

Volume II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lee County

William Jeffrey Young, Circuit Court Judge

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S.C. Supreme Court

EUNICE MCCALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case no. 2012-213542

APPENDIX

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 A YES, SIR. LENNY GREEN AND KEITH HANNABEL.

2 Q AND WHO WAS IN THE MIDDLE?

3 A EUNICE AND TROY.

4 Q AND WERE YOU IN THE REAR?

5 A YES, SIR.

6 Q AND WHEN YOU ALL WERE DOING THAT, DID YOU STOP?

7 A YES.

8 Q WHY DID YOU STOP?

9 A I WAS TAKING MY SNEAKERS AND MY PANTS, I WAS WIPING
10 THE DUST OFF OF MY SNEAKERS.

11 Q WHAT DID YOU NOTICE AS YOU WERE BENT OVER FIXING,
12 TYING YOUR SHOES OR FIXING YOUR PANTS?

13 A THE FIRST THING I NOTICED, TROY HAD HIS ARM AROUND
14 EUNICE AND THEY WERE WALKING. HE WAS TALKING TO HIM. AND
15 HE SNATCHED THE HAT OFF FROM HIS HEAD.

16 Q DID THEY DO ANYTHING AFTER THAT, DID THEY TUSSLE?

17 A YES.

18 Q DID YOU THINK ANYTHING OF THAT AT FIRST?

19 A I THOUGHT THEY WAS PLAYING.

20 Q DID YOU CONTINUE GOING ABOUT DOING WHAT YOU WERE
21 DOING? WHAT HAPPENED WHEN YOU LOOKED BACK UP?

22 A THEY WERE FIST FIGHTING.

23 Q DID IT APPEAR TO BE A SERIOUS FIGHT AT THAT POINT?

24 A YES, SIR.

25 Q WHAT DID YOU DO?

1 A I STARTING RUNNING TOWARD THEM. I RAN.

2 Q YOU RAN TO THEM?

3 A YES.

4 Q WHAT WAS THE SITUATION WHEN YOU ARRIVED AT WHERE THEY
5 WERE TOGETHER?

6 A THEY WERE STILL FIGHTING FOR A MINUTE. AND AT THAT
7 POINT AND TIME, TROY STARTED CHOKING EUNICE.

8 Q HE WAS CHOKING HIM?

9 A YES.

10 Q DID YOU TRY AND GET HIM TO STOP?

11 A YES, SIR.

12 Q WHAT DID YOU DO?

13 A I TRIED TO GET IN BETWEEN THEM. I TOLD TROY, "THE
14 FIGHT IS OVER, YOU WON."

15 Q WHAT WAS TROY'S RESPONSE?

16 A HE TOLD ME "NO, I AM GOING TO KILL THIS NIGGER."

17 Q THAT'S WHAT HE TOLD YOU?

18 A YES, SIR.

19 Q DID YOU AT ANY TIME CALL OUT FOR HELP OF ANYONE ELSE?

20 A YES, SIR.

21 Q DID YOU GET ANY RESPONSE?

22 A NO, SIR.

23 Q AS YOU WERE TRYING TO BREAK THIS UP, WHAT HAPPENED?

24 A I HEARD A SHOT, AND I JUMPED BACK TO SEE IF I WAS HIT
25 AND I WASN'T. AND SECONDS LATER, I HEARD ANOTHER SHOT.

1 Q NOW HAD YOU KNOWN ANYTHING ABOUT ANYBODY HAVING A GUN
2 BEFORE YOU WENT TO BREAK UP THIS FIGHT?

3 A NO, SIR.

4 Q WAS YOUR FIRST NOTICE OF HIM WHEN YOU HEARD A SHOT?

5 A EXCUSE ME?

6 Q WAS YOUR FIRST NOTICE OF THE GUN WHEN YOU HEARD A
7 SHOT?

8 A YES, SIR.

9 Q DID YOU KNOW WHO THE SHOT CAME FROM THE MOMENT YOU
10 HEARD IT, OR DID YOU HAVE TO LOOK AND SEE WHO IT CAME
11 FROM?

12 A I HAD TO LOOK AND SEE.

13 Q WERE YOU ABLE TO DETERMINE AFTER YOU LOOKED, WHO HAD
14 FIRED THE SHOT?

15 A YES, SIR.

16 Q DID YOU KNOW WHO THE SHOT CAME FROM THE MOMENT YOU
17 HEARD IT, OR DID YOU HAVE TO LOOK AND SEE WHO IT CAME
18 FROM?

19 A I HAD TO LOOK AND SEE.

20 Q WERE YOU ABLE TO DETERMINE AFTER YOU LOOKED, WHO HAD
21 FIRED THE SHOT?

22 A YES, SIR.

23 Q AND WHO WAS IT?

24 A EUNICE.

25 Q NOW EVEN AFTER THE SECOND SHOT, DID MR. ROUSE GO

1 DOWN?

2 A NO, SIR.

3 Q WHAT HAPPENED? WHAT WAS GOING ON EVEN AFTER THE
4 SECOND SHOT?

5 A AFTER THE SECOND SHOT, TROY WAS STILL HANGING ON
6 EUNICE'S NECK.

7 Q DID HE SHOW ANY SIGNS OF LOOSENING OR WEAKENING?

8 A NO, SIR.

9 Q AND LET ME ASK YOU THIS, WHEN YOU HAD ENCOUNTERED
10 TROY EARLIER IN THE EVENING, WAS HE INTOXICATED?

11 A YES, SIR.

12 Q HAD HE BEEN DRINKING WITH YOU ALL, OR WAS HE DRUNK
13 WHEN HE GOT TO WHERE YOU ALL WERE?

14 A HE WAS VERY INTOXICATED WHEN I CAME TO THE FRONT YARD
15 OF CHAD'S HOUSE.

16 Q CHAD'S HOUSE?

17 A YES, SIR.

18 Q AFTER HE DIDN'T GO DOWN AFTER THE SHOTS HAD BEEN
19 FIRED, DID YOU HAVE ANY IDEA AS TO WHAT OTHER THAN HAVING
20 HEARD THE SHOTS, DID YOU KNOW ANYTHING MORE ABOUT WHETHER
21 HE HAD BEEN HIT OR NOT, OR WHAT HAD HAPPENED?

22 A I DIDN'T KNOW.

23 Q WHAT DECISIONS DID YOU MAKE AT THAT TIME?

24 A I SHOT HIM. I CAME TO THE CONCLUSION I HAD TO SHOOT
25 HIM. I SHOT HIM.

1 Q DID YOU DO THAT OUT OF FEAR FOR YOURSELF OR FEAR FOR
2 SOMEBODY ELSE?

3 MR. SAVERANCE: OBJECTION, YOUR HONOR, LEADING---

4 THE COURT: OBJECTION SUSTAINED.

5 A I DID IT OUT OF FEAR---

6 THE COURT: I SUSTAINED THE OBJECTION. ASK ANOTHER
7 QUESTION.

8 Q WHY DID TO DO IT?

9 A BECAUSE HE WAS STILL CHOKING EUNICE AFTER HE WAS
10 SHOT.

11 Q DID YOU FEAR FOR EUNICE?

12 A YES, SIR.

13 Q DID THIS MAN SHOW ANY SIGNS OF WEAKENING OR STOPPING
14 EVEN AFTER THE FIRST SHOTS WERE FIRED?

15 A NO, SIR.

16 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT TO
17 LEADING.

18 THE COURT: OBJECTION IS OVERRULED.

19 Q YOU CAN ANSWER THE QUESTION.

20 A NO, SIR.

21 Q HOW LARGE A MAN WAS MR. ROUSE? WAS HE BIGGER THAN
22 YOU?

23 A YES, SIR.

24 Q WAS HE BIGGER THAN EUNICE?

25 A YES, SIR.

1 Q WAS HE ALREADY WINNING WHEN YOU ARRIVED?

2 A EXCUSE ME?

3 Q THE FIGHT. WAS HE ALREADY -- DID HE HAVE EUNICE WHEN
4 YOU GOT TO WHERE THE SCENE OF THE FIGHT WAS?

5 A IT WAS ME HIDING.

6 Q WAS HE WINNING?

7 A OH, YES, SIR.

8 Q HAD HE DRAGGED EUNICE AROUND THE NECK EVEN AFTER HE
9 WAS WINNING THE FIGHT?

10 A YES, SIR.

11 Q NOW YOU SAID YOU KNEW MR. ROUSE AND HAD NEVER HAD A
12 PROBLEM WITH HIM. WERE YOU AWARE OF ANYBODY ELSE HAVING A
13 PROBLEM WITH HIM?

14 A NOT ME HAVING A PROBLEM, NO. NO.

15 Q WERE YOU EVER AWARE OF HIM DOING VIOLENCE TO ANYONE
16 ELSE?

17 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT.

18 A YES, SIR.

19 THE COURT: YES, SIR. BASIS FOR THE OBJECTION?

20 MR. SAVERANCE: IT CALLS FOR -- LEADING. SECOND OF
21 ALL, IT IS SOMETHING THAT WAS ALLEGED BUT NOT PROVEN. I
22 JUST THINK IT IS PREJUDICIAL AND SHOULDN'T BE ALLOWED.

23 Q LET ME GO BACK TO MY QUESTION. WERE YOU AWARE OF HIM
24 EVER HAVING DONE VIOLENCE TO ANYONE ELSE?

25 A YES, SIR.

1 Q WHO WAS THAT?

2 A CORY.

3 Q WAS THAT INCIDENT WIDELY KNOWN IN YOUR COMMUNITY?

4 A YES, SIR.

5 Q AMONG YOUR CIRCLE OF FRIENDS?

6 A YES, SIR.

7 Q AND HAD IT BEEN FAIRLY RECENT TO WHEN THIS INCIDENT
8 HAPPENED?

9 A YES, SIR.

10 Q AND WHAT DID YOU UNDERSTAND HAPPENED TO MR. MCCLEM?

11 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT ON THE
12 GROUNDS OF HEARSAY.

13 THE COURT: OBJECTION IS SUSTAINED. COUNSEL
14 APPROACH.

15 (THEREUPON, THE ATTORNEYS APPROACH AND CONFER WITH
16 THE JUDGE.)

17 Q WERE YOU AWARE -- WHAT WAS YOUR UNDERSTANDING OF WHAT
18 MR. ROUSE HAD DONE TO MR. MCCLEM?

19 A I UNDERSTOOD THAT HE CUT CORY'S THROAT.

20 Q AND DID THAT UNDERSTANDING AND KNOWLEDGE OF WHAT HAD
21 HAPPENED, HAVE AN AFFECT TO CAUSE YOUR DECISION TO TAKE
22 THE ACTION THAT YOU DID?

23 A YES, SIR.

24 Q AND AGAIN, EFRAIN, FROM YOUR VANTAGE POINT FROM
25 HAVING WATCHED THIS FIGHT AS YOU HEARD IT COMING UP TO --

1 HAD YOU HAD ANY KNOWLEDGE OF THE GUN PLAY, OR WHAT WAS
2 GOING ON WITH ANY GUN BEFORE THAT FIRST SHOT WAS FIRED?

3 A NO, SIR.

4 Q BUT YOU KNEW THAT MR. ROUSE DIDN'T STOP AFTER THAT
5 FIRST SHOT WAS FIRED.

6 A YES, SIR.

7 Q OR THE NEXT SHOT?

8 A YES, SIR.

9 Q AND AFTER AGAIN, AFTER YOU SHOT, DO YOU REMEMBER
10 EXACTLY HOW MANY TIMES YOU SHOT?

11 A ABOUT FOUR.

12 Q NOW IS THAT EXACT? DID YOU COUNT THEM, OR COULD IT
13 HAVE BEEN MORE OR LESS?

14 A I REMEMBER FOUR.

15 Q WHAT HAPPENED AFTER YOU SHOT, DID HE GO DOWN AT THAT
16 POINT?

17 A NO, SIR.

18 Q DID HE STILL CONTINUE TO STRUGGLE WITH MR. MCCLEM?
19 (SIC.)

20 A YES, SIR.

21 Q BEFORE YOU TOOK THE ACTION THAT YOU DID, COULD
22 MR. MCCLEM (SIC) HAVE ESCAPED FROM ROUSE'S GRASP?

23 MR. SAVERANCE: OBJECTION, YOUR HONOR.

24 THE COURT: BASIS FOR THE OBJECTION?

25 MR. SAVERANCE: I THINK THAT WOULD CALL FOR SOME

1 SPECULATION ON THE WITNESS' PART.

2 THE COURT: THE OBJECTION IS OVERRULED.

3 Q DID IT APPEAR TO YOU THAT EUNICE COULD HAVE GOTTEN
4 AWAY FROM HIM WHEN YOU MADE YOUR DECISION?

5 A NO, SIR.

6 Q EFRAIN, AS ALL THIS WENT ON, HOW MUCH TIME DID YOU
7 HAVE TO DECIDE WHAT YOU HAD TO DO?

8 A SECONDS.

9 Q NOW WHAT HAPPENED AFTER THEY CONTINUED TO STRUGGLE
10 AFTER YOU HAD SHOT?

11 A OH, AFTER I SHOT HIM, HE LET GO OF EUNICE'S NECK BUT
12 HE GRABBED HIM IN HIS HAND THAT HAD THE GUN. AND THEY
13 TUSSLED OVER THE GUN.

14 Q DO YOU THINK ANOTHER SHOT WENT OFF AS THEY WERE
15 TUSSLING OVER THE GUN?

16 A YES, ANOTHER SHOT WENT OFF.

17 Q DID HE STOP AT THAT POINT?

18 A YES.

19 Q WHAT DID YOU DO?

20 A I RAN.

21 Q WHERE DID YOU RUN?

22 A I RAN BACK TO CHAD JAMES' HOUSE.

23 Q WERE YOU ALONE IN RUNNING THERE?

24 A YES, SIR.

25 Q YOU JUST DIDN'T GO TO THE SAME PLACE YOU WENT IF HE

1 WENT SOMEWHERE?

2 A NO, SIR.

3 Q AND WERE YOU SCARED WHEN YOU GOT TO CHAD'S?

4 A YES, SIR.

5 Q NOW DID YOU TELL COURTNEY GENERALLY WHAT HAD HAPPENED
6 WHEN YOU GOT TO CHAD'S? OR AT SOME POINT AFTER YOU GET TO
7 CHAD'S?

8 A YES.

9 Q SHE WAS YOUR GIRLFRIEND OR IS YOUR GIRLFRIEND?

10 A YES, SIR.

11 Q DO YOU REMEMBER EXACTLY -- YOU DIDN'T GET HER A
12 NOTARIZED STATEMENT OR ANYTHING? DO YOU REMEMBER
13 GENERALLY TELLING HER WHAT HAPPENED THAT NIGHT?

14 A YES, SIR.

15 Q NOW DID YOU GO ON TO CAMDEN WITH THEM WHEN THEY WENT
16 TO CAMDEN?

17 A YES.

18 Q HOW MANY DAYS OR WHAT PERIOD OF TIME DID YOU SPEND IN
19 CAMDEN BEFORE COMING BACK TO BISHOPVILLE?

20 A THREE.

21 Q NOW WHEN YOU CAME BACK, DID YOU UNDERSTAND THAT THE
22 POLICE WERE LOOKING FOR YOU?

23 A YES, SIR.

24 Q DID YOU VOLUNTARILY GO TALK TO CAPTAIN BURKE?

25 A YES.

1 Q DID YOU GO DOWN TO HIS OFFICE AT THE POLICE STATION
2 HERE IN BISHOPVILLE?

3 A YES.

4 Q NOW DID YOU TELL HIM THE TRUTH WHEN YOU TALKED TO
5 HIM?

6 A NO.

7 Q WHY NOT?

8 A I WAS AFRAID.

9 Q AFRAID OF WHAT?

10 A OF GETTING IN TROUBLE.

11 Q SO YOU HAD TOLD HIM THAT HAD BEEN IN CAMDEN AND
12 DIDN'T KNOW ANYTHING ABOUT IT. IS THAT PRETTY MUCH IT?

13 A YES, SIR.

14 Q HE LET YOU GO AT THAT POINT.

15 A YES, SIR.

16 Q YOU WENT HOME. AFTER YOU LEFT HIS OFFICE THAT DAY,
17 DID YOU EVER LEAVE BISHOPVILLE AND DECIDE TO GO BACK TO
18 NEW YORK OR GO ANYWHERE ELSE?

19 A NO, SIR.

20 Q SO YOU DIDN'T FLEE?

21 A NO, SIR.

22 Q THE POLICE EVENTUALLY CAME AND ARRESTED YOU, DIDN'T
23 THEY?

24 A YES.

25 Q WAS THAT ON THE 29TH OF APRIL?

1 A YES.

2 Q DID THEY COME TO YOUR GRANDMOTHER'S HOUSE, YOUR GREAT
3 GRANDMOTHER'S HOUSE?

4 A YES.

5 Q WERE YOU ALL THAT SURPRISED TO SEE THEM WHEN THEY
6 CAME?

7 A NO.

8 Q DO YOU TO GO WITH THEM?

9 A YES.

10 Q NOW, EFRAIN, YOU GAVE A, ENDED UP GIVING A CONFESSION
11 TO INVESTIGATOR THOMPSON.

12 A YES, SIR.

13 Q AND YOU HEARD US GOING THROUGH -- YOU HEARD HIM TALK
14 ABOUT THE STATEMENT YESTERDAY. NOW YOU ACTUALLY TOLD HIM
15 THAT THERE WERE MORE -- THAT THERE WAS ANOTHER PERSON
16 THERE, DIDN'T YOU?

17 A YES, SIR.

18 Q IN FACT YOU DESCRIBE THE FIGHT IN YOUR STATEMENT,
19 DIDN'T YOU?

20 A YES.

21 Q BUT YOU DIDN'T NAME EUNICE, DID YOU?

22 A NO.

23 Q AND IN FACT, IN YOUR STATEMENT TO HIM, DID YOU TELL
24 HIM THAT MR. ROUSE HAD ATTACKED YOU OR COME AT YOU?

25 A YES.

1 Q WAS THAT TRUE?

2 A NO.

3 Q WHY DIDN'T YOU TELL HIM WHAT HAPPENED AS REGARDING
4 EUNICE?

5 A I JUST DIDN'T WANT TO GET NOBODY ELSE IN TROUBLE.

6 Q DID YOU JUST WANT TO TAKE RESPONSIBILITY FOR YOUR
7 PART IN THIS?

8 A YES.

9 Q DID YOU TELL HIM WHAT YOU HAD DONE?

10 A YES.

11 Q SO DID YOU TAKE YOUR ACTION OUT OF FEAR FOR YOURSELF
12 OR FOR EUNICE?

13 A FOR EUNICE.

14 Q NOW EVEN IN TAKING THE ACTION THAT YOU TOOK, DID YOU
15 INTEND TO KILL TROY ROUSE?

16 A NO.

17 Q WHAT WERE YOU TRYING TO DO?

18 A I JUST WANTED HIM TO GET OFF OF EUNICE.

19 Q DID HE SHOW ANY SIGNS OF LEAVING EUNICE OR REMOVING
20 HIS HANDS FROM HIS THROAT IF YOU HADN'T DONE SO?

21 A NO.

22 Q AND AGAIN, DID YOUR KNOWLEDGE OF WHAT HE HAD DONE TO
23 SOMEBODY ELSE IN THE PAST 2 MONTHS EARLIER, HAVE AN AFFECT
24 ON YOUR DECISION?

25 A YES, IT DID.

1 Q DID THE FACT THAT HE WAS INTOXICATED HAVE AN AFFECT
2 ON YOUR DECISION?

3 A YES, IT DID.

4 Q EFRAIN, KNOWING WHAT HAPPENED, HOW DO YOU FEEL ABOUT
5 WHAT HAPPENED?

6 A I HATE THAT TROY WAS SHOT, MAN.

7 Q DID YOU FEEL LIKE YOU HAD A CHOICE THOUGH IN WHAT YOU
8 HAD TO DO?

9 A NO.

10 Q AND AGAIN, YOU APPEARED TO MAKE THE DECISION YOU
11 MADE. HOW LONG DID YOU HAVE TO REFLECT AND MAKE SOME
12 DECISIONS OF WHAT YOU WERE GOING TO DO?

13 A SECONDS.

14 Q CAN YOU THINK OF ANYTHING THAT YOU COULD HAVE DONE
15 DIFFERENTLY THAT WOULD HAVE SPARED MR. ROUSE BUT NOT SAVE
16 MR. MCCALL?

17 A NO.

18 MR. WHEELER: THANK YOU.

19 THE COURT: MR. SAVERANCE.

20 MR. SAVERANCE: MAY IT PLEASE THE COURT, YOUR HONOR.

21 THE COURT: YES, SIR.

22 CROSS EXAMINATION BY MR. SAVERANCE:

23 Q MR. THOMAS, SO YOU ARE TELLING THIS JURY UNDER OATH
24 THAT YOU LIED TO CAPTAIN BURKE IN THE INITIAL INTERVIEW
25 YOU HAD WITH HIM?

1 A YES.

2 Q YOU TOLD HIM YOU WERE IN CAMDEN. YOU HAD NOTHING TO
3 DO WITH THE MURDER OF TROY ROUSE, DIDN'T YOU?

4 A YES.

5 Q YOU DIDN'T MENTION THAT YOU WERE ACTING IN SELF
6 DEFENSE AT THAT TIME, DID YOU?

7 A I WAS ACTING IN SELF DEFENSE.

8 Q MY QUESTION IS, YOU DIDN'T TELL CAPTAIN BURKE YOU DID
9 THIS IN SELF DEFENSE, DID YOU?

10 A NO, SIR.

11 Q YOU DIDN'T TELL CAPTAIN BURKE AT THAT TIME THAT YOU
12 SHOT AND KILLED TROY ROUSE BECAUSE EUNICE MCCALL WAS ABOUT
13 TO BE KILLED BY HIM DID YOU?

14 A NO, SIR.

15 Q NONE OF THAT WAS MENTIONED?

16 A NONE OF THAT WAS MENTIONED.

17 Q THE ONLY THING YOU SAID WAS, I WASN'T INVOLVED IN THE
18 MURDER. I WAS IN CAMDEN WHEN IT HAPPENED.

19 A THAT'S WHAT I SAID.

20 Q AND THAT WAS A LIE.

21 A YES, IT WAS.

22 Q AND I BELIEVE YOU TESTIFIED JUST A MINUTE AGO THAT
23 YOU LIED IN YOUR SECOND INTERVIEW WITH THE POLICE, IS THAT
24 CORRECT?

25 A YES, I DID.

1 Q AND THAT WAS WITH INVESTIGATOR THOMPSON?

2 A YES.

3 Q I BELIEVE YOU SAID IN THAT INTERVIEW THAT TROY ROUSE
4 CAME AT YOU AND ATTACKED YOU. AND THAT'S WHY YOU KILLED
5 HIM, CORRECT?

6 A YES.

7 Q NOW YOU'RE SAYING THAT'S NOT WHY YOU KILLED HIM,
8 CORRECT?

9 A YES.

10 Q IN THE INTERVIEW WITH INVESTIGATOR THOMPSON, AND I'LL
11 TELL YOU WHAT, LET'S GET THE DATE ON THAT. APRIL 29TH
12 2005, DOES THAT SOUND CORRECT?

13 A YES.

14 Q AND IN THAT INTERVIEW YOU DIDN'T SAY, OH, I WAS
15 COMING TO MY FRIEND EUNICE MCCALL'S DEFENSE WHEN I SHOT
16 TROY ROUSE, DIDN'T YOU?

17 A NO, I DIDN'T SAY THAT.

18 Q YOU DIDN'T SAY, DEFENSE OF OTHERS? I DID THIS
19 BECAUSE I WAS DEFENDING SOMEBODY ELSE?

20 A NO, I DIDN'T SAY THAT.

21 Q ISN'T IT TRUE THAT THE REASON YOU ARE HERE TODAY NOW,
22 AFTER LYING TWICE, SAYING IT WASN'T SELF DEFENSE, IT WAS
23 DEFENSE OF EUNICE MCCALL---

24 MR. WHEELER: OBJECTION, YOUR HONOR. COMPOUND
25 QUESTION.

1 THE COURT: LET ME HEAR THE QUESTION.

2 MR. SAVERANCE: I WILL REPHRASE IT, YOUR HONOR.

3 THE COURT: 1ALL RIGHT.

4 Q ISN'T IT TRUE THAT AFTER YOU GAVE THE FIRST TWO
5 STATEMENTS, YOU FIGURED OUT SELF DEFENSE WAS NOT GOING TO
6 WORK IN THIS CASE? ISN'T THAT TRUE?

7 A EXCUSE ME?

8 Q AFTER YOU GAVE THE TWO STATEMENTS ONE TO CAPTAIN
9 BURKE SAYING YOU WEREN'T INVOLVED, AND ONE TO CAPTAIN,
10 INVESTIGATOR THOMPSON THAT IT WAS SELF DEFENSE, AT SOME
11 POINT AFTER THAT YOU REALIZED SELF DEFENSE WAS NOT GOING
12 TO WORK IN THIS CASE, DIDN'T YOU?

13 A YES, SIR.

14 Q YOU KNEW THAT YOUR STATEMENT SAYING THAT YOU SHOT
15 TROY ROUSE IN THE BACK THREE TIMES, WAS NOT GOING TO BE
16 SELF DEFENSE, DIDN'T YOU?

17 A YES.

18 Q THAT'S WHY YOU CAME UP WITH THE DEFENSE OF EUNICE
19 MCCALL TODAY, CORRECT?

20 A NO.

21 Q ARE YOU SURE?

22 A POSITIVE.

23 Q NOW YOU WERE UNTRUTHFUL BEFORE. ARE YOUR SURE YOU
24 ARE TRUTHFUL TODAY?

25 A YES.

1 Q NOW YOU SAID YOU WERE CONVICTED OF POSSESSION OF A
2 WEAPON. WAS THAT BACK IN 2003?

3 A YES.

4 Q AND YOU GOT A ONE YEAR SENTENCE ON THAT?

5 A YEAH.

6 MR. SAVERANCE: YOUR HONOR, I WOULD LIKE TO GET THIS
7 MARKED FOR IDENTIFICATION BY THE STATE. IT IS MR. THOMAS'
8 STATEMENT TO INVESTIGATOR THOMPSON ON 4/29/05.

9 (STATEMENT MARKED STATE'S EXHIBIT NO. 43 FOR ID.)

10 Q MR. THOMAS, I WANT YOU TO LOOK THROUGH THERE AND READ
11 IT. AND WHEN YOU FINISH, I AM GOING TO ASK YOU SOME
12 QUESTIONS. I JUST WANT YOU TO MAKE SURE THAT THAT IS WHAT
13 YOU TOLD INVESTIGATOR THOMPSON.

14 A READ IT OUT LOUD?

15 Q NO, NO. YOU CAN JUST LOOK AT IT. JUST KIND OF SKIM
16 THROUGH AND MAKE SURE THAT IS CORRECT. MR. THOMAS, JUST
17 LET ME KNOW WHEN YOU FINISH REVIEWING THAT, OKAY?

18 A I AM FINISHED.

19 Q LET ME GET YOU TO SPEAK UP.

20 A YES, SIR.

21 Q IS THAT THE STATEMENT YOU GAVE INVESTIGATOR
22 THOMPSON?

23 A YES, IT IS.

24 Q IS THAT A TRUE REPRESENTATION OF WHAT YOU TOLD
25 INVESTIGATOR THOMPSON ON 4/29/05?

1 A YES, SIR.

2 MR. SAVERANCE: YOUR HONOR, I WOULD MOVE TO HAVE THIS
3 ADMITTED INTO EVIDENCE.

4 THE COURT: WHAT SAYS THE DEFENSE?

5 MR. WHEELER: I DON'T HAVE ANY OBJECTION.

6 MR. WATTS: YOUR HONOR, OBJECTION AS FOR RECORD, AS
7 WE DESCRIBED EARLIER, I THINK IT WOULD BE, THE STATEMENT
8 SHOULD BE ADMITTED FOR LIMITED PURPOSES AS IT WAS BEFORE.

9 THE COURT: MR. JOHNSON OF.

10 MR. JOHNSON: YOUR HONOR, I WOULD JOIN IN THE SAME
11 OBJECTION.

12 THE COURT: THE STATEMENT IS ADMITTED. LADIES AND
13 GENTLEMEN, THIS STATEMENT AS TO, THIS STATEMENT IS
14 ADMITTED ONLY AS IT RELATES TO THE GUILT OR INNOCENCE OF
15 THIS DEFENDANT.

16 MR. SAVERANCE: MAY I APPROACH AND GET THE STATEMENT?

17 THE COURT: YES, SIR.

18 (STATEMENT IS MARKED STATE'S EXHIBIT NO. 43 INTO
19 EVIDENCE.)

20 Q STATE'S 43. AND THAT FIRST PAGE IS WHERE YOU SIGNED
21 OFF AGREEING TO GIVE A STATEMENT TO INVESTIGATOR THOMPSON?

22 A YES, SIR.

23 Q IS THAT INVESTIGATOR THOMPSON SITTING THERE?

24 A YES, SIR.

25 Q WHAT I WANT YOU TO DO, AND YOUR SIGNATURE IS ON THIS

1 PAGE, CORRECT?

2 A YES, SIR.

3 Q AND YOU UNDERSTOOD WHAT YOU WERE DOING?

4 A YES, SIR.

5 Q YOU VOLUNTARILY GAVE THIS STATEMENT?

6 A YES, SIR.

7 Q YOU WEREN'T UNDER THE INFLUENCE OF ANYTHING WHEN YOU
8 DID THIS?

9 A NO, SIR.

10 Q HOW ABOUT FLIP OVER TO THE NEXT PAGE FOR ME PLEASE.
11 NOW INVESTIGATOR THOMPSON ASKED YOU IF YOU WERE INVOLVED
12 WITH THE HOMICIDE OF TROY ROUSE ON APRIL 7TH 2005, AND
13 WHAT DID YOU SAY?

14 A I SAID YES.

15 Q YOU ADMITTED TO BEING INVOLVED IN THE HOMICIDE OF
16 TROY ROUSE?

17 A YES.

18 Q AND THEN HE ASKED YOU WHAT OCCURRED ON THE EVENING IN
19 QUESTION. YOU SAID ME, TROY AND TWO OTHER PEOPLE WERE ON
20 THE WAY TO PLAY POOL. WHO WERE THOSE TWO OTHER PEOPLE?

21 A I WAS SAYING EUNICE AND LITTLE CHARLES.

22 Q YOU'RE SURE THOSE ARE THE ONLY PEOPLE THAT WERE WITH
23 YOU?

24 A THE ONLY TWO PEOPLE WITH ME.

25 Q AND THEN INVESTIGATOR THOMPSON ASKED YOU IF WHEN YOU

1 SAY SCUFFLE DO YOU MEAN FIGHT. AND WHAT DID YOU SAY?

2 A I SAID NO, THEY WERE SO CLOSE TO EACH OTHER.

3 SWINGING EACH OTHER AROUND.

4 Q SO WHEN HE SAID DOES SCUFFLE MEAN FIGHTING YOU SAID
5 NO?

6 A YES.

7 Q YOU SAY WE TRIED TO BREAK IT UP. WHO IS WE?

8 A IT WASN'T WE.

9 Q ARE YOU SURE?

10 A YES.

11 Q SO THAT'S ANOTHER LIE?

12 A YES, IT IS.

13 Q ARE YOU SURE CHAD JAMES WASN'T AT THE SCENE WITH YOU
14 ALL?

15 A YES.

16 Q ISN'T IT TRUE THAT YOU AND CHAD JAMES WERE TRYING TO
17 BREAK THIS FIGHT UP?

18 A NO, IT'S NOT.

19 Q ARE YOU AND CHAD FRIENDS?

20 A YES.

21 Q AND YOU WOULD LIKE TO HELP YOUR FRIENDS, DON'T YOU?

22 A YES.

23 Q AND YOU WANT TO HELP CHAD, DON'T YOU?

24 A WHAT DO YOU MEAN?

25 Q HE'S YOUR FRIEND. YOU WOULD LIKE TO HELP YOUR

1 FRIENDS, DON'T YOU?

2 A YES.

3 Q AND THAT'S WHY YOU DON'T WANT TO NAME HIM, DON'T YOU?

4 MR. JOHNSON: YOUR HONOR, I OBJECT. THIS IS OUTSIDE
5 THE SCOPE OF DIRECT.

6 THE COURT: THE OBJECTION IS SUSTAINED. THE JURY IS
7 TO DISREGARD THE QUESTION AND THE ANSWER.

8 Q YOU SAID YOU HEARD THE FIRST SHOT. WHERE WERE YOU?
9 AND I AM SORRY, YOU DON'T HAVE TO LOOK AT THE ANSWER ON
10 THIS PART. WHEN YOU HEARD THE FIRST SHOT, WHERE WERE YOU?

11 A I WAS TRYING TO GET IN BETWEEN TROY AND EUNICE.

12 MR. SAVERANCE: CAN I HAVE THE WITNESS STEP DOWN,
13 YOUR HONOR?

14 THE COURT: YES, STEP DOWN.

15 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
16 STAND.)

17 Q STAND TO THE SIDE. AND YOUR HONOR, THIS IS STATE'S 1
18 THAT HE IS POINTING TO. NOW TELL ME WHERE YOU, FIRST OF
19 ALL, DO YOU KNOW WHAT THIS IS? THIS REPRESENTS? IS THAT
20 A BLUE BUILDING?

21 A YES.

22 Q AND THAT'S WILSON STREET, IS THAT CORRECT?

23 A YES.

24 Q AND THIS IS RAY STREET?

25 A YES.

1 Q SO WHERE, JUST SHOW ME WHERE YOU AND EUNICE MCCALL
2 AND TROY WERE COMING.

3 A WHICH DIRECTION WE WERE COMING?

4 Q YEAH, BEFORE THE SHOTS.

5 A BEFORE WE WERE COMING IN THIS WAY RIGHT HERE.

6 Q I MEAN DID YOU ALL DO THIS, OR DID YOU CUT IN FRONT
7 OF THE STORE?

8 A LIKE THIS. (WITNESS INDICATING.)

9 Q WELL YOU ALL WERE WALKING, WEREN'T YOU?

10 A YES.

11 Q AND SO WHY WERE YOU WALKING IN THE STREET AND NOT
12 CUTTING THROUGH THE GRASS? AND THEN WHICH WAY DID YOU ALL
13 GO WHEN YOU GOT TO THE END OF THE STREET?

14 A THIS WAY.

15 Q I NEED YOU TO SPEAK UP WHEN YOU ANSWER, OKAY.

16 A LIKE THIS IS IN FRONT OF THE STORE. THIS AREA RIGHT
17 HERE.

18 Q AND TIFFANY HILL PASSED YOU ALL RIGHT BEFORE THAT,
19 CORRECT?

20 A I AM NOT SURE.

21 Q YOU'RE NOT SURE?

22 A NO.

23 Q DID YOU SEE HER?

24 A NO.

25 Q YOU CAN'T SAY SHE WASN'T THERE THOUGH.

1 A I CAN'T.

2 Q YOU CAN'T SAY SHE DIDN'T SEE YOU.

3 A I CAN'T.

4 Q TELL ME, I AM GOING TO TELL, TELL YOU WHAT THIS
5 SHOWS, AND YOU TELL ME THE ANSWER. THIS IS T, IS
6 REPRESENTING TROY AND THAT M IS REPRESENTING EUNICE MCCALL
7 BY A PRIOR WITNESS. AND I AM NOT, YOU JUST TELL ME WHERE
8 THEY WERE AT WHEN THE FIRST SHOT WENT DOWN.

9 A WHAT DO YOU MEAN WHERE WERE THEY AT?

10 Q WHERE WERE THEY LOCATED?

11 A ON THE STREET. THE AREA?

12 Q YEAH, IF YOU WOULD SHOW ME ON THERE ROUGHLY WHERE
13 THEY WERE AT.

14 A AROUND HERE. AROUND THIS AREA. THERE IS A STOP SIGN
15 RIGHT HERE. NOT TOO FAR FROM THE STOP SIGN ON RAY STREET.

16 Q YOU CAN GO BACK TO THE STAND.

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

18 Q HOW FAR IN DISTANCE WERE YOU FROM TROY AND EUNICE
19 WHEN THE FIRST SHOT WENT OFF?

20 A I WAS TRYING TO GET IN BETWEEN THEM.

21 Q OKAY. I MEAN WERE YOU CLOSER THAN WHERE I AM AT?

22 A I WAS CLOSE ON HIM.

23 Q RIGHT UP ON HIM?

24 A RIGHT UP ON HIM.

25 Q YOU SAID WHEN THE OTHER PERSON FINISHED SHOOTING.

1 WOULD THAT BE EUNICE MCCALL?

2 A YES.

3 Q AND YOU DIDN'T MENTION THAT TO CAPTAIN BURKE IN YOUR
4 FIRST INTERVIEW, CORRECT?

5 A NO, SIR.

6 Q SO THAT WASN'T TRUE?

7 A IT WASN'T TRUE.

8 Q HOW ABOUT PLEASE TURN OVER TO PAGE TWO. YOU SEE
9 WHERE IT SAYS WHEN HE CHARGED ME?

10 A YES, SIR.

11 Q COULD YOU PLEASE READ THAT ENTIRE PARAGRAPH?

12 A IT SAYS WHEN HE CHARGED ME, I RAN AROUND. AND WHEN I
13 RAN AROUND, I SHOT HIM THREE TIMES IN THE BACK. I SHOT
14 HIM THEN RAN.

15 Q YOU SHOT HIM THEN RAN.

16 A YES, SIR.

17 Q YOU DIDN'T STAY TO HELP HIM, DID YOU?

18 A EXCUSE ME?

19 Q YOU DIDN'T STAY TO HELP HIM AFTER YOU SHOT HIM, DID
20 YOU?

21 A YOU MEAN AFTER I SHOT TROY? DID I STAY?

22 Q UH-HUH. (AFFIRMATIVE.)

23 A YES, I DID.

24 Q WELL WHAT DO YOU MEAN WHEN YOU SAY YOU RAN?

25 A I SAID I RAN? THAT'S WHAT I SAID IN THE STATEMENT.

1 Q NOW YOU'RE SAYING YOU STAYED AT THE SCENE?

2 A YES, SIR.

3 Q DID YOU SEE THE POLICE SHOW UP?

4 A NO, SIR, I DIDN'T SEE THE POLICE SHOW UP.

5 Q SO YOU LEFT BEFORE THEY GOT THERE?

6 A YES, SIR.

7 Q AND YOU LEFT TROY ROUSE LYING IN THE STREET?

8 A YES, SIR.

9 Q TO DIE LIKE A DOG.

10 MR. JOHNSON: OBJECTION, YOUR HONOR.

11 MR. WHEELER: OBJECTION.

12 Q WHY DIDN'T YOU CALL ON YOUR CELL PHONE TO HELP TROY?

13 A EXCUSE ME?

14 Q WHY DIDN'T YOU CALL ON YOUR CELL PHONE TO GET HELP
15 FOR TROY?

16 A I DON'T OWN A CELL PHONE.

17 Q YOU DON'T HAVE ACCESS TO A CELL PHONE?

18 A NO, SIR.

19 Q WHY DIDN'T YOU CALL FOR HELP WHEN YOU GOT BACK TO
20 CHAD JAMES' HOUSE?

21 A I WAS SCARED, SIR.

22 Q SO YOU CHOSE NOT TO CALL AND TRY TO HELP THE PERSON
23 YOU SHOT AT LEAST THREE TIMES?

24 A YES, SIR.

25 Q DO YOU KNOW WHETHER OR NOT MR. ROUSE WAS DEAD WHEN

1 YOU RAN FROM THE SCENE?

2 A I WASN'T SURE.

3 Q DON'T YOU THINK IT WOULD HAVE BEEN GOOD FOR YOU TO
4 CALL AND GET EMS AND SOME AMBULANCES THERE TO HELP HIM?

5 A IT WOULD HAVE BEEN.

6 Q IN THIS STATEMENT THOUGH, YOU SAID HE CHARGED YOU.
7 HE RAN AROUND YOU, AND YOU SHOT HIM THREE TIMES IN BACK,
8 RIGHT?

9 A YES, I DID.

10 Q MR. THOMAS, ISN'T IT TRUE WHAT HAPPENED IS, YOU SAW
11 EUNICE SHOOT TROY? AND TROY CAME IN YOUR DIRECTION. YOU
12 MOVED OUT OF THE WAY, AND UNLOADED IN HIS BACK. ISN'T
13 THAT WHAT HAPPENED?

14 A NO, SIR.

15 Q ISN'T THAT WHAT MAKES SENSE WITH THAT STATEMENT,
16 THOUGH?

17 A IT'S A STATEMENT, YES.

18 Q BUT YOU'RE SAYING THIS IS A LIE.

19 A YES, SIR.

20 Q ANOTHER ONE?

21 A YES, SIR.

22 Q WHAT DID YOU SHOOT HIM WITH?

23 A A 22.

24 Q CALIBER?

25 A YES.

1 Q PISTOL?

2 A YES, PISTOL.

3 Q AND ARE YOU AWARE THAT THE BULLETS AND CASINGS WERE
4 CONSISTENT, FIVE OF THEM WITH A 22 CALIBER GUN, ARE YOU
5 AWARE OF THAT?

6 A YES.

7 Q SO YOU DON'T DENY THAT YOU FIRED SEVERAL SHOTS FROM A
8 22 CALIBER PISTOL IN TO TROY ROUSE, CORRECT?

9 A NO, I DON'T DENY IT.

10 Q SO IN THAT STATEMENT YOU'RE ASKED DID YOU FEEL YOUR
11 LIFE WAS IN JEOPARDY AND YOU SAY YES. YOU DIDN'T TELL
12 CAPTAIN BURKE YOUR LIFE WAS IN JEOPARDY BACK ON APRIL 11TH
13 2005?

14 A THAT'S CORRECT.

15 Q AND NOW YOU'RE TELLING US TODAY THAT IT WAS NOT SELF
16 DEFENSE, THAT YOUR LIFE WAS NOT IN JEOPARDY, CORRECT?

17 A CORRECT.

18 Q SO THAT'S ANOTHER LIE AND MISSTATEMENT IN HERE?

19 A YES, IT IS.

20 Q NOW YOU'RE SAYING SOMEBODY ELSE'S LIFE WAS IN
21 JEOPARDY?

22 A YES.

23 Q WHAT DID YOU DO WITH YOUR CLOTHES?

24 A WHAT DID I DO WITH THEM?

25 Q UH-HUH (AFFIRMATIVE.)

1 A I KEPT THEM ON.

2 Q DIDN'T YOU TELL INVESTIGATOR THOMPSON YOU THREW THEM
3 AWAY?

4 A YES, SIR.

5 Q WHY DID YOU DO THAT, WERE YOU SCARED OF WHAT SOMEBODY
6 WOULD FIND ON THEM?

7 A NO.

8 Q WHY WOULD YOU THROW THEM AWAY?

9 A THAT'S JUST WHAT I TOLD HIM. I DIDN'T THROW MY
10 CLOTHES AWAY.

11 Q SO THAT WAS ANOTHER LIE?

12 A YES.

13 Q YOU DIDN'T HAVE A BUNCH OF BLOOD OR ANYTHING ON THEM,
14 DID YOU?

15 A NO, SIR.

16 Q IN YOUR STATEMENT, YOU SAY TROY ROUSE WAS A GOOD
17 PERSON. IS THAT TRUE?

18 A YES, SIR.

19 Q DID HE DESERVE TO DIE?

20 A NO, SIR.

21 Q AND YOU SAY I AM ONE OF THE ONES RESPONSIBLE FOR
22 TROY'S DEATH?

23 A YES, SIR.

24 Q IS EUNICE MCCALL ALSO RESPONSIBLE FOR TROY'S DEATH?

25 A YES, SIR.

1 Q BOTH OF YOU ALL?

2 A YES, SIR.

3 Q YOU'RE NOT TRYING TO BLAME TROY ROUSE, ARE YOU?

4 A NO, I DON'T KNOW WHO TO BLAME.

5 Q AND YOU ADMIT THAT YOU AND EUNICE MCCALL BOTH FIRED A
6 WEAPON, A GUN, AND THOSE BULLETS HIT TROY ROUSE, IS THAT
7 TRUE?

8 A YES SIR.

9 Q AND THAT'S EUNICE MCCALL?

10 A YES, SIR.

11 Q AND TODAY WHEN YOU SAY EUNICE MCCALL'S LIFE WAS IN
12 JEOPARDY, THAT'S THE FIRST TIME THAT YOU'VE GIVEN A
13 STATEMENT OR MENTIONED THAT AS FAR AS THESE PRIOR
14 STATEMENTS, CORRECT?

15 A YES, SIR.

16 Q THE AUTOPSY SHOWED THAT TROY ROUSE WAS I THINK RIGHT
17 AT 6'1, 170 POUNDS. DOES THAT SOUND ABOUT RIGHT?

18 A YEAH.

19 Q THAT'S ABOUT MY SIZE. IT IS FAIR TO SAY HE WAS ABOUT
20 MY SIZE?

21 A A LITTLE BIT BIGGER---

22 Q OKAY.

23 A ---IN HEIGHT.

24 Q BUT 170 POUNDS IS A GOOD ESTIMATE OF WHAT HE WEIGHED?

25 A YES, SIR.

1 Q IS IT TRUE THAT YOU SHOT TROY ROUSE 6 TIMES?

2 A I AM NOT SURE.

3 Q BUT YOU COULD HAVE?

4 A UM....

5 Q WELL THERE WAS TESTIMONY THAT THERE WERE 7 GUNSHOT
6 WOUNDS ON TROY ROUSE, ON HIS BODY?

7 MR. WHEELER: OBJECTION, YOUR HONOR. HE'S PITTING
8 THE WITNESSES AS TO PREVIOUS TESTIMONY.

9 MR. SAVERANCE: IF I COULD,---

10 THE COURT: THE OBJECTION IS SUSTAINED.

11 Q HOW MANY PEOPLE SHOT TROY ROUSE?

12 A TWO.

13 Q HOW MANY GUNS WERE USED TO SHOOT TROY ROUSE?

14 A TWO.

15 Q ONE FROM YOU AND ONE FROM EUNICE MCCALL?

16 A YES, SIR.

17 Q THE TRUTH IS, YOU FIRED SIX TIMES AT TROY, DIDN'T
18 YOU?

19 A I DON'T REMEMBER.

20 Q YOU DON'T REMEMBER BUT YOU COULD HAVE.

21 A I DON'T KNOW.

22 Q THE TYPE OF GUN YOU HAD, DOESN'T IT CARRY 6 BULLETS?

23 A NO.

24 Q HOW MANY DOES IT CARRY?

25 A TEN.

1 Q TEN? AND YOU DON'T KNOW HOW MANY TIMES YOU FIRED?

2 A NO.

3 Q WOULD YOU AGREE THAT YOU SHOT TROY ROUSE IN THE BACK
4 AT LEAST TWICE?

5 A YES.

6 Q ARE YOU AWARE THAT BOTH OF THOSE SHOTS IN THE BACK
7 LACERATED HIS LUNG AND CONTRIBUTED TO HIS DEATH?

8 MR. WHEELER: OBJECTION, YOUR HONOR. THAT'S IN THE
9 AUTOPSY REPORT. MY CLIENT IS NOT A DOCTOR.

10 THE COURT: THE OBJECTION IS SUSTAINED. IT CALLS FOR
11 THE WITNESS TO GIVE A MEDICAL OPINION AND CONCLUSION.

12 Q YOU ALSO SHOT TROY ROUSE, THE VICTIM, IN THE LEG,
13 DIDN'T YOU?

14 A I AM NOT SURE. I DON'T REMEMBER. I JUST RAN AND
15 FIRED SEVERAL TIMES, SIR.

16 Q ISN'T IT TRUE THAT AFTER TROY ROUSE WAS HIT, HE WAS
17 ON THE GROUND IN A DEFENSIVE POSITION, AND YOU FIRED? AND
18 ONE SHOT WENT UP INTO THE BOTTOM OF HIS KNEE CAP AND UP IN
19 TO HIS LEG, ISN'T THAT THE TRUTH?

20 A NO, SIR, THAT IS NOT TRUE.

21 Q DO YOU KNOW HOW THAT BULLET GOT THERE?

22 A NO, SIR.

23 Q DO YOU KNOW, IF YOU KNOW, DID YOU SEE EUNICE MCCALL
24 SHOOT TROY ROUSE IN THE BOTTOM OF THE KNEE CAP IN AN UPPER
25 POSITION?

1 A EXCUSE ME?

2 Q DID YOU SEE EUNICE MCCALL SHOOT TROY ROUSE IN THE
3 LEG?

4 A I COULDN'T EXACTLY SEE WHERE HE SHOT HIM. THEY WERE
5 SO CLOSE TOGETHER.

6 Q TROY ROUSE DIDN'T HAVE A GUN THAT NIGHT, DID HE?

7 A NOT TO MY KNOWLEDGE. NO, SIR.

8 Q WELL DON'T YOU THINK HE WOULD HAVE USED IT IF HE HAD
9 ONE?

10 A YES, SIR.

11 Q AND HE DIDN'T HAVE ONE, DID HE?

12 A NO, SIR.

13 Q AND HE DIDN'T SHOOT A GUN, DID HE?

14 A NO, SIR.

15 Q YOU DIDN'T SEE HIM WITH ANY OTHER TYPE OF WEAPON, DID
16 YOU?

17 A NO, I DIDN'T.

18 Q DID YOU SEE ANY VISIBLE INJURIES ON EUNICE MCCALL
19 DURING OR AFTER THE SCUFFLE?

20 A NO. NO, SIR.

21 Q YOU DIDN'T SEE A BLACK EYE ON HIM?

22 A WELL, HE RAN THE OTHER WAY.

23 Q WELL WHEN YOU WENT TO BREAK UP THE FIGHT, YOU DIDN'T
24 SEE ANY VISIBLE INJURIES ON HIM, DID YOU?

25 A NO, SIR.

1 Q YOU DIDN'T SEE ANY BUSTED TEETH?

2 A NO, SIR.

3 MR. WHEELER: YOUR HONOR, ---

4 MR. SMITH: OBJECTION, YOUR HONOR.

5 MR. JOHNSON: THAT HAS BEEN ASKED AND ANSWERED FIVE
6 TIMES.

7 THE COURT: THE OBJECTION IS OVERRULED.

8 Q YOU DIDN'T SEE A BROKEN NOSE?

9 A NO, SIR.

10 Q YOU DIDN'T SEE SCARS OR MARKS ON HIS FACE, DID YOU?

11 A IT WAS DARK. YOU COULDN'T SEE.

12 Q BUT YOU COULD SEE GOOD ENOUGH TO SAY THAT EUNICE
13 MCCALL WAS BEING ATTACKED AND YOU HAD TO SAVE HIM?

14 A YES.

15 Q YOU COULD SEE FOR THAT?

16 A YES.

17 Q YOU SAID THAT YOU RAN TO CHAD JAMES' HOUSE AFTER THE
18 SHOOTING?

19 A YES, SIR.

20 Q WHY DID YOU GO TO CHAD'S HOUSE?

21 A THE FIRST THING ON MY MIND.

22 Q DID YOU THINK HE WOULD HELP YOU?

23 A HUH?

24 Q DID YOU THINK HE WOULD HELP YOU?

25 A WHO, CHAD? I WASN'T LOOKING FOR NO HELP.

1 Q YOU HAD JUST RUN FROM THE SCENE OF THE CRIME, HADN'T
2 YOU?

3 A YES.

4 Q BUT YOU WEREN'T LOOKING FOR ANY HELP?

5 A NO, SIR.

6 Q WEREN'T YOU TALKING TO CHAD JAMES AT HIS HOUSE AFTER
7 THIS HAPPENED?

8 A YES, SIR.

9 Q DID YOU TELL HIM WHAT HAD HAPPENED?

10 A NO, SIR.

11 Q ARE YOU SURE ABOUT THAT?

12 A I AM POSITIVE.

13 Q AND YOU ALL ARE FRIENDS, RIGHT?

14 A YES, SIR.

15 Q DIDN'T HE DRIVE YOU OUT OF THIS COUNTY INTO ANOTHER
16 COUNTY AFTER THIS HAPPENED?

17 A YES.

18 Q AND THAT WAS PRETTY SOON AFTER THIS HAPPENED, WASN'T
19 IT?

20 A YES.

21 Q A FEW MINUTES AFTER IT HAPPENED?

22 A NO, SIR.

23 Q WHY WERE YOU IN THE TRUNK ON THE WAY TO CAMDEN?

24 A WELL I WAS SHAKING. I WAS NERVOUS. AND I DIDN'T
25 WANT NOBODY TO ASK ME NO QUESTIONS. AND I WANTED TO LAY

1 DOWN. AND THERE WAS FIVE PEOPLE IN THAT CAR, AND IT
2 WASN'T ENOUGH ROOM FOR ME TO LAY DOWN.

3 Q SO TO BE ABLE TO LAY DOWN, YOU DECIDED TO RIDE FROM
4 LEE COUNTY TO CAMDEN IN THE TRUNK OF A CAR?

5 A YES, SIR.

6 Q DO YOU NORMALLY RIDE IN THE TRUNK OF A CAR WHEN YOU
7 ARE TIRED?

8 A NO, SIR.

9 Q THE TRUTH IS, YOU RODE IN THE TRUNK OF THAT CAR
10 BECAUSE YOU KNEW YOU HAD JUST KILLED TROY ROUSE. YOU WERE
11 TRYING TO GET OUT OF TOWN, ISN'T THAT TRUE?

12 A NO, SIR.

13 Q YOU WERE TRYING TO HIDE IN THAT TRUNK, WEREN'T YOU?

14 A NO, SIR.

15 Q DID CHAD JAMES TELL YOU TO GET IN THE TRUNK?

16 A NO, SIR.

17 Q SO YOU JUST DECIDED TO HOP IN THE TRUNK BY YOURSELF.

18 A YES.

19 Q WELL HE KNEW YOU WERE IN THE TRUNK, DIDN'T HE?

20 A YES.

21 Q WHERE DID YOU ALL GO?

22 A EXCUSE ME?

23 Q WHAT DID YOU ALL GO?

24 A FROM WHERE?

25 Q WHERE DID YOU ALL GO IN THE CAR?

1 A OH, WE WENT, FIRST WE STOPPED AT THE INTERSTATE
2 SHELL. THAT'S WHEN I GOT INTO THE TRUNK. AND AFTER THAT
3 I GOT TO CAMDEN.

4 Q DID YOU ALL CALL FOR HELP FOR TROY ROUSE AT THE
5 INTERSTATE SHELL?

6 A I DIDN'T, NO. NOBODY CALLED FOR HELP.

7 Q DON'T THEY HAVE PAY PHONES OUT THERE THAT YOU CAN
8 USE?

9 A I DON'T HAVE AN HONEST ANSWER FOR THAT..

10 Q THE TRUTH IS, YOU DIDN'T CARE ABOUT HELPING TROY AT
11 THAT TIME, DID YOU?

12 MR. WHEELER: OBJECTION, YOUR HONOR. IT'S
13 ARGUMENTATIVE. ASKED AND ANSWERED. I THINK TWICE.

14 THE COURT: OBJECTION IS SUSTAINED.

15 Q WHERE DID YOU ALL GO WHEN YOU LEFT THE INTERSTATE
16 SHELL?

17 A WE WENT TO CAMDEN, SIR.

18 Q WHERE DID YOU GO IN CAMDEN?

19 A TO SOME APARTMENTS.

20 Q WHAT DID YOU DO WHEN YOU GOT THERE?

21 A I GOT OUT OF THE BACK SEAT. I STOOD UP. HE ASKED ME
22 WHAT IS WRONG. I SAID I JUST DON'T FEEL GOOD. AND I TOLD
23 HIM, I ASKED HIM TO COME PICK ME UP TOMORROW. AND HE
24 SAID HE WOULD. AND I WENT IN THE HOUSE.

25 Q WHO WENT INSIDE?

1 A MYSELF, COURTNEY AND SAMANTHA.

2 Q AND YOU HAD TOLD COURTNEY WHAT HAD HAPPENED?

3 A YES, SIR.

4 Q DIDN'T YOU TELL HER EVERYTHING COULD HAVE BEEN
5 AVOIDED IF EUNICE WOULDN'T HAVE SHOT TROY?

6 A YES, SIR.

7 Q ARE YOU SAYING THIS IS EUNICE MCCALL'S FAULT?

8 A NO, I AM NOT.

9 Q EARLIER YOU ADMITTED IT WAS YOURS AND EUNICE MCCALL'S
10 FAULT WHEN I QUESTIONED YOU, DIDN'T YOU?

11 A I CAN'T REMEMBER.

12 Q OH, YEAH, I ALMOST FORGOT. YOU SAID THAT YOU HEARD A
13 SHOT WHEN YOU WERE TRYING TO BREAK UP EUNICE AND TROY,
14 RIGHT?

15 A YES, SIR.

16 Q YOU STEPPED BACK TO SEE WHAT WAS GOING ON.

17 A I STEPPED BACK TO SEE IF I WAS HIT.

18 Q OKAY, AND I AM NOT TRYING TO TRICK YOU. YOU STEPPED
19 BACK TO CHECK YOURSELF?

20 A I STEPPED BACK TO SEE IF I WAS HIT.

21 Q AND YOU WEREN'T?

22 A NO.

23 Q AND YOU CLAIM THAT THEY WERE STILL SCUFFLING?

24 A HE WAS STILL CHOKING EUNICE.

25 Q HOW WERE THEY IN POSITION TO YOU? WHAT COULD YOU

1 SEE?

2 A I COULD SEE THE LEFT SIDE OF TROY. AND OPPOSITE,
3 THEY WAS FACED TOGETHER.

4 Q OKAY, AND I AM NOT TRYING TO TRIP YOU UP. BUT THIS
5 WOULD BE THE LEFT SIDE. SO YOU COULD SEE THE LEFT SIDE
6 OF?

7 A YES.

8 Q OF TROY?

9 A YES.

10 Q AND EUNICE WAS LIKE THIS?

11 A THE RIGHT SIDE. YES, SIR.

12 Q AFTER YOU REALIZED YOU WEREN'T HIT, HOW FAR AWAY WERE
13 YOU FROM HIM? DO I NEED TO COME CLOSER OR BACK UP?

14 A CLOSE. A COUPLE OF INCHES AWAY FROM HIM.

15 Q SO WHEN YOU BACKED UP, YOU DIDN'T BACK UP THAT MUCH?

16 A NO, SIR.

17 Q IS THAT THE POINT AND TIME WHERE YOU FIRED INTO
18 TROY'S BACK?

19 A NO, SIR.

20 Q WELL HOW DID THAT COME ABOUT?

21 A WELL SECONDS LATER, ANOTHER SHOT WENT OFF. AND HE
22 WAS STILL HOLDING ON TO EUNICE'S NECK. AND SO I MADE THE
23 DECISION TO STEP BEHIND TROY AND FIRE.

24 Q OKAY. AND I AM TROY. YOU SAID YOU COULD SEE HIS
25 LEFT SIDE.

1 A YES, SIR.

2 Q AFTER THE SECOND SHOT YOU SAY HE WAS STILL GOING AT
3 IT?

4 A YES, SIR.

5 Q WELL HOW DID YOU SHOOT HIM IN THE BACK IF YOU ARE
6 LOOKING THAT WAY?

7 A I STATED I STEPPED BEHIND HIM AND SHOT HIM IN THE
8 BACK.

9 Q WERE YOU ABOUT THIS CLOSE TO HIM?

10 A YEAH. ARE YOU TALKING ABOUT AS CLOSE FROM ME TO YOU
11 OR WHATEVER? YES.

12 Q AFTER TROY WAS SHOT THE SECOND TIME, YOU WENT BEHIND
13 HIS BACK, RIGHT?

14 A YES.

15 Q AND SHOT THREE TIMES IN HIS BACK?

16 A I FIRED MULTIPLE TIMES, SIR.

17 Q WHY DID YOU SHOOT HIM THREE TIMES?

18 A WELL I SHOT ONE TIME FIRST, SIR. HE DIDN'T RESPOND.
19 I SHOT HIM AGAIN.

20 Q , SO IT WAS HIS FAULT HE WOULDN'T GO DOWN?

21 A I GUESS SO.

22 Q HOW DO YOU KNOW HE WASN'T STRUGGLING FOR HIS LIFE OR
23 FOR HELP.

24 MR. SMITH: OBJECTION. CALLS FOR SPECULATION.

25 MR. SAVERANCE: I SAID HOW DO YOU KNOW IT.

1 THE COURT: HOW DO YOU KNOW WHAT?

2 MR. SAVERANCE: I JUST ASKED HIM HOW DID HE KNOW---

3 THE COURT: HOW DID HE KNOW WHAT?

4 MR. SAVERANCE: THAT TROY WASN'T STRUGGLING FOR HIS
5 LIFE OR FOR HELP?

6 THE COURT: OBJECTION IS OVERRULED.

7 A ANSWER IT?

8 Q HOW DO YOU KNOW AFTER HE HAD BEEN SHOT TWICE, TROY
9 ROUSE?

10 A HE WAS STILL CHOKING EUNICE.

11 Q WHY DID YOU WALK AROUND AND SHOOT HIM IN THE BACK
12 THREE TIMES?

13 A I COULDN'T HAVE SHOT HIM IN THE FRONT, HE WAS STILL
14 CHOKING EUNICE.

15 Q AND AGAIN, YOU DIDN'T SEE ANY MARKS ON EUNICE IS WHAT
16 YOU SAID JUST A MINUTE AGO.

17 A I DIDN'T.

18 Q WELL WHEN YOU SHOT INTO THE BACK, IF IT HAPPENED THAT
19 WAY, YOU WEREN'T RISKING SHOOTING EUNICE ALSO?

20 A NO, SIR. I WAS DIRECTLY BEHIND MR. ROUSE.

21 Q ARE YOU SAYING YOU ARE A GOOD SHOT AND YOU KNEW YOU
22 WOULDN'T HIT EUNICE MCCALL?

23 A NO, I AM NOT SAYING THAT. I KNOW I WASN'T -- I
24 COULDN'T HAVE HIT EUNICE BECAUSE I WAS DIRECTLY BEHIND
25 TROY.

1 Q BUT YOU COULD HAVE MISFIRED, COULDN'T YOU?

2 MR. WHEELER: OBJECTION, YOUR HONOR. THIS CALLS FOR
3 SPECULATION. I DON'T UNDERSTAND IT..

4 THE COURT: OBJECTION IS SUSTAINED.

5 Q YOU INTENDED TO SHOOT TROY THOSE THREE TIMES IN THE
6 BACK THOUGH, RIGHT?

7 A I INTENDED TO GET TROY OFF OF EUNICE.

8 Q NO MATTER WHAT IT TOOK?

9 A NO MATTER WHAT IT TOOK.

10 Q AFTER THOSE THREE SHOTS, WHEN DID YOU FIRE AGAIN AT
11 TROY?

12 A WELL AFTER THE FIRST SHOT, I SEE HE DIDN'T GET OFF OF
13 EUNICE. THAT'S WHEN I FIRED SEVERAL MORE TIMES AFTER
14 THAT. AND HE LET GO OF EUNICE THEN. AND GRABBED EUNICE'S
15 HAND.

16 Q DID YOU KNOW COURTNEY JOHNSON BACK WHEN THIS
17 HAPPENED?

18 A YES, SIR.

19 Q DID YOU ASK HER TO TELL THE POLICE THAT YOU WERE WITH
20 HER WHEN THIS HAPPENED?

21 A YES.

22 Q SO YOU ASKED HER TO LIE FOR YOU?

23 A YES, I DID.

24 Q SO THAT WAS ANOTHER LIE?

25 A YES, IT WAS.

1 Q THAT'S A LOT OF LIES YOU TOLD, RIGHT?

2 A YES, SIR.

3 Q WHY SHOULD WE BELIEVE YOU TODAY?

4 A BECAUSE IT IS TRUE.

5 Q NOW IS THE TRUTH, TODAY IS THE TRUTH?

6 A TODAY IS THE TRUTH.

7 MR. SAVERANCE: ALL RIGHT, CAN I HAVE ONE SECOND,
8 YOUR HONOR?

9 THE COURT: YES, LADIES AND GENTLEMEN LET'S STAND FOR
10 A MOMENT. ANYTHING FURTHER, MR. SAVERANCE?

11 MR. SAVERANCE: VERY BRIEFLY, YOUR HONOR.

12 RECROSS EXAMINATION BY MR. SAVERANCE:

13 Q DO YOU LIVE NEAR WHERE THIS CRIME OCCURRED?

14 A I LIVE ON JACKSON STREET, SIR.

15 Q WHY DIDN'T YOU GO HOME AFTER THE SHOOTING?

16 A I DON'T KNOW.

17 Q YOU WENT TO CHAD'S HOUSE?

18 A YES, SIR.

19 Q NOW MR. WHEELER ASKED WHEN YOU MENTIONED SOMETHING
20 ABOUT TROY ROUSE DOING SOMETHING TO CORY MCCLEM. IF HE
21 WAS SUCH A DANGEROUS PERSON, WHY WERE YOU WALKING WITH HIM
22 AT NIGHTTIME DOWN THE STREET?

23 A TROY AIN'T DID NOTHING TO ME.

24 Q AND HE DIDN'T TRY TO DO ANYTHING TO YOU THAT NIGHT
25 EITHER, DID HE?

1 A NO, SIR.

2 Q NOBODY FORCED Y'ALL TO WALK TOGETHER, DID THEY?

3 A NO, SIR.

4 MR. SAVERANCE: THAT'S ALL I HAVE, YOUR HONOR.

5 THE COURT: MR. WATTS.

6 MR. WATTS: MAY IT PLEASE THE COURT, YOUR HONOR.

7 DIRECT EXAMINATION BY MR. WATTS:

8 Q A FEW QUESTIONS, FIRST OFF, I WANT YOU, DO YOU STILL
9 HAVE YOUR STATEMENT IN FRONT OF YOU?

10 A YES, SIR.

11 Q LET'S LOOK AT PAGE TWO. I AM GOING TO ASK YOU
12 SOMETHING YOU MAY NOT HAVE SAID ALREADY. READ WHERE THERE
13 IS A QUESTION. IT SAYS, "WHAT WAS TROY'S CONDITION."
14 WOULD YOU READ THAT FOR ME?

15 A WHAT WAS TROY'S CONDITION.

16 Q READ THAT ANSWER FOR ME PLEASE.

17 A ANSWER: "HE WAS FUCKED UP. I DON'T KNOW, IT COULD
18 HAVE BEEN CRACK, COKE, ALCOHOL. HE WAS FUCKED UP."

19 Q WERE YOU HERE WHEN THE EXPERT CAME IN AND TALKED
20 ABOUT THE TOXICOLOGY?

21 A YES, SIR.

22 Q DID YOU HEAR HER TALK ABOUT HOW MUCH ALCOHOL CONTENT
23 WAS IN THE DECEASED'S BLOOD SYSTEM?

24 A YES, SIR.

25 Q LET'S GO TO ANOTHER PART. LET'S GO TO PAGE THREE.

1 READ THE THIRD QUESTION WHERE IT STARTS WITH, WAS THE.

2 A READ IT?

3 Q YES, SIR.

4 A OUT LOUD?

5 Q YES, SIR.

6 A QUESTION: "WAS THERE ANY PREEXISTING ALTERCATION
7 GOING ON BETWEEN YOU, THE OTHER PERSON AND TROY?" ANSWER:
8 NO, SIR.

9 Q READ THE NEXT QUESTION.

10 A WAS THE INCIDENT A SPONTANEOUS ONE? ANSWER: "YES."

11 Q NOW I WANT YOU TO READ THE SECOND TO THE LAST
12 QUESTION. I DON'T THINK WE HAVE READ THAT YET.

13 A SECOND TO THE LAST?

14 Q WHERE IT TALKS ABOUT, ARE YOU SAYING.

15 A QUESTION: ARE YOU SAYING THAT PERSON ONE WAS THE ONE
16 THAT INITIALLY WAS ASSAULTED BY TROY. ANSWER: YES.

17 Q YOU WITNESSED THE ALTERCATION AND THE FIGHT BETWEEN
18 THE DECEASED AND EUNICE, CORRECT?

19 A YES, SIR.

20 Q WERE THEY STANDING STILL THE WHOLE TIME?

21 A NO, SIR.

22 Q WERE THEY MOVING AROUND?

23 A YES, SIR.

24 Q WERE THEY GRAPPLING?

25 A NO, SIR.

- 1 Q WERE THEY THROWING PUNCHES?
- 2 A YES, SIR.
- 3 Q WERE THEY TANGLED UP IN EACH OTHER'S LIMBS?
- 4 A NO, SIR.
- 5 Q SO THEY WERE FACE TO FACE?
- 6 A YES, SIR.
- 7 Q WERE THEY MOVING AROUND?
- 8 A YES, SIR.
- 9 Q THEY DIDN'T STAND IN ONE PLACE THE WHOLE TIME?
- 10 A NO, SIR.
- 11 Q WERE THEY MOVING AROUND WHEN YOU TRIED TO COME UP AND
- 12 GET BETWEEN THEM?
- 13 A NO, SIR.
- 14 Q THEY WERE STANDING STILL AT THAT TIME?
- 15 A AT THAT TIME.
- 16 Q WHERE WAS HIS HAND PENDING AT THAT TIME?
- 17 A TROY WAS CHOKING EUNICE.
- 18 Q SO TROY WAS CHOKING EUNICE.
- 19 A YES, SIR.
- 20 Q THEY HAD BEEN MOVING AROUND IN THIS FIGHT BEFORE AND
- 21 NOW THEY WERE BOTH STANDING STILL?
- 22 A YES, SIR.
- 23 Q WAS EUNICE STRUGGLING?
- 24 A YES, SIR.
- 25 Q DO YOU HAVE MY MEDICAL TRAINING?

-) 1 A EXCUSE ME?
- 2 Q DO YOU HAVE ANY MEDICAL TRAINING?
- 3 A NO, SIR.
- 4 Q DO YOU KNOW HOW LONG IT TAKES A BRUISE TO SHOW UP?
- 5 A NO, SIR.
- 6 Q DO YOU HOW LONG IT TAKES A SCRATCH OR AN ABRASION TO
- 7 START BLEEDING?
- 8 A NO, SIR.
- 9 Q DID YOU TAKE A LONG, CLOSE HARD LOOK AT EUNICE MCCALL
- 10 TO SEE IF HE HAD ANY CUTS?
- 11 A NO, SIR.
- 12 Q WHAT WERE YOU TRYING TO DO?
- 13 A I WAS JUST TRYING TO BREAK IT UP.
- 14 Q SO YOU DIDN'T INSPECT MR. MCCALL TO SEE IF HE HAD ANY
- 15 KIND OF BRUISES OR CONTUSIONS OR CUTS OR BROKEN TEETH.
- 16 YOU DIDN'T TAKE A LONG HARD LOOK AT HIM TO DO THAT, DID
- 17 YOU?
- 18 A NO, SIR.
- 19 Q WHEN THEY WERE FIGHTING BEFORE, DID THEY COVER A
- 20 PRETTY GOOD AREA?
- 21 A EXCUSE ME?
- 22 Q DID THEY COVER A PRETTY GOOD AREA WHEN THEY WERE
- 23 FIGHTING?
- 24 A YES, SIR.
-) 25 Q YOU TESTIFIED YOU WERE COMING UP TO TRY TO GET

1 MR. ROUSE OFF OF EUNICE, IS THAT CORRECT?

2 A YES, SIR.

3 Q AND THEN YOU TESTIFIED YOU HEARD A SHOT.

4 A YES, SIR.

5 Q WHEN YOU HEARD THAT SHOT, DID YOU KNOW WHO FIRED IT?

6 A YES, SIR.

7 Q YOU DID?

8 A YES, SIR.

9 Q HOW DID YOU KNOW?

10 A BECAUSE TROY HAD BOTH OF HIS HANDS AROUND EUNICE'S
11 NECK.

12 Q SO HE WAS THROTTLING HIM?

13 A YES, SIR.

14 Q OKAY. DID MR. ROUSE LOOK LIKE HE WAS TENSED UP?

15 A YES, SIR.

16 Q WAS HE SQUEEZING HIM?

17 A YES, SIR.

18 Q DID IT LOOK LIKE MR. MCCALL WAS IN DISTRESS?

19 A YES, SIR.

20 Q DID IT LOOK LIKE HE WAS BEING CHOKED?

21 A YES, SIR.

22 Q YOU KNEW THE DECEASED'S REPUTATION, IS THAT CORRECT?

23 A YES.

24 Q YOU KNEW WHAT HAD GONE ON A COUPLE OF MONTHS PRIOR,
25 IS THAT CORRECT?

1 A YES, SIR.

2 Q YOU SAID EARLIER HE CAME UP TO YOU IN THIS YARD. HE
3 CAME UP TO THE GROUP.

4 A I WENT UP TO HIM.

5 Q YOU CAME OUT OF THE HOUSE?

6 A YES, SIR.

7 Q THEY WERE IN THE YARD?

8 A YES, SIR.

9 Q THERE WAS A DECISION TO GO TO THE POOL HALL?

10 A YES, SIR.

11 Q OKAY. WAS THAT DECISION MADE WHEN YOU WALKED OUT?

12 A NOT IMMEDIATELY.

13 Q SO YOU ALL TALKED ABOUT GOING?

14 A YES, SIR.

15 Q ARE YOU ALL GOING TO TELL TROY ROUSE THAT HE CAN'T GO
16 WITH YOU?

17 A NO, SIR.

18 Q OKAY. SO YOU WEREN'T GOING TO TELL HIM NO, HE CAN'T
19 GO?

20 A NO, SIR.

21 Q OKAY. WHEN YOU WOKE UP AND SAW THEM IN THIS SERIOUS
22 FIGHT, HOW FAR AWAY DO YOU THINK YOU WERE?

23 A ABOUT 20, 20, 25 FEET AWAY.

24 Q AND YOU TESTIFIED EARLIER, YOU KNEW FROM EARLIER IN
25 THE EVENING THAT THE DECEASED HAD BEEN DRINKING?

1 A YES, SIR.

2 Q YOU COULD TELL HE WAS INTOXICATED?

3 A YES, SIR.

4 Q COULD YOU TELL IF HE WAS A LITTLE INTOXICATED, OR A
5 LOT INTOXICATED?

6 A I COULD TELL HE WAS A LOT INTOXICATED.

7 Q YOU SAID HE WAS VERY INTOXICATED?

8 A YES, SIR.

9 Q YOU TESTIFIED EARLIER THAT THE FIRST SHOT, THE
10 DECEASED STILL HAD HIS HANDS AROUND EUNICE'S NECK?

11 A YES, SIR.

12 Q YOU TESTIFIED EARLIER THAT THE SECOND SHOT YOU HEARD
13 THE DECEASED STILL HAD HIS HANDS AROUND EUNICE'S NECK?

14 A THAT'S CORRECT, SIR.

15 Q YOU TESTIFIED YOU FIRED.

16 A YES, SIR.

17 Q AND YOU TESTIFIED THE DECEASED STILL HAD HIS HANDS
18 AROUND EUNICE'S NECK?

19 A THAT'S CORRECT.

20 Q YOU FIRED AGAIN?

21 A YES, SIR.

22 Q STILL THERE?

23 A NO, SIR.

24 Q OKAY, AFTER THAT, WHAT WAS HE DOING?

25 A HE GRABBED EUNICE'S HAND.

1 Q HE GRABBED HIS HAND?

2 A YES, SIR.

3 Q AND YOU'RE STILL MAKING AN ATTEMPT TO GO AFTER HIM.

4 A YES, SIR.

5 Q YOU SAID AT THAT TIME THEY WERE FACE TO FACE?

6 A YES, SIR.

7 Q SO THE DECEASED MADE A FORWARD MOTION TOWARD YOU?

8 A HE WAS ALREADY TOWARDS ME.

9 Q I MEAN, THEY WERE COMING AT YOU ANY WAY, RIGHT?

10 A YES, SIR.

11 Q THEY CONTINUED THAT MOTION.

12 A YES, SIR.

13 MR. WATTS: ONE SECOND, YOUR HONOR.

14 Q AND YOU TRIED, YOU CAME UP AND TRIED TO BREAK UP THE
15 DECEASED AND EUNICE. WHAT DID YOU SAY?

16 A I TOLD TROY YOU WON. THE FIGHT IS OVER. YOU WON.

17 Q WHAT DID MR. ROUSE SAY?

18 A HE SAID NAH, "I AM GOING TO KILL THIS NIGGER."

19 Q HE SAID HE WAS GOING TO KILL HIM?

20 A YES, SIR.

21 Q AND THAT WAS AT THE TIME HE HAD HIS HANDS AROUND
22 EUNICE'S THROAT?

23 A YES, SIR.

24 Q DO YOU HAVE ANY REASON TO DISBELIEVE THAT?

25 A NO, SIR.

1 Q THE ACTIONS THAT YOU WITNESSED THERE, DO YOU BELIEVE
2 WHAT HE SAID?

3 A YES, I DO.

4 MR. WATTS: NO FURTHER QUESTIONS, YOUR HONOR.

5 THE COURT: MR. JOHNSON.

6 MR. JOHNSON: THANK YOU, YOUR HONOR. MAY IT PLEASE
7 THE COURT.

8 CROSS EXAMINATION BY MR. JOHNSON:

9 Q GOOD MORNING, MR. THOMAS.

10 A GOOD MORNING.

11 Q MR. THOMAS, I JUST NEED TO ASK YOU A COUPLE OF
12 QUESTIONS CONCERNING MY CLIENT CHAD JAMES. THE STATE HAD
13 ASKED YOU A NUMBER OF TIMES AND HAS ATTEMPTED TO PUT CHAD
14 JAMES OR MAKE HIM INVOLVED IN THIS. JUST THE FIRST
15 QUESTION, DID CHAD HAVE ANYTHING TO DO WITH ANY OF THIS?

16 A NO, SIR, HE DOESN'T.

17 Q LET'S START AT THE HOUSE EARLIER BEFORE YOU WERE
18 LEAVING TO GO PLAY POOL. I GUESS IT WAS AT ROME'S OR
19 WHATEVER. YOU NAMED SOME PEOPLE THAT LEFT TO GO TO THE
20 HOUSE. WHO WERE THE PEOPLE THAT LEFT THE HOUSE THAT DAY?
21 LEFT CHAD'S HOUSE WHEN YOU LEFT THE FRONT PORCH. WHO LEFT
22 TO GO THERE?

23 A WHO LEFT?

24 Q RIGHT?

25 A MYSELF, LENNY GREEN, KEITH HANNABEL, TROY AND EUNICE

1 MCCALL.

2 Q LENNY GREEN, KEITH HANNABEL.

3 A YES, SIR.

4 Q THOSE ARE NAMES THAT NOBODY MENTIONED TODAY, DID
5 THEY?

6 A NO, SIR.

7 Q BUT THOSE WERE THE OTHER PEOPLE THAT WERE WITH YOU?

8 A YES, SIR.

9 Q WAS CHAD JAMES WALKING WITH YOU WHEN Y'ALL LEFT
10 THERE?

11 A NO, SIR.

12 Q CHAD DIDN'T GO WITH YOU, DID HE?

13 A NO, SIR.

14 Q BUT IT WAS LENNY GREEN AND KEITH HANNABEL WERE THE
15 ADDITIONAL PEOPLE WITH YOU THAT DAY, IS THAT CORRECT?

16 A YES, SIR.

17 Q SO YOU ALL WAS WALKING THERE TO GO TO THE STORE?

18 A YES, SIR.

19 Q AT ANY TIME AFTER YOU LEFT THE HOUSE, DID CHAD CATCH
20 UP WITH YOU OR ANYTHING?

21 A NO, SIR.

22 Q DID HE EVER CATCH UP WITH YOU BEFORE THE FIGHT
23 STARTED?

24 A NO, SIR.

25 Q THE FIGHT THAT STARTED, CAN YOU SEE THE BOARD FROM

) 1 WHERE YOU ARE SITTING?

2 A YES, SIR.

3 Q CAN YOU STILL SEE IT?

4 A YES, SIR.

5 Q YOU SAID THAT THE FIGHT APPARENTLY HAPPENED ON THE
6 CORNER HERE IN THIS AREA.

7 A THAT'S CORRECT.

8 Q SO DOWN HERE WAS TIFFANY HILL WHO THE STATE SAYS
9 THEIR KEY WITNESS---

10 MR. SAVERANCE: OBJECTION, YOUR HONOR.

11 THE COURT: I DIDN'T HEAR THE FULL QUESTION.

12 Q TIFFANY HILL SAID THAT SHE SAW THE FIGHT UP HERE
13 ALMOST IN THE MIDDLE OF THE STREET IN FRONT OF HER. DID
14 THE FIGHT HAPPEN THERE?

15 A NO, SIR.

16 Q SO SHE WAS INCORRECT?

17 MR. SAVERANCE: OBJECTION, YOUR HONOR.

18 Q IF SHE SAID THE FIGHT HAPPENED HERE, TO YOUR
19 KNOWLEDGE, WAS SHE INCORRECT?

20 MR. SAVERANCE: OBJECTION, YOUR HONOR.

21 THE COURT: OBJECTION IS OVERRULED.

22 Q YOU CAN ANSWER THAT.

23 A YES, SIR, SHE WAS.

24 Q THE FIGHT HAPPENED ON THE CORNER, IS THAT CORRECT?

) 25 A YES, SIR.

1 Q WAS CHAD JAMES THERE?

2 A NO, SIR, HE WASN'T.

3 Q THE OTHER INDIVIDUALS THAT WAS IN FRONT OF YOU, WHO
4 WAS IN FRONT OF THE FIGHT, OR WHO TOOK OFF TO GET IN FRONT
5 OF YOU?

6 A LENNY GREEN AND KEITH HANNABEL.

7 Q THOSE WERE THE INDIVIDUALS THAT WERE IN FRONT OF YOU,
8 IS THAT CORRECT?

9 A YES, SIR.

10 Q DO YOU THINK THEY SAW, OR COULD HAVE HEARD THE SHOTS?

11 MR. SAVERANCE: OBJECTION.

12 Q TO YOUR KNOWLEDGE.

13 THE COURT: BASIS FOR THE OBJECTION?

14 MR. SAVERANCE: SPECULATION AS TO WHAT OTHER PEOPLE
15 SAW OR HEARD.

16 Q I WILL REPHRASE YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 Q TO YOUR PERSONAL KNOWLEDGE, WERE THEY CLOSE ENOUGH
19 THAT THEY COULD HAVE HEARD THE SHOTS?

20 A YES, SIR.

21 Q BUT CHAD JAMES WASN'T THERE, WAS HE?

22 A NO, SIR.

23 Q AFTER THE FIGHT WHEN YOU RAN BACK TO CHAD JAMES'
24 HOUSE, DID YOU GO THERE BECAUSE YOUR GIRLFRIEND WAS THERE?

25 A YES, SIR.

1 Q AND YOU KNEW THAT SHE WAS THERE?

2 A YES, SIR.

3 Q IS THAT THE REASON YOU WENT BACK THERE?

4 A YES, SIR.

5 Q WHEN YOU GOT BACK TO THE HOUSE, WHO DID YOU GO AND
6 TALK TO FIRST?

7 A COURTNEY.

8 Q DID YOU TALK TO CHAD JAMES?

9 A NO, SIR.

10 Q DID YOU TELL CHAD JAMES YOU HAD SHOT SOMEBODY?

11 A NO, SIR.

12 Q WHO DID YOU TELL?

13 A I TOLD COURTNEY.

14 Q SHE KNEW, RIGHT?

15 A SHE KNEW.

16 Q SHE KNEW BEFORE YOU LEFT THE HOUSE, BEFORE YOU LEFT
17 THE HOUSE TO GO TO CAMDEN YOU HAD SHOT SOMEBODY, IS THAT
18 CORRECT?

19 A YES, SIR.

20 Q DID SHE TELL CHAD JAMES, TO YOUR KNOWLEDGE, DID SHE
21 TELL CHAD JAMES ANYTHING ABOUT IT?

22 A NOT TO MY KNOWLEDGE.

23 Q WHERE WAS CHAD AT?

24 A I AM NOT SURE.

25 Q YOU DIDN'T SEE HIM AT ALL, DID YOU, INITIALLY?

1 A NO, SIR.

2 Q WHEN WAS THE FIRST TIME YOU SAW CHAD AFTER YOU GOT
3 BACK TO THE HOUSE?

4 A I WAS SITTING IN THE ROOM WITH COURTNEY.

5 Q AND WHERE DID CHAD COME FROM?

6 A I DON'T KNOW. HE WALKED OUT OF THE ROOM. THE DOOR
7 WAS CLOSED.

8 Q HE WALKED OUT OF HIS BEDROOM?

9 A I AM NOT SURE WHERE HE WALKED FROM.

10 Q BUT HE WALKED INTO THE ROOM?

11 A YES, SIR.

12 Q AT THAT TIME, WHO ASKED CHAD TO TAKE THEM TO CAMDEN?

13 A MYSELF.

14 Q YOU ASKED CHAD?

15 A YES, SIR.

16 Q DID YOU TELL HIM BECAUSE YOU HAD SHOT SOMEBODY AND
17 YOU WAS AFRAID, AND YOU WANTED HIM TO HIDE YOU OR GET YOU
18 AWAY FROM THE POLICE?

19 A NO.

20 Q WHAT DID YOU TELL HIM?

21 A I JUST ASKED HIM TO TAKE ME TO CAMDEN.

22 Q DID HE ASK WHY?

23 A NO.

24 Q DO YOU NORMALLY GO TO CAMDEN, OR HAVE YOU BEEN TO
25 CAMDEN BEFORE?

1 A YES, SIR.

2 Q EARLIER THAT DAY, HAD YOU ALL PLANNED ON GOING TO
3 CAMDEN EARLIER THAT DAY?

4 A YES, SIR.

5 Q WHY HAD YOU ALL PLANNED ON GOING TO CAMDEN EARLIER
6 THAT DAY?

7 A I WANTED TO GO WITH MY GIRLFRIEND, SPEND SOME TIME
8 WITH HER OVER THERE. IT'S PRIVATE.

9 Q I DIDN'T HEAR YOU.

10 A THERE IS PRIVACY OVER THERE.

11 Q DID YOU TELL THAT TO THE POLICE IN YOUR STATEMENT?

12 A NO, SIR.

13 Q BUT YOU HAD PLANNED EARLIER TO GO TO CAMDEN, IS THAT
14 CORRECT?

15 A YES, SIR, THAT IS CORRECT.

16 Q AND YOU HAD SAID THAT TO CHAD EARLIER THAT DAY?

17 A YES, SIR.

18 Q SO IT WAS NOTHING UNUSUAL FOR YOU TO ASK HIM THAT,
19 WAS IT?

20 A NO, SIR.

21 Q AND JUST TO BE CLEAR, DID YOU TELL CHAD BEFORE
22 LEAVING TO GO TO CAMDEN THAT YOU HAD SHOT SOMEBODY AND YOU
23 WAS AFRAID?

24 A NO, SIR, I DIDN'T.

25 Q WHEN YOU FIRST GOT IN THE CAR TO GO TO CAMDEN, DID

1 CHAD OPEN THE TRUNK AND LET YOU IN THE TRUNK OF THE CAR?

2 A NO, SIR.

3 Q YOU WERE SITTING IN THE BACK SEAT, WEREN'T YOU?

4 A YES, I WAS.

5 Q AND WHEN DID YOU GET INTO THE TRUNK?

6 A AT THE INTERSTATE SHELL, SIR.

7 Q AND LET'S TALK ABOUT THIS GETTING INTO THE TRUNK.

8 THAT IS NOT CORRECT, IS IT? YOU WASN'T TOTALLY IN THE
9 TRUNK, WERE YOU?

10 A NO, SIR.

11 Q HOW DID YOU SUPPOSEDLY GET INTO THE TRUNK?

12 A I LIFT THE BACK SEAT BACK.

13 Q IS IT ONE OF THOSE SEATS THAT LIFTS DOWN?

14 A YES, SIR.

15 Q AND WHAT DID YOU DO?

16 A I SLID IN THE TRUNK LEGS FIRST. AND I HAD MY HEAD
17 LAYING ON THE SEAT THAT WAS DOWN.

18 Q SO YOU WERE HALF IN AND HALF OUT---

19 A YES, SIR.

20 Q AND YOU WAS LAYING DOWN LIKE STRETCHED OUT?

21 A YES, SIR.

22 Q SO YOU WASN'T IN THE TRUNK?

23 A NO, SIR, NOT THE WHOLE WAY IN THE TRUNK.

24 Q BUT YOU WERE STRETCHED OUT IN THE BACK OF THE CAR?

25 A YES, SIR.

1 Q SO YOUR HEAD WAS INSIDE THE CAR?

2 A YES, SIR, IT WAS.

3 Q DID ANYBODY ASK YOU WHY YOU WAS LAYING THAT WAY?

4 A YES.

5 Q WHO ASKED YOU THAT?

6 A CHAD ASKED ME WHAT WAS THE MATTER WITH ME.

7 Q AND WHAT DID YOU TELL HIM?

8 A I TOLD HIM I DIDN'T FEEL GOOD, I WANTED TO LAY DOWN.

9 Q AND THAT'S WHAT YOU TOLD CHAD ABOUT WHY YOU WERE
10 DOING THAT?

11 A YES, SIR.

12 Q AND DID THAT MAN ASK YOU WHY WERE YOU LAYING DOWN IN
13 THE BACK OF THE CAR?

14 A YES, HE DID.

15 Q DID YOU TELL HIM BECAUSE YOU WERE RUNNING FROM THE
16 POLICE OR TRYING TO ESCAPE OR SOMETHING?

17 A NO, SIR.

18 Q WHAT DID YOU SAY AGAIN?

19 A I TOLD HIM---

20 MR. SAVERANCE: OBJECTION YOUR HONOR.

21 THE COURT: YES, SIR.

22 MR. SAVERANCE: I BELIEVE HE HAS ASKED HIM A COUPLE
23 OF TIMES ALREADY THE SAME QUESTION.

24 THE COURT: THE OBJECTION IS OVERRULED.

25 Q WOULD YOU PLEASE ANSWER THAT? WHAT DID YOU TELL HIM

1 WHEN HE ASKED YOU THAT?

2 A I TOLD HIM I WASN'T FEELING WELL, I WAS GOING TO LAY
3 DOWN.

4 Q DID OTHER PEOPLE, WHO ELSE IN THAT CAR KNEW THAT YOU
5 HAD SHOT SOMEBODY?

6 A COURTNEY, SAMANTHA.

7 Q DID THEY TELL CHAD WHY YOU WERE LAYING DOWN?

8 A NOT TO MY KNOWLEDGE.

9 Q WHILE YOU WAS IN THE CAR, DID THEY TELL CHAD YOU HAD
10 SHOT SOMEBODY?

11 A NO, SIR.

12 Q SO CHAD DIDN'T KNOW, DID HE?

13 A NO, SIR.

14 Q WHEN DID, DO YOU HAVE ANY KNOWLEDGE AS TO WHEN CHAD
15 FOUND OUT THAT YOU HAD SHOT SOMEBODY?

16 A YEAH, I TOLD HIM THE NEXT DAY.

17 Q THE NEXT DAY. IS THAT AFTER HE HAD ALREADY TAKEN YOU
18 TO CAMDEN?

19 A YES, SIR.

20 Q THAT'S WHEN YOU TALKED TO HIM AND TOLD HIM THAT.

21 A YES, SIR.

22 Q ARE YOU TELLING THE TRUTH?

23 A YES, SIR.

24 MR. JOHNSON: NO OTHER QUESTIONS.

25 THE COURT: MR. WHEELER?

1 MR. WHEELER: NO REDIRECT, YOUR HONOR.

2 THE COURT: MR. SAVERANCE?

3 MR. SAVERANCE: NOTHING, YOUR HONOR.

4 THE COURT: MR. WATTS?

5 MR. WATTS: NOTHING, YOUR HONOR.

6 THE COURT: STEP DOWN. LET'S TAKE A SHORT RECESS.

7 IF YOU WOULD GO TO THE JURY ROOM. PLEASE DO NOT DISCUSS
8 THE CASE.

9 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
10 PRESENCE THE JURY.)

11 THE COURT: ANYTHING FURTHER BEFORE WE BRING THE JURY
12 BACK, FROM THE STATE?

13 MR. SAVERANCE: THE ONLY THING IS THE NEXT WITNESS
14 BEFORE THE JURY COMES BACK FOR THE RECORD.

15 THE COURT: GO AHEAD.

16 MR. SAVERANCE: IT IS MY UNDERSTANDING THE NEXT
17 PERSON THEY ARE GOING TO CALL IS CORY MCCLEM. YOUR HONOR,
18 AND JUST FOR THE RECORD AS I SAID BEFORE, IT HAS BEEN
19 ESTABLISHED THAT TROY ROUSE WAS CHARGED WITH CUTTING CORY
20 MCCLEM. THAT HAS BEEN BROUGHT UP SEVERAL TIMES. WE
21 HAVEN'T DISPUTED THAT. YOUR HONOR, THE DEFENDANT
22 TESTIFIED TO THAT FACT. I DON'T HAVE ANY PROBLEM. I
23 UNDERSTAND THE OBJECTION IS OVERRULED. I DON'T HAVE ANY
24 PROBLEM NOW THAT THAT'S BEEN OUT THERE. THE JURY HEARD
25 THAT. AND THAT'S OKAY. I UNDERSTAND THAT. BUT I THINK

) 1 ANYTHING ELSE WOULD BE IMPROPER CHARACTER ASSIGNATION.
2 BECAUSE WHY IS MR. WHEELER OFFERING THIS WITNESS OTHER
3 THAN TO ESTABLISH THAT TROY ROUSE COMMITTED THE CRIME.

4 WE KNOW HE WAS CHARGED. WE KNOW THE JURY KNEW. WE
5 KNOW HE SUPPOSEDLY CUT CORY MCCLEM. ANY OTHER REASONS HE
6 WAS OFFERING IT IS TO PROVE THAT CASE. AND MR. ROUSE IS
7 DEAD. HE HAS NO WAY TO REBUT THAT.

8 THE COURT: MR. WHEELER?

9 MR. WHEELER: YOUR HONOR, TO THE CONTRARY, THEY HAVE
10 NEVER ADMITTED THAT. IN FACT, THEY'VE OBJECTED TO ANY
11 REFERENCE OF IT. THEY'VE NEVER ADMITTED THE MAN WAS
12 CHARGED WITH IT IN OPEN OR CROSS OR ANY WITNESS THAT HAS
13 TESTIFIED.

14 THE COURT: THAT'S IRRELEVANT ANY WAY. GO AHEAD.

15 MR. WHEELER: YES, SIR. ALL IT DOES, WE ARE NOT
16 TRYING TO PUT MR. ROUSE ON TRIAL FOR IT. BUT MY CLIENT
17 HAS TESTIFIED TO SOMETHING. TWO QUESTIONS WERE SOMETHING
18 THAT WERE CORROBORATED THAT HE IS NOT MAKING UP WHAT HE
19 HAS TOLD THE JURORS IN THIS CASE. THAT IN FACT THE
20 INCIDENT DID OCCUR. AND WE CERTAINLY BELIEVE HE LAID THE
21 FOUNDATION FOR HIS FEARS. AND THE REASON THAT HE ACTED;
22 THAT HE DID SO IN HIS TESTIMONY. AND NOW WHAT WE WOULD
23 JUST LIKE IS A VERY BRIEF FEW QUESTIONS TO GO AHEAD AND
24 CORROBORATE IT SO THE JURY DOESN'T THINK THAT HE'S JUST --
) 25 FOR ALL THEY KNOW, THE JURY MAY NOT KNOW ABOUT THESE

1 THINGS. JUST TO CORROBORATE THAT.

2 THE COURT: WHAT DO YOU WANT TO ASK HIM?

3 MR. WHEELER: DID MR. ROUSE ATTACK YOU WITH A KNIFE
4 ON JANUARY 25, 2005.

5 THE COURT: SOLICITOR?

6 MR. SAVERANCE: YOUR HONOR, I HAVE NO DISAGREEMENT
7 WITH STIPULATING OR AGREEING THAT THERE WAS A PENDING
8 CHARGE, THAT HE -- I JUST THINK IF WE ARE GOING TO GET IN
9 TO WHAT HAPPENED, JUST TRYING TO PROVE THAT THAT HAPPENED.
10 PROVE THE CASE. AND IT'S A CASE INSIDE OF A CASE. LIKE I
11 SAID, I HAVE NO PROBLEM WITH WHAT THE COURT HAS ALLOWED
12 IN. I HAVE NO PROBLEM STIPULATING THAT THERE WAS A
13 PENDING CHARGE. IT HAS ALREADY BEEN TRUE BILLED.

14 THE COURT: I WILL ALLOW ANY QUESTIONS AS TO TIME AND
15 PLACE ONLY AS TO THIS WITNESS.

16 MR. WHEELER: AND IF MR. SAVERANCE WANTED TO
17 STIPULATE TO THIS AS WELL, HE HAS GOT A CERTIFIED COPY OF
18 THE INDICTMENT THAT HIS OFFICE PREPARED.

19 THE COURT: YOU SAID AS WELL.

20 MR. WHEELER: AS WELL.

21 MR. SAVERANCE: AND WOULD CERTAINLY AGREE TO LIMIT
22 IT TO THAT ONE QUESTION, YOUR HONOR.

23 THE COURT: WELL WHETHER YOU AGREE OR NOT IS BESIDE
24 THE POINT AS WELL. THE QUESTION IS WHETHER OR NOT THIS
25 STIPULATION HAS A LITTLE BIT OF TESTIMONY OR IN ADDITION

1 TO THE TESTIMONY. WHAT ARE YOU SAYING, MR. WHEELER?

2 MR. WHEELER: WE WOULD LIKE TO DO BOTH. THIS IS JUST
3 AN INDICTMENT THAT THE SOLICITOR'S OFFICE HAS PREPARED.

4 MR. SAVERANCE: YOUR HONOR, IF IT IS NOT IN MOVEMENT,
5 I WOULD STIPULATE TO IT. AND ALSO I WOULD OBJECT TO AN
6 INDICTMENT BEING ADMITTED INTO EVIDENCE AND SHOWN TO A
7 JURY.

8 THE COURT: YOU DON'T HAVE TO AGREE TO ANYTHING THAT
9 YOU DON'T WANT TO AGREE TO. YOU CAN OBJECT TO IT. YOU
10 DON'T HAVE TO AGREE TO IT.

11 MR. SAVERANCE: YES, SIR.

12 THE COURT: WELL I AM NOT GOING TO ALLOW THE
13 INDICTMENT. I WILL ALLOW THE ONE QUESTION.

14 MR. WHEELER: YOUR HONOR, GIVE US ONE SECOND, AND I
15 WILL ASK MR. SAVERANCE ABOUT IT.

16 THE COURT: ALL RIGHT, YOU MAY BRING THE JURY.

17 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
18 PRESENCE OF THE JURY.)

19 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

20 MR. WHEELER: THANK YOU, YOUR HONOR. I WOULD CALL
21 MR. CORY MCCLEM.

22 CORY MCCLEM-BEING FIRST DULY
23 SWORN, TESTFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MR. WHEELER:

25 Q IF YOU WILL, STATE YOUR FULL NAME FOR THE RECORD

1 PLEASE.

2 A CORY MCCLEM.

3 Q MR. MCCLEM, ARE YOU HERE UNDER SUBPOENA TODAY?

4 A YES, SIR.

5 Q WERE YOU ATTACKED BY MR. TROY ROUSE ON JANUARY 25,

6 2005?

7 A YES, SIR.

8 Q AND WHAT HAPPENED AT THAT TIME?

9 MR. SAVERANCE: OBJECTION, YOUR HONOR.

10 THE COURT: THE OBJECTION IS SUSTAINED.

11 Q WHAT WAS THE NATURE OF THAT ATTACK? WERE YOU

12 STABBED?

13 MR. SAVERANCE: OBJECTION, YOUR HONOR.

14 THE COURT: THE OBJECTION IS OVERRULED.

15 A EXCUSE ME, SIR?

16 Q WERE YOU STABBED?

17 A YES, SIR.

18 Q WHERE?

19 A ON MY NECK.

20 MR. WHEELER: THANK YOU.

21 THE COURT: MR. SAVERANCE, CROSS EXAMINATION?

22 CROSS EXAMINATION BY MR. SAVERANCE:

23 Q WERE YOU CHARGED WITH SHOPLIFTING IN THE 2002?

24 A YES, SIR.

25 Q CONVICTED OF RESISTING ARREST IN 2003?

1 A YES, SIR.

2 Q AND YOU CURRENTLY HAVE A PENDING CHARGE TOO, DON'T
3 YOU?

4 A YES, SIR.

5 Q WHAT IS THAT FOR?

6 A ARMED ROBBERY AND KIDNAPPING.

7 Q ARMED ROBBERY AND KIDNAPPING?

8 A YES, SIR.

9 Q MR. ROUSE WASN'T CONVICTED OF STABBING YOU, BUT IT
10 WAS A PENDING CHARGE.

11 MR. WHEELER: OBJECTION, YOUR HONOR.

12 THE COURT: OBJECTION IS SUSTAINED.

13 MR. SAVERANCE: THAT'S ALL I HAVE.

14 THE COURT: MR. WATTS, MR. SMITH?

15 MR. SMITH: THANK YOU, YOUR HONOR.

16 CROSS EXAMINATION BY MR. SMITH:

17 Q DID YOU TAKE OUT A WARRANT AGAINST MR. ROUSE FOR THE
18 ATTACK UPON YOU?

19 A NO, SIR.

20 Q THERE WAS NO WARRANT EVER TAKEN OUT AGAINST HIM FOR
21 HIM CUTTING YOUR THROAT?

22 A THERE WAS, BUT I DIDN'T DO IT.

23 Q SO DO YOU KNOW WHO TOOK OUT THE WARRANT?

24 A I GUESS THE POLICE TOOK THE WARRANT OUT.

25 Q DO YOU HAVE A SCAR ON YOUR NECK FROM THIS ATTACK?

1 A YES, SIR.

2 Q CAN YOU TILT YOUR HEAD BACK? CAN YOU PUT YOUR FINGER
3 ACROSS THE SCAR?

4 A (THEREUPON, WITNESS INDICATES.)

5 Q OKAY. CAN YOU STEP DOWN, SIR, PLEASE, SIR? CAN YOU
6 STEP DOWN?

7 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT TO ANY
8 DEMONSTRATION. IT IS GOING OUTSIDE---

9 MR. SMITH: NO, HE DOESN'T EVEN KNOW WHAT I AM GOING
10 TO DO, YOUR HONOR. WOULD YOU PLEASE STEP DOWN AND LET ME
11 SEE HOW TALL YOU ARE?

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

14 Q HOW TALL ARE YOU, SIR?

15 A ABOUT 6 FOOT FIVE.

16 Q 6'5?

17 A NO, 6 FOOT.

18 Q HOW MUCH DO YOU WEIGH?

19 A 250, 260.

20 Q 250, 260. DO YOU REMEMBER MR. ROUSE BEING TALLER
21 THAN YOU?

22 A PROBABLY ABOUT THE SAME HEIGHT OR A LITTLE SHORTER.

23 Q OKAY. AND YOU THINK YOU ARE 6 FEET TALL. I AM 6'1.

24 A I AM JUST TAKING A GUESS.

25 Q YOU'RE JUST TAKING A GUESS?

1 A YES.

2 Q THANK YOU, SIR. IF YOU WOULD RETURN TO YOUR SEAT.

3 THE COURT: MR. JOHNSON.

4 MR. JOHNSON: I HAVE NO QUESTIONS, YOUR HONOR.

5 THE COURT: MR. WHEELER?

6 MR. WHEELER: I DON'T HAVE ANYTHING FURTHER, YOUR
7 HONOR.

8 THE COURT: MR. SAVERANCE?

9 MR. SAVERANCE: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: YOU MAY STEP DOWN. YOUR NEXT WITNESS
11 MR. WHEELER?

12 MR. WHEELER: YOUR HONOR, WE WOULD REST AT THIS TIME.

13 THE COURT: LADIES AND GENTLEMEN, THE DEFENDANT
14 MCCALL, OR THE DEFENDANT THOMAS' CASE RESTS. MR. WATTS.

15 MR. WATTS: YES, YOUR HONOR.

16 THE COURT: HOW MANY WITNESSES DO YOU HAVE?

17 MR. WATTS: THREE.

18 THE COURT: CALL YOUR FIRST WITNESS.

19 MR. WATTS: I WOULD CALL MARLANDIA WESLEY.

20 MARLANDIA WESLEY, BEING FIRST
21 DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY WATTS:

23 Q MARLANDIA, I WANT TO ASK YOU, DO YOU KNOW EUNICE
24 MCCALL?

25 A YES.

1 Q WHAT IS YOUR RELATIONSHIP WITH YOU EUNICE MCCALL?

2 A HE IS MY FIANCEE.

3 Q ARE YOU PREGNANT RIGHT NOW?

4 A YES.

5 Q ARE YOU CARRYING HIS CHILD?

6 A YES.

7 Q DO YOU REMEMBER THE NIGHT OF APRIL 7TH 2005?

8 A YES.

9 Q HOW DO YOU REMEMBER THAT?

10 A SOMEBODY GOT KILLED IN MY NEIGHBORHOOD.

11 Q DO YOU RECALL WHERE YOU WERE THAT NIGHT?

12 A AT HOME.

13 Q DO YOU RECALL HEARING ANY GUNSHOTS THAT EVENING?

14 A YES, I DID.

15 Q DO YOU RECALL ABOUT WHAT TIME IT WAS WHEN YOU FIRST
16 HEARD THE SHOTS?

17 A YES.

18 Q OKAY WHAT TIME WAS THAT?

19 A 10:00 P.M.

20 Q OKAY AROUND 10:00 O'CLOCK. WHERE WERE YOU WHEN YOU
21 HEARD THE SHOTS?

22 A IN MY HOME.

23 Q WHAT DID YOU DO AFTER YOU HEARD THE SHOTS?

24 A STEPPED OUTSIDE.

25 Q AFTER YOU STEPPED OUTSIDE, DID YOU HEAR ANY MORE

1 SHOTS?

2 A YES, I DID.

3 Q AFTER YOU HEARD THESE SHOTS, WHERE WERE YOU?

4 A I WAS ON MY PORCH.

5 Q OKAY. YOU WERE ON YOUR PORCH. OKAY.

6 A YES, SIR.

7 Q DO YOU RECALL SEEING MS. TIFFANY HILL?

8 A YES, I DID.

9 Q SO YOU SAW TIFFANY HILL AFTER YOU HEARD THE FIRST TWO
10 SHOTS?

11 A AFTER I HEARD THE FIRST TWO SHOTS?

12 Q UH-HUH. (AFFIRMATIVE.)

13 A YES, SIR.

14 Q YOU HEARD AND YOU SAW HER AFTER YOU HEARD THE OTHER
15 SHOTS?

16 A YES.

17 Q BECAUSE I THINK YOU SAID YOU WERE IN YOUR HOUSE WHEN
18 THE FIRST TWO WERE FIRED AND YOU CAME OUTSIDE.

19 A YES.

20 Q YOU HEARD MORE SHOTS?

21 A YES.

22 Q AND THEN YOU SAW MRS. HILL?

23 A YES..

24 Q WHERE WAS MS. HILL?

25 A COMING OUT OF HER DOOR.

1 Q SHE WAS COMING OUT OF HER HOUSE?

2 A YES.

3 Q FROM WHERE YOU WERE STAYING, YOU COULD SEE HER HOUSE?

4 A YES.

5 Q AND YOU COULD RECOGNIZE HER COMING OUT OF THE DOOR?

6 A YES, I DID.

7 Q DO YOU KNOW MS. HILL?

8 A YES.

9 Q YOU KNEW HER BEFORE THAT DAY?

10 A YES.

11 Q OKAY. YOU HAVE KNOWN HER FOR A WHILE?

12 A YES.

13 Q YOU TESTIFIED YOU SAW HER COMING OUT OF THE HOUSE.

14 A YES.

15 Q WAS THERE ANY WAY SHE COULD HAVE BEEN PRESENT, I
16 THINK IT'S COOTS STORE, THE BLUE BUILDING, WHEN THE FIRST
17 SHOTS WERE FIRED AND THEN COME OUT OF HER HOUSE?

18 MR. SAVERANCE: OBJECTION, YOUR HONOR.

19 THE COURT: BASIS FOR THE OBJECTION?

20 MR. SAVERANCE: LEADING AND SPECULATION.

21 THE COURT: OBJECTION IS OVERRULED.

22 A NO, SHE COULDN'T.

23 MR. WATTS: NO FURTHER QUESTIONS, YOUR HONOR.

24 THE COURT: MR. SAVERANCE.

25 CROSS EXAMINATION BY MR. SAVERANCE:

1 Q TELL ME AGAIN YOUR RELATIONSHIP TO EUNICE MCCALL?

2 A THAT'S MY FIANCEE.

3 Q YOU ARE HERE TO HELP HIM, AREN'T YOU?

4 A NO, I AM NOT.

5 Q YOU HAVEN'T TALKED TO THE POLICE PRIOR TO TODAY, HAVE
6 YOU?

7 A THEY NEVER CAME TO MY HOUSE AND TALKED TO ME.

8 Q BUT YOU KNEW ABOUT THIS CASE COMING UP, DIDN'T YOU?

9 A YES.

10 Q DON'T YOU THINK IT WOULD HAVE BEEN WISE TO GO TELL
11 THE POLICE WHAT YOU SAW AND GIVE THE STATEMENT?

12 A I DIDN'T SEE ANYTHING IN REGARD TO THE CASE.

13 Q BUT YOU WERE THERE NEAR THE AREA WHERE THE SHOTS WERE
14 FIRED?

15 A I WASN'T NEAR THE AREA WHERE THE SHOTS WERE FIRED.

16 Q YOU WEREN'T?

17 A NO, I WAS NOT.

18 Q BUT YOU STILL BELIEVE YOU COULD HAVE AT LEAST COME
19 FORWARD AND TALKED TO THE POLICE ABOUT WHAT YOU HEARD THAT
20 NIGHT?

21 A ABOUT GUNSHOTS BEING HEARD?

22 Q YES.

23 A THERE WAS NO NEED FOR ME TO TELL THE POLICE I HEARD
24 GUNSHOTS.

25 Q YOU DID WHAT?

1 A THERE WAS NO NEED TO TELL THE POLICE, POLICE TO SAY
2 NOTHING ABOUT HEARING GUNSHOTS.

3 Q THE TRUTH IS, YOU DIDN'T SEE MS. HILL THAT NIGHT, DID
4 YOU?

5 A YES, I DID.

6 Q WERE YOU AT THE SCENE OF THE CRIME TOO?

7 A NO, I WASN'T.

8 Q THAT'S WHERE YOU SAW HER AT THE SCENE OF THE CRIME?

9 A NO, I DIDN'T.

10 Q DO YOU HAVE ANY CHILDREN BY MR. MCCALL?

11 A YES.

12 Q HOW MANY?

13 A I HAVE TWO KIDS.

14 MR. SAVERANCE: ONE SECOND, YOUR HONOR.

15 Q WHAT TIME WAS THIS?

16 A THE TIME WHAT?

17 Q THE TIME YOU CLAIM YOU SAW TIFFANY, MS. TIFFANY?

18 A WHEN I WALKED IN MY HOUSE IT WAS 10:00 O'CLOCK.

19 Q HOW DO YOU KNOW?

20 A I JUST LOOK AT MY TIME BOX ON MY CABLE BOX.

21 Q WELL THAT'S CONVENIENT BECAUSE NOW A YEAR LATER
22 YOU'RE SAYING YOU REMEMBER EXACTLY WHAT TIME IT WAS.

23 A I REMEMBER LOOKING AT MY CABLE BOX AND IT HAD
24 10:00 O'CLOCK.

- 25 Q AND THAT WAS A YEAR AGO?

1 A YES.

2 Q SO YOU DIDN'T SEE TROY ROUSE GET SHOT?

3 A NO, I DIDN'T.

4 Q YOU DIDN'T WITNESS ANYTHING THAT WENT ON THAT EVENING
5 INVOLVING TROY ROUSE AND THE DEFENDANTS?

6 A NO.

7 MR. SAVERANCE: THAT'S ALL, YOUR HONOR.

8 THE COURT: MR. WHEELER?

9 MR. WHEELER: I DON'T HAVE ANY QUESTIONS, YOUR HONOR.

10 THE COURT: MR. JOHNSON.

11 CROSS EXAMINATION BY MR. JOHNSON:

12 Q GOOD MORNING. CAN YOU SEE THE BOARD? I WILL BRING
13 IT OVER TO YOU. WHAT STREET DO YOU LIVE ON?

14 A KENNEDY.

15 Q COMPARED TO RAY STREET---

16 A KENNEDY IS OFF OF RAY STREET.

17 Q FURTHER BACK THIS WAY?

18 A YES.

19 Q ABOUT HOW FAR BACK DO YOU THINK?

20 A HOW FAR IS WHAT?

21 Q WELL FROM THE CORNER OF WILSON AND RAY, HOW MANY
22 BLOCKS?

23 A TWO.

24 Q TWO BLOCKS BACK. JUST ONE SIMPLE QUESTION. DOES
25 TIFFANY HILL LIVE HERE? THIS IS THE LITTLE STORE ON

1 WILSON STREET. THE CORNER OF RAY AND WILSON. THERE'S A
2 LITTLE BUILDING THERE. ARE YOU AWARE OF THAT BUILDING?

3 A YES, I AM.

4 Q DOES TIFFANY HILL LIVE THERE?

5 A NO.

6 Q DO YOU LIVE THERE?

7 A NO.

8 Q AT THE TIME OF THIS SHOOTING, WAS TIFFANY HILL
9 STANDING HERE ON THE SIDE OF THE BUILDING?

10 A NO.

11 Q HOW DO YOU KNOW THAT?

12 A BECAUSE I SAW HER COMING OUT OF THE HOUSE.

13 Q YOU SAW HER WITH YOUR OWN EYES?

14 A WITH MY OWN EYES.

15 Q IF SHE SAYS SHE WAS STANDING THERE, WAS SHE -- AS FAR
16 AS YOU KNOW, COULD THAT HAVE BEEN POSSIBLE?

17 A NO, IT COULDN'T.

18 MR. JOHNSON: NO OTHER QUESTIONS, YOUR HONOR.

19 THE COURT: MR. WATTS?

20 MR. WATTS: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: MR. SAVERANCE?

22 MR. SAVERANCE: NOTHING, YOUR HONOR.

23 THE COURT: MR. WHEELER?

24 MR. WHEELER: NOTHING FURTHER.

25 THE COURT: NEXT WITNESS.

1 MR. WATTS: WE WOULD CALL LEROY DIXON.

2 LEROY DIXON, BEING FIRST DULY SWORN,

3 TESTIFIED AS FOLLOWS:

4 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST
5 NAME FOR THE RECORD.

6 A LEROY DIXON. D-I-X-O-N..

7 MR. SAVERANCE: YOUR HONOR, CAN WE APPROACH?

8 (THE ATTORNEYS APPROACH THE BENCH AND CONFER WITH THE
9 JUDGE.)

10 DIRECT EXAMINATION BY MR. WATTS:

11 Q ARE YOU MR. DIXON?

12 A CORRECT.

13 Q AND, MR. DIXON, I NEED YOU TO SPEAK LOUD SO THIS JURY
14 CAN HEAR YOU.

15 A YES, I AM.

16 Q DO YOU LIVE IN LEE COUNTY?

17 A I DO.

18 Q HOW LONG HAVE YOU LIVED IN LEE COUNTY?

19 A ALL MY LIFE.

20 Q AND WHAT---

21 A SIXTY-NINE YEARS.

22 Q SIXTY-NINE?

23 A YES, SIR.

24 Q AND WHAT DO YOU DO FOR A LIVING?

25 A I AM RETIRED NOW.

1 Q WHAT ARE YOU RETIRED FROM?

2 A FIRST JOB FROM HILL PLUMBING COMPANY FOR 25 YEARS.

3 SECOND JOB FROM LEE COUNTY SCHOOL DISTRICT 21 YEARS.

4 Q DO YOU KNOW LUCILLE WESLEY?

5 A YES, I DO.

6 Q HOW DO YOU KNOW HER?

7 A I HAVE TO PASS HER HOUSE EVERY DAY GOING HOME IN
8 FRONT OF MY HOUSE.

9 Q AT SOME POINT DURING THE TIME AFTER THIS INCIDENT
10 THAT WE ARE HERE FOR THIS TRIAL, DID SHE CONTACT YOU?

11 A DID MS. WESLEY?

12 Q MS. WESLEY CONTACT YOU?

13 A YES, SHE DID.

14 Q WHEN SHE CONTACTED YOU, DID SHE WANT TO TALK TO YOU
15 ABOUT THIS CASE?

16 A SHE DID.

17 MR. SAVERANCE: OBJECTION YOUR HONOR.

18 THE COURT: BASIS FOR THE OBJECTION?

19 MR. SAVERANCE: HEARSAY.

20 THE COURT: MR. SMITH.

21 MR. SMITH: I ASKED---

22 THE COURT: YOUR RESPONSE TO THE OBJECTION.

23 MR. SMITH: YOUR HONOR, I DON'T KNOW HOW IT CAN BE
24 HEARSAY WHEN HE HASN'T SAID ANYTHING SHE IS GOING TO SAY.
25 I BELIEVE MY QUESTION WAS, DID SHE WANT TO BE SPECIFIC TO

1 YOU ABOUT THIS CASE.

2 THE COURT: OBJECTION OVERRULED. ANSWER YES OR NO.

3 Q IS, DID SHE WANT TO SPEAK TO YOU ABOUT THIS CASE?

4 A YES, SHE DID.

5 Q DID SHE, WITHOUT TELLING ME WHAT SHE SAID, DID SHE
6 TELL YOU SOME FACTS THAT SHE KNEW ABOUT THIS CASE?

7 A YES, SHE DID.

8 Q WHAT DID YOU ADVISE HER TO DO WHEN SHE TOLD YOU ABOUT
9 THAT?

10 A FIRST SHE APPROACHED ME AND WAS TELLING ME THAT---

11 Q DON'T TELL ME WHAT SHE TOLD YOU. OKAY, BUT SHE DID
12 TELL YOU SOMETHING?

13 A YES, SHE DID.

14 Q WHAT DID YOU TELL HER TO DO WITH THAT KNOWLEDGE?

15 A I TOLD HER THAT SHE NEEDED TO TALK TO EUNICE'S
16 LAWYER.

17 Q AND DO YOU KNOW WHETHER OR NOT SHE MADE AN EFFORT TO
18 GO TALK TO EUNICE'S LAWYERS?

19 A YES, HE DID.

20 Q WERE YOU ACTUALLY, WERE YOU INVOLVED IN HER GOING TO
21 SEE EUNICE'S LAWYERS?

22 A I DID NOT.

23 Q DO YOU KNOW WHETHER OR NOT SHE ACTUALLY WENT TO SEE
24 THEM?

25 A YES, SHE DID.

1 MR. SAVERANCE: OBJECTION, YOUR HONOR. THEY ARE
2 TRYING TO ASK HER STUFF.

3 THE COURT: BASIS FOR THE OBJECTION?

4 MR. SAVERANCE: SPECULATION, AND HEARSAY. ALSO
5 RELEVANCE. IF HE DOESN'T HAVE ANY DIRECT KNOWLEDGE OF
6 WHAT HAPPENED, IT CALLS FOR RELEVANCE.

7 THE COURT: MR. SMITH.

8 MR. SMITH: YOUR HONOR, I AM ASKING YES OR NO
9 QUESTIONS. I AM NOT ASKING ANYTHING ABOUT THE CONTENT AT
10 ALL.

11 THE COURT: NOW WHAT'S THE QUESTION?

12 MR. SMITH: THAT PARTICULAR QUESTION WAS WHETHER OR
13 NOT HE WAS AWARE THAT SHE ACTUALLY WENT TO SEE EUNICE
14 MCCALL'S ATTORNEY.

15 THE COURT: ANSWER YES OR NO.

16 A YES.

17 Q ARE YOU AWARE OF WHETHER OR NOT SHE GIVE A STATEMENT
18 TO THOSE ATTORNEYS?

19 A YES.

20 Q WERE YOU PRESENT DURING THAT STATEMENT?

21 A I WAS THERE, BUT I WAS NOT IN THE PRESENCE OF THE
22 CONVERSATION.

23 Q AFTER THAT CONVERSATION WAS DONE WITH EUNICE MCCALL'S
24 ATTORNEYS, WERE YOU AWARE THAT HER STATEMENT WAS DIFFERENT
25 FROM THE TESTIMONY SHE GAVE HERE?

1 MR. SAVERANCE: OBJECTION, YOUR HONOR.

2 THE COURT: THE OBJECTION IS SUSTAINED.

3 Q YOU ARE AWARE THAT SHE WENT AND GAVE A STATEMENT TO
4 THE ATTORNEYS?

5 A I DID. WHAT IT IS, I DO NOT KNOW.

6 Q OKAY. YOU DID HEAR HER TESTIMONY IN HERE YESTERDAY
7 OR THE DAY BEFORE I BELIEVE. TUESDAY, IS THAT CORRECT?

8 A YES.

9 MR. SMITH: THANK YOU.

10 THE COURT: MR. SAVERANCE?

11 MR. SAVERANCE: NOTHING, YOUR HONOR.

12 THE COURT: MR. WHEELER?

13 MR. WHEELER: NO QUESTIONS, YOUR HONOR.

14 THE COURT: MR. JOHNSON?

15 MR. JOHNSON: NO QUESTIONS, YOUR HONOR.

16 THE COURT: YOU MAY STEP DOWN, SIR.

17 MR. WATTS: YOUR HONOR, AT THIS TIME I WOULD CALL
18 EUNICE MCCALL.

19 EUNICE MCCALL, BEING FIRST
20 DULY SWORN, TESTIFIED AS FOLLOWS:

21 THE CLERK: SPEAK INTO THE MIC AND STATE YOUR FULL
22 NAME FOR THE RECORD.

23 A MY NAME IS EUNICE DAVIS MCCALL.

24 DIRECTION EXAMINATION BY MR. WATTS:

25 Q EUNICE, HOW OLD ARE YOU?

-) 1 A TWENTY-THREE.
- 2 Q DO YOU HAVE FAMILY HERE IN LEE COUNTY?
- 3 A YES, SIR.
- 4 Q DOES YOUR FAMILY LIVE IN BISHOPVILLE?
- 5 A YES, SIR.
- 6 Q SPEAK UP.
- 7 A YES, SIR.
- 8 Q ARE YOU PRESENTLY WORKING?
- 9 A YES, SIR.
- 10 Q WHERE ARE YOU WORKING AT?
- 11 A I WORK FOR COCA COLA.
- 12 Q I AM GOING TO GO AHEAD AND GET YOU TO THIS NIGHT THAT
- 13 WE ARE TALKING ABOUT HERE TODAY. OKAY. DO YOU REMEMBER
- 14 APRIL 7TH 2005?
- 15 A YES, SIR.
- 16 Q AT ANY TIME THAT AFTERNOON, WERE YOU OVER AT CHAD
- 17 JAMES' HOUSE?
- 18 A YES, I WAS.
- 19 Q WERE YOU THERE EARLY THAT AFTERNOON?
- 20 A YES, SIR.
- 21 Q DID YOU STAY THERE THE WHOLE TIME?
- 22 A NO, I DIDN'T.
- 23 Q DID YOU RETURN BACK TO WHERE YOU WERE STAYING?
- 24 A NO, I LEFT HIS HOUSE.
-) 25 Q WHEN YOU LEFT HIS HOUSE, WHERE DID YOU GO?

-) 1 A COLUMBIA.
- 2 Q SO THAT EVENING YOU WERE GOING TO PLAY POOL?
- 3 A YES, I WAS.
- 4 Q DO YOU RECALL ABOUT WHAT TIME IT WAS?
- 5 A AROUND TEN.
- 6 Q OKAY, AROUND TEN. WHO WAS THERE, YOU ALL LEFT FROM
- 7 WHERE?
- 8 A CHAD.
- 9 Q CHAD JAMES' HOUSE?
- 10 A YES.
- 11 Q WHO WAS IN THAT GROUP?
- 12 A ME, EFRAIN THOMAS, KEITH HANNABEL AND LENNY GREEN.
- 13 Q ANYBODY ELSE?
- 14 A THAT'S ALL.
- 15 Q YOU ALL WENT TO PROCEED DOWN TO THE POOL HALL?
- 16 A YES.
- 17 Q AT SOME TIME DID TROY ROUSE COME AND JOIN YOUR GROUP?
- 18 A YES, HE DID.
- 19 Q PROCEEDED TO GO TOWARDS THAT AREA OF THE POOL HALL?
- 20 A YES, HE DID.
- 21 Q SO IT WAS THE FIVE OF YOU?
- 22 A YES.
- 23 Q AT ANY TIME DID THE GROUP BREAK UP WHERE YOU WEREN'T
- 24 ALL FIVE TOGETHER?
-) 25 A YES.

1 Q HOW DID IT BREAK UP?

2 A KEITH HANNABEL AND LENNY GREEN WAS IN FRONT OF ME.

3 ME, EFRAIN THOMAS AND TROY ROUSE.

4 Q SO LENNY GREEN AND KEITH HANNABEL WERE UP IN FRONT?

5 A YES.

6 Q DO YOU RECALL HOW FAR?

7 A A GOOD DISTANCE.

8 Q A GOOD DISTANCE. NOW THAT LEFT THE OTHER PEOPLE
9 BEHIND THEM. DO YOU REMEMBER MR. THOMAS DOING ANYTHING
10 WHILE Y'ALL WERE WALKING?

11 A I SEEN HIM KNEEL DOWN.

12 Q HE STOPPED AND KNELT DOWN?

13 A YES.

14 Q DID HE KEEP WALKING?

15 A YES, HE DID.

16 Q WAS MR. ROUSE NEAR YOU?

17 A YES, HE WAS.

18 Q DID YOU ALL END UP HAVING ANY KIND OF CONVERSATION
19 WHILE YOU WERE WALKING?

20 A YES.

21 Q DO YOU REMEMBER THE CONTEXT OF THAT CONVERSATION?

22 A YES, SIR.

23 Q DO YOU RECALL WHAT MR. ROUSE SAID TO YOU?

24 A YES, SIR.

25 Q WHAT DID HE SAY?

1 A HE ASKED ME ABOUT CHARLES ROBINSON. A CONFRONTATION
2 WITH CHARLES ROBINSON.

3 Q HE ASKED YOU ABOUT A CONFRONTATION WITH CHARLES
4 ROBINSON?

5 A YES, HE DID.

6 Q DO YOU KNOW WHAT KIND OF RELATIONSHIP -- DO YOU KNOW
7 WHO CHARLES ROBINSON IS?

8 A THAT IS TROY ROUSE'S COUSIN.

9 Q OKAY. THAT'S HIS COUSIN. SO HE ASKED YOU ABOUT SOME
10 KIND OF ISSUE BETWEEN YOU AND CHARLES?

11 A YES, HE DID.

12 Q WHAT DID HE SAY TO YOU?

13 A HE ASKED WHAT'S UP BETWEEN ME AND CHARLES.

14 Q AND WHAT DID YOU TELL HIM?

15 A THAT AIN'T GOT NOTHING TO DO WITH YOU.

16 Q THAT DOESN'T HAVE ANYTHING TO DO WITH IT. WHAT WAS
17 HIS RESPONSE?

18 A HE SAID ANYBODY THAT FUCK WITH HIM OR HIS FAMILY, HE
19 WOULD FUCK THEM UP.

20 Q HE SAID, I AM NOT SURE YOU ARE SPEAKING LOUD ENOUGH
21 WHERE ANYBODY CAN UNDERSTAND YOU.

22 MR. SAVERANCE: OBJECTION, YOUR HONOR.

23 THE COURT: JUST A MOMENT. YES, SIR.

24 MR. SAVERANCE: HE IS TESTIFYING FOR THE WITNESS.

25 REPEATING WHAT HAS BEEN SAID.

) 1 THE COURT: THE OBJECTION IS OVERRULED. YOU MAY
2 PROCEED.

3 Q DO YOU RECALL WHAT HIS -- WHAT YOUR RESPONSE WAS TO
4 HIS STATEMENT?

5 A YES, SIR.

6 Q WHAT DID YOU SAY?

7 A WHEN---

8 Q WHEN HE TOLD YOU THAT.

9 A ANYBODY THAT MESS WITH HIM OR HIS FAMILY?

10 Q UH-HUH. (AFFIRMATIVE.) WHAT DID YOU SAY BACK?

11 A YEAH, WHATEVER.

12 Q OKAY, WHAT HAPPENED AFTER THAT?

13 A HE APPROACHED ME.

14 Q HE APPROACHED YOU AND THEN WHAT HAPPENED?

15 A HE KNOCKED THE HAT OFF MY HEAD.

16 Q HE HIT YOU?

17 A YES, HE DID.

18 Q DID HE CONTINUE TO ADVANCE TOWARDS YOU?

19 A YES, HE DID.

20 Q DID HE STRIKE YOU?

21 A YES, HE DID.

22 Q DID YOU GET INVOLVED IN A FIGHT?

23 A YES, WE DID.

24 Q WERE YOU ALL TRADING BLOWS?

) 25 A YES, WE DID.

1 Q DID YOU ALL END UP GETTING TANGLED UP AND GRAPPLING
2 WITH EACH OTHER?

3 A YES, WE DID.

4 Q AT SOME POINT AND TIME, MR. ROUSE PUT HIS HANDS
5 AROUND YOUR THROAT?

6 A YES, HE DID.

7 Q WHAT WAS HE TRYING TO DO TO YOU?

8 A HE WAS TRYING TO SQUEEZE THE BREATH OUT OF ME REALLY.

9 Q CHOKING YOU?

10 A YES, HE WAS.

11 Q HE WASN'T JUST TRYING TO HOLD YOU BACK, WAS HE?

12 A NO.

13 Q WAS HE APPLYING PRESSURE TO YOUR NECK?

14 A YES, HE WAS.

15 Q HOW TALL DO YOU THINK MR. ROUSE WAS?

16 A 6 FEET. 6'1.

17 Q WAS HE TALLER THAN YOU?

18 A HE WAS.

19 Q ARMS LONGER THAN YOU?

20 A YES, HE WAS.

21 Q DID YOU FEEL MR. ROUSE WAS TRYING TO DO SERIOUS
22 BODILY HARM TO YOU?

23 A YES, I DID.

24 Q DID YOU FEEL AT THAT TIME MR. ROUSE WAS MAKING AN
25 ATTEMPT ON YOUR LIFE?

) 1 A YES, I DID.

2 Q DID MR. ROUSE' GRIP ON YOUR THROAT LAPSE AT ANY TIME?

3 A AT ONE POINT.

4 Q WHEN DID THAT HAPPEN?

5 A WHEN HE REMOVED ONE HAND FROM MY NECK.

6 Q SO HE DID TAKE A HAND OFF YOUR NECK?

7 A HE DID.

8 Q WAS THIS AFTER HE HAD BEEN, HAD HIS HANDS AROUND YOUR
9 THROAT FOR SOME PERIOD OF TIME?

10 A YES.

11 Q HE HAD BEEN APPLYING PRESSURE?

12 A YES.

13 Q HE REMOVED HIS HANDS-- ONE OF HIS HANDS FROM YOUR
14 THROAT. DID HE STILL HAVE A HOLD OF YOU WITH HIS OTHER?

15 MR. SAVERANCE: OBJECTION, YOUR HONOR.

16 THE COURT: OBJECTION IS SUSTAINED. THAT'S LEADING.

17 Q AT SOME POINT WAS THERE LESS THAN TWO HANDS ON YOUR
18 THROAT?

19 A YES, SIR.

20 Q AT THAT TIME, WHAT HAPPENED?

21 A I FELT HIM MOVE ONE HAND FROM BEHIND THE OTHER HAND.
22 IT APPEARED HE WAS REACHING FOR SOMETHING. HE WAS GOING
23 TO GET SOMETHING.

24 Q OKAY. HE WAS REACHING FOR SOMETHING?

) 25 A YES.

1 Q DO YOU RECALL WHAT HE WAS REACHING FOR?

2 A NO, I DON'T.

3 Q WHAT WERE YOU TRYING TO DO AS HE WAS REACHING DOWN
4 FOR WHATEVER IT WAS YOU THOUGHT HE WAS GOING AFTER?

5 A I WAS TRYING TO GRAB HIS HAND.

6 Q OKAY, YOU WERE TRYING TO GRAB HIS HAND. YOU KNEW
7 MR. ROUSE OR KNEW OF HIM, CORRECT?

8 A SIR?

9 Q YOU KNEW MR. ROUSE?

10 A YES, I DID.

11 Q YOU KNEW ABOUT THE INCIDENT THAT HAPPENED TWO MONTHS
12 PRIOR?

13 A YES, I DID.

14 Q DO YOU KNOW MR. CORY MCCLEM?

15 A YES, I DO.

16 Q HOW DO YOU KNOW MR. MCCLEM?

17 A I WENT TO SCHOOL WITH HIM. AND WHEN I USED TO LIVE
18 OUT AT RIVER TREE APARTMENTS, HE USED TO LIVE RIGHT NEXT
19 DOOR TO ME.

20 Q SO YOU SAW HIM BEFORE JANUARY OF 2005?

21 A YES, I DID.

22 Q AND YOU SAW HIM SUBSEQUENT TO JANUARY OF 2005?

23 A YES, SIR, I DID.

24 Q ARE YOU AWARE OF WHAT HAPPENED TO HIM?

25 A YES, I DID.

1 Q HOW BIG DO YOU THINK MR. MCCLEM IS?

2 A ABOUT TROY'S SIZE OR A LITTLE HEAVIER.

3 Q YOU WERE AWARE THAT HE HAD HIS THROAT CUT?

4 A YES, I DID.

5 Q DO YOU RECALL MR. ROUSE REACHING FOR SOMETHING?

6 A YES, I DID.

7 Q YOU WERE GOING AFTER HIS HAND?

8 A YES, I DID.

9 Q AND WERE YOU ABLE TO GRAB HIS HAND?

10 A SIR?

11 Q WERE YOU ABLE TO GET YOUR HAND OR A HAND ON HIS HAND?

12 A YES.

13 Q WERE YOU STRUGGLING AND TUSSLING AND PULLING BACK AND
14 FORTH?

15 MR. SAVERANCE: OBJECTION, YOUR HONOR.

16 THE COURT: YES, SIR.

17 MR. SAVERANCE: I THINK HE IS TESTIFYING FOR THE
18 WITNESS. AND HE'S CONTINUING TO LEAD HIM.

19 THE COURT: YES, SIR. DON'T SUGGEST THE ANSWERS TO
20 THE WITNESS, SIR.

21 MR. WATTS: YES, SIR.

22 Q WAS THERE A STRUGGLE?

23 A YES, SIR.

24 Q WERE YOU ALL STATIONARY? DID YOU ALL MOVE AROUND?

25 A YES, WE DID.

1 Q DID Y'ALL COVER A GOOD BIT OF DISTANCE?

2 A YES.

3 Q DO YOU RECALL THE SHOT BEING FIRED?

4 A YES, I DID.

5 Q OKAY. WAS IT WHILE YOU WERE STRUGGLING?

6 A YES, SIR.

7 Q WHAT HAPPENED, WHAT DO YOU RECALL AFTER THE SHOT WAS
8 FIRED? DO YOU REMEMBER WHAT HAPPENED AFTER THE SHOT WAS
9 FIRED?

10 A YES, I DO.

11 Q OKAY, WHAT HAPPENED?

12 A WHEN THE FIRST SHOT WAS FIRED, BOTH OF US WAS
13 TUSSLING OVER THE GUN.

14 Q OKAY. SO YOU ALL WERE TALKING AND TUSSLING OVER A
15 GUN?

16 A YES, SIR.

17 Q DID HE STILL HAVE ONE HAND AROUND YOUR THROAT?

18 A NO, SIR.

19 Q YOU ALL HAD, WHERE WERE YOUR HANDS?

20 A AT THAT POINT WHEN I PUT MY HAND ON HIS HAND---

21 Q OKAY.

22 A ---WHEN HE REACHED FOR THE GUN.

23 Q OKAY. WERE BOTH OF YOUR HANDS -- WHERE WERE BOTH OF
24 YOUR HANDS?

25 A REACHING FOR THE GUN.

-) 1 Q WERE YOU ALL STANDING STILL AT THAT TIME?.
- 2 A NO, SIR, WE WERE STILL MOVING.
- 3 Q OKAY. SO YOU ALL WERE STILL FIGHTING AND MOVING?
- 4 A YES, SIR.
- 5 Q DO YOU RECALL MR. THOMAS COMING UP ON YOU AND
- 6 MR. ROUSE WHILE YOU ALL WERE STRUGGLING?
- 7 A YES, SIR.
- 8 Q AND DO YOU RECALL WHAT MR. THOMAS SAID?
- 9 A YES, SIR.
- 10 Q WHAT DID HE SAY?
- 11 A WHEN TROY ROUSE WAS CHOKING ME, HE ASKED TROY TO LET
- 12 ME GO. HE TOLD HIM WE DIDN'T WANT TO FIGHT.
- 13 Q OKAY, DO YOU RECALL WHAT MR. ROUSE SAID?
- 14 A YES, I DID.
- 15 Q WHAT DID HE SAY?
- 16 A HE TOLD TROY THAT HE WAS GOING TO KILL ME.
- 17 Q DID YOU BELIEVE HIM?
- 18 A YES, I DID.
- 19 Q AFTER THE FIRST SHOT WAS FIRED, DID YOU CONTINUE TO
- 20 STRUGGLE?
- 21 A YES, I DID.
- 22 Q DO YOU RECALL AND WAS THERE A SECOND SHOT FIRED?
- 23 A YES, THERE WAS.
- 24 Q DID YOU CONTINUE TO STRUGGLE AFTER THAT?
-)25 MR. SAVERANCE: OBJECTION, YOUR HONOR.

1 THE COURT: BASIS FOR THE OBJECTION?

2 MR. SAVERANCE: YOUR HONOR, I JUST THINK HE IS
3 CONTINUALLY LEADING AND TESTIFYING FOR THE WITNESS INSTEAD
4 OF ASKING HIM WHAT HAPPENED.

5 THE COURT: THE OBJECTION IS OVERRULED.

6 Q DID YOU CONTINUE TO STRUGGLE?

7 A YES, I DID.

8 Q DO YOU RECALL MORE SHOTS BEING FIRED?

9 A WHEN?

10 Q DO YOU RECALL MORE SHOTS BEING FIRED?

11 A YES, I DO.

12 Q DID THE STRUGGLE CONTINUE?

13 A YES, IT DID.

14 Q DID THE STRUGGLE EVENTUALLY END?

15 A AT ONE POINT.

16 Q AT ONE POINT IT DID. WHAT DID YOU DO AFTER THAT?

17 A I RAN.

18 Q YOU LEFT THE SCENE?

19 A YES, I DID.

20 Q DO YOU RECALL WHEN YOU LEARNED THAT ANYONE WAS
21 LOOKING FOR YOU? DO YOU RECALL WHEN ANYONE FROM LAW
22 ENFORCEMENT WAS LOOKING FOR YOU?

23 A DO I RECALL ANYONE---

24 Q DO YOU RECALL WHEN YOU FOUND OUT ANYONE FROM LAW
25 ENFORCEMENT WAS LOOKING FOR YOU?

1 A YES, I DID, LATER ON.

2 Q WHEN DID YOU LEARN THAT LAW ENFORCEMENT WAS LOOKING
3 FOR YOU?

4 A AFTER THEY PUBLISHED IT IN THE NEWSPAPER.

5 Q DO YOU RECALL ABOUT WHAT TIME IT WAS THAT YOU LEARNED
6 THERE WAS A NEWSPAPER ARTICLE?

7 A APRIL 22ND.

8 Q WHO DID YOU FIND OUT ABOUT THE ARTICLE FROM?

9 A MY MOTHER.

10 Q WHEN YOU FOUND OUT THAT LAW ENFORCEMENT WAS LOOKING
11 FOR YOU, WHAT DID YOU DO?

12 A MY MOTHER CALLED ME AND I HAD TALKED TO HER, AND
13 TURNED MYSELF IN.

14 Q DID YOU TURN YOURSELF IN?

15 A YES, I DID.

16 Q WHEN YOU TURNED YOURSELF IN, WERE YOU SERVED WITH ANY
17 WARRANTS?

18 A YES, I WAS.

19 Q WERE YOU IN FEAR OF YOUR LIFE BEING TAKEN BY
20 MR. ROUSE?

21 A YES, I WAS.

22 Q DID YOU TRY TO GET HIM TO RELEASE HIS GRIP OFF OF
23 YOUR NECK?

24 A YES, I DID.

25 Q DID YOU STRUGGLE WITH HIM TO TRY TO PROTECT YOURSELF?

1 A YES, I DID.

2 Q DID YOU HAVE ANY WAY OF GETTING AWAY FROM MR. ROUSE
3 WHEN HE HAD HIS HANDS AROUND-YOUR THROAT?

4 A THERE WAS NO WAY POSSIBLE.

5 Q IS HE STRONGER THAN YOU?

6 A YES, HE WAS.

7 Q WHEN THE GUN WENT OFF, DO YOU KNOW IF YOU WERE HIT?

8 A WHEN THE GUN WENT OFF DID I KNOW IF---

9 Q THE FIRST SHOT.

10 A DID I KNOW IF I WAS HIT, NO, I DIDN'T.

11 Q YOU DIDN'T KNOW WHEN THE FIRST SHOT WAS FIRED. DO
12 YOU KNOW IF IT STRUCK YOU?

13 A NO, I DIDN'T.

14 Q COULD YOU TELL IF IT STRUCK MR. ROUSE?

15 A NO, I COULDN'T.

16 Q THE STRUGGLE WAS STILL GOING ON AT THAT TIME?

17 A YES, IT WAS.

18 Q WHEN DID YOU FIRST SEE THE GUN?

19 A AFTER MR. ROUSE REMOVED ONE HAND FROM MY NECK TO GO
20 REACH.

21 Q SO MR. ROUSE REACHED DOWN AND THEN YOU SAW THE GUN?

22 A YES, I DID.

23 Q THE GUN CAME FROM WHO?

24 A MR. ROUSE.

25 Q AFTER YOU RAN FROM THE SCENE, DID YOU EVER GO TO MS.

) 1 WESLEY'S HOUSE?

2 A WHEN I GET ARRESTED?

3 Q LUCILLE WESLEY.

4 A LUCILLE WESLEY, NO, I DIDN'T.

5 Q YOU DIDN'T GO TO HER HOUSE?

6 A NO, I DIDN'T.

7 Q DID YOU EVER TELL HER YOU SHOT ANYONE?

8 A NO, I DIDN'T.

9 Q DO YOU KNOW WHAT HAPPENED TO THE GUN AFTER YOU LEFT
10 THE SCENE?

11 A NO, SIR.

12 Q DID YOU TAKE IT WITH YOU?

13 A NO, SIR.

14 MR. WATTS: YOUR HONOR, IF I MAY, CAN I HAVE THE
15 WITNESS STEP DOWN?

16 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
17 STAND.)

18 Q DO YOU KIND OF RECOGNIZE WHAT THIS IS SUPPOSED TO
19 REPRESENT?

20 A YES, SIR.

21 Q DO YOU KNOW WHAT THIS BUILDING IS SUPPOSED TO
22 REPRESENT?

23 A IT'S COOTS STORE.

24 Q COOTS STORE?

) 25 A YES.

) 1 Q DO YOU RECALL THERE BEING AN OUTCROPPING OR SOME
2 OTHER KIND OF STRUCTURE ON THE SIDE OF THIS BUILDING?

3 A YES, SIR.

4 Q FROM WILSON STREET DOES THAT LOOK ACCURATE WHAT WOULD
5 BE RAY?

6 A YES.

7 Q WHERE WERE YOU WHEN THE ALTERCATION STARTED?

8 A RIGHT HERE.

9 Q YOU WHERE UP IN HERE?

10 A YES.

11 Q WHICH WAY DID Y'ALL PROCESS AS THE FIGHT WENT ON?

12 A TOWARDS THIS WAY.

13 Q SO YOU WERE COMING DOWN RAY TOWARD WILSON?

14 A YES, SIR.

15 Q AND WHERE DID THE FIGHT END?

16 A UP IN HERE, SIR.

17 THE COURT: SPEAK UP, SIR.

18 A A LITTLE UP IN HERE SOMEWHERE.

19 Q AND YOU WERE TAKING THE INTERSECTION OF RAY AND
20 WILSON?

21 A YES.

22 Q AND THAT'S WHERE THE FIGHT, THE SITUATION ENDED?

23 A YES, SIR.

24 Q DO YOU RECALL A STOP SIGN GOING HERE?

) 25 A YES, SIR.

1 Q DO YOU RECALL ANY KIND OF MOUNDS OR STOP SIGNS OVER
2 HERE?

3 A NO, SIR.

4 MR. WATTS: YOU CAN TAKE YOUR SEAT.

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

6 Q WHY DID YOU ACT THE WAY YOU DID THAT NIGHT?

7 A WHAT DO YOU MEAN?

8 Q WHY DID YOU TAKE THE ACTIONS THAT YOU TOOK THAT
9 NIGHT?

10 A BECAUSE I WAS IN FEAR FOR MY LIFE.

11 Q BECAUSE YOU WERE IN FEAR FOR YOUR LIFE?

12 A YES, SIR.

13 MR. WATTS: NO FURTHER QUESTIONS, YOUR HONOR.

14 THE COURT: MR. SAVERANCE.

15 CROSS EXAMINATION BY MR. SAVERANCE:

16 Q YOU SAID YOU KNEW CORY MCCLEM?

17 A YES, I DO.

18 Q Y'ALL ARE FRIENDS?

19 A YES, SIR.

20 Q HUNG AROUND TOGETHER?

21 A I KNEW HIM.

22 Q YOU KNEW HE HAD A SHOPLIFTING CONVICTION?

23 A I DIDN'T KNOW THAT.

24 Q HOW ABOUT RESISTING ARREST?

25 A I DIDN'T KNOW ABOUT THAT EITHER.

1 Q HOW ABOUT A PENDING CHARGE FOR ARMED ROBBERY?

2 A I DIDN'T KNOW ABOUT THAT.

3 Q AND KIDNAPPING?

4 A I DIDN'T KNOW ABOUT THAT EITHER.

5 Q ARE YOU NOW SAYING, IS WHAT YOU SAID THAT TROY ROUSE
6 HAD A GUN?

7 A YES, HE DID.

8 Q SO TROY IS BIGGER THAN YOU, STRONGER THAN YOU,
9 BEATING ON YOU, AND HE HAS A GUN, AND HE'S THE ONE THAT
10 ENDS UP SHOT AND DEAD? IS THAT WHAT YOU'RE TELLING US?

11 A YES, SIR.

12 Q DOES MAKE ANY SENSE TO YOU?

13 A IT MADE SENSE THAT NIGHT.

14 Q THAT NIGHT. YOU DIDN'T HAVE ANY SERIOUS INJURIES,
15 DID YOU?

16 A I HAD A LACERATION AROUND MY THROAT.

17 Q DO YOU STILL HAVE IT?

18 A I HAD FINGERNAIL PRINTS IN MY THROAT.

19 Q BUT YOU DON'T HAVE ANY MARKS TODAY FROM IT.

20 A NO, THAT WAS A YEAR AGO.

21 Q THAT'S ALL YOU HAD THOUGH, THAT YOU CAN RECALL, WAS
22 THE MARKS?

23 A AROUND MY NECK, YES.

24 Q WHAT REALLY HAPPENED WAS, Y'ALL GOT IN A FIGHT. TROY
25 HIT YOUR HAT TO START WITH, DIDN'T HE? DIDN'T HE HIT YOUR

1 HAT AND KNOCK IT OFF OF YOUR HEAD?

2 A YEAH. HE HIT MY HEAD AND KNOCKED MY HAT OFF. YES.

3 Q AND YOU GOT MAD, DIDN'T YOU?

4 A SURELY.

5 Q OKAY. AND THEN HE STARTED PUSHING YOU AROUND A
6 LITTLE BIT?

7 A NO. HE APPROACHED ME TO CHOKE ME.

8 Q OKAY. SO YOU GET YOUR HAT KNOCKED OFF, HE GOES TO
9 CHOKE TO YOU, AND THEN Y'ALL ARE TUSSLING?

10 A YES, SIR.

11 Q THE TRUTH IS, IS IT NOT, THAT YOU WERE MAD THAT YOUR
12 HAT GOT KNOCKED OFF. YOU WERE MAD THAT YOU WERE GETTING
13 BEAT UP. SO YOU WERE GOING TO GET SOME PAY BACK BY
14 SHOOTING AND KILLING TROY ROUSE.

15 A WHAT ARE YOU ASKING ME?

16 Q WEREN'T YOU PAYING HIM BACK FOR KNOCKING YOUR HAT
17 OFF, AND GETTING YOU MAD WHEN YOU SHOT HIM?

18 A YES. DID I WANT TO PAY HIM BACK FOR KNOCKING MY HAT
19 OFF?

20 Q YEAH.

21 A WHAT DO YOU MEAN, AS FAR AS THE FIGHT?

22 Q YOU TELL ME.

23 A WE HAD A FIGHT BECAUSE OF THAT. AND WE WERE ARGUING
24 BECAUSE OF THAT, YES.

25 Q AND YOU WANTED TO SHOOT HIM BECAUSE HE HAD STARTED

) 1 FIGHTING AND MESSING WITH YOU.

2 A DID I WANT TO SHOOT HIM?

3 Q YEAH.

4 A NO, I DIDN'T WANT TO SHOOT HIM.

5 Q WELL WHOSE FAULT IS IT THAT HE WAS SHOT?

6 A IT WAS HIS FAULT, HE HAD THE GUN.

7 Q SO IT'S MR. ROUSE'S FAULT THAT HE WAS DEAD.

8 A HE PULLED THE WEAPON OUT.

9 Q SO IS IT HIS FAULT THAT HE IS DEAD?

10 A YES, IT IS.

11 Q SO YOU DON'T AGREE WITH MR. THOMAS THAT IT'S YOURS
12 AND HIS FAULT?

13 A SAY WHAT?

14 Q MR. THOMAS SAID IT WAS HIS FAULT AND YOUR FAULT THAT
15 TROY ROUSE WAS DEAD. AND YOU AGREE WITH THAT?

16 MR. WHEELER: OBJECTION, YOUR HONOR.

17 THE COURT: SUSTAINED. FITTING WITNESSES.

18 Q YOU SAY YOU NEVER WENT TO LUCILLE WESLEY'S HOUSE
19 AFTER THE SHOOTING?

20 A YES, SIR.

21 Q SHE DOES LIVE RIGHT NEAR WHERE THE SHOOTING OCCURRED,
22 DOESN'T SHE?

23 A SHE LIVES ON FRIERSON STREET.

24 Q ON FRIERSON STREET. ARE YOU SURE?

)25 A YES.

1 Q DID EFRAIN THOMAS HAVE A GUN?

2 A YES, HE DID.

3 Q I DON'T KNOW IF YOU MENTIONED THIS A FEW MINUTES AGO,
4 BUT TELL ME HOW HE SHOT TROY ROUSE.

5 A TO GET HIM OFF OF ME.

6 Q HOW DID HE DO IT?

7 A HOW DID HE DO IT? WHAT DO YOU MEAN HOW DID HE DO IT?

8 Q WHERE DID HE GO, WHERE DID HE SHOOT HIM AT?

9 A HE STEPPED BEHIND HIM, AND SHOT HIM IN THE BACK.

10 Q IS IT FAIR TO SAY THAT TROY WAS HERE AND YOU WERE IN
11 FRONT OF HIM, AND Y'ALL WERE GOING AT IT?

12 A YES.

13 Q DID EFRAIN THOMAS GO BEHIND AND SHOOT TROY IN THE
14 BACK?

15 A WHAT DO YOU MEAN DID HE GO BEHIND HIM AND SHOOT HIM
16 IN THE BACK?

17 Q YES.

18 A YES, HE DID.

19 Q HOW MANY TIMES?

20 A I DON'T KNOW.

21 Q AND YOU DIDN'T GET HIT BY ANY PARTIAL BULLETS OR
22 BLOOD OR ANYTHING FROM MR. ROUSE?

23 A NO.

24 Q WELL HE COULD HAVE SHOT YOU, COULDN'T HE? MR.
25 THOMAS?

1 A COULD HE HAVE SHOT ME? NO, HE COULDN'T.

2 Q WEREN'T YOU RIGHT THERE IN FRONT OF MR. ROUSE?

3 A YES, AND HE WAS BEHIND MR. ROUSE.

4 Q AND WHAT DID YOU DO AFTER THIS TOOK PLACE? AFTER THE
5 SHOOTING OF TROY ROUSE TOOK PLACE?

6 A WHAT DID I DO AFTER IT TOOK PLACE?

7 Q YEP.

8 A I WENT HOME.

9 Q YOU DIDN'T STAY AT THE SCENE?

10 A NO, I DIDN'T.

11 Q WHY?

12 A BECAUSE I RAN.

13 Q WHY?

14 A WHAT DO YOU MEAN, WHY?

15 Q WHY DID YOU RUN?

16 A BECAUSE I RAN. I RAN TO GET AWAY.

17 Q BECAUSE YOU KNEW YOU DID SOMETHING WRONG, DIDN'T YOU?

18 A I KNEW THAT I HAD A FIGHT WITH TROY ROUSE AND HE WAS
19 SHOT.

20 Q WELL WHY DID YOU RUN?

21 MR. SMITH: ASKED AND ANSWERED, YOUR HONOR.

22 OBJECTION.

23 THE COURT: THE OBJECTION IS SUSTAINED.

24 Q DID YOU CALL EMS OR ANYBODY ELSE TO HELP MR. ROUSE?

25 A NO.

1 Q WHEN YOU LEFT, WAS HE DEAD?

2 A HE WAS STILL MOVING WHEN I LEFT.

3 Q WHY WOULDN'T YOU CALL FOR HELP FOR HIM?

4 A I DON'T KNOW.

5 Q HE WASN'T A THREAT ONCE HE WAS ON THE GROUND AND HAD
6 BEEN SHOT FIVE OR SIX TIMES, WAS HE?

7 A WELL HE WAS A THREAT WHEN HE HAD HIS HANDS AROUND MY
8 NECK.

9 Q THAT'S NOT WHAT I ASKED YOU. I SAID WHEN HE WAS
10 LAYING ON THE GROUND FROM FIVE OR SIX SHOTS, WAS HE A
11 THREAT THEN?

12 A I DIDN'T SEE HIM LAYING ON THE GROUND THEN.

13 Q WHEN YOU RAN, WHAT IS THE LAST THING YOU SAW OF TROY
14 ROUSE? WHAT WAS HE DOING?

15 A HE WAS STILL MOVING. STILL UP.

16 Q STANDING UP?

17 A NO, HE WASN'T STANDING UP. BUT HE WAS UP.

18 Q SO HE WAS STILL ALIVE.

19 A YES, HE WAS.

20 Q AND YOU DIDN'T CALL FOR HELP FOR MR. ROUSE WHEN YOU
21 -- WHOSE HOUSE DID YOU GO TO?

22 A I WENT HOME.

23 Q WHY DIDN'T YOU CALL FOR HELP WHEN YOU GOT HOME FOR
24 HIM?

25 A BECAUSE I DIDN'T.

1 Q WHY?

2 A I DON'T HAVE A REASON WHY, I JUST DIDN'T.

3 Q DON'T YOU THINK IT WOULD HAVE BEEN GOOD TO CALL AND
4 TRY TO GET SOME HELP FOR MR. ROUSE?

5 A YES, IT PROBABLY WOULD HAVE.

6 Q MR. MCCALL, DO YOU HAVE A PRIOR CONVICTION FOR
7 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE?

8 A YES, I DID.

9 Q YOU RECEIVED A YOA SENTENCE NOT TO EXCEED 6 YEARS?

10 A YES, I DID.

11 Q IN 2002.

12 A YES, I DID.

13 Q AND YOU WERE CONVICTED OF ASSAULT AND BATTERY OF A
14 HIGH AND AGGRAVATED NATURE?

15 A YES, I WAS.

16 Q THE AUTOPSY SHOWED THAT MR. ROUSE WEIGHED 170 POUNDS.
17 WOULD YOU SAY THAT IS ACCURATE OR NOT ACCURATE?

18 A TO TELL YOU THE TRUTH, I THOUGHT HE WEIGHED MORE THAN
19 THAT.

20 Q I MEAN, YOU NEVER WEIGHED HIM, DID YOU?

21 A NOT PERSONALLY, NO, I DIDN'T.

22 Q SO YOU DON'T HOW MUCH HE WEIGHED.

23 MR. SMITH: OBJECTION, YOUR HONOR. ARGUMENTATIVE.

24 HE ASKED THE QUESTION, HE ANSWERED IT. NOW HE'S ARGUING.

25 THE COURT: EXAMINING COUNSEL MUST CONDUCT ALL

) 1 OBJECTIONS.

2 MR. WATTS: WELL, JUDGE, YOUR HONOR, I WOULD SAY
3 EXACTLY ASKED AND ANSWERED. IT'S ARGUMENTATIVE.

4 THE COURT: OBJECTION SUSTAINED.

5 Q HOW MANY TIMES DID YOU SHOOT TROY ROUSE?

6 A I DIDN'T SHOOT TROY ROUSE AT ALL.

7 Q YOU DIDN'T?

8 A NO, I DIDN'T.

9 Q NOT AT ALL?

10 A NOT AT ALL.

11 Q HOW MANY TIMES DID EFRAIN THOMAS SHOOT TROY ROUSE?

12 A I DON'T KNOW.

13 Q DO YOU KNOW HOW MANY GUNSHOTS YOU HEARD?

14 A I HEARD TWO SHOTS WHEN ME AND TROY ROUSE WAS TUSSLING
15 OVER THE GUN.

16 Q AND WHERE DID THOSE SHOTS COME?

17 A FROM THE GUN ME AND TROY ROUSE WAS TUSSLING OVER.

18 Q AND YOU CLAIM THAT YOU SAW SOME GUN HE HAD?

19 A I DIDN'T SAY I SEEN THE GUN HE HAD.

20 Q DID YOU HAVE A GUN ON YOU?

21 A NO, I DIDN'T.

22 Q ARE YOU SURE?

23 A POSITIVE.

24 Q WHERE DID THAT GUN COME FROM?

25 A TROY ROUSE.

1 Q WHERE DID HE HAVE IT?

2 A IN HIS WAIST.

3 Q WHAT KIND OF GUN WAS IT?

4 A I DON'T KNOW.

5 Q WELL HE DIDN'T SHOOT YOU, DID HE?

6 A NO, HE DIDN'T.

7 Q AND YOU'RE SAYING THAT YOU DIDN'T TAKE THAT GUN AND
8 SHOOT TROY ROUSE WITH IT?

9 A YES.

10 Q YOU DIDN'T SHOOT HIM IN THE CHEST AT POINT BLANK
11 RANGE AS Y'ALL WERE SCUFFLING?

12 A NO, I DIDN'T.

13 Q MR. THOMAS SAID YOU DID.

14 A THAT'S WHAT MR. THOMAS SAID.

15 MR. WHEELER: OBJECTION, YOUR HONOR. HE'S PITTING
16 THE WITNESSES. AND MISCHARACTERIZING TESTIMONY.

17 THE COURT: OBJECTION IS SUSTAINED.

18 Q SO IF MR. ROUSE IS BIGGER THAN YOU, STRONGER THAN
19 YOU, HE HAS A GUN, YOU DON'T. HE SAYS HE IS GOING TO KILL
20 YOU AND HE ENDS UP DEAD. IS THAT WHAT YOU'RE SAYING
21 HAPPENED?

22 MR. WATTS: OBJECTION TO THE FORM OF THE QUESTION,
23 YOUR HONOR.

24 THE COURT: OBJECTION IS OVERRULED.

25 A WHAT WAS THE QUESTION?

1 Q I SAID YOUR TESTIMONY WAS, THAT MR. ROUSE WAS BIGGER
2 THAN YOU, STRONGER THAN YOU, HEAVIER THAN YOU; THAT HE HAD
3 A GUN AND SAID HE WAS GOING TO KILL YOU. BUT HE DIDN'T
4 KILL YOU, DID HE?

5 A NO, I DIDN'T.

6 Q HE'S THE ONE THAT ENDED UP SHOT AND DEAD, DIDN'T HE?

7 A YES, HE DID.

8 Q DO YOU KNOW WHY HE DIDN'T KILL YOU?

9 A DO I KNOW WHY HE DIDN'T KILL ME? I KNOW HE TRIED.

10 Q WHY DIDN'T HE JUST PULL OUT THE GUN AND SHOOT YOU?

11 A HE DID TRY TO DO THAT TOO.

12 Q HE POINTED THE GUN AT YOU?

13 A NO. WHEN HE REACHED FOR THE GUN, OBVIOUSLY HE WAS
14 TRYING TO SHOOT ME WITH IT.

15 Q DID HE EVER GRAB THE GUN?

16 A YES, HE DID.

17 Q STAND RIGHT THERE. CAN HE STAND RIGHT THERE FOR ME,
18 YOUR HONOR?

19 THE COURT: YES, SIR.

20 Q STAND RIGHT THERE, PLEASE.

21 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
22 STAND.)

23 Q IF YOU ARE TROY ROUSE, SHOW ME WHAT HE DID TO GO FOR
24 THE GUN.

25 A WHAT DID HE DO TO GO FOR THE GUN?

- 1 Q WHAT DID HE DO?
- 2 A HE REACHED FOR THE GUN LIKE THIS. (WITNESS
- 3 INDICATING.)
- 4 Q DID HE ACTUALLY POINT THE GUN AT YOU?
- 5 A HE WAS TRYING.
- 6 Q DID HE POINT THE GUN AT YOU?
- 7 A HE WAS TRYING TO.
- 8 Q SO HE DIDN'T GET THE GUN ALL THE WAY POINTED AT YOU?
- 9 A NO, HE DIDN'T.
- 10 Q WHY NOT?
- 11 A BECAUSE I REACHED FOR THE GUN.
- 12 Q AND WHAT HAPPENED TO THE GUN?
- 13 A WE WAS TUSSLING OVER IT.
- 14 Q YOU NEVER GOT CONTROL OF IT?
- 15 A NO, SIR.
- 16 Q DID IT FALL TO THE GROUND?
- 17 A NO, SIR.
- 18 Q WHAT HAPPENED TO IT AS Y'ALL WERE TUSSLING?
- 19 A HE HAD THE GUN IN HIS HAND.
- 20 Q THE ENTIRE TIME Y'ALL WERE TUSSLING, HE HAD IT IN HIS
- 21 HAND?
- 22 A YES, SIR.
- 23 Q BUT HE DIDN'T SHOOT YOU.
- 24 A NO, SIR.
- 25 Q DO YOU KNOW WHY HE JUST DIDN'T BACK AWAY AND SHOOT

1 YOU?

2 A HE COULDN'T.

3 Q HE COULDN'T? I THOUGHT HE WAS STRONGER THAN YOU. HE
4 COULDN'T PUSH AND BACK UP?

5 A I WAS HOLDING ON TO HIM.

6 MR. SAVERANCE: YOU CAN GO AHEAD AND HAVE A SEAT.

7 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
8 STAND.)

9 Q WHY WERE YOU HOLDING ON TO HIM?

10 A BECAUSE IF I DIDN'T, HE WOULD HAVE SHOT ME WITH THE
11 GUN.

12 Q UH-HUH. (AFFIRMATIVE.) DID THAT GUN GO OFF?

13 A THE GUN ME AND TROY ROUSE WAS TUSSLING OVER? YES, IT
14 DID IT.

15 Q WHERE DID THE BULLETS GO? I MEAN, LET ME REPHRASE,
16 YOUR HONOR. WHERE WAS THE GUN POINTED WHEN IT WENT OFF?

17 A I CAN'T YOU TELL YOU.

18 Q WAS IT POINTED AT YOU?

19 A NO, IT WASN'T.

20 Q WAS IT POINTED DIRECTLY AT MR. ROUSE?

21 A NO, IT WASN'T.

22 Q WAS IT POINTED TO ONE OF THE SIDES?

23 A WE WAS TUSSLING OVER THE GUN. IT WAS POINTED IN ALL
24 DIRECTIONS.

25 Q SO WHO PULLED THE TRIGGER FOR IT TO SHOOT TWICE?

1 A HE HAD HIS HAND ON THE TRIGGER.

2 Q DID YOU PULL THE TRIGGER?

3 A NO, I DIDN'T.

4 Q DID HE KEEP THE GUN IN HIS HAND THE ENTIRE TIME FROM
5 THE TIME SHOTS STARTED UNTIL THE TIME HE RAN?

6 A I DON'T KNOW.

7 Q WELL AFTER Y'ALL WERE STRUGGLING AND TUSSLING AND TWO
8 SHOTS WENT OFF, WHAT HAPPENED TO THE GUN?

9 A I DON'T KNOW.

10 Q YOU DON'T KNOW?

11 A MY GUESS IS, IT WAS STILL IN HIS HAND.

12 Q IT WAS STILL IN HIS HAND?

13 A YES, SIR.

14 Q WAS IT IN HIS HAND WHEN HE WAS SHOT IN THE BACK BY
15 EFRAIN THOMAS?

16 A YES, IT WAS.

17 Q AFTER HE WAS SHOT IN THE BACK BY EFRAIN THOMAS, IS
18 THAT THE POINT AND TIME YOU AND HE SEPARATED?

19 A REPEAT THE QUESTION.

20 Q AFTER MR. ROUSE WAS SHOT IN THE BACK BY EFRAIN
21 THOMAS, DID YOU AND MR. ROUSE SEPARATE?

22 A YES, WE DID.

23 Q AND HE STILL HAD THE GUN IN HIS HAND?

24 A YES, HE DID.

25 Q AND YOU WERE IN FRONT OF HIM?

) 1 A WAS I IN FRONT OF HIM? YES, I WAS.
2 Q MAYBE FROM ME TO THE COURT REPORTER?
3 A CLOSER THAN THAT.
4 Q CLOSER? MAYBE THIS?
5 A CLOSER THAN THAT. BODY TO BODY.
6 Q WELL DID YOU BACK UP, OR DID HE BACK UP?
7 A AT ONE POINT, YES.
8 Q WHO BACKED UP?
9 A WE STEPPED AWAY FROM EACH OTHER. I STEPPED AWAY FROM
10 HIM.
11 Q AND HE STILL HAD THE GUN, RIGHT?
12 A YES, HE DID.
13 Q AND HOW FAR WERE Y'ALL APART FROM THAT POINT? FROM
14 ME TO YOU? OR DO YOU WANT ME TO MOVE UP SOME?
15 A ABOUT FROM HERE TO HERE.
16 Q WHY DIDN'T HE SHOOT YOU AT THAT POINT?
17 A BECAUSE HE COULDN'T.
18 Q WHY?
19 A BECAUSE I HAD MY ARM AROUND HIS HAND.
20 Q AT SOME POINT DID YOUR ARMS REMOVE -- DID YOUR ARMS
21 AND HANDS BECOME REMOVED FROM MR. ROUSE AT SOME POINT?
22 A NOT WHILE HE HAD THE GUN, NO.
23 Q OKAY. SO WHAT HAPPENED TO THE GUN?
24 A HE STILL HAD THE GUN IN HIS POSSESSION.
25 Q WELL YOU DIDN'T KNOCK IT TO THE GROUND, DID YOU?

1 A NO, I DIDN'T.

2 Q AT SOME POINT DID YOU BACK AWAY FROM MR. ROUSE WHERE
3 Y'ALL WERE NOT IN CONTACT WITH EACH OTHER?

4 A WHAT ARE YOU ASKING?

5 Q AT SOME POINT WHEN YOU AND MR. ROUSE WERE SCUFFLING
6 AND GOING AT IT -- CAN I STRIKE THAT, YOUR HONOR? I'LL
7 WITHDRAW THAT. MR. ROUSE WAS SHOT IN THE BACK BY MR.
8 THOMAS, CORRECT?

9 A YES.

10 Q AND AFTER HE WAS SHOT IN THE BACK, WERE Y'ALL STILL
11 SCUFFLING?

12 A YES, WE WERE.

13 Q HOW LONG DID Y'ALL SCUFFLE AFTER THAT?

14 A UNTIL I WAS ABLE TO GET OUT.

15 Q HOW LONG?

16 A I DON'T KNOW.

17 Q A MINUTE?

18 A I'M NOT SURE HOW LONG.

19 Q WHAT ENDED THE SCUFFLE?

20 A WHEN TROY ROUSE GOT OFF OF ME.

21 Q HOW DID HE GET OFF OF YOU?

22 A I DON'T KNOW.

23 Q DID YOU MOVE AWAY, OR DID HE MOVE AWAY?

24 MR. WATTS: OBJECTION, YOUR HONOR. ASKED AND

25 ANSWERED. WE'RE GOING OVER THE SAME GROUND OVER AND OVER

1 AGAIN.

2 THE COURT: OBJECTION IS SUSTAINED.

3 Q AT WHAT POINT DID YOU LEAVE THE SCENE?

4 A WHEN I RAN.

5 Q WHEN YOU RAN, WHERE WAS TROY ROUSE?

6 A STILL AT THE SCENE.

7 Q STANDING UP OR LAYING DOWN?

8 A HE WASN'T STANDING UP OR LAYING DOWN.

9 Q WHAT WAS HE DOING?

10 A HE WAS MORE LIKE IN THE POSITION OF ONE KNEE UP, ONE
11 KNEE DOWN.

12 Q DO YOU KNOW HOW HE GOT SHOT IN THE KNEE?

13 A NO, I DON'T.

14 Q ANYBODY SHOOT MR. ROUSE BESIDES MR. THOMAS?

15 A NO, SIR.

16 Q DID MR. THOMAS HAVE A GUN THAT NIGHT?

17 A YES, SIR.

18 Q DID HE SHOOT MR. ROUSE?

19 A YES, SIR.

20 Q WELL WHEN YOU WENT TO RUN FROM MR. ROUSE, WHY DIDN'T
21 HE SHOOT YOU THEN?

22 A BECAUSE HE TURNED AROUND---

23 MR. WHEELER: OBJECTION, YOUR HONOR.

24 MR. WATTS: OBJECTION, YOUR HONOR.

25 THE COURT: OBJECTION IS OVERRULED.

) 1 A REPEAT THE QUESTION.

2 Q WHEN YOU RAN FROM MR. ROUSE, WHY DIDN'T HE SHOOT YOU
3 THEN?

4 A I DON'T KNOW.

5 Q HE STILL HAD THE GUN, DIDN'T HE?

6 A SURE.

7 Q AND YOU DIDN'T GET SHOT AT ALL?

8 A NO, SIR.

9 MR. SAVERANCE: ONE SECOND, YOUR HONOR. THAT'S ALL,
10 YOUR HONOR.

11 THE COURT: MR. WHEELER.

12 MR. WHEELER: THANK, YOUR HONOR.

13 CROSS EXAMINATION BY MR. WHEELER:

14 Q MR. MCCALL, THE NIGHT YOU SAID THIS HAPPENED BEFORE
15 ANY ALTERCATION OCCURRED BETWEEN YOU AND MR. ROUSE, MR.
16 THOMAS HAD STOPPED AND KNEELED DOWN, IS THAT CORRECT?

17 A YES, SIR.

18 Q AND HE WAS SOME, WAS IT SOME 20 TO 25 FEET BEHIND
19 Y'ALL FAIRLY ACCURATE AS TO HOW FAR BEHIND YOU HE WAS?

20 A I'M NOT SURE HE WAS BEHIND ME.

21 Q DID Y'ALL KEEP WALKING AFTER HE STOPPED AND KNEELED
22 DOWN?

23 A YES, SIR.

24 Q AND WAS THAT BEFORE WHATEVER SET THIS SITUATION OFF
25 OCCURRED?

) 1 A YES, SIR.

2 Q SO WITH REGARD TO THE FIGHT THAT OCCURRED BETWEEN YOU
3 AND MR. ROUSE AS IT STARTED, MR. THOMAS HAD NO FAULT IN
4 BRINGING THAT ON. IS THAT FAIR TO SAY?

5 A YES, SIR.

6 Q NOW AS Y'ALL WENT TO FIGHTING, WERE MR. ROUSE'S HANDS
7 OR HAND AROUND YOUR NECK AT THE TIME MR. THOMAS ARRIVED?

8 A YES, SIR.

9 Q AND WHENEVER THESE SHOTS WENT OFF, DID HE FALL, OR
10 DID HE DO ANYTHING TO WITHDRAW FROM THE ATTACK ON YOU?

11 A NO, SIR.

12 Q DID, TO YOUR KNOWLEDGE, MR. THOMAS THEN DISCHARGE A
13 WEAPON THAT HE HAD?

14 A YES, SIR.

15 Q THE 22 PISTOL?

16 A YES, SIR.

17 Q IS THAT CORRECT? AND DID MR. ROUSE CONTINUE TO
18 STRUGGLE WITH YOU AFTER THAT HAPPENED?

19 A YES, SIR.

20 Q BUT DID HE EVENTUALLY STOP AFTER, WAS IT ANOTHER SHOT
21 FROM THE PISTOL THAT Y'ALL WERE TUSSLING OVER, IS THAT
22 CORRECT?

23 A YES, SIR.

24 Q DO YOU BELIEVE THAT MR. ROUSE INTENDED TO KILL YOU?

) 25 A YES, SIR.

1 Q AND DO YOU BELIEVE THAT MR. THOMAS TRIED TO SAVE YOUR
2 LIFE?

3 MR. SAVERANCE: OBJECTION, YOUR HONOR.

4 A HE DID.

5 THE COURT: THE OBJECTION IS OVERRULED.

6 MR. WHEELER: THANK YOU, MR. MCCALL.

7 THE COURT: MR. JOHNSON.

8 MR. JOHNSON: THANK YOUR HONOR. MAY IT PLEASE THE
9 COURT.

10 CROSS EXAMINATION BY MR. JOHNSON:

11 Q EUNICE, YOU WAS AT THE HOUSE OF CHAD JAMES?

12 A YES, SIR.

13 Q WHEN YOU GOT READY TO LEAVE TO GO TO PLAY POOL, WHO
14 WENT WITH YOU?

15 A ME, EFRAIN THOMAS, KEITH HANNABEL AND TROY ROUSE
16 AFTERWARDS.

17 Q WAS THERE A MR. GREEN THERE AS WELL?

18 A YES, SIR. LENNY GREEN.

19 Q DID CHAD JAMES GO WITH YOU?

20 A NO, SIR.

21 Q AFTER YOU LEFT THAT HOUSE, DID YOU SEE CHAD JAMES
22 ANYMORE?

23 A NO, SIR.

24 Q DID HE ASSIST YOU IN ANY WAY AFTER THE SHOOTING IN
25 RUNNING, HIDING, ---

) 1 A NO, SIR.
2 Q ---THROWING AWAY THE GUN?
3 A NO, SIR.
4 Q CALLING ANYBODY FOR YOU?
5 A NO, SIR.
6 Q DID HE DO ANYTHING AT ALL TO HELP YOU?
7 A NO, SIR.
8 Q AND WAS HE PRESENT WHEN THIS HAPPENED?
9 A NO, SIR.
10 Q AND IF TIFFANY HILL SAYS THAT SHE WAS STANDING IN THE
11 MIDDLE OF WILSON STREET---
12 MR. SAVERANCE: OBJECTION, YOUR HONOR.
13 THE COURT: TO WHAT?
14 MR. SAVERANCE: ASKING WHAT SOMEBODY ELSE SAID TO
15 ANOTHER WITNESS.
16 THE COURT: HE HASN'T ASKED THE QUESTION.
17 Q IF TIFFANY HILL SAID SHE SAW THE FIGHT HAPPEN HERE IN
18 THE MIDDLE OF WILSON STREET, WOULD SHE BE CORRECT?
19 A NO, SHE WOULDN'T.
20 Q WAS THE FIGHT AT THE CORNER OF RAY AND WILSON?
21 A YES, SIR.
22 Q IS THERE ANY WAY THAT IT EVER ENDED UP HERE?
23 A NO, SIR.
24 MR. JOHNSON: NO OTHER QUESTIONS.
) 5 THE COURT: MR. WATTS.

1 MR. WATTS: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: MR. SAVERANCE.

3 MR. SAVERANCE: NOTHING, YOUR HONOR.

4 THE COURT: MR. WHEELER.

5 MR. WHEELER: NOTHING, YOUR HONOR.

6 THE COURT: STEP DOWN, SIR. LADIES AND GENTLEMEN,
7 THAT BRINGS US TO LUNCH TIME. WE WILL BREAK FOR LUNCH AT
8 THIS TIME. WE WILL TAKE AN HOUR AND 15 MINUTES FOR LUNCH.
9 WE WILL SEE YOU BACK AFTER LUNCH.

10 (THEREUPON, THE JURY GOES TO LUNCH AT 1:10 P.M.)

11 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
12 PRESENCE OF THE JURY.)

13 THE COURT: MR. JOHNSON, ARE YOU GOING TO PUT UP ANY
14 WITNESSES?

15 MR. JOHNSON: YOUR HONOR, I THINK WE---

16 MR. WATTS: YOUR HONOR, IF YOU WOULD LIKE IF I CAN
17 BRIEFLY SEE, I BELIEVE WE HAVE FINISHED.

18 THE COURT: WE ARE GOING TO LUNCH.

19 MR. JOHNSON: WELL I JUST WANTED TO, SINCE THEY
20 HAVEN'T DECIDED WHETHER THEY ARE GOING TO FINISH OR NOT
21 YET, YOUR HONOR, I WILL DIRECT THAT AFTER LUNCH THEN.

22 THE COURT: WHAT IS IT?

23 MR. JOHNSON: WELL IT IS MY PLAN THAT I PROBABLY
24 WON'T BE PUTTING UP A DEFENSE. I WILL BE RESTING. AND I
25 DIDN'T KNOW IF THAT MIGHT HELP THE COURT IN SCHEDULING

1 THIS STUFF OR NOT.

2 THE COURT: ALL RIGHT.

3 MR. JOHNSON: BUT THAT DEPENDS ON.

4 THE COURT: HOW ABOUT REQUEST OF CHARGES? DOES
5 ANYONE HAVE ANY PREPARED REQUEST OF CHARGES?

6 MR. JOHNSON: I HAVE ONE, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 MR. WHEELER: I HAVE NOTHING TO MENTION TO REBUT
9 FURTHER, YOUR HONOR.

10 THE COURT: MR. WATTS.

11 MR. WATTS: YOUR HONOR, I HAVE CARRIED SOME OF OUR
12 REQUESTS WITH THE CLERK.

13 THE COURT: THE PREPARED CHARGES---

14 MR. WATTS: NO, SIR.

15 THE COURT: ---THAT YOU HAVE?

16 MR. WATTS: WE TALKED. WE DON'T HAVE ANY PREPARED
17 YET.

18 THE COURT: DOES ANYONE HAVE ANY PREPARED REQUEST OF
19 CHARGES?

20 MR. WATTS: NOT TO SUBMIT RIGHT NOW, YOUR HONOR.

21 THE COURT: MR. SAVERANCE?

22 MR. SAVERANCE: NOTHING, YOUR HONOR.

23 THE COURT: ANYTHING ELSE BEFORE WE BREAK FOR LUNCH?

24 MR. SAVERANCE: NOT FROM THE STATE, YOUR HONOR.

25 MR WATTS: NOTHING.

1 MR. JOHNSON: NOTHING FROM US, YOUR HONOR.

2 THE COURT: WE WILL TAKE AN HOUR AND 15 MINUTES.

3 (THEREUPON, THE COURT TAKES A LUNCH RECESS.)

4 MR. MCCALL: YOUR HONOR, WE HAVE NO ADDITIONAL
5 WITNESSES. MR. MCCALL CLOSES HIS CASE AT THIS TIME.

6 THE COURT: YOU WILL BE ABLE TO REST IN FRONT OF THE
7 JURY. MR. JOHNSON?

8 MR. JOHNSON: YOUR HONOR, AT THIS TIME AFTER
9 CONFERRING WITH MY CLIENT WE DECIDED NOT TO PUT ON ANY
10 EVIDENCE AND WE REST AT THIS TIME.

11 THE COURT: AGAIN, ANY REPLY, MR. SAVERANCE?

12 MR. SAVERANCE: NONE FROM THE STATE, YOUR HONOR.

13 THE COURT: IF ALL THE TESTIMONY IS IN THEN, WE WILL
14 DO ALL THE RESTING IN FRONT OF THE JURY. AND WE WILL GO
15 TO CLOSING ARGUMENTS. ANYTHING FURTHER REGARDING THE
16 REQUEST OF CHARGE, MR. SAVERANCE?

17 MR. SAVERANCE: YOUR HONOR, AFTER SPEAKING WITH YOUR
18 LAW CLERK, I THINK Y'ALL ALREADY HAVE THE THINGS THAT I
19 WOULD REQUEST. Y'ALL ALREADY HAVE THOSE. IF THOSE ARE
20 SPECIAL OR DIFFERENT CHARGES, I ASK THEY BE SUBMITTED.

21 THE COURT: MR. WHEELER.

22 MR. WHEELER: YOUR HONOR, WITH REGARD TO THE REQUEST
23 TO CHARGE, I BELIEVE EVERYTHING THAT WE HAD TALKED ABOUT
24 EARLIER HAS BEEN -- THE DISCOVERY CHARGE HAS BEEN DECIDED.
25 I DO WANT TO MOVE ON THE RECORD AND ASK FOR A CHARGE

1 REGARDS INVOLUNTARY MANSLAUGHTER.

2 THE COURT: INVOLUNTARY MANSLAUGHTER?

3 MR. WHEELER: INVOLUNTARY MANSLAUGHTER. WE WOULD
4 JUST REQUEST TO CHARGING THAT. AND I DON'T THINK I HAD
5 MADE ANY REQUEST ON THE RECORD PREVIOUSLY.

6 THE COURT: MR. WATTS.

7 MR. WATTS: YOUR HONOR, I WOULD CONCUR IN ASKING FOR
8 A CHARGE ON INVOLUNTARY MANSLAUGHTER. I ACTUALLY PREPARED
9 A STATEMENT THAT I WOULD LIKE TO SHARE WITH YOUR LAW
10 CLERK. WE SPOKE BEFORE. I'M THINKING THESE CHARGES THAT
11 I AM BRINGING UP ARE PROBABLY CONTAINED IN THE COURT'S
12 CHARGES.

13 THE COURT: INVOLUNTARY MANSLAUGHTER?

14 MR. WATTS: YES, SIR. INVOLUNTARY MANSLAUGHTER. AND
15 THERE ARE SOME OTHER, I BELIEVE, THAT ARE COVERED IN THE
16 STANDARD CHARGES. I JUST WANTED TO PRESENT TO YOUR CLERK
17 TO MAKE SURE THEY COINCIDE.

18 THE COURT: YOU BETTER PRESENT THEM TO ME.

19 MR. WATTS: YES, SIR. I'LL PRESENT THEM TO YOU, YOUR
20 HONOR. THANK YOU.

21 THE COURT: YES, SIR. MR. JOHNSON.

22 MR. JOHNSON: THANK YOUR HONOR. YOUR HONOR, THE ONLY
23 REQUEST TO CHARGE WE HAVE WAS THE KNOWLEDGE OF THE FACT
24 CHARGE. THE OTHER---

25 THE COURT: LET ME GO BACK TO MR. WATTS AGAIN. YOU

1 SAID YOU WANTED -- THAT YOU PREFERRED VOLUNTARY
2 MANSLAUGHTER AND YOUR REQUEST TO REPLY STATES INVOLUNTARY
3 MANSLAUGHTER?

4 MR. WATTS: THAT'S CORRECT. INVOLUNTARY MANSLAUGHTER
5 IS WHAT I AM REFERRING TO.

6 THE COURT: WHICH ONE DO YOU MEAN, ONE OR THE OTHER
7 OR BOTH?

8 MR. WATTS: YOUR HONOR, I WOULD REQUEST INVOLUNTARY
9 MANSLAUGHTER. I AM NOT SURE IF THE CHARGE FOR VOLUNTARY
10 HAS ALREADY BEEN PLACED BEFORE YOU.

11 THE COURT: WELL THE CHARGE IS -- THE DEFENDANT IS
12 CHARGED WITH MURDER.

13 MR. WATTS: YES, YOUR HONOR.

14 THE COURT: AND ACCESSORY AFTER THE FACT. DON'T
15 ASSUME ANYTHING IS IN THE CHARGE.

16 MR. WATTS: YES, YOUR HONOR.

17 THE COURT: YOU JUST HAVE TO TELL ME. AND I'LL
18 DECIDE WHETHER I AM GOING TO CHARGE. NOT BASED ON---

19 MR. WATTS: YES, YOUR HONOR.

20 THE COURT: WHAT YOU MIGHT HAVE SEEN FROM ANYONE
21 ELSE.

22 MR. WATTS: YES, SIR. YOUR HONOR, I WOULD REQUEST AN
23 INVOLUNTARY MANSLAUGHTER CHARGE.

24 THE COURT: DO YOU REQUEST A VOLUNTARY MANSLAUGHTER
25 CHARGE?

) 1 MR. WATTS: NO, YOUR HONOR.

2 THE COURT: AND, MR. WHEELER, DO YOU REQUEST A
3 VOLUNTARY MANSLAUGHTER CHARGE?

4 MR. WHEELER: YOUR HONOR, WE WOULD REQUEST BOTH.

5 THE COURT: YOU REQUEST BOTH.

6 MR. WHEELER: AND JUST TO BE CLEAR, AND NOT TO ASSUME
7 ANYTHING HAS BEEN CHARGED. IF YOU WOULD LIKE TO RUN
8 THROUGH THE OTHER THINGS, I THINK THEY HAVE ALREADY BEEN
9 COVERED JUST FOR CLARIFICATION. JUST TO MAKE SURE. YOUR
10 HONOR, WE ARE ASKING THAT THE DEFENSE OF OTHERS BE
11 CHARGED. AND GENERALLY USING THE CHARGE FROM -- THAT YOU
12 WOULD NORMALLY USE. INCLUDING ALL THE FACTORS THAT WOULD
13 BE CONSIDERED THEREIN. THEY ARE PRETTY MUCH THE SAME,
14 SIZE, AND AGE, PRIOR DIFFICULTIES. PRIOR VIOLENCE BY A
15 VICTIM, THREATS BY THE VICTIM, INTOXICATION. AND SUCH
16 THINGS. AND THE RIGHT TO ACT ON APPEARANCES. AS I SAID,
17 MAYBE INCLUDED. JUST POINT IT OUT.

18 THE COURT: YES, SIR.

19 MR. WATTS: YOUR HONOR, MAY I ALSO REQUEST A SELF
20 DEFENSE CHARGE? CONCURRING WITH THOSE FACTORS THAT MR.
21 WHEELER HAS JUST SAID; ALL THE UNDERLYING PARTS OF SELF
22 DEFENSE. INTOXICATION, SIZE, REPUTATION, USE OF FORCE,
23 ALL OF THOSE OTHER PARTS OF THAT SELF DEFENSE CHARGE.

24 THE COURT: MR. JOHNSON, I CUT YOU OFF. GO AHEAD.

) 25 MR. JOHNSON: THANK YOUR HONOR. YOUR HONOR, AS I

1 STATED BEFORE, WE PRESENTED TO THE COURT A KNOWLEDGE OF
2 FACT CHARGE THAT WE REQUEST. WE ALSO REQUEST ACCESSORY
3 AFTER THE FACT WHERE THERE ARE FOUR ELEMENTS OF. I TALKED
4 WITH YOUR CLERK BEFORE AND PRESENTED A COPY TO HER.

5 THE COURT: AND WHAT ARE THE FOUR ELEMENTS THAT YOU
6 ARE REFERRING TO?

7 MR. JOHNSON: MY UNDERSTANDING, YOUR HONOR, THAT
8 BASICALLY THE PRINCIPAL HAD COMPLETED THE COMMISSION OF
9 THE CRIME OF MURDER. WHICH IS WHAT HE IS CHARGED WITH.
10 THE DEFENDANT KNEW THAT THE PRINCIPAL HAD COMMITTED THE
11 CRIME OF MURDER. THE DEFENDANT THEN PROVIDED HELP TO THE
12 PRINCIPAL IN AVOIDING ARREST. THE DEFENDANT PROVIDED THIS
13 HELP FOR THE SPECIFIC PURPOSE OR PLAN OF HELPING PRINCIPAL
14 TO AVOID ARREST, TRIAL OR PUNISHMENT FOR THE CRIME OF
15 MURDER.

16 THE COURT: ALL RIGHT.

17 MR. JOHNSON: ALSO, YOUR HONOR, IN ADDITION, I WAS
18 TOLD THAT IT WOULD BE YOUR STANDARD CHARGE, BUT I GUESS I
19 NEED TO MAKE IT PART OF THE RECORD IF IT'S NOT. I WOULD
20 ALSO REQUEST A CHARGE OF MERE PRESENCE.

21 THE COURT: PRESENCE AT THE SCENE OF THE CRIME?

22 MR. JOHNSON: THAT'S CORRECT, YOUR HONOR. ONE OF THE
23 FACTORS IN REQUIRING THAT REQUEST IS THAT THE STATE,
24 BASICALLY THE ONLY EVIDENCE CONNECTING MY CLIENT TO
25 KNOWLEDGE IS THAT HE WAS PRESENT OR MERE PRESENCE OR

1 SHOULD HAVE KNOWN. AND I THINK A MERE PRESENCE CHARGE IS
2 ACCEPTABLE IN THAT MATTER AS WELL.

3 THE COURT: SOLICITOR.

4 MR. SAVERANCE: YOUR HONOR, WITH MR. WHEELER, I WOULD
5 AGREE THAT A CHARGE IF THE COURT APPROVES A CHARGE OF
6 VOLUNTARY MANSLAUGHTER ON EFRAIN THOMAS. I WOULD DISAGREE
7 AND OBJECT TO A CHARGE OF INVOLUNTARY MANSLAUGHTER. I
8 THINK CLEARLY IN LOOKING AT WHAT'S BEEN PRESENTED,
9 INVOLUNTARY WOULD BE SOMETHING NON-INTENTIONAL AND THAT
10 SORT OF THING IN THE EVIDENCE THAT HAS BEEN PRESENTED.
11 AND MR. THOMAS DID INTENTIONALLY SHOOT THE VICTIM IN THE
12 CASE.

13 THE COURT: DID HE SAY THAT HE INTENDED TO SHOOT HIM,
14 OR DID HE SAY THAT HE DID NOT INTEND TO SHOOT HIM? THE
15 GUN WENT OFF WHILE THEY WERE STRUGGLING.

16 MR. SAVERANCE: YOUR HONOR, I'M TALKING ABOUT EFRAIN
17 THOMAS. MY UNDERSTANDING WAS HE WENT BEHIND THE VICTIM,
18 AND DID INTEND TO SHOOT THE VICTIM. BECAUSE I ASKED
19 WHY---

20 THE COURT: WELL I UNDERSTAND. I'M SORRY.

21 MR. SAVERANCE: ---HE WAS -- HE WOULD HIT MR. MCCALL.

22 THE COURT: I WAS NOT REFERRING TO MR. MCCALL.

23 MR. SAVERANCE: YES, SIR. OKAY. BUT THAT'S AS FAR AS
24 I WOULD AGREE ON THE VOLUNTARY MANSLAUGHTER BUT NOT ON THE
25 INVOLUNTARY. AS FAR AS MR. EUNICE MCCALL, WE WOULD

1 REQUEST A MURDER CHARGE, THE VOLUNTARY MANSLAUGHTER CHARGE
2 BASED ON THE FACT THERE WAS TESTIMONY BY THE CO-DEFENDANT
3 THAT MR. MCCALL DID PULL OUT A GUN AND FIRE AND SHOOT THE
4 VICTIM ON THAT. ON THAT, I WOULD PROBABLY DISAPPROVE OF
5 THE INVOLUNTARY CHARGE OR INVOLUNTARY MANSLAUGHTER ON
6 THAT. BUT I UNDERSTAND IT'S A LITTLE BIT DIFFERENT ON THE
7 FACTS INVOLVING MR. THOMAS. AND WITH MR. JOHNSON I DON'T
8 HAVE ANY PROBLEMS WITH WHAT HE HAS SUBMITTED.

9 THE COURT: AND DO YOU REQUEST A CHARGE ON THE HANDS
10 OF ONE IS THE HANDS OF ALL?

11 MR. SAVERANCE: YES, SIR, YOUR HONOR.

12 THE COURT: RESPONSES, MR. WHEELER?

13 MR. WHEELER: THANK YOUR HONOR. WITH REGARD TO OUR
14 REQUEST FOR INVOLUNTARY MANSLAUGHTER WE WOULD JUST ASK THE
15 COURT TO CONSIDER CHARGING THAT ALONG WITH THE OTHER. WE
16 BELIEVE THAT THE EVIDENCE LEADS TO REASONABLY TEND TO
17 PROVE ON THAT MR. THOMAS THAT HE UNINTENTIONALLY, ANY
18 KILLING OF MR. ROUSE WAS UNINTENTIONAL AS REGARDS TO
19 MR. THOMAS. HE DIDN'T INTEND THE CONSEQUENCES OF HIS
20 ACTION. CERTAINLY---

21 THE COURT: WHAT TESTIMONY WOULD ESTABLISH THAT?

22 MR. WHEELER: YOUR HONOR, HE SAYS HE DIDN'T MEAN TO
23 KILL HIM.

24 THE COURT: WELL IF YOU SHOOT SOMEONE AND THEY DIE,
25 YOU CAN'T SAY IT'S UNINTENTIONAL. IF YOU INTENTIONALLY

1 SHOOT THEM, AND THEN YOU INTEND THE CONSEQUENCES OF THE
2 ACT.

3 MR. WHEELER: I UNDERSTAND, YOUR HONOR.

4 THE COURT: SO I AM TRYING TO FIGURE OUT, I'M TRYING
5 TO UNDERSTAND WHAT FACTS IN EVIDENCE WOULD SUPPORT THAT.

6 MR. WHEELER: YOUR HONOR, I WOULDN'T ASSERT ANYTHING
7 BEFORE YOU OTHER THAN THE TESTIMONY OF MR. THOMAS. AND I
8 UNDERSTAND YOUR CONCERN IN THAT REGARD. I CAN'T POINT TO
9 ANYTHING OTHER THAN THAT. AND OF COURSE THE OTHER, IT
10 WOULD APPEAR THAT ONE OF THE REQUIREMENTS IS WHATEVER
11 ACTION IS TAKEN WITHOUT MALICE. AND WE CERTAINLY CONTEND
12 THAT THERE WAS NO TESTIMONY THERE WAS ANY ILL WILL TOWARDS
13 MR. ROUSE. NO PRIOR DIFFICULTIES OTHER THAN THAT PROVED.
14 I CAN'T POINT YOU TO THE EVIDENCE OTHER THAN THE LACK
15 THEREOF WITH REGARD TO THAT. NOW I UNDERSTAND THE
16 INFERENCE THAT MAY BE CHARGED FROM THE USE OF THE WEAPON.

17 THE COURT: ANYTHING ELSE, MR. WHEELER?

18 MR. WHEELER: NOT IN REGARD TO THAT. YOUR HONOR, WE
19 WOULD OBJECT TO THE HAND OF ONE CHARGE. I DON'T FEEL THAT
20 THE STATE MADE ANY EVIDENCE OF ANY SHOWING OF THE EVIDENCE
21 OTHER THAN THAT BOTH OF THESE PEOPLE WERE AT THE SCENE OR
22 SOMETHING; THAT THERE WAS ANY PLAN OR COMING TOGETHER OF
23 THE MINDS OF WHAT HAPPENED. AND I DON'T BELIEVE THAT
24 THEIR MERELY ACTION AT THE SAME TIME WAS PART OF ANY
25 COLLABORATIVE EVIDENCE. THEREFORE OBJECT TO THAT CHARGE.

1 THAT'S ALL I HAVE WITH REGARD TO THE CHARGES. THANK YOUR
2 HONOR.

3 THE COURT: ALL RIGHT. YES, SIR.

4 MR. SMITH: AS TO THE HAND OF ONE HAND OF ALL, WE
5 ALSO OBJECT TO THAT, YOUR HONOR. MY BELIEF, IF MY MEMORY
6 SERVES ME, THAT IS WHERE THE PARTICIPANTS ARE INVOLVED IN
7 THE CRIMINAL OFFENSE. AND SOMETHING HAPPENS DURING THE
8 COMMISSION OF THE OFFENSE. IN THIS CASE, YOUR HONOR,
9 THERE IS NO FACTS THAT THEY WERE INVOLVED IN AN OFFENSE.
10 A FIGHT BROKE OUT ON THE WAY TO SHOOT POOL. THEY WEREN'T
11 GOING TO ROB THE POOL HALL. THEY WEREN'T GOING TO DO
12 ANYTHING AS AN OFFENSE, SO WE WOULD OBJECT TO THAT. AND
13 AGAIN, YOUR HONOR, WE FEEL THERE IS SOME CAUSE TESTIMONY
14 AS TO VOLUNTARY MANSLAUGHTER AS TO HIM. BECAUSE HIS
15 TESTIMONY DIRECTLY WAS THAT HE DIDN'T EVEN -- HE HEARD TWO
16 SHOTS. HE DIDN'T EVEN KNOW WHETHER OR NOT, BY HIS
17 TESTIMONY, WHETHER THE DECEASED WAS STRUCK WITH ONE OF
18 THOSE BULLETS OR NOT. HE DID NOT KNOW.

19 AND HIS TESTIMONY WAS, THERE WAS A STRUGGLE INVOLVING
20 THE WEAPON. SO WE FEEL LIKE VOLUNTARY MANSLAUGHTER IS A
21 PROPER CHARGE IN HIS CASE.

22 THE COURT: ALL RIGHT.

23 MR. SMITH: THANK YOU, YOUR HONOR.

24 THE COURT: MR. JOHNSON.

25 MR. JOHNSON: THANK YOUR HONOR.

1 THE COURT: YOU DIDN'T OBJECT TO ANYTHING ABOUT YOUR
2 GUY.

3 MR. JOHNSON: I UNDERSTAND. BUT IF YOU ASKED ANY
4 QUESTIONS CONCERNING THE HAND OF ONE, I'M ASSUMING IT'S
5 NOT RELATED TO MY GUY AS FAR AS THE HAND OF ONE IS
6 CONCERNED. WELL I OBJECT TO THE HAND OF ONE, IT HAS NO
7 CONNECTION TO MY GUY. THE HAND OF ONE I THINK IN HIS CASE
8 WILL BE AS FAR AS THE MURDER IS CONCERNED. AFTER THE
9 FACT, I DO NOT THINK THE HAND OF ONE SITUATION WOULD BE
10 APPLICABLE AS IT APPLIED TO MY PARTICULAR CLIENT.

11 THE COURT: BECAUSE OTHERWISE HE WOULD BE GUILTY OF
12 MURDER TOO.

13 MR. JOHNSON: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: WELL THE LAW REGARDING THE HAND OF ONE,
15 IS THAT A PERSON WHO JOINS IN ANOTHER TO ACCOMPLISH AN
16 ILLEGAL PURPOSE IS CRIMINALLY RESPONSIBLE FOR EVERYTHING
17 DONE BY THE OTHER. WHICH OCCURS AS THE NATURAL
18 CONSEQUENCE OF AN ACT DONE IN CARRYING OUT THE COMMON PLAN
19 AND PURPOSE. SO I AGREE WITH MR. SMITH THERE IS NO
20 EVIDENCE OF ANY COMMON PLAN OR PURPOSE. IT APPEARS BASED
21 ON THE TESTIMONY TO HAVE BEEN A RATHER SPONTANEOUS
22 OCCURRENCE. IN THE SENSE THAT THERE IS NO PRIOR
23 ARRANGEMENT THAT APPEARS TO COMMIT ANY CRIMINAL OFFENSE.
24 SO I WILL NOT CHARGE THE HAND OF ONE BASED ON THAT.

25 I WILL CHARGE, ONCE AGAIN, AS FAR AS MR. THOMAS'

1 CHARGE, INVOLUNTARY. WHAT DO YOU SAY, MR. SAVERANCE?

2 MR. SAVERANCE: YOUR HONOR, I THINK WITH MR. THOMAS
3 THE MURDER AND THE VOLUNTARY MANSLAUGHTER WAS A PROBLEM.
4 BUT INVOLUNTARY WOULDN'T. BECAUSE HE NOT ONLY HE SHOT
5 INTENTIONALLY AT TROY ROUSE. IT WASN'T, I MEAN, YOU
6 KNOW, I ASKED HIM ABOUT HITTING HIS FRIEND. HE SAID, NO,
7 I WASN'T GOING TO SHOOT EUNICE. I INTENTIONALLY SHOT TROY
8 ROUSE IN THE BACK. WHEN YOU INTEND TO SHOOT SOMEBODY AND
9 YOU SHOOT THEM, THAT'S NOT AN ACCIDENT.

10 THE COURT: EITHER SELF DEFENSE OR GUILTY OF---

11 MR. SAVERANCE: YES, SIR, YOUR HONOR. IT WOULD BE,
12 IT'S NOT NEGLIGENCE OR ACCIDENT OR WHATEVER.

13 THE COURT: I AGREE WITH MR. SAVERANCE ON THAT. I'M
14 NOT GOING TO CHARGE INVOLUNTARY AS TO MR. THOMAS. AS TO
15 BOTH DEFENDANTS I'M CHARGING, BOTH MURDER DEFENDANTS I'M
16 CHARGING VOLUNTARY MANSLAUGHTER. I'M ALSO CHARGING SELF
17 DEFENSE. AS TO MR. MCCALL I'M ALSO CHARGING INVOLUNTARY.
18 AND AS TO MR., THE THIRD GUY, MR. JAMES, I AM CHARGING THE
19 REQUEST OF CHARGES OF MR. JOHNSON.

20 YES, SIR. ANYTHING ELSE?

21 MR. SAVERANCE: THE ONLY THING JUST TO BE CLEAR ON
22 MR. CHARLIE JOHNSON, YOUR HONOR, I WOULD REQUEST THAT
23 THERE BE ACCESSORY AFTER THE FACT OF THE MURDER. BUT
24 THERE ALSO BE ACCESSORY AFTER THE FACT OF VOLUNTARY
25 MANSLAUGHTER SINCE THAT'S A LESSER INCLUDED OF MURDER.

1 JUST TO TOUCH BASE WITH THAT, YOUR HONOR.

2 THE COURT: WHAT DO YOU SAY, MR. JOHNSON?

3 MR. JOHNSON: YOUR HONOR, I WOULD DISAGREE. MY
4 CLIENT WAS INDICTED FOR ACCESSORY AFTER THE FACT OF
5 MURDER. THAT IT IS MY BELIEF THAT IF THE MURDER IS NOT
6 FOUND THAT HE CAN BE HELD TO THE LESSER INCLUDED OFFENSE.

7 THE COURT: IN ORDER TO PROVE THIS CRIME, THE STATE
8 MUST PROVE THAT THE DEFENDANT KNEW THE OTHER PERSON, THE
9 PRINCIPAL COMMITTED A FELONY AFTER THE CRIME, AND
10 INTENTIONALLY HELPED THE PRINCIPAL TO ESCAPE AN ARREST,
11 CONVICTION OR PUNISHMENT. SO I GUESS IF A JURY FINDS THAT
12 HE WAS -- THAT MR. THOMAS IS GUILTY OF VOLUNTARY
13 MANSLAUGHTER THEY CAN'T FIND THAT MR. JAMES IS GUILTY OF
14 ACCESSORY AFTER THE FACT OF THAT CRIME, THAT FELONY.

15 MR. JOHNSON: THANK YOU, YOUR HONOR. JUDGE, YOUR
16 HONOR, JUST ONE OTHER QUESTION AS FAR AS THE ORDER OF
17 CLOSING.

18 THE COURT: THE ORDER OF CLOSING, MR. SAVERANCE, MR.
19 WHEELER, MR. WATTS, OR, MR. SMITH, AND YOU. GO AHEAD.

20 MR. JOHNSON: WELL IT'S MY UNDERSTANDING, YOUR HONOR,
21 THAT I WOULD BE ALLOWED LAST ARGUMENT.

22 THE COURT: YOU DIDN'T PRESENT ANYTHING?

23 MR. JOHNSON: I DIDN'T PRESENT ANYTHING, YOUR HONOR.

24 THE COURT: YES, SIR.

25 MR. SAVERANCE: YOUR HONOR, MY POSITION ON THAT IS,

1 IF ONE THE DEFENDANT'S PRESENTS SOMETHING, I BELIEVE I AM
2 ENTITLED TO FINAL THE ARGUMENT. AND THAT WAY IF I IN THIS
3 CASE WAIVE, BEGIN THE OPENING AND ALLOW MR. WHEELER AND
4 MR. WATTS TO GO, I BELIEVE MR. JOHNSON HAS GOT TO GO. AND
5 THEN I WOULD BE LAST.

6 THE COURT: WHAT IS THAT BELIEF BASED ON?

7 MR. SAVERANCE: YOUR HONOR, QUITE FRANKLY, I DO NOT
8 HAVE THE CASE IN FRONT OF ME. I'M NOT TRYING TO MISLEAD
9 THE COURT. THAT'S MY UNDERSTANDING. I MAY BE WRONG, BUT
10 THAT'S MY UNDERSTANDING SINCE THE DEFENSE DID PUT UP SOME
11 OF THE EVIDENCE. I MEAN, I DO ACKNOWLEDGE MR. JOHNSON DID
12 NOT PUT ANYTHING IN TO EVIDENCE.

13 THE COURT: HE DIDN'T PUT ANYTHING IN?

14 MR. JOHNSON: NO, I DID NOT, YOUR HONOR.

15 THE COURT: YOU WERE CAREFUL NOT TO PUT ANYTHING IN?

16 MR. JOHNSON: EXTREMELY CAREFUL, YOUR HONOR.

17 THE COURT: MR. SMITH.

18 MR. SMITH: YOUR HONOR, AGAIN, THE SOLICITOR'S OFFICE
19 CHOSE, THE STATE CHOSE TO PROSECUTE THE DEFENDANT'S AS A
20 GROUP. THE FACT THAT ONE OF THE DEFENDANT'S PUT NO
21 EVIDENCE IN, SHOULD ALLOW US AS A GROUP TO GO LAST. THE
22 SOLICITOR SHOULD GO FIRST.

23 THE COURT: AND WHAT AUTHORITY DO YOU HAVE FOR THAT
24 PROPOSITION?

25 MR. SMITH: THE SAME AUTHORITY MR. SAVERANCE HAS,

) 1 YOUR HONOR.

2 THE COURT: OKAY.

3 MR. JOHNSON: YOUR HONOR, I HAVE SOME AUTHORITY FOR
4 MY POSITION.

5 THE COURT: WHAT'S YOUR AUTHORITY?

6 MR. JOHNSON: MY AUTHORITY IS I THINK THAT IT IS
7 CLEAR TO STATE THAT THE DEFENSE DID NOT PUT UP ANY
8 EVIDENCE, THAT THEY HAVE THE RIGHT TO HAVE FINAL ARGUMENT.
9 IF THE STATE HAD DECIDED TO TRY ALL THREE DEFENDANTS
10 SEPARATELY, I MEAN TOGETHER HOWEVER, EACH ONE OF US HAD
11 ALL SEPARATE DEFENSES. AND BY ME NOT PUTTING UP ANY
12 DEFENSE AND NOT PUTTING IN ANY EVIDENCE, I AM THEREFORE
13 ALLOWED TO HAVE FINAL ARGUMENT.

14 THE COURT: THE CASE OF STATE V. MOUZON SAYS THAT IN
15 SOUTH CAROLINA IT IS WELL ESTABLISHED WHEREAS THE
16 DEFENDANT CALLS NO WITNESSES AND OFFERS NO EVIDENCE IN HIS
17 BEHALF, HIS COUNSEL IS ENTITLED TO HAVE THE CONCLUDING
18 ARGUMENT TO THE JURY. THE RIGHT TO OPEN AND CLOSE
19 ARGUMENT TO THE JURY IS A SUBSTANTIAL RIGHT. THE DENIAL
20 WHICH IS REVERSIBLE ERROR. THIS ADDRESSES IT AS TO MR.
21 JOHNSON'S MAN. THE COURT OF APPEALS REVERSED A CONVICTION
22 AND FOUND THAT MOUZON SHOULD HAVE HAD THE FINAL ARGUMENT
23 BECAUSE THE ONLY EVIDENCE HE OFFERED WAS TO HAVE THE JURY
24 VIEW THE SCENE. SO THE COURT OF APPEALS SAID THAT THAT
25 DID NOT CONSTITUTE OFFERING EVIDENCE. HE WAS STILL

1 ENTITLED TO LAST ARGUMENT. AND THEY REVERSED THE
2 CONVICTION. THE SUPREME COURT THEN REVERSED THE COURT OF
3 APPEALS HOLDING THAT THOUGH IT IS A SUBSTANTIAL RIGHT, IT
4 IS STILL SUBJECT TO THE HARMLESS ERROR ANALYSIS. AND THAT
5 DESPITE THE FACT THAT THE STRUCTURE OF THE TRIAL SHOULD
6 HAVE GIVEN HIM THE RIGHT TO ARGUE LAST. THE EVIDENCE
7 INDICATING THAT HE WAS GUILTY IS STILL SO OVERWHELMING
8 THAT CONVICTION SHOULD STAND. OR SHOULD HAVE STOOD. THEY
9 REVERSED THE COURT OF APPEALS.

10 SO I THINK THAT THE RIGHT, CLEARLY THE RIGHT TO AN
11 INDIVIDUAL DEFENDANT, THE MANNER IN WHICH THE STATE CHOOSE
12 TO PROSECUTE WOULD NOT ENTITLE ALL DEFENDANTS TO A FINAL
13 ARGUMENT. SO THEREFORE, THE ONLY DEFENDANT GIVING THE
14 FINAL ARGUMENT WOULD BE MR. JOHNSON. SO THAT MEANS MR.
15 SEVERANCE THAT YOU MUST OPEN IN FULL AS TO THE -- OR YOU
16 MAY OPEN IN FULL -- OR IF YOU WAIVE OPENING, WAIVE BY MR.
17 JOHNSON. AND MR. JAMES, IF THERE IS ANY ARGUMENT AS TO
18 MR. JAMES YOU WILL NOT REPLY AT ALL IN REFERENCE TO MR. --
19 I MEAN ANY FOLLOW UP AS TO MR. JAMES. AND MR. JOHNSON
20 WILL GIVE THE FINAL ARGUMENT.

21 MR. SAVERANCE: WHAT IS THE POINT AND POSITION ON THE
22 OPENING ON THE LAW, AND THEN WAIVING TO THE OTHER TWO
23 DEFENDANTS?

24 THE COURT: YOU CAN WAIVE THEM AS TO THAT PART. I
25 WANT YOU TO MAKE AN OPENING ON THE LAW.

1 MR. SAVERANCE: AND, YOUR HONOR, JUST FOR
2 CLARIFICATION---

3 THE COURT: BUT YOU HAVE TO OPEN AS TO MR. JAMES
4 ANYWAY. SO YOU ARE GOING TO DO SOME TALKING.

5 MR. SAVERANCE: OKAY. BUT, YOUR HONOR, I WOULD JUST
6 FOR THE RECORD, I AM GOING TO DO THAT. BUT I WOULD
7 PRESERVE THE RIGHT TO ALLOW MR. WHEELER OR MR. WATTS TO GO
8 AFTER THAT.

9 THE COURT: THEN COME BACK.

10 MR. SAVERANCE: YES.

11 THE COURT: AND THEN MR. JOHNSON CLEANS UP.

12 MR. SAVERANCE: THANK YOUR HONOR.

13 MR. WHEELER: YOUR HONOR,---

14 THE COURT: YES, SIR.

15 MR. WHEELER: ---THE ONLY OTHER THING I HAVE JUST
16 FOR THE RECORD, MS. SULLIVAN MENTIONED TO ME EARLIER
17 TODAY. OUR DEFENDANT'S EXHIBIT NO. 7 IS MISSING. I DON'T
18 KNOW WHERE IT IS. IT IS A PHOTOGRAPH. AND I JUST WANTED
19 TO PUT THAT ON THE RECORD.

20 THE COURT: IT IS A PHOTOGRAPH OF WHAT?

21 MR. WHEELER: OF THE CRIME SCENE. I KNOW THAT'S A
22 SILLY ANSWER. BUT I DON'T KNOW EXACTLY WHAT, I KNOW IT'S
23 ONE OF THOSE CRIME SCENE PHOTOS.

24 THE COURT: IT IS NOT ANYTHING YOU ARE LOOKING FOR.

25 MR. WHEELER: NO, SIR. WE JUST WANTED TO -- SHE HAD

) 1 ASKED. IT DOES APPEAR TO BE MISSING. WE'VE LOOKED FOR
2 IT.

3 THE COURT: EVERYONE HAS LOOKED FOR IT? THE
4 PHOTOGRAPH? THERE IS NOTHING WE CAN DO ABOUT IT.

5 MR. WHEELER: NO, SIR. I DON'T THINK SO. I JUST
6 WANTED TO PUT THAT ON THE RECORD.

7 THE COURT: AS FAR AS THE DEFENDANT MCCALL, WHO IS
8 ARGUING FOR HIM?

9 MR. WATTS: YOUR HONOR, I WOULD BE PRESENTING THE
10 CLOSING ARGUMENT.

11 THE COURT: YOU WOULD DO THE ENTIRE CLOSING FOR HIM?

12 MR. WATTS: YES, SIR.

13 THE COURT: WE WILL BRING THE JURY OUT. AND THEN
14 THIS RESTING WILL TAKE PLACE IN THE PRESENCE OF THE JURY.
15 THEN WE WILL GO TO CLOSING ARGUMENTS. AND BEFORE THAT, WE
16 WILL TAKE ABOUT 3 MINUTES TO GET READY TO DO THAT.

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

18 MR. JOHNSON: YOUR HONOR, BEFORE WE BRING THE JURY
19 OUT, WE DIDN'T MAKE ANY, BUT WE FORGOT TO MAKE OUR
20 DIRECTED VERDICT MOTIONS.

21 THE COURT: YES, SIR. YOU CAN DO THAT AT THIS TIME.

22 MR. JOHNSON: YOU SET THE STANDARD ALREADY, YOUR
23 HONOR. ON BEHALF OF MY CLIENT, I WOULD LIKE TO MAKE A
24 MOTION FOR A DIRECTED VERDICT IN THIS CASE. I DO NOT FEEL
25 THAT THE STATE HAS GIVEN SUFFICIENT EVIDENCE TO PROVE ITS
)

1 CASE. THE ONLY EVIDENCE HE HAS CONNECTED MY CLIENT CLOSE
2 TO THE CRIME WAS THAT THERE WAS TESTIMONY OF MS. HILL,
3 YOUR HONOR, WHO STATED THAT SHE SAW MY CLIENT IN THE
4 MIDDLE OF WILSON STREET. ALL EVIDENCE GIVEN THUS FAR HAS
5 STATED THAT THE CRIME ACTUALLY OCCURRED AT THE CORNER OF
6 RAY AND HILL (SIC). THERE'S ALSO ADDITIONAL EVIDENCE
7 TO STATE THAT MS. HILL WAS SEEN AT ANOTHER LOCATION AT THE
8 TIME THAT THIS HAPPENED. AND SHORT OF THAT, YOUR HONOR,
9 THE STATE HAS NO EVIDENCE, HAS GIVEN ANY EVIDENCE
10 CONNECTING MY CLIENT.

11 AS A RESULT, I THINK THEY HAVE PROVEN, THEY HAVE
12 FAILED TO PROVE ALL THE REQUIREMENTS, ALL OF THE ELEMENTS
13 OF THE CRIME. AT LEAST CALLS THEM TO BE QUESTIONED. I
14 THINK THAT MY CLIENT IS ENTITLED TO A DIRECTED VERDICT.

15 THE COURT: WELL HER TESTIMONY CERTAINLY HAS BEEN
16 VIGOROUSLY ATTACKED. AND SIGNIFICANTLY ASSAULTED AND PUT
17 UNDER THE MICROSCOPE BY OTHER WITNESSES. BUT IT STILL
18 REMAINS A CREDIBILITY ISSUE BASED ON THE TOTALITY OF HER
19 INITIAL TESTIMONY AND HER INITIAL STATEMENT THAT SHE SAW
20 MR. JAMES THERE WITH HIM WHILE WALKING DOWN THE STREET
21 RIGHT AT OR NEAR THE TIME THE SHOOTING OCCURRED. SO I
22 THINK THAT THERE IS NO QUESTION THAT THE JURY COULD
23 BELIEVE THE FIRST PART OF WHAT SHE SAID. AND THEREFORE
24 COULD CONCLUDE THAT HE WAS THERE TO A STANDARD. HE WOULD
25 HAVE BEEN THERE DURING THE SHOOTING. HE DROVE MR. THOMAS.

1 SO I DENY THE MOTION.

2 MR. JOHNSON: THANK YOUR HONOR.

3 THE COURT: MR. SMITH.

4 MR. SMITH: YOUR HONOR, ON BEHALF OF MR. MCCALL, WE
5 WOULD ALSO MAKE THE SAME MOTION FOR A DIRECTED VERDICT.
6 AS I STATED EARLIER, YOUR HONOR, THE STATE PROVIDED NO
7 TESTIMONY, NO EVIDENCE TO IMPLICATE MY CLIENT AT ALL.
8 THERE WAS SOME TESTIMONY BY TWO WITNESSES THAT WAS VAGUE,
9 IT WAS UNCERTAIN. IN FACT, THE CROSS EXAMINATION OF BOTH
10 OF THEM WAS VERY UNCLEAR. YOUR HONOR, I REALIZE THE JURY
11 MIGHT HAVE A RIGHT TO LOOK AT THOSE WITNESSES STATEMENT'S
12 AND DETERMINE THEIR CREDIBILITY. BUT IN LOOKING AT THIS
13 WITHOUT BEING PREJUDICE TO MY CLIENT, CLEARLY, THE STATE
14 IS ASKING THIS JURY TO FILL IN THE BLANKS. THEY'RE ASKING
15 THEM TO TRY AND FIND A WAY TO CONVICT EUNICE MCCALL OF
16 MURDER. AND, IN FACT, THERE HAS BEEN VERY LITTLE, IF ANY,
17 TO INDICATE SUCH A CHARGE. AND WE WOULD MOVE FOR A
18 DIRECTED VERDICT ON THAT CHARGE.

19 AS FAR AS THE GUN, YOUR HONOR, THE GUN CHARGE ITSELF,
20 THEY NEVER PUT ANY EVIDENCE FORWARD THAT MY CLIENT HAD A
21 GUN. MY CLIENT IN HIS TESTIMONY SAID THAT THE DECEASED
22 HAD THE GUN; THAT HE STRUGGLED WITH HIM FOR IT. SO WE
23 WOULD MOVE FOR A DIRECTED VERDICT ON THAT ISSUE ALSO.

24 THE COURT: WELL THE TESTIMONY OF MR. THOMAS
25 ESTABLISHES IF BELIEVED BY THE JURY THAT MR. MCCALL SHOT

1 MR. ROUSE SEVERAL TIMES. THE OTHER WITNESS ON THE SCENE
2 SAID SHE HEARD TWO GUNSHOTS. BASED ON THE TESTIMONY IN
3 THE LIGHT MOST FAVORABLE TO THE STATE, THERE IS CERTAINLY
4 A QUESTION MADE AS TO WHETHER OR NOT TWO PEOPLE WALKING
5 DOWN THE STREET, AND ONE KNOCKING THE OTHER'S HAT OR HAT
6 OFF, WOULD GIVE THE OTHER PERSON A SUFFICIENT BASIS TO
7 SHOOT HIM. SO THERE IS A QUESTION AS TO WHETHER OR NOT
8 EXCESSIVE FORCE WAS USED ON THE DECEASED. AND IF THE JURY
9 IS TO BELIEVE ALL THE EVIDENCE AND THE INFERENCES FROM THE
10 STATE THEY COULD CONCLUDE THAT MR. MCCALL IS GUILTY AS
11 CHARGED. I DENY THE MOTION.

12 THE COURT: YES, SIR.

13 MR. WHEELER: THANK YOUR HONOR. MAY IT PLEASE THE
14 COURT, YOUR HONOR, AT THIS TIME WE WOULD RENEW OUR
15 PREVIOUS MOTION FOR A DIRECTED VERDICT. AND, YOUR HONOR,
16 I WILL MAKE THE SAME ARGUMENT I MADE PREVIOUSLY. AND IT
17 MAY BE A LITTLE MORE CLEAR AS TO WHY YOUR RULING A LITTLE
18 WHILE AGO ON THE HAND OF ONE, IS THE HAND OF ALL CHARGE.
19 YOUR HONOR, I WOULD SUBMIT THAT THE ACTIONS OF MR. THOMAS
20 AND MR. MCCALL MUST BE VIEWED INDEPENDENTLY IF IT'S NOT
21 THE HAND OF ONE, THE HAND OF ALL, WHICH YOU SAID IT'S NOT
22 GIVEN THE LAW ON THAT. THEREFORE, THE STATE HAS TO PROVE
23 BEYOND A REASONABLE DOUBT THAT MY CLIENT'S ACTIONS WOULD
24 BE A PROXIMATE CAUSE OF MR. ROUSE'S DEATH. THEY MUST
25 PROVE THAT IT IS THE IMMEDIATE CAUSE, THE EFFICIENT CAUSE,

1 AND THAT CAUSE WITHOUT WHICH THE DEATH WOULD NOT HAVE
2 OCCURRED.

3 THE ONLY TESTIMONY THEY PUT UP HERE IN THAT REGARD IS
4 DR. ROSS, OF COURSE. SHE TESTIFIED IT WAS A 38 CALIBER
5 BULLET WHICH NOBODY CONTENDS MY CLIENT SHOT, WAS THE
6 EFFICIENT CAUSE OF DEATH OF TROY ROUSE. NOT THE 22
7 BULLETS. THERE IS NO HAND OF ONE, HAND OF ALL SEPARATING
8 WHAT THESE GENTLEMEN DID FIRING THESE BULLETS. AND
9 THERE'S NO QUESTION THAT MY CLIENT DIDN'T FIRE THE 38
10 BULLET. THERE IS NO PROOF THAT HE PROXIMATELY CAUSED THE
11 DEATH TROY ROUSE. AND I WOULD RENEW THAT ALSO.

12 THE COURT: WELL THE JURY CAN BELIEVE ANY WITNESSES.
13 THE JURY IS NOT OBLIGATED TO BELIEVE A WITNESS BECAUSE THE
14 WITNESS IS AN EXPERT. AND THE TESTIMONY OF MR. MCCALL WAS
15 TO THE EFFECT THAT EVEN THOUGH MR. ROUSE HAD BEEN SHOT
16 SEVERAL TIMES, IT DIDN'T DO ANY GOOD UNTIL MR. THOMAS
17 INTERCEDED TO SHOOT HIM IN THE BACK, AND SHOOT HIM THE
18 MOST NUMBER OF TIMES THAT HE DID. SO CONSIDERING THE
19 TESTIMONY OF MR. MCCALL AND THE TESTIMONY OF MR. THOMAS
20 CONCERNING THE FACT THAT THE INITIAL SHOTS DID NOT CAUSE
21 MR. ROUSE TO LOOSEN HIS GRIP, THAT'S WHY HE SHOT HIM. AND
22 THE QUESTION IS WHETHER OR NOT HE USED APPROPRIATE FORCE.
23 WHETHER HE HAD ANY BASIS TO DO WHAT HE DID. WHETHER OR
24 NOT SOMETHING WAS INVOLVED WITH THESE FRIENDS, WITH BOTH
25 OF THEM TO SHOOT. ONE IN THE BACK THREE TIMES, THREE,

1 FOUR, FIVE TIMES.

2 THE JURY MIGHT WONDER WHO ASSIGNED HIM THAT
3 RESPONSIBILITY. THEY DECIDED THAT HE WAS THE PERSON TO
4 SOLVE THE ISSUE DURING THAT NIGHT BY SHOOTING MR. ROUSE IN
5 THE BACK. BUT I THINK TAKING THE TESTIMONY AS A WHOLE THE
6 CHARGE IS A CHARGE FOR WHICH THE JURY HAS TO EVALUATE ON
7 THAT ISSUE.

8 MR. WHEELER: THANK YOU, YOUR HONOR.

9 THE COURT: ARE YOU READY FOR THE JURY?

10 MR. SAVERANCE: THE STATE IS, YOUR HONOR.

11 THE COURT: BRING THEM ON.

12 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
13 PRESENCE OF THE JURY.)

14 THE COURT: WELCOME BACK, LADIES AND GENTLEMEN. MR.
15 WATTS.

16 MR. WATTS: YES, YOUR HONOR.

17 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT
18 MCCALL?

19 MR. MCCALL: YOUR HONOR, THE DEFENDANT MCCALL RESTS.

20 THE COURT: LADIES AND GENTLEMEN, YOU'VE HEARD
21 MR. MCCALL'S DEFENSE. MR. JOHNSON.

22 MR. JOHNSON: YOUR HONOR, ON BEHALF OF MY CLIENT CHAD
23 JAMES, WE REST OUR CASE.

24 THE COURT: MR. SAVERANCE, ANY REPLY BY THE STATE?

25 MR. SAVERANCE: NO REPLY FROM THE STATE, YOUR HONOR.

1 THE COURT: LADIES AND GENTLEMEN, YOU HAVE NOW HEARD
2 ALL OF THE EVIDENCE IN THIS CASE. IT IS NOW TIME FOR THE
3 LAWYERS TO GIVE THEIR CLOSING ARGUMENTS. PLEASE GIVE THEM
4 YOUR ATTENTION, MR. SAVERANCE.

5 MR. SAVERANCE: MAY IT PLEASE THE COURT, YOUR HONOR.

6 THE COURT: YES, SIR.

7 MR. SAVERANCE: LADIES AND GENTLEMEN, WE APPRECIATE
8 YOU SITTING HERE ALL WEEK AND GIVING US YOUR TIME. WE
9 KNOW IT WASN'T SOMETHING YOU PROBABLY WANTED TO DO. WE
10 HAVE BEEN AS QUICK AS POSSIBLE. AT THE TIME SAME TIME,
11 TAKING OUR JOB SERIOUSLY AND PUTTING UP WHAT WE FELT WAS
12 NECESSARY AND NEEDED TO BE HEARD.

13 NOW I AM GOING TO TALK TO YOU A LITTLE BIT ABOUT THIS
14 CASE AS IT MAINLY PERTAINS TO CHAD JAMES. YOU KNOW, SOME
15 OF THE OTHER ATTORNEYS WILL GET A CHANCE TO TALK. MR.
16 MCCALL, HIS ATTORNEY, AND THE OTHER ATTORNEYS. AND I'LL
17 COME BACK UP AND SPEAK TO YOU ABOUT MR. MCCALL AND
18 MR. THOMAS AT THAT POINT AND TIME. SO I JUST WANTED TO
19 EXPLAIN TO YOU THAT WHAT I TELL YOU NOW IS NOT THE ENTIRE
20 OPENING STATEMENT I AM GOING TO GIVE YOU. IT'S IN
21 RELATION TO MR. JAMES. AND I WILL COME BACK UP AND TALK A
22 LITTLE BIT MORE. SO AS WE SAID IN THE BEGINNING, THIS IS
23 A CASE ABOUT MURDER. THE UNLAWFUL KILLING OF A HUMAN
24 BEING. THE TAKING OF A LIFE WITHOUT JUSTIFICATION.

25 AND AS FAR AS CHAD JAMES GOES, HE'S BEEN CHARGED WITH

1 ACCESSORY AFTER THE FACT. NOW WHAT DOES THAT MEAN? THAT
2 MEANS THAT HE HAD SOME KNOWLEDGE OF WHAT HAPPENED ON THE
3 NIGHT OF APRIL 7, 2005, WHEN TROY ROUSE WAS KILLED. AND
4 THAT'S NOT IN DISPUTE. THAT'S NOT IN DISPUTE. TROY ROUSE
5 WAS SHOT AND KILLED. SHOT SEVERAL TIMES AND KILLED THAT
6 NIGHT. HERE IN BISHOPVILLE, HERE IN LEE COUNTY. NOW
7 TIFFANY HILL TESTIFIED THAT SHE WAS IN THE AREA, AND THIS
8 WAS A CLUB OR A LITTLE STORE, BLUE STORE, AND THAT SHE SAW
9 ALL THE DEFENDANTS, MR. MCCALL, MR. THOMAS, AND MR. JAMES.
10 SHE KNEW THEM ALL. KNEW THEM ALL FOR A LONG TIME. AND
11 KNEW THEM ALL WELL. THERE WAS SOME LIGHTING OUT THERE.
12 SHE COULD CLEARLY IDENTIFY THEY WERE ALL THREE TOGETHER.
13 AND WHO WERE THEY WITH THAT NIGHT? TROY ROUSE.

14 AND SHE STATED WHEN SHE'S WALKING THIS WAY, THEY
15 PASSED BY HER. AND SHE WAS CLOSE TO THEM. AND SHE I.D.'D
16 ALL FOUR OF THEM WALKING TOGETHER. AND HER TESTIMONY WAS,
17 THAT AS SHE GOT UP TO THIS PART OF THE STORE, SHE HEARD AN
18 ALTERCATION AND TURNED AROUND. AND AT THAT POINT, SHE SAW
19 EUNICE MCCALL FIRING AND SHOOTS TROY ROUSE. REMEMBER SHE
20 SAID THAT SHE SAW HIM LOOKING THIS WAY AND THEY WERE FACE
21 TO FACE. AND SHE SAID THAT MR. ROUSE DID NOT HAVE EUNICE
22 MCCALL IN A HEADLOCK AT THAT POINT AND TIME; THAT THEY
23 WERE FACE TO FACE, AND PULLED OUT A GUN AND FIRED. NOW
24 FROM HER TESTIMONY THAT SHE JUST PASSED BY THE THREE
25 DEFENDANTS THAT WILL TELL YOU THAT CHAD JAMES WAS RIGHT

1 THERE. HE'S RIGHT UP IN THIS AREA. AND A VERY SHORT TIME
2 LATER, THE GUNSHOTS GO OFF. THE GUNSHOTS GO OFF. SO HE
3 WAS IN THE AREA AND AT THE SCENE WHEN IT HAPPENED.

4 WE'RE NOT SAYING THAT HE DID ANYTHING AS FAR AS
5 SHOOTING OR ANYTHING LIKE THAT, BUT HE WAS THERE. HE WAS
6 THERE. AND WE KNOW THAT FROM MS. HILL'S TESTIMONY. AND I
7 BELIEVE SHE DID SEE ALL THREE DEFENDANTS THERE RIGHT
8 BEFORE THE SHOOTING. NOW WHAT'S IMPORTANT ABOUT THAT?
9 WELL WHAT'S IMPORTANT IS, MR. JAMES IS RIGHT THERE AT THE
10 SCENE. RIGHT IN THE AREA WHEN IT HAPPENED. NOT THAT HE
11 DID ANYTHING NECESSARILY, BUT HE KNEW SOMETHING WENT DOWN.
12 HE WAS RIGHT THERE. HE HEARD THE SHOTS. I CAN'T TELL YOU
13 AND I WON'T TELL YOU WHAT, YOU KNOW, THE OTHER PEOPLE SAW.
14 THEY KNEW HIM BETTER THAN I DO. BUT HE WAS RIGHT THERE AT
15 THE SCENE WHEN THE SHOTS WERE FIRED. WHEN THE SHOTS WERE
16 FIRED. AND THEN WHAT HAPPENED EVEN MORE IMPORTANT WAS
17 THAT EFRAIN THOMAS, WHO JUST GOT THROUGH KILLING TROY
18 ROUSE. JUST GOT THROUGH SHOOTING HIM SIX TIMES. SIX
19 TIMES.

20 WHERE DOES HE GO? HE DOESN'T GO HOME. HE DOESN'T
21 STAY AT THE SCENE. HE GOES TO HIS BUDDY'S HOUSE, HIS
22 FRIEND, CHAD JAMES. HIS FRIEND'S HOUSE, THAT'S WHERE HE
23 GOES. WHY? I SUBMIT TO YOU, HE KNOWS HE'S GOING TO GET
24 SOME HELP. AND HE KNEW HE WAS GOING TO GET SOME HELP FROM
25 MR. JAMES. HE GOES BACK TO MR. JAMES' HOUSE. AND YOU

1 HEARD FROM COURTNEY JOHNSON AND SAMANTHA HICKMAN, AND THEY
2 TESTIFIED. YOU HEARD TESTIMONY THAT MR. THOMAS CAME BACK
3 TO CHAD JAMES' HOUSE, SWEATING, WINDED, AND TO WASH HIS
4 FACE DOWN. AND THEN WAS OUTSIDE AFTER TALKING TO CHAD
5 JAMES. THE WITNESSES STATED THEY WERE TALKING TOGETHER
6 OUTSIDE RIGHT AFTER THIS SHOOTING HAPPENED. MR. THOMAS IS
7 SWEATING AND WINDED, AND THEY'RE TALKING TOGETHER SHORTLY
8 AFTER THAT. AND YOU MAY SAY, MR. SAVERANCE, THE TWO
9 WITNESSES DIDN'T SAY WHAT THEY HEARD. THEY COULDN'T HEAR
10 TALKING. AND THAT'S RIGHT.

11 BUT WHAT HAPPENED NEXT? WHAT HAPPENED NEXT WAS, CHAD
12 JAMES DRIVES A VEHICLE THAT EFRAIN THOMAS GETS IN. NOT
13 ONLY DOES HE GET IN THE VEHICLE, BUT HE GETS IN THE TRUNK.
14 HE GETS IN THE TRUNK OF THE VEHICLE. NOW THAT SHOULD SET
15 SOME ALARMS RIGHT THERE. WHAT SENSE DOES THAT MAKE? WHAT
16 NORMAL SITUATION WOULD SOMEBODY? MR. THOMAS SAID
17 SOMETHING ABOUT THERE WASN'T ENOUGH ROOM. WHAT NORMAL
18 SITUATION WOULD COME ABOUT WHERE SOMEBODY SAYS, I NEED
19 SOME ROOM, AND GETS IN A TRUNK? A TRUNK OF A CAR? YOU
20 KNOW, IF HE LAID THE SEAT DOWN, HE WOULD HAVE TAKEN UP
21 EVEN MORE SPACE UP IN THE BACK SEAT. WHICH IT JUST
22 DOESN'T MAKE SENSE IF HE WAS LOOKING FOR ROOM TO LAY DOWN.
23 AND WHAT DO THEY DO? CHAD JAMES DRIVES THE PERSON THAT
24 JUST -- ONE OF THE PEOPLE WHO JUST FINISHED SHOOTING AND
5 KILLING TROY ROUSE TO THE GAS STATION. AND THEN HE DRIVES

1 HIM OUT OF THE COUNTY, OVER TO CAMDEN.

2 SO, LADIES AND GENTLEMEN, YOU KNOW WHAT THE WITNESSES
3 SAID. I'M NOT TRYING TO PUT WORDS IN THEIR MOUTH. BUT
4 YOU CAME IN HERE AND YOU HAD YOUR COMMON SENSE AND YOUR
5 GOOD JUDGMENT. AND WE KNOW THAT YOU KEPT THAT WITH YOU
6 ALL WEEK AND YOU'RE GOING TO KEEP IT WITH YOU WHEN YOU
7 LEAVE. AND WHAT DOES COMMON SENSE TELL YOU? CHAD JAMES
8 WAS THERE AT THE SCENE IN THE AREA AT THE TIME THE SHOTS
9 WERE FIRED. EFRAIN THOMAS GOES BACK TO CHAD JAMES' HOUSE.
10 EFRAIN THOMAS WAS WINDED AND SWEATY. EFRAIN THOMAS WAS
11 TALKING TO CHAD JAMES. THEN EFRAIN THOMAS GETS IN THE
12 TRUNK OF A CAR THAT CHAD JAMES DRIVES TO ANOTHER COUNTY.
13 AND MR. JOHNSON HAS SAID LITTLE BITS AND COMMENTS MADE
14 EARLIER ABOUT WHETHER HE WAS WANTED OR NOT. I DON'T --
15 THAT DOESN'T MAKE ANY DIFFERENCE. IF CHAD JAMES HAD
16 KNOWLEDGE OF THE SHOOTING THAT OCCURRED AND THEN DROVE THE
17 DEFENDANT MR. THOMAS OUT OF THE COUNTY, IT DOESN'T MATTER
18 WHETHER THERE WERE WARRANTS AT THE TIME OR SOMEBODY WAS
19 TRYING TO SPEAK TO THEM. YOU CAN'T JUST HAVE SOMEBODY
20 TRYING TO DRIVE THEM AWAY AND SAY, OH, THE POLICE WEREN'T
21 LOOKING FOR MR. THOMAS AT THAT POINT AND TIME, SO HE COULD
22 DRIVE THEM AWAY. THAT DOES NOT MAKE ANY SENSE, AND THAT
23 IS NOT THE LAW.

24 SO WHEN YOU GO BACK TO DELIBERATE, I WANT YOU TO SAY,
25 HEY, WHAT MAKES SENSE HERE. CHAD JAMES WAS AT THE SCENE.

1 EFRAIN THOMAS ADMITTED HE WAS FRIENDS WITH CHAD JAMES.
2 YEAH, EFRAIN THOMAS TOOK THE STAND AND SAID CHAD JAMES
3 DIDN'T KNOW NOTHING ABOUT IT. I DIDN'T TELL CHAD JAMES
4 ANYTHING. HE PROBABLY -- HE DIDN'T SEE ME IN THE TRUNK.
5 WHAT ARE Y'ALL GOING TO SAY? CHAD JAMES IS MY FRIEND. I
6 SAID, YOU WANT TO HELP YOUR FRIEND DON'T YOU. AND HE
7 SAID, YEAH, I'M GOING TO HELP MY FRIEND. THAT'S WHAT HE
8 WAS DOING. EFRAIN THOMAS ACKNOWLEDGED TO ME ON THE
9 WITNESS STAND THAT HE LIED NINE OR TEN TIMES. AT LEAST.
10 SO WHY WOULD YOU BELIEVE HIM WHEN HE TRIED TO HELP HIS
11 FRIEND CHAD JAMES? SO JUST THINK ABOUT THAT WHEN YOU'RE
12 DELIBERATING.

13 AND LASTLY, WE HAVE CHARGED MR. JAMES WITH ACCESSORY
14 AFTER THE FACT OF MURDER. NOW IF YOU BELIEVE, IF YOU FIND
15 EUNICE MCCALL AND OR EFRAIN THOMAS GUILTY OF MURDER, WE
16 ASK THAT YOU FIND CHAD JAMES GUILTY OF THE ACCESSORY. A
17 MURDER WAS COMMITTED AND HE HELPED, AFTER THE FACT. AFTER
18 THE FACT, THAT'S WHAT WE'RE CHARGING HIM WITH. NOT BEFORE
19 THE FACT, BUT AFTER. WHAT WERE HIS ACTIONS AFTER THE
20 FACT? DO THEY MAKE SENSE, OR DO THEY NOT MAKE SENSE? IF
21 YOU, AND WE'LL TALK MORE ABOUT THIS LATER. BUT IF YOU
22 FIND THE DEFENDANTS, EFRAIN THOMAS AND OR EUNICE MCCALL
23 GUILTY OF VOLUNTARY MANSLAUGHTER, WE ARE GOING TO ALSO ASK
24 THAT YOU FIND CHAD JAMES GUILTY OF ACCESSORY AFTER THE
25 FACT OF VOLUNTARY MANSLAUGHTER. EITHER WAY YOU CUT IT,

1 TROY ROUSE WAS KILLED. WAS SHOT IN THE STREET AND LEFT TO
2 DIE. AND HE DID DIE. SO HE WAS KILLED WHETHER IT
3 WAS MURDER OR VOLUNTARY MANSLAUGHTER. AND BECAUSE CHAD
4 JAMES ASSISTED EPHRAIN THOMAS AFTER THE KILLING OF TROY
5 ROUSE, HE IS GUILTY. HOLD HIM ACCOUNTABLE, LADIES AND
6 GENTLEMEN, HOLD HIM ACCOUNTABLE.

7 THE COURT: MR. WHEELER.

8 MR. WHEELER: THANK YOU, YOUR HONOR, MAY IT PLEASE
9 THE COURT. I WANT TO FIRST THANK Y'ALL FOR YOUR ATTENTION
10 DURING THIS TRIAL. I'VE TRIED A GOOD NUMBER OF CASES NOW.
11 AND I THINK I'VE SEEN Y'ALL PAY AS CLOSE OR CLOSER
12 ATTENTION THAN ANY JURY I'VE EVER SEEN. LEANING UP,
13 LOOKING AT THIS. AND LISTENING TO THESE WITNESSES. AND I
14 REALLY DO APPRECIATE THAT. I KNOW THIS WHOLE SYSTEM
15 APPRECIATES THAT. AND NOBODY WANTS HAVING PEOPLE GOING
16 TO SLEEP AND DON'T SEEM TO CARE. ESPECIALLY WHEN THE
17 STAKES ARE THIS HIGH.

18 LADIES AND GENTLEMEN, IN THAT VEIN ABOUT APPRECIATING
19 SOMETHING, I WOULD APPRECIATE IT IF Y'ALL WOULD PLEASE
20 HEAR ME REAL CLOSE DURING THIS CLOSING. THE REASON I
21 ASKED THAT IS THIS, MR. SAVERANCE EXPLAINED TO YOU HE'S
22 GOING TO TELL YOU A LITTLE BIT NOW. I'M GOING TO TALK A
23 LITTLE BIT ABOUT CHAD JAMES. BUT HE'S SAVING HIS BEST FOR
24 LAST. AND HE'S GOING TO WAIT UNTIL EVERYBODY ELSE TALKS,
25 AND THEN HE'S GOING TO GET TO COME UP AND SAY WHATEVER HE

1 WANTS TO SAY. AND I'M GOING TO HAVE TO SIT HERE WITH MY
2 MOUTH SHUT AND I'M NOT GOING TO HAVE ANOTHER CHANCE TO
3 COME BACK UP HERE. AND IT'S MY JOB TO REPRESENT MR.
4 THOMAS THE BEST I CAN. AND IF I DON'T LIKE SOMETHING MR.
5 SAVERANCE SAYS, I'M NEVER GOING TO GET TO TELL YOU ABOUT
6 IT AGAIN.

7 I'M GOING TO TRY TO DO MY BEST SHOT OF EXPLAINING TO
8 YOU NOW, AND THAT'S WHY I TELL Y'ALL THAT. BECAUSE I
9 WON'T GET TO TALK TO YOU AGAIN. MR. WATTS AND MR. JOHNSON
10 WILL. AND ALL THAT TIME IS GOING FURTHER WHEN Y'ALL GO
11 BACK TO THE JURY ROOM. SO I'M GOING TO BE FIRST AND THAT
12 MAKES ME LAST WHEN IT COMES TO REMEMBERING WHAT I SAID.
13 SO I APPRECIATE IT. LADIES AND GENTLEMEN, WE'VE TRIED TO
14 BE VERY CLEAR ABOUT MR. THOMAS' INVOLVEMENT IN THIS CASE
15 FROM THE FIRST MINUTE THAT I WALKED UP IN FRONT OF YOU
16 WHEN WE STARTED THIS TRIAL. WE'VE GOT 45, 42 EXHIBITS.
17 CLOTHES, BULLETS, BALLISTIC TESTS. THESE THINGS THAT SHOW
18 ROUNDS WERE SHOT. I TOLD YOU THE FIRST TIME I WALKED UP,
19 NONE OF THAT IS INVALID.

20 MR. THOMAS SAID HE SHOT HIM WITH A 22-PISTOL JUST
21 LIKE HE TOLD YOU HE DID. HE DIDN'T TRY TO SAY ANYTHING HE
22 DIDN'T KNOW. HE SAID HE DISCHARGED THE WEAPON. HE DIDN'T
23 AIM FOR ANYTHING IN PARTICULAR. ONE HITS HIM IN THE LEG.
24 A COUPLE IN THE SHOULDER. AND I THINK THAT'S PROBABLY
25 MOST OF THEM THAT HIT. BUT HE DIDN'T TRY AND SAY I

1 DIDN'T. HE SHOT HIM. WHATEVER 22 BULLETS THAT Y'ALL SEE
2 IN THIS AUTOPSY REPORT YOU CAN INFER CAME FROM HIS
3 FIREARM. HE HADN'T TRIED TO PLAY ANY GAMES. HIDE ANY
4 BALLS FROM YOU ABOUT WHAT WAS GOING ON. NOW MR. SAVERANCE
5 SAYS HE LIED 9 TIMES. AND HE DID. HE TOLD YOU HE DID.
6 WHEN HE TALKED TO CAPTAIN BURKE ON HIS OWN WHEN HE WAS
7 FIRST CONFRONTED ABOUT THIS, OR ASKED TO COME IN, AND HE
8 LIED. AND HE TOLD Y'ALL HE LIED. HE'S 23-YEARS-OLD. 22
9 AT THE TIME. SHOT SOMEBODY WHO HE THOUGHT WOULD SAVE HIS
10 FRIEND'S LIFE. BUT HE OBVIOUSLY WAS NOT HAPPY ABOUT WHAT
11 HE DID. AND HE DIDN'T TELL THE POLICE THE TRUTH AND THEY
12 LET HIM GO. AND HE DIDN'T COME IN HERE, HE COMES TO
13 Y'ALL, BUT I SUBMIT TO YOU HE DIDN'T DUCK AND DODGE THAT
14 QUESTION. I MEAN EVERY TIME MR. SAVERANCE ASKED HIM, DID
15 YOU LIE ABOUT ANYTHING FURTHER. NO, SIR. ABOUT A
16 SPECIFIC QUESTION IN YOUR STATEMENT, IS THIS TRUE ABOUT
17 HIM RUNNING AT YOU. NO.

18 SO WHY SHOULD YOU BELIEVE HIM BECAUSE HE LIED? WHY
19 SHOULDN'T YOU BELIEVE HIM BECAUSE OF THESE 42 PIECES OF
20 EVIDENCE THAT THEY PUT IN; THAT THE STATE PUT IN. THAT
21 ALL SUPPORT, IF NOT ANYBODY ELSE'S, EFRAIN THOMAS' VERSION
22 OF WHAT HAPPENED. I TOLD YOU WHEN WE FIRST TALKED THAT
23 YOU WERE GOING TO HEAR FROM A LOT OF PEOPLE. Y'ALL ARE
24 THE SOLE JUDGE OF THE CREDIBILITY OF WHAT WITNESSES YOU
25 BELIEVE AND WHAT ONES YOU DON'T. YOU CAN FIT THESE PIECES

1 YOU LIKE. YOU CAN FIT PIECES YOU DON'T. THIS STUFF CAN'T
2 BE CHANGED. NOW A BUNCH OF IT WASN'T NECESSARY IF YOU
3 BELIEVE THIS HAPPENED. BUT A BUNCH OF IT SUPPORTS WHAT
4 EFRAIN THOMAS TELLS YOU. GO OVER THESE PICTURES THAT WE
5 TALKED A LOT ABOUT. AND THESE THAT COME IN FROM
6 YESTERDAY. PICTURES ABOUT THE BOOTS. PICTURES ABOUT THE
7 CASH AND THE CELL PHONE. THE CRACK IN MR. ROUSE'S POCKET.
8 THESE ARE ALL THESE PICTURES.

9 NOW IF I HOLD THEM UP TO THE LIGHT, Y'ALL CAN SEE
10 THEY ARE ALL MADE BY SLED. Y'ALL KNOW WHO SLED IS. THEY
11 JUST CAME AND TESTIFIED. WHY DID THESE PICTURES HELP TELL
12 EFRAIN THOMAS' STORY? WELL HE SAID HE DIDN'T HAVE A
13 PROBLEM WITH MR. ROUSE. HE NEVER HAD A PROBLEM WITH HIM.
14 NO WITNESS AT ALL INDICATED OTHERWISE. NOBODY OUT THERE
15 SAID THAT EFRAIN THOMAS WAS ANYTHING, THERE WAS NOTHING
16 OTHER THAN TO BE FRIENDS. NOBODY SAID ANYTHING DIFFERENT
17 AT ALL. NOTHING AT ALL WOULD SUGGEST THIS. IT WASN'T
18 ROBBERY. IT DIDN'T HAVE ANYTHING TO DO WITH TAKING
19 ANYBODY'S DRUGS. YOU'VE GOT THE BOOT HERE IN THE ROAD.
20 Y'ALL CAN JUDGE DISTANCES ON YOUR OWN. I'M NOT SUGGESTING
21 ANYTHING TO YOU, 20 SOME ODD FEET FROM WHERE ROUSE'S BODY
22 WAS. THAT TELLS YOU A STRUGGLE TOOK PLACE. NOBODY MADE
23 THAT UP. AND THAT BOOT DIDN'T JUST FALL OFF THAT DISTANCE
24 FROM WHERE THE BODY WAS. THESE PICTURES THAT SLED TOOK
25 SUBSTANTIATE WHAT MR. THOMAS TOLD YOU. THEY BACK THAT UP.

1 LADIES AND GENTLEMEN, I'M NOT GOING TO TAKE YOUR
2 TIME. Y'ALL WILL GET THESE THINGS WHEN YOU GET BACK TO
3 THE JURY ROOM. ONE OF THE THINGS Y'ALL WILL SEE IS THE
4 TOXICOLOGY REPORTS OF ALCOHOL CONTENT IN MR. ROUSE. WHEN
5 YOU SEE IT, AND YOU HEARD WHAT DR. ROSS SAID ABOUT IT
6 YESTERDAY I THINK IT WAS. Y'ALL SEE IT WAS WELL OVER 2.
7 ALL OF Y'ALL PROBABLY KNOW FROM READING THE PAPER AND JUST
8 YOUR COMMON KNOWLEDGE THAT 08 IS ABOUT THE LEGAL LIMIT.
9 AND THEREFORE, THAT'S INTOXICATED. DOES THAT MEAN
10 SOMEBODY NEEDS TO BE SHOT BECAUSE THEY'RE DRUNK? OF
11 COURSE NOT. BUT IT SUPPORTS WHAT MR. THOMAS TOLD YOU.

12 YOU KNOW, THE STATE HAS RUN RABBITS ACTUALLY ABOUT
13 WHY THIS HAPPENED. I ASK YOU WOULD THEY BE ABLE TO PROVE
14 ANY WHY WHEN I TALKED TO YOU AT THE START OF THIS CASE.
15 THEY PROVED IT WAS, A MAN WAS SHOT. HAVE THEY GIVEN ANY
16 ALTERNATIVE FOR WHY, OTHER THAN WHAT MR. THOMAS SAID?
17 NONE. THERE'S NO OTHER REASON HE WOULD HAVE DONE THIS
18 OTHER THAN THE REASON THAT HE TOLD YOU, TO SAVE HIS
19 FRIEND. AND HE HAD EVERY REASON TO BE WORRIED. MR.
20 ROUSE, YOU HEARD FROM MR. MCCLEM. YOU HEARD FROM THE
21 OTHER WITNESS; TO BE A VIOLENT MAN. CORY MCCLEM SHOWED
22 YOU HIS SCAR. NOW DID HE GO AROUND PICKING ON THE WEAK
23 AND FEEBLE? NO. WHO HERE WOULD TANGLE WITH CORY MCCLEM?
24 MR. SAVERANCE BROUGHT IN HIS RECORD. HE'S A ROBBER, A
25 KIDNAPPER ACCORDING TO THEM, AND ALL THESE OTHER THINGS.

1 HE'S NOT A FEEBLE, OLD MAN. AND HE'S A BIG GUY. HE'S
2 BIGGER THAN BOTH OF THESE GUYS.

3 TROY ROUSE TOOK HIM ON IN A HEARTBEAT AND CUT HIS
4 THROAT. HE KNEW ABOUT THAT. HE KNEW ABOUT THAT BECAUSE
5 HE HELD HIM BY THE THROAT. WHAT OTHER DECISION DID HE
6 MAKE? HE MAY HAVE CHOSE ONE OVER THE OTHER. BUT HE CHOSE
7 THE ONE THAT WAS DURING THE ATTACK. AND THERE IS NO OTHER
8 REASON HE WOULD HAVE DONE THIS. JUST NONE. NOT ONLY HAS
9 THE STATE NOT PRODUCED ANY EVIDENCE OF ANY OTHER REASON,
10 EVEN IF THEY HAD, Y'ALL KNOW THAT NOT ONLY DO THEY HAVE TO
11 PROVE SOME, THEY HAVE TO PROVE IT BEYOND A REASONABLE
12 DOUBT. I SUBMIT THEY HAVEN'T DONE THAT. CERTAINLY NOT
13 BEYOND A REASONABLE DOUBT WHEN THEY WANT Y'ALL TO BELIEVE
14 THAT IT WAS MALICE WITH INTENT TO KILL THIS MAN. THEY
15 WANT YOU TO GUESS. THEY WANT YOU TO GUESS. EMPTY GUESS.
16 EMPTY WANDERING. THEY NEED TO SHOW SOME REASON. THERE IS
17 NO MOTIVE AT ALL.

18 YOU ALSO SEE THE GUNSHOT RESIDUE TEST. THAT'S WHAT
19 THEY TALKED ABOUT MR. ROUSE'S HANDS WERE BAGGED. THEY PUT
20 BAGS ON THEM. THEY TESTED FOR THAT. I'M NOT REACHING,
21 I'M NOT SAYING ANYTHING OVER THAN WHAT THEY SAID. BUT THE
22 FACT THAT THE MATERIAL STOOD OUT THERE, AND THAT THE LADY
23 FROM SLED SAID IT SHOWED IT WAS CLOSE. THIS WASN'T SOME
24 EXECUTION WHERE SOMEBODY STOOD BACK AND SHOT. AND
25 SOMETHING WAS CLOSE. IT WAS THE BACK OF THE HANDS. THOSE

1 HANDS GOT THAT WAY. THEY WEREN'T DOING LIKE THIS. THEY
2 WERE PRIMARILY LIKE THAT. (ATTORNEY INDICATING.) NOW
3 EFRAIN THOMAS DID TELL THE TRUTH TO THE POLICE TO BEGIN
4 WITH. AND HE DIDN'T TELL THEM THE EXACT TRUTH WHEN HE WAS
5 ARRESTED. HE ADMITTED THAT TO YOU.

6 IN THE STATE'S CONDUCTING OF THIS TEST, I SUBMIT TO
7 YOU THAT YOU CAN SEE SOME REASONS WHY HE HAD TO BE SCARED.
8 HAS HE BEEN GIVEN CREDIT FOR ANYTHING THAT HE SHOULD HAVE?
9 HAS HE BEEN TREATED OBJECTIVELY FOR A BETTER WORD? OR IS
10 THERE SOME ZEAL IN THIS PROSECUTION BEYOND WHAT IT WOULD
11 TAKE TO JUST CONVICT SOMEBODY? TRY AND CONVICT SOMEBODY?
12 HE GOT UP AND ADMITTED TO YOU EVERY LIE HE TOLD AND ANY
13 INCONSISTENCY AND WHAT HAPPENED AND THAT HE SHOT SOMEBODY.
14 I SUBMIT TO YOU THAT'S NOT AN EASY THING TO DO. OKAY.
15 YOU CAN JUDGE A LOT FROM SOMEBODY BY THE BAD THINGS THEY
16 SAY ABOUT THEMSELVES MORE THAN THE OTHER THINGS THEY'LL
17 SAY. IT HURTS SOMEONE TO GET UP IN FRONT OF A ROOM FULL
18 OF PEOPLE AND SAY, I DID THIS. SOME PEOPLE CAN'T DO IT.
19 SOME PEOPLE JUST COME OUT AND SAY THEY DID IT.

20 COMPARE HIS TESTIMONY TO SOME OF THE POLICE OFFICERS
21 IN THIS CASE WHERE ANY OF THEM WANTED TO DUCK AND DODGE
22 ANYTHING. WHEN WE TALKED ABOUT THE MONEY, WHATEVER
23 HAPPENED TO IT? EVERYBODY HAD ANOTHER EXPLANATION. IT'S
24 NOT AS IMPORTANT THAT IT WAS GONE. WHAT'S IMPORTANT IS,
25 NOBODY WANTED TO TALK ABOUT. NOBODY IS WANTING TO COME

1 OUT AND SAY ANYTHING ABOUT IT. WHEN I ASKED ABOUT SOME OF
2 THESE THINGS IN DETAIL, I MEAN, LET'S JUST TALK ABOUT
3 THIS, THIS WAS IMPORTANT TO ME. ALL OF THE STUFF THAT
4 MIGHT HAVE HELPED EFRAIN THOMAS, DID THE STATE JUST COME
5 ON OUT AND ADMIT ANY OF IT, OR DID WE HAVE TO DRAG IT OUT
6 OF THEM KICKING AND SCREAMING? THINGS LIKE THE CAP THEY
7 FOUND ON HIM. THAT DIDN'T COME OUT ON CROSS EXAMINATION.
8 THEY DIDN'T ASK ABOUT THAT. THE FACT THAT MR. MCCLEM HAD
9 HIS THROAT CUT, WE HAD TO FIGHT ABOUT THAT. THEIR OWN
10 PHOTOGRAPHS TAKEN BY SLED WERE OBJECTED TO THAT MIGHT HAVE
11 HELPED THEM.

12 AND DR. ROSS, Y'ALL HEARD DR. ROSS' TESTIMONY. Y'ALL
13 WILL SEE HER REPORT IN EVIDENCE. NOTHING WRONG WITH HER
14 REPORT. I DON'T HAVE ANY PROBLEM WITH IT. SAID SHE HAS
15 BEEN DOING THIS FOR 30 YEARS. SHE SAID SHE'S TESTIFIED
16 FOR THE STATE AND PROSECUTION MORE THAN SHE'S EVER
17 TESTIFIED IN DEFENSE. Y'ALL ARE NOT GOING TO THINK ABOUT
18 THAT. AND THERE'S AN OLD SAYING, "WHOSE BREAD I EAT,
19 WHOSE SONG I SING." THE MAN WHO IS PAYING USUALLY GETS A
20 LITTLE BETTER RESULT. NOW DR. ROSS HAS A REPORT. AND
21 THAT WAS ALL WELL AND GOOD. THERE IS NO QUESTION MR.
22 ROUSE WAS SHOT. OKAY. THAT WASN'T ENOUGH. HAD TO ADMIT
23 TO MET WITH MR. SAVERANCE BEFORE WE CAME IN THE COURTROOM
24 AND COMING UP TO THE DEFENSE TO MEET WITH HIM, NEVER
25 MENTIONED THIS REPORT. WERE THERE POSSIBLY OTHER WAYS IT

1 COULD HAVE HAPPENED? SURE. LOTS OF WAYS. DIDN'T NEED TO
2 BRING THOSE UP.

3 IS THERE ANY THEORY AT ALL THAT THE STATE GAVE TO
4 SUPPORT A MOVE THAT WAY, OR WERE THEY JUST REACHING,
5 TRYING TO GRAB SOMETHING EXTRA OUT OF THIS WITNESS? IS
6 THERE ANY REASON FOR IT? SHE DIDN'T KNOW WHAT HAPPENED.
7 SHE SAID WHEN ASKED, COULD IT HAVE BEEN AN AGGRESSIVE
8 WOUND, COULD IT BEEN FROM BITING OR CHOKING SOMEBODY.
9 YES. JUST AS POSSIBLY HAPPENED THAT WAY. BUT THAT'S NOW
10 WHAT YOU HEARD BEFORE SHE CAME AND TESTIFIED. THE SAME
11 THING WHEN IT CAME TO THE ALCOHOL WITH DR. ROSS. ON
12 DIRECT EXAMINATION DID MR. ROUSE HAVE SOME ALCOHOL IN HIS
13 SYSTEM. HE HAD SOME ALCOHOL IN HIS SYSTEM. ON CROSS
14 EXAMINATION HE WAS DRUNK. I WOULDN'T HAVE GOTTEN IN THE
15 CAR WITH HIM. HE WAS TWO TO THREE TIMES THE LEGAL LIMIT.
16 I KNOW THEY WANT TO GET A CONVICTION. BUT IS IT ABOUT
17 WINNING OR IS IT ABOUT FINDING OUT WHAT THE CASE IS ABOUT?

18 LADIES AND GENTLEMEN, THE SCALES THE JUSTICE, Y'ALL
19 ARE THE ONES, THANK GOODNESS, THAT ARE GOING TO HAVE TO
20 DECIDE THIS CASE. Y'ALL CAN LOOK AT THESE WITNESSES
21 TESTIMONY. CERTAINLY I DON'T ASK YOU TO REJECT THE OTHER
22 FINDINGS. BUT WHY, WHY REACH LIKE THAT? LADIES AND
23 GENTLEMEN, THE DEFENSE IS THE DEFENSE OF OTHERS IN THIS
24 TRIAL. AND AS I SAID, NOTHING AT ALL CONTRADICTS WHAT HE
25 HAS TOLD YOU. NOTHING AT ALL. WE HAVE BY MR. MCCALL'S

1 OWN ADMISSION, NOTHING EFRAIN THOMAS DID WOULD HAVE
2 STARTED THAT FIGHT THEY WERE IN. BY THE STATE'S OTHER
3 WITNESSES, MS. HILL, THEY MAY WANT YOU TO, SOME OF THE
4 OTHER PEOPLE SITTING AT MY TABLE MAY WANT YOU TO IGNORE.
5 BUT SHE SAID THAT WHATEVER HAPPENED, HAPPENED AND MR.
6 THOMAS RAN TO IT. SO THEIR TESTIMONY IN COURT, HE HAD
7 NOTHING TO DO WITH WHAT STARTED IT. BUT HE ESSENTIALLY
8 FOUND WHEN HE GOT THERE.

9 NOW HE SAID THESE THINGS HAPPENED AND HE HAD TO MAKE
10 A QUICK DECISION TO TRY TO SAVE HIS FRIEND. AND THAT'S
11 WHAT HE DID. IF YOU DECIDE THAT MR. MCCALL'S REASON FOR
12 THE FIGHT OR WHATEVER HE WAS DOING WERE NOT CORRECT, OR
13 WERE NOT THE WAY HE DESCRIBED IT, THAT DOESN'T GIVE YOU
14 ANY REASON NOT TO TAKE IT AS MR. THOMAS SAYS. BECAUSE BY
15 EVERYBODY'S ADMISSION, HE DIDN'T HAVE ANYTHING TO DO WITH
16 WHY THE FIGHT WAS GOING ON. BUT HE CAN TELL YOU WHAT
17 HAPPENED WHEN HE GOT THERE. HE TELLS YOU A SOMEWHAT
18 VERSION OF WHAT HAPPENED WHEN HE GOT THERE. IT MAY NOT BE
19 FAVORABLE TO MR. MCCALL, BUT THERE IS NO REASON FOR YOU
20 NOT TO BELIEVE MR. THOMAS.

21 FINALLY, LADIES AND GENTLEMEN, YOU WILL HEAR FROM THE
22 JUDGE AS HE CHARGES YOU THE LAW ABOUT THE FACTORS IN THE
23 DEFENSE OF OTHERS CASE. IT'S VERY SIMILAR FACTORS THAT
24 YOU TAKE INTO ACCOUNT IN A SELF DEFENSE CASE. WHAT THINGS
25 SOMEBODY MAY CONSIDER IN DETERMINING WHETHER IT WAS USE OF

1 FORCE AND WHETHER A DECISION WAS PROPER. LISTEN TO HIM
2 CLOSE NOW, I'M NOT GOING TO GO OVER. BUT YOU ARE GOING TO
3 HEAR SOME FAMILIAR THINGS. THE SIZE OF SOMEBODY. THE
4 VIOLENT REPUTATION. WHETHER THEY WERE INTOXICATED.
5 WHETHER THE PERSON COULD HAVE GOTTEN AWAY. MR. THOMAS
6 HAS AN ABSOLUTE RIGHT TO DEFEND ANOTHER PERSON. EVEN A
7 BYSTANDER UNDER THE LAW. JUST AS HE COULD DEFEND HIMSELF.
8 IF SOMEONE IS BEING ATTACKED ON THE STREET, WHAT DO YOU
9 DO? THE LAW IS THERE FOR A REASON. DO YOU LET THEM BE
10 ATTACKED? DO YOU WALK AWAY? DECIDE WHO GETS HURT? WHAT
11 ARE WE TO INCUR? LET THEM FIGHT IT OUT? LET THEM CHOKE
12 YOU? IT'S NOT A GOOD DECISION TO HAVE TO MAKE, BUT IT'S A
13 MURDER. I SUBMIT TO YOU IT'S NOT EVEN CLOSE TO MURDER.
14 CERTAINLY ONE OF THE ELEMENTS TO MURDER IS MALICE.
15 CERTAINLY NO ILL WILL IS EXPRESSED. AT THE LEAST IT'S
16 VOLUNTARILY MANSLAUGHTER. AND IT SHOULD BE CHARGED.

17 I SUBMIT TO YOU MORE IMPORTANTLY THAN THAT,
18 MR. THOMAS IS ASKING FOR AN ACQUITTAL BECAUSE IT'S THE
19 DEFENSE OF THE OTHERS. AND NOT BASED ON WHAT OTHERS DID,
20 BUT BASED ON WHAT HE PERCEIVED. AND I ASK THAT YOU KEEP
21 IN MIND WHAT PERCEPTION. WHAT HE SAW. IS THERE ANY
22 REASON TO BELIEVE ANYTHING DIFFERENT THAN WHAT HE TOLD
23 YOU. FINALLY, I SUBMIT THE STATE, THERE IS NO EVIDENCE AT
24 ALL THAT THERE IS ANY REASON TO DISBELIEVE, OTHER THAN
25 WHATEVER CONTRADICTIONS THEY POINT OUT IN HIS TESTIMONY.

1 HAVE THEY GIVEN YOU ANY ALTERNATIVE? THAT'S THE BURDEN.
2 NOT TO PICK MR. THOMAS. THEY'VE GOT TO PROVE TO YOU
3 SOMETHING DIFFERENT. THANK YOU VERY MUCH, LADIES AND
4 GENTLEMEN, I APPRECIATE YOUR TIME THROUGHOUT THIS CASE.

5 THE COURT: MR. WATTS.

6 MR. WATTS: THANK YOUR HONOR. MR. SMITH AND I WANT
7 TO CONCUR WITH MR. WHEELER IN THANKING Y'ALL. YOU'VE BEEN
8 VERY ATTENTIVE. WE APPRECIATE THAT. IT'S A VERY
9 IMPORTANT ISSUE, AND Y'ALL KNOW THAT. IT'S VERY IMPORTANT
10 THAT YOU ARE HERE TODAY. NO DENYING IT. ONE PERSON HAS
11 ALREADY LOST A LIFE. THE STATE HAS SPENT A LOT OF TIME
12 TALKING ABOUT THAT. AND THERE IS A LOT OF STUFF THAT GOES
13 ALONG WITH THAT. IF YOU RECALL TOO WHEN WE STARTED THIS,
14 I TOLD YOU IT WASN'T ANY QUESTION ABOUT THAT.

15 IT'S UNFORTUNATE NOT ONLY FOR MR. ROUSE AND HIS
16 FAMILY, IT'S UNFORTUNATE FOR EUNICE AND OTHER DEFENDANTS
17 WHO IS SITTING AT THE TABLE, AND THEIR FAMILY. BECAUSE
18 WHEN WE GO THROUGH AND TALK ABOUT THOSE DEFENSES TO
19 REVIEW IN THE MATTER, AND EUNICE WAS ON THE WAY DOWN TO
20 PLAY POOL. AND TESTIFIED TO THAT FACT. AN ARGUMENT
21 OCCURRED WITH MR. ROUSE. THERE'S BEEN TESTIMONY TO THAT
22 AND CORROBORATED. TRYING TO SOOTH, AND EUNICE LOSSES.
23 AND THAT'S BEEN CORROBORATED. THERE'S BEEN TESTIMONY TO
24 THAT. EUNICE WAS IN FEAR OF HIS LIFE. MR. THOMAS WAS
25 EVEN IN FEAR FOR EUNICE. THERE WAS TESTIMONY ABOUT A

1 CHOKER HOLD. THAT'S WHAT YOU HEARD. WHO'S GIVING THESE
2 FACTS? WHO'S TELLING YOU WHAT HAPPENED WHEN IT HAPPENED?
3 THE DEFENDANTS. BECAUSE THEY'RE THE ONES WHO ARE THERE.

4 WHAT HAS THE STATE TOLD YOU? THE STATE HAS TOLD YOU
5 MR. ROUSE WAS SHOT. THEY TOLD YOU THERE WERE BULLETS.
6 THEY TOLD YOU THERE WERE SHELL CASINGS. THEY TOLD YOU
7 ABOUT SOME OF THE EVIDENCE, AND SHOWED YOU SOME PICTURES
8 OF THE SCENE. THEY HAVEN'T TOLD YOU EVERYTHING. THEY
9 DIDN'T TELL YOU EVERYTHING. CHERRY PICKING. WHAT ARE
10 THEY GOING TO BRING OUT AND WHAT ARE THEY GOING TO TELL
11 YOU ABOUT THIS CASE. WE'RE GOING TO TELL YOU ABOUT
12 EUNICE. WE'RE GOING TO HOLD BACK. WHAT ARE WE GOING TO
13 LET YOU KNOW ABOUT, AND WHAT ARE WE GOING TO KEEP FROM YOU
14 BEFORE YOU GO THROUGH AND GET A CONVICTION? WHEN YOU TALK
15 ABOUT A KILLING, MOTIVE IS IMPORTANT. OKAY. WHAT IS A
16 MOTIVE? THERE HAS BEEN TESTIMONY FROM STATE WITNESSES
17 AND THE DEFENDANTS WHEN THIS ALTERCATION OCCURRED. AND
18 THIS IS A FIGHT. THERE HAS BEEN TESTIMONY FROM THE STATE
19 AND THE DEFENSE ABOUT THEIR BEING A FIGHT. A SERIOUS
20 FIGHT. THE FIGHT MOVED. IT MOVED AROUND A LOT OF AREA.
21 A SERIOUS FIGHT.

22 YOU HEARD TESTIMONY AGAIN ABOUT THE FEAR FOR HIS
23 LIFE, AND WE'RE NOT TALKING THAT IT WAS JUST A SLIGHT SPAT
24 OR A LITTLE TUSSLE AND A SLIGHT ALTERCATION. THIS WAS A
25 SERIOUS FIGHT. YOU KNOW WHAT HAPPENED BETWEEN HIM AND MR.

1 ROUSE. EUNICE STAND. THE AUTOPSY REPORTS MR. ROUSE'S
2 ABOUT 73 INCHES WHICH IS ABOUT 6'1, 6'1/2. I'M ABOUT 6'2.
3 THEY ESTIMATED MR. ROUSE AT 170. THEIR SCALES DIDN'T
4 PERFORM THAT. THAT'S PUT IN THE AUTOPSY TO FIND THE
5 REASON WHY, WHAT'S GOING ON, SCIENTIFIC EVIDENCE TO FIGURE
6 OUT. THEY ESTIMATED HIS WEIGHT. THEY ESTIMATED AT 170.
7 TAKE A LOOK AT EUNICE. YOU'VE HEARD ABOUT THE FIGHT.
8 THERE'S NOBODY CONTRADICTING THERE WAS A FIGHT. YOU'VE
9 HEARD TESTIMONY ABOUT THE CHOKING. WHY DID HE ACT AS HE
10 DID? WELL THE MOTIVE FOR HIS ACTIONS IS BECAUSE HE IS
11 TRYING TO SAVE HIS OWN LIFE. IT'S NOT UNREASONABLE TO TRY
12 TO PROTECT YOURSELF. IT'S NOT UNREASONABLE TO ACT IN A
13 WAY TO PRESERVE YOUR OWN LIFE.

14 I SUBMIT TO YOU IF THINGS HAD GONE DOWN DIFFERENTLY
15 THAT EVENING, THEN THERE WOULD BE A DIFFERENT PERSON
16 SITTING HERE TODAY. IT WOULD BE A DIFFERENT PERSON YOU
17 WOULD BE REFERRING TO IN THAT SEAT. AND MR. MCCALL WOULD
18 BE DECEASED. AND MR. ROUSE WOULD BE AT THAT TABLE. AND
19 YOU'VE HEARD TESTIMONY ABOUT WHAT HAPPENED. AND THE
20 ACTIONS THAT MR. ROUSE HAD TAKEN. IT'S AN UNFORTUNATE
21 SITUATION, BUT IT'S REASONABLE. YOU CAN PROTECT YOURSELF.
22 AND AFTER YOU CONSIDER THAT UNDER THE LAW, YOU CAN PROTECT
23 YOURSELF. THAT'S YOUR RIGHT. YOU DON'T HAVE TO LAY IDLY
24 BY AND LET SOMEONE DO HARM TO YOU. YOU HAVE THE RIGHT.
25 THERE ARE OTHER FACTORS THAT GO ALONG WITH SELF DEFENSE.

1 MR. WHEELER SAID SOMETHING ABOUT IT. THE JUDGE IS GOING
2 TO CHARGE YOU. YOU WILL HEAR THAT SOME OF THOSE ARE
3 FACTORS OF INTOXICATION, REPUTATION, AND SIZE OF SOMEONE
4 ELSE COMPARED TO YOURSELF.

5 YOU'RE NOT GOING TO HEAR FROM ME AGAIN, AND YOU'RE
6 NOT GOING TO HEAR FROM MR. WHEELER. AND I AM PROUD TO
7 REPRESENT EUNICE. AND I DON'T WANT TO KEEP YOU. AND I
8 APPRECIATE THE ATTENTION YOU HAVE SHOWN ME. BUT THIS IS
9 IMPORTANT, BECAUSE THE STAKES ARE HIGH. WHEN DID YOU HEAR
10 FROM THE STATE'S WITNESSES AND LAW ENFORCEMENT ABOUT
11 EUNICE? WE HAD THE EXPERTS THAT TALKED ABOUT THE GUNS AND
12 THE BULLETS THAT WERE FIRED. NONE OF THEM EVER MENTIONED
13 EUNICE MCCALL. NOW THEY TALKED ABOUT THESE CERTAIN
14 TESTINGS, AND THEY TALKED ABOUT THE BULLETS AND THE
15 AUTOPSY REPORTS. AND YOU MIGHT NOT EXPECT THEM TO. LET
16 ME ASK YOU THIS, WE HAD THREE, THREE FROM THE BISHOPVILLE
17 POLICE DEPARTMENT, INVESTIGATOR THOMPSON, INVESTIGATOR
18 WILSON WAS FIRST. AND THEN IT WAS CAPTAIN BURKE. AND
19 THEN INVESTIGATOR THOMPSON. I WANT YOU TO THINK BACK AND
20 TRY TO REMEMBER WHEN ANY ONE OF THE SPECIFICALLY SAID
21 EUNICE MCCALL. MENTIONED HIS NAME. PROVIDED ANY EVIDENCE
22 ABOUT EUNICE MCCALL. I WANT YOU TO THINK BACK. DID THEY
23 EVER STRAY FROM THAT? I SUBMIT TO YOU THEY NEVER
24 MENTIONED IT.

25 DETAILS OF WHAT HAPPENED THAT NIGHT HAVE BEEN

1 PROVIDED BY EUNICE. HE TOLD YOU. HE SAT ON THE STAND AND
2 ANSWERED QUESTIONS. HE ANSWERED MY QUESTIONS, AND HE
3 ANSWERED THE SOLICITOR'S QUESTIONS. WHEN HE ANSWERED, YOU
4 DIDN'T SEE HIM REACHING. HE ANSWERED THEM. HE ANSWERED
5 THE WHOLE TRUTH. HE DIDN'T STALL. HE DIDN'T BACK PADDLE.
6 IF THERE WAS AN UNREASONABLE QUESTION AND HE DIDN'T
7 UNDERSTAND IT, HE ASKED THEM TO REPHRASE IT. BUT HE
8 ANSWERED THE QUESTION. HE'S TELLING YOU WHAT HAPPENED.
9 THE STATE IS ASKING YOU TO GUESS AND FILL IN THE BLANK; TO
10 GO AHEAD AND SOMEHOW USE YOUR IDEAS THAT WHATEVER HAS BEEN
11 ADMITTED INTO EVIDENCE, JUST GO AHEAD AND TRY TO FIGURE
12 OUT HOW EUNICE WAS INVOLVED. AND FIGURE OUT HOW HE DID
13 SOMETHING WRONG. YOU GO AHEAD AND PUT THAT IN THERE.
14 FILL IN THE BLANK, SO YOU CAN HELP US, BECAUSE THEY
15 HAVEN'T PROVIDED ANYTHING TO YOU TO THE CONTRARY OF WHAT
16 EUNICE SAID.

17 BRIEFLY I GO TO THIS. YOU'RE GOING TO TAKE SOME OF
18 THE EVIDENCE BACK IN PICTURES. THE SCENE IS HERE IN THIS
19 AREA. WHO IS THE FIRST WITNESS THEY PUT UP? MS. HILL.
20 AND YOU HEARD SOME TESTIMONY ABOUT MS. HILL AND WHAT WAS
21 GOING ON WITH HER. SHE'S THE ONE WHO MARKED ON THIS. SHE
22 WAS THE FIRST ONE TO TOUCH IT. AND THIS IS SOMETHING
23 CREATED BY THE SOLICITOR'S OFFICE. I THINK IT WAS CAPTAIN
24 BURKE THAT MADE THIS. WHERE DID SHE PUT US AT? OVER HERE
25 ON THIS SIDE OF THE BUILDING. EVERYONE FROM LAW

1 ENFORCEMENT, SLED, EVERYBODY WHO WAS AT THE CRIME SCENE,
2 YOU'VE GOT SOME PICTURES. AND YOU'LL SEE THOSE PICTURES
3 WHEN YOU GO BACK. THEY'RE TALKING ABOUT OVER THERE. SO
4 LET'S JUST SAY THAT SHE WAS HERE. AND LET'S JUST SAY WE
5 ADD ON THIS LITTLE SIDE CROPPING, THE BOX ON THE SIDE OF
6 IT. AND LET'S JUST SAY NOW WE REMEMBER ABOUT THIS OTHER
7 BUILDING THAT WAS OVER HERE. THAT'S WHERE SHE PUT IT, NOT
8 ME.

9 MS. WESLEY. TALKED TO HER. SHE ADMITTED GIVING A
10 CONTRARY STATEMENT. SAYING SHE SAW EUNICE. AND THEY
11 HEARD THOSE SHOTS. ALSO SAID THAT, YOU KNOW, SHE SAID
12 EUNICE CAME UP AND TOLD HER HE SHOT SOMEBODY. YOU HEARD
13 TESTIMONY FROM MR. MCCALL HE DIDN'T STOP THERE. SHE
14 DIDN'T TALK TO HIM. WHAT I SUBMIT TO YOU IS, WHERE IS THE
15 PROOF THAT THE STATE IS GIVING YOU TO GO BEYOND A
16 REASONABLE DOUBT TO CONVICT EUNICE MCCALL OF MURDER?
17 MALICE? HAVE THEY GIVEN YOU A REASON WHY? THEY HAVEN'T.
18 HE TOLD YOU WHAT HAPPENED THAT NIGHT. THERE WAS A FIGHT,
19 HE WAS TRYING PROTECT HIMSELF. WHO IS CONTRADICTING THAT?
20 AND I DON'T MEAN TO BELABOR THE POINT, BUT YOU HEARD
21 TESTIMONY ABOUT WHEN THIS FIGHT WAS GOING ON. EFRAIN
22 THOMAS CAME UP AND SAID, YOU WIN. LET'S GO, YOU WON THE
23 FIGHT. YOU HEARD WHAT HE SAID. HE SAID NO, I'M GOING TO
24 KILL HIM. HE SAID HE WAS GOING TO KILL HIM. BY THAT
25 TIME YOU HEARD TESTIMONY ABOUT HIM REACHING AROUND. IT

1 MAKES SENSE THAT HE'S GOING FOR A WEAPON AFTER THAT
2 STATEMENT. AND WHAT WAS HE GOING TO USE THE WEAPON FOR?
3 TO HURT MR. MCCALL. EUNICE SAID HE DIDN'T KNOW WHAT HE
4 WAS GOING FOR. HE WENT FOR IT.

5 IT WASN'T A NATURAL REACTION WHEN SOMEONE IS REACHING
6 DOWN TO GET SOMETHING AND USE IT AGAINST YOU, ARE YOU
7 GOING LET THEM DO IT? ARE YOU GOING TO TRY TO BLOCK THAT
8 ACTION? I SUBMIT YOU'RE GOING TO DO WHATEVER YOU CAN TO
9 PROTECT YOURSELF. AGAIN, I GOT TO TELL YOU, THE TRUTH
10 COMES AND THE ANSWERS COME EASY WHEN YOU ARE TELLING THE
11 TRUTH. AND I WANT YOU TO REMEMBER THIS, THAT THIS IS
12 SOMETHING THAT THE STATE HAS THE BURDEN. THEY HAVE TO
13 PROVE TO YOU WHAT MR. MCCALL DID. AND THE FACTORS AND
14 THE LAW. I DON'T WANT TO TELL YOU ABOUT THE LAW. THE
15 JUDGE IS GOING TO TELL YOU ABOUT THE LAW. I JUST WANT YOU
16 TO THINK ABOUT IT, AND THINK ABOUT IT RATIONALLY. DOES IT
17 MAKE SENSE FROM WHAT YOU'VE HEARD, AND THE EVIDENCE THAT'S
18 BEEN PROVIDED? NOT WHAT THEY'RE ASKING YOU TO JUST FILL
19 IN THE BLANKS. NOT WHAT THEY'RE ASKING YOU TO BRING IN
20 FROM OUTSIDE. FROM WHAT YOU'VE HEARD, DOES IT MAKE SENSE.
21 AND I SUGGEST TO YOU THE TESTIMONY THAT YOU HEARD FROM
22 EUNICE DOES MAKE SENSE? IT'S A STORY THAT MAKES THE
23 VERSION OF THE TRUTH COME EASY WHAT HE'S TELLING YOU. THE
24 ANSWERS. THANK YOU AGAIN, LADIES AND GENTLEMEN. EUNICE
5 THANKS YOU. AND I HOPE YOU KEEP THAT CONSIDERATION AND GO

1 BACK AND DELIBERATE AND COME TO YOUR DECISION. THANK YOU.

2 THE COURT: LADIES AND GENTLEMEN, LET'S STAND FOR A
3 MOMENT OR TWO AND STRETCH. MR. SAVERANCE.

4 MR. SAVERANCE: MAY IT PLEASE THE COURT, YOUR HONOR.

5 THE COURT: YES, SIR.

6 MR. SAVERANCE: LADIES AND GENTLEMEN, YOU ARE GOING
7 TO HAVE SOME PICTURES WHEN YOU GO BACK. BUT I AM NOT --
8 YOU WILL LOOK AT THEM WHEN YOU GO BACK, BUT I AM JUST
9 GOING TO KIND OF REMIND YOU ABOUT SOME OF THESE THINGS
10 RIGHT NOW. BUT I'M NOT GOING TO GO THROUGH ALL THESE
11 PICTURES. MR. WHEELER MENTIONED WHY. TALK ABOUT WHAT IF.
12 WHAT IF. WHAT IF THEY HADN'T SHOT TROY ROUSE? WELL I
13 CAN'T TELL YOU ABOUT WHAT IF. BUT WHAT HAPPENED ARE THE
14 FACTS. BECAUSE TROY ROUSE HIS BODY WAS LAYING IN THE
15 STREET LIFELESS. I DON'T HAVE TO GUESS WHAT IF. WE KNOW
16 THAT HE WAS SHOT 6 OR 7 TIMES. THAT'S NOT WHAT IF. IT
17 HASN'T EVEN BEEN DISPUTED. AND WE KNOW THAT HE DIED OF
18 GUNSHOT WOUNDS. THAT HASN'T BEEN DISPUTED. WHO GAVE
19 EFRAIN THOMAS THAT RIGHT TO DECIDE WHO LIVED AND WHO DIED
20 THAT NIGHT? WHO APPOINTED HIM THAT POWER AND DUTY TO
21 DECIDE WHICH PERSON MAY LIVE AND WHICH PERSON MAY DIE?

22 WELL THEY SAY IT HAS NOTHING TO DO WITH IT. WE MAY
23 BE HERE BECAUSE TROY ROUSE MAY HAVE KILLED EUNICE MCCALL.
24 WE DON'T KNOW THAT. WE DON'T KNOW THAT AT ALL. AND WHAT
25 IF'S DON'T MATTER. IT'S NOT A WHAT IF, BUT WHAT HAPPENED,

1 LADIES AND GENTLEMEN. IT'S WHAT HAPPENED. AND WHAT
2 HAPPENED WAS, TROY ROUSE WAS SHOT 7 TIMES AND LEFT LAYING
3 IN THE STREET TO DIE LIKE AN ANIMAL. AND HE DID DIE. AND
4 THE TWO MEN THAT DID THIS HEINOUS CRIME AND PUT THESE
5 BULLETS IN HIS BODY DID NOT CALL FOR HELP. DIDN'T CALL
6 FOR HELP AT THE SCENE. DIDN'T CALL FOR HELP AT ONE OF THE
7 OTHER HOUSES. DIDN'T CALL FOR HELP ANY TIME. WHAT DOES
8 THAT SHOW YOU, DOES THAT SHOW COMPASSION AND REMORSE? OR
9 DOES THAT SHOW GUILT AND CONCERN FOR THEIR OWN SELVES NOT
10 TO CALL AND GET INVOLVED?

11 WHAT IS COMMON SENSE? COMMON SENSE TELLS YOU IF THEY
12 DIDN'T DO ANYTHING WRONG, AND THEIR FRIEND WAS LYING IN
13 THE STREET AND THEY DIDN'T CARE ABOUT HIM AND DIDN'T MEAN
14 TO KILL HIM, WHY WOULDN'T THEY HAVE CALLED? WHY WOULDN'T
15 THEY HAVE CALLED? THEY SEEM TO KNOW A LOT OF PEOPLE IN
16 THIS NEIGHBORHOOD. WHENEVER MR. JAMES' HOUSE WAS NEARBY,
17 HE DIDN'T COME OUT AND SEE WHAT WAS GOING ON. WHY DIDN'T
18 THEY SAY, CALL AND GET HELP? OH, MY GOD, TROY IS DYING.
19 CALL AND GET HELP. COME ON, EMS. COME ON AND SAVE HIM.
20 BECAUSE AT THAT POINT THEY KNEW WHAT THEY HAD DONE. THEY
21 HAD KILLED TROY ROUSE WITHOUT JUSTIFICATION. AND THEY
22 KNEW THEY WERE WRONG. AND THAT WAS GUILT THEY HAD.
23 THAT'S WHY THEY DIDN'T CALL FOR HELP. THEY WERE MORE
24 CONCERNED WITH SAVING THEMSELVES THEN THEIR FRIEND, OR
25 THEIR SO CALLED FRIEND.

1 NOW, IF WE GO BACK AND THINK ABOUT SOME THINGS THAT
2 HAVE BEEN BROUGHT UP, AND ALSO LET ME ADD THIS. MR.
3 WHEELER SAYS, WHY, WHY, WHY. WELL I DON'T NEED TO
4 NECESSARILY SHOW YOU WHY SOMETHING HAPPENED. I MEAN IF
5 SOMEBODY WALKS UP AND SHOOTS SOMEBODY SEVERAL TIMES, DOES
6 IT SOMETIMES MATTER WHY HE DID IT? HIT SOMEBODY IN THE
7 BACK THREE TIMES AND YOU LEFT THEM THERE TO DIE? IF YOU
8 USE TOO MUCH FORCE? AT THAT POINT WHY DOES IT MATTER?
9 IT'S WHAT HAPPENED. MR. WHEELER ACKNOWLEDGED THAT HIS
10 CLIENT SHOT THE VICTIM TROY ROUSE, SIX, AT LEAST 5 OR 6
11 TIMES. HE DOESN'T DISPUTE THAT SOME TWO OF THOSE SHOTS
12 DIDN'T HELP CAUSE THE DEATH OF TROY ROUSE. IT'S NOT WHY,
13 WHAT HAPPENED. WHAT HAPPENED IS WHAT'S MORE IMPORTANT.
14 AND I DIDN'T PUT UP TESTIMONY THAT THIS WAS A ROBBERY OR
15 ANYTHING ELSE. BECAUSE I DIDN'T HAVE ANYTHING TO SAY IT
16 WAS. DOES THAT MEAN TROY ROUSE SHOULD HAVE BEEN ALLOWED
17 TO BE SHOT 7 TIMES, AND LEFT THERE DYING IN THE STREET?
18 THAT'S WHAT MR. WHEELER WOULD HAVE YOU BELIEVE. THAT'S
19 NOT CORRECT.

20 THE USE OF FORCE IN THIS CASE EXCEEDED THE BOUNDS OF
21 WHAT SHOULD HAVE BEEN USED. SHOOTING SOMEBODY, MR. THOMAS
22 SHOT THE VICTIM 6 TIMES. THERE WERE 7 GUNSHOT WOUNDS.
23 ONE CAME FROM A MEDIUM CALIBER TYPE, 38 TYPE OF GUN. AND
24 THAT WAS FROM MR. MCCALL SHOOTING THE VICTIM IN THE CHEST.
25 THE OTHER 6 WOUNDS WERE CONSISTENT WITH A SMALL CALIBER

1 GUN. AND 5 OF THOSE THERE WERE RECOVERED WERE CONSISTENT
2 WITH A 22 CALIBER. WHAT DID MR. THOMAS ACKNOWLEDGE HE
3 SHOT THE VICTIM WITH? A 22 CALIBER. BUT HE SHOOTS THE
4 VICTIM 6 TIMES AFTER THE VICTIM HAD BEEN SHOT IN THE CHEST
5 AT CLOSE RANGE. AND YOU TELL US, IS THAT NOT EXCESSIVE
6 FORCE? IS THAT NOT EXCESSIVE FORCE? I SUBMIT TO YOU IT
7 IS. IT IS. AND MR. THOMAS DID NOT HAVE THE RIGHT THAT
8 NIGHT TO DECIDE WHO WAS GOING TO DIE.

9 AND THEY MAY SAY WELL WE DIDN'T. AND Y'ALL KNOW, WE
10 KNOW TROY ROUSE WAS KILLED BY THESE TWO GENTLEMEN SITTING
11 RIGHT HERE BEFORE YOU. NOW YOU HEARD TIFFANY HILL, AND
12 SHE TESTIFIED SHE WAS IN THIS AREA NEAR THE TIME OF THE
13 SHOOTING. AND SHE IDENTIFIED ALL THREE DEFENDANTS, CHAD
14 JAMES, EFRAIN THOMAS, AND EUNICE MCCALL, AS BEING WITH
15 WHO? TROY ROUSE. WHY IS THAT IMPORTANT? WELL MR. MCCALL
16 AND MR. THOMAS WERE RIGHT THERE WITH THE VICTIM. AND THEY
17 WALKED BACK AND SHE GOES THIS WAY. AND SHE SAID SHE KNEW
18 THEM. THERE WERE SOME LIGHTS THERE. SHE KNEW WHO THEY
19 WERE AND THAT'S WHO WAS THERE. AND AGAIN, SHE SAID THAT
20 WHEN SHE GETS TO ABOUT THIS POINT, SHE HEARS A SCUFFLE.
21 AND SHE TURNS. AND SHE SEES TROY ROUSE AND EUNICE MCCALL
22 RIGHT HERE. SHE SAID NOTHING WAS BLOCKING HER VIEW.

23 AND WHAT DOES SHE SAY? SHE SAYS THAT SHE WAS
24 LOOKING THIS WAY. AND IT WAS TROY AND EUNICE FACE TO
25 FACE. AND I SAID WAS EUNICE MCCALL IN A HEADLOCK. DID

1 TROY ROUSE HAVE HIM IN A HEADLOCK. AND SHE SAID NO, NO.
2 AND HOW GOOD. FACE TO FACE. AND SHE SAID, NO, NO,
3 HEADLOCK. SHE SAID THEY WERE FACE TO FACE. AND SHE SAID
4 EUNICE MCCALL HAD A WEAPON AND HE FIRED IT. BAM. CLOSE
5 RANGE. CLOSE RANGE FROM WHERE SHE WAS AT. SHE ALSO TOLD
6 YOU THAT EFRAIN THOMAS WAS OVER IN THIS AREA. AND I
7 BELIEVE THAT SHE DID ALSO SAY THAT SHE DIDN'T NECESSARILY
8 SEE MR. THOMAS DO THE SHOOTING. SHE SAID HE WAS OVER IN
9 THAT AREA. AND IT WAS HARD FOR HER TO SEE BECAUSE OF THAT
10 BUILD. SHE COULD SEE TROY AND EUNICE. SHE SAW EUNICE
11 SHOOT TROY. AND THEN SHE SAW -- AND THEN SHE HEARD
12 SEVERAL SHOTS FROM HER LEFT, WHICH WOULD HAVE BEEN EFRAIN
13 THOMAS. AND THEN SHE RAN. AND THEN SHE RAN.

14 SO WE KNOW FROM HER TESTIMONY, THAT MR. ROUSE DIDN'T
15 HAVE ANYBODY IN A HEADLOCK AT THAT TIME. AND EVEN IF HE
16 DID, THAT DOES NOT MEAN THAT HE COULD SHOOT SOMEBODY 6
17 TIMES AFTER THEY HAD ALREADY BEEN SHOT ONCE IN THE CHEST
18 JUST BECAUSE SOMEBODY MAY HAVE BEEN IN A HEADLOCK. THAT'S
19 TOO MUCH FORCE. TOO MUCH FORCE.

20 NOW THEY WANT YOU BELIEVE THAT AFTER EUNICE MCCALL
21 SHOT TROY ROUSE AT POINT BLANK RANGE WITH A MEDIUM CALIBER
22 WEAPON, SHOT HIM IN THE CHEST, AND THAT WAS A FATAL WOUND,
23 THAT HE WAS STILL A DANGER; THAT HE WAS STILL A THREAT;
24 THAT THEY HAD NO CHOICE; THAT THERE WAS NO CHOICE BUT TO
25 SHOOT TROY ROUSE 6 MORE TIMES. REMEMBER I ASKED EUNICE

1 MCCALL WHOSE FAULT IT WAS THAT Y'ALL WOULD KEEP SHOOTING.
2 THEY WOULD KEEP SHOOTING TROY ROUSE, AND HE SAID TROY
3 ROUSE'S. BASICALLY THOUGHT HE WOULDN'T GO DOWN THE FIRST
4 COUPLE OF SHOTS. HOW DO WE KNOW THAT TROY ROUSE WASN'T
5 TRYING TO SHUFFLE FOR HELP OR MOVE AROUND AFTER HE HAD
6 BEEN SEVERELY WOUNDED? THAT WOULD MAKE SENSE. WHAT KIND
7 OF DANGER IS HE AT THAT POINT AFTER HE HAD BEEN SHOT IN
8 THE CHEST AT POINT BLANK RANGE. AND THEN MR. THOMAS
9 SHOOTS HIM IN THE BACK THREE TIMES. HE DOESN'T REMEMBER
10 ANYTHING BESIDES THAT. AND YOU CAN LOOK AT THE DIAGRAM
11 FROM THE PATHOLOGIST AND THERE'S ONE SHOT THAT'S
12 CONSISTENT WITH A 22 CALIBER THAT ENTERS. ENTERS HERE AND
13 GOES UPWARD. AND WHY IS THAT IMPORTANT?

14 WELL I WASN'T THERE, SO I CAN'T TELL YOU I KNOW HE
15 WAS LAYING HERE OR LAYING THERE. BUT LET'S JUST THINK
16 ABOUT IT. COMMON SENSE AND GOOD JUDGMENT. THE
17 PATHOLOGIST TOLD YOU, DR. ROSS, THAT THAT WOULD BE
18 CONSISTENT WITH A DEFENSIVE WOUND. WHY IS THAT, AFTER HE
19 HAD BEEN SHOT IN THE BACK THREE TIMES IF HE HAD GONE TO
20 THE GROUND AND WAS LAYING THERE AND WAS IN A DEFENSIVE
21 POSITION SOMEBODY COULD SHOOT AGAIN AND THE BULLET WOULD
22 ENTER HERE AND GO UP THIS WAY? THAT WOULD BE CONSISTENT
23 WITH MR. THOMAS SHOOTING THE VICTIM IN THE BACK, AND AS HE
24 TURNED AND FELL ANOTHER SHOT TO THE KNEE. I MEAN, HOW DO
25 YOU SHOOT HERE AND COME UP THIS WAY? BECAUSE MR. ROUSE

1 WOULD HAVE TO BE WAY UP HERE ABOUT TWICE THE HEIGHT THAT
2 HE IS. SO THAT IS A DEFENSIVE WOUND. A DEFENSIVE WOUND.
3 MR. ROUSE WAS TRYING TO PROTECT HIMSELF AFTER HE HAD BEEN
4 SHOT SEVERAL TIMES. AND THEN HE WAS SHOT SOME MORE UNTIL
5 HE DIED.

6 AND MR. WHEELER TALKED ABOUT HIS CLIENT GETTING ON
7 THE STAND AND COMING CLEAN. COMING CLEAN. AND HE SAID,
8 WHY SHOULDN'T WE BELIEVE. WELL MAYBE ALL THE TIMES HE
9 ADMITTED TO LYING BEFORE WHEN HE TOOK THE STAND. THAT
10 WOULD BE A GOOD START. THAT WOULD BE A GOOD START. HE
11 DIDN'T DISPUTE THAT HE LIED TO CAPTAIN BURKE. A SHORT
12 TIME AFTER THIS CRIME OCCURRED, HE TALKED TO CAPTAIN
13 BURKE. HE DIDN'T SAY HE WAS THREATENED OR COERCED TO SAY
14 ANYTHING. HE ACKNOWLEDGED THAT HE TOLD CAPTAIN BURKE HE
15 HAD NOTHING TO DO WITH IT. HE WAS IN CAMDEN. HE DIDN'T
16 SAY, I WAS DEFENDING MY FRIEND. DIDN'T SAY SELF DEFENSE.
17 HE SAID I WASN'T INVOLVED AT ALL. A LIE. A LIE, LADIES
18 AND GENTLEMEN. AND YOU DETERMINE HOW MUCH YOU BELIEVE IN
19 OF WHAT SOMEBODY SAYS. LOOK AT THE TRACK RECORD. THE
20 PAST HISTORY.

21 THEN HE GIVES A STATEMENT, A CONFESSION TO
22 INVESTIGATOR THOMPSON. AND IN THERE HE SAID, Y'ALL HAVE
23 THIS CONFESSION. BUT YOU HEARD HIM ON THE STAND. HE
24 SAID, WHEN HE, WHICH WOULD BE TROY, CHARGED ME, I RAN
25 AROUND HIM. WHEN I RAN AROUND HIM, I SHOT HIM THREE TIMES

1 IN HIS BACK. SO IN THIS STATEMENT TO INVESTIGATOR
2 THOMPSON, HE CLAIMS THAT TROY ROUSE WAS CHARGING HIM.
3 TROY ROUSE IS COMING AT HIM. HE MOVED TO THE SIDE, AND
4 THEN HE TURNS AND FIRES THREE TIMES IN THE BACK OF MR.
5 ROUSE. THAT'S HIS OWN STATEMENT. THAT'S HIS OWN
6 STATEMENT THAT MR. ROUSE WAS SHOT IN THE BACK. TWICE IN
7 THE BACK AND ONCE IN THE ABDOMEN. WHAT DOES THAT TELL
8 YOU? WHAT THAT TELLS YOU IS THAT AT THAT POINT, MR. ROUSE
9 WAS NO LONGER ENGAGED IN FIGHTING WITH MR. MCCALL BECAUSE
10 HE HAD TO DISENGAGE IN THE SCUFFLE WITH MR. MCCALL TO COME
11 AFTER MR. THOMAS.. AND THAT MAKES SENSE.. AND OF COURSE
12 AFTER BEING SHOT IN THE CHEST, IF TROY ROUSE WAS COMING
13 TOWARDS EFRAIN, MR. THOMAS COULD HAVE EASILY HAVE MOVED
14 OUT OF THE WAY. AND AT THAT POINT WHAT SHOULD HE HAVE
15 DONE? HE COULD HAVE RAN. HE COULD HAVE DONE A LOT OF
16 THINGS.

17 I MEAN AT THIS POINT TROY ROUSE HAD BEEN SHOT IN THE
18 CHEST AT POINT BLANK RANGE. AT THAT POINT HE'S NOT A
19 THREAT. HE'S NOT GOING TO RUN SOMEBODY DOWN. HOW IS HE
20 GOING TO BEAT SOMEBODY DOWN WHEN HE HAS BEEN SHOT IN THE
21 CHEST? BUT EFRAIN THOMAS CHOSE, MADE A CONSCIOUS DECISION
22 TO PUMP THREE ROUNDS, TWO IN THE BACK AND ONE IN THE
23 ABDOMEN OF TROY ROUSE. THEN HE ALSO PROCEEDED AND HE SAID
24 HE DIDN'T REMEMBER. BUT WE KNOW THERE WERE THREE OTHER
25 WOUNDS CONSISTENT WITH COMING FROM A 22 CALIBER. SO HE

1 SHOT HIM SIX TIMES. SIX TIMES, LADIES AND GENTLEMEN.

2 NOW MR. THOMAS TELLS US ON THE STAND, SAID, OH, I
3 WASN'T DEFENDING MYSELF. REMEMBER I SAID, SELF DEFENSE.
4 AND HE SAID, NO. JUST I WAS DEFENDING MR. MCCALL. SO
5 EVEN MR. THOMAS ACKNOWLEDGED THAT THIS WAS A LIE. THAT
6 TROY ROUSE DIDN'T COME AFTER HIM, AND NO, IT'S NOT SELF
7 DEFENSE. DO YOU REMEMBER WHAT I SAID? THE FIRST
8 STATEMENT HE SAID HE HAD NOTHING TO DO WITH IT. HIS
9 SECOND STATEMENT WAS SELF DEFENSE. HE CAME AFTER ME. NOW
10 HE'S SAYING, NO, I WAS DEFENDING MY FRIEND. WHY?
11 BECAUSE HE KNEW SELF DEFENSE WASN'T GOING TO PLAY. HE
12 KNEW SELF DEFENSE WASN'T GOING OT CUT IT. SHOOTING
13 SOMEBODY IN THE BACK THREE TIMES. YOU TELL ME HOW THAT IS
14 SELF DEFENSE. AND AS FAR DEFENDING HIS FRIEND, AS I SAID,
15 HE SHOT THE VICTIM THREE TIMES IN THE BACK. AND WE KNOW
16 MR. ROUSE DIED BECAUSE OF IT.

17 AND, LADIES AND GENTLEMEN, YOU CAN THINK ABOUT WHAT
18 WAS SAID ON THE STAND AND PRIOR STATEMENTS AND WERE THEY
19 CONSISTENT OR NOT CONSISTENT AND THAT SORT OF THING. BUT
20 EFRAIN THOMAS WAS NOT CONSISTENT FROM THE VERY BEGINNING.
21 FROM THE VERY BEGINNING. AND THAT GOES TO HIS
22 CREDIBILITY. AND WHAT YOU MAY BELIEVE AND WHAT YOU MAY
23 NOT, THAT'S UP TO YOU. BUT IT DOESN'T MAKE SENSE. NOW AS
24 FAR AS MR. MCCALL GOES, THERE IS A KIND OF TWO DIFFERENT
25 VERSIONS OF WHAT HAPPENED. I MEAN EFRAIN THOMAS SAYS OH,

1 I WAS DEFENDING MY FRIEND. AND WHAT DOES HE SAY? HE SAYS
2 EUNICE MCCALL SHOT TROY ROUSE. REMEMBER THAT? AND THAT
3 HE DIDN'T GO DOWN. AND THAT HE CAME AROUND AND SHOT HIM
4 IN THE BACK. AND WHAT DOES EUNICE MCCALL SAY? NO, HE
5 SAID WE WERE STRUGGLING. WE WERE FIGHTING. THE GUN WENT
6 OFF TWICE. IT DIDN'T HIT ME. IT DIDN'T HIT TROY ROUSE.
7 IT JUST WENT, I DON'T KNOW, IT JUST WENT OFF. AND THEN
8 WHAT DID HE SAY? THAT EFRAIN THOMAS CAME AROUND AND FIRED
9 THREE SHOTS INTO THE BACK OF TROY ROUSE.

10 SO THAT DOESN'T MAKE SENSE. WHAT EUNICE MCCALL SAID
11 HAPPENED DOESN'T MATCH WHAT EFRAIN THOMAS SAID HAPPENED.
12 AND BY THE WAY, WHY IS MR. EUNICE MCCALL, WHY DO THEY TALK
13 ABOUT SELF DEFENSE IF HE DIDN'T EVEN SHOOT THE VICTIM?
14 WHAT SENSE DOES THAT MAKE? IS IT SELF DEFENSE OR DID HE
15 NOT DO ANYTHING AT ALL. THAT'S NOT CONSISTENT. NOW YOU
16 ALSO HEARD ON CROSS EXAMINATION THAT EUNICE MCCALL IN MY
17 QUESTIONS, THAT HE DID ACKNOWLEDGE AT SOME POINT HE AND
18 TROY ROUSE DISENGAGED. AND THAT HE TURNED AND RAN. AND I
19 SAID WELL WHY DIDN'T TROY ROUSE SHOOT YOU AT THAT POINT
20 AND TIME. AND HE SAID THAT HE DIDN'T KNOW. AND HE
21 ADMITTED THAT TROY ROUSE STILL HAD THE GUN AND WAS RIGHT
22 THERE AT HIM. SO, YOU KNOW, IF HE IS TELLING THE TRUTH,
23 WHY WOULDN'T MR. ROUSE HAVE GONE AHEAD AND SHOT HIM?
24 BECAUSE TROY ROUSE NEVER HAD THE GUN.

25 EFRAIN THOMAS SAID EUNICE MCCALL SHOT TROY ROUSE.

1 EFRAIN THOMAS SAID TROY ROUSE DID NOT HAVE A GUN OR A
2 WEAPON ON HIM THAT NIGHT. EFRAIN THOMAS, NOT ONLY DID THE
3 VICTIM DID NOT EVER GET HOLD OF A WEAPON. SO THAT DOES
4 NOT MAKE SENSE AND MATCH UP. IT DOES NOT MATCH UP AND
5 MAKE SENSE, BECAUSE IT IS NOT CONSISTENT. AND NOT
6 ACCURATE. NOW AGAIN, WHEN YOU GO BACK THERE AND THERE ARE
7 GOING TO BE SOME CHARGES AND DIFFERENT KINDS OF THINGS.
8 MURDER IS TAKING SOMEBODY'S LIFE WITHOUT JUSTIFICATION AND
9 WITH MALICE. NOW MALICE MAY BE SOMETHING YOU HAVE A LONG
10 TIME OR A SHORT TIME. AND ALSO BY USING A GUN YOU CAN
11 INFER MALICE. WHEN YOU SHOOT SOMEBODY SIX TIMES, THAT'S
12 MALICE. MAYBE IF HE HAD SHOT MR. ROUSE IN THE LEG, MAYBE
13 THAT WAS A REASON. BUT THREE SHOTS IN THE BACK? AND
14 THREE MORE SHOTS? AND ONE IN THE KNEE? THIS IS A
15 DEFENSIVE WOUND. AND THE MAN IS DOWN ABOUT TO DIE? THAT
16 IS NOT REASONABLE.

17 AND AS FAR AS EUNICE MCCALL, EFRAIN THOMAS SAID
18 EUNICE MCCALL SHOT TROY ROUSE AT POINT BLANK RANGE IN THIS
19 AREA. IN THIS AREA. EUNICE MCCALL DIDN'T HAVE ANY
20 EVIDENCE OF WOUNDS ON HIM. LUCILLE WESLEY TESTIFIED THAT
21 AFTER THE SHOOTING, HE CAME IN HER HOUSE AND ADMITTED
22 WHAT? THAT HE HAD SHOT SOMEBODY. LUCILLE WESLEY SAID HE
23 SAID THAT HE SHOT SOMEBODY. NOW HE'S SAYING THERE WAS NO
24 MOTIVE. WE WERE JUST FIGHTING. I RAN OFF. SHOTS JUST
25 RANG OUT. WHAT SENSE DOES THAT MAKE? AND LUCILLE WESLEY

1 SAID WHAT ELSE? SHE SAID I DIDN'T SEE A BROKEN NOSE. I
2 DIDN'T SEE A BLACK EYE. I DIDN'T SEE BUSTED LIP. I
3 DIDN'T SEE BLOOD ON THE SHIRT. SHE SAID I DIDN'T SEE ANY
4 SIGNS OF ANY KIND OF INJURIES OF A STRUGGLE.

5 EFRAIN THOMAS SAID THE SAME THING. I DIDN'T NOTICE
6 ANY BLACK EYE, BROKEN NOSE, BLOODY LIP, ANY KIND OF
7 INJURIES ON MR. MCCALL. SO EVEN IF THERE WAS A STRUGGLE,
8 WAS SHOOTING HIM IN THE CHEST SUFFICIENT? WAS THERE A
9 REASON TO DO THAT? THERE WASN'T. NEITHER ONE OF THESE
10 DEFENDANTS HAD A REASON TO KILL TROY ROUSE. A LEGAL
11 JUSTIFICATION. A REASON TO JUSTIFY BY LAW. BY LAW. MR.
12 MCCALL WANTS YOU TO BELIEVE THAT TROY ROUSE HAD A GUN.
13 BUT THE OTHER EVIDENCE PRESENTED WAS THAT HE DIDN'T. EVEN
14 FROM MR. THOMAS. HE WANTS YOU TO BELIEVE THAT TROY ROUSE
15 WAS BIGGER, STRONGER, HEAVIER AND HAD THE GUN. AND HE
16 HAD NOTHING. WHAT SENSE DOES THAT MAKE? IF HE IS THAT
17 MUCH SMALLER AND DIDN'T HAVE A WEAPON, THEN WHY DIDN'T HE
18 HAVE MARKS ON HIM? WHY DIDN'T HE HAVE A BROKEN NOSE OR A
19 BLACK EYE? WHY DIDN'T TROY ROUSE JUST PUSH HIM BACK WITH
20 ALL HIS STRENGTH AND BAM, SHOOT HIM? IT WOULD HAVE BEEN
21 EASIER IF HE'S THAT STRONG. IT WOULD HAVE BEEN EASIER.
22 BECAUSE THAT'S NOT WHAT HAPPENED.

23 LADIES AND GENTLEMEN, YOU KNOW, HE ACKNOWLEDGED,
24 TROY ROUSE HIT HIM IN THE BACK OF THE HEAD AND STARTED
25 KIND OF PUSHING AND SHOING. AND WHAT PROBABLY HAPPENED

1 IS HE JUST GOT TIRED OF IT. MR. MCCALL GOT TIRED OF IT
2 AND SAID YOU AIN'T GOING TO PUSH ME AROUND. I GOT A GUN.
3 YOU'RE GOING TO SLAP MY HAT AND PUSH ME AROUND A LITTLE
4 BIT. YOU'RE AIN'T GOING TO PUSH ME AROUND. I'M TOUGHER.
5 SO HE PULLED THAT WEAPON OUT AND SHOT THE VICTIM AT CLOSE
6 RANGE. NOW WE TALKED ABOUT WHERE THE BODY WAS FOUND OVER
7 HERE. AND I SUBMIT TO YOU THAT FROM TIFFANY HILL'S
8 TESTIMONY WHEN EUNICE MCCALL SHOT TROY ROUSE AND THEN WENT
9 THIS WAY, THAT'S WHEN EFRAIN THOMAS MOVED OUT OF THE WAY
10 AND FIRED INTO THE BACK. SO IT WOULDN'T BE CONSISTENT
11 WITH THE BODY ENDING UP OVER HERE.

12 WE ALSO DON'T KNOW IF TROY ROUSE MAY HAVE STRUGGLED
13 AND MOVED SOME. BECAUSE THEY LEFT THE SCENE AND RAN OFF
14 AND DIDN'T CALL FOR HELP. WE DON'T KNOW WHAT HAPPENED.
15 TROY ROUSE'S BODY, HE STILL COULD HAVE BEEN BARELY
16 BREATHING AND LIVING. AND HE COULD HAVE BEEN DRAGGING
17 HIMSELF OR MOVING DOWN THE ROAD. WE DON'T KNOW. ALSO,
18 THE AUTOPSY, THE PATHOLOGIST, SHE SAID THAT THE SHOTS TO
19 THE CHEST, WHICH WE SHOWED CAME FROM THE DEFENDANT, WAS
20 FATAL. WAS FATAL. SHE ALSO SAID SHOTS 6 AND 7 TO THE
21 BACK, WHICH THE DEFENDANT ADMITTED BEING THE SHOOTER, WERE
22 POTENTIALLY FATAL TOO. AND WHAT DID SHE SAY? THOSE SHOTS
23 CONTRIBUTED TO THE DEATH BECAUSE OF THE DAMAGE THEY DID TO
24 MR. ROUSE'S BODY. AND MR. WHEELER HASN'T DISPUTED THAT;
25 THAT THE SHOTS CAME FROM HIS CLIENT AND THOSE ARE THE

1 SHOTS THAT DID HELP KILL TROY ROUSE.

2 SO, LADIES AND GENTLEMEN, AS I SAID IN THE BEGINNING
3 WHEN WE FIRST STARTED OPENING STATEMENTS, TWO PEOPLE CAN
4 BE CONVICTED OF MURDER. ESPECIALLY WHEN BOTH PEOPLE ARE
5 UNLOADING SHOTS INTO THE VICTIM. AND THAT'S WHAT HAPPENED
6 IN THIS CASE. AND WE KNOW EUNICE MCCALL DID NOT HAVE ANY
7 WOUNDS OR INJURIES AFTER THE SHOOTING. WE KNOW THAT
8 EFRAIN THOMAS HAS CHANGED HIS STORY NUMEROUS TIMES. NOW
9 HE'S SAYING TROY SAYS, NO, I AM NOT GOING TO STOP. I AM
10 GOING TO KILL THAT SO AND SO. I WON'T SAY WHAT HE SAID.
11 BUT THAT WASN'T IN HIS STATEMENT, WAS IT? IT WASN'T IN
12 HIS STATEMENT THAT TROY SAID THAT. HE SAID A LOT OF OTHER
13 THINGS. BUT WHO TO BELIEVE? WHAT MAKES SENSE?

14 AS I SAID BEFORE, LADIES AND GENTLEMEN, THE
15 DEFENDANTS ARE GUILTY OF MURDER, EFRAIN THOMAS AND EUNICE
16 MCCALL. THEIR STORIES DON'T MATCH UP. MR. THOMAS' SURE
17 DON'T MATCH UP GOING BACK TO CAPTAIN BURKE TALKING. SURE
18 DON'T MATCH UP. WE BELIEVE THAT WHEN YOU GO BACK TO
19 DELIBERATE, THAT WE HAVE PROVEN OUR CASE BEYOND A
20 REASONABLE DOUBT. THAT YOU WILL FIND EFRAIN THOMAS AND
21 EUNICE MCCALL GUILTY OF MURDER OF THE KILLING OF TROY
22 ROUSE. THE FORCE THEY USED WAS MORE THAN THEY HAD A RIGHT
23 TO USE. AND THEY DIDN'T HAVE THAT POWER THAT NIGHT TO
24 DECIDE WHO WAS GOING TO DIE. WHO MAYBE WAS GOING TO LIVE.
25 THAT WASN'T THEIR RIGHT THAT NIGHT. AND THEY COULD HAVE

1 DONE A LOT OF OTHER THINGS BESIDES PUTTING 7 ROUNDS INTO
2 THE VICTIM, TROY ROUSE. A LOT OF OTHER THINGS. AND IF
3 FOR SOME REASON YOU DON'T FEEL LIKE IT WAS MALICE BY THE
4 FACT THAT THEY PUT SOME OF THESE BULLETS INTO THE VICTIM,
5 YOU CAN ALSO FIND HIM GUILTY OF VOLUNTARY MANSLAUGHTER.
6 AND THAT MEANS THEY KILLED TROY ROUSE AND THERE WASN'T ANY
7 MALICE. AND I'LL LEAVE THAT UP TO Y'ALL. BUT THE BOTTOM
8 LINE IS, THESE TWO DEFENDANTS KILLED TROY ROUSE. KILLED
9 HIM WITHOUT PROPER JUSTIFICATION. WITHOUT A REASON. AND
10 WE BELIEVE THEY ARE GUILTY OF MURDER.

11 THEY HAD POSSESSION OF A WEAPON, A FIREARM, DURING
12 THIS CRIME. WE HAVE CHARGED THEM WITH POSSESSION OF A
13 FIREARM DURING A VIOLENT CRIME. THAT'S WHAT MURDER AND
14 MANSLAUGHTER IS, VIOLENCE. EVEN THOUGH EUNICE MCCALL SAYS
15 HE DIDN'T HAVE THE WEAPON. EFRAIN THOMAS SAYS, YES,
16 EUNICE MCCALL DID. WE HAVE PRESENTED EVIDENCE THAT BOTH
17 OF THEM WERE THE SHOOTERS. AND BOTH OF THEM HAD A WEAPON,
18 SO THEY ARE GUILTY OF THAT CHARGE. AGAIN, LADIES AND
19 GENTLEMEN, THANK YOU FOR YOUR TIME AND YOUR ATTENTION TO
20 THIS MATTER. AND WE FEEL WE HAVE PRESENTED OUR CASE
21 BEYOND A REASONABLE DOUBT. AND WE JUST ASK THAT YOU USE
22 YOUR COMMON SENSE AND GOOD JUDGMENT. AND JUST THINK ABOUT
23 WHAT YOU'VE HEARD ON THE STAND. AND LOOK AT THE EVIDENCE
24 THAT'S BEEN PRESENTED TO YOU. AND WHAT MAKES SENSE.
25 THANK YOU.

1 THE COURT: MR. JOHNSON.

2 MR. JOHNSON: THANK YOUR HONOR. MAY IT PLEASE THE
3 COURT.

4 THE COURT: YES, SIR.

5 MR. JOHNSON: GOOD AFTERNOON, LADIES AND GENTLEMEN.
6 FIRST OF ALL, I WOULD LIKE TO EXPLAIN SOME THINGS TO YOU.
7 MY CLIENT, CHAD JAMES, DID NOT TESTIFY. IT'S HIS
8 CONSTITUTIONAL RIGHT NOT TO TESTIFY. I THINK THE COURT
9 HAS TOLD YOU THAT YOU SHOULDN'T HOLD THAT AGAINST HIM.
10 THERE ARE BASICALLY TWO REASONS FOR THAT. ONE REASON IS
11 IT'S HIS CONSTITUTIONAL RIGHT TO REMAIN SILENT. BUT ALSO
12 THAT THERE WAS NO NEED FOR HIM TO TESTIFY. YOU HEARD THIS
13 WHOLE CASE. THE STATE PRESENTED IT, AND THE DEFENDANT
14 PRESENTED IT. EVERYTHING THAT WE COULD HAVE TOLD YOU,
15 HAS ALREADY BEEN TOLD TO YOU. THE STATE EVEN TOLD YOU
16 ABOUT THE STATEMENT THAT HE HAD GIVEN AS HE EXPLAINED WHAT
17 HAPPENED. THERE'S ALSO A SECOND REASON. THE SECOND
18 REASON IS THAT BECAUSE HE DIDN'T GIVE ANY TESTIMONY, I GET
19 TO BE THE LAST PERSON TO TALK TO YOU. YOU WILL NOT HEAR
20 ANYTHING ELSE FROM THE STATE AND OR THE DEFENDANT, JUST
21 ME. AND IT'S VERY IMPORTANT FOR CHAD JAMES THAT YOU
22 LISTEN TO ME RIGHT NOW. IT'S EXTREMELY IMPORTANT BECAUSE
23 EVERYBODY THAT YOU HAVE HEARD FROM SINCE YOU HAVE BEEN
24 HERE, EVERYBODY HAS GIVEN TWO STATEMENTS. SUPPOSEDLY ONE
25 IS A LIE AND ONE IS THE TRUTH. THE ONLY PERSON THAT HAS

1 ONLY GIVEN ONE STATEMENT WAS CHAD JAMES. HIS STATEMENT
2 THAT WAS GIVEN TO THE POLICE WHICH WAS READ BY OFFICER
3 THOMPSON. AND BEFORE I GO ANY FURTHER, I NEED TO
4 APOLOGIZE, OFFICER THOMPSON. I WAS A LITTLE SHORT WITH
5 HIM WHEN HE WAS ON THE WITNESS STAND. SOMETIMES I AM
6 OVERZEALOUS IN REPRESENTING MY CLIENT. BUT SEE, MY
7 CLIENT'S LIFE IS ON THE LINE. AND I WOULD BE LESS OF A
8 LAWYER IF I WASN'T ZEALOUS. BUT I DO OWN HIM AN APOLOGY,
9 BECAUSE HE IS A FRIEND OF MINE. AND THERE IS A CERTAIN
10 WAY THAT EVERYBODY SHOULD BE TREATED, AND I BECAME
11 OVERZEALOUS.

12 HOWEVER, HE READ THIS TO YOU. THIS WITNESS STATEMENT
13 WAS GIVEN TO HIM BY MY CLIENT. HE SAID HE PROCEEDED TO
14 TURN LEFT ON FRIERSON. WAS GOING TO MAKE A LEFT. THAT HE
15 WROTE IN THERE. A LEFT ON WILSON STREET WHEN HE SAW ALL
16 THE POLICE CARS. HE TURNED AROUND, DROVE BACK TO THE
17 CLUB. HE THEN DROVE TO THE RESIDENCE A SHORT TIME LATER
18 WHERE HE TOOK EFRAIN, COURTNEY, SAMANTHA, KENO, TO CAMDEN
19 IN CORY JAMES' GREEN NEON. THEY PROCEEDED ON THE SHELL
20 STATION ON US 15 TO GET SOME GAS. THEY THEN TOOK I-20 TO
21 RIVER WIND APARTMENTS IN CAMDEN WHERE THEY DROPPED OFF
22 COURTNEY AND EFRAIN. HE STATED THAT HE HAD NO KNOWLEDGE
23 ABOUT THE MURDERS OF EFRAIN, OR EFRAIN'S INVOLVEMENT IN
24 THE MURDER UNTIL THE NEXT DAY. ACCORDING TO THE SUBJECT
25 3, WHICH WAS CHAD, HE MERELY HAD GIVEN EFRAIN AND HIS GIRL

1 A RIDE TO SAMANTHA'S HOUSE.

2 AND THAT WAS HIS STATEMENT. THE FIRST TIME, THE
3 FIRST ATTEMPT, THAT WAS HIS STATEMENT. THE ONLY THING
4 THAT WAS DIFFERENT IN HIS STATEMENT WAS THE WORD LEFT. IF
5 YOU LOOK AT THE BOARD, I ASKED THE OFFICER. HE SAID CAME
6 DOWN FRIERSON, AND LEFT. WHICH WOULD HAVE BEEN THIS WAY.
7 IT DOESN'T MATCH, TRUE. BUT THE OFFICER WAS WRITING THIS,
8 NOT CHAD. HE DID NOT WRITE THE STATEMENT, THE OFFICER
9 WROTE IT. I ASKED THE OFFICER IF HE CHANGED THAT
10 STATEMENT TO RIGHT. HE MADE A RIGHT. SAW THE POLICE
11 OFFICER. TURNED AROUND. WENT BACK. AND IF YOU KNOW
12 ANYTHING ABOUT HIS AREA, THERE IS A CIRCLE GOING THAT WAY.
13 IT GOES BACK TO THE CLUB. A FEW MINUTES LATER, A FEW
14 LATER ON, HE GOES BACK TO HIS HOUSE. IT MATCHES. HE
15 DIDN'T LIE. HE DIDN'T PRETEND. HE DIDN'T SAY, I DIDN'T
16 SEE HIM. HE DIDN'T SAY, I DIDN'T TAKE THEM, I DIDN'T
17 DRIVE THEM. HE ADMITTED IT. HE'S THE ONLY PERSON THAT
18 TOLD THE TRUTH. AND FOR TELLING THE TRUTH, HE'S SITTING
19 HERE NOW.

20 NOW THE STATE WOULD ASK YOU TO, I GUESS THEY WOULD
21 ASK YOU TO STRETCH THE TRUTH. BECAUSE, LADIES AND
22 GENTLEMEN, EVEN IF YOU BELIEVE, LET'S TALK ABOUT TIFFANY
23 HILL, WHO'S THE ONLY PERSON THAT EVEN PLACES MY CLIENT AT
24 THE SCENE. AND EVEN SHE SAYS WHEN I CROSS EXAMINED HER,
25 YOU KNOW, SHE SAID, I SAW HIM EARLIER. I DON'T REMEMBER

1 SEEING HIM DURING THE FIGHT. OR I DON'T KNOW WHAT
2 HAPPENED TO HIM. BUT SHE SAYS SHE WAS COMING FROM A
3 FRIEND'S HOUSE GOING HOME TOWARDS THIS SIDE, TOWARDS RAY
4 STREET THAT SHE PASSED THEM. I SUBMIT TO YOU, HOW COULD
5 SHE PASS THEM ON FRIERSON WHEN THEY ARE WALKING DOWN RAY
6 STREET? AND WHY WOULD SHE PASS THEM ON FRIERSON, SHE
7 LIVES ON RAY STREET TWO BLOCKS DOWN? SHE GOES BACK AROUND
8 THE STORE. THAT DOESN'T MAKE SENSE.

9 NOW I'M FROM THE LOW COUNTRY ORIGINALLY. AND MY
10 PARENTS TOLD ME TO CALL A DOG A DOG, A CAT A CAT. SHE
11 LIED, PLAIN AND SIMPLE. YOU HAD SOMEONE ELSE. I DID NOT
12 EVEN HAVE TO PUT UP ANY WITNESSES. WHEN THE DEFENDANT
13 PUT UP A WITNESS WHO SAID SHE HEARD THE SHOTS, WALKED OUT
14 ON THE PORCH. LIVED NEXT DOOR TO TIFFANY HILL. TIFFANY
15 HILL WALKS OUT OF HER HOUSE. UNLESS SHE'S A TRACK STAR, I
16 DON'T SEE HOW THAT CAN HAPPEN. SOMEBODY IS LYING. THAT'S
17 IMPOSSIBLE. A LOT OF PEOPLE WANT TO BE INVOLVED IN
18 THINGS. THEY LIKE BEING INVOLVED IN THINGS. THEY LIKE
19 THE THRILL OF SITTING HERE AND BEING SEEN AND HAVING THEIR
20 NAMES IN THE PAPER. THEY SIT AROUND AND LISTEN TO OTHER
21 PEOPLE SAY THINGS. AND SOMETIMES LIKE MY FATHER TOLD ME,
22 WHEN YOU OPEN YOUR MOUTH YOU GET IN TROUBLE. SHE LIKED
23 WALKING AROUND SAYING, I KNOW WHAT HAPPENED. AND NOW
24 SHE'S GOT TO CONTINUE WITH THE LIE. BUT THE LIE DOESN'T
25 MATCH. SHE MARKED THAT BOARD. NOBODY DIDN'T PUT -- THAT

1 BOARD DIDN'T HAVE ANY MARKS ON IT.

2 EVERYBODY THAT CAME AFTER THAT SAID THAT IT HAPPENED
3 OVER HERE. NOW THE STATE WANTS TO SAY THAT AFTER THIS MAN
4 HAD BEEN SHOT 7 TIMES, HE CRAWLED ALL THE WAY TO THE
5 CORNER? THERE IS NO -- THEY PICKED UP THE ROUNDS FROM THE
6 CORNER. SO I GUESS HE TOOK THE BULLETS WHEN HE WENT TO
7 THE CORNER. BECAUSE SHE COULD NOT SEE THROUGH THAT
8 BUILDING. BUT THAT'S ENOUGH FOR HER. BOTH DEFENDANTS
9 TOLD YOU WHO WALKED TO THIS STORE. THEY GAVE YOU CLEAR,
10 CONVINCING EVIDENCE. THEY TOLD YOU TWO INDIVIDUALS THAT
11 THE STATE KNEW ABOUT, AND DIDN'T EVEN PRESENT. BECAUSE IT
12 DIDN'T MATCH THEIR STORY.

13 NOW I UNDERSTAND THAT EACH PERSON HAS A PURPOSE. THE
14 STATE'S PURPOSE IS TO PROSECUTE. THE DEFENDANT'S IS TO
15 DEFEND. THE JUDGE IS THE JUDGE. AND THE JURY IS TO
16 DECIDE THE EVIDENCE, AND MAKE A DETERMINATION OF GUILT.
17 BUT THERE ARE CERTAIN STRETCHES THAT YOU SHOULD DO. THERE
18 WAS EVIDENCE GIVEN THAT WOULD INDICATE THAT MY CLIENT, THE
19 ONLY THING HE DID WAS GIVE SOMEBODY A RIDE. NOW IF THAT
20 BY ITSELF IS ENOUGH THAT HE IS GUILTY OF ASSISTING THE
21 DEFENDANT IN ESCAPING, THEN YOU HAVE EVERY REASON TO FIND
22 HIM GUILTY. BUT THINK ABOUT THIS, HE WASN'T TRYING TO
23 ESCAPE, HE WAS SCARED. HE WENT AND TOLD HIS GIRLFRIEND. -
24 HE WENT TO -- THERE HAS BEEN A LOT OF THE USE OF THE WORD
25 WHY. WELL I CAN TELL YOU WHY CHAD DIDN'T CALL ANYBODY,

1 BECAUSE HE DIDN'T KNOW WHAT HAPPENED.

2 I CAN TELL YOU WHY CHAD DROVE EFRAIN TO CAMDEN.
3 BECAUSE HE DIDN'T KNOW EFRAIN HAD KILLED ANYBODY. HE
4 ASKED EFRAIN WHY ARE YOU LAYING DOWN IN THE BACK OF THE
5 CAR. REMEMBER EFRAIN SAID THAT? AND HE TOLD HIM HE
6 WASN'T FEELING GOOD. AND I NEEDED TO LAY DOWN. HE
7 BROUGHT THAT OUT HIMSELF. THERE IS -- THAT'S THE ONLY
8 THING THAT HE COULD ASK. WHY ARE YOU LAYING DOWN. ALSO
9 REMEMBER SAMANTHA SAID THEY HAD PLANNED EARLIER THAT DAY
10 TO GO TO CAMDEN. SO THERE WAS NOTHING THAT CHAD EVEN KNEW
11 WITHOUT GOING THERE. HE ALWAYS TOOK THEM TO CAMDEN TO HER
12 HOUSE. THEY WAS ALL OVER TO HER HOUSE EARLIER THAT DAY.
13 NOW YOU HAVE BEEN SITTING HERE. AND I KNOW YOU'RE TIRED
14 OF SITTING DOWN. AND I'M NOT GOING TO BRING THIS ON. YOU
15 SAT THROUGH THE SAME TRIAL THAT I SAT THROUGH. IF YOU SAW
16 WHAT I SAW, LISTENED TO WHAT I LISTENED TO, AND AS THE
17 STATE WOULD LIKE TO SAY, GOT COMMON SENSE AND GOOD
18 JUDGMENT, FIND MY CLIENT GUILTY (SIC) AND SEND HIM HOME
19 TODAY. THANK YOU.

20 THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE A
21 SHORT BREAK. GO TO THE JURY ROOM FOR A SHORT BREAK.
22 PLEASE DO NOT DISCUSS THE CASE. WE WILL COME BACK WITH
23 THE FINAL INSTRUCTIONS BEFORE DELIBERATIONS. PLEASE DO
24 NOT DISCUSS THE CASE.

25 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE

1 PRESENCE OF THE JURY.)

2 THE COURT: MR. JOHNSON, DID YOU WANT TO CORRECT THE
3 RECORD?

4 MR. JOHNSON: NOT GUILTY, YOUR HONOR.

5 THE COURT: WE WILL TAKE ABOUT 5 MINUTES.

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

7 THE COURT: YOU MAY BRING THE JURY.

8 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
9 PRESENCE OF THE JURY.)

10 THE COURT: MR. FOREMAN AND MEMBERS OF THE JURY, YOU
11 HAVE HEARD THE EVIDENCE AND THE ARGUMENTS OF THE PARTIES.
12 I WILL NOW EXPLAIN TO YOU THE LAW THAT APPLIES TO THIS
13 MATTER. I CHARGE YOU THAT THERE ARE THREE DEFENDANTS IN
14 THIS CASE. EUNICE DAVIS MCCALL AND EFRAIN THOMAS ARE
15 CHARGED WITH MURDER AND POSSESSION OF A WEAPON DURING THE
16 COMMISSION OF A VIOLENT CRIME. AND CHAD JAMES IS CHARGED
17 WITH ACCESSORY AFTER THE FACT OF MURDER.

18 THE CASE OF EACH DEFENDANT AND THE EVIDENCE AND THE
19 LAW CONCERNING THAT DEFENDANT SHOULD BE CONSIDERED
20 SEPARATELY AND INDIVIDUALLY. YOUR VERDICT DOES NOT HAVE
21 TO BE THE SAME FOR ALL DEFENDANTS. THE FACT THAT YOU MAY
22 FIND ONE DEFENDANT GUILTY OR NOT GUILTY SHOULD NOT CONTROL
23 YOUR VERDICT AS TO ANY OTHER DEFENDANT. WHERE MORE THAN
24 ONE PERSON IS CHARGED WITH A CRIME, IF THE EVIDENCE
35 WARRANTS IT, YOU MAY CONVICT ONE AND ACQUIT OTHERS. OR

1 YOU MAY ACQUIT ALL. OR YOU MAY CONVICT ALL. IT WILL
2 DEPEND ON YOUR VIEW OF THE TESTIMONY AND THE EVIDENCE.
3 YOU MUST TAKE EACH DEFENDANT AND CONSIDER THE EVIDENCE AS
4 TO THAT DEFENDANT AND MY INSTRUCTION TO YOU ON THE LAW.
5 YOU WILL THEN WRITE A SEPARATE VERDICT OF GUILTY OR NOT
6 GUILTY FOR EACH INDIVIDUAL DEFENDANT.

7 THE DEFENDANTS HAVE PLED NOT GUILTY TO THIS
8 INDICTMENT. AND THAT PLEA PUTS THE BURDEN ON THE STATE TO
9 PROVE THE DEFENDANTS GUILTY. PERSONS CHARGED WITH
10 COMMITTING A CRIME IN THE STATE OF SOUTH CAROLINA ARE
11 NEVER REQUIRED TO PROVE THEMSELVES INNOCENT. I CHARGE YOU
12 THAT IT IS AN IMPORTANT RULE OF THE LAW THAT A DEFENDANT
13 IN A CRIMINAL TRIAL NOT MATTER WHAT THE SERIOUSNESS OF THE
14 CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF
15 THE CRIME FOR WHICH THE INDICTMENT IS ISSUED UNLESS GUILT
16 HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT
17 BEYOND A REASONABLE DOUBT. AND THIS PRESUMPTION OF
18 INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS.
19 BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL
20 UNTIL YOU HAVE REACHED A VERDICT OF GUILT BASED ON
21 EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE
22 DOUBT.

23 THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
24 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT,
25 WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN

1 STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF
2 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. AND THIS
3 PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY. IT'S
4 NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO
5 WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU THE JURY ARE
6 SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT
7 BEYOND A REASONABLE DOUBT. I REMIND YOU THAT DURING THE
8 TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE
9 TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE
10 TRIAL AND ALSO TO RULE ON THE ADMISSIBILITY OF THE
11 EVIDENCE DURING THE TRIAL. AND YOU ARE TO CONSIDER ONLY
12 THE COMPETENT EVIDENCE BEFORE YOU. IF THERE IS ANY
13 EVIDENCE ORDERED STRICKEN FROM THE RECORD IN THIS CASE,
14 YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER
15 ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS
16 WITNESS STAND, ALONG WITH ANY EXHIBITS WHICH HAVE BEEN
17 MADE A PART OF THE RECORD IN THIS CASE AND STIPULATIONS OF
18 COUNSEL.

19 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW THAT
20 IS APPLICABLE TO THIS CASE. AND AS THE PRESIDING JUDGE, I
21 AM THE SOLE JUDGE OF THE LAW OF THIS CASE. AND IT IS YOUR
22 DUTY AS JURORS TO ACCEPT AND APPLY THE LAW EXACTLY AS I
23 STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT
24 THE LAW IS, OR WHAT THE LAW OUGHT TO BE, AND IT DOES NOT
25 AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST

1 ABANDON THIS IDEA, BECAUSE YOU ARE SWORN TO ACCEPT AND
2 APPLY THE LAW EXACTLY AS I STATE IT TO YOU. IN EVERY CASE
3 TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE
4 SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN THE CASE. THE
5 TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON OR MAKE ANY
6 STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. AND
7 SINCE YOU THE JURY ARE SOLE JUDGE OF THE FACTS IN THIS
8 CASE, YOU ARE NOT TO INFER FROM WHAT I SAID DURING THE
9 PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF
10 THE EVIDENCE OR OTHERWISE, OR ANYTHING THAT I NOW STATE TO
11 YOU DURING THE COURSE OF THIS INSTRUCTION TO INDICATE THAT
12 I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW
13 DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN
14 THIS CASE. THAT IS A MATTER SOLELY FOR YOU THE JURY TO
15 DETERMINE. AND AS JURORS, IT IS YOUR DUTY TO DETERMINE
16 THE EFFECT AND VALUE AND THE TRUTH OF THE EVIDENCE
17 PRESENTED DURING THIS TRIAL.

18 NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF
19 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY
20 SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS
21 JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE, AND TO
22 DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH. IN
23 DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE
24 TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER
25 SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS.

1 YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND
2 REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME
3 WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN
4 ITS ENTIRETY, OR REJECT THE TESTIMONY OF A WITNESS IN ITS
5 ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS
6 EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER
7 MOTIVE IN THIS CASE. AND YOU MAY CONSIDER THE APPEARANCE
8 AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND.

9 YOU HAVE HEARD EVIDENCE THAT SOME OF THE DEFENDANTS,
10 MR. THOMAS AND MR. MCCALL HAVE PRIOR, PRIOR CRIMINAL
11 RECORDS. THIS EVIDENCE MAY BE CONSIDERED BY YOU IF YOU
12 CONCLUDED THAT ONLY IN DECIDING WHETHER THE DEFENDANT'S
13 TESTIMONY IS BELIEVABLE, AND FOR NO OTHER PURPOSE. YOU
14 MUST NOT CONSIDER THE DEFENDANT'S PRIOR RECORD AS ANY
15 EVIDENCE OF THE DEFENDANT'S GUILT OF THE CHARGE WE ARE
16 TRYING TODAY. A STATEMENT ALLEGED TO HAVE BEEN MADE BY
17 THE DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS
18 CASE. AND WHILE THE COURT HAS DETERMINED THAT THE
19 STATEMENT IS ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE
20 ULTIMATE DECISION OF WHETHER OR NOT -- THAT THE DEFENDANT
21 MADE THE STATEMENT. IF THE DEFENDANT DID MAKE THE
22 STATEMENT, YOU MUST DETERMINE WHETHER THE STATEMENT WAS
23 MADE BY THE DEFENDANT VOLUNTARILY AND OF HIS OWN FREE
24 WILL.

25 THIS MEANS THAT THE STATEMENT WAS NOT CAUSED BY

1 PRESSURE OR FORCE, FEAR, THREATS, COERCION OR
2 INTIMIDATION. OR BY HOPE OF PROMISE OF LENIENCY OR REWARD
3 OF ANY KIND. IN DETERMINING WHETHER THE STATEMENT WAS
4 VOLUNTARY, YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF
5 THE DEFENDANT AND THE DETAILS OF THE QUESTIONS. AND SOME
6 OF THE FACTS YOU MUST CONSIDER ARE THE AGE OF THE
7 DEFENDANT, DEFENDANT'S EDUCATION OR LACK OF EDUCATION.
8 THE DEFENDANT'S MENTAL ABILITY OR CAPACITY, THE
9 DEFENDANT'S I.Q. OR INTELLIGENCE, THE DEFENDANT'S
10 BACKGROUND AND ENVIRONMENT, PLACE, LENGTH OF DETENTION,
11 THE NATURE OF THE QUESTIONING, AND THE ADVICE OR LACK
12 THEREOF TO THE DEFENDANT OF HIS CONSTITUTIONAL RIGHTS.
13 INCLUDING BUT NOT LIMITED TO, THE RIGHT TO REMAIN SILENT;
14 THAT ANY STATEMENT WOULD BE USED AGAINST HIM IN A COURT OF
15 LAW. THE RIGHT TO HAVE A LAWYER PRESENT. IF HE CANNOT
16 AFFORD A LAWYER, A LAWYER WOULD BE APPOINTED TO REPRESENT
17 HIM WITHOUT ANY COSTS. AND THAT HE SHOULD STOP MAKING A
18 -- AND HE CAN STOP MAKING A STATEMENT AT ANY TIME. BUT
19 CAREFULLY CONSIDER ALL THE SURROUNDING CIRCUMSTANCES
20 BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED STATEMENT.

21 THE STATE HAS THE BURDEN OF PROVING BEYOND A
22 REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS VOLUNTARY.
23 IF YOU DETERMINE THAT IT WAS, YOU MAY GIVE THE STATEMENT
24 ANY FURTHER CONSIDERATION THAT YOU DEEM PROPER. YOU MUST
25 DECIDE WHAT WEIGHT IF ANY SHOULD BE GIVEN TO THE ALLEGED

1 STATEMENT. IF YOU DETERMINE THAT THE ALLEGED STATEMENT
2 WAS NOT THE FREE AND VOLUNTARY STATEMENT OF THE DEFENDANT,
3 YOU SHOULD NOT CONSIDER THE STATEMENT AT ALL. I ALSO
4 INSTRUCT YOU AND EMPHASIZE THE FACT THAT A DEFENDANT, IN
5 THIS CASE DEFENDANT JAMES, DID NOT TESTIFY, IS NOT A
6 FACTOR TO BE CONSIDERED BY YOU IN ANY MANNER IN YOUR
7 DELIBERATIONS AND IN YOUR CONSIDERATION ON THE QUESTION OF
8 HIS GUILT OR INNOCENCE. IT MUST NOT BE CONSIDERED BY YOU
9 IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE
10 CONSTITUTIONAL RIGHT TO REMAIN SILENT. AND THE ASSERTION
11 OF THIS RIGHT SHOULD NOT BE CONSIDERED BY YOU IN YOUR
12 DELIBERATIONS.

13 AND I REPEAT, THAT UNDER YOUR OATH, YOU CAN DRAW NO
14 CONCLUSIONS WHATSOEVER FROM THE FACT THAT THIS DEFENDANT
15 DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT
16 TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM.
17 THE BURDEN AS I HAVE SAID, STATED TO YOU, IS ON THE STATE.
18 THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. THE
19 DEFENDANT -- THE BURDEN OF PROOF REMAINS ON THE STATE TO
20 PROVE GUILT BEYOND A REASONABLE DOUBT. AND WHAT IS A
21 REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS THE
22 KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
23 HESITATE TO ACT. PROOF BEYOND A REASONABLE DOUBT IS PROOF
24 THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
25 PROOF BEYOND A REASONABLE DOUBT MUST THEREFORE BE PROOF OF

1) SUCH A CONVINCING CHARACTER THAT A REASONABLE PERSON WOULD
2 NOT HESITATE TO ACT AND TO RELY UPON IT IN THE MOST
3 IMPORTANT OF HIS OR HER OWN AFFAIRS.

4 REASONABLE DOUBT MAY ARISE FROM THE EVIDENCE WHICH IS
5 IN THE CASE OR FROM THE LACK OF EVIDENCE IN THE CASE. YOU
6 THE JURY MUST DETERMINE WHETHER OR NOT REASONABLE DOUBT
7 EXISTS AS TO THE GUILT OF THE DEFENDANT. THE STATE HAS
8 THE BURDEN OF PROVING EACH AND EVERY ELEMENT OF A CRIME
9 BEYOND A DOUBT. AND ANY DOUBT WHICH YOU MAY HAVE IN YOUR
10 DELIBERATIONS SHOULD BE RESOLVED IN FAVOR OF THE
11 DEFENDANT. IF YOU HAVE A REASONABLE DOUBT AS TO THE GUILT
12 OF A DEFENDANT, THEY ARE ENTITLED TO THAT DOUBT AND WOULD
13 BE ENTITLED TO AN ACQUITTAL. PROOF BEYOND A REASONABLE
14 DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
15 DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS THAT WE KNOW
16 IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY. AND
17 IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT
18 OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON YOUR
19 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED
20 THAT A DEFENDANT IS GUILTY OF A CRIME CHARGED, THEN YOU
21 MUST FIND HIM GUILTY.

22 ON THE OTHER HAND, IF YOU THINK THAT THERE IS A REAL
23 POSSIBILITY THAT A PARTICULAR DEFENDANT IS GUILTY, OR THAT
24 THEY ARE NOT GUILTY, YOU MUST GIVE THEM THE BENEFIT OF THE
25 DOUBT AND FIND THEM NOT GUILTY.

1 THE DEFENDANTS, EUNICE DAVIS MCCALL AND EFRAIN THOMAS
2 ARE CHARGED WITH MURDER. THE STATE MUST PROVE BEYOND A
3 REASONABLE DOUBT THAT THESE TWO DEFENDANTS KILLED ANOTHER
4 PERSON WITH MALICE AFORETHOUGHT. MALICE IS HATRED, ILL
5 WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE
6 INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR
7 EXCUSE AND WITH AN INTENT TO INFLECT AN INJURY, OR UNDER
8 CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.
9 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXIST FOR
10 ANY PARTICULAR TIME BEFORE THE ACT WAS COMMITTED. BUT
11 MALICE MUST EXIST IN THE MIND OF DEFENDANT JUST BEFORE AND
12 AT THE TIME THAT THE ACT IS COMMITTED. THEREFORE, THERE
13 MUST BE A COMBINATION OF A PREVIOUS EVIL INTENT AND THE
14 ACT.

15 MALICE AFORETHOUGHT MAY BE EXPRESSED OR INFERRED.
16 THESE TERMS EXPRESSED AND INFERRED DO NOT MEAN DIFFERENT
17 KINDS OF MALICE, BUT MERELY THE MANNER IN WHICH MALICE MAY
18 BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR
19 BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE
20 PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS
21 WORDS, EXPRESSES HATRED OR ILL WILL TOWARDS ANOTHER, OR
22 WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH IT
23 LATER ACCOMPLISHED; SUCH AS, LYING IN WAIT FOR A PERSON.
24 OR ANY OTHER ACT OF PREPARATION GOING TO SHOW THAT THE
25 DEED WAS WITHIN THE DEFENDANT'S MIND IS EXPRESS MALICE.

1 MALICE MAY BE INFERRED FROM THE CONDUCT SHOWING TOTAL
2 DISREGARD OF HUMAN LIFE.

3 INFERRED MALICE MAY ALSO ARISE WHEN THE DEED IS DONE
4 WITH A DEADLY WEAPON. AND A DEADLY WEAPON IS ANY ARTICLE,
5 INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR
6 GREAT BODILY HARM. AND WHETHER AN INSTRUMENT HAS BEEN
7 USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND
8 CIRCUMSTANCES OF EACH CASE. AND THE FOLLOWING ARE
9 INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL, A
10 SHOTGUN, A RIFLE, DAGGER OR KNIFE. NOW IF YOU FIND THAT
11 THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT
12 THAT ANY OF THE DEFENDANTS CHARGED WITH MURDER COMMITTED
13 MURDER, YOU MAY CONSIDER WHETHER THE STATE HAS PROVED
14 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT OR THESE
15 DEFENDANTS COMMITTED VOLUNTARY MANSLAUGHTER. TO PROVE
16 VOLUNTARY MANSLAUGHTER THE STATE MUST PROVE BEYOND A
17 REASONABLE THAT THE DEFENDANTS TOOK THE LIFE OF ANOTHER IN
18 SUDDEN HEAT OF PASSION BASED ON SUFFICIENT PROVOCATION.

19 BOTH HEAT OF PASSION AND SUFFICIENT LEGAL PROVOCATION
20 MUST BE PRESENT AT THE TIME OF THE KILLING TO CONSTITUTE
21 VOLUNTARY MANSLAUGHTER. SUDDEN HEAT OF PASSION MAY FOR A
22 TIME AND EFFECT A PERSON'S SELF CONTROL AND TEMPORARILY
23 DISTURB A PERSON'S REASON. AND SUDDEN HEAT OF PASSION
24 MUST BE THE TYPE THAT WOULD MAKE AN ORDINARY PERSON UNABLE
25 TO TRULY REFLECT HIS ACTIONS AND WOULD PRODUCE AN

1 UNCONTROLLABLE IMPULSE TO DO VIOLENCE. SUFFICIENT LEGAL
2 PROVOCATION MUST BE THE TYPE THAT WOULD MAKE A PERSON OF
3 ORDINARY REASON AND CAUTION TO BECOME ENRAGED AND TO LOSE
4 CONTROL TEMPORARILY. THE PROVOCATION NEEDED FOR VOLUNTARY
5 MANSLAUGHTER MUST COME TO SOME ACT OR RELATED TO THE
6 VICTIM. AND WORDS ALONE HOWEVER VULGAR OR INSULTING ARE
7 NOT ENOUGH TO BE A LEGAL PROVOCATION.

8 WHERE DEATH IS CAUSED BY THE USE OF A DEADLY WEAPON,
9 THE WORDS MUST BE ACCOMPANIED BY SOME OVERT, THREATENING
10 ACT WHICH COULD HAVE PRODUCED THE HEAT OF PASSION. THE
11 EXERCISE OF A LEGAL RIGHT NO MATTER HOW OFFENSIVE IT IS,
12 IS NEVER SUFFICIENT LEGAL PROVOCATION FOR VOLUNTARY
13 MANSLAUGHTER. IF THE HEAT OF PASSION HAD COOLED OR IF
14 THERE WAS ENOUGH TIME BETWEEN THE PROVOCATION IF ANY AND
15 THE KILLING FOR THE PASSION OF A REASONABLE PERSON TO
16 COOL, THE KILLING WOULD NOT BE VOLUNTARY MANSLAUGHTER. IN
17 DECIDING WHETHER A REASONABLE PERSON WOULD HAVE HAD ENOUGH
18 TIME TO COOL OFF, YOU SHOULD CONSIDER ALL THE
19 CIRCUMSTANCES SURROUNDING THE KILLING. YOU MAY CONSIDER
20 THE NATURE OF THE PROVOCATION IF ANY, THE DEFENDANT'S
21 MENTAL AND PHYSICAL STATE AND THE CIRCUMSTANCES AND
22 RELATIONSHIPS BETWEEN THE PARTIES.

23 NOW AS TO EUNICE DAVIS MCCALL, IF YOU FIND THAT THE
24 STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT
25 THE DEFENDANT EUNICE DAVIS MCCALL IS GUILTY OF MURDER OR

1 VOLUNTARY MANSLAUGHTER, YOU MAY CONSIDER WHETHER THE STATE
2 HAS PROVED BEYOND A REASONABLE DOUBT THAT THIS DEFENDANT
3 IS GUILTY OF INVOLUNTARY MANSLAUGHTER. TO PROVE
4 INVOLUNTARY MANSLAUGHTER THAT THE DEFENDANT
5 UNINTENTIONALLY KILLED THE VICTIM WITHOUT MALICE, BUT
6 WHILE ENGAGED IN AN UNLAWFUL ACTIVITY NOT NATURALLY
7 INTENDING TO CAUSE THE DEATH OR GREAT BODILY HARM, OR THAT
8 THE DEFENDANT UNINTENTIONALLY KILLED THE VICTIM WITHOUT
9 MALICE WHILE ENGAGED IN A LAWFUL ACTIVITY WITH RECKLESS
10 DISREGARD FOR THE SAFETY OF OTHERS.

11 UNINTENTIONAL MEANS THAT THE DEFENDANT DID NOT INTEND
12 FOR ANYONE TO BE KILLED OR SERIOUSLY INJURED. RECKLESS
13 DISREGARD FOR THE SAFETY OF OTHERS IS MORE THAN MERE
14 NEGLIGENCE OR CARELESSNESS. MERE NEGLIGENCE OR
15 CARELESSNESS IS THE FAILURE TO USE THE CARE THAT A PERSON
16 OF ORDINARY REASON WOULD UNDER THE SAME CIRCUMSTANCES.
17 RECKLESSNESS IS A CONSCIOUS FAILURE TO USE ORDINARY CARE.
18 RECKLESS DISREGARD FOR THE SAFETY OF OTHERS MEANS THAT YOU
19 ARE NOT INTERESTED IN THE CONSEQUENCES OF YOUR ACTS OR THE
20 RIGHTS AND SAFETY OF OTHERS.

21 IF A PERSON WHO KNOWS OR SHOULD KNOW THAT ORDINARY
22 CARE REQUIRES CERTAIN PRECAUTIONS TO BE TAKEN FOR THE
23 SAFETY OF OTHERS WHEN USING A DANGEROUS INSTRUMENTALITY;
24 SUCH AS, A GUN TO CAUSE OR THAT PERSON FAILS TO USE THOSE
25 PRECAUTIONS WITHOUT CONCERN, THE PERSON'S ACTIONS ARE

1 CONSIDERED RECKLESS. AND THE STATE MUST PROVE BEYOND A
2 REASONABLE DOUBT THAT THE DEFENDANT'S ACTS WAS THE
3 PROXIMATE CAUSE FOR THE DEATH. PROXIMATE CAUSE IS A
4 DIRECT CAUSE. IT IS AN IMMEDIATE CAUSE. IT IS THE
5 EFFICIENT CAUSE. IT IS THAT CAUSE WITHOUT WHICH THE DEATH
6 OF THE VICTIM WOULD NOT HAVE RESULTED. THERE MUST BE
7 CHAIN OF CAUSATION FROM THE TIME OF THE INJURY INFLICTED
8 BY THE DEFENDANT UNTIL THE TIME OF THE VICTIM'S DEATH.
9 PROXIMATE CAUSE DOES NOT NECESSARILY MEAN THAT IT OCCURRED
10 IMMEDIATELY PRIOR TO DEATH. THERE CAN BE MORE THAN ONE
11 PROXIMATE CAUSE. THE ACTS OF TWO OR MORE PERSONS MAY
12 COMBINE TOGETHER TO BE A PROXIMATE CAUSE OF THE DEATH OF
13 THE PERSON.

14 THE DEFENDANT'S ACTS MAY BE REGARDED AS THE PROXIMATE
15 CAUSE IF IT IS A CONTRIBUTING CAUSE TO THE DEATH OF THE
16 VICTIM. THE FACT THAT THERE ARE OTHER CAUSES ALSO
17 CONTRIBUTING TO THE DEATH OF THE VICTIM WOULD NOT RELIEVE
18 A DEFENDANT FROM RESPONSIBILITY. THE DEFENDANTS ACTS NEED
19 NOT BE THE SOLE CAUSE OF THE DEATH BUT MUST BE A PROXIMATE
20 CONTRIBUTING CAUSE TO THE DEATH OF THE VICTIM. AND AS
21 NOTED EARLIER, YOU WOULD ONLY CONSIDER INVOLUNTARY
22 MANSLAUGHTER AS TO THE DEFENDANT MCCALL. NOW THE
23 DEFENDANT CHAD JAMES IS CHARGED WITH BEING AN ACCESSORY
24 AFTER THE FACT OF MURDER. IN ORDER TO PROVE THIS CLIENT,
25 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE

1 DEFENDANT KNEW THAT ANOTHER PERSON, THE PRINCIPAL,
2 COMMITTED A FELONY AND AFTER THE CRIME INTENTIONALLY
3 HELPED THE PRINCIPAL TO ESCAPE FROM ARREST, CONVICTION OR
4 PUNISHMENT.

5 INTENTIONALLY MEANS WILFULLY. INTENDING THE RESULTS
6 WHICH ACTUALLY OCCURRED. IT IS NOT ACCIDENTALLY OR
7 INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF
8 THE DEFENDANT AND FROM OTHER CIRCUMSTANCES FROM WHICH YOU
9 MAY NATURALLY AND REASONABLY INFER INTENT. ABSENCE IS NOT
10 AN ELEMENT OF THE CRIME OF ACCESSORY AFTER THE FACT. IF
11 YOU FIND THAT THE DEFENDANT WAS MERELY PRESENT AT THE
12 SCENE AT THE TIME AND DID NOT PARTICIPATE IN THE CRIME BUT
13 BECAME INVOLVED AFTER THE COMMISSION OF THE CRIME, YOU MAY
14 FIND THE DEFENDANT OF BEING AN ACCESSORY AFTER THE FACT.
15 ALTHOUGH THE ACTIONS OF THE DEFENDANT MAY HAVE HELPED THE
16 PRINCIPAL TO ESCAPE PROTECTION OR ARREST, THIS IS NOT
17 ENOUGH TO BE AN ACCESSORY AFTER THE FACT. THE STATE MUST
18 ALSO PROVE THAT THE DEFENDANT ACTED WITH THE INTENTION OR
19 WITH THE PURPOSE OF HELPING THE PRINCIPAL TO ESCAPE
20 DETECTION OR ARREST. SO IF A PERSON CHARGED WITH BEING AN
21 ACCESSORY AFTER THE FACT DID NOT INTEND THAT HIS ACTION
22 HELPED THE PRINCIPAL ESCAPE DETECTION OR ARREST, THEN HE
23 IS NOT AN ACCESSORY AFTER THE FACT. EVEN THOUGH THE ACT
24 IN FACT MAY HAVE HELPED IN HELPING THE PRINCIPAL ESCAPE
25 DETECTION OR ARREST. THERE MUST BE SOME AFFIRMATIVE ACTS

1 TENDING TOWARDS THE CONCEALMENT OF THE COMMISSION OF A
2 CRIME. VIOLENCE ALONE IS NOT SUFFICIENT TO MAKE A PERSON
3 AN ACCESSORY AFTER THE FACT OF A FELONY.

4 EUNICE DAVIS MCCALL AND EFRAIN THOMAS ARE ALSO
5 CHARGED WITH POSSESSION OF A WEAPON DURING THE COMMISSION
6 OF A VIOLENT CRIME. THE STATE MUST PROVE BEYOND A
7 REASONABLE DOUBT THAT THE DEFENDANT WAS IN POSSESSION OF A
8 FIREARM OR DID VISIBLY DISPLAY WHAT APPEARED TO BE A
9 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. AND A
10 FIREARM MEANS ANY WEAPON WHICH WILL OR DESIGN MAY BE
11 READILY CONVERTED TO EXPEL A PROJECTILE. IN ORDER TO FIND
12 A DEFENDANT GUILTY OF POSSESSION OF A WEAPON DURING THE
13 COMMISSION OF A VIOLENT CRIME, YOU MUST FIRST FIND THE
14 DEFENDANT GUILTY OF EITHER COMMITTING OR ATTEMPTING TO
15 COMMIT A VIOLENT CRIME. MURDER AND VOLUNTARY MANSLAUGHTER
16 ARE VIOLENT CRIMES.

17 NOW A DEFENDANT WHO IS NOT CONSCIOUS OF A FACT AND
18 DOES NOT ACT WITH KNOWLEDGE OF THAT FACT, EVEN THOUGH A
19 REASONABLE PERSON IN THE SAME SITUATION AS THE DEFENDANT
20 WOULD HAVE BEEN CONSCIOUSLY AWARE OF THAT FACT. KNOWLEDGE
21 IS BASED ON WHAT A PERSON WAS AWARE OF, NOT WHAT HE OUGHT
22 TO BE OR SHOULD HAVE BEEN AWARE OF. NOW THE DEFENDANT'S
23 MCCALL AND THOMAS RAISE THE DEFENSE OF SELF DEFENSE. SELF
24 DEFENSE IS A COMPLETE DEFENSE. AND IF ESTABLISHED, YOU
25 MUST FIND THE DEFENDANT NOT GUILTY. THE STATE HAS THE

1 BURDEN OF DISPROVING SELF DEFENSE BY PROOF BEYOND A
2 REASONABLE DOUBT. IF YOU HAVE A REASONABLE DOUBT OF ANY
3 OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL OF THE
4 EVIDENCE INCLUDING THE EVIDENCE OF SELF DEFENSE, THEN YOU
5 MUST FIND THAT DEFENDANT NOT GUILTY.

6 ON THE OTHER HAND, IF YOU HAVE NO REASONABLE DOUBT OF
7 ANY OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE
8 EVIDENCE INCLUDING THE EVIDENCE OF SELF DEFENSE, THEN YOU
9 MUST FIND THAT DEFENDANT GUILTY. THE FOLLOWING ELEMENTS
10 ARE REQUIRED IN ORDER TO ESTABLISH SELF DEFENSE. FIRST,
11 THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON THE
12 DIFFICULTY. IF THE DEFENDANT'S CONDUCT WAS THE TYPE THAT
13 WAS REASONABLY CALCULATED TO AND DID PROVOKE THE DEADLY
14 ASSAULT, THE DEFENDANT WOULD BE AT FAULT IN BRINGING ON
15 THE DIFFICULTY AND WOULD NOT BE ENTITLED TO AN ACQUITTAL
16 BASED ON SELF DEFENSE.

17 THE SECOND ELEMENT OF SELF DEFENSE IS THAT DEFENDANT
18 WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY
19 INJURY. OR THAT THE DEFENDANT ACTUALLY BELIEVED THAT HE
20 WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY.
21 IF ANY OF THE DEFENDANTS WERE ACTUALLY IN IMMINENT DANGER,
22 IT MUST BE SHOWN THAT THE CIRCUMSTANCES WOULD HAVE
23 WARRANTED A PERSON OF ORDINARY FIRMNESS AND COURAGE TO
24 STRIKE THE FATAL BLOW IN ORDER TO PREVENT DEATH OR SERIOUS
25 BODILY INJURY. IF THE DEFENDANT BELIEVED HE WAS IN

1 IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY IT MUST
2 BE SHOWN THAT A REASONABLY PRUDENT PERSON OF ORDINARY
3 FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF.

4 IN DECIDING WHETHER THE DEFENDANT ACTUALLY WAS OR
5 BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS
6 BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND
7 CIRCUMSTANCES SURROUNDING THE CRIME. INCLUDING THE
8 PHYSICAL CONDITIONS AND THE CHARACTERISTICS OF THE
9 DEFENDANT AND THE VICTIM. THE DEFENDANT DOES NOT HAVE TO
10 SHOW THAT THERE WAS ACTUAL DANGER. IT IS ENOUGH THAT THE
11 DEFENDANT BELIEVED THEY WERE IN IMMINENT DANGER AND A
12 REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE
13 WOULD HAVE HAD THE SAME BELIEF. THE DEFENDANT HAS A RIGHT
14 TO ACT ON APPEARANCES EVEN THOUGH THE DEFENDANT'S BELIEF
15 MAY HAVE BEEN MISTAKEN. IT IS FOR YOU DECIDE WHETHER THE
16 DEFENDANT'S FEAR OF IMMINENT DANGER OF DEATH OR SERIOUS
17 BODILY INJURY WAS REASONABLE AND WOULD HAVE BEEN FELT BY
18 AN ORDINARY PERSON IN THE SAME SITUATION.

19 WORDS ACCOMPANIED BY HOSTILE ACTS MAY DEPENDING ON
20 THE CIRCUMSTANCES ESTABLISH SELF DEFENSE. THERE IS ALSO
21 THE SIZE, THE AGES AND WEIGHT OF THE DEFENDANT AND THE
22 VICTIM AND MAY BE CONSIDERED IN DECIDING THE APPEARANCE OR
23 ACTUAL NEED FOR FORCE IN SELF DEFENSE. AND THE AMOUNT OF
24 SELF DEFENSE. THE REPUTATION OF THE VICTIM AS A VIOLENT
25 PERSON MAY BE CONSIDERED IN DECIDING WHETHER THERE WAS A

1 NEED FOR FORCE. WHETHER THE DEFENDANT HAD A REASON TO
2 BELIEVE THAT THERE WAS A NEED FOR FORCE. AND WHETHER
3 DEADLY FORCE WAS REASONABLY NECESSARY.

4 PRIOR INSTANCES OF VIOLENCE BY THE VICTIM MAY BE
5 CONSIDERED IN DECIDING WHETHER THE DEFENDANT ACTUALLY
6 BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS
7 BODILY INJURY. OR WAS ACTUALLY IN IMMINENT DANGER. THE
8 INTOXICATION OF THE VICTIM MAY BE CONSIDERED IN DECIDING
9 WHETHER THE DEFENDANT'S FEAR OF DEATH OR BODILY HARM WAS
10 REASONABLE. AND THE FINAL ELEMENT OF SELF DEFENSE IS THAT
11 A DEFENDANT HAD NO OTHER PROBABLE WAY TO AVOID THE DANGER
12 OF DEATH OR SERIOUS BODILY THAN TO ACT AS THE DEFENDANT
13 DID IN THIS PARTICULAR INSTANCE. THE DEFENDANT HAD NO
14 DUTY TO RETREAT IF BY DOING SO THE DANGER OF BEING KILLED
15 OR SUFFERING SERIOUS BODILY INJURY WOULD HAVE INCREASED.

16 NOW A PERSON CANNOT BE REQUIRED TO MAKE AN EXACT
17 CALCULATION AS TO THE DEGREE OR THE AMOUNT OF FORCE WHICH
18 MAY BE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM.
19 THEREFORE, IN SELF DEFENSE THE DEFENDANT HAS THE RIGHT TO
20 USE THE FORCE NEEDED TO AVOID DEATH OR SERIOUS BODILY
21 HARM. FORCE USED IN SELF DEFENSE DOES NOT HAVE TO BE
22 LIMITED TO THE DEGREE OR AMOUNT OF FORCE USED BY THE
23 VICTIM. THE DEFENDANT HAS THE RIGHT TO USE SO MUCH FORCE
24 AS APPEARS TO BE REASONABLY NECESSARY FOR COMPLETE SELF
25 PROTECTION IN WHICH A PERSON OF ORDINARY REASON AND

1 FIRMNESS WOULD HAVE BELIEVED TO BE NEEDED TO PREVENT DEATH
2 OR SERIOUS BODILY HARM. NOW IF THE DEFENDANT IS JUSTIFIED
3 IN DEFENDING HIMSELF OR OTHERS AND THEN FIRES THE FIRST
4 SHOT, THEN THE DEFENDANT IS ALSO JUSTIFIED IN CONTINUING
5 TO SHOOT UNTIL IT IS APPARENT THAT THE DANGER OF DEATH OR
6 SERIOUS BODILY INJURY HAS COMPLETELY ENDED.

7 NOW UNDER THE LAW OF SELF DEFENSE, THE DEFENDANT MAY
8 TAKE ANOTHER'S LIFE IN THE DEFENSE OF OTHERS. THE RIGHT
9 TO INTERVENE TO PROTECT ANOTHER PERSON IS SUBJECT TO THE
10 SAME RIGHTS AND LIMITATIONS AS THE RIGHT OF SELF DEFENSE.
11 THE DEFENDANT MAY TAKE THE LIFE OF A PERSON WHO ASSAULTS A
12 FRIEND OR ALSO A BYSTANDER IF THAT FRIEND OR RELATIVE OR
13 BYSTANDER WOULD HAVE HAD THE RIGHTS OF SELF DEFENSE. TO
14 SHOW THAT THE PERSON BEING DEFENDED HAS THE RIGHT TO SELF
15 DEFENSE IT MUST FIRST BE SHOWN THAT THE PERSON BEING
16 DEFENDED AND THE DEFENDANT WERE BOTH WITHOUT FAULT IN
17 BRINGING ON THE DIFFICULTY. IF THE CONDUCT OF THE PERSON
18 DEFENDED OR THE DEFENDANT WAS REASONABLY CALCULATED TO AND
19 DID PROVOKE THE DEADLY ASSAULT, THE PERSON WOULD BE AT
20 FAULT IN BRINGING ON THE DIFFICULTY AND WOULD NOT HAVE THE
21 RIGHT TO SELF DEFENSE. THEREFORE THE DEFENDANT WOULD NOT
22 HAVE THE RIGHT TO USE DEADLY FORCE IN DEFENDING THAT
23 PERSON.

24 THE DEFENSE OF ANOTHER PERSON IS EXCUSABLE IF THE
25 DEFENDANT HAD REASONABLE GROUND TO BELIEVE AND IN GOOD

1 FAITH DID BELIEVE THAT THE PERSON BEING DEFENDED WAS IN
2 IMMINENT DANGER OF DEATH OR SERIOUS BODILY HARM FROM THE
3 VICTIM. IN DECIDING WHETHER THE PERSON DEFENDED WAS OR
4 THAT PERSON ACTUALLY BELIEVED THE PERSON WAS IN IMMINENT
5 DANGER OF DEATH OR SERIOUS BODILY INJURY, YOU SHOULD
6 CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE
7 CRIME, INCLUDING THE CHARACTERISTICS OF THE PARTIES.

8 MR. FOREMAN AND MEMBERS, I AM REQUIRED TO DECLARE THE
9 LAW AS I HAVE DONE, AND THROUGHOUT THESE INSTRUCTIONS NOW
10 BEING GIVEN. AND THEY ARE BEING GIVEN TO HELP GUIDE YOU
11 IN LAWFUL AND JUST VERDICT. AND YOU HAVE NOTICED THAT I
12 HAVE READ THESE INSTRUCTIONS. AND I DO SO IN ORDER TO
13 GIVE YOU THE LAW AS ACCURATELY AS POSSIBLE. WHETHER SOME
14 OF THESE INSTRUCTIONS WILL APPLY WILL DEPEND ON WHAT YOU
15 FIND THE FACTS TO BE. THE FACT THAT I HAVE INSTRUCTED ON
16 VARIOUS SUBJECTS IN THIS CASE MUST NOT BE TAKEN AS ANY
17 INDICATION OF THIS COURT AS TO WHAT YOU FIND THE FACTS TO
18 BE OR AS TO WHICH PARTY IS ENTITLED TO YOUR VERDICT. AND
19 YOU HAVE BEEN SWORN TO GIVE BOTH SIDES IN THIS CASE, ALL
20 SIDES IN THIS CASE, A FAIR AND IMPARTIAL TRIAL. AND WHEN
21 YOU HAVE DONE THAT, YOU WILL HAVE COMPLIED WITH YOUR OATH
22 AND NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT.
23 YOU MUST NOT BE INFLUENCED BY OPINIONS OR EXPRESSIONS OF
24 OPINIONS THAT YOU MAY HAVE HEARD OUTSIDE OF THIS
25 COURTROOM. BUT RATHER SHOULD BASE YOUR VERDICT ONLY ON

1 THE TESTIMONY OF THE SWORN WITNESSES WHO TOOK THE STAND
2 ALONG WITH THE OTHER EVIDENCE.

3 YOU SHOULD NOT SWAYED BY CAPRICE, PASSION, PREJUDICE,
4 OR IMPROPER SYMPATHY FOR OR AGAINST ANY OF THE PARTIES IN
5 THIS CASE. AND REMEMBER YOU HAVE NO FRIENDS TO REWARD OR
6 ENEMIES TO PUNISH. AND BOTH SIDES ARE ENTITLED, OR ALL
7 SIDES ARE ENTITLED TO A FAIR AND IMPARTIAL TRIAL AT YOUR
8 HANDS. THE POSSIBLE VERDICTS IN THIS CASE ARE STATED AND
9 ESTIMATED ON THE VERDICT FORM WHICH I HAVE AND WHICH WILL
10 GO BACK TO THE JURY ROOM WITH YOU. FIRST, AS TO THE
11 DEFENDANT EUNICE DAVIS MCCALL AS TO MURDER, THE CHARGE OF
12 MURDER OF TROY ROUSE, THE VERDICT IS EITHER GUILTY OF
13 MURDER, GUILTY OF VOLUNTARY MANSLAUGHTER, GUILTY OF
14 INVOLUNTARY MANSLAUGHTER OR NOT GUILTY.

15 AND IF YOU FIND HIM EITHER GUILTY OF MURDER OR
16 VOLUNTARY MANSLAUGHTER OR INVOLUNTARY MANSLAUGHTER, THEN
17 YOU WILL GO TO B, WHICH IS POSSESSION OF A WEAPON DURING
18 THE COMMISSION OF A VIOLENT CRIME. AND AS TO THAT COUNT
19 EITHER THE VERDICT WILL BE GUILTY OR NOT GUILTY. THE
20 REASON YOU WOULD ONLY CONSIDER B IS THAT YOU CAN ONLY FIND
21 HIM GUILTY OF POSSESSION OF WEAPON DURING THE COMMISSION
22 OF VIOLENT CRIME IF YOU FIND HIM GUILTY OF A VIOLENT
23 CRIME. MURDER AND MANSLAUGHTER ARE VIOLENT CRIMES.

24 AS TO EFRAIN THOMAS, FOR MURDER, CHARGING MURDER OF
25 TROY ROUSE, EITHER THE VERDICT IS GUILTY OF MURDER, GUILTY

1 OF VOLUNTARY MANSLAUGHTER OR NOT GUILTY. AND IF YOU FIND
2 HIM GUILTY OF EITHER MURDER OR VOLUNTARY MANSLAUGHTER,
3 THEN YOU ARE TO CONSIDER B, WHICH IS WHETHER OR NOT HE IS
4 GUILTY OF POSSESSION OF A WEAPON DURING A VIOLENT CRIME.
5 YOUR VERDICTS EITHER BEING GUILTY OR NOT GUILTY.

6 AS TO CHAD JAMES ACCESSORY AFTER THE FACT OF MURDER,
7 YOUR VERDICT WOULD EITHER BE GUILTY OR NOT GUILTY. AND
8 CERTAINLY YOU CANNOT FIND HIM GUILTY OF BEING ACCESSORY
9 AFTER THE FACT OF MURDER UNLESS YOU FIND HIM GUILTY OF --
10 UNLESS YOU FIND ONE OF THE OTHER DEFENDANTS GUILTY OF
11 MURDER OR VOLUNTARY MANSLAUGHTER. AND YOU WILL CHECK THE
12 APPROPRIATE BOX REFLECTING THE VERDICT OF THE JURY.
13 THERE ARE LINES NEXT TO THE VARIOUS THINGS. AND CERTAINLY
14 THERE IS NO ORDER IN WHICH I HAVE -- THERE IS NO BASIS FOR
15 THE ORDER IN WHICH I READ THE POSSIBLE FORMS OF THE
16 VERDICT. SIMPLY ONE MUST BE READ BEFORE THE OTHER.

17 ALL 12 OF YOU WHO ARE DELIBERATING MUST AGREE ON A
18 VERDICT. AND WHEN THE OTHERS GO BACK TO THE JURY ROOM THE
19 ALTERNATES, IF Y'ALL WILL JUST STAY OUT HERE WITH ME. ALL
20 12 OF YOU MUST AGREE ON A VERDICT. THE ONLY REQUEST I
21 HAVE IS THAT THE CLERK ORDER SOMETHING TO EAT FOR THE
22 JURORS. ALL 12 OF YOU MUST AGREE ON A VERDICT. AND IF
23 YOU AGREE ON THE VERDICT, YOU WILL WRITE IT ON THE VERDICT
24 FORM. AND, MR. FOREMAN, IF YOU WILL COMPLETE THE VERDICT
25 FORM, KNOCK ON THE JURY ROOM DOOR, OR PUSH THE BUTTON AND

1 AT THAT TIME AND WE WILL RECEIVE YOU BACK INTO THE
2 COURTROOM. AND I WILL GIVE YOU A COPY OF THESE
3 INSTRUCTIONS IN WRITTEN FORM. AND DURING YOUR
4 DELIBERATIONS YOU MAY REFER TO THESE INSTRUCTIONS TO GUIDE
5 YOU IN YOUR DECISION MAKING. YOU MUST CONSIDER THEM AS A
6 WHOLE AND NOT FOLLOW SOME AND IGNORE OTHERS. AND YOU ARE
7 REQUIRED TO RETURN THEM AT THE TIME OF YOUR VERDICT.

8 I WOULD ASK THAT YOU GO TO YOUR JURY ROOM, BUT DO NOT
9 BEGIN YOUR DELIBERATIONS UNTIL YOU HAVE RECEIVED THE
10 VERDICT FORM, THE INSTRUCTIONS AND THE EXHIBITS. AND IF
11 YOU RECEIVE ALL OF THOSE THINGS, THEN THAT WILL BE YOUR
12 SIGNAL TO BEGIN YOUR DELIBERATIONS. IF YOU WILL PLEASE
13 GO TO THE JURY ROOM.

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

16 THE COURT: ARE THERE ANY ADDITIONS OR EXCEPTIONS TO
17 THE CHARGE?

18 MR. SAVERANCE: NONE FOR THE STATE, YOUR HONOR.

19 MR. WHEELER: ON BEHALF OF DEFENDANT THOMAS, I SHOULD
20 PROBABLY RENEW OUR INVOLUNTARY REQUEST AND OBJECTION TO
21 THAT CHARGE AT THIS TIME.

22 THE COURT: CHARGE AS TO WHAT?

23 MR. WHEELER: NOT CHARGING INVOLUNTARY.

24 THE COURT: NOT CHARGING INVOLUNTARY.

25 MR. WHEELER: OTHERWISE NOTHING ELSE.

1 THE COURT: MR. WATTS?

2 MR. WATTS: NONE, YOUR HONOR.

3 THE COURT: MR. JOHNSON?

4 MR. JOHNSON: YOUR HONOR, AS I WAS LISTENING TO THE
5 COURT, I DO HAVE ONE QUESTION CONCERNING THE CHARGE.

6 THE COURT: ALL RIGHT.

7 MR. JOHNSON: YOUR HONOR, MY CLIENT WAS CHARGED ON A
8 SEPARATE INDICTMENT FOR ACCESSORY AFTER THE FACT AS TO
9 EACH DEFENDANT. WHICH ARE SEPARATE DEFENDANTS. THEY ARE
10 NOT UNDER THE HAND OF ONE AS I UNDERSTAND IT, IS THAT
11 CORRECT?

12 THE COURT: THAT'S RIGHT.

13 MR. JOHNSON: THERE WAS NO EVIDENCE PRESENTED BY THE
14 STATE DURING THE TRIAL THAT MY CLIENT ASSISTED EUNICE AT
15 ALL. AS A RESULT OF YOUR CHARGE TO THE JURY, YOU
16 MENTIONED THAT IF THEY -- THEY HAD TO FIND FOR INSTANCE,
17 IF THE JURY FOUND EFRAIN NOT GUILTY, BUT FOUND EUNICE
18 GUILTY UNDER YOUR CHARGE, IT WOULD MEAN THAT THEY COULD
19 POSSIBLY THEN FIND MY CLIENT GUILTY OF ACCESSORY AFTER THE
20 FACT.

21 THE COURT: HOLD ON ONE SECOND. SO IT STATES THE
22 JURY CAN ONLY CONSIDER FINDING CHAD JAMES GUILTY OF
23 ACCESSORY ONLY IF THEY FIND EFRAIN THOMAS GUILTY OF MURDER
24 OR MANSLAUGHTER.

25 MR. JOHNSON: THAT'S CORRECT, YOUR HONOR.

1 THE COURT: I THINK YOU ARE CERTAINLY CORRECT ON
2 THAT, BECAUSE THERE IS EVIDENCE THAT HE AIDED MCCALL.

3 MR. JOHNSON: THAT'S CORRECT. AND I GUESS FOR THE
4 RECORD, YOUR HONOR, I GUESS I NEED TO MAKE A MOTION FOR A
5 DIRECTED VERDICT AS FAR AS IT RELATES TO ACCESSORY AFTER
6 THE FACT FOR EUNICE MCCALL. AND I GUESS THAT WOULD BE A
7 WAY TO SOLVE IT.

8 THE COURT: MR. SAVERANCE.

9 MR. SAVERANCE: YOUR HONOR, WE GIVE THE NAMES OF BOTH
10 DEFENDANTS THAT MR. JAMES HELPED MCCALL OR THOMAS. BUT I
11 WOULD ACKNOWLEDGE THE ONLY EVIDENCE THAT WE PUT IN TRIAL
12 WAS THAT CHAD JAMES ATTEMPTED TO ASSIST EFRAIN THOMAS. SO
13 I MEAN OTHER THAN THAT, YOUR HONOR, WE DIDN'T PUT ANY
14 EVIDENCE UP WITH MR. MCCALL AT ALL IN THIS.

15 THE COURT: I THINK IF YOU WANT ME TO BRING THEM
16 BACK, I WILL BRING THEM BACK AND GIVE THAT CLARIFICATION.

17 MR. JOHNSON: THANK YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 THE COURT: IF YOU WILL BRING THE JURY BACK OUT,
20 PLEASE.

21 (THEREUPON, THE FOLLOWING TAKES PLACE IN THE PRESENCE
22 OF THE JURY.)

23 THE COURT: LADIES AND GENTLEMEN, ONE ADDITIONAL
24 INSTRUCTION AND THIS IS AS TO CHAD JAMES AND THE CHARGE OF
25 ACCESSORY AFTER THE FACT OF MURDER. AS I INSTRUCTED YOU

1 THAT HE CAN ONLY BE FOUND GUILTY OF ACCESSORY AFTER THE
2 FACT OF MURDER IF YOU FIND THAT THE DEFENDANT WAS GUILTY
3 OF MURDER OR A FELONY WHICH INCLUDED VOLUNTARY
4 MANSLAUGHTER. AND IN THIS--INSTANCE YOU CAN ONLY CONSIDER
5 FINDING CHAD JAMES GUILTY OF ACCESSORY AFTER THE FACT OF
6 MURDER. YOU CAN ONLY CONSIDER THAT IF YOU FIND EFRAIN
7 THOMAS GUILTY OF MURDER OR MANSLAUGHTER SINCE THE
8 ALLEGATIONS REGARDING MR. THOMAS ONLY RELATED TO EFRAIN
9 THOMAS. YOUR VERDICT FORM WILL REPRESENT IT AS WELL THAT
10 YOU ARE TO CONSIDER THAT ONLY IN RELATION TO YOUR FINDINGS
11 REGARDING MR. EFRAIN THOMAS.

12 AND WITH THAT INSTRUCTION, I ASK THAT YOU GO BACK TO
13 THE JURY ROOM. AND WHEN YOU RECEIVE THESE DOCUMENTS, YOU
14 CAN BEGIN YOUR DELIBERATIONS. AND THE JURY CHARGE.

15 THE COURT: ANY ADDITIONS OR EXCEPTIONS?

16 MR. SAVERANCE: NONE, YOUR HONOR.

17 THE COURT: REGARDING THE ALTERNATES, I THINK I MAY
18 HAVE THE ALTERNATES REMAIN. CERTAINLY Y'ALL CANNOT
19 PARTICIPATE IN THE JURY DELIBERATIONS BECAUSE IT TAKES 12
20 AND WE ONLY USE 12. BUT IN THE EVENT SOMETHING SHOULD
21 HAPPEN TO ONE OF THE 12, WE WILL NEED AN ALTERNATE. AND
22 THE FIRST ALTERNATE CHOSEN, WE WILL GO IN ORDER. SO WE
23 JUST HAVE Y'ALL STAY HERE WHILE THEY ARE DELIBERATING. WE
24 WILL MAKE LIFE AS COMFORTABLE FOR YOU AS WE POSSIBLY CAN.
25 AND WE WILL HAVE YOU GO TO THE FAMILY COURTROOM UNTIL WE

1 GET NOTICE OF THE VERDICT. OKAY. PLEASE DO NOT DISCUSS
2 THE CASE HOWEVER WHILE YOU ARE IN THERE.

3 MR. JOHNSON: YOUR HONOR.

4 THE COURT: YES; SIR.

5 MR. JOHNSON: I HATE TO KEEP DISTURBING THE COURT,
6 BUT I HAVE TO MAKE A MOTION CONCERNING YOUR DECISION TO
7 KEEP THE ALTERNATE HERE.

8 THE COURT: ALL RIGHT.

9 MR. JOHNSON: I THINK UNDER THE STATUTE IT IS
10 REQUIRED THAT YOU MUST RELEASE THEM ONCE YOU GIVE THE
11 VERDICT TO THE -- ONCE YOU GIVE THE EVIDENCE TO THE JURY;
12 THAT YOU MUST RELEASE THEM. I THINK IT'S WRITTEN IN THE
13 STATUTE. I HAD A PCR CASE ON THAT RECENTLY.

14 THE COURT: I MUST RELEASE THEM?

15 MR. JOHNSON: YOU MUST RELEASE THEM?

16 THE COURT: WHY IS THAT?

17 MR. JOHNSON: I THINK THE STATUTE READS THAT THE
18 POWER OF THE COURT TO REPLACE A JURY MEMBER AFTER THEY
19 START DELIBERATIONS IS NOT ALLOWED AFTER THEY START
20 DELIBERATION.

21 THE COURT: ALL RIGHT.

22 MR. JOHNSON: I DON'T HAVE THE STATUTE BEFORE ME,
23 YOUR HONOR. BUT I AM SURE YOU CAN PULL IT UP. I HAD A
24 RECENT PCR CASE ON THAT WHERE THAT WAS THE ISSUE.

25 THE COURT: WHAT DO YOU SAY ABOUT, MR. SAVERANCE?

1 MR. SAVERANCE: WELL, YOUR HONOR, THAT'S THE PERSON.
2 THAT'S THE ALTERNATE. GOING THROUGH A WEEK LONG TRIAL.
3 THEY'VE HEARD EVERYTHING. AND THEY'RE NOT PARTICIPATING
4 IN DELIBERATIONS. IF SOMETHING HAPPENS WHERE SOMEBODY
5 FALLS OUT FOR SOME REASON, YOU'VE GOT SOMEBODY THERE TO
6 PLUG IN. WE'VE SPENT ALL WEEK TRYING THIS. I'M NOT
7 AWARE OF ANY -- I'M NOT AWARE OF ANY LAW THAT SAYS THAT
8 YOU DON'T HAVE THE POWER TO KEEP THEM HERE SEPARATED FROM
9 THE JURY.

10 MR. JOHNSON: JUST IN RESPONSE, YOUR HONOR. IT'S MY
11 UNDERSTANDING THAT THE ALTERNATE SHOULD BE REPLACED DURING
12 THE TRIAL AND NOT DURING THE DELIBERATIONS.

13 THE COURT: WELL, YOU KNOW, I USUALLY LET THEM GO.
14 THIS IS MY FIRST TIME EVER TO KEEP THEM.

15 MR. JOHNSON: BUT I THINK IT---

16 THE COURT: I AM GOING TO LOOK AT THE LAW YOU ARE
17 TALKING ABOUT, MR. JOHNSON, AND SEE WHAT IT SAYS. LET ME
18 SEE WE HAVE ONE WHERE THE JUROR WAS DISMISSED BECAUSE THE
19 JUROR DECLINED TO TAKE A RELIGIOUS OATH. Y'ALL PROBABLY
20 REMEMBER THAT ONE. LET'S SEE, MEANWHILE IN DECIDING THAT
21 ISSUE THAT DOESN'T AFFECT THE DELIBERATION OF THIS JURY.
22 IF YOU WILL REVIEW THE EXHIBITS OF THIS JURY, THEY CAN
23 START DELIBERATING.

24 MR. SEVERANCE: WE'VE GOTTEN THE ORIGINAL, THE
25 COMPLETE ALREADY ADMITTED INTO EVIDENCE. I DON'T HAVE A

1 PROBLEM WITH THAT.

2 THE COURT: THE REDACTED PORTION WAS OFFERED ADMITTED
3 FOR IDENTIFICATION ONLY. NOT FOR THE JURY.

4 (STATEMENT MARKED STATE'S 42 FOR ID ONLY.)

5 THE COURT: ARE THE PARTIES IN AGREEMENT AS TO THE
6 EXHIBITS?

7 MR. WHEELER: THE DEFENDANT THOMAS IS, YOUR HONOR.

8 MR. SAVERANCE: YES, SIR, YOUR HONOR. AND FOR THE
9 RECORD, I THINK STATE'S 42 WAS JUST FOR JUST
10 IDENTIFICATION PURPOSES SO THAT'S NOT GOING TO THE JURY.

11 THE COURT: IS THAT CORRECT, MR. WHEELER?

12 MR. WHEELER: DEFENDANT THOMAS AGREES WITH THAT.
13 YES, SIR, YOUR HONOR.

14 THE COURT: MR. WATTS?

15 MR. WATTS: CORRECT, YOUR HONOR.

16 THE COURT: MR. JOHNSON?

17 MR. JOHNSON: THAT'S CORRECT, YOUR HONOR.

18 THE COURT: YOU CAN GIVE THEM THE EXHIBITS AND THEY
19 CAN HAVE AT IT. THE EXHIBITS AND INSTRUCTIONS.

20 MR. WATTS: YOUR HONOR, CAN I BRIEFLY ON THE RECORD
21 A SECOND CONCUR THIS ISSUE THAT MR. JOHNSON MENTIONED WITH
22 THE ALTERNATES AND THE RELEASE IN KEEPING THEM HERE?

23 THE COURT: MR. WHEELER, WHAT IS YOUR VIEW ON THAT?

24 MR. WHEELER: YOUR HONOR, I'LL JOIN IN THE MOTION
25 JUST FOR THE RECORD.

1 THE COURT: AND WHAT IS YOUR VIEW ON THAT? ARE YOU
2 STILL DISAGREEING, MR. SAVERANCE?

3 MR. SAVERANCE: YOUR HONOR, MY UNDERSTANDING WAS
4 THAT'S WHAT THE JURORS ARE FOR. BUT I'M NOT -- I
5 HAVEN'T -- I'M NOT AWARE OF THAT PCR ISSUE MR. JOHNSON IS
6 TALKING ABOUT. SO I JUST -- I'M NOT SURE, YOUR HONOR. MY
7 VIEW WOULD BE FOR THEM TO STAY. BUT OF COURSE IF THE LAW
8 IS DIFFERENT THEN THEY WON'T. BUT I WOULD PREFER FOR THEM
9 TO STAY.

10 MR. JOHNSON: I THINK I CAN FIND THAT PARTICULAR
11 RULE.

12 THE COURT: BRING THOSE ALTERNATES IN. I AM GOING TO
13 ACCEPT THE CHALLENGE OF LAW.

14 (THEREUPON, THE ALTERNATES RETURN TO THE JURY ROOM.)

15 THE COURT: LADIES, IT APPEARS THAT ONE LAWYER WANTS
16 Y'ALL TO STAY, AND THREE WANT YOU TO GO WHILE THE JURY IS
17 DELIBERATING. AND CHANCES ARE YOU WANT TO GO. SO THAT
18 MEANS FIVE WANT TO GO AND ONE WANTS YOU TO STAY. THE 12
19 JURORS WHO ARE DELIBERATING WILL SEE THIS CASE THROUGH TO
20 THE END. SO RATHER THAN HAVE Y'ALL STAY WHILE
21 DELIBERATIONS ARE TAKING PLACE, I AM GOING TO RELEASE
22 Y'ALL. AND JUST ASK THAT YOU NOT DISCUSS WHAT YOU THINK
23 YOUR VERDICT SHOULD BE UNTIL YOU HEAR THAT THERE IS A
24 VERDICT IN THIS CASE. AND I WANT TO THANK YOU FOR YOUR
25 SERVICE ON JURY DUTY THIS WEEK. I HOPE YOU GAINED SOME

1 INSIGHT THAT WILL BENEFICIAL TO YOU. I CERTAINLY HOPE YOU
2 WON'T BENEFIT A WHOLE LOT FROM HEARING ABOUT SOME OF THE
3 BAD THINGS YOU HEARD DURING THE TRIAL. I HOPE YOU WILL
4 BENEFIT FROM SOME OTHER THINGS. I HOPE IT IS A POSITIVE
5 THING YOU EXPERIENCED THIS WEEK. THIS IS LAST CASE AND
6 ONLY CASE WE ARE GOING TO BE ABLE TO DO THIS WEEK. SO
7 YOUR SERVICE OF JURY DUTY IS NOW OVER. YOU WILL NOT BE
8 ELIGIBLE FOR SERVICE NEXT YEAR, TWO YEARS. BEYOND THAT
9 YOU CAN CHOOSE NOT TO SERVE. I WANT TO THANK YOU. IF YOU
10 NEED ANY CERTIFICATES FOR YOUR JOB YOU CAN GET THAT FROM
11 THE CLERK'S OFFICE I THINK. THEY WILL HAVE THOSE FOR YOU.
12 AND THEY WILL MAIL FOR YOUR JURY SERVICE. I WANT TO THANK
13 YOU AND LET YOU GO.

14 (THEREUPON, THE ALTERNATES ARE EXCUSED.)

15 THE COURT: WE WILL BE AT EASE.

16 MR. SAVERANCE: YOUR HONOR, THERE IS ONE ISSUE THAT I
17 WOULD BRING BEFORE THE COURT.

18 THE COURT: YES, SIR.

19 MR. SAVERANCE: SINCE THE CASE HAS NOW GONE TO THE
20 JURY, WE WOULD REQUEST THAT THE DEFENDANTS BE PLACED INTO
21 CUSTODY PENDING THAT. I UNDERSTAND WE HAD SOME BAIL
22 PEOPLE HERE DURING THE TRIAL. BUT AT THIS POINT SINCE THE
23 CASE HAS NOW GONE TO THE JURY, AND WE WOULD JUST REQUEST
24 THE DEFENDANTS BE PLACED INTO CUSTODY PENDING THE
5 DELIBERATIONS.

1 THE COURT: YES, SIR, MR. WATTS.

2 MR. WATTS: YOUR HONOR, MY CLIENT HAS BEEN HERE THE
3 WHOLE TWO WEEKS BEFORE THE TRIAL. HE'S APPEARED EVERY
4 TIME THE COURT WAS BACK. I WOULD ASK THAT HE BE ALLOWED
5 TO BE WITH HIS FAMILY. BE ABLE TO GO OUTSIDE FOR BRIEF
6 MOMENTS. IF AN ESCORT IS NECESSARY, WE WOULD ASK FOR
7 THAT. THAT'S NO PROBLEM AT ALL. WE WOULD ASK THAT HE NOT
8 BE PLACED IN CUSTODY.

9 THE COURT: MR. JOHNSON.

10 MR. JOHNSON: I WOULD ALSO ASK FOR THE SAME FOR MY
11 CLIENT.

12 THE COURT: THE DEFENDANTS ARE IN CUSTODY UNTIL THE
13 JURY COMES OUT WITH A VERDICT.

14 (THEREUPON, AT 6:50 P.M. THE JURY HAS A QUESTION.)

15 THE COURT: THE JURY HAS A FEW QUESTIONS. YOU MAY
16 BRING THEM IN.

17 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
18 PRESENCE THE JURY.)

19 THE COURT: MR. FOREMAN, AND MEMBERS OF THE JURY, I
20 RECEIVED A FEW QUESTIONS. NO. 1, DO WE KNOW IF EUNICE
21 DAVIS MCCALL WAS RIGHT HANDED OR LEFT HANDED. NO. 2, WE
22 NEED TO SEE CHAD JAMES' STATEMENT HE GAVE TO THE POLICE.
23 PAGE 1 OF THE INSTRUCTIONS I GAVE YOU, YOU PROBABLY
24 REMEMBER THE FIRST THING I SAID TO YOU IS THAT YOU HAVE
5 HEARD THE EVIDENCE AND THE ARGUMENTS OF THE PARTIES. AND

1 FURTHER, THAT YOU ARE DECIDE THE CASE BASED ON THE
2 EVIDENCE ALREADY PRESENTED AND THE LAW. YOU HAVE HEARD
3 ALL OF THE EVIDENCE. YOU HAVE RECEIVED ALL OF THE
4 EVIDENCE, AS WELL AS THE ARGUMENTS OF COUNSEL, AS WELL AS
5 MY INSTRUCTIONS OF LAW. AND YOU ARE TO DELIBERATE BASED
6 ON THE EVIDENCE THAT YOU HAVE, THAT YOU HAVE RECEIVED.

7 PLEASE RETURN TO THE JURY ROOM. CONTINUE YOUR
8 DELIBERATIONS.

9 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
10 PRESENCE OF THE JURY.)

11 THE COURT: ANY EXCEPTIONS TO THE CHARGE?

12 MR. SAVERANCE: NONE FROM THE STATE, YOUR HONOR.

13 MR. WHEELER: NONE, YOUR HONOR.

14 MR. WATTS: NONE, YOUR HONOR.

15 MR. JOHNSON: NONE, YOUR HONOR.

16 THE COURT: BACK AT EASE UNTIL WE HEAR FROM THE JURY.

17 (THEREUPON, AT 6:53 P.M. JURY COMMENCES
18 DELIBERATIONS.)

19 (THEREUPON, AT 7:55 P.M. JURY REACHES VERDICT.)

20 THE COURT: AS I UNDERSTAND IT, THE JURY HAS A
21 VERDICT. AND WHEN THE JURY REACHES ITS VERDICT, AND THE
22 VERDICT IS ANNOUNCED THERE WILL BE SOME PEOPLE WHO WILL BE
23 HAPPY AND SOME PEOPLE WHO WILL BE SAD. I WANT TO LET
24 EVERYONE KNOW THAT WE ARE IN COURT. AND ORDER MUST BE
25 KEPT IN COURT ALL TIMES. THERE WILL BE NO VERBAL

1 OUTBURSTS BY ANYONE IN THE COURTROOM. ANY VERBAL
2 OUTBREAKS BY ANYONE WILL RESULT IN THAT PERSON BEING HELD
3 IN CONTEMPT OF COURT. I AM JUST GIVING YOU FAIR WARNING
4 SO YOU CAN CONTROL YOURSELF. OKAY, BRING THE JURY.

5 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
6 PRESENCE OF THE JURY.)

7 THE COURT: THE DEFENDANTS PLEASE STAND. MR.
8 FOREMAN, IF YOU WILL STAND, PLEASE. HAVE YOU REACHED A
9 VERDICT?

10 MR. FOREMAN: YES, YOUR HONOR, WE HAVE.

11 THE COURT: IS IT A UNANIMOUS VERDICT?

12 MR. FOREMAN: YES, SIR.

13 THE COURT: IF YOU WILL PASS IT TO THE BAILIFF FOR
14 ME. MADAM CLERK, YOU MAY PUBLISH THE VERDICT.

15 THE CLERK: WE THE JURY FIND UNANIMOUSLY AS TO THE
16 DEFENDANT EUNICE DAVIS MCCALL, GUILTY OF VOLUNTARY
17 MANSLAUGHTER. GUILTY OF POSSESSION OF A WEAPON DURING THE
18 COMMISSION OF A VIOLENT CRIME. WE THE JURY FIND
19 UNANIMOUSLY AS TO THE DEFENDANT, EFRAIN THOMAS, GUILTY OF
20 MURDER OF TROY ROUSE. GUILTY OF POSSESSION OF A WEAPON
21 DURING THE COMMISSION OF A VIOLENT CRIME. AND WE THE JURY
22 FIND UNANIMOUSLY AS TO THE DEFENDANT CHAD JAMES, ACCESSORY
23 AFTER THE FACT OF MURDER, NOT GUILTY.

24 THE COURT: LADIES AND GENTLEMEN, IF THAT'S THE
5 VERDICT OF EACH AND EVERY JUROR, PLEASE LET IT BE KNOWN BY

1 RAISING YOUR RIGHT HANDS.

2 (ALL JURORS AFFIRM.)

3 THE COURT: ANY ADDITIONAL POLLING REQUESTED BY ANY
4 PARTIES?

5 MR. SAVERANCE: NONE FROM THE STATE, YOUR HONOR.

6 MR. WHEELER: YOUR HONOR, DEFENDANT THOMAS, WE
7 REQUEST THAT YOU POLL THE JURY.

8 MR. WATTS: DEFENDANT MCCALL REQUESTS POLLING OF THE
9 JURY, YOUR HONOR.

10 MR. JOHNSON: I DO NOT REQUEST IT, YOUR HONOR.

11 THE COURT: MADAM CLERK, IF YOU WILL POLL EACH JUROR
12 INDIVIDUALLY.

13 THE CLERK: MR. FOREMAN, PLEASE STAND. IS THIS YOUR
14 VERDICT, AND STILL YOUR VERDICT?

15 THE FOREMAN: YES, IT IS STILL MY VERDICT.

16 THE COURT: IF YOU WILL CALL EACH JUROR'S NAME
17 INDIVIDUALLY PLEASE.

18 THE CLERK: MS. MICHAEL, IS THIS YOUR VERDICT AND IS
19 IT STILL YOUR VERDICT?

20 MS. MICHAEL: YES.

21 THE CLERK: MR. BAKER, IS THIS YOUR VERDICT AND STILL
22 YOUR VERDICT?

23 MR. BARKER: YES, MA'AM.

24 THE CLERK: PLEASE BE SEATED. MS. MCFADDEN, IS THIS
25 YOUR VERDICT AND IS IT STILL YOUR VERDICT?

1 MS. MCFADDEN: YES.

2 THE CLERK: BE SEATED. MR. MONTGOMERY, IS THIS YOUR
3 VERDICT AND STILL YOUR VERDICT?

4 MR. MONTGOMERY: YES, MA'AM.

5 THE CLERK: MS. PRESCOTT, IS THIS YOUR VERDICT AND
6 STILL YOUR VERDICT?

7 MS. PRESCOTT: YES, IT IS.

8 THE CLERK: MR. GRANTHAM, IS THIS YOUR VERDICT AND
9 STILL YOUR VERDICT?

10 MR. GRANTHAM: YES, MA'AM.

11 THE CLERK: MR. LUCAS, IS THIS YOUR VERDICT AND STILL
12 YOUR VERDICT?

13 MR. LUCAS: YES, MA'AM.

14 THE CLERK: MS. COOPER, IS THIS YOUR VERDICT AND
15 STILL YOUR VERDICT?

16 MS. COOPER: YES, IT IS.

17 THE CLERK: MS. CANNON, IS THIS YOUR VERDICT AND
18 STILL YOUR VERDICT?

19 MS. CANNON: YES.

20 THE CLERK: MR. SHERMAN, IS THIS YOUR VERDICT AND
21 STILL YOUR VERDICT?

22 MR. SHERMAN: YES, IT IS.

23 THE CLERK: MR. KEENAN, IS THIS YOUR VERDICT AND
24 STILL YOUR VERDICT?

25 MR. KEENAN: YES, MA'AM.

1 THE COURT: THE VERDICT APPEARS TO BE A UNANIMOUS
2 VERDICT OF EACH AND EVERY JUROR. A UNANIMOUS VERDICT OF
3 THE JURY. ANY POSTTRIAL MOTIONS?

4 MR. WHEELER: YES, SIR, YOUR HONOR. THE DEFENDANT
5 THOMAS WOULD RESPECTFULLY MAKE A MOTION FOR A NEW TRIAL
6 PURSUANT TO CODE SECTION 17-23-110. AND ASK THE COURT TO
7 GRANT A NEW TRIAL LARGELY BASED ON THE MOTIONS PREVIOUSLY
8 MADE AT THE DIRECTED VERDICT STAGE. AND WE WOULD RENEW
9 THOSE MOTIONS AT THIS TIME. THANK YOU, YOUR HONOR.

10 THE COURT: MR. WATTS.

11 MR. WATTS: YOUR HONOR, MR. MCCALL WOULD ALSO MAKE A
12 MOTION FOR A NEW TRIAL BASED ON 17-23-10. BASED ON THE
13 DIRECTED VERDICT MOTIONS ALSO. AND ALSO REGARDING A
14 QUESTION THAT WAS PROVIDED BY THE JURY EARLIER REGARDING
15 THE QUESTION THAT THE JURY HAD DURING DELIBERATIONS, WHICH
16 BECOMES A QUESTION OF REASONABLENESS AND REASONABLE DOUBT.
17 AND THAT RAISES A QUESTION THAT YOU GRANT NEW TRIAL FOR
18 MR. MCCALL.

19 THE COURT: SAY THAT AGAIN.

20 MR. WATTS: THAT THERE WAS A QUESTION OF DOUBT THAT
21 WAS RAISED UP BY THE QUESTION OF THE JURY EARLIER. I
22 BELIEVE THAT IS GROUNDS FOR A NEW TRIAL AS WELL.

23 THE COURT: WHAT QUESTION IS THAT?

24 MR. WATTS: REGARDING THE DOMINANT HAND OF MR. MCCALL
5 THAT WAS PRESENTED APPROXIMATELY AT 6:50, YOUR HONOR.

1 THE COURT: WELL WHEN THE JURY CAME WITH THE QUESTION
2 AND I HAD RESPONDED TO THE JURY'S QUESTION THAT GAVE
3 COUNSEL ANY OPPORTUNITY TO VOICE ANY OBJECTION TO OR ANY
4 EXCEPTION TO THE COURT'S INSTRUCTION TO THE JURY, AND
5 THERE WAS NONE. BUT I WILL TAKE THAT INTO CONSIDERATION
6 ALONG WITH THE OTHER GROUND THAT YOU RAISED. AND I
7 RESPECTFULLY DENY BOTH MOTIONS. THE MOTION AS TO THOMAS
8 AS WELL THE MOTION AS TO MR. MCCALL. THE QUESTIONS RAISED
9 IN THIS CASE WERE QUESTIONS FOR THE JURY TO DETERMINE, TO
10 WEIGH THE CREDIBILITY OF THE WITNESSES AND THE EVIDENCE
11 AND APPLY THE LAW.

12 AND THE JURY HAS DONE THAT. THE JURY HAS SPOKEN.
13 AND I WILL NOT DISTURB THE VERDICT OF THE JURY. I FIND
14 THE VERDICT IS SUPPORTED BY THE EVIDENCE. THE POSTTRIAL
15 MOTIONS ARE DENIED.

16 MR. WATTS: YES, YOUR HONOR.

17 THE COURT: LADIES AND GENTLEMEN, I WANT TO THANK YOU
18 FOR YOUR SERVICES IN REGARD TO THIS CASE. YOU WERE
19 SUBPOENAED TO APPEAR. AND IT'S NOT SOMETHING YOU ARE
20 CALLED UPON TO DO EVERY DAY. BUT YOU RESPONDED TO THE
21 SUMMONS. AND WERE CALLED AND YOU HAVE ACTUALLY DONE WHAT
22 WAS ASKED OF YOU TO DO. YOU LISTENED TO THE EVIDENCE.
23 YOU DEVOTED A GOOD PORTION OF THIS WEEK TO THIS CASE AND
24 DELIBERATED AND YOU'VE REACHED A VERDICT. I WANT TO THANK
5 YOU FOR THAT.

1 WHERE THE JURY HAS DETERMINED A GUILTY VERDICT, IT
2 BECOMES MY DUTY TO IMPOSE A SENTENCE. CERTAINLY YOU HAVE
3 NO ROLE IN THAT, BUT I DO. AND WE WILL PROCEED TO THAT AT
4 THIS TIME. AS TO MR. JAMES, THE JURY HAS FOUND HE IS NOT
5 GUILTY. YOU ARE DISCHARGED FROM THIS CASE.

6 MR. JOHNSON: THANK YOU, YOUR HONOR.

7 THE COURT: IS THE STATE READY TO PROCEED WITH
8 SENTENCING?

9 MR. SAVERANCE: WE ARE, YOUR HONOR.

10 THE COURT: IS THE DEFENSE READY?

11 MR. WHEELER: YES, SIR.

12 MR. WATTS: YES, YOUR HONOR.

13 MR. WHEELER: YOUR HONOR, WOULD YOU LIKE US TO
14 APPROACH OR STAND HERE?

15 THE COURT: I WOULD LIKE YOU TO STAND. MR. WHEELER,
16 REGARDING DID YOU SAY 17-23-10?

17 MR. WHEELER: I THINK I SAID 110. I MAY HAVE BEEN IN
18 ERROR.

19 THE COURT: 10. 17-23-10.

20 MR. WHEELER: I THINK I PROBABLY MISSPOKE.

21 THE COURT: YES, SIR, MR. SOLICITOR.

22 MR. SAVERANCE: DO I GO FIRST, YOUR HONOR?

23 THE COURT: YES, SIR.

24 MR. SAVERANCE: YOUR HONOR, THOSE ARE THE SHEETS ON
EERAIN THOMAS. YOUR HONOR, YOU'RE AWARE OF THE FACTS OF

1 THE CASE. BUT BRIEFLY AS YOU KNOW, THE JURY FOUND EFRAIN
2 THOMAS GUILTY OF MURDER. THIS HAPPENED ON APRIL 7, 2005.
3 HE SHOT TROY ROUSE NUMEROUS TIMES. FIVE OR SIX TIMES.
4 LEFT HIM FOR DEAD. HE DID DIE. YOUR HONOR, OUR POSITION
5 FOR THE STATE THE VICTIM, YOU KNOW, WAS KILLED UNJUSTLY.
6 AND NOTHING CAN BRING HIM BACK. AND WE FEEL THAT A PROPER
7 PUNISHMENT WOULD BE LIFE IMPRISONMENT WITHOUT PAROLE FOR
8 THE DEFENDANT SINCE HE WAS CONVICTED BY A JURY OF MURDER.
9 YOU CAN'T REPLACE ONE LIFE FOR ANOTHER. BUT AT THE SAME
10 TIME YOU CAN PUNISH SOMEBODY TO THE FULL EXTENT IF IT'S IN
11 YOUR -- IF YOUR HONOR SEES FIT. BUT THAT'S OUR POSITION.
12 WE WOULD ASK FOR THE MAXIMUM PENALTY. I BELIEVE THAT'S
13 ALSO THE POSITION OF THE VICTIM'S FAMILY.

14 MS. ROGERS: MY NAME IS LAKAVIA ROGERS. I'M TROY
15 ROUSE'S SISTER. I DO WANT TO SAY THAT THE ACCIDENT FOR MY
16 BROTHER, YOU KNOW, AND EVERYTHING THEY CAN STILL SEE THEIR
17 FAMILY. WE CAN'T EVER SEE OUR BROTHER EVER AGAIN, YOU
18 KNOW. I MEAN, I JUST FEEL LIKE THEY SHOULD GET EVERYTHING
19 THAT THEY DESERVE. I DON'T FEEL LIKE IT SHOULD BE NO LESS
20 THAN THE MAX. LIKE I SAID, THEY CAN STILL SEE THEIR
21 FAMILY. MY BROTHER CANNOT SEE HIS KIDS ANYMORE. THEY CAN
22 STILL VISIT THEIR KIDS. YOU KNOW. HE WAS NOT A BAD
23 PERSON. CAME DOWN HERE TO CHANGE HIS LIFE AND HE GOT
24 INVOLVED IN THE WRONG CROWD.

25 THE COURT: AND WHAT IS YOUR NAME?

1 MS. ROGERS: I'M LAKAVIA ROGERS. I'M THE DECEASED'S
2 SISTER.

3 MR. SAVERANCE: YOUR HONOR, THAT'S THE ONE PERSON
4 THAT WANTS TO SPEAK ON BEHALF OF THE VICTIM. I BELIEVE
5 THE VICTIM'S MOTHER AND SOME OTHER PEOPLE JOIN IN IN WHAT
6 SHE IS SAYING. BUT I'VE MET WITH THEM SEVERAL TIMES. AND
7 THEY SHARE HER SENTIMENTS. BUT I THINK THAT'S ALL AS FAR
8 AS SPEAKING AT THIS TIME. WOULD YOU LIKE THE RECORD ON
9 THIS DEFENDANT, YOUR HONOR?

10 THE COURT: YES.

11 MR. SAVERANCE: YOUR HONOR, WE HAVE A NARCOTIC DRUG
12 CONVICTION ON 2003. HE RECEIVED THREE YEARS. WE HAVE
13 CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE 7TH. I
14 DON'T HAVE ANY PRIOR OFFENSE, BUT 7 IS BESIDE. HE GOT A
15 SENTENCE OF ONE YEAR AND THAT WAS ON 3-18-84. THERE'S A
16 CONVICTION OF POSSESSION OF A WEAPON IN 2004. A PLEA OF
17 GUILTY AND A ONE YEAR SENTENCE. AND THAT WAS ON 3-18-04.
18 AND THAT'S WHAT I HAVE AS FAR AS A PRIOR OFFENSE, YOUR
19 HONOR.

20 THE COURT: AND AS TO THE OTHER DEFENDANT? DID YOU
21 TELL ME AS TO BOTH OR---

22 MR. SAVERANCE: THAT WAS JUST ONE, YOUR HONOR. I'VE
23 GOT THE SHEETS ON THOSE OTHERS ALSO.

24 THE COURT: YES, SIR. TELL ME THAT RECORD ONE MORE
5 TIME. MR. THOMAS' RECORD.

1 MR. SAVERANCE: YOUR HONOR, I HAVE A NARCOTICS DRUG
2 CONVICTION IN 2003. THESE RAP SHEETS ARE DIFFERENT IN THE
3 UNITED STATES. BUT I CAN TELL THAT WAS IN 2003. HE GOT A
4 THREE-YEAR SENTENCE. THERE IS A CRIMINAL POSSESSION OF
5 CONTROLLED SUBSTANCE 7. I DON'T KNOW WHAT THAT 7 MEANS.
6 BUT THAT WAS ON 3-18-04 A ONE-YEAR SENTENCE. CRIMINAL
7 POSSESSION OF WEAPON. A CONVICTION OF 2-26-04 AND A
8 ONE-YEAR SENTENCE.

9 THE COURT: ALL THOSE WERE IN THE STATE OF NEW YORK?

10 MR. SAVERANCE: YES, SIR, YOUR HONOR. THEY APPEAR TO
11 BE ALL IN THE STATE OF NEW YORK.

12 THE COURT: AS FAR AS MR. MCCALL.

13 MR. SAVERANCE: YOUR HONOR, AS FAR AS MR. MCCALL
14 GOES, HE WAS CONVICTED BY A JURY OF A MOST SERIOUS
15 OFFENSE, WHICH IS VOLUNTARY MANSLAUGHTER. AGAIN, THE
16 VICTIM WAS SHOT CLOSE RANGE BY HIM. THEY LEFT HIM THERE
17 TO DIE. AND HE DID DIE IN THE STREET. HE DIDN'T CALL
18 FOR HELP. WE FEEL WAS A HEINOUS CRIME. THE FAMILY OF THE
19 VICTIM HAS BEEN ROBBED BEING ABLE TO BE WITH HIM AND SPEND
20 TIME NOW THAT HE'S DEAD. WE JUST ASK FOR THE MAXIMUM
21 PENALTY UNDER THE VOLUNTARY MANSLAUGHTER STATUTE. I
22 BELIEVE IT IS 30 YEARS. AND THE WEAPONS CHARGE IS 5. WE
23 ARE REQUESTING THE MAXIMUM AMOUNT OF TIME BASED ON THE
24 TYPE OF CRIME THIS IS. I WILL LET THE FAMILY SPEAK AGAIN
25 IF THEY WANT TO.

1 THE COURT: YES, SIR. I'LL BE HAPPY TO HEAR FROM
2 YOU. TELL ME YOUR NAME, SIR.

3 MR. ROGERS: CARNELL ROGERS.

4 THE COURT: YES, SIR.

5 MR. ROGERS: I WOULD REQUEST THE MAXIMUM TIME TOO
6 ALSO.

7 MS. ROGERS: LIKE I SAID HIS FAMILY CAN'T SEE HIM.
8 MY BROTHER CANNOT COME BACK.

9 MR. ROGERS: EXACTLY.

10 MS. ROGERS: AND HE HAS THREE KIDS. ONE THAT HE
11 HASN'T EVEN SEEN THAT HAS JUST BEEN BORN.

12 MR. SAVERANCE: PRIOR RECORD, YOUR HONOR?

13 THE COURT: YES.

14 MR. SAVERANCE: AGGRAVATED ASSAULT AND BATTERY OF A
15 HIGH AND AGGRAVATED -- I'M SORRY, ASSAULT AND BATTERY OF A
16 HIGH AND AGGRAVATED NATURE. A CONVICTION IN 2002. A YOA
17 NOT TO EXCEED 6 YEARS. PROBATION 5 YEARS. YOUR HONOR,
18 THAT'S THE ONLY CONVICTION I'M SHOWING.

19 THE COURT: MR. WHEELER.

20 MR. WHEELER: THANK YOUR HONOR. MAY IT PLEASE THE
21 COURT. YOUR HONOR, MR. THOMAS SAYS HE HAD INDICATED
22 DURING THE TESTIMONY AT TRIAL HE IS 23-YEARS-OLD. WHICH
23 MAKES HIM A PRETTY YOUNG MAN. YOUR HONOR, I WON'T, AND
24 CERTAINLY THERE IS NO NEED TO REHASH ANY OF THE FACTS.
25 YOU HEARD THEM. HE ADMITTED WHAT HAPPENED AT TRIAL.

1 NEVER DENIED THAT HE WAS INVOLVED IN THIS. I THINK THE
2 ONLY QUESTION WAS WHETHER HIS INVOLVEMENT WAS PROPERLY
3 PREDICATED ON SOMETHING THAT HE THOUGHT HE WAS DOING
4 RIGHT. THE JURY FOUND IT WASN'T. HE DOESN'T DENY WHAT
5 HE DID. HE NEVER HAS DENIED, YOUR HONOR, OR HAS ALWAYS
6 HAD SORROW FOR WHAT HE DID.

7 YOUR HONOR, I KNOW YOU HEARD THE APOLOGY PORTION OF
8 HIS CONFESSION THAT CAME IN TO EVIDENCE DURING THE TRIAL
9 WHERE HE EXPRESSED A GOOD DEAL OF REGRET AS TO WHAT
10 HAPPENED TO MR. ROUSE. AND HIS INVOLVEMENT IN IT. I
11 THINK HE FEELS FOR THAT FAMILY. YOUR HONOR, THE JURY HAS
12 CONCLUDED HE DID SOMETHING THAT WAS WRONG. I THINK HE
13 WOULD ADMIT THEIR HAVING HAD AN OPPORTUNITY TO LOOK AT IT,
14 AND THEY'RE MAKING THAT CONCLUSION, THAT'S THE CONCLUSION.
15 THAT'S WHAT IT IS UNDER THE LAW. WE WOULD POINT OUT THAT
16 IT WAS NOT A SYSTEMATIC OR LONG TERM DECISION ANY WAY YOU
17 CUT IT. IT'S BEEN CONCLUDED TO BE A WRONG ONE, AND A
18 VIOLATION OF THE LAW. BUT IT WAS NOT A PATTERN THAT
19 APPLIED TO MR. ROUSE. WAS NOT PART OF A LARGER CRIME AS
20 WE'VE SEE IN SOME CASES. PART OF AN ARMED ROBBERY. PART
21 OF ANY KIND OF ROBBERY.

22 YOUR HONOR, NOT CERTAINLY LOOKING IN TO WHAT THE JURY
23 THOUGHT OVERALL, BUT I THINK BY ANY ACCOUNT THERE WAS SOME
24 KIND OF STRUGGLE THAT TOOK PLACE AND THIS HAPPENED.
25 WHETHER THE DEFENSE WAS ENOUGH OBVIOUSLY NOT. BUT IT'S

1 NOT LIKE THIS WAS SOME SPREE OR ANYTHING LIKE THAT. YOUR
2 HONOR, MY CLIENT HAS NO RECORD OF VIOLENCE OF HURTING
3 ANYONE. HE HAS SOME DRUG CHARGES IN NEW YORK AND ONE
4 WEAPONS. BUT HE HAS NEVER HAD ANY SIMPLE ASSAULT OR
5 ANYTHING LIKE THAT OF WANTING TO HURT ANOTHER INDIVIDUAL.
6 ALTHOUGH HE ACKNOWLEDGES HE DID THAT TO MR. ROUSE. YOUR
7 HONOR, THE MINIMUM IS 30. AND IT'S DAY FOR DAY. OF
8 COURSE, THAT'S GOING TO MAKE HIM A 50-YEAR OLD SOMETHING
9 MAN. PLUS WHATEVER THERE IS ANOTHER CHARGE THAT HE HAS
10 BEEN CONVICTED OF THAT CARRIES FIVE.

11 THERE IS NO WAY HE'S GOING TO SEE, YOUR HONOR, EVEN
12 IF YOU SEE FIT TO GIVE HIM THE MINIMUM, HE WON'T SEE THE
13 OUTSIDE OF A WALL BEFORE HE'S 55 YEARS OLD. YOUR HONOR,
14 WE WOULD SUBMIT TO YOU HE CAN LEARN A LOT BETWEEN 23 AND
15 55. HE'S SHOWN NO PATTERN IN THE PAST OF EVER TRYING TO
16 HURT ANYBODY BEFORE THIS ALTERCATION OCCURRED. OVER THE
17 NEXT 55 OR SO YEARS, EXCUSE ME, 35 OR SO YEARS. I CAN'T
18 SEE ANY REASON WHY HE DECIDED TO DO ANYTHING ELSE LIKE
19 THAT. WHY HE WOULD EVER TRY TO COME AND HURT ANOTHER
20 PERSON AGAIN. YOUR HONOR, HE DOES HAVE HIS FAMILY THAT'S
21 BEEN WITH HIM. THEY'VE BEEN COOPERATIVE. THEY CARE ABOUT
22 HIM. HIS MOTHER STILL LIVES IN NEW YORK. AS HARD AS IT
23 IS FOR HER TO TRAVEL, SHE'S BEEN HERE WHEN SHE COULD.
24 I'VE MET WITH HER ON TWO OR THREE OCCASIONS WHEN SHE'S
25 COME DOWN TO BISHOPVILLE. YOUR HONOR, WHEN IT COMES TO

1 LOSING LOVED ONES, SHE MAY NOT BE HERE WHEN HE COMES OUT
2 AGAIN. BUT AND HE IS A FATHER TO YOUNG CHILDREN.

3 YOUR HONOR, WE WOULD ASK THAT YOU GIVE HIM THE LESSER
4 SENTENCE THAT YOU COULD GIVE HIM UNDER THE CIRCUMSTANCES
5 GIVEN HIS YOUTH, HIS LACK OF PRIOR RECORD, HIS LACK OF
6 DOING VIOLENCE TO ANYONE ELSE. HIS COMING CLEAR IN EFFECT
7 AS TO WHAT HE DID, AND SAYING THAT HE WAS INVOLVED IN
8 THIS. HE DIDN'T HIDE UNDER A ROCK AND SAY I HAD NOTHING
9 TO DO WITH IT. YOUR HONOR, HE WOULD LIKE TO SAY SOMETHING
10 TO THE FAMILY. IF NOW IS NOT THE TIME, IF YOU WOULD LIKE
11 FOR HIM TO WAIT UNTIL THE OTHER IS FINISHED. IF YOU WOULD
12 GIVE HIM THAT OPPORTUNITY.

13 THE COURT: YES, SIR. MR. THOMAS.

14 MR. THOMAS: THANK YOU, JUDGE. I DON'T KNOW YOUR
15 NAME. YOUR NAME?

16 MR. ROGERS: SIR?

17 MR. THOMAS: HER NAME.

18 MR. ROGERS: MY SISTER IS LAKAVIA.

19 MR. THOMAS: LAKAVIA. MS. LAKAVIA, MS. RUBY JEAN,
20 YOU KNOW ME AND YOU NEVER HAD NOTHING.

21 MR. ROGERS: YEAH.

22 MR. THOMAS: LET ME EXPLAIN MYSELF. WHAT HAPPENED
23 WAS AN ACCIDENT. I NEVER HAD NO PROBLEMS WITH TROY.
24 NEVER. NEVER.

25 MR. ROGERS: I MEAN, I AM HURTING, MAN. YOU KNOW WHAT

1 I AM SAYING?

2 MR. THOMAS: LET ME FINISH TALKING TO YOU. I KNOW
3 YOU ARE HURTING. I HAVE BEEN HURTING EVER SINCE IT
4 HAPPENED. HE'S BEEN ON MY MIND. I HAVE BEEN GOING
5 THROUGH PHYSICAL AND EMOTIONAL TORMENT EVER SINCE. IF I
6 WASN'T -- IF I FEEL LIKE I SHOULDN'T SUFFER THE
7 REPERCUSSIONS FROM MY ACTIONS, I WOULDN'T HAVE ADMITTED TO
8 BEING INVOLVED IN THIS THING. I FELT BAD, YOU KNOW WHAT I
9 AM SAYING? YOU LOST A BROTHER. MS. JEAN, SHE LOST A SON.
10 LIKE YOUR SISTER SAID, Y'ALL AIN'T NEVER GOING TO BE ABLE
11 TO TOUCH HIM NO MORE. HIS KIDS AIN'T NEVER GOING TO BE
12 ABLE TO TOUCH HIM NO MORE. AND THAT'S IMPORTANT. I JUST
13 WANT YOU TO UNDERSTAND THAT I WAS BLINDFOLDED AND TRYING
14 TO WALK A STRAIGHT LINE, YOU KNOW. I THOUGHT I COULD, YOU
15 KNOW.

16 MR. ROGERS: Y'ALL ALL I SAY IS, YOU KNOW, I CAN
17 FORGIVE, BUT I CAN'T FORGET. YOU KNOW WHAT I MEAN? I'M
18 GOING TO LET GOD HANDLE ALL THIS.

19 MR. THOMAS: I RESPECT THAT.

20 MR. ROGERS: YOU KNOW WHAT I MEAN? BECAUSE I'VE
21 DEALT WITH Y'ALL. I KNOW, YOU KNOW WHAT I'M SAYING? I
22 PUT Y'ALL IN THE CAR WITH ME. I RODE Y'ALL AROUND WITH
23 ME.

24 MR. THOMAS: EXACTLY.

25 MR. ROGERS: WE HANG WITH EACH OTHER. AND THIS IS

1 WHAT HAPPENED TO MY BROTHER? I CAN'T -- THAT'S SOMETHING
2 I CAN'T UNDERSTAND. THAT'S WHY I CAN FORGIVE, BUT I CAN'T
3 FORGET.

4 MR. THOMAS: I KNOW. I'M DON'T EXPECT YOU TO FORGET.
5 LIKE I SAID, YOU KNEW ALL OF US. WE ALL KNEW TROY.
6 HOWEVER WE PLAYED A PART IN THIS TOO. BUT I DON'T, YOU
7 KNOW, YOU LEFT IT IN GOD'S HANDS. AND THIS IS GOD'S
8 DECISION RIGHT HERE. I'LL LEAVE IT IN HIS HANDS TOO. I
9 WANT TO APOLOGIZE TO MS. RUBY JEAN BECAUSE I KNOW THAT WAS
10 HER BOY. THAT WAS HER BABY. I APOLOGIZE, MS. RUBY JEAN,
11 IF THAT MEANS ANYTHING TO YOU. FORGIVE ME FOR WHAT I DID.
12 FOR THE WHOLE FAMILY. LITTLE CHARLIE. THANK YOU. THANK
13 YOU, JUDGE.

14 THE COURT: YES, SIR, MR. THOMAS, IS THERE ANYTHING
15 ELSE YOU WANT TO SAY?

16 MR. THOMAS: JUDGE, YOUR HONOR, THESE PAST 12 MONTHS
17 I'VE BEEN INCARCERATED, I'VE HAD TIME TO THINK ABOUT A
18 LOT. AND BEING AWARE OF THE VERDICT I JUST RECEIVED, I
19 MIGHT NOT GET A CHANCE TO COME HOME TO MY MOTHER NO MORE.
20 MY KIDS NO MORE. MY GIRL NO MORE. MY FAMILY NO MORE. I
21 DON'T THINK I AM GOING TO BE ABLE TO LIVE WITH THAT. SO
22 I'M ASKING YOU, I DON'T WANT YOU TO TAKE MY LIFE. AS FAR
23 AS EMOTIONAL AND MENTAL, I AIN'T GOING TO BE ABLE TO LIVE
24 THAT LONG AWAY FROM THEM. I WANT TO DIE. I CAN'T STAY
25 ALIVE WITHOUT THEM. I DIDN'T WANT TO DO THAT TO HIM. I

1 JUST WANTED TO SAVE MY FRIEND. THAT'S ALL. THAT'S ALL,
2 YOUR HONOR. THAT'S ALL I WANTED TO DO. I AIN'T HAD NO
3 PROBLEMS WITH TROY. NEVER. I NEVER HAD A PROBLEM WITH
4 HIM.

5 HE'S GONE AND I CAN'T BRING HIM BACK. BUT I PRAY FOR
6 HIM EVERY DAY. I FEEL BAD FOR HIM, YOUR HONOR. I THINK
7 ABOUT HIM ALL THE TIME. LIKE HIS BROTHER SAY, HE KNOW ALL
8 OF US.

9 THE COURT: ANYTHING ELSE, MR. WHEELER?

10 MR. WHEELER: NO, SIR, YOUR HONOR. THANK YOU.

11 THE COURT: MR. WATTS.

12 MR. WATTS: YOUR HONOR, AGAIN, AS MR. WHEELER SAID,
13 THE JURY HAS MADE ITS DECISIONS BASED ON THE FACTS OF THIS
14 CASE. THE JURY HAS MADE A DETERMINATION THAT THIS
15 OCCURRED IN THE SUDDEN OF HEAT OF PASSION. WASN'T
16 PROVOCATION. LEGALLY SUFFICIENT PROVOCATION IN THIS
17 INSTANCE. NOTHING THAT WE CAN DO TO BRING MR. ROUSE
18 BACK. MR. MCCALL IS DEEPLY SORRY FOR THAT. MR. ROUSE'S
19 FAMILY HAS LOST HIM. SOME OF HIS CHILDREN HAVE LOST A
20 FATHER. MR. MCCALL IS VERY SORRY ABOUT THAT. I WOULD
21 ASK, JUDGE, THAT YOU WOULD CONSIDER AS WELL, THAT MR.
22 MCCALL IS A YOUNG MAN. HE'S GOT FOUR CHILDREN. TWO WITH
23 HIS FIANCEE, AND THERE IS ONE ON THE WAY.

24 HE IS HERE SUPPORTED BY HIS FAMILY. HIS PRIOR RECORD
5 IS CLASSIFIED AS A NONVIOLENT CRIME. YOUR HONOR KNOWS

1 THE FACTS OF THE CASE THAT WE PUT OUT, AND THE TESTIMONY
2 OF BOTH SIDES REGARDING THE ALTERCATION.

3 THIS CHARGE THAT THE JURY HAS COME BACK WITH GUILTY
4 ON VOLUNTARY MANSLAUGHTER ALLOWS YOUR HONOR A WIDE
5 DISCRETION. I WOULD ASK THE COURT TO EXTEND AS MUCH
6 LENIENCY AS YOU CAN IN THIS SITUATION WITH MR. MCCALL DUE
7 TO THIS CHILDREN, DUE TO THE FACTS AND CIRCUMSTANCES THAT
8 CAME OUT WITH THE CASE. THERE'S A MANDATORY GUN CHARGE OF
9 FIVE YEARS THAT COMES ALONG WITH THIS, AS WELL AS
10 VOLUNTARY MANSLAUGHTER. I WOULD ASK THE COURT TO TAKE
11 THAT INTO CONSIDERATION IN HANDING DOWN A SENTENCE. THERE
12 IS GOING TO BE A MANDATORY OF FIVE, AND THE OTHER
13 DISCRETION THAT YOUR HONOR HAS, AND THE MINIMUM OF TWO.
14 AND WE WOULD ASK YOUR HONOR TO EXTEND THAT LENIENCY TO
15 MR. MCCALL GIVEN THE CIRCUMSTANCES IN THIS SITUATION.

16 SOME OTHER MITIGATING FACTORS WHEN HE LEARNED, AS
17 YOUR HONOR KNOWS, WHEN HE LEARNED HE WAS BEING SOUGHT HE
18 TURNED HIMSELF IN. HE'S BEEN A GOOD FATHER TO HIS
19 CHILDREN. HE'S TRIED TO DO WHAT HE CAN. THERE IS STILL
20 NO WAY TO BRING MR. ROUSE BACK. AND THERE IS NO WAY TO
21 MAKE UP FOR THAT LIFE LOST. BUT, YOUR HONOR, GIVEN THE
22 FACTS, GIVEN THE SITUATION, I WOULD ASK FOR ALL THE
23 LENIENCY THAT YOU CAN PROVIDE TO MR. MCCALL. HIS FAMILY
24 IS GOING TO BE SUFFERING AS WELL. MR. THOMAS' FAMILY IS
25 GOING TO BE SUFFERING AS WELL. I'M NOT TRYING TO PUT THAT

1 ON A LEVEL PLAYING FIELD WITH MR. ROUSE'S FAMILY. I CAN'T
2 DO THAT. UNDER THIS SITUATION, THERE IS NO ONE HERE THAT
3 IS NOT EFFECTED BY THIS AND IS EXPERIENCING LOSS. NOT THE
4 DEFENDANTS. NOT THE VICTIM'S FAMILY, NOT THE DEFENDANT'S
5 THEMSELVES AND NOT THE DEFENDANT'S FAMILY AND NOT THEIR
6 PROGENY.

7 AGAIN, YOUR HONOR, I JUST ASK YOU THAT THIS IS A
8 SITUATION WHERE IT IS IN MY OPINION THAT SOMETHING THAT
9 WOULD JUSTIFY LENIENCE TO MR. MCCALL AS MUCH AS THE COURT
10 CAN GIVE. JUDGE, YOUR HONOR HAS A WIDE DISCRETION IN
11 SENTENCING IN THIS MATTER. I WOULD ASK THAT YOU STAPLE
12 THE MINIMUM MINUTES OF THIS SITUATION. MR. MCCALL IS
13 SORRY AND HAS REGRET. AND THIS IS SOMETHING THAT HE HAS
14 EXPRESSED TO ME. AND I THINK THAT IN THE SITUATION OTHER
15 STATEMENTS WERE GIVEN. WE'RE NOT TALKING ABOUT A
16 STATEMENTS, BECAUSE HE WAS FOLLOWING THE ADVICE OF HIS
17 COUNSEL. I DON'T THINK THAT NOT PROVIDING INFORMATION
18 EARLIER SHOULD BE HELD AGAINST HIM, BECAUSE HE WAS
19 EXERCISING HIS RIGHT TO LISTEN TO COUNSEL. I WOULD ASK
20 THAT THAT NOT BE HELD IN ANY KIND OF ACCOUNT.

21 YOUR HONOR, I THINK MR. MCCALL WOULD LIKE TO SAY
22 SOMETHING.

23 THE COURT: YES, SIR, MR. MCCALL.

24 MR. MCCALL: I WOULD LIKE TO SAY SOME MORE REGARDS
5 FOR HIS FAMILY. YOU'RE RIGHT, I CAN'T BRING TROY BACK. I

1 AM SORRY FOR WHAT HAPPENED. I NEVER MEANT TO DID WHAT I
2 DID. I JUST WANTED TO PROTECT MYSELF. I AM SORRY.

3 MR. WATTS: YOUR HONOR, HIS COUSIN IS HERE AS WELL,
4 IF THE COURT WOULD LIKE TO HEAR.

5 THE COURT: I WILL BE HAPPY TO HEAR FROM YOU. YOUR
6 NAME, PLEASE?

7 MS. DIXON: RONDEL DIXON.

8 THE COURT: RONDEL DIXON.

9 MS. DIXON: YES. I WOULD JUST LIKE TO SAY THAT
10 EUNICE IS MY FIRST COUSIN. BUT I DON'T CONSIDER HIM MY
11 COUSIN, I CONSIDER HIM MY BROTHER. I WOULD LIKE TO SAY I
12 AM SORRY TO THE FAMILY FOR WHAT HAS HAPPENED. I CAN'T
13 IMAGINE WHAT YOU ARE GOING THROUGH RIGHT NOW, BUT I CAN
14 ONLY FEEL FOR YOU. I SYMPATHIZE FOR YOU. BUT I ALSO ASK
15 THAT YOU SYMPATHIZE WITH US TOO. BECAUSE EUNICE IS NOT A
16 VIOLENT PERSON. I'VE KNOW HIM SINCE WE WERE YOUNG. WE
17 GREW UP TOGETHER. I KNOW THAT HE WOULD NEVER
18 INTENTIONALLY TAKE ANOTHER HUMAN BEING'S -LIFE.

19 HE'S A GOOD FATHER. HE'S RAISING THREE, YOUNG BLACK
20 MEN. AND I WOULD LIKE TO ASK THE JUDGE TO SHOW LENIENCY
21 SO THAT HE CAN COME HOME AND SHOW HIS CHILDREN AND HIS SON
22 HOW TO BE PRODUCTIVE CITIZENS, AND NOT MAKE THE SAME
23 MISTAKES THAT HE'S MADE IN HIS LIFE; SO THAT WE WILL NOT
24 HAVE THE SAME THING GOING ON IN THE BLACK COMMUNITY. AND
25 HE ALSO HAS A MOTHER AND A FATHER WHO LOVE HIM VERY MUCH.

1 AND LIKE YOU SAID, YOU CAN NEVER BRING TROY BACK. AND I'M
2 SORRY FOR THAT. BUT I ASK THAT YOU GIVE MY COUSIN ANOTHER
3 CHANCE TO RAISE HIS CHILDREN AND TEACH THEM THE RIGHT
4 THINGS SO THEY DON'T HAVE TO GO THROUGH THIS IN THEIR LIFE
5 TIME. PLEASE JUST SHOW MERCY ON HIM, AND GIVE HIM ANOTHER
6 CHANCE TO COME HOME WITH HIS FAMILY SO THAT HE CAN DO THE
7 RIGHT THING IN HIS LIFE.

8 THAT'S ALL I HAVE TO SAY.

9 THE COURT: YES, SIR.

10 MR. WATTS: MR. DIXON, HIS GRANDFATHER WHO YOU HEARD
11 FROM EARLIER, HE HAD A COUPLE OF WORDS THAT HE WOULD ASK
12 TO BE ALLOWED TO SPEAK.

13 THE COURT: YES, SIR, MR. DIXON.

14 MR. DIXON: YOUR HONOR, YOU SEE THE FAMILY. YOU
15 CANNOT HOLD ACCOUNTABLE FOR ANY ACTION. THE ONLY THING I
16 CAN SAY IS EUNICE IS MY GRANDSON. BUT HE DON'T SEEM LIKE
17 A GRANDSON. I RAISED HIM FROM A BABY UNTIL HE WAS 20
18 SOMETHING YEARS OLD AND HE GOT ON HIS OWN. AND I ALWAYS
19 TEACH THEM TO TRY, DON'T CAUSE TROUBLE, STAY OUT OF
20 TROUBLE. AND I CAN SAY WE HAVE BEEN SUCCESSFUL UP UNTIL
21 THIS TIME. WE ALWAYS HAD THEM IN CHURCH. HE WENT TO
22 SCHOOL. WHEN HE GOT HOME, HE ALWAYS HAD A CHORE TO DO.
23 WE ALWAYS IN OUR FAMILY, HAD, WE TRY TO WHEN THE CHILDREN
24 WERE COMING UP, WE TRIED TO CHOOSE ACTIVITIES FOR THEM.
25 BUT WHEN THEY GET GROWN, YOU KNOW, THEY CHOOSE THEIR OWN

1 ACTIVITY. AND THIS IS WHAT HAPPENED TO EUNICE. BECAUSE
2 HAVING THE WRONG ACTIVITY AND GOT CAUGHT UP IN IT.

3 AS WE SAY, WE ASK YOU TO LOOK AT WHAT WE ARE SAYING.
4 HE HAVE A FAMILY. HE HAS NO ONE OTHER THAN HIMSELF TO,
5 YOU KNOW, TO PROVIDE FOR THEM. THESE ARE OUR GREAT
6 GRANDCHILDREN. WE RAISE GRANDS. NOW IT LOOKS LIKE WE ARE
7 GOING TO HAVE TO TAKE ON ANOTHER RESPONSIBILITY. AND I'M
8 69-YEARS-OLD. AND MY WIFE IS 66. AND WE'RE GETTING, YOU
9 KNOW, OLD. LIKE I SAY, WE RAISED, THIS IS MY DAUGHTER'S
10 BABY. SHE HAS THREE CHILDREN, EUNICE, LARRY AND LAKESHA.
11 SHE HAS ONE GIRL AND TWO BOYS. AND WE RAISE ALL THREE OF
12 THEM FROM ARM BABIES. AND THIS IS A GRAND HERE. A
13 GRANDCHILD TOO. AND WE HELPED RAISE HER AND WE BRING HER
14 UP THE SAME WAY. AND WE'RE JUST A FAMILY OF PEOPLE. I
15 WOULD LIKE TO SAY TO THE FAMILY, SOME OF THEM I KNOW AND
16 SOME OF THEM I DON'T. BUT JUST BECAUSE THIS HAPPENED, WE
17 SHOULD NOT LET THIS COME BETWEEN US IN THE COMMUNITY.
18 BECAUSE LIKE I SAY, THE CHILDREN GOT ALONG WITH US. WE
19 COULD TELL THEM WHAT TO DO. BUT WHEN THEY GET OUT, THEN
20 WE CAN'T TELL THEM WHAT TO DO.

21 AND THE ONLY THING I CAN SAY TO THEM THAT, I'M SORRY
22 THAT IT HAPPENED, BUT LIFE MUST GO ON. AND I HOPE THAT
23 WE CAN HAVE A FAMILY IN THE COMMUNITY THAT WE CAN PUT THIS
24 BEHIND US AND MOVE ON WITH OURS. THANK YOU, YOUR HONOR.

25 THE COURT: YES, SIR. MR. WATTS.

1 MR. WATTS: YOUR HONOR, IF I COULD BEG THE COURT'S
2 INDULGENCE. MS. MCCALL, VIVIAN MCCALL, IS HERE. MR.
3 MCCALL'S MOTHER. IF THE COURT WOULD ALLOW HER TO SPEAK.

4 THE COURT: YES, MA'AM, MS. MCCALL.

5 MS. MCCALL: YES, THANK YOU AGAIN. TO THE FAMILY, I
6 AM VERY SORRY. AND I'M ALSO HURT BY THE FACT THAT TROY IS
7 MISSING OUT OF Y'ALLS LIFE. AS FAR AS EUNICE, I CAN SPEAK
8 ACCORDING TO HIM AS A CHILD, BUT HE'S NOT A CHILD ANYMORE.
9 HE IS A YOUNG MAN. AND I AM VERY SORRY AGAIN ABOUT TROY.
10 BUT I DID NOT RAISE EUNICE TO KILL ANYONE. IT'S ALWAYS
11 BEEN A SITUATION WHERE YOU DO GOOD TO PEOPLE. DON'T THINK
12 ABOUT THE BAD THINGS, OR DO BAD THINGS TO PEOPLE. AND
13 THIS IS WHAT I RAISED HIM UP TO DO. AND I FEEL THAT I AM
14 NOT STANDING HERE TRYING TO JUSTIFY THE LIFE THAT WAS
15 TAKEN. BUT I KNOW EUNICE IS MY SON. AND I KNOW HIM
16 BECAUSE I HELPED RAISE HIM. AND I DID NOT RAISE HIM AS A
17 MURDERER. I CAN TRULY SAY THIS IS IN MY HEART THAT I KNOW
18 I DID NOT RAISE A MURDERER. AND I WOULDN'T BE HERE IN
19 THIS COURT TRYING TO TALK TO YOU AS A FAMILY AND TALK TO
20 THE JUDGE AND EVERYONE ELSE. JUST I KNOW. AND I AM
21 TRULY SORRY.

22 THE COURT: MS. MCCALL, ANYTHING FURTHER?

23 MS. MCCALL: AND I'M TRULY SORRY. AND I TRULY AM
24 SORRY. AND I ASK THE COURT AND THE JUDGE TO BE LENIENT
25 WITH HIM.

1 THE COURT: ANYTHING FURTHER FROM THE STATE?

2 MR. ROGERS: AND I WOULD LIKE TO SAY SOMETHING ELSE.
3 I MEAN THIS IS SOMETHING ABOUT CHANCES. YOU KNOW WHAT I'M
4 SAYING? WHAT CHANCES DID MY BROTHER HAVE? NONE. HE'S
5 GONE. HE'S GOT KIDS JUST LIKE YOU'VE GOT. HE'S NOT HERE
6 TO RAISE THEM. BUT THEY ASKED FOR LENIENCY. YOU KNOW, I
7 UNDERSTAND THAT, YOU KNOW, THAT THEY ARE SORRY AND
8 EVERYTHING. BUT IT DOESN'T YOU KNOW WHAT I'M SAYING, YOU
9 KNOW, I MEAN IT DOESN'T TAKE THE PLACE OF, IT'S A LIFE
10 THAT'S GONE, MAN. YOU KNOW. AND JUSTICE SAYS IT'S NO
11 RIGHT TO KILL. IT'S NO RIGHT TO KILL. YOU HAD NO RIGHT
12 TO KILL. SO AS FAR AS LENIENCY, I FEEL LIKE, YOU KNOW,
13 THERE SHOULD BE SOME SUFFERING. BECAUSE WE ARE GOING TO
14 SUFFER FOR THE REST OF OUR LIFE.

15 IF THEY ARE GIVEN CHANCES, YOU KNOW, THEY'RE GOING TO
16 SUFFER BUT IT'S GOING TO BE PART-TIME, YOU KNOW. IT'S A
17 FULL-TIME JOB. IT'S PART-TIME JOB. BUT IF THERE'S
18 LENIENCY ON THEM, THEY'VE GOT ANOTHER CHANCE. I MEAN
19 WE'VE GOT TO LIVE WITH THIS FOR THE REST OF OUR LIFE. AND
20 WE LOST ONE. AND HE HAVE KIDS. HE'S NOT THERE TO RAISE
21 HIS KIDS. WHICH LEAVES A MOTHER RAISING THREE KIDS ON HER
22 OWN. AND THESE ARE BABIES. THEY JUST STARTING WALKING.
23 ONE HAS JUST BEEN BORN BEFORE HE GOT KILLED.

24 MS. ROGERS: IT DOESN'T EXCUSE ANYTHING THEY HAVE
25 DONE. THEY TOOK JUSTICE IN THEIR OWN HANDS. THEY TOOK

1 THE LIFE OF ANOTHER HUMAN BEING. AND IT DOES NOT EXCUSE
2 WHAT THEY HAVE DONE. AND MY BROTHER CANNOT COME BACK. HE
3 HAVE A FOUR-MONTH-YEAR OLD SON THAT HE WILL NEVER HOLD IN
4 HIS LIFE. HE HAVE A ONE-YEAR-OLD DAUGHTER THAT'S NEVER
5 GOING TO SEE HER FATHER. HE'S GOT AN 18-YEAR-OLD MONTH
6 DAUGHTER THAT'S NEVER GOING TO SEE HER FATHER. I FEEL
7 LIKE....

8 MR. ROGERS: IT EVEN PUT ME IN A POSITION AFTER THIS
9 SITUATION IT FORCED ME IN TO HAVING ANXIETY ATTACKS. I AM
10 ON THE HIGHEST MILLIGRAM OF, YOU KNOW, XANAX. I TAKE
11 XANAX RIGHT NOW. THEY'RE RIGHT IN MY POCKET RIGHT NOW.
12 BECAUSE IF MY MIND FUNCTIONS AND THINKS ABOUT MY BROTHER,
13 I HAVE TO BE RUSHED TO THE HOSPITAL SOMETIMES, YOU KNOW.
14 I MEAN THIS IS MESSING WITH ME REAL BAD. REAL BAD. AND,
15 YOU KNOW, I'M A MAN, JUST LIKE THEY'RE A MAN. I COULD
16 HAVE EASILY TOOK IT, YOU KNOW WHAT I'M SAYING, IN MY
17 HANDS. THERE IS A FIGHT, THIS IS HOW THEY FOUGHT FOR.
18 BUT I AM A MAN, AND I DON'T -- I'M NOT -- YOU KNOW WHAT
19 I'M SAYING, I'M NOT CRIMINAL JUSTICE. I'M A MAN, YOU
20 KNOW, DOING THE RIGHT THING. I'M NOT PUTTING MYSELF IN
21 THESE SITUATIONS WHERE I WOULD HAVE TO BRING FAULT. YOU
22 KNOW, I MEAN, AND, YOU KNOW, ANY WRONG TO ANYBODY. AND
23 THEY ARE A MAN JUST LIKE ME.

24 THE COURT: MR. SAVERANCE, ANYTHING FURTHER?

25 MR. SAVERANCE: NOTHING FROM THE STATE, YOUR HONOR.

1 THE COURT: IT LOOKS LIKE A VERY SENSELESS THING THAT
2 WAS CREATED IN THIS COURTROOM TODAY AS FAR AS, IT STARTED
3 OUT WITH THREE PEOPLE TOGETHER WHO ARE -- WERE SUPPOSEDLY
4 FRIENDS. AND IT'S VERY HARD TO EVALUATE HOW THEY COULD
5 FIND THAT A FRIENDSHIP WHICH CAN RESULT IN TWO FRIENDS
6 SHOOTING THEIR FRIEND AND KILLING HIM. AND ALL THE THINGS
7 THAT OCCURRED THERE ON THE STREET IN BISHOPVILLE THAT
8 NIGHT. IT'S ENOUGH SADNESS TO GO AROUND. EVERYONE IN THE
9 TOWN, IN THIS ENTIRE COMMUNITY IS SADDENED BY THE
10 SEQUENCE OF EVENTS..

11 IT'S PARTICULARLY UNFORTUNATE BECAUSE AS I LISTEN TO
12 ALL OF YOU, ALL OF YOU FROM BOTH SIDES, SOUNDS REAL
13 ARTICULATE, INTELLIGENT. IT CERTAINLY SOUNDS AS IF
14 PARTICULARLY ON THE SIDE OF THE DEFENDANT, THAT YOU
15 CERTAINLY COULD HAVE PUT YOUR LIFE IN A DIFFERENT
16 DIRECTION IN THIS LIFE. MR. DIXON, I FEEL YOUR PAIN.
17 THE YOUNG LADY SOUNDS REAL ARTICULATE. SPEAKS REAL WELL.
18 I KNOW YOUR PAIN.

19 AND, MR. THOMAS, YOU CAME HERE FROM NEW YORK. AFTER
20 GETTING IN TROUBLE UP THERE, YOU'VE GOTTEN IN THE WORSE
21 TROUBLE YOU COULD HAVE POSSIBLY GOTTEN AFTER YOU GOT HERE.
22 NEVERTHELESS, YOU SOUND LIKE A VERY INTELLIGENT PERSON WHO
23 COULD HAVE DIRECTED THEIR LIFE IN A MUCH DIFFERENT
24 DIRECTION. I'M NOT HERE TO JUDGE ANYONE'S HEART. BUT I
25 HAVE TO JUDGE THE WICKEDNESS OF THE ACT COMMITTED THAT

1 NIGHT.

2 MR. THOMAS, YOU HAVE BEEN CONVICTED OF MURDER AND
3 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
4 CRIME. CONSIDERING ALL THAT I HAVE HEARD THROUGHOUT THE
5 COURSE OF THIS WEEK, THE SENTENCE YOU WILL RECEIVE IS AS
6 FOLLOWS: FOR MURDER, I SENTENCE YOU TO THE STATE
7 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30 YEARS. FOR
8 POSSESSION OF A WEAPON DURING THE COMMISSION OF A CRIME OF
9 VIOLENCE THE SENTENCE IS FIVE YEARS.

10 MR. MCCALL, FOR VOLUNTARY MANSLAUGHTER, THE SENTENCE
11 OF THE COURT IS THAT YOU BE COMMITTED TO THE STATE
12 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 18 YEARS. FOR
13 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
14 CRIME, THE SENTENCE IS FIVE YEARS. YOU WILL RECEIVE
15 CREDIT FOR ANY TIME THAT YOU HAVE SERVED. GOOD LUCK TO
16 YOU ALL.

17 MR. WHEELER: THANK YOU, YOUR HONOR.

18 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
19
20
21
22
23
24
25
)

CERTIFICATE

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

I, MARGARET T. SULLIVAN, OFFICIAL COURT REPORTER FOR
THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD
AND EVIDENCE INTRODUCED IN ABOVE CAPTIONED CASE, RELATIVE
TO APPEAL, IN GENERAL SESSIONS COURT, ON APRIL 4TH-6TH
2006, FOR LEE COUNTY, BISHOPVILLE, SOUTH CAROLINA.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

8:19.76
DATE.

Margaret T. Sullivan

COURT REPORTER
MY COMMISSION EXPIRES OCTOBER 3, 2011

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Lee)

D9-CP-31-136

Eunice McCall # 314833)

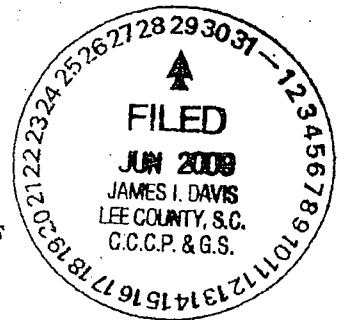
Full name and prison number, if any, of applicant.)

APPLICATION FOR

POST-CONVICTION RELIEF

v.
State of South Carolina)

Name of Respondent)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

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

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lieber Correctional Institution; P.O. Box 205;
Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Lee County Court of General Sessions
Bishopville, S.C. 29010
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 200- GS-31
 - (b) ~~2005- GS-31-102~~ 2005- GS-31-00102
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 6, 2006
 - (b) Voluntary Manslaughter; Possession of a Firearm
 - (c) (18) years; (5) years poss. weapon; concurrent

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. appeal denied relief _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 11, 2009 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2009-UP-077 _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A _____
- (b) N/A _____
- (c) N/A _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel _____
- (b) Due Process Violation _____
- (c) Ineffective Assistance of Counsel _____

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

- (a) Trial counsel's failure to request jury charge on accident where evidence supported charge, and objected to its omission was ineffective assistance of counsel
- (b) Trial counsel's failure to protect applicant's rights violated Due process clause of the 14th Amendment to the U.S. Constitution.
- (c) Trial counsel's failure to effectively litigate applicant's case fell below an object standard of professional norms.

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

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

No.

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

NO

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

NO

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

NO

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

- (a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

- (c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Post Conviction Issue
- (b) Post Conviction Issue
- (c) Post Conviction Issue

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

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

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

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

- i. Mr. W.S. Watts III, Mr. Carl Smith, Esq. Bishopville, S.C.
- ii. Joseph L. Savitz, III, Chairman of Plaintiff Defense, Chicago, S.C.
- iii. _____

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

- i. _____
- ii. Direct Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

Sentence and conviction vacated / New Trial

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

No

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Lee) VERIFICATION

I, Eunice Davis McCall, 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.

Eunice Davis McCall

Sworn to and subscribed before me

This 26th day of May, 2009.

Arma F. L. S. L.S.

Notary Public for South Carolina

My Commission Expires 4/4/2011

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

I, Eunice Davis McCall, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Eunice Davis McCall
 Applicant

Sworn to and subscribed before me

This 26th day of May, 2009

Arma F. L. S. L.S.

Notary Public for South Carolina

My Commission Expires: 4/4/2011

STATE OF SOUTH CAROLINA
COUNTY OF LEE

Eunice McCall, #314833,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2009-CP-31-0136

RETURN

(Appointment of Counsel Requested)

The Respondent, making its Return to the Application for Post-Conviction Relief filed June 29, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lee County. The Applicant was indicted at the November 2005 term of the Lee County Grand Jury for (1) Murder and Possession of a Firearm During A Crime of Violence (2005-GS-14-0102).¹ The Applicant was represented by W. S. Watts, III, Esquire. Applicant proceeded to a jury trial before the Honorable Clifton Newman. On April 6, 2006, the Applicant was found guilty at trial of Possession of a Weapon During a Crime of Violence and the lesser included offense of Voluntary Manslaughter. Applicant was sentenced to eighteen (18) years imprisonment for Manslaughter and five (5) years imprisonment for Possession of a

¹ Applicant was indicted along with co-defendant Efrain Thomas for Murder and Possession of a Firearm During a Crime of Violence. The indictment also included a charge of Accessory After the Fact of Murder as to a third co-defendant, Chad James.

Weapon During a Crime of Violence, sentences to be served concurrently with credit for time served.

A notice of appeal was filed, and an Anders brief was submitted. The South Carolina Court of Appeals dismissed the appeal. State v. McCall, 2009-UP-077 (S.C. Ct. App. filed February 11, 2009). The Remittitur was sent down March 2, 2009.

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

II.

In her application, the Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel;
 - a. "Trial counsel's failure to request jury charge on accident where evidence supported charge, nor objected to its omission was ineffective assistance of counsel."
 - b. "Trial counsel's failure to protect applicant's rights violated Due Process clause of the 14th Amendment to the U.S. Constitution."
 - c. "Trial counsel's failure to effectively litigate applicant's case fell below an object[ive] standard of professional norms."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges that she was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

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

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

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

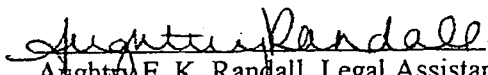
Nov. 16, 2009.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEE	)	
	)	
	)	2009-CP-31-0136
	)	
EUNICE MCCALL, 314833	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Charles T. Brooks, III, Esquire
The Brooks Law Firm
309 Broad Street
Sumter SC 29150

DATED this 19th day of November, 2009.


 E. K. Randall, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

IN THE COMMON PLEAS COURT

COUNTY OF LEE

Eunice McCall, 314833

Applicant

DOCKET NO.: 2009-CP-31-136

AMENDMENT AND SUPPLEMENT TO
APPLICANTS PCR APPLICATION

STATE OF SOUTH CAROLINA)

Respondent,

The Applicant through undersigned Counsel would respectfully show unto this Court of Common Pleas the following:

This is an amendment and supplement to the Applicant's prior PCR pleadings submitted to this court pursuant to Rule 71.1(d) SCRCF.

The amendments and supplements to Applicant's pleadings are in conformity with the S. C. Code Ann § 17-27-20, thereby cognizable in this court to be considered on the merits.

To amend and supplement section nine (9) of Applicant's PCR pleadings, I would state as follows:

(9-A)

Applicant would contend that she received ineffective assistance of trial counsel, thus violating her rights under Art. IV § 2, and the 6th and 14th Amendments to the Federal Constitution, and under Article I §§ 3, and 14 the S. C. Constitution.

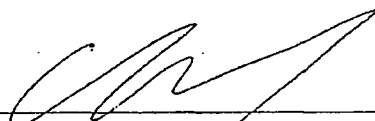
(9-B)

Applicant would contend that she received ineffective assistance of Appellate Court counsel , thus violating her rights under Article IV § 2, and the 6th and 14th Amendments to the Federal Constitution and under Article I §§ 3 and 14th to the S. C. Constitution.

To Amend and supplement Section 10 of Applicant's PCR pleadings:

SEE ATTACHED PAGES THREE (3) AND FOUR (4):

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, Eunice McCall



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

June 30, 2010

To amend and supplement section 10 of applicant's PCR pleading's,
I would state as follows:

[INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL]

[10-A-1]

I would contend that trial counsel was inept, and constitutionally ineffective for failing to request a jury instructions on accident in this case.

The record in this case portrays that the applicant and the deceased were tussling and the gun went off;

TR.P.80 L.17-23; 92 L.19-21; 94 L.16-18; 98 L.17-25 through 99 L.24; 587 L. 3-16; 597 L. 4-10;

The record also portrays that applicant had no idea as to whether he or the deceased was shot when the gun was fired (TR.P. 591 2-24), moreover common sense dictates that there evidence in the record for a jury instruction on accident.

Stare decisis dictates that a criminal defendant is entitled to a jury instruction regardless of how weak the evidence is

KEEBLE "VS" U.S., 412 U.S. 205, 93 S.C.T. 1993 (1973).

In STATE "VS" WHARTON, 381 S.C. 209, 672 S.E. 2d. 786 (S.C. 2009) the court was unequivocal when the court explained;

"Evidence of an accidental discharge of a gun [w]ill support a charge of accident where the defendant lawfully arms himself in self defense, also see

STATE "VS" LIGHT, 378 S.C. 641, 664 S.E. 2d. 465 (S.C. 2004).

Counsel in this case knew [b]efore trial, and surely during trial that the deceased was shot by accident, however for some unknown reason refused to request a jury instruction on accident or misfortune.

applicant was prejudiced by trial counsels ineptitude and ineffectiveness because there is a reasonable probability that if counsel would have requested a jury instruction on accident of misfortune, the judge would have charged it to the jury because there is evidence to support it, and the jury would have followed the instruction and the outcome could have been different, and a reasonable probability is a probability sufficient to undermine confidence in the outcome, STRICKLAND "VS" WASHINGTON.

[10-A-2]

I would also contend that trial counsel was inept, and constitutionally ineffective for failing to object to several written statements being adduced at trial without the prerequisites of the S.C. Code Ann. § 19-1-80, and 19-1-90 being complied with at trial;

STATE "VS" MOTES, 264 S.C. 317, 215 S.E. 2d. 190 (1975)

TR.P. 111 L.2-25 through TR.P.122 L.1-25;

TR.P. 149 L.6-25 through TR.P 151 L.1-18 ect.

There is a reasonable probability that if counsel would have objected to these statements the outcome of this case could have different, and a reasonable probability is a probability sufficient to undermine confidence in the outcome, STRICKLAND supra.

[10-B-1]

I would contend that my appellate court counsel was inept and constitutionally ineffective for failing to visit me in prison to confer and consult with me a-bout my appeal.

There is a reasonable probability that the outcome of the appeal would have been different if counsel would have visited me in prison and we talked about the appeal.

6-28-10
DATE

Emmie McCall
NAME

S--ORN TO AND SUBSCRIBED BEFORE ME

THIS 28th DAY OF June

20 10
Sylvia Jones

NOTARY PUBLIC
STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES 1/24/2013

State of South Carolina)

County of Lee)

Eunice McCall,
Plaintiff
vs.

2009-CP-31-00136
PCR

The State of South Carolina,
Defendants

September 19, 2013
Bishopville, S.C.

Before the Honorable W. Jeffrey Young, Judge.

A-P-P-E-A-R-A-N-C-E-S

Mr. Hemphill Pride, II
Attorney for Plaintiff

Ms. Megan E. Harrigan,
Attorney for the Defendants

Margaret T. Sullivan
Court Reporter

1 MS. HARRIGAN: Your Honor, the state will call
2 Eunice McCall versus The State of South Carolina.

3 THE COURT: Okay.

4 MS. HARRIGAN: Docket No. 2009-CP-31-0136. The
5 Applicant was indicted during the November 2005, term of
6 the Lee County Grand Jury for murder and possession of a
7 firearm during the commission of a violent crime. He
8 was represented by W. S. Watts, III. The Applicant
9 proceeded to a jury trial before Honorable Clifton
10 Newman. And on April 6, 2006, the Applicant was found
11 guilty at the trial of possession of a weapon during a
12 crime of violence, and the lesser of offense of
13 voluntary manslaughter. Applicant was sentenced to 18
14 years for voluntary manslaughter, and 5 years for
15 possession of weapon during a crime of violence. Those
16 sentences were to be served concurrently with credit for
17 time served.

18 And Notice of Appeal was filed, and an Anders
19 brief was filed on Applicant's behalf. The South
20 Carolina Court of Appeals dismissed the appeal, and the
21 remittitur was sent on March 2nd 2009. Applicant filed
22 a timely PCR, Your Honor, on June 29th 2009, alleging
23 that he is being held in custody unlawfully due to
24 ineffective assistance of trial counsel. The state made
25 it's return on November 16th, 2009.

1 And Applicant is represented in this
2 action by Hemphill Pride, II.

3 THE COURT: Mr. Pride.

4 MR. PRIDE: Good morning, Your Honor.

5 THE COURT: Yes, sir.

6 MR. PRIDE: Your Honor, I want to
7 preference my remarks to you by telling you that I
8 am prepared to go forward as the attorney---

9 THE COURT: Yes, sir.

10 MR. PRIDE: ---for my client in this
11 matter; however, when I spoke with my client this
12 morning he is adamantly opposed to going forward
13 and wants me ask you for a continuance.

14 THE COURT: How many times has this case
15 been continued?

16 MS. HARRIGAN: I believe three or four,
17 Your Honor.

18 THE COURT: Yes, sir.

19 MR. PRIDE: The basis of his request is
20 this, Your Honor. He tells me that the Department
21 of Corrections for some reason unbeknown to him,
22 came and took all his legal papers. And he says
23 that as a result of all those legal papers being
24 taken, he has not had the ability to study,
25 familiarize himself and prepare himself to

Walter Watts-direct by Pride

1 testify.

2 THE COURT: When did they take his papers?
3 Before or after the last continuance that he had?

4 MR. PRIDE: Would you indulge me?

5 THE COURT: Yes, sir.

6 MR. PRIDE: Judge, I asked my client and
7 he tells me that they took his papers a month ago.

8 THE COURT: Well this case is over three
9 years old. He ought to know what is in his
10 papers. So I am going to deny the motion for a
11 continuance. He's just trying to delay prolong
12 it. Are you ready to proceed?

13 MR. PRIDE: Yes.

14 THE COURT: Call your first witness.

15 WALTER STEVENSON WATTS, III, after being
16 duly sworn, testified as follows.

17 THE BAILIFF: Please state your full name
18 and spell your last name for the record.

19 A Walter Stevenson Watts, III. Last name is
20 spelled W-A-T-T-S.

21 Direct Examination by Mr. Pride:

22 Q Mr. Watts, where do you practice?

23 A I practice in Hartsville, South Carolina.
24 Which is Darlington County.

25 Q And do you practice alone?

Walter Watts-direct by Pride

1 A No, sir. I am a partner in Smith, Watts
2 and Associates.

3 Q How long have you been practicing?

4 A I was admitted by the bar in 2003. So I
5 have been practicing approximately nine years.

6 Q Do you consider yourself proficient in the
7 area of criminal practice?

8 A I do.

9 Q And do you and have you tried a lot of
10 criminal cases and represented people who have
11 been charged with criminal offenses?

12 A Yes, sir.

13 Q And you have done that since 2002, with
14 the firm that you are in?

15 A Since 2003, yes, sir.

16 Q Okay. The defendant in this case hired
17 you to represent him as a result of charges
18 brought here over in Sumter; is that correct?

19 A Charges brought in Lee County, sir.

20 Q In Lee County, I am sorry. And at the
21 time that he hired you, he had two other
22 co-defendants in this case; is that correct?

23 A Yes, sir.

24 Q And this case resulted in the death of a
25 victim; is that correct?

Walter Watts-direct by Pride

1 A Yes, sir.

2 Q When he -- did Ernest hire you or did his
3 mother? Did Mr. McCall hire you, or did his
4 mother hire you?

5 A On the initial contact was through
6 Mr. McCall's family. They came in and we
7 discussed the charges. And then I believe we were
8 retained. Provided our retainer through the
9 family.

10 Q Were you able to get him out on bond?

11 A Yes, sir. I believe we were able to get
12 him into our law office and get him out.

13 Q And during the period he was out on bond,
14 did you bring him in discuss this case in
15 preparation of trial?

16 A Yes, sir. We came in and we had
17 discussions. I can't tell you exactly how many
18 times, but more than three or four occasions. I
19 remember sometimes we would review the file; that
20 we sent out letters asking him to come in. Some
21 of them came back, undeliverable. And then we
22 would call, and get in touch with the family. But
23 we would always ask Mr. McCall to come and discuss
24 the matters that were going on this case.

25 As far as preparation, any discussions we

Walter Watts-direct by Pride

1 had with the solicitors involved in the case,
2 anything that came up. And then of course when it
3 got called to trial, in preparation for trial, and
4 we went through.

5 Q In preparation of trial in this case what
6 motions did you file in order to discover
7 evidence that the state would use to support the
8 charges?

9 A Well of course we submitted the Rule 5 and
10 Brady requesting all information and all
11 documentation and other evidence they plan to use
12 against Mr. McCall at trial. In preparation of
13 trial, we had discussed whether or not any motions
14 to sever the trial with the other defendants or go
15 forward with all defendants at once. And those
16 discussions it came out that we would all, that he
17 was agreeable to have charges all dealt with at
18 the same time, with three defendants at the table.

19 Of course we'd also investigated on our
20 own. Went out to the scenes. Got pictures.
21 Talked with other individuals. The family had
22 brought our attention to at least one witness who
23 had been questioned by the police; had a statement
24 that made have been different than what she told
25 before. I think we had her come into the office.

Walter Watts-direct by Pride

1 I believe she signed an affidavit for our office.

2 Later on it came to our attention as we
3 going to trial that she was wanting to basically
4 contradict or recant what she had told us. So we
5 had discussion. I believe that discussed in
6 trial. But we did everything we needed to do to
7 get all the information from solicitor's office of
8 what they were trying to plan to present against
9 Mr. McCall at trial.

10 Q Were you satisfied that the solicitor had
11 fully complied with your discovery request?

12 A I believe so. I don't think there was
13 anything that left out that the solicitor had they
14 did not represent.

15 Q And the witness who ultimately recanted on
16 the affidavit that you obtained, this witness
17 provided an alibi; is that not correct?

18 A To my recollection, I would have to go
19 back and fully access everything that was said.
20 But I believe the initial testimony was that
21 she -- that Mr. McCall came up and or she saw him
22 leaving the scene. Later I think the affidavit
23 that was given that; no, she didn't see him or he
24 was at a different place and time. And then I
25 believe after submission in the affidavit, there

Walter Watts-direct by Pride

1 was follow-up either law enforcement or the
2 solicitor's office. And she came back from her
3 original statement in which she told the police
4 that Mr. McCall came up after this incident or the
5 alleged incident occurred.

6 Q Would it be fair to say that she made an
7 effort to help him by providing a statement that
8 was favorable to him?

9 A I can't tell you what her motivations
10 were. But I can tell you that she came to our
11 office and provided a statement that was contrary
12 to what she told law enforcement before. And so
13 if it was to help him or she felt like she had
14 misspoken to police before, I can't tell you what
15 she felt. But she did provide something that was
16 beneficial to Mr. McCall's defense initially. And
17 then after subsequently recanted and discussed at
18 trial.

19 Q Now on the question of why you did not
20 file a severance, you did realize, you did have an
21 opportunity to talk with the other lawyers that
22 were representing the co-defendants; is that
23 correct?

24 A Yes, sir.

25 Q And would it be a correct statement to say

Walter Watts-direct by Pride

1 that if there were any plea negotiations offered
2 by the solicitor's office, they were turned down.
3 And you knew as Mr. McCall's attorney, that you
4 were going to trial in this case.

5 A Well, yes, sir. As soon as the plea
6 negotiations were turned down, I mean there was
7 offers on there. I'd have to pull out and see
8 exactly what the offers were.

9 Q Okay.

10 A I believe the offers were less than what
11 of course to what Mr. McCall was sentenced. But
12 those offers were of course rejected, because if
13 he had accepted the offer, he would in a situation
14 where he would then plea in front of the court.

15 Q What I interested in, you at some point
16 and time determined that you have to go to trial
17 and represent Mr. McCall; is that correct?

18 A Yes, sir.

19 Q And simultaneously, with that
20 determination also the other lawyers representing
21 the co-defendants, had made that same decision.

22 A I can't speak for the other attorneys.

23 Q Well you---

24 A I would assume if they had gone to trial,
25 they may also rejected any plea offer that had

Walter Watts-direct by Pride

1 been presented.

2 Q Well you may not assume that, but you know
3 the three of you defended three defendant's; is
4 that not correct?

5 A We were also defending three defendants.

6 Q What I am getting at, as a result of that
7 decision, knowing three lawyers that you were
8 going to defend three people, was there any
9 colloquy between you and the other lawyers about
10 the strategy and how you were going to defend the
11 three defendants in this case? Did you all work
12 together?

13 A There were discussions about what we
14 presented, but of course every defense attorney is
15 primarily responsible for the best interest of
16 their own clients. So the things that we saw as
17 far as what was presented by the solicitor's
18 evidence, we may have discussed what the solicitor
19 had presented and how it may effect. But as far
20 as going through and having a joint strategy of
21 handling every bit of presentation, you would have
22 to worry about what the solicitor is going to come
23 in, and what the testimony comes through to look
24 at best interest of your client. But of course,
25 we discussed things together since we were having

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1 a joint trial.

2 Q Well having said that you had the
3 responsibility to do what was in the best of your
4 client, notwithstanding the fact you were
5 collectively, you and the other two lawyers were
6 representing three defendants, you made a -- you
7 talked about the fact that you made a decision in
8 this case not to move for a severance; is that
9 correct?

10 A There was a discussion that after
11 conference with Mr. McCall was reached. So that
12 was a decision that was made with the foresight
13 and knowledge of Mr. McCall, as well about his
14 options to either request a severance of the trial
15 or to proceed forward with all three defendants at
16 the table.

17 Q Why did you leave that decision up to
18 Mr. McCall?

19 A I did not leave it solely up to him. I
20 gave him my opinion on what were the benefits and
21 the positives and negatives of going to trial with
22 three defendants at the table, versus the benefits
23 of him going to trial solely. After discussion
24 with him and having the opportunity to go through
25 it was a joint decision to move forward with all

Walter Watts-direct by Pride

1 the defendants at the table.

2 Q What was the rational basis of your advice
3 to Mr. McCall, wait a minute; to be tried
4 collectively, as opposed to moving for a motion
5 for severance?

6 A Well after we discussed what the
7 possibilities were and the plea offers that were
8 made to other defendants subsequent to their
9 rejection say at trial date if a motion for
10 severance granted, there could be other situations
11 where a better offer was made in exchange for
12 testimony of the other defendants against
13 Mr. McCall. So that would be a consideration.

14 Q But would you not agree that that's not a
15 consideration and severance. In making a motion
16 for a severance would you not agree that the
17 primary objective and what you should concentrate
18 on, is whether or not my client would be better
19 off being tried by himself as opposed to being
20 tried collectively with co-defendants. Would you
21 not agree with that?

22 A In the consideration and whether its
23 something beneficial to be separate or together is
24 also taken into consideration of what other
25 evidence may be presented during a trial by

Walter Watts-direct by Pride

1 Mr. McCall solely sitting at the table himself.

2 We took those into consideration. Those
3 issues were brought up in consideration with
4 Mr. McCall in the discussion with who we were
5 going to proceed either solely or with three
6 defendants.

7 Q Do you think that they should have -- you
8 should have relied on Mr. McCall's judgment?
9 Wasn't that a professional decision that you
10 should have recommended based on your experience
11 first of all, and your education as a lawyer, as
12 to whether or not Mr. McCall should go to trial
13 separately or whether or not he should go
14 collective with the defendants?

15 Don't you think that you should have
16 been the influencing factor?

17 A I gave him my opinion on the benefits and
18 the negatives for both scenarios.

19 Q What benefit---

20 A Mr. McCall -- excuse me. I don't want to
21 talk over you, I apologize.

22 Q I apologize. Excuse me, that's my fault.
23 And won't happen again.

24 A As it was Mr. McCall who was going to
25 trial, it was his liberty at stake, I provided

Walter Watts-direct by Pride

1 information again and told him about the
2 scenarios, the benefits and the negatives on each
3 scenario, whether going to trial solely or going
4 to trial with the co-defendants present at the
5 table.

6 Was it my opinion that there could some
7 benefit of going altogether; yes. I thought the
8 potential for other evidence or other witnesses to
9 come in and provide more incriminating testimony,
10 when he was at trial solely, or to try to use
11 other information that was gained from other
12 trials against Mr. McCall, made it more beneficial
13 for him to go forward.

14 If I had adamantly thought that it was in
15 the sole best interest to go and be tried solely,
16 then I think we would probably made that very
17 clear and that probably would have been the case.
18 But of course, Mr. McCall is the one who is trial
19 and just provide him with the information that I
20 had, and give him an opinion because it's his
21 liberty that was at stake.

22 Q Based on your education and based on your
23 experience in the area of defending people charged
24 with criminal offenses, please list categorically
25 what you told Mr. McCall, what benefits he would

Walter Watts-direct by Pride

1 derive from being charged at or being tried
2 collectively. Tell me what exactly what you told
3 him.

4 A Mr. Pride, I can't tell you exactly what I
5 told him. It was a conversation that occurred
6 6 years ago.

7 Q Well hypothetically, what factors does a
8 lawyer consider when you are making a decision to
9 have your client charged and tried along with
10 co-defendants?

11 A The ability to go through and have other
12 attorneys also question the same time on evidence;
13 to go through and find out prior to your
14 opportunity to cross examine other information
15 that witnesses provided. The ability, and I think
16 it was taken in this case with three, I think it
17 would be two, myself and I think Mr. Wheeler were
18 able to go and give our closing. Again, and then
19 the third co-defendant's attorney went last to
20 try to deal with after the solicitor's comments in
21 the case; to also think about, if they were tried
22 separately, and if any other individual was found
23 guilty and their testimony would come back in
24 exchange for leniency in judgment.

25 Would it more beneficial for him to be in

Walter Watts-direct by Pride

1 group favorable situation where we can all be
2 there at the same time at his side with the jury
3 seeing him; listening to the other explanations
4 that were provided by the co-defendants. A lot of
5 reasons why you may want to sit at the table
6 together. And there were also some reasons where
7 you may want to have him separate. So you are
8 asking me which was the best decision. Well in my
9 opinion at that time, and going through and having
10 some discussions with the other counsel, talking
11 with Mr. McCall, looking at the evidence, look at
12 the benefits that we can have in cross examining
13 state witnesses and having 2 or 3 shots with the
14 collective attorneys there, it was a
15 recommendation that he may be best served to go
16 through and be tried at the same time as the
17 co-defendants.

18 Q Did you do any research at all to
19 determine when severance should be made for a
20 defendant?

21 A Seeing as how I drafted the motion for
22 severance and presented it, and went through and
23 talked about it where it could have been
24 represented, I believe I enclosed a copy of what I
25 drafted in the documentation that you requested in

Walter Watts-direct by Pride

1 the subpoena. I researched it at that time, and
2 we had that discussion. We were ready to go
3 forward with the motion to sever, and the only
4 reason why we did not, because we had that joint
5 discussion to consider what his best options were.
6 And we came to the conclusion together that it was
7 best for him to go through and have a trial with
8 the two other co-defendants at the same time.

9 Q When you say together, would you not agree
10 with me that there are times when a lawyer should
11 override a client's opinion in making a decision
12 when the client makes a decision that is not in
13 their best interest?

14 A As I've said before, I am the attorney who
15 was hired to represent and give advice and try to
16 steer my client with the best result possible. I
17 cannot force a client to provide any information
18 or try to force a client to make a specific plea.

19 And in this discussion, I gave my
20 professional opinion. But if I had said over your
21 opinion, this is your case, but now I am
22 absolutely not going to take into consideration
23 what you want, and I am going to make this
24 unilateral decision to do a severance motion for
25 trial. If things had gone differently then I am

Walter Watts-direct by Pride

1 sure that the question would be, why didn't you
2 try them together at the same time versus severing
3 the trial.

4 So as far as my ability to make a client
5 except or do something in that manner, I don't
6 think that's my place.

7 Q But you didn't you have a statement of
8 Thomas in the discovery, and the benefit of
9 talking to Thomas's lawyer, so that you would know
10 at trial what Thomas intended to testify to?

11 A In those statements and what you are you
12 are talking about, more than likely would have
13 never come if other counsel had not during the
14 time of trial, opened the door. So you are asking
15 me could I foresee that anyone else would ask any
16 questions that would ever open the door to allow
17 any evidence that may be objectionable or would
18 not be admissible? Well I don't have that in my
19 foresight to know exactly what someone will say at
20 that point at trial.

21 Q Now answer my question. My question to
22 you is this. Didn't you discover from reading the
23 discovery supplied to you---

24 MS. HARRIGAN: Objection, leading.

25 THE COURT: Sustained. This is your

Walter Watts-direct by Pride

1 witness.

2 MR. PRIDE: All right, sir.

3 Q Did you not discover from reading the
4 discovery from the solicitor's office, and the
5 colloquy with Thomas' lawyer, what Thomas was
6 going to testify to, and that he was going to
7 testify?

8 A The statements that were provided to the
9 solicitor's office regarding Mr. Thomas; yes, I
10 did read it. Yes, I had an idea of what his
11 allegation and what his statement was, and how he
12 was going to explain how the events occurred.

13 Q Therefore you knew that Thomas was going
14 to say that McCall shot, what's his name Rawl?

15 A Mr. Rouse?

16 Q Rouse, thank you. Didn't you?

17 A I knew from the statement that was
18 provided that that's what Mr. Thomas had told law
19 enforcement. As far as what he was going to
20 testify to and whether he was not, I think that
21 any decision regarding whether he was going to
22 provide testimony at trial was made after the
23 state presented their evidence. So did I expect
24 him to come in and testify? I didn't know if he
25 was going to testify or not at the call of his.

Walter Watts-direct by Pride

1 turn in the case. I knew what he provided to law
2 enforcement as far as the statement.

3 Q Well I am not asking you about his
4 testimony.

5 A Yeah.

6 Q I am asking you didn't know, you were
7 forwarned from the discovery that you read, that
8 Thomas was going to say that McCall shot the
9 victim; didn't you? Yes or no?

10 MS. HARRIGAN: Objection, counsel is
11 testifying.

12 THE COURT: Sustained. Rephrase your
13 question.

14 Q You, excuse me. I will withdraw the
15 question. You knew you had a case. You knew
16 that one of the elements in a severance, filing a
17 motion for severance, was that the two defendants
18 should not have an antagonistic relation between
19 each other; didn't you? That's one of the
20 elements; isn't it?

21 A But as far as antagonistic, I think that
22 if you look back at the statements it would
23 basically, Mr. Thomas talked about how there was
24 an altercation between Mr. Rouse and Mr. McCall.
25 And Mr. Thomas's testimony with respect, towards

Walter Watts-direct by Pride

1 the fact that he was coming to Mr. McCall's
2 defense. So I think that the explanation and what
3 he was saying was that Mr. McCall was in danger of
4 Mr. Thomas putting in a defense of others type
5 situation we're at trial.

6 Q But my point to you is, is that you went
7 to trial knowing that Thomas was going to say that
8 McCall---

9 MS. HARRIGAN: Objection. He's testifying
10 to the witness.

11 THE COURT: Sustained.

12 MR. PRIDE: I am sorry, Judge. Sustained?

13 THE COURT: Yes, sir. You're testifying.

14 MR. PRIDE: Judge, this is not a jury.
15 This is a pretrial.

16 THE COURT: This is still a civil trial.
17 You can't testify.

18 MR. PRIDE: All right, Judge.

19 Q The facts in this case are that McCall
20 testified that he didn't intend to shoot the
21 victim; that it was an accident; is that correct?

22 A I believe the testimony was they were
23 tussling over it. That it was withdrawn. I think
24 Mr. McCall testified it was not his weapon. It
25 was something Mr. Rouse had. That there was a

Walter Watts-direct by Pride

1 physical confrontation; that it appeared
2 to Mr. McCall that Mr. Rouse was attempting to get
3 the weapon. There was a subsequent altercation to
4 go through and try to gain control of it. I
5 believe his testimony was he wasn't even aware the
6 gun went off from what he said. I think there was
7 testimony from someone else about that there was
8 confusion of his testimony about one or two shots,
9 as far as, how many were fired during that
10 altercation with Mr. Rouse and Mr. McCall about
11 the weapon going off.

12 I think it was his testimony that says he
13 didn't realize that the weapon had gone off. Or
14 he didn't know if whether he was shot or if
15 Mr. Rouse was shot. I believe was his testimony
16 was.

17 Q In a situation where defendants are tried
18 jointly together, and your client was testifying
19 that he did not shoot the victim, and the
20 co-defendant was testifying that he did shoot the
21 victim, doesn't that make it a finger pointing
22 contest between two defendants that are on trial?

23 A From what I recall about this, it was a
24 situation where there were shots fired. And I
25 don't know how much Mr. Thomas saw initially when

Walter Watts-direct by Pride

1 the first shot went off. But if you're asking me
2 if they're going through and saying, he shot him.
3 And Mr. McCall said, I didn't shoot him. Is that
4 what you asking me? The testimony was, they were
5 going after a weapon, and he didn't know whether
6 or not he caused the discharge or if there was
7 another individual's finger that went through.

8 I don't think there was any question about
9 both of them with Mr. McCall's testimony about
10 having a gun there, and having this altercation
11 and trying to gain control of it.

12 Q But your defense with Mr. McCall was that
13 it was an accident.

14 A And going through we made the request for
15 the additional lesser included charges and
16 everything else; that we did bring up the fact
17 that there was this tussle they went through; yes,
18 sir.

19 Q And Mr. Thomas' defense was that he
20 himself shot the victim because he was trying to
21 protect McCall.

22 A Yes, sir, I believe that's correct.

23 Q And Mr. Thomas' testimony was also that
24 McCall shot the victim. Yes or no?

25 A Without looking at it, I think he said he

Walter Watts-direct by Pride

1 yes, that he believed the firing was caused by
2 Mr. McCall.

3 MR. PRIDE: Thank you, very much. I have
4 no further questions.

5 THE COURT: Yes, ma'am.

6 MS. HARRIGAN: May it Please the Court.

7 Cross Examination by Ms. Harrigan:

8 Q Mr. Watts, in regards to the severance in
9 this first issue that I believe that Applicant has
10 raised.

11 MR. PRIDE: I'm sorry, Judge, I ask her to
12 speak up a little bit louder.

13 MR. HARRIGAN: Certainly.

14 Q Why did you feel that a joint trial would
15 be in your client's best interest?

16 A As I've said, that we had three attorneys
17 that would be there able to provide cross
18 examination opportunities for the state's
19 witnesses. We were able to come through and try
20 to come up with a loose strategy amongst ourselves
21 about how to approach the state's case; taking
22 into account that each one of us would bear solely
23 the interest of our clients. So there was nothing
24 that was discussed that would impede the rights of
25 one to the other.

Walter Watts-cross by Harrigan

1 But there were issues that came up in the
2 testimonies of law enforcement which if I am not
3 mistaken said it would be a situation where some
4 issues may be able to be properly addressed or
5 excluded during a joint trial versus what would
6 come in later against Mr. McCall if he was on his
7 own.

8 Q And you waived these benefits with your
9 client.

10 A I had that discussion, and made those
11 considerations with Mr. McCall; yes.

12 Q Did you feel he understood these
13 discussions with you?

14 A Yes.

15 Q And ultimately it was a joint decision
16 between yourself and your client to have a joint
17 trial.

18 MR. PRIDE: Leading and suggestive.

19 THE COURT: She's on cross examination.

20 MR. PRIDE: Yes.

21 Q And in regards to the co-defendant's
22 Thomas' statement, that was redacted.

23 A We did go through and request the court to
24 redact statements to make it only applicable to
25 Mr. Thomas. I think that we had previously tried

Walter Watts-cross by Harrigan

1 to have the entire statement excluded. If I
2 recall, I think that what happened is that during
3 some of the testimony of Mr. Thomas the door was
4 somewhat open where it would then come in. I
5 think we were able to have at least a limiting
6 instruction where anything in that statement was
7 only applicable to Mr. Thomas, and was not to be
8 used against Mr. McCall during his trial.

9 Q And in fact the judge removed any
10 effort -- any inference to any other person being
11 with the co-defendant Thomas; correct?

12 A I believe that's correct.

13 Q And in regards to the second allegation of
14 ineffective assistance of counsel in regards to an
15 accident defense. Is there a particular reason
16 that an accident charge is not requested for the
17 jury?

18 A In our request to charge and everything
19 else, we had talked about requesting voluntary and
20 involuntary manslaughter to be presented to the
21 jury. I think it was during the testimony that
22 Mr. McCall's testimony, I think we had it, where
23 there is this an altercation that it was
24 accidental discharge per his testimony. We had to
25 from my recollection move because it would be hard

Walter Watts-cross by Harrigan

1 to get the involuntary. So we went through and
2 made the charges. There was not a specific
3 accident charge requested. However, when we went
4 through the elements that would come up and help
5 towards the jury determining be the involuntary
6 manslaughter, I thought were had it properly
7 covered in the involuntary manslaughter charge, to
8 the extent that went by the testimony.

9 Q And to your recollection was self-defense
10 charged to the jury?

11 A I think so. I would have to review the
12 transcript to be sure, but I believe so.

13 Q And I know it's six years since you tried
14 this case, but do you feel that your former client
15 was in any prejudiced by not having an accident
16 charge submitted to the jury?

17 A I can only tell you what a jury would do
18 in a specific charge. I know that the question is
19 did we request it, I did not. Do I know whether
20 that would have an effect, well I think that some
21 of those issues were covered in the involuntary
22 manslaughter's charge. And the jury came back and
23 decided voluntary. So I don't know whether or not
24 it would have made a decision -- would have made
25 an impact or not.

Walter Watts-cross by Harrigan

1 I think that if they had truly considered
2 the testimony regarding accidental discharge, then
3 they may have come back with involuntary. But of
4 course, I can never tell you what a jury is going
5 to do. I have no idea how much impact it would
6 have made or if any at all.

7 MS. HARRIGAN: No further questions, Your
8 Honor.

9 THE COURT: Any redirect?

10 Redirect Examination by Mr. Pride:

11 Q You're not saying that a charge for
12 accident and a charge for involuntary manslaughter
13 has the same elements; are you?

14 A No, sir.

15 Q Okay.

16 A No, sir.

17 Q And I just want to concentrate on one area
18 and then we will be clear. I am not talking about
19 versus when you knew it and what you knew. You
20 knew from discovery and you knew from talking to
21 Thomas' lawyer, that Thomas had made a statement
22 that said that McCall shot the victim; is that
23 correct?

24 A Without having the exact statement in
25 front me, I know that the allegation was that

Walter Watts-redirect by Pride

1 McCall was shot. As far as -- or excuse me,
2 Mr. Rouse was shot during the altercation with
3 Mr. Rouse. Whether or not the exact words, and it
4 maybe that he said in his statement that
5 Mr. McCall shot Mr. Rouse. But as far as, did I
6 know that he was going to come in there and give a
7 direct testimonial statement and say I saw
8 Mr. McCall have the gun and fire directly into
9 Mr. Rouse; no, sir, I did not know that's what he
10 would say. But you are correct in discovery it
11 did say in his statement he's talking about
12 Mr. McCall shot Mr. Rouse.

13 Q Let me just ask you one other question.
14 During the trial, you discovered that Thomas said
15 that Mr. McCall shot Rouse; is that correct?

16 A During Mr. Thomas' testimony; yes, sir.

17 Q Why didn't you move for a mistrial?

18 A At that time, we were talking about what
19 I'd have to take into account, I did not move for
20 a mistrial. And there was discussion behind it.

21 Q It's so easy a Monday morning
22 quarterback. I want to acknowledge that right now
23 and tell you that.

24 A Obviously I did not move for a mistrial.
25 Nor did any other counsel move. So at that point,

Walter Watts-redirect by Pride

1 I cannot tell you why we did not at that exact
2 point. I cannot give you an exact answer to any
3 discussion, determination why. I know that after
4 Mr. Thomas talked about Mr. McCall firing a shot,
5 we continued forward with the defense talking
6 about the self defense altercation occurred; that
7 it was instigated by Mr. Rouse. And believed at
8 that time we would still be able to convince the
9 jury that if not to acquit Mr. McCall, but at
10 least we thought we had a great shot of going
11 after the involuntary manslaughter decision.

12 Q At a point and time, when a lawyer is
13 surprised during the trial and the information
14 comes out prejudices his client's defense, the
15 appropriate motion would be for a mistrial. Would
16 you not agree with that?

17 A I think in view of the amount of prejudice
18 versus the outweighing of what else could come up,
19 you can still make a sound in your argument; yes,
20 I guess you could have said yes, make a mistrial
21 motion.

22 MR. PRIDE: Thank you very much.

23 THE COURT: Anything else?

24 MS. HARRIGAN: No recross.

25 THE COURT: You may step down. Any

Walter Watts-redirect by Pride

1 objection to Mr. Watts being excused?

2 MR. PRIDE: None. thank you very much for
3 coming.

4 MS. HARRIGAN: None, Your Honor.

5 THE COURT: You may call your next
6 witness.

7 Eunice McCall, being first
8 duly sworn, testified as follows:

9 THE BAILIFF: State your full name and
10 spell your last name for the record.

11 A Eunice McCall. M-C-C-A-L-L.

12 Direct Examination Mr. Pride:

13 Q Mr. McCall, presently where are you
14 residing?

15 A Lieber Correctional Institution.

16 Q And how long have you been under the
17 jurisdiction of the Department of Corrections?

18 A A little over 6 and a half years.

19 Q And you were you sentenced as a result of
20 your conviction in Lee County; is that correct?

21 A Yes, sir.

22 Q Now, Mr. McCall, this might be -- Judge,
23 this might not really be relevant, but just to get
24 it out. You wanted to have your papers with you
25 today; is that correct?

Eunice McCall-direct by Pride

1 A Yes, sir.

2 Q And what was the basis of wanting your
3 papers?

4 A I would be fully prepared. I would be --
5 know what's going on with my case more in depth
6 than just all the memory of six years.

7 Q Okay. And what happened to your papers?

8 A The officers at SCDC at Lieber
9 Correctional Institute, they took all my
10 belongings; including, my Rule 5 and transcript,
11 all the legal work, along with my property. And
12 told me I was placed under investigation for
13 reasons I don't know. They don't tell you why you
14 are under investigation. They just tell you you
15 are under investigation.

16 Q When did the taking of the papers take
17 place?

18 A August 16th, August 15th, right in that
19 area.

20 Q And you do acknowledge to the judge that
21 prior to August 16th, that you had all of those
22 papers, and they were available and you were
23 pretty knowledgeable about the information that
24 was contained in those papers.

25 A Yes, sir.

Eunice Mccall-direct by Pride

1 Q Now and you were present obviously this
2 morning when attorney Watts testified; is that
3 correct?

4 A Yes, sir.

5 Q You did hear his testimony.

6 A Yes, sir.

7 Q And you did understand his testimony.

8 A Yes, sir.

9 Q Now so as far as being tried with your
10 co-defendants, first of all, strike that please.
11 Thomas, was he your friend; that you were tried
12 with?

13 A He was someone I knew.

14 Q You just knew him?

15 A Yes, sir. He lived in the same
16 neighborhood.

17 Q He lived in the same neighborhood. And
18 what about Rouse, the victim?

19 A I knew him also, but he lived in a
20 different neighborhood; a different part of town.

21 Q And the night that this incident happened,
22 how did you and Thomas happen to be together?

23 A We all agreed to go shoot some pool
24 somewhere in my neighborhood.

25 Q And when the victim was shot and killed,

Eunice Mccall-direct by Pride

1 did you make a statement?

2 A A statement when, sir?

3 Q In other words, where the killing took
4 place, did you tell the police what happened?

5 A No, sir. I told my lawyer what happened.

6 Q And what did you tell your lawyer
7 happened?

8 A I told my lawyer that on our way to go
9 play pool that night, that me and Rouse got into
10 an altercation. And at that time a gun was pulled
11 in the altercation. And me and him was basically
12 tussling over the weapon. We had fired over the
13 gun.

14 Q And whose gun was it?

15 A Rouse?

16 Q And the gun went off?

17 A Yes, sir.

18 Q And there was no intent on your part to
19 shoot?

20 A No, sir.

21 Q Okay. Now Thomas, what's Thomas's first
22 name?

23 A Efrain.

24 Q He was represented by a different lawyer;
25 is that correct?

Eunice Mccall-direct by Pride

1 A Yes, sir.

2 Q Now prior to going to trial, did you have
3 any discussions with your lawyer that you can
4 recall about whether you wanted to be tried with
5 your co-defendants?

6 A No, sir. That discussion was held the
7 same day of the trial.

8 Q Well you can't say no, sir, and then say
9 it was held. So let's start over again. Did you
10 ever have any discussion with Mr. Watts about a
11 decision to be tried with your co-defendants?

12 A Yes, sir.

13 Q Okay. And when was that discussion, and
14 where was it?

15 A The first day of trial in Bishopville
16 Courthouse. In the courthouse.

17 Q At the courthouse?

18 A Yes, sir.

19 Q Was that the only time you talked to him
20 about it?

21 A Yes, sir.

22 Q Are you are certain about that?

23 A Yes, sir.

24 Q And tell the judge the extent of the
25 conversation that transpired between the two of

Eunice McCall-direct by Pride

1 you that you recall.

2 A He basically asked me did I want to get
3 tried with the to co-defendants at that same time.
4 And I basically left it up to him, because I
5 didn't have no knowledge of the fact that was --
6 what would be the outcome, having a trial with him
7 or having trial a without him. I asked his
8 advice.

9 Q Would it be a fair statement to say that
10 you relied on his judgment?

11 A Yes, sir.

12 Q And his education.

13 A Yes, sir.

14 Q And that was the extent of the discussion
15 about whether you should go to trial or whether or
16 not you should go with your co-defendants.

17 A Yes, sir.

18 Q And you did testify during the trial?

19 A Yes, sir.

20 Q And your testimony was consistent with
21 what you told the judge that you told your lawyer;
22 is that correct.

23 A Yes, sir.

24 Q And Mr. Thomas, who is a co-defendant,
25 testified that he shot the victim; is that.

Eunice McCall-direct by Pride

1 correct?

2 A Yes, sir.

3 Q And that likewise you shot the victim.

4 A Yes, sir.

5 MR. PRIDE: Thank you, Judge.

6 MS. HARRIGAN: May it Please the Court.

7 THE COURT: Yes, ma'am.

8 Cross Examination Ms. Harrigan:

9 Q Mr. McCall, your testimony is here today
10 is that you never discussed the issue of severance
11 with your prior to the start of the trial?

12 A No, I discussed the issue with him the
13 same day of trial.

14 Q Did you have any knowledge before coming
15 here today that your attorney drafted a motion for
16 severance on your behalf?

17 A No, sir. No, ma'am, I mean. Excuse me.

18 MS. HARRIGAN: Thank you.

19 THE COURT: Anything else?

20 MR. PRIDE: I'm sorry, Judge.

21 No redirect. Judge, that's the extent of the case
22 that we have for Mr. McCall.

23 THE COURT: All right.

24 MR. PRIDE: And I would ask you to
25 respectfully to allow me just to address you on

Eunice McCall-cross by Harrigan

1 behalf of how---

2 THE COURT: Yes, sir.

3 MR. PRIDE: ---on how I see it.

4 THE COURT: Well she I think she might
5 want to present witnesses.

6 MS. HARRIGAN: We have no witnesses to
7 call.

8 THE COURT: Now she said she didn't want
9 to present witnesses.

10 MR. PRIDE: I stand here because I can
11 hear better.

12 THE COURT: Yes, sir.

13 MR. PRIDE: Judge, lawyers have a
14 responsibility at all times, in representing
15 people who are charged with a criminal offense to
16 demonstrate their education and their professional
17 experience. And I say that to say that you cannot
18 leave to a defendant an important decision like
19 whether or you should go to trial with
20 co-defendants or whether or not you should allow
21 me to move for a severance and take you to trial
22 alone.

23 I say that, Your Honor, because a
24 defendant is not equipped to intelligently make
25 that decision. And in this case, and, Judge, I've

1 never liked these cases because you have always
2 got to beat up on a fellow lawyer and that's not a
3 not good feeling. But the truth of the matter is,
4 that there was notice from the discovery; that you
5 had a good situation where Thomas was going to say
6 that McCall shot the victim.

7 There was no question about the fact that
8 what Thomas was going to say was inconsistent
9 with the defendant's defense. Therefore there was
10 an antagonistic relation between the two. And it
11 boiled down to the solicitor having a great day in
12 court. Because what he had was two defendants up
13 there doing this, pointing at each other. And
14 it's up to a lawyer to stay away from those kinds
15 of situations with their clients.

16 And this is not a situation where I am
17 necessarily Monday morning quarterbacking, you
18 know, looking over a lawyer's shoulders. I'm just
19 looking at the record in this case. And there was
20 clear and convincing evidence that the appropriate
21 remedy and the appropriate motion in this case for
22 Mr. McCall in order to obtain a fair trial, would
23 have been to move before the court to have a
24 severance. And to certainly if the lawyer or no
25 two cooks make beef stew the same way, I'll

1 acknowledged that. But ordinarily in a situation
2 like that where you would move for a severance,
3 you would take the co-defendants statement and
4 attach it to your motion so the judge would see
5 the rationale basis upon which you move.

6 And I think that should have been done in
7 this case, but he caught up in the muck. He was
8 up there depending himself on accident. And also,
9 Judge, the lawyer -- Judge, there is no perfect
10 defense, okay. I mean, I don't---

11 THE COURT: I haven't seen one yet.

12 MR. PRIDE: I haven't either. I mean
13 there is no perfect---

14 THE COURT: Especially when you are found
15 not guilty.

16 MR. PRIDE: ---argument. Any lawyer who
17 says he said everything he meant to say is not a
18 lawyer telling the truth. You always go to bed
19 and say, how in the hell could I have missed that.
20 Or something to that effect. But by the same
21 token, there some basic fundamental things that
22 are expected out of a lawyer. And certainly when
23 Mr. Watts found himself in that situation where he
24 sort of portrays Thomas as turning on McCall and
25 testifying that they caught him by surprise, then

1 you got guess out of that box.

2 You know, you've got to say, Judge, this
3 is a surprise. I didn't think it was coming down
4 this way. The prejudice is overwhelming, and I
5 can't overcome this. And please grant me a
6 mistrial or a new trial. Whether you get it or
7 not, and you may not get it because oftentimes,
8 you being a practicing lawyer you ask for more,
9 way more than you'll ever get from a judge. But
10 the point is this, there are things that must be
11 done in the record to protect the client.

12 And also on the question of accident,
13 there is a great distinction between having a jury
14 instructed on accident. And having a jury
15 instructed on involuntary manslaughter. And
16 Mr. Watts graciously acknowledged that the
17 elements are different. On that basis, Judge, I
18 would respectfully ask you for your consideration
19 in granting my client a new trial.

20 THE COURT: Thank you. Ms. Harrigan, do
21 you want to say anything?

22 MS. HARRIGAN: Just briefly, Your Honor.

23 THE COURT: Yes, ma'am.

24 MS. HARRIGAN: In regards to the
25 ineffective assistance and counsel's decision not

1 to make a motion for a severance, attorney Watts
2 testified that he was fully prepared to research
3 the issue, and had dropped the motion for
4 severance. And after weighing the pros and cons,
5 personally and in a professional decision and with
6 his client, he made a professional opinion not to
7 move forward on that motion. And therefore, it's
8 not deficient performance. It falls well below
9 the standard set forth in Strickler vs.
10 Washington. And no prejudice has been shown her
11 today as if Mr. Watts had severed the trial.

12 There is testimony that the co-defendant's
13 may have possibly testified against him. And the
14 applicant could have come out far worse. In
15 regards to ineffective assistance of counsel for
16 failure to commence trial motion, that is in the
17 sole discretion of the judge to grant. It's a
18 very rare decision. And the record will show that
19 the statement was not inflammatory. And no
20 prejudice can be found. And in regards to
21 ineffective assistance of counsel or the failure
22 to request an accident charge, no prejudice can be
23 shown in testimony from Mr. Watts that involuntary
24 manslaughter was also charged. And it wasn't
25 convincing the jury wasn't really buying that

1 argument, and would have found involuntary
2 manslaughter. The state asks you to deny the
3 application.

4 THE COURT: All right, I will review
5 the---

6 MR. PRIDE: Judge, can I get a reply?

7 THE COURT: Briefly.

8 MR. PRIDE: Very briefly. And I just want
9 to -- it's on this basis. You know, there is a
10 difference between a lawyer looking through a
11 record and trying to find something in order that
12 they can hang their at on to help someone. You
13 know, you can be picayunish and go through the
14 record and pick here and pick there. But when you
15 go through a record and it's glaring, that's
16 different. And I would submit to you that this is
17 a case in which ineffective assistance is glaring.
18 Thank you very much.

19 THE COURT: Thank you. I will take this
20 matter under advisement. I'll give you a ruling
21 within 15 days.

22 MR. PRIDE: And I want to thank you for
23 the beginning of the week.

24 THE COURT: Yes, sir.

25 MS. HARRIGAN: Thank you, Your Honor.

C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the General Sessions Court on September 19th 2013, in Lee County, Bishopville, South Carolina.

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

4/30/13
DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/21

STATE OF SOUTH CAROLINA
COUNTY OF LEE

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

Eunice McCall #314833,

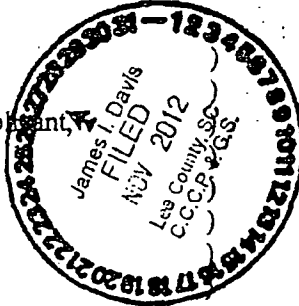
Case No. 2009-CP-31-0136

Applicant,

v.

State of South Carolina,

Respondent.



ORDER OF DISMISSAL

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 29, 2009. The Respondent made its Return on November 16, 2009. An evidentiary hearing into the matter was convened on September 19, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Hemphill Pride, II, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. The Applicant was indicted during the November 2005 term of the Lee County Grand Jury for Murder and Possession of a Firearm during a Crime of Violence (2005-GS-14-0102).¹ The Applicant was represented by W. S. Watts, III, Esquire. Applicant proceeded to a jury trial before the Honorable Clifton Newman. On April 6, 2006, the Applicant was found guilty at trial of Possession of a Weapon during a Crime of Violence and the lesser included

¹ Applicant was indicted along with co-defendant Efrain Thomas for Murder and Possession of a Firearm During a Crime of Violence. The indictment also included a charge of Accessory After the Fact of Murder as to a third co-defendant, Chad James.

offense of Voluntary Manslaughter. Applicant was sentenced to eighteen years imprisonment for Manslaughter and five years imprisonment for Possession of a Weapon during a Crime of Violence, sentences to be served concurrently.

A notice of appeal was filed, and an Anders brief was submitted on Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. McCall, 2009-UP-077 (S.C. Ct. App. filed February 11, 2009). The Remittitur was sent on March 2, 2009.

In Applicant's post-conviction relief application, he alleged that he is being held in custody unlawfully based on the following claims:

- I. Ineffective Assistance of Counsel;
 - a. "Trial counsel's failure to request [a] jury charge on accident where evidence supported charge, nor objected to its omission was ineffective assistance of counsel."
 - b. "Trial counsel's failure to protect applicant's rights violated Due Process clause of the 14th Amendment to the U.S. Constitution."
 - c. "Trial counsel's failure to effectively litigate applicant's case fell below an object[ive] standard of professional norms."

Applicant amended his application on July 12, 2012, re-alleging the same grounds for relief. At the evidentiary hearing, Applicant proceeded on the following claims of ineffective assistance of counsel:

1. Counsel was ineffective for failing to move for a severance;
2. Counsel was ineffective for failing to request an accident charge; and
3. Counsel was ineffective for failing to move for a mistrial.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, the Applicant testified on his own behalf. Applicant also presented testimony from trial counsel, W.S. Watts, III, Esquire ("Counsel"). This Court also had before it a copy of the Applicant's trial transcript, the records of the Lee County Clerk of Court,

and Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

At the start of the hearing, Applicant, through his counsel, moved for a continuance of this matter due to Applicant's lack of his "legal papers" which he stated were taken from him by South Carolina Department of Corrections officials. This Court questioned Applicant regarding what additional documents he felt he needed to proceed, and this Court made a determination that Applicant was fully prepared to proceed forward with the scheduled hearing.

Applicant called Counsel to testify. Counsel stated that he was retained by Applicant's family and was able to successfully secure a bond for Applicant's release prior to trial. Counsel testified that he met with Applicant, as well as Applicant's family, at least three or four times prior to trial. Counsel stated that he filed standard discovery motions in this case, and upon receipt of these materials, he reviewed the State's entire discovery file with Applicant. Counsel testified that he fully discussed Applicant's version of the facts giving rise to the incident as well. Counsel testified that he did a thorough investigation based on the State's discovery materials and his discussions with the Applicant. Specifically, Counsel stated that he interviewed numerous witnesses, including Lucille Wesley, who recanted an earlier statement.

Counsel stated that Applicant was tried with two co-defendants, Efrain Thomas and Chad James. Counsel stated that co-defendant Thomas was convicted of murder and possession of a weapon during the commission of a violent crime and co-defendant James was found not guilty of accessory after the fact of murder. Counsel testified that he negotiated with the State to secure his client a favorable plea deal, but once his client turned down the plea offer, he was fully prepared for trial.



Counsel testified that before the trial, he considered moving for a severance to have Applicant tried separately from his co-defendants and drafted a proposed motion that he intended to submit to the trial court. Counsel stated that one major risk and potentially negative aspect to moving for a severance was that Applicant's co-defendants could have testified against Applicant at his trial. Additionally, Counsel stated that there were numerous benefits to a joint trial with Applicant's co-defendants, such as three separate attorneys to independently cross-examine and attack the credibility of the State's witness, the ability for the jury to hear multiple closing statements, and the ability to listen to the co-defendants' cases as presented to the jury and present his case accordingly. Counsel testified that he did research on severance of cases in preparation for a severance motion. Based on his review of current case law and the specific facts of this case, he determined in his professional opinion that a joint trial was in the best interest of his client. Counsel testified that he spoke with his client at length regarding whether or not to move for a severance of his case and he feels that he gave his client appropriate and sound professional advice as to whether or not to move for a severance. Counsel testified that ultimately this decision was up to his client, and if Applicant had been adamant that he wanted a severance, then he would have made this motion before the court.

Counsel testified that he requested a jury instruction on the lesser included offense of voluntary manslaughter and argued to the trial court that sufficient evidence of provocation had been presented to the jury to warrant a voluntary manslaughter charge. Counsel also testified that he requested charges of self-defense and involuntary manslaughter as well. Counsel testified that the trial court instructed the jury as both voluntary manslaughter and involuntary manslaughter as to his client, as well as self-defense, while only voluntary manslaughter was charged as to co-defendant Thomas. Counsel testified that he did not request an accident charge

be given to the jury. Counsel testified that his reason for not doing so was that Applicant's testimony was not that he had fired a gun on accident, but that he did not have a gun in his possession at all during the incident. Counsel testified that he does not think that his client was prejudiced by a lack of an accident charge, or that the result of the trial would have been different had the jury been instructed as to the law of accident. Counsel elaborated that Applicant was found guilty of voluntary manslaughter, not involuntary manslaughter or acquitted, which indicated to him that the jury did not believe that the shooting was accidental.

Counsel testified that he was aware that Applicant's co-defendant, Efrain Thomas, would testify that Applicant had a gun in his hand during the incident from the discovery he received from the State prior to trial. Counsel stated that when Thomas made this statement while testifying before the jury, he did not move for a mistrial for strategic reasons. Specifically, Counsel testified that he felt that Applicant had a good probability of being acquitted or convicted of involuntary manslaughter and that he was surprised with the jury's verdict.

Following Counsel's testimony, Applicant took the stand. Applicant testified that co-defendant Thomas and the victim were both "someone he knew" from his neighborhood. Applicant testified that he told his attorney that the victim was shot accidentally during a tussle over the victim's gun, but that he never had any intent to ^{shoot} ~~sh~~ the victim. Applicant testified that he was not in possession of a gun the night of the incident. Applicant stated the three of them were walking to a pool hall together when this incident occurred.

In regards to a severance of his trial from his co-defendants, Applicant testified that he spoke about this issue with his attorney only once directly before the trial and that he relied on his attorney's advice when deciding not to move for a severance. Applicant testified that his testimony at trial was consistent with what he had relayed to his attorney prior to trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).



Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant and that he was prejudiced by any of Counsel's alleged deficiencies. Below are the following findings of this Court regarding Applicant's specific allegations of ineffective assistance of counsel:

Counsel was ineffective for failing to move for a severance

Applicant alleged that Counsel was ineffective for failing to move for a severance of his trial from that of his two co-defendants, Efrain Thomas and Chad James. Thomas was convicted of murder and possession of a weapon during a crime of violence and James was acquitted of accessory after the fact to murder.

In regards to this allegation of ineffective assistance of counsel, this Court finds that Counsel's performance was reasonable and effective. Counsel testified that in his professional opinion, he did not think that a severance was in the best interest of his client. Counsel testified that he fully researched current case law on severance as well as drafted a proposed motion he intended to make before the court. Counsel testified that after reviewing the benefits and

drawbacks of a joint trial or severance, he felt that a joint trial was in the best interest of his client. Counsel testified that he discussed this issue with his client well before trial, and Applicant decided not to proceed with a severance motion. Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

Counsel was ineffective for failing to request a jury instruction on accident

Applicant alleges that Counsel was ineffective for failing to request a jury instruction on accident. In regards to this allegation of ineffective assistance of counsel, this Court finds that Counsel's performance was reasonable and effective. Counsel testified that he successfully argued before the trial court that the jury should be instructed as to both voluntary and involuntary manslaughter, as well as self-defense, in regards to his client.

Furthermore, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel. The facts must support a jury instruction for it to be proper. State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (S.C. 2003). Here, Counsel testified that Applicant's testimony to the jury was not that the gun was fired accidentally, but that he was not in possession of a gun at any time during the struggle. There was no evidence presented that if Counsel had requested such a charge, the trial court would have instructed the jury as to accident based on Applicant's own testimony. Additionally, Counsel testified that Applicant was found guilty of voluntary manslaughter, not involuntary manslaughter or acquitted, which indicated to him that the jury did not believe that the shooting was accidental.



Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

Counsel was ineffective for failing to move for a mistrial

Applicant alleged that Counsel was ineffective for failing to move for a mistrial when co-defendant Thomas testified that Applicant was in possession of a gun during the incident. In regards to this allegation of ineffective assistance of counsel, this Court finds that Counsel's performance was reasonable and effective. Counsel testified that he was already aware of co-defendant Thomas' expected testimony due to the discovery he had received from the State prior to the trial. Additionally, he stated that he made a strategic decision not to move for a mistrial, as he believed that Applicant would be acquitted or convicted of involuntary manslaughter based on how the trial had proceeded thus far. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Counsel articulated valid strategic reasons for not moving for a mistrial. Applicant has not shown that counsel was deficient in that choice of tactics. Furthermore, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.



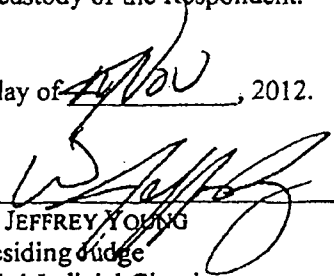
CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of April, 2012.


W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

 South Carolina.

WITNESSES

BISHOPVILLE POLICE DEPARTMENT

Captain T. S. Burke

DOCKET NO. 2005-GS-31-102

The State of South Carolina,

County of LEE

COURT OF GENERAL SESSIONS

NOVEMBER/DECEMBER TERM 2005

THE STATE

vs.

CHAD JAMES

EUNICE DAVIS MCCALL

ERRAIN THOMAS

ARREST WARRANT NO. H772670, H772752

(1); H772760 (2); No Warrant (3)

D/A: 04/07/05

ACTION OF GRAND JURY

True Bill

11-22-05

most Johnson

Foreman of Grand Jury

VERDICT

Indictment for

MURDER

ACCESSORY AFTER THE FACT TO
MURDER

POSSESSION OF A FIREARM DURING
A CRIME OF VIOLENCE

Foreman of Petit Jury

Date:

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEE)

INDICTMENT FOR
 MURDER
 ACCESSORY AFTER THE FACT TO MURDER
 POSSESSION OF A FIREARM DURING A CRIME OF VIOLENCE

At a Court of General Sessions, convened on November 22, 2005,
 the Grand Jurors of LEE County present upon their oath:

COUNT ONE - MURDER

That EUNICE DAVIS MCCALL AND EFRAIN THOMAS did in Lee County on or about April 7, 2005, violate Section 16-3-10 of the Code of Laws of South Carolina (1976), as amended, in that they did feloniously, willfully and with malice aforethought, kill one TROY ROUSE by means of shooting him with a handgun and that the said TROY ROUSE did die as a proximate result thereof.

COUNT TWO - ACCESSORY AFTER THE FACT TO MURDER

That CHAD JAMES did in Lee County on or about April 7, 2005, render assistance to felons, namely, EUNICE DAVIS MCCALL AND EFRAIN THOMAS who, on or about April 7, 2005, committed the crime of Murder, as prohibited by Section 16-1-55 of the Code of Laws of South Carolina (1976), as amended.

COUNT THREE - POSSESSION OF A FIREARM DURING A CRIME OF VIOLENCE

That EUNICE DAVIS MCCALL AND EFRAIN THOMAS did in Lee County on or about April 7, 2005, was in possession of and did visibly display a firearm during the commission of a violent crime, to-wit: Murder, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

C. Kelly Jackson
 SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lee
STATE VS.
Eunice Davis McCall
AKA:
Race: B Sex: M Age: 22
DOB: 4/19/83 SS#: _____
Address:
City, State, Zip Bishopville SC 29010
DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 05 -GS- 31 102
A/W#: H 1112 670
Date of Offense: 4/17/08
S.C. Code §: 16-3-10
CDR Code #: 0111116
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Voluntary Man Slaughter
in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0, 2, 1, 7
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

J. P. Sam
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms:
☐ set by SCDPPPS

PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____
*Fine: \$ _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 10.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
§ 35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 128.75

☐ Appointed PD or appointed other counsel, \$35.13.TP
Requires \$500 be paid to Clerk during probation.

James L. Davis
Clerk of Court/ Deputy Clerk
Court Reporter: Marquet Sullivan

PRESIDING JUDGE P. Warr
Judge Code: 0111217
Sentence Date: April 6, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lee
STATE VS.

AKA:

Race: B Sex: M Age: 22DOB: 4-19-83 SS#:

Address:

City, State, Zip Duncan SC 29060DL# SID#

INDICTMENT/CASE#: 05 -GS- 31 - 102
 A/W#: 10 Wang
 Date of Offense: 4-7-05
 S.C. Code §: 16-23-490
 CDR Code #: 0151419
☐ CASE RESTORED
 SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Possession Weapon During Violent Crime
 in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0151419
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$128.75

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 0111217Sentence Date: April 6, 2006Court Reporter: Margaret Sullivan