

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Clarendon County

William Jeffrey Young, Circuit Court Judge

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S.C. Supreme Court

LAMONT RAPHAEL BRIGGS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213670

A P P E N D I X

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STATE OF SOUTH CAROLINA)
)

COUNTY OF SUMTER

THE STATE OF SOUTH CAROLINA,)
PLAINTIFFS

VS.)

DOCKET NO.

) 06-GS-14-76

RALPHAEL LAMONT BRIGGS,
DEFENDANT)

MARCH 21, 2006
MANNING, S.C.

B E F O R E:

THE HONORABLE JOHN M. MILLING, JUDGE.

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

MR. R. FERRELL COTHRAN,
ASSISTANT SOLICITOR FOR THE STATE

MR. HARRY LESLIE DEVOE, JR.,
ATTORNEY FOR DEFENDANT

MARGARET T. SULLIVAN,
COURT REPORTER

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1 THE COURT: LADIES AND GENTLEMEN, IF YOU WILL PLEASE
2 GIVE ME YOUR ATTENTION. THE STATE HAS CHARGED
3 MR. RALPHAEL LAMONT BRIGGS IN INDICTMENT 2006-GS-14-76
4 WITH TWO COUNTS. COUNT ONE IS A CHARGE OF MURDER. COUNT
5 TWO IS A CHARGE OF POSSESSION OF A FIREARM DURING THE
6 COMMISSION OF A VIOLENT CRIME. IN COUNT 1, IT IS ALLEGED
7 THAT RALPHAEL LAMONT BRIGGS DID IN CLARENDON COUNTY ON OR
8 ABOUT SEPTEMBER 5TH 2005, DID FELONIOUSLY, WILFULLY AND
9 WITH MALICE AFORETHOUGHT, KILL ONE WESLEY ANTONIO HOUSE BY
10 MEANS OF SHOOTING HIM, AND THAT THE SAID WESLEY ANTONIO
11 HOUSE DID DIE AS A PROXIMATE RESULT THEREOF. IT IS
12 ALLEGED IN COUNT 2, THAT WHILE, RALPHAEL LAMONT BRIGGS WAS
13 HERE IN CLARENDON COUNTY ON OR ABOUT SEPTEMBER 5, 2005,
14 THAT HE WAS IN POSSESSION OF AND DID VISIBLY DISPLAY A
15 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. THAT
16 CRIME BEING MURDER.

17 LADIES AND GENTLEMEN, I NEED TO KNOW IF ANY OF YOU
18 HAVE ANY INFORMATION ABOUT THIS ALLEGED EVENT INVOLVING
19 THE DEFENDANT, MR. BRIGGS, AND THE VICTIM, MR. HOUSE,
20 OTHER THAN WHAT I'VE TOLD YOU TODAY. IF ANYBODY KNOWS
21 ANYTHING ELSE ABOUT THIS SITUATION THAT IS SUPPOSED TO
22 HAVE HAPPENED BACK ON SEPTEMBER 5, 2005, INVOLVING THESE
23 TWO PEOPLE, IF YOU DO, IF YOU KNOW ANYTHING ABOUT IT,
24 HEARD ANYTHING ABOUT IT, IF YOU WOULD PLEASE STAND AT
25 THIS TIME.

1 IF YOU WOULD PLEASE GIVE ME YOUR NAME AND NUMBER.

2 THE JUROR: ANTEE PARSON. NO. 83.

3 THE COURT: MR. PARSON, IF YOU WOULD PLEASE COME
4 FORWARD AND LET ME GET SOME ADDITIONAL INFORMATION FROM
5 YOU. HOW ARE YOU?

6 THE JUROR: FINE.

7 THE COURT: MR. PARSON, YOU SAY YOU KNOW SOMETHING
8 ABOUT IT?

9 THE JUROR: I JUST KNOW WHAT I HEARD. AND I KNOW
10 HIM.

11 THE COURT: YOU KNOW WHICH HIM, BRIGGS?

12 THE JUROR: BRIGGS.

13 THE COURT: AND DID YOU KNOW THE OTHER FELLOW?

14 THE JUROR: I KNOW BOTH.

15 THE COURT: YOU KNOW BOTH PARTIES.

16 THE JUROR: YES.

17 THE COURT: AND YOU'VE JUST HEARD SOME STUFF OUT ON
18 THE STREET?

19 THE JUROR: YES.

20 THE COURT: NOW OF COURSE WHEN SOMEBODY COMES IN TO A
21 COURT SETTING, IT'S THE BURDEN ON THE STATE TO PROVE GUILT
22 BEYOND A REASONABLE DOUBT. THE ONLY THING THAT REALLY
23 COUNTS AS FAR AS EVIDENCE, BECAUSE STUFF ON THE STREET
24 ISN'T EVIDENCE; IS WHAT YOU HEAR FROM THE WITNESS STAND,
25 AND WHAT MAY BE INTRODUCED IN THE WAY OF EXHIBITS. CAN

1 YOU TAKE YOUR MIND AND JUST THROW AWAY WHAT YOU HEARD
2 ABOUT ON THE STREET, AND START OVER LIKE A CLEAN
3 BLACKBOARD OR A CLEAN SLATE AND BASE YOUR DECISION ONLY ON
4 WHAT YOU HEAR IN THE COURTROOM AND THE WITNESSES UNDER
5 OATH?

6 THE JUROR: YES, SIR.

7 THE COURT: YOU WON'T BE PREJUDICED FOR OR AGAINST
8 EITHER SIDE?

9 THE JUROR: NO, SIR.

10 THE COURT: VERY GOOD. IF YOU CAN DO THAT, I WILL
11 LET YOU STAY WITH US. THANK YOU, YOU CAN HAVE A SEAT
12 BACK. MA'AM, IF YOU WILL COME FORWARD.

13 THE JUROR: TRACY LAWSON, 63.

14 THE COURT: TRACY LAWSON, NO. 63. MS. LAWSON, WHAT
15 DO YOU KNOW ABOUT THE SITUATION?

16 THE JUROR: I JUST HEARD ABOUT IT. AND THE GUY THAT
17 GOT KILLED WAS MY COUSIN.

18 THE COURT: WAS HE SOMEONE YOU SAW ON A REGULAR
19 BASIS?

20 THE JUROR: I SAW HIM REGULAR.

21 THE COURT: OKAY. SO YOU KNOW BOTH OF THEM.

22 THE JUROR: YES, SIR.

23 THE COURT: AND YOU HAVE HEARD SOME THINGS ON THE
24 STREET?

25 THE JUROR: YES, SIR.

1 THE COURT: MS. LAWSON, OF COURSE, THE THINGS ON THE
2 STREET ARE JUST THINGS ON THE STREET. WHEN SOMEBODY IS
3 CHARGED WITH A CRIME, THE LAW SAYS THAT THEY ARE INNOCENT
4 UNTIL THE STATE PROVES GUILT BEYOND A REASONABLE DOUBT
5 THROUGH TESTIMONY ON THE STAND AND THROUGH EXHIBITS THAT
6 MAY COME INTO THE RECORD IN THE CASE; THAT YOU DON'T MAKE
7 THESE DECISIONS JUST BASED ON STREET TALK. EVEN THOUGH
8 THIS WAS YOUR COUSIN AND YOU KNOW BOTH PARTIES, WOULD SEE
9 THEM ON A REGULAR BASIS, CAN YOU SET ASIDE WHAT YOU HAVE
10 HEARD AND JUST HAVE A CLEAN SLATE, AND LISTEN AND MAKE A
11 DECISION ONLY ON WHAT IS PRESENTED IN THE COURTROOM,
12 WITHOUT BEING FOR OR AGAINST EITHER SIDE? OR WOULD YOUR
13 RELATIONSHIP WITH THESE PARTIES KEEP YOU FROM BEING ABLE
14 TO DO THAT?

15 THE JUROR: I WOULD BE ABLE TO DO IT.

16 THE COURT: YOU WOULD BE ABLE TO DO THAT. VERY GOOD.

17 MR. DEVOE: COULD I ASK, YOUR HONOR, I BELIEVE ONE OF
18 THE WITNESSES FOR THE STATE IS NAMED LAWSON ALSO.

19 THE COURT: WHO IS THE POTENTIAL WITNESS?

20 MR. COTHRAN: DOMINIQUE LAWSON.

21 THE JUROR: THAT'S KIN.

22 THE COURT: THAT'S KIN? WHAT KIN IS DOMINIQUE?

23 THE JUROR: COUSIN ALSO. THEIR GRANDMOTHER WAS MY
24 AUNT.

25 THE COURT: NOW EVIDENTLY HE MAY END UP BEING A

1 WITNESS IN THE CASE. EVEN IF HE IS A WITNESS, CAN YOU
2 JUST TREAT HIM LIKE ANY OTHER WITNESSES AND EVALUATE THE
3 TESTIMONY AND MAKE A DECISION?

4 THE JUROR: YES, SIR.

5 THE COURT: THANK YOU, MS. LAWSON, YOU MAY HAVE A
6 SEAT WITH THE REST.

7 THE COURT: AND YOUR NAME?

8 THE JUROR: WILLIAMS. TAMMY WILLIAMS.

9 THE COURT: WILLIAMS?

10 THE CLERK: 118.

11 THE COURT: AND, MS. WILLIAMS, WHAT INFORMATION DO
12 YOU HAVE?

13 THE JUROR: MR. HOUSE WAS MY FIRST COUSIN.

14 THE COURT: HAD YOU HEARD ANYTHING ABOUT WHAT
15 HAPPENED OR SUPPOSEDLY HAPPENED?

16 THE JUROR: YES, SIR.

17 THE COURT: STREET TALK?

18 THE JUROR: UH-HUH. (AFFIRMATIVE.)

19 THE COURT: NOW OF COURSE WHENEVER SOMEBODY IS
20 CHARGED WITH A CRIME AND THE LAW SAYS THEY'RE INNOCENT,
21 THEY'RE NEVER GUILTY UNLESS AFTER ALL THE EVIDENCE IS IN,
22 ALL 12 JURORS BELIEVE THE STATE'S PROVEN THE CASE BEYOND A
23 REASONABLE DOUBT. SOMETIMES PEOPLE BEING RELATED TO THEM
24 MAKES A DIFFERENCE TO THEM. SOMETIMES IT DOESN'T MAKE A
25 DIFFERENCE TO THEM. BUT YOU CAN'T COME IN AND BE A GOOD

1 JUROR IF YOU'RE GOING TO BE ALREADY HAVING YOUR MIND MADE
2 UP IN ANY FASHION. YOU ALMOST JUST HAVE TO LIKE A CLEAN
3 SLATE, WIPE IT CLEAN AND START OVER AGAIN, AND BASE YOUR
4 DECISION ONLY ON WHAT'S PRESENTED IN COURT. CAN YOU DO
5 THAT, OR ARE YOU GOING TO BE AFFECTED BY THE FACT THAT
6 YOU'VE GOT A RELATIONSHIP HERE?

7 THE JUROR: I THINK I'LL BE AFFECTED.

8 THE COURT: YOU THINK YOU WILL BE AFFECTED.

9 THE JUROR: UH-HUH. (AFFIRMATIVE.)

10 THE COURT: WELL THAT'S WHAT I NEED TO KNOW. I'M
11 NOT EXCUSING YOU EXCUSING YOU.

12 THE JUROR: OKAY.

13 THE COURT: BUT I AM GOING TO HAVE YOUR NAME TAKEN
14 OUT OF THE LIST OF PEOPLE WHO MIGHT SERVE AS JURORS IN
15 THIS FIRST CASE. SO IF YOU WILL JUST HAVE A SEAT. AND
16 DON'T SAY ANYTHING AROUND YOU ABOUT OPINIONS OR ANYTHING
17 YOU MAY HAVE.

18 THE JUROR: OKAY.

19 THE COURT: THANK YOU. 118 IS BEING EXCUSED. MR.
20 BRIGGS, I AM GOING TO ASK IF YOU WILL, IF YOU WILL JUST
21 STAND UP AND TURN AROUND AND FACE THE JURY PANEL FOR A
22 MOMENT. THANK YOU, VERY MUCH. YOU MAY BE SEATED.

23 LADIES AND GENTLEMEN, THIS IS MR. RALPHAEL LAMONT
24 BRIGGS. I NEED TO KNOW IF ANY OF YOU ARE RELATED TO HIM
25 BY BLOOD OR MARRIAGE. I NEED TO KNOW IF YOU KNOW HIM OUT

1 IN THE COMMUNITY. IF YOU HAVE CONTACT WITH HIM THROUGH
2 CIVIL, CHARITABLE, RELIGIOUS, SOCIAL OR SOME OTHER TYPE
3 OF ORGANIZATION. IF HE LIVES IN YOUR NEIGHBORHOOD, OR IF
4 YOU HAVE CONTACT WITH HIM THROUGH WORK OR IN SOME WAY.
5 NOW A COUPLE OF YOU ALREADY HAVE TOLD ME THAT YOU KNEW
6 THE PARTIES WHO WERE INVOLVED IN THIS MATTER. SO THOSE
7 INDIVIDUALS DON'T NEED TO STAND AGAIN. BUT ANYBODY ELSE
8 HAVE ANY TYPE OF CONTACT WHATSOEVER WITH MR. BRIGGS? IF
9 YOU DO, IF YOU WILL PLEASE STAND.

10 (THEREUPON, NO RESPONSE.)

11 THE COURT: THANK YOU. LET THE RECORD REFLECT THAT
12 NO ONE STOOD. LADIES AND GENTLEMEN, TO THE EXTENT THAT
13 YOU HAVE NOT PREVIOUSLY IDENTIFIED OR GIVEN ME THIS
14 INFORMATION, ARE ANY OF YOU RELATED BY BLOOD OR MARRIAGE
15 TO WESLEY ANTONIO HOUSE? DID YOU KNOW HIM OUT IN THE
16 COMMUNITY? DID YOU WORK WITH HIM? HAVE CONTACT WITH HIM
17 THROUGH CIVIC, CHARITABLE, RELIGIOUS, SOCIAL
18 ORGANIZATIONS? KNOW HIM IN THE COMMUNITY, OR IN SOME WAY
19 HAVE SOME KNOWLEDGE OF HIM? AS I SAY, A COUPLE OF YOU
20 HAVE ALREADY IDENTIFIED THAT INFORMATION FOR ME. IF ANY
21 OTHERS HAVE ANY KNOWLEDGE OF OR HAD CONTACT WITH MR. HOUSE
22 IF YOU KNOW HIM, PLEASE STAND.

23 (THEREUPON, NO RESPONSE.)

24 THE COURT: THANK YOU. LET THE RECORD REFLECT THAT
25 NO ONE STOOD. LADIES AND GENTLEMEN OF THE JURY, I AM

1 GOING TO CALL OUT SOME NAMES OF POTENTIAL WITNESSES. I
2 MAY MISPRONOUNCE THESE NAMES, AND IF I DO, THE ATTORNEYS
3 WILL PROBABLY GIVE ME THE CORRECT PRONUNCIATION. THESE
4 ARE INDIVIDUALS WHO MAY APPEAR AS WITNESSES. IT DOESN'T
5 MEAN THEY WILL NECESSARILY APPEAR AS WITNESSES. BUT WE
6 ALWAYS TRY TO GET THE MAXIMUM NUMBER OF INDIVIDUALS SO
7 THAT WE WILL HAVE A CHANCE TO PRESENT THESE NAMES TO YOU
8 FOR YOUR CONSIDERATION JUST TO SEE IF ANY OF YOU KNOW
9 THEM.

10 BUT LADIES AND GENTLEMEN, I AM GOING TO READ OUT
11 SOME 10 OR 12 NAMES. AND IF YOU ARE RELATED BY BLOOD OR
12 MARRIAGE TO ANY OF THESE INDIVIDUALS, IF YOU KNOW THEM IN
13 THE COMMUNITY, HAVE CONTACT WITH THEM THROUGH WORK,
14 CIVIC, CHARITABLE, SOCIAL, RELIGIOUS OR SOME OTHER TYPE
15 OF ORGANIZATION, OR YOU JUST KNOW THEM IN GENERAL AND
16 WOULD STOP AND SPEAK TO THEM IF YOU SAW THEM ON THE
17 STREET, IF YOU HAVE THAT KIND OF ASSOCIATION WITH THEM,
18 IF YOU WOULD PLEASE STAND AND THEN I WILL COME BACK TO
19 YOU AND GET THE DETAILS FROM YOU ABOUT YOUR RELATIONSHIP.
20 BUT POTENTIAL WITNESSES IN THIS MATTER ARE, A DAN CUTLER,
21 ANTHONY RAGING, SHEROD GREEN, A BARBARA PROCTOR, A
22 MONIQUE RHAMES, A DOMNIQUE LAWSON, A CHRISTY HAILE, A
23 P.O. HAMM, A KATIE GREEN, AND AARON PRESNELL WHO IS AN
24 M.D., A BAMADAL APATHAGO WHO IS A MEDICAL DOCTOR OUT OF
25 CHARLESTON. A JAMES EARL GREEN, AND AN OPISA AARON

1 BROWN. I WILL GO WITH THE LADIES FIRST. YES, MA'AM, IF
2 YOU WILL GIVE ME YOUR NAME AND JURY NUMBER.

3 THE JUROR: TRACY LAWSON, 63.

4 THE COURT: AND I BELIEVE YOU INDICATED TO ME
5 PREVIOUSLY THAT YOU WERE A RELATIVE OF DOMINIQUE LAWSON,
6 IS THAT CORRECT?

7 THE JUROR: YES, SIR.

8 THE COURT: ANY OTHER POTENTIAL JURORS YOU RECOGNIZE?

9 THE JUROR: NO, SIR.

10 THE COURT: SO I AM SORRY, I SAID JURORS BUT I MEANT
11 WITNESSES AS I SAW YOU LOOK AROUND. ANY OF THESE OTHER
12 NAMES I CALLED OUT, DID YOU RECOGNIZE ANY OF THEM?

13 THE JUROR: I JUST KNOW SOME NAMES, BUT I DON'T KNOW
14 THE PERSON.

15 THE COURT: WHICH ONES DID YOU RECOGNIZE?

16 THE JUROR: KATIE GREEN AND DOMINIQUE LAWSON.

17 THE COURT: AND WOULD THE FACT THAT YOU RECOGNIZE
18 THOSE NAMES AS BEING SOME PEOPLE YOU'VE HEARD OUT IN THE
19 COMMUNITY AFFECT IN ANY WAY YOUR ABILITY TO BE FAIR AND
20 IMPARTIAL?

21 THE JUROR: NO, SIR.

22 THE COURT: THANK YOU, MA'AM. YOU MAY BE SEATED, MS.
23 LAWSON.

24 THE COURT: YES, SIR. THE GENTLEMAN IN THE SOLID
25 SHIRT, YOUR NAME AND NUMBER.

1 THE JUROR: TRENT ATKINSON NO. 2.

2 THE COURT: MR. ATKINSON, WHO DID YOU RECOGNIZE?

3 THE JUROR: MS. BARBARA PROCTOR.

4 THE COURT: AND DO YOU KNOW BARBARA PROCTOR FROM OUT
5 IN THE COMMUNITY OR?

6 THE JUROR: I MARRIED HER NIECE.

7 THE COURT: MARRIED HER NIECE?

8 THE JUROR: YES, SIR.

9 THE COURT: AND WOULD THE FACT THAT YOU HAVE MARRIED
10 HER NIECE AFFECT IN ANY WAY YOUR ABILITY TO BE FAIR AND
11 IMPARTIAL TO BOTH SIDES IN CONNECTION WITH THE TRIAL OF
12 THIS CASE?

13 THE JUROR: NO, SIR.

14 THE COURT: THANK YOU, MR. ATKINSON, YOU CAN BE
15 SEATED. YES, SIR, YOUR NAME AGAIN FOR THE RECORD.

16 THE JUROR: BOBBY HICKS 50.

17 THE COURT: MR. HICKS, WHO DID YOU RECOGNIZE?

18 THE JUROR: BARBARA PROCTOR.

19 THE COURT: AND IS SHE SOMEONE YOU JUST KNOW OUT IN
20 THE COMMUNITY OR DID YOU MARRY HER OTHER NIECE?

21 THE JUROR: JUST FRIENDS.

22 THE COURT: AND WOULD THE FACT THAT Y'ALL ARE
23 FRIENDS AFFECT IN ANY WAY YOUR ABILITY TO BE FAIR AND
24 IMPARTIAL TO BOTH SIDES?

25 THE JUROR: NO, SIR.

1 THE COURT: THANK YOU, SIR. YOU MAY BE SEATED.

2 THE COURT: LADIES AND GENTLEMEN, FROM TIME TO TIME
3 THERE ARE INDIVIDUALS WHO HAVE HAD A SITUATION OCCUR TO
4 EITHER THEMSELVES OR A FAMILY MEMBER OR A CLOSE FRIEND AND
5 WHERE YOU HAVE -- THAT FAMILY MEMBER OR CLOSE FRIEND, YOU
6 YOURSELF HAVE SUFFERED SERIOUS INJURIES OR PERHAPS DEATH
7 HAS OCCURRED AT THE HANDS OF SOMEONE ELSE. OR PERHAPS
8 YOU HAVE BEEN ROBBED, OR YOUR LIFE HAS BEEN THREATENED.
9 PERHAPS DRUGS HAVE BEEN INVOLVED IN THAT SITUATION.
10 PERHAPS THEY HAD -- PERHAPS WEAPONS HAVE BEEN INVOLVED.
11 PERHAPS THEY HADN'T -- BUT THESE ARE SITUATIONS THAT HAVE
12 OCCURRED TO YOU THAT HAVE BEEN TRAUMATIC. MAY EVEN
13 INVOLVE YOUR HOME BEING BROKEN INTO AND YOU BEING THERE.
14 YOU HAVE BEEN SORT OF TRAUMATIZED BY THESE TYPES OF
15 EVENTS, OR A FAMILY OR A CLOSE PERSONAL FRIEND WAS TELLING
16 YOU ABOUT WHAT HAPPENED TO THEM.

17 IF YOU FALL INTO ANY OF THOSE CATEGORIES WHERE THESE
18 TYPES OF EVENTS HAVE HAPPENED TO YOU YOURSELF, OR TO SOME
19 FAMILY MEMBER OR CLOSE FRIEND, WOULD YOU PLEASE STAND?

20 (THEREUPON, NO RESPONSE.)

21 THE COURT: THANK YOU. LET THE RECORD REFLECT THAT
22 NO ONE STOOD. SOLICITOR, IF YOU WILL IDENTIFY YOURSELF
23 AND THOSE WHO WILL BE ASSISTING IN THE PROSECUTION.

24 MR. COTHRAN: MY NAME IS FERRELL COTHRAN. I'M
25 ASSISTANT SOLICITOR HERE IN CLARENDON COUNTY.

1 THE COURT: MR. DEVOE, IF YOU WILL IDENTIFY YOURSELF
2 AND ANYBODY WHO WILL BE ASSISTING YOU WITH THE DEFENSE.

3 MR. DEVOE: I AM HARRY DEVOE. I AM ONE OF TWO
4 PART-TIME PUBLIC DEFENDERS IN CLARENDON COUNTY.

5 THE COURT: LADIES AND GENTLEMEN, IS ANYONE PRESENTLY
6 BEING REPRESENTED BY MR. COTHRAN OR MR. DEVOE? DO YOU
7 KNOW THEM OUT IN THE COMMUNITY? HAVE ANY CONTACT WITH
8 THEM THROUGH CIVIC, CHARITABLE, RELIGIOUS, SOCIAL
9 ORGANIZATIONS? KNOW THEM IN SUCH A WAY AS IF YOU SAW THEM
10 ON THE STREET, YOU WOULD STOP AND SPEAK TO THEM? HAVE ANY
11 OF YOU EVER BEEN IN ESSENCE BEEN REPRESENTED BY THEM IN
12 THEIR PRACTICE, EITHER INDIVIDUALLY OR THROUGH THE
13 POSITIONS THAT THEY HOLD AS PUBLIC DEFENDER OR SOLICITOR,
14 EITHER CURRENTLY OR IN THE PAST? IF YOU HAVE ANY OF THOSE
15 TYPES OF CONTACTS WITH EITHER OF THESE GENTLEMEN, WOULD
16 YOU PLEASE STAND?

17 I WILL START BACK WITH YOU, MR. ATKINSON, WHO IS IT
18 YOU RECOGNIZE?

19 THE JUROR: MR. HARRY.

20 THE COURT: YOU JUST KNOW HIM OUT IN THE COMMUNITY?

21 THE JUROR: WE LEASE LAND TO HUNT FROM HIS WIFE.

22 THE COURT: AND WOULD THE FACT THAT YOU HAVE THAT
23 LEASE ARRANGEMENT FOR HUNTING RIGHTS ON THE FARM PROPERTY
24 AFFECT IN ANY WAY YOUR ABILITY TO BE FAIR AND IMPARTIAL?

25 THE JUROR: NO, SIR.

1 THE COURT: THANK YOU, SIR, YOU MAY BE SEATED. AND,
2 MR. HICKS, WHO DID YOU RECOGNIZE?

3 THE JUROR: BOTH OF THEM.

4 THE COURT: JUST KNOW THEM OUT IN THE COMMUNITY?

5 THE JUROR: YES, SIR.

6 THE COURT: AND WOULD YOUR RELATIONSHIP WITH EITHER
7 OF THESE GENTLEMEN AFFECT IN ANY WAY YOUR ABILITY TO BE
8 FAIR AND IMPARTIAL?

9 THE JUROR: NO, SIR.

10 THE COURT: THANK YOU. MA'AM, IN THE GREEN. YOUR
11 NAME AND NUMBER.

12 THE JUROR: CYNTHIA THOMPSON, 111.

13 THE COURT: AND, MS. THOMPSON, WHO DID YOU
14 RECOGNIZE?

15 THE JUROR: MR. COTHRAN.

16 THE COURT: AND YOU HAVE -- YOU KNOW HIM OUT IN THE
17 COMMUNITY? PRIOR BUSINESS RELATIONSHIPS? HAS HE
18 REPRESENTED YOU, OR WHAT IS YOUR CONNECTION?

19 THE JUROR: I JUST MEET HIM THROUGH MY BOSS.

20 THE COURT: WOULD THAT RELATIONSHIP THAT YOU'RE
21 HAVING MET HIM, AFFECT YOUR ABILITY TO BE FAIR AND
22 IMPARTIAL?

23 THE JUROR: NO, SIR.

24 THE COURT: THANK YOU. YOU MAY BE SEATED. THE
25 GENTLEMAN NEXT TO HER, YOUR NAME AND NUMBER?

1 THE JUROR: JEFF LEE. NO. 64.

2 THE COURT: MR. LEE, WHO IS IT THAT YOU RECOGNIZE?

3 THE JUROR: MR. COTHRAN.

4 THE COURT: AND IS HE SOMEONE YOU SIMPLY KNOW OUT IN
5 THE COMMUNITY?

6 THE JUROR: YES, SIR.

7 THE COURT: AND WOULD THAT RELATIONSHIP AFFECT IN ANY
8 WAY YOUR ABILITY TO BE FAIR AND IMPARTIAL?

9 THE JUROR: NO, SIR.

10 THE COURT: THANK YOU, SIR, YOU MAY BE SEATED. YES,
11 MA'AM, IN THE DARK WITH THE JACKET. YOUR NAME AND NUMBER.

12 THE JUROR: DEBORAH HOUSE NO. 54.

13 THE COURT: MS. HOUSE, WHO IS IT THAT YOU RECOGNIZE?

14 THE JUROR: MR. DEVOE.

15 THE COURT: I'M SORRY?

16 THE JUROR: MR. DEVOE.

17 THE COURT: MR. DEVOE?

18 THE JUROR: YES.

19 THE COURT: AND YOU JUST KNOW HIM OUT IN THE
20 COMMUNITY?

21 THE JUROR: I WORK AT THE PUBLIC LIBRARY.

22 THE COURT: THROUGH THE LIBRARY?

23 THE JUROR: THROUGH THE LIBRARY.

24 THE COURT: AND WOULD THAT CONNECTION YOU HAVE WITH
25 HIM IN ANY WAY AFFECT YOUR ABILITY TO BE FAIR AND

1 IMPARTIAL?

2 THE JUROR: NO, SIR.

3 THE COURT: THANK YOU. AND I NOTICE THAT YOUR NAME
4 IS THE SAME AS ONE OF THE PARTIES INVOLVED WITH THIS
5 MATTER, BUT THERE IS NO RELATIONSHIP THERE?

6 THE JUROR: NO RELATION.

7 THE COURT: THANK YOU SO MUCH. AND, YES, MA'AM, YOUR
8 NAME AND NUMBER?

9 THE JUROR: HEATHER RAGLIN, NO. 91.

10 THE COURT: MS. RAGLIN, WHOM DID YOU RECOGNIZE?

11 THE JUROR: MR. COTHRAN. AND YOU JUST KNOW HIM OUT
12 IN THE COMMUNITY?

13 THE JUROR: YES, SIR. I HAVE SPOKEN WITH HIM ABOUT A
14 DIVORCE OF MINE.

15 THE COURT: SO HE HAS PREVIOUSLY REPRESENTED YOU?

16 THE JUROR: NO, HE IS REPRESENTING ME.

17 THE COURT: WOULD YOUR KNOWLEDGE OF EITHER OF THESE
18 PARTIES IN ANY WAY AFFECT YOUR ABILITY TO BE FAIR AND
19 IMPARTIAL?

20 THE JUROR: NO, SIR.

21 THE COURT: THANK YOU, MA'AM, YOU MAY BE SEATED. ANY
22 FURTHER INQUIRY THE STATE WOULD LIKE FOR ME TO MAKE?

23 MR. COTHRAN: NONE FROM THE STATE, YOUR HONOR.

24 THE COURT: ANYTHING FURTHER FROM THE DEFENSE?

25 MR. DEVOE: NONE FROM THE DEFENSE.

1 THE COURT: LADIES AND GENTLEMEN, WHAT IS GOING TO
2 HAPPEN NEXT IS YOUR NAMES ARE IN CAPSULES. THE BIN IS
3 GOING TO BE SPUN. BUBBA IS GOING TO CALL YOUR NAME OUT.
4 AS HE DOES SO, PLEASE BRING YOUR BELONGINGS UP TO THE
5 FRONT. AND KIND OF COME UP TO THE AREA WHERE THE MIKE IS.
6 EACH SIDE HAS THE OPPORTUNITY TO ACCEPT YOU OR TO EXCUSE
7 YOU IN CONNECTION WITH THE TRIAL OF A PARTICULAR CASE.
8 THERE WILL BE SOME OF YOU WHO WILL BE SELECTED.
9 THERE WILL BE SOME OF YOU WHO WILL BE EXCUSED. THE STATE
10 HAS THE BURDEN OF PROOF, AND THEREFORE THEY EXPRESS THEIR
11 DESIRE TO HAVE YOU OR TO EXCUSE YOU FROM A PARTICULAR
12 TRIAL FIRST. AND THEN THE DEFENSE MAKES THAT
13 DETERMINATION. IF YOU ARE ACCEPTED THEN YOU WILL BE
14 SEATED OVER HERE TO MY RIGHT IN THE JURY BOX. IF YOU ARE
15 NOT ACCEPTED ON THIS PARTICULAR CASE, YOU WILL STEP BACK
16 AND SIT WITH THE REST OF THE PANEL. NOW THERE ARE
17 VARIOUS REASONS THAT GO IN TO JURY SELECTION PROCESS.
18 AND NONE OF US EVER UNDERSTAND A REASON SOMEBODY ELSE MAY
19 ACCEPT OR EXCUSE A PARTICULAR PERSON FROM THE TRIAL OF A
20 PARTICULAR CASE. SO DON'T GET YOUR FEELINGS HURT IF
21 YOU'RE ACCEPTED. DON'T GET YOUR FEELINGS HURT IF YOU ARE
22 EXCUSED. IT'S JUST A PROCESS THAT THE PARTIES ARE GOING
23 THROUGH IN AN EFFORT TO TRY AND GET WHAT BOTH SIDES ARE
24 ENTITLED TO HAVE. AND THAT IS, A JURY THAT IS FAIR AND
25 IMPARTIAL; THAT HAS NOT MADE THEIR MIND UP ABOUT

1 ANYTHING; THAT WILL BE WILLING TO LISTEN TO THE
2 TESTIMONY, LOOK AT THE EXHIBITS AND NOT PREJUDGE
3 ANYTHING, AND ONLY MAKE A DECISION AFTER ALL THE EVIDENCE
4 HAS BEEN GIVEN TO THEM. AND AFTER THEY HAVE RECEIVED
5 LEGAL INSTRUCTION FROM THE COURT. SO PLEASE, AS YOUR
6 NAME IS CALLED, IF YOU WILL COME FORWARD.

7 MR. DEVOE: YOUR HONOR, MAY WE APPROACH?

8 THE COURT: YES, SIR.

9 (THEREUPON, ATTORNEYS APPROACH THE BENCH AND CONFER
10 WITH THE JUDGE IN THE PRESENCE OF BUT OUT OF THE HEARING
11 OF THE JURY.)

12 MR. DEVOE: I HAVE AN OBJECTION AS TO NO. 63. IN
13 THAT SHE'S TESTIFIED, SHE HAS TOLD US THAT SHE IS A FIRST
14 COUSIN OF THE VICTIM. AS WELL AS THE FIRST COUSIN OF ONE
15 OF THE STATE'S WITNESSES. AS WELL AS SHE KNOWS ONE OF MY
16 POTENTIAL WITNESSES, KATIE GREEN. THE SOLICITOR HAS
17 INFORMED ME BEFORE THAT THE HOUSE FAMILY IS REALLY UPSET
18 ABOUT THIS CASE. AND WANTS MY CLIENT BASICALLY TO GET
19 THE MAXIMUM SENTENCE AVAILABLE. AND I AM AFRAID THIS
20 WITNESS HAS INHERITED THAT SAME ATTITUDE TOWARDS MY
21 CLIENT AS THE REST OF HER FAMILY HAS. AND I THINK
22 THAT -- I KNOW THAT WE ARE TIGHT ON NUMBERS. I AM NOT
23 TRYING TO MESS UP THE JURY POOL. I THINK RELATED TO
24 PEOPLE, THE VICTIM AND ONE OF THE POTENTIAL WITNESSES, I
25 THINK IS PREJUDICIAL TO MY CLIENT.

1 THE COURT: WHAT SAYS THE STATE?

2 MR. COTHRAN: FIRST OF ALL, SHE DIDN'T SAY SHE WAS
3 FIRST COUSINS TO THE VICTIM. SHE WAS COUSIN TO THE
4 VICTIM. SHE ALSO KNOWS THE DEFENDANT IN THIS CASE AS
5 WELL AS MY OTHER WITNESS. BUT SHE SAYS SHE CAN BE FAIR
6 AND IMPARTIAL. AND I THINK THAT'S -- SHE HAS PASSED THE
7 TEST. MR. DEVOE HAS TEN STRIKES AND HE CAN USE THOSE
8 STRIKES AGAINST HER. AND I ALSO HAVE FIVE THAT I CAN
9 USE. BUT I THINK SHE NEEDS TO BE PRESENTED. AND IF HE
10 DOESN'T WANT HER, HE NEEDS TO STRIKE HER.

11 THE COURT: I HAVE TALKED TO HER. SHE WAS EXAMINED
12 BY THE COURT. APPEARED TO BE OPEN AND FORTHRIGHT. SHE
13 SAID SHE COULD IN ESSENCE MAKE A DECISION ON THE EVIDENCE
14 THAT WAS PRESENTED FROM THE WITNESS STAND, AND THE
15 EXHIBITS THAT CAME IN; THAT SHE WOULD NOT BE AFFECTED BY
16 HER RELATIONSHIP. AND THAT SHE COULD BE -- TO THE VICTIM;
17 THAT SHE WAS RELATED TO HIM, BUT THAT SHE COULD BE FAIR
18 AND IMPARTIAL TO BOTH SIDES. AND SO I DECLINE TO GRANT
19 THE MOTION TO EXCUSE HER FOR CAUSE.

20 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
21 HEARING OF THE JURY.)

22 THE COURT: VERY GOOD, LADIES AND GENTLEMEN, AS I
23 STATED, WHEN YOUR NAME IS CALLED IF YOU WILL COME FORWARD
24 AND BRING ANY BELONGINGS THAT YOU HAVE WITH YOU SO THAT
25 IF YOU ARE SEATED AS A PART OF THIS JURY, YOU HAVE

1 EVERYTHING YOU NEED. YOU MAY PROCEED.

2 THE CLERK: NO. 104 FRANCES SPIGNER (F-W) ACCEPTED.
3 NO. 86 BENJAMIN C. PARKER (M-W) DEFENSE STRUCK. NO. 91
4 HEATHER RAGLAND (F-W) ACCEPTED. NO. 51 CARRELL HILTON
5 (M-B) STATE STRUCK. NO. 44 PHILLIP GAMBLE (M-B) ACCEPTED.
6 NO. 94 MELVIN RICKETTES (M-B) ACCEPTED. NO. 54 DEBORAH
7 HOUSE (F-B) ACCEPTED. NO. 83 ANTA PARSON (M-B) STATE
8 STRUCK. NO. 86 ESTER M. POPE (F-W) DEFENSE STRUCK. NO.
9 67 BARBARA B. MCCARTHY (F-W) ACCEPTED. NO. 50 MONTY B.
10 HICKS (M-W) ACCEPTED. NO. 28 THELMA ELLEBE (F-B)
11 ACCEPTED. NO. 5 GENE D. BAKER (F-W) DEFENSE STRUCK.
12 NO. 93 HELEN D. RICHBURG (F-W) DEFENSE STRUCK. NO. 115
13 CORA WHEELER (F-B) ACCEPTED. NO. 43 NETTIE GALLISHAW
14 (F-B) ACCEPTED. NO 59. SHERRY JOHNSON (F-B) DEFENSE
15 STRUCK. NO. 111 CYNTHIA K. THOMPSON (F-W) DEFENSE
16 STRUCK. NO. 64 JEFFREY S. LEE (M-W) DEFENSE STRUCK.
17 NO. 12 LOUISE S. BLANDING (F-B) DEFENSE STRUCK. NO. 14
18 LORETTA A. BROWN (F-B) ACCEPTED. NO. 47 JOHN E. JENKINSON
19 (M-W) DEFENSE STRUCK. NO. 2 TRENTON B. ATKINSON (M-W)
20 ACCEPTED.

21 THE CLERK: ALTERNATE, YOUR HONOR?

22 THE COURT: YES, SIR. TWO AND ONE ON THE
23 ALTERNATES.

24 THE CLERK: NO. 71 DANIEL MCINNIS (M-W) ACCEPTED.

25 THE COURT: ANY MOTIONS FROM THE STATE RELATING TO

1 THE SELECTION AND IMPANELING OF THIS JURY?

2 MR. COTHRAN: NONE, YOUR HONOR.

3 THE COURT: FROM THE DEFENSE?

4 MR. DEVOE: NONE, YOUR HONOR.

5 THE COURT: THANK YOU VERY MUCH. LADIES AND
6 GENTLEMEN, I AM GOING TO RELEASE YOU IN JUST A MOMENT FOR
7 LUNCH. BUT BEFORE DOING THAT, I WANT TO TALK WITH YOU A
8 LITTLE BIT. AT THIS PARTICULAR POINT AND TIME, YOU HAVE
9 NOT YET BEEN SWORN, BUT YET YOU HAVE BEEN SELECTED AS THE
10 JURY TO HEAR THIS CASE. SO IT WOULD BE IMPROPER FOR YOU
11 TO DISCUSS THIS CASE AMONG EACH OTHER OR ALLOW ANYBODY TO
12 DISCUSS IT WITH YOU. WE ARE AT THE POINT WHERE WE WILL
13 BEGIN WITH TESTIMONY AFTER YOU COME BACK FROM LUNCH.
14 WITNESSES WILL BEGIN TO TESTIFY FROM THE STAND. PRIOR TO
15 THAT, THERE WILL BE SOME OPENING REMARKS TO YOU. AND I
16 WILL GO IN MORE DETAIL WITH YOU AT THAT TIME WHEN YOU COME
17 BACK FROM LUNCH AS TO WHAT YOU CAN SORT OF ANTICIPATE AND
18 AS TO HOW THIS MATTER WILL FLOW. BUT WHEN YOU COME BACK
19 FROM LUNCH, I WILL NEED FOR YOU TO GO INTO THE JURY ROOM.
20 I WILL NEED FOR YOU TO TAKE A FEW MOMENTS AND SELECT
21 SOMEONE FROM AMONG THE FIRST 12 OF YOU TO BE THE
22 FOREPERSON OF THE JURY.

23 THE FOREPERSON WILL SIT IN THE FIRST SEAT THERE,
24 NEXT TO THE ENTRANCE OR EXIT WHICHEVER WAY YOU WANT TO
25 DESCRIBE IT. AND THEY HAVE CERTAIN RESPONSIBILITIES.

1 THEY DON'T GET PAID ANY MORE. THEY DON'T GET ANY MORE
2 VOTES. THEY JUST HAVE MORE RESPONSIBILITIES. ONE OF THE
3 FUNCTIONS OF THE FOREPERSON IS TO INSURE THAT THERE IS
4 NOT PREMATURE OR EARLY DISCUSSION ABOUT THE CASE. AS
5 I'VE INDICATED TO YOU, THE ONLY EVIDENCE THAT NEEDS TO,
6 THAT IS PROPERLY TO BE CONSIDERED BY YOU IS THE EVIDENCE
7 THAT IS PRESENTED FROM THE WITNESS STAND. OR FROM THE
8 EXHIBITS. NOTHING ELSE COUNTS. ONLY WHAT YOU HEAR
9 WITHIN THE COURTROOM IS PROPER FOR YOUR CONSIDERATION.
10 AND IN ESSENCE, WHEN YOU TAKE YOUR OATH TO TRY THE CASE,
11 THAT'S WHAT YOU'RE SAYING IS, WE'RE GOING TO MAKE THIS
12 DECISION ONLY ON WHAT WE HEAR IN THE COURTROOM. AND IT
13 IS NEVER PROPER TO BEGIN DISCUSSING THE EVIDENCE UNTIL
14 ALL THE EVIDENCE IS IN, AND UNTIL I HAVE GIVEN YOU YOUR
15 LEGAL INSTRUCTIONS AS TO THE LAW WHICH YOU ARE TO APPLY
16 TO THE FACTS AS YOU FIND THEM.

17 FROM TIME TO TIME, SOMEBODY MAY INADVERTENTLY MAKE
18 SOME COMMENT ABOUT THE EVIDENCE. SO THE FOREPERSON WILL
19 GENTLY REMIND THAT INDIVIDUAL SHOULD IT HAPPEN, THAT IT'S
20 NOT PROPER TO BEGIN DISCUSSING THE CASE UNTIL ALL OF THE
21 EVIDENCE IS IN, YOU HAVE RECEIVED THE JURY INSTRUCTIONS,
22 AND YOU'VE BEEN TOLD IT'S OKAY TO DISCUSS THE CASE.
23 LIKEWISE, ONE OF THE JOB'S AS A FOREPERSON IS TO INSURE
24 THAT AFTER IT IS PROPER TO DISCUSS THE CASE, THAT EVERY
25 MEMBER OF THE JURY GETS TO DISCUSS THE CASE AS FULLY AS

1 THEY WOULD LIKE TO; THAT NOBODY FEELS LIKE THEY ARE CUT
2 OFF PREMATURELY OR EARLY FROM DISCUSSING THE CASE. THE
3 FOREPERSON ALSO HAS THE RESPONSIBILITY TO RECORD YOUR
4 VERDICT, WHATEVER YOUR VERDICT MAY BE. I WILL GIVE YOU A
5 VERDICT FORM. AND WHATEVER YOUR VERDICT MAY BE, IT IS
6 THE RESPONSIBILITY OF THE FOREPERSON TO RECORD THAT
7 VERDICT AND TO NOTE IT ON THE VERDICT FORM AND TO SIGN IT
8 ON YOUR BEHALF.

9 IT MUST BE A UNANIMOUS VERDICT. BUT IN OUR SYSTEM,
10 ONLY THE FOREPERSON SIGNS THAT VERDICT FORM INDICATING
11 WHAT THE JURY'S VERDICT IS. ALSO THE FOREPERSON CAN
12 SERVE AS YOUR SPOKESPERSON SHOULD THERE BE SOME CREATURE
13 COMFORT OR SOMETHING THAT NEEDS TO BE ADDRESSED THAT WE
14 ARE UNAWARE OF. NOW, MS. MCINNIS, YOU ARE THE ALTERNATE.
15 YOU ARE NOT ELIGIBLE TO SERVE AS A FOREPERSON. BUT YOU
16 STILL HAVE A TREMENDOUS RESPONSIBILITY. YOU HAVE TO
17 LISTEN JUST AS CAREFULLY AS ALL OF THE 12 THAT WERE
18 CHOSEN AND ARE SITTING ON THE INSIDE OF THE BOX. OR IN
19 THE EVENT THAT SOMETHING SHOULD HAPPEN TO ONE OF THOSE
20 INDIVIDUALS, WE WOULD HAVE TO THEN PUT YOU INTO THE BOX.
21 AND I KNOW YOU WOULD NOT FEEL COMFORTABLE ABOUT GOING AND
22 SERVING AS AN ACTIVE JUROR UNLESS YOU HAD LIKEWISE KEPT
23 UP WITH ALL OF THE TESTIMONY.

24 SO PLEASE REMEMBER YOUR JOB THIS WEEK IS JUST TO
25 LISTEN AS CAREFULLY AS THEY DO, IN THE EVENT THAT

1 SOMEBODY GETS SICK, OR FOR SOME OTHER REASON IS NOT ABLE
2 TO GO FORWARD. THEN WE WOULD MOVE YOU INTO THEIR SEAT.
3 NOW HAVING SAID THAT, I AM GOING TO EXCUSE YOU UNTIL
4 2:30. WE HAVE GOT SOME WITNESSES WHO MIGHT NEED TO DO
5 SOME TRAVELING TO GET HERE IN A TIMELY FASHION. I AM NOT
6 SURE HOW IT'S GOING TO BE WORKED OUT FROM A STANDPOINT,
7 BUT WE ARE EXCUSING YOU TODAY UNTIL 2:30. GO AND ENJOY
8 LUNCH. AND PLEASE BE BACK IN YOUR JURY ROOM AT 2:30.
9 AND REMEMBER TO TAKE A FEW MINUTES TO SELECT SOMEONE TO
10 BE YOUR FOREPERSON. WRITE THAT PERSON'S NAME DOWN ON A
11 SHEET OF PAPER. KNOCK ON THE DOOR AND GIVE IT TO THE
12 BAILIFF. AND THEN THAT WAY WE WILL KNOW WHO WILL SERVE
13 IN THAT CAPACITY. THANK Y'ALL VERY MUCH. AND WE WILL
14 SEE YOU BACK AT 2:30.

15 (THEREUPON, THE JURY GOES TO LUNCH AT 12:58.)

16 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
17 PRESENCE OF THE JURY.)

18 THE COURT: COUNSEL, WHO ARE INVOLVED IN THIS CASE,
19 WE WILL BE IN RECESS UNTIL 2:30. I THINK WE INDICATED
20 THAT THERE WEREN'T ANY JACKSON V. DENNO MOTIONS OR
21 ANYTHING OF THAT NATURE THAT HAVE TO BE ADDRESSED AHEAD OF
22 TIME.

23 MR. DEVOE: NO, YOUR HONOR. BUT I WOULD ASK --
24 POINT TO MAKE SURE ALL THE WITNESSES ARE SEQUESTERED.

25 THE COURT: WE WILL SEQUESTER BOTH STATE AND DEFENSE

1 WITNESSES.

2 MR. DEVOE: THANK YOU.

3 THE COURT: THE ONLY SEQUESTRATION I PROBABLY WON'T
4 DO IS THE MEDICAL TESTIMONY SINCE THEY ARE NOT FACT
5 WITNESSES. AND LET THEM COME ON IN SO WE CAN GET THEM IN.

6 MR. COTHAN: IS THERE ANY PROBLEM WITH THE EVIDENCE
7 CUSTODIAN STAYING IN HERE?

8 THE COURT: MR. BRIGGS, I JUST WANT TO ADVISE YOU AT
9 THIS TIME, OF COURSE. THE CASE HASN'T STARTED. I'M NOT
10 TAKING YOU IN TO CUSTODY OR ANYTHING LIKE THAT OR LETTING
11 YOUR BOND DROP---

12 MR. COTHAN: HE'S IN CUSTODY.

13 THE COURT: HE'S IN CUSTODY. YOU'RE IN CUSTODY, SO
14 THAT WON'T MAKE ANY DIFFERENCE.

15 MR. COTHAN: HE'S NOT ON BOND.

16 THE COURT: BUT YOU WILL BE AVAILABLE TO TALK TO YOUR
17 ATTORNEY MR. DEVOE, DURING THE LUNCH BREAK. WE'LL MAKE
18 ARRANGEMENTS FOR THAT. ALL RIGHT, EXCEPT AS TO, I NEED MY
19 COURT PERSONNEL TO BE HERE BECAUSE WE ARE GOING TO DEAL
20 WITH A PROBATION VIOLATION ACCUSATION WITH MR. BURROUGHS
21 AND THEN WE WILL BREAK FOR LUNCH.

22 (THEREUPON, THE COURT BREAKS FOR LUNCH.)

23 THE COURT: YOU MAY BRING THE JURY.

24 (THEREUPON, THE FOLLOWING TAKE PLACE WITHIN THE
25 PRESENCE OF THE JURY.)

1 THE COURT: MS. HOUSE, MEMBERS OF THE JURY, I HOPE
2 EVERYBODY HAD A GOOD MEAL. SOMETIMES WE EAT TOO MUCH IN
3 THE MIDDLE OF THE DAY. AND SHOULD YOU FIND THAT OCCURRED
4 WITH YOU AND YOU GET A LITTLE NODDY OR NAPPY, IF YOU WILL
5 JUST KIND OF LET ME KNOW. WE DON'T HAVE TO GO AN HOUR
6 AND A HALF BEFORE WE TAKE A BREAK. WE CAN WORK WITH YOU
7 TO BE SURE YOU ARE COMFORTABLE.

8 MS. HOUSE, THANK YOU FOR YOUR WILLINGNESS TO ACCEPT
9 THE DRAFT THAT WAS IMPOSED ON YOU BY THE OTHER MEMBERS OF
10 YOUR JURY. I WANT TO TALK TO YOU A LITTLE BIT ABOUT WHAT
11 IS GOING ON. AS I TOLD YOU, THE STATE HAS BY THIS
12 INDICTMENT, CHARGED MR. BRIGGS WITH THE CRIME OF MURDER
13 AND POSSESSION OF A FIREARM DURING THE COMMISSION OF A
14 VIOLENT CRIME. THESE ARE TWO SEPARATE CHARGES THAT HAVE
15 BEEN BROUGHT AGAINST HIM. THIS INDICTMENT AS I INDICATED
16 TO YOU, IS NO MORE THAN A CHARGING PAPER. IT ESSENTIALLY
17 PUTS A DEFENDANT ON NOTICE AS TO WHAT IT IS THEY HAVE
18 BEEN ACCUSED OF. AND THE STATE HAS THE BURDEN OF PROVING
19 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT AS TO
20 EACH OF THESE CHARGES.

21 THERE ARE TWO CHARGES AND I WILL DISCUSS THE LAW IN
22 MORE DETAIL WITH YOU. BUT THE FIRST CHARGE IS THE CHARGE
23 OF MURDER. THAT IS ALLEGED TO BE A VIOLATION OF 16-3-10
24 OF OUR CODE OF LAWS. AND IT SAYS MURDER IS THE KILLING
25 OF ANY PERSON WITH MALICE AFORETHOUGHT EITHER EXPRESS OR

1 IMPLIED. MALICE OFTENTIMES IS THOUGHT OF AS ILL WILL.
2 SOMETIMES MALICE IS EXPRESSED WHERE SOMEBODY ACTUALLY
3 MAKES A STATEMENT TO INDICATE THAT. SOMETIMES MALICE IS
4 INFERRED BY THE CONDUCT THAT THE PEOPLE ARE INVOLVED IN.
5 AND IN MY FINAL INSTRUCTIONS, I WILL GIVE YOU MORE
6 INFORMATION ABOUT THAT. BUT BASICALLY THERE IS ONE KIND
7 OF MALICE. IT'S THE SAME WHETHER IT'S EXPRESS OR IT IS
8 IMPLIED OR INFERRED.

9 AND SO IT IS NECESSARY THAT THE STATE PROVE THAT THE
10 KILLING TOOK PLACE AS A RESULT OF ACTIONS OF THE
11 DEFENDANT MR. BRIGGS WITH MALICE AFORETHOUGHT; THAT THAT
12 MALICE EXISTED AT LEAST SOME PERIOD OF TIME BEFORE THE
13 KILLING, AND THAT THE DEATH OF MR. HOUSE WAS AS A DIRECT
14 AND PROXIMATE RESULT OF THE ACTIONS UNDERTAKEN BY THE
15 DEFENDANT. IF YOU FIND THE DEFENDANT IS IN FACT GUILTY
16 OF THAT CRIME; THAT IT HAS IN FACT BEEN ESTABLISHED
17 BEYOND A REASONABLE DOUBT, THEN YOU WOULD CONSIDER
18 WHETHER OR NOT HE WAS ARMED WITH A WEAPON DURING A CRIME
19 OF VIOLENCE. BECAUSE IF THERE IS NO PRINCIPAL CRIME,
20 THERE CAN'T BE ANY CONVICTION OF COUNT NO. 2, BECAUSE IT
21 REQUIRES THE CONVICTION ON THE VIOLENT CRIME WHICH MURDER
22 WOULD BE.

23 SO THIS IS THE NATURE OF WHAT YOU ARE GOING TO BE
24 HEARING ABOUT. YOU'RE GOING TO HAVE TO AS I TOLD YOU,
25 JUDGE THE CREDIBILITY AND THE BELIEVABILITY OF THE

1 WITNESSES. BECAUSE IT IS YOUR JOB TO MAKE THE FACTUAL
2 FINDINGS TO DETERMINE WHETHER OR NOT THE STATE HAS PROVEN
3 GUILT BEYOND A REASONABLE DOUBT.

4 NOW BRIEFLY, REASONABLE DOUBT IS A DOUBT WHICH MAKES
5 AN HONEST, A SINCERE, A CONSCIENTIOUS JUROR IN SEARCH OF
6 THE TRUTH IN THE CASE, TO HESITATE TO ACT. SAID ANOTHER
7 WAY, PROOF BEYOND A REASONABLE DOUBT MUST BE PROOF OF
8 SUCH A CONVINCING CHARACTER THAT A REASONABLE PERSON
9 WOULD NOT HESITATE TO RELY UPON IT AND ACT UPON IT IN THE
10 MOST IMPORTANT OF HIS OR HER OWN EVENTS IN LIFE. AND SO
11 THE STATE HAS THE BURDEN OF PROVING EACH AND EVERY
12 ELEMENT OF A CRIME BEYOND A REASONABLE DOUBT. IN THIS
13 PARTICULAR CASE, WE MAY HEAR SOME EVIDENCE AS IT RELATES
14 TO SELF DEFENSE. AND THERE ARE BASICALLY FOUR ELEMENTS
15 OF SELF-DEFENSE. THE DEFENDANT IN NO. 1, MUST BE WITHOUT
16 FAULT IN BRINGING ON THE DIFFICULTY. TWO, THE DEFENDANT
17 MUST HAVE ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF
18 LOSING HIS LIFE OR SUSTAINING SERIOUS BODILY INJURY. OR
19 THE DEFENDANT ACTUALLY WAS IN SUCH IMMINENT DANGER. IF
20 THE DEFENSE IS BASED UPON HIS BELIEF OF IMMINENT DANGER,
21 A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND
22 COURAGE WOULD HAVE FELT THE SAME THING UNDER THOSE
23 CIRCUMSTANCES.

24 AND IF THE DEFENDANT ACTUALLY WAS IN IMMINENT
25 DANGER, THE CIRCUMSTANCES WERE SUCH AS WOULD WARRANT A

1 PERSON OF ORDINARY PRUDENCE, FIRMNESS AND COURAGE, TO
2 STRIKE THE FATAL BLOW, FIRE THE FATAL SHOTS IN ORDER TO
3 SAVE THEMSELVES FROM SERIOUS BODILY HARM, OR THE
4 LIKELIHOOD OF LOSING THEIR OWN LIFE. AND FOURTH, THAT
5 THE DEFENDANT HAD NO OTHER PROBABLY MEANS OF AVOIDING THE
6 DANGER OF LOSING THEIR OWN LIFE OR SUSTAINING A SERIOUS
7 INJURY OTHER THAN TO ACT AS THEY DID. SO YOU'RE GOING TO
8 HEAR EVIDENCE ABOUT THOSE VARIOUS FACTORS. AS IT COMES
9 TO CRIMES THAT ARE CHARGED, THEY HAVE VARIOUS ELEMENTS.
10 IF THE STATE IS NOT ABLE TO PROVE EVERY ELEMENT BEYOND A
11 REASONABLE DOUBT, THEN THE STATE WILL HAVE FAILED IN
12 THEIR BURDEN OF PROOF.

13 ON THE OTHER HAND, WHILE THE STATE HAS TO PROVE THE
14 ABSENCE OF SELF-DEFENSE, SHOULD YOU FIND THAT ANY OF
15 THOSE 4 ELEMENTS OF SELF-DEFENSE WERE MISSING THEN THE
16 STATE WOULD HAVE OVERCOME SELF-DEFENSE AS TO AT LEAST ONE
17 OF THOSE CATEGORIES AND SELF DEFENSE WOULD NOT APPLY. SO
18 YOU WILL BE HEARING THAT KIND OF EVIDENCE LADIES AND
19 GENTLEMEN. THE TRIAL IS BROKEN INTO VARIOUS STAGES.
20 EACH OF THE ATTORNEYS ARE GOING TO HAVE THE OPPORTUNITY
21 TO TALK TO YOU IN THEIR OPENING REMARKS IN JUST A FEW
22 MOMENTS. WHAT THE ATTORNEYS TELL YOU IS NOT EVIDENCE IN
23 THIS CASE. IT IS WHAT THEY ANTICIPATE WILL BE
24 ESTABLISHED BY THE EVIDENCE IN THE CASE. THE EVIDENCE IS
25 THE TESTIMONY OF THE WITNESSES AND THE EXHIBITS THAT MAY

1 BE ALLOWED IN TO THE TRIAL OF THE CASE.

2 THE ATTORNEYS ARE ADVOCATES FOR THEIR PARTICULAR
3 POSITIONS. THEY ARE GOING TO PUT THINGS FORTH IN THE
4 BEST POSSIBLE LIGHT FOR THEIR PARTICULAR SIDE. BUT IT IS
5 IMPORTANT TO LISTEN TO THEM AS THEY GIVE YOU THEIR
6 OPENING REMARKS, BECAUSE IT WILL GIVE YOU AN OVERVIEW.
7 IT WILL GIVE YOU A ROAD MAP OF WHERE THEY BELIEVE THE
8 EVIDENCE IS GOING TO GO. BUT, LADIES AND GENTLEMEN, YOU
9 ARE THE FACT FINDERS. YOU HAVE TO MAKE THOSE FACTUAL
10 DETERMINATIONS AS TO WHAT IS OR IS NOT ESTABLISHED BY THE
11 EVIDENCE. AND AFTER THE ATTORNEYS GET A CHANCE TO TALK
12 WITH YOU IN THEIR OPENING REMARKS, THAT'S WHEN WE WILL
13 BEGIN RECEIVING THE TESTIMONY. WE WILL RECEIVE TESTIMONY
14 FIRST FROM THE STATE BECAUSE THEY HAVE THE BURDEN OF
15 PROOF. THE DEFENSE MAY OR MAY NOT HAVE TO PUT -- MAY OR
16 MAY NOT PUT UP ANY WITNESSES. THEY DON'T HAVE TO,
17 BECAUSE THEY DON'T HAVE A BURDEN OR PROOF. THEY ARE
18 PRESUMED TO BE INNOCENT UNLESS THE STATE ESTABLISHES
19 GUILT BEYOND A REASONABLE DOUBT.

20 WHEN THE EVIDENCE IS CONCLUDED THEN THE ATTORNEYS
21 HAVE A CHANCE TO TALK WITH YOU AGAIN IN THEIR CLOSING
22 REMARKS AND THEIR SUMMATIONS. THEY WILL THEN TALK WITH
23 YOU ABOUT WHAT THEY BELIEVE HAS BEEN ESTABLISHED BY THE
24 TESTIMONY, WHAT THE DOCUMENTS, THE EXHIBITS DO IN FACT
25 ESTABLISH. AND THEN THEY WILL ALSO HAVE A CHANCE TO TALK

1 WITH YOU ABOUT WHAT THEY BELIEVE IS THE LAW THAT I AM
2 GOING TO INSTRUCT YOU. AND THEY HAVE A CHANCE TO TALK
3 ABOUT THAT A LITTLE BIT IN THEIR OPENING REMARKS AS WELL.
4 AND SO THEY TALK WILL TALK WITH YOU AT THE END AS WELL.
5 AGAIN, THAT IS NOT GOING TO BE TESTIMONY. IT'S GOING TO
6 BE THEIR VIEW OF WHAT THE TESTIMONY IS. BUT AGAIN, YOU
7 HAVE TO MAKE THAT FACTUAL DETERMINATION AS TO WHAT HAS
8 BEEN ESTABLISHED OR WHAT HAS NOT BEEN ESTABLISHED.

9 AFTER THEY HAVE A CHANCE TO TALK WITH YOU IN THEIR
10 CLOSING REMARKS, THEIR CLOSING ARGUMENTS, THEN I WILL
11 COME BACK AND I WILL GIVE YOU MORE DETAILED INSTRUCTIONS
12 AS TO WHAT THE LAW IS THAT SHOULD BE APPLIED BY YOU AS TO
13 THE FACTS AS YOU FIND THEM. SO AT THAT POINT AND TIME,
14 LADIES AND GENTLEMEN, I WILL SEND YOU BACK TO THE JURY
15 ROOM AND THEN YOU WILL BE ABLE TO BEGIN YOUR
16 DELIBERATIONS WHEN YOU GET THE EXHIBITS AND YOU GET THE
17 VERDICT FORM. SO IN ORDER TO KNOW WHAT IS GOING ON, YOU
18 HAVE TO LISTEN CAREFULLY TO THE TESTIMONY. YOU HAVE TO
19 EVALUATE ITS CREDIBILITY, ITS BELIEVABILITY. YOU HAVE TO
20 DETERMINE WHAT EVIDENCE CONVINCES YOU OF ITS TRUTH. YOU
21 HAVE TO WEIGH THE TESTIMONY BY THE VARIOUS PARTIES WHO
22 TESTIFY. AND YOU ARE CHARGED WITH THE RESPONSIBILITY OF
23 REACHING A VERDICT THAT SPEAKS THE TRUTH. YOU TAKE THAT
24 EVIDENCE THAT'S PRODUCED IN THE TRIAL OF THE CASE. YOU
25 EVALUATE IT. YOU USE YOUR SENSE OF LOGIC, YOUR SENSE OF

1 REASON. AND YOU DETERMINE WHAT CONVINCES YOU OF ITS
2 TRUTH. AND THEN YOU REACH YOUR VERDICT USING THOSE
3 FACTUAL FINDINGS AND THE LAW THAT I GIVE YOU.

4 YOU'VE GOT NO FRIENDS TO REWARD HERE TODAY. YOU'VE
5 GOT NO ENEMIES TO PUNISH HERE TODAY. YOUR OATH THAT YOU
6 ARE GOING TO TAKE IN JUST A MOMENT SAYS TO THE STATE,
7 SAYS TO THE DEFENDANT, SAYS TO THE SYSTEM, WE'RE GOING TO
8 LISTEN, WE'RE GOING TO BE OBJECTIVE. WE ARE GOING TO
9 WEIGH THE EVIDENCE. WE ARE GOING TO BE DISPASSIONATE.
10 AND WE ARE GOING TO STEP BACK AND WE ARE JUST GOING TO
11 JUST LOOK AT IT. AND WE'RE GOING TO SEE WHAT HAPPENS.
12 WE ARE GOING TO DETERMINE WHETHER OR NOT THE STATE HAS
13 PROVEN GUILT BEYOND A REASONABLE DOUBT. IF THE STATE
14 DOES, THEN THE DEFENDANT WILL BE FOUND GUILTY. IF THE
15 STATE HAS NOT PROVEN GUILT BEYOND A REASONABLE DOUBT
16 THEN THE DEFENDANT IS ENTITLED TO A NOT GUILTY VERDICT.
17 ANY DOUBTS TO BE RESOLVED ARE ALWAYS TO BE RESOLVED IN
18 FAVOR OF A DEFENDANT.

19 SO, LADIES AND GENTLEMEN, LISTEN CAREFULLY. BE
20 ATTENTIVE. SHOULD THERE BE SOME WITNESS THAT YOU ARE NOT
21 ABLE TO HEAR, LET ME KNOW, SO THAT YOU LADIES AND
22 GENTLEMEN WILL HAVE ALL OF THE EVIDENCE FOR YOUR
23 CONSIDERATION AS YOU MAKE THIS DECISION. IT'S AN
24 IMPORTANT DECISION. IT'S CIVIC DECISION WITHOUT WHICH OUR
25 SYSTEM DOESN'T WORK, BECAUSE YOU AND YOU ALONE ARE THE

1 FACT FINDERS IN THIS CASE.

2 NOW, I AM GOING TO ASK THE CLERK IF SHE WILL
3 ADMINISTER YOUR OATH TO YOU. THIS IS AN OATH THAT YOU,
4 WHERE YOU ACCEPT THESE RESPONSIBILITIES. MS. ROBERTS.

5 (THEREUPON, THE JURY IS SWORN.)

6 THE COURT: MS. HOUSE, AND OTHER MEMBERS OF THE JURY,
7 THANK YOU VERY MUCH. SOLICITOR, YOU MAY MAKE YOUR OPENING
8 REMARKS.

9 MR. COTHRAN: THANK YOU, YOUR HONOR. LADIES AND
10 GENTLEMEN, MY NAME IS FERRELL COTHRAN. AND I HAVE THE
11 PRIVILEGE OF REPRESENTING THE CITIZENS OF CLARENDON COUNTY
12 TODAY IN THIS COURTROOM. WE ARE HERE TODAY BECAUSE OF A
13 DECISION THAT THE DEFENDANT MADE ON SEPTEMBER 5TH OF 2005.
14 THAT'S MR. BRIGGS SEATED OVER THERE BY HIS ATTORNEY.

15 AS THE JUDGE TOLD YOU, THIS IS A MURDER CASE. AND
16 WHAT YOU ARE GOING TO HEAR THE REST OF THE DAY AND
17 PROBABLY MOST OF THE DAY TOMORROW, IS FACTS THAT UNFOLD.
18 THIS HAPPENED ON THE EVENING HOURS OF SEPTEMBER 5TH IN
19 SUMMERTON JUST OUTSIDE THE CITY LIMITS IN A RESIDENCE.
20 THE DECEASED, MR. WESLEY HOUSE, THIS IS HIS ONLY DAY IN
21 COURT TODAY. HE LOST HIS LIFE AS A RESULT OF THE
22 DECISION, THAT MAN MADE. EARLIER THAT DAY, THEY GOT INTO
23 AN ALTERCATION. THEY GOT INTO A DISAGREEMENT AT THIS
24 PARTICULAR LOCATION. AND YOU'RE GOING TO HEAR FROM THE
25 TESTIMONY AT THAT POINT, THE DEFENDANT IN THIS CASE LEFT.

1 AND HE COMES BACK TWO OR THREE OR FOUR HOURS LATER WITH A
2 LOADED 20 GAUGE SHOTGUN LOADED WITH SLUGS.

3 HE PULLS UP IN THE YARD. MR. HOUSE APPROACHES HIM,
4 NOT IN ANY KIND OF THREATENING MANNER. SIMPLY SAYS
5 "WHAT'S UP MAN." HE POPS THE TRUNK. PULLS OUT THAT 20
6 GAUGE SHOTGUN. STICKS IT IN MR. HOUSE'S CHEST AND PULLS
7 THE TRIGGER. AND KILLED HIM JUST LIKE THAT. THAT'S WHAT
8 THIS CASE IS ABOUT. IT'S NOT GOING TO BE A COMPLICATED
9 CASE, BECAUSE IT'S GOING TO BE RELATIVELY SIMPLE. THE
10 WITNESSES AREN'T GOING TO BE THAT MANY. AT THAT POINT HE
11 LEAVES. DISPOSES OF THE MURDER WEAPON. ULTIMATELY THE
12 POLICE CATCH UP WITH HIM. HE IS HERE BEFORE YOU TODAY.
13 YOU ARE GOING TO HEAR FROM WITNESSES WHO WERE THERE THAT
14 DAY. THEY WERE HAVING A COOK OUT, WHO OBSERVED THE WHOLE
15 THING. YOU ARE GOING TO HEAR FROM THE POLICE OFFICER WHO
16 INVESTIGATED THIS CASE. THE LAST PERSON YOU ARE GOING TO
17 HEAR FROM IS THE PATHOLOGIST WHO IS THE DOCTOR DOWN IN
18 CHARLESTON, WHO PERFORMED THE AUTOPSY. WHO IS GOING TO
19 TELL YOU THAT MR. HOUSE DIED AS A RESULT OF A GUNSHOT
20 WOUND. AND THE EVIDENCE WILL SHOW YOU THAT THAT GUNSHOT
21 WOUND WAS INFLECTED BY THE DEFENDANT IN THIS CASE,
22 RALPHAEL BRIGGS.

23 HE IS CHARGED WITH MURDER, WHICH IS THE UNLAWFUL
24 KILLING OF ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT.
25 I THINK AFTER YOU HEAR THIS CASE, THERE WON'T BE ANY

1 QUESTION IN YOUR MIND WHO KILLED MR. HOUSE. AND YOU CAN
2 INFER FROM HIS ACTIONS, THE FACT THAT HE GOES AND GETS A
3 GUN AND COMES BACK. AND THE FACT HE PULLS THE GUN OUT
4 AND BLATANTLY SHOT THIS MAN. AND HE CERTAINLY HAD MALICE
5 IN HIS HEART WHEN HE PULLED THE TRIGGER. HE'S ALSO
6 CHARGED WITH POSSESSION OF A WEAPON DURING A VIOLENT
7 CRIME. AND ESSENTIALLY MURDER IS A VIOLENT CRIME IN THE
8 STATE OF SOUTH CAROLINA. AND IN THE COMMISSION OF A
9 VIOLENT CRIME. IT IS AN ADDITIONAL POTENTIAL PENALTY IF
10 YOU POSSESS A WEAPON AND USE THAT WEAPON IN THE
11 COMMISSION OF A VIOLENT CRIME, WHICH IS A FACT IN THIS
12 CASE. IT IS THAT SIMPLE. I ASK YOU TO PAY CLOSE
13 ATTENTION, BECAUSE THIS IS A SERIOUS CASE. IT IS AN
14 IMPORTANT CASE TO THE CITIZENS OF CLARENDON COUNTY. IT
15 IS AN IMPORTANT CASE TO MR. HOUSE AND HIS FAMILY.

16 HE DIED A SENSELESS DEATH ON THE SEPTEMBER 5TH 2005.
17 IN OUR SOCIETY, IT SAYS WHEN THIS HAPPENS, REVENGE IS NOT
18 TO BE MET ON THE STREET. IT IS TO BROUGHT IN THIS
19 COURTROOM, BECAUSE THIS IS WHERE WE SETTLE OUR
20 DIFFERENCES. AND SO MR. HOUSE IS HERE TODAY SEEKING
21 JUSTICE JUST LIKE THE CITIZENS OF THIS COUNTY. IF HE
22 DIED A SENSELESS DEATH, HE WAS MURDERED ON THE EVENING
23 HOURS OF SEPTEMBER 5TH OF 2005. BUT HE DIDN'T HAVE TO DO
24 THAT. THERE WAS A LOT OF THE OTHER CHOICES THAT MR.
25 BRIGGS COULD HAVE MADE THAT DAY. AND HE DIDN'T HAVE TO

1 TAKE MR. HOUSE'S LIFE. IT WAS A VERY POOR CHOICE. AND
2 AS A RESULT OF THAT, HE IS GUILTY OF MURDER AND HE IS
3 GUILTY OF POSSESSION OF A WEAPON DURING A VIOLENT CRIME.
4 ALL I WANT YOU TO DO IS TO PAY CLOSE ATTENTION. AND WHEN
5 YOU GO BACK IN THAT JURY ROOM AFTER YOU HAVE HEARD ALL OF
6 THE EVIDENCE, HAVE YOUR VERDICT SPEAK THE TRUTH. BECAUSE
7 THAT'S -- IT'S THAT SIMPLE. YOU WILL LISTEN TO WHAT
8 HAPPENED JUST LIKE YOU WERE THERE THAT DAY. IF I COULD
9 TAKE YOU AND SIT YOU IN A ROW OF SEATS AND LET YOU WATCH
10 THIS WHOLE THING UNFOLD, YOU WOULD DETERMINE RIGHT THEN
11 WHETHER HE HAD THE RIGHT TO TAKE THAT MAN'S LIFE. YOU
12 WOULD DETERMINE WHAT THE TRUTH IS. AND THAT'S WHAT I
13 WANT YOU DO TODAY, IS TO LISTEN TO THESE FACTS, DETERMINE
14 WHAT THE TRUTH IS. DETERMINE DID HE TAKE THAT MAN'S LIFE
15 WITHOUT JUST CAUSE.

16 AND IF YOU FIND THAT, WHICH I AM SURE YOU WILL, FIND
17 HIM GUILTY OF MURDER AND POSSESSION OF A WEAPON DURING A
18 VIOLENT CRIME. THANK YOU.

19 THE COURT: MR. DEVOE.

20 MR. DEVOE: EARLIER TODAY I WAS INTRODUCED TO YOU AS
21 HARRY DEVOE. THAT'S MY NAME. I AM ONE OF THE TWO
22 PART-TIME PUBLIC DEFENDERS IN CLARENDON COUNTY. I THINK
23 YOU WILL SEE QUICKLY WHEN I KEEP ON TALKING, THAT MY
24 ACCENT IS NOT QUITE LIKE YOURS. ONE OR TWO OF YOU KNOW
25 THAT. MY WIFE IS FROM CLARENDON COUNTY, NEW ZION, WHERE

1 WE LIVE. AND WE CAME BACK HERE FROM PHILADELPHIA 15 YEARS
2 AGO. I HAVE BEEN PRACTICING LAW IN SOUTH CAROLINA FOR
3 ALMOST 15 YEARS. I NEVER DID PRACTICE CRIMINAL LAW IN
4 PHILADELPHIA. NOR IN FLORIDA BEFORE THAT. BUT I PRACTICE
5 A LOT OF IT HERE, AND I ENJOY DOING IT. WE ENJOY DOING
6 IT, BECAUSE I THINK EVERYBODY DESERVES A PROPER
7 REPRESENTATION. AND MY CLIENT IS AN INDIVIDUAL. THE
8 SOLICITOR REPRESENTS THE STATE. AND I REPRESENT THE
9 INDIVIDUAL, NOT THE STATE.

10 BUT IN THIS PARTICULAR CASE IF EVERYTHING WAS AS
11 FERRELL COTHRAN SAID IT WAS, HE WOULD BE PLEADING GUILTY.
12 STAND UP AND PLEAD GUILTY AND TAKE OUR MEDICINE.
13 HOWEVER, CERTAIN FACTS WE SAY, AREN'T CORRECT. OTHERS
14 ARE FAR FROM BEING CORRECT. IT IS YOUR DUTY AND
15 OBLIGATION TO FIND OUT WHICH VERSION OF THE FACTS ARE
16 CORRECT. IF OUR FACTS, AS I BELIEVE THEM TO BE ARE
17 CORRECT, THEN I THINK YOU WILL FIND MY CLIENT ACTED IN
18 SELF-DEFENSE ON THE DAY IN QUESTION. THERE IS NO
19 QUESTION BY YOUR OATH, TO FIND THESE FACTS AND NOT COME
20 WITH ANY PRECONCEIVED NOTION THAT WHERE THERE IS SMOKE
21 THERE IS FIRE. WHERE THE STATE IS ALLEGING THERE MUST BE
22 SOMETHING WRONG, THE BURDEN SHIFTS OVER TO US. WE DON'T
23 HAVE ANY BURDEN AT ALL. WE DON'T EVEN HAVE TO PUT A
24 DEFENSE UP.

25 THE STATE HAS TO PROVE ITS CASE TO YOU BEYOND A

1 REASONABLE DOUBT. THAT'S A HIGH, HIGH BURDEN. AND MY
2 CLIENT, MY CLIENT DECIDES NOT TO TESTIFY, YOU CANNOT HOLD
3 THAT AGAINST HIM. AND I HOPE YOU DON'T HOLD THAT AGAINST
4 HIM. HE HAS NO OBLIGATION TO TESTIFY, TO TELL YOU HE IS
5 NOT GUILTY. BECAUSE HE'S TELLING YOU HE IS NOT GUILTY.
6 HE IS GOING TO TRIAL. NOW IN THIS CASE, THERE ARE
7 CERTAIN FACTS THAT AREN'T CORRECT. MY CLIENT DID SHOOT
8 THE VICTIM. NO QUESTION ABOUT IT. HE NEVER DENIED HE
9 SHOT THE VICTIM. DAY ONE HE'S TURNED HIMSELF IN ON DAY
10 ONE. HE WASN'T AROUND HIDING OR TRYING TO EVADE THE
11 POLICE. HOWEVER, WHY DID HE SHOOT HIM? THAT'S THE
12 QUESTION, WHY. WAS IT SELF DEFENSE?

13 WELL, THE FACTS WILL COME OUT BY DATE IN TESTIMONY;
14 THAT MY CLIENT WAS THERE EARLY IN THE DAY. AS WAS THE
15 VICTIM AND SOME OTHER PEOPLE. AND THEY WERE DOING SOME
16 THINGS THAT PERHAPS RIGHT MINDED CITIZENS WOULDN'T BE
17 DOING. THEY WERE SELLING PRODUCTS. YOU KNOW WHAT THE
18 WORD PRODUCT MEANS, TO PEOPLE COMING BY. AND THE VICTIM
19 STOLE SOME PRODUCT FROM MY CLIENT. MY CLIENT DIDN'T GO
20 AFTER HIM. HE DIDN'T GET MAD AT HIM. HE JUST ACCEPTED
21 HIM AS BEING ONE OF THOSE THINGS. BUT DECIDED FINALLY
22 THAT HE NEEDED TO GO OFF AND REPLENISH HIS PRODUCT. THEN
23 HE CALLED HIS GIRLFRIEND ON HIS CELL PHONE AND SHE CAME
24 BACK AND PICKED UP THE CAR. AND HE DROPPED HER OFF AT
25 WORK. AND THEN HE WENT OFF TO THE MALL IN SUMTER AND

1 BOUGHT SOME TENNIS SHOES FOR HIS CHILDREN IN BALTIMORE
2 AND THEN SHIPPED THEM OFF TO THEM. AND HE WENT WITH THE
3 SON OF THE PERSON THAT OWNS THE HOUSE WHERE THEY WERE AT.
4 I DON'T KNOW IF I'M PRONOUNCING THE WORD RIGHT, MAYZAK
5 ROAD, MEZERICK ROAD IN SUMMERTON. IT'S A POLISH NAME.
6 AND I BELIEVE I CAN STILL PRONOUNCE POLISH NAMES. I TRY
7 TO PRONOUNCE THIS PARTICULAR NAME. I DON'T EVEN KNOW
8 WHERE IT IS.

9 AND THEN HE TOOK THE CAR AND CAME BACK EVENTUALLY TO
10 THE HOUSE, A HOUSE OWNED BY HATTIE GREEN. OR KATIE
11 GREEN; WENT BACK TO HER HOUSE. CAME UP THE ROAD AND
12 PARKED ANGLE TO THE END OF HER TRAILER. AT WHICH POINT,
13 THE VICTIM, YELLED SOMETHING AT HIM. IT'S ALMOST LIKE
14 WHAT ARE YOU TRYING -- HE WENT OVER TO HIM. AND HE
15 STARTS APPROACHING, COMING AROUND MAD AND WITH A STICK IN
16 HIS HAND. AND THIS IS WHERE SOLICITOR AND I DISAGREE.
17 I -- WE CONTEND IT'S A STICK. AND THE SOLICITOR WILL
18 SAY, HE DOESN'T THINK. WELL IT'S A FAIRLY BIG STICK. I
19 MEAN, HE HOLDS IT LIKE A BASEBALL BAT. AND THE END
20 FLARES OUT, AND IT'S A RED STICK. WHEN HE APPROACHES MY
21 CLIENT---

22 MR. COTHRAN: YOUR HONOR, I HATE TO OBJECT IN HIS
23 OPENING STATEMENT, HE IS TESTIFYING.

24 MR. DEVOE: I SAY IT WILL BE TESTIFIED TO. WHAT I
25 BELIEVE I HAVE A RIGHT TO DO IN OPENING STATEMENTS.

1 THE COURT: LADIES AND GENTLEMEN, THIS IS WHAT THE
2 PARTIES WILL ANTICIPATE WILL BE THE TESTIMONY. OF
3 COURSE, AS I TOLD YOU, THE ATTORNEYS DO NOT GIVE EVIDENCE.
4 AND SO YOU WILL HAVE TO DETERMINE WHETHER OR NOT THE
5 EVIDENCE IS AS COUNSEL INDICATES OR NOT. IF YOU WILL
6 CONTINUE, MR. DEVOE.

7 MR. DEVOE: THE OLD SAYING IS, DON'T SAY IN OPENING
8 STATEMENT WHAT YOU CAN'T PROVE LATER ON IN THE CASE. AND
9 WE CONCUR WE CAN DO THAT. BUT MR. HOUSE APPROACHED MY
10 CLIENT SAYING SOME SWEAR WORDS AND SOME BAD WORDS AND
11 STREET WORDS. I DON'T WANT TO SAY NECESSARILY. AND MY
12 CLIENT, YOU KNOW, GETS OUT OF HIS CAR AND DECIDED HE WOULD
13 GO IN THE TRUNK OF THE CAR. AND HE PUSHED THE BUTTON ON
14 THE FRONT SEAT, HOLDING THE TRUNK UP AND GRABBED THE GUN
15 AND HELD IT. HE STAYED STILL AND MR. HOUSE CAME TOWARDS
16 HIM. AND ACTUALLY CAME RIGHT TO THE GUN. WENT BARELY UP
17 TO THE GUN. AND UNFORTUNATELY AT THAT POINT, MY CLIENT
18 WILL TESTIFY, HOPEFULLY HE TESTIFIES. I THINK THAT HE
19 WILL; THAT HE WAS SCARED AND EXPECTING HIM TO DO
20 SOMETHING. AND THE GUN WENT OFF AND SHOT HIM, RIGHT AT
21 CAR.

22 NOW DID HE HAVE A DUTY TO RETREAT, OR WAS THE OTHER
23 PERSON SO CLOSE TO WHAT WE BELIEVE WAS A WEAPON THAT HE
24 HAD NO REASONABLE MEANS TO ESCAPE AND EVADE THE
25 SITUATION. THERE IS SOME EXCEPTIONS TO RETREAT WE THINK.

1 AND MAYBE HOLDING THOSE EXCEPTIONS AND NOT HAVING TO
2 RETREAT ALSO. BUT THE FACTS IN THIS CASE THAT WE ARE
3 CONTENDING THAT MY CLIENT DID NOT COME BACK TO THAT
4 TRAILER. THERE WAS A COOK OUT AMONG OTHER THINGS THAT
5 WERE GOING ON, TO CREATE TROUBLE. THE TROUBLE IS
6 RECREATED BY THE INDIVIDUAL WHO STOLE FROM HIM INITIALLY
7 AND APPROACHED HIM A SECOND TIME IN A MENACING MANNER, IN
8 A PLACE HE HAD A RIGHT TO BE. AND ACTUALLY CAME DOWN THE
9 ROAD AND INTO THE DRIVEWAY. SO IT'S BLOCKING MY CLIENT.
10 MY CLIENT IS ABOUT TO LEAVE. ALL THIS TRAFFIC WENT TO
11 THE HOUSE.

12 THE WHOLE THING IS UNFORTUNATE. IT'S A TRAGEDY WHEN
13 ANYBODY IS KILLED. WHEN ANYONE DIES PREMATURELY, IT IS A
14 TRAGEDY. AND MANY OF US HAVE TRAGEDIES IN OUR LIVES.
15 WE'VE SEEN THAT KIND OF SITUATION. IT STILL IS A TRAGEDY
16 IN THIS CASE WHEN OTHER REAL THINGS ARE GOING ON. IT IS
17 STILL A TRAGEDY WHEN SOMEONE DIES. THE QUESTION IS, DID
18 MY CLIENT KILL OR IN A SENSE OF MURDERING HIM, OR DID HE
19 KILL HIM IN SELF-DEFENSE? NOW AS THE FACTS OF THE CASE
20 PLAY OUT, Y'ALL HAVE TO MAKE THAT DETERMINATION. WHAT
21 FACTS ARE CORRECT, AND WHAT FACTS ARE NOT CORRECT? I
22 DON'T KNOW HOW MANY WITNESSES ARE GOING TO BE IN THIS
23 CASE. I THINK ALL OF THEM HAVE HAD SOME PROBLEMS. AND I
24 AM SURE WITH THE PROBLEMS WILL COME ALONG. I REMIND YOU
25 THAT MY CLIENT IS NOT -- HE'S PLEADING INNOCENT OF THE

1 CHARGE OF MURDER, IF IN FACT HE DID NOT BELIEVE THAT HE
2 WAS NOT -- IS NOT GUILTY OF THE CRIME OF MURDER. AND
3 YOU'RE A HANDED PICKED JURY. THESE OTHER PEOPLE WERE
4 ELIMINATED FROM THE JURY PANEL. WE PICKED Y'ALL BECAUSE
5 WE THINK YOU ARE PEOPLE WHO WILL LISTEN TO THE FACTS AND
6 NOT PREJUDGE THE FACTS. AND NOT BE TURNED OUT BY CERTAIN
7 FACTS THAT ARE -- WHAT WAS GOING ON AT THAT HOUSE THAT
8 DAY. AND WILL I THINK, EXERCISE AND MAKE A JUDGMENT. I
9 THINK IT WILL BE A CORRECT JUDGMENT IN THIS CASE. AND I
10 THANK YOU FOR YOUR ATTENTION.

11 THE COURT: AND AS I TOLD YOU, LADIES AND GENTLEMEN,
12 WHAT THE STATE HAS TOLD YOU, WHAT THE DEFENSE HAS TOLD
13 YOU, THAT'S JUST WHAT THEY HOPE THE EVIDENCE WILL SHOW.
14 NO BODY CAN COME BEFORE YOU IN OPENING REMARKS AND TELL
15 YOU THAT THE VICTIM'S STATE OF MIND WAS SUCH; THE
16 DEFENDANT'S STATE OF MIND WAS SUCH. THE STATE OF MIND,
17 THE ACTIONS, AND ALL THOSE THINGS WILL HAVE TO BE
18 DETERMINED BY YOU BASED UPON THE WITNESS' TESTIMONY FROM
19 THE STAND. SOLICITOR, YOU MAY BEGIN.

20 MR. COTHRAN: THANK YOU, YOUR HONOR. THE STATE
21 CALLS DOMINIQUE LAWSON TO THE STAND.

22 THE COURT: LADIES AND GENTLEMEN, WE HAVE OUR
23 WITNESSES SEQUESTERED. THAT MEANS THAT THE WITNESSES ARE
24 NOT SITTING IN THE COURTROOM LISTENING TO THE TESTIMONY
25 OF ANOTHER WITNESS BEFORE THEY TESTIFY. SO IT WILL TAKE

1 A FEW MINUTES TO BRING WITNESSES IN TO THE COURTROOM.

2 DOMINIQUE LAWSON, BEING FIRST

3 DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. COTHRAN:

5 Q IF YOU WOULD, INTRODUCE YOURSELF TO THE JURY,
6 PLEASE, SIR.

7 A DOMINIQUE LAWSON.

8 Q AND, DOMINIQUE, WHERE DO YOU LIVE?

9 A SUMMERTON.

10 Q HOW LONG HAVE YOU LIVED IN SUMMERTON?

11 A ALL MY LIFE.

12 Q WHERE DID YOU GO TO SCHOOL?

13 A SCOTT'S BRANCH.

14 Q DO YOU KNOW THE DEFENDANT IN THIS CASE?

15 A YES, SIR.

16 Q HOW LONG HAVE YOU KNOWN HIM?

17 A JUST ABOUT ALL MY LIFE.

18 Q DID YOU KNOW THE DECEASED IN THIS CASE, THE VICTIM IN
19 THIS CASE, WESLEY HOUSE?

20 A YES, SIR.

21 Q HOW LONG HAD YOU KNOWN WESLEY?

22 A ABOUT ALL MY LIFE.

23 Q OKAY. LET ME TAKE YOU BACK TO SEPTEMBER 5TH OF 2005.

24 CAN YOU TELL US WHERE YOU WERE THAT AFTERNOON OF THAT DAY?

25 A I WAS THERE WHEN THE ACCIDENT, WHEN IT HAPPENED.

1 Q OKAY. WHERE WERE YOU? WHERE DID THIS THING HAPPEN?

2 A IN SUMMERTON AT THE, RIGHT AT THE TRAILER.

3 Q AT THE WHAT?

4 A AT THE TRAILER.

5 Q AT THE TRAILER?

6 A YES, SIR.

7 Q AND LET ME SHOW YOU THESE PICTURES. ANY OBJECTIONS
8 HARRY? ANY OBJECTIONS TO THESE GOING IN TO EVIDENCE?

9 MR. DEVOE: NO OBJECTION.

10 MR. COTHRAN: MARK THESE INTO EVIDENCE, PLEASE. YOUR
11 HONOR, WE WOULD OFFER THESE IN EVIDENCE WITHOUT OBJECTION.

12 THE COURT: THIS WOULD BE OF THE TRAILER YOU ARE
13 GETTING READY TO ASK ABOUT?

14 MR. COTHRAN: YES, SIR.

15 THE COURT: THEY ARE COMING IN AS STATE'S 1 THROUGH
16 4.

17 (PICTURES MARKED AS STATE'S EXHIBIT NOS. 1 THROUGH 4
18 INTO EVIDENCE.)

19 Q CAN YOU LOOK AT THAT?

20 A YES, SIR.

21 Q WHAT IS THAT? IS THAT THE TRAILER?

22 A YES.

23 Q I AM GOING TO PULL UP ON THE SCREEN. IT IS SIMPLY
24 THE SAME PICTURE. SIMPLY WHERE THE JURY WILL BE ABLE TO
25 SEE WHAT YOU ARE TELLING ME. LET ME HOLD THAT PICTURE

1 WHERE I CAN SHOW IT TO MS. LAND. THAT IS STATE'S EXHIBIT
2 NO. 1. IS THAT THE TRAILER YOU ARE TALKING ABOUT?

3 A YES, SIR.

4 Q CAN -- IS THAT THE TRAILER WHERE THIS SHOOTING TOOK
5 PLACE?

6 A YES, SIR.

7 Q DO YOU RECALL ABOUT WHAT TIME YOU GOT THERE?

8 A I DON'T KNOW EXACTLY WHAT TIME. IT WAS LIKE, IT WAS
9 JUST BEFORE DARK. LIKE IN THE EVENING TIME.

10 Q WHEN YOU GOT THERE, WAS THE DEFENDANT RALPHAEL BRIGGS
11 THERE?

12 A NO, SIR, NOT AT THE TIME.

13 Q WAS WESLEY HOUSE, THE DECEASED THERE?

14 A NO, SIR.

15 Q HE WASN'T THERE EITHER. WESLEY WASN'T THERE EITHER.

16 A WELL NOT AT THE TIME I GOT THERE.

17 Q DO YOU RECALL WHO ALL WAS THERE WHEN YOU GOT THERE?

18 A WELL AT THE TIME, IT WAS ME, JAMES AND FEW MORE
19 FELLOWS. BUT I DON'T KNOW THEIR NAMES.

20 Q OKAY.

21 A BUT HE WAS JUST STANDING AROUND.

22 Q AND WERE YOU THERE, WHILE YOU WERE THERE, DID WESLEY
23 EVER COME UP?

24 A WELL YES, HE CAME UP LIKE, IT WAS LIKE 20 OR 30
25 MINUTES BEFORE TANK PULLED UP.

1 Q YOU CALL THE DEFENDANT IN THIS CASE TANK?

2 A YES, SIR.

3 Q AND WHAT DO YOU CALL WESLEY?

4 A HIS SCREEN NAME IS HOUSE MOUSE.

5 Q SO AND WESLEY GOT THERE ABOUT 20 MINUTES BEFORE, OR
6 20 OR 30 MINUTES BEFORE TANK GOT THERE?

7 A YES, SIR.

8 Q WHERE WAS WESLEY HANGING OUT AND WHERE WERE YOU
9 HANGING OUT?

10 A WELL I WAS JUST RIGHT LIKE IN BETWEEN THE TRAILER
11 WHERE I TELL YOU WE WAS ABOUT TO GRILL AT.

12 Q YEAH. AND MS. LAND IS GOING TO MOVE HER MARKER.
13 TELL HER WHERE YOU WANT HER TO PUT IT.

14 A COME TO THE LEFT A LITTLE BIT.

15 Q TO THE LEFT?

16 A YEAH, LIKE---

17 Q RIGHT IN THERE?

18 A YEAH, LIKE RIGHT UP IN THERE. A LITTLE PAST THE
19 PORCH.

20 Q THAT'S WHERE YOU WERE?

21 A YES, SIR.

22 Q WHAT WERE YOU DOING?

23 A FLIPPING THE MEAT ON THE GRILL.

24 Q OKAY. AND WHERE WAS WESLEY?

25 A WELL WHEN HE PULLED UP, -- WHEN HE CAME UP, HE WAS

1 STANDING ON THE SHOULDER OF THE ROAD. RIGHT AT THE
2 SHOULDER OF THE ROAD.

3 Q WHICH WAY?

4 A TO THE RIGHT.

5 Q A LITTLE MORE TO THE RIGHT.

6 A LIKE ON THE SHOULDER---

7 Q LIKE RIGHT IN THERE?

8 A YES, SIR.

9 Q DID HE DRIVE THERE OR WALK THERE?

10 A HE WALKED UP.

11 Q DID HE HAVE ANYTHING WITH HIM THAT YOU SAW?

12 A NO, SIR.

13 Q OKAY, DID HE HAVE A STICK IN HIS HAND?

14 A NO, SIR.

15 Q DID HE HAD HAVE ANY KIND OF WEAPON THAT YOU KNOW OF?

16 A NO, SIR.

17 Q NOW HOW DID TANK GET THERE? HOW DID THE DEFENDANT IN
18 THIS CASE GET THERE?

19 A WELL HE PULLED UP IN THE CAR, AND THAT'S WHEN HE
20 PULLED UP COMING FROM THIS WAY, AND HE PULLED INTO THE
21 YARD. HE PULLED IN FRONT OF THE TRAILER.

22 Q OKAY, SO HE PULLED UP. HE PULLED IN THE DRIVEWAY?

23 A YES, SIR.

24 Q AND THEN TURNED RIGHT, RIGHT THERE IN FRONT OF THE
25 TRAILER?

1 A YES, SIR.

2 Q WAS ANYBODY IN THE CAR WITH HIM?

3 A ARE YOU TALKING ABOUT WHEN HE PULLED UP?

4 Q YEAH.

5 A NO, I DIDN'T SEE ANYBODY.

6 Q YOU DIDN'T SEE ANYBODY WITH HIM?

7 A NO, SIR.

8 Q WAS ANYBODY ELSE STANDING AROUND OUT THERE NEAR THE
9 CAR?

10 A WELL, NO, NOT THAT I RECALL. BECAUSE WHEN HE PULLED
11 UP THAT'S WHEN WESLEY WALKED UP TO THE CAR.

12 Q WESLEY WAS DOWN THERE ON THE EDGE OF THE STREET THE
13 WHOLE TIME?

14 A YES, SIR.

15 Q OKAY, AND HE WALKED UP TO THE CAR?

16 A YES, SIR.

17 Q THEN WHAT HAPPENED?

18 A AND THAT'S WHEN TANK GOT OUT OF THE CAR. WHEN TANK
19 GOT OUT OF THE CAR, WESLEY STATED, "WHAT'S UP." AND THEN
20 TANK SAID, "WHAT ARE YOU CRAZY." AND THAT'S WHEN HE
21 POPPED THE TRUNK OF THE CAR.

22 Q LET ME SLOW YOU DOWN RIGHT HERE A MINUTE. WHEN TANK
23 DROVE UP, HE WAS DRIVING?

24 A UH-HUH. (AFFIRMATIVE.) YEAH, HE WAS DRIVING WHEN
25 PULLED UP.

1 Q HE GOT OUT---

2 A UH-HUH. (AFFIRMATIVE.)

3 Q ---OF THE DRIVER'S SEAT?

4 A YES, SIR.

5 Q AND WENT BACK TOWARD THE BACK OF THE CAR.

6 MR. DEVOE: YOUR HONOR, HE IS LEADING.

7 A YES.

8 THE COURT: IF YOU WILL PHRASE IT WITHOUT SUGGESTING
9 ANSWERS, SIR.

10 Q TELL ME, YOU TAKE ME STEP BY STEP OF WHAT TANK DID
11 AFTER HE PULLED UP.

12 A WELL WHEN HE PULLED UP, I GUESS WESLEY SAW HIM WHEN
13 HE WAS PULLING UP. SO BY THE TIME TANK PULLED IN THE YARD
14 AND GOT OUT OF THE CAR, WESLEY WAS GOING TOWARDS THE CAR.
15 HE WAS LIKE AT THE TRUNK OF THE CAR BY THE TIME TANK HAD
16 GOT OUT OF THE CAR. SO WHEN TANK GOT OUT OF THE CAR,
17 WESLEY STATED, "WHAT'S UP." TANK WAS LIKE, "BOY ARE YOU
18 CRAZY." AND THAT'S WHEN HE POPPED THE TRUNK OF THE CAR,
19 AND GOT THE GUN AND PUT IT TO WESLEY AND PULLED THE
20 TRIGGER.

21 Q AND WHAT KIND OF GUN WAS IT? WAS IT A PISTOL? LONG
22 GUN, SHORT GUN?

23 A IT WAS A LONG GUN. IT WAS A SHOTGUN.

24 Q A SHOTGUN?

25 A YES, SIR.

1 Q OKAY. WHEN HE POPPED THE TRUNK, AND TELL ME AGAIN
2 WHAT HE DID.

3 A HE PUT THE GUN TO WESLEY AND PULLED THE TRIGGER.

4 Q HOW CLOSE WERE THEY STANDING?

5 A ABOUT FROM -- ABOUT FROM HERE, WELL TANK WAS RIGHT
6 HERE. AND WESLEY WAS PROBABLY LIKE AT THE END OF THE STEP
7 RIGHT THERE. SO IT WAS CLOSE TO EACH OTHER.

8 Q REAL CLOSE TO EACH OTHER. OKAY, DID, COULD YOU HEAR
9 WHAT WERE THEY SAYING? HOW FAR AWAY WERE YOU?

10 A I WAS RIGHT THERE. LIKE WHERE I SAID I WAS GRILLING
11 AT.

12 Q OKAY.

13 A WHEN HE PULLED IN, LIKE THE TAIL OF THE CAR WAS LIKE
14 PAST WHERE I COULD SEE.

15 Q OKAY.

16 A AND THAT'S WHEN I HEARD EVERYTHING WHEN WESLEY CAME
17 UP. AND THAT'S WHEN HE STATED, "TANK, WHAT'S UP."

18 Q DID YOU HEAR WESLEY THREATEN TANK IN ANY WAY?

19 A NO, SIR.

20 Q COULD YOU -- WAS HIS TONE OF VOICE AGGRAVATED IN ANY
21 WAY?

22 A WELL, YEAH, WHEN HE WALKED UP TO TANK, YOU KNOW, HE
23 WAS KIND OF AGGRESSIVE WAY LIKE, "WHAT'S UP."

24 Q DID HE HAVE ANYTHING IN HIS HAND?

25 A I DIDN'T SEE ANYTHING.

1 Q DID HE HAVE A STICK IN HIS HAND?

2 A NO, I DIDN'T SEE NO STICK.

3 Q DID YOU EVER SEE HIM THAT NIGHT WITH A STICK?

4 A WELL EARLIER HE HAD A STICK, BUT WHEN HE WALKED UP,
5 HE DIDN'T HAVE NO STICK.

6 Q TELL ME, DESCRIBE THIS STICK HE HAD EARLIER.

7 A IT WAS LIKE A PADDLE WITH A STICK.

8 Q A PADDLE.

9 A UH-HUH. (AFFIRMATIVE.)

10 Q A BOAT PADDLE?

11 A NO, MORE LIKE, IT WAS ABOUT THAT LONG. I WOULD SAY
12 ABOUT THAT LONG AND ABOUT THAT THICK. (WITNESS
13 INDICATING.) IT HAD A LITTLE HANDLE ON IT.

14 Q LIKE A PADDLE YOU USE AT SCHOOL?

15 A YES, SIR.

16 Q AND WHERE DID HE HAVE THAT STICK, THE PADDLE YOU USED
17 AT SCHOOL?

18 A WELL I SAW IT EARLIER WHEN HE WAS AT MY
19 GRANDMOTHER'S HOUSE, AND HE HAD IT AROUND THERE. HE HAD
20 IT IN THE TRUNK OF HIS CAR. HE KEEP IT IN HIS CAR RIGHT
21 NOW. IT DIDN'T RUN, HE ALWAYS KEEP IT IN THE TRUNK.

22 Q HOW FAR DOES YOUR GRANDMOTHER LIVE FROM THIS HOUSE?

23 A RIGHT AROUND THE BLOCK.

24 Q RIGHT AROUND THE BLOCK. SO WESLEY KEPT HIS CAR AT
25 YOUR GRANDMOTHER'S HOUSE. AND HE HAD THIS RED PADDLE OR

1 WHATEVER COLOR STICK IT WAS---

2 A YES, SIR.

3 Q ---IN THE TRUNK OF THE CAR.

4 A UH-HUH. (AFFIRMATIVE.)

5 Q AND THAT WAS EARLIER THAT DAY.

6 A YES, SIR.

7 Q WHEN HE CAME BACK TO THIS LOCATION, DID HE BRING IT
8 WITH HIM?

9 A NO, I DIDN'T SEE IT.

10 Q YOU NEVER SAW IT?

11 A NO, SIR.

12 Q IF HE HAD HAD IT, WERE YOU STANDING CLOSE ENOUGH YOU
13 COULD HAVE SEEN IT?

14 A YES, SIR.

15 Q DID YOU SEE HIM TRY TO HIT TANK WITH ANY KIND OF
16 OBJECT?

17 A NO, SIR.

18 Q DID HE MAKE ANY KIND OF THREATS AND GESTURES TOWARD
19 HIM AT ALL?

20 A NO, HE DIDN'T RAISE HIS HAND OR NOTHING.

21 Q HOW FAST DID ALL THIS GO DOWN?

22 A IT HAPPENED SO FAST. I MEAN AS SOON AS TANK PULLED
23 UP, I MEAN WESLEY WALKED TO HIM AND STATED, "WHAT'S UP."

24 AND THAT'S WHEN TANK, TANK SAID, "BOY ARE YOU CRAZY."

25 AND HE POPPED THE TRUNK OF THE CAR AND PULLED THE GUN OUT

1 AND SHOT HIM.

2 Q HOW DID HE -- TELL ME HOW HE POPPED THE TRUNK, DID HE
3 POP IT FROM THE INSIDE AND OUTSIDE? HOW DID HE POP THE
4 TRUNK?

5 A I THINK IT'S FROM THE INSIDE.

6 Q OKAY.

7 A IT WAS FROM THE INSIDE. THAT'S WHEN HE WENT BACK TO
8 THE CAR AND PULLED THE LATCH. IT WAS FROM THE INSIDE.

9 Q SO WHEN HE GETS OUT OF THE CAR, DOES HE WALK TOWARD
10 THE BACK AND THEN GO BACK AND POP THE TRUNK? OR DOES HE
11 POP THE TRUNK BEFORE HE GOES?

12 A WHEN HE GOT OUT OF THE CAR, HE WENT BACK AND POPPED
13 THE TRUNK.

14 Q OKAY.

15 A AND WESLEY WAS STILL STANDING AT THE CAR, LIKE THE
16 TRUCK OF THE CAR.

17 Q OKAY. SO HE WENT BACK OUT THE DRIVER'S DOOR AND
18 POPPED THE TRUNK?

19 A UH-HUH. (AFFIRMATIVE.)

20 Q THEN WHAT HAPPENED?

21 A AND THAT'S WHEN HE GOT THE GUN AND PUT IT TO WESLEY
22 AND SHOT HIM.

23 Q SO HE POPPED THE TRUNK?

24 A UH-HUH. (AFFIRMATIVE.)

25 Q AND DOES HE STICK HIS HAND IN THE TRUNK?

1 A YES, SIR.

2 Q WHEN HE DID THAT, DID WESLEY STICK HIS HAND IN THE
3 TRUNK OR DO ANYTHING?

4 A NO, SIR.

5 Q WHEN HE PULLED THE -- ONCE HE PULLED THE GUN OUT OF
6 THE TRUNK---

7 A UH-HUH. (AFFIRMATIVE.)

8 Q ---BY THE TIME HE GOT THE GUN OUT, HOW LONG DID IT
9 TAKE HIM TO SHOOT WESLEY?

10 A PROBABLY AIN'T BEEN A SECOND. BETWEEN PULLING THE
11 GUN OUT, HE PUT THE GUN ON WESLEY AND SHOT HIM. IT'S LIKE
12 HE PULLED THE GUN, BOOM.

13 Q IT WAS THAT QUICK?

14 A THAT QUICK.

15 Q AFTER HE SHOT WESLEY, WHAT DID HE DO?

16 A WELL AFTER HE SHOT WESLEY, HE LOOKED AT ME AND
17 STATED: "FUCK YOU," AND RIDE OFF.

18 Q THAT'S WHAT HE DID.

19 A YES, SIR.

20 Q DID HE PUT THE GUN BACK IN THE TRUNK?

21 A YES, SIR, HE PUT THE GUN BACK IN THE TRUNK.

22 Q DID HE PUT ANYTHING ELSE IN THE TRUNK?

23 A I DIDN'T SEE HE HAD NOTHING ELSE IN HIS HAND.

24 Q AND WHAT HAPPENED? AFTER WESLEY GOT SHOT, WHAT
25 HAPPENED?

1 A THAT'S WHEN I WENT TO WESLEY AND GRABBED HIM TO MAKE
2 SURE HE WAS ALL RIGHT. AND I TOLD SOMEBODY TO CALL THE
3 RESCUE SQUAD.

4 Q AND WHAT WAS WESLEY'S CONDITION WHEN YOU GOT TO HIM?

5 A HE WAS LIKE, HIS EYES WERE LIKE ROLLING BACK IN HIS
6 HEAD. AND HE WAS LIKE TO SIDE TO SIDE. LIKE MOVING HIS
7 HEAD SIDE TO SIDE. AND HE WAS DYING. HE WASN'T SAYING
8 NOTHING. HE COULDN'T SAY NOTHING.

9 Q DID YOU STAY THERE WAITING UNTIL THE RESCUE SQUAD GOT
10 THERE?

11 A YES, SIR.

12 Q HOW LONG DID THAT TAKE?

13 A ABOUT AT, LEAST A GOOD 45 MINUTES. THE POLICE GOT
14 THERE BEFORE THE RESCUE SQUAD GOT THERE. AND THEY WAS OUT
15 THERE WAITING ON THE RESCUE SQUAD TO COME.

16 Q AND WHAT CONDITION WAS WESLEY IN AT THAT POINT?

17 A HE WAS STILL LIKE, LIKE, WHAT I AM SAYING, TWISTING.

18 Q OKAY. DID HE EVER SAY ANYTHING TO YOU?

19 A NO, SIR.

20 Q FROM THE TIME TANK DROVE UP UNTIL THE TIME HE LEFT
21 WAS ABOUT HOW LONG?

22 A YOU'RE SAYING FROM THE TIME TANK PULLED UP?

23 Q PULLED UP AND SHOT WESLEY, AND GOT BACK IN HIS CAR
24 AND LEFT. ABOUT HOW LONG DID THIS TAKE?

25 A I WOULD SAY A GOOD 5 OR 6 MINUTES JUST IN THAT TIME.

1 Q THAT'S IT?

2 A THAT'S IT.

3 Q DID TANK EVEN COME BACK?

4 A NO, SIR.

5 Q DID TANK EVER TRY TO GIVE AID TO WESLEY?

6 A NO, SIR.

7 Q DID HE EVER SAY HE WAS SORRY?

8 A NO, SIR. WHEN HE SHOT HIM, LIKE WHEN HE SHOT WESLEY
9 I WAS SHOCKED. I'M LIKE, "OH, OH." AND HE LOOKED AT ME,
10 LIKE "FUCK YOU." AND HE GOT IN THE CAR AND DRIVE OFF.
11 AND THAT'S WHEN I WENT TO WESLEY AND GRAB HIM.

12 Q THEY KNEW EACH OTHER?

13 A YES, SIR.

14 Q DID WESLEY EVER DO ANYTHING OR EVER GIVE HIM ANY
15 REASON TO SHOOT HIM WHEN YOU WERE STANDING THERE?

16 A NO, SIR.

17 Q HE NEVER SAID ANYTHING OR THREATENED HIM, DID
18 ANYTHING---

19 A THE ONLY THING HE SAID WAS, "WHAT'S UP." THAT'S ALL
20 HE SAID.

21 Q WERE YOU SURPRISED?

22 A ARE YOU TALKING ABOUT WHEN HE SHOT HIM? YES, SIR.

23 Q HAD YOU EVER SEEN -- DID YOU KNOW WHOSE CAR THAT WAS
24 THAT TANK WAS DRIVING?

25 A NO, SIR. I DON'T KNOW WHOSE CAR THAT WAS.

1 Q DOES TANK HAVE A CAR?

2 A WELL, YEAH, HE HAD A CAR. HIS CAR WAS PARKED THERE
3 IN FRONT OF THE TRAILER AT THAT TIME. SO I DON'T KNOW
4 WHOSE CAR HE WAS DRIVING.

5 Q DID HE EVER COME BACK TO THAT TRAILER ANY TIME LATER
6 THAT NIGHT?

7 A NO, SIR.

8 Q DID YOU EVER TALK TO HIM AFTER THAT?

9 A NO, SIR.

10 Q YOU NEVER TALKED TO TANK AGAIN AFTER THAT?

11 A NO, SIR.

12 Q OTHER PEOPLE THAT WERE STANDING AROUND WHEN THIS
13 SHOOTING WENT DOWN, DID ANYBODY ELSE HAVE ANY KIND OF
14 WEAPON OR ANY MAKE ANY THREATS TO ANYBODY?

15 A NO, SIR.

16 Q WHEN WESLEY WAS LAYING ON THE GROUND---

17 A UH-HUH. (AFFIRMATIVE.)

18 Q ---AND YOU CAME THERE, DID YOU KNEEL DOWN BESIDE HIM
19 OR GET OVER HIM IN ANY WAY?

20 A YES, SIR.

21 Q DID YOU SEE ANY KIND OF WEAPONS OR STICKS OR ANYTHING
22 AROUND HIM AT THAT TIME?

23 A NO STICK. NO WEAPON, NO NOTHING. JUST HIM.

24 Q NOTHING?

25 A NOTHING.

1 Q WHOSE TRAILER IS THAT?

2 A MS. KATIE GREEN.

3 Q MS. KATIE GREEN?

4 A YES, SIR.

5 Q OKAY. AND WHY WERE Y'ALL AT MS. KATIE GREEN'S THAT
6 PARTICULAR NIGHT?

7 A BECAUSE WE WAS ABOUT TO HAVE A COOK OUT, AND SHE WAS
8 LIKE, IT WAS OKAY FOR US TO HAVE A COOK OUT IN HER YARD.

9 Q AND WHAT KIND OF MEAT WERE YOU COOKING?

10 A IT WAS STEAK AND GROUND BEEF.

11 Q WOULD THIS -- DID Y'ALL INVITE PEOPLE, OR HOW WERE
12 YOU GOING TO DECIDE WHO WAS GOING TO EAT THERE?

13 A YEAH, WE INVITED SOME PEOPLE.

14 Q WAS TANK INVITED?

15 A WELL, NO, HE BE OUT THERE EVERY DAY, AND OF COURSE HE
16 WAS INVITED. BUT I MEAN, IT WAS LIKE---

17 Q SO HE NORMALLY HUNG OUT THERE.

18 A YES, SIR.

19 Q Y'ALL ALL NORMALLY HUNG OUT THERE.

20 A YES, SIR.

21 Q WESLEY NORMALLY HANG OUT THERE TOO?

22 A YEAH.

23 Q AND WAS THERE ANY BAD BLOOD BEFORE THIS DAY BETWEEN
24 THE TWO OF THEM?

25 A NO, SIR.

1 Q YOU HAD NEVER SEEN ANY KIND OF ALTERCATION OR
2 ANYTHING THAT WOULD HAVE CAUSED TANK TO SHOOT WESLEY?

3 A NO, SIR.

4 Q COULD TANK HAVE GOTTEN BACK IN HIS CAR AND DRIVEN OFF
5 WITHOUT SHOOTING WESLEY? DID WESLEY DO ANYTHING TO KEEP
6 HIM FROM GETTING BACK IN THE CAR AND DRIVING OFF? DID
7 WESLEY CORAL HIM UP IN ANY WAY, OR THREATEN HIM IN ANY
8 WAY?

9 A NO, SIR. I DON'T KNOW IF HE FELT THREATENED WHEN
10 WESLEY WALKED UP ON HIM.

11 Q BUT HE WENT BACK AND POPPED THE TRUNK, RIGHT?

12 A YES, SIR.

13 Q HE COULD HAVE JUST AS EASY GOTTEN BACK IN THE CAR AND
14 DRIVEN OFF, RIGHT?

15 A YES, SIR.

16 Q BECAUSE WESLEY WASN'T STANDING NEAR HIM. WASN'T
17 NEAR HIM AT THAT TIME?

18 A NO, SIR.

19 Q WESLEY DIDN'T HAVE A WEAPON.

20 A NO, SIR.

21 Q BUT HE POPPED THE TRUNK AND GOES BACK AROUND.

22 A BACK AROUND.

23 Q AND OPENS THE TRUNK AND PULLS THE SHOTGUN AND STICKS
24 IT IN HIS CHEST AND PULLED THE TRIGGER.

25 A YES, SIR.

1 Q THAT'S THE WAY IT HAPPENED.

2 A THAT'S THE WAY IT HAPPENED.

3 Q AND HE COULD HAVE JUST AS EASILY DRIVEN AWAY AND
4 WESLEY WOULD HAVE BEEN ALIVE TODAY.

5 A YES.

6 MR. COTHRAN: THANK YOU. HOW ABOUT ANSWER ANY
7 QUESTIONS MR. DEVOE HAS.

8 THE COURT: YOU MAY EXAMINE HIM.

9 MR. DEVOE: THANK YOU.

10 CROSS EXAMINATION BY MR. DEVOE:

11 Q YOU ARE DOMINIQUE LAWSON, IS THAT CORRECT?

12 A YES, SIR.

13 Q ARE YOU RELATED TO WESLEY HOUSE?

14 A YES, SIR.

15 Q HOW ARE YOU RELATED TO HIM?

16 A HIS MOTHER, THAT'S MY GREAT AUNT. SO THAT'S MY
17 COUSIN. MY COUSIN.

18 Q NOW DO YOU HANG OUT AT THIS HOUSE MUCH? THIS
19 PARTICULAR HOUSE, KATIE GREEN'S HOUSE?

20 A YES, SIR.

21 Q THAT'S A HANG OUT FOR YOU, ISN'T IT?

22 A YES, SIR. BUT MOSTLY I BE AT MY GRANDFATHER'S STORE
23 HELPING HIM.

24 Q WELL I AM TALKING ABOUT THE PEOPLE WHO WERE THERE
25 THAT DAY. DON'T THEY USUALLY HANG OUT AT THAT PLACE?

1 A YEAH, SOME OF THEM.

2 Q SOME OF THEM?

3 A YES, SIR.

4 Q WELL WHO IS SOME OF THEM?

5 A ME, TANK, WESLEY AND RAY, AND THAT'S ABOUT IT.

6 Q DAVID?

7 A DAVID? WHO IS DAVID?

8 Q DAVID LEE.

9 A NO, I DON'T KNOW IF HE IS OUT THERE. BUT THAT IS HIS

10 AUNT'S TRAILER.

11 Q GERARD'S TRAILER?

12 A THAT IS HIS AUNT, THE DAVID FELLOW.

13 Q YEAH.

14 A THAT IS HIS AUNT'S TRAILER, BUT HE DON'T USUALLY HANG

15 OUT THERE.

16 Q WHEN YOU SAY YOU WERE BACK ON THE PORCH OF THIS

17 HOUSE---

18 A YES, SIR.

19 Q AND MS. LAND PUT THE DOT HERE. WAS THE GRILL THERE,

20 OR WAS IT FURTHER BACK FROM THE HOUSE?

21 A IT WAS LIKE RIGHT THERE. IN THE MIDDLE -- LIKE IN

22 THE MIDDLE OF THE PORCH.

23 Q RIGHT ABOUT HERE?

24 A UH-HUH. (AFFIRMATIVE.)

25 Q SO RIGHT THERE. NOT WHERE THE DOT WAS BEFORE. BUT

1 MORE BACK UNDER HERE, IS THAT CORRECT?

2 A LIKE RIGHT IN THERE. LIKE YOU SEE WHERE THE GROUND
3 IS FADING OUT AT, THE DIRT WAS LIKE RIGHT IN THERE.

4 Q RIGHT ABOUT IN THERE.

5 A COME DOWN A LITTLE BIT.

6 Q WHICH WAY?

7 A COME BACK TO ME.

8 Q YOU WERE ON YOUR PORCH, OR AT THE PORCH, OR IN FRONT
9 OF THE PORCH?

10 A LIKE IN THE MIDDLE OF THE PORCH.

11 Q THIS IS THE FRONT OF THE PORCH RIGHT THERE. SO THE
12 MIDDLE WOULD BE PROBABLY IN THERE.

13 A RIGHT UP IN THERE.

14 Q THAT'S WHERE YOU WERE?

15 A UH-HUH. (AFFIRMATIVE.)

16 Q I HAVE A POINTER. IT HELPS. SO YOU'RE SAYING THIS
17 IS THE FRONT OF THE PORCH RIGHT HERE.

18 A UH-HUH. (AFFIRMATIVE.)

19 Q AND YOU WERE MOVE OR LESS IN THERE WHERE THE DIRT
20 STOPPED, IS THAT RIGHT?

21 A YES, SIR.

22 Q HUH?

23 A YES, SIR.

24 Q NOW YOU'RE OUT THERE EARLIER IN THE DAY, WERE YOU?

25 A NO, SIR.

1 Q NO STORIES ABOUT WHAT HAD HAPPEN BETWEEN---

2 A YEAH, I HEARD IT WAS A STRUGGLE BETWEEN THEM EARLIER.

3 Q DID YOU HEAR A STORY ABOUT THAT WESLEY---

4 A YES, SIR.

5 Q ---HAD STOLEN SOME PRODUCT FROM TANK?

6 A YES, SIR.

7 Q AND TANK DIDN'T DO ANYTHING. YOU SAY THEY STRUGGLED?

8 A YES, SIR.

9 Q AND MUCH LATER IN THE DAY WHEN HE COMES AROUND THIS

10 WAY, HE PARKS RIGHT ABOUT IN HERE, DOESN'T HE?

11 A UH-HUH. (AFFIRMATIVE.)

12 Q ALL RIGHT.

13 A YES, SIR, HE PULLED IN---

14 Q SO HE PARKED, DIDN'T HE PARK PARALLEL TO THIS HOUSE,

15 THIS TRAILER?

16 A NO, IT WAS LIKE AN ANGLE. LIKE WHEN HE PULLED IN---

17 Q YOU SAY AN ANGLE?

18 A YES, SIR.

19 Q NOW ARE YOU SURE IT WAS AN ANGLE?

20 A YES, SIR.

21 Q AND YOU'RE OVER HERE COOKING WITH WHO ELSE WAS OVER

22 THERE---

23 A UH-HUH. (AFFIRMATIVE.)

24 Q ---WITH YOU?

25 A YEAH, I WAS OVER THERE COOKING.

1 Q WHO WAS COOKING THERE WITH YOU?

2 A ME AND DAVID LEE.

3 Q THERE WAS JUST TWO OF YOU, NOT THREE.

4 A YES, SIR. JUST TWO.

5 Q WERE YOU CHATTING BACK AND FORTH WITH EACH OTHER?

6 A YES.

7 Q WERE YOU HAVING SOME BEERS WITH EACH OTHER?

8 A NO, SIR, I DON'T DRINK.

9 Q ANY OTHER PRODUCT YOU WERE USING THEN?

10 A NO, SIR.

11 Q NOTHING. SO HE'S BACK IN HERE. THE QUESTION IS,

12 WERE YOU UP IN HERE, OR WAS HE OVER IN HERE, RIGHT?

13 A UH-HUH. (AFFIRMATIVE.) WELL HE WAS---

14 Q I AM ASKING THE QUESTION. YOU'RE SAYING THAT THE

15 VICTIM WAS IN HERE SOMEWHERE?

16 A UH-HUH. (AFFIRMATIVE.)

17 Q I THINK THE DOT WAS PUT ABOUT IN HERE. WAS IT HERE

18 OR WAS IT MORE OVER HERE?

19 A MORE OVER THERE.

20 Q WHERE?

21 A WHERE YOU BEEN AT THE FIRST TIME.

22 Q MORE LIKE RIGHT ABOUT IN HERE?

23 A YEAH, RIGHT THERE.

24 Q HERE?

25 A YES, SIR.

1 Q GO ALL AROUND THIS WAY AND GO BACK IN THIS WAY. IS
2 THAT RIGHT?

3 A WELL, AGAIN, I DON'T KNOW WHICH WAY. I DON'T KNOW IF
4 THEY WALKED ACROSS THE GRASS OR WALKED AROUND IN THE
5 DRIVEWAY.

6 Q WELL WHY DON'T YOU KNOW? DIDN'T YOU SEE THEM?
7 COULDN'T YOU SEE THEM?

8 A YES. WHEN LIKE TANK PULLED UP, I SAW WESLEY STANDING
9 AT THE ROAD. AND THAT'S WHEN I TURNED BACK FROM THE
10 GRILL. AND BY THE TIME WHEN I TURNED BACK AROUND, WESLEY
11 WAS ALREADY AT THE CAR.

12 Q SO YOU DIDN'T SEE WHICH WAY HE WENT, DID YOU?

13 A NO, SIR.

14 Q SO IF YOU DIDN'T SEE THEM SAY SO.

15 A I DIDN'T SEE WHICH WAY WESLEY WALKED.

16 Q YOU SAW HIM HERE. AND YOU SAW HIM BACK OVER HERE AT
17 SOME POINT. YOU DIDN'T SAY HOW HE GOT FROM THERE TO
18 THERE.

19 A THE LAST TIME I SEE HIM WHEN HE WAS STANDING AT THE
20 ROAD. AND THEN WHEN I TURNED BACK TO THE GRILL. WHEN I
21 TURNED BACK AROUND AND LOOKED BEHIND ME, HE WAS AT THE
22 CAR. SO I COULDN'T TELL YOU WHICH WAY HE WALKED.

23 Q THE QUESTION, THIS CLUB YOU ARE TALKING ABOUT, THE
24 STICK YOU ARE TALKING ABOUT---

25 A UH-HUH. (AFFIRMATIVE.)

1 Q ---THAT HE HAD BEFORE.

2 A YES, SIR.

3 Q WHAT COLOR WAS IT?

4 A SIR?

5 Q WHAT COLOR WAS IT?

6 A EITHER BLUE OR RED, ONE OF THEM.

7 Q OKAY.

8 A I DON'T KNOW.

9 Q ONE OF THE TWO THOUGH, RIGHT?

10 A YES, SIR.

11 Q IT WAS NOT AN UNPAINTED CLUB, WAS IT?

12 A UH-UH. (NEGATIVE.)

13 Q AND WHAT DID HE USE IT FOR?

14 A WELL BASICALLY HE JUST -- HE HAD IT IN THE TRUNK.

15 THAT'S HOW I SEEN IT. LIKE WHEN HE USUALLY GO IN THE

16 TRUNK, HE KEEP ALL HIS TOOLS IN THE TRUNK. AND EVERY TIME

17 HE OPENED THE TRUNK, THE STICK WAS IN THE TRUNK.

18 Q WHAT WAS---

19 A I DON'T KNOW WHAT HE USED IT FOR.

20 Q DID YOU SEE HIM CARRY IT AROUND?

21 A NO, SIR.

22 Q DID YOU EVER SEE HIM USE IT FOR ANYTHING?

23 A NO, SIR.

24 Q JUST A DECORATIVE ITEM?

25 A YES, SIR.

1 Q YOU SAY YOU WERE OVER HERE COOKING. AND YOU SAW HIM
2 STANDING HERE, IS THAT CORRECT?

3 A YES.

4 Q IS THAT RIGHT?

5 A YES, SIR.

6 Q AND THE GRILL WAS IN TOWARD THE HOUSE, OR BACK AWAY
7 FROM THE HOUSE?

8 A BACK AWAY FROM THE HOUSE.

9 Q SO IT WAS MAYBE CLOSER TO -- WHAT IS THIS OVER HERE,
10 A WASHING MACHINE? A TRASH CAN?

11 A NO, THAT'S A TRASH CAN. THAT'S FARTHER BACK.

12 Q WAS IT CLOSE TO---

13 A THE GRILL WAS UP.

14 Q ---THE TRASH CAN?

15 A SIR?

16 Q WAS IT CLOSE TO THE TRASH CAN?

17 A NO, UH-UH. (NEGATIVE.) IT WAS FARTHER UP. FARTHER
18 UP.

19 Q RIGHT ABOUT IN HERE?

20 A YES, SIR.

21 Q AND YOU'RE SAYING THE TRUNK OF THIS CAR WAS SO FAR
22 THAT YOU SAW EVERYTHING THAT WAS GOING ON?

23 A YES, SIR.

24 Q SO EXACTLY WHERE DID YOU FIND WESLEY'S BODY?

25 A RIGHT THERE. YOU SEE WHERE THAT DIRT AT?

1 Q WHERE?

2 A RIGHT THERE.

3 Q HERE?

4 A NO, COME UP. COME UP A LITTLE BIT.

5 Q WHICH WAY? THIS WAY?

6 A THIS WAY.

7 Q THIS WAY.

8 A YES, SIR.

9 MR. COTHRAN: I'D LIKE HIM TO COME DOWN AND POINT.

10 MR. DEVOE: WELL COME DOWN AND POINT.

11 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
12 STAND.)

13 A HE WAS LAYING UP RIGHT IN HERE.

14 Q LAYING RIGHT THERE?

15 A THAT'S WHERE WE SAW HIM AT. BECAUSE WHEN TANK CAME
16 IN, HE PULLED, THE TRUNK OF THE CAR WAS STICKING OUT. SO
17 WESLEY LIKE AT THE TRUNK OF THE CAR AND TANK WAS ON THE
18 OTHER SIDE.

19 Q ARE YOU SAYING THAT TANK'S CAR WAS PARALLEL TO THE
20 ROAD, OR WAS IT AT AN ANGLE TO THE ROAD?

21 A IT WAS AN ANGLE. LIKE HE WAS PULLED IN, HE WAS
22 PULLED STRAIGHT UP. LIKE THE NOSE OF THE CAR WAS FACING
23 THIS WAY, AND THE TRUNK OF THE CAR WAS LIKE FACING WHERE I
24 COULDN'T SEE.

25 Q YOU SURE IT WASN'T OVER HERE?

1 A NO, SIR.

2 Q ALL RIGHT. THANK YOU.

3 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

4 Q YOU'RE SAYING THE ONLY WORDS YOU HEARD SPOKEN WERE,
5 BY WESLEY SAYING, "WHAT'S UP?"

6 A YES, SIR.

7 Q WHAT DOES THAT MEAN TO YOU, "WHAT'S UP?"

8 A I GUESS IT COULD MEAN MANY WAYS, "WHAT'S UP." BUT IT
9 CAN BE FIGHTING WORDS.

10 Q IT CAN BE FIGHTING WORDS?

11 A YES, SIR.

12 Q WHATEVER YOU SAW -- WHEN DID YOU TESTIFY TO WHEN TANK
13 WENT BACK TO THE CAR TO POP THE TRUNK? WAS IT AFTER HE
14 SAID, "WHAT'S UP," OR BEFORE HE SAID, "WHAT'S UP?"

15 A THAT WAS AFTER HE SAID, "WHAT'S UP."

16 MR. DEVOE: I HAVE NO FURTHER QUESTIONS, THANK YOU.

17 REDIRECT EXAMINATION BY MR. COTHRAN:

18 Q DOMINIQUE, YOU JUST TOLD MR. DEVOE THAT WHERE THE
19 TRUNK WAS STICKING OUT RIGHT HERE, THAT'S ABOUT WHERE
20 WESLEY WAS LYING?

21 A YES, SIR.

22 Q LAYING ON THE GROUND?

23 A COME IN. IT WASN'T THAT FAR.

24 Q RIGHT HERE.

25 A NO, COME DOWN. GO BACK.

1 MR. COTHRAN: YOU COME DOWN HERE AND SHOW ME THEN.
2 SHOW ME ONE MORE TIME WHERE YOU WERE STANDING. WHERE HE
3 FELL. AND THEN I'M GOING -- AND I'LL ASK YOU ANOTHER
4 QUESTION.

5 (THEREUPON THE WITNESS STEPS DOWN FROM THE WITNESS
6 STAND.)

7 A HE FELL LIKE RIGHT HERE. IT WAS LIKE RIGHT HERE.

8 Q OKAY, AND WHAT WERE YOU---

9 A WHERE HE FALL AT.

10 Q WHERE WERE YOU COOKING?

11 A RIGHT HERE.

12 Q RIGHT THERE?

13 A YES, SIR.

14 Q DID YOU, YOU HAVE A CLEAR VIEW OF WESLEY THE WHOLE
15 TIME?

16 A YES, SIR.

17 Q OKAY. AFTER WESLEY GOT SHOT, DID HE FALL RIGHT WHERE
18 HE GOT SHOT?

19 A YES, SIR.

20 Q HOW DID---

21 A HE FALL ABOUT---

22 Q HOW DID TANK GET THE CAR OUT OF THERE? DID---

23 A HE DRIVE STRAIGHT UP.

24 Q HE DROVE THROUGH THAT WAY. HE DIDN'T TRY TO BACK UP
25 OR BACK OVER HIM.

1 A NO, SIR.

2 Q HE DROVE STRAIGHT THOUGH?

3 A UH-HUH. (AFFIRMATIVE.)

4 Q WERE THERE ANY OTHER CARS PARKED IN THAT PARKING LOT
5 OR THAT YARD?

6 A NO, SIR.

7 Q THAT WAS THE ONLY CAR THAT CAME UP?

8 A YES, SIR.

9 Q HAD WESLEY -- BEFORE TANK WENT BACK TO POP THE TRUNK,
10 HAD WESLEY PUT HIS HANDS ON HIM IN ANY WAY?

11 A NO, SIR.

12 Q DID WESLEY HAVE HIS HANDS IN HIS POCKET?

13 A HE HAD -- HE WALKED IN LIKE, "WHAT'S UP."

14 Q HE DIDN'T HAVE HIS HANDS DOWN IN HIS POCKET?

15 A NO, SIR. HE HAD HIS HANDS DOWN LIKE, "WHAT'S UP."

16 Q AND HE HAD NOTHING IN HIS HANDS.

17 A NOTHING IN HIS HANDS.

18 Q AND HOW -- COME STAND RIGHT HERE AND SHOW ME HOW
19 CLOSE THEY WERE WHEN HE SHOT HIM.

20 A LIKE ABOUT RIGHT HERE.

21 Q ALL RIGHT. LET'S DO IT OVER HERE WHERE THE JURY CAN
22 SEE. YOU'RE TANK, I'M WESLEY. SHOW ME. YOU'VE GOT THE
23 STICK, SHOW ME WHAT HE DID.

24 A TANK WAS ON THAT SIDE RIGHT THERE.

25 Q I CAN SWITCH SIDES.

1 A THIS IS THE CAR. LIKE WHEN HE PULLED IN, TANK WAS
2 RIGHT HERE. WESLEY WAS OVER AT THIS CAR RIGHT HERE. A
3 CAR PARKED RIGHT HERE. SO WESLEY CAME, "WHAT'S UP." TANK
4 LIKE, "BOY YOU CRAZY." WENT TO THE CAR. OPENED THE DOOR.
5 POPPED THE LATCH, CAME BACK. TRUNK WAS OPEN. REACHED IN
6 THE TRUNK, GOT THE GUN AND PUT IT TO WESLEY.

7 Q DID HE SHUCK THE GUN OR DO ANYTHING?

8 A IT WAS ALREADY COCKED.

9 Q HE PICKED IT UP---

10 A AND JUST PULLED THE TRIGGER.

11 Q PULLED THE TRIGGER.

12 A YES, SIR.

13 Q AND THEN WHAT DID HE DO WITH THE GUN?

14 A PUT IT BACK IN THE TRUNK. AND THEN WHEN I WAS LIKE
15 STANDING RIGHT OVER THERE, HE LOOKED AT ME LIKE, "FUCK
16 YOU," JUMPED IN THE CAR AND DRIVE OFF.

17 MR. COTHRAN: THANK YOU.

18 (THEREUPON, WITNESS RESUMES THE WITNESS STAND.)

19 THE COURT: RECROSS?

20 MR. DEVOE: ONE MORE QUESTION TO ASK YOU.

21 THE COURT: IS IT BETTER THAT HE BE DOWN?

22 MR. DEVOE: HE CAN STAY THERE THIS TIME, I HOPE.

23 RECROSS EXAMINATION BY MR. DEVOE:

24 Q WHEN HE, TANK, GOT IN THE CAR, HE DROVE STRAIGHT OFF,
25 IS THAT RIGHT?

1 A YES, SIR.

2 Q YOU SAY IT WAS ANGLE TO THE HOUSE?

3 A UH-HUH. (AFFIRMATIVE.)

4 Q HOW CLOSE IN TO THE TRAILER WAS HE?

5 A HE WAS ABOUT A GOOD 4 OR 5 FEET AWAY FROM THE CAR.

6 LIKE 4 OR 5 FEET AWAY FROM THE TRUNK.

7 Q AND HE COULD TURN AROUND---

8 A ACTUALLY JUST TURN AND DRIVE STRAIGHT ON OUT.

9 Q NOW YOU WERE STILL COOKING ALL THIS TIME, IS THAT

10 RIGHT?

11 A YES, SIR.

12 Q WERE YOU WATCHING THIS ENTIRE EPISODE?

13 A UH-HUH. (AFFIRMATIVE.)

14 Q YOU WERE?

15 A AFTER WESLEY STATED, "WHAT'S UP," THAT'S WHEN I

16 TURNED AROUND AND I WATCHED EVERYTHING.

17 MR. DEVOE: I HAVE NO FURTHER QUESTIONS. THANK YOU.

18 THE COURT: THANK YOU, VERY MUCH. YOU MAY STEP DOWN.

19 IS IT SATISFACTORY TO EXCUSE THIS WITNESS?

20 MR. COTHRAN: YES, SIR. AS FAR AS THE STATE IS

21 CONCERNED. DO YOU HAVE ANY OBJECTION?

22 THE COURT: MR. LAWSON, YOU CAN BE EXCUSED AT THIS

23 TIME.

24 MR. COTHRAN: CAN HE STAY IN THE COURTROOM?

25 THE COURT: HE CAN STAY IN THE COURTROOM IF HE'D

1 LIKE TO IF HE IS NOT TESTIFYING. OR HAVING TESTIFIED.
2 LADIES AND GENTLEMEN, BEFORE WE CALL THE NEXT WITNESS, DO
3 ANY OF YOU, WOULD YOU LIKE A BREAK AT ANY TIME? A SHORT
4 BREAK TO STEP TO THE RESTROOM OR ANYTHING? IF YOU DO, WE
5 ARE GOING TO TAKE -- SOLICITOR?

6 MR. COTHRAN: YES, SIR.

7 THE COURT: WE ARE GOING TO TAKE ABOUT A 5 MINUTE
8 BREAK AND LET THE JURY STEP TO THE JURY ROOM.

9 MR. COTHRAN: ALL RIGHT. LET ME CUT THESE LIGHTS
10 BACK ON. I'M SORRY.

11 THE COURT: WE'LL BE IN RECESS FOR ABOUT 5 MINUTES.

12 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

13 (SHOTGUN MARKED STATE'S EXHIBIT NO. 5 FOR I.D.)

14 THE COURT: YOU MAY BRING US THE JURY.

15 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
16 PRESENCE OF THE JURY.)

17 MR. COTHRAN: WE WOULD CALL SERGEANT CUTLER.

18 SERGEANT CUTLER, BEING FIRST DULY SWORN,
19 TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION BY MR. COTHRAN:

21 Q INTRODUCE YOURSELF TO THE JURY, PLEASE.

22 A I'M SERGEANT DAN CUTLER WITH THE CLARENDON COUNTY
23 SHERIFF'S OFFICE.

24 Q HOW LONG HAVE YOU WORKED AT THE SHERIFF'S OFFICE?

25 A A LITTLE OVER 9 YEARS.

1 Q LET ME TAKE YOU BACK TO SEPTEMBER 5, 2005. WERE YOU
2 WORKING THAT NIGHT?

3 A I WAS ON CALL.

4 Q DID YOU GET A CALL TO RESPOND TO THE TRAILER IN
5 SUMMERTON THAT IS SHOWN IN STATE'S EXHIBIT NO. 1?

6 A YES, SIR.

7 Q WHEN YOU GOT THERE, WHAT DID YOU FIND?

8 A WHEN I GOT THERE AND I SAW SOME PEOPLE, I WAS MET
9 THERE BY LAW ENFORCEMENT. THEY STATED THAT A MURDER HAD
10 TAKEN PLACE. AND THE OFFICER HAD TWO INDIVIDUALS THERE
11 THAT WERE WITNESSES, A MR. JAMES EARL GREEN AND
12 MR. DOMINIQUE LAWSON. THEY GIVE ME STATEMENTS THAT---

13 Q LET ME ASK YOU THIS. WAS THE VICTIM STILL THERE WHEN
14 YOU GOT THERE?

15 A THE VICTIM WAS NOT THERE WHEN I GOT THERE.

16 Q THE VICTIM HAD ALREADY GONE.

17 A THE ONLY THING THERE WAS A BLOOD SPOT ON THE GROUND.

18 Q LET ME GET MS. LAND TO PULL THIS PICTURE UP FOR ME
19 AGAIN. THERE YOU GO. SHOW ME WHERE YOU SAW THE BLOOD
20 STAIN.

21

22 A APPROXIMATELY RIGHT THERE.

23 Q OKAY.

24 A IT WAS ABOUT 2 INCHES IN DIAMETER.

25 Q OKAY. AND YOU GOT THERE, AND YOU QUESTIONED THESE

1 Q LET ME TAKE YOU BACK TO SEPTEMBER 5, 2005. WERE YOU
2 WORKING THAT NIGHT?

3 A I WAS ON CALL.

4 Q DID YOU GET A CALL TO RESPOND TO THE TRAILER IN
5 SUMMERTON THAT IS SHOWN IN STATE'S EXHIBIT NO. 1?

6 A YES, SIR.

7 Q WHEN YOU GOT THERE, WHAT DID YOU FIND?

8 A WHEN I GOT THERE AND I SAW SOME PEOPLE, I WAS MET
9 THERE BY LAW ENFORCEMENT. THEY STATED THAT A MURDER HAD
10 TAKEN PLACE. AND THE OFFICER HAD TWO INDIVIDUALS THERE
11 THAT WERE WITNESSES, A MR. JAMES EARL GREEN AND
12 MR. DOMINIQUE LAWSON. THEY GIVE ME STATEMENTS THAT---

13 Q LET ME ASK YOU THIS. WAS THE VICTIM STILL THERE WHEN
14 YOU GOT THERE?

15 A THE VICTIM WAS NOT THERE WHEN I GOT THERE.

16 Q THE VICTIM HAD ALREADY GONE.

17 A THE ONLY THING THERE WAS A BLOOD SPOT ON THE GROUND.

18 Q LET ME GET MS. LAND TO PULL THIS PICTURE UP FOR ME
19 AGAIN. THERE YOU GO. SHOW ME WHERE YOU SAW THE BLOOD
20 STAIN.

21

22 A APPROXIMATELY RIGHT THERE.

23 Q OKAY.

24 A IT WAS ABOUT 2 INCHES IN DIAMETER.

25 Q OKAY. AND YOU GOT THERE, AND YOU QUESTIONED THESE

1 Q IT WASN'T HIS CAR?

2 A IT WAS NOT HIS CAR.

3 Q AND ALSO IN YOUR INVESTIGATION, DID HE, DID YOU FIND

4 OUT ABOUT WHAT TIME HE WENT TO THAT RESIDENCE THAT DAY?

5 A THE FIRST TIME OR THE SECOND TIME?

6 Q THE FIRST TIME.

7 A YES, BETWEEN 12 AND 1 O'CLOCK.

8 Q AND HE GOT THERE BETWEEN 12 AND ONE THAT DAY?

9 A YES, SIR.

10 Q AND HOW LONG WAS HE THERE BEFORE HE LEFT THE FIRST

11 TIME?

12 A UP, HE DIDN'T GIVE -- I DIDN'T HAVE AN EXACT TIME.

13 ONLY THAT THERE WAS A CONFRONTATION WITH THE VICTIM.

14 Q THE VICTIM, MR. HOUSE?

15 A MR. HOUSE, YES.

16 Q WHAT DID THIS CONFRONTATION CONSIST OF?

17 A ACCORDING TO WHAT I UNDERSTAND, AN INDIVIDUAL CAME UP

18 THERE TO BUY CRACK COCAINE. HE DID NOT WANT TO SPEAK TO

19 MR. HOUSE. HE WANTED TO TALK TO MR. BRIGGS ABOUT THE

20 PURCHASE. MR. HOUSE HAD AN OBJECTION TO THIS, AND

21 GRAPPLED WITH MR. BRIGGS AND TOOK THE VILE OF COCAINE THAT

22 HE WAS GOING TO SELL AWAY FROM HIM.

23 Q MR. HOUSE TOOK TANK'S VILE? WAS IT CRACK OR WAS IT

24 COCAINE?

25 A CRACK.

1 Q CRACK COCAINE?

2 A CRACK COCAINE I AM SORRY, CRACK COCAINE.

3 Q SO EARLIER THAT DAY, MR. HOUSE HAD TAKEN A BOTTLE OF
4 CRACK COCAINE FROM MR. BRIGGS.

5 A YES, SIR.

6 Q THEN AFTER THAT MR. BRIGGS LEFT?

7 A YES, SIR.

8 Q AND THE FIRST TIME HE WAS AT THIS RESIDENCE DID HE
9 HAVE THE GUN WITH HIM?

10 A NOT TO MY KNOWLEDGE.

11 Q BUT HE GOT HIS CRACK COCAINE TAKEN FROM HIM. HE
12 LEAVES. DOES HE GO GET THE GUN THEN?

13 A NOT RIGHT AWAY, SIR.

14 Q TELL ME WHAT HE DOES?

15 A HE WENT TO THE MALL IN SUMTER. HE DID SOME CHORES.
16 AND RETURNED TO THE HOUSE ABOUT 7:30 THAT EVENING.

17 Q WHEN HE RETURNED TO THE HOUSE, DID HE HAVE THE GUN AT
18 THAT TIME?

19 A YES, SIR.

20 Q AND WHERE DID HE HAVE THE GUN?

21 A IN HIS TRUNK.

22 Q IN HIS TRUNK. LET ME SHOW YOU WHAT HAS BEEN MARKED
23 FOR IDENTIFICATION STATE'S EXHIBIT NO. 5. ANY OBJECTION?

24 MR. DEVOE: NO OBJECTION.

25 MR. COTHAN: YOUR HONOR, WE WOULD OFFER STATE'S

1 EXHIBIT 5 IN WITHOUT OBJECTION.

2 THE COURT: STATE'S 5 IS THE SHOTGUN IN WITHOUT
3 OBJECTION.

4 (SHOTGUN MARKED STATE'S EXHIBIT NO. 5 INTO
5 EVIDENCE.)

6 Q STATE'S EXHIBIT NO. 5, IS THAT THE SHOTGUN THAT MR.
7 BRIGGS KILLED MR. HOUSE WITH?

8 A YES, SIR.

9 Q WHEN HE CAME BACK THAT NIGHT ABOUT SEVEN OR 7:30 HE
10 HAD THAT GUN IN HIS TRUNK?

11 A YES, SIR.

12 Q WHAT WAS IT LOADED WITH?

13 A TWENTY GAUGE REBEL SLUGS.

14 Q HOW MANY DID IT HAVE IN IT?

15 A FIVE.

16 Q HOW DID YOU RECOVER THAT GUN? WHERE -- HOW DID YOU
17 KNOW WHERE, LET ME ASK YOU, WHEN YOU ARRESTED MR. HOUSE,
18 WAS THE GUN IN THE CAR?

19 A NO, SIR.

20 Q WHERE DID YOU RECOVER THAT GUN FROM?

21 A AT ELLIOTT'S POND ON OLD RIVER ROAD.

22 Q HOW DID IT GET IN TO ELLIOTT'S POND?

23 A IT WAS THROWN IN THERE AFTER THE MURDER BY, I AM NOT
24 QUITE SURE, A RELATIVE OR FRIEND. SOMEONE WHO MR. BRIGGS
25 GAVE IT TO, TO THROW IT IN THERE.

1 Q HOW DID YOU KNOW WHERE IT WAS? WHO TOOK YOU TO THE
2 LOCATION AND TOLD YOU WHERE IT WAS?

3 A MR. BRIGGS.

4 Q AND THE DEFENDANT IN THIS CASE, MR. BRIGGS, CARRIED
5 YOU AND SHOWED YOU WHERE THE GUN HE USED TO KILL MR. HOUSE
6 WAS THROWN?

7 A YES, SIR.

8 Q WHEN YOU GOT IT, I SEE YOU HAVE WRAPPED UP IN THAT
9 CELLOPHANE, FOUR, 20 GAUGE SLUGS?

10 A YES, SIR.

11 Q WHERE WERE THOSE SLUGS WHEN YOU RECOVERED THE GUN?

12 A ONE WAS IN THE CHAMBER. ONE OF THE CHAMBERS. AND 3
13 WERE IN THE MAGAZINE SECTION OF THE GUN.

14 Q AND SO IT WAS IN THE CHAMBER, THREE OF THEM WERE IN
15 THE MAGAZINE, AND YOU HAD A LIVE ROUND IN THE CHAMBER.

16 A YES, SIR.

17 Q WHAT HAPPENED TO THE SHELL CASING THAT MR. BRIGGS
18 KILLED MR. HOUSE WITH?

19 A MR. HOUSE SAID HE HAD CHAMBERED IT AT HIS HOME.

20 Q SO AFTER HE SHOT MR. HOUSE, HE TOOK THE GUN BACK WITH
21 THE EMPTY SHELL CASINGS STILL IN THE BARREL. HE HADN'T
22 SHUCKED IT OUT.

23 A NO.

24 Q WHEN HE GOT HOME HE SHUCKED THAT OUT AND PUT IN
25 ANOTHER ONE.

1 A YES, SIR.

2 Q AND THEN ULTIMATELY DISPOSED OF THE GUN AT ELLIOTT'S
3 MILL POND?

4 A YES, SIR.

5 Q WHERE DID HE LEAVE THE CAR?

6 A THE CAR, THE VEHICLE, HE DROPPED IT OFF AT THE STORE
7 ON OLD RIVER ROAD. AND LEFT THE KEYS THERE AND THEN HE
8 CALLED SOMEBODY AND TOLD THEM HE HAD LEFT IT THERE.

9 Q DID YOU FIND ANY OTHER EVIDENCE IN THAT CAR OR ANY
10 EVIDENCE AT ALL IN THE CAR?

11 A NO, SIR.

12 Q OKAY. THE GUN WAS FOUND IN THE MILL POND, BUT YOU
13 DIDN'T FIND ANY EVIDENCE AT ALL IN THAT CAR?

14 A NO, SIR.

15 Q DID YOU EVER FIND ANY EVIDENCE OF A WEAPON THAT
16 MR. HOUSE MAY HAVE HAD?

17 A NO, SIR.

18 Q DID ANY OF THE WITNESSES THAT YOU INTERVIEWED SAY HE
19 HAD A WEAPON?

20 A NO, SIR.

21 Q DID YOU FIND ANYTHING IN YOUR INVESTIGATION THAT
22 WOULD HAVE PROVOKED; THAT ANYTHING MR. HOUSE HAD DONE THAT
23 WOULD HAVE PROVOKED MR. BRIGGS KILLING HIM?

24 A NOTHING. NOTHING AT THAT TIME.

25 Q EARLIER THAT DAY, YOU TOLD ME THAT MR. HOUSE HAD

1 TAKEN MR. BRIGGS' CRACK COCAINE?

2 A YES, SIR.

3 Q BUT THIS WAS 12 OR 1 O'CLOCK. MR. BRIGGS LEAVES,
4 GOES HOME AND DOES SOME THINGS. COMES BACK AT SEVEN OR
5 7:30 WITH THAT SHOTGUN AND SHOOTS MR. HOUSE?

6 A YES, SIR.

7 Q AT THAT TIME, DOES MR. HOUSE THREATEN HIM IN ANY WAY?

8 A NO, SIR, NOT TO MY KNOWLEDGE.

9 Q AND IN YOUR INVESTIGATION, DID YOU FIND ANY LEGAL
10 PROVOCATION WHY MR. BRIGGS WOULD HAVE KILLED MR. HOUSE?

11 A NO, SIR.

12 Q ONE LAST QUESTION. WHERE IS THAT LOCATED?

13 A FORTY-SEVEN MAYZAK STREET.

14 Q WHERE IS MAYZAK STREET?

15 A THE BACK SIDE OF SUMMERTON.

16 Q OKAY.

17 A GOING OUT ABOVE THE MIDDLE ROAD.

18 Q IS IT IN THE CITY LIMITS OR OUT OF CITY LIMITS?

19 A OUTSIDE.

20 Q JUST OUTSIDE OF THE CITY LIMITS?

21 A BY TWO HOUSES, YES.

22 Q IN CLARENDON COUNTY?

23 A YES.

24 MR. COTHRAN: HOW ABOUT ANSWER ANY QUESTIONS

25 MR. DEVOE HAS FOR YOU.

1 THE COURT: YOU MAY EXAMINE HIM.

2 MR. DEVOE: THANK YOU, YOUR HONOR.

3 CROSS EXAMINATION BY MR. DEVOE:

4 Q MR. CUTLER, IN THIS CASE I BELIEVE THAT YOU TESTIFIED
5 THAT YOU EXAMINED MY CLIENT. IT WAS ON TAPE. YOU GAVE
6 HIM A MIRANDA WARNING AND HE TALKED TO YOU, IS THAT
7 CORRECT?

8 A YES, SIR.

9 Q AND HE PRETTY MUCH LAID OUT HIS CASE TO YOU AT THAT
10 TIME, DIDN'T HE?

11 A YES, SIR.

12 Q HE ALSO TOLD YOU, DIDN'T HE, IN THAT SITUATION THAT
13 HE TOOK THE CAR OVER TO RIVER ROAD AND DROPPED IT OFF IN
14 THE POND, THE GUN.

15 A YES, SIR.

16 Q SO HE'S TRYING TO BE AS HONEST AS HE KNEW HOW TO BE
17 AT THAT TIME. IS THAT A FAIR STATEMENT?

18 A YES, SIR.

19 Q DID HE TELL YOU AT THAT TIME EITHER THERE OR THEN OR
20 AFTERWARDS, THAT HE THOUGHT WESLEY HOUSE HAD A CLUB?

21 A YES, HE DID.

22 Q AND HE TESTIFIED WHAT COLOR THE CLUB WAS?

23 A YES, HE DID. I BELIEVE HE DID.

24 Q NOW THE CAR HE WAS DRIVING I THINK BELONGED TO HIS
25 THEN GIRLFRIEND. IS THAT, WOULD YOU FIND THAT TO BE TRUE?

1 A I KNOW IT BELONGED TO SOME LADY.

2 Q EARLY IN THE DAY WHEN THERE WAS A DRUG STOLEN FROM
3 HIM BY WESLEY HOUSE WHO ALSO HAD DRUGS.

4 A YES, SIR.

5 Q HE STAYED FOR A WHILE. HE HAD NO CAR TO GET AWAY,
6 DID HE? TO LEAVE?

7 A I HAVE NO IDEA.

8 Q WELL DID HE EVER TELL YOU THAT HE CALLED HIS
9 GIRLFRIEND AND ASKED HER TO COME PICK HIM UP?

10 A NO. NOT TO MY MEMORY, NO.

11 Q DID HE TELL YOU THAT THE SHOTGUN WAS ALWAYS IN THE
12 TRUNK OF THAT CAR?

13 A I BELIEVE HE DID.

14 Q SO HE DIDN'T GO UP TO HIS HOUSE AND GET THE GUN AND
15 PUT IT IN THE TRUNK OF THE CAR AND COME BACK NECESSARILY,
16 DID HE?

17 A I HAVE NO KNOWLEDGE OF THAT.

18 Q WELL HE TOLD YOU THE GUN WAS ALWAYS IN THE TRUNK OF
19 THE CAR, DIDN'T HE?

20 A THAT'S WHAT HE TOLD ME.

21 Q YOU HAD NO REASON TO DOUBT THAT, DO YOU?

22 A YES.

23 Q WELL WHAT REASON DO WHO HAVE TO DOUBT IT?

24 A PEOPLE THAT MURDER PEOPLE DON'T ALWAYS TELL THE
25 TRUTH.

1 Q BUT UP TO THAT POINT YOU'RE SAYING HE DID TELL THE
2 TRUTH ABOUT COOPERATING. HE TOLD YOU WHERE THE GUN WAS
3 AND WHAT HE HAD DONE. IS THAT---

4 A UP TO THAT POINT, HE GAVE ME STATEMENTS. WHETHER
5 THEY WERE TRUE OR NOT, I DIDN'T FIND OUT ABOUT IT UNTIL
6 LATER.

7 Q THE POINT IS, THAT HE DID TELL YOU THE GUN WAS IN THE
8 TRUNK OF THE CAR ALWAYS.

9 A THAT'S WHAT HE TOLD ME.

10 Q AND HE TOLD YOU THE TRUTH ABOUT GOING TO THE MALL.
11 DID YOU EVER CHECK IN TO THAT?

12 A NO.

13 Q THAT HE BROUGHT SOME SNEAKERS FOR HIS KIDS IN
14 BALTIMORE AND SENT THEM OFF TO THEM?

15 A THAT'S WHAT HE SAID.

16 Q DID HE TELL YOU THAT SHEROD GREEN WAS IN THE CAR WITH
17 HIM AND HE CAME BACK TO THE HOUSE ON MAYZAK STREET?

18 A NO.

19 Q DID HE TELL YOU THAT THE VICTIM, YOU HAD A
20 PRELIMINARY HEARING---

21 A YES, SIR.

22 Q ---IN THIS CASE. YOU TESTIFIED THAT HE SAID THAT THE
23 VICTIM RAN TO THE GUN.

24 A THAT'S WHAT HE TOLD ME.

25 Q AND THAT THE VICTIM SAID HE HAD NOTHING TO LIVE FOR.

1 "THE GIRL WAS CHEATING ON ME," I DON'T GIVE A DAMN." IS
2 THAT RIGHT?

3 A I NEVER SAID THAT.

4 Q YOU DIDN'T? THE TAPES I THINK WOULDN'T SHOW THAT?

5 A MR. DEVOE, NOT TO MEMORY. HE SAID A LOT OF THINGS.

6 Q HE DID? THE TRANSCRIPT OF HIS CONFESSIONS ARE
7 FAIRLY LENGTHY, ISN'T IT?

8 A I DON'T HAVE IT IN MY HAND. I CAN'T TELL YOU.

9 Q YOU DON'T HAVE IT WITH YOU ON THE STAND?

10 A NO.

11 Q DID YOU REVIEW IT BEFORE YOU TESTIFIED TODAY?

12 A NO.

13 Q YOU DIDN'T? YOUR MEMORY IS BETTER THAN MOST
14 PEOPLE'S.

15 A EXCUSE ME?

16 Q YOUR MEMORY IS BETTER THAN MOST PEOPLE'S THEN.

17 A THANK YOU.

18 Q DID HE TESTIFY TO YOU THAT HE FELT SCARED BY THE CLUB
19 IN WESLEY HOUSE'S HAND?

20 A I BELIEVE HE TOLD ME HE FELT THREATENED.

21 MR. DEVOE: HE FELT THREATENED. I HAVE NO FURTHER
22 QUESTIONS. THANK YOU.

23 THE COURT: ANY REDIRECT?

24 REDIRECT EXAMINATION BY MR. COTHRAN:

25 Q IN YOUR INVESTIGATION OF ALL THE WITNESSES YOU TALKED

1 TO, DID ANYBODY ELSE TELL YOU ANYTHING ABOUT A CLUB OR A
2 STICK OR A THREAT ON THE DEFENDANT IN THIS CASE?

3 A NO, SIR.

4 Q OKAY. DID ANYONE ELSE SEE ANY KIND OF WEAPON THAT
5 THE DECEASED HAD?

6 A NO, SIR.

7 MR. COTHRAN: I DON'T HAVE ANYTHING FURTHER.

8 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

9 MR. COTHRAN: YOUR HONOR, MY NEXT WITNESS IS A DOCTOR
10 FROM CHARLESTON AND IS NOT GOING TO BE ABLE TO BE HERE
11 UNTIL 9:30 IN THE MORNING.

12 THE COURT: LADIES AND GENTLEMEN, IN CONNECTION WITH
13 THE ALLEGATIONS OF MURDER OFTENTIMES WE'LL HAVE A
14 PATHOLOGIST WHO IS SOME PLACE OTHER THAN IN THE COMMUNITY
15 WHERE THE ALLEGED MURDER TAKES PLACE. IN THIS PARTICULAR
16 INSTANCE, THERE ARE EVIDENTLY SOME PEOPLE FROM CHARLESTON
17 THAT NEED TO TESTIFY. RATHER THAN KEEPING YOU THIS
18 AFTERNOON AND TRYING TO FIND SOMEONE ELSE, I AM JUST GOING
19 TO GO AHEAD AND RELEASE YOU A LITTLE BIT EARLY. ONE OF
20 THE DOCTORS WILL BE HERE IN THE MORNING TO OFFER SOME
21 TESTIMONY IN THIS MATTER. AND IF YOU WILL JUST BE BACK IN
22 YOUR JURY ROOM AT 9:30. AGAIN, DO NOT DISCUSS THE CASE
23 AMONG YOURSELVES. IF YOU GO HOME TONIGHT AND YOUR
24 SIGNIFICANT OTHER SAYS, WHAT DID YOU DO TODAY, JUST SAY, I
25 AM ON A JURY BUT I CAN'T TELL YOU ANYTHING ABOUT IT.

1 BECAUSE OFTENTIMES WITHOUT EVEN REALIZING THAT WE'RE DOING
2 IT, IF SOMEBODY SAYS, WELL YOU KNOW WHAT I THINK, AND
3 THEY JUST WANT TO TELL US WHAT THEY THINK. WELL WHAT THEY
4 THINK IS NOT WHAT YOU BASE YOUR DECISION ON. WHAT YOU
5 BASE YOUR DECISION ON IS THE EVIDENCE HERE. SO JUST TELL
6 THEM THAT THE JUDGE SAID I CAN'T TALK WITH YOU ABOUT WHAT
7 IS GOING ON UNTIL AFTER THE CASE IS OVER WITH.

8 AND SO DON'T ALLOW ANYBODY TO TALK WITH Y'ALL.

9 (PHOTOS MARKED STATE'S 6 AND STATE'S 7 FOR ID ONLY.)

10 (THEREUPON, THE TRIAL COMMENCES ON MARCH 21, 2006, AT
11 (9:30 A.M.)

12 THE COURT: THE JURY IF THEY ARE READY TO COME IN,
13 YOU MAY BRING THEM FORWARD.

14 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
15 PRESENCE OF THE JURY.)

16 THE COURT: GOOD MORNING.

17 THE JURY: GOOD MORNING.

18 THE COURT: I'VE LOOKED WITH A LITTLE BIT OF
19 AMUSEMENT THIS MORNING. I SEE SOME OF YOU HAVE
20 INTENTIONALLY TRIED TO SIT IN THE SAME SEATS THAT YOU WERE
21 IN YESTERDAY. IT IS NOT NECESSARY, BUT IF YOU FEEL
22 COMFORTABLE THERE, THAT'S OKAY. SOLICITOR, YOU MAY
23 PROCEED.

24 MR. COTHRAN: THANK YOU. WE WOULD CALL DR. PRESNELL.

25 DR. SUSAN ERIN PRESNELL, BEING

1 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MR. COTHRAN:

3 Q DOCTOR, IF YOU WOULD INTRODUCE YOURSELF TO THE JURY
4 PLEASE, MA'AM.

5 A MY NAME IS ERIN PRESNELL. AND I'M A FORENSIC
6 PATHOLOGIST AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA.

7 Q TELL US WITH REGARDS ABOUT YOUR EDUCATIONAL
8 BACKGROUND AND YOUR QUALIFICATIONS.

9 A WELL PATHOLOGISTS ARE M.D.'S. SO TO BECOME A MEDICAL
10 DOCTOR, YOU HAVE TO GO TO COLLEGE AND GET A COLLEGE
11 DEGREE. THEN GO TO MEDICAL SCHOOL, WHICH IS 4 YEARS.
12 AFTER THAT YOU DO A SPECIALTY, LIKE SURGERY, PEDIATRICS.
13 I CHOSE PATHOLOGY, WHICH WAS AFTER MEDICAL SCHOOL, A
14 FIVE-YEAR TRAINING PROGRAM. AND AFTER GENERAL PATHOLOGY
15 TRAINING, I DID A ONE-YEAR SUBSPECIALTY TRAINING IN
16 FORENSIC PATHOLOGY. THROUGHOUT THE PROCESS WE TAKE THE
17 NATIONAL BOARDS, ETC. AND I AM BOARD CERTIFIED IN
18 ANATOMIC, CLINICAL AND FORENSIC PATHOLOGY.

19 Q AND HOW LONG HAVE YOU BEEN PRACTICING YOUR TRAINING?

20 A WELL I STARTED TO DO FORENSIC PATHOLOGY IN 1995. I
21 DID MY SUBSPECIALTY IN THE YEAR 98. FROM 98 TO 99. AND
22 THEN STARTED ON AS FACULTY AT MUSC IN 1999.

23 Q AND HAVE YOU EVER TESTIFIED IN COURT FROM THIS DATE
24 AS AN EXPERT IN FORENSIC PATHOLOGY?

25 A YES, I HAVE.

1 MR. COTHRAN: YOUR HONOR, I OFFER HER AS AN EXPERT AT
2 THIS TIME.

3 THE COURT: ANY QUESTIONS?

4 MR. DEVOE: I HAVE NO OBJECTION, YOUR HONOR.

5 THE COURT: VERY GOOD. MADAM FORELADY, AND MEMBERS
6 OF THE JURY, WHEN SOMEONE HAS SPECIAL TRAINING AND
7 EXPERTISE, THEY ARE ALLOWED TO COME IN AND OFFER THEIR
8 TESTIMONY, OFFER YOU OPINIONS ABOUT MATTERS THAT ARE IN
9 DISPUTE. THEIR PURPOSE IS FOR ASSISTING YOU IN MAKING
10 YOUR DETERMINATIONS. YOU CONSIDER AND WEIGH THE EVIDENCE
11 OF EXPERT WITNESSES, THEIR TESTIMONY, JUST AS YOU CONSIDER
12 AND WEIGH THE TESTIMONY OF ALL PEOPLE WHO TESTIFY, LAY OR
13 EXPERT. AS I SAY, THEIR TESTIMONY IS FOR THE PURPOSE OF
14 ASSISTING YOU IN EVALUATING WHAT TOOK PLACE. IT'S NOT FOR
15 THE PURPOSE OF CONTROLLING YOUR FINDINGS IN THIS MATTER.
16 SOLICITOR, YOU MAY CONTINUE.

17 MR. COTHRAN: THANK YOU, YOUR HONOR.

18 Q DID YOU HAVE AN OCCASION TO PERFORM AN AUTOPSY ON
19 WESLEY HOUSE?

20 A YES, I DID. MR. HOUSE WAS REFERRED TO US BY THE
21 CLARENDON COUNTY CORONER. AND WE PERFORMED THE AUTOPSY ON
22 SEPTEMBER 6, 2005.

23 Q AND CAN YOU TELL US WHAT YOU DID, AND WHAT RESULTS
24 YOU FOUND?

25 A WELL ALL OUR FORENSIC AUTOPSIES ARE COMPLETE

1 AUTOPSIES WHERE WE DO THE FULL EXTERNAL EXAM ON THE
2 DIAGRAMS AND THE PHOTOGRAPHS. AND THEN WE LOOK AT ALL THE
3 INTERNAL ORGANS AS WELL. LOOKING FOR ANYTHING THAT COULD
4 POSSIBLY BE THERE, WHETHER IT BE TRAUMA OR DISEASES. IN
5 THIS CASE WITH MR. HOUSE, WE FOUND A SIGNIFICANT FINDING
6 AND ALSO THE CAUSE OF DEATH WHICH WAS A SINGLE SHOTGUN
7 WOUND TO THE ABDOMEN. WHEN WE DO -- WHEN WE EVALUATE
8 GUNSHOT WOUNDS OR SHOTGUN WOUNDS, THEN WE TRY TO GET A
9 NUMBER OF THINGS. AND FIRST OF ALL, WAS, DID IT GO
10 THROUGH. AND THEN SOME OTHER THINGS WHICH WE CAN GET TO
11 IN A MINUTE. BUT IN THIS CASE THE DECEDENT, MR. HOUSE,
12 THE SHOTGUN WOUND TO HIS ABDOMEN, WENT IN. THEN THE SLUG
13 THAT WENT IN BROKE UP, THEN IT WENT THROUGH THE LIVER.
14 WENT THROUGH THE LEFT LUNG. IT WENT THROUGH THE SPLEEN.
15 IT WENT THROUGH THE ADRENAL GLAND. IT HEADS THE VERTEBRAL
16 COLUMN AND PERHAPS YOUR BACK. AND THEN FROM THE
17 FRAGMENTS ENDED UP KIND OF IN THE AREA OF THE BACK. ONE
18 OF THE FRAGMENTS ACTUALLY EXITED THE BACK. AND THE OTHER
19 MAJOR THING IT HIT WAS HIS AORTA WHICH IS THE MAJOR BLOOD
20 VESSEL THAT YOUR HEART PUMPS BLOOD TO THE REST OF YOUR
21 BODY THROUGH.

22 THAT IS THE MOST SIGNIFICANT FINDING IN OUR OPINION
23 THAT IT HAD GONE THROUGH THE AORTA CAUSING HIM TO BLEED
24 OUT INSIDE HIS ABDOMINAL CAVITY. LIKE I SAID, THERE WAS A
25 NUMBER OF OTHER THINGS WE DO WHEN WE EXAMINE SHOTGUN

1 WOUNDS. THE OTHER THING IS RANGE OF FIRE. HOW FAR AWAY
2 IS THE SHOTGUN AT THE TIME IT WAS FIRED. AND IN THIS
3 PARTICULAR CASE, WHEN YOU LOOK AT THE WOUND ON HIS
4 ABDOMEN, HE HAD NOT ONLY SOOT THAT COMES FROM THE END OF
5 THE BARREL WHEN IT'S FIRED, BUT HE ALSO HAS A MUZZLE
6 IMPRINT. AN ABRASION OR SCRATCHING AROUND THE ENTRANCE
7 WOUND THAT COURSE LINES TO THE MUZZLE OF THE SHOTGUN.
8 AND BECAUSE OF THIS, WE CLASSIFIED THIS SHOTGUN WOUND AS A
9 CONTACT RANGE MEANING THAT THE MUZZLE IS UP AGAINST THE
10 SKIN.

11 SO PUTTING THEM ALL TOGETHER AGAIN, WE CALL THIS HIS
12 CAUSE OF DEATH, A SINGLE CONTACT SHOTGUN WOUND TO THE
13 ABDOMEN. AND THE MANNER OF DEATH WE CLASSIFIED AS
14 HOMICIDE.

15 Q LET ME SHOW YOU STATE'S EXHIBITS SIX AND SEVEN.

16 THE COURT: ARE THESE IN WITHOUT OBJECTION?

17 MR. COTHRAN: YES, YOUR HONOR.

18 MR. DEVOE: I DON'T KNOW IF THEY ARE IN, BUT WITHOUT
19 OBJECTION, YOUR HONOR.

20 MR. COTHRAN: WE WOULD MOVE THEM IN AT THIS TIME
21 WITHOUT OBJECTION.

22 (PHOTOGRAPHS MARKED AS STATE'S EXHIBIT NOS. 6 & 7
23 INTO EVIDENCE.)

24 Q STATE'S EXHIBIT NO. 7, CAN YOU TELL THE LADIES AND
25 GENTLEMEN OF THE JURY WHAT IS THAT A PHOTOGRAPH OF?

1 A STATE'S EXHIBIT 7 IS A PHOTOGRAPH WE TOOK AT AUTOPSY,
2 AND IT SHOWS THE SHOTGUN WOUND TO THE ABDOMEN AND KIND OF
3 ITS LOCATION IN RELATION TO THE REST OF HIS BODY.

4 Q AND WHAT IS IN STATE'S EXHIBIT 6?

5 A STATE'S EXHIBIT 6, IS A CLOSER UP OF THE SHOTGUN
6 WOUND WHERE YOU CAN APPRECIATE THAT MUZZLE IMPRINT THAT I
7 WAS TALKING ABOUT. AND IF YOU LOOK REAL CLOSE YOU CAN
8 ALSO SEE THE SOOT.

9 Q LET ME SHOW YOU STATE'S EXHIBIT NO. 5, WHICH IS THE
10 MURDER WEAPON IN THIS CASE, THIS SHOTGUN BARREL. WHEN YOU
11 SAY IT'S A CONTACT WOUND, DID THIS BARREL ACTUALLY TOUCH
12 HIS SKIN WHEN THE GUN WAS DISCHARGED?

13 A RIGHT, IT WAS AGAINST THE SKIN.

14 Q AND IF YOU WOULD, COME DOWN AND SHOW THE LADIES AND
15 GENTLEMEN THOSE PHOTOGRAPHS. AND IF YOU WERE GOING TO
16 SHOW THIS HALF FIRST AND THIS HALF, AND HOW YOU KNOW IT'S
17 AN ACTUAL CONTACT WOUND.

18 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
19 STAND.)

20 A I APOLOGIZE, WE JUST SWITCHED TO DIGITAL PHOTOGRAPHY.
21 AND THIS IS OUR FIRST ATTEMPT. BUT THERE IS THE PICTURE
22 OF THE PERSON ON THE AUTOPSY TABLE. YOU CAN KIND OF SEE
23 RIGHT WHERE HIS NECK IS AND DOWN TO RIGHT BELOW THE BELLY
24 BUTTON. AND YOU CAN SEE THE ROUND HOLE IN THE MIDDLE OF
25 THE ABDOMEN. BUT THAT IS THE ENTRANCE SHOTGUN WOUND. AND

1 I SHOW YOU GUYS OVER HERE. AGAIN THE PHOTOGRAPH IS FROM
2 ABOUT THE NECK AREA TO RIGHT BELOW THE BELLY BUTTON. AND
3 THE SHOTGUN WOUND IS RIGHT IN THE MIDDLE OF THE ABDOMEN.

4 THIS PICTURE HERE IS CLOSER UP ON THE SHOTGUN WOUND.
5 AND I DON'T KNOW IF YOU CAN PASS THIS AROUND, BUT IF YOU
6 LOOK AT THE LETTERS, THEY ORIENT YOU. THEY ARE FACING
7 DIRECTLY TO THE TOP OF HIS HEAD. SO HIS HEAD IS UP HERE
8 AND HIS FEET ARE DOWN THIS WAY. AND YOU CAN SEE A ROUNDED
9 HOLE IN HIS ABDOMEN. THERE IS THIS ABRASION OR
10 SCRATCHING. YOU CAN EVEN KIND OF SEE THE LITTLE TOP PARTS
11 TOO, WHICH WOULD KIND OF GO ALONG WHATEVER YOU CALL THAT,
12 THE END OF THE SHOTGUN WOUND OR SITE AREA WHERE THE MUZZLE
13 WAS AGAINST THE SKIN.

14 AGAIN THE CLOSE UP OF THE ENTRANCE SHOTGUN WOUND TO
15 THE ABDOMEN. THE HOLE IS IN THE MIDDLE. AND THIS DARKER
16 AREA AROUND THE SKIN HERE IS THAT ABRASION FROM THE
17 SHOTGUN WOUND OR FROM THE SHOTGUN MUZZLE.

18 MR. COTHRAN: THANK YOU. LET ME, I'M GOING TO GO
19 AHEAD AND PUBLISH THESE TO THE JURY.

20 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

21 Q BASED ON YOUR FINDINGS OF THIS GUNSHOT WOUND THAT
22 ACTUALLY CAUSED HIS DEATH, DO YOU HAVE ANY IDEA AS TO ONCE
23 HE WAS SHOT, HOW MOBILE HE WAS? WAS HE -- WOULD HE HAVE
24 BEEN ABLE TO WALK OR RUN OR PURSUE HIS ATTACKER IN ANY
25 WAY?

1 A WELL UNDERSTAND THAT WHEN WE'RE EXAMINING SOMEONE AT
2 AUTOPSY, THEY ARE DECEASED. WE ARE TRYING TO PROJECT, YOU
3 KNOW, HOW LONG FOR THAT INDIVIDUAL PERSON. I MEAN IN
4 MOST CASES THAT PERSON WON'T BE ABLE TO, YOU KNOW, DO MUCH
5 FOR VERY LONG WHEN YOU HAVE A HOLE IN YOUR AORTA. I MEAN
6 ANY BLOOD TO BE ABLE TO GET TO YOUR BRAIN YOU WOULD BE
7 ABLE TO FUNCTION. THE ONLY TIME THAT I CAN DEFINITELY
8 SAY THAT THAT PERSON DID NOT MOVE AFTER A PARTICULAR
9 INJURY IS IF IT GOES TO THE BRAIN STEM. OF COURSE THIS
10 ONE DIDN'T INVOLVE THE HEAD, THIS WAS ON THE ABDOMEN. SO
11 THERE IS A POTENTIAL FOR HIM TO HAVE SURVIVED AND MOVED
12 AROUND FOR A SHORT PERIOD OF TIME AFTER THE SHOTGUN WOUND.

13 MR. COTHRAN: COURT'S INDULGENCE FOR JUST ONE MOMENT.
14 HOW ABOUT ANY QUESTIONS THAT MR. DEVOE HAS FOR YOU. THANK
15 YOU.

16 A YOU'RE WELCOME.

17 THE COURT: CROSS?

18 MR. DEVOE: I HAVE NO QUESTIONS, YOUR HONOR.

19 THE COURT: THANK YOU VERY MUCH. YOU MAY STEP DOWN.
20 IS THE STATE GOING TO RELEASE THE DOCTOR TO GO BACK TO
21 CHARLESTON?

22 MR. COTHRAN: YES, SIR.

23 THE COURT: THANK YOU, DOCTOR.

24 MR. COTHRAN: THAT'S THE STATE'S CASE, YOUR HONOR.

25 THE COURT: LADIES AND GENTLEMEN, THERE ARE SOME

1 LEGAL ISSUES THAT I NEED TO ADDRESS AT THIS TIME. SO I
2 KNOW YOU'VE ONLY WALKED OUT. SO I AM GOING TO ASK YOU IF
3 YOU WILL, STEP BACK TO YOUR JURY ROOM FOR A MOMENT.
4 AGAIN, DO NOT DISCUSS THE CASE AND LET ME DEAL WITH THESE
5 ISSUES AND THEN WE'LL GO FROM THERE.

6 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
7 PRESENCE OF THE JURY.)

8 THE COURT: MOTIONS BY THE DEFENSE?

9 MR. DEVOE: YOUR HONOR, AT THIS TIME, I WOULD MAKE A
10 MOTION FOR A DIRECTED VERDICT ON THE GROUNDS THAT THE
11 STATE HAS NOT FULFILLED ITS BURDEN OF PROVING THE CASE
12 BEYOND A REASONABLE DOUBT.

13 THE COURT: I FIND THAT THERE IS EVIDENCE THAT COULD
14 BE BELIEVED BY THE JURY THAT WOULD ESTABLISH HIS TESTIMONY
15 THAT THIS DEFENDANT WAS SHOOTING, AND THAT THE DEATH WAS
16 AS A RESULT OF A SINGLE SHOTGUN WOUND TO THE CAVITY IN THE
17 ABDOMEN SO I WILL DENY YOUR MOTION FOR SUMMARY JUDGMENT.
18 HAVE YOU AND MR. BRIGGS DISCUSSED HIS TESTIFYING?

19 MR. DEVOE: WE HAVE, YOUR HONOR. I WOULD LIKE YOU
20 TO HOWEVER ADVISE HIM OF HIS RIGHTS.

21 THE COURT: MR. BRIGGS, IF YOU WILL JUST STAND AND
22 RAISE YOUR RIGHT HAND SO THE CLERK CAN PUT YOU UNDER OATH.

23 (THEREUPON, THE DEFENDANT IS SWORN.)

24 THE COURT: MR. BRIGGS, I NEED TO TALK WITH YOU
25 BRIEFLY. WE HAVE REACHED THE POINT AND TIME WHERE THE

1 STATE HAS FINISHED ITS CASE. YOU CAN OFFER TESTIMONY
2 YOURSELF, OR YOU CAN NOT OFFER TESTIMONY YOURSELF. THAT
3 IS TOTALLY YOUR CHOICE. THE STATE CANNOT COMMENT UPON
4 YOUR SILENCE. AND YOU WOULD HAVE AN INSTRUCTION TO THE
5 JURY THAT YOUR SILENCE CANNOT BE CONSIDERED BY THEM IN ANY
6 WAY AS GUILT. HOWEVER MR. BRIGGS, THE DECISION AS TO
7 WHETHER TO REMAIN SILENT OR TESTIFY IS TOTALLY YOURS. IF
8 YOU CHOSE TO TESTIFY, AND YOU HAVE SOME PRIOR RECORD, I
9 DON'T KNOW WHETHER YOU DO OR NOT. I WOULD HOLD A HEARING
10 AND MAKE A DETERMINATION AS TO WHETHER OR NOT IT WOULD BE
11 PROPER TO CROSS EXAMINE YOU ON THAT PRIOR RECORD FOR
12 PURPOSES OF CREDIBILITY ISSUES. BUT YOU WOULD ALSO BE
13 SUBJECTED TO OTHER CROSS EXAMINATION. AND IF YOU CHOOSE
14 TO TESTIFY, YOU WOULD TO BE REQUIRED TO ANSWER QUESTIONS
15 THAT WOULD BE PROPERLY PRESENTED TO YOU FOR YOUR
16 CONSIDERATION.

17 I HAVE BEEN ADVISED BY MR. DEVOE THAT YOU AND HE
18 HAVE DISCUSSED YOUR RIGHT TO TESTIFY AS WELL AS YOUR
19 RIGHT NOT TO TESTIFY. IS THAT CORRECT? YOU WILL NEED TO
20 VERBALIZE YOUR ANSWERS SO WE CAN HAVE A RECORD.

21 THE DEFENDANT: YES, SIR.

22 THE COURT: HAVE YOU REACHED A DECISION?

23 MR. DEVOE: I THINK WE NEED A FEW MOMENTS, YOUR
24 HONOR.

25 THE COURT: WELL WE...

1 MR. DEVOE: I KNOW. HE DOESN'T SEEM TO, HE WAS
2 LOOKING TO ME FOR QUESTIONING. I THOUGHT HE HAD IT
3 ALREADY.

4 THE COURT: DO YOU UNDERSTAND THAT YOU CAN EITHER
5 TESTIFY OR NOT TESTIFY?

6 THE DEFENDANT: I GUESS.

7 THE COURT: IF YOU WILL STAND UP. YOU HAVE SEEN
8 WITNESSES DURING THE TRIAL OF YOUR CASE OFFER TESTIMONY,
9 SO YOU UNDERSTAND WHAT I MEAN WHEN I ASK YOU WHETHER OR
10 NOT YOU WANT TO TESTIFY, DON'T YOU?

11 THE DEFENDANT: ARE YOU TALKING ABOUT THE PEOPLE
12 WHO ARE ON THE STAND?

13 THE COURT: YOU'VE SEEN WITNESSES ON THE STAND.

14 THE DEFENDANT: OH, YES, SIR.

15 THE COURT: AND THEY'VE BEEN ASKED QUESTIONS BY THE
16 STATE AND THEY'VE BEEN ASKED QUESTIONS BY YOUR ATTORNEY.

17 THE DEFENDANT: OKAY..

18 THE COURT: YOU UNDERSTAND THAT WE'VE REACHED THE
19 POINT THAT IF YOU WANT TO COME FORWARD AND OFFER
20 TESTIMONY, IT WILL HAPPEN VERY SOON. AND YOU WOULD
21 LIKEWISE BE ASKED QUESTIONS BY MR. DEVOE, BUT YOU WOULD BE
22 ASKED QUESTIONS BY MR. COTHRAN ON CROSS EXAMINATION. DO
23 YOU UNDERSTAND THAT?

24 THE DEFENDANT: YES, SIR.

25 THE COURT: YOU HAVE THE RIGHT TO TESTIFY, BUT YOU

1 ALSO HAVE THE RIGHT NOT TO TESTIFY. DO YOU UNDERSTAND
2 THAT?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: AND IF YOU TESTIFY, YOU WOULD BE ASKED
5 QUESTIONS ABOUT ANY PRIOR RECORD. STATE DOES HE HAVE A
6 PRIOR RECORD?

7 MR. COTHRAN: YES, SIR.

8 THE COURT: YOU WOULD BE ASKED IF PROPER, ABOUT YOUR
9 PRIOR RECORD. YOU WOULD BE ASKED QUESTIONS ABOUT WHAT WAS
10 GOING ON, ON THIS DAY OF SEPTEMBER 5, 2005. YOU WOULD BE
11 ASKED QUESTIONS BY MR. DEVOE, BUT YOU WOULD ALSO BE CROSS
12 EXAMINED BY THE STATE. DO YOU UNDERSTAND THAT?

13 THE DEFENDANT: YES, SIR.

14 THE COURT: THE DECISION AS TO WHETHER OR NOT TO
15 TESTIFY IS A DECISION THAT ONLY THE DEFENDANT CAN MAKE.
16 YOU CAN TALK WITH OTHER PEOPLE AND THEY CAN ADVISE YOU
17 ABOUT IT, BUT ULTIMATELY YOU HAVE TO MAKE THAT DECISION.
18 DO YOU UNDERSTAND THAT?

19 THE DEFENDANT: YES, SIR.

20 THE COURT: HAVE YOU AND MR. DEVOE TALKED ABOUT
21 WHETHER OR NOT YOU ARE GOING TO TESTIFY OR WHETHER YOU ARE
22 NOT GOING TO TESTIFY?

23 THE DEFENDANT: NO, I DON'T THINK WE TALKED ABOUT
24 THAT YET. DID WE TALK ABOUT THAT? WE TALKED ABOUT A
25 LOT.

1 THE COURT: I WILL GIVE YOU ABOUT THREE TO 5 MINUTES
2 TO GO OVER THAT WITH HIM AGAIN. MR. DEVOE INDICATES THAT
3 YOU AND HE HAVE TALKED ABOUT IT. I WILL GIVE HIM A FEW
4 MINUTES TO REFRESH YOU WITH THAT INFORMATION THAT Y'ALL
5 HAVE BEEN OVER, AND THEN WE WILL MAKE A DECISION AT THAT
6 TIME. MR. DEVOE, IF MR. BRIGGS CHOSSES TO TESTIFY, WILL HE
7 BE YOUR ONLY WITNESS, OR DO YOU HAVE OTHER WITNESSES AS
8 WELL?

9 MR. DEVOE: IF HE TESTIFIES, I BELIEVE THERE IS ONE
10 MORE WITNESS. MAYBE ANOTHER ONE IF THEY SHOW UP.

11 THE COURT: WE HAVE AN ADDITIONAL WITNESS -- WE HAVE
12 A WITNESS IN THE COURTROOM WHO IS SEQUESTERED---

13 MR. DEVOE: IN THE GRAND JURY ROOM.

14 THE COURT: ---WHO WOULD BE AVAILABLE TO TESTIFY?

15 MR. DEVOE: IN THE GRAND JURY ROOM.

16 THE COURT: VERY GOOD. WE WILL BE IN RECESS FOR
17 ABOUT 5 MINUTES WHILE YOU TALK TO---

18 MR. DEVOE: YOUR HONOR, ONE OF THE, IF I MIGHT BEFORE
19 WE DO THAT, I WOULD ASK YOU FOR A LYLE HEARING CONCERNING
20 WHETHER OR NOT HIS PRIOR HEARING IS GOING TO COME IN.
21 AND I WONDER WHETHER THAT MIGHT MAKE A DECISION AS TO
22 WHETHER HE TESTIFIES OR NOT.

23 THE COURT: WELL WE CAN -- DURING THIS TIME, WHAT
24 WOULD BE THE RECORD UPON WHICH THE STATE WOULD MAKE AN
25 INQUIRY? YES, SIR---

1 MR. DEVOE: YOUR HONOR, THE SOLICITOR AND I---

2 THE COURT: ---WHAT WOULD THE STATE PROPOSE?

3 MR. DEVOE: THE SOLICITOR AND I HAVE CONFERRED ABOUT
4 HIS PRIOR RECORD. AND THERE ARE ONLY THREE THINGS THE
5 SOLICITOR WOULD LIKE TO HAVE IN EVIDENCE. AND I'VE
6 AGREED WITH ONE OF THEM, WAS THE FACT THAT HE HAD A
7 MARIJUANA POSSESSION CHARGE OF 2000---

8 MR. COTHRAN: 3.

9 MR. DEVOE: IN SOUTH CAROLINA. HE HAS TWO OTHER
10 CHARGES THAT HE WANTS TO GET IN. 1996, IN BALTIMORE.
11 WHICH ARE, IT'S ACTUALLY ONE CHARGE. AND VIOLATION OF
12 PROBATION ON HIM. WHICH IS POSSESSION OF A HANDGUN. AND
13 I WOULD OBJECT TO THAT. I THINK THE PREJUDICIAL EFFECT
14 OUTWEIGHS THE PROBATIVE VALUE ON THE HANDGUN IN BALTIMORE
15 IN 1996.

16 MR. COTHRAN: WELL HE HAD---

17 THE COURT: WHAT IS THE ACTUAL CHARGE COMING OUT OF
18 BALTIMORE IN 96?

19 MR. DEVOE: ALL IT SAYS IS HANDGUN.

20 MR. COTHRAN: IT SAYS HANDGUN ON A PERSON. HE GOT---

21 MR. DEVOE: WELL THAT'S THE VIOLATION OF PROBATION.
22 IT'S THE SAME THING.

23 MR. COTHRAN: NO, UP TOP. HERE'S WHERE HE HAD THE
24 GUN, AND THEN HE VIOLATED PROBATION. BECAUSE IT APPEARS
25 HE HAD ANOTHER HANDGUN. HE GOT 2 YEARS AND ONE DAY.

1 MR. DEVOE: I DON'T SEE THAT.

2 MR. COTHRAN: RIGHT THERE. 2 YEARS AND A DAY. SO
3 AND IT WASN'T WHETHER HE HAD ANOTHER HANDGUN OR WHETHER
4 HE GOT VIOLATED FOR SOME OTHER REASON. BECAUSE OF THE
5 HANDGUN HE GOT 2 YEARS IN PRISON.

6 MR. DEVOE: IT'S UNCLEAR. BALTIMORE.

7 MR. COTHRAN: BUT AT LEAST HE HAD A HANDGUN
8 CONVICTION. AND HE HAS A BURGLARY AND SOME OTHER STUFF
9 THAT ARE TOO OLD. AND THEN WE PASS THE 10 YEARS. AND I
10 DIDN'T NOTICE MY INTENT TO USE THEM. AND HE HAS GOT
11 POSSESSION OF A HANDGUN IN 96. HE GOT REVOKED IN 97.

12 MR. DEVOE: NO, 96. HE GOT ON 974129, 2 YEARS AND
13 ONE DAY.

14 THE COURT: ARE WE TALKING ABOUT---

15 MR. DEVOE: ONE OF THE CHARGES, YOUR HONOR,---

16 THE COURT: UNLAWFUL POSSESSION OF PISTOL TYPE
17 CHARGE, OR ARE WE TALKING ABOUT THE ONE THAT FALLS UNDER
18 IT SEEMS LIKE THE FIVE-YEAR STATUTE AS WELL?

19 MR. COTHRAN: YES, SIR. IN OUR STATE THERE IS.
20 WE'VE GOT 16-23-20, WHICH IS A ONE-YEAR CARRYING A PISTOL.
21 AND THEN YOU'VE GOT 16-23-30 WHICH IS A STOLEN PISTOL, YOU
22 KNOW, SOMEBODY UNDER 21. SOMEBODY CONVICTED OF A VIOLENT
23 CRIME IN THIS STATE CAN'T CARRY A HANDGUN. BUT THESE
24 CHARGES ARE IN BALTIMORE. AND I DON'T KNOW WHAT
25 MARYLAND'S STATUTE DEALS WITH, BUT HE GOT TWO YEARS AND A

1 DAY FOR THAT CRIME. AND HE'S---

2 MR. DEVOE: WELL, YOUR HONOR, HE GOT---

3 MR. COTHRAN: AND UNDER THE BRADY BILL IF HE'S EVER
4 BEEN CONVICTED OF A CRIME THAT CARRIES IN EXCESS OF 1
5 YEAR, THAT'S CONSIDERED A FELONY UNDER THE FEDERAL
6 STATUTE. AND HE CAN'T POSSESS A GUN OF ANY TYPE UNDER THE
7 FEDERAL LAW.

8 THE COURT: THAT'S NOT A CONVICTION. HE DOESN'T
9 HAVE SUCH A CONVICTION UNDER THE FEDERAL STATUTE.

10 MR. COTHRAN: YES, SIR, HE DOES.

11 THE COURT: WHAT HE'S GOT A FEDERAL CONVICTION?

12 MR. COTHRAN: NO, SIR.

13 MR. DEVOE: NO, NO.

14 MR. COTHRAN: HE, BUT HE, AND OF COURSE WE'RE NOT IN
15 FEDERAL COURT. BUT THE BRADY BILL APPLIES TO ANY STATE
16 CONVICTION THAT CARRIES IN EXCESS OF A YEAR. SO ANYBODY
17 THAT HAS EVER BEEN CONVICTED OF ANYTHING THAT CARRIES
18 MORE THAN A YEAR, THE FEDS, THAT'S A FELONY. AND THAT
19 HAS NOTHING TO DO WITH THIS. BUT HE CAN'T CARRY THAT GUN
20 PERIOD. BUT THAT'S A FEDERAL CHARGE.

21 MR. DEVOE: WHAT WE HAVE GOING HERE, YOUR HONOR, IS A
22 VERY CRYPTIC SITUATION WHICH SAYS ON JUNE 14, 1996, LITTLE
23 CHARGES, "HANDGUN," THE SEVERITY IS, "UNKNOWN." AND THEN
24 6 MONTHS LATER OR ONE MONTH LATER, HE HAS A VIOLATION OF
25 PROBATION ON THE HANDGUN ON A PERSON. THE SEVERITY IS

1 UNKNOWN. AND THEN JANUARY OF---

2 MR. COTHRAN: AND IN 1990, HE HAS BURGLARY OF A
3 DWELLING AND USE OF A HANDGUN WHILE COMMITTING A FELONY.
4 THOSE WERE ALL BACK IN 1990.

5 THE COURT: SOLICITOR, WHAT IS IT THAT YOU WOULD
6 PROPOSE TO INTRODUCE?

7 MR. COTHRAN: THAT HE HAD AN UNLAWFUL POSSESSION OF A
8 HANDGUN IN 1996. AND HE HAD A DRUG CONVICTION HERE IN
9 2003. I THINK AT LEAST THOSE ARE THE ONLY TWO THAT WERE
10 WITHIN THE STATUTORY TIME PERIOD. AND I DON'T KNOW THAT,
11 YOU KNOW, THE HAND -- I WAS GOING TO INTRODUCE THE HANDGUN
12 AND THE DRUG CONVICTION. MR. DEVOE HAS ALREADY TOLD THE
13 JURY HE WAS A DRUG DEALER FOR THE MOST PART.

14 MR. DEVOE: AND THE VICTIM WAS ALSO.

15 MR. COTHRAN: NO, HE DIDN'T. THE VICTIM WAS TRYING
16 TO CLEAN UP THE DRUGS AND TOOK THEM FROM YOUR CLIENT.

17 THE COURT: AS I RECALL THE ARGUMENT WAS THAT MR.
18 BRIGGS WAS THE THIRD DEALER, AND MR. HOUSE BECAME UNHAPPY
19 WITH THAT.

20 MR. DEVOE: I THINK DETECTIVE CUTLER---

21 MR. COTHRAN: THAT WAS---

22 MR. DEVOE: ---TESTIFIED TO THAT.

23 MR. COTHRAN: NO, THAT WAS HIS ARGUMENT. HIS OPENING
24 STATEMENTS IS THAT THE PRIOR ALTERCATION IS THAT HE HAD A
25 VILE OF CRACK COCAINE. MR. HOUSE SNATCHED IT FROM HIM.

1 HE LEFT. AND CAME---

2 THE COURT: BOTTLE.

3 MR. COTHRAN: AND CAME -- THE BOTTLE OF CRACK, YES,
4 SIR, AND CAME BACK.

5 MR. DEVOE: AND THAT WAS MY OPENING ARGUMENT. I
6 THINK SERGEANT CUTLER TESTIFIED THAT THERE WERE TWO DRUG
7 DEALERS. AND THE QUESTION WAS, WHO WAS GOING TO BE
8 SELLING DRUGS TO AN INDIVIDUAL WHO CAME ALONG TO BUY.

9 MR. COTHRAN: HE DIDN'T SAY THAT, THAT IS YOUR WORD.

10 THE COURT: THERE WAS OBJECTIONABLE TESTIMONY THAT
11 WAS NOT OBJECTED TO UNDER SOME OF THE CASES.

12 MR. COTHRAN: I UNDERSTAND THAT. I DIDN'T OPEN THAT
13 DOOR. I DIDN'T SAY ANYTHING ABOUT THAT IN MY OPENING
14 STATEMENT.

15 THE COURT: I UNDERSTAND, BUT YOU MAY HAVE BEEN ABLE
16 TO OBJECT TO SOME OF THE SELF-SERVING STATEMENTS.

17 MR. COTHRAN: OH, I KNOW, I DIDN'T. I NEEDED THAT
18 MOTIVE THAT HE PUT IN TO PLACE AND IT WORKED OUT GOOD.

19 THE COURT: I THINK UNDER THE SCENARIO THAT THIS
20 SITUATION HAS COME UP, IT WOULD BE APPROPRIATE TO MAKE
21 THE INQUIRY ABOUT HIS 2003 DRUG RECORD THAT HAS ALREADY
22 HAD THAT DOOR OPENED. AND I THINK -- THE GUN CONVICTION
23 IS THE ONE THAT CAUSES ME SOME CONCERN, BECAUSE I DON'T
24 WANT TO IT TO BE ONE OF THOSE THINGS WHERE HE PREVIOUSLY
25 HAD A GUN SO HE MUST BE A SHOOTER. BUT BY THE SAME

1 TOKEN, IT APPEARS THAT THIS IS THE TYPE OF CRIME THAT
2 CARRIES A PENALTY OF MORE THAN ONE YEAR. SO THE ISSUE
3 COMES AS TO WHETHER OR NOT IT IS MORE PROBATIVE THAN
4 PREJUDICIAL AS TO WHAT IS GOING ON HERE. SOLICITOR,
5 WHAT DO YOU SAY ABOUT THAT?

6 MR. COTHRAN: WELL, JUDGE, YOU KNOW, HE IS CHARGED
7 WITH MURDER AND POSSESSION OF A WEAPON DURING A VIOLENT
8 CRIME. HE IS CHARGED WITH A POSSESSION OF A GUN CHARGE IN
9 THIS PARTICULAR CASE. AND IT WOULD BE THE SAME SCENARIO
10 IF HE WAS CHARGED WITH BURGLARY AND HAD A PRIOR CONVICTION
11 FOR BURGLARY.

12 THE COURT: EXCEPT THAT IS A MATTER OF THE STATUTE.

13 MR. COTHRAN: YES, SIR. AND I UNDERSTAND THAT.
14 THAT ENHANCES AND MAKES IT BURGLARY FIRST. BUT EVEN AT
15 THAT SCENARIO, IN THE BURGLARY SITUATION, I PUT THE
16 PRIOR CONVICTIONS ON IN MY CASE IN CHIEF THROUGH THE
17 POLICE OFFICER. AND GET PROOF---

18 THE COURT: IN ORDER TO BRING IT TO FIRST.

19 MR. COTHRAN: YES, SIR. IN THIS CASE AND IN ANY
20 BURGLARY TRIAL, IF THE DEFENDANT ACTUALLY TAKES THE STAND,
21 THEN I FEEL I CAN BRING OUT HIS PRIOR CONVICTIONS FOR
22 BURGLARY THAT FALL WITHIN THE STATUTE. IF HE GETS ON THE
23 STAND, HE UNDERSTANDS HE'S OPENED UP FOR THAT ISSUE.

24 THE COURT: WELL IT ONLY OPENS IF IT MEETS THE
25 STATUTORY REQUIREMENTS. SO THE ISSUE IS, IS WHETHER OR

1 NOT IT'S MORE PROBATIVE. IF THERE IS SOME IN DISPUTE THEN
2 IT IS PREJUDICIAL.

3 MR. COTHRAN: YES, SIR. AND I SUBMIT THAT, YOU KNOW,
4 IF HE GETS ON THE STAND, HE IS CHARGED WITH A GUN
5 VIOLATION. HE HAS A PAST RECORD OF BRINGING, INVOLVING
6 GUNS IN A CRIME. IN THIS PARTICULAR CASE, HE LEAVES THE
7 ALTERCATION, GOES AND GETS THE GUN AND COMES BACK AND
8 KILLS THIS MAN. AND CERTAINLY THAT'S A PROBATIVE
9 SITUATION THAT THE JURY HAS THE RIGHT TO KNOW THAT HE HAS
10 THE PROPENSITY TO USE GUNS. AND HE GOES IN FACT, AND GETS
11 THIS GUN AND COMES BACK AND KILLS THIS MAN.

12 THE COURT: WHAT SAYS THE DEFENSE?

13 MR. DEVOE: YOUR HONOR, WE ARE TALKING ABOUT HANDGUNS
14 HERE. NOT A SHOTGUN. THIS IS ALMOST 10 YEARS AGO. YOU
15 KNOW, WE'RE NOT SURE WHAT THE CRIME IS IN BALTIMORE. AND
16 I THINK THE STATE HAS TO SHOW US EXACTLY WHAT THE CRIME IS
17 HE IS CONVICTED OF IN BALTIMORE. OR IN THE STATE OF
18 MARYLAND. I THINK THE PREJUDICIAL EFFECT OUTWEIGHS THE
19 PROBATIVE VALUE BY A MILE. I THINK THAT UNDER, IF THIS
20 CASE TOOK OR THIS TRIAL TOOK PLACE SIX MONTHS FROM NOW,
21 THEN MAYBE 10 YEARS HAS COME AND GONE. AND AS WE STAND
22 TALKING ABOUT THE CHARGES, WE ARE NOT QUITE SURE WHAT THE
23 CHARGES ARE. I THINK HE HAS A VIOLATION OF PROBATION WHEN
24 HE GOT THE SENTENCE.

25 MR. COTHRAN: I UNDERSTAND.

1 MR. DEVOE: BEFORE THAT, WE DON'T KNOW WHAT KIND OF
2 A SENTENCE HE GOT WHEN IT ALL HAPPENED IN JULY OF 2000 --
3 1996. IT SAYS, HANDGUN ON PERSON, SEVERITY UNKNOWN.

4 THE COURT: IT WAS A 2 YEAR PERIOD OF TIME.

5 MR. DEVOE: I AM SORRY, NO.

6 THE COURT: THE CONVICTION WAS---

7 MR. DEVOE: NO, IT WAS JUNE OF ONE YEAR UNTIL JANUARY
8 OF THE NEXT YEAR. IT'S LIKE A SEVEN MONTH PERIOD OF TIME.

9 THE COURT: I THOUGHT I HEARD TWO YEARS AND A DAY.

10 MR. COTHRAN: HE GOT SENTENCED, JUDGE. HIS CHARGE
11 WAS POSSESSION, UNLAWFUL POSSESSION OF A HANDGUN. AND
12 THAT WAS A 1996 INDICTMENT. AND HE---

13 MR. DEVOE: THE ARREST DATE WAS JUNE 1996.

14 MR. COTHRAN: RIGHT. HE GETS VIOLATED ON THAT
15 CHARGE IN 1997, AND RECEIVES A SENTENCE OF 2 YEARS AND A
16 DAY.

17 THE COURT: WAS THERE A SENTENCE GIVEN TO HIM TO
18 96---

19 MR. COTHRAN: NO, SIR. HE GOT PROBATION IN 96. BUT
20 I DON'T KNOW WHAT HIS ACTUAL SENTENCE WAS IN 96. YOU
21 KNOW, IT DOESN'T TELL US, IT DIDN'T TELL HIM HE GOT FIVE
22 YEARS SUSPENDED TO TWO YEARS PROBATION. IT DOESN'T SAY
23 THAT. BUT HE ULTIMATELY GOT SERVED TWO YEARS.

24 MR. DEVOE: WELL WE HAVE THE EXACT DATE THAT'S
25 EXACTLY, YOUR HONOR. IN JUNE 14TH 1996, AND HE HAS A

1 LITTLE CHARGE OF A HANDGUN. SEVERITY UNKNOWN. ONE MONTH
2 LATER, JULY 24TH 1996, IT SAYS VIOLATION OF PROBATION.
3 AND---

4 MR. COTHRAN: WHERE ARE YOU GETTING JUNE FROM?

5 MR. DEVOE: RIGHT HERE. JULY 24, 1996. AND THEN, IN
6 JANUARY 29TH 1997, THEY TAKE CARE OF THE DISPOSITION OF
7 THE CHARGE. SO THE CHARGE STAYED THERE FROM THE TIME HE
8 VIOLATED HIS PROBATION IN JULY. IT TOOK PLACE THE
9 FOLLOWING JANUARY OF 1997.

10 MR. COTHRAN: HE GETS ARRESTED TWICE ON A GUN
11 CHARGE.

12 MR. DEVOE: NO, ONE IS A VIOLATION OF PROBATION.

13 THE COURT: DO WE KNOW WHETHER THE 2 YEARS AND ONE
14 DAY HE GOT IS AS A RESULT OF VIOLATION OF PROBATION AT A
15 SENTENCING ON THE GUN CHARGE, OR WAS IT AS A RESULT OF
16 SOME OTHER CHARGE, AND THAT THE TWO YEARS AND A DAY CAME
17 AS A RESULT OF HIM VIOLATING SOMETHING ELSE FOR WHICH HE
18 WAS ON PROBATION?

19 MR. DEVOE: WE DON'T KNOW, YOUR HONOR.

20 MR. COTHRAN: YOU CAN'T EVEN TELL THAT FROM HIS
21 RECORD, JUDGE.

22 THE COURT: WELL IF WE CAN'T TELL FROM THE RECORD
23 WHAT THE GUN CHARGE IS AND WHAT IT CARRIED, THEN I WOULD
24 RULE THAT IT IS NOT ADMISSIBLE.

25 MR. COTHRAN: ALL RIGHT.

1 THE COURT: BUT THE DRUGS WOULD BE.

2 MR. DEVOE: THANK YOU, YOUR HONOR. YOUR HONOR,
3 INADVERTENTLY MY WITNESS TODAY CAME TO TRIAL WITH THE
4 VICTIM'S MOTHER AND SAT IN THE COURTROOM. SHE WAS IN THE
5 COURTROOM THIS MORNING. ALL SHE HEARD WAS PATHOLOGY. AND
6 SHE HEARD THIS ARGUMENT HERE. IT WAS MY MOTION TO
7 SEQUESTER.

8 MR. COTHRAN: AND I ASKED TO SEQUESTER THOSE TWO.
9 JUDGE IF, I DON'T HAVE AN ISSUE, EVEN THOUGH SHE SHOULDN'T
10 HAVE BEEN IN HERE, I DON'T KNOW THAT ANY TESTIMONY THAT
11 SHE MAY HAVE HEARD WOULD HAVE TAINTED WHAT SHE MAY SAY.
12 BUT I JUST WANT TO BE SURE THAT BEFORE HE STARTS HIS CASE,
13 HIS WITNESSES ARE OUT OF THIS COURTROOM. AND I NOT MAKING
14 AN ISSUE THAT SHE WAS IN HERE DURING THE PATHOLOGIST.
15 BECAUSE QUITE FRANKLY I JUST, AND I'M---

16 THE COURT: IF THAT'S THE ONLY WITNESS THAT YOU HAVE
17 WHO IS CURRENTLY IN THE COURTROOM, WHEN DID YOU NOTICE
18 THAT SHE WAS IN THE COURTROOM?

19 MR. DEVOE: WHEN THE SOLICITOR POINTED IT OUT TO ME
20 OR ASKED ME A QUESTION, I TURNED AROUND AND THERE SHE WAS.

21 THE COURT: ANY OTHERS IN THE COURTROOM?

22 MR. DEVOE: NO ONE BUT MY WITNESS. NO.

23 THE COURT: OKAY. WE WILL NOT BE CONCERNED WITH HER
24 PRESENCE HERE, BUT WE WILL BE CONCERNED IF ANYBODY ELSE
25 WANDERS IN AND WOULD BE DEPOSED THEN AS A WITNESS BECAUSE

1 OF THE NATURE OF HER TESTIMONY. ALL RIGHT, WE WILL BE IN
2 RECESS FOR ABOUT 3 MORE MINUTES SO YOU CAN TALK WITH
3 MR. BRIGGS AND GET A FINAL DETERMINATION ON THAT.

4 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

5 THE COURT: MR. DEVOE, HAVE YOU DISCUSSED WITH MR.
6 BRIGGS WHETHER HE WILL TESTIFY OR NOT TESTIFY?

7 MR. DEVOE: I HAVE, YOUR HONOR.

8 THE COURT: AND WHAT HAS HE INDICATED TO YOU?

9 MR. DEVOE: HE INDICATES HE WOULD LIKE TO TESTIFY.

10 THE COURT: MR. BRIGGS, I UNDERSTAND YOU WOULD LIKE
11 TO TESTIFY IN CONNECTION WITH THIS MATTER, IS THAT
12 CORRECT?

13 THE DEFENDANT: YES, SIR.

14 THE COURT: AND THIS IS YOUR DECISION THAT YOU FREELY
15 AND VOLUNTARILY MADE.

16 THE DEFENDANT: YES, SIR.

17 THE COURT: VERY GOOD. THANK YOU VERY MUCH, YOU MAY
18 BE SEATED. IF YOU WILL BRING US THE JURY.

19 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
20 PRESENCE OF THE JURY.)

21 THE COURT: VERY GOOD. MR. DEVOE, YOU MAY PROCEED.

22 MR. DEVOE: THANK YOU, YOUR HONOR. I WOULD CALL
23 KATIE GREEN TO THE STAND.

24 THE COURT: MS. GREEN, IF YOU WILL COME AROUND.

25 KATIE GREEN, BEING FIRST DULY

1 SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MR. DEVOE:

3 Q KATIE, FOR THE RECORD, WOULD YOU GIVE YOUR FULL NAME?

4 A KATIE GREEN.

5 Q IS THAT YOUR FULL NAME?

6 A UH-HUH. (AFFIRMATIVE.)

7 Q AND YOU LIVE WHERE?

8 A IN SUMMERTON.

9 Q AND WHERE IN SUMMERTON?

10 A MAYZAK STREET.

11 Q HOW DO YOU PRONOUNCE THE WORD?

12 A MAYZAK STREET.

13 Q THANK YOU VERY MUCH. YOU LIVE IN A SINGLE WIDE

14 TRAILER THERE?

15 A RIGHT.

16 Q DO YOU REMEMBER THE DAY LAST YEAR WHEN SOMEBODY WAS

17 KILLED ON YOUR PROPERTY?

18 A RIGHT.

19 Q IT WAS A TERRIBLE DAY, WASN'T IT?

20 A RIGHT.

21 Q BEFORE THAT HAPPENED, WAS YOUR GRANDSON, OR SON WAS

22 COOKING FOOD THERE?

23 A MY STEP -- NO, MY BROTHER'S CHILD.

24 Q THAT WAS STEVEN LEE?

25 A STEVEN LEE, YES.

1 Q WHAT KIND OF GRILL DID HE HAVE? WAS IT A ROUND GRILL
2 OR TRIANGULAR GRILL OR WHAT?

3 A A LONG GRILL.

4 Q A LONG GRILL?

5 A UH-HUH. (AFFIRMATIVE.)

6 Q AND HOW FAR -- AND WHERE WAS IT LOCATED ON YOUR
7 PROPERTY? THE JURY HAS SEEN A PICTURE OF YOUR TRAILER
8 WITH THE PORCH.

9 A IT WAS ON THE CORNER.

10 Q WHICH CORNER?

11 A ON THE CORNER ABOUT 30 FEET.

12 Q 30 FEET FROM WHERE? FROM THE FRONT OF THE TRAILER?

13 A YEAH, IT WAS THE FRONT.

14 Q SO IT WAS THE BACK CORNER OF THE PORCH?

15 A YEAH. UH-HUH. (AFFIRMATIVE.)

16 Q AND WAS HE THE ONLY ONE DOING THE COOKING?

17 A RIGHT.

18 Q WHEN HE COOKS, DOES HE STAND WITH HIS BACK TO THE
19 ROAD, OR WAS---

20 MR. COTHRAN: YOUR HONOR, I AM GOING TO OBJECT.

21 Q ---HE FACING THE ROAD?

22 MR. COTHRAN: I AM GOING TO OBJECT TO THE LEADING.

23 A HE HAD HIS BACK TURNED TOWARDS THE ROAD.

24 Q AND YOU DIDN'T SEE THE ACTUAL KILLING, DID YOU?

25 A NO, SIR, I SURE DIDN'T.

1 Q BUT DID YOU COME IN AND OUT OF THE TRAILER FROM TIME
2 TO TIME DURING THE DAY?

3 A YEAH, I COME OUT, BUT WHEN THAT HAPPENED, I DIDN'T
4 BEEN OUT THERE. I WENT IN THE HOUSE AND DIDN'T COME BACK
5 OUT.

6 Q AND DO YOU HAVE A GRANDSON BY THE NAME OF SHEROD?

7 A SHEROD, YES, SIR.

8 Q WHAT'S HIS LAST NAME?

9 A MACK.

10 Q AND WHERE DOES HE LIVE?

11 A IN NEW YORK.

12 Q NEW YORK CITY?

13 A UH-HUH. (AFFIRMATIVE.)

14 Q WAS IN SUMMERTON THAT DAY?

15 A OH, YEAH, HE BEEN IN SUMMERTON BUT HE WENT BACK UP
16 THE ROAD.

17 Q AND YOU ARE FAMILIAR WITH WHO THE VICTIM IS IN THIS
18 CASE.

19 A HOW'S THAT?

20 Q YOU ARE FAMILIAR WITH WHO THE VICTIM IS IN THIS CASE,
21 WESLEY---

22 A WESLEY.

23 Q ---HOUSE?

24 A RIGHT.

25 Q IN FACT DIDN'T YOU DRIVE HERE WITH HIS MOTHER TODAY?

1 A HUH?

2 Q DIDN'T YOU DRIVE HERE WITH HIS MOTHER TODAY?

3 A NO, UH-UH. (NEGATIVE.) I DROVE WITH MY SON'S

4 MOTHER-IN-LAW.

5 Q OKAY.

6 A UH-HUH. (AFFIRMATIVE.)

7 Q AND YOU'RE FAMILIAR WITH THE PERSON THEY CALL TANK?

8 A RIGHT.

9 Q IS TANK AT YOUR HOUSE A LOT?

10 A YEAH, HE BEEN THERE A LOT.

11 Q OUT FRONT?

12 A YES, HE BE BACK AND FORTH.

13 Q OKAY. YOU SAY WESLEY HOUSE WAS AT YOUR HOUSE---

14 A RIGHT.

15 Q THAT DAY.

16 A YEAH.

17 Q I MEAN BEFORE HE WAS KILLED YOU SAW HIM THERE.

18 A RIGHT. BUT AFTER THAT, I DON'T KNOW WHAT HE HAD

19 AFTER THAT, YOU KNOW.

20 Q AT ANY TIME THAT DAY WHEN YOU SAW WESLEY HOUSE DID

21 YOU SEE HIM CARRYING ANYTHING?

22 A YEAH, HE GOT A BAT OR WHATEVER. I DON'T KNOW WHAT IT

23 WAS, BUT IT BEEN A BAT.

24 Q A BAT OR A STICK OR SOMETHING LIKE THAT?

25 A YES, SOMETHING LIKE THAT.

1 Q WHAT COLOR WAS IT? DID IT HAVE ANY COLOR? WAS IT
2 PAINTED OR NOT PAINTED? OR?

3 A YEAH, IT LOOKED KIND OF RED. A PAINT ON IT OR
4 SOMETHING. BUT AFTER THAT I DON'T KNOW IF HE HAD IT OR
5 NOT LATER.

6 Q UH-HUH. (AFFIRMATIVE.)

7 A BECAUSE I DIDN'T WENT BACK OUT THERE.

8 MR. DEVOE: I HAVE NO FURTHER QUESTIONS. THANK YOU
9 FOR TESTIFYING.

10 THE COURT: JUST WAIT A SECOND IF YOU WOULD, MS.
11 GREEN. THERE ARE SOME QUESTIONS THE SOLICITOR MAY WANT TO
12 ASK YOU.

13 CROSS EXAMINATION BY MR. COTHRAN:

14 Q MS. GREEN.

15 A UH-HUH. (AFFIRMATIVE.)

16 Q YOU WEREN'T OUTSIDE WHEN TANK KILLED WESLEY, WERE
17 YOU?

18 A NO, UH-UH. (NEGATIVE.)

19 Q YOU WERE INSIDE YOUR TRAILER OR WERE YOU AT HOME AT
20 ALL?

21 A YEAH, I WAS HOME, BUT I WAS INSIDE.

22 Q YOU WERE INSIDE?

23 A RIGHT.

24 Q OKAY. HOW LONG HAD YOU BEEN INSIDE BEFORE THE
25 KILLING OCCURRED?

1 A OH, GOD, I BEEN THERE ABOUT, I BEEN THERE ABOUT
2 2:00 O'CLOCK. AND I STAY IN THERE ALL DAY.

3 Q OKAY.

4 A UH-HUH. (AFFIRMATIVE.)

5 Q SO YOU WENT BACK INTO YOUR TRAILER AT TWO, AND THE
6 KILLING HAPPENED AT 7:30 OR 7:43. SO YOU---

7 A RIGHT.

8 Q ---FROM 2:00 O'CLOCK UNTIL 7:30 OR---

9 A RIGHT, I WASN'T---

10 Q ---QUARTER TILL 8 YOU WEREN'T OUT THERE AT ALL.

11 A NO, I HADN'T BEEN OUT THERE AT ALL.

12 Q SO YOU DON'T KNOW WHO WAS OUTSIDE OR WHAT WAS GOING
13 ON OUT THERE.

14 A RIGHT. NO, I DIDN'T KNOW WHAT WAS GOING ON. BUT I
15 KNOW DAVID LEE WAS COOKING, BECAUSE I COME ON THE PORCH.
16 AND I GO TO THE DOOR.

17 Q AND YOU SAID THE GRILL WAS ABOUT 30 FEET FROM THE
18 FRONT OF YOUR TRAILER.

19 A RIGHT.

20 Q WHICH IS ABOUT TEN STEPS?

21 A RIGHT.

22 Q WHICH IS ABOUT FROM ME TO YOU?

23 A YES, SIR.

24 Q OKAY.

25 MR. DEVOE: YOUR HONOR, I OBJECT TO THE SOLICITOR

1 SAYING IT'S TEN STEPS.

2 MR. COTHRAN: IT IS.

3 THE COURT: HE CAN ASK THE QUESTION. THIS IS CROSS
4 EXAMINATION AND SHE CAN SAY YEA OR NAY.

5 Q THANK YOU, SIR. DID YOU HEAR THE GUNSHOT?

6 A YES, I HEAR. I HEAR IT IN THE HOUSE.

7 Q YOU COULD HEAR IT IN---

8 A I DIDN'T KNOW WHAT IT WAS. I THOUGHT IT WAS SOMEBODY
9 SHOOTING A LITTLE PISTOL OR WHATEVER.

10 Q OKAY. DID YOU GO OUTSIDE AFTER THE SHOOTING?

11 A NO, I DIDN'T WENT OUT.

12 Q SO YOU DIDN'T GO OUT THERE AND SEE WESLEY LAYING ON
13 THE GROUND OR NOTHING.

14 A I JUST PEEPED TO THE DOOR.

15 Q AND YOU -- WHAT POINT DID YOU PEEK TO THE DOOR?

16 A I JUST PEEP AND LOOK OUT AND WENT BACK IN THE HOUSE.

17 Q WHEN YOU PEEPED TO THE DOOR WAS TANK STILL THERE?

18 A NO, UH-UH. (NEGATIVE.)

19 Q HE HAD ALREADY GONE AWAY IN THE CAR.

20 A RIGHT.

21 Q SO THE LAST TIME YOU HAD BEEN IN THE YARD TO FIND OUT
22 WHO WAS THERE AND WHAT WAS GOING ON, WAS LIKE 2 O'CLOCK
23 THAT AFTERNOON.

24 A RIGHT.

25 Q DID ANY OF THOSE GUYS IN THE YARD COME IN THE HOUSE

1 WITH YOU?

2 A NO, SIR.

3 Q DID WESLEY HOUSE EVER COME IN THE HOUSE?

4 A NO, SIR.

5 Q DID TANK EVER COME IN THE HOUSE?

6 A NO, SIR.

7 Q WHAT ABOUT DOMINIQUE LAWSON?

8 A AIN'T NONE OF THEM BEEN IN THERE.

9 Q AIN'T NONE OF THEM BEEN IN THE HOUSE.

10 A UH-UH. (NEGATIVE.)

11 Q SO YOU DON'T KNOW WHAT WAS GOING ON?

12 A NO, I DIDN'T KNOW WHAT WAS GOING ON. BUT THEY ASKED
13 ME DID I HEAR ANY FUSS AND I I TELL THEM NO, I DIDN'T HEAR
14 NOTHING.

15 Q SO YOU DIDN'T HEAR NOTHING?

16 A UH-UH. (NEGATIVE.)

17 Q WHEN THE AMBULANCE AND EVERYBODY GOT THERE, DID YOU
18 GO OUT?

19 A NO, I DIDN'T GO OUT AT ALL. I STAYED RIGHT IN THE
20 HOUSE.

21 Q OKAY.

22 A BECAUSE I DON'T LIKE -- I DON'T LIKE TO LOOK AT
23 NOTHING LIKE THAT.

24 MR. COTHRAN: I DON'T HAVE ANYTHING FURTHER.

25 MR. DEVOE: NOTHING.

1 THE COURT: BE CAREFUL GETTING DOWN, MS. GREEN.

2 MR. DEVOE: YOUR HONOR, CAN YOU ADVISE HER TO STAY
3 IN THE COURT?

4 THE COURT: SHE MAY STAY IN THE COURT IF SHE WOULD
5 LIKE.

6 MR. DEVOE: I WOULD CALL RALPHAEL LAMONT BRIGGS.

7 THE COURT: MR. BRIGGS, IF YOU WOULD COME AROUND.

8 RALPHAEL LAMONT BRIGGS, BEING
9 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. DEVOE:

11 Q MR. BRIGGS, YOU ARE THE DEFENDANT IN THIS CASE. IS
12 YOUR NAME COMMONLY KNOWN AS TANK?

13 A MY NICKNAME?

14 Q IS THAT YOUR STREET NAME?

15 A YES, SIR.

16 Q ARE YOU FROM CLARENDON COUNTY?

17 A NO, SIR.

18 Q WHERE ARE YOU FROM ORIGINALLY?

19 A BALTIMORE, MARYLAND.

20 Q YOU HAVE RELATIVES HERE THOUGH, IS THAT CORRECT?

21 A YES, SIR. MY GRANDMOTHER.

22 Q WHERE DOES SHE LIVE?

23 A RIVER ROAD.

24 Q RIVER ROAD?

25 A YES, SIR.

1 Q AND YOU CAME BACK HERE FROM BALTIMORE WHEN?

2 A 2000.

3 Q NOW WAS YOUR CUSTOM, HABIT TO HANG OUT ON THE MAYZAK
4 ROAD IN SUMMERTON?

5 A REPEAT THAT.

6 Q YOU'D HANG OUT THERE---

7 A OH---

8 Q ---AND YOU'D SOCIALIZE THERE---

9 A YES, SIR.

10 Q ---IN THAT AREA?

11 A YES, SIR.

12 Q AND LET ME GO BACK TO ONE THING. HAVE YOU EVER
13 WORKED IN CLARENDON COUNTY?

14 A NO, SIR. I WORKED IN BALTIMORE, BUT I HAVEN'T WORKED
15 DOWN HERE.

16 Q CAN YOU READ OR WRITE?

17 A NO, SIR.

18 Q HOW FAR IN SCHOOL DID YOU ACTUALLY GO?

19 A I WAS IN SPECIAL CLASSES. I MADE IT TO THE 9TH.

20 Q SPECIAL CLASSES?

21 A YES, SIR.

22 Q DID YOU PASS YOUR DRIVER'S LICENSE EXAMINE IF YOU
23 CAN'T---

24 A NO, I TOOK---

25 Q ---READ OR WRITE?

1 A ---THE PERMIT. I HAD A PICTURE AND STUFF. I HAD NO
2 DRIVER'S LICENSE. I GOT A LITTLE PICTURE THING IN
3 MANNING.

4 Q UH-HUH. (AFFIRMATIVE.)

5 A I FAILED ABOUT 7 TIMES. THAT LADY WILL READ THE
6 LITTLE QUESTIONS IF YOU ASK HER INSIDE THE MOTOR VEHICLE.

7 Q DO YOU LIKE LIVING IN CLARENDON COUNTY?

8 A YES, SIR.

9 Q YOU HAVE SOME FRIENDS HERE?

10 A YES, SIR.

11 Q AND YOU HUNG OUT MOSTLY AT KATIE'S GREEN TRAILER A
12 LOT?

13 A YES. THAT'S THE ONLY PLACES TO GO, BECAUSE I CAN'T
14 GO AROUND THE APARTMENT BECAUSE OF TRESPASSING. I'VE GOT
15 A TRESPASSING. I CAN'T GO AROUND THERE. THAT'S WHERE
16 MOST EVERYBODY BE AT. AND, YOU KNOW, I JUST GET TIRED OF
17 GOING THERE SO I JUST STOPPED GOING THERE.

18 Q AND I THINK YOU TESTIFIED OR IT WAS TESTIFIED TO THAT
19 THE ON THE DAY IN QUESTION THAT YOU WERE TRYING TO SELL
20 DRUGS TO SOMEBODY THAT MORNING?

21 A YES, SIR.

22 Q DID YOU GO THERE A LOT TO SELL DRUGS, OR WAS THAT A
23 ONE TIME OCCURRENCE?

24 A YOU KNOW, IT'S JUST, I AM ALWAYS THERE, YOU KNOW WHAT
25 I'M SAYING? AND, YOU KNOW, YOU KNOW, PEOPLE THAT BE

1 STANDING RIGHT THERE, PEOPLE MIGHT WANT TO COME UP TO YOU,
2 THE AREA, JUST ANYBODY JUST COME WHERE YOU ARE AT. AND
3 THAT'S JUST A PLACE WHERE I JUST CHILL OUT.

4 Q THAT YOUR -- WAS THAT -- THAT WAS YOUR HEADQUARTERS
5 TO SELL DRUGS?

6 A IT WASN'T MY HEADQUARTERS, BUT THAT'S WHERE I BE AT.

7 Q THAT'S WHERE YOU SELL YOUR DRUGS?

8 A YES, SIR.

9 Q ANYBODY ELSE SELL DRUGS AT THE SAME PLACE?

10 A A FEW OTHER GUYS. NOT TOO MANY. BUT MOSTLY A
11 COUPLE OF THEM BE OUT THERE.

12 Q WELL THE DAY IN QUESTION, I THINK IT WAS TESTIFIED TO
13 BY THE STATE THAT SOMEONE CAME TO SELL DRUGS AND THE
14 VICTIM TRIED TO SELL DRUGS INSTEAD OF YOU, IS THAT
15 CORRECT?

16 A REPEAT THAT AGAIN.

17 Q THE VICTIM WESLEY HOUSE.

18 A UH-HUH. (AFFIRMATIVE.)

19 Q TRIED TO SELL DRUGS TO AN INDIVIDUAL WHO DROVE UP IN
20 THE CAR. AN INDIVIDUAL---

21 A HE WALKED. HE AIN'T DRIVE, HE WALKED.

22 Q THE WALKED. AND THE INDIVIDUAL SAID HE WANTED TO BUY
23 FROM YOU?

24 A YEAH, HE WAS LIKE UM, YOU KNOW, HE JUST KEPT TALKING.
25 I SAID, "HEY." I SAID, "GO AHEAD." I SAID, "YOU CAN GO

1 AND SEE HIM." AND THE GUY WAS LIKE, "NO, I WANT TO SEE
2 YOU." AND HE JUST GOT MAD AND, YOU KNOW, JUST SNATCHED
3 THE BOTTLE OUT OF MY HAND. AND I TOLD HIM, I SAID,
4 "UH-UH," I SAID, "YOU GOT THAT."

5 Q HE SNATCHED THE VILE OR BOTTLE FROM YOU? DID YOU
6 HAVE A LITTLE WRESTLING FIGHT OR ANYTHING? ANYTHING
7 PHYSICAL HAPPEN?

8 A NO, SIR. I MEAN, REALLY I THOUGHT HE PLANNED IT AT
9 FIRST. HE PINNED ME UP AGAINST THE TRAILER. AND I BEEN
10 LAUGHING. I THOUGHT HE WAS PLAYING. AND TOOK IT OFF, YOU
11 KNOW, THAT'S THE FIRST TIME WE EVER HAD A PROBLEM.
12 BECAUSE, YOU KNOW, I NEVER THOUGHT THAT IT WOULD END UP
13 LIKE THAT, YOU KNOW, HOW HE JUST PIN ME UP AGAINST THE
14 TRAILER AND SNATCH IT OUT OF MY RIGHT HAND.

15 Q WHAT WAS THE STREET AMOUNT VALUE OF THE DRUGS THAT
16 WERE SNATCHED FROM YOU?

17 A IT WAS ONLY PROBABLY ABOUT \$50 WORTH. I HAD A
18 LITTLE BOTTLE.

19 Q WEREN'T YOU ANNOYED WHEN HE SNATCHED \$50 FROM YOU?

20 A I WAS MAD AT FIRST.

21 Q YOU WERE MAD AT FIRST.

22 A YEAH. BUT I JUST, YOU KNOW, I JUST LEFT IT ALONE.
23 YOU KNOW, BECAUSE, RATHER THAN TRY TO GET IT BACK FROM
24 HIM. AND---

25 Q WELL WHAT DID YOU DO AFTER HE GOT IT FROM YOU? YOU

1 DIDN'T GET IT BACK. DID HE STILL STAY THERE?

2 A NO, BECAUSE HE LEFT. HE JUST WENT TO THE CORNER AND
3 PLAYING WITH HIS HANDS AND LAUGHING AND STUFF YOU KNOW.
4 AND I WAS JUST, YOU KNOW, BUT HE WAS LAUGHING AND WALKING
5 DOWN THE STREET. BECAUSE I AIN'T, LIKE I SAY, I AIN'T HAD
6 NO POSSESSION ON MY CAR YET. SO....

7 Q SO YOU HAD NO CAR THERE?

8 A NO, SIR, NOT AT THE TIME.

9 Q HOW DID YOU GET THERE THAT MORNING? OR THAT
10 AFTERNOON?

11 A MY GIRL DROPPED ME OFF.

12 Q AND HOW DID YOU LEAVE THERE?

13 A SHE HAD TO COME BACK AND PICK ME UP.

14 Q DID YOU CALL HER ON THE CELL PHONE?

15 A YES, SIR.

16 Q AND SHE CAME TO PICK YOU UP?

17 A YEAH, SHE HAD TO GO TO WORK. AND I HAD TO BE AT WORK
18 AT 4:30.

19 Q AND WHERE DOES SHE WORK AT?

20 A PIGGLY WIGGLY.

21 Q WHERE?

22 A IN SUMMERTON.

23 Q SO YOU DROVE HER TO THE PIGGLY WIGGLY IN SUMMERTON?

24 A AND THEN DROPPED HER OFF AND CAME BACK.

25 Q AND YOU THEN WENT OFF FROM THERE?

1 A I WENT TO THE MALL. NOT RIGHT OFF, BUT I WENT TO THE
2 MALL LATER ON.

3 Q DID YOU -- ANYBODY GO TO THE MALL WITH YOU?

4 A YEAH, SHEROD.

5 Q SHEROD WHO?

6 A I MEAN I CALL HIM SHEROD.

7 Q IS THAT SAME SHEROD KATIE GREEN MENTIONED IS HER
8 GRANDSON?

9 A YES, SIR.

10 Q AND YOU WENT TO THE MALL IN SUMTER?

11 A YES, SIR.

12 Q AND HOW LONG DID YOU STAY THERE?

13 A I WENT TO FRIEDMAN'S JEWELRY STORE TO GET MY JEWELRY
14 CLEANED. THEN WE WENT TO ONE OF THOSE LITTLE SHIRT
15 STORES. AND THEN WE WENT TO THE LITTLE KIDS FOOT LOCKER.
16 THE GUY, I KNOW, THE MANAGER. AND THEN I WASN'T OUT THERE
17 BUT, YOU KNOW, THERE BUT AN HOUR. IF I SPEND MONEY THERE
18 TO BUY TENNIS SHOES, HE GIVES ME A LITTLE DISCOUNT. I
19 BOUGHT TWO, THEY CALL IT 101. AND BY THE TIME I CAME
20 BACK, I WENT BACK TO THE JEWELRY STORE TO GET MY JEWELRY
21 BACK. AND THEN WHEN I LEFT FROM THERE, I JUST WALKED --
22 WE WALKED AROUND THE MALL FOR A LITTLE WHILE. AND THEN I
23 WENT TO CHURCH'S CHICKEN.

24 Q WELL WHAT HAPPENED TO THE SHOES YOU BOUGHT?

25 A I GOT LOCKED UP. WHEN I TURNED MYSELF IN, I GOT MY

1 UNCLE TO MAIL THEM UP THERE TO MY BABY'S MOTHER. I DIDN'T
2 HAVE THEM. MY UNCLE MAILED THEM FOR ME.

3 Q DID YOU GO BY YOUR HOUSE WHERE YOU LIVED AT, AT ANY
4 POINT AND TIME YOU LEFT KATIE GREEN'S HOUSE, AND YOU WENT
5 TO THE MALL AND CAME BACK TO KATIE GREEN'S HOUSE?

6 A NO, SIR.

7 Q THE SHOTGUN IN QUESTION, THIS 20 GAUGE SHOTGUN, WHERE
8 DID YOU GET THAT FROM?

9 A I BOUGHT IT FROM A DUDE---

10 Q I DON'T MEAN THAT. I MEAN THAT DAY, WHERE DID YOU
11 GET IT FROM?

12 A IT WAS IN THE CAR.

13 Q WAS IT ALWAYS IN THE CAR?

14 A YES, SIR.

15 Q YOU DIDN'T GO BY YOUR HOUSE TO GET THE GUN?

16 A NO, SIR.

17 Q SO WHEN THE CAR CAME TO PICK YOU UP AT KATIE GREEN'S
18 HOUSE, THE GUN WAS IN THE TRUNK AT THAT TIME?

19 A YES, SIR.

20 Q SO WHEN YOU CAME BACK FROM THE MALL OR WHEREVER YOU
21 WENT, YOU CAME BACK TO KATIE GREEN'S HOUSE?

22 A YES, SIR. I HAD TO DROP MY GRANDSON OFF.

23 Q AND YOU'RE SURE YOU DID NOT EVER GO BY YOUR HOUSE
24 THAT DAY?

25 A NO, SIR.

1 Q AND YOU DROVE UP INTO THE YARD OF THE HOUSE. AND---

2 A THE ONLY ONE THING I DID, I WENT TO MEET SOMEBODY TO
3 GET SOME STUFF, BUT I DIDN'T GO BACK HOME. REMEMBER I
4 TOLD YOU THAT. I WENT TO GET SOME STUFF. I WENT TO BUY
5 SOME MORE STUFF.

6 Q YOU DIDN'T HOME.

7 A I SAID I MEET SOMEBODY, NOT AT HOME. I SAID I MET
8 SOMEBODY DOWN THE MILE ROAD TO GET SOME STUFF.

9 Q WHEN YOU DROVE BACK TO KATIE GREEN'S TRAILER, YOU
10 PULLED -- DID YOU SEE WESLEY HOUSE OUT IN FRONT OF THE
11 TRAILER? OUT IN THE ROAD?

12 A WHEN I CAME BACK FROM THE MALL?

13 Q THAT'S RIGHT.

14 A YEAH, HE WAS STANDING AT THE STOP SIGN.

15 Q ON THE ROAD?

16 A NOT -- THE STOP SIGN IS WHERE THE WHITE TRAILER IS AT
17 WHERE YOU HAD ON THE THREE PICTURES TO THE END. IT WAS TO
18 THE END. IT HAD A STOP SIGN.

19 Q WAS HE STANDING ON THE ROAD SIDE OR THE GRASS?

20 A NO, SIR. HE WAS STANDING TO THE ROAD TALKING TO
21 SOMEBODY.

22 Q HE WAS STANDING WHERE?

23 A TO THE STOP SIGN, TO THE CORNER. HER HOUSE IS AT THE
24 CORNER. HE WAS STANDING AT THE CORNER AT FIRST.

25 Q DID YOU DRIVE CLOSE TO HIM?

1 A NO, SIR.

2 Q DIDN'T HE MAKE SOME COMMENTS TO YOU?

3 A THAT'S WHEN I WAS -- WHEN I WENT TO MEET THE GUY DOWN
4 THE MILE ROAD, HE WAS STANDING OUT THERE TALKING; SAYING I
5 WAS TRYING TO RUN HIM OVER.

6 Q I'M SORRY. I DIDN'T---

7 A THAT'S NOT WHEN I CAME BACK. THAT'S WHEN I WAS
8 LEAVING OUT.

9 Q OH, WHEN YOU WERE LEAVING OUT INITIALLY. WAS IT YOUR
10 GIRLFRIEND?

11 A NO, I JUST DROVE -- I JUST DROVE -- I DROPPED HER
12 OFF. AND HE WAS LIKE STANDING IN THE ROAD RIGHT THERE.
13 AND WHEN I CAME BACK, I RODE PAST. HE WAS LIKE, "ALL
14 RIGHT." YOU KNOW WHAT I'M SAYING? LIKE HE'S SAYING,
15 "ALL RIGHT." YOU KNOW, I NEVER THOUGHT IT WAS GOING TO
16 END UP STAYING LIKE THAT, YOU KNOW. SO I JUST, YOU KNOW,
17 HAD IT WHATEVER, YOU KNOW, YOU KNOW....

18 Q WHEN YOU CAME BACK FROM THE MALL, THEN YOU CAME IN
19 THE YARD WHERE THE TRAILER IS?

20 A YES.

21 Q HOW DID YOU PARK YOUR CAR AT THAT YARD?

22 A I DROVE IN. I CAME LIKE THIS.

23 Q WELL DID YOU DRIVE DIAGONALLY INTO THE TRAILER OR
24 PARALLEL TO THE TRAILER OR WHAT?

25 A I PARKED LIKE THIS. (WITNESS INDICATING.)

1 Q WHAT DOES THAT MEAN?

2 A THIS IS STRAIGHT AWAY. THE TRAILER IS LIKE THIS. I
3 WAS PARKED LIKE THIS.

4 Q SO YOU WERE PARKED PARALLEL TO THE BACK END OF THE
5 TRAILER?

6 A I WAS ON THE SIDE OF THE TRAILER.

7 Q ON THE SIDE OF THE TRAILER?

8 A YES, SIR.

9 Q WELL ISN'T THERE A PROJECTION OUT FROM THE SIDE OF
10 THE TRAILER WHERE YOU TOW THE TRAILER?

11 A SAY THAT AGAIN?

12 Q ISN'T THERE A PROJECTION OUT FROM THE TRAILER WHERE
13 YOU CAN TOW IT FROM?

14 A OH, YES, SIR. I WAS PARKED RIGHT IN FRONT OF THAT.

15 Q IN FRONT OF THAT?

16 A YES, SIR.

17 Q AND THAT PROJECTION COMES OUT FROM THE MIDDLE OF THE
18 BACK OF THE TRAILER?

19 A YES, SIR.

20 Q WHEN YOU PARKED THERE, YOU GOT OUT OF THE CAR, IS
21 THAT RIGHT?

22 A YES, SIR.

23 Q AND THEN WHAT HAPPENED?

24 A THAT'S WHEN I WAS TALKING. AND THAT'S WHEN SHEROD
25 GOT OUT OF THE CAR. AT FIRST HE DIDN'T JUST COME STRAIGHT

1 OVER TO ME NOW. YOU KNOW WHAT I'M SAYING? AND WHEN I
2 TURNED MY BACK.

3 Q HE BEING WHO?

4 A WESLEY HOUSE. HE DIDN'T JUST COME RIGHT TO ME
5 THOUGH. HE WAS STANDING AT THE STOP SIGN AND HE WALKED,
6 AND I LOOKED AND TURNED AROUND. AND HE CAME WALKING OVER
7 TOWARDS ME, AND HE HAD THE LITTLE STICK IN HIS HAND. SO I
8 WENT TO THE CAR.

9 Q WHEN YOU SAY A LITTLE STICK, HOW BIG IS A LITTLE
10 STICK?

11 A IT'S ABOUT THAT BIG.

12 Q HAS IT GOT A HANDLE?

13 A IT'S GOT A HANDLE ON IT. AND---

14 Q WHAT COLOR IS IT?

15 A GRAY. AND---

16 Q YOU SAID IT HAS A NAME ON THE STICK?

17 A YEAH, BIG SHOT.

18 Q DID YOU KNOW THAT THEN OR LATER?

19 A NAH, I'D SAY IT WAS, YOU KNOW, LATER ON, YOU KNOW,
20 WHENEVER I WAS AT THE TRUNK OF THE CAR. THE TRUNK OF THE
21 CAR.

22 Q AND YOU'RE SAYING HE WALKED UP TOWARDS YOU SAYING
23 SOMETHING?

24 A YES, SIR.

25 Q WHAT WAS HE SAYING?

1 A HE SAID, "WHAT'S UP NOW NIGGER." THAT'S THAT.

2 Q DID HE WALK UP TO YOU IN A FRIENDLY MANNER?

3 A NO, SIR.

4 Q DID HE WALK UP LIKE HE WAS READY TO HAVE A PROBLEM, A
5 TUSSELE WITH YOU?

6 A YES, SIR.

7 Q WHY DID YOU START GETTING ALARMED?

8 A BECAUSE HE WAS WALKING TOWARD ME. AND I TOLD HIM,
9 "GO AHEAD MAN." AND I SAID, "JUST GO AHEAD AND BACK UP
10 MAN." AND HE WAS LIKE GETTING READY TO WALK TOWARD ME.
11 AND I POPPED THE TRUNK. ALL I DID WAS TRY TO SCARE HIM
12 AWAY. I DIDN'T KNOW---

13 Q JUST GO BACK. YOU POPPED THE TRUNK AND WHAT? YOU
14 PULLED SOMETHING OUT OF THE TRUNK?

15 A YEAH, I PULLED SOMETHING OUT -- THE GUN OUT OF THE
16 TRUNK.

17 Q YOU PULLED THE GUN IN QUESTION OUT OF THE TRUNK?

18 A I SAID I PULLED THE GUN OUT OF THE TRUNK.

19 Q THE GUN THAT'S IN EVIDENCE YOU PULLED OUT OF THE
20 TRUNK?

21 A YES, SIR.

22 Q HOW DID YOU OPEN THE TRUNK UP? DID YOU HAVE A LATCH
23 TRUNK, OR DO YOU GO BACK IN THE CAR?

24 A IT'S A LITTLE LATCH RIGHT THERE BY THE DOOR AND YOU
25 JUST POP IT AND IT OPENS.

1 Q THE DRIVER'S DOOR?

2 A YES, SIR.

3 Q YOU POPPED IT OPEN, AND YOU GRABBED THE SHOTGUN?

4 A YES, SIR.

5 Q AND WHY DID YOU DO THAT?

6 A BECAUSE I WAS SCARED. YOU KNOW WHAT I'M SAYING? YOU
7 KNOW, HE WAS -- I JUST THOUGHT, I BEEN TRYING TO SCARE HIM
8 AWAY. LIKE I SAID, I DIDN'T KNOW THE GUN, IT ALL HAPPENED
9 SO FAST, AND, YOU KNOW.

10 Q WELL DID YOU LOAD THE GUN?

11 A THE GUN ALREADY BEEN LOADED.

12 Q IT'S ALWAYS BEEN LOADED WITH THE SHOTGUN IN THE
13 CHAMBER?

14 A YES, SIR.

15 Q OR SHELL I MEAN IN THE CHAMBER?

16 A YES, SIR. I DIDN'T JUST GO HOME OR NO WHERE AND JUST
17 PUT A BULLET IN IT. THE BULLET HAS ALWAYS BEEN IN.

18 Q SO HE CAME WALKING UP TO YOU?

19 A YES.

20 Q HOW CLOSE WERE YOU -- WAS HE TO YOU WHEN YOU---

21 A WHEN I PULLED THE GUN OUT?

22 Q ---HAD THE GUN OUT AND HOLDING IT?

23 A HE WALKED STRAIGHT TOWARDS IT. YOU KNOW, LIKE IT,
24 LIKE IT AIN'T BEEN NOTHING.

25 Q WHAT WAS HE SAYING?

1 A FUCK THAT. EXCUSE MY EXPRESSION.

2 Q WHAT WERE YOU THINKING OR DOING?

3 A I WAS SCARED.

4 Q WAS HE BIGGER THAN YOU?

5 A HE WAS TALLER THAN ME.

6 Q SO BIGGER?

7 A WELL A LITTLE BIGGER THAN ME.

8 Q HAVE YOU EVER FOUGHT BEFORE?

9 A NO, NEVER BEEN IN A FIGHT.

10 Q DID HE ACT LIKE HE WAS DARING YOU TO SHOOT HIM OR
11 SOMETHING, OR WHAT?

12 A HE JUST ACTED LIKE HE DIDN'T CARE. LIKE, YOU KNOW,
13 LIKE HE REALLY JUST DIDN'T CARE. YOU KNOW, I NEVER KNOW
14 HIM TO EVER ACT THAT WAY WITH ME. YOU KNOW, JUST THAT
15 DAY.

16 Q WELL WHEN THE GUN -- DID YOU MEAN TO PULL THE
17 TRIGGER?

18 A NO, SIR.

19 MR. COTHRAN: OBJECT TO LEADING.

20 Q IF YOU HADN'T PULLED THE TRIGGER, WHAT WOULD YOU HAVE
21 DONE?

22 A I DON'T KNOW WHAT I WOULD HAVE DONE.

23 Q WAS HE STILL COMING TOWARDS YOU?

24 A YES, SIR.

25 Q DID YOU THINK YOU WERE USING THE GUN AS A CLUB RATHER

1 THAN AS A GUN?

2 A SAY AGAIN?

3 Q DID YOU THINK YOU WERE USING THE GUN---

4 MR. COTHRAN: YOUR HONOR, I REQUEST HE NOT LEAD HIM.

5 THE COURT: SUSTAINED.

6 Q WELL IF YOU HADN'T USED THE GUN, WHAT WOULD YOU HAVE
7 DONE?

8 A I DON'T KNOW WHAT I WOULD HAVE DONE. I CAN'T ANSWER
9 THAT.

10 Q ALL RIGHT.

11 A I DON'T KNOW WHAT I WOULD HAVE DONE.

12 Q AFTER YOU SHOT HIM, AND HE FELL, DID YOU MAKE ANY
13 COMMENTS OR STATEMENTS?

14 A NO, SIR.

15 Q IT WAS TESTIFIED TO BY DOMINIQUE PEARSON (SIC) THAT
16 YOU SAID SOMETHING.

17 A NO, WHY WOULD I SAY SOMETHING? I MEAN, HE DIDN'T SAY
18 NOTHING TO ME, SO. I WAS SCARED TOO. ALL HE DID IS JUMP
19 UP AND ACTED FOOL. SO I JUST JUMPED IN THE CAR AND RAN.
20 BECAUSE I WAS COMING FROM THE FRONT, TOWARDS THE FRONT OF
21 THE CAR.

22 Q DID YOU, IMMEDIATELY AFTER THAT HAPPENED, YOU JUMPED
23 IN YOUR CAR AND DROVE OFF?

24 A YES, SIR.

25 Q WHY DIDN'T YOU STICK AROUND?

1 A BECAUSE HIS FAMILY BEEN OUT THERE, MAN. I BEEN
2 SCARED, MAN. LIKE I SAY, IT HAPPENED SO QUICK, I MEAN,
3 YOU KNOW, I REALLY BEEN SCARED THOUGH.

4 Q WHERE DID YOU GO?

5 A TO RIVER ROAD AND DROPPED THE CAR OFF. AND CALLED
6 SOMEBODY TO COME AND PICK ME UP.

7 Q WASN'T -- WAS THE GUN STILL WITH YOU?

8 A YES, SIR. I LEFT IT IN THE CAR.

9 Q AND WHERE WAS THE STICK?

10 A THE STICK WAS IN THE TRUNK TOO.

11 Q HOW DID THE STICK GET IN THE TRUNK?

12 A WHEN I WENT TO TAKE THE GUN OUT THE TRUNK, WHEN I
13 DROP IT TO RIVER ROAD. I LOOKED IN THE TRUNK, BECAUSE, YOU
14 KNOW, LIKE I TOLD YOU, HE RAISED IT UP. AND IT JUST WAS
15 IN THE TRUNK.

16 Q WELL, WHEN HE RAISED UP---

17 A LIKE I SAID, WHEN HE CAME TOWARD THE GUN, THAT'S
18 WHEN, YOU KNOW, I DON'T HOW THE STICK -- I DIDN'T KNOW HOW
19 THE STICK, I DIDN'T EVEN KNOW THAT THE STICK EVEN FELL IN
20 THE TRUNK. I THOUGHT THE STICK WAS OUT THERE ON THE
21 GROUND. BUT IT WAS INSIDE THE TRUNK THE WHOLE TIME.

22 Q WHEN YOU OPENED THE TRUNK OF THE CAR TO GET THE GUN,
23 DID YOU CLOSE THE TRUNK OF THE CAR?

24 A YOU MEAN, ARE YOU TALKING ABOUT WHEN I TOOK THE
25 CAR---

1 Q WHEN YOU GOT THE GUN---

2 A ---TO RIVER ROAD?

3 Q WHEN YOU GOT THE GUN FROM THE CAR -- LET ME FINISH MY
4 QUESTION.

5 A ALL RIGHT.

6 Q AT KATIE GREEN'S HOUSE DID YOU---

7 A SAY THAT AGAIN. REPEAT THAT.

8 Q WHEN YOU OPENED THE TRUNK---

9 A UH-HUH. (AFFIRMATIVE.)

10 Q ---AND GRABBED THE GUN OUT---

11 A UH-HUH. (AFFIRMATIVE.)

12 Q ---DID YOU CLOSE THE TRUNK?

13 A NO, I DIDN'T CLOSE THE TRUNK.

14 Q WHEN DID YOU CLOSE THE TRUNK?

15 A REPEAT THAT QUESTION AGAIN.

16 Q WHEN DID YOU CLOSE THE TRUNK?

17 A ARE YOU TALKING ABOUT WHEN I WAS AT THE HOUSE ON
18 RIVER ROAD OR WHEN I WAS AT---

19 Q THE HOUSE AT KATIE---

20 A ---KATIE GREEN'S HOUSE?

21 Q ---GREEN'S HOUSE.

22 A OH, NO, I DIDN'T CLOSE THE TRUNK UNTIL I THREW THE
23 GUN IN THE TRUNK AND CLOSED THE DOOR. CLOSED THE TRUNK.
24 AND GOT IN THE CAR AND RAN OUT RIVER ROAD.

25 Q YOU DIDN'T KNOW THE STICK WAS IN THE TRUNK---

1 A NO, SIR.

2 Q ---UNTIL YOU GOT TO RIVER ROAD.

3 A YES, SIR. I JUST JUMPED IN THE CAR. I DIDN'T EVEN
4 KNOW.

5 Q WHEN DID YOU TURN YOURSELF IN TO THE POLICE?

6 A THAT NEXT NIGHT. BECAUSE I CALLED THAT GUY RIGHT
7 THERE. AND I TOLD HIM, MET ME. HE TOLD ME TO MEET HIM AT
8 THE WAFFLE HOUSE. AND I TOLD HIM I AIN'T WANT TO RUN.
9 AND I SAY I'M NOT USED TO BEEN RUNNING, YOU KNOW. HE CAME
10 AND TOLD ME TO MEET HIM AT THE WAFFLE HOUSE. SAID HE
11 WOULD PICK ME UP. YOU KNOW, THEY TOLD ME THIS BY THE
12 WEEKEND. BUT I WAS LIKE, I AM GOING TO COME NOW. AND I
13 JUST CAME AND MEET HIM THERE. HE DIDN'T PULL THE HANDGUN
14 ON ME OR NOTHING. THEY TOOK ME TO THE POLICE RIGHT THERE
15 IN MANNING. AND HE WAS QUESTIONING ME AND STUFF.

16 Q DID YOU TELL THEM WHAT YOU HAD DONE---

17 A YES, SIR.

18 Q ---WITH THE CAR?

19 A YEAH, I TOLD HIM WHAT I DID WITH THE CAR.

20 Q WHAT YOU HAD DONE WITH THE GUN?

21 A NAH, I AIN'T -- I TOLD HIM WHAT I, YOU KNOW, THAT MY
22 PEOPLE GOT RID OF THE GUN.

23 Q AND WITH THE STICK?

24 A YES, SIR. HE KNOWS ABOUT ALL THAT.

25 Q SO---

1 A I USED HIS CELL PHONE TO CALL THE PERSON TO ASK THEM
2 WHERE THIS GUN WAS REALLY AT.

3 Q SO BACK AT KATIE GREEN'S HOUSE WHEN YOU SHOT WESLEY
4 HOUSE---

5 A YES, SIR.

6 Q ---YOU WERE DEFENDING YOURSELF?

7 A YES, SIR.

8 MR. DEVOE: I HAVE NO FURTHER QUESTIONS. ANSWER ANY
9 QUESTIONS THE SOLICITOR MIGHT HAVE.

10 A OKAY.

11 CROSS EXAMINATION BY MR. COTHAN:

12 Q MR. BRIGGS, YOU TESTIFIED THAT YOU HAD COME EARLIER
13 THAT DAY?

14 A YES, SIR.

15 Q THAT SOMEBODY DROPPED YOU OFF THERE?

16 A YES, SIR. I BEEN THERE ALL DAY.

17 Q YOU'D BEEN THERE ALL DAY?

18 A YES, SIR.

19 Q YOU TOLD YOUR LAWYER YOU WENT THERE TO SELL CRACK.

20 A I WAS THERE, YES.

21 Q AND THAT'S WHAT YOU DO. THAT IS YOUR HANG OUT TO
22 SELL CRACK?

23 A THAT'S WHAT I DO. IT'S MY LIFE.

24 Q YOU HAVEN'T HAD A JOB SINCE YOU HAVE BEEN HERE.

25 A NO, SIR.

1 Q YOUR GIRLFRIEND WORKS, AND YOU HANG OUT AT MS.
2 GREEN'S HOUSE TO SELL CRACK ALL DAY.

3 A YES, SIR.

4 Q ON THIS PARTICULAR DAY, SOMEBODY CAME UP THERE
5 WANTING TO BUY CRACK FROM YOU?

6 A YES, SIR.

7 Q YOU DIDN'T SELL IT TO THEM.

8 A I SOLD IT TO THEM.

9 Q OKAY. WELL YOU THOUGHT IT WAS A SETUP THAT SOMEBODY
10 CAME TO YOU, AND THEN WESLEY PINNED YOU UP AGAINST THE
11 TRAILER AND TOOK YOUR CRACK FROM YOU?

12 A NO, THIS WASN'T NO SETUP. YOU SAY, I THOUGHT IT WAS
13 A SETUP?

14 Q YEAH, YOU JUST TOLD YOUR LAWYER YOU THOUGHT IT WAS A
15 SETUP THAT'S WHY YOU WERE LAUGHING.

16 A NAH, I DIDN'T SAY THAT. I AIN'T NEVER TELL MY LAWYER
17 THAT I WAS -- I THOUGHT IT WAS A SETUP.

18 Q YOU THOUGHT IT WAS PLANNED?

19 A I AIN'T NEVER SAID THAT EITHER.

20 Q YOU JUST TOLD HIM THAT WHEN THE GUY CAME UP WANTING
21 TO BUY CRACK, WESLEY PINNED YOU UP AGAINST THE TRAILER AND
22 YOU FIRST THOUGHT IT WAS FUNNY.

23 A I SAID AFTER THE FACT.

24 Q AFTER THE FACT YOU THOUGHT THEY SET YOU UP.

25 A I NEVER SAY THEY SET ME UP.

1 Q OR PLANNED THIS TAKING THE CRACK FROM YOU.

2 A I NEVER SAID THAT. HE DID NOTHING.

3 Q HE, HE PINNED YOU UP AGAINST THE TRAILER---

4 A I DIDN'T SAY THAT WESLEY PINNED ME UP. I AIN'T SAY
5 NOTHING ABOUT THE GUY---

6 Q RIGHT, I AM TALKING ABOUT WESLEY.

7 A YES, SIR.

8 Q WESLEY PINNED YOU UP AGAINST THE TRAILER.

9 A YES, SIR. HE PINNED ME UP AFTER I SOLD IT TO THE
10 GUY.

11 Q AFTER YOU SOLD IT TO THE GUY, WESLEY PINNED YOU
12 AGAINST THE TRAILER.

13 A AND TOOK IT.

14 Q AND TOOK YOUR CRACK FROM YOU.

15 A YES, SIR.

16 Q DID HE TAKE ALL YOUR CRACK?

17 A YES, IT WAS IN A BOTTLE.

18 Q HE TOOK EVERY BIT OF THE CRACK YOU HAD.

19 A WHATEVER IN THE BOTTLE I HAD.

20 Q SO YOU DIDN'T HAVE ANYTHING ELSE TO SELL SO YOU HAD
21 TO LEAVE.

22 A I HAD TO GO GET SOME MORE.

23 Q SO AND HE WAS DOWN THERE AFTER HE TOOK YOUR CRACK
24 FROM YOU---

25 A YES.

1 Q THAT MADE YOU MAD, DIDN'T IT?

2 A I WAS MAD AT FIRST.

3 Q YOU WERE MAD. AND NOT ONLY THAT, HE WAS DOWN THERE
4 POINTING AT THE BOTTLE AND LAUGHING AT YOU.

5 A YES.

6 Q IN FRONT OF ALL THE OTHER GUYS?

7 A UH-HUH. (AFFIRMATIVE.)

8 Q HE WAS LAUGHING?

9 A YES, SIR.

10 Q WERE THE REST OF THEM LAUGHING AT YOU TOO?

11 A NO.

12 Q JUST WESLEY?

13 A YES, SIR.

14 Q AND YOU WERE MAD AT HIM?

15 A I WAS MAD AT FIRST.

16 Q SO YOU LEAVE THERE TO GO GET MORE CRACK?

17 A YES, SIR.

18 Q YOU CALLED YOUR GIRLFRIEND?

19 A YES, SIR, TO GET THE CAR.

20 Q SHE BRINGS YOU THE CAR?

21 A YES, SIR.

22 Q OKAY. AND THEN YOU SAID YOU GOT INSIDE TO GO TO THE
23 MALL IN SUMTER.

24 A YES, SIR.

25 Q TO GET YOUR JEWELRY CLEANED, AND BUY SOME SHOES.

1 WHERE DID YOU GET THE MONEY?

2 A WHAT DO YOU MEAN? I MEAN, I HUSTLED.

3 Q HOW MUCH MONEY DID YOU HAVE ON YOU WHEN YOU LEFT
4 THERE THAT DAY?

5 A I HAD PROBABLY ABOUT, TO BE HONEST WITH YOU, I HAD
6 ABOUT \$200 IN MY POCKET MAYBE.

7 Q SO YOU GO TO SUMTER, DO ALL THIS SHOPPING AND YOU
8 COME BACK. AND THEN WHEN---

9 A I ONLY BOUGHT TWO PAIR OF SHOES.

10 Q HOW DID YOU GET BACK FROM SUMTER TO SUMMERTON?

11 A I DROVE BACK.

12 Q WHAT ROAD DID YOU TAKE?

13 A I TOOK THE MILE ROAD.

14 Q SO YOU WENT---

15 A WENT DOWN 15.

16 Q WHEN YOU CAME FROM SUMTER BACK TO SUMMERTON, DID YOU
17 STAY 15 ALL THE WAY INTO SUMMERTON AND THEN GET ON THE
18 MILE REAL?

19 A REPEAT THAT QUESTION.

20 Q WHEN YOU CAME FROM THE MALL COMING BACK TO
21 SUMMERTON---

22 A COMING BACK, YES.

23 Q ---DID TO COME 15 THE WHOLE WAY?

24 A YES.

25 Q SO YOU COME IN SUMMERTON ON 15. AND THEN YOU---

1 A I WASN'T COMING SUMMERTON NOW. I COME THROUGH THE
2 BACK MILE, I WAS COMING DOWN 15, COMING TO THE BACK WAY
3 LIKE THROUGH SILVER WAY.

4 Q OH, SO YOU COME THROUGH SILVER DOWN FURSE ROAD ON TO
5 THE MILE ROAD.

6 A YES, SIR.

7 Q AND WHEN YOU CAME ON TO THE MILE ROAD YOU SAW WESLEY
8 STANDING OUT THERE.

9 A YES, SIR. AT THE STOP SIGN.

10 Q AT STOP SIGN.

11 A YES, SIR.

12 Q TALKING TO SOME OTHER DUDE.

13 A YES, SIR.

14 Q AND WHEN YOU -- YOU WERE GOING TO GET MORE CRACK.

15 A I ALREADY HAD IT ALREADY, AND BEEN BACK.

16 Q OKAY. SO HE'S COMING BY, AND HE'S LAUGHING AT YOU
17 STILL WHEN YOU COME BACK BY, RIGHT?

18 A NO, HE AIN'T BEEN LAUGHING AT ME. HE WAS MAD WHEN I
19 COME BACK.

20 Q WHAT WAS HE MAD FOR?

21 A HE WAS WAITING ON ME TO COME BACK. HE BEEN WAITING
22 FOR ME.

23 Q IS HE GOING TO TAKE MORE OF YOUR DRUGS?

24 A NO, HE WAS JUST MAD. HE WAS GOING TO GET ME.

25 Q WHY WAS HE GOING TO GET YOU? WHAT HAD YOU DONE TO

1 HIM?

2 A I DON'T KNOW. HE SAID I TRIED TO RUN HIM OVER.
3 THAT'S WHAT HE SAID.

4 Q WHEN DID YOU TRY TO RUN HIM OVER?

5 A WHEN I WAS LEAVING OUT.

6 Q THE FIRST TIME?

7 A YES, SIR.

8 Q BUT I THOUGHT YOUR GIRLFRIEND CAME AND GOT YOU. WERE
9 YOU DRIVING OR WAS SHE DRIVING?

10 A AFTER I BEEN BACK, AFTER I DROPPED MY GIRL OFF, I
11 COME BACK.

12 Q YOU DROPPED THE GIRL AND YOU CAME BACK?

13 A YES, SIR.

14 Q AND WHERE WAS HE?

15 A THE PIGGLY WIGGLY BEEN RIGHT THERE.

16 Q I UNDERSTAND. AND SO WHEN YOU DROPPED HER OFF, DID
17 YOU GO DOWN THE MILE ROAD TOWARD THE FURSE ROAD TO GET
18 YOUR CRACK?

19 A NOT AT THE TIME. BUT WHEN I WAS -- YOU KNOW, HE WAS
20 STANDING RIGHT THERE. AND THEN WHEN I TURNED, NO, I
21 AIN'T TURN. I WENT DOWN MILE -- HE WAS STANDING RIGHT
22 THERE. AND HE JUST SAID, I TRIED -- YOU KNOW, I KNOW HE
23 SAID I TRIED TO RUN HIM OVER, BUT I DIDN'T TRY TO RUN HIM
24 OVER THOUGH.

25 Q AND WHEN DID HE TELL YOU THAT YOU TRIED -- YOU TRIED

1 TO RUN YOU OVER?

2 A WHEN I CAME BACK. AND WHEN HE RAN TOWARDS ME.

3 Q WERE YOU STILL IN THE CAR?

4 A NAH, I WAS OUT OF THE CAR AT THE TIME.

5 Q OKAY. AND YOU PULLED BACK INTO KATIE'S HOUSE?

6 A YES, SIR.

7 Q AND YOU TOLD YOUR LAWYER HE HAD THIS RED STICK?

8 A YES, SIR.

9 Q DID HE HAVE THE RED STICK EARLIER THAT DAY?

10 A NO, I DIDN'T SEE HIM WITH IT EARLIER THAT DAY. BUT I
11 SEEN -- WHEN HE WAS AT THE STOP SIGN HE HAD IT IN HIS
12 HAND.

13 Q OKAY.

14 A THAT'S THE FIRST TIME I'VE EVER SEEN IT.

15 Q FIRST TIME YOU HAD SEEN IT WHEN HE WAS AT THE STOP
16 SIGN.

17 A YES, SIR. THE FIRST TIME I EVER SEEN IT.

18 Q AND SO YOU COME IN TO SUMMERTON FROM THE FURSE ROAD
19 ON TO THE MILE ROAD?

20 A YES, SIR.

21 Q WHERE AND DID -- AND WHEN YOU CAME BACK THAT TIME,
22 WHERE WAS HE STANDING?

23 A WHEN I CAME BACK HE WAS STANDING OUT THERE, YES.

24 Q WELL WHEN YOU CAME BACK FROM WHERE?

25 A WHEN I CAME BACK FROM THE MALL, HE WAS STANDING OUT

1 TO THE STOP SIGN.

2 Q BUT YOU CAME BACK FROM THE MALL THROUGH SILVER?

3 A YES, SIR.

4 Q OKAY. AND HE WAS STANDING THERE.

5 A AT THE STOP SIGN, YES, SIR.

6 Q AND WHEN DID YOU GET THE CRACK? AFTER YOU PASSED
7 HIM?

8 A YEAH, I WAS GOING TO GET IT.

9 Q YOU PASSED HIM TO GO GET SOME CRACK AND COME BACK.

10 A YES, SIR.

11 Q DID YOU -- SO YOU'RE COMING FROM SILVER. SO YOU GO
12 IN TO SUMMERTON TO GET CRACK?

13 A WHAT DO YOU MEAN?

14 Q WELL HE -- DO YOU GO INTO SUMMERTON TO GET FROM ON
15 THE MILE ROAD? DID YOU GO PAST IN TOWARDS SUMMERTON TO
16 GET THE CRACK?

17 A YEAH, I TOLD YOU I WAS MEETING SOMEBODY TO PICK
18 SOMETHING UP.

19 Q OKAY. BUT IT WAS ON THE SUMMERTON SIDE WHERE HE WAS?

20 A YES, SIR.

21 Q OKAY. SO YOU PICK UP SOME CRACK. HOW MUCH DID YOU
22 PICK UP?

23 A AROUND 14 GRAMS.

24 Q HOW MUCH DID YOU PAY HIM FOR IT?

25 A \$400.

1 Q OKAY.

2 A THAT'S WHY I HAD ONLY \$200 WHEN I WENT TO THE MALL.

3 Q HUH?

4 A I SAID THAT'S WHY I ONLY HAD \$200 WHEN I WENT TO THE
5 MALL.

6 Q I THOUGHT YOU WENT TO THE MALL BEFORE YOU BOUGHT THE
7 CRACK?

8 A NO, I BOUGHT THE CRACK FIRST. THEN I WENT THE MALL.
9 I DIDN'T HAVE NO CRACK WHEN I CAME BACK. I ALREADY HAD IT
10 WHEN I LEFT.

11 Q SO YOU GO AND RIDE BY---

12 A THAT WAS BEEN STUPID OF ME TO GO TO THE MALL WITH
13 CRACK ON ME. IF I HAD IT PUT UP -- I PUT IT IN MY CAR.
14 MY OTHER CAR WAS SITTING IN THE YARD. I JUST STOOD THERE
15 AND PUT THE CRACK INSIDE THE CAR.

16 Q OKAY. WHEN YOU SEE HIM STANDING OUT BY THE STOP
17 SIGN, YOU ARE ON THE WAY TO BUY THE CRACK?

18 A HUH?

19 Q YOU TOLD YOUR LAWYER YOU WERE ON THE WAY TO GET
20 SOMETHING, TO MEET A MAN TO BUY THE CRACK. AND YOU SEE
21 HIM STANDING AT THE STOP SIGN WITH THE RED STICK.

22 A YES, SIR.

23 Q YOU BUY THE CRACK. AND YOU JUST TOLD ME YOU HAD \$400
24 YOU PAID FOR THE CRACK?

25 A YES, SIR.

1 Q YOU BUY THE CRACK.

2 A UH-HUH. (AFFIRMATIVE.)

3 Q THEN YOU GO TO THE MALL?

4 A I BOUGHT THE CRACK FIRST.

5 Q RIGHT.

6 A THEN I GO TO THE MALL. THEN MY BABY'S MOTHER CALL ME
7 AND TELL ME I KNOW I'M SUPPOSED TO BRING -- GET SHOES.

8 YOU KNOW MY KIDS START SCHOOL SOON. I SAID, "I AM GOING
9 TO GET IT." I SAID, "GO AHEAD TO THE MALL RIGHT NOW."

10 BECAUSE I, YOU KNOW, SHE'S LIKE, "I NEED THEM NOW. THEY
11 START SCHOOL MONDAY."

12 Q YOU PASS HIM. YOU GO BUY THE CRACK. YOU GO TO THE
13 MALL.

14 A YES, SIR.

15 Q WHILE YOU'RE AT THE MALL YOU HANG OUT. GO GET YOUR
16 JEWELRY CLEANED. YOU BUY SOME SHOES. YOU BUY SOME
17 SHIRTS.

18 A NO, I AIN'T BUY NO SHIRTS. I JUST BOUGHT SOME SHOES.

19 Q OKAY.

20 A I DIDN'T HAVE ENOUGH FOR ALL THAT.

21 Q YOU PAID \$400 FOR THE CRACK.

22 A YES.

23 Q YOU HAD \$200 LEFT OVER.

24 A YES, SIR.

25 Q SO YOU HAD 600 TOTAL?

1 A YES, SIR.

2 Q NOW YOU COME BACK IN TO SUMMTERON? YOU ALREADY
3 BOUGHT THE CRACK.

4 A UH-HUH. (AFFIRMATIVE.)

5 Q YOU PASSED HIM AND YOU CLAIM HE HAD THE STICK.

6 A YES, SIR.

7 Q AND WHEN YOU COME BACK IN TO SUMMERTON YOU COME
8 THROUGH SILVER?

9 A YES, SIR.

10 Q AND WHEN YOU COME DOWN FURSE ROAD ON TO THE MILE
11 ROAD, YOU GO STRAIGHT TO KATIE'S HOUSE AND PULL IN THERE.

12 A YES, SIR.

13 Q AND HE COMES WALKING UP?

14 A YES, SIR.

15 Q OKAY. HOW -- DID YOU SEE HIM STANDING OUT THERE AT
16 THE ROAD WHEN YOU PULLED IN THERE?

17 A YES, SIR.

18 Q DID HE MAKE ANY THREATENING GESTURES TOWARDS YOU AT
19 THAT TIME?

20 A NO, NOT UNTIL HE CAME UP ON ME.

21 Q OKAY.

22 A YES, SIR.

23 Q AND THEN YOUR TESTIMONY IS, YOU GET OUT OF THE CAR.

24 A UH-HUH. (AFFIRMATIVE.)

25 Q YOU WALK TOWARD THE BACK OF THE CAR, THEN YOU GO BACK

1 AND POP THE TRUNK?

2 A YES, SIR.

3 Q SO YOU WALK OUT THERE AND HE IS STANDING THERE. DID
4 HE HIT YOU OR TOUCH YOU OR DO ANYTHING WHILE YOU WERE
5 FIRST STANDING THERE?

6 A HE WAS ABOUT TO.

7 Q HE WAS?

8 A YES, SIR.

9 Q WHAT WAS HE GOING TO HIT YOU WITH?

10 A WITH THAT STICK.

11 Q OKAY. BUT HE DIDN'T?

12 A NO.

13 Q YOU TURNED YOUR BACK ON HIM AND WALKED BACK AND
14 POPPED THE LID?

15 A NO, HE AIN'T -- YOU AIN'T HEAR WHAT I SAID. HE WAS
16 WALKING UP ON ME. HE WAS WALKING THIS WAY. AND I WENT --
17 AND FROM THE TIME HE WAS WALKING EXACTLY RIGHT THERE WHERE
18 THE BACK CONCRETE WAS AT, I DONE GOT TO THE TRUNK AND I
19 JUST DID LIKE THIS AND WHIPPED IT OUT. AND HE WAS
20 WALKING. HE AIN'T RUNNING. HE JUST WALKED REAL FAST
21 TOWARDS IT.

22 Q OH, OKAY. SO YOU'RE TELLING ME HE IS COMING OFF THE
23 BACK CONCRETE.

24 A UH-HUH. (AFFIRMATIVE.)

25 Q AND YOU'RE PULLING IN THE TRAILER. SO HE'S A GOOD

1 WAYS AWAY FROM YOU AND YOU SEE HIM COMING WITH THE STICK.
2 SO YOU DECIDE AT THAT POINT INSTEAD OF GETTING IN THE CAR
3 AND DRIVING AWAY, YOU'RE GOING TO POP THE LID ON THE
4 TRUNK, RIGHT?

5 A YES, SIR.

6 Q SO AND HE'S STILL A GOOD WAYS AWAY AT THAT POINT.

7 A NO, HE WAS RIGHT IN FRONT OF ME WHEN I POPPED THE
8 TRUCK. BECAUSE HE'S LIKE TO THE STOP SIGN RIGHT THERE.
9 HE WALKED FROM THE STOP SIGN AND WALKED IN FRONT OF ME.

10 Q RIGHT. BUT HE WASN'T CLOSE ENOUGH TO HIT YOU WITH NO
11 STICK.

12 A OH, YEAH, HE WAS.

13 Q WHEN YOU POPPED THE TRUNK HE WAS.

14 A NAH, I MEAN NOT AT THE PRESENT TIME. HE WAS WALKING
15 UP ON ME. HE WAS CLOSE ENOUGH.

16 Q HE WASN'T CLOSE ENOUGH TO HIT YOU WITH NO STICK UNTIL
17 YOU GOT TO THE BACK OF THE CAR WHERE THE GUN WAS.

18 A YES.

19 Q ALL BEFORE THAT, YOU COULD HAVE JUST AS EASILY GOTTEN
20 IN THE CAR AND DRIVEN AWAY.

21 A YES.

22 Q BUT INSTEAD OF GETTING IN THE CAR AND DRIVING AWAY,
23 YOU POPPED THE LID ON THE TRUNK, YOU WALKED TO THE BACK,
24 AND HE'S STANDING RIGHT THERE. YOU REACH IN AND PULL OUT
25 THAT SHOTGUN RIGHT THERE.

1 A UH-HUH. (AFFIRMATIVE.)

2 Q WHICH WAS ALREADY LOADED ACCORDING TO YOU?

3 A YES, SIR.

4 Q WITH SLUGS. HOW MANY SLUGS DID YOU HAVE IN IT?

5 A THERE BEEN TWO DIFFERENT KINDS OF SLUGS IN THERE.
6 LIKE PELLETS.

7 Q OKAY. AND WHO PUT THEM IN THERE?

8 A ME.

9 Q HOW LONG HAD YOU HAD THE GUN?

10 A I PROBABLY -- I BOUGHT IT FROM A CRACK HEAD DURING
11 OVER THE SUMMER TIME, I THINK.

12 Q WHAT'S HIS NAME?

13 A I DON'T KNOW THE GUY. JUST SOME GUY FROM MANNING
14 CAME UP AND SELL ME THE GUN.

15 Q OKAY.

16 A FOR A 20.

17 Q FOR \$20 OR A 20 ROCK?

18 A \$20 CRACK.

19 Q OKAY. AND SO---

20 A I THOUGHT THEY, YOU KNOW, THEIR PEOPLE'S GUN OR
21 SOMETHING THEY WERE TRYING TO GET RID OF. IT LOOKED NEW.
22 I THOUGHT IT WAS PRIVATE GUN OR SOMETHING THEY WERE
23 GETTING RID OF. IT LOOKED BRAND NEW TO ME.

24 Q SO YOU TAKE IT HOME AND LOAD IT, AND YOU'VE GOT IT IN
25 THE TRUNK OF YOUR GIRLFRIEND'S CAR.

1 A YES, SIR. NOT THE FIRST DAY I BUY IT; I PUT IN
2 THERE.

3 Q WHEN DID YOU PUT IT IN THERE?

4 A WHEN I STARTED GOING FISHING. I FISH AND ALL THAT.

5 Q OKAY. SO WHEN IS THE -- BEFORE THIS DAY, BEFORE
6 SEPTEMBER 5TH OF 2005, WHEN IS THE LAST TIME YOU GOT IT
7 OUT AND PLAYED WITH IT OR MESSED WITH IT?

8 A I SHOOT IT OUT IN MY YARD ALL THE TIME.

9 Q SO YOU SHOOT IT IN YOUR YARD ALL THE TIME.

10 A YES, SIR. BUT I KNOW WHEN THEY CAME AND LOOKED, I
11 KNOW THEY SEEN THE LITTLE SHELLS IN THE YARD AND STUFF.

12 Q WELL HOW LONG -- THE DAY BEFORE THAT HAD YOU SHOT IT
13 IN THE YARD?

14 A PROBABLY, PROBABLY A COUPLE OF DAYS BEFORE.

15 Q OKAY. SO YOU HAD SHOT IT A COUPLE OF DAYS BEFORE.
16 YOU KEPT IT LOADED IN THE TRUNK OF YOUR CAR?

17 A YES, SIR. I WENT TO WAL-MART AND GET THE LITTLE --
18 AND GET THE BULLETS.

19 Q SO YOU WENT TO WAL-MART AND GOT THE BULLETS.

20 A I WENT TO WAL-MART, YEAH. AND BOUGHT LIKE TWO BOXES.
21 AND ME AND MY MAN WAS OUT THERE JUST -- IN THE YARD
22 SHOOTING IT.

23 Q HOW COME YOU WERE SHOOTING IT IN THE YARD?

24 A BECAUSE IT WILL CUT YOU.

25 Q SO HE'S STARTING TO WALK TOWARDS YOU, YOU POP THE

1 LID. AND YOU GO BACK AND PULL THE GUN OUT AND YOU STICK
2 IT IN HIS CHEST. AND HE'S DEFYING YOU TO SHOT HIM, RIGHT?

3 A NAH, I DIDN'T STICK IT TO HIS CHEST. HE WALKED INTO
4 THE GUN.

5 Q HE JUST WALKED INTO IT, AND YOU PULLED THE TRIGGER.

6 A HE WALKED INTO THE GUN, AND THE GUN WENT OFF.

7 Q SO WHEN HE'S WALKING TO THE GUN, YOU'RE JUST STANDING
8 THERE WITH IT.

9 A I JUST PULLED IT OUT. AS SOON AS I PULLED IT OUT, HE
10 WAS CLOSE TO ME. HE WAS WALKING UP ON IT. AS SOON AS I
11 WHIP IT OUT, THAT'S WHEN HE -- HE WAS STILL CLOSE ENOUGH,
12 CLOSE ENOUGH FOR HIM TO WALK ON---

13 Q OKAY. WHERE WAS---

14 A ---AND, YOU KNOW, AND TOLD HIM TO BACK UP. I DIDN'T
15 KNOW IT WAS GOING TO GO OFF.

16 Q HE JUST WALKED UP THERE. HE HAD HIS HANDS DOWN BY
17 HIS SIDE.

18 A NO, HE HAD HIS HANDS UP WITH THE STICK WALKING
19 TOWARDS ME. LIKE I TOLD YOU BEFORE.

20 Q HE HAD HIS HAND UP WITH THIS STICK---

21 A YES, SIR.

22 Q ---WALKING TOWARDS YOU?

23 A HIS HAND RIGHT HERE.

24 Q AND WHAT DID YOU SAY TO HIM?

25 A I TOLD HIM TO BACK UP.

1 Q AND WHAT DID HE SAY TO YOU?

2 A "FUCK THAT."

3 Q AND SO YOU PULLED THE TRIGGER?

4 A IT WENT OFF. YEAH, I DIDN'T, YOU KNOW, I DON'T KNOW
5 HOW IT HAPPENED. IT HAPPENED SO QUICK.

6 Q SO IT HAPPENED SO QUICK. AND THEN AFTER IT HAPPENS,
7 YOU STICK THE GUN IN THE TRUNK. CLOSE THE LID, AND DRIVE
8 AWAY.

9 A BECAUSE HE WAS JUMPING UP AND ACTING STUPID.

10 Q DID YOU HAVE YOUR CELL PHONE WITH YOU?

11 A YES, SIR.

12 Q DID YOU CALL 911?

13 A NO, SIR.

14 Q DID YOU DO ANYTHING TO TRY TO GET HIM ANY HELP?

15 A NO, I WAS SCARED, MAN.

16 Q SO YOU'RE SCARED. THEN YOU TAKE OFF AND HAVE SOME OF
17 YOUR PEOPLE DISPOSE OF THE GUN. WHERE DID THEY -- THEY
18 THREW THE GUN IN THE MILL POND?

19 A YES, SIR.

20 Q AND THEN AFTER A COUPLE OF DAYS YOU DECIDE TO TURN
21 YOURSELF IN?

22 A ONE DAY.

23 Q ONE DAY. YOU DECIDED TO TURN YOURSELF IN. WHAT
24 HAPPENED TO THE - DID YOU EVER TAKE THE DRUGS OUT THAT YOU
25 WERE GOING TO COME BACK THERE AND SELL?

1 A NO, I COULD NEVER -- I SENT SOMEBODY TO GO GET IT.
2 IT WAS IN MY CAR UNDER THE LITTLE -- UNDER THE THING UNDER
3 THE RUG. I SENT SOMEBODY TO GET IT. THEY WENT TO GO GET
4 IT.

5 Q WHY DID YOU GO BACK TO KATIE GREEN'S HOUSE THAT
6 MORNING?

7 A I HAD TO DROP MY GRANDSON OFF. THAT'S THE REASON
8 THEY WERE HAVING A COOK OUT. IT WAS LABOR DAY OR MEMORIAL
9 DAY OR WHATEVER DAY IT WAS.

10 Q SO IT WAS A COOK OUT. YOU WENT BACK THERE TO SELL
11 MORE DRUGS?

12 A YES, SIR. BECAUSE THEY HAD A COOK OUT TOO.

13 Q BUT YOU'D ALREADY HAD AN ISSUE. WESLEY HAD ALREADY
14 TAKEN YOUR DRUGS EARLIER THAT DAY AND LAUGHED AT YOU.

15 A THAT DON'T MEAN NOTHING TO ME.

16 Q THAT DIDN'T MEAN ANYTHING.

17 A I BOUGHT MORE.

18 Q SO YOU JUST WENT AND BOUGHT MORE?

19 A YEAH.

20 Q BUT WHEN YOU CAME BACK HE WAS THERE. WHY DIDN'T YOU
21 KEEP DRIVING?

22 A BECAUSE I DIDN'T KNOW HE WAS GOING TO DO NOTHING.
23 FOR ONE, WHY DID I KEEP DRIVING? FOR THE SIMPLE FACT---

24 Q DID HE EVER TOUCH YOU?

25 A ---I HAD TO BRING MY GRANDSON HOME REGARDLESS OF WHAT

1 I WANTED TO DO.

2 Q DID HE EVER HIT YOU? DID HE EVER TOUCH YOU?

3 A NOT WHEN I CAME BACK.

4 Q OKAY. YOU SAID YOU CAME BACK FROM BALTIMORE IN 2000?

5 A YES, SIR.

6 Q HOW COME YOU CAME BACK HERE IN 2000?

7 A I CAME BACK, BACK AND FORTH.

8 Q OKAY.

9 A I GOT LOCKED UP DOWN HERE IN 2000 SO. I KNOW I BEEN
10 DOWN HERE IN 2000.

11 Q OKAY.

12 A I GOT LOCKED UP WITH SOMEONE. A BOY ROBBED US AND
13 STUFF LIKE THAT.

14 Q HUH?

15 A I SAID A GUY ROBBED -- ME AND THE VICTIM'S COUSIN WAS
16 IN A MOTEL IN MAY OF 2000. SUMMERTON MOTEL.

17 Q OKAY. DID YOU, YOU SAID SOMEBODY WENT TO THE MALL
18 WITH YOU?

19 A YES, SIR.

20 Q WHO?

21 A SHEROD.

22 Q AND WHERE WAS -- DID SHEROD GO BACK TO THE GREEN'S
23 WITH YOU?

24 A YES, SIR. THAT'S WHERE HE WAS STAYING AT.

25 Q SO WHEN YOU PULLED UP THERE, WAS HE IN THE CAR WITH

1 YOU?

2 A YES, SIR.

3 Q DID HE GET OUT?

4 A YES, SIR, HE HAD TO. WE BOTH GET OUT.

5 Q SO BOTH OF Y'ALL GOT OUT?

6 A YES, SIR.

7 Q AND HE WAS A FRIEND OF YOURS?

8 A YES, SIR.

9 Q HE GOT OUT OF THE PASSENGER SIDE?

10 A YES, SIR.

11 Q AND YOU GOT OUT OF THE DRIVER'S SIDE.

12 A YEAH, TWO-DOOR CAR. YEAH.

13 Q AND WHERE IS HE STANDING WHEN THIS SHOOTING WENT
14 DOWN?

15 A HE WAS WALKING TOWARDS THE HOUSE. HE WAS LIKE
16 WALKING TOWARDS THE HOUSE.

17 Q OKAY. FROM THE TIME YOU GOT OUT OF YOUR CAR, YOU GO
18 TOWARDS THE BACK. THEN YOU TURN AROUND AND GO BACK AND
19 POP THE TRUNK.

20 A REPEAT THE QUESTION AGAIN.

21 Q YOU PULL UP THERE, YOU GET OUT OF THE CAR.

22 A UH-HUH. (AFFIRMATIVE.)

23 Q AT THAT TIME WESLEY'S OUT THERE BY THE ROAD, COMING
24 TOWARDS.

25 A HE DIDN'T COME AT ME RIGHT AS SOON AS I PULLED UP

1 THOUGH. HE DIDN'T JUST COME RIGHT AT ME.

2 Q THEN WHAT HAPPENED AS SOON AS YOU PULLED UP?

3 A I GET OUT OF THE CAR. I WAS TALKING. I BEEN TALKING
4 TO THE LITTLE KIDS AND THEN WALKED PAST THEM. THEN THEY
5 LEFT AND WALKED OFF. AND LIKE I SAID, HE BEEN AT THE STOP
6 SIGN TALKING TO SOMEBODY. THEN HE WALKED UP ON ME. THEN
7 HE WALKED UP.

8 Q SO HE'S OUT THERE AT THE STOP SIGN TALKING TO
9 SOMEBODY. SO YOU GET OUT. THERE'S A PERIOD OF TIME THAT
10 YOU'RE TALKING TO SOME PEOPLE AND MESSING AROUND BEFORE HE
11 COMES UP. AND THEN WHEN YOU SEE HIM START COMING, HE'S
12 SAYING, "WHAT'S UP."

13 A IF HE WOULD NOT HAD THE STICK, I WOULDN'T HAVE
14 BROUGHT THE GUN OUT.

15 Q OKAY. BUT YOU SEE HIM WITH THIS STICK. SO YOU
16 DECIDE HE'S GOT A STICK, SO YOU'RE GOING TO GET YOUR GUN.
17 SO YOU WALK UP THERE AND POP THE TRUNK.

18 A TO SCARE HIM OFF.

19 Q TO SCARE HIM OFF. THEN YOU COME BACK AROUND, REACH
20 IN THE TRUNK AND PULL OUT THE GUN. AND BY THAT TIME HE'S
21 ON YOU?

22 A YES, SIR.

23 Q SO YOU STICK THE GUN IN HIS CHEST AND PULL THE
24 TRIGGER?

25 A NO, HE WALKED TO THE GUN. I DID NOT MOVE. I DIDN'T

1 MOVE AT ALL. HE WALKED TO THE GUN.

2 Q SO YOU'RE SAYING YOU'RE SITTING THERE HOLDING THE GUN
3 ON HIM---

4 A HE WALKED TOWARDS IT.

5 Q ---AND HE WALKS RIGHT INTO THE GUN---

6 A HE WALKED RIGHT INTO IT.

7 Q ---AND YOU PULLED THE TRIGGER?

8 A YES, SIR.

9 Q OKAY. THEN AT THAT POINT YOU THROW THE GUN IN THE
10 TRUNK, AND JUMP IN THE CAR AND TAKE OFF.

11 A YES, SIR.

12 Q DID SHEROD GET IN THE CAR WITH YOU?

13 A NO, SIR. I DON'T WHERE -- HE MUST HAVE WENT IN THE
14 HOUSE OR SOMETHING. I DON'T KNOW WHERE HE BE AT. LIKE I
15 SAY, I WAS NERVOUS SO....

16 Q WHEN YOU PULLED UP THERE AND GOT OUT AND TALKED WITH
17 THOSE PEOPLE, DID YOU REACH DOWN AND BRING YOUR DRUGS WITH
18 YOU, OR DID LEAVE THEM IN THE CAR?

19 A NO, THEY WAS ALREADY IN THE CAR THE WHOLE TIME WHEN I
20 CAME BACK FROM THE MALL.

21 Q BUT SO YOU DIDN'T GET THEM OUT TO SELL OR ANYTHING?

22 A THEY WASN'T ANY USE -- AIN'T NO USE FOR ME TO TOUCH
23 THEM UNLESS SOMEBODY COME UP TO ME AND ASK FOR SOMETHING.

24 Q I GOT IT. YOU WERE GOING TO LEAVE THEM IN THERE
25 UNTIL YOU GOT ASKED. YOU DIDN'T WANT WESLEY TO TAKE THEM

1 FROM YOU AGAIN.

2 A NO, HE WASN'T GOING TO TAKE THEM FROM ME NO MORE.

3 Q HE WASN'T GOING TO TAKE THEM FROM YOU THIS TIME, WAS
4 HE?

5 A NAH, HE WASN'T -- I DON'T THINK -- HE JUST CAME, YOU
6 KNOW. I DIDN'T THINK ABOUT WHETHER HE WAS GOING TO TAKE
7 SOMETHING FROM ME NO MORE OR NOT.

8 Q YOU WEREN'T WORRIED ABOUT THAT, BECAUSE YOU HAD A GUN
9 THIS TIME. I DON'T HAVE ANY FURTHER QUESTIONS.

10 THE COURT: ANY REDIRECT?

11 REDIRECT EXAMINATION BY MR. DEVOE:

12 Q THIS CAR THAT THE SOLICITOR KEEPS TAKING ABOUT WAS
13 NOT THE CAR YOU WERE DRIVING WHERE THE DRUGS WERE, IS IT?

14 A NO, SIR.

15 Q DID YOU HAVE ANOTHER CAR AT KATIE'S GREEN HOUSE?

16 A YES.

17 Q AND THAT WAS YOUR CAR?

18 A YES.

19 Q AND WHAT COLOR WAS THAT?

20 A BROWN. FORD TAURUS. 95.

21 Q THAT WAS TESTIFIED TO EARLIER, THAT CAR WAS OFF---

22 A YEAH, IT WAS OFF.

23 Q ---OFF TO THE LEFT AND BY THE TREES?

24 A YES. UNDER THE TREES.

25 Q WAS IT OPERABLE AT THAT TIME?

1 A NO, SIR.

2 Q BUT YOU STASHED THE DRUGS THERE FOR SAFEKEEPING?

3 A YEAH.

4 Q SO WHEN YOU LEFT THE FIRST TIME AFTER THE DRUGS WERE
5 STOLEN FROM YOU, YOU WENT OFF SOMEWHERE TO GET THE DRUGS
6 AND CAME BACK WITH THEM?

7 A YES, SIR.

8 Q AND STASHED THEM THERE BEFORE YOU WENT TO THE MALL,
9 IS THAT CORRECT?

10 A YES, SIR.

11 Q WHEN YOU WENT BACK TO KATIE'S HOUSE AFTER THE MALL,
12 DID YOU THINK THAT WESLEY HOUSE WAS GOING TO BE THERE?

13 A NO, SIR.

14 Q AND SHEROD IS KATIE GREEN'S GRANDSON?

15 A YES, SIR.

16 Q AND WHERE IS HE, DO YOU KNOW?

17 A I DON'T KNOW. I THINK THEY SAID HE WENT OUT OF TOWN
18 OR SOMETHING. I DON'T KNOW.

19 Q THE -- WHEN YOU WERE STANDING BY YOUR CAR, DID YOU---

20 A BY THE GIRL'S CAR OR MY CAR?

21 Q NO, THIS IS THE VERY END NOW. WHEN WESLEY HOUSE IS
22 COMING UP TOWARDS YOU.

23 A OKAY.

24 Q STANDING BY YOUR GIRLFRIEND'S CAR ACTUALLY.

25 A OKAY.

1 Q DID YOU FEEL YOU COULD RETREAT IN SAFETY?

2 A NO, SIR. BECAUSE I DIDN'T KNOW AIN'T NOTHING WOULD
3 HAPPEN LIKE THAT.

4 Q DID YOU CONSIDER YOURSELF TO BE A GUEST AT KATIE
5 GREEN'S HOUSE?

6 A YES, SIR.

7 Q DID YOU CONSIDER THAT AREA TO BE YOUR PLACE OF
8 BUSINESS?

9 A I DON'T LOOK AT -- I DON'T LOOK AT IT LIKE THAT.
10 BUT, YOU KNOW, Y'ALL ARE SAYING LIKE THAT. BUT I DON'T
11 LOOK AT IT LIKE A PLACE OF BUSINESS.

12 Q WHERE ELSE DID YOU SELL DRUGS BESIDES THERE?

13 A JUST RIGHT THERE.

14 MR. DEVOE: I HAVE NO FURTHER QUESTIONS. THANK YOU.

15 A OKAY.

16 THE COURT: RECROSS?

17 RECROSS EXAMINATION BY MR. COTHRAN:

18 Q THAT WAS YOUR TURF.

19 A EVERYBODY BE OUT THERE. THAT TOWN AIN'T BIG ENOUGH
20 FOR NO TURF.

21 MR. COTHRAN: I DON'T HAVE ANY FURTHER QUESTIONS.

22 THE COURT: YOU MAY STEP DOWN. ANY FURTHER
23 WITNESSES?

24 MR. DEVOE: THE DEFENSE RESTS, YOUR HONOR.

25 THE COURT: ANY MATTERS IN REPLY?

1 MR. COTHRAN: NO, YOUR HONOR.

2 THE COURT: VERY GOOD, LADIES AND GENTLEMEN, YOU HAVE
3 HEARD THE EVIDENCE FROM THE STATE. YOU HAVE HEARD THE
4 EVIDENCE FROM THE DEFENDANT. THERE ARE SOME OTHER LEGAL
5 ISSUES THAT I NEED TO TAKE UP AT THIS TIME. SO IF YOU
6 WILL, IF YOU WILL STEP BACK TO YOUR JURY ROOM, AND DO NOT
7 BEGIN DISCUSSING THE CASE.

8 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
9 PRESENCE OF THE JURY.)

10 THE COURT: ANY MOTIONS AT THIS TIME?

11 MR. DEVOE: YOUR HONOR, I REPEAT MY MOTION FOR A
12 DIRECTED VERDICT AT THIS TIME.

13 THE COURT: I WILL DENY THE SAME. IT IS A JURY
14 ISSUE. THE QUESTION I HAVE IN MY MIND AT THIS PARTICULAR
15 POINT AND TIME IS WHETHER OR NOT THERE IS SUFFICIENT
16 EVIDENCE TO CHARGE THE JURY ON SELF DEFENSE.

17 MR. COTHRAN: HE HASN'T MET THE CRITERIA OF THE
18 STATUTE, YOUR HONOR.

19 MR. DEVOE: I THINK HE HAS, YOUR HONOR.

20 MR. COTHRAN: HE HAD -- HE WAS NOT ON HIS OWN
21 PROPERTY. HE HAD A DUTY TO RETREAT. HE, YOU KNOW---

22 THE COURT: THAT'S THE PART THAT GIVES ME THE
23 PROBLEM, MR. DEVOE.

24 MR. DEVOE: YOUR HONOR, I THINK TOWARDS THE END, I
25 THINK HE WAS A GUEST AT THAT HOUSE. THEN YOU DON'T HAVE

1 TO RETREAT WHEN YOU ARE A GUEST AT SOMEONE'S HOUSE.

2 THE COURT: WELL, HE WASN'T IN THE HOUSE. HE WAS IN
3 THE YARD.

4 MR. DEVOE: WELL THE PROPERTY OF THE HOUSE. HE ALSO
5 WAS AT HIS PLACE OF BUSINESS, IF YOU TO WANT TO STRETCH
6 IT.

7 THE COURT: WELL I DON'T THINK ILLEGAL ACTIVITIES
8 CONSTITUTE PLACE OF BUSINESS. I WOULD NOT CHARGE THAT.

9 MR. DEVOE: AND YOU ALSO CANNOT RETREAT IN COMPLETE
10 SAFETY EITHER WHICH IS THE OTHER PART.

11 THE COURT: WELL THAT'S THE THING I DON'T KNOW. HE
12 SAID THAT, YOUR LAST QUESTION TO HIM IS, COULD HE RETREAT
13 SAFELY, AND HE SAID NOT WHEN HE HAD THE STICK AT ME. BUT
14 HE HAD RESPONDED PREVIOUSLY ON CROSS EXAMINATION THAT HE
15 COULD HAVE JUST AS EASILY HAVE DRIVEN AWAY INSTEAD OF
16 GOING BACK TO THE TRUNK WHEN HE SAW THE VICTIM COMING
17 FORWARD WITH THE STICK. AND BASED ON THAT TESTIMONY, I
18 HAVE A HARD TIME ABOUT WHETHER THE ELEMENTS OF
19 SELF-DEFENSE ARE THERE.

20 MR. COTHRAN: JUDGE, CAN WE STOP? SHE NEEDS TO GIVE
21 THIS TO THE JURY. HOLD ON JUST A SECOND. THANK YOU, SIR.

22 MR. DEVOE: YOUR HONOR, I WOULD SAY HE WAS IN THE
23 CURTILAGE OF THE HOME NO. 1. NO. 2, I THINK HE TESTIFIED
24 MORE THAN THAT ABOUT RETREATING. I THINK BY THE TIME HE
25 KNEW HE WAS IN DANGER THAT IT WAS TOO CLOSE FOR HIM TO GET

1 TO THE CAR AND DRIVE AWAY.

2 THE COURT: HAVE YOU GOT SOMETHING THAT INDICATES
3 THAT STANDING IN THE YARD OF A NEIGHBOR'S HOUSE AS AN
4 INVITEE NOT INSIDE THE HOUSE, BUT OUTSIDE THE HOUSE?

5 MR. COTHRAN: OF COURSE, HE HASN'T EVEN PROVED HE
6 WAS AN INVITEE, JUDGE.

7 MR. DEVOE: I THINK KATIE GREEN.

8 MR. COTHRAN: SHE DIDN'T SAY ANYTHING ABOUT HIM
9 BEING INVITED. AND HE CLEARLY COULD HAVE ONCE THE
10 DANGER, ASSUMING WHAT HE SAYS IS TRUE; THAT THE DECEASED
11 HAD A STICK, ONCE HE CAME TOWARDS HIM WITH THAT STICK,
12 ALL HE HAD TO DO WAS OPEN THE DOOR, POP THE LID. ALL HE
13 HAD TO DO WAS STEP IN THE CAR AND WALK AWAY.

14 MR. DEVOE: I DON'T---

15 MR. COTHRAN: HE CONFRONTED THE COMPETITION BY, WENT
16 BACK, POPPED THE TRUNK AND GOT HIS GUN OUT AND KILLED A
17 MAN.

18 MR. DEVOE: I THINK THE STATE VS. GONZALEZ, WHICH
19 IS A 1924 CASE.

20 THE COURT: WHAT IS THE CASE YOU ARE CITING?

21 MR. DEVOE: STATE VS. GONZALEZ.

22 THE COURT: FOR WHAT PROPOSITION?

23 MR. DEVOE: WHERE YOU DON'T HAVE TO, A GUEST AT THE
24 SAME HOME, AND YOU DON'T HAVE TO - NO DUTY TO RETREAT.

25 MR. COTHRAN: BUT HE CLEARLY WASN'T A GUEST IN THE

1 HOME.

2 THE COURT: HE CLEARLY WASN'T IN THE HOME.

3 MR. COTHRAN: RIGHT.

4 THE COURT: LET ME SEE WHAT WE CAN FIND BY WAY OF
5 STATE V. GONZALEZ.

6 THE COURT: WHEN WAS THAT CASE?

7 MR. COTHRAN: TWENTY-FOUR. THAT WAS BEFORE THE
8 DEPRESSION.

9 THE COURT: WELL NOT ALL THE OLD LAW IS BAD LAW.

10 MR. COTHRAN: NO, THAT'S TRUE.

11 MR. DEVOE: CONSTITUTION. PRETTY GOOD LAW. STATE V.
12 SMITH, 85 S.E. 2D., 409. PAGE 695. JUDGE, I DON'T -- I
13 MENTIONED GONZALEZ, BUT IT'S ON PAGE 685 IN THE MACINISH
14 AND VARIOUS CASES.

15 THE COURT: THE STATE OF SOUTH CAROLINA V. SMITH
16 SIMPLY SAYS WHEN YOU'VE GOT TWO GUESTS IN A HOME YOU DON'T
17 HAVE TO RETREAT. AND THAT NEITHER GUEST HAS THE RIGHT TO
18 EJECT THE OTHER. BUT---

19 MR. DEVOE: AND IT'S ALSO STATE V. GRANTHAM, I THINK
20 TOO.

21 THE COURT: BUT I THINK YOU ARE FINDING THAT ALL
22 THESE CASES THAT YOU ARE TALKING ABOUT ARE PEOPLE INSIDE
23 A HOME.

24 MR. COTHRAN: YES, SIR. INSIDE A HOUSE IN ITSELF IS
25 ENTITLEMENT AND CERTAINLY ONLY WAYS IN AND OUT. HE IS ON

1 THE WIDE OPEN SIDE OF A ROAD. AND THE VICTIM HAD A STICK.
2 IT'S NOT VERY HARD TO GET AWAY FROM A STICK.

3 MR. DEVOE: THE DEFENSE, BUT ALSO I THINK THE
4 CURTILAGE OF A HOME IS CONSIDERED AS PART OF A HOME.

5 MR. COTHRAN: NO.

6 MR. DEVOE: WHEN YOU'RE A GUEST.

7 THE COURT: YOU THINK. DO YOU HAVE A CASE?

8 MR. DEVOE: WELL, YOUR HONOR, STATE V. JACKSON A
9 1955 CASE, IT SAYS NO DUTY TO RETREAT---

10 THE COURT: DO YOU HAVE A CITATION?

11 MR. DEVOE: ---WITHIN ITS CURTILAGE.

12 THE COURT: I CAN'T TELL ANYTHING EXCEPT BY CITATION.

13 MR. DEVOE: THAT IS 87, S.E. 2D., 681.

14 THE COURT: 87.

15 MR. DEVOE: S.E. 2D, 681. THERE IS ALSO STATE V.
16 QUICK, WHICH IS 135 S.E. 800. THAT'S A 1926 CASE.
17 THAT'S STATE V. QUICK.

18 MR. COTHRAN: BUT THEY ALL WOULD BE IN THEIR OWN
19 HOME. THEY DON'T DEAL WITH GUESTS.

20 THE COURT: I AM GOING TO BRING THE JURY OUT AND
21 SEND THEM TO LUNCH. AND COME BACK AT ONE O'CLOCK AND
22 ARGUE AND CHARGE AT ONE.

23 MR. COTHRAN: ALL RIGHT, SIR. THAT WOULD BE---

24 THE COURT: AND THAT WILL GIVE ME A CHANCE TO FINISH
25 THE CHARGE CONFERENCE.

1 MR. COTHRAN: ALL RIGHT, THAT WILL BE FINE.

2 THE COURT: IF YOU WILL BRING THE JURY OUT.

3 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
4 PRESENCE OF THE JURY.)

5 THE COURT: MADAM FORELADY AND MEMBERS OF THE JURY,
6 IT'S ABOUT 10 MINUTES TILL 12. UNDER OUR PROCEDURES, I
7 HAVE WHAT IS KNOWN AS A CHARGE CONFERENCE WITH THE
8 ATTORNEYS SO THAT I HAVE A CHANCE TO TALK WITH THEM ABOUT
9 WHAT THEY WOULD LIKE FOR ME TO INSTRUCT YOU ON, AS WELL
10 AS WHAT I AM GOING TO TELL THEM I AM GOING TO DO SOME
11 INSTRUCTING ON. AND I STARTED LOOKING AT THE CLOCK, AND
12 I THINK THAT RATHER THAN HAVING YOU COME BACK OUT AND I
13 BEGIN MAKING SOME ARGUMENTS AND IT GETS TO BE ONE O'CLOCK
14 OR SOMETHING LIKE THAT, I'M GOING TO RELEASE YOU FOR
15 LUNCH NOW. AND ASK THAT YOU COME BACK AT ONE O'CLOCK SO
16 THAT Y'ALL WILL BE REFRESHED AT THE TIME WE BEGIN
17 ARGUMENTS AND CHARGE.

18 AGAIN, DO NOT DISCUSS THE CASE AMONG YOURSELVES, OR
19 ALLOW ANYONE ELSE TO DISCUSS IT WITH YOU. JUST SIMPLY GO
20 AND HAVE A NICE LUNCH. PLEASE COME BACK AT ONE O'CLOCK.
21 AND WE'LL BEGIN WITH THE ARGUMENTS AND CHARGE AT THAT
22 TIME. THANK YOU VERY MUCH.

23 (THEREUPON, THE JURY GOES TO LUNCH AT 12 O'CLOCK.)

24 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
25 PRESENCE OF THE JURY.)

1 THE COURT: THE STATE V. OSBORNE, WHICH I WILL CITE
2 TO YOU IN A SECOND, AS WELL AS STATE V. GORDON. STATE V.
3 GORDON IS A 1924 CASE. 122 S.E. 2D 501. I HAVE GOT A
4 CASE OF STATE V. SMITH, WHICH IS 85 S.E. 2D., 409 A 1955
5 CASE. WHAT HAVE YOU GOT? AND SARA FOUND THE STATE V.
6 OSBORNE WHICH I HAVEN'T LOOKED AT YET, WHICH IS A 1943
7 CASE.

8 MR. DEVOE: I HAVE THAT ONE HERE, 225 S.E. 2D., 561.

9 THE COURT: STATE V. OSBORNE, TALKS ABOUT AN OWNER OR
10 GUEST NOT HAVING TO RETREAT. STATE V. SMITH A 1955 CASE
11 INDICATES THAT THERE WERE TWO GUESTS IN THE HOME. AND THE
12 COURT INDICATED THAT NEITHER HAD THE RIGHT TO EJECT THE
13 OTHER, BUT IF SOMEBODY IS NOT AT FAULT, IF THEY ARE
14 WITHOUT ANY FAULT IN BRINGING ON THE DIFFICULTY, THEN THEY
15 ARE NOT BOUND TO RETREAT IN ORDER TO INVOKE THE BENEFIT OF
16 THE DOCTRINE OF SELF-DEFENSE. SO IT SOUNDS LIKE WHEN
17 YOU'VE GOT TWO PEOPLE WHO MAY BE GUESTS, I GUESS---

18 MR. DEVOE: INVITEES---

19 THE COURT: ---WESLEY HOUSE WAS AS MUCH OF A GUEST AS
20 MR. BRIGGS WAS; THAT NEITHER WOULD HAVE THE DUTY TO
21 RETREAT IF WRONGFULLY ATTACKED BY ANOTHER. AND WOULD
22 PROBABLY BE ENTITLED TO A CHARGE THAT IF SOMEONE WERE
23 LAWFULLY ON THE PREMISES OF ANOTHER AS A GUEST, THAT THEY
24 WOULDN'T HAVE THE DUTY TO RETREAT. AND THERE ARE SOME
25 CASES THAT I HAVE READ THAT INDICATE THAT APPLIES TO THE

1 CURTILAGE AS WELL AS TO THE DWELLING ITSELF. IT APPLIES
2 TO THE BUSINESS AS WELL AS THE PARKING LOT. BUT I AM NOT
3 GOING TO SAY THAT A PLACE OF BUSINESS FOR AN ILLEGAL
4 ACTIVITY ENTITLES SOMEONE TO CLAIM NO DUTY TO RETREAT.

5 MR. DEVOE: I DIDN'T THINK YOU WOULD TAKE THAT
6 ARGUMENT, BUT I TRIED.

7 THE COURT: BUT, ONE OF THE DECISIONS THAT THE
8 PERSON -- THAT THE JURY IS GOING TO HAVE TO MAKE IS
9 WHETHER OR NOT THESE WERE PEOPLE WHO WERE LAWFULLY GUESTS
10 AT HER HOUSE, OR WHETHER THEY WERE JUST HANGING OUT, I
11 GUESS. BUT I WILL MAKE THAT AS A PART OF THE CHARGE. AND
12 THAT WILL SIMPLY HAVE TO BE SOMETHING THAT THE JURY IS
13 GOING TO HAVE TO MAKE A DECISION AS TO WHAT WERE THEIR
14 RESPECTIVE RIGHTS AS TO WHETHER THEY WERE JUST PEOPLE WHO
15 HAPPENED TO COME UP THERE OR WHETHER THEY WERE ACTUALLY
16 GUESTS.

17 MR. DEVOE: WELL IF YOU REMEMBER, YOUR HONOR, THE
18 TESTIMONY OF MR. BRIGGS WAS, TESTIFIED HE WAS BRINGING
19 SHEROD BACK TO HIS GRANDMOTHER'S HOUSE.

20 THE COURT: I UNDERSTAND WHAT IT WAS, BUT I DON'T
21 THINK AT THAT PARTICULAR---

22 MR. COTHRAN: HE SAID HE WAS RIDING WITH HIM.

23 THE COURT: ---TIME, SHEROD HAD GOTTEN OUT AND WALKED
24 OFF. AND SO I---

25 MR. COTHRAN: AND HE DIDN'T SAY THAT. HE SAID HE

1 WAS COMING BACK THERE TO SELL CRACK.

2 THE COURT: AND EAT OUT AT THE BARBECUE.

3 MR. DEVOE: THERE WERE THREE REASONS. THEY WERE
4 GOING TO EAT, SELL AND DRINK.

5 THE COURT: AND WE'LL LET THE JURY MAKE A
6 DETERMINATION AS TO WHETHER OR NOT HE FITS THAT
7 DESIGNATION OF BEING A LAWFUL GUEST ON THE PREMISES OF
8 ANOTHER. THE OTHER ISSUE IS THAT I CAN'T REALLY TELL FROM
9 WHERE THIS TOOK PLACE, I AM GUESSING, AND FROM THE
10 PICTURE, I AM GUESSING THAT HE WAS ON SOME GROUND OVER
11 WHICH KATIE GREEN AT LEAST WAS RENTING OR OWNED OR
12 SOMETHING. THAT IT WAS IN THE YARD AS OPPOSED TO IN THE
13 STREET.

14 MR. DEVOE: I THINK IT DEFINITELY WAS IN THE YARD,
15 NO QUESTION.

16 MR. COTHRAN: I DON'T KNOW ABOUT THAT NOW, HARRY,
17 THERE'S A LOT OF QUESTIONS. WHETHER IT WAS ON A HIGHWAY,
18 OR RIGHT OF WAY OR NOT, I DON'T KNOW. AND I GUESS THAT'S
19 GOING TO BE THE ULTIMATE DECISION THAT THE JURY WOULD
20 HAVE TO MAKE.

21 THE COURT: AND THE JURY IS GOING TO HAVE TO MAKE THE
22 DECISION ABOUT, I STILL THINK, YOU KNOW, I AM GOING TO
23 HAVE TO CHARGE THEM THAT, YOU KNOW, THE NORMAL DUTY ON THE
24 LAW OF RETREAT. AND THEN CHARGE THEM THE NORMAL
25 RESPONSIBILITY ABOUT GUESTS. AND THEN LET THEM MAKE A

1 DECISION ONE WAY---

2 MR. COTHRAN: OKAY.

3 THE COURT: ---OR THE OTHER AS TO WHAT WAS GOING ON.
4 AND AS TO WHAT POSITION HE ACTUALLY OCCUPIED, AND AS TO
5 WHETHER OR NOT HE SHOULD HAVE GOTTEN BACK IN THE CAR AND
6 DRIVEN OFF AS OPPOSED TO POPPING THE TRUNK---

7 MR. COTHRAN: THAT'S RIGHT.

8 THE COURT: ---AND GOING BACK.

9 MR. COTHRAN: DON'T CONFUSE THE JURY ON THE FACTS OR
10 THE LAW.

11 MR. DEVOE: OF COURSE, THAT GETS TO THE SITUATION---

12 THE COURT: NOW THE NEXT QUESTION I HAVE IS ABOUT, I
13 AM ASSUMING THE QUESTION COMES UP ON WHETHER OR NOT TO
14 CHARGE MANSLAUGHTER AS A LESSER INCLUDED.

15 MR. DEVOE: VOLUNTARY?

16 THE COURT: VOLUNTARY. AND DO YOU WANT THAT CHARGE?

17 MR. DEVOE: I DO, YOUR HONOR.

18 THE COURT: FROM THE DEFENSE?

19 MR. DEVOE: I DO.

20 THE COURT: I WOULD THINK THAT IF THERE IS -- THERE
21 IS SOME EVIDENCE IN THE RECORD ON A STICK. I GUESS THAT
22 WOULD BE SOMETHING THAT COULD CHANGE IT FROM A -- FROM
23 MURDER TO MANSLAUGHTER OR HEAT OF PASSION TYPE SITUATION
24 IF BELIEVED BY THE JURY THE FACT THAT THERE WAS A STICK AT
25 THE TIME THIS WAS TAKING PLACE. SO I WILL CHARGE

1 VOLUNTARY MANSLAUGHTER AS A LESSER INCLUDED. IS THERE
2 ANYTHING ELSE WE NEED TO THINK ABOUT ON THIS MATTER?

3 MR. COTHRAN: I THINK AS FAR AS THE LAW, IT'S
4 MURDER, MANSLAUGHTER, POSSESSION OF A WEAPON DURING A
5 VIOLENT CRIME. AND IF YOU DECIDE SELF DEFENSE ISSUES.
6 AND THEN THE OTHER STANDARD STUFF.

7 THE COURT: WE WILL HAVE A VERDICT FORM THAT SAYS AS
8 TO COUNT 1 OF THE INDICTMENT, SO AND SO WE THE JURY BY A
9 UNANIMOUS CONSENT FIND THE DEFENDANT NAMING HIM, NOT
10 GUILTY, GUILTY OF MURDER, GUILTY OF VOLUNTARY
11 MANSLAUGHTER. THEN AS TO COUNT 2, WE THE JURY BY A
12 UNANIMOUS CONSENT FIND THE DEFENDANT RALPHEAL BRIGGS, NOT
13 GUILTY OR GUILTY. AND I WILL INSTRUCT THEM THAT THEY
14 COULD NOT FIND HIM GUILTY OF COUNT 1 UNLESS THEY FOUND HIM
15 GUILTY OF EITHER MURDER OR MANSLAUGHTER UNDER COUNT 1.

16 MR. COTHRAN: ALL RIGHT, SIR.

17 MR. DEVOE: I AM SORRY, IT SAYS EITHER GUILTY OF
18 MURDER OR MANSLAUGHTER?

19 THE COURT: YES, HE HAS TO BE GUILTY OF MURDER OR
20 MANSLAUGHTER UNDER COUNT 1 BEFORE HE CAN BE FOUND GUILTY
21 OF ANYTHING UNDER COUNT TWO.

22 MR. COTHRAN: OKAY.

23 MR. DEVOE: ALL RIGHT.

24 THE COURT: WE WILL BE IN RECESS UNTIL 1 O'CLOCK.

25 (THEREUPON, THE COURT BREAKS FOR LUNCH.) DON'T TALK

1 WITH ANYBODY. AND JUST HAVE YOURSELF A PLEASANT EVENING.
2 AND WE'LL SEE YOU BACK AT 9:30 IN THE

3 MORNING. YOU ARE EXCUSED AT THIS TIME.

4 (THEREUPON, THE JURY IS EXCUSED AT 4:36 P.M.)

5 THE COURT: WE WILL PROCEED WITH ARGUMENTS AND
6 CHARGE. IS THE DEFENDANT GOING TO REQUIRE THAT THE STATE
7 OPEN ON THE LAW, OR IS THIS TO BE JUST TWO ARGUMENTS?

8 MR. DEVOE: NO, YOUR HONOR. OPEN ON THE LAW.

9 THE COURT: YOU WANT HIM TO OPEN ON THE LAW. VERY
10 GOOD, IF YOU WILL, IF YOU WILL CHECK WITH THE JURY AND SEE
11 IF THEY ARE READY TO COME OUT.

12 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
13 PRESENCE OF THE JURY.)

14 THE COURT: MADAM FORELADY AND MEMBERS OF THE JURY, I
15 HOPE EVERYONE HAD A GOOD LUNCH. THE BEST THING I GUESS WE
16 CAN SAY ABOUT THE WEATHER IS THAT IT WASHED SOME OF THE
17 POLLEN AWAY. THE CASE IS AS STAGES 1 AND 2, COMPLETED
18 WITH THE OPENING REMARKS AND WITH THE PRESENTATION OF THE
19 EVIDENCE. THE ATTORNEYS NOW HAVE THE OPPORTUNITY TO
20 ADDRESS YOU IN THEIR CLOSING REMARKS. AS I INDICATED TO
21 YOU PREVIOUSLY, WHAT THE ATTORNEYS DISCUSS WITH YOU IS NOT
22 EVIDENCE IN THE CASE. AND WHAT THEY WILL BE DISCUSSING
23 WITH YOU NOW WILL NOT BE EVIDENCE. THE EVIDENCE IS THE
24 TESTIMONY THAT HAS COME IN, AS WELL THE EXHIBITS. BUT THE
25 ATTORNEYS HAVE THE OPPORTUNITY TO DISCUSS WITH YOU

1 WITH ANYBODY. AND JUST HAVE YOURSELF A PLEASANT EVENING.
2 AND WE'LL SEE YOU BACK AT 9:30 IN THE

3 MORNING. YOU ARE EXCUSED AT THIS TIME.

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10 GOOD, IF YOU WILL, IF YOU WILL CHECK WITH THE JURY AND SEE
11 IF THEY ARE READY TO COME OUT.

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17 POLLEN AWAY. THE CASE IS AS STAGES 1 AND 2, COMPLETED
18 WITH THE OPENING REMARKS AND WITH THE PRESENTATION OF THE
19 EVIDENCE. THE ATTORNEYS NOW HAVE THE OPPORTUNITY TO
20 ADDRESS YOU IN THEIR CLOSING REMARKS. AS I INDICATED TO
21 YOU PREVIOUSLY, WHAT THE ATTORNEYS DISCUSS WITH YOU IS NOT
22 EVIDENCE IN THE CASE. AND WHAT THEY WILL BE DISCUSSING
23 WITH YOU NOW WILL NOT BE EVIDENCE. THE EVIDENCE IS THE
24 TESTIMONY THAT HAS COME IN, AS WELL THE EXHIBITS. BUT THE
25 ATTORNEYS HAVE THE OPPORTUNITY TO DISCUSS WITH YOU

1 TESTIMONY, AND THEIR VIEW OF THE TESTIMONY. AND, WHAT
2 THEY BELIEVE HAS BEEN ESTABLISHED BY THE TESTIMONY OR HAS
3 NOT BEEN ESTABLISHED BY THE TESTIMONY.

4 IF THERE IS ANY DISCREPANCY BETWEEN WHAT THEY URGE
5 YOU WAS THE TESTIMONY AND WHAT YOU ACTUALLY REMEMBER AS
6 BEING TESTIMONY ON THE PARTICULAR POINT THEN, LADIES AND
7 GENTLEMEN, YOU USE YOUR COLLECTIVE MEMORY. THE ATTORNEYS
8 ARE NOT GOING TO INTENTIONALLY MISSTATE THE EVIDENCE IN
9 THE CASE. BUT THEY MAY END UP HAVING SOME MEMORY THAT IS
10 DIFFERENT FROM YOURS. AND AS I SAY, THAT'S FINE. BUT
11 YOU OF COURSE RELY ON YOUR OWN MEMORIES OF WHAT THE FACTS
12 ARE IN THIS CASE, AND NOT SIMPLY ACCEPT WHAT THE
13 ATTORNEYS TELL YOU WAS TESTIMONY. USE YOUR MIND, USE
14 YOUR MEMORIES TO GO BACK AND REVIEW THAT TESTIMONY,
15 BECAUSE YOU MUST DETERMINE WHAT WAS THE TESTIMONY. THEY
16 ALSO HAVE THE RIGHT TO TALK WITH YOU ABOUT WHAT THEY
17 BELIEVE I AM GOING TO INSTRUCT YOU ON THE LAW IN THE
18 CASE. AND I HAVE THE GONE OVER VARIOUS ASPECTS OF THAT
19 WITH THEM. BUT SHOULD THERE BE SOME MATERIAL
20 MISSTATEMENT BETWEEN WHAT I TELL YOU IS THE LAW AND WHAT
21 THEY SUGGEST TO YOU I AM GOING TO SAY IS LAW, THEN OF
22 COURSE UNDER YOUR OATH, YOU'RE OBLIGATED TO FOLLOW THE
23 LAW AS I GIVE IT TO YOU THIS AFTERNOON.

24 THIS IS IMPORTANT. IT IS IMPORTANT TO BOTH THE
25 STATE AND THE DEFENDANT THAT YOU LISTEN CAREFULLY TO

1 THEIR SUMMATIONS IN THIS MATTER. AND THE STATE HAS THE
2 BURDEN OF PROOF. THEY WILL THEREFORE HAVE THE
3 OPPORTUNITY TO ADDRESS YOU IN OPENING REMARKS. AND THEN
4 THE DEFENSE WILL HAVE THE OPPORTUNITY TO ADDRESS YOU IN
5 THEIR REMARKS, AND THEN THE STATE WILL HAVE THE
6 OPPORTUNITY TO ADDRESS YOU FINALLY WITH THE STATE'S
7 CLOSING ARGUMENTS. BUT PLEASE LISTEN CAREFULLY, LADIES
8 AND GENTLEMEN. THIS CASE AS SOME GO, HAS NOT BEEN
9 PARTICULARLY LONG, BUT IT IS IMPORTANT TO ALL OF THESE
10 PARTIES. IT IS IMPORTANT TO THE SYSTEM, SO PLEASE LISTEN
11 CAREFULLY. SOLICITOR, YOU MAY ADDRESS THE JURY.

12 MR. COTHRAN: THANK YOU, YOUR HONOR. GOOD AFTERNOON,
13 LADIES AND GENTLEMEN, Y'ALL HAVE PAID CLOSE ATTENTION
14 THROUGHOUT THIS TRIAL AND I REALLY APPRECIATE IT. I AM
15 GOING TO SPEAK TO YOU BRIEFLY ON THE LAW THAT IS INVOLVED
16 IN THIS CASE, AND THEN I AM GOING TO SIT DOWN AND THEN
17 MR. DEVOE IS GOING TO GET UP AND GIVE YOU HIS CLOSING
18 ARGUMENT. AND THEN I AM GOING TO COME BACK AND GIVE YOU
19 THE FACTS IN THIS CASE. THEN AFTER THAT, THE JUDGE IS
20 GOING TO CHARGE YOU ON THE LAW AND THEN YOU TAKE THAT LAW
21 WHEN YOU GO TO YOUR JURY ROOM AND FIND YOUR VERDICT.

22 BASICALLY IN THIS PARTICULAR CASE, MR. BRIGGS HAS
23 BEEN CHARGED WITH THE OFFENSE OF MURDER. AND MURDER IS
24 THE UNLAWFUL KILLING OF ANOTHER HUMAN BEING WITH MALICE
25 AFORETHOUGHT. I MEAN, THAT'S WHAT, YOU KNOW, I DON'T

1 THINK, YOU HEARD THE FACTS OF THIS CASE. THERE IS
2 ABSOLUTELY NO QUESTION THAT MR. BRIGGS KILLED MR. HOUSE.
3 HE SHOT HIM WITH THAT SHOTGUN. AND YOU HEARD THE
4 TESTIMONY FROM THE PATHOLOGIST THAT IT KILLED HIM. SO
5 YOUR POSSIBLE -- THE VERDICT THAT ULTIMATELY YOU WILL
6 HAVE WILL BE GUILTY OR NOT GUILTY OF MURDER. GUILTY OR
7 NOT GUILTY OF VOLUNTARY MANSLAUGHTER.

8 VOLUNTARY MANSLAUGHTER IS A LESSER INCLUDED OFFENSE.
9 THAT'S WHERE IT IS AN UNLAWFUL KILLING OF ANOTHER HUMAN
10 BEING BUT IT'S DONE IN THE HEAT OF PASSION. SO IT'S
11 DONE IN A SITUATION WHERE YOU GET IN AN ARGUMENT WITH
12 SOMEBODY AND YOU LOSE YOUR TEMPER AND IN THAT HEAT OF
13 PASSION YOU KILL SOMEBODY. AND THAT'S VOLUNTARY
14 MANSLAUGHTER. IN THIS PARTICULAR CASE, YOU KNOW, THERE
15 WAS AN ARGUMENT, BUT IT WAS 3 OR 4 HOURS BEFORE THAT,
16 THAT MR. BRIGGS HAD SUFFICIENT TIME TO CALM DOWN, TO COOL
17 OFF. HE WENT THERE IN THE HEAT OF PASSION AND CAME BACK
18 WITH THAT GUN. THE OTHER SITUATION HE WILL FACING IS
19 POSSESSION OF A WEAPON DURING A VIOLENT CRIME. IF YOU
20 FIND HIM GUILTY OF MURDER OR VOLUNTARY MANSLAUGHTER
21 EITHER ONE, THEN YOU GO TO THE SECOND COUNT OF THE
22 INDICTMENT; DID HE HAVE A GUN AT THE TIME HE COMMITTED
23 THE CRIME. AND IT IS AGAINST THE LAW IN THIS STATE TO
24 COMMIT A VIOLENT CRIME WITH THE USE OF A FIREARM. THOSE
25 ARE YOUR POTENTIAL VERDICTS IN THIS CASE.

1 MR. DEVOE HAS BROUGHT UP THIS ISSUE WELL, AND MAYBE
2 IT'S SELF-DEFENSE. YOU PAY VERY CLOSE ATTENTION TO THE
3 LAW OF SELF DEFENSE. WE HAVE THIS SITUATION IN THE STATE
4 THAT YOU HAVE THE RIGHT TO DEFEND YOURSELF; THAT YOU HAVE
5 A RIGHT, BUT YOU ONLY HAVE THE RIGHT TO USE WHATEVER FORCE
6 IS NECESSARY TO DEFEND YOURSELF. IT IS NOT A GOOD
7 PRACTICE IN SOCIETY FOR PEOPLE GOING AROUND KILLING. SO
8 YOU CAN'T JUST KILL SOMEBODY AND CLAIM IT WAS SELF
9 DEFENSE. AND YOU KNOW IF, IN THOSE -- IN THE CRIME OF
10 SELF-DEFENSE, YOU HAVE CERTAIN THINGS YOU HAVE TO DO.
11 FIRST OF ALL, YOU COULDN'T HAVE STARTED THE ALTERCATION.
12 AND YOU HAVE TO RETREAT IF AT ALL POSSIBLE BEFORE YOU CAN
13 USE A DEADLY WEAPON TO TAKE SOMEBODY'S LIFE.

14 SO IF YOU GET INTO AN ALTERCATION, I DON'T HAVE A
15 RIGHT TO PULL OUT A GUN AND SHOOT SOMEBODY IF I HAVE A
16 WAY TO GET AWAY FROM THEM. I CAN RETREAT, BECAUSE THE
17 LAW, SOCIETY DOESN'T WANT PEOPLE GOING AROUND KILLING
18 PEOPLE. DECISIONS AREN'T MADE ON THE STREET, THEY ARE
19 MADE IN THIS COURTROOM. SO YOU HAVE TO RETREAT. NOW
20 THERE IS ONE EXCEPTION TO THAT. I DON'T HAVE TO RETREAT
21 IN MY OWN HOME IF I AM IN MY OWN HOME, AND AN INTRUDER OR
22 SOMEONE BREAKS IN, AND I FEEL THAT MY LIFE IS THREATENED
23 OR THE LIFE OF ONE OF MY FAMILY MEMBERS, I HAVE THE RIGHT
24 TO USE DEADLY FORCE. AND I DON'T HAVE TO LEAVE MY OWN
25 HOME. AND THAT'S COMMON SENSE. YOUR OWN HOME, IT'S YOUR

1 CASTLE. YOU HAVE THE RIGHT TO DEFEND YOUR OWN HOME. AND
2 YOU DON'T HAVE TO RETREAT IN YOUR OWN HOME. BUT IF I'M ON
3 THE STREET SOMEWHERE OR I'M HERE IN THIS COURTHOUSE, AND
4 GET MYSELF TO THE SITUATION AND I FEEL THREATENED, I DON'T
5 HAVE THE RIGHT TO PULL OUT A GUN AND KILL SOMEBODY. I
6 NEED TO GET AWAY FROM THAT. AND I HAVE A DUTY TO RETREAT.

7 THERE IS ALSO A SCENARIO, WELL AN INVITED GUEST IN
8 YOUR HOME. IF I HAVE AN INVITED GUEST, AND I HAVE
9 SOMEONE, COMPANY OVER FOR SUPER ONE NIGHT AND AN
10 ALTERCATION BREAKS OUT IN MY HOME, AND THAT PERSON IS AN
11 INVITEE TO BE IN MY HOME, HE DOESN'T HAVE TO RETREAT
12 EITHER. THAT'S JUST COMMON SENSE. SO AND THE JUDGE IS
13 GOING TO DISCUSS WITH YOU THOSE ELEMENTS. AND IN THIS
14 PARTICULAR CASE, THE ELEMENTS OF SELF DEFENSE SIMPLY
15 AREN'T THERE. AND MR. BRIGGS HAD A DUTY, AN OPPORTUNITY
16 TO HAVE WALKED AWAY FROM THIS SITUATION. AND HE COULD
17 HAVE GOTTEN BACK IN THAT CAR AND DRIVEN AWAY. HE WAS IN A
18 THREATENING SITUATION, HE COULD HAVE -- HE MADE SOME
19 WRONG CHOICES. HE SHOULD HAVE NEVER PULLED THAT GUN OUT
20 OF THAT CAR AND KILLED MR. HOUSE. THAT SHOULD HAVE NEVER
21 HAPPENED. THE ELEMENTS OF SELF DEFENSE AREN'T PRESENT IN
22 THIS CASE.

23 THIS IS A MURDER CASE. HE WAS ANGRY THAT DAY. HE
24 LEFT. HE GOES AND GETS A GUN. HE CAME BACK AND HE CALLED
25 MR. HOUSE THAT QUICK. HE MADE SOME TERRIBLE DECISIONS. I

1 AM GOING TO SIT DOWN, AND MR. DEVOE IS GOING TO MAKE HIS
2 CLOSING ARGUMENT. AND THEN I AM GOING TO GET BACK UP AND
3 PULL THE FACTS TOGETHER. I'VE KIND OF TOLD YOU THE LAW
4 YOU ARE GOING TO BE FACING ON MURDER, MANSLAUGHTER,
5 POSSESSION OF A WEAPON DURING A VIOLENT CRIME, AND THE
6 ELEMENTS OF SELF DEFENSE. AND YOU'VE GOT TO FIND ALL
7 THOSE ELEMENTS IN PLACE. ONE THING YOU'VE GOT TO FIND IS
8 THAT HE DIDN'T HAVE A DUTY TO RETREAT; THAT HE WAS A GUEST
9 AT THAT HOUSE. HE WASN'T AT ANYBODY'S HOUSE. HE WASN'T A
10 GUEST THERE. HE PULLED UP THERE TO SETTLE A SCORE. HE
11 COMES OUT THERE AND SOLD CRACK COCAINE AS HE HAS TOLD YOU
12 ON THE STAND. BUT HE HADN'T -- HE WASN'T IN HER HOUSE.
13 HE WASN'T IN A SITUATION, HE HAD PLENTY OF OPPORTUNITY NOT
14 TO PULL THAT GUN OUT OF THAT TRUNK; TO DRIVE THAT
15 AUTOMOBILE AWAY.

16 LISTEN TO MR. DEVOE'S CLOSING ARGUMENT. I AM GOING
17 TO GET UP AND TIE THE FACTS TOGETHER. AND THE JUDGE WILL
18 CHARGE YOU ON THE LAW AND YOU TAKE THAT LAW AND THE FACTS
19 AND GO BACK AND HAVE YOUR VERDICT SPEAK THE TRUTH. THAT'S
20 ALL YOU NEED TO DO, IS WHAT'S THE TRUTH IN THIS CASE. AND
21 THE TRUTH IS, MR. BRIGGS UNLAWFULLY KILLED MR. HOUSE.
22 THANK YOU.

23 THE COURT: MR. DEVOE.

24 MR. DEVOE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
25 COURT. AS FERRELL COTHRAN STATED, ALL OF YOU ARE GOOD

1 LISTENERS. I HAVE SEEN YOU PAY ATTENTION. AND I
2 APPRECIATE THAT, AND I AM SURE MY CLIENT DOES. AND I KNOW
3 THE SOLICITOR DOES. I WANT TO START OFF BY CORRECTING ONE
4 THING THAT MR. COTHRAN SAID. THE JUDGE IS THE PERSON
5 WHOSE LAW YOU MUST LISTEN TO, NOT ANY LAW AS PERCEIVED BY
6 FERRELL COTHRAN OR BY HARRY DEVOE. HOWEVER, THERE IS A
7 DUTY TO RETREAT, AS HE SAID. EXCEPT WHEN YOU ARE IN YOUR
8 YOUR OWN HOME, YOUR OWN BUSINESS, THE PARKING LOT OF YOUR
9 BUSINESS, THE CURTILAGE OF YOUR HOME. CURTILAGE MEANS THE
10 GRATER OF YOUR YARD. IF YOU'RE AN INVITED GUEST. OR TWO
11 GUESTS ARE THERE NEITHER ONE HAS THE DUTY TO RETREAT. SO
12 I JUST WANT YOU TO GET THAT STRAIGHT IN YOUR MIND. THE
13 JUDGE WILL EXPAND ON THAT. BUT THERE IS IN THIS CASE WE
14 CONTEND, THERE IS NO DUTY TO RETREAT. THEY BOTH WERE
15 THERE. THEY BOTH CAN BE INVITEES OR THEY'RE GUESTS OR
16 THEY'RE THERE FOR A COOK OUT THAT IS GOING ON. WITH THE
17 GRILL GOING, COOKING AT THAT TIME.

18 YOU HEARD ABOUT MY CLIENT TAKING THE OWNER -- THE
19 TENANT OF THE HOUSE OFF THE DAY TO THE MALL, AND BRINGING
20 HIM BACK HOME. SO FOR VARIOUS REASONS, MY CLIENT WAS
21 EITHER THE GUEST OR INVITEE OF THAT HOME. HE HAD NO DUTY
22 TO RETREAT. THERE ARE 4 ELEMENTS OF SELF DEFENSE. AND
23 THE JUDGE WILL GO OVER THOSE WITH YOU. IT'S OUR
24 CONTENTION THAT MY CLIENT WAS WITHOUT FAULT IN CREATING
25 THIS PROBLEM. HE DROVE UP BASICALLY BRINGING SHEROD HOME.

1 AND MAYBE RESTARTING THIS DRUG BUSINESS OR THEY WERE GOING
2 TO A COOK OUT. WE DON'T KNOW. IT NEVER HAPPENED THAT
3 WAY. AND HE WAS ACCOSTED BY THE VICTIM. THE VICTIM
4 APPROACHED HIM. HE DIDN'T APPROACH THE VICTIM. WAS HE
5 SCARED? WELL THE VICTIM, ACCORDING TO SOME TESTIMONY
6 OBVIOUSLY HAD A STICK, A RED STICK. I THINK EVEN THE
7 STATE'S ONE WITNESS WHO TESTIFIED AS TO WHAT HAPPENED THAT
8 DAY, MENTIONED HE HAD A STICK. YOU REMEMBER THAT. HE
9 MENTIONED THERE WAS A STICK. HE FINALLY CAME FORWARD AND
10 SAID HE HAD A STICK. AND IT WAS A RED STICK. RED OR BLUE
11 I THINK HE SAID. EVERYONE ELSE SAID IT WAS A RED STICK.

12 SOME PEOPLE WOULD SAY WELL I AM NOT SCARED OF A STICK
13 AND I AM GOING TO TOUGH IT OUT. I AM NOT WORRIED ABOUT
14 THAT. I'M GOING TO GET IN MY CAR AND LOCK IT UP. AND GET
15 OUT OF THERE HERE OR SOMETHING. BUT YOU SAW THE PICTURES
16 OF THE HOUSE OR TRAILER. YOU SAW HOW CLOSE EVERYTHING
17 WAS. DID HE REALLY HAVE THE TIME TO GET INTO THE CAR AND
18 DRIVE OFF? DID HE HAVE AN OBLIGATION TO GET IN THE CAR
19 AND DRIVE OFF? THE ANSWER IS HE DIDN'T HAVE THE
20 OBLIGATION, AND HE DIDN'T HAVE ANY DUTY TO RETREAT. THE
21 OTHER IS, HE HAD A RIGHT TO BE THERE AS DID THE VICTIM.
22 OR I STILL HAVE THE RIGHT TO BE THERE ALSO FOR THE PURPOSE
23 OF THIS ARGUMENT.

24 DID HE BELIEVE HE WAS IN IMMINENT DANGER OF THIS
25 STICK BASHING HIM OVER THE HEAD? AND WAS THERE A

1 REASONABLE BELIEF? AND THOSE ARE THE ELEMENTS OF SELF
2 DEFENSE YOU ARE TALKING ABOUT. DID HE -- DID HE -- WAS HE
3 WITHOUT FAULT IN STARTING THE SITUATION? DID HE BELIEVE
4 HE WAS IN IMMINENT DANGER? WAS IT A REASONABLE BELIEF AND
5 OR DID HE HAVE A DUTY TO RETREAT? AND THE JUDGE WILL GIVE
6 YOU THE INSTRUCTIONS ON SELF DEFENSE. I AM NOT TRYING TO
7 JUMP THE GUN, I THOUGHT I HAD TO BECAUSE FERRELL COTHRAN
8 IS TELLING YOU HIS VERSION OF SELF DEFENSE. THIS CASE IS
9 AN INTERESTING CASE IN THE SINCE THAT ALL OF YOU ARE
10 SITTING HERE IN THE JURY BOX BASICALLY WOULD NOT BE HERE
11 IF YOU HAD A CRIMINAL RECORD OR A WARRANT. WE WOULDN'T
12 ALLOW YOU TO BE HERE. THE JUDGE WOULD EXCUSE YOU. YOU
13 WOULD STAND UP AND COME FORWARD. SOME PEOPLE ARE EXCUSED
14 FOR THAT REASON AND SOME OTHER REASONS. THAT'S ONE OF THE
15 THINGS IN LIFE THAT YOU SORT OF GIVE UP WHEN YOU GET IN
16 SOME KIND OF TROUBLE; YOU DON'T HAVE THE RIGHT TO SIT AS A
17 JURY. WHICH I THINK IS A WONDERFUL RIGHT TO HAVE. SO I
18 HAVE ALWAYS BEEN ASTONISHED WHEN PEOPLE ARE TRYING TO WIMP
19 OUT OF BEING ON THE JURY PANEL. AND THEY'RE THE ONES THAT
20 COMPLAIN WHAT JURY PANELS DO. WELL YOU SHOULDN'T COMPLAIN
21 ABOUT SOMETHING UNLESS YOU ARE WILLING TO COME FORWARD AND
22 BE ON THE JURY ITSELF.

23 WE HAVE THE RIGHT TO BE TRIED BY A JURY OF OUR PEERS.
24 YOU ARE SORT OF THE PEERS OF THE DEFENDANT IN THIS CASE.
25 AND THAT'S WHY OUR SYSTEM WORKS. YOU KNOW, IF YOU ARE

1 GOING TO FIND MY CLIENT GUILTY, YOU MUST FIND HIM GUILTY
2 BEYOND A REASONABLE DOUBT. BUT IT IS THE STATE'S BURDEN
3 ALSO TO FIND THAT MY CLIENT DID NOT ACT REASONABLY WHEN HE
4 HAD THIS SELF DEFENSE AS A DEFENSE. THEIR BURDEN TO PROVE
5 THAT HE WAS UNREASONABLE WHEN HE DECIDED HE HAD TO DEFEND
6 HIMSELF IN THAT YARD. NOW YOU HEARD THE STORY OF THE DAY,
7 THE QUESTION WAS, YOU KNOW, THAT HE WAS THERE. A MAN
8 WALKED UP. HE WANTED TO BUY DRUGS. HE WANTED TO BUY
9 DRUGS FROM MY CLIENT NOT THE VICTIM. BUT THE VICTIM
10 TRIED SELLING HIM DRUGS. INSTEAD THE VICTIM GRABBED THE
11 DRUGS FROM MY CLIENT. AND I DON'T KNOW WHAT HE DID WITH
12 THE DRUGS, BUT I ASSUME HE GAVE THEM BACK TO MY CLIENT.

13 INSTEAD THERE WAS A LITTLE SLIGHT PUSHING AGAINST THE
14 WALL KIND OF SITUATION. AND MY CLIENT STAYED THERE. HE
15 DID CALL HIS GIRLFRIEND TO COME AND GET HIM. YOU KNOW, HE
16 DID TAKE HER TO WORK. ONE OF THE REASONS HE GOT THE CAR
17 IS TO GET ANOTHER SUPPLY OF DRUGS. HE SAID HE DID. AND
18 THEN WENT OFF TO THE SUPPLIER AND BROUGHT THEM BACK TO THE
19 HOUSE, AND PUT THEM IN HIS OTHER CAR WHICH IS NOT OPERABLE
20 WHICH IS ON THE PROPERTY, WHICH WAS TESTIFIED TO BY THE
21 STATE'S WITNESSES ON THE LEFT SIDE UNDER THE TREE. YOU
22 REMEMBER THAT STATEMENT, THERE WAS NOT A RUNNING VEHICLE.
23 SO THAT WAS WHAT HE DID, HID THE DRUGS. AND THEN HE WENT
24 OFF WITH SHEROD TO THE MALL. WHATEVER HE DID AT THE MALL.
25 IT WAS A LONG TIME AGO. IN A CAR THAT HE TESTIFIES, HAS

1 THE GUN. HE DIDN'T GO BY HIS HOUSE TO GET THE GUN AND
2 COME BACK FOR REVENGE. HE DIDN'T GO BY AND DIDN'T GO BY
3 AND DO ANYTHING OTHER THAN WHAT HE NEEDED TO DO, GO OFF
4 AND GET HIS CHILDREN SOME SHOES FOR SCHOOL. AND THEN HE
5 COMES BACK. HE CAME BACK THE FIRST TIME IN THE CAR.

6 APPARENTLY WESLEY, THE VICTIM, THOUGHT HE TRIED RUN
7 OVER HIM. SO HE WAS ACCUSING HIM OF THAT SITUATION.
8 THERE WAS A LITTLE BIT OF TALKING THERE, I GUESS AT LEAST
9 ON ONE SIDE. HE GOES TO MALL AND COMES BACK WITH SHEROD.
10 DROPS HIM OFF. AND I THINK HE THINKS HE'S GOING TO SELL
11 HIS DRUGS OR, INSTEAD WESLEY COMES UP TO HIM AND BASICALLY
12 IS APPROACHING. YOU HEARD THE STATE'S ONE WITNESS WHO SAW
13 ANYTHING IN THIS CRIME. HEAR HIM SAY, "WHAT'S UP, MAN."
14 IN A THREATENING WAY. IT'S INTERESTING HE SAID THAT. HE
15 MEANT THAT TO BE A THREATENING WAY. HE ALSO TESTIFIED HE
16 HAD A STICK IN HIS HAND DURING THE DAY, BUT HE DIDN'T SEE
17 THE STICK THEN. BUT YOU RECALL WHEN HE'S GRILLING, WHICH
18 IS TESTIFIED 30 FEET BACK FROM THE FRONT END OF THE
19 TRAILER. AND THE GRILL IS A LONG GRILL AND THE PEOPLE ARE
20 COOKING AND FACING THE BACKYARD. THEY'RE NOT FACING THE
21 FRONT.

22 AND ALL OF A SUDDEN THIS WITNESS SEES EVERYTHING,
23 HEARS EVERYTHING. BUT NOBODY ELSE SAW OR HEARD. IF THEY
24 DID, THEY WEREN'T HERE TESTIFYING FOR THE STATE. WHEN THE
25 STATE PRODUCES A BUNCH OF WITNESSES, AND WHEN I ASKED HIM

1 WHO THESE WITNESSES WERE, AND THE ONLY WITNESS THEY COULD
2 GET, WAS THAT ONE, DOMINIQUE PEARSON (SIC) WHO IS RELATED
3 TO WESLEY HOUSE. ONE. I AM SURE YOU'RE CONFUSED IN SOME
4 RESPECTS AS TO EXACTLY WHAT HAPPENED THERE. BUT
5 APPARENTLY WESLEY IS COMING ALONG, THREATENING SAYING,
6 "WHAT'S UP." AND HE'S COMING CLOSE. AND MY CLIENT GETS
7 NERVOUS. HE POPS THE TRUNK OF THE CAR, WHICH I THINK HE
8 SAID IS A VERY SMALL CAR. PULLS THE GUN OUT, AND PULLS
9 IT. AND WESLEY HOUSE IS RIGHT UP TO THE GUN. AND RIGHT
10 UP TO THE GUN.

11 THE PATHOLOGIST TESTIFIED THE GUN WENT OFF. HE POKES
12 AT THE BELLY. NOT AS THOUGH IT WAS A FEW FEET AWAY. IF
13 YOU RECALL THE SOLICITOR'S OPENING REMARKS, HE SAID IT WAS
14 A FEW -- SOME DISTANCE AWAY FROM EACH OTHER WHEN THE GUN
15 WAS FIRED. THAT'S NOT CORRECT. RIGHT AT THE BELLY. NOW
16 DO YOU THINK THAT IN YOUR OWN MINDS THAT MY CLIENT WOULD
17 RUN UP TO HIM AND FIRE THE GUN INSTEAD OF STANDING BACK
18 WAITING AT THE GUN? WHY PUT YOURSELF IN MORE DANGER AND
19 RUNNING TOWARDS THE PERSON WHO IS WAITING, EVEN FOR A FEW
20 MOMENTS WAITING TO GO OUT. HE COMES, HE BEING WESLEY
21 HOUSE, LAST FEW FEET TO THE GUN ITSELF. AND IT IS A
22 TRAGEDY. THIS CASE IS A TRAGEDY. IT'S A TRAGEDY FOR
23 EVERYBODY.

24 IT IS A TRAGEDY FOR THE PEARSON (SIC) FAMILY AND THE
25 HOUSE FAMILY. AND IT'S A TRAGEDY FOR MY CLIENT. AND A

1 A LITTLE BIT LESS THAN THAT. BUT THERE IS SOMETHING THERE
2 THAT'S LESS THAN MALICE AFORETHOUGHT. WHAT WE ARE
3 CONTENDING WAS SELF DEFENSE. WHERE HE HAD THE RIGHT TO
4 DEFEND HIMSELF. HE HAD NO DUTY TO RETREAT. HE DIDN'T
5 CAUSE ANY PART OF THIS TROUBLE. YOU MIGHT SAY, WELL HE'S
6 A CRIMINAL, HE SELLS DRUGS. AND THAT'S BLAMELESS. WOULD
7 THAT CAUSE THIS TROUBLE? SHOULD THAT HAVE CAUSED THIS
8 TROUBLE.

9 I MEAN, DRUGS ARE NOT A GREAT THING. NONE OF US ARE
10 FOR DRUGS. NONE OF US. AND PEOPLE WHO SELL DRUGS, AND
11 THE LAW IS, YOU CAN'T SELL DRUGS. YOU CAN'T EVEN USE
12 DRUGS, BOTH WAYS. IT TAKES ONE -- TWO TO TANGO, ONE TO
13 SELL AND ONE TO USE. NEITHER ONE IS RIGHT. AND IT'S
14 DESTROYED PART OF OUR SOCIETY. IT'S MADE US, BECAUSE WE
15 HAVE A WAR GOING AGAINST DRUGS, IN A SEMI IN A SINCE,
16 POLICE STATE BECAUSE THEY ARE SO ANXIOUS TO STOP THIS
17 FLOW, EVIL FLOW OF THIS PRODUCT IN THIS COUNTRY. AND BUT
18 THAT DOES NOT MAKE MY CLIENT A KILLER. IT JUST DOESN'T.
19 WAS THIS A FIGHT OVER DRUG TERRITORY? IT MIGHT BE
20 IMPLIED. YOU MAYBE THINK IT WAS. I'VE SEEN NO INDICATION
21 OF THAT, OTHER THAN THIS ONE TIME WHERE WESLEY HOUSE
22 GRABBED A VILE OF DRUGS. IT'S A 50. WHAT DID HE STEAL
23 OVER \$50? ARE YOU GOING TO WALK AWAY BETWEEN THERE AND
24 THEN. AND YOUR GIRLFRIEND COMES IN THE CAR WHICH THE GUN
25 IS ALREADY IN, AND DRIVE AWAY FOR HALF A DAY. AND THEN

1 COME BACK WITH THE INTENT OF KILLING WESLEY HOUSE? I
2 DON'T THINK SO.

3 AND HOW COULD THE STATE PROVE THAT? ALL THE STATE
4 CAN PROVE IS THAT A KILLING TOOK PLACE. SOMEBODY GOT
5 KILLED. KILLING OF SOMEONE TOOK PLACE. YOU KNOW IN THE
6 OLD BIBLICAL DAYS, AND THIS IS VERY LONG AGO. IN THE OLD
7 BIBLICAL DAYS IT TOOK ONLY ONE PERSON TO TESTIFY ABOUT A
8 CASE AND THAT WAS HIMSELF. ALL THE STATE HAS IS ONE
9 PERSON. WHERE ARE THE OTHER WITNESSES FROM THE STATE?
10 WHERE ARE THESE PEOPLE WHO ARE SUPPOSEDLY OUT THERE
11 TESTIFYING ABOUT THIS CASE? WHERE WAS THE COOK WHO WAS
12 GRILLING? THERE ISN'T ANYBODY. I KEEP HEARING ALL THESE
13 PEOPLE WERE THERE. BUT I DON'T SEE THEM. I DIDN'T SEE
14 THEM ON THE WITNESS STAND. YOU MIGHT SAY WELL WHERE ARE
15 MY WITNESSES. AND THAT'S A GOOD QUESTION TOO. THEY
16 WEREN'T HERE EITHER. YOU KNOW THIS CASE WAS NOT DESIGNED
17 TO SAY WHERE ARE WITNESSES, SIGN THEM UP, AND MAKE SURE
18 THEY STICK AROUND. SO WE HAVE THEM WHEN THE TRIAL STARTS.
19 UNFORTUNATELY LIFE DOESN'T WORK THAT WAY. THIS IS NOT
20 LIKE WE HAVE A FEW DAYS AND EVERYTHING IS RIGHT OUT AND
21 SET UP AND EVERYBODY AVAILABLE. IT DOESN'T HAPPEN.

22 OF COURSE WHATEVER YOUR FEELING ARE ABOUT DRUG
23 DEALERS AND DRUG USERS, THAT IS NOT REALLY A PART OF THIS
24 CASE. SINCE FERRELL IS GOING TO SAY WELL, THEY WILL FIGHT
25 OVER THE DRUGS AND HE GOT MAD ABOUT IT. I DON'T BELIEVE

1 THAT'S HAPPENED IN THIS CASE. AND DON'T DAMN ONE VERSUS
2 THE OTHER ABOUT DRUGS IF YOU FEEL THE WAY I DO ABOUT DRUGS
3 AS MOST OF US DO. WHAT I AM SAYING IS, WHEN WE ARE
4 TALKING ABOUT THE LIFE OF SOMEBODY WHO DIED,
5 UNFORTUNATELY, DIED NOT AS A RESULT OF MURDER, BUT DIED AS
6 A RESULT OF SELF DEFENSE. WHY DID WESLEY APPROACH HIM THE
7 WAY HE DID? WHY DID HE SAY, "WHAT'S UP, MAN," IN A
8 THREATENING WAY, AND ACCORDING TO THEIR WITNESS. WHY HE
9 HAD A STICK IN HIS HAND ACCORDING TO SOME WITNESSES. AND
10 THAT STICK THAT DAY CERTAINLY, THE STICK THAT SUPPOSEDLY
11 DOESN'T EXIST. MAYBE IT DOESN'T EXIST ANYMORE. I DON'T
12 KNOW, NONE OF US KNOW.

13 I REMIND YOU THAT THE BURDEN OF PROVING THIS CASE
14 AGAINST MY CLIENT IS ON THE STATE. IT'S NOT OUR BURDEN TO
15 PROVE IT DIDN'T HAPPEN OR COULDN'T HAVE HAPPENED. IT'S
16 THEIR BURDEN BEYOND A REASONABLE DOUBT. AND THAT'S A BIG
17 DOUBT. IT'S A DOUBT WHICH I'M SURE THE JUDGE WILL EXPLAIN
18 TO YOU WHAT IT MEANS. IT'S BEEN THROUGH ALL SORTS OF
19 VARIATIONS OF HISTORY OF THAT WORD. YOU SEE SUPREME COURT
20 CASES CHANGING, OR TRYING TO EXPLAIN THAT AGAIN AND AGAIN.
21 I AM NOT GOING TO TRY TO EXPLAIN OTHER THAN SAYING IT'S A
22 BIG DOUBT. IT'S NOT A 51/49 BASKETBALL GAME. OR 95/5
23 BASKETBALL GAME IN THE ANATOMY OF SPORTS. YOU HAVE A
24 SOLEMN DUTY HERE. YOU HAVE THE FUTURE OF AN INDIVIDUAL IN
25 YOUR HANDS. AND I KNOW YOU WILL TAKE A LOT OF CAUTION AND

1 DEBATE AND DISCUSS ABOUT EXACTLY WHAT HAPPENED AND WHAT
2 THE VERDICT OUGHT TO BE IN THE CASE. I WOULD ASK YOU
3 HOWEVER, TO FIND FOR MY CLIENT, A VERDICT OF NOT GUILTY BY
4 REASON OF SELF DEFENSE. THANK YOU FOR YOUR ATTENTION.
5 AND ONCE AGAIN I KNOW YOU HAVE BEEN PAYING ATTENTION. I
6 CAN SEE YOU LOOKING UP WHEN I'M TALKING TO YOU. THANK
7 YOU.

8 MR. COTHRAN: AND I PROMISE I WON'T BE LONG. I KNOW
9 YOU'RE TIRED OF HEARING FROM LAWYERS. BUT LET ME, YOUR
10 JOB AS I TOLD YOU EARLIER, IS REAL SIMPLE IN THIS CASE.
11 YOU'VE JUST GOT TO FIND WHAT THE TRUTH IS. AND YOU
12 HEARD -- AND YOU'VE GOT TO USE THE EVIDENCE THAT CAME FROM
13 THIS WITNESS STAND TO FIND THE TRUTH. AND IT'S REAL
14 CLEAR, THIS CASE IS CLEAR CUT. THE TRUTH IS UNDISPUTED
15 THAT RALPHEAL BRIGGS TOOK THAT GUN AND KILLED WESLEY
16 HOUSE. THAT'S UNDISPUTED. EVERYBODY THAT HAS GOT ON THE
17 STAND HAS TOLD YOU THAT EXCEPT THE PATHOLOGIST. SHE
18 DIDN'T KNOW WHO DID WHAT. SHE JUST KNEW THAT THAT GUNSHOT
19 WOUND TO THE CHEST WAS A COMPACT WOUND. AND SHE TOLD YOU
20 WHAT ALL IN HIS BODY. IT PERFORATED HIS AORTA AND KILLED
21 HIM. AND THAT WAS THE CAUSE OF HIS DEATH. SO YOU KNOW
22 UNDISPUTED THAT RALPHEAL BRIGGS TOOK THAT GUN AND SHOT
23 WESLEY HOUSE AND THAT GUNSHOT CAUSED HIS DEATH. THERE'S
24 NO DISPUTE ABOUT THAT.

25 NOW, YOU'VE GOT TO DECIDE WELL, WAS THAT GUNSHOT,

1 THAT ACT JUSTIFIED UNDER THE LAW. SHOULD HE HAVE BEEN
2 ABLE TO DO IT? AND YOU'RE A CROSS SECTION OF CLARENDON
3 COUNTY. YOU'RE A PART OF OUR SOCIETY. IS THAT
4 SOMETHING SOCIETY WANTS? THAT HE SHOULD HAVE BEEN ABLE
5 TO GO OUT THERE IN THIS FACTUAL SITUATION AND KILL THIS
6 MAN? AND HE HAD JUST A REASON TO KILL HIM? EVEN UNDER
7 HIS SET OF FACTS, AND I AM GOING TO GO THROUGH THE
8 WITNESSES WITH YOU. BUT UNDER HIS SET OF FACTS, UNDER
9 HIS STORY, HE PULLS UP THERE, WELL LET'S GO BACK TO HIS
10 STORY. EARLIER THAT DAY, WESLEY TAKES HIS BOTTLE OF \$50
11 WORTH OF CRACK COCAINE FROM HIM. PINS HIM TO AGAINST THE
12 TRAILER, TAKES HIS VILE, AND IT MAKES HIM MAD. AND WHAT
13 DOES WESLEY DO? HE DOESN'T HAVE A CAR AT THAT TIME. HE
14 CALLS FOR SOMEBODY TO COME GET HIM. BUT WESLEY WALKS
15 DOWN, PULLS THE CRACK OUT OF HIS HAND AND IS LAUGHING AT
16 HIM. THAT INFURIATES HIM. THAT MAKES HIM MAD.
17 SO WHAT DOES HE DO? HE LEAVES THERE. AND HE GETS
18 HIS GIRLFRIEND'S CAR. AND IT JUST SO HAPPENED HE'S GOT
19 THIS SHOTGUN THAT HE GAVE A \$20 ROCK OF CRACK COCAINE
20 FOR, LOADED WITH SLUGS. HE KEEPS IT IN THE CAR WITH FIVE
21 SLUGS IN IT. AND HE TELLS Y'ALL WHEN I ASKED HIM HOW
22 MANY TIMES HE SHOT, HE SAID HE PRACTICES WITH IT ALL THE
23 TIME. HE'S A DRUG DEALER WITH A GUN WHO GETS IN HIS BACK
24 YARD AND SHOOTS HIS GUN ALL THE TIME. AND HE LOADS IT
25 WITH SLUGS AND HE KEEPS IT THERE. AND THIS IS A TURF

1 SITUATION, SO HE GOT HIS GUN. NOW HE'S PROTECTED.

2 THEN HE TELLS ME THIS STORY, AND HE GETS SOMEBODY
3 WITH HIS GIRLFRIEND'S CAR, AND HE GOES TO THE MALL IN
4 SUMTER. WHEN HE FIRST, THE STORY HE FIRST TOLD HIS
5 LAWYER, HE GOES TO THE MALL. AND HE'S GETS HIS JEWELRY
6 CLEANED, AND HE BUYS THESE TENNIS SHOES. AND HE'S COMING
7 BACK, AND HE RIDES DOWN MILE ROAD, AND DRIVES PAST TO GO
8 GET SOME MORE CRACK. AND THEN, BUT HE TOLD AN EARLIER
9 STORY HE HAD \$200 IN HIS POCKET WHEN HE GOES TO THE MALL.
10 BUT THEN HE BUYS \$400 WORTH OF CRACK. WHILE WHEN I ASKED
11 HIM ABOUT THE \$400, HE SAID, WOE, WOE, HE HAD, YOU KNOW,
12 HE HAD TO CHANGE HIS STORY. THEN HE CHANGES IT AND SAID
13 WELL HE GOT THE CRACK BEFORE HE WENT TO SUMTER. HE GOES
14 AND BUYS \$400 WORTH OF CRACK FROM THE SUPPLIER BEFORE HE
15 GOES TO SUMTER.

16 AND THEN HE LEAVES THE CRACK IN THE CAR AND HE GOES
17 OUT AND HE HAS THIS \$200 TO DO HIS SHOPPING WITH. AND
18 THEN HE COMES BACK. THEN HE'S RIDING BY THERE. AND THEN
19 HE SEES WESLEY STANDING OUT BY THE ROAD, AND HE'S
20 POINTING AT HIM. AND THE WHOLE TIME HE'S STEWING. HE'S
21 AGGRAVATED AT WESLEY, BECAUSE WESLEY TOOK HIS CRACK FROM
22 HIM AND LAUGHED AT HIM. HE'S UPSET WITH HIM. SO HE
23 PULLS UP THERE IN THE YARD, AND WESLEY IS STANDING RIGHT
24 THERE BY THE ROAD. HE SAYS HE PULLS UP THERE AND THE
25 OTHER GUY GETS OUT. AND HE WALKS AROUND THE BACK, AND

1 WESLEY IS COMING TOWARDS HIM. HE TALKED -- WHEN HE
2 FIRST HAD TALKED A LITTLE LOUDER, HE GETS IN THE YARD.
3 AND THEN WESLEY IS WALKING TOWARDS HIM AND WITH THIS RED
4 STICK HE KEEPS TALKING ABOUT. SO HE FEELS THREATENED BY
5 THIS STICK. HE GOES BACK, INSTEAD OF GETTING IN HIS CAR
6 AND DRIVING AWAY, HE POPS THE TRUNK BECAUSE HE KNOWS HE'S
7 GOT THAT SHOTGUN. HE AIN'T GOING TO BE MADE A FOOL OF
8 AGAIN. AND HE GOES BACK THERE, REACHES INSIDE THAT
9 TRUNK. AND WESLEY IS STANDING -- AND HE NEVER TOUCHES
10 IT. HE CRAMS THAT GUN IN HIS CHEST AND HE PULLED THE
11 TRIGGER.

12 AND I ASKED, DID YOU PULL THE TRIGGER. AND HE SAID
13 YES. AND HE PUTS IT BACK IN HIS TRUNK, AND HE DRIVES
14 AWAY. AND THEN YOU HEARD FROM VERY FIRST WITNESS FROM
15 THE STATE WAS DOMINIQUE. DOMINIQUE IS OVER THERE. AND
16 HARRY MAKES THIS BIG DEAL ABOUT 30 FEET. AND 30 FEET IS
17 10 STEPS. HE'S RIGHT THERE. HE'S COOKING AND HE SEES.
18 HE TELLS YOU WESLEY WALKS UP TO HIM AND SAYS: "WHAT'S UP
19 MAN." HE POPPED, HE GOES BACK AND POPS THE TRUNK AND
20 PULLS THE GUN OUT. IT AIN'T NO STICK. IT AIN'T NO
21 THREAT. HE'S AGGRAVATED BECAUSE HE MADE A FOOL OUT OF
22 HIM EARLIER. HE COMES BACK WITH HIS GUN, AND HE STICKS
23 HIS GUN, AND WESLEY DIDN'T HAVE A CHANCE TO COWER DOWN OR
24 DO ANYTHING ELSE. HE NEVER HAD A CHANCE TO DO ANYTHING.
25 HE CRAMS THAT GUN IN HIS STOMACH AND PULLS THE TRIGGER.

1 PUTS IT BACK IN HIS CAR. AND HE'S CLAIMING THAT THIS IS
2 MYSTERIOUS STICK THAT NOBODY ELSE SAW.

3 WHY WOULD DOMINIQUE LIE ABOUT IT? ENDS UP IN HIS
4 TRUNK. WHERE IS THE STICK? HOW COME HE DIDN'T BRING IT
5 IN HERE? YOU HAVEN'T SEEN THE STICK. WHY ISN'T THE
6 STICK THERE BY THE BODY? NOBODY ELSE SAW A STICK. HE'S
7 GOT THIS STICK IN HIS TRUNK. HE DIDN'T BRING IT. WE
8 GOT THE GUN THAT WAS IN THE TRUNK. AIN'T NO STICK. EVEN
9 IF IT WAS A STICK, YOU KNOW, EVEN IF IT WAS A STICK, HE
10 DIDN'T HAVE THE RIGHT TO SHOOT THAT MAN. YOU DON'T BRING
11 A STICK TO A GUN FIGHT. HE DIDN'T HAVE A RIGHT TO SHOOT
12 HIM. BUT WHAT -- HE WAS AGGRAVATED. HE MADE A FOOL OUT
13 OF HIM. HE WAS DRUG DEALER RIGHT THERE ON THIS CURB. HE
14 HAD TAKEN HIS DRUGS AND MADE A FOOL OUT OF HIM. HE WAS
15 MAD. AND HE CAME BACK TO SETTLE A SCORE.

16 BUT THE DIFFERENCE IS, AND WE'VE TALKED ABOUT
17 MANSLAUGHTER VERSUS MURDER. HE HAD PLENTY OF TIME TO
18 COOL DOWN. HE HAD ALL AFTERNOON TO THINK ABOUT IT. IF
19 THE FIRST ALTERCATION THAT THEY HAD GOT IN A FIGHT AND HE
20 LOST HIS TEMPER AND THEY WERE STRUGGLING. HE GOT TO THE
21 CAR AND POPPED THE TRUNK AND THEN SHOT HIM, IT MIGHT HAVE
22 BEEN A MANSLAUGHTER CASE. BECAUSE HE WAS ACTING IN THE
23 HEAT OF PASSION. BUT IN THIS CASE, HE HAD PLENTY OF TIME
24 TO COOL DOWN. ACCORDING TO HIM, HE'S PAYING FOR TENNIS
25 SHOES. HE'S GETTING HIS JEWELRY WASHED. HE'S BUYING

1 600 -- \$400 WORTH OF CRACK. HE HAS PLENTY OF TIME TO
2 COOL DOWN. BUT HE WASN'T COOLED DOWN. HE WENT BACK TO
3 THE SAME PLACE THAT HE HAD THAT ALTERCATION BEFORE. THIS
4 TIME HE COMES BACK WITH THAT SHOTGUN. LOADED WITH SLUGS.
5 AND HE IS GOING TO SHOW EVERYBODY OUT THERE, HE IS THE
6 MAN. AIN'T NOBODY GOING TO MAKE NO FOOL OUT OF ME. I
7 AM GOING TO SHOW YOU RIGHT NOW WHO IS IN CHARGE. AND HE
8 CRAMS THAT GUN IN HIS STOMACH AND PULLS THE TRIGGER AND
9 HE KILLED THAT MAN.

10 THAT IS NOT SOMETHING WE CAN ACCEPT IN SOCIETY.
11 THAT AIN'T SOMETHING WE CAN ACCEPT IN CLARENDON COUNTY.
12 YOUR JOB IS TO FIND THE TRUTH. IT'S UNDISPUTED HE KILLED
13 THAT MAN. SO FOR YOU TO FIND HIM NOT GUILTY, YOU'VE GOT
14 TO -- TO TURN HIM LOOSE. YOU'VE GOT TO SAY WELL, HE IS
15 GUILTY, EVERYBODY SAYS HE IS GUILTY. WE THINK THAT HE
16 HAD A RIGHT TO KILL HIM. WE ARE GOING TO TURN HIM LOOSE.
17 THAT AIN'T THE TRUTH. HE DIDN'T HAVE THE RIGHT TO KILL
18 THAT MAN. HE FLAT MURDERED HIM. AND AT THE TIME HE
19 COMMITTED THE CRIME, HE HAD THAT WEAPON. THAT'S THE
20 TRUTH IN THIS CASE. THAT'S WHAT COMES OUT.

21 HE COULD HAVE EASILY GOTTEN BACK IN THAT CAR AND
22 DRIVEN AWAY. YOU ALSO, YOU DIDN'T HEAR ANY TESTIMONY
23 ABOUT HIM INVITED THERE. HE WASN'T INVITED INTO HER
24 HOUSE. HE WASN'T AN INVITED GUEST. HE WAS HANGING OUT
25 THERE SELLING DRUGS. MS. GREEN DIDN'T EVEN KNOW HE WAS

1 OUT THERE. HE DIDN'T -- SHE DIDN'T INVITE HIM THERE, SO
2 HE WANTS YOU -- HE WANTS TO CLOTH HIMSELF AS AN INVITEE
3 IN HER RESIDENCE. THEREFORE, HE HAS THE RIGHT TO USE
4 SELF DEFENSE. NOW I DON'T HAVE TO RETREAT BECAUSE I AM
5 INVITED TO BE HERE. WELL YOU CAN ONLY USE A SUFFICIENT
6 AMOUNT OF SELF DEFENSE TO PROTECT YOURSELF. SOMEBODY
7 WITH A STICK IN THEIR HAND. HE DIDN'T TOUCH HIM. HE
8 TESTIFIED HE NEVER TOUCHED ME. HE NEVER GOT HIT. AND HE
9 NEVER TOUCHED ME. HE JUST FLAT SHOOTS HIM. BUT NOW HE
10 WANTS YOU TO SAY WELL, I HAD A RIGHT TO SHOOT HIM
11 BECAUSE I WAS AN INVITED GUEST AT THAT HOUSE. I DIDN'T
12 HAVE TO RETREAT. I DIDN'T HAVE TO GET BACK IN MY CAR AND
13 DRIVE AWAY. IF HE WOULD HAVE MADE THAT DECISION, WESLEY
14 HOUSE WOULD HAVE BEEN ALIVE TODAY. I DIDN'T HAVE TO MAKE
15 ANY DECISION BECAUSE MY PRIDE WAS TOO BIG. I AM THE BAD
16 DUDE ON THE STREET. I GET TO SELL MY CRACK. AIN'T
17 NOBODY GOING TO LAUGH AT ME AND TAKE MY DRUGS AND GET
18 AWAY WITH IT. I AM COMING BACK WITH A SHOTGUN AND SHOW
19 YOU RIGHT NOW WHO IS IN CHARGE. IN FRONT OF ALL HIS
20 FRIENDS. I AM THE BAD GUY. AND THAT WAS A BAD DECISION
21 TO MAKE. BECAUSE NOW THAT HE'S GOTTEN ARRESTED AND HAD
22 TIME TO THINK ABOUT THIS THING, WHAT HAVE I DONE? I
23 AIN'T ON THE STREET ANYMORE. I GOT TO COME UP WITH A
24 STORY THAT THIS JURY IS GOING TO BELIEVE.

25 LADIES AND GENTLEMEN, THE TRUTH IS REAL SIMPLE. HE

1 DROVE BACK UP, BECAUSE HE WAS AGGRAVATED WITH HIM. IT
2 WAS A SITUATION HE WAS -- HE HAD BEEN EMBARRASSED. HE
3 WAS GOING TO SETTLE THIS SCORE. HE, IF HE HAD NOT PULLED
4 THE GUN OUT, NOTHING WOULD HAVE HAPPENED. HE WAS GOING
5 TO SETTLE THAT SCORE IN FRONT OF EVERYBODY ELSE TO SHOW
6 THE REST OF THEM, HE WAS BAD. HE HAD BEEN PRACTICING
7 WITH THAT GUN HE HAD FULL OF SLUGS. IT WASN'T BIRD SHOT.
8 IT WASN'T NOTHING TO SHOOT SNAKES WITH IF YOU ARE GOING
9 FISHING. IT WAS BUCK -- I MEAN, SLUGS TO KILL A MAN
10 WITH. AND THAT'S EXACTLY WHAT HE DID.

11 ALL I ASK YOU TO DO IS DO WHAT IS RIGHT. YOU DO
12 WHAT IS RIGHT FOR WESLEY HOUSE'S FAMILY. YOU DO WHAT IS
13 RIGHT FOR WESLEY HOUSE. YOU DO WHAT IS RIGHT FOR THE
14 CITIZENS OF THIS COMMUNITY. AND FIND RALPHEAL BRIGGS
15 GUILTY OF MURDER AND POSSESSION OF A WEAPON DURING A
16 VIOLENT CRIME. THANK YOU.

17 THE COURT: LADIES AND GENTLEMEN, MY REMARKS TO YOU
18 WILL TAKE SOME 45 MINUTES TO AN HOUR, AS I TALK WITH YOU
19 ABOUT THE LAW THAT YOU WOULD APPLY TO THE FACTS AS YOU
20 FIND THEM. IF YOU LIKE TO TAKE ABOUT A 5-MINUTE BREAK
21 BEFORE WE GET STARTED, THAT WILL FINE. IF YOU WOULD LIKE
22 FOR ME TO BEGIN, THAT WILL FINE. I WANT TO KEEP YOU
23 COMFORTABLE, AND I KNOW THAT YOU HAVE BEEN BACK HERE FOR
24 ABOUT AN HOUR OR SO. SO IF THERE IS ANYBODY -- ANY AMONG
25 YOU BECAUSE I NEED ALL 12 OF YOU TO BE COMFORTABLE. IF

1 ANY AMONG YOU WOULD LIKE TO TAKE A BREAK AT THIS TIME, IF
2 YOU WOULD JUST KIND OF RAISE YOUR HAND, WE CAN TAKE A
3 BREAK. IF I DON'T SEE ANY HANDS AND THEN I WILL GO
4 FORWARD.

5 IT LOOKS AS IF EVERYBODY IS COMFORTABLE. THANK YOU
6 VERY MUCH. THANK YOU FOR THE ATTENTION THAT YOU HAVE
7 GIVEN THROUGHOUT THE TRIAL OF THIS CASE, TO THE PARTIES,
8 FROM THE OPENING ARGUMENTS, TO THE PRESENTATION OF THE
9 TESTIMONY AND THROUGH THE CLOSING ARGUMENTS. AND I OF
10 COURSE NEED FOR YOU TO LISTEN CAREFULLY AS I DISCUSS WITH
11 YOU MY ROLE, AND YOUR ROLE, AND WHAT THE LAW IS IN THIS
12 MATTER. LADIES AND GENTLEMEN, I HAVE GOT TWO HATS AS THE
13 TRIAL JUDGE THAT I WEAR. AND ONE OF THOSE HATS IS TO
14 PRESIDE OVER THE TRIAL OF THE CASE, TO RULE UPON THE
15 ADMISSIBILITY OF THE EVIDENCE. AND TO HANDLE THE
16 ADMINISTRATION OF THE TRIAL, TO TRY AND PROVIDE FOR EACH
17 SIDE A FAIR AND IMPARTIAL SETTING IN WHICH THEY CAN
18 PRESENT THIS CASE TO YOU FOR YOUR CONSIDERATION.

19 TO THE EXTENT THAT EVIDENCE IS ALLOWED IN, THAT
20 EVIDENCE IS TO BE USED BY YOU IN REACHING YOUR DECISION
21 IN THIS MATTER. TO THE EXTENT THAT EVIDENCE HAS BEEN
22 EXCLUDED THEN, LADIES AND GENTLEMEN, YOU ARE TO DISREGARD
23 AND NOT USE AS A PART OF YOUR DECISION MAKING PROCESS,
24 ANY EVIDENCE THAT MAY HAVE BEEN EXCLUDED IN CONNECTION
25 WITH THIS MATTER. MY OTHER JOB THAT I GET TO DO AT THIS

1 PARTICULAR POINT IN THE PRESENTATION OF THE CASE, IS TO
2 GIVE YOU YOUR LEGAL INSTRUCTIONS ON THE LAW. YOU, LADIES
3 AND GENTLEMEN, ARE THE FACT FINDERS IN THIS CASE. YOU
4 HAVE TO DETERMINE EXACTLY WHAT DID IN FACT TAKE PLACE.
5 BUT I AM THE JUDGE OF THE LAW IN THIS CASE. AND IT IS MY
6 RESPONSIBILITY TO GIVE YOU YOUR LEGAL INSTRUCTIONS FOR
7 YOU TO FOLLOW AND TO APPLY BASED ON WHAT FACTS YOU IN
8 FACT DO FIND.

9 NOW, LADIES AND GENTLEMEN, IT YOUR DUTY UNDER THE
10 OATH THAT YOU HAVE TAKEN, IT'S YOUR RESPONSIBILITY, IT IS
11 YOUR AGREEMENT TO ACCEPT THE LAW AS I GIVE IT TO YOU
12 TODAY. SHOULD YOU HAVE SOME PRECONCEPTION AS TO WHAT THE
13 LAW IS, OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT
14 COINCIDE WITH THE LAW AS I GIVE IT TO YOU TODAY, THEN,
15 LADIES AND GENTLEMEN, YOU HAVE AGREED THAT YOU WILL SET
16 ASIDE ANY PRECONCEPTIONS THAT YOU MAY HAVE, AND SIMPLY
17 FOLLOW THE LAW YOU RECEIVE TODAY IN CONNECTION WITH THIS
18 CASE. YOU AND YOU ALONE MUST DETERMINE WHAT ARE THE
19 FACTS IN THIS CASE. AND WHILE I AM JUDGE OF THE LAW, AND
20 THE SOLE JUDGE OF THE LAW, YOU LADIES AND GENTLEMEN, ARE
21 THE SOLE JUDGE OF THE FACTS IN THE CASE. SO PLEASE BEAR
22 THAT IN MIND. I DO NOT HAVE ANY AUTHORITY, I DO HAVE ANY
23 RIGHT UNDER THE CONSTITUTIONS AND THE STATUTES OF THIS
24 STATE, TO INTIMATE TO YOU, TO STATE, TO COMMENT UPON, OR
25 TO MAKE ANY STATEMENT TO YOU AS THE TRIAL JURY, TO MAKE

1 YOU THINK THAT I HAVE ANY OPINION ABOUT WHAT THE FACTS
2 ARE IN THIS CASE.

3 SO PLEASE, LADIES AND GENTLEMEN, SHOULD I HAVE DONE
4 SOMETHING DURING THE PRESENTATION OF THE CASE OR IN MY
5 PRESIDING OVER THE CASE, DONE -- OR DO SOMETHING NOW AS I
6 INSTRUCT YOU AS TO THE LAW OF THE CASE TO MAKE YOU THINK
7 I HAVE GOT SOME OPINION, THEN PLEASE REALIZE I DO NOT.
8 DO NOT TAKE ANYTHING FROM WHAT I SAY OR DO DURING THE
9 TRIAL OF THIS CASE TO MAKE YOU THINK I HAVE SOME OPINION
10 ABOUT WHAT THE FACTS ARE, BECAUSE I DON'T. THE LAW
11 DOESN'T PERMIT ME TO HAVE AN OPINION, BECAUSE YOU AND YOU
12 ALONE ARE THE FACT FINDERS IN THIS CASE.

13 AND AS A PART OF YOUR DUTY AS FACT FINDERS, LADIES
14 AND GENTLEMEN, IT IS YOUR DUTY TO DETERMINE THE EFFECT,
15 THE VALUE, THE WEIGHT AND THE TRUTH OF THE EVIDENCE THAT
16 HAS BEEN PRESENTED TO YOU. AND WHEN YOU ARE DOING THAT,
17 YOU MUST NECESSARILY ASSESS THE CREDIBILITY OF THE
18 WITNESSES WHO TESTIFY. YOU MUST DETERMINE THEIR
19 BELIEVABILITY. IT BECOMES PART OF YOUR JOB AS JURORS IN
20 THIS MATTER TO ANALYZE AND EVALUATE THE EVIDENCE THAT HAS
21 BEEN PRESENTED TO YOU, AND TO DETERMINE WHAT EVIDENCE
22 CONVINCES YOU OF ITS TRUTH.

23 NOW, LADIES AND GENTLEMEN, AS I TOLD YOU IN MY
24 OPENING REMARKS, THE QUESTION OF CREDIBILITY OR
25 BELIEVABILITY OF THE WITNESSES WHO HAVE TESTIFIED IN THIS

1 MATTER IS SOLELY UP TO YOU. YOU MAY BELIEVE ONE WITNESS
2 AS AGAINST SEVERAL WITNESSES OR SEVERAL WITNESSES AS
3 AGAINST ONE WITNESS. YOU MAY BELIEVE A PART OF WHAT A
4 WITNESS TELLS YOU AND DISREGARD THE BALANCE OF THAT SAME
5 WITNESS' TESTIMONY. IF YOU HAVE A GOOD AND A SOUND
6 REASON YOU MAY IN FACT BELIEVE A WITNESS' TESTIMONY IN
7 ITS ENTIRETY OR REJECT A WITNESS' TESTIMONY IN ITS
8 ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS
9 EXHIBITED TO YOU ANY INTEREST, ANY BIAS, ANY PREJUDICE,
10 OR SOME OTHER MOTIVE IN CONNECTION WITH THE CASE THAT
11 WOULD AFFECT THEIR TESTIMONY.

12 YOU MAY CONSIDER WHETHER THE TESTIMONY OF THE
13 WITNESS HAS BEEN STRICKEN BY OTHER TESTIMONY AND EVIDENCE
14 IN THE CASE OR HAS IT BEEN WEAKENED BY OTHER TESTIMONY
15 AND EVIDENCE IN THE CASE. AND LIKEWISE, LADIES AND
16 GENTLEMEN, YOU MAY CONSIDER THE DEMEANOR; THAT IS, THE
17 APPEARANCE OF A WITNESS AS THEY TESTIFY IN CONNECTION
18 WITH THE TRIAL OF THE CASE. DO THEY APPEAR OPEN AND
19 FORTHRIGHT. DO THEY APPEAR HESITANT AND GUARDED. THESE
20 ARE MATTERS THAT YOU CAN CONSIDER AS WELL. AND, LADIES
21 AND GENTLEMEN, AS I INSTRUCTED YOU PREVIOUSLY, YOU CAN
22 CONSIDER THE -- OR THAT YOU CONSIDER AND YOU WEIGH THE
23 EVIDENCE OF THE EXPERT JUST AS YOU WEIGH ALL OF THE
24 EVIDENCE AND OTHER TESTIMONY YOU RECEIVE.

25 THE TESTIMONY OF AN EXPERT IS BEING GIVEN IN A CASE

1 TO ASSIST YOU IN MAKING YOUR FINDINGS, TO HELP YOU IN
2 YOUR EVALUATING. YOU ARE NOT BOUND BY THE TESTIMONY OF
3 AN EXPERT. YOU GIVE THAT TESTIMONY SUCH WEIGHT, SUCH
4 VALUE AS YOU FEEL IT IS ENTITLED TO RECEIVE. LADIES AND
5 GENTLEMEN, SOMETIMES TESTIMONY OF WITNESSES IS
6 DISCREDITED OR IMPEACHED BY SHOWING THAT THEY HAD
7 PREVIOUSLY MADE A STATEMENT THAT WAS INCONSISTENT WITH
8 THEIR TRIAL TESTIMONY. WHEN THAT HAPPENS, IT'S SOLELY UP
9 TO YOU THE JURY TO DETERMINE WHETHER YOU ARE GOING TO
10 BELIEVE THE PREVIOUS STATEMENT, TO BELIEVE THE TESTIMONY
11 AT TRIAL, OR TO BELIEVE SOME OF EACH OF THOSE TYPES OF
12 STATEMENTS.

13 THE TESTIMONY IS SOLELY FOR YOUR CONSIDERATION AS
14 YOU DETERMINE ITS CREDIBILITY. AND IF YOU FIND THAT A
15 WITNESS HAS TESTIFIED IN SOME MAJOR EFFECT IMPROPERLY OR
16 IN A WAY THAT SHOWS YOU THAT YOU DO NOT CONSIDER THEIR
17 EVIDENCE TO BE CREDIBLE, YOU CAN CONSIDER THAT PREVIOUS
18 STATEMENT AND THE CURRENT TESTIMONY, AND GIVE IT SUCH
19 WEIGHT AS YOU FEEL IS APPROPRIATE. LADIES AND GENTLEMEN,
20 THERE WAS TESTIMONY ABOUT OTHER EVENTS THAT WERE GOING ON
21 OR HAD BEEN GOING ON AT TIME THIS MATTER WAS BEING
22 PRESENTED. HOWEVER, I WANT YOU TO UNDERSTAND THAT ANY
23 EVIDENCE OF OTHER CRIMES IS NOT WHAT THIS DEFENDANT IS ON
24 TRIAL. THIS DEFENDANT IS ON TRIAL FOR THE MATTERS SET
25 FORTH IN THE INDICTMENT.

1 SO THAT EVIDENCE THAT MAY HAVE BEEN PRESENTED TO YOU
2 AS TO THE FACTS AND CIRCUMSTANCES SURROUNDING WHAT WAS
3 GOING ON AT THE KATIE GREEN RESIDENCE ON SEPTEMBER 5TH
4 2005, IS NOT FOR THE PURPOSE OF CONVICTING THIS DEFENDANT
5 FOR THE CHARGE OF MURDER AND POSSESSION OF A WEAPON
6 DURING A CRIME OF VIOLENCE. AND SHOULDN'T BE CONSIDERED
7 SIMPLY FOR THAT. IT'S JUST A PART OF THE FACTS AND
8 CIRCUMSTANCES. BUT THIS EVIDENCE OF ANOTHER TYPE OF
9 VIOLATION IS NOT TO BE CONSIDERED BY YOU AS PROOF OF
10 WHETHER OR NOT THE DEFENDANT DID OR DID NOT COMMIT THIS
11 PARTICULAR CRIME. BECAUSE IT'S THE CRIME OF MURDER AND
12 POSSESSION OF WEAPON DURING A CRIME OF VIOLENCE THAT THIS
13 DEFENDANT IS ON TRIAL FOR.

14 NOW, LADIES AND GENTLEMEN, AS YOU ARE CONSIDERING
15 ALL OF THE EVIDENCE IN THIS MATTER, AND YOU MUST CONSIDER
16 IN ADDITION, THE REASONABLENESS OF THE TESTIMONY. DOES
17 IT MAKE SENSE TO YOU. WERE THESE PEOPLE IN A POSITION TO
18 KNOW THE THINGS ABOUT WHICH THEY HAVE OFFERED YOU
19 TESTIMONY. AS YOU CONSIDER ALL OF THESE FACTORS, YOU DO
20 NOT CONSIDER THEM IN AN ARBITRARY FASHION. BUT IF IN
21 YOUR GOOD JUDGMENT AS YOU CONSIDER THIS MATTER THERE IS
22 SOUND REASON IN THIS CASE FOR YOU TO CONSIDER THESE
23 VARIOUS FACTORS THEN YOU MAY BE DO. BECAUSE, LADIES AND
24 GENTLEMEN, YOU HAVE BUT ONE JOB TODAY AND THAT IS TO
25 REACH THE TRUTH. IT DOESN'T MATTER WHETHER THE TESTIMONY

1 THAT CONVINCES YOU OF IT'S TRUTHFULNESS COMES FROM THE
2 WITNESSES FOR THE STATE OR THE WITNESSES OF THE
3 DEFENDANT, OR SOME OF EACH. BECAUSE TRUTH IS NOT
4 DETERMINED BY COUNTING UP WITNESSES. YOU SIMPLY EXERCISE
5 YOUR MENTAL PROCESSES. AND IN DETERMINING WHAT YOU
6 CONSIDER TO BE TRUE, THE LAW SIMPLY REQUIRES THAT YOU
7 EXERCISE YOUR GOOD JUDGMENT, YOUR COMMON SENSE, YOUR
8 SENSE OF LOGIC AND REASON, AND YOUR EXPERIENCES IN LIFE.
9 YOU TAKE THESE ATTRIBUTES AND YOU APPLY THEM TO THE
10 EVIDENCE THAT HAS BEEN PRESENTED TO YOU AND YOU DETERMINE
11 WHAT YOU CONSIDER TO BE THE TRUTHFUL EVIDENCE. AND THEN
12 TO THESE TRUE STATEMENTS OF FACT AS DETERMINED BY YOU THE
13 JURY, YOU APPLY THE LAW AND THUS YOU ARRIVE AT YOUR
14 VERDICT IN THIS MATTER.

15 YOU HAVE GOT NO FRIENDS TO REWARD HERE TODAY. YOU
16 HAVE GOT NO ENEMIES TO PUNISH HERE TODAY. YOUR VERDICT
17 IS TO SPEAK THE TRUTH. AND THAT'S BASICALLY WHAT VERDICT
18 MEANS. IT COMES FROM LATIN, VEREDICTUM. VERE MEANING
19 TRUE AND DICTUM MEANING TO SPEAK. SO BY YOUR VERDICT
20 HERE TODAY, YOU SPEAK THE TRUTH. NOW, LADIES AND
21 GENTLEMEN, YOU HAVE HEARD EVIDENCE THAT HAS BEEN
22 PRESENTED TO YOU FROM THE WITNESS STAND. YOU HAVE SEEN
23 SOME DOCUMENTS. OUR EVIDENCE IS USUALLY GOING TO BE
24 EITHER DIRECT EVIDENCE OR CIRCUMSTANTIAL EVIDENCE OR
25 SOMETIMES THERE IS GOING TO BE A COMBINATION OF THESE

1 TYPES OF EVIDENCE. WHEN WE'RE THINKING ABOUT DIRECT
2 EVIDENCE, WE'RE TALKING ABOUT THE TESTIMONY OF A PERSON
3 WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT;
4 SUCH AS, AN EYE WITNESS. SOMEBODY WHO HAS PERCEIVED
5 EVENTS THROUGH ONE OF THEIR 5 SENSES. THEY'VE SMELLED
6 IT. THEY'VE SEEN IT. THEY'VE HEARD IT. THEY'VE TASTED
7 IT. THEY'VE TOUCHED IT. AND THEY COME IN AND THEY
8 TESTIFY TO YOU ABOUT WHAT IT IS THAT HAVE PERCEIVED.
9 THAT WOULD BE DIRECT EVIDENCE.

10 CIRCUMSTANTIAL EVIDENCE IS A LITTLE BIT DIFFERENT.
11 CIRCUMSTANTIAL EVIDENCE IS THE PROOF OF A CHAIN OF FACTS
12 AND EVENTS AND CIRCUMSTANCES THAT INDICATE THE EXISTENCE
13 OF ANOTHER FACT. I OFTENTIMES USE THE ILLUSTRATION OF A
14 SUMMER THUNDERSTORM TO EXPLAIN CIRCUMSTANTIAL EVIDENCE.
15 IF WE WERE AT A THEATER IN JULY AND WE HAD GONE AT 7:00
16 O'CLOCK WE MIGHT GO, AND THE SUN WOULD BE SHINING IN JULY
17 AT 7:00 O'CLOCK. WE GET THERE, AND THE GROUND IS DRY.
18 AND ALL THE OTHER VEHICLES IN THE PARKING LOT ARE DRY.
19 AND WE GO INTO THE MOVIE. AND WHILE WE'RE IN THE MOVIE,
20 WE MIGHT HEAR SOME RUMBLINGS. LIGHTS MIGHT EVEN FLICKER
21 A LITTLE BIT.

22 WE COME BACK OUTSIDE, THE SUN IS SHINING AGAIN.
23 8:30, QUARTER TILL 9. BUT NOW WE FIND THERE ARE PUDDLES
24 IN THE PARKING LOT, AND WE FIND VEHICLES HAVE GOT DROPS
25 ON THEM. WELL WE NEVER SAW IT RAIN. BUT FROM THE

1 CIRCUMSTANCES, THE THUNDERING NOISE, THE PUDDLES, WE CAN
2 CONCLUDE IT INFERS THAT IT RAINED. WE HAD A FAST MOVING
3 THUNDERSTORM COME THROUGH WHILE WE WERE WATCHING THAT
4 MOVIE. SO IT'S THE TYPE OF SITUATION WHERE YOU HAVE A
5 GROUP OF FACTS AND CIRCUMSTANCES THAT CAUSE YOU TO
6 DETERMINE THAT THERE IS THE EXISTENCE OF ANOTHER FACT.
7 OUR LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE
8 WEIGHT OR THE VALUE TO BE GIVEN TO EITHER DIRECT EVIDENCE
9 OR TO CIRCUMSTANTIAL EVIDENCE. AND THERE IS NOT A
10 GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
11 EVIDENCE THAN OF DIRECT EVIDENCE.

12 LADIES AND GENTLEMEN, YOU SHOULD WEIGH ALL OF THE
13 EVIDENCE IN THIS CASE. AND AFTER WEIGHING ALL OF THE
14 EVIDENCE IF YOU ARE NOT CONVINCED OF THE GUILT OF THE
15 DEFENDANT BEYOND A REASONABLE DOUBT, THEN YOU MUST FIND
16 THE DEFENDANT NOT GUILTY. CONJECTURE AND SPECULATION,
17 SUSPICION OR PROBABILITIES DO NOT CONSTITUTE
18 CIRCUMSTANTIAL EVIDENCE. NOW, LADIES AND GENTLEMEN,
19 ONCE AGAIN I WANT TO SHOW YOU THIS INDICTMENT. AND I
20 ALSO WANT TO TELL YOU AGAIN THAT THIS INDICTMENT IS NOT
21 EVIDENCE IN THE CASE. THE FACT THAT THE DEFENDANT WAS
22 ARRESTED, THAT HE WAS CHARGED, THAT HE HAD BEEN INDICTED
23 IS NOT IN FACT EVIDENCE OF HIS GUILT IN THIS MATTER AND
24 CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF THE
25 DEFENDANT'S GUILT. IT IS SIMPLY THE CHARGING PAPER. IT

1 DOES NOT CREATE ANY INFERENCE OR ANY PRESUMPTION OF GUILT
2 WHATSOEVER. IT SIMPLY PUTS THE DEFENDANT ON NOTICE AS TO
3 WHAT THE CHARGES ARE AND WHAT THE STATE MUST PROVE HIM
4 GUILTY OF BEYOND A REASONABLE DOUBT.

5 NOW, LADIES AND GENTLEMEN, AS YOU ARE CONSIDERING
6 THIS MATTER, THE STATE HAS MADE TWO CHARGES. SO YOU HAVE
7 TO INDEPENDENTLY CONSIDER EACH OF THE CHARGES. YOU DON'T
8 JUST LUMP THINGS TOGETHER. BUT YOU CONSIDER THE CHARGE
9 OF MURDER AND THEN YOU CONSIDER THE CHARGE OF POSSESSION
10 OF A FIREARM DURING THE COMMISSION A CRIME. THE
11 DEFENDANT HAS PLED NOT GUILTY AND THAT PUTS THE BURDEN ON
12 THE STATE TO PROVE HIM GUILTY, AND PROVE HIM GUILTY
13 BEYOND A REASONABLE DOUBT. UNDER THE LAWS OF THE UNITED
14 STATES, A PERSON WHO IS CHARGED WITH COMMITTING A CRIME
15 IS NEVER REQUIRED TO PROVE THEIR INNOCENCE. THEY ARE
16 ALWAYS PRESUMED TO BE INNOCENT.

17 IT IS A CARDINAL AND AN IMPORTANT RULE OF OUR LAW
18 THAT A DEFENDANT IN A CRIMINAL CASE NO MATTER HOW SERIOUS
19 THE CHARGE MAY BE THAT IS AGAINST THAT DEFENDANT, WILL
20 ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH
21 THEY ARE CHARGED UNLESS THEIR GUILT HAD BEEN PROVEN TO
22 THE SATISFACTION OF EACH AND EVERY MEMBER OF THE JURY
23 BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE
24 LADIES AND GENTLEMEN DOESN'T END WHEN YOU GO INTO YOUR
25 JURY ROOM. IT ATTACHES TO A DEFENDANT FROM THE TIME THAT

1 DEFENDANT IS CHARGED ALL THE WAY THROUGH THE TRIAL OF THE
2 CASE AND REMAINS WITH THAT DEFENDANT UNTIL YOU LADIES AND
3 GENTLEMEN REACH A VERDICT OF GUILT BASED UPON EVIDENCE
4 THAT SATISFIES YOU AND EACH OF YOU OF THAT GUILT BEYOND A
5 REASONABLE DOUBT.

6 IN FACT OUR SUPREME COURT SAID THAT THE PRESUMPTION
7 OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS THAT IS
8 PLACED ABOUT THE SHOULDERS OF A DEFENDANT. AND THAT ROBE
9 OF RIGHTEOUSNESS REMAINS WITH THE DEFENDANT AND ASSIGNS
10 HIM TO THE CLASS OF INDIVIDUALS WHO ARE KNOWN AS INNOCENT
11 INDIVIDUALS UNTIL THAT PRESUMPTIVE ROBE OF RIGHTEOUSNESS
12 HAS BEEN STRIPPED FROM HIS PERSON BY EVIDENCE THAT
13 SATISFIES YOU OF GUILT BEYOND A REASONABLE DOUBT. THIS
14 PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT'S
15 NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO
16 WHICH EVERY DEFENDANT IS ENTITLED. AND IT REMAINS WITH
17 THAT DEFENDANT UNTIL YOU ARE SATISFIED BEYOND A
18 REASONABLE DOUBT THAT THAT ROBE OF RIGHTEOUSNESS SHOULD
19 BE REMOVED AND THAT THE DEFENDANT IS IN FACT GUILTY.

20 WHAT IS A REASONABLE DOUBT? A REASONABLE DOUBT IS
21 DOUBT WHICH MAKES AN HONEST, SINCERE, CONSCIENTIOUS JUROR
22 IN SEARCH OF THE TRUTH IN THE CASE TO HESITATE TO ACT.
23 PROOF BEYOND A REASONABLE DOUBT MUST THEREFORE BE PROOF
24 OF SUCH A CONVINCING CHARACTER THAT A REASONABLE PERSON
25 WOULD NOT HESITATE TO RELY AND ACT UPON IT IN THE MOST

1 IMPORTANT OF HIS OR HER OWN AFFAIRS. LADIES AND
2 GENTLEMEN, PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
3 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
4 NOW THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW
5 WITH ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES THE LAW
6 DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE
7 DOUBT. THE LAW DOESN'T REQUIRE THAT. IF BASED ON YOUR
8 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED
9 THAT THE DEFENDANT IS GUILTY OF THE CRIME THAT HE HAS
10 BEEN CHARGED WITH, YOU MUST FIND THE DEFENDANT GUILTY.

11 IF ON THE OTHER HAND YOU THINK THERE IS A REAL
12 POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE
13 BENEFIT OF THAT DOUBT AND FIND HIM NOT GUILTY. LADIES
14 AND GENTLEMEN, A REASONABLE DOUBT MAY ARISE FROM EVIDENCE
15 WHICH IS IN THE CASE, OR IT MAY ARISE FROM A LACK OF OR
16 AN ABSENCE OF EVIDENCE IN THE CASE. YOU THE JURY MUST
17 DETERMINE WHETHER OR NOT REASONABLE DOUBT EXISTS IN FAVOR
18 OF THIS DEFENDANT. THE STATE HAS THE BURDEN OF PROVING
19 EACH AND EVERY ELEMENT OF A CRIME BEYOND A REASONABLE
20 DOUBT. AND OF COURSE ANY REASONABLE DOUBT THAT YOU MAY
21 HAVE IN YOUR DELIBERATION SHOULD BE RESOLVED IN FAVOR OF
22 THE DEFENDANT. IF YOU HAVE A REASONABLE DOUBT AS TO THE
23 GUILT OF THE DEFENDANT, HE IS ENTITLED TO THAT GUILT AND
24 ENTITLED TO A VERDICT OF NOT GUILTY.

25 OF COURSE IF YOU HAVE NO REASONABLE DOUBT AS TO THE

1 GUILT OF THE EVIDENCE, THEN YOU WOULD FIND THE DEFENDANT
2 GUILTY AS CHARGED. LADIES AND GENTLEMEN, CRIMINAL INTENT
3 IS A NECESSARY ELEMENT EVERY TIME A CRIME IS CHARGED.
4 THEREFORE CRIMINAL INTENT MUST BE PROVEN BY THE STATE
5 BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A
6 MATTER THAT MUST BE DETERMINED BY YOU THE JURY FROM THE
7 CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO WAY
8 TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. AND THERE
9 IS NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S MIND AND
10 LOOK INSIDE. SO THE LAW SAYS CRIMINAL INTENT MAY BE
11 INFERRED FROM THE CIRCUMSTANCES THAT HAVE BEEN SHOWN TO
12 HAVE EXISTED. AND THAT, LADIES AND GENTLEMEN, IS HOW YOU
13 AS A JURY MAKE A DETERMINATION OF WHETHER OR NOT THE
14 ELEMENT OF CRIMINAL INTENT WAS PRESENT IN CONNECTION WITH
15 THE CHARGE AGAINST THIS DEFENDANT.

16 NOW, LADIES AND GENTLEMEN, THIS DEFENDANT IS CHARGED
17 WITH MURDER. HE IS CHARGED WITH VIOLATING TITLE 16-3-10
18 OF OUR LAWS. THIS SAYS THAT MURDER IS THE KILLING OF ANY
19 PERSON WITH MALICE AFORETHOUGHT. SO IN ORDER FOR THE
20 STATE TO PROVE THE DEFENDANT GUILTY OF MURDER, IT MUST BE
21 PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID
22 KILL THE VICTIM IN THIS CASE, AND THAT THE KILLING WAS
23 DONE WITH MALICE AFORETHOUGHT. THE STATE IS NOT REQUIRED
24 TO PROVE ANY MOTIVE FOR THE KILLING. THE STATE MUST
25 PROVE THAT THE DEFENDANT DID KILL ANOTHER PERSON WITH

1 MALICE AFORETHOUGHT.

2 NOW, LADIES AND GENTLEMEN, MALICE IS THE INTENTIONAL
3 DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND
4 WITH AN INTENT TO INFLICT INJURY. MALICE IS ALSO DEFINED
5 AS HATRED OR ILL WILL. MALICE IS A WRONGFUL INTENT TO
6 INJURE ANOTHER PERSON. IT INDICATES A WICKED OR DEPRAVED
7 SPIRIT INTENT ON DOING WRONG. MALICE IS A LEGAL TERM
8 IMPLYING WICKEDNESS AND EXCLUDING A JUST CAUSE OR EXCUSE.
9 THE TERM MALICE INDICATES A FORM, PURPOSE AND DESIGN TO
10 DO A WRONGFUL ACT UNDER THE CIRCUMSTANCES OF THAT
11 EXCLUDING ANY LEGAL RIGHT TO DO IT. AFTERTHOUGHT MEANS
12 THAT THE INTENTION TO DO THE UNLAWFUL ACT WAS CONCEIVED
13 OR PLANNED SOME TIME BEFORE THE ACTUAL COMMISSION OF THE
14 UNLAWFUL ACT.

15 MALICE NEED NOT EXIST FOR ANY PARTICULAR LENGTH OF
16 TIME BEFORE THE KILLING. AND AS I SAY, LADIES AND
17 GENTLEMEN, MALICE IS A WORD THAT SUGGESTS A WICKEDNESS OR
18 A HATRED OR A DETERMINATION TO DO WHAT ONE KNOWS TO BE
19 WRONG WITHOUT ANY JUST CAUSE OR LEGAL EXCUSE OR
20 PROVOCATION. MALICE NEED NOT BE IN THE MIND OF THE ONE
21 WHO DOES THE KILLING ANY PARTICULAR LENGTH OF TIME BEFORE
22 THE ACT OF KILLING IN ORDER TO RENDER THE KILLING MURDER.
23 IF MALICE IS PRESENT IN THE MIND OF THE ONE DOING THE
24 KILLING ANY LENGTH OF TIME BEFORE THE ACT, THEN ITS
25 PRESENCE WOULD BE SUFFICIENT TO RENDER THE KILLING

1 MURDER.

2 MALICE MAY BE EXPRESS MALICE OR INFERRED MALICE. AND
3 THE WORDS EXPRESS OR INFERRED OR IMPLIED DO NOT MEAN
4 DIFFERENT KINDS OF MALICE, BUT MERELY THE MANNER IN WHICH
5 THE LAW SAYS MALICE MAY BE SHOWN TO EXIST. MALICE IS SAID
6 TO BE EXPRESS MALICE WHERE THERE IS MANIFESTED A VIOLENT,
7 DELIBERATE INTENTION TO UNLAWFULLY TAKE AWAY THE LIFE OF
8 ANOTHER HUMAN BEING. MALICE MAY BE INFERRED WHERE ONE
9 INTENTIONALLY AND DELIBERATELY DOES AN UNLAWFUL ACT WHICH
10 HE OR SHE KNOWS TO BE WRONG, AND IN VIOLATION OF HIS OR
11 HER DUTY TO ANOTHER. MALICE MAY BE INFERRED WHERE NO
12 EXCUSE OR LEGAL PROVOCATION FOR THE KILLING APPEARS. AND
13 WHEN CIRCUMSTANCES ATTENDING A KILLING SHOW AN ABANDONED
14 HEART OR A MALIGNANT HEART FATALLY BENT UPON MISCHIEF.

15 LADIES AND GENTLEMEN, IN ORDER FOR A KILLING TO BE
16 MURDER, IT IS ALSO REQUIRED THAT THE DEATH BE THE
17 PROXIMATE RESULT OF THE SHOOTING. AND IN ORDER FOR THE
18 SHOOTING TO BE THE PROXIMATE RESULT OF SOMEONE'S DEATH, IT
19 MUST BE THE DIRECT CAUSE OF THAT DEATH. THE EFFICIENT
20 CAUSE OF THAT DEATH. THE CAUSE WITHOUT WHICH DEATH WOULD
21 HAVE NOT HAVE OCCURRED. THE LAW ALSO SAYS, LADIES AND,
22 GENTLEMEN, THAT IF ONE INTENTIONALLY KILLS ANOTHER WITH A
23 DEADLY WEAPON THE INFERENCE OF MALICE MAY ARISE. AND A
24 DEADLY WEAPON IS ANY OBJECT OR SUBSTANCE WHICH REASONABLY
25 COULD BE USED TO CAUSE BODILY HARM. A PISTOL OR A SHOTGUN

1 OR A RIFLE WOULD CONSTITUTE A DEADLY WEAPON.

2 MALICE MAY BE INFERRED FROM THE USE OF A DEADLY
3 WEAPON. YOU THE JURY ARE PERMITTED TO INFER MALICE FROM
4 THE CONDUCT OF THE DEFENDANT IN THE USE OR THE HANDLING OF
5 A DEADLY WEAPON IF SUCH CONDUCT RESULTS DIRECTLY IN THE
6 DEATH OF ANOTHER, AND IF SUCH CONDUCT WAS SO INEXCUSABLE,
7 SO AGGRAVATED, AND GROSSLY RECKLESS AS TO SHOW AN ACTUAL
8 INTENTIONAL DISREGARD OF THE CONSEQUENCES TO LIFE. A
9 CONDUCT SUFFICIENT TO SHOW A DELIBERATE INTENTIONAL DESIGN
10 TO USE AND EMPLOY OR HANDLE THE DEADLY WEAPON SO AS TO
11 ENDANGER THE LIFE OF ANOTHER OR OTHERS WITHOUT ANY CAUSE
12 OR EXCUSE IS SUFFICIENT TO RAISE AN INFERENCE OF MALICE.

13 HOWEVER, LADIES AND GENTLEMEN, IF FACTS PROVED BEYOND
14 A REASONABLE DOUBT ARE SUFFICIENT TO RAISE AN INFERENCE OF
15 MALICE IF ANY FROM THE USE OF A DEADLY WEAPON TO YOUR
16 SATISFACTION, THIS INFERENCE IS SIMPLY AN EVIDENTIARY FACT
17 TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH ALL THE
18 OTHER EVIDENCE IN THE CASE BEARING ON THE ISSUE OF MALICE.
19 AND YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD
20 RECEIVE. THE DEFENDANT IS NOT REQUIRED TO PROVE THE
21 ABSENCE OF MALICE. FURTHERMORE, YOU MAY ACCEPT OR REJECT
22 ANY INFERENCE OF MALICE.

23 LADIES AND GENTLEMEN, IF YOU FIND THAT THE STATE HAS
24 NOT PROVED BEYOND A REASONABLE DOUBT THAT THIS DEFENDANT
25 DID KILL THE VICTIM WESLEY HOUSE WITH MALICE AFORETHOUGHT,

1 THEN YOU MAY CONSIDER THE CRIME OF MANSLAUGHTER. AND IF
2 YOU HAVE A REASONABLE DOUBT AS TO WHETHER OR NOT THE STATE
3 HAS PROVEN GUILT BEYOND A REASONABLE DOUBT AS TO MURDER OR
4 MANSLAUGHTER, THEN YOU WOULD RESOLVE THAT DOUBT IN FAVOR
5 OF THE DEFENDANT AND FIND HIM GUILTY IF YOU FIND HIM
6 GUILTY OF ANYTHING, OF THE CRIME OF MANSLAUGHTER. IN
7 ORDER FOR THE DEFENDANT, I AM SORRY, IN ORDER FOR THE
8 STATE TO PROVE THE DEFENDANT GUILTY OF MANSLAUGHTER, THE
9 STATE MUST PROOF BEYOND A REASONABLE DOUBT THAT THE
10 DEFENDANT TOOK THE LIFE OF ANOTHER IN AT SUDDEN HEAT AND
11 PASSION, AND UPON SUFFICIENT LEGAL PROVOCATION.

12 THE LAW RECOGNIZES THAT SUDDEN HEAT AND PASSION MAY
13 FOR THE TIME BEING AFFECT ONE'S SELF CONTROL, TEMPORARILY
14 DISTURB THE SWAY OF ONE'S REASON, AND THEREFORE, REDUCE
15 THE CRIME FROM MURDER TO MANSLAUGHTER. PROVIDED THERE WAS
16 SUFFICIENT LEGAL PROVOCATION. SUFFICIENT LEGAL
17 PROVOCATION MUST BE SUCH AS WOULD BE CALCULATED TO CAUSE A
18 PERSON OF ORDINARY REASON AND CAUTION TO BECOME ENRAGED;
19 THAT IS, TO EXPERIENCE SUDDEN HEAT AND PASSION AND THEREBY
20 LOSE CONTROL OF HIMSELF OR HERSELF TEMPORARILY.

21 NOW, LADIES AND GENTLEMEN, SOME EXAMPLES. AND THIS
22 IS REALLY JUST MEANT FOR ILLUSTRATION ALONE. BUT THESE
23 MATTERS ARE SUCH AS YOU CAN CONSIDER IN DETERMINING
24 WHETHER OR NOT THERE IS SUFFICIENT PROVOCATION TO NEGATE
25 MALICE AND REDUCE THE CRIME OF MURDER DOWN TO

1 MANSLAUGHTER. AND THAT CAN HAPPEN WHEN YOU HAVE CERTAIN
2 THINGS SUCH AS SUDDEN MUTUAL COMBAT IN WHICH ONE PERSON
3 WAS KILLED BY ANOTHER ONE BUT WITHOUT SOME PREVIOUSLY
4 FORMED INTENTION TO DO SO. WHERE THERE HAS BEEN SOME TYPE
5 OF PREVIOUS FIGHTING OR ARGUING THAT IS GOING ON. SIMPLY
6 BY WAY OF ILLUSTRATION, LADIES AND GENTLEMEN, THESE ARE
7 SOME THINGS THAT CAN BE IF YOU FIND THEM TO EXIST JUSTIFY
8 A FINDING OF VOLUNTARY MANSLAUGHTER AS OPPOSED TO MURDER.

9 TO BE MANSLAUGHTER, THE KILLING MUST BE IN SUDDEN
10 HEAT AND PASSION. IF THE HEAT AND PASSION HAD COOLED, OR
11 IF THERE WAS SUFFICIENT TIME BETWEEN THE PROVOCATION IF
12 ANY, AND THE KILLING FOR PASSION TO COOL, THE KILLING
13 WOULD NOT BE ATTRIBUTED TO HEAT AND PASSION BUT TO MALICE.
14 THE SUFFICIENCY OF COOLING TIME DEPENDS UPON WHETHER THERE
15 WAS TIME CONSIDERING ALL OF THE CIRCUMSTANCES FOR A PERSON
16 OF ORDINARY REASON TO COOL OFF. NOW, LADIES AND
17 GENTLEMEN, AS I INDICATED TO YOU BEFORE YOU COULD FIND THE
18 DEFENDANT GUILTY OF ANYTHING, YOU WOULD HAVE TO FIND THAT
19 THE STATE HAS ESTABLISHED THE ELEMENTS BEYOND A REASONABLE
20 DOUBT AS TO THE CRIME OF MURDER. AND IF NOT THAT, AS TO
21 THE CRIME OF MANSLAUGHTER. THE BURDEN IS ALWAYS ON THE
22 STATE.

23 IN ADDITION TO THE CRIME OF MURDER, THE STATE HAS
24 CHARGED THE DEFENDANT WITH POSSESSION OF A WEAPON DURING
25 THE COMMISSION OF A CRIME. LADIES AND GENTLEMEN, IN ORDER

1 TO PROVE THE DEFENDANT GUILTY OF THAT, IT MUST BE SHOWN
2 THAT AT THE TIME THE DEFENDANT COMMITTED A VIOLENT CRIME,
3 THAT HE HAD IN HIS POSSESSION A FIREARM. I TELL YOU THAT
4 THE CRIME OF MURDER IS A CRIME OF VIOLENCE. AND I TELL
5 YOU THAT ALSO THE CRIME OF VOLUNTARY MANSLAUGHTER IS A
6 CRIME OF VIOLENCE. BUT OF COURSE BEFORE YOU CAN FIND THE
7 DEFENDANT GUILTY OF POSSESSION OF A WEAPON DURING A CRIME
8 OF VIOLENCE, YOU MUST OF COURSE FIND THAT HE HAD A
9 POSSESSION OF A WEAPON, AND YOU MUST FIND THAT HE WAS
10 GUILTY OF EITHER MURDER OR VOLUNTARY MANSLAUGHTER.

11 NOW LADIES AND GENTLEMEN, IN CONNECTION WITH THE
12 TRIAL OF THIS CASE, THERE HAS BEEN DISCUSSED WITH YOU, THE
13 DEFENSE OF SELF-DEFENSE. OUR LAW RECOGNIZES THE RIGHT OF
14 EVERY PERSON TO DEFEND HIMSELF OR HERSELF FROM DEATH OR
15 SERIOUS BODILY HARM. AND TO DO THAT, A PERSON MAY USE
16 SUCH FORCE AS IS NECESSARY EVEN TO THE POINT OF TAKING
17 ANOTHER PERSON'S LIFE. LADIES AND GENTLEMEN, SELF DEFENSE
18 IS A COMPLETE DEFENSE. AND ENTITLES ONE CHARGED WITH AN
19 UNLAWFUL KILLING TO AN ACQUITTAL IF THE LEGAL ELEMENTS OF
20 THE PLEA OF SELF DEFENSE ARE SHOWN TO YOUR SATISFACTION BY
21 THE EVIDENCE IN THIS CASE. AS I SAY, THIS DEFENSE IS A
22 COMPLETE DEFENSE. IF IT IS ESTABLISHED YOU MUST FIND THE
23 DEFENDANT NOT GUILTY.

24 THERE ARE FOUR ELEMENTS WHICH ARE REQUIRED BY THE LAW
25 TO ESTABLISH SELF DEFENSE. FIRST, THE DEFENDANT MUST BE

1 WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. SECOND, THE
2 DEFENDANT MUST HAVE ACTUALLY BELIEVED HE WAS IN IMMEDIATE
3 DANGER OF LOSING HIS LIFE OR SUSTAINING SERIOUS BODILY
4 INJURY. OR HE ACTUALLY WAS IN SUCH IMMEDIATE DANGER.
5 THIRD, IF THE DEFENSE OF SELF DEFENSE IS BASED UPON HIS
6 BELIEF OF IMMEDIATE DANGER, A REASONABLE PRUDENT MAN OF
7 ORDINARY FITNESS AND COURAGE WOULD HAVE ENTERTAINED THE
8 SAME BELIEF. IF THE DEFENDANT ACTUALLY WAS IN IMMEDIATE
9 DANGER THE CIRCUMSTANCES WERE SUCH AS WOULD WARRANT A MAN
10 OF ORDINARY PRUDENCE AND FIRMNESS AND COURAGE TO STRIKE
11 THE FATAL BLOW IN ORDER TO SAVE HIMSELF FROM SERIOUS
12 BODILY HARM OR FROM LOSING THEIR OWN LIFE.

13 IN EVALUATING THE REASONABLE PERSON'S STANDARD,
14 LADIES AND GENTLEMEN, YOU MAY CONSIDER ALONG WITH ALL
15 OTHER FACTORS THAT YOU DEEM REASONABLE AND APPROPRIATE,
16 THE PHYSICAL CONDITION OF THE PARTIES. ANY PRIOR
17 DIFFICULTIES THAT THEY HAVE HAD WITH EACH OTHER CAN ALSO
18 BE CONSIDERED BY YOU. ANY THREATS THAT MAY HAVE BEEN
19 GIVEN IN ONE WAY OR ANOTHER CAN BE CONSIDERED BY YOU. AND
20 FOURTH, LADIES AND GENTLEMEN, THE DEFENDANT HAD NO OTHER
21 PROBABLE MEANS OF AVOIDING THE DANGER OF LOSING HIS OWN
22 LIFE OR SUSTAINING SERIOUS BODILY INJURY OTHER THAN TO ACT
23 AS HE DID.

24 NOW, LADIES AND GENTLEMEN, THE LAW IN THIS CASE, IN
25 THIS STATE DOES NOT REQUIRE A DEFENDANT TO RETREAT IF THEY

1 ARE ON THEIR OWN PREMISES. OR THEY ARE ABOUT THE YARD OF
2 THEIR DWELLING HOUSE. AND LIKEWISE, LADIES AND GENTLEMEN,
3 THE LAW OF THIS STATE SAYS THAT IF SOMEONE IS INVITED TO
4 YOUR HOME, IF THEY ARE THERE AT YOUR RESIDENCE AS YOUR
5 GUEST, THEY LIKEWISE DO NOT HAVE THE DUTY TO RETREAT IN
6 ORDER TO BE ENTITLED TO SELF DEFENSE. THEY CAN BE THERE
7 EITHER EXPRESSLY OR IMPLIEDLY. BUT IT IS OF COURSE ALWAYS
8 THE FUNCTION OF THE JURY TO DETERMINE WHAT STATUS SOMEONE
9 OCCUPIES WHEN THEY ARE THERE AT A PARTICULAR LOCATION.

10 THE BURDEN OF PROOF IS NOT ON THE DEFENDANT TO PROVE
11 THE ELEMENTS OF SELF-DEFENSE. THE ABSENCE OF SELF DEFENSE
12 MUST BE PROVEN BY THE PROSECUTION, BY THE STATE, BEYOND A
13 REASONABLE DOUBT. FURTHER, LADIES AND GENTLEMEN, NO
14 INDIVIDUAL HAS A DUTY TO RETREAT IF BY DOING SO THEY WILL
15 INCREASE THE DANGER OF BEING KILLED OR SUFFERING SERIOUS
16 BODILY INJURY. NOW, LADIES AND GENTLEMEN, WHEN THE STATE
17 HAS UNDERTAKEN TO PROVE A DEFENDANT GUILTY OF A CHARGE,
18 THEY HAVE TO PROOF THE DEFENDANT HAS COMMITTED ALL THE
19 ELEMENTS OF THE CRIME IN ORDER FOR YOU TO FIND THAT
20 DEFENDANT GUILTY.

21 WHEN THE ISSUE OF SELF DEFENSE HAS BEEN SUBMITTED TO
22 YOU THEN, LADIES AND GENTLEMEN, AND YOU MUST FIND ALL OF
23 THE ELEMENTS OF SELF DEFENSE HAVE NOT BEEN DISPROVEN BY
24 THE STATE. BECAUSE IF THE STATE DISPROVES ONE ELEMENT OF
25 SELF DEFENSE THEN SELF DEFENSE WOULDN'T EXIST. SO JUST AS

1 ALL OF THE ELEMENTS OF A CRIME MUST BE PROVEN TO EXIST
2 BEYOND A REASONABLE DOUBT IN ORDER TO FIND A DEFENDANT
3 GUILTY, IF YOU FIND BEYOND A REASONABLE DOUBT ONE OF THE
4 ELEMENTS OF SELF DEFENSE DOES NOT EXIST, THEN SELF DEFENSE
5 WOULD NOT EXIST.

6 LADIES AND GENTLEMEN, WHEN WE'RE TALKING ABOUT
7 WITHOUT FAULT IN BRINGING ON THE DIFFICULTY, I WANT YOU TO
8 UNDERSTAND THAT THIS IS TALKING ABOUT LEGAL FAULT. OUR
9 STATE LAW SAYS THAT IT WOULD BE ENTIRELY UNREASONABLE TO
10 PERMIT A MAN TO DELIBERATELY PROVOKE AN ACTIVE AGGRESSION
11 AGAINST HIMSELF AND THEN SHIELD THAT PERSON AGAINST
12 RESPONSIBILITY FOR THE DEATH OF THE OTHER PERSON BY
13 PLEADING THE LAW OF SELF DEFENSE. AND OTHERWISE, AND ON
14 THE OTHER HAND RATHER, IT WOULD ALSO BE UNREASONABLE TO
15 WITHHOLD FROM A MAN THE RIGHT TO DEFEND HIMSELF, AND TO
16 DEFEND HIS LIFE AGAINST A DEADLY ASSAULT MERELY BECAUSE HE
17 MAY HAVE BEEN SOMEWHAT RUDE OR SHOWED BAD MANNERS OR
18 DISRESPECT FOR THE VICTIM.

19 WHEN AN INDIVIDUAL IS BEING ASSAULTED AND HE DOES NOT
20 HAVE FAULT IN CAUSING THE ASSAULT AND HE APPREHENDS THAT
21 DEATH OR SERIOUS BODILY HARM MAY OCCUR TO HIM UNLESS HE
22 KILLS THE PERSON, THE KILLING IS EXCUSABLE AND THE ACCUSED
23 IS ENTITLED TO BE ACQUITTED UNDER CERTAIN CIRCUMSTANCES,
24 LADIES AND GENTLEMEN. THEY HAVE TO DETERMINE WHETHER OR
25 NOT THE PERSON WHO IS ATTACKING THEM IS TRYING TO CAUSE

1 THEM SERIOUS HARM OR DEATH. AND THE PERSON WHO IS BEING
2 ATTACKED IS THE JUDGE OF THEIR OWN PERIL AND CAN ACT
3 SAFELY UPON APPEARANCES, FACTS AND CIRCUMSTANCES
4 SURROUNDING THE SITUATION AT THE TIME. AND THE SITUATION
5 SHOULD BE DETERMINED FROM THE STANDPOINT OF THE DEFENDANT.
6 IT BEING FOR YOU THE JURY TO SAY WHETHER OR NOT HIS
7 APPREHENSION OF IMMEDIATE DANGER OR OF DEATH OR OF SERIOUS
8 BODILY HARM WAS REASONABLE AND WOULD HAVE BEEN FELT BY A
9 MAN OF ORDINARY REASON AND FIRMNESS.

10 AND NOW WHETHER THERE WAS SUCH A REASONABLE
11 APPEARANCE OF DANGER AS WOULD JUSTIFY THE KILLING IS A
12 QUESTION THAT YOU THE JURY WILL HAVE TO RESOLVE. YOU
13 SHOULD CONSIDER THE CONDITIONS OF BOTH PARTIES. IF THE
14 APPEARANCE OF THE DEFENDANT AT THE TIME THE FATAL SHOT WAS
15 FIRED WAS SUCH THAT HE COULD NOT REASONABLY AND SAFELY
16 AVOID TAKING THE LIFE OF THE DECEASED, AND A MAN OF
17 ORDINARY REASON AND COURAGE WOULD HAVE ARRIVED AT THE SAME
18 CONDITIONS, THEN IT IS NOT NECESSARY FOR HIM TO GO ANY
19 FURTHER, AND HE WOULD BE ENTITLED TO AN ACQUITTAL.

20 ONE WHO HAS THE RIGHT TO USE FORCE IN REPELLING FORCE
21 OR IN SELF PROTECTION CANNOT BE REQUIRED TO MAKE AN EXACT
22 CALCULATION AS TO THE DEGREE OR QUANTITY OF FORCE WHICH
23 MAY BE NECESSARY FOR HIS COMPLETE PROTECTION. IF YOU FIND
24 THE DEFENDANT WAS WITHOUT FAULT IN BRINGING ON THE
25 DIFFICULTY THE DEFENDANT HAS THE RIGHT OF SELF DEFENSE AND

1 THE RIGHT TO USE SUCH NECESSARY FORCE AS WAS REQUIRED FOR
2 HIS COMPLETE PROTECTION FROM LOSS OF LIFE OR SERIOUS
3 BODILY HARM. AND HE CANNOT BE LIMITED TO THE DEGREE OR
4 QUANTITY OF THE ATTACKING OPPOSING FORCE. THAT IS TO
5 SAY, THE DEFENDANT COULD NOT BE REQUIRED OR EXPECTED IN
6 DEFENDING HIMSELF TO USE JUST AS MUCH FORCE AS WAS USED
7 AGAINST HIM AND NO MORE. BUT HE HAS A RIGHT TO USE SO
8 MUCH FORCE AS APPEARED TO HIM TO BE NECESSARY FOR HIS
9 COMPLETE SELF PROTECTION AND WHICH IN THE MIND OF A PERSON
10 OF ORDINARY REASON AND FIRMNESS WOULD HAVE APPEARED TO BE
11 NECESSARY TO PREVENT THE LOSS OF LIFE OR SERIOUS BODILY
12 HARM.

13 LADIES AND GENTLEMEN, IF YOU HAVE A REASONABLE DOUBT
14 OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL OF THE
15 EVIDENCE INCLUDING THE EVIDENCE OF SELF DEFENSE, THEN YOU
16 MUST FIND THE DEFENDANT NOT GUILTY. IF ON THE OTHER HAND,
17 IF YOU HAVE NO REASONABLE DOUBT AS TO THE DEFENDANT'S
18 GUILT IN THIS MATTER AFTER CONSIDERING ALL THE EVIDENCE IN
19 THIS CASE, INCLUDING THAT RELATING TO SELF DEFENSE THEN
20 YOU MUST FIND THE DEFENDANT GUILTY. YOU HAVE TAKEN AN
21 OATH IN THIS MATTER. LADIES AND GENTLEMEN, YOU HAVE TAKEN
22 AN OATH IN THIS MATTER, LADIES AND GENTLEMEN, TO CONSIDER
23 THE EVIDENCE, TO APPLY THE LAW AS I INSTRUCT IT TO YOU,
24 AND REACH A VERDICT THAT SPEAKS THE TRUTH.

25 YOU HAVE SAID THAT YOU HAVE NO FRIENDS TO REWARD,

1 YOU HAVE NO ENEMIES TO PUNISH. AND WHEN YOU DO THAT, NO
2 ONE WILL HAVE A RIGHT TO ARGUE ABOUT WHAT YOUR VERDICT IS,
3 WHATEVER IT MAY BE. LADIES AND GENTLEMEN, YOUR VERDICT
4 MUST BE UNANIMOUS. IT CAN'T BE NINE AND THREE OR SEVEN
5 AND FIVE OR SOME COMBINATION THEREOF. IT MUST BE A
6 UNANIMOUS VERDICT AS TO EACH OF THESE CHARGES AGAINST THIS
7 DEFENDANT. I HAVE PREPARED FOR YOU A VERDICT FORM. NOW,
8 LADIES AND GENTLEMEN, WHEN I SET UP A VERDICT FORM, I HAVE
9 TO SET UP THE QUESTIONS AND THEN THE POSSIBLE RESPONSES.
10 AND SO PLEASE DO NOT THINK I AM TRYING TO SUGGEST TO YOU
11 WHAT YOUR VERDICT SHOULD BE BY THE WAY I HAVE ARRANGED
12 THESE THINGS. I HAVE TO PUT SOMETHING FIRST.

13 THE VERDICT FORM MADAM FORELADY SAYS AS TO COUNT ONE
14 OF INDICTMENT, AND IT IDENTIFIES THIS INDICTMENT NUMBER,
15 CHARGING MURDER, WE THE JURY BY A UNANIMOUS CONSENT FIND
16 THE DEFENDANT RALPHEAL LAMONT BRIGGS AND YOU HAVE THREE
17 CHOICES. YOU CAN FIND THE DEFENDANT NOT GUILTY. IF YOU
18 FIND THE DEFENDANT HAS NOT HAD HIS GUILT ESTABLISHED
19 BEYOND A REASONABLE DOUBT, THEN HE WOULD BE ENTITLED TO A
20 NOT GUILTY VERDICT. IF YOU FIND THAT THE STATE HAS
21 ESTABLISHED BEYOND A REASONABLE DOUBT THAT THIS DEFENDANT
22 IS GUILTY OF MURDER, THEN YOU WOULD CHECK THE MURDER
23 BLOCK. IF YOU FIND THAT THE STATE HAS NOT PROVEN GUILT
24 BEYOND A REASONABLE DOUBT AS TO MURDER BUT HAS PROVEN
25 GUILT BEYOND A REASONABLE DOUBT AS TO VOLUNTARY

1 MANSLAUGHTER, THAT WOULD BE THE LINE YOU WOULD CHECK
2 INDICATING THE VERDICT.

3 AS TO THE CHARGE OF POSSESSION OF A FIREARM DURING
4 THE COMMISSION OF A VIOLENT CRIME THEN, LADIES AND
5 GENTLEMEN, YOU WOULD EITHER FIND THE DEFENDANT NOT GUILTY
6 OR GUILTY OF THAT PARTICULAR CHARGE. BUT OF COURSE YOU
7 CANNOT FIND THE DEFENDANT GUILTY OF THAT CHARGE UNLESS YOU
8 FIND THE DEFENDANT GUILTY OF EITHER MURDER OR VOLUNTARY
9 MANSLAUGHTER. LADIES AND GENTLEMEN, AS I SAY, YOUR
10 VERDICT IS TO BE UNANIMOUS. YOU WOULD GO BACK, YOU WOULD
11 CONSIDER THE TESTIMONY. YOU WOULD CONSIDER THE EVIDENCE
12 THAT HAS BEEN INTRODUCED BY WAY OF EXHIBITS AND YOU WOULD
13 REACH A VERDICT THAT SPEAKS THE TRUTH IN THIS DISPUTE.
14 WHEN YOU HAVE DONE SO, MADAM FORELADY, YOU WILL NEED TO
15 FILL OUT THIS VERDICT FORM. SIGN IT, AND DATE IT, AND
16 KNOCK ON THE DOOR. AND THEN LET THE BAILIFF KNOW THAT YOU
17 HAVE REACHED A VERDICT. AND WE WILL RECEIVE YOU BACK INTO
18 THE COURTROOM AND ACCEPT YOUR VERDICT FROM YOU.

19 YOU ALSO HAVE THE RIGHT TO COME BACK ON OTHER
20 OCCASIONS. IF THERE IS SOME PORTION OF THE TESTIMONY
21 THAT YOU FEEL YOU NEED TO HEAR AGAIN, WRITE US A NOTE TO
22 THAT EFFECT AS TO WHAT WITNESS IT WAS, AND WHAT PORTION OF
23 THE TESTIMONY IT WAS. SIGN IT AND DATE IT. AND KNOCK ON
24 THE DOOR AND GIVE IT TO THE BAILIFF. THE BAILIFF WILL
25 BRING IT TO ME. AND I'LL DISCUSS IT WITH COUNSEL. THE

1 COURT REPORTER WHO HAS BEEN VERY ACTIVE OVER THE LAST
2 SEVERAL DAYS WILL LOCATE THAT TESTIMONY. WE'LL BRING YOU
3 BACK IN, AND WE WILL PLAY IT FOR YOU. BECAUSE YOU ARE THE
4 FACT FINDERS. WE WANT YOU TO HEAR THE TESTIMONY, AND YOU
5 TO MAKE YOUR DETERMINATIONS AS TO WHAT IS MEANT BY THAT
6 TESTIMONY.

7 AND SO WE DON'T JUST WRITE YOU A NOTE AND SEND IT
8 BACK TO YOU. WE BRING YOU BACK OUT. LIKEWISE, IF YOU
9 HAVE SOME QUESTION AS TO MY LEGAL INSTRUCTIONS, YOU CAN
10 WRITE ME A NOTE IN THAT SAME FASHION. I WILL BRING YOU
11 BACK OUT AND I WILL RECHARGE YOU ON THAT PARTICULAR POINT
12 OF LAW AND GAVE YOU SUCH ADDITIONAL EXPLANATION AS MAY BE
13 APPROPRIATE. NOW, LADIES AND GENTLEMEN, I HAVE TO TALK
14 WITH THE ATTORNEYS ONE MORE TIME BEFORE YOU BEGIN YOUR
15 DELIBERATIONS. I AM GOING TO ASK ALL 13 OF YOU, IF YOU
16 WILL AT THIS TIME, STEP TO THE JURY ROOM, BUT DON'T BEGIN
17 DISCUSSING THINGS YET. MS. MCINNIS, WHEN IT IS TIME, I
18 WILL HAVE YOU COME BACK OUT WHEN I SEND THE EXHIBITS BACK
19 IN. AND I WILL LET THE JURY BEGIN THEIR DELIBERATIONS AT
20 THAT TIME. BUT RIGHT NOW JUST WAIT COMFORTABLY UNTIL I
21 SEND THE VERDICT FORM AND THE EXHIBITS BACK TO YOU. THANK
22 YOU VERY MUCH.

23 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
24 PRESENCE OF THE JURY.)

25 THE COURT: ANY ADDITIONS TO, OR DELETIONS FROM BY

1 THE STATE?

2 MR. COTHRAN: NONE FROM THE STATE.

3 THE COURT: DEFENSE?

4 MR. DEVÖE: NONE BY THE DEFENSE, YOUR HONOR.

5 THE COURT: IF YOU ALL WILL GO OVER THE EXHIBITS.

6 (THEREUPON, AT 2:34 P.M. JURY COMMENCES

7 DELIBERATIONS.)

8 THE COURT: ASK MS. MCINNIS TO COME OUT.

9 (THEREUPON ALTERNATE IS EXCUSED.)

10 THE COURT: WE WILL BE IN RECESS FOR A FEW MINUTES

11 WHILE THE JURY BEGINS ITS DELIBERATIONS.

12 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

13 (THEREUPON, AT 3:10 P.M. THE JURY HAS A QUESTION.)

14 THE COURT: WE HAVE A NOTE FROM THE JURY. THE

15 DEFINITION OF MANSLAUGHTER VERSUS MURDER. I WILL INSTRUCT

16 THEM ON MURDER AND INSTRUCT THEM AGAIN ON MANSLAUGHTER.

17 MR. COTHRAN: ALL RIGHT, SIR. THAT'S WHAT THEY
18 ASKED FOR.

19 THE COURT: IN THAT FASHION. YOU MAY BRING THE
20 JURY.

21 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
22 PRESENCE OF THE JURY.)

23 THE COURT: I SEE EVERYBODY IS BACK IN THEIR SPOT.

24 LADIES AND GENTLEMEN, AS I UNDERSTAND FROM YOUR NOTE, YOU
25 WOULD LIKE FOR ME TO DISCUSS AGAIN WITH YOU MURDER AND

1 MANSLAUGHTER, AND GO OVER THE ELEMENTS OF EACH SO THAT YOU
2 CAN UNDERSTAND THE DIFFERENCE BETWEEN THE TWO. SO WITH
3 MURDER BEING THE ORIGINAL CHARGE, AND THE MORE SIGNIFICANT
4 OF THE TWO CRIMES, I WILL START WITH MURDER. BOTH CRIMES
5 OF COURSE INVOLVED THE KILLING OF ANOTHER PERSON. AND
6 WITH THE RESPECT TO MURDER, IT IS THE KILLING OF ANOTHER
7 PERSON WITH MALICE AFORETHOUGHT. NOW MALICE IS THE
8 INTENTIONAL DOING OF A WRONGFUL ACT, WITHOUT JUST CAUSE OR
9 EXCUSE, AND WITH THE INTENT TO INFLICT INJURY. MALICE IS
10 ALSO DEFINED AS HATRED OR ILL WILL. MALICE IS A WRONGFUL
11 INTENT TO INJURE ANOTHER PERSON. IT INDICATES A
12 WICKEDNESS OR A DEPRAVED SPIRIT THAT IS INTENT ON DOING
13 WRONG.

14 IT IS A LEGAL TERM THAT IMPLIES WICKEDNESS AND IT
15 EXCLUDES A JUST CAUSE OR A JUST EXCUSE. IT INDICATES A
16 FORMED PURPOSE AND DESIGN TO DO A WRONGFUL ACT UNDER
17 CIRCUMSTANCES THAT EXCLUDE ANY LEGAL RIGHT TO DO IT. SO
18 KILLING IS MURDER IF IT IS PERFORMED WITH MALICE
19 AFORETHOUGHT. AND THAT IS WHAT MALICE IS, THAT HATRED,
20 THAT ILL WILL, THAT WRONGFUL INTENT. AFORETHOUGHT MEANS
21 THAT THE INTENT TO DO THE UNLAWFUL ACT WAS CONCEIVED OR
22 IT WAS PLANNED AT SOME TIME BEFORE THE ACT OR ACTS WAS
23 CARRIED OUT. MALICE DOES NOT HAVE TO EXIST FOR ANY
24 PARTICULAR PERIOD OF TIME PRIOR TO THE KILLING. NOW IT
25 DOESN'T HAVE TO BE IN THE MIND OF THE INDIVIDUAL WHO HAS

1 DONE THE KILLING FOR ANY PARTICULAR LENGTH OF TIME BEFORE
2 THE ACT OF KILLING IN ORDER TO RENDER THE KILLING MURDER.
3 IF THE MALICE IS PRESENT IN THE MIND OF THE ONE WHO IS
4 THE DOING THE KILLING ANY LENGTH OF TIME BEFORE THE ACT,
5 THEN IT'S PRESENCE WOULD BE SUFFICIENT TO RENDER THE
6 KILLING MURDER.

7 AS I INDICATED TO YOU, MALICE CAN BE EXPRESS OR IT
8 CAN BE INFERRED OR IMPLIED. IT'S STILL THE SAME KIND OF
9 MALICE. IT'S JUST A MANNER IN WHICH THAT MALICE IS
10 SHOWN. EXPRESS MALICE IS WHERE THERE IS MANIFESTED A
11 VIOLENT, A DELIBERATE, INTENTION TO UNLAWFULLY TAKE AWAY
12 THE LIFE OF ANOTHER HUMAN BEING. THAT WOULD BE EXPRESS
13 MALICE. BUT MALICE MAY BE INFERRED WHERE ONE
14 INTENTIONALLY AND DELIBERATELY DOES AN UNLAWFUL ACT WHICH
15 HE OR SHE KNOWS TO BE WRONG. AND IN VIOLATION OF THEIR
16 DUTY TO ANOTHER. MALICE MAY BE INFERRED WHERE NO EXCUSE
17 AND NO LEGAL PROVOCATION FOR THE KILLING APPEARS. AND
18 WHEN CIRCUMSTANCES SURROUNDING THE KILLING SHOW AN
19 ABANDONED HEART OR A MALIGNANT HEART THAT IS FATALLY BENT
20 UPON MISCHIEF.

21 AS I TOLD YOU, LADIES AND GENTLEMEN, IN ORDER FOR
22 THE KILLING TO BE DEFINED AS MURDER IT MUST BE DONE WITH
23 MALICE AFORETHOUGHT. AND, OF COURSE, THE DEATH MUST
24 RESULT FROM THE ACTUAL ACT THAT HAS BEEN PERPETRATED IN
25 THIS CASE, THE SHOOTING. OUR LAW ALSO SAYS THAT IF ONE

1 INTENTIONALLY KILLS ANOTHER WITH A DEADLY WEAPON THE
2 INFERENCE OF MALICE MAY ARISE. AND OF COURSE A WEAPON
3 SUCH AS A SHOTGUN, A PISTOL, OR SOME TYPE OF FIREARM IS A
4 DEADLY WEAPON. MALICE MAY BE INFERRED FROM THE USE OF
5 THAT DEADLY WEAPON. YOU ARE PERMITTED TO INFER THE
6 MALICE FROM THE USE OR THE HANDLING OF A DEADLY WEAPON IF
7 SUCH CONDUCT RESULTS DIRECTLY IN THE DEATH OF ANOTHER,
8 AND IF SUCH CONDUCT WAS SO INEXCUSABLE, SO AGGRAVATED AND
9 GROSSLY RECKLESS AS TO SHOW AN ACTUAL INTENTIONAL
10 DISREGARD OF THE CONSEQUENCES TO HUMAN LIFE. CONDUCT
11 SUFFICIENT TO SHOW DELIBERATE INTENTIONAL DESIGN TO USE,
12 EMPLOYEE OR HANDLE A DEADLY WEAPON AS TO ENDANGER THE
13 LIFE OF ANOTHER OR OF OTHERS WITHOUT ANY JUST CAUSE OR
14 EXCUSE IS SUFFICIENT TO RAISE AN INFERENCE OF MALICE.

15 HOWEVER, LADIES AND GENTLEMEN, IF FACTS ARE PROVED
16 BEYOND A REASONABLE SUFFICIENT TO RAISE AN INFERENCE OF
17 MALICE IF ANY FROM THE USE OF A DEADLY WEAPON TO YOUR
18 SATISFACTION, THAT INFERENCE IS SIMPLY AN EVIDENTIARY
19 FACT TO BE TAKEN INTO CONSIDERATION BY YOU, ALONG WITH
20 ALL OF THE OTHER EVIDENCE IN THE CASE, BEARING ON THAT
21 ISSUE OF MALICE. YOU MAY GIVE SUCH INFERENCE THE WEIGHT
22 YOU DETERMINE THAT IT SHOULD RECEIVE. A DEFENDANT IS NOT
23 REQUIRED TO PROVE THE ABSENCE OF MALICE. AND YOU OF
24 COURSE MAY EITHER ACCEPT OR REJECT ANY INFERENCE OF
25 MALICE.

1 IF YOU FIND THAT THE STATE HAS NOT PROVED BEYOND A
2 REASONABLE DOUBT THAT THE DEFENDANT KILLED THE VICTIM
3 WITH MALICE AFORETHOUGHT, THEN YOU WOULD BE ENTITLED TO
4 CONSIDER THE CRIME OF MANSLAUGHTER. AND OF COURSE YOU
5 HAVE A REASONABLE DOUBT AS TO WHETHER OR NOT THE STATE
6 HAS PROVEN MURDER OR MANSLAUGHTER, YOU WOULD RESOLVE THAT
7 DOUBT IN FAVOR OF THE MANSLAUGHTER. BUT AGAIN TO FIND
8 THE DEFENDANT GUILTY OF ANYTHING, THE STATE MUST PROVE
9 BEYOND A REASONABLE DOUBT EITHER MURDER OR MANSLAUGHTER.
10 NOW TO PROVE MANSLAUGHTER, THE STATE MUST PROOF BEYOND A
11 REASONABLE DOUBT THAT THE DEFENDANT TOOK THE LIFE OF THIS
12 VICTIM IN A SUDDEN HEAT AND PASSION AND UPON SUFFICIENT
13 LEGAL PROVOCATION. THE LAW RECOGNIZES THAT SUDDEN HEAT
14 AND PASSION MAY FOR THE TIME BEING AFFECT ONE'S SELF
15 CONTROL AND TEMPORARILY DISTURB THE SWAY OF ONE'S REASON,
16 AND THEREFORE REDUCE THE CRIME FROM MURDER TO
17 MANSLAUGHTER, PROVIDED THERE WAS SUFFICIENT LEGAL
18 PROVOCATION.

19 IN ORDER TO HAVE SUFFICIENT LEGAL PROVOCATION TO
20 REDUCE IT FROM MURDER TO MANSLAUGHTER, THIS SUFFICIENT
21 LEGAL PROVOCATION MUST BE SUCH AS WOULD BE CALCULATED TO
22 CAUSE A PERSON OF ORDINARY REASON AND CAUTION TO BECOME
23 ENRAGED. THAT IS TO EXPERIENCE SUDDEN HEAT AND PASSION
24 AND THEREBY LOSE CONTROL OF THEMSELVES. AS I INDICATED
25 TO YOU MERELY BY WAY OF ILLUSTRATION AND ILLUSTRATION

1 ALONE, THE FOLLOWING TYPES OF ACTS MAY BE ACTS OF
2 PROVOCATION THAT WOULD BE SUFFICIENT TO NEGATE MALICE AND
3 REDUCE THE CRIME OF MURDER TO MANSLAUGHTER. THOSE TYPES
4 OF ACTS THAT COULD BE CONSIDERED BY YOU THAT WOULD BE BY
5 WAY OF ILLUSTRATION TO YOU WOULD BE PREVIOUS ACTS OF
6 FIGHTING. AN UNJUSTIFIABLE ASSAULT MADE UPON SOMEONE
7 WITH VIOLENCE. SUDDEN MUTUAL COMBAT IN WHICH ONE PERSON
8 WAS KILLED BY ANOTHER, BUT WITHOUT ANY PREVIOUSLY FORMED
9 INTENTION OF DOING SO.

10 THOSE ARE ILLUSTRATIONS OF THE TYPES OF CONDUCT THAT
11 CAN JUSTIFY SOMEBODY TO EXPERIENCE SUDDEN HEAT AND
12 PASSION. MERE WORDS ALONE, LADIES AND GENTLEMEN, ARE NOT
13 IN THEMSELVES SUFFICIENT TO CONSTITUTE SUDDEN HEAT AND
14 PASSION TO PROVOKE SOMEONE AND TO CHANGE THE CONDUCT FROM
15 MURDER TO MANSLAUGHTER. TO BE MANSLAUGHTER, THE KILLING
16 MUST BE IN SUDDEN HEAT AND PASSION. IF THE HEAT AND
17 PASSION HAD COOLED OR IF THERE HAD BEEN SUFFICIENT TIME
18 BETWEEN THE PROVOCATION IF ANY AND THE KILLING FOR THE
19 PASSION TO COOL, THEN THE KILLING WOULD NOT BE ATTRIBUTED
20 TO HEAT AND PASSION BUT MALICE. THE SUFFICIENCY OF
21 COOLING TIME DEPENDS UPON WHETHER THERE WAS TIME
22 CONSIDERING ALL OF THE CIRCUMSTANCES FOR A PERSON OF
23 ORDINARY REASON TO COOL OFF.

24 SO, LADIES AND GENTLEMEN, YOU HAVE TO DETERMINE
25 WHETHER OR NOT THE STATE HAS PROVEN MURDER; THAT BEING

1 THAT THE KILLING TOOK PLACE WITH THE MALICE AFORETHOUGHT.
2 OR WHETHER THE STATE HAS PROVEN MANSLAUGHTER, WHERE THERE
3 WAS A KILLING THAT AROSE OUT OF SUDDEN HEAT AND PASSION,
4 THAT THEREBY THE MALICE WAS REDUCED AND DID NOT EXIST
5 BECAUSE THE DEFENDANT WAS OVERCOME WITH SUDDEN HEAT AND
6 PASSION BECAUSE OF A PROVOCATION THAT TOOK PLACE. BUT OF
7 COURSE IN ORDER TO PROVE THE DEFENDANT GUILTY OF ANYTHING
8 THE STATE HAS TO PROVE BEYOND A REASONABLE DOUBT EITHER
9 THE MURDER OR THE MANSLAUGHTER.

10 AND SO, LADIES AND GENTLEMEN, IF THERE ARE OTHER
11 QUESTIONS THAT COME UP, PLEASE SIMPLY WRITE ME A NOTE,
12 AND I WILL BE GLAD TO DEAL WITH THEM AS BEST THAT I CAN.
13 THANK YOU VERY MUCH. IF YOU WILL RETURN TO YOUR JURY
14 ROOM AND CONTINUE WITH YOUR DELIBERATIONS.

15 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
16 PRESENCE OF THE JURY.)

17 THE COURT: ANYTHING FROM THE STATE?

18 MR. COTHRAN: NOTHING, YOUR HONOR.

19 THE COURT: FROM THE DEFENSE?

20 MR. DEVOE: NOTHING FROM THE DEFENSE, YOUR HONOR.

21 THE COURT: THANK YOU, VERY MUCH. WE WILL REMAIN
22 IN RECESS.

23 (THEREUPON, AT 3:30 P.M. THE JURY COMMENCES
24 DELIBERATIONS.)

25 (THEREUPON, AT 3:45 P.M. THE JURY REACHES A

1 VERDICT.)

2 THE COURT: THANK YOU, VERY MUCH. IF YOU WILL BRING
3 THE JURY BACK IN.

4 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
5 PRESENCE OF THE JURY.)

6 THE CLERK: MADAM FORELADY, HAVE YOU REACHED A
7 VERDICT?

8 THE FORELADY: YES, SIR.

9 THE COURT: IS IT A UNANIMOUS VERDICT?

10 THE FORELADY: YES, SIR.

11 THE COURT: YOU MAY PUBLISH THE VERDICT.

12 THE CLERK: ON 2006-14-76, THE STATE OF SOUTH
13 CAROLINA VERSUS RALPHAEL LAMONT BRIGGS, WE THE JURY BY A
14 UNANIMOUS CONSENT FIND THE DEFENDANT GUILTY OF MURDER.
15 AND ALSO GUILTY OF POSSESSION OF A WEAPON DURING A VIOLENT
16 CRIME. SIGNED DEBORAH HOUSE FOREPERSON.

17 THE COURT: MADAM FORELADY AND MEMBERS OF THE JURY,
18 IF THIS IS YOUR VERDICT AND THE VERDICT OF EACH OF YOU,
19 WOULD YOU PLEASE RAISE YOUR RIGHT HAND FOR ME?

20 THE COURT: THANK YOU. LET THE RECORD REFLECT THAT
21 EACH MEMBER OF THE JURY RAISED THEIR RIGHT HAND. ANY
22 INDIVIDUAL POLLING REQUESTED BY THE DEFENSE?

23 MR. DEVOE: THERE IS, YOUR HONOR. YES.

24 THE COURT: VERY GOOD. LADIES AND GENTLEMEN, THIS IS
25 A PROCESS WHERE THE CLERK IS GOING TO ASK YOU TO STAND.

1 AND BASICALLY SHE IS GOING TO ASK YOU IF THAT WAS YOUR
2 VERDICT AND IF IT'S STILL YOUR VERDICT. SO PLEASE LISTEN
3 TO HER AND THE LISTEN AS SHE CALLS YOUR NAMES.

4 THE CLERK: THANK YOU, YOUR HONOR. BEGINNING WITH
5 THE FORELADY DEBORAH HOUSE, IS THIS YOUR VERDICT?

6 MS. HOUSE: YES.

7 THE CLERK: AND STILL YOUR VERDICT?

8 MS. HOUSE: AND STILL MY VERDICT.

9 THE COURT: THANK YOU, MA'AM. YOU MAY BE SEATED.
10 TRENTON B. ATKINSON, IS THIS YOUR VERDICT?

11 MR. ATKINSON: YES.

12 THE CLERK: AND STILL YOUR VERDICT?

13 MR. ATKINSON: YES.

14 THE CLERK: THANK YOU, SIR. LORETTA A. BROWN, IS
15 THIS YOUR VERDICT?

16 MS. BROWN: YES.

17 THE CLERK: AND STILL YOUR VERDICT?

18 MS. BROWN: YES.

19 THE CLERK: THANK YOU. NETTIE B. MCDUFFY, IS THIS
20 YOUR VERDICT?

21 MS. MCDUFFY: YES.

22 THE CLERK: AND STILL YOUR VERDICT?

23 MS. MCDUFFY: YES.

24 THE CLERK: CORA L. WHEELER, IS THIS YOUR VERDICT?

25 MS. WHEELER: YES.

1 THE CLERK: AND STILL YOUR VERDICT?

2 MS. WHEELER: YES.

3 THE CLERK: THANK YOU, MA'AM. THELMA ELLERBEE, IS
4 THIS YOUR VERDICT?

5 MS. ELLERBEE: YES.

6 THE CLERK: AND STILL YOUR VERDICT?

7 MS. ELLERBEE: YES.

8 THE CLERK: MONTY B. HICKS, IS THIS YOUR VERDICT?

9 MR. HICKS: YES, MA'AM.

10 THE CLERK: AND STILL YOUR VERDICT?

11 MR. HICKS: YES, MA'AM.

12 THE CLERK: BARBARA E. MCCARTHY, IS THIS YOUR
13 VERDICT?

14 MS. MCCARTHY: YES.

15 THE CLERK: AND STILL YOUR VERDICT?

16 MS. MCCARTHY: YES.

17 THE CLERK: MELVIN J. RICKETTE, IS THIS YOUR VERDICT?

18 MR. RICKETTE: YES.

19 THE CLERK: AND STILL YOUR VERDICT?

20 MR. RICKETTE: YES.

21 THE CLERK: PHILLIP GAMBLE, IS THIS IS YOUR VERDICT?

22 MR. GAMBLE: YES.

23 THE CLERK: AND STILL YOUR VERDICT?

24 MR. GAMBLE: YES.

25 THE CLERK: HEATHER B. BRABHAM, IS THIS YOUR VERDICT?

1 MS. BRABHAM: YES.

2 THE CLERK: AND STILL YOUR VERDICT?

3 MS. BRABHAM: YES.

4 THE CLERK: AND FRANCES A. SPIGNER, IS THIS YOUR
5 VERDICT?

6 MS. SPIGNER: YES.

7 THE CLERK: AND STILL YOUR VERDICT?

8 MS. SPIGNER: YES.

9 THE CLERK: THANK YOU, MA'AM. YOUR HONOR, THE JURY
10 HAS BEEN POLLED.

11 THE COURT: THANK YOU VERY MUCH. LADIES AND
12 GENTLEMEN, I APPRECIATE VERY MUCH YOUR SERVICES HERE THIS
13 WEEK. SOMETIMES WHEN A JURY HAS PERFORMED AS YOU HAVE, I
14 HAVE THE LUXURY BECAUSE OF A NUMBER OF JURORS OF EXCUSING
15 THEM FOR THE BALANCE OF THE WEEK. BUT UNFORTUNATELY IF I
16 DON'T PUT YOU BACK WITH THE REST OF THEM, I DON'T HAVE
17 ENOUGH JURORS TO GET MY NEXT JURY. SO I AM GOING TO HAVE
18 TO ASK THAT YOU BE BACK HERE AT 9:30 IN THE MORNING. AS
19 FAR WHAT YOUR VERDICT IS AND HOW IT WAS REACHED, IF YOU
20 WANT TO TALK WITH ANYONE ABOUT THIS CASE YOU CAN, BUT YOU
21 DON'T HAVE TO. AND NOBODY CAN MAKE YOU TALK ABOUT WHAT
22 TOOK PLACE ON THIS CASE. WHAT GOES ON IN THE JURY ROOM
23 IS VERY PRIVATE AND IT'S PROTECTED.

24 AND SO IF YOU START TALKING WITH SOMEONE AND DON'T
25 WANT TO TALK WITH THEM ANYMORE, TELL THEM YOU DON'T WANT

1 TO. AND IF THEY CONTINUE TO PRESSURE YOU OR SOMEBODY
2 PRESSURES YOU TO TALK WITH THEM, PLEASE REPORT THAT TO ME
3 SO THAT I CAN DEAL WITH IT APPROPRIATELY. BUT THANK YOU
4 FOR YOUR SERVICES HERE TODAY. WE'RE EXCUSING YOU AT THIS
5 TIME, AND WE'LL LOOK TO SEE YOU BACK AT 9:30 IN THE
6 MORNING.

7 (THEREUPON THE JURY IS DISMISSED AT 3:51 P.M.)

8 THE COURT: MOTIONS BY THE DEFENSE?

9 MR. DEVOE: I MAKE A MOTION FOR A NEW TRIAL AT THIS
10 TIME.

11 THE COURT: I FIND THAT THERE WAS EVIDENCE THAT WAS
12 SUBMITTED TO THE JURY UPON WHICH THEY COULD MAKE A
13 DETERMINATION AS TO THE DEFENDANT'S GUILT IN THIS MATTER
14 AS CHARGED. AND I DECLINE TO GRANT YOUR MOTION FOR A NEW
15 TRIAL. IS THE SENTENCING SHEET THEN PREPARED?

16 MR. COTHRAN: YES, YOUR HONOR. I GAVE IT TO THE
17 CLERK.

18 THE COURT: ALL RIGHT, IF YOU WILL COME FORWARD WITH
19 THE DEFENDANT.

20 THE COURT: MR. DEVOE, I WILL BE GLAD TO HEAR FROM
21 YOU ON BEHALF OF MR. BRIGGS.

22 MR. DEVOE: MY CLIENT LAMONT -- RALPHEAL LAMONT
23 BRIGGS IS 32-YEARS-OLD. AS HE TESTIFIED IN COURT, HE
24 CANNOT READ NOR WRITE. HE WENT EITHER THROUGH THE NINTH
25 GRADE AS SORT OF A SOCIAL PROMOTION SITUATION BEFORE HE

1 DROPPED OUT OF SCHOOL. HE INFORMED YOU THAT HE GOT HIS
2 DRIVER'S LICENSE AFTER TAKING THE EXAM SIX OR SEVEN TIMES.
3 AND THAT IS A PICTURE EXAM. I GUESS THEY HAD KIND OF A
4 FORMAT THEY CAN DO FOR A PERSON BEING ABLE TO DRIVE IN
5 SOUTH CAROLINA. HE IS NOT MARRIED. HE DOES HAVE SOME
6 CHILDREN IN BALTIMORE. HE BOUGHT SOME SHOES TO SEND TO
7 ONE OF HIS TWO CHILDREN. HE MOVED DOWN HERE TO BE WITH
8 HIS GRANDMOTHER IN 2000. YOU ALSO HEARD HE DOESN'T WORK.
9 HE IS INCAPABLE OF WORKING, APPARENTLY OF HOLDING A JOB
10 WITH HIS EDUCATIONAL SKILLS.

11 HE FREELY ADMITTED TO YOU THAT HE DEALT DRUGS TO
12 SURVIVE HERE. AND YOU HEARD THE EVIDENCE IN THE CASE.
13 AND HE CONTENDED IT WAS SELF-DEFENSE. OBVIOUSLY THE
14 JURY DID NOT BELIEVE THAT. AND HE -- THE SOLICITOR GAVE
15 HIM AN OPPORTUNITY TO PLEAD EARLIER TO VOLUNTARY
16 MANSLAUGHTER, WHICH HE REJECTED, WHICH IS UNFORTUNATE. I
17 THINK I TOLD YOU HE IS 32. I WOULD ASK, YOUR HONOR,
18 UNDER THE CIRCUMSTANCES OF THE CASE AND THE WHOLE
19 SCENARIO YOU HAVE HEARD IN THE TRIAL, THAT YOU GIVE HIM
20 AS MINIMUM A SENTENCE AS YOU CAN UNDER THIS CHARGE,
21 WHICH IS 30 YEARS. HE WOULD BE 62 WHEN HE GOT OUT, MINUS
22 THE TIMES HE'S BEEN IN JAIL. HE'S BEEN IN JAIL SINCE HE
23 WAS ARRESTED I THINK IT WAS ON SEPTEMBER 6TH OR SEPTEMBER
24 7TH. HE TURNED HIMSELF IN RIGHT AWAY TO DETECTIVE --
25 SERGEANT CUTLER. HE WASN'T RUNNING. HE WAS FACING UP TO

1 THE MUSIC. UNFORTUNATELY TAKING THE MUSIC WAS A LITTLE
2 DIFFERENT THAN THE JURY'S TAKE WAS.

3 WELL WE WERE HINDERED AT THE TRIAL BY THE FACT THAT
4 SOME OF THE WITNESSES WERE NOT AVAILABLE. LIVED IN NEW
5 YORK OR IN NEW YORK. AND I DIDN'T HAVE ANY ADDRESS FOR
6 THEM. IN ANY EVENT, I THINK THAT PEOPLE I HAVE TALKED TO
7 PEOPLE LIKE MS. GREEN WHO TESTIFIED, TOLD ME HE IS A VERY
8 NICE PERSON. NEVER HAD ANY TROUBLE WITH HIM WHEN HE WAS
9 AROUND HER PLACE. AND OTHERS I HAVE TALKED TO SAID THE
10 SAME THING. THE JAIL IS TELLING ME HE HAS BEEN A MODEL
11 INMATE. NO PROBLEMS THERE. SO I WOULD ASK YOUR HONOR
12 TO GIVE HIM SOME CONSIDERATION FOR THAT KIND OF BEHAVIOR
13 HE EXHIBITS IN THIS SYSTEM, AND GIVE HIM THE MINIMUM
14 SENTENCE HE ASKED FOR.

15 THE COURT: MR. BRIGGS, ANYTHING YOU WOULD LIKE TO
16 TELL ME?

17 THE DEFENDANT: YEAH, I AM JUST SAYING, I AM SORRY
18 FOR WHAT HAPPENED. AND, YOU KNOW, I DIDN'T MEAN FOR WHAT
19 HAPPENED LIKE HOW IT HAPPENED. YOU KNOW, SORRY TO THE
20 MOTHER, YOU KNOW.

21 MS. HOUSE: TANK, YOU ARE SORRY?

22 THE DEFENDANT: YOU KNOW, I MEAN---

23 MR. COTHRAN: YOU'VE GOT TO TALK TO THE JUDGE, OKAY.
24 HANG ON A MINUTE, YOU WILL GET TO TALK TO THE JUDGE.

25 THE DEFENDANT: LIKE I SAY, I DIDN'T MEAN TO DO IT.

1 AND IT WAS AN ACCIDENT, YOU KNOW. AND I AM GUILTY.
2 THERE IS NOTHING I CAN DO ABOUT IT, YOU KNOW, I AM SORRY,
3 YOU KNOW.

4 THE COURT: THANK YOU, SIR. SOLICITOR.

5 MR. COTHRAN: YOUR HONOR, MS. HOUSE, THE, MOTHER, IS
6 HERE. I DON'T WHETHER SHE WANTED TO ADDRESS THE COURT.
7 I DIDN'T WANT HER -- THEM TO ADDRESS EACH OTHER.

8 THE COURT: YES.

9 MR. COTHRAN: BUT THE JUDGE IS FIXING TO SENTENCE
10 HIM, SO IF YOU WANT TO TELL THE JUDGE ANYTHING---

11 MS. HOUSE: YES.

12 MR. COTHRAN: ---PRIOR TO SENTENCING HIM.

13 MR. HOUSE: RALPHEAL, TANK IS HIS STREET NAME. I'VE
14 KNOWN TANK EVER SINCE TANK CAME FROM BALTIMORE. I TAKE
15 TANK'S KIDS IN MY HOUSE, IN MY HOME, AND THIS IS THE
16 THANKS TANK GIVE ME, MY ONLY SON, AWAY FROM ME. MY SON
17 AIN'T ROWDY. TANK KNOW MY SON WOULD NEVER HURT TANK THAT
18 DAY. ME AND TANK ALWAYS TALK. TANK ALWAYS SAY, ONLY
19 SOMEBODY CAN TALK TO WESLEY IS ME. I NEVER HURT WESLEY.
20 THIS IS THE THANKS I GET. I TAKE TANKS TWO KIDS IN THE
21 HOME. AND TAKE MY BABY'S CLOTHES, AND MAKE TANK'S LITTLE
22 GIRL LOOK LIKE A LITTLE GIRL. HE COULD HAVE GOT IN HIS
23 CAR, DROVE AWAY. HE COULD HAVE GOT ON THE PHONE,
24 CONTACTED ME. WESLEY BOTHER HIM, TANK KNOWS HOW TO
25 CONTACT ME, OR TELL SOMEBODY TO CALL WESLEY'S MAMA. I

1 NEVER HURT TANK AND NEVER HURT NEAR ONE OF THEM KIDS.

2 AND TANK KNOW, I NEVER -- I USED TO, SOME ON THE
3 STREET; TWO JOBS I HAD, TIRED, GET THEM KIDS OFF THE
4 STREET, KEEP THEM KIDS FROM GETTING IN TROUBLE WITH HIM.
5 AND THAT AIN'T SORRY, THAT'S THE THANKS YOU GIVE ME.

6 THE COURT: THANK YOU, MA'AM. ANYTHING ELSE,
7 SOLICITOR?

8 MR. COTHRAN: NO, SIR. YOU ARE FAMILIAR WITH HIS
9 RECORD. I THINK HE HAS PRIOR CONVICTION AND A GUN
10 CONVICTION. AND THEN BACK IN EARLY 90'S HE HAD A BURGLARY
11 AND POSSESSION OF A WEAPON.

12 THE COURT: WELL EVIDENTLY THERE HAD BEEN A GOOD
13 RELATIONSHIP WITH THESE INDIVIDUALS PRIOR TO THIS
14 UNFORTUNATE EVENT BACK IN SEPTEMBER. ANY TIME FIREARMS
15 BECOME INVOLVED SO OFTEN SERIOUS INJURY OR DEATH FOLLOWS.
16 THE JURY HAS SPOKEN IN THIS MATTER. I AM GOING TO TAKE
17 VARIOUS THINGS INTO CONSIDERATION. I NOTE THAT YOU DO
18 NOT HAVE AN EXTENSIVE RECORD FOR VIOLENT CRIMES EVEN
19 THOUGH YOU DO HAVE A RECORD THAT RELATES TO POSSESSION OF
20 A FIREARM IN THE PAST. AND DRUG CONVICTIONS. AND
21 OBVIOUSLY YOU WERE OUT THERE SELLING DRUGS ON THIS
22 OCCASION. IS THE DATE OF HIS ARREST THE 6TH OR THE 7TH
23 OF SEPTEMBER?

24 MR. COTHRAN: I SHOW THE 6TH, YOUR HONOR.

25 THE COURT: THE 6TH?

1 MR. COTHRAN: YES, SIR.

2 MR. DEVOE: YEAH, HE DID TESTIFY HE TURNED HIMSELF
3 IN ON THE NEXT DAY.

4 MR. COTHRAN: THE WARRANT WAS SERVED ON THE 6TH.

5 MS. ROGERS: THE WARRANT WAS SERVED ON THE 6TH.

6 MR. COTHRAN: THAT'S WHAT I'VE GOT.

7 THE COURT: I'LL GIVE HIM CREDIT SINCE SEPTEMBER 6TH.
8 SENTENCE IN THIS MATTER ON THE CHARGE OF MURDER YOU BE
9 COMMITTED TO THE STATE DEPARTMENT CORRECTIONS FOR A PERIOD
10 OF 37 YEARS. ON THE POSSESSION OF A FIREARM, FIVE YEARS
11 THESE TWO COUNTS TO RUN CONCURRENT WITH EACH OTHER.
12 GIVING YOU CREDIT SINCE SEPTEMBER 6TH 2005. GOOD LUCK TO
13 YOU.

14 MR. DEVOE: THANK YOU, YOUR HONOR.

15 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
16
17
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25

1 CERTIFICATE

2 STATE OF SOUTH CAROLINA)

3)
4 COUNTY OF CLARENDON

5
6 I, MARGARET T. SULLIVAN, OFFICIAL COURT REPORTER FOR
7 THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA,
8 DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
9 AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD
10 AND EVIDENCE INTRODUCED IN ABOVE CAPTIONED CASE, RELATIVE
11 TO APPEAL, IN THE GENERAL SESSIONS COURT, ON MARCH 21,
12 2006, FOR CLARENDON COUNTY, MANNING, SOUTH CAROLINA.

13 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
14 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

15 5-30-06 Margaret T. Sullivan
16 DATE

17 COURT REPORTER
18 MY COMMISSION EXPIRES OCTOBER 3, 2011
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-14-023

Raphael Lamont Briggs, #314499,

Applicant, pro se,

vs.

The State of South Carolina,

Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

A P P L I C A T I O N

1. Place of detention?

** South Carolina Department of Corrections
 Perry Correctional Institute, Q3A-101
 430 Oaklawn Road
 Pelzer, South Carolina 29669

2. Name and location of Court which imposed sentence?

** General Sessions Court for
 Clarendon County
 P.O. Box Drawer E
 Manning, South Carolina 29102

3. Name(s) of co-defendant(s) (if any)?

** None

4. The indictment number or numbers (if known) upon which and the offense(s) for which sentence was imposed?

** Indictment No.: 2006-GS-14-0076

Count One - Murder

Count Two - Possession of Firearm During
 Commission of a Violent Crime

5. The date upon which sentence(s) was imposed and the terms of the sentence(s):

** Sentence Date: March 21, 2006

Count One = Thirty-seven (37) Years Imprisonment;

Count Two = Five (5) Years Imprisonment;

Sentence Terms = Concurrent Service.

6. How was a finding of guilt determined?

** By Jury Verdict, After Plea of Not Guilty and Trial

7. Did you Appeal from the judgement of conviction or the imposition of sentence?

** Yes

8. If you answered "Yes," to (7), list:

(a) The name of each Court to which you Appealed?

** South Carolina Court of Appeals

(b) The result in each such Court to which you Appealed?

** Conviction and Sentences Affirmed

(c) The date of each such result?

** September 8, 2008

(d) The citation of any written opinion or orders entered pursuant to such results?

** Affirmed pursuant to State v. Adams, 580 S.E.2d 785, 795 (Ct.App.2003)(holding; arguments not raised to or ruled upon by the trial court are not preserved for appellate review, and a defendant may not argue one ground below and another on appeal.)

9. If you answered "No," to (7), state your reasons for not so appealing:

** Answered "Yes" to (7)

10. State concisely the grounds on which you base your allegation(s) that you are being held in custody unlawfully:

** (a) "Ineffective Assistance of Trial Counsel";

(b) "Prosecutorial Misconduct".

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

** (a) See Attachment at page 8 through 36;

(b) See Attachment at page 37 through 41.

12. Prior to this Application have you filed with respect to this conviction:

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

** No

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

** No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)?

** No

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

** No

13. If you answered "Yes," to any part of (12), list with respect to each petition, motion or application:

** Applicant answered "No" to each part of (12)

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

** No

15. If you answered "Yes," to (14), identify:

** Applicant answered "No"

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reason why such ground has not previously been presented:

** A State Procedural bar for each ground set forth in (10) has existed prior to this Application. That "bar" existed pursuant to the dual appellate procedure process in South Carolina which mandates fundamental Constitutional grounds, such as those set forth in (10), be raised only in a collateral forum, and thus, this Application for Post-Conviction Relief is the accepted collateral forum in South Carolina.

17. Were you represented by an attorney at any time during the course of:

(a) Your arraignment and plea?

** Yes

(b) Your trial, if any?

** Yes

(c) Your sentencing?

** Yes

(d) Your appeal, if any, from the judgement of conviction or the imposition of sentence?

** Yes

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

** Yes - On Direct Appeal

18. If you answered "Yes," to one or more parts of (17), list:

[(a) The Name and address of each attorney who represented you, and (b) the proceedings at which each such attorney represented you.]

** At Arraignment & Plea, Trial, Sentencing, and Notice of Appeal, I was represented by:

Mr. Harry L. Devoe, Jr., Esquire
7411 Black River Road
New Zion, South Carolina 29111

** On Direct Appeal, I was represented by:

Mr. Joseph L. Savitz, III, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589

19. State clearly the relief you seek in filing this application:

** The Applicant Prays this Honorable Court to Reverse his convictions and vacate his sentences. Thereby Granting the Applicant a New Trial should the State pursue re-prosecution.

Or any other such relief as the Court deems appropriate based on the fundamental Constitutional deprivations associated with the claims of this Action.

20. Are you now under sentence from any other Court that you have not challenged?

** No

The Applicant reserves the Statutory and Procedural right to Amend and/or Supplement this Original Application for Post-Conviction Relief as may be prudent or otherwise become necessary to insure each and every non-frivolous ground for relief is not waived or abandoned.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

)
)
)

VERIFICATION

I, Raphael Lamont Briggs, #314499, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me at this time for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true to the best of my knowledge and belief.

Raphael Lamont Briggs
Raphael Lamont Briggs, #314499
Applicant acting pro se

Sworn and subscribed to before me,

this 12th day of January, 2008.

Stewart M. Mearns
Notary Public for South Carolina

My Commission Expires: December 7, 2016

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS
AND AFFIDAVIT IN SUPPORT THEREOF

I, Raphael Lamont Briggs, #314499, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under the penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Raphael Lamont Briggs
Raphael Lamont Briggs, #314499
Applicant acting pro se

Sworn and subscribed to before me.

this 13th day of January, 2008.

Dennis T. Mulvaney
Notary Public for South Carolina

My Commission Expires: January 7, 2016

A T T A C H M E N T T O

Application For
Post-Conviction Relief

Raphael Lamont Briggs, #314499,
vs.
The State of South Carolina.

I N D E X T O A T T A C H M E N TGround (a): "Ineffective Assistance of Trial Counsel"

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[2] Trial Failures And Omissions	Page 9 - 36
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Trial Counsel Opens Doors For the Introduction Of "Bad Act" And Character Defaming Evidence	Page 14 - 22
Trial Counsel Chose Not To Oppose Impeachment Based On A Conviction For Marijuana Possession	Page 22 - 25
Trial Counsel Failed To Object To The State's Use Of A Golden Rule Argument And Language Designed To Challenge, And Inflame The Prejudices And Passions Of The Jurors	Page 25 - 29
Trial Counsel Failed To Request A Jury Charge On The Offense Of Involuntary Manslaughter	Page 30 - 33
Trial Counsel Failed To Properly Preserve The Trial Court's Prejudicial Error Of Law. Whereas, The Court Submitted To The Jury Whether Briggs Was A Lawful Guest And Thus Had A Duty To Retreat Before He Acted In Self-Defense.....	Page 33 - 36

Ground (b): "Prosecutorial Misconduct" Page 37 - 41

[Ground (a)]: "Ineffective Assistance Of Trial Counsel"

Strickland Analysis Defined And Applied To Case At Bar:

The United States Supreme Court handed down the case of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984) as the instructive case analysis by which all Courts were expected to use for guidance in analyzing claims framed within the Constitutional parameters associated with "Effective Assistance Of Counsel". The Supreme Court squarely decided and announced through Strickland that the Sixth Amendment mandated that; "[A]n accused defendant is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure the trial is fair." Id. at 466 U.S. 685. Further, "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id.

Strickland identifies and assigns some specific duties required to be performed by counsel based within the framework of the Sixth Amendment ideals, such as but not limited to; (1) assistant to the defendant," which is (2) "to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution." Id. at 466 U.S 688.

[1] Pretrial Failures And Omissions:

In the case at bar, trial counsel failed to adequately prepare for trial in any form. Specifically, trial counsel failed to independently investigate any of the facts and circumstances of the case. Counsel did not even discuss potential witnesses for the defense until the day of trial. Thus, to say that counsel even investigated what was provided by the Solicitor through

Discovery would be a gracious stretch. But, it is certainly no stretch that counsel did not investigate beyond what information was provided by the State through Discovery. See Von Moltke v. Gillies, 322 U.S. 708, 68 S.Ct. 316, 92 L.Ed. 309 (1947) whereas counsel was declared to have rendered ineffective assistance, to wit: (Counsel failed to independently investigate the facts and evidence of the case, did not interview potential witnesses either for the State or defense as he prepared for trial.) See United States ex rel Spencer v. Warden, Pontiac Correctional Center, 545 F.2d 21, 24-25 (7th Cir. 1970) (Effective representation "hinges on adequate pretrial investigation for the mere appearance of in-court effectiveness cannot compensate for inadequate pretrial preparation). See E.G. Moore v. United States, ("... although the fate of a criminal defendant is determined at trial, the course of that trial can be decisively affected by actions of defense counsel in preparing the case.") See Davis v. Alabama, 596 F.2d 1214 (5th Cir. 1979) (Effective counsel must conduct a reasonable amount of pretrial investigation and not just accept what the prosecutor offers.)

[2] Trial Failures And Omissions:

Standard Of Review Discussed

Strickland has been often misread. For which the Applicant presents his grounds for relief keeping in mind that a Strickland analysis does not require a criminal defendant to show that trial counsel's deficient conduct "more likely than not" altered the outcome of the trial. Strickland merely requires that a criminal defendant demonstrate that "but for" his counsel's deficient performance, there is a "a probability sufficient to undermine reliability in the outcome" of the trial. Id. at 104 S.Ct. 2068 Thus, a criminal defendant need not prove at any level that trial counsel's deficient performance was outcome

determinative, as the language of Strickland focuses on a showing of a "likelihood of a result more favorable to the defendant." *Id.* at 2068.

While challenging trial counsel's effectiveness in the case at bar, the Applicant Prays this Honorable Court will examine each challenge (allegation) individually and also will consider their cumulative effect in light of the totality of the circumstances unique to the case at trial. Strickland, *supra* at 2069; United States v. Brown, 739 F.2d 1136, 1145 (7th Cir. 1984). The contention of "cumulative error" as expressed herein means that, trial counsel's individual errors and/or omissions may not, looking at the trial as a whole, cause doubt on the reliability of the result, and thus would not merit a reversal. On the other hand, even if individual acts and/or omissions are not so grievous as to merit a finding of incompetence (ineffectiveness) or of prejudice from such incompetence, their "cumulative effect" may be substantial enough to meet the Strickland test.

There is no mechanical number of minor errors and/or omissions that are summed to trigger a "cumulative error" review. It is a matter based on a case-by-case basis and should be evaluated to ascertain the likelihood of an outcome more favorable to the criminal defendant within the totality of circumstances unique to their case. The Applicant believes his case should trigger a "cumulative error" analysis.

Further, the Applicant declares that as this Honorable Court analyzes his issues framed within "Ineffective Assistance of Trial Counsel" taken individually, and in combination, the error and omissions by trial counsel will prove to the Court that the Applicant has met his burden of proving his trial counsel's representation fell below an objective standard of reasonableness. Strickland, *supra*; Edmond v. State, 241 S.C. 340, 534 S.E.2d 682 (2000).

Moreover, trial counsel cannot shield his decisions, errors and omissions based on a claim of legitimate trial strategy or tactics. See generally Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000) (... ineffectiveness of counsel is found where an invalid trial strategy is employed by defense counsel.) A glaring example of an invalid trial strategy or tactic used by defense counsel in the case at bar is his decision to "open the door" on devastating "bad act" and character defaming practices by his client. The impact of which cannot be ignored, to wit:

Facts Relevant To Case At Trial:

In the early evening hours of September 5, 2005 (Labor Day), an incidental encounter took place where it is undisputed that the Applicant was responsible for the discharge of a 20-gauge shotgun that resulted in the death of Wesley House. Based on a summary of the testimony from trial, the following took place through that tragic day and evening:

The Applicant (Raphael Briggs) testified that, he hung-out at the mobile home of Katie Green. That he was there every day, usually with several other neighbors and relatives of Katie Green who lived nearby. Earlier in the afternoon on the day of the incident, Briggs testified that while he and others were at Katie's trailer, he was approached by someone who wanting to buy some crack cocaine. He sent the person to see Wesley, but the person said he would rather deal with Briggs. Wesley got angry over that and started to scuffle with Briggs. Wesley took a vile of crack cocaine from Briggs valued at around \$50.00. Briggs at first though Wesley was just playing around, as Wesley had been drinking and was aggressive and boisterous when he drank alcohol. Briggs testified, he did get angry at first, but just left it alone knowing how Wesley was.

Later, Briggs left and purchased more crack cocaine, returned to the trailer and hid it in an old Ford Taurus that he kept in Katie Green's yard. After Briggs hid the cocaine, he left again with Katie Green's grandson to run some errands and went to the Mall to do some shopping. (At some point in Briggs' coming and going, it was testified that Wesley claimed that Briggs had tried to run him over with the car as he was leaving).

Briggs returned to the trailer at about 7:30 p.m. to drop off Sherod, Katie's grandson. He parked his girlfriend's car, got out of it and began walking to the Ford Taurus and his stash, when he noticed Wesley standing out by a Stop sign talking with some people. He also saw that Wesley was holding a wooden paddle (weapon) that he was reputed to carry around, especially when drinking alcohol. Briggs stated that Wesley began walking toward him quickly and in an aggressive manner saying, "what's up now nigger".

Briggs testified that he turned, walked back a couple steps to his girlfriend's car, reached into the car and popped the trunk. He stepped back to the trunk and took out the 20-gauge shotgun he always kept there. He testified that Wesley just kept coming despite the shotgun, which surprised him and prompted him to ask Wesley, "Are you crazy" and Wesley continued walking right into the end of the shotgun.

Briggs stated that he was scared because of the weapon in Wesley's hand and that it happened so fast that he didn't remember consciously pulling the trigger, and thought that maybe the shotgun discharged from Wesley walking into it. (Possibly, he pulled the trigger as he attempted to withdraw the shotgun as Wesley deliberately walked into it.)

Briggs further testified that, he tossed the shotgun back into the trunk which was still open and left the scene because he feared retaliation from some of Wesley's family who were present and others who lived nearby. He did not want

his girlfriend involved so, as he was preparing to return her car, he intended to remove the shotgun from the trunk and as he was doing so, he saw the wooden paddle (weapon) that Wesley had in his hand as he approached him. He guessed that Wesley must have dropped it into the truck when he was shot, and so, he had some of his friends remove and discard the shotgun and paddle.

Briggs stated that, in hindsight, he believed he could have left in his car when he first saw Wesley approaching him, but it happened so fast, that Wesley was right on him when he got to the trunk.

The State presented one (1) of several eyewitnesses (Dominique Lawson), who admitted under cross-examination that he was related (cousin) to Wesley. Dominique testified that he saw Wesley carrying around the wooden paddle (weapon) earlier in the day. He stated that, at the time of the shooting, he was flipping burgers on a grill in the porch area of the trailer. From that position, he turned around and watched the encounter after he heard Wesley say "what's up." while he was walking toward Briggs. Dominique testified that he was at an angle where he could only see the trunk area of Briggs' parked car, and that he did not see the wooden paddle in Wesley's hand as he approached Briggs, but, the manner in which he approached and said "what's up," was aggressive and could have been "fighting words".

Essentially, the State injected the theory whereby the Jury could infer that Briggs was angry about Wesley taking a small amount of his crack cocaine, and as such, since both Wesley and Briggs were known to sell crack cocaine, Briggs had to stand-up to Wesley in a "territorial - drug-lord" kind of way that has been depicted on television so dramatically over the past 30 years. And such was why he choose to shoot Wesley rather than leave. The State simply wished the Jury to believe that Briggs killed Wesley as an example to others, thereby sending the message, "this is my turf - don't mess with me.

The State argued as a matter of law, that Briggs had a "duty to retreat," as an element of "self defense," and yet, all evidence adduced at trial was that Briggs was an "invited guest" at the trailer, which was acknowledged by the property owner, Katie Green and the State's only eyewitness, Dominique Lawson. Further, Katie Green also confirmed seeing Wesley earlier in the day carrying around a wooden "bat". But, she was inside the trailer at the time of the encounter resulting in the shooting of Wesley, and thus did not witness anything related to that.

Based on that brief summary of trial facts, the Applicant presents the following trial issues and arguments as grounds for relief;

**Trial Counsel Opens Doors For The Introduction Of
"Bad Act" And Character Defaming Evidence**

In Defense counsel's opening statement to the Jury, counsel states in pertinent part, that:

At - Tr. p.39, lns.15-22:

"... they were doing some things that perhaps right minded citizens wouldn't be doing. They were selling products. You know what the word product means, to people coming by. And the victim stole some product from my client. My client didn't go after him. He didn't get mad at him. He just accepted him as being one of those things. But decided finally that he needed to replenish his product."

**** [Note]**

Through counsel's opening statement to the jury, he literally opened the door for the State to introduce unimpeded "bad acts" evidence associated with illegal drug related activities, as well as, eviscerating character evidence. Counsel spoke of "selling products" meaning crack cocaine, and from there, the possession, distribution, and selling of crack cocaine became an integral part of the State's case in chief. For example, during one of the State's primary witnesses, a Police investigator (Sgt.

Cutler) testified at Tr. p.78, ln.18 through p.79, ln.11, whereas "crack or crack cocaine" was mentioned ten (10) times in twenty (20) lines of testimony. **

At - Tr. p.64, lns.2-6:

During the cross-examination of Dominique Lawson, Defense counsel confirms by eliciting hearsay testimony that, his client (Briggs) had some product (crack cocaine) stolen from him earlier in the day after a "scuffle" with the deceased.

** [Note]

The matter of a "scuffle," between Briggs and Wesley and the taking of a vile of crack had already been testified to by the Police investigator, Sgt. Cutler at Tr. p.78. Defense counsel succeeded in acquired prejudicial corroboration by asking Lawson if he had heard about such a "scuffle" incident earlier in the day. Thus, Defense counsel re-rung a bell in the jurors minds which easily resulted to emphasize the possibility of "malice" to have existed based on that "scuffle" and subsequent taking of a small amount of crack cocaine. **

At - Tr. p.106, lns.19-21:

The Court decides to allow Briggs to be impeached, if he testifies, based on a 2003 marijuana possession conviction, by stating, "I think under that scenario that the situation has come up, it would be appropriate to make the inquiry about his 2003 drug record that has already had that door opened."

** [Note]

From here, being as no objections and arguments have been made by Defense counsel to keep such prejudicial matters from coming before the jury, it can be said that Defense counsel "crossed over into the camp of the prosecution," which is further exemplified by counsels following queries and comments: **

At - Tr. p.122, lns. 12-15:

- (1) Defense counsel elicits through his client's testimony that, his client has never had a (legal) job in South Carolina.

At - Tr. p.123, lns.22-25:

- (2) Defense counsel asks his client if he goes to the trailer a lot to sell drugs?

At - Tr. p.124, lns.4-5:

- (3) Defense counsel asks, -- was that -- that was your headquarters to sell drugs?

At - Tr. p.165, lns.7-8 and ln.12:

- (4) Defense counsel asks, "Do you consider that area to be your place of business?" and then asks, "Where else did you sell drugs besides there?"

**** [Note]**

Immediately following Defense counsel's question, the State followed-up with questions on cross-examination that combined as "one-two-punches" toward prejudicing the Applicant, to wit: **

At - Tr. p.140, lns.19-25:

- Q. You told your lawyer you went there to sell crack.
 A. I was there yes.
 Q. And that's what you do. That is your hangout to sell crack?
 A. That's what I do. It's my life.
 Q. You haven't had a job since you've been here?
 A. No.

At - Tr. p.141, lns.1-3:

- Q. Your girlfriend works, and you hangout at Ms. Green's house to sell crack all day?
 A. Yes, Sir.

At - Tr. p.141-143, lns.1-15:

Questions and answers amounted to a confirmation of earlier testimony concerning selling crack cocaine, the taking of crack cocaine and the "scuffle" between Briggs and Wesley.

At - Tr. p.165, lns.17-20:

Q. That was your turf?

** [Note]

That question set up the inflammatory closing by the State's, as follows in pertinent parts: **

At - Tr. p.195, ln.23 through p.196, ln.1:

"... He's a drug dealer with a gun who gets in his back yard and shoots his gun all the time. And he loads it with slugs and he keeps it there. And this is a turf situation, so he got his gun and now he is protected."

At - Tr. p.199, lns.3-9:

"... This time he comes back with that shotgun. Loaded with slugs. And he is going to show everybody out there, he is the man. Ain't nobody gonna make no fool out of me. I am going to show you right now who is in charge. And he crams that gun in his stomach and pulls the trigger and killed that man.

At - Tr. p.200, lns.15-24 in pertinent parts:

"... I am the bad dude on the street. I get to sell my crack. Ain't nobody gonna laugh at me and take my drugs and get away with it. I am coming back with my shot gun and show you right now who is in charge. In front of all his friends. I am the bad guy. ... I've got to come up with a story that the jury is going to believe."

*

** [Note]

Defense counsel opened the door for all drug related "bad acts," to be explored by the State. Counsel's actions and failure to object, invited the State to inject into the trial, without limitations, an irrelevant, embellished and imaginary world of drug dealers, and the prototypical criminal acts and violence that arouse some of the greatest public anxiety.

Defense counsel's choices opened the door for the Jury to convict the Applicant based on preconceived thoughts, beliefs and ideas related to stylized drug-gang violence, and "turf wars" associated with same. **

There can be no question that Defense counsel should not have opened the doors for the State prosecutor to drive a train through. See Tr. p.105, lns.23 - through - p.106, lns.18 whereas, in dialog between Defense counsel, the Court and Solicitor is taking place. The Solicitor notes on the Record that "I needed that motive that he put in place and it worked out good". The Solicitor was referring to Defense counsel opening the door to the altercation (scuffle) between Briggs and the deceased (Wesley) and the taking of crack cocaine.

The can-of-worms opened by Counsel on the issue of "selling product" (crack cocaine), Counsel should have fought to exclude any mention of illegal activities ("bad acts") there stood outside the scope of the crimes being tried. Further, Defense counsel should have objected to the 2003 marijuana possession being used to impeach Briggs if he testified. The record does not support that the door was opened on that particular possession offense, moreover, it was not a "moral turpitude" type of offense. Case law and Rule of Evidence were in place for Defense counsel to use to guard against such prejudicial matters coming before the Jury, or in the very least, to minimize same through a "tailoring process," whereby the prejudice could be balanced by the Court to conform within principles associated with a fair trial.

Being graciously optimistic to Defense counsel reasoning, it is conceivable that he employed a strategy, in that, he wanted to establish that Katie Green's property was his clients "place of business," and as such would be shielded by "no duty to retreat," before using deadly force in "self defense" while at his "place of business". Notwithstanding, Counsel cannot use that strategy as a shield against the ineffective assistance claim in this case. It was a completely ludicrous attempt to circumvent the law on "self-defense," and as such was an invalid strategy. Common sense must dictate that an illegal business is no business as a matter of law. Even a "moral right" to self defense

during an illegal activity is highly questionable, particularly within legal parameters of "self defense" principles. Further, Counsel must have realized his error as he provided arguments and case law to the Court concerning "no duty to retreat". Counsel must have learned by that point at trial that, being as his client was an "invited guest," on the property where the incident took place, he was shielded against a "duty to retreat" argument by the State to negate "self-defense".

Therefore, it seems likely that trial counsel was either completely unprepared to enter trial of this magnitude, or counsel intentionally "tanked" the trial. The later seems most likely since so many basic and fundamental Rules of Procedure were dismissed and not utilized by counsel. More disturbing, Counsel chose to ignore any meaningful use of the most basic, common sense trial mechanisms available, such as objections, motions, etc., to exclude, or minimize prejudicial matters, and would have preserve same for Appellate review.

At PCR an Applicant who asserts that evidence entered at trial deprived him of a fair determination of guilt or innocence has the burden of proving that assertion similar to the holding of State v. Copeland, 278 S.C. 572, 300 S.E.2d 63 (1982). Whereby the Applicant in the case at bar, asserts that his trial attorney abidicated his duty to advocate his cause at trial in any meaningful way. It is just as likely that the Applicant was convicted based on being a "drug dealer," as he was based on sufficient proof on charges being tried. He essentially had two (2) trials in one.

No statement that was given by the Applicant to the police was being used at trial, and thus no need for a Jackson v. Denno hearing to ascertain the voluntary nature of any such statement. With that in mind, Counsel should have leaped at any opportunity to keep out any mention of other "bad acts," of harmful "character evidence" until such time that the Court, through a proper

analysis deemed such evidence relevant and admissible. Or, until such time as the Defendant personally puts such matters at issue by waiving his right to remain silent.

If anticipated, Counsel should have moved the Court pre-trial to exclude such evidence, or otherwise objected at the first instance of such coming before the jury and sought exclusion of same outside the presence of the jury. Had Counsel done so, the Court would have had to have made several analytical determinations, prior to a determination of admissibility, and the Court would have been placed on notice of imminent Appellate oversight based on such analysis and determinations. For example; the Court would have had to determine first, if the evidence sought to be excluded was "relevant evidence," as defined by Rule 401, SCRE. (The unique circumstances of the case at trial may have required the exclusion of the evidence as irrelevant.) State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (2001). If the Court determined the evidence to be "relevant," then the Court would have to perform a Rule 403, SCRE, balancing analysis to ascertain whether the relevant evidence should be excluded based on prejudice, confusion, or waste of time. Meaning, that although the evidence has been deemed relevant, it may be excluded if it's probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Alexander, supra.

Specifically, Counsel should have argued for the exclusion of the "bad acts," and devastating character evidence based on Rule 404(b), SCRE, holding that, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. State v. Lyle, 125 S.C 406,

118 S.E. 803 (1923); State v. Garner, 304 S.C. 220, 403 S.E.2d 631 (1991). Granted, in the case at bar, it is possible the State could have argued, at least some, of the illegal activities alleged to be ongoing activities by the Defendant. Yet, more proof would have been required at trial than what was required during the Applicant's trial, and thus, more proof may not have been available. Something more than "hearsay" would be needed to establish that Briggs was a drug dealer, or that a "scuffle" took place between Briggs and the deceased, or that the deceased took a vile of crack cocaine from Briggs during the alleged "scuffle". Until Briggs, took the stand and opened the door to such inquiries, the State would have been required to present "clear and convincing evidence," of unconvicted "bad acts" even if admissible within one of the exceptions of Rule 404(b), SCRE. Further, the Court would still have had to make a Rule 403, SCRE, balancing test and reduce or limit any unfair prejudice if at all possible. All Counsel had to do was object or move the Court to preclude such evidence if he anticipated the State going there in it's case-in-chief.

But, Counsel did more than not attempt the exclusion of such "bad act" evidence, he actually opened the door and introduced it himself. The State was allowed unhindered exploration without any subsequent objections, or other limiting exercises to minimize the prejudice to his client who was on trial for Murder and Use of a Firearm During the Commission of a Violent Crime.

All counsel had to do was object and principles such as those outlined thus far by our State Rules of Procedure and case law, and those set forth by the United States Supreme Court would have been triggered to guard his clients "fair trial rights". The U.S. Supreme Court has stated that, when a Court is analyzing whether a particular piece of evidence raises a danger of unfair prejudice, if it did, the Judge would go on to evaluate the degrees of probative value and unfair prejudice, not for only the item in question, but for any actual

substitutes as well. If an alternative were found to have substantially the same or greater probative value but a lower degree of unfair prejudice, sound judicial discretion would discount the value of the item first offered and exclude it if it's discounted value were substantially outweighed by unfair prejudice risks. See Old Chief v. United States, 117 S.Ct. 644, at 651 [7]. In other words, it is the law of the land, that a trial Court will seek to minimize the risks associated with unfair prejudice when analyzing questionable evidence. And so, the trial Court, in the case at bar, would have endeavored to seek to minimize if not exclude entirely, such prejudicial evidence if Counsel would have objected or otherwise move the Court for exclusion.

**Trial Counsel Chose Not To Oppose Impeachment
Based On A Conviction For Marijuana Possession**

As stated earlier, the Court allowed impeachment on a 2003 Marijuana Possession Conviction by declaring that, "... it would be appropriate to make the inquiry about his 2003 drug record that has already had that door opened." [Tr. p.106, lns.19-21] Defense counsel does not object based on any of the Rules of Procedure or case law in its favor. Further, nowhere in the trial Record is there a reflection that any "door had been opened" concerning a marijuana possession conviction in 2003.

Yet, even if it had, Counsel should have in the very least, made an attempt to argue against impeachment based on anything related to "drugs" because, as seemingly improbable as it is, that subject became such an inflammatory topic before the jury in this trial, that the Applicant (Briggs) may have been convicted based on a combination of the violent incident in conjunction with crack cocaine distribution, rather than, the subject matter of indictments being tried.

Defense should have stood in opposition to such impeachment based on Rule 609(1), SCRE, which would have afforded his client the added guard against (even more) unfair prejudice coming before the jury if he took the witness stand in his own defense. Rule 609(1) would have triggered another Rule 403, SCRE inquiry, by which the Judge would have had to weigh the "probative vs. prejudicial" value of such impeachment by prior conviction.

If Counsel would have objected to the prior conviction impeachment and articulated good arguments supporting his objection, the Court would have had to make that determination based on the unique circumstances of the trial, and so, would not have ignored the cumulative prejudice such impeachment would add to the trial that had already gone astray of the subject matter of Murder and Use of a Firearm... Moreover, the Court would have analyzed carefully knowing that imminent Appellate oversight would be likely based on properly argued and preserved objections.

Counsel may have supported his position in opposition to such impeachment by citing similar to the holding from State v. Alexander Johnson, Opinion No.: 25945, filed September 22, 2005, whereas the South Carolina Supreme Court ruled that the Coff balancing test must be applied by the trial Court when determinations are being made for the admittance of prior convictions for the purpose of impeachment. The Supreme Court quoted from the holdings in both U.S. v. Beaham, 644 F.2d 414 (4th Cir. 1981); and U.S. v. Cavender, 578 F.2d 529 whereas the defendant's in both these cases had their convictions and sentences reversed because the trial judge failed to state specific facts supporting the probative value of the prior convictions for impeachment purposes or otherwise show their probative value substantially outweighed their prejudicial effect. Thus, the South Carolina Supreme Court recognized the trial Court's weighing analysis (prejudicial vs. probative) and factual determination thereto placed

on-the-record as a judicial imparitive. If prior convictions are properly objected to, based on the intended purpose of impeachment while exercising the right to testify, such a Judicial duty for balancing and a factual determination made on-the-record thereto, is required upon each individual prior conviction sought to be used for impeachment purposes.

Our State Supreme Court reversed Colf's conviction while holding that, "... the strength of the State's case combined with the effectiveness of the cross-examination of Colf leads to the conclusion that the prior conviction was not sufficiently probative to substantially outweigh the undoubted prejudice." State v. Colf, 504 S.E.2d 360 (1998).

In the case at bar, similar to the holdings in Colf, the strength of the State's case was very high based on Defense Counsel's "opening of doors," and literally crossing over to the "camp of his adversary." The State did not even need effective cross-examination after the Defense completed it's direct examination of his own client. Yet, the State's effective cross-examination certainly negated any need to impeach based on the prior marijuana possession conviction. Thus, impeaching Briggs based on that conviction was not sufficiently probative to outweigh the undoubted prejudice. Further, the trial judge made no determination upon the prior marijuana conviction beyond a determination that it was a matter that had already had the door opened for it to be used. Based on the record, that determination was a factual error.

However, Counsel should have argued to keep out the prior marijuana possession, even if it had been specifically spoken of, Counsel should have argued against it coming before the jury again for the purpose of impeachment. Especially, like as the circumstances from Colf, for to be impeached based on a marijuana possession, was nothing more than additional unchecked prejudice stacked toward the likelihood of Briggs being convicted outside the realm of the actual indicted offenses.

No valid strategic decision can explain why trial counsel failed to object to such impeachment based on the prior marijuana conviction. Considering the plethora of prejudicial drug related matters already before the jury, Defense counsel's failure cannot rise to the level of "an objective standard of reasonableness." Magazine v. State, 361 S.E. 610, 606 S.E.2d 761 (2004).

It is by far, too easy to believe the possibility that the Jury resolved in favor of guilt based on the extensive admission of illegal drug activity evidence, rather than actual evidence of guilt related to the Murder offense being tried. And thus, the cumulative effect of illegal drug activity and the prior conviction for illegal drug possession had the effect of unfairly corroborating the State's theory in an improper manner. Therefore, Defense counsel should have vigorously objected to such impeachment evidence.

**Trial Counsel Failed To Object To The State's Use
Of A Golden Rule Argument And Language Designed To
Challenge, And Inflame The Prejudices And Passions Of The Jurors**

In the State's Opening statement to the Jury, the Solicitor began "dropping lugs" designed to prejudice and inflame the jurors, whereby, at:

Tr. p.34, lns.20-21:

"The deceased, Mr. Wesley House, this is his only day in Court today."

Tr. p.36, lns.20-21:

"And so Mr. House is here today seeking justice just like the citizens of this county."

Those first two opening statements by the Solicitor were intended to spiritually inject the presence of the deceased into the realm of the trial. Defense counsel should have been awakened by those statements to the point of being vigilant to guard against the Solicitor building further on those statements. Those statements were designed to invoke a sense of responsibility

to punish the Defendant (Briggs) which diminished Juror impartiality as they listen to the evidence. Then the Solicitor opened the door for all negative inferences associated with "fugitive - flight to avoid prosecution," to wit:

Tr. p.35, lns.11-12:

"Ultimately the police catch up with him."

Based on the State's opening, Defense counsel should have objected and sought admonishment and curative actions by the Court. If premature, the objection would have served notice to the Solicitor of counsel's diligence and for the likelihood of further objections and appellate preservation if the Solicitor attempted to build thereon. Counsel may have been considered to be "jumping the gun" by the Court if he objected at this point to the State's language concerning the deceased having his day in Court and being there seeking justice "just like the citizens of the County".

However, Defense counsel was well within an objection envelope to the State's intentional misleading statement that; "Ultimately the police catch up with him." That statement implied "flight to avoid prosecution" as if Briggs became a fugitive. The State derived a plethora of negative inferences that are normally attached to fugitive type of "flight" evidence. In truth, the Defendant fled the scene impulsively due to fear of retaliation from the friends and family of Wesley who were at or near the scene. Briggs turned himself in to the police the next day.

[Now] moving to the language chosen in the State's closing arguments, as asserted previously, Defense counsel should have been diligently alert based on all the inflaming and prejudice invoking material before the jury that the Solicitor would intend to inject "Golden Rule" as well as, "challenging" arguments into jury the minds of jurors as they began deliberations. The Solicitor remarks to the Jurors, as follows:

Tr. p.199, lns.10-20:

"That is not something we can accept in society. That ain't something we can accept in Clarendon County. Your job is to find the truth. It's undisputed he killed that man. So for you to find him not guilty, you've got to -- to turn him loose. You've got to say well, he is guilty, everybody says he is guilty. We think that he had a right to kill that him. We are going to turn him loose. That ain't the truth. He didn't have the right to kill that man. He flat murdered him. ... That's the truth in this case. That's what comes out.

Tr. p.201, lns.4-10:

"... He was going to settle that score in front of everybody else to show the rest of them, he was bad. He had been practicing with that gun he had full of slugs. It wasn't bird shot. It wasn't nothing to shoot snakes with if you are going fishing. It was buck -- I mean, slugs to kill a man with ...

[Then] Tr. p.201, lns.11-16:

"All I ask you to do is what is right. You do what is right for Wesley House's family. You do what is right for the citizens of this community. And find Ralphael Briggs guilty of murder and possession of a weapon during a violent crime. ..."

Defense Counsel should have vigorously objected and preserved his points while seeking curative actions by the Court to include the possibility of declaring a mistrial. Counsel should have argued his points of contention that were supported through the basic legal knowledge that, a Solicitor's arguments will be reviewed in the context of the entire Record. State v. Copeland, 278 S.C 572, 300 S.E.2d 63 (1982). If after objection, the trial judge lets the argument stand, the accused has the burden of proving that the arguments denied him a fair determination of guilt or innocence. *Id.* In order to constitute reversible error, it must be shown that the argument so infected the trial with unfairness as to make the resulting conviction a denial of due process. Darden v. Wainwright, 477 U.S. 168 (1986); Donnelly v. DeChristoforo, 416 U.S. 637 (1974); Von Dohlen v. State, 360 S.C. 598, 602 S.E.2d 738 (2004), cert. denied, 544 U.S. 943 (2005).

Thus, while considering the entire record of the Applicant's trial, there is no question that the Solicitor's arguments asked jurors to abandon their impartiality and view evidence from the viewpoint of "vengeance and punishment" or in the alternative the "release" of Briggs. Further, the Solicitor placed the jurors in the stance of "victims" and in essence asked them to speak for Wesley House, and his family. For this reason, as the opening and closing arguments by the Solicitor merged and combined with other prejudicial evidence introduced at trial, they became highly improper and were sufficient to deny Briggs a fair determination of guilt and thus, due process.

A solicitor's closing argument must be carefully tailored not to appeal to the personal biases of the jury. Von Dohlen, Supra. The argument must not be calculated to arouse the juror's passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom. Id. Jurors are sworn to be governed by the evidence, and it is their duty to consider the facts of the case impartially. Id. A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice. Id. In the case at bar, the evidence of Briggs' intent as the firearm he presented discharged was, and still is, in dispute. Thus, the evidence of malice is not overwhelming, and since the existence of malice aforethought as a required element for murder was a question for the jury, and so, the Solicitor's improper Golden Rule argument deprived Briggs of a fair trial.

Moreover, the Solicitor's remarks to the jury in both his opening and closing were designed to challenge the jurors to "do what is right". He goes farther, to embellish a lack of punishment if they find Briggs not guilty of Murder. Other than a verdict of guilty of Murder, he states, "... you've got to -- turn him loose." And he then challenges the jury by stating the their job is

to find the truth, followed with, "... We think he had a right to kill that man. We are going to turn him loose. That ain't the truth. ..."

That combination whereas the Solicitor was "speaking for the Jurors", was inflammatory and was calculated with intent to attach with other "drug related inflammatory matter" specifically designed to appeal to the passions, fears, and prejudices of the jury, and should be condemned.

See South Carolina State Highway Dep't. v. Nasim, 179 S.E.2d 211, 213 (1971) "[W]hether or not the particular arguments are so prejudicial as to constitute reversible error depends upon the nature of the utterances and the circumstances under which they were made." Under certain circumstance the Supreme Court of South Carolina has stated, it will grant a new trial despite the aggrieved party's failure to contemporaneously object to the argument if the prejudice caused by the argument is clear. Dial v. Niggel Assoc., Inc., v. Lynch, 333 S.C. 253, 256, 509 S.E.2d 269, 271 (1998); Toyota of Florence v. Lynch, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994). The Applicant in the case at bar, declares that the arguments in question, when viewed from the context of the entire record, clearly infected the trial with unfairness so as to make the resulting conviction a denial of due process, and should be the basis for the grant of a new trial. Trial Counsel's invalid strategy or tactic for choosing not to object and seek a cure at trial, or otherwise preserve same for Direct Appeal **cannot** be a shield against this fundamental matter of ineffective assistance, and the resulting prejudice is clear. State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997). Furthermore, this issue standing alone, is sufficient that Briggs is entitled to a new trial per the holdings in Lynch and Nasim supra.

**Trial Counsel Failed To Request A Jury Charge
On The Offense Of Involuntary Manslaughter**

The following cross-examination of the Defendant (Briggs) takes place:

Tr. p.155, ln.25 -through- p.157, lns.1-5

Q. So he's starting to walk towards you, you pop the lid. And you go back and pull the gun out and you stick it in his chest. And he's defying you to shoot him, right?

A. Nah, I didn't stick it to his chest. He walked into the gun.

Q. He just walked into it, and you pulled the trigger.

A. He walked into the gun, and the gun went off.

Q. So when he's walking into the gun, you're just standing there with it.

A. I just pulled it out. As soon as I pulled it out, he was close to me. He was walking up on it. As soon as I whip it out, that's when he -- he was still close enough, close enough for him to walk on ---

Q. Okay. Where was ---

A. --- and, you know, and told him to back up. I didn't know it was going to go off.

Q. He just walked up there. He had his hands down by his side.

A. No, he had his hands up with the stick walking towards me. Like I told you before.

Q. He had his hand up with this stick ---

A. Yes, sir.

Q. --- walking towards you?

A. His hand right here.

Q. And what did you say to him?

A. I told him to back up.

Q. And what did he say to you?

A. "Fuck that."

Q. And so you pulled the trigger?

A. It went off. Yeah, I didn't, you know, I don't know how it happened. It happened so quick.

Based on that cross-examination testimony alone, if trial counsel had requested it, Briggs would have been entitled to an additional conviction option with far less consequences to that of murder and voluntary manslaughter. Thus, in addition to a jury charges on Murder, Voluntary Manslaughter, and Self-Defense, as a matter of law, the Court would have also charged the Jury on Involuntary Manslaughter. By definition under South Carolina law, involuntary manslaughter is; "... the killing of another without malice and unintentionally while engaged in either; (1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others. State v. Cabera-Pena, 361 S.C. 372, 605 S.E.2d 522 (2004); State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996).

The testimony of Briggs is direct evidence justifying an "involuntary manslaughter" charge. It could have been inferred the decision he made arming himself was a lawful act under the circumstances. Further, it may have been argued that he had a recognized "moral right to arm himself," under the circumstances, even though he was a convicted felon in possession of a firearm -- See State v. Burriss, 513 S.E.2d 104 (1999).

Involuntary manslaughter does not necessarily negate the act of self-defense, but rather, may result as a consequence of self-defense. It is reasonable to infer a likelihood that the Jury may have elected to resolve the controversy in favor of guilt on the involuntary manslaughter offense, if that option had been available to them. Had Defense counsel requested the charge of

involuntary manslaughter, and the Court denied such a request, Counsel may have preserved the matter for Direct Appeal. Counsel could have supported his request for the involuntary manslaughter charge, by citing and arguing similar with; State v. Williams, 367 S.C. 192, 624 S.E.2d 443 (Ct.App.2005) holding that, If there is any evidence to support a jury charge, the trial judge should grant the requested charge. State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law. Clark v. Cantrell, 399 S.C. 369, 390, 529 S.E.2d 528, 539 (2000) To warrant a reversal, however, the error must result in prejudice to the party requesting the charge. State v. Lee, 298 S.C. 362, 364, 380 S.E.2d 834, 836 (1989) The trial judge commits reversible error if he or she fails to give a charge on an issue raised by the evidence and requested by the defendant.

It is undisputed, that trial counsel must, in the least, request an involuntary manslaughter charge before such triggered an "error of law" review by the Appellate Court. Yet, counsel's failure to request same, does constitute ineffective assistance of counsel, whereas the resulting prejudice is satisfied by the lack of overwhelming evidence of guilt on the Murder offense being tried. As mentioned earlier, the fact that the Jury may have resolved in favor of "involuntary manslaughter" rather than, "murder" is a sufficient likelihood to undermine confidence in the trial verdict, and there can be no question that a conviction for "involuntary manslaughter," is far more favorable to a Defendant, than a conviction for "murder".

**Trial Counsel Failed To Properly Preserve The Trial Court's
Prejudicial Error Of Law, Whereas The Court Submitted To The Jury
Whether Briggs Was A Lawful Guest And Thus
Had A Duty To Retreat Before He Acted In Self-Defense**

After a fairly extensive charge conference, through which Defense counsel had a difficult time arguing the facts supported by specific case law, the trial Court concluded and ruled as follows in pertinent parts:

Tr. p.173, lns.7-16:

[O]ne of the decisions ... that the jury is going to have make is whether or not these were people who were lawfully guests at her house, or whether they were just hanging out, I guess. But I will make that as part of the charge. And that will simply have to be something that the jury is going to have to make a decision as to what were their respective rights as to whether they were just people who happened to come up there or whether they were actually guests.

[Then] At Tr. p.174, lns.5-13:

[W]e'll let the jury make a determination as to whether or not he fits that designation of being a lawful guest on the premises of another.

[And] At Tr. p.174, ln.21 -through- Tr. p.175, ln.8:

And the jury is going to have to make the decision about, I still think, you know, I am going to have to charge them that, you know, the normal duty on the law of retreat. And then charge them the normal responsibility about guests. And then let them make a decision one way or the other as to what was going on. And as to what position he actually occupied, and as to whether or not he should have gotten back in the car and driven off as opposed to popping the trunk and going back.

[The Actual Jury Instruction]

At Tr. p.221, ln.24 -through- p.222, ln.9:

Now, Ladies and Gentlemen, the law in this case, in this State does not require a defendant to retreat if they are on their own premises. Or they are about the yard of their dwelling house. And likewise, Ladies and Gentlemen, the law of this State says if someone is invited to your home, if they are about your residence as your guest, they likewise do not have a duty to retreat in order to be entitled to self-defense. They can be there either expressly or impliedly. But it is of course the function of the jury to determine what status someone occupies when they are there at a particular location.

The evidence adduced through the trial is uncontroverted that Briggs was a guest on the property of Katie Green where a cookout was taking place. And, that the incident resulting in Wesley being shot occurred on the curtilage of that property. [Tr. p.113, lns.16-20]. Katie Green testified for the defense, saying that Briggs "been there a lot. ... [H]e be back and forth." [Tr. p.116, lns.7-12]. The State's key witness, Wesley's cousin, Dominique Lawson, testified that Briggs "... [B]e there everyday, and of course he was invited." [Tr. p.59, lns.15-16.].

There was absolutely no testimony that Briggs was anything but an invited guest on Katie Green's property through the incident. And so, the only controversy upon the issue of Briggs' "guest" status was in the mind of the Assistant Solicitor. From that perspective, was the decision made by the Court to submit facts contrary to all evidence for Jury determination. Which as a matter of law, resulted in reversible error when the actual Jury instruction was given at [Tr. p.221, ln.21 -through- p.222, ln.9]. Upon which trial counsel should have objected and requested, in the least, a corrected re-charge.

Defense Counsel should have supported his position in opposition to that improper charge based on his articulations earlier during the charge conference. Specifically, he could have continued his arguments similar to the principle holdings that; -- A person need not retreat before resorting to deadly force in self-defense if he is a guest in the home of another. State v. Osborne, 202 S.C. 473, 25 S.E.2d 561 (1943). That exception to the requirement to retreat extends to the curtilage of the premises as well. State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955). There is also, no duty to retreat where both parties are guests. State v. Smith, 226 S.C. 418, 85 S.E.2d 409 (1955). As stated, the record of the trial contains absolutely no evidence from which the Jury could have inferred that Briggs was not a welcome guest on Katie Green's property. See Osborn, *supra*.

Under those circumstances, the trial Judge erred by submitting the non-existent issue of Briggs' "guest" status on the property of Katie Green to the Jury. "A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant." State v. Day, 241 S.C. 410, 418, 535 S.E.2d 431, 435 (2000). In fact, within the evidence adduced during Briggs' trial, the trial Judge should have charged the Jury that there was no duty to retreat under the circumstances present in the case. See State v. Sales, 285 S.C. 113, 328 S.E.2d 619 (1985).

Moreover, Defense counsel failed to investigate and develop facts relevant to self-defense matters unique to that case at trial. Counsel should have investigated Wesley's "propensity for violence", along with his substance abuse, etc. For which, if sufficient evidence were derived and admitted during trial, Briggs would have been entitled to an additional charge on self-defense where the Jury could consider Briggs' right to view and judge Wesley's conduct more harshly (more threateningly) as Wesley approached him. Wesley's behavior may have been more threatening under the circumstances of his aggressive approach based on, (1) Wesley's alcohol and other drug consumption, (2) Wesley's prior instances of violence or unprovoked aggression, etc. From such evidence the Jury could have had a more realistic understanding as to whether or not Briggs had a reasonable belief of imminent danger. See State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989). Counsel's failure associated with these additional facts and elements for self-defense deprived Briggs of the complete defense he was entitled through the "fair trial" principles and Due Process.

Prejudice on this issue is multifaceted. Had the trial Judge charged the Jury that Briggs had no duty to retreat, the Jury may have been satisfied that the State did not negate the "duty to retreat" element of self-defense, and

thus, the Jury's verdict would have been different. Had Counsel not failed to investigate and present additional evidence pertaining to the actual danger presented to Briggs by Wesley's approach, the Jury's verdict would also have likely been different.

Counsel's failure to properly preserve such matters resulted in the issues being abandoned for Direct Appeal, which actually cost Briggs his one and only Appeal-of-right, because the foundation of this issue was the only issue raised by Appellate Counsel, upon which the Court of Appeals rejected as it was not preserved by trial Counsel.

Prejudice done to the Applicant's "fair trial rights" were such as to easily satisfy the Strickland "prejudice test"; there is a reasonable probability that, but for counsel's unprofessional errors, the result of the trial would have been different. Bennett v. State, 371 S.C. 198, 638 S.E.2d 673 (2006). Based on the testimony and other direct evidence at trial, there is a lack of evidence of guilt, in that sense that, no overwhelming evidence of guilt was adduced so as to cure any error by counsel, and to contend otherwise, would be an unfair mischaracterization of the trial testimony.

Further, as to the second prong of a Strickland analysis, the United States Supreme Court has explicitly recognized that "prejudice" can occur in sentencing alone. Thus, if prejudice can result on the more favorable outcome of the "likelihood of a smaller sentence", then the likelihood of a more favorable conviction on a lesser charge resulting in a smaller sentence also constitutes prejudice, and as such satisfied Strickland's analytical test related to prejudice. 466 U.S. 668, 104 S.Ct. 2052 (1984).

Accordingly, this Honorable Post-Conviction Relief Court should find, there is a reasonable probability that the Jury verdict was influenced by Defense counsel's deficient performance. Strickland v. Washington, *supra*; Rhodes v. State, 349 S.C. 25, 561 S.E.2d 606 (2002).

[Ground (b)]: "Prosecutorial Misconduct"

There is no question from the Record of the trial at bar, that Defense counsel "opened the door" for the State prosecutor (Assistant Solicitor) to explore and examine highly prejudicial and inflammatory matter that would, under normal circumstances, never come before a Jury. (See previous discussion and arguments through Ground (a) "Ineffective Assistance of Trial Counsel").

Notwithstanding, the Applicant asserts that the State prosecutor (Solicitor) exercised no restraint to keep **unfair prejudice** out of the trial at bar. The Solicitor completely ignored the fact that he was acting in the capacity of a "minister of justice" rather than a mere advocate attempting to prevail at trial. See State v. Jones, Opinion No.: 25242, (January 24, 2001); State v. Davis, 239 S.C. 280, 122 S.E.2d 633 (1961) (While the Solicitor is obligated to prosecute vigorously, it is not his job to convict an individual accused, but rather to see that justice prevails.)

Despite the fact that the Applicant was on trial for the offenses of Murder and Possession of a Firearm During the Commission of a Violent Crime, and despite the prior knowledge that certain statements and testimony would reveal the highly prejudicial fact that the Defendant (Applicant) made his living as a distributor of illegal drugs, the Solicitor chose to ignore his "ministerial duties" and thus gave more sound than substance to the principles of justice for which he was oath-bound to uphold as the prosecutor through the criminal trial at bar. The powers wielded by a Solicitor, must be tempered with some restraint. Whereas, there must be some degree of self-regulation and balancing of those powers at the trial level. Granted, the adversarial process encompasses a theoretical balance in that Defense Counsel is supposed to play the role of checking, when necessary, the powers of the Solicitor, etc. However, reality must yield to circumstances, such as those in the case at bar, where Defense

Counsel did not play the role of advocate, and actually entered the camp and assisted the Solicitor in his prosecution. ...

Therefore, as articulated by our State Supreme Court, the Applicant must rely upon and trust in the Courts to act in his behalf to protect his fundamental Constitutional Rights, because they certainly were abandoned by trial counsel. See State v. Quattlebaum, 527 S.E.2d 105, (2000) at 109 [4] & [5];

[4] "... every South Carolinian has a vital interest in the fair administration of Justice. This Court bears the ultimate responsibility for maintaining judicial integrity and high standards of professional conduct among the members of the bar, and for protecting and defending the Constitutional Rights of the accused."

[5] "We will not tolerate deliberate prosecutorial misconduct which threatens rights fundamental to liberty and justice."

The Applicant (Briggs) contends that based on the totality of circumstances unique to his trial, that the Solicitor's choices and actions through that trial, entered a realm of misconduct that deprived him of the fundamental right to a "fair trial" and to have a "fair and impartial Jury". The Solicitor used the "open door" opportunities created by Defense Counsel to essentially stir the passions and prejudices of the Jurors to such a degree that the Jury may have likely resolved in favor of guilt for Murder, based on the admitted livelihood of illegal drug distribution. The drama associated with an incident of drug related confrontations and murder, has far more unconscious appeal, based on entertainment value if nothing else, than that of something less dramatic, like voluntary manslaughter, or even self-defense by an admitted illegal drug distributor.

As examples from the trial, the Solicitor's opening statement began with inherently prejudicial "Golden Rule" statements designed to begin inflaming the

passions and prejudices of the Jurors -- [Tr. p.34, lns.20-21] -- [Tr. p.36, lns.20-21]. Then, in a more overtly egregious manner, the Solicitor stated skewed facts intended to invoke negative inferences in the Jurors minds related to "Flight to Avoid Prosecution" while knowing Briggs actually turned himself in to the Police the day after the incident -- [Tr. p.35, lns.11-12]. Moving on nevertheless, the Solicitor did not exercise any restraint as he elicited "crack or crack cocaine" ten (10) times in (20) lines of examination through a Police Investigator [Tr. p.78, ln.18 -through- p.79, ln.11]. The Solicitor did not have to seek "impeachment" of Briggs based on a simple possession of marijuana conviction, while knowing such a prior conviction had no bearing on Briggs veracity, but the Solicitor certainly knew it would add to the prejudice associated with Briggs being a drug dealer [Tr. p.106].

Then the Solicitor enjoyed unhindered cross-examination of Briggs concerning illegal drug distribution, etc., at [Tr. p.140, lns.19-25] -- [Tr. p.141, lns.1-3] -- [Tr. p.141 -through p.143, ln.15] -- [Tr. p.165, lns.17-20]. Each of these instances can appear to be diligent advocacy, but Briggs declares that based on the circumstance of his case at trial, the Solicitor's unchecked actions were a form of deliberate misconduct similar to those utilized by the prosecutor in the case of Spevack v. Klein, where the Justice wrote to wit:

"It may be that it is the obnoxious thing in it's mildest form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. ... It is the duty of Courts to be watchful for the Constitutional Rights of the citizens, and against any stealthy encroachment thereon." Id. at 87 S.Ct. 625, 628 (1967)

Following, the above intra-trial action of the Solicitor, he went on unchecked into his closings, whereby he again ignored the principle of fairness, and intentionally skews legal definitions to intentionally mislead the Jury or

to lead them to have one dimensional thoughts based on his position of authority, and his viewpoint of guilt, to wit:

Tr. p.180, lns.8-13:

Voluntary Manslaughter is a lesser included offense. That's where it is an unlawful killing of another human being but it's done in the heat of passion. So it's done in a situation where you get in an argument with somebody and you lose your temper and in the heat of passion kill somebody.

[Then] Tr. p.181, lns.3-6:

We have this situation in the State that you have a right to defend yourself; that you have a right, but you only have the right to use whatever force is necessary to defend yourself.

When a Solicitor speaks to a Jury he or she is speaking from a position of recognized authority which is just as strong as a Judge's. It is a well known psychological fact that Jurors will, more often than not, defer to what a Solicitor says, especially when it is non-technical. And so, the misleading points of law described to the Jury by the Solicitor **should not** be considered automatically corrected by the Judge's authoritative charge on the same points of law.

The Solicitor went on in his "closing on the facts" with egregious intentions, as quoted previously at **Ground (a), "Ineffective Assistance of Trial Counsel"** -- at [Tr. p.195, ln.23 -through- p.196, ln.1] -- [Tr. p.199, ln.3-20] -- [Tr. p.200, lns.15-24] -- [Tr. p.201, lns.4-10] -- [Tr. p.201, lns.11-16].

Even though trial counsel did not object to any of the Solicitor's arguments, or other actions, the Solicitor's choices, decisions, and actions are still subject to review at Post-Conviction Relief. Where improper comments made in the presence of the Jury are materially prejudicial to the rights of the criminal defendant, particularly the rights associated with a fair and impartial trial, a new trial is warranted, where the impact of the improper arguments,

comments, etc., were not sufficiently counteracted by the trial Court. They were not counteracted period in the trial at bar, as no objections or motions to preclude them was made by Defense Counsel. See State v. Gilstrap, 205 S.C. 412, 32 S.E.2d 163 (1944), where the Court recognized and articulated that:

"It would seem consistent with the ordinary principles upon which justice is administered, that if in this case the statement complained of were material, and this Court can see, from an examination of the evidence, that they were likely to and probably did wrongly influence and mislead the jury to return a verdict against the defendant to his manifest prejudice, this Court should redress the wrong by reversing the judgement and granting a new trial." Id. at 32 S.E.2d 164.

The Applicant declares that, the Solicitor's arguments, and other actions, within the totality of the circumstances unique to his case at trial, did deprive the him of a fair trial and impartial Jury. It is more likely than not that the Applicant was convicted based on illegal drug distribution practices, which is outside the scope of the crimes he was being actually tried for. Such resolution of guilt was the direct result of the Solicitor's unhindered and unchecked improper arguments and choices through the course of the trial.

The evidence of guilt for the crimes being tried was not overwhelming, and the Applicant was denied the benefit of a full defense, and fair trial based on the injection of materials outside the scope of the matter appropriate for prosecution upon the offenses indicted. Such served to inflame the passions and prejudices of the Jurors to such an extent as to undermine reliability in the trial's outcome.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	
	)	
	)	2009-CP-14-0023
	)	
Raphael Lamont Briggs, #314499,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2009 JUN 26 PM 12:56

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 13, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the March 2006 term of the Sumter County Grand Jury for (1) Murder and (2) Possession of a Firearm During Commission of a Violent Crime (2006-GS-14-0076). Applicant was represented by Harry Devoe, Esquire. Applicant proceeded to a jury trial and was found guilty. Applicant was sentenced by the Honorable John M. Milling to thirty-seven (37) years imprisonment for Murder and to a concurrent term of five (5) years for Possession of a Firearm During Commission of a Violent Crime.

A Notice of Appeal was filed and an appeal perfected. Following the submission of briefs, the conviction and sentence were affirmed. State v. Briggs, Op. No. 2008-UP-515 (S.C. Ct. App. filed Sept. 8, 2008). The remittitur was sent on September 24, 2008.

Attached herewith and incorporated herein are the records of the Clarendon County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective assistance of trial counsel."
 - a. Failure to adequately investigate/prepare.
 - b. "Trial counsel opens doors for the introduction of 'bad act' and character defaming evidence."
 - i. Opening argument opened door to State presenting evidence of defendant's drug-related activities.
 - ii. During cross examination of Dominique Lawson a "scuffle" was mentioned which had been testified to by a police officer, and this "re-rung a bell in the jurors minds which easily resulted to emphasize the possibility of 'malice' to have existed based on that 'scuffle' and subsequent taking of a small amount of crack cocaine."
 - iii. Court decided that prior drug conviction is admissible. "...From here, being as no objections and arguments have been made by Defense counsel to keep such prejudicial matters from coming in, it can be said that Defense counsel 'crossed over into the camp of the prosecution'..."
 1. Defense counsel elicited testimony from defendant that he never had a legal job and asked about selling drugs at the trailer. The prosecution followed up with similar questions.
 - iv. Counsel should have argued for exclusion of bad acts evidence.
 - c. "Trial counsel chose not to oppose impeachment based on a conviction for marijuana possession."
 - i. Door had not been opened and even if it had, counsel should have objected.
 - d. "Trial counsel failed to object to the State's use of a golden rule argument and language designed to challenge and inflame the prejudices and passions of the jurors."
 - e. "Trial counsel failed to request a jury charge on the offense of involuntary manslaughter."
 - f. "Trial counsel failed to properly preserve the trial court's prejudicial error of law, whereas the court submitted to the jury whether Briggs was a lawful guest and thus had a duty to retreat before he acted in self-defense."

2. "Prosecutorial Misconduct."

- a. "...the State prosecutor (solicitor) exercised no restraint to keep unfair prejudice out of the trial at bar. The Solicitor completely ignored the fact that he was acting in the capacity of a 'minister of justice' rather than a mere advocate attempting to prevail at trial."
 - i. Opening statements were improper.
 - ii. "Then the Solicitor enjoyed unhindered cross-examination of Briggs concerning illegal drug distribution, etc."
 - iii. Closing arguments were improper.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

With regard to a claim of prosecutorial misconduct, the burden is on the defendant to prove actual vindictiveness. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

V.

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

VI.

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

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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By: 
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June 17, 2009.

STATE OF SOUTH CAROLINA

)

) IN THE COURT OF COMMON PLEAS

COUNTY OF CLARENDON

2009-CP-14-0023

Raphael Lamont Briggs, 314499

)

Applicant,

)

)

vs

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State of South Carolina,

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Respondent.

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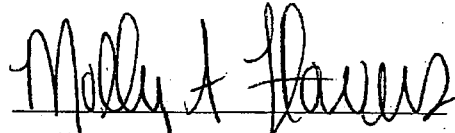
BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

) AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Charles T. Brooks, III, Esquire
309 Broad St.
Sumter, SC 29150

DATED this 23rd day of June, 2009.


 Molly A. Flowers, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

Court of Common Pleas
2009-CP-14-00023

Ralpheal Lamont Briggs
-vs-
State of South Carolina

:
:
: Transcript of Record
:
:

Wednesday, October 27, 2010
Sumter, South Carolina

B E F O R E:

The Honorable W. Jeffrey Young, Judge.

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

Charles T. Brooks, III, Esquire
Attorney for the Applicant

Mary S. Williams, Assistant Attorney General
Attorney for the State

Dianne A. Rutledge
Circuit Court Reporter

1 I N D E X
2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 Ralpheal Lamont Briggs

4 Mr. Brooks 4

5 Ms. Williams 12

6 Harry Devoe

7 Mr. Brooks 13

8 Ms. Williams 15

9 Certificate of Court Reporter 21

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18 (No exhibits were introduced during the hearing.)

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1 THE COURT: This is the case of Ralpheal Lamont
2 Briggs, 314499, versus the State of South Carolina.
3 Present and appearing is the petitioner, Mr. Briggs, along
4 with his attorney, Mr. Charles T. Brooks, III of the Sumter
5 County Bar. Ms. Mary S. Williams is present, representing
6 the State of South Carolina.

7 Mr. Brooks, what is your motion?

8 MR. BROOKS: Your Honor, my client is respectfully
9 asking for a continuance, to subpoena the lady with Court
10 Administration. Her name is Michelle Owens. And he wanted
11 me to bring that to The Court's attention.

12 THE COURT: What's the basis? Why is she critical?

13 MR. BROOKS: There's an issue ---"

14 THE COURT: Did she have something to do with the
15 trial?

16 MR. BROOKS: The issue is about the indictment.

17 THE COURT: What does Court Administration have to do
18 with an indictment?

19 MR. BROOKS: Well, that's what my client has
20 requested.

21 THE COURT: I don't know what possible relevance it
22 could have in this trial.

23 MR. BROOKS: And -- and I'll tell you, Judge. From a
24 standpoint of having done a lot of these cases, I've never
25 had a P.C.R. granted because of some indictment issue; so

MR. BRIGGS - Direct by Mr. Brooks

4

1 that's why I didn't ---

2 THE COURT: Well, I have no idea if there was an
3 indictment issue, why we would have somebody from Court
4 Administration. That makes no sense. It would be like
5 asking the president to be here for the hearing. There's
6 no corollary there.

7 MR. BROOKS: I understand, Judge. But my client
8 requested I put that on the record and ask for a
9 continuance for those reasons.

10 THE COURT: So noted. Motion denied. Thank you. You
11 may call your first witness.

12 MR. BROOKS: We would call Mr. Briggs to the stand.

13 RALPHEAL LAMONT BRIGGS,
14 being first duly sworn, testified as follows:

15 CLERK: State your name please, and spell your last
16 name for the record.

17 MR. BRIGGS: Ralpheal Briggs, B-r-i-g-g-s.

18 DIRECT EXAMINATION BY MR. BROOKS:

19 Q Mr. Briggs.

20 A Yes, sir.

21 Q You brought this application for ineffective
22 assistance of counsel; is that correct?

23 A Yes, sir.

24 Q And Mr. Devoe was your court-appointed lawyer?

25 A Yes, sir.

MR. BRIGGS - Direct by Mr. Brooks

5

1 Q You were actually trying to hire a private attorney to
2 represent you; is that correct?

3 A Yes, sir. Yes, sir.

4 Q And they basically just took you to trial and not
5 allowed you to get that private attorney; is that correct?

6 A Yes, sir.

7 Q Now, one of the issues you also raised is the issue in
8 regards to the grand jury, and questions about the
9 indictment; that's what we were talking about Ms. Owens;
10 isn't that correct?

11 A Yes, sir.

12 Q Can you tell the Judge what issues you had in regards
13 to the grand jury process in your case?

14 A They failed the proper procedure in my indictment.
15 They didn't indict me right.

16 Q Can you tell The Court what you mean, they didn't
17 indict you right?

18 A They didn't have general sessions.

19 Q Okay. That's the basis your or argument in regards to
20 the grand jury process; is that correct?

21 A Yes, sir.

22 Q All right.

23 THE COURT: What was his answer on that? They didn't
24 have what?

25 MR. BROOKS: They didn't have general sessions.

1 Q Now, in addition to that, you raise some other issues
2 in regards to Mr. Devoe's representation; is that correct?

3 A Yes, sir.

4 Q And one of those issues was in doing the trial, he
5 asked questions that basically short-changed you and opened
6 the door to a lot of negative things about you; is that
7 correct?

8 A Yes, sir.

9 Q Can you tell The Court specifically what you're
10 referring to?

11 A About the things I asked him to do, he didn't do for
12 me, you know. That is I asked him to, you know, subpoena
13 people and he didn't do it.

14 And I asked -- you know, I ain't seen him. I told
15 him, I ain't seen you -- you know, you came to see me one
16 or two times. And you were like, I figured it was
17 straight, you know, because a lawyer came saw me.

18 Q So you felt that he wasn't prepared and didn't
19 properly investigate your case?

20 A Yes, sir.

21 Q Okay. Go ahead and tell The Court what else about
22 what he didn't do for you?

23 A He -- bad acts. Trial counsel opened the doors for
24 the solicitor. He opened the bad acts -- he opened the
25 doors, deflame (phonetic) evidence.

MR. BRIGGS -- Direct by Mr. Brooks

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1 Q What was that last part?

2 A Deflame evidence.

3 Q Okay. And can you elaborate on that?

4 A He -- he -- he opened the doors because he -- he like

5 -- he's saying that I was drug -- you know, a drug dealer

6 like this. He sell prior -- you know, he sell -- produce.

7 So that opened the door for them.

8 Q So what you're saying is you felt that it prejudiced

9 you by making a reference to drug dealing; is that correct?

10 A Yes, sir.

11 Q Okay. All right. Anything else?

12 A Yes. He -- he -- he -- the trial counsel failed to

13 object to the state going -- going into argument and laying

14 aside challenging the deflame, and prejudice and passion of

15 the jury.

16 Q Okay. You're saying that the solicitor made certain

17 comments that trial counsel did not object to?

18 A Yes, sir.

19 Q Okay. You felt that prejudiced you in the trial; and

20 that was improper; is that correct?

21 A Yes, sir.

22 Q All right. Any other issues in regards to Mr. Devoe's

23 representation?

24 A He failed to request a jury charge of voluntary

25 manslaughter.

- 1 Q In this case you were found guilty of murder?
- 2 A Yes, sir.
- 3 Q Okay. And you felt that he should have asked for a
- 4 lesser-included offense of voluntary manslaughter?
- 5 A Yes, sir.
- 6 Q All right. And he didn't do that; is that correct?
- 7 A No, sir.
- 8 Q Now, wasn't there certain things that came up during
- 9 the trial in the course of certain conversations you had
- 10 with Mr. Devoe that you wanted to tell the Judge about?
- 11 A Yeah. Like, he was like -- the same thing I was
- 12 telling you about when he was like when he first came in
- 13 here, I was like, he ain't come see me, and I asked him
- 14 why. He was like -- the same thing I was saying a few
- 15 minutes ago. He was like -- I said you ain't need me
- 16 because you had somebody come see you, you know what I'm
- 17 saying. So I was like, that ain't got nothing to do with
- 18 me. I'm in jail, you know what I'm saying.
- 19 Q How long did you have Mr. Devoe as your attorney
- 20 before going to trial?
- 21 A About 5 months; that's all I know. And I seen him
- 22 maybe one or two time maybe.
- 23 Q Okay. All right. You had no bond; is that correct?
- 24 A I never went up for bond or nothing.
- 25 Q So from the time you were arrested, until the time you

MR. BRIGGS -- Direct by Mr. Brooks

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1 went to trial, was a time span of about five months; is
2 that correct?

3 A Yes, sir.

4 Q Okay. And then, of course, you had Mr. Devoe at some
5 point representing you; is that correct?

6 A Somewhat, yes, sir.

7 Q And you tried to hire Mr. Chandler; is that correct?

8 A Yes, sir.

9 Q All right. What else?

10 A I told him that I was trying to hire him.

11 Q You told Mr. ---

12 A Devoe.

13 Q --- Devoe that?

14 A Yes, sir.

15 Q And you ---

16 A I wanted -- I told him, get me a postponement. He
17 said, you got to go to trial today.

18 Q You wanted a continuance of the trial?

19 A Yes, sir. He was like, you got to go to trial today.

20 Q Did Mr. Devoe ask for that?

21 A He didn't ask for nothing -- to my knowledge.

22 Q All right. Do you have any other issues in regards to
23 like the charge of self defense?

24 A Yeah. He failed to properly preserve the trial --

25 prejudicial error of law where -- submit to the jury where

1 I was a lawful guest, and I had a duty not to -- had a duty
2 to retreat.

3 Q All right. So basically, Mr. Devoe didn't talk about
4 that as a potential defense for you; is that correct?

5 A To my knowledge, no.

6 Q Was that ever submitted as some type of jury charge
7 requested by Mr. Devoe?

8 A No, sir, not that I know of.

9 Q Okay. And that's part of your application; is that
10 correct?

11 A Yes, sir.

12 Q All right. Now, Ralpheal, is there anything that we
13 haven't covered about Mr. Devoe's representation? Tell the
14 Judge that.

15 A Just pre-trial failure to omis -- omission, a standard
16 to disclude (phonetic).

17 Q Can you elaborate on what you're referring to?

18 A It's just saying a stigman (phonetic), a element to
19 the case at bar.

20 Q Okay. All right. Any other ---

21 A There's a case law wrote under it.

22 Q And we filed the application?

23 A Yes, sir.

24 Q Is that correct?

25 A Yes, sir.

MR. BRIGGS - Direct by Mr. Brooks

11

1 Q Is there anything else that we haven't covered?

2 A Yeah, the -- the impeachment -- impeachment of the
3 witness in court.

4 Q As a matter of fact, the state's main witness had
5 testified against you; is that correct?

6 A Yes, sir.

7 Q You felt that Mr. Devoe's cross examination was not
8 effective?

9 A No. He -- he came to me and said -- he said after --
10 not before the trial, when the trial be going. He said,
11 I'm sorry. I could have gotten the guy away from the
12 trial. Because I told him the guy had -- had charges. And
13 he's like, I'm sorry. It's too late.

14 Q He told you you could have had the guy excluded from
15 his testimony?

16 A He told me but it's too late now.

17 Q Okay.

18 A And I just shook my head. Nothing I could do.

19 Q Okay. And did he ever make a reference to these
20 criminal charges when that gentleman was testifying?

21 A What you mean?

22 Q Impeaching, asking him about his record?

23 A No, sir, not that I know of.

24 Q Okay. All right. And that's actually a part of your
25 ground, ineffective assistance of counsel?

1 A Yes, sir.

2 Q All right. Is there anything else that we haven't
3 covered?

4 A No, sir. I think that's it.

5 MR. BROOKS: All right. Answer any questions of the
6 attorney general.

7 THE COURT: Ms. Williams.

8 CROSS EXAMINATION BY MS. WILLIAMS:

9 Q I just want to clarify a couple of things. On the
10 impeachment, which witness are you talking about?

11 A Dominick Lawson.

12 Q Okay. And you gave a statement in this case; is that
13 correct?

14 A Yes, ma'am.

15 Q And in that statement did you mention the drug
16 dealing?

17 A Offhand, I can't remember.

18 Q And if the transcript does reflect that the judge
19 charged on retreat, duty to retreat, you wouldn't argue
20 with that; is that correct?

21 A I think that's it:

22 MS. WILLIAMS: All right.

23 THE COURT: Anything further on redirect?

24 MR. BROOKS: No other questions for Mr. Briggs, Judge.

25 THE COURT: All right. Thank you. You may step down.

MR. DEVOE — Direct by Mr. Brooks

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1 (The witness leaves the witness stand.)

2 MR. BROOKS: We would call Mr. Harry Devoe.

3 HARRY DEVOE, being first

4 duly sworn, testified as follows:

5 CLERK: State your name please, and spell your last
6 name for the record.

7 MR. DEVOE: Harry L. Devoe, Jr., that's D-E-V-O-E.

8 DIRECT EXAMINATION BY MR. BROOKS:

9 Q Mr. Devoe, how are you today?

10 A I'm fine today. How are you, Mr. Brooks?

11 Q Doing good. Now, you represented Mr. Briggs?

12 A I did.

13 Q And it was through your capacity as a public defender?

14 A That's correct.

15 Q Now, do you recall how long you'd been on this case?

16 A I was appointed the case, I believe, in September of
17 2005.

18 Q All right. And this case went to trial in respect to
19 that, March of 2006?

20 A That's correct.

21 Q Okay. Now, during that five months, six months, do
22 you recall how many times you met with Mr. Briggs?

23 A The week before trial maybe four or five times.

24 Q Now, did you talk with him about trial strategy?

25 A I did.

1 Q Can you surmise what the state's case was against Mr.
2 Briggs?

3 A We had a preliminary hearing on October 11, 2005. At
4 that hearing, unfortunately, he revealed to me that he had
5 made a -- was mirandized and made a statement to Detective
6 Dan Culler (phonetic), whereupon he admitted that it was a
7 drug deal, he was selling drugs in the location of the
8 crime, that he shot the victim. There was a dispute about
9 how the shooting happened. He actually did the shooting,
10 and he ran from the location. He said he'd had two fights
11 with the victim four hours apart from each other. I mean,
12 he laid the whole thing out at the preliminary hearing.

13 Q So basically, can you surmise -- what was the state's
14 case against him? There was a statement. Did you try to
15 keep the statement out?

16 A The state's case against him was witnesses. There was
17 an admission. They found the gun with his admission in a
18 mill pond in the Summerton area. There's no question he
19 did the shooting. The question is what kind of defense was
20 there to do the shooting? What reason there was a
21 shooting? Also the problem was the defense, did he have a
22 duty to retreat or to stand his ground? Was he a social
23 guest? Was he a business guest? Whatever. And we had a
24 lot of discussion in front of the Judge about that.

25 Q Now, were there any plea negotiations in this case?

MR. DEVOE - Cross by Ms. Williams

15

1 A None that I know of.

2 Q Did you ---

3 A I was also aware that Mr. Chandler was -- he warned me
4 that he was trying to retain Ray Chandler to be his lawyer.

5 Q He told you that?

6 A Which slowed down my seeing him a lot. Because,
7 there's a memo that I have in the file dated July 3rd from
8 Mr. Chandler's investigator about the facts of the case and
9 the fee he charged, and they were waiting for the fee to be
10 paid. The fee, obviously, was never paid. They wanted 50
11 percent down. And he didn't get it. And so I was back in
12 the loop.

13 Q Okay.

14 MR. BROOKS: Beg The Court, Your Honor.

15 THE COURT: Yes.

16 (Pause.)

17 MR. BROOKS: No other questions.

18 THE COURT: Ms. Williams.

19 CROSS EXAMINATION BY MS. WILLIAMS:

20 Q Mr. Devoe, I'm going to talk to you quickly about some
21 of the facts in this case, and some of the things that Mr.
22 Briggs has raised. Tell me what the primary gist of the
23 defense was in this matter?

24 A The primary part of the defense, really, I thought was
25 self-defense. The other individual, the deceased

1 individual, was approaching Mr. Briggs in a threatening
2 manner. They'd had a fight before, four hours before,
3 where the other individual stole some drugs from Mr.
4 Briggs. Then he laughed at him.

5 Q Now, in your mind was that fight about the drugs
6 earlier in the day critical to the self-defense?

7 A Well, the state seem to make it critical, the fact
8 this was a revenge situation. Mr. Briggs went away, got
9 his gun, and came back looking for a fight. I didn't see
10 it that way, but that's what the state tried to make it.

11 Mr. Briggs did go off. He went off twice, once to go
12 to the mall in Sumter, supposedly with either a son or a
13 nephew or the owner of the property to get some clothes for
14 his own children, and then he came back.

15 There was no question he had a gun, I believe, in an
16 abandoned car in the property where the shooting took
17 place. It was a shotgun.

18 Q And in your view of this fight, did this establish why
19 he might be afraid of the victim?

20 A Well, the victim had a stick. He didn't have a gun.
21 There's conflicting testimony as to whether or not the
22 victim had a stick at the time of the killing. He saw he
23 had a stick earlier in the day, that was testified to. But
24 Mr. Briggs was saying that Mr. House came towards him in a
25 threatening manner, using some bad words. He felt he -- he

1 could have retreated before then. There's no time when the
2 words started happening, he reached in his car, and got the
3 trunk of the abandoned car, and pulled out the shotgun and
4 held it out. And then Mr. Briggs -- Mr. House walked into
5 the shotgun, and the gun went off.

6 The question was, was it voluntary manslaughter or
7 self-defense or whatever. There's some conflicting
8 testimony as to how the gun went off. At that point Mr.
9 Briggs left. He left for a couple hours, then came back
10 and turned himself in.

11 Q So there was the murder, voluntary manslaughter, self-
12 defense?

13 A I tried to establish self-defense and voluntary
14 manslaughter.

15 Q And the retreat was also charged to the jury; is that
16 correct?

17 A The charge was the jury is to make that decision about
18 the duty to retreat or not. I brought it before the judge,
19 he had no duty to retreat because he was either an invitee
20 or a business guest.

21 Q And tell me briefly just about your experience as a
22 public defender and how long you've been practicing law?

23 A In South Carolina I've been a lawyer here now for 18
24 years.

25 Q And have you been in the Clarendon County Public

1 Defender's office that time?

2 A No. I've been 15 years. I retired last spring after
3 15 years.

4 Q And did you meet with Mr. Briggs -- he said you only
5 met once or twice. How many times do you recall meeting
6 with him?

7 A I recall meeting -- I met him initially, on November
8 5, and I met him -- September 30, I'm sorry. And I went to
9 the preliminary hearing on October 11, and I met him -- I
10 go to the jail a lot. Anybody wants to see me, gets to see
11 me. I think the jail correctional officers can testify to
12 that. The jail log can testify to that.

13 I would say I probably met him -- except for when Ray
14 Chandler's representing him, I probably met him once a
15 week.

16 Q Now, he's also testified regarding the statement you
17 made about getting a witness thrown out. Do you have any
18 recollection of a conversation like that?

19 A He never mentioned that to me. If he had, I would
20 have made a motion to the Judge and ask for the witness --
21 obviously, I expect to get it from the solicitor when they
22 call witnesses up, listen to their record. They didn't
23 give me any record of this -- Dominick Lawson, I believe
24 his name was. He was the only witness that the state
25 called.

MR. DEVOE - Cross by Ms. Williams

19

1 Q And just, how did it come about Mr. Briggs would
2 testify?

3 A The only witness -- they had Dan Culler's testimony
4 also. He was the only witness who was there.

5 Q Okay. How did it come about that Mr. Briggs would
6 testify? Is that something he wanted to do all along?

7 A He wanted to do it. I give him pluses and minuses of
8 testifying. The minus if he testifies, we don't get the
9 last argument. The plus is you can try to counter what the
10 state's saying.

11 Q And you had subpoenaed some other witnesses. I
12 believe Katie Green was one?

13 A That's right.

14 Q And this was all for your primary purpose of
15 establishing self-defense?

16 A That's right. And that he's a social guest. Ms.
17 Katie Green was the owner of the property and lives right
18 there.

19 MS. WILLIAMS: I believe that's all.

20 THE COURT: Any redirect, Mr. Brooks?

21 MR. BROOKS: No other questions, Judge.

22 THE COURT: Thank you. Mr. Briggs, you may step down.

23 (The witness leaves the witness stand.)

24 MR. BROOKS: Judge, that's the applicant's case.

25 THE COURT: Ms. Williams, do you intend to call any

1 witnesses?

2 MS. WILLIAMS: Nothing further, Your Honor.

3 THE COURT: Thank you. Yes, sir.

4 MR. BROOKS: We respectfully ask The Court to grant my
5 client his application and give him a new trial.

6 THE COURT: All right. Thank you. I'm going to take
7 the matter under advisement. When I reach a decision, I'll
8 let you know.

9 MR. BROOKS: Thank you, Judge.

10 THE COURT: Thank you.

11 --- End of transcript of record ---

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1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of the record of
5 the proceedings had and evidence introduced in the hearing
6 of the captioned case, relative to appeal, in the Circuit
7 Court for Clarendon County, South Carolina on the 27th day
8 of October 2010.

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

11

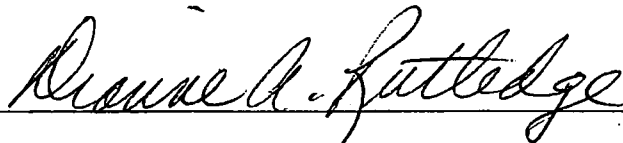
12

August 28, 2012

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A handwritten signature in cursive script, reading "Dianne A. Rutledge", is written over a horizontal line.

16

Court Reporter

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Raphael Lamont Briggs, #314499,)

Case No. 2009-CP-14-0023

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
7012 DEC 18 AM 11:25

This matter is before this Court by way of an application for post-conviction relief filed January 13, 2009. The State made its Return on June 17, 2009. A hearing on the matter was convened at the Sumter County Courthouse on October 27, 2010. Applicant was present and represented by Charles T. Brooks, III, Esquire. The State was represented by Mary S. Williams, Esquire, of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf at the hearing. His trial counsel, Harry Devoe, Esquire, also testified. In addition, this Court had before it the transcript of Applicant's trial, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the post-conviction relief application and the State's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the March 2006 term of the Sumter County Grand Jury for (1) Murder and (2) Possession of a Firearm during Commission of a Violent Crime (2006-GS-14-0076). Applicant was represented by Harry Devoe, Esquire. Applicant proceeded to a jury trial before the Honorable John M.

12-18-12

Beulah G. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC

Milling, where he was found guilty as indicted. Judge Milling sentenced Applicant to thirty-seven years imprisonment for Murder and to a concurrent term of five years for Possession of a Firearm During Commission of a Violent Crime.

A Notice of Appeal was filed and an appeal perfected. Following the submission of briefs, the conviction and sentence were affirmed. State v. Briggs, Op. No. 2008-UP-515 (S.C. Ct. App. filed Sept. 8, 2008). The remittitur was sent on September 24, 2008.

ALLEGATIONS

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

- I. "Ineffective assistance of trial counsel."
 - a. Failure to adequately investigate/prepare.
 - b. "Trial counsel opens doors for the introduction of 'bad act' and character defaming evidence."
 - i. Opening argument opened door to State presenting evidence of defendant's drug-related activities.
 - ii. During cross examination of Dominique Lawson, a "scuffle" was mentioned which had been testified to by a police officer, and this "re-rung a bell in the jurors minds which easily resulted to emphasize the possibility of 'malice' to have existed based on that 'scuffle' and subsequent taking of a small amount of crack cocaine."
 - iii. Court decided that prior drug conviction is admissible. "...From here, being as no objections and arguments have been made by Defense counsel to keep such prejudicial matters from coming in, it can be said that Defense counsel 'crossed over into the camp of the prosecution'..."
 1. Defense counsel elicited testimony from defendant that he never had a legal job and asked about selling drugs at the trailer. The prosecution followed up with similar questions.
 - iv. Counsel should have argued for exclusion of bad acts evidence.
 - c. "Trial counsel chose not to oppose impeachment based on a conviction for marijuana possession."
 - i. Door had not been opened and even if it had, counsel should have objected.
 - d. "Trial counsel failed to object to the State's use of a golden rule argument and language designed to challenge and inflame the prejudices and passions of the jurors."

- e. "Trial counsel failed to request a jury charge on the offense of involuntary manslaughter."
- f. "Trial counsel failed to properly preserve the trial court's prejudicial error of law, whereas the court submitted to the jury whether Briggs was a lawful guest and thus had a duty to retreat before he acted in self-defense."
- 2. "Prosecutorial Misconduct."
 - a. "...the State prosecutor (solicitor) exercised no restraint to keep unfair prejudice out of the trial at bar. The Solicitor completely ignored the fact that he was acting in the capacity of a 'minister of justice' rather than a mere advocate attempting to prevail at trial."
 - i. Opening statements were improper.
 - ii. "Then the Solicitor enjoyed unhindered cross-examination of Briggs concerning illegal drug distribution, etc."
 - iii. Closing arguments were improper.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the post-conviction relief hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel

The burden of proof is on the applicant in a post-conviction relief proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted post-conviction relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's

ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel: Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address each allegation of ineffective assistance of counsel:

Applicant's request for more time

Applicant alleges he requested additional time to hire a private attorney but was tried before he could retain private counsel. Applicant wanted additional time to hire attorney Ray Chandler, and requested his counsel "get me a postponement." Tr. P. 9, L. 16. Counsel testified that before the case went to trial in March 2006, he represented Applicant for roughly five months and met with him several times, and in the week before trial maybe four or five times. Tr. P. 13, L. 21. Counsel testified that he discussed trial strategy with Applicant. Id., 24-25.

This Court finds Applicant's claim is without merit, and that Applicant failed to meet his burden of proving his trial counsel was unprepared, that he needed more time, or that the lack of an extension of time could have caused prejudice to his case. Applicant was represented by competent counsel who is very experienced in defending criminal matter such as the one at bar.

Further, this Court finds that Applicant failed to show what benefits would have accrued from further investigation or more time, and has failed to meet his burden proof. This Court finds Counsel's testimony was credible and he adequately investigated and prepared the case for

trial. Additionally, this Court finds Applicant failed to meet his burden of proving prejudice, therefore this allegation is denied.

Errors in the indictment

Applicant alleges there were errors in his indictment, to wit, "they didn't indict me right." And "[t]hey didn't have general sessions." Tr. P. 5, L. 15-18. The well-settled test for judging the sufficiency of criminal indictments is whether "the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he has called upon to answer, and acquittal or conviction may be pleaded in bar in bar to any subsequent prosecution." State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991) (quoting State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981)). The State is not required to plead its evidence in the indictment. State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (S.C. App. 1991).

When reviewing the sufficiency of indictments, the above cited test "must be viewed with a practical eye; all the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached." State v. Adams, 283 S.E.2d at 588 (citations omitted).

In this matter, Applicant's claim sounds in the nature of a defective indictment, but as posited before this Court, the allegation is general and vague in its form, and fails to state a claim cognizable under the Uniform Post Conviction Relief Act. This Court finds Applicant's claim is without merit, and that Applicant failed to meet his burden of proving material errors in the indictment or that such errors could have caused prejudice to his case in any way. Accordingly, this allegation is denied.

Failure to call witnesses

Applicant alleges he asked counsel to subpoena witnesses, and that counsel did not do so. Tr. P. 6, L. 12-13. This claim must fail since Applicant himself did not call these very witnesses at the post-conviction relief hearing, nor did he explain how they would have affected the outcome of his trial. In fact, counsel did call the witness he felt were in accord with his trial strategy, such as Mrs. Katie Green. Tr. P. 19, L. 11-13. Accordingly this Court is not persuaded by Applicant's claim, and therefore this allegation is denied.

Counsel was unprepared

Applicant alleges he did not get enough time with counsel to prepare his defense. "I ain't seen him. I told him, I ain't seen you - - you know, you came to see me one or two times. And you were like, I figured it was straight, you know, because a lawyer came to see me." Tr. P. 6, L. 15-17. In response to the question of how long he had Mr. Devoe as his counsel, Applicant averred, "about 5 months; that's all I know. And I seen him maybe one or two time maybe."

On cross-examination, Applicant admitted that he provided law enforcement with a statement in the case. Tr. P. 12, L. 12-14. Counsel testified that Applicant revealed to him that he was "mirandized and made a statement to Detective Dan Culler, whereupon he admitted that it was a drug deal, he was selling drugs in the location of the crime, that he shot the victim." Tr. P. 14, L. 4-8. Counsel further testified, "he laid the whole thing out at the preliminary hearing." Id. L. 12.

Given the full admission by his client, which appeared to have been obtained freely and voluntarily from Applicant, counsel had the difficult task of putting up a defense for a case where there had been a full admission that Applicant shot the victim and that drugs were involved. Counsel testified the difficulty in establishing a defense was the issue of the duty to

retreat or whether Applicant had the right to stand his ground. Additionally, "there's conflicting testimony as to whether or not the victim had a stick at the time of the killing." Tr. P. 16, L. 22-22.

Counsel testified, "I tried to establish self-defense and voluntary manslaughter." Tr. P. 17, L. 13-14. Counsel further argued that Applicant had no duty to retreat because he was either in invitee or business guest. *Id.* L. 19-20. Counsel's trial strategy to seek to establish self defense was well within the professional norms of competent representation. That the jury simply did not believe the case was one of self defense does not automatically indicate counsel's performance was deficient. On the contrary, counsel's conduct did not fall below reasonable standards of representation and I find counsel rendered effective representation in a case with overwhelming evidence of guilt against the Applicant. Therefore, this allegation is denied.

Counsel "opened the door"

Applicant complained that counsel opened the door for the solicitor to go into Applicant's prior bad acts. P. 6, L. 23-24. Counsel testified that Applicant wanted to testify. Tr. P. 19, L. 5-7. The general strategy was that Applicant would be able to counter what the State was saying, to establish a self-defense and to establish he was a social guest with no duty to retreat. *Id.*

Applicant failed to show what testimony from trial opened the door, and how that prejudiced his case. Accordingly this allegation is denied.

Failed to request a charge

Applicant alleged his counsel failed to request a charge of voluntary manslaughter. Tr. P. 7, L. 24-25. Upon cross examination, applicant was asked, "And if the transcript does reflect that the judge charged on retreat, duty to retreat, you wouldn't argue with that; is that correct?"

To which the witness responded, "I think that's it." Tr. P. 12, L. 18-21. Counsel testified, "I tried to establish self-defense and voluntary manslaughter." Tr. P. 17, L. 13-14. Counsel further argued that Applicant had no duty to retreat because he was either in invitee or business guest. Id. L. 19-20. Counsel's trial strategy to establish self defense was well within the professional norms of competent representation. That the jury simply did not believe the case was one of self defense does not indicate counsel's performance was deficient. This Court finds that counsel's conduct did not fall below reasonable standards of representation and I find counsel rendered effective representation.

Failure to exclude harmful witness

Applicant also testified his trial counsel felt he could have excluded Dominick Lawson, who he felt was a key witness against Applicant because of the witness' prior criminal record. Tr. P. 12, L. 11. Aside from speculation about what might have been a possibility, Applicant failed to show the witness would have likely been excluded, or how even lack of impeachment of this witness with his past record prejudiced Applicant's case, or how the outcome of his trial might have been different if this witness had been excluded. This Court is not persuaded by this Allegation.

Under these circumstances, Applicant has failed to show Counsel rendered ineffective assistance under prevailing professional norms, and therefore this Court denies this allegation.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

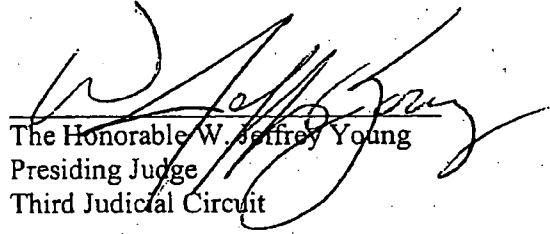
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 11 day of Dec, 2012.

Sumter

Sumter, South Carolina


The Honorable W. Jeffrey Young
Presiding Judge
Third Judicial Circuit

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 12-18-12

Brenda B. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC

WITNESSES

SHERIFF'S OFFICE

Cuttler

DOCKET NO. 2006-GS-14

76

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

MARCH TERM 2006

THE STATE

VS.

RALPHAEL LAMONT BRIGGS

ARREST WARRANT NUMBER

3120300

D/A: 9/6/05

ACTION OF GRAND JURY

Sharon E. Evers

Foreperson of Grand Jury

Date: 3-9-06

VERDICT

True A.P.

Indictment for

MURDER AND POSSESSION OF
FIREARM DURING COMMISSION OF
A VIOLENT CRIME

Foreperson of Petit Jury

Date:

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

INDICTMENT FOR
MURDER AND POSSESSION OF FIREARM
DURING COMMISSION OF
A VIOLENT CRIME

At a Court of General Sessions, convened on March 9, 2006, the Grand Jurors of
CLARENDON County present upon their oath:

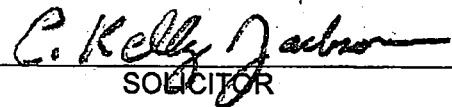
COUNT ONE – MURDER

That RALPHAEL LAMONT BRIGGS did in Clarendon County on or about
September 5, 2005, feloniously, wilfully and with malice aforethought, either expressed
or implied, kill one Wesley Antonio House by means of shooting him, and that the said
Wesley Antonio House did die as a proximate result thereof.

COUNT TWO – POSSESSION OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

That RALPHAEL LAMONT BRIGGS in Clarendon County on or about
September 5, 2005, was in possession of and did visibly display a firearm during the
commission of a violent crime as defined in Section 16-1-60, to-wit: murder and/or
manslaughter, in violation of Section 16-23-490, Code of Laws of South Carolina
(1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case
made and provided.


SOLICITOR