

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

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S.C. Supreme Court

LEROY ARCHIE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON) 10TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD

-VS-) 05-GS-04-2826

LEROY ARCHIE,)
DEFENDANT.)

SEPTEMBER 11-14, 2007

2006

ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE

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

SCOTT MCELHANNON, ASSISTANT SOLICITOR

CATHERINE HUEY, ASSISTANT SOLICITOR

ATTORNEYS FOR THE STATE

ANDREW T. POTTER, ESQUIRE

ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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ALL STATE'S EXHIBITS WERE PRE-MARKED FOR IDENTIFICATION BEFORE
TRIAL.

VOIR DIRE

Date: September 11, 2006
County: AndersonCase No: 05-GS-04-2826
Pl./State: State of South CarolinaJudge: Macaulay
Pl./State Atty: Scott McElhannon
Catherine Huey
Defense Atty: Andy PotterDefendant: Leroy ArchieCourt Reporter: Sharon L. Vizer Haaks

Juror No.	Name	Sex	Race	Strikes			
				Court	Plaintiff	Defense	Accept
131	Bonniefaye Samples	F	B				1
87	David Koch	M	W				2
172	Joanna Williford	F	B		X-1		
37	Carol Crocker	F	W			X-1	
127	Michelle Rogers	F	W			X-2	
21	Marcus Burdette	M	W			X-3	
52	Donald Dove	M	W		X-2		
71	George Haynes	M	W				3
57	Mary Fecas	F	W			X-4	
129	Melvin Ross	M	W				4
134	Robert Shiflet	M	W		X-3		
122	Thomas Reeves	M	W				5
77	Lisa Hourihan	F	W			X-5	
149	Sammy Taylor	M	W			X-6	
123	Terry Richey	M	W				6
137	April Sloan	F	W			X-7	
T-3	Mark Goff	M	W				7
54	Annette Drennon	F	W				8
106	Daniel Mitchell	M	W		X-4		
162	Connie Vicars	F	W			X-8	
96	Gretchen Madden	F	W				9

VOIR DIRE

Date: September 11, 2006

County: Anderson

Case No: 05-GS-04-2826

Judge: Macaulay

Pl./State State of South Carolina

Pl./State Atty: Scott McElhannon

Defendant: Leroy Archie

Defense Atty: Catherine Huey
Andy Potter

Court Reporter: Sharon L. Vizer-Hanks

[illegible]

1 Monday, September 11, 2006

2 THE COURT: Ladies and gentlemen of the jury panel,
3 my name is Alex Macaulay. I'm one of the resident circuit
4 judges here in the 10th Circuit, which also includes Oconee
5 County, where I reside, and I've been assigned here this week
6 for a term of General Sessions Court, sometimes called
7 Criminal Court.

8 The purpose of this Court is to resolve questions of
9 alleged criminal conduct arising between the State of South
10 Carolina and the defendant in a fashion which will ensure that
11 justice under the law is accomplished.

12 The trial of a case begins with the selection of the
13 jury. Both the State and the defendant are entitled to jurors
14 who approach the case with an open mind. The trial jury must
15 be free as humanly possible for any bias, prejudice or
16 sympathy for either side and free from any preconceived ideas
17 on the facts of the case or the law of the case. Therefore,
18 certain questions will be asked of you, the petit jury panel.
19 The questions which will be asked are designed to ensure that
20 each side has a fair and impartial jury.

21 Now, I might note if Judge Nicholson didn't mention
22 it to you earlier that if anybody should try to talk to you or
23 speak to you about any case that might be pending in this term
24 of General Sessions or Common Pleas Court you should report
25 them immediately so that we might take the appropriate action.

1 From this point on no one is to interfere with your duties as
2 jurors of the Circuit Court for Anderson County this week.

3 Now, the first thing we will have to begin the trial
4 is the selection of the jury.

5 Mr. Solicitor, you may call your first case.

6 MR. MCELHANNON: Your Honor, under indictment
7 2005-GS-04-2826, The State of South Carolina vs. Leroy Archie,
8 he's charged with murder and possession of a weapon during a
9 commission of a violent offense.

10 THE COURT: Very well.

11 Now, ladies and gentlemen of the jury panel, as
12 you've heard, the case we are about to try is The State of
13 South Carolina vs. Leroy Archie, charged in indictment number
14 2005-GS-04-2826 with murder and possession of a weapon during
15 a violent offense.

16 The State will be represented by Mr. McElhannon, who
17 is the assistant solicitor here in the 10th Circuit.

18 Mr. McElhannon, if you would, please, introduce
19 yourself as well as anyone who will be assisting you in the
20 trial of the case.

21 MR. MCELHANNON: Thank you, Your Honor.

22 I am Scott McElhannon. I am an assistant solicitor
23 for the 10th Circuit. Seated at the table with me will be
24 Catherine Huey, who is also an assistant solicitor with the
25 10th Circuit; and also Investigator Michael Sloan with the

1 Anderson County Sheriff's Office.

2 THE COURT: Both of you please stand and look upon
3 the jury, please.

4 Thank you very much.

5 I ask people who were introduced to the jury to do
6 this because in these days we might not know somebody by their
7 name but might recognize them and it's important that any
8 recognition be acknowledged.

9 Now, the defendant, Mr. Leroy Archie, is represented
10 by Mr. Potter.

11 Mr. Potter, if you would, please stand and introduce
12 yourself, your client and anyone who might be assisting you in
13 the trial of this case.

14 MR. POTTER: Yes, Your Honor. My name is Andrew
15 Potter. I'm representing Mr. Leroy Archie. Mr. Archie is
16 here. And also at the table is Julie Williams, who is my
17 assistant.

18 THE COURT: Very good.

19 Now, ladies and gentlemen of the petit jury panel,
20 there are a few questions I will be directing to each of you.
21 First, is any member of the panel related by blood or
22 marriage, now or formerly, a close personal friend or
23 business associate of the defendant, Mr. Leroy Archie. If so,
24 please stand.

25 (There have no response.)

1 THE COURT: Is there any member of the jury panel
2 related by blood or marriage, close personal friend or
3 business associate of the decedent, Cathy Galloway? If so,
4 please stand.

5 (There was no response.)

6 THE COURT: Was any member of the jury panel a
7 member of the grand jury for Anderson County during year 2005?
8 If so, please stand.

9 (There was no response.)

10 THE COURT: I'm going to read out a list of names of
11 potential witnesses. When I say potential witnesses they may
12 be called but they do not have to be called for the trial of
13 this case. If these witnesses are in the courtroom at the
14 time I call their names if they would please stand and look
15 upon the jury.

16 Michael Sloan, Anderson County Sheriff's Office;
17 James D. Crawford, Anderson County Sheriff's Office; Ken
18 Blakely; John Carpenter, Anderson County Sheriff's Office;
19 Kevin Matheson, Anderson County Sheriff's Office; Mike
20 Mitchell, Anderson County Sheriff's Office; Steve Reeves,
21 Anderson County Sheriff's Office; Chris Beusse, B-e-u-s-s-e,
22 Chris Beusse, Anderson County Sheriff's Office; Pete Normadin,
23 Anderson County Sheriff's Office; Tommy Clamp, Anderson County
24 Sheriff's Office; C. Wright, Anderson County Sheriff's Office;
25 Derek Roland, Anderson County Sheriff's Office; Greg Shore,

1 Anderson County Coroner; Dan DeFreese, South Carolina Law
2 Enforcement Division; John Roberts, South Carolina Law
3 Enforcement Division; Tim W. Grambow, South Carolina Law
4 Enforcement Division; Antwan Andre Jack Galloway; Nellie
5 Blanding; Billie Ann Holland; Harold Berry Holland; Brenda
6 Gail Rogers; Kathy Renee Wilkes; Helen Abrams; Randy Pete
7 Watts; Dayton Williams, Jr.; Chauncey Demetrius Capman; Dr.
8 Ron Biscopink; James Johnson; and Patricia Martin.

9 Is any member of the jury panel related by blood or
10 marriage, close personal friend, business associate of any of
11 the following potential witnesses in this case; Michael Sloan;
12 James D. Crawford; Ken Blakely; John Carpenter; Kevin
13 Matheson; Mike Mitchell; Steve Reeves; Chris Beusse; Pete
14 Normadin; Tommy Clamp; C. Wright; Derek Roland; Greg Shore;
15 Dan DeFreese; John Roberts; Tim W. Grambow; Antwan Andre Jack
16 Galloway; Nellie Blanding; Billie Ann Holland; Harold Berry
17 Holland; Brenda Gail Rogers; Kathy Renee Wilkes; Helen Abrams;
18 Randy Pete Watts; Dayton Williams, Jr.; Chauncey Demetrius
19 Chapman; Dr. Ron Biscopink; James Johnson; and Patricia
20 Martin?

21 If any member of the jury panel is related by blood
22 or marriage, now or formerly, a business associate, close
23 personal friend of any of the potential witnesses in this case
24 if you would please stand at this time.

25 On this end, sir?

1 And each time I call on you if you would please give
2 me your name, even if you have to respond more than once. The
3 reason for that, of course, is that we are making a record of
4 all the proceedings in the court and in order for the court
5 reporter to identify who is speaking we need to know by name.

6 And if you would, please.

7 POTENTIAL JUROR: Michael Wilson.

8 THE COURT: Yes, sir.

9 MR. WILSON: I'm a close friend of Greg Shore.

10 THE COURT: Would that in any way interfere with
11 your ability to give both the State and the defendant a fair
12 and impartial trial in this case?

13 MR. WILSON: I don't think it would interfere.

14 THE COURT: Again, I need to be certain --

15 MR. WILSON: No, sir.

16 THE COURT: The fact that you know Mr. Store and if
17 he was a witness in this case would that in any way interfere
18 with your ability both for the State and the defendant?

19 MR. WILSON: No, sir.

20 THE COURT: Very good. Thank you, sir.

21 Yes, sir?

22 POTENTIAL JUROR: My name is Sammy Taylor. I'm an
23 acquaintance of Michael Sloan.

24 THE COURT: Would that in any way interfere with
25 your ability to give both the State and the defendant a fair

1 and impartial trial in this case?

2 MR. TAYLOR: No, sir.

3 THE COURT: Very good. Thank you, sir.

4 Anyone else?

5 (There was no response.)

6 THE COURT: Now, has any member of the panel formed
7 or expressed an opinion about this case or any matter that
8 might be involved in this case? If so, please stand.

9 (There was no response.)

10 THE COURT: Is any member of the panel aware of any
11 interest, bias or prejudice towards either the defendant or
12 the State of South Carolina? If so, please stand.

13 (There was no response.)

14 THE COURT: Does any member of the panel know of any
15 reason whatsoever why she or he could not give both the State
16 of South Carolina and the defendant a fair and impartial
17 trial? If so, please stand.

18 (There was no response.)

19 THE COURT: Any additional questions from the State?

20 MR. MCELHANNON: Nothing from the State.

21 THE COURT: From the defendant?

22 MR. POTTER: Nothing from the defendant.

23 THE COURT: Madam, give us a jury.

24 Now, ladies and gentlemen of the jury panel, the way
25 we select a jury in General Sessions Court is, if you'll

1 notice, the Clerk of Court has a drum that contains cylinders
2 and each of those cylinders have one of your names, and your
3 name will be drawn from the drum in the cylinder and will be
4 called.

5 As your name is called if you would please approach,
6 come to the front of the courtroom where the bailiff will be
7 standing and turn around and face the back of the courtroom.
8 And when you come if you would bring any personal effects that
9 you have at this time.

10 Then the State will consider the juror, potential
11 juror first and will either say present the juror or excuse
12 the juror. Then the defendant will have the opportunity to
13 consider the juror and will say either swear the jury or
14 excuse the juror.

15 In this case, I understand the State has 5 strikes
16 and the defendant 10. Very good.

17 If you would, please, ma'am.

18 THE CLERK: Yes, sir.

19 Juror number 131, Bonniefaye Samples. Number 131.

20 (A black female came forward.)

21 THE CLERK: What say you for the State?

22 MR. MCELHANNON: Please present the juror.

23 THE CLERK: What say you for the defendant?

24 MR. POTTER: Please swear Ms. Samples.

25 THE CLERK: Ms. Samples, if you'll please go over

1 and have a seat in the jury box.

2 Number 87, David Koch. Number 87.

3 (A white male came forward.)

4 THE CLERK: What say you for the State?

5 MR. MCELHANNON: Please present Mr. Koch.

6 THE CLERK: What say you for the defendant?

7 MR. POTTER: Please swear Mr. Koch.

8 THE CLERK: If you'll go over, please, sir, and have
9 a seat in the jury box.

10 Number 172, Joann Williford. Number 172.

11 (A black female came forward.)

12 THE CLERK: What say you for the State?

13 MR. MCELHANNON: Please excuse the juror.

14 THE CLERK: You may return to you seat. Thank you
15 so much.

16 Number 37, Carol Crocker. Number 37.

17 (A white female came forward.)

18 THE CLERK: What say you for the State?

19 MR. MCELHANNON: Please present Ms. Crocker.

20 THE CLERK: What say you for the defendant?

21 MR. POTTER: Please excuse Ms. Crocker.

22 THE CLERK: Your may return to your seat. Thank
23 you, Ms. Crocker.

24 Number 127, Michelle Rogers. Number 127.

25 (A white female came forward.)

1 THE CLERK: What say you for the State?
2 MR. MCELHANNON: Please present Ms Rogers.
3 THE CLERK: What say you for the defendant?
4 MR. POTTER: Please excuse Ms. Rogers.
5 THE CLERK: Thank you, Ms. Rogers.
6 Number 21, Marcus Burdette. Number 21.
7 (A white male came forward.)
8 THE CLERK: What say you for the State?
9 MR. MCELHANNON: Please present Mr. Burdette.
10 THE CLERK: What say you for the defendant?
11 MR. POTTER: Please excuse Mr. Burdette.
12 THE CLERK: Thank you, Mr. Burdette.
13 Number 52, Donald Dove, Jr. Number 52.
14 (A white male came forward.)
15 THE CLERK: What say you for the State?
16 MR. MCELHANNON: Please excuse Mr. Dove.
17 THE CLERK: You may return to your seat. Thank you,
18 Mr. Dove.
19 Number 71, George Haynes. Number 71.
20 (A white male came forward.)
21 THE CLERK: What say you for the State?
22 MR. MCELHANNON: Please present Mr. Haynes.
23 THE CLERK: What say you for the defendant?
24 MR. POTTER: Please swear Mr. Haynes.
25 THE CLERK: If you'll please have a seat in the jury

1 box, Mr. Haynes.

2 Number 57, Mary Fecas. Number 57.

3 (A white female came forward.)

4 THE CLERK: What say you for the State?

5 MR. MCELHANNON: Please present Ms. Fecas.

6 THE CLERK: What say you for the defendant?

7 MR. POTTER: Please excuse Ms. Fecas.

8 THE CLERK: Thank you, ma'am.

9 Number 129, Melvin Ross. Number 129.

10 (A white male came forward.)

11 THE CLERK: What say you for the State?

12 MR. MCELHANNON: Please present Mr. Ross.

13 THE CLERK: What say you for the defendant?

14 MR. POTTER: Please swear Mr. Ross.

15 THE CLERK: If you'll have a seat right there in the

16 jury box, Mr. Ross.

17 Number 134, Robert Shiflet. Number 134.

18 (A white male came forward.)

19 THE CLERK: What say you for the State?

20 MR. MCELHANNON: Please excuse Mr. Shiflet.

21 THE CLERK: Thank you, Mr. Shiflet.

22 Number 122 Thomas Reeves. Number 122.

23 (A white male came forward.)

24 THE CLERK: What say you for the State?

25 MR. MCELHANNON: Please present Mr. Reeves.

1 THE CLERK: What say you for the defendant?

2 MR. POTTER: Please swear Mr. Reeves.

3 THE CLERK: If you'll have a seat right there in the
4 jury box, please, Mr. Reeves.

5 Number 77, Lisa Hourihan. Number 77.

6 (A white female came forward.)

7 THE CLERK: What say you for the State?

8 MR. MCELHANNON: Please present the juror.

9 THE CLERK: What say you for the defendant?

10 MR. POTTER: Please excuse Ms. Hourihan.

11 THE CLERK: Thank you, ma'am.

12 Number 149, Sammy Taylor. Number 149.

13 (A white male came forward.)

14 THE CLERK: What say you for the State?

15 MR. MCELHANNON: Please present Mr. Taylor.

16 THE CLERK: What say you for the defendant?

17 MR. POTTER: Please excuse Mr. Taylor.

18 THE CLERK: Thank you, Mr. Taylor.

19 123, Terry Richey. Number 123.

20 (A white male came forward.)

21 THE CLERK: What say you for the State?

22 MR. MCELHANNON: Please present Mr. Richey.

23 THE CLERK: What say you for the defendant?

24 MR. POTTER: Please swear Mr. Richey.

25 THE CLERK: Have a seat, please, Mr. Richey, in the

1 jury box.

2 Number 137, April Sloan. Number 137.

3 (A white female came forward.)

4 THE CLERK: What say you for the State?

5 MR. MCELHANNON: Please present Ms. Sloan.

6 THE CLERK: What say you for the defendant?

7 MR. POTTER: Please excuse Ms. Sloan.

8 THE CLERK: Thank you, ma'am.

9 Transfer number 3, Mark Goff. Transfer number 3.

10 (A white male came forward.)

11 THE CLERK: What say you for the State?

12 MR. MCELHANNON: Please present Mr. Goff.

13 THE CLERK: What say you for the defendant?

14 MR. POTTER: Please swear Mr. Goff.

15 THE CLERK: Have a seat, please, sir, in the jury

16 box.

17 Number 54, Annette Drennon. Number 54.

18 (A white female came forward.)

19 THE CLERK: What say you for the State?

20 MR. MCELHANNON: Please present Ms. Drennon.

21 THE CLERK: What say you for the defendant?

22 MR. POTTER: Please swear Ms. Drennon.

23 THE CLERK: Have a seat, Ms. Drennon, in the jury

24 box.

25 Number 106, Daniel Mitchell. Number 106.

1 (A white male came forward.)
2 THE CLERK: What say you for the State?
3 MR. MCELHANNON: Please excuse Mr. Mitchell.
4 THE CLERK: You may return to your seat. Thank you,
5 Mr. Mitchell.
6 Number 162, Connie Vicars. Number 162.
7 (A white female came forward.)
8 THE CLERK: What say you for the State?
9 MR. MCELHANNON: Please present Ms. Vicars.
10 THE CLERK: What say you for the defendant?
11 MR. POTTER: Please excuse Ms. Vicars.
12 THE CLERK: You may return to your seat. Thank you,
13 ma'am.
14 Number 96, Gretchen Madden. Number 96.
15 (A white female came forward.)
16 THE CLERK: What say you for the State?
17 MR. MCELHANNON: Please present Ms. Madden.
18 THE CLERK: What say you for the defendant?
19 MR. POTTER: Please swear Ms. Madden.
20 THE CLERK: Have a seat, please, Ms. Madden, in the
21 jury box.
22 Transfer number 12, William Hunt. Transfer 12.
23 (A white male came forward.)
24 THE CLERK: What say you for the State?
25 MR. MCELHANNON: Please present Mr. Hunt.

1 THE CLERK: What say you for the defendant?

2 MR. POTTER: Please swear Mr. Hunt.

3 THE CLERK: Have a seat in the jury box, please,

4 Mr. Hunt.

5 Number 120, April Pitts. Number 120.

6 (A white female came forward.)

7 THE CLERK: What say you for the State?

8 MR. MCELHANNON: Please present Ms. Pitts.

9 THE CLERK: What say you for the defendant?

10 MR. POTTER: Please excuse Ms. Pitts.

11 THE CLERK: Thank you, Ms. Pitts.

12 Juror number 22, Henry Busby. Number 22.

13 (A white male came forward.)

14 THE CLERK: What say you for the State?

15 MR. MCELHANNON: Please present Mr. Busby.

16 THE CLERK: What say you for the defendant?

17 MR. POTTER: Please swear Mr. Busby.

18 THE CLERK: Have a seat, please, sir, in the jury

19 box, Mr. Busby.

20 Number 138, Douglas Smith. Number 138.

21 (A white male came forward.)

22 THE CLERK: What say you for the State?

23 MR. MCELHANNON: Please present Mr. Smith.

24 THE CLERK: What say you for the defendant?

25 MR. POTTER: Please excuse Mr. Smith.

1 THE CLERK: Thank you.

2 Transfer number 2, Lisa Gillespie.

3 (A white female came forward.)

4 THE CLERK: What say you for the State?

5 MR. MCELHANNON: Please present Ms. Gillespie.

6 THE CLERK: What say you for the defendant?

7 MR. POTTER: Please swear Ms. Gillespie.

8 THE CLERK: Have a seat, please, Ms. Gillespie, in
9 the jury box.

10 THE COURT: Let's draw 2 alternates, please.

11 THE CLERK: Number 147, Courtney Strickland. Number
12 147.

13 (A white female came forward.)

14 THE CLERK: What say you for the State?

15 MR. MCELHANNON: Please present Ms. Strickland.

16 THE CLERK: What say you for the defendant?

17 MR. POTTER: Please excuse Ms. Strickland.

18 THE CLERK: Thank you, Mr. Strickland.

19 Number 93, Chris Lippart. Number 93.

20 (A white male came forward.)

21 THE CLERK: What say the State?

22 MR. MCELHANNON: Please excuse Mr. Lippart.

23 THE CLERK: Thank you, Mr. Lippart.

24 Number 66, Ronnie Griffin. Number 66.

25 (A white male came forward.)

1 THE CLERK: What say you for the State?

2 MR. MCELHANNON: Please present Mr. Griffin.

3 THE CLERK: What say you for the defendant?

4 MR. POTTER: Please swear Mr. Griffin.

5 THE CLERK: If you'll have a seat, please, sir, in
6 the second row.

7 Number 74, Robert Higgins. Number 74.

8 (A white male came forward.)

9 THE CLERK: What say you for the State?

10 MR. MCELHANNON: Please present Mr. Higgins.

11 THE CLERK: What say you for the defendant?

12 MR. POTTER: Please excuse Mr. Higgins.

13 THE CLERK: Number 144, Michael Stone. Number 144.

14 (A white male came forward.)

15 THE CLERK: What say you for the State?

16 MR. MCELHANNON: Please present Mr. Stone.

17 THE CLERK: What say you for the defendant?

18 MR. POTTER: Please swear Mr. Stone.

19 THE CLERK: If you'll have a seat in the jury box,
20 please, sir.

21 THE COURT: Is there any reason this jury cannot be
22 sworn for the trial of this case, from the State?

23 MR. MCELHANNON: Nothing from the State, Your Honor.

24 THE COURT: From the defendant?

25 MR. POTTER: Nothing from the accused, Judge.

1 THE COURT: Ms. Gillespie, I'm going to ask you to
2 serve as the foreperson of this jury. So when we come back if
3 you would --

4 Mr. Ross, you can sit anywhere you like. I'm going
5 to ask Ms. Gillespie to sit in the seat that you are in.

6 And the 2 alternates, Mr. Griffin and Mr. Stone, you
7 will always sit in the chairs that you are sitting.

8 Everybody else, sit anywhere you want to in the jury
9 box, but I want the foreperson to sit in the first chair on
10 the front row and the 2 alternates on the end so that I will
11 be able to identify them if it should be necessary.

12 Counsel, approach, please.

13 (WHEREUPON, a bench conference was had.)

14 THE COURT: Madam forelady, ladies and gentlemen of
15 the jury, I apologize but what I'm trying to do, we have 3
16 terms of court or 3 different judges this week and we'll be
17 drawing another jury in just a few minutes. So in order to
18 not inconvenience you any more than we have to I'm going to
19 ask you to go to lunch because there will be some things I
20 also need to take care of in this case before we start it. Go
21 to lunch and come back at 2:30. Now, that's about 2 and a
22 half hours, 2 hours and 15 or 20 minutes. And when you do,
23 come back to the room that the bailiff will show you. That's
24 the jury room that we'll be using during the trial of this
25 case.

1 Now, my instructions throughout the trial of the
2 case is going to be the same, and that is do not discuss this
3 case among yourselves. Obviously, you haven't heard anything
4 about it yet, but even personalities or anything else, do not
5 even consider the case at all, even among yourselves or
6 particularly do not permit anybody to discuss it with you or
7 try to discuss it. If somebody else should try to discuss it
8 with you it's your duty advise me so that I might take the
9 proper action to not permit that sort of thing.

10 Now, I think you understand the reason not to
11 discuss the case even now or until it's given to you at the
12 end of the case, after you've heard all of the testimony and
13 received all of the evidence and the law, and the argument of
14 the counsel because you never know what's going to be the most
15 important part of the case to you.

16 It might be the first witness or the lawyers'
17 arguments by the counsel at the end of case, or the law. So
18 you must keep an open mind the whole time of the case. So
19 please do not discuss the case in any way until it's given to
20 you in its entirety at the end.

21 Now, with that, I'm going to excuse you until 2:30.
22 And so go with the bailiff and he'll show you the jury room
23 that we'll be using during the trial of this case. Again, I
24 look forward to working with you and I'll see you at 2:30.

25 Everyone else remain seated, please.

1 (WHEREUPON, the jury leaves the courtroom at
2 approximately 12:13 p.m.)

3 THE COURT: All right. We'll stand in recess until
4 2 o'clock in this case.

5 (WHEREUPON, the trial of this case was recessed for
6 lunch.)

7 THE COURT: Is there anything from the State before
8 we proceed?

9 MR. MCELHANNON: Your Honor, I believe Mr. Potter
10 has stipulated to allow into evidence State's Exhibit 39,
11 which will be the 911 call in this matter.

12 THE COURT: Any objection?

13 MR. POTTER: No, just as long as it doesn't go back
14 into the jury room.

15 THE COURT: Now, gentlemen, for those who haven't
16 been with me before, I do not let audio or video go to the
17 jury room. If the jury wants to hear it we bring them back
18 out. I consider it testimonial evidence. So you'll play it
19 in the courtroom so there will be a record of whatever they
20 look at or hear.

21 (WHEREUPON, State's Exhibit No. 39, the 911 Tape,
22 was admitted into evidence.)

23 THE COURT: All right. Anything else from the
24 State?

25 MR. MCELHANNON: Nothing at this time.

1 THE COURT: Anything from the defendant?

2 MR. POTTER: No, Your Honor.

3 THE COURT: All right. Ask the jury to join us.

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 3:45 p.m.)

6 THE COURT: Madam Forelady, ladies and gentlemen of
7 the jury, I do want to thank you for your patience with the
8 Court this afternoon. Perhaps you have realized that this
9 week we have a lot going on in court and the cases are
10 somewhat -- not somewhat, they are very important. They are
11 somewhat complicated, and things had to be done in order to
12 get them to a position we could, not only this case but the
13 other case as well, to start the trial.

14 Madam Clerk, if you would, please swear the jury.

15 (WHEREUPON, the jury was sworn.)

16 THE COURT: Madam forelady, ladies and gentlemen of
17 the jury, I'm sure that each of you now fully appreciates that
18 this Court, the Court of General Sessions of Anderson County,
19 exists for the purpose of resolving questions of alleged
20 criminal conduct arising between the State of South Carolina
21 and the defendant.

22 It is a guaranteed right of every citizen that a
23 charge of criminal conduct be presented in open court
24 according to certain rules of procedure. The State has not
25 only an equal right but a duty to present a charge of criminal

1 conduct in open court according to the same rules of
2 procedure. Each of the parties, therefore, both the State and
3 the defendant, then have an equal right to the opportunity of
4 this judicial proceeding and to have you, as the jury,
5 selected and now sworn for the trial of this case.

6 One of the most important aspects of your duty as
7 the jury lies essentially in the oath that you have now taken
8 to well and truthfully try and determine the facts of this
9 case. That oath in a very essential way says that you are the
10 sole judges of the facts in this case.

11 Obviously, any case tried in court will involve a
12 question about what happened or how something came to happen
13 or whom, if anyone, did anything in a particular occurrence or
14 circumstance. From this point forward, no one concerned with
15 this trial has a right to decide any question of fact in this
16 trial or the truth of it except you, the jury.

17 The facts then are for your resolution, and your
18 decision and yours alone. And after you hear all of the
19 evidence in the case then it will be your duty by your mutual
20 and joint discussions to determine the truth of this case by
21 deciding the weight and the believability of each part of
22 evidence and by applying the law of the case thereto.

23 Now, as the trial judge I am the law of the case in
24 this case. It is also my responsibility, among other duties,
25 to preside over this trial, to rule on the admissibility of

1 evidence offered during the progress of the trial and to state
2 to you, the jury, the law applicable to the case.

3 The Constitution of South Carolina mandates that I,
4 as the trial Judge, cannot directly or indirectly comment
5 about the facts in this case in any way.

6 The process of a verdict then is simply that you,
7 the jury, first determine what is the truth of the facts and
8 then apply to that true state of facts that principle of law
9 applicable and by that process determine and report to this
10 Court your final verdict in the case, speaking the truth of
11 the case as you determine it.

12 Now, the Court will fully and more completely state
13 to you the principles of law applicable to the issues in this
14 case before the case is submitted to you for your decision.
15 However, there are certain principles of law applicable to the
16 framework of every case in General Sessions Court. In the
17 very basic way I'll outline several of these basic principles
18 for you for your guidance.

19 First, the defendant has entered a plea of not
20 guilty to the charges contained in the indictment. An
21 indictment in a case is not evidence and it is simply the
22 written instrument that contains the charge or charges against
23 the defendant and it serves as the formal document by which
24 this case is processed into this Court.

25 The plea of not guilty places upon the State the

1 burden of proof in this case. As for what is meant by the
2 term burden of proof, the defendant is presumed in law
3 innocent of all charges contained in the indictment.

4 The burden of proof requires the State to prove
5 guilt beyond a reasonable doubt, and therefore consistent with
6 that burden the defendant or the accused party shall be
7 presumed to be innocent, and that presumption of innocence is
8 sufficient to ~~compel~~ a verdict of not guilty or a verdict of
9 acquittal unless you, the jury, conclude that the State has
10 satisfied its obligation to prove the defendant's guilt beyond
11 a reasonable doubt.

12 Now, the term reasonable doubt means the kind of
13 doubt that would cause a reasonable person to hesitate to act.

14 Now, the case will be open by the solicitor, after
15 which the same opportunity will be afforded to the defendant's
16 attorney to make an opening statement. When all of the
17 evidence has been received by the Court, counsel for the State
18 and counsel for the defendant will state to you, the jury,
19 their respective positions, after which I will more fully
20 state to you the applicable law in the case.

21 Now, obviously all parts of the case are important.
22 You do not know which witness in a case will most impress you,
23 whether the first witness or the last witness. In reaching
24 your final conclusion you will need the guidance of the
25 judgment of the other jurors, you will need the guidance of

1 the principles of law that will be stated to you by the Court.

2 For all of these reasons then when we have any
3 recess periods when you retire to your jury room or during the
4 overnight or meal recess I instruct you that you must not
5 undertake to discuss this case among yourselves until the case
6 is finally given to you for your deliberation; nor are you to
7 discuss this case with anyone or permit anyone to discuss this
8 case with you. If anyone should try to do so, report them,
9 please.

10 Now, the verdict in this case must be a unanimous
11 verdict, that is the verdict of all 12 members of the jury.

12 There are a few other things I need to mention
13 before we start. First, as I've said earlier, although I am
14 the only person who can tell you what the law is you, and you
15 alone, are the only ones who can determine the facts. I do
16 not have the right to indicate how I may feel about the
17 evidence presented, and throughout this trial my intention
18 will be to act impartially towards each party.

19 Second, from time to time an attorney will object or
20 may object to some bit of testimony or evidence which the
21 other side is seeking to present.

22 As in sports, business or any other structured
23 activity there are certain rules that both sides must obey in
24 presenting evidence. These rules have a definite purpose.
25 They ensure that the information you receive is the most

1 trustworthy and reliable evidence available.

2 Now, objection is a procedure we use for an attorney
3 to call the possible violation of rule to the Court's
4 attention, and for this reason you should not hold an
5 attorney's objection against his client nor should you
6 conclude from my ruling on the objection that I favor one side
7 or the other.

8 Finally, I am going to ask that you pay the closest
9 attention possible to the evidence presented to you. I will
10 ask that you do not take notes. For if the note taker makes
11 an error those notes can be more detrimental than helpful
12 during your deliberations. The time tested system is for
13 each of you to listen carefully, and I am confident that you
14 will do that.

15 Now, I have suggested that you not take notes. And
16 the reason for that is that I find when we take notes we have
17 a tendency to concentrate on the notes, and in doing so just
18 be sure that words are spelled right and also we put down what
19 we think we hear. But in doing so that distracts from what is
20 happening at the time, so we might miss something.

21 Now, as I say, sometimes notes can be more
22 detrimental than helpful because if we do inaccurately record
23 the notes and leave out something it changes the note
24 altogether. And I use an example, the word not. If you miss
25 the word not and write the statement down it's entirely

1 different from what was actually said.

2 So what I do is I suggest that you pay very careful
3 and close attention to the testimony and evidence so you hear
4 and see what is happening at the time, and then by your mutual
5 recollections if you have a question to resolve those
6 questions.

7 Now, having said do not take notes you'll note that
8 I do take notes. That is not one of these do as I say not as
9 I do. The fact is, you and I have different functions in this
10 courtroom. As I said, you, and you alone, are the only ones
11 who can determine the facts in this case.

12 However, I am concerned about what occurs. So I am
13 copying down not the effect of it or the worth of it, the
14 value of it but just that something has happened. So I'm just
15 jotting down what has happened to be sure that those things
16 that must happen are met.

17 So, therefore, please understand, if you would
18 concentrate on the testimony and exhibits and other evidence,
19 that is your, function, and what I am doing is not in any way
20 affecting your duty and responsibility in this trial.

21 Now, again, we will now begin the trial, and I'll
22 recognize the solicitor for his opening statement.

23 MR. MCELHANNON: May it please the Court.

24 Ladies and gentlemen, I want to thank you all for
25 your patience today. We do have things that we need to take

1 care of to begin a trial and today it took a little longer
2 with the other trial that they've got going on.

3 I also want to go ahead and thank you in advance for
4 your attentiveness. I know you will be. This is the most
5 important day or days for the victim in this case, Cathy
6 Galloway, and also for her friends and family.

7 On August 22nd, 2005 at 119 Scott Circle in
8 Pendleton, which is in Anderson County, South Carolina, the
9 defendant seated there in the middle willfully, feloniously
10 and with malice aforethought shot Cathy Galloway three times
11 and left her in the yard of their home.

12 Why did he do this? Well, we believe and we think
13 we'll show that it was over personal property. They had been
14 together on and off for 18 years, roughly, lived together.
15 Basically they were common law husband and wife, but they were
16 separating this time for good, the last time. Cathy Galloway
17 said this was it. She had had enough.

18 She was on her way to work that morning. It was
19 early. It was about between 7:00 and 7:30 on a Monday. She
20 worked at Le France. She left the house that day and actually
21 went and got in her car, ready to go to work.

22 Mr. Archie came out of the house and confronted her
23 in some way to get her to come back out of the car, and she
24 came back out and came towards him to see what else he wanted
25 because they had been arguing, as I stated, about personal

1 property, televisions, things of that nature. He shot her.
2 As she tried to get into the home, she came up the front
3 porch, came back down, he shot her again. She fell face up in
4 the yard. That was two shots.

5 The evidence is going to show that Mr. Archie went
6 inside the home, made a phone call to his friend, not to 911,
7 to a friend, and told him what he had just done. Then some
8 minutes later, probably 5 to 10 minutes later, he was outside
9 pacing back and forth in the yard and up and down the steps of
10 the porch, according to the witnesses that you're going to
11 hear from the witness stand, eyewitnesses.

12 That much time elapsed. He went back to the
13 victim's body as the Anderson County law enforcement officer
14 arrived and shot her a third time in the presence of law
15 enforcement, then he drops the gun and they handcuff him.

16 What could be that important to shoot someone 3
17 times over? Even once, let alone 3 times. No regard for her
18 life. As I stated, did not call 911. It's a cold, callous
19 disregard for human life.

20 What we are going to do through this trial is put a
21 puzzle together piece by piece. Every witness is going to
22 have part of the puzzle. The physical evidence is going to
23 come in and that's going to put more of the puzzle together.

24 And at the end of this day or days, however long it
25 takes, because it is very important, there's not going to be a

1 doubt in your mind that that defendant seated in the middle,
2 Leroy Archie, is guilty of murder and nothing less. It was
3 callous, it was cold, it was heartless, it was evil.

4 So what I'm going to ask you to do is just listen
5 attentively. And as I stated before, we thank you for being
6 here today and for however many days it takes, and I think
7 you'll come to the conclusion and the verdict, which means to
8 speak the truth, and I think it's going to scream out loud and
9 clear that he's guilty of murder. Thank you.

10 THE COURT: Mr. Potter.

11 MR. POTTER: If it pleases the Court.

12 Evidence is going to show that Leroy shot Cathy
13 Galloway. The evidence is going to show that. Well, why are
14 we here then? Why are we here if I'm standing before you
15 saying Leroy shot Cathy Galloway? I'll give you a hint. He
16 had no choice. He had no alternative. He had no other
17 alternative because of the following; that he was trapped. He
18 was trapped in a relationship that was violent. The evidence
19 is going to show that.

20 He met Cathy Galloway 18 some odd years ago, as the
21 solicitor said. They lived together. They argued with one
22 another, and they fought. He fought with her, she fought with
23 him. And it came to a point in time where Leroy say I'm
24 moving out. And you'll see pictures the prosecutor is going
25 to give to you, and you'll see boxes saying West Point Stevens

1 on them, and that's where Leroy works. He was loading up his
2 gear. He was getting out.

3 He chose that day, August 22nd, to tell Cathy I'm
4 leaving today. My friend, Duke, is going to help me load up
5 and I'm getting out of here. The evidence is going to show
6 that an argument ensued. That wasn't good enough for Cathy.
7 An argument ensued.

8 The evidence is going to show that Cathy's son, Jack
9 Galloway, who will testify before you, got involved in it.
10 He threatened Leroy Archie; I'll bust your ass just like I did
11 the last time.

12 Leroy was trapped. He got a gun, he put it into a
13 robe to protect himself.

14 More argument ensues. The evidence is going to show
15 that Cathy left the house.

16 Now, what does Leroy do? He gets out of the house
17 too because he's afraid of Jack. He comes out onto the porch.
18 He looks to his right and he sees Cathy's car backing up, but
19 it stops.

20 Cathy puts it from reverse into drive and pulls
21 forward, stops the car, turns the key off, opens the door and
22 walks out of that car and starts yelling, screaming, fists
23 raised, and immediately behind Leroy as he steps on that porch
24 is Jack Galloway. He's trapped. He has no alternative.

25 He has a lady coming to him that's over 300 pounds.

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1 He's got a gentleman behind him that's over 200 pounds who has
2 already threatened him that day. He had no choice.

3 Leroy shot Cathy, I'm sorry to say. But had he not
4 he would have had serious injury to himself, if not death at
5 that point in time. Tempers were high, people were upset.
6 Leroy acted in self defense. Thank you.

7 THE COURT: You may call your first witness.

8 MR. MCELHANNON: The State calls Investigator Mike
9 Mitchell.

10 GARY MICHAEL MITCHELL, after having been duly
11 sworn, testified as follows:

12 THE COURT: If you would, please, give us your full
13 name for the record, spelling your last name.

14 MR. MITCHELL: Gary Michael Mitchell,
15 M-i-t-c-h-e-l-l.

16 THE COURT: Thank you.

17 DIRECT EXAMINATION

18 BY MR. MCELHANNON:

19 Q. Detective, who are you employed with?

20 A. Anderson County Sheriff's Office.

21 Q. How long have you been employed with them?

22 A. Eleven years.

23 Q. All as a detective or --

24 A. No, sir. I've had a couple of different jobs. Road
25 patrol, I worked crime scene and forensics and now I'm

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1 assigned in special operations division assigned to a training
2 unit.

3 Q. What position did you hold August 22nd, 2005?

4 A. I was an investigator in crime scene and forensics.

5 Q. And did you actually respond to 119 Scott Circle?

6 A. Yes, sir, I did.

7 Q. And what was the nature of that call?

8 A. When the call went out it was shots fired in the
9 area, a domestic.

10 Q. I'm sorry?

11 A. A domestic.

12 Q. Domestic. And what were your responsibilities at
13 that crime scene?

14 A. To photograph the crime scene, to retrieve and
15 document any physical evidence at the crime scene.

16 Q. And did you do that?

17 A. Yes, sir, I did.

18 Q. Let me show you some photographs marked State's
19 Exhibits 9 through 31 and see if you can identify those. And
20 if you would, go through every one and make sure I am not
21 leaving any out, maybe 9 through 32.

22 [PAUSE.]

23 A. Nine through 31.

24 Q. Can you identify those photographs?

25 A. Yes, sir. These are the photographs I had taken at

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1 the crime scene.

2 Q. You actually took those?

3 A. Yes, sir, I did.

4 MR. MCELHANNON: Your Honor, at this time the State
5 would move that State's Exhibits 9 through 31 be admitted into
6 evidence. *no foundation laid for pics*

7 MR. POTTER: No objection.

8 THE COURT: Without objection State's Exhibits 9,
9 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,
10 25, 26, 27, 28, 29, 30 and 31 are admitted in evidence.

11 MR. MCELHANNON: Thank you, Your Honor.

12 (WHEREUPON, State's Exhibit Numbers 9 through 31,
13 Photographs, were admitted into evidence.)

14 BY MR. MCELHANNON:

15 Q. Now, Detective Mitchell, I'm going to show you a box
16 from SLED. If you can open that for me and see if you can
17 identify what's in there.

18 A. Yes, sir, I can.

19 Q. Now, what is that?

20 A. This is a revolver that was laying at the scene.

21 Q. What caliber is it.

22 A. It's a .32 revolver?

23 Q. And do you remember where exactly it was laying at
24 the scene?

25 A. Yes, sir. It was laying very close to the victim,

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1 approximately 5 feet away from her head.

2 Q. And for the record, that's State's Exhibit 1. Did
3 you take the .32 revolver into evidence?

4 A. Yes, sir, I did.

5 Q. And are you the one that processed it or sent it on
6 to SLED?

7 A. I send it on to SLED to be processed.

8 Q. Now, how was it found by way of ammunition?

9 A. There were 3 live rounds in the revolver and 6 spent
10 shell casings.

11 Q. So it holds how many shots?

12 A. Six total.

13 Q. So there were how many? Were there any unfired
14 shells in it?

15 A. Yes, sir.

16 Q. How many?

17 A. Three fired, 3 unfired.

18 Q. Three fires and 3 unfired. So there weren't 6 spent
19 shell casings?

20 A. No, sir.

21 Q. If you'll come down for a minute.

22 A. (The witness complied.)

23 Q. If you can, tell the jury what that is and point to
24 it and tell them what that is.

25 MR. POTTER: Your Honor, I don't mean to interrupt.

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1 I need to know what number this is. .

2 MR. MCELHANNON: Oh, I'm sorry. This is State's 26.

3 A. It's right here, the revolver that was laying in the
4 grass right near the victim in the front yard of the location.

5 Q. Do you know, when that picture was taken was
6 Ms. Galloway still on the ground?

7 A. Yes, sir, she was.

8 Q. Okay.

9 THE COURT: Now, what exhibit was that?

10 MR. MCELHANNON: It's 26, Your Honor.

11 BY MR. MCELHANNON:

12 Q. Let me show you State's Exhibit 27. That's close
13 up?

14 A. That's just a close-up of the same photograph. Just
15 closer magnification.

16 Q. And that is, in fact, the gun that's marked State's
17 Exhibit Number 1?

18 A. Yes, sir.

19 Q. Can you identify what's on State's Exhibit 28?

20 A. Yes, sir. This is a set of car keys with the little
21 electric door locks on it --

22 Q. Did you know -- I'm sorry.

23 A. -- and a little small drive's license purse on it, a
24 little picture.

25 Q. And did you discover who those keys belonged to?

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1 A. They belonged to the victim.

2 Q. Ms. Galloway?

3 A. That's correct.

4 Q. And I think State's 29, a close-up of those keys?

5 A. That's a close-up of the same photograph.

6 Q. Where was that located, if you remember?

7 A. It was right near the victim approximately 6, 7 feet
8 away from it.

9 Q. Now, you went throughout the house, as well, taking
10 pictures?

11 A. Yes, sir.

12 Q. I'll just show you State's 15.

13 A. That's one of the rooms inside the residence. It's
14 some boxes and TV's.

15 I would like to point out one thing. You keep
16 seeing these little red things in each one of the photographs,
17 that's just the evidence tag the State puts on the back of the
18 photograph. That's not a picture of something on the wall.

19 Q. Thank you. I believe all these, just quickly,
20 State's Exhibit 14 would be the same?

21 A. Yes, sir.

22 Q. More boxes?

23 A. Yes, sir, just more boxes, just packed up, stacked
24 up.

25 Q. State's 13?

GARY MITCHELL - DIRECT BY MR. MCELHANNON

1 A. That's just a photograph of through the house, just
2 documenting the condition of the residence when we found it.

3 Q. Let me show you what's been marked State's Exhibit
4 Number 12. Can you identify that?

5 A. Yes. This patrol car is parked on the road, the
6 paved surface. These mailboxes is actually across the street
7 from the residence. This is the residence. That photograph
8 was made in the yard adjacent, across the street.

9 Q. And do you know whose patrol car that is?

10 A. No, sir, I can't determine that. I don't remember.

11 Q. Again, State's 11?

12 A. That's just, again, across the street. This is the
13 residence at 119 Scott, and you can see the road just across
14 the street. The residence was blocked by some large trees in
15 the front yard.

16 Q. Where is the porch of that home -- or the front
17 porch?

18 A. It's actually right straight behind this tree right
19 here (indicated). Just this window would be to the right of
20 the porch (indicated).

21 Q. And to your knowledge was there a side porch?

22 A. I don't remember. The front porch was one with
23 steps on the opposite side. You could come up either side of
24 the step. It didn't step up from the front. It came up from
25 either side.

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1 Q. This may be clearer. Let me show you State's
2 Exhibit 25?

3 A. Yes, sir, this is much clearer. You can see the
4 steps just on the other side of these chairs, and then there
5 was some steps coming up just on the other side and, again,
6 you can see the trees that were in the front yard.

7 Q. State's Number 16?

8 A. This was a vehicle that was parked in the yard.

9 Q. Do you know who that belonged to?

10 A. No, sir, I honestly don't.

11 Q. And State's 17?

12 A. That's the interior of the vehicle that was in the
13 prior photograph.

14 Q. Now, what is that in the passenger seat, if you can
15 tell?

16 A. It's a lady's pocketbook.

17 Q. State's Exhibit 19?

18 A. This is the front porch of the residence. The
19 photograph you seen earlier was from this side. This is
20 looking in from the left side.

21 Q. What was the significance of that photograph, if you
22 remember?

23 A. We were documenting some blood that was on the front
24 porch.

25 Q. Fresh blood?

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1 A. Yes, sir, it had not dried.

2 Q. State's 24?

3 A. Those are some photographs showing the blood
4 droplets on the porch.

5 Q. And if you can tell, I know that's a large photo,
6 which side of the porch that was on?

7 A. It's the side -- the prior photograph of where you
8 were facing, going off that side.

9 Q. So let me get you back to Exhibit 19, and if you can
10 kind of show where that --

11 A. You'll notice this metal folding chair with the
12 black tennis shoes. The blood droplets are going to be right
13 on here and a little bit in front of the shoes.

14 Q. State's 23?

15 A. A blood droplet on part of the porch.

16 Q. State's 22?

17 A. That's going to be on one of the pickets, the part
18 of railing --

19 Q. Of the front --

20 A. Of blood droplet.

21 Q. Of where?

22 A. Pardon?

23 Q. Of where?

24 A. I'm thinking it was on the handrail going up, one of
25 the pictures on the handrail.

GARY MITCHELL - DIRECT BY MR. MCELHANNON

1 Q. On the front porch?

2 A. On the front porch, yes, sir.

3 Q. State's 21?

4 A. That's some blood that was on the metal chair where
5 I used for a reference where you're going off the porch --
6 just -- the black shoes would have been over in this area of
7 the step. It's right behind that folding chair.

8 Q. State's 20?

9 A. That's more blood on the porch and that's pretty
10 much in the center of the porch, about midway.

11 Q. If you remember, how much blood was on the porch?

12 A. There were several different spots of blood,
13 probably seven or eight different locations from one point,
14 from one side of the porch before you got off the other side.

15 Q. Let me show you State's 18.

16 A. That's a spot of blood, and this spot was actually
17 on one of the risers on the steps.

18 Q. And what's the significance of the ruler?

19 A. This is an odontology scale. The projector sort of
20 bleeds it out, but this is increments to where you can tell
21 the size of something, measurements, and this is actually
22 10 millimeters.

23 Q. Let me show you what's marked as State's Exhibit 30.
24 Can you identify this?

25 A. This is going to be the victim, the deceased covered

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1 up with a sheet. That was before she was transported to the
2 emergency room.

3 Q. And what end of the porch is her body on?

4 A. She's facing the house. This is the right side.
5 You can just barely make out that brown folding chair on this
6 side (indicated).

7 Q. The nature of the yard I believe you said had large
8 trees in the front?

9 A. Yes, sir. You can see these on the right side of
10 the photograph, the road being to the right of these trees
11 (indicated).

12 Q. And could you see through those trees?

13 A. Just at spots, mainly toward the bottom where the
14 foliage wasn't so thick.

15 Q. Well, in reference to this picture, where were the
16 blood spots that we just saw, on which end of that porch
17 related to the body?

18 A. The major of them was on this end of the porch near
19 the folding chair and the black athletic shoes that was on the
20 corner of the porch against the residence (indicated).

21 Q. And State's 31?

22 A. Basically the same photograph from a different angle
23 of the deceased, the front porch and the trees on the left
24 side of the photograph.

25 Q. And where is the car that we saw in the picture in

GARY MITCHELL - DIRECT BY MR. MCELHANNON

1 relation to that?

2 A. It's going to be in the driveway on this end of the
3 residence (indicated).

4 Q. You can have a seat back up there.

5 A. (The witness complied).

6 Q. I believe you've testified that you actually took
7 the .32 revolver, State's Exhibit Number 1, into evidence?

8 A. Yes, sir, I did.

9 Q. What did you do with that weapon?

10 A. We placed it into evidence, which is the secure
11 custodian, until the evidence is needed for court or either
12 sent to a lab for processing.

13 MR. MCELHANNON: Your Honor, at this time I'd move
14 that State's Exhibits 1, 5, 6 and 7, which have been
15 identified as --

16 A. Shell casings.

17 Q. And were they in the weapon when you retrieved it?

18 A. Yes, sir, they were.

19 MR. MCELHANNON: State's Exhibits 1, 5, 6 and 7 be
20 admitted.

21 THE COURT: Now, which is 5?

22 MR. MCELHANNON: 5, 6 and 7 are 3 spent shell
23 casings.

24 THE COURT: Each one is just --

25 MR. MCELHANNON: Yes, sir.

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1 THE COURT: Spent?

2 MR. MCELHANNON: Yes, sir.

3 THE COURT: Any objection?

4 MR. POTTER: If I could just have -- were those

5 found at the scene or --

6 THE COURT: Were they in the yard or in the pistol?

7 MR. MCELHANNON: No, sir, they were in the revolver,

8 Your Honor.

9 A. They were in the pistol.

10 Q. You took control of those shell casings with the

11 weapon; is that correct?

12 A. That's correct.

13 MR. POTTER: That's fine. No objection.

14 THE COURT: All right. Without objection State's

15 Exhibits 5, 6 and 7 are admitted.

16 (WHEREUPON, State's Exhibit Numbers 1, 5, 6 and 7,

17 Revolver and Spent Shell Casings, were admitted into

18 evidence.)

19 BY MR. MCELHANNON:

20 Q. Mr. Mitchell, did you attend the autopsy in this

21 case?

22 A. No, sir, I did not.

23 MR. MCELHANNON: That's all I have of this witness,

24 Your Honor.

25 THE COURT: Cross-examination.

GARY MITCHELL - CROSS BY MR. POTTER

1 MR. POTTER: Thank you, Your Honor. If it pleases
2 the Court.

3 CROSS-EXAMINATION

4 BY MR. POTTER:

5 Q. Detective, did you test the blood that was on the
6 porch of the house?

7 A. No, sir, I collect it and then that is sent on to
8 SLED for --

9 Q. I understand.

10 A. -- identification.

11 Q. So if I'm understanding correctly, the front of the
12 house has steps -- if you are facing the house on your left
13 will be steps, on the right will be steps, correct?

14 A. Yes, sir, that's correct.

15 Q. Then there's a middle area, a porch area --

16 A. Yes, sir.

17 Q. -- that you are referring to?

18 A. Yes, sir.

19 Q. Has spicket -- excuse me.

20 A. Pickets.

21 Q. Pickets on either side of the steps, correct?

22 A. Yes, sir.

23 Q. And as well as pickets in front of the porch area?

24 A. Yes, sir.

25 Q. And the pickets in front of porch area, did you find

GARY MITCHELL - CROSS BY MR. POTTER

1 any blood on those pickets?

2 A. No, sir, I don't remember finding any.

3 Q. When you are looking at the house, steps to the left
4 you indicated on those pickets you found some blood?

5 A. Yes, sir.

6 Q. Did you find any blood on the steps to the right of
7 the porch?

8 A. No, sir.

9 Q. The riser to the left of the porch you did find some
10 blood?

11 A. Yes, sir.

12 Q. The keys that you found in the yard, did those go to
13 the Maxima that is referenced in State's Exhibit Number 16?

14 A. Sir, I don't know. I collect evidence and the
15 investigators follow up on that end of the --

16 Q. When you took photographs of inside of the Maxima
17 were there any keys in the ignition?

18 A. No, sir.

19 Q. And you took photographs inside the house as well?

20 A. Yes, sir.

21 Q. And looking at State's Number 14 and State's Number
22 15, these are photographs you took?

23 A. Yes, sir.

24 Q. The inside of the house?

25 A. Yes, sir.

GARY MITCHELL - REDIRECT BY MR. MCELHANNON

1 Q. And there's numerous boxes in there that say West
2 Point Stevens on them; is that correct?

3 A. Yes, sir, it does.

4 MR. POTTER: Judge, can I publish these to the jury?

5 THE COURT: Certainly.

6 MR. POTTER: No further questions. Thank you.

7 THE COURT: Re-examine.

8 REDIRECT EXAMINATION

9 BY MR. MCELHANNON:

10 Q. Mr. Mitchell, Scott Street in Pendleton, is that in
11 Anderson County?

12 A. Yes, sir, it is.

13 Q. As you went through the house taking pictures, were
14 you looking for any other weapons of any type or anything of
15 that nature?

16 A. Yes, sir. Once the search warrant was obtained we
17 searched the house for any evidence that would further the
18 investigation as to the crime that had been committed.

19 Q. Did you find any weapons in the house?

20 A. No, sir, we did not.

21 Q. The only weapon you found was this .32 caliber?

22 A. Yes, sir, that's correct.

23 Q. Did you arrive on the scene quickly, fairly quickly?

24 A. Yes, sir. I was one of first couple of units there.

25 I was in route to work and my first initial response was for a

GARY MITCHELL - REDIRECT BY MR. MCELHANNON

1 back-up officer.

2 Q. And was Mr. Archie still present when you arrived?

3 A. Yes, sir, he was.

4 MR. POTTER: I'm going to object at this time. I
5 think this exceeds the scope of cross-examination.

6 THE COURT: Not exactly --

7 MR. MCELHANNON: I'll withdraw that, Your Honor.

8 THE COURT: Thank you.

9 MR. MCELHANNON: That's all the questions I have.

10 THE COURT: All right. You may step down.

11 You may call your next witness.

12 MR. MCELHANNON: Your Honor, if we may approach

13 quickly?

14 THE COURT: Certainly.

15 (WHEREUPON, a bench conference was had.)

16 THE COURT: Madam forelady, ladies and gentlemen of
17 the jury, I perhaps need to explain to you a little bit about
18 how we'll proceed.

19 I have found that we have two worlds today, one
20 begins early in the morning and goes until about five o'clock
21 then another starts at five and goes somewhat later. And so
22 normally I try to break about five o'clock, and that means
23 that I do not take witnesses that might go beyond that, in
24 other words, direct examination, cross-examination that would
25 go beyond five. And I don't like to break the testimony which

1 means take direct today and then cross-examine tomorrow.

2 I like to keep the testimony constant and flowing so
3 you can evaluate it without any sort of interruption. For
4 that reason, and understanding the next witness might take
5 some time, I'm going to suggest that we break for the day at
6 this time.

7 Sometimes I will go beyond five to complete a
8 witness. In other words, if we don't anticipate it going too
9 much beyond that, just to be sure that we have all the
10 witness' testimony, again, so we don't break the testimony.
11 So I'm going to suggest that we break today at this time.

12 Now, this will be your first duty as foreperson, and
13 that is to tell me what time you'd like to start in the
14 morning. We won't have any more interruptions like we've had
15 today. It's usually getting started that we have some
16 difficulties, but in the morning we'll start when -- well, I
17 anticipate start without any interruptions.

18 But if you would tell me what time you'd like to
19 start. I would suggest anywhere from 9:00, 9:30 or 10
20 o'clock. And this is not a unanimous verdict. This is a
21 consensus. So if you'd just check with your jury and see what
22 time you'd like to start 9:00, 9:30 or 10:00.

23 You all know what you have to do before you get
24 here. There might be things you need to get out of way before
25 you come. So whatever time, 9:00, 9:30 or 10:00.

1 THE FOREPERSON: Nine o'clock.

2 THE COURT: Nine o'clock. Very good. So you'll
3 just come back to the jury room that you've been in this
4 afternoon.

5 Now, I'll tell juries this is the most difficult
6 part of the case because you'll go home this evening and
7 everybody will ask, well, what are you doing? And you're
8 going to say, well, I've been drawn on a case on a trial.

9 And they say, what is it about? And you're going to
10 have to tell them, well, I can't tell you. And they will say,
11 well, why not? And you'll tell them because the Judge said
12 so. And more than likely they'll say something to the effect,
13 well, that's ridiculous.

14 Well, the thing is, I think you understand, this
15 case is important to everybody involved and needs to be
16 resolved in the right fashion which means only by what you
17 hear from this witness stand and the exhibits and other
18 evidence introduced in this Court and the argument and the
19 law in the case.

20 Now, no one who is not sitting where you are sitting
21 right now or will be with you in the jury room can help you.
22 All they can do is confuse. They can only add to -- increase
23 the problems with the case rather than helping you resolve the
24 issues that you'll have to decide. So please tell them that
25 you can't discuss the case with them.

1 Now, I'll be here about 8:30 in the morning, and if
2 they don't understand tell them I'll be glad to explain it to
3 them, but they are not to interfere with your duties here.

4 So with that, I'll excuse you and look forward to
5 seeing you at nine o'clock in the morning.

6 Everyone else remain seated while the jury retires
7 from the courtroom.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 4:33 p.m.)

10 THE COURT: Anything from the State?

11 MR. MCELHANNON: Nothing, Your Honor.

12 THE COURT: Anything from the defendant?

13 MR. POTTER: No.

14 THE COURT: If either side anticipates any problems
15 please get here a little bit early because I do want to start
16 at 9:00 because they've been very patient with us today.

17 All right. Very good. I will see you in the
18 morning.

19 (WHEREUPON, the trial of this case was recessed for
20 the day.)

21 Tuesday, September 12, 2006

22 (WHEREUPON, Court's Exhibit Number 1, a Note From
23 Juror 22, was marked and made a part of the record.)

24 THE COURT: If you would, please, ask the juror to
25 join us.

1 (WHEREUPON, juror 22 enters the courtroom.

2 THE COURT: We've had a conference in chambers with
3 the attorneys and I've interviewed or discussed some matters
4 with juror 22. As a result of that discussion I'm going to
5 excuse the juror.

6 And I do thank you for it. This doesn't have a
7 thing to do with anything you've done but it's just something
8 for the Court's discretion feels it's in the best interest. I
9 want to thank you for your service, too. Thank you very much,
10 sir.

11 Anything from the State?

12 MR. MCELHANNON: Nothing from the State.

13 MR. POTTER: Just want to thank the juror for his
14 service.

15 THE COURT: Very good. Thank you, sir.

16 (WHEREUPON, the juror was excused.)

17 THE COURT: All right. Anything else before we
18 bring the jury in?

19 By the way, we should also, I think, juror --

20 MR. POTTER: Judge, that was juror T-12, is the one
21 whose father passed.

22 THE COURT: So juror T-12, transfer 12 is also
23 excused for a family situation.

24 Yes, sir?

25 MR. MCELHANNON: Your Honor, now that we're down to

1 12 jurors from 14 in just a days time if you could tell the
2 audience about having any contact with jurors just so that --

3 THE COURT: Well, again, let's do understand that
4 anybody -- no, rather nobody is to have any contact with a
5 juror or any of the other parties in this case if they are
6 interested in this case at all. Any contact with a juror is
7 improper and when it happens it creates a lot of problems but
8 it will also create a problem for the person that does that.

9 All right. Does anybody in the courtroom have any
10 question about no contact with jurors or anyone else without
11 invitation?

12 (There was no response.)

13 THE COURT: If you do, raise your hand now.

14 (There was no response.)

15 THE COURT: All right. Very good. Anything else?

16 Thank you, Solicitor.

17 MR. MCELHANNON: Nothing from the State, Your Honor.

18 THE COURT: Anything from the defendant?

19 MR. POTTER: No, Your Honor.

20 THE COURT: Ask the jury to join us.

21 (WHEREUPON, the jury enters the courtroom at
22 approximately 9:20 a.m.)

23 THE COURT: Mr. Griffin and Mr. Stone, you will now
24 move over into the jury. Very good. Thank you very much,
25 gentlemen.

ANTWAN "JACK" GALLOWAY - DIRECT BY MR. MCELHANNON

1 Let the record reflect that the jury is in the jury
2 box. We will now proceed with the trial of the case.

3 Mr. Solicitor, you may call your next witness.

4 MR. MCELHANNON: The State calls Jack Galloway.

5 ANTWAN ANDRE "JACK" GALLOWAY, after having been
6 duly sworn, testified as follows:

7 THE BAILIFF: State your name and spell your last
8 name.

9 THE WITNESS: My name Antwan Galloway,
10 G-a-l-l-o-w-a-y.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MR. MCELHANNON:

14 Q. Antwan, you go by Jack?

15 A. Yes, sir.

16 Q. Most people call you Jack?

17 A. Yes, sir.

18 Q. Just to start off with, you are currently in federal
19 custody; is that right?

20 A. Yes, sir.

21 Q. For what?

22 A. I got a distribution charge.

23 Q. Drug charge?

24 A. Yes, sir.

25 Q. And when did you plead -- did you plead guilty or

ANTWAN "JACK" GALLOWAY - DIRECT BY MR. MCELHANNON

1 have a trial on that?

2 A. I pleaded guilty.

3 Q. And when was that?

4 A. June 16th, 2005.

5 Q. And was that when you were sentenced?

6 A. I got sentenced but I self surrendered October the
7 3rd of '05.

8 Q. So you were sentenced in June of '05, didn't go to
9 prison until October?

10 A. Yeah. I was on home confinement.

11 Q. And how much time did you get on that charge?

12 A. I got 37 months.

13 Q. 37 months. So you've done about a year of your time
14 already?

15 A. About a year.

16 Q. Now, where were you living on August 22nd, 2005?

17 A. 119 Scott Circle, Pendleton, South Carolina.

18 Q. And who were you living with?

19 A. My mom and her boyfriend.

20 Q. And who is your mother?

21 A. Cathy Louise Galloway.

22 Q. And who was her boyfriend at that time?

23 A. Leroy Archie.

24 Q. Is that the defendant seated there?

25 A. Yes, sir.

ANTWAN "JACK" GALLOWAY - DIRECT BY MR. MCELHANNON

1 Q. Was there anyone else staying with you in that home
2 at that time?

3 A. I mean, my girlfriend, she would stay there off and
4 on.

5 Q. What's her name?

6 A. Kathy Wilkes.

7 Q. Kathy Wilkes?

8 A. Yes, sir.

9 Q. How old are you right now, Jack?

10 A. 26.

11 Q. And on the morning of August 22nd, 2005, if you can
12 start early that morning and what you were doing.

13 A. Well, I was asleep. My mom, she came and woke me
14 up. Her and Leroy had been arguing or whatever about she
15 couldn't take her stuff or he couldn't take his stuff when he
16 leave or whatever. So I got up and I went to the back to the
17 room where they was in.

18 Q. Let me stop you there now. Was your mother also
19 moving out of the house?

20 A. Yes, sir. She had already started packing her
21 stuff. She was going to leave the week I left. She was only
22 staying there because I had another week before I had to self
23 surrender to Edgefield.

24 Q. To Edgefield prison?

25 A. Yes, sir.

ANTWAN "JACK" GALLOWAY - DIRECT BY MR. MCELHANNON

1 Q. Okay. So both the defendant and your mother were
2 moving out of this home?

3 A. Yes, sir.

4 Q. Go ahead.

5 A. And so I went to the back room and my mom was all
6 upset saying Leroy going to take all our stuff, blasé, blasé.
7 So I was just like -- well, I told Leroy, look, while momma at
8 work you can take anything that's yours but what's hers you
9 not going to take nothing.

10 So he was like, so I can't have nothing.

11 I was like, well, you can have what's yours.

12 Then my mom was like, well, look, I'm fixing to go
13 to work. I'm going to try to get off work early but don't go
14 nowhere.

15 I was like, all right, I'll be here.

16 So my mom turned and left the room. So I followed
17 behind her. As she left, Leroy got up and he followed behind
18 me.

19 Q. Where was he when you went into the room? Where was
20 the defendant?

21 A. He was sitting down.

22 Q. And what was he dressed in?

23 A. He had on a green robe and maybe some regular pants
24 or whatever. I know he had on a green robe. He was just
25 sitting down.

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1 Q. I show you what's been marked as State's Exhibit
2 Number 7 -- excuse me, Number 8. Can you identify this?

3 A. Yes, sir.

4 Q. What is that?

5 A. That's the green robe he had on.

6 Q. And you say he was seated on the bed when you first
7 went into the bedroom?

8 A. Naah. In their bedroom you got the bed then you got
9 like another living area which they got a couch and a TV in
10 there. He was sitting on the couch.

11 Q. Okay. And he had on that green robe and what else?

12 A. Maybe some pants and some -- probably his black
13 slippers.

14 Q. And at that time did you see him with any type of a
15 weapon?

16 A. No, sir.

17 Q. Then what happened?

18 A. So my mom said she was fixing to go to work, she
19 going to try to get off early. So she was leaving the house
20 and then he had got up behind her, behind. Well, she left and
21 then I left behind her. She was like, I'm going to try to get
22 off early. I was like, okay. I'll see you when you get off.

23 So he got up behind her, and I was fixing to go to
24 my room, and he was at the door. Then he stopped and was
25 like, why you act like you want to jump on me or something.

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1 Q. He said that to you?

2 A. Yeah. He said why you act like -- you act like you
3 want to jump on me or something.

4 So I was like naah. I said if I wanted to jump on
5 you I'd jump on you like I did last time. I said, but I got a
6 lot going on right now. I'm fixing to go to jail, you know.
7 You and mom just need to go you all own way.

8 So he opened the door. And I was fixing to go to my
9 room, and then he shut the door behind me. And then that's
10 unusual because he'll go outside and sit on the porch and
11 don't shut the door. So something told me to go see what's
12 going on. So when I turned to go to the door, by the time I
13 got to the door and heard -- I heard the gunshots. So when I
14 opened the door that's when I seen my momma.

15 Q. Where was she?

16 A. She was -- she was running. She was fixing to run
17 up the steps, and he was behind her. And I seen the gun. So
18 when I seen the gun I just automatically locked the door and
19 ran out the back door.

20 Q. And that back door, is that a side door?

21 A. Yes, sir.

22 Q. Okay. And now before you opened that door that he
23 had shut you heard gunshots?

24 A. Yes, sir.

25 Q. How many did you hear?

ANTWAN "JACK" GALLOWAY - DIRECT BY MR. MCELHANNON

1 A. Probably two or three.

2 Q. And you shut the front door and locked it?

3 A. Yes, sir.

4 Q. Why did you do that?

5 A. That was just the front. I shut the front door and
6 locked it so I know he couldn't come in after me.

7 Q. Let me show you a picture that's marked State's
8 Exhibit Number 12.

9 MR. MCELHANNON: Your Honor, may the witness leave
10 the stand briefly?

11 THE COURT: Certainly.

12 (WHEREUPON, the witness stepped off the witness
13 stand.)

14 Q. There again, State's Exhibit 12. If you can show --
15 and this is going to be hard to see, which is why I like to
16 use that. But show the jury where you ran -- where you shut
17 the front door and then what door you left out of when you ran
18 out.

19 A. The front door is right here (indicated) and I ran
20 through the house and came out the side door right there
21 (indicated).

22 Q. Okay. And where was your mother in the yard when
23 you shut the door, when you saw her running?

24 A. She was running up on the porch.

25 Q. Okay. You can take your seat.

ANTWAN "JACK" GALLOWAY - DIRECT BY MR. MCELHANNON

1 A. (The witness complied).

2 Q. When you ran off the side porch did you look back at
3 all?

4 A. When I looked back I thought I saw my mom on the
5 ground.

6 Q. And where, where on the ground?

7 A. In the front yard.

8 Q. What did you do after that?

9 A. Well, I ran to my nextdoor neighbor to try to call
10 911 but he wasn't there. So I was in the middle of the street
11 and I stopped a man and he let me use his cell phone to call
12 911.

13 Q. How were you dressed?

14 A. No shirt, shoes or nothing. I just ran out the
15 house.

16 Q. Just shorts on?

17 A. Shorts.

18 Q. So when you got there did you run to the Refuge Road
19 and Scott's Circle intersection?

20 A. Yes.

21 Q. And what did you do then?

22 A. Well, I tried to flag one car, it kept going. Then
23 this man, he stopped and he let me use his cell phone.

24 Q. And what did you do?

25 A. I called 911.

ANTWAN "JACK" GALLOWAY - DIRECT BY MR. MCELHANNON

1 MR. MCELHANNON: At this time, Your Honor, I'm going
2 to play State's Exhibit 39, which has been admitted without
3 objection.

4 THE COURT: All right. And I do understand that
5 State's Exhibit 39 has been admitted.

6 (WHEREUPON, State's Exhibit No. 39, a 911 Tape, was
7 played for the jury.)

8 BY MR. MCELHANNON:

9 Q. Jack, who was that that made that 911 call at first?

10 A. At first? That was me on the phone first.

11 Q. How far is it from your house, from that house at
12 119 Scott Circle down to the corner of Refuge Road and Scott
13 Circle that you ran to? Can you estimate?

14 A. Probably about 34 yards.

15 Q. After you ran down there did you hear anything else?

16 A. Naah. No, sir.

17 Q. After the police, policeman came up -- did you see
18 the policeman come up?

19 A. I seen the police -- the first -- the first police,
20 he turned in. We got a circle so he turned in on the top
21 road. When I seen him turn on the top road I was standing
22 there in my nextdoor neighbor yard.

23 And when the police pulled up I heard the police
24 telling him put the gun down. He said, put it down, put it
25 down, put it down. Then I heard pow. So I said the police

ANTWAN "JACK" GALLOWAY - DIRECT BY MR. MCELHANNON

1 done shot him now, so I ran up there. When I run up there the
2 police putting him in handcuffs. So I'm asking the police why
3 you didn't shoot him, you just let him shoot my momma again?

4 Q. So you heard another shot after the time of that 911
5 call, and as long as it took that 911 tape to play just then
6 after that you heard a third shot?

7 A. Yes, sir.

8 Q. What did you do after the police arrived? Did you
9 give a statement?

10 A. Yes, sir.

11 Q. Was that basically what you told today, the
12 statement you told today?

13 A. Yes, sir.

14 Q. Had you ever had altercations with the defendant in
15 this case?

16 A. Once.

17 Q. And how long ago was that?

18 A. Probably 2003.

19 Q. So two years before the --

20 A. Yes, sir.

21 Q. -- shooting?

22 A. Yes, sir.

23 Q. And he had been living in the home with your mother
24 and you for awhile?

25 A. Yes, sir.

ANTWAN "JACK" GALLOWAY - DIRECT BY MR. MCELHANNON

1 Q. This morning, the morning of August 22nd, 2005, did
2 you threaten Mr. Archie in any way?

3 A. No, sir.

4 Q. What risk did you have if you would have gotten in
5 an altercation with him?

6 A. Well, I had a lot to lose as far as being on home
7 confinement. I had a lot of rules I had to follow. I
8 couldn't be around no alcohol, drugs, no guns or weapons, and
9 anything that I would have done would have violated me and
10 sent me straight to prison. So I had to, you know, be good.

11 Q. Did you know Mr. Archie had a gun?

12 A. No, sir.

13 Q. Do you know how long he had that gun for?

14 MR. POTTER: Objection. Judge, he testified, if I
15 understood it correctly, he did not know --

16 MR. MCELHANNON: Withdrawn.

17 THE COURT: All right. Sustained. Withdrawn.

18 BY MR. MCELHANNON:

19 Q. What would you have done differently, if anything,
20 if you had known he had a weapon?

21 MR. POTTER: Judge, I'm going to object to that
22 question. It calls for speculation.

23 THE COURT: Again, I'm going to sustain the
24 objection. Now, you can restate your question and make it
25 relevant to what this witness knows.

ANTWAN "JACK" GALLOWAY - DIRECT BY MR. MCELHANNON

1 MR. MCELHANNON: No, sir. I'll withdraw it.

2 BY MR. MCELHANNON:

3 Q. Jack, when you heard the first gunshots and opened
4 the door did you at any time see your mother assaulting
5 Mr. Archie?

6 A. No, sir.

7 Q. What was she doing?

8 A. Well, she had got in her car. And I guess by the
9 time he went out the door she got back out of the car, and he
10 immediately shot her and she had to run past him. And that's
11 when I opened the door and I seen the gun and her running.

12 Q. So she wasn't running -- or was she running at
13 Mr. Archie?

14 A. She was running away from him.

*Was running away
from D.*

15 MR. MCELHANNON: Your Honor, may he leave the chair
16 one more time, please?

17 THE COURT: Certainly.

18 BY MR. MCELHANNON:

19 Q. Come back down here, Jack, if you would.

20 A. (The witness complied).

21 Q. Let me show you what's marked State's 11 and --
22 excuse me, 16 and 17. Can you identify that vehicle right
23 there?

24 A. That's my mother's car.

25 THE COURT: Now, which one are you referring to,

ANTWAN "JACK" GALLOWAY - DIRECT BY MR. MCELHANNON

1 sir?

2 MR. MCELHANNON: It's 16, Your Honor.

3 THE COURT: Thank you, sir.

4 BY MR. MCELHANNON:

5 Q. And 17, what is that?

6 A. The inside of her car.

7 Q. And can you identify what's on the passenger seat?

8 A. Her purse.

9 Q. You can have a seat back up there.

10 A. (The witness complied).

11 Q. Do you remember, was her car door still open or was
12 it closed? Do you remember?

13 A. It was still open.

14 Q. Jack, do you know -- now, this is of your own
15 personal knowledge. Do you know if your mother owned a
16 weapon?

17 A. No, sir, she never owned a weapon.

18 Q. Do you remember that morning some of the other
19 people in the neighborhood that were on the scene?

20 A. Yes, sir.

21 Q. Can you name them?

22 A. Ms. Abrams, I know she was there. Well, she had
23 stopped and I asked her did she see my mom. And she said no,
24 do you think I can go back?

25 I was like, yeah.

ANTWAN "JACK" GALLOWAY - CROSS BY MR. POTTER

1 She was like, do you think he will shoot me?

2 I was like, I don't know.

3 Q. So Ms. Helen Abrams. Can you remember anybody else?

4 A. Ms. Nellie Maye, she was going to work because she's
5 my mom's boss lady. As a friend she came. I think she drove
6 back around the road.

7 Q. That's Ms. Blanding, Nellie Blanding?

8 A. Yes, sir.

9 MR. MCELHANNON: That's all the questions I have,
10 Your Honor.

11 THE COURT: Cross-examination.

12 MR. POTTER: Thank you, Judge.

13 CROSS-EXAMINATION

14 BY MR. POTTER:

15 Q. Now, Jack, you wrote a statement out to police the
16 day of the shooting; is that correct?

17 A. Yes, sir.

18 Q. And have you had an opportunity to review that
19 statement before testifying today?

20 A. Yes, sir, I seen it.

21 Q. And in that statement you wrote that while you were
22 in the house with Leroy, Leroy asked you do you want to jump
23 on me, and your response was, I said if I did I would bust
24 your ass like I did last time; right?

25 A. Yes, sir.

ANTWAN "JACK" GALLOWAY - CROSS BY MR. POTTER

1 Q. So you busted his ass last time. When was that?

2 A. 2003 maybe.

3 Q. You sent him to the hospital, too, didn't you?

4 A. Naah, he didn't go to no hospital.

5 Q. He didn't go to the hospital? He had broken ribs.

6 A. Naah.

7 MR. MCELHANNON: Objection, Your Honor, that's
8 evidence not -- I mean, not being submitted yet. He's
9 testifying, Your Honor.

10 THE COURT: No, he's cross-examining him.

11 MR. MCELHANNON: But, Your Honor, he's already said
12 he didn't go to the hospital.

13 THE COURT: Well, follow up and find out if he
14 remembers accurately. Overruled.

15 BY MR. POTTER:

16 Q. He had broken ribs, didn't he?

17 A. Not to my understanding.

18 Q. Didn't have an injured arm either, did he?

19 A. Naah.

20 Q. So that was the only time you physically assaulted
21 Leroy; is that right?

22 A. Yes, sir.

23 Q. But there were other times you argued with him and
24 yelled at him, isn't that true?

25 A. I mean, he argued at me, you know. I mean, other

ANTWAN "JACK" GALLOWAY - CROSS BY MR. POTTER

1 than that it wasn't I directly argued at him, naah. It wasn't
2 no situation like that because I respect my elders.

3 Q. You respect your elders but you busted his ass, just
4 like last time?

5 A. Well, he put his hands on my momma, and he been
6 putting his hands on my momma. And I ain't never done nothing
7 to him as a child growing up. I didn't never do nothing to
8 him. He just put his hands on my momma. So one morning, yes,
9 I did put my hands on him, and that's it.

10 Q. And you respect your elders, right?

11 A. Yes.

12 Q. You are a drug dealer, aren't you?

13 A. I got a drug charge.

14 Q. No. You are doing time for distribution of drugs.

15 You are a drug dealer, aren't you?

16 A. Well --

17 Q. You sell drugs, don't you?

18 A. I did.

19 Q. You sell drugs, don't you?

20 A. I did, sir.

21 Q. You were dealing out of Scott Circle, weren't you?

22 A. No, sir.

23 Q. Where were you dealing?

24 A. Where?

25 Q. Yeah.

ANTWAN "JACK" GALLOWAY - CROSS BY MR. POTTER

1 MR. MCELHANNON: Objection, Your Honor. That's not
2 relevant. He has a drug conviction, he's already admitted
3 that. Where he was dealing drugs has no relevance whatsoever.

4 THE COURT: I'm going to permit limited questions
5 about his background.

6 BY MR. POTTER:

7 Q. You weren't dealing out of Scott Circle?

8 A. No, sir, I never dealt drugs out of Scott Circle.

9 Q. But you are serving time for dealing drugs, right?

10 A. Yes, sir.

11 Q. You don't have a weapon, do you?

12 A. No, sir.

13 Q. Okay. You are a drug dealer but you don't have a
14 weapon?

15 A. No, sir.

16 Q. Now, the morning of the shooting Leroy and your
17 mother were arguing; isn't that right?

18 A. Well, when my mom woke me up to go back there they
19 wasn't arguing. She was just saying he was going to take this
20 and she was like, don't let him take nothing that ain't his,
21 and that's all that it was.

22 Q. That's all it was? There wasn't any arguing or
23 yelling at that point?

24 A. Not like -- naah.

25 Q. Your mom left to go to work. She went outside the

ANTWAN "JACK" GALLOWAY - CROSS BY MR. POTTER

1 house; isn't that right?

2 A. Yes, sir.

3 Q. After she left the house that's when you told Leroy
4 you would bust his ass?

5 A. No, sir. Leroy -- after my mom left to go to work
6 she went outside, closed the door. I followed behind her. I
7 was going to my room. Leroy then went to the door and stopped
8 and was like, you act like you want to jump on me.

9 I was like, naah, if I want to jump on you, Leroy, I
10 would bust your ass like I did the last time. But I said, I'm
11 going to jail next week. You go your way and momma go her
12 way. And then Leroy shut the door, and then something dawned
13 on me like why did he shut --

14 Q. Let's stop for a second. You didn't write that in
15 your statement to the police, did you?

16 A. I mean --

17 Q. You didn't talk about how you couldn't risk going to
18 jail. You didn't put that in the statement to police, did
19 you?

20 A. I mean, that morning right there --

21 Q. Answer the question, sir --

22 A. It's not in the statement.

23 THE COURT: Gentlemen. Ask the question, answer the
24 question and then you can explain your answer.

25 THE WITNESS: All right, sir.

ANTWAN "JACK" GALLOWAY - CROSS BY MR. POTTER

1 THE COURT: Very good. Ask the question.

2 BY MR. POTTER:

3 Q. The question is this. You didn't put in the
4 statement to the police that you didn't want to risk going
5 back to jail or violating your house arrest?

6 THE COURT: Now, answer the question.

7 A. No, sir.

8 THE COURT: You can explain your answer, though.

9 A. The reason, that morning so many things were going
10 through I just gave them the best statement that I could come
11 up with and I never came back and gave them a clearer
12 statement.

13 Q. Now --

14 A. But basically that statement right there is what I
15 came up with that morning, and it's everything is the truth.
16 I just forget little things, forgot little certain things that
17 maybe came back to me as I came back around, you know.

18 Q. You through?

19 A. Yes, sir.

20 Q. Now, when Cathy left she went outside the house, got
21 in her car, correct?

22 A. I'm assuming she got in her car because I'm inside
23 the house, so yes.

24 Q. Okay. Leroy goes outside the house?

25 A. Yes, sir.

ANTWAN "JACK" GALLOWAY - CROSS BY MR. POTTER

1 Q. You tell me that he shuts the door?

2 A. He shut the door behind him.

3 Q. You're telling me you didn't see anything at that
4 point in time?

5 A. No, sir.

6 Q. So you don't know if Cathy was -- well, strike that.
7 Cathy got out of the car, didn't she?

8 A. I don't know. I'm inside the house.

9 Q. You found out later Cathy got out of the car?

10 A. After I heard the shots I opened the door and seen
11 my momma running.

12 Q. And your testimony is that you immediately shut the
13 door and locked it; is that right?

14 A. Shut the door and locked it when I seen him coming
15 with the gun.

16 Q. Okay. But Leroy made a call to Dayton Williams to
17 call for the ambulance from the house, didn't he?

18 A. I didn't know about that call.

19 Q. Okay. And you left the house to go get a gun,
20 didn't you?

21 A. I mean, I left the house to go --

22 Q. You left the house to go get a gun, didn't you?

23 A. I left the house to call 911.

24 Q. That's not what you told Chauncey Chapman; isn't
25 that right?

ANTWAN "JACK" GALLOWAY - REDIRECT BY MR. MCELHANNON

1 A. I mean --

2 Q. You asked Chauncey Chapman, you got a gun; isn't
3 that right?

4 A. That's my friend.

5 Q. You went to him looking for a gun, didn't you?

6 A. Not -- I mean, not exactly.

7 Q. Okay. So Mr. Chapman is lying then?

8 THE COURT: Woah. Don't pit witnesses.

9 MR. POTTER: Excuse me. I'm sorry, Judge.

10 BY MR. POTTER:

11 Q. You didn't tell Chauncey Chapman that you wanted a
12 gun from him?

13 A. Yes.

14 Q. You did?

15 A. Yes.

16 MR. POTTER: No further questions. Thank you.

17 THE COURT: Re-examine.

18 REDIRECT EXAMINATION

19 BY MR. MCELHANNON:

20 Q. Jack, in 2003 why did you put your hands on or beat
21 up, whatever you want to call it, this defendant?

22 A. Because he had put his hands on my mom, and she
23 called me one morning crying, blasé, blasé, and I never done
24 anything. And I was just like, if he going to keep doing this
25 it's time for me to do something to him, you know.

ANTWAN "JACK" GALLOWAY - REDIRECT BY MR. MCELHANNON

1 Q. And was there another way into your house other than
2 the front porch that Mr. Archie could have gotten back into
3 when the door was locked?

4 A. Yes, sir, the side, the side door I ran out because
5 I just ran out and kept running.

6 MR. MCELHANNON: That's all I have, Your Honor.

7 THE COURT: Recross?

8 MR. POTTER: None, Your Honor. Thank you.

9 THE COURT: All right. You may step down.

10 May I see counsel?

11 (WHEREUPON, a bench conference was had.)

12 THE COURT: Madam forelady, ladies and gentlemen of
13 the jury, I'm going to suggest we take the morning break at
14 this time before we start into the other witnesses. Again, my
15 instruction is as it was yesterday, do not undertake
16 discussion of the case among yourself in any way.

17 Let's see, you'll have refreshments for the jury?

18 THE BAILIFF: Yes, sir.

19 THE COURT: When you're ready to come back just
20 knock on the door and we'll come back at that time, but they
21 should have refreshments for you back there. Again, please
22 retire to the jury room and when you're ready to come back
23 knock on the door and we'll come back and reconvene.

24 Everyone else remain seated while the jury retires
25 from the courtroom.

1 (WHEREUPON, the jury leaves the courtroom at
2 approximately 10:05 a.m.)

3 THE COURT: All right. Anything from the State
4 before we take a recess?

5 MR. MCELHANNON: Nothing, Your Honor.

6 THE COURT: From the defense?

7 MR. POTTER: Nothing.

8 THE COURT: All right. We'll take a short recess.

9 (WHEREUPON, a brief recess was taken.)

10 (WHEREUPON, Court's Exhibit Numbers 2 and 3, Notes
11 From Jurors T-2 and 144, were marked and made a part of the
12 record.)

13 THE COURT: Bring juror -- I think she's the
14 foreperson, forelady, and one attorney from either side,
15 please.

16 (WHEREUPON, Juror T-2 entered the courtroom, and the
17 following side-bar was reported.)

18 THE COURT: Yes, ma'am, Ms. Gillespie. I got your
19 message here. How do you feel?

20 MS. GILLESPIE: Like I'm going to be sick. I mean,
21 in the jury box it just hit me. I don't know if there's
22 something going around at work and I've got that.

23 THE COURT: Do you think you can continue?

24 MS. GILLESPIE: I don't know. If it hits me I don't
25 know what to do.

1 THE COURT: If it hits you, feel it coming on just
2 raise your hand and I'll immediately excuse you.

3 MS. GILLESPIE: Just to be on the safe side I just
4 wanted to tell you guys ahead of time. All of a sudden I just
5 didn't feel well.

6 THE COURT: Do you feel all right now?

7 MS. GILLESPIE: No.

8 THE COURT: Not perfect, but do you feel like you
9 can continue?

10 MS. GILLESPIE: I can if I have to, but I'd rather
11 not.

12 THE COURT: But you could continue if you have to?

13 MS. GILLESPIE: One thing is when I'm sitting here
14 I'm not thinking about what they are saying.

15 THE COURT: I understand, and that's the main thing
16 that we're concerned about. I mean, also your health as well.
17 All right. I want to ask you to rejoin the jury. Do you fell
18 all right to sit back there with them?

19 MS. GILLESPIE: Yes.

20 THE COURT: All right.

21 (WHEREUPON, Juror T-2 returned to the jury room, and
22 the side-bar was concluded.)

23 THE COURT: All right. By the note from the juror,
24 which has been marked as Court's Exhibit Number 2, the Court
25 has been advised that the juror was not feeling well.

1 Anything from the State as to how they wish to
2 proceed?

3 MR. MCELHANNON: Well, of course, we wish to proceed
4 but I suggested to Mr. Potter, maybe, Your Honor, if she can't
5 go on today maybe check and see tomorrow and resume the trial
6 tomorrow if Your Honor --

7 THE COURT: What do you say, Mr. Potter?

8 MR. POTTER: Judge, that would be fine with me. My
9 main concern is that if she's feeling ill then that's going to
10 be the focus.

11 THE COURT: Exactly. I think you make a good point.
12 If the witness is not comfortable obviously she's going to be
13 concerned about her own well being, as she should, and might
14 miss some part of the testimony or other evidence.

15 All right. What I'll suggest is that we call a
16 recess for the day and then reconvene in the morning. I'm
17 going to say -- if you all will forgive me, I'm going to say
18 10 o'clock because we've had too many things we've had to deal
19 with today. I'm going to leave a little time in the morning
20 to take care of those before we have the jury come back.

21 All right. We did stop at the end of a witness so
22 this is a good time to take a break.

23 Anything else from the State?

24 I'm going to declare a recess for the day and then
25 ask the jury to come back at 10:00 in the morning.

1 Anything else from the State?

2 MR. MCELHANNON: No, sir.

3 THE COURT: From the defendant?

4 MR. POTTER: No, sir.

5 THE COURT: Very good. Ask the jury to join us,
6 please.

7 (WHEREUPON, the jury enters the courtroom at
8 approximately 10:32 a.m.)

9 THE COURT: Madam forelady, ladies and gentlemen of
10 the jury, I am going to suggest that -- something has come up
11 and I think the only way that I can deal with it is to perhaps
12 recess the trial of the case today and reconvene in the
13 morning. And so I'm going to ask you to retire for the day
14 and come back, I'm going to ask 10 o'clock in the morning
15 rather than 9:00. I found out a lot of times things develop
16 that I have to take care of that puts us a little bit behind.
17 So I'm going to leave a little cushion in the morning.

18 Again, I apologize but it's something that the Court
19 can't help, and in order to see that the case is resolved in a
20 proper fashion I'm going to excuse you for the balance of the
21 day and ask you to return at 10 o'clock in the morning.

22 Again, my instructions for you are going to be not
23 to discuss this case or let anybody discuss it with you. If
24 anybody should, report them to the Court because that is
25 entirely improper.

1 All right. With that, I'm going to excuse you. And
2 again I thank you for your patience with the Court.

3 Everyone else remain seated.

4 Return to the jury room at 10 o'clock in the
5 morning.

6 (WHEREUPON, the jury leaves the courtroom at
7 approximately 10:34 a.m.)

8 THE COURT: Anything else from the State?

9 MR. MCELHANNON: Nothing from the State, Your Honor.

10 THE COURT: From the defense?

11 MR. POTTER: Nothing from the defense.

12 THE COURT: We've gotten 3 notes from the jury that

13 I've had marked as Court's 1, 2 and 3 and then 1 juror's

14 communication with the clerk of court as to a death in the

15 family who I excused first. So with that we'll stand in

16 recess in this case until tomorrow morning at 10 o'clock.

17 Thank you very much.

18 (WHEREUPON, the trial of this case was recessed for

19 the day.)

20 Wednesday, September 13, 2006

21 THE COURT: Good morning. I understand we have a

22 jury. Is there anything from the State before we bring the

23 jury in?

24 MR. MCELHANNON: Nothing from the State, Your Honor.

25 THE COURT: From the defendant?

KATHY WILKES - DIRECT BY MR. MCELHANNON

1 MR. POTTER: Nothing, Your Honor.

2 THE COURT: All right. Ask the jury to join us,
3 please.

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 10:14 a.m.)

6 THE COURT: Let the record reflect that the jury is
7 in the jury box.

8 Madam forelady, ladies and gentlemen of the jury,
9 I apologize for that delay this morning but I had a bit of a
10 traffic problem getting here this morning, and I do
11 appreciate your patience. But we'll now proceed with the
12 trial of the case.

13 Mr. Solicitor, you may call your first witness.

14 MR. MCELHANNON: The State calls Kathy Renee Wilkes.

15 KATHY RENEE WILKES, after having been duly
16 sworn, testified as follows:

17 THE BAILIFF: State your name, spell your last name.

18 THE CLERK: My name is Kathy Wilkes, W-i-l-k-e-s.

19 DIRECT EXAMINATION

20 BY MR. MCELHANNON:

21 Q. Ms. Wilkes, where do you live now?

22 A. I live now at 1002 East South 6th Street in Seneca,
23 South Carolina.

24 Q. And how old are you?

25 A. 24.

KATHY WILKES - DIRECT BY MR. MCELHANNON

1 Q. Do you know the defendant, Leroy Archie?

2 A. Yes, I do.

3 Q. How do you know him?

4 A. I dated Mrs. Galloway's son -- well, I still do
5 date, Antwan, and he was Ms. Galloway's son.

6 Q. And by Antwan we mean Jack?

7 A. Jack.

8 Q. Who testified yesterday?

9 A. Yes.

10 Q. Were you dating Jack Galloway August 22nd, 2005?

11 A. Yes, I was.

12 Q. Were you present at 119 Scott Circle?

13 A. Yes, I was.

14 Q. On that day?

15 A. Yes.

16 Q. Can you tell this Court and this jury what
17 transpired that morning between 7:00 and 7:30?

18 A. Well, that morning we were in Jack's room asleep and
19 Ms. Galloway, she came to the door. She asked Jack to come
20 help her take something to the car. I'm thinking it was a TV
21 but I'm not sure about that.

22 And so Jack got up and she was, you know, yelling
23 and she was saying that he wanted to move the furniture and
24 stuff while he was at work. She said she didn't mind him
25 taking his stuff but she wanted him to wait until she got back

1 so that he didn't just take everything.

2 So he got up. I stayed in the bedroom. I was in
3 the room. You know, he went out to help her do whatever she
4 asked him to do. The next thing that I remember is Ms. Cathy,
5 she went out the door, I guess headed for work, and Leroy, he
6 went behind her and he shut the door. And at that time it
7 didn't dawn on me. I don't know if it was like a key to Jack
8 but usually he doesn't shut the door. So he shut the door
9 behind him. By this time, Jack, like I say, I don't know if
10 it was a key for --

11 Q. Let me stop you there.

12 A. Okay.

13 Q. This door on this home, were there two doors, two
14 front doors?

15 A. No. There's a front door and then there's a side
16 door. And the way that his room is set up I can see into --
17 there's another, like, living area when you come into the
18 front door, and I can see the actual front door from the angle
19 of his room.

20 Q. Was there a screen door on the front door?

21 A. Yes.

22 Q. So the normal thing for Mr. Archie to do was what
23 with the door?

24 A. Usually the screen door was shut but the front door
25 was usually left open.

KATHY WILKES - DIRECT BY MR. MCELHANNON

1 Q. And that morning was different?

2 A. Yes. Like I said, she went out, then he followed
3 behind her and she shut the door. And like I said, at that
4 time I didn't think, you know, about it, but I don't know if
5 it was a key for Jack to just follow. He was on his way back
6 to the bedroom.

7 Q. That's what I was going to ask you. Where was Jack
8 at this point?

9 A. He was on his way back to the bedroom.

10 Q. Inside the home?

11 A. Yes, sir.

12 Q. Then what happened?

13 A. And as Jack got closer to the door I hear shots. He
14 had opened the door. I heard -- it was anywhere from two to
15 five shots at that moment. I can't tell you exactly how many
16 I heard. He had opened the door and he shut the door really
17 fast -- well, he opened the door and I heard him say mom, just
18 come in the house. Then he shut the door and locked it. He
19 left out of the side door. I was still in the house in the
20 room. So at this time I picked up the phone to call 911.

21 Q. And what kind of phone was this?

22 A. It was a cordless phone.

23 Q. So the base of it was in the house?

24 A. Yes.

25 Q. One that you can walk around with?

KATHY WILKES - DIRECT BY MR. MCELHANNON

1 A. Yes.

2 Q. Okay.

3 A. For some reason I couldn't get a dial tone. I don't
4 know if I was just nervous or what but I couldn't get a dial
5 tone. So the next thing I hear is someone trying to open the
6 door. You know how like you'll try to open the door.

7 So I took the phone and I ran out of the side of the
8 house. And as I ran out the side of the house I seen her
9 laying in the yard. And Jack, he was about 50 yards. Like
10 there's a little highway before you can -- a road before you
11 can turn onto Scott Circle, and a guy had stopped and he was
12 using the cell phone.

13 Q. Did you hear the 911 call played in court yesterday?

14 A. Yes, I did.

15 Q. Were you on that call?

16 A. Yes, I was.

17 Q. Was it you who the operator, I believe -- the phone
18 kept cutting off?

19 A. Yes. I had took the phone with me and I guess it.
20 was so far away from the base that I couldn't get any
21 reception. It kept going in and out.

22 Q. When you were running did you look back or anything
23 at the yard?

24 A. Like I said, when I came out of the side door I
25 looked back and I didn't see him but I seen her laying on the

KATHY WILKES - DIRECT BY MR. MCELHANNON

1 opposite side of the porch in the yard.

2 Q. She was laying in the yard?

3 A. Yes.

4 Q. And you didn't see him at that point?

5 A. No.

6 MR. MCELHANNON: Your Honor, may the witness leave
7 the stand for one moment?

8 THE COURT: Certainly.

9 (WHEREUPON; the witness stepped down from the
10 witness stand.)

11 BY MR. MCELHANNON:

12 Q. Kathy, if you can use that stick there and point out
13 what door you heard someone trying to enter and where you ran.

14 A. Okay.

15 MR. POTTER: I'd like to know what exhibit this is.

16 MR. MCELHANNON: It's Exhibit 12, Your Honor.

17 State's 12.

18 A. This would be the front door (indicated). This
19 would be the front door and I came out the side (indicated).
20 This is a side door. The side door. So this is the door that
21 I heard someone trying to open (indicated).

22 Q. And is there a porch on the front and the side of
23 house?

24 A. There is a big porch on the front and on the side.

25 It's like a small --

KATHY WILKES - DIRECT BY MR. MCELHANNON

1 Q. So if you could point for them which way Refuge Road
2 is. Which way did you run, to the left or right?

3 A. I came out of this door and I just came around and I
4 ran up (indicated).

5 Q. Okay. So Refuge Road, in that picture you're facing
6 it, it is to the left?

7 A. Yes.

8 Q. You can have a seat.

9 A. (The witness complied).

10 Q. I show you what's been marked State's Exhibit 8.

11 Can you identify this?

12 A. Yes. That would have been the robe that Mr. Archie
13 was wearing the day.

14 Q. And I think it has two front pockets in it; is that
15 right?

16 A. Yes.

17 MR. MCELHANNON: Your Honor, at this time I'd like
18 to introduce State's 8 into evidence.

19 THE COURT: Any objection?

20 MR. POTTER: No, Your Honor.

21 THE COURT: Without objection, State's Exhibit

22 Number 8 is admitted.

23 (WHEREUPON State's Exhibit No. 8, a Green Robe, was
24 admitted into evidence.)

25 BY MR. MCELHANNON:

KATHY WILKES - CROSS BY MR. POTTER

1 Q. Ms. Wilkes, did you know Cathy Galloway fairly well?

2 A. I would say that I did, yes.

3 Q. How long had you known her?

4 A. I met -- well, I met Jack in about around 2000. So

5 around 2001, 2002 I met her.

6 Q. About three or four years?

7 A. Yes, sir.

8 Q. And did you ever know her personally to carry a
9 weapon?

10 A. No, sir, I didn't.

11 Q. Did you see a weapon inside that home at all while
12 you were staying there?

13 A. No, sir.

14 Q. And by weapon I mean knife or a gun or anything of
15 that nature?

16 A. No.

17 MR. MCELHANNON: That's all the questions I have.

18 MR. POTTER: May it please the Court?

19 THE COURT: Yes, sir, you may proceed.

20 CROSS-EXAMINATION

21 BY MR. POTTER:

22 Q. Now, Kathy, you testified that you were in the
23 bedroom with Jack, and Cathy came into the bedroom, correct?

24 A. She came to the door of the bedroom. She didn't --
25 yes.

KATHY WILKES - CROSS BY MR. POTTER

1 Q. She woke up Jack and she was yelling; is that
2 correct?

3 A. Yes.

4 Q. So there was an argument between Cathy and Leroy?

5 A. I didn't hear them fussing but she was yelling. So
6 I can't say if there was an argument or not.

7 Q. And you testified -- excuse me. You wrote out a
8 statement for the police on the day of the shooting, correct?

9 A. Yes.

10 Q. And you wrote in that statement that Leroy and Cathy
11 argue a lot; is that right?

12 A. Yes.

13 Q. Now, you also testified that you stayed in the
14 bedroom while Jack went out of the bedroom, correct?

15 A. Yes.

16 Q. And the door was open to the bedroom the whole time?

17 A. Yes.

18 Q. So you could see what was going on outside the
19 bedroom from where you were?

20 A. As far as the living area and the front door. The
21 front, yes.

22 Q. And you heard Jack tell Leroy that he'd bust his ass
23 just like last time?

24 A. Jack came back -- when he was walking toward --
25 well, he had come back in the room one time and I asked what,

KATHY WILKES - CROSS BY MR. POTTER

1 you know, was said.

2 Q. Well, I'm sorry, that's not my question. Did you
3 hear Jack --

4 A. I did not personally hear him say that he would bust
5 his ass.

6 Q. Went outside the house on the side door, correct?

7 A. Yes.

8 Q. When you look at this house, the parking is on the
9 right -- or excuse me, the left of the house, correct?

10 A. Yes.

11 Q. And you were spending the night there so you had a
12 car there?

13 A. Yes.

14 Q. Jack had a car there?

15 A. At the time, no, I don't think so.

16 Q. There's a Maxima there as well?

17 A. Yes.

18 Q. Leroy had a car parked there too, as well, right?

19 A. I don't think so.

20 Q. Okay.

21 A. But I'm not sure.

22 Q. So there were at least two cars in the parking area,
23 correct?

24 A. Yes.

25 Q. What kind of car do you drive?

KATHY WILKES - CROSS BY MR. POTTER

1 A. Well, my dad had a kidney transplant so I was
2 driving my brother's car. He has a Chevy Impala.

3 Q. This is State's Exhibit 16. If I could show it to
4 you. That's a picture of the Impala you were driving?

5 A. Yes, sir.

6 Q. And the Maxima is Cathy's Maxima, correct?

7 A. Yes, sir.

8 Q. And the Maxima is closer to the house, correct?

9 A. Yes, sir.

10 MR. POTTER: Could I publish this to the jury,
11 Judge?

12 THE COURT: Certainly.

13 MR. POTTER: It's Exhibit 16.

14 BY MR. POTTER:

15 Q. Now, there's a whole parking area to the left of the
16 house?

17 A. Yes, sir.

18 Q. And then there's a side door that comes down some
19 steps then you go out and Scot's Circle kind of turns a little
20 bit towards Refuge Road, correct?

21 A. Uh-huh.

22 Q. And there's another long driveway, Dr. Thurston's
23 driveway, I believe.

24 A. Yes.

25 Q. There's a fence there as well --

DAYTON WILLIAMS - DIRECT BY MR. MCELHANNON

1 A. Yes, to the side.

2 Q. -- along Dr. Thurston's driveway?

3 And you testified that you caught up with Jack by

4 Refugee [sic] Road; is that correct?

5 A. At the top of the road, yes.

6 MR. POTTER: Nothing further. Thank you, Judge.

7 THE COURT: Re-examine?

8 MR. MCELHANNON: Nothing further, Your Honor.

9 THE COURT: All right. You may step down.

10 MR. MCELHANNON: May this witness be excused, Your

11 Honor?

12 MR. POTTER: No objection.

13 THE COURT: Without objection you may be excused.

14 Thank you, ma'am.

15 MR. MCELHANNON: The State calls Dayton Williams

16 Jr., Your Honor.

17 DAYTON WILLIAMS JR., after having been duly

18 sworn, testified as follows:

19 THE BAILIFF: State your name and spell your last

20 name for the record.

21 THE WITNESS: Dayton Williams, Jr., W-i-l-l-i-a-m-s.

22 DIRECT EXAMINATION

23 BY MR. MCELHANNON:

24 Q. Mr. Williams, do you go by any other names?

25 A. Duke.

DAYTON WILLIAMS - DIRECT BY MR. MCELHANNON

1 Q. Duke. Okay. Do you mind if I just call you Duke
2 Williams or Mr. Williams?

3 A. Mostly Duke.

4 Q. Most people do?

5 A. (There was no response).

6 Q. Where do you live?

7 A. 904 East Main Street, Seneca.

8 Q. How long have you lived there?

9 A. About 14 months.

10 Q. And do you live with anyone there?

11 A. Brenda Rogers.

12 Q. Brenda Rogers?

13 A. Yes, sir.

14 Q. Were you living with Brenda Rogers August 22nd,

15 2005?

16 A. Yes, sir.

17 Q. Let me start you back about August 17th or 18th,

18 2005. Well, let me first start out --

19 I'll withdraw that, Your Honor.

20 You know Mr. Archie, Leroy Archie?

21 A. Yes.

22 Q. How long have you known him?

23 A. About 15 years.

24 Q. Are you friends with him?

25 A. Yes, sir.

DAYTON WILLIAMS - DIRECT BY MR. MCELHANNON

1 Q. Were you friends with Cathy Galloway?

2 A. Yes, sir.

3 Q. Did you all, you and Brenda Rogers, do things with
4 them as a couple?

5 A. Yes, sir.

6 Q. Now, on August the 17th or 18th, 2005, did you have
7 a conversation with Mr. Archie about a weapon, about a gun?

8 A. No.

9 Q. Do you work with Mr. Archie?

10 A. No, I don't.

11 Q. Have you ever given Mr. Archie a ride to or from
12 work?

13 A. Yes, sir.

14 Q. On August 17th, did you pick Mr. Archie up from
15 work?

16 A. Yes, sir.

17 Q. Where did you all go?

18 A. We went to a store right up the road from the plant.

19 Q. Was it a convenience store, gas station?

20 A. Yes.

21 Q. And did you meet somebody up there?

22 A. Yes, sir.

23 Q. Do you know who that was?

24 A. I guess Troy Vernon. I don't know him.

25 Q. Troy Verner?

DAYTON WILLIAMS - DIRECT BY MR. MCELHANNON

1 A. (There was no response).

2 Q. When you got to that store did Mr. Archie tell you
3 what you were going to the store for.

4 A. Yes, sir.

5 Q. What was that?

6 A. A gun.

7 Q. Why did he say he needed this gun?

8 A. He said that he needed it for protection.

9 Q. And for protection from what?

10 A. I couldn't say.

11 Q. Did he tell you that he was moving out, moving to
12 some apartments?

13 A. Yes.

14 Q. Did he tell you for protection at the apartments?

15 A. Yes.

16 Q. When you got to that convenience store what did
17 Mr. Archie do?

18 A. He came back to the truck with a paper bag.

19 Q. Well, what did he do before he came back to the
20 truck? Did he go meet with Mr. Verner?

21 A. Yes, sir.

22 Q. And where was Mr. Verner?

23 A. He came up to the store.

24 Q. I mean, was he in his car?

25 A. Yes.

DAYTON WILLIAMS - DIRECT BY MR. MCELHANNON

1 Q. So how long do you think he spent with Mr. Verner?

2 A. Five or ten minutes.

3 Q. Then you say he came back to your car?

4 A. Yes.

5 Q. And what did he have, if anything?

6 A. He had a brown paper bag.

7 Q. Did he show you what was in that bag?

8 A. Yes.

9 Q. What was it?

10 A. A gun.

11 Q. Did he have anything else in the bag?

12 A. Bullets.

13 Q. Bullets. Let me show you what's been marked State's

14 Exhibit 1. Can you identify that?

15 A. It look like the gun.

16 Q. Looked like the gun he brought back to the car?

17 A. Yes.

18 Q. And you say he had a bag of bullets with it?

19 A. Some bullets, not a bag.

20 Q. Did you do anything else that day with Mr. Archie

21 after he bought the gun?

22 A. I brought him to Anderson to see about getting the
23 lights turned on.

24 Q. Brought him down here to Anderson?

25 A. Yes.

DAYTON WILLIAMS - DIRECT BY MR. MCELHANNON

1 Q. And where did you go, to Duke Power?

2 A. Yes.

3 Q. Where was he trying to get lights turned on?

4 A. Calhoun Apartments at Pendleton.

5 Q. It was an apartment that he was going to rent?

6 A. Yes.

7 THE COURT: What was the name of the apartments,
8 sir?

9 THE WITNESS: I think the name of them Calhoun Arms.

10 THE COURT: Calhoun Arms?

11 THE WITNESS: Yes.

12 THE COURT: Thanks.

13 BY MR. MCELHANNON:

14 Q. And then after you went to Duke Power, what did you
15 do?

16 A. He went inside and stayed a few minutes and came
17 back up the road.

18 Q. Okay. Where did you take him after that?

19 A. Home.

20 Q. To Scott's Circle?

21 A. Yes, sir.

22 Q. And when he got out there did he take the gun and
23 bullets with him?

24 A. Yes, sir.

25 Q. Now, let's go to August 22nd, 2005. Where were you

DAYTON WILLIAMS - DIRECT BY MR. MCELHANNON.

1 early that morning?

2 A. I was home.

3 Q. Did you receive a telephone call?

4 A. Yes, sir.

5 Q. From who?

6 A. Leroy.

7 Q. Leroy Archie?

8 A. Yes.

9 Q. And what was the nature of that call?

10 A. He wanted me to move some stuff for him, furniture I

11 assume.

12 Q. Did Leroy Archie have a car or any vehicle that you

13 knew of?

14 A. No, sir.

15 Q. Did he have a license that you knew of?

16 A. No, sir.

17 Q. So he wanted you to come down and help him move some

18 stuff?

19 A. Yes, sir.

20 Q. What did you tell him at that point?

21 A. I told him I would. And then I discussed it with

22 Brenda and she said we wasn't supposed to get involved in

23 that.

24 Q. So Brenda told you not to get involved in that?

25 A. Yes, sir.

DAYTON WILLIAMS - DIRECT BY MR. MCELHANNON

- 1 Q. What did you do after she told you that?
- 2 A. I called him back and put her on the phone.
- 3 Q. You put Brenda Rogers on the phone?
- 4 A. Yes.
- 5 Q. With Leroy Archie?
- 6 A. Yes.
- 7 Q. After she got off the phone what did you do?
- 8 A. What did I do?
- 9 Q. Yeah.
- 10 A. I went in the kitchen and told Brenda ---
- 11 Q. When she hung up the phone did you have a
- 12 conversation with Brenda?
- 13 A. Yes.
- 14 Q. And what was that conversation?
- 15 A. I told her we wasn't supposed to get involved in it.
- 16 Q. And you agreed with her?
- 17 A. Yes, sir.
- 18 Q. Now, did you receive another phone call that
- 19 morning?
- 20 A. Yes, sir.
- 21 Q. And about how long after the first phone call was
- 22 this second phone call?
- 23 A. A couple of minutes, I guess.
- 24 Q. And who was it on the phone?
- 25 A. Leroy.

DAYTON WILLIAMS - DIRECT BY MR. MCELHANNON

1 Q. What did he tell you that time?

2 A. The second phone call?

3 Q. The second phone call, yes, sir.

4 A. I didn't talk to him the second phone call. I just

5 dialed the number and put Brenda on the phone.

6 Q. Okay. After that, after she talked to him, and what

7 did she tell him, that you weren't coming down there to help

8 move?

9 A. Yes. I think so.

10 Q. Did you receive a phone call after that?

11 A. Yes, sir.

12 Q. And who was that from?

13 A. Leroy.

14 Q. And what did Mr. Archie tell you during that phone

15 call?

16 A. He said I just killed Cathy.

17 Q. I just killed Cathy?

18 A. Yes, sir.

19 Q. Did he ask you to do anything?

20 A. No, sir.

21 Q. Didn't ask you to call anybody?

22 A. No, sir.

23 Q. Did you call anybody after that?

24 A. I told Brenda to call her brother, Harold.

25 Q. Told her to call her brother?

DAYTON WILLIAMS - CROSS BY MR. POTTER

1 Q. That's what he told you, isn't it?

2 A. He told me?

3 Q. Yes, sir.

4 A. He just told me he needed it for protection.

5 Q. The first phone call -- excuse me. The second phone
6 call that Leroy -- or when Leroy and Brenda talked you learned
7 that they were arguing that morning; isn't that right?

8 A. I didn't hear an argument.

9 Q. I understand that but you learned later that they
10 were arguing over a TV, right?

11 A. I didn't hear it.

12 Q. That's not my question. You learned after the
13 conversation with Brenda and Leroy they were arguing over a
14 TV?

15 A. Oh. Yes, sir.

16 Q. That's why you didn't want to get involved?

17 A. That's right.

18 Q. You didn't want to go down there because you knew
19 they were arguing and they were fighting and there was going
20 to be a problem trying to move Leroy out?

21 A. Yes.

22 MR. POTTER: Nothing further. Thank you.

23 MR. MCELHANNON: May the witness be excused, Your
24 Honor?

25 MR. POTTER: No objection.

BRENDA ROGERS - DIRECT BY MR. MCELHANNON

1 THE COURT: Without objection he may be excused.

2 Thank you, sir.

3 MR. MCELHANNON: The State calls Brenda Gail Rogers.

4 THE CLERK: Ms. Rogers, will you please come forward

5 and be sworn.

6 BRENDA GAIL ROGERS, after having been duly
7 sworn, testified as follows:

8 THE BAILIFF: State your name and spell your last
9 name for the record.

10 THE WITNESS: Brenda Gail Rogers, R-o-g-e-r-s.

11 DIRECT EXAMINATION

12 BY MR. MCELHANNON:

13 Q. Ms. Rogers, where do you live?

14 A. 904 East Main Street, Seneca, South Carolina.

15 Q. How long have you lived in Seneca?

16 A. All my life.

17 Q. Did you know Cathy Galloway?

18 A. Yes, I did.

19 Q. Do you know Leroy Archie?

20 A. Yes, I do.

21 Q. How long have you known both of them?

22 A. Well, I've known Cathy about 20 years and I knew

23 Leroy about 15.

24 Q. And during that time that you knew both of them were

25 they a couple?

DAYTON WILLIAMS - DIRECT BY MR. MCELHANNON

1 A. Yes, sir.

2 Q. But you all didn't call 911 from Seneca?

3 A. No, sir.

4 Q. What did you do immediately after Mr. Archie telling
5 you that he had killed Cathy?

6 A. Went in the kitchen and told Brenda to call her
7 brother, Harold, and see was it true.

8 Q. Did they live in that neighborhood, Harold, the
9 brother?

10 A. Yes, sir.

11 Q. Does he live on Scott Circle?

12 A. Yes, sir.

13 Q. Mr. Williams, did you ever know personally
14 Ms. Galloway to carry a weapon?

15 A. No, sir.

16 Q. Mr. Williams, on that phone call, that last phone
17 call when Mr. Archie told you that he had killed Cathy, did he
18 say anything else to you in that phone conversation?

19 A. No, sir, we hung up.

20 Q. Okay. He didn't say why?

21 A. No.

22 Q. Didn't say she was attacking him?

23 A. No.

24 Q. Did he sound upset?

25 A. No, sir.

DAYTON WILLIAMS - CROSS BY MR. POTTER

1 MR. MCELHANNON: That's all I have, Your Honor.

2 THE COURT: Cross-examination.

3 MR. POTTER: Thank you, Your Honor. If it pleases

4 the Court.

5 CROSS-EXAMINATION

6 BY MR. POTTER:

7 Q. Now, Duke, you said you knew Cathy and Leroy for 15
8 years, right?

9 A. Yes.

10 Q. Cathy and Leroy fought a lot, didn't they?

11 A. No.

12 Q. They didn't?

13 A. No.

14 Q. You never saw Cathy hit Leroy?

15 A. No, sir.

16 Q. You never saw that happen?

17 A. (Nodded).

18 Q. You knew he was trying to move out, didn't you?

19 A. Yes.

20 Q. Because he got an apartment in Calhoun Apartments?

21 A. Yes.

22 Q. And he bought the gun because he needed protection
23 because he was living by himself in Calhoun Apartments; isn't
24 that right?

25 A. I guess.

BRENDA ROGERS - DIRECT BY MR. MCELHANNON

1 A. Yes.

2 Q. And did you know them to live together for a long
3 time?

4 A. Yes.

5 Q. Who lives in Seneca at 904 East Main Street with
6 you?

7 A. Dayton Williams, Jr.

8 Q. The gentleman who was just up here?

9 A. Yes.

10 Q. And were you both living at that address August
11 22nd, 2005?

12 A. Yes.

13 Q. Over the years that you knew Cathy Galloway and
14 Leroy Archie as a couple did you all do things together?

15 A. Yes, we did.

16 Q. So you knew them well?

17 A. Pretty much so, yes.

18 Q. On the morning of August 22nd, 2005 where were you?

19 A. At home.

20 Q. And what transpired? Did the telephone ring?

21 A. Yes, it did.

22 Q. What happened or who was it?

23 A. Leroy called the house. He talked to Duke. He
24 asked him to come and help him move. So Duke said, yeah, I'll
25 be down there in a minute.

BRENDA ROGERS - DIRECT BY MR. MCELHANNON

1 He hung up the phone and I told him, I said you're
2 not going down there getting involved. I said, Cathy asked
3 you not to get involved and we're not going to get involved.
4 So --

5 Q. Let me stop you there. Was it because -- did you
6 ask him not to go because you thought there was going to be
7 trouble?

8 A. No, because we was friends with both of them and I
9 didn't feel like we should get involved because he had told me
10 personally that he had somebody else to move him. He was
11 going to get a U-haul and have the police there to make sure
12 he could get his stuff.

13 Q. Okay.

14 A. That's why.

15 Q. And did you know Leroy Archie to have a vehicle?

16 A. No, not at this time he didn't.

17 Q. I mean at this time.

18 A. No.

19 Q. So he didn't have anything, personal vehicle where
20 he could move anything out?

21 A. No.

22 Q. What happened after you told Duke he wasn't going
23 down there?

24 A. He called Leroy back to tell him that I said he
25 couldn't go. So Leroy said, let him speak to me. So I got on

BRENDA ROGERS - DIRECT BY MR. MCELHANNON

1 the phone. I told him, I say, Leroy, Duke is not coming down
2 there to move you. I told him about what he had told me about
3 he had somebody else to move him.

4 So he said, well, I ain't going to take nothing but
5 what belongs to me. I said, well, we're still not going to
6 get involved. And at that moment I heard Cathy say, Leroy,
7 don't take my TV, and Leroy hung up the phone?

8 Q. So after you heard her say that over the phone line
9 you didn't -- there were no other words, he hung up the phone?

10 A. Uh-uh.

11 Q. Had Cathy Galloway told you anything about moving
12 out as well?

13 A. Yes. She came to see me on that Saturday and she
14 told me she had just about everything packed up in her boxes
15 and all she was waiting on was Jack to leave.

16 Q. And where was Jack going?

17 A. He was going to be leaving that following Monday and
18 then she was going to move.

19 Q. And Jack was going to be -- he had been sentenced
20 and was going to prison?

21 A. Yes. That was the only reason that she was staying
22 there, until he left.

23 Q. Okay. What happened after Leroy Archie hung up the
24 phone with you?

25 A. I went back into the kitchen to fix some breakfast.

BRENDA ROGERS - DIRECT BY MR. MCELHANNON

1 The phone rang again.

2 Q. How long after that was that?

3 A. I would say five, ten minutes at the most. And Duke
4 went to answer the phone. He came back in there and he had a
5 funny look on his face. I said, what is it? He said --

6 MR. POTTER: Judge, I'm going to object to the
7 testimony related to -- excuse me. I'm going to object to any
8 testimony that was told to her through witnesses's statements
9 to her, persons to hearsay.

10 THE COURT: Solicitor?

11 MR. MCELHANNON: Your Honor, I would say it's
12 present sense impression exception to the hearsay rule.

13 THE COURT: She wants to state what the witness -- I
14 mean, what the declarant said to her. Well, the witness has
15 testified -- or the declarant had testified. The declarant
16 is, in fact, available for cross-examination. I'm going to
17 overrule the objection.

18 BY MR. MCELHANNON:

19 Q. What did Duke tell you when he came into the
20 kitchen?

21 A. He said Leroy just said he killed Cathy. I said,
22 what? He said, call Harold and see.

23 Q. And who is Harold?

24 A. Harold is my brother. He live in Scott Circle. So
25 I got the phone, I called Harold. I told Harold what Leroy

BRENDA ROGERS - CROSS BY MR. POTTER

1 said. I said, Harold go see, call me back. So when Harold
2 called me back he said, Brenda, there's shooting. I don't
3 know how bad it is. So he hung up the phone.

4 So I looked at the phone to see where he called me
5 from and I noticed it was Ms. Blanding's cell phone. So I
6 redialed the phone and called and got her. And she was crying
7 and upset. She said, Bernie, yes, it's true.

8 So I went in the kitchen, cut off the stove. I
9 said, Duke, let's go. And we left and went down there.

10 Q. By the time you got down to 119 Scott Circle was it
11 roped off already by the police?

12 A. Yes, it was.

13 Q. Ms. Rogers, did you personally ever know Cathy
14 Galloway to carry a weapon?

15 A. No. No, I didn't.

16 MR. MCELHANNON: That's all the questions I have.

17 THE COURT: Cross-examination.

18 MR. POTTER: Thank you, Judge. If it pleases the
19 Court.

20 CROSS-EXAMINATION

21 BY MR. POTTER:

22 Q. Ms. Rogers, Cathy and Leroy fought a lot, didn't
23 they?

24 A. I've never seen them fight, but I've heard them
25 argue, yes.

BRENDA ROGERS - CROSS BY MR. POTTER

1 Q. And the day of the shooting you spoke with Leroy.
2 You said that Cathy said, you're not taking my TV. She was
3 yelling?

4 A. Yes -- no, she wasn't yelling. She just said,
5 Leroy, don't take my TV. That was it.

6 Q. Okay. Did you hear any other arguing or yelling on
7 the phone?

8 A. No, I didn't.

9 Q. That's when --

10 A. He hung up the phone.

11 Q. Leroy works at West Point Stevens; is that right?

12 A. That's right.

13 MR. POTTER: Nothing further. Thank you.

14 THE COURT: Re-examine?

15 MR. MCELHANNON: Nothing further, Your Honor.

16 THE COURT: All right. You may step down. Thank

17 you, ma'am.

18 MR. MCELHANNON: May the witness be excused, Your

19 Honor?

20 THE COURT: Mr. Potter?

21 MR. POTTER: Yes, sir. I'm sorry?

22 THE COURT: All right. Without objection?

23 MR. POTTER: No objection.

24 THE COURT: Any objection to the witness being

25 excused?

RANDY WATTS - DIRECT BY MR. MCELHANNON

1 MR. POTTER: No, sir, no objection.

2 THE COURT: Without objection the witness may be
3 excused.

4 Thank you, ma'am.

5 MR. MCELHANNON: State calls Randy Pete Watts.

6 THE CLERK: Come forward and be sworn.

7 RANDY PETE WATTS, after having been duly sworn,
8 testified as follows:

9 THE BAILIFF: State your name and spell your last
10 name for the record.

11 THE WITNESS: My name is Randy Pete Watts,
12 W-a-t-t-s.

13 DIRECT EXAMINATION

14 BY MR. MCELHANNON:

15 Q. Mr. Watts, you go by what name mainly?

16 A. Pete.

17 Q. Pete?

18 A. Uh-huh.

19 Q. Where do you live?

20 A. 221 Scott Circle.

21 Q. That's in the Pendleton?

22 A. Yes, sir.

23 Q. Do you live with anyone?

24 A. Ms. Nellie Blanding.

25 Q. How long have you all lived on Scott Circle?

RANDY WATTS - DIRECT BY MR. MCELHANNON

- 1 A. A little better than five years.
- 2 Q. And do you know Leroy Archie?
- 3 A. Well, I met him, visit his home.
- 4 Q. Did you know Cathy Galloway?
- 5 A. Yes, sir.
- 6 Q. Do you know them as a couple?
- 7 A. Yes, sir.
- 8 Q. Did you all ever do anything together, you and
- 9 Ms. Blanding and Mr. Archie and Ms. Galloway?
- 10 A. We visit them on a couple of different occasions.
- 11 Q. Where would you do that, at their home?
- 12 A. At their home.
- 13 Q. Where were you the morning of August 22nd, 2005?
- 14 A. I was on my way to work.
- 15 Q. And where did you work at that time?
- 16 A. At Clayton Home in Greenwood, South Carolina.
- 17 Q. And were you in your own vehicle?
- 18 A. I was in the vehicle with Ms. Blanding.
- 19 Q. And Ms. Blanding was giving you a ride to work?
- 20 A. Yes, sir.
- 21 Q. And what did you observe?
- 22 A. We left the house and we pulled up to the stop sign
- 23 at the corner of Scott and the road that passes it.
- 24 Q. Is that Refuge Road?
- 25 A. Yes, sir.

RANDY WATTS - DIRECT BY MR. MCELHANNON

1 Q. And what did you see?

2 A. We observed Jack standing to the right-hand side of
3 us with just maybe, looked like to me shorts on, no shoes and
4 no shirt.

5 Q. Jack Galloway?

6 A. Yes, sir. And he asked us had we seen his mother.
7 And we said, no, what's wrong? And he said he believed Leroy
8 had shot her. So we turned left, went up the street, made
9 another left to go back around Scott Circle.

10 Q. And Scott Circle is -- Refuge Road goes straight
11 across Scott's Circle. It's like a half of a circling; is
12 that right?

13 A. Yes, sir, circle. You go on one road and come out
14 either.

15 Q. So you can come in one and go out the other?

16 A. Uh-huh.

17 Q. Okay. Go ahead.

18 A. So once he said that we pulled up back around to see
19 if we seen Cathy. So we pulled up close to her house, we
20 noticed her laying on the ground. We stopped --

21 Q. And how was she laying?

22 A. Flat on her back, seemed like to me.

23 Q. On her back. Did you see Mr. Archie?

24 A. At that time, we didn't.

25 Q. You did not?

RANDY WATTS - DIRECT BY MR. MCELHANNON

1 A. No, sir, until we attempted to get out the car to
2 see if we could help her. At that point, Leroy walked off the
3 steps.

4 Q. Off the steps of where?

5 A. The front porch of Cathy's house. And when we
6 started to get out of the car Ms. Blanding was crying, and we
7 was getting out to see if we could help her. Seemed like to
8 me Leroy started toward us, and I noticed that he still had a
9 gun in his hand.

10 And I told her, I said hold on there, back up
11 because he still got a gun in his hand. So we backed up a few
12 feet, and by that time you can hear the siren. We were not
13 knowing at the time whether it was an officer, ambulance or
14 what. But by that time the officer pulled in front of us in
15 front of our car. So instead of Leroy continuing toward us he
16 went back toward her where she was laying on the ground.

17 Q. Toward Cathy Galloway?

18 A. Yes, sir.

19 Q. What did he do?

20 A. And he stood over her and he pointed the gun at her,
21 and by that time the officer had gotten out the car. He
22 pointed the gun at her and she started to fire; click, click,
23 click, click.

24 The officer at that time was telling him to drop the
25 weapon, and he kept clicking it until it fired. Once it fired

RANDY WATTS - DIRECT BY MR. MCELHANNON

1 he looked at the officer and dropped the weapon. The officer
2 told him to get on the ground. He got on the ground.

3 Q. So you heard what we call dry firing of the gun?

4 A. Yes, sir.

5 Q. You heard it click several times?

6 A. Yes, sir, twice or more.

7 Q. And then a gunshot?

8 A. Yes, sir.

9 Q. How was Mr. Archie standing when he fired the shot
10 into Ms. Galloway?

11 A. To me, directly over her. Her body was laying like
12 this (indicated). He was behind her shoulder length in sort
13 of a leaning motion aiming at her, and he was firing the gun.

14 Q. Could you tell what body part he was aiming at?

15 A. To me, looked like he was aiming at her head.

16 Q. At her head?

17 A. Yes, sir.

18 Q. Did you -- or did Ms. Galloway do anything when that
19 final shot was shot?

20 A. Seemed like to me her body made a motion, like a
21 jerking motion.

22 Q. And then you said the police got -- he dropped the
23 gun and got him on the ground?

24 A. Uh-huh.

25 Q. Put handcuffs on him?

RANDY WATTS - CROSS BY MR. POTTER

1 A. Yes, sir, put bags on his hands.

2 Q. What did you do, you and Ms. Blanding do after that?

3 A. Well, all I could do then was just comfort her.

4 After the officer had put Leroy on the ground in handcuffs
5 wasn't nothing I could do but comfort Ms. Blanding because she
6 was upset, so was I.

7 Q. Did you ever know Ms. Galloway to carry a weapon?

8 A. No, sir.

9 MR. MCELHANNON: That's all the questions I have.

10 THE COURT: Cross-examine.

11 Are you through on your direct?

12 MR. MCELHANNON: I am through.

13 THE COURT: Cross-examination.

14 MR. POTTER: Thank you, Judge. If it pleases the

15 Court.

16 CROSS-EXAMINATION

17 BY MR. POTTER:

18 Q. Now, when you testified, you were still in the
19 vehicle when you saw this happened; is that right?

20 A. Yes, sir.

21 Q. So you never got out of the vehicle?

22 A. No, sir, not until the officer arrived, then we
23 exited the vehicle.

24 Q. I'm sorry, say that again.

25 A. Not until the officer arrived, then we exited the

RANDY WATTS - CROSS BY MR. POTTER

1 vehicle.

2 Q. So the police cruiser was immediately in front of
3 your vehicle?

4 A. Uh-huh.

5 Q. And the police officer was coming out of his
6 vehicle?

7 A. Uh-huh.

8 Q. And Scott Circle, 111 Scott -- excuse me. 119 Scott
9 Circle had numerous large trees between the house and the
10 road; isn't that right?

11 A. Trees. I wouldn't say large trees, but trees.

12 Q. It was August when the shooting happened; isn't that
13 right?

14 A. Uh-huh.

15 Q. And the trees had leaves on them, didn't they?

16 A. Yes.

17 Q. Looking at State's Exhibit Number 10, these trees
18 are at least 10 feet high, correct?

19 A. Yes.

20 Q. And there's at least 4 of these 10-foot high trees
21 in front of the house, correct?

22 A. Yes.

23 Q. Now, April 27th, 2000 you pled or were convicted of
24 possession of crack cocaine; is that right?

25 A. That's right.

RANDY WATTS - CROSS BY MR. POTTER

1 Q. That's a felony here in South Carolina and you did
2 time for that; is that right?

3 A. That's right.

4 Q. And then April 2000 you had a shoplifting charge
5 that you were convicted of, right?

6 A. That's right.

7 Q. April of '99 you had another crack cocaine charge
8 you were convicted of; is that right?

9 A. That's right.

10 Q. Was Jack your supplier?

11 A. I didn't have a supplier.

12 MR. POTTER: No further questions. Thank you.

13 THE COURT: Re-examine?

14 MR. MCELHANNON: Nothing further, Your Honor. May

15 this witnesses be excused?

16 THE COURT: Any objection?

17 MR. POTTER: No objection.

18 THE COURT: Without objection the witness may be

19 excused. Thank you, sir.

20 MR. MCELHANNON: The State calls Nellie Blanding.

21 NELLIE BLANDING, after having been duly sworn,

22 testified as follows:

23 THE BAILIFF: State your name and spell your last

24 name for the record.

25 THE WITNESS: My name is Nellie Blanding,

NELLIE BLANDING - DIRECT BY MR. MCELHANNON

1 B-l-a-n-d-i-n-g.

2 DIRECT EXAMINATION

3 BY MR. MCELHANNON:

4 Q. Ms. Blanding, where do you live?

5 A. 221 Scott Circle.

6 Q. Who do you live there with?

7 A. Randy Watts.

8 Q. Pete that was just up here?

9 A. Yes.

10 Q. Were you all living on Scott Circle August 22nd,
11 2005?

12 A. Yes, sir.

13 Q. And the morning, that morning were you taking
14 Mr. Watts to work?

15 A. Yes.

16 Q. If you could tell the jury what you observed that
17 morning.

18 A. We got in the car and was on my way to work, and
19 when I got to the end I had passed Cathy house. I got to the
20 end of the driveway at the road. I stopped at the stop sign
21 and Jack called me.

22 Q. Jack Galloway?

23 A. At the stop sign he called me and he said, Nel, did
24 you see my momma? I said, no. He said -- I said, why? He
25 said, Leroy done shot her. I think she's dead.

NELLIE BLANDING - DIRECT BY MR. MCELHANNON

1 So we road around the side. We went all the way
2 around the circle and I stopped at Cathy house, and I seen
3 Cathy laying down on her back.

4 Q. Laying on her back?

5 A. And I was fixing to see her body and Randy told me
6 not to go because Leroy had a gun.

7 Q. Did you see Leroy Archie?

8 A. I didn't until he told me because I was looking at
9 Cathy.

10 Q. Okay.

11 A. And when I seen her I backed up, and when we backed
12 up that's when police passed us. So I stopped then, and Leroy
13 came down them steps. He was looking at us, and he come down
14 the steps and he took -- he shoot her again in the face.

15 Q. Ms. Blanding, did he shoot her while the officer was
16 present?

17 A. He shoot her there. I think he was there. The
18 officer was present because he told him to drop his gun. I
19 don't know whether he told him to drop it -- I know he told
20 him to drop his gun, but he shot her in front of the officer.

21 Q. Ms. Blanding, when you saw Cathy's body on the
22 ground on her back and you saw Mr. Archie come back over with
23 the gun did was Ms. Galloway swinging at him or fighting or
24 anything?

25 A. She was laying on her back.

NELLIE BLANDING - CROSS BY MR. POTTER

1 Q. Was she moving at all?

2 A. She wasn't moving. She was just laying there. He
3 come down and he shot her.

4 Q. Did you hear anything before the gunshot?

5 A. No.

6 Q. What did you all do after the police got there?

7 A. I know I got -- we got out the car and I called my
8 sister-in-law.

9 Q. And who is that?

10 A. Gloria Johnson. I just called her and told her
11 Leroy was shooting Cathy.

12 Q. And then all the police arrived right after that?

13 A. Yeah.

14 MR. MCELHANNON: No further questions, Your Honor.

15 THE COURT: Cross-examination,

16 MR. POTTER: Thank you.

17 CROSS-EXAMINATION

18 BY MR. POTTER:

19 Q. Ms. Blanding, you were in the car when this was all
20 going on?

21 A. (Shook head).

22 Q. And you were driving the vehicle?

23 A. Yes, sir.

24 Q. I'm sorry. That's a yes?

25 A. Yes.

HAROLD HOLLAND - DIRECT BY MR. MCELHANNON

1 Q. And you were in the car, yes?

2 A. (There was no response).

3 Q. You were in the car?

4 A. Yes, sir.

5 Q. Okay. And never got out of the car?

6 A. Never got out of the car.

7 Q. Now, there are a series of trees between the house
8 and the street, correct?

9 A. Correct.

10 MR. POTTER: Nothing further. Thank you.

11 MR. MCELHANNON: No redirect, Your Honor. May this
12 witness be excused?

13 MR. POTTER: No objection, Judge.

14 THE COURT: Without objection you may be excused.

15 Thank you, ma'am.

16 MR. MCELHANNON: The State calls Harold Berry
17 Holland.

18 HAROLD BERRY HOLLAND, after having been duly
19 sworn, testified as follows:

20 THE BAILIFF: State your name and spell your last
21 name for the record.

22 THE WITNESS: Harold B. Holland, H-o-l-l-a-n-d.

23 DIRECT EXAMINATION

24 BY MR. MCELHANNON:

25 Q. Mr. Holland, where do you live?

HAROLD HOLLAND - DIRECT BY MR. MCELHANNON

- 1 A. 230 Scott Circle.
- 2 Q. How long have you lived at that address?
- 3 A. About 34 years.
- 4 Q. Are you married?
- 5 A. Yes.
- 6 Q. To who?
- 7 A. Billie Holland.
- 8 Q. And how long have you been married?
- 9 A. Probably 35 years.
- 10 Q. 35 years. Do you know where 119 Scott Circle is?
- 11 A. 119? I'm not familiar with the numbers.
- 12 Q. Do you know where Ms. Galloway and Mr. Archie lived?
- 13 A. Yes.
- 14 Q. How far is your house from their house?
- 15 A. Approximately 200, 300 yards.
- 16 Q. 200 yards?
- 17 A. Yes.
- 18 Q. Were you at home on the morning of August 22nd,
- 19 2005?
- 20 A. Yes.
- 21 Q. And did you receive a telephone call?
- 22 A. Yes.
- 23 Q. And who called you?
- 24 A. It was my sister.
- 25 Q. And who was that?

HAROLD HOLLAND - DIRECT BY MR. MCELHANNON

1 A. Brenda Rogers.

2 Q. Brenda Rogers. And what was the nature of that
3 telephone call?

4 A. Well, she told me to get up and go see what was
5 going on. So I put my clothes on and went up the road.

6 Q. And what did you observe when you went down the
7 road?

8 A. Well, I -- Nellie Blanding come by and she said
9 Leroy shot Cathy. So I was going on out there. And she asked
10 me did I want a ride, and I said I'll walk on. So they went
11 up the road, and I kept going and the officers come by me. I
12 said, go on up the road. I think the disturbance out there.
13 So I heard the officer say drop your weapon, and I heard a
14 shot.

15 Q. You heard the officer say drop your weapon?

16 A. Yes.

17 Q. And then you heard a gunshot. Did you see anything
18 or you just heard that?

19 A. I just heard him.

20 Q. What did you do after that?

21 A. I walked on out the road.

22 Q. The their house?

23 A. Yes.

24 Q. What did you observe when you got there?

25 A. I saw Cathy laying there on her back and Leroy was

HAROLD HOLLAND - CROSS BY MR. POTTER

1 handcuffed on the ground.

2 Q. Did he have on that bathrobe right there?

3 A. Yes.

4 Q. How long had you known Cathy Galloway?

5 A. Well, as long as -- probably 35 years.

6 Q. Did you ever know her to carry a weapon?

7 A. No.

8 Q. Sir?

9 A. No, sir.

10 MR. MCELHANNON: That's all the questions I have,

11 Your Honor.

12 THE COURT: Cross-examine.

13 MR. POTTER: Thank you. If it pleases the Court.

14 CROSS-EXAMINATION

15 BY MR. POTTER:

16 Q. Mr. Holland, you knew Cathy for 35 years; is that
17 correct?

18 A. Possibility, yes.

19 Q. And you knew Leroy as well, right?

20 A. Well, I didn't meet Leroy until about probably maybe
21 10 years later.

22 Q. Okay. Within the last 10 years you've known Leroy
23 and Cathy living together on Scott Circle, right?

24 A. Yes.

25 Q. And you knew they fought and argued a lot, correct?

BILLIE HOLLAND - DIRECT BY MR. MCELHANNON

1 A. I don't know nothing about fighting. I've heard
2 them fussing.

3 Q. You know that the law has been called to their
4 residence?

5 A. Pardon me?

6 Q. Have you seen the law at their residence prior to
7 the date of the shooting?

8 A. No, I haven't seen the law prior to that.

9 MR. POTTER: Thank you. Nothing further.

10 MR. MCELHANNON: No redirect, Your Honor. May the
11 witness be excused?

12 MR. POTTER: No objection.

13 THE COURT: All right. Without objection you may be
14 excused. Thank you, sir.

15 MR. MCELHANNON: The State calls Billie Ann Holland.

16 BILLIE ANN HOLLAND, after having been duly
17 sworn, testified as follows:

18 THE BAILIFF: State your name and spell your last
19 name.

20 THE WITNESS: Billie Ann Holland, H-o-l-l-a-n-d.

21 DIRECT EXAMINATION

22 BY MR. MCELHANNON:

23 Q. Ms. Holland, where do you live?

24 A. 230 Scott Circle.

25 Q. How long have you lived there?

BILLIE HOLLAND - DIRECT BY MR. MCELHANNON

1 A. 32 years.

2 Q. And are you married to Harold Holland?

3 A. Yes.

4 Q. Did you know Cathy Galloway?

5 A. Yes.

6 Q. Did you talk to her frequently?

7 A. Yes.

8 Q. Did you know of your own personal knowledge if she
9 was moving out of 119 Scott Circle?

10 A. Yes.

11 Q. How did you know that?

12 A. When she called and asked me for some newspaper to
13 wrap some glasses.

14 Q. Some newspaper to wrap some glasses in?

15 A. Uh-huh.

16 Q. When was that telephone call?

17 A. That Sunday night, the 21st.

18 Q. August 21st?

19 A. Uh-huh.

20 Q. The night before the killing?

21 MR. POTTER: Objection, Judge.

22 THE COURT: Sustained.

23 Q. August 21st, the night before August 22nd?

24 A. Yes.

25 Q. 2005?

HELEN ABRAMS - DIRECT BY MR. MCELHANNON

1 A. Yes.

2 MR. MCELHANNON: That's all the questions I have.

3 MR. POTTER: No questions, Judge.

4 THE COURT: You may step down. Thank you, ma'am.

5 You want the witness excused?

6 MR. MCELHANNON: Yes, sir.

7 THE COURT: Any objection?

8 MR. POTTER: No objection.

9 THE COURT: Without objection the witness may be

10 excused.

11 Again, thank you, ma'am.

12 MR. MCELHANNON: The State calls Helen Abrams.

13 HELEN ABRAMS, after having been duly sworn,

14 testified as follows:

15 THE BAILIFF: State your name and spell your last

16 name for the record.

17 THE WITNESS: My name is Helen Goodwill Abrams,

18 A-b-r-a-m-s.

19 DIRECT EXAMINATION

20 BY MR. MCELHANNON:

21 Q. Ms. Abrams, where do you live?

22 A. 245 Scott Circle.

23 Q. Is that near 119 Scott Circle?

24 A. It's on the opposite end of the street.

25 Q. And did you live there August 22nd, 2005?

HELEN ABRAMS - DIRECT BY MR. MCELHANNON

1 A. Yes.

2 Q. On the morning of August 22nd, 2005 what were you
3 doing?

4 A. I was leaving off of Scott Circle and turned onto
5 Refuge Road.

6 Q. And were you alone?

7 A. Yes.

8 Q. What did you observe, if anything?

9 A. I saw Jack and the little girl named Kathy, I didn't
10 know her name at the time, up at the top of Refuge Road
11 flagging down cars trying to get a cell phone.

12 Q. And were they successful in that?

13 A. Jack had already gotten a cell phone. He asked me
14 did I have a cell phone, and he asked me did I see his momma
15 laying in the yard. And I told him I didn't look but I would
16 go back and see if I saw her, because he thought Mr. Leroy had
17 shot his mom.

18 Q. And what did you do when he told you -- which
19 direction did you go to get back to their house?

20 A. I think I made a U-turn somewhere. I don't know
21 exactly how I got back there, but I went back and I saw her
22 laying in the yard. And I went back and told him that I did
23 see her laying there and I would go back and check on her. So
24 I did.

25 Q. You went back, observed her laying there. Could you

HELEN ABRAMS - DIRECT BY MR. MCELHANNON

1 tell at that point how she was laying?

2 A. I didn't observe her. I just got out of the car,
3 parked my car in front of house and went back to check on her,
4 just went to the yard to check on her.

5 Q. Well, did you go back to Jack first and tell --

6 A. I went to Jack first and told him. I didn't get out
7 of the car when I went the first time. I just saw her in the
8 yard and told him she was there and I just came back, straight
9 back and went to the yard.

10 Q. And when you came back the second time what did you
11 do?

12 A. I parked my car in front of the yard and just got
13 out and went to check on her.

14 Q. Did you actually go to her?

15 A. Yes.

16 Q. What did you do when you got to her?

17 A. I checked for a pulse and to see how her pulse was,
18 and she was still breathing at this time, and she was just
19 making little gurgling noises. So I just stayed there with
20 her and prayed with her and tried to talk to her and comfort
21 her.

22 Q. Did you observe anything about her face?

23 A. No. Her eyes were just back in her head and she was
24 just barely breathing.

25 Q. Did you see any type of gunshot wound on her face?

HELEN ABRAMS - DIRECT BY MR. MCELHANNON

1 A. Not on her face, no.

2 Q. Now, how long do you think you were there with her?

3 How long were you there with her?

4 A. Total? The total time?

5 Q. Well, at that point.

6 A. I'm not exactly sure. I was just waiting for the
7 ambulance to come. I'm not sure. You know how time -- it's
8 kind of crazy, kind of all mixed up. I'm not exactly -- it
9 seemed like it was forever but I'm sure it was not that long.

10 Q. Did you at any point observe Leroy Archie?

11 A. Yes, he was there.

12 Q. And what was he doing?

13 A. He was just pacing back and forth in the yard.

14 Q. Did you ask him anything?

15 A. When I first got there I asked him had someone
16 called 911, and he said 911 had been called. That was all he
17 said.

18 Q. Did you see anything in his hand?

19 A. Not at that time, no.

20 Q. How about later?

21 A. Later, after when -- right before the officer
22 arrived he stepped off the steps, because I was thinking he
23 was going to shoot himself, and then he started walking. I
24 thought he was walking to give -- the officer had just came
25 up. He had barely just started to exit the car. He hadn't

HELEN ABRAMS - DIRECT BY MR. MCELHANNON

1 even gotten out of the car yet, and I thought he was going to
2 walk and give the gun to the officer but instead he came and
3 pointed it at Cathy, and that's when I took off.

4 Q. Did you see the gun?

5 A. At that time I did.

6 Q. In Mr. Archie's hand?

7 A. Yes.

8 Q. And you took off?

9 A. Yes.

10 Q. Why did you take off?

11 A. Because I was on the ground with her and he started
12 aiming the gun so I thought that was the thing to do.

13 Q. Did you hear anything after that?

14 A. Well, I was running at that point but I heard the
15 gun click and I did hear a gunshot, and I heard the officer
16 say put down the gun, put down the gun, put down the gun
17 several times.

18 Q. And you heard clicking before the gunshot?

19 A. I'm not exactly sure the way I remembered it, but
20 everything was so crazy that day so I think I heard the clicks
21 first and then the shot. Seems like I heard two clicks and
22 then a shot.

23 Q. Two clicks and a shot?

24 A. Uh-huh.

25 MR. MCELHANNON: That's all the questions I have.

HELEN ABRAMS - DIRECT BY MR. MCELHANNON

1 MR. POTTER: No questions.

2 MR. MCELHANNON: May the witness be excused?

3 THE COURT: Any objection?

4 MR. POTTER: No, Your Honor.

5 THE COURT: Without objection. You may be excused.

6 Thank you, ma'am.

7 May I see the attorneys, please.

8 (WHEREUPON, a bench conference was had.)

9 THE COURT: Madam forelady, ladies and gentlemen of
10 the jury, I understand this may be a good place to take the
11 morning break. So I'm going to ask you to retire to the jury
12 room. And when you are ready to come back just knock on the
13 door and we'll come back and restart the trial.

14 Now, again, please do not undertake discussions of
15 the case among yourselves in any way. Thank you very much.

16 Everyone else remain seated while the jury retires
17 from the courtroom.

18 (WHEREUPON, the jury leaves the courtroom at
19 approximately 11:25 a.m.)

20 THE COURT: Anything from the State before we take a
21 break?

22 MR. MCELHANNON: Nothing from the State.

23 THE COURT: Anything from the defendant?

24 MR. POTTER: Nothing.

25 THE COURT: We'll stand in recess until the jury is

JAMES CRAWFORD - DIRECT BY MR. MCELHANNON

1 ready to come back.

2 (WHEREUPON a brief recess was taken.)

3 THE COURT: Anything from the State before we bring
4 the jury back?

5 MR. MCELHANNON: No, Your Honor.

6 THE COURT: Anything from the defendant?

7 MR. POTTER: No, Your Honor.

8 THE COURT: Ask the jury to join us, please.

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 11:47 a.m.)

11 THE COURT: Let the record reflect the jury is in
12 the jury box.

13 Madam forelady, ladies and gentlemen of the jury,
14 we'll now continue with the State's case.

15 You may call your next witness.

16 MR. MCELHANNON: Thank you, Your Honor. The State
17 calls Deputy James D. Crawford.

18 JAMES D. CRAWFORD, after having been duly
19 sworn, testified as follows:

20 THE BAILIFF: State your name and spell your last
21 name.

22 THE WITNESS: James Crawford, C-r-a-w-f-o-r-d.

23 DIRECT EXAMINATION

24 BY MR. MCELHANNON:

25 Q. Deputy, who are you employed with?

JAMES CRAWFORD - DIRECT BY MR. MCELHANNON

1 A. Anderson County Sheriff's Office.

2 Q. How long have you been employed with them?

3 A. About two years now.

4 Q. What are your current duties?

5 A. I'm assigned to the Sheriff's Aggressive Criminal
6 Enforcement Team.

7 Q. Is that called the ACE Team?

8 A. It is called the ACE Team.

9 Q. What were your duties on August 22nd, 2005?

10 A. I was a road deputy. I answered calls for service.

11 Q. And were you, in fact, on the shift the morning of
12 August 22nd, 2005?

13 A. I was. I was on first shift.

14 Q. And where were you patrolling?

15 A. I was assigned to the zone force, the Pendleton area
16 of the county.

17 Q. Did you receive a call from Scotts Circle on that
18 morning?

19 A. I did. It was early that morning. It was on first
20 shift. It was the first call I got of the day. The call come
21 in as possible shots fired in the area of Scott Circle.

22 Q. And what did you do when you got that call?

23 A. I responded normally because of the way the call
24 come out. It didn't come out as a priority call. So I was at
25 the intersection of Highway 76 at Le France Road, so I wasn't

JAMES CRAWFORD - DIRECT BY MR. MCELHANNON

1 just a couple miles from the incident location.

2 Q. How long do you think it took you to get from where
3 you were to 119 Scott Circle?

4 A. I'd say 4 to 5 minutes.

5 Q. And let me show you State's Exhibit 10.

6 Your Honor, may the witness step down?

7 THE COURT: Certainly.

8 (The witness stepped down from the witness stand.)

9 BY MR. MCELHANNON:

10 Q. Which way on Scott Circle did you come in?

11 A. This is the incident location house right here. I
12 come in -- Scott Circle is like a horseshoe. I come in on the
13 top part of Scott Circle and made the horseshoe around, and I
14 came in from this way where this patrol car was pointing
15 (indicated).

16 Q. So your car would have been pointing in that same
17 direction?

18 A. That's correct.

19 Q. Do you remember approximately where you stopped
20 along that tree line?

21 A. It was approximately in this area but a little bit
22 further down because I remember when I got out of my vehicle I
23 was blocked, I couldn't see nothing of the house because of
24 the trees.

25 Q. And was there another car there?

JAMES CRAWFORD - DIRECT BY MR. MCELHANNON

1 A. Patrol car?

2 Q. No, another individual car there?

3 A. I think I passed one. I do recall passing an
4 individual walking and he told me that the disturbance was up
5 there and there was another vehicle back here that I had
6 passed (indicated).

7 Q. So you pulled in front of that vehicle?

8 A. I did.

9 Q. You can take your seat.

10 A. (The witness complied).

11 Q. Deputy, when you initially arrived on the scene what
12 did you observe?

13 A. When I first pulled up to 119 Scott Circle I saw a
14 black female lying in the yard on her back and there was a
15 lady in a -- like a blue denim type of a dress, which would be
16 on the victim's left side, kneeling beside her. I didn't know
17 exactly how it happened. Like I said, the call came in as
18 shots fired, and it was deer season and anything could happen.
19 But when I first pulled up it kind of shocked me to see what
20 had actually happened and what I did see.

21 Q. So you saw a lady kneeling beside Ms. Galloway?

22 A. That's correct. It would have been on
23 Ms. Galloway's left side.

24 Q. Was that lady Helen Abrams who testified earlier?

25 A. I couldn't tell you.

JAMES CRAWFORD - DIRECT BY MR. MCELHANNON

1 Q. What happened next?

2 A. By the time I seen the victim lying in the yard and
3 by the time it took me to kind of comprehend what I just seen
4 I stopped my vehicle. Like I mentioned a minute ago, I got
5 out of my vehicle but I was -- the trees were obscuring my
6 vision of the residence.

7 As soon as I got out of the vehicle I heard what I
8 know as dry firing of a revolver type pistol.

9 Q. And explain dry firing. What is that?

10 A. Dry firing is like if you take a pistol, a revolver
11 pistol, and if it's empty you just start pulling the trigger
12 and you're going to have a clicking every time you pull the
13 trigger; click, click, click, click, and that's what I call a
14 dry firing.

15 Q. And I show you what's marked State's Exhibit 1. Is
16 this a revolver?

17 A. It is.

18 Q. And is that the type of gun you are saying would dry
19 fire?

20 A. That's correct.

21 Q. By the way, do you recognize this?

22 A. Yes, I do.

23 Q. And what is that?

24 A. That's the weapon that the defendant, Mr. Archie,
25 had in his hand, and the one he dropped.

JAMES CRAWFORD - DIRECT BY MR. MCELHANNON

1 Q. So you heard -- how many dry fires did you hear?

2 A. Four to five.

3 Q. And what did you hear after that, if anything?

4 A. After I heard the dry firing I immediately
5 unholstered my weapon. I didn't know exactly what I had at
6 that time. And I eased around the -- I don't know if you saw
7 those big trees in the yard, but I eased around that last
8 tree. And just as soon as I got around that last tree I heard
9 click, bang, and I seen Mr. Archie standing, looked to me
10 directly over the victim's head, and I seen the muzzle flash.
11 I seen everything, and just bang.

12 Then I gave him the orders to drop the gun, at that
13 time, in which he complied. I think I had to tell him two or
14 three times to drop the gun, and he complied.

15 Q. Did you see him at all before you heard the dry
16 firing?

17 A. I did not. I did not. The only person I seen was
18 the lady in the blue denim dress. I did not see Mr. Archie
19 whatsoever when I first pulled up to the scene.

20 Q. What did Mr. Archie do when you told him to drop the
21 gun?

22 A. He complied, and you could hear him exhale, and just
23 a long exhale, like he had been holding his breath for about
24 five minutes or so.

25 Q. And did he obey your commands?

JAMES CRAWFORD - DIRECT BY MR. MCELHANNON

1 A. He did. I called him over to me. I got about 15,
2 20 yards away from the victim. I called him over to me. I
3 placed him on the ground, I put handcuffs on him, and at that
4 time I think I advised him of his Miranda rights. After doing
5 that, I went back to the victim, and it appeared to me that
6 she was deceased.

7 Q. And where was the gun in relation to Ms. Galloway?

8 A. The gun, if you were looking over her, like you have
9 a sky view type view of her, the gun would be to the right
10 side of her head, which is where Mr. Archie was standing
11 directly over her. And whenever I told him to drop it he kind
12 of looked at me then dropped the gun to the right side of her
13 head.

14 Q. Was the gun feet away from her body?

15 A. It was maybe -- maybe a foot away from her from her
16 body.

17 Q. What did you do after you had him handcuffed?

18 A. After I checked on the victim I went back to my
19 vehicle and got some brown bags -- let me recant that. Once I
20 had secured Mr. Archie, by that time family members had
21 started showing up on the scene. I did the best I could to
22 try to preserve the crime scene.

23 And Deputy Courtney Rod [ph] arrived on scene. I
24 asked him if he had any brown paper bags, that way we could
25 bag Mr. Archie's hands for any type of evidence for a gunshot

JAMES CRAWFORD - DIRECT BY MR. MCELHANNON

1 residue test kit. And so he had some and I placed the bags
2 over Mr. Archie's hands.

3 Q. Did you take -- or what did you do with Mr. Archie
4 after that?

5 A. Due to the fact that all the family members were
6 coming up, and I know with some type of retaliation, I placed
7 Mr. Archie, I believe it was in the back of my patrol vehicle,
8 and I locked the doors for his safety?

9 Q. And do you know what happened with Mr. Archie after
10 that?

11 A. I do not. Investigator Matheson was ordered to take
12 me back to the sheriff's office immediately and to obtain a
13 statement from me based on what I had seen.

14 Q. From you?

15 A. From me.

16 Q. So you released Mr. Archie into someone else's
17 custody?

18 A. Yes, sir. Yes. And by that time the road
19 lieutenant, my lieutenant had showed up and both my sergeants,
20 there were several, several deputies there from crime scene
21 units, investigations, and like I said, my superiors. So I
22 was relieved from at the scene.

23 Q. Were you there when EMS arrived? Were you still
24 there?

25 A. I don't recall. I do not think so.

JAMES CRAWFORD - CROSS BY MR. POTTER

1 Q. State's Exhibit 1, which is the revolver, is that
2 the only weapon you found around Ms. Galloway?

3 A. That is. It is.

4 MR. MCELHANNON: That's all the questions I have.

5 THE COURT: Cross-examination.

6 MR. POTTER: Thank you, Judge. If it pleases the
7 Court.

8 CROSS-EXAMINATION

9 BY MR. POTTER:

10 Q. Deputy, you did an incident report, I guess, is the
11 best way to -- I'm sorry.

12 A. Yes, sir.

13 Q. You did an incident report in regards to your
14 involvement in the shooting, correct?

15 A. That's correct.

16 Q. And in the incident report you indicated that there
17 was some individuals who appeared to be family members?

18 A. That's correct.

19 Q. And one gentleman had dreadlocks and gold teeth
20 plating and another black man had on a T-shirt and his hair
21 pulled back into a bun; is that right?

22 A. That's correct.

23 Q. And you had -- they were coming towards you; is that
24 right?

25 A. That's correct.

JAMES CRAWFORD - CROSS BY MR. POTTER

1 Q. So you had to deal with those two people, also, at
2 the scene, didn't you?

3 A. That's correct.

4 Q. And you later learned that the person with the
5 dreadlocks was Cathy's son, correct?

6 A. That's correct.

7 Q. And they were trying to get at Leroy, weren't they?

8 A. Trying to get at him?

9 Q. Yes, sir.

10 A. No, sir, they weren't trying to get at him to -- I
11 don't think they were trying to -- well, they were upset.

12 Q. I understand.

13 A. I guess the boy's momma just got shot, so they were
14 upset.

15 Q. Now, in your report you say I was struggling with
16 the son trying to keep him back.

17 A. Keep him back from the crime scene as well. A lot
18 of that was crime scene preservation.

19 Q. And in your incident report you said all the
20 subjects attempted to make contact with Leroy.

21 A. To get to Leroy?

22 Q. Yes, sir.

23 A. They probably did.

24 MR. POTTER: No further questions.

25 THE COURT: Redirect?

JAMES CRAWFORD - REDIRECT BY MR. MCELHANNON

1 MR. MCELHANNON: Just one redirect, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. MCELHANNON:

4 Q. Deputy, with a crime scene like this, and especially
5 one where someone has died, how important is it to try to keep
6 individuals other than law enforcement out of that crime
7 scene?

8 A. It's paramount. You could -- anything from
9 disturbing a footprint to, you know, a blade of grass that may
10 have some forensic evidence on it. It's paramount to keep
11 everyone out that's not associated with that crime scene. And
12 I understand that the victim's son was there but, you know,
13 for us and law enforcement it's paramount to keep everyone
14 out.

15 Q. Well, speaking of the victim's son, Jack Galloway,
16 did he at any time go over to the car where Mr. Archie was and
17 bang on the window or anything like that?

18 A. No, sir, he did not.

19 MR. MCELHANNON: That's all I have.

20 THE COURT: Recross?

21 MR. POTTER: No, Your Honor.

22 THE COURT: You may step down.

23 MR. MCELHANNON: I'd ask that this witness be
24 excused, Your Honor.

25 THE COURT: Any objection?

KENNETH BLAKELY - DIRECT BY MR. MCELHANNON

1 MR. POTTER: No, Your Honor.

2 THE COURT: Without objection he may be excused.

3 Thank you, sir.

4 MR. MCELHANNON: The State calls Ken Blakely.

5 KENNETH BLAKELY, after having been duly sworn,
6 testified as follows:

7 THE BAILIFF: State your name and spell your last
8 name.

9 THE WITNESS: Kenneth Duane Blakely, B-l-a-k-e-l-y.

10 DIRECT EXAMINATION

11 BY MR. MCELHANNON:

12 Q. Mr. Blakely, who are you employed with?

13 A. Anderson County Sheriff's Office.

14 Q. How long have you been employed with them?

15 A. Since 1994.

16 Q. And what are your duties now?

17 A. Now, I am a sergeant supervisor over the crime scene
18 forensics division.

19 Q. What were your duties or what type of job did you
20 have August of 2005?

21 A. At that time, I was a crime scene tech assigned to
22 answer crime scene calls.

23 Q. So now you are a supervisor?

24 A. Yes.

25 Q. Did you, in fact -- were you asked to attend the

KENNETH BLAKELY - DIRECT BY MR. MCELHANNON

1 autopsy of Cathy Galloway?

2 A. Yes, I did attend.

3 Q. And what is, just the nature, general nature of what
4 a crime scene investigator would do at an autopsy?

5 A. Photo document, collect any evidence, preserve any
6 evidence that may be recovered from the body such as clothing,
7 projectiles, documentation of any injuries present.

8 Q. Let me show you what's been marked State's Exhibits
9 4, 5 -- excuse me, 2, 3 and 4, and see if you can identify
10 these, please.

11 A. Yes, I do recognize them.

12 Q. What is that?

13 A. These are three projectiles or bullets, if you will,
14 that were removed from the body of Ms. Galloway at the
15 autopsy.

16 Q. So there were three actual bullets removed from the
17 body?

18 A. That's correct.

19 Q. And you took those into evidence?

20 A. I did.

21 MR. MCELHANNON: Your Honor, may the witness leave
22 the chair?

23 THE COURT: Certainly.

24 (The witness stepped down from the witness stand.)

25 BY MR. MCELHANNON:

KENNETH BLAKELY - DIRECT BY MR. MCELHANNON

1 Q. I show you first what's been marked State's Exhibit

2 32. First of all, did you take this photograph?

3 A. Yes, I did.

4 Q. And where was it taken?

5 A. That was taken in the autopsy room after being
6 removed from the body.

7 Q. And what does that depict?

8 A. That depicts a scale that we utilize in scaling
9 projectiles and other types of instruments, and this is
10 actually one of the projectiles that was removed from the
11 body.

12 Q. Could you tell what caliber that was?

13 A. I personally didn't know what caliber it was, no.

14 Q. Let me show you State's Exhibit 33. What does that
15 depict?

16 A. Again, this is one of the other projectiles, again
17 with the scale in the photograph to represent size.

18 Q. Okay. And State's Exhibit 34?

19 A. This is yet another one of the three, again with the
20 scale.

21 Q. And you took all of those pictures, all three of
22 those?

23 A. Yes, I did.

24 MR. MCELHANNON: Your Honor, at this time I'd ask
25 that State's Exhibits 32, 33 and 34 be admitted.

KENNETH BLAKELY - DIRECT BY MR. MCELHANNON

1 THE COURT: Any objection?

2 MR. POTTER: No objection.

3 THE COURT: Without objection State's Exhibit
4 Numbers 32, 33 and 34 are admitted into evidence.

5 (WHEREUPON, State's Exhibit Numbers 32, 33 and 34,
6 Photographs, were admitted into evidence.)

7 MR. MCELHANNON: As well as State's Exhibits 2, 3
8 and 4, the projectiles, Your Honor.

9 THE COURT: Any objection?

10 MR. POTTER: No objection.

11 THE COURT: Without objection State's Exhibits 2, 3
12 and 4 are admitted in evidence.

13 (WHEREUPON, State's Exhibit Numbers 2, 3 and 4,
14 Projectiles, were admitted into evidence.)

15 BY MR. MCELHANNON:

16 Q. Officer, what is the normal procedure for taking
17 evidence?

18 A. Evidence is retrieved from the body by the forensics
19 pathology that performs the autopsy. It is then sealed,
20 documented with the victim's name, the autopsy number given
21 for the hospital. It is then, at the completion of the
22 autopsy, the clothing, any evidence that is collected from the
23 body at that particular time is sealed by the physician's
24 assistant in the presence of me. I sign for it. It's
25 transported back to my agency where it's secured into evidence

KEVIN MATHESON - DIRECT BY MR. MCELHANNON

1 until such time that it is needed.

2 Q. And is it frequently transported to South Carolina
3 Law Enforcement Division in Columbia?

4 A. Yes, it is. Anything that we can't do in-house is
5 sent to our state crime lab.

6 MR. MCELHANNON: I have nothing further, Your Honor.

7 MR. POTTER: No questions, Judge.

8 THE COURT: All right. You may step down.

9 MR. MCELHANNON: May the witness be excused, Your
10 Honor?

11 THE COURT: Any objection?

12 MR. POTTER: No, Your Honor.

13 THE COURT: Without objection the witness may be
14 excused. Thank you, sir.

15 MR. MCELHANNON: The State calls Investigator Kevin
16 Matheson.

17 KEVIN DAVID MATHESON, after having been duly
18 sworn, testified as follows:

19 THE BAILIFF: State your name and spell your last
20 name.

21 THE WITNESS: Kevin David Matheson, M-a-t-h-e-s-o-n.

22 DIRECT EXAMINATION

23 BY MR. MCELHANNON:

24 Q. Mr. Matheson, who are you employed with?

25 A. The Anderson County Sheriff's Office.

KEVIN MATHESON - DIRECT BY MR. MCELHANNON

1 Q. How long have you been employed with them?

2 A. Approximately eight years.

3 Q. What was is your title?

4 A. Detective.

5 Q. And what are your normal duties as a detective?

6 A. Investigate crimes that have been issued to our
7 division for follow-up from the road deputy, the original
8 taking officers.

9 Q. Regarding the crime that happened on August 22nd,
10 2005 on Scott Circle in Pendleton, what did you do regarding
11 that?

12 A. I was summonsed to the scene just to be of
13 assistance. When I arrived on scene I was told to escort a
14 deputy back to the office and get an interview from him, a
15 statement from him, if you will, and afterwards I was told to
16 conduct the interview with Mr. Archie.

17 Q. And that deputy was Deputy Crawford who just
18 testified?

19 A. That's correct.

20 Q. And did you, in fact, interview Mr. Archie?

21 A. Yes, I did.

22 Q. What was the nature of the surroundings where you
23 interviewed Mr. Archie?

24 A. The interview was conducted in my office which
25 consists of a regular office desk, a computer desk and two

KEVIN MATHESON - DIRECT BY MR. MCELHANNON

1 chairs in front of that desk which is just inside the door
2 where Mr. Archie and the detective assisted me sat.

3 Q. Is that the normal place where a statement is taken?

4 A. Yes, for me in my office. Usually detectives will
5 utilize their own office space for the interview.

6 Q. And who was present during this interview?

7 A. A Detective Chris Beusse.

8 Q. As well as yourself?

9 A. Yes.

10 Q. And the defendant?

11 A. And Mr. Archie.

12 Q. And no one else?

13 A. No one else.

14 Q. Did it appear to you on that morning of August 22nd,
15 2005 that Mr. Archie was under the influence of any drugs or
16 alcohol?

17 A. No, sir, it did not.

18 Q. Did it appear to you that he was under any type of
19 mental or physical disability which would impair his judgment?

20 A. No, sir.

21 Q. Let me show you what's been marked State's Exhibits
22 35 and 36. See if you can identify those for me.

23 A. State's Exhibit 35 is the Miranda warnings that we
24 read to the defendant. It's called our advice of rights form.
25 It's the 5th and 6th Amendments from the Constitution, which

KEVIN MATHESON - DIRECT BY MR. MCELHANNON

1 was initialed and signed by Mr. Archie as well as witnessed by
2 myself and Detective Beusse.

3 Q. Let's stop there. Can you read me the Miranda
4 warnings or the constitutional rights that you issued to
5 Mr. Archie?

6 A. Yes, sir. Before we ask him any questions you must
7 understand your rights. You have the right to remain silent.
8 Anything you say can be used against you in court.

9 You have the right to talk to a lawyer for advice
10 before we ask you any questions and have him with you during
11 questioning. If you cannot afford a lawyer one will be
12 appointed for you before any questioning, if you wish.

13 If you decide to answer questions now without a
14 lawyer present you will still have the right to stop answering
15 at any time. You also have the right to stop answering at any
16 time until you talk to a lawyer.

17 Q. Okay. And that's the actual advice of rights form,
18 correct?

19 A. That's correct.

20 Q. And did Mr. Archie, in fact, initial and sign that
21 form?

22 A. Yes, he did.

23 Q. And was that witnessed by anyone?

24 A. By myself and Detective Beusse.

25 Q. And what time does it appear to you that that was

KEVIN MATHESON - DIRECT BY MR. MCELHANNON

1 signed by Mr. Archie?

2 A. At 08:47, which is 8:47 a.m.

3 Q. So roughly an hour or an hour and a half after the
4 incident?

5 A. I believe so.

6 Q. Now, the second part of that form is a waiver of
7 rights?

8 A. That's correct.

9 Q. If you can read that for us.

10 A. I have read the statement of my rights and I
11 understand what my rights are. I'm willing to make a
12 statement and answer the questions. I do not want a lawyer at
13 this time. I understand and know what I am doing. No
14 promises or threats have been made to you and no pressure or
15 coercion of any kind has been used against me.

16 Q. And was that also read to Mr. Archie or did he read
17 that?

18 A. Yes, it was. It was read to him.

19 Q. And did he, in fact, sign that?

20 A. Yes, he did.

21 Q. Was that witnessed?

22 A. Yes, sir.

23 Q. By whom?

24 A. Be myself and Detective Beusse, again.

25 Q. And what time was that witnessed?

KEVIN MATHESON - DIRECT BY MR. MCELHANNON

1 A. That was at 08:49, was 8:49 a.m.

2 Q. So two minutes after the advice of rights form was
3 signed?

4 A. Correct.

5 Q. How long did this interview with Mr. Archie take, if
6 you can tell? Do you have any notes that you took?

7 A. If I may refer to my notes.

8 Myself, I actually arrived at the office at 8:30
9 a.m. that morning. At 8:35, my notes reflect that I began
10 speaking with Mr. Archie, and at that point I was asking him
11 aside from the case if he needed anything to drink or if he
12 had any needs at that point. We actually began the interview
13 at 8:45 a.m., and the actual questioning concluded around 9:40
14 a.m. when I began typing the statement in which he had told
15 me.

16 Q. Okay. Was it your understanding Mr. Archie was
17 under arrest at this time?

18 A. Yes, sir.

19 Q. Did he understand the nature of the charge that he
20 was facing at that time?

21 A. Yes, sir.

22 Q. Did you explain that to him?

23 A. Yes, sir.

24 Q. Now, let's go to State's Exhibit 36, I believe.

25 A. State's Exhibit 36 is the statement that I typed out

KEVIN MATHESON - DIRECT BY MR. MCELHANNON

1 as a result of the interview with Mr. Archie.

2 Q. How long is that statement, how many pages?

3 A. Two pages, typed.

4 Q. And is it common practice for you to actually type
5 out a statement of a witness?

6 A. Yes, it is.

7 Q. At any time during the taking of his statement did
8 Mr. Archie say he wanted to stop, and ask for a lawyer?

9 A. No. No, sir.

10 Q. Did he have any trouble, that you could see,
11 understanding anything that was going on?

12 A. No, sir. He appeared quite relaxed and understood
13 exactly what was going on.

14 Q. Did you or Deputy Beusse in any way threaten or
15 coerce Mr. Archie into giving this statement?

16 A. No, sir, not at all.

17 Q. To the best of your knowledge, was this statement
18 freely and voluntarily given by Mr. Archie?

19 A. Yes, sir, it was.

20 Q. Did he actually receive a copy of his waiver of
21 rights form as well as the statement?

22 A. No, not a copy of the waiver of rights but he did
23 receive a copy of the statement.

24 MR. MCELHANNON: Your Honor, at this time I'd ask
25 that the waiver of rights, State's Exhibit 35, as well as the

1 statement, State's 36, be admitted into evidence.

2 THE COURT: Madam forelady, ladies and gentlemen of
3 the jury, a statement allegedly to have been made by the
4 defendant has been admitted into evidence in this case. While
5 the Court has determined that the statement is admissible I
6 instruct you that you make the ultimate decision of whether or
7 not the defendant made the statement.

8 If the defendant did not make the statement you must
9 determine whether the statement -- or if you determine the
10 defendant did make the statement you must determine whether
11 the statement was made by the defendant voluntarily and on his
12 own free will. This means that the statement was not caused
13 by pressure, force, fear, threats, coercion or intimidation,
14 or by hope of a promise of leniency or a reward of any kind.

15 In determining whether the statement was voluntary
16 you should consider both the characteristics of the defendant
17 and the details of the questioning.

18 Some of the factors that you must consider are, one,
19 the age of the defendant; the defendant's education or lack of
20 education; the defendant's mental ability or capacity; the
21 defendant's I. Q. or intelligence; the defendant's background
22 and environment; the place and length of detention; the nature
23 of the questioning and the advice or lack thereof to the
24 defendant of his constitutional rights, including but not
25 limited to the right to remain silent, that any statement can

1 be used against him in a court of law, the right to have a
2 lawyer present, that if he could not afford a lawyer a lawyer
3 would be appointed to represent him without cost and that he
4 could stop making a statement at any time. You must carefully
5 consider all of the surrounding circumstances before giving
6 any weight to the alleged statement.

7 The State has the burden of proving beyond a
8 reasonable doubt that the alleged statement was voluntary. If
9 you determine it was you may give the statement any further
10 consideration that you deem proper. You must decide what
11 weight, if any, should be given to the alleged statement.

12 If you determine the alleged statement was not the
13 free and voluntary statement of the defendant you should not
14 consider the statement at all.

15 State's Exhibits Number 35 and Number 36 are
16 admitted.

17 (WHEREUPON, State's Exhibit Numbers 35 and 36 were
18 admitted into evidence.)

19 MR. MCELHANNON: Your Honor, may we approach
20 briefly?

21 THE COURT: Certainly.

22 (WHEREUPON, a bench conference was had.)

23 MR. MCELHANNON: That's all I have, Investigator.

24 THE COURT: All right. Cross-examination?

25 MR. POTTER: Judge, I don't have any questions.

STEVE REEVES - DIRECT BY MR. MCELHANNON

1 THE COURT: You may step down. Thank you, sir.

2 MR. MCELHANNON: The State calls Detective Steve
3 Reeves.

4 STEVEN JAMES REEVES, after having been duly
5 sworn, testified as follows:

6 THE BAILIFF: State your name and spell your last
7 name.

8 THE WITNESS: Steven James Reeves, R-e-e-v-e-s.

9 DIRECT EXAMINATION

10 BY MR. MCELHANNON:

11 Q. Detective Reeves, who are you employed with?

12 A. The Anderson County Sheriff's Office.

13 Q. And for how long have you been employed?

14 A. For 11 years.

15 Q. How long have you been a detective?

16 A. Nine.

17 Q. Were you a detective August 22nd, 2005?

18 A. Yes, sir, I was.

19 Q. As well as August 24th, 2005?

20 A. Yes, sir.

21 Q. Did you have an occasion or reason to go speak with
22 Mr. Archie, the defendant?

23 A. I did.

24 Q. And what was that reason?

25 A. That was at Anderson County Detention Center on the

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1 24th.

2 Q. And why did you go to speak with him?

3 A. The lead investigator on the case or Detective
4 Michael Sloan had asked me to accompany him down at the
5 detention center to re-interview Mr. Archie in reference to
6 this case.

7 Q. And did both of you actually go to the detention
8 center?

9 A. We did.

10 Q. Where did you meet with Mr. Archie?

11 A. There's an interview room that's off the main
12 hallway. The size is probably about six by ten. It has a
13 desk with three chairs surrounding the desk.

14 Q. And who was present in that room?

15 A. That was myself, Detective Sloan and the defendant,
16 Leroy Archie.

17 Q. Let me show you what's been marked State's Exhibits
18 37 and 38 and see if you can identify those for me, please.

19 A. State's Exhibit 37 is Anderson County Sheriff's
20 Office advice of rights and waiver of rights form.

21 Q. And did you or Detective Sloan read Mr. Archie his
22 rights or did he read this form?

23 A. Detective Sloan did read -- administer this form to
24 Mr. Archie.

25 Q. And if you can, once again, read the rights that

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1 were given to Mr. Archie on August 24th, 2005?

2 A. Yes, sir. Before you answer any questions you must
3 understand your rights. You have the right to remain silent.
4 Anything you say may be used against you in Court.

5 You have the right to speak to a lawyer for advice
6 before we ask you any questions and have him with you during
7 questioning. If you cannot afford a lawyer one will be
8 appointed for you before any questioning, if you wish.

9 If you decide to answer questions now without a
10 lawyer present you'll still have the right to stop answering
11 questions at any time. You also have the right to stop
12 answering at any time until you speak to a lawyer.

13 Q. And did Mr. Archie appear to understand those
14 rights?

15 A. Yes, sir.

16 Q. Did he sign that form?

17 A. Yes, sir, he did.

18 Q. And what time did he sign that?

19 A. The initial advice of rights was at 13:19, which was
20 1:19 in the afternoon.

21 Q. 1:19 p.m.?

22 A. P.m.

23 Q. And on what date?

24 A. That was on 8-24-05.

25 Q. And who witnessed that?

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1 A. Detective Sloan and myself.

2 Q. And the bottom portion of that form is called what?

3 A. The following portion is called a waiver of rights.

4 Q. And if you could please read that to the jury.

5 A. I've read the statement of my rights and understand
6 what my rights are. I'm willing to make a statement and
7 answer questions. I do not want a lawyer at this time. I
8 understand and know what I am doing. No promises or threats
9 have been made to me and no pressure or coercion of any kind
10 has been used against me.

11 Q. And was that read to Mr. Archie?

12 A. Yes, it was.

13 Q. Did he seem to know and understand what that meant?

14 A. He did.

15 Q. And did he, in fact, sign that?

16 A. He did. Mr. Archie signed that at 13:21 on 8-24-05,
17 which is 1:21 in the afternoon.

18 Q. So approximately 2 minutes after he signed the
19 advice of rights form?

20 A. That's correct.

21 Q. And who witnessed that?

22 A. Detective Sloan and myself.

23 Q. And I see on there where actually Mr. Archie had
24 signed the witness line. What was the reason for that?

25 A. That was a mistake. That happens often. There's 4

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1 lines under both portions. He signed that by mistake,
2 corrected that. He came back and signed it under the
3 signature blank.

4 Q. Did Mr. Archie appear to you to be under the
5 influence of any drugs or alcohol at the time?

6 A. No, sir, he did not.

7 Q. Did he appear to be under any physical or mental
8 constraints that would have limited his ability to reason?

9 A. No, sir.

10 Q. How did he speak with you, in what type of tone?

11 A. He seemed to be in good spirits considering where he
12 had been for the last couple of days, and the circumstances.
13 I never had a chance to meet him before but he seemed to be in
14 good spirits. He knew who he was, who we were, where we were
15 and what we were discussing.

16 Q. How long did this interview take?

17 A. Anywhere between an hour and hour and a half. I
18 don't think it was more than an hour and a half.

19 Q. Did he ask for any type of a break during the
20 interview?

21 A. No, sir, he did not.

22 Q. Did he ask for any type of food or drink?

23 A. No, sir, he did not.

24 Q. Did he at any time ask for you to stop the
25 questioning of him and ask for an attorney?

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1 A. No, sir, he did not.

2 Q. And I believe at this time he was under arrest?

3 A. Yes, sir.

4 Q. Did he appear to understand the nature of the reason
5 why you were there?

6 A. Yes, sir.

7 Q. How were his responses to your questions?

8 A. He responded to all the questions that Detective
9 Sloan had. Detective Sloan asked most of the questions. I
10 had a few follow-up questions. He answered them all and
11 completely.

12 Q. And his interview or his statement was reduced to
13 writing? You actually wrote that statement?

14 A. Detective Sloan actually wrote this statement in
15 Mr. Archie's words.

16 Q. And typically in a statement when it's taken by a
17 witness or a defendant in a case, if someone else is
18 transcribing their statement what does that person who's
19 giving the statement, what do they do if there is a mistake in
20 that statement?

21 A. What we typically do upstairs and what had happened
22 in this case is the statement was read back to the defendant,
23 Mr. Archie. Mr. Archie was asked if he wanted to make any
24 deletions and/or additions to what was already on the
25 statement. If there's any misspellings that Detective Sloan

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1 caught or I caught, or in some cases the defendant catches, we
2 correct them. They are either marked out or circled and then
3 we allow the defendant or the person we're taking -- witness
4 or defendant that we're taking the statement from to put their
5 initials over where the correction is at.

6 Q. And regarding this statement of August 24th, 2005,
7 which is 2 and a half written pages long, did Mr. Archie make
8 any corrections and initial those?

9 A. Yes, sir, there were some wording that Mr. Archie
10 wanted to change and then some whole phrases that Mr. Archie
11 wanted to take out.

12 Q. And after he did all that he signed the statement?

13 A. Yes, sir, he did.

14 Q. And was that statement witnessed?

15 A. Sir?

16 Q. Was that statement witnessed at all?

17 A. Yes, sir.

18 Q. By whom?

19 A. I didn't hear that question.

20 Q. I said was his statement witnessed at all?

21 A. Yes, sir, by myself and Detective Sloan.

22 Q. Did he receive a copy of his statement?

23 A. I believe he did.

24 MR. MCELHANNON: Your Honor, at this time I'd ask
25 that State's Exhibits 37 and 38 be admitted into evidence.

STEVE REEVES - DIRECT BY MR. MCELHANNON

1 THE COURT: Again, madam forelady, ladies and
2 gentlemen of the jury, this statement has been admitted by the
3 Court. However, no statement or alleged statement made by a
4 defendant can be considered as any evidence in the case
5 against that defendant making it unless the State has
6 satisfied to you beyond a reasonable doubt that the statement
7 was freely and voluntarily made without any threats or
8 inducements as to hope or fear.

9 In other words, before an alleged confession can be
10 considered by you, the jury, as evidence it must not have been
11 induced by promises nor extorted by fear. It must be free and
12 voluntary in every respect. And even then it must be believed
13 to be true by you, the jury.

14 All right. State's Exhibits 37 and 38 are admitted
15 into evidence.

16 (WHEREUPON, State's Exhibit Numbers 37 and 38 were
17 admitted into evidence.)

18 MR. MCELHANNON: Thank you, Your Honor. That's all
19 the questions I have.

20 THE COURT: Cross-examination?

21 MR. POTTER: No questions, Judge.

22 THE COURT: You may step down.

23 MR. MCELHANNON: Your Honor, may we approach.

24 THE COURT: Certainly.

25 (WHEREUPON, a bench conference was had.)

1 THE COURT: Madam forelady, ladies and gentlemen of
2 the jury, this seems to be a good place to stop for lunch.
3 It's 12:20, and I'm going to ask you what time you'd like to
4 come back and start the case over. I would suggest either
5 1:30 or 2:00, or anywhere in between that.

6 But, if you would, Madam Forelady, consult with your
7 jury and advise me what time you'd like to start, 1:30 or
8 2:00.

9 THE FORELADY: Two o'clock.

10 THE COURT: Two o'clock. Very good.

11 Again, the instruction is that you're not to discuss
12 this case among yourselves or permit anybody to discuss it
13 with you. I'll see you back at two o'clock and we'll
14 reconvene at that time.

15 Everyone else remain seated while the jury retires
16 from the courtroom.

17 (WHEREUPON, the jury leaves the courtroom at
18 approximately 12:33 p.m.)

19 THE COURT: All right. Gentlemen, as far as the
20 statement, I would suggest that over the break you make a copy
21 of the statement and redact from it. You probably need to
22 make you two copies. In other words, make a copy of the
23 original statement and from that copy redact what you need to
24 and then make another copy just so it doesn't bleed through or
25 anything like that. And the redacted copy we'll identify as

1 -- and that's on State's Exhibit Number 36?

2 MR. MCELHANNON: Yes, sir.

3 THE COURT: All right. I'm going to designate that,
4 Madam Court Reporter, State's Exhibit 36-R.

5 Any objection?

6 MR. MCELHANNON: No objection.

7 THE COURT: Or any other suggestion. I'm just
8 looking for one so it will maintain its same identity but
9 not --

10 MR. POTTER: Just as long as -- so 36-R will be
11 going back to the jury and 36 would not be?

12 THE COURT: That's exactly right.

13 MR. POTTER: That's fine.

14 THE COURT: 36-R is the one that will go to the
15 jury. After the copy has been made and everything I'll make
16 36 a Court's Exhibit.

17 MR. POTTER: Thank you, Judge.

18 THE COURT: Very good. All right. Any else from
19 the State before we take a recess?

20 MR. MCELHANNON: Nothing from the State.

21 THE COURT: Anything from the defendant?

22 MR. POTTER: No.

23 THE COURT: Try to have that ready before two
24 o'clock so the court reporter can have it all done.

25 MR. MCELHANNON: Yes, sir.

1 THE COURT: All right. Very good. We'll see you
2 after lunch.

3 (WHEREUPON, a lunch break was taken.)

4 THE COURT: Did you all work it out on the exhibits?
5 Let me see them.

6 [PAUSE].

7 THE COURT: Very good.

8 (WHEREUPON, Court's Exhibit No. 4, and State's
9 Exhibit No. 36-R were marked and made a part of the record.)

10 THE COURT: Anything from the State before we bring
11 the jury back?

12 MR. MCELHANNON: Nothing from the State.

13 THE COURT: From the defendant?

14 MR. POTTER: Nothing.

15 THE COURT: And by the way, 36-R, the redacted
16 statement is acceptable in the sense to the defendant?

17 MR. POTTER: Yes, sir.

18 THE COURT: Very good. Ask the jury to join us,
19 please.

20 (WHEREUPON, the jury enters the courtroom at
21 approximately 2:10 p.m.)

22 THE COURT: Let the record reflect the jury is in
23 the jury box.

24 Solicitor, you may proceed.

25 MR. MCELHANNON: Thank you, Your Honor. The State

1 calls Dr. Ron Biscopink.

2 THE CLERK: Please come forward and be sworn.

3 RONALD J. BISCOPINK, after having been duly
4 sworn, testified as follows:

5 THE BAILIFF: State your name and spell your last
6 name.

7 THE WITNESS: My name is Ronald J. Biscopink. The
8 last name is spelled B, as in boy, i-s-c-o-p-i-n-k.

9 DIRECT EXAMINATION

10 BY MR. MCELHANNON:

11 Q. Doctor, where do you live?

12 A. I live in Anderson County.

13 Q. And who do you work for?

14 A. Piedmont Pathology Associates.

15 Q. And what is your title there, I should say?

16 A. I'm currently the chairman of the department of
17 pathology at Anderson Area Medical Center.

18 Q. What is your educational background, Doctor?

19 A. I completed my medical skill training at the
20 University of Louisville 1978. From 1978 until 1982, I
21 complete my anatomic and clinical residency at the University
22 of Louisville. From '82 to '83 I was at Sloan-Kettering
23 Cancer Center in Manhattan.

24 Q. And how long have you been in Anderson?

25 A. I've been in Anderson since December of 2000.

DR. RON BISCOPINK - DIRECT BY MR. MCELHANNON

1 Q. What does the majority of your medical practice deal
2 with?

3 A. The majority of my practice is with surgical
4 pathology, which is -- surgical pathology and cytology which
5 deals with tissue, examining tissue specimens and cytology
6 specimens. I also do some level of autopsy pathology as well
7 at the hospital.

8 Q. And how many autopsies in your medical career do you
9 think you've performed?

10 A. Well over a thousand.

11 Q. Have you testified in court before?

12 A. Yes, sir.

13 Q. Testified in South Carolina?

14 A. Yes, sir.

15 Q. You testified in other states?

16 A. Yes, sir, Kentucky.

17 Q. Have you been qualified as expert witness in those
18 Courts?

19 A. Yes, sir.

20 MR. MCELHANNON: Your Honor, at this time, I'd move
21 that Dr. Biscopink be qualified as an expert witness.

22 THE COURT: Any voir dire?

23 EXAMINATION

24 BY MR. POTTER:

25 Q. Doctor, what type of board certifications do you

DR. RON BISCOPINK - DIRECT BY MR. MCELHANNON

1 have?

2 A. I have certification in anatomic and clinical
3 pathology.

4 Q. Do you have any certification or training in
5 forensic pathology?

6 A. I'm not board certificated in forensic pathology but
7 had extensive training in forensic pathology in University of
8 Louisville. We performed all the forensic cases for Jefferson
9 County as well as for the State of Kentucky.

10 Q. When you say we, were you the lead doctor, for lack
11 of a better word or phrase?

12 A. I was the chief resident during 1978, but during
13 residency and prior to that I did -- I was an autopsy
14 assistant during medical school, which sort of directed me
15 into pathology. We worked under George Nichols, who was the
16 state medical examiner.

17 MR. POTTER: Judge, I don't have any other voir
18 dire.

19 THE COURT: All right. I find that the witness is
20 qualified as a pathologist or -- what is the particular area
21 of expertise you want to qualify? I understand he has a broad
22 background but what particular expertise would you --

23 MR. MCELHANNON: Just in forensic autopsies, Your
24 Honor.

25 THE COURT: Well, forensics pathologist, would that

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1 be correct?

2 MR. MCELHANNON: Yes.

3 THE COURT: Doctor, is that a correct --

4 THE WITNESS: That sounds good, Your Honor.

5 THE COURT: The reason I ask and want to be sure
6 that the doctor or the witness is qualified in the right area.
7 I find that he is qualified as a forensic pathologist. Most
8 witnesses -- now, you've heard some objections to certain
9 testimony in the trial of the case. Most witnesses are
10 prevented from testifying to anything that they do not know of
11 of their own knowledge, in other words, by exercise of their
12 own personal senses, such as sight, hearing and touch, and
13 things of that nature.

14 However, if a witness is qualified in the particular
15 area by reason of their background, training and experience to
16 give -- or in that case they have been qualified as experts in
17 that area then they are permitted to give their opinion, in
18 other words, something beyond what they know other than by
19 reason of study and things of this nature. They don't have to
20 be, quote, eyewitnesses in this case. The witness is
21 qualified as a forensic pathologist.

22 Now, remember, though, all witnesses, expert or
23 otherwise, the value to be given their testimony is for your
24 determination.

25 All right. You may proceed, Mr. Solicitor.

DR. RON BISCOPINK - DIRECT BY MR. MCELHANNON

1 MR. MCELHANNON: Thank you, Your Honor.

2 BY MR. MCELHANNON:

3 Q. Doctor, did you have an opportunity to perform an
4 autopsy on Cathy Louise Galloway?

5 A. Yes, sir.

6 Q. Do you have a copy of your report there?

7 A. Yes, sir.

8 Q. What date was that autopsy performed?

9 A. We performed that autopsy on 8-22-05.

10 Q. August 22nd?

11 A. Yes, sir. I'm sorry, it was actually 8-23-05, date
12 of permit.

13 Q. Okay. August 23rd. What was or what were, if any,
14 the injuries to Ms. Galloway?

15 A. She had sustained 3 gunshot wounds. One of those
16 was what I consider the lethal wound and it had perforated her
17 foreman in a through-and-through fashion. It had then gone
18 through her upper arm, right arm in a through-and-through
19 fashion, then went into her right chest, went across the dome
20 of the right lob of the liver, where it penetrated that.

21 It penetrated through the mediastinum, which is a
22 soft tissue surrounding the heart and then had lacerated the
23 aorta. She had sustained a significant amount of blood loss
24 into the plural space on the left side in the range of 1500
25 CC's, which is about 3 pints of blood, which in her case would

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1 be somewhere in the range of 30 percent of her blood volume.
2 And it also passed through the left lobe of the liver -- I
3 mean, excuse me, the left lobe of the lung.

4 In addition to that wound, she had also suffered
5 another gunshot wound which was a through-and-through of the
6 left breast and then went into the upper aspect of the left
7 arm. And then there was a third gunshot wound that she had
8 sustained which was below the angle of the jawbone here and
9 had gone in a downward fashion, hit the trachea and then hit
10 the posterior aspect of the vertebral body and caused a
11 laceration of the larynx.

12 Q. And did you retrieve the bullets or projectiles at
13 autopsy?

14 A. We did.

15 Q. Let me show you what's been marked State's Exhibits
16 2, 3 and 4. See if you can identify those, please.

17 A. Yes, sir.

18 Q. And can you identify those?

19 A. These are the 3 projectiles that we retrieved from
20 Ms. Galloway's body.

21 Q. At autopsy?

22 A. Yes, sir.

23 Q. And did an Anderson County employee take control of
24 those at all times?

25 A. Yes, sir, one of the sheriff's deputies received

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1 these from us.

2 Q. Doctor, let's talk about these gunshots
3 individually. Is there any way that you could have told the
4 chronological order of these gunshots from the autopsy?

5 A. No, sir.

6 Q. Which gunshot, in your medical opinion, was the
7 fatal gunshot?

8 MR. POTTER: Objection.

9 THE COURT: Overruled.

10 A. The gunshot wound that had transversed the right
11 foreman and then the right arm and then had entered into the
12 chest. And, again, I'll describe the injuries.

13 After it entered into the thoracic area it caused a
14 fracture of the right 4th rib and it proceeded again across
15 the dome of the right lobe of the liver, went through the soft
16 tissue of the -- the soft tissue around the heart and then
17 lacerated the aorta, which was the lethal injury.

18 Q. I believe you said there was roughly 3 pints of
19 blood?

20 A. 1500 CC's, which would be equivalent to 3 units of 3
21 pints of blood.

22 Q. Did those come from the aorta?

23 A. Those would have been mostly from the aorta. She
24 had a perforation of the left lobe of the lung, which would
25 also have caused some hemorrhage but not to the degree of

1 penetrating the aorta. The aorta, as most people understand,
2 is the main transit or pipeline of blood supply, particularly
3 to the lower extremities, to the kidneys, to the
4 gastrointestinal tract.

5 Q. And looking at your autopsy report, you stated in
6 there that the right arm was in a defensive posture. What do
7 you mean by that?

8 A. Well, it appears since she had these 4 different
9 penetrating wounds, through-and-through wounds, and I said 4
10 because she had a gunshot entrance wound, an exit wound, an
11 entrance wound, and exit wound that she had her arm somewhat
12 in an upward position potentially as a deflection to the
13 gunshot, where as if she had had it down at her side it
14 wouldn't have caused that pattern of injury.

15 Q. And there were 3 projectiles retrieved. Can you
16 tell the jury how many actual entry and exit wounds were in
17 the body that you found?

18 A. She had -- from the one that entered her chest she
19 had 3 entrance wounds, the one to the forearm, the one to the
20 arm and then the one to the chest. But she had a total of 5
21 bullet holes, if you will, from that 1 gunshot, 1 projectile.

22 Then the one that penetrated her left breast caused
23 2 entrance wounds, 1 on the medial aspect of the breast and
24 then 1 on the medial aspect or the inside aspect of her left
25 arm. So there's 2 entrance wounds from that, but a total of 3

1 because she's got an entrance and exit and the entrance. The
2 one to the lower portion of her cheek would just be 1 entrance
3 wound. There was no exit wound associated with that.

4 Q. So we've got 5, 3 and 1, 9?

5 A. We've got a total of nine perforations.

6 Q. The shot that you term as the fatal shot, do you
7 have an opinion or in your medical expertise could you tell --
8 or can you tell how far a person would be able to travel after
9 being shot with a nicked aorta?

10 MR. POTTER: Judge, objection on that question.

11 THE COURT: Restate your question. He's your
12 expert.

13 BY MR. MCELHANNON:

14 Q. Doctor, given the nature of the shot that you just
15 testified to, the defensive posture that went through the arm
16 and into the thorax, can you tell to a reasonable degree of
17 medical certainty how far a person could travel on their feet
18 with a wound, with a nicked aorta like that?

19 MR. POTTER: Again, same objection.

20 THE COURT: Overruled.

21 A. I'll term it a short distance, and I can't give you
22 an exact number of feet that somebody can continue walking,
23 but it wouldn't be very far, and simply for 2 reasons. One
24 is, is that she's lost a lot of blood into her chest cavity
25 very quickly. So she would become -- her blood pressure would

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1 drop pretty quickly from that, plus the fact that she's got a
2 big hole in the major blood vessel coming from the heart
3 that's going to decrease your blood pressure as well.

4 So for 2 reasons that she wouldn't, drop in her
5 blood pressure very rapidly, which means she's not going to
6 able to walk very far, and I would say just speculating at
7 this point or an estimate, if you will, somewhere between
8 maybe 10 and 20 feet, but not a distance.

9 Q. Now, the other two wounds, two projectiles that you
10 got that caused the other injuries to Ms. Galloway, in your
11 medical opinion would or were either one of those fatal?

12 A. No, sir.

13 Q. Would a person or could a person have survived
14 either one of those shots?

15 MR. POTTER: Objection.

16 THE COURT: Overruled.

17 A. The one that was the through-and-through the left
18 breast that entered the arm would not have been fatal. The
19 one from the lower aspect of the left cheek would have caused
20 some damage because of the fact that it lacerated the wind
21 box, if you will, the larynx. But if she had had medical
22 attention in any period of time at all they would have been
23 very survivable.

24 MR. MCELHANNON: That's all the questions I have,
25 Your Honor.

DR. RON BISCOPINK - CROSS BY MR. POTTER.

1 MR. POTTER: May it please the Court?

2 THE COURT: You may proceed.

3 CROSS-EXAMINATION

4 BY MR. POTTER:

5 Q. Doctor, your autopsy report indicates that
6 Ms. Galloway was 72 inches tall; is that correct?

7 A. I would have to go back and look at that.

8 Q. Go ahead and check.

9 A. Yes, sir, that's what I've got.

10 Q. Six feet?

11 A. Six feet

12 Q. And weight is approximately 300 pounds; is that
13 correct.

14 A. Correct.

15 Q. And you testified that the one bullet wound came
16 through the right arm; is that correct?

17 A. Correct.

18 Q. Lower portion of the right arm?

19 A. Yeah, we'll use that. From the wrist to the elbow
20 is the foreman. So, yes, it went through her foreman.

21 Q. Now, was it --

22 A. It went from medial to lateral.

23 Q. Right. Now, my question is this. The hand being
24 raised like that you assume was in a defensive posture,
25 correct?

DAN DEFREEZE - DIRECT BY MR. MCELHANNON

1 A. Correct.

2 Q. You don't have any personal knowledge whether that
3 fist was raised to hit somebody?

4 A. No, sir.

5 Q. And it could have been raised to hit somebody?

6 A. That's possible.

7 MR. POTTER: Nothing further, thank you.

8 THE COURT: Redirect?

9 MR. MCELHANNON: No redirect, Your Honor.

10 THE COURT: You my step down.

11 MR. MCELHANNON: The State calls Mr. Dan DeFreese.

12 FRANK DAN DEFREESE, after having been duly
13 sworn, testified as follows:

14 THE BAILIFF: State your name and spell your last
15 name.

16 THE WITNESS: My name is Frank Dan DeFreese. That's
17 D-e-F-r-e-e-s-e.

18 DIRECT EXAMINATION

19 BY MR. MCELHANNON:

20 Q. Mr. DeFreese, who do you work for?

21 A. I work for the South Carolina Law Enforcement
22 Division, what many people know of as SLED, and I'm assigned
23 to the forensic laboratory in Columbia.

24 Q. How long have you worked for SLED?

25 A. For 39 years.

DAN DEFREESE - DIRECT BY MR. MCELHANNON

1 Q. And how many different departments have you been
2 with at SLED?

3 A. I've principally been in the firearm and tool mark
4 unit the entire time with the exception of about a 5 year
5 period of time that I directed the laboratory and something
6 less than a year that I was working in the regulatory area.

7 Q. And what is your background education?

8 A. Well, I'm a graduate of the University of South
9 Carolina in Columbia but my principal training with regard to
10 the examination of firearm and tool mark evidence I received
11 at SLED. That upon my employment I was assigned to the
12 firearms laboratory where I undertook a course of study that
13 lasted about 2 and a half years.

14 I studied the techniques of firearm and tool mark
15 identification under Lieutenant Millard Cate, who established
16 the SLED laboratory when SLED itself was established in 1947.
17 I also studied from Lieutenant Carl Stokes, who was an
18 examiner at that time. And after about 2 and a half years of
19 performing examinations under their supervision I began
20 accepting cases on my own and testifying as to my results,
21 which I've been doing since 1969.

22 Q. Can you estimate how many trials you've testified
23 in?

24 A. I estimated between 6 and 700 trials.

25 MR. POTTER: Judge, we'll stipulate to the

1 qualifications of this expert.

2 THE COURT: All right. You want to qualify him on
3 solely ballistics or --

4 MR. MCELHANNON: No, sir, also tool marks.

5 THE COURT: All right. I do find that he's
6 qualified in the area of -- as an expert in the area firearms
7 and tool marks, to include ballistics.

8 Madam forelady and ladies and gentlemen, again, by
9 reason of this witness's background, training and experience
10 he'll be permitted to give his opinion as to matters with
11 which are within his area of expertise, firearms and tool
12 mark, and to include ballistics.

13 You may proceed.

14 But always remember every witness's testimony is for
15 your evaluation.

16 You may proceed.

17 BY MR. MCELHANNON:

18 Q. Mr. DeFreese, let me show you what's been marked
19 State's Exhibit 1, State's 2, 3 and 4, 5, 6 and 7, and see if
20 you can identify those.

21 A. Yes, sir, I can identify all of these.

22 Q. Let's start with -- just go down the line, State's
23 Exhibit 1, the revolver.

24 A. Yes, sir.

25 Q. Did you test that revolver in Columbia?

DAN DEFREESE - DIRECT BY MR. MCELHANNON

1 A. I did.

2 Q. And first, what caliber of revolver is that?

3 A. This is a .32 Smith and Wesson long caliber
4 revolver. It's made by H and R Arms. It's their model 732?

5 Q. And what exactly did you test for on that weapon?

6 A. Well, I made a number of statistical measurements
7 about its caliber, its barrel length, its trigger pull, the
8 number of cartridges it could possibly fire.

9 After which time I loaded this firearm with
10 ammunition similar to the ammunition used in the other
11 evidence items and I obtained test bullets and test cartridge
12 cases that I knew this gun had fired. Because we don't do a
13 direct comparison between a firearm and bullets and cartridge
14 cases. We do our microscopic comparison between known test
15 bullets and known test cartridge cases, and the evidence
16 bullets and evidence cartridge cases.

17 I've fired this using .32 auto caliber ammunition,
18 which was the caliber of the evidence specimen submitted.

19 Q. Let me stop you there. Was that actually the
20 correct ammunition type for that weapon?

21 A. It's not the caliber for this revolver we intended
22 to fire.

23 Q. But will it fire that type?

24 A. Yes, it will.

25 Q. Will it do it consistently or miss some?

DAN DEFREESE - DIRECT BY MR. MCELHANNON

1 A. No, it will fire it consistently.

2 Q. Now, you tested that as well as the items 2, 3 and
3 4?

4 A. Yes, sir. Once I had obtained my test bullets and
5 test cartridge cases that I knew item 1 had fired I first
6 compared my test bullets with each other to see that they had
7 unique repeatable markings, and I found that they did on both
8 my test cartridge cases and test bullets, were so, and then I
9 compared them with the bullets in State's Exhibits 2, 3 and 4.

10 The basis for my test is markings that are left on
11 bullets when they are fired through the barrel of a rifled
12 firearm. Rifled firearms generally include pistols, revolvers
13 and rifles and they don't generally include shotguns, although
14 there are rifled shotguns being made now.

15 Because of the unique markings that are left on the
16 inside of the surface of the barrel of a firearm during
17 manufacture and because of use and abuse after the gun is
18 manufactured and put into service there are unique tool marks
19 present within the inside surface of the bore that transfer
20 markings onto bullets fired in that barrel. And when bullets
21 are recovered and in sufficiently undamaged condition it's
22 possible to identify a particular bullet back to the gun
23 barrel in which it was fired.

24 In a similar fashion, the tool marks that are
25 present on the breech face surfaces and on some guns in the

DAN DEFREESE - DIRECT BY MR. MCELHANNON

1 chamber and on the firing pin can also leave unique markings
2 on the cartridge cases that are fired in a particular gun.

3 When the gun fires, the firing pin moves forward and
4 strikes the primer at the rear of the cartridge case which can
5 leave an impression of the imperfections that are present on
6 the firing pin.

7 When the cartridge fires, a high pressure is built
8 up inside the cartridge which is what's used to propel the
9 bullet down and out of the barrel. But this pressure also
10 embosses the imperfections that might be present on the breech
11 face of the firearm onto the cartridge case.

12 Those are the basis for concluding that a particular
13 cartridge case or a particular bullet was fired by one gun and
14 only one gun.

15 Q. Now, specifically, let's go to item 2, the
16 projectile that was recovered at autopsy.

17 A. Yes, sir.

18 Q. You tested that. What was your analysis of that?

19 A. I found the same unique individual markings on
20 Exhibit 2 that I found on test bullets fired by the revolver,
21 by Exhibit 1.

22 Q. So what would be your conclusion?

23 A. My conclusion is this bullet, Exhibit 2, was fired
24 by this revolver, Exhibit 1.

25 Q. How about Exhibit 3, another fired projectile?

DAN DEFREESE - DIRECT BY MR. MCELHANNON

1 A. My results would be the same, that I found unique
2 identifiable marking from which I concluded this bullet was
3 fired by Exhibit 1.

4 Q. And how about Exhibit 4?

5 A. I found the same results, that the bullet in Exhibit
6 4 was fired by the revolver, Exhibit 1.

7 Q. So all 3 projectiles were fired by that .32
8 revolver?

9 A. Correct.

10 Q. And then Exhibits 5, 6 and 7 spent .32 shell
11 casings?

12 A. Yes, sir.

13 Q. Were you able to determine if they were fired by
14 that weapon?

15 A. I was. I found matching breech face impressions on
16 the 3 fired cartridge cases in State's Exhibits 5, 6 and 7,
17 and on my test cartridge cases from which I was able to
18 conclude that these 3 fired cartridge cases were fired in this
19 gun.

20 MR. MCELHANNON: That's all the questions I have,

21 Your Honor.

22 THE COURT: Cross-examination?

23 MR. POTTER: No questions, Your Honor.

24 THE COURT: You may step down.

25 May the witness be excused?

1 MR. MCELHANNON: Yes, sir.

2 THE COURT: Any objection?

3 MR. POTTER: No, sir.

4 THE COURT: All right. Without objection you may be
5 excused. Thank you, sir.

6 MR. MCELHANNON: The State rests, Your Honor.

7 THE COURT: All right. Madam forelady, ladies and
8 gentlemen, the State has rested. In other words, that's the
9 case in chief of the State. And I'm going to need to discuss
10 some things with the attorneys before we proceed so I'm going
11 to ask you to retire to the jury room at this time until I do
12 that or so that I can do that.

13 Now, again, you haven't heard the whole case so you
14 need to, again, to not discuss the case among yourselves in
15 any way. So, if you would, please retire to the jury room at
16 this time. As soon as I finish I will call you back. Thank
17 you very much.

18 Everyone else remain seated while the jury retires
19 from the courtroom.

20 (WHEREUPON, the jury leaves the courtroom at
21 approximately 2:43 p.m.)

22 THE COURT: All right. Anything further from the
23 State?

24 MR. MCELHANNON: Nothing from the State, Your Honor.

25 THE COURT: From the defendant?

1 MR. POTTER: Judge, for the record, we'll make our
2 motion for a directed verdict on the indictment. Judge,
3 you've heard the testimony before the Court and before the
4 jury. Taking the evidence in the light most favorable we
5 would submit that the State has failed to meet the essential
6 elements of murder as well as use of a deadly weapon during
7 the commission of a violent offense in submitting the 2, Your
8 Honor.

9 THE COURT: Well, obviously I have to take the
10 evidence in the light most favorable to the nonmoving party,
11 which would be the State in this case. The Court is not
12 concerned with the weight of the evidence but only whether or
13 not there is competent evidence tending to prove the charge in
14 the indictment, and I found that there is sufficient evidence
15 to submit the case to the jury. I'll deny the motion for
16 directed verdict.

17 Anything from the defendant?

18 MR. POTTER: Judge, we have a couple witnesses under
19 subpoena that we asked them to be here 2:30. They are not
20 here as of yet. If we can just recess for maybe 10, 15
21 minutes. They might have trouble finding a place to park.

22 THE COURT: See if we can't be ready to go forward
23 at 3 o'clock. That's 17 minutes.

24 MR. POTTER: Yes, sir.

25 THE COURT: Very good. We'll stand in recess for 17

1 minutes.

2 (WHEREUPON, a brief recess was taken.)

3 THE COURT: Anything from the State before we bring
4 the jury back?

5 MR. MCELHANNON: Nothing from the State?

6 MR. POTTER: Nothing, Your Honor.

7 THE COURT: We are going to release the jury this
8 afternoon and then start back in the morning with the
9 testimony or completing the case. But the attorneys I do want
10 to stay with us until we go through any charges and requests
11 of charges and anything else that we might need to do before
12 it does go to the jury.

13 Ask the jury to join us, please.

14 (WHEREUPON, the jury enters the courtroom at
15 approximately 3:03 p.m.)

16 THE COURT: Madam forelady, ladies and gentlemen of
17 the jury, I've conferred with the attorneys, and from my
18 experience it's getting to be late in the afternoon and we've
19 got some things that we need to do before the case is given to
20 you that will take some time and you would not be able to get
21 the case this afternoon and still start your deliberations.

22 As I say, I also have things I need to do so that it
23 can be in a position or posture to go to you. For that
24 reason, I am going to suggest rather than keep you back there
25 while I do have to take up some things with the attorneys I'm

1 going to suggest that you go home this afternoon and then come
2 back in the morning and we'll complete the case tomorrow
3 morning. We'll have plenty of time so it won't have to
4 interrupt or things of nature.

5 For that reason, I'll ask you -- well, give me the
6 time that you'd like to start. I hope the traffic is not the
7 way it was for me this morning, but I don't think it will be.
8 Well, let's say either 9:30 or 10 o'clock. That gives me a
9 little time to be sure if I do run into a problem.

10 Which would you like to do, 9:30 or 10:00?

11 THE FORELADY: 9:30. Very good. We'll start at
12 9:30 in the morning. And, again, I appreciate your patience
13 with the Court. And do not undertake discussion of the case
14 among yourselves or permit anybody to discuss it with you.
15 We'll see you in the morning at 9:30.

16 Everyone else remain seated while the jury retires
17 from the courtroom.

18 (WHEREUPON, the jury leaves the courtroom at
19 approximately 3:05 p.m.)

20 THE COURT: Gentlemen, is there anything from the
21 State? As I mentioned earlier, I would like to go over
22 preliminary charges with the attorneys. If they have anything
23 that they have particular, I'll give you an idea as to what
24 I'll be charging. But this is not going to close it out.
25 You've got until we go to the jury to give me any charges.

1 Is there anything else, though, that State has?

2 MR. MCELHANNON: No, Your Honor.

3 THE COURT: The defendant?

4 MR. POTTER: No, Your Honor.

5 THE COURT: Does the defendant intend to take the

6 stand?

7 MR. POTTER: Judge, at this point in time I don't

8 think he's made a final decision on that.

9 THE COURT: Let me do this. Let me go ahead and

10 advise the defendant of his rights in this regard.

11 Mr. Archie, if you would, please raise your right

12 hand.

13 LEROY ARCHIE, after having been duly sworn,

14 testified as follows:

15 THE COURT: You are Leroy Archie?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: At this time, I'm going to explain to

18 you certain of your rights. If you do not understand anything

19 I say please let me know. If you want me to explain anything

20 in more detail please let me know. Now, do you understand?

21 THE DEFENDANT: I understand.

22 THE COURT: Now, we have reached that stage in the

23 trial where you may present your defense. You have the right

24 to claim the protections given to you by 5th Amendment to the

25 Constitution of the United States.

1 This Amendment state's in part no person shall be
2 compelled in any criminal case to be a witness against
3 himself. This means that you cannot be required to testify in
4 this case. You have the right to testify on your own behalf,
5 however, no one can make you testify. This is a personal
6 right and no one can waive the right except you.

7 If you decide to testify you'll be subject to the
8 same rules that govern other witnesses and you may be examined
9 and cross-examined on any relevant issue in the case.

10 In addition, if you have a conviction involving
11 dishonesty or false statement or for crimes punishable by
12 imprisonment for more than one year and this Court determines
13 that the probative value of admitting this evidence outweighs
14 its prejudicial effect to you the solicitor will be able to
15 introduce your record to attack your credibility.

16 If you decide to testify this decision on your part
17 must be freely, voluntarily and intelligently made with the
18 knowledge of these protections given to you by the 5th
19 Amendment and its Constitution of South Carolina and the
20 consequences for your decision to testify.

21 If you decided not testify I would instruct the
22 jurors they cannot give the fact that you did not testify any
23 consideration whatsoever and that there is to be absolutely no
24 prejudice to you because you did not testify.

25 You may talk with your attorney or family and

1 friends or anyone else but the final decision will be left
2 entirely up to you. Now, do you understand what I've
3 explained to you?

4 THE DEFENDANT: I understand, sir.

5 THE COURT: Do you have any question about what I've
6 explained to you?

7 THE DEFENDANT: No questions.

8 THE COURT: Now, I don't want to hear what your
9 decision is, but I will ask you in the morning whether you
10 wish to testify or not in this case. Very good. Thank you
11 very much.

12 All right. With that, is there anything else that
13 we need take up before we recess for the evening and I have my
14 conferences with the attorneys?

15 MR. MCELHANNON: No, Your Honor.

16 MR. POTTER: No.

17 THE COURT: Very good. As I say, this is not a
18 final charge conference but it is a conference I need to take
19 to be sure the Court is prepared on what you anticipate or
20 would like to charge to the jury.

21 All right. We'll stand in recess until 9:30 in the
22 morning.

23 I'll see the attorneys back in conference.

24 (WHEREUPON, the trial of this case was recessed for
25 the day.)

Thursday, September 14, 2006

1
2 THE COURT: Is there anything from the State before
3 we proceed?

4 MR. MCELHANNON: Nothing from the State.

5 THE COURT: From the defendant?

6 MR. POTTER: Nothing, Your Honor.

7 THE COURT: Mr. Archie, if you would, please stand.
8 You understand, of course, you are still under oath from
9 yesterday?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And yesterday I advised you of your
12 rights as to whether or not you want to testify. You do have
13 the right to testify, of course, but you also have the right
14 not to testify. Have you discussed with your lawyer whether
15 you should or should not testify?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Have you discussed it with other people?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: Have you reached a decision --

20 THE DEFENDANT: Yes, I have.

21 THE COURT: -- what you would like to do?

22 THE DEFENDANT: I would like to testify.

23 THE COURT: You would like to testify?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Understanding everything I've explained

1 to you yesterday to include the right of the State to question
2 you on any prior convictions or anything of that nature?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Any questions?

5 THE DEFENDANT: No questions.

6 THE COURT: All right. I find that the defendant
7 knowingly, intelligently and freely and voluntarily waives his
8 right not to testify, and if he decides to testify he may do
9 so.

10 Thank you very much, sir.

11 MR. POTTER: Thank you, Judge.

12 THE COURT: All right. Anything before we bring the
13 jury back, from the State?

14 MR. MCELHANNON: Nothing from the State, Your Honor.

15 THE COURT: From the defendant?

16 MR. POTTER: Nothing from the defendant.

17 THE COURT: All right. Ask the jury to join us,
18 please.

19 (WHEREUPON, the jury enters the courtroom at
20 approximately 9:45 a.m.)

21 THE COURT: Let the record reflect that the jury is
22 in the jury box.

23 Madam forelady, ladies and gentlemen of the jury,
24 when we recessed for the evening the State had rested. So
25 we'll now go forward with the defense.

PATRICIA MARTIN - DIRECT BY MR. POTTER

1 Mr. Potter?

2 MR. POTTER: Thank you, Your Honor. If it pleases

3 the Court. We would call Pat Martin to the stand.

4 PATRICIA MARTIN, after having been duly sworn,
5 testified as follows:

6 THE BAILIFF: State your name and spell your last
7 name, please.

8 THE WITNESS: Patricia Martin, M-a-r-t-i-n.

9 DIRECT EXAMINATION

10 BY MR. POTTER:

11 Q. Ms. Martin, where do you live?

12 A. Six mile.

13 Q. Street address?

14 A. At 381 Camp Creek Road, six mile.

15 Q. And at some point in time were you employed at West
16 Point Stevens?

17 A. Yes.

18 Q. How long had you worked at West Point Stevens?

19 A. Ten and a half years.

20 Q. And you are not working there anymore?

21 A. No.

22 Q. When did you stop working at West Point?

23 A. May.

24 Q. Of this year?

25 A. Of 2006.

1 Q. And why did you stop working there?

2 A. The plant closed.

3 Q. Before you worked at West Point Stevens were you
4 employed?

5 A. Yes.

6 Q. And what did you do before you worked at West Point?

7 A. A K-5 teacher. I taught kindergarten for 20 years.

8 Q. And where did you teach kindergarten?

9 A. I taught in Brazil, South America.

10 Q. Brazil, South America?

11 A. Uh-huh.

12 Q. Ms. Martin, do you know Leroy Archie?

13 A. Yes, I do.

14 Q. How do you know Leroy?

15 A. Work with him.

16 Q. Where did you work with him?

17 A. At West Point in the inspection.

18 Q. And how long have you known Leroy?

19 A. Ten and a half years.

20 Q. So the whole time you were at West Point you worked
21 with Leroy?

22 A. Yes.

23 Q. Did you work with him daily or weekly?

24 A. Daily.

25 Q. Did you have contact with him daily?

PATRICIA MARTIN - DIRECT BY MR. POTTER

1 A. Daily, uh-huh.

2 Q. Would you all talk or would you just see one
3 another? How was that contact?

4 A. Well, we'd see each other every day and we'd talk,
5 you know, every day.

6 Q. Did you talk about work things, or private things,
7 or personal things?

8 A. Sometimes work, sometimes personal things. You
9 know, just different things.

10 Q. Now, did you know who Leroy was living with?

11 A. Yes.

12 Q. And who was that?

13 A. Cathy. I'm not sure of her last name.

14 Q. Cathy Galloway?

15 A. Yes, uh-huh.

16 Q. And do you know how long Cathy and Leroy were living
17 together?

18 A. Years. I don't know exactly how many years.

19 Q. And did you have the occasion to see any contact,
20 any interaction between Cathy and Leroy?

21 A. The day they fired her, I saw that, when she --

22 Q. When was that?

23 A. That was in '96. Either the latter part of November
24 or the starting of December. I'm not sure which, but it was
25 in '96.

PATRICIA MARTIN - DIRECT BY MR. POTTER

1 Q. Would you tell the ladies and gentlemen of the jury
2 what did you see occurred between Cathy and Leroy?

3 A. I was on my job and she walked in front of my job
4 and walked over to the end of the belt where Leroy worked. He
5 wrapped rugs. And I don't know if there was words exchanged,
6 I imagine there was, but I didn't hear that. She just whopped
7 him, and wheeled him around. And she walked off, and he
8 walked to the office.

9 Q. Now, when you say she whopped him --

10 A. She hit him with her hand.

11 Q. Show the jury how she did that.

12 A. She came back and she just "wham" in his face
13 (indicated).

14 Q. Front of the face?

15 A. Well, I imagine. I don't know whether it was the
16 front or the side because he was standing with his back to me.

17 Q. And did she hit him with the closed fist or open
18 hand?

19 A. To me it was with open hand.

20 Q. Now, after that incident in 1996 did you have the
21 occasion to see Leroy with any injuries or anything of that
22 sort?

23 A. He came in once with fractured ribs.

24 Q. Tell me, when was that?

25 A. I don't know exactly. It was after -- I know it was

PATRICIA MARTIN - DIRECT BY MR. POTTER

1 after 2000, I think, but I'm not sure.

2 Q. Tell me about the ribs.

3 A. Well, he was out a few days from work and he came in
4 and we kidded him. But he told me he had fractured ribs, and
5 he said it was a scuffle. So I don't know how, what, and then
6 he came in one day with the side of his face bruised about --
7 I guess about maybe a year before he left work.

8 Q. Before the shooting?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes.

12 Q. I'm sorry. You need to say yes or no. Any other
13 times did you see him come to work with any injuries?

14 A. He came in one day with an arm in a sling. Now, I
15 don't know what that was from.

16 Q. Now, the week immediately before the shooting, now
17 the shooting happened August 22nd of last year, the week of
18 August 15th was Leroy planning on doing anything?

19 A. He had told me he had rented him an apartment and
20 that he was packing up things and was going to move, and he
21 was really -- he wasn't himself the whole week. And the last
22 -- on a Thursday and Friday he was really, really, really tore
23 up about things and all, and he just -- you know, I don't know
24 if he moved or not.

25 Q. Was he scared, was he nervous?

PATRICIA MARTIN - CROSS BY MR. MCELHANNON

1 A. He seemed like he was -- he told me he was scared.

2 He said he wasn't sleeping.

3 Q. Did he say why he wasn't sleeping?

4 A. He told me he had been threatened and that he was

5 sleeping with one eye open and one eye closed.

6 Q. Now, Leroy was working at West Point Stevens, right?

7 A. Yes.

8 Q. Did you see him take anything from West Point

9 Stevens in regards to the move?

10 A. He took boxes.

11 MR. POTTER: Thank you, Ms. Martin. No further

12 questions.

13 Your witness.

CROSS-EXAMINATION

14

15 BY MR. MCELHANNON:

16 Q. Good morning, Ms. Martin.

17 A. Morning.

18 Q. Ms. Martin, the incident where you saw Ms. Galloway
19 slap with an open hand Mr. Archie, that was 9 years before?

20 A. It was in '96.

21 Q. Okay, in 1996. And she slapped him -- did she slap
22 him with an open hand?

23 A. Yes.

24 Q. Not a fist?

25 A. I saw open hand.

PATRICIA MARTIN - CROSS BY MR. MCELHANNON

1 Q. And she slapped him once?

2 A. I saw once.

3 Q. And she walked away?

4 A. She walked off from him and he walked to the office.

5 Q. So she didn't jump on him and beat him up, she just

6 slapped him once?

7 A. In the plant she just slapped him, yes.

8 Q. And do you know what that was about?

9 A. No, I don't.

10 Q. You don't know if he had said something to her to

11 cause that slap?

12 A. No. No, I don't.

13 Q. Then about, you say sometime after 2000, the year

14 2000 he came in and he told you he had fractured ribs?

15 A. Yes. He told everyone he had fractured ribs.

16 Q. But you had no medical proof other than him telling

17 you?

18 A. No, I didn't ask.

19 Q. And you don't know who he had a scuffle with?

20 A. He just said it was at home.

21 Q. You don't know what that was about?

22 A. No.

23 Q. You don't know who would have instigated that

24 scuffle?

25 A. No.

PATRICIA MARTIN - CROSS BY MR. MCELHANNON

1 Q. And when he came in and the side of his face was
2 bruised about a year before, so it would have been in 2004, he
3 didn't tell you what happened there, did he?

4 A. I asked him. I said, what, did you fall or what
5 about? And he said a little incident at home. So that was
6 the answer..

7 Q. There again, no details. Don't know who or if he
8 fell at home, just an incident at home --

9 A. That's right.

10 Q. Is that what he told you? Okay.
11 He could have walked in the side of something?

12 A. Maybe.

13 Q. Could have fallen?

14 A. Maybe. I don't know.

15 Q. And as far as an arm in a sling, don't know any
16 details about that?

17 A. No.

18 Q. Don't know if someone caused that or if he fell
19 again?

20 A. No.

21 Q. And injured his own arm?

22 A. No.

23 Q. And he told you when he was moving out of the
24 apartment he was not himself, he was torn up about moving out?

25 A. At work he was in a bad nervous situation.

PATRICIA MARTIN - CROSS BY MR. MCELHANNON

1 Q. Okay. And he said he had been threatened?

2 A. That's what he told me.

3 Q. He didn't tell you by whom?

4 A. Yes.

5 Q. Who did he say?

6 A. He said by the deceased and her son.

7 Q. Okay. And did he say what that was about?

8 A. A TV.

9 Q. He had been threatened about a TV?

10 A. That's what he told me.

11 Q. A week before the incident?

12 A. Yes.

13 Q. Ms. Martin, you were not present at 119 Scott Circle
14 on August 22nd, 2005, were you?

15 A. Was that on a Monday?

16 Q. Yes, ma'am.

17 A. No, I wasn't.

18 Q. So you have no earthly idea what transpired that
19 morning, do you?

20 A. No.

21 MR. MCELHANNON: That's all I have, Your Honor.

22 THE COURT: Re-examine?

23 MR. POTTER: Your Honor, we have no other questions
24 for Ms. Martin. We ask that she be excused.

25 THE COURT: Any objection?

JAMES JOHNSON - DIRECT BY MR. POTTER

1 MR. MCELHANNON: No objection.

2 THE COURT: Without objection you may be excused.

3 Thank you very much, ma'am.

4 MR. POTTER: Judge, we'd call James Johnson.

5 JAMES JOHNSON, after having been duly sworn,
6 testified as follows:

7 THE BAILIFF: State your name and spell your last
8 name for the record.

9 THE WITNESS: James Johnson, J-o-h-n-s-o-n.

10 DIRECT EXAMINATION

11 BY MR. POTTER:

12 Q. Mr. Johnson, where do you live?

13 A. 104 Limbwood Drive, Central.

14 Q. Are you married or single?

15 A. Am I what?

16 Q. Do you have a wife?

17 A. Yes.

18 Q. And are you working right now?

19 A. Yes, sir.

20 Q. Do you work first, second or third shift?

21 A. I work rotating shift.

22 Q. And where are you working at right now?

23 A. Shaw in Central.

24 Q. At any point in time were you working at West Point

25 Stevens?

JAMES JOHNSON - DIRECT BY MR. POTTER

1 A. Yes.

2 Q. And when did you work at West Point Stevens?

3 A. I worked there for 11 years.

4 Q. When did you stop working at West Point?

5 A. I think it was May the 4th of this year.

6 Q. And why did you stop working at West Point?

7 A. They shut the plant down.

8 Q. Now, Mr. Johnson, do you know Leroy Archie?

9 A. Yes, I do.

10 Q. How long have you known Leroy?

11 A. Ever since I've been working there 11 years.

12 Q. And did you have contact with Leroy at work?

13 A. Every day.

14 Q. Did you see Leroy at work?

15 A. Every day.

16 Q. Did you talk with him at work?

17 A. Every day.

18 Q. Did you talk about personal things, private things
19 or business things?

20 A. Some of both, some of all of it.

21 Q. And did you know Cathy Galloway?

22 A. Yes, I do.

23 Q. How did you know Cathy Galloway?

24 A. I met her through Leroy.

25 Q. Have you ever been to 119 Scott Circle where Leroy

JAMES JOHNSON - DIRECT BY MR. POTTER

1 and Cathy lived?

2 A. Yes, I have.

3 Q. And why would you go to Leroy's house?

4 A. Well, just to visit.

5 Q. Were there any times that Leroy would call you
6 specifically to come visit him?

7 A. Yeah, sometimes.

8 Q. Tell me about that.

9 A. Well, I don't know how to put it but he would call
10 me when something was going on, and I come over there. But as
11 far as anything going on after I get over there, I don't know.

12 Q. What do you mean by something is going on?

13 A. Normally when he call he probably been in an
14 argument, him and Cathy been arguing.

15 Q. And so why would you go, go to the house?

16 A. Well, I think the reason why he calls me but --

17 MR. MCELHANNON: Objection, Your Honor, calls for
18 speculation as to why the defendant would call him.

19 THE COURT: Restate your question.

20 BY MR. POTTER:

21 Q. Without guessing, why would you personally decide to
22 go after you received a call from Leroy to go to Leroy's
23 house?

24 A. Well, to stop the argument, if it was one going on.

25 Q. When you got to the house what would you do?

JAMES JOHNSON - DIRECT BY MR. POTTER

1 A. Well, sometimes there wouldn't be an argument,
2 sometimes there would.

3 Q. When there was a time when you would go to the house
4 when there was an argument between Cathy and Leroy what would
5 you do?

6 A. I would talk to Cathy and I would talk to Leroy.

7 Q. Why would you do that?

8 A. Well, just to keep them apart from arguing.

9 Q. Now, at any point in time had you ever seen Leroy
10 hit Cathy?

11 A. No.

12 Q. Now, when you worked at West Point Stevens did you
13 work a rotating shift or did you work a specific shift?

14 A. I was straight first shift.

15 Q. Did you work third shift at any time?

16 A. When I first started.

17 Q. And when you were working at West Point Stevens did
18 you have the opportunity to see Leroy and Cathy interact?

19 A. Yeah, on occasion, on several occasions.

20 Q. Did you ever see anything happen physically between
21 Leroy and Cathy?

22 A. Well, I seen the time he got slapped down there
23 where he worked at on his belt, on his job.

24 Q. When was that?

25 A. I guess around in the '90's, that's all.

JAMES JOHNSON - DIRECT BY MR. POTTER

1 Q. Was this inside the plant or outside the plant?

2 A. Inside the plant.

3 Q. Was that during first shift or third shift?

4 A. First shift.

5 Q. And you were working first shift at that time?

6 A. Yes.

7 Q. Did you see any contact between Cathy and Leroy in
8 the parking lot at West Point Stevens?

9 A. I didn't see --

10 MR. MCELHANNON: Objection, Your Honor. This is
11 leading.

12 MR. POTTER: I'm just trying to set the scene. He
13 can testify whether he saw anything in the parking lot or not.

14 THE COURT: Overruled.

15 By the way, madam forelady, ladies and gentlemen of
16 the jury, a leading question is a question that suggests an
17 answer. It wouldn't affect what it is that the lawyer states,
18 a question that all the witness has to do is to respond yes or
19 no, in other words, the lawyer testifies.

20 So if it's your witness, in other words, a witness
21 that you call, you can't lead. Now, on cross-examination you
22 may lead. But in this case I find that why it is not a
23 leading question it can be answered either he does know or he
24 does not know.

25 All right. Go ahead. You may proceed.

JAMES JOHNSON - DIRECT BY MR. POTTER

1 BY MR. POTTER:

2 Q. Did anything happen between Cathy -- strike that.
3 What, if anything, happen between Leroy and Cathy in the
4 parking lot at West Point Stevens?

5 A. I didn't see her strike him or nothing like that. I
6 just saw him run around the car.

7 Q. When you say him, who is him?

8 A. Leroy Archie.

9 Q. What was he running from?

10 A. Running from her.

11 Q. Her being Cathy Galloway?

12 A. Yeah, Cathy Galloway.

13 Q. So Cathy was chasing Leroy around the car?

14 A. Yes, sir.

15 Q. Were they having fun and games or how would you
16 describe it?

17 A. I couldn't tell. I had just walked out the door.

18 Q. Now, I want to direct your attention, let's talk
19 about Sunday morning when you went to Scott Circle to see
20 Cathy and Leroy; do you remember that day?

21 A. On a Sunday morning they came to my house.

22 Q. I'm sorry. They came to your house?

23 A. Yeah. That was on a Sunday afternoon.

24 Q. Do you remember when that was?

25 A. Not really.

JAMES JOHNSON - DIRECT BY MR. POTTER

1 Q. Was it before 2000 or after?

2 A. It was after 2000.

3 Q. Was it within the last year before the shooting or
4 was it later?

5 A. It was longer than that.

6 Q. Now, can you tell the jury what happened when they
7 came to your house that Sunday afternoon?

8 A. Well, it started Leroy was telling a bunch of lies
9 to Cathy that I was talking about. So she wanted to make sure
10 was it true. So she comes over to my house and I'm leaving.
11 And she asked me was I talking about her. I told her no, I
12 wasn't. So I asked Leroy, asked Leroy why he tell Cathy that
13 I was talking about her. Why would he tell a lie. I thought
14 we supposed to be friends.

15 So finally Leroy admitted, he told the truth. You
16 know, he said, I wasn't talking about her. So Cathy said,
17 thank you, James. I said, well, I'll see you all later,
18 because they was going to Ryan's, and I was going to the
19 store. So I got in behind them and they stopped.

20 Q. Now, when you said they were going to Ryan's, they
21 got in their car and drove off to Ryan's?

22 A. I guess they were still going to Ryan's. I'm not
23 for sure.

24 Q. And you got in your car, and were you following them
25 or --

JAMES JOHNSON - DIRECT BY MR. POTTER

1 A. No, I was going to the store, but there was only one
2 way out. We had to go the same way, basically, during that
3 time.

4 Q. And so what happened?

5 A. He stopped the car, and I sat in the car. I didn't
6 know what was going on. So I decided to get out. And he told
7 her to get off from under the driving wheel because he said
8 she was trying to tear up his transmission.

9 Q. Okay.

10 A. So she got out. He went around and got in the car,
11 put his seatbelt on. And I was on my way back to the car and
12 I just happened to turn back around and she was beating him in
13 the seatbelt.

14 Q. How was she beating him?

15 A. With her fist.

16 Q. Was she outside the car or inside?

17 A. She was outside. He was sitting in the car with his
18 seatbelt on.

19 Q. How many times --

20 A. So --

21 Q. I'm sorry.

22 A. I don't know how many blows. All I know is his
23 mouth and nose was bleeding. So I got in between them on
24 that. And he pulled off and left and she asked me to take her
25 home. So I said, well, Cathy I'll take you home.

JAMES JOHNSON - CROSS BY MR. MCELHANNON

1 So when I got on Scott Circle she told me don't take
2 her home because she said Leroy was going to call the police.
3 So she said drop me off down the road. I don't know where she
4 went after that so I just dropped her off down the road and I
5 went on home.

6 Q. Now, when you were at work did you see Leroy have --
7 show up for work with any injuries or anything?

8 A. Well, on the side of his face be bruised. So I
9 guess -- he was holding his ribs. I don't know if they were
10 cracked or what.

11 Q. Did you see any other injuries besides the
12 bruises --

13 A. Arm in a sling, but I don't know what.

14 MR. POTTER: Thank you, Mr. Johnson. No further
15 questions.

16 Your witness.

17 CROSS-EXAMINATION

18 BY MR. MCELHANNON:

19 Q. Morning, Mr. Johnson.

20 A. Good morning.

21 Q. Now, let's just start, first, you said when Leroy
22 used to call you'd come down. Sometimes there would be
23 arguments and sometimes there wouldn't be?

24 A. Yes.

25 Q. And most of the time those arguments were just

JAMES JOHNSON - CROSS BY MR. MCELHANNON

1 verbal, they were just arguing back and forth?

2 A. Yeah, no hitting or nothing like that.

3 Q. Doing like sometimes married couples do, argue back
4 and forth?

5 A. Well, basically, yeah.

6 Q. And this incident at the plant was back in 1996; is
7 that right?

8 A. Somewhere around in there.

9 Q. So it will be 9 years before this incident happened?

10 A. Yeah.

11 Q. You saw him -- you saw Cathy Galloway slap him?

12 A. Yes.

13 Q. Slap him once?

14 A. Yes, only once.

15 Q. You don't know what they were arguing about?

16 A. No, I don't know.

17 Q. And that was the day that she got laid off or fired
18 from West Point?

19 A. That's the day she got terminated, yes.

20 Q. And then is that the same day you saw her chasing
21 him around the car in the parking lot?

22 A. No.

23 Q. It was a different day?

24 A. It was before then.

25 Q. When would that have been?

JAMES JOHNSON - CROSS BY MR. MCELHANNON

1 A. I guess a few months before.

2 Q. Oh, before?

3 A. Yeah.

4 Q. So that was even longer?

5 A. It was before she got terminated.

6 Q. Okay. So that was even before --

7 A. She was employed there, yes.

8 Q. So that might have been in 1995?

9 A. Yes.

10 Q. Okay. There again, do you know why she was chasing
11 him?

12 A. No. All I know I had worked third shift and I was
13 getting off and they was coming in, and I just saw them
14 running around the car. I don't know --

15 Q. So you don't know --

16 A. No.

17 Q. -- if he provoked her any way or said anything to
18 her to make her start chasing him?

19 A. No, but he did tell me to go back up the steps and
20 look behind the car to see if she's there because she went to
21 her job.

22 Q. And this Sunday afternoon when they came up to your
23 house, and you said it was after the year 2000 but more than a
24 year before this happened so probably --

25 A. Yes.

JAMES JOHNSON - CROSS BY MR. MCELHANNON

1 Q. -- would have been 2001?

2 A. I was probably around 2003.

3 Q. So two years before this happened?

4 A. It was about three, four years ago.

5 Q. And they came up there because Cathy wanted to get
6 something straight?

7 A. Right.

8 Q. Leroy had been telling a bunch of lies?

9 A. Yeah, that I was talking about Cathy. Yes.

10 Q. That you were talking about her?

11 A. Yeah.

12 Q. So he was lying?

13 A. Yeah.

14 Q. He wasn't telling the truth?

15 A. He wasn't telling the truth.

16 Q. So basically at that point in time could you say
17 Leroy was a liar?

18 MR. POTTER: Objection.

19 THE COURT: I think he can restate his question.

20 BY MR. MCELHANNON:

21 Q. How would you characterize Leroy that day with the
22 falsehoods that he had told about you?

23 A. Well, he just told -- you know, he told a lie.

24 Q. A bunch of lies you said?

25 A. At that time, yeah, because she was pretty hot about

JAMES JOHNSON - CROSS BY MR. MCELHANNON

1 that.

2 Q. Okay. So when they stopped the car you imagine she
3 was still hot about that?

4 A. Evidently he must have got hot because she was
5 driving.

6 Q. Oh, okay.

7 A. He was on the passenger side.

8 Q. So you think he got upset?

9 A. Well, what he told me after I pulled in behind him
10 and asked him what was wrong he told her to get off from under
11 his wheel because she was trying to tear up his transmission
12 or something.

13 Q. So he is mad, too?

14 A. Yeah.

15 Q. And you were not present August 22nd, 2005 at 119
16 Scot Circle, were you?

17 A. No, sir.

18 Q. So you don't have any idea why this happened?

19 A. No, sir.

20 MR. MCELHANNON: That's all questions I have, Your
21 Honor.

22 THE COURT: Re-examine?

23 MR. POTTER: Your Honor, we have none. We'd ask
24 that this witness be excused.

25 THE COURT: All right. You may step down.

JAMES JOHNSON - CROSS BY MR. MCELHANNON

1 May the witness be excused?

2 MR. MCELHANNON: Yes, sir, without objection.

3 THE COURT: Without objection you may be excused.

4 Thank you, sir.

5 All right. Counsel, approach, please.

6 (WHEREUPON, a bench conference was had.)

7 THE COURT: Madam forelady, ladies and gentlemen of
8 the jury, I need to take up something with the attorneys, so
9 I'm going to suggest that we take about five minutes or so.
10 It won't take long but I need to be sure that I understand how
11 we're proceeding.

12 So with that, I'm going to ask you to retire to the
13 jury room just for a few minutes. And, again, do not
14 undertake discussion of the case among yourselves in any way.
15 Thank you.

16 Everyone else remain seated while the jury retires
17 from the courtroom.

18 (WHEREUPON, the jury leaves the courtroom at
19 approximately 10:14 a.m.)

20 THE COURT: All right. As I understand, the
21 defendant is to take the stand. Now, there's a question of
22 impeachment. As far as credibility, a prior record is going
23 to be used.

24 Is that correct, Mr. Solicitor?

25 MR. MCELHANNON: That's correct, Your Honor.

1 THE COURT: What are the convictions that you are
2 going to use?

3 MR. MCELHANNON: Your Honor, the only one that I'm
4 going to use in cross would be the conviction for assault and
5 battery high and aggravated nature. The sentence date was May
6 15th, 2002.

7 THE COURT: And I understand the victim there was
8 the victim in this case?

9 MR. MCELHANNON: That's correct, Your Honor.

10 THE COURT: Mr. Potter, anything you have to say?

11 MR. POTTER: Your Honor, if it pleases the Court.
12 I've explained to my client what he is relinquishing when he
13 does take the stand, that the prosecutor can ask him questions
14 related to that particular conviction. In essence, he can ask
15 him anything he wants within the rules of evidence, and he
16 fully understands that and he tells me he still wishes to go
17 ahead and take the stand in his defense.

18 THE COURT: Thank you.

19 Mr. Solicitor, what's the purpose of introducing the
20 2002 conviction?

21 MR. MCELHANNON: I'm sorry?

22 THE COURT: What's the purpose in introducing the
23 2002 conviction? And this is the reason I ask. I trust
24 you're doing this under Rule 609(a)(1) which provides evidence
25 that an accused has been convicted of such a crime which is

1 more than a year shall be admitted if the Court determines
2 that the probative value of admitting this evidence outweighs
3 its prejudicial effect of the accused. What's the probative
4 value here?

5 MR. MCELHANNON: The probative value is, Your Honor,
6 at this point with the two defense witnesses that have come in
7 he has tried to portray himself as the victim, and that he is
8 actually not the victim. He was as much at fault in this
9 relationship and the volatileness of it as she was, if she
10 was, and that it goes toward also the defense of self defense,
11 which he's claiming in this.

12 THE COURT: He hasn't claimed it yet but I
13 understand.

14 MR. MCELHANNON: Yes.

15 THE COURT: All right. Mr. Potter?

16 MR. POTTER: If it pleases the Court. My
17 understanding of the purpose of that rule is merely to use to
18 impeach for credibility, okay. And my understanding, the
19 limit of the question, if Your Honor is inclined to allow him
20 to ask the question, is simply this; you were convicted of
21 ABHAN back in May of 2002, is that true?

22 If he says yes, then that ends the question. I
23 don't think the solicitor is allowed to get into the specifics
24 of each specific alleged act that he pled guilty to. The only
25 purpose of the rule is to go into the voracity of the client,

1 the voracity of the witness, the defendant. It doesn't
2 necessarily -- in essence this is --

3 THE COURT: So you are saying --

4 MR. POTTER: -- a Lyle type situation.

5 THE COURT: You're saying he can't bring up the --

6 MR. POTTER: The specifics of the conviction.

7 MR. MCELHANNON: Your Honor, I don't intend to get
8 into the specifics.

9 THE COURT: How about the victim?

10 MR. MCELHANNON: No, sir.

11 THE COURT: Not going to ask him about the victim?

12 MR. MCELHANNON: No, sir, unless he opens the door.

13 THE COURT: I think you're right as far as
14 impeachment purposes, that he's lent to just to whether or not
15 he was convicted. And if he admits the conviction then that's
16 it. But that just goes to the credibility, whether or not his
17 credibility is affected by --- or not affected but is
18 reflected by his conviction. But to go into the facts of the
19 particular conviction I don't think would be appropriate, and
20 I find that would perhaps be more prejudicial than probative
21 as far as credibility.

22 Now, with the same caveat, Mr. Potter, that the
23 solicitor has said that if you try to present something that
24 would suggest -- well, I'll just leave it up to you to find
25 out because I don't want to anticipate that you all will have

1 a problem. Relax. But if, in fact, the problem is created
2 I'll have to address it.

3 MR. POTTER: Yes, sir.

4 THE COURT: All right. Anything else from the
5 State?

6 MR. MCELHANNON: No, Your Honor.

7 THE COURT: From the defendant?

8 MR. POTTER: No, Your Honor.

9 THE COURT: Do you want to take some time while you
10 got it?

11 MR. POTTER: Yes, sir.

12 THE COURT: Or are you ready to go?

13 MR. MCELHANNON: Yes.

14 MR. POTTER: Just 5 more minutes, Judge.

15 THE COURT: All right. Let's take just 5 minutes
16 then we're going at 25 after.

17 (WHEREUPON, a brief recess was taken.)

18 THE COURT: Mr. Potter, you ready?

19 MR. POTTER: Yes, sir.

20 THE COURT: The State ready?

21 MR. MCELHANNON: Yes, sir.

22 THE COURT: There are a few things I just want to be
23 sure the record is clear on. First, that I do find that the
24 prior conviction in 2002, the probative value outweighs its
25 prejudicial effect to the accused on the question of

1. credibility.

2 In reaching that decision or determination I find
3 that the impeachment value of the prior crime is important,
4 the point in time of the conviction and the subsequent history
5 being only 3 years at the most, similarity between the past
6 crime and the charge crime, the importance of the defendant's
7 testimony and the centrality of the credibility of the
8 defendant's testimony.

9 Considering all those factors I find that the
10 probative value as to credibility alone outweighs the
11 prejudicial value and will permit the introduction for that
12 purpose alone. All right. Very good.

13 Anything from the State?

14 MR. MCELHANNON: Nothing from the State.

15 THE COURT: Anything from the defendant?

16 MR. POTTER: Nothing.

17 THE COURT: Ask the jury to join us, please.

18 (WHEREUPON, the jury enters the courtroom at
19 approximately 10:30 a.m.)

20 THE COURT: Let the record reflect the jury is in
21 the jury box.

22 Madam forelady, ladies and gentlemen of the jury,
23 we'll now continue with the case.

24 Mr. Potter, you may call your next witness.

25 MR. POTTER: If it pleases the Court. We're going

LEORY ARCHIE - DIRECT BY MR. POTTER

1 to call Mr. Leroy Archie to the stand.

2 LEROY ARCHIE, after having been duly sworn,
3 testified as follows:

4 THE BAILIFF: State your name and spell your last
5 for the record.

6 THE WITNESS: My name is Leroy Archie, A-r-c-h-i-e.

7 DIRECT EXAMINATION

8 BY MR. POTTER:

9 Q. Mr. Archie, did you shoot Cathy Galloway?

10 A. Yes, I did.

11 Q. Why did you shoot Cathy?

12 A. I was threatened by my life and I was afraid for my
13 life by her and her son, Jack.

14 Q. Leroy, in August of 2005 where were you living?

15 A. I was living at 119 Scott Circle, Pendleton, South
16 Carolina.

17 Q. Who did you stay there with?

18 A. I lived there with Cathy, and her son, Jack, was
19 living with us.

20 Q. How long had you and Cathy been together?

21 A. We had been together for approximately 15 to 16
22 years.

23 Q. How long had you all lived together?

24 A. We lived together since 1988.

25 Q. Have you always lived on Scott Circle?

LEROY ARCHIE - DIRECT BY MR. POTTER

1 A. Yes, we have.

2 Q. Were you ever married to Cathy?

3 A. Never was.

4 Q. So you were common law?

5 A. Yes.

6 Q. Did you have any children together?

7 A. No.

8 Q. Leroy, how old are you?

9 A. I'm 57.

10 Q. And how far did you get in school?

11 A. 12th grade.

12 Q. What high school did you graduate from?

13 A. Old West Side High.

14 Q. In August of 2005, where were you working?

15 A. West Point Stevens.

16 Q. And how long had you been at West Point Stevens?

17 A. 22 years.

18 Q. And what did you do for West Point?

19 A. I was an employee in specialty department. I was a
20 roll wrapper.

21 Q. And you saw Pat Martin and James Johnson testify
22 earlier; is that right?

23 A. Yes.

24 Q. Did they work with you there?

25 A. Yes.

LEROY ARCHIE - DIRECT BY MR. POTTER

1 Q. How did you and Cathy meet?

2 A. At West Point Stevens.

3 Q. Now, you told us that you had been living with her
4 from 1998, correct?

5 A. Yes.

6 Q. How would you describe your relationship with Cathy?

7 A. We had fights and all the majority of the time.

8 Q. Arguing and fighting?

9 A. Yes.

10 Q. When did you decide that you knew it was time to
11 move out?

12 A. I decided back in year, say 2004.

13 Q. So what did you do?

14 A. I told Cathy I was ready to get out of the
15 environment that I was in with her and her son, Jack.

16 Q. So what did you do?

17 A. I packed up, was ready to move out. I got me an
18 apartment.

19 Q. Well, where did you get the boxes to pack your
20 things up with?

21 A. I got them from West Point Stevens, where I worked
22 at.

23 Q. When did you start packing up your stuff?

24 A. I started packing up the stuff as soon as the
25 landlord told me I had gotten an apartment.

LEROY ARCHIE - DIRECT BY MR. POTTER

1 Q. When was that?

2 A. That was a couple weeks before, actually.

3 Q. A couple weeks before the shooting?

4 A. Yes.

5 Q. So it was possibly the beginning of August when you
6 found out you had the apartment?

7 A. Yes.

8 Q. Where was the apartment at?

9 A. It was at Calhoun Arms in Pendleton, South Carolina.

10 Q. Were you going to be staying by yourself or were you
11 going to be living with anybody?

12 A. I will be living by myself.

13 Q. Okay. What's Calhoun Apartments like?

14 A. It's kind of a rough neighborhood anyway, but I
15 needed a place to stay.

16 Q. When you decided to stay at Calhoun Apartments did
17 you think you needed anything?

18 A. Yeah. In a way I thought I needed something to
19 protect myself on the account of the neighborhood.

20 Q. So what did you do?

21 A. I went out and I asked a friend of mine where could
22 I get something to protect myself while I was living there by
23 myself.

24 Q. Is that when you got the gun?

25 A. That's when I purchased the gun.

LEROY ARCHIE - DIRECT BY MR. POTTER

1 Q. Now, how did Cathy react when you told her you were
2 moving out?

3 A. Mad, upset, really wanted to fight in a way.

4 Q. Well, why do you say she was mad and upset?

5 A. Because I was leaving her, and her and her son,
6 Jack.

7 Q. What type of behavior from her caused you to think
8 she was mad and upset?

9 A. She got to threatening me and saying I wasn't going
10 to take this and that.

11 Q. Well, okay. What do you mean not going to take this
12 or that; what does that mean?

13 A. She was all about my furniture that was in my house.

14 Q. Like the couch, the TV?

15 A. My couch, the living room suit, the televisions.

16 Q. Beds, things like that?

17 A. Yes.

18 Q. Let's talk about August 22nd, 2005, okay?

19 A. Yes.

20 Q. It's Monday morning; is that right?

21 A. Right.

22 Q. What happened that morning?

23 A. It was Monday morning, I got up, was finish -- I was
24 continuing to pack, and I told Cathy that I was leaving.

25 Q. Were you leaving that day or were you going to be

LEROY ARCHIE - DIRECT BY MR. POTTER

1 leaving later on?

2 A. I was leaving that morning, that day.

3 Q. Did you get somebody to help you?

4 A. I had called my friend up, Duke Williams, to come up
5 and help me. Him and I had discussed this, that he was going
6 to help me move.

7 Q. Because why did you need Duke to help you move?

8 A. He had truck.

9 Q. So on August 22nd, 2005 you told Cathy you were
10 leaving that day?

11 A. Yes, I did.

12 Q. How did she react?

13 A. Mad, upset, ranting, jumped on me, pushed me,
14 started fighting me.

15 Q. Was she talking in a normal tone of voice or was she
16 yelling at you or --

17 A. She was angry at me with a high voice.

18 Q. What happened after that?

19 A. She pushed me down on the couch in my den and she
20 ran and got her son, Jack.

21 Q. How did she go get her son, Jack?

22 A. When she pushed me down she left out of my den and
23 went to our other den to the back bedrooms that we have, and
24 Jack and one of his girlfriends was back there.

25 Q. And when she got Jack what happened next?

LEROY ARCHIE - DIRECT BY MR. POTTER

1 A. Jack came back and was threatening me, telling me I
2 wasn't taking a dammed thing out of this house.

3 Q. And did he say anything else to you?

4 A. And he was coming at me, trying to push her to get
5 to me. And I just kept standing there, after I got back up
6 off the couch.

7 Q. So he was trying to push Cathy aside?

8 A. Yes.

9 Q. Did you have any problems with Jack before?

10 A. Yes, I have. I have had a lot of problems with
11 Jack. I have been jumped on, been to the hospital from Jack
12 by beat up with fractured ribs and a fractured arm from Jack.

13 Q. How much you weigh, Leroy?

14 A. I weighs 150.

15 Q. How tall are you?

16 A. I'm 5, 7, maybe 5, 8.

17 Q. Now, after Jack tried to get beside around Cathy to
18 get to you what happened next?

19 A. Cathy left and went towards my kitchen. Jack
20 followed behind her. I kept standing there.

21 Q. What happened then?

22 A. I came out from my den into my bedroom and came into
23 our other den where is the fireplace. And I was taking my
24 glasses out of my coffee table, was wrapping them up. And
25 Jack and one of his girlfriends, I reckon the one that

LEROY ARCHIE - DIRECT BY MR. POTTER

1 testified that he was in there fighting trying to get to me,
2 cussing me and saying that he didn't have a dammed thing to
3 lose, he'll fuck this mother fucker up, he ain't got nothing
4 to lose, and she was telling him don't do this and don't do
5 that.

6 Q. What happened next?

7 A. So then I got back up from packing my glasses out of
8 my coffee table. I went back into my bedroom. I reached in
9 my nightstand and I put my gun into my house robe.

10 Q. Well, what were you thinking?

11 A. I was afraid of Jack, that he was going to jump on
12 me while I was in the house.

13 Q. So why did you get the gun?

14 A. Afraid of Jack, to protect myself from him.

15 Q. So what happened after you got your gun?

16 A. He kept cursing me and shouting and going on in the
17 house. So I decided I better get out the house.

18 Q. Where was Cathy when that happened?

19 A. She was going out the door.

20 Q. Where was she going?

21 A. I don't know. I don't know. She was gone, she
22 wasn't in the house.

23 Q. Was she going to work or does she work?

24 A. Yes, she works. She probably was going to work.

25 Q. Okay. So she was gone?

LEROY ARCHIE - DIRECT BY MR. POTTER

1 A. She was gone.

2 Q. You didn't see her in the house?

3 A. She was not in the house.

4 Q. Was the front door open or closed?

5 A. I always keeps my front door open. We just leave
6 the glass storm door, we close all the time. The big door be
7 open

8 Q. So what did you do then?

9 A. I came out onto my porch. Jack comes behind me.

10 Q. Okay. What happened then?

11 A. I comes out of the front porch. Cathy was backing
12 back, and when I came out on the front porch she saw me.

13 Q. Now, when you say Cathy was backing back was she in
14 a car or outside a car?

15 A. She was in her car backing back.

16 Q. And what happened next?

17 A. And when I came out she saw me, and Jack was behind
18 me. She put her car back in drive and drove back up and
19 jumped out of her car, and she came at me and saying you're
20 not taking a dammed thing out of this damn house. I'm sick
21 and dammed tired of you. I'm going to fuck you up.

22 Q. So how did you feel at that point?

23 A. I was afraid and I was scared for my life, and I was
24 trapped by Jack and Cathy.

25 Q. So what did you do?

LERoy ARCHIE - DIRECT BY MR. POTTER

1 A. I pulled my revolver out and I shot. Cathy kept
2 coming at me, and I ran back and I shot.

3 Q. What happened next?

4 A. I ran back into the house. Jack ran back into the
5 house. I ran back into the house. I called my buddy, Duke,
6 and I told him what had happened, to call the police and call
7 911 for the rescue squad.

8 Q. Then what did you do?

9 A. Jack was still in the house cursing and shooting and
10 saying he was going to Peanut's house to get a gun to kill me
11 with. I came back outdoors to Cathy. I told Cathy I had
12 dialed 911, the rescue squad is on its way. As I was standing
13 there talking to Cathy, Jack ran out of my side door cursing
14 and hollering, Mother fucker, I'll be back. I'm going to get
15 a gun and I'm going to fuck you up. He ran.

16 Q. And he ran down Scott Circle towards Refuge Road?

17 A. Yes.

18 Q. What happened next?

19 A. I kept standing there talking to Cathy, talking to
20 Cathy. And as I looked up, Jack and a couple of his friends,
21 they had went and got a gun and was coming at me with the gun,
22 him and his friends. About three of his friends, they all --

23 Q. Let's stop for a minute here. So you look up, you
24 see Jack and two or three of his friends?

25 A. Yes.

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 Q. And you did you see a gun?

2 A. Yes, I did, in Jack's hand.

3 Q. So Jack had a gun?

4 A. Yes, sir.

5 Q. What happened next?

6 A. So I was afraid for my life. They was coming at me,
7 and I shot down into the ground to scare them back off of me
8 until to police arrived.

9 Q. Then what happened next?

10 A. That's when the police came and ordered me to drop
11 my gun and lay on my belly.

12 MR. POTTER: No further questions. Thank you.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. MCELHANNON:

16 Q. Mr. Archie?

17 A. Yes.

18 Q. You were convicted in 2002, May 15th, 2002 of
19 assault and battery of a high and aggravated nature, were you
20 not?

21 A. Yes, I was.

22 Q. Let's start with the purchase of this .32 caliber
23 revolver. Who did you buy that from?

24 A. I bought it from Troy Verner.

25 Q. Troy Verner?

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 A. Yes.

2 Q. And how did you know Troy Verner?

3 A. He worked with me at West Point Stevens?

4 Q. Why didn't you buy the gun, if you were scared, just
5 go buy a weapon from White Jones?

6 A. I never bought a gun at a hardware store before. I
7 didn't have enough money to purchase a high price gun. I just
8 needed something just for my protection. If it was a
9 10-dollar gun I would have bought it.

10 Q. Well, why in your -- and I take it you've read your
11 statement of August 22nd, 2005? You got copies of both your
12 statements?

13 A. Yes, I does.

14 Q. Why did you tell the officers that day that you
15 bought the gun from a man named Herman Alexander?

16 A. Troy Verner name, we call him Troy, we call him
17 V-dog. I really don't know his real name. We just call him
18 by his nicknames at work.

19 Q. So you just made up the name Herman Alexander?

20 A. Well, I thought his name was Herman?

21 Q. You did?

22 A. Yes, I did.

23 Q. And Duke took you to get this gun?

24 A. Yes, he did.

25 Q. Did Duke tell you anything about what you should do

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 with that gun?

2 A. No. Only thing Duke told me that he said take it in
3 the house, Cathy call the police on you.

4 Q. So he told you that if Cathy found out that you had
5 a gun --

6 A. She would call the polices on me.

7 Q. Okay. So you hid the gun?

8 A. I did not hid the gun. I put the gun in my
9 nightstand beside my bed.

10 Q. Well, there again your statement of -- you bought
11 this gun, when, August the 17th, 2005?

12 A. It was somewhere along in there. I can't really,
13 you know, just say what date it was.

14 Q. So five days --

15 A. It was in August.

16 Q. Five days or so before this shooting took place you
17 bought the gun?

18 A. Yes.

19 Q. And in your statement, again, of August 22nd you say
20 that -- your statement of August 24th, you remember that
21 statement you gave at the police station?

22 A. Yes.

23 Q. Did you get a copy of that?

24 A. Yes.

25 Q. You state that Cathy said on the morning of August

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 22nd, 2005, Cathy said, Why didn't you go get your little gun,
2 but she tells me that all the time.

3 A. Because she knows I had a gun.

4 Q. She tells you that all the time? You had the gun
5 for five days and she tells you that all the time, go get your
6 little gun?

7 A. Yes. From the time I had it she always would tell
8 me that when her and I were arguing.

9 Q. So for five days she said why don't you go get your
10 little gun?

11 A. We had argued longer than five days.

12 Q. But you didn't have a gun?

13 A. I didn't have a gun.

14 Q. Well, why would she say go get the gun?

15 A. Because I brought the gun home and she knowed I had
16 the gun in the nightstand.

17 Q. But for five days I understand, but you say she'd
18 say that all the time?

19 A. From the time that I brought the gun home.

20 Q. Did you tell her you got this gun?

21 A. Yes, I did.

22 Q. You told her?

23 A. I told her I had purchased a gun.

24 Q. Why didn't you put that in your statement?

25 A. No one asked me.

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 Q. Okay. I believe you said, and correct me if I'm
2 wrong, that you decided to get out of this apartment -- I
3 mean, get out of the house with Cathy and Jack in 2004?

4 A. Yes.

5 Q. So a year before --

6 A. Yes.

7 Q. -- you moved out or you were going to move out?

8 A. Yes, I was. I was tired of the environment that
9 Jack was doing there in the house and Cathy would let him do
10 it. He was having parties, bringing his wild womens in my
11 house, and I would talk to Cathy about it and she would tell
12 me that she helped pay the damn bills there and if a man
13 didn't like her son he didn't like her.

14 Q. Okay. And Cathy was moving out too, wasn't she?

15 A. No, Cathy was not moving out, that I knows of.

16 Q. She wasn't boxing things up, too?

17 A. No, sir.

18 Q. And you all were arguing on August 22nd about
19 personal property, TV mainly, wasn't it?

20 A. Yes, siree, that's what she started about, TV. And
21 we have five in the house. It wasn't no reason to argue about
22 a television.

23 Q. Well, there wasn't any use in shooting somebody over
24 a television either, was there?

25 A. I did not shoot her over a television.

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 Q. Now, you called Duke Williams that morning and asked
2 him to come help you move?

3 A. Yes, I did.

4 Q. And what did he tell you?

5 A. He told me he would be there maybe an hour, hour and
6 a half.

7 Q. And then what happened, did he call you back?

8 A. He calls me back and said that his wife said that --
9 or his wife and Cathy and I were all friends, that he should
10 not help me move.

11 Q. And what did you do at that point? Did you talk
12 to --

13 A. I asked Duke to let me speak to his wife, Brenda.

14 Q. Okay. And what did she tell you?

15 A. I told Brenda, I said why Duke can't help me move?
16 I said, I'm not taking nothing that belongs to Cathy. I'm
17 just getting my merchandise and get gone.

18 Q. And then you hung up on her?

19 A. I hung the phone up. But Cathy really jerked the
20 phone from me.

21 Q. Why would she jerk the phone from you and hang up on
22 Brenda Rogers?

23 A. I don't know her and Brenda Williams was talking or
24 not. She must have called Brenda Williams back after she took
25 the phone from me.

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 Q. Cathy was going to work this morning, wasn't she?

2 A. I assume she was. She was not in the house when I
3 came out.

4 Q. And you left out of the house after her, didn't you?

5 A. After Cathy?

6 Q. Yes. You walked out on the porch arguing with her?

7 A. I didn't know she was gone.

8 Q. Why did you go out of the house?

9 A. I was afraid of Jack in the house.

10 Q. Well, where were you going in your bathrobe?

11 A. I always wear my bathrobes in my house.

12 Q. No, I mean, outside. You were just going to walk
13 outside and stay outside all day?

14 A. I was walking outside to get away from Jack.

15 Q. Jack was going back to the bedroom, wasn't he?

16 A. No, Jack was not.

17 Q. And, in fact, Jack had already been sentenced to
18 federal prison, hadn't he?

19 A. Yes, I know, sir. Yes. For a year or something. I
20 don't know. He was living with us on the account of that,
21 yes.

22 Q. So he had a lot to lose, didn't he, by jumping on
23 you?

24 A. He said that he didn't have a damn thing to lose.

25 He was going to jail so he was going to fuck me up.

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 Q. You don't think he'd done more jail time if he had
2 jumped on you?

3 A. I don't know that.

4 Q. Well, wasn't he going to jail?

5 A. The way he expressed to me that he didn't care. His
6 intention was to fuck me up.

7 Q. Well, why didn't he?

8 A. Why didn't he?

9 Q. Yeah.

10 A. I came out the house. He came behind me to get me.

11 Q. He came behind you?

12 A. Yes, he did.

13 Q. How far did he come?

14 A. He was close enough to jump on me.

15 Q. Why didn't he?

16 A. After I pulled my revolver out he ran back into the
17 house.

18 Q. And then you were scared of Jack, weren't you?

19 A. Yes, I were.

20 Q. Why didn't you shoot Jack?

21 A. Jack ran back into the house. Cathy was coming at
22 me with her fist to bop me.

23 Q. How close was she?

24 A. Close enough to bop me. That's how close.

25 Q. Did she swing at you?

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 A. Yes, she did.

2 Q. Did she hit you?

3 A. She didn't because I jerked back.

4 Q. So instead of shooting Jack who you were really
5 scared about you shot Cathy?

6 A. No. Cathy was coming after me, Jack was behind me.
7 Jack turned around and ran.

8 Q. Jack turned around and ran?

9 A. Yes.

10 Q. Did Cathy have a weapon?

11 A. No, Cathy did not have a weapon in her hands that I
12 know, sir. All I know, her fists was balled up.

13 Q. Now, you say Cathy was in the yard, Jack was on the
14 porch. Where were you?

15 A. Cathy was in the yard?

16 Q. That's what you said.

17 A. Yes. I was at the steps.

18 Q. Jack was up at the door on the porch?

19 A. Jack was behind me, yeah, passed the door.

20 Q. Well, Mr. Archie, in your statement August 24th,
21 2005 you state Cathy started coming towards me with her fist
22 and Jack kept trying to get past her saying I'm going to fuck
23 that mother fucker up. Now, which is it? Was he up here and
24 was she down in the yard?

25 A. That statement was made in the house, that Jack was

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 trying to get past her to hit me.

2 Q. She was coming towards you in the house and in the
3 yard?

4 A. No, sir. She was coming at me outdoors. That
5 statement was made when Jack was in the house.

6 Q. Okay. If he said that in the house your own
7 statement is Cathy started coming towards me with her fists
8 and Jack kept trying to get past her. How is Jack getting
9 past her if he was up on the porch and she was in the yard?

10 MR. POTTER: Judge, respectfully, I'm going to
11 object. I think the solicitor is charactering this. The
12 defendant testified --

13 THE COURT: Let's do this. Why don't you read the
14 statement that you are relying on.

15 MR. MCELHANNON: I did, Your Honor. That's
16 exactly --

17 THE COURT: Well, read it again.

18 MR. POTTER: Well, I need to know which page.

19 MR. MCELHANNON: Page 2.

20 THE COURT: All right. Read the statement you are
21 relying on and ask your question in regard to that statement.

22 BY MR. MCELHANNON:

23 Q. August 24th, 2005, your statement that you gave at
24 the police station. Part of it says Cathy started coming
25 towards me with her fists and Jack kept trying to get past her

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 saying, quote, I'm going to fuck that mother fucker up, end
2 quote. I thought Jack was coming so I pulled out the gun.
3 Cathy can whoop me bad and I knew both of them were coming
4 after me. I just snapped and shot Cathy while she was running
5 towards me.

6 A. That's the statement that I made. That's true.

7 Q. Yes, sir. Well, you state that Jack was trying to
8 get past her but he was up on the porch.

9 A. The statement that Jack was trying to get past me,
10 that statement was made by Jack being -- when we was in the
11 house.

12 Q. And then you go on to say after I shot her she comes
13 back at me with her fists then I shot Cathy again. Cathy is
14 still cussing me. So she's cussing you after you've shot her
15 twice now?

16 A. Yes.

17 Q. And she's still standing up?

18 A. Yes.

19 Q. And she's still trying to get at you --

20 A. Yes, sir.

21 Q. -- with two bullets in her body?

22 A. Yes.

23 Q. Then you say I ran inside and called Duke.

24 A. Right.

25 Q. And told him I shot Cathy.

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 A. Yes.

2 Q. You don't mention anywhere in here that Jack was
3 still in the house, do you?

4 A. No one asked me.

5 Q. You didn't say that in your August 22nd statement
6 either, did you, that Jack stayed in the house?

7 A. No one asked me.

8 Q. And you are telling this jury that Jack stayed in
9 the house knowing you had a loaded weapon in your hand?

10 A. Yes, he did.

11 Q. You don't remember putting that third bullet in
12 Cathy's face?

13 A. The third bullet, it was an accident. I shot down
14 in the ground to keep Jack and his buddy from getting to me
15 hoping that the police would get there in time.

16 Q. The police were there, weren't they?

17 A. No, sir.

18 Q. The policeman didn't see you shoot that third shot?

19 A. The police saw me fire down at the ground to keep
20 Jack and them from getting to me. The police came behind me.
21 Jack and I was facing one another, him and his friends.

22 Q. Jack was there in the yard?

23 A. Yes, him and three of his buddies.

24 Q. Who were his buddies?

25 A. His gang that he hangs with.

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 Q. So they just all showed up somehow --

2 A. I guess he must have called them.

3 Q. Even though he didn't have a cell phone and the only
4 phone he had --

5 A. I don't know what he did when he ran out to the
6 street.

7 Q. You didn't hear the 911 call?

8 A. Did I hear the 911 call?

9 Q. You didn't hear him call 911?

10 A. I heard a call yesterday.

11 Q. On a cell phone?

12 A. Yes. I guess he called his buddies on his cell
13 phone. I don't know.

14 Q. Okay. You, I believe, according to your August 22nd
15 statement on page 2 say that Cathy -- well, you say they
16 started blocking me when I started trying to carry stuff out
17 that I had packed.

18 A. Yes.

19 Q. Where were you carrying it to?

20 A. From my den to my other den. I have a den in my
21 bedroom and a den where I can watch my fireplace.

22 Q. And they were blocking you?

23 A. Yes. We was in the house, in my bedroom, in my den.

24 Q. You didn't have a car that you were going to load
25 that into, did you?

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 A. No, sir.

2 Q. Then you say in that same statement, same sentence,
3 me and Cathy ended up in the yard fighting.

4 A. That's when I came out the door to get away from
5 Jack.

6 Q. After that I just snapped. I pulled my gun, .32
7 caliber pistol from my pocket in my house coat and shot her.

8 A. That's what I said.

9 Q. Jack was standing on the porch when I shot her?

10 A. Behind me.

11 Q. But you were in the yard?

12 A. I never said I was in the yard. I said I was on the
13 steps.

14 Q. Sir, you say right here me and Cathy ended up in the
15 yard fighting.

16 A. Well, I call that -- that's outdoors. We was
17 outdoors. We was not in the house.

18 Q. And you claim that Cathy was on the ground this time
19 but was still cussing you?

20 A. Yes.

21 Q. So after you've shot her twice she's still cussing
22 at you?

23 A. She come on the porch and still was cussing. That's
24 when I ran back to the house to call Duke to call the police
25 and the rescue squad.

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 Q. But you didn't tell Duke to call 911, did you?

2 A. Yes, I did.

3 Q. Why didn't you call 911?

4 A. I was so nervous and scared Duke was the only one
5 that was on my mind at the time. He was my closest friend.

6 Q. So it wasn't really anything about helping Cathy --

7 A. Yes, it was. I told him to call 911 and to call the
8 polices.

9 Q. So you shoot her twice, she's laying on her back in
10 the yard, you go inside, call your friend Duke and you tell
11 him you just killed Cathy, right?

12 A. Shot Cathy.

13 Q. And after that, which took, what, a couple, several
14 minutes at least, right?

15 A. Yes.

16 Q. You say I went back outside and told Cathy to quit
17 cussing me because I done called the rescue squad.

18 A. Right.

19 Q. Well, you didn't call the rescue squad, did you?

20 A. Well, I assume Duke had called for me. I was saying
21 that I had called and let her know that they was on the way
22 coming.

23 Q. And you are saying several minutes after you shot
24 her twice and she's laying on back in her yard se's still able
25 to be cussing?

LERoy ARCHIE - CROSS BY MR. MCELHANNON

1 A. Yes. Her and I was communicate -- talking.

2 Q. Were you?

3 A. Yes.

4 Q. What did she say to you?

5 A. She was talking to me. I can't tell you the words
6 she was saying but we was talking.

7 Q. You know Helen Abrams?

8 A. Yes, I does.

9 Q. Did you see her that morning?

10 A. Yes, I did.

11 Q. What was she doing?

12 A. She came around the circle and got out of her car.
13 She was talking with Cathy and I told her that I had called
14 911.

15 Q. And you know she was trying to help Cathy, wasn't
16 she?

17 A. Yes.

18 Q. What did she do?

19 A. I don't know what she was doing but she was talking
20 to Cathy.

21 Q. But she ran away from you, didn't she?

22 A. I think she did. I'm not for sure. I was looking
23 at Jack to come out. I'm for sure.

24 Q. You were looking at Jack to come?

25 A. Yes.

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 Q. If you were going to fire into the ground to scare
2 Jack and his friends that were coming out of the blue why did
3 you lean down close to Cathy's head when you fired that shot?

4 A. I didn't lean down as I know, sir.

5 Q. Do you remember the officer telling you drop it,
6 drop it, drop it?

7 A. Yes, I did.

8 Q. Why did you shoot after he said drop it?

9 A. I did not shoot after he said drop it.

10 Q. You didn't?

11 A. No, sir, I did not.

12 Q. And how many times did you pull that trigger before
13 that third shot went off?

14 A. I don't know, sir.

15 Q. Were you dry firing, clicking?

16 A. All I know is that I was shooting the gun to get
17 Jack and them back off me, and I heard the officer say drop
18 the gun, drop the gun.

19 Q. Mr. Archie, isn't it true that Cathy couldn't have
20 said anything when you made that phone call to Duke and came
21 back out?

22 A. Cathy was talking to me, sir, and she was talking
23 with Ms. Helen.

24 Q. Ms. Helen Abrams testified all she heard was
25 gurgling sounds, she was not talking.

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 A. She was kneeled down with Cathy. I can't swear she
2 was talking to Cathy, but she was talking to Cathy.

3 Q. She was talking to Cathy but did you hear Cathy
4 talking back to her?

5 A. I wasn't paying attention to her and Cathy
6 conversation. I was staring on Jack and them.

7 Q. But your testimony is that while Ms. Abrams was
8 there you came out and were talking to Cathy.

9 A. I was not talking to Cathy while Ms. Abrams was
10 there. I was talking to Cathy before Ms. Abrams came.
11 Ms. Abrams drove up while I was talking to Cathy.

12 Q. No. Ms. Abrams testified she didn't even see you
13 when she drove up, that you were up on the porch.

14 A. No, sir, I was standing in the yard.

15 Q. By Cathy?

16 A. Standing between Cathy.

17 Q. With the gun in your hand?

18 A. Yes.

19 Q. And Ms. Abrams still came up there and knelt down
20 beside Cathy?

21 A. Yes. I was standing from Cathy when Ms. Abrams
22 came, staring at Jack and them. Ms. Abrams asked me had I
23 called 911, and I said yes.

24 Q. So you are saying after the second bullet went into
25 Cathy's body and went through her aorta, which was just

LEROY ARCHIE - CROSS BY MR. MCELHANNON

1 pumping blood like the doctor testified yesterday, that she
2 was still cussing you?

3 A. The second shot Cathy was coming -- the first shot
4 Cathy was coming at me beating with her fist. The second shot
5 Cathy was still coming after me, cursing me. I went back into
6 the house. Jack had ran back into the house. I ran back into
7 the house to call Duke, to call 911.

8 Q. And after you came back out, for several minutes?

9 A. Yes.

10 Q. Cathy had been on the ground for several minutes?

11 A. Cathy had come up on the right side of the porch and
12 went over on the left side of porch when I came back out.

13 Q. And had collapsed in the yard?

14 A. Yes.

15 Q. With her aorta having been shot?

16 A. She was still talking.

17 Q. Still talking after several minutes?

18 A. I told her that I had called 911. That help was on
19 the way.

20 Q. And then law enforcement shows up -- well, first,
21 how about Pete Watts? He showed up, didn't he?

22 A. Pete Watts, I never saw him.

23 Q. But he saw you, didn't he?

24 A. He said he did in court yesterday.

25 Q. And he heard dry firing?

LEROY ARCHIE - REDIRECT BY MR. POTTER

1 A. He said he did yesterday.

2 Q. And he saw you bend down close to her head and shoot
3 her a third time?

4 A. That's what he said, I heard him say yesterday. To
5 my knowledge, I never know Cathy was shot the third time.

6 Q. You didn't know you shot her the third time?

7 A. No, until I read my statement.

8 Q. Isn't it true that you thought she was still alive
9 after those first two shots when you came back out? You shot
10 her a third time so she couldn't tell the police what really
11 happened that day?

12 A. No, I did not.

13 Q. You wanted to make sure she was dead, didn't you,
14 Mr. Archie?

15 A. No, I did not.

16 Q. You wanted to make sure she was dead?

17 A. No, I did not, sir.

18 MR. MCELHANNON: That's all the questions I have.

19 THE COURT: Re-examine?

20 REDIRECT EXAMINATION

21 BY MR. POTTER:

22 Q. Mr. Archie, did you have any other choice but to
23 pull that trigger?

24 A. I didn't have no other choice. I was trapped
25 between Cathy and her son, Jack.

1 MR. POTTER: No further questions. Thank you.

2 THE COURT: All right. You may step down.

3 MR. POTTER: Your Honor, we rest.

4 THE COURT: Any reply?

5 MR. MCELHANNON: No reply.

6 THE COURT: Madam forelady and ladies and gentlemen
7 of the jury, that completes the testimony and other evidence
8 in this case. We still have the argument by counsel and then
9 we have the charge on the law applicable to this case. That
10 will probably take some time. And after that is when the case
11 will be given to you for your consideration. As I say, that
12 will take some time.

13 So what I'm going to suggest is that you take a
14 short recess at this time then we'll come back and we'll
15 complete the trial of the case. But, again, please do not
16 undertake discussion of the case among yourselves. Very good.
17 You may retire to the jury room.

18 Everyone else remain seated while the jury retires
19 from the jury room.

20 (WHEREUPON, the jury leaves the courtroom at
21 approximately 11:08 a.m.)

22 THE COURT: All right. Anything from the State?

23 MR. MCELHANNON: Nothing from the State.

24 THE COURT: From the defendant?

25 MR. POTTER: Nothing, Judge.

1 THE COURT: All right. Take your time. I'm going
2 let them as soon as they are ready to come back so you might
3 want to stay close to the courtroom. All right. Very good.
4 We'll wait until the jury is ready to come back. We'll stand
5 at ease.

6 MR. POTTER: Judge, are we going to take up any
7 instructions at this time?

8 THE COURT: Yes, we could. That would be good if we
9 could.

10 Well, let's take a short break then we'll do that.

11 (WHEREUPON, a brief recess was taken.)

12 THE COURT: The State ready to proceed?

13 MR. MCELHANNON: Ready to proceed, Your Honor.

14 THE COURT: The defendant ready to proceed?

15 MR. POTTER: Yes, Your Honor.

16 THE COURT: We've had an informal charge conference
17 but are there any particular charges that the State wants?

18 MR. MCELHANNON: No, Your Honor.

19 THE COURT: From the defense?

20 MR. POTTER: Judge, we would ask for self defense
21 instruction.

22 THE COURT: Let me just go through them again so we
23 understand what I will be charging. The general credibility
24 of the witnesses. We do have expert witnesses.

25 I'll charge prior record of the defendant is to be

1 considered only as to credibility. Presumption of innocence,
2 reasonable doubt, direct and circumstantial evidence, criminal
3 intent, statement of the defendant. Now, that's going to be
4 the long one because this is when the jury has to determine it
5 from reasonable doubt -- beyond a reasonable doubt.

6 Multiple indictments. The charge on murder,
7 possession of a firearm during the commission of a violent
8 crime, where I do define murder as a violent crime.

9 And then self defense, the Court's elements they are
10 without fault, contentious language, which a reasonable person
11 would expect to bring upon a physical encounter and which did
12 actually contribute to the physical encounter.

13 And then imminent danger, right to act upon
14 appearances, words accompanied by hostile acts, prior
15 difficulty, size and age. Now, in this case we have the size
16 of the defendant, his testimony, but do we have anything about
17 the victim?

18 MR. POTTER: Yes, Your Honor. The pathologist did
19 testify that her size was 300 pounds and 6 feet tall.

20 THE COURT: 300 pounds and 6 feet tall?

21 MR. POTTER: Yes, sir.

22 THE COURT: All right. Prior violence by the
23 victim, threats by the victim, no other way to avoid danger,
24 duty to retreat, degree of force, and then finally reasonable
25 doubt as to not only each element of the offenses charged but

1 also self defense.

2 Now, that's all I have. Anything else from the
3 State?

4 MR. MCELHANNON: Nothing from the State, Your Honor.

5 THE COURT: Anything from the defendant?

6 MR. POTTER: Nothing, Your Honor.

7 THE COURT: All right. Is the jury ready?

8 THE BAILIFF: Yes, sir.

9 THE COURT: All right. Ask the jury to join us,
10 please.

11 (WHEREUPON, the jury enters the courtroom at
12 approximately 11:28 a.m.)

13 THE COURT: Let the record reflect the jury is in
14 the jury box.

15 Madam forelady, ladies and gentlemen of the jury, as
16 I mentioned earlier this is the final stages of the trial of
17 the case. First we'll have argument by counsel with the State
18 going first, then the defendant will argue and then the State
19 will close. Following the closing statement -- argument,
20 rather, by the State the Court will charge you on the law
21 applicable to the case and then it will be given to you for
22 your deliberations.

23 I recognize the solicitor.

24 MR. MCELHANNON: Your Honor, the State waives.

25 THE COURT: The State wishes to waive its opening

1 statement.

2 MR. POTTER: Judge, I'd ask you to allow him to go
3 ahead and go forward.

4 THE COURT: All right. The State will.

5 MR. MCELHANNON: Your Honor, may we approach?

6 THE COURT: Certainly.

7 (WHEREUPON, a bench conference was had.)

8 MR. MCELHANNON: May it please the Court?

9 THE COURT: Yes, Solicitor.

10 MR. MCELHANNON: Ladies and gentlemen, when I first
11 started this I told you this was a murder over personal
12 property, or a TV. I believe all the evidence showed that's
13 what this was about.

14 On August 22nd, 2005 Leroy Archie shot Cathy
15 Galloway three times. The first shot apparently did not
16 actually kill her. The second shot, which was a defensive,
17 she had her hand up trying to block Mr. Archie from shooting
18 her again, that according to the pathologist was the fatal
19 shot that went through her arm down into her thorax, nicking
20 her aorta and she bled to death.

21 Ten minutes went by. Everything was happening. You
22 all heard the 911 tape. That took 10 to 11 minutes.
23 Mr. Archie was in the yard pacing. Pacing, back and forth,
24 going up on the porch, coming back down.

25 As law enforcement arrives he's over her again

1 pulling the trigger. You heard two or three witnesses testify
2 they heard dry firing, clicking. He was pulling that trigger
3 and he pulled it until it went off again the third shot
4 hitting her in the jaw.

5 Now, I've told you that he is guilty of murder.
6 Murder is the killing of another willfully, feloniously and
7 with malice aforethought. Malice can be implied or inferred,
8 and malice can be shown right at the instance that this
9 incident happens or it can be shown ahead of time.

10 This was malicious. He had Ms. Galloway down on the
11 ground. Helen Abrams said when she came up to her she was
12 gurgling, she was nonresponsive, her eyes rolled back in her
13 head. He comes back down. Ms. Abrams runs off because she
14 sees the gun still in his hand.

15 Pete Watts, who has driven up with his wife at this
16 time, sees Leroy Archie bend down close to her and hears the
17 clicks and hears the third shot.

18 Now, you can take what the witnesses say and you
19 have to judge their credibility. The witnesses that the State
20 put up, they don't have a dog in this fight. They were just
21 observers. They saw what happened, they heard what happened.
22 So they don't really have any reason to get up here and lie.
23 We submit to you that what they told you was the truth.

24 However, Mr. Archie, he does have a reason to lie.
25 And I think when you go back in the jury room and deliberate,

1 and you'll have his two statements, I would ask that you
2 please take the time to go through both of those statements
3 and see the discrepancies in both of them. He's all over the
4 place. The day that it happened he says one thing about where
5 Cathy was and where Jack was and what they were doing. Two
6 days later, after he's thought about it awhile, he has a
7 different story.

8 You heard Jack Galloway, and he told you, he's in
9 federal prison for dealing drugs. That's what -- can't help
10 that. He's in prison. But he told you that Leroy Archie had
11 shut that front door when he went out following Cathy out and
12 Jack was going back to his bedroom. And he heard gunshots,
13 and he opened the door and he saw Leroy Archie chasing Cathy
14 Galloway up toward the porch. He shut the door, locked it and
15 ran off the side porch.

16 Jack's girlfriend, Kathy Wilkes, told you the same
17 thing. She was in the house, and it was surprising because
18 Jack ran out of the house without her. She was still in the
19 house and heard Leroy Archie come up and try to get back in
20 the door. She heard the doorknob turning.

21 At that point, she grabs the portable phone and runs
22 out of the house the same way Jack went. So for Leroy Archie
23 to get up here and tell you that Jack was still in the house
24 when he came in the house with a loaded gun and Jack was still
25 cussing him and saying he was going to fuck him up, a man with

1 a loaded gun who you just seen shoot your mother and you're
2 not armed, it doesn't make sense. And it doesn't make sense
3 because it's not true.

4 You heard the 911 tape. Who was the first person
5 that called? That was Jack Galloway. He's down at the corner
6 of Refuge Road and Scott Circle. He had had to flag a car
7 down and borrow the man's cell phone to make that call, and
8 today Leroy Archie wants you to believe that Jack had time to
9 call three of his friends to come from God knows where with
10 guns to come into that neighborhood.

11 And today is the first day that Leroy Archie has
12 ever mentioned Jack Galloway with a gun and three of his
13 friends. He didn't tell the police that. That's not in
14 either statement. So he's made that up over the year that
15 this happened. He thought I better have a better story.
16 Jack had a gun now. But in either statement he says neither
17 one of them were armed. He was afraid Jack had beat him up
18 before so he was afraid Jack was going to jump on him. He
19 didn't say he had a gun.

20 Law enforcement, I don't know how many law
21 enforcement cars showed up that day. Right after this
22 happened, you heard the deputy up here who actually came
23 around the trees and heard the clicking before he came around
24 the trees, and then when he finally got into sight saw
25 Mr. Archie standing just a couple of feet from Cathy

1 Galloway's head and pull the trigger, and it went off. And he
2 was yelling drop it, drop it, drop it. And Mr. Archie went
3 ahead and fired and then dropped it. That was the testimony.
4 That officer has no reason to lie.

5 But if Jack Galloway -- I guarantee you this, if
6 Jack Galloway had come up into that yard or near that yard
7 with a gun in his hand with all that law enforcement around he
8 would have been on the ground face first and they would have
9 been taking that gun from him.

10 So that just doesn't make sense that Mr. Archie when
11 he was firing that shot to scare Jack Galloway off, because he
12 was standing right there with a gun, the deputy was right
13 there, and the deputy said that Jack Galloway nor Cathy
14 Galloway were armed. So he's made that up in the meantime.

15 The callousness of this is that, there again, 10 to
16 11 minutes went by between the second shot and the third shot.
17 And you heard the doctor testify to say that someone with that
18 much blood coming out of the aorta could not have walked more
19 than, in his estimation, 10 and then at the most 20 feet
20 before collapsing.

21 So for Leroy Archie to get up here today and say
22 that after he shot her twice and went into the house and
23 called his friend, Duke, and said I just shot Cathy, then he
24 comes back out and she's still cussing at him after she's
25 laying in the yard, she's still cussing him?

1 And I want you to, there again, look at these
2 statements because he actually says in one, in the statement
3 of August 22nd, the first statement after he called Duke, told
4 him he had shot Cathy, he said I went back outside and told
5 Cathy to quit cussing me because I done called the rescue
6 squad. Now, keep in mind this is when she's on her back after
7 being shot twice. And he says she kept calling me all kinds
8 of names and stuff so I shot her again.

9 Today on the stand he says he didn't shoot her
10 again. He didn't remember shooting her again, but in his
11 statement that day he says, so I shot her again. And you know
12 what? He goes on. The next sentence is she stopped cussing
13 me after I shot her again. That's why he shot her the third
14 time. She kept cussing at him, according to him.

15 I'm going to submit to you that the reason he shot
16 her a third time was he saw Helen Abrams who came up, and if
17 you remember Helen Abrams' testimony she did not see Leroy
18 Archie at first when she went in the yard. She went and saw
19 Cathy Galloway laying there. She went up to see if she could
20 help her. At that point, she saw Leroy Archie coming off the
21 porch and noticed he had a gun in his hand so she ran.

22 Mr. Archie thought, I'm going to submit to you, that
23 Helen Abrams -- that Cathy was still alive and Helen Abrams
24 was going to help survive this and Cathy might be able to tell
25 the police exactly what had happened, so he was going to end

1 that. And he went over her and stood over her and put that
2 third bullet in her head, and that's why he did that.

3 And for him to get up here today and say he doesn't
4 remember it, well he remembered it the day it happened. He
5 remembered shooting her and her not cussing him anymore that
6 day, but today he doesn't remember it.

7 You heard his own witness today, Mr. Johnson, say
8 that years before -- a couple of years before this happened,
9 or several years before this happened that they were mad and
10 that they had come up there to his house because Mr. Archie
11 had been telling lies, been telling lies, even back then on
12 Cathy and Mr. Johnson, and Mr. Johnson was mad about it. And
13 it took him awhile, apparently, to fess up to the lies, and
14 Cathy was mad about that.

15 I'm going to get a chance to talk to you one more
16 time after the defense counsel does, and I'll bring up just a
17 few more points. But I want to go ahead and tell you that we
18 thank you, the State thanks you, Ms. Galloway's family thanks
19 you for taking the time to be here this week. This is a very
20 important case. It's Ms. Galloway's day in court.

21 And I think that when you render your verdict, which
22 I told you from the start will be to speak to truth, I think
23 when you put all the pieces together that the truth is going
24 to come from that stand. It's going to come from the State's
25 side with those witnesses who don't have anything to gain by

1 testifying, and I think the truth is going to be that
2 Mr. Archie committed murder. He killed Cathy Galloway for no
3 reason, and he's also guilty of possession of a firearm during
4 the commission of a violent crime. Thank you.

5 THE COURT: Mr. Potter?

6 MR. POTTER: Thank you, Your Honor. May it please
7 the Court.

8 Leroy is trapped. The evidence and testimony shows
9 that. The testimony shows there was prior violence between
10 Leroy and Cathy. You heard the testimony of Mr. Johnson
11 indicating that he was sitting in the car and Cathy was
12 outside the car hitting him, hitting him in the face.

13 You have testimony before you that shows that there
14 was an assault on the job, and Cathy was fired because of
15 that. You have testimony of Leroy showing up at work with
16 bruises and injuries to his face, to his ribs, his arm in a
17 sling. There's prior violence between them. This lady was
18 300 pounds, 6 foot tall. Leroy is 150 some odd pounds. She
19 didn't have a weapon, but her weapon were her fists.

20 The doctor testified that at first this was a
21 defensive wound but then he admitted well, yeah, that's a fist
22 that could be raised in anger, that's a fist that could be
23 used as a weapon, a fist that could do damage.

24 Leroy was trapped. He had no alternative. He had
25 no choice. The day the shooting happened Leroy left the house

1 to get away from Jack. Cathy was in the car. She chose to
2 stop, pull forward, park her car, get out of that vehicle and
3 come towards him because she wasn't done with him. She was
4 coming towards him to finish, to hit him, to hurt him, perhaps
5 kill him, and he has a right to protect himself.

6 And Judge Macauly is going to instruct you on that.
7 The burden is on the State to show that self defense wasn't
8 there. Leroy testified that he was trapped. Leroy testified
9 he had no alternative, he had no choice.

10 When you go back into the jury room look at the
11 evidence, read the statements, respect each other's opinion,
12 talk it out, and I believe when you evaluate the evidence and
13 the testimony and the history between Cathy and Leroy you'll
14 understand why he chose to protect himself that day and that
15 self defense was the appropriate choice, and find him not
16 guilty. Thank you.

17 MR. MCELHANNON: This is going to be brief. If you
18 do in some way believe this was any type of self defense you
19 would have to also consider part of the self defense is that
20 the accused, the defendant had no other way to avoid this or
21 had no other option.

22 Mr. Archie, if you do buy that self defense
23 argument, he didn't fire any type of a warning shot, he didn't
24 say you better stop or I'm going to shoot, and he didn't shoot
25 Jack Galloway, who is the one that he was afraid of.

1 He actually, I don't believe ever testified that he
2 was afraid of serious bodily harm from Cathy Galloway. He was
3 afraid of Jack. He had a chance to shoot Jack apparently
4 inside the mobile home, according to him, because Jack stayed
5 there, and he was unarmed. But he didn't shoot him, but he
6 shot Cathy. It doesn't make sense.

7 That's what you're going to have to do. You are
8 going to have to use common sense in rendering a verdict. And
9 one old common sense saying is you don't take a knife to a gun
10 fight. Well, I think even more common sense is you don't take
11 your fist to a gun fight.

12 If Cathy Galloway saw Leroy Archie pointing a gun at
13 her he wants you to believe she kept running at him and just
14 got shot, and then continued to come at him and he shot her
15 again. That doesn't make sense. That's not common sense.

16 You have to remember too that Leroy Archie bought
17 this gun 5 days before he did this shooting. He had been with
18 Cathy Galloway for 18 years and never needed a gun. Jack had
19 been living in the house and he wasn't afraid enough to get a
20 gun before this.

21 He bought it 5 days before this and he used it on
22 Cathy because they were separating, they were splitting up
23 property and he couldn't handle it. He snapped. He just
24 snapped. Look at both of his statements, and that's the only
25 thing that's going to be considered with either one.

1 I just want to tell you briefly that these are the 2
2 statements. These are the various lies that are in both of
3 them. Statement of 8-22, bought the gun from a Herman
4 Alexander; 8-24, bought the gun from Troy Verner.

5 On 8-22 Cathy was in the yard when Leroy Archie shot
6 her. He says Jack was standing on the porch when I shoot her.
7 His next statement says Cathy started coming towards me with
8 her fists but Jack kept trying to get past her. Look how
9 different that is. There's no way, that either Jack's on the
10 porch or he's in the yard with Cathy.

11 On 8-22 Leroy Archie went inside and called Duke
12 Williams, told him that he had shot Cathy and call 911; 8-24
13 he went inside and called Duke and told him that he had shot
14 Cathy. He didn't tell Duke to call 911, and Duke testified to
15 that. Duke said no, he didn't tell me to call 911.

16 On 8-22 Leroy Archie said he shot Cathy 2 times, 1
17 shot before he called Duke Williams, 1 shot after he called
18 Duke Williams because Cathy still was cussing him; 8-24 Leroy
19 Archie says he shot Cathy 2 times, both shots were before he
20 called Duke Williams. It does not say he shot her a third
21 time.

22 So he in this statement he says he didn't even
23 shoot her again after he came back out of the house after he
24 called Duke. And he says that he had already called the
25 rescue squad but Cathy was still yapping, still yapping, so.

1 he shot her again.

2 And the only thing that is consistent in both
3 statements is you'll see he says I just snapped. I just
4 snapped. So there again I'm going to submit to you that this
5 is a case of murder. She was unarmed. It's not self defense.
6 He was chasing Cathy Galloway around the yard. She wasn't
7 chasing him. Jack testified to that. His story -- or his
8 stories just don't pan out.

9 So I'm going to trust your judgment. I know you'll
10 do a great job. But do take your time going through the
11 statements and the other evidence which will be submitted to
12 you, the pictures, you'll have everything back there. If you
13 want to listen to the 911 tape again it won't be back there
14 with you but you are entitled, I believe the Judge will tell
15 you to come back out here and listen to it, and you can view
16 any evidence that is submitted.

17 So, again, from the Galloway family, friends we
18 thank you.

19 THE COURT: Madam forelady, ladies and gentlemen of
20 the jury, as jurors in this case you have certain functions
21 and responsibilities to perform which are entirely separate
22 and distinct from those of mine as the trial judge.

23 I am prohibited by the Constitution of our State in
24 charging you on the facts of this case. I am also prohibited
25 from discussing the facts of the case with you or in any way

1 intimating what my feelings, if any, are about the facts of
2 this case. It is your responsibility and yours alone to pass
3 upon all issues of fact presented in the case.

4 I would therefore charge you that if during the
5 course of the trial or during my charge you are given or left
6 with the impression or feeling that I do have a personal
7 feeling about the facts of the case I would specifically
8 instruct you to disregard that feeling or impression.

9 Moreover, you are the sole judges of what the
10 testimony was and not the argument of counsel.

11 It is also your duty and yours alone to weigh the
12 testimony and evidence in the case and pass upon the
13 credibility or believability of the witnesses. In this
14 connection you have the right to believe all that a witness
15 tells you or disbelieve all that a witness tells you. You
16 have the right to believe a part of what a witness tells you
17 and disbelieve a part of what a witness tells you.

18 You have the right to take into conversation any
19 bias or prejudice or interest you feel a witness might have in
20 the case. I say this merely to emphasize that the weight you
21 see fit to give to the testimony or to the credibility of the
22 witnesses, as well as all issues of fact are for your sole
23 determination.

24 As judges of the facts you are the sole judges of
25 the credibility, that is the believability of the witnesses

1 who have testified in this case. In passing upon their
2 credibility you may take into consideration many things such
3 as the appearance and manner of the witness on the stand,
4 sometimes referred to as the demeanor of the witness. Was the
5 witness forthright or hesitant? Was the witness's testimony
6 consistent or did it contain discrepancies? What was the
7 ability of the witness to know the facts about which he or she
8 testified? Did the witness have a cause or a reason to be
9 bias and prejudiced in favor of the testimony he or she gave?
10 Was the testimony of the witness corroborated or made stronger
11 by other testimony and evidence or was it made weaker or
12 impeached by such other testimony and evidence.

13 As jurors you have the right to believe a small
14 portion of a witness's testimony and discard the larger, or
15 vica versa. You may believe all of a witness's testimony or
16 none. You may believe the testimony of a single witness
17 against that of many witnesses or the other way around.

18 Most certainly you do not determine the matter of
19 credibility or believability by counting up the number of
20 witness who may have testified on behalf of the parties.

21 Now, the rules of evidence ordinarily do not permit
22 witnesses to testify to opinions or conclusions. Exception to
23 this rule exists for witnesses we call expert witnesses. A
24 witness who by education and experience has become an expert
25 in some art, science or profession may give an opinion as to

1 the subject the witness claims to be an expert in. They may
2 also give the reasons for the opinion.

3 You should consider any expert opinion given by a
4 witness, and like any other evidence give it the weight you
5 think it deserves. If you decide that an expert witness's
6 opinion is not based on sufficient education and experience or
7 if you decide that the reason given in support of the opinion
8 are not sound or that the opinion is outweighed by other
9 evidence you may disregard the opinion entirely.

10 An expert witness's testimony is to be given no
11 greater weight than any other witness simply because the
12 witness is an expert, and you do not have to accept an
13 expert's opinion even though it is uncontradicted.

14 You've heard testimony -- excuse me. You have heard
15 evidence that the defendant was convicted of a crime other
16 than the ones for which the defendant is now on trial. This
17 evidence may be considered by you, if you conclude that it's
18 true, only in deciding whether the defendant's testimony is
19 believable, and for no other reason or purpose. You must not
20 consider the defendant's prior record as any evidence of the
21 defendant's guilt of the charge we are trying today.

22 Remember, you are the sole judges of the facts in
23 this case and of the believability of any and all of the
24 witnesses. Throughout this entire process you have but one
25 single objective and that is to seek the truth regardless from

1 what witness the testimony may have come.

2 Now, madam forelady, ladies and gentlemen of the
3 jury, by the same constitution and law which makes you the
4 finders of facts and the evidence as I discussed with you I
5 am, as the judge, made the sole and only instructor of the
6 law. You must accept as correct the law which I charge and
7 apply to it the evidence as you find it and reach your
8 verdict.

9 If I should make an error in the law as I instruct
10 it to you there is another time and place for that error to be
11 considered and, if necessary, corrected. But for the purposes
12 of this case today you must accept the law as I charge it to
13 you to be the correct law.

14 Now, the defendant has pled not guilty to this
15 indictment and to both counts in the indictment. And that
16 plea puts the burden on the State to prove the defendant
17 guilty. A person charged with committing a criminal offense
18 in South Carolina is never required to prove himself innocent.

19 I charge you that it is an important rule of law
20 that the defendant in a criminal trial no matter what the
21 seriousness of the charge may be will always be presumed to be
22 innocent of the crime for which the indictment was issued
23 unless the guilt has been proven by evidence satisfying you of
24 that guilt beyond a reasonable doubt.

25 This presumption of innocence does not end when you

1 begin your deliberations, but it accompanies the defendant
2 throughout the trial until you reach a verdict of guilt based
3 upon evidence satisfying you of that guilt beyond a
4 reasonable doubt.

5 Presumption of innocence is a robe of righteousness
6 placed about the shoulders of the defendant which remains with
7 the defendant until it has been stripped from the defendant by
8 evidence satisfying you of the defendant's guilt beyond a
9 reasonable doubt.

10 Presumption of innocence is not mere legal theory,
11 it is not just a legal phrase. It is a substantial right to
12 which every defendant is entitled to unless you, the jury, are
13 satisfied from the evidence of the defendant's guilt beyond a
14 reasonable doubt. A reasonable doubt has been defined as the
15 kind of doubt that would cause a reasonable person to hesitate
16 to act.

17 Now, there are two types of evidence generally
18 presented during a trial, direct evidence and circumstantial
19 evidence. Direct evidence is the testimony of a person who
20 claims to have an actual knowledge of a fact, such as an
21 eyewitness. It is evidence which immediately establishes a
22 main fact to be proven.

23 Circumstantial evidence is proof of a chain of facts
24 and circumstances indicating the existence of a fact. It is
25 evidence which immediately establishes collateral facts from

1 which the main fact may be inferred.

2 Circumstantial evidence is based on inferences and
3 not on personal knowledge or observation. It is proof that
4 does not actually establish the fact in question but dissects
5 or describes something else from which you may either
6 reasonably infer the truth of the fact or at least reasonably
7 infer increase in the probability of the fact is true.

8 Circumstantial evidence can be sufficient to warrant
9 the finding of a fact. The circumstances must lead to that
10 facts that reasonable certainty. The facts and circumstances
11 should be considered in light of ordinary experience and
12 common sense. The existence of a fact cannot be raised or
13 based on speculation, surmise or conjecture.

14 The law makes absolutely no distinction between the
15 weight or value to be given to either direct or circumstantial
16 evidence, nor is there a greater degree of certainty required
17 of circumstantial evidence than of direct evidence.

18 Now, criminal intent is a state of mind that
19 operates jointly with an act or omission in the commission of
20 a crime. Criminal intent is a mental state. Intent includes
21 those consequences which represent the very purpose for which
22 an act is done or known to be substantially certain to result
23 regardless of desire.

24 Criminal liability is normally based upon
25 concurrence of two factors, an evil meaning mind and an evil

1 doing hand. A person who causes a particular result is said
2 to act purposely for if he consciously desires that result,
3 whatever the likelihood of the result happening from his
4 conduct. The person is said to act knowingly if he is aware
5 that the result is particularly certain to follow from his
6 conduct, whatever his desire may be as to that result. Proof
7 of intent necessarily rests from inference to conduct.

8 Now, a statement of -- in fact, two statements of
9 the defendant have been introduced into evidence. While the
10 Court determines the admissibility of the evidence you, the
11 jury, must determine the existence of the voluntariness of
12 weight of any alleged statements made by the defendant. You
13 must make the ultimate determination of whether or not the
14 defendant made the alleged statement.

15 If you determine the defendant made that statement
16 you must then determine whether the statement was made
17 voluntarily. Finally, you must decide what weight, if any,
18 that should be given to any alleged statement.

19 You must determine whether the alleged statement was
20 a product of an essentially free and uncontrolled or
21 unconstrained choice by its maker. The State must prove the
22 voluntariness of the statement beyond a reasonable doubt.

23 If you determine beyond a reasonable doubt the
24 statement was given freely and voluntarily then you may give
25 the statement such further consideration as you deem proper.

1 If you determine that the alleged statement was not
2 the free and voluntary willed expression of the defendant then
3 you should not consider the statement as evidence.

4 In determining whether the defendant's will was
5 overcome in obtaining the statement the law requires you to
6 consider what is known as the totality of the circumstances.
7 You should consider both the characteristics of the defendant
8 and the circumstances surrounding any questioning or
9 interrogation.

10 Some of the factors the law says you may consider
11 are the age of the defendant, the defendant's educational
12 background, the defendant's mental ability or capacity and the
13 defendant's background, along with all other facts and
14 circumstances surrounding the making of the alleged statement.

15 In determining the voluntariness of any alleged
16 statement you should consider whether the defendant was
17 advised of and understood his or her constitutional rights.

18 The law requires that before any interrogation or
19 questioning of a person in custody may begin law enforcement
20 must advise the accused of his Miranda rights. This means
21 that the authorities advise the accused that the accused has
22 the right to remain silent, that any statement could be used
23 against the accused in a court of law, that the accused has a
24 right to have a lawyer present and that if the accused cannot
25 afford a lawyer that a lawyer would be appointed to represent

1 him without any cost, and that the accused could stop making a
2 statement at any time.

3 Other factors to consider are the place and length
4 of any detention and the nature of the questioning. You must
5 carefully scrutinize all of the surrounding circumstances
6 before you give any weight to an alleged statement. You must
7 be satisfied beyond a reasonable doubt that the statement was
8 made by the defendant uninfluenced by promise of reward or
9 threat of harm.

10 If you find beyond a reasonable doubt any alleged
11 statement was given voluntarily then you must decide what
12 weight, if any, you should be given this statement. If you
13 find the statement was not voluntary then in that event you
14 must not consider the statement as evidence for any purpose.

15 Now, the indictment in this case alleges 2 different
16 offenses against the defendant. The charges are in indictment
17 number 2005-GS-04-2826, count 1, murder; and count 2,
18 possession of a firearm during the commission of a violent
19 crime. Each count charges a separate and distinct offense.
20 You must decide each count of the indictment separately on the
21 evidence and the law applicable to it, uninfluenced by
22 decision as to any other indictment.

23 The defendant may be convicted or acquitted on 1 or
24 both of the offenses charged. You will be asked to write a
25 separate verdict of guilty or not guilty for each indictment.

1 I will remind you that the fact that the defendant
2 was arrested, charged and indicted in this case is not
3 evidence in this case and cannot be considered by you as
4 evidence of guilt in this case; nor does it create any
5 presumption of inference of guilt. The indictments are simply
6 the formal written instruments which contain the charges made
7 against the defendant. They are the formal documents by which
8 the cases are brought into Court.

9 Now, the defendant, Leroy Archie, is charged with
10 murder. To prove murder the State must prove beyond a
11 reasonable doubt that the defendant killed another person with
12 malice aforethought. Malice is hatred, ill will, hostility
13 towards another person. It is the intentional doing of a
14 wrongful act without just cause or excuse and with the intent
15 to inflict an injury or under the circumstances that the law
16 will infer an evil intent.

17 Malice aforethought does not require that malice
18 exists for any particular time before the act is committed but
19 malice must exist in the mind of the defendant just before and
20 at the time the act is committed. Therefore, there must be a
21 combination of previous evil intent and the act.

22 Malice aforethought may be express or inferred.
23 These terms express and infer do not mean different kinds of
24 malice but merely the manner in which malice may be shown to
25 exist. That is either by direct evidence or by evidence from

1 the facts and circumstances which are proved.

2 Express malice is shown when a person speaks words
3 which express hatred or ill will for another, or when the
4 persons prepared beforehand to do the act which was later
5 accomplished. For example, lying in wait for a person or
6 any other acts or preparation going to show that the deed was
7 within the defendant's mind would be express malice.

8 Malice may be inferred from the conduct showing a
9 total disregard for human life. Inferred malice may also
10 arise when the deed is done with a deadly weapon.

11 A deadly weapon is any article, instrument or
12 substance which is likely to cause death or great bodily harm.
13 Whether and instrument has been used as a deadly weapon
14 depends upon the facts and circumstances of each case.

15 The following are examples of instruments which may
16 be deadly weapons; a pistol, a shotgun, a rifle, a dirk, a
17 dagger, a knife, a slingshot, metal knuckles, a razor,
18 gasoline or fireball or Molotov cocktail and lighter fluid. A
19 gun may be a deadly weapon even if not operating.

20 The defendant, Leroy Archie, is charged in the
21 second count of the indictment with possession of a firearm
22 during the commission of a violent crime. The State must
23 prove beyond a reasonable doubt that the defendant was in
24 possession of a firearm or visibly displayed what appeared to
25 be a firearm during the commission of a violent crime.

1 A firearm means any machine gun, automatic rifle,
2 revolver, pistol or any other weapon which will and is
3 designed to or may be ready converted to expel a projectile.

4 In order to find the defendant guilty of possession
5 of a firearm during the commission of a violent crime you must
6 first find the defendant guilty of committing a violent crime.
7 Murder is a violent crime under the law of South Carolina.

8 Now, in this case there is an issue of self defense
9 as a defense to the charge of murder. Self defense is a
10 complete defense and if it is established you must find the
11 defendant not guilty. The State has the burden of disproving
12 self defense by proof beyond a reasonable doubt.

13 If you have a reasonable doubt of the defendant's
14 guilt after considering all of the evidence including the
15 evidence of self defense then you must find the defendant not
16 guilty. On the other hand, if you have no reasonable doubt
17 of the defendant's guilt after considering all of the
18 evidence, including that of self defense, then you must find
19 the defendant guilty.

20 The following elements are required to establish
21 self defense. First, the defendant must be without fault in
22 bringing on the difficulty. If the defendant's conduct was
23 the type which was reasonably calculated to or did provoke a
24 deadly assault the defendant would be at fault in bringing on
25 the difficulty and would not be entitled to an acquittal based

1 on self defense.

2 Self defense is not available to a person who uses
3 language which is so contemptuous that a reasonable person
4 would have expected to bring on a physical encounter which did
5 actually contribute to the physical encounter.

6 The second element of self defense is that the
7 defendant was actually in imminent danger of death or serious
8 bodily injury, or that the defendant actually believed he was
9 in imminent danger of death or serious bodily injury.

10 If the defendant was actually in imminent danger it
11 must be shown that the circumstances would have warranted a
12 person of ordinary firmness and courage to strike the fatal
13 blow to prevent death or serious bodily injury.

14 If the defendant believed he was in imminent danger
15 of death or serious bodily injury it must be shown that a
16 reasonably prudent person of ordinary firmness and courage
17 would have had the same belief.

18 In deciding whether the defendant was or believed he
19 was in imminent danger of death or serious bodily injury you
20 should consider all the facts and circumstances surrounding
21 the crime, including the physical condition and
22 characteristics of the defendant and the victim.

23 The defendant does not have to show that he was
24 actually in danger. It's enough that the defendant believed
25 he was in imminent danger and a reasonably prudent person of

1 ordinary firmness and courage would have had the same belief.
2 The defendant has the right to act on appearances even though
3 the defendant's belief may have been mistaken.

4 It is for you to decide whether the defendant's fear
5 of immediate danger or death or serious bodily injury was
6 reasonable and would have been felt by an ordinary person in
7 the same situation.

8 Now, words accompanied by hostile acts may,
9 depending on the circumstances, establish self defense.
10 Evidence of prior difficulties between the defendant and the
11 victim may be considered in deciding whether the threat
12 existed, whether the defendant had reason to believe the
13 threat existed and how serious that threat was.

14 Relative sizes, ages and weights of the defendant
15 and the alleged -- of the defendant and the alleged victim may
16 be considered in deciding the apparent or actual need for
17 force and self defense and amount of force needed.

18 Prior instances of violence by the alleged victim
19 may be considered in deciding whether the victim actually
20 believed he was in imminent danger of death or serious bodily
21 injury or was actually in imminent danger.

22 Threats made by the alleged victim may be considered
23 in determining whether the defendant actually was or believed
24 he was in imminent danger.

25 The final element of self defense is that the

1 defendant had no proper way to avoid the danger of death or
2 serious bodily injury other than to act as the defendant did
3 in this particular incident.

4 If a defendant is on his own premises the defendant
5 has no duty to retreat before acting in self defense. The
6 defendant had not duty to the retreat if by doing so the
7 danger of being killed or suffering serious bodily injury
8 would increase.

9 A person cannot be required to make exact
10 calculation of the degree or amount of force which may be
11 necessary to avoid death or serious bodily harm. Therefore,
12 in self defense the defendant has a right to use the force
13 needed to avoid death or serious bodily harm.

14 The force used in self defense does not have to be
15 limited to the degree or amount of force used by the victim.
16 The victim has the right to use so much force as appeared to
17 be necessary -- excuse me. The defendant had the right to use
18 so much force as appeared to be necessary for complete self
19 protection and which a person of ordinary reason and firmness
20 would have believed to be necessary to prevent death or
21 serious bodily harm.

22 Now, the State has the burden of proving the
23 defendant guilty beyond a reasonable doubt. Some of you may
24 have heard as jurors in civil cases where you were told that
25 it is only necessary to prove that a fact is more likely true

1 than not true, such as the greater weight or the preponderance
2 of the evidence.

3 In criminal cases the State's proof must be more
4 powerful than that. It must be beyond a reasonable doubt.
5 Reasonable doubt, as I've said, is defined as the kind of
6 doubt which would cause a reasonable person to hesitate to
7 act. As stated earlier, the State has the burden of
8 disproving self defense by proof beyond a reasonable doubt.

9 If you have a reasonable doubt to the defendant's
10 guilt after considering all the evidence, including the
11 evidence of self defense than you must find the defendant not
12 guilty. On the other hand, if you have no reasonable doubt as
13 to the defendant's guilt after considering all of the
14 evidence, including the evidence of self defense then you must
15 find the defendant guilty.

16 Now, madam forelady, ladies and gentlemen of the
17 jury, you have been selected as fair and impartial jurors
18 sworn to impartially try and determine the facts of this case.
19 When you comply with your oath to do so then no one will have
20 a right to criticize your verdict and you will have fully
21 discharged your duty as jurors.

22 You should not be influenced by opinions or
23 expressions of opinion, if any, which you may have heard on
24 the outside. You are to decide this case according to
25 testimony that you have heard from the lips of sworn witnesses

1 along with the other evidence that may have been introduced.

2 You must never speculate to be true any insinuations
3 suggested by a question asked a witness. A question is not
4 evidence and may be considered only as it supplies meaning to
5 the answer.

6 As I said earlier, you are the judges of the facts
7 in this case and you are to determine only if this defendant
8 is guilty or not guilty of each of the indictments upon the
9 testimony -- each of the counts of the indictment upon the
10 testimony and evidence presented in the trial after applying
11 the law as I have given it to you.

12 If from the evidence you have reasonable doubt as to
13 whether or not the defendant is guilty it is your duty to
14 acquit him and write the two words, not guilty, on the verdict
15 form I will be giving you.

16 Under the oath you took you swore to try this case
17 based only and solely on the testimony, evidence and law
18 presented and heard in this courtroom. Your duty is to lay
19 aside all bias and prejudice or sympathy you may have in
20 reaching your verdict. You have no friends to reward or
21 enemies to punish in this case.

22 I might note that the word verdict comes from the
23 Latin term veredictum which means to speak the truth. Abide
24 by your oath and return a verdict which does speak the truth.

25 Now, madam forelady and ladies and gentlemen of the

1 jury, there are two possible verdicts in this case as to each
2 count in the indictment. I'll prepare a verdict form to send
3 to you in a few minutes, and on that form it will either have
4 we, the jury, unanimously find the defendant on the charge or
5 the count of murder guilty or not guilty; and in the second
6 count, we, the jury, unanimously find for the defendant on the
7 second count on the charge of possession of a weapon --
8 firearm during the commission of a violent crime guilty or not
9 guilty. There are two verdicts in each count that you'll have
10 to find a verdict as to each one.

11 Also, as I've said, your verdict must be unanimous.
12 That means that all 12 have to agree on that verdict, whatever
13 the verdict might be as to each count.

14 Now, with that, I'm going to ask you to retire to
15 the jury room. It will be just a few minutes. I need to take
16 up some matters with the lawyer and also prepare the verdict
17 form. And once I've done that I will send the verdict form in
18 with the exhibits.

19 When you receive -- well, I don't know. I'll tell
20 you what. We're awfully close to the time -- I'm going to ask
21 you to retire to the jury room and before you start -- do not
22 start your deliberations because I might suggest that you go
23 to lunch then come back and I'll send in the exhibits and the
24 verdict form. So let's do that. I want you to retire to your
25 jury room and do not begin your deliberations until I tell you

1 to do so.

2 Everyone else remain seated while the jury retires
3 to the jury room.

4 (WHEREUPON, the jury leaves the courtroom at
5 approximately 12:16 p.m.)

6 THE COURT: All right. Any exceptions or requests
7 from the State?

8 MR. MCELHANNON: None from State.

9 THE COURT: From the defendant?

10 MR. POTTER: None, Your Honor.

11 THE COURT: We made arrangements for the jury to go
12 to lunch. I'm going to swear the bailiffs and then let them
13 go to lunch. Then when they come back I'll bring them back
14 and be sure they get the verdict form and exhibits and
15 evidence and can start the deliberation at that time.

16 Anything from the State?

17 MR. MCELHANNON: Nothing from the State.

18 THE COURT: From the defendant?

19 MR. POTTER: Nothing.

20 (WHEREUPON, the bailiffs were given their oath.)

21 THE COURT: All right. If you would just tell the
22 jury to go with them. They are not supposed to be discussing
23 this case so be sure that they understand that. Let me know
24 if they do. Very good.

25 We'll stand at ease until if the jury returns from

1 lunch.

2 (WHEREUPON, a lunch break was taken.)

3 THE COURT: We're back on the case of State of South
4 Carolina vs. Leroy Archie. I understand the jury is back. I
5 would suggest that I will be bringing them back, telling them
6 or charging them to begin their deliberations and give them
7 the verdict form. You might want to come forward and look at
8 the verdict form and make sure it's in order.

9 (WHEREUPON, the attorneys approached the bench.)

10 THE COURT: Let's ask the jury to join us, please.

11 Anything further from the State before the jury
12 comes back?

13 MR. MCELHANNON: No, Your Honor.

14 THE COURT: From the defense?

15 MR. POTTER: No, Your Honor.

16 THE COURT: Very good.

17 (WHEREUPON, the jury enters the courtroom at
18 approximately 1:30 p.m.)

19 THE COURT: Let the record reflect the jury is in
20 the jury box.

21 Madam forelady, ladies and gentlemen of the jury, as
22 I mentioned before the lunch recess, the case will now be
23 given to you for your deliberations. And I've prepared a
24 verdict form that the bailiff has, and if you'll notice it
25 says verdict, indictment number 2005-GS-04-2826, count 1,

1 murder. And on that count 1 you have 2 verdicts. It says we,
2 the jury, unanimously find that the defendant, Leroy Archie,
3 is either guilty of murder or not guilty.

4 Whichever is your unanimous verdict then, madam
5 forelady, you will check the appropriate block there.

6 Then count 2, possession of a firearm during the
7 commission of a violent crime. We, the jury, unanimously find
8 that the defendant, Leroy Archie, is either guilty of
9 possession of a firearm during the commission of a violent
10 crime or not guilty.

11 Again, whatever is the unanimous verdict you will
12 check the appropriate box, and once you've completed the form
13 if you'd sign your name on the line provided. At that time,
14 then knob on the door and we will receive your verdict.

15 I'm going to ask you to retire to the jury room and
16 we'll be sending in the exhibits with the verdict form. As
17 soon as you get the exhibits and verdict form start your
18 deliberations. Again, remember, whatever verdict you reach
19 must be unanimous. Very good.

20 If you would, please, go with the bailiff, and it
21 will be just a minute before these things come in to you.

22 (WHEREUPON, the jury leaves the courtroom at
23 approximately 1:32 p.m.)

24 THE COURT: All right. You all look at the exhibits
25 and make sure everything is there. I'm sending the pistol

1 back but not the live rounds. In other words, 3 spent cases
2 and the 3 shots, alleged.

3 MR. MCELHANNON: I didn't introduce any live rounds
4 in evidence.

5 THE COURT: Oh, you didn't.

6 Tell them to begin their deliberations, please.

7 We'll stand at ease awaiting the jury's verdict.

8 (WHEREUPON, court was in recess while awaiting a
9 verdict from the jury.)

10 (WHEREUPON, Court's Exhibit No. 5, a note from the
11 jury, was marked at approximately 1:50 p.m. and made a part of
12 the record.)

13 THE COURT: Counsel, approach.

14 (WHEREUPON, a bench conference was had.)

15 THE COURT: All right. Bring them back, please.

16 (WHEREUPON, the jury enters the courtroom at
17 approximately 1:55 p.m.)

18 THE COURT: Madam forelady, I've received your
19 message, may we have a copy of your charges for us.

20 I should have or I can, and I'll do that now, charge
21 you that in this regard that you, nor for that matter am I
22 concerned with what the law ought to be but rather what I
23 charge you the law to be. And what I'm saying there is that
24 whatever you get as the charge on the law has to come from me.
25 In other words, it's not how you interpret the law but how I

1 -- what I give to you.

2 For that reason, I'm going to ask you, unless you
3 know now, what areas that you want recharged to you and if
4 further explanation is necessary I'll be glad to give it to
5 you just to be sure that what you receive in your
6 deliberations is what the law is and not an interpretation of
7 what should be or what you might think it is.

8 So do you have any particular areas of the law that
9 you want recharged?

10 (WHEREUPON, the forelady confers privately with her
11 fellow jurors.)

12 THE COURT: Yes, ma'am?

13 THE FORELADY: Self defense.

14 THE COURT: Self defense. All right. Is there
15 anything else? And if there's anything else let me know.
16 I'll read you the charge of self defense. If you need further
17 explanation of it I'll be glad to give that to you, too.

18 In this case, there's an issue of self defense as a
19 defense to the charge of murder. Self defense is a complete
20 defense, and if it is established you must find the defendant
21 not guilty. The State has the burden of disproving self
22 defense by proof beyond a reasonable doubt.

23 If you have a reasonable doubt of the defendant's
24 guilt after considering all of the evidence including the
25 evidence of self defense, then you must find the defendant not

1 guilty. On the other hand, if you have no reasonable doubt of
2 the defendant's guilt after considering all the evidence
3 including the evidence of self defense then you must find the
4 defendant guilty.

5 The following elements are required to establish
6 self defense. First, the defendant must be without fault in
7 bringing on the difficulty. If the defendant's conduct was
8 the type which was reasonably calculated and did provoke a
9 deadly assault the defendant would be at fault in bringing on
10 the difficulty and would not be entitled to an acquittal based
11 on self defense.

12 Self defense is not available to a person who uses
13 language which is so contentious that a reasonable person
14 would expect it to bring on a physical encounter which did
15 actually contribute to the physical encounter.

16 The second element of self defense is that the
17 defendant was actually in imminent danger of death or serious
18 bodily injury, or that the defendant actually believed he was
19 in imminent danger of death or serious bodily injury.

20 If the defendant was actually in imminent danger it
21 must be shown that the circumstances would have warranted a
22 person of ordinary firmness and courage to strike the fatal
23 blow to prevent death or serious bodily injury.

24 If the defendant believed that he was in imminent
25 danger of death or serious bodily injury it must be shown that

1 a reasonably prudent person with ordinary firmness and courage
2 would have had that same belief.

3 In deciding whether the defendant actually was or
4 believed he was in imminent danger of death or serious bodily
5 injury you should consider all the facts and circumstances
6 surrounding the crime, including the physical condition and
7 characteristics of the defendant and the victim.

8 The defendant does not have to show that he was
9 actually in danger. It is enough that the defendant believed
10 he was in imminent danger and a reasonably prudent person of
11 ordinary firmness and courage would have had that same belief.
12 The defendant has the right to act on appearances even though
13 the defendant's beliefs may have been mistaken.

14 It is for you to decide whether the defendant's fear
15 of immediate danger or of death or serious bodily injury was
16 reasonable, it would have been felt by an ordinary person in
17 the same condition.

18 Now, words accompanied by hostile acts may,
19 depending on the circumstances, establish self defense.
20 Evidence of prior difficulties between the defendant and the
21 victim may be considered in deciding whether a threat existed,
22 whether the defendant has reason to believe a threat existed
23 and how serious that threat was.

24 The relative sizes, ages and weights of the
25 defendant and the alleged victim may be considered in deciding

1 the apparent or actual need for force and self defense and the
2 amount of the force needed.

3 Prior instances of violence by the alleged victim
4 may be considered in deciding whether the defendant actually
5 believed he was in imminent danger of death or serious bodily
6 injury or was actually in imminent danger.

7 Threats by the alleged victim may be considered in
8 determining whether the defendant actually was or believed he
9 was in imminent danger.

10 The final element of self defense is that the
11 defendant has no other probable way to avoid the danger of
12 death or series bodily injury than to act as the defendant did
13 in this particular instance.

14 If a defendant is on his own premises the defendant
15 has no duty to retreat before acting in self defense. The
16 defendant has no duty to retreat if by doing so the danger of
17 being killed or suffer serious bodily injury would increase.

18 A person cannot be required to make an exact
19 calculation as to the degree or amount of force which may be
20 needed to avoid death or serious bodily injury. Therefore, in
21 self defense the defendant has the right to use the force
22 needed to avoid death or serious bodily injury.

23 Force used in self defense does not have to be
24 limited to the degree or amount of force used by the victim.
25 The defendant has the right to use so much force as appeared

1 to be necessary to complete self protection in which a person
2 of ordinary reason and firmness would have believed to be
3 needed to prevent death or serious bodily harm.

4 As stated earlier, the State has the burden of
5 proving self defense by proof beyond -- excuse me. As stated
6 earlier the State has the burden of disproving the self
7 defense by proof beyond a reasonable doubt.

8 If you have a reasonable doubt of the defendant's
9 guilt after considering all the evidence including the
10 evidence of self defense then you must find the defendant not
11 guilty. On the other hand, if you have no reasonable doubt of
12 the defendant's guilt after considering all the evidence
13 including the evidence of self defense then you must find the
14 defendant guilty.

15 Now, is there any further instruction you would like
16 to have or even an explanation of the instruction I've given
17 to you?

18 THE FORELADY: No, sir.

19 THE COURT: Very good. If you would please return
20 to the jury room and continue your deliberations.

21 (WHEREUPON, the jury leaves the courtroom at
22 approximately 2:02 p.m.)

23 THE COURT: Any exceptions or requests from the
24 State?

25 MR. MCELHANNON: No.

1 THE COURT: From the defendant?

2 MR. POTTER: None, Your Honor.

3 THE COURT: Very good. We'll stand in recess
4 awaiting a verdict.

5 (WHEREUPON, court was in recess while awaiting a
6 verdict from the jury.)

7 THE COURT: It's my understanding that the jury has
8 reached a verdict. Is there anything from the State before I
9 bring the jury back?

10 MR. MCELHANNON: No, Your Honor.

11 THE COURT: From the defendant?

12 MR. POTTER: No, Your Honor.

13 THE COURT: Ladies and gentlemen, let me make it
14 perfectly clear that when we receive the verdict from the jury
15 there is to be no outburst whatsoever. If you cannot control
16 your emotions, please leave at this time, otherwise the Court
17 will have to take action.

18 Now, I can assure you this is a very serious case,
19 it's important to everyone and should be handled and accepted
20 in a proper fashion. So therefore, no outbursts. If you feel
21 that you cannot control your emotions if you would, please,
22 retire from the courtroom at the time.

23 Very good. Thank you.

24 Ask the jury to join us, please.

25 (WHEREUPON, the jury enters the courtroom at

1 approximately 4:12 p.m.)

2 THE COURT: Madam forelady, I understand the jury
3 has reached a verdict?

4 THE FORELADY: Yes, sir, we have.

5 THE COURT: If you would, please, hand that form up
6 to the bailiff.

7 All right. Have the defendant stand, please.

8 The State of South Carolina vs. Leroy Archie,

9 indictment number 2005-GS-04-2826, count 1, murder; we, the
10 jury, unanimously find that the defendant, Leroy Archie, is
11 guilty of murder. Count 2, possession of firearm during the
12 commission of a violent crime; we, the jury, unanimously find
13 that the defendant, Leroy Archie, is guilty of possession of a
14 firearm during the commission of a violent crime. Signed Lisa
15 Gillespie, forelady, Anderson, South Carolina, September the
16 14th, 2006.

17 Madam forelady, ladies and gentlemen of the jury, is
18 this your verdict, is it still your verdict, so say you all,
19 if so, indicate by raising your right hand.

20 Very good. Let the record reflect that all members
21 of the jury responded in the affirmative.

22 Is there anything from the jury before we release
23 them, from the State?

24 MR. MCELHANNON: Nothing from the State.

25 THE COURT: From the defendant?

1 MR. POTTER: No, Your Honor.

2 THE COURT: Very good. Madam forelady, ladies and
3 gentlemen of the jury, I know that you would have rather been
4 anywhere else except where you've been the last four days.
5 However, having performed your service as jurors in this Court
6 and on this particular case I have to thank you on behalf of
7 not only Anderson County but the people of South Carolina.

8 There is no higher duty than that as a juror, and I,
9 as a gentleman once said, that no greater duty or service can
10 a citizen serve, provide for their country than in times of
11 peace than jury service.

12 If it wasn't for jurors bringing your own good
13 judgment to these cases our system would not function, and I
14 thank you for it. As I say, I know you have every other place
15 you'd rather be than here today.

16 One of the things I want to make perfectly clear,
17 though, that is a verdict of the jury is unanimous. That
18 means it is a verdict of all 12 jurors, not 1 person. So
19 therefore, none of you are responsible for the verdict
20 regardless of what that verdict might be.

21 So if you do not want to discuss that verdict with
22 anyone you do not have to, and if anyone does persist take
23 their name and provide it to the Clerk of Court and I'll take
24 the action that's necessary to see that that doesn't occur.

25 And the other thing is I wish there was something I

1 could do for you but the only thing I can say is that when you
2 were qualified you were asked, all members of the jury panel
3 were asked have you served in the last 3 years on jury duty.
4 Well, at least you won't have to serve for another 3 years.
5 But I do hope that it hadn't been without some benefit for you
6 because you have, as I say, performed your duties very
7 excellently in this case, and I thank you very much.

8 So you will now be excused.

9 Madam forelady, I do need to see you for a moment,
10 please. Come forward.

11 The others may be excused. If you'd go with the
12 bailiff.

13 (WHEREUPON, the jury was excused.)

14 THE COURT: Is the State ready to proceed?

15 MR. MCELHANNON: Yes, Your Honor.

16 THE COURT: If the defendant would come around,
17 please.

18 MCELHANNON: Your Honor, this is a life without
19 parole matter. I did serve him with notice of intent to seek
20 life without parole. I have a true copy of that. I'd like to
21 make to a Court's exhibit as well as certified copies of his
22 prior convictions.

23 THE COURT: All right. If you would, please mark
24 them sequentially with the notice first then the records,
25 certified records, chronologically.

1 (WHEREUPON, Court's Exhibit Numbers 6, 7 and 8 were
2 marked and made a part of the record.)

3 THE COURT: Is there anything else from the State?

4 MR. MCELHANNON: At the appropriate time, Your
5 Honor, I think one family member of the victim would like to
6 address the Court.

7 THE COURT: Yes, sir.

8 Now, Mr. Archie, understand that you are still under
9 oath from earlier, that you don't have to be put under oath
10 again. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I find from the affidavit of service
13 dated October the 6th, 2005 that the notice, the State's
14 notice of intent to seek a sentence of life without parole
15 dated October the 6th, 2005 was served on the defendant, Leroy
16 Archie, and upon the defendant's attorney, Andrew Potter.
17 This is Court's Exhibit 6, which is the motion of intent to
18 seek a sentence of life without parole.

19 I find from certified records of the Anderson County
20 Clerk of Court that the defendant, Leroy Archie, was sentenced
21 on April 11th, 1988 by the Honorable Frank Epps on an
22 indictment for assault and battery with intent to kill arising
23 out of an incident on August the 13th, 1987. I find that the
24 same is a most serious offense under Section 16-3-620, or as
25 16-3-620, assault and battery with intent to kill, is a most

1 serious offense under Section 17-25-45(a).

2 Also, I find that by certified copy of the records
3 of this Court dated September the 7th, 2006 that the
4 defendant, Leroy Archie, was sentenced on a plea of guilty to
5 assault and battery of a high and aggravated nature, which is
6 not a most serious offense under Section 17-25-45(a)(1).

7 All right. Mr. Potter, what do you have to say on
8 behalf of the defendant?

9 MR. POTTER: Judge, thank you. If it pleases the
10 Court. Leroy is 56 years old, born July 31st, 1950. He
11 doesn't have any children. He is a 12th grade educated
12 gentleman. He graduated high school. He lived all his life
13 here in Anderson County. Worked at West Point Stevens for
14 close to 24 years.

15 He has the 2 prior convictions, as you noted. As
16 far as I am aware those are the only 2 contacts that he's had
17 with the Court.

18 Your Honor, what I would ask you to consider is, in
19 light of the life without parole I would ask Your Honor to
20 consider his age in regards to sentencing. Apart from that, I
21 don't think there's more I can really add.

22 THE COURT: All right. Anything from the victim's
23 family?

24 MS. BLACKBURN: My name is Sheryl Blackburn, and I'm
25 the victim. That was my sister, and I would just like for you

1 to take into consideration that she had a family that loved
2 and cared about her, and every time we remember we got to
3 remember the way she left this world, and that's all we got to
4 live with the rest of our life. And my sister, no matter what
5 he said here today, she was a kind, goodhearted person and she
6 would not mess with anyone unless you mess with her. So
7 please, Your Honor, don't ever let him out of jail.

8 THE COURT: Thank you very much.

9 Anything else from the State?

10 MR. MCELHANNON: No, Your Honor.

11 THE COURT: Murder, of course, is a most serious
12 offense. Mr. Archie, anything you'd like to say?

13 THE DEFENDANT: Yes, sir. I would like to say that
14 I'm sorry for the cause of the death of Ms. Cathy Galloway.
15 I'm very sorry of it, but just trying to get away from all the
16 environments and fussing, fighting. I'm sorry for the cause
17 of her death.

18 THE COURT: Now, I understand that second count of
19 the indictment, possession of a weapon during the commission
20 of a violent offense, will be subsumed in a sentence of life
21 without parole.

22 MR. MCELHANNON: That's correct, Your Honor.

23 THE COURT: Anything else, Mr. Archie?

24 THE DEFENDANT: No, sir.

25 THE COURT: In as much as provided that upon a

1 conviction for a most serious offense, which murder is defined
2 by Section 17-25-45(c)(1), a person must be sentenced to the
3 term of imprisonment for life without the possibility of
4 parole if they have been found and had prior convictions of a
5 most serious offense, which is as found by this Court, assault
6 and battery with intent to kill.

7 The Court so finding that the defendant, Leroy
8 Archie, has been found guilty of a most serious offense,
9 murder, and has a prior conviction for assault and battery
10 with intent to kill under indictment number 1988-GS-04-590,
11 it's the sentence of the Court that the defendant, Leroy
12 Archie, on indictment number 2005-GS-04-2826, count 1, murder,
13 that the defendant be sentenced to a term of imprisonment for
14 life without parole in the State Department of Corrections.

15 On the second count of the indictment, possession of
16 a weapon during the commission of a violent offense, the
17 sentence of the Court, that the term of 5 years on that charge
18 be subsumed in the count 1 indictment for murder.

19 MR. MCELHANNON: Thank you, Your Honor.

20 MR. POTTER: Thank you, Judge.

21 THE COURT: Good luck so you, sir.

22 (WHEREUPON, the trial of this case was concluded.)

23

24

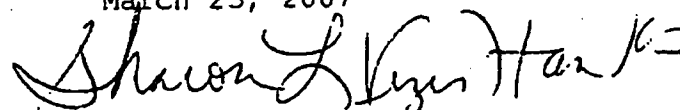
25

C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 10th 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
the evidence introduced in the trial of the captioned case in
Circuit Court on the 11th through 14th day of September 2006.

I do further certify that I am neither of kin,
counsel nor have an interest to any party hereto.

March 23, 2007


SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)

County of Anderson)Leroy Archie # 317590)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

In the Court of Common Pleas

A TRUE COPY

DEC 10 2008

Cathy M. Phillips
CLERK OF COURT

APPLICATION FOR

POST-CONVICTION RELIEF

2008-CP-04-04204

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Corr. Inst. 386 Redemption
Way, McCormick, S.C. 29379
2. Name and location of Court which imposed sentence Anderson County Court
of General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) # 2005-SS-04-2826 Murder
 - (b) Possession of a firearm during a violent crime
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 29, 2005 - Life without parole
 - (b) Five years, 11-29-05
 - (c) _____

2008 DEC 10 P 2:02

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

Direct Appeal

7. If you answered "yes" to (6), 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. Conviction Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. Unpublished Opinion No. 2003-UP-572

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) Ineffective Assistance of counsel

(b) Denial of right to effective assistance of counsel

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)
 (a) See 9(a)(b) and attachment marked 1 thru 3

(b) See Attachment marked 3, Issue VIII

(c) _____

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

(a) any petition in a State Court under South Carolina Law?

NO

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

NO

(d) any other petitions, motions or applications in this or any other Court?

NO

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

(a) the specific nature thereof:

i. _____

N/A

ii. _____

iii. _____

iv. _____

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

i. _____

N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

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

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

(a) First PCR N/A

(b) Lack jurisdiction

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes, Conviction

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? yes, Direct Appeal

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

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

- i. Andrew T. Potter, Trial Attorney, 301 Carson Rd.
- ii. Anderson, S.C. 29125,
- iii. LaNelle C. DuRant, P.O. Box 11537 Columbia, S.C. 29211

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

- i. At Trial
- ii. On Appeal
- iii. _____

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

Reverse conviction and Remand for a new trial,
Remand for resentencing

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

No

STATE OF SOUTH CAROLINA

COUNTY OF Anderson

VERIFICATION

I, Leroy Archie, 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.

Leroy Archie

Sworn to and subscribed before me

This 04 day of December 2008

Jennifer G Franklin
L.S.

Notary Public for South Carolina

My Commission Expires 01-31-2010

A TRUE COPY

DEC 10 2008

Lashly M. Franklin
CLERK OF COURT

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

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

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

Leroy Archie
Applicant

Sworn to and subscribed before me

This 04 day of December, 2008

Jennifer G Franklin L.S.

Notary Public for South Carolina

My Commission Expires: 01-31-2010

CLERK OF COURT

DEC 10 P 2:02

2008-CP-04-04204

Attachment - (1).

Answers to question 10(A) and 10(B) of the
attached application:

Issue I.

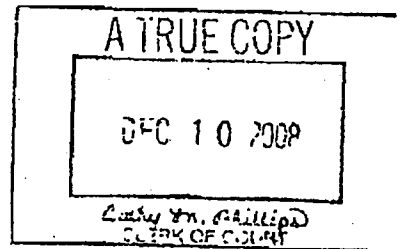
Trial Counsel ineffective in failing to object to the
prosecution use of an invalid prior conviction for
enhancement purposes wherein he was denied the
Right to Counsel.

Issue II.

Trial Counsel ineffective in failing to properly
preserve for appellate review the issue of whether
the trial Judge error in allowing the state
pathologist to give speculative testimony outside
his field of expertise.

Issue III.

Trial Counsel ineffective in failing to Request for jury
charge of lesser included offense of manslaughter
where such was warranted base on the circumstances



FILED-CLERK'S OFFICE
APPELLATE DIVISION
2008 DEC 10 P 2:01
COMMON PLEAS AND
GENERAL SESSIONS

and Evidence of the case.

Attachment (2).

Issue IV.

TRIAL COUNSEL ineffective where doing closing summation, he fail to adequately REVIEW, Clarify, and Sum up EVIDENCE of CASE for jury consideration.

Issue V.

TRIAL COUNSEL ineffective in failing to object and/or Request for new trial base on the prosecution failure to disclose in-full the autopsy Report as it involve test showing whether or not the victim had drugs or alcohol in her system.

Issue VI.

TRIAL COUNSEL ineffective in failing to object to Judge instruction charging jury on intent where such charge impermissible Require the Jury to find intent base on knowledge and conduct of the accused, without finding the Element of intent beyond a reasonable doubt.

Attachment (3).

ISSUE VII.

Appellant Counsel on appeal was ineffective in failing to raise the issue of whether the trial Judge error in denying defense motion for directed verdict base on state failure to establish the essential elements of first degree murder beyond a reasonable doubt.

ISSUE VIII.

Applicant was Denied his Sixth Amendment Right to Effective Assistance of Counsel where trial Judge Denied his timely and legitimate Request for a Substitute Counsel.

Conclusion :

The Applicant believes that an evidentiary Hearing should be held in this matter because of the issues raised. See SHARPER V. STATE, 279 S.C. 264, 305 S.E. 2d 247 (1983). He Request for appointment of Counsel pursuant to SHARPER V. SOUTH CAROLINA, 296 F. Supp. 563 (D.S.C. 1969).

Respectfully,
 /s/ Gregory H. H. H.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 10TH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	Case No.: 2008-CP-04-4204
Leroy Archie, #317590	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND REQUEST FOR
	)	APPOINTMENT OF COUNSEL
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post conviction relief (PCR) filed December 10, 2008, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the November 2005 term of the Anderson County Grand Jury for murder (2005-GS-04-2826) and possession of a firearm during the commission of a violent crime (2005-GS-04-2826). Andrew T. Potter, Esquire, represented the Applicant. On September 11-14, 2006, the Applicant proceeded to trial and was found guilty as indicted. The Honorable Alexander S. Macaulay sentenced him to confinement for a period of life without parole.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Archie, Op. No. 2008-UP-572 (S.C. Ct. App. filed October 14, 2008.)

Attached herewith and incorporated herein by reference are the records of the

Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate court records, and the trial transcript.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to object to the prosecution use of an invalid prior conviction for enhancement purposes.
 - b. Counsel failed to properly preserve for appellate review the issue of whether the trial judge erred in allowing the state pathologist to give speculative testimony outside his field of expertise.
 - c. Counsel failed to request a lesser-included jury charge of manslaughter.
 - d. Counsel failed to adequately summarize the evidence during closing summation.
 - e. Counsel failed to object and request a new trial when the prosecution failed to completely disclose the autopsy report of the victim.
 - f. Counsel failed to object to judge's jury instruction charging the jury on intent.
2. Ineffective assistance of appellate counsel.
 - a. Appellate counsel failed to raise issue of whether the trial judge erred in denying defense motion for directed verdict based on states failure to establish the essential elements of first-degree murder beyond a reasonable doubt.
3. Trial judge erred in denying Applicant's request for substitution of counsel.

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000).

First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington,

466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), citing Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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, Id. 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.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation. Sharper, Id.

V.

The Applicant's third allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). 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). The

Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an attorney be appointed to represent the Applicant and that a hearing be held.

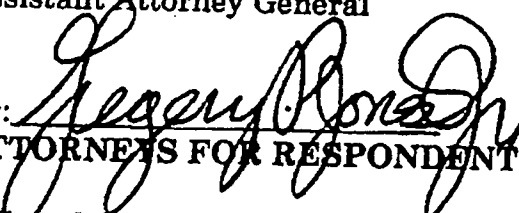
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

GREGORY P. JONES, JR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

April, 1, 2009.

State of South Carolina

County of Anderson

In the Court of Common Pleas

Leroy Archie,

Applicant,

-vs-

State of South Carolina,

Respondent.

2008-CP-04-4204

October 6, 2010

Transcript of Record

BEFORE:

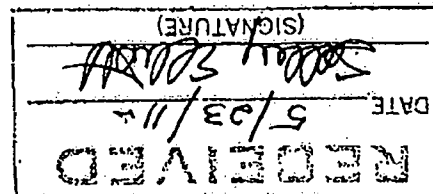
The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

J. Chris Brown, Esquire
Attorney for the Applicant

A. West Lee, Esquire
Attorney the State

Renee H. Tollison
Circuit Court Reporter



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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Andrew Potter				
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Lee	36			

<< -- >>

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EXHIBITS

No

DESCRIPTION

ID EV

No exhibits were presented during the hearing

Leroy Archie v. State of South Carolina 2008-CP-04-4204
PCR Hearing - Opening Statements (10/5/2010)

4

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had, commencing
3 at approximately 10:53 a.m.)

4 THE COURT: This is Leroy Archie?

5 MR. LEE: Yes, Your Honor.

6 This is Leroy Archie versus State of South Carolina.
7 It's 2008-CP-04-4204. It comes to the Court by way of
8 application for post-conviction relief filed December 10,
9 2008. The Applicant was indicted at the November 2005
10 term of the Anderson County Grand Jury for murder and
11 possession of a firearm during the commission of a
12 violent crime. He was represented by Mr. Andrew Potter.
13 And from September 11th to the 14th of 2006, the
14 Applicant underwent trial pursuant to which he was found
15 guilty as indicted. He was sentenced by the Honorable
16 Alexander Macaulay to confinement for a period of life
17 without parole. A timely notice of appeal was filed on
18 the Applicant's behalf, and the South Carolina Court of
19 Appeals subsequently affirmed the Applicant's conviction
20 and sentence.

21 And in his current application the Applicant alleges
22 that he's being held in custody unlawfully, generally for
23 ineffective assistance of counsel. He makes an
24 allegation of ineffective assistance of appellate counsel
25 as well, and he makes an allegation that the trial judge

1 erred in denying Applicant's request for a substitution
2 of counsel. There are some specific allegations
3 pertaining to ineffective assistance of counsel, but I
4 will turn it over to his attorney, Mr. Chris Brown, to
5 elaborate on those. Thank you.

6 THE COURT: Yes, sir?

7 MR. BROWN: Good morning, Your Honor. We do
8 have two witnesses we would call in regards to the P.C.R.
9 filing.

10 THE COURT: Okay.

11 MR. BROWN: And we'd call Attorney Potter if we
12 could to the stand.

13 THE COURT: All right.

14 ANDREW TROY POTTER,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. BROWN:

18 Q. Good morning, Mr. Potter.

19 A. Good morning.

20 Q. The summation of the case that was just presented by
21 Attorney Lee, did you find that to be accurate?

22 A. Yes. Yes, sir.

23 Q. Regarding the P.C.R. filing by Mr. Archie, have you
24 had a chance to review that motion, that filing?

25 A. The one he did pro se, yes, sir.

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1 Q. Yes. There was a subsequent amendment to that
2 P.C.R. filing as well last year.

3 A. Okay.

4 Q. And actually a second amendment was filed just
5 within the last ten days. It reiterated two of the
6 issues of the original -- the original filing. Did you
7 had a chance to see those?

8 A. I don't think I've seen any supplemental or amended
9 pleadings.

10 Q. The amended pleadings, as can be confirmed Mr. Lee,
11 just primarily dealt with ineffective counsel.

12 A. Okay.

13 Q. So are you prepared to proceed with questions along
14 those lines?

15 A. Yes, sir.

16 Q. Okay. Thank you.

17 Going back to the actual trial itself, Mr. Potter,
18 and the testimony of Jack Galloway, Antwon Jack Galloway,
19 which was the son of the victim, to the best of my
20 knowledge.

21 A. Yes, sir.

22 Q. There was a 2003 altercation that was presented --
23 that he testified about at trial involving himself and
24 Mr. Archie. And to the best of your knowledge, were
25 there any police reports or medical records submitted at

1 trial regarding that altercation?

2 A. In regards to evidence, there were -- as far as I --
3 there were no incident reports or any photographs or
4 anything like that related to that specific incident that
5 we submitted, no.

6 Q. I know there -- on your cross-examination, it was my
7 understanding that there was testimony regarding his, Mr.
8 Galloway's, Antwon Galloway's, drug use and the
9 possibility of him dealing drugs. Was there any of Mr.
10 Galloway's criminal records submitted at trial regarding
11 that matter?

12 A. A copy of the records, no, sir. No.

13 Q. Okay. So there was nothing other than the testimony
14 that he presented at trial?

15 A. Correct.

16 Q. Do you recall if there were any witnesses that could
17 substantiate those allegations?

18 A. Well, he was locked up in and he was in federal
19 custody. If I remember, this was the one who was in
20 federal custody at the time. Or was that Jack?

21 Q. This was Antwon Jack.

22 A. Okay, excuse me. I'm thinking of another witness.
23 I'm sorry. State your question again. Was there any
24 witnesses that would corroborate ---

25 Q. Were any witnesses called, to the best of your

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8

1 knowledge ---

2 A. No.

3 Q. --- to substantiate those allegations?

4 A. No, there were not.

5 Q. Okay. I believe Dayton Williams was another witness
6 that was called that had been a friend of the Defendant's
7 for a number of years. Do you recall ever interviewing
8 him or contacting him prior to trial?

9 A. I had an investigator with our office attempt to
10 make contact with him. He didn't -- never responded to
11 our attempts to contact him.

12 Q. So to the best of your knowledge, your first
13 opportunity to discuss this incident with him would have
14 been at trial on cross-examination?

15 A. Correct. We made some attempts to try to contact
16 him. He wouldn't cooperate. We were unable to get in
17 touch with him.

18 Q. Okay. During the course of the Defense's case,
19 there were two witnesses that were called, Ms. Patricia
20 Martin and Mr. James Johnson.

21 A. Yes, sir.

22 Q. Both of which it appeared had worked with the
23 Defendant, possibly the victim, Ms. Galloway, as well.
24 And their testimony surrounded their working relationship
25 with them; is that correct?

1 A. If I remember correctly, the purpose of the
2 testimony was to try to establish prior incidents of
3 violence between Mr. Archie and the decedent. And the
4 idea was to show the decedent was violent towards Mr.
5 Archie and try to show to the jury that there is a
6 history of and a pattern of conduct of the decedent being
7 violent towards Mr. Archie.

8 Q. In Ms. Martin's testimony specifically, she
9 mentioned having witnessed the Defendant with fractured
10 ribs, a bruised face, arm in a sling at various times,
11 different times. Do you recall if there was any medical
12 records or documentation submitted at trial to
13 substantiate those claims?

14 A. No, sir.

15 Q. Do you recall the Defendant asking you to contact a
16 Mr. Troy Verner as a potential witness?

17 A. If you'll give me a moment, let me ...

18 Q. Okay.

19 A. There was a list he gave me of people he wanted me
20 to contact. There was a Troy Verner that was locked up
21 in S.C. -- or A.C. -- in the Anderson County Detention
22 Center. He wasn't the one we were looking for. There
23 was another one. My investigator made attempts to try to
24 get in touch with him and was unsuccessful in doing so.

25 Q. Were you asked to contact a Chester Crane?

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1 A. Yes.

2 Q. Were you successful in talking with him prior to
3 trial?

4 A. No, sir.

5 Q. And were you asked to contact a Sherman Guyton?
6 It's G-U-Y-T-O-N, I believe.

7 A. Yes.

8 Q. And were you successful in talking with him?

9 A. No, sir. As far as from what I can tell, no. Wait,
10 wait, wait, wait. Excuse me. My investigator spoke with
11 Mr. Guyton on July 25th at four fifty-five. Does not
12 know anything. Worked a different shift, hasn't seen
13 anything was what he told us.

14 Q. The last potential witness I had was a Ms. Julie
15 Rogers. Were you able to contact her?

16 A. Ms. Rogers, got in touch with her on July 26th at
17 nine thirty. I presume that's a.m. Heard they were
18 having problems from people at work, but Mr. Archie never
19 told her anything nor did she ever see anything. So she
20 -- it turned out to be a dead-end with her.

21 Q. Were there any other witnesses that you contacted in
22 preparation for the trial?

23 A. Well, we had Mr. Johnson and Ms. Martin testify on
24 his behalf. Based on our investigation, those were our
25 best witnesses we felt in regards to what we wanted to

1 present. We attempted to contact Dayton Williams. He
2 would not cooperate with us. Mr. Johnson, I spoke about
3 earlier. Scotty Richardson (phonic), again, would not
4 cooperate. Julie Rogers, I think we've already talked
5 about her. I think those -- I think that's the amount of
6 witnesses we were able to get in touch with that related
7 to what he gave me.

8 Q. The Defendant had presented several criminal
9 domestic violence reports that had been filed listing him
10 as the victim between 2001 and 2003. Did you have an
11 opportunity to examine those prior to trial?

12 A. Yes.

13 Q. Was there any attempt to present those at trial,
14 submit them into evidence?

15 A. Through his testimony.

16 Q. There was also a toxicology or forensic report that
17 was completed soon after the victim's death. Were you
18 able to review a copy of it prior to trial?

19 A. Let's see. I have a SLED testing report dealing
20 with GSRs. I don't -- unless the toxicology report was
21 attached to the autopsy, I don't have anything in my file
22 that I've seen on toxicology.

23 MR. BROWN: Your Honor, if it would please the
24 Court, if I could approach the witness.

25 THE COURT: Yes, sir. That's fine.

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1 Q. Mr. Potter, if you could just verify that's the
2 report.

3 A. I don't remember seeing this. I'm sorry. I just
4 don't remember seeing it.

5 Q. Okay. Having made that statement, I'll ask the
6 question. But on page two where it did show a positive
7 result, reading, for cannibanooids in her system, were you
8 aware of that prior to trial?

9 A. I don't have any independent recollection whether he
10 told me that she was drinking or smoking or anything of
11 that sort. Honestly, I don't remember seeing this
12 report. And it's -- it may be buried in the file some
13 place. That's the best I can tell you right now.

14 Q. And to the best of your knowledge, it was not an
15 issue raised at trial, the Defendant's trial?

16 A. I don't recall talking about her being intoxicated
17 or anything of that sort.

18 Q. Mr. Potter, do you recall any disagreements or
19 disputes that you had directly with the Defendant, Mr.
20 Archie, in preparation for trial?

21 A. I do not specifically recall. I mean, there may
22 have been. When we prepped this case, the argument was
23 going to be self-defense. The theory of the case was
24 that he was trapped and he was in a situation that, you
25 know, he had no alternative but to do what he did to get

1 out of this cycle of violence. I don't necessarily
2 recall him objecting to that strategy and that tactic
3 related to his trial.

4 I know that he did file a motion to have me relieved
5 on the eve of trial. I had -- Judge Macaulay was the
6 presiding judge. I had faxed him the motion -- to him
7 when he was in Marion at the time. And I presumed it was
8 -- I think it was addressed before we seated the jury and
9 all of that. But honestly, I don't specifically recall
10 any -- you know, any dispute in regards to how I was
11 going to try the case and the theory of the case.

12 You know, at times I do butt heads with clients
13 about certain aspects of a case, and at times I will
14 challenge clients saying this is what a prosecutor or
15 solicitor's going to present. How are you going to
16 defend it? How are you going to respond to it? I know
17 that we -- I explained to him on this particular case
18 that he's going to have to testify. The jury needs to
19 hear from you if you're going to argue self-defense. I
20 know we talked about that and what he was going to say.
21 He expressed concern to me about that he has a stuttering
22 issue, and he was afraid he was going to have a hard time
23 talking to the jury about his stutter. And if I recall
24 correctly, we did kind of address that for the jury to
25 understand that he does stutter a little bit and that's

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1 why he was speaking the way he was. But I'm sorry, I
2 don't recall any specific arguments or disagreements in
3 regards to the theory of the case and how we were going
4 to try it.

5 Q. Prior to the Defendant's testimony at trial, the
6 Prosecution submitted a 2002 conviction which Judge
7 Macaulay did allow into the record. Did you determine
8 there was no reason to object to that conviction being
9 entered into the record?

10 A. Hang on a second. Typically, I do a list of all of
11 the exhibits as they're coming in, and I would indicate
12 my thinking in regards to -- let's see. Do you know what
13 exhibit that was?

14 Q. I do not.

15 A. Okay. Because I'm not -- I'm showing -- I'm looking
16 at my list that I did during the trial of the Plaintiff's
17 exhibits, State's exhibits, and I'm not showing an
18 incident report related to a -- was it 2003?

19 Q. A 2001 charge, 2002 conviction. Conviction on May
20 15th, 2002.

21 A. Was this during cross-examination of Mr. Archie?

22 Q. To the best of my recollection, it was an issue
23 discussed briefly with Judge Macaulay prior to any
24 testimony given by Mr. Archie.

25 A. Was it a conviction for an assault and battery of a

1 high and aggravated nature?

2 Q. To the best of my knowledge, I have it listed as
3 assault and battery of a high and aggravated nature, yes.

4 A. Then I would suspect -- and my notes don't show
5 anything in regards to my thinking. I would suspect that
6 it's a maximum of ten years. That would be admissible
7 under the rules of evidence. I suspect that's probably
8 what I was thinking.

9 Q. And just to reiterate, there was no objection made
10 at that time to the best of your knowledge?

11 A. As best I can -- I'm sorry. You know, looking
12 through my notes, I just can't answer that question in
13 concrete terms. It's the best. You know, that may have
14 been my thinking. I don't know. And -- you know, I
15 don't know.

16 Q. Just a couple of other questions, Mr. Potter.

17 A. Yes, sir.

18 Q. The Defendant had raised an issue in his P.C.R. that
19 he felt that the lesser offense of manslaughter should
20 have been included and the jury should have been able to
21 weigh that as a lesser offense to indict him on -- or to
22 convict him on. Based on your case and the evidence you
23 presented and the volatile abusive relationship between
24 the parties, the circumstances surrounding the events
25 leading to the victim's death, did you feel that that

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1 should have been included or raised at trial?

2 A. We had a -- the jury was sent out, and Judge
3 Macaulay called counsel to the bench to discuss jury
4 instructions. At that time, Judge Macaulay said, I
5 didn't really hear enough evidence for voluntary
6 instruction. My position on the voluntary instruction
7 was he'd been L-WOPED, which is life without parole. If
8 the jury came back with a conviction on voluntary, he
9 would have been L-WOPED. The theory of the case was
10 self-defense. The theory of the case was -- and she was
11 the aggressor. She was the one that was attacking Leroy.
12 Leroy had no choice but to defend himself. The
13 strategic, the tactical decision was to argue it was
14 self-defense and focus the jury there and not let them be
15 confused in regards to voluntary and run the risk of
16 maybe a compromised verdict.

17 MR. BROWN: I don't have any other questions at
18 this time. Thank you, Mr. Potter, Judge.

19 MR. LEE: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. LEE:

22 Q. Mr. Potter, I assume you were appointed to this
23 case?

24 A. Yes, sir.

25 Q. After you were appointed to the case, did you have

1 the occasion to meet with the Applicant?

2 A. Yes, sir.

3 Q. Okay. And I believe it was your testimony that
4 pretty early on in your meeting with the Applicant in
5 preparation for this case, you decided that the defense
6 would be one of self-defense?

7 A. Yes, sir.

8 Q. And you testified that you don't recall him ever
9 having any problem with that?

10 A. No, sir.

11 Q. Did he ever present -- in these discussions and
12 meetings that you had with him, did he ever present any
13 other potential defenses that you might explore?

14 A. No. Based upon the investigations completed by the
15 Sheriff's department, there was a deputy who witnessed
16 the coup de grace of the decedent.

17 Q. And when you say coup de grace, what do you mean?

18 A. The testimony was that the decedent was on the
19 ground, and the deputy heard a couple of dry firings and
20 then came around the tree and saw the Defendant standing
21 over the decedent and firing the gun. At that point in
22 time, it was going to be difficult to say he didn't do
23 it.

24 Additionally, there was, I believe, a statement he
25 gave to law enforcement. And I have it in my file. You

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1 know, based on my investigation, it seemed the best
2 approach to this particular case was self-defense. There
3 was no dispute the fact that this lady was shot and
4 killed. So you know, the focus of the case is not going
5 to be that he didn't do it. The focus of the case is
6 going to be the reason why. The reason why he did it was
7 because she was abusive. The reason why he did it was he
8 felt trapped. The reason why he did it was he had no
9 alternative but to protect himself. Otherwise, she would
10 have done, you know, serious bodily injury if not death
11 to him. Okay? And the thinking was, you know, let's try
12 to show the jury this is what's going on. This is why he
13 chose to do what he did because he had no other choice
14 available to him. So you know, I think from the start
15 that was the thinking of the case and that's where we
16 proceeded.

17 Q. Okay. So once you decided that that was going to be
18 your strategy, I assume you undertook your investigation
19 of the case?

20 A. Yeah.

21 Q. Okay. And at that point, it was your testimony
22 earlier that you had an investigator work with you on the
23 case?

24 A. Yes.

25 Q. Okay. And it was also your testimony, I believe,

1 that you and your investigator made several attempts to
2 locate different witnesses on the applicant's behalf?

3 A. I have my investigator do that because if I need her
4 to testify -- I mean, if I go out and talk to witnesses,
5 I do that. But I need to either have somebody with me or
6 I let an investigator take care of that because if that
7 witness gets up and says something different, I'm going
8 to need to be able to have somebody testify to that. And
9 if it's just me there, I can't testify.

10 Q. Certainly. Okay. So you had your investigator
11 attempt to locate several witnesses, and those witnesses
12 would have testified to the abusive relationship?

13 A. The ones we got in touch with, we determined they
14 were not necessary. They weren't going to help the case.
15 The two that did, we felt, help the case was Pat Martin
16 and James Johnson, and we called them as witnesses.

17 Q. And those did testify to ---

18 A. Yes.

19 Q. --- there being some trouble in the relationship?

20 A. Yes.

21 Q. All right. And then did you file Rule 5 and a Brady
22 motion for discovery?

23 A. I did.

24 Q. Did you share that with the Applicant?

25 A. I believe I did. Typically, my process is when I

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1 get the Rule 5, I'll copy it and get it out to my client.

2 I'm pretty sure he got it.

3 Q. Okay. But it was always the client's desire to go
4 to trial with this. Did he ever express a desire to
5 plead?

6 A. I don't recall. Well, honestly, when we got L-
7 WOPED, the option of plea was off the table. And the
8 State seemed pretty -- they weren't necessarily willing
9 to offer anything that would have been something -- I
10 don't think any offers were made honestly. I don't
11 recall any offers being made.

12 Q. So then it would probably be fair to say you were
13 going to trial and your strategy was going to be self-
14 defense, and in support of that you were going to present
15 witness who would testify to an abusive relationship?

16 A. Correct.

17 Q. Okay.

18 MR. LEE: I beg the Court's indulgence just one
19 second, Your Honor.

20 Q. There was some testimony to there not being medical
21 records admitted to -- regarding maybe some of the
22 Applicant's injuries suffered during maybe some of these
23 altercations with the decedent. Do you recall looking
24 for those, or do you not have any independent
25 recollection?

1 A. I don't think I have any records related to any
2 physical injuries. I guess my thinking was he can
3 testify to that. He can tell the jury what happened and
4 it's from the source. So the thinking probably was he
5 can address those issues when he gets on the stand.
6 Because the thinking from the start was he has to testify
7 because of the self-defense defense we were going to
8 present.

9 Q. And he did end up testifying, correct?

10 A. Yes, sir.

11 Q. I believe it was your testimony that you didn't
12 recall the Applicant ever mentioning the possibility of
13 the decedent being intoxicated at the time?

14 A. He may have told me that. He may not have. I just
15 don't -- I don't recall. I don't recall.

16 Q. And it was your testimony that with regard to the
17 prior conviction for assault and battery of a high and
18 aggravated nature, you don't have any recollection of
19 that. But if you had to project a guess, you would have
20 said that's because you didn't find it objectionable at
21 the time?

22 A. Probably.

23 Q. Okay.

24 A. I mean, you know, that's probably true.

25 Q. And with regard to the manslaughter, the Applicant

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1 made an allegation that you should have tried for a
2 manslaughter instruction. You stated that you didn't --
3 I believe it was your testimony because -- was it that
4 they were sort of competing ideas, you were trying to go
5 all or nothing. This was a self-defense case and if you
6 had put out voluntary manslaughter, that could have
7 actually worked against you?

8 A. That was the thinking. I don't think, based on the
9 testimony, the Judge was not necessarily inclined to
10 argue voluntary. I didn't argue that we wanted that
11 instruction to the Judge, again, because, you know, we
12 wanted to argue self-defense. We wanted to say, you
13 know, he's not guilty because he was defending himself.
14 And the concern was -- and this is more tactical -- I
15 don't want a jury going back -- and if I have some people
16 who are in my corner on self-defense who are leaning my
17 way -- be able to say, well, we've got voluntary. We can
18 convict him on that. How about we just do that. So the
19 concern really was a compromise verdict. And the hope
20 was, you know -- the fear was if they went back and they
21 had that option and some people who were hanging on to my
22 self-defense argument would let go and go ahead and go
23 with voluntary.

24 Q. Now, have you ever -- before this case, had you ever
25 tried a murder trial before?

1 A. Yeah. Yes, sir.

2 Q. And have you been faced with decisions like that in
3 the past where you had to make a strategic choice?

4 A. In every trial you make strategic decisions on what
5 to -- you know, which issues to fight, which issues not
6 to fight. And the main goal is try to keep the jury
7 focused on what you want them to focus on.

8 Q. Now, certainly any time you get a verdict that's
9 against you, you're not happy with the result. But do
10 you ultimately feel like you made the right choice in
11 trial strategy in this case?

12 A. I think so. In regards to these particular facts, I
13 think that was my only real choice I had, yeah. I didn't
14 see any other possible defenses that could have been
15 raised that were viable.

16 Q. So do you feel like you provided effective
17 assistance of counsel?

18 A. I know I provided effective assistance of counsel.

19 MR. LEE: That would be all of my questions.

20 Thank you.

21 THE COURT: Anything?

22 MR. BROWN: No further questions, Your Honor.

23 THE COURT: All right. Thank you, sir. You
24 can step down.

25 MR. POTTER: Thank you, Judge.

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1 MR. BROWN: Your Honor, we'd call our second
2 and only other witness, Mr. Leroy Archie.

3 THE COURT: All right. Come on up, sir.

4 **LEROY ARCHIE,**

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS

6 DIRECT EXAMINATION

7 BY MR. BROWN:

8 Q. Good morning, Mr. Archie.

9 A. Good morning, sir.

10 Q. Earlier this morning Mr. Lee just went over a
11 summation of the previous case regarding your
12 indictments, the dates of the trial and then your
13 subsequent conviction and sentencing. Did you have any
14 objections to that summation of the previous trial?

15 A. Yes, I do.

16 Q. Did you agree with the summation?

17 A. No, sir. No, I do not agree with it.

18 Q. Well, the only question I'm asking is are you
19 agreeing with the court record, the dates of the trial
20 ...

21 A. Uh-huh (affirmative).

22 Q. ... and the actual conviction, that it took place.

23 A. Yes, yes.

24 Q. Not that you agree with the results, but in fact
25 that's what took place on that day, September 14th, 2006?

1 A. Yes.

2 Q. Okay. And you are currently serving a life sentence
3 without parole?

4 A. Yes.

5 Q. Where are you currently serving that sentence?

6 A. At McCormick Correctional Institution.

7 Q. And have you been there since you first were
8 incarcerated?

9 A. Yes, I have.

10 Q. Regarding the trial itself, Mr. Archie, when you
11 were on trial -- I mentioned earlier that there was
12 testimony regarding a 2003 altercation between you and
13 Antwon Jack Galloway.

14 A. Yes.

15 Q. And do you recall that altercation?

16 A. I do.

17 Q. Okay. Could you briefly for the record explain that
18 altercation to the best of your knowledge?

19 A. Yes. Antwon Galloway, he came that morning. His
20 mother, Ms. Cathy Galloway, the deceased, she went and
21 got him. Her and I had an argument. And she always run
22 and get Jack, Antwon. And that morning, she left home
23 that morning. And approximately fifteen minutes later,
24 Antwon Jack drove up, and I was standing in my den. And
25 he came in the house and picked up a chair, my dining

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- 1 room chair, and beat me up side the head with it, knocked
2 me over and fractured my ribs and my arm. And I called
3 the police, and they came and called the rescue squad.
4 And they carried me to the medical center.
- 5 Q. To the best of your knowledge, was there a police
6 report filled out on that incident?
- 7 A. Yes, sir. The police, he filled it out.
- 8 Q. To the best of your knowledge, would there have been
9 medical records at the hospital ---
- 10 A. Yeah.
- 11 Q. --- of you being admitted that day?
- 12 A. Yes, it was.
- 13 Q. Would those records have contained the injuries that
14 you sustained?
- 15 A. Yes, they does [sic].
- 16 Q. To the best of your knowledge, did you have a chance
17 to discuss those reports with your attorney, Mr. Potter?
- 18 A. Yes, I did.
- 19 Q. Were those reports submitted at trial?
- 20 A. It never was.
- 21 Q. To the best of your knowledge, did you have a chance
22 to discuss Jack Galloway's alleged drug use or dealing
23 drugs with Mr. Potter?
- 24 A. Yes, I did. I told him how he was.
- 25 Q. Was there anyone else that knew about Jack's use of

1 drugs or dealing drugs?

2 A. Yes, there was.

3 Q. Did you discuss any of these other potential
4 witnesses with Mr. Potter?

5 A. Yes, I did.

6 Q. Were you aware of Jack Galloway having a criminal
7 record?

8 A. Yes, I was.

9 Q. Did you have an opportunity to discuss that with Mr.
10 Potter as well?

11 A. I told Mr. Potter all about it.

12 Q. To the best of your knowledge, were any of those
13 criminal records submitted at trial?

14 A. They never was.

15 Q. Mr. Dayton Williams was also a witness at that
16 trial; is that correct?

17 A. Correct.

18 Q. Could you briefly tell the Court your relationship
19 with Mr. Williams?

20 A. Mr. Williams and I, we've been friends for
21 approximately fifteen years.

22 Q. Was he someone you confided in if you were having a
23 problem?

24 A. He was someone that I would lean on at all times. I
25 recall the times that when Jack Galloway was in my house

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- 1 and he was having a gambling game going on in my house.
2 And I didn't like it. And his mother, she wouldn't do
3 anything about it. Said that he's got to make money to
4 pay for his house arrest. And I didn't appreciate that
5 in my house. So I called up Dayton Martin [sic] and
6 asked him could I spend the night with him because I
7 didn't want to be in that environment around him and his
8 drug gang. And so I spent the night with Dayton
9 Williams, and he carried me to work the next morning.
10 Q. Based on this transcript, you and the victim did
11 fight and have arguments at times?
12 A. Yes, we did.
13 Q. Did you ever confide in Mr. Williams during those
14 times?
15 A. I told him all about it at all times and his lady
16 friend, Ms. Brenda Rogers.
17 Q. So they both would have been aware of the times when
18 you fought with Ms. Galloway?
19 A. Yes, sir.
20 Q. Would they have been aware of when you filed your
21 C.D.V. reports?
22 A. Yes.
23 Q. Your criminal domestic violence reports?
24 A. Yes, sir.
25 Q. Do you recall Mr. Williams being asked about those,

1 knowledge of those reports at trial?

2 A. Yes, sir.

3 Q. Do you recall Mr. Williams being asked about those

4 -- knowledge of those reports at trial?

5 A. Yes, sir.

6 Q. Do you recall him acknowledging or testifying about
7 those reports?

8 A. He didn't testify about those reports.

9 Q. Had he been asked about the reports, do you think he
10 would have testified?

11 A. I'm sure he would have.

12 Q. We briefly discussed earlier, Mr. Archie, the
13 witnesses that did appear on your behalf, Ms. Patricia
14 Martin and Mr. James Johnson.

15 A. Yes, sir. Ms. Pat Martin and Mr. James Johnson, Mr.
16 Potter supposed to have had called them, and he never
17 would contact them. And Ms. Pat Martin had to contact
18 Mr. Johnson to contact Mr. Potter. He never would --
19 never would contact them, so they had to keep contacting
20 him. They kept calling Mr. Potter to come to court for
21 me. Mr. Potter acted like he didn't want them to come.
22 They had to kept calling his office and kept trying to
23 make him -- to get them to come to court to testify on my
24 behalf.

25 Q. And once they were in court and specifically when

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Leroy Archle - Direct Examination by Mr. Brown

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1 Ms. Martin testified, she mentioned having witnessed you
2 with fractured ribs, a bruised face and an arm in a
3 sling?

4 A. That's correct. She saw that on my job.

5 Q. Were those on different occasions, different
6 injuries?

7 A. That was the one that Jack -- that Jack did to me.

8 Q. So all three of those injuries would have been due
9 to the 2003 altercation we talked about?

10 A. Yes.

11 Q. And if I understood you correctly before, there were
12 no medical records submitted?

13 A. No medical records committed [sic] in court. Mr.
14 Potter did not commit [sic] the records.

15 Q. Were there any other witnesses that you asked Mr.
16 Potter to contact for your defense?

17 A. Yes, I did. I asked him to contact my supervisor,
18 Mr. Chester Crane. And Mr. Potter never did contact Mr.
19 Crane. Mr. Crane wrote me a letter saying that he wanted
20 to come to my trial, but he tried to contact my lawyer
21 several times, but he would not get an answer back. And
22 that's the reason why he wasn't at my trial.

23 Q. Do you recall any other -- suggesting any other
24 witnesses be contacted?

25 A. I asked him to call Julie Rogers.

1 Q. Okay.

2 A. And Mr. Potter came to the county jail and told me
3 that he contacted her, but she said she didn't know
4 nothing. And I asked him to call Mr. Sherman Guyton.

5 Q. Okay.

6 A. And Mr. Potter said that he tried to contact Mr.
7 Guyton, but Mr. Guyton said he didn't know nothing.

8 Q. Have you had a chance to review the forensic
9 toxicology report that was completed on Ms. Galloway
10 regarding any potential drugs or other substances in her
11 system?

12 A. In my motion to discover, I was looking for that,
13 and it was not in my motion to discover. And I asked Mr.
14 Potter the day of my trial, him and his secretary, Ms. --
15 I think her name was Ms. Amy. And I asked Mr. Potter to
16 ask the pathologist while he was on the stand, to ask the
17 pathologist did Ms. Galloway have drugs in her system at
18 the time of the incident. And he would not do it. He
19 wouldn't do it.

20 Q. So to the best of your knowledge, this report, you
21 did not see it before trial and it was not submitted at
22 trial?

23 A. I never saw it.

24 Q. Was there any other documentation that you provided
25 Mr. Potter that you thought would be helpful?

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Leroy Archie - Direct Examination by Mr. Brown

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1 A. Yes, I did. I wanted to know why come he didn't
2 represent a manslaughter or either involuntary
3 manslaughter at my trial. He just only presented this
4 self-defense. And on a murder charge with a jury trial,
5 the jury must hear involuntary manslaughter or voluntary
6 manslaughter or self-defense. And Mr. Potter, he would
7 not do it. The only thing he did was present it self-
8 defense.

9 Q. And going back to the actual documentation, Mr.
10 Archie, were there any photographs you provided to Mr.
11 Potter?

12 A. Yes. I asked Mr. Potter to give me my photograph
13 that was not in my motion to discover. And he said that
14 my attorney would get them. And I kept writing Mr.
15 Potter several letters about my motion to discover. And
16 he sent me some copies of them, not the original, but he
17 sent me black and white. He never would send me the
18 original one. He said my attorney would need them in the
19 court and he would get them.

20 Q. Was there any other written papers or any other
21 evidence you presented to Mr. Potter that you wanted to
22 be presented at trial?

23 A. Yes, sir, I did. I asked him about my jury trial on
24 my jury trial. On my jury trial, I asked him, you know,
25 why come he didn't request the manslaughter or the

1 involuntary manslaughter.

2 Q. During the course of your trial or leading up to
3 your trial, Mr. Archie, did you request to have another
4 attorney?

5 A. Yes, I did. I feel like Mr. Potter, he wasn't doing
6 nothing for me. Mr. Potter, he came to the county jail
7 about twice. And both times he came, he wanted me to
8 just plead guilty, that I wasn't going to win my case. I
9 didn't have no grounds to fight on. He said, let's go
10 plead guilty because I did it and someone's got to pay
11 for what you did, and let's go plead guilty. And Mr.
12 Potter, he didn't want to help me. And so then I asked
13 for another attorney.

14 And Mr. Potter called me to come down to the court,
15 and he came on the stand and squatted down beside me and
16 he told me, there was a good Judge was here today, and
17 Mr. Archie, let's plead guilty and get this over with.
18 And I told him, no, I was not pleading guilty.

19 And as I got out in the hallway, Mr. Robert Gamble,
20 he came out in the crowd and he wanted to know who was
21 Leroy Archie, who was Leroy Archie? I said, I am. I'm
22 Leroy Archie. He says, what do you mean by you not going
23 to plead guilty. You did it, didn't you? I said, well,
24 I'm not pleading guilty, sir. I say, I'm protecting
25 myself. He said, well, by the way you look with that

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Leroy Archie - Direct Examination by Mr. Brown

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1 orange jumpsuit on, you did it. And that's when I filed
2 to get another attorney.

3 Q. Okay. Mr. Archie, based on your P.C.R. filing and
4 the issues raised in both the original complaint and the
5 amendments, do you have any other testimony you'd like to
6 present to the Court?

7 A. Yes, I do. On the morning of that incident, I was
8 trying to get away from Ms. Galloway and her son Jack.
9 And I had rented an apartment, that I was leaving my own
10 house that I was buying, my house that Ms. Galloway was
11 living with me. I was buying that house. And I was
12 going to give the whole house up. And which I went and
13 rented an apartment, and I was getting away from Ms.
14 Galloway and her son. I was tired of the abuse and
15 enough was enough. And I had packed all my merchandise
16 up and my boxes, and I was getting ready to leave. And I
17 have a receipt that I had rented my own apartment, and I
18 was leaving.

19 And that morning of the incident, Ms. Galloway, she
20 ran back to the bedroom where her and his girlfriend was
21 at. And they came back into my bedroom where I was at.
22 Mr. Jack Galloway and Ms. Kathy Galloway, they jumped on
23 me that morning. I have pictures where they jumped on me
24 and knocked me all down. And Mr. Jack Galloway, he went
25 back to the bedroom where his girlfriend was at. And Ms.

1 Galloway, I don't know where she went to. And Mr.
2 Galloway, Mr. Jack Galloway, he was back there with his
3 girlfriend just kept saying, I'm going to whoop his rump
4 like I did before. I'm sick and tired of him. I'm going
5 to jail. I ain't got nothing to lose. He's not going to
6 do my mother like this and I'm not going to stand for
7 this here. And his girlfriend, she kept hollering and
8 like holding him, didn't want him to come and jump back
9 on me. And Jack Galloway kept on saying, I ain't got
10 nothing to lose. I'm going to jail anyway. I'll whoop
11 his -- so I said to myself, I've got to get out of this
12 house.

13 Ms. Galloway, I don't know where she had went to
14 after they had jumped on me. And so that's when I got my
15 gun and put it into my robe. And I had to come by Mr.
16 Jack to get out of the house. Him and his girlfriend was
17 back in the bedroom. And that's when I came out on the
18 porch, and Ms. Galloway -- I have a picture of her car
19 door where she jumped out of her car and came and
20 attacked me with her fist. That's how the incident
21 occurred.

22 Q. Okay. Thank you, Mr. Archie.

23 MR. BROWN: I don't have any other questions at
24 this time, Your Honor.

25 MR. LEE: Thank you, Your Honor. I just have a

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Leroy Archie - Cross-Examination by Mr. Lee

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1 few questions.

2 CROSS-EXAMINATION

3 BY MR. LEE:

4 Q. The 2003 altercation was between you and Jack
5 Galloway, correct?

6 A. Yes.

7 Q. Okay. And then the medical records that you were
8 referring to earlier were between you and -- were as a
9 result of that altercation between you and Jack, correct?

10 A. Correct.

11 Q. Okay. But just for clarity's sake, it was Jack who
12 died, right?

13 A. No, it wasn't.

14 Q. Okay. Let's see. The reference you made to your
15 photos in the motion of discovery, that was after the
16 conviction that you requested those, right? That was
17 during your initial -- your P.C.R., correct?

18 A. Mr. Potter, he carried me to his office and he
19 showed me the photo, but he never would give it to me.

20 Q. Okay. And you testified that you were -- actually,
21 no. That's all my questions. Thank you.

22 MR. BROWN: No further questions, Your Honor.

23 THE COURT: All right. Thank you, sir. You
24 can step down.

25 MR. BROWN: Other than just a few closing

1 comments, we have no other witnesses to present, Your
2 Honor.

3 THE COURT: All right. Okay.

4 MR. LEE: The State would recall Mr. Potter to
5 the stand, please.

6 THE COURT: All right.

7 ANDREW TROY POTTER,

8 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS

9 DIRECT EXAMINATION

10 BY MR. LEE:

11 Q. Mr. Potter, the 2003 altercation between the
12 Applicant and Mr. Galloway pertaining to the medical
13 records resulting from that incident, would you have seen
14 those as terribly relevant to your case?

15 A. Probably not. Again, he can testify to that in
16 front of the jury. And the fact that it was Jack, not
17 Cathy, I felt it would be cleaner for him just to go
18 ahead and testify to that on direct.

19 Q. All right. The Applicant made an allegation that
20 one of the witnesses that we talked about earlier, Frank
21 something or other -- I can't remember his last name --
22 attempted to contact you and that you didn't call him
23 back. Do you recall that?

24 A. No. Typically, at that point in time in our office,
25 we were still using the paper messages. And whenever a

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Andrew Potter - Direct Examination by Mr. Brown

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1 paper message is left on a particular case, it gets put
2 in the file. There's no indication of that. I know that
3 Mr. Johnson did leave a message for me, and we did get
4 back in touch with him, and he ultimately did testify.
5 But the -- if I recall correctly, the one witness that we
6 spoke of, when we attempted to contact that person,
7 didn't want to cooperate or did not respond to our
8 request to interview.

9 Q. With regard to the allegation that was again
10 asserted by the Applicant regarding manslaughter and
11 involuntary manslaughter, specifically referring to the
12 involuntary manslaughter allegation, isn't it true that
13 there was an eyewitness who saw the Applicant standing
14 over the decedent, actually was laying on the ground,
15 firing the final shot?

16 A. That was the testimony of one of the -- the deputy
17 who -- the first deputy to the scene.

18 Q. Okay. So in your opinion, was there any evidence at
19 all to support an involuntary manslaughter charge?

20 A. No. And I don't think if -- you know, again, the
21 Judge would have instructed the jury had I asked for
22 that.

23 Q. Regarding the photos that the Applicant mentioned in
24 the motion of discovery, was that pertaining to his
25 P.C.R. case?

1 A. My office received a letter from him wanting the
2 photographs. And there was concerns that some of the
3 photographs showed the decedent while treatment was being
4 done. She was, you know, partially naked, partially
5 nude. And it was a concern of turning those photographs
6 over to her -- or to Mr. Archie because of the sensitive
7 nature of that. S.C.D.C. is -- my understanding is
8 S.C.D.C. doesn't allow inmates to have those photographs.
9 So what was determined was to go ahead and just give him
10 photocopies of the photographs. And I think eventually
11 my paralegal went ahead and did that for him.

12 Q. Okay. Speaking to the motion to be relieved, the
13 Applicant alleged that he wanted to move to have you
14 relieved because you were constantly trying to force him
15 to plead guilty or talk him into that. Is that true?

16 A. That's bunk. I've been practicing since 1993. I
17 make it a course when I talk with my clients to advise
18 them to what their rights are, what their options are.
19 That the ultimate decision on what to do is theirs solely
20 because they're the one who has to make the plea. I have
21 never told any client to plead guilty. I've given them
22 the options. I've advised them what their options are.
23 I've told them it may be a good decision. If that's what
24 you're going to do, it's probably your best decision.
25 But in regards to that, I have never done that.

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Closing Arguments

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1 MR. LEE: Thank you. That's all I have.

2 THE COURT: Any questions?

3 MR. BROWN: No further questions.

4 THE COURT: All right.

5 MR. POTTER: May I be released?

6 THE COURT: Yes, sir.

7 MR. LEE: That would be all the State's
8 witnesses, Your Honor.

9 THE COURT: All right. Anything else?

10 MR. BROWN: Your Honor, again, just in summary
11 on behalf of Mr. Archie, we feel like even with the
12 testimony we had today there were a number of reports,
13 both criminal being the criminal domestic violence
14 reports and the toxicology forensic reports, as well as
15 the witnesses, all of which would have potentially aided
16 his main claim as testified by Mr. Potter to be self-
17 defense. And there was limited efforts made to do so.
18 And we feel like that the basis of the P.C.R. centers on
19 the additional evidence and testimony that could have
20 been presented that was not presented at the time of
21 trial. And had that additional evidence and testimony
22 been a part of the trial or a subsequent trial, it could
23 have made a difference and could have ultimately been a
24 different result in the trial. And therefore, we would
25 go forward and ask for the P.C.R. to be granted.

1 THE COURT: Okay. All right. I'll review the
2 transcript and I'll take it under advisement and let you
3 know.

4 Thank you, sir.

5 (WHEREUPON, the hearing ended at approximately 11:47
6 a.m.)

7 (END OF REQUESTED TRANSCRIPT OF RECORD)

Leroy Archie v. State of South Carolina 2008-CP-04-4204
PCR Hearing (10/6/2010)

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1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 6th day of October 2010.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 May 16, 2011

15

16

17

Renee H. Tollison
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Leroy Archie, # 317590,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

2008-CP-04-4204

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ORDER OF DISMISSAL

Blanca
CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 10, 2008. The Respondent made its Return on April 1, 2009. An evidentiary hearing into the matter was convened on October 6, 2010, at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by J. Chris Brown, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying were Applicant's trial counsel, Andrew T. Potter, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Anderson County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the November 2005 term of the Anderson County Grand Jury for Murder and Possession of a Firearm During the Commission of a Violent Crime (2005-GS-04-2826). He was represented by Andrew T. Potter, Esquire. On September 11,

14, 2006, Applicant proceeded to jury trial before the Honorable Alexander S. Macaulay where he was found guilty as indicted. Applicant was sentenced to life imprisonment without parole.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the conviction and sentence. State v. Archie, Op. No. 2008-UP-572 (S.C. Ct. App. filed October 14, 2008).

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - i. "Counsel failed to object to the prosecution use of an invalid prior conviction for enhancement purposes."
 - ii. "Counsel failed to properly preserve for appellate review the issue of whether the trial judge erred in allowing the state pathologist to give speculative testimony outside his field of expertise."
 - iii. "Counsel failed to request a lesser-included jury charge or manslaughter."
 - iv. "Counsel failed to adequately summarize the evidence during closing summation."
 - v. "Counsel failed to object and request new trial when the prosecution failed to completely disclose the autopsy report of the victim."
 - vi. "Counsel failed to object to judge's jury instruction charging the jury on intent."
2. Ineffective Assistance of Appellate Counsel.
 - vii. "Appellate counsel failed to raise issue of whether the trial judge erred in denying defense motion for directed verdict based on state's failure to establish the essential elements of first-degree murder beyond a reasonable doubt."
3. Trial judge erred in denying Applicant's request for substitution of counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient

performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Ineffective Assistance of Counsel

At the PCR hearing, Applicant presented exclusively allegations regarding the effectiveness of counsel provided by Mr. Potter (hereinafter "counsel") on these charges.

Applicant contends counsel was ineffective for failing to investigate/present additional evidence and witnesses at trial, for failing to request a jury instruction for the lesser included offense of manslaughter and for failing to object to the introduction of a prior ABHAN conviction. These allegations are addressed individually by this Court below.

Failure to Investigate and Present Medical Records/Police Incident Reports

Applicant contends counsel was ineffective in failing to investigate, obtain and present at trial several pieces of evidence to bolster Applicant's self-defense theory. Specifically, Applicant alleges counsel should have obtained and presented at trial an incident report and medical records stemming from a 2003 altercation between Applicant and the victim's son, Antwon Jack Galloway ("Galloway"), as well as a toxicology report from victim's autopsy. Applicant testified that in 2003, he and Galloway got into an altercation during which Galloway beat Applicant with a chair, and as a result Applicant filed a police report and was taken to the hospital for treatment. Applicant stated his arms and ribs were fractured from the altercation, as would have been reflected in the hospital records. Applicant went on to state that he discussed the altercation with counsel during their meetings, during which he requested counsel obtain the incident report and hospital records to present at trial to prove there had been prior altercations between Applicant and Galloway. Applicant also alleged counsel failed to obtain a copy of a toxicology report from

victim's autopsy that showed she was under the influence of cannabinoids at the time of the shooting.

Counsel testified he was aware of the prior incidents between Galloway and Applicant during trial, but that he did not present either the incident report or medical records as he was able to elicit the same information through live testimony. Counsel stated he believed Applicant's live testimony at trial to the facts and results of the altercations, as well as the testimony of two defense witnesses and the cross-examination of Galloway, was a more effective way of presenting the information to the jury without having to introduce the medical records and incident reports. Counsel went on to say he called two witnesses, Patricia Martin and James Johnson, on behalf of Applicant who both testified to Galloway and victim's prior acts of violence towards Applicant, bolstering Applicant's theory of self-defense. Counsel went on to say with respect to victim's possible drug use, he never saw a toxicology report which he could have introduced at trial, nor did he recall Applicant ever mentioning victim may have been on drugs at the time of the incident, but he did cross-examine Galloway regarding his drug use in the victim's house and elicited testimony that Galloway had previous drug charges including distribution charges.

I find Applicant has failed to prove counsel was ineffective in this regard. First, I find counsel's performance was not deficient as he carried out his duties within the objective standard of reasonableness demanded of attorneys under the circumstances. Counsel was aware of and fully investigated the incident report and medical records complained of, ultimately making the strategic decision to introduce the information through the use of live testimony rather than documentary evidence. *(Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy,*

counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003).) Counsel also noted that any records from the 2003 altercation would only relate to prior acts of violence by Galloway, Applicant's son, and not by victim. Counsel therefore believed that those records (incident reports and medical records) were not "too terribly relevant" to presenting Applicant's self-defense theory regarding victim, in addition to being able to introduce the same evidence through live testimony. Counsel stated he was never in possession of nor did the State ever turn over the results of victim's toxicology report as part of the autopsy report in discovery. I find counsel's conduct was reasonable in not introducing a document that he was never aware of based on his investigation and discussions with Applicant. *(A court's measurement of reasonableness may be determined or substantially influenced by defendant's own statements or actions... Counsel's actions are usually based on informed strategic choices made by a defendant and on information supplied by defendant. What investigation decisions by counsel are deemed reasonable depends critically on such information. Strickland v. Washington, supra.)* Further, Applicant failed to prove prejudice resulting from counsel's failure to introduce these documents at trial. With regards to the incident reports and medical records, Applicant failed to produce such documents at the PCR hearing to prove that such reports are in fact in existence, or that their presentation would have made a difference at trial had they been introduced. *See United States v. Cronin, 466 U.S. 648 (1984)(when claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant...must show specific prejudice resulting from counsel's alleged lack of time to prepare)* See also *Harris v. State, 377 S.C. 66 (2008)(Applicant failed to carry burden where merely speculative that counsel's alleged deficient performance was prejudicial).*

Additionally, the documents complained of would have merely been cumulative in nature to the live testimony presented at trial had they been introduced, and therefore this Court cannot find that they would have reasonably had an effect on the outcome at trial. Regarding the toxicology report, based on the testimony of Applicant and counsel, in addition to a review of the record, I find the introduction of such a report would not have had any substantial impact on the outcome at trial as victim's intoxication would not have bolstered Applicant's self-defense theory in any way since it was based on a history of prior violence. I find Applicant has failed to prove both deficiency in counsel's representation and resulting prejudice in this regard.

Failure to Call Witnesses at Trial/Properly Question Witnesses to Bolster Self-Defense Theory

Applicant also alleges counsel was ineffective in failing to investigate/call at trial, or otherwise properly question, several people to bolster his self-defense theory based on prior acts of violence by victim. The first witness Applicant alleges counsel failed to investigate was Chester Crane ("Crane"), Applicant's supervisor at work. Applicant testified Crane wrote Applicant a letter saying he would testify at trial and told Applicant he had even tried to contact counsel several times to inform him of the same, but was never contacted back by counsel. Applicant alleged Crane could have testified to prior acts of violence by victim against Applicant. The second witness Applicant said counsel failed to investigate was Julie Rogers ("Rogers"). Applicant stated he gave counsel Rogers' name, after which counsel contacted Rogers to discuss her ability to testify on Applicant's behalf at trial. Applicant went on to say counsel then informed him that Rogers had said she didn't know anything about the incident nor could she provide any helpful testimony for Applicant. Applicant also alleges he gave counsel the name of Sherman Guyton as a potential witness. Applicant stated counsel told him that Guyton also said he did not know anything about Applicant and victim's history, nor could he

provide testimony that would be helpful at trial. Applicant stated his best friend, Dayton Williams ("Williams") was called at trial by the State to testify, but counsel failed to properly question Williams on cross-examination to elicit testimony regarding his knowledge of victim's prior acts of violence against Applicant and the filing of incident reports with police.

Counsel testified Applicant did in fact give him a list of potential witnesses which he used in his preparation of Applicant's case. Counsel stated he had an investigator that did a lot of the "leg work" in locating and preliminarily interviewing the potential witnesses. Counsel went on to say his investigator tried to locate Crane, as well as an additional witness named Troy Verner, but was unable to locate either person after extensive efforts were exhausted. He went on to say he was never contacted by Crane as Applicant alleged, as there would have been a note in his file from any witness who contacted his office, and there was no such note in his file. Counsel said he was able to locate and interview both Guyton and Rogers in July of 2006, but that both said they did not know anything about Applicant and victim's relationship, nor could they provide any helpful testimony for Applicant. Regarding Williams and an additional witness named Scott Richardson, counsel stated he located and spoke with both witnesses, but both refused to cooperate in any way in discussing the matter. Counsel went on to say that the testimony of Williams which Applicant complains of was elicited through several other witness' testimony, including Applicant's own testimony. Counsel testified that he called the only two witnesses (Patricia Martin and James Johnson) at trial that were also able to provide helpful testimony for Applicant. Counsel stated that their testimony was able to adequately establish a history of violent acts by victim towards Applicant to bolster Applicant's self-defense theory.

I find Applicant has failed to carry his burden in proving counsel was ineffective in his investigation of potential witnesses or cross-examination of Williams at trial. Further, I find the

testimony of counsel to be credible, while I conversely find Applicant's testimony to not be credible. Counsel conducted reasonable investigation into each of the potential witnesses provided by Applicant, and ultimately presented the testimony of the only two witnesses who were willing to cooperate that could provide helpful testimony. Additionally, counsel was not ineffective in his cross-examination of Williams as the information Applicant complains of was sufficiently introduced through the testimony of Applicant and other witnesses. (*The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian*, 824 F.2d 1294, 1321 (2nd Cir. 1987). [*A*] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result. *United States v. Rodriguez*, 53 F.3d 1439, 1449 (7th Cir. 1995).) The Applicant has failed to prove prejudice as well, as he did not proffer any questions counsel allegedly failed to ask, nor did he present any testimony showing what the witnesses' answers at trial would have been different. Further, Applicant failed to produce the testimony of any of the witnesses he now alleges would have testified favorably at trial. Therefore, he has not proven prejudice in this regard either. (*Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Bassette v. Thompson*, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). *The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995). *An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness'*

failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).) Accordingly, these allegations must be denied and dismissed.

Failure to Request Jury Instruction for Lesser-Included Voluntary/Involuntary Manslaughter

Applicant claims counsel was ineffective in failing to request the trial judge charge the jury with the lesser included offense of manslaughter. Applicant testified counsel only presented a self-defense theory at trial and refused to try for a voluntary or involuntary manslaughter verdict from the jury.

Counsel started by testifying that he and Applicant developed a self-defense theory early on in their meetings based on the facts and evidence in the case. Counsel stated there was no dispute that the victim was shot and killed, there was a law enforcement officer that testified at trial to hearing shots and seeing Applicant standing over victim while firing several more shots, and Applicant had given an incriminating statement to law enforcement, all of which was evidence that severely limited their defense options. Counsel went on to say Applicant was facing life without parole if convicted of voluntary manslaughter anyway, so he decided to go with an "all or nothing approach" where either the jury would buy into the self-defense theory or not. Counsel stated he was very concerned with the potential of compromising the jury's verdict by allowing lesser-included charges to be included in the jury's deliberations, and that his request to charge would have been denied anyway had he made it as Judge Macaulay told him during a bench conference that he had not heard enough evidence to charge voluntary manslaughter. Counsel finished by stating that he "knew [he] provided effective assistance of counsel" to Applicant in this matter based on his investigation, preparation and presentation at trial.

After a thorough review of the testimony presented at the hearing and the record before this Court, I find Applicant has also failed to prove counsel was ineffective in this regard. Counsel articulated a valid, well developed trial strategy for opting not to request a charge on lesser-included manslaughters, especially in light of the evidence and the fact that Applicant was facing life without parole for either a murder or a manslaughter conviction. (*Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 530 (1992). See also *Dempsey v. State*, 363 S.C. 365, 610 S.E.2d 812 (2005) and *McLaughlin v. State*, 352 S.C. 476, 575 S.E.2d 841 (2003).) Further, where Applicant would have received the same sentence that he is currently serving under the murder conviction had the jury found him guilty of voluntary manslaughter, Applicant has failed to prove how counsel's failure to request such a jury charge prejudiced him. Therefore, Applicant has failed to prove either prong of the Strickland test. Accordingly, this allegation is without merit and must be denied and dismissed.

Failure to Object to Introduction of Prior ABHAN Conviction

The final allegation raised by Applicant in his application is counsel was ineffective in failing to object to the introduction of an Assault and Battery of a High and Aggravated Nature ("ABHAN") conviction on Applicant's record from 2002 presented by the solicitor during cross-examination of Applicant. Applicant presented no testimony on the matter at the PCR hearing; however, the Court will address this matter herein as the allegation was raised in the application and counsel was questioned extensively on the subject at the hearing. Counsel stated that in his preparation for trial, he discussed with Applicant that in order to effectively present a self-defense strategy, it would be imperative for Applicant to testify at trial. Counsel went on to say

he discussed Applicant's potential testimony with him during their pre-trial meetings as well. Counsel testified he did not object to the state's introduction of the prior conviction as he did not see anything objectionable, and he believed the conviction to be admissible against Applicant under the Rules of Evidence when Applicant took the stand to testify.

I find counsel's conduct was not deficient in this regard. Under Rules 609(a)(1) and 609(b), SCRE, "evidence that an accused has been convicted of [a crime punishable by death or imprisonment in excess of one year] shall be admitted if the court determines that the probative value of admitting [the] evidence outweighs its prejudicial effect to the accused" and the conviction is less than ten (10) years old. The Applicant received this ABHAN conviction in May of 2002, roughly three years and four months before the start of this trial, falling well within the ten year time limit. Additionally, ABHAN carried with it at the time a maximum ten (10) year sentence under S.C. Code Section 17-25-0030 (prior to the Code being revised in 2010). Further, the trial court undertook a Rule 403, SCRE, analysis and found the probative value of introducing the conviction outweighed its prejudicial effect to Applicant. Therefore, this prior conviction was in fact admissible under the Rules. Therefore, counsel did not act unreasonably, nor was Applicant prejudiced by counsel's failure to object as the evidence was properly admitted.

Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective. Further, I find that counsel at all times during his representation of Applicant acted within the range of competence demanded of attorneys in criminal cases, and Applicant was unable to establish resulting prejudice from any alleged deficiency. Therefore, these allegations of ineffectiveness are without merit and must be denied.

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.

Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. Specifically, Applicant failed to address his allegation regarding "prosecutorial misconduct" as set forth in his PCR application. The Applicant's failure to address this and any additional issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

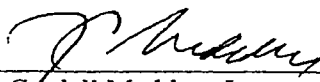
This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

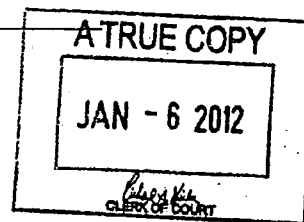
[Signature on Next Page]

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 4th day of January, 2012.


J. Cordell Maddox, Jr.
Presiding Judge
Tenth Judicial Circuit



Anderson, South Carolina.

CLERK'S OFFICE
JAN - 5 A 10:21
COURT SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

LEROY ARCHIE, #317590,

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:

**J. Chris Brown, Esquire
505 West Butler Rd.
Greenville, SC 29607**

This 18th Day of January, 2012.

Lena Pelishenko

Lena Pelishenko
Legal Assistant for Respondent

SWORN to before me this 18th Day of January, 2012.

Lamen Meera

Notary Public for South Carolina.

My Commission Expires: 9/25/2019

387

WITNESSES

ACSD/M. SLOAN

ARREST WARRANT NO.

1854382

1854383

ACTION OF GRAND JURY

TRUE BILL

NOV 29 2005

Foreman of Grand Jury

Foreperson

VERDICT

COUNT ONE GUILTY

COUNT TWO GUILTY

Isa. Dilligie 9.14.2006

Foreman of Petit Jury

Date:

DOCKET NO. 2005-GS-04-2826

The State of South Carolina,

County of

ANDERSON

COURT OF GENERAL SESSIONS

NOV 29 2005 TERM

THE STATE

MAC

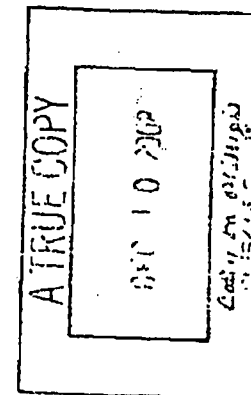
vs.

LEORY ARCHIE

Indictment for

Count One - MURDER
16-3-10/16-3-20 [0116]

Count Two - POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT CRIME
16-23-490 [0549]



COMMITMENT
9-14-06/comp

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR

Ct. One - Murder

Ct. Two - Possession of a Firearm During
The Commission of a Violent Crime

At a Court of General Sessions, convened on NOV 29 2005,
the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONEMURDER

That Leroy Archie did in Anderson County, South Carolina, on or about August 22, 2005 feloniously, wilfully and with malice aforethought, kill one Cathy Galloway by means of shooting her with a handgun and the said victim died on August 22, 2005 as a proximate result thereof.

COUNT TWOPOSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

That Leroy Archie did in Anderson County, South Carolina, on or about August 22, 2005, possess a firearm during the commission of a violent crime, to wit: Murder. All in violation of Section 16-23-490, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA/
COUNTY OF ANDERSON
STATE v LEROY ARCHIE

AKA: _____

Race/Sex: B M Age: 54

DOB: 07/31/50 SSN: _____

Address: _____

City, State, Zip PENDLETON SC 29670

DL# _____ SID _____

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE #

389

20 05 -GS-04- 2826

) A/W#: 1854383

) Date of Offense: 08/22/05

) S.C. Code: 16-23-0490

CDR Code #: 0549

) CASE RESTORED ☐

SENTENCE ☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS TO:

Possession of Weapon during commission of Violent Offense

in violation of 16-23-490 of the S.C. Code of Laws, bearing CDR Code #: 0154191

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Scott McElhannon

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections,
☐ County Detention Center, for a determinate term of 180 days/months/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject of South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

Subsine
☐ CONCURRENT or ☒ CONSECUTIVE to sentences on: Conf One Munda
☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine.....	\$
14-1-206 - Assessments (107.5%)	\$
14-1-211 (A)(1) Conv. Surcharge	\$100 \$
14-1-211 (A)(2) DUI Surcharge	\$100 \$
56-5-2995 (DUI Assessment)	\$12 \$
35.13 (Public Def/Prob)	\$500 \$
73.3, 1B TP (Law Enforce. Funding)	\$25 \$
33.7, 1B TP (Drug Court Surcharge)	\$100 \$
50-21-114 (BUI Breath Test Fee)	\$50 \$
56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% County(if paid in installments)	\$
TOTAL	\$

Cathy M. Phillips

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

PTUP _____ time served pursuant to S.C. Code 24-13-40 to
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund, if applicable

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 116131

Sentence Date 9-14-06

Court Reporter Sharon V. Hanks Code #: 1111

A TRUE COPY

DEC 10 2003

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

STATE v LEROY ARCHIE

AKA:

Race/Sex: ☒ M Age: 55

DOB: 07/31/50 SSN: 7

Address:

City, State, Zip PENDLETON SC 29670

DL# SID:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

2005-GS-04-2826

AW#: 1854382

Date of Offense: 08/22/05

S.C. Code: 16-03-0010 CDR Code #: 0116

CASE RESTORED ☒

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Murder Count one

in violation of 16-3-10 of the S.C. Code of Laws, bearing CDR Code #: 0111161

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☒ MOST SERIOUS ☒ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Scott McElhannon

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections,
☐ County Detention Center, for a determinate term of Life with 10 years days/months/years or
☐ under the Youthful Offender Act not to exceed 10 years and/or pay a fine of \$
provided that upon the service of days/months/years and/or payment of \$
plus costs and assessments as applicable*, the balance is suspended with probation
for months/years and subject of South Carolina Department of Probation.
~~Parole & Parole Services standard conditions of probation, which are incorporated by reference.~~

- ☐ CONCURRENT or ☐ CONSECUTIVE to sentences on:
☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied
by the State Department of Corrections

SPECIAL CONDITIONS:

- ☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ plus 20% fee \$
Payment Terms:
☒ set by SCDPPPS

Recipient:

*Fine.....	\$	<u> </u>
14-1-206 - Assessments (107.5%)	\$	<u> </u>
14-1-211 (A)(1) Conv. Surcharge	\$100	\$ <u>100</u>
14-1-211 (A)(2) DUI Surcharge	\$100	\$ <u> </u>
56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
35.13 (Public Def/Prob)	\$500	\$ <u> </u>
73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25</u>
33.7, 1B TP (Drug Court Surcharge)	\$100	\$ <u> </u>
50-21-114 (BUI Breath Test Fee)	\$50	\$ <u> </u>
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
3% County (if paid in installments)	\$	<u> </u>
TOTAL	\$	\$ <u>125</u>

Cathy M. Phillips

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

PTUP time served pursuant to S.C. Code 24-13-40 to
days/hours Public Service Employment

Obtain GED
Attend Voc Rehab, or Job Corps
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund, CDR
Other:

A TRUE COPY

DEC 10 2008

- ☐ Appointed PD or other counsel, 35.13 TP
Requires \$300 be paid to Clerk during probation.

Presiding Judge

Judge Code: 11631

Sentence Date 9/14/06

Court Reporter Sharon Code #: 1111

Yizer-Hanks

ENTERED

391
ARREST WARRANT
I-854382
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
ANDERSON

THE STATE
against

ARCHIE, LEROY

Address: PENDLETON, SC 29670-0000

Phone: _____ SSN: _____

Sex: M Race: B Height: 5 10 Weight: 160

State: SC DL#: _____

DOB: 7/31/1950 Agency ORI#: 0400

Prosecuting Agency: SHERIFF DEPT.

Prosecuting Officer: SLOAN, M B

Offense: MURDER

Offense Code: 0116
Code/Ordinance Sec. 16-3-10

This warrant is **CERTIFIED FOR SERVICE** in the

☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant ARCHIE, LEROY

on 08-22-2005

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
ANDERSON)

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 25, 1993
SCCA 518

Personally appeared before me the affiant INV. M.B.SLOAN/ACSO who
being duly sworn deposes and says that defendant ARCHIE, LEROY
did within this county and state on 8/22/2005
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) violate the criminal laws of the
in the following particulars:

DESCRIPTION OF OFFENSE: MURDER

I further state that there is probable cause to believe that the defendant named above did commit the crime
set forth and that probable cause is based on the following facts:
ON 8/22/05 THE DEFENDANT DID WITH MALICE AFORETHOUGHT CAUSE THE
DEATH OF CATHY L. GALLOWAY BY SHOOTING HER WITH A .32 CALIBER
HANDGUN. THE DEFENDANT DID GIVE A WRITTEN CONFESSION TO THIS
INCIDENT. THIS INCIDENT DID OCCUR IN ANDERSON COUNTY

Sworn to and subscribed before me)
on 8/22/2005)

Signature of Affiant _____)
Affiant's Address _____)
Signature of Issuing Judge _____)
Affiant's telephone _____)

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
ANDERSON)

** CASE NUMBER 200530129
ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 8/22/2005 defendant ARCHIE, LEROY
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of _____)

DESCRIPTION OF OFFENSE: MURDER) as set forth below:

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her
before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge _____ (L.S.)) Judge's Address POB 8002, 107 S. MAIN ST.
Judge Code: 733) ANDERSON SC 29622-0000
Judge's Telephone 260-4156
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held at

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol.pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

393

ARREST WARRANT

I-854383

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ANDERSONTHE STATE
against

ARCHIE, LEROY

Address:

PENDLETON, SC 29670-0000

Phone: _____ SSN: _____

Sex: M Race: B Height: 5 10 Weight: 160

State: SC DL#: _____

DOB: 7/31/1950 Agency ORI#: 0400

Prosecuting Agency: SHERIFF DEPT.

Prosecuting Officer: SLOAN, M B

Offense: POSSESSION OF WEAPON DURING COMMISSION

Offense Code: 1245

Code/Ordinance Sec. 16-23-490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant ARCHIE, LEROY

on 08-22-2005

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of
ANDERSON)

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1992
SCCA 516Personally appeared before me the affiant INV. M.B. SLOAN/ACSO
being duly sworn deposes and says that defendant ARCHIE, LEROY
did within this county and state on 8/22/2005State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of) violate the criminal laws of the
in the following particulars:DESCRIPTION OF OFFENSE: POSSESSION OF WEAPON DURING COMMISSION
OF A VIOLENT CRIMEI further state that there is probable cause to believe that the defendant named above did commit the crime
set forth and that probable cause is based on the following facts:ON 8/22/05 THE DEFENDANT WAS IN POSSESSION OF A .32 CALIBER
HANDGUN DURING THE COMMISSION OF A VIOLENT CRIME (MURDER). THE
DEFENDANT USED THE HANDGUN TO SHOOT CATHY L. GALLOWAY. THE
DEFENDANT DID GIVE A WRITTEN CONFESSION TO THIS INCIDENT. THIS
INCIDENT DID OCCUR IN ANDERSON COUNTY.

Sworn to and subscribed before me)

on 8/22/2005)

Signature of Affiant)

Affiant's Address)

Signature of Issuing Judge (L.S.)

Affiant's telephone

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of
ANDERSON)

** CASE NUMBER 200530129

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 8/22/2005 defendant ARCHIE, LEROY
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of) as set forth below:DESCRIPTION OF OFFENSE: POSSESSION OF WEAPON DURING COMMISSION
OF A VIOLENT CRIMENow, therefore, you are empowered and directed to arrest the said defendant and bring him or her
before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

Judge Code: 733

(L.S.)

Judge's Address POB 8002, 107 S. MAIN ST.

ANDERSON

Judge's Telephone 260-4156

SC 29622-0000

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge _____
 on _____
 Type and Amount: _____
 Name of Surety: _____

PRELIMINARY HEARING held at

Judge _____
 on _____
 Defense Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol.pros., etc.)
 Disposition: _____
 Sentence: _____

JURORS

WITNESSES

Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

