

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

ROBERT EARLE RICKETTS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213611

APPENDIX

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN WALT WHITMIRE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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CLOSING ARGUMENT BY MS. WHITE

1 ALL. "HE'S SAYING, "I DIDN'T COMMIT THE ASSAULT AND BATTERY
2 WITH INTENT TO KILL AT ALL. "I NEVER SHOT." SO, SELF-DEFENSE
3 IS NOT AN ISSUE.

4 HOWEVER, ON THE ASSAULT WITH INTENT TO KILL, OKAY.

5 ON THE ASSAULT WITH INTENT TO KILL, HIS DEFENSE IS, "YES, I
6 DID POINT IN THAT DIRECTION, SHOOT IN THAT DIRECTION, BUT IT
7 WAS SELF-DEFENSE. SO, LET'S LOOK AT THE ELEMENTS OF

8 SELF-DEFENSE. THERE ARE FOUR. ONE, THAT THE DEFENDANT IS

9 WITHOUT FAULT IN BRINGING ABOUT THE DIFFICULTY. HE HAS GOT

10 TO SHOW HE IS TOTALLY WITHOUT FAULT IN BRINGING ABOUT THE

11 DIFFICULTY. TWO, THAT AT THE TIME HE FIRED THE SHOT,

12 REMEMBER WE'RE TALKING FIRST SHOT HERE, AT THE TIME HE FIRED

13 THE SHOT, HE FEARED FOR SERIOUS BODILY INJURY OR DEATH. NOT

14 AN INJURY, BUT SERIOUS BODILY INJURY OR DEATH. THE THIRD ONE

15 IS WHAT I CALL THE WIMP FACTOR. YOU KNOW, IF I HAVE A

16 TWO-YEAR-OLD WHO PULLS A PINK SQUIRT GUN ON ME AND I BLOW

17 THEM AWAY, I CAN'T VERY WELL SAY I FEARED FOR SERIOUS BODILY

18 INJURY OR DEATH. WHY? IT'S NOT REASONABLE. SO, IT HAS TO

19 BE A REASONABLE FAIR FEAR. IN OTHER WORDS, AN ORDINARY

20 PERSON STANDING IN THIS PERSON'S SHOES WOULD HAVE ALSO FELT

21 SERIOUS BODILY INJURY OR DEATH. TO GIVE YOU THE FULL

22 DEFINITION OF THAT, IF THE DEFENSE IS BASED UPON HIS BELIEF

23 OF IMMINENT DANGER, A REASONABLY PRUDENT MAN OF ORDINARY

24 FIRMNESS AND COURAGE WOULD HAVE ENTERTAINED THE SAME BELIEF.

25 SO, IN OTHER WORDS, IT'S A REASONABLE FEAR. AND, FOURTH,

1 DUTY TO RETREAT. YOU MUST RETREAT IF YOU CAN DO SO SAFELY.
2 YOU MUST RETREAT IF YOU CAN DO SO SAFELY. HOWEVER, IF YOU'RE
3 ON YOUR OWN PROPERTY, YOU DO NOT NEED TO RETREAT. THESE
4 OTHER THREE STILL MUST BE PRESENT.
5 THOSE ARE THE FOUR ELEMENTS OF SELF-DEFENSE. NOW,
6 AGAIN, THIS IS ONLY A DEFENSE WHEN YOU SIT DOWN AND YOU SAY
7 WELL, IS HE GUILTY OF MURDER OR NOT; IF IT'S NOT, WAS IT
8 SELF-DEFENSE? DID HE SHOOT OR NOT? WHEN IT COMES TO ASSAULT
9 AND BATTERY WITH INTENT TO KILL, THIS IS NOT TO BE
10 CONSIDERED. IT'S ONLY WHEN YOU GET TO THE ASSAULT WITH
11 INTENT TO KILL. AND THIS IS VERY IMPORTANT. IF DAWN DID
12 PULL HER GUN OUT AFTER THE FIRST TWO SHOTS, STILL YOU WOULD
13 NOT HAVE SELF-DEFENSE. WHY? HE WAS NOT WITHOUT FAULT IN
14 BRINGING UPON THE DIFFICULTY. SHE PULLED OUT THE GUN BECAUSE
15 HE HAD SHOT. YOU ARE ALLOWED TO DEFEND OTHERS, INCIDENTALLY.
16 I KNOW THAT'S REALLY NOT A DEFENSE IN THIS CASE, BUT ONCE
17 SOMEBODY SHOOTS MY SISTER, I'M DEFINITELY ALLOWED TO STAND IN
18 THEIR SHOES AND USE SELF-DEFENSE. BUT THAT'S NEITHER HERE
19 NOR THERE, THAT'S JUST FOR DAWN. SO, SELF-DEFENSE.
20 THAT COVERS ALL OF THE CHARGES AND THE DEFENSES.
21 I'LL BE BACK WHEN THE DEFENSE IS DONE TO TALK TO YOU ABOUT
22 THE FACTS OF THE CASE.

23 THE COURT: MR. GOLDSMITH?

24 MR. GOLDSMITH: PLEASE THE COURT? MR. BANNISTER,
25 COULD YOU HELP ME SET UP THIS PLEASE, SIR? I THINK THIS IS

CLOSING ARGUMENT BY MR. GOLDSMITH

1 ONE OF THOSE THINGS THAT TAKES TWO PEOPLE.

2 (SETTING UP DIAGRAM)

3 CLOSING ARGUMENT BY MR. GOLDSMITH:

4 CAN EVERYBODY SEE THIS? (NO RESPONSE ELICITED)

5 LADIES AND GENTLEMEN OF THE JURY, I PRACTICE LAW IN
6 UPSTATE SOUTH CAROLINA AND WESTERN NORTH CAROLINA. AND IN MY
7 GLOVEBOX OF MY PICKUP TRUCK IS A ROAD MAP. AND I BET I'VE
8 OPENED THAT ROAD MAP AND CLOSED IT BACK FIVE OR SIX DIFFERENT
9 WAYS. I NEVER CAN GET IT BACK LIKE IT WAS WHEN I ORIGINALLY
10 HAD IT. LET ME TELL YOU SOMETHING, YOU FOLKS HAVE A ROAD
11 MAP. DESPITE ALL OF THIS EVIDENCE, ALL OF THESE WITNESSES,
12 TWO DAYS WORTH OF WITNESSES, TABLES FULL OF PHYSICAL
13 EVIDENCE, HUNDREDS, OR A HUNDRED PHOTOGRAPHS, SCIENTIFIC
14 EVIDENCE, MEDICAL EVIDENCE, BALLISTIC TESTS, GUNPOWDER
15 RESIDUE TESTS, A MOUNTAIN OF EVIDENCE FOR YOU TO REVIEW. I
16 COMMEND YOU AND THANK YOU FOR LISTENING AS ALL OF THIS
17 EVIDENCE WAS PRESENTED.

18 BUT YOU HAVE A ROAD MAP, A ROAD MAP TO HELP YOU TO
19 DECIPHER THIS EVIDENCE AND DECIDE WHERE TO GO WITH IT. AND
20 JUST LIKE THAT ROAD MAP IN MY PICKUP TRUCK THAT HELPS ME FIND
21 WHERE I WANT TO FIND AND GO WHERE I WANT TO GO, YOU HAVE A
22 ROAD MAP. IT'S THIS DIAGRAM. AND I'M GOING TO ASK YOU A
23 FAVOR. IF YOU WOULD, WHEN YOU GO BACK TO THE JURY ROOM,
24 IT'S A STATE'S EXHIBIT, IT'S EVIDENCE, IT WILL GO BACK THERE
25 WITH YOU. WOULD SOMEBODY PLEASE SET THAT UP SO YOU CAN REFER

1 TO IT? BECAUSE IT IS YOUR ROAD MAP. AND AS I DISCUSS THIS
2 CASE WITH YOU, I WANT YOU DO REFER BACK TO IT AND YOU'LL SEE,
3 AS IT WILL BECOME APPARENT TO YOU HOW THIS IS YOUR ROAD MAP
4 TO DOING YOUR DUTY IN DECIDING THIS CASE.

5 NOW, LT. CREMER DREW THIS UP. AND HE ADMITTED IT'S
6 NOT TO SCALE, BUT IT'S CLOSE ENOUGH FOR WHAT WE NEED TO DO.
7 AND HE DID A GOOD JOB. THE STARTING POINT ON THIS ROAD MAP,
8 AND YOU NEED A STARTING POINT WHEREVER YOU GO, TO KNOW WHERE
9 YOU'RE STARTING AND WHERE YOU'RE ENDING, IS RIGHT THERE.

10 NOW, WHY DO I SAY THAT? (MARKING) WHY IS THAT YOUR STARTING
11 POINT? WELL, WE KNOW FROM LT. CREMER, HE DREW THE DIAGRAM
12 HERE OF RENEE'S BODY. THAT WAS THE POSITION HE FOUND THE
13 BODY WHEN HE GOT ON THE SCENE. HER HEAD FACING THIS WAY,
14 BODY HERE, ON THIS SIDE OF THE PLAYHOUSE.

15 NOW, REMEMBER, THIS IS THE DRIVEWAY AND BACK OVER
16 HERE IS THE BILLADEAU HOUSE. REMEMBER, LT. CREMER SAID,
17 "THAT'S WHERE THE BODY WAS." AND WE HAD EVIDENCE THAT
18 SOMEBODY CHECKED THE PULSE AND SOMEBODY LOOKED AT THE WOUND,
19 BUT THAT'S WHERE IT WAS, HAD NOT BEEN MOVED.

20 NOW, WE ALSO HAD SOME TESTIMONY -- THESE CARS WERE
21 TOWARD THE END OF THIS SCENE -- BUT WE HAD SOME TESTIMONY
22 THAT THERE WAS A WHITE TROOPER THAT WAS PULLED IN. I'M GOING
23 TO USE THIS YELLOW PAD HERE, RIGHT HERE OFF OF HAMBY ROAD,
24 THAT DEE CAME TO THE SCENE IN. YOU REMEMBER? THEN WE HAD
25 SOME OTHER TESTIMONY THAT PULLED UP BESIDE IT A SHORT TIME

1 LATER WAS THE BLACK MINIVAN THAT DAWN CAME IN. THESE WERE
2 THE POSITIONS LATER, WHEN LT. OCREMER CAME THERE. AND I PUT
3 THESE THERE. THIS IS THE WAY THE SCENE LOOKED WHEN THIS
4 BEGAN.

5 NOW, WHAT ELSE DO WE KNOW ABOUT THIS ROAD MAP AND
6 WHY THIS IS THE STARTING POINT AND WHY THIS IS IMPORTANT?

7 DR. WOODARD, OUR MEDICAL DOCTOR, WHAT DID HE TELL YOU? HE
8 SAID RENEE DIED FROM A SINGLE SHOT. WE KNOW THAT. SHE DIED
9 FROM A SINGLE SHOT. AND WE KNOW THE ANGLE OF THE SHOT. HE
10 DESCRIBED IT AS BEING RIGHT UNDER THE SEAM, RIGHT HERE, THE
11 ENTRY WOUND ON THE LEFT, THE EXIT WOUND HERE ON THE RIGHT. I
12 ASKED HIM TO DESCRIBE IT. I ASKED HIM, COULD THAT BE 9:00?
13 THAT KIND OF GIVES A MENTAL PICTURE. BUT IF I COULD TURN MY
14 BACK TO YOU FOR JUST A MOMENT, THIS IS THE DIRECTION THAT SHE
15 WAS SHOT, ON HER LEFT SIDE, NEAR THE SEAM OF HER T-SHIRT.
16 THE ENTRY WOUND HERE, THE EXIT WOUND THERE. THAT'S WHAT DR.
17 WOODARD SAID.

18 SO ON THIS DIAGRAM AN ENTRY WOUND HERE, AN EXIT
19 WOUND THERE. YOU SEE WHY THIS IS YOUR STARTING POINT? YOU
20 SEE WHY THIS IS SO IMPORTANT TO DETERMINE WHAT HAPPENED?
21 BECAUSE THE BULLET THAT KILLED RENEE CAME FROM THIS ANGLE.
22 WHAT ELSE DID HE SAY? HE SAID SHE DIED INSTANTLY. AND I
23 QUESTIONED HIM FURTHER AND HE SAID IT WAS WITHIN ONE
24 HEARTBEAT. YOU EVER FELT YOUR PULSE? ONE HEARTBEAT AND
25 SHE'S DEAD, INSTANTLY.

1 HE ALSO SAID SOMETHING, I TOOK THE NOTES DOWN, AND
2 HE SAID THERE WAS NO SIGNIFICANT ACTIVITY. I LOVE CROSS
3 EXAMINING DOCTORS BECAUSE YOU GOT TO GET THEM TO TELL YOU
4 WHAT THAT MEANS IN LAYMAN'S TERMS. NO SIGNIFICANT ACTIVITY
5 MEANS THERE WAS NO STEPS OR NO MOVEMENT. ESSENTIALLY SHE
6 DIED INSTANTLY AND SHE FELL AND HER BODY IS WHERE SHE WAS
7 STANDING WHEN THIS INCIDENT BEGAN. SHE'S RIGHT THERE. NOW,
8 I ASKED HIM SOMETHING ELSE AS WELL. I SAID, "SHE GOT SHOT
9 FROM THE LEFT?" I DON'T KNOW ANYTHING ABOUT PHYSICS, I WENT
10 TO LAW SCHOOL, BUT YOU WOULD THINK, I SAID, IT'S INTUITIVE,
11 IF YOU'RE SHOT FROM THE LEFT YOU FALL OVER THIS WAY.
12 YOU REMEMBER WHAT HE SAID? HE SAYS, "NO." HE
13 SAID, "IT'S NOT LIKE YOU WOULD THINK IT WOULD BE. YOU FALL
14 TOWARDS THE SHOT." HE MENTIONED, AND I WANT TO GET THE FACTS
15 AND QUOTES EXACTLY LIKE HE SAID. HE SAID, "YOU DON'T HAVE AN
16 OPPOSITE REACTION, THE RECOIL CAUSES YOU TO FALL IN THE
17 DIRECTION OF THE SHOT." THAT'S VERY SIGNIFICANT. IT'S VERY
18 SIGNIFICANT. AND IT'S NOT TOTALLY UNDERSTANDABLE. I WOULD
19 NOT HAVE KNOWN THAT. I DID NOT KNOW THAT. I'VE BEEN
20 PRACTICING LAW A NUMBER OF YEARS, DIDN'T KNOW THAT UNTIL THIS
21 WEEK THAT IF YOU'RE SHOT FROM THE LEFT YOU DON'T FALL TO THE
22 RIGHT, YOU FALL IN THE DIRECTION OF THE SHOT. WHY IS ALL OF
23 THIS IMPORTANT? AGAIN, HERE'S YOUR STARTING POINT ON YOUR
24 MAP. THIS IS WHERE YOU HAVE TO START TO ANSWER THE QUESTION
25 THAT I ASKED YOU IN MY OPENING STATEMENT. THIS WHOLE CASE

1 TURNS ON THIS ISSUE, WHO KILLED RENEE BILLADEAU? THAT'S WHAT
2 YOU'RE CONFRONTED WITH. NOW, WE KNOW SOME OTHER THINGS ABOUT THESE THINGS
3 AT THE SCENE. WE KNOW THESE THINGS ARE REALLY NOT IN
4 CONTROVERSY, EVERYBODY AGREES ON THAT BOLT. CREMER SAID THAT
5 THREE SPENT SHELLS FROM THIS RIFLE, BOBBY'S RIFLE, WERE
6 LOCATED HERE. ONE, TWO, THREE. REMEMBER BOBBY'S CAR, THAT'S
7 THE DRIVEWAY, THAT'S THE GATE. YOU HAVE A PICTURE, PLEASE
8 REFER TO IT, I DON'T KNOW WHAT THE NUMBER IS, BUT IT'S IN
9 THAT STACK. THREE SPENT SHELLS RIGHT THERE IN THAT LOCATION.
10 EVERY POLICE OFFICER THAT I HAD A CHANCE TO ASK, I WOULD ASK
11 THEM, "WERE ANY SHELLS FOUND ANYWHERE ELSE? SPENT SHELLS,
12 NOT TALKING ABOUT LIVE SHELLS. LIVE SHELLS BASICALLY ARE
13 IRRELEVANT. WE WANT TO KNOW WHERE THE SPENT RIFLE SHELLS ARE
14 SO WE CAN RECREATE THIS THING. THERE WEREN'T ANY OUT HERE,
15 THERE WEREN'T ANY OUT HERE. THERE WEREN'T ANY ANYWHERE ELSE
16 BUT ONE, TWO, THREE. THAT'S ALL. I THINK THE STATE WOULD
17 ADMIT THAT. SO, WE KNOW BOBBY FIRED THREE TIMES, BECAUSE
18 THERE'S THREE SPENT SHELLS, AND THEY'RE ALL IN THIS AREA
19 RIGHT HERE.

21 NOW, I CAN'T REMEMBER IF IT WAS THE BALLISTICS
22 EXPERT OR PERHAPS ONE OF THE OFFICERS WHO WAS INDICATING HOW
23 THE BOLT ACTION WORKS, BUT YOU RECALL YOU HAVE TO CHAMBER THE
24 BULLET, IT COMES FROM THE MAGAZINE, CLOSE THE BOLT, FIRE THE
25 GUN, PULL THE BOLT BACK, AND THE SPENT ROUND IS EJECTED. YOU

1 ALL TOOK NOTES, PLEASE REFER TO YOUR NOTES INSTEAD OF MINE;
2 BUT MY NOTES INDICATED THAT THE OFFICER SAID THEY'RE USUALLY
3 EJECTED WITHIN A FOOT, 12 INCHES, OF THE SHOOTER. IT'S NOT
4 VERY FAR. THESE SPENT SHELLS ARE NOT VERY FAR FROM WHERE THE
5 GUN WAS SHOT. IN OTHER WORDS, THEY'RE NOT GOING TO GO FLYING
6 OFF SOMEWHERE. SO, WE KNOW THAT THESE THREE SPENT SHELLS
7 WERE FOUND HERE. AND WE KNOW THAT BOBBY IS IN THIS AREA AND
8 HE HAS THE RIFLE.

9 AT NO TIME AND AT NO EVIDENCE IS BOBBY IN THIS
10 POSITION. THERE'S NO SPENT SHELLS UP HERE. AND WE KNOW FROM
11 DR. WOODARD THAT THE SHOT HAD TO COME FROM THAT DIRECTION
12 THAT KILLED RENEE.

13 NOW, I DON'T OWN A RIFLE SO HOLDING ONE IS A LITTLE
14 UNCOMFORTABLE AND DIFFICULT FOR ME. BUT, MRS. WHITE, MISS

15 DRUANNE WHITE, YESTERDAY IN HER CROSS EXAMINATION OF BOBBY
16 WAS HOLDING THE GUN -- I DON'T WANT TO POINT IT AT ANYBODY.
17 BUT SHE WAS HOLDING IT LIKE THIS, LIKE HE WAS DOING THIS, IN
18 THIS UPRIGHT POSITION. BUT THE FACT IS, WE KNOW THAT DEE,
19 WHO WAS IN THIS AREA RIGHT HERE, DEE GARRETT, AND YOU SAW HER
20 WOUND, WAS SHOT IN THE LEG, BELOW THE KNEE. FRANKLY, LADIES
21 AND GENTLEMEN, IF THE STATE'S THEORY IS CORRECT AND BOBBY IS
22 HOLDING THE GUN LIKE THIS, DEE GARRETT IS NOT WITH US TODAY.
23 THAT MAKE SENSE? IF HE'S HOLDING THE GUN LIKE THIS, LIKE THE
24 SOLICITOR SAYS, DEE GARRETT IS NOT WITH US.

25 LADIES AND GENTLEMEN, I SUBMIT TO YOU THAT THE

CLOSING ARGUMENT BY MR. GOLDSMITH

1 THREE SHELLS THAT WERE FIRED, FROM THE SUM TOTAL OF ALL OF
2 THE EVIDENCE, TWO AND A HALF DAYS OF EVIDENCE THAT YOU HAVE,
3 REMEMBER OFFICER CLAMP TESTIFIED THAT THERE WAS A WINDOW SHOT
4 OUT IN THE TROOPER, THE WINDSHIELD I BELIEVE. THE VAN ON THE
5 DRIVER'S SIDE WAS SHOT OUT. I MAY HAVE THAT BACKWARDS, SO
6 MANY CARS AND STUFF. BUT THE WINDSHIELD WINDOWS WERE SHOT
7 OUT OF THOSE, AND DEE WAS SHOT ONCE IN THE LEG. SUBMIT TO
8 YOU THAT FROM THE SUM TOTAL OF EVIDENCE YOU'VE HEARD, THAT
9 ACCOUNTS FOR THE THREE SHOTS FROM BOBBY'S RIFLE.

10 NOW, LADIES AND GENTLEMEN, IT'S IMPORTANT FOR YOU
11 TO UNDERSTAND WHAT THE STATE'S THEORY IS HERE. THE STATE'S
12 THEORY THAT BOBBY CAME UP THERE, GOT IN AN ARGUMENT, HAD THIS
13 GUN, AND JUST STARTED SHOOTING. I'M A LITTLE TALLER THAN
14 BOBBY, BUT THIS IS CLOSE. BUT THEIR THEORY IS WRONG.
15 BECAUSE AS I SAID, IF HE IS HOLDING THE GUN LIKE THIS,
16 (INDICATES) DEE GARRETT IS NOT WITH US TODAY. SHE'S NOT
17 WITH US. SHE'D BE DEAD. THE ANGLE FROM BOBBY'S POSITION,
18 THE STATE'S THEORY IS WRONG BECAUSE OF THE ANGLE. RENEE IS
19 RIGHT HERE. WE KNOW THAT THE BULLET COMES IN FROM 9:00. I
20 KEEP REFERRING TO 9:00. I HOPE EVERYBODY UNDERSTANDS WHAT
21 I'M SAYING HERE. COMES IN FROM HERE, IN THIS DIRECTION.
22 IT'S UNCONTROVERTED, UNLESS YOU DON'T WANT TO BELIEVE DR.
23 WOODARD. AND I TEND TO BELIEVE HIM.

24 WE KNOW THAT BOBBY IS DOWN HERE. WE KNOW HE'S DOWN
25 HERE AND HE'S SHOOTING FROM THIS AREA. IF HE SHOT RENEE, THE

1 ANGLE IS ALL WRONG. THE ANGLE IS ALL WRONG. IF THE STATE
2 CANNOT SAY HE'S SHOOTING THERE OR THERE, WE KNOW HE IS
3 SHOOTING RIGHT IN THIS AREA. THAT'S BEYOND CONTROVERSY.
4 IT'S UNCONTESTED. HE IS SHOOTING HERE. SHE IS SHOT AND SHE
5 DIES HERE. LOOK AT THE ANGLE. LOOK AT THE ANGLE. IT
6 DOESN'T FIT. IT CANNOT FIT. THERE'S NO WAY THAT BOBBY SHOT
7 AND KILLED RENEE BILLADEAU.
8 NOW, IN MY OPENING STATEMENT I TOLD YOU THE
9 EVIDENCE WOULD TEND TO SHOW THAT DAWN SHOT AND KILLED RENEE.
10 AND RECALL THAT SHE CAME OVER, SHE WAS UPSET. THIS IS ONE
11 THING I ASKED HER IN MY BEGINNING, MY CROSS EXAMINATION. "WE
12 GOT TO GET OVER TO RENEE'S HOUSE. WE GOT TO GET OVER THERE,
13 GOT TO GET OVER THERE. NO TIME TO CALL 911, NO TIME TO CALL.
14 LET'S GO."

15 BECAUSE I ASKED HER, "WHY DIDN'T YOU CALL THE
16 POLICE? WHY DIDN'T YOU CALL THE POLICE?" CALL THEM AND SAY,
17 "LOOK, WE'RE GOING OVER THERE, YOU ALL PLEASE MEET US." IF
18 TIME IS SUCH AN ESSENCE -- AND, YOU KNOW, THE FUNNY THING
19 ABOUT IT, IF TIME IS OF THE ESSENCE, THEY GET HALFWAY OVER
20 THERE, "WAIT A MINUTE. TAKE ME BACK, I GOT TO GET MY GUN."
21 THAT'S WHAT DAWN SAID, "I GOT TO GET MY GUN." THAT'S
22 UNCONTROVERTED. THAT'S NOT IN CONTEST. SHE SAYS, "I GOT TO
23 GO BACK AND GET MY GUN."

24 NOW, WHAT DO WE KNOW ABOUT DAWN? ONE THING THAT
25 WAS VERY INTERESTING YESTERDAY, THE AGENT KIMBERLY BLACK, THE

CLOSING ARGUMENT BY MR. GOLDSMITH

1 LADY THAT DID THE GUNPOWDER TESTING, YOU REMEMBER I ASKED HER
2 JUST A COUPLE OF QUESTIONS. AND SHE TOLD ME THAT DAWN HAD
3 GUNPOWDER ON THIS HAND AND ON THIS HAND. AND I ASKED HER,
4 "DID THAT INDICATE THAT SHE WAS SHOOTING LIKE THIS?"

5 (INDICATES) SHE SAID, "YES." THE ONLY WAY YOU GET GUNPOWDER ON
6 BOTH HANDS. SHE'S SHOOTING IN THAT FASHION. I THINK THAT'S
7 THE WAY THEY TEACH YOU TO SHOOT. YOU DON'T SHOOT WILDLY LIKE
8 SHE'S CLAIMING I'M SHOOTING, SHE'S SHOOTING LIKE THIS.

9 (INDICATES) POP, POP, POP, POP. MISS LINDA WHITE, WHO CAME
10 AT THE END OF THE DAY ON TUESDAY BECAUSE SHE COULDN'T BE HERE
11 THE REST OF THE WEEK, SO WE HAD TO TAKE HER OUT OF TOWN [SIC]
12 AND I APPRECIATE THAT. SHE LIVES ACROSS THE STREET. SHE
13 LIVES DOWN THIS WAY. AND SHE HEARD SOMETHING REAL IMPORTANT,
14 SHE HEARD "POP, POP, POP, BOOM."

15 NOW, WHAT DOES THAT INDICATE TO YOU? YOU ALL HAVE
16 COMMON SENSE. I TOLD YOU, TRUST YOUR GOOD JUDGMENT, TRUST
17 YOUR COMMON SENSE. WHAT DOES POP, POP, POP, BOOM INDICATE TO
18 YOU AS FAR AS THE SEQUENCE OF THE SHOOTING? IT INDICATES
19 CLEARLY THAT THIS REVOLVER IS BEING SHOT FIRST, AND THAT THE
20 RIFLE, THE BOOM, IS RETURNING FIRE. NOW, MISS PORTER ALSO
21 TESTIFIED, BUT HER TESTIMONY WAS LESS CLEAR BECAUSE SHE'S
22 DOWN THE STREET. BUT SHE DID TESTIFY THAT SHE HEARD SOME
23 POPPING NOISE. SO, THE DEFENSE THEORY, OUR CASE THAT DAWN IS
24 RESPONSIBLE OR IT'S MORE LIKELY THAT SHE'S RESPONSIBLE IS

1 CONSISTENT. IT'S CONSISTENT WITH THIS POP, POP, POP, BOOM;
2 IT'S CONSISTENT WITH DAWN SHOOTING WITH TWO HANDS, AND IT'S
3 CONSISTENT WITH WHO IS IN THIS AREA. WHO HAS A GUN IN THIS
4 AREA? OUR STARTING POINT RIGHT HERE. DAWN BILLADEAU,
5 BECAUSE THERE'S TESTIMONY THAT SHE'S GOING UP AND DOWN HAMBY
6 ROAD. AND THIS IS HAMBY ROAD SHE'S GOING UP AND DOWN. THE
7 ONLY PERSON WHO IS AT THIS POINT, AND THIS IS THE ONLY PLACE
8 WHERE THE SHOOTER CAN BE IF YOU BELIEVE DR. WOODARD, WITH A
9 BULLET, WITH A GUN, IS DAWN. DAWN BILLADEAU.
10 NOW BOBBY TESTIFIED YESTERDAY AND HE USED THIS
11 CHART, THIS ROAD MAP, THAT HE WAS TALKING HERE TO RENEE, DEE
12 CAME UP HERE, AND AS I SAID IN MY OPENING STATEMENT, IT'S NOT
13 A CONVERSATION ANY OF US WOULD WANT TO HAVE. YOU HEARD THE
14 TAPE AND YOU'LL READ THE TRANSCRIPT. THERE'S SOME BAD
15 LANGUAGE IN THERE. I DON'T CONDONE IT, I'M NOT GOING TO
16 REPEAT IT. YOU ALL CAN HEAR IT IN WHATEVER CONTEXT. BUT
17 WHEN DEE IS HERE, RENEE HERSELF SAYS, "IT'S OKAY, DEE. IT'S
18 OKAY."
19 NOW, LET ME DROP BACK. RENEE ACTUALLY INVITES HIM
20 TO STAY. SAYS, "TURN THE MOTOR OFF, BOBBY. TURN THE MOTOR
21 OFF SO WE CAN TALK." AND THEY PROCEED TO HAVE A
22 CONVERSATION. AND THEN DEE PULLED UP AND RENEE SAYS, "IT'S
23 OKAY, DEE. EVERYTHING IS OKAY. AND IT IS OKAY. IT'S NOT
24 PERFECT, BUT IT'S OKAY. AND IT'S OKAY UNTIL DAWN PULLS UP.
25 AND DAWN AND BOBBY HAVE NEVER EVER GOTTEN ALONG. SHE

CLOSING ARGUMENT BY MR. GOLDSMITH

1 TESTIFIED SHE HATED HIM, SHE NEVER LIKED HIM. MY
2 RECOLLECTION IS THAT SHE WANTED TO KILL HIM. HE TESTIFIED HE
3 HAD SOME RUN INS WITH HER, SHE HAD THREATENED HIM. HE TRIED
4 TO STAY AWAY FROM HER. HE WAS SCARED OF HER.
5 SHE GETS OUT OF THE CAR, AND HIS TESTIMONY IS THAT
6 HE SAYS, "THAT'S THE MAJOR ONE THERE." THAT'S A BAD "A."
7 AND THEN THERE'S SOME MORE LANGUAGE, SOME MORE BAD LANGUAGE.
8 AND AT THAT POINT, ACCORDING TO OUR THEORY, DAWN STARTS
9 SHOOTING. AND IT'S CONSISTENT WITH WHAT MISS LINDA GAIL
10 WHITE SAYS, POP, POP, POP, BOOM. BOBBY IS HIT ONCE IN THE
11 SHOULDER HERE. HE COMES AROUND, HE GETS HIS RIFLE OUT AND HE
12 BEGINS SHOOTING IN THIS AREA. AND YOU HEARD HIS TESTIMONY
13 YESTERDAY, THAT THE SECOND SHOT HIT HIM IN THE CHIN. HIT HIM
14 IN THE CHIN WITH THIS .357 FIRING A HOLLOWPOINT BULLET. ONE
15 OF THE OFFICERS TESTIFIED IT'S A HOLLOWPOINT BULLET, A VERY
16 POWERFUL, A VERY DANGEROUS BULLET FROM A VERY DANGEROUS GUN.
17 AND HE GETS SHOT IN THE CHIN AND HE SAYS, "IT FEELS LIKE A
18 BASEBALL BAT HIT, KNOCKING ME TO THE GROUND." HE ACTUALLY
19 FELL TO THE GROUND HERE, DEMONSTRATING WHAT HAPPENED. AND HE
20 GOT UP SHOOTING AND HE FIRED OFF TWO MORE SHOTS, WHICH I
21 SUBMIT TO YOU BROKE THE WINDOWS OUT HERE. WHY IS HE SHOOTING
22 IN THIS DIRECTION? THAT'S WHERE DAWN IS. AND HIS PROBLEM IS
23 WITH DAWN, IT'S NOT WITH RENEE. HIS PROBLEM IS DOWN HERE.
24 AND HE SHOOTS DOWN HERE. BREAKS OUT A WINDOW HERE, BREAKS
25 OUT A WINDOW THERE. AT THAT POINT THE BLOOD GUSHING FROM HI

1 CHIN JAMS THIS GUN. THAT'S ANOTHER FACT THAT'S NOT IN ISSUE.
2 EVERYBODY SAID THERE WAS BLOOD ALL OVER. OFFICER,
3 AGENT COLLINS SAID HE HAD TO CLEAN IT UP FIRST, THERE'S SO
4 MUCH BLOOD. AND YOU HEARD BOBBY TESTIFY THAT HE WAS
5 TERRIFIED, THAT HE REALIZED HIS GUN WAS JAMMED, AND HE
6 COULDN'T FIRE ANY MORE ROUNDS, BUT SHE WAS COMING AT HIM.
7 AND SO HE BEGINS TO CRAWL UP THIS WAY. AND THE SCENE OF THE
8 ACTION MOVES THIS WAY AND IT RESULTS, UNFORTUNATELY, IN RENEE
9 GETTING SHOT.

10 NOW, I'VE TAKEN SOME TIME. I HAVEN'T TIMED MYSELF,
11 I'VE TAKEN SOME TIME TO EXPLAIN THIS THING. YOU'VE GOT TO
12 REALIZE, LADIES AND GENTLEMEN, THIS THING HAPPENED, BOOM,
13 REAL FAST. I'LL BET THIS THING IS OVER IN 10 OR 15 SECONDS.
14 POW, POW, POW, BOOM, IT'S OVER. IT DOESN'T TAKE AS LONG AS
15 I TOOK TO DESCRIBE IT. SO DON'T BE MISLEAD BY THAT.

16 NOW LET'S TALK VERY BRIEFLY ABOUT SOME OF THE
17 WITNESSES THAT YOU'VE HEARD FROM. AS FAR AS DEE GARRETT,
18 LADIES AND GENTLEMEN, FRANKLY SHE GOT CAUGHT UP IN SOMETHING
19 THAT GOT OUT OF CONTROL. AND MY SYMPATHY GOES OUT TO HER AND
20 ALL HER FAMILY, FRANKLY. AND IT IS LUCKY THAT SHE IS WITH US
21 TODAY. NOT BECAUSE OF THE STATE'S THEORY, BECAUSE AS I SAID,
22 IF BOBBY IS SHOOTING LIKE THIS, DEE DOES NOT GET SHOT IN THE
23 LEG. IT BASICALLY HAPPENED AS BOBBY TRIED TO DESCRIBE IT TO
24 YOU YESTERDAY.

25 AND MY HEART ALSO GOES OUT TO THESE TWO CHILDREN. I

CLOSING ARGUMENT BY MR. GOLDSMITH

1 WISH THEY DIDN'T HAVE TO COME TESTIFY, BUT THEY DID.
2 UNFORTUNATELY, PART OF THE STATE'S CASE IS AN EMOTIONAL
3 APPEAL TO YOU. THEY WANT YOU TO FEEL SORRY FOR THESE
4 CHILDREN. AND BECAUSE OF YOUR FEELINGS FOR THESE CHILDREN
5 YOU FIND BOBBY GUILTY. DON'T DO THAT. IT'S OKAY TO FEEL
6 SORRY FOR THESE CHILDREN AND YET DO YOUR DUTY AS JURORS.
7 BECAUSE, LADIES AND GENTLEMEN, I FEEL SORRY FOR THESE
8 CHILDREN. I WOULD TAKE THEM BOTH HOME WITH ME TODAY IF I
9 COULD. BUT YOU'VE GOT TO UNDERSTAND WHERE THEY'RE COMING
10 FROM.
11 LOOK AT THE PICTURES. DANA IS WAY BACK HERE IN THE
12 HOUSE, SHE CAN'T SEE WHAT'S HAPPENING TO HER MOTHER BECAUSE
13 THE PLAYHOUSE BLOCKS IT. SHE CANNOT SEE THAT FAR. SHE'S
14 LOOKING OUT A WINDOW. LOOK AT THOSE PICTURES, SEE THE
15 DISTANCE. IT SITS WAY BACK OFF THE ROAD. THERE'S POMPAS
16 GRASS AS I RECALL, THERE'S CARS. HER VIEW OF THE THING IS
17 SKEWED. AND SHE'S UPSET. AND IT'S UNDERSTANDABLE. NOW
18 CORY, CORY TESTIFIED. ONE OTHER THING ABOUT DANA, THIS
19 THING HAPPENED JUNE THE 21ST. DANA DIDN'T GIVE HER FIRST
20 STATEMENT UNTIL AUGUST SECOND, ALMOST SIX OR SEVEN WEEKS
21 LATER. SHE DIDN'T GIVE A CONTEMPORANEOUS STATEMENT THAT DAY.
22 YOU'VE GOT THE 911 TAPE, BUT SHE DIDN'T GIVE A STATEMENT.
23 HER STATEMENT WAS GIVEN AUGUST SECOND, TOOK SIX OR SEVEN
24 WEEKS. AND THAT'S WHY I ASKED, "YOU, YOU STAYED WITH YOUR
25 AUNT DAWN? YOU ALL TALKED ABOUT THIS THING, YOU GOT YOUR

1 STORIES STRAIGHT WHEN YOU TALKED TO THE POLICE."

2 "LITTLE CORY, I THINK BOBBY'S SON THAT YOU HEARD

3 FROM TODAY, HIS TESTIMONY IS VERY IMPORTANT. HE CALLS THESE

4 CHILDREN HIS LITTLE SISTER, LITTLE SISTER AND LITTLE

5 BROTHERS. THEY'RE NOT HALF BROTHERS, STEPBROTHERS, ALL THAT;

6 HIS BROTHER AND SISTER. HE DOESN'T KNOW WHAT HAPPENED. HE

7 SAYS, "WHAT HAPPENED?"

8 HE SAID, "MY AUNT DAWN SHOT FIRST." THERE'S

9 INCONSISTENCIES IN THAT STATEMENT, INCONSISTENCIES IN DANA'S.

10 AND JUDGE HALL WILL INSTRUCT YOU THAT YOU CAN USE THOSE

11 INCONSISTENCIES TO JUDGE THE BELIEVABILITY OF THAT WITNESS.

12 PAUL JIMINEZ, PAUL JIMINEZ COMES OVER THERE, AND HE'S LIKE

13 "DEE AND DAWN. WHY DIDN'T HE CALL THE POLICE? LET ME ASK

14 YOU, LADIES AND GENTLEMEN, IF DAWN HAD NEVER SHOWED UP ON

15 THIS DAY, WOULD RENEE BILLADEAU STILL BE ALIVE? IF SOMEHOW

16 WE COULD REWIND HISTORY, WE COULD GET WORD TO DAWN, "DAWN,

17 LISTEN, THIS IS DEE. I'M OVER HERE AT RENEE'S. EVERYTHING

18 IS OKAY. DON'T BOTHER COMING OVER." OR IF THEY CALLED THE

19 POLICE. I WISH PAUL WOULD HAVE DONE THAT. I WISH DEE WOULD

20 HAVE DONE THAT, BUT THEY DIDN'T.

21 BUT I WILL TELL YOU, LADIES AND GENTLEMEN, DAWN WAS

22 NEVER GOING TO CALLING THE POLICE. SHE WAS NEVER GOING TO

23 CALL THE POLICE. AS A MATTER OF FACT, WHEN I ASKED HER, SHE

24 SAYS, "WELL, YOU KNOW, YOU KNOW HOW 911 IS, THEY PUT YOU ON

25 HOLD, THEY DON'T PAY ANY ATTENTION, IT TAKES ALL DAY TO GET

CLOSING ARGUMENT BY MR. GOLDSMITH

1 OUT THERE. FRANKLY, LADIES AND GENTLEMEN, I FELT THAT THAT
2 WAS VERY OFFENSIVE. OF ALL THE ANDERSON COUNTY SHERIFF'S
3 DEPUTIES AND PERSONNEL THAT HAVE COME UP HERE TO TESTIFY TO
4 TAKE TIME OFF TO DO THEIR DUTY, AND SHE SAYS, "WELL, NO, WE
5 DON'T WANT TO CALL, BECAUSE THEY TAKE ALL DAY TO GET OUT
6 THERE. THEY PUT YOU ON HOLD. AND THEY DON'T DO ANYTHING."
7 A BIT OFFENSIVE TO ME, LADIES AND GENTLEMEN. BUT IT SHOWS
8 HER TRUE CHARACTER. SHE DIDN'T WANT THE POLICE. SHE HAD HAD
9 ENOUGH OF BOBBY, AND THIS WAS HER OPPORTUNITY. AND IT DAWNED
10 ON HER THAT, LET'S GO BACK AND GET THE PISTOL.
11 YOU CAN ALSO CONSIDER THE FACT THAT THEY LEFT THE
12 SCENE, AND ATTACH WHATEVER WEIGHT YOU WANT TO THAT. TRUST
13 YOUR COMMON JUDGMENT AND YOUR COMMON SENSE, YOUR HUMAN
14 NATURE. YOU'RE FLEEING THE SCENE. WHAT DOES THAT SAY ABOUT
15 YOU? NOW, THEY'VE COVERED THEMSELVES BY SAYING "WELL, DEE
16 WAS HURT, DEE WAS HURT. WE GOT TO GET HER TO THE CAR. AND
17 WE'RE STILL KIND OF SCARED. AND EMS MAY NOT SHOW UP,
18 WHATEVER. BUT OFFICER ARFLIN SAYS HE'S THERE, HE AND OFFICER
19 GERRARD, AND THE GUN HAS BEEN REMOVED FROM BOBBY, HE DOESN'T
20 HAVE THE GUN ANY MORE. AND MRS. LINDA WHITE SAYS, "EMS IS ON
21 THE WAY, THEY'LL BE HERE IN A MINUTE, JUST WAIT." AND THEY
22 LEAVE. I WOULD TERM THAT FLEEING.
23 AND THEY GET HALFWAY DOWN THERE AND THEN FRANKLY AN
24 INTERESTING THING HAPPENS THAT, FRANKLY, I CAN'T EXPLAIN. IF
25 YOU ALL CAN EXPLAIN -- MR. PAMPHILON WHO TESTIFIED YESTERDAY,

1 HE SAID -- HE WAS JUST A PASSERBY, HE HAS NO CONNECTION TO
2 THESE PEOPLE. NO CONNECTION AT ALL. YOU REMEMBER MR.
3 PAMPHILON? AND HE SAYS THEY THREW SOMETHING OUT THE WINDOW.
4 NOT JUST ANYTHING, IT WAS SOMETHING SUBSTANTIAL BECAUSE IT
5 ATTRACTED HIS ATTENTION. NOW, LADIES AND GENTLEMEN, THINK
6 ABOUT SOMETHING. YOU'RE RIDING DOWN THE ROAD, YOU DRIVE THE
7 ROADS, HIGHWAYS OF THIS COUNTY ALL THE TIME. YOU'RE RIDING
8 DOWN THE ROAD, YOU SEE SOMEBODY THROW A PIECE OF GLASS OUT.
9 ARE YOU GOING TO GIVE IT A SECOND THOUGHT? SOMETHING
10 SUBSTANTIAL HAPPENED OUT THERE. I DON'T KNOW -- ON FLAT
11 ROCK ROAD, SOMETHING SUBSTANTIAL TO ATTRACT THE ATTENTION OF
12 MR. PAMPHILON. AND HE COMES TO COURT YESTERDAY AND HE SAID
13 SOMETHING VERY INTERESTING. I WROTE IT DOWN. HE SAID,
14 "WELL, APPARENTLY IT WAS GLASS." APPARENTLY. WHAT DOES THAT
15 IMPLY TO YOU? THAT SOMEBODY KIND OF, "HEY, IT'S GLASS, IS
16 WHAT IT IS."
17 DR. WOODARD AND AGENT COLLINS, YOU REMEMBER AGENT
18 COLLINS WAS OUR BALLISTIC EXPERT. DR. WOODARD WAS OUR
19 MEDICAL EXPERT. THE STATE IS GOING TO GET UP HERE AND TELL
20 YOU DR. WOODARD SAYS THIS IS A RIFLE. AND I RESPECT DR.
21 WOODARD. AND THE THEORY OF MY CASE IS BUILT IN LARGE PART ON
22 WHAT DR. WOODARD SAID. BUT DR. WOODARD IS NOT A BALLISTICS
23 EXPERT. IF HE WERE A BALLISTICS EXPERT, WE WOULDN'T NEED
24 AGENT COLLINS. AGENT COLLINS TESTIFIED YESTERDAY AFTERNOON
25 AND HE SAID HE TOOK THE BULLET FRAGMENTS THAT WERE REMOVED

1 FROM RENEE BILLIDEAU, AND HE CANNOT SAY AFTER TESTING AND
2 TESTING AND TESTING -- AND THESE GUYS DO SOPHISTICATED
3 TESTING -- CAN'T TELL YOU WHICH GUN IT CAME FROM. IT COULD
4 HAVE COME FROM THIS GUN, COULD HAVE COME FROM THIS GUN, COULD
5 HAVE COME FROM THIS GUN, COULD HAVE COME FROM ANY GUN OUT
6 THERE IN THE UNIVERSE. WE CAN'T SAY. WE CANNOT SAY WHICH
7 GUN IT CAME FROM.

8 NOW, LADIES AND GENTLEMEN, I JUST WANT TO BRIEFLY
9 TALK A LITTLE BIT ABOUT BOBBY'S TESTIMONY. AND, FRANKLY,
10 LADIES AND GENTLEMEN, HIS VERSION IS CONSISTENT WITH A LOT OF
11 THE FACTS. AND YOU GOT TO LOOK AT EVEN SMALL DETAILS.
12 HERE'S ONE DETAIL FOR YOU. YOU MAY HAVE MISSED IT, BUT YOU
13 MIGHT HAVE GOTTEN IT, I HOPE YOU DID. AGENT COLLINS SAID, AS
14 HE'S LOOKING AND THE STATE SAYS, "CAN YOU IDENTIFY THIS GUN?"
15 AND THEY LOOKED AT IT AND THEY SEE THEIR MARK, AND HE
16 DESCRIBES IT. AND HE DESCRIBES IN HIS REPORT SOME DAMAGE TO
17 THE STOCK, IT'S DINGED UP, BANGED UP. THERE'S SOME DAMAGE TO
18 IT. AND YOU REMEMBER BOBBY'S TESTIMONY. HE SAID, "I PUT THE
19 GUN IN MY CAR BECAUSE I WAS TAKING IT OVER TO WHITE AND
20 BROWN'S [SIC]. BECAUSE I'M GETTING ANOTHER ONE OF THESE STOCKS
21 FOR IT THAT'S LIGHTER, BECAUSE THIS ONE IS DAMAGED." IT'S
22 CONSISTENT. THE STORY IS CONSISTENT.

23 NOW, THERE WAS SOME MENTION MADE YESTERDAY ABOUT
24 WHETHER HE REMEMBERED WELL ENOUGH OR NOT. AGAIN, I CALL ON
25 YOU TO USE YOUR COMMON SENSE. LADIES AND GENTLEMEN, THIS IS

1 A DANGEROUS AND POWERFUL WEAPON. IF YOU ARE SHOT WITH THIS
2 WEAPON WITH A HOLLOWPOINT BULLET IN THE CHIN, DO YOU THINK
3 MAYBE YOU MIGHT HAVE A LITTLE PROBLEM REMEMBERING A WHILE
4 AFTER AND FOR A GOOD WHILE AFTER? THIS THING ONLY HAPPENED
5 ABOUT FOUR MONTHS AGO. I'D HATE TO HAVE TO GO THROUGH THAT,
6 BUT I'D HATE TO HAVE SOMEBODY QUESTION MY ABILITY TO REMEMBER
7 WHEN I HAD BEEN THROUGH ALL THAT. ISN'T IT PROBABLE THAT
8 MAYBE HIS MEMORY WAS A LITTLE SPOTTY TO BEGIN WITH AND OVER
9 TIME BECAME BETTER AS HE HEARD THE FACTS AND AS HE REMEMBERED
10 MORE?

11 NOW, LADIES AND GENTLEMEN, LET ME ASK YOU
12 SOMETHING. ONE OF THE THINGS THAT THE SOLICITOR TALKED ABOUT
13 WAS INTENT. WHAT WAS BOBBY'S INTENT? DID HE INTEND TO KILL,
14 DID HE INTEND TO ASSAULT, OR DID HE INTEND TO DEFEND HIMSELF?
15 AND IN THAT REGARD HIS TESTIMONY IS, HE SAID, "I FEARED FOR
16 MY LIFE. I THOUGHT SHE WAS GOING TO KILL ME. AND I WAS VERY
17 FEARFUL BECAUSE THE GUN IS JAMMED." AND HE'S PRETENDING LIKE
18 HE'S LOADING BECAUSE HE WANTS TO DECOY HER INTO THINKING HE'S
19 GOING TO SHOOT AGAIN. BUT IN REALITY HE KNOWS HE CANNOT
20 SHOOT AGAIN. AND HIS LIFE IS IN PERIL BECAUSE HE'S BEEN SHOT
21 TWICE.

22 AND, AS I SAID, HIS ARGUMENT IS WITH DAWN, IT'S NOT
23 WITH RENEE. AND THAT'S IMPORTANT WHEN YOU GO BACK TO YOUR
24 ROAD MAP HERE. ONE OTHER THING ABOUT HIS TESTIMONY, HE WROTE
25 IN ONE OF HIS LETTERS TO HIS CHILDREN, AND THOSE LETTERS

1 DIDN'T ALL COME IN, BUT HE DESCRIBED HOW HE WAS WRITING TO
2 THEM BECAUSE HE HADN'T SEEN THEM IN MONTHS AND HE LOVES THEM.
3 YOU SAW HOW HE REACTED WHEN WE STARTED TALKING ABOUT HIS
4 CHILDREN. HE SAID HE'S SORRY THIS HAPPENED. AND I'M SURE
5 THE STATE IS GOING TO TRY TO MAKE SOMETHING OUT OF THAT.
6 LADIES AND GENTLEMEN, IF BEING SORRY THAT THIS HAPPENED MAKES
7 YOU GUILTY, THEN YOU CAN ARREST ME BECAUSE I'M GUILTY.
8 BECAUSE THERE'S NOBODY, I CHALLENGE ANYBODY IN THIS COURTROOM
9 THAT'S SORRIER THAT THIS HAPPENED THAN ME. I FEEL FOR THOSE
10 CHILDREN. I LOOK AT THE FAMILY. I'M SORRY THIS HAPPENED.
11 I'D RATHER BE SOMEWHERE ELSE, ALL THINGS CONSIDERED. I WISH
12 THIS HAD NEVER HAPPENED AND I'M SURE YOU ALL DO, TOO. DOES
13 THAT MAKE US GUILTY? NO. WHEN BOBBY EXPRESSES HIS SORROW
14 FOR THAT, IT'S NOT TO BE INFERRED THAT HE'S GUILTY.

15 LADIES AND GENTLEMEN, YOU HAVE A ROAD MAP. I ASK
16 THAT YOU USE IT. THIS IS YOUR STARTING POINT. THIS IS WHERE
17 THE FATAL SHOT WAS FIRED THAT KILLED RENEE, AND IT WAS FIRED
18 BY DAWN BILLADEAU. IT COULD NOT HAVE BEEN FIRED BY BOBBY.

19 LADIES AND GENTLEMEN, I WANT TO ASK YOU ONE OTHER
20 THING. I'VE ASKED YOU IF YOU WOULD, SET THAT UP WHEN YOU
21 GO BACK THERE SO YOU CAN REFER TO IT. BELIEVE ME, THIS IS
22 THE MOST IMPORTANT DOCUMENT. EVERYTHING ELSE FITS INTO THIS,
23 IT HANGS ON THAT. I ASKED YOU TO TRUST YOUR JUDGMENT IN
24 OPENING STATEMENTS, I ASKED YOU TO TRUST YOUR COMMON SENSE.
25 I ASKED YOU TO LISTEN TO JUDGE HALL'S INSTRUCTION. COULDN'T

1 BE HAPPIER WITH 12, 13 PEOPLE SITTING ON THE JURY. YOU FOLKS
2 HAVE SAT THROUGH TWO AND A HALF DAYS. IT WOULD TAX MOST
3 PEOPLE, AND YOU'VE PAID ATTENTION. EVERY ONE OF YOU. AND
4 I THANK YOU ON BEHALF OF BOBBY AND HIS FAMILY. I THANK YOU
5 FOR PAYING ATTENTION. I COULDN'T ASK FOR 12 OR 13 BETTER
6 JURORS. BUT I GOT TO ASK YOU ONE OTHER THING, LADIES AND
7 GENTLEMEN. THIS MAN IS CHARGED WITH MURDER AND ASSAULT AND
8 ASSAULT AND BATTERY. THESE ARE SERIOUS CHARGES. THESE ARE
9 SERIOUS CHARGES. DELIBERATE FULLY ON THIS. PLEASE TAKE ALL
10 THE TIME YOU NEED. WE'LL STAY AS LONG AS YOU WANT TO.
11 DELIBERATE FULLY. LOOK AT THE EVIDENCE. REMEMBER THIS ROAD
12 MAP. REMEMBER YOUR STARTING POINT. AND I ASK YOU, DO NOT, DO
13 NOT CONVICT A MAN UNLESS YOU ARE ABSOLUTELY CERTAIN THAT
14 THERE IS NO REASONABLE DOUBT. HOLD THE STATE TO THAT
15 STANDARD.
16
17 FRANKLY, IF YOU THINK BOBBY SHOT RENEE AND THESE
18 FOLKS, IF YOU THINK BACK AND YOU DON'T HAVE ANY QUESTION
19 ABOUT IT, FIND HIM GUILTY. ON THE OTHER HAND, IF YOU THINK,
20 HEY, MAYBE DAWN HAD SOMETHING TO DO WITH IT, MAYBE SHE SHOT
21 THEM, FIND BOBBY NOT GUILTY. BUT WHAT IF YOU FALL IN THAT
22 MIDDLE RANGE WHERE YOU JUST DON'T KNOW? GOSH, YOU KNOW
23 DURING THE TRIAL I THOUGHT BOBBY DID IT, THEN I THOUGHT DAWN
24 DID IT. I DON'T KNOW. THAT'S OKAY. IF YOU FEEL THAT WAY,
25 AND YOU CAN'T RESOLVE YOUR DOUBTS, FIND HIM NOT GUILTY.

CLOSING ARGUMENT BY MS. WHITE

1 THAT'S THE VERDICT THAT SPEAKS THE TRUTH ON ALL FOUR
2 INDICTMENTS IN THIS CASE. THANK YOU, LADIES AND GENTLEMEN.

3 REPLY ARGUMENT BY MS. WHITE

4 ON JUNE 21ST, 1999, RENEE WAS 38 YEARS OLD. SHE
5 HAD FOUR CHILDREN. SHE SPENT THE DAY LIKE A LOT OF US WHO
6 ARE WORKING MOTHERS DO. YOU'RE NOT AT WORK, RUNNING ERRANDS,
7 HANGING OUT WITH YOUR KIDS, TALKING ON THE PHONE. AT THE
8 TIME THAT THIS OCCURRED, SHE WAS TALKING ON THE PHONE AND
9 PLANNING A BIRTHDAY CELEBRATION FOR COLT. AT THE TIME SHE
10 WAS PLANNING THIS BIRTHDAY CELEBRATION, THE DEFENDANT HAD
11 OTHER PLANS. THE DEFENDANT WAS PLANNING TO KILL RENEE. THIS
12 WAS NOT A SPUR OF THE MOMENT THING AT ALL.

13 HOW DO WE KNOW HE WAS PLANNING TO KILL RENEE? HE
14 HAD SEEN HER UP AT THE LAW ENFORCEMENT CENTER EARLIER THAT
15 DAY AND HAD WORDS. SHE IGNORED HIM AND TURNED AND WALKED
16 AWAY. THEY HAD RECENTLY SEPARATED FROM A VIOLENT
17 RELATIONSHIP. HOW DO WE KNOW THIS? DANA TOLD US HE HAD
18 THREATENED TO KILL HER. IT'S PRETTY BAD WHEN A 13 YEAR OLD
19 CHILD, WHEN THE FATHER PULLS UP, THE CHILD SAYS, "NO, MAMA,
20 DON'T GO OUT THERE. TAKE A TAPE RECORDER IF YOU DO."

21 WHAT DOES SHE DO AFTER DADDY COMES? SHE TAKES THE
22 PHONE, IS TALKING TO HER FRIEND, LOOKING OUT THE WINDOW THE
23 WHOLE TIME. WHY? BECAUSE SHE MIGHT NEED TO CALL 911. RENEE
24 HAD JUST HAD THE LOCKS CHANGED ON HER HOUSE. THIS DEFENDANT
25 WAS UNABLE TO ACCEPT THE FACT THAT RENEE WAS FINALLY TAKING

1 CONTROL AND WAS NOT GOING TO PUT UP WITH THIS RELATIONSHIP
2 ANYMORE.

3 SO, WHILE SHE WAS BAKING A CAKE, TALKING TO HER
4 SISTER AND PLANNING HER TWO-YEAR-OLD'S BIRTHDAY PARTY, THE
5 DEFENDANT WAS LOADING A 300 WINCHESTER MAGNUM RIFLE THAT YOU
6 HUNT BIG GAME WITH. HE BROUGHT A FEW EXTRA ROUNDS, TOO.
7 THANK GOODNESS THIS WEAPON JAMMED, BECAUSE HE HAD NINE OR TEN
8 SHOTS, NOT JUST THREE. HE DIDN'T KNOW THAT DAWN AND DEE WERE
9 GOING TO BE COMING OVER. HE HAD NO WAY OF KNOWING THAT WHEN
10 HE LOADED THAT WEAPON AND STUCK IT IN HIS BRAND NEW CAMARO
11 THAT HAD NO OTHER JUNK IN IT.

12 HE DIDN'T GO THERE FOR A BIRTHDAY PARTY. IN TEN
13 MINUTES OF CONVERSATION HE NEVER ONCE WISHED COLT A HAPPY
14 BIRTHDAY. HE NEVER ONCE MENTIONED A BIRTHDAY CELEBRATION.

15 HE HAD NO BIRTHDAY PRESENT IN HIS CAR. HIS PLANS WERE NOT
16 FOR A BIRTHDAY PARTY. THERE WERE FOUR EYEWITNESSES THAT
17 TESTIFIED, THE OTHERS WERE TOO SMALL. WE HAVE DANA AND CORY
18 AND WE HAVE DEE AND DAWN.

19 LET'S START WITH THE CHILDREN. DO THEY HAVE MOTIVE
20 TO LIE? YOU BETTER BELIEVE THEY DO. YOU BET THEY HAVE
21 MOTIVE TO LIE. THEY HAVE EVERY MOTIVE IN THE WORLD TO TRY TO
22 GET ON THE STAND, HELP THEIR ONLY SURVIVING PARENT, MAMA IS
23 GONE. ALL THEY'VE GOT LEFT IS DAD. HE'S WRITING THEM
24 LETTERS, LETTING THEM KNOW HE'S NO LONGER ON MEDICATION, HE'S
25 GOT HIS TEMPER UNDER CONTROL NOW. THERE WILL BE NO MORE

CLOSING ARGUMENT BY MS. WHITE

1 ANGER. "WE'LL LIVE ANYWHERE YOU ALL KIDS WANT TO LIVE. I'LL
2 BUY YOU A NEW HOUSE. YOU'LL GET GIFTS WHEN I GET OUT. OH,
3 JAIL IS TERRIBLE." THERE ARE PEOPLE IN HERE WHO HAVE KILLED
4 FOUR AND FIVE PEOPLE. HE'S DONE EVERYTHING HE CAN DO TO TRY
5 TO PERSUADE THESE CHILDREN TO COME IN AND LIE. AND THEY HAVE
6 EVERY MOTIVE TO DO THAT. BUT THEY TELL THE TRUTH, OR IF
7 ANYTHING SLANT THINGS ON HIS BEHALF.

8 LOOK AT THE 911 TAPE, DANA. SHE HASN'T TALKED TO
9 DAWN. SHE HASN'T TALKED TO ANYBODY. YOU'LL HAVE THAT TAPE
10 IN THE BACK WITH YOU. YOU'LL HAVE THE TRANSCRIPT. IN ONE
11 SMALL PARAGRAPH IT SAYS SOMETHING ABOUT, "YEAH, MY DAD IS
12 BLEEDING, I THINK MY AUNT SHOT HIM." THE ENTIRE TAPE AS
13 SHE'S WATCHING IT, SHE'S NOT THINKING ABOUT COURT. WHAT IS
14 SHE SAYING? SHE'S SAYING, "MY DAD SHOT MY AUNT. HE'S
15 RELOADING. HE'S CRAZY. CORY. HE'S CRAZY. DON'T GO OUT
16 THERE. NO. I CAN'T CHECK ON MY MOM. HE'S STILL OUT THERE."
17 IT'S VERY OBVIOUS WHO THE AGGRESSOR WAS WHEN YOU LISTEN TO
18 THAT TAPE. THERE'S NO MYSTERY AS TO WHO THE AGGRESSOR WAS
19 THAT DAY.

20 CORY, THAT'S PRETTY PITIFUL WHEN YOUR TEN-YEAR-OLD
21 CHILD HAS TO RUN IN THE HOUSE FROM HIS DEAD MOTHER AND GET
22 HIS TOY BOW AND ARROW. WHY IS HE GETTING HIS BOW AND ARROW?
23 IS IT TO PROTECT HIMSELF FROM DAWN? OH, NO. IT'S TO PROTECT
24 HIMSELF FROM HIS DADDY.

25 DID HE GIVE A PRIOR STATEMENT? YES, HE GAVE A

1 STATEMENT AT THE HOSPITAL BEFORE ANYBODY HAD A CHANCE TO GET
2 TO HIM. DO YOU THINK THAT WASN'T PROVIDED TO THE DEFENSE?
3 DO YOU THINK IF THERE HAD BEEN ANYTHING INCONSISTENT IN THERE
4 THE DEFENSE WOULDN'T HAVE BROUGHT IT UP? IF IN FACT, HE SAID
5 THAT TO BOBBY, HIS BOBBY, HE WAS TRYING TO CONSOLE HIM. HE'D
6 GIVEN A FULL STATEMENT AT THE HOSPITAL TO THE DETECTIVE. IT
7 WAS PANDAMONIUM THAT DAY. THE DETECTIVE NEVER WOULD HAVE
8 KNOWN WHAT TO PUT IN THAT STATEMENT.

9 WHAT ABOUT THE OTHER TWO? WHAT ABOUT DAWN AND DEE?
10 ALL FOUR -- YOU KNOW, THIS IS THE FRIGHTENING THING -- IF
11 RENEE HAD NOT HAD THAT TAPE RECORDER IN HER POCKET, MIGHT YOU
12 HAVE FALLEN FOR ONE OF HIS LIES? THANK GOODNESS RENEE --
13 THAT'S THE BEAUTY OF MURDER, KILL THE PERSON YOU WANT TO KILL
14 AND YOU SHUT THEM UP. YOU CAN COME INTO COURT, SAY ANYTHING
15 YOU WANT TO SAY. BUT NOT TODAY, BECAUSE RENEE IS ABLE TO
16 TELL US WHAT HAPPENED OUT THERE THROUGH THE TAPE RECORDER,
17 WHICH UNFORTUNATELY SHUT OFF WHEN IT FELL OUT OF HER POCKET
18 OR SHE THREW IT UNDERNEATH THE HOUSE MAYBE TO PRESERVE THE
19 EVIDENCE. WE DON'T KNOW.

20 THIS IS VERY IMPORTANT. FROM THE TIME THAT DEE
21 GETS THERE, THERE HAS BEEN NO CHANGING THIS TAPE. WE TOOK
22 OUT SOME PRIOR THINGS THAT WEREN'T RELEVANT. EVERYBODY
23 AGREED ON IT. FROM THE TIME DEE ARRIVES, THAT TAPE IS
24 INTACT. DO YOU EVER HEAR DAWN'S VOICE ON THE TAPE? NEVER.
25 SHE NEVER GOT OUT OF THE CAR. LOOK AT THE REMARKS THAT ARE

CLOSING ARGUMENT BY MS. WHITE

1 MADE. THE LAST THING RENEE EVER SAYS TO THE DEFENDANT IS, "I

2 TALKED TO JUDGE DURHAM, I TALKED TO JUDGE STEELE, AND I

3 TALKED TO JUDGE BUSBEE

4 DEFENDANT: "WELL, WHAT ARE THEY GOING TO DO?"

5 "YOU'LL FIND OUT SOON."

6 THAT'S WHY HE WAS THERE WITH THE LOADED WEAPON.

7 AND DAWN DROVE UP, IT JUST SET THINGS OFF A LITTLE EARLIER

8 BECAUSE IT INFURIATED HIM. DAWN WASN'T GOING TO PUT UP WITH

9 HIS TREATMENT OF HER SISTER.

10 AND THEN LISTEN TO THIS. "DEE, DEE, GO. DEE, YOU

11 AND DAWN GO." SHE'S TALKING TO DEE. DAWN IS OUT THERE, "WHY

12 ISN'T SHE SAYING "DEE AND DAWN, YOU ALL GO. DEE, YOU AND

13 DAWN GO." EVERYBODY IS TALKING TO DEE. RENEE CAN'T COME IN

14 AND TELL YOU WHAT HAPPENED, BUT FROM THE TIME DAWN WALKS UP

15 OR DEE WALKS UP WE HAVE THIS.

16 (PLAYS TAPE)

17 PEOPLE CAN LIE. BUT A TAPE DOESN'T. IF WE DIDN'T

18 HAVE THAT TAPE, WHAT POSITION WOULD WE BE IN TODAY? THERE'S

19 NO QUESTION WHAT HAPPENED OUT AT THE SCENE THAT DAY. WHY

20 DIDN'T DEE AND DAWN CALL THE POLICE? WHAT ARE THEY GOING TO

21 SAY? "POLICE, CAN YOU COME OVER TO RENEE'S HOUSE, THERE'S

22 SOMEBODY THERE."

23 "AND THE CRIME IS?"

24 "WELL, THERE'S SOMEBODY THERE." OF COURSE THEY'RE

25 NOT GOING TO CALL THE POLICE FOR THAT.

1 DID THEY LEAVE THE SCENE? YES. AND THE WHITE CAR,
2 BY THE WAY, DID NOT HAVE TWO SHOTS IN IT. THOSE ARE DENTS
3 FROM WHEN SHE RAN OVER THE DEFENDANT. THOSE AREN'T SHOTS.
4 DID THEY LEAVE THE SCENE? YOU BET THEY DID. INJURIES ARE SO
5 SEVERE ON DEE'S LEGS, ANYBODY WOULD DO THAT FOR THEIR
6 SIBLING. AS A MATTER OF FACT, IT IS REMARKABLE, WE HEARD
7 WHAT A VILLAIN DAWN IS THIS WHOLE TIME. SHE'S SITTING IN HER
8 OWN CAR. THIS NEVER WOULD HAVE HAPPENED IF DAWN HADN'T PULLED
9 UP. NO, THERE'S ONE PERSON RESPONSIBLE FOR WHAT HAPPENED OUT
10 THERE AND THAT'S THE ONE THAT PULLED THE LOADED .300
11 WINCHESTER MAGNUM OUT AND SHOT PEOPLE. IF ANYTHING, DAWN IS
12 UNBELIEVABLY HEROIC. HOW MANY PEOPLE WOULD GO TELL SOMEBODY
13 TO CALL 911 AND COME BACK, KNOWING THEY WERE UNARMED AND SAVE
14 THEIR SISTER WHO HAD JUST HAD HER LEG SHOT OFF WHEN THE ARMED
15 GUNMAN IS STILL THERE. DON'T LET HIM TWIST THAT AS WELL.
16 NOW, LET'S LOOK AT THE DEFENSE CASE. GUNPOWDER ON
17 DAWN'S HAND. YEAH, SHE FIRED THE WEAPON, SHE PROBABLY
18 TOUCHED IT WHEN IT WAS DIRTY AND EVERYTHING ELSE AFTERWARDS.
19 THIS IS QUITE REMARKABLE ON OUR LITTLE ROAD MAP TOUR. WELL,
20 WHERE WAS THE VICTIM STANDING? BECAUSE THE VICTIM IS
21 STANDING AS HE POINTS THE GUN. NOW, LADIES AND GENTLEMEN, I
22 THINK WE CAN SAFELY ASSUME THAT IF SOMEBODY POINTS A GUN AT
23 YOU AFTER THEY'VE JUST FIRED AT SOMEBODY ELSE, YOU DON'T
24 STAND THERE AND GO, "GET ME." YOU TURN AND YOU RUN. THAT'S
25 EXACTLY WHAT HAPPENS. AND THAT'S WHAT HAPPENED.

CLOSING ARGUMENT BY MS. WHITE

1 SPENT SHELL CASINGS, HE PROBABLY SHOT FROM AROUND
2 THERE, BUT SHELL CASINGS FLY OUT, HIT THINGS, OTHER PEOPLE
3 WERE RUNNING ON THE SCENE, KICKING THINGS. WE KNOW IT'S THAT
4 GENERAL AREA. AS TO THE EXACT PLACE THEY ACTUALLY FELL, WE
5 DON'T KNOW. A CAMARO IS A LOW CAR. HE WAS SHOOTING FROM
6 THAT AREA.

7 NOW, LET'S LOOK AT THE DEFENSE CASE. LINDA WHITE,
8 THE NEIGHBOR. I DON'T THINK LINDA WHITE IS A LIAR. I DON'T
9 THINK SHE'S LYING AT ALL. I THINK SHE'S MISTAKEN. SHE CAME
10 IN ON THE MIDDLE OF THINGS. SHE'S USED TO HEARING THESE
11 DOGS BARK. REMEMBER WHAT THE NEIGHBOR SAID, SHE LIVES ACROSS
12 THE ROAD, ON THE OTHER SIDE, WHERE SHE HAD TO TURN HER TV UP
13 WHEN THEY BEGIN BARKING. REMEMBER LINDA WHITE SAID, "I NEVER
14 HEARD ANY SCREAMS. I DIDN'T KNOW CHILDREN WERE OUT THERE."
15 SHE DID JUST DIDN'T REALIZE SHE MISSED THE FIRST PART. OF
16 COURSE SHE THINKS DAWN WAS THE AGGRESSOR, SHE CAME IN IN THE
17 MIDDLE.

18 SHE SAID SOMETHING ABOUT POPS AND BOOMS. EVEN THE
19 FIREARMS EXPERT SAYS, NO, YOU CAN'T TELL FROM THAT. IT
20 DEPENDS ON THE POSITION, WHICH WAY THEY'RE FACING, IF YOU'RE
21 SHOOTING UP OR DOWN AND ALL OF THAT. SO, THAT REALLY HAS NO
22 RELEVANCE.

23 HOW ABOUT THE DEFENDANT? YOU KNOW THE DEFENDANT
24 HAS TREATED THIS WHOLE THING LIKE A GAME SHOW. BEHIND DOOR
25 NUMBER ONE HE HAS ONE STORY, DOOR NUMBER TWO, THREE, FOUR,

1 FIVE, AND SO ON. AND HE DOESN'T CARE WHICH DOOR YOU CHOOSE.
2 AS LONG AS YOU CHOOSE THE ONE THAT WILL SET HIM FREE. BEHIND
3 DOOR NUMBER ONE WE HAVE THE STORY OF, "I WAS IN A MOTORCYCLE
4 WRECK. I DON'T REMEMBER." THE ONLY PROBLEM WITH THAT IS THE
5 DOCTORS CAME IN AND SAID, "HE WAS TREATED IN THE MOTORCYCLE
6 WRECK. HE WAS FINE. CAT SCAN WAS FINE. WE KEPT HIM TWO
7 DAYS FOR OBSERVATION. NO WAY, HE HAD NO PROBLEMS."
8 THEN WE BRING THE DOCTORS IN FROM THE GUNSHOT
9 WOUND. THEY BOTH SAY HE'S FULLY ORIENTED, HE'S ALERT, HE'S
10 TALKING. HE'S GOT VITALS THAT ARE FINE, WHICH MEANS HE'S NOT
11 IN SHOCK. ONE OF THEM GOES HOME TO HER HUSBAND AND SAYS,
12 "THAT WAS SO WEIRD. HE ACTED LIKE I MET HIM IN A STORE OR
13 SOMETHING." HE HAD NO MEMORY LOSS. AND ISN'T IT INTERESTING
14 WHICH MEMORIES HE LOST? VERY SELECTIVE. ISN'T IT
15 INTERESTING HOW THE ONLY MEMORIES HE LOST WERE THE THINGS
16 THAT MIGHT INCRIMINATE HIM? BUT HE REMEMBERS. -- BOY, HE CAN
17 GET UP HERE, DRAW A MAP, TELL WHERE PEOPLE PARKED, GOT OUT,
18 HOW MUCH AMMUNITION THEY HAD. HE CAN TELL YOU ALL THE
19 CONVERSATION, BUT HE JUST CAN'T REMEMBER A FEW OF THOSE HARD
20 ANSWERS. THERE IS NO MEMORY LOSS.
21 IF YOU DON'T BUY THAT, WELL, DOOR NUMBER ONE WE GO
22 BACK TO. BECAUSE ANY TIME THERE'S A HARD QUESTION, EVEN WITH
23 OTHER DOORS, WE GO BACK. DOOR NUMBER TWO IS SOME LADY GAVE
24 ME FOUR GREEN PILLS, I WOKE UP AND WENT OVER THERE. I DON'T
25 EVEN REMEMBER GOING OVER THERE. YOU LISTEN TO THE TAPE. HE

CLOSING ARGUMENT BY MS. WHITE

1 HAD A HARD TIME CONVERSING AND DIDN'T KNOW WHERE HE WAS, DID
2 HE? WELL, THERE'S A PROBLEM WITH THAT... THE TOX SCREEN CAME
3 BACK NEGATIVE. SO, OKAY, TOXICOLOGY SAYS I'M NOT UNDER THE
4 INFLUENCE, DON'T BUY DOOR NUMBER TWO IF YOU DON'T WANT TO,
5 LET'S GO TO DOOR NUMBER THREE, WHICH IS I MIXED MY MEDICINES.
6 I MIXED MY MEDICINES AND IT DIDN'T SIT WELL. AGAIN, THESE
7 ARE KIND OF VARIATIONS OF DOOR NUMBER ONE, BUT, AGAIN, THE
8 DRUG SCREEN CAME BACK NEGATIVE SO THAT WOULDN'T WORK.
9 SO THEN WE GO TO DOOR NUMBER FOUR, WHICH IS
10 SELF-DEFENSE. DAWN SHOT. AND THIS IS THE BEST ONE OF ALL.
11 HE GOES OVER THERE AND HE'S JUST GOING TO TAKE THIS GUN IN
12 FOR SOME REPAIR WORK. THIS IS JUNE AND HUNTING SEASON BEGAN
13 WHAT, FOUR DAYS AGO? HE WANTS TO GET A JUMP ON THINGS. SO
14 HE TAKES THIS GUN IN AND HE PUTS IT IN HIS CAR AND GOES OVER
15 THERE AND IT'S NOT LOADED OR ANYTHING. NOTHING. WELL, DAWN
16 JUMPS OUT OF HER CAR AND BEGINS SHOOTING AT HIM. SO, WHAT
17 DOES HE DO? REMEMBER ON THE MAP, OUR LITTLE TOUR ON THE ROAD
18 MAP, REMEMBER WHERE EVERYBODY PARKED. DAWN IS JUST A FEW
19 FEET AWAY. DAWN BEGINS FIRING AWAY WITH HER .357. SO, HE
20 RUNS TO HIS CAR, HE OPENS THE GLOVE COMPARTMENT BOX, HE GETS
21 OUT NINE OR TEN ROUNDS. HE THEN TAKES THE MAGAZINE, POPS IT
22 IN, TOP LOADS IT. THREE IN. THEN HE TAKES HIS GUN AND GETS
23 THE OTHER AMMUNITION AND PUTS IT IN HIS POCKET. THEN HE
24 TAKES HIS GUN AND HE PULLS THE BOLT BACK. AND NOW HE'S READY
25 TO GO.

1 THAT'S WHAT HE WANTS YOU TO BELIEVE. WE KNOW HE
2 CAME DOWN THERE. HE RELOADED BECAUSE THERE WERE THREE SPENT
3 SHELL CASINGS ON THE GROUND. SO HE DID RELOAD. HE WAS GOING
4 TO KEEP ON SHOOTING, LADIES AND GENTLEMEN. YOU UNDERSTAND
5 THAT? BY THE GRACE OF GOD, THANK GOODNESS THAT GUN JAMMED.

6 WHY DID HE BRING ALL THAT AMMUNITION?

7 ALL RIGHT. THIS IS ANOTHER INTERESTING THING.

8 HE'S SAYING, "DAWN'S SHOOTING AT ME." NOW, IF YOU BELIEVE,
9 AS THE EVIDENCE SHOWED, THAT BOTH OF THESE WOMEN WERE SHOT BY
10 A RIFLE, WHY WOULD HE BE TURNING TO SHOOT THEM? REMEMBER THE
11 MAP WHERE EVERYTHING WAS. IF DAWN IS SHOOTING THIS WAY, HOW
12 IS THAT DEFENDING HIMSELF IF HE TURNS AND SHOOTS DEE AND THEN
13 HE TURNS AND SHOOTS RENEE? HOW IS THAT SELF-DEFENSE?

14 THEY'RE NOT ARMED. TOTALLY UNARMED. HE'S SHOOTING IN THE
15 WRONG DIRECTION.

16 BUT HE'S TOO DISABLED, REMEMBER, TO PULL THE BOLT
17 BACK. HE'S ON DISABILITY. NOW, HE CAN HUNT, RIDE
18 MOTORCYCLES, JET SKIS. OF COURSE, DENIES JUMPING ON THE
19 TRAMPOLINE. HE DID A PRETTY GOOD JOB ROLLING AROUND DOWN
20 HERE YESTERDAY. BUT HE'S TOO DISABLED TO PULL THAT BOLT
21 BACK.

22 ALL RIGHT. THEN WE GO TO DOOR NUMBER FIVE, WHICH
23 IS -- THIS WAS A TOTAL SHOCK, BECAUSE HE DOESN'T EVEN SAY
24 THIS IN HIS DIRECT. HE CHANGES HIS STORY WHEN I ASKED HIM A
25 QUESTION. "I DIDN'T SHOOT DEE."

1 "WHAT? YOU'RE SAYING NOW YOU DIDN'T EVEN SHOOT
2 DEE?"

3 "NO, I DIDN'T SHOOT DEE. I DIDN'T SHOOT EITHER ONE
4 OF THEM." HOW DO WE KNOW THAT'S A LIE? THE BALLISTICS
5 PERSON WAS UNABLE TO TAKE THE LITTLE BITS AND PIECES FROM THE
6 AUTOPSY AND COMPARE IT TO THIS GUN AND SAY IT CAME FROM THIS
7 GUN FROM A BALLISTICS STANDPOINT. SO YOU HAVE TO GO TO A
8 MEDICAL DOCTOR, WHICH WE HAVE, DR. WOODARD. BECAUSE THEY'RE
9 GOING TO BE LOOKING AT THE BODY. OBVIOUSLY THE FIREARMS
10 PERSON IS NOT QUALIFIED TO DO THAT. DR. WOODARD IS NOT JUST
11 A DOCTOR, HE'S A PATHOLOGIST. HE'S NOT JUST A PATHOLOGIST,
12 HE IS A FORENSIC PATHOLOGIST, TRAINED TO LOOK AT GUNSHOT
13 WOUNDS, KNIFE WOUNDS, IN OTHER WORDS CRIMINAL LAW, GUNSHOT
14 VICTIMS.

15 AND WHAT DOES HE TELL YOU? THERE'S NO QUESTION THE
16 DAMAGE DONE IN THIS CASE TO RENEE IS DONE BY A RIFLE.
17 THERE'S ONLY ONE PERSON THAT HAD A RIFLE AT THE SCENE THAT
18 DAY. HER ORGANS BASICALLY EXPLODED INTO PIECES, WENT ALL THE
19 WAY UP INTO HER LUNGS THE DAMAGE WAS SO BAD. HE SAYS, "I CAN
20 TELL YOU BEYOND A REASONABLE DOUBT THAT WAS NOT A PISTOL."
21 HOW ELSE DO WE KNOW, THOUGH? WE KNOW THE DEFENDANT WAS SHOT
22 WITH THE .357. AND, HEY, I'M NOT SAYING THAT'S NOT A LETHAL
23 WEAPON, BELIEVE ME. BUT COMPARED TO THE RIFLE, LOOK AT HIS
24 DAMAGE. DID ANYTHING EXPLODE? WERE ORGANS DISINTEGRATED?
25 THINGS EXPAND? NO. HE WAS SHOT WITH A PISTOL. NOT A RIFLE.

1 LADIES AND GENTLEMEN, YOU ARE THE DEFENDANT'S JURY
2 AND YOU WILL DECIDE GUILT OR INNOCENCE. BUT YOU ARE ALSO
3 THIS FAMILY'S ONLY JURY. THIS IS THEIR ONLY SHOT AS WELL. I
4 WOULD SUGGEST TO YOU THAT THERE'S ANOTHER DOOR THAT YOU
5 SHOULD LOOK AT, AND BEHIND THAT DOOR IS THE TRUTH. AND THE
6 TRUTH IS THAT THIS DEFENDANT LOADED THIS WEAPON. HE WENT
7 DOWN TO THE SCENE, HE TURNED, POINTED IT AT DEE AND SHOT. HE
8 TURNED, POINTED IT AT RENEE AND SHOT. HE KEPT SHOOTING, AT
9 LEAST ONE MORE TIME. WHEN HE RELOADED, THE GUN JAMMED.

10 THE DOOR THAT HOLDS THE TRUTH SAYS THAT THE
11 DEFENDANT IS GUILTY. AND HE SHOULD BE FOUND GUILTY ON ALL
12 FOUR COUNTS FOR ONE VERY GOOD REASON, HE DID IT. (POINTING).

13 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF
14 THE JURY, WE'LL TAKE ABOUT A TEN MINUTE BREAK. PLEASE LEAVE
15 YOUR NOTEPADS IN YOUR CHAIR. DO NOT DISCUSS THE CASE WHILE
16 YOU'RE IN THE JURY ROOM.

17 WE'LL TAKE ABOUT TEN MINUTES.

18 (RECESS)

19 THE COURT: STATE READY?

20 MS. WHITE: YES, SIR.

21 THE COURT: DEFENDANT READY?

22 MR. GOLDSMITH: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT. THOSE OF YOU THAT ARE IN
24 THE COURTROOM, PLEASE GIVE ME YOUR ATTENTION. FOR THE NEXT
25 20 OR 25 MINUTES I'LL BE INSTRUCTING THE JURY. AND DURING

1 THESE INSTRUCTIONS YOU WILL NOT BE ALLOWED TO LEAVE THE
2 COURTROOM. AND TO THE BAILIFF AT THE BACK DOOR, NOR WILL
3 ANYONE BE ALLOWED TO COME IN THE COURTROOM. THE REASON FOR
4 IS VERY SIMPLE. ANY MOVEMENT IN THE COURTROOM WILL BE A
5 DISTRACTION TO THOSE MEMBERS OF THE JURY. IT'S SORT OF HUMAN
6 NATURE THAT ANY MOVEMENT WILL ATTRACT THEIR ATTENTION AND
7 THEY'LL TURN TO INVESTIGATE WHAT THAT PARTICULAR MOVEMENT IS.

8 SO, IF EVERYONE WILL JUST STAY IN THEIR SEATS, THIS
9 SHOULDN'T TAKE MORE THAN ABOUT 20 OR 25 MINUTES. YOU MAY
10 BRING IN THE JURY.

11 (WHEREUPON, THE JURY RETURNS TO OPEN COURT. THE
12 COURT CHARGED THE JURY AS FOLLOWS:)

13 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF
14 THE JURY, AT THIS TIME I WILL INSTRUCT YOU ON THE LAW THAT
15 APPLIES IN THIS PARTICULAR CASE. UNDER OUR RULES OF
16 PROCEDURE IN THIS COURT I AM NOT ALLOWED TO FURNISH YOU WITH
17 A WRITTEN COPY OR A TRANSCRIPT OF MY CHARGE, SO PLEASE PAY
18 PARTICULAR ATTENTION. THE ONLY WAY THAT WE CAN REPEAT OR
19 RESTATE THIS CHARGE IS TO PLAY IT BACK ON AUDIO TAPE OR HAVE
20 ME READ IT AGAIN. SO, IF YOU WILL, PLEASE PAY PARTICULAR
21 ATTENTION TO THESE INSTRUCTIONS.

22 THE STATE OF SOUTH CAROLINA CHARGES THE DEFENDANT,
23 ROBERT EARLE RICKETTS, WITH THE FOLLOWING OFFENSES. IN
24 INDICTMENT 99-1945, THE CRIME OF MURDER; 99-1943, ASSAULT AND
25 BATTERY WITH INTENT TO KILL; 99-1944, ASSAULT WITH INTENT TO

1 KILL; AND 99-1942; POSSESSION OF A FIREARM DURING THE
2 COMMISSION OF A VIOLENT CRIME. EACH ONE OF THESE IS A
3 SEPARATE CHARGE AND YOU WILL HAVE A SEPARATE VERDICT FORM
4 SENT TO THE JURY ROOM WITH YOU AT THE CONCLUSION OF MY
5 INSTRUCTIONS. AND I WILL AT THE CONCLUSION OF THESE
6 INSTRUCTIONS GO OVER THOSE VERDICT FORMS WITH YOU AND ADVISE
7 YOU OF THE PROPER WAY TO FILL THEM OUT.
8 NOW, TO EACH ONE OF THESE CHARGES, TO EACH ONE OF
9 THESE INDICTMENTS, THE DEFENDANT IN THIS CASE, ROBERT EARLE
10 RICKETTS, HAS ENTERED A PLEA OF NOT GUILTY, WHICH PLACES UPON
11 THE STATE OF SOUTH CAROLINA THE BURDEN OF PROVING THE
12 DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A
13 CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE
14 HIMSELF INNOCENT. I CHARGE YOU THAT IT IS A VITAL IMPORTANT
15 RULE OF THE LAW OF EVIDENCE THAT THE DEFENDANT IN A CRIMINAL
16 TRIAL, NO MATTER HOW GREAT OR SERIOUS MAY BE THE OFFENSES
17 WITH WHICH HE IS CHARGED, MUST ALWAYS BE PRESUMED INNOCENT
18 UNTIL HIS GUILT HAS BEEN PROVEN. THIS PRESUMPTION OF
19 INNOCENCE REMAINS WITH THE DEFENDANT AT ALL TIMES, FROM THE
20 MOMENT OF HIS ARRAIGNMENT, THROUGHOUT THE TRIAL, AND UNTIL
21 THE JURY HAS UPON THE TESTIMONY AND EVIDENCE PRESENTED,
22 REACHED A VERDICT OF GUILTY BEYOND A REASONABLE DOUBT.
23 IT IS THE SOLEMN DUTY OF THE JURY IF NOT CLEARLY
24 CONVINCED OF HIS GUILT BEYOND EVERY REASONABLE DOUBT TO THE
25 CONTRARY, TO ACQUIT THE DEFENDANT. THE BURDEN OF PROOF IS

JURY CHARGE

1 UPON THE STATE TO ESTABLISH BY EVIDENCE TO YOUR SATISFACTION
2 THE GUILT BEYOND A REASONABLE DOUBT OF THIS DEFENDANT HERE ON
3 TRIAL TODAY. WHAT IS REASONABLE DOUBT? A REASONABLE DOUBT
4 IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
5 HESITATE TO ACT.

6 THE STATE OF SOUTH CAROLINA HAS THE BURDEN OF
7 PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME
8 OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES WHERE YOU
9 WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS
10 MORE LIKELY TRUE THAN NOT TRUE. IN CRIMINAL CASES THE
11 STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE
12 BEYOND A REASONABLE DOUBT. PROOF BEYOND A REASONABLE DOUBT
13 IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S
14 GUILT.

15 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE
16 KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW
17 DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.
18 IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY
19 CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIMES CHARGED,
20 YOU MUST FIND HIM GUILTY. IF, ON THE OTHER HAND, YOU THINK
21 THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY
22 YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT
23 GUILTY.

24 UNDER THE CONSTITUTION AND LAWS OF SOUTH CAROLINA,
25 YOU ARE THE FINDERS OF THE FACTS IN THIS CASE. I DO NOT HAV

1 THE RIGHT TO PASS UPON THE FACTS OR EXPRESS ANY OPINION I
2 MIGHT HAVE AS TO THE FACTS OF THIS CASE, NOR MAY I INTIMATE
3 IN ANY WAY WHAT I MAY THINK ABOUT THE GUILT OR INNOCENCE OF
4 THE DEFENDANT. YOU, THE JURY, ARE ALSO THE JUDGES AND THE
5 SOLE JUDGES OF THE CREDIBILITY, THE BELIEVABILITY OF THE
6 WITNESSES WHO HAVE TESTIFIED IN THIS CASE.
7 IN PASSING UPON THEIR CREDIBILITY YOU MAY TAKE INTO
8 CONSIDERATION MANY THINGS SUCH AS THE FOLLOWING: THE
9 APPEARANCE AND MANNER OF THE WITNESS ON THE STAND, SOMETIMES
10 REFERRED TO AS THE Demeanor OF THE WITNESS. WAS THE WITNESS
11 FORTHRIGHT OR HESITANT? WAS THE WITNESS'S TESTIMONY
12 CONSISTENT OR DID IT CONTAIN DISCREPANCIES? WHAT WAS THE
13 ABILITY OF THE WITNESS TO KNOW THE FACTS ABOUT WHICH HE OR
14 SHE TESTIFIED? DID THE WITNESS HAVE A CAUSE OR A REASON TO
15 BE BIASED AND PREJUDICED IN FAVOR OF THE TESTIMONY HE OR SHE
16 GAVE? WAS THE TESTIMONY OF THE WITNESS CORROBORATED OR MADE
17 STRONGER BY OTHER TESTIMONY AND EVIDENCE? OR WAS IT MADE
18 WEAKER OR IMPEACHED BY OTHER TESTIMONY AND EVIDENCE?
19 AS JURORS YOU HAVE A RIGHT TO BELIEVE A SMALL
20 PORTION OF A WITNESS'S TESTIMONY AND DISCARD THE LARGER
21 PORTION OR VICE VERSA. YOU MAY BELIEVE ALL OF A WITNESS'S
22 TESTIMONY OR NONE. YOU MAY BELIEVE THE TESTIMONY OF A SINGLE
23 WITNESS AGAINST THAT OF MANY WITNESSES OR THE OTHER WAY
24 AROUND. MOST CERTAINLY YOU DO NOT DETERMINE THE MATTER OF
25 CREDIBILITY OR BELIEVABILITY BY COUNTING UP THE NUMBER OF

JURY CHARGE

1 WITNESSES WHO MAY HAVE TESTIFIED ON BEHALF OF THE PARTIES.
2 THROUGHOUT THIS ENTIRE PROCESS YOU HAVE BUT ONE OBJECTIVE,
3 AND THAT IS TO SEEK THE TRUTH, REGARDLESS OF FROM WHICH
4 WITNESS THE TESTIMONY MAY HAVE COME. ALL THESE THINGS YOU
5 WILL CONSIDER BEARING IN MIND THAT YOU SHOULD GIVE THE
6 DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT.
7 THE SAME CONSTITUTION AND LAWS WHICH MAKE YOU THE
8 FINDERS OF THE FACTS AND THE EVIDENCE AS I HAVE INSTRUCTED
9 YOU PROVIDE THAT THE JUDGE IS THE SOLE AND ONLY INSTRUCTOR IN
10 THE LAW. YOU MUST ACCEPT AS CORRECT THE LAW WHICH I CHARGE
11 AND APPLY IT TO THE EVIDENCE AS YOU FIND IT AND REACH YOUR
12 VERDICT. IF I SHOULD MAKE AN ERROR IN THE LAW AS I INSTRUCT
13 IT TO YOU, THERE IS ANOTHER TIME AND PLACE THAT ERROR CAN BE
14 CONSIDERED; AND, IF NECESSARY, CORRECTED. BUT FOR PURPOSES
15 OF THIS CASE TODAY, YOU MUST ACCEPT THE LAW AS I CHARGE IT TO
16 YOU TO BE THE CORRECT LAW. I FURTHER CHARGE YOU IN THIS
17 REGARD THAT YOU, NOR FOR THAT MATTER I SHOULD BE CONCERNED
18 WITH WHAT THE LAW OUGHT TO BE, BUT RATHER WHAT I CHARGE YOU
19 THE LAW TO BE.

20 NOW, IN THIS CASE, AS I HAVE TOLD YOU, THIS
21 DEFENDANT IS CHARGED WITH FOUR DIFFERENT OFFENSES, FOUR
22 DIFFERENT CRIMES. I'M NOW GOING TO INSTRUCT YOU ON EACH ONE
23 OF THOSE CRIMES. I'M GOING TO DEFINE THE CRIME FOR YOU UNDER
24 THE LAWS OF THIS STATE.

25 THE FIRST OFFENSE OR THE FIRST CRIME THAT I WANT TO

1 INSTRUCT YOU ON IS THAT OF MURDER. SECTION 16-3-10 OF THE
2 SOUTH CAROLINA CODE OF LAWS AS AMENDED STATES IN PART,
3 "MURDER IS THE KILLING OF ANY PERSON BY ANOTHER WITH MALICE
4 AFORETHOUGHT, EITHER EXPRESS OR IMPLIED." I CHARGE YOU THAT
5 IN ORDER TO CONVICT OF MURDER, THE STATE MUST NOT ONLY PROVE
6 THAT THE DECEASED WAS KILLED BY THE DEFENDANT, BUT IT ALSO
7 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE KILLING WAS
8 DONE WITH MALICE AFORETHOUGHT.
9 MALICE IN THE LAW OF HOMICIDE IS A TERM OF ART;
10 THAT IS, A TECHNICAL TERM IMPORTING WICKEDNESS AND EXCLUDING
11 JUST CAUSE OR EXCUSE. IT IS SOMETHING WHICH SPRINGS FROM
12 DEPRAVITY, FROM A HEART DEVOID OF SOCIAL DUTY AND FATALLY
13 BENT ON WRONGDOING. MALICE HAS BEEN DEFINED AS THE WRONGFUL
14 INTENT TO INJURE ANOTHER AND INDICATES A WICKED OR DEPRAVED
15 SPIRIT INTENT ON DOING WRONG.

16 THE WORDS EXPRESS OR IMPLIED DO NOT MEAN DIFFERENT
17 KINDS OF MALICE, BUT MERELY THE MANNER IN WHICH THE ONLY KIND
18 KNOWN TO THE LAW MAY BE SHOWN TO EXIST. MALICE IS EXPRESSED
19 WHEN THERE ARE PRIOR THREATS OF VENGEANCE OR WHEN OTHER
20 CIRCUMSTANCES SHOW DIRECTLY THAT THE CRIMINAL PURPOSE WAS
21 ENTERTAINED. THE LAW SAYS IF ONE INTENTIONALLY KILLS ANOTHER
22 WITH A DEADLY WEAPON, THE INFERENCE OF MALICE MAY ARISE.
23 WITH RESPECT TO THE USE OF A DANGEROUS INSTRUMENTALITY, SUCH
24 AS A WEAPON, MALICE CANNOT BE INFERRED FROM MERE
25 RECKLESSNESS, WHICH MEANS A CONSCIOUS FAILURE TO EXERCISE DUE

JURY CHARGE

1 CARE, OR A CONSCIOUS INDIFFERENCE TO THE RIGHTS AND SAFETY OF
2 OTHERS.

3 TO INFER MALICE FROM THE USE OF A DANGEROUS
4 INSTRUMENTALITY SUCH AS A WEAPON, THE CONDUCT MUST EITHER BE
5 INTENTIONAL OR IT MUST BE SO GROSSLY RECKLESS, SO AGGRAVATED,
6 SO ATROCIOUS, SO CULPABLE AND INEXCUSABLE AS TO SHOW AN
7 ACTIVE INTENTIONAL DISREGARD OF CONSEQUENCE TO HUMAN LIFE,
8 THEREBY DENOTING A HEART DEVOID OF SOCIAL DUTY AND ONE
9 FATALLY BENT ON MISCHIEF. IF FACTS ARE PROVED BEYOND A
10 REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE
11 TO YOUR SATISFACTION, THE INFERENCE WOULD BE SIMPLY AN
12 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, THE
13 JURY, ALONG WITH THE OTHER EVIDENCE IN THE CASE. AND YOU MAY
14 GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE. YOU
15 MAY ACCEPT OR REJECT THIS PERMISSIVE INFERENCE, DEPENDING
16 UPON YOUR VIEW OF THE EVIDENCE.

17 MALICE DOES NOT NECESSARILY MEAN AN ACTUAL INTENT
18 TO TAKE HUMAN LIFE. IT MAY BE INFERRED WHEN AN ACT WHICH
19 IMPORTS DANGER TO ANOTHER IS DONE SO RECKLESSLY OR WANTONLY
20 AS TO MANIFEST DEPRAVITY OF MIND AND DISREGARD OF HUMAN LIFE.
21 MALICE DOES NOT NECESSARILY IMPORT ILL WILL TOWARD THE
22 INDIVIDUAL INJURED, BUT SIGNIFIES RATHER A GENERAL MALIGNANT
23 RECKLESSNESS OF THE LIFE AND SAFETY OF OTHERS OR A CONDITION
24 OF THE MIND WHICH SHOWS A HEART REGARDLESS OF SOCIAL DUTY AND
25 FATALLY BENT ON MISCHIEF. AS I HAVE SAID, IF FACTS ARE

1 PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN
2 INFERENCE OF MALICE TO YOUR SATISFACTION, THE INFERENCE WOULD
3 BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION
4 BY YOU, THE JURY, ALONG WITH THE OTHER EVIDENCE IN THE CASE,
5 AND YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD
6 RECEIVE. YOU MAY ACCEPT OR REJECT THIS PERMISSIVE INFERENCE
7 DEPENDING UPON YOUR VIEW OF THE EVIDENCE.

8 WHEN WE DEFINE MURDER AS AN UNLAWFUL KILLING WITH
9 MALICE AFORETHOUGHT, WHAT DO WE MEAN BY AFORETHOUGHT? IT
10 MEANS THAT WHILE THE LAW DOES NOT REQUIRE THAT MALICE SHALL
11 EXIST FOR ANY PARTICULAR LENGTH OF TIME BEFORE THE COMMISSION
12 OF THE ACT IN QUESTION, IT MUST BE AFORETHOUGHT. THERE MUST
13 BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT
14 PRODUCING THE FATAL RESULT.

15 THE MALICE NEED NOT BE IN THE MIND OF THE ONE DOING
16 THE WRONGFUL ACT ANY PARTICULAR LENGTH OF TIME BEFORE THE
17 ACT. IF IT IS PRESENT IN THE MIND ANY LENGTH OF TIME BEFORE
18 THE ACT AND AT THE TIME OF THE ACT, ACCOMPANYING AND
19 PROMPTING THE ACT, THEN ITS PRESENCE WOULD BE SUFFICIENT.
20 THAT IS THE CHARGE ON THE CRIME OF MURDER.

21 I WILL NOW CHARGE YOU ON THE CRIMES OF ASSAULT AND
22 BATTERY WITH INTENT TO KILL AND ASSAULT WITH INTENT TO KILL.
23 FIRST I WILL DEFINE THE WORD ASSAULT AND THE WORD BATTERY FOR
24 YOU. AN ASSAULT IS AN ATTEMPT TO DO VIOLENCE TO THE PERSON
25 OF ANOTHER IN A RUDE, ANGRY, AND RESENTFUL MANNER. ANOTHER

JURY CHARGE

1 WAY OF EXPRESSING THIS IS THAT AN ASSAULT IS AN ATTEMPT TO DO
2 BODILY HARM WHICH FALLS SHORT OF TOUCHING THE BODY OR
3 ACTUALLY DOING THE BATTERY. BY WAY OF ILLUSTRATION, AN
4 ASSAULT MAY BE COMMITTED BY STRIKING AT ANOTHER PERSON WITHIN
5 STRIKING DISTANCE, BY THROWING A MISSILE AT HIM WITHIN
6 HITTING DISTANCE, OR BY DRAWING A FIREARM ON A PERSON OR
7 DISCHARGING A FIREARM AT A PERSON WITHIN FIRING DISTANCE.
8 BATTERY IS DEFINED AS CARRYING INTO EFFECT AN
9 ASSAULT AND BY USING OR APPLYING FORCE TO THE PERSON OF
10 ANOTHER HOWEVER SLIGHT, IN A RUDE, ANGRY AND RESENTFUL
11 MANNER.
12 THE CRIME OF ASSAULT AND BATTERY WITH INTENT TO
13 KILL IS THE UNLAWFUL ACT OF A VIOLENT NATURE TO THE PERSON OF
14 ANOTHER WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED.
15 ASSAULT AND BATTERY WITH INTENT TO KILL CONTAINS ALL THE
16 ELEMENTS OF MURDER EXCEPT THE ACTUAL DEATH OF THE PERSON
17 ASSAULTED. BEFORE A PERSON CAN BE CONVICTED OF ASSAULT AND
18 BATTERY WITH INTENT TO KILL, THE JURY MUST BE SATISFIED
19 BEYOND A REASONABLE DOUBT THAT IF THE PARTY ASSAULTED HAD
20 DIED FROM THE INJURY, THE DEFENDANT WOULD HAVE BEEN GUILTY OF
21 MURDER. ACCORDINGLY, ASSAULT AND BATTERY WITH INTENT TO KILL
22 REQUIRES AN INTENT TO KILL ACCOMPANIED BY MALICE. WITH
23 RESPECT TO THE INTENT TO KILL, IT IS SUFFICIENT FOR THE STATE
24 SIMPLY TO ESTABLISH A GENERAL INTENT AS OPPOSED TO A SPECIFIC
25 INTENT TO KILL.

1 THE CRIME OF ASSAULT WITH INTENT TO KILL IS AN
2 ASSAULT WITH INTENT TO COMMIT MURDER AND CONTAINS ALL THE
3 ELEMENTS OF MURDER EXCEPT THE BATTERY AND THE ACTUAL
4 HOMICIDE. MALICE AFORETHOUGHT IS THEREFORE AN ESSENTIAL
5 ELEMENT AND MUST BE PROVED BY THE STATE BEYOND A REASONABLE
6 DOUBT. I HAVE ALREADY DEFINED THE TERM OR THE WORD MALICE
7 FOR YOU.

8 NOW, THE LAST OFFENSE WITH WHICH THE DEFENDANT IS
9 CHARGED IS POSSESSION OF A FIREARM DURING THE COMMISSION OF
10 OR ATTEMPT TO COMMIT A VIOLENT CRIME. UNDER SECTION
11 16-23-490 OF OUR CODE OF LAWS AS AMENDED, A PERSON IS GUILTY
12 OF POSSESSION OF A FIREARM DURING THE COMMISSION OF OR
13 ATTEMPT TO COMMIT A VIOLENT CRIME IF THE PERSON IS IN
14 POSSESSION OF A FIREARM OR VISIBLY DISPLAYS WHAT APPEARS TO
15 BE A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. OUR
16 LAW DEFINES FIREARM AS ANY MACHINE GUN, AUTOMATIC RIFLE,
17 REVOLVER, PISTOL, OR ANY WEAPON WHICH WILL OR IS DESIGNED TO
18 OR MAY READILY BE CONVERTED EXPEL A PROJECTILE. A VIOLENT
19 CRIME INCLUDES THE OFFENSES OF MURDER AND ASSAULT AND BATTERY
20 WITH INTENT TO KILL.

21 I FURTHER INSTRUCT YOU THAT SHOULD YOU, THE JURY,
22 FIND THE DEFENDANT NOT GUILTY OF THE CRIME OF MURDER, AND NOT
23 GUILTY OF THE CRIME OF ASSAULT AND BATTERY WITH INTENT TO
24 KILL, THEN YOU WOULD HAVE TO FIND THE DEFENDANT NOT GUILTY OF
25 THIS CRIME, THE CRIME OF POSSESSION OF A FIREARM WITH INTENT

JURY CHARGE

1 TO COMMIT A VIOLENT CRIME.

2 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY,
3 BEFORE YOU CAN FIND THE DEFENDANT GUILTY OF ANY CRIME, THE
4 STATE MUST PROVE BEYOND A REASONABLE DOUBT EACH AND EVERY
5 ELEMENT OF THAT PARTICULAR CRIME. SHOULD THE STATE FAIL TO
6 PROVE EACH AND EVERY ELEMENT OF THE CRIME BEYOND A REASONABLE
7 DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY AND ACQUIT HIM
8 OF THAT CRIME.

9 CRIMINAL INTENT IS A NECESSARY ELEMENT OF EACH
10 CRIME THAT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE
11 DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
12 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE
13 SITUATION. I CHARGE YOU THAT THE STATE DOES NOT HAVE TO
14 PROVE A SPECIFIC INTENT BEFORE A DEFENDANT MAY BE FOUND
15 GUILTY. A GENERAL INTENT IS SUFFICIENT. SUCH INTENT MAY BE
16 SHOWN BY ACTS AND CONDUCT OF THE ACCUSED, THE CHARACTER OF
17 THE MEANS OR INSTRUMENT USED, MANNER IN WHICH IT WAS USED,
18 PURPOSE TO BE ACCOMPLISHED, RESULTING WOUNDS OR INJURIES AND
19 OTHER CIRCUMSTANCES. INTENT TO KILL MAY BE INFERRED FROM THE
20 CHARACTER OF THE ASSAULT. THE USE OF A DEADLY WEAPON WITH AN
21 OPPORTUNITY TO DELIBERATE, OR THE USE OF A DANGEROUS OR
22 DEADLY WEAPON IN A MANNER REASONABLY CALCULATED TO CAUSE
23 DEATH OR GREAT BODILY HARM. INTENT MAY BE INFERRED WHEN IT
24 IS DEMONSTRATED THAT THE ACCUSED VOLUNTARILY AND WILLFULLY
25 COMMITS AN ACT, THE NATURAL TENDENCY OF WHICH IS TO DESTROY

1 ANOTHER'S LIFE.

2 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, THE

3 DEFENDANT HAS PLED IN THIS CASE WHAT IS KNOWN AS PLEA OF

4 SELF-DEFENSE. AND SELF-DEFENSE IS A COMPLETE DEFENSE. IF

5 ESTABLISHED, YOU MUST FIND THE DEFENDANT NOT GUILTY OF

6 ASSAULT WITH INTENT TO KILL. THIS IS IN INDICTMENT 99-1994.

7 [SIC] SO I CHARGE YOU THAT THIS PLEA OF SELF-DEFENSE APPLIES

8 ONLY TO INDICTMENT 99-1944 CHARGING THE DEFENDANT WITH

9 ASSAULT WITH INTENT TO KILL.

10 THERE ARE FOUR ELEMENTS REQUIRED BY LAW TO

11 ESTABLISH SELF-DEFENSE. FIRST THE DEFENDANT MUST BE WITHOUT

12 FAULT IN BRINGING ON THE DIFFICULTY. SECOND, THE DEFENDANT

13 MUST HAVE ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF

14 LOSING HIS LIFE OR SUSTAINING SERIOUS BODILY INJURY OR HE

15 ACTUALLY WAS IN SUCH IMMINENT DANGER. THIRD, IF HIS DEFENSE

16 IS BASED UPON HIS BELIEF OF IMMINENT DANGER, A REASONABLY

17 PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE

18 ENTERTAINED THE SAME BELIEF. IF THE DEFENDANT ACTUALLY WAS

19 IN IMMINENT DANGER, THE CIRCUMSTANCES WERE SUCH AS WOULD

20 WARRANT A PERSON OF ORDINARY PRUDENCE, FIRMNESS, AND COURAGE

21 TO STRIKE THE FATAL BLOW IN ORDER TO SAVE HIMSELF FROM

22 SERIOUS BODILY HARM OR LOSING THEIR OWN LIFE. FOURTH, THE

23 DEFENDANT HAD NO OTHER PROBABLE MEANS OF AVOIDING THE DANGER

24 OF LOSING HIS OWN LIFE OR SUSTAINING SERIOUS BODILY INJURY

25 THAN TO ACT AS HE DID IN THIS PARTICULAR INSTANCE. IF,

JURY CHARGE

1 HOWEVER, THE DEFENDANT WAS ON HIS OWN PREMISES, HE HAD NO
2 DUTY TO RETREAT BEFORE ACTING IN SELF-DEFENSE. THESE ARE THE
3 ELEMENTS OF SELF-DEFENSE.

4 I CHARGE YOU THAT A DEFENDANT MUST SHOW THAT HE
5 BELIEVED HE WAS IN IMMINENT DANGER, NOT THAT HE WAS ACTUALLY
6 IN SUCH DANGER BECAUSE HE HAD THE RIGHT TO ACT ON
7 APPEARANCES, AND UNDER THE CIRCUMSTANCES AS THEY APPEARED TO
8 HIM, HE BELIEVED HE WAS IN SUCH DANGER AND A REASONABLE
9 PRUDENT MAN OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE
10 ENTERTAINED THE SAME BELIEF. WORDS ACCOMPANIED BY HOSTILE
11 ACTS MAY, DEPENDING ON THE CIRCUMSTANCES, ESTABLISH A PLEA OF
12 SELF-DEFENSE. I CHARGE YOU THAT AN INDIVIDUAL HAS NO DUTY TO
13 RETREAT IF BY DOING SO HE WOULD INCREASE HIS DANGER OF BEING
14 KILLED OR SUFFERING SERIOUS BODILY INJURY.

15 I CHARGE YOU THAT THE STATE OF SOUTH CAROLINA MUST
16 PROVE ITS CASE AGAINST THE DEFENDANT BEYOND A REASONABLE
17 DOUBT. THE STATE OF SOUTH CAROLINA MUST, THEREFORE, PROVE TO
18 YOUR SATISFACTION BEYOND A REASONABLE DOUBT THAT THE
19 DEFENDANT DID NOT ACT IN SELF-DEFENSE. IF YOU HAVE A
20 REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING
21 ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, YOU
22 MUST FIND HIM NOT GUILTY. ON THE OTHER HAND, IF YOU HAVE NO
23 REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING
24 ALL OF THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE,
25 THEN YOU MUST FIND THE DEFENDANT GUILTY. ONCE AGAIN, I WOULD

1 INSTRUCT YOU THAT THE PLEA OF SELF-DEFENSE APPLIES ONLY TO
2 INDICTMENT 99-1944 CHARGING THE DEFENDANT WITH ASSAULT WITH
3 INTENT TO KILL.
4 WHILE THE COURT GENERALLY DETERMINES THE
5 ADMISSIBILITY OF EVIDENCE, I INSTRUCT YOU THAT AS REGARDS ANY
6 ALLEGED STATEMENT MADE BY THIS DEFENDANT, THAT YOU MEMBERS OF
7 THE JURY MAKE THE ULTIMATE DETERMINATION OF WHETHER OR NOT
8 THE DEFENDANT MADE THE SAID STATEMENT, AND IF HE DID MAKE THE
9 STATEMENT, WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT
10 VOLUNTARILY AND OF HIS OWN FREE WILL AND ACCORD. AND,
11 FINALLY, JUST WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO ANY
12 ALLEGED STATEMENT. I CHARGE YOU THAT YOU MUST DETERMINE IF
13 THE ALLEGED STATEMENT WAS A PRODUCT OF AN ESSENTIALLY FREE
14 AND UNCONSTRAINED CHOICE BY ITS MAKER.

15 IF YOU DETERMINE IT WAS, AND THE BURDEN IS UPON THE
16 STATE TO PROVE THIS FACT AS ALL OTHER FACTS BEYOND A
17 REASONABLE DOUBT, THEN YOU MAY GIVE THE STATEMENT SUCH AS
18 FURTHER CONSIDERATION AS YOU DEEM PROPER. IF YOU DETERMINE
19 THE ALLEGED STATEMENT WAS NOT THE FREE AND VOLUNTARY WILLED
20 EXPRESSION OF THE DEFENDANT, THEN YOU SHOULD NOT CONSIDER THE
21 STATEMENT AT ALL.

22 IN DETERMINING WHETHER A DEFENDANT'S WILL WAS
23 OVERCOME IN OBTAINING A STATEMENT, YOU SHOULD CONSIDER BOTH
24 THE CHARACTERISTICS OF THE ACCUSED AND THE DETAILS OF THE
25 INTERROGATION, WHICH IS REFERRED TO IN THE LAW AS THE

JURY CHARGE

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540

1 TOTALITY OF THE CIRCUMSTANCES. SOME OF THE FACTORS THAT YOU
2 MUST CONSIDER ARE THE AGE OF THE ACCUSED, HIS EDUCATION OR
3 LACK THEREOF, HIS MENTAL ABILITY OR CAPACITY, HIS IQ OR
4 INTELLIGENCE, HIS BACKGROUND AND ENVIRONMENT, THE ADVICE OR
5 LACK THEREOF TO THE ACCUSED OF HIS CONSTITUTIONAL RIGHTS.
6 OTHER FACTORS TO CONSIDER ARE THE PLACE AND LENGTH OF
7 DETENTION AND THE NATURE OF THE QUESTIONING. YOU, THE JURY,
8 MUST CAREFULLY SCRUTINIZE ALL OF THE SURROUNDING
9 CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED
10 STATEMENT. YOU MUST BE SATISFIED BEYOND A REASONABLE DOUBT
11 THAT THE STATEMENT WAS MADE BY THE ACCUSED, UNINFLUENCED BY
12 PROMISE OF REWARD, THREAT OF INJURY, OR DIMINUTION OF HIS
13 RIGHTS.

14 I CHARGE YOU THAT ALTHOUGH LAY WITNESSES ARE
15 LIMITED TO TESTIFYING ABOUT FACTS WITHIN THEIR KNOWLEDGE AND
16 ARE NOT ALLOWED TO GIVE OPINIONS, CERTAIN WITNESSES WHO BY
17 TRAINING, EDUCATION, OR EXPERIENCE ARE CONSIDERED AS EXPERTS
18 IN A PARTICULAR FIELD MAY GIVE OPINIONS IN THAT FIELD BASED
19 UPON THE FACTS OF A MATTER AND THEIR CONCLUSIONS. AND THESE
20 OPINIONS CONSTITUTE EVIDENCE TO BE CONSIDERED BY YOU IN
21 CONNECTION WITH ALL OF THE OTHER EVIDENCE AND TESTIMONY IN
22 THE CASE. THAT IS TO SAY, YOU MAY CONSIDER THE EXPERT'S
23 OPINION JUST AS YOU DO ALL THE OTHER EVIDENCE IN THE CASE.
24 IT IS FOR YOU, THE JURY, TO GIVE IT SUCH WEIGHT AS YOU IN
25 YOUR EXPERIENCE AND DISCRETION MAY DETERMINE. BY THIS, I

1 MEAN THAT YOU MUST WEIGH SUCH EVIDENCE AND ACCEPT OR REJECT
2 IT IN THE SAME MANNER AS YOU TREAT ALL OTHER EVIDENCE IN THE
3 CASE.
4
5 YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL JURORS
6 SWORN TO IMPARTIALLY TRY AND DETERMINE THE FACTS OF THIS
7 CASE, AND WHEN YOU COMPLY WITH YOUR OATH TO DO SO, NO ONE
8 WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT, AND YOU WILL
9 HAVE FULLY DISCHARGED YOUR DUTY AS JURORS. YOU SHOULD NOT BE
10 INFLUENCED BY OPINIONS OR EXPRESSIONS OF OPINIONS, IF ANY,
11 WHICH YOU MAY HAVE HEARD ON THE OUTSIDE, BUT YOU ARE TO
12 DECIDE THIS CASE ACCORDING TO THE TESTIMONY THAT YOU HAVE
13 HEARD FROM THE LIPS OF THE SWORN WITNESSES ALONG WITH OTHER
14 EVIDENCE INTRODUCED.

15 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY,
16 ACCOMPANYING YOU TO THE JURY ROOM WILL BE ALL OF THOSE ITEMS
17 THAT WERE INTRODUCED IN EVIDENCE AND ADMITTED IN EVIDENCE BY
18 THE COURT. THESE, AS I TOLD YOU AT THE BEGINNING OF THE
19 TRIAL, WERE ALL NUMBERED. SO YOU MAY EXAMINE THEM, IF YOU
20 CHOOSE, WHILE YOU ARE IN THE JURY ROOM IN YOUR DELIBERATIONS.
21 THERE ARE FOUR DIFFERENT CHARGES AGAINST THIS DEFENDANT.
22 THEREFORE, THERE WILL BE FOUR VERDICT FORMS. I'M HOLDING ONE
23 IN MY HAND NOW. THESE FOUR FORMS WILL ACCOMPANY YOU TO THE
24 JURY ROOM.

25 WHATEVER YOUR VERDICT IS, IT MUST BE UNANIMOUS.
YOU WOULD CONSIDER EACH CHARGE, EACH INDICTMENT SEPARATELY,

JURY CHARGE

NEW YORK, N.Y.

1 AND RENDER A VERDICT ON THAT INDICTMENT, ON THAT CHARGE.
2 ONCE AGAIN, WHATEVER YOUR VERDICT IS ON EACH CHARGE, ON EACH
3 INDICTMENT, IT MUST BE UNANIMOUS; THAT IS, ALL 12 OF YOU MUST
4 AGREE. ~~AT THE TOP OF EACH OF THE VERDICT FORMS YOU WILL~~
5 ~~FIND THE CAPTION OF THE CASE. TO THE RIGHT-HAND SIDE IS THE~~
6 ~~NAME OF THIS COURT AND BENEATH THAT IS THE INDICTMENT NUMBER.~~
7 ~~BENEATH THE INDICTMENT NUMBER IS THE NAME OF THE OFFENSE OR~~
8 ~~THE NAME OF THE CRIME. BENEATH THE NAME OF THE OFFENSE OR~~
9 ~~THE NAME OF THE CRIME. IN PARENTHESES WE HAVE TYPED THE NAME~~
10 ~~OF THE ALLEGED VICTIM TO ASSIST YOU IN KEEPING UP OR~~
11 ~~DISTINGUISHING BETWEEN THESE DIFFERENT CHARGES.~~

13 I CHARGE YOU AND TELL YOU THAT ON THESE VERDICT
14 FORMS THE ONLY POSSIBLE FORMS OF VERDICT ARE PRINTED. THERE
15 THERE IS NO SIGNIFICANCE WHATSOEVER IN THE ORDER THAT THEY'RE
16 PRINTED. YOU SIMPLY DELIBERATE ON EACH CHARGE AND WHEN ALL
17 12 OF YOU AGREE ON A VERDICT, THE FOREPERSON WOULD SIGN HIS
18 NAME ON THE LINE BENEATH THE FORM OF VERDICT THAT YOU HAVE
19 AGREED ON. ON THE LINE THAT YOU NEED TO SIGN ON, BENEATH
20 THAT IS TYPED THE WORD FOREPERSON, TO IDENTIFY THE PROPER
21 PLACE FOR THE FOREPERSON'S SIGNATURE. I WOULD ALSO CHARGE
22 YOU THAT YOU ARE TO CONSIDER EACH CHARGE OR EACH INDICTMENT
23 SEPARATELY.

24 NOW, AT THIS TIME I'M GOING TO ASK THAT 12 OF YOU
25 GO TO THE JURY ROOM. I'M GOING TO ASK THE BAILIFF TO HOLD

1 THE ALTERNATE JUROR IN THE GRAND JURY ROOM. MR. FOREMAN, DO
2 NOT BEGIN YOUR DELIBERATIONS AT THIS TIME. IN JUST A FEW
3 MINUTES WE'LL SEND IN THE EXHIBITS, WE'LL SEND IN THE VERDICT
4 FORMS, AND AT THAT TIME WE WILL TELL YOU TO BEGIN YOUR
5 DELIBERATIONS. THE CLERK HAS ORDERED LUNCH FOR YOU, SO THERE WILL
6 BE NO NEED FOR YOU TO LEAVE TODAY FOR LUNCH. YOUR LUNCH WILL
7 BE SENT IN. IT SHOULD BE ARRIVING MOMENTARILY. I'LL LEAVE
8 IT UP TO YOU IF YOU WANT TO EAT AND DELIBERATE, THAT'S FINE.
9 OR IF YOU WANT TO STOP AND HAVE YOUR LUNCH, MR. FOREMAN,
10 THAT'S SOMETHING YOU ALL CAN DECIDE. IF YOU HAVE ANY
11 QUESTIONS, YOU'LL NEED TO WRITE THEM OUT ON A PIECE OF PAPER
12 AND SIGN YOUR NAME TO IT, MR. FOREMAN. PASS THAT OUT TO THE
13 BAILIFF AND THE BAILIFF WILL GET THAT TO THE COURT.

15 AT THIS TIME IF THE 12 JURORS WOULD GO TO THE JURY
16 ROOM. IF THE BAILIFF WOULD PLACE THE ALTERNATE JUROR IN THE
17 GRAND JURY ROOM. DO NOT BEGIN YOUR DELIBERATIONS.

18 (WHEREUPON, AT 12:35 P.M. THE JURY RETIRES)

19 THE COURT: ALL RIGHT. ANY EXCEPTIONS OR REQUESTS
20 FOR ADDITIONAL CHARGES BY THE STATE?

21 MS. WHITE: NO, SIR.

22 THE COURT: BY THE DEFENDANT?

23 MR. GOLDSMITH: NO EXCEPTIONS OR ADDITIONAL
24 REQUESTS, JUDGE.

25 THE COURT: ALL RIGHT. WE'LL BE AT EASE UNTIL WE

JURY CHARGE

1 HEAR FROM THE JURY. HAVE YOU ALL CHECKED THE EXHIBITS TO
2 MAKE SURE THEY'RE ALL HERE?

3 (ATTORNEYS REVIEW EXHIBITS)

4 THE COURT: WE'LL ALSO NEED TO SEND A TAPE RECORDER
5 BACK THERE. MR. BANNISTER, AFTER YOU DELIVER THE EXHIBITS IF
6 YOU'D TELL THE JURY TO BEGIN THEIR DELIBERATIONS.

7 MR. GOLDSMITH: YOU WANT THE ALTERNATES IN HERE?

8 THE COURT: YEAH, AFTER YOU DO ALL THIS.

9 (WHEREUPON, AT 12:37 P.M. THE ALTERNATE JUROR IS
10 EXCUSED AND THE JURY IS INSTRUCTED TO BEGIN ITS
11 DELIBERATIONS.)

12 THE COURT: OKAY. WE'LL BE AT EASE UNTIL WE HEAR
13 FROM THE JURY.

14 (AT 2:35 P.M. COURT IS AGAIN IN SESSION, WHEN THE
15 FOLLOWING PROCEEDINGS WERE HAD:)

16 THE COURT: THE COURT'S BEEN ADVISED THAT THE JURY
17 HAS REACHED A VERDICT IN THE CASE. IS THE STATE READY TO
18 RECEIVE THE VERDICT?

19 MS. WHITE: YES, SIR.

20 THE COURT: THE DEFENDANT READY?

21 MR. GOLDSMITH: READY, YOUR HONOR.

22 THE COURT: ALL RIGHT... YOU MAY BRING IN THE JURY.

23 (AT 2:36 P.M. THE JURY RETURNS TO OPEN COURT TO
24 REPORT ITS VERDICT.)

25 THE CLERK: MR. FOREMAN, LADIES AND GENTLEMEN, HAVE

1 YOU AGREED ON VERDICTS?

2 THE FOREMAN: YES, MA'AM.

3 THE CLERK: PASS THEM OVER, PLEASE.

4 THE COURT: YOU MAY PUBLISH THE VERDICTS.

5 THE CLERK: CASE 98-GS-04-1945, THE STATE VERSUS

6 ROBERT EARLE RICKETTS, INDICTMENT FOR MURDER. WE THE JURY

7 FIND THE DEFENDANT, ROBERT EARLE RICKETTS, GUILTY OF MURDER.

8 SIGNED JOHN COCHRAN, FOREPERSON OF THE JURY.

9 98-GS-04-1943, STATE VERSUS, ROBERT EARLE RICKETTS,

10 INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL,

11 VICTIM ELONA DEE GARRETT. "WE THE JURY FIND THE DEFENDANT

12 GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL." SIGNED

13 JOHN COCHRAN, FOREPERSON.

14 98-GS-04-1944, STATE VERSUS ROBERT EARLE RICKETTS,

15 INDICTMENT FOR ASSAULT WITH INTENT TO KILL, VICTIM DAWN

16 BILLADEAU. VERDICT GUILTY OF ASSAULT WITH INTENT TO KILL,

17 JOHN COCHRAN, FOREPERSON. AND 98-GS-04-1942, THE STATE

18 VERSUS ROBERT EARLE RICKETTS, INDICTMENT FOR POSSESSION OF A

19 FIREARM OR A KNIFE DURING THE COMMISSION OF OR ATTEMPT TO

20 COMMIT A VIOLENT CRIME. GUILTY OF POSSESSION OF A FIREARM OR

21 KNIFE DURING THE COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT

22 CRIME, SIGNED JOHN COCHRAN, FOREPERSON.

23 NOW, LADIES AND GENTLEMEN OF THE JURY, IF THESE ARE

24 ALL YOUR FOUR VERDICTS, WOULD YOU PLEASE RAISE YOUR RIGHT

25 HANDS.

JURY CHARGE

ROMAN, PAUL

1 (JURORS COMPLY)

2 THE CLERK: ALL RIGHT HANDS BEING RAISED, VERDICTS
3 OF THE JURY, YOUR HONOR.

4 THE COURT: ALL RIGHT. ANY MATTERS CONCERNING THE
5 JURY AND THE JURY'S VERDICT BY THE STATE?

6 MS. WHITE: NO, SIR.

7 THE COURT: BY THE DEFENDANT?

8 MR. GOLDSMITH: NONE, YOUR HONOR.

9 THE COURT: ALL RIGHT. LET ME ASK IF THE SOLICITOR
10 WOULD COME AROUND. MR. GOLDSMITH, IF YOU AND YOUR CLIENT
11 WOULD COME AROUND FOR SENTENCING.

12 (DEFENDANT AND ATTORNEYS STEP FORWARD)

13 THE COURT: IT'S BEEN CALLED TO THE COURT'S
14 ATTENTION ON THE VERDICT FORMS, UNDER WHERE THE CASE NUMBER
15 IS LISTED, THE NUMBERS '98 APPEAR INSTEAD OF '99. ANY
16 OBJECTION TO AMENDING THOSE?

17 MR. GOLDSMITH: NO OBJECTION TO AMENDING THEM.

18 THE COURT: HEARING NO OBJECTION, THE VERDICT FORMS
19 WILL BE AMENDED SO THE DATES IN THE INDICTMENT NUMBER WILL BE
20 '99 INSTEAD OF 1998. MR. GOLDSMITH, ARE THERE ANY MOTIONS
21 YOU WANT TO MAKE AT THIS TIME OR YOU WANT TO WAIT UNTIL AFTER
22 SENTENCING?

23 MR. GOLDSMITH: YOUR HONOR, I UNDERSTAND UNDER THE
24 RULES I CAN HAVE UP TO TEN DAYS AND I WOULD EXERCISE THAT
25 WITHIN THE TEN-DAY RULE.

1 THE COURT: SOLICITOR, LET ME ASK YOU ABOUT ANY
2 PRIOR RECORD OF THIS DEFENDANT, AND ALSO IF ANY OF THE
3 VICTIMS' FAMILY WISHES TO BE HEARD BEFORE SENTENCING, I'LL BE
4 GLAD TO HEAR FROM THEM.

5 MS. WHITE: YOUR HONOR, THE FAMILY JUST WANTS ME TO
6 TELL RENEE'S SIDE OF THE STORY, AND I THINK I CAN DO THAT.
7 DO YOU CARE TO HEAR IT NOW? YOUR HONOR, THE FAMILY WANTED ME
8 TO CONVEY TO YOU THAT RENEE REGULARLY, THROUGHOUT HER
9 MARRIAGE, HAD MARKS ON HER NECK, BLACK EYES AND SO FORTH.
10 ABOUT NOVEMBER OF LAST YEAR SHE SEPARATED FROM THE DEFENDANT,
11 WENT OVER TO DAWN'S HOUSE. DAWN AGREED TO LET HER AND THE
12 CHILDREN STAY THERE. THAT NIGHT SOMEONE CAME BY AND SHOT
13 INTO THE HOUSE AND CAR. DAWN TOOK RENEE BACK AND THE
14 CHILDREN TO GET SOME CLOTHES FROM THE DEFENDANT'S HOUSE TO

15 HELP THEM. THE DEFENDANT PULLED A GUN ON HER. SHE CALLED
16 THE POLICE, HE HAD PENDING CHARGES. THIS ALL LEAD UP TO THE
17 SEPARATION. DAWN AGREED TO DROP THOSE CHARGES IN EXCHANGE
18 FOR THE DEFENDANT MOVING OUT OF RENEE'S HOUSE, AND THAT'S WHY
19 THEY HAD JUST SEPARATED.

20 WHEN HE MOVED OUT, RENEE CHANGED THE LOCKS AND SHE
21 WAS READY TO -- SHE KEPT VASCILLATING BEFORE ON EVERYTHING
22 AND SHE FINALLY HAD DECIDED THAT WAS IT.

23 THE NIGHT BEFORE THIS OCCURRED, ON THE TAPE WHAT
24 THEY WERE ARGUING OVER, THE PART WE REDACTED, WAS THE NIGHT
25 BEFORE THEY WERE IN THE HOUSE AND SOMEBODY HAD COME BY AND

JURY CHARGE

1 SHOT INTO THE HOUSE AND SHE WAS CONFRONTING HIM ABOUT THAT ON
2 THE TAPE, AND THAT'S WHY SHE WAS UP AT THE MAGISTRATE'S
3 COURT AND UP AT THE SHERIFF'S DEPARTMENT, YOUR HONOR, THE
4 FAMILY WISHES TO THANK THE JURY FOR THE VERDICT, AND THAT'S
5 ALL THE STATE HAS.

6 THE COURT: ANY PRIOR RECORD?

7 MS. WHITE: NOT CONVICTIONS. HE HAD ANOTHER CDV
8 WHICH RESULTED OUT OF SOME OF THIS FROM LAST YEAR. HE AGREED
9 TO GO TO COUNSELING IN EXCHANGE FOR NOT PROSECUTING. HE DID
10 NOT COMPLETE COUNSELING. SO, I DON'T KNOW IF THAT GOES DOWN
11 AS A GUILTY OR NOT GUILTY, I'M NOT SURE; BUT WE DID TALK TO
12 THE PERSON AT MAGISTRATE'S COURT IN CHARGE OF FOLLOWING
13 WHETHER OR NOT THEY DID COUNSELING, AND HE DID NOT COMPLETE
14 IT.

15 THE COURT: ANYTHING ELSE FROM THE STATE?

16 MS. WHITE: NO, SIR.

17 THE COURT: MR. GOLDSMITH, I'LL BE GLAD TO HEAR
18 FROM YOU.

19 MR. GOLDSMITH: JUDGE, I DON'T THINK THERE'S
20 ANYTHING MORE I CAN SAY. I'M JUST PERSONALLY HEARTSICK ABOUT
21 THE THING. THE COURT HAS A FULL IDEA OF HIS BACKGROUND, HIS
22 EDUCATION. ANYTHING I COULD TELL THE COURT WOULD JUST BE
23 ADDITIONAL... SO WE'LL STAND HERE AND ACCEPT SENTENCING.

24 THE COURT: ALL RIGHT. AND, MR. RICKETTS, ANYTHING
25 YOU'D LIKE TO SAY BEFORE SENTENCING?

1 THE DEFENDANT: AS FAR AS COUNSELING, I WENT AND
2 THEY SAID I WAS THROUGH WITH THAT. HE TOLD ME I DIDN'T HAVE
3 NO MORE TIMES TO GO TO THAT. SO, I HAD FINISHED THAT. AND
4 THE TIME THAT SHE COME OVER SHE SAID THAT I PULLED A GUN, SHE
5 HAD CALLED EARLIER AND THREATENED ME COMING OVER THERE ON
6 THAT DEAL, SO THAT'S WHAT HAPPENED THERE. THAT'S WHY IT WAS
7 DISMISSED. I HADN'T EVEN MOVED OUT OF THE HOUSE ALL THE WAY
8 ANYWAY. I WAS JUST FIXING UP ANOTHER TRAILER TO RENT IT OUT.

9 THE COURT: ALL RIGHT. IF NOTHING FURTHER, THE
10 SENTENCE ON 99-1945, THE INDICTMENT CHARGING THE DEFENDANT
11 WITH MURDER, THE JURY HAVING RETURNED A VERDICT OF GUILTY,
12 THE SENTENCE IS THE DEFENDANT BE COMMITTED TO THE STATE
13 DEPARTMENT OF CORRECTIONS FOR A TERM OF LIFE. 99-1943,
14 ASSAULT AND BATTERY WITH INTENT TO KILL, THE SENTENCE IS THE
15 DEFENDANT BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A
16 TERM OF 20 YEARS. THIS IS CONSECUTIVE TO THE SENTENCE IN
17 99-1945. 99-1944, ASSAULT WITH INTENT TO KILL, SENTENCE IS
18 THE DEFENDANT IS COMMITTED TO THE DEPARTMENT OF CORRECTIONS
19 FOR A TERM OF TEN YEARS. THIS IS CONCURRENT. 99-1942,
20 POSSESSION OF A FIREARM, THE SENTENCE IS HE IS COMMITTED TO
21 THE DEPARTMENT OF CORRECTIONS FOR A TERM OF FIVE YEARS. THIS
22 WOULD BE CONCURRENT. ALSO MY UNDERSTANDING IS THAT SINCE
23 HE'S RECEIVED A LIFE SENTENCE, THIS FIVE-YEAR SENTENCE WOULD
24 BE SUBSUMED IN THE LIFE SENTENCE.

25 MS. WHITE: THANK YOU, YOUR HONOR.

1 THE COURT: YOU MAY RETURN TO YOUR SEAT.

2 (WHEREUPON, THE PROPOSED VOIR DIRE AND PROPOSED

3 JURY CHARGES ARE MARKED AS COURT'S EXHIBITS NO. 1 AND 2

4 RESPECTIVELY.)

5 *** * * * * END OF REQUESTED TRANSCRIPT OF RECORD * * * * *

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ANDERSON) CERTIFICATE OF REPORTER

3
4 I, THE UNDERSIGNED, DONNA MARIE BRADY, OFFICIAL COURT
5 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH
6 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
7 ACCURATE, AND COMPLETE TRANSCRIPT OF ALL THE PROCEEDINGS HAD
8 AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED
9 CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS
10 FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE 11TH THROUGH 14TH
11 DAYS OF OCTOBER, 1999.

12 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
13 NOR ANY INTEREST TO ANY PARTY HERETO.

14

15

16

Donna M. Brady
DONNA M. BRADY

17

18

12/30/00
DATE

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BY:

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STATE OF SOUTH CAROLINA

County of Anderson, South Carolina

In the Court of Common Pleas

Robert Earle Ricketts, III

Full name and prison number (if any) of Applicant.

vs.

State of South Carolina

Name of Respondent.

Joseph L. Savitz, III

James L. Goldsmith, Jr. Esquire

2002-DP-04-1544

A TRUE COPY

APPLICATION FOR
MAY 23 2002
POST-CONVICTION RELIEF

CLERK OF COURT

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

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

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Perry Corr. Inst. Pelzer, S.C.
2. Name and location of Court which imposed sentence Anderson County Court of General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) #99-GS-04-1942; 1943; 1944; 1945
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 8, 1999 Life and 35 years
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty No

(b) after a plea of not guilty Yes

(c) after a plea of nolo contendere N/A

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. Unpublished Opinion No. 2002-UP-235 Submitted January 28, 2002 Filed 3/28/2002

ii. AFFIRMED See Attached

iii. _____

(c) the date of each such result:

i. Same S/A

ii. _____

iii. _____

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

i. See Attached

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) See issues attached

(b) _____

(c) _____

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

(a) See Attached table of contents

(b) _____

(c) _____

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?
NO

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

YES

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. YES I sent a copy of PRO Se argument raising same but it was sent back
- ii. by the Clerk saying anything I send has to be through my Attorney Joseph
- iii. L. Savitz, III Appellate Defense

(b) the proceedings in which each ground was raised:

- i. See Attached
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) They were not applicable to my knowledge
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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

(a) the name and address of each attorney who represented you P.O. Box 14186
Address Greenville, SC 29610

- i. Skip Goldsmith, Esq. Attorney for Defendant at trial and arraignment
Joseph L. Savitz, III Appellate Defense 1122 Lady St. Columbia, SC
- ii. _____
- iii. _____

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

- i. Trial and Appellate Defense
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

Vacate sentence remand for new trial, reduce sentence, re-sentence.

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

NO

STATE OF SOUTH CAROLINA

County of Anderson

VERIFICATION

I, Robert Earle Ricketts, III #261694, 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.

Robert E Ricketts III

SWORN to and subscribed before me this 8th

day of May, 19 2002

Mary H McCabe (L.S.)
Notary Public

My Commission Expires: 2/7/2007

A TRUE COPY

MAY 23 2002

Casey M. Smith
CLERK OF COURT

2002 MAY 15 P 12:05
CLERK OF COURT
ANDERSON SC

FILED-CLERK'S OFFICE
ANDERSON SC

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

I, Robert Earle Ricketts, III #261694, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Robert E Ricketts III
Applicant

SWORN or affirmed to and subscribed before me this

8th day of May, 19 2002
Mary H McCabe
Notary Public

My Commission Expires 2/7/2007

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Robert Earle Ricketts, III,

Appellant.

Appeal From Anderson County
H. Dean Hall, Circuit Court Judge

Unpublished Opinion No. 2002-UP-235
Submitted January 28, 2002 - Filed March 28, 2002

AFFIRMED

Deputy Chief Attorney Joseph L. Savitz, of the South Carolina Office of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General Jeffrey A. Jacobs, all of Columbia;

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STATEMENTS OF ISSUES ON APPEALISSUE ONE

TRIAL COUNSEL WAS INEFFECTIVE ASSISTANCE OF COUNSEL AS APPERTAIN TO REPRESENT APPLICANT WHEN HE FAILED TO CONTACT, INTERVIEW, AND CALL WITNESSES TO TESTIFY AT TRIAL ON BEHALF OF THE APPLICANT.

ISSUE TWO

TRIAL COUNSEL WAS INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO INTRODUCE INTO EVIDENCE MATERIAL EVIDENCE SUPRESSED BY THE PROSECUTION FAVORABLE TO THE DEFENDANT.

ISSUE THREE

DEFENSE COUNSEL AT TRIAL WAS INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE DID NOT MAKE MOTION REGARDING THE FAILURE OF THE ARRESTING OFFICER TO INFORM APPELLANT OF HIS RIGHTS UNDER MIRANDA V. ALABAMA, ET SEQ. THIS WAS INEFFECTIVE ASSISTANCE OF COUNSEL.

STATEMENT OF FACTS

On August 31, 1999, an Anderson County grand jury indicted Robert Earle Ricketts, III, for murder (the victim: his estranged wife, Renee Billadeau), assault and battery with intent to kill (his wife's sister, Dee Garrett) and assault with intent to kill (her other sister, Dawn Billadeau). Judge H. Dean Hall presided at appellant's jury trial on October 11-14, 1999. Appellant will show this Court he was acting only in self defense after Dawn Billadeau suddenly opened fire on him as he was fixing to leave. The judge charged self-defense as to Dawn, who was not injured, but refused it to Renee, who was killed, and Dee, who suffered a severe leg injury. The attorney for appellant Joseph L. Savitz, III, will argue under the doctrine of "transferred intent," the judge erred by refusing to charge self-defense in relation to the death of appellant's wife and the injury to her sister. (See initial brief by Joseph L. Savitz, III,)

The Appellant will show the Court the following from the evidence given at trial, that he did not kill his wife Renee Billadeau, nor did he try to kill Dee Billadeau. (See Argument), also see issues, One and Two and three.

ARGUMENT

APPELLANT

Robert Ricketts and his estranged wife, Renee Billadeau, were talking in their front yard when Renee's sisters, Dee Garrett and Dawn Billadeau, arrived to start trouble Tr. p. 411, line 18-p. 412, 9-10; Anticipating an altercation, Robert said, "I'm just, I'm not even getting into this. I'm going to leave." Tr. p. 412, lines 12-13; when appellant went to his car and opened his door he was shot by Dawn Billadeau in the shoulder, Tr. p. 412, lines 14-17 and then I reached over and got my rifle. lines 18-20; (See diagram enclosed and compare to my testimony, Ms. Linda White's testimony, and Dawn Billadeau's testimony). Continual from Tr. p. 412, lines 20- p. 413, lines 1-25- p. 414, lines 1-3; I come around this way. I got right here, (See diagram) Dawn shot and hit me in the face, line 25- p. 413, line 1-25-p. 414, lines 1-3; during these two shots Dawn fired at me or the third is when she hit my wife Renee, Note line 10, p. 413, through line 15; My gun goes off upon reflex as I was falling. And I see gravel fly up. It's possible Dee, could have been hit by accident during this time because Dawn was firing at me from behind the rodeo, Tr. p. 331, lines 5-8; and if you will please note lines 15-25; Dawn shot at me through her window the first two shots, and then jumped out of the van and was shooting at me on the other side of the rodeo and Dee, was in the line of fire. And it was this time Dawn see Dee, was hit, not when my gun went off. lines 6-7 p. 331, Please note what Dawn says line 17-19; And he was behind the rodeo and I was on the other side, and he was taking shots at me. And I was just shooting back wild. Now Please carefully note lines 22-25 cause this is where Dawn hits Dee, " I was in front of the rodeo I saw dee on the ground, and her leg was like huge. I told the neighbor to call 911, my sister had been shot. Now please turn back to my testimony on page 413, lines 15-18; After Dawn shot me through her window and got out of the van, I shot towards the vav. 15, Q-16 In this direction? 17,

In this direction. Shot that way, Ejected it out and shot again. At this time from lines 19-25- P.414, lines 1-3, Please note this is when my gun jammed and Dawn jumped in the Rodeo and took off down the road. Now by the evidence given in testimony by Dawn and Myself, how could I have shot my wife? My first shot went into the grown and blowed up gravel Pg.413, lines 10-11; and I shot twice at Dawn, lines 15-18; same Pg. And Dawn testimony on page 331, She states she did not see me shoot my Wife or Dee, lines 7-8; And then states on line 18, he was taking shots at me, Again this is three shots, and proves that I did not and could not have shot my wife Renee.. And also shows that Dawn shot Dee, Lines 18-25; same page 331. Now please note the shots that hit me, my wife Renee, and Dee, The one that hit me came apart in fragments, my testimony Pg. 413, lines 4-5; When Dee, was hit either the bullet came apart in fragments, or she was hit twice by Dawn, cause her left thigh was shot, and her right back calf, Pg. 319, lines 22-Pg. 320, line 1; Also note when Renee was shot the bullet also broke up into fragments, Tr. Pg. 257, lines 1-10; Note in line 9, and 10, and 11-17 these fragments were entered into evidence. Also note the bullet fragments that is in my face, if I have them taken out and tested to the fragments that where taken from my wife Renee, I know they will match metal alloy of these two bullets because the metal mixture will be the same. I know this because I did not shoot my wife. Now if you will please note Ms. Linda Whites testimony Tr. p. 234, lines 7-22 This shows Dawn going around the front of the van, and shooting across the Rodeo putting Dee, in the line of fire. This is in accordance with Dawns testimony and appellants testimony. (See diagram). By the information given and the evidence introduced from the Testimony of Dawn Billadeau, Ms. Linda White, and appellant Robert Earle Ricketts, III, for this reason, the Court should reverse appellant's conviction for murder and assualt and battery with intent to kill and remand for a new trial. Appellant would also like to state for the record, that he feels Joseph L. Savitz, III, is also ineffective assistance of counsel, in that he failed to address issues appealable to the appellant.

Appellate Counsel is in-effective assistance of counsel in that page 7, of his initial brief for appellant he stated "The evidence in this case supported a finding that Ricketts unintentionally hit his wife Renee and Dee Garrett while shooting at Dawn Billadeau in self-defense. There is no testimony to support his statement, and the doctrine of "transferred intent," is a Designation of matter to be included in the record on appeal and as he stated on the unnumbered page next to the last page of his initial brief, "I certify that the designation contains no matter which is irrelevant to this appeal."

S.C. 1999. Failure to disclose BRADY material is reversible error only when its omission deprives the defendant of a fair trial.-State v. Hughes, 521 S.E. 2d 500, 336 S.C. 585. Substantive criminal law, 700 (2.1) C.A. 4 (S.C.) 1992. Exculpatory evidence allegedly withheld by the prosecutor must be considered in light of the entire record. U.S.C.A. Const. Amends. 5, 14.- Adams v. Aiken, 965 F. 2d 1306. S.C. 1999. A claim that the prosecution violated BRADY v. MARYLAND by failing to disclose exculpatory material in its possession requires a demonstration that (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 514 S.E. 2d 320, 334 S.C. 515.

Under Kyles v. Whitley 115 S. Ct. 1555 (1995) As you may know from that case, the United States Supreme Court imposed upon law enforcement and the prosecution a "duty to learn" favorable information relating to the defendant. State and Federal Courts have made it clear that in any criminal case, material evidence or information that is favorable to the defendant on trial must be turned over to defense counsel. The Supreme Court has said that the prosecution is responsible for revealing such evidence to the defense even though the evidence was known only by police and never made known to the prosecutor. The result of failing

to comply with this requirement, the Court said, can be reversal of conviction or the sentence on appeal and costly retrials.

S.C. App. 1995 BRADY requires that State disclose evidence in its possession, including impeachment evidence, which is favorable to accused and material either to guilt or punishment- State v. Gill, 460 S.E. 2d 412, 319 S.C. 283. Impeachment or exculpatory evidence is material and must be disclosed to defense only if there is reasonable probability that had evidence been disclosed to defense, result of proceeding would have been different-ID.

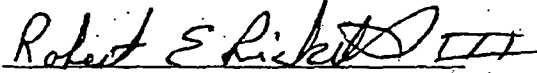
Appellants attorney at trial was ineffective assistance of counsel when he failed to question Dawn after she testified that her gun clicked, see Tr. Pg. 331, line 19; compared to David Collins, which was recognized as an expert firearms examiner by the State Tr. Pg. 369, lines 14-15; with regards to Dawn Billadeau right before his testimony making the false statement that her gun had clicked. David Collins testified on page 375, line 2-20; This is exhibit 114. Dawn Billadeaus 357 magnum from lines 13-20; Expert Collins was questioned how many bullets does it hold and whether they were live or fired? And he states lines 18-20; "I received a total of six cartridges or cartridge cases, one of which was unfired, the remaining five were in a fired condition. This shows that Dawn could not have heard her gun click. Please note her testimony Tr. Pg. 331, lines 19-25, it was at this time she shot her sister, note line 20, she states "OH SHIT." And I jumped in Dee's Rodeo because it was still running and I drove up two houses. and I told them to call 911 because when I was in front of the Rodeo I saw Dee on the ground, and her leg was like huge. I told the neighbor to call 911, my sister had been shot. She just stated she did not see the appellant shoot her sister on lines 7-8; same page. Please note when Expert David Collins was cross by Mr. Goldsmith, Tr. Pg. 379, 7-16; His testimony was consistency with Ms. Linda G. White's testimony that the appellants gun made a booming sound. But Goldsmith was ineffective when he failed to impeach Dawn Billadeaus testimony that her gun clicked. And failed to enter into evidence for the defense these shell casings.

Goldsmith was ineffective assistance of counsel when he failed to request the jury to view the scene after making motion for the jury to view the scene see Tr. Pg. 6, lines 1-9; Pg 7, lines 17-23; Then counsel was ineffective assistance when he with-drew his motion, see Tr. Pg. 464, lines 17--Pg. 465, 1-4.

Goldsmith was also ineffective assistance of counsel when he failed to argue the violation of Miranda the Prosecutor Ms. White, admitted there's a Miranda violation, see Tr. Pg. 18, lines 10-13, Pretrial motions. (issues one two and three,)

Again for the reasons set forth, the Court should reverse appellant's conviction for murder and assault and battery with intent to kill and remand for a new trial.

Respectfully submitted,



Robert Earle Ricketts, III,
Acting as PRO-SE Appellant

This 8 day of May 2002

ISSUE ONE

TRIAL COUNSEL WAS INEFFECTIVE ASSISTANCE OF COUNSEL AS APPERTAIN TO REPRESENT APPLICANT WHEN HE FAILED TO CONTACT, INTERVIEW, AND CALL WITNESSES TO TESTIFY AT TRIAL ON BEHALF OF THE APPLICANT.

Applicant requested through his counsel to have witnesses contacted and subpoenaed whose testimony would have impeached state witnesses and would have been favorable to the applicant for his defense. Defense counsel thwarted his attempt's to obtain these witnesses. Defense counsel was given the information containing names of witnesses prior to court, which was Officer Clint Fuller who lived across the road from the defendant. See Tr. Page 229 Lines 20-23. And Miss Linda White is Officer Clint Fuller's Mother-in-law which gave testimony. Defense counsel received this information from the defendant that Officer Fuller spoke to the him while he was in jail and confirmed he heard the first shot and witnessed the intire scene. But did not follow up or interview Mr. Fuller or contact other witnesses and failed to subpoena them for trial.

The dispositive issue in this case concerns the trial counsel's inefctive-ness when counsel acted with his first protege to the court and deprived applic-ant from calling witnesses on his own behalf that may have change the outcome of the trial.

Trial counsels failare to contact interview witnesses and issue sobpoenas on behalf of the defense prior to trial constituted wanton and deficient perfor-mance under Strickland v. Washington, 466 U.S. 688 (1984). Trial counsels assi-stance to applicant before and during the trial was deficient and prejudiced his case under Farett v. California, 422 U.S. 806 (1975) Because the sixth and the fourteenth amendments to U.S. Constitution guaranteed a defendant the right to present defense witnesses before a jury at trial. The court has previously held defendants were prejudiced in cases where witnesses were not produced at trial due to ineffective assistance of counsel. In Grier v. State, 299 S.C. 321, 384 S.E. 2d 722 (1989). The court held that the defendant was prejudiced where counsel was ineffective in failing to call witnesses for trial because the defendant's defense was crucial in the case. In Martinze v. State, 304S.C. 39, 408, S.E. 2d 113 (1991), the court held that trial counsel was deficient in failing to call an witness for trial and that this prejudiced the defendant inasmuch as the wit-nesses testimony might have made the difference in obtaining an acquittal in the case. U.S. Constitution guarantees a defendant the right to present all his

defense witnesses before a jury at trial.

This court has previously held that defendants were prejudiced in cases where witnesses were not produced at trial due to ineffective assistance of counsel. In GRIER V. STATE, 299 S.C. 321, 384 S.E.2d 722 (1989), the court held that the defendant was prejudiced where counsel was ineffective in failing to call witnesses for trial because the defense was crucial in the case. In Grier, the defendant alleged that witnesses would have testified that on the night of the robbery he was wearing brown clothing, which contradicted the store cashier's testimony that the perpetrator of the crime wore grey clothing during the robbery. Further, in MATTINEZ V. STATE, 304 S.C. 39, 403 S.E. 2d 113 (1991), the court held that trial counsel was deficient in failing to call an witness for trial and that this prejudiced the defendant inasmuch as the witnesses testimony might have made the difference in obtaining an acquittal in the case. The witness in Martinez case would have testified that he saw the defendant leaving the lounge fifteen minutes prior to the conclusion of the rape for which he was indicted.

In UNITED STATES V. EX REL. COSEY V. WOLFF, 727 F.2d 656 (7th Cir. 1984): The defendant was convicted of shooting the victim in a basement, in the apartment where the victim lived. The defendant claimed to have witnesses, and other witnesses, who could prove that the victim lied. That it could not have happened the way the victim said. The

attorney never investigated, this or called these witnesses, to testify, at the defendants trial. So he was ineffective assistance of counsel. The first time it was before the district court, they granted relief, we reversed, because the court made no factual finding of fact. The district court again found ineffective assistance of counsel, and the state appealed, we agree with the district court on his case, He was denied effective assistance of Counsel for not calling witnesses on behalf of defendant. In SULLIVAN V. FAIRMAN, 819 F.2d 1382 (7th Cir. 1987) the 7th Circuit ruled that the lawyer was ineffective assistance of counsel, when he failed to contact and call witnesses for defendant. In HARRIS V. REED, 894 F.2d 871 (7th Cir. 1990) THE Supreme Court found ineffective counsel because he did not contact and call witnesses for defendant. SEE also, Cross v. O'Leary, 896 F.2d 1099 (7th Cir. 1990); United States v. ex REL. Williams v. Washington, 863 F. Supp. 697 (N.D. Ill. 1994); Cross v. United States, 392 F.2d 360 (8th Cir. 1968); McQueen v. Surnson, 498 F.2d 207 (8th Cir. 1974); Nealy v. Cabana, 764 F.2d 1173 (5th Cir. 1985); Bryant v. Scott, 28 F.3d 1411 (5th Cir. 1994) Counsel should have contacted witnesses for defendants defense and this prejudiced his case.

It is clear but for trial counsel's assistance being ineffective and failure to contact and interview the witnesses listed by the applicant prior to trial, a reasonable probability exists that the outcome of the applicants trial would have been different. The applicant

was denied effective assistance of counsel in violation of the sixth and fourteenth amendments of the U.S. Constitution and Article 1, and 14 of the South Carolina Constitution.

ISSUE TWO

TRIAL COUNSEL WAS INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO INTRODUCE INTO EVIDENCE MATERIAL EVIDENCE SUPPRESSED BY THE PROSECUTION FAVORABLE TO THE DEFENDANT.

Defense counsel failed to have evidence which was shell casings introduced into evidence for the defense. The State had this evidence and suppressed it from the defense, and was aware of the incorrect information given to Officer Michael Arflin. See transcript page 468 lines 17- page 469 lines 1-17 when in fact there was three guns taken at the time, One from The man in the white shirt who's name is Paul Jiminez, and being that Officer was the investigating Officer see page 466 lines 22-25, Officer Michael Arflin failed to take the name of a man after taking his gun? This shows that Officer Michael Arflin is suppressing evidence for the Prosecution. Gun two was taken from the defendant a 300 winchester magnum rifle, and gun three which was Dawn Billadeaus 357. See transcript page 288 lines 20-page 289 lines 1-13. Officer Arflin interviewed Paul Jiminez, and took his gun and lies to the defendants counsel Mr. Goldsmith on page 467 of the transcript lines 21-page 468 lines 1-12. Compare transcript page 288 Paul Jiminez testimony lines 20-25 and page 289. Also Officer Arflin lies when he says he told the defendant to drop the gun see Tr. Pg. 471 lines 9-15 compare Tr. Pg. 234 lines 23- Pg. 235 lines 1-3. Arflin lies concerning Paul Jiminez gun which Dawn had see Tr. 469-line 16-17 compare Pg. 475 lines 10-13 and turns right around and lies saying that they had no gun lines 16-17 same page. And lies again on next page 476 lines 14-16. On page 375 Lines 2-20 Five shell casings suppressed, /six.

Under S.C. 1978. Brady rule pertaining, to suppression of evidence by the prosecution applies only to favorable evidence which prosecution has but which is unavailable to the defendant; where evidence is equally available to accused, obligation on part of State to furnish such evidence to accused is relieved. See Anderson v. Leeke, 248 S.E. 2d 120, 271 S.C. 435. Convicted person may be entitled to relief under Brady rule pertaining to suppression of evidence by prosecution in spite of good faith of prosecution.

State v. Freeman cite as 459 S.E. 2d 867 (S.C.app, 1995) Pg. 868-873, 5. Constitution Law 268(5) Criminal Law 1166 (10.10) Pg. 872-873 II State's failure to disclose [5]

Pursuant to Brady, the suppression by the prosecution of evidence favorable to an accused upon request violates Due Process where the evidence is material either to guilt or punishment, irrespective of good faith or bad faith of the prosecution.

The evidence in this case as spoken of was suppressed solely to deprive applicant as a source of defense and the failure to disclose, investigate and provide analysis of this evidence was a violation of his rights. U.S. v. Wong, 78 F3d 73, (2nd cir. 1996) states that a new trial is warranted under BRADY when prosecution failed to disclose favorable evidence is suppressed was material.

Counsel's failure to seek by motion to have the necessary analysis done so as to formulate a defense on appellates behalf is ineffective assistance of counsel.

Brady violations occurs when the prosecution suppresses evidence that is favorable to the defendant and material is use is an issue at trial. U.S. v. CLARK, 988 F 2d 1945 (6th Cir. 1993). BARTHOLOMEW V. WOOD 34 F 3d 870 (9th Cir. 1994) states that under BRADY, prosecution must disclose to defense both exculpatory evidence and evidence that would be useful for impeachment and evidence to defendant will violate due process under BRADY, even when defendant makes no request for such evidence.

Under BRADY, in U.S. v. ZUNO-ARCE, 44 F3d 1420 (9th Cir. 1995) it states that evidence can not be kept out of hands of defense just because prosecution does not have it, where investigating agency does. In this case truly the investigative agency did not persue to the fullest extent of the law to find the truth when they did not seek all the analysis necessary to prove the truth in what happen in this case but jumped to judgement and prosecuted the wrong person. The Appellant.

The very absence of this evidence in questions brings a violation of due process and the question screams out as to why it is not present. Additionally, the question calls for a full investigation of this matter. Counsel NEVER question the absence of this evidence nor did he make effort to obtain this evidence for use as part of his clients defense. This is in it self ineffective assistance of counsel.

ISSUE THREE

DEFENSE COUNSEL AT TRIAL WAS INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE DID NOT MAKE MOTION REGARDING THE FAILURE OF THE ARRESTING OFFICERS TO INFORM APPELLANT OF HIS RIGHTS UNDER MIRANDA V. ARIZONA, THIS WAS INEFFECTIVE ASSISTANCE OF COUNSEL.

Applicant contends that he was interrogated without being read his Miranda Rights. See Tr. Pg. 18, lines 10-13; And Tr. Pg. 394, lines 9-10 shows that the investigator Hodges, was trying to interrogate appellant. and Tr. Pg. 394, lines 17-25. and the Court was in error see Tr. Pg. 396---397, lines 1-25--Pg. 398, line 1. In Miranda v. Arizona, 384 U.S. 436, 474, 86 S.Ct. 1602, 1628, 12 L. Ed 2d 694 (1966) the United States Supreme Court held that an individual must be informed of his right to remain silent and his right to an attorney before he is questioned in cases where he "is taken into custody or otherwise deprived of his freedom by the authorities in any significant way." Interrogation is required to trigger the Miranda Requirements and it can be either express questioning or its functional equivalent, including words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response. State v. Easler, 471, S.E. 2d 745 (S.C. App. 1996) When determining whether a defendant is in custody, the Court must look at the totality of the circumstances including the suspect's freedom to leave the scene and the purpose, place and length of the questioning BRADY v. STATE, 449 S.C. 2d 492 (S.C. 1994). The critical inquiry is whether a reasonable man in the suspect's position would believe he is in custody. ID. SEE Also, EDWARDS V. ARIZONA, 451, U.S. 477, 484-85, 101 S.Ct. 1884-85 (1981).

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

H. Dean Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT EARLE RICKETTS, III,

APPELLANT

DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

The Appellant PRO-SE proposes the following be included in Record on Appeal:

- (1) Tr. pp. ~~6-81-12~~
Tr. pp. ~~18-19-14~~
Tr. pp. 229-230
Tr. pp. 235-236
Tr. pp. 257-258
Tr. pp. 288-289
Tr. pp. 319-320
Tr. pp. 331-332
Tr. pp. 369-375
Tr. pp. 394-398
Tr. pp. 411-414
Tr. pp. 464-465
Tr. pp. 466-467
Tr. pp. 468-469
Tr. pp. 469-471
Tr. pp. 472-475

- (2) Indictments

585

neighbor
house

neice
House

PLAY
House

Blows up Gravel
↓ Poms grass

Fence

Ditch

Shoulder of Road

GRAVEL

Ditch

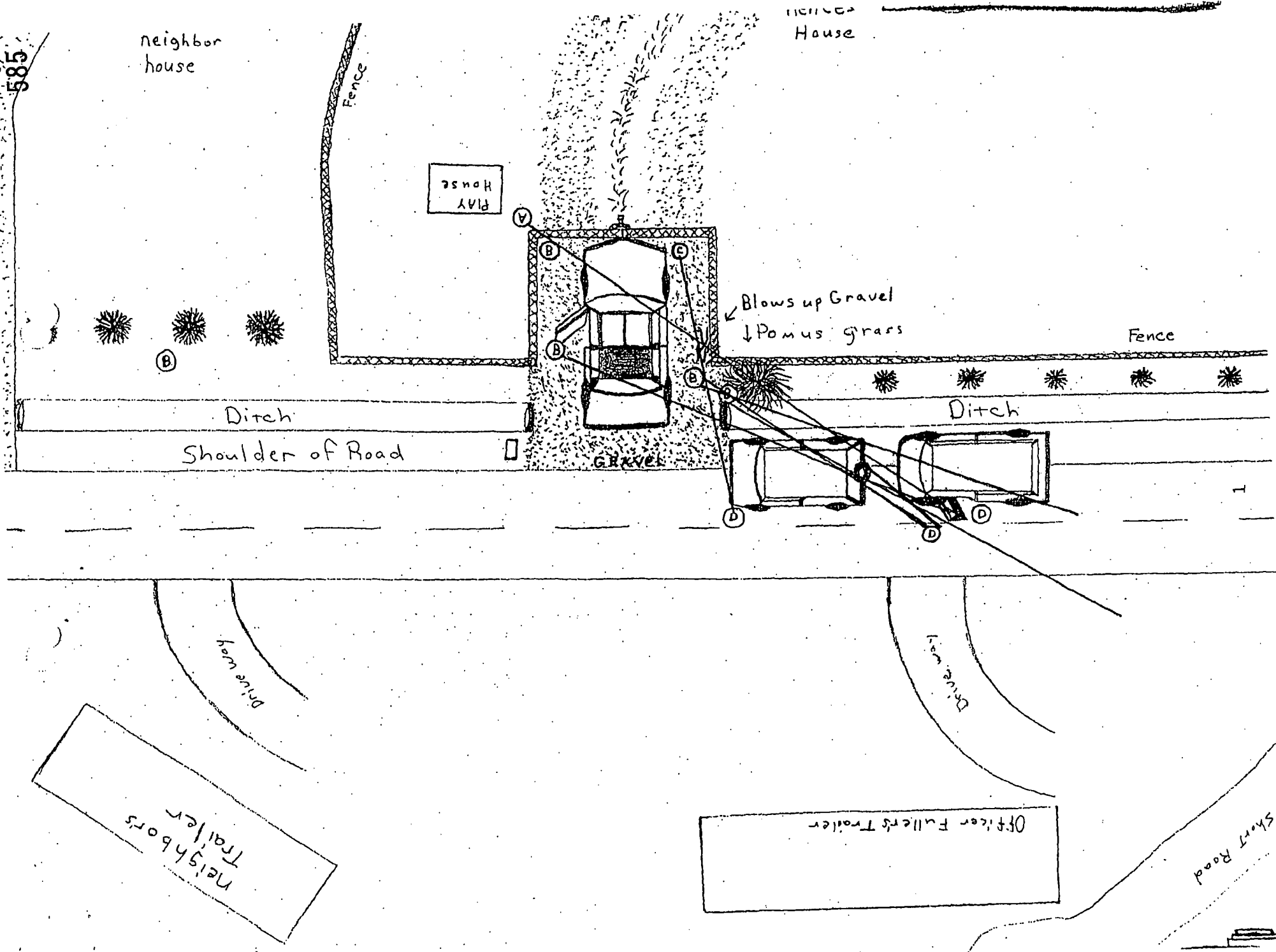
Drive way

Neighbors
Trailer

Officer Fuller's Trailer

Drive way

Short Road



EXPLANATION OF DIAGRAM

A-Renee Billadeau, talking to -B- Robert Earle Ricketts, (See Tr. Pg. 409, Lines 9-15.)

B-When the shooting starts goes to his car, when he opened his car door gets hit in the shoulder, he reaches into his car and got his rifle and ducks down and puts three shells into the rifle, B, then goes around the back of the car and gets hit in the face, Bs, gun goes off and blows up gravel, he ejects and moves toward the pomus grass while D-Dawn Billadeau, is shooting at him and shoots toward the van ejects and shoots again. (See Tr. Pg. 412-414,) D, runs around the Rodeo towards the front and is shooting at B, and hits her sister C, then D, jumps into the Rodeo and goes up the street and comes back and runs over B, then B, runs over to the next door neighbor's yard.

D-Dawn Billadeau, D, shoots through her window at B, hits him as he is trying to leave in the shoulder, when B, came around the car D, shoots again and hits B, in the face in his chin. B, fires back toward the van, (See Tr. Pg. 331-332,) D, run around the Rodeo shooting wild at B, and hits her sister C, who is standing on the right front side of B's car. D, jumps into the Rodeo and goes up the street and tell the neighbor to call 911 her sister had been shot, then comes back and runs over B, and B, runs over to the neighbor's yard. (Note D's testimony page 331 line 18, And he was taking shots at me.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

CLERK FOR ANDERSON COUNTY

THE STATE OF SOUTH CAROLINA)
)
 PLAINTIFF,)
)
 VERSUS)
)
 ROBERT E. RICKETTS, III)
)
 DEFENDANT.)

CERTIFICATE OF SERVICE

Case No. #99-GS-04-1942, 1943;
 1944; 1945

A TRUE COPY

MAY 23 2002

Linda J. Deshields
 CLERK OF COURT

The undersigned appellate hereby certifies that a true copy of the Post Conviction Relief Application has been served upon the Clerk for Anderson County South Carolina Clerk of Court. The Honorable Linda J. Deshields Post Office Box 8002 Anderson South Carolina.

Robert E. Ricketts, III

Robert E. Ricketts, III #261694
 Perry Corr. Inst. Q1A115
 430 Oaklawn Road
 Pelzer, SC 29669

SUBSCRIBED AND SWORN TO before me
 this ~~17~~ day ~~April~~ 2002

8th day of May, 2002

Mary H. McCaker (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/7/2007

COMMON FILES AND
 CRIMINAL SESSIONS

2002 MAY 15 PM 12:05

FILED-CLERK'S OFFICE
 ANDERSON SC

Robert E. Ricketts III #261694
 Perry Corr. Inst. Q1A115
 430 Oaklawn Road
 Pelzer, SC 29669

April 04/17/02

Linda J. Deshields
 Clerk of Court
 Anderson County
 Anderson, SC

A TRUE COPY

MAY 23 2002

Re: Robert E. Ricketts, III v. State of South Carolina
 Case No. #99-GS-04-1942; 1943; 1944; 1945

Dear Clerk :

Enclosed you will find a copy of my Post Conviction Relief Application I am filing in my case. Will you please make a copy and clock stamp it and send back to me for my records.

I am sorry for I have not the funds to make my own copies, and your help will be greatly appreciated.

With kindest regards I am,

Sincerely yours,

Robert E Ricketts III

Robert E. Ricketts, III #261694
 Perry Corr. Inst.

COMMON PLEAS AND
 GENERAL SESSIONS

2002 MAY 15 P 12:05

FILED-CLERK'S OFFICE
 ANDERSON SC

CC RER / file

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2002-CP-04-1544
COUNTY OF ANDERSON	)	
	)	
Robert Earle Ricketts, III	)	
S.C.D.C. No. 261694,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed May 15, 2002, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Anderson County Clerk of Court's orders of commitment. The Anderson County Grand Jury indicted the Applicant at the August 1999 term of General Sessions for Murder (99-GS-04-1945), Assault and Battery with Intent to Kill (99-GS-04-1943), Assault with Intent to Kill (99-GS-04-1944), and Possession of a weapon during the Commission of Violent Crime (99-GS-04-1942). The Applicant was represented on the charges by James L. Goldsmith, Jr., Esquire. On October 14, 1999, the Applicant went to a trial by jury and was found guilty as indicted. The Honorable H. Dean Hall sentenced the Applicant to confinement for a term of life for murder, twenty (20) years consecutive for ABWIK, ten (10) years concurrent for AWIK, and five (5) years concurrent on the weapons conviction.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by

Joseph L. Savitz, III, Esquire. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Ricketts, Op. No. 2002-UP-235 (S.C. Ct. App. filed March 28, 2002).

Attached herewith and incorporated herein by reference are the records of the Anderson County Clerk of Court regarding the subject conviction(s) and the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the relevant records from the Applicant's direct appeal.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel (three specific allegations).

III.

The Respondent asserts the Applicant's allegation that his trial counsel was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment."

Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a evidentiary hearing be convened for the sole purpose of determining whether the Applicant was rendered the effective

assistance of trial counsel.

Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

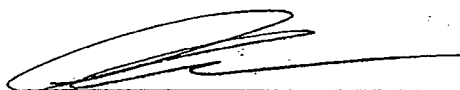
JOHN W. MCINTOSH
Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTOPHER L. NEWTON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for Respondent

Columbia, South Carolina

10-5, 2004

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

)
) IN THE COURT OF COMMON PLEAS
)

2002-CP-04-1544

Robert Earle Ricketts, III, #261694

Applicant,

vs

State of South Carolina,

Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Raymond MacKay
 112 Essex Dr.
 Anderson, SC 29621

DATED this 1st day of November, 2004.


Gianandrea A. Maoli, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	CASE NO: _____
	)	
Robert Earle Ricketts,	)	
Applicant,	)	MEMORANDUM IN SUPPORT OF APPLICATION
	)	FOR POST-CONVICTION RELIEF
v.	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

COMES NOW the Applicant Robert Ricketts, through Counsel, and hereby submits this Memorandum In Support Of Application For Post-Conviction Relief raising the following grounds for relief:

STATEMENT OF FACTS

Applicant Robert Ricketts was charged on June 21, 1990, in Anderson County, State of South Carolina with having committed the crimes of Murder, indictment 99-GS-04-1945, Assault and Battery with Intent To Kill, indictment 99-GS-04-1943, Assault and Battery With Intent to Kill, indictment 99-GS-04-1944, and Possession of a Firearm During the Commission or Attempted Commission Of a Violent Crime, indictment 99-GS-04-1942. All charges arising out of an incident involving Applicant and his wife Renee along with her two sisters Dawn Billadeau and Dee Billadeau. The incident took place at the home of Applicant's wife Renee, and erupted into a gunfight between Applicant and his wife's sister Dawn Billadeau. During the gunfight Applicant's wife Renee was killed, and sister Dee Billadeau was wounded in the leg.

At trial on October 11, 1999, Applicant plead not guilty to all charges and asserted that Dawn Billadeau had in fact accidentally killed Renee during the gunfight. Dawn Billadeau admitted to firing several rounds from a 357 magnum pistol loaded with hollow-point bullets. After a jury trial, Applicant was found guilty to all crimes as charged, and sentenced to serve a life term for the murder of Renee Billadeau, a 20 years consecutive term for the assault and battery with intent to kill of Dee Billadeau, a 10 years concurrent term for the assault and battery with intent to kill of Dawn Billadeau, and a 5 years concurrent term for possession of a firearm.

GENERAL STANDARDS OF REVIEW FOR CLAIMS
OF 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) SCRPC; 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 on 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, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts will presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. 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, 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. also see Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Moreover, when trial counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of counsel. Roseborough v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). However, [C]ounsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness. Roseborough, supra. When counsel articulates a strategy, it is measured against an objective standard of reasonableness. Roseborough, supra. [Emphasis in original].

I. INEFFECTIVE ASSISTANCE FOR FAILURE TO
OBTAIN AN EXPERT WITNESS ON BEHALF OF THE DEFENSE

Applicant's defense at trial to the charge of murdering his estranged wife Renee, was stated by Defense Counsel Goldsmith during his opening statement to the jury....

"The defense will prove that the killer, the person
who fired the fatal shot was her own sister"

See TR. p17 lines 14-15

However when presented with an opportunity to scientifically and conclusively establish that Dawn had in fact fired the killing shot into her sister Renee, Counsel Goldsmith's performance proves grossly deficient. Testimony entered by States witness and firearm experts David Collins revealed that fragments of the bullet or bullets which killed Renee were retrieved from her body during autopsy...

Q. Handing you states exhibit 108. Do you recognize that?

A. Those two vials or bottles contain metal fragments
I received as part of the examination, the bottles
or containers as well as the larger of the two
fragments bear my markings so I could identify
them later.

Q. Those were retrieved from Renee's body at the autopsy?

A. That is what I am lead to believe by the markings
on the bottle, Yes.

See TR p376 lines 5 -13

Those bullet fragments were readily available to both the prosecution and defense, and easily available for purposes of scientific testing. Although firearms expert David Collins was unable to make a microscopic markings comparison from the metal fragments and match it to which weapon actually fired the projectile (See TR. p376 lines 14-25 and p377 lines 1-9), it would have been a simple and scientific process to determine from which of the two weapons (Dawn's 357 pistol or Mr. Rickett's 300 magnum rifle) the metal fragments actually came from.

The police retrieved both Dawn's 357 pistol and Applicant's 300 magnum rifle from the crime scene, along with fired and unfired bullets. (See Exhibits listing of Tr.) From the evidence collected along with the metal fragments retrieved from Renee's body, it would have been a simple matter to demonstrate "scientifically" which weapon actually fired the killing shot into Renee, because each weapon was loaded with bullets containing different and distinguishing metallurgic characteristics. (See Tr.) Dawn's 357 pistol was loaded with soft lead hollow point bullets, whereas Applicant's rifle was loaded with bullets containing both lead and copper. A simple metallurgical composition test on the metal fragments retrieved from Renee's body would have revealed the existence or non existence of copper, thereby conclusively establishing which weapon actually fired the killing shot. A test of this type would have established beyond any doubt who had in fact killed Renee.

Defense Counsel Goldsmith's performance again proves deficient with regards to tape recorder evidence entered at trial. Evidence which in and of itself, could readily establish Applicant's innocence. At trial it was determined that a tape recorder had been found at the crime scene. See trial transcript p.162 lines 17-21 where states witness Cremer stated...

Q. Did you find any recording device on or near her body?

A. Yes. Shortly thereafter we did find a tape recorder. It was just under the playhouse. Just out of sight.

Q. And how far from the body was this?

A. Arms' length.

That the tape recorder contained a cassette recording, that victim Renee had the recorder in her back pocket at the time of the killing, and that it had been recording. Moreover, evidence showed that the recorder had stopped running when Renee fell to the ground after being shot, and that the cassette recording contained the sound of only "one" gunshot. (See Tr.) The shot that killed Renee.

It went undisputed at trial that a 300 magnum rifle when fired makes a different and substantially louder sound than would be made by a 357 pistol such as Dawn possessed. See Trial Transcript p.381 lines 6-12. States witness and firearms expert Collins testified that...

"However, its difficult to quantify sound. Obviously the rifle would typically make a great deal more noise given the same set of circumstance as the revolver. In particular the rifle has a device in the end of the barrel thats referred to as a muzzle break. Muzzle breaks tend to greatly increase the amount of noise that a rifle makes."

Furthermore, testimony entered at trial supported Applicant's claim that Dawn fired the first shot. see Trial Tr. p.229, lines 10-12;

A. I heard what sounded like fireworks, then a real loud boom and then a couple of more fireworks, then a real loud boom again.

and then see Trial Tr. p.237, line 5...

A. Like pow, pow and then boom.

Then at Trial Tr. p.479 lines 16 and 17...

"And he said, "My father did not shoot...My Daddy did not shoot first."

Adequate testimony was presented at trial such that Counsel Goldsmith should have questioned the fact of whether an expert sound technician could have restaged the incident to determine which weapon had actually fired the killing shot recorded on the crime scene tape. Given that only one shot is recorded on the tape, the weapon used in the killing could have been easily determined by sound analysis. [Evidence entered during trial demonstrated that Renee's tape recorder had shut off after being damaged when she fell to the ground after being shot. Hence, the sound of only one shot on the tape.]

Moreover, with the evidence of only a single shot on the tape recording, it would be impossible for Applicant to have killed Renee. According to undisputed trial testimony, Applicant shot Dee first in the leg, before killing Renee. see Trial Tr. p315 line 18-21, Dee's testimony...

"And the gun went off and I fell back against the ground on the gravel against the fence. And I could hear Renee in the background. She said, "Dee, are you okay?" Are you okay?" And the gun went off again. And I didn't see her.

and Dana R. [REDACTED] see Trial Tr. p.79 lines 19-25 and p80, lines 1-7,

A. He went to the passenger side and shot Auntie Dee.

Q. Where did he shoot Auntie dee?

A. In the leg.

Q. What then did your Mother do and what did he do?

A. My Mother saying Auntie Dee...I mean "Dee." And then he turned around and shot her.

Since the tape recording contains the sound of only one shot, trial evidence tended to support Applicant's defense. The fact that Renee was shot second, and only after Dee received her leg wound, raises reasonable and serious doubt as to Applicant's guilt which should have been presented to the jury. Counsel Goldsmith's performance was clearly deficient for not vigorously pursuing this line of questioning. The only conclusion that can be drawn from the crime scene recording is that Dawn accidentally shot her sister Renee, while attempting to kill Applicant. Given that Counsel Goldsmith stated in opening that Applicant's defense would be to prove that Dee killed her own sister, see trial Tr. p.17, lines 14-15, missing such obvious exculpatory evidence in support of Applicant's innocence, demonstrates ineffectiveness.

Therefore, inasmuch as the States expert witness testimony was crucial in this case, it was incumbent upon defense counsel Goldsmith to obtain both a sound analysis technician, and metalologist as expert witnesses to meaningfully challenge the conclusions presented at trial by the State. Especially given the fact that such tests had the potential to conclusively establish Applicant's innocence. The factors that may be valuable tools in accessing the reliability of an experts opinion are whether the reasoning or methodology underlying the expert's opinion has been or could be tested; whether the reasoning or methodology "has been subject to peer review and publication"; the known or potential rate of error, and the level of acceptance of the reasoning or methodology by the relevant professional community. See Westberry v. Gislaved Gummi AB, 170 F.3d 257 (4th Cir. (S.C.) 1999); [Emphasis added].

In this case counsel Goldsmith failed to challenge either the reasoning or methodology underlying the experts opinion both of which could have easily been tested. All that was required of Counsel Goldsmith was to contact, employ and present expert testimony for the defense. Such testimony would have

established reliable evidence demonstrating conclusively who had in fact actually fired the shot killing Renee. The necessary tests were readily available, and easily conducted. Counsel Goldsmith had no valid reason not to conduct the needed tests.

In order to obtain reversal Applicant must show that but for Counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Strickland v. Washington, 466 U.S. 668 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1979). A reasonable probability has been defined by the South Carolina Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. However, when trial counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of counsel. Roseborough v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). On the other hand, counsel may not explain away errors and omissions which acted to prejudice the client's ability to receive a fair trial by simply labeling them matters of trial strategy or tactics. See Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002). See also Roseboro supra and Stokes supra.

In the case at bar no valid trial strategy or reason exists which could explain counsel Goldsmith's deficient performance. At some point in the trial proceedings counsel Goldsmith should have presented a meaningful challenge to the States interpretation of events and evidence. To blindly accept the States case against Applicant without challenge clearly demonstrates a deficient performance by counsel Goldsmith. The fact that Applicant suffered prejudice is clear as well, given that the verdict by the jury still cannot be relied on as speaking the truth. The necessary resources and experts were available to establish Applicants innocence beyond any doubt, yet counsel Goldsmith chose not to employ them.

Therefore, for the foregoing reasons this court should find Counsel Goldsmith rendered ineffective assistance of counsel. See Strickland, supra; Judge supra; and Johnson supra.

II. INEFFECTIVE ASSISTANCE FOR FAILING TO OBJECT
TO STATE'S PROFFER OF FORENSIC EXPERTS TESTIMONY
THAT INVADED THE PROVINCE OF THE JURY

During the State's direct examination of its forensic pathologist, Dr. Woodard, the solicitor proffered the following testimony:

Q: Were you able to determine whether or not this was a wound that would be more consistent, more consistent with a pistol such as a 357, or more consistent with a high-powered rifle such as a winchester magnum?

A: This was a wound "that would have to be produced by a winchester magnum..."

(Tr. p.251, lines 15-22) emphasis added

It should be a judicially noted fact here that Dr. Woodard, without any objection from defense Counsel or request for curative instructions, opined that the Applicant's "winchester rifle actually caused his wife's death and her sister's wound", to the exclusion of Dawn's 357 magnum pistol. It should also be noted that the State's firearm expert testified that he could find no reliable evidence to indicate that bullets from Applicant's winchester rifle killed and wounded the victims. (Tr. p.382, lines 6-15). Evidence at trial also established that Dawn was firing her 357 pistol wildly in the direction of Applicant and Renee, the victim. (Tr. p.331, lines 15-19).

As a result, the proffer of this opinion impermissibly invaded the province of the jury whose function was to determine the ultimate issue of fact as to whether or not Applicant's rifle "actually caused" the victims injuries. A properly qualified expert witness may state his opinion as to the nature, cause and effect of a wound or injury, and the manner and means by which the injury could have been inflicted; he may state what kind of weapon or instrument "could have caused a particular wound, but not whether that weapon 'actually caused' the wound." Bell v. State, 435 So.2d 772 (Ct. App.).

Further, expert testimony should not be permitted if it concerns a subject improper for expert testimony, one that invades the province of the jury. Accordingly, an expert witness may not pass on the weight or credibility

of the evidence, for those matters are clearly within the province of the jury. U.S. v. Binder, 769 F.2d 595 (C.A.9). Additionally, when inference or conclusion are so obvious that they could be as easily drawn from the evidence by the jury as by the expert, the expert testimony regarding such inference is inadmissible. State v. Polard, 698 F.2d 183. affirmed 106 S.Ct. 1749, 476 U.S. 147, 90 L.E.2d 123.

A medical examiner may describe the type and nature of a wound suffered, physical and medical causes of death, tests conducted during his examination and answer hypothetical questions based on the evidence, but he may not opinion about the manner of death because that is a fact finding function of the jury. State v. Jackson, 298 S.E.2d 866.

In conjunction, the S.C. Supreme Court has adhered to the axiomatic principle delineated in Bell, Binder, Pollard, and Jackson, infra, by holding that the general rule is that opinion evidence by an expert witness which is determinative of the ultimate fact in issue should be excluded as an invasion of the province of the factfinders. See State v. Blurton, 537 S.E.2d 291 (S.C. App. 2002); State v. Ellis, 547 S.E.2d 490 (S.C. 2001); State v. McConnell, 449 S.E.2d 789 (S.C.App. 1997); State v. Wilkins, 407 S.E.2d 670 (S.C.App. 1997).

In sum, the State's proffer of expert opinion invaded the province of the jury and constituted a "structural defect" that affected the framework within which the trial took place, and involved basic protections provided under the 6th and 14th Amendments of the United States and South Carolina Constitutions, without which no criminal trial can reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair. See e.g. In re Winship, 379 U.S. 358, 90 S.C. 1068 (1970) and Arizona v. Fulminate, 111 S.Ct. 1246, 1264-65 (1991).

Therefore, as tested by prevailing law, counsel's failure to object to the State's proffer of expert testimony that invaded the province of the jury, and/or failure to request immediate curative instructions, regarding the ultimate issue of fact as to whether or not Applicant's weapon "actually caused" the victim's injuries, constituted ineffective assistance of trial counsel that was both prejudicial to Applicant's defense, and violation of his fundamental right to a fair trial. See Strickland, Supra; and Fulminate, infra.

CONCLUSION

For the foregoing reasons this Court should find that trial Counsel Goldsmith rendered ineffective assistance of counsel.

Respectfully submitted,

Robert E. Ricketts
Applicant

Dated this 9 day of March 2005,
Pelzer, South Carolina

Robert E. Ricketts

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2004-CP-04-3387
	)	
Robert Earle Ricketts, III,	)	
	)	
Plaintiff,	)	
vs.	)	MOTION FOR ORDER
	)	ALLOWING TESTING OF
State of South Carolina,	)	CERTAIN EVIDENTIARY ITEMS
	)	
Defendant.	)	
	)	

TO: DANIEL E. GRIGG, ASSISTANT ATTORNEY GENERAL FOR
THE STATE OF SOUTH CAROLINA

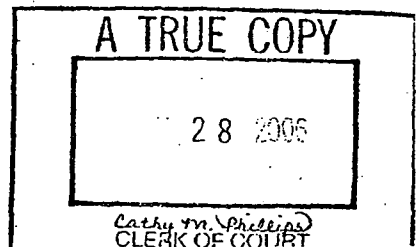
PLEASE TAKE NOTICE that the Applicant, by and through his undersigned attorney, hereby moves for an Order of this Court allowing the items described in the attached Affidavit of Raymond E. MacKay to be released for non-destructive metallurgical testing by the Applicant to support his claims contained in his Post-Conviction Relief application.

Further the Applicant would show the Court:

That the Applicant has arranged for these items to be tested by Ara Nalbandian, PE, Vice President, Thielsch Engineering, Inc., 195 Frances Avenue, Cranston, RI 02910, and has previously submitted a Consent Order to the Attorney General's Office, who has refused to consent to said testing; and

That as a result of this refusal, the Applicant has been forced to file this Motion;

That the Applicant was in a position to be ready for this matter to be heard at the scheduled term of Court for the week of June 26, 2006, but instead the Applicant is forced to request an order of this Court permitting the testing and will no longer be prepared for trial for said term of court; and

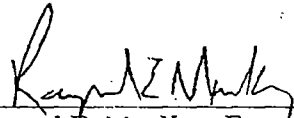


That a copy of the findings will be sent to the Assistant Attorney General and the Solicitor's Office upon receipt;

That the Applicant has requested a continuance from this term of Court to the next term of Court to allow for the testing; and

This Motion is based on applicable case law and South Carolina Rules of Civil Procedure.

I SO MOVE:



Raymond E. MacKay, Esq.
112 Essex Drive
Anderson, SC 29621
864-226-6132

Attorney for Plaintiff

Anderson, South Carolina
June 26 2006

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
CASE NO.: 2004-CP-04-3387

Robert Earle Ricketts, III,)

Plaintiff,)

vs.)

AFFIDAVIT

State of South Carolina,)

Defendant.)

NOW COMES Raymond E. MacKay, attorney for Robert Earle Ricketts, III, who being duly sworn states:

1. That he is the Attorney for the Plaintiff in the above-referenced Post-Conviction Relief matter;

2. That, in order to provide proper representation for Plaintiff in this PCR matter, certain items entered into evidence on October 11, 1999, in the hearing on The State of South Carolina v. Robert Earle Ricketts, III, Case Nos. 99-GS-04-1942; 1943; 1944; and 1945, need to be released for further testing and analysis;

3. That the evidentiary items to be tested are the following:

- a. State's 108 Bullets from autopsy
- b. State's 115 Four unfired 35 ___ Federal brand) - "...from Taurus" (NOTE: description not complete on faxed copy)
- c. State's 122 Live round from ditch
- d. State's 123 Live rounds
- e. State's 124 Spent rounds
- f. State's 125 Spent round
- g. State's 126 Spent round
- h. State's 127 Live round from pants
- i. State's 128 Live round from scene
- j. Unknown No. SLED's Item 12 One unfired 38 Special (+) caliber cartridge (Federal brand) contained in State's evidence

A TRUE COPY

28 2006

Cathy M. Phillips
CLERK OF COURT

4. That the following items to be tested are in the custody of the Sheriff's Office:

- a. SLED Item 33 - One Winchester factory ammunition box containing five unfired 300 Winchester Magnum caliber cartridges (three Winchester brand and two Hornady "Frontier" brand) and two unfired 7mm Remington Magnum caliber cartridges (Hornady "Frontier" brand) - box is labeled "Winchester Ballistic Silvertip 300 Win. Mag. 180 gr." - from "...bedroom closet Jean Ave..."
- b. SLED Item 33.1 - One unfired 300 Winchester Magnum caliber cartridge (Winchester brand) - "...bearing ridge detail"
- c. SLED Item 53 - One Hornady factory ammunition box containing six unfired 7mm Remington Magnum caliber cartridges (Hornady "Frontier" brand) - box is labeled "Hornady Custom 300 Win. Mag. Boat Tail Spire Point 165 gr. Interlock Bullet"
- d. SLED Item 54 - One fired bullet - from envelope labeled "99-32217, Malicious destruction, 406 Hamby Rd., Starr, SC"

5. That the firm of Thielsch Engineering, Inc. or Cranston, Rhode Island, has been retained to perform metallurgical testing on the above listed items;

6. That the firm will specifically check the alloy material of the above listed items by use of an electro microscope scan;

7. That this test will be a non-destructive analysis;

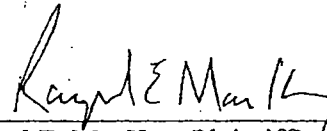
8. That should this test unavoidably cause harm to any of the items, the Plaintiff and the undersigned attorney hereby state that they will not use this mishap as a defense against the State in further representation of this matter;

9. That the results of this analysis and testing of said evidentiary items will be furnished to the Attorney General's office and to the Solicitor's Office of Anderson County;

10. That the Attorney General's office does not agree to the release of these items;

11. That the Solicitor's office does not agree to the release of these items.

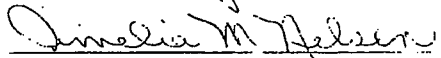
FURTHER AFFIANT SAYETH NOT.



Raymond E. MacKay, Plaintiff's Attorney

SWORN TO BEFORE ME THIS

26th day of June, 2006



Notary Public for South Carolina

My commission Expires: 6/18/2008

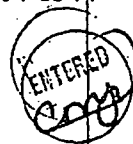
STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

Robert Earle Ricketts, III,)
Plaintiff,)
vs.)
State of South Carolina,)
Defendant.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
CASE NO.: 2002-CP-04-1544

A TRUE COPY

MAY 21 2013



Robert E. Ricketts
CLERK OF COURT

ORDER ALLOWING TESTING OF
CERTAIN EVIDENTIARY ITEMS

FILED - CLERK'S OFFICE
ANDERSON SC
JAN 23 A 10:02
COMMON PLEAS AND
JUDICIAL SESSIONS

THIS MATTER came to be heard before the Court on August 16, 2006, on motion of Raymond E. MacKay, Attorney for the Plaintiff in the above-entitled action, wherein Attorney Raymond E. MacKay seeks to have certain evidence that was collected in this matter by SLED to be released for testing;

AND, WHEREAS Raymond E. MacKay has made his Affidavit describing the items that are to be released for a non-destructive metallurgical test as follows:

Evidentiary evidence to be released by the Anderson County Clerk of Court:

1. State's 108 Bullets from autopsy
2. State's 114 Ruger pistol (bullets only needed)
3. State's 123 Live rounds

That the evidence is to be released to Thielsch Engineering, Inc., Attn: Ara Nalbandian, PE, Vice President, 195 Frances Avenue, Cranston, RI 02910;

That the analysis is non-destructive and evidence will be returned in its original condition to the respective parties;

That a copy of the report of findings will be sent to the Assistant Attorney General Daniel E. Grigg and the Anderson County Solicitor's Office upon receipt; and

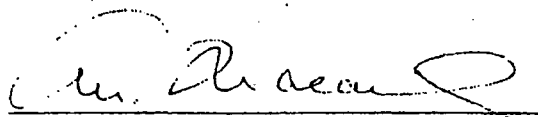
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

That the Anderson County Clerk of Court and the Anderson County Sheriff's Department package as soon as possible their respective items in possession as described above and send to Thielsch Engineering, Inc., Attn: Ara Nalbandian, PE, Vice President, 195 Frances Avenue, Cranston, RI 02910;

1-62
[Signature]

That Raymond E. MacKay forwards a copy of the findings of the test to the Assistant Attorney General Daniel E. Grigg and the Anderson County Solicitor's Office.

IT IS SO ORDERED.


CIRCUIT COURT JUDGE
TENTH JUDICIAL CIRCUIT

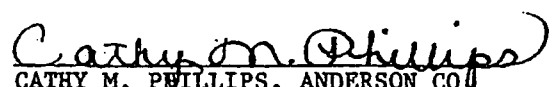
Anderson, South Carolina

Dated: July 22, 2008

EVIDENCE IN ORDER PREPARED AND PACKAGED IN THE PRESENCE OF

KATHY RIVAS, REPRESENTATIVE FROM ATTY. RAYMOND

MACKAY'S OFFICE, THIS 23rd DAY OF JANUARY, 2008.


CATHY M. PHILLIPS, ANDERSON CO
CLERK OF COURT

I WITNESSED CATHY M. PHILLIPS, PACKAGE
THE WITHIN EVIDENCE THIS 23rd DAY OF JANUARY, 2008.


KATHY RIVAS
REP. OF ATTY. RAYMOND MACKAY'S OFFICE

FILED - CLERK'S OFFICE
ANDERSON SC
2008 JAN 23 A 10:02
COMMON PLEAS AND
GENERAL SESSIONS

2.62

STATE OF SOUTH CAROLINA	)	IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	THE COURT OF GENERAL SESSIONS
	)	2002-CP-04-01544
ROBERT EARLS RICKETTS,	)	
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	DATE: JUNE 15, 2010
DEFENDANT.	)	ANDERSON, SOUTH CAROLINA

POST CONVICTION RELIEF HEARING

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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

RAYMOND MACKAY, ESQUIRE
ATTORNEY FOR THE APPLICANT

A. WEST LEE, ESQUIRE
ATTORNEY FOR THE STATE

PROVIDED FOR: SCCID

FOR COPIES CONTACT: JO RICE
jrice@sccourts.ORG
OFFICIAL COURT REPORTER
SOUTH CAROLINA JUDICIAL DEPARTMENT

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1 MR. LEE: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. LEE: Your Honor, this is Robert Earle Ricketts
4 versus The State of South Carolina, 2002-CP-04-1544. It
5 comes to the Court by way of application for post-
6 conviction relief filed April 15, 2002.

7 The Applicant was indicted by the Anderson County
8 Grand Jury during the August 1999 term, for: Murder,
9 assault and battery with intent to kill, another assault
10 with intent to kill, and possession of a weapon during the
11 commission of a violent crime. The Applicant was
12 represented on those charges by Mr. James Goldsmith and on
13 October 14, 1999, the Applicant went to trial by jury and
14 was found guilty as indicted. He was sentenced by The
15 Honorable Dean Hall to be confined for a period of life for
16 the murder charge, twenty years to run consecutively for
17 the assault and battery with intent to kill, ten years to
18 be run concurrent for the assault with intent to kill and
19 five years concurrent on the weapons conviction.

20 Timely notice of appeal was filed on the Applicant's
21 behalf and it was perfected and The South Carolina Court of
22 Appeals subsequently dismissed that appeal.

23 In his current application for post-conviction relief,
24 the Applicant alleges he is being held in custody
25 unlawfully for ineffective assistance of trial counsel. At

1 this time, the State would move for a continuance.

2 Just a little more procedural history here. There
3 have been, by my count, eight total continuances in this
4 case, six of them at the Applicant's Attorney's request and
5 all of those were surrounding evidentiary testing which was
6 granted by this court at previous hearings. That was
7 forensic evidentiary testimony and an expert's
8 unavailability are where six of the continuances came from
9 and then one, the State requested. It was accidentally put
10 on the roster in 2006 and taken off before the Applicant
11 was transported. The other one was due to an uncompleted
12 transcript and both parties requested a continuance there.

13 The reason the State is requesting the continuance
14 today is, Mr. Goldsmith is actually in North Carolina now
15 and Mr. MacKay has informed me, he believes he's been
16 disbarred in South Carolina, but he does have a practice in
17 North Carolina. In our earlier attempts to serve him, it
18 looks like we had been successful until he moved to a new
19 location. It looks like the newest subpoena that was sent
20 to him was sent to an incorrect address in that it was sent
21 back to us "not deliverable as addressed," and the number
22 that we had for Mr. Goldsmith was a disconnected number.

23 Today, when I realized that Mr. Goldsmith was not in
24 the courtroom, I began hastily searching through the file
25 and way back under a stack of papers, I found a fax in

1 which his, I guess, his most current number is listed.
2 That was a fax from 2006 and I was able to get in touch
3 with his office and left a message there, but again, the
4 subpoena was sent to the wrong place and the number that we
5 had was originally incorrect. In that fax sent by Mr.
6 Goldsmith, he did express his intention to be here. Of
7 course, that was in 2006, but it seems to the State that he
8 is not intentionally not being here, so at this time the
9 State would request a continuance in the matter.

10 THE COURT: What is your position?

11 MR. MACKAY: Your Honor, we oppose their request.
12 There is a procedure in the code for serving civil
13 subpoenas out-of-state that was not even done in this case.
14 He's under no subpoena to be here. The State didn't elect
15 to subpoena him. It's the first we've heard of it.

16 The other continuances we have had to ask for had to
17 do with, of course, after asking the Court's permission to
18 get a forensic expert involved in the case, which we did,
19 and then as a result of trying to get a deposition and the
20 Court's use of that deposition. We have done that by
21 agreement of the parties and we are ready to go forward
22 with Petitioner's testimony and a proffer of the expert
23 forensic guy's deposition.

24 Mr. Goldsmith, as we said, the State has not really
25 protected their position in this case. If they wanted him

1 here and they were doing it by voluntary means or by
2 voluntary compliance, then they dropped the ball on that.
3 They have certainly not gone through the procedure to
4 protect themselves.

5 THE COURT: All right. Well, let me say this: In all
6 these cases we have, not just the ones involved in this
7 particular PCR, but in all PCRs we've had, they are either
8 from the State or from the Applicant and it's usually the
9 Applicant that asks for a continuance based on the
10 unavailability of a material witness to the proceeding,
11 I've granted that for the sake of everybody having a full
12 and fair opportunity to be heard. I will do one of two
13 things in this case. I will grant the motion for a
14 continuance or we can proceed with the hearing and then let
15 you go take the deposition of the attorney. It seems to me
16 that earlier in the week we went ahead and continued it
17 because it was a similar case and it's just cleaner that
18 way and we don't have to bifurcate a hearing, but do you
19 have a feeling one way or the other?

20 MR. MACKAY: Yes, sir. I'd like to proceed now that
21 we've gotten the Defendant here, we've completed our
22 discovery and we're ready to present it. It won't take
23 more than thirty minutes for us to put our case up. You'll
24 have to take it under advisement anyway to review it. To
25 me, I've been in it for, I don't know, six years now and to

1 me it's very simple, but I know Your Honor has a number of
2 cases and will probably want to review this one and while
3 you're doing that, we can arrange a time period to present
4 to him for deposition or come back for further testimony at
5 a later date. It doesn't matter to me, but I'd like to get
6 the thing before the Court.

7 THE COURT: What are your feelings on it, Mr. Lee?

8 MR. LEE: Your Honor, I don't think the State is
9 unduly prejudiced in either case. It is totally at the
10 discretion of Your Honor.

11 THE COURT: Say that again?

12 MR. LEE: We would just submit to Your Honor's
13 discretion in this matter. I don't feel like the State is
14 unduly prejudiced in either scenario, either continuing it
15 or going ahead.

16 THE COURT: Well, I'll tell you what, we'll go ahead
17 and take testimony as it is and I will retain jurisdiction
18 of the case and you'll just have to wait until it comes
19 back before me. Earlier in the week, my rationale for not
20 doing that was that I thought the case might be disposed of
21 sooner than later, but if you want to go ahead and take
22 some testimony now, I'll be glad to do it. I'll just keep
23 the case and we'll do it another day. That way, just so
24 the record is clear, Mr. Lee, either you'll need to take
25 his de bene esse deposition, Mr. Goldsmith's, or have him

1 available here for the hearing. Okay, sir?

2 MR. LEE: Yes, Your Honor.

3 MR. MACKAY: And if we could put some kind of time out
4 there. I don't know if three months, but some kind of time
5 period.

6 THE COURT: Well, that will depend on my schedule.
7 This seems to have been going on for quite some time and so
8 I don't think a few more months is going to make that much
9 of a difference, but if you want to go ahead and call your
10 first witness, Mr. MacKay.

11 MR. MACKAY: We'd call Mr. Ricketts, please.

12 CLERK OF COURT: Mr. Ricketts, if you would please
13 come forward to be sworn.

14 ROBERT EARL RICKETTS, after being duly sworn by the
15 Clerk of Court, testified as follows:

16 THE COURT: Mr. MacKay, before you get started, the
17 grounds that I have written, from what Mr. Lee said is,
18 ineffective assistance of counsel. Is that correct?

19 MR. MACKAY: Yes, sir.

20 THE COURT: Does he have any other grounds? I know,
21 and this is for the record, any and all grounds asserted
22 in his application would be before the Court, but just so I
23 can have a quick glance, is there anything besides
24 ineffective assistance?

25 MR. MACKAY: No, sir.

ROBERT EARL RICKETTS VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 9

1 THE COURT: Okay. Under that heading, what are your
2 allegations?

3 MR. MACKAY: The allegations will revolve around the
4 defense counsel's failure to develop a defense that Mr.
5 Ricketts did not actually shoot either of the victims in
6 this case, that a third party on the scene, the sister of
7 the murder victim, actually shot and killed her sister as
8 well as her other sister, wounding her. There was no
9 forensic evidence at trial. That speaks for itself in that
10 respect, but the major defense at trial, it was that he
11 didn't shoot the two victims. So, our allegations are that
12 the defense counsel did not properly develop those defenses
13 and do what he could have done to properly present the
14 case.

15 THE COURT: So, essentially, in a broad sense, that's
16 failure to properly investigate?

17 MR. MACKAY: Yes, sir.

18 THE COURT: All right. Go ahead.

19 MR. MACKAY: All right, sir.

20 DIRECT EXAMINATION

21 BY MR. MACKAY:

22 Q State your full name, please, Robert.

23 A Robert Earl Ricketts.

24 Q Where are you from, originally, Robert?

25 A Star, South Carolina. Anderson County.

ROBERT EARL RICKETTS VERSUS THE STATE OF SOUTH CAROLINA

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 10

1 Q All right. And you, what have you done before you
2 were incarcerated to make a living?

3 A I was disabled at the time. I had a back injury. I
4 worked at Coca-Cola and I had a machine fall on me and
5 tear some discs out of the bottom of my back, so I had
6 been out of work for quite a while.

7 Q All right. How old are you now?

8 A I am fifty-one.

9 Q All right. And this shooting occurred back in 1999.
10 Is that right?

11 A Yes, sir.

12 Q All right. So, you were approximately forty at the
13 time?

14 A Thirty-nine.

15 Q Thirty-nine?

16 A Fixing to be forty at the time.

17 Q All right. And you were married to the victim in this
18 case. Is that right?

19 A Yes, sir.

20 Q And what's her name?

21 A Her name's Renee Villadoe.

22 Q Renee Villadoe?

23 A Uh-huh.

24 Q All right. And where did y'all live?

25 A We lived at [REDACTED], in Star.

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 11

1 Q At the time that she was shot and killed, were you
2 living together or were you separated?

3 A We were separated. I moved out. I had been moved out
4 for about two or three weeks.

5 Q Had you gone to Family Court yet?

6 A No, sir.

7 Q All right. So, there was no court order ---

8 A No, sir.

9 Q --- in the matter. All right. So ---

10 A We had planned on getting back together. We had been
11 talking and she wanted me to come back and I was going
12 to go back home.

13 Q All right. Now, you, on the date your wife was shot,
14 tell me how you came to arrive at her house.

15 A She made a phone call to my house and left a message
16 that -- it was a pretty bad message. It threatened
17 me, saying she was going to have somebody to shoot me.
18 She had got mad because this young girl was coming
19 over to the house and there wasn't nothing going on
20 there, but she thought that there was and that's how
21 she got upset and got mad about it and told me to come
22 down there and I shouldn't of went, but I did.

23 Q All right. Now, my records show that that day when
24 you went down there and your wife was shot, was June
25 21, 1999. Is that right?

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 12

1 A That's right.

2 Q Okay. And so, you went down there. Did you have a
3 weapon with you?

4 A Yes, sir. I had a .300 Magnum deer rifle. I was
5 going by White Jones to get a synthetic stock put on
6 it. It was all scratched up and beat up and so I had
7 that. Usually, I carry a pistol or something like
8 that, but I just had that rifle at the time.

9 Q No pistols?

10 A No pistols.

11 Q What kind of vehicle?

12 A It was a '82 Iroc Camaro.

13 Q So, you arrived there. You had the weapon. Did you
14 have bullets with it?

15 A I had a box in the console.

16 Q And you had bullets in the rifle itself?

17 A No. I put them in after I got shot. When I got shot
18 in the shoulder, I got back in the Camaro and got the
19 bullets and loaded it as fast as I could.

20 Q All right. Let's back up before the shooting
21 occurred. You arrived there. Was anyone else there
22 at your wife's house?

23 A There wasn't nobody there at the time. Me and her was
24 talking and at first she was kind of ---

25 Q Stop there. Where were you talking?

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 13

1 A She was inside the fence and I was outside. She had
2 the fence locked. I had a fence put up around my
3 house.

4 Q So, you were in the yard?

5 A Yeah.

6 Q Okay. You didn't bring your car into the yard, it was
7 outside the fence?

8 A Yes, sir. I had it outside the fence. She told me to
9 get out and talk to her.

10 Q How did she know you had arrived? Was she already
11 outside?

12 A Yeah, she was walking on the porch when I drove up and
13 all my kids and stuff run out and then they all went
14 back into the house. I didn't know what they were
15 going back into the house for, but she put a recorder
16 in her back pocket, because somebody had shot at the
17 house and she was trying to get me to say I done it
18 and I had never been over there.

19 Q All right. So, there were kids in the house.

20 A Yes, sir.

21 Q How many?

22 A Four.

23 Q Were they your children?

24 A Yes, sir.

25 Q All right. Anyone else?

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 14

1 A That was it.

2 Q All right. So, your wife is or has or at that time
3 had two sisters. Correct?

4 A That's right.

5 Q And what were their names?

6 A Dee and Dawn Villadoe.

7 Q All right. Dee and Dawn.

8 A Yes, sir. They's twins.

9 Q I'm sorry?

10 A They's twins.

11 Q All right. How old are they?

12 A I'm not sure.

13 Q At the time, do you know?

14 A I'm going to say around twenty-two, somewhere along in
15 there.

16 Q All right. So, you arrived and your wife came to the
17 fence and y'all started talking. What happened after
18 that?

19 A Well, we got to talking and I told her, I said, "We
20 need to get along for the kid's sake. You know, we
21 don't need to be arguing in front of them," because
22 the kids come over to my house all the time. They've
23 just always been with me and I was telling her, you
24 know, they don't need to see all the arguing and
25 fussing. That was the main reason I moved out,

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 15

1 because I didn't want them to see that.

2 Q All right. What happened next?

3 A A van pulled up, a white van, like a Izuzu, I think it
4 was, and then a truck pulled up and the van had real
5 dark tinted windows. I couldn't tell who was in it
6 and then when I come around the back of the Camaro,
7 that's when I got hit in the shoulder and I go back to
8 get my gun.

9 Q You got hit from a bullet from where?

10 A They said it come through, they shot through the
11 window of the van, but I'm not sure.

12 Q Did you ever determine who shot you?

13 A I don -- I figured it was Dawn, I wasn't sure. Then I
14 looked and I heard a couple more shots. I could hear
15 one go by my head and I looked and seen her with the
16 door open.

17 Q Where was your wife when you could hear those bullets
18 going by your head?

19 A She was right behind me and Dee, her other sister, had
20 got out of the vehicle. She was talking to my wife
21 and so they was both right behind me. That's why I
22 said they got hit in the crossfire. You could hear a
23 lot of shots.

24 Q Did you contend at the trial that your wife was hit
25 and that Dawn, her sister, was hit by bullets coming

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 16

1 from that van?

2 A Yes, sir. That's what I said because I knowed I
3 didn't hit them. I told my lawyer, I said, "Have
4 those bullets tested because they won't match my
5 rifle." I know it couldn't match my rifle.

6 Q All right. Are you talking about you told Mr.
7 Goldsmith to do that?

8 A Yes, sir. I asked him, I told him, I said, "We need
9 experts to get them bullets and test them, because I
10 knowed they weren't going to come back to my rifle."

11 Q When did you tell him that was the case?

12 A When he come to talk to me at the county jail.

13 Q Who hired him for you?

14 A I did. I don't know how he got my name. I'm not
15 sure. He come up there to talk to me.

16 Q All right. Payments that were made to him, who made
17 those?

18 A My Mom. I gave her, what do they call it when they
19 get your money out of the bank?

20 Q Did you give her a power of attorney?

21 A That's right. Yes, sir. The power of attorney, so
22 she paid some for the lawyer.

23 Q How much did she pay him?

24 A I want to say she paid him around \$5000.00 or \$6000.00
25 and he come and told me after the trial was over, if I

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 17

1 give him the Camaro and stuff we'd call it even and so
2 I gave him the title to the car.

3 Q All right. And so, how much time did you have prior
4 to trial from the time he was hired to going to trial?

5 A I went to trial like five months after. He said we'd
6 have a speedy trial because it ain't no use for me
7 sitting in jail, because if the bullets didn't match,
8 I'd be going to the house.

9 Q How did he know the bullets didn't match?

10 A I don't know how he found out, but he sent word to me
11 that they didn't match. I knew that was going to
12 happen anyway.

13 Q Well, the State acted like the bullets matched. Did
14 they not?

15 A You know, I don't remember what they said. It's been
16 eleven years ago. I don't recall.

17 Q You were tried for actually shooting your wife with
18 your rifle.

19 A Yes, sir.

20 Q You were tried for shooting her sister with your
21 rifle.

22 A Yes, sir.

23 Q And a SLED expert got up there and testified during
24 your trial. Correct?

25 A That's correct. He said they didn't match.

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 18

1 Q Or did he say he couldn't tell?

2 A I don't recall.

3 Q All right. Did your, did the question of who shot
4 your wife and your sister-in-law revolve around the
5 angles of the bullets and the trajectories and things
6 of that nature?

7 A I can't remember exactly how my lawyer did it, he -- I
8 can't remember exactly what he had to say.

9 Q All right. Did your lawyer ever send the evidence or
10 ask that the evidence be evaluated by a forensic
11 expert for your case?

12 A No, sir. I asked him to do that and he said he was,
13 but he never did. Now, I asked him why he didn't do
14 it and he said, "We don't need it. You're going to
15 the house. We don't need that". And I asked him
16 about firing the firearm and letting the jury hear the
17 difference in them because my next door neighbor
18 testified for me that she heard a pop, pop, pop and
19 then a loud boom," and they had their expert get up
20 there and say that you couldn't tell the difference
21 between a .357 Magnum and a rifle when it fired.
22 That's what they was saying. If they had of done
23 that, it would have proved it right there, because I
24 had a bottle system on the end of my rifle and it
25 makes the rifle not kick as bad, but it will make them

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 19

1 real, real loud. It was a real, real loud gun, so
2 that would have proved it right there.

3 Q All right. Now, the audiotape that was in her back
4 pocket, did it record the loud boom?

5 A It recorded one shot, the first shot. I thought they
6 would be able to tell, but it went off after the first
7 shot.

8 Q So, it didn't hear but one shot?

9 A Yes, sir.

10 Q All right.

11 A It wasn't no loud boom, it was a pop.

12 Q So, your defense was that was a pop from a .357 ---

13 A Yes, sir.

14 Q --- that shot your wife and she fell and the tape
15 recorder stopped.

16 A Yes, sir. Her sister told me at trial that she was
17 shooting wildly, that she was shooting wild, like two
18 shots from the van. I don't know because I didn't see
19 it.

20 Q Who was shooting a .357?

21 A Dawn.

22 Q Dawn was?

23 A Yes.

24 Q So, it was the sister Dee that was hit?

25 A Yeah. Hit her in the leg and hit my wife in the side.

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 20

1 Q All right. Were any bullet fragments pulled from the
2 sister, Dee?

3 A I don't think they pulled any from her. They said
4 they got some from my wife and that was another thing.
5 I told him, a rifle like mine, if she got hit with it,
6 they wouldn't find no bullets because they would go
7 through anything. It would go through the block of an
8 engine of a car, so nothing won't stop that bullet,
9 especially as small as she was. She didn't weigh but
10 like a hundred and three pounds. But a rifle like
11 that would have did a lot more damage and you never
12 would have found no bullet.

13 Q But your testimony was, she was behind you with her
14 sister Dee when Dawn started firing.

15 A That's right. When she fired, both of them was right
16 behind me. That's what I'm saying. When I looked, I
17 heard a few pops and when I looked, my wife was laying
18 on the ground and I thought she was just covering,
19 laying on the ground, you know, covering up, you know,
20 from the gunfire. I didn't even realize she had been
21 hit.

22 Q Well, did you then fire your weapon?

23 A Yeah. I fired my weapon back towards Dawn that was
24 shooting, but I didn't hit her.

25 Q How many times, do you remember?

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 21

1 A I shot three times. The first time, when I got hit,
2 my rifle actually went off towards the ground. We had
3 gravel on the driveway and I could see rocks flying
4 every which way. I had like a hair trigger on there.
5 When I got hit, it went off and hit the ground and I
6 shot two times at Dawn and hit the windshield and it
7 didn't hit her.

8 Q So, you shot only after Dawn shot you?

9 A That's right.

10 Q Do you have any idea why Dawn shot at you?

11 A She just never liked me. I was with my wife twenty
12 years and she just never liked me.

13 Q Were you and your wife having a heated discussion at
14 that point in time?

15 A No, we had done got everything cleared up. Like I
16 said, I told her we had to get along for the kid's
17 sake and we had been talking about going back
18 together.

19 Q Do you know what brought Dawn to that scene?

20 A When she called me and we was talking on the phone, I
21 hung up the phone and when I was coming down there,
22 she was talking to Dawn on the phone ---

23 Q Stop just a minute. You said, "When she was talking
24 to me on the phone," you are talking about your wife?

25 A Yes, sir.

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 22

1 Q All right. You've got to identify all these people.

2 A Okay. And when I was going down to my wife's house,
3 they said Dawn had called over there talking to my
4 wife and she said, "Bobby's coming over," and so I
5 don't know. Her and Dee started over and she got
6 about half way, she give testimony, she got about half
7 way and she said, "I forgot my gun. I'm going to go
8 back and get my gun in case there's trouble over
9 there," so she goes back home and gets her gun and
10 comes over there and I don't know why she had got that
11 in her head, but she had been angry before, but she
12 was really angry that day.

13 Q All right. So, basically, what I'm hearing is that
14 your defense centered around the position of people at
15 the time the shooting began and that Dawn started
16 shooting first.

17 A That's right. She was shooting wild. I could hear
18 them go by my head.

19 Q So, as to the murder of your wife, she was behind you
20 at the time she got hit ---

21 A Yes, sir.

22 Q --- and not by your rifle.

23 A That's right.

24 Q And as to the wounding of Dee, she was behind you at
25 the time of the shooting ---

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 23

1 A Yeah. She was talking to my wife.

2 Q And that she was hit by a gun that was not yours, by a
3 bullet that was not from your gun.

4 A That's right. Mine would have did a lot more damage
5 to her on that leg.

6 Q And thirdly, that you shot, the assault with attempt
7 to kill, you shot at Dawn.

8 A Yes, I did. I'd done been hit twice.

9 Q Because you had already been hit.

10 A Yeah. She shot me in the mouth and I got a big place
11 out of my jaw bone.

12 Q And all that goes toward the unlawful possession of a
13 firearm during a violent act. Correct?

14 A Yes, sir.

15 Q Okay. And going back to your discussions with Mr.
16 Goldsmith. Early on, five months before trial, you
17 talked to him about getting a forensic expert
18 testimony?

19 A Yes, sir.

20 Q And he said you didn't need it?

21 A He said he was going to do it to start with and then
22 when it was time to go to court, I asked him did he
23 have everything lined up and he said, "No, that
24 expert, we really don't need him."

25 Q All right.

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 24

1 A "We can win it without him." That's what he said.

2 Q But your family, or your mother, had paid him on your
3 behalf, of your money, \$5000.00 or \$6000.00 to him.

4 A Yes, sir. I had a little bit of money in the bank.

5 Q So, he had money to hire somebody. Right?

6 A Yes, sir.

7 Q And did you believe he had done so until you got to
8 trial?

9 A I thought he did, yes, sir. And he said something
10 about changing venues, too, but he didn't do that. I
11 don't know if that would help, but he said he was
12 going to do that also.

13 Q How many times did you meet with him during the five
14 month period?

15 A I want to say around five or six times.

16 Q And how many times during those five or six times did
17 you talk about the ballistic expert and evidence?

18 A He would always tell me that that was what was going
19 to get me to the house and that's why he asked for a
20 speedy trial. He said I could sit at the county jail
21 for a year waiting to go to court and why not go ahead
22 and go through with it.

23 Q But when you went to trial, the State actually put up
24 testimony that your bullet killed your wife. Correct?

25 A They said it would have been from a gun like mine.

DIRECT EXAMINATION OF ROBERT EARL RICKETTS BY MR. MACKAY 25

1 Q All right. And they put up evidence that you wounded
2 Dee, her sister. Correct?

3 A That's what they said. Yes, sir.

4 Q And you were convicted on all counts. Right?

5 A Yes, sir. And I never had no prior record. Thirty-
6 nine years old and I'd never been in jail for
7 anything.

8 MR. MACKAY: Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 Q Your complaint against Mr. Goldsmith is that he did
11 not properly investigate your case by not hiring a
12 forensic metallurgist expert to look at the
13 composition of the bullets. Correct?

14 A That's right, sir.

15 Q The two bullet fragments that were taken from your
16 wife, were they able to be examined for rifling marks?

17 A Yes, sir. They looked at the rifling marks on the
18 inside and looked at the metal of the bullets and none
19 of it matched.

20 Q Well, I'm talking about by the State at trial.

21 A Yes, sir.

22 Q Did they offer any evidence -- in my review of the
23 record, I do not see any evidence of rifling marks.

24 A Yes, sir. That's right.

25 Q There were fragments. Correct?

1 A Yes, sir.

2 Q In my review of the record, I don't see anybody
3 talking about the metal composition of the bullet
4 fragments or your bullets from your .300 Magnum rifle
5 or the bullet from the Reuger .357 that Dawn had. Is
6 that right?

7 A That's right.

8 Q And that's what you were asking your lawyer to do?

9 A Yes, sir, because I knowed that would clear me of it,
10 you know. They had the bullet fragments, they said,
11 and I knowed that would clear me.

12 Q All right. Answer any questions the State may have
13 for you, please.

14 A Okay.

15 CROSS EXAMINATION

16 BY MR. LEE:

17 Q Just a couple of questions, Mr. Ricketts.

18 A All right.

19 Q So, I believe it was your testimony that it was your
20 lawyer's strategy at trial that it wasn't you that
21 fired the gun that killed your wife. Is that correct?

22 A That's correct.

23 MR. MACKAY: Objection to form.

24 THE COURT: I'll allow the question. Go ahead.

25 Q Now, was it also your testimony that a large part of

CROSS EXAMINATION OF ROBERT EARL RICKETTS BY MR. LEE

27

1 that defense was the positioning of the parties?

2 A Yes, sir.

3 Q Okay. And isn't it true that your attorney hired a
4 ballistic expert by the name of Agent Collins?

5 A I don't recall.

6 Q Okay. Isn't it true that ---

7 THE COURT: Just one second. Was that Agent Hollins?

8 MR. LEE: Collins, Your Honor.

9 THE COURT: Collins.

10 Q Isn't it true that there was testimony at trial from
11 someone on your behalf that they couldn't tell whose
12 gun fired the bullet that killed your wife?

13 A You mean the experts?

14 Q Yes.

15 A Yeah, they said they couldn't match it.

16 Q And isn't it true that your attorney also hired
17 another expert by the name of Dr. Woodward?

18 A I don't know who hired him. I'm not sure. I remember
19 the name.

20 Q You do remember the name?

21 A Yeah, I remember the name.

22 Q And then, isn't it true that your lawyer in his
23 closing argument, argued again that it was not you
24 that fired the shot that killed your wife?

25 A Yes, sir.

1 MR. LEE: No further questions for this witness, Your
2 Honor.

3 MR. MACKAY: Beg the Court's indulgence just one
4 moment, Your Honor. I have no further questions, Your
5 Honor.

6 THE COURT: All right. You may step down. (Witness
7 leaves the witness stand) Any other witnesses?

8 MR. MACKAY: Yes, sir, the petitioner would like to
9 offer the original deposition of Mr. Ara, and I'll give the
10 spelling, A-R-A and the last name Nalbandian,
11 N-A-L-B-A-N-D-I-A-N, and proffer him as an expert in
12 forensics, ballistics. It was sealed at the deposition and
13 at this point.

14 THE COURT: What's your position on that, Mr. Lee?

15 MR. LEE: The State has seen Dr. Nalbandian's
16 deposition and we have no objection as to his qualification
17 as an expert.

18 MR. MACKAY: Given that, Your Honor, I was going to
19 read his deposition and give his qualifications and ask you
20 to rule that they consented that he was an expert. We'd
21 offer his deposition and not read it into the record in its
22 entirety right now, but ask that it be accepted into the
23 record in its entirety for your review.

24 THE COURT: First, let me say Mr. Lee has stipulated
25 to the expertise of the proposed witness in the area of ---

1 MR. LEE: I believe it's forensic metallurgy.

2 THE COURT: Is it ballistics or metallurgy?

3 MR. MACKAY: It's forensic metallurgy.

4 THE COURT: All right. Forensic metallurgy. Is that
5 correct, Mr. Lee?

6 MR. LEE: Yes, Your Honor.

7 THE COURT: All right. I admit that deposition into
8 evidence, but do you want to point out any particular
9 passages you want me to look at more so than others?

10 MR. MACKAY: Yes, sir. I'll have that marked as
11 Plaintiff's Exhibit #1.

12 (Whereupon, a deposition of Ara Nalbandian is entered
13 into evidence as Plaintiff's Exhibit #1, without objection)

14 MR. MACKAY: And while she's doing that, Your Honor, I
15 wanted to point out for the record, in my reading of the
16 transcript, page 368 has Mr. David Collins as an employee
17 of SLED and called as a State's witness towards the end of
18 their case. I think he's their last witness. He was not
19 one that was hired by this defendant. They just proffered
20 his testimony and he probably would not have realized that
21 and I will just refer to the transcript and re-direct him
22 on those points.

23 THE COURT: Let me see, I have 240 pages.

24 MR. MACKAY: There are two volumes.

25 MR. LEE: Which volume do you have?

1 THE COURT: You're saying page 368?

2 MR. MACKAY: Page three sixty-eight of the total
3 transcript.

4 THE COURT: All right. Mr. Collins was called by the
5 State?

6 MR. MACKAY: Yes, sir. He was a SLED agent, an expert
7 called by the State, not by the defendant. The only other
8 witness that appeared and called by the defendant besides
9 himself and his son, the defendant's son, was Mr. Arflin,
10 who evidently was employed by the county at the time and
11 responded to the scene and gave testimony regarding his
12 observations. There was no forensic, forensic expert,
13 hired by the defense to my knowledge and I just wanted to
14 point that out to the Court.

15 MR. LEE: That's correct.

16 MR. MACKAY: As to the report, I think Exhibit #1 to
17 the deposition, I think there is a report there from Mr.
18 Nalbandian that I would like to refer to for a moment.
19 Basically, we sent to Mr. Nalbandian from the Clerk of
20 Court's office here, live rounds taken from the Magnum
21 .300, and to be honest, either from the .300 itself or from
22 the box he was loading them from, but a live round from the
23 .300 magnum that was in his possession and several other
24 live rifle bullets from the .300. We sent one live round
25 from the .357 Reuger and we sent the two projectiles,

1 bullet projectiles, taken from the victim in the murder
2 case, his wife, and basically, those four items were
3 analyzed for metal composition. What we found was that the
4 bullet fragments that killed the victim were primarily
5 lead, like 86 percent, 87 to 89 percent lead with a little
6 tin mixed in. In all the graphs from the analysis are in
7 color and they are pretty informative behind it, to support
8 it. The bullet from the Reuger, its composition matched
9 the fragments taken from the victim to a tee. They were
10 also 96 to 99 percent tin, I mean lead with some tin. The
11 bullets taken from the .300 Magnum were analyzed and turned
12 out to be nearly 100 percent copper with no lead in them,
13 whatsoever, and no tin in them, whatsoever. They were 95
14 percent copper as the graphs will show and the way this was
15 done, they took the bullet and used the process of energy
16 dispersive x-ray spectroscopy, EDS, for short and they
17 would take samples or readings from different points on the
18 bullet and they are referred to as different plots,
19 spectral plots. And so, he would look for the consistency
20 within the bullet for the metal composition and he
21 concluded, as he said on page two of his reports, based on
22 the results of the chemical analysis of item #12 and I
23 believe that's the Reuger. I'll double check. Yes. Item
24 #12 is the Reuger pistol bullet. Based on the analysis of
25 items #12, #21, which is the .300 Magnum bullet, #37 and

1 #38, which were the fragments from the body, indications
2 are that the chemical composition of the fragments from the
3 body from autopsy and the Reuger pistol bullet are similar
4 and included lead and tin.

5 However, the chemical composition of the rifle bullet,
6 Item #21, consisted of copper. And so, in our deposition
7 of him, we went into fine detail to make sure there was no
8 room for error, and I can try to find the exact page, I
9 think I have it, but he basically said that his opinion was
10 there was no lead in the .300 Magnum bullet at all. So,
11 the conclusion was that the .300 Magnum bullet could not
12 have matched the fragments taken from the body. And what
13 that tells us is that Dawn, the sister Dawn's bullets from
14 her Reuger which match the fragments taken from the victim,
15 her bullets are the ones that killed the victim and this is
16 pretty clear. I mean, there's no mixing. The .300 Magnum
17 had no lead in it. It was all copper. The fragments taken
18 from the body had no copper in them. They were all lead
19 with a little tin and they match perfectly the composition
20 of the Reuger .387 bullet that Dawn was shooting.

21 So, our contention is that in review, that had Mr.
22 Goldsmith gotten a forensic metallurgist as requested to
23 have the bullets analyzed by the defendant five months
24 prior to this trial, they would have shown that his story
25 about his wife was behind him and her sister, Dee, was

1 behind him, Dawn started shooting and all of a sudden that
2 has all the credibility in the world, because it's backed
3 up with pretty hard evidence, scientific evidence. They
4 got into a big trial about angles, but this pretty much
5 tells the story that despite whatever else he may have
6 done, whether you think he pulled the gun out first or
7 last, his gun out with regards to Dawn, it certainly does
8 not put him shooting his wife and it certainly excludes him
9 -- it doesn't exclude him from shooting Dawn, I mean Dee,
10 because no fragments were taken from her, but it adds room
11 for reasonable doubt as far as Dee is concerned because now
12 you know that Dawn is shooting in that direction and so
13 none of that was brought forth by the defense.

14 To me, like I said, I've been looking at it for four
15 or five years and it appears to be pretty simple on its
16 face, but that's, I think, what the evidence shows. Now,
17 I've heard that you have to show in a PCR case, that the
18 lawyer did or didn't do something he should or shouldn't
19 have done and that my client was prejudiced, I think it's
20 clear that he should have done this because the client is
21 asking him to do it and has paid him the money that he
22 could have had it done with and he didn't. Has he been
23 prejudiced? I think it's evident that he's been prejudiced
24 because he's been sitting in jail for ten years, almost
25 eleven, for ten years now. If this evidence had been

1 around at the time of this trial, I dare say he wouldn't
2 have gotten the convictions he got, if any of them.
3 Certainly not for murder and certainly not for assault and
4 battery with intent to kill.

5 So, we would ask you to take that under consideration,
6 look at it, the fact that the fragments taken from the
7 victim matched the victim's sister's .357 Reuger is
8 undisputable in this case before you today. There is no
9 evidence to the contrary. It carries, I think, some
10 particular weight with the Court not only through the
11 credentials and the veracity and accuracy of this
12 particular expert witness, but the fact that it is
13 undisputed today and they had the testimony of this witness
14 months ago and haven't produced anything different and so,
15 that being said, we'd ask the Court to grant the PCR in
16 this case and allow them to come back. If they want to
17 re-try him on another theory, they can, but they didn't try
18 him on another theory then. They tried him as the direct
19 shooter on the direct murder theory and the evidence
20 doesn't support that at all. It could have been discovered
21 prior to trial and should have been discovered prior to
22 trial. Thank you.

23 THE COURT: Mr. Lee, I'm going to continue this case
24 anyway. I'm certainly glad to hear any response you may
25 have or you may continue it on until you have a chance to

1 depose Mr. Goldsmith and be allowed to bring back your
2 arguments at that point in time. Whatever you want to do.

3 MR. LEE: Thank you, Your Honor.

4 THE COURT: All right. I'm going to read this
5 information. I'm going to retain jurisdiction over this
6 case. It will be re-scheduled back whenever it can be re-
7 scheduled. I know according to Mr. Lee, there's supposed
8 to be another term back in October. I don't know if that's
9 when I'm back here or not, but whenever you can re-schedule
10 it in front of me, I will hear it and we will make it a
11 part of this case and I'll make a ruling at that point.

12 MR. MACKAY: Your Honor, I would think even if it's
13 not a PCR term, if you have a non-jury term sometimes and
14 all he has to do is ---

15 THE COURT: Let me tell you, I'm glad to get it
16 disposed of. I also have a Capital murder PCR case I'm
17 dealing with, I have a products liability multi-week case
18 I'm dealing with and it's just a matter of squeezing it in
19 whenever I can, so I'll be glad to as soon as I can get
20 around to it.

21 MR. MACKAY: Thank you, Your Honor.

22 THE COURT: Okay, thank you.

CERTIFICATE

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND
AND SEAL THIS 6TH DAY OF MARCH, 2013.

Police
JO RICE
OFFICIAL COURT REPORTER

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF ANDERSON TENTH JUDICIAL CIRCUIT

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7 ROBERT E. RICKETTS, III :

8 :

9 VS. : CASE NO. 2002-CP-04-01544

10 :

11 STATE OF SOUTH CAROLINA :

12

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14

15

16 TELEPHONIC DEPOSITION of ARA NALBANDIAN,

17 P.E., a WITNESS in the above-entitled cause, taken on

18 behalf of the PLAINTIFF, pursuant to notice, before

19 Denise A. Webb, a Notary Public in and for the State

20 of Rhode Island, at the offices of Thielsch

21 Engineering, Inc., 195 Frances Avenue, Cranston,

22 Rhode Island, on November 12, 2009, at 10:00 a.m.

23

24

25

Ara Nalbandian

Vol. 1

11/12/2009

1 APPEARANCES:

2

3 FOR THE PLAINTIFF..... MEDICOLEGAL CONSULTANTS

4 (Via telephone) BY: RAYMOND MacKAY, ESQUIRE

5 112 ESSEX DRIVE

6 ANDERSON, NC 29621-3319

7

8 FOR THE DEFENDANT..... ASSISTANT ATTORNEY GENERAL,

9 (Via telephone) STATE OF SOUTH CAROLINA

10 BY: A. WEST LEE, ESQUIRE

11 COLUMBIA, SC 29211, ESQUIRE

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I N D E X

WITNESS:

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PLAINTIFF'S DESCRIPTION:

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1 (DEPOSITION COMMENCED AT 10:11 A.M.)

2 ARA NALBANDIAN, P.E.

3 Being duly sworn, deposes and testifies as follows:

4 THE REPORTER: Would you please state
5 your name for the record.

6 THE WITNESS: Ara Nalbandian,
7 N-A-L-B-A-N-D-I-A-N.

8 DIRECT EXAMINATION BY MR. MACKAY:

9 Q. Dr. Nalbandian, my name is Raymond Mackay. I'm
10 an attorney in South Carolina. I'm taking your
11 deposition by agreement of parties in this action
12 to be used at trial in Anderson, South Carolina.
13 Do you understand that?

14 A. Yes, sir.

15 MR. MACKAY: And, Mr. Lee, is that your
16 agreement with us, to take this for use at trial?

17 MR. LEE: That is my understanding.
18 Yes, sir.

19 Q. Dr. Nalbandian, you are --

20 A. It's Mr. Nalbandian, Mr. Mackay.

21 Q. I'm sorry?

22 A. Mr. Nalbandian.

23 Q. Mr. Nalbandian. Okay. If you would, tell me
24 your area of expertise, please, sir.

25 A. My expertise is mechanical engineering,

1 materials, and metallurgical evaluation.

2 Q. And how long have you worked in metallurgical
3 evaluation?

4 A. For the last 35 years.

5 Q. Have you ever been qualified as an expert --

6 A. Yes.

7 Q. -- in any court in metallurgical evaluation?

8 A. Yes.

9 Q. Approximately, how many times have you been so
10 qualified?

11 A. I have provided depositions and testimony
12 over ten times in various courts.

13 Q. All right, sir. Does that include state and
14 federal courts or just state courts?

15 A. State and federal courts and foreign courts.

16 Q. Where is your office located, please?

17 A. Our office is located in Cranston, Rhode
18 Island.

19 Q. How long have you been situated in Rhode Island?

20 A. We have been situated in Rhode Island since
21 1984.

22 Q. What is your educational background, please?

23 A. I'm a graduate of mechanical engineering with
24 a Master's in industrial management.

25 Q. All right, sir. Where did you receive those

1 degrees?

2 A. I received both at the University of Rhode
3 Island which is located in Kingston, Rhode
4 Island.

5 Q. Approximately, what year?

6 A. 1964 and 1969.

7 Q. And you worked in this field since your obtaining
8 those degrees?

9 A. Yes. I was working with ITT Grinnell until
10 1986, for almost 20 years, which is located in
11 Providence, Rhode Island. And from 1986 to date,
12 I have been with Thielsch Engineering Company
13 doing mechanical engineering, material
14 evaluation, and failure analysis, including
15 metallurgical evaluations.

16 MR. MACKAY: For the record, we would
17 move that Mr. Nalbandian be qualified as an
18 expert in failure analysis by means of
19 metallurgical evaluation. Any objection to that?

20 MR. LEE: No objection from the state.

21 Q. Mr. Nalbandian, in your role there, did you do --
22 you now work for Thielsch Engineering,
23 Incorporated; is that correct?

24 A. Yes, it is.

25 Q. And did you, at my request, receive certain items

1 regarding the criminal trial of Robert Earle
2 Ricketts for testing?

3 A. Yes, I did.

4 Q. Can you tell me, if you can from your file, when
5 you first received these items from me?

6 A. We received a package of items on or about
7 January 25, 2008.

8 Q. And what was the request I gave you at that time
9 regarding the testing of those items?

10 A. The request at the time was primarily to
11 evaluate the chemical composition of the items
12 which were included and compare their chemical
13 composition to distinguish or find which is in
14 compliance with others or compared with the
15 others.

16 Q. All right, sir. Specifically -- well, as a
17 result of your testing, did you produce a report
18 dated October 2, 2009?

19 A. Yes, I did.

20 Q. Do you have that report in front of you?

21 A. Yes, sir.

22 Q. All right. It appears that you were sent one
23 live round, item number 12; five spent rounds,
24 item numbers 13, 14, 15, 16 and 17; three live
25 rifle bullets, item number 21; projectile

1 fragment, item number 37; and a projectile on
2 nedskin, item number 38; is that correct?

3 A. Yes, it is.

4 Q. Is that all the items that you were sent?

5 A. These are the items that I had received from
6 the South Carolina -- I guess it was from
7 Anderson County, Clerk of Court.

8 Q. Yes, sir. And they came directly to you; is that
9 correct?

10 A. Yes, it is.

11 Q. Did you conduct testing on those particular
12 items?

13 A. Yes, I did.

14 Q. Would you describe for me what each item appeared
15 to be and the testing -- well, first off, what
16 testing did you conduct on these items?

17 A. The testing that we conducted on these items
18 is basically a chemical analysis of the
19 components or subparts of these pre-identified
20 items that you previously enumerated: The live
21 round item, the spent round items, three live
22 rifle bullets, projectile fragment, items 37 and
23 38. Those are the ones that were basically
24 examined visually. And then, specifically, the
25 selected items of particular interest were

1 examined to see the chemical composition of the
2 rifle bullet, the projectile fragments, and the
3 live round from item 12.

4 Q. What manner of testing did you use on these
5 items?

6 A. We used a scanning electro microscope
7 combined with energy dispersive X-ray
8 spectroscopy, which is primarily identified as a
9 chemical composition of the material that our
10 subject -- for examination.

11 Q. You said you used a scanning electron microscope?

12 A. Yes.

13 Q. That is in conjunction with the chemical
14 analysis; is that correct?

15 A. Correct. A scanning electro microscope in
16 conjunction with energy dispersive X-ray
17 spectroscopy is the combined units that provide
18 you the results in identifying the elements that
19 are present on some of the components that we
20 have examined.

21 Q. The manner of testing that you used on these
22 items, how long has that manner of testing been
23 in use in your field?

24 A. For the last 35 years, probably. This is
25 much more today than it used to be, because this

1 equipment is rather very expensive. So it is not
2 something that you do, the chemical analysis, as
3 we do it today. They used to do it otherwise
4 with a wet chemical analysis rather than doing it
5 nondestructively. The chemical analysis that we
6 have done is primarily nondestructive. We don't
7 do anything to change, alter, or disfigure any of
8 the evidence as we have received. It's just a
9 matter of exposing them to X-ray -- diffraction
10 X-rays that will identify element by element what
11 is the composition of that matter or material.

12 Q. Let me ask you this. Was the testing that you
13 conducted on these items available to you in
14 1999?

15 A. Yes, it was.

16 Q. As a result of your testing -- let me ask you
17 this. You did the scanning electron microscope
18 in conjunction with the energy dispersive X-ray
19 spectroscopy analysis. Were there any other
20 tests that you performed on the items?

21 A. Visual examination.

22 Q. All right, sir. What, if anything, did the
23 visual examination reveal to you and any
24 conclusions you reached as a result of that?

25 A. A visual examination provides basically the

1 condition of the items that were received,
2 whether they are -- relative to the condition
3 that they have been exposed to, whether they are
4 new, disassembled, or some how distorted, like
5 fragments, they were fragments. But when you
6 look at a complete bullet, which is a live round,
7 you would know that the cartridge, the bullet, as
8 well as the markings are all intact. Whereas, if
9 something is disassembled, we will notify
10 ourselves that, yes, we have received this in a
11 disassembled form rather than intact. So the
12 visual examination is confirmation of the items
13 that we have received in the form that they were
14 handed to us for further examination.

15 Q. Does your visual examination lead you to any
16 conclusions as to the composite materials
17 involved?

18 A. No.

19 Q. Can you look at tin and copper and lead and
20 identify it visually?

21 A. Usually not, unless it is so obvious that the
22 copper has a copper tone. But even that may not
23 be easily detected because you may have a copper
24 alloy rather than pure copper.

25 Q. In this case, do you recall whether your visual

1 examination made it that obvious to you what
2 materials were lead, tin, or copper?

3 A. No.

4 Q. You're saying they did not make it that obvious
5 or you do not recall?

6 A. No, they did not make it obvious.

7 Q. So you relied on the scanning electron microscope
8 and the use of the energy dispersive X-ray
9 spectroscopy analysis to form your opinions in
10 this case; correct?

11 A. Yes, it is.

12 Q. If you would then, based on your examination of
13 these items and your expertise and training in
14 this field, can you tell me what your opinions
15 are, if you reached any, regarding the composite
16 materials of the particular items enumerated
17 already to you?

18 A. Yes. Basically the spectral plots that we
19 have obtained from the analysis gave us the
20 elemental presence of each component that we
21 analyzed. Meaning, that if you take a bullet
22 from any of those items, and if the item 21 is of
23 subject interest, we look at the composition of
24 the material that it is made from and you expose
25 several areas from that segment to find what is

1 the consistency of the elemental presence that
2 you find, that it is eventually going to be able
3 to identify a metal with such elemental
4 characteristics.

5 That's why when we look at item 21, which is
6 the rifle bullet identified with 300 MAG, as
7 identification on the bullet itself, the tip was
8 primarily, when you look at it, it was a color
9 which is different than the body of the bullet.
10 And we started looking from the tip all the way
11 to the bottom area in order to ensure that there
12 is a consistency or variation in the chemical
13 composition of the bullet from tip to bottom.
14 And the areas of interest was basically on the
15 plot, and each plot represented the chemical
16 elements that will basically be able to identify
17 what material do we have as the basis for
18 manufacture or production of that bullet.

19 The tip was nonmetallic. Somehow it was the
20 construction of the bullet. And the upper black
21 area, which is the surface condition, was copper.
22 And the jacket, which is the bottom section of
23 it, it is copper. The bottom black area was also
24 copper. The tip cutting removed, when we removed
25 the surface coating, still it maintained its

1 nonmetallic composition, primarily identified as
2 plastic, because it was all hard carbon and
3 nothing else. The upper area of the coating
4 removed also verified that it was copper. The
5 jacket with the coating removed was also copper,
6 and the bottom area with the coating removed was
7 also copper. So those analysis results would be
8 the basis for concluding that that portion of the
9 rifle bullet was basically copper.

10 Q. And that would include the tip of the projectile
11 bullet as well as the jacket portion of the
12 projectile?

13 A. Yes. Yes.

14 Q. All right. So in your first page of your report,
15 you indicate item number 12. Are you talking
16 about item number 12 now?

17 A. No. I was talking about item number 21.

18 Q. I'm sorry. Three live rifle bullets, item number
19 21?

20 A. Yes.

21 Q. And they were only copper; is that what you're
22 telling me?

23 A. Yes. Now, in order to take the live bullets,
24 live ammunition, we have to separate the jacket
25 of the bullet from the rest of the body by

1 emptying the carbon black -- the powder.

2 Q. Right.

3 A. In order to make it safer. So that was
4 disassembled in order to only do the examination
5 of the bullet.

6 Q. So you removed the bullet from the cartridge,
7 basically?

8 A. Yes. So the cartridge was not analyzed, only
9 the bullet.

10 Q. Correct. All right, sir. Which item -- the one
11 live round, item number 12, how did you identify
12 that item?

13 A. That item was disassembled already, and when
14 we received it, the bullet was removed, the
15 powder was removed, everything was readily
16 available for examination as part of the bullet
17 itself, which was in the jacket. So we had the
18 tip and the jacket of item number 12, which was
19 also identified as a Ruger pistol bullet.

20 Q. Is that the same as items 13, 14, 15, 16 and 17?
21 Were they also Ruger pistol bullets?

22 A. No, 13, 14, 15, 16 are from the item 21.

23 Q. Okay. So 13, 14, 15, 16 are from --

24 A. Item 21 without the coating. Remember, when
25 you look at --

1 Q. Where does item 17 come from?

2 A. Item 17 is from the autopsy bullet, the
3 spectral plot. You have to go by spectral plot
4 numbers to identify the items which are listed on
5 page two.

6 MR. MACKAY: All right, sir. I have in
7 the first paragraph -- and maybe before we go any
8 further I would move to admit your report at this
9 time. Any objection?

10 MR. LEE: No objection from the state.

11 (PLAINTIFF'S EXHIBIT 1 MARKED IN FULL)

12 Q. All right, sir. Let me ask you about your first
13 paragraph of your report dated October 2, 2009.
14 You indicate that you did a nondestructive
15 chemical analysis on a total of four bullets:
16 One pistol, item number 12; one rifle, item 21;
17 two autopsy bullets, numbers 37 and 38; is that
18 right?

19 A. Correct.

20 Q. So when you disassembled item 21, explain for me
21 where items 13, 14, 15, and 16 came from.

22 A. Well, 13, 14, 15, 16, and 17 were the spent
23 rounds that were not necessarily -- that's the
24 remainder. We don't have any of the parts of the
25 bullet, we just had primarily the shells.

1 Q. I see. Empty shells?

2 A. Yes. They were spent rounds. They were
3 identified as 13, 14, 15, 16, and 17.

4 Q. So no chemical analysis to be done on those
5 items; correct?

6 A. Correct.

7 Q. That clears that up. Thank you. So item 12 is
8 the pistol bullet. You've already talked about
9 item 21. Talk about item 12, that bullet,
10 please.

11 A. Okay. Item 12 is the disassembled unit that
12 we had primarily used the tip and the jacket
13 as -- because they were together. And we have
14 identified the material both at the tip, as well
15 as the jacket, which encapsulates that in the
16 back of it. The spectral plots from the EDS
17 analysis indicate that we had the elements of
18 lead and some presence of tin, which in itself is
19 consistent with lead/tin alloy rather than a
20 hundred percent tin -- a hundred percent lead.

21 Q. Yes, sir.

22 A. And the jacket, which is primarily holding
23 the lead tip, is in itself copper with some lead
24 scraping. Because whenever you insert, you may
25 have the powder of lead being spread over the

1 copper component, because in the assembly, you
2 may have some powdery remnants of lead to be on
3 the copper also.

4 Q. And then your analysis of projectile, item
5 numbers 38 and 39, from an autopsy.

6 A. Is it 38 and 37?

7 Q. Yes, 38 and 37.

8 A. Those are the fragments that they were
9 basically in a glass flask that was extracted
10 from the autopsy.

11 Q. Yes, sir. What did your analysis show of that?

12 A. The spectral plots also indicated that the
13 consistency of the two fragments consisted of
14 lead and tin.

15 Q. Any copper in them at all?

16 A. Pardon?

17 Q. Any copper in those fragments at all?

18 A. No.

19 Q. You state in your final opinion on page two of
20 your report that indications are that the
21 chemical compositions, the fragments 37 and 38
22 from the autopsy bullet, and the Ruger pistol
23 bullet, item 12, are similar; it included lead
24 and tin; is that correct?

25 A. Yes.

1 Q. And the chemical composition of the rifle bullet,
2 item 21, consisted of copper; is that correct?

3 A. Yes.

4 Q. And when you had the intact rifle bullet analyzed
5 at the time of your testing, did you find any
6 lead and tin in the rifle bullet at all?

7 A. No, I did not.

8 Q. Did you form an opinion as to whether the
9 fragments, item numbers 38 and 37, could have
10 come from a rifle bullet as presented to you in
11 item number 21?

12 A. Well, since they are not from the same
13 materials, so distinctly it varies that they
14 should not be associated with the rifle bullet.

15 Q. Let me ask you, behind your two-page narrative, I
16 have delivered to me black and white photographs
17 and also grafts from testing. Can you walk me
18 through -- have you got those color photographs
19 with you today?

20 A. Yes, I do.

21 MR. MACKAY: Madam Court Reporter, if
22 you would, it looks like there are eight
23 photographs in his report. Do you have those
24 eight color photographs there with you?

25 THE REPORTER: Yes.

1 MR. MACKAY: Can you mark those as a
2 single exhibit, please.

3 (PLAINTIFF'S EXHIBIT 2 MARKED FOR ID)

4 MR. MACKAY: We would move to admit the
5 eight photographs as attached to the
6 Mr. Nalbandian's report as Plaintiff's Exhibit 2.

7 MR. LEE: No objection.

8 (PLAINTIFF'S EXHIBIT 2 MARKED IN FULL)

9 Q. These are the color photographs of the black and
10 white photos in your report; correct?

11 A. Yes, it is.

12 Q. If you would, looking at the first page of those
13 four, it looks like a cartridge next to a ruler.
14 Do you see that photograph?

15 A. No. The first page has the live 300 MAG
16 cartridge before and after disassembly.

17 Q. Okay. Very good. You can understand it's very
18 difficult for us to see it in black and white.

19 A. The top photograph is the cartridge intact,
20 which on the left side you can see a whitish tip,
21 and then there is about three-quarters of an inch
22 long segment of a black tapered bullet.

23 Q. All right, sir.

24 A. And the rest of the shiny side, which is
25 about two and a half inches or two and

1 three-quarter inches long, is basically the
2 cartridge, the shell.

3 Q. And this is the live round before disassembly at
4 the top; correct?

5 A. Yes. At the bottom, you see the three parts
6 separated. Basically, you have the shell on the
7 top flask, the middle has the bullet and the tip,
8 and the lower has the gun powder.

9 Q. All right, sir. And the middle vile has the item
10 number 21 that you previously discussed in your
11 testimony?

12 A. Yes, it is.

13 Q. The next page of two photographs, can you tell me
14 what the top one indicates? It appears to be
15 another cartridge of some sort, and then the
16 second picture is marked as a disassembled shell,
17 a 300 Magnum bullet, item 21.

18 A. Correct. Well, the top one is basically the
19 disassembled separated pieces without the gun
20 powder, naturally. And the lower one shows the
21 areas of the bullet, item 21, identifying the
22 locations where EDS examinations have been
23 performed.

24 Q. As referred to in your report?

25 A. Yes. When I say EDS one and two, three and

1 four, five and six, seven and eight, that will
2 basically be related to spectral plots that will
3 identify the chemical composition of that area.

4 Q. The next page, the third page of two photographs,
5 figure three, disassembled segments of Ruger
6 pistol cartridge, item 12?

7 A. Yes. This is the disassembled Ruger pistol
8 cartridge that we had received in this form. So
9 they represent the three pieces, the gun powder,
10 the shell, as well as the bullet with a cartridge
11 of the yellowish back. And the arrows indicating
12 EDS-9 and 10 are basically the front tip. And in
13 the lower photographs you can see the top views
14 of that. And the aft section, EDS-11 and 12,
15 identifies the shiny golden color cover, which is
16 basically the cartridge.

17 Q. All right. So the top item in those photographs,
18 what is that item?

19 A. The top items?

20 Q. Yes.

21 A. In the transparent glass is the gun powder
22 and the lower left is the shell and the lower
23 right is the bullet with the tip and the
24 cartridge, which is retaining the bullet tip.

25 Q. Is that a hollow point bullet?

1 A. If you look at the lower photograph on the
2 lower right you see the hollow tip.

3 Q. All right. Do those bullets, by nature, destruct
4 or tear into pieces whenever they hit an object?

5 A. I would presume that will be it, because it
6 is hollow, and when it impacts, it has to sort of
7 fragment itself.

8 Q. The fourth page of photographs, could you
9 identify the top photograph on that page, please?

10 A. The photograph on the fourth page are two
11 vials that we had received. One is one fragment,
12 which is identified as item 37, and the
13 projectile received from the autopsy, it says
14 ned.skin, or whatever, and it gives you an
15 identification number as item 38. And you can
16 see the fragment in the right upper hand of that
17 vile, which sort of gives you, through the
18 transparent glass, as a darker shade, something
19 that you would be able to see it in your black
20 and white photograph.

21 Q. I do see that. Thank you. So that would be
22 items 37 and 38 that you took from those vials
23 and tested; correct?

24 A. Correct.

25 Q. The next page of your report has EDS spectral

1 plot?

2 A. Yes.

3 Q. That identified item 21 and plot numbers 1
4 through 8 and 13 through 16. It identifies as
5 basically an index to the subsequent pages; is
6 that correct?

7 A. Yes.

8 Q. And each of those grafts indicate the testing
9 results from those particular points on those
10 particular items; is that correct?

11 A. Yes.

12 Q. Can you take one of these and explain how you
13 read this graft? Let's take the first one for
14 example, 300 MAG tip, item 21. Do you see that
15 graft?

16 A. Yes. Now, if you look at the spectral plots,
17 we have this chart which shows some spectral
18 peaks, values that when the item is subjected to
19 energy dispersive X-ray, spectroscopy X-rays, it
20 will gather all the wavelength identifying the
21 material.

22 In this case, it provided nothing but high
23 levels of carbon and oxygen and nothing metallic
24 to the degree that it would be identified as a
25 metal, which was to me rather surprising. I was

1 expecting metallic from tip to toe. So that sort
2 of gave me kind of a question whether it is
3 something of a nature of a bullet that it is
4 unique to the manufacturer or is it something
5 that identifies a type of a bullet specific for
6 some relevant distinction from another type of a
7 bullet. Because sometimes people have a tendency
8 of identifying the bullets by color coding. So I
9 did not put too much emphasis on what the colors
10 were, except by identifying the elemental
11 presence of the material that it is part of the
12 bullet.

13 In this case, when I realized that it was
14 carbon and oxygen, I said, it is most likely
15 nonmetallic, therefore, it is not something that
16 will be of interest unless we find that the rest
17 of the body is something different. So that
18 would be the significance of this first spectral
19 plot. And you can see lower elemental presence,
20 and in the percentages you can see there is
21 approximately 78 percent carbon and
22 20 percent/21 percent oxygen. The only way you
23 can distinguish this material is hydrocarbon
24 related material, that it becomes more likely
25 plastic rather than anything else.

1 Q. But on the third page of these grafts as attached
2 to your report, on that same item number 21, you
3 tested the upper black area --

4 A. Yes.

5 Q. -- and had different results; is that correct?

6 A. Correct. This black area, naturally, when
7 you look at the color, then you know normally the
8 lead could be a dark gray, but the black in
9 itself was rather -- some appearance that it made
10 no difference whether it was black or another
11 color except it will be detecting what is the
12 material consistency. Therefore, the appearance
13 was not any of the concern to the EDS analysis in
14 order to find out what the elemental presence
15 would be. So spectral plot number three
16 identified all the major peaks that will be
17 relevant to the identity of the material of
18 manufacturers.

19 When you look at the composition of this
20 material, you see that the major component is
21 primarily 76 percent copper, and carbon could be
22 a disturbance from the copper base that we have
23 or the coating that you have, basically used as a
24 coating; it may have carbon in it. So to
25 identify this as a material will be primarily

1 , looking for metallic elements which is primarily
2 copper in here; nothing else.

3 Q. I will take you back to the page -- the first one
4 of the 38 special, item number 12, tip. If I can
5 count back, do you see that graft?

6 A. That's ten?

7 Q. Nine spaces back in the graft. This is the
8 testing of item number 12 --

9 A. The special, item number 38. Is that what it
10 is?

11 Q. It's a 38 special bullet, I believe, but it's
12 item number 12.

13 A. Item number 12, the tip?

14 Q. Yes, sir.

15 A. What we would like to do is if you could
16 identify with the number that is the first line.

17 Q. Okay.

18 A. So 9 SPC.

19 Q. All right, sir. That would be the point --

20 A. That will be the spectral plot number
21 identified on the pictures, as well as in this
22 location.

23 Q. Okay. That would be 9.SPC?

24 A. Yes. Those are the identification -- it says
25 number 9 spectral plot, that will be that one.

1 The next one will be 10, so on and so forth,
2 which has a second line identification.

3 Q. Then spectral plot item 9 or number 9.

4 A. No. Spectral plot 9.

5 Q. All right. Spectral plot 9 shows what type of
6 composition in that testing?

7 A. The spectral plot number 9, which is in
8 reference to item 12, the tip, has a chemical
9 composition of mostly lead, 85/86 percent, and
10 3 percent of it is basically tin. So the
11 metallic components are primarily lead and tin.

12 Q. Then I will take you back to graft number or
13 spectral plot 17.

14 A. Okay.

15 Q. What results show of that particular analysis?

16 A. Spectral plot number 17, which is item 38,
17 projectile item 38, it shows also 90 percent lead
18 and 2 and a half percent, approximately, tin. So
19 primarily it's a lead and tin alloy.

20 Q. And that's the autopsy -- one of the two autopsy
21 items; correct?

22 A. Correct.

23 Q. And the second autopsy item would be on the next
24 page number 18 spectral plot?

25 A. Yes.

1 Q. Similar results?

2 A. The results, again, over here it shows that
3 the major peaks are lead and tin, and, of course,
4 you have carbon in there, which is not part of
5 the chemical composition of the metal.

6 Q. All right, sir. And then you have attached a
7 bill for your testing services and you will be
8 submitting the bill for the time spent today in
9 deposition; correct?

10 A. Yes.

11 MR. MACKAY: If you would answer
12 questions that Mr. Lee may have for you, please.

13 THE WITNESS: Sure.

14 CROSS-EXAMINATION BY MR. LEE:

15 Q. Mr. Nalbandian, so you say that this type of
16 testing was available in 1999?

17 A. Yes, it was.

18 Q. Now, I recall you mentioning that the type of
19 testing that you did is much more common today
20 than it would have been in the past. Why is
21 that?

22 A. Well, in 1950s or '60s, we didn't have the
23 technology/computer systems that makes it much
24 easier today. That technology has improved and
25 gives us energy dispersive X-ray spectroscopy

1 much readily available than it used to be in the
2 '50s, '60s, and early '70s.

3 Q. But I believe you mentioned it being cost
4 prohibitive. Would it have been less commonly
5 used in 1999 than it would be today?

6 A. No. It was used in the 1980s. It wasn't
7 anything unavailable in the 1980s. What I was
8 referring to is in early days when you're looking
9 back 35/40 years of experience, we didn't have
10 that point of interest that you could do
11 nondestructive examination of chemical
12 composition of this magnitude as we do in the
13 last 25/20 years.

14 Q. So it wouldn't have been any more cost
15 prohibitive -- it wouldn't have been more
16 expensive or anything like that in 1999?

17 A. No. The unit is expensive. Not too many
18 people will have it.

19 Q. Not too many people will have it?

20 A. Yes.

21 Q. Is it a commonly known form of testing?

22 A. Yes, it is.

23 Q. Now, you mentioned that some of the bullets you
24 received were intact versus some were
25 disassembled. Would the fact that you

1 received -- I believe you said that item number
2 12, which was the Ruger bullet, I believe you
3 mentioned that it was already disassembled.
4 Would that suggest earlier testing, that someone
5 had already done some testing on it?

6 A. I really don't know. The only thing I know
7 is that they have disassembled it. I have no way
8 of knowing what they have done with it.

9 Q. Now, did any of the spent -- in reference to the
10 rifle bullets, item 21, I believe you said that
11 you received a live round, a non-spent round with
12 regard to that. Did you receive any spent rounds
13 from the rifle bullets that were taken from the
14 crime scene?

15 A. No. I received three live rounds, so I --

16 Q. So you didn't receive any spent rifle bullets?

17 A. No.

18 Q. Now, I'll beg your indulgence one second. Hang
19 on one second. Now, is it possible that the
20 rifle -- I believe you received a -- you said you
21 received three live rounds from the rifle. Were
22 those taken from the gun in question, do you
23 know?

24 A. No, I don't.

25 Q. Is it possible that a rifle of that caliber, the

1 300 MAG, could have fired a different type of
2 bullet than the ones you analyzed?

3 MR. MACKAY: Object to form. Go ahead,
4 Mr. Nalbandian.

5 A. I don't know. The only thing I know is that
6 these were the bullets that were identified as
7 rifle bullets/rifle rounds.

8 Q. In your experience as a forensic examiner, is
9 that the only type of bullet that a 300 MAG rifle
10 could fire?

11 A. Well, I'm not really looking for what a rifle
12 can fire. They may have other types of bullets
13 for specific purposes, but in this case I was
14 given this 300 MAG as part of the basic
15 comparison. So I did not really venture in
16 finding what other types of bullets can be fired
17 in that rifle.

18 Q. Certainly. Now, when a round is fired and hits a
19 person, what is the part of the bullet that
20 gets -- I don't know how to say this. What is
21 the part of the bullet that gets lodged in the
22 person? Is it the tip, et cetera?

23 A. Well, the bullet itself is, not the round, is
24 the tip of the trajectory that sort of takes off
25 after the shell is dropped off and the gun powder

1 is consumed. So what you have is a bullet, the
2 front part of it.

3 Q. Now, I believe you said items 13, 14, 15, 16, and
4 17 were spent rounds; correct?

5 A. Correct.

6 Q. Where did those rounds come from? Which gun did
7 they come from?

8 A. Well, they were identified by location, so it
9 was a matter of really looking at the angle that
10 they had, relative information at the location of
11 those rounds from a pistol.

12 Q. How accurate is this type of testing,
13 Mr. Nalbandian?

14 A. Very accurate.

15 Q. I beg your indulgence one more second.

16 (PAUSE)

17 Q. Now, in reference to the rifle bullet, I guess I
18 will refer you to the first page of your
19 pictures, you mentioned that the lighter colored
20 part there would be the tip, and I believe you
21 said that was nonmetallic, a mix of carbon and
22 oxygen. What did you say that black part was?
23 What was that composed of?

24 A. Copper.

25 Q. Copper?

1 A. Yes.

2 Q. I believe you said with those hollow point
3 bullets that when they impact on something
4 they -- what's the word -- they spread or
5 destruct. Was there anything to indicate that, I
6 guess in your review of the projectile fragments
7 found or sent from the autopsy, was there
8 anything to indicate that that was the case?

9 A. Well, if you have fragments, naturally, you
10 will be able to understand that it is broken into
11 several pieces, that it is not intact as you see
12 in an ~~undisturbed~~ bullet.

13 Q. And, again, it was your opinion that the
14 projectiles found in the autopsy, in the body,
15 was it your opinion that those could not have
16 been from the rifle bullet?

17 A. Yes. It could not have been, because their
18 material is not consistent with each other.

19 MR. LEE: Mr. Nalbandian, I appreciate
20 your time. I do not believe that I have any
21 further questions for you.

22 MR. MACKAY: I have no redirect. Thank
23 you.

24 THE REPORTER: Gentlemen, could you
25 please tell me what you'd like for transcripts?

1 MR. MACKAY: I want the original and an
2 E-Tran copy, please.

3 MR. LEE: I would appreciate a copy. I
4 don't have any preference to form.

5 (DEPOSITION CLOSED AT 11:00 A.M.)

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C E R T I F I C A T E

I, Denise A. Webb, Notary Public, do hereby
certify that I am expressly approved as a person
qualified and authorized to take depositions
pursuant to Rules of Civil Procedure of the Superior
Court, especially but without restriction thereto,
under Rule 28 of said Rules; that the witness was
sworn by me; that the transcript contains a true
record of the proceedings.

Reading and signing of the Transcript was not
requested by the Deponent or any Parties involved
upon completion of the Deposition.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 13th day of November, 2009.

DENISE A. WEBB, CSR/RPR/NOTARY PUBLIC

MY COMMISSION EXPIRES APRIL 7, 2010

State of South Carolina

County of Anderson

In the Court of Common Pleas

Robert Ricketts,

Applicant,

-VS-

State of South Carolina,

Respondent.

2002-CP-04-1544

March 15, 2011

Transcript of Record

BEFORE:

The Honorable R. Lawton McIntosh, Judge

APPEARANCES:

Raymond Mackay, Esquire
Attorney for the Applicant

David Spencer, Esquire
Attorney the State

Renee H. Tollison
Circuit Court Reporter

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1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 9:46 a.m.)

4 OPENING STATEMENTS

5 MR. SPENCER: Your Honor, my name is David
6 Spencer. I'm from the Attorney General's Office.

7 Your Honor, this is 2002-CP-04-1544. Your Honor,
8 this Robert Earl Ricketts versus State of South Carolina.
9 Mr. Ricketts was indicted by the Grand Jury in August of
10 '99 for murder, assault and battery with intent to kill,
11 assault with intent to kill, possession of a weapon
12 during the commission of a violent crime. He was
13 represented by Skip Goldsmith who is here today from
14 North Carolina.

15 He went to trial, was found guilty by the jury. He
16 was sentenced by Judge Hall to life, a life sentence for
17 murder, twenty years for assault and battery with intent
18 to kill. And that was running consecutive. And the rest
19 of the sentences was ten years concurrent to the assault
20 with intent to kill charge. And also, Your Honor, five
21 years concurrent on the weapons conviction. An appeal
22 was filed and conviction was confirmed.

23 Your Honor, you've heard a portion of this case back
24 in, I believe, June. The attorney with the Attorney
25 General's Office was West Lee that was here for that one.

1 Your Honor, the case was continued because we did not
2 have Mr. Goldsmith's testimony. And I guess Mr.
3 Goldsmith wasn't available at that time. So he's here
4 today to testify.

5 Also, Your Honor, I have an additional witness, the
6 person from SLED, an expert from the trace analysis
7 section of SLED's forensic services division. And she's
8 here to testify about the report, a report that was
9 admitted back in June, which was a report concerning some
10 ammunition that was tested by an expert. I think the
11 proper term is a metallurgist. And so I would have her
12 testify about that, about her analysis of that report.

13 Your Honor, as I understand it though, Mr. Mackay is
14 going to object to that. And so certainly, I imagine at
15 this time, the proper thing would be to hear Mr. Mackay's
16 objections.

17 THE COURT: Refresh my memory on where we were
18 in the -- on the prior hearing. I remember some of it.
19 Was it a three hundred Winchester Magnum?

20 MR. MACKAY: Three hundred Magnum that was used
21 by the Defendant, a three fifty-seven pistol by the
22 victim's sister.

23 THE COURT: And they had a big -- it was big
24 shootout there in the yard?

25 MR. MACKAY: A big shootout in the yard. My

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1 expert says that the bullet fragments from the autopsy
2 from the victim match the bullets from the victim's
3 sister's three fifty-seven Magnum, not the Defendant's
4 three hundred Mag rifle.

5 THE COURT: Where were we though in this
6 hearing before?

7 MR. MACKAY: In the hearing, as I understand
8 it, that's what I related to Mr. Spencer when he told me
9 about his additional witness yesterday at four o'clock.
10 He told me about her, and I said that my recollection was
11 that the State had closed their case except for the
12 calling of Mr. Goldsmith. They scheduled the case in
13 June of 2010. They had taken -- that had Mr.
14 Nalbandian's, my expert's report in November of '09.
15 They took -- I mean, October of '09. We took his trial
16 deposition in November of '09 because he's up north in
17 New England. And -- well, I wasn't going to bear the
18 expense of bringing him down here. So they've had that
19 testimony available since November '09. Scheduled the
20 case in June of '10. I presented my case. They
21 presented their case and was about to close without Mr.
22 Goldsmith except you gave them leave to find Mr.
23 Goldsmith if he thought he could and come back and
24 present that testimony. They found Mr. Goldsmith and are
25 coming back to present that testimony. And now they're

1 seeking to add another witness, which I think they're not
2 permitted to do because they've rested in essence when
3 they tried the case in June of '10. And the only reason
4 it's still open was to provide this one particular
5 witness. Now they're seeking to add another one. And
6 you know, if they get past this hurdle, then I've got to
7 talk about my need for deposing that witness before she
8 testifies and putting her testimony back to my expert and
9 coming back to this Court for a cost order so that I can
10 then employ my expert for further evaluation of their
11 testimony, possibly retesting of the bullet to conform to
12 their objections to our test. And then his ---

13 THE COURT: Let me stop you there. I seriously
14 doubt we're going to go through all of that. But I mean,
15 I'm not ruling.

16 But Mr. Spencer?

17 MR. SPENCER: Right, your Honor. I tried to
18 contact ---

19 THE COURT: No, no, no, no, no. Let me ask ---

20 MR. SPENCER: I'm sorry.

21 THE COURT: I'm going to ask you a question.
22 And the question is -- what Mr. Mackay rings true with my
23 memory. And if it serves me right, that I left the
24 record open to depose the attorney, and that otherwise
25 the case was closed.

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1 MR. SPENCER: And Your Honor, I haven't been
2 able to confirm that with Mr. Lee.

3 THE COURT: Why not? This case has been
4 pending for a while, and there's no reason that could not
5 have been confirmed.

6 MR. SPENCER: I understand. And you know, I'd
7 like to just kind of explain the background.

8 THE COURT: I want -- I'd rather have that
9 question answered first.

10 MR. SPENCER: Well, the ---

11 THE COURT: Hang on.

12 MR. SPENCER: I'm sorry.

13 THE COURT: This lady, I assume, is just going
14 to testify about the report she gave at trial, correct?

15 MR. SPENCER: She's going to -- no. She didn't
16 testify at the trial.

17 THE COURT: Oh, she didn't?

18 MR. SPENCER: No. What she's going to testify
19 to is basically what their expert did was they did a --
20 ran a x-ray ---

21 MR. MACKAY: Your Honor?

22 THE COURT: Stop.

23 MR. SPENCER: Ran an x-ray on the bullet.

24 THE COURT: Do you have an order allowing
25 discovery on that? I mean, doesn't P.C.R., unless it's a

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1 capital case, you have to have an order allowing
2 discovery?

3 MR. SPENCER: Your Honor, you know, they -- I
4 don't think, first of all, we'd call it discovery.

5 THE COURT: I'm going to double-check that.
6 But I thought that discovery, unless it was a capital
7 case, you had to have an order granting discovery in
8 P.C.R. cases.

9 MR. SPENCER: Right. I mean, you can --
10 obviously -- and in this case, Mr. Mackay obviously had
11 to come forward and ask for funds for an expert.

12 THE COURT: Okay.

13 MR. SPENCER: But I don't think there's
14 anything limiting either party from just calling
15 witnesses.

16 THE COURT: Give me -- I'm going to take a
17 five-minute break and come back. I'll be right back.

18 MR. SPENCER: Okay. Thank you, Your Honor.

19 (WHEREUPON, court stood at recess for a short
20 break.)

21 THE COURT: All right. Counsel, § 17-27-158
22 says that there's not any discovery in P.C.R. in non-
23 capital cases unless I grant it for good cause shown.

24 MR. SPENCER: Right.

25 THE COURT: Now, this lady, you know, qualified

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1 and competent as she is, if she's testifying at variance
2 or in reply to the report submitted by Mr. Mackay, then
3 it would be prohibited by that statute without a court
4 order. I don't know that there is one.

5 In addition -- and not just to throw you off to the
6 side -- but I clearly remember that the case was left
7 often solely for the purposes of receiving Mr.
8 Goldsmith's deposition testimony. So for both reasons,
9 primarily for the reason that, you know, I left the
10 record open solely for Mr. Goldsmith's testimony and by
11 virtue of § 17-27-158, I'm not going to allow her
12 testimony.

13 MR. SPENCER: I understand. And Your Honor,
14 may I be heard?

15 THE COURT: Yes, sir.

16 MR. SPENCER: Your Honor, I understand your
17 ruling. Your Honor, first as to whether the record was
18 left open solely for the attorney's testimony, I would
19 move -- and I think it's proper to move -- to reopen the
20 record in that case, if you will, to have the testimony
21 heard. I think it is good to do in the interest of
22 justice. I can also give a time line of how we sort of
23 arrived here.

24 But also, to address the discovery issue, my
25 understanding of discovery is I don't believe this would

1 fall under the discovery rules. Certainly, you need the
2 leave of the court. That would be to do depositions,
3 interrogatories, requests to admit, that sort of thing.
4 You know, I don't think this is something that would fall
5 under the ambit of that rule or that statute. And you
6 know, I would say that there was no leave of court
7 required. I would move, Your Honor, for leave of court
8 now.

9 But let me please explain the background, if you
10 could indulge me, Your Honor. This case, of course, is a
11 considerably old case, which I'm well aware of, Your
12 Honor. I was assigned to this day of P.C.R.s, this case
13 and all of the rest that have been scheduled for today
14 about -- I believe about the first of the month. Your
15 Honor, I've started looking at this case. Unfortunately,
16 it was one of the last, if not the last one, I started
17 looking at last week. Looked at the transcript and
18 looked at the deposition. And Your Honor, so this case
19 is old. It's new to me. I looked at it. I have,
20 comparing what this report seemed to be saying against
21 the rest of the record, had some concerns.

22 And on Thursday I called the Anderson Sheriff's
23 Department and got basically a thirty-page fax. Kind of
24 looked at the inventory. One of my first concerns was
25 maybe there's two kinds of ammunition. There are. But

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1 it's clear, I think, from looking at the ballistics
2 report that at least as far as we know, there's only one
3 kind of three hundred ammunition at the scene.

4 The next thing I did, I spoke with someone in the
5 ballistics department, Ira Pernell (phonic); you know,
6 testified around the State. I'm not going to give away
7 what he told me, but we discussed this and compared this.
8 And she -- and he referred me to Ms. Stoner here. And I
9 spoke with Ms. Stoner in the afternoon and realized that
10 she had something to contribute for this case of vital
11 importance. And Your Honor, at that point I tried to fax
12 a subpoena to her about, I think, about five o'clock
13 Friday afternoon.

14 THE COURT: Did you copy that subpoena to Mr.
15 Mackay?

16 MR. SPENCER: And I did not, Your Honor. I
17 gave him notice last afternoon, yesterday afternoon. It
18 was late notice. If I could explain a little bit about
19 ---

20 THE COURT: I've heard enough about your
21 explanation. And let me tell you this. I'll let you
22 proffer her testimony.

23 MR. SPENCER: Okay. Thank you.

24 THE COURT: But I'm not going to let you put it
25 up in your case-in-chief.

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1 MR. SPENCER: I understand.

2 THE COURT: My ruling -- and you have a point,

3 and you may very well be right that it wouldn't

4 constitute discovery. I have to think about that.

5 That's why I want you to proffer it so I can at least

6 have notes on it. But I recall that the case -- this

7 file was left open only for Mr. Goldsmith's testimony,

8 and that's it.

9 MR. SPENCER: I understand.

10 THE COURT: I have a little concern with -- and

11 I understand you getting this dropped in your lap at the

12 last minute, but I have a real concern about you plopping

13 this down on Mr. Mackay's lap this morning in here in the

14 courtroom ---

15 MR. SPENCER: Right.

16 THE COURT: --- or yesterday afternoon,

17 whatever. That is a concern to me.

18 MR. SPENCER: Right.

19 THE COURT: I also ---

20 MR. SPENCER: But I think ---

21 THE COURT: No, sir. No, sir. I'm not asking

22 for a response.

23 MR. SPENCER: I understand. I apologize.

24 THE COURT: I do find that it would be blocked

25 by discovery. That being said, I think the proper thing

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James L. Goldsmith, Jr. - Direct Examination by Mr. Spencer

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1 to do is you proffer it at such time as it needs to be.
2 That way, if I'm incorrect in what I do, in what I've
3 ruled, then you have a record to protect yourself. That
4 being said, I assume at this stage we have Mr. Goldsmith?

5 MR. SPENCER: Yes, Your Honor.

6 THE COURT: Okay. So would you call him,
7 please?

8 MR. SPENCER: Yes, Your Honor. Your Honor, I
9 would call Mr. Goldsmith to the stand.

10 (WHEREUPON, the witness was duly sworn.)

11 MR. SPENCER: Your Honor, may it please the
12 Court?

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION

15 JAMES L. GOLDSMITH, JR.,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. SPENCER:

19 Q. Mr. Goldsmith, very quickly, you recall representing
20 Mr. Ricketts for his trial in 1999?

21 A. I do.

22 Q. Okay. If you could explain -- and also, have I sent
23 you a copy of the deposition and attached exhibits for
24 Mr. Ara Nalbandian?

25 A. Yes, sir, you have.

1 Q. Okay. When you represented Mr. Ricketts, what was
2 your theory of the case? What was your defense strategy?

3 A. Well, my theory in essence was that the victim's
4 sister, I believe Dawn Bilido (phonic). There's Dawn and
5 Dean (phonic) initiated the shootout. My client had gone
6 over to his wife's house. They were separated. They
7 were having a conversation outside the residence at the
8 fence. That conversation was taped. The victim had an
9 audio recorder in her back pocket, so it was taped. It
10 appeared from the conversation that it was at least a
11 cordial conversation, as cordial a conversation as you
12 would have with two people who are separated. But that
13 when the sister or sisters of the victim drove up, that
14 shooting began. And it was my theory that the sister,
15 Dawn Bilido, as I recall, shot first, intending to shoot
16 Bobby and shot and killed her sister. And that's what I
17 argued to the jury.

18 Q. Okay. Now, in addition to your client, there were
19 several eyewitnesses at the scene, right?

20 A. Correct.

21 Q. And your client testified that the one sister had
22 originally fired the first shots; is that correct?

23 A. I think so. Yes, sir.

24 Q. Did any other witnesses testify that it was the
25 sister and not the Defendant that fired the first shot?

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1 A. I don't believe so. There was a Ms. White who was a
2 next door neighbor. And I recall -- of course, twelve
3 years in the interim -- that her testimony was that she
4 heard a couple of pops and then a boom. I knew that
5 Bobby had fired a rifle and that Dawn Billido had fired a
6 three fifty-seven Magnum. And I had argued to the jury
7 at that point that the popping was because of the three
8 fifty-seven Magnum and the boom was the rifle, the larger
9 gun. But other than Bobby's testimony, I don't recall
10 that there was anybody else that testified that Dawn shot
11 first.

12 Q. All right. And Dawn testified that actually Mr.
13 Ricketts shot and killed both his wife and her sister,
14 Dee, right?

15 A. She testified that he fired the first shot, yes.

16 Q. All right. And that's also what Dee herself
17 testified to, isn't it?

18 A. Yes, I think so.

19 Q. And the thirteen-year-old daughter, Mr. Ricketts'
20 thirteen-year-old daughter, do you recall that she also
21 testified that Mr. Ricketts shot both the victim and the
22 -- excuse me -- the wife and the sister?

23 A. She testified to that as well. And her 9-1-1 tape
24 came in as well where she was heard to say on the 9-1-1
25 tape in a very emotional manner, my daddy's killing my

1 mom or something to that effect.

2 Q. Now, in preparing the defense, did you consider
3 utilizing any experts?

4 A. I would have loved to have had an expert just as a
5 matter of strategy. You know that the State is going to
6 have their experts. And if you can have an expert to
7 sort of turn that against or at least neutralize some of
8 that, obviously that's the optimum situation. I was
9 retained by Bobby's family. And unfortunately, he was
10 not able to fully comply with his retainer agreement. It
11 was a very small amount paid on the fee. And under our
12 retainer agreement, he was to pay for any costs. So he
13 would have been obligated under our agreement to pay for
14 any costs. And I was not in a position to advance those
15 costs. So I knew going in that there was no money to pay
16 for an expert.

17 Q. Right. So he didn't come forward with any money to
18 hire an expert?

19 A. He did not, nor did his family.

20 Q. Was any particular kind of expert contemplated?

21 A. Well, I would have thought that some sort of
22 ballistic expert. We had Ms. White's testimony about the
23 sound of the gun popping and the sound of the other gun
24 booming. It would have been, I think, advantageous to
25 pursue something along those lines as well as perhaps a

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1 ballistics expert as to which bullet was fired from which
2 gun. And I had not, at that time, heard of the type of
3 testing that Mr. Mackay had done a couple of years ago.
4 I was not familiar with that type of ballistics testing.
5 The typical testing there was firing a bullet and
6 identifying it through the spirals or whatever in the
7 bullet itself and tracing that bullet to a particular
8 gun.

9 Q. And as a matter of fact, were they able to -- in
10 terms of the fragments that were recovered from Mr.
11 Ricketts' wife, were they able to match that? Were SLED
12 experts able to match that to any gun?

13 A. Again, my recollection is somewhat dimmed by the
14 twelve years in the interim. And I did look over the
15 transcript. There's a lot in the transcript. I'd
16 forgotten that it was that extensive. I believe that the
17 SLED agent was able to trace that gun [sic] to the rifle,
18 to Bobby's rifle. But that is just my recollection.

19 Q. Okay. So I mean, so you don't have a clear
20 recollection whether or not they were able to trace the
21 fragments to the gun?

22 A. I'm sorry. I do not.

23 Q. Okay. I understand. And how long have you
24 practiced criminal law?

25 A. I was admitted in South Carolina in 1982; admitted

1 in North Carolina in 1998.

2 Q. Okay. And have you been practicing criminal law
3 ever since 1982?

4 A. Pretty much. I've ventured into other areas before,
5 but always the majority of my practice -- and it has been
6 for the last ten or twelve years -- is criminal defense.

7 Q. Let me ask you this. And you said you had an
8 opportunity to review the deposition and report that I
9 sent you?

10 A. Yes. I read the deposition in full, yes.

11 Q. In reviewing that, did you see anywhere where it
12 suggested that the bullet -- that the bullet for the
13 three hundred ammunition had been tested both on its
14 outside and its inside?

15 A. I don't think that it was. It seemed to me more of
16 a chemical analysis. This bullet -- in other words, this
17 bullet consists of copper versus this one which is
18 plastic or something. Seemed to be more of a chemical
19 analysis rather than the traditional examination of a
20 bullet or fragments to determine which gun it was fired
21 from.

22 Q. And did it indicate anywhere in the report when you
23 reviewed it what was in the core of it or in the middle
24 of the bullet?

25 MR. MACKAY: Objection, Your Honor. He's

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1 testified earlier he's not familiar with this testing.
2 He's not, I don't think, qualified to testify as to what
3 the particulars are of the testing unless they can
4 qualify him as a metallurgist.

5 THE COURT: All right. Mr. Spencer?

6 MR. SPENCER: Well, Your Honor. I'm just going
7 towards his -- the reason I -- you know, obviously when
8 we're deciding an issue of ineffective assistance of
9 counsel, deficient performance, one of the things is we
10 need to get the mind process of the attorney. And that's
11 why I'm having him testify about what he's seen in the
12 report. And I want to explore further, you know, if this
13 is a report that he would want to be presenting to the
14 jury.

15 THE COURT: Well, let me ask you this. Didn't
16 he testify that he was unfamiliar with the type of
17 testing that was done in that report?

18 MR. SPENCER: Right. But he's had the
19 opportunity to review it. You know, I've already asked
20 that question. And he's familiarized himself somewhat
21 with this idea. And the question is, would he have --
22 you know, we're not trying to look in hindsight. But
23 would he have, at the time of trial in 1999, wanted to
24 call this expert to testify to this report? And one of
25 the things, Your Honor -- you know, the problem is we

1 know what's on the outside of this bullet. We have no
2 idea what's on the inside.

3 THE COURT: I gathered that was a chemical --
4 the testing that was done by Mr. Mackay's apparently was
5 some type of chemical versus an actual analysis on the
6 shell and the casing. But ---

7 MR. SPENCER: Through my understanding, it's
8 sort of -- I'm sorry, Your Honor. It's just an x-ray
9 disbursive test. So it's sort of like, well, an x-ray.

10 THE COURT: Look, I'm going to overrule your
11 objection, just for what it's worth. I think it is,
12 quite frankly, hindsight, but I'll let you go a little
13 bit further into it.

14 MR. SPENCER: And you know, we're always -- I'm
15 ---

16 THE COURT: But don't ---

17 MR. SPENCER: I'll proceed.

18 THE COURT: Go ahead, please, sir.

19 MR. SPENCER: I'm sorry, Your Honor.

20 THE COURT: That's okay.

21 Q. And again, just -- I don't know if you answered the
22 question, Mr. Goldsmith. But did you see anywhere in the
23 report where it indicated that the middle or the core of
24 the bullet had been tested?

25 A. I'm not sure if I recall that. But to answer your

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1 ultimate question, would I have used that expert?
2 Absolutely, I would have used that expert. From a
3 defense point of view, I don't have to prove my case
4 beyond a reasonable doubt. I just have to introduce some
5 doubt. And I would have utilized the services of this
6 gentleman and introduced that report had it been
7 available, absolutely. And I don't necessarily need to
8 fully understand it. I don't fully understand D.N.A.
9 testing, but it's a valuable tool. And I would have used
10 this gentleman had he been available.

11 Q. Now, let me ask you this. The State would have had
12 the opportunity to test the same bullet, would it not?

13 A. Yes, they would have.

14 Q. And if the State tested the -- opened the bullet and
15 found something inside that more or less matched the
16 fragment, then that could be prejudicial to your case?

17 THE COURT: Sustained.

18 MR. MACKAY: Objection, speculation.

19 THE COURT: Sustained.

20 Q. If the State presented a -- let me ask you this.
21 The State would have the opportunity to cross-examine a
22 witness that was produced in 1999, is that ---

23 A. Certainly.

24 Q. And the State could have cross-examined the witness
25 on whether or not he had tested the inside of the bullet?

1 A. Certainly. I would have been surprised if they
2 wouldn't have done that.

3 Q. And I think you testified in your years of
4 experience you had not heard of this kind of testing
5 before?

6 A. Not specifically that type of analysis of a bullet,
7 no, not at that point.

8 Q. All right. And did Mr. Ricketts say anything to you
9 or anyone else suggest that you should have an expert run
10 an x-ray and disbursive test on the bullet versus the
11 fragments to try and eliminate?

12 A. We did not have a discussion on that specific topic.
13 My recollection is that we talked about it would be very
14 helpful if we could have some sort of expert about the
15 bullet or about the sound of the gun or something, if
16 nothing else, just to counteract what I anticipated the
17 State would do. But there was simply no money available
18 to do that.

19 Q. All right.

20 MR. SPENCER: I beg the Court's indulgence.
21 Your Honor, I have no further questions.

22 THE COURT: Yes, sir. Cross-examination?

23 MR. MACKAY: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. MACKAY:

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1 Q. Mr. Goldsmith, how much did the failure of Mr.
2 Ricketts' family to pay your retainer upset your ability
3 to hire an expert or your hiring an expert?

4 A. Absolutely could not hire an expert. There was no
5 money to do that. And I did not feel, either under my
6 retainer agreement or under the rules of conduct or
7 professionalism or any other standard, that I was
8 obligated to advance costs to them. As you know, the
9 experts, even back in 1999, were fairly expensive. And
10 so it basically eliminated my ability to get one.

11 Q. Would you have hired an expert if you had the money
12 to advance?

13 A. Yes.

14 Q. You would have?

15 A. Yes.

16 Q. You didn't have the money to advance, correct?

17 A. Did not.

18 Q. You understand your obligation as a defense attorney
19 that once you undertake representation of an individual
20 to fully represent that individual?

21 A. Yes, I do understand that.

22 Q. And you would not agree with me that that includes
23 advancing costs for experts in that they are necessary
24 and crucial to your defense?

25 A. I would not agree that it is my obligation to

1 advance costs to a client who has signed a retainer
2 agreement to be responsible for costs. The ability that
3 I have and the things within my control, yes, I'm to do
4 the best that I can to the standards. But the ability to
5 hire an expert would have been something outside of my
6 control.

7 Q. How much had they paid on your retainer? What was
8 your retainer?

9 A. My recollection is that it was -- the retainer was
10 fifteen thousand. And I think he paid two thousand on
11 it.

12 Q. Okay. At any time, did you consider moving to be
13 relieved on the case so that Mr. Ricketts would have the
14 benefit of the public defender's office and state-funded
15 experts?

16 A. I did on several occasions, and I'm not sure that I
17 recall talking to Bobby about it. But this case was a
18 bit extraordinary in that it came to court fairly
19 quickly. Talk about a fast track. It was on a fast
20 track. Usually you can anticipate maybe a year or two
21 before the case comes to trial from the actual incident.
22 This one was a matter of a few months. And so I did
23 consider it. It's been my experience that judges aren't
24 likely to let you off the case. I liked Bobby. I wanted
25 to do a good job for him, and so I stayed on the case.

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1 But I did consider it in my own mind several times.

2 Q. And you don't -- in your experience, you don't
3 believe the judge would have let you off the case when a
4 client had paid two thousand on a fifteen-thousand-dollar
5 fee and was in need of hiring experts which you could not
6 afford nor felt obligated to advance costs for? You
7 believe a judge would not have relieved you?

8 A. In my experience -- I'm sure there may have been a
9 judge somewhere. My experience is that you're just not
10 going to get off a case in a situation like that. I've
11 never been able to, and I've asked many times before.

12 Q. At any time did you ask the court for assistance in
13 hiring experts, financial assistance in hiring experts?

14 A. I did not.

15 Q. You said a while ago a couple of times you weren't
16 familiar with this type of testing in 1999 when you
17 represented Mr. Ricketts; is that correct?

18 A. That's correct.

19 Q. Did you notice in Mr. Nalbandian's deposition --
20 that you stated you had a chance to review, I think --
21 that he said this testing had been around since the
22 1980s?

23 A. Yes, I recall him saying that in his deposition. I
24 read that, yes.

25 Q. And you said you would have loved to have had this

1 expert at trial?

2 A. Well, to have that expert or any expert that I could
3 have utilized to blunt the State's evidence and create
4 some doubt in the jury's mind. Yes, sir.

5 Q. Do you believe that Mr. Nalbandian's opinion, as
6 rendered in his deposition and his report, would have
7 helped your client's case as you tried it in 1999?

8 A. Well, I certainly think it would have helped. I
9 mean, anytime the State puts up the weight of their
10 evidence -- and it's expert after expert after expert --
11 and you don't have any, then it just -- from a strategic
12 point of view, it's helpful to have an expert. Again, as
13 a defense attorney, I'm trying to create doubt in the
14 jury's mind. I'm not trying to prove any innocence by
15 any reasonable standard, a guilt standard. The creation
16 of doubt is what I'm after. And I think that, to some
17 extent, would have created additional doubt in the jury's
18 mind that would have benefitted him. Sure do.

19 Q. Do you believe that Mr. Nalbandian's opinion, which
20 in essence is that the bullet from the three fifty-seven
21 Magnum fired by the victim's sister killed the victim,
22 would have helped you in your defense of Mr. Ricketts?

23 A. Oh, absolutely. I mean, that's my argument. That
24 was my strategy going into the case. That's what I
25 argued to the jury. But as it was, it's just me arguing

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1 it. And I didn't have the backing of an expert such as
2 Mr. Nalbandian. And that would have been very
3 beneficial, been helpful.

4 Q. And also, while we're on experts, did you consider
5 or talk -- or did you hear a request from Mr. Ricketts to
6 hire an audio expert to analyze the tape that was in the
7 victim's back pocket that, in your recollection, had
8 several popping sounds on it and then a boom.

9 THE COURT: Just one second. Do you have an
10 objection?

11 MR. SPENCER: Yes, Your Honor. I think that
12 goes to a different issue. And you know, my
13 understanding coming into this ---

14 THE COURT: State your objection, please.

15 MR. SPENCER: Oh, I'm sorry. My objection is
16 it's not related to the issue of ineffective assistance
17 as to this expert whether -- you know, it's a new issue
18 as I understand it that's being brought up now.

19 MR. MACKAY: I understand his objection. I
20 don't know that I've limited myself to that. He asked me
21 that yesterday, and I told him I didn't know whether -- I
22 was still free to go into any allegations in the petition
23 of insufficient representation. I think it's in the
24 petition, failure to hire an audio expert. And so I'm
25 going to ask to go into it.

1 THE COURT: Well, it's -- you know, what's good
2 on the one hand should generally be good on the other
3 hand. I have limited the State, so I'm going to sustain
4 the objection.

5 MR. MACKAY: All right.

6 MR. SPENCER: Thank you, Your Honor.

7 MR. MACKAY: No further questions.

8 THE COURT: Any redirect?

9 MR. SPENCER: No, Your Honor, I don't believe
10 so.

11 THE COURT: Okay. May this witness be excused?

12 MR. SPENCER: Yes, Your Honor.

13 THE COURT: Mr. Mackay?

14 MR. MACKAY: Yes, sir.

15 THE COURT: Thank you, sir.

16 THE WITNESS: Thank you, Judge.

17 THE COURT: All right. Would you call your
18 next witness, please, Mr. ---

19 MR. SPENCER: Your Honor, my only -- my last
20 witness would be, of course, the witness that we would be
21 proffering the testimony for. So I would call Agent
22 Jennifer Stoner to the stand.

23 THE COURT: Okay.

24 JENNIFER STONER,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MR. SPENCER:

3 Q. Agent Stoner, if you could just give us your --
4 where are you currently employed?

5 A. I'm employed by the South Carolina Law Enforcement
6 Division in the trace evidence section.

7 Q. All right. What are your duties in the trace
8 evidence section?

9 A. The trace evidence section has, we have many
10 different duties that we perform. We analyze evidence
11 and present the evidence in court. The evidence that we
12 analyze, we analyze paint evidence, fiber evidence,
13 accelerants, trace other case work, gunshot residue,
14 explosives and tape analysis.

15 Q. Okay. I think you mentioned miscellaneous trace
16 evidence?

17 A. It's considered a trace other category.

18 Q. Excuse me. Trace other category. Would that
19 sometimes include testing of metals?

20 A. It includes testing pretty much anything which can
21 include metals.

22 THE COURT: What was that last thing? Trace
23 could be anything but what?

24 THE WITNESS: Trace other analysis can -- we
25 test anything that comes in. Like a white powder

1 substance. It can include like metals from pry bars that
2 are breaking and entering. Anything that doesn't fall
3 into one of the six or seven categories of testing that
4 we have would fall under a trace other category.

5 Q. And let me just back up a little bit. What is your
6 educational background?

7 A. I have a bachelor of science degree in chemistry
8 from California University of Pennsylvania. Upon
9 completion of my degree, I performed an internship at
10 SLED in the trace evidence section. And upon completion
11 of that internship, I was hired in the drug analysis
12 department. And at that time, I completed the Criminal
13 Justice Academy and began training in the analysis of
14 controlled substances.

15 Q. Okay. And after -- and what year would that be?

16 A. That was 1997.

17 Q. And after that, did you move into the trace
18 analysis?

19 A. I did. In 1998, I transferred into the trace
20 evidence department and began the training program in
21 that department.

22 Q. Okay. And I think you said started a training
23 program. Can you tell me about that training program?

24 A. It was approximately a three-year program, depending
25 on what background you came into the department with. It

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1 was under the supervision of the lieutenant at the time.

2 Q. Okay.

3 A. He would take us through the training program, teach
4 us the instrumentation, evidence flow in that department,
5 what you look for when you get evidence in those types of
6 cases. And it also included instrumental training and
7 training classes outside of SLED through different
8 agencies and vendors.

9 Q. All right. Did you complete that program?

10 A. I did.

11 Q. Okay. And when about did you complete that program?

12 A. You complete it in increments. As you finished one
13 part of your training -- like I started training in
14 gunshot residue first. When I completed that training, I
15 would receive gunshot residue cases and then begin
16 training in a different discipline. So it took me right
17 at three years to complete it.

18 Q. Okay.

19 A. So I think it was the end of 2001 where I was
20 competent in all areas.

21 Q. Now, as part of your duties, do you operate a
22 scanning electron microscope?

23 A. I do. We have actually four of them in our
24 department.

25 Q. Okay. And have you ever used them to analyze

1 metals?

2 A. I've used them to analyze metals on several
3 occasions.

4 Q. Okay. Can you give some examples of when you've
5 used it to analyze metals?

6 A. A lot of the metals that we look at are with gunshot
7 residue. We look at analysis on the person's hands. We
8 look for the trace metals that are present after having
9 fired a weapon or been near a weapon when it was fired.
10 I've also looked at cases where, as I stated earlier, if
11 someone uses a tool to break into something, there can be
12 metal shavings left behind. I look at metals in those
13 cases. I've also looked at metals when someone has used
14 wire cutters to cut wire, to look for the coatings on the
15 wire left behind on the pliers.

16 And we've done some cases -- we worked a case for
17 the Hunley where we had to look at a coin to see if there
18 was actually lead residue on the coin.

19 And one other area that I neglected to mention is
20 with explosives. We look at a lot of the metals that are
21 contained within explosives.

22 Q. And have you been -- have you been qualified as a
23 witness to testify -- excuse me. Have you been qualified
24 as an expert witness in court before?

25 A. I have.

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1 Q. And do you know approximately how many times?

2 A. I think this is my sixtieth testimony.

3 Q. Sixty?

4 A. Sixtieth, yes.

5 MR. SPENCER: And Your Honor, at this time, you
6 know, if we were proceeding with the hearing, I would be
7 asking to qualify Ms. Stoner as a -- Agent Stoner as an
8 expert in trace analysis.

9 MR. MACKAY: No objection.

10 THE COURT: No objection. Okay. For the
11 purposes of this hearing, I would find that Ms. Stoner is
12 an expert in the field of trace analysis and be allowed
13 to give her opinion on that -- in that area. Go ahead.

14 MR. SPENCER: Thank you, Your Honor.

15 Q. Now, have I forwarded to you or sent you a
16 deposition transcript for an Ara Nalbandian?

17 A. Yes, you did.

18 Q. All right. And did I also forward to you the
19 exhibits to that deposition?

20 A. You did.

21 Q. All right. And have you had an opportunity to look
22 through those materials?

23 A. I did.

24 Q. All right. And did you review the conclusions that
25 Mr. Nalbandian had reached?

1 A. Yes, I did.

2 Q. And did you see some issues with both the
3 conclusions that had been reached?

4 A. I did.

5 Q. And if you could explain and kind of summarize what
6 some of the issues you had with that report?

7 A. The first -- whenever we analyze -- we have had
8 requests in the past to do bullet comparisons with bullet
9 fragments to a certain box of ammunition or to a specific
10 projectile. But the issue that we have with that is
11 unless there is something very specific about that bullet
12 lead or that composition, we cannot do a comparison
13 because within a box of ammunition, the ratios will vary
14 in the components. So if you do a lead to antimony ratio
15 ---

16 THE COURT: A lead to what, please?

17 THE WITNESS: A lead to antimony. Antimony is
18 added to lead to harden it so that when it goes through
19 the firing process it doesn't disintegrate.

20 THE COURT: Okay.

21 A. So when we do those ratios, it can vary within the
22 box of ammunition. So we do not look at bullet lead to
23 determine if it came from a particular bullet as opposed
24 to another unless we look at the bullet standards and
25 determine there's something very unique about them that

1 we can look for other than the ratioing of the lead that
2 is in the bullets.

3 When I looked at this case, I noticed he did S.C.M.
4 analysis with energy disbursive x-ray which means he put
5 it in an instrument that uses electrons to generate an
6 image. It's kind of like a light microscope, but it
7 gives you a much better image and it's operated in a
8 vacuum. When you look at that and you do an x-ray, the
9 x-ray does the surface features. In this case, if I had
10 looked at it, I would have looked -- I would have cut the
11 bullets open to see what the core of the bullet was. If
12 I have a completely copper-jacketed bullet and I x-ray
13 different areas around it, I'm not going to get what's in
14 the middle. So that was my first concern when I looked
15 at it was that from his pictures, it appears that he only
16 x-rayed the outer portion of the projectile which doesn't
17 tell me what is in the middle of it. And normally when
18 you have a projectile found in a body at autopsy, you're
19 getting what's in the core of that bullet because the
20 rest of it usually breaks away in the process of being
21 fired and going through what it's hitting. So I had
22 concern about that, that the middle was not looked at to
23 determine if it was a lead core in that bullet.

24 The second ---

25 THE COURT: When you say middle, just for my

1 purposes, are you speaking of the projectile in the
2 bullet?

3 THE WITNESS: When you have a cartridge and you
4 have the casing and then you have the bullet portion, you
5 could have a fully jacketed one which has a coating
6 around the lead.

7 THE COURT: Okay.

8 THE WITNESS: And so the middle of it would be
9 to take that and break it open.

10 THE COURT: Okay.

11 A. The second issue that I had is in the report he
12 reported that he found on the Ruger pistol bullet, which
13 is item twelve, and the autopsy bullet, that he found
14 lead and tin. And when I looked at his data, the data
15 that was generated from the instrument, lead is clearly
16 there, but the tin is not. The tin is labeled -- or what
17 he is calling peaks -- are actually labeled antimony on
18 his data. So the instrument is saying that those peaks
19 are antimony. And I don't see any indication that there
20 is any tin present which is what he reported.

21 Q. And in your course of your duties, are you familiar
22 with the elements charts, elemental chart?

23 A. I am. We use a chart for the scanning electron
24 microscope because it basically breaks down and we look
25 for elemental composition. We look for barium, antimony

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1 and lead for gunshot residue. When we do paint cases, we
2 look for titanium, barium, calcium. So we do look at --
3 I use these x-ray line almost in every case that I work.
4 And when I looked at this one ---

5 THE WITNESS: Can I show this to you?

6 THE COURT: Yes, ma'am.

7 THE WITNESS: This is actually a plot.
8 Whenever you x-ray ---

9 THE COURT: Do you want to look at this that
10 she's showing me?

11 MR. MACKAY: No, sir. I have a copy.

12 THE COURT: Okay.

13 THE WITNESS: This is actually a plot of the x-
14 ray information. Whenever we beam the electrons on a
15 sample, some chemical reactions take place and we'll get
16 specific, unique lines that tell us what's present. This
17 is one of the main lead lines that we see along with this
18 one and this one so that we -- and we check this against
19 the database that we have that shows the lines that
20 you're supposed to receive when you x-ray that item. We
21 check that to determine what that is.

22 Right here, this abbreviation, the S.B., that is
23 actually the abbreviation for antimony. S.N. is the
24 abbreviation for tin. So the instrument labeled this as
25 antimony, and he reported tin. And also, when you look

1 at -- and he may want to see this because this is
2 something that I generated. I ran an antimony and a tin
3 standard.

4 Do you want to show that to him?

5 Q. If you can go ahead and describe what -- the
6 standard that you were running and how you did that.

7 A. We have metal standards that we analyze for our
8 cases to determine -- if we need them for cases, we just
9 have a set of standards. So I pulled the tin standard
10 and the antimony standard to run them so that I could
11 bring to show you the graph of the x-ray lines of what
12 you would receive if you would analyze a sample with that
13 substance in it.

14 MR. MACKAY: All right. I'm sorry. I want to
15 be clear, Your Honor. Is this something she's done
16 independently, some other test or ---

17 THE WITNESS: It was just a standard run on a
18 scanning electron microscope to show you where the lines
19 would occur for antimony and for tin.

20 MR. MACKAY: I mean, did you put -- I mean ---

21 THE COURT: Hang on.

22 Q. And how do you ---

23 THE COURT: Both of you.

24 MR. SPENCER: I'm sorry.

25 THE COURT: I believe -- and you correct me

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1 just so we can keep this clear, okay, if y'all will allow
2 me -- the report that she was looking at based on your
3 expert's report and what she just went over with me
4 showed S.B., lines elevated for S.B., which is the
5 elemental chart for antimony. However, he reported those
6 same lines on that chart finding as being S.N. which is
7 tin. Is that correct?

8 THE WITNESS: That's correct.

9 THE COURT: But you did no independent testing
10 on that?

11 THE WITNESS: No.

12 THE COURT: Is that what you're asking?

13 MR. MACKAY: No. I'm asking -- the document
14 that he just put in front of me, I've never seen before.
15 And I'm wondering if she had done -- she's produced
16 evidence I haven't seen. I'm just asking her where this
17 came from.

18 THE COURT: Oh, okay.

19 MR. MACKAY: I understood her second point of
20 contention. I just wanted to see what this was about.

21 THE WITNESS: That is not evidence. That was
22 just a standard I ran just to show you what the lines
23 should look like when you're calling that element.

24 Q. And when you say standard, what specimen are you
25 running this test on?

1 A. It was a certified standard we received from Fisher
2 Scientific. It's in a jar labeled antimony, and one's
3 labeled tin metal.

4 Q. So it's a known, ---

5 A. It's a known standard.

6 Q. --- substance? It's a known standard for tin and a
7 known standard for antimony?

8 A. Yes.

9 Q. And that's what this is testing?

10 MR. MACKAY: It's all proffer, so I won't
11 object.

12 MR. SPENCER: Your Honor, and I would ask to
13 move these standards into evidence as State's Exhibit 1
14 and State's Exhibit 2, understanding this is a proffer.

15 THE COURT: Okay. Sure.

16 THE WITNESS: Can I explain one more thing to
17 you?

18 THE COURT: Yes, ma'am.

19 THE WITNESS: We have a governing body, which
20 is Asplad Lab (phonic), which we have to follow certain
21 Q.A. and Q.C. procedures. And with S.C.M. work the
22 longer you collect, the better chance you're going to get
23 more.

24 THE COURT: S.C.M.?

25 THE WITNESS: Scan militron microscope.

1 THE COURT: All right.

2 THE WITNESS: The longer you put that x-ray on
3 a substance, the better chance you're going to bring
4 these peaks out if it's present. So the longer you
5 collect, the better. And when you look at this, these
6 are the lines that you should see for antimony, and these
7 are the lines for tin. Down here, I would be hard
8 pressed to call this anything with this data because you
9 don't have the -- you're not seeing -- you don't have the
10 elevation of those lines and you don't know for sure if
11 that's in the noise or if it's actually there.

12 THE COURT: Okay.

13 THE WITNESS: So the computer will call things
14 based on -- you have to go in and check it.

15 THE COURT: Okay.

16 MR. SPENCER: And these are the two documents.
17 State's 1 would be the tin example -- the tin standard.
18 And State's 2 would be the antimony standard.

19 (WHEREUPON, Respondent's Exhibit Numbers 1 and 2
20 were marked for identification only.)

21 Q. And I think you've testified -- you kind of alluded
22 to this just now. But did you compare these standards to
23 the test that Mr. Nalbandian had ran on portions of the
24 ammunition and the fragments?

25 A. I didn't do a physical comparison. I just looked at

1 the standards and what lines were produced by the
2 standard, as opposed to what was called on his report.

3 Q. And do you have some issues as to concerns about
4 whether those substances should have been called based on
5 the graphs of the reports that are in front of you?

6 A. That is what I've just explained to the Judge ---

7 Q. Okay.

8 A. --- was that they're not very high, they're not very
9 defined. So I would have collected longer to determine
10 if they're actually there or if it's part of the noise
11 that we're seeing.

12 Q. And how long would you typically run that test under
13 this circumstance?

14 A. It depends on circumstances. With some cases where
15 we're looking at -- when you look at it and you do a
16 quick scan, you try to determine what you have, if you
17 have some areas that aren't resolved, I've collected as
18 long as fifteen hundred seconds, live seconds.

19 Q. Okay. What would be, say, the least time?

20 A. If it's a cut-and-dry case, I usually do two hundred
21 to four hundred.

22 Q. Okay. And how long was it run in this case?

23 A. This one it appears the live seconds were fifty
24 seconds.

25 Q. Okay.

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1 MR. SPENCER: I beg the Court's indulgence.

2 THE COURT: Okay, sir.

3 Q. And you mentioned before that you don't run,
4 typically run the test comparing ammunition to determine
5 if -- to determine if the composition of the metals
6 matches; is that correct?

7 A. We do not unless there is some reason to believe
8 there is something unique about that -- one of the
9 rounds.

10 Q. And how come you wouldn't run that?

11 A. We are not able to because of the difference in each
12 box of ammunition.

13 Q. All right.

14 A. And we're not able to determine based on ratios.

15 Q. And did the F.B.I. used to run that sort of
16 analysis?

17 A. They used to do a bullet lead analysis test, but it
18 was -- they discontinued doing it because they found that
19 they were not able to make a scientific ---

20 MR. MACKAY: Objection. Objection, Your Honor,
21 as to the statement as to why the F.B.I. stopped doing a
22 particular test. Past the point of that they stopped
23 doing it, I think, is okay. But not going into their
24 rationale behind it. I don't think she can speak to
25 that.

1 THE COURT: All right. Overruled. Go ahead.

2 Q. Just explain why the F.B.I. doesn't run that test
3 anymore. What's the reason they don't run that test to
4 your understanding?

5 A. Am I allowed to answer it?

6 Q. Yes, you can go ahead and answer.

7 A. When that happened, it was because within a box of
8 ammunition, the ratios of the lead and the antimony and
9 the trace metals can vary significantly, so that if we do
10 a comparison and try to match a projectile or a bullet
11 back to a specific box from a suspect, it's not sound
12 scientific evidence because of the variances that are
13 found unless you have some very unique ammunition.

14 Q. Okay.

15 A. Which we usually do not.

16 MR. SPENCER: I beg the Court's indulgence a
17 moment.

18 Q. When you -- before when you ran your testing to the
19 known standards to produce the graphs that we've entered
20 into evidence, how many -- I hope I'm getting this right.
21 How many kilovolts did you run that at?

22 A. I ran it at twenty-five K.E.V.

23 Q. Okay. And in your review of the report by Mr.
24 Nalbandian, what did he run that at?

25 A. At fifteen K.E.V.

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1 Q. What's the advantage or what's the difference that
2 you would -- if you run the voltage at twenty-five
3 kilovolts versus fifteen kilovolts?

4 A. Some of the x-ray lines that we look for, they need
5 a certain excitation to be produced. And if you run
6 something at twenty kilovolts and it needs to be a
7 twenty-five excitation, you're not going to see it. And
8 if you run it fifteen, anything that needs to be excited
9 above fifteen is not going to be seen. In this case, the
10 elements that we were looking at fell within the range
11 for fifteen or twenty-five. I just usually do my case
12 work at twenty-five or thirty to make sure I see
13 everything that is present.

14 Q. Thank you.

15 MR. SPENCER: I have no further questions.

16 THE COURT: Cross-examination?

17 MR. MACKAY: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. MACKAY:

20 Q. Is it Ms. Stoner?

21 A. Yes, sir.

22 Q. Okay. Ms. Stoner, while you've got Dr. -- I mean,
23 Mr. Nalbandian's report in front of you -- do you have
24 his complete report?

25 A. I assume so. I have what I was sent. I don't know

- 1 how many ...
- 2 Q. The graphs that are attached to his report?
- 3 A. Yes.
- 4 Q. Would you look at the one that at the very top of
- 5 it, it had a long identifying label, but it ends with 13
- 6 point S.P.C.?
- 7 A. 13 point S.P.C.?
- 8 Q. Yes.
- 9 A. Yes, sir.
- 10 Q. All right. The second line of that heading
- 11 identifies this sample test as a three hundred Mag, item
- 12 21, tip coating removed?
- 13 A. Uh-huh (affirmative).
- 14 Q. Tip and coating removed, I think. Do you know what
- 15 coating would have been?
- 16 A. I don't know what it would have been. It was non-
- 17 metallic. It was carbon and oxygen. It was probably a
- 18 polymer or some type of plastic. But since I did not
- 19 look at it, I don't know.
- 20 Q. On item 14 dot S.P.C.
- 21 A. Yes, sir.
- 22 Q. Three hundred Mag, item 21, upper area?
- 23 A. Uh-huh (affirmative).
- 24 Q. Coating removed. Do you know what coating removed
- 25 means?

1 A. I don't know what he was talking about for the
2 coating because you can have the casing, and sometimes
3 the casings can have a lubricant on them when they go
4 down the barrel. So I don't know how far he removed the
5 coating, or I don't know what he is referring to.

6 Q. You don't?

7 A. And when I look at -- when I saw the pictures, it
8 shows points on the top where it was analyzed. This
9 picture here in the report.

10 Q. Uh-huh (affirmative).

11 A. And it doesn't -- I mean, I don't see any gouges in
12 it that would have gone down into the center of it.

13 Q. Okay. But you don't -- you can't argue with the
14 idea that he removed the outer coating of the projectile
15 bullet before running the test indicated as dash 14 point
16 6 P.C.?

17 A. He's saying coating, and he's not saying jacket. So
18 I don't know what he is referring to.

19 Q. He's not referring to a casing, is he?

20 A. I don't know.

21 Q. Well, I mean, you read his deposition when he
22 explains these graphs, correct?

23 A. Yes.

24 Q. Okay.

25 A. And he also stated it was nondestructive, and

1 therefore, I don't know how far down he could have gone
2 to be nondestructive.

3 Q. All right. Starting on page 13 of his deposition --
4 have you got that?

5 A. Page 13?

6 Q. Yes?

7 A. I do not have page numbers on it. Oh, there it is.

8 Sorry. No, I don't have page numbers.

9 Q. You don't have page numbers?

10 THE COURT: Would you try to show her ---

11 MR. MACKAY: I will. I'll try to give her
12 another copy.

13 I may not have another copy. Do you have a copy?

14 MR. SPENCER: I do. We can use -- and as I
15 printed the transcript, the actual transcript, off the
16 disk so it wouldn't be split up among four pages or
17 something.

18 THE COURT: Okay.

19 MR. SPENCER: They sent me the four-pages
20 version.

21 Q. If you would, I think this is when he starts
22 discussing his examination of item 21 which was a three
23 hundred Mag rifle bullet.

24 A. Yes, sir.

25 Q. Would you read that into the record, please?

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1 A. That's why when we look at item 21, which is the
2 rifle bullet, identified with three hundred Mag as
3 identification on the bullet itself, the tip was
4 primarily -- when you look at it, it was a color which is
5 different from the body of the bullet. And we started
6 looking from the tip all the way to the bottom area in
7 order to ensure that there is a consistency or a
8 variation in the chemical composition of the bullet from
9 tip to bottom. And the areas of interest was basically
10 on the plot. And each plot represented the chemical
11 elements that we'll basically be able to identify what
12 material do we have as the basis for manufacture or
13 production of that bullet.

14 Q. And keep reading.

15 A. The tip was non-metallic. Somehow it was the
16 construction of the bullet. And the upper black area,
17 which is the surface condition, was copper. And the
18 jacket, which is the bottom section of it, is copper.
19 The bottom black area was also copper. The tip cutting
20 removed, when we removed the surface coating, still it
21 maintained its non-metallic composition, primarily
22 identified as plastic because it was all hard carbon and
23 nothing else.

24 Q. All right. Let me interrupt you. That would be the
25 graph shown as point one three. Dash, one three point

1 S.P.C., correct?

2 A. For the tip?

3 Q. Yeah. That you just identified as non-metallic?

4 A. Yes.

5 Q. Okay. Keep reading that.

6 A. The upper area of the coating removed also verified
7 that it was copper. The jacket with the coating removed
8 was also copper, and the bottom area with the coating
9 removed was also copper. So those analysis results would
10 be the basis for concluding that the portion of the rifle
11 bullet was basically copper.

12 Q. Okay. So after reading that, you still have an
13 issue with whether he removed the outer layer of the
14 projectile to test the inner layer of the projectile?

15 A. I do because I don't know how far he went into the
16 inner layer.

17 Q. All right. Do you have any -- do you take any
18 exception to his qualifications?

19 A. I don't know anything about his qualifications.

20 Q. Well, they're in the deposition.

21 A. I had some concern for him calling an element tin
22 when it was clearly labeled as antimony.

23 Q. Oh, I understand that. But we're back on the one --
24 your second -- let's see -- the first exception you gave
25 the Court. Now, in the opening pages of the deposition

1 that you were given a copy of by the State earlier, can
2 you take a chance -- a moment to review his
3 qualifications -- if you're going to be critical of his
4 report, can you tell me if you have any criticism of his
5 qualifications?

6 A. The only criticism I would have is that he is a
7 metallurgist. And I don't know how often he works with
8 forensic evidence, which normally with forensic evidence,
9 we do have to look into things different than what -- if
10 I wasn't in the field of forensics, I would have never
11 known the inside of a bullet was different than the
12 outside. But through my training, that's one of the
13 things that I've learned and it's part of our procedure.

14 Q. And that might be why you would remove the outer
15 coating to test the projectile, right?

16 A. I would make sure that I was into the center of the
17 bullet, yes.

18 Q. Yeah. And can you go back and review the opening of
19 his deposition. I'll give you a moment to do that. And
20 tell me if you take exception to his qualifications as an
21 expert in ---

22 THE COURT: I'm going to ask you to move on.
23 He was qualified as an expert; she was qualified as an
24 expert. And that's for me to decide.

25 If you'd go ahead.

1 Q. Can I ask you if you're familiar with what an expert
2 in failure analysis is?

3 A. I think in failure analysis, it has more to do with
4 mechanical or industrial engineering. And I'm not
5 familiar with that. I know they use scan electron
6 microscopes to determine metal fatigue and metal failure
7 in pipes and different types of metals. But I've never
8 worked in that field.

9 Q. Or by use or by means of metallurgical evaluation,
10 failure analysis. Are you familiar with that expertise?

11 A. I am not.

12 Q. Okay. How long has this testing been around, the
13 use of electron microscopes to analyze the metal content
14 of items?

15 A. Scanning electron microscopes have been around
16 since, I think, 1964 or 1965. I wasn't born at that
17 time. I don't know when they started analyzing metals,
18 but I'm assuming it could have been right away because
19 they could analyze for elemental composition at that
20 time.

21 Q. Were you given a copy of the September 2007 order of
22 this Court in this case, the August 14th 2007 order,
23 where testing was ordered to be allowed on these items,
24 but that testing was to be nondestructive and the
25 evidence was to be returned in its original condition to

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1 the respective parties?

2 A. I don't think I have an order. I have a report from
3 the expert and the transcript.

4 Q. Let me show you the order. And if you would review
5 that just for a moment.

6 MR. SPENCER: Your Honor, to speed things
7 along, I would agree the order says that the test was
8 going to be nondestructive.

9 THE COURT: Just one second. What is your
10 objection?

11 MR. SPENCER: Oh, no. I was just trying to
12 speed things up.

13 THE COURT: Please -- no. Have a seat, please,
14 sir.

15 A. It does state that the analysis is nondestructive
16 and evidence will be returned in its original condition
17 to the respective parties.

18 Q. And if you were testing these items pursuant to this
19 order, would you cut the bullet open and look at the
20 core?

21 A. If I had that order, I would tell them I could not
22 do the testing without cutting the bullet open.

23 Q. Then the answer to my question, you would not cut
24 the bullet open and check the core of it, would you?

25 A. If I had a court order that read it had to be non-

1 destructive, I would not.

2 Q. So he did what was consistent with this order,
3 correct?

4 A. Yes.

5 Q. And frankly, if he removed the coating from the
6 projectile, he went a little bit beyond nondestructive,
7 didn't he?

8 A. Depending on how much coating he removed, yes.

9 Q. Okay. Thank you.

10 MR. SPENCER: Briefly, Your Honor?

11 THE COURT: Yes, sir.

12 REDIRECT EXAMINATION

13 BY MR. SPENCER:

14 Q. Did you see anywhere in the report or in the
15 deposition where it said that the copper jacket was
16 removed from the three hundred bullet?

17 A. All I saw was coating.

18 Q. And you don't know how thick that coating is?

19 A. I don't know.

20 Q. And if you were to analyze three hundred ammunition,
21 your process would have been to cut the bullet?

22 MR. MACKAY: Object to the leading, Your Honor.

23 THE COURT: Rephrase your question, Mr.

24 Spencer.

25 Q. If you were to test the three hundred ammunition,

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1 how would you go about it?

2 A. We would have done a visual examination on it,
3 determined what we were looking for, determined if it was
4 consistent throughout the top. Then I would have opened
5 the ammunition or cut it to determine what the inner
6 composition of the core of the bullet was.

7 MR. SPENCER: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 May this witness be excused?

10 MR. SPENCER: Yes, Your Honor.

11 MR. MACKAY: No objection.

12 THE COURT: Thank you, ma'am.

13 THE WITNESS: Thank you.

14 THE COURT: Is that the State's case?

15 CLOSING STATEMENTS

16 MR. SPENCER: And Your Honor, that would be the
17 State's case. I would again move to have her testimony
18 admitted into the record, Your Honor. You know, of
19 course, I've explained a little bit about why this comes
20 so late. I understand the discovery issue. I would
21 argue -- well, I'm not going to re-argue. But I would
22 say it's not covered by the discovery statute.

23 Your Honor, as an alternative, and I would even
24 suggest it as a preference, I think we want to know
25 ultimately what's in the middle of that bullet. You

1 know, this has been a case that's been around a long
2 time. I understand that, Your Honor. I understand that,
3 you know, had somebody thought to do this, this could
4 have been done earlier. A lot of the delay in this case,
5 of course, has been the process of having -- getting the
6 deposition testimony from Mr. Nalbandian. And as I
7 understand, I think the order Mr. Mackay mentioned was in
8 2007. And I think as early as 2005 they were trying to
9 line up an expert for this sort of thing.

10 Your Honor, understanding that this thing could have
11 been moved sooner -- understanding that, I would just
12 appeal that in the interest of justice that, first of
13 all, what I would suggest or ask for is to go ahead and
14 test the bullet, a destructive test. I think we have
15 enough that both sides would be able to test that bullet
16 and find out what's in the middle. Because, you know,
17 Your Honor, obviously this is an important case. And
18 Your Honor, I think at the end of the day, we just -- we
19 ought to know, good or bad, what that bullet is really
20 composed of. Then that would be my preference because we
21 want daylight. We want -- we really just want the truth.
22 And as a minister of justice, I think, you know, in my
23 role ultimately what we want is some light to know the
24 truth, to know what that bullet is compared -- made up
25 of.

1 THE COURT: Let me ask Mr. Mackay. If I were
2 to order the interior of whatever -- is that dot 13
3 S.P.C. 14, whatever it is?

4 MR. MACKAY: Item 21, Your Honor.

5 THE COURT: Item 21 to be analyzed, will that
6 resolve the case one way or the other?

7 MR. MACKAY: I don't think so, Your Honor.

8 THE COURT: Why not?

9 MR. MACKAY: Well, I mean, it will be
10 information. But whether it will resolve the case one
11 way or the other, I can't say. And that's why I say, I
12 don't know.

13 THE COURT: Well, let me ask.

14 And I'm going to ask Ms. Stoner in just a minute, if
15 you don't mind, Ms. Stoner.

16 Mr. Spencer, I have a tendency to say that I agree
17 with you, that we want just sunlight on the case. At the
18 same time, I don't want to unnecessarily prolong this
19 case or cost it any more than it already has unless I
20 could be assured that the results of that test would
21 definitively tell us the answer that we seek. Otherwise,
22 I'm going to say no.

23 And let me say this. It seems to me -- and correct
24 me, Mr. Mackay, because you know the facts in this case
25 better than Mr. Spencer or I do -- that they found

1 bullets either on the Petitioner's person or in his
2 pocket or in his vehicle or somewhere there at the scene
3 which is the subject of this test that have not
4 necessarily -- that is being admitted as being fired
5 through the gun, it just being the same type of bullet.

6 MR. MACKAY: Correct. This is not a -- item 21
7 is an unfired cartridge.

8 THE COURT: And we don't know -- didn't he have
9 various cartridges on his person or in his car at the
10 time?

11 MR. MACKAY: I can't recall from the record.
12 And it's in the record.

13 THE COURT: Well, would you let me know that
14 because I ---

15 MR. MACKAY: Because I'm not aware whether the
16 bullet came from within the rifle or within his house. I
17 know some ammunition was sought out of his house. But I
18 can't -- I can't recall that detail right here and now.

19 THE COURT: Okay.

20 And the point I'm looking at, Mr. Spencer, is that
21 if it's just another three hundred Mag bullet that was
22 tested, regardless if we go into the interior of the
23 bullet or not, I don't know if that's going to tell us
24 the answer.

25 Now, Ms. Stoner -- and I know you don't -- you

1 probably know less about this than me except for the
2 testing on this case. If you were to go in -- and I
3 don't know if I'm framing this question right. But if
4 you were to go in and check the interior of one of these
5 bullets, whatever item it is, would that give us any kind
6 of definitive information as to whether or not this lady
7 was shot with a three fifty-seven or a three one hundred
8 one [sic] Mag, because that's what the answer is.

9 THE WITNESS: The only issue with that is since
10 it is not the exact cartridge that was used, it could
11 have been a different cartridge. If I were to look at
12 that, one of those single cartridges, and find that it is
13 completely copper throughout and there is no lead
14 present, then it could definitively answer it. But more
15 than likely, it is a lead core. And at that point, I
16 couldn't tell you either way.

17 THE COURT: Okay.

18 MR. MACKAY: Your Honor, one other point too is
19 that I took pains to get her to concede that that coating
20 was removed by my expert to test this item 21 projectile.
21 And they deposed him at trial, in the trial deposition,
22 and had their crack at him to show the flaws in his
23 testing if they wanted to and could not show flaws in his
24 testing. And his testimony came in really without -- I
25 mean, without much attack. But the whole -- the concept

1 now that my expert didn't check the interior of the
2 bullet, I don't think is valid. I mean, she admitted he
3 removed the coating but didn't know how deep he went.
4 Well, now we're going to open it back up for them to go
5 on ---

6 THE COURT: I don't know that we're going to
7 open it back up, Mr. Mackay. I'm not saying -- that's
8 for me to determine whether it's valid or not. Because
9 that's the role I play in this case, unfortunately, as
10 far as having to make a determination.

11 MR. MACKAY: Yes, sir.

12 THE COURT: This thing just can't go on for ad
13 infinitum because just one more facet has been opened up
14 for consideration which is not going to give us an
15 answer. I entertained the idea by Mr. Spencer because I
16 think everybody wants justice done.

17 MR. MACKAY: Yes, sir.

18 THE COURT: That's what we all want. But if
19 it's not going to give us any more information than we
20 have now, then that's not going to be worth the cost.

21 MR. MACKAY: And respectfully, I believe these
22 tests are valid and that ---

23 THE COURT: Well, I'm sure you do.

24 MR. MACKAY: And I think they're enough to
25 convince Your Honor that justice can be done, but with a

1 new trial. But beyond that, every time we take another
2 matter up in this case -- the last one we took up was
3 nine months ago. You heard this case, and now we're back
4 nine months later. If this opens up, I've got to come
5 back and get expert fees for more expert costs to rebut
6 whatever they come up with. And we'll be another three
7 years, frankly, before we ---

8 THE COURT: Well, let me tell you something you
9 -- you may or may not. I mean, it depends on what I
10 decide I think is appropriate to do.

11 MR. MACKAY: Yes, sir.

12 THE COURT: And under the circumstances, what
13 I'm going to do at this juncture is I'm going to take Mr.
14 Spencer's motion to admit the proffered testimony under
15 advisement as well as take this entire matter under
16 advisement. Okay? I am going to deny the motion at this
17 stage to have the further testing done on the ammunition
18 that was taken off the Defendant -- or the Petitioner
19 rather -- because based on all reports, it's not going to
20 shed any light any further except for this may or may not
21 have been the bullet -- similar to the bullet used to
22 shoot the victim in this case. And I don't see any
23 benefit to be had by that.

24 MR. SPENCER: And Your Honor, could I just put
25 something on the record, Your Honor, briefly? And I

1 apologize. And you know, certainly Mr. Mackay's been
2 involved in this case a long time. My review of the
3 transcript is there were three rounds, three rounds of
4 three hundred Mag ammunition recovered from Mr. Ricketts'
5 pocket. And he also was attempting to load the gun, and
6 there was three rounds of ammunition -- the gun jammed,
7 but there's three rounds of ammunition in the gun. So
8 there's actually six live rounds. One of the rounds, of
9 course, is what -- of those six rounds was what was
10 tested by Mr. Nalbandian. And you know, there was a
11 nondestructive test. I understand that. But there is
12 those live rounds, and that's the core of the allegation
13 is that Mr. Nalbandian or someone like Mr. Nalbandian
14 should have tested this back in 1999 and then presented
15 this report. So it's useful in the sense that Mr.
16 Nalbandian's testimony is this is a copper-only bullet
17 and the fragments found inside the victim are lead. And
18 if we split it open, we'll know that it's really a
19 copper-only bullet or not. There's multiple rounds that
20 could be tested by two experts, if necessary. And that's
21 just what I wanted to clarify for the record. I'm not
22 trying to ---

23 THE COURT: Well, let me just say I will take
24 the matter of testing the particular ammunition under
25 advisement. I want to look at what your expert tested

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1 and see if it was -- that rings a bell, quite frankly,
2 Mr. Spencer, as to what was taken from his pocket. And
3 it seems like I recall that they were all the same thing.
4 Even the spent shell was the same type of bullet and
5 casing. I don't know. But I'm going to close off any
6 further argument and testimony on this matter at this
7 time, and I'll give you my decision on what I'm going to
8 do. Thank you both for being prepared.

9 MR. MACKAY: Your Honor, before we close the
10 record, I have a motion for cost.

11 THE COURT: I've got that and that's part of
12 the information that I'm going to consider. I've got it.

13 MR. MACKAY: Okay.

14 THE COURT: Okay. Thank you.

15 MR. SPENCER: Thank you, Your Honor.

16 THE COURT: All right.

17 (WHEREUPON, the hearing ended at approximately 11:15
18 a.m.)

19 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 15th day of March 2011.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 March 26, 2013

15

16



17

Circuit Court Reporter

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

C.A. No. 2002-CP-04-1544

Robert Earle Ricketts, III)

S.C.D.C. No. 261694,)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

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ANDERSON SC

This matter is before this Court by way of an application for post-conviction relief (PCR) filed May 12, 2002. The State made its return on October 5, 2004. On June 26, 2006, Applicant's counsel, Raymond E. McKay, Esquire, moved by written motion for an order to test ammunition. The motion was granted by the Honorable Alexander S. McCauley by order dated August 16, 2006. A more specific order allowing for the release and transportation of the evidence was entered on January 23, 2008. A deposition of Applicant's expert witness, Dr. Ara Nalbandian, was taken on November 12, 2009.

A hearing was convened at the Anderson Courthouse on June 15, 2010. Applicant and his counsel was present. The State was represented by A. West Lee of the South Carolina Office of the Attorney General. Dr. Nalbandian's deposition was admitted into evidence and Applicant testified on his own behalf. The case was then left open to attain testimony from trial counsel, James Skip Goldsmith, Esquire.

The hearing was resumed on March 15, 2011 at the Anderson County Courthouse. Again,

Applicant was present with his counsel. David Spencer of the South Carolina Office of the Attorney General appeared on behalf of the State. Initially, the State moved to open the record and allow testimony of State's expert, SLED Agent Jennifer Stoner. This Court initially excluded the testimony, but allowed the State to proffer her testimony later in the proceeding. Trial counsel then testified. The State, consistent with this Court's ruling, called Agent Stoner to the stand. Following her testimony, the State then moved again to admit her testimony. This Court took that motion under advisement. This Court now finds that it will admit her testimony.

The State also moved for further testing of the ammunition. The motion is denied upon failure to establish just cause for such expense and the need for finality.

In addition to hearing the testimony referred to above, this Court has before it the pleadings of both parties, the trial transcript, the Clerk of Court's records regarding the subject convictions, and the deposition transcript of Dr. Nalbandian.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Anderson County Clerk of Court's orders of commitment. The Anderson County Grand Jury indicted Applicant at the August 1999 term of General Sessions for Murder (99-GS-04-1945), Assault and Battery with Intent to Kill (99-GS-04-1943), Assault with Intent to Kill (99-GS-04-1944), and Possession of a weapon during the Commission of Violent Crime (99-GS-04-1942). Applicant was represented on the charges by James L. Goldsmith, Jr., Esquire. On October 14, 1999, the Applicant went to a trial by jury and was found guilty as indicted. The Honorable H. Dean Hall sentenced the Applicant to confinement for a term of life for murder, twenty (20) years

consecutive for ABWIK, ten (10) years concurrent for AWIK, and five (5) years concurrent on the weapons conviction.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Joseph L. Savitz, III, Esquire. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Ricketts, Op. No. 2002-UP-235 (S.C. Ct. App. filed March 28, 2002).

STATEMENT OF FACTS

Applicant's convictions stem from a shooting at the residence of Applicant's longtime but estranged girlfriend, Renee Billadeau, on one of their four children's birthday. Renee was fatally wounded and her sister was also shot in the leg. The State's first witness was Dona Ricketts, Applicant's daughter. She lived with her mother and her brothers. She testified that her mother, Renee, and Applicant were separated and not getting along at all. Applicant had told the kids he would kill Renee and dispose of the body. Applicant threatened to kill Renee about five times. On the day of the shooting, Renee and Dona bought a tape-recorder and then saw Applicant when Renee and Dona went to the Sheriff's Office to get a report. Applicant was fussing at Renee, but Renee ignored him and ushered Dona into the car. Later in the day, Applicant pulled up to the house in his red Camero. Renee was on the phone with her sister Dee at the time. Renee went outside, with her tape recorder, even though Dona tried to stop her. Dona and her brother Cory went outside with her, but Renee told them to go inside when Cory started crying. Tr. pp. 75-78.

Dona testified she was watching out the window when she saw Dee pull up in the driveway and get out of her Rodeo. She saw Applicant "jump in Dee's face". At that point, Dona called 911. Applicant walked to his car, pulled out a long rifle from the driver side and shot Dee from about five

feet away. He then turned and shot Renee. Applicant then went toward Renee's other sister, Dawn, and fired a shot. Dawn, unknown to Applicant, had a gun and fired back two shots. Applicant fell down in the ditch. Tr. pp. 78-81.

Dawn got in the Rodeo and swerved into Applicant as he attempted to reload his gun. Dawn then got Dee to take her to the hospital. Applicant walked toward the neighbor's house. Tr. pp. 81-82. A 911 tape of Dona's conversation with the dispatcher was played for the jury. Tr. p. 121.

Cory Ricketts, ten years old at the time of the shooting, also testified for the State. Cory and his six year old brother, Cody, had spent the night at Applicant's house. The next day he was at his mother's house already when Applicant arrived in his Camero. After he went inside the house, with his sister, he saw Dee and Dawn drive up to the house. When they drove up, Cory heard Applicant say, "Oh, Bad Shot's here." Then he saw Applicant grab the rifle out of the Camero. Cory saw Applicant shoot Dee and then turn around and shoot Renee. No one had pulled a gun on Applicant. Cory went to get a bow and arrow to protect himself. Tr. pp. 131-138.

Lieutenant George Cremer of the Anderson County Sheriff's Office responded to the scene. He noted entrance and exit wounds through Renee's abdomen. Applicant's rifle had three live rounds in it and was jammed. Tr. pp 160-166.

Pathologist Brett Woodward testified that there was an entrance wound and two exit wounds. He testified that the injury had to be produced by a high energy or high powered firearm such as Applicant's .300 Winchester Magnum as opposed to a .357 pistol. As Woodward explained:

Hunting rifles have a great deal more energy associated with the round, as the bullet passes through tissue, it not only makes a hole the size of the bullet or slightly larger than the bullet itself, but there is a

cone of energy that radiates out from the projectile. And this cone of energy will actually take wet organs, spongy organs like kidney, liver, and will produce multiple tears in these organs rather than a single hole. It will also will impart tremendous amount of energy and expand spaces, such as inside your abdomen, and can produce far distant to the wound itself can produce injuries. In this particular case what we saw was multiple tears and breaking apart of large wet spongy organs like the spleen, the kidneys, the liver, as well as the projectile path that passed through the blood vessels and produced tears in those blood vessels and in the tissues to get in and out of the abdomen.

We also saw that the abdomen was massively overexpanded. That overexpansion produced bruising and tearing in the lungs and it broke ribs on the left side. And actually as the ribs came out to break on the left side, produced bruises distant to the gunshot wound immediately over the ribs where the ribs came up and suddenly slapped from the inside to the outside against the skin producing bruises.

Tr. p. 251, line 25 - p. 252, line 23. Woodward further testified that on the other hand, a handgun would not have the secondary cone of energy and not cause the kind of damage found in Renee's abdomen in the instant case. Tr. p. 253.

Dee testified that her and Dawn went to Renee's house after Renee told her that Applicant arrived in the driveway. When they arrived, Applicant, looking in Dawn's direction said "Oh there's Bad Ass." She told Applicant they were just making sure Renee was okay. Applicant responded: "Let me tell you one thing. I could kill your bitch sister any time I want to." Applicant then went to his car, reached in and pulled out his gun. Despite Dee begging Applicant not to shoot them, Applicant shot and hit Dee. She then heard the gun go off again. She was not armed and at that point, neither was Dawn. Tr. pp. 315-317.

Dawn testified that when she saw Applicant retrieve his rifle, she tried to get her gun out of

her holster. He already fired before she could get her .357 out of the holster. They then exchanged fire while she retreated into Dee's Rodeo and drove between two houses and told the neighbor to call 911. She then drove behind pampas grass and then ran to Dee to see if she was okay. She then found Renee, who was dead. A friend, Paul, had arrived at that time. She took his gun and wanted to kill Applicant. At that point, police showed up and demanded she put the gun down. She then loaded Dee into the Rodeo and drove her to the hospital. Tr. pp. 330-333.

Applicant testified that Dawn fired the first shot and denied threatening to kill his wife. Tr. pp. 419-442. Applicant's son also testified, claiming that Cory told him that Applicant did not fire first. Tr. pp. 476-479.

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 presented 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 (2003).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing

professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

Applicant alleges counsel was ineffective for failing to adequately investigate the case and failing to utilize an expert to challenge the State's expert and evidence. Applicant offered as evidence in support of his claim the deposition testimony of Dr. Nalbandian as an expert in metallurgical evaluation. Dr. Nalbandian testified that he has offered opinion testimony over ten times in various courts. Dr. Nalbandian ran dispersive X-ray testing on live ammunition taken from the crime scene and bullet fragments recovered from the deceased victim. Dr. Nalbandian described the testing as non-destructive testing and further: "It's just a matter of exposing them to X-ray - diffraction X-rays that will identify element by element what is the composition of that matter or material." Dep. Tr. p. 10. The live ammunition consisted of rifle ammunition from Applicant's rifle, and ruger pistol ammunition taken from the sister of the deceased. Dr. Nalbandian testified that the pistol ammunition contained lead and tin, while the rifle ammunition contained copper and non-metallic substances. Dr. Nalbandian testified that the bullet fragments recovered during the autopsy

consisted of lead and tin.

Counsel testified that Applicant retained counsel for the charges for \$15,000, of which Applicant was only able to ever pay \$2,000. Counsel testified that while he would have potentially pursued retaining and utilizing an expert, Applicant did not have funds to hire an expert. Counsel testified that based on his experience, he did not believe that he would be successful if he attempted to seek indigent funding for an expert. Counsel testified that he would have been willing to use the report in this case if available.

Agent Stoner testified as an expert in trace evidence. Stoner testified that this was the sixtieth time she has testified in court as an expert. She testified she examined Dr. Nalbandian's report and testimony, and had concerns about the efficacy of Dr. Nalbandian's conclusions. Principally, the x-ray dispersive testing would only tell the composition of materials on the outside of the bullets. Therefore, without mutilative testing, it was not possible to know what was on the inside of the rifle bullet and that the tests were inconclusive as to whether the bullet may have a lead core. Accordingly, the testing was not reliable in determining whether or not there was lead or lead alloy in the bullet. She also noted that although Dr. Nalbandian testified that the pistol ammunition and the fragments contained a lead/tin alloy, Dr. Nalbandian's reports indicated "Sb", which is the symbol on the periodic table of elements for antimony. Tin's symbol is "Sn", lead's symbol is "Pb". Among other issues Agent Stoner noted was that testing for each item was run for only 50 seconds, shorter than the standard time for testing.

This Court finds counsel's performance was not deficient and gives his testimony great weight in so finding. Counsel's performance during trial reveals considerable preparation and

challenge to the State's evidence. Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991). Additionally, Counsel should not be required to be clairvoyant and this Court finds that Counsel could not have reasonably known that any benefit would have accrued to his client from such testing. Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993).

Further, Applicant's expert testimony is inconclusive as to the composition of the rifle bullet, and the State presented overwhelming evidence of guilt. Accordingly, this Court finds that Applicant has not met his burden of proving ineffective assistance of counsel.

CONCLUSION

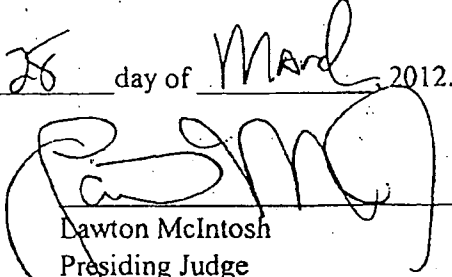
Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied with prejudice;
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26 day of March, 2012.


Dawton McIntosh
Presiding Judge
10th Judicial Circuit

Anderson South Carolina

COMMON PLEAS AND
GENERAL SESSIONS

2012 MAR 29 P 3:41

FILED-CLERK'S OFFICE
ANDERSON SC

759

WITNESSES

INV. S. JONES/ACSO

ARREST WARRANT NO. G-122891

ACTION OF GRAND JURY

TRUE BILL
DATE

Martha A. Cromer
8-31-99
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

AUGUST TERM 1999

DDW

THE STATE

vs.

ROBERT EARLE RICKETTS

Indictment for Assault and
Battery With Intent To Kill
and Possession of Firearm
or Knife During
Commission of or Attempt
to Commit Violent Crime

16-23-0490[0549]

GEORGE M. DUCWORTH, SOLICITOR

A TRUE COPY

MAY 23 2002

Cathy M. Phillips
CLERK OF COURT

Commitment

10-14-99

FORM 8 (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

INDICTMENT FOR ~~ASSAULT WITH~~
~~BATTERY WITH INTENT TO KILL~~
 AND POSSESSION OF FIREARM OR
 KNIFE DURING COMMISSION OF OR
 ATTEMPT TO COMMIT A
 VIOLENT CRIME
 16-23-0490[0549]

At a Court of General Sessions, convened on AUGUST 31, 1999,
 the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE — ASSAULT AND BATTERY WITH INTENT TO KILL

That _____
 did in _____ County on or about _____, with
 malice aforethought commit an assault and battery upon one _____
 _____ with intent to kill the said victim.

**COUNT TWO — POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
 OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That ROBERT EARLE RICKETTS
 did in ANDERSON County on or about JUNE 21, 1999, possess or
 visibly display a firearm or visibly display a knife during the commission or attempted commission
 of a violent crime, to wit: MURDER AND/OR ASSAULT AND BATTERY WITH INTENT
 TO KILL
 in violation of Code 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.

George M. Duworth

SOLICITOR

WITNESSES

INV. S. JONES/ACSO

ARREST WARRANT NO. G-122889

ACTION OF GRAND JURY

TRUE BILL
DATE

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 74-GS-04-1443

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

AUGUST TERM 1999

DDW

THE STATE

vs.

ROBERT EARLE RICKETTS

Indictment for Assault and
Battery With Intent To Kill
and Possession of Firearm
or Knife During
Commission of or Attempt
to Commit Violent Crime

16-03-0620[0014]

GEORGE M. DUCWORTH, SOLICITOR

TRUE COPY

MAY 20 2002

Clerk of Court
CLEAN OF COURT

Commitment

10-14-99

FORM 8 (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

INDICTMENT FOR ASSAULT AND
 BATTERY WITH INTENT TO KILL
~~AND POSSESSION OF FIREARM OR~~
~~KNIFE DURING COMMISSION OF CR~~
~~ATTEMPT TO COMMIT A~~
~~VIOLATION OF~~
 16-03-0620[0014]

At a Court of General Sessions, convened on AUGUST 31, 1999,
 the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE — ASSAULT AND BATTERY WITH INTENT TO KILL

That ROBERT EARLE RICKETTS
 did in ANDERSON County on or about JUNE 21, 1999, with
 malice aforethought commit an assault and battery upon one ELONA DEE GARRETT
 with intent to kill the said victim.

**COUNT TWO — POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
 OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That _____
 did in _____ County on or about _____, possess or
 visibly display a firearm or visibly display a knife during the commission or attempted commission
 of a violent crime, to wit: _____,
 in violation of Code 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:

George M. Duworth
 SOLICITOR

763

WITNESSES

INV. S. JONES/ACSO

DOCKET NO. 79-03-05-1744

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

AUGUST TERM 1999

DDW

THE STATE

vs.

ROBERT EARLE RICKETTS

ARREST WARRANT NO. G-122890

ACTION OF GRAND JURY

TRUE BILL
DATE

Martha A. Cromer
8/3/99
Foreman of Grand Jury

VERDICT

Indictment for Assault and
Battery With Intent To Kill
and Possession of Firearm
or Knife During
Commission of or Attempt
to Commit Violent Crime

C/L, 17-25-0030[0768]

GEORGE M. DUCWORTH, SOLICITOR

Commitment

10-14-99

A TRUE COPY

MAY 23 2002

Attest: J. M. Sullivan
CLERK OF COURT

Foreman of Petit Jury

Date:

FORM 8 (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

INDICTMENT FOR ASSAULT AND
~~BATTERY~~ WITH INTENT TO KILL
~~AND POSSESSION OF FIREARM OR~~
~~KNIFE DURING COMMISSION OF OR~~
~~ATTEMPT TO COMMIT A~~
~~VIOLENT CRIME~~
 C/L, 17-25-0030[0768]

At a Court of General Sessions, convened on AUGUST 31, 1999,
 the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE — ASSAULT AND ~~BATTERY~~ WITH INTENT TO KILL

That ROBERT EARLE RICKETTS
 did in ANDERSON County on or about JUNE 21, 1999, with
 malice aforethought commit an assault ~~and battery~~ upon one DAWN BILLADEAU
 with intent to kill the said victim.

**COUNT TWO — POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
 OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That _____
 did in _____ County on or about _____, possess or
 visibly display a firearm or visibly display a knife during the commission or attempted commission
 of a violent crime, to wit: _____
 in violation of Code 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.

George M. Duncworth
 SOLICITOR

765

WITNESSES

INV. S. JONES/ACSO

ARREST WARRANT NO. G-122888

ACTION OF GRAND JURY

DATE

Foreman of Grand Jury

TRUE COPY

MAY 23 2002

Foreman of Petit Jury

Date:

DOCKET NO. 79-0504-1775

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

AUGUST TERM 1999

DDW

THE STATE

VS.

ROBERT EARLE RICKETTS

Indictment for Murder

16-03-0010, 0020[0116]

GEORGE M. DUCWORTH, SOLICITOR

Commitment
1014-99

FORM 5 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR MURDER

16-03-0010, 0020[0116]

At a Court of General Sessions, convened on AUGUST 31, 1999,
the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE — MURDER

That ROBERT EARLE RICKETTS
did in ANDERSON County on or about JUNE 21, 1999,
feloniously, wilfully and with malice aforethought, kill one RENEE ARLETTE BILLADEAU
by means of SHOOTING HER WITH A RIFLE
and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

George M. Ducworth
SOLICITOR