All right, tell us what kind of work you do?
- 25 A I own my own company I'm a brick mason

- 1 Q All right, how long have you had your own
2 company?
- 3 A Two years
- 4 Q Two years?
- 5 A Uh-huh
- 6 Q All right, and how long have you been in the
7 brick masonry?
- 8 A 26 years
- 9 Q Okay, how many employees do you have?
- 10 A Nine
- 11 Q Nine?
- 12 A Uh-huh
- 13 Q And what kind of work do y'all do?
- 14 A Residential
- 15 Q Residential, y'all put the bricks on the house?
- 16 A Uh-huh
- 17 Q And did you know Charles Jackson?
- 18 A Yeah, uh-huh, I knew him
- 19 Q Bubba?
- 20 A Right
- 21 Q Do you know whether he had a reputation for
22 violence or not?
- 23 A I knew of him and what other people said I
24 didn't be around him that much
- 25 Q But did you know his reputation?

- 1 A Yeah
- 2 Q And what was it?
- 3 A Well, it wasn't good
- 4 Q Was it -- did he have a violent or peaceful
5 reputation?
- 6 A What I've heard, violent
- 7 Q Okay What about James Pollard?
- 8 A I know him real well
- 9 Q Do you know whether he had -- what his
10 reputation was?
- 11 A Violent
- 12 Q Okay, what about Reggie, you said his was
13 peaceful?
- 14 A He always seemed that way to me
- 15 Q Now, he lives with you?
- 16 A Uh-huh
- 17 Q And he's lived with you for a while?
- 18 A Uh-huh
- 19 Q And what about working for you, does he work for
20 you?
- 21 A Yeah
- 22 Q How long has he worked for you?
- 23 A He worked -- he was working with me when I
24 started my company on my own
- 25 Q He helped you get started?

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1 A Yeah

2 Q Because -- were you working on another job?

3 A Right, and he used to be in charge while I'm
4 working on the other job

5 Q What kind of job did he do for you?

6 A He did a good job, that's why I left him in
7 charge

8 Q Okay, all right, now how many hours did he
9 usually work for you?

10 A It can vary, it depends on the weather and what
11 we're doing It will go anywhere to 30 to 48

12 Q All right, you paid him by the hour?

13 A Uh-huh

14 Q All right, was he working for you at the time
15 this incident occurred?

16 A Yes, sir

17 Q Did he work for you on that particular day?

18 A No, he didn't work that particular day

19 Q What about the day before?

20 A He worked till 12 00 the day before

21 Q All right, did you notice anything about him the
22 day before?

23 A Yeah

24 Q What did you notice about him?

25 A Well, as we was working, I was on one side of

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1 the house and he was on the other side And I looked
2 around and I saw him walking out in the street And it
3 kind of puzzled me

4 And he came back to me and said ---

5 MR SALEEBY Objection

6 THE COURT Objection sustained

7 Q So he came back to you and what did he do?
8 Don't tell me what he did -- what he said, tell us what he
9 did

10 A He said ---

11 MR SALEEBY Objection

12 Q Tell us what he did What did he do?

13 A I could -- I could tell you what he said

14 Q Okay The Judge ruled that you can't tell us
15 what he said Did you do anything as a result of what he
16 said?

17 A I tried to talk to him

18 Q Okay, all right, what was his demeanor and what
19 was his appearance?

20 A It looked like he was worried about something,
21 something was on his mind

22 Q And did he work that entire day?

23 A No

24 Q What happened?

25 A After lunch, he said he was coming back but he

1 never did

2 MR SALEEBY I would object to any statements
3 he made, sir

4 MR CLARK Your Honor, I believe -- not only
5 for the truth but showing that he didn't work that day

6 THE COURT The objection's sustained as to what
7 he said

8 Q All right, did he work the entire day?

9 A No

10 Q How long did he work?

11 A 12 00

12 Q Was that like him to leave?

13 A No

14 Q Do you feel that was unusual?

15 A Yes

16 Q That he never came back that day?

17 A No

18 Q Did he ever work the next day?

19 A No

20 Q Would you know whether Reggie carried a pistol
21 or not?

22 A No, I didn't

23 Q Okay Did you ever witness any violent acts by
24 Mr Jackson or Mr Pollard?

25 A No

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1 MR CLARK Thank you, Mr Clea, that's all I
2 have

3 CROSS EXAMINATION BY MR SALEEBY

4 Q Mr Drakeford, he lived in the same house with
5 you?

6 A Uh-huh

7 Q How long?

8 A Since '99

9 Q Last year it had been five years?

10 A Yeah

11 Q Had one room in that house?

12 A Sir?

13 Q Did he have a room to himself?

14 A Yes, sir

15 Q All right, kept his things there?

16 A Uh-huh

17 Q The Room was open, you could go in and go out if
18 you had to ---

19 A Yeah

20 Q --- clean? What kind of weapons did he keep in
21 there?

22 A I didn't see any

23 Q What kind of weapons did he keep in his truck?

24 A I didn't see any there

25 Q So to your knowledge, he never had a weapon or

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1 ever carried any kind of weapon?

2 A Not to my knowledge

3 MR SALEEBY All right, thank you, sir

4 MR CLARK Nothing further, Your Honor

5 THE COURT Thank you, sir

6 (The witness leaves the witness stand)

7 MR CLARK Call Rich Bledsoe, Your Honor

8 **RICHARD A BLEDSOE**, after being first duly
9 sworn, testified as follows

10 THE CLERK Have a seat up there, please State
11 your full name and spell your last name, please

12 THE WITNESS Richard Allen Bledsoe, B-l-e-d-s-
13 o-e

14 **DIRECT EXAMINATION BY MR CLARK**

15 Q Mr Bledsoe, how are you employed?

16 A Through -- I'm the manager of Palmetto Tire here
17 in Sumter

18 Q How long have you been the manager there?

19 A Right at seven years

20 Q All right, and y'all sell and service tires and
21 that kind of thing?

22 A Yes, sir

23 Q All right, and that's on Westmark Boulevard?

24 A Yes, sir

25 Q All right, and do you know -- who else works

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1 with you there?

2 A As far as total employees or -- you figure
3 Philip Marlowe (phonetic) is the owner which of course
4 lives here in town

5 Q Okay, so you're the manager?

6 A Yes, sir

7 Q Okay, do you know Reginald Clea?

8 A Yes

9 Q How long have you known Reginald Clea?

10 A For roughly, I'd say, about probably five years

11 Q All right, was there a time when Reginald worked
12 for you at Palmetto Tire?

13 A Yes

14 Q What kind of worker was he?

15 A He was really good, which he changed tires, did
16 basic maintenance and everything in the shop on cars But
17 real good as far as attitude, everything

18 Q All right, have you maintained a relationship
19 with him since then?

20 A Have seen him dropping in as far as a little bit
21 because he knows me and a lot of the guys up there, been
22 dropping in periodically for the last couple of years

23 Q All right, and how long did he work for you, if
24 you know?

25 A I want to say, without being definite on there,

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1 was about probably six to eight months, somewhere right in
2 there

3 Q All right, never had any problems with him at
4 work?

5 A No

6 Q And what kind of -- what kind of reputation does
7 he have? Does he have a reputation for violence or
8 peacefulness or do you know?

9 A Well, I mean, the majority of what I saw was
10 there, work related as far as work related, but always
11 good attitude and more quiet I mean, not somebody
12 outgoing, talking a whole bunch

13 Q Okay, did you ever see him act violently?

14 A No, never have

15 Q You said he worked there for a year?

16 A Well, close to that Like I said, around six to
17 eight months, somewhere right in there

18 MR CLARK All right, thank you, Mr Bledsoe,
19 that's all I have

20 THE WITNESS All right

21 MR CLARK Answer Mr Saleeby's questions

22 **CROSS EXAMINATION BY MR SALEEBY**

23 Q Mr Bledsoe, I took in the answer you said,
24 you're really not sure what is reputation is in the
25 community where he lives, do you?

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1 A No, sir

2 MR SALEEBY That's all, thank you, sir

3 THE COURT Step down

4 THE WITNESS Okay

5 (The witness leaves the witness stand)

6 MR CLARK Your Honor, at this time I would
7 call Jermaine Diggs

8 JERMAINE A DIGGS, after being first duly
9 sworn, testified as follows

10 THE CLERK Have a seat up here please State
11 your full name and spell your last name, please

12 THE WITNESS Jermaine Antwan Diggs, D-1-g-g-s

13 DIRECT EXAMINATION BY MR CLARK

14 Q Mr Diggs, where are you from?

15 A Rembert

16 Q How old are you?

17 A 24

18 Q All right, did I give you a subpoena to be here
19 today?

20 A Yes, sir

21 Q All right, do you know Reginald Clea?

22 A Yes, sir

23 Q Are you related to him?

24 A Yes, sir

25 Q You are Did you know Charles Jackson?

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1 A Yes, sir

2 Q What about James Pollard?

3 A Yes, sir

4 Q Did you know whether Mr Jackson had a
5 reputation for violence in the community?

6 A Yes, sir

7 Q What was that reputation?

8 A Do what he had to do, I guess, whatever

9 Q All right ---

10 MR SALEEBY What did he say?

11 Q Can you speak up?

12 A Do what he had to do

13 Q Do you know what reputation means?

14 A Yeah

15 Q Did he have a reputation for violence or
16 peacefulness or do you know?

17 A Me and him got in an altercation one time

18 Q All right, did he commit any violent acts
19 towards you?

20 A Yeah

21 Q Tell the ladies and gentlemen of the jury what
22 happened

23 MR SALEEBY Same objection, Your Honor, not
24 related to this Defendant

25 MR CLARK State v Day, Your Honor

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1 THE COURT You can answer, sir

2 A I was going to one of my friend's house one day
3 I was walking in the house I didn't know -- I was
4 speaking to him and he never did nothing to me so I
5 thought he was cool

6 So I went to go to speak to him, he wouldn't
7 speak to me And then he walked up behind me, hit me in
8 the back of my head, for what, I don't know

9 Q He hit you in the back of the head?

10 A Yes, sir

11 Q How many times?

12 A Like one time and then he like kept pushing me

13 Q And how much older than he was you?

14 A I don't know his age, I was young

15 Q All right, were you able -- did you do anything
16 to him?

17 A No, sir

18 Q Did you do anything to provoke Mr Jackson?

19 A No, sir

20 Q Did you know Mr Pollard?

21 A Yes, sir

22 Q Were you and him friends?

23 A Yes, sir

24 Q Were you related to him in any way?

25 A Not to my knowledge

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1 Q Did you ever report the incident to the to the
2 police?

3 A No, sir

4 Q Why not?

5 A I ain't never followed it up

6 Q Why?

7 A I don't know what he would of done

8 Q You were afraid to follow it up?

9 A Yeah ---

10 MR SALEEBY Objection to the leading

11 A I left it alone

12 THE COURT Objection sustained

13 Q Let me ask you this way, what did you say, the
14 reason why you didn't follow it up?

15 A I didn't know what he would do

16 Q What do you mean by that?

17 A I just didn't know what he would do

18 Q Did you think he would do something else to you?

19 A I really -- I mean, I don't know to tell you the
20 truth

21 Q Did I ask you what kind of reputation Reginald
22 had?

23 A No, sir

24 Q Can I ask you that now? Do you know what kind
25 of reputation Reginald had in the community?

1 A Yeah, he was a cool person He don't bother
2 nobody

3 Q Did you know whether Reginald carried a gun ---

4 A Not to my knowledge

5 Q --- have you ever seen him with a gun before?

6 MR CLARK Thank you, Mr Diggs, that's all I
7 have

8 **CROSS EXAMINATION BY MR SALEEBY**

9 Q What kin or you to Mr Clea?

10 A Cousin

11 Q Cousin What's your date of birth?

12 A 11-3rd-80

13 Q All right, and you're the same Jermaine Antwan
14 Diggs that's been arrested, tried and convicted for an
15 unlawful weapon charge?

16 A Yes

17 MR CLARK Objection, Your Honor

18 THE COURT The basis for the objection

19 MR CLARK I don't know that it's proper for
20 impeachment I don't believe it is

21 THE COURT Yes, sir

22 MR SALEEBY I'd say that it carries a charge
23 that -- that particular sale and possession, more than a
24 year and it's current, March of this year

25 MR CLARK I thought it was a year, Your Honor

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1 I didn't know it was more than a year

2 THE COURT Counsel approach

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

6 THE COURT You may answer the question, sir

7 Q This is -- you're the man they charged with this
8 and convicted of this, right?

9 A Not been charged yet

10 Q Oh, I see What's your kinship to him?

11 A Reggie?

12 Q Yeah ---

13 MR CLARK Your Honor ---

14 MR SALEEBY I thought he told me he had ---

15 THE COURT Sir?

16 MR CLARK Your Honor, I -- can we approach
17 just briefly again, Your Honor?

18 (Whereupon, a bench conference was held off the
19 record in the presence of the jury, but out of hearing of
20 the jury)

21 THE COURT You may step down You're still
22 under subpoena

23 (The witness leaves the witness stand)

24 THE COURT The Court will reserve ruling on the
25 objection

1 MR CLARK Thank you, Your Honor Call the
2 next witness?

3 THE COURT Yes, sir

4 MR CLARK Call Bertha Drakeford

5 **BERTHA L DRAKEFORD**, after being first duly
6 sworn, testified as follows

7 THE CLERK Have a seat up here, please, ma'am
8 State your full name and spell your last name, please

9 THE WITNESS Bertha Louise Drakeford, D-r-a-k-
10 e-f-o-r-d

11 **DIRECT EXAMINATION BY MR CLARK**

12 Q Ms Drakeford, what's your relationship to
13 Reginald?

14 A That's my son

15 Q Is he your oldest son?

16 A That's my only son

17 Q Your only son, okay And where -- are you
18 employed?

19 A Yes

20 Q Where are you employed?

21 A Kendall's in Camden

22 Q How long have you worked there?

23 A It will be four years this year

24 Q Okay, did you work anywhere before that?

25 A Yes

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- 1 Q Where?
- 2 A DeRoyal in Camden
- 3 Q DeRoyal?
- 4 A DeRoyal
- 5 Q DeRoyal?
- 6 A Uh-huh
- 7 Q How long did you work there?
- 8 A Six years
- 9 Q What about before then?
- 10 A I was working for Springs Mill in Kershaw
- 11 Q How long?
- 12 A Six years there and then I worked to the one in
- 13 Ker -- in Lancaster County before I went to the one in
- 14 Kershaw
- 15 Q For how long?
- 16 A I think I been there almost seven years
- 17 Q Seven years, okay And where are you from?
- 18 A Rembert, South Carolina
- 19 Q Have you lived there all your life?
- 20 A All my life
- 21 Q Okay, and is Floyd your husband?
- 22 A Yes
- 23 Q Okay, did you -- did you see Reggie on the day
- 24 that this occurred?
- 25 A Yes

- 1 Q Did he tell you about any threats that he
2 received?
- 3 A Not that day but the day before
- 4 Q And what did he tell you?
- 5 A That he ---
- 6 MR SALEEBY Objection
- 7 THE COURT Objection sustained
- 8 Q Don't tell us what he told you but he did tell
9 you about threats though?
- 10 A Yeah
- 11 Q The day before?
- 12 A Yeah
- 13 Q And you -- was he being -- do you think he was
14 being sincere?
- 15 A Yeah
- 16 Q Take him serious?
- 17 A Yes
- 18 Q Did he appear to be afraid?
- 19 A Yes
- 20 Q Did it make you afraid?
- 21 A Excuse me?
- 22 Q Did it make you afraid?
- 23 A Yes
- 24 Q So this was the day before this incident?
- 25 A Yes

- 1 Q And did you see him the morning of this
2 incident?
- 3 A Yes, I did
- 4 Q How did he appear to you then?
- 5 A The same, he wasn't himself
- 6 Q When you say he wasn't himself, what do you
7 mean?
- 8 A He just wasn't himself He just was acting
9 different ---
- 10 Q Okay ---
- 11 A --- than he normally act
- 12 Q Is Reggie a peaceful person?
- 13 A Yes, he is
- 14 Q Have you ever seen him do anything violent?
- 15 A No, I haven't
- 16 Q Does he always work?
- 17 A Every since he was in high school
- 18 Q Okay, did you know Charles Jackson?
- 19 A Yes, I did
- 20 Q How did you know Charles Jackson?
- 21 A Just growing up -- he was growing up around me
- 22 Q Is he around your age or ---
- 23 A No, he's younger than I am
- 24 Q And do you know what kind of reputation he had?
- 25 A I can't really tell you that he really did what

1 people say he did, but things that I heard, yeah But I
2 couldn't really say that he done it

3 Q What kind of reputation did you hear about him?

4 A He had a bad reputation for violence and stuff

5 Q Okay, what about James Pollard?

6 A The same

7 Q Okay, did Mr -- do you know Mr Gardner, Deputy
8 Gardner?

9 A Yes

10 Q Wesley Gardner?

11 A Yes

12 Q Did he ever come by your house around this time
13 to talk about Reggie going to his house?

14 A No

15 Q He never came to your house?

16 A No

17 Q Did you ever talk to him at all?

18 A No

19 Q Do you know anything else about this case?

20 A Not really

21 Q Have you ever seen Reggie with a gun?

22 A No

23 Q Do you know whether he carried a gun or not?

24 A I had heard said he carried one but I had never
25 seen him with one

1 MR CLARK Thank you, Ms Drakeford, that's all
2 I have

3 THE WITNESS Okay

4 **CROSS EXAMINATION BY MR SALEEBY**

5 Q Ms Drakeford, what kind of gun did you hear he
6 carried?

7 A I don't know

8 Q Was it a pistol or a shotgun or a rifle?

9 A They said a pistol

10 Q They say?

11 A Yeah, people -- I just hear things

12 Q You don't really know?

13 A No, I couldn't tell you

14 Q And of course if there were people in the
15 community that you didn't think were good people, you told
16 him to stay away from them, didn't you?

17 A Sure, you would too if you didn't think it was a
18 good person for your child to be around, yes, you would

19 MR SALEEBY Thank you, ma'am

20 MR CLARK Nothing further, Your Honor

21 THE COURT All right, thank you, ma'am

22 (The witness leaves the witness stand)

23 MR CLARK I recall Mr Diggs, Your Honor

24 THE COURT All right, come back, sir

25 (The witness returns to the witness stand)

1 THE CLERK I remind you you're still under
2 oath, sir

3 MR CLARK Mr Diggs ---

4 MR SALEEBY I think it's cross examination and
5 my turn, thank you

6 **CROSS EXAMINATION BY MR SALEEBY CONTINUES**

7 Q I'm just going to ask you what kin you are to
8 Mr Clea?

9 A Cousin

10 Q Cousin, how -- how -- who -- how are y'all's
11 folks connected?

12 A On my grandma's side

13 Q On your grandmama's side?

14 A Yeah

15 Q And I believe you were asked about an incident
16 you said that just wasn't serious enough for you to report
17 it to anybody, is that right?

18 A Yeah I never said -- what I said is I didn't
19 know what he was going to do That's why I didn't mention
20 to no police

21 Q You didn't report it to Mr Gardner or anybody
22 else?

23 A No

24 Q We're hearing about it today for the first time?

25 A I guess

1 MR SALEEBY Okay, thank you

2 **REDIRECT EXAMINATION BY MR CLARK**

3 Q Mr Diggs, who else was there when this
4 happened?

5 A Mike Clea

6 Q And Mr Saleeby said -- he asked you -- he asked
7 you, well, we're hearing about it today for the first
8 time Did you ever tell anybody before today?

9 A People heard about it but I ain't never told
10 nobody

11 Q All right, and Mr Saleeby asked you about a gun
12 case Have you been convicted of that crime?

13 A No, sir

14 MR CLARK Thank you, sir, that's all I have
15 (Pause)

16 THE COURT You may step down, sir

17 (The witness leaves the witness stand)

18 THE COURT The jury should disregard the
19 questions to this witness concerning the gun charge, the
20 questions by the State

21 (Pause)

22 **CARL HOLMES**, after being first duly sworn,
23 testified as follows

24 THE CLERK Have a seat up here, please State
25 your full name and spell your last name, please

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1 THE WITNESS Carl Holmes, H-o-l-m-e-s, my last
2 name

3 DIRECT EXAMINATION BY MR CLARK

4 Q Good afternoon, Mr Holmes, how are you, sir?

5 A Would -- I am hard of hearing so can you speak
6 louder, please?

7 Q All right

8 A Okay

9 Q You doing okay today?

10 A Yes, I am

11 Q All right, tell us a little bit about yourself
12 What kind of work do you do?

13 A I'm in the insurance business

14 Q How long have you been in the insurance
15 business?

16 A About 30 years

17 Q All right, and where do you live, sir?

18 A I live at 6650 -- 6651 Francis Marion Avenue in
19 Dalzell

20 Q Okay, that's not Rembert, Dalzell?

21 A Yes, it's close to Rembert

22 Q Close to Rembert, the next town over?

23 A Yes

24 Q All right, how long have you lived there?

25 A 14 years

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1 Q Did you live somewhere else in Sumter before
2 then?

3 A Yes, I did

4 Q Okay, all right, do you know Reginald Clea?

5 A Yes, I do

6 Q How long have you known him?

7 A About a year

8 Q All right, a year before this incident or a year

9 ---

10 A A year before the incident

11 Q Okay, all right, how did you know him?

12 A Well, he was a friend of my granddaughter's

13 Q Your granddaughter, okay And you -- what kind
14 of person did you observe him to be?

15 A A mannerable person that answer you yes, sir and
16 no, ma'am

17 Q All right, and you were impressed with that by
18 him?

19 A Oh, yes I was

20 Q You don't see that too much among young folk?

21 A No, you don't

22 Q Okay, Mr Holmes, did you know anything -- let
23 me ask you this, do you remember approximately when this
24 event occurred? I'm not asking you the particular date
25 but you remember when this did happen?

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- 1 A Yes, I remember
- 2 Q All right, and did you have a conference with
- 3 Reggie before this incident happened?
- 4 A Yes, I did
- 5 Q And how long before it happened did you have
- 6 that conference?
- 7 A The day before it happened
- 8 Q And where was that meeting? Where was that
- 9 meeting?
- 10 A At my office and also at my home
- 11 Q So you had more than one or two?
- 12 A Two meetings
- 13 Q Was it the same day?
- 14 A The same day One was in the morning and my
- 15 home was about 9 00 at night
- 16 Q All right, and it was on the morning before this
- 17 incident?
- 18 A Yes, it was
- 19 Q And did Reggie come -- did you initiate the
- 20 meeting or did Reggie initiate it?
- 21 A No, he just came -- came to my office about 9 00
- 22 that morning before it happened
- 23 Q Where is your office?
- 24 A 742 Bultman Drive in Sumter
- 25 Q All right, that's where your office was at the

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1 time of this incident?

2 A Yes, it was

3 Q And he came by your office?

4 A Yes, he did

5 Q And when he came, did he tell you about any
6 threats that he knew about ---

7 MR SALEEBY I would object to any hearsay

8 MR CLARK Well, it's from the Defendant, Your
9 Honor

10 MR SALEEBY The same difference

11 MR CLARK And goes to his state of mind at the
12 time of the incident

13 (Pause)

14 THE COURT Let me hear the voluntary argument
15 between counsel

16 MR CLARK Oh, I'm sorry I apologize

17 THE COURT Objection's overruled

18 Q Did he tell you about any other -- did he tell
19 you about any threats that he was concerned about that
20 day, sir?

21 A When he first came, I -- when he came to the
22 office that morning and I was not there My wife was
23 there She's my secretary And she said Reggie came by
24 and said ---

25 MR SALEEBY Objection ---

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- 1 THE COURT Objection sustained
- 2 Q Don't tell us what she said
- 3 A I was not there and she told him to come back
- 4 Q And did you subsequently meet with him later
- 5 that night at your house?
- 6 A I met with him that day in my office first
- 7 Q Later in the day?
- 8 A Uh-huh
- 9 Q About what time?
- 10 A About 12 00
- 11 Q All right, and is that when he told you about
- 12 the threats?
- 13 A Yes, he did
- 14 Q Did he appear to be sincere to you?
- 15 A Sincere and nervous and scared
- 16 Q Okay, and did you meet with him again that -- at
- 17 any point after that?
- 18 A At my home
- 19 Q Later that night?
- 20 A Around 9 00
- 21 Q Did he voice the same concerns to you then?
- 22 A Yes, he did
- 23 Q And did he -- was his demeanor the same then?
- 24 A Pardon?
- 25 Q Was his demeanor and his -- the way he was

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1 acting, was that the same?

2 A It was the same

3 Q Okay, afraid and nervous and that kind of thing?

4 A Say again?

5 Q Did he appear to be afraid and nervous and
6 scared?

7 A Yes, uh-huh

8 Q And were you able to offer him any consolation
9 or anything of that nature?

10 A He kept saying that ---

11 MR SALEEBY Objection

12 A He kept saying ---

13 MR SALEEBY Objection

14 THE COURT Objection is sustained as to what he
15 said

16 Q Okay, don't go say what he said, okay?

17 A All right

18 Q Were you able to -- did you contact law
19 enforcement or anything?

20 A No, I didn't

21 Q Okay, did you talk to him?

22 A Yes, I did Yes, I talked to him

23 Q Tell me what you said

24 A What did I say to him?

25 Q Yes, sir, if you remember

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- 1 A I really -- I can't -- I really can't -- I can't
2 remember I can remember more of what he said to me than
3 what I said to him
- 4 Q Okay, remember more of what he said to you?
- 5 A Yes
- 6 Q Did you know Charles Jackson? Did you know an
7 individual named John Charles Jackson?
- 8 A Personally?
- 9 Q Yes, sir
- 10 A No
- 11 Q Did you know of him by reputation?
- 12 A Yes
- 13 Q And what did you know about his reputation, sir?
- 14 A He threatened my grandson
- 15 Q What about James -- and your grandson is who?
- 16 A Valdez (phonetic) Holmes
- 17 Q Okay, so someone other than Reggie?
- 18 A Pardon?
- 19 Q Someone other than Reggie? This person is
20 someone other than Reggie?
- 21 A Right
- 22 Q Right, your grandson?
- 23 A My grandson, yes
- 24 Q Valdez Holmes
- 25 A Uh-huh

1 Q All right, what about Mr Pollard, did you know
2 him?

3 A No

4 Q Are you related to Reggie?

5 A No

6 Q Are you related to Pollards or Jacksons that you
7 know of?

8 A No

9 Q And do you know anything about whether Reggie
10 had a reputation for violence or peacefulness?

11 A No

12 Q And do you know anything other -- anything else
13 about this event?

14 A No

15 MR CLARK You don't, thank you, Mr Holmes
16 That's all I have

17 THE WITNESS Okay

18 **CROSS EXAMINATION BY MR SALEEBY**

19 Q Mr Holmes, you didn't know what Reggie's
20 reputation was in terms of violence and peacefulness, is
21 that correct?

22 A Speak a little louder, please

23 Q I'm sorry

24 A Come a little closer

25 Q I'm sorry Did you know whether or not Reggie

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(S 11)

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1 usually carried a weapon with him?

2 A No

3 Q All right, and after your conversation with him,
4 I assume you told him to stay away from whoever it was he
5 thought might cause him some trouble, is that right?

6 A That's not true?

7 Q You didn't?

8 A No, because the conversation wasn't nothing like
9 that

10 Q I understand I understand He was looking for
11 -- was he looking for you to get some help for him?

12 A Crying out to me

13 Q And did you advise him as best you could?

14 A I did

15 MR SALEEBY Thank you, sir

16 MR CLARK Nothing further, Mr Holmes, thank
17 you

18 THE WITNESS All right

19 (The witness leaves the witness stand)

20 MR CLARK The Defense rests at this point,
21 Your Honor

22 THE COURT Any other matters before we proceed
23 with any reply?

24 MR SALEEBY Yes, sir

25 THE COURT Ladies and gentlemen, I'll need you

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1 to go to the jury room for a moment I'll have you come
2 back as soon as possible Please do not discuss the case

3 (Jury exits the courtroom)

4 MR CLARK Your Honor, I do have a motion

5 THE COURT Yes, sir, your motion

6 MR CLARK Thank you, Your Honor Again, under
7 Rule 19, I'd move for a directed verdict on the basis that
8 there has been no competent evidence to prove the elements
9 of the offense charged particularly malice aforethought,
10 requirement of murder

11 At the close of the State's case, Mr Saleeby
12 argued that the use of a deadly weapon implied malice and
13 I agreed with that at that time But we believe the
14 implied malice has been rebutted by the testimony of the
15 Defendant and with the State having the burden of proving
16 -- by proof beyond a reasonable doubt that it was not
17 self-defense, we move for a directed verdict on that
18 basis, Your Honor

19 THE COURT It is the responsibility of the jury
20 to weigh the testimony of the State as well as weigh the
21 testimony offered by the Defense

22 I deny the motion Mr Saleeby?

23 MR SALEEBY Yes, sir?

24 THE COURT Anything from the State?

25 MR SALEEBY Nothing other than the Reply

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1 THE COURT And how many witnesses do you
2 anticipate as far as reply?

3 MR SALEEBY One, possibly two

4 MR CLARK And, Your Honor, we ask for their
5 names and pertinent information so what we can be prepared
6 to cross examine them as well

7 MR SALEEBY One of them's Mr Gardner, I'll be
8 recalling him I may be calling Sheriff Dennis He may
9 not be immediately available right now

10 THE COURT All right I'm going to take a
11 break on this and then deal with that other matter I
12 don't believe it will take too long

13 MR SALEEBY Go forward today or ---

14 THE COURT Yes, sir, take a recess on this case
15 while we're dealing with the other matter

16 MR SALEEBY May we approach?

17 THE COURT Yes, sir

18 (Whereupon, a bench conference was held off the
19 record)

20 THE COURT All right, we'll take a short
21 recess, short recess

22 (Whereupon, a recess was taken in this case)

23 (Jury returns to the courtroom)

24 THE BAILIFF Your Honor, all of the jurors and
25 alternates are present in the courtroom

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1 THE COURT All right, ladies and gentlemen, you
2 have heard -- now heard the Defendant's case

3 Any reply by the State?

4 MR SALEEBY Your Honor, we would recall Wesley
5 Gardner He's been sworn

6 **DIRECT EXAMINATION BY MR SALEEBY**

7 Q Mr Gardner, you have testified previously Just
8 for recall, you've worked for the Sheriff's Department for
9 how many years?

10 A 22 years

11 Q And you are an investigator?

12 A That's correct

13 Q You were an investigator in 2004?

14 A Yes

15 Q And in 2003?

16 A Yes

17 Q You live in the Rembert area?

18 A That's correct

19 Q All right, do you have prior knowledge of the
20 Defendant in this case, Mr Reggie Clea?

21 A Yes

22 Q You also know Charles Jackson and James Pollard,
23 I believe you testified to that?

24 A Yes, sir, I did

25 Q All right, I will ask you if at some time in

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1 April of 2003, if Mr Clea came to your house?

2 A Yes, sir, he did

3 Q All right, and during that conversation, did he
4 ever make any complaint or allege a conversation between
5 himself and Charles Jackson?

6 A No, sir, he didn't

7 Q Did he ever make any complaints or any
8 allegations about a confrontation between him and Mr
9 Pollard?

10 A No, sir, he didn't

11 Q From April of 2003 until this incident in
12 February of 2004, did Mr Clea ever come to you and make
13 any complaints about either Mr Pollard or Mr Jackson?

14 A No

15 Q Did he send anybody to make any complaints about
16 them on your behalf?

17 A No, sir, he didn't

18 Q During the time you were in his presence, from
19 the time you picked him up until the time you brought him
20 here to the Sheriff's Department, did you ever overhear
21 him making any comments about threats or fear of violence
22 that he felt being -- coming from either Mr Pollard or
23 Mr Jackson?

24 A No, sir, he did not

25 MR SALEEBY Thank you, please answer any

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1 questions counsel has

2 MR CLARK Thank you, Your Honor

3 **CROSS EXAMINATION BY MR CLARK**

4 Q Mr Gardner, this young man turned himself in
5 willingly, didn't he?

6 A Beg your pardon?

7 Q He turned himself in willingly, didn't he?

8 A Yes, sir, he did

9 Q Didn't have to go looking for him or anything,
10 did you?

11 A No

12 Q Came to your house, right, or ---

13 A No, I got him from his mother's house

14 Q His mother's house, okay All right, and
15 although you say you didn't overhear him talk about any
16 threats to you or anyone else, you don't know what he may
17 have told Sheriff Dennis, do you?

18 A No, I wouldn't know what he told Sheriff Dennis

19 Q All right, and it is a fact that he -- in April
20 of 2003, he did come by your house though, didn't he?

21 A Yeah, that's correct

22 Q And he came by your house about some issues he
23 was concerned about in the neighborhood, right?

24 A That's correct

25 Q And I asked you about this the other day, right?

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1 A Right

2 Q And didn't you tell me it was so long ago you
3 really can't remember the names he mentioned to you, Mr
4 Gardner? Didn't you tell me that?

5 A No, sir, I didn't

6 Q You didn't say anything about being able to
7 remember?

8 A I gave you some names

9 Q You gave me some names All right, he did come
10 to complain to you about some issues he had in the
11 community?

12 A Yes

13 Q All right and, Mr Gardner, though you say you
14 remember who it was and it wasn't these people, you didn't
15 do anything about that though, did you, at all?

16 A Yes, sir, I did

17 Q What did you do?

18 A We continued the investigation

19 Q Well, I know you say you continued the
20 investigation, but tell me about the end results? What
21 happened -- what did you get done, Mr Gardner, anything?

22 A Nobody was arrested

23 Q Right, so nothing really was done

24 A Nobody was arrested

25 Q Well, was anything done?

- 1 A Yes, a lot was done
- 2 Q Okay, a lot of talking?
- 3 A A lot of talking?
- 4 Q Yeah, I mean, a lot of talking and this and that
- 5 and this and that ---
- 6 A Mr Clark, an investigation was done
- 7 Q Okay, but I mean an investigation can be
- 8 anything, right? It can be ---
- 9 A No ---
- 10 Q --- talking to somebody, talking on the phone?
- 11 A That's correct
- 12 Q All right, and that's pretty much what you did,
- 13 right?
- 14 A Just like I said, Mr Clark, an investigation
- 15 was done
- 16 Q Okay, Mr Gardner, this was over a year ago now,
- 17 right?
- 18 A Yes
- 19 Q And you knew this case was coming up today,
- 20 right?
- 21 A Yes
- 22 Q Or this week, right?
- 23 A Yes
- 24 Q Where's your documents on that investigation
- 25 that you claim was done? You got any documents on that

1 today?

2 A It wasn't concerning this particular case

3 Q All right but it's concerning him, wasn't it?

4 A Yes

5 Q Well, show me where you wrote down some other --
6 about some other person's name other than John Jackson and
7 James Pollard?

8 A Just like I said, Mr Clark, he came to my
9 residence and we talked about it and neither one of those
10 suspect -- those victims was mentioned

11 Q Mr Gardner, isn't it a fact that you didn't
12 even make any notes when the man came by your house, isn't
13 that a fact?

14 A No, sir, I sure did

15 Q Where are they, sir? Where are those notes?
16 Where are they?

17 A Just like I said, Mr Clark, we -- I talked to
18 him I listened at what he had to say ---

19 Q Okay

20 A --- and I checked into it and no arrest was
21 made

22 Q Good detective always supposed to make notes, am
23 I right?

24 A Accordingly

25 Q Right, and that way you don't remember -- don't

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1 -- that way a defense lawyer can come into court and say
2 something happened that you disagree with You can go
3 back to your written notes, right? That's the first thing
4 they teach you when you go to investigator school, right?

5 A Well, you don't always have to make notes I
6 mean, it's good to make notes You don't always have to
7 make notes

8 Q It's good -- it's better to make notes, isn't
9 it?

10 A It's according

11 Q And isn't it true that you don't have the first
12 note from when this young man came by your house today, do
13 you?

14 A I didn't document it

15 Q You didn't even document the meeting because you
16 blew him off, didn't you, Detective Gardner?

17 A No, sir, I didn't

18 Q Well, show these ladies and gentlemen of the
19 jury where you did something when this man came by your
20 house with these complaints and concerns? Where --
21 where's the notes? Where's the evidence? Who did you
22 talk to? What did you do other than blow him off?

23 A Mr Clark, he came back a second time ---

24 Q Came back a second time, when was that?

25 A And -- a couple of weeks later

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- 1 Q So he came by your house twice?
- 2 A Correct
- 3 Q All right, and ---
- 4 A If I could talk about that
- 5 Q Have you got the notes for that meeting?
- 6 A In fact, we talked about that and he was saying
- 7 at that time that he didn't think these guys were even
- 8 involved
- 9 Q All right, but did he tell you about threats?
- 10 A No, he didn't mention anything about threats
- 11 Q Now, Detective Gardner, you handle a lot of
- 12 cases throughout the year, don't you?
- 13 A Yes
- 14 Q Almost everyday something new comes up, right?
- 15 A That's correct
- 16 Q And you're testifying from independent memory
- 17 How many cases have you handled since April of 2003 -- 4
- 18 -- no 3, 2003, three years ago How many cases ---
- 19 A Several ---
- 20 Q A couple of hundred, haven't you?
- 21 A Probably so
- 22 Q And despite all those cases over a two year
- 23 period, you can testify precisely what this man, who he
- 24 told you that he was afraid of and was threatened by every
- 25 since April of 2003, without the first note in front of

1 you?

2 A Mr Gardner, I told you the names that he
3 mentioned to me

4 Q All right

5 A We discussed that

6 Q Okay and you remember that?

7 A Yes

8 Q But, Mr Gardner, in fairness, didn't you -- you
9 deny that you told me that you forgot some of this
10 information, it's been so long ---

11 THE COURT Just a moment, Mr Clark, you're not
12 testifying in the case?

13 MR CLARK No, sir No, sir, I'll withdraw
14 that question, Your Honor

15 Q You didn't forget any of the names, sir?

16 A No, Mr Clark, I told you the two names that we
17 talked about and neither one of them was Pollard or
18 Jackson

19 Q And who were they?

20 A Warren Wells (phonetic) and Sherman Coleman
21 (phonetic)

22 Q And did you talk to Warren Wells and Sherman
23 Coleman?

24 A In fact there was a warrant on Warren Wells I
25 went to his house several times looking for him and never

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1 could locate him

2 Q All right, and he didn't think -- of course Mr
3 Clea didn't think these guys were the ones who committed
4 the crime that he was talking about, but didn't he think
5 they were behind it?

6 A That's correct

7 Q Right, so he came and told you that he thought
8 that James Pollard and Charles Jackson were behind this
9 incident that had him so upset, right?

10 A No, he didn't tell me that

11 Q Well, you just said he did What ---

12 A I thought you were talking about Coleman and ---

13 Q Right, but what my question is, he thought Wells
14 and Coleman were the ones who actually committed the act,
15 right?

16 A He didn't really know He just threw those
17 names out ---

18 Q Right ---

19 A --- that he had the problems with

20 Q Right, and didn't he think that these
21 individuals were behind this, behind the problems?

22 A Coleman and ---

23 Q No, Jackson and Pollard

24 MR SALEEBY Your Honor, he's stopping him from
25 answering

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1 MR CLARK Well, he asked me a question ---

2 THE COURT The objection is sustained You may
3 answer the question, sir

4 Q Did you know who I was ---

5 THE COURT Just a moment Please answer the
6 question that was posed to you

7 A Okay, repeat the question again

8 Q Didn't he believe that Jackson and Pollard were
9 behind these two individuals that you -- and when I say
10 behind, were the cause of them doing what he was so
11 concerned about?

12 A He didn't mention Jackson and Pollard was behind
13 those two individuals

14 Q Okay, but again, you don't have any
15 documentation at all or anything from the two meetings at
16 your house?

17 A No, sir, not concerning that part

18 Q And, Mr Gardner, just finally, these were some
19 very serious issues that he came and talked to you about,
20 weren't they?

21 A Yes

22 Q Extremely serious We're not talking about, you
23 know, jaywalking or nothing like that, are we?

24 A No

25 Q All right, and even though they were extremely

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1 serious by your own admission, you don't have any notes or
2 anything of what you did to try to help this young man

3 A Mr Clark, it was checked into

4 Q Checked into but you can't produce a file right
5 now?

6 A Beg your pardon?

7 Q You can't produce any records right now, can
8 you?

9 A No

10 MR CLARK Okay, thank you, Mr Gardner

11 THE COURT Anything further from the State?

12 **REDIRECT EXAMINATION BY MR SALEEBY**

13 Q He mentioned two names and neither was Pollard
14 or Jackson?

15 A That's correct

16 MR SALEEBY Thank you, sir That's all we
17 have, sir

18 THE COURT Any further questions, Mr Clark?

19 MR CLARK Beg your pardon?

20 THE COURT Anything further of this witness?

21 MR CLARK No, sir

22 THE COURT All right, thank you

23 (The witness leaves the witness stand)

24 THE COURT Anything further from the State?

25 MR SALEEBY No, sir

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1 THE COURT All right, ladies and gentlemen, you
2 have now heard all the testimony in this case We're
3 going to need you back tomorrow morning at 9 45 I want
4 to once again caution you that you are not to discuss the
5 case with anyone or allow anyone to discuss it in your
6 presence

7 We have now heard all of the testimony in this
8 case When you come back tomorrow, we will have closing
9 arguments Then I will give you the jury charge, that is
10 the instructions of the law concerning this matter and you
11 will then deliberate in the case in an effort to return a
12 verdict as it relates to the charges

13 I thank you very much for your efforts today and
14 we'll see you tomorrow The jury only may be excused at
15 this time

16 (Jury exits the courtroom)

17 THE COURT Are there any other matters of law
18 at this time?

19 ~~MR. CLARK: Your Honor, I renew my directed~~
20 ~~verdict motion again at this time.~~

21 THE COURT: The motion is denied based on all
22 reasons stated before. Regarding the requested jury
23 charges, do you have any state or defense?

24 MR. SALEEBY: No, Sir

25 MR. CLARK: Yes, Sir, Your Honor

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1 THE COURT: All right

2 (Pause)

3 MR. CLARK: Your Honor, I would request, or I

4 had ~~my~~ Your Honor, I would request a charge on self-

5 defense. I also request a charge on proof that is

6 required once the Defendant raises the issue of self-

7 defense. That the Defendant can consider the character

8 and reputation of the victims

9 Plus the charge on motive, Your Honor, or lack
10 thereof. Request a charge on duty to retreat, Your Honor,

11 appearance of danger, Your Honor. Your Honor, I also

12 request a charge on manslaughter, Your Honor. I don't

13 have that one prepared just yet. I can have it prepared

14 in just a few minutes but I request one on manslaughter

15 Your Honor, the basis of my request is State v

16 Gilliam. The cite of that is 296 S C 395 -- 296 -- State

17 v Gilliam, G-1-l-l-a-m. That's 296 S C 395, 373

18 S E 2nd 596

19 Your Honor, I believe that case entitled Mr

20 Clea to a charge of manslaughter even though he has raised

21 the self-defense defense, I believe what that case says is

22 that the appearance of danger or the gesture of reaching

23 for a weapon as believed by the Defendant, can serve as

24 the adequate provocation to warrant the manslaughter

25 charge, Your Honor

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1 Your Honor, I just finally, I request the -- I
2 know the Court's intending to charge self-defense Does
3 the Court charge the doubt that causes a reasonable person
4 to hesitate to act or the one that sufficient character
5 that a person would rely on without hesitation and
6 important matters?

7 THE COURT A combination of both

8 MR CLARK That's all I have right now, Your
9 Honor

10 THE COURT All right, what says the State?

11 MR SALEEBY Your Honor, I know that you are
12 going to charge self-defense and I know that you have got
13 a charge that's stood the test of time So what you
14 request in there -- what you charge in that and the
15 wording you do is perfectly acceptable to the State

16 I would think, as I read the law, and I'm
17 looking at a much more recent case than the one he cited,
18 State versus Cole, Opinion 25037, January the 4th of 2000,
19 appears to me to be applicable here

20 I don't see any evidence of sudden heat of
21 passion I don't see any evidence of sufficient legal
22 provocation His defense is explicitly and exclusively
23 limited to self-defense I asked him those questions
24 exactly And every time I asked him those questions, he
25 didn't indicate that he was angry or mad He indicated

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1 that he was fearful and acting in self-defense

2 And I think he's put himself in that lock

3 THE COURT Mr Clark, I'm looking at this State
4 versus Gilliam case where Gilliam lived with Daisy Mae
5 Reed seven years and left to marry Hannah On Christmas
6 day, he assaulted Daisy Mae by hitting her in the head
7 with a walking stick and slashing her with a switchblade
8 and as a result he was convicted of ABHAN at the trial of
9 this case

10 A few hours after assaulting Daisy Mae, he shot
11 and killed Daisy Mae's lover at the Brown Derby Cafe and
12 this time he was convicted of murder and claimed that he
13 was entitled to a manslaughter conviction based -- a
14 manslaughter charge based on the fact that he was angry at
15 Daisy Mae for calling his wife and Daisy Mae taunted him
16 during the conversation He went to the Brown Derby
17 looking for the victim He found him -- and the Defendant
18 found the victim at the Brown Derby, had him to come
19 outside and they began arguing and the victim made a
20 threatening statement and the victim then took a gun from
21 his pocket and shot at Gilliam before Gilliam could reach
22 his own gun, he then shot back killing victim And the
23 court in that case held, based on all of that, the Judge
24 could have charged manslaughter

25 How does that square in with the facts of this

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1 case?

2 MR CLARK Well, as I understand it, the Court
3 in that case considered the fact that the person made the
4 threat and the gesture and the threats and the ridicule
5 that you mentioned, and I think that's appropriate in this
6 case

7 There is extensive testimony about threatening
8 gestures My client testified what he thought he saw He
9 pleaded with them to show hands and show weapon And
10 coupled with the prior threats that were made, and I
11 believe he testified on was in January, this occurred in
12 February I believe he'd be entitled to it under Gilliam

13 And also there's another case I would rely on,
14 State v Linder, 278 S E 2nd 335

15 But even in Gilliam, the Court does refer to
16 this threatening gesture

17 THE COURT Well, he shot at him The guy shot
18 at Gilliam

19 MR CLARK Right

20 THE COURT And threatened Gilliam

21 MR CLARK Right, so what I'm saying is if in
22 that case the victim shot at the Defendant and that was
23 provocation, I believe attempting to shoot at or
24 attempting to reach for a weapon, attempt to assault with
25 a deadly weapon, would satisfy the provocation as

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1 discussed in Gilliam and Linder, Your Honor

2 THE COURT I'm going to look at these cases
3 overnight and let you all know tomorrow before we begin
4 your arguments All of this is part of the brief amount
5 of time that you all said you would need before I move
6 into my other hearing that I asked you all to wait until I
7 concluded

8 So we're going to be in recess in this case
9 until tomorrow morning at 9 45 I will let you all know
10 before I charge the jury, before we begin closing
11 arguments

12 MR CLARK Can I give you one more cite on
13 that, Your Honor?

14 THE COURT Yes, sir

15 MR CLARK Just one more cite, State v Pickens
16 at 320 S C 528, 466 S E 2nd 364, a 1996 case

17 THE COURT All right, we'll be in recess in
18 this case until 9 45 a m

19 (Whereupon, this case was adjourned for the
20 day)

21 Thursday, May 5, 2005

22 THE COURT Good morning On this issue of the
23 Defense's request to charge voluntary manslaughter, is
24 there anything else you want to offer?

25 MR CLARK No, sir, Your Honor

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07:18

1 MR SALEEBY No, sir

2 (Pause)

3 THE COURT All right, in order for there to be
4 -- for the Court to charge voluntary manslaughter, the law
5 requires a sudden heat of passion brought about upon
6 sufficient legal provocation

7 I find in this instance that the evidence does
8 not support a charge of voluntary manslaughter That the
9 evidence presented by the Defense best supports a self-
10 defense charge but did not support the voluntary
11 manslaughter charge in that there is no evidence of any
12 sudden heat of passion That the case law required some
13 degree of assault, and in addition to that, something that
14 might have provoked the killing

15 That in this case, at best, the Defendant's
16 testimony concerning the -- what he thought was a presence
17 of a gun, indicates possibly some provocation but it does
18 not conjure up any sudden heat of passion That the prior
19 incidents between the parties could not create a sudden
20 heat of passion, but any passion regarding that, in
21 addition to the Defendant's testimony about firing the
22 shots regarding warning the Defendant or something of that
23 nature, in and of itself does not indicate any sudden heat
24 of passion and I'm not going to charge manslaughter

25 Anything else?

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1 MR CLARK Your Honor, there is one other jury
2 charge that I want to propose to the Court

3 THE COURT All right

4 MR CLARK Give Mr Saleeby a copy here

5 (Whereupon, a bench conference was held off the
6 record)

7 THE COURT If you will bring in the jury
8 (Jury returns to the courtroom)

9 THE BAILIFF Your Honor, all of the jurors and
10 alternates are present in the courtroom

11 THE COURT Good morning

12 JURY Good morning

13 THE COURT All right, ladies and gentlemen,
14 welcome back You have now heard all of the evidence in
15 this case It is now time for closing arguments in this
16 case

17 What the lawyers tell you is not new evidence
18 because you have heard the evidence from the witness stand
19 and the evidence will also be contained in the exhibits
20 that will be submitted to you in the jury room

21 What the lawyers are telling you may or may not
22 be the law It is my responsibility to charge you the
23 law But certainly what they tell you will be important
24 because they have important rolls to carry in this case
25 So I ask you that you give them your attention at this

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1 time

2 Mr Saleeby?

3 MR SALEEBY We'll waive opening, Sir

4 THE COURT All right, Mr Clark

5 MR CLARK Thank you, Your Honor May it
6 please the Court

7 **CLOSING ARGUMENT BY MR CLARK ON BEHALF OF THE DEFENDANT**

8 Mr Saleeby, Madam Forelady and the jury, my
9 client and I sincerely appreciate your kind attention over
10 the course of this week

11 Ladies and gentlemen, we're now at the time of
12 this case where you have to decide whether Reginald Clea,
13 the young man sitting at this table here, is guilty of
14 murder Now is that time

15 And in deciding whether he is guilty of murder,
16 what you have to do is not come to the conclusion of what
17 might have happened or what you think happened or what
18 you're sorry happened, what you have to do is determine
19 whether the State of South Carolina has proven by proof
20 beyond a reasonable doubt that he's guilty of the crime of
21 murder

22 Murder is more than just someone being dead
23 Someone can be dead and not be murdered You have to
24 determine whether the State of South Carolina has proven
25 by proof beyond a reasonable doubt that these cases

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1 involve the crime of murder

2 The Judge is going to tell you what murder is
3 I'm going to tell you what I think murder is and you will
4 have an idea of what it is when you go back to the jury
5 room

6 Not only do you have to decide whether the State
7 has proven murder by proof beyond a reasonable doubt, you
8 have to decide whether the State of South Carolina has
9 disproven self-defense by proof beyond a reasonable doubt
10 That's what you've got to do

11 Ladies and gentlemen, I would submit to you that
12 based on the evidence that came from this witness stand,
13 and based on -- of the exhibits -- based on all these
14 exhibits, you cannot find him guilty of murder You
15 simply cannot do it

16 You cannot do it because the evidence presented
17 by the State leaves too many unanswered questions and too
18 many inconsistencies for you to determine that they have
19 proven by proof beyond a reasonable doubt You just
20 cannot do it

21 Now, ladies and gentlemen, I told you in the
22 opening statement that this is a sympathetic case None
23 of us here wish this had ever happened My client
24 included, you know that Nobody wished it ever happened
25 But you can't decide this case on that You can't decide

1 this case on that

2 Nothing will ever change what happened on
3 February 25th of 2004, nothing You convicting an
4 innocent man of the most serious charges on the books will
5 never change what happened And our system recognizes
6 that

7 So, ladies and gentlemen, as I said, they must
8 prove this case by proof beyond a reasonable doubt And
9 Judge Newman's going to -- going to tell you the law He's
10 the judge of the law I'm simply an advocate for my
11 client But I'm going to tell you what I think he's going
12 to tell you proof beyond a reasonable doubt is

13 I think what Judge Newman's going to tell you,
14 ladies and gentlemen, that proof beyond a reasonable doubt
15 is proof of such convincing character that you would be
16 willing to rely and act upon it without, without
17 hesitation in the most important of your matters

18 That's what I believe reasonable doubt means and
19 that's what I believe the Judge is going to tell you it
20 is If he tells you something different, you have to
21 follow what he says but I think this is what he's going to
22 tell or something very similar to this

23 So, ladies and gentlemen, for you to conclude
24 that Mr Clea is guilty, you have to find that this
25 evidence was such -- of such convincing character that you

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1 would rely and act upon it without hesitation in your most
2 important matters

3 (Bee in the courtroom)

4 And we have got a little friend in here this
5 morning

6 And what that means, ladies and gentlemen, is
7 after considering this evidence, if you have any
8 hesitation about whether Reginald Clea feared for his
9 life, and I don't think there's any question he did, if
10 you have any hesitation about whether he acted reasonably,
11 then your verdict must be not guilty

12 The law recognizes that it is difficult for
13 someone to prove his own innocence and it doesn't require
14 him to prove his own innocence It requires the State of
15 South Carolina to prove by proof beyond a reasonable doubt
16 that he is in fact guilty of murder

17 Now, ladies and gentlemen, as I said earlier,
18 there's too many questions and too many inconsistencies in
19 this evidence where you could act without hesitation
20 because there are several issues in this case that leaves
21 you thinking, I wonder what that meant? I wonder whether
22 this -- whether there was a gun? I wonder whether this
23 person's reaching? I wonder whether the crime scene was
24 tampered with?

25 See, you can't convict him of murder and then go

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1 home and not be firmly convinced of such a nature that you
2 would not hesitate to act You can't reach a verdict like
3 that of guilty

4 And that's why I submit to you the evidence in
5 this case just doesn't reach that level Sympathy does

6 I was thinking last night, anytime there's a
7 death, people tend to look for reasons to punish a person
8 I think our instinct tells us, you know, I wish that
9 didn't happen That didn't have to happen Why did that
10 happen? We instinctively look to punishment And in a
11 perfect world, where everybody went to church and
12 everybody had good character, where everybody was non-
13 violent, we wouldn't have these situations

14 Ladies and gentlemen, this is not a perfect
15 world And I submit to you that on February the 25th,
16 Reginald Clea was confronted by two violent individuals
17 and had he not acted, he reasonably believed they would
18 have taken his life That's the evidence in this case

19 And, ladies and gentlemen, I'll get to this in a
20 minute, science proves there was a gun at this scene
21 Science proves it I'll discuss that in a little more
22 detail in a minute

23 It's a very important decision that you have to
24 make, ladies and gentlemen, very important It's
25 important to the State of South Carolina, most importantly

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1 to Reginald Clea A 25 year old man, never been in
2 trouble before, in church the Sunday before this happened
3 Worked two jobs, taking care of his kids A very
4 important decision

5 I'll tell you, ladies and gentlemen, that as a
6 lawyer and me and Mr Saleeby as lawyers, if we make a
7 mistake, the Judge makes a mistake, the Supreme Court can
8 correct that

9 You, as the judge of the facts, if you make a
10 factual determination, no one can correct it, ever You
11 make the factual determination That's why the law
12 requires proof of a convincing character that you would be
13 willing to rely and act upon it without hesitation,
14 because your decision cannot be changed Your factual
15 determination cannot, so we don't ask juries to make these
16 decisions on evidence that is less than very convincing
17 where they would not hesitate to act

18 Ladies and gentlemen, in the opening statement I
19 believe Mr Saleeby said Reginald Clea just opened fire
20 Ladies and gentlemen, we've proven that wasn't the case
21 We've proven that wasn't the case

22 There are so many questions in this case and I'm
23 going to talk about them in detail in just a minute

24 The first question, ladies and gentlemen, the
25 first inconsistency is this, there was a gun in the box

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1 There was a gun in this box SLED proved it for us, thank
2 goodness And I'm going to talk about the details There
3 was a gun in this box There was a gun in this box

4 Secondly, will we ever know what was taken from
5 the scene? Will we ever know? We've got a lady with five
6 shoplifting convictions, I believe that's what I counted,
7 four or five I mean, after you've shoplifted that much
8 do you have any credibility at that point? That went to
9 the scene and took what she wanted And when everybody
10 got there she was hysterical like nothing happened

11 Can you trust that lady at all, ladies and
12 gentlemen? That's another question that's going to be
13 with us that they didn't resolve, they didn't answer And
14 if you find this man guilty, that will be a question that
15 lingers in your mind forever because it never was
16 answered, what she did

17 There was testimony that more than one gun
18 fired, there was more than one gun fired There was
19 testimony Was there more than one gun? The evidence
20 says that -- there was evidence that there was more than
21 one gun

22 Was Mr Jackson making a waiving motion from his
23 waist? We know there was a gun in his car

24 Was Mr Pollard reaching in his jacket? One
25 witness said that right after the incident and changed the

1 testimony in court But that's what they said right after
2 the incident

3 Inconsistencies, which can you rely on without
4 hesitation? You cannot

5 Perhaps the most compelling thing in this case,
6 Reginald Clea had no motive to do this The State's only
7 witness, John Lee Powell said there was no talk about
8 this Mr Clea didn't even know Mr Jackson was going to
9 be there He didn't even know they were going to be
10 there He had no motive to do this He had no motive to
11 do it Something pushed him Something pushed him I
12 think the evidence clearly showed that

13 Ladies and gentlemen, we have entered evidence
14 of self-defense in this case And as I told you in
15 opening statement, the law recognizes self-preservation
16 The law of South Carolina gives you the right, if you
17 believe your life is about to be taken, to act, even if it
18 means taking another life That's only fair And it
19 doesn't require you to be shot first That wouldn't make
20 any sense

21 Judge Newman is going to tell you what the law
22 of self-defense is I believe what he's going to tell is
23 that the Defendant must show that he believes he was in
24 imminent danger Even their witnesses said that, he's got
25 a gun, he's got a gun, tell him to put the gun down, tell

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1 him to put the gun down Even their witnesses said that

2 This young man was scared and believed his life
3 was in imminent danger

4 The law goes further Not that he was actually
5 in such danger, because he had the right to act on
6 appearances He told you, I saw this man reach for this
7 box This man had already threatened me This man opened
8 the box, took something out and sat it on his lap I
9 said, show me your hand What you got in the box? Show
10 me your hand

11 And under the circumstances as they appeared to
12 him, he believed he was in such danger and a reasonable
13 prudent man of ordinary firmness and courage would have
14 entertained the same belief

15 Based on the history to these individuals, I
16 submit to you, I believe his fear was reasonable And
17 I'll talk about that a little more in a minute

18 But, ladies and gentlemen, the State of South
19 Carolina has to prove that this did not occur Have they
20 proven that? There own witnesses said Mr Clea was
21 frantic and afraid and saying, put the gun down They
22 haven't disproved that beyond a reasonable doubt

23 Ladies and gentlemen, the law and facts that
24 I've discussed so far, in and of itself is enough for you
25 to return a not guilty verdict What we've talked about

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1 so far is enough because there are questions in your mind
2 that haven't been answered But there's a whole lot more
3 that makes this not murder

4 I want to talk about the evidence right now

5 Ladies and gentlemen, you heard testimony that
6 this occurred in Rembert And people -- you people are
7 from Sumter County, you know where Rembert is And I
8 submit to you it's a small community A lot of people are
9 related, a lot of people are friends, a lot of people are
10 neighbors In fact, the people in this case were related

11 That's important, ladies and gentlemen, because
12 every one of the State's witnesses, every one, changed
13 their testimony, every one of them, every one without
14 fail, every one

15 And I submit to you, I believe the reason why is
16 because they're being pulled by both sides Every one
17 changed their testimony, every one

18 Let's talk about John Lee Powell First of all,
19 I believe Mr Saleeby brought out on his direct that John
20 Lee Powell has a conviction for assault with intent to
21 kill I believe he brought that out

22 You can look at this in determining his
23 credibility, his believability John Lee Powell changed
24 his story Two years later he changed his story -- a year
25 later he changed his story, I'm sorry Keep thinking

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1 about John Lee Powell even with him changing his story, he
2 said there was no plan to do this There was no talk
3 about this and murder requires malice aforethought meaning
4 -- and the Judge is going to explain it to you, it's a
5 preconceived intent to do evil, to do wickedness, to do
6 harm

7 John Lee Powell said, Reggie Clea didn't have a
8 preconceived notion to do anything like this It wasn't
9 there He said that But he changed his story about the
10 facts

11 Ladies and gentlemen, he sat on this stand and
12 he admitted to you that in his statement, right after this
13 occurred, he saw Bubba, Charles Jackson, the man with this
14 box that we're going to talk about make a waiving motion
15 from his waste That's what he said in his statement

16 He also admitted that he said, I'm not really
17 sure what they were saying That's what he said then,
18 right after this incident He also said, Pooh didn't know
19 either Pooh was running

20 But the key is he never said Mr Clea went over
21 to Mr Jackson He never said that in his statement He
22 changed after he got here

23 Now, what version can you believe? Which
24 version can you rely on without hesitation? How can you
25 rely on something without hesitation when there's two

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1 opposite versions? How can you rely on it You cannot

2 He also admitted he never said anything in his
3 statement about Bubba talking to Bobo or saying anything
4 This is, totally two sets of testimony, one statement with
5 a factual scenario and testimony with a factual scenario,
6 opposite Can you rely on that without hesitation? I
7 submit to you, you cannot

8 But as I said, he did say, Reggie kept saying,
9 he's got a gun, he's got a gun Put the gun down, show me
10 your hand That's the one consistent thing that he said
11 That's the one consistent thing that he said

12 Mr Maurice Hunter, in his statement that he
13 gave right after the incident said -- he admitted he said
14 he saw Bubba on the ground and turned, ran and heard
15 additional shots, didn't know what happened

16 He was further away He came in here and told
17 us something different But that's just it, it's a
18 different statement Remember, these people are all
19 connected and being pulled I really feel sorry for them
20 Because what you've got is you've got a group of people on
21 this side of the courtroom You've got a group of people
22 on this side of the courtroom And they're all going to
23 go back to Rembert and they're all going to have to live
24 with this So who wants to be in the middle of this? I
25 can understand that But it's not proof beyond a

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1 reasonable doubt

2 Now, when you rely on what these guys said, one
3 thing that's telling about what they saw and what they
4 didn't saw or see, neither one of them said they saw this
5 box So what that means, ladies and gentlemen, what it
6 means is this -- and I'm going to get State's Exhibit
7 Number -- State's Exhibit Number 2

8 What that means is they were over in this area,
9 by their own testimony Remember the testimony, we took
10 the dog houses over here The dog houses over here, Mr
11 Jackson's Pontiac is right here Mr Clea's truck is over
12 here

13 John -- Maurice and John Lee Powell couldn't see
14 what was going on because they never saw a box Reggie
15 Clea saw a box Reggie Clea said he thought the man took
16 a gun out of the box Ila Simmons, the expert from SLED,
17 the young lady that testified, she said she found bullet
18 particles in this box

19 Ladies and gentlemen, how do they get in there?
20 She said, well, there's only two ways it could have got in
21 there If a gun that was fired was in this box or it was
22 nearby a shot

23 Well, ladies and gentlemen, I ask you to look at
24 this box And she said that if the top was closed, it
25 would be hard for anything to get in here from a shot

1 being fired This is not a box where the top -- box where
2 the top comes off If you open it, this is what it does
3 This is what it does

4 They never saw this box, so they really don't
5 know what was happening over here because they were over
6 here And that diagram is not to scale but this one is a
7 picture This one is an aerial photograph This is the
8 trailer here

9 I submit to you that Mr Jackson's Pontiac was
10 somewhere in that area right there These individuals
11 that testified were over here and couldn't see what was
12 going on in that box But I submit to you, it's a good
13 thing Reggie Clea did because if he didn't he probably
14 wouldn't be here today

15 Ladies and gentlemen, I believe Mr Powell did
16 say that Mr Pollard, BoBo, who was over in this area --
17 I'm sorry that was in front of the trailer, this is where
18 it actually occurred over in here, was saying, does Bubba
19 got a gun Bubba's got a gun?

20 Ladies and gentlemen, John Lee Powell, in his
21 statement, said he couldn't tell whether BoBo, Mr
22 Pollard, was reaching in his jacket It's a very key
23 point He said -- in his statement he said, I couldn't
24 tell if he was reaching in his jacket or not But he got
25 on the stand and said, no, he didn't have on a jacket, he

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1 had on a shirt That's what he got on the stand and said

2 But remember the doctor from SLED -- and you can
3 hear her testimony back, if there's any question You've
4 got a right to ask the court reporter to play it back when
5 you're deliberating The lady from SLED, the pathologist
6 and her name escapes me right at the moment, she said Mr
7 Pollard had on a jacket Just like John Lee Powell said
8 right after this incident She said he had on a jacket
9 If you want to hear her testimony, you can hear it

10 But Mr Powell comes in and says, no, he didn't
11 have on a jacket when he already said he did Why? I
12 don't know why his testimony has changed, ladies and
13 gentlemen I submit to you it's changing because if you
14 could imagine all these witnesses being in the middle
15 aisle, being pulled by both sides of this community

16 I told you, I really feel sorry them I can
17 appreciate the position that they're in He said there
18 was no jacket He said there was a jacket, then he came
19 in and said there was no jacket And the doctor said,
20 yeah, the young man had on a jacket You can hear that
21 testimony if you don't remember it that well

22 How can it be proof beyond a reasonable doubt
23 with these inconsistencies How can it be? How can you
24 rely on it without hesitation? You simply can't

25 One thing these witnesses did establish was that

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1 Reggie Clea had a serious question about guns and about
2 whether Mr Jackson has a weapon and about whether Mr
3 Pollard had a weapon And they established the imminent
4 danger These witnesses established the imminent danger
5 And they established that for us This is self-defense,
6 that he believed he was in imminent danger They
7 established that

8 Ladies and gentlemen, John Powell, I believe he
9 did say these individuals were violent Now he said it in
10 his own way He said first, very stand up guys, you ain't
11 going to do nothing to them or they going to do something
12 to you Just like me

13 He never denied they were violent But what he
14 did admit was that Reginald Clea is peaceful He did
15 admit that

16 I'm sorry, it was Maurice Young, not Hunter I
17 called him Young (sic) What his statement says, as I
18 said earlier, his statement said that he saw Reggie
19 shooting at Bubba from the side of the car He started
20 running, didn't see him shoot BoBo That's what he said
21 in his statement If you want to hear it again, you can

22 He doesn't prove murder beyond a reasonable
23 doubt

24 The next witness you heard from, or one of the
25 next witnesses, was Rick Nelson, Richard Nelson I don't

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1 know whether he was lieutenant or not, he testified He
2 was the first one on the scene And when he got there, he
3 said there was a lady hysterical

4 Ladies and gentlemen, this lady was hysterical
5 but she had everything of any value at that scene in her
6 pocket Can you trust a person like that? Who would be
7 so low to do that, go to the scene where two people are
8 laying on the ground?

9 The point is, Julia Knox never told Rick Nelson,
10 well, you know, I went through the pockets and moved the
11 guns and took the money She's just going hysterical

12 Ladies and gentlemen, perhaps one of the most
13 important witnesses is Ray Mackessy He was the evidence
14 technician or custodian that testified And I wrote down
15 what he said, my job is to preserve and document the
16 scene, photograph, to tell a story That's what he said

17 But he also said if items are moved or taken
18 away, my preservation would not be telling the correct
19 story That's what he said And I wrote down his quote,
20 he said that if the scene is tampered with, preservation
21 of a tampered scene is not much good That's what he
22 said

23 Ladies and gentlemen, even after saying that, he
24 still tried to prove the case But his testimony was
25 contradicted by every other witness He wanted you to

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1 believe that Mr Jackson was standing by the car when he
2 got shot This is State's Exhibit 3-I, which you'll have
3 all these photographs Mr Mackessy wanted you to believe
4 he said, I think he got shot in the legs when he was
5 standing behind this door But on cross examination he
6 admitted he had no expertise to give that opinion He's
7 not a pathologist He doesn't know how bullets enter a
8 body That's what he admitted on cross examination

9 All the other witnesses said, no, he was never
10 standing there He was never even standing right there by
11 that door But you see how quick they'll give you an
12 opinion? Find this man guilty of murder and don't know
13 what they're talking about

14 He was adamant, yeah, I think he got shot in the
15 leg right by that door They want you to convict this man
16 of murder on that And then everybody else comes in and
17 says that's not the case He was never standing there

18 But if you don't look closely, they'll allow you
19 to convict this man of murder, go home, have lunch, forget
20 about it, and hang that murder tag around Reggie Clea's
21 neck And they don't have the slightest clue

22 Isn't that irresponsible, ladies and gentlemen
23 They have the burden of proof of proving this case beyond
24 a reasonable doubt How can that be proof beyond a
25 reasonable doubt when they put up one witness who said one

1 thing and everybody else contradicts it, John Lee Powell,
2 Maurice Young, Reggie Clea,

3 Also, the reason why that can't be correct,
4 ladies and gentlemen, where's the blood on the ground on
5 this side? Where is it?

6 And here's why what Ray Mackessy said doesn't
7 make sense The only thing that he said that made sense
8 was that if that scene is tampered with, it's no good No
9 blood on this side

10 Now, let's think about it a little bit If he
11 got shot there and he ended up on the other side of the
12 car, what would he have had to do, either run around the
13 front or the back of the car? Well, Ray Mackessy said he
14 couldn't bear weight once he got shot So he couldn't
15 have run around the car Or crawl through the car Did
16 they ever tell you about any blood inside this car?

17 Come on, ladies and gentlemen, you got shot with
18 a rifle twice in the leg, fractured your bones in your
19 leg, if you crawl through this car, there's going to be
20 some blood They didn't present any to you

21 What Ray Mackessy said made no sense and it was
22 disproved by the evidence But if you aren't paying
23 attention or if someone wasn't paying attention, they
24 would have no problem standing up in front of you and
25 saying, convict him of murder on that incident And it

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1 just isn't true This is not true His theory is all
2 wrong It doesn't make sense

3 But you know, another important point about what
4 Ray Mackessy said is that he said Jamie Turner assisted
5 him in collecting evidence That's what he said But now
6 when he said it, I don't think many people really
7 understood how important that was

8 We've got a scene here where we need to know if
9 other people are armed, what they're doing We've got a
10 scene here where a lady admits taking some items And you
11 know how most liars are, they're going to tell you half
12 the truth They won't tell you all the truth, they'll
13 tell you a little bit That's how most thieves are
14 They're going to tell you half the truth what they feel
15 like they can prove They're not going to tell you the
16 whole story

17 So we've got all this going on And Ray
18 Mackessy has assisting him Rick -- Jamie Turner, Deputy
19 James Turner, collecting this evidence Did you ever hear
20 any testimony from James Turner? Do you know who he is?

21 Ask yourself why didn't they put him up? Why
22 they didn't put him up? It could be a couple of reasons

23 Number one, he could have told you there were no
24 shell casings by this door He could have told you it
25 didn't appear that anybody was crawling on that ground

1 He could have told you how they found out Julia Knox stole
2 something, what did she say

3 But they didn't present him They didn't
4 present him because they didn't want you to know what he
5 was going to say is what I believe

6 How can you ask someone to convict a person of
7 murder and you don't even present the person who collected
8 evidence? Are they trying to hide something?

9 Ladies and gentlemen, I know one thing they
10 tried to hide and that's Council Hunter Remember Council
11 Hunter, a very interesting witness Council Hunter told
12 the police, I heard two gunshot -- two guns shooting, two
13 different guns And his statement is in evidence

14 Here it is right here I was out working in the
15 yard, the lawnmower I heard BoBo say, you all leave my
16 yard Then I heard more than one gun shooting ,And I
17 heard more than 10 shots I looked up and saw a black
18 pickup coming across the yard

19 You have the statement signed by him at 3 10
20 p m right after this incident

21 Now, who called him as a witness, who subpoenaed
22 him? We did The State of South Carolina had this man's
23 testimony He was available They didn't call him
24 because it doesn't fit with their case

25 They didn't -- is that justice? Is it justice

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1 to select and pick what you want to put up when you're
2 really trying to find out everything that happened?

3 No, it's a rush to judgment to convict Reginald
4 Clea at all costs If Ray Mackessy has to say he stood by
5 the door and got shot, that's what they'll say If they
6 have to push Council Hunter out the door, that's what
7 they'll do

8 They didn't want to present all the evidence to
9 you We had to bring him in by subpoena to tell you what
10 he heard

11 Now, Council Hunter -- as I said in the
12 beginning, every one of the State's witnesses changed
13 their story, including him But I submit to you he has a
14 more personal reason why he changed his story Because,
15 remember he said, Julia Knox is my friend girl Okay,
16 remember he said that?

17 Well, if he heard two guns shooting, then that
18 corroborates that she took one away from the scene Well,
19 can't stick with that Got to change that No, well, I
20 know I signed it I'm sorry I signed it but it wasn't but
21 one gun shooting

22 Is that -- ladies and gentlemen, is that proof
23 beyond a reasonable doubt of such convincing character
24 that you would be willing to rely upon it?

25 How can you? One day he says, two guns, right

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1 after the shooting A year later he said, no, I didn't
2 mean that I know I signed it I know I swore to it I
3 know it said, each page which bears my signature and the
4 rest, if any, bear my initials and I certify that the
5 facts of the case herein are true and correct I know I
6 signed all that but don't worry about that

7 Are you going to convict this man of murder on
8 that kind of evidence, ladies and gentlemen? That would
9 be injustice, not justice

10 Now, while we're talking about Mr Hunter, I'd
11 like to talk about Julia Knox a little more because she is
12 the key to this case Five shoplifting convictions,
13 dishonest If it ain't nailed down, she'll steal it
14 Alive or dead, she'll steal it from you

15 Can you trust what she says? You're going to
16 convict this man of murder on what she says? Never been
17 in trouble before, in church the day before -- the week
18 before this happened, raised up in the choir, he told his
19 story, stayed with it the whole time?

20 Julia Knox took the gun away from that scene,
21 ladies and gentlemen It just doesn't make sense any
22 other way It doesn't make sense any other way

23 Bullet particles in this box Bullet particles
24 in this box What was in it?

25 Now, I bet Mr Saleeby is going to say, oh,

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1 well, when Charles Jackson was being shot, particles got
2 in this box That doesn't make sense, ladies and
3 gentlemen You know why? Here's why, because when they
4 -- when they recovered this box -- and you've got a
5 picture of it that shows it on the floor, there was
6 nothing in it Nothing in this box

7 Now, Ms Jackson, Charles Jackson's sister, she
8 said, I bought my son or someone some shoes Here's the
9 receipt No need -- no reason to doubt her I didn't
10 even ask her any questions I sympathize with her She
11 lost a brother and nephew I can only imagine how painful
12 that is

13 She said she bought these shoes at the
14 Footlocker and she put it the trash bin That's what she
15 said And that was their witness now She said, my
16 brother got it out the trash Why? I don't know

17 But, ladies and gentlemen, when the police get
18 there after Julia Knox is done, there's nothing in this
19 box, nothing How much sense does that make when Ila
20 Simmons from SLED is telling you there are bullet
21 particles in here

22 Do you know what I really think, ladies and
23 gentlemen, I really think Mr Pollard was intent on
24 getting Reggie Clea that day He got his weapon He got
25 this box He did some target practice, shooting the gun

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1 and put it in the box

2 Now whether he shot it then or not, Counsel
3 Hunter said he did Reggie Clea said so much was going on
4 I can't tell you I know he was reaching for something
5 But that is the only theory that makes sense We know he
6 got -- this box just wasn't laying in the car

7 Ms Jackson says he got it that morning He had
8 to get it for a purpose, for a reason Reginald Clea
9 said, I saw him when he reached and put it on his lap and
10 opened it and took something out that he was holding and
11 put it on his lap There's nothing in it

12 You are going to convict this man of murder with
13 this? They never answered the question Oh, just convict
14 him of murder, don't worry about it We don't know what
15 was in the box We don't know really how the bullet
16 particles got there Convict Reggie Clea Don't worry
17 about it

18 Ladies and gentlemen, that is injustice, not
19 justice What other explanation could there be, nothing
20 in the box, he got it for no reason?

21 Ladies and gentlemen, also here is another very
22 important point, asked the State of South Carolina why
23 didn't they fingerprint this box? I'll bet if they had,
24 you'd find Julia Knox's paws all over it But they
25 didn't They didn't If they had, we could have told you

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1 who was handling this box Could have told you whether
2 Julia Knox had been in this box But they didn't

3 Now, we didn't have the opportunity They had
4 custody of the box They have the burden of proof to do
5 that, but they didn't But again, don't worry about that,
6 convict Reggie Clea of murder

7 That's just a small detail, ladies and
8 gentlemen, but that's a big -- that's a big big point

9 I was thinking about Ms Knox's testimony and it
10 is almost like this It is like being a little bit
11 pregnant Can't be a little bit pregnant You are either
12 pregnant or you are not Either you tampered with this
13 scene and polluted it so it doesn't tell the right story
14 or you didn't

15 Oh, she just took a few things Oh, don't worry
16 about it Well, ladies and gentlemen, let's think about
17 that a little more

18 Remember when Julia Knox got on the stand and I
19 purposefully wanted her to go ahead and tell you what
20 happened, what she did But cross examination brings out
21 the truth because, you know, when I was growing up they
22 used to tell us, you tell one lie, you've got to tell
23 another one to cover it up and another one and another one
24 and another one

25 She said, I didn't go through the pockets, it

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1 was on the ground I said, well, show me where it was?
2 Remember she pointed on this side one time, then she
3 pointed over here Then she got frustrated and said,
4 well, I don't know where it was

5 Well, ladies and gentlemen, if it was on the
6 ground -- just think about it She admits she took this
7 money and cell phone I submit to you she took guns away
8 from that scene These are her relatives and she knew
9 what the situation would be if it was determined they had
10 guns She's been in the criminal justice system before,
11 she knows this

12 You know, she's been in and out of this system
13 so many times, she knows what's going on But let's look
14 at it Let's analyze what she said

15 If money and a cell phone are on the ground,
16 then that means it had to be in the young man's hands,
17 okay It had to be in his hands

18 Now, let's contrast that with what John Lee
19 Powell said His hands were open and empty That's what
20 he said, the second time around Now the first time he
21 said, he said he didn't know if Mr Pollard was wearing a
22 jacket or not The second time around he told them, his
23 hands were open and empty Well, where is this money and
24 this cell phone? How does it get on the ground like Julia
25 Knox is saying? There's a rat here somewhere How does

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1 it get on the ground?

2 Now, let's look at it from the other side, the
3 other perspective If he does have that cell phone in his
4 hand when he comes out of his jacket, could that be what
5 Mr Clea thought was the gun? I'm simply analyzing the
6 evidence for you

7 Did they ever bring the cell phone in here and
8 show it to you, show you the condition of it, show you
9 whether it was shot, show you whether it was damaged? Did
10 they ever tell you how much money she -- no, they didn't,
11 anything to do with Julian Knox I mean, if they could
12 have got around this case without calling Julia Knox --
13 the only reason why they called her is because they knew
14 if they didn't I would have That's my opinion

15 Ladies and gentlemen, this is reasonable doubt
16 These are questions that the State has failed to prove and
17 they want you to hang that murder around this young man's
18 neck

19 Ladies and gentlemen, you just can't do it
20 These, I mean nothing's going to change what happened that
21 day Convicting an innocent man surely isn't

22 What she says conflicts with what everybody else
23 says She never gave a consistent story You steal a
24 little bit and you might still it all

25 Just think about it, ladies and gentlemen, guns

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1 are valuable People break in and steal those all the
2 time They sell them on the street Julia Knox is a
3 thief She steals things of value and then she is so
4 hysterical, I forgot I had the money Another lie to
5 cover up

6 Where was the money? Oh, it was here Another
7 lie Oh, it was here Another lie You've got to keep
8 telling them That old adage that grandma said, you tell
9 one lie, you've got to tell another one, that's true

10 Now, let's talk about Ila Simmons with SLED a
11 minute What else did she say? She said Mr Jackson had
12 gunshot residue on the palms and back of his hands And
13 you only get that if you fire a weapon or she said if
14 could get shot in that area

15 Well, Mr Jackson never got shot in his hands
16 Mr Jackson got shot in the legs twice and one time in his
17 head How does that gunshot residue get on the back of
18 his hands?

19 We will never know But I submit to you that he
20 had a gun, in my opinion, and that he got that on his
21 hands either while shooting at Mr Clea or while doing
22 target practice before coming to that scene

23 Remember what Ila Simmons told you? She said,
24 look, if it's more than six hours, we won't even analyze
25 what you take off the hands There's no reason for that

1 If it's more than six hours, it won't be on there or it
2 might be polluted

3 His was polluted because it occurred that
4 morning It occurred -- I submit to you it either
5 occurred before he got that box or after he got this box
6 Why would he need the box? Certainly if he just pulls a
7 gun, he doesn't want to ride around with the gun on the
8 seat Put it in the box That's slick Put it in the
9 box

10 When the police get there there's nothing in
11 there but bullet particles And we know this box closes
12 by itself And you have a photograph showing the box on
13 the floor I'm trying to find it right quick

14 (Pause)

15 Ladies and gentlemen, I know I'm taking a long
16 time by this is a very important case I mean, murder is
17 one of the most -- one of the most heinous crimes on the
18 books and it's important to Reginald Clea, it's important
19 to the State I don't mean to bore you I don't I'm
20 not talking just because I like to hear myself talk, I'm
21 really trying to help you arrive at justice

22 State's Exhibit 3-M You will have this
23 picture The box is closed and on the floor And
24 remember, how could those particles get inside this box?
25 Remember Ray Mackessy said, even though I don't give much

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1 credibility to his testimony, but some of it he can prove,
2 and that is the number of shots that went in that car

3 Remember the door, ladies and gentlemen -- this
4 is a back shot, a back view of the car Those four shots
5 in the door, they couldn't put particles in that box How
6 could they put particles in that box?

7 And remember, Mr Powell -- Mr Jackson was shot
8 on this side on the passenger side of the car Well, the
9 box is down on the floor That's where we believe it was
10 unless Julia Knox put it there We don't know It could
11 have been in another position But to prove proof beyond
12 a reasonable doubt, you would be speculating This is
13 where that box was

14 Ladies and gentlemen, you have to consider all
15 of these issues before you even think about the evidence
16 we presented And I submit to you, you don't even have to
17 get to what was presented to find this man not guilty
18 You don't have to get to it because he doesn't have any
19 burden of proof He doesn't have to prove anything

20 Their evidence has failed to prove by proof
21 beyond a reasonable doubt

22 You're going to be tired -- you might be hearing
23 about proof beyond a reasonable doubt even after you leave
24 here but that's the central issue in this case, proof
25 beyond a reasonable doubt You might be dreaming -- you

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1 might hear it in your sleep tonight But that is the
2 issue in this case The State has to prove that They
3 haven't done it

4 Ladies and gentlemen, Reggie Clea doesn't have a
5 burden of proof Didn't have to present any evidence He
6 didn't have to open his mouth He had a right to remain
7 silent from the very beginning

8 But what did do? He was scared He left the
9 scene He told Mr Powell, don't leave me now, please,
10 I'm scared I don't know what to do Don't leave Come
11 on, cuz, don't leave me He went to look for one of his
12 elders I think they say he went to Sandy Clea's house I
13 think that's John Powell -- I think that's Reggie's uncle
14 They went there, he wasn't home

15 Mr Clea told you, John Powell's brother lives
16 in Columbia I don't know where he lives John Powell
17 drove

18 Did he run and hide and go from state to state
19 and try to disguise himself? No, he came back Like they
20 say, he acted like a man He walked in the door and says,
21 this is what happened Now this isn't all of it now but
22 he never changed anything in here

23 He told Investigator Turner and Investigator --
24 Sheriff Dennis who you didn't hear from Don't worry
25 about the Sheriff, you know, this is a murder case of

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1 Reggie Clea We can convict him without coming Don't
2 worry about coming and tell us what he told you He told
3 what happened

4 He told, I was afraid I said, put the gun down
5 and show me your hand I never would -- he never would
6 show me his hand Other witnesses corroborated that
7 Bubba's got a gun, he's got a gun, put the gun down, man,
8 put the gun down He shot the car, warning shots He
9 wasn't trying -- he said, why don't y'all just let me
10 leave Just let me leave

11 That's what he said from the very beginning,
12 ladies and gentlemen, just let me leave He said, if I
13 felt as though -- I left my truck running because I wanted
14 to go When I got there, I wasn't planning on staying I
15 left the truck running

16 Mr Jackson, come here Reggie Clea, I've got
17 something I want to show you Come on over here, I've got
18 something I want to show you We don't -- Reggie Clea
19 said it was a gun We never will know We can't convict
20 him on that

21 He said, you know I don't mess with you, what do
22 you want? What? Come here Never would tell him Show
23 me your hand Show me your hand

24 Reginald Clea, ladies and gentlemen, I submit to
25 you is not a murderer He's not a murderer This young

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1 man, he testified when he was in high school, I want you
2 to look at his life And then when you look at his life,
3 compare it to these guys

4 And before we go into Reginald Clea's life,
5 ladies and gentlemen, we proved to you that these guys
6 were violent We proved it to you

7 Now, it's proven because there's no evidence to
8 contradict it Did Mr Saleeby in the 105,000 people in
9 this county, did he find one person to say these guys were
10 peaceful?

11 MR SALEEBY Your Honor, Mr Clark knows the
12 law does not allow that and I'd ask him to refrain from
13 making statement like that when the law doesn't allow
14 that

15 THE COURT Objection sustained, you may
16 proceed

17 CLOSING ARGUMENT BY MR CLARK CONTINUES

18 The fact of the matter is, he presented no
19 evidence that these guys were peaceful

20 MR SALEEBY Your Honor, he knows that the law
21 doesn't allow us to do that and I ask him not to infer as
22 if I had that capability

23 THE COURT Objection sustained, you may
24 proceed

25 CLOSING ARGUMENT BY MR CLARK CONTINUES

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1 Well, I'm going to ask you to look at whatever
2 evidence you heard You heard evidence that these guys
3 were violent

4 Michael Clea told you Mr Pollard told him -- I
5 wasn't going to take you anywhere What does he do? He
6 gets out and whips out his pistol, pow, shoots the car
7 Then he wants to fight with the gun in his hand Who's
8 going to fight you with a gun in your hand?

9 Mr Diggs got up and told you, I was a young
10 guy, I didn't even know this guy, Mr Jackson I walked
11 in and the next think I know, pow Then he kept pushing
12 me

13 What does he do? Well, you know, what could I
14 do, I couldn't do nothing

15 Mr Saleeby wants to say, you didn't report it
16 to the police Ladies and gentlemen, if you think
17 everything that happens on the street is reported to the
18 police?

19 Well, let's talk about it Mr Gardner's not
20 here today Reginald Clea went to Mr Gardner's house
21 twice There are disputes about what was said But did
22 Mr Gardner even write any record of that? I asked him,
23 did you make a file on it? Mr Clark, something was done
24 Where is it?

25 So, I mean, just because you go to the police

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1 doesn't mean anything's going to be done

2 But the evidence is uncontradicted these guys
3 are violent Reggie Clea told you, I saw him shoot at
4 somebody He always carried a gun, violent

5 Reginald Clea went to high school He said, I
6 played football all four years And think about it, never
7 ever been convicted of a crime, never

8 While in high school I worked when I wasn't
9 playing football, a typical American kid Wouldn't it be
10 nice if all our young people were like that? He was in
11 high school, he said I'm going to get me a brick mason
12 certificate Everybody isn't going to go to college

13 To be honest, I didn't know that he didn't get a
14 diploma Maybe I should have I asked him, I said, did
15 you graduate No, I got a certificate I couldn't pass
16 the math -- I think the math part of the exit exam He
17 was completely honest with you

18 He got out and he said he started working
19 masonry five days a week and then he'd work at Bojangles
20 for three days He said, I started as a chicken breeder
21 and got to move to kitchen leader Three kids, takes care
22 of them

23 Now, ladies and gentlemen, is this man a killer?
24 Reginald Clea was 24 years old and still living with his
25 mother

1 Now, Reggie Clea did have this weapon He did
2 have it And in a perfect world he wouldn't need it But
3 that's not what he's on trial for In fact, I don't know
4 that that's a violation of the law But that's not what
5 he's on trial for

6 You may not like it that he had this weapon I
7 wish he didn't need it But that's not what he's on trial
8 for

9 But what I submit to you, ladies and gentlemen,
10 if he didn't have it that day, the guys, I believe, would
11 have taken his life

12 He told you, he said, show me your hands BoBo,
13 tell him, let me -- let Lee go get the gun Let Lee go
14 Never would let Lee go Jackson, BoBo, you come here
15 No, let Lee go

16 Now, let's talk about what he said about Mr
17 Pollard Now, ladies and gentlemen, here's why I think
18 Mr Pollard was armed and reaching for a gun and here is
19 why I think the evidence proves that

20 Mr Clea is over here shooting a weapon Every
21 body can see it The woods are right here Does Mr
22 Pollard turn and run into the woods like John Lee Powell
23 did, like Maurice Young did? No, he turned and is
24 starting confronting this guy Why would he do that?

25 Did he go towards the Pontiac to see if Mr

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1 Jackson had a gun? No He went toward Mr Clea Why
2 would he do that? The woods are right there

3 (Pause)

4 This is the area he was coming from All he had
5 to do, if he was afraid of this man, he was unarmed, to
6 turn and run into the woods But he didn't do that He
7 turned around, nor did he go towards the Pontiac and say,
8 Charles, you got a gun, show the man your gun, why do you
9 have this gun? He didn't do that He went toward
10 Reginald Clea, reaching in his pocket

11 And Ms Julia Knox, the cell phone was on the
12 ground Did he come out of his pocket with a black
13 object? Conflicting evidence and not convincing

14 Everybody, even the State's witnesses, said Mr
15 Clea was peaceful The preacher came and said, as Mr
16 Saleeby said -- and I think the point he was trying to
17 make is, he grew up singing but he don't go to church
18 anymore What did Reverend Davis tell him, he was in
19 church the Sunday before this happened

20 Is this somebody with the intent to kill someone
21 or is this someone who's scared He knew about the
22 threats He cried out for help He cried out for help
23 He went to Wesley Gardner's house, which we don't have a
24 file on, what we need to make it for Twice he went to
25 Carl Holmes' office, that morning, he came back at 12 in

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1 the afternoon He went there at night trying to get him
2 You need to take your granddaughter to school because I
3 don't know what's going to happen Somebody's out to get
4 me Is that contradicted? No, it wasn't

5 Ladies and gentlemen, if you put aside the
6 emotion and the sorrow, you will conclude that the State
7 has failed to meet their burden of proof beyond a
8 reasonable doubt

9 Now, ladies and gentlemen, I'm almost done And
10 there's a couple of things that I want to make sure I
11 cover because my client is charged with murder in this
12 case And it's very important what you do

13 When you leave here, you're going to go about
14 your life and whatever you've got to do But your decision
15 will stay with Reginald Clea

16 There's a couple of other things that I want to
17 cover We already talked about self-defense The law
18 says you don't have to see a gun, you just have to believe
19 he was in imminent danger And you've got the right to
20 act on appearances

21 What does that mean? You don't have to wait
22 until somebody takes out a gun and shoots you That
23 doesn't make sense Keep that in mind He believed he
24 was in such danger that a reasonable prudent man of
25 ordinary firmness and courage would have entertained the

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1 same belief

2 I think that a reasonable man would have
3 entertained the same belief and science proves that that
4 belief was right

5 You have Reginald Clea's statement, he said,
6 when he told me to come over to the car, I felt a chill go
7 up my back I felt a chill

8 Now, Judge Newman's going to tell you that once
9 a Defendant has raised the defense of self-defense, the
10 burden is then on the State of South Carolina to disprove
11 Defendant's claim of self-defense by proof beyond a
12 reasonable doubt They haven't done that They have to
13 prove that this was not self-defense That he didn't feel
14 that he had a -- was in reasonable and imminent danger
15 That his reaction was not reasonable They haven't proved
16 that

17 One other point here and this is the last one
18 I believe Judge Newman's going to tell you one may act on
19 appearances Don't have to wait to the person points the
20 gun in your face He may be mistaken It is reasonable
21 The law does not hold him to a refined assessment of
22 danger provided of course he acted as a person or ordinary
23 prudence and courage would have acted or should have acted
24 in heeding the appearance of danger

25 He doesn't have to wait until his assailant is

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1 to drop on him If it is reasonably apparent the
2 assailant was taking steps to get the drop on him, he may
3 take steps first to prevent this That's what Reginald
4 Clea did

5 Remember what's going on in Mr Clea's mind, I'm
6 going to get you You keep putting my name in your mouth,
7 I'm going to get you Reggie Clea, I'm going to change
8 all that, I'm going to get you

9 All of this was going on in this man's mind All
10 this is going on in his mind

11 Ladies and gentlemen, this is the last time that
12 I'm going to get to address you As I told you in the
13 opening, somebody has to go first, somebody go second I
14 won't get to speak to you again after I sit down

15 Mr Saleeby is going to get up here and argue
16 his case He's going to do a good job, ain't no doubt in
17 my mind about that

18 But since I won't be able to respond to him,
19 when he makes a point, I'm going to ask you to ask
20 yourself, what would Reggie Clea say about it? What would
21 Reggie Clea say? Because Reggie Clea can't say -- his
22 lawyer can't say anything else

23 When Mr Saleeby gets up here and argues to you,
24 I want to ask you in your mind to see if he answers and
25 clears up these very serious questions about this case

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1 The first thing I want you to see if he clears
2 up is this box See if he can tell you how the bullet
3 particles got in there, consistent, that makes sense, and
4 why nothing was in the box when the police got there And
5 what Julia Knox took, what roll she played with this box

6 If Mr Saleeby can't explain this with proof
7 beyond a reasonable doubt, you can't convict Reggie Clea
8 Ask Mr Saleeby to explain that box to you Keep that in
9 your mind

10 Ask him to explain to you why all the witnesses
11 changed their stories Not one, every single one Ask
12 him to reconcile all that

13 In your mind, see if he explains to you why they
14 didn't present Council Hunter to you, who told you he
15 heard two guns Are they trying to not show you that?
16 Why that wasn't done, why do we have to prove it when they
17 have the burden of proof

18 Ask yourself if he explains to you what was
19 actually at that scene How can he be sure what Julia
20 Knox took and what she did? Ask him to explain that, in
21 your mind Ask him to explain how he knows nothing else
22 was at that scene and how can he prove it beyond a
23 reasonable doubt

24 If he can't do that, ladies and gentlemen, you
25 only have one choice and that's not guilty

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1 Ask him to explain how the gunshot residue got
2 on Charles Jackson's hands, the palms and back You've
3 got the testimony if you want to hear what this -- what
4 Ila Simmons said Ask him to explain that

5 Ask him to prove that Reggie Clea acted
6 unreasonable Ask him to prove that How is he going to
7 prove that?

8 More importantly, ladies and gentlemen, murder
9 required malice aforethought, an intent on doing
10 wickedness, doing harm Ask him to prove to you that
11 Reggie Clea had malice aforethought which is required for
12 murder

13 Ask him to prove to you how he had this malice
14 aforethought when he left his truck running Ask him to
15 answer all those questions

16 Ladies and gentlemen, I submit to you that he
17 won't be able to As many years of experience as he has,
18 as good as he is, as well as he knows the rules of
19 evidence, as great an orator as he is, he can't do it

20 Lawyers can't change the facts We can argue
21 them We can't change them But they want you to convict
22 anyway and they call that justice It is not justice,
23 injustice

24 Now, ladies and gentlemen, your verdict -- the
25 Judge is going to give you the verdict form and you're

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1 going to have a couple of choices Not guilty or guilty,
2 that's the only choices you're going to have

3 I submit to you that on both of these counts of
4 murder, your verdict has to be not guilty because the
5 State hasn't proved the case beyond a reasonable doubt

6 There is a third charge that nobody has talked
7 about much and you'll see it, but that is possession of a
8 weapon during a violent crime

9 Ladies and gentlemen, if your verdict is not
10 guilty on the murder counts, then no violent crime was
11 committed and your verdict must necessarily be not guilty
12 on possession of a weapon during a violent crime

13 I just wanted to mention that to you, let you
14 know what your choices will be

15 Ladies and gentlemen, I submit to you justice
16 isn't done in halves You can take this case and you say,
17 well, these guys got killed and something needs to be done
18 regardless of the law That's not whole justice

19 The law sometimes can be difficult Somebody's
20 going to walk away upset and somebody's going to walk away
21 -- I don't think anybody will walk away happy but
22 somebody's got to walk away more upset than the other
23 party

24 But you've got to put bias and sorrow and
25 sympathy, you've got to put all that aside

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1 Ladies and gentlemen, someone said -- I'm not
2 going to tell you I know who said it, he said it is better
3 to let 10 guilty persons go free than to punish one
4 innocent man

5 Reggie Clea is an innocent man and it's your
6 duty to let him go free

7 Thank you, very much

8 (Pause)

9 THE COURT Ladies and gentlemen, we're going to
10 take a break at this time Please go to the jury room
11 Please do not discuss the case

12 (Jury exits the courtroom)

13 THE COURT We'll take about ten minutes

14 (Whereupon, a recess was taken)

15 THE COURT You may bring the jury in

16 THE BAILIFF Your Honor, all of the jurors and
17 alternates are present in the courtroom

18 THE COURT All right, thank you, sir

19 Mr Saleeby

20 MR SALEEBY May it please the court

21 THE COURT Yes, sir

22 **CLOSING ARGUMENT BY MR SALEEBY ON BEHALF OF THE STATE**

23 Madam Forelady, ladies and gentlemen of the
24 jury, Reggie Clea has problems Reggie Clea has several
25 problems

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1 The first problem is he comes and asks at your
2 hands for two for the price of one He has a problem
3 because he's admitted back in February of '04 and to you,
4 that he's killed two people That he killed them with
5 this assault weapon That he shot James Pollard nine
6 times That he shot Bubba Jackson three times

7 He's got a problem because he told the police
8 when he was arrested, I'm the only one who did any
9 shooting He's got a problem because he told the police,
10 I never saw a weapon

11 He's got a problem because he's now got to find
12 and manufacture not one but two weapons or some reasonable
13 facsimile of a weapon And then he's got to have those
14 weapons disappear Like a magician pulls a rabbit out of
15 a hat, goes back in that hat for the rabbit

16 He's got a problem because back when it was
17 important, back when it counted, back when he had an
18 opportunity to say, I've had a problem for a long long
19 time with these two individuals, and here is a history of
20 things that led up to what had to inevitably happen today,
21 which he would have you believe was a public service, the
22 killing of these two men

23 He's got a problem because from whenever he says
24 something started until February of '04, he told no one,
25 including Wesley Gardner, who absolutely remembers and

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1 absolutely denies that he had a problem with either two of
2 those people

3 He's got a problem because his kinsmen and his
4 friends, Mr Powell and Mr Young, show that during this
5 day there was nothing going on but normal hanging out,
6 normal chilling

7 He's got a problem because -- and because of
8 that problem, that's why most of yesterday we spent trying
9 to persuade you that he was an angel and you had a chance
10 to see him testify And we'll talk about how angelic he
11 was and that the other two were demons or devils, which is
12 typical when one person has killed another person, because
13 Mr Jackson's not here to speak for himself Mr Pollard
14 is not here to speak for himself

15 Mr Clea took care of that Mr Gardner, who
16 lived in the community with these people and knows all of
17 them, says he didn't know of either one of them having a
18 reputation for violence

19 Mr Young said it didn't happen Mr Powell
20 said they were stand up guys If you messed with them,
21 they messed with you, not they were initiating things

22 And all of these terrible things that may or not
23 have happened, are not documented, not reported, but they
24 show up today, to give you the idea that something else
25 has been manufactured and this is a reason why well, we

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1 should think that these people are bad and he's good

2 He's got a problem because now what he says is,
3 I'm not responsible, I shouldn't be held accountable
4 There's no price to pay for shooting Mr Pollard who
5 raised dogs with him, bred dogs, bought dog houses from
6 him, lived together at one time Or for shooting Mr
7 Jackson while he's crawling on the ground, as Dr Ross
8 showed us and as the scene will show us and as the diagram
9 will show us

10 Now we're at the stage of the trial where all
11 the evidence you're going to hear is before you All the
12 people who are going to testify from that stand have shown
13 up and testified All the things that you're going to be
14 able to take back in the jury room with you, photographs
15 and the weapons, all of that is in front of you

16 Now, this particular part of the trial is often
17 erroneously referred to as an argument I'm certainly not
18 here to argue with you I'm here to summarize what you've
19 seen I am here to tell you, as they say, the other side
20 of the story I'm here to answer these questions and
21 more

22 You know, all of us have a job in the courtroom
23 We'll talk about the Judge's first We'll talk about
24 yours last

25 His job is to give you the law, the law as it

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1 has been developed over the years by our courts and our
2 legislature He gives you the blueprint, the guideline
3 You take it back in the jury room and decide what fits,
4 how do the facts fit the law

5 If there is punishment involved, that's his
6 responsibility That's something he's had special
7 training in That's what the law provides for him to do
8 and relieves you of the burden to have to consider it All
9 you have to consider is what do the facts show

10 Mr Clark has a job in this trial and that is to
11 raise every possible question, no matter how theoretical,
12 no matter how implausible, no matter how impractical,
13 because he's got a client to represent, and represent him
14 as hard and vigorously as he can, which he has done

15 And I have a job in this trial too And the
16 reason I bring it up is because of a couple of comments
17 that were made

18 The law says that those of us who are fortunate
19 enough to represent the State of South Carolina and
20 fortunate enough to represent the citizens of Sumter
21 County, and fortunate enough to try to enforce the laws
22 that protect us all from one another, our job is not just
23 to prosecute, our job is to see that justice is done

24 It tells us that we have a duty to everybody
25 including to this Defendant And that's why, ladies and

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1 gentlemen, I stand here and I tell you we have been
2 faithful to that obligation We have hidden nothing from
3 you We have brought you things as they developed and not
4 as they wouldn't be

5 I don't bring before you and waste your time
6 with witnesses telling us what this Defendant said when
7 this Defendant's statement is already here, and by his
8 hand and by his admission in the record

9 We don't come here to hide Council Hunter from
10 you because I heard what Mr Hunter testified And I
11 believe I asked Mr Hunter, hadn't I been to see him and
12 hadn't he told me the same thing he told y'all I only
13 heard one gun Why it was written back then, who can tell
14 you One gun, he said it again and again and again There
15 was no hiding involved there

16 Julia Knox, the other part of Julia Knox and
17 Council Hunter If there was manipulation, conspiracy, a
18 cover up involved, I suppose there would have been some
19 way to avoid it But you needed to hear what happened
20 You needed to hear the circumstances and we brought it all
21 to you

22 We brought her, we brought Rick Nelson, we
23 brought Helen Jackson There's nothing that she did was
24 commendable There's nothing she did that she deserves a
25 pat on the back for No No She deserves to be accused

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1 of doing what she did But she didn't do any more than
2 she did

3 And I tell you what tells me that When you
4 look at the couple and when you listen to her testify, the
5 impression that comes out is pathetic and hardly capable
6 of some sort of rational scheme, cover up, whatever you
7 may call it

8 Here's a woman that I believe Mr Nelson said
9 was rolling on the ground in the presence of these people
10 We don't hide, we don't cover up, we don't misrepresent
11 We're here to do justice You need to know that

12 And your part in this, well, you're doing it
13 right now You've been doing it since you walked in the
14 door You've been listening, you've been thinking but you
15 haven't been deciding

16 In a few minutes, after the Judge gives you the
17 law, you'll go back and deliberate And that's just a big
18 word for reason together

19 What you do as a juror is you use your good old
20 God given commonsense You use your experience in the
21 real world You're different ages, you're from different
22 parts of the county, different income groups I suppose
23 You all bring a unique and different perspective

24 When you look at things, you look at it and say,
25 is it logical, is it reasonable, is it rational? Does it

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1 -- is it consistent with my experience in the real world?
2 And if somebody tells you that, you can believe it and
3 hold on to it

4 And if somebody tells you something like that
5 that doesn't make sense, then you stop and say, why did
6 thy tell me that?

7 For example, for example, for those of you --
8 and this is usually men but may be women, and you women
9 may know some men Those of you who come in possession of
10 a weapon like this, with this kind of firepower, if it's
11 logical, if it's rational, and it's consistent that you
12 take this weapon with this clip in it, with 30 rounds, and
13 fire it one time and never again fire it until the day you
14 kill two men with it, that you don't test fire it and go
15 out and have fun with it and see all the things that it
16 can do, if that sounds logical and rational and consistent
17 to you, believe it

18 And if that sounds like somebody who's being
19 self-serving and trying to cover up, then you shouldn't
20 believe it and the next question is, why? Why is this
21 person trying to be so innocent, too innocent? Why is
22 this person trying to distance themselves from what
23 happened?

24 Yes, there are three charges in the indictment
25 The charge of a violent crime with a weapon is self-

1 evident

2 The crime of murder you need to listen to
3 Murder is defined as one person killing another person
4 without just cause or excuse That's one way it's
5 defined And those words, just cause or excuse, are
6 important because that's what Mr Clea wants you to tell
7 him, that he had a just cause for killing both of these
8 men Not just one man, but for killing two men That each
9 individually and differently was justified

10 It's also defined as what we call with malice
11 aforethought Malice is just a word meaning, without the
12 just cause and intent, doing a bad act It will be
13 defined by the Judge

14 Now the aforethought is what you don't need to
15 get hooked up on Aforethought's a word that the Judge's
16 have created for it And for most of us, aforethought
17 gives us the image of what we've got to do is we've got to
18 go out, we've got to write down a plan and say, this
19 afternoon at 2 15 I'm going to go to somebody's house and
20 do something to them, premeditated

21 The law doesn't say premeditated The law says
22 aforethought can accompany in an -- can occur in an
23 instant, in the pull of a trigger, in the blink of an eye

24 If I shoot you for no good reason, that's
25 aforethought I don't have to sit here a minute and say,

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1 I'm going to shoot juror X and pick one out and shoot
2 them If I just pick it up and shoot them, that's
3 aforethought That's the instantaneous decision to do
4 something that's wrong, to do something that's illegal, to
5 shoot at somebody else

6 Now there are other items of law that the Judge
7 will tell you about but the biggest one you need to talk
8 about is self-defense

9 And the part of self-defense I'm going to ask
10 you to focus on here and when you get in the jury room is
11 the part that says that the belief, the circumstances
12 justify using fatal force

13 Okay? The circumstances, regardless of what was
14 going on your head, first of all there's got to be a
15 reason But secondly, the circumstances have got to
16 justify you actually killing the other person And if
17 there's anything in that process where you don't have to
18 kill them, then it's murder to kill them

19 And it also says, if you can avoid it It says,
20 the words are, no other means of avoiding

21 And what we're going to see here as we go
22 forward, is you're trying to be given the impression that
23 there was nothing else he could do but kill these two
24 people But as we get to the facts, as we slow it down,
25 as we freeze frame, you will see that shooting these fatal

1 shots is something that should never ever have occurred

2 And that's why so much time was spent in seeing,
3 well, let's talk about these other things

4 Something else we want to talk about is
5 credibility Credibility just means believability, people
6 you deal with all day long You go into a business,
7 somebody comes into yours Somebody tells you something,
8 it makes sense, you take it If it doesn't make sense,
9 you reject it

10 Credibility comes from looking at somebody's
11 demeanor How did they say what they said? Credibility
12 comes from looking at what they said on another occasion
13 Credibility, or lack of credibility, comes from when you
14 look at what one person says and how that lines up against
15 two or three different things

16 We're going to need to look at that and we'll
17 look at that together

18 Now, what you need to look at is the difference
19 between the Defense now and the Defense in February of
20 last year

21 And the first thing that comes up in basic human
22 nature is this, and I'm talking about your kids, my kids,
23 you When you get accused -- when you get accused or
24 charged with doing something, basic human instinct says,
25 I've got to give them a reason why I did what I did

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1 Yes, I didn't bring the car back on time daddy,
2 but I got caught in traffic Or no, I didn't do my
3 homework because Or, yes, I took the things you told
4 me not to take but this is why I did it

5 And right there at the instant when it was time
6 to layout this elaborate history about all of these bad
7 dealings that they said had happened, Mr Clea said
8 nothing

9 Now don't tell me quote-unquote Mr Clea doesn't
10 know how to give a statement We all know how to be self-
11 serving He's self-serving all over this statement But,
12 well, I had a problem with this guy before, none of that

13 What did Mr Powell tell you? What did Mr
14 Young tell you? They hung together They were family
15 They lived together All this amount of time and not
16 once, not once were any of these episodes they claimed had
17 happened ever reported

18 Now that starts making you a little suspicious
19 That's not unusual in a case like this for the dead people
20 to be displayed as the demons and the person who's still
21 here to be displayed as the angel But nevertheless what
22 you think here, it doesn't seem to fit

23 Now, somewhere back there a little inkling came
24 up and that's this thing about, well, Mr Clea thought or
25 accused Mr Jackson and maybe Mr Pollard of having done

1 something And they denied it and said, stop accusing us

2 I think if I accused you or you accused you of

3 something you didn't do, I wouldn't like it and I'd tell

4 you to stop But maybe, maybe that was the start of

5 something bigger or deeper than we will ever know because

6 Mr Jackson's not here to tell us and Mr Pollard's not

7 here to tell us and Mr Clea is here to tell you whatever,

8 whatever you'll hold on to to believe that he's the victim

9 instead of them That they're the bad guys and that

10 things are being manufactured and then disappearing

11 So that's what we've got to deal with Mr Clea

12 would want you to have it both ways

13 On the one hand, these two people are violent

14 but all of the people who came in to testify about them,

15 including Mr Clea, talked about how they keep hanging out

16 together They're at the same home They're at the same

17 hangouts They're at the same clubs They're living

18 together in the same trailer They're doing all these

19 things together

20 Now, if the relationship between you or somebody

21 in your family and anybody else was as strained, as

22 threatening as all of that, you wouldn't be hanging around

23 them So something doesn't sit right there and that's

24 where this bad blood stuff just does not hang together

25 And that's what we need to look at some too

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0807

1 Mr Gardner, he never came to me and complained
2 about anybody If there was a complaint to Anthony
3 Dennis, Sheriff now and Chief Deputy then, they could have
4 told us, they would and it never happened It never
5 happened

6 Who do you believe? Do you believe Mr Gardner
7 that it didn't happen the way that man said or do you
8 believe him?

9 Well, what you see here is a pattern or -- and I
10 think Mr Michael Clea probably gave you the best
11 indication of that pattern And what was the pattern?
12 Yeah, we lived together Yeah, we're family Yeah, we
13 did stuff together We fought together We made up, we
14 fought together It was me and my nephew, him and his
15 nephew It's a way of dealing that we may or may not
16 understand because it appears to be that amongst at least
17 this group of people, an ordinary way of doing things
18 The very fact that they were doing business that day tells
19 me that that's what occurred

20 Now, credibility, believability Whatever
21 happened to just don't go? What happened to not just --
22 don't say no, just don't go Don't sell dogs Don't sell
23 dog houses Don't go to homes See, that's not happening
24 and that's where you try to get close and then you try to
25 get distance Okay, well, I was there but I didn't really

1 want to be there I wasn't enthusiastic about being
2 there

3 It's sort of like the two-step, rocking back and
4 forth We were at arm's length but we were doing stuff
5 together

6 Credibility When you start talking about
7 credibility, more than willing to have you test and take
8 great issue with the fact that we brought you people who
9 came here to lie We did not Not Mr Mackessy, not Mr
10 Powell, not Mr Young You had a chance to assess them
11 You saw what their demeanor was You saw when Mr Powell
12 tried to demonstrate his testimony or tried to show you
13 what happened You know that he's kin to all of them
14 You know that this was a painful episode but you know that
15 what he said and what he told you fit And when you see
16 what the other folks said, particularly experts, it will
17 plug together

18 Now, Mr Clea's got something to say You need
19 to evaluate very carefully Mr Clea's testimony Why?

20 Number one, he's the man on trial here Nobody
21 in this courtroom has got more to gain and less to lose
22 than selling you a bill of goods, nobody

23 Number two, you had the opportunity yesterday to
24 observe him in the stand, to see what we call demeanor,
25 attitude Demeanor is what we call it in court,

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1 everywhere else we call it an attitude, what's the
2 attitude

3 Now, nobody, nobody in the courtroom more than
4 the Defendant has got a reason to want to win friends and
5 influence people, to show himself in the best possible
6 light But what we saw yesterday, I submit to you, was a
7 touch of what Mr Jackson and Mr Pollard saw on that
8 February afternoon We saw somebody who was combative,
9 who was hostile, who was aggressive and who was evasive,
10 who did not want to answer questions unless told to do so
11 by the court Or when answering questions, wanted to
12 answer beyond the question, wanting to argue

13 Why? We talk about a peace loving person I
14 did not see a peace loving person That's what I saw
15 yesterday You made up your own mind You saw how he
16 handled himself You made up your own impression But I
17 ask you to look at that very carefully

18 I ask you to consider selective memory When Mr
19 Powell says something and Mr Young says something but he
20 doesn't hear it Or when he hears something and they
21 didn't hear it Or accusations of everybody's wrong and
22 out of step to me

23 Wesley Gardner, he's wrong or out of step The
24 people who took the statement, they're wrong and out of
25 step Everything's wrong but the way I want it

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1 Now, when you're assessing credibility, you need
2 to assess that as part of it And part of what I'm asking
3 is just a small portion of it, was if you think he only
4 fired this weapon one time before that day, then believe
5 everything else he tells you If he tells you the moon is
6 made out of cheese, believe it It is fairly incredible

7 Look at what he says in terms of what the
8 doctors say That's part of what we want to do

9 Now, the law doesn't require that the State
10 prove or you find what his motive was But I think it's
11 quite obvious that nobody went there that day intending to
12 kill somebody else

13 What do I mean by that? Well, he wasn't looking
14 to go there He just got asked to bring some dog houses
15 Mr Pollard wasn't looking to do anybody any harm He was
16 looking to bring the dog houses there Mr Jackson wasn't
17 looking to do anybody harm He just left his sister's
18 house and said he was on his way home and was helping them
19 move the dog house And none of this, none of this had a
20 preplanned thing to murder

21 But somewhere in the history of these people,
22 and they start going towards the truck and one starts
23 going towards the car, an antenna came up and whatever
24 grudge, whatever hostility, whatever reservation, whatever
25 apprehension, it was there We still are talking about

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1 murder

2 What we want to look at is what he said and then
3 what he did, regardless of what he thought, it's what he
4 did and how he did it And then we ask, is at this point
5 did the circumstances justify killing somebody; at this
6 point, did the circumstances justify killing somebody?
7 Look at it as a whole and we'll put it together

8 What did we have earlier that day? Nothing out
9 of the ordinary What happens step by step when we get to
10 this location? What happens step by step?

11 Now we realize this diagram is not to scale
12 Photographs many times represent it better The exact
13 location of parking the truck has been a matter of some
14 dispute These are the general areas of the shells I
15 believe Mr Mackessy said there were other areas

16 After some conversation, some innocent
17 conversation, Mr Jackson heads towards his vehicle and
18 Mr Clea heads towards his truck

19 Apparently Mr Clea overheard no conversation
20 and Mr Powell said he was there and he heard nothing but
21 innocent conversation He didn't hear any plotting, he
22 didn't hear any threatening or what have you

23 Now, Mr Clea will tell you, when he got to this
24 point, Mr Jackson, come here, Reggie, please come here,
25 Reggie Clea That's what's supposed to be happening And

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1 that he, thinking that he is now -- thinking that there's
2 a weapon, he says, he fires two shots

3 And now there is a dispute in the testimony
4 Mr Clea says in his statement, stood -- I'm looking for
5 his exact words here Stood up like a deer who had just
6 seen something My understanding and recollection, Mr
7 Powell also said he stood up Whether he stood or was
8 half-standing or how he had the door was irrelevant
9 because the bullets could have passed through his leg the
10 same way We'll show you the photographs

11 But he says the first shots were at the car, at
12 the front of the car, warning shots, which may or may not
13 have been justified in his own mind If there was a
14 weapon in the car, surely Mr Jackson would have fired
15 back at him at that time

16 But there were not shots back at him, none
17 whatsoever And as he's saying, Bubba's got a gun, Mr
18 Young hears him saying, I ain't got no gun I ain't got
19 no gun He could have stopped there

20 Think about it He's got his He's already
21 fired two shots He's going to beat at somebody A man
22 who's saying, I ain't got a gun, who ain't pointing
23 nothing at him, he never sees anything at him, but he
24 doesn't stop He does not stop

25 Now he says he sees some sort of movement Let

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1 me tell you what happened next Two things show it

2 The next set of shots hit this man Bubba, why
3 didn't he bleed profusely? Well, perhaps you remember the
4 question asked Dr Ross yesterday because I knew I would
5 ask that question because I knew we needed to know

6 Did it hit an artery? Did it do anything that
7 would spurt? No Would there be splatter from this?
8 Because Mr Powell said the man dove across, dove across
9 quickly to get out on the other side

10 So we're not talking about bam, bam and let's
11 say, okay, I'll stand her a second and let this thing
12 bleed out We're talking about bam, bam -- boom, gone

13 Now, what helps us see that? State's Exhibit 5-
14 A, the shots to the outside of the car, 1 and 2 are
15 obvious 5-C, the rods show it coming in Remember Mr
16 Mackessy said the door was open These rods show where it
17 would have went if the door was closed

18 The right distance apart to inflict these two
19 wounds without bursting an artery with a man wearing pants
20 and he gets out of the car

21 Now, what are the position of his hands? That's
22 key, the position of his hands And this is where being
23 selective doesn't do us any good We need to be exact

24 What does Ms Simmons tell us? She says, he had
25 residue on the palms of both hands and the back Only

1 comes from one of two things, firing a weapon and Mr Clea
2 is very clear that he never fired a weapon and his were
3 the only shots fired, or being fired at

4 Mr Clea is much closer to this vehicle than he
5 would have you believe He also puts two shots through
6 the front seat

7 Now what's coming out of the barrel of this
8 weapon, as she says, is what we call gunshot residue
9 Yes, this is closed and on the floor now, State's Exhibit
10 Number 5-J, but who knows, and none of us will ever know,
11 what this other object here which appears to be a plate
12 with tinfoil on it, I don't know if it's a food plate or
13 not, who knows whether or not that was in the box

14 We can't tell you I'm not asking you to have
15 conjectures But I'm saying to you that the shots fired
16 at him which put residue on him, I think it was the back
17 of his left hand, she said his hands were in what she said
18 was a defensive posture, a defensive posture

19 That tells us about three things Number one, it
20 tells us his hands were up so Reggie Clea could see them
21 His hands were up to get the residue out of the end of
22 that barrel His hands were up so Reggie could see he did
23 not have a weapon in his hands His hands were up, not
24 just up and empty, they were up and defensive They
25 weren't here, they weren't there, they weren't anywhere

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1 else

2 And if this was in his lap or close there to
3 him, these other two shots which passed over the seat, F
4 and G, put the residue there Don't tell me, don't tell
5 anybody, Ms Knox has got enough comprehension to go in
6 and start poking in a box

7 Ms Simmons is key She's key But that's why
8 she's key because she tells us where those things were
9 She tells us how that happened She tells us that the
10 hands were in a defensive posture

11 And Dr Ross is the one who tells us, the leg is
12 broken And what does Mr Powell say, trying to show how
13 things happened? She said, when he gets out on the
14 passenger side, he turned this way to the right to flee,
15 to flee, to run away And then turned back around and
16 went down on the ground, I submit to you because he wasn't
17 going to be able to go any further on that broken leg

18 Now, he's on the ground because he's surely not
19 going to be shot in the legs either on the ground or
20 standing behind that car He's already shot in the leg,
21 already shot

22 Now, where is the third shot coming from and why
23 was the third shot necessary? Why would he have to use --
24 do the circumstances justify fatal force?

25 He didn't tell me until I asked -- showed him

1 his statement, did he see him crawling on the ground
2 Yeah, I panicked when I see him crawling towards the gun
3 he never saw

4 Why is that critical? You will look at State's
5 Exhibits 6, 7 and 4 and you will see cartridge cases all
6 over this yard and markings all over this yard, not just
7 -- these are generic areas We didn't have him put 27 of
8 those things But you'll see where the markers are

9 I believe you will see, as Mr Paavel told us,
10 how this weapon kicks rounds out to the right And you
11 will see on your photograph a number of rounds clustered
12 here, some of which could be fired from this position

13 Mr Powell told you, without having any reason
14 to lie because he didn't know the significance of it Mr
15 Powell didn't know what Dr Ross knew He said, when I
16 started to leave -- or when I started -- as I was leaving,
17 all the time telling him, all the time telling him, put
18 the gun down, put the gun down, put the gun down

19 As he's leaving, some things are happening
20 Bubba has already said, and Mr Young heard him say it
21 before he skedaddled, I ain't got a gun, I ain't got a
22 gun

23 Now what Bubba doesn't know because he's shot
24 and in great pain and on the ground, can't move, can't
25 stand up, he's calling to BoBo who at this time is already

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1 dead or dying We'll talk about BoBo in a minute

2 We're just talking about was this man justified
3 in killing somebody else? Was he justified in this fatal
4 shot? If he was justified in the warning shots, okay,
5 maybe Justified in shooting the guy in the leg from
6 which he would have recovered? Was he justified in
7 shooting BoBo Jackson in the top of the head while he was
8 lying on the ground?

9 The shot comes in this way, right there, through
10 here There ain't no way in the world that he was up in a
11 helicopter, no way in the world, no That's what tells
12 you that the fatal shot was the man that was on the ground
13 with no gun, with no gun anywhere close to him, couldn't
14 move and he shot him in the top of the head And that was
15 as unnecessary, it was unavoidable as any homicide could
16 ever be Troops in combat don't take out enemies like
17 that

18 And her testimony and that diagram is proof
19 positive No other way he gets the shot from there If
20 the shot comes in the front, he's looking at him If the
21 shot comes in the side, that's where The shot comes in
22 the top of the head, he's down

23 That's what we talked about being logical,
24 consistent and rational evidence That's what we need to
25 look at very carefully

1 And that's why you said, was this necessary?
2 No, it wasn't necessary Was it justifiable to kill a man
3 in those circumstances? I hope we never get to that
4 point

5 Mr Pollard, shot nine times I guess Mr
6 Pollard knew him I guess Mr Pollard was upset that he
7 was shooting at his uncle Mr Pollard didn't see any
8 gun He said, are you saying what, Bubba's got a gun,
9 like what do you mean? I don't see no gun

10 What happens here? What happens here? What she
11 tells you is that on his right thumb, right thumb, is an
12 enormous amount of gunshot residue All right? And she
13 says it's consistent with being very close to the muzzle
14 of a weapon He was shot point blank range by Mr Clea

15 What's the significance of wounds number 3 and
16 number 4? First of all, number 4 is here And that's
17 what we call a defensive wound It's kind of like, you
18 can't control it I throw something at you, you jump If
19 I'm throwing something hard at you, you jump even more,
20 you try to, you know, protect yourself

21 This shot comes in an open palm, number 3 It
22 goes on up the -- on up the arm and up here

23 Number 4 is here Folks, he shot with his hands
24 out in front of him in a defensive posture Mr Pollard's
25 as close to him as I am that table He can see he hasn't

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1 got anything in his hand

2 And he would tell you -- and how he knows, I'll
3 never know But he says, I shot him in the hand first
4 But he showed up here as he was sitting on the stand, he
5 kind of reached his hands like that Mr Pollard's not
6 shot in the back of his hands, he's shot in the front of
7 his hands He's shot in a defensive posture and he's shot
8 again and again and again

9 And here's where that legal standard comes up
10 Hey, hey, Mr Clea, you could have avoided this You
11 didn't have to shoot him fatally You've already got a
12 couple of shots in him You can see he doesn't have a
13 weapon on him But you keep on killing him

14 Now, he's the first one to die because he's
15 pumped with all these rounds at point blank range And as
16 you can see the different angles that they're at, Mr
17 Clea's moving around, he's moving around

18 Not that we put it together that way, but here's
19 why it fits You take what Mr Powell said, who's got no
20 idea what Ms Simmons is going to say, who's got no idea
21 what Dr Ross is going to say And you take the people
22 who aren't there and you put it together What they say
23 at an expert point of view corroborates what he says No
24 weapons, hands up, defensive posture Killing wasn't
25 necessary Killing wasn't avoiding

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1 And what shows more than anything else, I'm
2 afraid, is the final shot to Mr Jackson When you clear
3 out all the smoke, when you clear out all the fog, when
4 you accept the fact that there is this history of
5 apprehension, although whatever happened happened, if you
6 got back and do just like we do, if you freeze frame this
7 thing, if you realize that there was more than Mr Clea
8 will tell you what went on, and if you will freeze frame
9 it and look at every point in time, that he had the
10 opportunity not to kill somebody and went ahead

11 That's where we are Now he can kill two people
12 and say he's not accountable Or he can kill two people
13 and you can find him accountable and we ask you to do
14 that

15 Thank you very much

16 **CHARGE BY THE COURT**

17 Madam Forelady and members of the jury, you have
18 heard the evidence and the arguments of both parties I
19 will now explain to you the law that applies to this
20 action

21 Reginald Tyrell Clea is charged by an indictment
22 filed with this court on two counts of murder and
23 possession of weapon during the commission of a crime of
24 violence I remind you that you and I have certain duties
25 to perform As the Trial Judge, it is my responsibility

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1 to preside over the trial I also have the duty to rule
2 on questions involving the admissibility of the evidence
3 offered during the trial

4 You are to consider only the competent evidence
5 before you If there was any testimony ordered stricken
6 from the record in this case, during this trial, you must
7 disregard that testimony You are to consider only the
8 testimony which has been presented from this witness
9 stand, any exhibits which have been made a part of the
10 record in this case and any stipulations of counsel

11 I have the additional duty to charge you the law
12 applicable to this case As the Presiding Judge, I am the
13 sole judge of the law of this case, and it is your duty as
14 jurors to accept and apply the law as I now state it to
15 you If you already have any idea as to what the law is
16 or what the law ought to be and it does not agree with
17 what I now tell you that the law is, you must abandon this
18 idea because you swore to accept and apply the law exactly
19 as I state it to you

20 In every case tried in this court before a jury,
21 the jury becomes the sole and exclusive judge of the facts
22 in a case A trial judge cannot intimate, state, comment
23 on, or make any statement to a trial jury about the facts
24 in a case Since you, the jury, are the sole judge of the
25 facts in this case, you are not to infer from what I have

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1 said during the progress of this trial in ruling upon the
2 admissibility of evidence, or otherwise, or anything that
3 I say now during the course of these instructions, that I
4 have an opinion about the facts in this case The law does
5 not allow me to have an opinion about the facts of this
6 case This is a matter solely for you, the jury, to
7 determine And as jurors, it is your duty to determine
8 the effect, the value, the weight and the truth of the
9 evidence presented during this trial

10 The Defendant has pled not guilty to this
11 indictment, and that plea puts the burden on the State to
12 prove the Defendant guilty A person charged with
13 committing a criminal offense in the State of South
14 Carolina is never required to prove himself innocent

15 I charge you that it is an important rule of the
16 law that the Defendant in a criminal trial, no matter what
17 the seriousness of the charge may be, will always be
18 presumed to be innocent of the crime for which the
19 indictment was issued unless guilt has been proven by
20 evidence beyond a reasonable doubt This presumption of
21 innocence does not end when you begin your deliberations,
22 but it accompanies the Defendant throughout the trial
23 until you reach a verdict of guilt based on evidence
24 satisfying you of that guilt beyond a reasonable doubt

25 The presumption of innocence is like a robe of

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1 righteousnes placed about the shoulders of the Defendant
2 which remains with the Defendant until it has been
3 stripped from the Defendant by evidence satisfying you of
4 the Defendant's guilt beyond a reasonable doubt

5 The presumption of innocence is not a mere legal
6 theory It is not just a legal phrase It is a
7 substantial right to which every Defendant is entitled
8 unless you, the jury, are satisfied from the evidence of
9 the Defendant's guilt beyond a reasonable doubt

10 Now, what is a reasonable doubt in the law? A
11 reasonable doubt is the kind of doubt that would cause a
12 reasonable person to hesitate to act Proof beyond a
13 reasonable doubt is therefore the proof of such a
14 convincing character that a reasonable person would not
15 hesitate to act and to rely upon in the most important of
16 his or her own fears

17 Reasonable doubt may arise when evidence which
18 was in the case or from the lack of evidence in the case
19 You, the jury, must determine whether or not reasonable
20 doubt exists as to the guilt of this Defendant The State
21 has a burden of proving each and every element of a crime
22 beyond a reasonable doubt

23 And any doubt that you may have in your
24 deliberations should be resolved in favor of the
25 Defendant If you have a reasonable doubt as to the guilt

1 of the Defendant, he is entitled to that doubt and would
2 be entitled to an acquittal

3 Proof beyond a reasonable doubt is proof that
4 leaves you firmly convinced of the Defendant's guilt
5 There are very few things in this world that you know with
6 absolute certainty And in criminal cases, the law does
7 not require proof that overcomes every possible doubt

8 If based on your consideration of the evidence
9 in this case you are firmly convinced that the Defendant
10 is guilty of the crime charged, then you must find him
11 guilty

12 If on the other hand you think that there's a
13 real possibility that he is not guilty, you must give him
14 the benefit of the doubt and find him not guilty

15 Necessarily you must determine the credibility
16 of witnesses who have testified in this case Credibility
17 simply means believability It becomes your duty as
18 jurors to analyze and to evaluate the evidence and
19 determine which evidence convinces you of its truth

20 In determining the believability of witnesses
21 who have testified in this case, you may believe one
22 witness over several witnesses or several witnesses over
23 one witness You may believe a part of the testimony of a
24 witness and reject the remaining part of the testimony of
25 that same witness You may believe the testimony of a

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1 / witness in its entirety or reject the testimony of a
2 witness in its entirety You may consider whether any
3 witness has exhibited to you any interest, bias, prejudice
4 or other motive in this case You may also consider the
5 appearance and manner of a witness while on the witness
6 stand

7 A statement alleged to have been made by the
8 Defendant has been admitted into evidence in this case
9 While the Court has determined the statement admissible, I
10 instruct you that you make the ultimate decision of
11 whether or not the Defendant made the statement If the
12 Defendant did make the statement, you must determine
13 whether the statement was made by the Defendant
14 voluntarily and of his own free will This means that the
15 statement was not caused by pressure, force, fear,
16 threats, coercion or intimidation, or by hope or a promise
17 of leniency or a reward of any kind

18 In determining whether the statement was
19 voluntary, you should consider both the characteristics of
20 the Defendant and the details of the questioning Some of
21 the factors that you must consider are the age of the
22 Defendant, the Defendant's education or lack of education,
23 the Defendant's mental ability or capacity, the
24 Defendant's I Q or intelligence, the Defendant's
25 background and environment, the place and length of

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1 detention, the nature of the questioning and the advice,
2 or lack thereof, to the Defendant of his constitutional
3 rights including, but not limited to, the right to remain
4 silent, that any statement could be used against him in a
5 court of law, the right to have a lawyer present and that
6 if he could not afford a lawyer, a lawyer would be
7 appointed to represent him without any costs, and that he
8 could making a statement at any time

9 You must carefully consider all of the
10 surrounding circumstances before you give any weight to an
11 alleged statement

12 The State has the burden of proving beyond a
13 reasonable doubt that the alleged statement was voluntary
14 If you determine it was, you may give the statement any
15 further consideration that you deem proper You must
16 decide what weight, if any, should be given to the alleged
17 statement If you determine that alleged statement was
18 not the free and voluntary statement of the Defendant, you
19 should not consider the statement at all

20 The indictment in this case alleged three
21 different offenses Count 1, the murder of John C
22 Jackson, Count 2, the murder of James Pollard, Count 3,
23 possession of a firearm in the commission of a crime of
24 violence Each charge is a separate and distinct offense
25 You must decide each charge separately on the evidence and

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1 the law applicable to it, uninfluenced by your decision as
2 to any other charge The Defendant may be acquitted or
3 convicted on any or all of the offenses charged But
4 should you find the Defendant not guilty of murder, then
5 the Defendant cannot be found guilty of possession of the
6 firearm during the commission of a crime of violence

7 The Defendant is charged with two counts of
8 murder. The State must prove beyond a reasonable doubt
9 that the Defendant killed each of these persons with
10 malice aforethought

11 Malice is hatred, ill will or hostility towards
12 another person It is the intentional doing of a wrongful
13 act without just cause or excuse and with an intent to
14 inflict an injury or under circumstances that the law will
15 infer an evil intent

16 Malice aforethought does not require that malice
17 exists for any particular time before the act is
18 committed, but malice must exist in the time -- in the
19 mind of the Defendant just before and at the time the act
20 is committed Therefore, there must be a combination of
21 the previous evil intent and the act

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

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Any
evidence
of
express
malice?

*{

1 manner in which malice may be shown to exist That is
2 either by direct evidence or by inference from the facts
3 and circumstances which are proved Express malice is
4 shown when a person speaks words which express hatred or
5 ill will for another or when the person prepared
6 beforehand to act -- to do the act which was later
7 accomplished, for example, lying in wait for a person or
8 any other acts of preparation going to show that the deed
9 was within the Defendant's mind would be express malice
10 ~~Malice may be inferred from conduct showing a~~
11 ~~total disregard for human life~~ Inferred malice may also
12 arise when the deed is done with a deadly weapon A
13 deadly weapon is an article, instrument or substance which
14 is likely to cause death or great bodily harm Whether an
15 instrument has been used as a deadly weapon depends on the
16 facts and circumstances each case

17 The following are examples of instruments which
18 may be deadly weapons a pistol, a shotgun, a rifle, a
19 dagger, and a knife

20 The Defendant is charged with possession of a
21 weapon during the commission of, or attempt to commit, a
22 violent crime The State must prove beyond a reasonable
23 doubt that the Defendant was in possession of a firearm or
24 visibly displayed what appeared to be a firearm during the
25 commission of a violent crime

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1 A firearm means any machine gun, automatic
2 rifle, revolver, pistol or any weapon which will or is
3 designed to or may be readily -- can be readily converted
4 to expel a projectile

5 In order to find the Defendant guilty of
6 possession of a weapon during the commission of violent
7 crime, you must find the Defendant guilty of either
8 committing a violent crime or attempting to commit a
9 violent crime and murder is a violent crime

10 Now the Defendant has raised the defense of
11 self-defense Self-defense is a complete defense and if
12 it is established, you must find the Defendant not guilty
13 The State has the burden of disproving self-defense by
14 proof beyond a reasonable doubt If you have a reasonable
15 doubt of the Defendant's guilt after considering all of
16 the evidence, including the evidence of self-defense, then
17 you must find the Defendant not guilty

18 On the other hand, if you have no reasonable
19 doubt of the Defendant's guilt after considering all of
20 the evidence, including the evidence of self-defense, you
21 must find the Defendant guilty

22 The following elements are required to establish
23 self-defense

24 First, the Defendant must be without fault in
25 bringing on the difficulty If the Defendant's conduct

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1 was the type which was reasonably calculated to or did --
2 and did provoke the deadly assault, the Defendant would be
3 at fault in bringing on the difficulty and would not be
4 entitled to an acquittal based on self-defense

5 2) The second element of self-defense is that the
6 Defendant was actually in imminent danger of death or
7 serious bodily injury, or that the Defendant actually
8 believed he was in imminent danger of death or serious
9 bodily injury If the Defendant was actually in imminent
10 danger, it must be shown that the circumstances would have
11 warranted a person of ordinary firmness and courage to
12 strike the fatal blow to prevent death or serious bodily
13 injury If the Defendant believed he was in imminent
14 danger of death or serious bodily injury, it must be shown
15 that a reasonably prudent person of ordinary firmness and
16 courage would have held the same belief

17 In deciding whether the Defendant actually was
18 or believed he was in imminent danger of death or serious
19 bodily injury, you should consider all the facts and
20 circumstances surrounding the crime, including the
21 physical condition and characteristics of the Defendant
22 and victim

23 The Defendant does not have to show that he was
24 actually in danger It is enough that the Defendant
25 believes he was in imminent danger and a reasonably

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1 prudent person of ordinary firmness and courage would have
2 had the same belief

3 The Defendant has the right to act on
4 appearances even though the Defendant's beliefs may have
5 been mistaken. It is for you to decide whether the
6 Defendant's fear of immediate danger of death or serious
7 bodily injury was reasonable and would have been felt by
8 an ordinary person in the same situation

9 Words accompanied by hostile acts may, depending
10 on the circumstances, establish self-defense. Evidence of
11 prior difficulties between the Defendant and a victim may
12 be considered in deciding whether a threat existed,
13 whether the Defendant had a reason to believe that a
14 threat existed and how serious that threat was

15 The relative sizes, ages and weights of the
16 parties, of the Defendant and the victim, may be
17 considered in deciding the apparent or actual need for
18 force in self-defense and the amount of force needed

19 The reputation of the victim as a violent person
20 may be considered in deciding whether there was a need for
21 force, whether the Defendant had a reason to believe there
22 was a need for force and whether deadly force was
23 reasonably necessary

24 Prior instances of violence by a victim may be
25 considered in deciding whether the Defendant actually

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1 believed he was in imminent danger of death, of serious
2 bodily injury or was actually in imminent danger

3 Threats made by the victim may be considered in
4 determining whether the Defendant actually was or believed
5 he was in imminent danger

6 3) The final element of self-defense is that the
7 Defendant had no other probable way to avoid the danger of
8 death or serious bodily injury than to act as the
9 Defendant did in this particular instance

10 A person cannot be required to make an exact
11 calculation as to the degree of amount of force which may
12 be needed to avoid death or serious bodily harm
13 Therefore, in self-defense the Defendant has the right to
14 use the force needed -- to use the force needed to avoid
15 death or serious bodily harm The force used in self-
16 defense does not have to be limited to the degree or
17 amount of force used by the victim The Defendant has the
18 right to use so much force as appears to be necessary for
19 complete self-protection in which a person of ordinary
20 reason and firmness would have believed to be needed to
21 prevent death or serious bodily harm

22 Now, if the Defendant is justified in defending
23 himself or others and in firing the first shot, then the
24 Defendant is also justified in continuing to shoot until
25 it is apparent that the danger of death or serious bodily

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1 injury has completely ended

2 Madam Forelady and members of the jury, nothing
3 that I have said or done during the course of this trial
4 has been in any way intended to express or suggest a view
5 of the case or any opinion as to the facts, the weight of
6 the evidence or the credibility of the witnesses. If any
7 of my actions or words have seemed to so indicate, you
8 will disregard such and form your own opinion as to these
9 matters

10 I am required to declare the law as I have done
11 through these instructions now being given to help you to
12 a just and lawful verdict. You may have noticed that I
13 have read these instructions to you. I do so in order to
14 give you the law as accurately as possible. Whether some
15 of these instructions will apply will depend upon what you
16 find the facts to be. The fact that I have instructed you
17 on various subjects in this case must not be taken as an
18 indication of an opinion of this court as to what you
19 should find the facts to be or which party is entitled to
20 your verdict

21 Now you have been sworn to give both sides of
22 this case a fair and impartial trial, and when you have
23 done so, you will have complied with your oath, and no one
24 will have a right to criticize your verdict. You must not
25 be influenced by opinions or expressions of opinion you

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21.20

1 may have heard outside of this courtroom, but rather
2 should base your verdict only on the testimony of the
3 sworn witnesses who took the stand, along with other
4 evidence, along with the evidence You should not be
5 swayed by caprice, passion, prejudice or improper sympathy
6 for or against any of the parties in this case Remember
7 you have no friends to reward or enemies to punish and
8 both parties are entitled to a fair and impartial trial at
9 your hands

10 The possible verdicts are stated on the verdict
11 form in this case which I am holding in my hand There is
12 no significance whatsoever in the order in which these
13 possible verdicts are stated, it is simply that one must
14 be stated first

15 And the verdict form states that we, the jury,
16 find unanimously the Defendant on Count 1, the murder of
17 John C Jackson, guilty or not guilty and you will check
18 the appropriate box

19 As to County Number 2, the murder of James
20 Pollard, guilty or not guilty and you will check the
21 appropriate box

22 And you are to decide Number 3 only if you find
23 the Defendant guilty of either Number 1 or Number 2 or
24 both Count 3 states, possession of weapon during the
25 commission of a violent crime, guilty or not guilty

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1 After you have completed the verdict form, Madam
2 Forelady, you will sign your name to it All twelve of
3 you must agree on the verdict And Madam Foreperson, it
4 is your duty to preside over the jury deliberations and
5 complete the verdict form

6 When the jury agrees on a verdict, you will
7 write the verdict and then sign your name as foreperson on
8 the line on the verdict form, knock on the door and inform
9 the bailiff that you have reached a verdict At that time
10 we will receive your verdict back in the courtroom

11 I will give you a copy of these instructions in
12 written form During your deliberations you may refer to
13 the instructions to guide your decision making You must
14 consider the instructions as a whole and not follow some
15 and ignore others Please return the instructions to the
16 court at the time your verdict is rendered

17 We have ordered lunch for you so your lunch will
18 be brought into the jury room so that you will not have to
19 go outside or leave the jury room

20 I'd ask that you now return to the jury room,
21 everyone except Mr Robertson and Mr Johnson, the
22 alternates But do not begin your deliberations until you
23 have received a copy of these instructions, the exhibits
24 which have been introduced into evidence and the verdict
25 form

1 And there are some matters that must be
2 discussed with the attorneys before you begin your
3 deliberations But when you receive these things, that
4 will be a signal for you to begin your deliberations

5 Thank you very much, ladies and gentlemen
6 Please go to the jury room at this time, except Mr
7 Robinson and Mr Johnson

8 (Jury exits the courtroom)

9 THE COURT Are there any additions or
10 exceptions to the charge?

11 MR. SALEEBY None from the State, Your Honor.

12 MR. CLARK Yes, Your Honor. The Defendant
13 objects to the Court's charge on inferred malice and use
14 of a deadly weapon. We believe that is the appropriate
15 charge, Your Honor, but we believe also, when that charge
16 is given, the Court should charge that inferred malice can
17 be rebutted by competent evidence. And we would ask the
18 Court to recharge the jury, include a charge that inferred
19 malice from the use of a deadly weapon can be rebutted and
20 also if the Court's going to give the jury written jury
21 instructions, that that be added to the written
22 instructions, Your Honor.

23 THE COURT What says the State?

24 MR. SALEEBY I think your charge covered it.

25 MR. CLARK Just, if I may, we believe the way

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1 the charge is stated impermissibly shifts the burden to
2 the Defendant, unlawfully unconstitutionally shifts the
3 burden

4 THE COURT All right, now the jury was
5 instructed that the State must prove beyond a reasonable
6 doubt that the Defendant killed each of these persons with
7 malice aforethought The fact that the jury may infer the
8 malice and the Court instructed the jury as to the manner
9 in which they may infer the malice -- inferred malice, in
10 the opinion of the Court, does not shift the burden to the
11 Defense Further that the instruction is an appropriate
12 instruction and will not charge them further on that
13 point The exception is noted for the record

14 MR CLARK Thank you, Your Honor

15 THE COURT Anything further?

16 MR CLARK No, sir

17 THE COURT All right, Mr Bailiff, if you will
18 give that to them along with gathering up all of the
19 exhibits, take in to them

20 THE BAILIFF Okay

21 THE COURT And you can proceed while I talk
22 with the -- you can proceed while I talk with the
23 alternates

24 THE BAILIFF Okay, excuse me, sir

25 THE COURT Okay, Mr Johnson and Mr Robertson,

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1 we picked 14 jurors, only 12 can deliberate And we do
2 that because sometimes in the trial something might come
3 up, a juror may get sick, they might discover that they
4 have a conflict with sitting as a fair and impartial
5 juror In that instance we then plug in the two
6 alternates

7 We have to do it particularly in a murder trial
8 or serious charge because in the event that we fall below
9 12 for some reason or another and we don't pick alternates
10 and we fall below 12, then we declare a mistrial and do
11 the case all over

12 To guard against that, we select alternates but
13 after the first 12 survive the ordeal, that means you
14 cannot participate in the deliberations But I certainly
15 want to thank you all for your participation and hope that
16 it has proven to be beneficial to you

17 The other jurors have been told that they will
18 not need to come back since this case took up the entire
19 week pretty much So you all will not have to come back
20 anymore And we thank you for your services in this case
21 and you all are excused and free to go

22 I want to tell you that you are not obligated to
23 discuss your -- your view of this case with anyone I
24 will encourage you not to do so until after a -- at least
25 until after you hear that the jury has reached a verdict

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1 in this case At that point and time, you are free to
2 discuss the case with people if you want to You are not
3 obligated to If anyone should harass you concerning it,
4 please let me know

5 Thank you very much You are free to go

6 (The alternate jurors are excused)

7 THE BAILIFF May I have your buttons, please?

8 THE COURT We will be at ease in this case and
9 we won't do anything in regard to this case before 1 45
10 So if anybody wants to leave, we're not going to reconvene
11 before for at least 45 minutes

12 If you will confer regarding exhibits to be sure
13 that everything is straight that goes to the jury

14 MR CLARK Thank you, Your Honor

15 THE COURT All right

16 (The exhibits, jury charge and verdict forms
17 were sent to the jury to begin deliberations)

18 (The court was in recess awaiting a verdict
19 commencing at 1 10 p m)

20 THE COURT Ladies and gentlemen, I understand
21 that the jury has a verdict I'm certain that the verdict
22 will disappoint someone, some of you I want to emphasize
23 to you, however, that this is a court of law That the
24 decorum of the court must be maintained at all times and
25 that there are to be no outbursts by anyone in the

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1 courtroom that would be disruptive to the Court

2 You may bring the jury in

3 (Jury returns to the courtroom at 9 30 p m)

4 THE COURT All right, Madam Forelady, if you'll
5 remain standing, please and would the Defendant please
6 stand

7 (Complied)

8 Madam Forelady, have you reached a verdict?

9 FORELADY Yes, we have

10 THE COURT It is a unanimous verdict?

11 FORELADY Yes, it is

12 THE COURT Okay, if you'll pass it to Clerk

13 (Complied)

14 (Pause)

15 THE COURT Mr Clerk -- you may be seated,
16 Madam Forelady

17 (Complied)

18 THE COURT You may publish the verdict

19 **VERDICT OF THE JURY**

20 THE CLERK Case number 2004-GS-43-956, the
21 State of South Carolina versus Reginald Tyrell Clea

22 As to Count 1, we the jury by unanimous consent
23 for the Defendant, Count number 1, murder of John C
24 Jackson, not guilty

25 As to Count 2, murder of James C Pollard --

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1 James Pollard, excuse me, guilty

2 As to Count 3, possession of a firearm during
3 the commission of a violent crime, guilty

4 Signed Yvonne D Jones, Foreperson, dated May
5 5th, 2005

6 This be your verdict so say you all by raising
7 your right hand

8 THE COURT Try that again with the hands The
9 right hand is this hand

10 THE CLERK So say you all by raising your right
11 hand

12 (All jurors complied)

13 THE CLERK Thank you

14 THE COURT Does either party request any
15 additional polling of the jury?

16 MR SALEEBY No, Your Honor, thank you

17 MR CLARK Yes, Your Honor

18 THE COURT All right, would you individually
19 poll the jurors, please

20 THE CLERK Ladies and gentlemen, when your name
21 is called would you please stand

22 Angeleta Pack, is this your verdict, is it still
23 your verdict?

24 JUROR PACK Yes, it is

25 THE CLERK Thank you Betty Epps You may be

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1 seated

2 (Ms Pack is seated)

3 THE CLERK Is this your verdict, is it still
4 your verdict?

5 JUROR EPPS Yes, it is

6 THE CLERK Thank you Sybil Parrott, is this
7 your verdict and still your verdict?

8 JUROR PARROTT Yes

9 THE CLERK Thank you Andrew Turnbull, is this
10 your verdict and still your verdict?

11 JUROR TURNBULL Yes, it is

12 THE CLERK Thank you Yvonne Jones, is this
13 your verdict and still your verdict?

14 JUROR JONES Yes, it is

15 THE CLERK Thank you Katie Washington, is
16 this your verdict and still your verdict?

17 JUROR WASHINGTON Yes, it is

18 THE CLERK Thank you Michael McGee, is this
19 your verdict and still your verdict?

20 JUROR MCGEE Yes, sir

21 THE CLERK Thank you Jessica Ketter, is this
22 your verdict and still your verdict?

23 JUROR KETTER Yes

24 THE CLERK Thank you Tomaki Robertson, is
25 this your verdict and still your verdict?

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1 JUROR ROBERTSON Yes

2 THE CLERK Thank you Ammie Anderson, is this
3 your verdict and still your verdict?

4 JUROR ANDERSON Yes, sir

5 THE CLERK Thank you Christopher Geddings, is
6 this your verdict and still your verdict?

7 JUROR GEDDINGS Yes, sir

8 THE CLERK Thank you Francina Dix, is this
9 your verdict and still your verdict?

10 JUROR DIX Yes, it is

11 THE CLERK Thank you Stephen Robertson -- he
12 was an alternate juror, excuse me

13 Your Honor, the jury has been polled and the
14 verdict stands

15 THE COURT The verdict of the jury appears to
16 be appropriate based on the unanimous consent of each and
17 every juror

18 ~~Any post-trial motions, Mr. Clark?~~

19 ~~MR. CLARK: Yes, Your Honor~~

20 ~~THE COURT: We will entertain them at this time~~

21 ~~MR. CLARK: Your Honor, at this time while we~~
22 ~~respect the verdict of the jury, we would move for a new~~
23 ~~trial in the count involving Mr. Pollard~~

24 ~~The basis for our motion, Your Honor, is the~~
25 ~~Court's denial of our requested jury instructions~~

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1 regarding implying malice. The Court instructed the jury
 2 that malice may be inferred from the use of a deadly
 3 weapon. We objected, prior to the jury's deliberation,
 4 and requested a charge that although malice may be
 5 inferred, that the inference may be rebutted by sufficient
 6 evidence.

7 ~~The Court denied that request.~~ In light of the
 8 fact that the jury has returned a not guilty verdict on
 9 one of the counts of murder, we feel that the Defendant's
 10 prejudice by the Court's failure to give the instruction
 11 that malice, although it could be implied, that
 12 implication could be rebutted.

13 That's our motion, Your Honor.

14 THE COURT The Court would respectfully deny
 15 the motion. The jury charge as to the definition of
 16 murder as well as the inference that could be drawn from
 17 the use of a deadly weapon is a jury charge that is well-
 18 established in the law of the State of South Carolina.

19 The Court gave all parties an opportunity to
 20 submit requested charges pursuant to the South Carolina
 21 Rules of Criminal Procedure, Rule 20 of the South Carolina
 22 Rules of Criminal Procedure and no requested charge was
 23 given on this issue prior to the instruction given to the
 24 jury.

25 Notwithstanding that fact, however, the Court

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1 did entertain the request for charge and failed to give it
2 based on the Court's view that the charge given to the
3 jury is the or was the appropriate charge regarding the
4 laws of this state

5 I further find that the verdict of the jury is
6 supported by the evidence in this case and I deny any
7 post-trial motion

8 You all may be seated for a moment

9 Ladies and gentlemen, I want to thank you for
10 your work in this case. You didn't volunteer for jury
11 duty. You were summoned, you were drafted and certainly
12 probably a couple of months ago you had no clue that you
13 would even be called for jury duty. The juror summons was
14 served on you and you appeared and responded and you were
15 qualified to serve on jury duty. You were selected by
16 both sides of this case as fair and impartial jurors

17 I want to commend you on the professional manner
18 in which you have accepted the responsibility. You had a
19 difficult task, one of evaluating the evidence and sorting
20 through all of the evidence, you gave it your very best.
21 It's obvious from the extended length of time which you
22 deliberated in this case, approximately it seemed to be
23 eight hours or so and I'm sure for you all it seemed to be
24 much longer than that.

25 And you are to be commended. That's all that

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1 anyone can ask of you and that is to weigh the evidence
2 and to decide the facts of this case It certainly was an
3 unfortunate incident and unfortunate set of circumstances
4 that brought us all here together on this day But in
5 this world we face the circumstances that we oftentimes
6 cannot anticipate

7 But you responded to the call of duty and you
8 have rendered a verdict and I find that that verdict is
9 supported by the evidence

10 Now once the jury has returned a guilty verdict,
11 then it becomes my responsibility to impose a sentence,
12 which I'll do after hearing from the State, any victims as
13 well as the Defense

14 You have no role in the sentencing, but you are
15 certainly welcome to stay and to be a part of that as far
16 as witnessing

17 I wanted to say to you regarding my earlier
18 instruction to you about not talking about the case You
19 are released from that restriction You can talk about it
20 as much as you want at this point in time, now that you
21 have deliberated and decided the case But you are not
22 required to talk with anyone about the case It's
23 entirely up to you and you're certainly not to be bothered
24 or harassed by anyone concerning your participation in
25 this case and your jury verdict And if you face such a

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at 7:00

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1 circumstance of someone bothering you and harassing you or
2 annoying you about it, and if you need any assistance,
3 then call me and I assure you that I will respond
4 aggressively on your behalf, even though I do not think
5 any such thing to be necessary

6 I want to thank you, and of course now that you
7 have served on a jury, if you remember the questions
8 earlier in the week, you're disqualified for service for
9 another year, for two additional years if you choose not
10 to serve No one can be required to serve more than once
11 every three years I trust that the service that you
12 rendered has proven to be a beneficial and enlightening
13 experience

14 It never ceases to amaze me as I go around the
15 State with things that I've discovered going on in the
16 various towns and cities and it's just mind boggling
17 sometimes, the things that people do

18 We will now move to sentencing From the State,
19 Mr Saleeby

20 MR SALEEBY If you will indulge us a moment,
21 Your Honor

22 THE COURT Yes, sir

23 (Pause)

24 MR SALEEBY Your Honor, after consulting with
25 the families of Mr Jackson and Mr Pollard, they do not

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1 wish to make a public statement at this time And we have
2 laid out before the Court, you heard this entire case, so
3 we don't have anything additional for us to present other
4 than what's already been presented to you

5 THE COURT All right Now, Mr Clark, if you
6 would have Mr Clea come around for sentencing

7 MR CLARK Your Honor, may I bring his mother
8 and father

9 THE COURT Yes, sir

10 (Pause)

11 THE COURT Yes, sir, Mr Clark

12 MR CLARK Thank you, Your Honor, may it please
13 the Court

14 Your Honor, while we disagree with the jury's
15 verdict, we have to respect it as part of the judicial
16 process

17 Your Honor, my client is well aware of the
18 Court's options in regards to sentencing on the murder
19 conviction

20 Your Honor, we would ask for leniency and mercy
21 for this young man As I said, we respect the jury's
22 verdict, we believe they worked hard to arrive at verdicts
23 that they believe spoke justice, spoke the truth in the
24 case

25 Your Honor, but we ask for mercy for the young

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1 man He's 25 years old He's here in front of you with
2 several members of his family His father, Mr Lawrence
3 Dinkins, his mother, Bertha Drakeford, his sister and
4 other family members

5 Your Honor, he's 25 years old at this time No
6 prior convictions at all in this young man's past As the
7 court heard during his testimony and the presentation of
8 other testimony, he is a church-going young man, raised up
9 in the church, a hard worker Graduated from high school,
10 at one point worked two jobs, has three children that he
11 supports

12 Your Honor, this was a very tragic and
13 unfortunate situation Our sympathy goes out to the
14 Jackson and Pollard family We're sorry this ever
15 occurred We wish we could erase February 25 of 2004

16 Your Honor, I understand the Court's options are
17 life in prison or a 30 year sentence We'd ask for the 30
18 year sentence on the murder count

19 Your Honor, in my investigation of this case,
20 listening to all of the evidence, I think the jury's
21 verdict in the Jackson indictment speaks volumes about
22 what happened on February 25th, 2004 My client had no
23 intention for the result to come about that did He never
24 had any idea that this was going to occur And we stand
25 by the fact that but for Mr Jackson's actions, and I

1 think the evidence was somewhat convincing that there was
2 a weapon there on the scene in that shoebox But for Mr
3 Jackson's actions, none of this would have occurred

4 And we're not trying to make an excuse The
5 jury has spoken And as I said, we have to respect that
6 But I think when Mr Jackson took the action that he did,
7 because of the prior threats and the fears that this young
8 man had, it set in motion a chain of events that ended in
9 tragedy That was certainly not my client's intent

10 If the Court sees fit to sentence him to
11 something other than life in prison, he will spend a long
12 time in prison He will be a very middle aged individual
13 when he's released

14 I just say that he didn't intend for this to
15 happen He knows he has to pay a price I have talked
16 with him about that He's going to have to pay a heavy
17 price

18 But we'd ask you to grant him some leniency,
19 fashion a sentence so that he does have some hope for the
20 future and some life ahead of himself outside of the walls
21 of prison

22 Your Honor, I can tell you he has been in
23 custody since the day of this event I believe he's a
24 model -- he's been a model prisoner I don't believe
25 there's any evidence that he's caused any problems and I

1 think he will continue to be a model prisoner

2 Your Honor, I asked him did he want to address
3 the Court

4 THE DEFENDANT Yes

5 MR CLARK And he does want to address the
6 Court, Your Honor, if the Court would allow that at this
7 time

8 THE DEFENDANT Yes, sir, Your Honor, I was
9 knowing these people all my life and I hate that it did
10 happen And I know I have to be a man and stand up for my
11 wrongs and that what I did

12 And ask them for forgiveness If they give it
13 or they will not give it I can't change what happened
14 The only thing I knew I was in fear for my life And I
15 just ask if you can have any leniency on me If not, I
16 have to live with it

17 But I thank the jury for their participation and
18 that's all I have to say

19 MS DRAKEFORD I just ask the Court to please
20 have mercy on my child Never had any trouble out of him
21 He always been good to everybody I always told my boy,
22 always tell him he trusted people too much He never did
23 bother nobody He's always been nothing but good to
24 people out there in that street, nothing but good and then
25 they turn their back on him They turn their back on him

The State v Reginald Tyrell Clea

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1 They turn their back on him They just turn their back on
2 him

3 Ms Pollard, she came to me when it happened and
4 she told me how good my boy been to her and she told me
5 that Reggie is a good boy and she would never turn her
6 back on him and then she turned her back on him She told
7 me, she told me Mr Clark, she told me Then she turn
8 her back on my boy

9 Oh, Jesus, have mercy on my child, Lord, please
10 have mercy on my child Oh, Lord, please have mercy on my
11 child Please have mercy on my child

12 Reggie, I told you, I told you I told you,
13 Reggie Reggie, I told you, I told you Oh, Lord, no,
14 no, no, no, no She told me she wasn't going to turn her
15 back on my boy

16 (Continues crying)

17 (Pause while Ms Drakeford is taken from the
18 courtroom)

19 THE COURT Anything in this case further, Mr
20 Clark?

21 MR CLARK Your Honor, this is all we have
22 And I apologize about the outburst, Your Honor

23 THE COURT Anything further from the State?

24 MR SALEEBY No, sir

25 THE COURT All right, Mr Clea, you have been

The State v Reginald Tyrell Clea

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1 found guilty of murder of James Pollard You are a 25
2 year old young man I understand that Mr Pollard was
3 19?

4 MR CLARK 19, I believe so, Your Honor

5 THE COURT A 19 year old young man whose life
6 was cut short I certainly understand the hurt and pain
7 that your family is now experiencing And I can also
8 sense the hurt and pain that Mr Pollard's family
9 experienced and continue to experience

10 THE DEFENDANT Yes, sir

11 THE COURT Unfortunately he's not here that
12 they can cling to him and they can hold on to him

13 I certainly understand the hurt and pain that
14 Mr Jackson's family experienced and continue to
15 experience

16 You know, in life you make choices and there are
17 consequences as a result of those choices

18 THE DEFENDANT Yes, sir

19 THE COURT The choice that you made to get that
20 weapon, perhaps the sense of power you probably felt on
21 that morning because you had that weapon

22 THE DEFENDANT No, sir, it was ---

23 THE COURT From all that I can sense in the
24 testimony and just -- it was just a senseless killing of
25 Mr Pollard The entire episode that day was senseless

The State v Reginald Tyrell Clea

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1 And you know, it's rare, very rare that I ever hear a case
2 where an unarmed person, except for a domestic situation,
3 where is gunned down

4 So whatever the circumstance that you might have
5 found yourself in that morning, chances are if you did not
6 have that weapon on that day, you wouldn't be standing
7 here and no hurt or harm would have resulted to you that
8 law enforcement could not address

9 I find it almost impossible to believe that had
10 you not had that weapon that day, even if Mr Jackson had
11 a weapon, that he would have pulled it out and shot you
12 with it, if he had a weapon

13 So we're left with two dead bodies, crying and
14 grieving families and you are facing an uncertain future
15 but a future you have, whether within the walls or out the
16 walls

17 Now the option of the Court where a person is
18 convicted of murder, is to either sentence the Defendant
19 to a 30 year term of incarceration or life imprisonment

20 I want to commend Mr Clark on an excellent job
21 of the representation he's done

22 MR CLARK Thank you, Your Honor

23 THE COURT He's raised every question with a
24 ferocious and strong argument on your defense But just
25 as strongly, I want to commend the jury on the verdict

The State v Reginald Tyrell Clea

1 that they rendered which confirms their view that this was
2 murder of Mr Pollard

3 **SENTENCE OF THE COURT**

4 THE COURT I think the appropriate sentence,
5 given the lack of your past involvement with the law and
6 the character that you seem to have, despite the acts that
7 you did that day, I find the appropriate sentence would be
8 commitment in the State Department of Corrections for a
9 period of 30 years

10 And therefore, I sentence you to the State
11 Department of Corrections for a period of 30 years on the
12 murder charge And I sentence you to a period of
13 incarceration for five years on the charge of possession
14 of a weapon during the commission of a violent crime,
15 giving credit for the time that you have served and the
16 sentences will run concurrent with each other

17 Good luck to you, son

18 THE DEFENDANT Thank you

19 MR CLARK Thank you, Your Honor

20 THE COURT Ladies and gentlemen, I'm going to
21 excuse the jury at this time The jury only, the jury can
22 go The jury only, everyone else will remain seated until
23 released by the Court

24 (Jury is excused and exits the courtroom)

25 THE COURT We'd like to have the family of the

The State v Reginald Tyrell Clea

1 Defendant leave at this time

2 (The Defendant's family exits the courtroom)

3 THE COURT I want to commend the victim's
4 family as to the manner in which you all responded and
5 conducted yourselves during the course of the trial
6 realizing it's been very difficult on all of you

7 I trust that you have found some consolation in
8 the jury's verdict and that's all the Court can do It's
9 a tough situation for everyone and I just want to thank
10 you for maintaining the proper decorum in the court and
11 witnessing the trial in the manner in which you have

12 The rest of you can leave

13 (Court was adjourned)

14 --- END OF VOLUME THREE AND TRANSCRIPT OF RECORD ---
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V

REGINALD TYRELL CLEA,

APPELLANT

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

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

0861

STATEMENT OF FACTS

On May 2 through 5, 2005, Reginald Tyrell Clea stood trial in Sumter County on indictments charging him with two counts of murder and possession of a firearm during the commission of a violent crime. Clay admitted that he shot Charles Jackson three times and James Pollard nine times, but insisted that he had done so in self-defense. Judge Clifton B. Newman presided at Clea's jury trial. He instructed the jury on self-defense, but refused a defense request for a charge on the lesser-included offense of voluntary manslaughter. (That ruling forms the basis of this appeal.) The jury acquitted Clea of murdering Jackson, but found him guilty of murdering Pollard, and the judge sentenced him to imprisonment for thirty years for that and five years for possession of the firearm.

0862

ARGUMENT

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

Reginald Clea admitted that he shot Charles Jackson and James Pollard, but testified that he had done so in self-defense, believing both men to be armed and on the verge of killing him as a result of some prior bad blood Tr p 441, line 4 – p 455, line 4 “It was like it was a setup,” he said Tr p 455, lines 5-12 Even the State’s evidence revealed that both Jackson and Pollard were known to be violent See, for example, Tr p 204, lines 5-13 Moreover, two eyewitnesses who testified for the State essentially corroborated Clea’s account of the incident Tr p 164, line 10 – p 168, line 4, tr p 239, line 23 – p 242, line 17 Clea specifically testified that he was “heated up” when he shot Jackson and that Pollard had provoked him into shooting “[b]y reaching in his waist” for what Clea thought was a firearm Tr p 490, line 20 – p 493, line 2

At the conclusion of the trial, defense counsel requested a charge on voluntary manslaughter Tr p 644, lines 11-25 The Solicitor objected

I don't see any evidence of sudden heat of passion. I don't see any evidence of sufficient legal provocation. His defense is explicitly and exclusively limited to self-defense. I asked him those questions exactly. And every time I asked him those questions, he didn't indicate that he was angry or mad. He indicated that he was fearful and acting in self-defense.

Tr p 645, line 20 – p 646, line 1 The judge agreed with the Solicitor on the ground that “the defendant’s testimony concerning what he thought was the presence of a gun indicates possibly some provocation, but it does not conjure up any sudden heat of passion ”

Tr p 649, lines 3-24 In accordance with this ruling, the judge did not include a charge on

voluntary manslaughter in his final instructions to the jury Tr p 721, line 16 – p 737, line 4

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation *State v Locklair*, 341 S C 352, 535 S E 2d 420 (2000) A trial judge should refuse a charge on the lesser-included offense of voluntary manslaughter only where it very clearly appears that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter *State v Cole*, 338 S C 97, 525 S E 2d 511 (2000)

The case cited by defense counsel in support of his request for a charge on voluntary manslaughter, *State v Gilliam*, 296 S C 395, 373 S E 2d 596 (1988), is directly on point In that case, the Supreme Court explained

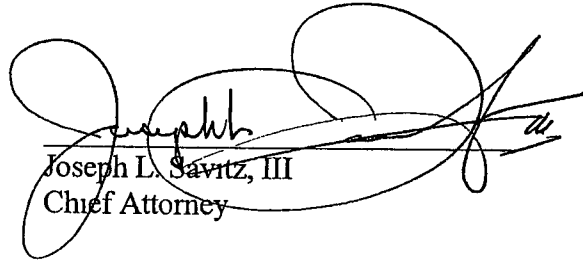
Both self-defense and the lesser included offense of voluntary manslaughter should be submitted to the jury if supported by the evidence The rationale for this rule is that the jury may fail to find all the elements of self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter

373 S E 2d at 597 (citations omitted) A charge on voluntary manslaughter is required where (as here) the defendant testifies that the deceased engaged in “some overt, threatening act” which placed him in fear of an imminent assault *State v Judge*, 208 S C 497, 38 S E 2d 715, 719 (1946), compare *State v Rogers*, 320 S C 520, 466 S E 2d 360 (1996) In the final analysis, the trial judge erred by listening to the Solicitor self-defense and voluntary manslaughter are not mutually exclusive as a matter of law *Gilliam*, see, also, *State v Wiggins*, 330 S C 538, 500 S E 2d 489 (1998)

—

Since the evidence supported a charge on voluntary manslaughter, the trial judge committed reversible error by failing to include that lesser-included offense in his instructions to the jury. This Court should reverse Clea's conviction for murder and possession of a firearm during the commission of a violent crime and remand for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Joseph L. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT

This 1st day of December, 2006

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**THIS OPINION HAS NO PRECEDENTIAL VALUE IT SHOULD
NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY
PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v

Reginald Tyrell Clea,

Appellant

Appeal From Sumter County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No 2007-UP-552
Submitted December 1, 2007 – Filed December 14, 2007

AFFIRMED

Chief Attorney Joseph L. Savitz, III, South Carolina Commission
of Indigent Defense, of Columbia, for Appellant

Attorney General Henry D. McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General Donald J. Zelenka, Assistant Attorney
General Melody J. Brown, all of Columbia, and Solicitor
C. Kelly Jackson, of Sumter, for Respondent

PER CURIAM Reginald Tyrell Clea (Clea) was convicted of one count of murder and possession of a firearm during the commission of a crime of violence. He was acquitted on a second murder charge. On appeal, Clea argues the trial judge erred in not charging the jury on the lesser included offense of voluntary manslaughter. We affirm.¹

FACTS

Clea admittedly shot and killed Charles Jackson (Jackson) and James Pollard (Pollard). John Lee Powell (Lee) testified he was with Pollard the day of the shootings. Pollard picked Lee up earlier in the day, and they were later joined by Maurice Young (Young). They drove together to Rembert to find Clea and buy doghouses from him. Pollard and Clea had shared a residence prior to the shootings and had bred dogs. Clea left several dogs at Pollard's new home, and the dogs did not have doghouses. Pollard paid Clea for the doghouses, and all four men amicably loaded them onto Clea's truck.

The group drove to Pollard's new home and, as they were unloading, Jackson arrived in his car. Jackson spoke cordially with Lee and then approached Pollard. The group continued to interact in a friendly manner when Jackson called Clea over to Jackson's car so he could "show" him "something." Lee said Jackson's tone was good natured. When Lee heard the first shots, his back was to Clea, but he turned to see Clea shooting at Jackson. He asked Clea why he was shooting at Jackson, and Clea repeatedly answered that Jackson had a gun. Clea fired again as Jackson crawled through his car to exit the passenger side. Lee told Clea to stop shooting, but Clea again replied Jackson had a gun. Lee never saw Jackson with a gun, nor did he hear shots come from Jackson's direction.

Pollard, who was near the car, asked Clea why he was shooting at Jackson and Clea turned towards him. As Pollard walked towards Clea repeating his question, Clea started shooting at Pollard. Lee did not see a weapon on Pollard and had no indication he was armed. He heard Clea ask Jackson to show his hand, but Lee was unable to observe Jackson who now lay on the ground on the opposite side of the car. Jackson yelled numerous

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

times for Pollard to tell Clea he didn't have a gun, however Pollard had already been shot. After Lee and Young left the yard, Lee heard another set of gunfire.

Young testified to being at Pollard's home unloading the doghouses. Soon after Jackson arrived, he heard gunshots and turned to see Clea shoot at Jackson. He didn't see Jackson shoot back and saw no gun other than Clea's. After the first shots, he recalled Clea said Jackson was going to get a gun. Jackson stated, "no, I ain't got no gun, I ain't got no gun." Young heard Lee tell Clea to put the gun down, and he heard more shots as he left the yard.

According to Clea's testimony, he sold the doghouses to Pollard as a last detail from their having lived together. He explained he had previous difficulties with the victims and knew both had reputations for violence. The day of the shooting, Pollard and Young stopped him on the road to discuss the doghouses. No one was upset and no "cross words" were exchanged. Clea helped load the doghouses onto his truck, drove them to Pollard's residence, and unloaded one with Pollard's help. Jackson drove up shortly afterwards, and they worked together to unload another doghouse.

When Jackson told Clea he needed to talk with him, Clea reported he was not suspicious at first. But, as he walked toward the car and his truck, "a chill went up [his] back." Because he did not want to speak with Jackson, he continued towards his truck "so [he] could leave." As Clea was about to sit in the truck, he saw Jackson reach into the car's backseat and pick up a shoebox. Jackson continued to call Clea to the car. While Clea "was stalling putting Vaseline on my lips because it was cold," Jackson began "talking aggressively." Clea thought Jackson was going to get a gun from the box. He told Jackson, "if you want me to come over there, why you don't come to me. And that's when [Jackson] be like, nah, I want you to come to me. And that's when I slammed my backseat back, threw on my jacket" and reached for the loaded assault rifle.

Clea said he couldn't leave because no safe exit from the yard was available. "[A]t first," he didn't think Jackson had a gun, but, when he saw that Jackson "was clamping on to something," he thought "like, man, forget that" and shot at the front of the car in which Jackson sat. He called these

first shots "warning signs," and he told Jackson "to let [him] leave from the scene because [he] was about to leave anyway " When Clea demanded "let me see your hand," Jackson did not comply The solicitor asked Clea

Q Was there anything that he did that provoked you into a fight with him? Is there anything he did to make you mad? Did he call you a name or do anything like that that got you heated up?

A What got me heated up was he wouldn't show me his hands

Q All right, what I'm trying to ask you is if there was any hostility, if there was anything that got you mad at him, angry at him, outraged at him?

A I never said I was mad

Q What's that?

A Whoever said I was mad?

Q I'm asking you that Are you telling me you weren't mad?

A No, I was just precautious

Q Did Mr Pollard ever say anything or do anything to you that made you mad or angry?

A Yeah, when he kept hollering to me and looking for me, wanting me to give an explanation about something that I didn't had no — that I didn't had no right to give him an explanation about

Q I'm asking you if Mr Jackson – if Mr Pollard on this day ever said anything to you or did anything to you that got you mad, that got you outraged?

A No, sir

Q Did he ever provoke you by calling you a name or by doing anything else, provoke you into the point where you just said you had to shoot him for no other reason?

A Yes.

Q How did he provoke you?

Ⓐ By reaching into his waist

Q That made you mad?

A No, it didn't make me mad but I'm not going to let nobody draw down on me and my life is in danger

Q So you weren't made [sic] at him, you weren't outraged at him, you were just trying to defend yourself, that's your testimony?

A Exactly

Q How many steps did [Pollard] get towards you before you dropped him?

A About three or four

Q And then you dropped him He didn't have anything in his hands, did he?

A Nah, but as he was walking he was reaching in his waist

Q Did he have anything in his hands?

A I couldn't see his hands

Q Did you ever see his hands?

A How could I?

Q Did you ever see anything in his hands?

A No

Jackson was shot three times and Pollard was shot nine times. Twenty-seven cartridges were recovered from the scene. Twenty-one were determined to have been fired from Clea's gun. The remaining six cartridges, though inconclusive, were the proper caliber for the same gun. No weapons were found in the yard or in any vehicles. Gunshot residue testing on Pollard's right hand indicated lead counts higher than would be expected had he fired a gun. The SLED technician found it more consistent with a hand being on the muzzle end of a gun. From the residue found on Jackson's hand, the technician reasoned he either could have fired a gun or a gun was fired in his vicinity. Testing of the shoebox was positive suggesting a gun had been placed in the box after being fired or that the box was open when a gun was fired nearby.

Defense counsel requested a charge on voluntary manslaughter arguing the appearance of danger or the gesture of reaching for a weapon can adequately provide the necessary provocation. The State objected stating no evidence showed sudden heat of passion or sufficient legal provocation. After the trial judge considered the issue and reviewed the case law overnight, he ruled against the request finding no sudden heat of passion. He explained

[F]or the Court to charge voluntary manslaughter, the law requires a sudden heat of passion brought about upon sufficient legal provocation

I find in this instance that the evidence does not support a charge of voluntary manslaughter. That the evidence presented by the Defense best supports a self-defense charge in that there is no evidence of any sudden heat of passion. That the case law required some degree of assault, and in addition to that, something that might have provoked the killing.

That in this case, at best, the Defendant's testimony concerning the – what he thought was a presence of a gun, indicates possibly some provocation but it does not conjure up any sudden heat of passion. That the prior incidents between parties could not create a sudden heat of passion, but any passion regarding that, in addition to the Defendant's testimony about firing the shots regarding warning the Defendant [sic] or something of that nature, in and of itself does not indicate any sudden heat of passion and I'm not going to charge manslaughter.

STANDARD OF REVIEW

The law to be charged must be determined from the evidence presented at trial. State v Childers, 373 S C 367, 373, 645 S E 2d 233, 235 (2006), State v Cole, 338 S C 97, 101, 525 S E 2d 511, 512 (2000). “Due process requires that a lesser included offense be charged when the evidence warrants it but only if the evidence would permit a jury rationally to find the defendant guilty of the lesser offense.” State v Small, 307 S C 92, 94, 413 S E 2d 870, 871 (Ct App 1992). “In determining whether the evidence requires a charge on voluntary manslaughter, this Court must view the facts in the light most favorable to the defendant.” Childers, 373 S C at 373, 645 S E 2d at 235. To justify a court's eliminating the offense of manslaughter, it should clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. Id

DISCUSSION

Clea argues he was entitled to a charge of voluntary manslaughter given the facts of this case. We disagree.

“Voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing.” State v. Smith, 363 S.C. 111, 609 S.E.2d 528 (Ct. App. 2005) (citing State v. Cooley, 342 S.C. 63, 67, 536 S.E.2d 666, 668 (2000)). “The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.” State v. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996) (citing State v. Byrd, 323 S.C. 319, 474 S.E.2d 430 (1996)). When there is no evidence of sudden heat of passion upon sufficient legal provocation, the court’s refusal to instruct the jury on voluntary manslaughter is proper. Id.

Viewing the evidence in the light most favorable to Clea, we find he did not act in the sudden heat of passion. Clea testified that, in the moments before the shooting, he was “suspicious,” walked away from the victims, stalled at his truck, negotiated with Jackson to come to his truck to speak, and asked to be allowed to leave. We find these statements demonstrate cool reflection. Clea explained he was “heated up” by Jackson’s not showing his hands. But, further strengthening our determination, he said he was “just precautious,” and not mad. Although he said Pollard provoked him by reaching into his waist, he again asserted he was not mad but simply defending himself. See State v. Walker, 324 S.C. 257, 478 S.E.2d 280 (1996) (no sudden heat of passion where defendant tried to diffuse argument and give victim time to cool off), State v. Rogers, 275 S.C. 485, 272 S.E.2d 792 (1980) (defendant’s testimony he was not mad when he shot wife and stepdaughter, together with his insanity defense, precluded voluntary manslaughter charge), cf. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998) (evidence tended to show defendant acted in sudden heat of passion).

where he was in a heated argument with victim and feared for his life because victim threatened him), State v Lowry, 315 S C 396, 434 S E 2d 272 (1993) (holding a voluntary manslaughter charge was necessary where defendant and victim were in a heated argument and victim was about to initiate a physical encounter when shooting occurred), State v Davis, 278 S C 544, 298 S E 2d 778 (1983) (holding voluntary manslaughter charge was proper where a witness testified that defendant and victim had been fighting)

Because there is clearly no evidence to show Clea acted in the sudden heat of passion, we will not reach the issue of whether sufficient legal provocation existed

CONCLUSION

The trial judge properly found Clea did not act in the sudden heat of passion and did not err in refusing to charge the lesser included offense of voluntary manslaughter. Accordingly, Clea's convictions are

AFFIRMED

ANDERSON, SHORT AND WILLIAMS, JJ , concur

COPY

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SUMTER COUNTY
Court of Common Pleas**

G Thomas Cooper, Jr , Circuit Court Judge

Case No 2008-CP-43-1858

State of South Carolina,

Respondent,

V

Reginald Tyrell Clea

Appellant,

NOTICE OF APPEAL

Reginald Tyrell Clea, #309063, appeals the Order Dismissal of the Honorable G Thomas Cooper, Jr , Presiding Circuit Court Judge of the Third Judicial Circuit, dismissing the Application for Post-Conviction Relief filed on August 7, 2008, and amended March 18, 2009


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J. D. H. R. J.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

G Thomas Cooper, Jr , Circuit Court Judge

Case No 2008-CP-43-1858

State of South Carolina,

Respondent,

V

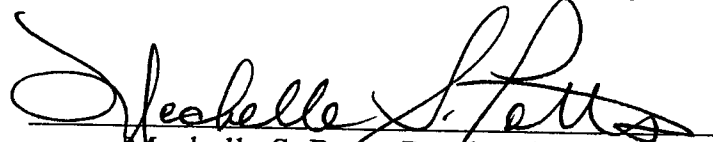
Reginald Tyrell Clea,

Appellant,

PROOF OF SERVICE

I certify that I have served a copy of the Appellant's Notice of Appeal on counsel for the Respondent by depositing a copy of it in the United States Mail, certified mail, postage prepaid on February 22 , 2010, to

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