

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Oct 05 2023

Certiorari to Oconee County

S.C. SUPREME COURT

Honorable G.D. Morgan, Jr., Circuit Court Judge

DANIEL LEWIS CROWE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000368

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

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

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUNE 23, 1998	1
INDICTMENT AND SENTENCE SHEET	416
COMMON LAW PETITION FOR WRIT OF CERTIORARI	420
RETURN TO PETITION FOR WRIT OF CERTIORARI	441
REPLY TO STATE’S RETURN TO PETITION FOR WRIT OF CERTIORARI	459
ORDER GRANTING PETITION FOR CERTIORARI	463
APPLICATION FOR POST-CONVICTION RELIEF	464
RETURN AND MOTION TO DISMISS	467
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 25, 2022	486
EXHIBITS	593
ORDER OF DISMISSAL	608

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF OCONEE) COURT OF GENERAL SESSIONS
3 STATE)
4 V.) TRANSCRIPT OF RECORD
5 DANIEL LEWIS CROWE,)
6 DEFENDANT.)

7
8 BEFORE:
9 THE HONORABLE GERALD C. SMOAK, JUDGE, AND A JURY

10
11 DATE:
12 JUNE 23, 1998

13
14
15
16
17
18
19
20 APPEARANCES:
21 SUSAN CHAPPELL, DEPUTY SOLICITOR
22 N. GRUBER SIRES, JR., PUBLIC DEFENDER

23
24
25 REPORTER: EVELYN C. TEAGUE

I N D E X

1					
2	VOIR DIRE	3			
3	PRELIMINARY BY COURT		18		
4	OPENINGS				
5	Chappell	20			
6	Sires	22			
7	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
8	SHERRY HEATON				
9	Chappell	27		45	
10	Sires		35		47
11	JOHN SMITH				
12	Chappell	48		75	
13	Sires		62		
14	JOYCE SMITH				
15	Chappell	76			
16	Sires		86		
17	MARK EVANS				
18	Chappell	92		109	
19	Sires		101		
20	BENJAMIN SMITH				
21	Chappell	110			
22	Sires		113		
23	RICHARD WRIGHT				
24	Chappell	116		125	
25	Sires		122		

1 JAMES SMITH

2 Chappell 126 135

3 Sires 130

4 RONALD WILBANKS

5 Chappell 136

6 Sires 139

7 JERRY MOSS

8 Chappell 142

9 Sires 145

10 DAVID SMITH

11 Chappell 146

12 Sires 149

13 STANLEY SHERIFF

14 Chappell 151 176

15 Sires 159 179

16 KARL ADDIS

17 Chappell 184

18 Sires 190

19 VELLO PAAVEL

20 Chappell 194 221

21 Sires 209 222

22 JOHN BARRON

23 Chappell 224

24 Sires 230

25

1	MICHAEL FULBRIGHT		
2	Sires	236	
3	Chappell	246	
4	TIMOTHY PHILLIPS		
5	Sires	248	
6	Chappell	253	
7	LYNN ENRIGHT		
8	Sires	256	263
9	Chappell	261	264
10	CHARLOTTE CROWE		
11	Sires	274	
12	Chappell	291	
13	DANIEL LEWIS CROWE		
14	Sires	299	335
15	Chappell	323	
16	MOTIONS	342	
17	CLOSINGS		
18	Chappell	345	
19	Sires	350	
20	Chappell	362	
21	CHARGE TO THE JURY	389	
22	VERDICT	406	
23	SENTENCING	409	
24			
25			

E X H I B I T S

STATE

EV.

1	Shotgun	209
2	Photograph	154
3	Photograph	154
4	Photograph	154
5	Photograph	154
6	Photograph	154
7	Photograph	154
8	Photograph	154
9	Photograph	154
10	Photograph	154
11	Photograph	154
12	Photograph	154
13	Toxicology Report	188
14	.22 Semi-automatic Handgun	208
15	GSR-Heaton	230

DEFENDANT

1	Photograph	166
2	Bill of Sale	240
3	Hospital Bill	335

Date: 6/23/98County: Deer

VOIR DIRE

Case No: 97-45-37-702Judge: SmockPl. / State: StateState / Pl's. Atty: Hon. NewworthDefendant: Daniel CroweDefense Atty: Susan Chappell
Aruber SiresCourt Reporter: Loagne

Juror No.	Name	Sex	Race	Court	Strikes		Accept
					Plaintiff	Defense	
59		M	W				✓
10		F	W				✓
110		M	W			X	
37		F	W			X	
13		F	W				✓
63		M	B		X		
20		M	W		X		
27		F	W				✓
159		M	W			X	
152		M	W		X		
73		F	W			X	
126		M	W				✓
16		M	B			X	
71		F	W			X	
158		M	W		X		
12		F	W				✓
53		F	W				✓
154		M	W		(Foreman)		✓
15		M	W				✓

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

97
22
9
62
138



mw
mw
mw
mw
FW

xy
xy

✓
✓
✓

Alternate

109
131



mw
FW

✓
✓

1 COURT:

2 All right, ladies and gentlemen of the pettit
3 jury panel, please give me your attention. We
4 are about to begin the trial of the case of State
5 versus Daniel Lewis Crowe indicted for murder.

6 In that connection I will have to ask you
7 some questions, so, please give me your attention
8 if you would please. And, if anybody doesn't
9 understand the questions, you are certainly at
10 liberty to stand up or raise your hand or whatever
11 and I will be glad to repeat it.

12 All right, does any member of the jury panel
13 have any connection, either by blood or marriage,
14 or a close personal acquaintance of the defendant
15 in this case, Daniel Lewis Crowe?

16 If so, please stand.

17 All right, ladies and gentlemen, I am going
18 to read you a list of the State's potential
19 witnesses and I am going to ask you the same
20 questions about these witnesses, so, please listen
21 to the list and if there is anybody on that that
22 you have any connection with, either business or
23 personal, or a relative or whatever or a personal
24 relationship, I want you to stand and let me know
25 if you have any connection with these potential

1 witnesses.

2 The first one is Sherry Loraine Heaton.

3 Anybody have any connection with her?

4 John Wesley Smith.

5 (Juror standing)

6 COURT:

7 Yes, ma'am?

8 JUROR:

9 I grew up around the Smith family, so I don't
10 know whether I could judge them fairly.

11 COURT:

12 Your name please, ma'am, - -

13 JUROR:

14 [REDACTED].

15 COURT:

16 [REDACTED]

17 Well, the fact that you know the Smith
18 family, would that affect your ability to listen
19 to the testimony and evidence and give both the
20 State and defense a fair trial?

21 JUROR:

22 I could listen, but, I don't know whether I
23 could judge it fairly.

24 COURT:

25 All right, take her name out.

1 CLERK:

2 Number fourteen.

3 COURT:

4 Just have a seat, ma'am.

5 Angela Duckett. Anybody have any connection
6 with Angela Duckett?

7 Joyce Ann Smith.

8 Mark Evans.

9 Benjamin Smith.

10 Greg Shelton.

11 Richard Wright.

12 April Nix.

13 Russell Culbertson.

14 Jonathan Lecroy.

15 Lynn Enright.

16 Timothy Phillips.

17 James Eugene Smith.

18 Richard Griffin.

19 (Juror standing)

20 JUROR:

21 Your Honor, I work with Mr. Griffin.

22 COURT:

23 You work for him?

24 JUROR:

25 With him.

1 COURT:

2 You work with him?

3 JUROR:

4 If he goes by the nickname of Moby.

5 CHAPPELL:

6 Yes, Your Honor, - -

7 COURT:

8 All right, - - Okay. Better take his name
9 out then.

10 JUROR:

11 Number Thirty-five.

12 COURT:

13 Number thirty-five. Thank you.

14 All right, Gail Crenshaw.

15 Ronald Wilbanks.

16 Curtis Rogers.

17 JUROR:

18 Your Honor, I know Curtis Rogers.

19 COURT:

20 You know him?

21 All right, would the fact that you know Mr.
22 Rogers - - would that affect your ability to
23 listen to the testimony and evidence and give both
24 the State and defense a fair trial?
25

1 JUROR:

2 I would think so.

3 COURT:

4 And your name please, ma'am?

5 JUROR:

6

7 COURT:

8 All right, thank you, ma'am. Have a seat.

9 Take her name out.

10 SIRES:

11 What number is that, Your Honor?

12 CLERK:

13 Ninety-nine.

14 COURT:

15 Stanley Sheriff.

16 David Smith.

17 Jerry Moss.

18 Mike Crenshaw.

19 John Barron.

20 Vello Paavel.

21 And, Karl Addis who is your coroner.

22 All right, I will ask you again are any of
23 you related by blood or marriage, or a close
24 personal acquaintance of any of the State's
25 witnesses that I just read out? If so, please

1 stand.

2 All right, thank you very much.

3 Are any of you employed by the State's
4 witnesses? If so, please stand.

5 Or, by the defendant - - please stand.

6 Were any of you a member of the grand jury
7 which found the indictment in this case, if so,
8 please stand?

9 Has any member of the jury panel expressed or
10 formed any opinion about this case as to the guilt
11 or innocence of the defendant? If so, please
12 stand.

13 (Juror standing)

14 COURT:

15 Yes, - -

16 JUROR:

17 Your Honor, my husband went to school with
18 the deceased in the case, and he works possibly
19 with one of his relatives, and I feel like with
20 that that I may not. - - -

21 COURT:

22 All right, and your name?

23 JUROR:

24 (Inaudible) (Number One Hundred Thirty-
25 four)

1 COURT:

2 All right, take her out.

3 CLERK:

4 One Thirty-four.

5 COURT:

6 Does any member of the jury panel have any
7 bias or prejudice in connection with this case or
8 any of the parties thereto? If so, please stand.

9 All right, does any member of the jury panel
10 know of any reason why they could not give the
11 State and the defendant a fair and impartial trial
12 in this case?

13 If so, please stand.

14 (Juror standing)

15 COURT:

16 Yes, ma'am, your name please?

17 JUROR:

18

19 COURT:

20 I can't hear you.

21 JUROR:

22 I've heard a lot about the case and I don't
23 know if I could be impartial.

24 COURT:

25 All right, - - Have you got her name?

1 CLERK:

2 [REDACTED] [REDACTED] [REDACTED]. Number Eighty-five.

3 COURT:

4 All right, take her out.

5 Thank you. You may have a seat now.

6 All right, I'm going to ask you again - -

7 does any member of the jury panel know of any
8 reason why they could not give the State and the
9 defendant a fair and impartial trial in this case?

10 If so, please stand.

11 JUROR:

12 I know the deceased's father. I feel, you
13 know, that I wouldn't be qualified.

14 COURT:

15 All right, sir, your name please, sir?

16 JUROR:

17 [REDACTED] [REDACTED]. Sixty-one.

18 COURT:

19 All right, - -

20 All right, has anyone on the jury panel read
21 The Greenville News this morning concerning this
22 case, or, have you seen or heard any other
23 publicity surrounding this case?

24 If so, please stand.

25 (Jurors standing)

1 COURT:

2 Keep standing. I'll start right here with
3 you please, ma'am.

4 Tell us your name first please.

5 JUROR:

6

7 COURT:

8 All right, what did you read?

9 JUROR:

10 It was just when it first happened.

11 COURT:

12 All right, - -

13 JUROR:

14 It had some information on it.

15 COURT:

16 Would that fact affect your ability to listen
17 to the testimony and evidence and give both sides
18 a fair trial?

19 JUROR:

20 No, sir.

21 COURT:

22 All right, thank you, ma'am. You may have a
23 seat.

24 All right, - - Yes, ma'am.

25

1 JUROR:

2 Just that it was going to be a case that was
3 going to be tried this time.

4 COURT:

5 Would that fact affect your ability to listen
6 to the testimony and evidence and give both the
7 State and defendant a fair trial?

8 JUROR: (Crooks)

9 No, sir.

10 COURT:

11 All right, thank you ma'am. You may have a
12 seat.

13 Your name please, ma'am?

14 JUROR:

15

16 COURT:

17 Thank you.

18 Yes, sir, - -

19 JUROR:

20 [REDACTED], Number Fifty. The Greenville
21 News this morning.

22 COURT:

23 All right, would that fact affect your
24 ability to listen to the testimony and evidence
25 and give both the State and the defense a fair
trial?

1 GARRETT:

2 No, sir.

3 COURT:

4 Thank you, sir. Have a seat.

5 Yes, sir, - -

6 JUROR:

7 [REDACTED] [REDACTED] [REDACTED]. The Greenville News.

8 COURT:

9 Yes, sir, you have already been excused.

10 (During initial jury qualification juror
11 informed the Court that he knew defendant and
12 could not be impartial)

13 COURT:

14 Yes, sir, - -

15 JUROR:

16 [REDACTED] Number Twenty-two. Just read the
17 paper this morning.

18 COURT:

19 Would that fact affect your ability to listen
20 to the testimony and evidence and give both the
21 State and defense a fair trial?

22 CALVERT:

23 No, sir.

24 COURT:

25 All right, thank you, sir. You may have a

1 seat.

2 Yes, sir.

3 JUROR:

4 [REDACTED] [REDACTED]. Read the article in the
5 paper. No problem.

6 COURT:

7 All right, [REDACTED] [REDACTED], who are you employed
8 by?

9 ALLGOOD: (Number Three)

10 I'm employed by the City of Seneca as a
11 firefighter.

12 COURT:

13 Firefighter? All right, sir. Thank you
14 very much.

15 Would not affect.

16 All right, is any member of the jury panel a
17 member of the local Shrine - - or Shrine Club I
18 guess - - Shriners or Masons or Masonic Lodge and
19 know the deceased as a result of this, or his
20 immediate family?

21 If so, please stand.

22 Let me ask you that again.

23 Is there any member of the jury panel who is
24 a Mason or Shriner and knew the deceased through
25 those organizations?

1 If so, please stand.

2 Thank you very - -

3 Yes, - - -

4 JUROR:

5 Sherry Heaton.

6 COURT:

7 I can't hear you.

8 CLERK:

9 Speak up.

10 SIRES:

11 The first witness, Your Honor.

12 COURT:

13 And your name?

14 JUROR:

15 [REDACTED] [REDACTED] (Number Sixty-eight)

16 COURT:

17 All right, take her out.

18 CLERK:

19 [REDACTED] [REDACTED], Number Sixty-eight.

20 COURT:

21 Anything further from the State?

22 CHAPPELL:

23 May we approach, Your Honor?

24 COURT:

25 Yes, ma'am.

1 (Bench conference out of the hearing of the
2 jury and court reporter)

3 COURT:

4 All right, the attorneys who are going to try
5 this case - -

6 Everybody knows Mr. Ducworth, but, would you
7 stand up please, ma'am, and tell them who you are.
8 If you would please, ma'am.

9 CHAPPELL:

10 My name is Susan Chappell, and I'm deputy
11 solicitor here in Oconee County.

12 COURT:

13 Thank you.

14 And, Mr. Sires, - -

15 SIRES:

16 I'm Gruber Sires, the Public Defender for
17 Oconee County and I also practice law in the City
18 of Seneca.

19 COURT:

20 Does anybody have any connection with either
21 of these two lawyers? Having been represented by
22 them or close personal acquaintance or anything
23 else that might affect your ability to serve on
24 this jury concerning these two lawyers?

25 If so, please stand.

1 COURT:

2 No response.

3 Anything further from the State?

4 CHAPPELL:

5 Nothing further from the State.

6 COURT:

7 From the defense?

8 SIRES:

9 Nothing further from the defense, Your Honor.

10 COURT:

11 All right, we are going to draw the jury now,
12 but, you people put on the record that you waive - -

13 Did y'all agree to that?

14 Do both parties agree that you waive a blind
15 person drawing the jury or a person under the age
16 of ten years drawing the jury?

17 CHAPPELL:

18 The State waives, Your Honor.

19 SIRES:

20 Defense waives, Your Honor.

21 I've discussed it with my client and he's in
22 agreement with that.

23 COURT:

24 All right, thank you very much.

25 (Jury drawn according to attached strike sheet)

1 (No matters regarding jury selection and no
2 motions prior to swearing jury)

3 (Jury placed under oath and sent to jury room)

4 [REDACTED] appointed foreman)

5 (Motion made and granted as to sequestration
6 of all witnesses) (Defendant's wife allowed to
7 remain)

8 (Stanley Sheriff remains as chief officer)

9 (Victim's wife allowed to remain in courtroom)

10 (The following took place in the presence of
11 the jury)

12 COURT:

13 Now what I am about to say to you right now
14 is intended as an introduction to this case.
15 It is not a substitute, of course, for the
16 detailed instructions on the law which I will give
17 you at the close of the case and before you retire
18 to consider your verdict.

19 This is a criminal case commenced by the
20 State which is sometimes referred to as the
21 prosecution against one Daniel Lewis Crowe.

22 This case is based on an indictment which the
23 solicitor may read or explain to you.

24 Now you should distinctly understand that the
25 indictment is simply a charge and that it is not

1 in any sense evidence of the allegations it
2 contains.

3 The defendant has pleaded not guilty to the
4 indictment and the State, therefore, has the
5 burden of proving each of the essential elements
6 of the indictment beyond a reasonable doubt.

7 The purpose of the trial is to determine
8 whether the State has met this burden. Your
9 purpose as jurors is to find and determine the
10 facts.

11 Under our system of criminal procedure you
12 are the sole judge of the facts.

13 If at any time I should make any comment
14 regarding the facts, you should disregard it.

15 It is especially important that you perform
16 your duty of determining the facts diligently and
17 conscientiously. Ordinarily, there is no means
18 of correcting an erroneous finding of fact by a
19 jury.

20 On the other hand, and with equal emphasis, I
21 instruct you that the law as given by the court
22 constitutes the only law for your guidance.

23 It is your duty to accept and follow the law
24 as I give it. It is your duty to follow the law
25 as I give it even though you may disagree with the

1 law. You are to determine the facts from the
2 testimony you hear and the other evidence introduced
3 in court. It is up to you to determine the
4 emphasis which you feel may properly be drawn from
5 the evidence.

6 You must not consider anything that you may
7 have read or heard about the case outside the
8 courtroom whether before or during the trial.

9 Until this case is submitted to you you must
10 not discuss it with anyone, even with your fellow
11 jurors.

12 After it is submitted to you, you must
13 discuss it only in the jury room with your fellow
14 jurors. It is important that you keep an open
15 mind and not decide any issues in the case until
16 the entire case has been submitted to you under
17 the instructions of the court.

18 It will be your added duty, Mr. Foreman, to
19 preside in the jury room and be the jury spokesperson
20 here in the court.

21 Solicitor, - -

22 CHAPPELL:

23 Thank you.

24 Good morning.

25 On June 7th, 1997 the victim in this case,

1 Eddie Heaton, went to work. After he got off
2 work he decided to stop by the home of his
3 brother-in-law John Smith because there was a
4 birthday party at that house.

5 He and his wife Sherry rode over to John's
6 home and there he saw the defendant Sonny Crowe.

7 The testimony will show that during that
8 evening there had been two almost - - or altercations
9 between the defendant and other people.

10 As Eddie and Sherry arrived, they saw the
11 defendant, and there was a brief altercation
12 between the defendant and the victim. The
13 testimony will also show that the victim either
14 hit the defendant or pushed him.

15 At that point the owner of the home, John
16 Smith, put the defendant in a truck and took him
17 back to his house, told him to stay home and not
18 to come back to the party.

19 A few minutes later this defendant walked
20 back up a driveway, leveled a shotgun at the
21 victim and shot him in the chest.

22 Ladies and gentlemen, you will hear from
23 witnesses who were at the party. You will hear
24 from people who watched the death of Eddie Heaton.

25 You will hear from officers who investigated

1 the case and looked into the facts.

2 I'm asking you to do something very simple -
3 keep your eye on the ball. Don't leave your
4 common sense behind; listen to the facts; listen
5 to the testimony.

6 If you do that, ladies and gentlemen, I have
7 every confidence that you will return a verdict
8 that speaks the truth.

9 That's what the word verdict means - to speak
10 the truth.

11 And, the truth is, ladies and gentlemen, that
12 this defendant is guilty of murder.

13 Thank you.

14 COURT:

15 Mr. Sires, - -

16 SIRES:

17 If it please the court, - -

18 Mr. Foreman, and ladies and gentlemen, the
19 solicitor - the prosecution, told you what the basic
20 facts are. We are not going to be in disagreement
21 with that.

22 The word verdict comes from the Latin
23 veredicto which means to speak the truth, and this
24 is what Mr. Crowe wants you to do.

25 When a jury verdict comes back that speaks

1 the truth you will find Sonny not guilty.

2 Let me tell you a little bit about Sonny
3 Crowe.

4 That's his wife sitting there and he has two
5 children - two teenagers. He's thirty-nine years
6 old and he's an auto mechanic. He likes to work
7 on cars. What I call a shade-tree mechanic and
8 Sonny thinks an awful lot and has become attached
9 to a vehicle that he owned at that time.

10 And, as the prosecution pointed out to you,
11 he had been at Mr. Smith's house and they had a
12 party and he was taken home, and he stayed home
13 for a while and he started thinking about that car
14 and all these people down there at this party that
15 was going on - - and the drinking and the dope
16 dealing and whatever they were doing down there - -
17 and he decided he wanted to go back and get his
18 car.

19 And a word that I have learned in the last
20 few days or the last month or two - - he took what
21 was called a wolf ticket - - Now, I had never
22 heard that term before, and I'm sure most of you
23 haven't heard that word before. But, a wolf
24 ticket - -

25 And, what's a wolf ticket?

1 Well, as Sonny explained it to me, it's a
2 bluff. It's something to keep the wolf off.

3 So, in order to do that, Sonny picked up a
4 shotgun and took it with him as a wolf ticket to
5 get his car.

6 And, when he got back down to the Smith
7 residence - the trailer - the deceased came after
8 him with a gun and Sonny had no choice - -
9 none at all - - but to fire that gun and it
10 resulted in the death of Mr. Heaton, and Sonny
11 didn't run away. He didn't go hide; he didn't
12 jump on the next freight train or airplane.

13 He stayed out of sight for a while but he did
14 come back down there to see what was happening and
15 he got beat up - - somewhat quite severely - -
16 and the police came and they arrested him and
17 charged him with it and that was back June the 8th
18 last year and he's been in jail ever since.

19 And no one has been able to hear his side; no
20 one has heard all the testimony and all the proof.
21 You are going to be the ones to decide what
22 happened.

23 And after all the testimony is in the Judge
24 is going to tell you what the law is in the State
25 of South Carolina in regards to self defense, and

1 Sonny asks that you listen to that.

2 And you remember - - Of course, I've got a
3 few years on most of you. - - when we were small
4 we used to go to the theaters - -

5 I grew up in Charleston and we used to go to
6 a place called The Palace on Saturday afternoons
7 and watch the old westerns, and the two fellows
8 would have guns and they would go out in the
9 street and they would shoot it out.

10 Sometimes the one with the black hat got it;
11 and, sometimes the one with the white hat got it.

12 But, be that as it may, they didn't charge
13 those people with murder even in the movies,
14 because it was self defense.

15 And, that's what we have here, and I think
16 when your verdict comes back that speaks the truth
17 you will find that Sonny Crowe was acting as any
18 reasonable person would act.

19 That gun only had one shot. He didn't carry
20 any extra shells in his pocket. He wasn't loaded
21 for bear. He didn't carry any automatic weapon
22 or anything.

23 He carried a wolf ticket, and that's all he
24 carried.

25 And there were more guns down there than

1 there probably is in the gun shop across the
2 street that day.

3 We think differently about different circumstances
4 because we're human and I'm sure that Sonny was
5 not thinking as you or I here today, but, we have
6 to go back to June of last year and put ourselves
7 in that situation and then apply the law as the
8 judge gives it to you and your common sense.

9 That's why we have jurors. That's why the
10 Constitution of the United States says that no
11 person shall be seized without probable cause,
12 because this is not a civil case remember.

13 A man's liberty is at stake here.

14 The State must prove to you beyond a reasonable
15 doubt his guilt beyond a reasonable doubt, not
16 that we think this is what happened, not that this
17 is what most probably happened - - beyond a
18 reasonable doubt.

19 The burden is on the State always. Sonny
20 Crowe doesn't have to prove anything here today.
21 The State of South Carolina has to prove what
22 happened and they have to prove it beyond a
23 reasonable doubt.

24 The indictment as the judge has already told
25 you is just a simple piece of paper, some way to

1 get it to you.

2 But, it says on there with malice aforethought
3 that he took the life of this fellow.

4 Malice aforethought.

5 Thank you for your attention.

6 COURT:

7 All right, call your first witness.

8 CHAPPELL:

9 The State would call Sherry Heaton.

10 COURT:

11 All right, come around please and be sworn.

12 SHERRY HEATON, being duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. CHAPPELL:

16 Q State your name for the jury please.

17 A Sherry Loraine Heaton.

18 Q Sherry, how old are you?

19 A Thirty-one.

20 Q And did you know the victim in this case,
21 Eddie Heaton?

22 A Yes, he happened to be my husband.

23 Q How long had you all been married?

24 A We'd been together almost eight years.

25 Q Were you with him on June 7th and 8th,

1 1997?

2 A Yes, I was.

3 Q What did you do the evening of June 7th?

4 A Went to Scooters and worked and then got them
5 to fix us a plate to take home that evening, and
6 we went by my brother's for a few minutes before
7 we went home. - to his birthday party.

8 Q Did both you and Eddie work at Scooters at
9 that time?

10 A Yes. Helped them out on the weekends.

11 Q What time did you and Eddie get off of work
12 that night?

13 A It was about twelve. We stayed a little
14 over.

15 Q What is your brother's name?

16 A John Wesley Smith.

17 Q And why did you go to his house that night?

18 A Because he was having a birthday party and
19 they had come down there earlier to get us to come
20 by there.

21 Q So, did you decide to go?

22 A Yeah.

23 Q And, what time do you think you arrived at
24 John's house?

25 A It was around one or so.

1 Q Did you see the defendant when you arrived at
2 the house?

3 A Yes, ma'am.

4 Q And what was he doing?

5 A He - - Well, he was acting wild and telling
6 everybody he would fight them and all kind of
7 stuff.

8 Q Where was he when you pulled up at the house?

9 A He was on the front porch when we first
10 pulled up.

11 Q Did you or Eddie, either one, have words with
12 the defendant at that time?

13 A Uh-uh (negative)

14 Q What happened that caused a problem between
15 Eddie and the defendant?

16 A Well, he had been trying to pick a fight with
17 some others that was there and two of them left
18 which is Moby Griffin and Tracy.

19 And then we was all standing around talking
20 and he come up to me and started hitting me - -
21 nudging me in the back and stuff and I told him to
22 just go on and leave me alone and when he went on
23 around the truck he called me - -

24 Q You can say it.

25 A Bitch.

1 And, my husband asked him not to talk to me
2 like that - - to his wife like that.

3 Q What, if anything, happened next?

4 A And he come - - when Eddie done that he come
5 and 'runned' up against Eddie and he fell on the
6 ground in the ditch.

7 Q Did you see Eddie hit him?

8 A I never - - I never seen Eddie raise his hand
9 except to hold it out to help him up.

10 Q Do you know whether or not Eddie hit him?

11 A (Nods head)

12 Q What, if anything - - -

13 COURT:

14 Ma'am, you have to answer the question rather
15 than nod your head.

16 A Okay.

17 COURT:

18 Please answer the question.

19 Q After this defendant hit the ground, did you
20 hear him say anything to Eddie?

21 A Just after Eddie - - Eddie tried to help
22 him up and after he was going to the truck he
23 turned - - when he got about halfway to the truck
24 that my brother was going to take him home in,
25 he turned and told Eddie - - He said you're

1 marked; I'll be back to get you.

2 Q And the brother you are talking about is
3 John?

4 A John.

5 Q What did John do after this problem between
6 Eddie and the defendant?

7 A He finally got him in the truck and took him
8 home.

9 Q Did you see John take him home?

10 A Yes, John left the yard with him, yes.

11 Q What did you and Eddie do then?

12 A We was trying to get everybody to leave.
13 John came back and said that Sonny said he was
14 coming back and we was trying to get everybody in
15 their cars to get them out from there in case he
16 did come back.

17 Q What happened next?

18 A Some of them was getting in the cars and some
19 of them was in the house, and me and Eddie and
20 Rick - - And we was standing all around his car
21 and out of nowhere he came out of the woods, and
22 he said which one is first - - you are and he
23 pulled the trigger.

24 Q Did he have anything with him when you first
25 saw him?

1 A Yeah.

2 Q What did he have with him?

3 A He had a single-barrel shotgun.

4 Q And what did he say?

5 A He said which one's first and you are when he
6 pulled the trigger.

7 Q Where was Eddie when he pulled the trigger?

8 A He was standing beside a station wagon in the
9 driveway.

10 Q And what did Eddie do?

11 A He - - he did nothing. I mean - - He just
12 turned and looked at me funny.

13 And I started screaming that Eddie was hit.
14 And, then I turned to tell them to call 911 - -
15 I turned and was going to hold back onto him and
16 he was gone.

17 He went over the top of the car and landed in
18 between the car and the motorcycle.

19 Q What did the defendant do?

20 A He ran out to the roadway.

21 Q What did you do in an attempt to help Eddie
22 at that time?

23 A I picked him - - He was laying on the
24 ground and I raised him up and laid him - -
25 When I got to him I just fell down on my knees

1 and I was holding him up and I had told them
2 forget 911, he ain't going to make it if we don't
3 get him there now, and they give me a towel and I
4 held it in his chest.

5 We picked him up and put him in the car and
6 Rick took us to the hospital.

7 Q When Eddie was shot, did he have anything in
8 his hands?

9 A No.

10 Q Are you sure of that?

11 A He didn't have nothing in his hands when he - -
12 because when he got hit, he threwed this hand up
13 like this and he was holding onto the station
14 wagon like this when he first got hit and then
15 when I turned and he was gone is when he had fell
16 between the motorcycle and the car.

17 Q Once he fell, did you find anything near him?

18 A Yeah, I - - I had a pistol.

19 Q Was Eddie left or right handed?

20 A He was right handed.

21 Q When he fired a gun, did he fire it with his
22 left or right hand?

23 A Right hand.

24 Q Where did you find the pistol?

25 A Down towards his feet.

1 Q Where did you normally keep that pistol?

2 A In my saddle bag.

3 Q How far was he from that saddle bag when he
4 fell?

5 A He was right at it.

6 Q What did you do with the pistol?

7 A I laid it on the porch.

8 Q And that was before you put Eddie in the car?

9 A Yeah. Well, when they throwed me the towel
10 and I was holding it and they was trying to get
11 the car door unlocked is when I laid it up on the
12 porch.

13 And then we had to lay Eddie down on the
14 ground so we could open the car door up across the
15 top of him and then pick him up and put him in the
16 car.

17 Q Were you able to get Eddie to the hospital?

18 A Yes, ma'am.

19 Q Did he in fact die at the hospital?

20 A Yes.

21 Q And this happened in Oconee County?

22 A Uh-huh.

23 Q Nothing further.

24 COURT:

25 Cross.

1 CROSS EXAMINATION

2 BY MR. SIRES:

3 Q How tall was Eddie, Ms. Heaton?

4 A Five eight (5'8").

5 Q What did he weigh?

6 A About two thirty-five.

7 Q Two thirty-five?

8 A Uh-huh.

9 Q What did he do at Scooters?

10 A We kept the fights - - make sure there wasn't
11 no fights or nothing.

12 Q He was a bouncer?

13 A Bouncer.

14 Q He was a bouncer at Scooters.

15 And what time did y'all leave Scooters that
16 night?

17 A Between 12:00 and 12:30.

18 Q Did he have anything to drink?

19 A No.

20 Q Didn't drink anything?

21 A Nope, he was a severe diabetic.

22 Q He was diabetic?

23 A Yep.

24 Q You say you went down to John Smith's.

25 Is that your brother?

1 A Yeah.

2 Q And he lived - - or did live in a trailer
3 there on [REDACTED] Road?

4 A Yes.

5 Q He's not there anymore, is he?

6 A Uh-uh.

7 Q What happened? Did he move or - - -

8 A Yes.

9 Q Did he get evicted?

10 A He was asked to leave, yeah.

11 Q Asked to leave.

12 And, y'all were riding a motorcycle?

13 A Yeah.

14 Q You've got a motorcycle. What type motorcycle
15 you have?

16 A Got Harleys.

17 Q Big Harleys.

18 So, you drove the Harleys from where to
19 where? You left Scooters and where did you go?

20 A We went up through Westminster.

21 Q Uh-huh.

22 A And out the [REDACTED] Road. That way.

23 Q So, you went straight from Scooters over to
24 John's trailer?

25 A Yeah. We stopped - - We was just cruising

1 along. We wasn't in no hurry.

2 Q Right. It was a pretty Summer evening,
3 wasn't it?

4 A Yeah.

5 Q Wasn't bad weather or anything.

6 And when you pulled up on your motorcycles
7 where did you park?

8 A Right next to the porch.

9 Q Okay. And this pistol that you talked about
10 was in the saddle bag in your - -

11 A It was in my saddle bag.

12 Q Your saddle bag.

13 A Yeah.

14 Q Why was that?

15 A I always carried one with me.

16 Q Always carried that pistol with you on the
17 motorcycles?

18 A Uh-huh.

19 Q And when you found it after Eddie was shot,
20 it was on the ground there by Eddie wasn't it?

21 A Uh-huh.

22 Q And, how many rounds does that gun hold?

23 A Ten.

24 Q Was it loaded?

25 A Uh-huh.

1 Q Had ten rounds in it.

2 In fact you gave that gun to someone and they
3 started shooting at Sonny, didn't they?

4 A No.

5 Q Were you there when they started shooting at
6 Sonny?

7 A I was in the car with Eddie leaving out of
8 the driveway.

9 Q And who was shooting at Sonny?

10 A (No response)

11 Q Answer the question.

12 A My brother.

13 Q Your brother was shooting at him.

14 And, was there a lot of drinking going on
15 down there that day?

16 A We hadn't been there long.

17 Q No, but, - - When you got there was there
18 drinking going on?

19 A A little, yeah.

20 Q How about smoking marijuana?

21 A No.

22 Q Doing crank or meth?

23 A I didn't see none of that.

24 Q You never saw any drugs down there?

25 A No.

1 Q Didn't the sheriff's department have a big
2 raid down there after this - - sometime in the
3 last six months?

4 A That hasn't got nothing to do with this case.

5 Q But, they did have a raid down there, did
6 they not?

7 A (No response)

8 Q Isn't that why John was forced to leave from
9 down there?

10 A Uh-uh.

11 Q That wasn't the reason?

12 A No. He was behind on his rent.

13 Q Behind on his rent. Okay.

14 And Eddie popped Sonny I think you told a
15 deputy back on the 8th of June. Popped Sonny and
16 knocked him down. Is that right?

17 A No.

18 Q What happened?

19 A Sonny ran into Eddie. The only time Eddie
20 put his hands out was when he was - - asked Sonny - -
21 was going to help him up.

22 Q Well, how did Sonny get on the ground, if he
23 didn't - -

24 A He run into Eddie. Eddie was a big man.

25 Q Oh, he ran - - He just bumped into him

1 and that made him fall?

2 A Sonny run back around towards the truck when
3 Eddie asked him not to speak to his wife like that
4 and then Sonny run into Eddie.

5 Q And he fell?

6 A Yeah.

7 Q Why did you tell Deputy Stanley Sheriff that
8 Eddie popped Sonny?

9 A Well, - -

10 Q You don't know why you told him that?

11 A (No response)

12 Q Ma'am?

13 A Like I said, I didn't see Eddie ever raise
14 his hand to hit - -

15 Q Let me show you - - the statement, ma'am,
16 that was dated 6-8 of '97. That is your statement,
17 is it not?

18 A Uh-huh.

19 Q And, isn't that what you said, he popped
20 Eddie? Read your statement, ma'am.

21 A Uh-huh.

22 Q That Eddie popped him.

23 A Uh-huh.

24 Q Okay. But, you are telling us today that he
25 didn't pop him, that Eddie didn't hit him and that

1 Sonny and Eddie just bumped into each other.

2 Is that right?

3 A Yeah.

4 Q And, so, your brother John carried Sonny
5 home.

6 A Yes, sir.

7 Q And, do you remember seeing Charlotte - -

8 A Uh-huh.

9 Q - - Sonny's wife.

10 A Uh-huh.

11 Q And she came down there looking for Sonny.

12 A Yep, and we told her that he had done been
13 taken home.

14 Q And then what happened?

15 A And then she left.

16 Q She left.

17 And how long was she gone before Sonny came
18 back? - - that you saw him.

19 A Not very long. She wasn't gone maybe ten or
20 fifteen minutes.

21 Q All right, and - - -

22 A When he come back up in the yard.

23 Q Did you know where Sonny lived?

24 A No, I sure didn't.

25 Q If I told you that [REDACTED] [REDACTED] is off of

1 Highway - - I guess that's 24 - - at Oakway, and
2 it's fourteen miles, would you disagree with that?

3 A I don't know.

4 Q If I told you it takes a good fast driver at
5 least twenty minutes to drive that route, would
6 you disagree with that?

7 A (No response)

8 Q When Sonny came back, did he come walking
9 down that gravel road?

10 A Nope, he come out of the woods.

11 Q Out of the woods.

12 Now, where are these woods, ma'am?

13 A There's some right off the terrace on the
14 bottom side of the driveway and there's some on
15 the upper side of the driveway.

16 Q All right, - - there's [REDACTED] Road and this
17 trailer is sitting there. It's clear from the
18 trailer up to the road, is it not?

19 There's no trees or woods or anything there,
20 right?

21 A There are up on the hill beside the driveway.

22 Q Beside the drive.

23 Where was Sonny's car parked?

24 A It was parked at the end of the trailer.

25 Q Okay. So, he came out towards his car?

1 A No, he - -

2 What car you talking about, the one he left
3 or the one he came back in?

4 Q That he left.

5 A The one he left was at the other end of the
6 trailer.

7 Q So, he had to go by the trailer to get to the
8 car.

9 A Well, not necessarily.

10 Q How else would he have got it?

11 A Because there's another driveway that comes
12 in on the other side.

13 Q Okay.

14 So, he could have gone around the back of the
15 trailer, is that what you're saying?

16 A Yeah.

17 Q And the car was still - - But, it was on the
18 far end of the trailer, right?

19 A Yep.

20 Q Okay. And, you said the car he came in, did
21 you see the car that he came in?

22 A No, but he had to come back in something.

23 Q So, you don't know how he got back down
24 there?

25 A No.

1 Q All right, - -
2 And he was by himself?
3 A Uh-huh. As far as I know.
4 Q Okay.
5 Now who shot up Sonny's car?
6 A (No response)
7 Q Do you know?
8 A Nobody shot up the car.
9 Q You don't know who?
10 A There was nobody shot at no car.
11 Q Okay.
12 When your brother shot at Sonny was he in a
13 line with Sonny's car?
14 A No.
15 Q He was not?
16 A Sonny - - When my brother was shooting at
17 Sonny, he was running out at the end of the
18 driveway in the opposite direction.
19 Q Going toward [REDACTED] Road or going towards the
20 woods?
21 A Going towards [REDACTED] Road.
22 Q And you weren't there when Sonny came back,
23 walked back down to the trailer?
24 A Uh-uh.
25 Q You had already gone?

1 A Yep.

2 Q Okay.

3 Now you said in your statement that I showed
4 you a moment ago I did not see Eddie get the gun,
5 but, I saw Eddie's target pistol that had been in
6 the saddle bag on the ground by Eddie.

7 A Uh-huh.

8 Q And that's where you found it.

9 A Right.

10 Q Thank you, ma'am.

11 COURT:

12 Anything on redirect?

13 CHAPPELL:

14 Yes, Your Honor, - -

15 REDIRECT EXAMINATION

16 BY MS. CHAPPELL:

17 Q Sherry, Mr. Sires asked you about the raid.

18 Was your brother's home ever raided for drugs?

19 A They came looking for someone that they had a
20 warrant for and he - - and they had been told that
21 he had been staying at my brother's is the reason
22 they came there.

23 Q But, there wasn't a raid at your brother's
24 home.

25 A Uh-uh.

1 Q When you say that your brother was shooting
2 at the defendant, is that John your brother?

3 A No, James.

4 Q So, this is a different brother than the one
5 we are talking about?

6 A Yes.

7 Q To your knowledge, did anyone shoot up
8 Sonny's car?

9 A No, ma'am.

10 Q Did anyone damage that car in any way?

11 A No, ma'am. They came and got it. Picked
12 it up the first thing the next morning.

13 Q Could Sonny have gotten to his car without
14 approaching or shooting Eddie?

15 A Yes, he sure could have. There was another
16 driveway. He could have come around and backed
17 up a little bit and went back out the other
18 driveway.

19 Q While you were there did anyone ever approach
20 him or go toward him in any aggressive way?

21 A No.

22 Q Nothing further.

23 COURT:

24 Further questions?

25

RECROSS EXAMINATION

BY MR. SIRES:

Q How many people were down there that night?

A Uh - -

Q Just a rough guess. Twenty to thirty or more? Or five or six?

A Before we started getting them to leave?

Q Uh-huh.

A There was about twenty or twenty-five.

Q All right, so there was a large crowd.

Where were their vehicles? How did these people get down there?

A They was sitting around. Vehicles was sitting in the yard.

Q All in the yard.

And so how could Sonny - - Could Sonny even get his vehicle out that way?

A Yes, he sure could have.

Q How?

A There was nobody blocking his vehicle.

Q But, the road was blocked, wasn't it?

A No.

Q With all these people in these cars.

A No. Like I said, there was another driveway that came in from the end where his car was

1 sitting at.

2 His car was sitting at the opposite end of
3 the trailer.

4 Q Back behind the trailer?

5 A No.

6 Q Toward the front?

7 A The very end.

8 Q Okay. We'll get somebody else to clear that
9 up.

10 Thank you.

11 COURT:

12 You may step down, ma'am.

13 (Witness excused from the witness stand)

14 COURT:

15 Call your next witness.

16 CHAPPELL:

17 Your Honor, the State calls John Wesley
18 Smith.

19 JOHN WESLEY SMITH, being
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. CHAPPELL:

23 Q State your name for the jury please.

24 A John Wesley Smith.

25 Q And, John, where were you living on June 8th,
1997?

1 A I was living on the [REDACTED] Road; I can't
2 remember the address. Out next to Five Forks.

3 Q And that was in Oconee County?

4 A Yes, ma'am.

5 Q And did you have a home on that property or - -

6 A Yes, ma'am.

7 Q And, was it a mobile home?

8 A Yes, ma'am.

9 Q Do you know the defendant in this case, Sonny
10 Crowe?

11 A Yes, ma'am.

12 Q Did you know the victim in this case, Eddie
13 Heaton?

14 A Yes, ma'am.

15 Q How did you know Eddie?

16 A He was my brother-in-law.

17 Q Sherry is your sister?

18 A Yes, ma'am.

19 Q How long had you known the defendant?

20 A About a year and a half. Around two years.
21 Something like that.

22 Q Were you and he friends?

23 A Yes, ma'am.

24 Q What were you doing on the afternoon of June 7th,
25 1997?

1 A We was celebrating my birthday.

2 Q Is that your birthday?

3 A The [REDACTED] was, but, we just went ahead and
4 decided to do it the following weekend.

5 Q And had you planned a party for that evening?

6 A Yes, ma'am.

7 Q What time did the party start on the 7th?

8 A It actually started somewhere around 5:30 or
9 6:00. Somewhere around there.

10 Q Had the defendant been in your home that day?

11 A Yes, ma'am.

12 Q And what was he doing at your home on the
13 7th?

14 A We were drinking.

15 Q Did he come over for any particular reason
16 that afternoon?

17 A Yes, ma'am.

18 I met him in town and we noticed he was
19 having a flat tire on his car and he followed me
20 home and we changed his tire.

21 Q How long was he over there that afternoon
22 before the party actually started?

23 A He arrived somewhere around 5:00 or 5:30.
24 Somewhere around in there.

25 Q And the two of you were drinking?

1 A We started drinking.

2 Q Would you say before the party started that
3 the defendant was intoxicated?

4 A Yeah.

5 Q Did he stay for the party?

6 A Yes, ma'am.

7 Q Did you notice anything about the way that he
8 was acting at the party?

9 A Yes, ma'am.

10 Q Can you tell the jury the way the defendant
11 behaved while he was at your party?

12 A He was just - - trying - - he was harassing
13 everybody.

14 He was just, you know, making comments toward
15 everybody and stuff. Just waiting for trouble to
16 start more or less.

17 Q Do you know of any problem he had with an
18 individual by the name of Tim Phillips?

19 A Not right off hand. Mainly the whole thing
20 started after that.

21 Q What, if anything, happened with Tim Phillips
22 that evening and the defendant?

23 A Tim Phillips was passed out on my couch, and
24 Mr. Crowe - - we was out around the fire and Mr.
25 Crowe went in the house and jumped on him while he

1 was on the couch passed out.

2 Q And what did he do to him?

3 A I - - As far as I could see he hit him with
4 his fist. He had a black eye and stuff. As far
5 as I could see.

6 Q Did you see any reason for the defendant to
7 have attacked Tim Phillips - - -

8 A No, ma'am, not at all.

9 Q What did you do with Mr. Phillips after this
10 attack?

11 A My little boy's room was on the other side of
12 the kitchen. We put Tim in there to lay back
13 down - - and shut the door.

14 Q After the defendant had done this to Tim
15 Phillips, what did you do?

16 A I was trying to keep Sonny calmed down and I
17 was asking everybody just to avoid him, overlook
18 him, and, you know, - - in other words to keep
19 more trouble from starting.

20 Q Did people pretty much do what you asked them
21 to do?

22 A Yes, up to a certain point. Everybody took
23 what they could.

24 Q Did you see the defendant have a problem with
25 anybody else there that night?

1 A Well, he was just popping off stuff toward
2 everybody. I mean - - it wasn't one certain
3 person.

4 Q Did he have any problems with a person by the
5 name of Moby Griffin?

6 A Yeah, there at the end he did.

7 Q What happened between he and Mr. Griffin?

8 A They had quite a few words on my front porch.

9 Q When did Eddie and Sherry arrive?

10 A Somewhere around 12:30 or something 'til 1:00.
11 Somewhere around in there.

12 Q Did you see or notice anything between Eddie
13 and the defendant?

14 A Uh, not until Sonny stepped off the porch and
15 then that's when he started on Eddie.

16 Q What did he say to Eddie?

17 A I can't remember; not right offhand.

18 Q Were they friendly words or fighting - - -

19 A They was arguing words.

20 Q And you couldn't hear or don't remember - - -

21 A I just don't remember.

22 I just give up by then.

23 Q Did you see Eddie do anything to Sonny?

24 A No, ma'am.

25 Q Did you see Eddie hit Sonny?

1 A No, ma'am.

2 Q What did you do at that time?

3 A Well, when I realized - - when I raised my
4 head back up, I realized what was going on and
5 that's when I got Mr. Crowe and put him in my
6 truck and took him home.

7 Q And why did you do that?

8 A To keep from - - a big fight occurring or - -

9 Q Where did the defendant live?

10 A In Fair Play.

11 Q Did the defendant at anytime during that
12 night attempt to fight you up to this point or
13 hurt you in any way?

14 A No, ma'am.

15 Q Had you made an effort before this time to
16 get the defendant away from your party?

17 A Yes, ma'am.

18 Q And, what did you do?

19 A He said he lost his key for his car and we
20 hunted it and then I offered to take him home and
21 he wouldn't do that - - quite a few times during
22 the night.

23 Q Did you ever send for his wife Charlotte to
24 come get him?

25 A Yes, ma'am.

1 Q But, finally you decided to take him home
2 yourself?

3 A Yes, ma'am.

4 Q When you put him in the car, what kind of
5 vehicle did you have?

6 A A little Ford Ranger pickup.

7 Q And did he go with you?

8 A Yes, ma'am.

9 Q Did you in fact take him all the way home?

10 A Yes, ma'am, I let him out right in his
11 driveway.

12 Q What, if anything, did he say to you while he
13 was being taken home?

14 A He repeatedly told me several times that he
15 was coming back to kill Eddie and that if I
16 testified against him that he would kill me too.

17 Q How many times would you estimate that he
18 told you that on the trip back home?

19 A Several times.

20 Q Did you believe that he might do that?

21 A Uh, not until he got out of the truck.

22 Q What made you think he was going to do that
23 when he got out of the truck?

24 A The way he looked at me and the way he done
25 when he slammed the door and started towards his

1 house just as soon as he got out of the truck.

2 Q What did you do after you dropped Sonny off?

3 A I went straight home.

4 Q Did you attempt to get the people at your
5 house to leave?

6 A Yes, ma'am.

7 Q What did you tell them?

8 A I told them that Mr. Crowe - - Sonny said he
9 was coming back to get Eddie and I was asking
10 everybody to leave hoping they'd be gone before he
11 did get back to prevent that.

12 Q Where were you when the defendant came back?

13 A I was standing in my living room starting out
14 my door - - My front door was open and that's when
15 I seen him come across my yard.

16 Q Did he have anything with him?

17 A He had a single-barrel shotgun held up.
18 Straight up in the air in his hand.

19 Q At that point did you see Eddie?

20 A No, ma'am.

21 Q What, if anything, did you hear or see after
22 you saw Sonny come back into the driveway?

23 A Then I heard shots and that was it. That's
24 all I remember.

25 Q So, you weren't actually outside - - -

1 A No, ma'am.

2 Q Did you ever receive a gun from anybody?

3 A Yes, ma'am, after it happened, there was one
4 handed to me on my front porch.

5 Q Who handed you that gun?

6 A My brother Benjamin.

7 Q And what did you do with it?

8 A I laid it in the seat of my truck.

9 Q Did you ever shoot at anybody?

10 A No, ma'am.

11 Q What happened after the shooting? Did you
12 try to help Eddie?

13 A Yes, ma'am.

14 Q How did you do that?

15 A We all went out - - we all picked him up and
16 put him in my wife's car and sent him on to the
17 hospital.

18 Q Did you go to the hospital, or, did you
19 remain at your house?

20 A We remained at my house.

21 Q And why did you do that?

22 A To wait on the officers to come to show them
23 where it happened and all.

24 Q Who all waited with you at your house?

25 A My wife, Joyce Smith, and Mark Evans.

1 Q Did you wait inside or outside the house?

2 A Well, at first we waited outside and then we
3 went inside.

4 Q What, if anything, happened regarding the
5 defendant at that point?

6 A My wife was standing in the kitchen at the
7 sink washing Eddie's blood off her hands - -
8 (crying) - - she looked up and Sonny was standing
9 outside with the shotgun pointed at her.

10 (Crying)

11 COURT:

12 Would you like some water?

13 A Thank you, sir.

14 He was standing out just two or three foot
15 from the porch with the shotgun pointed at her
16 through the kitchen window and that's when she screamed
17 and went to the floor.

18 Q What did you all do at that point?

19 A I had Mark take her to the bathroom and close
20 the door.

21 Q And what did you do?

22 A Uh, I went into the bedroom. By the time I
23 got to the bedroom, he was standing right behind
24 me.

25 Q He came into your home?

1 A Yes, ma'am.

2 Q What, if anything, did he say to you?

3 A He told me - - He said I told you I was
4 coming back and he said if you testify against me,
5 he said I'm get you, too, John.

6 He said I loved you almost like a brother - -
7 almost had you as a brother, but, I'll get you,
8 too.

9 Q What happened next?

10 A And my wife - - and then that's when she
11 broke down and he realized she was in the bathroom
12 and he went for her.

13 Q What did he do?

14 A He tried to slam the door open. And, when
15 he did, Mark slammed it back to and that's when he
16 realized that Mark was in there with her and
17 that's when they went to struggling and tore the
18 bathroom door down.

19 Q The bathroom door actually came off the
20 hindges?

21 A Yes, ma'am.

22 Q What did you do?

23 A He left the shotgun - - back in the hallway
24 and I was still standing in the bedroom door entry
25 and I grabbed the shotgun from him.

1 And, that's when him and Mark went to
2 fighting.

3 Q And what happened?

4 A That's when I started beating him with the
5 shotgun.

6 Q How many times do you think that you hit him
7 with the shotgun?

8 A I don't know exactly.

9 Q Did you damage the shotgun?

10 A Yes, ma'am; I know I done that.

11 Q How easy was it to get this defendant calmed
12 down?

13 A It wasn't easy.

14 I mean I beat him with that shotgun I don't
15 know how many times and Mark was fighting him from
16 the front and we both like to have never got him
17 down even with me hitting him with the shotgun
18 from behind.

19 I mean he liked to have not - - I thought
20 we wasn't going to get him down.

21 Q What, if anything, was he saying during this
22 time?

23 A He didn't say nothing. And when he went
24 down, he just laid there.

25 When the officers stepped in the house - -

1 when he heard the officers step in the house, he
2 sort of snickered John, you're next, and that's
3 when he got up on his knees and put his hands
4 behind his back and he didn't move.

5 Q How did you finally get him in a position
6 where you were actually able to keep him down?

7 A I beat him with that shotgun.

8 Q Did Mark do anything?

9 A Mark was fighting him from the front.

10 Q What, if anything, did you do with the vacuum
11 cleaner?

12 A Mark got it and held it over his head.

13 After we got him down, he was laying face
14 down on the floor in the hallway. Mark grabbed
15 it and laid it crossways of his neck and put his
16 knee on it, and I stood behind him with the
17 shotgun held up just in case he moved again.

18 Q And is that when the police came?

19 A Yes, ma'am.

20 Q You said you heard shots on that night. How
21 many shots do you think you heard?

22 A I couldn't tell you. It sounded like three
23 or four.

24 Q Could you tell the difference between a
25 shotgun blast and other shots?

1 A Not that night. It just sounded like an
2 echo.

3 Q During that night did you ever see Eddie with
4 a gun?

5 A No, ma'am.

6 Q And this happened in Oconee County?

7 A Yes, ma'am.

8 Q Nothing further.

9 CROSS EXAMINATION

10 BY MR. SIRES:

11 Q What are you presently charged with, Mr.
12 Smith?

13 A Sir?

14 Q What are you presently charged with criminally?

15 A What do you mean by that?

16 Q Are there criminal charges placed against
17 you, sir?

18 A (No response)

19 Q Have you been arrested for something lately?

20 A Yes.

21 Q Well, what is that, sir?

22 A Uh - -

23 Q Answer my question. Don't look at them.
24 Look at me or look at the judge or the jury.

25 What have you been charged with, sir?

1 A Criminal Domestic violence.

2 Q Okay. For what? For beating your wife and
3 child or something?

4 A No, it was not for beating my child, thank
5 you, sir.

6 Q Just beating your wife.

7 A Uh - - This is - - I'm not the one on trial
8 here, sir.

9 COURT:

10 You answer his questions.

11 Q Do you want me to start over again?
12 What else are you charged with, sir?

13 A Criminal domestic violence.

14 Q Weren't you arrested on a recent drug raid in
15 this county?

16 A No, sir.

17 Q You haven't been charged with any drug
18 violations?

19 A No, sir.

20 Q You've never been charged with any drugs
21 violations?

22 A No; sir.

23 Q Okay. Fine.

24 You didn't shoot at Sonny that night?

25 A No, sir.

1 Q You never had a gun in your hand that night?

2 A Yes, sir, the one they handed to me on the
3 porch.

4 Q Who handed it to you?

5 A My brother Benjamin.

6 Q Your brother who?

7 A My brother Benjamin.

8 Q Benjamin?

9 A Yes, sir.

10 Q You said you heard four or five shots. Who
11 made these shots?

12 A I can't tell you, sir; I was inside the
13 house.

14 Q You were in the house?

15 A Yes, sir.

16 Q And you don't know the difference between a
17 shotgun blast and pistol shots, sir?

18 A Not that night, sir; it was just like an
19 echo. That's all I know.

20 I mean I don't know.

21 Q What had you had to drink or smoke or - -

22 A I had two mixed drinks. I didn't have
23 nothing to smoke.

24 Q You had a what?

25 A I had two mixed drinks.

1 Q Two mixed drinks is all you had?

2 A Yes, sir.

3 Q Did you give one to Sonny that night?

4 A No, sir.

5 Q Never mixed one and handed him?

6 A No, sir.

7 Q You said you took him to Fair Play.

8 Do you know where Oakway is, sir?

9 A Not right offhand. I mean it's - -

10 Q How long have you lived in this county?

11 A All my life, but, I haven't ever went in that
12 area that much.

13 Q And, you don't know the difference between
14 Oakway and Fair Play?

15 A Not right offhand, sir.

16 Q Do you know where the Oakway Tractor Company
17 is?

18 A (No response)

19 Q Or, the school down there - - Oakway School.
20 You don't know where any of that is?

21 A Ain't that - - Is that above his house?

22 Q Yeah, right above his house down there.

23 A Okay.

24 Q Okay.

25 And, from his house to the trailer on

1 ██████ Road is how far?

2 A Uh, - -

3 Q If I told you fourteen miles would you agree
4 or disagree with that?

5 A Pretty close to it.

6 Q Yeah. . About fourteen miles.

7 And, how long would it take you to drive that
8 far, Mr. Smith?

9 A I couldn't tell you, sir; I haven't ever
10 timed it.

11 Q Well, in your statement you gave, you said it
12 was about ten minutes or so.

13 Surely, you didn't make that distance in ten
14 minutes, did you?

15 A Uh, - -

16 Q Do you remember giving a statement to Mike
17 Crenshaw on the 8th of June, sir?

18 A (No response)

19 Q A written statement that's some four pages long?
20 Do you remember giving that?

21 A That morning?

22 Q Yes, sir. At 4:20 A.M.

23 A Yes, sir.

24 Q Right after this happened.

25 A Yes, sir.

1 Q Do you remember that?

2 A Yes, sir.

3 Q You haven't gone over that statement with the
4 prosecution?

5 A Uh, yes, sir.

6 Q Sure, you have.

7 Okay.

8 And you said you took him to Fair Play, but,
9 you might have meant Oakway. You really don't
10 know.

11 But, you took him home - wherever that was.

12 A Yes, sir.

13 Q Is that right?

14 You realized that Eddie had hit Sonny at one
15 time. You said that in there. And now you are
16 saying you don't remember that?

17 A I knew he hit Eddie - - I knew he hit Sonny
18 because Sonny had a black eye, but, I did not see
19 it.

20 Q Okay.

21 So, when the solicitor asked you did you know
22 that - - you're saying you didn't know it because
23 you didn't see it, but, you know it because he had
24 a black eye.

25 Somebody hit him, didn't they?

1 A Yes, sir.

2 Q And that gun that your brother handed you - -

3 A Yes, sir.

4 Q - - what kind of gun was that?

5 A It was a .22 pistol is all I know.

6 Q You don't know whose it was?

7 A Uh, they say it was Eddie's.

8 Q Eddie's?

9 A Yeah.

10 Q Why did they hand it to you? Why didn't
11 they just leave it out there by Eddie?

12 A I don't know.

13 Q Eddie was a bouncer at Scooter's, is that
14 right?

15 A Yes, sir.

16 Q How long had he done that?

17 A Uh, two or three years.

18 Q Had he and Sonny ever had any trouble before
19 that you know of?

20 A No, sir, not that I know of.

21 Q Yeah.

22 And you never found out who was doing all
23 this shooting?

24 A No, sir.

25 Q And Sonny came ~~back~~ after they took Eddie to

1 the hospital.

2 Sonny came walking ~~back~~ in the trailer.

3 A Yes, sir.

4 Q And laid the shotgun by the door, didn't he?

5 A Yes, sir.

6 Q So, that when he came down the hall to where
7 you were in the bedroom, he didn't have anything
8 in his hand - - -

9 A No, no, he had the gun in his hand. He had
10 the shotgun in his hand.

11 Q Now, which way is it?

12 Did he lay it down?

13 A No, he had - - -

14 Q Well, how did you hit him with it? How did
15 you get it away from him?

16 A He had it pointed down and he was 'lent' into
17 the bathroom.

18 Q Uh-huh.

19 A And he still ~~had~~ a hold of the gun in the
20 hallway.

21 Q All right, and - - -

22 A And I reached down and grabbed the barrel and
23 snatched it out of his hand.

24 Q And took it away from him?

25 A Yes, sir.

1 Q And beat the fool out of him with it.

2 A Yes, sir.

3 Q Okay.

4 Was the gun loaded?

5 A I didn't know, sir, at the time.

6 Q All right, - -

7 A I didn't.

8 Q Did you ever find out whether it was loaded
9 or not?

10 A I realized it wasn't loaded once I got
11 through.

12 Q Okay.

13 And did Sonny have any shells in his pocket
14 or anything?

15 A I don't know that, sir.

16 Q You didn't find any, did you?

17 A I didn't - - -

18 Q Did you see any?

19 A No, sir, I didn't see any.

20 Q And, what did he have on that night, do you
21 remember?

22 A I know he had on bluejeans.

23 Q Bluejeans.

24 And bluejeans are a fairly tight fit and you
25 know how big a shotgun shell is. Would you have

1 seen those shotgun shells if he had had a bunch of
2 them?

3 A I - - I wasn't paying that no attention, sir.

4 Q All right, - -

5 Didn't Sonny tell you that he was coming back
6 to get his car?

7 A No, sir.

8 Q He didn't tell you he was coming back to get
9 his car?

10 A No, sir.

11 Q And you saw him going in the house when you
12 dropped him off down there at Oakway.

13 A I seen him head toward the house, sir.

14 Q Okay.

15 And his wife's car wasn't there?

16 A No, sir.

17 Q She wasn't there. As far as you know.

18 A As far as I know, sir.

19 Q You got back and what you told the solicitor
20 was that he kept saying that he was going to come
21 back and get Eddie.

22 And explain this to me, sir. Why did you
23 tell all these other folks to leave and not Eddie?

24 A I - - -

25 Q Why didn't you say Eddie, he's coming back to

1 get you; why don't you get out of here?

2 A I was asking everybody to leave, sir.

3 Q Including Eddie.

4 A Yes, sir, I was trying to get everybody out
5 of there.

6 Q Why didn't Eddie leave?

7 A Well, everybody was leaving. Sir, they was
8 in the yard.

9 Q He had a Harley sitting right out there in
10 front, didn't he?

11 A Yes.

12 Q He and his wife. Two Harleys sitting right
13 there ready to go.

14 A Yes, sir.

15 Q And all these other people left, didn't they?

16 A Uh, they was in the process of leaving.

17 Q All right, - - How many people left?

18 A Everybody left right when it happened.

19 Q No, before that. When you first got back
20 from dropping Sonny off at his house - -

21 A Two or three I guess.

22 Q - - - and you said you folks get out of here,
23 how many had left?

24 A Two or three I guess.

25 Everybody, like I said, was out in the

1 yard telling everybody bye and they was leaving.

2 Q Why didn't Eddie leave?

3 A Sir, - - Like I said, everybody was in the
4 yard telling everybody bye when Sonny walked up.

5 Q Did you see how he got down there?

6 A Sir?

7 Q Did you see how he had gotten down there?

8 A Got ~~back~~ to where he was at? No, sir.

9 Q How long had it been?

10 A Uh, it was just a short period of time.

11 Q Just a short period of time.

12 A I can't remember exactly.

13 Q If you take say fifteen minutes to take Sonny
14 home and then fifteen minutes back, that's a half
15 hour.

16 A Somewhere - - -

17 Q And then how long after that was it before
18 Sonny came back?

19 He had to drive the same distance, didn't he?

20 A Yes, sir.

21 Q Okay.

22 Would it have been another fifteen or twenty
23 minutes after that?

24 A I guess; I suppose so.

25 Q All right, - -

1 And, so, you didn't see him shoot Eddie?

2 A No, sir.

3 Q Did you?

4 A (No response)

5 Q You didn't see the pistol until somebody
6 handed it to you?

7 A No, sir.

8 Q And you didn't see the shotgun until you took
9 it away from Sonny - - or, you saw him walk in the
10 yard with the gun.

11 A Yes, sir, I seen him walk in the yard with
12 the shotgun.

13 Q The wolf ticket.

14 Do you know what a wolf ticket is?

15 A What's that, sir?

16 Q Wolf ticket. Have you ever heard of that
17 term?

18 A No, sir.

19 Q Never heard of that. Okay.

20 How long have you known Sonny?

21 A About a year and a half, maybe two years.

22 Q Who is Charlotte?

23 MRS. CROWE:

24 Me.

25 Q First cousins?

1 A Yes, sir.

2 Q I guess you have known your first cousin all
3 your life, haven't you?

4 A Yes, sir.

5 Q And she and Sonny had been going together for
6 about fifteen years?

7 A I never did go around them much.

8 Q Never did.

9 A No, sir, not until - - like I said - -

10 Q All right, - -

11 That's all I'd have.

12 REDIRECT EXAMINATION

13 BY MS. CHAPPELL:

14 Q Mr. Smith, did this defendant ever lay the
15 shotgun down while he was in your house?

16 A No, ma'am.

17 Q Once you were handed that gun, what did you
18 do with it?

19 A The shotgun?

20 Q No, the - -

21 A The pistol?

22 Q - - gun that your brother handed you.

23 A I took it and laid it in the seat of my
24 pickup.

25 Q And did you let anyone know that it was there?

1 A Me and Mark knew that it was there.

2 Q Did you tell the police it was there?

3 A Yes, sir. I mean yes, ma'am.

4 Q So, you turned that gun over to the police?

5 A Yes, ma'am. They got it out of the truck
6 theirsself.

7 Q Nothing further.

8 COURT:

9 You may step down. You may remain in the
10 courtroom if you like. You've already testified.

11 (Lunch recess with usual admonition to jury
12 not to discuss case, news media, et cetera)

13 (After lunch recess)

14 (The following took place in the presence of
15 the jury)

16 JOYCE SMITH, being duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. CHAPPELL:

20 Q State your name for the jury please.

21 A Joyce Ann Smith.

22 Q And, what was your address on June 7th of
23 1997?

24 A [REDACTED], Walhalla.

25 Q And, who are you married to?

1 A John Smith.

2 Q What were you doing on the afternoon of June
3 7th of 1997?

4 A We were getting ready to have a birthday
5 party for my husband.

6 Q And, did you have occasion on that date to
7 see the defendant Sonny Crowe?

8 A Yes.

9 Q What time did he arrive at your house, if you
10 remember?

11 A It was in the evening; I'm not exactly sure
12 of the time, but, it was in the evening.

13 Q Did he stay for the party?

14 A For a portion of it.

15 Q Did you stay for the party? Were you there
16 at the time of the party?

17 A Yeah, I was there. I did leave a couple of
18 times to go to the store, but, I was there.

19 Q In the times that you were there with the
20 defendant, how was he behaving at that party?

21 A When he first got there he was okay, but, as
22 it progressed on he did get a little rowdy.

23 I did not say much to him because of his
24 rowdiness.

25 In fact, some of our guests were leaving

1 because he was rowdy.

2 Q Are you aware of any altercation that he had
3 with Tim Phillips?

4 A At the time it happened, I was at the store,
5 but, when I came back, my husband John called me
6 aside and told me what had happened.

7 Q Are you aware of any problem he had with Moby
8 Griffin that night?

9 A I know that they were trying to get him in
10 the truck to leave, and, they were arguing ~~back~~
11 and forth.

12 Q About what time did you leave the party for
13 the first time?

14 A The first time ~~was~~ probably around six or so.
15 We ran to the store to get some more drinks and
16 get something for sandwiches and chips.

17 Q How long were you gone?

18 A Forty-five minutes or so.

19 Q And, when was the next time that you left?

20 A It was getting late. Probably I guess - -
21 It was after twelve.

22 Q And, where did you go?

23 A We went to the store and then we went on down
24 to Scooter's.

25 Q And why did you go there?

1 A We went to the store to pick up some more beer
2 and the girl I was riding with, Lyn Enright,
3 wanted to go down to Scooter's, so, we ran down
4 there before we went all the way back to the
5 house.

6 Q When you got to Scooter's, did you see Eddie?

7 A Yes.

8 Q And, what was he doing?

9 A He was sitting with his wife Sherry at the
10 bar.

11 Q Did you speak with him?

12 A Uh-huh.

13 I went up and hit him on the shoulder and
14 said hey and asked if they were going to come up
15 and he said yeah.

16 Q Did anything in particular happen while you
17 were at the bar?

18 A No.

19 Q Did anyone ever ask you to come home?

20 A Now, I do have a beeper. My beeper was
21 going off continuously.

22 I did try to use the phone there, but,
23 somebody was on it. So, at that time I did try
24 twice to get to the phone; somebody was on it, so,
25 I told Lyn let's just go back home, you know,

1 something must be wrong.

2 Q And, did you in fact go back home at that
3 time?

4 A Uh-huh.

5 Q What, if anything, happened about that time?

6 A When I got home everything was a mess.

7 I got there, Mark Evans pulled me aside and
8 said that there had been some trouble, that they
9 had to ask Sonny to leave, that John, Eddie and
10 Moby had to put Sonny in the truck and at the time
11 John was gone to take Sonny home.

12 Q Did you ever have a meeting with Charlotte,
13 the defendant's wife, that evening?

14 A Yes.

15 When John got home, he asked me to go down
16 and get her. He said that Sonny said that he was
17 going to come back up there, and he asked me to go
18 down and get Charlotte and see if she could come
19 up there to calm him down, talk to him, and get
20 him to leave.

21 Q Did you in fact go to see Charlotte?

22 A Yes, I did.

23 Q Now, don't tell me anything that was said in
24 that conversation, but, did you have a conversa-
25 tion with Charlotte regarding this defendant's

1 behavior?

2 A Uh-huh.

3 Q Did she in fact come back to the house with
4 you?

5 A Yes.

6 Q And what happened when you got there?

7 A We went in and John had not got back yet.
8 They said - -

9 We went in and it was like well, where is
10 John and Sonny because she had come to get him and
11 they said that John then was in the process of
12 taking him home, that he should be back shortly.

13 Q So, until you actually got back to the house
14 you weren't aware that John had to take him home?

15 A Uh-uh.

16 Q What happened next?

17 A Charlotte came in with me; she came in the
18 house behind me. And they told me that John was
19 expected back at any minute. He had left to take
20 Sonny home and just a minute later - -

21 Well, I told her he's gone to take him home.
22 She left. A minute later John came in, pulled me
23 to the side and said we need to ask everybody to
24 leave and I said why and he said because Sonny
25 said he was going to come back.

1 Q Did Sonny in fact come back?

2 A Yes.

3 Q Where were you when Eddie was shot?

4 A I was standing in my livingroom.

5 Q Did you see anything?

6 A Yes, my front door was open.

7 Q What did you see?

8 A I - - I was in there talking to people.

9 I saw - - John said oh, God, and I said what,
10 and he said he's back.

11 And I said no, and he said yes, he's back and
12 he's got a gun.

13 I looked out and I saw Sherry and Eddie were
14 standing at the front of a station wagon in our
15 yard - - pulled to the side of our driveway.

16 I looked up, I saw the gun pointed. The
17 next thing I know I heard a shot and Sherry was
18 screaming Eddie's been hit.

19 Q Did you ever see Eddie with a gun?

20 A No, I did not.

21 Q Were you in a position to have seen Eddie
22 with a gun?

23 A Yes. When I heard the shot, I went out on
24 the front porch.

25 Q What did Eddie do when he was hit?

1 A He kind of stumbled back. He reached up
2 with his left hand - - kind of put it over his
3 chest.

4 My car was in our yard - - my front yard.
5 He ran to the passenger side of my car is where he
6 fell to the ground.

7 Q What did you do at that point?

8 A I panicked. I - - They were screaming,
9 you know, get help.

10 Lyn Enright ran back inside the house to get
11 911, John was getting a towel to give to Sherry
12 to, you know, stop the bleeding or try to help and
13 everybody went out there and jumped up and got
14 Eddie and put him in the car.

15 Q Did you go to the hospital?

16 A No, I did not. I was on the phone with the
17 police - the 911 operator. They said for me and
18 John to stay there because we lived there.

19 Q Did you in fact stay there?

20 A Yes.

21 Q Did anyone stay with you and John?

22 A Yes, Mark Evans.

23 Q What, if anything, happened after you decided
24 to stay at the house and wait for the police?

25 A I went back inside the house, and I had

1 helped put Eddie in the car.

2 I went back inside the house, was washing
3 blood off my hands, I looked up out the kitchen
4 window and Sonny was standing back in the yard
5 almost in - - close in the area where he had shot
6 him.

7 I screamed at John and Mark because the front
8 door was still standing wide open.

9 I grabbed the door and just slung it to, but,
10 it's an older mobile home, so, it kind of flopped
11 back open a little bit.

12 I went running. Mark took me in the
13 bathroom and John said well, I can probably talk
14 to him and calm him down, and John went to the
15 bedroom and Sonny came in with the gun and went in
16 the bedroom with John.

17 Q Did you hear anything of their conversation?

18 A Yes.

19 Q What did you hear?

20 A He said - - he - - I was panicking myself.
21 By the time Mark had got me calmed down some,
22 Sonny was asking John if he wanted to die.

23 Q What happened next?

24 A When I heard that, I broke down, started
25 crying even louder than I was, and Sonny came in

1 the bathroom after me and Mark.

2 I don't think he realized that Mark was in
3 there with me.

4 Q How did he try to get into the bathroom?

5 A We had the door shut and he was pushing on
6 the door and he stuck the gun inside the door,
7 and, in fact, he asked me if I wanted to die.

8 Q What did Mark do?

9 A Mark lounged at the bathroom door like this
10 and that's when the fight broke out.

11 Q What happened to the bathroom door?

12 A It was torn off the hinges.

13 Q What, if anything, did you hear Sonny say
14 during this fight?

15 A There was some cussing. I panicked.
16 Mark got the door down on him.

17 John came around, took the gun away from him.
18 I got across the door and went into the living
19 room and called 911.

20 Q Were Mark and John finally able to calm Sonny
21 down?

22 A They had to beat him down.

23 Q And, was he still in that condition? Were
24 they still holding him down when the police
25 arrived?

1 A Yes.

2 Q And it happened in Oconee County?

3 A Uh-huh.

4 Q Nothing further.

5 CROSS EXAMINATION

6 BY MR. SIRES:

7 Q You work somewhere right now, Ms. Smith?

8 A No, not right now.

9 Q Have you ever been in any trouble before?

10 A No.

11 Q Never have?

12 A (No response)

13 Q Did you notice Sonny had a black eye that
14 night?

15 A When he first got to the house?

16 Q No, later on that evening.

17 A No, I did not.

18 Q When did you first see Sonny? When he first
19 got to the house that day - -

20 A Uh-huh.

21 Q - - in the middle of the day working on a
22 car?

23 A Yeah, he had a flat tire or a tire was going
24 flat or something.

25 Q Okay.

1 And then you told the solicitor that you went
2 somewhere and I didn't quite catch that. Where
3 did you go?

4 A The first time I left I went to the store to
5 get sandwich things and some chips and dip.

6 Q And then you came back and then you left
7 again.

8 A Uh-huh.

9 Q Where did you go the second time?

10 A I went to get some beer and went to Scooter's.

11 Q What time was that?

12 A Well, in fact we couldn't get no beer
13 because, you know, it was after twelve. It was
14 around twelve or getting right after twelve, so,
15 we did not get any.

16 Q It was around twelve o'clock at night?

17 A Yes, somewhere in there.

18 Q While you were gone that's when Sonny and
19 Eddie got into it, or, you don't know.
20 You don't know when they got into it?

21 A That's when things started happening between
22 them.

23 Q Okay.

24 So, when you got back you didn't see Sonny at
25 first?

1 A No, he was - - Well, I don't know where he
2 was in fact when I first got back.

3 Q All right, - -

4 A Because I came back and went straight in the
5 house.

6 Q All right, - -

7 And, then they told you to go get Charlotte.
8 Is that right?

9 A Uh-huh.

10 Q And so you went over - - How long did it
11 take you to go from your house to Charlotte's down
12 there at Oakway?

13 A About fifteen minutes. Ten or fifteen
14 minutes.

15 Q You got her and brought her straight back?

16 A Uh-huh.

17 Q And when you got there was Sonny there?
18 When you came back with Charlotte was he there?

19 A No, John was taking him home.

20 Q He had already gone.

21 And, how long was it before Sonny came back?

22 A Uh, it wasn't very long at all.

23 Q Would it have been forty-five minutes?

24 A It wasn't forty-five minutes. Maybe twenty
25 minutes. Something like that.

1 Q She had to go all the way back home, right?

2 A Uh, - - -

3 Q And, get Sonny and then come all the way
4 back.

5 That's at least thirty minutes, isn't it?

6 A I don't know if Charlotte brought Sonny back
7 or not. I did not know how he got back to our
8 house.

9 Q Well, - -

10 But, if she had brought him back, wouldn't it
11 have taken at least thirty minutes?

12 A Well, - - I can't say. You know, when
13 you're mad and you're in a hurry and you want to
14 get somewhere - -

15 Q Yeah, but it's at least fourteen miles, isn't
16 it?

17 A I'm not exactly sure.

18 Q And you say that you never saw but the one
19 gun that night - - the shotgun?

20 A Uh-huh.

21 Q You never saw a pistol?

22 A Not until the police got there and they said
23 it was laying in the front seat of my husband's
24 truck.

25 Q Did your husband tell you where he got it

1 from?

2 A No. I did not know that the gun was even
3 there.

4 Q How many shots did you hear that night?

5 A I heard one.

6 Q So, the only time you heard - - You only
7 heard one shot?

8 A Yes.

9 Q And that was it.

10 And, when Sonny came back after they had
11 carried Eddie to the hospital about what time was
12 that? Two or three o'clock in the morning or so?

13 A It was - - I think Eddie died - - a little
14 bit - - you know, give or take a little bit - -
15 right at three.

16 So, it was - -

17 Sonny was there. They were holding him down - -
18 He was in the police car when we found out that
19 Eddie had died.

20 Q Sonny never really left, did he? He went
21 out in the woods or something and then came back
22 in after they took Eddie off.

23 A He took off running. I don't know - -
24 I don't even know which direction he ran off in.

25 Q Took off running.

1 When he took off running you don't remember
2 hearing any shots after him?

3 A No. No, I don't.

4 Q Where - - -

5 A I was on the phone in the house in my living
6 room with 911.

7 Q All right, - - And, you say your husband
8 and Mark are the ones that got the gun and beat
9 Sonny up and subdued him and put him down on the
10 floor or whatever? A vacuum cleaner and all that
11 stuff - - -

12 A Yeah.

13 Q - - - and held him down until the police got
14 there?

15 A Uh-huh.

16 Q You don't remember him saying anything about
17 calling the police when he first walked in the
18 trailer?

19 A Who?

20 Q Sonny.

21 Q No, I do not.

22 Q Okay.

23 You're not the same Joyce Ann Smith that on 9-28-92
24 was found guilty or pled guilty to tampering with
25 water meter - bypassing a water meter?

1 A Yes, I am that Joyce Smith, but, that was
2 something that I did not do.

3 Q Five and a half years ago?

4 A Yes, I am that person, but, that's already
5 been cleared up.

6 Q You were convicted and paid a hundred forty-
7 eight dollar fine?

8 A Uh-huh.

9 Q Okay.

10 Thank you, ma'am. That's all I'd have.

11 COURT:

12 You may step down. You may stay in the
13 courtroom if you like.

14 A Okay.

15 (Witness excused from the witness stand)

16 CHAPPELL:

17 The State would call Mark Evans.

18 MARK EVANS, being duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. CHAPPELL:

22 Q State your name for the jury please.

23 A Timothy Mark Evans.

24 Q Mark, do you know the defendant in this case,
25 Sonny Crowe?

1 A No, I do not.

2 Q Did you know the victim Eddie - - -

3 A Yes, I did.

4 Q Were you friends with Eddie?

5 A Yes, ma'am.

6 Q Did you have an occasion to see the defendant
7 Sonny Crowe on the late hours of June 7th or the
8 early morning hours of June 8th, 1997?

9 A Yes, ma'am.

10 Q Where did you see him?

11 A At John Smith's house.

12 Q And, are you a friend of John Smith?

13 A Yes, ma'am.

14 Q Why were you there?

15 A A birthday party.

16 Q Did you in fact help John Smith and the
17 defendant change a tire that day?

18 A I watched them do it.

19 Q What time did you arrive at the party? Did
20 you stay all day or did you leave and come back?

21 A Stayed all day.

22 Q What, if anything, happened with regard to
23 the defendant and other people that you saw that
24 night at the party?

25 A Just trying to fight everybody.

1 Q What kinds of things was he doing?

2 A Foaming at the mouth and he tried to start a
3 fight with me and everything, and then he beat up
4 Tim Phillips when he was passed out - - while me
5 and John was outside.

6 Q Was the defendant drinking?

7 A Yeah.

8 Q Was he drinking a good deal?

9 A I didn't really watch him.

10 We was all drinking.

11 Q Would you say he was intoxicated?

12 A Yeah.

13 Q You mentioned an incident with Tim Phillips,
14 what was Tim Phillips doing when the defendant
15 attacked him?

16 A Passed out on the couch in the trailer.

17 Q What did the defendant do to him?

18 A I was outside. Me and John was outside by a
19 fire and then we heard something. There was a
20 thump and I run up there and then John come behind
21 me and he was hitting Tim.

22 Q What kind of condition was Tim in when you
23 got him off the couch?

24 A After he beat him up?

25 Q Uh-huh.

1 A He was bleeding from the nose and mouth and I
2 think his eye was 'blooding'.

3 Q To your knowledge had Tim Phillips done
4 anything to start a fight with the defendant?

5 A Not that I know of.

6 Q At what point did Sonny or the defendant try
7 to start a fight with you?

8 A After he beat Tim up.

9 I told him to jump on me if he wanted to jump
10 on somebody.

11 Q What did he say to you then?

12 A He just run his mouth. I can't remember.
13 Mumbling something.

14 But, John got in between us.

15 Q And was John able to calm the defendant down
16 at that time?

17 A He took him outside. I think little James - -
18 James Smith took him out, too.

19 Q Do you recall an incident between the
20 defendant and a man by the name of Moby Griffin
21 that night?

22 A Yes, ma'am.

23 Q What happened between them?

24 A Moby went in and see what he done to Tim.
25 I don't know if Moby 'knowed' him or not, but,

1 he got mad and went and said something to him and
2 then him and Moby about got into it.

3 Q Were you there when Eddie and Sherry Heaton
4 rode up?

5 A Uh-huh.

6 Q What was the defendant doing when they came
7 to the party?

8 A He was outside; I don't know what he was
9 doing.

10 Q Did you see an altercation between the
11 defendant and Eddie?

12 A I was in the house. I heard something
13 outside and I went outside and Eddie was helping
14 him up.

15 Q So, did you actually see Eddie hit him?

16 A No, I didn't. Some people just said he hit him.

17 Q But, you didn't actually see it?

18 A No.

19 Q What happened after Eddie helped Sonny up?

20 A John picked him up - - Well, John got him
21 and put him in the car and took him home.

22 Q And that was the defendant?

23 A Yes, ma'am.

24 Q Where were you when Eddie was shot?

25 A I was in the kitchen - - over the sink - -

1 in front of the window. Me and John LeCroy was.

2 Q Did you actually see the shooting?

3 A Well, I heard somebody say he's got a gun and
4 I looked out and I seen him lower the gun
5 and that was it.

6 I mean it happened so quick.

7 Q You actually saw the defendant lower the gun
8 and shoot it?

9 A He lowered it like that right there.
10 Eddie was facing - - had his hands on the car.

11 Q At the time he was shot?

12 A No, he turned around when they said he had a
13 gun.

14 Q Were you in a position to see whether Eddie
15 had a gun in his hand when he was shot?

16 A Not that I could see. I didn't = =
17 look for one.

18 Q Did you notice whether or not he had a gun or
19 did you see a gun in Eddie's hand?

20 A I didn't see one.

21 Q What did Eddie do after he was shot?

22 A He grabbed his chest and then I seen him kind
23 of walk toward his motorcycle and then he fell to
24 one knee and he just fell backwards.

25 That's when Sherry went over there and

1 grabbed him and Rick Wright grabbed him and they
2 put him in the car.

3 Q Did you attempt to help Eddie at that point?

4 A There was somebody outside, but, I was scared
5 that he shot Eddie and he'd probably come after
6 me, and, so, - -

7 I think John or somebody told me to get in
8 the house.

9 Q So, you went back in the house at that time?

10 A Uh-huh.

11 I was standing at the door when they was
12 picking Eddie up; I wasn't actually around him.

13 Q So, you did not go to the hospital?

14 A No, ma'am.

15 Q What did you decide to do instead?

16 A Stay with John and wait on the police to
17 come.

18 That's what me and John decided. Somebody
19 had to be there.

20 Q What, if anything, happened next in regard to
21 this defendant?

22 A Well, me and John and Joyce was in the house,
23 and I think Joyce was over the sink and I was in
24 the living room or hallway and John was in the
25 bathroom or something, and all I heard was Joyce

1 say he's back and he's coming in - - when I heard
2 a door jiggle.

3 She had the door locked. I'm not sure, but,
4 me and her run to the bathroom.

5 Q What did John do?

6 A He run to the bedroom, or was back in toward
7 the bedroom.

8 Q Did you hear any of the conversation between
9 the defendant and John?

10 A Yes, ma'am.

11 Q What did you hear?

12 A Just heard he said he was going to shoot him - -
13 kill him.

14 And I reckon he didn't know me and Joyce was
15 in the bathroom.

16 Q When you heard the defendant say those
17 things, what, if anything, did Joyce do?

18 A She started hollering and screaming and I
19 reckon that's when he found out that somebody was
20 in the bathroom.

21 Q And what did the defendant do at that time?

22 A Attempted to push the door open and I was
23 leaning against it, and she was behind me and
24 stuff. I thought he might shoot through it, and
25 he kept pushing it and finally he got his hand

1 through and when he got his hand through, I just
2 grabbed the door and slammed it up against him,
3 and that's when he fell back or something and I
4 went and started fighting him.

5 Q What, if anything, did John do at that time?

6 A He grabbed the gun.

7 Q What did the defendant do after you pushed
8 the door back?

9 A He was trying to fight us and John started
10 hitting him and finally got him to the ground and
11 we held him down until the law come.

12 Q How easy was it to get this defendant down?

13 A Very hard. John - - I don't see how he got
14 up and walked out with the law he hit him so hard.

15 Q What, if anything, did you do regarding a
16 vacuum cleaner?

17 A I laid it across the back of his neck to hold
18 him down.

19 Q At anytime did this defendant voluntarily lay
20 the gun down as he entered this trailer?

21 A No, he didn't. He pointed it. Well, I'm
22 not - - he was pointing it at John.

23 Q Did he ask you to call the police?

24 A No, ma'am, he didn't.

25 Q Did he ever discuss anything calmly with

1 you or tell you that he wanted you to call the
2 police?

3 A No, ma'am.

4 Q Did he ever threaten you?

5 A Yes.

6 Q What did he say to you?

7 A It was me and John both. He said if he got
8 out on bond, he was going to get me and John, we
9 was next.

10 Q Nothing further.

11 CROSS EXAMINATION

12 BY MR. SIRES:

13 Q Where you work, Mr. Evans?

14 A I'm unemployed.

15 Q Where did you work?

16 A Scooter's Bar & Grill.

17 Q Okay, so you worked with the deceased there
18 at Scooter's Bar & Grill?

19 A Yes, sir.

20 Q How long did you do that?

21 A Sir?

22 Q How long did you do that? How long did
23 y'all work together?

24 A Uh, probably two years.

25 Q Both of you was bouncers there, or you were a

1 bartender or what?

2 A Yes, my mother and father owned it.

3 Q Pardon?

4 A My mother and father owned.

5 Q Owns Scooter's.

6 A Yes.

7 Q Okay.

8 How long had you known Sonny?

9 A I just met him that day.

10 Q Just met him that day.

11 A Yes, sir.

12 Q Didn't know him from Adam's house cat.

13 You were born in Walterboro, South Carolina.

14 How did you get way up here?

15 A Mama and them moved up here.

16 Q When?

17 A Uh, - - Well, we moved - - we lived in a lot
18 of places. York, Lincolnton, North Carolina.

19 Q How long have you lived in Oconee County?

20 A Probably - - Let's see - - We lived in
21 Florida for a while. Probably - -

22 I've been back from Florida two years.

23 Q Okay, so you have lived in Oconee for two
24 years?

25 A On and off. I mean - - it would be more

1 than that though.

2 Q Okay.

3 How many guns did you see that night?

4 A One.

5 Q Just the shotgun that Sonny had?

6 A Yes, sir.

7 Q What did he have on that night?

8 A Who?

9 Q Sonny. As far as clothing is concerned.

10 A Teeshirt. I don't know.

11 Q You don't remember?

12 A Uh-uh.

13 Q You'd been drinking that day?

14 A Yes, sir.

15 Q Had you been doing any kind of drugs or
16 anything?

17 A No, sir. Just drinking.

18 Q Just drinking?

19 A Uh-huh.

20 Q Were there any drugs down there that night?

21 A I didn't see any.

22 Q You didn't see any?

23 A No, sir.

24 Q And how long had you been drinking?

25 A Since probably eleven o'clock that day.

1 Q And this happened at about one or two o'clock
2 in the morning.

3 A Uh-huh.

4 Q Is that about right?

5 A Yes, sir.

6 Q Okay.

7 And you said when you first ran into Sonny he
8 was hitting on Tim Phillips.

9 A No, uh-uh.

10 I met Sonny that day about eleven o'clock.

11 Q All right, when was it that he was supposed
12 to have gotten on Tim Phillips?

13 A Later that night about seven o'clock or
14 something like that.

15 Q Did you actually see him hit Tim Phillips?

16 A He was the only one in the house; he was the
17 only one that could have done it.

18 Q I didn't ask you that, sir.

19 A No.

20 Q You didn't see him hit him, did you?

21 A No.

22 Q Did you ever have a conversation with Tim
23 after that?

24 A Yeah.

25 Q And didn't Tim tell you that he didn't know

1 who hit him?

2 A Well, yeah.

3 Q That's what he said, wasn't it?

4 A I don't - - I can't remember.

5 Q Sure, it was.

6 So, when they took your co-worker to the
7 hospital, you stayed there at the trailer?

8 A Me and John Smith and Joyce did.

9 Q Okay.

10 How long was Sonny gone when John took him
11 home - - until he came back?

12 A John was back about fifteen minutes after
13 John got back.

14 Q About fifteen minutes after John got back.
15 John was gone about a half hour or forty-five
16 minutes or so?

17 A Probably about thirty minutes.

18 Q Okay.

19 And, did you see how Sonny came back?

20 A No, sir, I didn't. I was in the house.

21 Q You were the house.

22 In fact, you were in the house until, what,
23 uh - - there was a shot fired?

24 A Yeah. I was at the window though.

25 Q Right. You were at the window, and you

1 said that Mr. Heaton was leaning against the car,
2 across the car?

3 A Yeah, it was like they was all talking.

4 Q They were all talking.

5 A A bunch of them was out there.

6 Q And you couldn't see his hands or anything
7 when he turned around?

8 A No, sir.

9 Q And when he got shot, you couldn't see his
10 hands.

11 A I just seen the gun lowering and - -

12 Q Right.

13 What kind of gun was it?

14 A A shotgun and that's all I know.

15 Q Single shot shotgun?

16 A Yes, sir, I think so.

17 Q I mean y'all hit Sonny over the head with it.

18 A It happened so fast, you know.

19 Q Right.

20 Was the gun loaded when you saw it?

21 A I don't know. I think John popped a shell
22 out of it; I don't know.

23 Q Empty shell or full shot?

24 A I don't know; I can't remember.

25 Q You don't know?

1 Did you ever see any other shells that night?

2 A Not that I know of.

3 Q You never saw any shotgun shells, did you?

4 A Uh-uh.

5 Q And you never saw this pistol that was out in
6 the yard?

7 A I never did see a pistol.

8 Q Did you ever hear any other shots other than
9 that shotgun?

10 A About two.

11 Q You heard two more shots. And what did they
12 sound like? Pistol or shotgun?

13 A Gun is all I know.

14 Q You don't do any hunting or anything?

15 A No, sir, I don't.

16 Q So, you're not familiar with how a pistol
17 sounds and how a shotgun sounds?

18 A No, sir.

19 Q But, you heard two shots after that. Were
20 they (snaps fingers) right together or - -

21 A Uh-huh.

22 Q They were.

23 And then what happened? Did you hear
24 hollering or saying anything?

25 A Everybody scattered and running.

1 Q Scattered like a covey of quail.

2 All right, - - When John got back from
3 taking Sonny home, did he tell everybody to leave?
4 Start leaving, disperse.

5 Everybody out of here - - -

6 A Some people he did.

7 Q Well, Eddie was there; Eddie had trouble with
8 him. Why didn't Eddie leave?

9 A He was his brother-in-law.

10 Q Who was his brother-in-law?

11 A John Smith's - -

12 Q John Smith's brother-in-law.

13 And because he was his brother-in-law, even
14 though he heard this fellow was going to come
15 back, he was going to stay there?

16 A He didn't know he was coming back.

17 Didn't nobody say he was coming back.

18 Q Nobody said he was coming back?

19 A That I know of. I didn't know he was coming
20 back.

21 Q Okay, - - thank you, Mr. Evans.

22 COURT:

23 You may step down.

24 Oh, you got other questions?

25 CHAPPELL:

Yes, Your Honor, - -

1 COURT:

2 Excuse me.

3 REDIRECT EXAMINATION

4 BY MS. CHAPPELL:

5 Q Mr. Sires asked you if Tim told you - -
6 Or, what Tim told you about who hit him. Is it a
7 fact that Tim was passed out at the time he was
8 assaulted?

9 A Yes, ma'am.

10 Q And, just after he was assaulted, you ran
11 into the trailer?

12 A Me and John. John was behind me.

13 Q And where was the defendant?

14 A He was laying in the floor.

15 Q The defendant was laying - - -

16 A Oh, no. He was over the top of him when he
17 was laying in the floor.

18 Q And you confronted the defendant about having
19 assaulted - - -

20 A Yes, I told him why don't he jump on me; I'm
21 sober.

22 Q And, did the defendant deny having done that?

23 A Yeah.

24 Q He denied having hit Tim Phillips?

25 A Well, no. We never did ask him. He was

1 the only one in there.

2 Q Now you said you heard two shots. Was this
3 after the shotgun blast or before?

4 A After.

5 Q Now, you said that nobody said that the
6 defendant was coming back. Nobody told you that
7 the defendant was coming back, is that correct?

8 A No, I didn't - - I thought he was gone
9 home.

10 Q Nothing further.

11 SIRES:

12 Nothing further.

13 COURT:

14 You may step down. You may stay in the
15 courtroom if you like.

16 (Witness excused from the witness stand)

17 Call your next witness.

18 CHAPPELL:

19 The State calls Benjamin Smith.

20 BENJAMIN SMITH, being duly sworn, testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MS. CHAPPELL:

24 Q State your name for the jury please.

25 A Benjamin Lee Smith.

1 Q Ben, are you related in any way to Sherry
2 Heaton?

3 A Yes, ma'am.

4 Q How are you related?

5 A That's my sister.

6 Q Do you know the defendant Sonny Crowe?

7 A Yes, ma'am.

8 Q And how do you know him?

9 A Uh, he's some relation.

10 Q Did you have an occasion to see the defendant
11 on June 7th and 8th of 1997?

12 A Yes, ma'am.

13 Q And where did you see him?

14 A At my brother's.

15 Q What were you doing that night?

16 A Went over there for his birthday party.

17 Q Did you have an occasion to go to Scooter's
18 at all that night?

19 A Yeah, we went down there for a little while,
20 me and my girlfriend.

21 Q And what did you do after you left Scooter's?

22 A We went back.

23 Q Back where?

24 A Back to my brother's.

25 Q And what was going on at your brother's house

1 that night?

2 A They was just having a party for his birthday.

3 Q When you got back after you had gone to
4 Scooter's was the defendant at the home of your
5 brother?

6 A No, ma'am.

7 Q What did you do after you got back?

8 A went in the kitchen and fixed me a drink.

9 Q Then what did you do?

10 A We stood around and talked.

11 Q Who were you standing around with?

12 A Me and my girlfriend and Mark and - - I
13 can't remember who and all was in the kitchen.

14 Q Did you ever go outside to talk to Eddie?

15 A I talked to him when I was coming in.

16 Q Were you there when Eddie was shot?

17 A Yes, ma'am.

18 Q And where were you?

19 A I was in the kitchen.

20 Q Did you actually see anything?

21 A No, ma'am.

22 Q When you heard the shot, what did you do?

23 A Uh, pushed my girlfriend out of the way
24 because I didn't know what was going on and then I
25 went outside.

1 Q Where was Eddie when you went outside?

2 A He was laying on the ground.

3 Q Did anyone hand you anything at that time?

4 A Uh, my sister.

5 Q What did she give you?

6 A A gun.

7 Q And what did you do with it?

8 A Handed it to my other brother. Handed it to
9 my brother John.

10 Q And this happened in Oconee County?

11 A Yes, ma'am.

12 Q Nothing further.

13 CROSS EXAMINATION

14 BY MR. SIRES:

15 Q So, your sister is Sherry Heaton, is that
16 correct?

17 A Yes, sir.

18 Q And she handed you a gun?

19 A Yes, sir.

20 Q What kind of gun did she hand you?

21 A Uh, an automatic is all I know. I couldn't
22 tell you what calibre.

23 Q An automatic?

24 A Yeah.

25 Q And what did you do with it?

1 A Handed it to my brother.

2 Q And he put it in somebody's truck or something.
3 His truck.

4 A I guess. I was - - At that point I wasn't
5 paying no - - I mean - -

6 Q Why did she hand you a gun?

7 A I have no idea.

8 Q You don't know why she handed you a gun?

9 A Uh, no, sir.

10 Q How many shots did you hear that night?

11 A Uh, one.

12 Q Just heard the shotgun?

13 A Yes, sir.

14 Q You weren't the one that shot at Sonny?

15 A No, sir.

16 Q Somebody shot at him, didn't they?

17 A Uh, - -

18 Q You didn't hear those shots?

19 A I was trying - - I was with Eddie by then.

20 Q As I understand the facts, Mr. Smith, after
21 Eddie was shot - -

22 A Yes, sir.

23 Q - - this gun was found close to him by your
24 sister, but, there were some other shots fired.
25 The fellow that was just in here testified that

1 there were some other shots fired.

2 You don't know who did those?

3 A My brother.

4 Q Your brother?

5 A Yeah, he's the one that shot - - fired - -
6 but, I didn't hear them. I wasn't paying no
7 attention.

8 Q Paying no attention.

9 Did you notice when Sonny came back that he
10 had a black eye?

11 A I wasn't in the yard; I didn't see him.

12 Q Did anybody tell you about Sonny coming back?

13 A Uh, no.

14 Q Did John - - That's your brother, right?

15 A Yes, sir.

16 Q When he got back from taking Sonny home, did
17 he start telling people to leave?

18 A Yes, sir.

19 Q And why didn't Eddie leave, and your sister
20 Sherry? They had bikes right there. They were
21 directly in front, right?

22 A Yes, sir.

23 Q And there was no reason why they couldn't
24 have got on those bikes and drove off like
25 everybody else that was leaving, right?

1 A Yes, sir.

2 Q So, why didn't they leave?

3 A That's what everybody was getting ready to
4 do.

5 Q Everybody was getting ready to?

6 A Well, some people had done left out.

7 Q That's what I said. A lot of people had
8 already left, hadn't they?

9 Okay, thank you, sir.

10 CHAPPELL:

11 Nothing further.

12 COURT:

13 You may step down.

14 (Witness excused from the witness stand)

15 And have a seat in the courtroom if you like.

16 Call your next witness.

17 CHAPPELL:

18 The State calls Richard Wright.

19 RICHARD WRIGHT, being duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. CHAPPELL:

23 Q State your name for the jury please.

24 A Richard Wright.

25 Q And, Richard, do you know the defendant

1 Sonny Crowe?

2 A No.

3 Q Do you know the victim in this case Eddie
4 Heaton?

5 A Yes, I do.

6 Q And, what was your relationship with Eddie
7 Heaton?

8 A He worked for me at Scooter's. He was a
9 customer sometimes and he worked down there part-
10 time.

11 Q Did you have an occasion to see this defendant
12 on June 7th and 8th, 1997?

13 A Late that night.

14 Q Where did you see him?

15 A He come up - - After we got off at Scooter's
16 he come up to John Smith's house, and I was there
17 right at the end of it.

18 He come up - - The only thing I seen, I was
19 talking to Eddie and he come up - - come up behind
20 him and I said to Eddie this guy's got a gun, and
21 about that time - - He was already in front of
22 us then. We was standing in front of my car and
23 he just leveled off and shot Eddie.

24 Q Okay, let's back up again.

25 You had worked at Scooter's that night?

1 A Yes, ma'am.

2 Q Okay, had Eddie worked there?

3 A Yes, ma'am, he was there that night.

4 Q Did you make a decision sometime during that
5 night to go to the party?

6 A I was asked earlier if I was going and I
7 hadn't made a decision up until the last minute.

8 Q How long had you been at the party when this
9 happened?

10 A Probably thirty minutes.

11 Q What did you do when you got to the party?

12 A I walked in and was going to wish John happy
13 birthday. It was his birthday party.

14 And I was sitting there in the kitchen for a
15 little while and then I started to leave and me
16 and Eddie walked out on the porch and started to
17 my car and that's when all the rest of it happened
18 that I have already said.

19 Q How long had you been talking to Eddie?

20 A The whole time. Ever since I had got there.
21 I started talking to him.

22 Q What was Eddie doing? What kind of mood was
23 he in?

24 A Uh, fair. Just like Eddie always.

25 Q Describe the scene there. How many of you

1 were standing around talking?

2 A Around the car?

3 There was me, John - - No, John was there.

4 Me, Russell Culbertson, Eddie, his wife was
5 there, and James was there. James, the other one - -

6 Q James Smith?

7 A Yeah.

8 Q What is James in relation to Sherry Heaton?

9 A Brother.

10 Q Did you see Eddie with a gun that night?

11 A Yes, ma'am.

12 Q And where was the gun?

13 A Well, we was on the porch at that time and we
14 walked out to the car and he pulled it off the
15 front of his belly and asked me to hold his cup of
16 coffee because he was drinking coffee that night,
17 and held his cup of coffee and he put it in the
18 back of his pants - - or, overalls. He might
19 have been wearing overalls that night; I can't
20 remember.

21 Q But, at any rate, the gun was in the back?

22 A Yes, ma'am.

23 Q And he just stood there and talked to you, is
24 that right?

25 A Yes, ma'am. We started walking to my car

1 then because I was getting ready to leave.

2 Q What, if anything happened next?

3 A What happened next is when we was standing
4 there and we was talking and I ~~was~~ getting ready to
5 leave.

6 I told Russell let's go. Russell was with
7 me, and that's when I noticed somebody walking up
8 the side of my car.

9 I turned around to get a good look and I seen.
10 that the person had a gun in his hand.

11 I said Eddie, he's got a gun.

12 Q Who was that person?

13 A It was Mr. Crowe.

14 Q What kind of gun did he have?

15 A It was a shotgun I think. I'm not sure.

16 Q What did he do with the shotgun?

17 A Well, when he walked around he asked which
18 one of us wanted it first, and he - - And I
19 heard it click. So, I didn't know if it was one
20 that he was clicking a bullet up in the chamber or
21 what. So, by then I was already getting out of
22 the way.

23 I had already told Eddie that he had a gun
24 and I was getting out of the way, so, - - I don't
25 know nothing that went on up there before that

1 because I just had got there - - about thirty
2 minutes.

3 So, I don't know what happened up - - the
4 reason why he was coming back up there or nothing.

5 Q How close were you standing to Eddie?

6 A . Arm to arm.

7 Q Did Eddie ever approach this defendant at
8 that time?

9 A No.

10 Q Did he ever say anything to him?

11 A No.

12 Q Did he ever pull a gun on him?

13 A He didn't have a chance.

14 Q When Eddie was shot, what happened?

15 A Eddie was shot and - - I was moving trying to
16 get out of the way.

17 I think there was another car in front of
18 mine and I went around that car and by then I was
19 getting in the house.

20 I was looking back trying to see what was
21 going on and Eddie's wife, you know, was trying to
22 take care of Eddie, and there was some shots shot
23 but I don't know who done the shooting or nothing
24 like that because I didn't see none of that.

25 I went in the house and hollered dial 911,

1 that Eddie had been shot and then we went back out
2 there.

3 I seen that it was pretty bad and I knew that
4 we needed to get him to the hospital, so, we put
5 him in a car.

6 I think it was John's car; I'm not sure.
7 And, I drove to the hospital.

8 Q Nothing further.

9 CROSS EXAMINATION

10 BY MR. SIRES:

11 Q Mr. Wright, as I understood, you worked at
12 Scotter's, too?

13 A I worked there part-time, yes, sir.

14 Q And you were working there that night with
15 Mr. Heaton?

16 A Well, he was there that night. Me and him
17 both, yes, sir.

18 Q And did y'all have a few beers or anything?

19 A No, sir.

20 Q Or anything to drink?

21 A No, sir.

22 Q Nothing.

23 But, you got there about what time - -
24 when you got to the party?

25 A We stayed there until twelve so I would say

1 it was around one. Somewhere around there.

2 Q Okay.

3 A A little after. I'm not sure.

4 Q What kind of gun was it that Eddie had?

5 A I'm not sure.

6 Q Was it a revolver? Was it a semi-automatic?

7 A It was a pistol.

8 Q I understand pistol, but, did it have a
9 chamber or - - -

10 A I never did pay that close attention to it.

11 Q But, you did see him - - -

12 A But, I did see a gun, yes, sir.

13 Q Pull the gun out and put it in his back.

14 Is that right?

15 A Yes, sir.

16 Q Why was he carrying a gun?

17 A I don't know.

18 Q Did he carry a gun at Scooter's?

19 A I didn't know him, to, no.

20 Q All right, - - And, so, - - And you don't
21 know what happened earlier that evening?

22 A No, sir; I wasn't there.

23 Q You heard the one shot from the shotgun and
24 then you said you heard four more shots.

25 Where did they come from?

1 A I don't really know. I was trying to get
2 out of the way at the time.

3 Q Right.

4 A Yes, sir.

5 Q Hum, okay.

6 And did you know Sonny Crowe? Had you ever
7 met him before?

8 A Never met him, no, sir.

9 Q Didn't know him from Adam's house cat.

10 A Never even seen him before in my life.

11 Q And, did he say anything immediately before
12 the gun was fired?

13 A Before he fired his gun?

14 Q Right.

15 A Which one of you wants it first.

16 Q Which one wants to go first.

17 Is that when Eddie stepped up?

18 A Eddie didn't move. Eddie stood right there
19 by the car.

20 Q Well, they were within four or five feet of
21 each other.

22 A At least.

23 Eddie was - - I was standing here.

24 Q Uh-huh.

25 A Eddie was - - This is the front of my

1 car here.

2 Q Yeah.

3 A Eddie was standing here talking to me.

4 Q Uh-huh.

5 A And when I told Eddie that somebody walked up
6 with a gun, by then Mr. Crowe was already in
7 front, and when Eddie turned around it was there.

8 Q So, he could see the gun in his back?

9 A Well, - -

10 Q Sure.

11 A Probably could.

12 Q Thank you.

13 REDIRECT EXAMINATION

14 BY MS. CHAPPELL:

15 Q If this defendant wanted to walk past you and
16 Mr. Heaton to his car, could he have done so
17 without being bothered?

18 A I'm sure, yes, ma'am.

19 Q Who made the first move, Mr. Crowe or Mr.
20 Heaton?

21 A Mr. Crowe.

22 Q Thank you.

23 COURT:

24 You may step down and stay in the courtroom
25 if you like.

(Witness excused from the witness stand)

1 COURT:

2 Call your next witness.

3 CHAPPELL:

4 The State calls James Eugene Smith.

5 JAMES EUGENE SMITH, being
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. CHAPPELL:

9 Q State your name for the record.

10 A James E. Smith, Jr.

11 Q And, do you know the defendant Sonny Crowe?

12 A I've met him a few times.

13 Q Did you know the victim in this case, Eddie
14 Heaton?

15 A Yeah, he was my brother-in-law.

16 Q So, your sister is who?

17 A Sherry Heaton.

18 Q Did you have an occasion to see this defendant
19 on June 7th and 8th of 1997?

20 A Yes, ma'am.

21 Q And what were you doing that night?

22 A I went to my brother's to a birthday party.

23 Q And who is your brother?

24 A John Smith.

25 Q What time did you arrive at that party?

1 A Around nine or ten o'clock that evening.

2 Q Did you see the defendant when you arrived?

3 A Yeah, he was there.

4 Q How was he acting?

5 A About like he was pretty drunk, rowdy.

6 Q Did you notice that he had had an altercation
7 while you were there?

8 A Yeah, he jumped on my cousin.

9 Q Who's your cousin?

10 A Tim Phillips.

11 Q And, what was the situation there?

12 A Well, we was outside and we heard something
13 in the house and he jumped on Tim and beat him up
14 laying on the couch passed out.

15 Q Did you go in after that to stop that?

16 A Yeah, we went in and I took and got Sonny
17 outside.

18 Q What time did Eddie and Sherry Heaton arrive
19 that night?

20 A I really couldn't tell you. It was later on
21 that night.

22 Q Did Eddie and the defendant have some
23 problems that night?

24 A I heard them arguing outside.

25 I was in the house and I came outside and

1 we put Sonny in the truck and made him leave.

2 Q Who took Sonny home?

3 A John Smith.

4 Q Were you there when John got back?

5 A Yes, ma'am.

6 Q What did you do after John got back?

7 A Me and Eddie and two more or three more was
8 standing around the car talking and John asked
9 everybody to leave because Sonny said he was
10 coming back.

11 So, everybody was leaving. Getting ready
12 and leaving and everything and Sonny walks up - -

13 I don't know where he came from or nothing
14 else.

15 - - with a shotgun. Spun around and asked
16 who was first and then he come down with the
17 shotgun and he said you are and shot Eddie right
18 beside my head.

19 Q How far were you standing from Eddie when he
20 was shot?

21 A About a foot and a half or two foot.

22 Q Did you ever see Eddie approach the defendant?

23 A Uh-uh.

24 Q Did he say anything to the defendant?

25 A Not that I know of.

1 Q Did he have any words or any fight or any
2 problem right before that?

3 A They ~~was~~ into a fuss earlier before we made
4 Sonny leave. I don't have no idea.

5 Q I'm talking about right when the shooting
6 occurred. Did you notice was there any problems?
7 Did Eddie say anything to the defendant?

8 A He didn't have a chance to say nothing.

9 Q Did you see Eddie point a gun?

10 A No, ma'am.

11 Q Once the defendant had shot Eddie, what did
12 Eddie do?

13 A Eddie ducked around the front of Joyce's car
14 to my right and I looked around and I asked where
15 did Sonny go and he was running out in the middle
16 of the driveway.

17 Q What did you do?

18 A I told somebody he's coming back or fixing to
19 shoot, and I said somebody shoot him or give me a
20 gun.

21 Somebody handed me a gun and I started
22 shooting in his direction.

23 Q What kind of gun was it?

24 A I have no idea.

25 Q Was it a revolver or an auto - - -

1 A Yeah, it was a revolver because the hammer
2 hit my thumb.

3 And then I run around over there where Eddie
4 was and laid the gun down.

5 I don't know where the gun went.

6 And then we took Eddie and put him in the car
7 and took him to the hospital.

8 Q So, you shot the gun at Sonny?

9 A Yeah.

10 Q Was that before or after Sonny had shot
11 Eddie?

12 A After.

13 Q Did you ever see while you were standing
14 there with Eddie, Eddie point a gun or threaten
15 the defendant in any way?

16 A I didn't even know Eddie had a gun if he had
17 one.

18 Q Nothing further.

19 CROSS EXAMINATION

20 BY MR. SIRES:

21 Q So, Eddie was your brother-in-law, is that
22 right?

23 A Yes, sir.

24 Q Where do you work, Mr. Smith?

25 A I work for myself right now in a wood shop.

1 Q In a wood shop?

2 A Uh-huh.

3 Q Have you ever been in any trouble before?

4 A Uh-huh.

5 Q For what?

6 A For explosives. Dynamite plants, DUI back
7 years ago.

8 Q So, you have been in court before, haven't
9 you?

10 A Uh-huh.

11 Q You said somebody gave you a revolver?

12 A Yes, sir.

13 Q You don't know who it was?

14 A Uh-uh.

15 Q Or, not going to tell us who it was.

16 A Everybody was running every which ways. I
17 couldn't tell you who handed it to me.

18 Q What did you do with the gun after you shot
19 it?

20 A I went running over there where Eddie was and
21 I laid it on the ground or the car one. I don't
22 know where it was.

23 Q It was a revolver and wasn't an automatic?

24 A No, it ~~was~~ a revolver because it hit me on the
25 thumb.

1 Q So, you know the difference?

2 A Well, I don't reckon an automatic - - -

3 Q You know the difference between a semi-
4 automatic and a revolver which has got a chamber
5 in it, right?

6 A I guess.

7 Q That's why they call it a revolver because
8 that chamber revolves around and that's what you
9 were shooting?

10 A As far as I know it was.

11 Q All right, and what calibre was it; do you
12 know?

13 A I have no idea.

14 Q How many times did you shoot?

15 A I have no idea.

16 Q How long had you been drinking that day?

17 A I drank about four or five beers. I started
18 drinking when I got there that night.

19 Q What about Eddie? What was he drinking?

20 A I didn't see Eddie drink nothing I don't
21 think.

22 Q Didn't see him drink anything.

23 You didn't see that automatic that he had?

24 A Uh-uh.

25 Q You didn't see it.

1 A Uh-uh.

2 Q And how far was Sonny from y'all?

3 A At what time?

4 Q When he shot.

5 A About as close as we are.

6 Q About ten feet?

7 A Something like that.

8 Q Who else was standing there besides you and
9 Eddie?

10 A Rick and I can't think of that other one's
11 name - - was standing there. Sherry I think was
12 standing there.

13 Q The four of you standing there.

14 Nobody said anything to Sonny?

15 A Nobody had a chance to say nothing.

16 Q Where was Sonny's car? Do you remember?

17 A The car he came in earlier that night?

18 Right there at the end of the trailer.

19 Q How far was that from where y'all were?

20 A I don't know; thirty, forty, fifty feet.

21 Q Was he walking in the direction towards his
22 car or was he walking in the direction away from
23 his car?

24 A He came from the road behind us and he left
25 the same way.

1 Q Right. But, when he first got there he came
2 off the [REDACTED] Road?

3 A Uh-huh.

4 Q Do you know how he got there?

5 A I have no idea.

6 Q You didn't see him get out of a car or
7 anything?

8 A I seen him take two steps and that was it.

9 Q All of a sudden he just appeared?

10 A Uh-huh.

11 Q Okay.

12 And, he was going towards the end of the
13 trailer where his car was.

14 A Going toward the porch. Right there at the
15 end of the porch.

16 Q Right.

17 But, headed towards where his car was parked.

18 A I don't know whether he was going towards his
19 car.

20 Q When you shot, what direction did you shoot
21 in the direction of [REDACTED] Road or back where his
22 car was?

23 A Back towards [REDACTED] Road.

24 Q Do you know who shot at his car that night?

25 A Didn't nobody shoot at his car that I know of.

1 Q That you know of.

2 A Uh-uh. Not that I know of.

3 Q All right, - -

4 And, did you go with them to take Eddie to
5 the hospital?

6 A Yes, sir.

7 Q So, you weren't there after that?

8 A Uh-uh.

9 Q Did anybody ask you what happened to the gun
10 that you had?

11 A Yeah, several people asked me.

12 Q And, - -

13 A I don't have no idea.

14 Q Don't know what happened to it.

15 A I laid it down there and that's it. That
16 was the last time I seen it.

17 Q Okay.

18 Thank you, sir.

19 REDIRECT EXAMINATION

20 BY MS.CHAPPELL:

21 Q One question. When you all were standing
22 there could this defendant have walked past you to
23 his car without any problems from you all?

24 A Yeah, I guess he could have.

25 Q Thank you.

1 COURT:

2 You may step down. You may have a seat in
3 the courtroom if you like.

4 (Witness excused from the witness stand)

5 Call your next witness.

6 CHAPPELL:

7 The State calls Ronald Wilbanks.

8 RONALD WILBANKS, being
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. CHAPPELL:

12 Q State your name for the jury please.

13 A Ronald Wilbanks.

14 Q And, where are you employed?

15 A Oconee County Sheriff's Office.

16 Q And, how long have you been employed there?

17 A Three years in August.

18 Q How long in law enforcement?

19 A Almost five.

20 Q What are your duties as an employee of the
21 department?

22 A I answer any calls that come in through
23 dispatch, enforce traffic violations and also
24 check property.

25 Q Were you working during the early morning

1 hours of June 8th, 1997?

2 A Yes, I was.

3 Q And did you have an occasion to see this
4 defendant Sonny Crowe?

5 A Yes, I did.

6 Q And where did you see him?

7 A I responded to a shooting call off the [REDACTED]
8 Road in Walhalla.

9 When I arrived on the scene, he was being
10 held in a residence by a Mr. Smith and a Mr.
11 Evans.

12 Q How was he being held?

13 A He was - - There was a little hallway where
14 they were at and they had him physically restrained
15 there.

16 At that time when I got there on the scene
17 I took possession from John Smith a shotgun and
18 Mr. Crowe was led to a patrol car.

19 Q And who gave you the shotgun?

20 A John Smith.

21 Q What did you do with it?

22 A I placed it in the back seat of my patrol car
23 and locked it there and secured it until it was
24 later turned over to Investigator Stanley Sheriff.

25 Q And, you turned it over to him?

1 A I did.

2 Q While it was in your possession did you alter
3 it or tamper with it in any way?

4 A No, I didn't.

5 Q I show you what has been marked as State's
6 Exhibit Number One for identification.

7 Do you recognize this?

8 A Yes.

9 Q What is it?

10 A It is the gun - - the shotgun I took from
11 John Smith and then later turned over to Investigator
12 Stanley Sheriff.

13 Q What kind of condition is that shotgun in?

14 A It's in the same condition as it was as when
15 I received it.

16 Q And, how is that?

17 A The night that I actually received it,
18 it was somewhat like that.

19 Q And what's wrong with it as you can tell?

20 A The stock here is broken or loose.

21 Q Thank you. I have no further questions.

22 COURT:

23 Cross.
24
25

1 CROSS EXAMINATION

2 BY MR. SIRES:

3 Q This is the gun you recovered that night?

4 A Yes, sir.

5 Q And, for the record, it's a single-shot
6 twenty gauge shotgun, is that right?

7 A Yes, sir.

8 Q Do you know what kind of choke it's got on
9 it?

10 A No, sir.

11 Q If I told you a modified choke, would that make
12 sense?

13 A It really doesn't mean anything to me.

14 I don't - -

15 Q That doesn't mean anything to you?

16 A I don't know much about guns.

17 Q Huh?

18 A I don't know much about guns.

19 Q Don't know much about guns.

20 A No.

21 Q What other weapons did you recover that
22 night?

23 A That's the only weapon that I recovered.

24 Q What about the pistols and stuff that was
25 down there?

1 A I didn't have anything to do with the pistol.

2 Q You didn't?

3 A I didn't, no.

4 Q All right, - -

5 Did you arrest Mr. Crowe?

6 A No, sir, I did not.

7 Q You didn't arrest him?

8 A I didn't arrest him.

9 Q Who arrested him?

10 A He was placed in a car by Deputy Steve Dyar
11 and I believe Steve Owens was also on the scene.

12 Q Okay.

13 Did anyone tell you how the stock was broken
14 on that shotgun?

15 A Uh, I believe they had to strike Mr. Crowe
16 with it.

17 Q Somebody told you they struck Mr. Crowe with
18 the shotgun and that's what broke the stock.

19 A I believe so. I can't remember - - -

20 Q There's one shell fastened to the barrel
21 there with a piece of plastic. What is that?

22 A If I recall correctly, there was a shell
23 still in the barrel when I received it.

24 Q And by shell you mean an empty casing?

25 A I didn't take it out.

1 Q You didn't take it out?

2 A No, I didn't take it out.

3 Q Who took it out?

4 A I can't testify to that.

5 Q You don't know.

6 A No, sir.

7 Q Would that look similar to the shell that was
8 there?

9 A Yes, sir.

10 Q And that says twenty gauge. But, it's got
11 something else, so, it's a slug.

12 Okay.

13 What kind of condition was Sonny in?

14 How did he look? How did he appear?

15 A (No response)

16 Q Like he had just been beat up?

17 A Pretty much. He - - -

18 Q Did he have a black eye that appeared to be
19 there for a while?

20 A To tell you the truth, I didn't pay much
21 attention to him.

22 Q Uh-huh.

23 A Like I say, he was placed in a car by
24 Deputy Dyar and Deputy Owens. I took possession
25 of the gun. They led him to the car.

1 Q So, what you're telling us, Deputy, is that
2 really all you know is about the shotgun?

3 A Yes, sir.

4 Q Thank you, sir.

5 CHAPPELL:

6 Nothing further, Your Honor, - -

7 COURT:

8 You may step down. You may stay in the
9 courtroom if you like.

10 (Witness excused from the witness stand)

11 CHAPPELL:

12 The State calls Jerry Moss.

13 JERRY MOSS, being duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. CHAPPELL:

17 Q State your name for the record please.

18 A Jerry Lee Moss.

19 Q And where are you employed?

20 A I'm employed with the Oconee County Sheriff's
21 Department.

22 Q How long have you been employed with the
23 department?

24 A Approximately fifteen years.

25 Q And how long in law enforcement?

1 A Approximately fifteen years.

2 Q What are your duties as an employee of the
3 department?

4 A I'm an investigator sergeant now.

5 Q And what does that entail?

6 A Mainly investigate property crimes and assist
7 on other crimes.

8 Q Were you working on June 8th, 1997?

9 A I'd worked that day.

10 Q And, were you called in in regard to a case
11 involving the death of Eddie Heaton?

12 A Yes, I was.

13 Q And what were you called in to do?

14 A I was called in to do a gunshot residue test
15 on him.

16 Q Where was that test done?

17 A At Oconee Memorial Hospital in the emergency
18 room.

19 Q Was the victim still alive when that test was
20 done?

21 A No, he was not.

22 Q When you talk about a gunshot residue test,
23 what is involved in such a test?

24 A A gunshot residue test is a test that's
25 performed on a person to see if they have

1 recently fired a handgun.

2 The test involves using a five percent
3 solution of nitric acid and distilled water,
4 Q-tips.

5 You would swab a person's hand, the palm and
6 the back of the hand.

7 Q And have you been trained to do such a test?

8 A Yes, I have.

9 Q And what areas of the hand do you test?

10 A During the test you will swab the palm of the
11 hand and the back of the hand using two Q-tips.
12 Two for the front, two for the back.

13 A fifth Q-tip is used to swab a controlled
14 area, an area that if a person did fire a handgun,
15 you would not expect to find gunshot residue.

16 Usually I perform that test on the back of
17 the arm around the elbow.

18 Q And, did you perform a test on both hands of
19 Edward Heaton?

20 A Yes, I did.

21 Q And did you in fact complete the test?

22 A Yes, I did.

23 Q What did you do with the test kit?

24 A After I completed the test kit, I came back
25 to the law enforcement center. I turned that

1 kit over to the case officer.

2 Q Did you seal the kit?

3 A Yes, I did.

4 Q Did you alter it or tamper with it in any
5 way?

6 A No, I did not.

7 Q Who did you turn that over to?

8 A I turned that over to Sgt. Sheriff.

9 Q Nothing further.

10 CROSS EXAMINATION

11 BY MR. SIRES:

12 Q Sir, you tested both the right and left hand?

13 A Yes, sir.

14 Q Did you ever see any weapons?

15 A No, sir, I didn't.

16 Q Did anybody tell you anything about this case
17 other than they told you to go swab Mr. Heaton's
18 hands?

19 A I was not familiar with what all had happened.

20 Q All right, - -

21 And, do you know what the results of the
22 tests were?

23 A No, sir, I haven't seen the results.

24 Q Okay.

25 Nothing further.

1 COURT:

2 You may step down. You can stay in the
3 courtroom if you like.

4 (Witness excused from the witness stand)

5 Call the next witness.

6 CHAPPELL:

7 The State calls Sgt. David Smith.

8 DAVID SMITH, being duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. CHAPPELL:

12 Q State your name for the record please.

13 A David Smith.

14 Q Where are you employed?

15 A I'm with the Oconee County Sheriff's Department.

16 Q And, how long have you been employed there?

17 A Employed since August of 1988.

18 Q And how long in law enforcement?

19 A I've been since '87 - - April 6th.

20 Q And, what are your duties as an employee of
21 the sheriff's department?

22 A I'm assigned to property crimes, criminal
23 investigations.

24 Q Did you in fact assist in the investigation
25 of the death of Eddie Heaton?

1 A I did.

2 Q Did you take possession of any evidence in
3 that regard?

4 A I did and transported it to SLED.

5 Q I show you what has been marked as State's
6 Exhibit Number One for identification. Do you
7 recognize this?

8 A I do.

9 Q And what is it?

10 A It's a shotgun with the barrel messed up, or,
11 the stock actually, and I transported that to
12 SLED.

13 Q Who did you receive this from?

14 A Sgt. Sheriff and it would be on the chain of
15 custody on the box.

16 Q And what did you do with it?

17 A I transported it to SLED.

18 Q While it was in your possession did you alter
19 it or tamper with it in any way?

20 A I did not.

21 Q Did you in fact take possession also of a
22 pistol?

23 A I did.

24 Q And who did you receive that from?

25 A Sgt. Sheriff.

1 Q Did you in fact transport that to SLED?

2 A That's correct.

3 Q Did you alter it or tamper with it in any
4 way while it was in your possession?

5 A I did not.

6 Q Did you take possession of any GSR kit?

7 A I did.

8 Q What does GSR stand for?

9 A It's gunshot residue.

10 Q Who did you receive that from?

11 A I believe I received that from Sgt. Sheriff.

12 Q What did you do with it?

13 A I transported it to SLED. It's got my
14 initials on the back of it where I sealed it.
15 Or, where it ~~was~~ sealed.

16 Q And, while it was in your possession did you
17 alter it or tamper with it in any way?

18 A No, ma'am.

19 Q Did you have any other involvement in the
20 case other than transporting these pieces of
21 evidence to SLED?

22 A Just assisting Sgt. Sheriff with whatever
23 they needed.

24 Q Nothing further.

25

1 CROSS EXAMINATION

2 BY MR. SIRES:

3 Q So, David, you didn't have anything to do
4 with the investigation of this case at all?

5 A I just took a couple of statements other than
6 transport that to SLED.

7 Q Took the stuff to SLED.

8 A Yes, sir.

9 Q Okay. Didn't arrest anybody, didn't talk to
10 anybody - - Who did you talk to?

11 A I'd have to look. I believe it was a couple
12 of the people that was out there that night.

13 It would be on one of the documents.

14 Q You don't remember who it was?

15 A No. It's been about a year ago. - - without
16 looking at the documents again.

17 Q Did you get out there that same night?

18 A Yes, I did.

19 Q Did you see Mr. Crowe that night?

20 A No, sir, I believe he had already left that
21 night. You see they called us out.

22 Q And you said you got the shotgun from who?

23 A I got it from Sgt. Sheriff. It's on the
24 chain of custody.

25 Q Stanley Sheriff?

1 A That's correct.

2 Q And also a pistol?

3 A That's correct.

4 Q Is it an automatic or a revolver?

5 A I believe it was an automatic. Chrome.

6 Q Pardon.

7 A I believe it was an automatic.

8 Q You believe?

9 A No, sir, it was an automatic.

10 Q Okay.

11 A Okay.

12 Q It was an automatic?

13 A Yes, sir.

14 Q Did you ever see a revolver?

15 A No, sir.

16 Q Just the two weapons?

17 A That's all, sir.

18 Q Okay. Thank you, sir.

19 COURT:

20 You may step down. You may stay in the
21 courtroom if you like.

22 (Witness excused from the witness stand)

23 Go ahead.

24 CHAPPELL:

25 The State calls Sgt. Stanley Sheriff.

STANLEY SHERIFF, being

duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CHAPPELL:

Q State your name please.

A Stanley Sheriff.

Q And where are you employed?

A With the Oconee County Sheriff's Office.

Q And how long have you been employed there?

A Approximately thirteen years.

Q And how long in law enforcement?

A Thirteen years.

Q And what are your duties as an employee of the Oconee County Sheriff's Department?

A We are a general investigator for the sheriff. Any duties that the sheriff directs us to do including murders, homicides - - any type of homicides, property crimes and anything the sheriff directs us to do.

Q Were you in fact asked to investigate the death of Eddie Heaton?

A Yes, I was.

Q That was on June the 8th, 1997?

A That's correct.

Q How did you become involved in that case?

1 A That early morning at approximately 2:00 A.M.
2 I was called and asked to come to the location
3 located on [REDACTED] Road.

4 I was also told as I was on the way that
5 there was a victim transported by a private car to
6 the hospital emergency room. The victim had
7 passed away at the emergency room.

8 Q When you arrived at the scene who was
9 present?

10 A As I arrived on the scene Deputy Ronald
11 Wilbanks was there. Deputy Curtis Rogers, Deputy
12 Steve Dyar, Deputy Steve Owens.

13 They had secured the crime scene.

14 Q Let me show you what has been marked as
15 State's Exhibit Number One for identification.
16 Do you recognize this?

17 A Yes, I do.

18 Q And what is it?

19 A It's a shotgun - - It's a twenty gauge
20 shotgun that was recovered from Ronald Wilbanks.
21 It was secured in the back seat of his car.
22 I took possession of this shotgun.

23 Q And, what did you do with it after taking
24 possession?

25 A I secured it and prepared it to be sent to
SLED.

1 Q Did you alter it or tamper with it in any way
2 while it was in your possession?

3 A No, ma'am, I did not.

4 Q I'm going to show you what has been marked as
5 State's Exhibit Numbers Two and Three for identifica-
6 tion. Do you recognize this?

7 A Yes, I do.

8 Q And what are they?

9 A The photograph marked as State's Exhibit
10 Number Three is a photograph of the shotgun as it
11 was received from Deputy Wilbanks from the back
12 seat of his patrol car.

13 State's Exhibit Number Two is the shotgun as
14 it is placed in the box that it was transported
15 here today in.

16 Q Do those pictures correctly and accurately
17 depict the shotgun as you found it and as you
18 packed it and sent it to SLED?

19 A Yes, they do.

20 SIRE:

21 I have no objection to that.

22 Q Your Honor, we would move at this time that
23 State's Exhibit Numbers Two and Three be admitted
24 and the words for identification be stricken.

25

1 COURT:

2 Admitted without objection.

3 (So admitted as State's Exhibit Numbers Two
4 and Three)

5 Q After you took possession of that weapon what
6 did you do next?

7 A We looked over the scene. I took photographs
8 of the scene and began interviewing witnesses.

9 SIRES:

10 No objection to these photographs, Your
11 Honor.

12 COURT:

13 Admitted without objection.

14 (So admitted as State's Exhibit Numbers
15 Four.

16 Q I'm going to show you what has been marked as
17 State's Exhibit Numbers Four, Five and Six. Do
18 you recognize these?

19 A Yes, ma'am, I do.

20 Q What are they?

21 A These are photographs of the front yard of
22 the trailer located on [REDACTED] Road at three
23 different angles.

24 Q And when were they taken?

25 A They were taken the night shortly after

1 2:00 A.M.

2 Q And do they completely and accurately depict
3 the scene as you found it when you arrived on [REDACTED]
4 Road that evening?

5 A Yes, ma'am, it does.

6 Q Did you take possession of any other piece of
7 evidence on that evening?

8 A Yes, ma'am, I did.

9 Q And, what was that?

10 A It was a .22 Ruger target-type automatic
11 weapon - handgun.

12 Q And, how did you come into possession of
13 that?

14 A In the course of talking to Mr. John Smith,
15 he informed me that the pistol - - a pistol was
16 found and was placed in the front seat of his
17 pick-up truck.

18 Q So, he turned it over to you?

19 A Yes, he did.

20 Q I show you what has been marked as State's
21 Exhibit Number Twelve do you recognize this?

22 A Yes, ma'am, I do.

23 Q And what is it?

24 A It is the weapon in question that we did take
25 possession of.

1 Q What did you do with that weapon?

2 A Secured it and prepared it to be sent to SLED.

3 Q Is that where it is now?

4 A Yes, ma'am, it is.

5 Q Sergeant, you said this is a .22 automatic I
6 believe.

7 A Yes, ma'am.

8 Q Can you tell me in an automatic pistol of
9 that kind, when it is fired, would anything be
10 ejected from it?

11 A Yes, ma'am, usually the weapon has a clip.
12 The clip is located in the handle. Approximately
13 ten shots. It holds ten.

14 As I was securing the weapon - this weapon -
15 I removed the clip. The clip had seven live
16 rounds which were unfired rounds still in the clip
17 and there was also one in the barrel - in the
18 chamber of the gun.

19 Q Did you find any live rounds on the ground?

20 A Yes, I did.

21 We combed the area and found one live round.
22 We also combed the area to look for spent shells.

23 When this weapon is fired, it will kick out
24 the spent shells, the shells that contain the
25 bullet.

1 We did not find any spent shells.

2 Q So, a weapon of this nature will kick out a
3 shell?

4 A Yes, ma'am.

5 Q And there was none found?

6 A No, there was not.

7 Q Did you return to the scene at anytime to
8 take pictures?

9 A Yes, ma'am, I did.

10 Q And when did you do that?

11 A The next day during the daylight hours, I
12 returned to take similar shots as were taken
13 during the night to give us an idea of what the
14 scene looks like during the daytime, and at that
15 point we did search again for spent shells and we
16 were unsuccessful.

17 Q Let me show you what have been marked as
18 State's Exhibit Numbers Eight and Nine. Do you
19 recognize these?

20 A Yes, ma'am, I do.

21 Q And what are they?

22 A These are photographs taken during the day
23 similar to the photographs taken during the night.

24 Q And those were just daylight pictures of the
25 same scene?

1 A Yes, ma'am.

2 Q Do they completely and accurately depict the
3 scene?

4 A Yes, ma'am, they do.

5 Q I'd ask you to look closely at what has been
6 marked as State's Exhibit Number Eight. Is the
7 defendant's car in that picture?

8 A Yes, ma'am, it is.

9 Q And that car was left there that night?

10 A Yes, ma'am.

11 Q The car was still there the next day when you
12 took pictures, is that correct?

13 A Yes, ma'am, that's correct.

14 Q And you were able to identify that car as
15 belonging to the defendant?

16 A Yes, ma'am.

17 Q Did you look over that car?

18 A Yes, ma'am, we did.

19 Q Were there any bullet holes in that car?

20 A We observed no bullet holes in the vehicle at
21 all.

22 Q Is there, or, is there not, a driveway
23 leading to where that car is?

24 A Yes, ma'am. Where the car is, it's a
25 circle-type driveway beyond the trailer for which

1 it circles back into the [REDACTED] Road just above
2 the original driveway.

3 Q And, so, is that driveway separate and apart
4 from the other driveway where people were that
5 night?

6 A Yes, ma'am, it is.

7 Q Did you see any vandalism to that car
8 whatsoever when you looked over it the next day?

9 A No, ma'am, we did not.

10 Q What else did you do in your investigation?

11 A We took several statements from witnesses
12 there.

13 Q And this crime occurred in Oconee County?

14 A Yes, ma'am, it did.

15 Q Nothing further.

16 CROSS EXAMINATION

17 BY MR. SIRES:

18 Q Stanley, did you tell Charlotte that you
19 smelled pot that night?

20 A I don't recall telling her that, no, ma'am - -
21 no, sir.

22 Q Could you have told her that, Stanley?

23 A I don't recall that, no.

24 Q You don't recall it?

25 A No, sir.

1 Q Were you the first one there?

2 A No, sir, I was not.

3 Q How long had it been since the shooting of
4 the shotgun until you got there?

5 A It could have been an hour maybe.

6 Q During that hour period of time what was the
7 condition of that crime scene?

8 A Once the deputies arrived on the scene, they
9 secured it with the yellow tape and that's - - -

10 Q How long did it take them to get there?

11 A I don't know that. I don't know how long.

12 Q How many people were there that night when
13 all of this happened?

14 A There were several people. I don't recall
15 how many were there.

16 Q Several?

17 A Several.

18 Q You're the chief investigator on this case,
19 Mr. Sheriff?

20 A Uh, I guess you could call myself the lead
21 investigator.

22 Q And you don't know how many people were there
23 that night?

24 A When you say people, there were several party
25 goers that we were interviewing - -

1 Q Right.

2 A There were approximately maybe four - -
3 maybe six deputy sheriffs. There could have been
4 three or maybe even four investigators on the
5 scene at that time.

6 Q All taking statements?

7 A Yes. Everyone busy having a task.

8 Q But, as the chief investigator isn't it your
9 job to compile all this stuff and tell us well,
10 let's see now we've got five from him and four
11 from this deputy and we've got a total of this
12 many statements?

13 A The statements were compiled and I did
14 compile them, and compiled approximately seventeen
15 statements.

16 Q Seventeen statements?

17 A Yes, sir.

18 Q And why after a year is that gun still down
19 at SLED?

20 A Normally it's secured there. It was tested
21 there.

22 A state law enforcement agent will come and
23 testify to what tests were performed on that gun
24 directly, so, that's - - -

25 Q Will he have the gun with him?

1 A I would assume so, yes, sir.

2 Q Okay, so that's where it is and he's going to
3 bring the gun?

4 A Yes, sir.

5 Q Okay.

6 Did you see Sonny that night?

7 A I did briefly in the back seat of a patrol
8 car.

9 Q What kind of condition was he in?

10 A He appeared to be intoxicated. I did not
11 have a whole lot of contact with him at that time.

12 Q How could you tell that he was intoxicated?
13 Was it because he was disheveled in his appearance?

14 A Well, at some point in time he was leaned
15 over this way. He didn't look like he felt very
16 well, and, basically what I was told from the
17 other officers.

18 Q Uh - - okay.

19 And, somebody told you that they had hit him
20 over the head with this gun, didn't they?

21 A That's correct.

22 Q Would you feel very well if somebody had hit
23 you over the head with this gun, Stanley?

24 A No, I wouldn't imagine so, no, sir.

25 Q All right, - - And they also hit him with the

1 barrel of the gun they said.

2 And they held him down with a vacuum cleaner
3 on his neck and he's a pretty good size fellow.

4 A That's correct.

5 Q And Mr. Heaton was a pretty good size fellow,
6 wasn't he?

7 A Yes, sir, he was.

8 Q Do you know what he did as far as occupation
9 was concerned?

10 A I believe by trade he was a welder.

11 Q And he was also a bouncer at Scooter's?

12 A I believe so, yes, sir.

13 Q Yes, sir.

14 What about a revolver, Stanley? You took a
15 statement that a fellow said that he had a
16 revolver.

17 A That's correct.

18 Q What happened to that revolver?

19 A It has not been recovered.

20 Q Can't find it.

21 A No, sir.

22 Q Don't know what happened to it.

23 And, this automatic pistol that you found -
24 the semi-automatic pistol that you found was in
25 the seat of the pick-up truck.

1 A That's correct.

2 Q Had been moved - - There again from statements
3 that you took - - had been moved from in front of
4 the decedent.

5 A That's correct.

6 Q And you took a statement from a fellow that
7 said that he had a gun - - he had a gun that
8 night, didn't he?

9 A Yes, sir, I did.

10 Q Did you do a parafin test or a gunshot
11 residue test on Mr. Crowe that night?

12 A No, sir, I did not.

13 Q Why not?

14 A Because of the witnesses that we had already
15 talked with - - that the gun was fired by him, the
16 shotgun was taken away from him, I didn't feel I
17 needed to take one.

18 Q Now these are the witnesses that were all kin
19 to or related to the deceased, weren't they?

20 A That's correct.

21 Q And you didn't think that an independent test
22 would do you any good?

23 A No, sir, not at that time.

24 Q Okay.

25 Did you take Sonny's statement that night?

1 A Later on the next morning we did.

2 Q Uh-huh.

3 A Yes, sir.

4 Q Okay.

5 And he admitted shooting him, didn't he?

6 A Yes, sir, he did.

7 Q And said he went back to get his car, didn't
8 he?

9 A That's correct.

10 Q And, his car is in the picture, is it not?

11 A Yes, sir, it is.

12 Q You said you examined that car, Stanley.
13 How close did you look at the car?

14 A Myself and two other investigators visually
15 looked at the vehicle.

16 The car was locked at the time; we could not
17 get in the vehicle.

18 Q Uh-huh.

19 A The owners expressed an interest in having it
20 removed - - -

21 Q The owners expressed an interest, do you mean
22 the owners of the property or the owners of the
23 car?

24 A The owners of the property.

25 Well, Mr. and Mrs. Smith.

1 Q Okay.

2 They weren't owners; they were tenants, but,
3 anyway, they wanted it moved?

4 A That's correct.

5 Q They have no problem with that.

6 COURT:

7 All right, admitted without objection.

8 (So admitted as Defendant's Exhibit Number
9 One)

10 Q Stanley, does that appear to you to be the
11 car of Mr. Sonny Crowe?

12 A (No response)

13 Q It's a Ford, isn't it? You can tell by the
14 taillights it's a Ford.

15 And if you compare that with - -

16 Where are your pictures?

17 A I don't think it really accurately depicts
18 his vehicle, no.

19 I would have some reservations in saying that
20 was his vehicle.

21 Q So, you can't identify that as his vehicle?

22 A No, sir.

23 Q Okay.

24 Does that appear to you to be a .22 shot into
25 whatever that is?

1 A It appears to be some paint off the vehicle.

2 Q Uh-huh.

3 A How the paint along with several other specks
4 here, and a fading spot here on top - - how that
5 happened I'm not sure.

6 I wouldn't say it was a gunshot, no, sir.

7 Q You don't know.

8 A No, sir, I don't.

9 Q But, you can't rule it out, can you?

10 A Uh, - -

11 Q Now, you are under oath, Mr. Sheriff.

12 A I couldn't testify whether it was or not.

13 Q There you go - - whether it was or was not.

14 A That's correct.

15 Q But, there's no doubt in your mind that that
16 is Mr. Crowe's vehicle parked there at the
17 trailer?

18 A It certainly is.

19 Q And on that end of the trailer - - Is that
20 the far end from [REDACTED] Road?

21 A That's correct.

22 Q You'd have to go by the trailer to get to the
23 car, wouldn't you?

24 A That's correct, yes, sir.

25 But, there are other routes to that

1 trailer - - I mean to that car.

2 Q Well, how? Behind the trailer maybe?

3 A Let me see the picture.

4 Q All right, - -

5 A Beyond this trailer that's here, the car's
6 parked at the end and there's another drive - -

7 Q Yeah.

8 A - - There's a drive that can be accessed
9 independent from even coming near the trailer.

10 Q How?

11 A It can be - - In fact, he could have made a
12 different route and went directly to his car
13 and avoided the trailer altogether.

14 Q How, Mr. Sheriff?

15 A Right here.

16 Q Step down to the board and show me.

17 All right, here's [REDACTED] Road and the trailer
18 is sitting like this, is that correct?

19 A No, sir.

20 Q Okay, you show us.

21 A This is [REDACTED] Road. To Walhalla, to
22 Westminster.

23 The drive is here.

24 As I say it comes in here.

25 Q Okay.

1 A And the trailer is here.

2 Art is not my strong point.

3 Q You're not an artist, but, go ahead.

4 A The trailer set this way. The front porch
5 is here.

6 Mr. John Wesley Smith's truck was parked
7 here. The motorcycles were here. And Mr. Crowe's
8 car was here.

9 Now, here is also another drive. It comes
10 this way.

11 And I believe there's a house right here.
12 I'm not sure.

13 This is the road. An independent route here
14 to the house and it would also be to this trailer.

15 Q Let me ask you this, are there any lights
16 along that road?

17 A You are referring to night lights or - -

18 Q Street lights, car light. Anything that
19 would light up this road here.

20 You say there are woods here.

21 A Right.

22 There certainly wouldn't be street lights and
23 I don't recall if there were night lights.

24 Q Are there lights that you can see in that
25 area like that?

1 Q There's woods here, correct?

2 A That's correct.

3 Q Or, that's what your pictures show.

4 A Let me clarify. There are some woods in
5 here. There's clearing on back to the back of
6 this trailer here, but, I'm not sure of the
7 distance.

8 Q But, the only light out there at one o'clock
9 in the morning is the light coming off this
10 trailer, right?

11 A (No response)

12 Q Out of the windows of this trailer.

13 A And also the light on the front porch.

14 Q And, the light on the front porch.

15 And no lights out in here.

16 A No.

17 Q That's right.

18 Thank you. Have a seat.

19 How many shots will that gun fire without
20 being reloaded?

21 A One shot.

22 Q And, when Mr. Crowe was arrested, how many
23 shells were recovered out of Mr. Crowe's pants
24 pockets?

25 A To my knowledge no shot - - no shells were

1 recovered.

2 Q Except for the one spent shell in the gun?

3 A That's correct.

4 Q Okay.

5 And that's really a kid's gun, isn't it?

6 A (No response)

7 Q To teach a kid to hunt bird, quail, first
8 shotgun. Isn't that what that is?

9 A I - -

10 Q You don't have children?

11 A I do have two boys, and that certainly
12 wouldn't be a gun I'd give them, no.

13 Q You wouldn't?

14 A No, sir.

15 Q What would you start out with?

16 A (No response)

17 Q Are you going to start them with a semi-
18 automatic shotgun?

19 A No, sir.

20 Q You're not going to start them with any guns.

21 A I don't think they're old enough for a gun
22 right now.

23 Q Well, when they get old enough. Isn't that
24 the type of gun that a child would have?

25 A Not in my opinion, no.

1 Q Not in yours?

2 A No, sir.

3 It's a gun that can kill.

4 Q A twenty gauge shotgun.

5 A Yes, sir.

6 Q And they can go up to ten gauge?

7 A Yes, sir.

8 Q And normally you start kids out with the
9 lowest right?

10 A If you say so.

11 Q All right, - -

12 Do you know how Mr. Crowe got back down there
13 that night?

14 A I talked with his wife Charlotte - -

15 No, I take that back. I talked to Sonny the next
16 day and in his statement I think he said that his
17 wife had brought him back.

18 Q And how long had he been gone before he came
19 back?

20 A Uh, I don't recall the time. I know what's
21 been said here today, but, I don't recall being
22 told the time by him.

23 Q Did you yourself drive the distance from
24 where he lived - - -

25 A Yes. Yes, I did.

1 Q And how long did it take you?

2 A It's approximately 14.3 of a mile - -
3 fourteen miles, three tenths. It took me
4 approximately nineteen minutes to drive.

5 Q So, even if he had got there and turned
6 around and come back, it would have been at least
7 roughly twenty minutes, right?

8 A Yes, sir.

9 Q And then if there was testimony that when he
10 got home that Charlotte wasn't there and he had to
11 wait some period of time for her to get there - -

12 People started leaving that party that night.
13 Did you talk to any of those that left?

14 A Yes, sir, I talked to approximately three to
15 four people that were not there during the time,
16 but, was there earlier.

17 Q And, did they tell you that Mr. Heaton had
18 struck Sonny, giving him a black eye and knocked
19 him down?

20 A The persons that I talked with did not see
21 this.

22 Q Didn't see anything.

23 And did they say that everybody was drinking
24 and smoking dope, or what were they doing?

25 A What was told to me was that they were

1 drinking alcohol.

2 Drugs was - - -

3 Q Nobody would admit it.

4 A - - would tell me that that was what was
5 going on.

6 Q And did you ever give Sonny any type of blood
7 test or check him in any way to see whether he had
8 any in his system that night?

9 A No, sir, we did not.

10 Q Why not?

11 A I do know that he was taken to the hospital.
12 I believe he was in some pain.

13 I believe that he was taken. I know that he
14 was in pain when we talked with him, and we did
15 not.

16 There was some time had passed.

17 Q Sonny co-operated with you and told you all
18 he knew about it, didn't he?

19 A Yes, he did.

20 Q When somebody told you about the revolver,
21 what did you do to try to find out about that
22 revolver?

23 A Questioned - - In fact, I took the statement
24 from Mr. Smith about that.

25 Q Uh-huh.

1 A And questioned several other people. I went
2 back and re-interviewed some of the witnesses we
3 had already interviewed to locate this weapon,
4 but, we were unsuccessful in getting it.

5 Q Other than Mr. Smith who admitted that he
6 shot the weapon, nobody else knew anything about
7 it, or - -

8 A Well, the chaos that happened out there I
9 think was one of the problems.

10 There had been so much activity going on.
11 Nobody remembers seeing the gun or nobody remembers
12 what happened to it.

13 Q And it was just by a fluke that you found the
14 automatic weapon. Nobody turned that in.

15 Just - - -

16 A No, sir.

17 Q Did somebody see it in the truck?

18 A It wasn't a fluke. I believe the way John
19 told it to me was that it was on the porch, he
20 placed it in the truck to more or less put it out
21 of the way while all the commotion was going on.

22 Q But his wife said that it was found by the
23 deceased, but, that she normally kept that gun
24 in her saddle bag on her bike.

25 A Yes, sir.

1 Q Isn't that what she said?

2 A Yes, sir.

3 Q How do you suppose it got there in the
4 deceased's hands or in his vicinity out of that
5 bike?

6 A I don't know that we can even say it was in
7 his hand.

8 Q Well, you had one witness that said that he
9 took it out of his waist and put it in the back.

10 A Right.

11 Q Was he left-handed or right-handed?

12 A Right-handed.

13 Q And when he shot the gun, could he have held
14 it like that?

15 A Anything is possible, but, I don't believe - - -

16 Q If he had held it like that, would there have
17 been powder residue on that hand? On the left
18 hand.

19 A I really couldn't testify to that because I
20 don't know.

21 Q You don't know.

22 Okay, thank you.

23 REDIRECT EXAMINATION

24 BY MS. CHAPPELL:

25 Q From whom did you recover the pistol?

1 A Well, actually I recovered it from the Ford
2 Ranger pick-up truck that was parked in the yard
3 that belonged to Mr. Smith - - John Smith.

4 John Smith informed me that he had placed the
5 gun there.

6 Q So, he voluntarily told you that that gun was
7 there and where it came from?

8 A That's correct.

9 Q You testified also I believe that there were
10 no shells in the vicinity of this area?

11 A That's correct.

12 Q Is that correct?

13 A Yes, ma'am, that's correct.

14 Q Looking at the defendant's car in these
15 photographs, what year is that car? Can you
16 estimate how old it is?

17 A I'd say seventies model perhaps.

18 Q Could it in fact be a '67?

19 A Possibly. I'm not that familiar. I do
20 know it's a Ford - - an older model Ford.

21 But, I don't know - - -

22 Q Sir, would you assume that every piece of
23 chipped paint on that '67 car would be a bullet
24 hole?

25 A No, ma'am, we could not assume that.

1 Q In looking at the car on that day - - You
2 said you looked at it thoroughly. Did you get
3 the impression that that car had been vandalized
4 in any way?

5 A No, ma'am.

6 Q Mr. Sires asked you about a single-shot
7 shotgun. Can you tell the jury a little bit
8 about what happens with a single-shot shotgun?
9 Would it be ejected toward a target?

10 A I'm not an expert by no means in firearms,
11 but, I do know that a single-shot shotgun such as
12 this one you breach - - or, you open it up; you
13 place a shell in it, close it, pull the hammer
14 back, and once the hammer strikes the bullet, it
15 propells it through the barrel at whatever target
16 it is covering - - strikes.

17 Q And there was a lot of talk about it being a
18 single-shot. Sergeant, how many shots would you
19 need with this weapon at four feet from an
20 intended victim?

21 A Just one.

22 COURT: .

23 No, ma'am, that's not proper.

24 Q Did you speak with Charlotte Crowe the next
25 day?

1 A Yes, ma'am, I did.

2 Q Did she tell you that she was the one that
3 took Sonny back?

4 A She did.

5 Q As you talked to these witnesses, did these
6 witnesses tell you that shots were fired - -
7 pistol shots were fired before or after a shotgun
8 blast?

9 A I don't think - - I don't really recall
10 anyone being able to distinguish between the
11 shotgun blast and the pistol shots.

12 Q Did anyone ever tell you that they saw the
13 victim fire or point a gun at the defendant?

14 A No, ma'am.

15 Q Nothing further.

16 RECROSS EXAMINATION

17 BY MR. SIRES:

18 Q Stanley, I know you did an investigation, so,
19 tell me how many sets of prints did we get off of
20 this pistol?

21 A I think that would be in the SLED report.
22 I don't have access to that.

23 CHAPPELL:

24 Your Honor, that's not proper redirect.

25 I don't believe that that was asked.

1 SIRES:

2 She talked about the pistol.

3 COURT:

4 I'm going to allow it; go ahead.

5 Q Did you fingerprint the weapon?

6 A I did not personally. I sent that to SLED
7 to be done.

8 Q To be done?

9 A That's correct.

10 Q And you say that this hold ten shots?

11 A Yes, sir.

12 Q Now, is that ten shots in the clip, or, is
13 that nine in the clip and one in the chamber, or
14 is that ten in the clip and one in the chamber
15 which makes eleven?

16 COURT:

17 Mr. Sires, he said he wasn't a gun expert.

18 Q But, he took the statements.

19 COURT:

20 There's no need to answer the question.

21 Q You said you found the clip and it had seven
22 rounds in it?

23 A Yes, sir.

24 Q Okay.

25 A Actually the clip come out of the gun with

1 seven rounds and one in the chamber.

2 Q Okay.

3 So, there were eight there.

4 A Correct.

5 Q But, you don't know how many it holds
6 besides - -

7 Did you try to load it?

8 A No, sir.

9 Q Did you check everybody out there to see if
10 they had any shells in their pockets?

11 A At that time we didn't have that information
12 about the gun.

13 The gun was secured. It was placed in a
14 secure place, and later when we were preparing it
15 for the trip to SLED was when we were actually
16 able to count the - - -

17 Q It was after the fact.

18 A Right.

19 Q The fact that it had so many shells in it
20 has really no relevance, does it?

21 A I wouldn't think so.

22 Q I wouldn't either.

23 Thank you.

24 COURT:

25 You may step down, sir.

(Witness excused from the witness stand)

1 COURT:

2 Call you next witness.

3 CHAPPELL:

4 Your Honor, the next witnesses are SLED
5 agents and will not be here until in the morning.

6 (Evening recess with usual admonition by the
7 court as to discussing case, news media, et
8 cetera)

9 JUNE 24, 1998

10 COURT:

11 Mr. Bailiff, come up a minute please.

12 Some of the jurors have complained of being
13 cold. Adjust the temperature.

14 (The following took place in the presence of
15 the jury)

16 Good morning, ladies and gentlemen. Thank
17 you very much for your promptness.

18 We had some matters that we had to dispose of,
19 some other business of the court and that's why we
20 are a little bit late getting started.

21 I want to warn you again about when you get
22 back to the courthouse, don't stand outside and
23 smoke a cigarette or don't hang around the
24 courthouse. When you get back to the courthouse
25 come on in to the jury room.

1 I understand that some of you were seen this
2 morning maybe hanging around outside a little bit.
3 I understand it's a kind of normal thing to do,
4 but, don't do it because I don't want you overhearing
5 anything, because, like I told you yesterday, we
6 are trying this case based on the testimony from
7 this witness stand and the exhibits that are
8 introduced in court, so, don't be hanging around
9 the courtroom.

10 When you get back to the courthouse, come
11 right on to the jury room.

12 All right, - - thank you very much.

13 Solicitor, - -

14 (Bench conference out of the hearing of the
15 jury and court reporter)

16 COURT:

17 Also, ladies and gentlemen, it was brought to
18 my attention that there was an article in the
19 paper this morning concerning this matter, and,
20 you know, I instructed you yesterday not to read
21 anything about this. If you saw an article just
22 not to read it.

23 Like I said a moment ago, the testimony from
24 this witness stand is what you are going to decide
25 this case about and I would like to know if anyone

1 on the jury panel read the article in the paper
2 this morning?

3 If so, raise your hand.

4 (No juror raises hand)

5 All right, thank you very much, ladies and
6 gentlemen, - -

7 You may proceed, Solicitor.

8 CHAPPELL:

9 The State would call Karl Addis.

10 KARL ADDIS, being duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. CHAPPELL:

14 Q State your name for the jury please.

15 A Karl Addis.

16 Q And, where are you employed?

17 A I'm the coroner here of Oconee County.

18 Q And how long have you been coroner here in
19 Oconee County?

20 A I'm in my sixth year.

21 Q And, what is your training and experience
22 that qualifies you as coroner?

23 A Well, I have attended a number of medical-
24 legal death type seminars, and, of course,
25 attended a number of autopsies in my career

1 and basically on the job training and working with
2 good law enforcement.

3 Q How many death investigations have you
4 participated in - - would you estimate?

5 A In the six years - - I'd say probably around
6 a thousand.

7 Q Your Honor, I would move that this witness be
8 qualified as an expert in death investigation.

9 COURT:

10 Mr. Sires, would you like to question him?

11 SIRES:

12 Yes, sir, I would. Just a moment.

13 Now, Karl, I know you have been coroner here
14 for how long?

15 A I'm in my sixth year, Mr. Sires.

16 Q Six years.

17 A Yes, sir.

18 Q What specialized training have you had as a
19 result of this employment?

20 A Uh - -

21 Q Or, as far as death investigations are
22 concerned.

23 A Again, I've been to a number of seminars
24 hosted by several different agencies in the
25 United States.

1 I've been to Washington to a death investigation
2 school by the Armed Forces Institute of Pathology.

3 I've been to St. Louis - - -

4 Q Do you have any schooling as far as any
5 formal schooling like a university or college or
6 anything like that sir, or, has all of yours been
7 on-the-job type training?

8 A I'm a paramedic certified by the State of
9 South Carolina.

10 Q Uh-huh.

11 A But, no formal college degree, Mr. Sires.

12 Q I've got no objection to this witness, Your
13 Honor.

14 COURT:

15 All right, you might proceed.

16 Q Mr. Addis, were you working on the morning of
17 June 8th, 1997?

18 A Yes, ma'am, I was called to the emergency
19 room at Oconee Memorial Hospital on that morning.

20 Q What part did you have in the investigation
21 of the death of the victim Eddie Heaton regarding
22 the hospital?

23 A After arriving at the hospital, again, just
24 basically obtained pertinent information with
25 regard to the death of Mr. Heaton, the time of

1 death, basically a brief history and then assisting
2 in the arrangement of the autopsy and going to the
3 autopsy.

4 Q Had the victim already been pronounced dead
5 when you arrived?

6 A Yes, ma'am, Mr. Heaton was declared dead by a
7 physician, Dr. Wesley Turton at 2:43 A.M. there in
8 the emergency room.

9 Q Did you in fact set up an autopsy in regard
10 to Edward Heaton?

11 A The autopsy was set up, yes, ma'am.
12 At Newberry County Hospital.

13 Q And, who performed that autopsy?

14 A That was Dr. Sexton.

15 Q And did you in fact attend that autopsy?

16 A Yes, ma'am, I did.

17 Q Can you tell the jury what the cause of death
18 was in the case of this victim?

19 A Yes, ma'am. The victim basically died from
20 a term called exsanguination.

21 Basically, he hemorrhaged due to a gunshot
22 wound to the chest.

23 Q Was there a toxicology report done in
24 relation to that autopsy?

25 A Yes, ma'am. Specimens obtained at autopsy

1 were submitted to the toxicology lab at SLED
2 and a routine drug screen and blood alcohol was
3 performed by the toxicologist.

4 Q Can you tell the jury whether or not Edward
5 Heaton had been drinking on the night of his death?

6 A I can tell the jury that based on the
7 toxicology report that SLED presented to my office
8 after they concluded it that he tested negative
9 for blood alcohol and negative for any drugs in
10 his system.

11 Q Okay. Did those drugs tested include both
12 cocaine and marijuana?

13 A I know that it tested cocaine. I do not
14 believe that there was a marijuana screen done,
15 ma'am.

16 SIRES:

17 I have no objection to the entering of that
18 report, Your Honor, - -

19 COURT:

20 All right, thank you.

21 (So admitted as State's Exhibit Number
22 Eleven)

23 Q I'm going to show you what has been marked as
24 State's Exhibit Number Eleven, and I'm going to
25 ask you to refer to the last item in number eleven.

1 Is that the toxicology report published by
2 SLED?

3 A Yes, ma'am, this is a report prepared by the
4 toxicology department at SLED and sent to Stanley
5 Sheriff, and, yes, I do see that he was tested for
6 THC, a metabolite of marijuana and it shows that
7 it was negative.

8 Q So, the toxicology report reflects no alcohol
9 or drugs in his system of the victim, is that
10 correct?

11 A That is correct, ma'am.

12 Q I'm going to show you what has been marked as
13 State's Exhibit Number Ten. Can you identify
14 that for the jury please?

15 A Yes, ma'am, this is a photograph that was
16 taken by the sheriff's department investigator who
17 attended the autopsy, and this is fragments and
18 wadding recovered from the body of Mr. Edward
19 Heaton.

20 Q And those were - - that was done while you
21 were at that autopsy?

22 A Yes, ma'am, they were recovered by the
23 pathologist at the autopsy, yes, ma'am.

24 Q That's all I have. No further questions.

25 COURT:

 Mr. Sires?

1 SIRES:

2 I wanted to make sure that she was through,
3 Your Honor.

4 COURT:

5 That's what she said. She had no further
6 questions.

7 SIRES:

8 All right, - -

9 COURT:

10 All right, - -

11 CROSS EXAMINATION

12 BY MR. SIRES:

13 Q Coroner, did you draw this blood yourself?

14 A No, sir, that was drawn by the pathology
15 group there at Newberry.

16 Q Were you present when it was done?

17 A Yes, I was.

18 Q And who carried it down to SLED?

19 A I did, sir.

20 Q You carried it personally?

21 A Yes, sir.

22 Q Now, will you tell this jury and this judge
23 and me that there was no alcohol in his system,
24 no drugs in his system because all of these things
25 were negative.

1 Isn't it a fact, coroner, that SLED has
2 what's called a threshold amount?

3 Are you familiar with that?

4 A (No response)

5 Q That the tests will not show below that.
6 They only go above that threshold.

7 In other words you can't say that he didn't
8 have anything to drink; you're just saying that it
9 was less than .01 percent, and that's what your
10 report says.

11 A According to the toxicology report I would
12 say, yes, Mr. Sires.

13 Q Okay.

14 And the same thing with barbituates, benzoids,
15 cocaine, THC and all these things. SLED is
16 saying we don't detect it, but, we don't start out
17 but at a certain level, and it's got to be above
18 that level for us to detect it.

19 It may still be there, and he may have one of
20 everything that's on this system, but, it's such a
21 minute amount that we're not picking it up.

22 Is that what you're saying?

23 A I'd have to let a SLED toxicologist more
24 experienced with their test and their knowledge - -

25 I'm not familiar with their baseline that

1 they go with, but, I know that the report that is
2 issued to the sheriff's department and my office
3 shows negative.

4 Q I show the report here which has been
5 introduced as State's Exhibit Number Eleven, and
6 what does it say - - it tells you the threshold
7 on all of those, doesn't it?

8 A Yes, sir.

9 Q They start at a certain point.

10 A Yes, sir, I would say - - -

11 COURT:

12 Now, Mr. Sires, the document shows. This
13 witness says he's not familiar with that.

14 Q Okay.

15 And, the lead - - the wadding, did you take
16 that picture?

17 A No, I did not take the picture. It was
18 taken by the investigator that was present at the
19 autopsy.

20 Q But, you were there?

21 A Yes, sir.

22 Q And you saw the pictures being taken?

23 A Yes, sir.

24 Q And the lead was gathered up and taken with
25 the blood on down to SLED?

1 A No, sir, the sheriff's department retained
2 the evidence of the projectile that was recovered
3 from Mr. Heaton's body.

4 Q Was Mr. Heaton examined for any diseases in
5 your presence?

6 A Other than what would have been observed at
7 autopsy - -

8 Be more specific, Mr. Sires.

9 Q All right, was any blood samples drawn and
10 sent to a pathologist to verify that he didn't die
11 of some strange blood disease or something like
12 that?

13 A No, sir.

14 Q Or that he had some pre-existing disease?

15 A As far as blood, no further blood studies
16 were done.

17 Q None was done?

18 A No, sir.

19 Q And, there was one gunshot wound, is that
20 correct?

21 A There was one gunshot wound.

22 Q And where was that gunshot wound?

23 A The gunshot wound was to Mr. Heaton's right
24 side, lower chest, sir.

25 Q And it went in at what type of angle?

1 A The wound path was toward his left slightly
2 down and to the rear.

3 Q That's all I'd have.

4 COURT:

5 You may step down, sir.

6 A Thank you, Your Honor, - -

7 (Witness excused from the witness stand)

8 COURT:

9 Call your next witness.

10 CHAPPELL:

11 Vello Paavel.

12 VELLO PAAVEL, being duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. CHAPPELL:

16 Q State your name for the jury please.

17 A My name is Vello Paavel.

18 Q And where are you employed?

19 A I work for the South Carolina Law Enforcement
20 Division commonly known as SLED.

21 Q And what are your duties as an employee of
22 that division?

23 A I work in the forensic services laboratory.
24 In particular I work in the firearms department.
25 I'm a firearms and tool mark examiner.

1 Q And what are your qualifications and training
2 to conduct this job?

3 A I have a four-year degree from the University
4 of South Carolina where I majored in chemistry.

5 I've also attended the Criminal Justice
6 Academy and taken several courses involving law
7 enforcement there.

8 Also I've had the opportunity to take several
9 courses that have been offered by the major
10 firearms manufacturers in the area of repair and
11 functioning of firearms.

12 Also prior to my law enforcement career I
13 worked and managed a gun shop for a number of
14 years where my responsibility was to buy, sell and
15 repair firearms.

16 The bulk of my training and education,
17 however, in the area of firearms identification
18 which involves looking at a bullet or cartridge
19 case or shell casing and trying to determine
20 whether or not that item was fired from a particular
21 gun was done at SLED itself.

22 That was part of my initial training when I
23 was hired by SLED.

24 What I had to do was work under supervision
25 of - - -

1 SIRES:

2 Your Honor, I've got no objection to him
3 being qualified as an expert in this area.

4 I've known him before and - - -

5 COURT:

6 He's an expert; he's qualified. You may
7 proceed.

8 Q Mr. Paavel, I'm going to show you what's been
9 marked as State's Exhibit Number Twelve and ask
10 you to identify this.

11 A Yes, ma'am, this is a shotgun and a fired
12 shotgun shell casing that I received in reference
13 to this incident. It was submitted for analysis
14 to the forensic services laboratory.

15 Q Can you tell the jury what, if any, tests you
16 performed on this shotgun?

17 A Yes, ma'am, what I did was examine this
18 shotgun, document the condition of it.

19 I then test fired the shotgun to obtained
20 fired shell casings that I could use for comparison
21 purposes so that I could try to determine whether
22 or not the shotgun shell casing which I'm holding
23 right here in this bag - - I tried to determine
24 whether or not that - - -

25 COURT:

 Yes, sir, Mr. Sires, - - (Sires standing)

1 SIRES:

2 Your Honor, I'll stipulate that this is the
3 weapon that was used in this particular case.
4 There is no reason to go into all this stuff and
5 waste the court's time. I'll stipulate it's the
6 weapon that was used in the shooting.

7 COURT:

8 Solicitor, - -

9 Q Thank you, Your Honor, - -

10 Can you tell the jury what condition this
11 weapon was in when you received it?

12 A Yes, ma'am, the butt stock - - the part I'm
13 holding the gun by - - the wooden part, the back,
14 has been bent and twisted around.

15 Normally, it's not in this position.

16 Also the shotgun shell casing - the fired
17 casing was stuck in the chamber or the back end of
18 the barrel.

19 Also that shell casing had been bent in some
20 manner.

21 It appeared to me that someone tried to close
22 the gun while the shell casing was partially
23 sticking out of the barrel and it damaged the
24 casing.

25 Other than that, the gun was in working

1 order.

2 The trigger-pull weight was normal. The
3 transfer bar system was working properly.

4 Q What particular type of weapon is that?

5 A This particular firearm is a single-barrel
6 shotgun. This is a twenty gauge shotgun.

7 It is made by a company called New England Fire-
8 arms or NEF.

9 Q And, can you tell the jury a little bit about
10 a shotgun and what happens? What is the mechanism
11 of a shotgun and how shots of this particular
12 weapon would work to project something out at a
13 target?

14 A Yes, ma'am.

15 Briefly, to differentiate between a shotgun,
16 a rifle and a handgun - - a handgun is obvious.
17 It's designed to be fired by one hand.

18 A rifle is a firearm that is normally - -
19 the inside of the barrel is rifled and it's
20 designed to fire a single projectile, a bullet.

21 A shotgun, however, most of the time is
22 designed to shoot a shell that has multiple
23 pellets or projectiles inside that casing depending
24 on what size shot you use.

25 There may be several hundred small pellets

1 in it.

2 If you use buck shot, you've got a lesser
3 number of pellets but they are larger in diameter.

4 Also a shotgun can shoot a single projectile
5 which is commonly called a shotgun slug or a rifle
6 slug.

7 But, the general difference in a shotgun and
8 those other guns is that it's primarily designed
9 to shoot multiple pellets at one time.

10 This particular shotgun again is a single-
11 barrel shotgun.

12 You can see that it's hindged where I'm
13 pointing to or holding right now. It's sometimes
14 called a break-open shotgun.

15 You notice that the barrel will break away
16 from the rest of the gun.

17 In order to fire this gun, assuming that it's
18 empty, you have to open it, place a shotgun shell
19 in the back end of the barrel and you close the
20 firearm and then you cock the hammer and then you
21 pull the trigger and the hammer will go forward
22 and it fires the shotgun.

23 Then, in order to put a new shell into it,
24 you have to open the gun by pressing the top
25 lever. Normally, it will kick or eject that

1 fired casing out of the gun and you have to
2 manually put another one in it, close it and start
3 all over.

4 Q Now, you called this a twenty-gauge shotgun.
5 What does twenty gauge mean?

6 A Yes, ma'am, the common gauges that are found
7 today are the ten gauge which is the larger of
8 these gauges, or, the largest of the gauges,
9 twelve gauge, sixteen, twenty, and sometimes you
10 see twenty-eight gauge and then you see what's
11 known as a four-ten bore.

12 It is simply an indication of the size of the
13 diameter of the shotgun shell or the inside of the
14 barrel of the shotgun itself.

15 Q As a shotgun shell travels through the barrel
16 of that, what happens to that shell as it approaches
17 a target?

18 A Well, the shell doesn't actually travel.
19 The pellets or projectiles that are in the shell
20 travels down the barrel and goes toward the
21 target.

22 Again, briefly, if you have an unfired
23 shotgun shell and you place it in the shotgun,
24 close it, cock it and fire it, the firing pin
25 hits the back of the shotgun shell where you have

1 a small device known as a primer.

2 The primer contains a small amount of an
3 explosive compound. When that firing pin hits
4 that primer, that explosive compound ignites and
5 literally explodes and it forces a jet of hot gas
6 into the gun powder itself that's in the shell.

7 That gun powder burns very, very rapidly,
8 just in a few thousandths of a second. The
9 pressure builds up in that shell and it starts to
10 push the wadding which is the next item which is
11 inside that shotgun shell.

12 The wadding is simply a paper or fiber or
13 plastic device that separates the gun powder from
14 the pellets or the projectiles.

15 So, that burning gun powder and all that
16 pressure forces the wadding - - or, pushes on the
17 back end of the wadding. The wadding will push
18 on the pellets or the single projectile depending
19 on what's loaded in the shell and that pressure
20 forces the wadding and the pellets or projectiles
21 down the barrel, out of the barrel and toward the
22 target.

23 Now, you were asking what happens when it
24 goes toward a target, if you have pellets in the
25 shotgun - - if you have a shell that used bird - - -

1 SIRES:

2 Your Honor, I hate to interrupt this man,
3 but, I think this is going a little far afield.

4 We're here on a shooting. We've stipulated
5 that's the gun that was used in the shooting.

6 Unless there's some question about whether or
7 not - -

8 We would stipulate that it was working
9 properly.

10 You know, why are we going into all this
11 about how a gun works?

12 I don't understand.

13 COURT:

14 Well, go ahead, solicitor, if you want to.

15 Q Continue please.

16 A Briefly - -

17 If you have multiple pellets or projectiles
18 in the shell as they travel toward a target, they
19 spread out and form a pattern.

20 If you have a single projectile, like a
21 shotgun slug, it's much like shooting a bullet out
22 of a handgun or out of a rifle itself.

23 Q I want to show you what's been marked as
24 State's Exhibit Number Ten. Can you identify
25 for the jury - - You might want to come down

1 and identify in front of the jury before them what
2 the various things are in that picture.

3 A This is a photograph of some wad components
4 and pieces of a shotgun slug.

5 This photograph was shown to me earlier
6 today.

7 This photograph shows, again, wad components
8 and pieces of a projectile that were submitted to
9 me for examination. It does not show all the
10 projectiles in this picture. It has a plastic
11 wad component which sits on top of the powder.

12 The three other circular items that I'm
13 pointing to are paper or fiber wad components.
14 The grey or silverish looking components are
15 fragments of the shotgun projectile.

16 Q Mr. Paavel, would you say that if a wadding
17 was actually found embedded in a person, does that
18 give you any indication of distance?

19 A It can.

20 Generally, it means that the shotgun was
21 fairly close to that person.

22 However, without test firing that shotgun
23 specifically to determine at what point that
24 particular wadding still goes inside the target,
25 I can't give you a figure as to how close it would
be.

1 Q Were you given anything else to test in
2 reference to this same case?

3 A Yes, ma'am, there were several other items
4 which I received if you would like for me to read
5 the list.

6 Q Well, in particular I'm talking about a
7 target pistol, a .22 calibre pistol.

8 A Yes, ma'am. I received a Ruger - which is
9 the brand name - Mark II target pistol, .22
10 calibre, and I have that pistol here with me.

11 Q When did you receive that weapon?

12 A Let me check my notes.

13 I took physical control of the gun on
14 September 2nd, 1997. It was at SLED earlier than
15 that. The information that I have from the log-
16 in sheet or the take-in sheet indicates that it
17 was submitted on June 11th, 1997 to the SLED
18 forensic laboratory.

19 Q What, if any, tests did you perform on that
20 weapon?

21 A I did the same basic type of investigation on
22 this gun. I took it and I examined it and
23 documented the condition of it and I test fired
24 it.

25 I did not have any components - - fired
components to compare to this gun, so, no

1 comparison was done to determine whether or not
2 anything was fired by this gun.

3 Q Was the pistol in working order?

4 A It is in general - - Generally, it is in
5 proper working order. The device that causes the
6 bolt to lock open after the last shot - - sticks
7 somewhat - - because of these grips - - the after
8 market grips that someone has put on the gun and
9 they had not relieved them properly, so, the bolt
10 hold open device does not work properly.

11 However, that does not keep you from firing
12 the gun. The safety mechanism works properly.
13 The gun does fire and I actually did test fire it.

14 Also the finish that you see, or, the color
15 of this gun, is different from what is normally
16 found in the factory guns.

17 These guns don't normally come from the
18 factory with a nickel or chrome finish as this.
19 Most of them are blued or stainless steel.

20 Someone has done this after - - after it left
21 the factory.

22 Q Did you in fact receive a magazine or clip
23 along with that gun?

24 A Yes, ma'am, there was a magazine with it.
25 The magazine - sometimes called a clip.

1 It is a device that is simply designed to
2 hold cartridges. This particular one will hold
3 ten cartridges inside the magazine.

4 If you will load the chamber of this gun,
5 this particular firearm will then hold a total of
6 eleven cartridges.

7 And, this is a .22 calibre semi-automatic
8 pistol.

9 Q Other than the tests you performed to
10 determine whether or not the gun was in working
11 order, did you alter that or tamper with it in any
12 way?

13 A No, ma'am, the only thing I have done to it
14 is mark it for my identification purposes, but,
15 that doesn't alter any of the working mechanism of
16 the firearm.

17 Q Can you tell from your examination whether or
18 not the gun - - I believe you used the word 'fouled'
19 when we talked a little while ago, and what that
20 means to the jury?

21 A Yes, ma'am, the gun is fouled or has fouling in
22 it, and generally fouling is a by-product of
23 firing a gun.

24 The burned and unburned powder, oil maybe in
25 the gun, particles of lead and any other residue

1 that is left over when you fire a cartridge
2 collects in a firearm - - usually when you shoot
3 it, and the more you shoot it, the more fouling
4 there is in it.

5 There is fouling in this particular gun.

6 Q How much fouling is found in this particular
7 gun?

8 A I can only give you a general amount. I had
9 no way of measuring, weighing or determining that.

10 I consider this gun to be -- In my notes I
11 indicate has a large amount of fouling which
12 indicates that it's due for a good cleaning.

13 Q Would that fouling be consistent or inconsistent
14 with a gun having been fired once or twice?

15 A I would not expect to find this amount of
16 fouling in the firearm as a result of one or two
17 shots, no, ma'am.

18 Q So, is it safe to say that that gun had not
19 been cleaned in a while?

20 SIRE:

21 Now, Your Honor, I think that calls for
22 speculation. He can't tell when the gun was
23 cleaned.

24 COURT:

25 What relevance is that anyway, Solicitor?

1 Q Is it your testimony then that one or two
2 shots would not have caused that fouling?

3 A I would not expect to find this from one or
4 two shots. I would expect more ammunition to be
5 shot through this gun to have this amount of
6 fouling in the gun.

7 Q Do you have any estimate it would have to be
8 fired?

9 A That would depend on what type of ammunition
10 is being used. You know, from personal experience
11 with guns of this type, I would expect several
12 hundred rounds to have been fired through it.

13 Q Your Honor, I would move to admit this
14 weapon. - - as a State's exhibit.

15 COURT:

16 Without objection?

17 SIRE:

18 Yes, sir.

19 (So admitted as State's Exhibit Number
20 Twelve)

21 Q Your Honor, that was State's Exhibit Number
22 Twelve.

23 Your Honor, I'd also move that the shotgun be
24 admitted as State's Exhibit Number One if it has
25 not already been so.

1 SIRES:

2 No objection.

3 COURT:

4 Without objection admitted.

5 (So admitted as State's Exhibit Number One)

6 Q Nothing further.

7 CROSS EXAMINATION

8 BY MR. SIRES:

9 Q How you doing, Mr. Paavel?

10 A Fine.

11 Q It's been a while since I've seen you.

12 A Yes, sir.

13 Q You say you run a gun shop for a while?

14 A I did for a while, yes, sir. I managed a
15 shop.

16 Q Managed a shop.

17 A Managed a shop. It was not my shop.

18 Q The first weapon we talked about - twenty
19 gauge, single shot, modified choke in it I
20 believe, is that correct?

21 It's marked on the barrel.

22 A Yes, sir.

23 Q And, if somebody came into your gun shop,
24 what would that normally be for?

25 A A gun of this type would be a good starter

1 gun for somebody. Many people buy a gun like
2 this for children.

3 Some people buy a twenty gauge gun because it
4 will recoil or kick less. The single-barrel
5 shotgun is generally less expensive than the other
6 types.

7 So, I sold a lot of guns like this to people
8 who just wanted a first time shotgun, and I sold
9 many to people who just wanted a second shotgun to
10 stick in a boat or something.

11 Q And is it a single action or a double action?

12 A Well, you call it single or double action,
13 but, that indicates the manner in which you fire
14 the gun.

15 This particular gun would technically be more
16 correctly a single-action trigger mechanism which
17 means there's one way to fire it.

18 You must cock the hammer and then pull the
19 trigger to make it fire. You cannot simply just
20 pull the trigger unless the hammer is cocked.

21 Q Before you fired it, you would be cocking it
22 back?

23 A That's correct, sir.

24 Q And, that makes some noise, doesn't it?

25 When you cock it back, you can hear that on a

1 still night?

2 A Well, it depends. If you will close the
3 action, and just pull it back, that's the noise it
4 makes.

5 Q You hear that normally.

6 A person with normal hearing would hear that
7 at this distance, would they not?

8 A Well, I've got some damage to my ears from
9 years of shooting, and I heard the little click.

10 Q Okay.

11 And, have you ever heard the term 'wolf
12 ticket'?

13 A No, sir, I don't think - -

14 Q I didn't think most people had.

15 Would any other shells - - twenty gauge
16 shells furnished to you with this gun other than
17 the one that you talk about being damaged?

18 A No, sir, the only twenty gauge shell that I
19 had, or, shell casing, was the one that is taped -
20 or, actually, rubberbanded to the barrel of the gun.

21 Q And, if someone - - to put this in a safe
22 condition - - as you have it here - - and popped
23 the breach with a shell in it - a spent shell in
24 it, and somebody else had then picked up the gun
25 and hit someone with it - - with the barrel,

1 would that explain the condition of the shell?

2 A That could, however, this particular gun
3 ejects the fired shell casing out of the gun.

4 Q Uh-huh.

5 A So, if you opened this gun and it worked
6 properly at the time, it will literally kick that
7 shell casing out of the firearm.

8 Q If you open it.

9 A If you open it and open it far enough to do
10 so that the ejector works.

11 Q Did you check the ejector to see if it works?

12 A Oh, yes, sir, it does.

13 Q It does work?

14 A Right.

15 Q So, if the gun was closed and somebody
16 breached it - - How would it have gotten damaged - - -

17 COURT:

18 Mr. Sires, don't point the shotgun at the
19 jury.

20 Q I'm sorry. It was pointed down.

21 COURT:

22 Yes, sir.

23 A In looking at the condition of the shell
24 casing as I saw it in the gun, it looked almost as
25 someone had closed the gun while the shell casing

1 was protruding from the chamber.

2 I do not know whether that occurred at the
3 time of the incident or whether that occurred when
4 it was packaged and placed into the container and
5 shipped to SLED, so, I don't know, sir.

6 Q Okay.

7 But, this is normally a gun that would be
8 used or given to a child to teach him to bird hunt
9 or hunting as a first gun?

10 A I've sold a lot of them for that purpose,
11 and, again, I've sold a lot of them to adults who
12 just needed a second-type gun or just liked this
13 type of gun.

14 Q And, how many death cases have you investigated
15 involving guns similar to that?

16 A I couldn't give you a number. I know I've
17 seen dozens and dozens of single-barrel shotguns
18 over my career where I have actually had to do a
19 firearms analysis on that particular gun.

20 Q What about .22 pistols?

21 A I've seen a number of .22 pistols also.

22 Q Wouldn't you say that that would be in the
23 State of South Carolina - - that the .22 pistol
24 would be the main killer more than shotguns?

25 A I don't have the figures to support that.

1 It changes over years.

2 When I first started, you used to see a lot
3 of .22 pistols. I saw a lot of short barrel or
4 sawed-off shotguns. As time has gone by, things
5 have changed. You see more nine millimeter
6 pistols; you see more .40 calibre pistols. I see
7 more of that type of firearm and see less of the
8 .22 and the shotguns.

9 Q But, you still see it's mainly pistols?

10 A Again, I don't have figures to support that.
11 That's probably correct. Probably there are more
12 pistols used.

13 Q This weapon, this .22 Ruger, you say it's in
14 perfect working order except for the fact that it
15 doesn't kick out on the last shell?

16 A Oh, no, sir, I didn't say it was in perfect
17 working order; I said it was in proper working
18 order - -

19 Q Okay.

20 A - - except for the bolt hold-open device.

21 Q This - - -

22 A When I test fired that gun, it does eject and
23 kick out shell casings.

24 Q Uh-huh.

25 A But, what happens is that after the last

1 shot when the magazine is empty, the bolt is
2 supposed to stay open as it is now.

3 Because of the interference of those rubber
4 grips with the bolt hold-open device, that bolt
5 hold-open device can't work properly, and the bolt
6 will not stay open when you fire it, and the last
7 round is fired.

8 But, it does again - - when I fired this gun,
9 it would kick or eject the shell casing from the
10 firearm.

11 Q And it would shoot eleven times, would it
12 not?

13 A If you loaded it totally.

14 Q With one in the chamber.

15 A Yes, sir, it would fire eleven rounds.

16 Q And, the rounds that were furnished to you,
17 there were eight of them, but, they were two
18 different kinds, weren't they?

19 A (No response)

20 Q Two different types of .22 shells.

21 A Yes, sir, there were two different types as a
22 matter of the head stamp on them, and, let me
23 check my notes about the bullet type.

24 I believe some were plated and some were
25 unplated.

1 Yes, sir, there were of the eight, four of
2 them had plated bullets and three of them had
3 unplated bullets. Five of the cartridge casings
4 had a Super-X head stamp, three of them had a big
5 'W' head stamp, and these head stamps are both
6 used by Winchester or Winchester-Western when they
7 make their ammunition.

8 Q Right.

9 So, if you went into the store and bought a
10 box of shells, they wouldn't be mixed like that.

11 A Oh, no, sir. If you went into any normal
12 store, you would expect to find ammunition of the
13 same type in that box.

14 This .22 ammunition normally comes in boxes
15 of fifty or boxes of a hundred and I would suspect
16 to find them all with a head stamp of Super-X
17 or with the 'W' if I'm buying that brand.

18 Q And were these unfired cartridges in the clip
19 or were they just loose?

20 A I have indicated here in my notes that they
21 were in the clip.

22 Q Two different types of shells?

23 A Yes, sir.

24 Q - - in the clip.

25 All right, - - Did they give you any spent

1 shells to compare or use with this weapon?

2 A No, sir, there were no fired .22 calibre
3 components.

4 Q Even though the gun had been obviously fired
5 at sometime in the past - - after having been
6 cleaned.

7 A Yes, sir, the gun has been fired sometime in
8 the past. I don't know whether it was fired at
9 the time of this incident.

10 And no fired .22 bullets or cartridge cases
11 were submitted for comparison.

12 Q Okay.

13 Did they furnish you with a revolver in this
14 case?

15 A No, sir.

16 These are the only two firearms that I've
17 examined in reference to this case.

18 Q Uh-huh.

19 And, can you operate this weapon from your
20 left hand as well as your right?

21 A Yes, sir, you can.

22 Q And if I were to hold this weapon in this
23 position - holding it in my right hand, but, using
24 my left hand as a brace, would I have lead residue
25 or powder residue on my left hand as well as my
right?

1 A In the fashion you show it, you conceivably
2 could. You'd probably need to talk to the trace
3 chemist about that.

4 Q Yes.

5 A They do more testing on that, but, in the
6 position that you have it now with the hand near
7 to the ejection port, - -

8 Q Right.

9 A - - I think you could have some residue
10 there.

11 Q Wouldn't that be not an unusual way to hold a
12 gun?

13 Would that be a safe way to hold a gun?

14 A No, sir. You normally wouldn't hold your
15 fingers up near the ejection port mainly because
16 that fired casing is going to be - -

17 Q Come out.

18 A - - ejecting out of there, plus, you are
19 going to have some fairly hot fragments of lead
20 and burned gun powder that may come out of that
21 ejection port. So, commonly you try to keep
22 obviously both of your hands away from the
23 ejection port.

24 The way you are holding it now - - -

25 Q The locked finger.

1 A Yes, sir.

2 Q Is how they teach you.

3 A Yes, sir.

4 Q The safety way, but, as far as the average
5 person picking up a gun and wanting to steady it,
6 you've seen it like that many times, have you not?

7 A I don't know that I can say that I have seen
8 it done many times like that.

9 I've seen something similar to that on
10 television.

11 I haven't seen knowledgeable shooters hold a
12 gun in that fashion.

13 Q Well, would a knowledgeable shooter have a
14 Ruger in this condition with putting these grips
15 on it?

16 A Well, the grips, believe it or not, are a
17 fine quality pair of grips that will help in
18 shooting.

19 Q But, they are not for this gun.

20 A They are for the gun; they just have not been
21 fitted properly to the gun.

22 Q Right.

23 A Yes, sir.

24 Q They weren't fitted properly.

25 And you say that this was normally a blued

1 gun that's been chrome plated or something?

2 A Yes, sir. Should be a blued gun.
3 Normally people don't try to plate stainless
4 steel; they do make that gun in stainless steel.

5 Q Right.

6 Did you run this through some type of
7 identification to see whether or not this gun had
8 been stolen?

9 A No, sir, our laboratory doesn't do that; we
10 rely on the local agency to do that.

11 Mainly because, if we try to do that, we're
12 going to be responsible for answering - -

13 Q Right.

14 A - - the agency if it is a stolen firearm, and
15 we don't get involved in that.

16 Q So, you don't know whether it is or not.

17 A I don't know.

18 Q And, did you take prints off this weapon?

19 A I did not, no, sir.

20 Q Did someone at SLED take prints off of it as
21 far as you know?

22 A I can only assume that it was fingerprinted
23 because I received the gun internally from a SLED
24 latent prints examiner.

25 Q All right, so, it came to you from them?

1 A Yes.

2 Q Thank you, sir.

3 No further questions.

4 REDIRECT EXAMINATION

5 BY MS. CHAPPELL:

6 Q Just about three follow-ups - -

7 In the situation that Mr. Sires showed you
8 where he was holding his hands and one of his
9 hands being very close to the ejection port, if
10 someone were holding their hand in that manner,
11 would you expect to see some kind of burns on
12 their hands?

13 A It depends on how close you would have your
14 fingers to that ejection port itself.

15 The .22 claibre guns do not throw out a large
16 amount of residue like a larger calibre would.
17 Most of the powder is completely burned or almost
18 completely burned when that shell casing is being
19 kicked from it, or, ejected from it. I don't
20 know whether or not you would receive a burn
21 at any appreciable distance. If you had your finger
22 right on the port and allowed it - - the gun to
23 fire, you may receive, you know, some sort of soot
24 or stipling or tatooing or something on your
25 finger. I have nothing to verify that. I have

1 not done any testing on it.

2 Q And, based on your tests, and the fouling
3 that you found, is it my understanding that you
4 can't say whether this gun was fired that night
5 or at some time prior to that night?

6 A No, ma'am, I could not.

7 I have no idea when this particular gun was
8 fired.

9 Q And, the gun as you have it does eject
10 shells, is that correct?

11 A Yes, ma'am, it did during my testing.

12 Q Nothing further.

13 RECROSS EXAMINATION

14 BY MR. SIRE\$:

15 A You said the .22 does not put out a lot of
16 powder residue.

17 A Compared, say, to a nine millimeter or a .40
18 or a .45 or the magnum calibre.

19 Q If this had been a revolver, and they held it
20 in the position I indicated earlier - with the
21 left hand - would that explain residue in the left
22 hand?

23 A It could.

24 A revolver does not have a one-piece barrel
25 and chamber like this gun does. A revolver has

1 a cylinder separate from the barrel.

2 Obviously, the revolver has the cylinder
3 which holds cartridges. There is a gap between
4 the front of the cylinder and the rear end of the
5 barrel. The purpose of that gap is to allow that
6 cylinder to rotate.

7 Everytime you fire a revolver, there will be
8 unburned powder, gun powder and small pieces of
9 lead and other residue emitted or thrown out of
10 that barrel-cylinder gap.

11 Q Okay, thank you, sir.

12 A Yes, sir.

13 COURT:

14 You may step down.

15 A Thank you.

16 (Witness excused from the witness stand)

17 CHAPPELL:

18 Your Honor, may this witness be excused?

19 SIRES:

20 No objection.

21 COURT:

22 Yes, ma'am.

23 Call your next witness.

24 CHAPPELL:

25 The State calls John Barron.

1 JOHN C. BARRON, being duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. CHAPPELL:

5 Q State your name for the jury please.

6 A John C. Barron.

7 Q And, Mr. Barron, where are you employed?

8 A South Carolina Law Enforcement Division.

9 Q And, what are your duties as an employee of
10 that division?

11 A I'm assigned to the trace evidence laboratory.

12 Q And, what is your experience and qualifications
13 that enable you to perform your duties?

14 A In the trace evidence laboratory we perform
15 many different types of scientific analysis.
16 We require that an individual to be hired there to
17 have at least a Bachelor of Science degree in a
18 science background preferably chemistry or
19 biology.

20 From there we receive training in specific
21 areas from previously experienced experts.

22 We also have the opportunity of attending
23 various training seminars and courses that are
24 offered through universities, through professional
25 organizations, through instrument companies whose
instruments we use in the laboratory.

1 And I have completed the training necessary
2 to be qualified to testify in numerous areas at
3 SLED, one of which is gunshot residue, and I have
4 testified on gunshot residue in the State of South
5 Carolina and in federal court approximately
6 thirty-five times.

7 Q Your Honor, I would move to recognize this
8 person as an expert in the field of trace evidence.

9 SIREs:

10 No objection.

11 COURT:

12 All right, without objection.

13 Q Mr. Barron, I'm going to show you what's
14 marked as State's Exhibit Number Thirteen for
15 identification.

16 Do you recognize this?

17 A Yes, I do.

18 Q And what is it?

19 A It is a manilla envelope that contains a
20 gunshot residue kit. It's still sealed from
21 where I sealed it when it left headquarters in
22 Columbia. Inside this envelope is what contained
23 a gunshot residue kit on the victim Edward Heaton.

24 Q And can you briefly describe for the jury
25 what a gunshot residue kit entails, what is in

1 there and how you test it?

2 A A gunshot residue kit is samples that is
3 taken from the hands of an individual.

4 When a gun is fired, then residue from the
5 fired weapon can be deposited on the hands of
6 individuals involved in a shooting incident.
7 Swabs are taken from each hand - the palms and the
8 backs of each hand, so, that's four different
9 swabs. The palm of the right hand, the back of
10 the right hand, the palm of the left hand and the
11 back of the left hand.

12 Also a control sample is taken from an area
13 away from the hands not - - that is exposed to the
14 environment but would not be exposed to the
15 gunshot residue. This is for an environmental
16 control because the elements that we are testing
17 for also are present in the environment, so, if
18 someone has a high environmental exposure to some
19 of the elements we are looking for, we need to
20 take that into account before we make a final
21 conclusion as to our results.

22 Q Do you in fact have the kit submitted to you
23 in this case?

24 A Yes, I do.

25 Q And what were your findings as to gunshot

1 residue?

2 A I found that on the left palm of the victim's
3 hand was a very high level of lead.

4 Lead is one of the components of gunshot
5 residue that is present. When a gun is fired,
6 lead is present in the primer which is the mixture
7 that ignites when the hammer falls on the cartridge
8 casing.

9 There's also lead in a bullet, and as that
10 bullet is fired out of the barrel it would have a
11 lot of heat and pressure and that causes the
12 bullet to shed lead and also throw this vaporized
13 lead out into the environment around the weapon
14 when it's fired.

15 I found a high level of lead on the palm of
16 the victim which can be associated with gunshot
17 residue.

18 Q And that was the palm of the left hand?

19 A The palm of the left hand.

20 Q Where would you expect to see gunshot residue
21 had a victim fired a weapon?

22 A Well, a person fires a weapon, of course,
23 they're holding it and the palm is wrapped around
24 the handle of the weapon, so, on a person who is
25 shooting a weapon, we expect to find gunshot

1 residue on the back of the hand. However, we can
2 find it on the palm of the hand as well because
3 when a weapon is picked up and it's previously
4 fired and hadn't been cleaned, you could have
5 residue deposited on the gun as well.

6 So, when a person fires a weapon, however,
7 though we do expect generally speaking to find
8 residue on the back of the hand as well.

9 Q In this case with gunshot residue present on
10 the palm of the left hand - - in your experience
11 what is that consistent with?

12 A Well, in this case - - Well, in all cases
13 we're looking at the amount of lead.

14 Based upon our test firing of weapons and
15 experience with seeing numerous cases come in and
16 analyzed in our laboratory, we know that the
17 amount of lead can tell us something as well.

18 In this particular case the amount of lead
19 was high. It was much higher than what we expect
20 to find on a person who is simply shooting a
21 weapon especially a small calibre weapon like a
22 .22.

23 The amount of lead on the palm of the hand
24 then would indicate most likely that the lead was
25 deposited there not from firing a weapon, but,

1 from being near a weapon when the weapon went off.

2 For instance, if someone pointed a gun at me
3 and I would hold up my hand as a defensive
4 measure, and the gun was fired, then the lead
5 coming out the end of the barrel would get on the
6 palm of my hand in a much larger degree than if I
7 was just shooting a weapon.

8 And, in this particular case we have a lot of
9 lead and it would be most consistent not with
10 firing a weapon, but, with being near a weapon
11 when the weapon went off.

12 Q So, in your opinion the lead residue found on
13 the palm of the victim's left hand is consistent
14 or inconsistent with a defensive posture?

15 A It would be very consistent with a defensive-
16 type posture.

17 Q Can you say whether it's consistent or
18 inconsistent with someone having fired a weapon?

19 A It is - - It's possible they could have fired
20 a weapon, but, our results are inconsistent with
21 that.

22 There can be unknown factors involved in a
23 shooting incident that can skew the results.

24 But, based upon our experience what we are
25 seeing here is consistent with not firing a

1 weapon; but, consistent with a defensive-type
2 position.

3 Q Your Honor, I would move that the GSR kit be
4 admitted as State's Exhibit Number Thirteen.

5 COURT:

6 Any objection?

7 SIRES:

8 No objection.

9 COURT:

10 Admitted as a State's exhibit.

11 (So admitted as State's Exhibit Number
12 Thirteen)

13 Q Nothing further.

14 CROSS EXAMINATION

15 BY MR. SIRES:

16 Q All right, Mr. Barron, so you are telling us
17 that you can't testify beyond a reasonable doubt
18 that the deceased didn't fire a weapon, can you?

19 A You have to define reasonable doubt I guess.

20 Q That's something we will have to do.

21 A A possibility is - - You know, there is a lot
22 of remote possibilities.

23 What I am saying is that the results are
24 consistent with - - -

25 Q What if it was a revolver that he fired

1 versus this .22 that you see? What if it was a
2 revolver?

3 Would that make it more likely?

4 A Well, what I think you are eluding to is the
5 fact that different weapons do deposit different
6 amounts of residue.

7 Q Sure.

8 A And residue from a revolver - - Well, let's
9 put it this way. A revolver is a little more
10 dirtier - -

11 Q Uh-huh.

12 A - - if you will than a semi-automatic, and,
13 so, you could get more residue on your hand from a
14 revolver than you would from a semi-automatic.

15 Q All right, - -

16 And, what if after I were shot, I place my
17 hand on the wound, would that also pick up lead?

18 A Yes, it would.

19 If a shot was close enough - -

20 Q Uh-huh.

21 A - - to deposit lead on the shirt, that would
22 be another source of the lead as well.

23 Q You also according to the report that has
24 been introduced, did a pattern of lead residue on
25 a black teeshirt?

1 A Yes, uh-huh.

2 Q And what did you find out?

3 A That there was lead around the hole.

4 Q Lead around the hole.

5 A That's correct.

6 Q So, if I touched that, I would have lead on
7 the palm of my hand?

8 A I could get some lead from that, yes, sir.

9 Q Okay.

10 Thank you, sir.

11 COURT:

12 You may step down.

13 (Witness excused from the witness stand)

14 Excuse him, Solicitor?

15 CHAPPELL:

16 Yes, sir.

17 SIRES:

18 No objection.

19 COURT:

20 Without objection you are excused.

21 Call your next witness.

22 CHAPPELL:

23 Your Honor, could we have a moment to check
24 if everything is in?

25 That's our last witness.

1 SIRES:

2 I need to talk to my client.

3 COURT:

4 That was your last witness, Solicitor?

5 CHAPPELL:

6 Yes, Your Honor, - - and the State rests.

7 COURT:

8 All right, - -

9 All right, ladies and gentlemen, we have a
10 matter of law that we have to take up at this
11 time.

12 So, Mr. Bailiff, would you take the jury out
13 please.

14 (The following took place outside the
15 presence of the jury)

16 COURT:

17 Any motions?

18 SIRES:

19 Your Honor, of course, at this time I'd move
20 for a directed verdict.

21 I've furnished the court with a copy of State
22 versus Hendrix - - I believe is the name of the
23 case - - which indicates that when there is a
24 clear showing of self defense which has not been
25 contradicted by the State in any manner that as a

1 matter of law that the court has to direct a
2 verdict of acquittal based on the law of self
3 defense.

4 COURT:

5 Motion denied.

6 What else you got, sir?

7 SIRES:

8 That's all I'd have at this time, Your Honor.

9 Of course, I'd move - - I still feel that the
10 State has not presented enough evidence to show
11 that there was malice aforethought on a murder
12 charge to go forward to the jury - - -

13 COURT:

14 Motion denied.

15 SIRES:

16 That's all I'd have at this time.

17 COURT:

18 Do you need a few minutes?

19 SIRES:

20 Yes, sir, I do.

21 COURT:

22 All right, sir, we will take a short recess
23 then.

24 Does anybody have any requests to charge?

25 CHAPPELL:

Yes, Your Honor, - -

1 COURT:

2 I will be glad to receive them at this time.

3 SIREs:

4 I will have some this afternoon.

5 COURT:

6 Let me do this before we do anything though,
7 ladies and gentlemen, - -

8 I want to advise the defendant of his right
9 to testify or not testify.

10 All right, sir, would you stand please, sir.

11 We have now reached that stage of the trial
12 where you may present your defense. You have the
13 right to testify in your own behalf, however, no
14 one can make you testify.

15 If you elect to testify and have a prior
16 record for a crime which carries a possible
17 sentence of one year or more, then the solicitor
18 will be able to present this prior record to the
19 jury for impeachment purposes.

20 If you elect not to take the stand, I will
21 charge the jury that they are not to give the fact
22 that you did not testify any consideration
23 whatsoever and that there is to be no prejudice to
24 you because you did not testify.

25 It will be left entirely up to you whether

1 or not you testify. You may talk with your
2 attorney, your family or anyone else, but, the
3 ultimate decision will be left entirely up to you.

4 Do you understand, sir?

5 CROWE:

6 Yes, sir.

7 COURT:

8 Do you want to wait and make a decision when
9 we come back in session?

10 CROWE:

11 Yes, sir.

12 COURT:

13 All right, thank you, sir.

14 All right, we will be in recess then.

15 (Recess taken)

16 (The following took place in the presence of
17 the jury)

18 COURT:

19 All right, you may proceed.

20 SIRES:

21 Sonny calls Mike Fulbright.

22 MICHAEL FULBRIGHT, being
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SIRES:

1 Q Mike, give us your full name and tell us
2 where you live, sir.

3 A Curtis Michael Fulbright. I live at [REDACTED]
4 [REDACTED], Westminster.

5 Q How long have you lived in Oconee County?

6 A All my life.

7 Q All right, sir, what do you do as far as
8 occupation?

9 A Sell used cars.

10 Q All right, sir, have you ever been in any
11 trouble before?

12 A Yes, sir.

13 Q And what was that?

14 A I've got an assault and battery charge
15 against me - - -

16 Q And when was that?

17 A It's pending right now. I'm not sure of the
18 date.

19 Q And prior to that?

20 A Yes, sir, a couple of assault charges.

21 Q A couple of assault charges in magistrate
22 court or big assault charges here in this court?

23 A I had a charge here in this court of
24 assault and battery of a high and aggravated
25 nature.

1 Q All right, - -

2 Do you know - - or, did you know the deceased
3 Eddie Heaton?

4 A Yes, sir, I did.

5 Q How long did you know him?

6 A I guess since I was probably around twelve
7 years old. I'm thirty-four now, so, twenty
8 years.

9 Q Twenty-two years or something.

10 Did y'all hang around together?

11 A When I got older we did.

12 Q Okay. And, describe Eddie for us as far as
13 his physical appearance.

14 A Well, he was short and stocky and - -

15 Q Well-built would you say?

16 A Well, he was a man.

17 Q Was a man.

18 And do you know his reputation in the
19 community for violence?

20 A Well, yes, - - I don't know - - I wouldn't
21 say that I would be the one to judge that.

22 Q I just asked if you knew his reputation?

23 A (No response)

24 Q Was he considered a peace-loving man? Or,
25 was he considered a violent man?

1 A Well, I always got along with him.

2 Q See, you are not answering my question.

3 A Well, I mean - - I don't know how to answer
4 your question.

5 Q All right, you don't know his reputation in
6 the community?

7 You don't know what people thought of him as
8 far as being a peace-loving man, or, he was a
9 violent man - - that he liked to fight or he liked
10 to walk away. You don't know any of those
11 things?

12 A Well, I guess he would stand his ground.

13 Q Okay.

14 You know that he was a bouncer out at
15 Scooter's.

16 A I've never been in that place.

17 Q Never been in there?

18 A No, sir.

19 Q All right, - -

20 How long have you known Sonny Crowe?

21 A Probably a couple of years. Maybe longer.
22 I'm not really sure.

23 Q And, do you know his reputation in the
24 community for peacefulness?

25 A No, sir, not really. I know he ain't

1 never done nothing to me.

2 Q He's always been nice around you, is that
3 what you want to say?

4 A Yes, sir.

5 Q Okay, did you sell him a car, Mike, back on
6 23 May of '97?

7 A Yes, sir.

8 Q Is this a copy - - or, the original looks
9 like - - of the bill of sale on that vehicle?

10 A Yes, sir, it is.

11 (Shows same to State)

12 No objection?

13 Without objection then, Your Honor.

14 COURT:

15 All right, sir.

16 (So admitted as Defendant Number Two)

17 Q Do you recall this car?

18 A Yes, sir.

19 Q And what kind of car was it?

20 A A '67 Ford Custom 500.

21 Q And what color was it, you remember?

22 A Sort of a gold rust color.

23 Q And I'm going to show you two pictures that
24 have already been introduced, one is Defendant's
25 Exhibit Number One, and one is State's Exhibit
Number Eight.

1 Do you recognize anything in State's Exhibit
2 Number Eight?

3 Look at it and take it.

4 A Yes, sir, I see it sitting right here.

5 Q That's the car sitting there next to the
6 trailer?

7 A Yes, sir.

8 Q All right, when you sold this car to Sonny,
9 was there any body damage done to it that you know
10 of?

11 A Seems like maybe on the right rear quarter
12 panel on the very bottom there might have been a
13 little dent on it.

14 Q Okay.

15 A And the paint was coming off the top of it.

16 Q All right, - - What about on the right rear
17 up above the taillight? Was there any damage
18 there?

19 A (No response)

20 Q As you recall?

21 A Not as I recall.

22 Q I show you then - - Would this be a picture
23 of the rear of that vehicle?

24 A Yes, sir.

25 Q And do you notice anything unusual about

1 the rear of that picture - - that was not there
2 when you sold him the car?

3 A Yes, sir, around the taillight right here
4 is - -

5 This right here.

6 Q Those marks there.

7 A Right.

8 Q All right, and I believe that you were out at
9 Sonny's house the morning or the afternoon of the
10 8th of June after this incident occurred, were you
11 not?

12 A Yes, sir, I was.

13 Q And did you see them bring this vehicle back
14 on a low boy I think you told me?

15 A Brought in on a roll-back.

16 Q A roll-back?

17 A Uh-huh.

18 Q And what did they do with it?

19 A They unloaded it and I took some - -
20 I had nitrous oxide and stuff like that. I took
21 that off the car.

22 They unloaded it off the roll-back and I took
23 nitrous oxide and the carburator and stuff off.
24 When Sonny got the car I left that one that but
25 it didn't go with it.

1 Q What's nitrous oxide?

2 A Use it for drag racing.

3 Q Okay. And, it was inside the car?

4 A Yes, sir.

5 Q So, this car was used for drag racing maybe
6 or something?

7 A I raced it.

8 Q You raced this car?

9 A Yes, sir.

10 Q And, did you notice these marks that day?

11 A Yes, sir, I noticed that one on the taillight
12 above it, yeah.

13 Q And, what could you tell about that mark?

14 A Well, it looked like something had maybe
15 glazed off of it.

16 I don't know. It looked like it was just
17 like a glaze like maybe something had glazed off
18 of it.

19 Q Like maybe a bullet or something?

20 A Yes, sir, I would say so.

21 Q And did it look like recent?

22 A Yes, sir.

23 Q There was no rust or anything to indicate
24 that it had been there for a while, was there?

25 A No, sir.

1 Q When Sonny got this car from you, it says
2 y'all traded for it.

3 A Yes, sir, we did.

4 Q What did you trade? Do you remember?

5 A A Monte Carlo Super Sport. I'm not sure
6 the year model. Maybe an '85.

7 Q Okay.

8 And what did Sonny think of this car as far
9 as you know?

10 A I know he had a lot of money in it.

11 I had a lot of money.

12 I guess he thought a good bit of it.

13 Q Thought a lot of this car?

14 A Yes, sir.

15 Q What kind of engine did it have in it, Mike?

16 A Had a 460 in it.

17 Q 460?

18 A Yes, sir.

19 Q That's a big engine, isn't it?

20 A Yes, sir.

21 Q And, Sonny is a mechanic, isn't he?

22 A Yes, sir.

23 Q And, did he ever tell you that he was worried
24 about people putting something in the tank or
25 tearing up this car?

1 A Well, - - what do you mean?

2 Q Well, did he indicate to you, Mr. Fulbright,
3 that - - You know, people get attached to things
4 and they don't want anything to happen to it.

5 Is that how he felt towards this car you
6 think?

7 A Yes, sir, I know the hood stayed - - -

8 Q Sort of like a child with something.

9 A The hood stayed chained down on it and
10 stuff like that. It was - -

11 There was a lot of money tied up in the motor
12 and the running gear.

13 Q Uh-huh.

14 A Buddy Griffin built the car and I got it from
15 another guy through him.

16 Q Were you ever present when Mr. Heaton had a
17 weapon?

18 A Not to my knowledge. I mean - -

19 Q What about Sonny?

20 A No, I've never seen Sonny with a gun either.

21 Q Never have?

22 A Uh-uh.

23 Q Okay.

24 Answer any questions that the State might
25 have.

1 CROSS EXAMINATION

2 BY MS. CHAPPELL:

3 Q Mr. Fulbright, you say you sold Sonny Crowe
4 this car?5 A I done some trading with him on a Monte
6 Carlo.

7 Q And what year is it again?

8 A A '67.

9 Q And when did you sell him the car?

10 A It was in May of last year.

11 Q May of '97?

12 A Yes, ma'am.

13 Q And you talk about this little glazed part
14 over the taillight. Can you say from personal
15 knowledge how that happened?

16 A What do you mean by that?

17 Q Can you tell this jury that you know how that
18 mark happened on the car?19 A All I can say is what it looked like to me,
20 you know.21 Q You said you knew Eddie. Did you ever have
22 a problem with him?

23 A No, ma'am.

24 Q Did you like him?

25 A Yes, ma'am.

1 Q Were you there the night of June 7th, 1997
2 when this happened?

3 A No, ma'am. I seen him prior - - seen him
4 earlier that day.

5 Q So, you weren't there when Eddie Heaton was
6 killed?

7 A No, ma'am, I wasn't.

8 Q Nothing further.

9 COURT:

10 You may step down.

11 SIRES:

12 Nothing further. You may come down.

13 (Witness excused from the witness stand)

14 SIRES:

15 The court's indulgence.

16 (Confers with client)

17 May I approach the bench, Your Honor?

18 COURT:

19 Yes, sir.

20 (Bench conference out of the hearing of the
21 jury and court reporter)

22 (Lunch recess taken at this time with usual
23 admonition not to discuss case, news media,
24 et cetera)

25

1 (After lunch recess the following took place
2 in the presence of the jury)

3 TIMOTHY PHILLIPS, being
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SIRES:

7 Q Mr. Phillips, give us your full name and tell
8 us where you live, sir.

9 A Timothy Wade Phillips. I live at [REDACTED]
10 [REDACTED] [REDACTED] [REDACTED].

11 Q How long have you lived in Oconee County?

12 A All my life.

13 Q All right, sir. Were you subpoenaed by the
14 State of South Carolina to be here?

15 A Yes, sir.

16 Q But, they didn't call you yesterday or today,
17 did they, as a witness?

18 A Now is the first time I've - - -

19 Q All right, sir.

20 Mr. Phillips, going back to Saturday night,
21 June 7th, sir, do you remember that night?
22 Or, some of it?

23 A Yeah.

24 Q Okay. What had you been doing prior to that
25 evening as far as drinking?

1 A After I got to the party I started drinking
2 heavy, and I'd been drinking a lot.

3 Q Had you?

4 You've gotten over that now you think?

5 A Yeah, I hadn't touched anything in a year so - -

6 Q Is that right?

7 A Over a year.

8 Q Good. Good for you, sir.

9 So, you were drinking. Did you run across
10 Eddie Heaton and Sonny Crowe that night?

11 A I seen Sonny right after I got to the party
12 and he thought I was somebody else and I told him
13 who I was.

14 Q Do you remember getting into an argument with
15 him?

16 A No, sir.

17 Q Do you remember being in the trailer on the
18 sofa and somebody attacking you or hitting you?

19 A I don't remember the actual thing.

20 Q All right, - - As a result of whatever
21 happened, did you have to go to the doctor or the
22 hospital or anything?

23 A The day of Eddie's funeral I had to go to the
24 emergency room. I had a seizure.

25 Q What was that for?

1 A They thought it was what I had got into and
2 how I had been drinking.

3 Q Been drinking then. All right, sir.

4 Do you remember someone telling you that
5 Sonny was coming back? Did anybody ever tell you
6 that prior to him coming back?

7 A Just he was in the yard.

8 Q Somebody said there's Sonny and he's got a
9 gun, is that right?

10 A Yes, sir.

11 Q But, prior to that time did you ever hear
12 Sonny Crowe make any threats to anybody?

13 A Not that I know of.

14 Q Did he make any threats to you that you know
15 of?

16 A No, sir.

17 Q Okay.

18 And so somebody told you, and you were still
19 in the trailer, here comes Sonny with a gun.

20 What did you do then?

21 A A guy that was at the party just directed me
22 towards the woods, you know, just basically get
23 out of the way because I was still - -
24 wasn't in my right mind.

25 But, I knowed good enough that I had to get

1 out of there, and I went around the trailer and
2 started to go in the woods and I heard a shot.

3 Q So, there was some period of time passed
4 between the time that somebody said well, there's
5 Sonny with a gun, and you got out, got with this
6 other fellow and y'all got out of the trailer,
7 went around the trailer and went in the woods, and
8 you heard a shot, is that right? Is that how it
9 happened?

10 A When they said he's got a gun, I was gone.

11 Q Somebody told you earlier. Is that what
12 happened? Is that why you did it?

13 Somebody told you earlier that he had
14 jumped on you? Is that why you left?

15 A Yeah, because - - -

16 Q Okay.

17 A - - - my eyes was black and my face
18 was, you know, - -

19 Q Do you know what happened?

20 A Not other than what I was told.

21 Q All right, - - Okay.

22 So, again I'll ask you, how long was it
23 from - - if you can tell me - - how long was it
24 from the time that somebody said there's Sonny
25 with a gun and you heard the shot?

1 A (No response)

2 Q Was it like that? (Snaps fingers)

3 Or, was there some period of time - - because you
4 did get up - - -

5 A Time for me to run from here to that wall
6 right there probably.

7 Q Went around the trailer and went into the
8 woods and that's when you heard the shot?

9 A Yeah.

10 Q Okay.

11 All right, sir.

12 Now, after the shot, what did you do, sir?

13 A I passed back out in the woods, and, when I
14 come to I could hear somebody walking around and I
15 knowed the policemen - - a bunch of cops was in
16 the yard up there - - and I could hear somebody
17 walking close to where I was at, so, I didn't move
18 for a long time and then I went up and talked to
19 the officers.

20 Q So, you heard somebody right there in the
21 woods with you?

22 A Yeah, they was pretty close. I never did
23 move, so, they finally just drifted off - -
24 whatever it was.

25 Q Could it have been Sonny Crowe standing in

1 those woods with you?

2 A It could have been. I don't know who it
3 was, but, something or somebody was around.

4 Q All right, thank you, Mr. Phillips. Answer
5 any questions that the prosecution might have.

6 CROSS EXAMINATION

7 BY MS. CHAPPELL:

8 Q What time did you get to the party the night
9 of June 7th?

10 A It was in early afternoon is all I can
11 remember.

12 Q How much would you say you had to drink
13 before you passed out?

14 A Probably four or five beers and quite a few
15 shots of liquor.

16 Q Did you in fact pass out at some time that
17 night?

18 A I - - I passed out pretty quick because I
19 drunk a lot the day before, nd I was drinking
20 liquor pretty quick and I couldn't take that, so, - -

21 I just talked to a few people and passed out
22 as far as I know.

23 Q Up to the time that you passed out, had you
24 and the defendant had any ill words at all?

25 A Not ill words that I know of.

1 Q What, if anything, did the defendant say to
2 you that night?

3 A Well, right after I had got there I was
4 sitting on the couch and he said you got a haircut
5 and a real job and I looked at him and I said
6 well, I reckon I've had one for a while, and he
7 said oh, you ain't who I thought you was. And
8 after that it was just chit-chat, you know, a
9 little bit with him and other people.

10 I mean - - and I went and laid down on the
11 couch.

12 Q So, you and the defendant never got into an
13 argument or anything that night before you passed
14 out?

15 A Not while I was awake.

16 Q When you woke up, what had happened to you?
17 What physically had happened to you?

18 A I'd been beat up.

19 Q And what kinds of things?

20 When you say you had been beat up, what kinds
21 of things had been done to you?

22 A Well, I must have been hit in the face a lot
23 because that was the only place that hurt pretty
24 bad.

25 It didn't hurt too bad then, but, the next

1 day, you know. My eyes was already 'swole' up
2 and black and my tooth chipped.

3 Q After you were beaten up, what did you do?

4 A Well, the next thing I remember I was, you
5 know, asking what happened, you know, who done it
6 because I didn't - -

7 I don't know if I had had so much to drink
8 or just knocked me out the first or second lick or
9 what happened, and John Smith, my cousin, he was
10 telling everybody to leave, you know, that there
11 had been trouble and that wasn't what we went
12 there for.

13 Q Were you able to stay awake or did you pass
14 back out after the beating?

15 A I think I laid ~~back~~ down for a little while
16 and then I was just stumbling.

17 They was trying to get where I could get away
18 from it because I wasn't able to defend myself at
19 all.

20 Q After the beating and you woke up did you see
21 the defendant again that night?

22 A I don't remember seeing him.

23 Q I believe you said that next thing you
24 remember was somebody saying he's back and he's
25 got a gun.

1 How far did you run between the time that you
2 heard that and you heard the shot?

3 A Like I was telling Mr. Sires, about as far as
4 from here to them light switches probably.

5 Q Nothing further. Thank you.

6 SIRE:

7 Nothing further. You may come down.

8 COURT:

9 You may step down.

10 (Witness excused from the witness stand)

11 Call your next witness.

12 SIRE:

13 I'd call Lynn Enright.

14 LYNN ENRIGHT, being duly

15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SIRE:

18 Q Ms. Enright, give us your full name and tell
19 us where you live.

20 A Lynn Bodiford Enright. I live [REDACTED]

21 [REDACTED]

22 Q And that's where?

23 A Westminster.

24 Q Okay. How long have you lived in Oconee
25 County?

1 A About fifteen years.

2 Q Okay.

3 I believe you told me earlier that you were
4 subpoenaed by the State to be here, is that
5 correct?

6 A Yes.

7 Q And they did not call you as a witness, did
8 they?

9 A No, sir.

10 Q Now, you're separated from your husband and
11 you have two children, is that correct?

12 A Yes, sir.

13 Q And, you work where?

14 A Square D.

15 Q How long have you worked there?

16 A About four years.

17 Q Do you know Joyce Smith?

18 A Yes, I do.

19 Q How well do you know Joyce? Is she one of
20 your best friends, or what?

21 A Yes. We've been friends for about two
22 years.

23 Q I call your attention back to June 7th,
24 a Saturday night I believe, of last year.

25 Did you have an occasion to go to Joyce's

1 home or trailer?

2 A Yes, I did.

3 Q Tell us about that. Why did you go there?

4 A We were having a birthday party for her
5 husband John.

6 Q Okay, and what time did you get there?

7 Do you remember?

8 A It was around 7:30.

9 Q Okay. Who all was there when you got there?

10 A I don't remember.

11 Q Were there a lot of people there?

12 A (No response)

13 Q More than say twenty.

14 A I don't think so; I don't remember.

15 Q As the night progressed and you were there
16 how many people were there? What was the most
17 people there at any one time?

18 A We were all in and out. Maybe ten or
19 fifteen people.

20 I was just running around helping.

21 Q Everybody drinking and having a good time?

22 A I guess.

23 Q Were you drinking?

24 A I had a couple of drinks.

25 Q Mixed drinks, beer or what?

1 A Mixed drink.

2 Q And anybody smoking marijuana that night?

3 A Not that I know of.

4 Q Doing any kind of drugs?

5 A Not that I know of.

6 Q Okay.

7 At 11:00 you and Joyce went to the store?

8 A Yes, sir.

9 Q And what did you go to the store for?

10 A Cigarettes.

11 Q Okay. And, when you came back, who was
12 there?

13 A I guess the same ones as when we left.

14 I don't know who and all was there.

15 Q When did Eddie and Sherry Heaton show up?

16 A It was after we come back from the store.

17 Q So, it would have been about what time?

18 A Maybe around 11:30 or 12:00. I really don't
19 know; I didn't keep up with the time.

20 Q All right, - - Do you know Sonny Crowe?

21 A I had met him that night.

22 Q That was the first time you knew him or met
23 him?

24 A The first time I had met him.

25 Q Okay. And in your presence did he have

1 a conversation with Eddie Heaton?

2 A Yes.

3 Q And what happened?

4 A Eddie just told him that he thought that it
5 was time that he go home.

6 Q Pardon.

7 Eddie - - told Sonny it was time for him to
8 go home?

9 A He thought that it may be time for him to go
10 home.

11 Q Okay. Did you see Eddie hit Sonny? Knock
12 him to the ground?

13 A Yes.

14 Q Okay. So, that happened also, didn't it?

15 A As far as I know. I was - - I think I was
16 standing on the porch at the time.

17 Q So, Eddie hit Sonny and knocked him to the
18 ground?

19 A Either that or Sonny stumbled, but, I think
20 Eddie hit him.

21 Q Think Eddie hit him.

22 A I could be wrong.

23 Q You didn't see Sonny after that with a black
24 eye?

25 A No, I didn't.

1 Q Okay.

2 Do you remember Sonny after that talking to
3 John Smith?

4 A Yes.

5 Q And what did he ask John to do?

6 A Take him home.

7 Q Sonny asked John to take him home. Is that
8 right?

9 A Yes.

10 Q No further questions.

11 CROSS EXAMINATION

12 BY MS. CHAPPELL:

13 Q Do you remember about what time you got to
14 the party that night?

15 A It was around 7:30.

16 Q Do you know the defendant very well?

17 A No.

18 Q How was he behaving the night of this
19 incident?

20 A You could tell he was drinking.

21 Q Do you remember what kinds of things he was
22 saying to people?

23 A He was - - seemed like he wanted to argue,
24 but, I had never been around him a lot, so, I
25 didn't know how he really acted.

1 Q Did you see a conversation between the
2 defendant and the victim's wife Sherry Heaton?

3 A I know he said something to Sherry, but, I
4 don't know what it was.

5 Q And, at that point is that when Eddie got
6 involved in the situation?

7 A Yes.

8 Q Were you there when Eddie was shot?

9 A Yes, I was.

10 Q What, if anything, did you hear?

11 A I'm sorry.

12 Q Did you hear anyone say anything or see
13 anything at that point?

14 A I just heard somebody say look out; Sonny has
15 a gun.

16 And then I looked out the door and saw him
17 lower the gun and shoot Eddie.

18 Q Did you see Eddie do anything to Sonny before
19 he was shot?

20 A No.

21 Q What did Sonny do after he shot Eddie?

22 A I was on the phone with 911 then, but, I
23 heard somebody say that he was running down the
24 road.

25 I didn't see him.

1 Q Nothing further.

2 REDIRECT EXAMINATION

3 BY MR. SIRES:

4 Q So, you were in the house then when you heard
5 the shot?

6 A Yes.

7 Q And you only heard one shot that evening?
8 Or, you heard other shots?

9 A Well, when I seen Eddie hit the ground, I was
10 on the phone. I think I heard more shots, but, I
11 don't know.

12 I was just - - I was just trying to get
13 help.

14 Q Think you heard more shots.

15 You were on the phone when he hit the ground.
16 You mean Eddie stood up for a while, is that what
17 you are trying to tell us?

18 A No, when I heard the shot, I was on the
19 phone - - when I saw him on the ground.

20 Q Okay, when you heard the shot you were on the
21 phone.

22 A Uh-huh.

23 Q You were already on the phone. What were
24 you on the phone about?

25 A No, when I heard the shot and he hit the

1 ground, that's when I got the phone.

2 Q Okay.

3 That's when you called 911 or whatever.

4 A Yes, sir.

5 Q You were the one that called?

6 A Yes, sir.

7 Q Okay.

8 And, you heard some more shots.

9 A I think so. I was - -

10 Q Did you see any other guns that night?

11 A No, I did not.

12 Q Okay.

13 Thank you, ma'am.

14 RECROSS EXAMINATION

15 BY MS. CHAPPELL:

16 Q A few more questions.

17 These shots came after Sonny shot Eddie?

18 A Yes.

19 Q Thank you.

20 SIRES:

21 Nothing further.

22 COURT:

23 You may step down.

24 (Witness excused from the witness stand)

25 COURT:

Call your next witness.

1 SIRES:

2 I call J.M.C.

3 J.M.C.,

4 being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SIRES:

7 Q J.M.C., I want you to give us your full
8 name and tell us where you live today, okay?

9 A J.M.C. And, I live in Walhalla on
10 [REDACTED].

11 Q And, how old are you, J.M.C.?

12 A Fifteen.

13 Q And, where do you go to school?

14 A [REDACTED] High School.

15 Q Okay. Do you know the difference between
16 right and wrong?

17 A Yes, sir.

18 Q Do you go to church?

19 A Yes, sir.

20 Q What church do you go to?

21 A Oakway Wesleyan.

22 Q Do you know the difference in telling the
23 truth and not telling the truth?

24 A Yes, sir.

25 Q Do you know what happens to you if you don't

1 tell the truth?

2 A Yes, sir.

3 Q Okay.

4 Now, J.M.C. going back to June 7th, that
5 night was a Saturday night of last year,
6 and the early morning hours of June 8th last year,
7 where were you living at that time?

8 A At [REDACTED] in Oakway.

9 Q Oakway.

10 And who was living in that home with you?

11 A My father - -

12 Q Who is Sonny?

13 A Yes.

14 Q Okay.

15 A - - my mom, Charlotte, and my brother J.L.C.
16 [REDACTED] and I.

17 Q Okay. And, what did you do that night?

18 Do you remember that Saturday night?

19 A (No response)

20 Q Before you went to sleep or fell asleep.

21 A My brother and mom and I watched a movie.

22 Q The three of you there watched a movie.

23 A Uh-huh.

24 Q Had your father gone out that night?

25 A Yes, sir.

1 Q Okay.

2 And tell us what happened.

3 A We watched the movie, and then I fell asleep
4 in the floor. My mom was on the couch and J.L.C
5 was on the loveseat.

6 Q Okay.

7 A And then after we went to sleep, somebody
8 come knocking on the door and I woke up and my mom
9 woke up and let Joyce in.

10 Q Now, Joyce, who is Joyce? Do you know her
11 last name?

12 A Smith.

13 Q Joyce Smith.

14 Okay, you let her in the house.

15 A Uh-huh.

16 Q What kind of condition was she in?

17 A She couldn't stand up by herself and her eyes
18 was blood shot.

19 Q Couldn't stand up by herself?

20 A No, she was leaning on our recliner kind of
21 helping herself.

22 Q Okay. Did she smell of alcoholic beverage
23 or something, or how did you know - -

24 You said her eyes were blood shot and she was
25 unsteady on her feet.

1 A Uh-huh.

2 Q Okay.

3 What did you think was wrong with her?

4 A That she had been drinking.

5 Q Okay.

6 What did she come in your house for?

7 What did she tell you?

8 A She said that there was problems at her
9 house.

10 Q Uh-huh. And house, she meant her house?

11 A Yeah.

12 Q Okay.

13 A She said that - - that my dad went in the
14 bathroom and beat himself up and that's why he was
15 beat up.

16 Q Uh-huh.

17 A And she said that everybody up there had
18 guns.

19 Q Uh-huh.

20 A And, she said that John was on his way to
21 being drunk.

22 Q Okay.

23 So, after she told you and your mother that,
24 what did y'all do?

25 A Well, I went and laid back down in the

1 floor and she said she was going - - Mama said
2 that she was going ~~back~~ to get daddy.

3 Q Okay.

4 And did she leave with Joyce?

5 A She left at the same time as Joyce but took
6 her car.

7 Q Okay. Took her car.

8 And what happened next?

9 A I laid back down and then a few minutes
10 later, I got back up because my dad had come back
11 in and he went to the restroom - -

12 Q Uh-huh.

13 A - - Then he put his teeth on the coffee table
14 and laid down on the couch.

15 Q Okay.

16 A And said not to let him forget to go back and
17 get his car before they did anything to it
18 because he wanted his car.

19 Q Tell us about that car. Did your father
20 think a lot of that car?

21 A Yeah.

22 Q What was special about it? Do you remember?

23 A Nothing special; he was just attached to the
24 car.

25 Q He loved that car?

1 A Yeah.

2 Q Was it a fast car?

3 A Yeah.

4 Q Was it a wolf in sheep's clothing, for a lack
5 of a better word? Did it look like it wouldn't
6 do much, but, it would go fast, is that what it
7 was?

8 A Yeah.

9 Q Okay.

10 And did he talk about racing that car?

11 A Yeah.

12 Q Okay.

13 So, he came back and after he went to the
14 restroom, he sat on the sofa or whatever and
15 propped his feet up on the coffee table and said
16 don't - - -

17 A No, he laid down on the couch.

18 Q Laid down on the couch. Okay. And then
19 what - - And then he said don't let me forget
20 about my car?

21 A Yeah.

22 Q And then what happened?

23 A I asked him about his teeth.

24 Q Pardon.

25 A I asked him about his teeth. - - because he

1 laid them on the coffee table.

2 He has false teeth.

3 Q Oh, okay.

4 He laid his teeth on the table.

5 A Yeah, and I asked him what happened to them
6 and he said the somebody had knocked them out.

7 Q Uh-huh.

8 A As in hitting him.

9 Q What did your father's face look like?
10 Did it look like it normally does?

11 A He looked and acted disoriented.

12 Q Disoriented?

13 A Yeah.

14 Q Okay.

15 Did he appear to have been drinking too much?

16 A He wasn't drunk.

17 Q Okay.

18 A But, he hadn't - - He didn't appear to be
19 drunk.

20 He just kind of seemed a little bit
21 spaced out.

22 Q Okay. He just wasn't acting right, is that
23 what you're saying?

24 Spaced out.

25 A Yeah.

1 Q Okay.

2 So, what happened next?

3 A I laid back down in the floor and I guess - -
4 I suppose he went - - I presume that he went to
5 sleep on the couch.

6 Q And, when do you remember waking up again?

7 A The next morning.

8 Q And, what happened?

9 A I got up and my mom was gone and I walked
10 through the house to go to the restroom, and she
11 was sitting at the kitchen table crying with some
12 short fat cop and another cop.

13 Q That guy right there?

14 A Which one?

15 Q With the mustache. That one.

16 A Yeah.

17 Q Okay.

18 He knows that description.

19 Okay. And, is that all you know about that
20 night?

21 A Yes, sir.

22 Q Did they bring the car back that day?

23 A I think - - it was sometime around dinner
24 or the afternoon.

25 Q Did you see it?

1 A Yeah.

2 Q Did you notice anything unusual about it?

3 A There was marks on the car that wasn't there
4 before.

5 Q Marks on the car that wasn't there the night
6 before or the day before?

7 A Uh-huh.

8 Q How often did you see that car?

9 A Everyday.

10 Q Everyday?

11 Okay. You answer any questions that the
12 prosecution might have, okay?

13 A Okay.

14 CROSS EXAMINATION

15 BY MS. CHAPPELL:

16 Q When you say the defendant Sonny Crowe, how
17 are you related to him?

18 A He's my father.

19 Q And Charlotte Crowe is your mother?

20 A Yes, ma'am.

21 Q Nothing further.

22 COURT:

23 You may step down.

24 SIRES:

25 Thank you, J.M.C. You may come down.

(Witness excused from the witness stand)

1 SIRES:

2 I'd call Charlotte Crowe.

3 CHARLOTTE CROWE, being
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SIRES:

7 Q Okay, Charlotte, what's your full name?

8 A Charlotte Marie Crowe.

9 Q Tell us where you live.

10 A [REDACTED] in Walhalla.

11 Q All right, speak up, okay.

12 Is Sonny Crowe your husband?

13 A Yes.

14 Q How long have y'all been married?

15 A Fifteen years.

16 Q All right, and you have how many children?

17 A Two.

18 Q The one that just testified and - -

19 A A little boy.

20 Q Is that him right there on the front row?

21 A Yeah.

22 Q That's him.

23 And where do you work, Charlotte?

24 A Private Collections.

25 Q Okay, how long have you done that?

1 A About four months.

2 Q Okay.

3 You remember June 7th of last year I'm sure.

4 A Yeah.

5 Q And, tell us what happened that night.

6 That you know.

7 A That I know?

8 Q That you know.

9 A Okay.

10 Joyce came to the house, told me that there
11 was trouble at John's -- up at their house - -

12 Q Uh-huh.

13 A - - said that there had been some arguing,
14 so, I asked her was there anybody up there drunk
15 and she said yes, everybody.

16 I asked her was there guns there and she said
17 yes.

18 Q Uh-huh.

19 A So, - - And I told her that if everybody
20 was drunk, redneck and all, I did not want to go
21 and get in on it, and then she said well, Sonny,
22 couldn't find the keys to his car, so, I told - -

23 Well, I told J.M.C. I was going to go get
24 him.

25 Q Uh-huh.

1 A Check on him.

2 So, me and her left and I followed her up
3 there.

4 Q Talking about me and her, you're talking
5 about Joyce Smith?

6 A Yes.

7 Q Okay.

8 A When we got there, there was two girls pulled
9 up in a station wagon in front of us.

10 Q Uh-huh.

11 A I got out and went in the trailer. Bengie
12 was walking through the living room. His eyes
13 was all blood shot.

14 Q Who is that?

15 A Bengie, John's brother.

16 Q Okay.

17 A And, Sherry was squatted down at the stereo
18 in the living room.

19 Q Uh-huh.

20 A James and Eddie was standing - - not - -
21 Well, about ten feet from the front porch.

22 Q Out in the yard?

23 A Yeah, they was both standing there drinking.

24 Q Uh-huh.

25 A So, when I walked in the door there was

1 Sherry and Bengie's girlfriend was on the couch
2 at the end and then there was a guy and a girl
3 sitting in the recliner.

4 There was a big heavy-set guy when
5 I walked - - because one of them came and got
6 Joyce as soon as we got in and they went in the
7 bedroom.

8 So, when I walked in the kitchen there was a
9 big heavy-set guy sitting at the table. I did
10 not know who he was.

11 His hair was feathered down to his shoulders
12 and he was sitting there with - - I guess cocaine,
13 crank or whatever you want to call it.

14 Q Where was it?

15 A He was sitting at the table with it.

16 Q The kitchen table?

17 A Yeah.

18 Q All right, what else was on the table?

19 A There was a guy with short black hair and an
20 earring in his left ear - -

21 Q Uh-huh.

22 A He had a big freezer bag of marijuana.

23 Q How do you know it was grass? How do you
24 know that it was marijuana?

25 A I've seen marijuana.

1 Q Okay.

2 Did you smell any?

3 A Yeah, you could smell it because there's a
4 desk as you come in the living room and there was
5 a boy sitting there rolling a joint.

6 Q Okay.

7 And did you see any weapons that night?

8 A No.

9 But, - - When I'd seen them and just cut my
10 eyes and tried not to look in their eyes - -

11 Q All right, - -

12 A - - and I come back out and I asked Bengie
13 where Sonny was at and he said he didn't know.
14 So, I went out on the porch and there were some
15 other people standing out there on the porch.

16 Q Uh-huh.

17 A So, I asked James - - And, I asked James
18 where Sonny was at - -

19 Q Yeah.

20 A - - and he said that he left and he said he
21 left the hard way.

22 So, I had an old pair of tennis shoes on
23 that - - Well, I should have brought them.

24 - - but, the rubber on the front of them
25 would pick up grass when you would walk.

1 Q Okay.

2 A Okay, when I squatted down on the porch to
3 get the grass out of them, I picked up a little
4 packet - - sandwich bag with a wrapper - -
5 I seen it laying there.

6 I don't know if they lost it or what they
7 done with it, but, it had crank.

8 It was tested.

9 - - and I stuck it in my shoe and gave it to
10 Sonny's brother, and he knowed an FBI agent
11 and we gave it to the FBI in Greenville.

12 Q After you did that, what did you do, Charlotte?

13 A I went back in and told Joyce - - I said
14 Joyce, they said Sonny was done gone, and I turned
15 around and I left.

16 Q Was Sonny's car still there?

17 A Yes, sir.

18 Q Tell us about that car, if you can, Charlotte.
19 What's so special about that car?

20 A Fast.

21 Q Fast?

22 A Yes.

23 He's got a lot of money in it. He worked
24 hard to buy it.

25 Q Well, why did he buy it?

1 A Because he likes to drag race.

2 Q Okay, it was a drag racing car.

3 A Yeah.

4 Q All right, so, you left in your car.

5 What kind of car were you driving?

6 A '87 Thunderbird.

7 Q All right, and you drove back home?

8 A Uh-huh.

9 Q 14.3 miles I think Mr. Sheriff said.

10 Took you about twenty minutes, right?

11 A Yep.

12 Q Okay. So, when you got back home, what did
13 you discover?

14 A Sonny laying on the couch.

15 Q Okay. Now, how long had you been gone?

16 A Uh, - - thirty minutes.

17 Q Well, - - twenty and twenty is forty.

18 A From which point?

19 Q Well, from the time you left home until you
20 came back home, how long were you gone?

21 A From going up there to check on him and back?

22 Q Uh-huh.

23 A Forty-five minutes. Close to an hour.

24 Q An hour.

25 All right, so you got back and Sonny was

1 laying on the couch.

2 A Uh-huh.

3 Q And what was he doing?

4 A Just laying there with his head covered up.

5 Q Laying with his head covered up?

6 A Uh-huh.

7 Q All right, - - And what happened? What
8 did he do?

9 A He got up and I was sit up - - I was smoking
10 a cigarette and he raised up and he says I want to
11 go get my car.

12 Q Uh-huh.

13 A And he asked me. So, I told him - -
14 I said well, I'll take you to get it.

15 Q What about the trouble that you'd seen down
16 there, Charlotte?

17 A Well, I figured that everybody wouldn't mess
18 with him.

19 Q Why is that?

20 A Because he told me I'm just going to get my
21 car and come back home.

22 Q That's what he told you?

23 A Uh-huh.

24 He said I'll be - - -

25 Q So, how long do you figure that he had been

1 gone before y'all got ~~back~~ down there?

2 A How long do I figure he ~~had~~ been gone?

3 Q Gone from John's trailer - - before you got
4 him back down there.

5 Had he been gone just a few minutes, or,
6 had he been gone a couple of hours? How long had
7 he been gone?

8 A It was over an hour.

9 Q Over an hour - - he'd been gone.

10 Okay.

11 So, tell me about the gun.

12 A The what?

13 Q This gun that's here.

14 Whose gun is that?

15 A My little boy's.

16 Q Okay. And what did he use it for?

17 A To - - Well, my brother lets him go coon
18 hunting with him.

19 Q Okay.

20 A And shooting.

21 Q Your brother takes him coon hunting?

22 A Uh-huh.

23 Q Okay. Where was this gun?

24 A Well house.

25 Q All right, where is the ammunition for the gun?

1 A We didn't have but one shell.

2 Q But, one shell.

3 That's what Sonny took with him that night,
4 right?

5 A Uh-huh.

6 Q Okay.

7 Why did he take the gun?

8 A Because he said he figured it would scare
9 them.

10 CHAPPELL:

11 Your Honor, I think that's hearsay, and I
12 think it's speculation on her part.

13 COURT:

14 Well, - -

15 SIRES:

16 Your Honor, I think if he told her why he was
17 taking the gun - -

18 COURT:

19 No, sir, not what he told.

20 She can describe his mood or whatever, but,
21 she can't - - She doesn't know why.

22 Go ahead.

23 Q Did he tell you why he was taking the gun?

24 A Just to scare them.

25 He didn't go to kill nobody.

1 CHAPPELL:

2 Your Honor, that is hearsay.

3 COURT:

4 No, ma'am, overruled.

5 Q How do you know that?

6 A (No response immediately)

7 Q - - of your own knowledge that he didn't go
8 down there to kill somebody?

9 A Because I've been with him fifteen years.

10 Q You let him out where, on [REDACTED] Road?

11 A Yes.

12 Q And then what did you do?

13 A Well, before he got out of the car he said
14 I'm going to get my car and I'll be right on back
15 home behind you.

16 Q Okay.

17 A And I went back home.

18 Q So, you went home?

19 A Uh-huh.

20 Q And, did he come home that night?

21 A No, I dozed off and went to sleep and Stanley
22 Sheriff woke me up.

23 Q Stanley Sheriff?

24 A Uh-huh, and David Smith.

25 Q What time did they wake you up?

1 A Around six.

2 Q When's the next time you saw Sonny's car?

3 A When I went to get it with a roll back.

4 Q You went and got it?

5 A Uh-huh, me and my nephew.

6 Q All right, - -

7 I'm going to show you what's been put in as
8 Defendant's Exhibit Number One. Do you recognize
9 that?

10 A Yep.

11 Q What is that?

12 A Sonny's car.

13 Q Okay. The back of it, is that right?

14 A (Shakes head affirmatively)

15 Q And, is there anything in this picture that
16 wasn't there on June 6th or June 7th?

17 A Yeah, a dent.

18 Q Show - - -

19 A Above the light.

20 Q Right here?

21 A Yeah, it was a fresh dent.

22 Q Fresh dent?

23 A Uh-huh.

24 Q And, what did it look like to you?

25 A Like a bullet had glazed it.

1 Q Okay.

2 When you went down there to get the car where
3 was it?

4 A At John's?

5 Q Yeah.

6 A Parked right there at the trailer.

7 Q Was it on the end of the trailer near [REDACTED]
8 Road or was it on the far end?

9 A The far end where the driveway's blocked
10 where you can't go in and out.

11 Q All right, - - Could you step down here,
12 Charlotte, and show us on this board - - this
13 diagram.

14 Do you remember that circular drive there?
15 That horseshoe drive? Is that - -

16 A This one?

17 Q Yes.

18 A When you pull in, the house is here, and the
19 driveway.

20 Q Uh-huh.

21 A And his car was parked right in there.

22 Q Yeah.

23 A But, you couldn't go out that driveway.
24 The people that owned the property, didn't want
25 you using it.

1 Q Okay, so, you don't normally - - You can't
2 go in that way.

3 How do you get into John's house?

4 A Pull in here.

5 Q Okay, you can go as far as the trailer, but,
6 not further.

7 A No.

8 Q That's why you pulled into there?

9 A Yes.

10 Q All right, have a seat.

11 When you saw Sonny on the couch that evening
12 how did he appear to you, Charlotte?

13 A He was just laying there.

14 Q Uh-huh.

15 What kind of physical condition was he in?

16 A Well, when he got up?

17 Q Uh-huh.

18 A He acted like he was disoriented.

19 Q Okay. Did he appear to be drunk?

20 A You could smell alcohol.

21 Q Well, that's not the question.

22 You've lived with him for fifteen years; you
23 know when he's drunk, don't you?

24 A He didn't act drunk-drunk. He acted like
25 he'd been drinking.

1 Q Okay.

2 All right, - - Did he appear to act like he
3 didn't know what he was doing?

4 A Ah, - - he never did say much. He just said
5 he wanted to go get his car, but, he just talked
6 normal to me. Had the same tone of voice and
7 everything.

8 Q Did he ever say anything about Eddie Heaton
9 beating him up?

10 A No.

11 Q Did he ever say anything about he was going
12 to have to go back down there nd straighten them
13 out or kill them or shoot them or anything like
14 that?

15 A No.

16 Q Never said anything like that.

17 A No.

18 Q It's about a twenty-minute ride over there.
19 Did you have any conversation on the way over?

20 A We just talked about - - He said that he'd
21 been over there and changed a tire.

22 He'd had a flat earlier.

23 Q Uh-huh.

24 A And John.

25 Q Yeah.

1 A And he said that he was going to get the car
2 and come back behind me.

3 Q Be right there.

4 A Said I'll see you in the morning. Or, see
5 you when I get there.

6 Q And what was this you think?

7 A Around two.

8 Q What time do you remember that Joyce came
9 and got you the first time?

10 A It was around 11:30 or 12:00.

11 Q So, it had been some two hours when you went
12 back the second time.

13 And, when you pulled up in the yard and let
14 Sonny off or pulled off [REDACTED] Road and dropped
15 Sonny out, could you see anybody out by the
16 trailer?

17 A Yeah.

18 Q And who was out there?

19 A Eddie and James and some other person but I
20 don't know who they was.

21 You can see the whole yard with the street
22 lights that they have out there.

23 Q With the light up above out there.

24 What were they doing, could you tell?

25 A Just standing.

Q Standing by their bikes or by the truck - - -

1 A They were standing by the porch.

2 Q Porch?

3 A Uh-huh.

4 Q And was there any way for Sonny to get to his
5 car other than to go in front of them?

6 A Not from where I let him out unless he's
7 going to run all the way up the road and around
8 because I let him out right at the driveway.

9 Q Okay, so, you saw him walking straight down
10 towards his car?

11 A Yeah.

12 Q Deputy Sheriff said that there was another
13 driveway. Would there be any reason to let him
14 out at the other driveway?

15 A Nobody ever uses that driveway.

16 Q Okay, it's not open or whatever?

17 A Oh, it's open. But, John said the lady
18 chewed him out if a car even went on it.

19 Q So, that was where he had to go.

20 A Yep.

21 Q All right, Charlotte, I appreciate your
22 testimony. Answer anything that the prosecution
23 might have.

24 COURT:

25 Cross.

1 CROSS EXAMINATION

2 BY MS. CHAPPELL:

3 Q Charlotte, do you remember a conversation you
4 had with Joyce Smith when she came to your house
5 that night?

6 A Yes.

7 Q Did she tell you that you needed to come get
8 Sonny?

9 A She told me that I needed to come up there
10 because there had been arguing.

11 Q Did she tell you that he'd been drinking?

12 A She said everybody was drinking.

13 Q Did she tell you Sonny had been drinking?

14 A She said he had dranked a few.

15 Q Did you tell her that you needed to go get a
16 gun?

17 A No.

18 Q Do you remember telling her that you needed
19 to go get a gun because when Sonny drank he took
20 it out on you?

21 A No.

22 Q You've never said that?

23 A No.

24 Q Did you in fact go get a gun?

25 A No, I didn't.

1 She said everybody up there had guns, and
2 that she wanted the trouble out from up there
3 because she said when she went by Scooter's -
4 her and Lynn - - she said that John probably
5 already knew that she had been down there, and that
6 by the time that she got home that he would beat
7 her.

8 Q But, you never told her that you had to go get
9 a gun to protect yourself?

10 A No, I do not recall saying that.

11 Q You don't recall saying it.

12 A No.

13 Q Do you remember talking to Deputy Sheriff the
14 next morning at six o'clock?

15 A Yes, I do.

16 Q Did you tell him that Joyce Smith came to
17 your house and told you that Sonny was drunk and
18 would not leave and that you needed to come get
19 him?

20 A She didn't say he wouldn't leave.

21 Q But, you told Deputy Sheriff that the next
22 day, didn't you?

23 A She said that John was going to bring him
24 home.

25 Q Do you deny the fact that you told Stanley

1 Sheriff that Joyce came to your house and told you
2 that Sonny was drunk and would not leave and that
3 you had to go get him?

4 A No, she told me - - asked me to come and get
5 him.

6 Q And you never told Stanley Sheriff that?

7 A (No response)

8 Q You never told - - -

9 A I told that to him?

10 Q Yes.

11 The next day when he interviewed you,
12 you told him that Joyce had come to get you
13 because Sonny was drinking and wouldn't leave?

14 A I don't remember telling him.

15 Q You don't remember that either?

16 A (No response)

17 Q Do you remember telling him that when you got
18 back to the house that Sonny was already on the
19 couch and he was asleep?

20 A With his head covered up.

21 He was just laying - -

22 SIRES:

23 Your Honor, if she's going to cross examine
24 her on some statement that she's given, then I
25 think the witness should have a copy of that

1 statement in front of them.

2 CHAPPELL:

3 It's not a statement, Your Honor; it's an
4 oral statement she made to the police officer and
5 she said she remembers talking to him.

6 SIRES:

7 So, this is the police officer's notes.

8 COURT:

9 Let her see a copy of it, Solicitor. What's
10 wrong with that?

11 A Your Honor, my statement says that I was
12 interviewed with Steve Dyar and I don't even know
13 this man, never seen him.

14 Q Do you remember talking to Stanley Sheriff?

15 A Yeah.

16 Q And, you did not tell him that you had to go
17 get Sonny because he was drunk?

18 A I didn't say he was drunk; I said he acted
19 like he was drinking.

20 Q As a matter of fact, when you talked to
21 Stanley Sheriff the next morning, you did not tell
22 him that you were the one that took the defendant
23 back, did you?

24 A No.

25 He didn't ask.

1 Q As a matter of fact, you told him you didn't
2 know how he got back.

3 A He didn't ask.

4 Q You told him you don't know how he got back,
5 didn't you?

6 A Yes.

7 Q Now, you said in your testimony that when you
8 got to the house to get Sonny that James and Eddie
9 were drinking.

10 A Yep.

11 Q You saw Eddie drinking.

12 A They both had a Budweizer in their hand.

13 Q And you also say you saw cocaine and crank on
14 the kitchen table with two individuals, is that
15 correct?

16 A Yes.

17 Q But, you didn't tell Stanley Sheriff that the
18 next day, did you?

19 A No.

20 Q You also said you saw a freezer bag of
21 marijuana that evening.

22 A Yeah.

23 Q Did you tell Stanley Sheriff that the next
24 day?

25 A No.

1 I don't trust our sheriff's department.

2 Q You didn't tell them any of this stuff.
3 You talked to them but you didn't say any of the
4 things that you just said on direct examination,
5 did you?

6 A No, I was scared to tell anybody.

7 Because I know what people will do to you
8 over drugs.

9 Q You also said that you found a bag of some
10 sort of marijuana and turned it over to an FBI
11 agent.

12 A No, it was crank.

13 Q Okay, it was crank.

14 What's the name of this FBI agent?

15 A Marshall Roebeshow in Greenville.

16 Q Marshall what?

17 A Roebeshow.

18 Q And he's with the FBI?

19 A Yep.

20 Q Now, is it your testimony when you came back
21 to the house that Sonny appeared to have been
22 beaten up?

23 A I didn't pay it any attention.

24 Q So, you didn't notice all this beating on
25 Sonny when you got back to the house?

1 A I didn't turn any lights on. I couldn't
2 see.

3 Q Isn't it true that the morning that Sonny's
4 car was picked up, the people that towed it
5 accidentally allowed it to roll back into your car?

6 A My nephew?

7 Q Whoever it was, didn't Sonny's car roll back
8 into your car?

9 A No.

10 Q It didn't. You're sure about that.

11 A Sonny's car did not.

12 Q Now, you said that when you saw Sonny that he
13 appeared to you to be disoriented, is that
14 correct?

15 A Uh-huh.

16 Q You could smell alcohol on him.

17 A Uh-huh.

18 I could smell alcohol on all of them.

19 Q You said that you'd been down there and you'd
20 seen this crank, this marijuana, these people
21 drinking, is that correct?

22 A Uh-huh.

23 Q And you made the decision it was a good idea
24 to take your husband, let him out at a road with a
25 gun and leave him there?

1 A To get his car. All he wanted to do was
2 scare them.

3 Q But, I'm asking you a question. Answer it
4 please.

5 You decided even though he was disoriented,
6 smelled of alcohol and had a gun, that you would
7 drive him down to the house, let him out and leave
8 him there?

9 A Well, I figured wouldn't nobody bother him.

10 Q Nothing further.

11 SIRES:

12 Nothing further, Charlotte.

13 COURT:

14 Thank you, ma'am. You may step down.

15 (Witness excused from the witness stand)

16 SIRES:

17 If we could take a short recess.

18 COURT:

19 All right, Mr. Bailiff, take the jury out a
20 few minutes.

21 Y'all don't discuss the case now while you
22 are in the jury room.

23 (Recess taken)

24 (The following took place outside the
25 presence of the jury)

1 COURT:

2 I'll say this for the benefit of all in the
3 audience. I've noticed some demonstrations being
4 made when one of the witnesses was testifying.

5 If that happens again, I'm going to remove
6 you and promptly put you in jail.

7 This is a courtroom. You don't do that in a
8 courtroom.

9 If I see it again, please be warned that you
10 are going to be removed from the courtroom and
11 probably put in jail.

12 Thank you very much.

13 We'll have a short recess.

14 (The following took place in the presence of
15 the jury)

16 DANIEL LEWIS CROWE, being
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SIRES:

20 Q State your name.

21 A Daniel Lewis Crowe.

22 Q And, where are you residing at the present
23 time?

24 A [REDACTED] Drive.

25 Q Which is what?

1 A The law enforcement center.

2 Q How long have you been down there?

3 A A year.

4 Q Since this happened?

5 A No, I spent some time in Pickens and then
6 they brought me back over here.

7 Q But, you have been incarcerated since the
8 date this happened?

9 A Yes, sir.

10 Q Are you married, Sonny?

11 A Yes, sir.

12 Q And how long you been married?

13 A Fifteen years.

14 Q And that's your wife there that testified
15 just a few moments ago?

16 A Yes, sir, it is.

17 Q And you have two children?

18 A Two children.

19 Q And they are seated right there on that front
20 row.

21 A Thirteen and fifteen.

22 Q What do you do as far as work, Sonny?

23 A I'm a mechanic, diesel mechanic.

24 Q Been doing that most of your life?

25 A Most of my life, yes, sir.

1 Q Who all have you worked for in Oconee County?

2 A I've worked for most all the grading companies
3 around servicing their equipment and working on
4 their equipment and stuff.

5 Q Ever worked for anybody like Bobby Wood - -

6 A I've worked for Bobby Wood Chevrolet, yes,
7 sir.

8 Q Roper Motor and that type of thing.

9 A Yes, sir.

10 Q Okay.

11 In June of last year what were you doing at
12 that time?

13 A Just out basically riding around.

14 Q I mean as far as work is concerned. How
15 were you doing work?

16 A Mostly working race cars.

17 Q Race cars?

18 A Yes, sir.

19 Q People pay you to fix them up?

20 A Yes, sir, I helped several people race, yes,
21 sir.

22 Q Sonny, you have been in trouble before,
23 haven't you?

24 A Yes, sir, sure have.

25 Q What year was that?

1 A '93.

2 Q And, as a result you pled guilty to voluntary
3 manslaughter, did you not?

4 A I did.

5 Q And that was something that happened up at
6 Salem?

7 A Yes, sir.

8 Q And what was your sentence?

9 A Twelve years suspended to three.

10 Q You built that three years?

11 A Yes, sir.

12 Q Was there any probation or parole behind
13 that?

14 A Yes, sir, two years.

15 Q Did you do that?

16 A Yes, sir.

17 Q Done all that stuff. Done your time.

18 A Yes, sir.

19 Q Okay, sir.

20 How long had you known Eddie Heaton?

21 A As far as knowing who he was and all,
22 and I personally didn't know him on a speaking
23 basis, but, I've been around him at the race
24 tracks for ten or twelve years.

25 Q What kind of person was he?

1 A Like myself. We have a lot in common.
2 He loved to race, and he was a hillbilly boy like
3 me.

4 He was a good man. You know, I can't say
5 he wasn't. He was basically like me.

6 Q When you got that car from Mike, why did you
7 get that '67 Ford?

8 A I'd been after it for a year or a little over
9 a year.

10 It's what you would call a sleeper.

11 It's designed to look like something your
12 grandpa drove.

13 It's got a film of rust on it, a torn front
14 seat and headliner hanging down. Steel wheels,
15 two hubcaps.

16 It's designed to take your money.

17 Q In other words, you'd take this thing to a
18 race track and young guys would come up and say
19 oh, I can beat that?

20 A Yes, sir, and I'd generally let them step on
21 their own toes so to speak.

22 Q And how long you been drag racing cars?

23 A All my life.

24 Q So, it took you over a year to get that car?

25 A Yes, sir.

1 Q Why did it take so long?

2 A It cost a good bit to get it.

3 The engine in the car is basically what it
4 would cost to have a new car - - for you to buy,
5 say, a cheap compact car is what the motor would
6 cost you - - for the motor alone, not to mention
7 the transmission and all the undercarriage and
8 stuff that had been done to it.

9 Q So, I think you said it was a 450 Ford?

10 A No, sir, it's a 460.

11 Q 460, and what does that refer to?

12 A It's a big block Ford engine.

13 Q How many - - I'm not much on automobiles.
14 Boats is my thing.

15 How many horsepower would something like that
16 have?

17 A I'd never really seen the stat sheets on it.
18 Five hundred eighty horses without the nitrous,
19 but, with a two hundred fifty shot of nitrous,
20 seven hundred eighty to nine hundred horses, or
21 eight hundred fifty horses. Somewhere right
22 along there.

23 Q And you used it for drag racing?

24 A Yes, sir.

25 Q Okay.

1 A But, I drove it everyday. It was my
2 everyday car.

3 I drove this car everyday.

4 Q Did you?

5 A Yes, sir.

6 Q Did you have any other vehicles?

7 A Yes, sir.

8 Q What else did you have?

9 A Had an '85 Saab and a '69 Oldsmobile. But,
10 I drove - - I had an Escort.

11 This is my automobile. This was my personal
12 automobile I drove everywhere I went.

13 Q Okay.

14 All right, let's go to June 7th. What got
15 you together out at the Smith place that day?

16 A I met John - - it was along about 12:30 that
17 day.

18 Q This was a Saturday?

19 A Saturday, yes, sir.

20 And I had pulled over - - As a matter of
21 fact, I was talking to Mike Fulbright. He had
22 seen me. I was coming through town and I passed
23 him this way and he made the block and come back.

24 He was delivering an S-10 pick-up to somebody
25 and I don't really know who, and I was standing

1 there talking to him and John came up.

2 And he said you're coming to my party
3 and he had invited me two weeks before that.
4 And, I didn't know whether I was really going to
5 go or not and I had a tire going down and he said
6 well, come on to the house and we'll change it,
7 so, we did.

8 Q About what time was that?

9 A I'd say we probably arrived at his house at
10 one o'clock.

11 Q And, so what did you do?

12 A We changed the tire.

13 Q And then what did you do after you changed
14 the tire, Sonny?

15 A Went inside talking and there was folks
16 there.

17 Q Who all was there?

18 A Well, a couple of them was people I don't
19 know - I had never met really, and there was
20 Shane. I remember him.

21 I knowed him a while. I met him while I was
22 doing time. His name was Shane Mulligan.

23 While I was at Blue Ridge Work Release I met
24 him. He was there.

25 And a couple of other people I didn't know.

1 Q What did you have to drink?

2 A Budweizer.

3 Q All right, and how many do you think you had
4 from one o'clock in the afternoon until one
5 o'clock that night?

6 A I don't know. I probably drank five to six
7 the whole time.

8 Q Over a twelve-hour period of time?

9 A Yeah.

10 Q Did anybody give you anything other than the
11 beer?

12 A Yes, sir. I was handed a drink of liquor by
13 John Smith.

14 Q And why did he give you a drink of liquor?

15 A He just said - - As far as I understand,
16 he said it's my birthday and all, go ahead. So,
17 you know, I drank it.

18 Q Do you know what kind it was or anything
19 about it?

20 A It seems like it was Southern Comfort.

21 Q Okay.

22 All right, so the party is rocking along and
23 there's been some testimony that you got into some
24 arguments with people.

25 Did you get in a fuss with anybody that

1 night or that afternoon?

2 A No, I don't remember as far as really fussing
3 with anybody or anything or hitting anybody or
4 anything like that, no, sir.

5 I didn't do that.

6 I don't know why that they really assumed
7 that I jumped on this man, but, I didn't hit this
8 man - - a passed out man.

9 Q The Phillips fellow testified that he didn't
10 know who it was either, didn't he?

11 A No.

12 And, I really don't understand, but, - -

13 Q When they arrested you on this thing
14 there that night did they take pictures of your
15 hands or anything?

16 A No, sir.

17 Q Were your hands bruised up to indicate that
18 you had been in a fight?

19 A No, sir, every other part of me was beat up
20 and cut up.

21 Q But, your hands weren't?

22 A No, sir.

23 Q All right, - - So, you didn't get in a
24 fight with Phillips.

25 What happened with Eddie?

Eddie came - - showed up about they say

1 twelve o'clock or so.

2 He and his wife come riding up on the bikes.

3 A Well, I was being ragged about supposedly
4 having jumped on Tim Phillips.

5 Q Okay.

6 A - - by several people.

7 It made people mad. It did, but, I never
8 jumped on this man and these people they were mad.

9 And, I can understand that. If you jump on a
10 man that's passed out and you're beating him, I can
11 understand that, but, - -

12 And, to tell you the truth, I don't recall
13 the words between me and Sherry or what went - -

14 We did - - I exchanged words and phrases but
15 I don't really remember exactly what it was, and,
16 Eddie - - It made him mad I guess and he hit me.

17 Q Said you wasn't going to talk to his wife
18 like that or whatever - -

19 A Uh, - - he said something, you know. I
20 really don't know.

21 Q And where did he hit you?

22 A In the face.

23 Q They testified - - or people said that they
24 saw him reach down and help you back up.

25 Did he help you back up?

1 A No, sir.

2 Q What happened after he hit you?

3 A We got up and I asked John to take me home
4 and all, and we got in the truck and we left.

5 Q You asked John Smith to take you home?

6 A Yes, sir.

7 Q Did he say come on and let's go or - - -

8 A No, sir.

9 Q - - anything like that?

10 A No, sir.

11 Q Why didn't he tell you to get in your car and
12 drive home?

13 A Well, they had been telling me to get in my
14 car and go home and all, but, at the time I wasn't
15 in no shape to drive or anything I didn't think.

16 Q Okay.

17 A I wasn't going to drive.

18 Q So, John takes you home. Who was there at
19 your house when you got there?

20 A My daughter and my son.

21 Q All right, and what did you do?

22 A I went to the bathroom and on through the
23 kitchen and I come back around through the kitchen
24 and got me a drink of water when I come back
25 around through the kitchen.

1 Q This is when you laid your teeth down on the
2 coffee table?

3 A Yes, sir.

4 Q And then what?

5 A I laid down on the couch.

6 Q Did you go to sleep or whatever?

7 A Yes, sir, I was dozing.

8 Q Okay. What's the next thing that you
9 remember?

10 A My wife sitting down on the couch.

11 Q Okay. How long you think it had been from
12 the time that you left the party until your wife
13 sat down there on the couch with you?

14 A It had been a while.

15 As far as looking at a clock or anything like
16 that, I never looked at a clock or anything like
17 that, but, - -

18 Q You don't wear a watch?

19 A No, sir, I've never wore a watch or anything.

20 I know it had to be an hour or better.

21 Q Okay. And, so, you noticed her sitting
22 there next to you and she said you said let's go
23 get my car.

24 A I did.

25 Q Why did you want to go get your car about

1 two o'clock in the morning, Sonny?

2 A Well, I think a lot of this car and it could
3 be very easily damaged.

4 And I know people is vindictative. If they
5 are mad at you, they destroy stuff. They take it
6 out on anything; your car or - -

7 You know, that stuck in my mind. I think a
8 lot of this car.

9 It's a bad judgment call, but, I wanted my
10 car and I went back to get my car.

11 Q Did you ever tell anybody before you left
12 that you were going to come back and shoot anybody
13 or kill anybody or anything like that?

14 A No, sir.

15 Q Did you say anything like that?

16 A No, sir.

17 Q Okay.

18 So, what happened when you told your wife
19 that you wanted to go get your car?

20 A We - - -

21 Q What did she say?

22 A Well, I went out to the well house - -

23 As she was coming out to get in the car, I went
24 out to the well house and that's - - because I
25 wasn't allowed to have a gun in my house.

1 I didn't keep a gun in my house and that's the
2 truth and it was out in the well house and I went
3 out to the well house and got the gun.

4 Q Why did you do that, Sonny?

5 A Well, these people are dangerous.

6 Q How did you know they were dangerous?
7 What had they done to you to indicate that they
8 were dangerous?

9 Of course, a fellow has done knocked you
10 down. We understand that.

11 A Well, I've seen - -

12 Like I said, I've known Eddie and them around
13 the race tracks for ten or twelve years and I've
14 witnessed some of the beatings that he has gave
15 people and all and stuff, and he would beat you
16 down or he'd hurt you - - he'd kill you.

17 Q He was a bouncer at Scooter's.

18 A Yes, sir.

19 Q Did you ever go out there?

20 A I think me and my wife went out one time
21 to hear Center Land Band at Scooter's.

22 Q All right, so, you went out to the well house
23 and you got the gun.

24 A Yes, sir.

25 Q How many shells did you get?

1 A Basically I didn't get any shells. Didn't
2 look for any shells.

3 I know it sounds stupid, but, I didn't really
4 know the gun was loaded. I never breeched
5 it and looked at it. But, it was, and - -

6 Q So, you just picked up the gun out of the
7 well house and did what, got in the car?

8 A Yes, sir.

9 Q And asked Charlotte to drive you over to
10 John's?

11 A Yes, sir.

12 Q What did y'all talk about on the way over
13 there, anything?

14 A Well, I just said - - I talked about my tire
15 going flat and the party and stuff like that.

16 I never mentioned nothing about no fighting
17 or stuff like that.

18 Q You told her where you had been that day.

19 A Yeah.

20 Q Okay.

21 All right, when you got there, she let you
22 out on [REDACTED] Road?

23 A Yes, sir.

24 Q And what did you do?

25 A I proceeded up the driveway.

1 Q The driveway shown as a circular type thing?

2 A No, sir, it's the one off the [REDACTED] Road
3 that my wife was showing.

4 Q Come on down. And let's show.

5 A This is the [REDACTED] Road and my wife let me
6 out here. And the trailer is right here.

7 I went up the driveway and these folks was
8 standing right here.

9 Q Mark the spot where they were.

10 A It was right on the other side of the porch.

11 Q And where was your car?

12 A It was sitting here.

13 Q Draw - -

14 Okay. So, you walked up the driveway.
15 What happened?

16 A Well, when I was walking up, you know, I
17 heard voices and all and stuff, and I took it as
18 aggression.

19 They testified I took it the wrong way, but,
20 they turned around and they said he didn't take no
21 step forward but he did.

22 I told them then I hope nobody wants to be
23 first.

24 Q You can have a seat back up there.

25 Why did you tell them that you hoped

1 nobody wanted to be first?

2 A Because of the aggression. I took it that I
3 was fixing to be beat down again. That was, you
4 know, the reason for the gun and all in the first
5 place - - to be killed, and, it was a bad judgment
6 call, but, that's the reason I had the gun.

7 I figured that they would leave me alone and
8 let me go ahead and get my car and go home.

9 Q All right, - -

10 But, what happened next?

11 A I took it - - Eddie reached across his body
12 and I knew he had a gun - - -

13 Q How did you know he had a gun?

14 A I seen - - You know, he had one on him
15 earlier that night.

16 Q All right, - -

17 A And I throwed the hammer back on the gun.
18 I cocked the gun back.

19 Q Uh-huh.

20 A - - hoping he'd slow down, but, you know, he
21 still - - The movement went on and I made a
22 decision and I shot him.

23 Q And after your shot went off, what happened
24 next?

25 A There was two or three consecutive rounds

1 right behind me. I had to run. And, - -

2 Or, I was going to be killed anyway.

3 Q They were shooting at you.

4 A Yes, sir.

5 You know, - - And I ran back towards [REDACTED]

6 Road there.

7 Q What did you do?

8 A I went right back to the top of the hill
9 there and I sit down.

10 Q So, you didn't try to run away from the place
11 as far as get away to the next state or anything;
12 you just got away from the shooting.

13 A I'd just shot a man and I'm not proud of that
14 and - - you know, it hurts me that a man's life
15 was took and I wasn't going to run from it.

16 You've got to, you know, - - The outcome of
17 this thing is something - - you know, ever how it
18 goes I have to pay for it.

19 I wasn't going to run from it.

20 Q And then what happened? You saw them take
21 Eddie to the hospital or whatever?

22 A Well, it amazed me because they said they put
23 him directly in the car and all, but, it was a
24 good fifteen minutes or so before they ever left
25 with him.

1 Q And you're watching.

2 A I'm watching, yes, sir.

3 Q And then what happened after they left with
4 him?

5 A I went into the trailer. I went back down
6 and the door was open on the trailer.

7 Q Uh-huh.

8 A And, I went in.

9 Q What did you do with the gun?

10 A I sit it down.

11 Q Where did you sit - - -

12 A I would have swore that I sit it down, but,
13 under the testimony that - - As I went in the
14 door, there's a couch sitting there and I sit it
15 right there by the door.

16 Q And then what happened? What's this about
17 getting after people in the bathroom and the
18 bedroom and all that. What was all that about,
19 Sonny?

20 A Well, I was upset and I guess I was a little
21 hysterical and I was mad because it took them so
22 long to get him to the hospital, too, and I was
23 amazed first off that they didn't call no paramedics
24 or anything.

25 But, then I don't know what they was doing or

1 what, but, they took entirely too long getting him
2 in the car.

3 I watched this and I was upset about it
4 and - - John and them's testimony they said the
5 words kill come out of my mouth, and - - I think
6 I could have said something about Eddie being
7 killed out there and all and them not doing
8 anything about it - - take so long - -

9 I was hysterical too. Yeah, and a little
10 mad I guess.

11 I didn't go there to kill nobody.

12 It's hard to explain - -

13 Q Did you believe your life was in danger?

14 A Sir?

15 Q Did you believe your life was in danger?

16 A Yes, sir.

17 Well, I know it was. If I hadn't have
18 turned and run, I would have been shot in the
19 back.

20 If I'd not did what I did, I'd been shot
21 dead, period.

22 Q Did you ask them about calling the police or
23 calling EMS or calling 911?

24 A At that time I don't really know if - -

25 I know I was - - They took too long to get

1 him loaded up and get him gone and what was going
2 on and all.

3 Of course, I can understand it was chaos.
4 You know, people seeing this and all, it was hard
5 on them.

6 It's hard to make a decision and stuff.
7 Especially with people partying and all, and I
8 don't know really whether I asked them whether
9 they called the police, but, I told them that I
10 was there for the police.

11 Q You weren't going anywhere.

12 A No.

13 Q And, is that when they jumped on you and
14 broke the stock of that gun over your head?

15 A Well, they said they had - - it took a lot to
16 subdue me, but, I basically only remember one
17 lick.

18 From then on I don't remember nothing until
19 the back of the police car.

20 Q Hit you over the head with the gun and broke
21 the stock.

22 A Yeah, I had a big gash in the side of my
23 head.

24 My back, you know, where they - - I guess
25 they done what they felt like they had to under

1 the - - in the situation.

2 Q All right, - -

3 I'm going to show you State's Exhibit Number
4 Eight. Is that your car there at the far end of
5 the trailer?

6 A Yes, sir. Yes, that's my car.

7 Q And, the damage that we have shown in the
8 picture, was that damage to that car that night?

9 A Yes, sir.

10 Q Was it there before that night?

11 A No, sir.

12 The only place that was on that car was Mike
13 Fulbright told you that there was a little dent on
14 the right corner at the bottom.

15 That's where he lost it and run through a
16 field and he put a little dent on the bottom
17 quarter.

18 There was not any other dents anywhere, no,
19 sir.

20 Q Sonny, answer - - and I'm sure the State
21 wants to know - - if the car was at the far end of
22 the trailer away from [REDACTED] Road and you were
23 running towards [REDACTED] Road after this happened,
24 and shots were fired, how did this car get hit?

25 A I was between Eddie and my car.

1 Q At one time.

2 A Yeah.

3 Q When it started. Okay.

4 A And, I knowed there was two or three shots
5 just right immediately after that, and, so, I
6 don't know - - I couldn't say they hit the car,
7 but, the direction that it could have been hit,
8 yeah.

9 Q How many shots did you hear that night?

10 A Mine and I heard two or three, and then
11 several others after that. I don't - -
12 I couldn't tell you exactly how many.

13 You know, it was happening pretty quick.

14 Q You were trying to get out of there.

15 A Yeah.

16 Q Is there anything else that you can recall
17 about this thing?

18 A No, sir, other than it was a nightmare.

19 Q And you've been in jail ever since then.

20 A Yes, sir.

21 Q Answer any questions that the prosecution
22 might have.

23 A Yes, sir.

24 COURT:

25 Cross.

1 CROSS EXAMINATION

2 BY MS. CHAPPELL:

3 Q You don't deny that in 1993 you were convicted
4 of manslaughter?

5 A No, ma'am.

6 Q Tell me how drunk you think you were that
7 night.

8 A Uh, - - I was pretty high.

9 Q As a matter of fact, do you remember talking
10 to Investigator Stanley Sheriff the next day?

11 A Yes, ma'am.

12 Q And did you make the statement to him I was
13 pretty intoxicated; I was loud and drunk?

14 A I don't recall the loud and drunk part.
15 Of course, I couldn't see the statement after he
16 got through writing it either.

17 My eyes were swole together; I couldn't see.

18 Q Well, I'm going to let you refer to the
19 statement here - - where I have my hand - -
20 I was loud and drunk.

21 A It's in the statement, yes, ma'am.

22 Q You say today that you never hit Tim Phillips,
23 is that correct?

24 A No, ma'am.

25 Q In the statement you said I don't remember;

1 I could have hit that boy; I was very intoxicated,
2 didn't you?

3 A Well, that's what they was saying.

4 I don't remember hitting the man and I don't
5 remember no altercation between us at all.

6 Q But, - - -

7 A This is what these people were telling me
8 that I did it and all and stuff, and they was
9 after me - - people was mad about me.

10 For a little while there there was some
11 people mad, yeah. You hit this boy; what did you
12 do that for.

13 Q But, you didn't tell Investigator Sheriff
14 that you didn't hit him. You told him that you
15 could have hit him; you just didn't remember,
16 didn't you?

17 A Yeah. Yes, ma'am, I did.

18 Q You also told the jury just now that you were
19 beat down.

20 How many times did Eddie Heaton hit you?

21 A Once.

22 Q Just once.

23 A He weighed three hundred ten pounds.

24 Q He hit you once, and what did you say to him?

25 A Nothing.

1 A In your statement you told Investigator
2 Sheriff that you told him, I'm not going to let
3 that go.

4 A Yes, ma'am, I could have said that.

5 Q Did you tell him that he was a marked man?

6 A No, ma'am.

7 Q You're positive about that?

8 A Yes, ma'am.

9 Q Were you ever asked to leave that party?

10 A Yes, ma'am.

11 Q Finally John had to take you home, didn't he?

12 A Yes, ma'am.

13 Q And in your statement you never said you
14 asked John to take you home, did you?

15 A It never was - - I made a statement somebody
16 check for powder burns for a gun shot and that's
17 the reason I waived my rights and gave a statement
18 because I wanted him checked.

19 Q But, - - -

20 A I was - - -

21 Q You never said I asked him to take me home,
22 did you?

23 A He never asked.

24 Q As a matter of fact, what you said was
25 after you had the altercation with Eddie, John

1 Smith loaded me up and took me home.

2 A True.

3 Q Do you remember telling him that?

4 A That's true.

5 Q Did you or did you not tell John Smith on
6 several occasions on the way home that you were
7 coming back to kill Eddie Heaton?

8 A No, ma'am.

9 Q But, you do admit that you did tell him that
10 you weren't going to let that go?

11 A I never told John Smith that, no.

12 Q But, you told Eddie Heaton that?

13 A I may have, yes.

14 Q Now, you told the jury that you didn't leave
15 the first time because you weren't in any shape to
16 drive, is that correct?

17 A Yes, ma'am.

18 Q But, once you got home you decided that you
19 were in shape to drive, and you came back to get
20 your car?

21 A Yes, ma'am.

22 Q So, why the difference? Why were you in no
23 shape to drive at the time that you were there,
24 but, you were in shape to drive after you arrived
25 home?

1 A Well, there had a little time passed.

2 Q But, you said you were very intoxicated, too.
3 You're saying you weren't intoxicated at the time
4 that you left your house?

5 A Yes. You know, I was still - - I guess
6 if I'd been pulled over, yes, ma'am, I would have a
7 DUI.

8 Q Now, you also stated you were afraid of
9 Eddie. But, you say when you took the gun
10 you don't even know if it was loaded.

11 A That's true.

12 Q So, you took a gun that you didn't know was
13 loaded - - back to this party - - to a man that
14 you were very afraid of?

15 A Yes, ma'am.

16 Q What was said to you when you were walking
17 out that driveway?

18 You said that there were voices and yells.
19 What was said?

20 A I couldn't actually tell you what was said
21 or anything like that.

22 It was - - There was just shouting and
23 noise and all and I took it for aggression.
24 They did turn around and start towards me.

25 Q You took it for aggression, but, you

1 didn't hear anybody threaten you?

2 A I heard yelling.

3 Q You heard yelling. But, you can't say what
4 that was.

5 A No, I don't recall, no, ma'am.

6 Q Do you think it might be a little bit
7 reasonable if they see a man walking up with a gun,
8 that it might frighten people?

9 A That was - - that was what it was intended to
10 do, ma'am. Yes, ma'am.

11 Q And, you don't have any idea what these
12 people were yelling?

13 A Well, - - No, ma'am, but, they turned around
14 and they started towards me.

15 Q We're they yelling he's got a gun?

16 A No, not at that time. I don't recall nobody
17 at that time yelling - - he said they got a gun - -
18 before they turned around.

19 Q You said they turned around and they started
20 toward you.

21 You have a loaded gun, or, you have a gun,
22 and these people are coming towards you?

23 A Yes, ma'am.

24 Q How many steps did they take toward you?

25 A It wasn't - - probably not over one.



1 Maybe not even quite that far.

2 Q And you told the jury that you decided to
3 shoot when Eddie reached across his body.

4 A Yes, ma'am.

5 Q And you told the jury that you had seen a
6 gun.

7 A Yes, ma'am.

8 Q I would like for you to point out in that
9 statement where you told Investigator Sergeant
10 Sheriff that you saw a gun.

11 A I had told Mr. Sheriff that during the
12 statement, but, Mr. Sheriff decided - - it was his
13 discretion not to put it in there.

14 Q So, it's your testimony that you signed that
15 statement even though never in that statement does
16 it say that you saw a gun?

17 A I read the statement. I took this man for
18 who he is - - his job - - and all for being who he
19 is.

20 I couldn't read the statement, ma'am; I could
21 hardly sit up. I couldn't see. My eyes - -
22 I was beat down bad, and, uh - -

23 Q You were beat down bad but you testified he
24 only hit you one time, right?

25 A Ma'am, we're talking about that shotgun there.

1 Q Okay, so you are talking about being beat
2 down by John Smith?

3 A Yes, ma'am. The next morning when I gave
4 the statement I had been beat down by that shotgun.

5 I really - - I shouldn't - - I wasn't in no
6 shape to give a statement and I should have never
7 did it.

8 I couldn't even read. I took the man for
9 his word. Never read over it.

10 Q Is it your testimony that you told this
11 officer that there was a gun out there and he just
12 failed to put it in your statement?

13 A Yes, ma'am, evidently.

14 Q And you signed that statement?

15 A Yes, ma'am.

16 Q You also said that it took them a long time
17 to get Eddie to the hospital, is that your
18 testimony?

19 A Yes, ma'am.

20 Q How long do you think they waited before they
21 left with him?

22 A As I stated, probably around fifteen minutes.
23 Maybe a little longer.

24 Q If I told you that the first 911 call came in
25 at 2:07 and the defendant was already in the

1 emergency room at 2:18, eleven minutes later,
2 would that surprise you?

3 A Yes, ma'am.

4 Q How long a trip was it from where you were on
5 [REDACTED] Road to Ocone Memorial Hospital?

6 A That's a good. If you was making it good it
7 would be somewhere around fifteen or twenty
8 minutes.

9 Q So, they arrived with Eddie Heaton within
10 eleven minutes of the shooting and it's your
11 testimony that they waited around and didn't
12 remove him?

13 A It was a while before they removed him, yes,
14 ma'am.

15 Q But, the documents show eleven minutes
16 from the time he was shot.

17 A Well, do you know exactly what time they made
18 the telephone call?

19 A 2:07 A.M.

20 Q How long before that after the shooting?
21 Their testimony says they called immediately.

22 Q That's correct.

23 A That's correct, yes, ma'am, but, it wasn't.

24 Q So, you're saying that they waited twenty
25 minutes with this individual before they even got

1 him to the hospital?

2 A I said fifteen minutes or a little longer.

3 Q And he was shot in the chest.

4 A Yes, ma'am.

5 Q And, he was still alive when he arrived at
6 the hospital.

7 A Yes, ma'am.

8 Q Now, after you shot Eddie Heaton you decided
9 to go back inside the trailer?

10 A Yes, ma'am.

11 Q Were you invited into that trailer?

12 A No, ma'am.

13 Q So, it's your testimony that you laid the gun
14 down at the door?

15 A Yes, ma'am. To the best of my knowledge, yes,
16 ma'am, I did.

17 Q You laid the gun down at the door.

18 When did John Smith pick the gun up?

19 A Ma'am, I don't know. I can't tell you.

20 Q Well, where were John and Joyce and Mark
21 Evans when you walked in the trailer?

22 A Down the hall.

23 Q So, you laid the gun down and walked down the
24 hall toward them?

25 A Yes, ma'am.

1 Q What did you do?

2 A Hollering at him and - - And I imagine I was
3 doing a little cussing, too.

4 Q Did you tell him that if he testified against
5 you that you would kill him?

6 A No, ma'am.

7 Q Did you ask him if he wanted to die?

8 A No, ma'am.

9 Q Did you ask his wife if she wanted to die?

10 A No, ma'am.

11 Q Did you tell Mark Evans you're next?

12 A No, ma'am.

13 Q You never did any of that?

14 A No, ma'am.

15 Q So, in order for them to have got the gun
16 they would have had to get past you to where you
17 left it, come back and beat you over the head with
18 it?

19 A Unless there was somebody down the hall
20 already at the other end of the trailer, yes,
21 ma'am.

22 Q Did you see anybody else there?

23 A I didn't look.

24 Q How did the bathroom door get off the
25 hindges?

1 A We'll have to rely on the testimony on that.

2 I don't know.

3 I don't know exactly why the bathroom door
4 was tore down.

5 Q Did you try to fight any of those people?

6 A There was a scuffle; I wouldn't call it - -

7 I mean I guess they could have took it as
8 aggression - fighting, but, not no fight, no,
9 ma'am.

10 Q The testimony was that Eddie and Sherry
11 Heaton did not arrive at the party until after one
12 o'clock after Scooter's had closed and they had
13 time to get there. Do you remember that?

14 A No, ma'am, I don't actually remember them - -
15 when they got there - - arrived, no, ma'am, I
16 don't.

17 Q Well, if they arrived after one o'clock and
18 the shooting happened at 2:07, there's no way you
19 could have gone home by your own testimony forty
20 minutes away and slept an hour, is there?

21 A Unless they got there around 1:30 - - or,
22 unless they got there around 12:30 - - is what I
23 meant to say, or, a little after twelve.

24 Q But, if everyone is correct about the time
25 being one o'clock, there's no way you slept an

1 hour at your house, is there?

2 A I would say yes, ma'am, I stayed at my house
3 around an hour, yes, ma'am.

4 Q But, you've already testified that you were
5 intoxicated, isn't that right?

6 A So was everybody else. How does their time - -
7 You know, there's a time frame there - - It's hard
8 to say.

9 No, ma'am, I can't say for sure that I was
10 there an hour. I can't say that. I don't
11 really know. I never looked at the clock.

12 Q Nothing further.

13 REDIRECT EXAMINATION

14 BY MR. SIRES:

15 Q You don't wear a watch, do you?

16 A No, sir.

17 Q Sonny, I'm going to show you a bill from the
18 hospital.

19 Without objection.

20 COURT:

21 What is that, sir?

22 SIRES:

23 A hospital bill for Mr. Crowe, Your Honor.

24 COURT:

25 All right, admitted without objection.

(So admitted as Defendant Exhibit Number Three)

1 Q Sonny, what is this? It's an Ocone
2 Memorial Hospital bill, but, tell us what this is
3 for.

4 A It's where they took me because I was - -
5 I never did - - I was beat down bad. My back
6 busted up, my neck and that's where they finally
7 had to carry me to the hospital and help me.

8 Q Okay.

9 And this statement that Ms. Chappell keeps
10 going over with you says that it was taken on 6-8
11 at 3:01 P.M. at the law enforcement center.

12 A Yes, sir.

13 Q Had you been to the hospital at that time?

14 A No, sir, I never made it to the hospital
15 until the 20th.

16 Q The 20th?

17 A Yes, sir.

18 I had told them - - Stanley Sheriff, he had
19 asked me that afternoon - - he said do you need to
20 go and I told him that I was beat down pretty bad
21 at that time, but, I didn't - - You know, I told
22 him that I was hurting and all, but, I didn't know
23 at that time whether I needed - - If I needed to
24 go then or not because I was beat up.

25 Q What all - - -

1 A I didn't know how physically bad it was, so,
2 I didn't - - I declined at that time about going.

3 Q There's been previous testimony that you had
4 a black eye. What else?

5 A Had two black eyes.

6 Q Two black eyes.

7 A Yes, sir.

8 My head was cracked. I was cut on my side
9 pretty deep, and my hand and my back had a big gash
10 in it across the spine.

11 Q Tell me what a wolf ticket is, Sonny.

12 A A bluff.

13 Just - -

14 Q When you were arrested, did they find any
15 shells on you?

16 A No, sir.

17 Q There was just the one in the gun, is that
18 right?

19 A Yes, sir.

20 Q Do you have any idea how the shell got bent
21 like it did?

22 A No, sir, I never - - I never breeched the
23 gun, period, at anytime from the beginning of the
24 night until that afternoon I never breeched it,
25 or, that night.

1 From the time I left the house until the
2 shooting, I never breeched the gun down.

3 Q When you cocked that thing back, what was the
4 reaction of the people that were there you said in
5 three or four feet of you?

6 A Well, people was scattering. It's true.
7 They were doing - - They was doing what they had
8 to do to get out of the way.

9 Q What about Heaton?

10 A Eddie never checked. And what I mean by
11 checked, he - - he reached across his body
12 and he never slowed down.

13 I cocked and fired and he never slowed down
14 and when he continued, I throwed the gun up and I
15 fired.

16 Q But, you had already cocked it at that time?

17 A Yes, sir.

18 Q Could you hear that cock at that time?

19 A (No response)

20 Q Could I have heard it if I was as close to
21 you as I am right now?

22 A You could have seen me, yes, sir.

23 Q Probably heard it.

24 A If you couldn't have heard it, you could have
25 seen me.

1 But, it happened fast, you know. By that
2 time it's a blur.

3 Q All right, - -

4 Did you set out to kill him that night?

5 A No, sir, I did not.

6 I don't - - It hurts me that a man's dead
7 because he - - Like I say, he was part of this
8 community, too. He's a root in this community
9 and he - - I hate he died, and - - but, it
10 happened.

11 He was who he was and I'm who I am and, like
12 I say, we've got a lot in common, and I don't
13 want - -

14 Q Thank you, sir.

15 A Yes, sir.

16 COURT:

17 You may step down.

18 A Yes, sir.

19 (Witness excused from the witness stand)

20 COURT:

21 Call your next witness.

22 SIRES:

23 That's the case for the defendant at this
24 time.

25

1 COURT:

2 Anything in reply?

3 CHAPPELL:

4 None, Your Honor, - -

5 COURT:

6 All right, - -

7 All right, ladies and gentlemen, it's four
8 o'clock and I have been advised by Court Administration
9 not to charge the jury after 4:00 or at 4:00
10 and I don't do it - - I wouldn't do it anyway
11 because it's not fair.

12 You have families and things to do this
13 evening and I don't want you to be here until all
14 hours deciding this case.

15 What we are going to do now is that we're
16 going to recess until 9:30 tomorrow morning, and
17 then you will hear the closing arguments and then
18 you will hear my charge on the law and then you
19 will make your decision.

20 And, I want to remind you again not to
21 discuss this case, not even among yourselves.
22 You have not heard the closing arguments, neither
23 have you heard my charge on the law so you are in
24 no position to talk about the case, so, just don't
25 talk about it.

1 And don't talk about it to anyone, and that
2 means anyone. Just tell your spouse or sweetheart
3 or father, grandfather, brother, sister, anybody - -

4 Just don't talk about the case, and certainly
5 allow no one to talk to you about the case.

6 If somebody tries to talk to you about it,
7 you tell them that you are on the jury and you
8 can't talk about it.

9 If they persist to talk about the case please
10 try to get their name and give it to me tomorrow
11 morning and I will take care of it at that time.

12 Also I caution you not to listen to anything
13 that might be on the radio or TV or read any
14 newspaper accounts of what may have happened in
15 this courtroom because you are going to decide
16 this case based upon the testimony from this
17 witness stand and from the exhibits that are put
18 in evidence and nothing else.

19 So, with that instruction I'm going to let
20 you go home and please be back promptly at 9:30 in
21 the morning.

22 We will start right at 9:30.

23 Everybody remain seated while the jury leaves
24 please.

25 (Evening recess for jury)

1 (The following took place outside the
2 presence of the jury)

3 COURT:

4 Anything further before we leave for the day,
5 Mr. Sires?

6 SIRES:

7 Nothing at this time, Your Honor.

8 COURT:

9 Anything - -

10 CHAPPELL:

11 Nothing for the State.

12 COURT:

13 All right, we'll begin at 9:30 in the
14 morning. We're in recess until 9:30.

15 JUNE 25, 1998

16 COURT:

17 State ready?

18 CHAPPELL:

19 The State's ready, Your Honor.

20 SIRES:

21 Your Honor, before we proceed this morning
22 I'd like to renew my motions for a directed
23 verdict - -

24 COURT:

25 All right, sir.

1 SIRES:

2 - - based on the self defense that was shown.

3 Quite clearly I think by the testimony - - -

4 COURT:

5 Motion denied.

6 SIRES:

7 I'd also, Your Honor, move at this time that
8 I be allowed to tell the jury that this young man
9 is facing life without parole given the fact that
10 under the new statute that has been enacted this
11 being the second most serious crime, his sentence
12 regardless of what the court does here today - -
13 if he's found guilty of anything - - he will be
14 subject to life without parole, and I feel that
15 the jury should be made aware of that, Your Honor.

16 I think it's fundamental fairness. I think
17 that the constitution would provide that a part of
18 due process would be that they are aware of this.

19 This is an unusual thing that's just started
20 to occur in South Carolina. I think other states
21 as the court is aware are getting to situations
22 to where the juries are actually sentencing
23 people, and this is not the case in South Carolina
24 as of this time.

25 But, the juries would have to give them some

1 recognition of the fact that they are aware of
2 what the courts normally do in situations like
3 manslaughter or even murder where - -

4 We had one last term where a man was convicted
5 of murdering his wife by shooting her in the head
6 with a gun and he got like fifteen or twenty years
7 or whatever it was. He did not get life without
8 parole.

9 But, this is the seriousness of this situation
10 here.

11 COURT:

12 I understand.

13 Thank you, sir. I'm going to deny the
14 motion. I think the law in this state at this
15 time is such that I can't grant your motion.

16 I think it would put too big a burden on the
17 State because the jury certainly might consider
18 the fact that whatever they found, if they were
19 going to punish him at all, that he would get life
20 without parole and, therefore, certainly might
21 find him not guilty for that reason.

22 So, I just can't put that burden on the State
23 under our present law.

24 Thank you very much.

25 Are y'all ready to go to the jury?

1 CHAPPELL:

2 Yes, Your Honor, - -

3 COURT:

4 All right, Mr. Bailiff, bring the jury in.

5 (The following took place in the presence of
6 the jury)

7 COURT:

8 All right, good morning, ladies and
9 gentlemen, - - Thank you for being prompt.
10 We had a few matters to take up before you came
11 in.

12 You will now hear the closing arguments of
13 the State and defense and then I will charge you
14 the law and then you will decide this case.

15 Solicitor, - -

16 CHAPPELL:

17 Good morning.

18 Ladies and gentlemen, what's going to happen
19 this morning is that I'm going to stand up here
20 just a little while - very briefly - to tell you
21 what the law is in South Carolina and what kind of
22 things you'll be charged the law is.

23 Now, if I make any mistake or if what I say
24 is different from what the judge tells you, then
25 you follow what he tells you because he is the

1 person who is going to tell you what the law is,
2 and I'm going to very briefly tell you about what
3 your options are in this case and what the State
4 has to show in order for you to convict the
5 defendant.

6 After I'm finished, Mr. Sires will come up
7 and he will talk to you about the facts of the
8 case. And when he is done I will come back and
9 give you what I believe are the facts and argue
10 based on those facts.

11 The first thing I want to tell you is about
12 reasonable doubt, and you're going to hear a lot
13 about what is reasonable doubt.

14 Reasonable doubt does not mean beyond any
15 doubt. Nothing in this world is beyond any
16 doubt. Reasonable doubt simply means that you
17 have a reason to doubt something.

18 Now, if these windows weren't here, and I
19 came in the back of the courtroom, and I was wet
20 and I had on a raincoat, you may not see it rain,
21 but, you could say beyond a reasonable doubt that
22 it was raining.

23 Reasonable also doesn't mean that if you run
24 back to the jury room and you don't know immediately,
25 then there's reasonable doubt.

1 You are the judges of the facts and you have
2 to determine what the facts are and then you ask
3 yourself is there a reasonable doubt based on what
4 we believe the facts to be.

5 You're going to be given three options in
6 this case.

7 The first option is going to be a conviction
8 of murder.

9 Now, murder in South Carolina is the killing
10 of another person with malice aforethought.

11 Now, that may be a little bit confusing.
12 Malice aforethought is a hard term.

13 Malice can be expressed or it can be inferred.

14 Okay. Malice may be expressed with an
15 actual intent to kill. It's an ill will.

16 It is a person fatally bent on doing mischief
17 the case law says.

18 You have to look and see whether the defendant
19 had malice.

20 Or, it can be inferred by the use of a deadly
21 weapon or by a malignant recklessness as to the
22 life or safety of another.

23 So, if you find that this defendant killed
24 another, and that he had one of these things,
25 either an expressed intent to kill, or you can

1 infer it from the use of a deadly weapon, the
2 recklessness of life or safety of another person - -
3 if you find that there was malice before the
4 shooting, it's murder.

5 The next option will be manslaughter.
6 That's the killing of another person but without
7 malice. There was no expressed intent to kill.
8 You didn't have these things that we've talked
9 about.

10 But, you have to commit this act during the
11 heat of passion - - you're enraged. You can't
12 control yourself you're so enraged. There is no
13 time to cool off; you didn't have time to rethink
14 what you did.

15 And, the act - - whatever caused you to be
16 this enraged - - had to inflame an ordinary
17 person.

18 An ordinary person in the same situation
19 would be that enraged.

20 And then the final option you will have is
21 not guilty. And, that would be based on a
22 finding that there was self defense.

23 Self defense - - in order for there to be
24 self defense - - all four must be present of these
25 things.

1 The defendant was without fault in bringing
2 on the difficulty.

3 So, he was basically innocent. He had no
4 part in bringing on the situation that forced him
5 to use this deadly force.

6 The defendant actually believed he was going
7 to lose his life or be seriously injured, and an
8 ordinary man - - a reasonably prudent man of
9 ordinary firmness and courage would have believed
10 that too.

11 And, the defendant had no other means of
12 avoiding the danger than to act as he did. He
13 could have done nothing else other than what he
14 did.

15 So, if you find all four of these - - the
16 State has not disproved those to you - - There has
17 to be all four. - - then you find him not
18 guilty.

19 Now, that's the law in South Carolina in
20 regard to this case.

21 Now, ladies and gentlemen, I'm going to sit
22 down. Listen to Mr. Sires, and I'll be back in a
23 minute to talk about the facts.

24 COURT:

25 Mr. Sires, - -

1 SIRES:

2 If it please the court, - -

3 Good morning.

4 This will be the last time you hear from
5 Gruber Sires or Sonny Crowe. Because the State
6 has such a tremendous burden in this case, they
7 will be allowed to use the final argument.

8 So, what I say she can turn around and
9 contradict it or whatever. So, I'm not going to
10 try to go over all the facts because you heard
11 them. You saw the witnesses.

12 You have the evidence here that's going to be
13 carried back to the jury room with you.

14 And, if I misquote something, I apologize in
15 advance. Don't take it out on Sonny Crowe; take
16 it out on me. Meet me next week somewhere.

17 But this is - - I cannot express to you the
18 importance of this case. I can't express how
19 important it is to that man, his wife and those
20 two children.

21 You heard the testimony.

22 What happened?

23 Well, the State hasn't given us any good
24 diagrams. We've drawn on the board and we've got
25 a picture of the trailer.

1 We don't have the whole picture.

2 All we have is pictures at night and some in
3 the daytime that you will be able to take back
4 with you, but, they show Sonny Crowe's car and
5 there's no question that his car was left down
6 there that night.

7 There's no question he went back to get his
8 car because that has not been contradicted.

9 That's the facts. He went back to get his
10 car.

11 The facts are he went back with a gun.
12 He told you that. He was quite honest with you
13 when he testified. He wasn't trying to hide
14 anything.

15 He apologized for what he did. He knew what
16 he did was wrong. But, what options did he have?

17 Remember when we first started I told you
18 that this reminded me of a western where the two
19 guys got out on the street.

20 Well, we not only have two weapons here
21 that have been introduced - - we have testimony
22 that there was a revolver involved. We had
23 testimony that a lot of people had guns down there
24 that night.

25 Where are they?

1 I don't know.

2 The State doesn't know. Or, if they do,
3 they're not here.

4 What did he take down there?

5 He took a child's gun used for bird hunting.
6 The expert said that, that this is something that
7 a child starts out with.

8 What was he faced with?

9 He was faced with a .22 semi-automatic with
10 eleven rounds. He was faced with a revolver
11 someone said.

12 He was faced with a fellow that was a bouncer
13 at a club. Two hundred eighty pounds or so,
14 short stocky fellow, and he made his living
15 throwing people around.

16 The State has given - - and, they talked to
17 y'all - - asked you if you knew any of these
18 people, and there's some - - over twenty-something
19 people on the list.

20 How many did they call?

21 Sonny Crowe had to call three people - -
22 two people - - that were subpoenaed by the State
23 because the State didn't want to hear from them
24 because those people contradicted what their other
25 witnesses had told.

1 Remember Lynn Enright that said I never heard
2 anybody say anything about Sonny coming back with
3 a gun?

4 Sonny asked John to take him home.

5 That's what she testified to. They didn't
6 want you to hear that.

7 And the fellow that Sonny supposedly beat up
8 so bad, he testified for Sonny Crowe. I never
9 had no trouble with Sonny Crowe. Sonny came in
10 and when I first met him he thought I was somebody
11 else, said my hair had been cut or whatever and
12 we talked and that's all he remembered.

13 And, then when all this thing happened,
14 somebody said here comes Sonny.

15 These people had told me that Sonny had beat
16 me up, so I get up and I walk out of the trailer
17 or run out of the trailer and I run around and I
18 go back in the woods back behind here and then I
19 hear shots.

20 It wasn't there's Sonny and boom, there's the
21 gun.

22 It wasn't like that. This is what their
23 witness tells you.

24 So, what happened?

25 Sonny goes in that day to fix a flat tire

1 and he knows these people. John was like a
2 brother to him.

3 John's birthday; they're all celebrating.

4 He has a few beers. He's drinking. We
5 don't deny that.

6 It's not against the law to have a drink on a
7 Saturday afternoon in the hot Summertime.

8 All of these other things happened. They
9 take Sonny home.

10 And he comes back and he comes back with a
11 gun that has one shell in it. And the State
12 would have you believe that he intended to come
13 back and kill somebody.

14 Ladies and gentlemen, you didn't leave your
15 common sense at home this morning.

16 They had fourteen witnesses or something and
17 what did most of them say?

18 There was a drunken party and a lot of guns
19 down there.

20 Sonny shot one time with a single-shot
21 shotgun.

22 We've got at least two other people with
23 weapons.

24 And, when John came back, he told people to
25 leave, and people started leaving.

1 But, not the deceased - that bouncer. He's
2 ~~gt~~ a gun. Nobody is going to run him off from
3 anywhere or tell him to go or to do anything.

4 And, let's talk about self defense for a
5 moment.

6 The public defender's office doesn't have the
7 money that the State has so we have to borrow
8 things from time to time.

9 There is no particular order that you have to
10 find these things in. They have just written
11 them down. And, the judge is going to tell you
12 what the law is and he's going to go into a little
13 more depth than what you have here, and he's going
14 to tell you that the State of South Carolina must
15 disprove this.

16 It's not up to Sonny Crowe. They have the
17 burden of proof.

18 This is not a civil case where we are talking
19 about dollars; we're talking about a man's life
20 and the State of South Carolina must prove beyond
21 a reasonable doubt this case.

22 If he says self defense, then they've got to
23 show hey, it wasn't self defense.

24 But, now, what happened?

25 No other probable means of avoiding the

1 danger than to act as he did.

2 The judge is going to tell you what else that
3 means. It means if a fellow's got a gun pointed
4 at you, or he's got a gun, how are you going to
5 avoid that gun?

6 You can't outrun a bullet, ladies and
7 gentlemen. But, he has the right to act to
8 prevent serious injury to himself or others under
9 the circumstances.

10 That's what the law is and the judge is going
11 to tell you that. So, we have no problem here.

12 Reasonable prudent man of ordinary firmness
13 and courage would have acted in the same manner.

14 Well, place yourself in this situation.

15 There's a guy going for a gun.

16 Now, what happened right before that?

17 The testimony from the big fellow that was up
18 there said when I saw him with the gun - -
19 One of them said they took off running. Another
20 fellow said he hit the ground.

21 What did this guy do?

22 He goes for his gun.

23 He could have hit the ground. He could have
24 left. He could have said hey, wait a minute.

25 He didn't say anything. He went for his

1 gun, and that's uncontradicted.

2 Nobody has said that he didn't have a gun.

3 And there it is.

4 Or, at least - - And, that's another thing
5 that bothers me about this thing.

6 Where did they find that gun?

7 The sheriff's office found it inside of
8 somebody's pickup truck on the seat.

9 Well, his wife admitted she picked the gun up
10 and handed it to somebody and somebody handed it
11 to somebody.

12 What was going on down there that night?

13 I'm sorry for Sonny that we didn't have a
14 preacher down there or a Sunday School teacher.
15 But, those types weren't down there.

16 A reasonably prudent man.

17 Believed his life was in danger - - well, I
18 don't think that there is any question about that.
19 The man had a gun. He saw it; everybody saw it.

20 Several people had guns.

21 Actually believed - - and he told you from
22 that stand there and it was not contradicted - -
23 and, I had never heard the term before - 'wolf
24 ticket'. He carried the gun so that there
25 wouldn't be any trouble - - so that there

1 wouldn't be any trouble.

2 That's what he intended to do.

3 Why leave your common sense at home? A guy
4 is going to go down there and he's going to shoot
5 all these people and he carries a single-shot twenty
6 gauge shotgun?

7 Give me a break.

8 Without fault in bringing on the difficulty.

9 At first that bothered me because he went
10 home and got a gun. But, think about that.
11 Think about how he thought about that car.

12 He worked for over a year to get that car.
13 He thought a lot of that car.

14 He went home, slept for a while, got himself
15 together and asked the wife - - listen, I'm
16 worried about them pouring something in my gas
17 tank; I'm worried about them tearing my car up
18 with it sitting down there with a bunch with guns
19 and dope and whatever else. Let's go down there
20 and get the car, and she said all right, okay, and
21 took him back, let him out on the road and the only
22 way he could get to that car, and it's shown there
23 in the picture, is down that one road.

24 That's the only way he could get there.

25 It's dark; one or two o'clock in the morning.

1 The only light to see anywhere is coming from the
2 trailer - - uncontradicted.

3 So, he thought and got his gun and why?

4 And then he showed them the gun. Most of
5 them left or got on the ground.

6 He's got no problem. But, not that fellow.
7 Not that fellow. He was a bouncer at Scooter's
8 and he's got his own gun.

9 The fellow draws a gun on me, then I'm going
10 to shoot them. That's what he said. Sonny
11 saw that.

12 The judge is going to charge you reasonable
13 doubt because you've got to be satisfied beyond a
14 reasonable doubt of the guilt of Mr. Crowe, and
15 you've got to remember this - - that that is the
16 law of the State of South Carolina as well.

17 The judge is going to charge you that the
18 State of South Carolina has the burden of proof.
19 Sonny Crowe doesn't have to do anything, but, he
20 wanted to be heard by you folks.

21 He told you I need to be home with my wife
22 and two children.

23 There is nothing that y'all can do or I can
24 do, nor anyone else to bring this fellow back.
25 It's done; it's over.

1 They are the first to tell you that Mr.
2 Heaton had a gun and we haven't recovered a gun.
3 That would probably be it - - that one.

4 That's not the facts that we have here today.
5 That's not the facts, and because the State of
6 South Carolina with two lawyers - - and, they've
7 had three - - fourteen police officers and SLED
8 and all of these other things - - are saying that
9 a fellow did something or a person did something
10 does not make it so.

11 It just don't - - because if it did, why
12 would we have juries?

13 Why would we ~~have~~ juries?

14 Richard Wright, the State's witness told you
15 that Eddie Heaton had a gun. He saw him take the
16 gun and put it in his waist.

17 That's a State's witness.

18 Mark Evans, the third witness or fourth
19 witness that they had, said I heard two shots, no
20 one said that Sonny was coming back to me; I never
21 heard that.

22 James Smith, their witness, said that there
23 was a revolver involved.

24 Where is that?

25 I don't know.

1 All these things the State has told you
2 about point straight to this - - straight to this.

3 Murder is no - - We've still got to overcome
4 that.

5 Malice aforethought.

6 If he had had malice aforethought, he would
7 have gone out and got a shotgun - - or an automatic,
8 or got a machine gun or something else and he
9 would have carried more than one round which just
10 happened to be in the gun.

11 Malice aforethought?

12 There again, give me a break.

13 Just because the State says it, it's not so.

14 Inferred by the use of a deadly weapon.

15 Well, what about the inference we get from
16 the pistols, or the fact that these people were
17 all doing dope and stuff which they all denied,
18 but, some of them have been charged with?

19 Think about what Charlotte Crowe said.

20 There is certainly a doubt.

21 I told you in the beginning that the word
22 verdict comes from the Latin, veredicto, and it
23 means to speak the truth, and this is for Sonny
24 and Charlotte and the two children.

25 Make sure your verdict when it comes back

1 speaks the truth is that Sonny Crowe that
2 night was faced with this and the judge will
3 charge you.

4 Come back with a verdict that speaks the
5 truth. Come back with a verdict that lets Sonny
6 Crowe go home to his family.

7 Thank you very much.

8 COURT:

9 Solicitor, - -

10 CHAPPELL:

11 If it please the court, - -

12 When I was growing up, my father was a
13 basketball coach. And, because he was a basketball
14 coach, we were real interested in sports. That's
15 what we did.

16 He played a lot of sports with us and he
17 taught us a lot about sports. And I remember
18 especially basketball and baseball and tennis.

19 And, as a child there was always one thing
20 that came back to my mind. He always said
21 no matter what sport we were playing - - Susan,
22 you've got to keep your eye on the ball.

23 And, I remember - - I got to be good at
24 tennis.

25 You can understand why I was not too good

1 at basketball, but, I got pretty good at tennis.

2 And, it worked. No matter what problems I
3 was having playing, I'd always keep my eye on the
4 ball and I always had an easier time doing
5 whatever I needed to do.

6 And, I have found that in most cases,
7 whether it's murder or rape or anything else, that
8 most criminal cases that's the key. You have to
9 keep your eye on the ball.

10 And what I always tell juries to do in
11 keeping their eye on the ball is to look at the
12 evidence. Look at the facts and look at your
13 evidence in your crimes.

14 See if - - because that's the key. - - do
15 the facts match what the defendant has been
16 charged with.

17 So, let's look at what murder is and let's
18 look at the facts. You have to look at all the
19 circumstances, all the things you've heard from
20 the witness stand, whether or not murder is
21 present.

22 The first thing - - the most important thing
23 that you have to look for - -

24 I think everybody will agree that we have
25

1 the killing of another.

2 That's one element there doesn't seem to be a
3 problem with.

4 Eddie Heaton died.

5 There is no contention that this defendant
6 did kill him. So, we have the killing of
7 another.

8 What we have to look for is malice aforethought.

9 What is malice?

10 I told you it was an ill will toward somebody.
11 It's a heart bent on depravity.

12 And, you can show malice by an expressed
13 intent to kill, or, you can infer it from the
14 circumstances.

15 Did the person use a deadly weapon; did he
16 have a recklessness toward the person.

17 Now, what was this defendant's behavior on
18 the night of this death?

19 Witnesses told you - - several witnesses told
20 you - - that Tim Phillips who did testify here - -
21 that he was so drunk that he had passed out on the
22 couch. He himself told you that he never had a
23 problem with this defendant, never had an argument
24 with this defendant, and, yet, while he is passed
25 out on the couch, this defendant jumps on him and

1 beats him.

2 People come in and find him doing this.

3 He says his teeth are broken, his eyes are
4 black, he's bleeding - - never having had a
5 problem with this defendant.

6 That's evidence of what his mental state was
7 that night, how he was behaving, how he was
8 acting.

9 Witnesses also tell you - - Mark Evans tells
10 you, I had a problem with him.

11 When I came in and found this I told him why
12 don't you jump on me like that; I'm not passed
13 out.

14 And, what does he do?

15 Then the two of them get into an altercation - -
16 not a physical altercation - - but, he wants to
17 argue, he wants to fight.

18 Mark says I backed off, John told me to back
19 off.

20 That's more information about what the
21 defendant's mental state was that night - -
22 whether he was forming malice.

23 Witnesses tell you people actually started
24 leaving the party because of the way this defendant
25 was behaving. Picking fights, harassing people.

1 A man by the name of Moby Griffin had a
2 problem with him. They got into some kind of
3 altercation on the porch and that's when Eddie
4 Heaton came up.

5 Again, more evidence of what he was thinking,
6 what his mental state was.

7 And then last we have Eddie Heaton.

8 Now everyone testifies that Eddie Heaton
9 didn't even arrive at this party until about
10 one o'clock. He worked until after twelve.

11 Joyce Smith tells you that she goes by the
12 place he worked about 12:30 and he's still there,
13 so, he doesn't even get there until about one
14 o'clock or after.

15 And, how quick is this altercation with this
16 defendant?

17 It's immediate.

18 He doesn't even have time to get into the
19 trailer.

20 This defendant starts in on his wife.

21 Some witnesses say he calls her a bitch, and
22 what does Eddie do?

23 He'd had enough and he hits him.

24 He doesn't fight. The testimony of the
25 defendant is that he hit him one time. Don't

1 talk to my wife that way.

2 That is four separate altercations with this
3 defendant in one night.

4 John Smith also tells you that this defendant
5 was asked to leave the party two different times
6 at least.

7 First of all, he's told listen, just get in
8 your car and go home; we don't want any trouble.

9 And, what does the defendant say? I'm too
10 drunk to drive.

11 Now, that's important, because he tells them
12 I can't leave; I'm too drunk to drive, and then he
13 goes home and he tells you that he's coming back
14 to get his car to drive it home.

15 But, he won't leave the party initially
16 because he feels like he's too intoxicated.

17 The party goers are actually forced to send
18 for his wife some twenty minutes away to come get
19 him.

20 And, finally, the person whose birthday it is
21 has to put him in the car - - by his own statement
22 load him up and put him in the car - - and take
23 him home because they don't want any trouble.

24 Mr. Sires is right; this wasn't a tea party.
25 He was causing enough problems for these individuals

1 that they felt it necessary that they had to take
2 him home.

3 And, let's look at what he says. What does
4 he tell Eddie Heaton when Eddie hits him?

5 He admits to telling him I'm not going to let
6 that go. That's what he admits to.

7 I'm not going to let that go.

8 What do the witnesses hear him say?

9 You are a marked man.

10 Expressed actual intent? Malice?

11 That's malice in and of itself.

12 But, let's look at what he tells John Smith
13 on the way home. John says on several occasions
14 he says I'm going home, getting a gun and coming
15 back and kill him.

16 Several times he says that on the way back.

17 I'm going to kill him.

18 That's malice.

19 When he walks up to the crowd and he does
20 have a gun, what does he say?

21 Which one of you wants to be first.

22 And, what does he tell the people in the
23 trailer?

24 I love you like a brother, but, if you
25 testify, I'll kill you, too.

1 I told you I was going to kill him. I told
2 you I was coming back. Do you want to die?

3 He hears his wife screaming - - do you want
4 to die.

5 He tells Mark and John you're next.

6 Ladies and gentlemen, that's the best
7 evidence of malice you can have when somebody
8 tells you that they're going to kill somebody - -
9 when somebody tells you I was going to kill
10 somebody, that's malice.

11 Aforethought. Aforethought simply means
12 that that malice has to be present at some point
13 before the death and it can be before the death
14 as quickly as the time that it takes to pull the
15 trigger.

16 But, we know in this case that that malice
17 was present at least forty minutes before Eddie
18 Heaton died.

19 You're a marked man. I'm coming back.

20 Keep in mind these threats. This evidence
21 of malice doesn't come from one person. It comes
22 from several people who testified. Several
23 people heard him say you're a marked man.

24 Other people that heard the threats.

25 That's what murder is - the killing of

1 another with malice aforethought.

2 Now, let's look at manslaughter. That's
3 another option you have.

4 The killing of another. Here we have that,
5 the killing of another.

6 No malice aforethought.

7 Okay, that means that those things weren't
8 present. Expressed intent to kill wasn't
9 present.

10 Look at number three, the killing must be
11 committed during the heat of passion.

12 Manslaughter is normally used when someone
13 hits you and you lose control. You react in a
14 way that you can't handle it and you strike back.
15 Immediate. Heat of passion.

16 I didn't have time to think; I was so enraged- -
17 No time to cool off.

18 In order for it to be manslaughter, there is
19 no cool down time.

20 Manslaughter is an immediate reaction.

21 You have to decide whether there was too much
22 cool down time here.

23 Now, even by the defense's testimony, Mr.
24 Crowe has over an hour between the time he was hit
25 and the time that he actually fired the shot.

1 It was at least forty minutes.

2 In order to find manslaughter, you have to
3 find he did not have sufficient time to cool down
4 before it happened, and the act must inflame the
5 ordinary person.

6 An ordinary person would have been that
7 enraged.

8 Now, we are not going to get into number
9 four, words alone are not enough, because the
10 testimony does show that the victim probably hit
11 him.

12 So, the question is in order to find manslaughter,
13 do you not believe there was an expressed intent
14 to kill? Do you think there was enough cool down
15 time? Or, too much cool down time.

16 Now, if you find that this defendant killed
17 another but he did not have that expressed intent
18 to kill - - he killed him in the heat of passion,
19 that he didn't have enough time to cool down after
20 being hit, then you would find him guilty of
21 manslaughter.

22 The important thing to remember is that if
23 you find malice - - if you find that he had an
24 intent to kill - - that he expressed that intent
25 to kill - - it's murder - - regardless of

1 whether there was heat of passion.

2 Think of that, ladies and gentlemen, whether
3 or not there was actually heat of passion. Think
4 about the drive back to his home.

5 This is not a person who is not thinking
6 rationally. This is not a person who is so
7 enraged that he can't even think.

8 He's actually planning this. He is telling
9 the person next to him not only I'm coming back to
10 kill him; he's telling him if you testify, I'll
11 kill you.

12 Not only has he thought past the act he's
13 going to do, he's thought past the consequences.

14 By his own testimony, he has to go out to the
15 well house to get this gun. He's planning what
16 he's going to do.

17 He's not somebody who is enraged and can't
18 control himself.

19 What the defense does is they decide well,
20 let's not think about these things. Let's not
21 think about these elements; let's forget this.

22 Let's concentrate on trying to not keep
23 everybody's eye on the ball.

24 Let's talk about all these other things that
25 were going on.

1 You hear a lot about self defense.

2 Now, self defense is a complete defense.

3 That means that if this person acted in self
4 defense then he's not guilty.

5 But, look what happens for self defense.

6 The defendant must be without fault in
7 bringing on the difficulty.

8 He can't be at fault.

9 Look at the behavior of the parties. Four
10 separate altercations that we know of. People
11 leaving the party, him being asked to leave
12 several times.

13 Is he without fault in bringing on this
14 difficulty?

15 He has to be taken away from the party and
16 told not to come back. Taken home.

17 Is he without fault?

18 Not only does he come back after being taken
19 away and being told not to come back, but, he
20 brings with him a shotgun.

21 Is he without fault?

22 He walks into a crowd of people.

23 Now, ladies and gentlemen, even by the
24 defendant's own testimony he's walking along the
25 driveway and there's a crowd of people. He gets

1 within four feet of this defendant, and this is a
2 circular driveway.

3 He has to leave that driveway and walk toward
4 these people.

5 He's within four feet of the victim when he
6 shoots him.

7 He doesn't just walk past him.

8 Witnesses even say that he actually walked
9 past him and turns around and comes back.

10 Is he without fault?

11 What does he say?

12 Which one of you wants to be first.

13 He tells you this isn't my fault; I am
14 without fault in bringing this on; I had nothing
15 to do with this. I was placed in a position
16 where I had to defend myself.

17 The facts don't show that.

18 If one of these is not present, there's no
19 self defense.

20 He tells you I was going to get my car.
21 That's why I was back there; I was going to get my
22 car.

23 Ladies and gentlemen, there are two driveways.
24 It's been very clear.

25 Even the defendant's wife, Charlotte Crowe,

1 said that that driveway was open.

2 He was parked there.

3 But, I've got to go get my car. I was
4 afraid it would be vandalized. And, you've seen
5 the pictures. Look at the car. There are a few
6 flecks of paint off the back right part of the
7 car. That's the vandalism that occurred.

8 These people that were so angry at him
9 managed to chip a few pieces of paint off. That
10 was his testimony.

11 He never had to go past these people.

12 Even if he wanted to get the car, all he had
13 to do was up that second driveway, get in the car
14 and drive away.

15 And, why not just let Charlotte go get the
16 car?

17 She had already been there one time.

18 By her own testimony, she had gone down there
19 by herself. Nobody bothered her.

20 If he's so afraid of these people, why not
21 just drop her off and let her drive that car home?

22 Nobody was going to bother her.

23 The fact of the matter is, ladies and
24 gentlemen, he went back to that party. He was at
25 fault.

1 If you don't believe anything else, when he
2 ~~made~~ the decision to go back with that shotgun, he
3 was at fault.

4 The second part of this is that he had to
5 believe that he was in imminent danger of losing
6 his life or sustaining serious bodily injury.

7 Well, what does he tell you?

8 His own testimony is he walks through this
9 crowd with a shotgun - - or passes this crowd with
10 a shotgun and he hears yelling, but, he didn't
11 know what they were saying.

12 He walks past these people with a shotgun and
13 he wonders why people are yelling - - after he's
14 already threatened to come back and kill somebody.

15 He said I heard yelling but I really didn't
16 know what they were saying.

17 Then he said Eddie Heaton took a step toward
18 me if that.

19 But, all of a sudden he's within four feet of
20 Eddie Heaton. How's that?

21 And, what does the man from SLED tell you
22 about the gun powder residue?

23 Eddie Heaton is trying to block a shot with
24 his hand.

25 He says he reached across his body.

1 Well, ladies and gentlemen, the testimony is
2 the gun's back here.

3 The testimony of the defendant is that he
4 reached across his body.

5 What is he doing reaching across his body
6 when the gun is back here?

7 And he tells you I saw a gun, but, he never
8 tells that to the police. He never tells the
9 police that he saw a gun.

10 He goes back to the party with a shotgun
11 after threatening the life of Eddie Heaton and
12 tells you I was in fear of my life.

13 If he was in fear of his life, he should have
14 stayed home.

15 But, then you've got to get past number
16 three, a reasonably prudent man of ordinary
17 firmness and courage would have believed their
18 life in danger.

19 Not only did this person have to do it, but,
20 an ordinary person in his situation would have to
21 do it - - walking past a group of people with a
22 shotgun.

23 He never said Eddie Heaton pulled that gun
24 out. He says he just reaches across his body and
25 he takes a step.

1 An ordinary person would have to believe it
2 was necessary for him to kill Eddie Heaton.

3 And, finally, the defendant had no other
4 means of avoiding this than to act as he did.

5 Why just not go back? Why not just go the
6 other direction to get your car.

7 He had no other means of avoiding this - -
8 than to go down there with that shotgun and kill
9 Eddie Heaton.

10 Ladies and gentlemen, none of these are
11 present. But, all four have to be present for
12 self defense.

13 The State has disproved this.

14 So, I think we have established that there is
15 no self defense here.

16 I think that we have established that there
17 is way too much cool down time and that there is
18 expressed malice, expressed intent to kill.

19 But, see, we are not finished because there
20 is much more smoke.

21 Everybody wants your eye off the ball.

22 So, this is what I call a let's make a deal
23 defense.

24 If you don't believe this, I've got another
25 one for you.

1 So, let's start with this. The first one is
2 Eddie had a gun. Eddie had a gun. It must be
3 self defense.

4 Remember Sonny never says in his statement
5 that he saw a gun. He never says he saw a gun.

6 Ladies and gentlemen, I want you to think
7 back. This is a man who has been threatened,
8 whom this defendant has told you're marked, who
9 has been told by another individual Eddie is
10 coming back to kill you.

11 Is it unreasonable that he would have a gun
12 in the back of his pants?

13 Mr. Sires talked so much about the rights
14 of someone to defend themselves.

15 Is it unreasonable that he would have got a
16 gun to put back there?

17 And, let's look at the gun. The gun was
18 turned in by his family.

19 John Smith, his brother-in-law, tells
20 Deputy Sheriff, I've got a gun in the front seat
21 of my truck and tells them where it was and where
22 they found it.

23 There is not one shell casing found and the
24 SLED officer told you that there would have been
25 the ejection of a shell casing if that gun had

1 been fired.

2 Not one person testified that Eddie Heaton
3 ever drew that gun or fired that gun.

4 Is it reasonable to you that the family of
5 this victim would turn over the gun and hide shell
6 casings?

7 They would have gotten rid of all of it.

8 The real problem in this situation was not
9 that Eddie Heaton had a gun.

10 In hindsight he should have been more ready
11 for what was going to happen.

12 Then we look at the gunshot residue test.
13 There is no gunshot residue on Eddie Heaton's
14 right hand and there is no doubt that he was right
15 handed.

16 The officer from SLED tells you that had he
17 fired a gun, it should be on the backs of the
18 hands. Nothing there.

19 The only place there is any residue is on the
20 left palm, and, what did he tell you?

21 That is consistent with a defensive wound.
22 We see that a lot.

23 When somebody starts to shoot, somebody
24 sticks their hand up.

25 And, it's consistent. This defendant is

1 within four feet of him when he shoots him, and
2 then he grabs his stomach.

3 All witnesses said with the left hand.

4 Then we have behind door number three, there
5 are shots going off around him.

6 Well, no kidding!

7 But, remember that no one hears anything - -
8 any shot prior to the defendant.

9 They hear he's got a gun, he's back, he's got
10 a gun, which one of you wants to be first.

11 Even the defendant himself never said that
12 anybody ever shot at him first.

13 He said he heard the shots as he was running
14 away.

15 Now, James Smith comes up here and he admits
16 yeah, I shot at him.

17 There was a revolver out there, I got it and
18 I shot at him.

19 Those shots are irrelevant. They were fired
20 after Eddie Heaton was shot.

21 Another thing that is so important - -
22 Mr. Sires told you that there were so many guns
23 out there. But, in this defendant's statement he
24 never talks about it.

25 He never says there were guns out there; I

1 knew there were guns out there and I had to go for
2 my gun.

3 That would be something pretty important to
4 mention twenty-four hours after the killing of
5 somebody in self defense.

6 Behind door number four we have this was
7 Eddie's fault. He should have left.

8 He didn't have the right to stay at his
9 brother-in-law's party; he should have left.

10 He should have anticipated that this defendant
11 was capable of doing this.

12 We hear a lot about the witnesses. One of
13 the witnesses had a prior record for tampering
14 with a water meter.

15 Ladies and gentlemen, the State didn't choose
16 these witnesses; the defendant chose them because
17 he was at the party.

18 We hear a lot about drugs. There were a lot
19 of drugs there that night. Methamphetamine,
20 crank.

21 Nobody ever mentioned that in their statements.

22 We hear from Charlotte Crowe. Eddie was
23 drinking when I got there.

24 Look at the toxicology report from the
25 autopsy. Negative for alcohol, negative for

1 drugs of any kind.

2 The defense says he only had one shot in that
3 shotgun. Well, ladies and gentlemen, that's all
4 he needed.

5 There's also a picture from the autopsy which
6 will show you what was taken out of this victim's
7 body.

8 Four feet from him. These things were all
9 taken out of that body.

10 A lot of damage is done by one shot.

11 And, he tells you I didn't know that gun was
12 loaded.

13 Is that reasonable?

14 I'm taking a gun to protect myself, but, I
15 didn't know that it was loaded.

16 Look at the pictures.

17 The defendant tells you behind door number
18 eight that this is not really my fault because
19 they waited for fifteen or twenty minutes before
20 they even left with him.

21 By his own testimony it's twenty minutes to
22 the hospital.

23 His wife and Richard Wright managed to get
24 him to the hospital in eleven minutes from the
25 time of the 911 call.

1 Lynn Enright tells you I was on the phone
2 when he hit the ground.

3 Eleven minutes - - they get him to the
4 hospital.

5 SIRES:

6 Your Honor, I hate to interrupt, but, - -
7 She asked that question but - - -

8 COURT:

9 No, sir, overruled, sir. Just have a seat.

10 CHAPPELL:

11 Behind door number nine we have well, we
12 don't trust the sheriff's department, and, why?

13 Charlotte Crowe tells us I couldn't tell them
14 about the drugs because I didn't trust them.

15 Sonny Crowe says well, I told Deputy Sheriff
16 about the gun; he just didn't put it in the
17 statement.

18 It's their fault.

19 And then the defense says well, the State
20 didn't call everybody on the list.

21 But, look at the two people that we didn't
22 call that they called.

23 We didn't call them because they didn't have
24 anything extra to say.

25 Tim Phillips tells you exactly what the
testimony is and he doesn't tell you that

1 he has time to run around the trailer back into
2 the woods.

3 He told you from the time he heard Sonny's
4 back, he had time to run from that chair to those
5 light switches before he heard the shot.

6 He also tells you I never had any trouble
7 with him.

8 Never had any trouble with somebody.

9 What does Lynn Enright tell you?

10 The same thing our other witnesses do.

11 She saw the shooting. She saw Sonny Crowe level
12 the gun down. She never saw Eddie approach him
13 in any aggressive way.

14 The scenario basically is this - - nobody
15 understands this defendant. He didn't have any
16 altercation with Tim Phillips. He never hit him.
17 He never caused any problems that night. He was
18 just minding his own business and wrongfully
19 evicted from this party and he asked somebody to
20 take him home.

21 He never threatened anybody. He was driven
22 all the way home. He very calmly got out of the
23 car, went home and slept an hour before asking his
24 wife to bring him back.

25 He gets a shotgun. Tries to walk by a

1 group of people who now are going to brush him
2 with a shotgun, and he is forced to take the life
3 of this individual, and he is so upset by it and
4 so hysterical by it and so distraught by the fact
5 that they didn't get this guy to the hospital that
6 he has to go back into the home of these people
7 and lay the gun down and was unmercifully beaten
8 by them.

9 I told you, ladies and gentlemen, not to
10 leave your common sense behind you, because, what
11 the truth is is that this defendant was drunk, he
12 was hard to control; he beat a kid that was passed
13 out on the couch; he had problems with several
14 people there.

15 We know of four altercations. Within five
16 minutes of an arrival of Sherry and Eddie Heaton
17 he was already calling her names.

18 And, you know what the difference is, ladies
19 and gentlemen, everybody that night had stepped
20 around him.

21 When he beat up Tim Phillips, what did they
22 do?

23 They took Tim Phillips to another room.

24 What does John Smith tell Mark Evans?

25 Let's not cause any problems, just leave

1 Sonny alone.

2 What does Moby Griffin do?

3 All right, - - All right,

4 He didn't back down. Eddie Heaton wasn't
5 going to let him talk to his wife that way, and
6 that's what set Sonny Crowe off.

7 But, you see he didn't want to fight Eddie.
8 You're marked.

9 So, he tells a friend on the way back I'm
10 going to kill him. I'm coming back and I'm going
11 to kill him, and, if you testify, I'll kill you.

12 He gets home and he gets the shotgun. He
13 comes back to the party. He walks past the group
14 to make sure that Eddie is there and he turns
15 around and comes toward him with the shotgun.

16 Which one of you wants to be first - -
17 he already knows.

18 He walks within four feet of his victim and
19 shoots him in the chest, and for that moment Sonny
20 Crowe was as good as his word.

21 But now he's got loose ends. He thinks
22 about it. What's he going to do now, and, darn,
23 this is easy. These people already know he's
24 capable of this, so, he goes ~~back~~ into the trailer
25 and he asks John Smith do you want to die.

1 I love you like a brother, but, I promised
2 you that I would come back and kill him, and I'll
3 kill you, too.

4 He goes after his wife. Do you want to die.

5 It takes two men taking doors off hinges,
6 beating him with the stock of a gun, using a
7 vacuum cleaner to hold him down to get him to the
8 point to where they can control him enough to wait
9 for the sheriff's department.

10 In all this there is one witness that you
11 didn't hear from.

12 You see, that's the beauty of a murder case.
13 The person that knows the most about it can't tell
14 you.

15 But, other people can tell you. SLED agents
16 can tell you and deputies can tell you. Statements
17 can tell you what happened.

18 Eddie cannot come before you and tell you
19 this isn't true. You're the only one that can
20 say that.

21 There were several witnesses on the stand
22 that said something that kept ringing in my ears.
23 They said he never had a chance.

24 Two or three witnesses said - - I asked them
25 did he ever get a gun, did you ever see - -

1 He never had a chance.

2 You can't change that, but, you can do
3 something about it, because, you see the story is
4 not over. You get to write the end of it.

5 I'm asking you - - the family of Eddie Heaton
6 is asking you to write the ending to this story
7 that speaks the truth - - that he was murdered by
8 this defendant.

9 Thank you.

10 CHARGE TO THE JURY:

11 All right, Mr. Foreman, and members of the
12 jury, the State of South Carolina charges the
13 defendant, one Daniel Lewis Crowe, with the
14 offense of murder.

15 The indictment has been explained to you, so,
16 I will not repeat the allegations contained in it.
17 You will have it in your jury room during your
18 deliberations.

19 Now, to this indictment the defendant has
20 pleaded not guilty which places upon the State the
21 burden of proving the defendant guilty.

22 A person charged with committing a criminal
23 offense in South Carolina is never required to
24 prove himself innocent. I charge you that it is
25 a vital, important rule of the law of evidence

1 that a defendant in a criminal trial no matter how
2 great or serious may be the offense with which he
3 is charged, must always be presumed innocent until
4 his guilt has been proven beyond a reasonable
5 doubt.

6 Now, this presumption of innocence remains
7 with the defendant at all times, from the moment
8 of his arraignment, throughout the trial and until
9 the jury has upon the testimony and evidence
10 presented reached a verdict of guilty beyond a
11 reasonable doubt, for it is the solemn duty of the
12 jury if not clearly convinced of his guilt beyond
13 every reasonable doubt to the contrary to acquit
14 the defendant.

15 So, the burden of proof is upon the state to
16 establish by evidence to your satisfaction guilt
17 beyond a reasonable doubt of the defendant here on
18 trial for the crime of murder.

19 Now, ladies and gentlemen, I will now define
20 reasonable doubt to you.

21 The State has the burden of proving the
22 defendant guilty beyond a reasonable doubt as I've
23 said.

24 Some of you may have served as jurors in
25 civil cases where you were told that it was only

1 necessary to prove that a fact is more likely true
2 than not. In criminal cases the State's proof
3 must be more powerful than that. It must be
4 beyond every reasonable doubt.

5 Proof beyond a reasonable doubt is proof that
6 leaves you firmly convinced of the defendant's
7 guilt.

8 There are two things in this world that we
9 know with absolute certainty, and, in criminal
10 cases the law does not require proof that overcomes
11 every possible doubt.

12 If based upon your consideration of the
13 evidence you are firmly convinced that the
14 defendant is guilty of the crime charged, you must
15 find him guilty.

16 If on the other hand you think there is a
17 possibility that he is not guilty, you must give
18 him the benefit of the doubt and find him not
19 guilty.

20 Now, Mr. Foreman, and members of the jury,
21 under the constitution and laws of South Carolina
22 you are the finders of the facts in this case.
23 I do not have the right to pass upon the facts or
24 even to express any opinion that I might have as
25 to them. Nor, may I intimate in any way what

1 I may think about the guilt or innocence of the
2 defendant.

3 You are also the judges, and the sole judges,
4 of the credibility, the believability of the
5 witnesses who have testified in this case.

6 In passing upon that credibility you may take
7 into consideration many things such as the
8 appearance and manner of the witness on the stand
9 sometimes referred to as the demeanor of the
10 witness, was a witness forthright or hesitant,
11 was the witness' testimony consistent or did it
12 contain discrepancies, what was the ability of the
13 witness to know the facts about which he or she
14 testified, did the witness have a cause or reason
15 to be biased or prejudiced in favor of a testimony
16 he or she gave, was the testimony of a witness
17 corroborated or made stronger by other testimony
18 and evidence or was it made weaker or impeached by
19 such other testimony and evidence.

20 As jurors you have the right to believe a
21 small portion of a witness' testimony and discard
22 the larger, or, vice versa, you may believe all of
23 a witness' testimony or none.

24 You may believe the testimony of a single
25 witness against that of many witnesses, or, the

1 other way around. Most certainly you do not
2 determine the matter of credibility or believability
3 by counting up the number of witnesses who have
4 testified on behalf of the parties.

5 Throughout this entire process you have but
6 one single objective and that is to seek the truth
7 regardless of from what witness the testimony
8 may have come.

9 All these things you will consider bearing in
10 mind that you should give the defendant the
11 benefit of every reasonable doubt.

12 Now, by the same constitution and law which
13 makes you the finders of the facts and evidence as
14 I discussed with you, I am as the judge made the
15 sole and only instructor of the law.

16 You must accept as correct the law which I
17 charge and apply it to the evidence as you find it
18 and reach your verdict.

19 If I should make an error in the law as I
20 instruct it to you, there is another time and
21 place and another court in which the error can be
22 considered, and, if necessary, corrected.

23 But, for the purposes of this case today you
24 must accept the law as I charge it to you to be
25 the correct law.

1 And, finally I charge you in that regard that
2 you, nor for that matter I, should not be concerned
3 about what the law ought to be but rather what I
4 charge you the law to be.

5 As I've indicated to you, and, you are well
6 aware, the State has charged in this indictment
7 that the defendant is guilty of the crime of
8 murder, so, it would be necessary for me to
9 instruct you the law of that crime in South
10 Carolina.

11 Now, under the principle recognized in
12 South Carolina that a greater crime includes the
13 lesser, this indictment includes not only the
14 charge of murder, but, also the charge of voluntary
15 manslaughter, so, I must also charge you as to
16 that crime as well.

17 Now, what is murder by definition?

18 Murder may be defined as the wilful, felonious
19 killing of a human being by a human being with
20 malice aforethought.

21 Now that malice be either expressed malice
22 or inferred malice - -

23 Now, what is voluntary manslaughter by
24 definition?

25 Voluntary manslaughter may be defined as the

1 felonious killing of a human being by a human
2 being without malice in sudden heat and passion
3 upon a sufficient legal provocation.

4 So, you see the difference between murder and
5 voluntary manslaughter is in the presence or
6 absence of malice, malice being present in murder,
7 but not present in manslaughter.

8 Now, what is malice?

9 Malice is a word suggesting wickedness,
10 hatred and determination to do what one knows to
11 be wrong without just cause or excuse or legal
12 provocation.

13 Malice need not be in the mind of the one
14 doing the killing any particular length of time
15 before the act of killing in order to render the
16 killing murder. If it is present in the mind of
17 the one doing the killing any length of time
18 before the act, then its presence would be
19 sufficient to render the killing murder.

20 Malice is said to be expressed where there is
21 manifested a violent, deliberate intention
22 unlawfully to take away the life of another human
23 being. Malice may be inferred where one intentionally
24 and deliberately does an unlawful act which he or
25 she then knows to be wrong and in violation of his

1 duty to another and where no excuse or legal
2 provocation appears and when the circumstances
3 attending a killing show an abandoned heart, a
4 malignant heart fatally bent upon mischief.

5 If the evidence should show under what
6 circumstances a shot was fired, or a blow delivered
7 which took the life of another, then you the jury
8 would have to determine whether under such
9 circumstances that act was malicious or not.

10 Malice may be inferred from the use of a
11 deadly weapon such as a pistol.

12 Now, the law, ladies and gentlemen, recognizes
13 the right of every person to defend himself from
14 death or serious bodily harm, and, to do this he
15 may use such force as is necessary even to the
16 point of taking human life. In other words, self
17 defense is a complete defense and entitles one
18 charged with unlawful homicide to an acquittal if
19 the legal elements of the plea of self defense are
20 shown to your satisfaction by the evidence.

21 Now, the right of self defense rests upon
22 necessity, either actual or reasonable appearance.

23 In order to establish a plea of self defense
24 in a homicide case the jury must be satisfied of
25 four things: First, that the defendant was not at

1 fault in bringing about the immediate difficulty
2 or the necessity for his taking the human life.
3 Obviously, one cannot through his own fault bring
4 on a difficulty and then claim the defense of self
5 defense.

6 Second, at the time the defendant fired the
7 fatal shot, he believes in good faith that he was
8 in imminent danger of losing his life or sustaining
9 serious bodily injury. Imminent means immediate,
10 not past or future, but, present.

11 Third, that such belief was reasonable and
12 that a reasonable, prudent and careful man, a man
13 of ordinary firmness and courage situated in like
14 circumstances would have reached a similar
15 conclusion.

16 Fourth, where both the deceased and the
17 defendant are on common ground, that is, they both
18 have a right to be, then it must be shown that the
19 defendant had no other reasonable, safe, adequate
20 or obvious means of escape or way of avoiding the
21 danger of losing his life or sustaining serious
22 bodily harm except to act as he did.

23 Now, if the person assaulted, being himself
24 without fault, and that is meant legal fault,
25 reasonably apprehends death or serious bodily

1 harm unless he kills his assailant, the killing is
2 excusable and the accused is entitled to be
3 acquitted. The party attacked is the judge of
4 his own peril and can act safely upon the appearance,
5 facts and circumstances surrounding him at the
6 time, and the situation should be determined from
7 the standpoint of the defendant. It being for
8 you the jury to say whether or not his apprehension
9 of immediate danger or death, or of serious bodily
10 harm was reasonable and would have been felt by a
11 man of ordinary reason and firmness.

12 Now, whether there was such a reasonable
13 appearance and danger as would justify the killing
14 is a question of fact for you the jury.

15 In making your deliberations you should
16 consider the condition of both parties. If the
17 appearance to the defendant at the time the fatal
18 shot was fired was such that he should not
19 reasonably and safely avoid the taking of the life
20 of the deceased, and a man of ordinary reason and
21 courage would have arrived at such a condition,
22 then it is not necessary for him to go any further
23 and he should be acquitted if he is freed from
24 fault in bringing on the immediate difficulty.

25 Now, one has the right to use force in

1 repelling force or in protecting himself, and he
2 cannot be required to make a nice calculation as
3 to the degree or quantity or amount of force which
4 may be necessary for his complete protection from
5 loss of his life or serious bodily harm to
6 himself.

7 Now, where the defendant sets up as here the
8 plea of self defense and undertakes to present a
9 case of apparent danger which is honestly believed
10 in as a defense, the jury should do justice to the
11 accused, consider all his surrounding circumstances
12 and facts calculated to influence motive.

13 If you have a reasonable doubt that the
14 defendant is guilty after considering all of the
15 evidence including the evidence of self defense,
16 then you must find him not guilty.

17 On the other hand, if you have no reasonable
18 doubt as to the defendant's guilt, after considering
19 all of the evidence, including the evidence of
20 self defense, then you must find him guilty.

21 The burden is not upon the defendant to prove
22 self defense; the State must prove the absence of
23 self defense.

24 Now, ladies and gentlemen, I charge you that
25 voluntary intoxication is never an excuse for a

1 defense to a crime regardless whether the crime is
2 one involving general or specific intent. A
3 person who voluntarily renders himself intoxicated
4 is no less responsible for his acts while in such
5 condition. If one voluntarily drinks intoxicating
6 liquors, wine or beer and becomes intoxicated to
7 any degree, and while in that condition commits an
8 act which would be a crime if it had been committed
9 by a sober person, the fact of drunkenness would
10 not relieve an intoxicated person from responsibility
11 where it has not produced permanent insanity.

12 Now, ladies and gentlemen, there are two
13 types of evidence which are generally presented
14 during a trial, direct evidence and circumstantial
15 evidence.

16 Direct evidence is the testimony of a person
17 who asserts or claims to have actual knowledge of
18 a fact such as an eyewitness.

19 Circumstantial evidence is proof of a chain
20 of facts and circumstances indicating the existence
21 of a fact.

22 The law makes absolutely no distinction
23 between the weight or value to be given to either
24 direct or circumstantial evidence, nor, is a
25 greater degree of certainty required of circumstantial

1 evidence than of direct evidence. You should
2 weigh all of the evidence in the case.

3 After weighing all the evidence if you are
4 not convinced of the guilt of the defendant beyond
5 a reasonable doubt, then you must find the
6 defendant not guilty.

7 Now, ladies and gentlemen, there was certain
8 testimony brought out relative to prior convictions
9 of the defendant. These convictions were for
10 crimes which carry a possible sentence of more
11 than one year - - for a conviction I believe it
12 was. I instruct you that such testimony is not
13 evidence of guilt of any of the matters contained
14 in this indictment. The testimonies only eluded - -
15 The testimony is only allowed for the purpose of
16 attempting to reflect upon the credibility or
17 believability of the defendant as a witness.

18 It is to be given only such weight in that
19 regard as you feel it should have.

20 Now, ladies and gentlemen, if you should find
21 the defendant guilty, and there is a reasonable
22 doubt as to whether he is guilty of murder or
23 guilty of voluntary manslaughter, you should give
24 him the benefit of that doubt and find him guilty
25 of the lesser offense of voluntary manslaughter.

1 But, you should not convict him of either
2 voluntary manslaughter or murder unless his guilt
3 has been established beyond a reasonable doubt.

4 Now, ladies and gentlemen, I have in my hand,
5 Mr. Foreman, a verdict form, and, please pay no
6 attention to the order in which they are listed.

7 In fact, I didn't list them; my clerk listed
8 them, so, it means nothing - - the order of the
9 listing means nothing.

10 You also have a place on the back to write
11 the verdict.

12 But, I gave you this form so that it would be
13 a little easier.

14 The first verdict we have listed is we find
15 the defendant guilty of murder.

16 If, depending upon your view of the evidence
17 you would circle that.

18 Number two is we find the defendant guilty of
19 voluntary manslaughter. If that's your verdict,
20 you would circle number two.

21 And, the last one I've got listed, we find
22 the defendant not guilty.

23 If that be your verdict, you would circle
24 number three.

25

1 Once you have reached a verdict, Mr. Foreman,
2 you would simply circle one of these numbers and
3 sign your name as foreman and date it.

4 Now, ladies and gentlemen, let me caution you
5 this - - that your verdict must be unanimous.
6 That is, each of you and all of you must agree.
7 All twelve of you must agree before you reach a
8 verdict in this case.

9 Now, Ms. Alternate, I certainly thank you for
10 your service on this case, but, it wasn't necessary
11 for you to move to the jury because no one got
12 sick or had to leave the jury, but, I thank you
13 for your service and you may have a seat if you
14 would in the courtroom.

15 (Alternate dismissed and instructed as to
16 time to return for service)

17 Now, ladies and gentlemen, just one more
18 thing before I send you to the jury room - -
19 You have been selected as fair and impartial
20 jurors sworn to impartially try and determine the
21 facts of this case, and, when you comply with your
22 oath to do so, then no one will have a right to
23 criticize your verdict and you will have fully
24 discharged your duty as jurors. You should not
25 be influenced by opinions, or expressions of

1 opinions, if any, which you may have heard on the
2 outside. But, you are to decide this case
3 according to the testimony that you have heard
4 from the lips of the sworn witnesses along with
5 the other evidence introduced.

6 Now, ladies and gentlemen, I'm going to ask
7 that you go to your jury room at this time, but,
8 do not begin your discussions at this point.

9 You'll have plenty of time to talk about the
10 case.

11 The attorneys in this case may have some
12 additional instructions they want me to give you.
13 I must consider that before you can start your
14 discussions.

15 Now, when the bailiff brings you the indictment
16 and the verdict form and the exhibits, then you
17 may start your discussions, but, not before.

18 Mr. Bailiff, - -

19 (The following took place outside the
20 presence of the jury)

21 COURT:

22 Anything from the State?

23 CHAPPELL:

24 Nothing from the State, Your Honor.

25 COURT:

From the defense?

1 SIRES:

2 Your Honor, I think that I had requested in
3 chambers earlier that there be a charge of
4 involuntary manslaughter. I think I furnished
5 the court with my request.

6 COURT:

7 Yes, sir.

8 That was denied.

9 SIRES:

10 Also, I would renew all of my motions made
11 previously as far as the self defense charge
12 and - - -

13 COURT:

14 All right, thank you, sir. Motion is
15 denied.

16 All right, Mr. Bailiff, come and get the
17 verdict form and indictment and exhibits and take
18 them to them if you would.

19 All right, we'll be in recess awaiting the
20 verdict.

21 (Jury begins deliberation at 11:00 A.M.)

22 (Jury returns to courtroom with verdict at
23 12:05 P.M. and the following took place)

24 COURT:

25 Mr. Foreman, have y'all reached a verdict?

1 FOREMAN:

2 Yes, we have.

3 COURT:

4 Will the clerk please - -

5 (Court reviews form of verdict)

6 CLERK:

7 97-GS-37-702, the State versus Daniel Lewis
8 Crowe, we find the defendant Daniel Lewis Crowe,
9 guilty of murder.

10 (General polling affirmative)

11 COURT:

12 Anything from the defendant before the jury
13 leaves?

14 SIRES:

15 Not at this time, Your Honor. We will make
16 the necessary motions.

17 COURT:

18 All right, sir, thank you very much.

19 (Jury dismissed)

20 COURT:

21 All right, bring the defendant around for
22 sentencing.

23 Anything you want to say before I sentence
24 you?

25 CROWE:

No, sir. My peers have rendered a verdict

1 and I have to abide by - - your discretion.

2 COURT:

3 All right, - -

4 Anything you want to say?

5 CHAPPELL:

6 Your Honor, I don't feel it's necessary for
7 the victim's family to speak in this situation.
8 I think the law is clear.

9 I do have this to say, Your Honor, - -
10 I have a prior certified conviction of manslaughter
11 in 1993; I have a notice of intent to seek life
12 without parole.

13 It is the State's contention that under the
14 statute 17-25-45 that there is no discretion in
15 this situation and that the defendant must be
16 sentenced to life without the possibility of
17 parole.

18 SIRES:

19 Your Honor, I would take exception to that
20 statute. I think it's unconstitutional. I
21 don't think it's been ruled on at this point.

22 I think it's truly cruel and unusual punishment
23 the way the statute was done and enacted because
24 you are punishing someone for something that is
25 not connected with this crime.

1 Sonny is, as you know, Your Honor, thirty-
2 nine years old and has two small children here.

3 I still think there's a serious question of
4 self defense - - which, of course, the jury ruled
5 against me, but, someday at sometime it will come
6 out that this is what happened.

7 The court is, of course, free to sentence
8 under the new statute. It's not an automatic
9 life as it used to be, and I would ask the court
10 to consider that.

11 COURT:

12 Thank you, sir.

13 Solicitor, I sentence him to life without
14 parole, is that what the sentence is, or just go
15 with life?

16 CHAPPELL:

17 Life without parole, Your Honor.

18 The statute also allows for life without
19 parole in the situation just based on this murder
20 alone, and we would, of course, contend that even
21 without this most serious offense statute that
22 this murder in and of itself would warrant life
23 without parole.

24 COURT:

25 Do you have a copy of the statute?

1 CHAPPELL:

2 I have a copy, Your Honor, of what your law
3 clerk gave me here.

4 COURT:

5 Let me see what it is.

6 He pled - - he was convicted of voluntary
7 manslaughter, is that it?

8 CHAPPELL:

9 Yes, Your Honor, he was convicted of
10 voluntary manslaughter on 11-16- 93.

11 COURT:

12 Under the statute I don't have any choice.
13 That's a most serious offense.

14 CHAPPELL:

15 Yes, Your Honor, - -

16 COURT:

17 All right, sir, you will be confined to the
18 State Department of Corrections for and during the
19 term of your natural life without parole, sir.

20 Good luck to you, sir.

21 CROWE:

22 Thank you, sir.

23 COURT:

24 Thank you.

25

-END-

CERTIFICATE

I, the undersigned, Evelyn C. Teague,
Official Court Reporter for the State of
South Carolina, do hereby certify that the
foregoing is a true, accurate and complete
Transcript of Record.

I do further certify that I am of no
interest to any party hereto.



3-17-99

WITNESSES

OCSD/SHERIFF

Mike Crenshaw

DOCKET NO. 97-GS-37-102

The State of South Carolina,

County of OCONEE

17,637

COURT OF GENERAL SESSIONS

JULY

TERM 1997

ARREST WARRANT NO. F415358

THE STATE

vs.

172

DANIEL LEWIS CROWE

ACTION OF GRAND JURY

Lois Gill

Jo S. Viking 7-23-97
Foreman of Grand Jury

GEORGE M. DUCWORTH, SOLICITOR

Indictment for Murder

16-3-20

(116)

VERDICT

416

Foreman of Petit Jury

Date:

417

WITNESSES

OCSD/SHERIFF

Mich. C...

ARREST WARRANT NO. F415358

ACTION OF GRAND JURY

2nd Bill

Jo S. Vickery 7-23-97
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 97-GS-37-702

The State of South Carolina,

County of OCONEE

17,637

COURT OF GENERAL SESSIONS

JULY

TERM 1997

THE STATE

vs.

172

DANIEL LEWIS CROWE

GEORGE M. DUCWORTH, SOLICITOR

Indictment for Murder

16-3-20

(116)

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

INDICTMENT FOR MURDER
16-3-20 (116)

At a Court of General Sessions, convened on JULY 23, 1997,
the Grand Jurors of OCONEE County present upon their oath:

COUNT ONE — MURDER

That DANIEL LEWIS CROWE
did in OCONEE County on or about JUNE 8, 1997,
feloniously, wilfully and with malice aforethought, kill one EDWARD HEATON
by means of SHOOTING HIM
and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

George M. Duworth
SOLICITOR

STATE OF SOUTH CAROLINA

VS

DANIEL LEWIS CROWE

COUNT NO: _____

CASE NO: 97

GS-37- 702

WARRANT NO: F415.358

CHARGE: Murder

The sentence of the Court is that DANIEL LEWIS CROWE, the defendant named in this indictment be confined to the State Board of Corrections/County Detention for a term of Natural life (months) (years)

(and) (or) pay a fine of \$ _____ : provided that upon the service of _____ (yr) (mt)

(and) (or) payment of \$ _____ plus (pay) (waive) cost and assessments as applicable*, the

balance is suspended and the defendant is placed on probation for _____ (months) (years).

RESTITUTION: (yes) (no)

PHYSICAL INJURY \$ _____

HEARING HELD OR WAIVED ON: _____

(and) (or)

PROPERTY DAMAGE \$ _____

PAYABLE TO CLERK FOR (VICTIM) _____

TOTAL \$ _____

SPECIAL CONDITIONS OF PROBATION AND/OR SENTENCE: _____

DATE: June 25, 1998

COST AND ASSESSMENTS:

FINE \$ _____

NON WAIVABLE \$ _____

NOT WAIVED \$ _____

TOTAL \$ _____

[Signature]
Presiding Judge

[Signature]
Clerk of Court

Date of Birth _____

Social Security _____

Drivers License _____

ATTORNEY FOR DEF: [Signature]

ADDRESS [Signature]

COPY RECEIVED BY: _____

Defendant

COURT REPORTER: E Teague

WHITE - Clerk

PINK - Detention

YELLOW - Probation Dept.

GOLD - Defendant's Copy

- Judge Gerald Smoak -

STATE OF SOUTH CAROLINA
In the Supreme Court

In the Original Jurisdiction

Daniel Crowe,

Petitioner,

v.

State of South Carolina,

Respondent.

Common Law Petition for a Writ of Certiorari

Elizabeth Franklin-Best
SC Appellate Law Group, LLC
Bar #72555
2725 Devine Street
Columbia, South Carolina 29205
elizabeth@franklinbestlaw.com

TABLE OF AUTHORITIES

Cases

<i>Austin v. State</i> , 305 S.C. 453, 409 S.E.2d 395 (1991)	10
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	1, 8, 9
<i>Brannon v. State</i> , 345 S.C. 437, 548 S.E.2d 866 (2001).....	10
<i>Crowe v. Warden of Perry Correctional Institution</i> , C/A 1:14-cv-3831-BHH (2016)	8
<i>Gibson v. State</i> , 334 S.C. 515, 514 S.E.2d 320 (1999).....	9
<i>In re Breast Implant Prod. Liab. Litig.</i> , 331 S.C. 540, 503 S.E. 2d 445 (1998)	8
<i>Michael T. Barnes v. State of South Carolina</i> , App. Case No. 2020-001360.	10
<i>Odom v. State</i> , 337 S.C. 256, 523 S.E.2d 753 (1999)	9
<i>State v. Crowe</i> , Op. No. 2000-MO-102.....	6
<i>State v. Pittman</i> , 373 S.C. 527, 647 S.E.2d 144 (2007)	1
<i>Whitehead v. State</i> , 352 S.C. 215, 574 S.E.2d 200 (2002)	1
<i>Wilson v. State</i> , 348 S.C. 215, 559 S.E.2d 581 (2002).....	9

State Statutes

S.C. Code Ann. §17-27-45.....	1
S.C. Code §14-3-310 (1976)	10

Constitutional Provisions

<i>S.C. Const. Art. V, §5</i>	8

TABLE OF CONTENTS

Introduction	1
Relevant Facts	3
Relevant Dates.....	6
Legal Principles	4
A. Legal Authority for the Petition.....	8
B. Petitioner Should Be Granted a “Full Bite at the Apple” by this Court’s Granting an Evidentiary Hearing on Petitioner’s Brady Claim.....	8
Conclusion.....	10

I. Introduction

Petitioner, Daniel Crowe, is serving life in prison for the murder of Eddie Heaton in June 1997. In this petition, he now alleges the state withheld material exculpatory and impeaching information in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). He asks this Court to remand this case for an evidentiary hearing.

After Petitioner's trial in 1998, he pursued a direct appeal of his conviction and sentence which was affirmed by the South Carolina Court of Appeals. *State v. Crowe*, Op. No. 2000-MO-102. Petitioner never had a PCR hearing, though, because his retained lawyer failed to timely file his application. Petitioner was denied his "full bite at the apple" because his lawyer missed the deadline by 14 days back in 2000.¹ App. 7. In failing to file within this time frame, counsel has effectively prevented any legal review of Petitioner's case. A subsequent attempt Petitioner made to have his case reviewed by the South Carolina courts was thwarted by a summary order of dismissal, drafted by the Attorney General's Office and signed by a circuit court judge responsible for adjudicating PCR's, which found his case to be "successive" even though Petitioner offered evidence that, if believed, would exonerate him of this murder charge and also raised a disturbing question of prosecutorial misconduct. App. 16-26.

¹ See S.C. Code Ann. 17-27-45 ("An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later"). Petitioner's state statute of limitations began to run on August 7, 2000 when the remittitur was issued after his direct appeal.

What the South Carolina courts have not reviewed yet, because Petitioner has been unable to avail himself of legal process, is a statement by Misty Heaton Price, the biological daughter of Eddie Heaton, that she informed the Oconee County Solicitor's Office in 1997 that her stepmother, Sherry Heaton, confessed to, along with her brothers, having involuntarily drugged Petitioner on the night of Eddie Heaton's killing. This statement is memorialized in a letter she sent to then-Solicitor George Duckworth on December 31, 1998 informing him of a meeting she and her sister attended with the prosecuting solicitor, Susan Chappell and her investigator, Daniel Singleton, informing them of this admission by Sherry Heaton. App. 3. Misty Price continues to stand by this statement as evidenced by a recent affidavit included with this petition. App. 1. Gruber Sires, Jr., Petitioner's trial counsel, has also provided a sworn statement indicating he never knew about this possible involuntary intoxication defense because the Solicitor's office never disclosed either the meeting with Heaton and her sister, or any subsequent investigation into their allegations.² App. 4.

Because of this initial missed statutory deadline by PCR counsel, Petitioner was also precluded from having his case adjudicated by the federal courts since his claim was defaulted. This case presents a breakdown of the judicial review process resulting in a manifest injustice. If Misty Heaton Price is to be believed, then

² See *State v. Pittman*, 373 S.C. 527, 557, 647 S.E.2d 144, 170 (2007) (recognizing that South Carolina applies the *M'Naughten* test as the standard for determining whether a defendant's mental condition at the time of the offense rendered him criminal responsible).

Petitioner is not guilty of murder and the Solicitor's Office engaged in prosecutorial misconduct by failing to disclose the contents of her statements to defense counsel. Petitioner respectfully asks this Court to remand this case for an evidentiary hearing so his claim may be heard and adjudicated.³

II. Relevant Facts

It is uncontested that Petitioner shot and killed Eddie Heaton on the night of June 7, 1997. But what the record also shows is that Petitioner was utterly unrestrained and out of control that night in a manner consistent with the involuntary ingestion of illicit drugs. The state offered the following pertinent evidence at trial.

Sherry Heaton, Edie Heaton's wife, was 31 years old at the time of trial. On the night of June 7, 1997, she went to Scooters, a local bar, to work. She took home some dinner and then she and Eddie went by Sherry's brother's house for a birthday party. App. 85. They got off work around midnight. Eddie Heaton was a bouncer. App. 85. Sherry's brother is John Wesley Smith. App. 70. They arrived at the party around 1:00am. App. 71.

When they arrived at Smith's house, Petitioner was there. He was "acting wild and telling everybody he would fight them and all kind of stuff." App. 79, ll. 5-7.

³ Counsel anticipates moving the court for a discovery order since the Oconee County Sheriff's Office, in conjunction with the Solicitor's Office, has determined that counsel cannot access any of its files related to this matter because, they claim, it is protected from disclosure because the request is being made on behalf of a "individual[] serving a sentence of imprisonment in a state or county correctional facility in this State . . ." See Correspondence between counsel and Kevin Davis of the Oconee County Sheriff's Office, dated July 22, 2021. App. 40.

According to Heaton, Petitioner came up to her and nudged her in the back. She told him to leave her alone. He called her a bitch. App. 79. Eddie and Petitioner then got into a scuffle. App. 80. Sherry's brother placed Petitioner into a truck and took him home. App. 81. Shortly afterwards, Petitioner returned and walked out of the woods. App. 81. He had a single-barrel shotgun with him. App. 82. Petitioner shot Eddie Heaton and he died shortly afterwards at the hospital. App. 82, 84.

Sherry found a pistol next to Eddie on the ground. App. 83. It was a gun Sherry normally kept in her saddle bag. App. 84.

There were around 20-30 people at the party that night. App. 97.

John Wesley Smith testified the party started around 5:30 or 6:0pm that night. App. 100. Petitioner came over earlier when he had a flat tire. App. 100. They started drinking and Petitioner became intoxicated. App. 101. He started to "harass everybody" and was "waiting for trouble." App. 101, ll. 12-15. Smith testified that another person, Tim Phillips was passed out on his couch. Petitioner, unprovoked, allegedly jumped on him while he was on the couch. App. 101-102. Petitioner testified at trial that Smith handed him "a drink of liquor" since it was "[his] birthday." He believed it was Southern Comfort. App. 357, ll. 12-21.

Petitioner and another person named Moby Griffin also had an argument that night. App. 103. When Smith saw Petitioner get into an argument with Heaton, that's when he put him in his truck and took him home. App. 104. While taking him home, Smith testified Petitioner told him he was going to come back and kill Heaton. App. 105.

When Smith got back to his trailer after taking Petitioner home, he told everyone to leave. He was concerned that Petitioner was going to come back and harm Heaton. App. 106. When Petitioner did return to the trailer, Smith heard gunshots. App. 106-107. His brother Benjamin then handed Smith a gun. App. 107. He claimed he did not use it, App. 107, but there is abundant evidence in the record that someone at the party had attempted to shoot Petitioner after Heaton was shot.

Smith testified he observed Petitioner point the shotgun at his sister, Sherry. App. 108. Petitioner then allegedly threatened Smith that he would kill him too if he testified against him. App. 109. Then Petitioner allegedly got into a fight with another person in the bathroom and the bathroom door came off its hinges. App. 109. Smith grabbed the shotgun. App. 109. As Petitioner and Mark started fighting, Smith began beating Petitioner with the shotgun.

Q: How easy was it to get this defendant calmed down?

A: It wasn't easy.

I mean I beat him with that shotgun I don't know how many times and Mark was fighting him from the front and we both like to have never got him down even with me hitting him with the shotgun from behind.

I mean he like to have not—I thought he wasn't going to get down.

App. 110, ll. 11-20.

The police finally arrived. App. 111.

Smith also acknowledged on cross-examination that Eddie hit Petitioner and gave him a black eye. App. 117.

Joyce Smith, John's wife also testified and claimed Petitioner was "rowdy" at the party. App. 127. Her testimony essentially corroborated the other witnesses that Petitioner was acting hyper-aggressively that evening.

Mark Evans testified that Petitioner was "foaming at the mouth" and tried to fight everyone. App. 144. He also described getting Petitioner down on the ground as "very hard." App. 150, l. 13. He had to lay a vacuum cleaner on Petitioner's back to get him to stay down. App. 150.

The trial record reflects that Petitioner was behaving as though he was out of control at this party. Had trial counsel known about Misty Heaton Price's statements indicating that Petitioner was involuntarily drugged at this party, it would have placed all this testimony in a completely different light. Additionally, counsel submits had he known of possible involuntary intoxication, he would have cross-examined Sherry Heaton as to the issue and he would have called Misty Heaton as a witness.

III. Relevant Dates

The following are pertinent dates for this Court's resolution of Petitioner's claim.

- Petitioner was tried and convicted of murder on June 25, 1998. He was sentenced to life in prison.
- On December 31, 1998 Misty Heaton wrote a letter to Solicitor Duckworth explaining that she met with the Solicitor in the case and an investigator prior to trial and informed them that her step-mother, Sherry Heaton, had confessed to her and her sister that Petitioner had been intentionally drugged on the night of her father's death.
- Petitioner appealed his conviction and sentence. Joseph Savitz of the Office of Appellate Defense represented Petitioner. The appeal was denied by the South Carolina Supreme Court and the remittitur issued on August 7, 2000. *State v. Crowe*, Op. No. 2000-MO-102.

- Retained counsel filed Petitioner's first PCR application on August 21, 2001. According to the notary public's signature, it was ready for filing on August 9, 2001. There is also a letter in Petitioner's state court file to the Clerk of Court dated August 9, 2001 indicating that was the date it was sent to Sally Smith, the Clerk of Court for Oconee county. App. 15.
- Three years later, the State filed its return on October 12, 2004 asking the case be summarily dismissed for missing the statutory deadline for filing post-conviction relief applications.
- Less than two weeks later, on October 25, 2004, a hearing was convened where Petitioner's case was dismissed for being filed two weeks late. The order dismissing the case was filed on that date. No evidence or testimony was entered into the record.
- No appeal was taken from the summary denial of Petitioner's PCR application.
- Petitioner, through the same retained counsel, filed a second PCR application on April 26, 2005 alleging the existence of new evidence in the case. App. 16.
- On September 16, 2005, the Attorney General's Office sent the Honorable J.C. Nicholson, Jr. a proposed order to dismiss Petitioner's case based on its being "successive" to the earlier application. App. 22, 26.
- The circuit court issued a conditional order of dismissal which was filed October 4, 2005. App. 26.
- On October 19, 2005, retained counsel filed a Return to the Conditional Order of Dismissal and requested an evidentiary hearing alleging after-discovered evidence.
- A final order dismissing the case, again drafted by the Attorney General's office, was filed on November 2, 2005. It held the allegations of after-discovered evidence did not constitute "sufficient reason" to show that the conditional order should not become final. App. 24.
- Retained counsel filed a notice of intent to appeal on November 8, 2005.
- Retained counsel filed a petition for writ of certiorari on January 24, 2006 alleging the PCR court erred in dismissing this second PCR application as successive when Petitioner alleged after-discovered evidence in his 2005 application. App. 30. In the petition, counsel did not disclose when that after-discovered evidence was discovered, nor did he indicate that Petitioner's first

PCR application was dismissed because he filed the application beyond the statute of limitations.

- Petitioner's petition for writ of certiorari was denied on January 4, 2007.
- Petitioner became aware of the denial of certiorari on March 24, 2011 after he received correspondence from the South Carolina Supreme Court after inquiring as to the status of his case.
- Petitioner then filed a pro se petition for writ of federal habeas corpus on September 23, 2014. The opinion correctly concluded that Petitioner's claims were defaulted. *Crowe v. Warden of Perry Correctional Institution*, C/A 1:14-cv-3831-BHH (2016) ("Accordingly, although the Court is sympathetic to Petitioner's unfortunate circumstances, it must overrule this objection and find that the AEDPA statute of limitations bars Petitioner's §2254 petition). 2016 WL 446628.
- On July 19, 2021 Misty Heaton executes an affidavit in connection with these efforts to have Petitioner's claim heard and affirming her earlier claim that she and her sister informed the Solicitor that Petitioner was intentionally drugged on the night that he killed her father. App. 1.

IV. Legal Principles

a. Legal Authority for the Petition

"The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs." S.C. Const. Article V, §5. This Court "will not generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal." *In re Breast Implant Prod. Liab. Litig.*, 331 S.C. 540, 543, n. 2, 503 S.E.2d 445, 447, n. 2 (1998). "[A] writ of certiorari may be issued when exceptional circumstances exist" involving "issues of significant public interest." *Id.*

b. Petitioner Should Be Granted a "Full Bite at the Apple" by this Court's Granting an Evidentiary Hearing on Petitioner's *Brady* Claim.

This Court should grant Petitioner's request to remand this case for an evidentiary hearing on his *Brady* claim. Misty Heaton Price has been prepared to testify to these events for years, but because of PCR counsel's failure to timely file Petitioner's application, and his incompetence in addressing that issue in the initial proceeding, or raising this issue in a second application, Petitioner's case has fallen through the legal cracks of our system. Any attempt by Petitioner to raise this claim by way of a third PCR application will inevitably be dismissed as "successive" and Petitioner's claim does not neatly fit within the requirements of Rules Crim. Proc., Rule 29(b) due to the passage of time. Price's letter and affidavit support the conclusion that the state withheld material evidence from the defense in this case in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (holding a *Brady* violation occurs when the evidence at issue is 1) favorable to the accused; 2) in the possession of or known to the prosecution; 3) suppressed by the prosecution; and 4) material to the defendant's guilt or punishment). Given the weighty interests implicated by this case including, if true, egregious misconduct by the solicitor, a hearing is appropriate.

Petitioner asks this Court to allow him access to our state court system to address this issue. South Carolina is unique in that it provides a robust post-conviction remedy for criminal defendants to challenge their convictions. The Court has, through a series of cases, reaffirmed the rights of defendants to have their "one fair bite at the apple." *Wilson v. State*, 348 S.C. 215, 217, 559 S.E.2d 581, 582-83 (2002) ("That is, every defendant has a right to file a direct appeal and one PCR

application.”); *Odom v. State*, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (the Court reversed a PCR judge’s order of dismissal, finding that the petitioner never received a full “bite at the apple” because both of his PCR applications were summarily dismissed before he was appointed legal counsel); *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991) (the Court reversed the summary dismissal of a second PCR application and remanded for an evidentiary hearing where the petitioner alleged in his second application that his initial PCR counsel was ineffective for failing to seek appellate review); *see also Whitehead v. State*, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002) (holding that the PCR statute of limitations does not apply to *Austin* claims). In *Brannon v. State*, 345 S.C. 437, 548 S.E.2d 866 (2001), this Court remanded for hearing a case where the PCR court erred in failing to ascertain the voluntariness of the applicant’s withdrawal prior to dismissing his application with prejudice. Recently this Court provided a remedy for another petition who did not receive his full bite at the apple. *Michael T. Barnes v. State of South Carolina*, Appellate Case No. 2020-001360.

CONCLUSION

Respectfully, this Court should exercise its powers under South Carolina Constitution, Art. V, §5 and S.C. Code §14-3-310 (1976) and grant an evidentiary hearing in this matter.

Respectfully submitted,

/s/ Elizabeth Franklin-Best
Elizabeth Franklin-Best
SC Appellate Law Group, LLC
Bar #72555
2725 Devine Street
Columbia, South Carolina 29205
(803) 445-1333
elizabeth@franklinbestlaw.com

July 27, 2021

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
 _____)

Affidavit of Misty Heaton Price

I hereby declare and affirm under penalty of perjury:

- 1) I am Misty Heaton Price and I'm over the age of 18. I am competent to execute this affidavit.
- 2) Eddie Heaton, the victim in this case, was my biological father. Sherry Heaton is my stepmother.
- 3) I have spoken with LaDonna Beeker, Elizabeth Franklin-Best's paralegal, in connection with what I know about this case. Elizabeth Franklin-Best's office reached out to me because I have been in contact with **J. L. C.**, Daniel Crowe's son.
- 4) I was 17 years old when my father was killed. My stepmother told me and my sister that she and some of her brothers had drugged Daniel Crowe at the party on the night he killed my father. I have no idea what he was drugged with, but I think it was put in his drinks.
- 5) My sister and I went to the solicitor's office and met with Susan Chappell and Danny Singleton. We told them what Sherry Heaton told us. They told us not to tell anyone and that they would have to investigate. She said that this information could mess up the integrity of her case and that it would let Daniel Crowe out of prison.
- 6) After Daniel Crowe was convicted, I reached out to Charlotte, Daniel Crowe's wife. I wrote a letter to Solicitor George Ducworth on December 31, 1998, telling him about our visit with Susan Chappell and Danny Singleton. I never heard anything back. I was 18 years old when I wrote the letter.
- 7) I don't remember talking to anyone else about this, including Richard Warder, Daniel Crowe's PCR lawyer.
- 8) I continue to stand by the letter I wrote to George Ducworth. We told the solicitor and sheriff about Sherry Heaton's statement that she and her brothers drugged Daniel Crowe on the night he killed my father. I believe that she received life insurance due to his death. She also received money from the state's victim fund.
- 9) My family is angry with me because I am trying to help Daniel Crowe, but I have to do what I believe is right. I believe God wants me to do the right thing.

FURTHER AFFIANT SAYETH NAUGHT.

Misty H Price
Misty Heaton Price

Dated this 19 day of July 2021.

TAMMY J ALLISON
Notary Public, State of South Carolina
My Commission Expires June 5, 2024

Tammy J Allison

11:17

Done

Edit

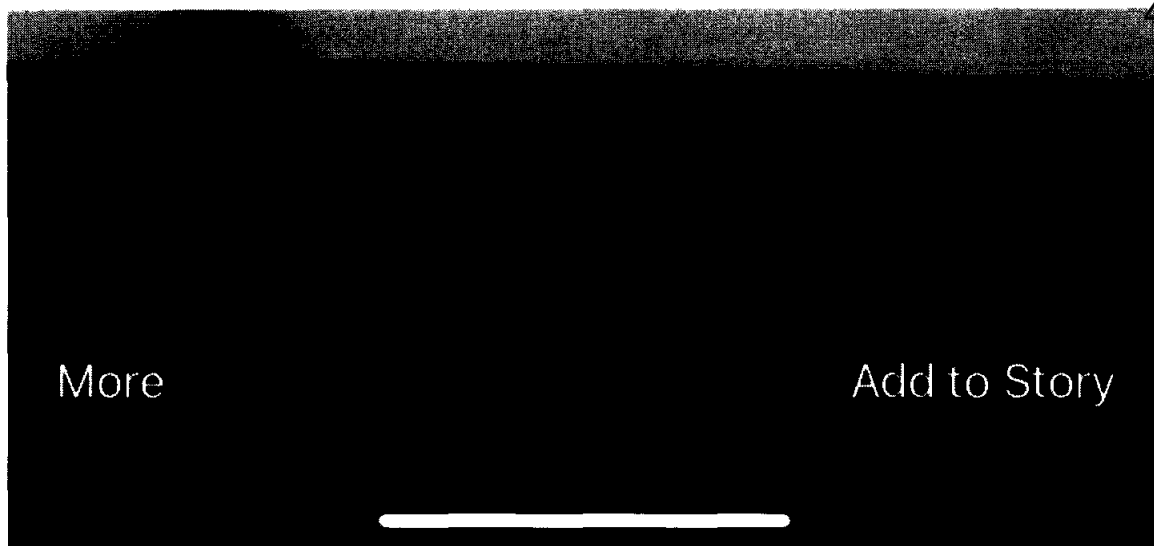
12-31-93

Mr. George Duworth,

I am writing you concerning the trial of Sonny Crowe, "Daniel Lewis Crowe." My name is Misty Heaton. Several months before the trial my family went to Mrs. Susan Chappel's office to review the statements against Sonny Crowe. My sister and I both told Mrs. Chappel that my stepmom, Sherry Heaton had confided to the both of us under secrecy that she and some of her brothers had drugged Sonny the night that he shot my dad. This was suppose to be before the shooting the same night when we told Mrs. Chappel this Danny Singleton was there. Mrs. Chappel and Mr. Singleton both told us not to tell anyone else, that they would have to investigate. Then all she did was ask them if they drugged him. She never said another word about it and never investigated. Mrs. Chappel told us she was going to make the judge order them to give them copies of all the statements. She wasn't going to let them know who her witnesses were or what they had against him. Mrs. Chappel and Mr. Singleton both told us this. Something needs to be done about this because Mrs. Chappel obviously doesn't care. She was concerned that it would ruin her case.

Thank You

Misty Dawn Heaton



STATE OF SOUTH CAROLINA)

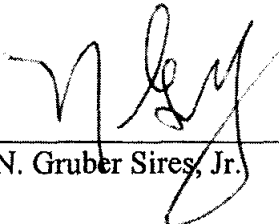
COUNTY OF OCONEE)

Affidavit of N. Gruber Sires, Jr.

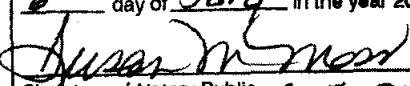
I hereby affirm and declare under penalty of perjury that:

- 1) I am an attorney in good standing in the state of South Carolina. I have been admitted to practice since 1971.
- 2) I worked as a part-time public defender for Oconee County and, in that capacity, I represented Daniel Lewis Crowe in his trial before the Honorable Gerald C. Smoak. *State of South Carolina v. Daniel Lewis Crowe*, 97-GS-37-702.
- 3) Susan Chappell prosecuted the case. Her name is now Susan Shaver Reese.
- 4) I have reviewed a letter provided to me by Elizabeth Franklin-Best that appears to be a letter written by Misty Heaton and addressed to George Ducworth, the Solicitor of Oconee County. It is dated December 31, 1998. I had not seen it before.
- 5) The State did not disclose to me that Misty Heaton informed the Solicitor's office that Sherry Heaton, the victim's wife, told them that Daniel Crowe was drugged on the night that he shot and killed the victim.
- 6) I was never given any information to suggest that the state may or may not have investigated any claims that Crowe may have been involuntarily drugged on the night of Eddie Heaton's death.
- 7) I would have wanted to know about these statements and any investigation into Misty Heaton's claims because it would have provided a legal defense to my client. At the very least, I would have used this information in my cross-examination of Sherry Heaton. I also would have called Misty Heaton as a witness at the trial.

FURTHER AFFIANT SAYETH NAUGHT.


N. Gruber Sires, Jr.

Dated this 6th day of July, 2021.

State of:	<u>South Carolina</u>
County of:	<u>Oconee</u>
Subscribed and sworn to (or affirmed) before me this	
<u>6th</u>	day of <u>July</u> in the year 20 <u>21</u>
	
Signature of Notary Public	
My Commission Expires <u>9-5-2024</u>	

STATE OF SOUTH CAROLINA)

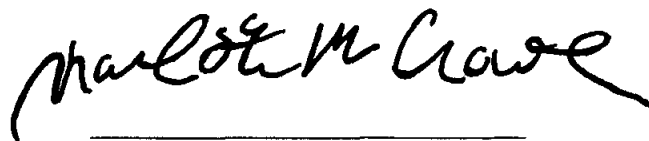
COUNTY OF OCONEE)

Affidavit of Charlotte Crowe

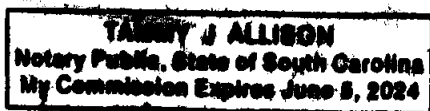
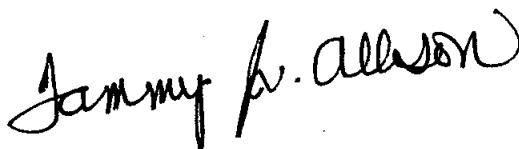
I hereby declare under penalty of perjury:

- 1) My name is Charlotte Crowe and I am married to Daniel Lewis Crowe. We were married when he shot and killed Eddie Heaton and we have remained married.
- 2) I remember when Misty Heaton came over to our house on December 31, 1998. She was friends with my daughter so I knew her before all this happened.
- 3) She came over to the house and said she had something she wanted to tell me. She told me that Sherry Heaton, who is my first-cousin, and her brothers admitted to drugging my husband on the night he shot and killed Eddie Heaton.
- 4) I don't know what drug they gave him, but I know they would use LSD or "acid."
- 5) I remember taking Misty's letter and sending a copy to George Duckworth of the 10th Circuit Solicitor's Office and also sending a copy to the South Carolina Attorney General's Office. I also made copies of it for our files.
- 6) I never received any response from anyone.
- 7) James Smith, Sherry Heaton's brother, is now deceased. He died of cancer.

FURTHER AFFIANT SAYETH NAUGHT.



Charlotte Crowe

Dated this 21 day of July, 2021.


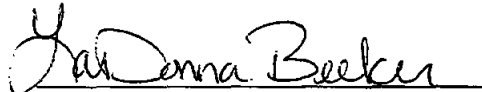
STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
_____)

Affidavit of LaDonna Beeker

I hereby declare under penalty of perjury that:

- 1) I am over the age of 18 and competent to execute this affidavit.
- 2) I am employed by Elizabeth Franklin-Best as her paralegal. We represent Daniel Crowe.
- 3) I reached out to Richard Warder's office to obtain a copy of Daniel Crowe's file(s). On June 28, 2021, I was informed by an employee of the office they do not have his case file(s) in their possession and that his case has already been shredded.

FURTHER AFFIANT SAYETH NAUGHT.


LaDonna Beeker

Dated this 21 day of July, 2021.


Haley C. Floyd Notary for
South Carolina

HALEY C. FLOYD
Notary Public-State of South Carolina
My Commission Expires
October 03, 2028

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

In the Original Jurisdiction

Appellate Case No. 2021-000796

DANIEL CROWE,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
ID No. 100851
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

DAVID R. WAGNER
Tenth Judicial Circuit Solicitor

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
RESPONDENT’S STATEMENT OF ISSUES.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	5
ARGUMENT	
I. Petitioner has failed to demonstrate any procedural, legal, or factual basis warranting certiorari for an issue previously denied certiorari by this Court	
a. Petitioner has failed to demonstrate that there is a procedural basis for certiorari to seek a remand of a PCR matter that has already been ruled upon by the PCR Court and denied Certiorari by this Court	6
b. Petitioner’s alleged evidence is plainly counter to his existing sworn testimony in such a contradictory way that Petitioner could not possibly satisfy the standard for newly discovered evidence.....	10
CONCLUSION.....	14
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Cases

<i>Catawba Indian Nation v. State</i> , 407 S.C. 526, 756 S.E.2d 900 (2014).....	10
<i>City of Columbia v. S.C. Pub. Serv. Comm'n</i> , 242 S.C. 528, 131 S.E.2d 705 (1963).....	7
<i>Clark v. State</i> , 315 S.C. 385, 434 S.E.2d 266, 267 (1993).....	12, 13
<i>In re Breast Implant Prod. Liab. Litig.</i> , 331 S.C. 540, 503 S.E.2d 445 (1998).....	7
<i>State v. Daniel Lewis Crowe</i> , 2000-MO-102 (S.C. S.Ct., July 20, 2000).....	2

Statutes

S.C. Code § 17-27-90.....	4, 8
S.C. Code § 17-27-45(C).....	1, 4, 9, 10

Rules

Rule 607(i), SCACR.....	3

Other Authorities

14 C.J.S Certiorari § 3, p. 124)	7

RESPONDENT'S STATEMENT OF ISSUES

- I. Having exhausted his state and federal collateral remedies, including a prior Petition for Writ of Certiorari on PCR appeal, can Petitioner now bypass the procedural bars to his claim and seek a remand of his 2005 PCR application so as to review evidence already deemed to have failed the newly discovered evidence standard under 17-27-45(C)?**

STATEMENT OF THE CASE

Petitioner Daniel Lewis Crowe (aka "Sonny Crowe" and hereinafter referred to as "Petitioner") was indicted by the Oconee County grand jury on a charge of murder in July of 1997 (97-GS-37-702). He was represented by N. Gruber Sires, Esquire and proceeded to a jury trial on June 23-25, 1998, before the Honorable Gerald C. Smoak. The State was represented by Deputy Solicitor Susan Chappell. (App., pp. 46; 455). Petitioner was convicted of murder and sentenced to life in prison. Petitioner had a previous conviction for voluntary manslaughter in 1993 and his life sentence was therefore mandatory. (App., pp. 456; 459).

Petitioner timely served and filed a notice of appeal. Deputy Chief Attorney Joseph L. Savitz, III, represented Petitioner on appeal. Petitioner raised a single issue on appeal:

The judge erred by refusing to instruct the jury on involuntary manslaughter where appellant testified he did not know the shotgun was loaded when he pulled the trigger.

The State filed its Brief of Respondent on October 11, 1999. On July 20, 2000, this Court filed a *per curium* Opinion affirming his conviction and sentence. *State v. Daniel Lewis Crowe*, 2000-MO-102 (S.C. S.Ct., July 20, 2000). This Court then sent the Remittitur to the Oconee County Clerk of Court on August 7, 2000. (App., pp. 7-15).

Through collateral counsel, Richard H. Warder, Esquire, Petitioner filed a Post-Conviction Relief (PCR) Application on August 21, 2001. (2001-CP-37-446). The State moved to summarily dismiss the PCR application as untimely. A hearing was conducted on that basis before the Honorable Judge Alexander S. Macauley on October 25, 2004. On November 17, 2004, Judge Macauley issued an Order of Dismissal denying relief and summarily dismissing the application

as untimely. (App., pp. 7-9). Petitioner did not seek to appeal that decision.¹ He instead chose to file a second PCR application on April 26, 2005. (2005-CP-37-356). (App., p. 16). In this second PCR application, Petitioner raised the following allegation:

“I have discovered evidence and witness that saw and/or knows that Defendant was involuntarily given drugs to render him under the influence at the time of the crime.”

(App., p. 17). The State filed its Return and Motion to Dismiss on October 12, 2004. The State argued that the 2005 Application should be summarily dismissed as untimely under the statute of limitations and as successive to the 2001 Application. The Honorable J.C. Nicholson, Jr., the Chief Administrator Judge of the Tenth Judicial Circuit, filed a Conditional Order of Dismissal on October 4, 2005. Judge Nicholson provisionally denied and dismissed the action on the grounds argued by the State, but gave Petitioner twenty days from the date of service of that Order in which to show why the dismissal should not become final. (App., pp. 26-29).

On October 19, 2005, Petitioner (through PCR counsel, Mr. Warder) filed a Return to the Conditional Order of Dismissal. However, Judge Nicholson filed a Final Order on November 2, 2005, in which he found that “[t]his Court has reviewed Applicant’s response to the State’s motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.” On that basis, Judge Nicholson summarily dismissed the 2005 application. (App., pp. 24-25).

¹ Because Petitioner did not appeal from Judge Macauley’s November 17, 2004 Order of Dismissal, apparently neither party ordered a copy of the transcript of the October 25, 2004 hearing. The files of the South Carolina Attorney General’s Office for Petitioner’s state court proceedings do not contain a copy of the hearing and it is too late to attempt to obtain one from the Court Reporter at this date. See Rule 607(i), SCACR (“Except as provided below, a court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five (5) years after the date of the proceeding, and the court reporter may reuse or destroy the tapes after the expiration of that period.”)

Petitioner next sought to appeal the denial of post-conviction relief from his second application, deemed untimely and successive. He filed his Petition for Writ of Certiorari on January 24, 2006, and asserted the following basis for certiorari:

Did the PCR Court err in summarily dismissing the Petitioner's successive application where he alleges newly discovered evidence subject to S.C. Code of Laws § 17-27-45(C)?

(App., pp. 30-38). The State filed a Return to the Petition for Writ of Certiorari on February 23, 2006. On January 4, 2007, this Court filed an Order denying certiorari. The Remittitur was sent to the Oconee County Clerk of Court on January 23, 2007, and the Remittitur was then filed on January 24, 2007.

More than five years later, Petitioner filed a third PCR application on April 9, 2012. (2012-CP-37-335). In this third application Petitioner alleged ineffective assistance of counsel for a) failing to file a timely PCR, b) "denied appeal to first PCR action", and c) "Did not receive full adjudication pursuant to § 17-27-90." The State again argued that the application was untimely, successive, and not cognizable. The Honorable R. Lawton McIntosh filed a Conditional Order of Dismissal on September 30, 2013. Petitioner filed a *pro se* "memorandum opposing conditional order of dismissal at post-conviction relief" arguing the ineffective assistance of PCR counsel. Judge McIntosh dismissed the action by Final Order on November 25, 2014, finding Petitioner's allegations were not cognizable for post-conviction relief. Petitioner did not appeal this Order.

On September 23, 2014, Petitioner next filed a Petition for Writ of Habeas Corpus in federal court. However, the Petition was found untimely under AEDPA. Petitioner appealed to the Fourth Circuit, but his appeal was dismissed. Petitioner has exhausted his customary avenues for relief and now files this Common Law Petition for Writ of Certiorari. Petitioner's argument relies upon the alleged knowledge of involuntary intoxication, which was first known, asserted, and

denied as supposed newly discovered evidence for post-conviction relief more than 16 years ago. The Common Law Petition for Writ of Certiorari requests that this Court disregard its own denial of certiorari, ignore the procedural bars to relief, and remand Petitioner's 2005 PCR action for an evidentiary hearing on this evidence. This Return follows.

STATEMENT OF FACTS

On the afternoon of June 7th, 1997, Petitioner went to a birthday party at the home of John Smith. Petitioner spent the afternoon and evening drinking liquor and beer. (App., pp. 355-357). As the evening progressed, Petitioner became belligerent and picked fights with or attacked a number of other partygoers. (App., pp. 79; 101; 130; 143; 177). Eventually, Petitioner made the mistake of calling Victim's wife, Sherry Heaton, a "bitch." Victim, a rather large man and a bouncer at a local club, may have punched Petitioner once and knocked him to the ground. Conflicting testimonies were presented on this topic, but in any event an altercation ensued. (App., pp. 79; 85; 80; 102; 146; 310). After this incident, John Smith had tired of Petitioner's behavior and told him that he needed to leave the party. Smith gave Petitioner a ride home because Petitioner was drunk and could not find his keys. (App., pp. 103-104). On the way home, Petitioner told Smith he was coming back to kill Victim and would kill Smith too if Smith testified. Smith testified that Petitioner's demeanor and behavior after making this threat gave credence to the possibility that he may follow through. (App., p. 105). As a result, Smith returned to the party and attempted to get people to leave because of Petitioner's threat. (App., p. 106).

Petitioner returned to the party shortly after he was dropped off by John Smith. However, this time, he was armed with a 20 gauge shotgun. (App., pp. 105-106). Petitioner testified that he brought the gun with the intention of scaring the party attendees, but claimed he only returned to the party to retrieve his vehicle. (App., p. 378). Petitioner also claimed that he never opened the

shotgun to check for ammunition and was unaware the gun was loaded. (App., p. 378). As he approached the partygoers, Petitioner testified that he heard yelling, but admitted he could not make out what anyone was actually saying. Petitioner testified that he construed the situation as aggression toward him. (App., pp. 364; 378-379). While carrying the shotgun, Petitioner approached Victim, who was in the company of multiple partygoers. Petitioner testified that he cocked the shotgun as he approached and claimed to see Victim reaching across his body. Petitioner claimed to believe that this was an effort by Victim to draw his own firearm.² (App., p. 366). Petitioner then pointed the shotgun at Victim and shot Victim in the chest at a close range.³ Multiple eye witnesses testified that Victim had not pulled a weapon out to threaten Petitioner and did not have time to even react before Petitioner shot him. Partygoers also testified that Petitioner could have reached his vehicle without bothering anyone. (App., pp. 174-175; 179; 183; 239; 312).

Forensics revealed that the gunshot residue testing of Victim's hands was consistent with presenting a defensive posture to a weapon fired by another individual. (App., p. 279). Forensics also revealed that Victim's blood tested negative for the presence of drugs or alcohol. (App., p. 239).

ARGUMENT

- I. Petitioner has failed to demonstrate any procedural, legal, or factual basis warranting certiorari for an issue previously denied certiorari by this Court.**
 - a. Petitioner has failed to demonstrate that there is a procedural basis for certiorari to seek a remand of a PCR matter that has already been ruled upon by the PCR Court and denied Certiorari by this Court.**

Petitioner has not demonstrated a procedural necessity for certiorari in this matter and the issue itself has already been litigated. As the procedural history lays to bear, Petitioner has already

² Petitioner testified that he had seen Victim with a gun earlier that day.

³ James Smith testified that the distance between Petitioner and Victim was approximately 10 feet. Victim's autopsy demonstrated that the shotgun's wadding was lodged into Victim's wounds.

raised this issue via his second PCR application under the auspices of a newly discovered evidence claim. As the PCR court ruled that the action did not satisfy the newly discovered evidence standard, and certiorari for that decision was denied by this Court on PCR appeal in 2006, the issue has been fully litigated by South Carolina courts. To permit further consideration would exceed the purposes of this Court's original jurisdiction and would run afoul of the limitations of *res judicata*. For those reasons, certiorari should be denied.

This Court "will not generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal, a writ of certiorari may be issued when exceptional circumstances exist." *In re Breast Implant Prod. Liab. Litig.*, 331 S.C. 540, 543, 503 S.E.2d 445, 447 (1998). Such a Writ is limited to "extraordinary circumstances." Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 268 (2d ed. 2002). "At common law the writ of certiorari is used for two purposes: (1) As an appellate proceeding for the re-examination of some action of an inferior tribunal. (2) As an auxiliary process to enable the [c]ourt to obtain further information with respect to some matter already before it for adjudication." "[T]o the extent that the subject matter of the proceeding brought before the appellate court will not be reinvestigated, tried, or determined on the merits as on appeal or writ of error, it is an original proceeding." *City of Columbia v. S.C. Pub. Serv. Comm'n*, 242 S.C. 528, 534, 131 S.E.2d 705, 708 (1963)(citing 14 C.J.S Certiorari § 3, p. 124).

In 2005, Petitioner filed a PCR application asserting newly discovered evidence of a witness "that saw and/or knows that Defendant was involuntarily given drugs to render him under [the] influence at the time of the crime. (App., p. 17). The Honorable Judge J.C. Nicholson, Jr., considered the application and issued a conditional order of dismissal on September 22, 2005. That Order concluded that Petitioner's alleged newly discovered evidence could have been discovered

and presented in Petitioner's first PCR action. Judge Nicholson's Conditional Order set forth that "the Applicant has failed to establish sufficient reason[s] why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet his burden imposed upon him. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980); *Aice v. State*, supra; *Arnold v. State/Plath v. State*, supra." Thus, the second PCR application was impermissibly successive under S.C. Code § 17-27-90.⁴ (App., pp. 27-28). Judge Nicholson provided Petitioner an opportunity to respond to this conditional ruling. Petitioner filed a Return to the Conditional Order of Dismissal.⁵ However, Judge Nicholson found that Petitioner failed to present a sufficient reason for why the Conditional Order of Dismissal should not become final and issued a Final Order on November 2, 2005. (App., pp. 24-25). Such a finding is well founded, given that the purported knowledge of the alleged witnesses existed before the trial and years before the expiration of time to file a PCR application.

Following the denial of his second PCR application for newly discovered evidence, Petitioner sought a PCR Appeal. Petitioner filed a Petition for Writ of Certiorari with the following issue presented:

Did the PCR Court err in summarily dismissing the Petitioner's successive application where he alleges newly discovered evidence subject to S.C. Code of Laws § 17-27-45(C)?

The State filed its Return to the Petition for Writ of Certiorari asserting, among other arguments, that Petitioner failed to set forth evidence demonstrating the alleged new evidence could not have been discovered through reasonable diligence within one year of the filing of the PCR action for

⁴ As an additional ruling, Judge Nicholson found the application to also be untimely. (App., p. 28).

⁵ Counsel for Petitioner filed a Return to Conditional Order of Dismissal on October 19, 2005. This document was not included in Petitioner's Appendix for this action. It was, however, included in the Appendix for Petitioner's PCR Appeal of this action.

which the claim was first asserted, pursuant to § 17-27-45(C).⁶ In consideration of the arguments presented, this Court denied certiorari.

Nothing in the present claim has changed the nature of this action. Petitioner is again seeking to gain certiorari for what he perceives to be the improper denial of a PCR evidentiary hearing for supposed newly discovered evidence regarding involuntary intoxication.⁷ This is not an appellate re-examination of an action of an inferior tribunal; this Court has already undertaken such an effort in 2006. Nor is there a need for an auxiliary process for discovery of an ongoing matter before the Court. As the Supreme Court noted, the common law writ of certiorari is geared toward review of matters that would not otherwise receive a reinvestigation, trial, or determination on the merits in subsequent appeal. Petitioner's request for certiorari to seek a remand of a previously decided and appealed PCR decision is not a case within the intended purpose for original jurisdiction review and it certainly does not represent an extraordinary circumstance. This action simply does not fit within the boundaries of original jurisdiction.

Moreover, undertaking such a review would be contrary to the doctrine of *res judicata*. Petitioner was *not* denied a full bite of the apple; his bite of the apple was simply not taken soon enough under § 17-27-45(C). This was the issue and basis for denial in 2005 and it is the presented issue for the current action seeking to remand the denial of a PCR evidentiary hearing. *Res judicata* applies.

⁶ The State's February 26, 2006 Return to the Petition for Writ of Certiorari was not included in the Appendix for this action.

⁷ The Petitioner now attempts to couch this issue as a *Brady* violation surrounding this evidence. However, if the speculative evidence is to be believed (Respondent argues it should not, *infra*), the existence of a potential *Brady* claim existed alongside this supposed evidence of involuntary intoxication. (App., pp. 1-3).

“Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction.” *Catawba Indian Nation v. State*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014). Res Judicata, often referred to as claim preclusion, “bars plaintiffs from pursuing a later suit where the claim (1) was litigated or (2) could have been litigated.” *Id.* As has been demonstrated, the question of whether Petitioner had a right to present evidence of newly discovered evidence of involuntary intoxication has been litigated, and the coinciding *Brady* claim could have been asserted as well had Petitioner complied with the § 17-27-45(C). Petitioner cannot now ask that question again.

The claims raised in the Common Law Petition for Writ of Certiorari are not a proper basis for original jurisdiction, and in any case, the subject-matter in question has already reached a final adjudication. Certiorari should therefore be denied.

b. Petitioner’s alleged evidence is plainly counter to his existing sworn testimony in such a contradictory way that Petitioner could not possibly satisfy the standard for newly discovered evidence.

In addition to and in the alternative to arguments demonstrating the procedural impropriety of this Petition, Respondent would also argue that the evidence itself is without merit. Petitioner’s evidence that his crime was defensible because of a supposed involuntary intoxication, runs contrary to his own extensive testimony offered on direct examination at trial. Additionally, the nature of the evidence is both facially and circumstantially dubious.

The nature of the supposed evidence now presented runs completely contrary to Petitioner’s own testimony at trial. Though lacking credibility to many facts in dispute, Petitioner’s testimony was an extensive, detailed, and coherent presentation; one that included specific memories as well as specific admissions of intent, all of which presented Petitioner as a calm and

measured individual who made the *conscious decision* to shoot Victim. In brief review, Petitioner testified to the following:

- His invitation and time of arrival to the party (App., p. 356, lines 2-16);
- The number of drinks and types of drinks he consumed (App., p. 357, lines 1-21);
- The admitted fact that he got into a fuss with Sherry Heaton that led to being punched a single time by Victim (App., p. 358, line 24 through p. 360, line 16).
- The recollection that he was too drunk to drive (App., p. 360);
- The specific recollection that he obtained the gun from the well house, did not check to see if it was loaded, and did so because he believed the partygoers were dangerous (App., p. 364, lines 1-8);
- The admitted fact that he brought the gun with the specific intention of frightening those same partygoers (App., p. 378, lines 6-10);
- That he heard yelling at the party, could not hear well enough to know the content of the yelling, but interpreted to be aggressive toward him anyway (App., pp. 364; 378-379);
- That he yelled "I hope nobody wants to be first"⁸ (App., pp. 364-366);
- That he had to cock the gun by hand before he could fire the gun (App., pp. 388; 378; 366);

⁸ This particular fact was heard by multiple partygoers as "who wants to be first?".

- That, according to him, Victim reached across his body. After which he made a conscious decision to shoot Victim, believing Victim was reaching for a gun (App., p. 366);
- The recollection that after shooting Victim he ran away from the party to the top of the nearby hill and then watched the commotion from afar (App., pp. 366-368); and
- The recollection that he came back and entered the mobile home without permission, wherein he engaged in another fight because he was upset that the partygoers did not respond more quickly to taking Victim to the hospital (App., pp. 368-370).

Despite all of those detailed recollections offered as sworn testimony at trial, Petitioner now wants this court to believe that there is evidence supporting his involuntary intoxication so as to demonstrate a lack of control or decision making in his guilt for shooting victim. Such evidence is not only insufficient to likely provide a differing result at a new trial, but is completely contradictory to the entire presented defense. See *Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (setting forth the elements for obtaining a new trial based on newly discovered evidence). Such an argument is simply without merit.

Additionally, Petitioner's suggested evidence is circumstantially questionable. Petitioner's alleged evidence, the hearsay statement of Misty Heaton, would suggest that despite being told defendant was drugged and rendered involuntarily intoxicated, she chose never to mention this fact to the defendant, his attorney, or his PCR attorney, and was ignored or expressly silenced by three different solicitors, including: Susan Chappell, Danny Singleton, and George Ducworth. She only now, twenty-three years later, has decided to come forward with this affidavit and supposed

letter. Such evidence is circumstantially doubtful, and it must be noted that such evidence would not satisfy the standards for newly discovered evidence as it is inadmissible hearsay, would only permit a topic of impeachment, and would not likely change the result of a new trial.⁹ *Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993).

The authenticity of the evidence in question is also facially doubtful. Petitioner has supposedly included a photograph of the referenced letter in Misty Heaton's affidavit.¹⁰ (App., pp. 1-3). Such an inclusion is problematic for a number of reasons. First, Ms. Heaton's affidavit asserts that she mailed the letter to Solicitor George Ducworth on December 31, 1998, and that she "never heard anything back". If that statement is to be believed, it should not be possible that she now possesses the letter – such would indicate she either never mailed it or that it was returned without delivery. Under either circumstance, her affidavit would be notably inaccurate.

Petitioner has failed to demonstrate how such evidence can be consistent and useful in light of his own testimony. He has likewise failed to demonstrate the plausibility that the alleged evidence can be authenticated and proven genuine.

⁹ Also, the record already contains cross-examination that John Smith denied ever serving Petitioner a drink. (App., p. 115, lines 1-6).

¹⁰ Also, the photograph of the supposed letter is taken using what appears to be social media "screen shot" and cellular phone. The top of the photograph shows the telltale signs of a screenshot photograph, including: battery life, cell signal, wifi, and time of day. The photograph appears to be a cellular phone photograph, as you can see an individual's out of focus feet at the bottom of the photo. Lastly, the remaining portions of the photograph indicate terms including: Done, Edit, More, and "Add to Story" which are telltale signs of social media technology. If this photograph is purported to be a photo of the actual letter, such technologies did not exist in December of 1998. In contrast, the photograph does not appear to be a photographic negative, a Polaroid, a traditional film photograph, or even a scan of the original letter, all of which represent technologies available in 1998. Regardless, if this document is purported to be a photograph of the letter somehow taken in 1998, and held onto for twenty-three years, it cannot possibly be authenticated in the form presented. The nature of this evidence is highly circumspect.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Common Law Petition for Writ of Certiorari be denied.

Respectfully submitted,

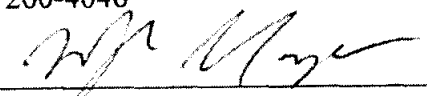
ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
ID No. 100851

DAVID R. WAGNER
10th Circuit Solicitor
Post Office Box 8002
Anderson, South Carolina 29622-8002
(864) 260-4046

By: 

W. Joseph Maye

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6305
ATTORNEYS FOR RESPONDENT

August 16, 2021

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

In the Original Jurisdiction

Appellate Case No. 2021-000796

DANIEL CROWE,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

PROOF OF SERVICE

I, **W. Joseph Maye**, counsel for the Respondent, certify that as per the March 20, 2020 Order of the Chief Justice, the Return to Petition for Writ of Certiorari has been forwarded to Petitioner's counsel, Elizabeth A. Franklin-Best, Esq. via email today, August 16, 2021 to elizabeth@franklinbestlaw.com.

I further certify that all parties required by Rule to be served have been served.

This 16th day of August, 2021.



W. JOSEPH MAYE
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
In the Supreme Court

In the Original Jurisdiction

Daniel Crowe,

Petitioner,

v.

State of South Carolina,

Respondent.

Reply to State's Return to Petition for Writ of Certiorari

Elizabeth Franklin-Best
SC Appellate Law Group, LLC
Bar #72555
2725 Devine Street
Columbia, South Carolina 29205
elizabeth@franklinbestlaw.com

ARGUMENT

This Court should grant Petitioner an evidentiary hearing.

Petitioner offers this brief reply to the State's Return to his Common Law Petition for Writ of Certiorari. Petitioner is fully aware there are procedural issues in this case. As the Attorney General correctly points out, prior counsel did appeal the denial of Petitioner's second PCR application and raised the issue of the after discovered evidence in that petition. What he failed to do, however, was to either present that evidence to the circuit court by way of an affidavit or with a copy of Misty Heaton's letter so this Court could have assessed the claim. He also failed to raise the associated *Brady*¹ claim. PCR counsel's presentation of this issue to the circuit court and the South Carolina Supreme Court was perfunctory and ineffective. No hearing was held; the PCR court signed a court order, drafted by the Attorney General's office, dismissing the action as being successive without any meaningful assessment of the merits of the claim. Without the development of that lower court record, this Court was not in a position to carefully assess the merits of this case.

Respondent argues that Petitioner was not denied a full bite of the apple; "his bite of the apple was simply not taken soon enough under §17-27-45(C)." Respondent's Brief, p. 9. But the fact is, it appears from paperwork contained in the Clerk of Court's file that initial PCR counsel may have timely submitted the paperwork but that, for some reason, it may not have been clocked in at the Oconee

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

County Clerk's Office until after the expiration of the statute of limitations. In any event, there is no record what how the post-conviction relief application came to have been untimely filed, nor is there a record of what, if any, steps were taken to request the court equitably toll the delay (since it was only 14 days and Petitioner is, after all, serving a life sentence). *See Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115 687 S.E.2d 29, 32 (2009) (explaining the courts may be applied "to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits"). *See also Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (recognizing there are situations where the interests of justice require PCR courts to be flexible with procedural requirements *before* PCR applicants suffer procedural defaults on their substantial claims) (emphasis in original).

Respondent's argument that the record shows Petitioner made a conscious effort to murder the victim, as evidenced by his various recollections at trial, shows that there remain disputed facts in this case. Respondent also asks this Court to make an adverse credibility determination regarding Misty Heaton. *See generally* Respondent's Brief, pp. 12-13. Again, Respondent's argument on this point militates in favor of this Court granting Petitioner an evidentiary hearing to resolve these conflicts. *See Foye v. State*, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999) (stating the reason appellate courts give "great deference to a [a court's] findings" is because [the court] has an opportunity to directly observe...the witnesses"). Petitioner additionally submits that the facts surrounding this conviction will be better resolved once Petitioner has access to the State's file which, to date, counsel have been denied

the right to access due to the solicitor's and law enforcement's reading of the FOIA statute. To be clear, Petitioner is not asking this Court to grant relief on this record. Petitioner requests this Court issue an order allowing him a hearing on this claim and assign a judge so that issues involving discovery can be addressed prior to a hearing. With a complete record on hand, Petitioner will then seek the appropriate relief.

Respectfully submitted,

/s/ Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
Bar #72555
2725 Devine Street
Columbia, South Carolina 29205
elizabeth@franklinbestlaw.com

August 22, 2021.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies she has served a copy of this Reply on Joseph Maye of the SC Attorney General's Office via email at JMaye@scag.gov on this date, August 22, 2021.

/s/ Elizabeth Franklin-Best

The Supreme Court of South Carolina

Daniel Crowe, Petitioner,

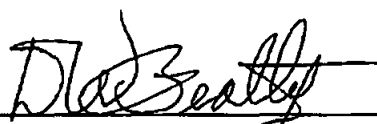
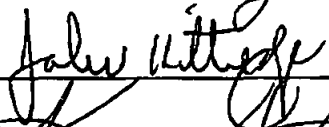
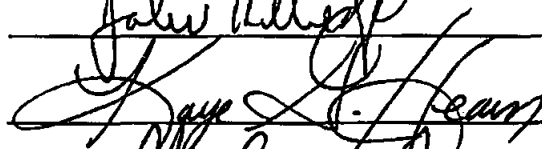
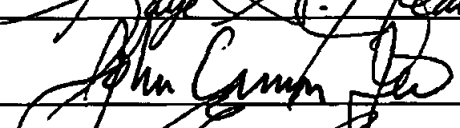
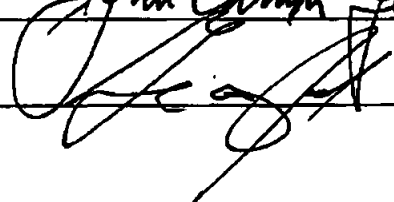
v.

State of South Carolina, Respondent.

Appellate Case No. 2021-000796

ORDER

Petitioner has filed a common law petition for a writ of certiorari in which he alleges the State withheld exculpatory material and impeaching evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), during his murder trial. We grant the petition and remand the matter to the circuit court. On remand, the circuit court shall construe Petitioner's filing as a permissibly successive application for post-conviction relief.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
September 22, 2021

cc:
Elizabeth Anne Franklin-Best, Esquire
Melody Jane Brown, Esquire

STATE OF SOUTH CAROLINA, OCONEE COUNTY, SC
COUNTY OF OCONEE MELISSA C. BURTON IN THE COURT OF COMMON PLEAS
 CLERK OF COURT

Daniel Lewis Crowe,
Applicant,
v.
State of South Carolina,
Respondent.

2021 SEP 28 P 1:17

**APPLICATION FOR
POST-CONVICTION RELIEF**

2021CP3700663

[This application conforms to the requirements of South Carolina Rules of Criminal Procedure, Form 5]

1. Daniel Lewis Crowe is currently incarcerated at Perry Correctional Institute, 430 Oaklawn Road, Pelzer, South Carolina 29669
2. He was convicted in the Oconee County Court of General Sessions.
3. No co-defendants.
4. Case No. 97-GS-37-702, murder.
5. Applicant was found guilty after trial that ended on June 25, 1998, and he received a life sentence.
6. Applicant was found guilty after trial.
7. Applicant did appeal from the judgment of conviction and imposition of sentence.
8. (a) Applicant appealed to the South Carolina Court of Appeals.
 - (b) The Court of Appeals affirmed the conviction and sentence.
 - (c) The Court of Appeals affirmed the conviction and sentence on July 20, 2000.
 - (d) (i) *State v. Daniel Crowe*, Op. No. 2000-MO-102.¹

¹ The full procedural history of Applicant's case is contained in the attached Common Law Petition for a Writ of Certiorari that was filed with the South Carolina Supreme Court.

Copies to:

Atty. ☒ (P) ☐ (D)

DSS ☒ other AG & Spl.

Mailed ☒ Boxed ☒ handed ☐

ENTERED
AW
COMPUTER

9. N/A.
10. Applicant alleges the following grounds as the bases upon which he is being held unlawfully:
 - a) Prosecutorial misconduct.
11. Facts in Support of the grounds set out in (10).
 - b) The prosecution failed to disclose evidence that was either exculpatory and/ or constituted impeaching evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) in that it failed to disclose to trial counsel that Misty Heaton and her sister informed the Solicitor and her investigator that Sherry Heaton and/ or others known to her, drugged Applicant on the night he shot and killed Eddie Heaton.
12. Prior to this application, Applicant has filed other petitions challenging his convictions.
13. Please see attached Common Law Petition for a Writ of Certiorari for a full procedural history of the case.
14. The ground set forth above has not been previously presented to this or any other Court, State or Federal, in any petition, motion or application.
15. N/A.
16. N/A.
17. Petitioner was represented by an attorney for his trial, sentencing, appeal and prior post-conviction relief application and appeal.
18. (a) For his trial and sentencing, Applicant was represented by N. Gruber Sires, Jr., P.O. Box 1277, Seneca, South Carolina 29679-1277.
 - (b) Applicant was represented on appeal by Joseph Savitz of the Office of Indigent Defense, Appellate Division, 1130 Lady Street, Suite 400, Columbia, South Carolina 29201.
 - (c) Applicant was represented on his two prior post-conviction relief applications by Richard Warder, P.O. Box 26133, Greenville, South Carolina 29616

19. Applicant is requesting the court reverse his convictions and remand his case for a new trial.
20. Applicant is not now under sentence from any other court that he has not challenged.

STATE OF SOUTH CAROLINA)
)
 County of Richland) **VERIFICATION**

I, Daniel L. Crowe being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

DAF Best For

Daniel Crowe

SWORN to and subscribed before me this 23
 day of September 2021.

Yadoma J. Becker
 Notary Public

My Commission Expires: July 12, 2029

FILED IN DEPT. COUNTY, SC
 JESSICA O. BURTON
 CLERK OF COURT
 2021 SEP 28 P 1:17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
	)	
Daniel Lewis Crowe, SCDC #250759,	)	Case No. 2021-CP-37-0663
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	(Counsel Retained)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Daniel Lewis Crowe (Applicant) on September 28, 2021, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Oconee County Clerk of Court. During its July 1997 term, the Oconee County Grand Jury indicted Applicant for murder (1997-GS-37-702). On June 23, 1998, Applicant proceeded to a jury trial before the Honorable Gerald C. Smoak. N. Gruber Sires, Esquire, represented Applicant. Deputy Solicitor Susan Chappell prosecuted the case.

On June 25, 1998, the jury convicted Applicant as indicted of murder. Judge Smoak imposed a mandatory sentence of life without parole (LWOP) pursuant to section 17-25-45 based on a prior voluntary manslaughter conviction in 1993.¹

¹ Both murder and voluntary manslaughter are classified as “most serious” offenses under section 17-25-45(C)(1). Section 17-25-45(A)(1) requires a person with one or more convictions of a most serious offense be sentenced to LWOP.

A. Direct Appeal

Applicant filed a timely notice of appeal. Deputy Chief Appellate Defender Joseph L. Savitz, III, on Applicant's behalf, raised the following issue on appeal:

The judge erred by refusing to instruct the jury on involuntary manslaughter where appellant testified he did not know the shotgun was loaded when he pulled the trigger.

On July 20, 2000, our Supreme Court issued a memorandum opinion affirming Applicant's conviction and sentence. *Crowe v. State*, 2000-MO-102 (S.C. Sup. Ct. filed July 20, 2000). The case was remitted back to the circuit court on August 7, 2000.

B. Initial Post-Conviction Relief Action: 2001-CP-37-0446

On August 21, 2001, Applicant filed his first PCR action, raising the following grounds for relief (excerpted verbatim):

1. Ineffective assistance of counsel
 - a. "Attorney did not object to improper evidence."
 - b. "Attorney failed to make pre-trial motions."

In its return, the State moved to summarily dismiss the application as untimely. On October 25, 2004, the Court convened a hearing into the matter before the Honorable Alexander S. Macaulay.² Applicant was present at the hearing and represented by Richard H. Warder, Esquire. Assistant Attorney General Christopher L. Newton appeared on behalf of the State. On November 17, 2004, Judge Macaulay issued an order denying and dismissing the application with prejudice. Applicant did not appeal.

² In Applicant's 2012 PCR application; June 6, 2014, response to the conditional order of dismissal; and August 10, 2015, response to Respondent's motion for summary judgment in his federal habeas proceeding, Applicant contends Judge Macaulay orally dismissed his PCR as untimely but granted him a new trial based on newly-discovered evidence during the October 25, 2004, hearing. However, as discussed further below, because Applicant did not appeal Judge Macaulay's November 17, 2004, Order of Dismissal, neither party obtained a copy of the transcript from the hearing.

C. Second Post-Conviction Relief Action: 2005-CP-37-0356 and Subsequent Appeal

On April 26, 2005, Applicant filed his second PCR action, raising the following grounds for relief (excerpted verbatim):

1. "I have discovered evidence and witness that saw and/or knows that Defendant was involuntarily given drugs to render him under the influence at the time of the crime."
 - a. "This is new evidence that if known and presented at the time of trial would have resulted in a different result."

The State made its return on June 13, 2005, requesting the application be summarily dismissed as untimely and successive. Pursuant to this request, the Honorable J.C. Nicholson, Jr., acting in his capacity as Chief Administrative Judge, issued a conditional order of dismissal on October 4, 2005, provisionally denying and dismissing the application while giving Applicant twenty days to show why the dismissal should not become final. Counsel Warder filed a timely response to the conditional order of dismissal on Applicant's behalf, stating that, since the hearing and denial of his 2001 application, Applicant's son "learned of witnesses who know that he was given involuntary drugs which rendered him under the include at the time of the alleged crime." Counsel Warder further stated that Applicant "learned of an additional witness who is in the prison system, who was a witness to the events resulting in his involuntary intoxication and the attempt upon his life wherein he reacted in self-defense," after the hearing on his 2001 application. Judge Nicholson subsequently issued a final order on November 2, 2005, denying and dismissing the application with prejudice.

Counsel Warder filed a timely notice of appeal on Applicant's behalf. He then perfected the appeal by filing a petition for writ of certiorari with the Supreme Court, raising the following issue:

Did the PCR Court err in summarily dismissing the petitioner's successive application where he alleges newly discovered evidence subject to S.C. Code of Laws § 17-27-45(c)?

Assistant Attorney General Daniel E. Grigg filed a return to the petition on February 23, 2006. On January 4, 2007, the Court issued an order denying Applicant's petition. *Crowe v. State*, S.C. Sup. Ct. Order dated Jan. 4, 2007. The case was remitted back to the circuit court on January 23, 2007.

E. Third Post-Conviction Relief Action: 2012-CP-37-0335

On April 9, 2012, Applicant filed his third PCR action, raising the following grounds for relief (excerpted verbatim):

1. Ineffective assistance of PCR counsel:
 - a. "Counsel failed to timely file PCR."
 - b. "Denied appeal to first PCR action."
 - c. "Did not receive full adjudication pursuant to § 17-27-90."

The State made its return on August 19, 2013, requesting the application be summarily dismissed as untimely, successive, and for failing to state a cognizable claim. Pursuant to this request, Judge Macaulay, acting in his capacity as Chief Administrative Judge, issued a conditional order of dismissal on September 30, 2013, provisionally denying and dismissing the application while giving Applicant twenty days to show why the dismissal should not become final. Applicant submitted a pro se memorandum in response. The Honorable R. Lawton McIntosh, acting in his capacity as Chief Administrative Judge, subsequently issued a final order on November 25, 2014, denying and dismissing the application with prejudice. Applicant did not appeal.

F. Federal Habeas Corpus Action: 1:14-3831-BHH-SVH

On December 5, 2014, Applicant filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the District of South Carolina. *See Crowe v.*

Warden of Perry Corr. Inst., No. 1:14-3831-BHH-SVH.³ Applicant raised the following grounds for relief in his *pro se* petition (verbatim):

1. "The trial court erred in failing to instruct the jury that they could find Petitioner guilty of involuntary manslaughter."
 - a. "Petitioner asserts the State Supreme Court's decision in denying relief on this issue was objectively unreasonable in light of the evidence presented. Petitioner submits that based on the facts of the case and the evidence presented by Petitioner the jury could have reasonably found Petitioner guilty of involuntary manslaughter had the jury been instructed on such."
2. "Ineffective assistance of counsel involuntary guilty plea"
 - a. "Trial Counsel was ineffective for eliciting prior bad acts of Petitioner that mirrored the offense for which Petitioner was on trial for."
 - b. "Trial Counsel was ineffective for failing to object to the Trial Court's jury instructions on malice that impermissibly shifted the burden of proof in violation of the Due Process Clause."
 - c. "Trial counsel was ineffective for failing to object to the Trial Court's jury instructions when the Trial Court 'failed' to instruct the jury on the essential element of 'criminal intent.'"
 - d. "Trial Counsel was ineffective for relying solely on the State's evidence and failed to conduct any independent investigation, including but not limited to questioning witnesses, that were at the incident the night in question and had counsel conducted independent investigation counsel could have located the witnesses who had critical information concerning drugs being placed in Petitioner's drink unaware to Petitioner that would have supported involuntary intoxication theory."
 - e. "Trial Counsel rendered ineffective assistance of counsel when counsel entertained an actual conflict of interest."
3. "Newly Discovered Evidence"
 - a. "Petitioner discovered the existence of witnesses present the night in question who have knowledge that a third party secretly spiked Petitioner's drinks in a way that caused Petitioner's involuntary intoxication."

³ In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2), D.S.C., all pre-trial proceedings are automatically referred to a United States Magistrate Judge.

The witnesses also observed the decedent attempt to cause Petitioner great bodily harm thus giving Petitioner the right to act in self-defense.”

Respondent filed a return and motion for summary judgment on April 13, 2015. On April 14, 2015, the Honorable Shiva H. Hodges, United States Magistrate Judge, issued a *Roseboro*⁴ order, advising Applicant of his responsibility to properly respond to the motion for summary judgment.

On August 10, 2015, Applicant filed a response in opposition to Respondent’s motion for summary judgment. Judge Hodges subsequently issued a report and recommendation that Respondent’s motion for summary judgment be granted and the petition be dismissed with prejudice. Applicant filed timely objections to the R&R on October 13, 2015.

On February 5, 2016, the Honorable Bruce Howe Hendricks, United States District Judge, issued an order adopting and incorporating the R&R by reference; granting Respondent’s motion for summary judgment; dismissing the petition with prejudice; and denying a certificate of appealability. *Crowe v. Warden of Perry Corr. Inst.*, No. CV 1:14-3831-BHH-SVH (D.S.C. Feb. 5, 2016).

Applicant filed a *pro se* notice of appeal in the United States Court of Appeals for the Fourth Circuit. On June 1, 2016, the Court issued an unpublished per curiam opinion denying Applicant’s request for a certificate of appealability and dismissing the appeal. *Crowe v. Warden of Perry Corr. Inst.*, 651 F. App’x 193 (4th Cir. 2016).

⁴ See *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) and *Webb v. Garrison*, No. 77-1855 (4th Cir. July 6, 1977) (requiring courts to provide explanation of dismissal/summary judgment procedures in federal habeas corpus cases).

Applicant then filed a petition for writ of certiorari in the United States Supreme Court. The Court denied Applicant's petition on November 28, 2016. *Crowe v. Lewis*, 137 S. Ct. 514 (2016).

G. Common Law Petition for a Writ of Certiorari: 2021-000697

On July 27, 2021, Applicant filed a common law petition for a writ of certiorari, asking our Supreme Court to remand his case for an evidentiary hearing on his allegation that the solicitor withheld exculpatory and impeaching information in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Specifically, Applicant asserted that the withheld information could have supported a defense of involuntary intoxication.⁵ The State made its return to the petition on August 16, 2021. Applicant then filed a reply to the State's return on August 22, 2021.

On September 22, 2021, the Court issued the following order:

Petitioner has filed a common law petition for a writ of certiorari in which he alleges the State withheld exculpatory material and impeaching evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), during his murder trial. We grant the petition and remand the matter to the circuit court. On remand, the circuit court shall construe Petitioner's filing as a permissibly successive application for post-conviction relief.

Crowe v. State, S.C. Sup. Ct. Order dated Sept. 22, 2021.⁶

II. SUMMARY OF FACTS

On the afternoon of June 7, 1997, Applicant went to a birthday party at the home of John Smith. Applicant spent the afternoon and evening drinking liquor and beer. (Trial Tr. 307). As the evening progressed, Applicant became belligerent and picked fights with or attacked a number of

⁵ Notably, Applicant raised this claim in the context of newly-discovered evidence in his 2005 and 2012 PCR applications and his 2014 petition for habeas corpus.

⁶ The Court neither found Applicant was entitled to an evidentiary hearing nor found the State could not raise valid procedural bars to the claim.

other partygoers. (Trial Tr. 29; 51–53; 77–87; 93–96; 104, 109, 127). Eventually, Applicant made the mistake of calling Victim’s wife, Sherry Heaton, a “bitch.” Victim, a rather large man and a bouncer at a local club, may have punched Applicant once and knocked him to the ground. Conflicting testimonies were presented on this topic, but in any event an altercation ensued. (Trial Tr. 29–30; 53–54; 96; 259–60; 309–10). After this incident, John Smith had tired of Applicant’s behavior and told him that he needed to leave the party. Smith gave Applicant a ride home because Applicant was drunk and could not find his keys. (Trial Tr. 30–31; 52–53; 80–81; 88; 96; 128; 261; 310). On the way home, Applicant told Smith he was coming back to kill Victim and would kill Smith too if Smith testified. (Trial Tr. 55). Smith testified that Applicant’s demeanor and behavior after making this threat gave credence to the possibility that he may follow through. (Trial Tr. 55–56).

Smith returned to the party and attempted to get people to leave because of Applicant’s threat. (Trial Tr. 31; 56; 81; 128). Meanwhile, Applicant dozed off for a while, and then asked his wife to take him back to the party. However, this time, he was armed with a twenty-gauge shotgun. (Trial Tr. 288–89; 297–98; 310–16). At trial, Applicant testified that he brought the gun with the intention of scaring the party attendees, but claimed he only returned to the party to retrieve his vehicle. (Trial Tr. 328). Applicant also claimed that he never opened the shotgun to check for ammunition and was unaware the gun was loaded. (Trial Tr. 328).

Applicant arrived back at the party during the early morning hours of June 8, 1997. As he approached the partygoers, Applicant testified that he heard yelling, but admitted he could not make out what anyone was actually saying. Applicant testified that he construed the situation as aggression toward him. (Trial Tr. 315; 328–29). Applicant then pointed the shotgun at Victim and

shot Victim in the chest at a close range.⁷ Applicant then ran away as one of the partygoers fired at him with a pistol. (Trial Tr. 38; 90; 129; 316–17).

Applicant testified that he cocked the shotgun as he approached and claimed to see Victim reaching across his body. While Applicant claimed to believe that this was an effort by Victim to draw his own firearm,⁸ multiple eyewitnesses testified that Victim had not pulled a weapon out to threaten Applicant and did not have time to even react before Applicant shot him. (Trial Tr. 33; 82; 128–29; 316; 328–29). Partygoers also testified that Applicant could have reached his vehicle without bothering anyone. Trial Tr. 124–25; 129; 133; 262).

Meanwhile, Applicant returned to Smith's house, went inside, and threatened to kill those inside with the shotgun. A scuffle erupted, but the remaining partygoers managed to subdue Applicant until the police arrived. (Trial Tr. 58–61; 68–69; 83–86; 91; 98–99).

Forensics revealed that the gunshot residue testing of Victim's hands was consistent with presenting a defensive posture to a weapon fired by another individual. (Trial Tr. 229). Forensics also revealed that Victim's blood tested negative for the presence of drugs or alcohol. (Trial Tr. 189).

III. CURRENT APPLICATION

In his fourth and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

1. Prosecutorial misconduct
 - a. The prosecution failed to disclose evidence that was either exculpatory and/or constituted impeaching evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) in that it failed to disclose to trial counsel that Misty Heaton and her sister informed the Solicitor

⁷ James Smith testified that the distance between Applicant and Victim was approximately 10 feet. Victim's autopsy demonstrated that the shotgun's wadding was lodged into Victim's wounds.

⁸ Applicant testified that he had seen Victim with a gun earlier that day.

and her investigator that Sherry Heaton and/ or others known to her, drugged Applicant on the night he shot and killed Eddie Heaton.

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated by reference are the Oconee County Clerk of Court records regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; Applicant's appellate records, including the trial transcript; Applicant's prior post-conviction relief records challenging this conviction and the appeal therefrom; Applicant's federal habeas records; and the records of the current PCR action.⁹ The State reserves the right to amend this return upon receipt of any relevant materials.

IV. MOTION TO DISMISS

Applicant contends he is entitled to an evidentiary hearing on his sole allegation that the State committed prosecutorial misconduct in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) when he was tried and convicted of murder in June of 1998. In support of this claim, Applicant presents a letter dated December 31, 1998, from Misty Heaton to then-Solicitor George Ducworth. In this letter, Ms. Heaton alleges her stepmother, the victim's wife, told her that "she and some of her brothers had drugged [Mr. Crowe] the night that he shot my dad." Ms. Heaton further states that she informed Deputy Solicitor Chappell of this information at some point before trial. Accordingly, Applicant contends the prosecution's failure to disclose this information to trial counsel constitutes a *Brady* violation.

⁹ On October 19, 2021, the Honorable J. Cordell Maddox, Jr., acting in his capacity as Chief Administrative Judge, issued an order granting discovery to Applicant. Specifically, Judge Maddox ordered the Tenth Circuit Solicitor's Office and Oconee County Sheriff's Office to "produce their complete files to counsel regarding the investigation and conviction of Applicant." In May 2022, Applicant's PCR counsel provided the Attorney General's Office with copies of the documents she obtained while reviewing these files.

In its September 22, 2021, Order, the Supreme Court remanded the matter to the circuit court and instructed the circuit court to construe Applicant's filing as a permissibly successive application for post-conviction relief. Notably, the Court did not find Applicant was entitled to an evidentiary hearing; that the statute of limitations must be equitably tolled; or that the materials presented in support of Applicant's *Brady* claim constitute newly-discovered evidence pursuant to S.C. Code §§ 17-27-20(A)(4) and 17-27-45(C). Accordingly, the State moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *Sutton v. State*, 361 S.C. 644, 647, 606 S.E.2d 779, 780 (2004) ("A PCR action is a civil action generally subject to rules and statutes that apply in civil proceedings"), *abrogated on other grounds by Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005).

First, this action should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act¹⁰ (Act). Specifically, the Act requires:

- (A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
- (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal

¹⁰ S.C. Code Ann. §§ 17-27-10 to -160.

proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

- (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45(A)–(C).

Our Supreme Court has held that the statute of limitations applies to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). The defense of statute of limitations may be properly raised in a motion for summary judgment. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” See *Leamon*, 363 S.C. at 435, 611 S.E.2d at 495 (“Ignorance of the statute of limitations is not an excuse for late filing . . .”); *Sutton*, 361 S.C. at 648, 606 S.E.2d at 781 (declining “to impose a duty on trial or appellate counsel to inform a convicted defendant of the availability of PCR or the one-year deadline to file an application”).

Because Applicant’s claim is not based on any change in case law, subsection 17-27-45(B) is clearly inapplicable. Therefore, the instant application falls under either subsection 17-27-45(A) or (C). Here, the remittitur from Applicant’s direct appeal was issued on August 7, 2000. The instant application, which was filed in September 2021, therefore clearly falls outside the statute of limitations as set forth in section 17-27-45(A). Accordingly, this action should be summarily

dismissed as untimely, particularly in light Applicant's failure to allege any known ground entitling him to equitable tolling. *See Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 619–20 (Ct. App. 2008) (equitable tolling has been deemed available where (1) extraordinary circumstances prevented the plaintiff from filing despite his due diligence; (2) the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass; and (3) the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim).

Alternatively, to the extent Applicant claims his *Brady* violation claim is timely pursuant to section 17-27-45(C) based on newly-discovered evidence,¹¹ this claim must be summarily dismissed as untimely as a matter of law. While Applicant does not indicate in his application or his common law petition for certiorari the date upon which he discovered Misty Heaton's December 31, 1998, letter to then-Solicitor George Ducworth, Applicant attached a copy of the letter to his response in opposition to Respondent's motion for summary judgment in his federal habeas corpus action on August 11, 2015. (Attached as Exhibits #1 and #2). His August 2015 response further indicates that Applicant was aware that this letter existed since October 25, 2004, at the latest. Specifically, Applicant states the following on pages 29 and 30 of his August 2015 response (verbatim):

Petitioner would submit that during the initial PCR hearing Petitioner had witnesses present, along with "newly discovered." Petitioner would submit that while Judge Macaulay's order state[s] that 'the Court has further had an opportunity to observe the witnesses presented at the hearing and closely pass upon their credibility and weigh their testimony, page 2 of Exhibit A, there was

¹¹ The Act states a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4).

never any witnesses testimony to consider because they were not allowed to testify. Rather, PCR counsel (Warder) presented a letter of correspondence written to Solicitor George Ducworth from the decedent's daughter Misty Dawn Heaton (correspondence attached hereto as Exhibit B). During the PCR hearing, Petitioner submitted that Judge Macaulay, after reviewing Exhibit B gave an open court ruling granting a new trial based on the decedent's daughter's correspondence. Thereafter, for reasons unknown to Petitioner he received Exhibit A simply denying relief based on the statute of limitations. In support of this allegation Petitioner submits three (3) sworn affidavits, hereto Exhibit C of the witnesses who were present during the initial PCR hearing willing to testify to the truth of the matter regarding Exhibit B. However, once Judge Macaulay reviewed Misty Heaton's correspondence he granted a new trial on that evidence alone and PCR counsel Warder assured Petitioner and his family that there was no need to argue any further because Judge Macaulay granted a new trial. The witnesses who presented Exhibits C were present the day of the open court ruling.

After Judge Macaulay issued the written order denying relief, Petitioner's family became concerned because it was everyone's impression that Judge Macaulay granted a new trial. At that time PCR Counsel Warder assured Petitioner's family there had been a mistake but he (Warder) would correct it, and that's when Ward filed the second PCR alleging "newly discovered evidence," and that "newly discovered evidence" was Misty Heaton's letter of correspondence to George Ducworth. The substance of Exhibit B supports the theory that Petitioner was unwittingly "drugged" the night in question.¹²

Thus, even assuming Applicant did not obtain a copy of the letter until he filed his federal habeas petition in 2014, section 17-27-45(C) requires the application to be filed within one year after the evidence was actually discovered. Applicant even admits in his common law petition that "Misty Heaton Price has been prepared to testify to these events for years." Accordingly, to the extent Applicant relies on the letter as newly-discovered evidence to support his *Brady* claim, this application is clearly untimely because Applicant had a copy of this letter in 2015.

¹² Because Applicant did not appeal from Judge Macaulay's November 17, 2004, Order of Dismissal, neither party obtained a copy of the transcript from the hearing.

This action should further be summarily dismissed based on the equitable doctrine of *laches*. To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. *McElrath v. State*, 276 S.C. 282, 284, 277 S.E.2d 890, 891 (1981). This requirement “guards the state’s legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available.” *Id.*

Where a PCR applicant fails to exercise reasonable diligence, the State may seek the summary dismissal through the equitable doctrine of *laches*, which is defined as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” *Bray*, 366 S.C. at 140, 620 S.E.2d at 745 (quoting *Whitehead v. State*, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002)); *see also RWE NUKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 199, 644 S.E.2d 730, 734–35 (2007) (“*Laches* connotes not only an undue lapse of time, but also negligence and opportunity to have acted sooner.”). “Whether a claim is barred by *laches* is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of right does not constitute *laches*.” *Whitehead*, 352 S.C. at 219, 574 S.E.2d at 202. Recognizing the importance of finality in litigation, Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of *laches*. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

The South Carolina General Assembly has likewise recognized this problem and instituted a one-year statute of limitations. *See* S.C. Code Ann. § 17-27-45.

Applicant filed this PCR action over twenty-three years after he was convicted. *See, e.g., Bray*, 366 S.C. at 140, 620 S.E.2d at 745 (affirming PCR judge’s ruling that laches barred belated review of denial of PCR seven years after PCR hearing was held). Applicant’s delay has greatly prejudiced the State (as well as Applicant). Absent some explanation or justification for the delay in seeking PCR, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to review the applicant’s claims. *McElrath*, 276 S.C. at 283, 277 S.E.2d at 890. According to Applicant, PCR counsel presented the letter from Misty Heaton in support of his *Brady* claim at the October 2004 hearing before Judge Macaulay. Despite Judge Macaulay’s denial of relief, Applicant’s failure to appeal Judge Macaulay’s November 17, 2004, Order of Dismissal—or at least obtain the transcript—prevented the State from addressing this claim at the appropriate time. *See, e.g., Rule 607(i), SCACR* (court reporter only required to retain records for five years); *see also State v. Serrette*, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining to remand for reconstruction of record noting such remedy “would undoubtedly be futile considering the passage of over ten years’ time” when the delay was caused by appellant). As aforementioned, Applicant states in his common law petition for certiorari that “Misty Heaton Price has been prepared to testify to these events for years.” He nonetheless waited until 2021 to bring this claim. Accordingly, this application should be summarily dismissed as barred by the equitable doctrine of *laches*.

Because the allegation in the current application was or could have been raised in Applicant’s previous state and federal proceedings, this action is further barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Cas. Ins. Co.*,

311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; *Foxworth*, 275 S.C. 615, 274 S.E.2d 415.

In *Foxworth*, the appellants—Myron Foxworth and Gary Wilson—were convicted of armed robbery and sentenced to twenty-two years imprisonment. Both men appealed their convictions, which were affirmed and their appeals dismissed. 275 S.C. at 616; 274 S.E.2d at 415. They then filed *pro se* petitions for writs of habeas corpus relief in the South Carolina Federal District Court, without exhausting their state PCR remedies. The District Court considered “the trial record and the numerous allegations raised in the petitions . . . and [it] dismissed [the petitions] on the merits.” *Id.* Both men then filed *pro se* PCR applications, but the PCR judge found their applications were without merit. He further found that *res judicata* bars claims raised in the applications, as well as those that *could have* been raised. *Id.* at 616–17, 274 S.E.2d at 415–16 (emphasis added). Our Supreme Court agreed. Relying upon section 17-27-90 and its prior decisions construing that statute, the Court held:

The language of Section 17-27-90 is not restricted to State proceedings but rather refers to “any other proceeding” where relief might be sought prior to the submission of a subsequent application. We, therefore, extend the reasoning espoused in *Land v. State*, *supra*, to the situation where, as here, an application in the State court follows a federal habeas corpus adjudication. The burden is on the applicant to prove that the alleged grounds for relief could not have been raised in federal court.

Id. at 618, 274 S.E.2d at 416.

Here, Applicant presented the letter from Misty Heaton to Solicitor Ducworth that is the basis of his current *Brady* violation claim in his petition for habeas corpus relief in federal court. Although the habeas petition was ultimately dismissed as untimely, Judge Hendricks found the following regarding equitable tolling:

Here, Petitioner argues that his PCR attorney's conduct constitutes "extraordinary circumstances" entitling him to equitable tolling. (ECF No. 51 at 7–8.) Specifically, Petitioner alleges that his PCR counsel acknowledged the untimely filing of the first PCR action and "assured that he (Warder) would get the case heard since the denial of the first PCR was his (Warder'[s]) fault for not timely filing the initial application." (*Id.* at 5.)

Holland is instructive here. In *Holland*, the Court considered whether the conduct of the petitioner's attorney amounted to "extraordinary circumstances" sufficient to warrant equitable relief. 560 U.S. at 651–652. The Court found that the conduct must amount to more than "a garden variety claim of excusable neglect" and proceeded to find the petitioner's allegations that his attorney "failed to file [the] petition on time and appears to have been unaware of the date on which the limitations period expired" to suggest only "simple negligence." *Id.* at 651–52. These allegations are analogous to those made in the instant action. The *Holland* Court went on to recount further facts that suggested the presence of "extraordinary circumstances," including the petitioner's remarkable diligence in seeking guidance from his attorney and his prompt efforts to remedy his attorney's failings. *Id.* at 652. However, such additional conduct is lacking here. Thus, because the conduct of Petitioner's attorney amounts to no more than "simple negligence," it cannot constitute extraordinary circumstances sufficient to warrant equitable tolling.

Applicant appealed that decision to the Fourth Circuit and to the United States Supreme Court but was denied certiorari. The finality of the previous court's rulings should be respected, and this Court should summarily dismiss this action as barred by the principles of *res judicata*.

V. ALL OTHER CLAIMS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[Conclusion and signature on following page]

VI. CONCLUSION

WHEREFORE, having made its return, the State moves to summarily dismiss the application as untimely and barred by the doctrines of *res judicata* and *laches*.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By:



ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

July 19, 2022

1 In the Court of Common Pleas of the
2 State of South Carolina, County of Oconee

3

4 Case No.: 2021CP370663

5 Daniel Crowe,

6 Plaintiff(s),

7 vs. **Transcript of Record**

8 State of South Carolina,

9 Defendant(s).

10

11

12

13

14

15 August 25, 2022

16 Anderson, South Carolina

17

18

19

20

21 BEFORE:

22 The Honorable G.D. Morgan

23

24

25

APPEARANCES**REPRESENTING THE STATE:**

Taylor Z. Smith, Esquire

Lillian L. Meadows, Esquire

South Carolina Attorney General's Office

Post Office Box 11549

Columbia, South Carolina 29211-1549

REPRESENTING THE DEFENDANT:

Elizabeth Franklin-Best, Esquire

3710 Landmark Drive, Suite 113

Columbia, South Carolina 29204

1	INDEX	
2	WITNESS:	PAGE:
3	MISTY HEATON PRICE	
	Direct Examination By Ms. Franklin-Best	22
4	Cross Examination By Mr. Smith	30
5	CHARLOTTE CROWE	
	Direct Examination By Ms. Franklin-Best	39
6	Cross Examination By Mr. Smith	39
7	GRUBER SIRES	
	Direct Examination By Ms. Franklin-Best	41
8	Cross Examination By Mr. Smith	44
9	JAY PHILLIPS	
	Direct Examination By Ms. Franklin-Best	47
10	Voir Dire Examination By Mr. Smith	50
	Cross Examination By Mr. Smith	59
11	GEORGE DUCWORTH	
12	Direct Examination By Ms. Meadows	64
	Cross Examination By Ms. Franklin-Best	66
13	DANNY SINGLETON	
14	Direct Examination By Ms. Meadows	68
15	SUSAN REESE	
	Direct Examination By Ms. Meadows	76
16	Cross Examination By Ms. Franklin-Best	85
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX AS TO EXHIBITS

Ex. No.:	Description:	Marked:	Received:
1	Charlotte Crowe Affidavit	8	8
3	Misty Heaton Affidavit	9	9
4	LaDonna Beeker Affidavit	9	9
5	Gruber Sires Affidavit	9	9
6	Misty Heaton written statement	9	9
7	T. Phillips statement	9	9
9	Ben Smith statement	9	9
11	Defense Notes	9	9
8	L. Heaton statement	9	
10	R. Griffin interview	9	
(Exhibit No. 2 intentionally skipped)			

1 PROCEEDINGS

2 THE COURT: All right. Ready to proceed
3 in the matter of Mr. Daniel Crowe; is that correct?

4 MR. SMITH: May it please the Court. This
5 matter is Daniel Crowe versus the State of South
6 Carolina, docket number 2021CP370663. Mr. Crowe was
7 convicted of murder in June of 1998, and sentenced to
8 life without parole pursuant to Section 17-25-45, due to
9 a prior conviction for voluntary manslaughter in 1993.

10 His conviction was confirmed on
11 appeal. He then filed an untimely application for
12 PCR, which was dismissed as barred by the statute of
13 limitations. He filed a second PCR in 2005, which
14 was also dismissed as untimely and successive. He
15 filed a third PCR in 2012, which was again dismissed
16 as untimely and successive.

17 On July 27th, 2021, Ms. Franklin-Best
18 filed a common law petition for cert on Mr. Crowe's
19 behalf requesting an evidentiary hearing on an
20 alleged Brady violation. The Supreme Court remanded
21 this case and instructed the circuit court to
22 construe Mr. Crowe's applications as permissibly
23 successive. And the State would like to be heard on
24 our motion to dismiss whenever you would like.

25 THE COURT: All right. Yes, ma'am.

1 MS. FRANKLIN-BEST: Good morning, Your
2 Honor. Elizabeth Franklin-Best here on behalf of Mr.
3 Danny Crowe.

4 THE COURT: Good morning.

5 MS. FRANKLIN-BEST: I do have some kind of
6 initial remarks. I guess that they want to argue their
7 motion to dismiss. At the proper time, I would like to
8 be heard on that. But I do as just sort of a matter of
9 house cleaning, there were some affidavits that were
10 filed with the South Carolina Supreme Court, I filed
11 copies there. I have the originals. And I would just ask
12 if I could make this a part of the record. As I said, it
13 has already been filed with the Supreme Court, but these
14 are just originals versus copies.

15 THE COURT: All right. Any objection?

16 MR. SMITH: Your Honor, we had discussed
17 this. I told Ms. Best that I would not object to the
18 affidavits as long as the people testified today.
19 However, there was one of Mike Shead and I can't remember
20 if that was marked.

21 MS. FRANKLIN-BEST: And we are not going
22 to submit that one.

23 MR. SMITH: Okay. My other concern was,
24 some of these affidavits obtain hearsay and it is hearsay
25 that I intend to object to as these people testify today,

1 so I'm concerned with the Court taking this into evidence
2 as a substantive matter when the contents of the
3 affidavits and the testimony might be objectionable.

4 THE COURT: All right. Ms. Franklin-Best.

5 MS. FRANKLIN-BEST: Your Honor, these are
6 already a part of the record.

7 THE COURT: It is odd that they are not --
8 are you submitting them as evidentiary documents or just
9 as part of the record?

10 MS. FRANKLIN-BEST: It is already part of
11 the record, this is just house cleaning. I mean, I
12 probably should have filed the originals with the South
13 Carolina Supreme Court, but I didn't, so I just wanted
14 the record at this level to look complete, Your Honor.

15 THE COURT: All right. Anything else?

16 MR. SMITH: Well, I guess that I would
17 ask, Your Honor, say for example, I make an objection on
18 hearsay that you sustain, would you also not take into
19 consideration that same bit of statement made in the
20 affidavit?

21 THE COURT: Well, if you object to an
22 evidentiary issue with the witness and you argue that
23 there's some issues with the affidavit, I will obviously
24 take that into consideration. I'm not going to take into
25 consideration an affidavit that has been excluded based

1 on an objection that you make made on hearsay, so I'm not
2 going to consider the affidavit as an evidentiary issue
3 unless it is moved into evidence. I think this is just
4 for the record.

5 MS. FRANKLIN-BEST: Just for the record,
6 Your Honor, just trying to clean up the record.

7 THE COURT: I will only consider for
8 purposes of this hearing what is admitted into evidence
9 and not what is excluded by way of objection on hearsay
10 or any other evidentiary issue, I will obviously not
11 consider. But I will not consider these affidavits just
12 because they are in the record. I think it is a -- it
13 does sound like it is a house cleaning, housekeeping
14 measure, so I will not consider those affidavits as part
15 of the testimony because it's not being admitted into
16 evidence, as I understand. But I'll allow you to go
17 ahead and make it part of the record.

18 MS. FRANKLIN-BEST: That's correct. Thank
19 you, Your Honor. And just to be clear, that is excluding
20 Michael Shead who has not appeared.

21 *(Whereupon, Applicant's Exhibit*
22 *No(s). 1 marked for identification and received in*
23 *evidence.)*

24 *(Whereupon, Applicant's Exhibit*
25 *No(s). 3 marked for identification and received in*

1 evidence.)

2 (Whereupon, Applicant's Exhibit

3 No(s). 4 marked for identification and received in

4 evidence.)

5 (Whereupon, Applicant's Exhibit

6 No(s). 5 marked for identification and received in

7 evidence.)

8 (Whereupon, Applicant's Exhibit

9 No(s). 6 marked for identification and received in

10 evidence.)

11 (Whereupon, Applicant's Exhibit

12 No(s). 7 marked for identification and received in

13 evidence.)

14 (Whereupon, Applicant's Exhibit

15 No(s). 9 marked for identification and received in

16 evidence.)

17 (Whereupon, Applicant's Exhibit

18 No(s). 11 marked for identification and received in

19 evidence.)

20 (Whereupon, Applicant's Exhibit

21 No(s). 8 marked for identification.)

22 (Whereupon, Applicant's Exhibit

23 No(s). 10 marked for identification.)

24 THE COURT: All right. We have got a

25 motion to dismiss, is that -- procedurally, is that where

1 we are, Ms. Meadows?

2 MS. MEADOWS: Yes, sir. And we move to
3 dismiss in our return as well. While the Supreme Court
4 did, did instruct the circuit court to construe the
5 allegations permissibly successive, the Court did not
6 grant Mr. Crowe an evidentiary hearing or otherwise
7 indicate that he was entitled to one. And we are moving
8 to dismiss this application as untimely. Section
9 17-27-20(A), Section 4 of the PCR Act states (inaudible)
10 into a PCR action. And there is evidence --

11 THE COURT REPORTER: I am sorry, could you
12 speak up?

13 MS. MEADOWS: Yes.

14 THE COURT: And slow down a little bit.
15 Dows she need to slow down?

16 THE COURT REPORTER: She does talk fast.

17 MS. MEADOWS: And that there exists
18 evidence of material facts not previously presented or
19 heard prior to the vacation of the conviction or sentence
20 in the interest of justice. And 17-25-45(C) states that
21 the application must be filed within one year after the
22 date of actual discovery of the facts by the applicant or
23 after the date the facts have been ascertained by the
24 exercise of reasonable diligence.

25 And in her affidavit Mr. Crowe's

1 wife, Charlotte, indicates that she personally
2 mailed this letter that is the subject of the Brady
3 claim to Solicitor Ducworth on December 31st, 1998.
4 And, additionally, in State's Exhibit 1 to the
5 return shows that Mr. Crowe got a copy of this
6 letter in one of his pleadings in his Federal habeas
7 corpus action in 2015. And State's Exhibit 2 to the
8 return, also pleadings in his Federal habeas action,
9 where he indicates that he was aware that the letter
10 had been sent since October 25th, 2004.

11 THE COURT: Well, that was when Judge
12 McCauley heard it. Wasn't it 2004 that Judge McCauley
13 heard one of these, I guess, the first or second PCR?

14 MS. MEADOWS: The first one.

15 THE COURT: Okay, the first one. And I
16 remember, as I recall from the file, there was some issue
17 that one side was saying that Judge McCauley issued an
18 oral order reversing it based on the letter. But then
19 the final order did not set forth the basis and he denied
20 the PCR; is that correct?

21 MS. MEADOWS: Yes, sir. It was dismissed
22 as untimely. And we do not have that transcript because
23 it was not appealed.

24 THE COURT: Okay. So, in 2000 -- so,
25 Judge McCauley had the letter in 2004, and then the

1 habeas in 2015, the letter was also an issue at that
2 point; is that correct?

3 MS. MEADOWS: Yes, sir. It was Mr. Crowe
4 filed it as an attachment to one of his habeas pleadings.

5 THE COURT: Okay. All right. So your
6 motion is that he didn't file it timely; is that correct?

7 MS. MEADOWS: Yes, sir.

8 THE COURT: All right. Ms. Franklin-Best,
9 tell me about -- because I read the file last night and I
10 saw where Judge McCauley actually did reference the
11 letter. And, again, not in controversy, but the issues
12 that arose at that time, apparently, was that some were
13 under the impression that Judge McCauley had ruled from
14 the Bench that the letter -- he reviewed the letter and
15 reversed and granted the PCR based on the letter, but
16 then when the written order was prepared and filed, that
17 it did not. In fact, it denied it. And then I believe
18 it was in raising the habeas corpus action in 2015; is
19 that correct?

20 MS. FRANKLIN-BEST: So, there has never
21 been adjudication on the merits as to this. You know,
22 what happened back in 2004 before Judge McCauley, we have
23 no record of it. I mean, I have seen those same kind of
24 pleadings that you are talking about. But we do know
25 that the order dismissing it didn't address the merits of

1 the case.

2 And this was -- and when he filed his
3 own pro se application in Federal habeas, you know,
4 if you look at the order and, you know, decision in
5 that, Judge Hendrix makes it clear that there was
6 just really no record upon which he could have
7 granted relief. And that is because, of course, in
8 order to raise something in Federal habeas, you have
9 to have exhausted it in State court. And that --
10 you know, it has never been exhausted.

11 I mean, we litigated this in the
12 South Carolina Supreme Court. I mean, when I filed
13 the common law petition for writ of certiorari, I
14 put it all out there, that there were a lot of
15 procedural bars. And sort of the most significant
16 one, the reason why he never had a PCR on this issue
17 is because his then-attorney, Richard Warder, failed
18 to timely file his PCR application.

19 So, you know, he was -- immediately
20 got dismissed. Well, not immediately, I mean, it
21 took about several years before he was dismissed.
22 But, I mean, this is why, the reason that we chose
23 the vehicle of the common law petition for writ of
24 certiorari was because we had the procedural
25 problems. And so they have argued what I think they

1 are getting ready to argue again in this motion to
2 dismiss, you know, it is not timely, it is
3 successive, it is all the rest of it. I mean, those
4 were the arguments that were made to the South
5 Carolina Supreme Court.

6 And in light of that, and despite
7 those procedural issues, they granted our request
8 for the evidentiary hearing, you know, for the PCR.
9 And so, you know, that is really my response to
10 that. I mean, he has those procedural problems,
11 that's all been raised to the South Carolina Supreme
12 Court. They are aware of it and they decided to
13 give us a hearing anyway.

14 THE COURT: But is the argument that you
15 are making that it is accurately discovered evidence? It
16 is not?

17 MS. FRANKLIN-BEST: I mean, you know, the
18 Court -- I mean, I just asked for an evidentiary hearing.
19 And the Supreme Court in its order said to construe this
20 as a successive PCR application, so I have not made an
21 argument that it was after discovered evidence. I just
22 said, Here is what we have got, can you please give me a
23 hearing on it? And then they issued the order saying,
24 You get a new PCR. \

25 THE COURT: Anybody else?

1 MS. MEADOWS: Your Honor, the Supreme
2 Court did not state that the action should be construed
3 as timely either. It just said successive. It didn't
4 say that, you know, that Mr. Crowe was entitled to an
5 evidentiary hearing on that. And our position is, of
6 course, is that this letter has been known for a while
7 and it is 24 years later and, you know, that is way
8 beyond the statute of limitations. But that would be the
9 State's position as to the Supreme Court's order.

10 THE COURT: Okay. Ms. Best.

11 MS. FRANKLIN-BEST: I would just say, Your
12 Honor, you know, the right to the evidentiary hearing is
13 just part of the PCR statute. So, when the Court -- I
14 mean, I doubt that the South Carolina Supreme Court
15 remanded this for another PCR just to entertain an issue,
16 or you know, an argument to dismiss it as untimely. I
17 mean, I think the reason why they granted this, and did
18 so within two months of filing it, is because they expect
19 there to be a hearing on this issue. And that is what we
20 are here prepared for.

21 THE COURT: I read the order last night
22 and, granted, it does not specifically say that an
23 evidentiary hearing is granted, it does -- let me find
24 it -- if I can pull it up again.

25 (Pause.)