

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

FEB 14 2013

S.C. Supreme Court

GEORGE MOSES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212308

APPENDIX

LANELLE CANTEY DURANT
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

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 IN HER TESTIMONY THE INJURIES TO THE FINGERS AND THE
2 ARMS SHE SAID WERE DEFENSE WOUNDS. AGAIN, I SUBMIT,
3 THAT'S CONSISTENT WITH MR. MOSES'S TESTIMONY ABOUT THERE
4 BEING A STRUGGLE BETWEEN THE TWO OF THEM, AND BEING, TO
5 THE FINGERS AND ARMS, THAT HE PUNCHED DOWN ON HIM TO TRY
6 TO GET HIM TO DROP HIS WEAPON. SHE DID TESTIFY THAT
7 THERE WAS A SMALL AMOUNT OF COCAINE AND COCAINE
8 BYPRODUCT IN MR. LIVINGSTON'S SYSTEM, AGAIN CONSISTENT
9 WITH THE FACT THAT THIS WAS A DRUG HOUSE, THAT THERE
10 WERE DRUGS BEING USED THERE, DRUGS BEING SOLD THERE.
11 AND SHE DID TESTIFY THAT THAT COCAINE WAS USED CLOSE TO
12 THE TIME OF DEATH. SHE ALSO TESTIFIED AS TO THE
13 BLOCKAGES TO THE, BOTH LEFT AND RIGHT ARTERIES IN MR.
14 LIVINGSTON. AGAIN, SHE SAID THE LACERATION TO THE
15 FOREHEAD COULD HAVE BEEN FALLING FROM THE CHAIR OR
16 FALLING INTO A CHAIR. AGAIN, SHE HAD NO FIRST HAND
17 KNOWLEDGE ABOUT WHAT HAPPENED, SHE WAS SIMPLY DEALING
18 WITH THE BODY AFTER.

19 WE HAD A BRIEF TESTIMONY FROM LINDA
20 GAHNI. SHE BASICALLY PUTS MR. MOSES'S CAR AT MR.
21 CONNER'S HOUSE SOMEWHERE AROUND THREE O'CLOCK IN THE
22 MORNING, AGAIN CONSISTENT WITH NOT ONLY MR. MOSES BUT OF
23 MR. CONNER. WE'RE NOT DENYING HIS CAR WAS THERE, WE
24 WENT THERE.

25 NOW WE GET TO DR. MILLS'S TESTIMONY,

1 THAT WAS THE DNA EXPERT. . OKAY. AGAIN, I REMIND YOU
2 THAT SHE SAID SHE CAN TELL WHO LEFT DNA EVIDENCE BEHIND,
3 BUT NOT WHEN IT WAS LEFT. SHE TESTIFIED THAT SHE GOT
4 BLOOD STANDARDS FROM BOTH MR. LIVINGSTON AND MR. MOSES,
5 AND THAT SHE EXAMINED THE KNIFE BLADE, IT WAS NEGATIVE
6 FOR ANY KIND OF BLOOD. SHE ALSO EXAMINED THE KNIFE
7 HANDLE, THAT WAS POSITIVE FOR BLOOD, BUT IT WAS OF MORE
8 THAN ONE PERSON. THE VICTIM COULD NOT BE EXCLUDED, WHICH
9 MEANS IT COULD OR COULD NOT HAVE BEEN, BUT DEFINITELY,
10 MR. MOSES'S DNA WAS NOT THERE. YOU HEARD HER TESTIMONY
11 THAT OF ALL THE EVIDENTIARY ITEMS THAT SHE LOOKED AT,
12 THERE WAS NO DNA FROM MR. MOSES. THE NEXT THING SHE
13 TESTIFIED ABOUT WAS THE LIGHT SWITCH. AGAIN, THAT WAS
14 POSITIVE FOR BLOOD. WHEN THEY DID THE DNA ANALYSIS IT
15 CONSISTED OF A MIXTURE, THE MAJOR CONTRIBUTOR TO THAT
16 MIXTURE BEING AN UNIDENTIFIED MALE, AGAIN, NOT MR.
17 MOSES. SHE ALSO TESTIFIED THAT SHE ANALYZED THE SWABS
18 THAT WERE TAKEN FROM MR. MOSES'S VEHICLE. SHE TOLD YOU
19 THAT SHE COULDN'T GET A PROFILE FROM WHAT THEY HAD
20 SUPPLIED HER WITH, BUT NOT ONLY THAT, SHE COULDN'T EVEN
21 TELL IF IT WAS BLOOD. SO, THERE'S NO EVIDENCE THERE WAS
22 ANY BLOOD, WHICH THE STATE OBVIOUSLY IS TRYING TO INFER,
23 THERE'S NO EVIDENCE OF THAT, LADIES AND GENTLEMEN. AS
24 TO THE JEAN SHORTS, YES, MR. LIVINGSTON'S DNA WAS ON
25 THOSE SHORTS. IT IS CONSISTENT WITH MR. MOSES'S STORY

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1 THAT THERE WAS A STRUGGLE BETWEEN THE TWO OF THEM, AND
2 THAT'S HOW THE BLOOD GOT THERE.

3 THE NEXT WITNESS TO TESTIFY WAS
4 OFFICER SHUMPERT. HE IS THE ONE YOU WILL REMEMBER WHO
5 BROUGHT MR. MOSES FROM HIS PLACE OF EMPLOYMENT AT SOUTH
6 CAROLINA STATE TO THE LAW ENFORCEMENT COMPLEX FOR
7 QUESTIONING. AT FIRST, HIS TESTIMONY WAS AT FIRST MR.
8 MOSES SAID HE DIDN'T KNOW ANYTHING ABOUT ANYTHING. MR.
9 MOSES TOLD YOU, AT THAT POINT IN TIME HE DIDN'T EVEN
10 KNOW WHY HE WAS PICKED UP FOR QUESTIONING. WHAT WAS HE
11 GOING TO TELL THEM? OFFICER SHUMPERT IS THE ONE THAT
12 FOUND THE JEANS. AGAIN, MR. MOSES ADMITS THAT THOSE
13 JEANS WERE HIS, HE ADMITS HE PUT THEM THERE. YOU HEARD
14 HIM ON THE STAND, THERE'S NO SURPRISE THERE. HE'S ALSO
15 THE ONE THAT, ALONG WITH OFFICER RODRIGUEZ, INTERVIEWED
16 HIM THE NEXT DAY. BUT AGAIN I REMIND YOU, OFFICER
17 SHUMPERT HAD ABSOLUTELY NO FIRST HAND KNOWLEDGE ABOUT
18 WHAT HAPPENED THAT NIGHT. HE DOESN'T KNOW WHAT WENT ON
19 IN THAT TRAILER ON THAT SEPTEMBER NIGHT.

20 NEXT WAS OFFICER RODRIGUEZ. HE
21 TESTIFIED TO YOU THAT HE WAS PRESENT WHEN THE, WHEN MR.
22 MOSES GAVE HIS WRITTEN STATEMENT. IN FACT, HE SAID THAT
23 THE DEFENDANT WANTED HIM TO WRITE IT. NOT ONLY THAT,
24 THAT MR. MOSES RATHER THAT HE WROTE IT. DOES THAT MAKES
25 SENSE, LADIES AND GENTLEMEN? YOU HEARD THE TESTIMONY,

1 MR. MOSES WAS BROUGHT TO OFFICER RODRIGUEZ IN CHAINS AND
2 A BELL CHAIN WITH A BLACK BOX. IT WOULD BE DARN NEAR
3 IMPOSSIBLE TO PHYSICALLY WRITE A STATEMENT UNDER THOSE
4 CONDITIONS. YOU JUST CAN'T DO IT. RATHER HE WROTE IT,
5 I SUBMIT TO YOU IT WASN'T MUCH OF A CHOICE, HE WAS NOT
6 ABLE PHYSICALLY TO WRITE IT, RODRIGUEZ HAD TO WRITE IT
7 FOR HIM. OFFICER RODRIGUEZ SAID THAT HE DIDN'T NOTICE
8 ANY INJURIES FROM POTENTIALLY A DOG ATTACKING HIM.
9 THERE'S NO TESTIMONY THAT HE BOTHERED TO LOOK EITHER,
10 AND AT THAT POINT IN TIME MR. MOSES WOULD HAVE HAD PANTS
11 ON. HIS TESTIMONY WAS THAT THE DOG WAS TRYING TO BITE
12 HIS FEET AND HIS LEGS, AND THAT'S WHERE HE WAS
13 SCRATCHED. OFFICER RODRIGUEZ TESTIFIED TO YOU THAT HE
14 DID NOT CHANGE ANY WORDS, THAT HE WROTE DOWN EXACTLY
15 WHAT MR. MOSES TOLD HIM. I ASK YOU TO LOOK AT THAT
16 STATEMENT AND TO LOOK AT HOW IT IS PHRASED, ESPECIALLY
17 THE VERY LAST OF THE STATEMENT WHERE IT SAYS ABOUT A
18 BROWN IN COLOR STICK. I SUBMIT TO YOU, LADIES AND
19 GENTLEMEN, NORMAL PEOPLE DON'T TALK THAT WAY. IT'S A
20 BROWN STICK, IT'S A TAN STICK, IT'S NOT A BROWN IN COLOR
21 STICK, THAT'S COP SPEAK, THAT'S HOW THEY WRITE THEIR
22 REPORTS, AND THE GIST OF WHAT MR. MOSES TOLD HIM MAY BE
23 IN THAT STATEMENT, BUT IT IS NOT A VERBATIM RENDERING OF
24 WHAT MR. MOSES TOLD HIM. OFFICER RODRIGUEZ ADMITTED TO
25 YOU THAT THEY HAD THE ABILITY TO RECORD WHAT WAS GOING

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1 ON WHEN MR. MOSES GAVE HIS STATEMENT, BUT THEY DIDN'T.
2 IT WOULD HAVE BEEN VERY EASY TO JUST GET A TAPE RECORDER
3 OR A VIDEO CAMERA, SLAP IT ON, AND THERE WOULD BE NO
4 QUESTION AS TO EXACTLY WHAT WAS SAID, BUT THEY DIDN'T DO
5 THAT. HE ALSO TESTIFIED THAT MR. -- HE DIDN'T REMEMBER
6 MR. MOSES BEING IN LEG IRONS OR CUFFS. DOES THAT MAKE
7 SENSE, LADIES AND GENTLEMEN? WE'VE GOT A MAN THAT'S
8 ACCUSED OF MURDER AND THEY'RE GOING TO TRANSPORT HIM
9 FROM ONE PLACE TO THE OTHER UNCHAINED AND UNSHACKLED?
10 IT DOESN'T MAKE ANY SENSE. HE ALSO TESTIFIED THAT HE
11 WAS NOT SURE WHETHER OR NOT MR. MOSES HAD PUT ON WEIGHT
12 SINCE HE WAS ARRESTED BY IN O-SIX. MR. MOSES HAS
13 SUBMITTED TO YOU THAT HE'S GAINED A CONSIDERABLE AMOUNT
14 OF WEIGHT IN THE LAST TWO YEARS. HE IS NOT PHYSICALLY
15 THE SAME PERSON THAT HE WAS IN SEPTEMBER, TWO THOUSAND
16 AND SIX. AGAIN, OFFICER RODRIGUEZ HAD NO FIRST HAND
17 KNOWLEDGE OF WHAT WENT ON THAT NIGHT IN SEPTEMBER OF O-
18 SIX.

19 WE, WE WOULD SUBMIT TO YOU THAT THE
20 STATEMENT THAT MR. MOSES GAVE TO A LARGE EXTENT WAS HIM
21 TRUTHFULLY TRYING TO TELL WHAT WENT ON. I WOULD ASK YOU
22 TO TAKE THAT STATEMENT WITHIN CONTEXT, HOWEVER, AND TO
23 PUT THAT TOGETHER WITH THE TESTIMONY THAT HE GAVE YOU ON
24 THE STAND. HE TOLD YOU WHAT HAPPENED THAT NIGHT.
25 UNFORTUNATELY, HE IS THE ONLY ONE THAT CAN TELL YOU WHAT

1 HAPPENED THAT NIGHT. HE TESTIFIED TO YOU THAT HE DID
2 NOT SEE YVETTE GIVE MR. LIVINGSTON MR. ROBINSON'S KEYS
3 OR MONEY. TO HIS KNOWLEDGE THAT EXCHANGE NEVER TOOK
4 PLACE. HE ADMITTED THAT HE HAD HAD NO PROBLEM, OR NO
5 MAJOR PROBLEM WITH THAT ROTTWEILER DOG BEFORE, BUT HE
6 ALSO SAID THAT USUALLY WHEN HE WENT OVER THERE HE STAYED
7 VERY BRIEFLY, HE WAS IN AND OUT, THE COUPLE OF TIMES
8 THAT THE DOG HAD BEEN CHAINED UP OUTSIDE HE DID BARK
9 VIGOROUSLY AT HIM, AND THAT DOG HAD NEVER BEEN COMMANDED
10 BEFORE TO ATTACK HIM. THIS WAS THE FIRST TIME THAT THAT
11 HAD HAPPENED. MR. MOSES TOLD YOU THAT HE WAS WAITING ON
12 GEORGE. GEORGE DIDN'T COME. AT THAT POINT, AFTER
13 YVETTE LINGUARD LEAVES, THE CONVERSATION TURNS TO DRUGS,
14 AND I WILL TELL YOU THAT, I'M NOT HERE TO TELL YOU THAT
15 MR. MOSES IS A SAINT. HE SAT ON THAT STAND, HE TOLD YOU
16 THAT HE'S INVOLVED IN SOME DRUG ACTIVITY, BUT AS WAS
17 PRETTY MUCH THE PEOPLE AT THAT HOUSE. I WOULD ASK YOU
18 TO UNDERSTAND THAT BECAUSE HE MIGHT DO DRUGS, THAT DOES
19 NOT MEAN HE COMMITTED A MURDER. THERE'S NO TESTIMONY
20 FROM ANYBODY THAT THERE WAS ANY KIND OF BAD BLOOD OR
21 ANIMOSITY BETWEEN MR. LIVINGSTON OR MR. MOSES THAT WOULD
22 PROVOKE, YOU KNOW, HE DIDN'T GO THERE WITH THE INTENT TO
23 HARM MR. LIVINGSTON. IT WAS MR. LIVINGSTON WHO PICKED
24 UP THE STICK FIRST AND STRUCK MR. MOSES. MR. MOSES
25 ADMITTED TO YOU THAT AT SOME POINT IN THE KITCHEN HE SAW

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1 A KNIFE, HE GRABBED IT BECAUSE HE WAS TRYING TO DEFEND
2 HIMSELF AGAINST NOT ONLY MR. LIVINGSTON ARMED WITH THAT
3 STICK, BUT WITH A LARGE ROTTWEILER DOG THAT WAS BEING
4 TOLD TO ATTACK HIM. MR. MOSES TOLD YOU HE WAS SWINGING,
5 JUST KIND OF FLAILING AWAY TRYING TO KEEP BOTH THE DOG
6 AND MR. LIVINGSTON AWAY FROM HIM. HE TESTIFIED TO YOU
7 THAT IN, IN, DURING THAT SCUFFLE HE FELL OVER -- THE
8 BOTH OF THEM FELL OVER TABLES AND CHAIRS, THAT'S
9 CONSISTENT WITH THE PIECES THAT YOU WILL SEE, ALSO
10 CONSISTENT WITH THERE NOT BEING ANY FINGERPRINTS OR ANY
11 KIND OF DNA EVIDENCE ON THEM. MR. MOSES TOLD YOU HE
12 DIDN'T KNOW IF HE HAD INJURED THE DOG. HE WASN'T
13 STICKING AROUND TO TRY TO CHECK THE DOG FOR INJURIES, HE
14 WAS TRYING AT THAT POINT TO KEEP THE DOG FROM HURTING
15 HIM AND TO GET OUT OF THERE. AS MR. MOSES SAID, MR.
16 LIVINGSTON WAS TELLING THAT DOG TO KILL ME. MR. MOSES'S
17 TESTIMONY ALSO WAS THAT WHEN MR. LIVINGSTON DECIDED THAT
18 THE TRADE THAT THEY HAD COME TO AN AGREEMENT ABOUT, THAT
19 HE DECIDED THAT THAT WAS NOT FAIR, THAT HE EVEN OFFERED
20 TO TRY TO APPEASE MR. LIVINGSTON BY TRYING TO GIVE HIM
21 SOME MONEY. HIS TESTIMONY WAS THAT THAT WAS NOT WHAT
22 MR. LIVINGSTON WANTED, HE WANTED MORE CRACK COCAINE. HE
23 KNOCKED THAT LITTLE BIT OF MONEY OUT OF MR. MOSES'S
24 HAND. THE MONEY, I SUBMIT TO YOU, THAT MR. MOSES PICKED
25 UP AS HE SAID BY THE DOOR, OR TOWARD THE, IN THE

1 KITCHEN, ON THE KITCHEN FLOOR, WAS HIS OWN MONEY. IT WAS
2 THE MONEY THAT MR. LIVINGSTON DIDN'T WANT IN LIEU OF, HE
3 WANTED MORE CRACK COCAINE. NOW, HE ADMITTED TO YOU THAT
4 HE WENT TO MR. CONNER'S THAT NIGHT. HE EVEN ADMITTED TO
5 YOU TO USING THE PHRASE TO MR. CONNER THAT HE WAS GOING
6 ON A MISSION. YEAH, HE WAS GOING TO THE CAR WASH
7 BECAUSE HE COULDN'T, HE WAS TRYING TO ASSESS HIS CUTS
8 AND SCRAPES AND BRUISES AND THE EXTENT OF HIS CLOTHING,
9 AND HE WENT TO THE CAR WASH WHERE THERE WAS BETTER
10 LIGHTING SO HE COULD SEE WHAT WAS GOING ON. AS MR.
11 CONNER'S TESTIMONY WAS, HE CAME BACK A VERY SHORT TIME
12 LATER.

13 AGAIN, I TOLD YOU ON EARLIER THIS
14 WEEK THAT THIS IS A TRAGEDY FOR MR. LIVINGSTON'S FAMILY,
15 WE DO NOT DIMINISH THE LOSS. BUT I DON'T, AGAIN, YOU
16 MUST TAKE THINGS IN CONTEXT. I BELIEVE THE STATE IS
17 GOING TO USE ONE OF THE STATEMENTS THAT MR. MOSES MADE
18 WHEN HE SAID HE WAS NOT CONCERNED WITH HOW BAD I HURT
19 HIM, I WAS JUST SCARED. I DON'T BELIEVE THAT THAT
20 EQUATES INTO, HE DIDN'T CARE IF MR. LIVINGSTON WAS HURT,
21 IT WAS TAKEN IN CONTEXT, THEY WERE HAVING A STRUGGLE, HE
22 WAS TRYING TO GET AWAY FROM MR. LIVINGSTON AND A HUGE
23 DOG, AND IT WAS NOT, HE WAS NOT AT THAT POINT IN TIME
24 ABLE TO ASSESS, IT WAS TOO MUCH GOING ON, HE WASN'T
25 GOING TO ASSESS MR. LIVINGSTON'S INJURIES. HE WASN'T

1 INDIFFERENT, HE WAS JUST TRYING TO GET OUT OF THERE.
2 AGAIN, MR. MOSES ADMITTED TO LEAVING THE SHORTS, HE TOLD
3 YOU THERE WAS NO TRASH CAN, HE STUCK THEM IN THE BRICK.
4 IF HE WAS TRYING TO, QUOTE, QUOTE, HIDE EVIDENCE, THERE
5 CERTAINLY COULD HAVE BEEN A BETTER WAY OR A MORE
6 CONCEALED PLACE. OFFICER SHUMPERT, EXCUSE ME, COMES,
7 AND OFFICER GREEN, THEY COME TO THE HOUSE AND SHUMPERT
8 SEE IT AFTER A CURSORY INSPECTION INSIDE THE HOUSE, AND
9 WHEN HE COMES OUTSIDE HE SEES THEM TUCKED IN THE BRICK.
10 IT'S NOT LIKE THEY WERE HIDDEN. IF HE WAS REALLY TRYING
11 TO HIDE EVIDENCE HE COULD HAVE COME UP WITH A MORE
12 CREATIVE WAY AND SOMETHING THAT WOULDN'T HAVE BEEN SO
13 EASILY FOUND.

14 AGAIN, I WOULD ASK YOU TO LOOK AT
15 THE STATEMENT. IT IS SIMILAR TO HIS TESTIMONY, BUT
16 AGAIN, YOU HAVE TO TAKE THAT IN CONTEXT. MR. MOSES'S
17 TESTIMONY WAS THAT HE DID NOT TAKE FIFTY DOLLARS IN A
18 PLASTIC BAGGIE, HE TOOK THE MONEY THAT WAS KNOCKED OUT
19 OF HIS HAND THAT HE TRIED TO OFFER TO MR. LIVINGSTON.
20 HIS TESTIMONY WAS HE HAD NO INTENTION OF STABBING MR.
21 LIVINGSTON, HE WAS TRYING TO KEEP HIM AWAY. HE HAD NO
22 INTENTION OF BEATING MR. LIVINGSTON, MR. LIVINGSTON WAS
23 HOLDING ONTO HIS LEG, TELLING THE DOG TO KILL HIM, HE
24 WAS SIMPLY TRYING TO DEFEND HIMSELF, TRYING TO WARD OFF
25 THAT ATTACK.

1 WE SUBMIT TO YOU THAT THERE IS NO
2 EVIDENCE OF ARMED ROBBERY IN THIS CASE. THERE'S NO
3 EVIDENCE THAT HE TOOK ANY PROPERTY OF MR. LIVINGSTON,
4 THERE IS NO EVIDENCE THAT HE WAS EVEN ARMED AT THE TIME,
5 IF THEY'RE GOING TO ARGUE THE MONEY, IF HE WAS EVEN
6 ARMED AT THAT TIME WITH ANYTHING. AND CERTAINLY, NOT
7 THE KNIFE, THE KNIFE HAD BEEN KNOCKED OUT OF HIS HAND
8 EARLIER. IT SIMPLY DOES NOT MEET THE ELEMENTS OF ARMED
9 ROBBERY.

10 AS TO THE MURDER, WE SUBMIT TO YOU
11 THAT HE DID NOT, THAT MR. LIVINGSTON DID NOT DIE OF
12 MURDER AT MR. MOSES'S HAND. THERE WAS NO MALICE
13 AFORETHOUGHT, THERE WAS NO BAD BLOOD, MR. MOSES GOT IN
14 A SITUATION WHEN MR. LIVINGSTON ATTACKED HIM FIRST, HE
15 DEFENDED HIMSELF. HE DID NOT BRING ON THE DIFFICULTY,
16 HE WAS AFRAID FOR HIS LIFE. THERE IS A ROTTWEILER WITH
17 A MAN TELLING THAT ROTTWEILER, WHO DOES WHAT HE DOES ON
18 COMMAND, TELLING HIM TO KILL OR TO, YES, TO KILL MR.
19 MOSES. HE DEFENDED HIMSELF THE ONLY WAY HE KNEW HOW.
20 HE TRIED TO GET TO THE DOOR, YOU'VE HEARD THE TESTIMONY,
21 HE USED THE CHAIRS TO TRY TO KEEP THEM BACK AS HE GOT
22 OUT OF THERE. HE GOT AWAY FROM THERE AS QUICKLY AS HE
23 COULD, HE RETREATED AS QUICKLY AS HE COULD. THAT WAS
24 THE ONLY WAY HE KNEW. I SUBMIT TO YOU, LADIES AND
25 GENTLEMEN, THAT ANY REASONABLE PERSON WOULD HAVE BEEN

1 AFRAID OF THAT ROTTWEILER DOG.

2 MR. MOSES STILL SITS HERE AN
3 INNOCENT MAN UNTIL AND UNLESS WHEN Y'ALL GO BACK AND
4 REVIEW ALL THE TESTIMONY, ALL OF YOU AGREE THAT THE
5 STATE HAS MET ITS BURDEN, THEN HE REMAINS AN INNOCENT
6 MAN. I APPRECIATE YOU WAITING TODAY AND UNDERSTANDING
7 THE BIG PICTURE. NOW YOU'VE HAD THE BIG PICTURE. I
8 SUBMIT TO YOU THAT THE STATE HAS NOT MET THEIR BURDEN OF
9 PROOF, MR. MOSES SIMPLY ACTED IN SELF DEFENSE. IT IS A
10 TRAGEDY THAT MR. LIVINGSTON IS NOT HERE, BUT MR. MOSES
11 DID NOT MURDER MR. LIVINGSTON. HE ACTED IN SELF DEFENSE,
12 HE DEFENDED HIMSELF AND THEN LEFT THE PREMISES. WE ASK
13 YOU TO RETURN A VERDICT THAT SPEAKS THE TRUTH. WE THINK,
14 WE SUBMIT TO YOU THAT WHEN YOU REVIEW ALL THE EVIDENCE,
15 WHEN YOU LOOK AT EVERYTHING TOGETHER, THAT YOU WILL FIND
16 A VERDICT THAT SPEAKS THE TRUTH. MR. MOSES IS NOT GUILTY
17 OF ARMED ROBBERY AND HE'S NOT GUILTY OF MURDER.

18 THANK YOU.

19 THE COURT: THANK YOU, MA'AM.

20 MR. SORENSON.

21 SOLICITOR SORENSON: MAY IT PLEASE
22 THE COURT.

23 FINAL CLOSING ARGUMENT BY SOLICITOR SORENSON

24 LADIES AND GENTLEMEN, A MAN'S HOME
25 IS OFTEN SAID AS HIS CASTLE. IT SHOULD BE THE ONE PLACE

1 THAT WE ALL SHOULD BE ABLE TO FEEL SAFE FROM ALL THE
2 EVILS IN THE OUTSIDE WORLD. SEPTEMBER TWENTY-NINTH, TWO
3 THOUSAND AND SIX, FIFTY-SEVEN YEAR OLD HARRY LIVINGSTON
4 MET SOME OF THOSE EVILS INSIDE THE WALLS OF HIS CASTLE.
5 HE WAS LEFT TO DIE ON HIS KITCHEN FLOOR, BEAT ABOUT THE
6 HEAD MULTIPLE TIMES, OVER SIX TIMES HE WAS STRUCK IN THE
7 HEAD, STABBED FOUR TIMES, STRUCK IN HIS UPPER CHEST,
8 STRUCK ABOUT HIS ARMS, DEFENSIVE WOUNDS ABOUT HIS HANDS,
9 ARMS AND WRISTS, LEFT TO DIE ON THAT KITCHEN FLOOR BY
10 THAT MAN, GEORGE MOSES. BUT WE'RE SUPPOSED TO BELIEVE,
11 LADIES AND GENTLEMEN, THAT HE DIDN'T HURT HIM THAT BAD,
12 THAT HE DIDN'T HURT HIM THAT BAD, WE JUST GOT IN A
13 LITTLE FIGHT, WE JUST GOT IN A LITTLE FIGHT. LADIES AND
14 GENTLEMEN, HE BRUTALLY BEAT HARRY LIVINGSTON AND LEFT
15 HIM TO DIE ON THAT KITCHEN FLOOR.

16 NOW, I WANT TO TALK TO YOU, LADIES
17 AND GENTLEMEN, AND THE WAY I WOULD LIKE TO DO IT IS KIND
18 OF BREAK IT INTO TWO PARTS. I WANT TO TALK TO YOU
19 INITIALLY ABOUT THE FACTS THAT I SUBMIT TO YOU CONVICT
20 GEORGE MOSES BEYOND ANY DOUBT, BEYOND ANY DOUBT,
21 NOTWITHSTANDING EVEN ANY OF THE STATEMENTS THAT HE HAS
22 GIVEN. THEN I WANT TO COME BACK AND TALK TO YOU A
23 LITTLE BIT ABOUT HOW INCREDIBLE HIS STORIES THAT HE HAS
24 GIVEN NOT ONLY TO LAW ENFORCEMENT BUT TO YOU IN THIS
25 COURTROOM ARE.

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1 WHAT I WANT TO DO IS, I'LL JUST KIND
2 OF START OFF BY TALKING ABOUT A KIND OF A LITTLE TIME
3 LINE. WE'LL START AT TWO:THIRTY IN THE MORNING OR SO,
4 OR A LITTLE BEFORE TWO:THIRTY IN THE MORNING, AT TWO
5 TWENTY-TWO AULTMAN. WE'VE PATRICIA OWENS COMES TO PICK
6 UP HER NIECE, YVETTE LINGUARD. REMEMBER, WHEN THEY
7 LEAVE, THEY LEAVE THAT MAN, GEORGE MOSES, AND THE
8 VICTIM, NOBODY ELSE THERE. BUT LET ME ASK YOU THIS,
9 LADIES AND GENTLEMEN, YOU KNOW, HE TESTIFIED, AND I'M
10 GOING TO PROBABLY TALK A LITTLE BIT ABOUT HIS TESTIMONY,
11 KIND OF MIXED IN HERE, HE TESTIFIED THAT HE HAD BEEN TO
12 THAT TRAILER OVER A HUNDRED TIMES, OVER A HUNDRED TIMES,
13 BUT NEVER STAYED MORE THAN A COUPLE OF MINUTES, NEVER
14 STAYED FOR MORE THAN A COUPLE OF MINUTES. HE WENT THERE
15 TO BUY DRUGS, HE DIDN'T GO THERE TO SOCIALIZE. WHAT
16 MADE THIS NIGHT DIFFERENT? WHAT MADE THIS NIGHT, THIS
17 EARLY MORNING DIFFERENT? HE WANTS YOU TO BELIEVE THAT
18 THEY TOLD HIM -- THAT HE WENT TO THAT TRAILER LOOKING
19 FOR GEORGE ROBINSON AND THAT THEY TOLD HIM THAT HE'LL BE
20 RIGHT BACK, AND THAT'S THE REASON HE HUNG AROUND, THAT'S
21 THE REASON HE HUNG AROUND. WELL, THAT DOESN'T MAKE
22 SENSE, LADIES AND GENTLEMEN, BECAUSE THEY KNEW THAT
23 GEORGE ROBINSON WAS IN JAIL. HE WASN'T COMING RIGHT
24 BACK, HE WASN'T COMING RIGHT BACK. SO, IF HE GOES OVER
25 THERE FOR THE PURPOSE OF BUYING DRUGS WHY IS HE STILL

1 THERE? BECAUSE HE'S UP TO NO GOOD, THAT'S WHY HE'S
2 STILL THERE. IF HE WAS THERE TO BUY DRUGS HE WOULD HAVE
3 BOUGHT DRUGS AND BEEN OUT OF THERE LONG BEFORE PATRICIA
4 OWENS CAME BACK TO PICK UP YVETTE. WHAT HE WAS DOING
5 WAS WAITING FOR THEM TO LEAVE, WAITING FOR THEM TO
6 LEAVE, BECAUSE THE THING, LADIES AND GENTLEMEN, ABOUT
7 VIOLENT CRIMES, ARMED ROBBERIES, HOMICIDES, RAPES,
8 BURGLARIES, THINGS LIKE THAT, PEOPLE DON'T DO THEM OUT
9 IN BROAD DAYLIGHT IN FRONT OF WITNESSES. THEY'RE CRIMES
10 OF ISOLATION, THE THINGS THAT PEOPLE DO WHEN NO ONE CAN
11 SEE THEM. THAT'S WHAT HE WAITED FOR. IF YOU NOTICE,
12 ACCORDING TO HIS TESTIMONY THE WHOLE ALTERCATION THAT
13 OCCURRED HAPPENED RIGHT AFTER YVETTE AND PATRICIA -- I
14 MEAN, HE HAD BEEN THERE FOR FORTY-FIVE MINUTES ACCORDING
15 TO HIS TESTIMONY, AND I THINK A LITTLE LONGER THAN THAT
16 ACCORDING YVETTE. BUT SUDDENLY THIS ALTERCATION OCCURS
17 THE MINUTE THEY LEAVE. THAT'S BECAUSE HE NOW KNOWS
18 THERE ARE NO WITNESSES TO WHAT HAPPENED, AND I'M GOING
19 TO TALK TO YOU ABOUT WHY THAT'S SIGNIFICANT IN A MINUTE.
20 BUT THEY LEAVE AT ABOUT TWO:THIRTY IN THE MORNING.
21 ALRIGHT, AND HERE, IT'S SUCH A MINOR DETAIL, BUT I
22 SUBMIT TO YOU IT'S THE WITNESS AND THE PIECE OF EVIDENCE
23 THAT ENDED UP CHANGING THE WHOLE COURSE OF WHAT HE HAD
24 TO COME UP WITH IN HIS MIND TO TRY TO EXPLAIN WHAT
25 HAPPENED IN THAT TRAILER. LINDA GAHNI, OKAY, HIS FORMER

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1 GIRLFRIEND, DRIVING HOME THAT NIGHT ABOUT THREE O'CLOCK
2 OR SO IN THE MORNING, SEES HIS CAR AT JEFFREY CONNER'S
3 HOUSE. THAT LITTLE PIECE OF EVIDENCE THAT ALMOST DIDN'T
4 EVEN MAKE IT TO THE SHERIFF'S OFFICE. IF IT WASN'T FOR
5 THE FACT THAT SHE TAGGED ALONG WITH HER SISTER WHEN SHE
6 WAS GOING IN THERE TO GIVE A STATEMENT, THE SHERIFF'S
7 OFFICE MAY NEVER HAVE LEARNED ABOUT THAT. HE WAS
8 COUNTING ON THAT THAT NIGHT. THAT'S WHY HE WENT TO
9 JEFFREY CONNER'S HOUSE, HIS BUDDY, HIS SMOKING BUDDY,
10 HIS DOPING BUDDY. HE KNEW JEFFREY CONNER WASN'T GOING
11 TO CALL THE POLICE ON HIM. BUT I SUBMIT TO YOU, HE
12 THOUGHT HE WAS SAFE WHEN HE WAS HIDING THOSE BLOODY
13 SHORTS BACK ON THAT BACK PORCH AT THREE, THREE:THIRTY IN
14 THE MORNING. I SUBMIT TO YOU, AND I'M GOING TO TALK TO
15 YOU ABOUT THIS IN A LITTLE WHILE, BUT WHEN HE WAS
16 ARRESTED LATER ON THAT MORNING, HE INITIALLY TELLS THEM,
17 I DON'T KNOW WHAT YOU'RE TALKING ABOUT, HE STILL THOUGHT
18 HE WAS OKAY. AT THAT POINT IN TIME THE ONLY THING HE
19 THINKS IS OUT THERE, HE KNOWS THERE'S A WITNESS THAT PUT
20 ME AT THE TRAILER, BUT I MEAN, IT DOESN'T PUT ME DOING
21 ANYTHING. THEY'RE NOT GOING TO FIND THE BLOODY CLOTHES
22 BECAUSE THERE'S ABSOLUTELY NO REASON FOR THE POLICE TO
23 KNOW ABOUT JEFFREY CONNER'S HOUSE, BUT FOR THAT LITTLE
24 MINUTE DETAIL THAT HE DIDN'T KNOW ABOUT, THAT HIS EX-
25 GIRLFRIEND HAPPENED TO SEE HIS CAR THAT NIGHT AND JUST

1 HAPPENED, I MEAN, AGAIN, JUST A STROKE OF LUCK, THE
2 THINGS END UP TURNING THE COURSE OF AN INVESTIGATION.

3 LET ME TALK ABOUT JEFFREY CONNER.
4 AS I SAID, YOU KNOW, I MEAN, HE, HE DIDN'T WORRY ABOUT
5 HIM CALLING THE POLICE ON HIM. OBVIOUSLY, WHEN THE
6 POLICE SHOWED UP AT JEFFREY'S HOUSE, I MEAN, HE, YOU
7 KNOW, HE HAD TO TELL ON HIS BUDDY THEN, I MEAN, THAT HE
8 HAD BEEN BY THERE THE NIGHT BEFORE, BECAUSE HE'S GOT A
9 PAIR OF BLOODY SHORTS FROM A HOMICIDE SITTING STUFFED IN
10 HIS BACK PORCH. OKAY. AND THE THING ABOUT THIS, YOU
11 KNOW, MS. HINDS TALKS ABOUT, YOU KNOW, THAT WELL, I
12 MEAN, HE WASN'T TRYING TO HIDE THEM, YOU KNOW, JUST
13 THERE WAS NO TRASH CAN SO HE DIDN'T WANT TO LEAVE THEM
14 LYING AROUND. REMEMBER, THIS IS THE HOUSE THAT THERE'S
15 NO ELECTRICITY, IT'S THREE SOMETHING THE MORNING, I
16 MEAN, THAT'S A PRETTY GOOD JOB FINDING WHERE HE PUT
17 THEM. I MEAN, THAT'S HIDING THEM, LADIES AND GENTLEMEN.
18 YET AGAIN, ON THE BACK PORCH OF THE HOUSE THAT'S GOT
19 ABSOLUTELY NO CONNECTION TO THE HOMICIDE. THEY'RE
20 TRYING TO TELL YOU THAT HE WASN'T TRYING TO HIDE THOSE
21 BLOOD SHORTS. BUT WHAT DOES MR. CONNER TELLS US, YOU
22 KNOW, THAT HAPPENED AT THREE OR SO IN THE MORNING?
23 ALRIGHT. HE COMES BY, SEES HIM THE FIRST TIME A LITTLE
24 AFTER THREE, AROUND THREE O'CLOCK, GOING ON A MISSION,
25 GOING ON A MISSION. NOW, I DON'T THINK THAT'S WHEN HE

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1 WENT BACK AND KILLED THE VICTIM, HE HAD ALREADY KILLED
2 HIM BY THAT POINT IN TIME. OKAY. I DON'T KNOW IF HE
3 WAS GOING TO BUY DRUGS WITH THE MONEY HE HAD STOLEN, I
4 MEAN, I DON'T BELIEVE THAT HE'S GOING DOWN THERE TO
5 CHECK OUT HIS CLOTHING AT THE CAR WASH DOWN THE STREET.
6 YOU KNOW, IF THAT WAS HIS CONCERN, IF THAT WAS HIS
7 CONCERN THAT MORNING, THAT I NEED TO GET THIS BLOODY
8 CLOTHES OFF OF ME, I MEAN, I NEED TO WASH UP, I NEED TO
9 CLEAN UP, WHY WOULD YOU DRIVE TO A HOUSE WHERE YOU KNOW
10 THERE'S NO ELECTRICITY, AND YOU KNOW THERE'S NO RUNNING
11 WATER? THAT MAKES NO SENSE, YOU GO RIGHT TO THE CAR
12 WASH OR YOU GO HOME. YOU KNOW, IF YOU FELT YOU DIDN'T
13 DO ANYTHING WRONG YOU GO HOME, PUT YOUR CLOTHES IN THE
14 WASHING MACHINE, WHAT MOST PEOPLE NORMALLY DO WITH THEIR
15 DIRTY CLOTHES, INSTEAD OF HIDING THEM AND BURNING THEM.
16 THEN HE COMES BACK, THEN HE COMES BACK, GOES RIGHT TO
17 THE BACK, AND I SUBMIT TO YOU, THAT'S WHEN HE HIDES
18 THESE IN THERE, THAT'S WHEN HE HIDES THESE IN THERE, BUT
19 HE SMART ENOUGH TO KNOW, THAT, YOU KNOW, JUST IN CASE
20 THEY GET FOUND AT SOME POINT IN TIME, YOU KNOW, I CAN'T
21 BE LEAVING, I CAN'T BE LEAVING MY PAY STUB IN THE
22 POCKET. SO, HE TAKES THAT OUT, AND THAT SHOWS THAT
23 HE'S, I MEAN, HE'S, THE WHEELS ARE TURNING UP HERE A
24 LITTLE BIT. HE TAKES THAT OUT, MAKES THE MISTAKE OF
25 LEAVING IT SITTING AT JEFFREY CONNER'S ON HIS TABLE,

1 THOUGH, AFTER THEY HAD GOT DONE SMOKING, SMOKING THEIR
2 COOLIES. BUT HOW IS HE ACTING, HOW DOES JEFFREY CONNER
3 SAY THE DEFENDANT IS ACTING? THAT HE'S QUIET, PARANOID
4 ACTING. I SUBMIT TO YOU, YOU KNOW, THAT'S PRETTY
5 REASONABLE FOR SOMEBODY THAT JUST BRUTALLY BEAT THE
6 DAYLIGHTS OUT OF SOMEBODY AND LEFT THEM TO DIE ON THEIR
7 KITCHEN FLOOR. YOU KNOW, HE SHOULD BE PRETTY PARANOID
8 ACTING AT THAT POINT IN TIME. YOU KNOW, THE ADRENALIN
9 RUSH HAD STARTED TO WEAR OFF.

10 BUT WHO DO WE HEAR FROM NEXT? MR.
11 BOWMAN, ABOUT FIVE:THIRTY IN THE MORNING. WE KNOW AT
12 THAT POINT IN TIME THE VICTIM'S BEEN DEAD FOR A COUPLE
13 OF HOURS. HE FINDS THE VICTIM, CONTACTS LAW ENFORCEMENT.
14 I CAN'T EVEN BEGIN TO UNDERSTAND THE WAY SOME PEOPLE
15 THINK SOMETIMES, I MEAN, WHY HE WOULD GO GET THE
16 BROTHER. BUT, YOU KNOW, IT WASN'T FOR THEM TO COME BACK
17 AND TAKE STUFF OUT OF THE TRAILER, BECAUSE THEY CALLED
18 THE POLICE, SO THE POLICE ACTUALLY ARRIVED BEFORE THEY
19 GET THERE. SO, YOU KNOW, UNTIL FACED WITH THAT
20 DECISION, I MEAN, I GUESS YOU NEVER QUITE KNOW WHAT
21 SOMEBODY'S GOING TO, THEIR FIRST REACTION IS GOING TO
22 BE, MAYBE GO GET FAMILY MEMBERS IS A REASONABLE
23 RESPONSE, I DON'T KNOW.

24 BUT LAW ENFORCEMENT SHOWS UP THERE
25 THAT MORNING, AND SECURES THE SCENE. OKAY. LIEUTENANT

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1 JENKINS TESTIFIED, AND THIS IS IMPORTANT ABOUT THAT DOG.
2 OKAY. A LARGE ROTTWEILER, BUT YOU KNOW, THE SIZE OF THE
3 DOG ISN'T ALWAYS WHAT'S IMPORTANT. I MEAN, YOU KNOW IT
4 CAN BE INTIMIDATING BUT THAT DOESN'T MEAN THAT JUST
5 BECAUSE THE DOG'S A BIG DOG THE DOG IS VIOLENT AND
6 VICIOUS OR BITES. HE TOLD YOU THE DOG WAS DOCILE
7 ACTING. AND THERE ARE NOW A WHOLE BOAT LOAD OF
8 STRANGERS WITH GUNS GOING INTO THAT TRAILER, AND THE DOG
9 ISN'T BARKING, IT ISN'T JUMPING AT THEM TRYING TO BITE
10 THEM, THE DOG IS DOCILE ACTING. BUT MORE IMPORTANTLY,
11 THE DOG DOESN'T HAVE ANY INJURIES, IT DOESN'T HAVE AN
12 INJURIES. IT DOESN'T HAVE ANY BLOOD ON HIM, IT ISN'T
13 CUT, ISN'T HURT.

14 AND HE TELLS YOU ABOUT THE KITCHEN,
15 ABOUT THE KITCHEN, AND I'M GOING TO GET BACK TO THIS IN
16 A SECOND. BUT FROM THE DOOR YOU COULD SEE THE VICTIM,
17 IT SHOULD HAVE BEEN THE VIEW BASICALLY THROUGH THE
18 TRIANGLE GLASS IN THE DOOR THAT MR. BOWMAN WOULD HAVE
19 HAD. HE TELLS YOU ABOUT THE OVERTURNED TABLE, THE
20 OVERTURNED CHAIRS, ITEMS STREWN ALL OVER THE FLOOR. IT
21 SHOWS YOU HOW VIOLENT THAT STRUGGLE, HOW VIOLENTLY, I
22 SUBMIT TO YOU, HARRY LIVINGSTON WAS FIGHTING FOR HIS
23 LIFE THAT MORNING.

24 THEY THEN BEGIN, YOU KNOW, THEY CALL
25 STATE LAW ENFORCEMENT OUT TO COME PROCESS THE SCENE,

1 COLLECT EVIDENCE. THEY THEN BEGIN INTERVIEWING
2 WITNESSES. THEY LEARN ABOUT YVETTE LINGUARD WHO THEN
3 GIVES THEM THE NAME OF GEORGE MOSES, THE LAST PERSON
4 THAT ANYBODY HAS SEEN WITH THE VICTIM. THEY TALKED TO
5 HER AUNT, PATRICIA OWENS, WHO CORROBORATES THAT. AND AS
6 I TOLD YOU, THAT'S WHEN THEY LEARNED ABOUT LINDA, WHICH
7 I SUBMIT TO YOU, IS THE BREAK THEY NEEDED THAT GAVE THEM
8 THE CORROBORATING EVIDENCE THAT THEY THEN COULD GO AT
9 THE DEFENDANT THE SECOND TIME THEY TALKED TO HIM. AND
10 THEY GO TO MR. CONNER'S HOUSE.

11 AND THEN THE LAST KIND OF WITNESS I
12 WANT TO TALK ABOUT AS FAR AS THE STATE'S WITNESSES IS
13 THE PATHOLOGIST, DR. ROSS. OKAY. NO DOUBT ABOUT IT, NO
14 DOUBT ABOUT IT, THIS WASN'T AN ACCIDENT. THAT DIDN'T
15 COME FROM ACCIDENTALLY HITTING A TABLE, THAT'S NOT HOW
16 THAT HAPPENS. OKAY. YOU REMEMBER THE INJURIES SHE
17 DESCRIBED TO YOU, FOUR STAB WOUNDS, FOUR STAB WOUNDS
18 THAT HAPPENED AT THE MOST FIVE, TEN MINUTES BEFORE ALL
19 OF THAT BLUNT TRAUMA TO HIS HEAD. BLOWS CONSISTENT WITH
20 A FIST STRIKING HIS EYE, STRIKING HIS CHEEK, STRIKING
21 HIS CHIN, A ROD LIKE INSTRUMENT BEATING HIM ABOUT HIS
22 HEAD SO SEVERELY THAT IT CAUSED HIS BRAIN BASICALLY TO
23 TELL HIS BODY, HIS HEART TO STOP BEATING AND FOR HIS
24 LUNGS TO STOP BREATHING. REMEMBER WHAT SHE SAID, THAT
25 HE WOULD HAVE LOST CONSCIOUSNESS WITHIN SECONDS OF THAT

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1 VIOLENT BEATING TO THE HEAD, WITHIN SECONDS. SO,
2 THERE'S NO WAY WHEN THAT MAN WALKED OUT OF THAT TRAILER
3 THAT NIGHT, HARRY LIVINGSTON WAS ON THAT FLOOR ALIVE AND
4 LOOKING AT HIM, LIKE NO BIG DEAL, JUST A LITTLE FIGHT.
5 THERE'S NO WAY THAT HAPPENED. I SUBMIT TO YOU, LADIES
6 AND GENTLEMEN, IT DOESN'T GET ANY MORE MALICIOUS.
7 REMEMBER THAT TERM FROM THE DEFINITION OF MURDER,
8 MALICE? IT DOESN'T GET ANY MORE MALICIOUS THAN THIS.
9 THIS IS NOT SELF-DEFENSE, LADIES AND GENTLEMEN, I SUBMIT
10 TO YOU, THIS ISN'T VOLUNTARY MANSLAUGHTER, THIS ISN'T IN
11 A HEAT OF PASSION. IT DOESN'T GET ANY MORE MALICIOUS.

12 I SUBMIT TO YOU, IF YOU LOOK AT ALL
13 THAT, IF WE STOP RIGHT THERE, YOU KNOW, IF HE NEVER
14 TALKED TO THE POLICE, IF THE ONLY STORY HE EVER GAVE
15 WAS THAT FIRST ONE, I DON'T KNOW WHAT YOU'RE TALKING
16 ABOUT, AND IT ENDED RIGHT THERE, I SUBMIT WHEN YOU GO
17 BACK TO THAT JURY ROOM AND YOU LOOK AT IT YOU'LL HAVE NO
18 CHOICE, THERE'S NO DOUBT, NO DOUBT OF HIS GUILT.
19 MURDER, ARMED ROBBERY. BUT AS I TOLD YOU EARLIER,
20 LADIES AND GENTLEMEN, YOU KNOW, WHEN HE TAKES THE STAND
21 AND TESTIFIES HE BECOMES SUBJECT TO THAT SAME SCRUTINY,
22 THAT SAME SCRUTINY AS ANY OTHER WITNESS. SO, NOW I WANT
23 TO TALK TO YOU A FEW MINUTES ABOUT THOSE STORIES, THOSE
24 STORIES THAT HE'S GIVEN YOU.

25 ALRIGHT, THE FIRST THING, ON THE

1 MORNING OF SEPTEMBER TWENTY-NINTH, YOU KNOW, WE'RE
2 TALKING SIX, SEVEN, EIGHT HOURS AT THE MOST AFTER, YOU
3 KNOW, HE'S GIVING THIS STATEMENT AT NINE:THIRTY IN THE
4 MORNING -- NINE:TWENTY IN THE MORNING. SO, YOU KNOW,
5 LESS THAN SEVEN HOURS LATER, LESS THAN SEVEN HOURS
6 LATER, AND HIS STORY IS, THE REASON WHY HE TOLD THE
7 POLICE HE DIDN'T KNOW WHAT THEY WERE TALKING ABOUT WAS,
8 HE DIDN'T KNOW, HE HONESTLY HAD NO EARTHLY IDEA WHY THEY
9 EVEN HAD PICKED HIM UP. ARE YOU TELLING ME HE HAD JUST
10 BEEN INVOLVED LESS THAN SEVEN HOURS LATER IN LEAVING A
11 MAN LOOKING LIKE THIS, AND WE'RE SUPPOSED TO BELIEVE
12 THAT HE HAD ABSOLUTELY NO IDEA WHY THEY WERE TALKING TO
13 HIM, WHY THEY WERE GOING OVER HIS RIGHTS AND ASKING HIM
14 TO GIVE A STATEMENT AT NINE:TWENTY IN THE MORNING ON THE
15 TWENTY-NINTH? DOES THAT APPEAL TO YOUR COMMON SENSE?
16 DOES THAT MAKE ANY SENSE? I SUBMIT TO YOU, LADIES AND
17 GENTLEMEN, WHAT HE THOUGHT AT THAT POINT IN TIME, THAT
18 MORNING, WAS THAT, YET AGAIN, ALL THEY HAVE ON ME IS,
19 THEY'VE GOT SOME LADY THAT SAW ME THERE AT TWO:THIRTY IN
20 THE MORNING. I MEAN, THEY DON'T KNOW ANYTHING ELSE. I
21 HID THE PANTS, I BURNED THE SHIRT, I THREW AWAY THE
22 STICK. ASSUMING, ASSUMING THIS IS THE KNIFE IE USED, I
23 MEAN, THERE'S NO BLOOD, I MEAN, HE WAS STABBED FOUR
24 TIMES, AND THERE'S NO BLOOD ON THE BLADE. SO, ASSUMING
25 THIS IS THE KNIFE, HE CLEANED THE KNIFE OFF, WHICH MIGHT

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1 BE WHY HE'S GOT ALL THAT BLOOD ALL OVER THE SHORTS AND
2 BACK HERE AND DOWN HERE, OR IT'S A DIFFERENT KNIFE AND
3 HE TOOK IT WITH HIM ALSO LIKE HE TOOK THE STICK THAT HE
4 CLAIMS THAT HE TOOK WITH HIM AND THREW AWAY, BECAUSE YOU
5 KNOW, THERE'S NO STICK FOUND ANYWHERE AT THE SCENE. SO,
6 HE'S THINKING HE'S FINE RIGHT THERE, YOU KNOW, JUST KEEP
7 MY MOUTH SHUT AND ALL WILL BE WELL. WELL, UNFORTUNATELY
8 FOR HIM, THAT WASN'T THE CASE. AND YOU KNOW, BY THE
9 NEXT DAY WHEN THEY'RE BRINGING HIM BACK OVER FROM THE
10 JAIL AND HE HASN'T GONE HOME YET, YOU KNOW, THOSE THINGS
11 HAD TO CHANGE A LITTLE BIT.

12 YET AGAIN, ON BOTH OF THESE
13 OCCASIONS, LADIES AND GENTLEMEN, YOU'LL HAVE THESE FORMS
14 BACK THERE, YOU CAN READ THEM. THEY WENT OVER THEIR
15 RIGHTS WITH HIM, HE SIGNED AND INITIALED THAT HE
16 UNDERSTOOD HIS RIGHTS, SIGNED AT THE BOTTOM SAYING THAT
17 HE UNDERSTOOD THE RIGHTS, AND THEN SIGNED AT THE BOTTOM
18 THAT HE WISHED TO WAIVE THESE RIGHTS AND TALK. OKAY.
19 THEY DIDN'T PROMISE HIM ANYTHING, DIDN'T THREATEN HIM,
20 DIDN'T COERCE HIM, DIDN'T MAKE HIM TALK, I MEAN, HE
21 COULD HAVE JUST DID THE SAME THING HE DID ON THE TWENTY-
22 NINTH AND SAY, I DON'T HAVE ANYTHING TO SAY. BUT HE
23 CHOSE TO MAKE A STATEMENT. AS I SAID, IT THEN HAS THE
24 SAME SCRUTINY AS ANYTHING ELSE. ALRIGHT. SO, NOW HE'S
25 GOT TO COME UP WITH A STORY BECAUSE, YOU KNOW,

1 OBVIOUSLY, THE PROBLEMS ARE STARTING TO AMASS IN HIS
2 MIND AT THIS POINT IN TIME. YOU KNOW, IT DOESN'T LOOK
3 REAL GOOD, YOU KNOW, LEAVING BEHIND A GUY THAT, YOU
4 KNOW, IT WASN'T LIKE YOU JUST HIT HIM ONE TIME, YOU
5 KNOW, HE'S BEATEN REPEATEDLY ABOUT THE HEAD, PLUS
6 STABBED, IN HIS OWN HOME. I MEAN, IT DOESN'T LOOK GOOD.
7 SO, YOU'VE GOT TO COME UP WITH A STORY. AND THIS IS
8 WHAT WE GET. THIS IS WHAT WE GET, STATE'S EXHIBIT
9 NUMBER THREE, WHICH YOU'RE GOING TO HAVE BACK THERE
10 ALSO. YOU HEARD TWO PEOPLE TESTIFY ABOUT THIS, BOTH
11 LIEUTENANT SHUMPERT AND DETECTIVE RODRIGUEZ, THAT THESE
12 WORDS, WHILE LIEUTENANT -- WHILE DEPUTY RODRIGUEZ MAY
13 HAVE BEEN THE ONE TO WRITE IT, AND HE EXPLAINED TO YOU
14 WHY, I MEAN, HE GAVE HIM THE OPTION, AND I SUBMIT TO
15 YOU, CAN YOU IMAGINE, I MEAN, HE'S GOT TO COME UP IN
16 HERE, FIRST OF ALL, AND BE ABLE TO READ THIS ALSO. SO,
17 YOU KNOW, IN THAT REGARD, I MEAN, AS LONG AS THE
18 DEFENDANT IS GIVEN THE OPPORTUNITY TO GO OVER THE
19 STATEMENT, MAKE ANY CHANGES, AND SIGN IT, I MEAN, IT'S
20 HIS WORDS. AT LEAST NOW WE KNOW THAT THE WITNESS WILL
21 BE ABLE TO READ WHAT'S ON THERE AS OPPOSED TO LEAVING IT
22 UP TO SOMEBODY'S HANDWRITING AND WE HAVE NO EARTHLY IDEA
23 WHAT IT'S GOING TO LOOK LIKE. BUT YOU HEARD FROM TWO
24 EXPERIENCED LAW ENFORCEMENT OFFICERS THAT THOSE WERE THE
25 DEFENDANT'S WORDS. YOU KNOW, IF THEY WANTED TO MAKE UP

1 A STATEMENT, IF THEY WANTED TO MAKE UP A STATEMENT DON'T
2 YOU THINK IT WOULD HAVE BEEN A WHOLE LOT WORSE THAN
3 THAT? I MEAN, I THEY WERE JUST GOING TO MAKE IT UP
4 ENTIRELY AND SOMEHOW FORCE HIM TO SIGN IT? YOU KNOW,
5 WHY EVEN PUT, YOU KNOW, THE VICTIM THREATENING THE
6 DEFENDANT WITH A STICK? I MEAN, YOU KNOW, IT JUST
7 DOESN'T MAKE SENSE. LIKE I SAY, HE'S GOT SOME PROBLEMS,
8 THOUGH. ALRIGHT.

9 THE FIRST ONE, HE MAKES THE MISTAKE,
10 YOU KNOW, AND KEEP IN MIND, THIS IS JUST THE FOLLOWING
11 MORNING NOW, SO, YOU KNOW, TWENTY-FOUR HOURS LATER; YOU
12 KNOW, HE COMES UP WITH THIS, HE'S GOT TO HAVE A REASON
13 WHY HE'S THERE. ALRIGHT, AND HE COMES UP WITH, WELL, I
14 WAS GOING TO SEE GEORGE, THE ROOMMATE. OKAY. AND THEY
15 TOLD ME THAT HE WAS COMING BACK SHORTLY. YET AGAIN, AS
16 I MENTIONED EARLIER, THAT'S THE FIRST PROBLEM, BECAUSE
17 THAT CAN'T BE TRUE. THAT CAN'T BE TRUE BECAUSE THEY
18 KNEW HE WASN'T COMING HOME. BUT YET AGAIN, I MEAN, HE
19 KNOWS HE'S GOT TO HAVE SOME REASON FOR WHY HE'S JUST
20 HANGING OUT THERE AS OPPOSED TO JUST COMING AND GOING
21 LIKE HE CLAIMS HE DID THE OTHER HUNDRED OR SO TIMES.
22 SO, THAT'S HIS FIRST PROBLEM.

23 ALRIGHT. AND OBVIOUSLY, HIS SECOND
24 PROBLEM, AS I SAID, I MEAN, HE'S GOT TO COME UP WITH
25 SOME WAY, YOU KNOW, HE KNOWS HE'S KIND OF, YOU KNOW, THE

1 SHORTS HAVE BEEN FOUND, YOU KNOW, AND HE'S GOT TO COME
2 UP WITH SOME REASON, I MEAN, YOU KNOW, WHAT HAPPENED.
3 AND THE OBVIOUS ONE WAS, I WAS DEFENDING MYSELF, I WAS
4 DEFENDING MYSELF. WHEN YOU GET BACK AND LOOK AT THAT
5 STATEMENT, ALRIGHT, LIKE I SAID, LOOK BACK AT THE
6 ELEMENTS OF SELF DEFENSE THAT HIS HONOR'S GOING TO
7 CHARGE YOU ON, THE DEFENDANT MUST BE WITHOUT FAULT IN
8 BRINGING ON THE DIFFICULTY, MUST HAVE ACTUALLY BELIEVED
9 HE WAS IN EMINENT DANGER OF LOSING HIS LIFE OR
10 SUSTAINING SERIOUS BODILY INJURY, HAD NO OTHER PROBABLE
11 MEANS OF AVOIDING THAT DANGER. ALRIGHT. IF HE GIVES
12 THIS WRITTEN STATEMENT THE MORNING OF SEPTEMBER
13 THIRTIETH WHAT DOES HE TELL THE POLICE? ALRIGHT, HE'S
14 TRYING TO LEAVE THE VICTIM'S PROPERTY, ALRIGHT, WITH THE
15 VICTIM'S PROPERTY. ALRIGHT, AND HE'S GOT DRUGS THAT HE
16 SAYS BELONG TO THE VICTIM THAT HE IS TRYING TO LEAVE
17 WITH, AND MR. LIVINGSTON DOESN'T WANT HIM TO. OKAY.
18 SO, YOU KNOW, IT'S HARD TO SAY THAT HE'S NOT AT FAULT
19 NOW IN STARTING THIS WHOLE ALTERCATION OR WHATEVER
20 HAPPENED. ALRIGHT. LOOK AT THAT, HIS STATEMENT, WHO
21 DOES HE PUT ARMING THEMSELVES FIRST IN HIS WRITTEN
22 STATEMENT? HE PUTS HIMSELF, THAT HE PICKED UP A KNIFE.
23 THEN HE SAID THE VICTIM PICKED UP A STICK AND THREATENED
24 HIM. THIS IS HARRY LIVINGSTON'S HOUSE, I MEAN, WHO'S
25 GOT HE RIGHT TO SELF DEFENSE HERE? FORTUNATELY, IT'S

1 THE PERSON THAT WAS UNABLE TO EXERCISE IT, AND IS NOW NO
2 LONGER WITH US.. AND HE NEVER AT ANY POINT IN TIME SAYS
3 IN THERE THAT HARRY LIVINGSTON STRUCK HIM WITH THAT
4 STICK OR EVEN SWUNG IT AT HIM. HE NEVER AT ANY POINT IN
5 TIME WHEN HE WROTE THAT, GAVE THAT STATEMENT TO THE
6 SHERIFF'S OFFICE. HE SAYS THAT HE STABS THE VICTIM MORE
7 THAN ONE TIME, AND THAT HE IS PUNCHING THE VICTIM IN THE
8 HEAD UNTIL HE PASSES OUT, UNTIL HE PASSES OUT. THE
9 PROBLEM IS, LADIES AND GENTLEMEN, WITH THAT STATEMENT,
10 AND I'M GOING TO GET TO THAT WHEN I TALK ABOUT WHY
11 THINGS SUDDENLY CHANGED HERE ON THE STAND WHEN HE
12 TESTIFIED, BECAUSE YOU KNOW, THAT CONVICTS HIM OF
13 MURDER. AT THE VERY LEAST IT CONVICTS HIM OF VOLUNTARY
14 MANSLAUGHTER. IT'S NOT SELF DEFENSE. OKAY? HE'S HAD AN
15 OPPORTUNITY NOW FOR TWO YEARS, YOU KNOW, TO TALK TO HIS
16 LAWYERS, TO SIT IN HERE AND GO OVER ALL THE EVIDENCE, TO
17 LISTEN TO ALL THE EVIDENCE, AND I MEAN, YOU KNOW, HE'S
18 GOING TO HAVE TO CHANGE SOME THINGS. AND I'M GOING TO
19 GET TO THOSE CHANGES IN A SECOND. BUT WHAT ELSE DOES HE
20 SAY IN HERE? WHAT ELSE DOES HE SAY IN HERE? "HARRY
21 PASSED OUT SO I GOT UP, I THEN SAW A PLASTIC BAG THAT
22 HARRY HAD DROPPED. IT HAD FIFTY DOLLARS IN IT, SO I
23 PICKED IT UP AND RAN OUT OF THE HOUSE." NOW, THIS IS
24 AFTER, THIS IS AFTER HE HAS STABBED THE VICTIM AND
25 BEATEN HIM. OKAY? AND HIS HONOR IS GOING TO CHARGE YOU

1 THAT ARMED ROBBERY, YOU KNOW, HARRY DIDN'T EVEN HAVE TO
2 STILL BE ALIVE FOR IT TO BE ARMED ROBBERY. OKAY? AS
3 LONG AS IT IS A CONTINUOUS CHAIN OF EVENTS IT'S ARMED
4 ROBBERY, AND I SUBMIT TO YOU, WHEN YOU TAKE PROPERTY
5 FROM ANOTHER, AND THERE'S NO DOUBT ABOUT IT, THAT IS
6 THROUGH FORCE, VIOLENCE, INTIMIDATION AND THE USE OF A
7 DEADLY WEAPON, THAT'S ARMED ROBBERY. SO, YOU'VE GOT
8 ANOTHER PROBLEM, OOPS, MY STATEMENT CONVICTS ME OF ARMED
9 ROBBERY. LET ME ASK YOU THIS, I MEAN, IF DEPUTY
10 RODRIGUEZ IS GOING TO JUST FOR SOME REASON DECIDE TO
11 JUST KIND OF PUT SOMETHING LIKE THAT, I MEAN, HOW DO YOU
12 COME UP WITH, YOU KNOW, THAT HE DROPPED A PLASTIC BAG
13 WITH FIFTY DOLLARS IN IT. I MEAN, THAT'S NOT A FACT
14 THAT YOU JUST KIND OF MAKE UP, I MEAN, UNLESS IT
15 HAPPENED, UNLESS IT'S THE TRUTH. I MEAN, YOU'RE GOING
16 TO SAY, I MEAN, IF YOU'RE JUST GOING TO PUT SOMETHING IN
17 THERE THAT HE TOOK SOMETHING, HE'S GOING TO SAY, I TOOK
18 MONEY OUT OF HIS POCKET, OR I TOOK MONEY OFF THE TABLE.
19 HE'S NOT GOING TO SAY THAT IT WAS IN A PLASTIC BAG
20 UNLESS THAT'S WHAT HE TOLD HIM.

21 ALRIGHT, THEN HE TALKS ABOUT THE
22 DOG, YOU KNOW, HE PUTS THE DOG IN THERE BITING HIS SHOES
23 AND HIS LEGS. ALRIGHT. NOW, KEEP IN MIND, HE'S GOT
24 THOSE SHORTS ON, HE DOESN'T HAVE LONG PANTS ON. I SUBMIT
25 TO YOU, IT AIN'T NO DOUBT ABOUT IT, I MEAN, I THINK YOU

1 HEARD TESTIMONY FROM THE STATE'S WITNESSES, ALONG WITH
2 HIM, I MEAN, IT IS A LARGE DOG. IF A LARGE ROTTWEILER
3 GETS A HOLD OF YOUR LEG, GETS A HOLD OF YOUR LEG YOU'RE
4 NOT GOING TO GET OUT OF THERE WITH JUST A SCRATCH OR TWO
5 ON YOUR LEGS, EITHER THAT DOG IS GOING TO BE SERIOUSLY
6 INJURED OR YOU'RE GOING TO BE SERIOUSLY INJURED. WE
7 DIDN'T FIND GEORGE MOSES'S BLOOD ALL OVER THAT KITCHEN
8 FLOOR. AS I SAID EARLIER, WE DIDN'T FIND ANY INJURIES ON
9 THE DOG. SO I SUBMIT TO YOU, HE'S MAKING THAT UP, THAT
10 THAT DOG NEVER ATTACKED HIM INSIDE THAT HOUSE, HE WAS
11 NEVER IN FEAR OF THAT DOG, THAT HE HAD SEEN OVER A
12 HUNDRED TIMES, ATTACKING HIM.

13 AN INTERESTING THING HE LEAVES OUT
14 IN HIS STATEMENT ALSO, IF YOU KNOW, HE NEVER SAYS
15 ANYTHING ABOUT HITTING THE VICTIM WITH THE STICK IN THE
16 STATEMENT. YOU KNOW, WHEN HE FIRST GAVE HIM THIS
17 STATEMENT, I MEAN, AS I SAID EARLIER, YOU KNOW, IT'S BAD
18 ENOUGH THAT HE'S, YOU KNOW, HE'S GOT TO ADMIT HE STABBED
19 HIM A COUPLE OF TIMES AND BEAT HIM, BUT I GUESS IF
20 YOU'VE GOT TO SAY YOU THEN BEAT HIM WITH A STICK, TOO,
21 I MEAN, IT'S KIND OF HARD TO ARGUE THAT, YOU KNOW, THAT
22 YOU HAD NO OTHER MEANS OF AVOIDING THE DANGER, WHEN YOU
23 SAY YOU HAVE ALL THE WEAPONS. I MEAN, YOU KNOW, IT'S
24 KIND OF HARD TO MEET THAT, SO HE LEAVES THAT OUT OF
25 THERE. YOU KNOW, FORTUNATELY, YOU KNOW, HE CAN'T GET

1 AROUND, HE CAN'T GET AROUND WHEN THE PATHOLOGIST THEN
2 COMES IN AND TESTIFIES, KEEP IN MIND, HE'S GOT, WHEN
3 HE'S WRITING THIS STATEMENT ON SEPTEMBER THIRTIETH, HE
4 HADN'T HAD ACCESS TO A PATHOLOGY REPORT, HE HADN'T HAD
5 THE OPPORTUNITY TO LISTEN TO THE PATHOLOGIST COME IN
6 HERE AND TESTIFY, THAT THERE ARE ALL THESE WOUNDS THAT
7 ARE NOT FROM HIM PUNCHING THE VICTIM, THEY'RE FROM SOME
8 OTHER ROD LIKE OBJECT STRIKING HIM REPEATEDLY IN THE
9 HEAD.

10 SO, NOW WE COME TO THE LAST THING I
11 WANT TO GO OVER WITH YOU, IS HIS TESTIMONY YESTERDAY.
12 ALRIGHT, AS I SAID, HE'S NOW HAD A CHANCE TO HEAR ALL
13 THE EVIDENCE. HE'S SPENT TWO YEARS TRYING TO COME UP
14 WITH EXPLANATIONS AS TO THE THINGS IN HERE THAT CONVICT
15 HIM. AND THAT'S WHAT WE GOT YESTERDAY. THAT'S WHAT WE
16 GOT YESTERDAY. AND KEEP IN MIND, YOU KNOW, I MEAN, THEY
17 MADE A BIG DEAL ABOUT HOW MUCH WEIGHT HE'S LOST AND ALL.
18 YOU KNOW, ACCORDING TO HIS OWN TESTIMONY HE'S KIND OF
19 THE, I GUESS, THE TOUCH GUY AROUND. YOU KNOW, REMEMBER
20 HE TOLD YOU THAT A LOT OF TIMES THERE ARE PEOPLE THAT
21 ARE ADDICTED TO CRACK COCAINE THAT ARE SCARED TO GO BUY
22 THE CRACK COCAINE, SO HE'LL GO AND BUY IT FOR THEM, AND
23 THEN BE KIND OF THE MIDDLE MAN. SO, I GUESS HE'S NO
24 AFRAID TO GO BUY IT WHEREVER IT'S BEING SOLD. AND THEN,
25 THAT, I GUESS, HELPS SUPPORT HIM THEN BUYING HIS POWDER

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1 COCAINE, I GUESS. ALRIGHT, BUT WHAT'S THE FIRST THING
2 THAT HE HAS TO CHANGE FROM IN THIS STATEMENT THAT HE
3 GAVE ON THE THIRTIETH? ALRIGHT, OBVIOUSLY, THE FACT
4 THAT HE DIDN'T TAKE ANYTHING BELONGING TO THE VICTIM.
5 SO, SUDDENLY, WE NOW HAVE TO BELIEVE THAT HE HAD DROPPED
6 HIS OWN, OR HAD KNOCKED OUT OF HIS HAND HIS OWN TWENTY-
7 FIVE DOLLARS AND THAT'S ACTUALLY WHAT, WHAT HE HAD TOLD
8 DEPUTY RODRIGUEZ, AND HE SOMEHOW, HE SOMEHOW CHANGED
9 THAT HAPPENING INTO THE VICTIM DROPPING FIFTY DOLLARS IN
10 A PLASTIC BAG. OKAY. AND THAT SOMEHOW HAPPENED RIGHT
11 IN THE KITCHEN. OKAY.

12 BUT THE OTHER THING THAT'S
13 INTERESTING THAT THERE'S NO EXPLANATION FOR IS, FIRST OF
14 ALL, IS THE FACT THAT, YOU KNOW, WE KNOW, ACCORDING TO
15 YVETTE, THAT SHE GAVE HARRY A HUNDRED AND FORTY-SEVEN
16 DOLLARS. OKAY. THERE'S NO SIGN OF THAT. OKAY.
17 ADDITIONALLY, ACCORDING TO HIS TESTIMONY, SOMEBODY IN
18 THE INTERIM THERE CAME AND MADE A DRUG DEAL WITH HARRY
19 WHILE HE WAS THERE. WELL, YOU WOULD PRESUME THAT THAT
20 PERSON THEN HAD GIVEN HARRY SOME MONEY TO GET DRUGS FROM
21 HIM. WELL, WHERE IS THAT MONEY, BECAUSE THAT'S THEN
22 HARRY'S MONEY? OKAY. YET AGAIN, NO MONEY FOUND ON
23 HARRY OR ANYWHERE AROUND HIM IN THAT KITCHEN, EITHER BY
24 LAW ENFORCEMENT WHEN THEY GOT THERE OR WHEN HIS BODY WAS
25 TRANSPORTED FOR THE AUTOPSY. EIGHTY-ONE CENTS, THAT'S

1 WHAT HE WAS LEFT WITH, EIGHTY-ONE CENTS. I SUBMIT TO
2 YOU, THE REASON IS THAT HE TOOK IT.

3 ALRIGHT, NOW, HE'S GOT TO CHANGE --
4 THE NEXT THING HE'S GOT TO CHANGE, AS I SAID IS, YOU
5 KNOW, NOWHERE IN HERE DOES HE PUT AT ANY POINT IN TIME
6 HARRY LIVINGSTON EVEN SWINGING THAT STICK AT HIM, LET
7 ALONE, HITTING HIM WITH IT. BUT HE'S GOT TO CHANGE THAT
8 BECAUSE YOU KNOW HE'S GOT TO NOW MAKE, YOU KNOW, BECAUSE
9 IF YOU LOOK AT THIS AND IT'S BASICALLY, YOU KNOW, THAT
10 HE'S THE ONE THAT'S BRINGING ON THE DIFFICULTIES, AND
11 NOW HE'S THE ONE THAT'S, YOU KNOW, THAT'S STABBING WITH
12 THE KNIFE. SO, NOW HE'S GOT TO CHANGE THAT AND PUT THE
13 VICTIM, PUT THE VICTIM BEING THE ONE HITTING HIM.
14 DESPITE THE FACT THAT HE SOMEHOW COMES OUT OF IT WITH,
15 YOU KNOW, NO INJURIES THAT WE KNOW, MAYBE SOME SMALL
16 SCRATCHES, SUPPOSED TO THAT, BUT YET, HE'S THE ONE THAT
17 WE'RE SUPPOSED TO BELIEVE HAS GOT THE SELF DEFENSE
18 CLAIM. DOES THAT MAKE SENSE? IT SAYS THAT HE WAS ONLY
19 SWINGING THE KNIFE AROUND, SWINGING THE KNIFE AROUND.
20 WELL, WE KNOW THAT'S NOT TRUE, WE KNOW THAT'S NOT TRUE
21 FROM DR. ROSS AND THE PHOTOGRAPHS. I MEAN, HE'S GOT
22 FOUR PUNCTURE WOUNDS, THREE ON HIS SIDE AND ONE IN HIS
23 ABDOMEN. THAT'S NOT FROM SOMEBODY SWINGING THE KNIFE
24 AROUND, THAT'S FROM SOMEBODY STABBING HIM FOUR TIMES.
25 HIS EXPLANATION NOW, AS I SAID, YOU KNOW, THE FIRST TIME

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1 WHEN HE GIVES THAT STATEMENT ON THE THIRTIETH HE DOESN'T
2 SAY ANYTHING ABOUT STRIKING THE VICTIM WITH A STICK.
3 SO, NOW HE PUTS HIM KIND OF LIKE CLIMBING UP AND HOLDING
4 ONTO HIM, AND HE'S HITTING HIM, TRYING TO GET HIM OFF OF
5 HIM. I MEAN, THAT'S THE EXPLANATION HE GIVES FOR WHY HE
6 HIT HIM WITH THE STICK. BUT THAT DOESN'T EXPLAIN,
7 LADIES AND GENTLEMEN, YOU KNOW, THIS BLOOD SPATTER ON
8 THE WALL DOWN HERE. YOU HEARD THE TESTIMONY FROM AGENT
9 GREEN THAT THAT BLOOD SPATTER ON THE WALL IS CONSISTENT
10 WITH THE VICTIM, SOME DEGREE OF FORCE BEING EXERTED ON
11 HIS HEAD, I SUBMIT TO YOU THAT STICK HITTING HIM, WHEN
12 HIS HEAD IS ON THE GROUND HERE UP AGAINST THE WALL.
13 THAT WALL IS THE WALL DIVIDING, I MEAN, THE WAY OUT OF
14 THE KITCHEN IS OVER HERE, I MEAN, THAT'S NOT ANYWHERE
15 NEAR THE WAY OUT OF THE KITCHEN, THAT'S THE WALL
16 DIVIDING THE LIVING ROOM AND THE KITCHEN. I SUBMIT TO
17 YOU, THAT'S WHERE HE'S ON TOP OF HIM FINISHING HIM OFF,
18 FINISHING HIM OFF WITH THAT STICK.

19 ALRIGHT, HERE WHEN WE TALK ABOUT
20 CREDIBILITY, I THINK ABOUT ONE OF THE LAST POINTS I'VE
21 GOT ON HIS STATEMENT. AS I SAID, HE'S GOT TO BRING THE
22 DOG INTO THE EQUATION, TOO. YOU KNOW, BECAUSE HE'S GOT
23 TO BE, HE'S GOT TO BE ABLE TO ARGUE THAT HE WAS IN FEAR
24 OF HIS LIFE, OR SERIOUS BODILY INJURY. SO, OBVIOUSLY,
25 YOU KNOW, THE DOG IS PRESENT, SO I'LL PUT THE DOG

1 ATTACKING ME. OKAY, EVEN THOUGH HE DOESN'T HAVE
2 INJURIES CONSISTENT WITH THAT, THE DOG DOESN'T HAVE ANY
3 INJURIES CONSISTENT WITH THAT, BUT THIS, HOWEVER, LADIES
4 AND GENTLEMEN, IS THE POINT THAT ABSOLUTELY DESTROYS HIS
5 WHOLE TESTIMONY YESTERDAY. OKAY? AND I ASKED HIM THIS,
6 IT HAD TO BE THREE OR FOUR TIMES, HE'S DESCRIBING AFTER
7 HARRY IS DOWN, HE HAS GOTTEN AWAY FROM HARRY, THAT HE IS
8 LEAVING, ATTEMPTING NOW TO LEAVE THE TRAILER. HE'S GOT
9 THE STICK IN ONE HAND, THE CHAIR IN THE OTHER, BUT
10 SOMEHOW MANAGES TO BEND DOWN AND PICK UP HIS MONEY WITH
11 THE HAND WITH THE STICK IN IT, AND HE IS, THE WAY HE HAS
12 DESCRIBED IT, AND HE DID IT MORE THAN ONCE, IS THAT HE
13 IS NOW BACKING THE DOG UP, OKAY. THE CHAIR, KIND OF
14 LIKE, AS I SAID, LIKE A LION TAMER ALMOST, SO THE CAN
15 GET TO THE DOOR AND GET OUT. OKAY. GET TO THE DOOR AND
16 GET OUT. AND THAT'S LOOKING NOW FROM THE DOORWAY INTO
17 THE LIVING ROOM, INTO THE KITCHEN, THAT'S LOOKING BACK
18 NOW AT THE DOOR. SO, THESE TWO PICTURES HERE, STATE'S
19 EXHIBITS SIX AND TWENTY-FOUR BASICALLY SHOW THAT WHOLE
20 AREA, THE ENTIRE AREA RIGHT INSIDE THE DOOR. WHAT DOES
21 HE TELL YOU HE DID AS HE EXITED THE DOOR? AND I ASKED
22 HIM THIS MORE THAN ONE TIME JUST TO MAKE SURE HE WAS
23 ABSOLUTELY CRYSTAL CLEAR ON IT. HE SAID AS HE BACKED UP
24 TO THE DOOR, GOT THE DOOR OPEN, BACKING THE DOG UP, HE
25 TOOK THE STICK WITH HIM, HE SET THE CHAIR DOWN RIGHT

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1 INSIDE THE DOOR. LADIES AND GENTLEMEN, THERE'S NO CHAIR
2 INSIDE THAT DOOR. THERE'S NO CHAIR INSIDE THAT DOOR.
3 THE ONLY CHAIRS ARE FOUND IN THE KITCHEN PILED UP BESIDE
4 THE VICTIM, I SUBMIT TO YOU, AS A RESULT OF WHEN HE
5 ATTACKED THE VICTIM IN THAT KITCHEN. YOU CAN'T GET
6 AROUND THAT, LADIES AND GENTLEMEN.

7 LOOK AT HIS ACTIONS. ARE THESE THE
8 ACTIONS OF A MAN WHO DID NO WRONG, WHO WASN'T AT FAULT?
9 DID HE CALL THE POLICE? NO. HIDING AND DESTROYING THE
10 EVIDENCE, HIDING THE PANTS, HIDING THE SHORTS, THROWING
11 AWAY THE STICK, BURNING THE SHIRT. YOU KNOW, HIS ONLY
12 CONCERN AT THAT POINT IN TIME ISN'T THE WELFARE OF HARRY
13 LIVINGSTON, IT'S WHERE HE'S GOING TO GO GET HIGH NEXT.
14 THAT'S HIS ONLY CONCERN. THEN WHEN HE'S FINALLY
15 CONFRONTED BY THE POLICE, THE LIES BEGIN, THE LIES
16 BEGIN. I SUBMIT TO YOU, THOSE ARE NOT THE ACTIONS OF A
17 MAN THAT DID NO WRONG, NOT THE ACTIONS OF A MAN WHO HAD
18 JUST DEFENDED HIMSELF, THOSE ARE THE ACTIONS OF A COLD,
19 MALICIOUS KILLER, A COLD, MALICIOUS KILLER.

20 NOW, LADIES AND GENTLEMEN, I'M JUST
21 ABOUT DONE. I KNOW, THIS FAMILY KNOWS THAT THERE'S
22 NOTHING THAT YOU CAN DO BACK IN THAT JURY ROOM THAT'S
23 EVER GOING TO BRING HARRY BACK. THAT'S NOT POSSIBLE.
24 THE ONE THING THAT YOU CAN DO, HOWEVER, WHEN YOU GET
25 BACK THERE, AND YOU BEGIN DELIBERATING, WHEN YOU REACH

1 A VERDICT, YOU CAN BRING SOME JUSTICE, SOME JUSTICE TO
2 THAT FAMILY, TO SOCIETY. YOU CAN SEND A MESSAGE TO THAT
3 MAN THAT HE WILL BE HELD RESPONSIBLE, HE WILL BE HELD
4 ACCOUNTABLE FOR HIS ACTIONS BACK ON SEPTEMBER TWENTY-
5 NINTH, OF TWO THOUSAND AND SIX.

6 YOU KNOW, THERE'S AN OLD QUOTE, I
7 SPENT SOME TIME ON THE INTERNET TRYING TO FIND OUT WHO
8 IT HAD INITIALLY BEEN ATTRIBUTED TO, AND SOME PEOPLE
9 ATTRIBUTE IT TO CONFUCIUS, IT'S ACTUALLY BEEN ATTRIBUTED
10 TO NAPOLEON BONAPARTE ALSO, AND TO SEVERAL OTHER WRITES
11 THROUGHOUT HISTORY, EARLY NINETEEN HUNDREDS, THAT A
12 PICTURE IS WORTH A THOUSAND WORDS. A PICTURE, LADIES
13 AND GENTLEMEN, IS WORTH A THOUSAND WORDS: LADIES AND
14 GENTLEMEN, WHEN YOU GET BACK INTO THAT JURY ROOM, I'M
15 NOT ASKING YOU FOR A THOUSAND WORDS, I'M NOT ASKING YOU
16 FOR A THOUSAND WORDS, I'M JUST ASKING YOU FOR ONE, AND
17 THAT'S GUILTY, LADIES AND GENTLEMEN, THAT YOU RETURN A
18 VERDICT OF GUILTY TO GEORGE MOSES FOR THE MURDER OF
19 HARRY LIVINGSTON AND FOR THE ARMED ROBBERY OF HARRY
20 LIVINGSTON ON SEPTEMBER TWENTY-NINTH, TWO THOUSAND AND
21 SIX.

22 THANK YOU.

23 THE COURT: THANK YOU, SIR.

24 LADIES AND GENTLEMEN, WE'RE GOING TO
25 TAKE A SHORT BREAK AT THIS TIME. PLEASE RETIRE TO YOUR

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1 JURY ROOM, WE'LL BE STARTING BACK UP IN ABOUT FIVE
2 MINUTES. YOU'VE BEEN THERE FOR ABOUT AN HOUR AND
3 FIFTEEN, TWENTY MINUTES, OR LONGER THAN THAT, REALLY, SO
4 WE'RE GOING TO TAKE A SHORT BREAK AND THEN WE'LL BE BACK
5 IN A FEW MINUTES. SO, PLEASE RETIRE TO YOUR JURY ROOM,
6 PLEASE REMEMBER, DO NOT TALK ABOUT THE CASE.

7 (Whereupon, the jury retires
8 to the jury room.)

9 (Recess)

10 THE COURT: ARE YOU ALL READY?

11 MR. MELLARD: WE'RE READY, YOUR
12 HONOR.

13 THE COURT: BRING THE JURY IN.

14 (Whereupon the jury
15 enters the courtroom.)

16 BAILIFF: YOUR HONOR, ALL OF THE
17 JURORS ARE IN THE JURY BOX.

18 THE COURT: THANK YOU, SIR.

19 LADIES AND GENTLEMEN, I'VE TOLD THEM
20 TO GO AHEAD AND ORDER YOU SOME LUNCH. THEY HAVE PRETTY
21 GOOD FOOD OVER THERE, SO HOPEFULLY NOT TOO LONG AFTER
22 YOU START YOUR DELIBERATIONS WE'LL HAVE YOUR LUNCH FOR
23 YOU.

24 CHARGE BY THE COURT

25 YOU KNOW, NOW, OF COURSE, THAT THE

1 STATE HAS CHARGED MR. MOSES IN TWO INDICTMENTS WITH TWO
2 SEPARATE CRIMES, THE CRIME OF MURDER AND THE CRIME OF
3 ARMED ROBBERY. TO THOSE INDICTMENTS AND THE CHARGES
4 CONTAINED IN THOSE INDICTMENTS HE HAS PLED NOT GUILTY.
5 NOW, LADIES AND GENTLEMEN, YOU'LL HAVE TO REACH SEPARATE
6 DECISIONS ON EACH OF THOSE INDICTMENTS. AND SOME OF THE
7 EVIDENCE MAY APPLY TO BOTH OF THE INDICTMENTS BUT YOU
8 MAKE SEPARATE DECISIONS BASED ON THE EVIDENCE AND THE
9 LAW AS I'M ABOUT TO CHARGE YOU AS TO EACH SEPARATE
10 OFFENSE. THE IMPORTANT THING IS, AND YOU'LL HAVE THESE
11 INDICTMENTS WITH YOU IN THE JURY ROOM. THE IMPORTANT
12 THING FOR YOU TO RECOGNIZE IS THAT THEY AREN'T EVIDENCE,
13 AND TO THE CHARGES HE HAS PLED NOT GUILTY. AND THAT
14 PLACES THE BURDEN ON THE STATE TO PROVE HIM GUILTY
15 BEYOND A REASONABLE DOUBT. A PERSON IS NEVER CHARGED OR
16 NEVER REQUIRED TO PROVE HIMSELF INNOCENT. IT IS A VITAL,
17 IMPORTANT RULE OF LAW THAT A DEFENDANT IN A CRIMINAL
18 CASE, NO MATTER HOW GREAT OR HOW SERIOUS THE CHARGES
19 WITH WHICH HE IS FACED, MUST ALWAYS BE PRESUMED INNOCENT
20 UNTIL THE STATE HAS PROVEN HIS GUILT BEYOND A REASONABLE
21 DOUBT. THIS PRESUMPTION OF INNOCENCE REMAINS WITH THE
22 DEFENDANT FROM THE MOMENT HE COMES INTO THIS COURTROOM
23 AND UNTIL YOU HAVE, UPON THE EVIDENCE PRESENTED IN THIS
24 CASE, MADE A DETERMINATION THAT HE IS GUILTY BEYOND A
25 REASONABLE DOUBT. IT IS YOUR DUTY, LADIES AND

1 GENTLEMEN, IF YOU ARE NOT SO CONVINCED, TO FIND HIM NOT
2 GUILTY. BY THE SAME TOKEN, IT IS YOUR DUTY, IF YOU ARE
3 SO CONVINCED, TO FIND HIM GUILTY. SO, IF THE BURDEN IS
4 ON THE STATE TO PROVE HIM GUILTY BEYOND A REASONABLE
5 DOUBT, WHAT DO WE MEAN BY BEYOND A REASONABLE DOUBT?

6 WELL, YOU MIGHT HAVE SERVED AS A
7 JUROR IN A CIVIL CASE AT SOME TIME AND YOU WERE ONLY
8 TOLD THAT IT IS NECESSARY TO PROVE THAT A FACT IS MORE
9 LIKELY THAN NOT TRUE. WELL, IN A CRIMINAL CASE THE
10 STATE'S BURDEN IS GREATER THAN THAT. PROOF BEYOND A
11 REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
12 CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW
13 THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
14 CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT
15 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF
16 BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
17 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE
18 CRIME CHARGED YOU MUST FIND HIM GUILTY. ON THE OTHER
19 HAND, IF YOU THINK THERE IS A REAL POSSIBILITY THAT HE
20 IS NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF ANY
21 REASONABLE DOUBT AND FIND HIM NOT GUILTY.

22 NOW, LADIES AND GENTLEMEN, AS I TOLD
23 YOU EARLIER, YOU ARE THE JUDGES OF THE FACTS IN THE
24 CASE, AND I DON'T HAVE A RIGHT TO EXPRESS ANY OPINION I
25 MIGHT HAVE ABOUT THE FACTS OF THE CASE OR THE GUILT OF

1 THE DEFENDANT OR ANY SUCH MATTER.

2 IN ORDER FOR YOU TO DETERMINE THE
3 FACTS IN THE CASE YOU HAVE TO JUDGE THE CREDIBILITY OR
4 THE BELIEVABILITY OF THE WITNESS WHO HAVE TESTIFIED IN
5 THE CASE, AND YOU ARE THE ONLY ONES WHO CAN MAKE THAT
6 DETERMINATION OF CREDIBILITY. IN PASSING UPON THEIR
7 CREDIBILITY OR BELIEVABILITY YOU SHOULD CONSIDER A
8 NUMBER THINGS: THE Demeanor OR THE MANNER OF TESTIFYING;
9 WAS THE WITNESS FORTHRIGHT OR WAS THE WITNESS HESITANT?
10 DID THE WITNESS HAVE REASON TO BIASED OR PREJUDICED IN
11 THEIR TESTIMONY? WAS A WITNESS'S TESTIMONY CONTRADICTED
12 ON ONE HAND OR WAS IT SUPPORTED AND CORROBORATED ON THE
13 OTHER HAND? WHAT WAS THE WITNESS'S OPPORTUNITY FOR
14 OBSERVATION AND KNOWLEDGE OF THE MATTERS ABOUT WHICH
15 THEY'VE TESTIFIED? HOW REASONABLE WAS THE WITNESS'S
16 TESTIMONY WHEN CONSIDERED IN THE LIGHT OF THE OTHER
17 EVIDENCE WHICH YOU DO BELIEVE?

18 YOU DON'T DETERMINE CREDIBILITY OR
19 BELIEVABILITY BY COUNTING THE NUMBER OF WITNESSES FOR
20 EITHER SIDE. YOU CAN BELIEVE A SMALL PORTION OF A
21 WITNESS'S TESTIMONY, ALL OF THAT WITNESS'S TESTIMONY, OR
22 NONE OF THAT WITNESS'S TESTIMONY. YOU CAN BELIEVE ONE
23 WITNESS AGAINST MANY, OR MANY AGAINST ONE. ALL OF THESE
24 THINGS YOU WILL USE, JUST USING YOUR GOOD COMMON SENSE
25 AS YOU DO IN YOUR RELATIONSHIPS EVERY DAY, BEARING IN

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1 MIND THAT YOU SHOULD GIVE THE DEFENDANT THE BENEFIT OF
2 ANY REASONABLE DOUBT.

3 NOW, LADIES AND GENTLEMEN, I TOLD
4 YOU EARLIER THAT CERTAIN WITNESSES WERE QUALIFIED TO BE
5 EXPERT WITNESSES, AND THAT SIMPLY MEANS THAT THEY ARE
6 ALLOWED TO GIVE YOU THEIR OPINION IN THE MATTER OF THEIR
7 AREA OF EXPERTISE. THAT OPINION IS NOT GIVEN FOR THE
8 PURPOSE OF CONTROLLING YOUR JUDGEMENT, BUT FOR THE
9 PURPOSE OF HELPING YOU UNDERSTAND THE EVIDENCE THAT YOU
10 MIGHT HAVE HEARD. AND SO, YOU WEIGH THE CREDIBILITY OF
11 AN EXPERT WITNESS JUST AS YOU DO EVERY OTHER WITNESS AND
12 GIVE IT SUCH WEIGHT AS YOU THINK IT DESERVES.

13 THERE ARE TWO TYPES OF EVIDENCE,
14 LADIES AND GENTLEMEN, FOR WHICH YOU CAN PROPERLY FIND
15 THE TRUTH AS TO THE FACTS IN THE CASE. ONE IS BY DIRECT
16 EVIDENCE, AND THE OTHER IS BY INDIRECT OR WHAT WE CALL
17 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE, LADIES AND
18 GENTLEMEN, INVOLVES THE TESTIMONY OF PERSONS WHO HAVE
19 PERCEIVED ITS EXISTENCE BY ONE OF THEIR FIVE SENSES, AND
20 COMES INTO COURT TO TESTIFY TO WHAT THEY'VE SEEN OR
21 HEARD, OR SMELLED, OR TOUCHED, THE FIVE SENSES, SIGHT,
22 SMELL, TASTE, SOUND OR FEELING. AND IT'S TESTIMONY
23 THAT'S GIVEN OF EVIDENCE THAT WAS PERCEIVED WITH THE USE
24 OF THESE FIVE SENSES WITHOUT THE AID OF ANY INFERENCES
25 WHATSOEVER. CIRCUMSTANTIAL EVIDENCE, ON THE OTHER HAND,

1 INVOLVES TESTIMONY OR EVIDENCE OF SURROUNDING FACTS FROM
2 WHICH ONE MAY OR MAY NOT INFER THAT AN EVENT HAS
3 OCCURRED OR THAT A FACT HAS BEEN ESTABLISHED.
4 CIRCUMSTANTIAL EVIDENCE CAN EXIST WHERE CERTAIN FACTS
5 ARE KNOWN THROUGH ONE OR MORE OF THE FIVE SENSES, AND
6 THESE FACTS GIVE RISE TO THE LOGICAL INFERENCE THAT
7 OTHER FACTS EXIST WITHOUT DIRECTLY PROVING THOSE FACTS.
8 IF YOU GO BACK IN YOUR JURY ROOM IN A FEW MINUTES AND
9 YOU SEE WATER ON THE WINDOW AND WINDOW SILL AND MAYBE
10 WATER RUNNING DOWN THE STREET, YOU CAN SAY, WELL, GOSH,
11 IT RAINED. WELL, YOU SEE CIRCUMSTANTIAL EVIDENCE THAT
12 IT RAINED, YOU DIDN'T, YOU DON'T HAVE ANY DIRECT
13 EVIDENCE, YOU DIDN'T SEE IT RAIN, HEAR IT RAIN, FEEL IT
14 RAIN, BUT YOU SAW THE WATER, AND SO, YOU MIGHT CONCLUDE
15 FROM THAT THAT IT RAINED. THAT'S CIRCUMSTANTIAL
16 EVIDENCE THAT IT RAINED WHILE WE WERE IN THIS COURTROOM.
17 SO, YOU MIGHT NOT HAVE USED THAT TERM, BUT YOU USE
18 CIRCUMSTANTIAL EVIDENCE EVERY DAY ALSO. ON A PARTICULAR
19 ISSUE YOU MAY HAVE SOME DIRECT EVIDENCE AND SOME
20 CIRCUMSTANTIAL EVIDENCE, OR A COMBINATION OF THE TWO AS
21 TO THAT FACT. BUT WITH REGARD TO BOTH DIRECT AND
22 CIRCUMSTANTIAL IT MUST BE SUCH AS TO PROVE THE GUILT OF
23 THE DEFENDANT BEYOND A REASONABLE DOUBT. YOU CONSIDER
24 ALL OF THE EVIDENCE IN THE CASE, BOTH DIRECT AND
25 CIRCUMSTANTIAL. THE LAW MAKES ABSOLUTELY NO DISTINCTION

1 BETWEEN THE WEIGHT OR THE VALUE TO BE GIVEN TO EITHER
2 DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER
3 DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE
4 THAN TO DIRECT EVIDENCE. YOU SIMPLY WEIGH ALL OF THE
5 EVIDENCE AND MAKE YOUR DECISION BASED ON THAT REVIEW.

6 NOW, LADIES AND GENTLEMEN, IN THIS
7 CASE YOU HEARD TESTIMONY ABOUT CERTAIN STATEMENTS THAT
8 WERE ALLEGED TO HAVE BEEN MADE BY MR. MOSES, THE
9 DEFENDANT IN THIS CASE. THERE WAS AN ORAL STATEMENT AND
10 A WRITTEN STATEMENT, AS WELL AS I REMEMBER. WELL, THE
11 COURT DETERMINES THE ADMISSIBILITY OF EVIDENCE, AND I
12 HAVE IN THIS CASE. YOU MUST DETERMINE REGARDING THESE
13 STATEMENTS AND MAKE THE ULTIMATE DETERMINATION OF
14 WHETHER OR NOT THE STATEMENTS WERE MADE BY THE
15 DEFENDANT, AND IF HE DID MAKE THE STATEMENTS WHETHER
16 THEY WERE MADE FREELY AND VOLUNTARILY. AND IF YOU
17 DECIDE THAT THEY WERE MADE AND WERE MADE FREELY AND
18 VOLUNTARILY, YOU CONSIDER THE STATEMENTS. IF YOU DECIDE
19 THEY WERE NOT MADE, OR THAT THEY WERE MADE BUT NOT MADE
20 FREELY AND VOLUNTARILY, THEN YOU CANNOT CONSIDER THOSE
21 STATEMENTS OR GIVE THEM ANY WEIGHT WHATSOEVER. SO, YOU
22 MUST DETERMINE WHETHER THESE STATEMENTS WERE THE PRODUCT
23 OF AN ESSENTIALLY FREE AND UNCONSTRAINED CHOICE, THAT
24 THEY WERE MADE VOLUNTARILY AND OF THEIR OWN FREE WILL.
25 IF YOU DETERMINE THAT THEY WERE, AND THE BURDEN IS UPON

1 THE STATE TO PROVE THAT FACT, AS ALL OTHER FACTS, BEYOND
2 A REASONABLE DOUBT, THEN YOU CAN GIVE THAT STATEMENT
3 SUCH WEIGHT AS YOU THINK IT SHOULD HAVE. IF YOU
4 DETERMINE THAT THE ALLEGED STATEMENTS WERE NOT THE FREE
5 AND VOLUNTARY WILL OR EXPRESSION OF THE DEFENDANT, THEN
6 YOU SHOULD NOT CONSIDER THEM AT ALL. IN DETERMINING
7 WHETHER A DEFENDANT'S WILL WAS OVERCOME IN OBTAINING A
8 STATEMENT YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS
9 OF THE ACCUSED AND THE DETAILS OF THE QUESTIONING, WHICH
10 IS OFTEN REFERRED TO AS THE TOTALITY OF THE
11 CIRCUMSTANCES. YOU WOULD CONSIDER THE AGE, OR THE YOUTH
12 OF THE ACCUSED, HIS EDUCATION OR LACK THEREOF, HIS
13 MENTAL ABILITY OR CAPACITY, HIS BACKGROUND AND
14 ENVIRONMENT, THE ADVICE, OR THE LACK THEREOF TO THE
15 DEFENDANT OF HIS CONSTITUTIONAL RIGHTS, INCLUDING BUT
16 NOT LIMITED TO THE PROCEDURAL SAFEGUARDS KNOWN AS THE
17 MIRANDA WARNINGS, THAT HE HAD THE RIGHT TO REMAIN
18 SILENT; THAT A STATEMENT COULD BE USED AGAINST HIM IN A
19 COURT OF LAW; HIS RIGHT TO HAVE A LAWYER PRESENT; IF
20 INDIGENT HIS RIGHT TO HAVE A LAWYER APPOINTED TO
21 REPRESENT HIM, AND THE FACT THAT HE COULD STOP MAKING A
22 STATEMENT, IF HE CHOSE TO BEGIN MAKING THAT STATEMENT HE
23 COULD STOP AT ANYTIME. AND YOU SHOULD CONSIDER THE
24 PLACE AND THE LENGTH OF THE DETENTION AND THE NATURE OF
25 THE QUESTIONING. YOU MUST BE SATISFIED BEYOND A

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1 REASONABLE DOUBT THAT THE STATEMENT WAS MADE BY THE
2 ACCUSED AND THAT IT WAS MADE UNINFLUENCED BY THE PROMISE
3 OF REWARD, THREAT OF INJURY, OR DIMINUTION OF HIS RIGHTS
4 IN ANY MANNER WHATSOEVER, AND IF YOU DETERMINE THOSE
5 FACTORS, THAT IT WAS MADE, THAT IT WAS MADE FREELY AND
6 VOLUNTARY, THEN YOU GIVE THOSE STATEMENTS SUCH WEIGHT AS
7 YOU THINK THEY SHOULD DESERVE.

8 NOW, LADIES AND GENTLEMEN, THE SAME
9 CONSTITUTION AND LAW WHICH MAKE YOU THE JUDGES OF THE
10 FACTS IN THE CASE MAKE ME THE JUDGE OF THE LAW IN THE
11 CASE. AND I'M TELLING YOU NOW, AND I'M ABOUT TO TELL
12 YOU SOME MORE ABOUT WHAT THE LAW IS. AND YOU MUST ACCEPT
13 THE LAW AS I GIVE IT TO YOU BECAUSE I'M THE ONLY JUDGE
14 OF THE LAW. YOU ARE THE ONLY JUDGE OF THE FACTS, NOBODY
15 CAN QUESTION YOUR DECISION AS FAR AS THE FACTS IN THE
16 CASE, BUT I'M THE ONLY JUDGE OF THE LAW. AND IF YOU
17 FIND THAT WHAT I TELL YOU IS NOT WHAT YOU THOUGHT THE
18 LAW WAS, OR EVEN IF IT'S NOT WHAT YOU THINK THE LAW
19 OUGHT TO BE, YOU MUST PUT ASIDE YOUR POSITION OR YOUR
20 OPINION ON THE LAW, ACCEPT THE LAW AS I GIVE IT TO YOU,
21 AND APPLY THAT TO THE FACTS AS YOU FIND THEM TO BE IN
22 THE CASE IN ORDER TO REACH YOUR VERDICT IN THE CASE.

23 NOW, FIRST I'M GOING TO DEFINE FOR
24 YOU, LADIES AND GENTLEMEN, WHAT WE MEAN BY ARMED
25 ROBBERY. WELL, ARMED ROBBERY INCLUDES ALL THE ELEMENTS

1 FIRST OF LARCENY AND ROBBERY. AND SO, LARCENY, LADIES
2 AND GENTLEMEN, IS NOTHING BUT STEALING. THE STATE MUST
3 PROVE FOUR THINGS TO PROVE LARCENY, AND THEY MUST PROVE
4 EACH OF THESE BEYOND A REASONABLE DOUBT:

5 THAT THERE WAS A TAKING;

6 THAT THE TAKING WAS OF PERSONAL PROPERTY.

7 NOW, LADIES AND GENTLEMEN, THE LAW RECOGNIZES ONLY TWO
8 KINDS OF PROPERTY, ONE IS PERSONAL PROPERTY, ONE IS REAL
9 PROPERTY. REAL PROPERTY CONSISTS OF LAND AND HOUSES OR
10 BUILDINGS UPON THAT LAND. EVERYTHING ELSE IS PERSONAL
11 PROPERTY.

12 SO, IT MUST BE A TAKING;

13 IT MUST BE OF PERSONAL PROPERTY;

14 THE PROPERTY MUST BE CARRIED AWAY, IT DOESN'T
15 HAVE TO BE CARRIED ANY PARTICULAR DISTANCE, BUT
16 IT'S GOT TO BE CARRIED AWAY; AND

17 IT'S GOT TO BE TAKEN FROM, WITH THE INTENT TO
18 STEAL THAT PROPERTY OR DEPRIVE THE OTHER PERSON OF
19 THAT PROPERTY.

20 SO, THAT'S LARCENY, THAT'S LARCENY OR STEALING, THE
21 TAKING, THE CARRYING AWAY, OF PERSONAL PROPERTY, WITH
22 INTENT TO STEAL THAT PROPERTY.

23 NOW, TO MAKE THAT ROBBERY, LADIES
24 AND GENTLEMEN, THERE'S ONE OTHER ELEMENT, AND IT IS THAT
25 THE TAKING MUST BE FROM THE PERSON OR PRESENCE OF THE

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1 VICTIM IN THE CASE. AND THERE ARE TWO OTHER ELEMENTS,
2 IT MUST BE TAKEN FROM THE PERSON OR PRESENCE OF THE
3 VICTIM, AND IT MUST HAVE BEEN ACCOMPLISHED BY PLACING
4 THE OTHER PERSON IN FEAR BY VIOLENCE OR THREATS OF
5 VIOLENCE SO AS TO MAKE THAT PERSON SURRENDER THE
6 PROPERTY WITHOUT THEIR CONSENT AND AGAINST THEIR WILL.
7 IN OTHER WORDS, IF YOU GO TO SOMEBODY'S HOUSE AND STEAL
8 THEIR LAWN MOWER AND LEAVE, THAT'S NOT ROBBERY BECAUSE
9 YOU DIDN'T TAKE IT -- IT'S LARCENY, BUT IT'S NOT ROBBERY
10 BECAUSE YOU DIDN'T TAKE IT FROM THE PERSON OR PRESENCE
11 OF THAT PERSON. BY THE SAME TOKEN, IF SOMEBODY IS
12 SITTING IN A RESTAURANT AND YOU WALK UP BEHIND THEM AND
13 YOU TAKE THE PURSE OFF THE BENCH AND TAKE IT OUT, THAT'S
14 STEALING BUT IT'S NOT ROBBERY, AND EVEN THOUGH YOU TOOK
15 IT FROM THE PRESENCE OF THE VICTIM, YOU DIDN'T TAKE IT
16 BY PLACING THE PERSON IN FEAR OR INTIMIDATION IN ORDER
17 TO MAKE THEM GIVE UP THE PROPERTY. WE WOULD CALL THAT
18 SERRUPTICIOUSLY STEALING, AND SO THAT WOULDN'T BE
19 ROBBERY. SO, ROBBERY IS TAKING, CARRYING AWAY, PERSONAL
20 PROPERTY OF ANOTHER, WITH THE INTENT TO STEAL THAT
21 PROPERTY, AND IT HAS TO BE TAKEN FROM THE PERSON OR
22 PRESENCE OF THAT PERSON AND IT HAS TO BE TAKEN BY
23 PLACING THAT PERSON IN FEAR OR INTIMIDATION.

24 NOW, ARMED ROBBERY INCLUDES ONE
25 ADDITIONAL ELEMENT, AND THAT MEANS THAT THE FORCE OR

1 INTIMIDATION IS ACCOMPLISHED BY BEING ARMED, THAT THE
2 PERSON WAS ARMED AND THAT WAY THEY INTIMIDATED THE
3 PERSON OR FORCED HIM TO GIVE UP THE PROPERTY. AND SO,
4 THE STATE MUST PROVE IN ORDER FOR YOU TO CONVICT THE
5 DEFENDANT OF ARMED ROBBERY THAT HE TOOK AND CARRIED AWAY
6 THE PERSON, PROPERTY OF THE VICTIM IN THE CASE, THAT HE
7 DID IT FROM THE PERSON OR PRESENCE OF THE VICTIM, AND
8 THAT HE DID IT BY PLACING THAT PERSON IN FEAR OR
9 INTIMIDATION BY THE USE OF A DEADLY WEAPON.

10 NOW, LADIES AND GENTLEMEN, THE STATE
11 ACTUALLY HAS DEFINED ARMED ROBBERY AS SAYING THAT A
12 PERSON WHO COMMITS THE CRIME OF ROBBERY WHILE ARMED WITH
13 A PISTOL, DIRK, SLING SHOT, METAL KNUCKLES, RAZOR OR ANY
14 OTHER DEADLY WEAPON COMMITS THE OFFENSE OF ARMED
15 ROBBERY. AND A DEADLY WEAPON IS ANY TYPE OF WEAPON
16 WHICH CAN BE USED TO INFLECT SERIOUS BODILY HARM.

17 LADIES AND GENTLEMEN, IT IS NOT
18 ESSENTIAL THAT A VICTIM IN AN ARMED ROBBERY MUST BE
19 ALIVE WHEN THE ROBBERY OCCURS, BUT IN ORDER TO BE GUILTY
20 OF ARMED ROBBERY IN CONJUNCTION WITH A HOMICIDE, OR
21 MURDER, THE STATE MUST PROVE THE VICTIM'S DEATH AND THE
22 TAKING ARE A PART OF A CONTINUOUS CHAIN OF EVENTS, AND
23 THAT THEY ARE SO INTERCONNECTED AS TO BE INSEPARABLE.

24 NOW, LADIES AND GENTLEMEN, THE STATE
25 HAS CHARGED THE DEFENDANT WITH MURDER. AND UNDER THE

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1 PRINCIPLE IN SOUTH CAROLINA THAT A GREATER CRIME
2 INCLUDES A LESSER CRIME, THIS INDICTMENT OF MURDER
3 INCLUDES ALSO THE CHARGE OF MANSLAUGHTER IN ADDITION TO
4 THE CRIME OF MURDER, MURDER BEING THE GREATER CRIME,
5 MANSLAUGHTER BEING THE LESSER CRIME. AND SO, I MUST
6 CHARGE YOU ON MURDER AND MANSLAUGHTER.

7 NOW, WHAT IS MURDER? THE DEFINITION
8 OF MURDER IS, IT IS THE WILLFUL, FELONIOUS KILLING OF A
9 HUMAN BEING BY A HUMAN BEING WITH MALICE AFORETHOUGHT,
10 THAT MALICE BEING EITHER EXPRESS MALICE OR IMPLIED
11 MALICE.

12 THE WILLFUL. WILLFUL, LADIES AND GENTLEMEN,
13 MEANS INTENTIONAL, IT MEANS VOLUNTARY, IT MEANS
14 CONSCIOUS, IT MEANS KNOWING AS OPPOSED TO
15 ACCIDENTALLY.

16 FELONIOUS, LADIES AND GENTLEMEN, MEANS
17 WRONGFUL, IT MEANS UNLAWFUL, IT MEANS WITHOUT
18 JUSTIFICATION OR EXCUSE.

19 MALICE, LADIES AND GENTLEMEN, IS A - - -
20 WELL, LET ME DEFINE MANSLAUGHTER AND THEN I'LL DEFINE
21 MALICE FOR YOU.

22 MANSLAUGHTER, LADIES AND GENTLEMEN,
23 IS THE FELONIOUS OR WRONGFUL KILLING OF A HUMAN BEING
24 WITHOUT MALICE, IN SUDDEN HEAT AND PASSION, UPON A
25 SUFFICIENT LEGAL PROVOCATION. SO, THE DIFFERENCE

1 BETWEEN MURDER AND MANSLAUGHTER IS THE PRESENCE OR
2 ABSENCE OF MALICE, MALICE BEING PRESENT IN MURDER, BUT
3 NOT PRESENT IN MANSLAUGHTER.

4 SO, WHILE MURDER IS THE WILLFUL,
5 FELONIOUS KILLING OF A HUMAN BEING BY A HUMAN BEING WITH
6 MALICE AFORETHOUGHT, AND THAT MALICE EITHER BEING
7 EXPRESSED OR IMPLIED MALICE, MANSLAUGHTER IS THE
8 FELONIOUS OR WRONGFUL KILLING OF A HUMAN BEING WITHOUT
9 MALICE IN A SUDDEN HEAT OF PASSION AND UPON SUFFICIENT
10 LEGAL PROVOCATION.

11 NOW, LET ME DEFINE FOR YOU FIRST
12 WHAT WE MEAN BY MALICE. MALICE IS AN ESSENTIAL ELEMENT
13 OF THE CRIME OF MURDER. MALICE IS A TERM OF ART, A
14 TECHNICAL TERM. IT IMPORTS WICKEDNESS, IT EXCLUDES JUST
15 CAUSE OR LEGAL EXCUSE. MALICE IN ANY FORM, WHETHER IT
16 ARISES FROM HATRED, ILL WILL, OR OTHERWISE, IS STILL
17 MALICE. MALICE SPRINGS FROM THE DEPRAVITY, FROM A HEART
18 DEVOID OF SOCIAL DUTY, AND FATALLY BENT ON MISCHIEF. IT
19 MUST BE AFORETHOUGHT. THE LAW DOES NOT REQUIRE THAT
20 MALICE SHOULD EXIST FOR ANY PARTICULAR TIME BEFORE THE
21 COMMISSION OF THE ACT, BUT MALICE MUST EXIST IN THE MIND
22 OF THE ACCUSED JUST BEFORE AND AT THE TIME OF THE
23 COMMISSION OF THE ACT. THERE MUST BE A COMBINATION OF
24 THE PREVIOUS EVIL INTENT AND THE ACT PRODUCING THE
25 RESULT.

1 MALICE AFORETHOUGHT MAY BE EITHER
2 EXPRESSED OR IMPLIED. THESE WORDS, EXPRESSED OR
3 IMPLIED, DO NOT MEAN DIFFERENT KINDS OF MALICE, BUT
4 MERELY THE MANNER IN WHICH THE ONLY KIND OF MALICE KNOWN
5 TO THE LAW MAY BE SHOWN TO EXIST, THAT IS, EITHER BY
6 DIRECT EVIDENCE OR BY A NECESSARY INFERENCE FROM THE
7 FACTS AND CIRCUMSTANCES WHICH ARE PROVEN. EXPRESS
8 MALICE IS SHOWN WHEN ONE, BY WORD OF MOUTH, EXPRESSES
9 HIS HATRED OR ILL WILL FOR ANOTHER OR WHERE THE STATE
10 SHOWS HE HAS MADE PREPARATION BEFOREHAND TO DO THE DEED
11 WHICH WAS LATER ACCOMPLISHED. LYING IN WAIT FOR A
12 PERSON OR ANY ACTS OF PREPARATION GOING TO SHOW THAT THE
13 DEED WAS WITHIN HIS MIND OR HIS THINKING WOULD BE
14 EXPRESSED MALICE.

15 NOW, EVEN THOUGH NO EXPRESSED INTENT
16 TO KILL IS PROVED BY DIRECT EVIDENCE, IT MAY BE INFERRED
17 FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVEN.
18 MALICE MAY BE INFERRED FROM THE WILLFUL, DELIBERATE AND
19 INTENTIONAL DOING OF AN UNLAWFUL ACT WITHOUT JUST CAUSE
20 OR LEGAL EXCUSE. IN OTHER WORDS, IN ITS GENERAL
21 SIGNIFICATION, MALICE MEANS THE DOING OF A WRONGFUL ACT
22 INTENTIONALLY, WITHOUT JUSTIFICATION OR LEGAL EXCUSE. IT
23 MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD
24 FOR HUMAN LIFE. THE INFERENCE OF MALICE ARISE WHEN THE
25 DEED IS DONE WITH A DEADLY WEAPON. A DEADLY WEAPON IS

1 ANY ARTICLE, INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO
2 CAUSE DEATH OR GREAT BODILY HARM. MALICE DOES NOT
3 NECESSARILY IMPART ILL WILL TOWARD THE INDIVIDUAL
4 INJURED, BUT RATHER SIGNIFIES A GENERAL MALIGNANT
5 RECKLESSNESS OF THE LIVES AND SAFETY OF OTHERS, A
6 CONDITION OF MIND WHICH SHOWS THE HEART DEVOID OF SOCIAL
7 DUTY AND FATALLY BENT ON MISCHIEF. IT IS THE WRONGFUL
8 INTENT TO INJURE ANOTHER AND INDICATES A WICKED OR
9 DEPRAVED SPIRIT INTENT ON DOING WRONG. SO IF FACTS ARE
10 PROVEN BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN
11 INFERENCE OF MURDER TO YOUR SATISFACTION, THIS INFERENCE
12 WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO
13 CONSIDERATION BY YOU, THE JURY, ALONG WITH OTHER
14 EVIDENCE IN THE CASE, AND YOU MAY GIVE IT SUCH WEIGHT AS
15 YOU DETERMINE IT SHOULD RECEIVE.

16 NOW, LADIES AND GENTLEMEN,
17 MANSLAUGHTER, AS I HAVE ALREADY INDICATED TO YOU, IS THE
18 UNLAWFUL OR FELONIOUS KILLING OF A HUMAN BEING WITHOUT
19 MALICE BUT IN SUDDEN HEAT AND PASSION UPON A SUFFICIENT
20 LEGAL PROVOCATION. A LEGAL PROVOCATION, LADIES AND
21 GENTLEMEN, IS SOME ACT WHICH, EITHER ALONE OR IN
22 CONJUNCTION WITH WORDS OR CIRCUMSTANCES, IS CALCULATED
23 TO THROW ONE INTO A PASSION. NOW, THE SUDDEN HEAT AND
24 PASSION UPON SUFFICIENT LEGAL PROVOCATION WHICH
25 MITIGATES OR REDUCES DOWN A FELONIOUS KILLING FROM

1 MURDER TO MANSLAUGHTER, WHILE IT NEED NOT DETHRONE OR
2 ELIMINATE REASON ENTIRELY, IT MUST BE SUCH AS WOULD
3 NATURALLY DISTURB OR SWAY THE REASON OF AN ORDINARY
4 PERSON AND RENDER HIS MIND INCAPABLE OF COOL REFLECTION,
5 AND PRODUCE WHAT ACCORDING TO HUMAN EXPERIENCE MAY BE
6 CALLED AN UNCONTROLLED IMPULSE TO DO VIOLENCE.

7 NOW, LADIES AND GENTLEMEN, IF THE
8 HEAT OF PASSION, EVEN IF IT EXISTED, HAD COOL, OR IF
9 THERE WAS SUFFICIENT TIME BETWEEN THE PROVOCATION AND
10 THE KILLING FOR PASSION TO HAVE COOLED, THE KILLING
11 WOULD NOT BE ATTRIBUTED TO THE HEAT OF PASSION BUT IT
12 WOULD BE ATTRIBUTED TO MALICE. NOW, AS TO WHETHER OR
13 NOT A REASONABLE TIME FOR THE COOLING HAD ELAPSED, YOU
14 SHOULD TAKE INTO CONSIDERATION THE WHOLE CIRCUMSTANCES
15 SURROUNDING THE DIFFICULTY. YOU SHOULD CONSIDER THE
16 NATURE OF THE PROVOCATION, THE DEFENDANT'S PHYSICAL AND
17 MENTAL CONSTITUTION, HIS CONDITION IN LIFE AND PECULIAR
18 SITUATION AT THE TIME OF THE AFFAIR, HIS EDUCATION, HIS
19 CONDUCT, MANNER AND CONVERSATION THROUGHOUT THE
20 TRANSACTION. ALL PERTINENT CIRCUMSTANCES MAY BE
21 CONSIDERED, AND THE TIME IN WHICH AN ORDINARY MAN IN
22 LIKE CIRCUMSTANCES WOULD HAVE COOLED, THAT WOULD BE THE
23 REASONABLE TIME.

24 LADIES AND GENTLEMEN, A TYPICAL
25 CASE THAT'S GIVEN IS, A MAN COMES HOME AND FINDS ANOTHER

1 MAN IN BED WITH HIS WIFE, AND HE KILLS THAT MAN RIGHT
2 THERE, BAM. IT WOULD BE UP TO A JURY, BUT THERE HAVE
3 BEEN MANY CASES WHERE THE JURY DETERMINED THAT THAT WAS
4 SUFFICIENT LEGAL PROVOCATION TO PROVOKE THE MAN IN THE
5 HEAT OF PASSION TO TAKING THAT MAN'S LIFE. NOW, IF THE
6 MAN COMES HOME AND FINDS ANOTHER MAN IN BED WITH HIS
7 WIFE, AND HE SAYS, GET OUT OF MY HOUSE, AND A WEEK LATER
8 HE GOES AND KILLS HIM, AS A MATTER OF LAW THAT WOULD NOT
9 BE SUFFICIENT LEGAL PROVOCATION BECAUSE HE'S HAD A WEEK
10 TO COOL OFF. HE COULDN'T BE SAID TO BE IN THE HEAT OF
11 PASSION. THAT'S WHAT WE MEAN BY, IT'S GOT TO HAPPEN
12 WHILE HE'S IN THE HEAT OF PASSION. BY THE SAME TOKEN, IF
13 SOMEBODY WALKS UP TO YOU AND SAYS, GEE, THAT'S THE
14 UGLIEST SHIRT I'VE EVER SEEN IN MY LIFE, AND YOU FLY
15 INTO A RAGE AND KILL HIM, THAT'S NOT GOING TO EXCUSE
16 YOU, BECAUSE THAT'S NOT ADEQUATE LEGAL PROVOCATION. YOU
17 KNOW, FINDING A MAN IN BED WITH YOUR WIFE HAS BEEN
18 CONSIDERED TO BE ADEQUATE LEGAL PROVOCATION, AND IT
19 WOULD BE UP TO A JURY, YOU MAY CONSIDER IT'S NOT, AND
20 THAT DOESN'T APPLY TO THIS CASE, I'M JUST TRYING TO SHOW
21 YOU WHAT WE MEAN BY ADEQUATE LEGAL PROVOCATION, THE HEAT
22 OF PASSION, AND THE TIME TO COOL OFF, AND I THINK THAT
23 ILLUSTRATES THAT. YOU WOULDN'T ORDINARILY GET SO
24 INFLAMED BY THE COLOR OF A MAN'S SHIRT, OR A MAN NOT
25 LIKING THE COLOR OF YOUR SHIRT THAT YOU WOULD KILL HIM,

1 AND THAT IN THE LAW WOULDN'T BE SUFFICIENT.

2 NOW, LADIES AND GENTLEMEN, WHEN YOU
3 CONSIDER ALL OF THE EVIDENCE IN THE CASE IF YOU CONCLUDE
4 THAT THE DEFENDANT IS GUILTY BUT THERE'S A REASONABLE
5 DOUBT AS TO WHETHER HE'S GUILTY OF MURDER OR
6 MANSLAUGHTER, THEN YOU WOULD RESOLVE THAT DOUBT IN FAVOR
7 OF THE DEFENDANT AND FIND HIM GUILTY OF MANSLAUGHTER,
8 BUT YOU WOULDN'T FIND HIM GUILTY OF ANYTHING UNLESS YOU
9 FIND THAT THE STATE HAS PROVEN THE ELEMENTS OF THAT
10 CRIME, EACH OF THOSE ELEMENTS BEYOND A REASONABLE DOUBT.

11 NOW, LADIES AND GENTLEMEN, THE
12 DEFENDANT IN THIS CASE HAS RAISED THE QUESTION OF SELF
13 DEFENSE, AND I CHARGE YOU, LADIES AND GENTLEMEN, THAT
14 THE LAW RECOGNIZES THE RIGHT OF EVERY PERSON TO DEFEND
15 HIMSELF FROM DEATH OR SERIOUS BODILY HARM. AND TO DO
16 THIS HE MAY USE SUCH FORCE AS IS NECESSARY, EVEN TO THE
17 POINT OF TAKING A HUMAN LIFE. IN OTHER WORDS, SELF
18 DEFENSE IS A COMPLETE DEFENSE, ENTITLED TO ONE CHARGED
19 WITH AN UNLAWFUL ACT, WHETHER IT BE MURDER OR
20 MANSLAUGHTER, TO AN ACQUITTAL OR NOT GUILTY VERDICT IF
21 THE LEGAL ELEMENTS OF THE PLEA OF SELF DEFENSE ARE SHOWN
22 TO YOUR SATISFACTION BY THE EVIDENCE IN THE CASE. SINCE
23 SELF DEFENSE IS A COMPLETE DEFENSE, IF YOU BELIEVE THAT
24 THE DEFENDANT ACTED IN SELF DEFENSE YOU MUST FIND HIM
25 NOT GUILTY.

1 NOW, LADIES AND GENTLEMEN, THERE ARE
2 FOUR ELEMENTS REQUIRED BY LAW TO ESTABLISH THE DEFENSE
3 OF SELF DEFENSE IN THIS CASE:

4 FIRST, THE DEFENDANT MUST BE WITHOUT FAULT IN
5 BRINGING ON THE DIFFICULTY. OBVIOUSLY, SOMEBODY
6 CAN'T CREATE A SITUATION AND THEN KILL A MAN AND
7 SAY, WELL, YOU KNOW, I'VE KILLED HIM IN SELF
8 DEFENSE. SO, YOU HAVE TO BE WITHOUT FAULT IN
9 BRINGING ON THE SITUATION.

10 SECONDLY, THE DEFENDANT MUST HAVE ACTUALLY
11 BELIEVED HE WAS IN EMINENT DANGER OF LOSING HIS
12 LIFE OR SUSTAINING SERIOUS BODILY INJURY, OR HE
13 ACTUALLY WAS IN SUCH EMINENT DANGER. HE EITHER HAD
14 TO BELIEVE THAT HE WAS IN EMINENT DANGER OF LOSING
15 HIS LIFE OR HE ACTUALLY WAS IN THE DANGER. WHAT'S
16 THE DIFFERENCE? WELL, ONE EXAMPLE COULD BE, IF
17 SOMEBODY IS POINTING A WEAPON AT YOU BUT IT'S NOT
18 LOADED, YOU KNOW, YOU'RE NOT REALLY IN EMINENT
19 DANGER BUT YOU COULD HAVE BELIEVED THAT YOU WERE
20 IN EMINENT DANGER. IF IT WAS LOADED YOU ARE IN
21 EMINENT DANGER. SO, BUT YOU DIDN'T KNOW. SO, YOU
22 HAVE TO HAVE BELIEVED THAT YOU WERE IN DANGER OR
23 ACTUALLY WERE IN DANGER, THAT'S THE SECOND
24 ELEMENT.

25 NOW, THE THIRD ELEMENT IS THIS, IF THE

1 DEFENSE IS BASED UPON THE BELIEF OF EMINENT
2 DANGER, WHEN MAYBE HE WASN'T, THE BELIEF, THEN A
3 REASONABLE PRUDENT MAN OF ORDINARY PRUDENCE AND
4 COURAGE WOULD HAVE ENTERTAINED THE SAME BELIEF.
5 IN OTHER WORDS, IF SOMEBODY IS HOLDING AT YOU AND
6 YOU DON'T KNOW WHETHER IT'S LOADED OR NOT, IT
7 TURNS OUT NOT TO BE LOADED, AND YOU ACTED AND
8 CLAIMED IT WAS SELF DEFENSE WHEN YOU TOOK THAT
9 PERSON'S LIFE, THEN THE QUESTION FOR THE JURY
10 WOULD BE, WOULD A MAN OF ORDINARY REASON AND
11 PRUDENCE HAVE FELT LIKE THAT HE WAS IN THAT
12 DANGER? NOW, IF THAT PERSON WAS POINTING A SLING
13 SHOT AT YOU IT WOULD BE A DIFFERENT QUESTION FOR
14 YOU TO RESOLVE. NOW, IF THE DEFENDANT ACTUALLY
15 WAS IN EMINENT DANGER, LADIES AND GENTLEMEN, THEN
16 THE CIRCUMSTANCES WERE SUCH AS WOULD WARRANT A MAN
17 OF ORDINARY PRUDENCE, FIRMNESS AND COURAGE TO
18 STRIKE THE FATAL BLOW IN ORDER TO SAVE HIMSELF
19 FROM SERIOUS BODILY HARM OR LOSING HIS OWN LIFE.
20 SO, IF HE BELIEVED THAT HE WAS IN DANGER IT MUST
21 HAVE BEEN A BELIEF THAT A REASONABLY PRUDENT MAN
22 WOULD HAVE HAD AT THE SAME TIME. IF HE ACTUALLY
23 WAS IN THAT EMINENT DANGER OF LOSING HIS LIFE OR
24 SUFFERING SERIOUS BODILY HARM, THEN THE CONDUCT,
25 HIS ACTIONS AFTER THAT BELIEF SHOULD BE SUCH AS

1 WOULD WARRANT A MAN OF ORDINARY PRUDENCE, FIRMNESS
2 AND COURAGE TO STRIKE THE FATAL BLOW IN ORDER TO
3 SAVE HIMSELF FROM SERIOUS BODILY HARM OR LOSING
4 HIS OWN LIFE.

5 FOURTH, LADIES AND GENTLEMEN, YOU MUST BE
6 CONVINCED THAT THE DEFENDANT HAD NO OTHER PROBABLE
7 MEANS OF AVOIDING THE DANGER OF LOSING HIS OWN
8 LIFE OR SUSTAINING SERIOUS BODILY INJURY OTHER
9 THAN TO ACT AS HE DID IN THIS PARTICULAR
10 CIRCUMSTANCE. SO, LADIES AND GENTLEMEN, A PERSON
11 HAS A DUTY TO AVOID TAKING HUMAN LIFE, OR
12 INFLECTING SERIOUS BODILY INJURY IF IT IS POSSIBLE
13 TO DO SO, EVEN TO THE EXTENT OF RETREATING FROM
14 HIS ADVERSARY UNLESS BY RETREATING THE DANGER OF
15 BEING KILLED OR SUFFERING SERIOUS BODILY HARM IS
16 INCREASED OR IT IS REASONABLY APPARENT THAT SUCH
17 DANGER WOULD BE INCREASED. SO, THERE IS A DUTY TO
18 RETREAT.

19 LADIES AND GENTLEMEN, THE FORCE WHICH A PERSON MAY USE
20 IN SELF DEFENSE IS THAT WHICH UNDER ALL CIRCUMSTANCES
21 REASONABLY APPEARS NECESSARY TO THAT PERSON IN ORDER TO
22 PREVENT AN IMPENDING INJURY. THE INFLECTING OF SERIOUS
23 BODILY INJURY IS NOT JUSTIFIABLE OR EXCUSABLE ON THE
24 GROUND OF SELF DEFENSE BY REASON OF A DANGER OR
25 APPREHENSION OF DANGER OF SLIGHT BODILY INJURY OR OF A

1 MERE INDIGNITY OF A SLIGHT OR MODERATE INJURY, SUCH AS
2 TO THAT TO BE APPREHENDED FROM A SIMPLE OR ORDINARY
3 ASSAULT OR BATTERY WITH OR WITHOUT SOME TYPE OF WEAPON
4 UNLESS THE ASSAULT IS ACCOMPANIED BY ACTS INDICATING
5 EMINENT DANGER OF SERIOUS BODILY HARM, OR A FELONY, AND
6 PRODUCES IN THE MIND OF THE ACCUSED A REASONABLE BELIEF
7 OF THAT DANGER. IN DETERMINING WHETHER THE PARTICULAR
8 MEANS AND METHOD USED IN SELF DEFENSE IS OR IS NOT
9 EXCESSIVE, THE AMOUNT OF FORCE EXERTED, THE MEANS OR
10 INSTRUMENTALITY BY WHICH IT IS APPLIED, THE MANNER OR
11 METHOD OF APPLYING IT AND THE CIRCUMSTANCES UNDER WHICH
12 THE FORCE WAS APPLIED ARE FACTORS TO BE CONSIDERED. THE
13 PRIVILEGE OF SELF DEFENSE RESTS UPON THE NECESSITY OF
14 PERMITTING A PERSON WHO IS ATTACKED TO TAKE REASONABLE
15 STEPS TO PREVENT HARM TO HIMSELF OR HERSELF WHERE THERE
16 IS NO TIME TO RESORT TO LAW. THE PRIVILEGE EXTENDS TO
17 THE USE OF ALL REASONABLE FORCE TO PREVENT ANY
18 THREATENED HARM OR OFFENSIVE BODILY CONDUCT OR
19 CONFINEMENT, WHETHER INTENDED OR NEGLIGENT.

20 LADIES AND GENTLEMEN, I'VE TOLD YOU
21 THAT THE STATE HAS THE BURDEN OF PROOF IN THIS CASE.
22 WELL, THE STATE MUST PROVE THE LACK OF EXISTENCE OF THE
23 DEFENSE OF SELF DEFENSE, OR THE STATE HAS TO DISPROVE
24 SELF DEFENSE BY PROOF BEYOND A REASONABLE DOUBT. IT IS
25 NOT SOMETHING THAT THE DEFENDANT HAS TO PROVE, BUT THE

1 STATE HAS TO PROVE THE ABSENCE OF THAT DEFENSE. YOU
2 SHOULD CONSIDER ALL OF THE EVIDENCE THAT YOU'VE HEARD IN
3 THIS CASE, AND AFTER YOU'VE HEARD ALL OF THE EVIDENCE,
4 INCLUDING THE EVIDENCE OF SELF DEFENSE, AND YOU HAVE A
5 REASONABLE DOUBT AS TO HIS GUILT YOU MUST FIND HIM NOT
6 GUILTY. ON THE HAND, AFTER CONSIDERING ALL OF THE
7 EVIDENCE, INCLUDING THE EVIDENCE OF SELF DEFENSE, IF YOU
8 FIND THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT
9 HIS GUILT, THEN YOU MUST FIND HIM GUILTY.

10 NOW, LADIES AND GENTLEMEN, NOTHING
11 THAT I'VE SAID DURING THE COURSE OF THIS TRIAL HAS BEEN
12 IN ANY WAY INTENDED TO EXPRESS OR SUGGEST A VIEW OF THIS
13 CASE OR AN OPINION AS TO THE FACTS OF THE CASE OR THE
14 WEIGHT OF THE EVIDENCE IN THE CASE, OR THE CREDIBILITY
15 OF THE WITNESSES, OR WHAT YOUR VERDICT SHOULD BE. AND
16 IF ANYTHING I'VE SAID OR DONE DURING THIS TRIAL OR THESE
17 INSTRUCTIONS SEEMS TO INDICATE TO YOU THAT I HAVE SUCH
18 AN OPINION, PLEASE DISREGARD THAT. PUT THAT OUT OF YOUR
19 MIND, YOU MUST MAKE THAT DECISION SOLELY, THAT IS SOLELY
20 YOUR PROVINCE.

21 YOU'VE BEEN SELECTED AS FAIR AND
22 IMPARTIAL JURORS. YOU ARE SWORN TO IMPARTIALLY TRY AND
23 DETERMINE THE FACTS OF THIS CASE. AND WHEN YOU COMPLY
24 WITH YOUR OATH TO DO SO THEN NO ONE WILL HAVE A RIGHT TO
25 CRITICIZE YOUR VERDICT, AND YOU WILL HAVE FULLY

1 DISCHARGED YOUR DUTY AS JURORS. YOU ARE TO DECIDE THIS
2 CASE ACCORDING TO THE TESTIMONY THAT YOU'VE HEARD FROM
3 THE LIPS OF THE WITNESSES IN THIS CASE ALONG WITH THE
4 OTHER EVIDENCE INTRODUCED. AS JURORS YOU MUST DECIDE
5 THE ISSUES IN THIS PROCEEDING WITHOUT BIAS AND WITHOUT
6 PREJUDICE TO ANY PARTY. YOU CANNOT ALLOW YOURSELF TO BE
7 GOVERNED BY PASSION, BY UNFAIR SYMPATHY, BY PREJUDICE
8 FOR OR AGAINST ANY PERSON, BY PUBLIC OPINION, OR ANY
9 OTHER ARBITRARY FACTOR. BOTH THE STATE AND THE
10 DEFENDANT HAVE A RIGHT TO EXPECT THAT EACH OF YOU WILL
11 CAREFULLY AND IMPARTIALLY CONSIDER ALL OF THE EVIDENCE
12 IN THE CASE AND THAT YOU WILL FOLLOW MY INSTRUCTIONS TO
13 YOU ON THE LAW IN ORDER TO REACH YOUR VERDICT IN THIS
14 CASE.

15 NOW, LADIES AND GENTLEMEN, AS I
16 SAID, YOU WILL HAVE THESE INDICTMENTS WITH YOU IN THE
17 JURY ROOM.

18 AND MR. SALLEY, I'M GOING TO ASK IF
19 YOU WOULD SERVE AS THE FOREPERSON. THAT SIMPLY MEANS
20 THAT YOU WOULD PRESIDE, THAT YOU WOULD SEE THAT
21 EVERYBODY HAS AN OPPORTUNITY TO SPEAK WHO WANTS TO BE
22 HEARD, WITHOUT EVERYBODY TALKING ALL AT ONE TIME. WHEN
23 THE JURY HAS REACHED A UNANIMOUS VERDICT IT WOULD BE
24 YOUR DUTY TO REPORT THAT VERDICT ON BEHALF OF THE ENTIRE
25 JURY. YOUR VERDICT MUST BE UNANIMOUS, ALL TWELVE OF YOU

1 MUST AGREE BEFORE ANY VERDICT CAN BE REPORTED ON BEHALF
2 OF THIS JURY.

3 NOW, AS TO THE INDICTMENT FOR ARMED
4 ROBBERY THERE ARE ONLY TWO POSSIBLE VERDICTS. IF YOU
5 FIND THE STATE HAS PROVEN THE ELEMENTS FOR ARMED ROBBERY
6 AS OUTLINED, YOUR VERDICT WOULD BE GUILTY. IF YOU FIND
7 THE STATE HAS FAILED TO PROVE EACH AND EVERY ONE OF
8 THOSE ELEMENTS, THEN YOUR VERDICT WOULD BE NOT GUILTY.
9 AND AS I SAID, IT MUST BE A UNANIMOUS DECISION. NOW,
10 YOU WILL HAVE THE INDICTMENT, ON ONE SAID IT HAS, ARMED
11 ROBBERY, AND IT HAS A LITTLE SUMMARY OF THE CHARGES. ON
12 THE OTHER SIDE, DOWN IN THIS BOTTOM CORNER IT HAS A
13 LITTLE BLANK BLOCK THAT SAYS, VERDICT. NOW, I HAVE THE
14 TWO VERDICTS THERE. THERE'S NO SIGNIFICANCE IN THE
15 ORDER IN WHICH I HAVE WRITTEN THE VERDICTS, IF I'M GOING
16 TO TALK ABOUT TWO MATTERS, IF I'M GOING TO WRITE TWO
17 THINGS DOWN I HAVE TO WRITE ONE AHEAD OF THE OTHER, BUT
18 THE VERDICTS ARE SIMPLY, GUILTY OR NOT GUILTY. YOU
19 WOULD SIMPLY STRIKE THROUGH THE APPROPRIATE ONE AND
20 LEAVE THE OTHER ONE SO IT'S CLEAR TO ME WHAT THE VERDICT
21 OF THE JURY IS, EITHER GUILTY OR NOT GUILTY.

22 NOW, ON THE MURDER CHARGE THERE ARE
23 THREE POSSIBLE VERDICTS, AND THERE'S NO SIGNIFICANCE
24 AGAIN IN THE ORDER IN WHICH I TELL YOU ABOUT THOSE
25 VERDICTS OR THE ORDER IN WHICH I HAVE WRITTEN THEM DOWN

1 ON THIS INDICTMENT. YOU SIMPLY HAVE TO WRITE SOMETHING
2 DOWN, IF YOU'RE GOING TO WRITE IT, ONE'S GOT TO BE AHEAD
3 OF THE OTHER. IF YOU FIND THAT THE STATE HAS PROVEN THE
4 ELEMENTS OF MURDER YOUR VERDICT WOULD BE GUILTY OF
5 MURDER, AND THAT'S THE FIRST ONE I HAVE WRITTEN. IF YOU
6 FIND THAT THE STATE HAS NOT PROVEN MURDER BUT HAS PROVEN
7 THAT THE DEFENDANT IS GUILTY OF VOLUNTARY MANSLAUGHTER,
8 THEN YOU WOULD FIND HIM GUILTY OF VOLUNTARY
9 MANSLAUGHTER. IF YOU FIND THAT THE STATE HAS NOT PROVEN
10 BEYOND A REASONABLE DOUBT THE ELEMENTS OF EITHER CRIME
11 THEN YOUR VERDICT WOULD BE NOT GUILTY. AND I'VE WRITTEN
12 ALL THREE OF THOSE RIGHT THERE, YOU JUST STRIKE OUT TWO
13 OF THEM, LEAVING IT CLEAR TO ME WHICH ONE YOU'VE LEFT AS
14 THE UNANIMOUS VERDICT OF THE JURY.

15 NOW, IF YOU HAVE ANY QUESTIONS THAT
16 COME UP, WRITE THEM DOWN ON A SHEET OF PAPER. THE
17 BAILIFF WILL SEE THAT YOU HAVE SOME PAPER BACK THERE,
18 AND JUST WRITE THEM DOWN, GIVE THEM TO THE BAILIFF,
19 KNOCK ON THE DOOR, THERE WILL BE SOMEBODY STANDING
20 OUTSIDE THAT DOOR EVERY MINUTE YOU ARE BACK THERE. GIVE
21 THEM TO THE BAILIFF, HE'LL BRING THEM TO ME, AND I'LL DO
22 WHATEVER I NEED TO DO IN RESPONSE TO THAT QUESTION.

23 IF WE HAVE ANY SMOKERS AND THE
24 SMOKERS NEED TO GO OUT, JUST KNOCK ON THE DOOR, TELL THE
25 BAILIFF YOU NEED TO SMOKE AND HE'LL TAKE YOU OUTSIDE ON

1 THE LAWN SOMEWHERE TO SMOKE. YOU CAN'T SMOKE IN THE
2 COURTHOUSE. IF THE SMOKERS LEAVE YOU HAVE TO STOP YOUR
3 DELIBERATIONS. YOU CAN'T DELIBERATE UNLESS ALL TWELVE OF
4 YOU ARE THERE.

5 WHEN YOU HAVE REACHED A VERDICT YOU
6 WILL SIMPLY KNOCK ON THE DOOR, TELL THE BAILIFF YOU HAVE
7 REACHED A VERDICT. YOU DO NOT TELL HIM WHAT THE VERDICT
8 IS, YOU DO NOT GIVE HIM THE INDICTMENTS, THESE VERDICT
9 FORMS, YOU SIMPLY TELL HIM YOU'VE REACHED A VERDICT AND
10 HE'LL NOTIFY ME. WE HAVE SOME OTHER MATTERS THAT WE'RE
11 GOING TO BE DOING SO IT MIGHT TAKE ME A FEW MINUTES, IT
12 MIGHT NOT BE INSTANTLY, BUT HE WILL NOTIFY ME, I'LL
13 BRING YOU BACK INTO THE COURTROOM AND WE WILL ACCEPT
14 YOUR VERDICT IN THE COURTROOM.

15 SO, WITH THAT I'M GOING TO ASK YOU
16 TO RETIRE TO THE JURY ROOM IN JUST A SECOND, BUT I'M
17 GOING TO ASK YOU NOT TO TALK ABOUT THE CASE FOR THIS
18 REASON, I MUST DISCUSS MY CHARGE TO YOU WITH THE
19 ATTORNEYS. SOMETIME I MAKE A MISTAKE. I KNOW THAT MIGHT
20 SHOCK YOU, BUT I DO. AND SO, IF I NEED TO CORRECT SOME
21 ERROR THAT I'VE MADE, IF I'VE NOT TOLD YOU EVERYTHING I
22 NEED TO TELL YOU, OR IF I NEED TO CHANGE SOMETHING I'VE
23 TOLD YOU I'LL BRING YOU BACK OUT IN JUST A COUPLE OF
24 MINUTES, AND I'LL CORRECT THAT ERROR. IF I DON'T NEED
25 TO DO THAT I WILL SEND IN TO YOU, MR. FOREMAN, THESE TWO

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1 INDICTMENTS AND ALL OF THE EXHIBITS WHICH HAVE BEEN
2 INTRODUCED INTO THIS CASE. ONCE YOU RECEIVE THE
3 INDICTMENTS AND THE EXHIBITS YOU CAN BEGIN YOUR
4 DELIBERATIONS BUT NOT UNTIL THAT TIME. WHEN YOUR LUNCH
5 COMES THEY WILL BRING IT RIGHT ON IN, THEY'LL KNOCK ON
6 THE DOOR, BRING IT ON IN TO YOU, AND YOU CAN HAVE YOUR
7 LUNCH AND CONTINUE YOUR DELIBERATIONS.

8 MR. FOGLE, I'M GOING TO ASK IF YOU
9 WOULD WAIT IN THE GRAND JURY ROOM. YOU CANNOT GO BACK
10 INTO THE JURY ROOM WITH THE OTHER TWELVE. WE CAN ONLY
11 HAVE TWELVE DELIBERATING, BUT I'M GOING TO ASK YOU TO
12 WAIT THERE AT LEAST UNTIL YOUR LUNCH COMES, AND THEN
13 I'LL PROBABLY EXCUSE YOU AND YOU CAN GO ON ABOUT YOUR
14 BUSINESS AS LONG AS EVERYBODY ELSE IS HEALTHY AND
15 FEELING OKAY. ALRIGHT, SIR? SO, MR. FOGLE, YOU RETIRE
16 TO THE GRAND JURY ROOM, EVERYBODY ELSE RETIRE TO THE
17 JURY ROOM, BUT DON'T BEGIN YOUR DELIBERATIONS UNTIL YOU
18 RECEIVE THE INDICTMENTS AND EXHIBITS. THANK YOU VERY
19 MUCH, PLEASE FOLLOW THE DEPUTY OUT.

20 (Whereupon, the jury retires
21 to the jury room and the following
22 takes place out of the presence
23 of the jury.)

24 THE COURT: ANY EXCEPTIONS FROM THE
25 STATE?

1 SOLICITOR SORENSON: YOUR HONOR, I
2 MAY HAVE MISSED IT, BUT DID YOU TELL THEM THAT THEIR
3 VERDICT HAS TO BE UNANIMOUS?

4 THE COURT: I DID.

5 SOLICITOR SORENSON: OKAY. I GUESS
6 I JUST MISSED IT.

7 THE COURT: I DIDN'T EXPRESS IT AS
8 MUCH AS I USUALLY DO, BUT I DID TELL THEM, WITHOUT ANY
9 QUESTION.

10 OKAY, ANY EXCEPTIONS FROM THE
11 DEFENSE?

12 MR. MELLARD: I WOULD JUST RENEW OUR
13 OBJECTION TO THE CHARGE OF VOLUNTARY MANSLAUGHTER.

14 THE COURT: ALRIGHT, OKAY. HOW MANY
15 EXHIBITS DO WE HAVE FOR THE STATE, MS. WALKER?

16 COURT REPORTER: I BELIEVE TWENTY-
17 FOUR.

18 THE COURT: TWENTY-FOUR?

19 COURT REPORTER: YES, SIR.

20 THE COURT: AND HOW MANY FOR THE
21 DEFENSE?

22 COURT REPORTER: NONE.

23 THE COURT: NONE. OKAY. MR.
24 MELLARD, YOU AND MR. SORENSON GATHER UP THOSE EXHIBITS,
25 BE SURE YOU'VE GOT ALL TWENTY-FOUR OF THEM THERE, AND AS

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1 SOON AS YOU GET THOSE EXHIBITS, MR. DEPUTY, YOU CAN GIVE
2 THEM TO THE JURY. NOW, YOU PUT A DOOR OUTSIDE THAT JURY
3 ROOM AND SOMEBODY'S GOT TO BE THERE EVERY MINUTE.

4 BAILIFF: YES, SIR.

5 THE COURT: ONE OF YOU, YOU CAN'T
6 LEAVE THAT DOOR UNATTENDED. ALRIGHT?

7 BAILIFF: ALRIGHT, SIR.

8 (Whereupon, the jury begins
9 deliberations at 12:10 p.m.)

10 (Recess)

11 (Whereupon, the jury sends in
12 a note and the following
13 takes place out of the presence
14 of the jury.)

15 THE COURT: WOULD YOU MARK THIS AS
16 COURT'S EXHIBIT NUMBER SEVEN. A QUESTION FROM THE JURY.
17 (Court's Exhibit Seven
18 marked and filed.)

19 THE COURT: THE FIRST ONE SAYS,
20 "WHERE ARE THE POLICE PICTURES THAT WERE TAKEN OF MR.
21 MOSES THE MORNING OF HIS ARREST THAT COULD POSSIBLY SHOW
22 SCARS FROM DOG SCRATCHES." THERE WERE NONE INTRODUCED
23 INTO EVIDENCE, I'LL JUST TELL THEM THERE ARE NONE IN
24 EVIDENCE, AND WE CAN'T INTRODUCE NEW EVIDENCE AT THIS
25 TIME. THAT'S ALL I'LL TELL THEM.

1 SOLICITOR SORENSON: I GUESS MY
2 CONCERN, JUDGE, IS - - -

3 THE COURT: HUH?

4 SOLICITOR SORENSON: THE STATE'S
5 CONCERN WITH THE RESPONSE IS JUST LIKE THEIR CONCERN, IS
6 MAKING SURE IT DIDN'T APPLY, THAT YOU'RE SAYING THERE
7 ARE NO PHOTOGRAPHS. WELL, OUR CONCERN IS MAKING SURE
8 YOU DON'T IMPLY THAT WE JUST DIDN'T INTRODUCE THEM. I
9 MEAN, IT'S OUR POSITION THEY EXIST.

10 THE COURT: WELL, WHAT DO I TELL
11 THEM?

12 SOLICITOR SORENSON: THEY DON'T
13 EXIST. I THINK JUST THAT THEY HAVE ALL THE EVIDENCE,
14 THAT YOU HAVE ALL THE EVIDENCE AND THEN LEAVE IT AT
15 THAT. I MEAN, BECAUSE IT'S OUR POSITION THAT THERE ARE
16 NO PHOTOGRAPHS, THEY DON'T EXIST, THEY WEREN'T TAKEN,
17 THEY DON'T EXIST. I MEAN, THEY OBVIOUSLY HAVE A
18 DIFFERENT POSITION, BUT IT'S OUR, I MEAN, I DON'T WANT
19 THE JURY THINKING THAT WE JUST ARE HIDING SOMETHING THAT
20 WE DIDN'T PUT IN, I MEAN, THAT'S NOT THE CASE.

21 MR. MELLARD: YOUR HONOR, I THINK
22 THAT'S PRETTY MUCH CORRECT, WHAT WE WOULD SAY THAT, YOU
23 KNOW, THEY'VE HEARD THE TESTIMONY, THEY'VE SEEN THE
24 EVIDENCE, THEY HAVE TO GO ON WITH WHAT - - -

25 THE COURT: ALRIGHT, I'LL JUST TELL

1 THEM WE CANNOT INTRODUCE NEW EVIDENCE AT THIS TIME.

2 SOLICITOR SORENSON: WELL, THAT
3 STILL WOULD IMPLY THAT THERE'S OTHER EVIDENCE OUT THERE,
4 BUT THERE ISN'T, I MEAN, IT'S NOT LIKE WE HAVE SOME
5 PHOTOGRAPHS SITTING HERE THAT WE CAN, I MEAN, IT DOESN'T
6 EXIST.

7 THE COURT: WELL, ANY WAY I SAY IT,
8 IT'S GOING TO MISLEADING, ONE WAY OR THE OTHER, I MEAN,
9 IT'S NO DIFFERENT TO SAY, YOU HAVE ALL THE EVIDENCE, OR
10 TO SAY, WE CAN'T INTRODUCE - - -

11 SOLICITOR SORENSON: WELL, I THINK
12 THE ACCURATE THING TO SAY, YOUR HONOR, THAT THERE ARE NO
13 PHOTOGRAPHS. I MEAN, THE PHOTOGRAPHS DO NOT EXIST. I
14 MEAN, THAT WOULD BE THE ACCURATE THING TO SAY.

15 THE COURT: IF THE POLICE DON'T HAVE
16 ANY PHOTOGRAPHS, DO THEY?

17 SOLICITOR SORENSON: NO, I MEAN,
18 WE'VE BEEN THROUGH THEIR FILE, WE'VE BEEN THROUGH THEIR
19 EVIDENCE, I MEAN, THERE'S NO NOTATION IN THEIR REPORT
20 THAT THEY TOOK PHOTOGRAPHS, I MEAN, THERE'S A NOTATION
21 THAT HE SHOWED THEM SOME SCRATCHES ON HIS ARM, THAT'S
22 WRITTEN IN SHUMPERT'S REPORT, BUT THERE'S NOTHING
23 INDICATING THEY TOOK PHOTOGRAPHS, NO.

24 MR. MELLARD: THE DEFENDANT
25 TESTIFIED THAT HE SAW THEM TAKE PHOTOGRAPHS OF HIMSELF.

1 SOLICITOR SORENSON: I MEAN, WE
2 SHOULD THEN HAVE - - -

3 MR. MELLARD: SHUMPERT AND WHO,
4 CRAFT?

5 DEFENDANT: CRAFT.

6 MR. MELLARD: THEY SHOULD HAVE HAD
7 THEM, BECAUSE THERE WERE PEOPLE THERE THAT TOOK THE
8 PHOTOGRAPHS.

9 SOLICITOR JOHNSON: YOUR HONOR,
10 COULDN'T YOU STATE BOTH, THAT IT'S OUR CONTENTION THAT
11 THERE IS NO PHOTOGRAPHS, AND IT'S THEIR CONTENTION
12 THROUGH THEIR WITNESS THAT THERE IS, AND IT'S OUR
13 CONTENTION, THE STATE'S CONTENTION THAT THERE IS NO
14 PHOTOGRAPHS. THAT WAY YOU COVER BOTH SIDES.

15 THE COURT: THAT SUITS ME GOOD.

16 THE SECOND QUESTION IS, WE NEED
17 DEFINITIONS OF MURDER AND MANSLAUGHTER. I CAN HANDLE
18 THAT ONE WITHOUT ANY HELP.

19 . OKAY, BRING THE JURY IN.

20 (Whereupon, the jury enters
21 the courtroom and the following
22 takes place in the presence of
23 the jury.)

24 THE COURT: JUST ONE MINUTE, LADIES
25 AND GENTLEMEN.

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1 YOUR FIRST QUESTION WAS, "WHERE ARE
2 THE PICTURES THAT WERE TAKEN OF MR. MOSES THE MORNING OF
3 HIS ARREST THAT COULD POSSIBLY SHOW SCARS FROM DOG
4 SCRATCHES? THERE ARE NO PICTURES IN ANYBODY'S
5 POSSESSION AT THIS TIME. WHETHER THEY WERE EVER ANY
6 PICTURES TAKEN OR NOT YOU'LL HAVE TO DEPEND ON ANY
7 TESTIMONY ABOUT THAT REGARD, I DON'T KNOW. BUT THERE
8 ARE NO PICTURES IN EXISTENCE THAT ANYBODY KNOWS ABOUT.
9 NOBODY IS TRYING TO HIDE ANYTHING TO YOU, NOBODY IS
10 TRYING TO MISLEAD YOU, AND I DON'T WANT YOU TO BLAME THE
11 STATE FOR THE THAT OR THE DEFENSE FOR THAT. IT'S JUST,
12 THE FACT IS, THERE ARE NO PHOTOGRAPHS THAT ARE IN
13 EXISTENCE. IF THERE EVER WERE ONE, WE DON'T KNOW. I
14 THINK THERE'S SOME TESTIMONY IN THE RECORD ABOUT SOME
15 INJURIES OR SOME EVIDENCE ABOUT INJURIES. YOU'VE GOT
16 THAT TESTIMONY, YOU'LL HAVE TO MAKE THAT DECISION BASED
17 ON THAT TESTIMONY YOU'VE HEARD. THERE ARE TWELVE OF YOU
18 AND HOPEFULLY BETWEEN THE TWELVE OF YOU, YOU CAN
19 RECOLLECT THAT TESTIMONY REGARDING ANY POSSIBLE INJURIES
20 AND MAKE A DECISION ON THAT BASIS. THERE ARE NO
21 PHOTOGRAPHS AVAILABLE. AND AS I SAID, IT'S REALLY
22 NOBODY'S FAULT, WE JUST DON'T HAVE ANY.

23 NOW, AS FAR AS MURDER AND
24 MANSLAUGHTER, MURDER IS THE WILLFUL, FELONIOUS KILLING
25 OF A HUMAN BEING BY A HUMAN BEING WITH MALICE

1 AFORETHOUGHT. THAT MALICE CAN EITHER BE EXPRESSED OR
2 IMPLIED. I THINK THAT'S PRETTY SIMPLE EXCEPT FOR
3 MALICE. I'LL DEFINE FOR YOU. MALICE IS AN INTENT TO DO
4 HARM, IT'S A WILLFUL, MALICIOUS CONDUCT. IT'S DOING HARM
5 TO SOMEBODY WITHOUT ANY LEGAL JUSTIFICATION OR ANY LEGAL
6 EXCUSE WHATSOEVER. IT'S CALLED SOMETIME A DEPRAVED OR
7 WICKED SPIRIT. MALICE CAN, YOU HAVE TO DETERMINE FROM
8 THE WAY THE CRIME WAS COMMITTED WHETHER THAT MALICE
9 EXISTED, BUT IT'S A CONDITION OF SOMEBODY'S HEART, IT'S
10 WHAT'S INSIDE SOMEBODY IS WHAT WE MEAN BY MALICE. AND
11 MALICE HAS TO EXIST FOR A CRIME OF MURDER. AS I SAID,
12 IT DOESN'T NECESSARILY IMPART ILL WILL TOWARD ANY
13 PARTICULAR INDIVIDUAL, BUT A GENERAL MALIGNANT
14 RECKLESSNESS AS TO THE LIVES AND SAFETY OF OTHERS, A
15 CONDITION OF MIND WHICH SHOWS A HEART DEVOID OF SOCIAL
16 DUTY AND FATALLY BENT ON MISCHIEF. IT IS THE WRONGFUL
17 INTENT TO INJURE ANOTHER AND INDICATES A WICKED OR
18 DEPRAVED SPIRIT INTENT ON DOING WRONG. THAT'S WHAT WE
19 MEAN BY MALICE. THAT'S A MENTAL ATTITUDE AND YOU HAVE
20 TO DETERMINE THAT BY LOOKING AT THE FACTS THAT HAVE BEEN
21 PROVEN WHETHER MALICE EXISTED AT THE TIME OF THE
22 INCIDENT. MALICE MUST BE AFORETHOUGHT. I USED TO THINK
23 THAT MEANT WHEN YOU'RE TALKING MALICE AFORETHOUGHT, THAT
24 SOMEBODY SAT DOWN AND PLOTTED FOR DAYS OR WEEKS OR HOURS
25 TO TAKE SOMEBODY'S LIFE. IT DOESN'T MEAN THAT AT ALL, IT

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1 MEANS IT HAS TO EXIST IMMEDIATELY AND AT THE TIME THE
2 FATAL ACTS WERE TAKEN, BUT IT'S NO PARTICULAR LENGTH OF
3 TIME WHEN WE SAY, AFORETHOUGHT, WITH MALICE
4 AFORETHOUGHT. THE MALICE CAN EITHER BE EXPRESSED OR
5 IMPLIED. EXPRESSED MEANS, I'M GOING TO KILL S.O.B.
6 THAT'S AN EXPRESSION OF MALICE, OR IT CAN BE IMPLIED. IF
7 IT'S NOT EXPRESSED IT CAN STILL EXIST, IT COULD BE
8 IMPLIED IN THE WAY IT WAS HANDLED, OR SOMEBODY LYING IN
9 WAIT, OR MAKING PREPARATIONS TO DO THE ACT. THAT WOULD
10 IMPLY MALICE. SO, IT CAN BE EITHER WAY, IT DOESN'T HAVE
11 TO BE AN EXPRESSION, IT CAN BE IMPLIED. THAT'S WHAT WE
12 MEAN BY MALICE. AND THE KILLING, FOR IT TO BE MURDER IT
13 MUST CONTAIN MALICE, YOU MUST DETERMINE THAT THE STATE
14 HAS PROVEN BEYOND A REASONABLE DOUBT THAT THERE WAS
15 MALICE ON THE PART OF THE DEFENDANT AT THE TIME THE
16 FATAL OR BLOWS WERE STUCK.

17 MANSLAUGHTER, LADIES AND GENTLEMEN,
18 IS A LESSER INCLUDED CRIME. AND MANSLAUGHTER IS THE
19 KILLING OF A HUMAN BEING BY ANOTHER HUMAN BEING. SO, IN
20 THAT REGARD IT'S EXACTLY THE SAME AS MURDER. BUT IT'S
21 WITHOUT MALICE. IT'S THE KILLING IN THE HEAT OF PASSION,
22 AFTER ADEQUATE LEGAL PROVOCATION, WITHOUT SUFFICIENT
23 TIME TO COOL, TO COOL OFF. AND I GAVE YOU AN EXAMPLE
24 ABOUT THAT, YOU KNOW, THE MAN FINDING ANOTHER MAN IN BED
25 WITH HIS WIFE, IT COULD BE A WOMAN ANOTHER, YOU KNOW, I

1 DIDN'T MEAN TO GET INTO THAT TYPE OF THING, IT COULD BE
2 EITHER WAY, BUT I MEAN, SUFFICIENT LEGAL PROVOCATION
3 MEANS A SIGNIFICANT ACT THAT WOULD CAUSE MOST PEOPLE,
4 THE ORDINARY MAN, TO LOSE CONTROL. THAT'S WHAT WE MEAN
5 BY THE HEAT OF PASSION. AND SO, LIKE I SAY, SOMEBODY
6 TELLING YOU THEY DON'T LIKE THE COLOR OF YOUR SHIRT, YOU
7 KNOW, AS A MATTER OF LAW THAT WOULDN'T BE SUFFICIENT TO
8 KILL SOMEBODY. SO, THE FIRST THING YOU HAVE IS, THE
9 KILLING IS IN THE HEAT OF PASSION, SOMEBODY JUST LOST IT
10 AND WENT INTO A RAGE AND TOOK SOMEBODY'S LIFE. BUT IT
11 HAS TO BE AFTER ADEQUATE LEGAL PROVOCATION. AND THE
12 EXAMPLE I GAVE YOU OF THE ADULTEROUS SITUATION HAS BEEN,
13 IT'S KIND OF THE CLASSIC EXAMPLE OF WHAT MOST JURORS
14 WOULD FIND, WELL, THAT'S BAD ENOUGH THAT THAT WOULD
15 PROBABLY CAUSE MOST ANYBODY TO WANT TO KILL WHOEVER IS
16 INVOLVED IN IT, AND THAT WOULD REDUCE THE KILLING FROM
17 MURDER TO MANSLAUGHTER. IT WOULD ELIMINATE THE MALICE
18 WITH THAT EXAMPLE. BUT BY THE SAME TOKEN, THE ONE I
19 GAVE YOU ABOUT SOMEBODY TELLS YOU THAT THEY DON'T LIKE
20 THE COLOR OF YOUR SHIRT, AND YOU JUMP UP AND KILL THEM,
21 THAT IS NOT ADEQUATE LEGAL PROVOCATION. IT MIGHT HAVE
22 BEEN PROVOCATION FOR THAT INDIVIDUAL BUT THAT'S NOT
23 LEGAL JUSTIFICATION FOR KILLING SOMEBODY BECAUSE THEY
24 DON'T LIKE THE COLOR OF YOUR SHIRT. AND IT HAS TO BE
25 DONE BEFORE THERE'S SUFFICIENT TIME TO COOL. AND I GAVE

1 YOU AN EXAMPLE AGAIN, A MAN WALKS IN ON AN ADULTEROUS
2 RELATIONSHIP, HE TELLS THE GUY TO GET OUT AND WEEK LATER
3 HE GOES AND KILLS HIM. WELL, YOU KNOW, IN A WEEK YOU'RE
4 NOT STILL IN THE HEAT OF PASSION, IT JUST DOESN'T WORK.
5 SO, ALL OF THEM ARE KIND OF TIED TOGETHER. SO, MURDER,
6 YOU HAVE TO FIND MALICE, THE INTENT TO DO EVIL, AN EVIL
7 INTENT, AND IT HAS TO EXIST AT THE TIME AND JUST BEFORE
8 THE ACT IS STRUCK. MANSLAUGHTER, THERE'S NO MALICE,
9 THERE'S NO MALICE INVOLVED. IF THERE'S MALICE IT'S
10 MURDER. BUT MANSLAUGHTER, IT HAS TO BE UPON, IN THE
11 HEAT OF PASSION, AFTER ADEQUATE LEGAL PROVOCATION, AND
12 WITHOUT SUFFICIENT TIME TO COOL.

13 NOW, I TRIED TO EXPLAIN THAT IN MY
14 OWN WORDS INSTEAD OF GOING BACK AND READING IT. I'LL BE
15 GLAD TO GO BACK AND READ IT VERBATIM.

16 DO YOU THINK, MR. FOREMAN, I'VE
17 ANSWERED YOUR QUESTIONS?

18 JUROR FOREMAN: YES, SIR.

19 THE COURT: WELL, IF YOU WANT ME TO
20 RECHARGE IT FORMALLY EXACTLY THE WAY I DID BEFORE I'LL
21 BE GLAD TO DO THAT, I'LL JUST LEAVE THAT UP TO YOU, BUT
22 SOMETIMES IT'S BETTER JUST TO KIND OF PUT IT IN YOUR OWN
23 WORDS AND HELP YOU UNDERSTAND THE DIFFERENCE BETWEEN
24 MURDER AND MANSLAUGHTER.

25 JUROR FOREMAN: YES, SIR, THAT WILL

1 SUFFICE. THAT'S GOOD.

2 THE COURT: ALRIGHT, THANK YOU VERY
3 MUCH. AND OF COURSE, THE STATE HAS TO PROVE ALL OF
4 THESE ELEMENTS. THANK YOU VERY MUCH, CONTINUE YOUR
5 DELIBERATIONS, LET ME KNOW IF YOU HAVE ANOTHER QUESTION.
6 THANK YOU.

7 (Whereupon, the jury retires
8 to the jury room and continues
9 their deliberations, and the
10 following takes place out of
11 the presence of the jury.)

12 THE COURT: ANY EXCEPTIONS FROM THE
13 STATE?

14 SOLICITOR SORENSON: NO EXCEPTIONS,
15 YOUR HONOR, I'M WITH YOU. YOUR HONOR, THE FOREPERSON
16 WAS, THE FOREMAN WAS TAKING NOTES.

17 THE COURT: THAT'S GOOD.

18 ANY EXCEPTIONS FROM THE DEFENSE?

19 MR. MELLARD: NONE FROM THE DEFENSE,
20 YOUR HONOR.

21 THE COURT: ALRIGHT. WE'LL BE AT
22 EASE IN THIS CASE.

23 (Recess)

24 THE COURT: I THINK WE HAVE A
25 VERDICT. IS THE STATE READY?

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1 SOLICITOR SORENSON: YES, SIR.

2 THE COURT: IS THE DEFENDANT READY?

3 MR. MELLARD: YES, SIR.

4 THE COURT: ALRIGHT, BRING THE JURY
5 IN, PLEASE. LET'S NOT HAVE ANY OUTBURSTS, LADIES AND
6 GENTLEMEN, WHEN THE VERDICT IS READ.

7 (Whereupon, the jury returns
8 with a verdict at 4:10 p.m.)

9 THE COURT: MR. FOREMAN, HAVE YOU
10 REACHED A VERDICT?

11 JURY FOREMAN: YES, SIR.

12 THE COURT: WOULD YOU PASS IT DOWN
13 THE BAILIFF?

14 MR. DEPUTY, WOULD YOU PICK UP THE
15 VERDICTS AND BRING THEM TO ME?

16 AND IT IS A UNANIMOUS VERDICT?

17 JUROR FOREMAN: YES, IT IS, YOUR
18 HONOR.

19 THE COURT: ALRIGHT.

20 (Whereupon, the Court
21 examines the verdicts.)

22 VERDICTS OF THE JURY

23 THE COURT: ALRIGHT, IN DOCKET
24 NUMBER 2006-GS-38-2067, THE STATE VERSUS GEORGE NAPOLEON
25 MOSES, THE CHARGE IS ARMED ROBBERY, AND THE VERDICT OF

1 THE JURY IS GUILTY.

2 INDICTMENT 2006-GS-38-2068, THE
3 STATE OF SOUTH CAROLINA VERSUS GEORGE NAPOLEON MOSES,
4 INDICTMENT FOR MURDER, THE VERDICT IS GUILTY OF
5 VOLUNTARY MANSLAUGHTER.

6 IS THERE ANY REQUEST TO POLL THE
7 JURY?

8 MR. MELLARD: YES, SIR.

9 THE COURT: ALRIGHT, LADIES AND
10 GENTLEMEN, I'M GOING TO ASK YOU TWO QUESTIONS, AND YOU
11 JUST ANSWER THE QUESTIONS APPROPRIATELY. THE FIRST
12 QUESTION IS, WERE THESE YOUR VERDICTS? AND THE SECOND
13 QUESTION IS, ARE THEY STILL YOUR VERDICTS?

14 MA'AM, WERE THESE YOUR VERDICTS?

15 JUROR: YES.

16 THE COURT: ARE THEY STILL YOUR
17 VERDICTS?

18 JUROR: YES.

19 THE COURT: MA'AM, WERE THESE YOUR
20 VERDICTS?

21 JUROR: YES.

22 THE COURT: ARE THEY STILL YOUR
23 VERDICTS?

24 JUROR: YES.

25 THE COURT: SIR, WERE THESE YOUR

1 VERDICTS?

2 JUROR: YES.

3 THE COURT: ARE THEY STILL YOUR

4 VERDICTS?

5 JUROR: YES.

6 THE COURT: MA'AM, WERE THESE YOUR

7 VERDICTS?

8 JUROR: YES.

9 THE COURT: ARE THEY STILL YOUR

10 VERDICTS?

11 JUROR: YES.

12 THE COURT: MA'AM, WERE THESE YOUR

13 VERDICTS?

14 JUROR: YES.

15 THE COURT: ARE THEY STILL YOUR

16 VERDICTS?

17 JUROR: YES.

18 THE COURT: MA'AM, WERE THESE YOUR

19 VERDICTS?

20 JUROR: YES.

21 THE COURT: ARE THEY STILL YOUR

22 VERDICTS?

23 JUROR: YES.

24 THE COURT: SIR, WERE THESE YOUR

25 VERDICTS?

1 JUROR: YES.

2 THE COURT: ARE THEY STILL YOUR
3 VERDICTS?

4 JUROR: YES.

5 THE COURT: SIR, WERE THESE YOUR
6 VERDICTS?

7 JUROR: YES.

8 THE COURT: ARE THEY STILL YOUR
9 VERDICTS?

10 JUROR: YES.

11 THE COURT: MA'AM, WERE THESE YOUR
12 VERDICTS?

13 JUROR: YES.

14 THE COURT: ARE THEY STILL YOUR
15 VERDICTS?

16 JUROR: YES.

17 THE COURT: MA'AM, WERE THESE YOUR
18 VERDICTS?

19 JUROR: YES.

20 THE COURT: ARE THEY STILL YOUR
21 VERDICTS?

22 JUROR: YES.

23 THE COURT: SIR, WERE THESE YOUR
24 VERDICTS?

25 JUROR: YES.

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1 THE COURT: ARE THEY STILL YOUR
2 VERDICTS?

3 JUROR: YES.

4 THE COURT: SIR, WERE THESE YOUR
5 VERDICTS?

6 JUROR: YES.

7 THE COURT: ARE THEY STILL YOUR
8 VERDICTS?

9 JUROR: YES.

10 THE COURT: ALRIGHT, I'VE POLLED THE
11 ENTIRE AND THE VERDICT STANDS.

12 LADIES AND GENTLEMEN, THAT CONCLUDES
13 YOUR SERVICES IN THIS CASE, THAT CONCLUDES YOUR SERVICES
14 FOR THE WEEK. YOU CAN GO HOME NOW AND GET THE TIMES AND
15 DEMOCRAT AND READ ALL ABOUT THIS CASE. YOU CAN GO HOME
16 AND LOOK IT UP ON THE INTERNET, YOU CAN TALK TO ANYBODY.
17 YOU WANT TO TALK ABOUT IT WITH IF YOU WANT TO DO THAT.
18 BUT YOU DO NOT HAVE TO TALK ABOUT IT. IF SOMEBODY CALLS
19 AND WANTS TO TALK ABOUT THIS CASE AND YOUR SERVICE ON
20 THIS JURY, AND YOU DON'T WANT TO DO IT AND THEY PERSIST
21 IN TRYING TO GET YOU TO TALK ABOUT IT AFTER YOU MAKE IT
22 CLEAR TO THEM THAT YOU DON'T WANT TO DISCUSS IT, YOU
23 PLEASE BE SURE YOU GET THAT PERSON'S NAME AND YOU CALL
24 BACK THAT NUMBER OR YOUR LETTER TO THE CLERK OF COURT'S
25 OFFICE AND REPORT THAT AND WE'LL TAKE CARE OF THAT. WE

1 DON'T ALLOW ANY HARASSMENT OF OUR JURORS.

2 I'M GOING TO EXCUSE YOU NOW, YOU'LL
3 BE GETTING A LITTLE CHECK IN THE MAIL. DON'T GO OUT AND
4 SPEND A BUNCH OF MONEY THINKING YOU'RE GOING TO PAY
5 YOURSELF, IT WILL HARDLY BE ENOUGH TO CARRY YOUR
6 SIGNIFICANT OTHER OUT TO A THANKSGIVING DINNER UNLESS
7 YOU GO TO HARDEES OR SOMEWHERE LIKE THAT. PRIMARILY,
8 WHAT YOU GET IS THE THANKS OF THE PEOPLE OF ORANGEBURG
9 COUNTY.

10 HAVE ANY OF YOU EVER SERVED ON A
11 JURY PRIOR TO THIS JURY? OH, JUST ABOUT EVERYBODY, SO
12 Y'ALL KIND OF KNOW HOW IT WORKS. WAS IT IN BIG COURT OR
13 MAGISTRATE'S COURT? MAGISTRATE'S COURT? WELL, IT'S A
14 LITTLE DIFFERENT, BUT NOW YOU HAVE A BETTER APPRECIATION
15 FOR HOW THE SYSTEM WORKS. AND WE COULD NOT DO IT, WE
16 JUST COULD NOT EXIST WITHOUT PEOPLE LIKE YOU WHO ARE
17 WILLING TO COME IN WITHOUT COMPLAINING, I KNOW YOU
18 DIDN'T VOLUNTEER, BUT NEITHER DID YOU TRY TO GET OUT OF
19 SO, AND SO, WE APPRECIATE YOUR SERVICE.

20 AT THIS TIME YOU ARE EXCUSED, YOU
21 ARE FREE TO GO, AND LIKE I SAID, YOU'LL BE GETTING THAT
22 CHECK IN THE MAIL. IF YOU WANT TO HAVE A SEAT IN THE
23 COURTROOM WE'RE GOING TO HAVE THE SENTENCING PROCEDURE
24 HERE IN JUST A FEW MINUTES, YOU'RE WELCOME TO STAY FOR
25 THAT, OR YOU CAN READ ABOUT IT IN THE TIMES AND DEMOCRAT

1 IN THE MORNING OR LOOK IT UP ON THEIR WEB SITE, I'M SURE
2 THEY'LL HAVE IT. THANK YOU VERY MUCH, YOU ARE EXCUSED.

3 THE COURT: ANY MOTIONS?

4 MR. MELLARD: WE'D RENEW ALL OF OUR
5 PRIOR MOTIONS THAT WE MADE DURING THIS TRIAL, TO INCLUDE
6 THE MOTION OPPOSING THE AMENDMENT OF THE INDICTMENT, AND
7 ALSO THE MOTION OPPOSING THE CHARGE OF VOLUNTARY
8 MANSLAUGHTER.

9 IN ADDITION, WE'VE MOVE FOR A MOTION
10 FOR A NEW TRIAL. IT'S OUR CONTENTION THEY FAILED TO
11 PROVE ALL THE ELEMENTS OF ARMED ROBBERY AS HAS BEEN
12 PREVIOUSLY DISCUSSED, AND ALSO THAT THEY FAILED TO PROVE
13 THE ELEMENTS OF VOLUNTARY MANSLAUGHTER. AND WE'D ALSO
14 MOVE FOR A MOTION FOR VERDICT IN ARREST OF THE
15 JUDGEMENT. IT'S OUR CONTENTION THAT THE CHARGING
16 DOCUMENT IN THIS CASE, WHICH IS THE INDICTMENT FOR
17 MURDER, WAS DEFECTIVE, THAT THE AMENDMENT WAS IMPROPER
18 AS WE'VE ALREADY DISCUSSED, AND WE WOULD SAY THAT THE
19 CHARGING DOCUMENT AS INSUFFICIENT AND THE COURT LACKED
20 JURISDICTION.

21 THE COURT: ALRIGHT, SIR. WELL, I
22 WOULD DENY THE MOTIONS PREVIOUSLY MADE ON THE GROUNDS
23 THAT I PREVIOUSLY DENIED THOSE MOTIONS. I THINK THE
24 EVIDENCE WAS SUFFICIENT IN THE RECORD TO SUPPORT BOTH
25 VERDICTS IN THE CASE, IT WAS A JURY QUESTION, AND I

1 WOULDN'T HAVE ANY REASON TO SET ASIDE THE JURY'S
2 VERDICTS.

3 YOUR OBJECTION TO THE AMENDMENT OF
4 THE INDICTMENT IS CERTAINLY A PART OF THE RECORD, AND
5 WHAT I'M GOING TO DO OUT OF THE ABUNDANCE OF CAUTION IS,
6 I'M GOING TO GIVE THE ORIGINAL INDICTMENT, NOT THE ONE
7 THAT WENT TO THE JURY, BUT THE ORIGINAL INDICTMENT WHICH
8 WAS AMENDED, I'M GOING TO HAVE IT MADE A COURT'S
9 EXHIBIT. THAT WAY WE'LL BE CERTAIN THAT IT GETS INTO THE
10 RECORD, BECAUSE IT'S CERTAINLY POSSIBLE THAT IT WOULD
11 NOT BE TRANSMITTED.

12 MR. MELLARD: THAT'S FINE. WE'D ALSO
13 LIKE THE, I GUESS THE OTHER ONE TO BE PUT IN, TOO.

14 THE COURT: WELL, - - -

15 MR. MELLARD: OH, I'M SORRY, YOU'RE
16 SAYING IT ALREADY IS?

17 THE COURT: I DON'T THINK, THE OTHER
18 ONES HAVE TO BE PART OF THE RECORD BECAUSE THEY ARE THE
19 VERDICTS.

20 MR. MELLARD: RIGHT, THAT'S, I JUST
21 WANTED TO BE SURE.

22 THE COURT: AND SO, I DON'T THINK I
23 WOULD MAKE THOSE COURT'S EXHIBITS.

24 MR. MELLARD: OKAY.

25 THE COURT: I'M SURE THEY'LL BE

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1 TRANSMITTED, BUT IT COULD BE THAT SOMEBODY IN GOING
2 THROUGH THE RECORD WOULD JUST NOT NOTICE THIS OTHER
3 INDICTMENT SITTING THERE, AND NOT TRANSMIT IT WITH THE
4 RECORD. AND SO, THAT'S THE REASON I AM GOING TO MAKE IT
5 COURT'S EXHIBIT NUMBER - - -

6 COURT REPORTER: EIGHT.

7 THE COURT: EIGHT.

8 MR. MELLARD: ALRIGHT.

9 MS. HINDS: THANK YOU, YOUR HONOR.

10 (Court's Exhibit Number Eight
11 marked and filed.)

12 THE COURT: BUT, I MEAN, THERE'S NO
13 QUESTION IN MY MIND, THE OTHER TWO EXHIBITS WILL BE PART
14 OF THE RECORD, I MEAN, THE OTHER TWO INDICTMENTS.

15 ALRIGHT, DOES ANYBODY WANT TO SPEAK
16 ON BEHALF OF THE VICTIM? I'LL BE GLAD TO HEAR FROM
17 THEM.

18 VICTIM'S ADVOCATE: NO, SIR, YOUR
19 HONOR.

20 SOLICITOR JOHNSON: NO, SIR, YOUR
21 HONOR.

22 THE COURT: ALRIGHT. YES, SIR, MR.
23 JOHNSON?

24 SOLICITOR JOHNSON: YOUR HONOR, FOR
25 THE STATE, YOUR HONOR, WE HAVE GIVE THE DEFENDANT PRIOR

1 NOTICE OF INTENT TO SEEK LIFE WITHOUT PAROLE. HE WAS
2 CONVICTED OF A -- HE WAS CONVICTED OF A MURDER BUT
3 REMANDED BACK ON NOVEMBER THE SIXTH OF NINETEEN NINETY-
4 ONE, REMANDED BACK FOR A VOLUNTARY MANSLAUGHTER CHARGE,
5 AND GIVEN, I'M NOT, IT WAS PRIOR NOTICE, YOUR HONOR.
6 BUT HE HAS A PRIOR 'CONVICTION' FOR MANSLAUGHTER. UNDER
7 THE STATE STATUTE I THINK IT'S REQUIRED THAT THE STATE
8 MUST, UNDER THIS CONDITION IF HE'S FOUND GUILTY,
9 SENTENCE THE DEFENDANT TO A LIFE WITHOUT PAROLE
10 SENTENCE. WE ASK THAT THAT SENTENCE BE IMPOSED TODAY.

11 THE COURT: THIS WOULD BE TWO, THIS
12 WOULD BE HIS SECOND MOST SERIOUS, WHICH IS A MANDATORY
13 LIFE WITHOUT PAROLE, RIGHT?

14 SOLICITOR SORENSON: THAT'S CORRECT,
15 YOUR HONOR.

16 THE COURT: MR. MELLARD, LET ME HEAR
17 FROM YOU ON THAT. I MEAN, DO YOU AGREE? ACTUALLY, HE
18 HAS A -- THE CONVICTION FOR MURDER WAS SET ASIDE, SO HE
19 HAS NO CONVICTION FOR MURDER.

20 MR. MELLARD: THAT'S CORRECT, YOUR
21 HONOR.

22 THE COURT: BUT HE HAS A PRIOR
23 CONVICTION FOR VOLUNTARY MANSLAUGHTER ON NOVEMBER THE
24 SIXTH, NINETEEN NINETY-ONE. I CAN'T READ THE SENTENCE,
25 BUT I'VE GOT THE INDICTMENT SHEET, IT'S JUST CUT OFF AT

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1 THE BOTTOM. BUT I MEAN, YOU HAVE NO REASON TO DISAGREE
2 THAT HE DOES HAVE THAT PRIOR CONVICTION, IS THAT - - -

3 MR. MELLARD: I, I, AS AN OFFICER OF
4 THE COURT, I'VE CONTACTED BAMBERG COUNTY, I'VE TALKED TO
5 THEM ABOUT THIS FILE. THEY TELL ME THAT THAT IS INDEED
6 WHAT HE WAS CONVICTED OF. I DON'T KNOW THAT FOR A FACT,
7 BUT I THINK THAT BASED ON WHAT THEY TOLD ME, AND I WOULD
8 JUST LEAVE IT UP TO THE COURT.

9 THE COURT: WELL, THE RECORD
10 CERTAINLY, I MEAN, IT'S A TRUE COPY FROM THE CLERK OF
11 COURT IN BAMBERG COUNTY AND IT CERTAINLY APPEARS TO BE
12 ACCURATE AND REFLECT EXACTLY WHAT WE JUST SAID, A
13 CONVICTION FOR VOLUNTARY MANSLAUGHTER ON NOVEMBER THE
14 SIXTH, NINETEEN NINETY-ONE.

15 ALRIGHT, ANYTHING ELSE FROM THE
16 STATE?

17 SOLICITOR JOHNSON: NOTHING ELSE,
18 YOUR HONOR, WE'D JUST ASK THAT THE COURT IMPOSE THE
19 SENTENCE AS REQUESTED.

20 THE COURT: ALRIGHT, DO YOU HAVE THE
21 SENTENCING SHEETS PREPARED? AND I'LL BE GLAD TO HEAR
22 ANYTHING FROM THE DEFENDANT OR ON HIS BEHALF.

23 SOLICITOR JOHNSON: YOUR HONOR, IF
24 I COULD HAVE A MOMENT JUST TO PREPARE THE SENTENCING
25 SHEETS?

1 THE COURT: WELL, I GUESS YOU WILL
2 BECAUSE I CAN'T DO ANYTHING WITHOUT THEM. JUST FILL IN
3 THE NAME AND INDICTMENT NUMBER, AND VOLUNTARY
4 MANSLAUGHTER, AND I WILL FILL IN THE REST AND THEN YOU
5 FILL IN THE OTHER DATA.

6 MR. MELLARD, DO YOU WISH TO BE
7 HEARD, YOU OR MS. HINDS, OR ANYBODY?

8 MR. MELLARD: NO, SIR.

9 THE COURT: ALRIGHT.

10 SOLICITOR SORENSON: WE'LL FILL IN
11 THE REST OF THE STUFF WHEN WE'RE DONE.

12 THE COURT: YES, YOU CAN FILL IN THE
13 REST OF THOSE DETAILS LATER.

14 SOLICITOR SORENSON: I NEED TO SIGN
15 THAT ONE.

16 THE COURT: YOU CAN SIGN IT LATER.
17 ONE THING, DO ME ANOTHER ONE ON VOLUNTARY MANSLAUGHTER,
18 I JUST MESSED IT UP. SO, JUST PUT HIS NAME ON IT AND
19 THE INDICTMENT NUMBER, VOLUNTARY MANSLAUGHTER, AND GIVE
20 IT TO ME.

21 SENTENCE OF THE COURT

22 ALRIGHT, ON INDICTMENT 2006-GS-38-
23 2068, THE CHARGE, I'M SORRY, 67, 2067, THE CHARGE BEING
24 ARMED ROBBERY, THE SENTENCE OF THE COURT IS THAT YOU BE
25 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A

1 PERIOD OF THIRTY YEARS.

2 ON INDICTMENT 2006-GS-38-2068, THE
3 STATE VERSUS GEORGE MOSES, THE CHARGE IS VOLUNTARY
4 MANSLAUGHTER. THE SENTENCE IS THAT YOU BE COMMITTED TO
5 THE STATE DEPARTMENT OF CORRECTIONS FOR THE BALANCE OF
6 YOUR NATURAL LIFE, WITHOUT POSSIBILITY OF PAROLE,
7 PURSUANT TO SECTION SEVENTEEN, DASH, TWENTY-FIVE, DASH,
8 FORTY-FIVE.

9 GOOD LUCK TO YOU, SIR.

10 SOLICITOR SORENSON: YOUR HONOR, - -

11 -
12 THE COURT: YES, SIR.

13 SOLICITOR SORENSON: IT WOULD BE
14 THE STATE'S POSITION AS TO THE ARMED ROBBERY, THAT'S A
15 MOST SERIOUS ALSO. SO, IT WOULD FALL UNDER THE TWO
16 STRIKE PROVISION ALSO. AND THE NOTICE WAS SERVED WITH
17 BOTH OF THOSE INDICTMENTS ON THE NOTICE. THE ARMED
18 ROBBERY IS THE MOST SERIOUS. SO, IF HE HAD JUST BEEN
19 CONVICTED OF ARMED ROBBERY AND NOTHING ELSE HE'D STILL
20 BE SUBJECT TO THE STATE'S TWO STRIKE LAW.

21 THE COURT: SO, YOU'RE SAYING THE
22 SENTENCE SHOULD BE LIFE WITHOUT PAROLE ON EACH
23 INDICTMENT?

24 SOLICITOR SORENSON: YES, YOUR
25 HONOR.

1 THE COURT: I UNDERSTAND WHAT YOU'RE
2 SAYING.

3 MR. MELLARD: WELL, WE WOULD -- THE
4 SERVICE THAT WE GOT WAS ON THE MURDER CHARGE.

5 SOLICITOR SORENSON: I MEAN, IT'S
6 GOT BOTH.

7 MR. MELLARD: WHERE? YOU TELL ME
8 WHERE THE SERVICE IS ON THE MURDER CHARGE?

9 SOLICITOR JOHNSON: IT'S ON BOTH.

10 MR. MELLARD: THAT'S HIS MURDER FROM
11 BAMBERG.

12 SOLICITOR JOHNSON: I SEE WHAT
13 YOU'RE SAYING, I SEE WHAT YOU'RE SAYING.

14 MR. MELLARD: THAT'S AT THE TOP,
15 BOTH OF THE INDICTMENTS AT THE TOP.

16 THE COURT: HE'S JUST SAYING IT
17 SHOULD BE TWO LIFE WITHOUT PAROLE SENTENCES INSTEAD OF
18 ONE THIRTY YEAR SENTENCE.

19 MR. MELLARD: YES, SIR.

20 THE COURT: AND I THINK HE'S RIGHT
21 BUT I'LL BE GLAD TO HEAR YOU ON THAT.

22 MR. MELLARD: I'LL JUST LEAVE IT UP
23 TO THE COURT.

24 SOLICITOR SORENSON: IF WE COULD
25 JUST PUT ON THE RECORD, THAT NOTICE WAS SERVED ON THEM,

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1 I BELIEVE ON THE RECORD IN FRONT OF YOUR HONOR BACK IN
2 DECEMBER, ALSO JUST SO THERE'S NO - - -

3 THE COURT: WELL, I, I MEAN, HE'S
4 NOT QUESTIONING THE NOTICE I DON'T THINK, ARE YOU?

5 MS. HINDS: NO, SIR.

6 MR. MELLARD: NO, SIR.

7 THE COURT: WELL, I THINK HE'S
8 RIGHT, I THINK EITHER ONE OF THESE WOULD BE A MOST
9 SERIOUS, WOULD BE A SECOND STRIKE, AND SO, I THINK THE
10 PROPER SENTENCE ON EACH OF THEM IS LIFE WITHOUT PAROLE.

11 AMENDED SENTENCE OF THE COURT

12 SO, THE SENTENCE ON THE ARMED
13 ROBBERY WOULD ALSO BE LIFE WITHOUT PAROLE.

14 MS. HINDS: THANK YOU.

15 MR. MELLARD: THANK YOU.

16 THE COURT: ALRIGHT. GOOD LUCK TO
17 YOU, SIR.

18 SOLICITOR JOHNSON: THANK YOU, SIR.

19 THE COURT: TAKE MR. MOSES OUT,
20 PLEASE.

21 LADIES AND GENTLEMEN, LET ME, IF YOU
22 HAVE ANY QUESTIONS ABOUT THE SENTENCE, IT'S KIND OF
23 UNUSUAL, BUT IF YOU DO I'LL BE GLAD TO ANSWER THEM, YOU
24 PEOPLE ON THE JURY. I MEAN, HE HAD A PRIOR CONVICTION
25 FOR VOLUNTARY MANSLAUGHTER, AND THAT MADE IT A MANDATORY

1 LIFE WITHOUT PAROLE. I HAD NO DISCRETION IN THE MATTER,
2 I MEAN, THAT'S THE SECOND PERSON THAT HE'S KILLED AND
3 THE STATE SAYS THAT THAT'S MANDATORY LIFE WITHOUT
4 PAROLE. IF YOU FEEL LIKE THAT'S TOO TOUGH, IT'S NOT
5 YOUR SENTENCE. YOU JUST, YOU MAKE THE DECISION YOU NEED
6 TO MAKE, I CARRY OUT THE LAW. SO, Y'ALL DON'T HAVE
7 ANYTHING TO DO WITH THE SENTENCE.

8 THANK YOU FOR YOUR SERVICE.
9 ALRIGHT.

10 ALRIGHT, GIVE ME ANOTHER BLANK ON
11 THE VOLUNTARY, I MEAN, ON THE ARMED ROBBERY.

12 SOLICITOR JOHNSON: I'VE GOT A BLANK
13 ONE. I HAVE ONE HERE, YOUR HONOR.

14 THE COURT: NOW, IS THAT IT,
15 SOLICITOR?

16 SOLICITOR SORENSON: I BELIEVE SO,
17 YOUR HONOR.

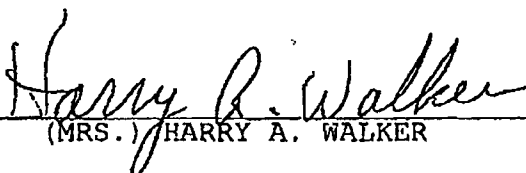
18 THE COURT: ALRIGHT, COURT IS
19 ADJOURNED, SINE DIE.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE TENTH THROUGH TWELFTH DAYS OF FEBRUARY, 2009.

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

DATE: APRIL 8, 2009


(MRS.) HARRY A. WALKER

COUNTY: ORANGEBURG DATE: FEBRUARY 9, 2009

Case No.: 06-GS-38-2067 AND 2068

VOIR DIRE (PAGE 1 OF 2)

Judge: JAMES C. WILLIAMS, JR.

Pl./State: State/Pl's.Atty:

STATE OF SOUTH CAROLINA DON SORENSON

CHARLIE JOHNSON

Defendant: Defense Atty:

GEORGE NAPOLEON MOSES DOUG MELLARD

MARGARET HINDS

Court Reporter: (Mrs.) Harry A. Walker

Juror		Strikes:						
No.	Name	Sex	Race	Pl.	Def.	Accept		
19	THOMAS BETSILL	M	W					X
155	MARY SELLERS	F	B					X
151	HENRY SALLEY	M	B					X
185	MONICA WASHINGTON	F	B					X
65	DONAVAN GAFFNEY	M	W		X			
190	LEROY WEST	M	B		X			
41	BRIAN DAVIS	M	B					X
86	TAMMI CALLAHAN	F	W	X				
134	DARRELL POUGH	M	B					X
52	JAMES FANNING	M	W		X			
2	AUDREY AIKEN	F	B					X
91	JONATHAN JAMISON	M	B	X				
27	EMMA BROWN	F	B					X
83	TANGELA HOOK	F	B					X
148	MICHAEL ROMANSTINE	M	W		X			
142	LORRAINE RICKENBAKER	F	B		X			
77	JOHN GREEN	M	B					X

COUNTY: ORANGEBURG DATE: FEBRUARY 9, 2009
 Case No.: 06-GS-38-2067 AND 2068
VOIR DIRE (PAGE 2 OF 2)

Judge: JAMES C. WILLIAMS, JR.

Pl./State: STATE OF SOUTH CAROLINA State/Pl's.Atty:
DON SORENSON
CHARLIE JOHNSON

Defendant: GEORGE NAPOLEON MOSES Defense Atty:
DOUG MELLARD
MARGARET HINDS

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Sex	Race	Pl.	Strikes:		Accept
					Def.		
172	ELLEN SUTTON	F	W				X
3	EMMA ASBURY	F	B				X
ALTERNATE NO. 1							
7	TARZIE BACKMAN	F	W				X
ALTERNATE NO. 2							
85	BETH HOWARD	F	B			X	
40	ANNETTE DAVIS	F	B	X			
43	DAVID DIETIKER	M	W			X	
53	ROBERT FANNING	M	W				X

FORM 5

STATE OF SOUTH CAROLINA)

County of Orangeburg)George N. Moses-103370)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2010-CP-38-1601
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

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 clear to which question any such continued answer refers.

Since every application must be sworn 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 the applicant was convicted.

1. Place of detention LEE Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions, Orangeburg, S.C.
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 06-65-38-2068
 - (b) 06-65-38-2067

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2-12-09 - Life without Parole
- (b) 2-12-09 - Life without Parole
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 30, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. ~~None~~ Unpublished Opinion No. 2010-UP-394
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE Attached Sheet
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE Attached Sheet
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (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. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Trial judge erred in amending defective Indictment
 (b) Trial judge erred in not granting motion of dismissal.
 (c) (See Attached sheet)

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

(a) your arraignment and plea? NO
 (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?
NO

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

(a) the name and address of each attorney who represented you:

i. Andrew Brown
Orangeburg Public Defenders Office
 ii. Doug Mullard - Peggy Hinds
Orangeburg Public Defenders Office
 iii. Elizabeth A. Franklin - Best
Appellate Defense - Columbia, S.C.

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

i. Andrew Brown - Pre-Trial - Preliminary Hearing
 ii. Doug Mullard - Peggy Hinds
Pre-Trial - Trial
 iii. Elizabeth A. Franklin - Best
Appeal

19 State clearly the relief you seek in filing this application:

NEW TRIAL

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

NO

STATE OF SOUTH CAROLINA)

County of Orangeburg)

VERIFICATION

I, George N. Moses, 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.

C. N. Moses

SWORN to and subscribed before me this

day of

Oct. 9th 2010
Shirley Ann
Notary Public

(L.S.)

My Commission Expires:

5-16-11

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Georgie N. Moses, 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 thereof.

Georgie N. Moses
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____.

Notary Public

My Commission Expires: _____

2010 OCT 29 P 2 10
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

10. (A.) Ineffective Assistance of trial Counsel.
10. (B.) Ineffective Assistance of Appellate Counsel.
10. (C.) Trial judge erred in not instructing involuntary manslaughter or Accident.
10. (D.) Trial judge erred in only giving Davis charge, when instructing the jury on self-defense.
10. (E.) Trial judge erred in ~~amending~~ defective indictment.
10. (F.) Trial judge erred in not granting defendants counsel motion for a direct verdict to the charges of Armed Robbery and Murder.
10. (G.) Trial judge erred in not charging the lesser included offenses of Robbery or Larceny.
10. (H.) Trial judge erred in charging voluntary manslaughter to the jury.

11. (A.) 1. Trial counsel failed to provide expert witness to testify against states theory of facts in defendant case, As to victims cause of death, And alleged intent by the defendant.
2. Trial counsel failed to obtain victims medical records, which would have shown pre-existing heart condition and drug abuse as possible causes of death to victim.
3. Trial counsel failed to object to jury charge of voluntary manslaughter, thereby, shifting the burden of proof of intent to the defendant.
4. Trial counsel failed to request additional jury instruction that state must disprove self defense by a reasonable doubt.
5. Trial counsel failed to request additional instructions to the jury on the use of deadly force and retreat in self defense.

11. (A)

6. Trial Counsel failed to call witness with testimony helpful to defendants defense of self defense. Officer Todd Williams of the Orangeburg Sheriff's Office gave a statement as to the injuries and condition of defendant which would have aided the jury in determining defendant plan of self defense.

7. Trial Counsel was ineffective for advising defendant to waive his fifth Amendment right not to testify at trial.

8. Trial Counsel was ineffective for failing to request a jury instruction to the lesser included offenses of Armed Robbery.

9. Trial Counsel was ineffective for failing to motion the court for a dismissal of the defective indictment before trial.

10. Trial Counsel was ineffective for failing to investigate DNA evidence which was recovered from crime scene, which showed multiple person(s) at scene of the crime.

Trial Counsel was ineffective for failing to file for interlocutory appeal after Nunez was

Attached Sheet - PCR Application
George N. Moses - Page 3A

11. (A.)

12. Trial Counsel was ineffective
for failing to introduce the
Autopsy report into evidence.

II. (A.)

- II. Trial Counsel was ineffective for failing to object to the introduction of statements and testimony pursuant to 19-1-90 and 19-1-80 and 8-15-50 of South Carolina code of laws 1976

II. (B.)

1. Appellate counsel failed to include all properly preserved issues for Appellate review by the S.C. Court of Appeals.

A. Appellate counsel failed to include issue of defective indictment that was amended by trial judge.

B. Appellate counsel failed to include the issue of trial judges denial of defendants motion for a direct verdict as to the offenses of Murder and Armed Robbery

C. Appellate counsel failed to petition the S.C. Supreme Court for a petition for certiorari after court of Appeal decision.

II. (C.)

1. There was testimony from the defendant and Dr. Ross to warrant the trial judge to instruct the jury to involuntary manslaughter and/or Accident in the death of the victim.

11. (D)

1. Trial judge should have given additional jury instruction on the use of deadly force in the defense of one's self.

11. (E)

1. Trial judge erred in amending defective indictment that was presented to the Grand Jury on false information, over defendant's counsel objection that it be resubmitted to the Grand Jury.

11. (F)

1. There was no corpus delicti as to the Armed Robbery as alleged, only the prosecutor's statements in his closing.

11. (G.)

1. The trial judge erred in his instruction to the jury by not charging the lesser included offenses of Robbery and Larceny on the indictment that was submitted to the jury during its deliberation.

II. (H.)

There was no evidence to warrant
a instruction to voluntary manslaughter
And by instructing the jury to such,
shifted the burden of having to prove
self defense to the defendant.

STATE OF SOUTH CAROLINA	)	
COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS
	)	
	)	2010-CP-38-1601
George N. Moses, 103370,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on October 29, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Orangeburg County Clerk of Court's orders of commitment. The Applicant was indicted at the December 2006 term of the Orangeburg County Grand Jury for Armed Robbery (2006-GS-38-2067) and Murder (2006-GS-38-2068). Doug Mellard and Margaret Hinds, Esquires, represented him. Applicant proceeded to a jury trial before the Honorable James C. Williams, Jr. On February 12, 2009, the Applicant was found guilty of Armed Robbery and Voluntary Manslaughter. Applicant was sentenced to life without the possibility of parole pursuant to S.C. Code Ann. §17-25-45.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Moses, Op. No. 2010-UP-394 (S.C. Ct. App. filed August 30, 2010). The Remittitur was sent September 15, 2010.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department

of Corrections, the appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel.

- a. "...failed to provide expert witness to testify against State's theory of facts in defendant case, as to victims cause of death, and alledged (sic) intent by the defendant."
- b. "...failed to obtain victims medical records, which would have shown pre-existing heart condition and jury abuse as possible causes of death to victim."
- c. "...failed to object to jury charge of voluntary manslaughter, thereby shifting the burden of proof of intent to the defendant."
- d. "...failed to request additional jury instruction that State must disprove self defense by a reasonable doubt."
- e. "...failed to request additional instructions to the jury on the use of deadly force and retreat in self defense."
- f. "...failed to call wittness (sic) with testimony helpful to defendants defense of self defense. Officer Todd Williams of the Orangeburg Sheriff's Office gave a statement as to the injur[ies] and condition of defendant which would have aided the jury in determining defendant plan of self defense."
- g. "...advising defendant to waive his fifth Amendment right not to testify at trial."
- h. "...failing to request a jury instruction to the lesser included offenses of Armed Robbery."
- i. "...failing to motion the court for a dismissal of the defective indictment before trial."
- j. "...failing to investigate DNA evidence which was recovered from crime scene, which showed multiple person(s) at scene of the crime."
- k. "...failing to file for interlocutory appeal after Denno hearing."
- l. "...failing to introduce the autopsy report into evidence."
- m. "...failing to object to the introduction of statements and testimony pursuant to 19-1-90 and 19-1-80 and 8-15-50 of South Carolina Code of Laws 1976."

2. Ineffective Assistance of Appellate Counsel.

- a. Failed to include all properly preserved issues for Appellate review by the S.C. Court of Appeals.

- i. Failed to include issue of defective indictment that was amended by trial judge.
 - ii. Failed to include the issue of trial judges denial of defendants motion for a direct verdict as to the offenses of Murder and Armed Robbery.
 - iii. Failed to petition the S.C. Supreme Court for a petition for certiorari after Court of Appeal decision.
- 3. "Trial judge erred in not instructing involuntary manslaughter or accident."
 - a. "There was testimony from the defendant and Dr. Ross to warrant the trial judge to instruct the jury to involuntary manslaughter and/or accident in the death of the victim."
- 4. "Trial judge erred in only giving Davis charge, when instructing the jury on self-defense."
 - a. "Trial judge should have give addition jury instruction on the use of deadly force in the defense of one's self."
- 5. "Trial judge erred in amending defective indictment."
 - a. "Trial judge erred in amending defective indictment that was presented to the Grand jury on false information, over defendants counsel objection that it be resubmitted to the Grand jury."
- 6. "Trial judge erred in not granting defendants counsel motion for a direct verdict to the charges of Armed Robbery and Murder."
 - a. "There was no corpus delicti as to the Armed Robbery as aledged (sic), only the prosecutors statements in his closing."
- 7. "Trial judge erred in not charging the lesser included offenses of robbery or larceny."
 - a. "The trial judge erred in his instruction to the jury by not charging the lesser included offenses of Robbery and larceny on the indictment that was submitted to the jury during its deliberation."
- 8. "Trial judge erred in charging voluntary manslaughter to the jury."
 - a. "There was no evidence to warrant a instruct to voluntary manslaughter and by instructing the jury to such, shifted the burden of having to prove self defense to the defendant."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is

without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, 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 upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that 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. Respondent requests an

evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate 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. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Respondent submits that the third, fourth, fifth, sixth, seventh and eighth allegations should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b)

(1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). 'A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss this application for post-conviction relief.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

GEORGE N. MOSES, 103370,

- - - Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-38-1601

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 by depositing same in the United States mail, postage prepaid:

Carl B. Grant, Esquire
 Post Office Box 1203
 Orangeburg, SC 29116

DATED this 3rd day of May, 2011.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF ORANGEBURG

CIRCUIT COURT
2010-CP-38-01601

3
4 GEORGE MOSES,
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9 Post Conviction Relief Hearing

10 Heard on Wednesday, November 30, 2011

11 Saint George, South Carolina

12 BEFORE:

13 THE HONORABLE DIANE SCHAFER GOODSTEIN
14
15
16
17

18 APPEARANCES:

Counsel on Behalf of the Applicant:

19 Rob D. Corney, Esq.

Mary S. Williams, Esq.

20 Counsel on Behalf of the Respondent, State of SC:

21 Carl B. Grant, Esq.
22

23 Cheri L. Young, RPR
24 Circuit Court Reporter
P O Box 5232
25 Aiken, SC 29804-5232

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1 ON WEDNESDAY, NOVEMBER 30, 2011 AT 11:28 P.M.:

2 THE COURT: Who is next?

3 MR. CORNEY: Next up, Your Honor, we will take care of
4 Mr. George Moses.

5 THE COURT: Okay.

6 MR. CORNEY: We'll get Mr. Grant up here and do that
7 one.

8 THE COURT: All right. Of course, we're on the record
9 with Mr. Moses. And his attorney is with him, Mr. Carl
10 Grant.

11 Do we have any preliminary matters, Mr. Grant, before
12 the Attorney General gives me sort of the procedural
13 history?

14 MR. GRANT: None from us, Your Honor.

15 THE COURT: Very well. All right.

16 MR. CORNEY: May it please the Court, Your Honor.

17 THE COURT: Yes, sir, Mr. Corney.

18 MR. CORNEY: This is George Moses. It's case number
19 2010-CP-38-1601.

20 Mr. Moses was true-bill indicted at the December 2006
21 term of the Orangeburg County Grand Jury for armed robbery
22 and murder. Mr. Moses proceeded to jury trial before the
23 Honorable James C. Williams, Jr., February 12th, 2009, at
24 which he was convicted of armed robbery and the lesser
25 included voluntary manslaughter.

GEORGE NAPOLEON MOSES - DIRECT

1 Mr. Moses was sentenced to life without parole on each
2 one of those counts pursuant to South Carolina Code
3 Section 17-25-45.

4 Mr. Moses filed a notice, a timely notice of appeal.
5 An appeal was perfected. The Court of Appeals affirmed
6 his conviction and sentence, and a remittitur was sent
7 September 15th, 2010,

8 Thereafter, Mr. Moses filed a timely PCR application
9 October 29th, 2010, and is represented today by Mr. Carl
10 Grant.

11 THE COURT: Very well. All right. Mr. Grant, if you
12 would call your first witness.

13 MR. GRANT: Yes, Your Honor. We call Mr. George
14 Moses.

15 He wants to know whether his handcuffs may be removed
16 so he can go through his notes.

17 THE COURT: No. May not.

18 MR. GRANT: Okay.

19 GEORGE MOSES, having been duly sworn, was examined and
20 testified as follows:

21 THE COURT: And your last name is spelled M-O-S-E-S?

22 THE APPLICANT: Yes.

23 THE COURT: And George is G-E-O-R-G-E?

24 THE APPLICANT: Yes.

25 THE COURT: And do you have a middle name?

GEORGE NAPOLEON MOSES - DIRECT

1 THE APPLICANT: Napoleon.

2 THE COURT: George Napoleon Moses?

3 THE APPLICANT: Yes.

4 THE COURT: Wonderful. Thank you. All right, your
5 witness.

6 MR. GRANT: Thank you, Your Honor.

7 THE COURT: Yes. Now, listen, let me tell you
8 something. If you need some help with your paperwork, we
9 got people here to help you. You run out of water, we got
10 people here to help you with that. Okay?

11 THE APPLICANT: Thank you.

12 THE COURT: You just let us know. Yes, sir.

13 MR. GRANT: Thank you, Your Honor.

14 THE COURT: Uh-huh.

15 DIRECT EXAMINATION

16 BY MR. GRANT:

17 Q. Mr. Moses, I want you to project loudly and clearly so
18 that you and I can hear each other well. Okay?

19 A. All right.

20 Q. Very good. Now, Mr. Moses, you are the Applicant in
21 this process. As far as this post conviction relief, you
22 are the one who applied; is that correct?

23 A. Yes, sir.

24 Q. All right, sir. And you applied for post conviction
25 relief because you went to trial on February 9th, 2009, in

GEORGE NAPOLEON MOSES - DIRECT

1 Orangeburg County on some criminal charges; is that right?

2 A. That's right. Yes, sir.

3 Q. And what were you accused of? What were you tried on?

4 A. Murder and armed robbery.

5 Q. Murder and armed robbery?

6 A. Yes, sir.

7 Q. All right. And who was your defense attorneys
8 defending you at that trial?

9 A. Before the trial I was represented by Andrew Brown,
10 but he left the practice from the public defenders office
11 and then they assigned me to Doug Mellard and Peggy Hinds
12 at the trial.

13 Q. Mr. Mellard and Ms. Hinds?

14 A. Right.

15 Q. And was there any understanding as to which one was
16 your lead attorney or were they essentially serving as
17 co-counsel?

18 A. Mr. Mellard was the lead attorney and Ms. Hinds was
19 assisting him.

20 Q. He was the lead attorney?

21 A. Yes, sir.

22 Q. Is he the person that you spoke to the most throughout
23 the preparation for the trial?

24 A. Yes.

25 Q. All right. Now, in a nutshell essentially, tell the

GEORGE NAPOLEON MOSES - DIRECT

1 Judge what it is you're accused of doing. We know the
2 charges were murder and armed robbery, but sort of give
3 the Judge the story, if you will. What is it that they
4 alleged happened?

5 A. They alleged that I went to the residence of Harry,
6 one Harry Livingston in order to rob him and essentially
7 murder him. That's what they, the indictment say and the
8 arrest warrant.

9 Q. And, was there some evidence or allegations of a drug
10 transaction going on?

11 A. Yes, there was.

12 Q. Tell the Judge about that, please, sir.

13 A. Essentially when I went to the residence I was
14 purchasing drugs, going to purchase drugs from Harry's
15 roommate. At the time I was told his roommate wasn't
16 there and that he would be back.

17 I proceeded to wait for his roommate to come back but
18 he never showed up. His roommate then -- actually there
19 was another person that was at the residence, Evette
20 Lingard. And after she left Harry approached me and asked
21 me did I have any drugs that I could trade for the drugs
22 that he had.

23 And when I said yeah, we proceeded to make the trade.
24 And after the trade he wasn't satisfied with what I gave
25 him, evidently. And he wouldn't allow me to leave the

GEORGE NAPOLEON MOSES - DIRECT

1 residence. And at the time he had a lot of, a Rotweiller
2 dog in the residence with him. And he sicked the dog on
3 me and 'posed to stick and told me I couldn't leave the
4 residence without giving him whatever drugs that he
5 wanted.

6 And at that time I was still attempting to leave the
7 resident and a fight ensued. Mr. Livingston was -- during
8 that fight he was hit or hit his head on something and he
9 fell and died from my understanding from what they told
10 me.

11 Q. And then the police investigated the matter and you
12 were identified as a potential suspect and you were
13 brought into the police station; is that right?

14 A. Yes, sir.

15 Q. And did you give a statement to the police initially?

16 A. No, I did not. Initially I, I didn't I know what was
17 going on. Then when they told me Mr. Livingston was dead,
18 then I asked, I requested to have an attorney present
19 before I gave a statement.

20 They took me to the county jail and then the next day
21 they came back and questioned me again with, telling me
22 that he -- that it wasn't my fault and he died of an
23 accident or what have you. And then they, then they
24 received the statement from me.

25 Q. So, the first statement was the verbal and the second

GEORGE NAPOLEON MOSES - DIRECT

1 statement was written; is that correct?

2 A. Right.

3 Q. Did you have an attorney at any process, out of one of
4 these statements?

5 A. No, sir.

6 Q. Okay. When did you first meet with Mr. Mellard as
7 your attorney?

8 A. I was incarcerated in Orangeburg County until
9 approximately 16 or 18 months before I met Mr. Mellard.

10 Q. For more than a year before you met the defense
11 attorney?

12 A. Yes, sir.

13 Q. All right. And when you did meet the defense
14 attorney, did you all discuss the potential issues of
15 having your statement suppressed at trial if you decided
16 to go to trial?

17 A. Yeah. We did for -- limitly, very limitly.

18 Q. Very limitedly?

19 A. Yes, sir.

20 Q. All right. Who decided that, to go to trial? I mean,
21 what happened? Why did you go to trial?

22 A. Because, I, I didn't feel -- it wasn't intentionally
23 on my behalf that, to kill Mr. Livingston or arm rob him.
24 I felt that I was not guilty of what went on because
25 everything that happened was probably more of a self-

GEORGE NAPOLEON MOSES - DIRECT.

1 defense than anything.

2 Q. Were there any pretrial motions filed to suppress your
3 statement?

4 A. Yes, sir; it was.

5 Q. And did you testify at that pretrial motion hearing?

6 A. Yes, I did.

7 Q. But the Judge ruled against you and ordered that the
8 statement would be admitted; is that right?

9 A. Right.

10 Q. And you ultimately did go to trial?

11 A. Yes.

12 Q. Now it's my understanding that because of your
13 previous record that the State had served notice of their
14 intent to seek life in prison against you anyway if you
15 were convicted of even lesser charges that would allow a
16 life sentence; is that correct?

17 A. Yes.

18 Q. And so when you went to trial you testified on your
19 own behalf?

20 A. Yes, sir.

21 Q. Now one of the issues -- and I'm going to go through
22 this item by item in a little bit, but one of the issues
23 that you allege against your trial attorneys is
24 essentially that they convinced you to testify. Tell the
25 Court about that.

GEORGE NAPOLEON MOSES - DIRECT

1 A. Well, before -- after the State presented their case,
2 the Judge then said that we had to take an opportunity to
3 go in the back and speak to my attorneys as far as me
4 testifying or not. When we went in the back, I asked him
5 what do you think I should do? Should I testify or
6 shouldn't I testify?

7 And they would just, you know, it's up to you but I
8 would testify because you need to say certain things or to
9 have certain things placed on the record.

10 So, I don't know but they was like, I don't really
11 know what to tell you but I would testify. So I took his
12 advice and testified.

13 Q. Are you alleging that your testimony, by testifying
14 that you prejudiced your own case?

15 A. Yes, sir. After, after looking at it I did because
16 there was, there was no evidence presented by the State to
17 either armed robbery, in my opinion, or the, or the actual
18 murder.

19 Q. Okay.

20 A. And by me testifying...

21 Q. All right. What I want to do now is to make sure we
22 focus on your application so that we can address the
23 issues that you have alleged in the application. Okay?

24 A. Okay.

25 Q. You have alleged ineffective assistance of counsel.

GEORGE NAPOLEON MOSES - DIRECT

1 And one of the first things you've alleged is that your
2 attorneys failed to provide an expert witness to testify
3 against the State's theory of the facts in your case as to
4 the victim's cause of death and the alleged intent by you,
5 the defendant?

6 A. Yes.

7 Q. What exactly do you mean by that? And -- well, my
8 first question is: What do you mean by that?

9 A. Okay. I need to place my glasses on, sir. (Pause.)

10 From the autopsy report and from the, from the things
11 I've heard, had heard about the defendant (sic), the
12 defendant had a pre-existing heart condition. He was
13 also, had, had drugs in his system.

14 And then the type of, the type of -- it was no weapon
15 used in the actual murder of the defendant other than him
16 hitting his head or from me hitting him in the head. I'm
17 not sure which one caused the injury to him.

18 I felt that at the time if they had asked for an
19 expert witness or got an expert witness or either his
20 medical records, it could have at least established some
21 type of reasonable doubt in the State's theory of the case
22 that I intentionally killed this individual because
23 it's -- the coroner said in her testimony that a person in
24 better health would have lived through that situation.

25 And it wasn't my intent at that time to harm

GEORGE NAPOLEON MOSES - DIRECT

1 Mr. Livingston in any kind of way, or definitely not to
2 kill him. I was just trying to protect myself from him.

3 Q. So you believe that an expert witness could have
4 established some type of theory as to you not being the
5 cause of death?

6 A. Yes, sir; or intentionally causing the victim's death.

7 Q. All right, sir. Let me turn your attention to the
8 next item.

9 You also alleged that your attorneys failed to obtain
10 the victim's medical records which would have shown
11 pre-existing heart condition and drug abuse as a possible
12 cause of death. Essentially the same thing you've already
13 said?

14 A. Yes, sir.

15 Q. Is that right?

16 A. Yes, sir.

17 Q. All right. Next item, Item C, failed to object to the
18 jury charge of voluntary manslaughter thereby shifting the
19 burden of proof of intent to the Defendant.

20 Did you want your lawyers to object to the charge of
21 voluntary manslaughter even though you were charged to
22 murder -- charged with murder?

23 A. Yes, sir.

24 Q. Tell us why.

25 A. Because I felt that it was self-defense and that gave,

GEORGE NAPOLEON MOSES - DIRECT

1 that gave the State an opportunity to have several
2 different options as far as a verdict was concerned. If
3 they were going to be any lesser-included offenses, I
4 thought it should have been a request for either
5 involuntary manslaughter or possibly accident instead of
6 voluntary manslaughter. Voluntarily manslaughter's the
7 intentional killing of a human being without sufficient
8 provocation.

9 In the State's theory of the case at the time I was
10 committing armed robbery. That's what they said, that I
11 was committing armed robbery. If a person is protecting
12 themselves from an armed robbery, there can be no legal
13 provocation for him protecting himself and him being
14 killed in a situation like that. I didn't feel there was
15 any evidence and that just gave the jury another
16 opportunity to convict me of a greater offense.

17 Q. The next item you allege, Mr. Moses, is that your
18 attorneys, trial attorneys, failed to request additional
19 jury instructions that the State must disprove self-
20 defense by a reasonable doubt.

21 A. Yes.

22 Q. That's what you indicated?

23 A. Yes, sir.

24 Q. Did you all talk about the jury charges before they
25 were submitted to the Trial Judge?

GEORGE NAPOLEON MOSES - DIRECT

1 A. No, sir. They never discussed that with me at all.

2 Q. All right. Item E and this is -- these -- this is --
3 Item E, this is outlined in paragraph, page two actually
4 of the State's return where they have it all itemized
5 here.

6 Item E, failed to request additional instructions to
7 the jury on the use of deadly force and retreat in self-
8 defense?

9 A. Yes, sir.

10 Q. That's another instruction that you wanted that your
11 attorneys did not discuss with you?

12 A. Yes, sir. I felt they should have been more tailored
13 instruction to the self-defense than just the standard
14 Davis instruction that was given at the time by the Trial
15 Judge.

16 Q. All right, sir. Now, Item F, you indicate that they
17 failed to call a witness with testimony that would be
18 helpful to your self-defense defense. That is Officer
19 Todd Williams of the Orangeburg Sheriff's Office gave a
20 statement as to the injuries and conditions of you, the
21 Defendant, which would have aided the jury in determining
22 your plan of self-defense?

23 A. Yes, sir.

24 Q. But Todd Williams was not called; right?

25 A. No.

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1 Q. My review of the record, the trial record indicates
2 that only you testified for the defense; am I correct in
3 that?

4 A. Yes, sir.

5 Q. Did you discuss with your defense attorneys Todd
6 Williams and his potential testimony and how you thought
7 it might help your case?

8 A. Before the trial, they never discussed with me any of
9 the potential witnesses that they were going to call.
10 When we got to the trial, they said that the judge looked
11 at the records and he noticed that he saw Todd Williams'
12 name mentioned in the records and it was his brother. And
13 he discussed then that, whether or not he should recuse
14 himself from the trial or not.

15 And the attorney they then decided themselves that
16 they didn't, they wouldn't need Mr. Williams to testify
17 without discussing it with me at all.

18 Q. Let's make it clear, though. How exactly do you think
19 Todd Williams' testimony would have made a difference in
20 the outcome of your case?

21 A. Because Mr. Williams was present when I was first
22 arrested by the officers. When I was taken to Orangeburg
23 County Jail and my body was examined for any scars,
24 scratches or injuries, he was present at the time.

25 The jury -- well, they requested to see the photos

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1 that were taken from me, taken of me which the solicitor
2 office said that there were never any photos but
3 Mr. Williams was there and he could have testified to the
4 photos being taken of me and also to the injuries that
5 were present on my body at the time.

6 Q. Item G on the list, I think you've already addressed
7 advising the Defendant to waive his Fifth Amendment right
8 not to testify at the trial. Are you saying your lawyers
9 told you you needed to testify?

10 A. Yes, sir.

11 Q. All right, sir. Now let me turn your attention to
12 Item H, failing to request a jury instruction to the
13 lesser-included offense -- lesser-included offenses of
14 armed robbery.

15 Again, do these jury charges ever get discussed with
16 you pertaining to the murder charge or the armed robbery?

17 A. No, sir.

18 Q. Did you want them to discuss that with you?

19 A. I felt they should have or they should have definitely
20 at least requested them from the Judge as lesser-included
21 offenses.

22 Q. All right. And Item I is failing to motion the Court
23 for a dismissal of the defective indictment before the
24 trial.

25 A. Right.

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1 Q. And before we start addressing that, again, I've read
2 the transcript here. I remember reading that Mr. Mellard
3 did indeed take up a motion about the indictment with the
4 Trial Judge. Do you remember that?

5 A. Yes, sir. But it wasn't Mr. Mellard who initially
6 made the motion. It was the State who made the motion to
7 amend the indictment.

8 Q. To amend?

9 A. Right.

10 Q. And you remember Mr. Mellard objecting to the motion
11 of it being amended and asking that the Judge actually
12 send the issue back before the grand jury?

13 A. Right.

14 Q. What else do you think he should have done?

15 A. I think he should have probably addressed that issue,
16 as the Judge said, before the trial started instead of
17 waiting until the trial started and waiting for the
18 solicitor's office to make the motion to have the
19 indictment dismissed. He should have did that
20 beforehand.

21 And possibly the Judge then, as he indicated, that he
22 would probably send it back to the grand jury at that time
23 or had an opportunity to send it back at that time instead
24 of waiting till the trial to do it.

25 Q. All right sir. Now, Item J indicates you're alleging

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1 ineffective assistance of counsel because your attorneys
2 failed to investigate the DNA evidence which was recovered
3 from the crime scene which showed multiple persons at the
4 scene of the crime.

5 A. Yes, sir.

6 Q. What do you think they should have done in that regard
7 specifically?

8 A. In that regard, actually DNA evidence wasn't taken
9 from me until about a month before trial when they came
10 and they actually requested DNA from me. At the time I
11 didn't have any idea that they had ever taken any DNA
12 evidence or they had any DNA evidence they were going to
13 be presenting at the trial. We never discussed that.

14 The DNA evidence that was presented by the State
15 showed there were other people in the residence touching
16 areas or in areas that were transferring blood to
17 different places.

18 There was no, any indication of DNA evidence on my
19 behalf anywhere in the residence especially where they
20 saying that the Defendant had, or excuse me, the victim
21 had any money.

22 If they would have investigated a little further they
23 possibly could have tested the other people that were in
24 the residence and possibly showed that they were the ones
25 who were in his drawers or taking money out of the

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1 residence or actually who committed the robbery or
2 possibly even committed an assault on, you know, more
3 assault on him at the time.

4 Q. All right. And Item K, you indicate your lawyers were
5 ineffective in that they failed to file for an
6 interlocutory appeal --

7 A. Yes, sir.

8 Q. -- after the Jackson-Denno hearing?

9 A. Yes, sir.

10 Q. All right. Tell the Court what is it that you would
11 have wanted them to have done in that regard.

12 A. To -- at the time, filing an appeal on the Judge's
13 ruling that he was going to allow the statement into
14 evidence. From my understanding, my rights were violated
15 concerning that statement or the statement being actually
16 taken from me the next day when I specifically and
17 definitely requested a lawyer.

18 And the officer's statement that he transcribed, and I
19 have a copy of it here, that he actually states in the
20 statement that I requested an attorney.

21 Q. Do you have a copy of that statement?

22 A. Yes, sir.

23 Q. In your paperwork?

24 A. Yes, sir.

25 Q. Would you take your time with the assistance of the

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1 court officers to find that particular document?

2 A. (Complying.) Yes, sir. Here it is. Here it is.

3 It's in the last sentence in the large paragraph there.

4 Q. Point it out to me, please, sir.

5 A. Right here.

6 Q. Uh-huh. Okay. You're talking about this portion here
7 that says, I may need to talk to a lawyer?

8 A. Yes, sir.

9 Q. All right. Let me have that marked, please, ma'am.

10 (Applicant's Exhibit No. 1, summary of Shumpert's
11 investigative summary, was marked for identification.)

12 MR. GRANT: I'm showing the lawyer for the Attorney
13 General's Office which is marked as Plaintiff's Exhibit
14 Number One the document which the witness is referring
15 to. The bottom portion of the statement reads: I may
16 need to talk to a lawyer.

17 THE COURT: Okay.

18 MR. GRANT: Well, actually it's a summary of the
19 investigative report by Shumpert indicating his recitation
20 of his discussion with the Defendant.

21 (Document handed to Mr. Corney and Ms. Williams.)

22 MR. CORNEY: Your Honor, we have no objection to it
23 coming in for reasonableness, again BUT not for the
24 content of it as Officer Shumpert I don't believe is here
25 to testify.

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1 MR. GRANT: That's fine.

2 THE COURT: Very well.

3 (Applicant's Exhibit No. 1, summary of Shumpert's
4 investigative report, received into evidence.)

5 BY MR. GRANT:

6 Q. All right. Did you discuss with your trial attorneys
7 that particular document; that is, wait a minute, the
8 investigator himself is indicating in his report that I
9 told him I may need to talk to a lawyer therefore we need
10 to take this up and make sure that's clear at the Jackson
11 V Denno hearing?

12 A. Yes, sir; I did mention it to him. I talked to him
13 about that. And at the hearing he never even questioned
14 the officer concerning whether or not I asked him for an
15 attorney or anything.

16 Q. When you say he, who are you referring to?

17 A. I'm talk -- I'm speaking of Mr. Mellard.

18 Q. All right, sir. All right. Now, you also indicate
19 that your trial attorneys are ineffective in that they
20 failed to introduce the autopsy report into evidence.

21 A. Yes, sir.

22 Q. How do you feel the autopsy report would have helped
23 you?

24 A. It, it, it again would have been able, the jury would
25 have been able to see that the, this individual did die

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1 from or he actually did have a pre-existing heart
2 condition. Also that he did have drugs in his system and
3 the autopsy report clearly states that -- if I could, I
4 also have a copy of that, sir where... (looking through
5 documents).

6 This right here where it actually says, I'm not sure
7 what the individual's name that's on it, that did that
8 portion of the autopsy report where he did state that he
9 has seen sudden death cause in individuals with lesser
10 amounts of cocaine in their system than the individual
11 had.

12 Q. Okay. All right, sir.

13 MR. GRANT: I'm showing opposing counsel what has been
14 marked as Plaintiff's Exhibit Number Two.

15 MR. CORNEY: Your Honor, the State would object to the
16 introduction of this document as it's an incomplete
17 report. It says page two of four on the top. It's only
18 one single page.

19 THE APPLICANT: I have the rest of the autopsy report.

20 MR. CORNEY: And I don't know who prepared this or
21 who's here to testify to it or anything along those lines.

22 THE APPLICANT: It's on there who prepared it.

23 MR. CORNEY: I don't know that whoever prepared this
24 is here to say anything about it or attest to the
25 accurateness of it or anything along those lines.

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1 THE COURT: Well, let me ask you this question. Do we
2 know whether or not the autopsy report is an exhibit in
3 the underlying trial?

4 THE APPLICANT: (Shakes head.)

5 MR. GRANT: He's indicating that it was not offered as
6 a document, but that it should have been offered as a
7 document. And that's the essence of his claim of
8 ineffective assistance of counsel; that if the autopsy
9 report was admitted as a document, then they could have
10 argued from an evidentiary standpoint, well, there's
11 something in here that shows that this person could have
12 even had sudden death as opposed to being killed if you
13 will, from the injuries that the prosecution alleges were
14 inflicted by him. So that's the relevance of it.

15 THE COURT: I understand. The problem with the matter
16 as it stands at this point is that it's not a
17 self-authenticating document. And I don't think there's
18 anybody here to put it in or not. So it can't come in
19 right now.

20 MR. GRANT: I understand. We'll mark it for
21 identification right now. We'll probably bring it up
22 again, obviously with the defense attorneys who tried the
23 case. Hopefully they'll be familiar with having seen this
24 document.

25 (Applicant's Exhibit No. 2, autopsy report, was marked

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1 for identification.)

2 BY MR. GRANT:

3 Q. So, Mr. Moses, I want to make sure I understand your
4 position. It is your position that if the autopsy report
5 would have come in, what arguments could have been made by
6 your attorneys?

7 A. Could have made the argument that the victim wasn't
8 intentionally killed by me, that there were possibly some
9 other issues that he was facing that could have
10 contributed to the cause, to actually causing his actual
11 death.

12 Q. All right. All right, sir.

13 Now, Item N indicates that your attorneys failed to
14 object to the introduction of statements and testimony
15 pursuant to various statutes. Do you know what particular
16 statements and testimony you are referring to?

17 A. The testimony of Evette Lingard, Patricia Owens and
18 Linda Gonny (phonetically)?

19 Q. Now what basis do you feel your attorneys could have
20 objected legally to their testimony?

21 A. By, again, from this statute that they -- that those
22 statements had to be signed by each one of those
23 individuals to be verified and they weren't.

24 Q. All right, sir.

25 A. And actually Linda Gonny's statement, she actually

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1 gave her statement almost two years after the, after the
2 incident happened. She didn't give her statement until
3 2009.

4 Q. All right, sir. Now I want to turn your attention to
5 the ineffective assistance of appellate counsel claim that
6 you made in your application as well.

7 A. Yes, sir.

8 Q. You did make that claim; is that right?

9 A. Yes, sir.

10 Q. And your appellate defense attorney was Ms. Elizabeth

11 A. Franklin-Best?

12 A. Yes, sir.

13 Q. Did you meet Ms. Best at any time during this
14 process?

15 A. No, sir. I've never met her personally.

16 Q. Even yet today you never met her?

17 A. No, I never saw her.

18 Q. All right, sir. So you did not discuss with her the
19 various issues that you thought needed to be appealed or
20 not appealed?

21 A. I spoke with her once or twice over the telephone.

22 And essentially at that time she informed me she sent me a
23 letter pertaining to that, that the Office of Appellate
24 Defense makes all the decisions concerning issues that
25 will be placed into the appeal.

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1 And I discussed with her several other issues that I
2 felt at the time that should have been raised in the
3 appeal especially given the severity of my sentence. It's
4 a life-without-parole sentence and every issue that was
5 available that I thought that she should have raised at
6 the time.

7 And she said this was the only issue, the one issue
8 she placed in the brief was concerning the Judge's denial
9 of, admitting of the statement.

10 Q. Well, let's turn your attention to, again, the issues
11 that you've alleged against appellate counsel. With
12 regards to failing to include all properly preserved
13 issues, what other issue other than admitting the
14 statement, what other issues do you think she should have
15 brought before the Appellate court on your behalf?

16 A. The fact that she -- excuse me. The fact that the
17 Judge denied the motion to, to, for a direct verdict as to
18 the -- I mean, the armed robbery and also the murder.

19 Q. All right. And what else?

20 A. And also the issue of the indictment. By him
21 improperly amending the effective indictment that was
22 presented to the solicitor or to the grand jury.

23 Q. Is there anything else you feel that the appellate
24 attorney did not do?

25 A. Also that she did not file a petition for writ of cert

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1 concerning the issue of the statement that the Supreme
2 Court ultimately ruled on.

3 Q. So in other words, when your case was appealed it was
4 appealed to the South Carolina Court of Appeals?

5 A. Yes, sir.

6 Q. And they affirmed the decision in a non published
7 opinion; is that right?

8 A. Yes, sir.

9 Q. And, again, after that happened what is it that you
10 feel that your appellate attorney should have done and
11 that by not doing it you feel that she was ineffective?

12 A. That she should have filed a petition for writ of cert
13 concerning that opinion of the Court of Appeals, and maybe
14 because the fact that it was an unpublished unprecedented
15 opinion.

16 Q. And there are other issues that you allege regarding
17 the Trial Judge's errors, but do you feel that these
18 errors should also have been appealed on your behalf?

19 A. Yes, sir.

20 Q. All right, sir. Now, Your Honor, may I approach this
21 witness?

22 THE COURT: You may.

23 MR. GRANT: Thank you.

24 Q. Mr. Moses, I'm going to hand you a copy of your very
25 detailed post conviction relief application. I want you

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1 to take your time and review it to make sure that you and
2 I have covered all of the issues that you wanted to
3 address in your post conviction relief application. If we
4 have not, let me know so that we can address it before I
5 finish my direct examination with you.

6 A. (Reviewing document.) I think we covered everything
7 up until 11-C; yes, sir.

8 Q. All right. And what's in 11-C?

9 A. That there was testimony from the Defendant and
10 Dr. Ross wanting the Trial Judge to instruct the jury on
11 involuntary manslaughter and/or accident in the death of
12 the Defendant (sic).

13 Q. And your allegation on that is that -- how did that --
14 that is a part of ineffective assistance of counsel
15 claim. Explain that to the Court.

16 A. Well, because the lawyer -- I felt, again, my lawyers,
17 they should have requested those additional instructions
18 for the Judge to submit to the jury.

19 Q. Okay. And those were not requested?

20 A. No, sir.

21 Q. All right. Anything else, sir?

22 A. Again, the 11-D, that they failed to request
23 additional instruction of deadly force and self-defense.

24 Also to the jury, I felt they should have at least
25 requested that he charge, give a tailored instruction to

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1 the self-defense or use of deadly force in that situation
2 based on the evidence that were presented at trial.

3 Q. What else do you have?

4 A. Again the defective indictment of the grand jury.

5 Back to this indictment again. When the indictment was
6 submitted to the grand jury, it was submitted in a manner
7 that said or in essence said that I stabbed, or I admitted
8 I stabbed the victim to death. The autopsy report, the
9 same one I already showed you, clearly states that the
10 victim was never stabbed to death.

11 So in essence this was false information that the
12 solicitor's office presented to the grand jury; this man
13 was stabbed to death. And he wasn't. They knew it. It
14 was in the, clearly in the autopsy the man wasn't stabbed
15 to death.

16 But that's what they went to the grand jury and told
17 them, that this man was stabbed to death. At trial they
18 came back and they said again, they said, we know he
19 wasn't stabbed to death but he was, he died of another
20 means.

21 Q. Blunt trauma?

22 A. Blunt trauma. This information was never presented to
23 the grand jury.

24 So that's -- I don't feel I had due process of having
25 the grand jury indict me on proper information. They

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1 indicted me on false information.

2 Q. Now was that the main issue of the indictment? Is
3 that what Mr. Mellard was arguing before the Judge and
4 trying to get him to send it back to the grand jury?

5 A. I think so.

6 Q. Okay. All right. But the Judge ruled against you at
7 trial?

8 A. Right.

9 Q. Was that issue appealed on your behalf?

10 A. No, it wasn't.

11 Q. All right. What else do you have there in the
12 application that we have not discussed so far?

13 A. Okay. Was just -- nothing that we haven't discussed
14 so far.

15 Q. Okay. All right. You've had a chance now to review
16 your application and we've discussed the issues.

17 Are there any other matters because this is your one
18 shot at the apple. One bite, I should say, at the apple.
19 Are there any other matters that you need to bring to the
20 Court's attention where you are alleging ineffective
21 assistance of counsel against your trial attorney or your
22 appellate attorney? If so, now is the time to do it.

23 A. No, sir; not at this time.

24 MR. GRANT: Thank you, Your Honor. That's all the
25 questions I have of this witness.

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1 THE COURT: And we're going to take a comfort break of
2 10 minutes and then we'll have cross-examination. And
3 Mr. Moses, just, during our break don't talk about your
4 testimony with anybody. Okay?

5 THE APPLICANT: Okay.

6 THE COURT: But you feel free, you can leave your
7 stuff right there. You can feel free to take a break.
8 We'll take 10 minutes everybody.

9 (Thereupon a break was taken at 12:06 p.m., until
10 12:23 p.m., when the hearing resumed:)

11 THE COURT: Cross-examination.

12 MR. CORNEY: May it please the Court, Your Honor.

13 THE COURT: Yes.

14 CROSS-EXAMINATION

15 BY MR. CORNEY:

16 Q. Mr. Moses, you don't deny that you were at Mr. Harry
17 Livingston's house on the night in question when he was
18 killed; right?

19 A. No, sir.

20 Q. Okay. And you don't contest that you got into an
21 altercation with him that night over a drug transaction?

22 A. It was not over a drug transaction.

23 Q. Okay. Did you give a written statement to the police
24 somewhat to that effect, right, you had gotten into an
25 altercation with him that night?

GEORGE NAPOLEON MOSES - CROSS

1 A. Right.

2 Q. And you testified to the same in front of the jury;
3 right?

4 A. Yes.

5 Q. Now you remember there being an expert pathologist
6 that testified at trial, Dr. Janice Ross. Do you recall
7 that?

8 A. Yes.

9 Q. And she testified as to her autopsy of Mr. Livingston
10 and his cause of death; correct?

11 A. Correct.

12 Q. And ultimately she said it was not stabbing that
13 caused his death; correct?

14 A. Correct.

15 Q. All right. But she also said that there was no
16 evidence that the death, that his death resulted in any
17 way from a heart attack or cocaine use in her testimony as
18 well; right?

19 A. I'm not sure. She might have said that. I'm not --

20 Q. And I'll just direct the Court to page 269 on that
21 point.

22 THE COURT: Thanks.

23 MR. CORNEY: I believe 269 lines 16.

24 THE COURT: Do you want to get there too, Mr. Moses?

25 Do you need some help getting there to your transcript?

GEORGE NAPOLEON MOSES - CROSS

1 Page 269.

2 MR. CORNEY: And it's all part of the record, Your
3 Honor. I was just going to point it out to his attention
4 without having him read it.

5 THE COURT: Sure. If he needs some help getting
6 there, we'll let him have it. Okay. I'm there.

7 MR. CORNEY: And on line 16 through 21.

8 THE COURT: Got it.

9 BY MR. CORNEY:

10 Q. And then also on Page 278, lines 11 through 15 where
11 her testimony continues.

12 A. I think you said page 261?

13 Q. 269.

14 A. 269.

15 MR. CORNEY: And like I say, Your Honor, it's all part
16 of the record. So I'll give him a minute to look it over,
17 but it's all in front of the Court anyway. That's line 16
18 through 21.

19 THE COURT: Got it. Okay.

20 BY MR. CORNEY:

21 Q. All right. I just want to make sure you had enough
22 time to just review that. I'm not going to ask you
23 anything further about that, Mr. Moses.

24 And you did testify at trial on your own behalf;
25 right?

GEORGE NAPOLEON MOSES - CROSS

1 A. Yes, I did.

2 Q. Judge Williams went over your right to either testify
3 or not testify before you took the stand?

4 A. Yes, he did.

5 Q. He told you it was entirely your decision whether to
6 testify at that point in time; right?

7 A. Yes.

8 Q. And you told him you understood that?

9 A. Yes.

10 Q. Okay. And after being advised by Judge Williams of
11 all those rights you decided you did want to testify?

12 A. And also the advice of my attorney, yes.

13 Q. And I believe on direct you said that they had told
14 you that it was ultimately up to you but their advice was
15 they thought you should?

16 A. Yes.

17 Q. And was that because in order to establish a self-
18 defense strategy you probably needed to present your
19 testimony at trial?

20 A. I'm not sure what their strategy was. Just, just to
21 testify, I'm sure that that's possibly what it was, yes.

22 Q. Okay. As far as the indictment, had you seen a copy
23 of the autopsy report before you went to trial?

24 A. Yes, I did.

25 Q. Okay. So you knew the cause of death of the victim in

1 this case was not in fact because of stabbing or because
2 of a blunt force trauma, or because of suffocation or
3 anything; right?

4 A. Right.

5 Q. And you knew that going into trial; right?

6 A. Yes.

7 Q. I just want to just make sure I have this straight
8 that you wanted Mr. Mellard to object to a lesser included
9 jury charge on voluntary manslaughter but you wanted him
10 to request a lesser included charge on armed robbery?

11 A. Yes, sir.

12 Q. So you wanted him to object on one hand and then
13 request one on the other hand?

14 A. Yes, sir.

15 MR. CORNEY: I believe that's all the questions I
16 have, Your Honor.

17 THE COURT: All right. Redirect?

18 MR. GRANT: No redirect, Your Honor.

19 THE COURT: All right. Come on back down to your seat
20 and we'll assist you in bringing your documents if that's
21 okay, Mr. Moses.

22 THE APPLICANT: All right.

23 THE COURT: Your next witness, please, Mr. Grant.

24 MR. GRANT: Yes, Your Honor. We call Mr. Doug Mellard
25 to the stand.

ROBERT DOUGLAS MELLARD - DIRECT

1 ROBERT DOUGLAS MELLARD, having been duly sworn, was
2 examined and testified as follows:

3 THE COURT: Just pull the microphone in. You might
4 need to pull it down just a little bit. I can move a lot
5 here, but just for position it looks like you did a good
6 job.

7 State your full name for record and spell your last
8 name.

9 THE WITNESS: Robert Douglas Mellard, M-E-L-L-A-R-D.

10 THE COURT: Your witness.

11 MR. GRANT: Yes, ma'am.

12 DIRECT EXAMINATION

13 BY MR. GRANT:

14 Q. Mr. Mellard, you were the defense attorney along with
15 Ms. Hinds for Mr. Moses when he went to trial; is that
16 right, sir?

17 A. Correct; yes, sir.

18 Q. And an issue apparently arose in the preliminary
19 stages of the trial about the indictment?

20 A. Correct.

21 Q. As to whether or not the indictment was defective?

22 A. Correct.

23 Q. Can you explain to the Court what that issue was?

24 A. Off the top of my head, I believe the indictment, and
25 it's in the transcript. I really, you know, you tell me

ROBERT DOUGLAS MELLARD - DIRECT

1 if I'm wrong. But I believe it had to do with he was
2 stabbed to death, I believe is what the indictment said.
3 If you had a copy of it I could look at it, but I think
4 that's what it is.

5 Q. Does it seem to refresh your memory, with a little
6 leeway here from opposing counsel, that the indictment may
7 have said he was stabbed to death when in fact he died, by
8 way of autopsy, from blunt force trauma?

9 A. Correct.

10 Q. Okay. All right. Now I understand you made an issue
11 of that with the Judge because the solicitor wanted to
12 amend the indictment to reflect blunt force trauma instead
13 of stabbed to death?

14 A. Correct.

15 Q. Is that right?

16 A. Correct.

17 Q. Okay. And the Judge ruled against you?

18 A. Yes, he did.

19 Q. All right. Now, when the Judge ruled against you and
20 the trial actually began in the case in chief, what
21 efforts if any did you make to preserve that issue for
22 appeal?

23 A. I would say that you need to look at the transcript.
24 I can't tell you off the top of my head.

25 Q. I understand. I'm just asking you whether you can

ROBERT DOUGLAS MELLARD - DIRECT

1 remember.

2 A. I cannot.

3 Q. You cannot remember.

4 A. And I tell you, this is almost three years ago.

5 Q. I understand.

6 A. I can't tell.

7 Q. So you don't have any specific recollection of any
8 reference that you made during the trial to preserve the
9 issue for appeal?

10 A. It would be in the transcript.

11 Q. I understand. You don't remember making any
12 continuing objections or anything like that?

13 A. Again, it would be in the transcript.

14 Q. I understand. Okay. With regards to the statement
15 given by Mr. Moses to the police as to whether or not he
16 did indeed request an attorney and therefore they should
17 not have asked him any additional questions, did you do
18 anything or make any efforts during the trial that you can
19 remember now, sir, to preserve that issue for appeal?

20 A. I don't mean to be vague, but again, I don't really --
21 I'm not sure what statements you're talking about --

22 Q. I'm talk about --

23 A. -- but again it would be in the transcript.

24 Q. Yes, sir. Again, just trying to refresh your memory.

25 Procedurally he was called to the police station and he

ROBERT DOUGLAS MELLARD - DIRECT

1 gave an oral statement. Then he was brought -- or the
2 very next morning the police approached him and he gave a
3 written statements. Moses indicates that between the
4 first and second statement he told them that he wanted an
5 attorney.

6 Do you have any recollection of him having that
7 discussion with you?

8 A. Not off the top of my head. I know we probably had a
9 hearing during the, during the trial, or before the
10 trial. And anything that was said would be, again, in the
11 transcript.

12 Q. All right. Well, let me ask you about some things
13 that are not in the transcript. Did you or Mr. Moses talk
14 about any of the jury charges in this case, from what you
15 thought they may or may not need to be?

16 A. I know -- I'm not sure off the top of my head whether
17 we talked -- I know there was a discussion about whether
18 voluntary should be charged. It was our belief Mr. Moses
19 was looking at life. And he had two most-serious charges,
20 and we basically had to run the table on those charges.

21 So, if he got a lesser included of voluntary and he
22 was found guilty of that, that would be another
23 most-serious charge. So, I believe our discussion was
24 that we were going to go and oppose the voluntary, make
25 it -- in other words, not give the jury a third most

ROBERT DOUGLAS MELLARD - DIRECT

1 serious they could consider.

2 And so I believe that's, that's what we discussed.

3 And I believe that's what we ended up doing in the trial.

4 Q. What was your defense at trial?

5 A. Self-defense.

6 Q. Whose idea was it to testify at the trial? You heard
7 his testimony. He maintains of course that you all pretty
8 much told him he had to testify. How did that come about?

9 A. He wanted -- our defense was self-defense. In order
10 to have self-defense, you have to have some sort of
11 evidence of self-defense and you need some sort of
12 evidence of that.

13 And that evidence would come from witnesses that we'd
14 put up and we had one witness. That was Mr. Moses.

15 So to get a self-defense charge, which we ultimately
16 got, we needed to put some sort of evidence in. And I
17 think that was put in through Mr. Moses.

18 Q. Yes, sir. Speaking of the one-witness defense, what
19 about the Todd Williams' witness, the potential testimony
20 from Todd Williams? Mr. Moses maintains that that witness
21 could have helped and maybe even changed the outcome of
22 his case. What is your position on that?

23 A. What happened was that Judge Williams -- again, it's
24 in the transcript. At some point Judge Williams told me
25 if I wanted to get Judge Williams there I need to call him

ROBERT DOUGLAS MELLARD - DIRECT

1 up. Not Judge Williams but Todd Williams there, or Todd
2 there.

3 So I called him up. I think court broke and then I
4 called him up, spoke to him. He was not a very helpful
5 witness for Mr. Moses. And so that ended that issue.

6 Q. Did you explain that to Mr. Moses?

7 A. I believe I did. But, again, it's three years ago.

8 Q. All right, sir. One second, Your Honor.

9 THE COURT: Yes, sir.

10 MR. GRANT: (Conferring with Applicant.)

11 BY MR. GRANT:

12 Q. I agree with you that the transcript would probably
13 reflect what happened at the Jackson V Denno hearing. But
14 do you have any specific recollection as to whether you
15 asked the police officers whether or not Mr. Moses
16 requested an attorney at any time during the process
17 before he gave a statement?

18 A. I can't tell you one way or another.

19 Q. Do you know whether Mr. Moses -- do you remember
20 whether Mr. Moses had informed you that he had indeed
21 asked for an attorney?

22 A. Again, I can't remember.

23 MR. GRANT: Okay. Thank you, sir. No further
24 questions, Your Honor.

25 THE COURT: All right. Cross-examination?

ROBERT DOUGLAS MELLARD - CROSS

CROSS-EXAMINATION

BY MR. CORNEY:

Q. All right. Mr. Mellard, I apologize. I thought before you said Mallard.

A. I answer to pretty much anything.

Q. All right. Did you have the opportunity to review your file from this case before coming in to court today?

A. I've got the file right here.

Q. Okay. And you recall meeting with Mr. Moses to discuss the charges he was facing in this incident?

A. I did. His original attorney was Andrew Brown. So the first part of the file is notations from Mr. Brown. I think I started meeting with him in June of 2008.

Q. Okay. And during those meetings did you have the opportunity to review the indictments and the elements of the charges that he was facing?

A. We did. I sent him -- I usually send letters out to people setting out the charges that they face, the, what the State has to prove, and what it carries.

And I sent him that letter. I believe I sent him a letter on September 18th, 2008.

Q. Okay. At some point in time you and Mr. Moses were served with a notice of intent to seek life without parole?

A. Yes.

ROBERT DOUGLAS MELLARD - CROSS

1 Q. Okay. Do you have any recollection or anything to
2 point you to a date perhaps that that was served on him?

3 A. Let me look one second. (Reviewing records).

4 I believe my notes say on September 12th of 2008, we
5 met. We discussed this case, discussed that he may be
6 served with his LWOP notice and what that means. That was
7 on September 12th. And then September 15th of '08, he was
8 brought to court and he was actually served with the life-
9 without-parole notice.

10 Q. And that was done in court on record, you said?

11 A. Correct.

12 Q. Now during your meetings with him, were you able to
13 discuss his version of the facts --

14 A. Yes.

15 Q. -- leading to these charges? And based on those
16 discussions, what was your general understanding, not to
17 go into too many details, of how these charges arose?

18 A. It was a self-defense case. He had gone over there.
19 I believe he had gone over there to purchase, I want to
20 say he wanted to purchase powder cocaine so he could turn
21 it into crack cocaine. I believe that's what he said.

22 And then at some point there was a problem and that's
23 kind of how things arose.

24 Q. Okay. And do you recall receiving the State's -- the
25 discovery file from the State for Mr. Moses?

ROBERT DOUGLAS MELLARD - CROSS

1 A. I do. Well, Andrew Brown received it and then -- he
2 received the initial discovery packet. And then when I
3 got the case, other things tended to trickle in so I would
4 get those things.

5 Q. And did you have the opportunity to review those
6 materials with Mr. Moses during your meetings?

7 A. Yes, I did.

8 Q. Okay. And part of that discovery file included a
9 statement that Mr. Moses gave to law enforcement?

10 A. Correct.

11 Q. Okay. And that was a written statement?

12 A. I believe, I believe it was. Based on what Mr. Grant
13 says, there was a written statement. Like I said, again,
14 I don't remember a whole lot about, about what happened
15 three years ago.

16 Q. Okay. Do you recall if there was anything in file as
17 far as DNA evidence linking Mr. Moses to the scene?

18 A. There was DNA. What we did was we -- and again, let
19 me look at my notes.

20 We got hold of a DNA person. He was our expert. We
21 got some funding for him. It was a Dr. Owstrowski. He's
22 a person we use quite frequently and he reviewed the DNA
23 evidence that the State had.

24 Q. So you did have an independent DNA expert look into
25 the DNA results?

ROBERT DOUGLAS MELLARD - CROSS

1 A. Correct.

2 Q. Okay. And do you recall receiving a copy of the
3 autopsy report of the victim in this case?

4 A. Again, that was received by Andrew Brown originally.
5 What Andrew Brown did, he -- and let me make sure of the
6 dates. He spoke to a Dr. Conrady on November the 2nd,
7 2007, he sent Dr. Conrady the discovery to look at in the
8 case. And what she was going to do for Andrew was to make
9 sure that the autopsy was, the cause of death was
10 consistent and correct.

11 Q. Okay. And was that autopsy report something you had
12 the opportunity to review and review with Mr. Moses prior
13 to going to trial?

14 A. Correct.

15 Q. Okay. Is it fair to say that you were both aware of
16 the cause of death of Mr. Livingston?

17 A. Dr. Conrady and also the person that did the autopsy,
18 they arrived at the same conclusion. It wasn't based on
19 an overdose or anything like that. It was, the death was
20 caused by a beating or blunt force trauma, I guess is what
21 you'd say.

22 Q. Okay. And at the start of the trial the State moved
23 to amend the indictment to reflect that cause of death as
24 opposed to a stabbing; correct?

25 A. That's correct.

ROBERT DOUGLAS MELLARD - CROSS

1 Q. And that was something that you objected to at that
2 time?

3 A. Yes.

4 Q. Okay. And I think there was a question from Mr. Grant
5 early on about whether you had preserved that issue. And
6 I don't know if you have a copy of the transcript there
7 with you.

8 A. I don't.

9 Q. I might have an extra copy I can hand up to you.
10 (Pause.)

11 But if I could have you -- I'll flip to the -- page
12 478 is the page. If I may approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 BY MR. CORNEY:

16 Q. This is a little later on. Page 478 right there. I
17 believe it's lines seven through 18. If you could just
18 take a minute to review that.

19 A. (Complying.) Okay.

20 Q. And based on your review of that part of the
21 transcript, would it be your understanding that that was
22 an issue you preserved for appeal?

23 A. Yes. The Court says that we're fully protected on my
24 objection. Yes.

25 Q. And I'll just leave that transcript with you in case

ROBERT DOUGLAS MELLARD - CROSS

1 we refer back to it. And you had a Jackson V Denno
2 hearing at the start of the trial as well?

3 A. Yes.

4 Q. Okay. And in fact there were two statements that were
5 brought out during that. The first being an oral
6 statement where Mr. Moses said he didn't have any
7 knowledge of this, and the second one, a written statement
8 where he confessed somewhat?

9 A. Again, I don't really remember.

10 Q. Okay. And I think you referred to your discussions
11 with Mr. -- Officer Todd Williams and you say you did have
12 the opportunity to speak with Mr. Williams?

13 A. We did. I believe Judge Williams told us we needed to
14 call his brother, I think, Todd. And that's what I did.

15 Q. And in addition to your testimony that he wasn't going
16 to say anything helpful, the State also said that they
17 didn't feel he was a necessary witness at that time; is
18 that your recollection?

19 A. It is. If it's in the transcript that's what they
20 said; yes.

21 Q. Okay. Beg the Court's indulgence for one minute, Your
22 Honor.

23 THE COURT: Sure.

24 BY MR. CORNEY:

25 Q. Okay. Do you recall having discussions with Mr. Moses

ROBERT DOUGLAS MELLARD - CROSS

1 about his decision whether to testify or not at trial?

2 A. We did discuss it with him. Usually what happens is
3 our courtroom is set up where you have to go in, I guess,
4 a side door. It's where they keep the pretrial
5 detainees. So we went and we met in a little small room
6 that's usually the court reporter's room, a very small
7 room, and we discussed that.

8 Q. And do you recall whether the request to charge the
9 jury were done on the record or in chambers? And I'll
10 refer you to page --

11 A. No, sir, I don't.

12 Q. I'll refer you to page 470 of that transcript, just to
13 refresh your recollection on that.

14 A. 470. Okay. It looks like we went into chambers to
15 discuss what charges would be brought and what the jury
16 would be charged. And then I think we came out and the
17 State -- we talked about it on the record.

18 Q. And do you recall any of those discussions that you
19 had in chambers or any requests to charge that you may
20 have made or the State may have made at that point?

21 A. I believe the big issue was they wanted voluntary. We
22 didn't want voluntary.

23 Q. Okay. And that was something you objected to on the
24 record or opposed on the record, I should say, the request
25 to charge voluntary manslaughter?

ROBERT DOUGLAS MELLARD - CROSS

1 A. That's correct.

2 Q. Okay. And self-defense was charged; correct?

3 A. Yes, it was.

4 Q. And in addition to that, and I don't know if you
5 recall just specifically from, you know, from your memory,
6 but do you recall whether duty to retreat and degree of
7 force to be used were part of that jury charge?

8 A. I do not.

9 Q. Typically would you say that they are part of the jury
10 charge that are given in self-defense?

11 A. It depends on the particular charge, but I believe
12 Judge Williams usually charges it. I'm not 100 percent
13 sure unless I look at the transcript.

14 Q. Okay. Did you ever make a jury charge or look into
15 any kind of jury charge on a lesser included to the armed
16 robbery charge?

17 A. No.

18 Q. Any reason that that wasn't something you looked into?

19 A. Just based on the facts; yes.

20 Q. Okay. All things considered, do you feel you spent
21 sufficient time preparing this case and in your
22 investigations and your meetings with Mr. Moses?

23 A. Yes, I do.

24 Q. And, you filed a notice of appeal on his behalf after
25 sentencing, after this case was ended?

ROBERT DOUGLAS MELLARD - REDIRECT

1 A. Correct.

2 Q. Did you ever discuss any appeal-able issues with him
3 or anything that you thought should be raised on appeal?

4 A. Generally what we do is we file the appeal and we let
5 the Appellate Court handle those matters.

6 MR. CORNEY: Okay. I beg the Court's indulgence for
7 one moment.

8 THE COURT: Surely.

9 (Pause.)

10 By MR. CORNEY:

11 Q. Just one more question. Was involuntary manslaughter
12 or accident or any of those defenses that you looked into
13 in your preparation for this case?

14 A. We looked into it. It wasn't, in our opinion,
15 something that we could charge.

16 Q. Okay. I believe that's all the questions I have, Your
17 Honor.

18 THE COURT: Very well. Yes, sir; redirect?

19 REDIRECT EXAMINATION

20 BY MR. GRANT:

21 Q. Mr. Mellard, with regards to the issue of the
22 indictment being amended and the Judge telling you that
23 your issue in that regard is being preserved for appeal,
24 do you remember the Court telling you that?

25 A. I just read it. Yes, sir.

ROBERT DOUGLAS MELLARD - RECROSS

1 Q. All right, sir. With the Court telling you that, what
2 were you expecting to happen on appeal with regards to
3 that particular issue?

4 A. What I was expecting was that the appellate people
5 would look at it and see if they believed that was an
6 issue which should be brought up.

7 Q. And since you raised it, do you believe it should have
8 been brought up?

9 A. Honestly, I don't do appeals. If I raised it, I would
10 probably just shotgun everything into an appeal. But,
11 like I say, I don't handle those things.

12 So I don't -- I think they're a little bit more, I
13 don't want to say professional, but I think they're a
14 little bit more knowledgeable of what the Court will
15 entertain or what they will not entertain.

16 MR. GRANT: Thank you, sir. No further questions of
17 this witness, Your Honor.

18 THE COURT: All right. Any recross?

19 MR. CORNEY: Just one, Your Honor.

20 THE COURT: All right.

21 RECROSS-EXAMINATION.

22 BY MR. CORNEY:

23 Q. Do you recall any discussion about the prejudice that
24 would be resulted by Mr. Moses in amending this
25 indictment?

ELIZABETH ANN FRANKLIN-BEST - DIRECT

1 A. I believe something was said. And I -- again, I
2 believe it would be in the transcript because -- I believe
3 Judge Williams asked something about that to me. I'm not
4 sure though.

5 Q. Okay. Would it be fair to say that where you knew of
6 the cause of death beforehand that it would be hard to
7 prove prejudice in amending the indictment based on the
8 cause of death?

9 MR. GRANT: That's leading and I object.

10 MR. CORNEY: I'll withdraw that question, Your Honor.

11 THE COURT: All right.

12 MR. CORNEY: And no further questions.

13 THE COURT: Very well. You may come down. Is this
14 witness free to leave?

15 ~~MR. GRANT: Free from us, Your Honor.~~

16 THE COURT: All right. Very well. Thank you. All
17 right.

18 MR. GRANT: Finally, Your Honor.

19 THE COURT: Next witness.

20 MR. GRANT: Yes, ma'am. Ms. Elizabeth

21 A. Franklin-Best.

22 ELIZABETH ANN FRANKLIN-BEST, having been duly sworn,
23 was examined and testified as follows:

24 THE COURT: And when you are seated and situated
25 there's going to be some water coming at you, too.

ELIZABETH ANN FRANKLIN-BEST - DIRECT

1 THE WITNESS: Okay. Thank you.

2 THE COURT: State your full name for the record and
3 spell your last name.

4 THE WITNESS: Elizabeth Ann Franklin-Best. And
5 Franklin, F-R-A-N-K-L-I-N hyphen Best, B-E-S-T.

6 THE COURT: Thank you so much. Your witness.

7 MR. GRANT: Thank you, Your Honor.

8 THE COURT: Yes.

9 DIRECT EXAMINATION

10 BY MR. GRANT:

11 Q. Ms. Best, you've been an appellate defense attorney
12 for about 10 years now?

13 A. No, for about four, I believe.

14 Q. About four years?

15 A. Uh-huh.

16 Q. All right. When it comes to appellate law though,
17 there's a subject matter called a statement of issues on
18 appeal that's part of a brief; is that right?

19 A. Yes.

20 Q. How does one formulate -- how does the appellate
21 attorney formulate a statement of issues on appeal?

22 A. We sort of look at the issues that we are -- are you
23 talking about just how do we decide which --

24 Q. Yeah.

25 A. -- issues are raised?

ELIZABETH ANN FRANKLIN-BEST - DIRECT

1 Q. Sure. How do you decide what the issues on appeal are
2 going to be? That's the simple question.

3 A. Well, by reading the transcript and making certain
4 decisions about which ones are likely to be meritorious
5 and which ones are properly preserved, that sort of thing.

6 Q. And let's turn our focus now to the properly-preserved
7 part.

8 A. Uh-huh.

9 Q. How does the trial lawyer properly preserve the issue
10 for you to address on appeal?

11 A. If it is objected to, a ruling secured by counsel from
12 the Trial Court Judge, you know, so -- contemporaneous
13 objections, a ruling by the Trial Court Judge and then if
14 some additional objection needs to be made, that it would
15 be made at that time. Like, for example, if you're
16 introducing drugs during trial.

17 Q. All right. Now, and having this appeal obviously you
18 read the transcript?

19 A. Yes.

20 Q. You probably had a chance to refresh your memory of
21 the transcript?

22 A. Just looking at it since I've been here, yes.

23 Q. All right. And you noticed one of the issues that was
24 dealt with at trial was the amendment of the indictment?

25 A. Yes.

ELIZABETH ANN FRANKLIN-BEST - DIRECT

1 Q. And the indictment was amended from saying that the
2 decedent had been stabbed to the decedent actually --

3 A. Yes.

4 Q. -- having died as a result of blunt trauma?

5 A. Yes.

6 Q. Would you consider that a material change in the
7 indictment?

8 A. Looking back on it now, I think that may very well be
9 a material variance.

10 Q. Okay.

11 A. That would be a legal question.

12 Q. And if it is a material variance, what impact does
13 that have upon the ability of the defense to really go to
14 trial? I mean, how do you preserve that for appeal?

15 A. Well, it seems to me that there's a recent case that
16 has come out dealing with material variance. I mean, I
17 would have to go back and do legal research on this
18 issue. I mean, reading it, is it properly preserved? I
19 mean, it may be. It may be. I'm not sure.

20 And that's just sort of reading it now that I'm not
21 positive. But if it is preserved, if the Court would find
22 that preserved and if the Court would further find that
23 that is a material variance, then that would be an issue
24 of merit.

25 Q. Give me your professional opinion in the facts as

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1 you've outlined, and your four years of experience,
2 changing that indictment in the way that we've indicated
3 would that appear to you to be a material variance?

4 A. Well, I would have to -- I mean, I can't just sort of
5 offer an opinion without doing the legal research. I
6 mean, it is something that I would look at.

7 Q. Uh-huh.

8 A. But, I mean, in order to prove ineffective assistance
9 of appellate counsel there would have to be a meritorious
10 issue that's overlooked and without sitting down and doing
11 the legal research I cannot tell you whether that is a
12 meritorious issue.

13 Q. We've established that the Trial Judge said to the
14 trial counsel that this issue will be appealed. You are
15 protected on appeal.

16 A. Uh-huh.

17 Q. Now the question obviously becomes: Considering that
18 you only appealed the one issue dealing with whether or
19 not the statement was voluntarily admitted or given, any
20 reason why you did not pursue the issue of the amendment
21 of the indictment as something to brief and address at the
22 Appellate Court?

23 A. I can't tell you at this point. For whatever reason,
24 I did not believe at the time that it was meritorious.

25 Q. But you don't know why?

ELIZABETH ANN FRANKLIN-BEST - DIRECT

1 A. No, I can't tell you why now.

2 Q. Okay. Now the Court of Appeals affirmed the
3 conviction and the Court of Appeals issued a non-published
4 opinion; is that correct?

5 A. True.

6 Q. The next step up would be the Supreme Court; is that
7 correct?

8 A. I mean, possibly.

9 Q. Possibly. And the way you get to the Supreme Court is
10 by filing what is called a writ of certiori; is that
11 right?

12 A. Correct. Petition for writ of certiori; yes.

13 Q. That's right. And did you petition the Supreme Court
14 considering your client was given life in prison and no
15 possibility of parole?

16 A. No, I did not.

17 Q. Is there any reason why you did not?

18 A. Yes, because I read the opinion and looked at it and
19 it is accurate. There is not an error of law in that
20 opinion.

21 Q. Next question: Did you have an opportunity to discuss
22 the decision to not appeal the appellate court's decision
23 with your then-client, Mr. Moses?

24 A. No, I did not.

25 Q. Is there any reason why you didn't talk to him about

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1 that very, very serious decision?

2 A. Well, because we're not required to. I mean, it's one
3 difference between trial court practice and appellate
4 practice. We are charged with making the decisions
5 regarding what issues are potentially meritorious and
6 which are not. That's just how -- I mean, that's just the
7 law.

8 Q. Okay.

9 A. So, so, I did not.

10 Q. Okay. Did you ever have an opportunity before today
11 to see George Moses in person?

12 A. No. Although I would like to -- I mean, you know, I
13 will say that it is the policy of our office that we, you
14 know, the last time I looked I had about 207 open files.
15 It is not possible for me to visit my clients in prison.

16 I mean, I had practiced appellate law in Miami and New
17 York, and I always met with my clients but under the
18 circumstances here I'm unable to do so.

19 Q. But the decision as to whether to file an appeal and a
20 decision to what issues to appeal yourself were made by
21 you and you alone without any consultation with Mr. Moses;
22 is that right?

23 A. I did speak with Mr. Moses on some occasions. I
24 cannot recall off the top of my head how many at this
25 point, but in determining which is used to go forward on,

ELIZABETH ANN FRANKLIN-BEST - DIRECT

1 I mean, that is, that is my decision.

2 Q. Now your issue on appeal dealt with the Sixth
3 Amendment guarantee to the effective assistance of counsel
4 with regards to the statement; is that right?

5 A. Well, the Fifth, Sixth and 14th. The Miranda issue,
6 balance and excess.

7 MR. GRANT: Your Honor, may I approach the witness?

8 THE COURT: You may.

9 BY MR. GRANT:

10 Q. Let me show you what is listed as statement of issues
11 on appeal.

12 A. Sure. The Sixth Amendment is here. The issue of the
13 interrogation would be a Fifth Amendment, 14th, and if you
14 look at the inclusion, law enforcement's actions denied
15 the right to counsel which is Sixth Amendment, the use of
16 the second statement at trial denied him the rights under
17 the Fifth and 14th.

18 Q. That's in the narrative, but it's not itemized in your
19 statement of issues on appeal as far as your this; is that
20 correct?

21 A. That's true, but I'll also note that the Court did not
22 find a procedural bar.

23 Q. But they did say they couldn't consider the Fifth
24 Amendment matter because you only addressed the Sixth
25 Amendment matter; is that right?

ELIZABETH ANN FRANKLIN-BEST - CROSS

1 A. Where is that?

2 Q. I'm just asking whether or not --

3 A. No.

4 Q. -- they did even address the issue of the Fifth
5 Amendment matter, whether or not his statement was given
6 in violation of his Fifth Amendment right to remain silent
7 as opposed to in violation of his Sixth Amendment right to
8 the assistance of counsel?

9 A. No. I mean, the conclusion of the Court was that it
10 was not a violation because it was cumulative to his
11 testimony at trial.

12 MR. GRANT: Thank you, Your Honor. That's all the
13 questions I have of the witness.

14 THE COURT: All right. Cross-examination?

15 MR. CORNEY: If I could just have one minute, Your
16 Honor.

17 THE COURT: Sure.

18 (Pause.)

19 CROSS-EXAMINATION

20 BY MR. CORNEY:

21 Q. Just very briefly. As your general practice as
22 appellate counsel, would you say that generally you raise
23 all the appealable issues or a fewer number of stronger
24 appealable issues?

25 A. As many issues as I think I can win on I will raise.

ELIZABETH ANN FRANKLIN-BEST - CROSS

1 That tends, you know, not to be a large number. You know,
2 some issues will result in automatic reversals, like jury
3 instruction issues, for example, but then some are, you
4 know, a hearsay issue just may not really have an effect
5 on the outcome of the case.

6 And so, you know, prioritize the cases. You know, I
7 would go forward with one that would, you know, result in
8 a reversible error than one that would just, you know,
9 not.

10 Q. Okay. And you said that you've been with the Office
11 of Appellate Defense doing criminal appeals for four
12 years?

13 A. I think that's about right.

14 Q. Any way for you to estimate maybe how many criminal
15 appeals you've done in your time there?

16 A. Sure. My first year -- I think I testified to this
17 the last time I had one of these. I believe my first year
18 I filed about 137. I'd say my second year maybe about
19 97. Probably about a hundred to 115 appeals a year.

20 Q. Okay. And in this particular appeal you didn't raise
21 the issue of the denial of the directed verdict?

22 A. I did not.

23 Q. And generally that is a pretty strong or pretty weak
24 issue to be raised?

25 A. I mean, it sort of depends. Bostick just came down

1 which was a reversal on the directed verdict issue.

2 Q. Is that an issue that you raise very often in your
3 appeals?

4 A. When I have nothing else, yes.

5 MR. CORNEY: I believe that's all the questions I
6 have, Your Honor.

7 I would just, to kind of point the Court to page
8 references; page 68 lines 10 through 11 and page 107 lines
9 three through four where the objections to the amendment
10 of the indictment are noted and preserved for appeal.

11 THE COURT: Got it. I read those earlier. Any
12 redirect?

13 MR. GRANT: No, Your Honor. That's our case.

14 THE COURT: Very well. Is this witness free to
15 leave?

16 THE WITNESS: Thank you.

17 THE COURT: Yes, yes.

18 MR. CORNEY: She is. I believe she might have
19 car-pooled but she is free to leave.

20 THE COURT: Oh gosh, gee whiz. Well at least you can
21 go to lunch. Thank you very much. You may come down.
22 And is that your case?

23 MR. GRANT: Yes, ma'am.

24 THE COURT: And will you be calling witnesses?

25 MR. CORNEY: No witnesses from the State, Your Honor.

1 THE COURT: There will be no witnesses from the
2 State. Very well. All right.

3 I'm going to ask for proposed orders from you,
4 please. I will take the matter under advisement.

5 And what I'm going to say to the two of you is that
6 I'm going to ask for proposed orders within 60 days
7 because just of the numbers that I know the Attorney
8 General's going to be working on, and quite frankly,
9 Mr. Grant, I know what your schedule is and it's -- I know
10 you're going to need that amount of time. If you guys
11 need longer, just talk to one another and just let Anna
12 know.

13 Let me share with you, though, that of interest would
14 be, just as counsel has just testified, that the issue
15 that you addressed with regards to the indictment may or
16 may not be an issue. And just as she said, depending on
17 what my research would indicate it may or may not be a
18 viable issue.

19 Obviously she's not had an opportunity to do that work
20 so I'm interested in y'all just addressing that in your
21 proposed orders.

22 MR. GRANT: Yes, ma'am.

23 MR. CORNEY: Yes, ma'am.

24 THE COURT: If you would be so kind.

25 MR. GRANT: Okay.

1 THE COURT: Now, and I just, I want to ask this
2 question because I know that Mr. Corney talked about the
3 information, the consultation if you will, with
4 Dr. Conrady. And of course I don't have any documentation
5 other than the testimony of Mr. Mellard that Dr. Conrady
6 of course was consulted and the opinion was pretty much
7 the same as the opinion that was elicited by the State.

8 I just want to be sure that that was not information
9 which was of a surprise to you, Mr. Grant.

10 MR. GRANT: No, ma'am.

11 THE COURT: Okay. Very well. Very well. All right.

12 Those are the only two issues really that come to my
13 mind in particular. I know that you all will address the
14 other ones in your proposed orders. All right.

15 Thank you so much.

16 MR. GRANT: Yes, ma'am.

17 THE COURT: Mr. Moses, here's what's going to happen.
18 I have all the documentation. I have the record.

19 And when I receive the proposed orders from these
20 folks, I will continue my study and then you will receive
21 information. My order of course will come first to
22 Mr. Grant who will pass that onto you. Okay?

23 THE APPLICANT: (Nods head.)

24 THE COURT: Very well. So we're probably looking,
25 you're probably looking at between 90 to 120 days, just

1 for your scheduling purposes. Okay?

2 THE APPLICANT: Okay.

3 THE COURT: They're going to need 60 days to send me
4 the order and then it takes me a little bit of time to get
5 that time to do my study. Okay.

6 THE APPLICANT: All right.

7 THE COURT: Thank you all so very much.

8 MR. CORNEY: Thank you, Your Honor.

9 END OF PROCEEDINGS: 2:04 P.M.

10 CERTIFICATE OF REPORTER

11

12 STATE OF SOUTH CAROLINA)

13

14 COUNTY OF AIKEN)

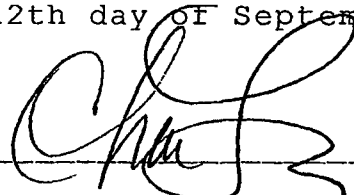
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17 I, Cheri L. Young, Registered Professional Reporter
18 and Official Court Reporter for the State of South
19 Carolina, Second Circuit-At Large, do hereby certify that
20 the foregoing is a true, accurate and complete transcript
21 of record of the proceedings had and evidence introduced
22 in the hearing of the captioned case, relative to appeal,
23 in the Court of Common Pleas for Orangeburg County, on the
24 30th day of November, 2011.

25 I do further certify that I am neither of kin,

1 counsel, nor interest to any party hereto. I have
2 hereunder set my hand this 12th day of September, 2012.



Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF

Orangeburg
EXHIBITSCase # 10-CP-38-1601Plaintiff(s) Moses, Geo

vs.

Defendant(s) SC

PLAINTIFF'S EXHIBITS

DEFENDANT'S EXHIBITS

COURT'S EXHIBITS

1	<u>Interview mt</u> ^{10/11/10}	1
2	<u>ID Autopsy report</u>	2
3		3
4		4
5		5
6		6
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CLERK OF COURT
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CP#2

Court Reporter

Clerk of Court

Date

Cheryl Yancy
Carolyn Ayer Reporter

11/30/11

10/11/06
 ne: 15:52:14

PLAINTIFF'S
 EXHIBIT

ORANGEBURG CO SO
 Offense Report

Page:

Program: CMS

1-06-002088

(Continued)

***** N A R R A T I V E # 4 *****
 INTERVIEW OF LLOYD BOWMAN Reported By: SHUMPERT, JAMES 9/

I INVESTIGATOR SHUMPERT INTERVIEWED LLOYD BOWMAN IN REFERENCE TO THE DECEASED PERSON. MR. BOWMAN EXPLAINED THAT HE WAS GIVING MAGGIE BAKER A RIDE TO THE BUS STATION WHEN SHE ASKED HIM TO TAKE HER TO THE VICTIM'S RESIDENCE. HE STATES AFTER ARRIVING AT THE HOME HE WENT TO THE DOOR AND KNOCKED SEVERAL TIMES. HE STATES HE THEN LOOKED THROUGH THE FRONT DOOR'S WINDOW AND THAT IS WHEN HE SAW THE VICTIM LYING ON HIS BACK. HE SAID HE TOLD MS. BAKER AND THEY AGREED TO GO AND TELL THE VICTM'S BROTHER (GEORGE LIVINGSTON). THAT WAS THE END OF HIS STATEMENT.

***** N A R R A T I V E # 5 *****
 INTERVIEW OF GEORGE MOSES Reported By: SHUMPERT, JAMES 9/3

I INVESTIGATOR SHUMPERT AND LT. WILLIAMS INTERVIEWED THE MR. MOSES IN REFERENCE TO THE DEATH OF THE VICTIM. HE WAS MIRANDIZED BY MYSELF, WHICH HE SIGNED. HE STATED THAT HE DID NOT KNOW ANYTHING INITIALLY, AND THEN RESCENDED THAT STATEMENT. HE STATED THAT HE WAS AT THE HOME, BUT HE WAS LOOKING FOR GEORGE ROBINSON (VICTIM'S ROOMMATE), HE WENT ONTO TO SAY THAT THE EVETTE LINGAUD AND THE VICTIM STATED THAT GEORGE WOULD BE BACK IN A LITTLE WHILE. I THEN ASKED HIM WHO TOOK HIM TO THE RESIDENCE HE STATED THAT SOME IMPORTANT PEOPLE IN THE COMMUNITY TOOK HIM TO THE HOUSE AND HE DID NOT WANTED TO GET THEM IN TROUBLE. HE THEN CHANGED RECANTED THAT STATEMENT AND THEN SAID HE WENT TO THE RESIDENCE TO BUY SOME NARCOTICS. HE STATED THAT EVETTE LEFT, HE SAID THAT HE AND VICTIM STAYED BEHIND AND TALKED. HE WENT ON TO SAY THAT HE BOUGHT SOME DRUGS AND LEFT THE VICTIM A LIVE AND WELL. HE STATED AFTER THAT HE WENT HOME, AFTER GETTING HOME HIS GIRLFRIEND WAS MAD BECAUSE HE STAYED OUT SO LATE. IN THAT SHE TOOK THE CAR A LEFT THE RESIDENCE AND CAME BACK LATER AND HE DROPPED HE OFF TO WORK AND HE WENT TO WORK HIMSELF. I ASKED MR. MOSES WHAT CLOTHES DID HE HAVE ON THE FOLLOWING NIGHT, HE STATED HE WAS WEARING SHORTS AND A T-SHIRT. I ASKED HIM COULD HE SHOW THE CLOTHES TO ME AND IF HE WOULD SIGN A CONSTENT TO SEARCH FORM ON HIS RESIDENCE, HE DID. LT. WILLIAMS AND I WENT TO THE SUBJECT'S RESIDENCE AT . WE LOOKED FOR THE SUBJECT'S CLOTHES BUT WERE UNABLE TO LOCATE THEM. AFTER AWHILE THE SUBJECT GAVE ME A PAIR OF FOLDED BLUE IN-COLOR-SHORTS-PANTS. THE SUBJECT ALSO HANDED ME A PAIR OF WHITE NIKE SHOES WITH ORANGE LINE STRIPES. THESE ITEMS WHERE BAGGED AND TURNED IN FOR EVIDENCE. WE LEFT THE RESIDENCE AND RETURNED BACK TO THE COMPLEX. WHILE BACK IN ROUTE TO THE OFFICE I ASKED MR. MOSES DID HE WANT TO TAKE A LIE DETECTOR TEST, HE REPLIED THAT IF I HAVE TO TAKE THE LIE DETECTOR TEST "I MAY NEED TO TALK TO A LAWYER." WE BROUGHT MR. MOSES BACK TO THE COMPLEX.

***** N A R R A T I V E # 6 *****
 LEAD TO JEFFERY CONNER Reported By: SHUMPERT, JAMES 9/3

I INVESTIGATOR SHUMPERT WAS SITTING IN ON THE INTERVIEW OF PATRICIA OWENS BY LT. BAMBERG. MRS. OWENS HAD HER SISTER WITH HER (LINDA

NEWBERRY PATHOLOGY ASSOCIATES, P.A.
P. O. Box 839
Newberry, S. C. 29108
Phone: (803) 276-0201
1-888-446-9898
Fax: (803) 276-0208

NECROPSY REPORT: FA06-617
NAME: HARRY LIVINGSTON
TYPE OF AUTOPSY: Complete

AGE: [REDACTED] RACE: BLACK SEX: MALE SSN: [REDACTED]

PROSECTOR(S): JOEL S. SEXTON, M.D. ^{OF} AND JANICE E. ROSS, M.D.

COUNTY: ORANGEBURG

INJURED on 09/29/06 at EARLY AM DIED on 09/29/06 at EARLY AM

AUTOPSIED on 09/29/06 at 1:00 PM

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WINFAB CLARK
CLERK OF COURT

2011 DEC -5 PM 4:39

FINAL NECROPSY DIAGNOSIS:

1. CLOSED HEAD INJURY WITH SCALP CONTUSIONS AND SUBARACHNOID HEMORRHAGE: MULTIPLE ABRASIONS/LACERATIONS OF THE FACE WITH CONTUSION OF THE LEFT EYE
2. NONFATAL STAB WOUND OF THE ABDOMEN
3. THREE NONFATAL STAB WOUNDS OF THE LEFT SIDE OF THE BACK
4. MULTIPLE SUPERFICIAL ABRASIONS OF HANDS AND ARMS; CONTUSIONS OF THE LEFT ARM
5. CARDIOMEGALY
6. CORONARY ARTERY ATHEROSCLEROSIS
7. PULMONARY CONGESTION AND EDEMA

MANNER OF DEATH: HOMICIDE

PLAINTIFF'S
EXHIBIT
2

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CR88 CO CORONER

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Harry Livingston

Report by: J.S. Sexton, M.D.
J.E. Ross, M.D.

PROBABLE CAUSE AND MECHANISM OF DEATH INTERVAL

ACUTE RESPIRATORY INSUFFICIENCY MINUTESDUE TO: BLUNT HEAD TRAUMA MINUTESDUE TO: BEATING MINUTES**CASE HISTORY**

This 57-year old black male was found apparently beaten and stabbed in his trailer.

The body was brought to these prosecutors for autopsy.

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CLERK OF COURT
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EXTERNAL EXAMINATION: The body is that of a 5' 6", approximately 160 pound, black male who arrives wearing a short-sleeve white undershirt and a pair of blue pants that are zipped and buttoned. He is wearing a black belt that is buckled and a pair of white jockey type undershorts. On his left wrist is a gray metal watch. In his pocket is a gray metal box cutter and a small folding pocket knife that has four blades. The pocket knife has red handles. There is also a yellow lighter and three napkins. He has eighty-one cents in his pocket.

Examination of the head reveals black curly hair that measures less than 1 inch in length. The eyes are brown and free of petechiae. He has natural lower teeth one of which is protruding through his lip on the left. He has no upper teeth. There are also other injuries that will be described on the face and neck.

Examination of the chest and abdomen reveals four stab wounds that will be described later and a small fresh abrasion on the left upper abdomen. The decedent is uncircumcised.

Examination of the legs reveals a well healed, curvilinear scar on the medial aspect of the right knee. There are two fresh abrasions on the anterior aspect of the right ankle.

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DRBG CO CORNER

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Harry Livingston

Report by: J.S. Sexton, M.D.
J.E. Ross, M.D.**EXTERNAL EXAMINATION continued:**

Examination of the arms reveals contusions on the inner aspect of the left upper arm and a linear abrasion on the medial aspect of the right forearm. The tip of the middle finger of the left hand has been previously amputated and is well healed. There are small abrasions on the base of the middle and ring finger of the left hand posteriorly and near the mid portion of the little finger and index finger of the right hand posteriorly. On the posterior aspect of the left forearm is a curvilinear abrasion and on the ulnar aspect of the left wrist is a linear abrasion.

Examination of the back reveals no acute injuries or scars.

EVIDENCE OF INJURY / BLUNT TRAUMA TO THE HEAD: There is a rectangular abrasion with a central laceration in the middle of the forehead. There is a linear laceration with tissue bridging above the right eye that is horizontal and there are two in the left eyebrow. The left upper and lower eyelids are contused and there is an abrasion on the lateral aspect of the left eye. There is a laceration medially. There is also a laceration at the top of the nose and across the bridge of the nose. The nose is fractured. There is a laceration at the right corner of the mouth. A tooth has protruded through the left side of the lower lip. There is abrasion around the edge of this puncture wound.

STAB WOUNDS: There are four stab wounds present. One is in the right lower abdomen with a blunt edge laterally. The wound is oblique and has a blunt edge that measures 0.07 inches. It has a hilt mark present. There is no blood in the abdomen. No viscous is punctured therefore the depth of the wound cannot be ascertained. The length of the wound is 0.9 inches. It is a nonfatal wound.

Just behind the left axillary line are three stab wounds that start near the axilla with two of them on the back of the chest and one on the left side of the back in the region of the abdomen. These are also superficial with only one entering the chest and causing 150 cc of blood loss; this is the middle of the three wounds. All three wounds are oblique, only the lowest one has a clear cut blunt edge which is medial and measures 0.10 inches. The upper most one does not enter the chest cavity. It stays in the subcutaneous tissue. It measures 1.3 inches in length and does not appear to have a blunt edge. The wound looks a little more blunted posteriorly. The second one from the top of the head (stab wound #3) is the one that does enter the left chest cavity but does not penetrate the lung. It does cause bleeding from the intercostal vessels with a total of 150 cc in the left chest cavity. It is also oblique and measures 1.3 inches in length and also does not have a clear cut blunt edge.

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Harry Livingston

Report by: J.S. Sexton, M.D. *JS*
J.E. Ross, M.D. *JR*

STAB WOUNDS continued: The posterior margin does seem a little thicker but not squared off. The lowest of the three stab wounds on the left side of the back is also oblique and measures 1.2 inches in length and has a very clear cut blunt edge that measures 0.10 inches in length. It almost enters the abdominal cavity however, it stops just outside of the peritoneal lining. All the stab wounds are nonfatal.

There are a number of defensive type injuries on the back of each hand (four small abrasions on the fingers described above) and on the back of the left forearm (two abrasions described above) and on the medial aspect of the right forearm (linear abrasion).

There are also bruises on the medial aspect of the left upper arm. There is a pattern abrasion on the upper chest that looks like it could have come from something impacting a medallion on a necklace but may represent the leading edge of some object that struck the decedent in this location.

DISSECTION: The body is opened with a Y-shaped incision to reveal organs in their normal anatomical position with no excess accumulation of fluid in either of the pleural, pericardial or peritoneal cavities. There is 150 cc of blood and blood clot in the left chest.

Dissection of the neck reveals there to be no hemorrhage within the strap muscles of the neck or surrounding the hyoid bone which is intact.

DESCRIPTION OF INTERNAL ORGANS

THYROID: The thyroid weighs 14 grams and has a reddish-brown cut surface.

HEART: The heart weighs 502 grams and has a thickened left ventricular wall that measures 1.8 cm at the anterior papillary muscle. Multiple sections through the myocardium reveal no areas of discoloration, hemorrhage or fibrosis. The coronary vessels exhibit atherosclerosis with 95% occlusion of the left anterior descending coronary artery. The right coronary artery exhibited 40% occlusion.

LUNGS: The right lung weighs 630 grams. The left lung weighs 595 grams. Both lungs are congested and show pulmonary edema. There is 150 cc of blood in the left chest cavity.

SPLEEN: The spleen weighs 50 grams and has a maroon colored cut surface.

PANCREAS: The pancreas weighs 198 grams and has a tan lobular cut surface with no areas of discoloration, hemorrhage or fibrosis.

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Page 4 of 6

Harry Livingston

Report by: J.S. Sexton, M.D. 
J.E. Ross, M.D. 

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Harry Livingston

Report by: J.S. Sexton, M.D. *JS*
J.E. Ross, M.D. *JR***DESCRIPTION OF INTERNAL ORGANS, Continued:**

LIVER: The liver weighs 1350 grams and has a brown cut surface without nodularity. The gallbladder contains thick yellowish-brown bile without stones.

ADRENALS: The adrenals are normal appearing.

KIDNEYS: The right kidney weighs 115 grams. The left kidney weighs 122 grams. Sectioning the kidneys reveals congested cut surfaces with normal cortices, calyces, ureters, medullae and vessels. The bladder contains 130 cc of clear yellow urine. The bladder, prostate, penis and testes are unremarkable.

GI TRACT: Unremarkable. The stomach contains 380 cc of brown liquid with orange fruit and red grape skin.

LYMPHATICS: Not remarkable.

CENTRAL NERVOUS SYSTEM: The scalp is reflected and the calvarium is removed revealing contusions but no fracture. The brain weighs 1445 grams and has subarachnoid hemorrhage superiorly and inferiorly. Multiple sections through the cerebral hemispheres, brainstem and cerebellum reveal no other lesions.

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CLERK OF COURT

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FA06-617

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Harry Livingston

Report by: J.S. Sexton, M.D.
J.E. Ross, M.D.**CASE SUMMARY**

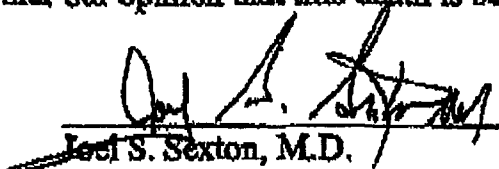
An autopsy was done on the request of and after due authorization from the Orangeburg County Coroner in the Newberry County Memorial Hospital Morgue on 09/29/06 at approximately 1:00 PM.

Postmortem examination and autopsy of the body of Harry Livingston, 57-year old black male revealed that he had a closed injury with scalp contusions and subarachnoid hemorrhage, multiple abrasions/contusions of the face with contusion of the left eye, a nonfatal stab wound of the abdomen, three nonfatal stab wounds of the left side of the back, multiple superficial abrasions of the hands and arms, contusion of the left upper arm, cardiomegaly, coronary artery atherosclerosis and pulmonary congestion and edema.

Multiple sections of the heart, liver, lungs, kidneys, brain and other tissues confirmed the above mentioned diagnoses and failed to reveal any other illness or disease.

This report is rendered in the absence of a toxicological analysis. If a positive analysis is submitted to these prosecutors, an amended opinion may be issued.

It is therefore the opinion of these prosecutors, in light of the history in the original protocol and the autopsy findings, that the cause of death is acute respiratory insufficiency, due to blunt head trauma, due to beating. It is further our opinion that this death is best classified as homicide.


J. S. Sexton, M.D.
Forensic Pathologist
Janice E. Ross, M.D.
Forensic PathologistJSS/JER:ajg
10/02/03

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

2010-CP-38-1601

George N. Moses, #103370,)

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 29, 2010. An evidentiary hearing into the matter was convened on November 30, 2011, at the Dorchester County Courthouse. The Applicant was present at the hearing and was represented by Carl Grant, Esquire. The Respondent was represented by Robert Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying were Doug Mellard, Esquire, and Elizabeth Franklin-Best, Esquire. This Court had before it the records of the Orangeburg County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Orangeburg County Clerk of Court. The Applicant was indicted at the December 2006 term of the Orangeburg County Grand Jury for Armed Robbery (2006-GS-38-2067) and Murder (2006-GS-38-2068). Doug Mellard and Margaret

ATTEST: TRUE COPY

Wynne B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Hinds, Esquires, represented him. Applicant proceeded to a jury trial before the Honorable James C. Williams, Jr. On February 12, 2009, the Applicant was found guilty of Armed Robbery and Voluntary Manslaughter. Applicant was sentenced to life without the possibility of parole pursuant to S.C. Code Ann. §17-25-45.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the appeal. State v. Moses, Op. No. 2010-UP-394 (S.C. Ct. App. filed August 30, 2010). The Remittitur was sent September 15, 2010.

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

1. Ineffective Assistance of Counsel.

- a. "...failed to provide expert witness to testify against State's theory of facts in defendant case, as to victims cause of death, and alledged (sic) intent by the defendant."
- b. "...failed to obtain victims medical records, which would have shown pre-existing heart condition and jury abuse as possible causes of death to victim."
- c. "...failed to object to jury charge of voluntary manslaughter, thereby shifting the burden of proof of intent to the defendant."
- d. "...failed to request additional jury instruction that State must disprove self defense by a reasonable doubt."
- e. "...failed to request additional instructions to the jury on the use of deadly force and retreat in self defense."
- f. "...failed to call witness (sic) with testimony helpful to defendants defense of self defense. Officer Todd Williams of the Orangeburg Sheriff's Office gave a statement as to the injur[ies] and condition of defendant which would have aided the jury in determining defendant plan of self defense."
- g. "...advising defendant to waive his fifth Amendment right not to testify at trial."
- h. "...failing to request a jury instruction to the lesser included offenses of Armed Robbery."
- i. "...failing to motion the court for a dismissal of the defective indictment before trial."
- j. "...failing to investigate DNA evidence which was recovered from crime

- scene, which showed multiple person(s) at scene of the crime.”
- k. “...failing to file for interlocutory appeal after Denno hearing.”
- l. “...failing to introduce the autopsy report into evidence.”
- m. “...failing to object to the introduction of statements and testimony pursuant to 19-1-90 and 19-1-80 and 8-15-50 of South Carolina Code of Laws 1976.”
- 2. Ineffective Assistance of Appellate Counsel.
 - a. Failed to include all properly preserved issues for Appellate review by the S.C. Court of Appeals.
 - i. Failed to include issue of defective indictment that was amended by trial judge.
 - ii. Failed to include the issue of trial judges denial of defendants motion for a direct verdict as to the offenses of Murder and Armed Robbery.
 - iii. Failed to petition the S.C. Supreme Court for a petition for certiorari after Court of Appeal decision.
- 3. “Trial judge erred in not instructing involuntary manslaughter or accident.”
 - a. “There was testimony from the defendant and Dr. Ross to warrant the trial judge to instruct the jury to involuntary manslaughter and/or accident in the death of the victim.”
- 4. “Trial judge erred in only giving Davis charge, when instructing the jury on self-defense.”
 - a. “Trial judge should have give addition jury instruction on the use of deadly force in the defense of one’s self.”
- 5. “Trial judge erred in amending defective indictment.”
 - a. “Trial judge erred in amending defective indictment that was presented to the Grand jury on false information, over defendants counsel objection that it be resubmitted to the Grand jury.”
- 6. “Trial judge erred in not granting defendants counsel motion for a direct verdict to the charges of Armed Robbery and Murder.”
 - a. “There was no corpus delicti as to the Armed Robbery as aledged (sic), only the prosecutors statements in his closing.”
- 7. “Trial judge erred in not charging the lesser included offenses of robbery or larceny.”
 - a. “The trial judge erred in his instruction to the jury by not charging the lesser included offenses of Robbery and larceny on the indictment that was submitted to the jury during its deliberation.”
- 8. “Trial judge erred in charging voluntary manslaughter to the jury.”
 - a. “There was no evidence to warrant a instruct to voluntary manslaughter and by instructing the jury to such, shifted the burden of having to prove self defense to the defendant.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong,

attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, *supra*). 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).

Failure to Provide Expert and Medical Records

Applicant states that Counsel should have provided an expert as to cause of death as well as medical records in order to create doubt as to how the Victim died. Applicant speculated that an expert and/or use of medical records could have attributed Victim's death to a heart condition or drug use or could have assisted in his theory of self defense. Counsel testified that he did utilize an expert, Dr. Conradi, to review the autopsy report which concluded that Victim died from head trauma. According to Counsel, Dr. Conradi arrived at the same conclusion as the State's expert. I find that Counsel's performance was well within reasonable professional norms. Further, Applicant has failed to demonstrate prejudice. Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 776 - 777 (2008) (merely speculative that allegedly favorable expert witnesses would have aided in defense).

Failure to Object to Voluntary Manslaughter Charge

Applicant further asserts that Counsel should have objected to the Voluntary Manslaughter charge. Counsel explained that he did in fact oppose giving the jury a charge on Voluntary

Manslaughter. (Tr. p. 470, line 14 – p. 473, line 16.) Counsel explained that if Applicant was convicted of any most serious charge at this trial, he would be sentenced to life imprisonment pursuant to S.C. Code §17-25-45, and Applicant was facing two most serious charges, Armed Robbery and Murder. Counsel stated that the defense therefore had to “run the table” and secure acquittals on both charges in order to avoid a life sentence. Counsel explained that they decided to oppose the Voluntary Manslaughter instruction so that the jury would not have an additional most serious option. Because Counsel did object to the charge, I find that Counsel was not ineffective. Counsel’s objection was based on a reasonable trial strategy. To the extent that Applicant would frame this issue as trial court error, such a claim would be inappropriate for PCR. S.C. Code §17-27-20; Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973).

Use of Force and Retreat Instructions

Applicant argues that Counsel should have requested more specific instructions on use of force and duty to retreat. Applicant asserts that the charge should have been more tailored than the standard Davis charge. The trial court charged the jury on retreat and use of force. (Tr. p. 558, line 5 – p. 559.) However, Applicant has made no specific suggestion of what additional language should have been charged. A trial judge is prohibited from instructing the jury on matters of fact, and Applicant has failed to demonstrate that the charges given were inappropriate. Applicant has failed to meet his burden of demonstrating unreasonable performance or prejudice therefrom.

Failure to Call Officer Williams

Applicant argues that Counsel’s failure to call Officer Todd Williams as a witness constitutes

ineffective assistance of counsel. Applicant speculated that Williams could have testified to Applicant's injuries and could have testified that photos of the injuries were taken. Counsel averred that he spoke to Williams and determined that Williams would not be a helpful witness for the defense. Therefore, Counsel did not intend to call him as a witness.

Applicant has failed to demonstrate that Counsel's assessment of Williams as a potential witness was unreasonable. Moreover, Applicant has failed to carry his burden in demonstrating that Williams' testimony could have been beneficial to the defense. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998)(must offer witness or evidence in keeping with Rules of Evidence in order to establish prejudice from the witness' failure to testify at trial); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (applicant cannot establish prejudice where alibi witnesses do not testify at PCR hearing).

Advice to Testify

Applicant asserts that Counsel's advice that he should testify constitutes ineffective assistance of counsel. Applicant testified that Counsel advised that the decision whether or not to testify was Applicant's but that his testimony would assist by putting certain things in the record.¹ Counsel testified that the primary defense was self-defense. Therefore, Counsel believed that Applicant's testimony was needed because he was the only witness. Counsel noted that the court gave an instruction on self-defense. As for prior record, Applicant could only be cross-examined on violating a court order, and Applicant was ultimately not cross-examined on any criminal record. The trial court also advised Applicant regarding his decision to testify. (Tr. p.392, line 1 – p. 393, line

¹ It does not appear that Counsel had any misapprehension regarding the burden of proof with regard to self-defense. Rather, Counsel believed that Applicant's testimony would buttress his written statement and therefore his claim of self-defense.

15.) Upon reaching his decision to testify, Applicant assured the trial court that he had not been pressured or forced to make the decision against his will. (Tr. p. 396, lines 3-17.) In Applicant's testimony, Counsel elicited information which he felt would benefit the case, including but not limited to Applicant's much smaller size at the time of the incident than at the time of trial (Tr. p. 399, lines 1-24), that Applicant felt he had to resort to violence in order to effectuate his retreat (Tr. p. 415, lines 3-10), and how Applicant's statements were taken (Tr. p. 425, line 11 – p. 430, line 11). Importantly, Applicant's statement reflected that Applicant picked up a plastic bag containing fifty dollars that Victim had dropped (Tr. p. 374, lines 22-24); in his testimony, Applicant explained that the money he picked up was his own, a point essential to the Armed Robbery charge. (Tr. p. 411, line 12 – p. 412, line 5.) Under the circumstances of this case, I find that Counsel's advice was not unreasonable. Further, evidence supports the conclusion that Applicant's decision to testify was made freely and voluntarily. Applicant's trial testimony was factually quite similar to his written statement and there was strong evidence of guilt; therefore, Applicant suffered no prejudice.

Instruction on Lesser Included Offense

According to Applicant, Counsel did not discuss lesser included offenses of armed robbery with him and did not request a jury instruction on lesser included offenses of Armed Robbery. There was no evidence which would support a jury charge on a lesser-included offense. It was uncontroverted that Applicant was armed during the incident, alternately with a knife and a stick. Therefore, I find that Counsel was not unreasonable in failing to request or discuss such a charge.

Indictment

Applicant asserts that Counsel erred in failing to move to dismiss the murder indictment

before trial. During pre-trial motions, the solicitor moved to amend the indictment, amending the cause of death from stabbing to also include blunt force trauma. (Tr. pp. 61-68.) Counsel conceded that the defense was aware of the cause of death prior to trial as a result of the pathologist's report but maintained his objection. (Tr. p. 67, line 14 – p. 68, line 12; p. 107, lines 3-4.) This objection was made prior to selection and swearing of the jury. Therefore, I find that Counsel was not ineffective in this regard.

Failure to Investigate DNA Evidence

Applicant stated that DNA was taken a month before trial and that he did not know DNA evidence would be presented. Applicant speculated that DNA evidence could have shown multiple people in the house. DNA evidence at trial consisted of the victim's blood on a knife and on a pair of pants stuffed into a cinder block behind the home of Jeffrey Connor. Connor had seen Applicant on the evening of Victim's death looking through gear on his back porch and borrowing a pair of pants, and Applicant stated that the pants belonged to him. Counsel stated that he did consult a DNA expert, Dr. Ostrowski. Applicant has failed to carry his burden of demonstrating that Counsel's performance was unreasonable in this regard or that Counsel's failure to conduct further investigation resulted in prejudice. Lorenzen v. State, *supra*.

Appeal Following Jackson v. Denno Hearing

Applicant alleges that Counsel should have filed an interlocutory appeal following the pre-trial Jackson v. Denno hearing. The trial court's ruling on the admissibility of Applicant's statement is not immediately appealable. S.C. Code §14-3-330. The Court of Appeals also addressed the issue of the admissibility of Applicant's statement and found it lacking merit. Therefore, I find Counsel

was not unreasonable in this regard, and Applicant has failed to carry his burden of demonstrating prejudice.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Applicant asserts that appellate counsel should have filed a petition for writ of certiorari following the Court of Appeals' decision affirming his conviction and sentence. Counsel felt that the

Court of Appeals' opinion was accurate and contained no error of law. Appellate Counsel testified that she did not believe that the appeal should be pursued, particularly based on the court's holding that any error in admission of Applicant's statement was harmless error. Counsel's evaluation of the potential merits of discretionary review was reasonable. An individual has no constitutional right to the effective assistance of counsel when seeking discretionary appellate review. Douglas v. State, 369 S.C. 213, 631 S.E.2d 542 (2006). Therefore, I find that Applicant is not entitled to relief in this regard.

Applicant also felt that counsel should have briefed all issues due to the severity of his sentence, specifically pointing to the denial of his motion for directed verdict and the amendment of the indictment. Appellate Counsel explained that she has a duty to review the record for preserved issues and select those which are potentially meritorious. The record was replete with evidence to survive the motion for directed verdict. Appellate Counsel was not ineffective in failing to raise the issue of denial of directed verdict.

Applicant specifically stated that Appellate Counsel should have challenged the court's decision to grant the State's motion to amend indictment. Prior to jury selection, the solicitor moved to amend the indictment to add "and/or blunt force trauma to the head" to "stabbing victim with a knife" as the cause of death. "Amendments to an indictment are permissible if they do not change the nature of the offense; the charge is a lesser included offense of the crime charged on the indictment; or the defendant waives presentment to the grand jury and pleads guilty." State v. Myers, 313 S.C. 391, 393, 438 S.E.2d 236, 237 (1993). S.C. Code §17-19-100 provides:

If (a) there be any defect in form in any indictments or (b) on the trial of any case there shall appear to be any variance between the allegations of the indictment and the evidence offered in proof

thereof, the court before which the trial shall be had may amend the indictment (according to the proof, if the amendment be because of a variance) if such amendment does not change the nature of the offense charged. After such amendment the trial shall proceed in all respects and with the same consequences as if the indictment had originally been returned as so amended, *unless such amendment shall operate as a surprise to the defendant*, in which case the defendant shall be entitled, upon demand, to a continuance of the cause.

[Emphasis supplied.] The decision to amend rests in the sound discretion of the trial judge, and the burden of showing an abuse of discretion and resulting prejudice is upon the party adversely affected by his ruling thereon. State v. Quarles, 261 S.C. 413, 417, 200 S.E.2d 384, 386 (1973). The cause of death did not change the nature of the offense charged. Further, the defense was aware of the autopsy report which had concluded that Victim dies of blunt force trauma to the head. Appellate Counsel was not ineffective in failing to raise this issue on appeal, and prejudice has not been shown.

Applicant has pointed to no issue which is clearly stronger than those actually raised on appeal. I therefore find that he has failed to meet the burden of demonstrating ineffective assistance of counsel.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

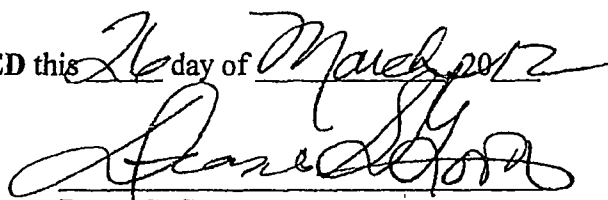
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

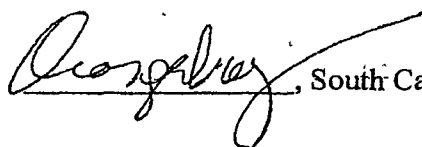
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26 day of March 2012



DIANE S. GOODSTEIN
Presiding Judge
First Judicial Circuit

 South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
IN THE COURT OF COMMON PLEAS

GEORGE N. MOSES, 103370,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Carl B. Grant, Esquire
Post Office Box 1203
Orangeburg, SC 29116

This 9th day of May, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

SWORN to before me this 9th day of May, 2012.

Judith A. Carey
Notary Public for South Carolina.
My Commission Expires: May 11, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

James C. Williams, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE MOSES,

APPELLANT

FINAL BRIEF OF APPELLANT

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

The Sixth Amendment guarantees that in all criminal prosecutions "the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense." Was Moses denied his right to counsel when the police, after Moses invoked his right to counsel, initiated contact with him the next day and continued to interrogate him, resulting in statement that the State then introduced against him during its case-in-chief?

STATEMENT OF THE CASE

George Moses was indicted by the Orangeburg grand jury for Murder (2006-GS-38-2068) and Armed Robbery (2006-GS-38-2067). He was tried before the Honorable James C. Williams, Jr. and a jury on February 9-12, 2009. He was represented by Doug Mellard and Margaret Hinds, Esquires. He was convicted of Voluntary Manslaughter and Armed Robbery. He was sentenced to life in prison under S.C. Code Ann. §17-25-45.

This appeal timely follows.

ARGUMENT

The Sixth Amendment guarantees that in all criminal prosecutions “the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense.” Moses was denied his right to counsel when the police, after Moses invoked his right to counsel, initiated contact with him the next day and continued to interrogate him, resulting in statement that the State then introduced against him during its case-in-chief.

Before the start of Moses’s trial, the parties conducted a Jackson v. Denno¹ hearing. At issue were two statements purportedly given by Moses in connection with the killing of Harry Livingston. The first statement was an oral statement, given on September 29, 2006 at the Orangeburg County Sheriff’s Department. He was given his Miranda² warnings, and then signed a waiver of rights form. After some discussion with law enforcement, Moses asked for a lawyer. He was taken to the Orangeburg County detention center after his assertion of his right to an attorney. The next morning, police officers again brought him back to the law enforcement center, and continued to interrogate him. Moses was re-Mirandized and signed a waiver of counsel form during this second interrogation on September 30, 2006. He subsequently gave a statement to officers about the events of that night. This second statement was taken in violation of Moses’ constitutional right to counsel, and in derogation of Edwards v. Arizona, 451 U.S. 477 (1981) and State v. Anderson, 357 S.C. 514, 593 S.E.2d 820 (2005). The use of the second statement at trial was a denial of Moses’s right to due process. U.S.C.A. 5, 14. See Miranda, *supra*. See also

¹ 378 U.S. 368 (1964).

² Miranda v. Arizona, 384 U.S. 436 (1966).

Montejo v. Louisiana, 129 S.Ct. 2079 (2009). Moses respectfully asks this Court to reverse his convictions and remand his case for trial.

On the morning of September 29, 2006, Officer Shumpert developed Moses as a suspect in the death of Harry Livingston who was killed in the early morning hours. Moses was one of the last people to be seen with the victim. Shumpert located Moses at his place of employment, South Carolina State University. He was brought to the law enforcement complex. Intending to interrogate Moses, Shumpert advised him of his Miranda warnings at 9:20am. ROA p. 2, line 3- p. 5, line 21. At the bottom of the Miranda warnings was waiver of rights section. Moses signed the waiver. Moses initially told the police that he did not know anything about Livingston's death. According to Shumpert, he "rescinded" that statement and said that he was at Livingston's home, looking for his, Livingston's, roommate. He told Shumpert that he was at the house to buy drugs from George. He claimed that Livingston was "fine and well" when he left the house. The solicitor asked Shumpert during the hearing:

Q: Okay. And did he tell you at that time what clothing he was wearing the night before?

A: He did, but I'd have to refer to my notes. Shorts and a t-shirt.

Q: Shorts and a t-shirt. Alright. Now, at that point did that conclude your talking with Mr. Moses that morning?

A: Yes, sir, it did.

Q: At the Sheriff's Office, is that correct?

A: Correct.

ROA p. 9, line 21- p. 10, line 5.

The next day, September 30th, law enforcement spoke to Moses again. He was read his rights at 11:30am. He was given his Miranda warnings again, and again he signed his waiver of rights. At that point, Shumpert was interrogating him with another officer, Deputy Rodriguez. Moses finally gave a written statement. ROA p. 10, line 6- p. 12, line 9.

Moses testified during the Jackson v. Denno hearing that he asked for a lawyer on September 29th:

Q: Okay. Did you ask for a lawyer?

A: Yes, I did.

Q: Alright. And who did you ask for a lawyer?

A: Officer Shumpert.

Q: Alright.

A: And also, I asked for the whole crew, him, Bamberg and Shumpert were in there that morning before they initially started questioning me that day before was when they arrested me, and I asked all of them, I didn't give a statement to anyone, I asked all of them could I have a lawyer first, and they all denied me to have a lawyer. They continued, one would question me one after another. When I continued to ask for a lawyer that's when they took me to the county jail.

ROA 34, lines 3-17.

The State never disputed Moses's claim that he asked for an attorney. During the solicitor's cross-examination of Moses, the solicitor did not challenge on his statement, but rather focused on Moses's signing of his Miranda warnings and waiver on September 30th:

Q: Okay. Did you then tell them that you had been to Harry's house that morning?

A: No, sir, I then immediately asked them could I have a lawyer.

Q: Okay. Now, the following day, on the thirtieth, you recall State's exhibit number two, is that correct?

ROA 39, lines 1-7.

The State did not call Shumpert to the stand in rebuttal.

Moses moved to exclude both statements, the second one on the ground that he had invoked his right to an attorney:

As far as the September thirtieth statement, we have testimony from Mr. Moses that he asked for a lawyer, he wasn't allowed to have a lawyer, he wasn't allowed to write the statement himself even though he says he wanted to.

ROA 44, line 22- p. 45, line 1.

The judge denied Moses's motion, concluding that it would be up to the jury to decide whether Moses made the statements, and whether he did so freely, voluntarily, knowingly and intelligently. ROA 47, line 17—p. 50, line 1. This was error, and Moses should have his convictions reversed and his case remanded for trial.

The State then called Shumpert and Rodriguez during its case in chief to testify to Moses's two statements. ROA p. 227- 272.

In Edwards, *supra*, the United States Supreme Court held that a defendant is denied due process when he invokes his right to counsel, but is then subjected to further interrogation without initiation by the defendant:

[A]nd we now hold that when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiate custodial interrogation even if he has been advised of his rights. We further hold that an accused, such as Edwards, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with police.

Id. 484-85.

Montejo, *supra*, the most recent United States Supreme Court case addressing Miranda, affirms the continued vitality of the Edwards holding:

The *Edwards* rule is “designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights,” . . . It does this by presuming his postassertion statements to be involuntary, “even where the suspect executes a waiver and his statements would be considered voluntary under traditional standards.” (quoting McNeil v. Wisconsin, 501 U.S. 171, 177, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991). This prophylactic rule thus “protect[s] a suspect’s voluntary choice not to speak outside his lawyer’s presence.” (quoting Texas v. Cobb, 532 U.S. 162, 175, 121 S.Ct. 1335, 149 L.Ed.2d 321 (2001).

Montejo at 2085-86. And see State v. Anderson, *supra* at 518-19. (“[O]nce a criminal defendant invokes his Sixth Amendment right to counsel, a subsequent waiver of that right—even if voluntary, knowing, and intelligent under traditional standards—is presumed invalid if secured pursuant to police-initiated conversation,” and “statements obtained in violation of that rule may not be admitted as substantive evidence in the prosecution’s case in chief.”)

It was uncontested by the State that Moses asked for a lawyer. He was then taken to the Orangeburg County Detention Center. Without invitation, the police then returned the next day and escorted him back to the Detention Center where they continued their interrogation of him. Indeed, law enforcement’s actions, in this case, constituted the precise danger addressed by the Edwards case—that a defendant is entitled to be free from repeated interrogation once he has invoked his right to counsel. Law enforcement’s actions denied Moses his right to counsel, and the use of the second statement at trial denied him his rights under the 5th and 14th Amendments, and Miranda.

CONCLUSION

For the preceding reason, Moses respectfully asks this Court to reverse his convictions and remand his case for trial.

Respectfully submitted,

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

This 15th day of December, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 15th, 2009

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Orangeburg County
James C. Williams, Jr., Circuit Court Judge

THE STATE

Respondent,

vs.

GEORGE MOSES,

Appellant.

FINAL BRIEF OF RESPONDENT

HENRY DARGAM McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

140 N. Main Street, Suite 102
Summerville, SC 29483
(843) 871-2640

ATTORNEYS FOR RESPONDENT

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<u>State v. Wilder</u> , 306 S.C. 535, 413 S.E.2d 323 (1991)	15
<u>State v. Williams</u> , 321 S.C. 455, 469 S.E.2d 49 (1996)	16
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001)	12

Other Authorities:

U.S. Const., amend. V	11, 13-15
U.S. Const., amend VI	11, 12, 14, 15
Rule 208(b)(1)(B), SCACR	11

STATEMENT OF ISSUES ON APPEAL**I.**

Is Moses' Issue available for appellate review?

II.

Did the trial judge properly deny the motion to suppress the statement Moses gave to the police?

STATEMENT OF THE CASE

Respondent concurs with the procedural Statement of the Case of Appellant George Moses.

STATEMENT OF FACTS

Lloyd Bowman, a retired school teacher, decided to stop by the trailer of Harry Livingston (the victim) in Orangeburg County around five o'clock in the morning on September 29, 2006. Bowman was taking a friend to the bus station and she decided to visit the victim on the way there. (R. 51-53). Bowman knocked at the door, but there was no answer. When Bowman peeped through the window, he observed the victim laying still on the floor. (R. 53-54, 57-58). Bowman drove to the home of the victim's brother a few miles away and they called the police. (R. 54-55).

The police arrived at the trailer shortly thereafter. (R. 64). The front door was closed, but unlocked. The kitchen inside the trailer "was in shambles." The table was turned upside down, and the chairs were tossed around and one was broken. The victim was on the floor, covered in blood. (R. 66-67, 88-89). There was also a dog inside the trailer, which was secured. (R. 67-68). After EMS arrived, the victim was pronounced dead. (R. 70). A knife was found on the floor. Blood splatter at the scene indicated there was a violent struggle inside the trailer. (R. 90-92).

The victim suffered multiple lacerations and bruises to his head and face. These injuries were inflicted with "something rod shaped" like as a chair,¹ and a fist. There were defensive injuries to the victim's hands and forearms. The victim died of swelling to the brain caused by blunt force trauma. He was rendered unconscious within minutes of the head trauma. He died within five to ten minutes "from failure to be able to breathe" as a result of

¹Dr. Janice Ross testified the head injuries could have been inflicted if the victim fell and hit a chair, but she explained the victim would have had to fall "at least six" times and "would have to have been pretty hard hit." (R. 180-81).

the brain injury. The victim also had multiple stab wounds to the abdomen and side, none of which were fatal. These wounds were inflicted around the time of the beating. (R. 159-69, 171-72).

Yvette Linguard was the victim's friend. Linguard testified she went to his trailer around midnight. Linguard explained that she was with the victim's roommate, but he was arrested.² She waited at the trailer until she got a ride home. (R. 107-10, 121-22). During this time, Moses and then several other people came to the trailer. By the time she left around 2:30, however, only the victim and Moses remained in the trailer. (R. 110-14, 116-17). Linguard testified Moses was wearing a white T-shirt and shorts when he was there. (R. 126). Linguard also recalled that she left \$147 with the victim before she left that morning which belonged to the roommate. (R. 122, 126). There was only eighty-one cents (\$.81) later found on the victim, however. (R. 160). There was no money found near the victim's body, either. (R. 92-93).

Jeffrey Connor testified that around 3:30 in the morning, he woke up and observed Moses on his back porch looking through some surplus gear he kept out there. Moses told Connor that he needed "stuff . . . to go on a mission" and he would return in about 45 minutes. (R. 144-46). When Moses returned, he told Connor that he needed to use the bathroom and went to the back of the house. He then returned a few minutes later and requested to borrow a pair of jeans. Moses only had on boxer shorts. (R. 146-50). Connor recalled that Moses looked "paranoid." (R. 151-52). Connor did not notice any injuries to Moses. (R. 152). Afterwards, Connor and Moses smoked some "cooleys," which are

²Linguard testified that the roommate of Moses was a drug dealer. (R. 120-21).

cigarettes laced with cocaine. (R. 150-51).

Soon after the victim was discovered, Moses was developed as a suspect and brought to the police station for questioning that morning. (R. 230-31). After waiving his rights, Moses agreed to talk with the police about the incident. (R. 231-34). Moses told the police he went to the victim's trailer with some other people to purchase drugs, and he then left and went to his girlfriend's house. (R. 235).

In the meantime, the police had obtained consent from Connor to search his home. (R. 238-39). During the search, the police retrieved a pair of bloody shorts stuffed inside a cinder block of the back steps. (Tr. 93-97, 239-41). The police also seized a recent pay stub in the living room that belonged to Moses. (R. 96-98, 154). Connor testified he had never seen the shorts or pay stub before. (R. 153-54). Moses' car was parked at Connor's house. (R. 98-100, 154, 190-92).

The victim's blood was on the handle of the knife discovered at the scene. (R. 207-08). No blood profile could be obtained from blood discovered elsewhere in the house. (R. 209-10). The police were unable to determine if there was blood inside the passenger's door of Moses' car. (R. 210-11). However, the victim's blood was found on the shorts retrieved at Connor's house. (R. 211-15).

The day after the killing, the police again spoke to Moses. (R. 243). Moses waived his rights and provided another statement, which was then transcribed by the police. (R. 243-46, 250-55). Moses told the police that he drove to the victim's trailer to purchase cocaine from his roommate. He was not there, so Moses waited with the victim and Linguard. When she left, Moses told the victim he wanted cocaine. Moses claimed the victim told him that

he had only three bags, but he refused to trade it for crack cocaine. Moses then said he would take the cocaine and return with \$50 and a "dime" of crack cocaine for the victim. The victim agreed, but he then "called" his dog to attack Moses as he left the trailer. Moses said he grabbed a knife to keep the dog away, and the victim then came at him with a stick. Moses claimed he grabbed the stick and stabbed the victim with the knife. They started to fight, and they "fell over the kitchen table" and landed on the floor. They continued to struggle and Moses stabbed the victim again. During this time, the victim's dog attacked him. Moses said he repeatedly punched the victim in the face and told him to get his dog off of him. When the victim passed out, Moses got up. He grabbed a bag with \$50 the victim had dropped and ran out of the house. Moses saw the blood on his clothes and decided to drive to Connor's home. Once there, he got a pair of pants from him and they "got high" together. Moses admitted he hid his shorts in the steps. Moses said he burned his bloody shirt when he got home. Moses claimed he did not intend to kill the victim. (R. 258-61).

Moses subsequently testified at trial. Moses said he went to the victim's trailer around 2:00 to purchase cocaine from his roommate. He stated it was a "drug house." (R. 275-76, 306-07). The victim and Linguard were there. There was an open bag of cocaine on the kitchen table. (R. 276-77, 307). They told Moses that the roommate would return shortly. (R. 277). Moses waited with them. (R. 277-78). The victim had a trained Rottweiler inside the trailer with him. (R. 278-79, 307-08).

Moses testified that after Linguard left, he and the victim agreed to trade some crack cocaine for the three bags of cocaine he wanted. (R. 279-81, 285-86, 310-11). Moses said that after the exchange, the victim complained about the amount of crack and he demanded

more. Moses said the victim refused to take any money. When Moses attempted to walk out, the victim "called" his dog to keep him from leaving. (R. 281-82, 286-87, 311-14). According to Moses, the victim then threatened him with a big stick and his dog attacked. Moses said he was struck with the stick and backed into the corner of the kitchen. Moses stated he retrieved a knife and tried to keep the dog away from him. When the victim hit Moses with the stick, he dropped the knife. Moses said he and the victim struggled over the stick and fell over the kitchen furniture onto the floor. Moses claimed he got possession of the stick and tried to leave the trailer, but the victim grabbed his leg and yelled for the dog to kill him. Moses said he struck the dog and the victim in the head with the stick. (R. 282-09, 287-90, 314-17, 320-21). Moses testified he also used the chairs as a shield until he managed to get out. (R. 284, 321-22). Moses did not recall stabbing the victim, because he only tried to stop the dog from biting him. Moses said the victim was probably stabbed when he swung the knife in self-defense. (R. 284-85).

Moses testified that when he left the trailer, the victim was still alive on the kitchen floor. He did not know the victim had been stabbed. (R. 291-92, 300). Moses claimed he grabbed his own money that the victim had knocked out of his hand on his way out the door. (R. 286-87, 322-23). He then drove to Connor's house to clean up and look for a change of clothes, because he thought he was bleeding from the dog attack and he did not want to get infected. (R. 293-94, 337-39). Moses said Connor did not have running water in the bathroom, so he borrowed a pair of pants and left to go to a car wash down the street. Moses returned to Connor's shortly thereafter, because the pants did not fit. (R. 294-97). He went to the back of the house and stuffed the shorts inside the steps when he noticed blood on

them. He then left and went home. (R. 297-99, 328-30). Moses saw some blood on his shirt and burned it in a trash barrel. (R. 299).

ARGUMENT

Moses' Issue is not available for appellate review. The trial judge properly denied the motion to suppress the statement Moses gave to the police. (Moses' Issue).

Prior to trial, the trial judge conducted a Jackson v. Denno hearing to determine the admissibility of the statements that Moses provided to the police.

Lt. James Shumpert testified they decided to speak with Moses on September 29, 2006, because he was the last person to be seen with the victim. (R. 2-3). Moses was brought to the police station from work that morning. (R. 2-3). Shumpert testified Moses was informed of his Miranda rights,³ which included a right to counsel. Moses acknowledged his rights orally and in writing, and he then waived them in writing. (R. 5-6; State's Exhibit 1, R. 341). Shumpert said Moses was not promised anything, and he was neither threatened nor coerced to give a statement. (R. 6-7). Shumpert testified that Moses freely and voluntarily waived his rights and provided the statement. (R. 7). Moses then gave an oral statement to the police. (R. 7-10).

Shumpert stated they spoke with Moses the next morning. Moses was in custody at the time. (R. 10). Shumpert used the same form to readvise Moses of his rights. Moses again acknowledged his rights orally and in writing, and he waived them in writing. (R. 10-11; State's Exhibit 2, R. 342). Shumpert said Moses was not promised anything, and he was neither threatened nor coerced to give a statement. (R. 11-12).

Moses then provided a statement that was handwritten by Deputy Roman Rodriguez. (R.12-13, 18-20). At the conclusion of his statement, Moses was given an opportunity to

³Miranda v. Arizona, 384 U.S. 436 (1966).

review it and initial the pages before he signed it. (R. 13, 19-21; State's Exhibit 3, R. 343-45). Rodriguez testified he was present when Shumpert informed Moses of his rights on September 30, and he witnessed the written waiver form on the bottom. (R. 18-19). Rodriguez said Moses was not threatened and no promises were made, and that the statement was freely and voluntarily given. (R. 19).

Moses testified at the hearing. Moses admitted that he waived his rights before his oral statement on September 29. Moses said he was not promised anything and that he was not threatened to give a statement. (R. 36-37). Moses asserted he repeatedly asked for an attorney before he was questioned the next day, however, although he admittedly signed the waiver of rights form. Moses testified he was told he did not need a lawyer, "because we're not going to charge you with murder or anything." (R. 34, 38-40). Moses further stated he was told the police only wanted to investigate a heart attack. (R. 31-32, 43).

At the conclusion of the hearing defense counsel moved to suppress the second statement, because Moses requested an attorney, and the statement was not freely and voluntarily given. (R. 44-45).

The trial judge denied the motion to suppress. He found the written statement was admissible on the grounds that Moses had been advised of his rights and had indicated that he understood them, and that the statement was made freely and voluntarily without any threats or promises. (R. 48-49).

On appeal Moses argues he was denied his right to counsel, because he requested an attorney, and the police initiated contact with him and continued to interrogate him the next day despite his earlier request for an attorney.

A. Error preservation

In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial judge will not be considered on appeal. Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001). A party may not argue one ground at trial and an alternate ground on appeal. State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001).

The "Statement of Issues on Appeal" states:

The Sixth Amendment guarantees that in all criminal prosecutions 'the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense.' Was Moses denied his right to counsel when the police, after Moses invoked his right to counsel, initiated contact with him the next day and continued to interrogate him, resulting in statement that the State then introduced against him during its case-in-chief?

(BOA at 3). On appeal, Moses asserts his September 30 statement was obtained in violation of Edwards v. Arizona, 451 U.S. 477 (1981) - - a Fifth Amendment case - - and State v. Anderson, 357 S.C. 514, 593 S.E.2d 820 (Ct. App. 2004) - - a Sixth Amendment case.

No point will be considered which is not set forth in the statement of issues on appeal. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003); Rule 208(b)(1)(B), SCACR; see State v. Bray, 342 S.C. 23, 535 S.E.2d 636 (2000)[holding it is error for an appellate court to consider issues not raised to it]. Because Moses clearly failed to raise a Fifth Amendment claim in his Statement of Issues on Appeal, the argument on this ground in his Brief must be dismissed. Id.; see also State v. Crocker, 366 S.C. 394, 621 S.E.2d 890, 893

n.1 (Ct. App. 2005)[holding appellant's "Statement of Issues on Appeal" contained no reference or challenge to the murder conviction; thus, the challenge in the brief to the admission of evidence used to obtain his conviction for murder was not preserved for appellate review].

Additionally, at no time at trial did defense counsel argue the police obtained the September 30 statement in violation of the Sixth Amendment right to assistance of counsel. Moses cannot, therefore, raise this assignment of error for the first time on appeal. His Issue must be dismissed. State v. Powers, 331 S.C. 37, 501 S.E.2d 116, 118 (1998); State v. Varvil, 338 S.C. 335, 526 S.E.2d 248, 250 (Ct. App. 2000); see also State v. Perry, 359 S.C. 646, 598 S.E.2d 723 (Ct. App. 2004)[holding the failure to raise a constitutional violation at trial precluded its consideration for the first time on appeal].

B. Admission of the second statement

In criminal cases, an appellate court reviews errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827, 829 (2001). This Court is bound by the trial judge's factual findings unless they are clearly erroneous. State v. Banda, 371 S.C. 245, 639 S.E.2d 36, 39 (2006). The conclusion of the trial judge on issues of fact as to the admission of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Kennedy, 333 S.C. 426, 510 S.E.2d 714, 715 (1998).

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights under Miranda. State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000). The voluntariness of a statement is determined from the totality of the circumstances. Id. The burden is on the State to prove by a preponderance of

the evidence that a suspect's rights, including the waiver of the right to counsel, were voluntarily waived. State v. Franklin, 299 S.C. 133, 382 S.E.2d 911, 913 (1989).

The police must inform criminal suspects of their right to have an attorney present during a custodial interrogation before the interrogation commences. Miranda, 384 U.S. at 473-474. The United States Supreme Court (USSC) went on to say that "[o]nce warnings have been given, the subsequent procedure is clear . . . [I]f the individual states that he wants an attorney, the interrogation must cease until an attorney is present." Id. In addition, police are restricted from initiating contact with a suspect when that contact is the "functional equivalent" of an interrogation. Rhode Island v. Innis, 446 U.S. 291, 301 (1980).

In Edwards, the USSC elaborated on one's right to have an attorney present during a custodial police interrogation. In that case, the police reinitiated an interrogation and eventually elicited a confession sometime after the defendant requested an attorney and interrogation had ceased. The Supreme Court of Arizona upheld the conviction, holding that the defendant's confession was voluntarily given. The USSC reversed, holding "waivers of counsel must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege." Id., 451 U.S. at 483.

To invoke a Fifth Amendment right to counsel, one must give "some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney in dealing with custodial interrogation by the police." McNeil v. Wisconsin, 501 U.S. 171, 178 (1991); see also Kennedy, 510 S.E.2d at 715 [holding that an unequivocal invocation of the Fifth Amendment right to counsel must be presented in a manner that a reasonable police officer, under similar circumstances, would understand the statement to be a request for the

presence of an attorney].

Nevertheless, the Supreme Court has held that “[a] valid waiver of the right to counsel will not be presumed simply from the silence of the accused after Miranda warnings are given. The record must show an accused was offered counsel but intelligently and knowingly rejected the offer.” State v. McCray, 332 S.C. 536, 506 S.E.2d 301, 306 (1998); see also State v. Doby, 273 S.C. 704, 258 S.E.2d 896, 899 (1979)[noting the signing of a waiver of rights form is not conclusive as the State must still prove a knowing and voluntary waiver].

Here, Moses argues the State never disputed Moses’ claim that he asked for an attorney. This assertion is misplaced. Shumpert and Rodriguez both testified that before Moses provided them with a statement, he was informed of his rights, which included the right to an attorney. Moses acknowledged his rights orally and in writing, and he then signed a waiver of his rights. The waiver appears at R. 342. Moses also admitted that he signed the waiver of rights form. Although Moses asserted that he asked for an attorney before questioning, the preponderance of the facts support the trial judge’s conclusion that Moses’ Fifth Amendment right to counsel was not violated and that his September 30 statement was admissible. There were no threats or coercion, and no promises were made. The totality of circumstances surrounding his statement thus demonstrates Moses made a knowing and voluntary waiver of his rights.

Because the record supports the finding that Moses failed to request the assistance of an attorney, his assertion of a Sixth Amendment violation likewise fails. Academically, however, the State notes the distinction between the Sixth Amendment right to assistance of

counsel and the Fifth Amendment right to speak to counsel. In State v. Register, 323 S.C. 471, 476 S.E.2d 153 (1996), the Supreme Court explained that the Sixth Amendment right to counsel attaches when adversarial judicial proceedings have been initiated and at all critical stages. Hence, the right to counsel in judicial proceedings is distinguished from the Fifth Amendment Miranda-Edwards right to speak with counsel upon request in a custodial setting. Register, 476 S.E.2d at 157; see McNeil v. Wisconsin, 501 U.S. 171 (1991); State v. Wilder, 306 S.C. 535, 413 S.E.2d 323 (1991). The Sixth Amendment right does not attach simply because the defendant has been arrested or because the investigation has focused on him. Hoffa v. United States, 385 U.S. 293 (1966). Further, the Sixth Amendment right attaches only “post-indictment,” at least in the questioning/statement setting. Register, 476 S.E.2d at 157; see Michigan v. Harvey, 494 U.S. 344 (1990). The Supreme Court recently acknowledged that it “has never found *per se* Sixth Amendment violations during the pre-indictment stage . . .” State v. Sterling, 377 S.C. 475, 661 S.E.2d 99, 101 (2008). The Sixth Amendment claim, therefore, should be dismissed.

C. Harmless error

In the event this Court finds the September 30 statement should have been suppressed, its admission was harmless error.

Appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991); State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150 (1985). Thus, an insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. State v. Kelley, 319 S.C. 173, 460 S.E.2d 368

(1995) [noting that when guilt is conclusively proven by competent evidence such that no other rational conclusion could be reached, an appellate court will not set aside the conviction for insubstantial errors not affecting the result].

The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence. State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); see also State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996)[instructing that error in admission of evidence is harmless where it is cumulative to other evidence which was properly admitted].

Moses testified at trial and admitted he and the victim struggled inside the trailer after a failed drug transaction. Moses claimed the victim ordered his dog to attack him. Moses said he grabbed the knife to protect himself from the dog and the victim who then attacked him with a stick. During the struggle, they fell over the kitchen furniture and onto the floor. Moses testified he repeatedly struck the dog and the victim with the stick to get them off of him. Moses admitted he must have stabbed the victim when he swung the knife to protect himself from the unprovoked attack.

This testimony was thus cumulative to the September 30 statement to the police, such that the admission of the statement was cumulative and therefore harmless. State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005); State v. Santiago, 370 S.C. 153, 634 S.E.2d 23 (Ct. App. 2006); see also State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997)[failure to suppress evidence for possible Miranda violation held harmless where record contains overwhelming evidence of guilt]; State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996)[holding even if defendant's statement to his employer was inadmissible, it was cumulative to his statement

to the police and was therefore harmless]; State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990)[statements of a defendant obtained after he invoked his right to counsel were merely cumulative to those properly obtained and to the defendant's testimony at trial; therefore, the admission of the statements did not prejudice the defendant]. There was no reversible error.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and convictions of the lower court should be affirmed.

Respectfully submitted,

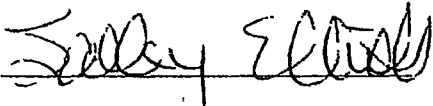
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

BY: 

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 9, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Orangeburg County
James C. Williams, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

GEORGE MOSES,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

By: Sally Ethell

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 9, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Orangeburg County
James C. Williams, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

GEORGE MOSES,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Elizabeth A. Franklin-Best, Appellate Defender, S.C. Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 9th day of December, 2009.


ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

George Moses, Appellant.

Appeal From Orangeburg County
James C. Williams, Jr., Circuit Court Judge

Unpublished Opinion No. 2010-UP-394
Submitted August 2, 2010 – Filed August 30, 2010

AFFIRMED

Appellate Defender Elizabeth A.
Franklin-Best, of Columbia, for
Appellant.

Attorney General Henry Dargan
McMaster, Chief Deputy Attorney
General John W. McIntosh, Assistant
Deputy Attorney General Salley W.
Elliott, and Senior Assistant Attorney
General Norman Mark Rapoport, all of
Columbia; and Solicitor David Michael
Pascoe, Jr., of Orangeburg, for
Respondent.

PER CURIAM: George Moses was convicted of voluntary manslaughter and armed robbery. The trial court sentenced him to life imprisonment. On appeal, Moses argues the trial court denied him his Fifth Amendment right to counsel by admitting a written statement he gave the police after he invoked his right to counsel. We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial

court either lack evidentiary support or are controlled by an error of law.") (citation omitted); State v. Rochester, 301 S.C. 196, 201, 391 S.E.2d 244, 247 (1990) (holding the admission of improper evidence is harmless when evidence is merely cumulative to other evidence); State v. Jarrell, 350 S.C. 90, 100-01, 564 S.E.2d 362, 368 (Ct. App. 2002) (finding harmless error when the statement was almost identical to the testimony of three witnesses at trial)

AFFIRMED.

FEW, C.J., KONDUROS and LOCKEMY, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

WITNESSES

Roman Rodriguez

Orangeburg County Sheriff

ARREST WARRANT NUMBER
H941779

Arrested: October 2, 2006

ACTION OF GRAND JURY

representative of Grand Jury
date: December 4, 2006

VERDICT

~~guilty of Murder~~
~~guilty of Voluntary Manslaughter~~
~~Not Guilty~~

representative of Petit Jury
date: 12/1/09

DOCKET NO. 2006GS38-2068

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

December 4, 2006 TERM

THE STATE
vs.

George Napoleon Moses

Indictment for
MURDER

SC Code: 16-3-10

After being fully advised of my rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY

Wingia B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2006GS38-2068

At a Court of General Sessions, convened on December 04, 2006 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That George Napoleon Moses, did in Orangeburg County, on or about September 29, 2006, with malice aforethought, kill one Harry Livingston by means of stabbing victim with a knife and/or blunt force trauma to the head, and the said victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

ATTEST: TRUE COPY
W. B. [Signature]
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Charlie Johnson, Jr.
Charlie Johnson, Jr., Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF OrangeburgINDICTMENT/CASE# 06 -GS- 38 - 2068VS
George MosesAM#: H941779Date of Offense: 9/29/06S.C. Code §: 16-03-10CDR Code #: 0116Rt# Sex: m Age: _____

SS#: _____

State, Zip: _____

SENTENCE SHEET

SID# _____

Position of the said Indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSVoluntary ManslaughterSection of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217IN-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☒ 17-25-45(CSC w/minor 1st or Lawd Act)Charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)Sentence is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Solicitor _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____

BEFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,Indeterminate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsto pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment probate_____ plus costs and assessments as applicable; the balance is suspended with probation for pursuant to 17-25-45

years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of probation,

are incorporated by reference.

CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State

Department of Corrections.

Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

STITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

\$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment _____

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.

206 (Assessments 107.5%) \$ _____

211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

211(A)(2) (DUI Surcharge) \$100 \$ _____

2995 (DUI Assessment) \$12 \$ _____

1 (Public Def/Prob) \$500 \$ _____

1B TP (Law Enforce. Funding) \$25 \$ 25.00

1B TP (Drug Court Surcharge) \$100 \$ _____

1-114(BUI Breath Test Fee) \$50 \$ _____

2942(J) (Vehicle Assessment) \$40/ea \$ _____

County (if paid in installments) \$ 3.90TP (SCCJA Surcharge) \$5 \$ 5.00\$ 133.90

Clerk of Court/Deputy Clerk _____

Rep. Harry Dat Walker

PRESIDING JUDGE _____

Judge Code 0114Sentence Date: 2-12-09

217 (2/7/2008)

ATTEST: TRUE COPY

W. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

751

WITNESSES

DOCKET NO. 2006GS38-2067

The State of South Carolina

County of

ORANGEBURG

DETECTIVE ROMAN RODRIGUEZ

Arresting Agency:

Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

H941781

Arrested: Oct 02, 2006

ACTION OF GRAND JURY

Person of Grand Jury
for: December 6, 2006

VERDICT

Guilty

Not Guilty

Person of Petit Jury
for: 2-12-2009

COURT OF GENERAL SESSIONS

December 04, 2006 TERM

THE STATE

vs.

George Napoleon Moses

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0139

Class: FEL-A(V)

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY
Wanda B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

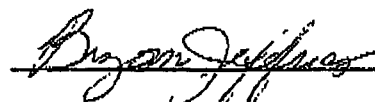
INDICTMENT
 2006GS38-2067

At a Court of General Sessions, convened on December 04, 2006 the Grand
 Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That George Napoleon Moses, did in Orangeburg County, on or about September 29, 2006, commit robbery by feloniously taking from the person or presence of the victim, Harry Livingston, by means of force or intimidation goods or monies of Harry Livingston such goods or monies being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of Section §16-11-330 of the South Carolina Code of laws, (1976 as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 Bryan S. Jeffries SOLICITOR

ORANGEBURG COUNTY
 CLERK OF COURT
 JEFFREY S. JEFFRIES
 JEFFRIES & ASSOCIATES
 1000 N. HIGHWAY 17
 ORANGEBURG, SC 29117
 (803) 681-1111
 FAX (803) 681-1112
 www.jeffrieslaw.com

COUNTY OF ORANGEBURG

STATE

VS.

George Napoleon Moses

A: _____

Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

_____ SID# _____

Disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

to: ARMED ROBBERY

violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1" or Less Act)

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)
he plees is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Charles A. Johnson

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, _____ County Detention Center, _____
or a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ to 12-25
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-26-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§58-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§58-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.90</u>
§90.11 TP (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
TOTAL		\$ <u>133.90</u>

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP

☐ Requires \$500 be paid to Clerk during probation.

ATTEST: TRUE COPY

W. L. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

PRESIDING JUDGE

Judge Code:

Sentence Date

James L. Williams
0114
2-12-09

Marion S. Edgemon Jr.
Clerk of Court/Deputy Clerk

Reporter:

Harvey Dat Walker