

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

VOLUME II OF II

RECEIVED

MAY 31 2011

S.C. Supreme Court

BRAXTON J. BELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

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

ATTORNEY FOR PETITIONER
VOLUME II OF II
PAGES 501-661

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General
P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
APPLICATION FOR POST-CONVICTION RELIEF.....	544
AMENDMENT TO APPLICATION FOR POST-CONVICTION RELIEF	551
RETURN.....	560
POST-CONVICTION RELIEF HEARING TRANSCRIPT.....	564
ORDER OF DISMISSAL.....	645
CLERK OF COURT RECORDS.....	653
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS RECORDS.....	659

1 circumstances surrounding him at the time, and the
2 situation could be determined from the standpoint of
3 the Defendant, it being for you, the Jury, to say
4 whether or not his apprehension of immediate danger or
5 death or serious bodily harm was reasonable and would
6 have been felt by a man of ordinary reason, prudence
7 and firmness.

8 Whether there was such a reasonable
9 appearance of danger would have justified the killing
10 is a question of fact for you, the Jury, and in making
11 your determination you will consider the conditions of
12 both parties. If the appearance to the Defendant at
13 the time the fatal shot was fired was such that he
14 could not reasonably and safely avoid the taking of
15 the life of the deceased, and a man of ordinary reason
16 and courage would have arrived at that same
17 conclusion, then it is not necessary for him to go any
18 further and he should be acquitted if he is free from
19 fault or bringing on the immediate difficulty.

20 One has a right to use force in repelling
21 force as far as protecting himself, and he cannot be
22 required to make a nice calculation as to the degree
23 or quantity or amount of force which would be
24 necessary for his complete protection from loss of his
25 life or serious bodily injury.

1 Ladies and gentlemen, as I told you, the
2 danger to the Defendant need not be actual. If it is
3 an apparent danger, and one which a man of ordinary
4 firmness and coolness would have come to the
5 conclusion it was an immediate danger, he would have
6 the right to act upon it, even if the result is death
7 of his adversary.

8 The force which a person may use in
9 self-defense is that which under all the circumstances
10 reasonably appears necessary to that person in order
11 to prevent an impending injury. The infliction of
12 serious bodily injury is not justifiable or excusable
13 on the ground of self-defense by reason of a danger or
14 apprehension of danger of a slight bodily injury, or
15 of a mere indignity, or of a slight or moderate
16 injury, such as that can be anything from a simple or
17 ordinary assault and battery with or without some type
18 of weapon, unless the assault is accompanied by acts
19 indicating imminent danger of serious bodily harm or
20 felony and produces in the mind of the accused a
21 reasonable belief of such danger.

22 In determining whether a particular means
23 and method used in the self-defense is or is not
24 excessive, the amount of the force, the means or
25 instrument by which it is applied, the manner or

1 method of applying it, and the circumstances under
2 which the force was applied are facts to be
3 considered.

4 The privilege of self-defense, as I said,
5 rests upon the necessity of permitting a person who is
6 attacked to take reasonable steps to prevent harm to
7 himself or herself where there is no time to resort to
8 the law. The privilege extends to the use of all
9 reasonable force to prevent any threatened harmful or
10 offensive bodily contact or any confinement, whether
11 intended or negligent.

12 One has a duty, however, ladies and
13 gentlemen, to avoid taking a human life or of
14 inflicting serious bodily harm if it is possible to do
15 so, even to the extent of retreating from his
16 adversary, unless by so doing, the danger of being
17 killed or suffering serious bodily harm is increased
18 or it is reasonably apparent that such danger would be
19 increased.

20 Now, ladies and gentlemen, just as I told
21 you, the State has the burden of proof in this case
22 and must prove all of the elements of these two
23 crimes. The State also has the burden of disproving
24 self-defense beyond a reasonable doubt.

25 So you should consider all of the evidence

1 in this case, including the evidence of self-defense.
2 And if you have a reasonable doubt of the Defendant's
3 guilt after considering all of the evidence, including
4 the evidence of self-defense, then you must find him
5 not guilty.

6 On the other hand, if you have no
7 reasonable doubt of the Defendant's guilt, after
8 considering all of the evidence, including the
9 evidence of self-defense, then you must find him
10 guilty, of course, guided by the charges that I gave
11 you as to murder and manslaughter.

12 Now, ladies and gentlemen, the second
13 crime he is charged with is a statutory crime, which
14 means it was a violation of a crime passed by our
15 Legislature, and it's Section 16-23-490 of our Code of
16 Laws. And that in pertinent part provides:

17 A person who is in possession of a firearm
18 or visibly displays what appears to be a firearm, or
19 visibly displays a knife during the commission of a
20 violent crime, and is convicted of committing or
21 attempting to commit a violent crime, is guilty of a
22 violation of this Section.

23 Ladies and gentlemen, nothing that I've
24 said during the course of this trial or any of these
25 instructions has been in any way intended to express

1 to you or to suggest to you that I have a view of this
2 case or an opinion as to the facts of the case or the
3 weight of the evidence or the credibility of the
4 witnesses or what your verdict should be; and if
5 anything I've said or done during this trial or during
6 this week seemed to indicate that I have such an
7 opinion, please put that out of your mind. I do not
8 and I am not allowed to have any such opinion.

9 Additionally, ladies and gentlemen, I'm
10 required to declare the law to you that might apply to
11 this case depending on what you find the facts to be,
12 and I'm doing this to help guide you to a just and
13 reasonable and lawful verdict.

14 Now, whether some of my instructions will
15 even apply in this case depends upon what you find to
16 be the facts in this case. And the fact that I have
17 instructed you on certain elements in this case should
18 not be taken as an opinion that I have, as to what
19 this Court thinks you should find to be the facts or
20 what your verdict should be in this case.

21 The order in which I've given my
22 instructions has no consideration and no significance.
23 I try to make it logical, but sometimes I think I
24 might fail to do that. And, if I have repeated
25 certain things, it's because these are difficult legal

1 principles and I know you have limited legal training.
2 I don't mean to belittle you, but sometimes I think we
3 come from different worlds. I haven't repeated
4 anything because I think it's more important, but
5 because I think that applies to this case. If I
6 repeated anything, it's because I think I may need to
7 do that to make it clear to you what I've been talking
8 about and it makes sense.

9 You have been selected as fair and
10 impartial jurors and you were sworn to impartially try
11 and determine the facts of this case, and when you
12 comply with your oath to do so, then no one will have
13 a right to criticize your verdict in this case and you
14 will have fully discharged your duty as Jurors.

15 You are to decide the case according to
16 the testimony that you have heard from the lips of the
17 sworn witnesses, along with the other evidence and the
18 exhibits or stipulation that was agreed to by the
19 parties and entered into the record.

20 You must decide the issues in this
21 proceeding without bias and without prejudice to any
22 party. You cannot allow yourself to be governed by
23 sympathy or by prejudice or passion or public opinion
24 or any other such arbitrary factor. Both the State
25 and the Defendant in this case have a right to expect

1 that you will carefully and impartially consider all
2 of the evidence in this case and that you will follow
3 my instructions to you on the law in reaching your
4 verdict in this case..

5 Now, Mr. McCarley, I'm going to ask if you
6 would serve as Foreperson. That simply means that you
7 would preside as this Jury begins its deliberation.
8 Any verdict reached by this Jury must be deliberate.
9 There would be 12 of you deliberating. All 12 of you
10 must agree before any verdict can be reported as the
11 verdict of this Jury. When the Jury has reached a
12 unanimous verdict, it will be your duty to report that
13 verdict to the Court on behalf of the entire Jury.

14 Now, you are going to have these
15 indictments with you. And on one side of the
16 indictment it has a brief description of the crime
17 which is charged, murder in this hand and possession
18 of a weapon or firearm during the commission of a
19 violent crime in this hand.

20 On the other side is the -- what I call it
21 the title side or the face of the indictment. And
22 down on the bottom right-hand corner it has a little
23 block for verdict.

24 And I'm gonna take the indictment for
25 murder first. And there are three possible verdicts

1 in this charge of murder. There is no significance in
2 the order in which I relay them to you. I have to
3 state one before the other, there are three that I
4 have to tell you about.

5 If you find that the State has proven
6 beyond a reasonable doubt the elements of murder as
7 I've charged them to you, then your verdict would be
8 guilty of murder.

9 If you find that the State has not proven
10 the elements of murder, but the State has convinced
11 you beyond a reasonable doubt that the Defendant is
12 guilty of voluntary manslaughter, then your verdict
13 would then be that of voluntary manslaughter.

14 If you find that the State has not proven
15 to you that the Defendant is guilty of a crime, then
16 your verdict would be not guilty.

17 And so I have listed those three: Guilty
18 of murder, guilty of voluntary manslaughter, not
19 guilty; you just strike two of them out or circle one
20 of them, just make it clear to me what is the
21 unanimous finding of the verdict in regard to this
22 charge. And then you sign your name as Foreperson and
23 put today's date, July 20th, indicating that that is
24 the unanimous verdict.

25 On the other indictment there are only two

1 possible forms: Guilty or not guilty. Now, you need
2 not even consider this indictment if you find him not
3 guilty on this one.

4 Voluntary manslaughter is a crime of
5 violence, isn't it?

6 MR. MCELHANNON: Yes, sir.

7 MR. WHITEN: Yes, sir.

8 THE COURT: If you find him guilty of
9 either of the charges, on the murder -- either the
10 murder or voluntary manslaughter, then you would
11 consider the elements of possession of a weapon during
12 the commission of a violent crime.

13 Ladies and gentlemen, let me tell you that
14 a violent crime is not what you and I might think it
15 is. The Legislature has passed a list of crimes which
16 are violent crimes, and so murder and voluntary
17 manslaughter are on that list. That's what we mean by
18 that.

19 So only if you find him guilty of one of
20 those two charges would you even consider this one.
21 Put this one aside until you have dealt with this one,
22 and then you would either consider this one or not
23 consider it at all, depending upon your verdict on the
24 first indictment.

25 Now, if you have any questions or

1 comments -- I mean questions which come up during your
2 deliberations, please write those down. Dr. Graham
3 will see that you have a pad and pencil. And write
4 those questions down, knock on the door, give them to
5 the bailiff and the bailiff will bring them to me and
6 I'll take whatever steps I need to do to furnish you
7 an answer in the parameters that I have to deal with
8 those type of questions.

9 (Off-the-record discussion.)

10 THE COURT: If the smokers leave, the rest
11 of you will have to stop your deliberations. All 12
12 of you need to be there before you can deliberate on
13 this case.

14 When you have reached a verdict, simply
15 knock on the door and tell the bailiff you have
16 reached a verdict. You don't tell him what the
17 verdict is, you don't give him the verdict form or
18 these indictments. You simply tell him you have
19 reached a verdict. At that time we will bring you
20 into the courtroom and you will pass up the verdict
21 form in the courtroom.

22 I'm gonna ask you in just a minute to
23 retire to your jury room. Your lunch should be there.
24 I told them to have it there by 1 o'clock, so I'm sure
25 if they're running a few minutes late, it's probably

1 there for you.

2 Don't begin talking about the case yet for
3 this reason. I must discuss my charge to you with the
4 attorneys. Sometimes I make a mistake, I fail to tell
5 you everything I need to tell you; sometimes I make a
6 misstatement without realizing it. But I assure you,
7 if I have, they will catch it and I will bring you
8 back in and I will correct any error that I have made,
9 either by omission or commission, and then you can
10 begin your deliberations. If I do not need to bring
11 you back in, I will at that time send in to you the
12 indictments and the exhibits. When you get the
13 indictments and the exhibits, then you can begin your
14 deliberations, but not until that time.

15 Would the two alternates just remain in
16 the jury box, and the other 12 of you are excused,
17 please. You can start eating your lunch. If I have
18 to bring you back, it will be within 90 seconds, so
19 you might consider that. If I haven't done that, the
20 bailiff will tell you -- the bailiff will tell you
21 quickly if you are not coming back and then you can
22 begin your lunch. So the 12 of you please retire to
23 the jury room, but do not begin your deliberations at
24 this time.

25 (Whereupon, the Jury left the courtroom at

1 1:20 p.m.)

2 THE COURT: Anything from the State?

3 MR. MCELHANNON: Nothing from the State,
4 Your Honor.

5 MR. WHITEN: None, Your Honor.

6 THE COURT: All right. I want to be sure
7 that voluntary is a crime of violence. That just hit
8 me as I was charging it.

9 Voluntary manslaughter, it is, without any
10 question.

11 MR. MCELHANNON: Yes, sir.

12 THE COURT: All right, sir.

13 MR. WHITEN: Your Honor, I would like to
14 see, if you don't mind, if I may review the
15 indictments?

16 THE COURT: Yes, sir (handing).

17 You can tell the Jury they can begin
18 lunch, that they will not be brought back.

19 (To the Alternates): You probably think
20 you have done nothing this week, but you are very
21 crucial to us being able to try a case. You would be
22 shocked at how often we have to substitute an
23 alternate for one of our jurors, it happens
24 frequently. And if we didn't have you here, we would
25 have to start over. If we had lost two jurors this

1 morning -- one -- and didn't have an alternate, we
2 would have to throw all this out and start over, so
3 you have served a very important service.

4 They have your lunch, and they'll put you
5 in a separate jury room. I'm gonna ask you to stay
6 there, I will not keep you any longer than I think
7 reasonably necessarily, and then I will be excusing
8 you. But please do that, if you would. Thank you
9 very much.

10 (Off-the-record discussion.)

11 (The two jury alternates retired to a
12 separate jury room.)

13 **THE COURT:** Anything before we recess?

14 **MR. WHITEN:** No, Your Honor.

15 **THE COURT:** I think, Mr. McElhannon, you
16 did a good job of presenting evidence for the State,
17 and, Mr. Whiten, I think you have done a good job
18 putting up your defense. It's in the hands of the
19 Jury, that's the way the system works. We'll await a
20 decision from the Jury.

21 **MR. MCELHANNON:** Thank you, Your Honor.

22 **MR. WHITEN:** Thank you, Your Honor.

23 (Whereupon, a recess was taken.)

24 (The Jury ate their lunch from 1:25 p.m.
25 until 2:07 p.m., at which time their

1 deliberations commenced.)

2 (There was a question from the Jury at

3 3 o'clock p.m.)

4 (Court's Ex. # 2, jury note, was marked

5 for identification.)

6 (The Defendant entered the courtroom.)

7 **THE COURT:** All right, ladies and

8 gentlemen, we have a note from the Jury Foreman and it

9 says: Need definition of malice again, types. And

10 then: Do we as jurors have a right to know what

11 punishment in years go with each possible conviction?

12 So I propose to bring the Jury in and

13 re-charge them on malice, which would include the two

14 types; and to answer the final question in the

15 negative, that that's not their concern.

16 Any objection from the State?

17 **MR. MCELHANNON:** No objection from the

18 State.

19 **MR. WHITEN:** None, Your Honor.

20 **THE COURT:** All right, sir. You can bring

21 them in.

22 (Whereupon, the Jury and the two

23 alternates entered the courtroom at 3:11

24 p.m.)

25 **THE COURT:** All right, ladies and

1 gentlemen. Let the record reflect that we have all 14
2 jurors in, including the two alternates, but the two
3 alternates have been held separately from the other
4 members of the Jury panel since we last had the Jury
5 in court.

6 Mr. Foreman, I got your note. First you
7 need a definition of malice, including the types of
8 malice, I believe. All right, sir.

9 Malice is an essential element of the
10 crime of murder. Malice is a term of art, a technical
11 term, importing wickedness and excluding just cause or
12 legal excuse. Malice in any form, whether it arises
13 from hatred, ill will or otherwise, is still malice.

14 Malice springs from depravity, from a
15 heart devoid of social duty and fatally bent on
16 mischief.

17 Malice must be aforethought. The law does
18 not require that the malice should exist for any
19 particular time before the commission of the act, but
20 malice must exist in the mind of the accused just
21 before and at the time of the commission of the act.
22 There must be a combination of the previous evil
23 intent and the acts producing them -- or producing the
24 result.

25 Malice aforethought may be expressed or

1 inferred. These words, expressed or inferred, do not
2 mean different types of malice, but merely the manner
3 in which the only kind of malice known to the law may
4 be shown to exist. That is either by direct evidence
5 or by necessary inference from the facts and
6 circumstances which are proved.

7 Expressed malice is shown when one by word
8 of mouth expresses his hatred or ill will toward
9 another, or whether the State shows that he made
10 preparation beforehand to do the deed which was later
11 accomplished, lying in wait for a person, or any acts
12 of preparation going to show that the deed was in his
13 mind would be expressed malice.

14 What is inferred malice? Even though no
15 expressed intent to kill is proved by direct evidence,
16 it may be inferred from the facts and circumstances
17 which are proved. Malice may be inferred from
18 willful, deliberate and intentional doing of an
19 unlawful act without just cause or legal excuse. In
20 other words, in its general signification, malice
21 means the doing of a wrongful act intentionally,
22 without justification or legal excuse. Malice may be
23 inferred from conduct showing a total disregard for
24 human life.

25 The inference of malice may arise when the

1 deed is done with a deadly weapon, such as a knife,
2 pistol, or dagger or some weapon of that nature,
3 which, when used with the intent to injure another, is
4 calculated to produce death or serious bodily injury.

5 A deadly weapon is any article,
6 instrument, or substance which is likely to cause
7 death or great bodily harm.

8 Malice does not necessarily impart ill
9 will toward the individual injured, but rather -- but
10 signifies rather a general malignant recklessness of
11 the lives and safety of others, or a condition of mind
12 which shows a heart devoid of social duty and fatally
13 bent on mischief. It is the wrongful intent to injure
14 another and indicates a wicked or depraved spirit
15 intent on doing wrong.

16 So, if facts are proved beyond a
17 reasonable doubt sufficient to raise an inference of
18 malice to your satisfaction, this inference would be
19 simply an evidentiary fact to be taken in
20 consideration by you, the Jury, along with the other
21 evidence in the case, and you may give to it such
22 weight as you determine it should receive.

23 All right, Mr. Foreman, then you asked:
24 Do we as jurors have a right to know what punishment
25 in years goes with each possible conviction? And the

1 answer is no. That is a matter of law, strictly for
2 the Court. You are not to concern yourself with
3 punishment, that is not of your doing, you are not to
4 even discuss that.

5 That's not your job. Your job is to
6 determine the facts in the case, which I've instructed
7 you to do, and that would result in your returning a
8 verdict. But, as far as any punishment is concerned,
9 that is not your concern, you should not worry about
10 that, you should not be concerned about that. Please
11 do not even discuss that. That's entirely for the
12 Court.

13 Now, I think I've answered your question.
14 Do you think I have?

15 **THE FOREMAN:** (Nodded head.)

16 **THE COURT:** All right, sir. If you need
17 anything else, please let me know. Please continue
18 your deliberations.

19 Mr. Bailiff, please put the two alternates
20 back in a separate room.

21 (Whereupon, the Jury and the two
22 alternates left the courtroom.)

23 **THE COURT:** Any exceptions from the State?

24 **MR. MCELHANNON:** No exceptions, Your
25 Honor.

1 THE COURT: From Defense?

2 MR. WHITEN: None, Your Honor.

3 THE COURT: All right, sir.

4 (The Jury continued their deliberations at
5 3:17 p.m.)

6 (A verdict was reached at 4:20 p.m.)

7 THE COURT: Ladies and gentlemen, I
8 understand we have a verdict in the case. I don't
9 have a clue as to what the verdict might be. This is
10 a serious case, a man lost his life. And I know that
11 the family of the victim as well as the Defendant are
12 here and there are a lot of emotions in this case; we
13 have already had some of them displayed.

14 But we can't tolerate any emotional
15 outbursts in this courtroom when this verdict is
16 announced. I would ask that if you think there is any
17 chance that you can't control your emotions, that you
18 step outside the door, because it won't take but about
19 two or three minutes after the verdict is announced,
20 and somebody can come out and tell you what the
21 verdict is.

22 Because, if you make any type of
23 disturbance in this courtroom, you might well be
24 spending the night in jail, regardless of what happens
25 or what the verdict is. So please, I would urge you,

1 if you think there is any chance that you can't
2 control your conduct, please just step out the door
3 and someone can tell you what the verdict is as soon
4 as we announce it.

5 All right. Is the State ready to receive
6 the verdict?

7 MR. MCELHANNON: We're ready to proceed,
8 Your Honor.

9 THE COURT: Is the Defense ready?

10 MR. WHITEN: Ready, Your Honor.

11 THE COURT: Bring the Jury in, please.

12 I would just note that our alternates are
13 in the courtroom; they were excused once we received
14 word that we had a verdict and I told them they were
15 welcome to stay. I appreciate y'all being patient.

16 (Whereupon, the Jury entered the courtroom
17 at 4:40 p.m.) --

18 THE COURT: All right, Madam Clerk, we
19 have all the Jury.

20 THE CLERK: Mr. Foreman, ladies and
21 gentlemen of the Jury, have you agreed on a verdict?

22 THE FOREMAN: Yes, we have.

23 THE CLERK: If you would pass it over to
24 the bailiff.

25

1 Verdict of the Jury:

2 THE COURT: All right, Madam Clerk, the
3 verdicts are in the proper form. You may publish the
4 verdict, that one first.

5 THE CLERK: Thank you.

6 Case 2005-GS-04-618, *The State v. Braxton*
7 *Bell*, indictment for murder. The verdict of the Jury:
8 Guilty of voluntary manslaughter. That's signed James
9 David McCarley, Foreperson.

10 Case 2005-GS-04-619, *The State v. Braxton*
11 *Bell*, indictment for possession of a firearm during
12 the commission of a violent crime, the verdict of the
13 Jury is guilty. That's signed James David McCarley,
14 Foreperson.

15 Mr. Foreman, ladies and gentlemen of the
16 Jury, if these are your verdicts, would you please
17 indicate by raising your right hand.

18 (All 12 members of the Jury raised their
19 right hands.)

20 THE CLERK: All hands raised, Your Honor,
21 verdicts of the Jury.

22 THE COURT: Any requests to poll the Jury?

23 MR. WHITEN: Yes, Your Honor, just as a
24 formality.

25 THE COURT: All right. Ladies and

1 Gentlemen, you can put your hands down. I'm gonna ask
2 you two questions, and you just answer them
3 appropriately. I'll start with the Foreperson and
4 I'll go right across the front row, then the second
5 and then the third.

6 The first question is: Were these your
7 verdicts? And you answer appropriately.

8 The second question will be: Are these
9 still your verdicts? And again you will answer
10 appropriately.

11 Mr. Foreman, were these your verdicts?

12 **THE FOREMAN:** Yes.

13 **THE COURT:** Are they still your verdicts?

14 **THE FOREMAN:** Yes.

15 **THE COURT:** Ma'am, were these your
16 verdicts?

17 **JUROR:** Yes.

18 **THE COURT:** Are they still your verdicts?

19 **JUROR:** Yes, sir.

20 **THE COURT:** Sir, were these your verdicts?

21 **JUROR:** Yes, sir.

22 **THE COURT:** Are they still your verdicts?

23 **JUROR:** Yes, sir.

24 **THE COURT:** Ma'am, were these your
25 verdicts?

1 JUROR: Yes.

2 THE COURT: Are they still your verdicts?

3 JUROR: Yes.

4 THE COURT: Sir, were these your verdicts?

5 JUROR: Yes, sir.

6 THE COURT: Are they still your verdicts?

7 JUROR: Yes, sir.

8 THE COURT: Ma'am, were these your

9 verdicts?

10 JUROR: Yes, sir.

11 THE COURT: Are they still your verdicts?

12 JUROR: Yes, sir.

13 THE COURT: Sir, were these your verdicts?

14 JUROR: Yes, sir.

15 THE COURT: Are they still your verdicts?

16 JUROR: Yes, sir.

17 THE COURT: Ma'am, were these your

18 verdicts?

19 JUROR: Yes.

20 THE COURT: Are they still your verdicts?

21 JUROR: Yes.

22 THE COURT: Ma'am, were these your

23 verdicts?

24 JUROR: Yes, sir.

25 THE COURT: Are they still your verdicts?

1 JUROR: Yes, sir.

2 THE COURT: Sir, were these your verdicts?

3 JUROR: Yes, sir.

4 THE COURT: Are they still your verdicts?

5 JUROR: Yes, sir.

6 THE COURT: Ma'am, were these your
7 verdicts?

8 JUROR: Yes.

9 THE COURT: Are they still your verdicts?

10 JUROR: Yes, sir.

11 THE COURT: Ma'am, were these your
12 verdicts?

13 JUROR: Yes.

14 THE COURT: Are they still your verdicts?

15 JUROR: Yes.

16 THE COURT: All right. All the jurors
17 have been polled and all have answered in the
18 affirmative. The verdict stands.

19 Ladies and gentlemen, that concludes your
20 service on this case, and now you can talk about it
21 all you want to with anybody you want to. But you do
22 not have to talk about it, that's entirely up to you.
23 If someone tries to get you to discuss this verdict
24 and your service on this jury, and you want to do
25 that, that's fine; but if you don't, you don't have

1 to, you tell them you don't want to discuss it.

2 If someone persists in trying to get you
3 to discuss it after you make it clear to them that you
4 don't want to talk about it, please report that back
5 to the Clerk of Court's office, and we will deal with
6 that individual, I assure you. You are not subject to
7 any harassment after having served on the Jury and
8 followed the instructions of this Court and I'm
9 convinced that you have done just exactly that.

10 We thank you very much for your service in
11 this case. We do not have any other jury trials this
12 week, so you will be excused. You will be getting
13 your little check in the mail.

14 **THE CLERK:** Yes, Your Honor, and I already
15 have their statements for their employer.

16 (Off-the-record discussion.)

17 **THE COURT:** Mainly you get the thanks of
18 the good people of Anderson County. It's very
19 important that we have capable jurors who will sit and
20 listen attentively to a case, as you have done and as
21 you two alternates have done.

22 You cannot be required by law to serve on
23 a jury again this year. You can serve in 2006 or '7,
24 but you can claim an exemption for 2006 or '7 in this
25 court. Not Federal Court or Magistrate's Court but in

1 this court. If you are subpoenaed next year or the
2 following year, you can say, I just decline to serve.
3 You heard me ask that question Monday if you have
4 served in the past three years. You can serve but you
5 don't have to.

6 Do any of you have any questions? If not,
7 then I'm going to excuse you. If you would like to
8 have a seat out in the front, you are certainly
9 welcome to do that. I will take up a couple legal
10 matters, and then I will sentence the Defendant, and
11 you are welcome to stay. This is part your case, too.
12 I'd be glad to have you. But if you would rather
13 leave, you are free to leave at this time. Thank you
14 very much.

15 You may go that way with the bailiff or
16 you may go right out and have a seat. Or you can go
17 out and come in the back door and have a seat if you
18 would like.

19 (Whereupon, the Jury left the courtroom.)

20 **THE COURT:** Any motions?

21 **MR. MCELHANNON:** None from the State, Your
22 Honor.

23 **MR. WHITEN:** None, Your Honor.

24 **THE COURT:** All right, sir. Have you
25 filled out the sentence sheet?

1 MR. MCELHANNON: Yes.

2 THE COURT: Pass those up, please, and
3 then I'll be glad to hear from anybody who wants to
4 speak on behalf of the State or the victim's family,
5 and y'all can just remain at the table until I hear
6 from them.

7 MR. MCELHANNON: (Handing.)

8 THE COURT: All right, sir. I'll be glad
9 to hear from anyone on behalf of the State or the
10 victim's family. Please come forward.

11 MR. MCELHANNON: Mr. Gambrell's twin
12 brother, Joshua.

13 THE COURT: All right. Yes, sir.

14 MR. JOSHUA GAMBRELL: My name is Joshua
15 Gambrell, G-a-m-b-r-e-l-l.

16 My brother and I were born at 8 a.m. on
17 Friday, April 27th, 1981, and he was born 59 seconds
18 after I was. And since that point in time we haven't
19 not spoken for more than a day. We've spoken every
20 day, even when we lived apart, even when we lived in
21 separate states. Every single day. Sometimes more,
22 sometimes two, sometimes five times a day.

23 My brother -- I also have two sisters, two
24 older sisters, one two years older than us and one
25 five years older than us. And we -- and so, although

1 my brother and I are the same age, I'm 24 now, he was
2 killed at 23, he was always kind of the baby. We used
3 to always treat him kind of like the baby and that was
4 sort of the difference between us.

5 We are fraternal twins, but we look very
6 much alike, I have pictures to show you that, and most
7 people think we're identical. All of our lives people
8 have thought that.

9 So, my brother was the most peace loving
10 person you ever met in your life. He was a friend to
11 the Defendant, who the Defendant --

12 (To the Defendant): You admitted that.

13 -- he was a friend to the family and that
14 was admitted earlier, he was a friend to everyone he
15 met.

16 He -- we were born in Anderson and we
17 moved away. And since his moving back in about 2001,
18 he made numerous friends. Even here -- there was --
19 the funeral service was held in Springfield,
20 Massachusetts, and he had a wake here, an open casket
21 wake here in Anderson, South Carolina, and it was
22 attended by virtually everyone he had met in life and
23 whose lives he had touched.

24 His impact on life extends far beyond, far
25 beyond the confines of our family, it reaches far

1 beyond. He extended himself to everyone he has met.

2 He was a Godfather at 21 to two children,
3 which I have pictures of him with those children. He
4 was valedictorian of his high school. He was probably
5 the most popular kid in his high school. Everyone
6 loves Jonathan.

7 Because we look so much alike, not only,
8 not only will his memory live on in my heart and my
9 mind, but every time I look into the mirror, every
10 time I'm out in the community, when someone approaches
11 me who I don't know, they ask me if I'm Jonathan
12 first.

13 And then that's across states. I've lived
14 in several states. At the time of Jonathan's death I
15 lived in San Francisco where I was a social worker for
16 folks who are living with HIV and they were homeless,
17 and I dealt with bereavement issues every day. At the
18 time of my brother's death I could no longer perform
19 that job. I had three clients die the month before.
20 And that was my first job out of college where I had
21 received a degree in social work, and it was a job I
22 loved and cherished. And I lived -- I was living in
23 Oakland, California, where I was forming a life for
24 myself.

25 At this point I cannot live there anymore.

1 I cannot perform that type of work. I've been out of
2 work. I cannot sleep at nights. I suffer from
3 hemispheric migraines, which are stress induced, and
4 I've been hospitalized due to those migraines because
5 blood flow is stopped on one side of my brain.

6 My sister, my sister who is here in court,
7 was in the process of receiving her college degree at
8 the time of my brother's death, and she was working
9 full-time, both of which she had to put on hold while
10 she dealt with this issue.

11 I have another sister who is a nurse for
12 elders, and she was unable to perform her job. In
13 fact, she had to -- far before any bereavement time,
14 she had no bereavement time at all to take off before
15 she had to return to work.

16 My mother has had bereavement counseling
17 in this time.

18 Because I am jobless, I have no medical
19 insurance and I cannot get any counseling connected
20 through a job, so I've had none of no kind.

21 It will take a lifetime for Mr. Bell to
22 process what he did. And, unfortunately, you do not
23 have the -- you may not have the opportunity, I don't
24 know -- to sentence him to a lifetime to think about
25 what he has done, the life he has taken. But I ask

1 for the maximum; my family asks for the maximum
2 sentence allowed, to give him the time to process what
3 he has done, because he's taken my life, in effect,
4 he's taken the life of my family.

5 And Jonathan's friends, his family, his
6 community, this is a man who literally would give the
7 shirt off his back to someone, literally gave money
8 out of his pocket. He was the type of man growing up
9 that he regularly invited folks, salespeople,
10 Jehovah's Witnesses or whoever might knock on the door
11 for something, he regularly invited them in to come
12 and stay.

13 At the time of his death he was even very
14 good friends to one such man, one such elderly man he
15 had invited to stay and talk about the Jehovah's
16 Witness faith. He was not a practicing Jehovah's
17 Witness, but he did that out of the kindness of his
18 heart; that's the kind of man he was.

19 The young woman who first testified was
20 just a woman who he met at work. He approached her,
21 introduced himself, as I'm sure he did Mr. Bell, as he
22 does most people. He's that kind of person.

23 This is not fair. This is simply not
24 fair. He did nothing to no one. He deserves more
25 than this. He was shot with a \$70 gun, for no reason,

532

1 by someone who was on drugs and had used alcohol
2 previously. Who had -- who -- I don't know if he
3 formed a grudge or not. I have no idea. I have not
4 known this man until I came into court.

5 All I do know is that my brother is not
6 here and nothing can bring him back. But I ask that
7 you give Mr. Bell the full -- the full -- the maximum
8 sentence allowed. And at this time I would like to
9 show you some photos I have.

10 THE COURT: All right, sir.

11 MR. JOSHUA GAMBRELL: And I'm five-eleven,
12 and my brother was, too.

13 THE COURT: Well, you all certainly look a
14 lot alike in these pictures. Thank you, sir.
15 (Handing.)

16 MR. MCELHANNON: Your Honor, no one else
17 from his family wanted to speak, I don't believe.

18 THE COURT: All right.

19 MR. MCELHANNON: And the State would just
20 concur with the family's request as to the sentencing,
21 Your Honor.

22 THE COURT: All right, sir. What kind of
23 record did the Defendant have?

24 MR. MCELHANNON: He had no prior record,
25 Your Honor.

1 **THE COURT:** No juvenile, either?

2 **MR. MCELHANNON:** He did have some juvenile
3 offenses; they were all minor, simple assaults and
4 batteries, that type of thing.

5 **THE COURT:** All right, thank you, sir.

6 Mr. Whiten, I would be glad to hear from
7 you, your client, and if you would like someone to
8 speak on his behalf, I would be glad to hear from
9 them.

10 **MR. WHITEN:** Your Honor, this is Joyce
11 Bell, his mother.

12 **THE COURT:** Yes, ma'am, come on around.

13 **MS. JOYCE BELL:** Hi.

14 **THE COURT:** Yes, ma'am.

15 **MS. JOYCE BELL:** I'm Braxton's -- the
16 Defendant's mother. I wasn't prepared to say this, or
17 prepared to do this.

18 But, first and foremost, I want to
19 apologize to the family. Me and Braxton, Braxton is
20 my son, and we loved Jonathan the same way they loved
21 him. Because we met him, he came to us as a friend,
22 he slept in our house, he ate our food, he took a
23 bath, and they was friends.

24 Then it went wrong somewhere. Something
25 got stolen and it started a whole lot of beef with

1 each other. And, if Jonathan had have come and told
2 me, you know, because he was older than Braxton, if he
3 had mentioned it, I would have resolved it. I
4 wouldn't have never let no child get hurt. That's the
5 type person I am, because I was raised that way.

6 I ain't the smartest person in the world,
7 but God knows I got a big heart, because my parents
8 always raised us to honor and obey and love
9 unconditionally and put God first.

10 So, Braxton ain't no bad person. This was
11 a purely accident, something that wasn't never, ever
12 supposed to happen, and God knows it. And I apologize
13 to the family, and I know I apologize within my heart
14 for my son, because I can look in his eyes every time
15 I go to the Anderson County Detention Center, and I
16 feel his heart. It was just a mistake.

17 And, if the family can forgive us both and
18 learn how to heal -- because I know Jonathan is gone,
19 I know I don't know that feeling. But the pain -- we
20 can't heal if you're gonna cause more and more pain.
21 And may God bless Jonathan Gambrell's family and keep
22 them strong and bless me and Braxton Bell's family so
23 we can come together.

24 Because there's too much going on in this
25 world, too much turmoil. And I just say that I'm so

1 sorry, and I apologize within my heart. And thank
2 you.

3 THE COURT: Thank you, ma'am.

4 MS. JOYCE BELL: Yes, sir.

5 MR. MCELHANNON: Your Honor, I did have
6 one thing to add about his juvenile record. He
7 actually -- we attempted several years ago to help
8 Mr. Bell with his drug problem. He was in the
9 Juvenile Drug Intervention Court and was terminated
10 from that program unsuccessfully.

11 THE COURT: All right, thank you, sir.

12 MR. WHITEN: This is the only witness.

13 I'd like to address the Court.

14 THE COURT: Yes, sir.

15 MR. WHITEN: Go ahead, Braxton.

16 **THE DEFENDANT:** I'm so sorry about what
17 happened to Jonathan. I apologize.

18 THE COURT: All right, sir.

19 MR. WHITEN: Have you got anything else to
20 say?

21 THE DEFENDANT: No, sir.

22 MR. WHITEN: That's all, Your Honor.

23 Now may I address the Court?

24 THE COURT: Yes, sir.

25 MR. WHITEN: Your Honor, this is tragic

1 for both sides, obviously it is. Both of them, both
2 families have been impacted by this.

3 But Braxton Bell when this happened was an
4 18-year-old young man. He's 19 now. His birthday was
5 November the 15th, that is his birth date. He turned
6 19 after this occurred. He has no children, he's not
7 married.

8 This was an act of a very, very immature,
9 really young man, who some of us -- some people
10 believe was influenced by the devil to some extent;
11 not forgivable, not by any means, not forgivable, but
12 it was an act by a very young, immature man.

13 He was using drugs. He admits that he was
14 using drugs. He has had a drug problem. Drugs have
15 been in his life for some time. He does need drug
16 interdiction, no question about that. He deeply needs
17 to be interdicted with some program that's effective.

18 We both know that the drug program in
19 prison is ineffective. You don't even get to it until
20 you're in the prison four or five years, and even then
21 it's been proven ineffective. But he needs that.

22 He has no prior record in this court.
23 This is his first time -- a big time to be here, but
24 it's his first time here. He's been in juvenile
25 court, as said, but not here.

1 From the testimony that was taken, and I'm
2 not gonna go over the testimony at all, but just to
3 reflect on the testimony just a bit, it's pretty clear
4 that this was an altercation between these two young
5 fellas, Jonathan was 23, that had been ongoing for
6 some time.

7 The verdict says it's a heat-of-passion
8 event. I think the Jury recognized it was a
9 heat-of-passion sort of conflict, and it was resolved
10 unfortunately in a very, very unfortunate way by the
11 death of Jonathan Gambrell. But it wasn't intentional
12 and there was no malice involved.

13 It would be wonderful if the Jury could
14 bring Jonathan Gambrell back, but they can't.

15 Braxton is -- I would ask that he be
16 considered for YOA. That's six years. And on the
17 16-23-490 charge, Your Honor, since it is over five
18 years, can sentence him concurrently on that if you
19 deem that's the way to go. I'm asking that you do
20 that, also.

21 If you see that that's not the way to go,
22 then I would ask at least that the concurrent -- that
23 16-23-490 be concurrent and that his other sentence on
24 the voluntary manslaughter be some kind of sentence
25 that can get Braxton Bell, when he's released, back in

1 the community.

2 He's an intelligent young man. He can be
3 a credit to the community if he gets back into the
4 community with some self-esteem, some self-respect
5 left after he serves whatever time he has to serve in
6 prison. And, after all, that is what the prison
7 system is supposed to be about. I know it is to be
8 punitive, but it's also supposed to be to try to get
9 that person back into the community when they're
10 released so that this won't happen again. And I'm
11 asking the Court to consider that in its sentence.

12 He's been in prison -- I mean the County
13 Jail for eight months and 12 days. I would ask the
14 Court to give him credit for that time served, as
15 well.

16 Your Honor, that's all that I can say to
17 the Court at this time. It's in your hands, it's in
18 the Court's hands, and I trust your judgment in this
19 sentence as I trusted your judgment in the trial
20 setting. Thank you, sir.

21 **THE COURT:** All right, thank you, sir.

22 (There was a pause in the proceedings.)

23 **Sentence of the Court:**

24 **THE COURT:** All right, sir. Bring
25 Mr. Bell up, please, Mr. Whiten.

1 I commend you, Mr. Whiten, for the job
2 that you've done putting up a defense for your client.
3 I don't know of anything anybody else could have done
4 to assist him in this case. He got himself in this
5 predicament.

6 I don't believe I could sentence him under
7 the Youthful Offender Act, even if I were inclined to
8 do so; under the circumstances I would not be inclined
9 to do so.

10 You know, there's a very prominent
11 organization right here that says guns don't kill
12 people, people kill people. This is a perfect example
13 where that is absolutely not true. Guns kill people.

14 I'm an outdoorsman. I have a pistol, I
15 have a rifle, and I have a shotgun, and I respect them
16 and I respect everybody's right to own them. But it's
17 the almost uncontrolled presence of firearms in our
18 country today which leads to this situation now,
19 untold numbers of situations exactly like this all
20 over the country. I see it everywhere I go. It's the
21 availability of firearms.

22 This young man was 18 or 19 and he had a
23 right good-sized pistol with the barrel sawed off.
24 I'm not sure I've ever heard of a pistol with a barrel
25 sawed off. That's a bad sign right there. If he

1 hadn't have been armed with that pistol, the worst
2 that would have happened that night was there would
3 have been a fist fight and somebody could have gotten
4 whooped.

5 And they probably would have got to go
6 home. Somebody might have had to serve 30 days or a
7 year or two if they put a good licking on the other
8 one, but there wouldn't have been a charge of murder
9 out of it. And our citizens need to understand that,
10 too. We've got to do something to control this.

11 But he's responsible. He made that
12 decision to arm himself with that weapon. And I'm
13 convinced that nobody in this courtroom except
14 Mr. Bell, and nobody else who's still alive knows
15 exactly what happened that night.

16 I agree with the Jury's determination that
17 this was not a case of self-defense. Personally,
18 while I'm not allowed to express that prior to the
19 Jury making their decision, I just didn't see it as
20 being a self-defense. It just didn't meet.

21 I suspect that if the Jury and those
22 others of us in this courtroom knew exactly what
23 happened that night, that the verdict in this case
24 might well have been murder. I don't know. Only
25 Mr. Bell knows that for certain.

1 But it is a serious case. A young life is
2 cut short, a family is without that son and without
3 any hope of having him back. At least Mr. Bell's
4 family knows that one day they will be allowed to see
5 him again. It's just a very serious, serious
6 question.

7 On Indictment 2005-GS-04-618, *The State v.*
8 *Braxton Jecory Bell*, the charge being voluntary
9 manslaughter, the conviction of the Jury being
10 voluntary manslaughter, the sentence is that you be
11 committed to the State Department of Corrections for a
12 period of 30 years.

13 On Indictment 2005-GS-04-619, possession
14 of a firearm in commission of a violent crime, it is
15 the sentence of this court that you, Braxton Bell, be
16 committed to the State Department of Corrections for a
17 period of five years. I will make those two sentences
18 concurrent, you will get credit for the time that you
19 have served, and I would recommend that you seek
20 treatment at the Addiction Treatment Unit.

21 Good luck to you, sir, and God have mercy
22 on you.

23 MR. WHITEN: Thank you, Your Honor.

24 THE COURT: Anything else, Solicitor,
25 before we recess?

1 **MR. MCELHANNON:** No, Your Honor.
2 (Court adjourned at 5:10 p.m.)
3 (Court's Ex. # 3, Subpoena for Dr. Randall
4 Garriott, was marked for identification at
5 the conclusion of the trial.)

6 ***** End of Requested Transcript *****

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

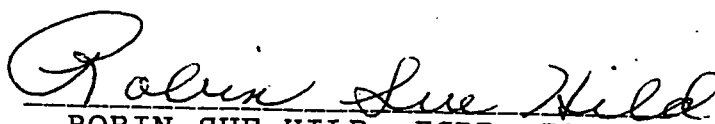
25

CERTIFICATE

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, Volume III, July 20, 2005, pages 357 through 539, relative to appeal, in the Court of General Sessions for Anderson County, South Carolina, on the 18th day and 19th day and 20th day of July, 2005.

I do further certify that I am neither of kin, Counsel nor interest to any party hereto.

October 7, 2005


ROBIN SUE HILD, FCRR, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
 County of ANDERSON)

IN THE COURT OF COMMON PLEAS

#310304
MR. BRAXTON BELL)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2008-CP-04-04101

FILED-CLERK'S OFFICE
 ANDERSON SC
 DEC - 2 A 9:32
 JUDICIAL PLEAS AND
 GENERAL SESSIONS

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention LEE CORRECTIONAL INST. 990 WISACKY Hwy. Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSION, Anderson County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2005-GS-04-618 Voluntary Manslaughter

A TRUE COPY

DEC - 2 2008

Cathy M. Phillips
 CLERK OF COURT

- (b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) July 20, 2005
(b) 30 years
(c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty _____
(b) after a plea of not guilty ☒ _____
(c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered Ayes@ to (7), list:
(a) the name of each Court to which you appealed:
i. SOUTH CAROLINA COURT OF APPEALS
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. Affirmed
ii. _____
iii. _____
(c) the date of each such result:
i. November 21, 2006
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. N/A
ii. _____
iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
(a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE Attachment
- (b) SEE Attachment
- (c) SEE Attachment
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE Attachment
- (b) SEE Attachment
- (c) SEE Attachment
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

N/A

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) N/A
 (b) N/A
 (c) N/A

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

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

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

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

i. MR. Charles Whiten
Anderson County Public Defender offices
 ii. MR. Robert M. DUDEK
Deputy Chief Attorney
 iii. South Carolina Court of Appeals

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

i. COURT OF COMMON PLEAS
Jury trial
 ii. Appeal

iii. _____

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

New trial or Vacated sentence

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

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

I, MR. Braxton Bell #310364, 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.

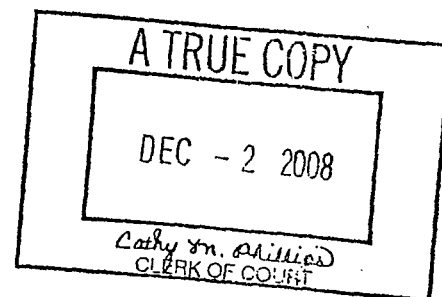
Braxton Bell

11-28-8
~~11-28-8~~

SWORN to and subscribed before me this 10
day of April, 2007.

Dana Brown (L.S.)
Notary Public

My Commission Expires: 11-4-2015



FILED-CLERK'S OFFICE
ANDERSON SC
2008 DEC - 2 A 9:32
CLERK'S OFFICE AND
GENERAL SESSIONS

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

I, MR. Braxton J. Bell #310304, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

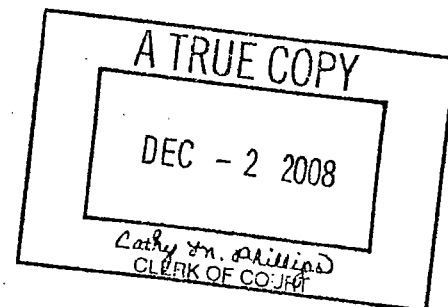
Braxton J. Bell
Applicant

Nov-28-8

SWORN or affirmed to and subscribed before me this
6 day of April, 2007.

Debra S. Smith
Notary Public

My Commission Expires: 11-4-2015



FILED-CLERK'S OFFICE
ANDERSON SC
2008 DEC - 2 A 9:32
CITY OF PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT
OF COMMON
PLEAS

BRAXTON J. BELL, #310304
Applicant,

AMENDMENT TO
APPLICATION FOR POST-
CONVICTION RELIEF AND
MEMORANDUM OF LAW
IN SUPPORT:
2008-CP-04-04101

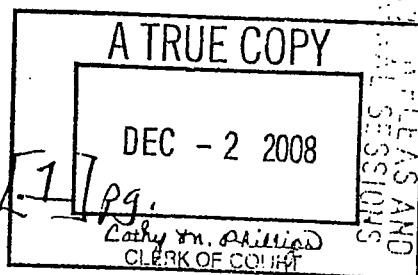
vs.
STATE OF SOUTH CAROLINA,
Respondent,

TO: THE RESPONDENTS, ABOVE-NAMED:

Please take notice, that the Applicant, Braxton J. BELL #310304 would respectfully move this Honorable Court pursuant Rule 15(b) of the South Carolina Rules of Civil Procedure and 17-27-10 and of the South Carolina Code Ann. of laws governing the Uniform Post-Conviction Act, to Amend his Application for Post-Conviction Relief (hereinafter "APCR") and provides Memorandum of Law in Support thereof.

I.

The Applicant submits issues and allegations of law to why he is being held in custody unlawfully for the following reasons:



FILED-CLERK'S OFFICE
ANDERSON SC
2008 DEC - 2 A 9: 32

- 1]. Ineffective Assistance of counsel;
- 2]. Ineffective Assistance of Appeal Counsel;
- 3]. Denial of Due Process of Law 14th Fourteenth Amendment to the United States Constitution;

II.

Applicant's trial counsel was ineffective in failing to conduct reasonable pretrial investigations and preparations.

Trial Counsel failed to conduct reasonable pretrial investigations and preparations. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). The Supreme Court held that, the total failure on the part of defense counsel to conduct pretrial discovery amounts to ineffective assistance of counsel. Kimmelman v. Morrison, 477 U.S. 387, 106 S.Ct. 2571 (1986).

Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. Hopper v. Garraghty, 845 F.2d 471 (4th Cir. 1988). At a minimum counsel has the duty to interview potential witnesses and to make independent investigations

of the facts and circumstances of the case.
 [466 U.S. at 687-96, 104 S.Ct.] The Applicant's
 crime stems from an alleged Murder. Trial
 Counsel failed to conduct independent investigation
 or interviews of potential witnesses involved directly
 or indirectly with Applicant case. Trial Courts
 failure to give requested instruction that state
 had burden of disproving self-defense by proof
 beyond reasonable doubt was reversible error,
 especially knowing that defendant admitted to
 killing his victim and relied entirely on self-defense
 versus Murder. State vs. BURKHART S.C. 350, S.C. 252
565 S.E. 2d. 298.

III

The Sixth Amendment's right to counsel attaches
 when adversarial judicial proceedings have been
 initiated, and at all critical stages. State v. Council,
335 S.C. 1, 515 S.E. 2d. 508 (1999). To prove ineffective
 assistance of counsel, the defendant must show
 that he was prejudiced by counsel's deficient performance.
 The two-prong test set forth in Strickland v. Washington
466 U.S. 688, 104 S.Ct. 2052. requires that a criminal
 defendant show that there is a reasonable probability

that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

A reasonable probability sufficient to undermine confidence in the outcome [United States v. Valenzuela, -Bernal, 458 U.S. 358, 102 S.Ct. 3440].

In a Post-Conviction Proceeding the burden is on the Applicant to prove the allegations in the Application (Butler v. State, 286 S.C. 441, 334, S.E.2d. 813). As to Allegations of ineffective assistance of counsel, the Applicant must show his counsel's performance fell below an objective Standard of reasonableness. In making such determination the Court's shall take into account, totality of circumstances and confining hearing to those's which have arguable merits. Therefore, Applicant's finds these allegations compelling, supported by evidence, and it's on these's grounds that Applicant has met his burden of proof.

ARGUMENT

The trial Judge erred in failing to grant a directed verdict of acquittal where there was insufficient evidence of guilt.

In reviewing the refusal to grant a directed verdict, this Court must determine whether there is any evidence, either direct or circumstantial, which reasonably tends to prove the guilt of the accused. (State v. Creech, 314 S.C. 76, 441 S.E.2d 635 (S.C. App. 1993), "If, the evidence is consistent with innocence and guilt it cannot support a conviction". [United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984). A directed verdict should be granted when there is an absence of competent evidence tending to prove the offense charged because the jury should not be allowed to decide the case based on conjecture, which raises only a mere suspicion of the defendants' guilt. [State v. Lyles-Gray, 328 S.C. 458, 492 S.E.2d 802].

[5] pg.

[State v. Barksdale, 311 S.C. 210, 428 S.E.2d. 498 (Ht. App. 1993). All of the charges lodged against appellant arose out of a single underlying episode in which he was accused of murdering in the 1st degree. The state claimed appellant charge, was in agreement with the elements of murder (is defined in terms of an unlawful killing with malice aforethought. The appellant defense was claim of self-defense. "If there's any evidence of self-defense, the issue should be submitted to the jury upon request.... A trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. [State v. Hill, 315 S.C. 260, 261, 433 S.E.2d. 848]. In appellant case there's probative evidence supported by testimony given by several witnesses as a theory of a struggle between the appellant and the victim. The appellant testified that his life was in danger, as the victim choked and battered him. Probative evidence from the sled reports, ballistics, gunshot residue Lab etc. relies completely with signs of struggle and comparisons.

[6] pg.

In reviewing a Motion for a directed verdict of acquittal, the trial is concerned with the evidence or nonexistence of evidence, not its weight. [State v. Morgan, 282 S.C. 489, 319 S.E. 2d 335 (1984)]. Moreover, the Judge must view the evidence in a light most favorable to the State. [State v. Schrock, 283 S.C. 129, 322 S.E. 2d 450]. Here, even viewed in the light most favorable to the State there was insufficient evidence tying appellant to the crime charged. The trial Judge erred in failing to grant a directed Verdict of acquittal.

CONCLUSION

Appellant is entitled to have his convictions and sentences reversed.

Respectfully
Submitted,
s/ See Application Signed!

[M]pg.

Re: Bell, Bratton, 310304 vs. State, 2008-CP-04-0410
 Post Conviction Relief matters: Ineffective Assistance
 of Counsel for Criminal Case in 10th Jud. Cir.

1. Defendant's Trial Counsel Failed to investigate and defend Case sufficiently, effectively and adequately by requirements of U.S. Const. 6th and 14th Amend.;
2. Counsel Failed to Verify Criminal Charges against the Defendant, having him to be denied a Statutory right to a lesser included as it would have been Involuntary Manslaughter, See recently Case law of S.C. Supreme Court, in State v. Reese, 2008 opinion, supra;
3. Counsel Failed to place timely Objections to Criminal Charges against Defendant, no pre-trial motions Filed in Compelling the State to reduce, Quash, drop to Charge, and to Correctly Charge by evidence from a review and evaluation, according to applicable laws by the trial Court;
4. Counsel Failed to proffer to the Court an evidentiary profferation by the SHER Reports from the preliminary results that is and or could have been made available for such defense;
5. Counsel Failed to engage himself to the required duties as Defendant representative, and his advocate, as Counsel instead engaged in unethical conduct prohibited by the SCRPC that it involved Counsel interests in pursuing to persuade Defendant in pleading guilty and caused procedural irregularities that exist for the Defendant benefits; Defendant didn't knowingly pleaded by waiving his Constitutional Rights and not have his Counsel to raise an appropriate legal argument for self defense.

Addendum #1

NO. 5-Continued:

by the proposition of Law and evidence of the Case at bar:

6. Counsel Failed to be acknowledgeable of Law mandates as S.C. Code of Law, § 17-19-10, § 17-19-20, and § 17-19-30, Cited in State v. Judge, Supra, versus evidence, of Involuntary Manslaughter, so that he could have Compelled the State to fully Comply to Rule 5, S.C. Crim. P.;
7. Counsel Failed to Consult with the Defendant to fully advise him of his options and provisional rights by the due process and equal protection Clause.
8. PCH Applicant do not involuntarily waive no issues to be heard in Filed PCH rather Counsel for PCH amend or not, PCH Applicant advancedly warns Respondent of the above stated no waiver in #8!

By Braxton Bell
Applicant/PCH
Braxton Bell 310304

Abandonment #2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 10TH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	Case No.: 2008-CP-04-4101
Braxton J. Bell, #310304	)	
	)	
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 2, 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 April 2005 term of the Anderson County Grand Jury for murder (2005-GS-04-0618) and possession of a firearm during commission of a deadly crime (2005-GS-04-0619). Charles W. Whiten, Jr., Esquire, represented him. On July 18, 2005, Applicant underwent trial, pursuant to which he was found guilty of voluntary manslaughter and possession of a firearm during the commission of a violent crime. The Honorable James C. Williams, Jr., sentenced him to confinement for thirty (30) years for voluntary manslaughter and five (5) years for possession of a firearm during the commission of a violent crime; the firearm offense sentence is to be served consecutive to the voluntary manslaughter sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and

sentence. State v. Bell, 374 S.C. 136, 646 S.E.2d 888 (S.C. Ct. App. filed June 4, 2007).

The Remittitur was sent on July 28, 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. Trial counsel failed to conduct reasonable pretrial investigations and preparations.
2. Trial counsel failed to interview potential witnesses.
3. Trial counsel failed to consult with Applicant about due process rights.
4. Trial counsel failed to pursue a involuntary manslaughter charge.
5. Trial counsel failed to quash or compel the State to reduce the charges in the indictment.
6. Trial court failed to give requested instruction that state had burden of disproving self-defense by proof beyond a reasonable doubt was reversible error.
7. Trial judge erred in failing to grant a directed verdict of acquittal where there was insufficient evidence of guilt.

III.

Respondent interprets Applicant's first, second, third, fourth, and fifth claims as ineffective assistance of counsel. 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.

Respondent submits that Applicant's sixth and seventh allegations raise direct appeal issues that are 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 these issues 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.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held and counsel be appointed.

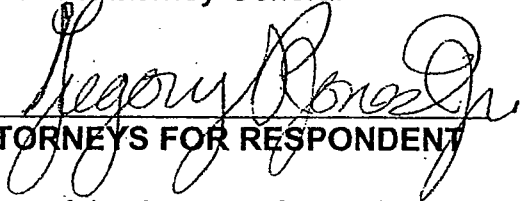
Respectfully submitted,

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

December 30, 2008.

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF GENERAL SESSIONS
OF THE TENTH JUDICIAL CIRCUIT
2008-CP-04-04101

BRAXTON BELL,)

PLAINTIFF,)

vs)

STATE OF SOUTH CAROLINA)

DEFENDANT.)

POST-CONVICTION RELIEF HEARING

JUNE 16, 2010

ANDERSON, SOUTH CAROLINA

BEFORE: THE HONORABLE R. LAWTON MCINTOSH

FOR THE STATE:

A. WEST LEE
ATTORNEY AT LAW
OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SC 29211-1549

FOR THE APPLICANT:

CHARLES L. ANDERSON
ATTORNEY AT LAW
POST OFFICE BOX 1286
ANDERSON, SC 29622

JO RICE
COURT REPORTER

INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RE-DIRECT</u>	<u>RE-CROSS</u>
----------------	---------------	--------------	------------------	-----------------

CHARLES WHITEN

MR. ANDERSON	4-23		30-35	
MR. LEE		24-30		35-36

LEON GRAY

MR. ANDERSON	39-43			
MR. LEE		43		

D'SEAN BELL

MR. ANDERSON	43-46		47	
MR. LEE		46-47		

JOYCE BELL JOHNSON

MR. ANDERSON	48-54			
--------------	-------	--	--	--

BRAXTON BELL

MR. ANDERSON	54-66			
MR. LEE		66-68		

CHARLES WHITEN

MR. LEE	69-71			
MR. ANDERSON		71-72		

CLOSING ARGUMENTS 73-80

CERTIFICATE 81

1 THE COURT: VERY GOOD. MISTER LEE, CALL YOUR NEXT CASE.

2 MR. LEE: THANK YOU, YOUR HONOR. THIS IS BRAXTON BELL VERSUS
3 THE STATE OF SOUTH CAROLINA. IT'S CASE NUMBER 2008-CP-04-4101. IT
4 COMES INTO COURT BY WAY OF APPLICATION FOR POST-CONVICTION
5 RELIEF, FILED DECEMBER 2, 2008. THE APPLICANT WAS INDICTED AT THE
6 APRIL, 2005 TERM OF THE ANDERSON COUNTY GRAND JURY FOR MURDER
7 AND POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT
8 CRIME. HE WAS REPRESENTED BY MISTER CHARLES WHITEN AND ON
9 JULY 18, 2005, THE APPLICANT UNDERWENT A TRIAL, PURSUANT TO WHICH
10 HE WAS FOUND GUILTY OF VOLUNTARY MANSLAUGHTER AND POSSESSION
11 OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. THE
12 HONORABLE JAMES C. WILLIAMS, JUNIOR, SENTENCED HIM TO CONFINEMENT
13 FOR THIRTY YEARS FOR VOLUNTARY MANSLAUGHTER AND FIVE YEARS FOR
14 THE POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT
15 CRIME. THE FIREARM SENTENCE WAS TO BE SERVED CONSECUTIVE TO THE
16 VOLUNTARY MANSLAUGHTER SENTENCE.

17 A TIMELY NOTICE OF APPEAL WAS FILED ON THE APPLICANT'S BEHALF
18 AND THE SOUTH CAROLINA COURT OF APPEALS SUBSEQUENTLY AFFIRMED
19 THE APPLICANT'S CONVICTION AND THE REMITTER WAS SENT JULY 28, 2008.

20 IN HIS CURRENT APPLICATION, THE APPLICANT ALLEGES HE IS BEING
21 HELD IN CUSTODY UNLAWFULLY FOR SEVERAL REASONS. 1) BEING, THAT
22 THE TRIAL COUNSEL FAILED TO CONDUCT REASONABLE PRE-TRIAL
23 INVESTIGATIONS AND PREPARATIONS, 2) TRIAL COUNSEL FAILED TO
24 INTERVIEW POTENTIAL WITNESSES, 3) TRIAL COUNSEL FAILED TO CONSULT
25 WITH THE APPLICANT ABOUT HIS DUE PROCESS RIGHTS, 4) TRIAL COUNSEL

DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

1 FAILED TO PURSUE AN INVOLUNTARY MANSLAUGHTER CHARGE, 5) TRIAL
2 COUNSEL FAILED TO QUASH OR COMPEL THE STATE TO REDUCE THE
3 CHARGES IN THE INDICTMENT, 6) THE TRIAL COURT FAILED TO GIVE
4 REQUESTED INSTRUCTION THAT THE STATE HAD THE BURDEN OF
5 DISPROVING SELF-DEFENSE BY PROOF BEYOND A REASONABLE DOUBT AND
6 7) THAT THE TRIAL JUDGE ERRED IN FAILING TO GRANT THE DIRECTED
7 VERDICT MOTION WHERE THERE WAS INSUFFICIENT EVIDENCE OF GUILT. AT
8 THIS TIME, I WILL TURN IT OVER TO THE APPLICANT'S ATTORNEY, MISTER
9 CHUCK ANDERSON.

10 THE COURT: MISTER ANDERSON.

11 MR. ANDERSON: IF IT PLEASES THE COURT. WE ARE READY TO
12 PROCEED.

13 THE COURT: CALL YOUR FIRST WITNESS.

14 MR. ANDERSON: WE CALL CHARLES WHITEN.

15 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, CHARLES
16 WHITEN TESTIFIED AS FOLLOWS:)

17 CLERK OF COURT: PLEASE HAVE A SEAT IN THE WITNESS STAND AND
18 IF YOU WOULD PLEASE GIVE THE COURT YOUR FULL NAME.

19 MR. WHITEN: MY NAME IS CHARLES WILLIAM WHITEN, JUNIOR.

20 MR. ANDERSON: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
21 COURT.

22 THE COURT: MISTER ANDERSON.

23 DIRECT EXAMINATION OF CHARLES WHITEN BY CHARLES ANDERSON

24 Q MISTER WHITEN, YOU REPRESENTED, OBVIOUSLY, MISTER BELL IN THIS
25 CASE.

1 A YES. I DID.

2 Q AND WERE YOU APPOINTED OR RETAINED?

3 A I WAS APPOINTED.

4 Q WAS IT A CONFLICT WITH THE PUBLIC DEFENDER'S OFFICE?

5 A YES. MISTER BELL STARTED OUT BEING REPRESENTED BY ROBERT

6 GAMBLE AT THE PRELIMINARY HEARING AND THEN THERE WAS A

7 CONFLICT.

8 Q DO YOU KNOW WHAT THE CONFLICT WAS?

9 A NO, SIR. I DON'T. I DON'T REMEMBER.

10 Q ALL RIGHT. AND DO YOU REMEMBER ABOUT WHEN YOU GOT

11 APPOINTED TO REPRESENT HIM?

12 A I DON'T REMEMBER EXACTLY THE MONTH OR THE YEAR, TO TELL THE

13 TRUTH.

14 Q APPROXIMATELY, HOW LONG BEFORE IT ACTUALLY WENT TO TRIAL?

15 A ABOUT SIX MONTHS.

16 Q SIX MONTHS? OKAY. IN THAT PERIOD BEFORE YOU WENT TO TRIAL,

17 DID YOU CONDUCT AN INVESTIGATION INTO THIS CASE?

18 A YES. I DID.

19 Q DID YOU HAVE ANYBODY ELSE WORKING FOR YOU, AN INVESTIGATOR,

20 OR DID YOU HANDLE THIS YOURSELF?

21 A NO. I CONDUCT MY OWN INVESTIGATION IN MURDER CASES.

22 Q DO YOU REMEMBER ABOUT WHEN YOU FIRST MET MISTER BELL?

23 A SHORTLY AFTER I WAS APPOINTED.

24 Q AND I ASSUME HE WAS AT THE ANDERSON COUNTY DETENTION

25 CENTER?

DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

- 1 A AT THE ANDERSON COUNTY JAIL.
- 2 Q HE WAS NEVER OUT ON BAIL OR BOND OR NOTHING LIKE THAT?
- 3 A NO.
- 4 Q OKAY. DO YOU KNOW APPROXIMATELY HOW MANY TIMES YOU WERE
- 5 ABLE TO MEET WITH HIM DURING THOSE SIX MONTHS?
- 6 A PROBABLY FOUR OR FIVE TIMES, TOTAL.
- 7 Q OKAY. AND WAS HE ABLE TO GIVE YOU ANY INFORMATION ABOUT
- 8 WHAT OCCURRED?
- 9 A YES. HE TOLD ME EXACTLY WHAT OCCURRED.
- 10 Q OKAY. AND WHAT WAS THAT?
- 11 A HE SAID THAT HE HAD HAD A CONFLICT WITH, I THINK GAMBRELL WAS
- 12 HIS NAME, PRIOR TO THIS EVENT HAPPENING AND THAT MISTER
- 13 GAMBRELL HAD THREATENED HIM ON OCCASION AND THEY HAD EVEN
- 14 GOTTEN INTO A FIGHT, MOSTLY BROUGHT ON BY GAMBRELL
- 15 ATTACKING BRAXTON, THAT BRAXTON NEVER BROUGHT ON THE
- 16 DIFFICULTY AT ALL AND HE TRIED TO AVOID HIM, BUT COULDN'T.
- 17 MISTER GAMBRELL HAD EVEN PURSUED HIM ON OCCASIONS DOWN
- 18 THE STREET AND ACCOSTED HIM AND STRUCK HIM ON OCCASION.
- 19 THAT WAS HOW THIS OCCURRED. HE WAS WITH A GROUP OF PEOPLE,
- 20 BRAXTON WAS, AND WENT TO A PARTY AT A GIRL'S HOUSE, A GIRL'S
- 21 APARTMENT, THAT NIGHT, AND THIS MISTER GAMBRELL WAS THERE.
- 22 HE LIVED IN THAT COMPLEX, MISTER GAMBRELL DID, BUT BRAXTON DID
- 23 NOT KNOW HE WAS THERE. HE DIDN'T GO THERE TO SEE HIM. HE
- 24 DIDN'T EVEN KNOW THAT GAMBRELL WAS THERE, BUT HE WENT INTO
- 25 THE PARTY WITH THESE OTHER PEOPLE, HE CAME OUT, AND MISTER

1 GAMBRELL ACCOSTED HIM AGAIN OUTSIDE THE APARTMENT COMPLEX
2 AND GRABBED HIM, ACCORDING TO BRAXTON -- AND THE EVIDENCE
3 PRETTY MUCH CONFIRMED THAT THIS WAS WHAT HAPPENED -- HE
4 GRABBED HIM AND AT THAT TIME STARTED TO CHOKE HIM AND PUSHED
5 HIM UP AGAINST A CAR AND BRAXTON HAD A PISTOL IN HIS POCKET
6 AND HE THOUGHT HE WAS GOING TO PASS OUT. BRAXTON HAD
7 MONONUCLEOSIS RIGHT UP UNTIL THE TIME THIS HAPPENED AND HE
8 WAS VERY WEAK. HE WAS NOT STRONG AT ALL, HE WAS VERY WEAK,
9 AND THOUGHT HE WAS GOING TO PASS OUT AND THAT WAS
10 ESTABLISHED, AND HE HAD A PISTOL IN HIS POCKET, PULLED THE
11 PISTOL OUT AND SHOT MISTER GAMBRELL ONE TIME THROUGH THE
12 COCHLEA, THROUGH THE EAR, (INDICATING) AND MISTER GAMBRELL
13 CONTINUED TO GRAPPLE WITH HIM. HE BACKED OFF A LITTLE BIT
14 AFTER HE SHOT HIM THE FIRST TIME AND THEN HE CONTINUED TO
15 GRAPPLE WITH HIM AND THEN GAMBRELL GRABBED BRAXTON AGAIN
16 AND BRAXTON SHOT HIM IN THE BACK (INDICATING) AND HE FELL TO
17 THE GROUND. THERE WAS -- THAT'S WHAT BRAXTON TOLD ME. THAT'S
18 THE GIST OF WHAT HE TOLD ME.

19 Q THAT'S HOW IT WAS RELAYED TO YOU.

20 A YES.

21 Q WOULD YOU AGREE WITH ME THAT, IN DEALING WITH THESE MURDER
22 CASES, THAT THERE ARE USUALLY TWO TYPES. THERE'S ONE WHERE,
23 "I DIDN'T DO IT, YOU'VE GOT THE WRONG GUY" AND YOU HAVE
24 ANOTHER TYPE WHERE SOMEONE GETS SHOT AND THERE'S SOME
25 UNDERLYING REASON FOR IT, WHETHER IT BE SELF-DEFENSE OR

DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

1 WHATEVER?

2 A YES.

3 Q THIS WAS BASICALLY THE SECOND TYPE?

4 A THIS WAS SELF-DEFENSE IN MY EYES, ALL THE WAY.

5 Q THERE WAS NEVER A POSITION TAKEN BY YOU OR HIM, "THEY'VE GOT
6 THE WRONG GUY" IN THE SHOOTING OF MISTER GAMBRELL?

7 A NO.

8 Q SO, WHEN YOU WERE PREPARING FOR TRIAL, YOU WERE BASICALLY
9 FOCUSED ON SELF-DEFENSE.

10 A YES.

11 Q OKAY. NOW, AT ANY TIME, DID ANYONE FROM THE STATE EVER MAKE
12 YOU ANY KIND OF PLEA OFFER OR ANYTHING OTHER THAN MURDER,
13 OBVIOUSLY?

14 A THEY OFFERED THIRTY YEARS FOR INVOLUNTARY MANSLAUGHTER.

15 Q AND THAT WAS RELAYED TO MISTER BELL?

16 A YES.

17 Q AND WHAT HAPPENED WITH THAT?

18 A WELL, TO ME IT WAS CLEARLY SELF-DEFENSE AND WE TALKED ABOUT
19 IT, BUT WE WENT WITH THE TRIAL ANYWAY.

20 Q ALL RIGHT. AND SO THE DEFENSE OF SELF-DEFENSE WAS WHAT YOU
21 PLANNED TO PRESENT WHEN YOU WENT TO COURT. CORRECT?

22 A YES. YES.

23 Q AND WHAT DID YOU DO IN ORDER TO PREPARE FOR THAT DEFENSE
24 FOR TRIAL?

25 A LET ME BACK UP A MINUTE ABOUT THAT OFFER. I DON'T WANT TO

1 MISREPRESENT ANYTHING THAT WASN'T OFFERED, BECAUSE I'M NOT
2 SURE ABOUT THAT. ONE OF THE THINGS THAT OCCURRED, THEY
3 INDICATED THAT, THE STATE, ORIGINALLY, THAT BRAXTON MIGHT HAVE
4 SHOT MISTER GAMBRELL FROM A DISTANCE AND THE REASON FOR
5 THAT WAS THERE WAS A CASING SOME HUNDRED, TWO HUNDRED,
6 THREE HUNDRED FEET AWAY FROM WHERE MISTER GAMBRELL FELL.

7 Q A THIRD CASING?

8 A NO. IT WAS JUST TWO.

9 Q THERE WERE JUST TWO CASINGS.

10 A YEAH. AND THAT WAS ONE OF THE CASINGS, A LONG WAY FROM
11 WHERE HE FELL.

12 Q RIGHT.

13 A BUT I INVESTIGATED THE SCENE MYSELF, PERSONALLY, AND I WENT TO
14 WHERE THE CASINGS FELL. THERE WERE TWO CASINGS. ONE OF
15 THEM WAS ON THE SIDEWALK RIGHT BY WHERE THE SHOOTING TOOK
16 PLACE AND THE OTHER ONE WAS WAY DOWN —

17 Q THIS WAS IN NEWPORT COMMONS?

18 A YES. NEWPORT COMMONS. BUT THE FORENSICS SHOWED THAT BOTH
19 SHOTS HAD POWDER BURNS ON THE CLOTHING, SO IT COULDN'T HAVE
20 BEEN SHOT FROM DOWN THE STREET AND I TRIED TO CONVEY THAT
21 TO THE STATE, BUT THEY WOULDN'T LISTEN TO THAT EVEN THOUGH
22 THE POWDER BURNS ON BOTH ENTRIES WERE RIGHT ON THE
23 CLOTHING. (INDICATING) AND AGAIN, I DON'T WANT TO MISREPRESENT
24 WHAT THE OFFER WAS, BUT THE OFFER WAS NOT CONSISTENT WITH
25 WHAT I SAW AND I THOUGHT IT WAS SELF-DEFENSE ALL THE WAY

DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

- 1 FROM WHAT HE TOLD ME, WHAT BRAXTON TOLD ME, WHAT THE
2 FORENSICS SHOWED AND I ALSO WENT TO TALK PERSONALLY WITH
3 DOCTOR WOODARD, WHO IS A PATHOLOGIST. WE TALKED ABOUT HOW
4 THIS COULD HAVE HAPPENED AND EVEN DOCTOR WOODARD'S
5 TESTIMONY, BOTH TO ME PERSONALLY AND IN COURT, WAS
6 CONSISTENT WITH SELF-DEFENSE AND SO THAT'S WHAT WE DID.
- 7 Q SO DOCTOR WOODARD -- YOU SPOKE WITH DOCTOR WOODARD AHEAD
8 OF TIME. CORRECT?
- 9 A YES. I DID. WE EVEN WENT THROUGH A SCENARIO ABOUT HOW THIS
10 COULD HAVE HAPPENED.
- 11 Q AND YOU RECEIVED ALL THE DISCOVERY FROM THE STATE?
- 12 A YES.
- 13 Q AND YOU WERE ABLE TO SEE ALL THE FORENSIC EVIDENCE. WERE
14 YOU ABLE TO GO OVER ALL THAT WITH BRAXTON?
- 15 A I DON'T REMEMBER WHETHER WE WENT OVER IT OR NOT, BUT I WAS
16 COMFORTABLE WITH WHAT I SAW. IT WAS CONSISTENT WITH WHAT
17 WE WERE PRESENTING.
- 18 Q AND ALL OF THIS WAS FOCUSED ON THE ACTUAL SHOOTING ITSELF.
19 RIGHT?
- 20 A YES.
- 21 Q AND THERE WAS ALSO INFORMATION PROVIDED TO YOU ABOUT THIS
22 ONGOING FEUD WITH MISTER GAMBRELL. IS THAT CORRECT?
- 23 A YES.
- 24 Q AND DID YOU GET NAMES FROM MISTER BELL OF PEOPLE WHO KNEW
25 ABOUT THIS?

1 A YES. I GOT SOME NAMES FROM HIM THAT KNEW ABOUT IT AND I'M NOT
2 SURE WHETHER I TALKED TO THEM OR NOT. I THINK I COULDN'T FIND
3 ONE OF THEM. HE GAVE ME THE NAMES. YES.

4 Q IN ORDER TO PREPARE FOR TRIAL, TO PRESENT THIS SELF-DEFENSE
5 AT TRIAL, DO YOU FEEL LIKE YOU ESTABLISHED THIS FEUD OR THIS
6 ON-GOING ARGUMENT BETWEEN THE TWO OF THEM?

7 A YES.

8 Q WOULD YOU AGREE WITH ME THAT, OBVIOUSLY, THE MORE PEOPLE
9 THAT HAD SEEN THEM IN FIGHTS OR IN ARGUMENTS PRIOR TO THIS
10 EVENT WOULD HAVE HELPED? IS THAT FAIR TO SAY?

11 A NOT NECESSARILY. IF ALL OF THEM HAD SAID THAT GAMBRELL WAS
12 THE ONE WHO BROUGHT ON THE DIFFICULTY, THAT WOULD BE TRUE,
13 BUT I'M NOT SURE THAT THAT'S WHAT EVERYBODY SAID AT THE TIME.
14 MOST OF THEM DID SAY THAT GAMBRELL BROUGHT ON THE
15 DIFFICULTY AND THAT'S THE WAY WE WERE PROCEEDING.

16 Q WAS THERE EVER ANYBODY THAT YOU TALKED TO THAT SAID THAT
17 MISTER GAMBRELL HAD PHYSICALLY ATTACKED MISTER BELL?

18 A YES. PRIOR TO THIS. YES.

19 Q PRIOR TO THIS INCIDENT.

20 A YES.

21 Q SO, THERE'S NO DOUBT THEY HAD A HISTORY.

22 A NO DOUBT.

23 Q SO, WHEN YOU GO ON TO TRIAL, OBVIOUSLY, THE INDICTMENT WAS
24 FOR MURDER. IS THAT CORRECT?

25 A YES.

DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

- 1 Q AND YOU PRESENTED SELF-DEFENSE AS YOUR DEFENSE TO MURDER.
- 2 A YES.
- 3 Q AND AT WHAT POINT DID THE JUDGE -- OBVIOUSLY, MISTER BELL GOT
- 4 CONVICTED OF VOLUNTARY MANSLAUGHTER.
- 5 A YES.
- 6 Q AT WHAT POINT DURING THE TRIAL OR DURING THE CHARGING OR
- 7 DURING THE CHARGE CONFERENCE, DID Y'ALL TALK ABOUT
- 8 VOLUNTARY MANSLAUGHTER AS OPPOSED TO MURDER?
- 9 A AFTER ALL THE EVIDENCE WAS IN, WE -- I'D ALREADY DRAFTED A
- 10 REQUEST FOR A CHARGE ON VOLUNTARY MANSLAUGHTER ---
- 11 Q RIGHT.
- 12 A --- PRIOR TO TRIAL.
- 13 Q AND YOU WOULD AGREE WITH ME THAT SELF-DEFENSE WOULD BE --
- 14 A I'M SORRY, LET ME BACK UP AGAIN. I DID NOT REQUEST VOLUNTARY
- 15 MANSLAUGHTER. I REQUESTED SELF-DEFENSE ONLY.
- 16 Q CORRECT. WHICH WOULD BE A DEFENSE TO MURDER.
- 17 A YES.
- 18 Q I DID NOT REQUEST A CHARGE ON VOLUNTARY MANSLAUGHTER.
- 19 Q SO, IF THE JURY WAS PRESENTED WITH JUST THE MURDER CHARGE
- 20 AND YOU RAISED SELF-DEFENSE, THE ONLY CHOICE THEY HAD WAS
- 21 GUILTY OR NOT GUILTY. IS THAT RIGHT?
- 22 A THAT'S RIGHT.
- 23 Q WHERE DID THE VOLUNTARY MANSLAUGHTER COME IN? DO YOU
- 24 REMEMBER?
- 25 A THE JUDGE CHARGED VOLUNTARY MANSLAUGHTER, BUT I DIDN'T

1 REQUEST IT.

2 Q THAT WAS OBVIOUSLY A LESSER INCLUDED TO MURDER.

3 A YES.

4 Q WHICH HE GOT FOUND GUILTY ON.

5 A YES.

6 Q SO, DID YOU OBJECT TO THE VOLUNTARY MANSLAUGHTER OR...

7 A I DON'T REMEMBER WHETHER I OBJECTED OR NOT, BUT I DIDN'T -- BUT

8 THAT WAS NOT THE WAY THAT WE WERE PROCEEDING WITH SELF-

9 DEFENSE OR GUILTY OF MURDER.

10 Q DID YOU EVER DISCUSS WITH MISTER BELL THE FACT THAT IF HE GOT

11 CONVICTED OF MANSLAUGHTER, THAT HE COULD DO ALMOST THE

12 SAME AMOUNT OF TIME THAT HE COULD DO ON MURDER?

13 A NO. I DIDN'T, BECAUSE I DIDN'T EXPECT THAT.

14 Q YOU WERE BASICALLY FOCUSED ON EITHER GUILTY OF MURDER OR

15 NOT GUILTY BY REASON OF SELF-DEFENSE?

16 A THAT'S CORRECT.

17 Q DO YOU THINK THE OUTCOME OF THIS TRIAL WOULD HAVE BEEN

18 DIFFERENT IF THE JUDGE HAD NOT CHARGED VOLUNTARY

19 MANSLAUGHTER?

20 A I THINK THEY WOULD HAVE FOUND HIM NOT GUILTY.

21 Q BUT YOU DON'T REMEMBER EVER ACTIVELY OBJECTING TO

22 VOLUNTARY MANSLAUGHTER?

23 A NO.

24 Q NOW, LET ME BACK UP A MINUTE. THIS ISSUE OF SELF-DEFENSE, DO

25 YOU REMEMBER HOW MANY WITNESSES YOU CALLED ON BRAXTON'S

DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

1 BEHALF? OBVIOUSLY, YOU CALLED BRAXTON. CORRECT?

2 A I DON'T REMEMBER HOW MANY WITNESSES I CALLED. I REMEMBER
3 THAT THERE WERE SOME WITNESSES FROM IN THE APARTMENT.

4 NOBODY WAS OUT THERE THAT SAW WHAT HAPPENED.

5 Q LET'S GO TO THAT REAL QUICK. SO, NOBODY ACTUALLY SAW THE
6 STRUGGLE THAT NIGHT? THERE WASN'T SOMEONE STANDING RIGHT
7 THERE?

8 A NO.

9 Q OKAY. SO, THE WITNESSES THAT THE STATE CALLED WERE ALL
10 PEOPLE THAT HAD BEEN TO THE PARTY AND CAME UP TO THE SCENE
11 AFTER THE ACTUAL SHOOTING OCCURRED?

12 A THEY WERE EITHER OUT THERE BEFORE WHEN THE STRUGGLE WAS
13 GOING ON OR CAME UP AFTER THE STRUGGLE, AFTER IT WAS OVER.
14 NOBODY SAW EXACTLY WHAT TOOK PLACE.

15 Q SO, NOBODY ACTUALLY SAW WHO PULLED THE GUN ON WHO OR ANY
16 OF THAT?

17 A WELL -- NO. NOBODY SAW THE GUN BEING PULLED.

18 Q BUT BRAXTON HAD, AT SOME POINT, ADMITTED THAT HE HAD A GUN IN
19 HIS POCKET?

20 A YES.

21 Q OKAY. WAS THERE EVER ANY TESTIMONY ABOUT MISTER GAMBRELL
22 BEING ARMED IN ANY WAY?

23 A THERE WAS -- BRAXTON SAID THAT HE WENT FOR A -- THERE WAS A
24 COKE BOTTLE OR BOTTLE OF SOMETHING, SOME KIND OF COCA-COLA
25 OR PEPSI BOTTLE IN HIS POCKET WHICH WAS FOUND, I BELIEVE, AND

1 BRAXTON SAID THAT THIS GUY, GAMBRELL, WENT INTO HIS POCKET
2 AND THAT'S WHEN HE PULLED OUT HIS GUN.

3 Q SO, HE DIDN'T KNOW WHAT HE WAS GOING FOR?

4 A HE DIDN'T KNOW WHAT IT WAS. IT WAS A COKE BOTTLE OR
5 SOMETHING, A COCA COLA BOTTLE.

6 Q BUT THERE WAS NO WITNESS OR ANY OTHER WITNESS FROM THE
7 STATE THAT ACTUALLY SAW THE STRUGGLE? JUST THE AFTERMATH
8 OF THE STRUGGLE.

9 A NO.

10 Q SO, IN ORDER TO ESTABLISH SELF-DEFENSE, AS FAR AS THE ACTUAL
11 STRUGGLE ITSELF, YOUR ONLY WITNESS WAS MISTER BELL?

12 A THAT'S CORRECT. MY ONLY WITNESS WAS MISTER BELL AND THE
13 FORENSICS AND DOCTOR WOODWARD. HE WAS A GOOD WITNESS FOR
14 US.

15 Q AND YOU CALLED MISTER BELL AS A WITNESS. CORRECT?

16 A YES.

17 Q ALL RIGHT. AND I ASSUME HE RELAYED THE SAME STORY —

18 A YES.

19 Q — THAT YOU ARE RELAYING TO US. OKAY. SO, THAT WAS YOUR FIRST
20 STEP TOWARDS ESTABLISHING SELF-DEFENSE, WAS MISTER BELL'S
21 TESTIMONY AND THE FORENSICS TESTIMONY.

22 A YES.

23 Q OKAY. AND YOU FEEL LIKE IT WOULD HAVE ASSISTED MISTER BELL —
24 OR LET ME BACK UP. DID YOU CALL ANYBODY TO ESTABLISH THE
25 FORMER RELATIONSHIP BETWEEN MISTER GAMBRELL AND MISTER

DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

1 BELL BEFORE THAT NIGHT?

2 A I DON'T REMEMBER WHETHER I DID OR NOT.

3 Q DO YOU THINK THAT WOULD HAVE BEEN OF ASSISTANCE TO MISTER
4 BELL'S DEFENSE TO HAVE SHOWN THIS ON-GOING PROBLEM THAT HE
5 HAD?

6 A I KNOW THAT — IT SEEMS TO ME LIKE I TRIED TO LOCATE SOME OF
7 THOSE WITNESSES AND WAS NOT ABLE TO LOCATE THEM, BUT I DID
8 CALL — AND THIS IS AN UNUSUAL THING THAT OCCURS NOT EVEN ON
9 THE RECORD, I DON'T THINK — BUT BRAXTON WAS SEEING A DOCTOR
10 ABOUT HIS MONONUCLEOSIS AND —

11 Q I THINK THAT IS ACTUALLY IN THE RECORD. YOU HAD SUBPOENAED
12 TWO DOCTORS TO SHOW —

13 A RIGHT. AND THEY DIDN'T APPEAR AND JUDGE WILLIAMS WAS IRATE
14 AND HE SAID THAT HE WAS GOING TO ARREST THEM AND BRING THEM
15 TO TRIAL AND I DIDN'T THINK THAT WAS TOO GOOD OF AN IDEA TO
16 ARREST A DOCTOR AND BRING HIM TO TRIAL, BUT —

17 Q THEY EVENTUALLY STIPULATED TO THAT.

18 A STIPULATED TO THAT. YES. WHICH WAS PROBABLY WEAKER THAN
19 HAVING THE DOCTORS THERE AND HAD THEY ACTUALLY ESTABLISHED
20 IT.

21 Q NOW, YOU ACTUALLY HAD, WHEN YOU PRESENTED THIS CASE, A LIST
22 OF A NUMBER OF WITNESSES FOR THE DEFENSE. IS THAT CORRECT?

23 A YES. I DID.

24 Q INCLUDING MISTER BELL'S MOM, JOYCE BELL, MADRIKIS LAMONT
25 MORRIS —

1 A RIGHT.

2 Q DO ANY OF THESE NAMES RING A BELL? AND ELAINE WILLIAMS, LEON
3 GRADY – I'M JUST NAMING A FEW OFF THE TOP. DO YOU REMEMBER
4 ACTUALLY NAMING THOSE AS DEFENSE WITNESSES?

5 A I HAD —

6 Q WERE THOSE PEOPLE SEQUESTERED DURING THE TRIAL?

7 A I DON'T REMEMBER.

8 Q DO YOU KNOW IF THEY WERE PRESENT AT ALL?

9 A I DON'T REMEMBER THAT EITHER.

10 Q BUT YOU, IN FACT, DIDN'T CALL ANY OF THESE PEOPLE.

11 A APPARENTLY NOT.

12 Q AND THE REASON THAT THESE PEOPLE WERE LISTED AS WITNESSES
13 WERE THAT THEY WERE GOING TO HELP YOU ESTABLISH SELF-
14 DEFENSE. IS THAT CORRECT?

15 A THEY WERE GOING TO HELP ME ESTABLISH THAT GAMBRELL HAD
16 PHYSICALLY ATTACKED BRAXTON IN THE PAST. THAT WAS THE
17 PURPOSE OF IT.

18 Q OBVIOUSLY, THEY COULDN'T TESTIFY TO THE NIGHT, TO SELF-
19 DEFENSE, THE NIGHT IT OCCURRED, BUT THE ELEMENTS LEADING UP
20 TO IT. THE FACT THAT THEY HAD HAD A PHYSICAL ALTERCATION IN
21 THE PAST.

22 A YES.

23 Q AND ESTABLISHED THAT PRIOR CONDUCT BEFORE THIS FIGHT.

24 A YES. THAT'S CORRECT.

25 Q BUT YOU OBVIOUSLY DID NOT CALL ANY OF THOSE GUYS. IS THAT

DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

- 1 CORRECT? WOULD THAT BE FAIR TO SAY?
- 2 A I DIDN'T CALL - I DON'T KNOW WHETHER I DID. I DON'T REMEMBER WHY
- 3 I DIDN'T, TO TELL YOU THE TRUTH.
- 4 Q YOU CAN'T THINK OF ANYTHING? WAS IT SOME KIND OF TRIAL
- 5 STRATEGY OR ANY REASON WHY YOU DID NOT CALL THESE PEOPLE?
- 6 A IF THEY HAD TESTIFIED AND TOLD ME THAT THEY KNEW THAT
- 7 GAMBRELL HAD ATTACKED HIM BEFORE AND THEY WERE THERE AT
- 8 THE TRIAL, I WOULD HAVE CALLED THEM.
- 9 Q DO YOU REMEMBER WHETHER YOU WERE ABLE TO INTERVIEW ANY OF
- 10 THEM BEFORE THE TRIAL?
- 11 A I DON'T WANT TO SAY THAT I DID OR DIDN'T BECAUSE I DON'T
- 12 REMEMBER.
- 13 Q OKAY. BUT THEY WERE LISTED AS A POSSIBLE DEFENSE?
- 14 A THEY WERE LISTED AS WITNESSES. YES.
- 15 Q ANYTHING ELSE YOU CAN REMEMBER ABOUT THE SELF-DEFENSE
- 16 CHARGE? I MEAN, WHEN YOU READ THE TRANSCRIPT, THE JUDGE DID
- 17 CHARGE SELF-DEFENSE. CORRECT?
- 18 A YES.
- 19 Q DID YOU FIND ANYTHING OBJECTIONABLE ABOUT THE CHARGE ITSELF?
- 20 A NOT THAT I REMEMBER.
- 21 Q NOW, ANOTHER ISSUE THAT'S BEEN BROUGHT UP BY MISTER BELL HAS
- 22 BEEN THAT THERE NEVER WAS ANY DISCUSSION OF THE CHARGE OF
- 23 INVOLUNTARY MANSLAUGHTER.
- 24 A NO.
- 25 Q WAS THAT EVER AN IDEA TO YOU OR STRATEGY TO ASK FOR AN

1 INVOLUNTARY MANSLAUGHTER CHARGE?

2 A NO. LIKE I SAID, MY TRIAL STRATEGY WAS BASED ON THE EVIDENCE
3 THAT I SAW, INCLUDING THE FORENSICS, WHICH WAS EITHER MURDER
4 OR SELF-DEFENSE. I FELT THERE WAS NO RECKLESSNESS IN THIS
5 CASE AT ALL. I MEAN, HE DIDN'T HAVE THE GUN OUT UNTIL THEY GOT
6 INTO THIS SCUFFLE, BRAXTON DIDN'T, AND THEN HE PULLED IT OUT
7 ONLY IN SELF-DEFENSE, BUT THE MAN HAD A BOTTLE AND WHEN HE
8 WENT INTO HIS POCKET, BRAXTON PULLED OUT THE PISTOL AND SHOT
9 HIM, BUT HE SHOT HIM TWICE, NOT ONCE.

10 Q WELL, DID YOU EVER CONSIDER -- YOU DIDN'T RAISE THE IDEA OF
11 VOLUNTARY MANSLAUGHTER. CORRECT? THAT WAS NOT YOUR -- YOU
12 DIDN'T REQUEST THAT CHARGE.

13 A NO.

14 Q SO, EITHER THE JUDGE SUGGESTED IT OR THE STATE ASKED FOR IT,
15 ONE OR THE OTHER.

16 A I THINK THE JUDGE FELT LIKE THE EVIDENCE SUPPORTED VOLUNTARY
17 MANSLAUGHTER. I DID NOT OBJECT TO IT. PERHAPS I SHOULD HAVE.

18 Q AT THAT POINT, WHEN THE JUDGE, EITHER THE JUDGE - WE'RE NOT
19 REALLY SURE, BUT THE VOLUNTARY MANSLAUGHTER WAS PUT INTO
20 THE CHARGE, AT THAT POINT, DID YOU EVER FEEL LIKE YOU SHOULD
21 HAVE ASKED FOR INVOLUNTARY MANSLAUGHTER?

22 A NO. THERE WAS NO RECKLESSNESS INVOLVED IN THIS. THIS WAS
23 EITHER -- BRAXTON DIDN'T HAVE THE GUN OUT WAVING IT AROUND OR
24 SAYING MY GUN JUST WENT OFF. THERE WAS NO EVIDENCE THE GUN
25 HAD A HAIR TRIGGER. THERE WAS NO RECKLESSNESS INVOLVED. HE

DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

1 HAD THE GUN IN HIS POCKET AND HE WOULDN'T HAVE PULLED IT OUT,
2 IN MY MIND STILL, IF THE GUY HADN'T ATTACKED HIM. THAT WAS THE
3 WHOLE PURPOSE —

4 Q DO YOU FEEL LIKE IF THE JUDGE HAD CHARGED INVOLUNTARY
5 MANSLAUGHTER, THAT WOULD HAVE GIVEN THE JURY STILL ANOTHER
6 OPTION OTHER THAN MURDER OR VOLUNTARY MANSLAUGHTER?

7 A I WOULD NEVER HAVE ASKED FOR INVOLUNTARY MANSLAUGHTER IN
8 THIS CASE.

9 Q NEVER WOULD HAVE ASKED FOR IT?

10 A NO.

11 Q OKAY.

12 MR. ANDERSON: I'D ASK FOR JUST A MOMENT, YOUR HONOR.

13 THE COURT: YES, SIR.

14 (MISTER ANDERSON CHECKS HIS NOTES)

15 Q LET ME ASK YOU JUST A COUPLE OF OTHER QUESTIONS. WHEN YOU —
16 WHEN Y'ALL STARTED ON THIS TRIAL, DID Y'ALL -- HOW DID THE JURY
17 SELECTION PROCEED? DID YOU HAVE ANY PROBLEMS WITH THAT?

18 A IT SEEMS LIKE THERE WAS A PROBLEM, BUT I DON'T REMEMBER WHAT
19 IT WAS.

20 Q DO YOU REMEMBER A FEMALE JUROR THAT BROUGHT UP CERTAIN
21 ISSUES TO THE COURT?

22 A THAT SHE KNEW SOMEONE?

23 Q THAT SHE KNEW SOME OF THE VICTIM'S FAMILY?

24 A YES. YES.

25 Q AND SHE ACTUALLY ENDED UP SERVING ON THE JURY. IS THAT

1 CORRECT?

2 A YES.

3 Q WAS THERE EVER AN OPPORTUNITY THAT YOU HAD TO REMOVE HER
4 FROM THE JURY OR IS THERE ANY REASON WHY YOU DIDN'T REMOVE
5 HER FROM THE JURY?

6 A I DON'T REMEMBER, UNLESS I RAN OUT OF STRIKES AND WE DIDN'T
7 CHALLENGE FOR CAUSE. I DON'T REMEMBER WHAT HAPPENED WITH
8 THAT.

9 Q BUT YOU CAN'T SAY SPECIFICALLY WHY OR WHY SHE WASN'T
10 REMOVED —

11 A NO.

12 Q — OR WHY YOU DIDN'T DO ANYTHING ABOUT THAT?

13 A I DON'T — I CAN'T SAY.

14 Q NOW, THERE WAS ALSO THE ISSUE THAT WAS PROBABLY THE LAST
15 THING, ABOUT JIMMY PENN. JIMMY PENN ACTUALLY WORKED FOR THE
16 PUBLIC DEFENDER'S OFFICE WHEN THIS CASE OCCURRED. IS THAT
17 CORRECT?

18 A THAT'S CORRECT.

19 Q AND HE HAD ACTUALLY INTERVIEWED MISTER BELL IN THIS
20 PARTICULAR CASE.

21 A THAT'S RIGHT.

22 Q AND THEN JUST LIKE THE CASE EARLIER TODAY, HE WENT ON TO
23 WORK FOR THE SOLICITOR'S OFFICE.

24 A THAT'S RIGHT.

25 Q DID HE EVER TESTIFY IN THIS CASE?

DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

1 A I THINK HE TESTIFIED. I RAISED THE ISSUE AND I MADE A MOTION TO
2 HAVE THE SOLICITOR'S OFFICE RECUSED BECAUSE OF A CONFLICT OF
3 INTEREST AND I THOUGHT THERE WAS A CONFLICT OF INTEREST AND I
4 BELIEVE MISTER PENN DID TESTIFY THAT HE DIDN'T HAVE ANYTHING
5 TO DO WITH THIS CASE AFTER HE LEFT THE PUBLIC DEFENDER'S
6 OFFICE, BUT THE PROBLEM WAS THAT HE, THAT I THOUGHT WAS, THAT
7 HE HAD CONFIDENTIAL INFORMATION FROM MISTER BELL, VERY
8 INTIMATE CONFIDENTIAL INFORMATION, AND THEN HE WENT TO WORK
9 FOR THE SOLICITOR WITH THAT INFORMATION AND I THINK HE DID
10 HAVE - SEEMS LIKE HE HAD VERY LITTLE TO DO WITH IT AT THE
11 SOLICITOR'S OFFICE, BUT JUST THE FACT THAT HE WAS IN THE
12 SOLICITOR'S OFFICE AND WOULD HAVE HAD INFORMATION, CAUSED
13 CONCERN FOR ME.

14 Q AND YOU DID PURSUE THAT.

15 A YES. I DID.

16 Q AND THE JUDGE - WHAT OCCURRED WITH THAT?

17 A HE DENIED MY MOTION.

18 Q ALL RIGHT. NOW, AT THE END OF THE TRIAL, AT THE END OF THE
19 EVIDENCE, DID YOU MAKE ANY MOTIONS FOR A DIRECTED VERDICT OR
20 ANYTHING LIKE THAT ON THE MURDER CHARGE?

21 A I DON'T REMEMBER.

22 Q OBVIOUSLY, IF YOU HAD, IT WAS NOT SUCCESSFUL.

23 A WELL, I PROBABLY DID NOT. I DON'T REMEMBER THAT I DID NOT, BUT
24 THERE WAS ENOUGH, I THINK THERE WAS ENOUGH EVIDENCE FROM
25 AFTER THE EVENT THAT HAD THE JUDGE - HAD I MADE THAT MOTION

1 THAT WAS A GOOD IDEA. I STILL DON'T FEEL THAT'S THE WAY IT
2 SHOULD BE DONE, BECAUSE IF YOU MAKE A MOTION ON DIRECTED
3 VERDICT ON A MURDER AND THEN THE JUDGE LEAVES VOLUNTARY
4 MANSLAUGHTER ON THE TABLE AND PRESENTS IT TO THE JURY, IN MY
5 MIND, THAT TELLS THE JURY OKAY, THE JUDGE SAYS HE'S GUILTY OF
6 VOLUNTARY MANSLAUGHTER. AT LEAST THAT'S MY PERCEPTION OF
7 THE WAY THAT WORKS SOMETIMES. SO, I DIDN'T MAKE A MOTION.

8 Q YOU WOULD AGREE THAT YOU FEEL LIKE IF YOU HAD OBJECTED TO
9 THE VOLUNTARY MANSLAUGHTER AND THE JUDGE AGREED TO TAKE IT
10 OUT, THIS TRIAL MIGHT HAVE ENDED DIFFERENTLY?

11 A WELL, I FELT THEN AND I STILL FEEL LIKE IT WAS SELF-DEFENSE BASED
12 ON EVERYTHING THAT I SAW, BASED ON THE EVIDENCE AND THE
13 FORENSIC AND EVERYTHING ELSE, BUT IF YOU'RE ASKING FOR AN
14 OPINION, THEN I REALLY CAN'T REACH -- IF YOU ARE ASKING ME
15 PERSONALLY AND NOT AS A LAWYER, YEAH, I THINK SO. BUT I'M NOT--
16 THAT'S A LEGAL QUESTION. IT'S NOT MY PROVIDENCE TO MAKE THAT
17 DECISION.

18 **MR. ANDERSON:** THAT'S ALL THE QUESTIONS I HAVE AT THIS TIME,
19 YOUR HONOR.

20 **THE COURT:** LET'S DO THIS. LET'S TAKE A FIVE MINUTE BREAK BEFORE
21 YOU DO YOUR CROSS EXAMINATION. WE'LL COME BACK AT A QUARTER
22 UNTIL TWELVE.

23 **MR. LEE:** YES, YOUR HONOR.

24 (BREAK. THE JUDGE HOLDS A BRIEF WRONGFUL DEATH SETTLEMENT
25 HEARING)

CROSS EXAMINATION OF CHARLES WHITEN BY MR. LEE

1 **THE COURT:** ALL RIGHT. MISTER LEE ARE YOU READY TO PROCEED
2 WITH CROSS EXAMINATION?

3 **MR. LEE:** YES, YOUR HONOR.

4 **CROSS EXAMINATION OF MISTER WHITEN BY MISTER LEE**

5 Q MISTER WHITEN, MISTER ANDERSON HAS DONE A GOOD JOB OF
6 ASKING MOST ALL THESE QUESTIONS, SO I'LL GO INTO SOME SPECIFIC
7 AREAS. SO, YOUR DEFENSE IN THE CASE WAS SELF-DEFENSE.
8 CORRECT?

9 A YES.

10 Q AND IN DOING SO, I THINK I HEARD YOU SAY THAT YOU INVESTIGATED,
11 YOU DID YOUR OWN INVESTIGATION. CORRECT?

12 A YES. I DID.

13 Q AND I BELIEVE I HEARD YOU SAY YOU WENT TO THE SCENE TWICE. IS
14 THAT RIGHT?

15 A YES.

16 Q AND YOU ALSO TALKED TO A PATHOLOGIST. IS THAT CORRECT?

17 A YES. I TALKED TO THE PATHOLOGIST IN HIS OFFICE PRIOR TO THE
18 TRIAL.

19 Q AND WOULD THAT HAVE BEEN DOCTOR WOODARD?

20 A YES.

21 Q AND DID HE TESTIFY AT TRIAL?

22 A YES. HE DID.

23 Q NOW, LET'S SKIP OVER JUST A SECOND. WITH REGARD TO THE
24 ADDITIONAL WITNESSES, THE ORIGINAL WITNESS LIST THAT YOU HAD,
25 WOULD THE PRIOR INSTANCE OF ACRIMONY OR PRIOR PHYSICAL

1 ALTERCATIONS BETWEEN THE TWO PARTIES, THE VICTIM AND THE
2 APPLICANT, WOULD THAT NECESSARILY IMPLICATE SELF-DEFENSE ON
3 THE OCCASION IN QUESTION?

4 A I THINK IT WOULD HAVE HAD SOME INFLUENCE ON WHY THE EVENT
5 OCCURRED IN THE FIRST PLACE.

6 Q CERTAINLY. BUT WOULD THE FACT THAT THERE HAD BEEN PAST
7 ALTERCATIONS NECESSARILY IMPLICATE THE FACT THAT IN THIS
8 ALTERCATION HE WAS THE AGGRESSOR?

9 A YOU WANT ME TO ANSWER THAT QUESTION THE WAY I FEEL ABOUT IT
10 OR MY OPINION ON IT?

11 Q I'M SAYING, LOGICALLY SPEAKING, DOES THE FACT THERE HAPPENED
12 TO HAVE BEEN PAST FIGHTS MEAN THAT IN THIS CASE, THAT FIGHT
13 HAPPENED IN THE EXACT SAME WAY?

14 A MISTER GAMBRELL ACCOSTED BRAXTON BELL A NUMBER OF TIMES SO,
15 I HAVE TO ANSWER THE ONLY WAY I CAN AND THAT IS, IF IT HADN'T
16 BEEN FOR MISTER GAMBRELL'S ATTITUDE ABOUT BRAXTON BELL,
17 BRAXTON BELL WOULD NEVER HAVE COMMITTED THIS CRIME.

18 Q OKAY. BUT COULD MISTER GAMBRELL'S PREVIOUS ASSAULTS OR
19 ATTACKS ON MISTER GAMBRELL ALSO BE CONSTRUED AS MOTIVE FOR
20 HIS EVENTUAL ACT? I'M JUST SAYING, IS IT POSSIBLE.

21 A IT'S POSSIBLE, BUT IT'S NOT PROBABLE IN THIS CASE.

22 Q BUT IT IS POSSIBLE. THE EVIDENCE THAT YOU HAD WAS THE
23 FORENSICS. CORRECT?

24 A YES.

25 Q WHICH REFLECTED SELF-DEFENSE IN YOUR MIND AND IN DOCTOR

CROSS EXAMINATION OF CHARLES WHITEN BY MR. LEE

1 WOODARD'S MIND.

2 A YES. WELL, IT WASN'T THAT - HE WAS NEUTRAL ABOUT THAT. HE WAS
3 STRAIGHT UP WITH THE ACTUAL, WHAT HE SAW.

4 Q DID HE SAY THAT THE - BASICALLY, DID HE SAY THAT THE EVIDENCE
5 PRESENTED TO HIM COULD BE CONSISTENT WITH SELF-DEFENSE?

6 A YES. HE DID.

7 Q SO, YOU HAD FORENSICS, YOU HAD DOCTOR WOODARD'S TESTIMONY
8 AND YOU HAD BRAXTON BELL'S OWN TESTIMONY ABOUT HIS
9 SELF-DEFENSE. IS THAT CORRECT?

10 A YES.

11 Q OKAY. NOW, IS IT COMMON FOR JUDGES TO INCLUDE THOSE LESSER
12 INCLUDED CHARGES IN THEIR JURY INSTRUCTIONS WHEN THE
13 EVIDENCE SUPPORTS THAT CHARGE?

14 A EVERY TIME.

15 Q OKAY. AND IN THIS CASE, DID THE EVIDENCE SUPPORT A CHARGE OF
16 VOLUNTARY MANSLAUGHTER?

17 A THAT WOULD BE AN OPINION I CAN'T GIVE. THAT'S THE JUDGE'S CALL.

18 Q BUT WAS IT YOUR TESTIMONY THAT THE EVIDENCE WOULD NOT HAVE
19 SUPPORTED AN INVOLUNTARY MANSLAUGHTER CHARGE?

20 A NO. IT WOULD NOT HAVE.

21 Q NOW, AGAIN, REFERRING TO THE WITNESSES THAT COULD HAVE
22 TESTIFIED TO THE PREVIOUS ACRIMONY, DID YOU, NONETHELESS,
23 ELICIT THE INFORMATION ABOUT THAT ACRIMONY THROUGH YOUR
24 CROSS EXAMINATION OF OTHER WITNESSES OR YOUR CLOSING
25 ARGUMENT?

1 A TO TELL YOU THE TRUTH, I CAN'T REMEMBER WHAT HAPPENED TO
2 THOSE WITNESSES. I DO KNOW THAT I TRIED TO FIND THEM AND I
3 TRIED TO TALK TO THEM. I CAN'T REMEMBER WHY I COULDN'T LOCATE
4 THEM. SOME OF THEM I THINK I DID AND SOME I DIDN'T.

5 Q BUT IF THE TRANSCRIPT REFLECTED THAT YOU HAD CROSS EXAMINED
6 SOMEONE ABOUT PREVIOUS ALTERCATIONS, WOULD YOU AGREE THAT
7 DID TAKE PLACE?

8 A IF THAT'S WHAT THE TRANSCRIPT SAYS. YES.

9 Q AND YOU SAID THAT THE WITNESSES THAT YOU WERE ALERTED TO,
10 YOU CAN'T REMEMBER WHY YOU COULDN'T FIND THEM, BUT YOU DID
11 TRY TO LOCATE THEM. IS THAT CORRECT?

12 A YES. I DID.

13 Q NOW, WITH REGARD, AGAIN, TO THE INVOLUNTARY MANSLAUGHTER
14 CHARGE, IT WAS YOUR ASSERTION THAT DURING YOUR MEETINGS
15 WITH THE APPLICANT, HE TOLD YOU HIS VERSION OF THE FACTS.
16 CORRECT?

17 A THAT'S CORRECT.

18 Q AND HIS VERSION OF THE FACTS WAS THAT AFTER BEING ATTACKED
19 BY THE VICTIM AND UPON, I GUESS, GRAPPLING AND UPON SEEING THE
20 VICTIM REACH INTO HIS POCKET FOR SOMETHING THAT TURNED OUT
21 TO BE A COKE BOTTLE, THEN HE GOT THE GUN AND SHOT THE VICTIM.

22 A THAT'S CORRECT.

23 Q AND THEN THEY CONTINUED GRAPPLING AND HE SUBSEQUENTLY SHOT
24 THE VICTIM AGAIN AT WHICH POINT HE FELL.

25 A THAT'S CORRECT. THAT HAPPENED WITHIN A MATTER OF SECONDS.

CROSS EXAMINATION OF CHARLES WHITEN BY MR. LEE

1 Q AND WITH REGARD TO THE INVESTIGATOR, YOU DID MAKE THE MOTION
2 TO HAVE THE SOLICITOR'S OFFICE RECUSED ON THAT GROUND.
3 CORRECT?

4 A YES. I DID.

5 Q AND DIDN'T THE STATE, IN FACT, AGREE TO NOT HAVE THE SOLICITOR
6 TESTIFY REGARDING THIS CASE IN THE TRIAL?

7 A YES. THEY DID.

8 Q AND THE JUDGE DENIED YOUR MOTION TO HAVE THE SOLICITOR'S
9 OFFICE RECUSED.

10 A YES.

11 Q OKAY. SO, IF THE EVIDENCE SUPPORTS, NOT GIVING AN OPINION HERE,
12 BUT IF THE EVIDENCE SUPPORTS A CHARGE OF VOLUNTARY
13 MANSLAUGHTER, IS IT WITHIN THE JUDGE'S DISCRETION TO GIVE THAT
14 CHARGE?

15 A YES. IF THE EVIDENCE SUPPORTS IT, HE MUST GIVE IT.

16 Q SO, WOULD THAT BE OBJECTIONABLE, THEN?

17 A IT WOULD BE. IF I - FROM A DEFENSE LAWYER'S POINT OF VIEW YOU
18 CAN OBJECT TO IT, BUT IF HE FEELS LIKE THERE IS EVIDENCE THERE,
19 THAT'S A CALL FOR THE JUDGE TO MAKE.

20 Q SO, IF THE EVIDENCE SUPPORTS IT AND YOU DID OBJECT TO IT,
21 ASSUMING IF THE EVIDENCE DID SUPPORT IT, DO YOU FEEL LIKE THAT
22 OBJECTION WOULD HAVE BEEN SUCCESSFUL?

23 A NO. I THINK THE JUDGE WOULD HAVE CHARGED IT ANYWAY.

24 MR. LEE: BEG THE COURT'S INDULGENCE.

25 THE COURT: YES, SIR.

1 Q YOU SAID YOU MET WITH THE APPLICANT APPROXIMATELY FOUR OR
2 FIVE TIMES BEFORE TRIAL?

3 A YES.

4 Q OKAY. AND AGAIN, YOU FELT LIKE SELF-DEFENSE WAS PRETTY
5 EVIDENT IN THIS CASE?

6 A I STILL DO.

7 Q WITH REGARD -- DO YOU FEEL YOU DID EVERYTHING POSSIBLE TO
8 PRESENT THAT DEFENSE?

9 A I REALLY THOUGHT THAT IT WAS -- I'M NOT JUST TOOTING MY OWN
10 HORN ABOUT THAT, BUT I THOUGHT THAT WE PRESENTED IT THE BEST
11 IT COULD BE PRESENTED UNLESS THERE WERE WITNESSES THAT
12 WOULD COME FORWARD ABOUT MISTER GAMBRELL'S PRIOR ATTACKS.
13 OTHER THAN THAT...

14 Q BUT THERE WERE NO EYE WITNESSES ---

15 A NO.

16 Q --- NO ONE THAT SAW THAT HAPPEN.

17 A NO.

18 Q AND THE FORENSICS SHOWED THAT THE -- I GUESS YOU SAID THAT THE
19 STATE ORIGINALLY CONTENDED THAT HE SHOT FROM A DISTANCE BUT
20 THE FORENSICS SHOWED THAT BOTH SHOTS HAD POWDER BURNS ON
21 THE CLOTHING?

22 A THAT'S MY RECOLLECTION. YES.

23 Q WHICH INDICATED TO BOTH YOURSELF AND DOCTOR WOODARD THAT
24 THAT WOULD BE CONSISTENT WITH SELF-DEFENSE?

25 A YES, SIR.

RE-DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

1 Q OKAY. DO YOU FEEL LIKE YOU PROVIDED EFFECTIVE ASSISTANCE OF
2 COUNSEL IN THIS CASE?

3 A I'M SORRY?

4 Q DO YOU FEEL LIKE YOU PROVIDED EFFECTIVE ASSISTANCE OF
5 COUNSEL IN THIS CASE?

6 A YES, SIR. THE ONLY SHOCK THAT I HAD ABOUT THE CASE WAS THE
7 SENTENCE. OTHER THAN THAT, YES.

8 Q AND AGAIN, HE WAS INDICTED FOR MURDER. RIGHT?

9 A YES. HE WAS.

10 Q AND HE WAS EVENTUALLY FOUND GUILTY OF THE LESSER INCLUDED.

11 A YES, SIR.

12 Q AND THE FINAL QUESTION REGARDING, I GUESS, THE JUROR THAT WAS
13 BROUGHT UP. YOU SAID THAT YOU COULDN'T RECALL WHY YOU DIDN'T
14 MOVE TO HAVE HER STRICKEN?

15 A I CAN'T RECALL. THE ONLY THING I CAN THINK OF WHICH NORMALLY
16 HAPPENS IS THAT YOU RUN OUT OF STRIKES AND THE JUDGE DIDN'T
17 REMOVE THE JUROR FOR CAUSE WHEN HE EXAMINED HER. OTHER
18 THAN THAT, THAT WOULD BE MY REASON FOR NOT STRIKING A JUROR
19 LIKE THAT.

20 MR. LEE: NO FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

21 MR. ANDERSON: JUST BRIEFLY, YOUR HONOR.

22 THE COURT: YES, SIR.

23 RE-DIRECT EXAMINATION OF MR. WHITEN BY MR. ANDERSON

24 Q WHAT WAS YOUR OBJECTION OR PROBLEM WITH THE ACTUAL
25 SENTENCING HE RECEIVED?

1 A WELL, MY RECOLLECTION WAS THAT THEY OFFERED THIRTY YEARS
2 FOR MURDER, NOT FOR VOLUNTARY MANSLAUGHTER. I THOUGHT HE
3 HAD A GOOD DEFENSE. OF COURSE, IT'S WITHIN THE JUDGE'S
4 PREROGATIVE TO SENTENCE HIM TO THAT SENTENCE, BUT THAT'S THE
5 MAXIMUM SENTENCE ---

6 Q --- IT'S THIRTY YEARS FOR THE MAX ---

7 A --- THE MAX FOR WHAT HE WAS CONVICTED OF AND MORE BY MAKING
8 THE GUN CHARGE ---

9 Q CONSECUTIVE.

10 A --- CONSECUTIVE. I WAS TAKEN ABACK BY THE SENTENCING. THAT'S
11 ALL I'M GOING TO SAY. IN MY MIND, I DON'T EVEN KNOW HOW HE
12 REACHED THAT SENTENCE.

13 Q SO, HE GOT THE ABSOLUTE MAX HE COULD GET FOR WHAT HE WAS
14 CONVICTED FOR.

15 A YES.

16 Q NOW, AGAIN, YOUR WHOLE FOCUS, THOUGH, WHEN YOU WENT TO
17 TRIAL, IT WAS ON MURDER AND YOUR DEFENSE TO THAT WAS A
18 SELF-DEFENSE.

19 A YES.

20 Q SO, YOU FELT LIKE, "IF I CAN SHOW SELF-DEFENSE HE'LL BE FOUND
21 NOT GUILTY."

22 A THAT'S CORRECT.

23 Q NOW, SELF-DEFENSE DOESN'T DO YOU ANY GOOD IN VOLUNTARY
24 MANSLAUGHTER. IS THAT CORRECT?

25 A NO. THAT'S MY -- THESE ARE HARD CALLS IN A MURDER CASE WHEN

RE-DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

1 YOU HAVE SELF-DEFENSE AND I'VE DONE IT SEVERAL TIMES AND I DID
2 IN THIS CASE, EITHER HE'S GUILTY OF MURDER OR HE'S NOT GUILTY.

3 Q RIGHT. AND SO YOU BRINGING UP SELF-DEFENSE OR HIM BEING
4 THREATENED DURING THIS ARGUMENT, THAT WOULDN'T HAVE DONE
5 YOU ANY GOOD WITH VOLUNTARY MANSLAUGHTER.

6 A NO.

7 Q AND SO, AT THE POINT WHEN THE JUDGE ANNOUNCED THAT HE WAS
8 GOING TO CHARGE THAT, YOU DIDN'T OBJECT TO VOLUNTARY
9 MANSLAUGHTER. CORRECT?

10 A NO.

11 Q AND LOOKING BACK ON IT NOW, DO YOU THINK THAT WOULD HAVE
12 CHANGED THE OUTCOME OF THIS TRIAL ASSUMING THAT YOU
13 OBJECTED AND THAT HE RULED WITH YOU? OBVIOUSLY, YOU DON'T
14 KNOW THAT, BUT...

15 A NO. I DON'T KNOW AND HE COULD HAVE BEEN CONVICTED OF MURDER,
16 TOO, BUT IT WOULD NOT HAVE BEEN SUPPORTED IN MY MIND.

17 Q BUT YOU COULD HAVE MADE AN ARGUMENT AGAINST VOLUNTARY
18 MANSLAUGHTER.

19 A YES.

20 Q OR IN THE ALTERNATIVE, EVEN REQUESTED INVOLUNTARY
21 MANSLAUGHTER IF THE JUDGE WAS GOING TO CHARGE VOLUNTARY.

22 A I WOULDN'T HAVE REQUESTED INVOLUNTARY MANSLAUGHTER
23 BECAUSE THERE WAS NO EVIDENCE OF RECKLESSNESS, NO EVIDENCE
24 TO SUPPORT THAT KIND OF CHARGE. THAT WOULDN'T HAVE EVEN
25 ENTERED MY MIND.

1 Q ALL RIGHT. LET ME GO BACK TO THE WITNESSES. I'M GOING TO SHOW
2 YOU PAGE SIXTEEN OF YOUR TRANSCRIPT.

3 THE COURT: PAGE WHAT?

4 MR. ANDERSON: PAGE SIXTEEN, YOUR HONOR.

5 Q LINES, BASICALLY, FOURTEEN THROUGH TWENTY-ONE. WHEN YOU
6 WERE PREPARING FOR THIS CASE, OBVIOUSLY, YOU HAD TO SUBMIT A
7 LIST OF WITNESSES TO THE COURT BEFORE YOU DID THE JURY
8 SELECTION.

9 A YES.

10 Q AND IN THAT LIST OF WITNESSES THERE ARE A NUMBER OF PEOPLE
11 THERE SUCH AS, JOYCE BELL, THE MOTHER OF THE DEFENDANT, AND
12 THAT SORT OF THING. I THINK THERE ARE SEVERAL WITNESSES
13 LISTED THERE ON LINES FOURTEEN THROUGH -- DO YOU RECOGNIZE
14 THOSE NAMES?

15 A THOSE ARE THE ONES I SUBMITTED. YES.

16 Q WOULD THOSE HAVE BEEN PEOPLE YOU HAD INTERVIEWED BEFORE
17 TRIAL OR AT LEAST TALKED TO AT SOME POINT PRIOR TO TRIAL?

18 A YES.

19 Q AND WOULD YOU AGREE WITH ME THAT THE, FOR THE LACK OF A
20 BETTER WORD, THE CHARACTER WITNESSES OR THE FACTUAL
21 WITNESSES IN THE MIDDLE, NOT THE DOCTORS, DID YOU CALL ANY OF
22 THOSE PEOPLE?

23 A I DID NOT CALL ANY OF THEM.

24 Q NOW, AS AN ELEMENT OF THIS SELF-DEFENSE, ONE OF THE FACTORS,
25 I THINK WOULD BE, DID, AT ANY POINT IN THE PAST, HAD BRAXTON

RE-DIRECT EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON.

1 BELL EVER ATTACKED MISTER GAMBRELL. THE STATE DIDN'T HAVE
2 ANY EVIDENCE OR ANY WITNESSES THAT EVER TESTIFIED THAT IN THE
3 PAST MISTER BELL HAD ATTACKED MISTER GAMBRELL. IS THAT
4 CORRECT?

5 A NO. THERE WAS NO EVIDENCE OF THAT.

6 Q THE PEOPLE THAT YOU SPOKE WITH AND THE THINGS THAT WERE
7 TOLD TO YOU WERE THAT MISTER GAMBRELL HAD ALWAYS BEEN THE
8 AGGRESSOR.

9 A I DON'T RECALL. I'M TRYING TO BE HONEST ABOUT THAT QUESTION.
10 I'M NOT SURE WHAT THEY TOLD ME AS FAR AS THE DETAILS.

11 Q HAD ANYBODY THAT YOU EVER INTERVIEWED EVER TOLD YOU THAT
12 MISTER BELL HAD GONE AFTER MISTER GAMBRELL IN ANY WAY?

13 A NO.

14 Q SO, THAT WOULD BE AN ELEMENT OF SELF-DEFENSE THAT WOULD
15 HAVE STRENGTHENED HIS CASE FOR THE JURY IF THEY HAD HEARD
16 TESTIMONY FROM WITNESSES THAT MISTER GAMBRELL ALWAYS HAD
17 BEEN THE AGGRESSOR.

18 A YES.

19 Q IT WOULD HAVE STRENGTHENED YOUR DEFENSE.

20 A IT WOULD.

21 Q BUT YOU NEVER CALLED ANY OF THESE WITNESSES. IS THAT
22 CORRECT?

23 A LET ME CLARIFY THAT IF I CAN. I'M NOT SURE WHAT THEY TOLD ME,
24 WHETHER THEY EVER ACTUALLY TOLD ME THAT MISTER GAMBRELL
25 HAD ATTACKED MISTER BELL. I KNOW WHAT YOUR QUESTION IS

1 ABOUT AND IF THEY HAD TOLD ME THAT, UNLESS THERE WAS SOME
2 REASON FOR ME NOT CALLING THEM AND I DON'T RECALL WHAT THAT
3 MIGHT BE, THEN I SHOULD HAVE CALLED THEM AS WITNESSES, BUT I
4 CAN'T HONESTLY SAY THEY TOLD ME THAT SPECIFICALLY.

5 Q I UNDERSTAND. IT'S BEEN A NUMBER OF YEARS.

6 MR. ANDERSON: THAT'S ALL THE QUESTIONS I HAVE, YOUR HONOR.

7 THE COURT: MISTER LEE?

8 MR. LEE: JUST A COUPLE OF QUESTIONS RELATED TO QUESTIONS
9 MISTER ANDERSON ASKED..

10 RE-CROSS EXAMINATION OF MR. WHITEN BY MR. LEE

11 Q ISN'T SELF-DEFENSE – YOU STATED THAT IT CERTAINLY WOULD HAVE
12 HELPED OR STRENGTHENED YOUR DEFENSE IF THESE PEOPLE HAD
13 TESTIFIED THAT THERE WERE PRIOR ALTERCATIONS IN WHICH MISTER
14 GAMBRELL WAS THE AGGRESSOR.

15 A I BELIEVE IT WOULD HAVE.

16 Q BUT SELF-DEFENSE DOESN'T NECESSARILY – SELF-DEFENSE, IN FACT,
17 REQUIRES A CONTINUOUS INCIDENT, IF THAT INCIDENT IS STOPPED, IF
18 THE PARTIES WALK AWAY FROM THAT INCIDENT, THEN THERE IS NO,
19 THAT'S NOT SELF-DEFENSE REGARDING THE ULTIMATE ACT.
20 CORRECT?

21 A THAT'S CORRECT. IT COULD HAVE GONE THE OTHER WAY. IT COULD
22 HAVE SHOWN ACRIMONY ON MISTER BELL'S PART BECAUSE OF PRIOR
23 ALTERCATIONS. I SAW NONE OF THAT, HOWEVER. I DON'T
24 SPECIFICALLY RECALL WHY THOSE WITNESSES WERE NOT CALLED,
25 BUT I CAN TELL YOU THAT IF IT WOULD HAVE BEEN BENEFICIAL,

1 BUT I CAN TELL YOU THAT IF IT WOULD HAVE BEEN BENEFICIAL,
2 NORMALLY, I WOULD HAVE CALLED THEM. I DON'T KNOW WHY I -- I
3 CAN'T RECALL WHY I DIDN'T CALL THEM.

4 Q BUT THE PRIOR ALTERCATIONS, ALTERCATIONS THAT ULTIMATELY
5 STOPPED OR ABATED, THOSE WOULDN'T ACTUALLY BE AN ELEMENT OF
6 THE SELF-DEFENSE CLAIM IN AND OF ITSELF. IT WOULD STRENGTHEN
7 THE CASE, BUT IT WOULDN'T BE HELPFUL.

8 A NO.

9 MR. LEE: THANK YOU. NO FURTHER QUESTIONS.

10 MR. ANDERSON: THAT'S ALL, YOUR HONOR.

11 THE COURT: I HAVE A COUPLE OF QUESTIONS, IF I MAY. MISTER PENN
12 HAS BEEN MENTIONED TWICE TODAY AND OBVIOUSLY, HE WAS AN
13 INVESTIGATOR FOR THE PUBLIC DEFENDER'S OFFICE. IS THAT CORRECT?

14 MR. WHITEN: YES, SIR.

15 THE COURT: AND THAT HE DID, IN FACT, MOVED OVER TO THE
16 SOLICITOR'S OFFICE IN THAT SAME CAPACITY, I ASSUME?

17 MR. WHITEN: YES, SIR.

18 THE COURT: WHEN YOU MADE YOUR MOTION TO THE TRIAL COURT,
19 WAS THERE ANY EVIDENCE THAT MISTER PENN HAD PARTICIPATED IN THE
20 SOLICITOR'S OFFICE IN THE PROSECUTION OF THIS MATTER OF THIS CASE IN
21 ANY FORM OR FASHION?

22 MR. WHITEN: NO, SIR. THE ONLY THING ABOUT IT THAT CONCERNED ME
23 WAS THAT HE HAD INTERVIEWED MISTER BELL AND HAD GOTTEN ALL THE
24 DETAILS IN A CONFIDENTIAL RELATIONSHIP WHEN HE WAS WORKING,
25 BASICALLY, FOR THE OTHER SIDE AS I UNDERSTAND, BUT NO, HE DIDN'T

1 HAVE ANY DIRECT – BUT HOW DO WE KNOW THAT HE DIDN'T TALK TO
2 SOMEBODY IN THE SOLICITOR'S OFFICE?

3 THE COURT: SO – AND I THOUGHT THAT WAS WHAT YOU WERE SAYING,
4 BUT BASICALLY, YOU ARE SAYING, IF I UNDERSTAND WHAT YOU ARE
5 TESTIFYING TO, THAT IT'S THE APPEARANCE —

6 MR. WHITEN: AND I WOULD SAY IT IS JUST HUMAN NATURE TO SAY,
7 "HEY, I KNOW HIM. I TALKED TO HIM." AND THEY MIGHT NOT HAVE ASKED HIM
8 WHAT HE SAID, BUT THAT'S A CONCERN, TO ME.

9 THE COURT: MISTER ANDERSON, DO YOU HAVE ANY EVIDENCE THAT
10 MISTER PENN PARTICIPATED IN THE PROSECUTION OF THIS GENTLEMAN'S
11 CASE IN ANY FORM OR FASHION?

12 MR. ANDERSON: WE DO NOT, YOUR HONOR. BUT AGAIN, WE HAVE
13 CONCERNS, THAT MISTER BELL HAD, THAT HIS DUE PROCESS COULD BE
14 VIOLATED IN SOME WAY IN THE FACT THAT HE RELAYED, HE WAS THE INITIAL
15 PERSON TO MEET MISTER BELL IN JAIL. HE RELAYED TO HIM HIS STORY AND
16 THEN HE WORKED FOR THE SOLICITOR'S OFFICE.

17 MR. WHITEN: I WANT TO SAY ONE MORE THING ABOUT THAT, TOO, AND I
18 KNOW IT MAY NOT HAVE ANY IMPACT ON HIS CASE, BUT MISTER BELL WAS
19 RELUCTANT TO TALK TO ME AT THE COUNTY JAIL BECAUSE OF THE FACT
20 THAT HE HAD TALKED TO MISTER PENN AND THEN MISTER PENN CROSSED
21 OVER, MORE OR LESS, AND I HAD A HARD TIME BEING HIS ATTORNEY AND
22 GETTING THE DETAILS BECAUSE HE DIDN'T WANT TO FREELY GIVE THEM AND
23 IT'S A PROBLEM WHEN THAT HAPPENS.

24 THE COURT: ANY QUESTIONS FROM EITHER ONE OF THE ATTORNEYS
25 BASED ON MY QUESTIONS?

1 THAT WE BROUGHT THAT UP WAS, AGAIN, NOT NECESSARILY INEFFECTIVE
2 ASSISTANCE OF COUNSEL, BECAUSE MISTER WHITEN DID MAKE AN
3 OBJECTION OR ASKED FOR A RULING FROM THE COURT, BUT THE FACT THAT
4 IT WASN'T PURSUED AND THE FACT THAT JIM PENN WASN'T CALLED IN AND
5 QUESTIONED *IN CAMERA* OR ANYTHING ELSE AS TO HIS INVOLVEMENT TO
6 PROTECT HIS RIGHTS AND SO THAT'S WHERE THAT ARGUMENT COMES
7 FROM, YOUR HONOR.

8 THE COURT: THANK YOU, MISTER WHITEN.

9 MR. WHITEN: I THINK HE WAS QUESTIONED. MAYBE NOT *IN CAMERA*.
10 DID YOU HAVE A QUESTION, MISTER LEE? I'M SORRY.

11 MR. LEE: NO. NOTHING FURTHER, YOUR HONOR.

12 THE COURT: OKAY. THANK YOU. (SPEAKING TO MR. WHITEN AND MR.
13 WHITEN LEAVES THE WITNESS STAND).

14 THE COURT: WE WANT TO CONTINUE, I KNOW, BUT BOTH ATTORNEYS, I
15 WAS LOOKING THROUGH SOME CANONS ABOUT AN ATTORNEY SWAPPING
16 OVER, GOING FROM ONE TO THE OTHER WHICH WOULD BE EVEN MORE SO
17 THAN AN INVESTIGATOR, BUT FROM MY UNDERSTANDING, AND I WANT TO
18 ASK YOU, IF YOU WOULD AND WANT TO SUBMIT SOMETHING TO THE
19 CONTRARY, IS THAT UNDER THE CANONS THAT IF ONE ATTORNEY GOES
20 FROM, SAY THE PUBLIC DEFENDER TO THE SOLICITOR'S OFFICE, AS LONG AS
21 THERE IS A CHINESE WALL, SO TO SPEAK, KEPT BETWEEN HIM AND THERE IS
22 NO INFORMATION SHARED ONE WAY OR THE OTHER, THERE'S NO
23 VIOLATIONS THERE AND IF ANYBODY KNOWS ANY CASE LAW THAT INDICATES
24 TO THE CONTRARY, I WOULD LIKE TO LOOK AT IT, BECAUSE THAT WAS A
25 CONCERN. DO YOU HAVE ANY OTHER WITNESSES, MISTER ANDERSON?

1 **MR. ANDERSON:** YES, SIR, YOUR HONOR. I'D LIKE TO CALL LEON GRAY.

2 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, LEON GRAY
3 TESTIFIED AS FOLLOWS:)

4 **CLERK OF COURT:** IF YOU'D PLEASE GO AND HAVE A SEAT IN THE
5 WITNESS STAND. IF YOU WOULD PLEASE STATE YOUR FULL NAME FOR THE
6 COURT.

7 **MR. GRAY:** LEON GRAY.

8 **CLERK OF COURT:** THANK YOU.

9 **DIRECT EXAMINATION OF LEON GRAY BY MR. ANDERSON**

10 Q AFTERNOON, MISTER GRAY. ARE YOU DOING ALL RIGHT?

11 A (NODS HEAD)

12 Q YOU MIGHT WANT TO SLIDE UP SO THAT YOU CAN SPEAK INTO THAT
13 MICROPHONE SO THAT EVERYBODY CAN HEAR YOU. THEY'VE GOT TO
14 TAKE DOWN EVERYTHING YOU SAY. OKAY?

15 A (NODS HEAD)

16 Q NOW, HOW DO YOU KNOW BRAXTON BELL?

17 A I KNOW HIS MAMA AND HIS FAMILY.

18 Q YOU'VE KNOWN HIM FOR SOME TIME?

19 A YEAH. SINCE HE WAS A LITTLE BABY.

20 Q OKAY. AND OBVIOUSLY, YOU ARE AWARE OF WHY WE ARE HERE
21 TODAY, I GUESS?

22 A YES, SIR.

23 Q AND DO YOU REMEMBER THE TIME PERIOD LEADING UP TO THE
24 PROBLEM HE HAD WITH MISTER GAMBRELL?

25 A WELL, YEAH.

DIRECT EXAMINATION OF LEON GRAY BY MR. ANDERSON

1 Q LET ME BACK UP A MINUTE. DID YOU KNOW MISTER GAMBRELL?

2 A YES, SIR.

3 Q THE DECEASED.

4 A I KNOWED HIM BUT I DIDN'T KNOW HIM THAT GOOD. HE USED TO COME
5 OVER TO MY HOUSE.

6 Q HE HUNG OUT IN YOUR NEIGHBORHOOD?

7 A YEAH. HE AND BRAXTON USED TO HANG TOGETHER A LITTLE BIT, YOU
8 KNOW.

9 Q ARE YOU PERSONALLY AWARE OF PROBLEMS BETWEEN MISTER BELL
10 AND MISTER GAMBRELL?

11 A YES, SIR.

12 Q WHAT DID YOU KNOW ABOUT THAT?

13 A WELL, THEY WOULD BE FRIENDS AND EVERYTHING AND HE LIVED
14 DOWN THE STREET AND BRAXTON LIVED RIGHT BESIDE ME AND YOU
15 KNOW THEY WOULD GO OUT AND BE TOGETHER AND THEY DON'T
16 COME BACK. THEY ALL TELL ME BO JUMPED ON HIM AND THEY BE
17 ARGUING AND FIGHTING AND, YOU KNOW.

18 Q DID YOU ACTUALLY WITNESS THEM FIGHTING BEFORE?

19 A ONE OF THEM.

20 Q DID YOU SEE WHO STARTED THE THING?

21 A WELL, MOSTLY IT SEEMED LIKE THEY WAS, YOU KNOW, LAUGHING AND
22 STUFF LIKE THAT THEN GET INTO A FIGHT AND BRAXTON COME AND
23 TELL ME THAT THEY GOT TO FIGHTING AND EVERYTHING.

24 Q SO, HOW DID THEY GET ALONG IN THE TIME PERIOD RIGHT UP TO THIS
25 INCIDENT?

1 A WELL, THEY GOT ALONG ALL RIGHT, YOU KNOW. BRAXTON AND HIM
2 WOULD PLAY TOGETHER AND BE TOGETHER AND ALL OF A SUDDEN
3 THEY, YOU KNOW, ONE WOULD SAY THE WRONG THING AND THEY'D
4 END UP ARGUING AND FIGHTING.

5 Q DID BRAXTON EVER TELL YOU THAT HE WAS AFRAID OF MISTER
6 GAMBRELL?

7 A WELL, HE TOLD ME THAT, YOU KNOW, HE WAS ALWAYS WANTING TO
8 FIGHT HIM AND THIS AND THAT.

9 Q DO YOU THINK HE WAS SCARED OF HIM?

10 A MAYBE A LITTLE BIT.

11 Q HOW BIG WAS MISTER GAMBRELL?

12 A HE WAS A GOOD BIT BIGGER THAN BRAXTON WAS BACK THEN.

13 Q NOW, LEADING UP TO WHEN BRAXTON GOT ARRESTED, DO YOU
14 REMEMBER THAT TIME PERIOD WHEN HE WAS JAIL IN ANDERSON?

15 A NO, SIR. I DON'T REMEMBER THAT.

16 Q YOU DON'T REMEMBER THAT?

17 A NAW. I WAS IN JAIL MYSELF.

18 Q LEADING UP TO – DO YOU REMEMBER HIS TRIAL? WERE YOU PRESENT
19 FOR HIS TRIAL?

20 A YEAH.

21 Q LEADING UP TO HIS TRIAL IN, I THINK IT WAS JULY OF 2005, DID YOU
22 HAVE THE OCCASION TO SPEAK TO HIS LAWYER, MISTER WHITEN?

23 A NO.

24 Q YOU NEVER SPOKE TO HIM OR INTERVIEWED BY HIM OR NOTHING LIKE
25 THAT?

DIRECT EXAMINATION OF LEON GRAY BY MR. ANDERSON

- 1 A NO.
- 2 Q NOW, YOU CAME TO BRAXTON'S TRIAL. CORRECT?
- 3 A WELL, I CAME, BUT THEY WOULDN'T LET ME —
- 4 Q I'M GOING TO GET TO THAT, BUT YOU WERE ACTUALLY PRESENT THE
- 5 DAY THE TRIAL STARTED?
- 6 A WELL, I WAS DOWNSTAIRS, BUT I WAS INCARCERATED, TOO.
- 7 Q BUT YOU WERE LISTED AS A WITNESS?
- 8 A YES.
- 9 Q ALL RIGHT. AND WERE YOU EVER CALLED AS A WITNESS DURING THE
- 10 TRIAL? DID YOU TESTIFY?
- 11 A NO.
- 12 Q NOBODY CAME DOWN THERE AND TALKED TO YOU?
- 13 A NO, SIR.
- 14 Q BUT YOU WERE ACTUALLY INCARCERATED DOWNSTAIRS?
- 15 A YES, SIR. I NEVER DID COME UP, YOU KNOW.
- 16 Q DID YOU KNOW WHY YOU WERE THERE?
- 17 A YES.
- 18 Q WHY IS THAT?
- 19 A THEY TOLD ME THAT BRAXTON HAD KILLED HIM AND THEY WANTED ME
- 20 TO TESTIFY.
- 21 Q WHO TOLD YOU THAT?
- 22 A ONE OF BOYS DOWN THERE AT KIRKLAND. I DIDN'T KNOW NOTHING
- 23 ABOUT IT, BUT YOU KNOW, THEY WANTED ME TO TESTIFY ABOUT HOW
- 24 THEY WAS TOGETHER AND ALL AND THIS AND THAT.
- 25 Q OBVIOUSLY, YOU DIDN'T WITNESS THE INCIDENT?

1 A NO.

2 Q OKAY. ALL RIGHT.

3 MR. ANDERSON: THAT'S ALL THE QUESTIONS I HAVE OF THIS WITNESS,
4 YOUR HONOR.

5 THE COURT: ANY CROSS EXAMINATION?

6 CROSS EXAMINATION OF LEON GRAY BY MR. LEE

7 Q I HAVE JUST A COUPLE OF QUESTIONS, MISTER GRAY. YOU SAID THAT
8 MISTER BELL AND MISTER GAMBRELL -- GAMBRELL, IS THAT RIGHT?

9 A YES, SIR.

10 Q YOU SAID THEY GOT ALONG ALL RIGHT?

11 A YEAH.

12 MR. LEE: NO FURTHER QUESTIONS.

13 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

14 MR. ANDERSON: I'D LIKE TO CALL D'SEAN BELL, YOUR HONOR.

15 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, D'SEAN BELL
16 TESTIFIED AS FOLLOWS:)

17 CLERK OF COURT: PLEASE HAVE A SEAT IN THE WITNESS STAND.
18 COULD YOU PLEASE GIVE YOUR FULL NAME FOR THE COURT.

19 MR. BELL: D'SEAN LEON BELL.

20 CLERK OF COURT: COULD YOU PLEASE SPELL THAT?

21 MR. BELL: D-'-S-E-A-N, LEON L-E-O-N, B-E-L-L.

22 CLERK OF COURT: THANK YOU.

23 DIRECT EXAMINATION OF D'SEAN BELL BY MR. ANDERSON

24 Q HOW ARE YOU RELATED TO BRAXTON?

25 A I'M HIS COUSIN.

DIRECT EXAMINATION OF D'SEAN BELL BY MR. ANDERSON

- 1 Q FIRST COUSINS?
- 2 A YES, SIR.
- 3 Q SO, Y'ALL HAVE KNOWN EACH OTHER ALL YOUR LIVES?
- 4 A YES, SIR.
- 5 Q AND DID YOU KNOW MISTER GAMBRELL?
- 6 A I KNEW HIM A LITTLE BIT.
- 7 Q HOW DID YOU KNOW HIM?
- 8 A WELL, HE USED TO STAY IN NEWPORT COMMONS. HE WOULD COME
- 9 OVER AND PLAY GAMES AND CHILL AND EAT.
- 10 Q DID YOU LIVE WITH BRAXTON AT THAT TIME?
- 11 A WELL, YOU MIGHT AS WELL SAY IT BECAUSE WE LIKE STAYED NEXT
- 12 DOOR.
- 13 Q SO, Y'ALL ACTUALLY LIVED IN THE SAME COMPLEX?
- 14 A YES, SIR.
- 15 Q AND ARE YOU AWARE OF – YOU KNEW ABOUT WHEN THIS OCCURRED,
- 16 WHEN MISTER GAMBRELL WAS SHOT. CORRECT?
- 17 A YEAH.
- 18 Q WERE YOU PRESENT THAT NIGHT?
- 19 A WELL, I WAS WITH MY GRANDPARENTS.
- 20 Q BUT YOU WEREN'T OUT AT THE NEWPORT COMMONS THEN?
- 21 A NO, SIR.
- 22 Q DID YOU HEAR ABOUT IT LATER?
- 23 A I HEARD ABOUT IT.
- 24 Q OKAY. WHO TOLD YOU ABOUT IT?
- 25 A WELL, WE KIND OFF SEEN IT ON THE NEWS ABOUT SOMEBODY HAD

1 GOT SHOT OUT AT NEWPORT COMMONS, SO WE DIDN'T KNOW WHO.

2 Q WERE YOU SURPRISED BY THIS?

3 A YEAH. KIND OF.

4 Q DID YOU KNOW ABOUT THE RELATIONSHIP BETWEEN BRAXTON AND
5 MISTER GAMBRELL LEADING UP TO THAT NIGHT?

6 A THE ONLY THING I KNOW IS THEY USED TO GET INTO IT.

7 Q WHAT DID THEY GET INTO ABOUT?

8 A DIFFERENT STUFF, LIKE BRAXTON COMING HOME FROM WORK AND
9 HE'D SEE BO OUT ON THE ROAD AND HE'D BE LIKE TALKING JUNK AND
10 STUFF.

11 Q WHO WOULD BE TALKING TO HIM?

12 A MISTER GAMBRELL. I CALLED HIM "BO".

13 Q YOU CALLED HIM "BO"?

14 A (NODS HEAD)

15 Q DID THEY EVER GET INTO ANY FIGHTS IN YOUR PRESENCE?

16 A YEAH. A COUPLE OF TIMES.

17 Q OKAY. AND WHO WAS THE AGGRESSOR IN THAT?

18 A I'D SAY BO BECAUSE LIKE ONE DAY HE WAS TRYING TO KICK HIM OUT
19 THE DOOR BECAUSE HE WAS TRYING TO GET IN.

20 Q WHAT WAS THE DIFFERENCE IN SIZE BETWEEN THE TWO OF THEM?

21 A BO WAS A LITTLE BIT MORE TALLER THAN BRAXTON.

22 Q BIGGER THAN HE WAS ALTOGETHER?

23 A YEAH.

24 Q DID HE EVER -- I MEAN, DID YOU EVER SEE HIM THREATEN HIM WITH
25 ANY TYPE OF WEAPON OR ANYTHING LIKE THAT?

CROSS EXAMINATION OF D'SEAN BELL BY MR. LEE

1 A HE DON'T SEEM TO HAVE A WEAPON. HE'D ALREADY RAN UP ON HIM A
2 COUPLE OF TIMES.

3 Q RAN UP ON MISTER BELL?

4 A YEAH.

5 Q DID MISTER BELL EVER TELL YOU HE WAS SCARED OF HIM?

6 A NO. NOT THAT I KNOW OF.

7 Q DID YOU KNOW BRAXTON HAD A GUN?

8 A (SHAKES HEAD)

9 Q YOU DIDN'T KNOW ANYTHING ABOUT IT?

10 THE COURT: YOU HAVE TO GIVE A VERBAL RESPONSE.

11 MR. ANDERSON: I'M SORRY, YOUR HONOR.

12 A NO, SIR.

13 Q DID YOU KNOW WHETHER OR NOT MISTER GAMBRELL HAD A GUN?

14 A NO, SIR.

15 MR. ANDERSON: THAT'S ALL THE QUESTIONS THAT I HAVE AT THIS
16 TIME, YOUR HONOR.

17 THE COURT: CROSS EXAMINATION?

18 CROSS EXAMINATION OF D'SEAN BELL BY MR. LEE

19 Q MISTER BELL, IS THAT RIGHT?

20 A YES, SIR.

21 Q SO, YOU SAID THAT MISTER GAMBRELL AND MISTER BELL AND ALL YOU
22 GUYS USED TO HANG OUT?

23 A YEAH.

24 Q WAS THAT FREQUENT?

25 A NO, BECAUSE BRAXTON HAD A JOB AND I AIN'T KNOW WHERE BO WAS

1 AT.

2 Q BUT THEY DID OCCASIONALLY SPEND TIME TOGETHER?

3 A YEAH.

4 Q THAT'S ALL MY QUESTIONS. THANKS.

5 MR. ANDERSON: JUST BRIEFLY, YOUR HONOR.

6 RE-DIRECT EXAMINATION OF D'SEAN BELL BY MR. ANDERSON

7 Q WERE YOU INTERVIEWED BY MISTER WHITEN PRIOR TO THE TRIAL?

8 A NO, SIR.

9 Q DID YOU EVER TALK TO MISTER WHITEN ABOUT ANY OF THIS?

10 A NO, SIR.

11 Q WHEN YOU – I MEAN, WERE YOU AT THE TRIAL?

12 A I WAS AT THE TRIAL, BUT I MEAN, I WASN'T CALLED.

13 Q YOU WEREN'T CALLED AS A WITNESS?

14 A NO.

15 MR. ANDERSON: THAT'S ALL I HAVE, YOUR HONOR.

16 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

17 MR. ANDERSON: JUST TWO MORE WITNESSES, YOUR HONOR.

18 THE COURT: YES, SIR.

19 MR. ANDERSON: WE CALL JOYCE BELL.

20 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, JOYCE BELL

21 TESTIFIED AS FOLLOWS:)

22 CLERK OF COURT: IF YOU WOULD PLEASE HAVE A SEAT IN THE

23 WITNESS STAND. WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE

24 COURT?

25 MS. BELL: JOYCE ANN BELL JOHNSON.

DIRECT EXAMINATION OF JOYCE BELL JOHNSON BY MR. ANDERSON

1 CLERK OF COURT: THANK YOU, MA'AM.

2 MR. ANDERSON: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
3 COURT.

4 DIRECT EXAMINATION OF JOYCE BELL JOHNSON BY MR. ANDERSON

5 Q MS. BELL, ARE YOU THE MOTHER OF BRAXTON BELL?

6 A YES, SIR.

7 Q AND AT THE TIME ALL THIS OCCURRED, WAS BRAXTON LIVING WITH
8 YOU?

9 A YES, SIR. WE WAS LIVING AT 2 OAKWOOD AVENUE.

10 Q OKAY.

11 Q AND HOW LONG HAD Y'ALL RESIDED THERE?

12 A WE STAYED AT THAT RESIDENT FOR ABOUT SIXTEEN-AND-A-HALF
13 MONTHS.

14 Q YES, MA'AM. AND DID YOU KNOW MISTER GAMBRELL?

15 A I MET HIM AT NEWPORT COMMONS BECAUSE WE WERE STAYING
16 THERE FIRST. IT WAS 2 OAKWOOD AND THEN WE LIVED AT NEWPORT
17 COMMONS JUST BEFORE IT HAPPENED, JUST BEFORE THIS
18 ALTERCATION AT NEWPORT COMMONS. WE LIVED AT 58 NEWPORT
19 COMMONS.

20 Q OKAY. HOW DID YOU MEET MISTER GAMBRELL?

21 A I MET HIM WHEN HE COME IN WITH MY SON. THEY LIVED IN THE
22 COMPLEX, IT WAS LIKE A BIG, OPEN COMMUNITY AND HE WAS A
23 STRANGER AND MY SON WALKED UP TO ME AND SAID, "MOM, THIS GUY,
24 HIS NAME IS JONATHAN GAMBRELL, HE'S FROM NEW YORK CITY AND HE
25 STAYS DOWN THE STREET," WITH ONE OF THE WITNESSES THAT WAS

1 SUPPOSED TO BE CALLED, AND ANOTHER GIRL. AT FIRST, THEY WAS
2 FRIENDS.

3 Q SO, THEY GOT ALONG PRETTY GOOD AT FIRST?

4 A AT FIRST WHEN HE FIRST CAME TO THE COMMUNITY AT NEWPORT
5 COMMONS, MY SON GAVE HIM SHOES, FOOD AND STUFF AND, YOU
6 KNOW, JUST HANGING OUT.

7 Q WHEN DID THAT RELATIONSHIP TURN, SO TO SPEAK?

8 A WELL, ONE PARTICULAR NIGHT HE HAD THIS BOOK BAG I HAD GOT AT
9 WORK AND HE HAD THE BOOK BAG AND IT WAS SITTING AT MY HOUSE.
10 HE HAD SOME SCALES, SOME DIRTY OLD SHIRTS, SOME MARIJUANA
11 AND I SAID WHAT IN THE WORLD IS THIS BECAUSE I HAD SEEN IT AND I
12 KNOW THE LAW WILL ARREST YOU FOR MARIJUANA, ALCOHOL AND ALL
13 THIS STUFF AND THAT'S ILLEGAL DRUGS AND PLAY STATIONS GAMES,
14 ALSO, YOU KNOW, ATARI, PLAY STATION, NINTENDO IS PURPLE. AND I
15 ZIPPED THAT BAG UP AND I SIT IT ON MY PORCH AND I DON'T KNOW
16 WHERE IT WENT FROM THERE. I MET JONATHAN THROUGH MY SON
17 AND HE SAID HE WAS A FRIEND. HE USED TO COME TO MY HOUSE AND
18 PLAY GAMES AND ALL THAT AND ALL OF A SUDDEN, I HEARD HIM CALL
19 MY SON BAD NAMES AND THAT HE STOLE THIS BOOK BAG AND I'M
20 GOING TO GET YOU AND HE - AFTERWARDS, MY SON ASKED ME, "MOM
21 HAVE YOU SEEN A BOOK BAG?" AND I SAID "YES, BUT I DIDN'T KNOW
22 WHO'S IT WAS." AND HE SAID, "MOM, IT WAS JONATHAN'S AND HE SAID
23 "WHAT DID YOU DO WITH IT?" AND I SAID, "I SIT IT ON THE FRONT PORCH
24 AND I HAVEN'T SEEN IT."

25 Q AND THIS WAS AT NEWPORT COMMONS?

DIRECT EXAMINATION OF JOYCE BELL JOHNSON BY MR. ANDERSON

1 A AT NEWPORT COMMONS.

2 Q DID YOU EVER SEE JONATHAN AND YOUR SON GETTING INTO ANY TYPE
3 OF PHYSICAL ALTERCATION?

4 A YES, SIR. ONE PARTICULAR TIME AND I REMEMBER THE POLICE WHEN I
5 CALLED THE SHERIFF OF ANDERSON COUNTY AND WHAT HE HAD DID
6 WAS JUMP OUT THE BUSHES ON MY SON AND HE WAS GETTING OFF
7 WORK AND I SAID, "JONATHAN, YOU BETTER LEAVE MY SON ALONE,
8 DON'T BE HARASSING MY SON AND IF YOU THINK IT WAS MY SON, YOU
9 TALK TO ME BECAUSE I'M THE ONE THAT MOVED THAT BOOK BAG. I
10 DON'T LIKE IT IN MY HOUSE." I SAID, "PLEASE LEAVE MY CHILD ALONE."

11 Q WAS BRAXTON AFRAID OF HIM?

12 A I WOULDN'T SAY AFRAID, BUT I WILL SAY THAT HE WAS LIKE STRANK,
13 BECAUSE HE'S NOT USED TO PEOPLE COMING UP TO HIM AGGRESSIVE,
14 YOU KNOW.

15 Q JONATHAN WAS A LOT BIGGER THAN HE WAS?

16 A TALLER. YES, SIR.

17 Q AT THE TIME THIS INCIDENT OCCURRED, I THINK MISTER WHITEN
18 TESTIFIED, HE THOUGHT BRAXTON HAD MONO.

19 A HE DID. YES, SIR. HE HAD MONO.

20 Q HOW LONG HAD HE HAD THAT?

21 A HE HAD JUST RECENTLY GOT HIS DOCTOR TOLD ME ABOUT SIX WEEKS
22 AND IT WAS SO BAD HE WAS SENT TO THE ANDERSON HOSPITAL
23 TWICE.

24 Q HE WAS PRETTY SICK?

25 A YES, SIR.

1 Q WAS HE FEELING BAD ABOUT THE TIME THIS OCCURRED?

2 A YES, SIR. HE WAS REAL WEAK.

3 Q NOW, AFTER BRAXTON GOT ARRESTED, HE GOT APPOINTED MISTER
4 WHITEN AS HIS LAWYER. CORRECT?

5 A YES, SIR. HE - WE HAD - MY BROTHER HAD PASSED AWAY AND MISTER
6 LONNIE LOGAN, JUNIOR BELL AND MISTER WHITEN WAS DOWN.

7 REPRESENTING HIM AT THE ANDERSON CITY POLICE STATION AND HE

8 WALKED UP AND SHOOK OUR HANDS AND TOLD US THAT HE WOULD

9 TAKE THE CASE ON BRAXTON BELL, THAT HE WAS AFFILIATED WITH

10 THE PUBLIC DEFENDER'S OFFICE

11 Q DID YOU MEET WITH MISTER WHITEN?

12 A ONCE.

13 Q WHERE DID THAT OCCUR OR WHEN?

14 A THAT HAPPENED ON WEST WHITTEN STREET, THE OLD TROPHY

15 OFFICE. YES, SIR. ME AND MY SISTER WENT IN AND HE CALLED US TO

16 HIS OFFICE AND HE SAID HE WAS GOING TO TRY TO GET THIS

17 INVOLUNTARY MANSLAUGHTER FOR THREE TO FIVE AND NO MORE.

18 Q WELL, DID YOU TALK TO HIM ABOUT THE RELATIONSHIP BETWEEN

19 YOUR SON AND MISTER GAMBRELL?

20 A YES, SIR.

21 Q AND DID HE INTERVIEW YOU, SO TO SPEAK, ABOUT WHAT YOU WOULD

22 TESTIFY TO IF IT WENT TO COURT?

23 A NO, SIR.

24 Q DID HE EVER TALK TO YOU ABOUT TESTIFYING?

25 A NO, SIR.

DIRECT EXAMINATION OF JOYCE BELL JOHNSON BY MR. ANDERSON

1 Q WERE YOU WILLING TO TESTIFY?

2 A YES, SIR.

3 Q THE DATE THE TRIAL STARTED, WERE YOU PRESENT THEN?

4 A YES, SIR.

5 Q YOU WERE AT THE COURTHOUSE?

6 A YES, SIR.

7 Q OKAY. AND WERE YOU CALLED AS A WITNESS AT ANY TIME?

8 A NO, SIR. I WAS PLACED INTO A LITTLE SMALL ROOM RIGHT ON THE
9 RIGHT.

10 Q SO, YOU GOT SEQUESTERED WITH OTHER WITNESSES?

11 A YES, SIR.

12 Q BUT YOU WERE NEVER CALLED. SO, YOU DIDN'T ACTUALLY WITNESS
13 THE TRIAL. YOU DIDN'T EVEN GET TO SEE THE TRIAL?

14 A NO, SIR.

15 Q AND YOU WERE NEVER CALLED TO TESTIFY?

16 A NO, SIR.

17 Q WHEN DID YOU FIND OUT THAT THIS THING WAS OVER?

18 A IT WAS - THEY BROKE FOR LUNCH. MY PARENTS WERE IN THE
19 COURTROOM AND THEY LOOKED AT ME AND THEY SAY, "WELL, IT'S
20 TIME TO GO. WE NEED TO COME BACK FOR THE SENTENCE FOR
21 BRAXTON," SO, WE WENT HOME AND WE COME BACK AND I SAID,
22 "MAMA AND DADDY, SOMETHING'S GOING ON BECAUSE I CAN FEEL IT,
23 SOMETHING'S WRONG, BECAUSE THAT'S MY SON THAT I GAVE LIFE."
24 AND I COME BACK AND I OPENED THE COURTROOM DOOR AND HE WAS
25 STANDING BY HISSELF AND I KNEW SITTING OUT THERE IN THE

24 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, BRAXTON BELL
25 TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION OF BRAXTON BELL BY MR. ANDERSON

1 TESTIFIED AS FOLLOWS:)

2 CLERK OF COURT: PLEASE HAVE A SEAT IN THE WITNESS STAND. IF
3 YOU WOULD PLEASE STATE YOUR FULL NAME FOR THE COURT.

4 MR. BELL: BRAXTON JECORY BELL.

5 CLERK OF COURT: IF YOU COULD PLEASE SPELL THAT. THANK YOU.

6 MR. BELL: B-R-A-X-T-O-N J-E-C-O-R-Y B-E-L-L.

7 CLERK OF COURT: THANK YOU.

8 MR. ANDERSON: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
9 COURT.

10 DIRECT EXAMINATION OF BRAXTON BELL BY MR. ANDERSON

11 Q BRAXTON, YOU DOING OKAY? YOU NEED SOME WATER OR ANYTHING?

12 A NO. I'M OKAY.

13 THE COURT: YOU NEED TO SPEAK UP, PLEASE, SIR.

14 Q YOU NEED TO SPEAK UP BECAUSE SHE'S GOT TO TAKE DOWN
15 EVERYTHING YOU SAY. OKAY?

16 A YES, SIR.

17 Q BRAXTON, YOU ARE OBVIOUSLY THE PETITIONER IN THIS ACTION HERE
18 TODAY. CORRECT?

19 A YES, SIR.

20 Q YOU'VE BEEN SITTING HERE LISTENING TO ALL THE TESTIMONY WE'VE
21 BEEN THROUGH TODAY. IS THAT RIGHT?

22 A YES, SIR.

23 Q OKAY. AND YOU WOULD AGREE WITH A LOT OF WHAT'S BEEN SAID AS
24 FAR AS THE FACTUAL EVENTS SURROUNDING THIS CASE.

25 A YES, SIR.

1 Q IS THAT CORRECT? IS THERE ANYTHING THAT YOU WOULD – MISTER
2 WHITEN BASICALLY DESCRIBED YOUR TESTIMONY AS TO WHAT
3 OCCURRED THE NIGHT THIS INCIDENT HAPPENED. IS THERE ANYTHING
4 THAT YOU WOULD CHANGE OR THAT YOU THINK WAS DIFFERENT?

5 A MY WITNESSES.

6 Q NO. I'M TALKING ABOUT WHAT ACTUALLY OCCURRED WITH MISTER
7 GAMBRELL. IS THERE ANYTHING THAT'S DIFFERENT THAN WHAT
8 MISTER WHITEN TESTIFIED TO?

9 A HE WAS SAYING THE INCIDENT OCCURRED, THE ENDING POINT WAS A
10 LITTLE BACKWARDS.

11 Q I'M SORRY. SAY THAT AGAIN?

12 A IT WAS A LITTLE BACKWARDS BECAUSE —

13 Q TELL US WHAT YOU MEAN BY THAT.

14 A WHEN MISTER GAMBRELL GOT SHOT OR WHATNOT, HE GOT SHOT – WE
15 WAS WRAPPED UP WHEN HE GOT SHOT OR WHATNOT, BECAUSE I
16 COULDN'T BREATHE.

17 Q LET ME SLOW YOU DOWN A LITTLE BIT. LET'S MAKE SURE WE'RE
18 CLEAR. YOU DON'T DENY THAT YOU ACTUALLY SHOT HIM. IS THAT
19 CORRECT?

20 A SAY AGAIN?

21 Q YOU DON'T DENY THE FACT THAT YOU SHOT MISTER GAMBRELL.

22 A NO. NO, SIR.

23 Q OKAY. BUT YOU – IN THE DEFENSE OF YOUR CASE, YOUR LAWYER AND
24 YOU ARGUED THAT IT WAS SELF-DEFENSE.

25 A YES, SIR.

DIRECT EXAMINATION OF BRAXTON BELL BY MR. ANDERSON

- 1 Q IN OTHER WORDS, YOU FELT THREATENED.
- 2 A YES, SIR.
- 3 Q OKAY. IS THAT WHAT OCCURRED?
- 4 A YES, SIR.
- 5 Q ALL RIGHT. SO, ON THE NIGHT THE INCIDENT OCCURRED, TELL US
- 6 AGAIN ABOUT HOW YOU WERE BEING HELD AND SO FORTH.
- 7 A OH. WELL, I WAS WRAPPED UP, AFTER WE WERE TWISTING AND
- 8 TURNING AND THROWING BLOWS AND I GOT WRAPPED UP AND I
- 9 COULDN'T BREATHE AND I FELT THE GUN IN MY POCKET AND I SHOT
- 10 HIM IN THE BACK RIGHT THERE SO HE WOULD UNWRAP ME AND HE
- 11 RUSHED ME AGAIN AND HE REACHED IN HIS POCKET AND THAT'S WHEN
- 12 I WAS LIKE, HE MIGHT HAVE SOMETHING, AND SO I SHOT HIM AGAIN.
- 13 Q THERE WERE ONLY TWO SHOTS?
- 14 A YES, SIR.
- 15 Q THE NIGHT IT OCCURRED, DID YOU FEEL THREATENED?
- 16 A YES, SIR. I WASN'T EVEN -- LIKE I SAID, I WASN'T EVEN GOING OUT
- 17 THERE FOR THAT. I WAS JUST GOING OUT THERE TO HAVE FUN, YOU
- 18 KNOW WHAT I MEAN.
- 19 Q DID YOU EVEN KNOW MISTER GAMBRELL WAS THERE THAT NIGHT?
- 20 A NO, SIR.
- 21 Q BUT YOU DID KNOW HE LIVED IN THAT AREA?
- 22 A I THOUGHT HE -- REALLY, I THOUGHT HE'D MOVED. IT CAME TO MY
- 23 THOUGHTS BECAUSE, I MEAN, STUFF OCCURRED THAT ME AND HIM
- 24 HAD BEEN INTO AND I WAS LIKE, NAH, HE'S PROBABLY NOT EVEN OUT
- 25 THERE NO MORE BECAUSE I DON'T NEVER SEE HIM NO MORE.

1 Q WHO'S IDEA WAS IT TO EVEN GO OUT THERE IN THE FIRST PLACE?

2 A THE DUDE THAT WAS DRIVING, YOU KNOW. THE DUDE THAT WAS IN
3 THE PASSENGER'S SEAT, IT WAS HIS IDEA. THEY ASKED ME IF I
4 WANTED TO GO OUT THERE AND I WAS LIKE, NO, AT FIRST, BUT THEN
5 THEY CAME BACK AND GOT ME AND I WAS LIKE I MIGHT AS WELL RIDE
6 OUT THERE AND HAVE A LITTLE FUN, YOU KNOW WHAT I MEAN.

7 Q YOU DIDN'T GO OUT THERE LOOKING FOR MISTER GAMBRELL?

8 A NO, SIR.

9 Q BUT YOU DID HAVE A GUN IN YOUR POCKET.

10 A YEAH.

11 Q WHY DID YOU HAVE A GUN IN YOUR POCKET?

12 A TO PROTECT MYSELF FROM OTHER PEOPLE THAT BE TRYING TO HURT
13 US AND STUFF LIKE THAT.

14 Q SO, WHEN YOU GOT OUT TO THIS PARTY, HOW DID THIS ALTERCATION
15 GET STARTED?

16 A I WALKED DOWN THE STREET HOLLERING AT A FRIEND OF MINE, WELL,
17 UP THE STREET, AND THEN I SEEN HIM AND HE WAS SAYING THINGS
18 LIKE, "I'M GOING TO GET YOU, I GOT YOU NOW." AND I WAS LIKE, "MAN,
19 I'M NOT LOOKING FOR NO TROUBLE, MAN. I'M JUST CHILLING" AND SO I
20 JUST WENT INTO THE PARTY AND THEY WAS ABOUT TO LEAVE AND SO
21 WHEN WE GOT READY TO LEAVE, THEY SAID THE PARTY'S OVER WITH
22 AND SO I WAS LIKE, "THAT SUCKS", BUT WHEN WE WERE ABOUT TO
23 LEAVE AND HE STARTS PUSHING ME AND WE GOT INTO A LITTLE
24 ALTERCATION THEN.

25 Q AND THAT'S WHEN IT HAPPENED?

DIRECT EXAMINATION OF BRAXTON BELL BY MR. ANDERSON

1 A YES, SIR.

2 Q AND YOU RELAYED ALL THIS TO YOUR LAWYER, MISTER WHITEN?

3 A YES, SIR.

4 Q OKAY. AND SO WHEN YOU WENT TO TRIAL, YOU UNDERSTOOD YOU
5 WERE BEING TRIED FOR MURDER.

6 A YES, SIR.

7 Q ALL RIGHT. AND WHAT WAS YOUR DEFENSE GOING TO BE?

8 A MY MOTHER WAS TELLING ME SELF-DEFENSE. WE'RE GOING TO WIN. I
9 DIDN'T REALLY KNOW TOO MUCH ABOUT THE LAW. I WISH I HAD
10 KNOWED MORE ABOUT IT LIKE I KNOW NOW, BUT I DIDN'T KNOW TOO
11 MUCH. I FELT LIKE HE WAS INEFFECTIVE BECAUSE HE REALLY DIDN'T
12 MAKE ANY MOTIONS OR ANYTHING AND ALL THE WITNESSES THAT WAS
13 AGAINST ME THAT THE STATE HAD, WE REALLY DIDN'T EVEN KNOW
14 NOTHING ABOUT THEM. THE ONLY PEOPLE WE KNEW WERE ABOUT
15 THREE OF THEM.

16 Q SO, YOU HADN'T DISCUSSED WHAT THE STATE WAS GOING TO USE TO
17 PROSECUTE YOU?

18 A NO, SIR. BECAUSE IF HE DID, I - SELF-DEFENSE, I DON'T KNOW ABOUT
19 THAT. IF HE'D JUST TOLD ME THE TRUTH, KEEP IT REAL, I'D PROBABLY
20 WOULD HAVE BELIEVED HIM AND THEN, TO BE REAL, HE DIDN'T REALLY
21 SAY NOTHING ABOUT NO PLEA. JUST SELF-DEFENSE AND YOU WANT
22 TO DO THIS AND I WAS LIKE, "THIS SUCKS" BECAUSE I RELAYED MY
23 STORY TO HIM, MY TESTIMONY, I GAVE IT TO HIM AND IT WAS LIKE
24 THAT'S WHAT'S UP.

25 Q LET'S BACK UP AND GET INTO WHAT LED UP TO YOUR TRIAL. HE WAS

1 APPOINTED TO REPRESENT YOU APPROXIMATELY SIX MONTHS
2 BEFOREHAND?

3 A NO. IT WAS A LONG TIME. I HAD MANY, MANY LAWYERS. FIRST OFF, I
4 HAD ANDY POTTER. HE CAME AND TALKED TO ME FIRST. I BELIEVE I
5 SHOULD HAVE KEPT HIM. HE WAS REAL, ANDY POTTER. AND THEN
6 ANDY POTTER, HE DIDN'T COME TO MY PRELIMINARY HEARING
7 BECAUSE HE HAD SOMETHING GOING ON AND SO ROBERT GAMBLE, HE
8 SUBSTITUTED AND THEN ANDY POTTER CAME BACK AND I WAS LIKE,
9 "MAN, WHAT'S GOING ON." AND SO I WAS LIKE I DON'T THINK I SHOULD
10 GO WITH ANDY POTTER BECAUSE HE WASN'T EVEN AT MY
11 PRELIMINARY HEARING. YOU'VE GOT TO COMMUNICATE WITH ME. THIS
12 IS MY LIFE RIGHT HERE. I KNOW I'VE KIND OF MESSED UP, BUT WE'VE
13 GOT TO COMMUNICATE, SO. I JUST WANT TO GO HOME AND PROTECT
14 MYSELF.

15 Q ONE OF YOUR ALLEGATIONS IS THAT MISTER WHITEN WAS
16 INEFFECTIVE OR NOT PROPERLY INVESTIGATING —

17 A SHORE DID.

18 Q --- PRIOR TO THE TRIAL, SO WHEN HE GOT APPOINTED, DID HE COME
19 OUT THERE TO SEE YOU AT THE JAIL?

20 A YEAH.

21 Q AND YOU NEVER GOT OUT ON BOND AT ANY POINT. CORRECT?

22 A NO, SIR.

23 Q YOU WERE INCARCERATED FROM THE DAY YOU GOT ARRESTED UNTIL
24 NOW?

25 A YEAH. 2004 AND, NO. YEAH, 2004, NOVEMBER, AND MY TRIAL AND —

DIRECT EXAMINATION OF BRAXTON BELL BY MR. ANDERSON

1 Q HOW MANY TIMES DID YOU MEET WITH HIM AFTER HE WAS APPOINTED
2 UNTIL THE DAY YOU WENT TO TRIAL?

3 A I'D SAY THREE OR FOUR TIMES AND THEN IT WAS ABOUT A THIRTY
4 MINUTE CONVERSATION. IT WASN'T NOTHING LONG LIKE THAT.

5 Q HE DIDN'T - Y'ALL DIDN'T GO OVER THE WITNESSES AGAINST YOU OR
6 STATEMENTS PEOPLE MAY HAVE MADE AGAINST YOU?

7 A ABOUT THREE OF THEM.

8 Q BECAUSE THERE WERE ABOUT THREE PEOPLE IN THE CAR WITH YOU
9 THAT GAVE STATEMENTS. CORRECT?

10 A YEAH.

11 Q DID YOU HAVE COPIES OF THOSE PRIOR TO TRIAL?

12 A ABOUT THREE OF THEM. ABOUT THREE OF THEM.

13 Q AND MISTER WHITEN SAID THAT HE WENT OUT TO THE SCENE. DID HE
14 TELL YOU ABOUT GOING OUT TO THE SCENE AND LOOKING AT THE
15 FORENSIC EVIDENCE?

16 A YEAH AND HE WAS KIND OF SHOCKED. HE WAS LIKE, "THEY SAID IT
17 HAPPENED UP HERE AND IT HAPPENED DOWN HERE, HOW CAN THEY
18 DO THIS, AND ALL THAT." I WAS LIKE, YOU MY LAWYER, MAN, I'M
19 TELLING YOU WHAT HAPPENED, MAN, AND YOU'RE SUPPOSED TO BE
20 TELLING ME HOW WE'RE GOING TO BEAT THIS." YOU KNOW WHAT I'M
21 SAYING?

22 Q YOU FEEL LIKE THAT YOU WERE PREPARED FOR THIS CASE?

23 A THEN?

24 Q IN OTHER WORDS, YOU WERE GOING TO - THERE WAS NO DOUBT THAT
25 YOU WERE GOING TO TESTIFY.

1 A YEAH.

2 Q WHEN YOU CAME TO TRIAL, IN ORDER TO ESTABLISH SELF-DEFENSE,
3 YOU HAD TO TESTIFY.

4 A YEAH.

5 Q SO, DID Y'ALL PREPARE YOUR TESTIMONY OR GO OVER WHAT YOUR
6 TESTIMONY MIGHT HAVE BEEN PRIOR —

7 A NOT REALLY. I PUT MY LIFE IN MY LAWYER'S HANDS. I WAS LIKE, I
8 DON'T KNOW TOO MUCH ABOUT THAT. I JUST KNOWED I WANTED TO
9 GO HOME AND I WAS PROTECTING MYSELF. THAT'S WHAT I WANTED,
10 TO PROTECT MYSELF AND I WANTED TO GO HOME.

11 Q DID YOU GIVE HIM A LIST OF NAMES OF WITNESSES —

12 A YES.

13 Q --- OR PEOPLE THAT COULD HELP YOU?

14 A YES, SIR.

15 Q ARE YOU AWARE OR DO YOU KNOW WHETHER OR NOT ANY OF THEM
16 EVER MET WITH MISTER WHITEN?

17 A I CAN'T — I DON'T THINK HE DID. I KNOW HE MET MY MAMAS AND MY
18 AUNT AND SOME OTHER INDIVIDUALS, BUT...

19 Q WHAT ABOUT ANYBODY THAT WOULD KNOW ABOUT YOUR PRIOR
20 RELATIONSHIP WITH MISTER GAMBRELL?

21 A YEAH. HE MET THIS DUDE, ADRIAN, I THINK GAVE HIS TESTIMONY AND
22 HIS TESTIMONY REALLY WASN'T ABOUT IT BECAUSE HE HAD SOME
23 CHARGES AND IF HE WAS GOING TO DO SOME INVESTIGATION LIKE HE
24 WAS SUPPOSED TO DO, LIKE HIS NAME WAS JOSEPH KELLY JONES. IF
25 HE WAS DOING HIS INVESTIGATION LIKE HE WAS SUPPOSED TO DO,

DIRECT EXAMINATION OF BRAXTON BELL BY MR. ANDERSON

1 THEN HE WOULD KNOW THIS MAN IS NOT REALLY LIKE THIS AND HE
2 SHOULDN'T REVOLVE EVERYTHING AROUND THIS PRIME WITNESS
3 WHEN HE'S NO GOOD LIKE THAT. AND THEN THE PRIME WITNESS THAT
4 I WAS TELLING YOU ABOUT, LAMONT, UM, MADRIKIS, HE WAS THERE ON
5 THE ALTERCATION THAT WAS REAL BAD THAT WE GOT INTO.

6 Q HE ACTUALLY WITNESSED A FIGHT BETWEEN THE TWO OF Y'ALL PRIOR
7 TO THIS?

8 A SURE DID.

9 Q HE WASN'T CALLED AS A WITNESS?

10 A NO. HE WASN'T CALLED AND HE WAS THERE. EVERYBODY WAS THERE
11 THAT SAME DAY.

12 Q EVERYBODY WAS AT YOUR TRIAL?

13 A THAT SAME WEEK FROM APRIL 14TH THROUGH THE 15TH AND 16TH,
14 EVERYBODY WAS THERE.

15 Q YOU FEEL LIKE THAT SELF-DEFENSE WAS PROPERLY PRESENTED TO
16 THE JURY DURING THE TRIAL?

17 A NO, SIR, BECAUSE HE HAD TOO MANY THINGS THAT BACKED UP. I
18 MEAN, YOU GO OFF THE EVIDENCE AND EMOTION IS HIGH AND I COULD,
19 BUT YOU GOT TO HAVE SUBSTANTIAL EVIDENCE. HE DIDN'T HAVE
20 PROPER EVIDENCE FOR US TO DO THIS.

21 Q NOW, DID YOU EVER DISCUSS VOLUNTARY MANSLAUGHTER?

22 A NO, SIR.

23 Q WERE YOU AWARE THAT THAT WAS CHARGED TO THE JURY?

24 A AFTER THE FACT. I MEAN, YOU KNOW, WE WENT THROUGH AND THEN
25 WELL, YEAH, THE JUDGE BROKE IT DOWN.

1 Q DID YOU ASK YOUR LAWYER TO OBJECT TO VOLUNTARY
2 MANSLAUGHTER?

3 A I ASKED HIM, "WHAT IS THAT?" AND HE WAS LIKE, "WE'LL TALK ABOUT
4 IT AFTER THE RECESS" OR WHATNOT. HE DIDN'T EVEN WANT TO TALK
5 TO ME WHEN THEY WERE DOING THEIR RULING AND WHATNOT. I WAS
6 JUST SITTING THERE WAITING ON THEM.

7 Q IS THERE ANYTHING ELSE THAT YOU WOULD HAVE WANTED YOUR
8 LAWYER TO DO THAT HE DIDN'T DO?

9 A COMMUNICATE A LITTLE MORE AND LIKE HE SAY, TALK TO THE
10 DOCTORS. HE SUBPOENAED TWO DOCTORS AND NOT BUT ONE CAME.
11 AND THE OTHER WITNESSES, THEY DIDN'T SEE NOTHING. I MEAN, IF HE
12 HAD A BETTER FOUNDATION AND I WOULDN'T BE HERE, I'D BE FREE.

13 Q OKAY.

14 A AND THEN, REALLY, HE DIDN'T DO NO, HE DIDN'T GO, THERE WASN'T NO
15 SUFFICIENT EVIDENCE FOR US TO GO SELF-DEFENSE. I MEAN, IT WAS
16 SELF-DEFENSE AND THE FORENSICS SAY THIS, BUT YOU NEED ACTUAL
17 PEOPLE. I MEAN, HOW YOU GOING TO CONVINCE SOMEBODY OF
18 SOMETHING IF YOU AIN'T GOT NO REAL EVIDENCE SHOWING THEM
19 THAT THIS IS WHAT HAPPENED?

20 Q NOW, DID YOU HAVE ANY CONCERN ABOUT THIS JUROR THAT THERE
21 WAS A QUESTION ABOUT?

22 A YEAH. MS. CHILDWELL, CHILDWELL, THAT THEY PAID MONEY TO SAID
23 SEVENTEEN, FIFTEEN. AND I ASKED HIM, LIKE, WHY IS SHE STILL ON MY
24 TRIAL? HE SAID, "EVERYTHING'S GOOD." I SAID, "EVERYTHING'S GOOD?
25 ARE YOU SERIOUS?" THIS LADY TOOK HER CHILD TO A DAY CARE

DIRECT EXAMINATION OF BRAXTON BELL BY MR. ANDERSON

1 CENTER AND THE DAY CARE CENTER PERSON TOLD HER THAT MY
2 COUSIN HAS BEEN KILLED AND HIS TRIAL IS TODAY. SHE DOES NOT
3 NEED TO BE ON MY OWN JURY. AND THEN YOU'VE GOT, THERE WERE --
4 LET ME SEE. THERE WAS FOURTEEN PEOPLE SITTING IN THE JURY BOX
5 AND YOU COULD HAVE SCRAPPED OUT HER TO SUBSTITUTE FOR
6 ANOTHER PERSON. WHY HE DIDN'T DID THIS?

7 Q YOUR PROBLEM WAS THAT HE DIDN'T OBJECT OR MAKE A MOTION TO
8 HAVE THAT JUROR REMOVED. IS THAT CORRECT?

9 A HE DIDN'T PUT FORTH NO EFFORT.

10 Q AND WHAT ABOUT THE PROBLEM WITH JIMMY PENN? DID THAT
11 CONCERN YOU?

12 A AND THEN THAT WAS ANOTHER THING, HE FOCUSED ON JIMMY PENN.
13 OKAY, HE WAS PRESENT. WE HAD A CONVERSATION, BUT IT WAS NO
14 PRIOR FACT. WHEN YOU ARE TRYING TO PUT THAT AGAINST A LIST OF
15 I MEAN, A CONFLICT OF INTEREST, YOU DONE CREATED A CONFLICT OF
16 INTEREST FOR NO REASON AT ALL BECAUSE THE JURY IS LISTENING
17 TO IT AND THEY'RE SAYING, "OH, THEY ARE SAYING MISTER PENN
18 SWITCHED SIDES." THERE REALLY WAS NO PRIOR FACT.

19 Q NOW, ARE YOU AWARE OF WHAT INVOLUNTARY MANSLAUGHTER
20 INVOLVES?

21 A YEAH. NOW, I AM, BUT BACK THEN, NO, I HAD NO CLUE.

22 Q YOU THOUGHT THAT WAS AN ISSUE THAT THAT WAS NOT REQUESTED
23 TO CHARGE, BUT BACK THEN YOU DIDN'T KNOW ANYTHING ABOUT IT?

24 A YEAH. I DIDN'T NO NOTHING ABOUT NONE OF IT.

25 Q YOU'VE JUST LEARNED ABOUT THAT SINCE YOU'VE BEEN

1 INCARCERATED?

2 A YEAH. UNFORTUNATELY.

3 Q IS THERE ANYTHING ELSE YOU WANT TO TELL THE COURT AS FAR AS
4 YOUR CLAIMS AGAINST MISTER WHITEN?

5 A THEN THERE WAS, SHE PROBABLY DON'T REMEMBER IT, BUT ON PAGE
6 189, 195, IT WAS ASHLEY MOORE, SHE WAS GOING IN AND OUT THE
7 COURTROOM TELLING WITNESSES – THAT'S WHY THEY HAD A BREAK
8 AND ALL THE WITNESSES, THAT'S WHY THEY MOVED THEM INTO A
9 SECLUDED AREA SO THAT WOULDN'T HAPPEN.

10 Q LET ME SLOW YOU DOWN SOME. MS. MOORE, SHE WAS A WITNESS
11 FOR THE STATE. CORRECT?

12 A NO. SHE WAS A GIRLFRIEND FOR THE WITNESS FOR THE STATE.

13 Q A GIRLFRIEND.

14 A SHE WAS RUNNING BACK TELLING HER BOYFRIEND, WHO WAS
15 JACQUEZ THOMAS —

16 Q ORIGINALLY, THEY HAD THE WITNESSES JUST OUT OF THE
17 COURTROOM OUT FRONT. IS THAT CORRECT?

18 A YEAH.

19 Q ALL RIGHT. SO, YOU'RE SAYING THAT SHE KEPT GOING IN AND OUT
20 TELLING THEM WHAT WAS GOING ON?

21 A BASICALLY. SHE SEEN THIS AND SHE BROUGHT IT BEFORE THE COURT
22 FOR ATTENTION.

23 Q AND THAT LED TO EVERYBODY BEING PUT INTO A ROOM?

24 A YEAH.

25 Q AND YOU FELT LIKE MISTER WHITEN SHOULD HAVE DONE SOMETHING

CROSS EXAMINATION OF BRAXTON BELL BY MR. LEE

1 ABOUT THAT AS WELL?

2 A THAT SHOULD HAVE BEEN ON TOP, MAN. ALL THE WITNESSES SHOULD
3 HAVE BEEN HID UP OR COMMUNICATED BETTER WHO WAS COMING IN
4 AND WHO GOING TO DO WHAT.

5 Q ANYTHING ELSE YOU WANT TO TELL THE COURT?

6 A THAT'S ABOUT IT.

7 Q YOUR POSITION IS, YOU FEEL LIKE YOU DESERVE A NEW TRIAL. IS
8 THAT CORRECT?

9 A YES, SIR.

10 Q BASED ON WHAT YOU'VE BROUGHT UP TODAY.

11 A YES, SIR.

12 Q ALL RIGHT.

13 MR. ANDERSON: THAT'S ALL THE QUESTIONS I HAVE AT THIS TIME,
14 YOUR HONOR.

15 THE COURT: CROSS EXAMINATION?

16 MR. LEE: JUST BRIEFLY.

17 CROSS EXAMINATION OF BRAXTON BELL BY MR. LEE

18 Q MISTER BELL, SO IT'S YOUR TESTIMONY THAT YOU WERE AT A
19 BIRTHDAY PARTY. RIGHT?

20 A YES, SIR.

21 Q AND YOU WERE CARRYING A GUN FOR PROTECTION AT THAT BIRTHDAY
22 PARTY?

23 A YES, SIR.

24 Q OKAY. AND WITH REGARD TO MISTER GAMBRELL, YOU SAID THAT YOU
25 HADN'T SEEN HIM IN A LONG TIME BEFORE THAT. IS THAT CORRECT?

1 A YEAH. I HADN'T SEEN HIM PROBABLY LIKE -- WHEN I MOVED OUT OF
2 NEWPORT COMMONS, I AIN'T SEEN HIM FOR A COUPLE MONTHS. SO, I
3 WAS LIKE, THE DUDE'S GONE AND SO I'M LIKE, I'LL GO, I'M STRAIGHT.

4 Q SO, YOU ACTUALLY THOUGHT HE HAD MOVED?

5 A YES.

6 Q SO, YOU WEREN'T IN FEAR OF HIM WHEN YOU WENT THERE THAT
7 NIGHT.

8 A I MEAN, I DIDN'T THINK HE WAS GOING TO BE THERE UNTIL I SEEN HIM
9 AND HE SAID THAT STATEMENT AND SO, YEAH, I WAS IN FEAR BECAUSE
10 I MEAN YOU TALKING ABOUT "I'M GOING TO GET YOU OR I GOT YA."
11 WHAT KIND OF STATEMENT IS THAT?

12 Q THAT WAS ACTUALLY MY NEXT QUESTION. YOU SAID, ON YOUR WAY IN
13 MISTER GAMBRELL POPPED OUT OF THE BUSHES OR SOMETHING TO
14 THAT EFFECT --

15 A NO, I --

16 Q NO, THAT WAS PRIOR TO THAT. I'M SORRY. YOU SAID ON THE WAY IN
17 YOU SAW HIM AND HE SAID, "I'VE GOT YOU OR I'M GOING TO GET YOU,"
18 OR SOMETHING LIKE THAT.

19 A YEAH. I BRUSHED IT OFF AND WENT IN TO THE PARTY TO SEE WHAT
20 WAS GOING ON AND AFTER IT WAS OVER WITH, HE PUSHED ME AND HE
21 STARTED AN ALTERCATION FOR NO REASON AT ALL. I NEVER SAID
22 NOTHING ELSE TO HIM. I TRIED TO BRUSH IT OFF.

23 Q YES, THAT'S WHAT I'M TRYING TO WALK THROUGH RIGHT NOW. SO,
24 FIRST YOU SAW HIM AND HE SAID, "I GOT YOU" AND THEN YOU SAID, "I'M
25 NOT HERE FOR ANY TROUBLE" AND YOU WALKED AWAY --

CROSS EXAMINATION OF BRAXTON BELL BY MR. LEE

1 A YEAH.

2 Q --- AND YOU WENT INTO THE PARTY.

3 A YEAH.

4 Q AND THEN YOU WERE ABOUT TO LEAVE AND YOU WALKED BACK OUT
5 AND THEN HE PUSHED YOU AGAIN. RIGHT?

6 A NO. HE AIN'T NEVER PUSHED ME THE FIRST TIME. HE JUST PUSHED ME
7 WHEN I WAS ABOUT TO LEAVE.

8 Q OH. HE PUSHED YOU WHEN YOU WERE ABOUT TO LEAVE. DID YOU
9 WALK AWAY FROM HIM AT THAT POINT OR DID YOU PUSH HIM BACK?

10 A I WAS LIKE MAN, I TRIED TO TELL HIM AGAIN, LIKE, "I DON'T WANT NO
11 TROUBLE." SO, NOW WE GOT IN A LITTLE FIGHT AND HE PUSHED ME
12 WE GOT INTO IT.

13 Q OKAY. NOW...

14 MR. LEE: ACTUALLY, I BEG THE COURT'S INDULGENCE JUST ONE
15 MINUTE, YOUR HONOR.

16 THE COURT: SURE.

17 MR. LEE: THAT WILL BE ALL THE QUESTIONS FOR THIS WITNESS, YOUR
18 HONOR. THANK YOU.

19 MR. ANDERSON: NOTHING, YOUR HONOR.

20 THE COURT: YOU CAN PLEASE STEP DOWN, SIR.

21 MR. ANDERSON: THAT WILL BE THE CASE FOR THE PETITIONER,
22 UNLESS YOU NEED TO CROSS EXAMINE MS. BELL. (SPEAKING TO MR. LEE)

23 THE COURT: DID YOU WISH TO CROSS EXAMINE MS. BELL?

24 MR. LEE: NO, SIR. I DO NOT.

25 THE COURT: MS. BELL, THANK YOU. ARE YOU ABLE TO GET UP AND

1 MOVE AROUND?

2 MS. BELL: YES, SIR. I TOOK SOME MEDICATION AND EVERYTHING.

3 THE COURT: OKAY. ARE YOU OKAY?

4 MS. BELL: YES, SIR. THANK YOU, YOUR HONOR. (MS. BELL HAD BEEN
5 SITTING IN THE JURY BOX AND NOW RETURNS TO HER SEAT IN THE
6 COURTROOM)

7 THE COURT: YES, MA'AM. I'M GLAD YOU'RE OKAY. MISTER LEE, DO YOU
8 HAVE ANY WITNESSES YOU WANT TO CALL?

9 MR. LEE: YES, YOUR HONOR. THE STATE WOULD JUST BRIEFLY CALL
10 MISTER WHITEN TO THE STAND.

11 THE COURT: OKAY.

12 DIRECT EXAMINATION OF CHARLES WHITEN BY MR. LEE

13 Q MISTER WHITEN, DID YOU HEAR THE APPLICANT'S TESTIMONY JUST
14 NOW?

15 A YES.

16 Q DID YOU HEAR HIM TESTIFY THAT HAD HE, I GUESS, BEEN MORE FULLY
17 AWARE OF THE SITUATION, HE WOULD HAVE TAKEN THE PLEA FOR THE
18 MURDER CHARGE?

19 A I HEARD HIM SAY THAT. YES.

20 Q WHAT IS THE MINIMUM FOR MURDER?

21 A THIRTY YEARS TO LIFE IN HIS CASE.

22 Q AND WHAT DID HE END UP GETTING ON THE VOLUNTARY
23 MANSLAUGHTER?

24 A THIRTY YEARS PLUS FIVE.

25 Q ON THAT OTHER CHARGE.

DIRECT EXAMINATION OF CHARLES WHITEN BY MR. LEE

1 A ON THE OTHER CHARGE.

2 Q NOW, THERE WAS SOME DISCUSSION OF ASHLEY MOORE, WHO CAME
3 IN AND OUT OF THE COURTROOM. WAS SHE SUBSEQUENTLY
4 QUESTIONED BY THE JUDGE ABOUT HER DEALINGS OUTSIDE THE
5 COURTROOM?

6 A I BELIEVE SHE WAS.

7 Q AND DID SHE, IN FACT, TESTIFY THAT SHE WASN'T TALKING ABOUT THE
8 CASE?

9 A THAT'S WHAT SHE SAID.

10 Q SO, THE JUDGE DID QUESTION HER TO HIS SATISFACTION?

11 A UNTIL THE JUDGE'S SATISFACTION. YES.

12 Q NOW, DID SEEING THE WITNESSES THAT TESTIFIED HERE TODAY, DID
13 THAT REFRESH YOUR MEMORY A LITTLE BIT ABOUT HAVING TALKED TO
14 THEM OUTSIDE OF THE COURTROOM?

15 A I HAD ASKED ALL THE WITNESSES TO BE THERE THAT WERE ON THE
16 LIST AND THEY WERE THERE AND I DID TALK TO THEM BRIEFLY. I THINK
17 I TALKED TO SOME OF THEM BEFORE. I KNOW I TALKED TO MS. BELL
18 BEFORE THAT IN MY OFFICE, A COUPLE OF TIMES AND I CAN SAY, I
19 WOULD NOT HAVE CALLED THESE WITNESSES TO THE STAND TO
20 TESTIFY.

21 Q WHY IS THAT?

22 A BECAUSE THEY WERE EQUIVOCAL ABOUT THE RELATIONSHIP
23 BETWEEN GAMBRELL AND BRAXTON BELL AS TO WHO WAS THE
24 AGGRESSOR IN THE PAST AND I KNEW WHAT BRAXTON WOULD SAY,
25 THAT YOU KNOW, MISTER GAMBRELL WAS THE AGGRESSOR, BUT I

1 DIDN'T WANT THAT WATERED DOWN. BRAXTON DID A GOOD JOB
2 ABOUT TESTIFYING ABOUT WHO THE AGGRESSOR WAS PRIOR TO THAT
3 TIME.

4 Q SO, YOU DIDN'T WANT SOMEONE TO GET UP THERE AND SAY, "OH,
5 THEY WERE CHUMMY, OR THEY WERE FRIENDS."

6 A NO.

7 Q NOW —

8 A INCLUDING MS. BELL. MS. BELL LOVES HER SON, BUT SHE WOULD
9 ALSO HAVE SAID THAT ORIGINALLY, THEY WERE FRIENDS. NO. I JUST
10 DON'T THINK — I DIDN'T THINK AT THE TIME THAT WOULD BE A GOOD
11 IDEA TO BRING THAT BEFORE THE JURY. WE HAD A GOOD CASE, TO
12 START WITH, I THOUGHT.

13 Q DID YOU GO OVER DISCOVERY WITH HIM?

14 A YES.

15 Q AND DID YOU DISCUSS HIS TESTIMONY PRIOR TO TRIAL?

16 A WE TALKED ABOUT HIS TESTIMONY AND HE TESTIFIED WELL. HE
17 TESTIFIED EXACTLY THE WAY WE TALKED ABOUT.

18 MR. LEE: NO FURTHER QUESTIONS, YOUR HONOR. THANK YOU.

19 MR. ANDERSON: JUST BRIEFLY, YOUR HONOR.

20 **CROSS EXAMINATION OF MR. WHITEN BY MR. ANDERSON**

21 Q WHEN MISTER BELL WAS TALKING ABOUT COPING A PLEA, HE WAS
22 ACTUALLY TALKING TO YOU ABOUT SOMETHING A LOT LESS THAN
23 THIRTY YEARS. IS THAT NOT CORRECT? HE DIDN'T PLEA TO MURDER.

24 A IF I COULD HAVE GOTTEN HIM LESS THAN THIRTY YEARS, HE WOULD
25 HAVE GOTTEN LESS THAN THIRTY YEARS. WE DISCUSSED IT WITH THE

CROSS EXAMINATION OF CHARLES WHITEN BY MR. ANDERSON

1 SOLICITOR AND I REMEMBER NOW, BECAUSE OF THAT SHELL CASING
2 BEING ABOUT ONE HUNDRED FEET FROM THE SCENE, THEIR WHOLE
3 POSITION WAS, THE STATE'S POSITION WAS THAT HE SHOT MISTER
4 GAMBRELL FROM A DISTANCE, WHICH WOULD HAVE BEEN MURDER.

5 Q HE WASN'T – WHEN HE WAS SAYING THAT ON THE STAND, HE MEANT
6 SOMETHING LESS THAN THIRTY YEARS, SOMETHING LESS THAN WHAT
7 HE GOT.

8 A YES.

9 Q OKAY.

10 MR. ANDERSON: THAT'S ALL THE QUESTIONS, YOUR HONOR.

11 THE COURT: THANK YOU, MISTER WHITEN.

12 MR. LEE: THAT WILL BE ALL OF THE STATE'S WITNESSES, YOUR
13 HONOR.

14 THE COURT: ANY REPLY?

15 MR. ANDERSON: NOTHING IN REPLY, YOUR HONOR.

16 THE COURT: LET ME ASK A QUICK QUESTION, MISTER ANDERSON.

17 MR. ANDERSON: YES, SIR.

18 THE COURT: MY LAW CLERK SHOWED ME, AND THIS IS IN VOLUME 1 OF
19 THE RECORD, THE TRANSCRIPT OF THE RECORD, PAGE 95.

20 MR. ANDERSON: YES, SIR.

21 THE COURT: WHAT I'VE HEARD THE WITNESSES TESTIFY ABOUT, THAT
22 MISTER WHITEN DID NOT MOVE TO EXCUSE MS. CALDWELL AS A JUROR
23 BECAUSE SHE HAD BEEN QUESTIONED BY SOMEBODY IN DAY CARE OVER
24 THE LUNCH BREAK. IS THAT CORRECT?

25 MR. ANDERSON: YES, SIR, YOUR HONOR.

1 **THE COURT:** AND LOOKING AT THE TRANSCRIPT, IT APPEARS THAT
2 MISTER WHITEN DID, IN FACT, ON PAGE 96, LINE 16: "I WOULD LIKE TO ASK
3 THAT THE JUROR TO BE REMOVED." AND THE JUDGE FIRST SAID, "I'M GOING
4 TO EXCUSE HER." AND THEN HE SAID, "I'M NOT GOING TO EXCUSE HER."

5 **MR. ANDERSON:** BACK AND FORTH. YES, SIR.

6 **THE COURT:** SO, THE QUESTION I'M ASKING YOU, IF YOU LOOK AT THAT
7 TRANSCRIPT, IT APPEARS THAT WAS A REQUEST FROM MISTER WHITEN TO
8 REMOVE THIS JUROR AND JUST WAS NOT DONE BY THE TRIAL JUDGE. IS
9 THAT CORRECT?

10 **MR. ANDERSON:** I DON'T KNOW IF THERE WAS ACTUALLY A MOTION. IT
11 SEEMS LIKE THERE WAS A DISCUSSION ABOUT IT, BUT IT WENT BACK AND
12 FORTH, BUT IT DOES APPEAR THEY CERTAINLY HAD A DISCUSSION ABOUT
13 REMOVING HER. THAT'S CORRECT, YOUR HONOR.

14 **THE COURT:** OKAY. ANY QUESTIONS OR COMMENTS BASED ON WHAT I
15 ASKED?

16 **MR. ANDERSON:** NO, SIR. I JUST HAVE A BRIEF ARGUMENT, IF THAT'S
17 ALL RIGHT.

18 **THE COURT:** YES, SIR.

19 **CLOSING ARGUMENT - MISTER ANDERSON**

20 YOUR HONOR, MISTER BELL IS ASKING FOR A NEW TRIAL BASED ON
21 SEVERAL GROUNDS, ONE OF WHICH IS, OBVIOUSLY, INEFFECTIVE
22 ASSISTANCE OF COUNSEL. HIS POSITION IS THAT THE INVESTIGATION PRIOR
23 TO TRIAL WAS NOT THOROUGH ENOUGH FOR THEM TO ACTUALLY PREPARE
24 FOR SELF-DEFENSE, THAT THAT'S WHAT THEIR GOAL WAS AND THEY GO
25 INTO THIS EITHER FOUND GUILTY OF MURDER OR YOU'RE FOUND NOT GUILTY

CLOSING ARGUMENTS

1 BY SELF-DEFENSE AND THAT IF HE HAD CALLED THESE WITNESSES AND SO
2 FORTH, THE OUTCOME OF THIS TRIAL WOULD HAVE BEEN DIFFERENT AND
3 THAT WOULD MEET THE CASE, THE WASHINGTON-STRICKLAND TEST THAT 1)
4 THERE WAS A MISTAKE MADE AND 2) THAT IT WOULD HAVE AFFECTED THE
5 OUTCOME OF THIS TRIAL AND THAT ALSO APPLIES WITH THE VOLUNTARY
6 MANSLAUGHTER. BY RELYING ON SELF-DEFENSE, THEY REALLY DIDN'T PUT
7 UP A DEFENSE FOR VOLUNTARY MANSLAUGHTER. THAT WAS JUST A LESSER
8 INCLUDED. THERE NEVER WAS ANY OBJECTION MADE TO THAT CHARGE,
9 ALTHOUGH, HE OBVIOUSLY, LOOKING AT IT FROM THE STATE'S SIDE, HE DID
10 BENEFIT FROM THE FACT THAT HE GOT CONVICTED OF VOLUNTARY
11 MANSLAUGHTER INSTEAD OF MURDER, BUT THE PROBLEM IS, THAT'S NOT
12 WHAT THEIR DEFENSE WAS FOCUSED ON. THEY WERE FOCUSED ON SELF-
13 DEFENSE AS AN ABSOLUTE DEFENSE TO A MURDER CHARGE AND SO HE WAS
14 KIND OF LEFT OUT ON A LIMB, SO TO SPEAK, WHEN IT CAME DOWN TO THAT.

15 THE THIRD ISSUE THAT HE RAISES IN THIS IS THAT THERE NEVER WAS
16 ANY SORT OF REQUEST FOR INVOLUNTARY MANSLAUGHTER AND I
17 UNDERSTAND THAT MISTER WHITEN TAKES THE POSITION THAT THERE WAS
18 NO NEGLIGENCE IN THE FACT. I PRINTED OUT THIS RECENT CASE, YOUR
19 HONOR, UNFORTUNATELY I DIDN'T HAVE ANY POWER LAST NIGHT AT HOME
20 OR AT THE OFFICE, AND SO I COULDN'T MAKE ANY COPIES, BUT IT'S STATE
21 VERSUS BRAYBOY. IT'S FROM THE COURT OF APPEALS.

22 MR. LEE: COULD YOU SPELL THAT?

23 MR. ANDERSON: THAT'S B-R-A-Y-B-O-Y. IT'S FROM THE COURT OF
24 APPEALS FROM MARCH OF 2010. I CAN PASS IT UP TO THE COURT.

25 THE COURT: CERTAINLY. (MISTER ANDERSON HANDS DOCUMENT TO

1 THE JUDGE. I WOULD HAVE MADE COPIES. I APOLOGIZE.)

2 MR. ANDERSON: BASICALLY, THE GIST OF THAT CASE GOES IN AND
3 EXPLAINS, IN THAT SITUATION, THE PERSON WHO WAS CHARGED WITH
4 MURDER AND HAD REQUESTED INVOLUNTARY MANSLAUGHTER AS A LESSER
5 INCLUDED AND WAS DENIED AT THE TRIAL LEVEL AND THEN IT WAS
6 OVERTURNED BY THE COURT OF APPEALS AND IT SPEAKS TO A SITUATION
7 WHERE, YOU KNOW, A PERSON IS LAWFULLY ARMED OR LAWFULLY
8 PRESENTING THE DEFENSE OF SELF-DEFENSE AND A GUN IS PULLED, WAVED
9 AROUND, AND SOMEONE GETS SHOT AND IT'S SIMILAR IN FACTS TO THIS
10 CASE IN THE SELF-DEFENSE SENSE AND THAT'S ONE THING WE'RE ARGUING
11 THAT CERTAINLY THE OUTCOME OF THIS TRIAL COULD HAVE BEEN
12 DIFFERENT UNDER STRICKLAND, EVEN IF THE JUDGE HAD DENIED IT, EVEN IF
13 HE'D OFFERED ANOTHER LESSER INCLUDED, ONCE VOLUNTARY
14 MANSLAUGHTER CAME IN, OFFERED INVOLUNTARY AND THE OPTION THAT
15 WOULD HAVE GIVEN THE JURY, A THIRD OPTION, OR FOURTH OPTION
16 BESIDES MURDER, VOLUNTARY, INVOLUNTARY AND JUST NOT GUILTY AND IT
17 WOULD HAVE BENEFITTED BRAXTON IN THE FACT THAT HE HAD BROUGHT UP
18 THE DEFENSE OF SELF-DEFENSE AND THAT'S NOT AVAILABLE TO HIM UNDER
19 THE VOLUNTARY MANSLAUGHTER. SO, WE'D ARGUE THAT THAT WAS ALSO
20 AN ERROR ENTITLING HIM TO A NEW TRIAL, THE FACT THAT THERE WAS
21 NEVER A REQUEST OR ANY KIND OF ARGUMENT ON INVOLUNTARY
22 MANSLAUGHTER.

23 THE COURT: THANK YOU, SIR. MISTER LEE?

24 CLOSING ARGUMENT OF MISTER LEE

25 MR. LEE: THANK YOU, YOUR HONOR. JUST BRIEFLY, WITH REGARD TO

CLOSING ARGUMENTS

1 THE SPECIFIC POINTS THAT MISTER ANDERSON MADE. WITH REGARD TO
2 THE INVESTIGATION, I THINK THE EVIDENCE IS PRETTY CLEAR. MISTER
3 WHITEN, HE PERSONALLY WENT TO THE SCENE TWICE AND INVESTIGATED
4 FORENSICS, TALKED TO A DOCTOR WOODARD AND IN HIS TESTIMONY TODAY,
5 HE TALKED TO SEVERAL PERSONS THAT MISTER BELL INDICATED HE SHOULD
6 SPEAK WITH AND ULTIMATELY DECIDED IT PROBABLY WOULD BE BEST NOT
7 TO PUT THEM ON THE STAND BECAUSE OF THEIR, I GUESS, SORT OF
8 INDECISIVENESS ABOUT THAT PARTICULAR RELATIONSHIP, THAT BEING
9 BETWEEN MISTER BELL AND MISTER GAMBRELL. BUT IT'S PRETTY CLEAR
10 THAT HE -- AND HE GOT THE RULE 5 BRADY MOTIONS OF THE STATE'S
11 EVIDENCE. MISTER WHITEN DID A THOROUGH JOB OF INVESTIGATING THE
12 CASE.

13 WITH REGARD TO THE VOLUNTARY MANSLAUGHTER CHARGE, IT'S THE
14 STATE'S POSITION THAT HAD MISTER WHITEN OBJECTED TO THAT CHARGE,
15 IT WOULD HAVE BEEN GIVEN ANYWAY. THERE WAS NO PREJUDICE IN THAT
16 CASE BECAUSE THE EVIDENCE IN THE CASE SUPPORTED IT. THERE WAS A
17 CONFRONTATION BETWEEN THE VICTIM AND THE DEFENDANT, THE
18 APPLICANT IN THIS CASE, THAT COULD HAVE, YOU KNOW, THEORETICALLY IN
19 THE JUDGE'S EYES, CAUSED SUCH CONSTERNATION OR PASSION IN THE
20 APPLICANT THAT RESULTED IN THE EVENTUAL OUTCOME AND SO IT'S THE
21 STATE'S POSITION THAT VOLUNTARY MANSLAUGHTER WAS APPLICABLE AND
22 THE JUDGE WAS CORRECT IN GIVING THAT INSTRUCTION, AND AS SUCH,
23 THERE WOULD HAVE BEEN NO PREJUDICE BASED ON THE FAILURE TO
24 OBJECT TO THAT.

25 WITH REGARD TO THE INVOLUNTARY MANSLAUGHTER, IT WAS MISTER

1 WHITEN'S TESTIMONY AND THE STATE'S POSITION THAT IT IS NOT
2 APPLICABLE IN THIS CASE. THERE WAS NO RECKLESSNESS. AND WITH
3 REGARD TO THE CASE STATE V. BRAYBOY, I'M SPECULATING, BASED ON
4 MISTER ANDERSON'S OUTLINING OF THAT CASE, BUT THERE WAS NO
5 WAIVING OF THE GUN, THERE WAS NO RECKLESSNESS INVOLVED. THERE
6 WAS, "THIS GUY ATTACKED ME AND I'M AFRAID AND I'VE DECIDED TO SHOOT
7 HIM."

8 IN SUMMARY, THE STATE WOULD JUST SUBMIT THE APPLICANT HAS
9 NOT CARRIED HIS BURDEN OF PROOF. HE HASN'T SHOWN INEFFECTIVE
10 ASSISTANCE OF COUNSEL AND EVEN IN SITUATIONS WHERE AN OBJECTION
11 COULD HAVE BEEN MADE, HE HASN'T SHOWN A RESULTING PREJUDICE. AS
12 SUCH, THE STATE SUBMITS HIS APPLICATION SHOULD BE DENIED. THANK
13 YOU.

14 THE COURT: MISTER ANDERSON.

15 MR. ANDERSON: YES, SIR.

16 THE COURT: UNDER THE PREVAILING NORMS FOLLOWED BY THE
17 CRIMINAL DEFENSE PART, WOULD THERE BE A LEGITIMATE STRATEGY OF
18 NOT OBJECTING TO THE VOLUNTARY MANSLAUGHTER CHARGE IN THIS CASE,
19 SUCH THAT IT WOULD BE CONSIDERED A LESSER INCLUDED ALTHOUGH
20 MAYBE NOT AN AGREED UPON STRATEGY, BUT WOULD THAT BE A VALID
21 STRATEGY TO FOLLOW?

22 MR. ANDERSON: YOUR HONOR, I'VE BEEN INVOLVED IN SEVERAL
23 MURDER CASES AND THE PROBLEM YOU HAVE WHEN YOU'RE DEALING
24 WITH SELF-DEFENSE, IF YOU HAVE A NORMAL MURDER CASE WHERE YOU
25 MIGHT NOT HAVE THE ELEMENTS OF SELF-DEFENSE, THEN OBVIOUSLY,

CLOSING ARGUMENTS

1 YOU'RE GOING TO WANT THAT VOLUNTARY MANSLAUGHTER CHARGE,
2 PROBABLY BEG FOR IT. BUT IN THE CASE OF SELF-DEFENSE, YOU'RE KIND OF
3 ROLLING THE DICE BECAUSE SELF-DEFENSE, AGAIN, IS AN ABSOLUTE
4 DEFENSE FOR MURDER. HE EITHER COMMITTED MURDER OR HE DIDN'T
5 BECAUSE OF SELF-DEFENSE. WHEN YOU GET VOLUNTARY MANSLAUGHTER
6 THROWN IN WITH THAT, IT KIND OF MUDDIES THE WATERS FOR YOUR SELF-
7 DEFENSE CLAIM BECAUSE THEN YOU GET INTO ALL THIS HEAT OF PASSION
8 AND THAT SORT OF AREA AND SO I DON'T KNOW THAT THERE IS A STRATEGY
9 FOR A DEFENSE LAWYER ONCE YOU HEAD DOWN THAT SELF-DEFENSE ROAD.
10 I THINK IT'S —

11 THE COURT: SO, IF I UNDERSTAND WHAT YOU'RE SAYING, THE
12 STRATEGY WAS ALL-OR-NOTHING SELF-DEFENSE OR NOTHING?

13 MR. ANDERSON: I THINK WHEN THEY STARTED THIS CASE, THAT WAS
14 WHAT THEIR PLAN WAS.

15 THE COURT: NO, I'M NOT ASKING YOU WHAT THEY WERE THINKING. I'M
16 TALKING ABOUT, WE HAVE TO LOOK AT THE PREVAILING NORMS THAT EXIST
17 OUT THERE AMONGST THE BAR IN THESE CASES. FIRST, YOU'VE GOT TO
18 SHOW THE STANDARD OF CONDUCT FALLS BELOW THE PREVAILING NORM.
19 SO, WHAT I'M ASKING IS, IS THERE A STRATEGY? IN OTHER WORDS, IS IT
20 100% OF THE TIME, IF YOU HAVE A MURDER CHARGE AND YOU'RE RAISING
21 SELF-DEFENSE, THAT YOU NEVER — THAT LESSER INCLUDED CHARGES
22 NEVER GO INTO THE JURY?

23 MR. ANDERSON: I DON'T BELIEVE THERE IS A PREVAILING STRATEGY. I
24 THINK THAT EACH ONE OF THESE CASES ARE SO FACT-SPECIFIC AND SO IT'S
25 DIFFICULT TO SAY THAT THERE IS A PREVAILING STRATEGY WHEN YOU'RE

1 COMING IN FOR A MURDER CASE. AGAIN, RELATED TO THAT, I THINK THERE
2 IS ALSO A THEORY THAT I'VE USED, I DON'T KNOW IF IT'S THE NORM OR NOT,
3 BUT I ASK FOR AS MANY LESSER INCLUDED'S THAT I CAN POSSIBLY THINK OF,
4 WHETHER THE JUDGE IS GOING TO ACCEPT THEM OR NOT, YOU KNOW, TO
5 GIVE THE JURY AS MANY OPTIONS. THAT'S WHERE THE INVOLUNTARY
6 MANSLAUGHTER ARGUMENT COMES IN. YOU WANT TO TRY TO GIVE THE --
7 IF YOU'RE GOING DOWN THAT ROAD, TO GET AWAY FROM THAT ALL-OR-
8 NOTHING SITUATION, YOU WANT TO GIVE THEM AS MANY OPTIONS AS YOU
9 CAN AND THAT'S WHY, I THINK THAT'S PART OF OUR INVOLUNTARY
10 MANSLAUGHTER ARGUMENT, BUT I CAN'T SAY THAT THERE WOULD BE A
11 NORM FOR THAT.

12 THE COURT: IT'S SO FACT-SPECIFIC.

13 MR. ANDERSON: SURE. AND THIS SITUATION TURNED OUT A LITTLE BIT
14 DIFFERENT FOR HIM BECAUSE HE GOT THE MAX. HE GOT THIRTY PLUS FIVE
15 CONSECUTIVE. I THINK IT WOULD HAVE BEEN A LOT DIFFERENT IF HE'D
16 GOTTEN VOLUNTARY MANSLAUGHTER AND GOT FIFTEEN. YOU'RE LOOKING
17 AT A WHOLE DIFFERENT KIND OF SITUATION.

18 THE COURT: WELL, I MEAN, THAT WOULD BE UP TO THE JUDGE'S
19 DISCRETION TO SENTENCING AS HE THOUGHT APPROPRIATE.

20 MR. ANDERSON: WE'RE NOT HERE TO MAKE AN ARGUMENT ABOUT
21 THAT.

22 THE COURT: RIGHT. THE LAWYER HAS NO CONTROL OVER THAT.

23 MR. ANDERSON: NO, SIR.

24 THE COURT: OKAY. LET ME SAY THIS, FIRST. I'M GOING TO TAKE THIS
25 CASE UNDER ADVISEMENT AND I'LL GIVE YOU MY DECISION. I AM GOING TO

CLOSING ARGUMENTS

1 FIND, HOWEVER, THAT THIS BRAXTON CASE AND THE BRAYBOY CASE THAT
2 WAS HANDED UP TO ME IS DISTINGUISHABLE FROM THE FACTS OF THIS
3 CASE. IN THAT PARTICULAR CASE, YOU HAD A GUN THAT ACCIDENTALLY
4 FIRED DURING A STRUGGLE. I THINK THAT UNDER THE EVIDENCE THAT I'VE
5 HEARD, THE FORENSIC TESTIMONY, TESTIMONY FROM THE APPLICANT
6 HIMSELF, AS WELL AS FROM MISTER WHITEN, THAT HE HAD NO BASIS
7 WHATSOEVER FOR REQUESTING AN INVOLUNTARY MANSLAUGHTER
8 CHARGE. IT WAS NO ACCIDENTAL SHOOTING OR MISFIRING. IT WAS EITHER
9 SELF-DEFENSE OR NOT OR AS THE JUDGE, I BELIEVE, SAW VOLUNTARY. BUT
10 I AM GOING TO LOOK AT THE CASE FROM THE PERSPECTIVE OF THE
11 INVESTIGATION AND LOOK AT IT FROM THE PERSPECTIVE OF NOT OBJECTING
12 TO THE VOLUNTARY MANSLAUGHTER CHARGE AND CHARGE TO THE JURY
13 AND GIVE YOU MY DECISION ON THAT.

14 IF THERE IS NOTHING FURTHER, THAT WILL BE THE END OF THIS CASE
15 AND I'LL GIVE YOU MY DECISION AS SOON AS IT'S REACHED. BOTH LAWYERS
16 DID A FINE JOB. THANK YOU VERY MUCH.

CERTIFICATE

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING EIGHTY PAGED TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA ON JUNE 16, 2010, AT THE ANDERSON COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

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

JANUARY 29, 2011



JO RICE

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Braxton J. Bell, # 310304,

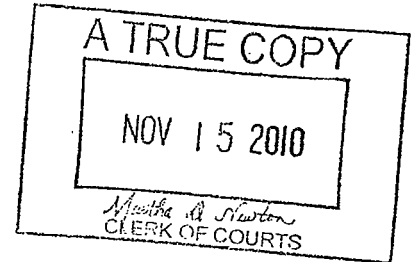
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
Case No.: 2008-CP-04-4101

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 2, 2008. The State submitted its Return on or about December 30, 2008. An evidentiary hearing into the matter was convened on June 16, 2010, at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by Charles Anderson, 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. The State presented testimony from Applicant's Counsel, Charles Whiten, Esquire. This Court also had before it a copy of the transcript from the Applicant's proceedings, the records of the Anderson County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Application for Post-Conviction Relief, the State's Return, and evidence presented at the hearing.

PROCEDURAL HISTORY

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 April

2005 term of the Anderson County Grand Jury for murder (2005-GS-04-0618) and possession of a firearm during commission of a deadly crime (2005-GS-04-0619). Charles W. Whiten, Jr., Esquire, represented him. On July 18, 2005, Applicant underwent trial, pursuant to which he was found guilty of voluntary manslaughter and possession of a firearm during the commission of a violent crime. The Honorable James C. Williams, Jr., sentenced him to confinement for thirty (30) years for voluntary manslaughter and five (5) years for possession of a firearm during the commission of a violent crime; the firearm offense sentence is to be served consecutive to the voluntary manslaughter sentence.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Bell, 374 S.C. 136, 646 S.E.2d 888 (S.C. Ct. App. filed June 4, 2007). The Remittitur was sent on July 28, 2008.

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

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel failed to conduct reasonable pretrial investigations and preparations."
 - b. "Trial Counsel failed to interview potential witnesses."
 - c. "Trial counsel failed to consult with Applicant about due process rights."
 - d. "Trial Counsel failed to pursue an involuntary manslaughter charge."
 - e. "Trial Counsel failed to quash or compel the State to reduce the charges in the indictment."
 - f. "Trial Court failed to give requested instruction that state had burden of disproving self-defense by proof beyond a reasonable doubt beyond a reasonable doubt was reversible error."
 - g. "Trial judge erred in failing to grant a direct verdict of acquittal where there was insufficient evidence of guilt."

APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of Counsel is alleged as a ground for relief, the Applicant must prove that "Counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of Counsel. First, the Applicant must prove that Counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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 (2003).

Failure to Conduct Reasonable Pre-trial Investigation and Interview Witnesses

Applicant alleged that Counsel had failed to conduct adequate investigation into his case prior to trial. Applicant testified that had Counsel conducted further investigation, he would have discovered a history of the victim harassing the Applicant, which he could have presented at trial in support of the Applicant's self-defense claim. Applicant further testified that he provided Counsel a list of witnesses to interview on his behalf, but that Counsel did not meet with them and did not call them at trial. In support of this allegation, the Applicant presented three witnesses who testified that there had been altercations between the Applicant and the victim before, but also testified that the two were friends and 'got along okay.'

Counsel testified that he remembered speaking with some witnesses and trying to get in touch with others prior to trial, but had no specific recollection of which witnesses he talked to. He testified, however, that he did not call them to testify at trial because his trial strategy was self-defense, and even though the witnesses did say there had been altercations in the past, they also said the two had been friends, and he felt this might hurt his case. With respect to his pre-trial investigation, Counsel testified that he received and reviewed the state's evidence, conducted a thorough investigation, and presented to the court that the Applicant was sick with

mono at the time of the incident, and also presented evidence in support of the Applicant self-defense claim.

With respect to this claim, this Court finds that the Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony that he conducted a pre-trial investigation during which he interviewed witnesses but elected not to call them to testify at trial as a matter of trial strategy to be credible. Further, this Court finds that Counsel's chosen course of action is a valid one. 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). Here, Counsel articulated valid strategic reasons for the choices he made. The Applicant has not shown that counsel was deficient in that choice of tactics. As such, this Court finds that the Applicant is unable to show ineffective assistance of counsel or resulting prejudice. Accordingly, this allegation is denied and dismissed.

Failure to Consult with Applicant About his Due Process Rights

Applicant also alleged that Counsel failed to consult with him about his due process rights. Counsel testified that it was his practice when he first met with clients to explain to them the charges they were facing, the possible penalties, and their constitutional rights. Counsel also testified that the Applicant testified at trial, which he believed was necessary since the defense being presented was self-defense. He testified that prior to this he discussed the right to testify or remain silent with the Applicant. This Court finds Counsel's testimony on this issue to be credible, while simultaneously finding Applicant's testimony on the issue not to be credible. As

such, this Court finds that the Applicant cannot show either ineffective assistance of counsel or resulting prejudice. Accordingly, this allegation is denied and dismissed.

Failure to Pursue an Involuntary Manslaughter Charge

Applicant testified that Counsel was ineffective for failing to obtain a jury charge on involuntary manslaughter, a lesser included offense of murder. Counsel testified that he did not pursue a jury charge on involuntary manslaughter as a matter of strategy because it was contradictory to their theory of self-defense, and he felt it might hurt the Applicant's chances of getting an acquittal based on self-defense if they gave the jury another option.

With respect to this claim, this Court finds that the Applicant has failed to meet his burden of proof. This Court finds Counsel's testimony that he elected not to pursue such a charge as a matter of trial strategy to be credible. Further, this Court finds such a strategy to be a valid one. 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). Here, Counsel articulated valid strategic reasons for his course of action. The Applicant has not shown that counsel was deficient in that choice of tactics. As such, this Court finds that the Applicant is unable to show ineffective assistance of counsel or resulting prejudice. Accordingly, this allegation is denied and dismissed.

Failure of Trial Court to Grant Directed Verdict or Give Requested Charge

This Court did not consider these issues as they are matters for direct appeal.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue 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.

CONCLUSION

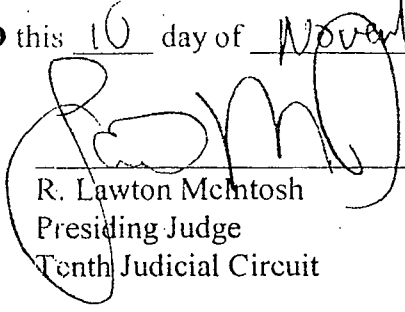
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file 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), SCRCP, 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 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

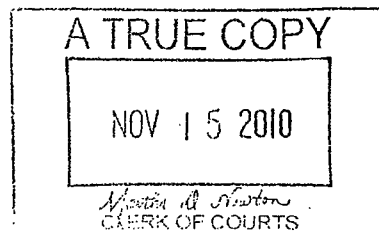
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10 day of November, 2010.



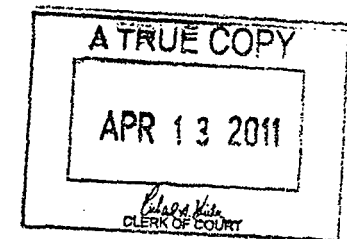
R. Lawton McIntosh
Presiding Judge
Tenth Judicial Circuit

Anderson South Carolina.



653

DOCKET NO. 2005-SS-04-618



WITNESSES

INV. CHRIS VAUGH - ACSO

The State of South Carolina,

ANDERSON

County of _____

COURT OF GENERAL SESSIONS

APR 19 2005

TERM _____

THE STATE

THE STATE

MAC

vs.

BRAXTON BELL

ARREST WARRANT NO. _____

H-109663

ACTION OF GRAND JURY

TRUE BILL

APR 19 2005

Foreman of Grand Jury

Foreperson

Circle One on strike through Two
VERDICT

Indictment for

MURDER

16-3-10/16-3-20[0116]

~~1. Guilty of Murder~~

② Guilty of Voluntary Manslaughter

~~3. Not Guilty~~

Richard E. Carley
Foreman of Petit Jury

7/20/05
Date:

*Commitment
7-21-05/
cmp*

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
MURDER
16-3-10/16-3-20 [0116]

At a Court of General Sessions, convened on APR 19 2005,
the Grand Jurors of ANDERSON County present upon their oath:

MURDER

THAT BRAXTON BELL DID IN ANDERSON COUNTY, SOUTH CAROLINA, ON OR
ABOUT NOVEMBER 7, 2004 FELONIOUSLY, WILFULLY AND WITH MALICE
AFORETHOUGHT, KILL ONE JONATHAN GAMBRELL BY MEANS OF SHOOTING
HIM WITH A HANDGUN AND THE SAID VICTIM DIED AS A PROXIMATE RESULT
THEREOF.

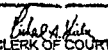
Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

Scott McElhannon
SOLICITOR

DOCKET NO. 2005-GS-04-619

A TRUE COPY

APR 13 2011


 CLERK OF COURT

WITNESSES

The State of South Carolina, **The State of South Carolina,**

INV. CHRIS VAUGHN - ACSD

ANDERSON

County of _____

COURT OF GENERAL SESSIONS

COURT OF GENERAL SESSIONS

APR 19 2005

TERM _____

MAC

THE STATE

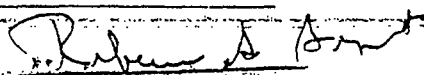
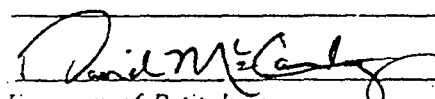
vs.
BRAXTON BELLARREST WARRANT NO. H109664

ACTION OF GRAND JURY

TRUE BILL

APR 19 2005

Foreman of Grand Jury


 Foreperson
Strike One
VERDICT(1) Guilty(2) Not Guilty**Indictment for**POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT CRIME
16-23-490 [0549]

 Foreman of Petit Jury
Date: 7/20/05

Commitment
7-21-05/cmp

STATE OF SOUTH CAROLINA)
ANDERSON)
COUNTY OF _____)

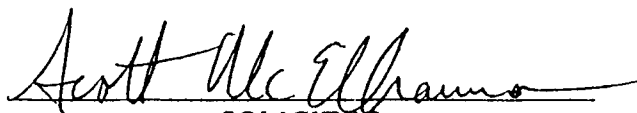
INDICTMENT FOR
POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME
16-23-0490 [0549]

At a Court of General Sessions, convened on APR 19 2005,
the Grand Jurors of ANDERSON County present upon their oath:

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

That Braxton Bell did in Anderson County on or about November 7, 2004
possess a firearm during the commission of a violent crime, to wit: Murder in violation of
Code Section 16-3-10/16-3-20, 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 BRAXTON JECORY BELL

AKA:

Race/Sex: B M Age: 18

DOB: 11/15/85 SSN:

Address: 409 MAYFIELD DR

City, State, Zip ANDERSON SC 29625

DL# SID: SC01550228

IN THE COURT OF GENERAL SESSIONS 657
INDICTMENT/CASE #

20 05 -GS-04- 618

AW#: H109663

Date of Offense: 11/07/04

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:

Voluntary Manslaughter

in violation of 16-3-50 of the S.C. Code of Laws, bearing CDR Code #: 0121171

☐ 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
Bruanna D. White

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections,
☐ County Detention Center, for a determinate term of 30 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.

☐ 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:

recommend A.D.U.

☐ 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	\$ <u>100</u>
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	\$ <u>25</u>
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	\$	\$ <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
_____ 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.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge _____

Judge Code: 011114

Sentence Date July 20, 2005

Court Reporter Robin Hild Code #: 1111

TRUE COPY

JUL 20 2005

Cathy M. Phillips
Clerk of Court

658 STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
STATE v BRAXTON JECORY BELL
AKA:
Race/Sex: B M Age: 18
DOB: 11/15/85 SSN:
Address: 409 MAYFIELD DR
City, State, Zip ANDERSON SC 29625
DL# SID: SC01550228

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE #
)
) 2005-GS-04-619
) A/W#: H109664
) Date of Offense: 11/07/04
) 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 Firearm in Commission of Violent Crime

in violation of 16-23-490 of the S.C. Code of Laws, bearing CDR Code #: 01514191

☐ 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
Dianne D. White

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections,
☐ County Detention Center, for a determinate term of 5 ~~days/months~~ years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject to South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 2005-GS-04-618

☐ 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: _____

PTUP _____ time served pursuant to S.C. Code 24-13-
_____ 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.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 01114

Sentence Date

July 20, 2005

Court Reporter Ronnie Hill Code #: 111

*Fine.....	\$	
14-1-206 - Assessments (107.5%)	\$	
14-1-211 (A)(1) Conv. Surcharge	\$100	\$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	\$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	\$125	

Cathy M. Phillips

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

TRUE COPY

JUL 20 2005

Cathy M. Phillips
Clerk of Court

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 12/16/08

C040

BELL, BRAXTON JECORY FBI # 837991EC3 STD# SC01550228 SCDC # 310304

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION...: LEE CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 30 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: -3

DORM.....: CHE121ST

RACE.....: B SEX...: M

PROJ MAXOUT DATE: 08/25/2031

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 EEC LEVEL:

ASSIGNMENT...: GENERAL DETAIL ONE

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 23 DATE OF BIRTH...: 11/15/85

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START U/VV CATEGOR
FIREARMS PROVISION	5 0 0 ANDERSON	11/ 8/20 4 N 3
VOLUNTARY MANSLAUGHTER	30 0 0 ANDERSON	11/ 8/20 4 V 4

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

FRAUD INSUFF FUNDS CHECK WANTED PRESIDING JUDGE CATEG: 1

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

11/ 7/ 8 USE, POSS NARC, MARIJ, UNAU CONVICTED	MAJOR
3/13/ 8 UNAUTH I/M ORGAN/PART ST CONVICTED	ADMIN
12/ 5/ 7 DISRESPECT	OTHER
11/26/ 7 REFUSING OR FAILING OBEY	OTHER
4/ 9/ 7 REFUSING TO ATTEND COMPU CONVICTED	MAJOR
12/ 4/ 6 POSSESSION OF CONTRABAND	OTHER
11/ 3/ 6 REFUSING TO ATTEND COMPU CONVICTED	MAJOR
10/18/ 6 REFUSING OR FAILING OBEY CONVICTED	ADMIN
10/13/ 6 STEALING CONVICTED	ADMIN
8/13/ 6 OUT OF PLACE CONVICTED	ADMIN
8/11/ 6 OUT OF PLACE CONVICTED	ADMIN
2/ 8/ 4 DAMAGE, DESTROY, PROP. VALU	OTHER

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
7/24/ 8	LEE	INCARCERATED	ADMINISTRATIVE
7/24/ 8	KIRKLAND	INCARCERATED	MEDICAL
5/ 6/ 8	LEE	INCARCERATED	ADMINISTRATIVE
5/ 5/ 8	KIRKLAND	INCARCERATED	MEDICAL
4/ 4/ 6	LEE	INCARCERATED	ADMINISTRATIVE
4/ 3/ 6	KIRKLAND	INCARCERATED	MEDICAL
8/15/ 5	LEE	INCARCERATED	ADMINISTRATIVE
7/21/ 5	KIRKLAND	INCARCERATED	R&E PROCESSING
7/21/ 5	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START DATE	END DATE	TERMINATION REASON	JOB
FOOD SERVICE AIDE	05/18/08	11/18/ 8	DISCIPLINARY/LOCK-UP	JOE
FOOD SERVICE AIDE	03/06/08	5/17/ 8	LATERAL TRANSFER	LUL
GENERAL WORKER	11/03/07	3/ 5/ 8	INSTIT TRANSFER	3F7
CARPENTER HELPER	05/19/06	8/17/ 7	PRIOR ATTENDANCE	3F5

HISTORY OF EARNED EDUCATION CREDITS:

WELL, BRAXTON JECORY FBI # 837991EC3 SID# SC01550228 SCDC # 310304 (CONTINUE
EEC START END TERMINATION
DESCRIPTION DATE DATE REASON
BONUS 15 OR MORE 05/20/06 4/ 9/ 7 POOR ATTENDANCE
LVL 3 - FULL TIME(NO EWC) 10/24/05 5/19/ 4 COMPLETED EDUC PROGRAM
LVL 3 - FULL TIME(NO EWC) 08/23/05 9/26/ 5 PLACED IN ST/SP CUSTODY
***** END OF REPORT *****

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 12/16/08
 OMCOMITA RELEASE DATE SCREEN C040481
 SCDC# > 310304 LOC: LEE
 BELL, BRAXTON JECORY SCDC CLASSIFICATION... VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS.....: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION.....
 CURRENT SENTENCE: 030-00-000 CONSECUTIVE SENTENCE ...: N
 030-00-000 CURRENT SENT START DATE: 11/08/2004
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 08/25/2031 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000132 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000167 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000048 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000
 TOTAL SERVICE TIME EARNED ...: 001499

PFKEYS: 5:HISTORY OF DATE CHANGES
 4-© 1 Sess-1 167.7.50.33 SCDC1491 3/11