

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
\_\_\_\_\_

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

DEC - 9 2013

**S.C. Supreme Court**

ANTONIO MOULTRIE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000632

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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## INDEX

|                                                                          |     |
|--------------------------------------------------------------------------|-----|
| INDEX .....                                                              | i   |
| TRIAL TRANSCRIPT .....                                                   | 1   |
| INDICTMENTS AND SENTENCING SHEET .....                                   | 382 |
| APPLICATION FOR POST-CONVICTION RELIEF .....                             | 385 |
| MEMORANDUM IN SUPPORT OF<br>APPLICATION FOR POST-CONVICTION RELIEF ..... | 394 |
| RETURN .....                                                             | 421 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT .....                          | 426 |
| ORDER OF DISMISSAL .....                                                 | 490 |

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA, )

2008-GS-10-4135

PLAINTIFF, )

-VS- )

DECEMBER 1-4, 2008

ANTONIO MOULTRIE, )

TRANSCRIPT OF RECORD

DEFENDANT. )

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

HENRY LEVENTIS, ESQUIRE  
PETER MCCOY, ESQUIRE  
ASSISTANT SOLICITORS FOR 10TH JUDICIAL CIRCUIT  
ATTORNEYS FOR THE State

MARTHA RUNEY, ESQUIRE  
BEATTIE BUTLER, ESQUIRE  
ATTORNEYS FOR THE DEFENDANT

DANETTE P. HANKS  
CIRCUIT COURT REPORTER

| <b>INDEX</b>                                        |               |              |                 |                   |
|-----------------------------------------------------|---------------|--------------|-----------------|-------------------|
| <b>WITNESSES</b>                                    | <b>DIRECT</b> | <b>CROSS</b> | <b>REDIRECT</b> | <b>RECROSS</b>    |
| Angela Bunker<br>Peter McCoy<br>Martha Runey        | 102           | 102          |                 |                   |
| Gerald Blake<br>Henry Leventis<br>Martha Runey      | 103           | 123          |                 |                   |
| George Hemingway<br>Henry Leventis<br>Martha Runey  | 126           | 143          | 146             |                   |
| David Watson<br>Peter McCoy                         | 146           |              |                 |                   |
| Shantel Mitchell<br>Leventis                        | 154           |              |                 |                   |
| Kelly Murphy<br>McCoy                               | 162           |              |                 |                   |
| Scott Wyant<br>McCoy                                | 167           |              |                 |                   |
| Al Hallman<br>McCoy<br>Butler                       | 172           | 195          | 197             |                   |
| Alexandria Teachey<br>McCoy                         | 198           |              |                 |                   |
| Paula A. Davis<br>McCoy<br>Runey                    | 203           | 206          | 207             |                   |
| Matthew Graham Fitts<br>McCoy<br>Butler             | 210           | 221          | 224             | 224               |
| Erin Presnell<br>McCoy<br>Butler                    | 225           | 236          | 247             |                   |
| Antonio Moultrie<br>Runey<br>Leventis               | 256           | 269          |                 |                   |
| <<-->>                                              |               |              |                 |                   |
|                                                     |               |              |                 | <b>PAGE</b>       |
| Opening Statements<br>Leventis<br>Runey             |               |              |                 | 74<br>76          |
| Closing Statements<br>Leventis<br>Runey<br>Leventis |               |              |                 | 316<br>317<br>327 |
| Charge                                              |               |              |                 | 336               |
| Certificate of Reporter                             |               |              |                 | 381               |



## STATE'S/ EXHIBITS

| NO   | DESCRIPTION | ID | EV |
|------|-------------|----|----|
| S-1  | Photo       | 34 | 82 |
| S-2  | Photo       | 34 | 82 |
| S-3  | Photo       | 34 | 82 |
| S-4  | Photo       | 34 | 82 |
| S-5  | Photo       | 34 | 82 |
| S-6  | Photo       | 34 | 90 |
| S-7  | Photo       | 34 | 90 |
| S-8  | Photo       | 34 | 90 |
| S-9  | Photo       | 34 | 90 |
| S-10 | Photo       | 34 | 90 |
| S-11 | Photo       | 34 | 90 |
| S-12 | Photo       | 34 | 90 |
| S-13 | Photo       | 34 | 90 |
| S-14 | Photo       | 34 | 90 |
| S-15 | Photo       | 34 | 90 |
| S-16 | Photo       | 34 | 90 |
| S-17 | Photo       | 34 | 90 |
| S-18 | Photo       | 34 | 90 |
| S-19 | Photo       | 34 | 90 |
| S-20 | Photo       | 34 | 90 |
| S-21 | Photo       | 34 | 90 |
| S-22 | Photo       | 34 | 90 |
| S-23 | Photo       | 34 | 90 |
| S-24 | Photo       | 34 | 90 |
| S-25 | Photo       | 34 | 90 |
| S-26 | Photo       | 34 | 90 |
| S-27 | Photo       | 34 | 90 |
| S-28 | Photo       | 34 | 90 |
| S-29 | Photo       | 34 | 90 |
| S-30 | Photo       | 34 | 90 |
| S-31 | Photo       | 34 | 90 |
| S-32 | Photo       | 34 | 90 |

| NO   | DESCRIPTION                                                       | ID  | EV  |
|------|-------------------------------------------------------------------|-----|-----|
| S-33 | Photo                                                             | 34  | 90  |
| S-34 | Photo                                                             | 34  | 90  |
| S-35 | Photo                                                             | 34  | 90  |
| S-36 | Photo                                                             | 34  | 90  |
| S-37 | Photo                                                             | 34  | 125 |
| S-38 | Photo                                                             | 34  | 125 |
| S-39 | Photo                                                             | 34  | 125 |
| S-40 | Photo                                                             | 34  | 125 |
| S-41 | Photo                                                             | 34  | 125 |
| S-42 | Aerial Photo of North Charleston neighborhood off Dorchester Road | 34  | 125 |
| S-43 | 911 call                                                          | 68  | 156 |
| S-44 | Photo                                                             | 98  | 99  |
| S-45 | Photo                                                             | 98  | 99  |
| S-46 | Photo                                                             | 98  | 99  |
| S-47 | Photo                                                             | 98  | 99  |
| S-48 | Photo                                                             | 98  | 99  |
| S-49 | Photo                                                             | 98  | 99  |
| S-50 | Photo                                                             | 98  | 99  |
| S-51 | Photo                                                             | 98  | 99  |
| S-52 | Knife                                                             | 99  | 100 |
| S-53 | Shoe cast                                                         | 99  | 100 |
| S-54 | Shoe cast                                                         | 99  | 100 |
| S-55 | Shoe cast                                                         | 99  | 100 |
| S-56 | Photo                                                             | 113 | 114 |
| S-57 | Photo                                                             | 113 | 114 |
| S-58 | Photo                                                             | 115 | 153 |
| S-59 | Photo                                                             | 115 | 153 |
| S-60 | Photo                                                             | 115 | 153 |
| S-61 | Photo                                                             | 115 | 153 |
| S-62 | Photo                                                             | 115 | 153 |
| S-63 | Photo                                                             | 115 | 153 |
| S-64 | Photo                                                             | 115 | 153 |
| S-65 | Photo                                                             | 115 | 153 |

| NO   | DESCRIPTION | ID  | EV  |
|------|-------------|-----|-----|
| S-66 | Photo       | 170 | 171 |
| S-67 | Photo       | 170 | 171 |
| S-68 | Photo       | 170 | 171 |
| S-69 | Photo       | 170 | 171 |
| S-70 | Photo       | 170 | 171 |
| S-71 | Photo       | 170 | 171 |
| S-72 | Photo       | 170 | 171 |
| S-73 | Photo       | 170 | 171 |
| S-74 | Photo       | 170 | 171 |
| S-75 | Photo       | 170 | 171 |
| S-76 | Photo       | 170 | 171 |
| S-77 | Photo       | 170 | 171 |
| S-78 | Photo       | 170 | 171 |
| S-79 | Photo       | 170 | 171 |
| S-80 | Photo       | 170 | 171 |
| S-81 | Photo       | 170 | 171 |
| S-82 | Photo       | 170 | 171 |

## DEFENDANT'S EXHIBITS

|                  |                                              |     |  |
|------------------|----------------------------------------------|-----|--|
| D-1              | Transcription of 911 call                    | 40  |  |
| COURT'S EXHIBITS |                                              |     |  |
| C-1              | Subpoena for Linda Watson                    | 308 |  |
| C-2              | Memo from Art DeGiovine to Martha Kent Runey | 308 |  |
| C-3              | Juror Notes                                  | 314 |  |
| C-4              | Note from jury panel                         | 356 |  |
| C-5              | Note from jury panel                         | 356 |  |
| C-6              | Note from jury panel                         | 356 |  |
| C-7              | Note from jury panel                         | 364 |  |
| C-8              | Note from jury panel                         | 364 |  |
| C-9              | Note from jury panel                         | 367 |  |

# JURY VOIR DIRE

| Juror # | Name                 | Race | Sex | Strikes |           |      | Accept |
|---------|----------------------|------|-----|---------|-----------|------|--------|
|         |                      |      |     | Court   | Plaintiff | Def. |        |
| 132     | Tate, Karen A        | W    | F   |         |           | X    |        |
| 43      | Fowler, Roy V Jr.    | W    | M   |         |           |      | X      |
| 24      | Catlin, Brandon M    | W    | M   |         |           | X    |        |
| 87      | Looper, Mary E       | W    | F   |         |           |      | X      |
| 122     | Sexton, Paula C      | W    | F   |         |           |      | X      |
| 75      | Justice, Gary A      | W    | M   |         |           |      | X      |
| 64      | Holbrook, Kylene B   | W    | F   |         |           |      | X      |
| 81      | Leland, Donald E     | W    | M   |         |           |      | X      |
| 127     | Stansell, Susan C    | W    | F   |         |           |      | X      |
| 74      | Johnson, Rena F      | W    | F   |         |           | X    |        |
| 145     | Whitted, Johnny R Jr | W    | M   |         | X         |      |        |
| 144     | White, Sharon L      | W    | F   |         |           |      | X      |
| 111     | Revis, Alice C       | W    | F   |         |           | X    |        |
| 139     | Wade, Thomas E       | W    | M   |         |           |      | X      |
| 119     | Schlecht, Julie A    | W    | F   |         | X         |      |        |
| 28      | Colbo, Kelson L.     | W    | M   |         | X         |      |        |
| 25      | Chapman, Tammy       | W    | F   |         |           |      | X      |
| 23      | Cassell, Faye H      | W    | F   |         |           |      | X      |
| 34      | Dobson, Linda B      | W    | F   |         |           |      | X      |
| 114     | Roach, Gloria J      | W    | F   |         |           |      | X      |
| 89      | Mansell, Annette     | B    | F   |         |           |      | X      |

1 (WHEREUPON, Court convened with all parties present  
2 and the following proceedings were had.)

3 THE COURT: All right. Solicitor and Ms. Runey,  
4 y'all ready to proceed with this case?

5 MR. LEVENTIS: The State is ready, Your Honor.

6 MS. RUNEY: We are ready as well, if we could  
7 approach on one matter before we get started.

8 THE COURT: Okay. Be glad to hear from you.

9 (WHEREUPON, Mr. Leventis, Mr. McCoy, Ms. Runey and  
10 Mr. Butler approached the bar.)

11 THE COURT: Thank you very much, ladies and  
12 gentlemen. Thank you for bearing with us and being  
13 patient. We are now ready to proceed with the trial of  
14 this case. This is the court of General Sessions. We  
15 will be trying what's known as criminal cases here. This  
16 is a case in which an indictment has been issued by the  
17 Charleston County Grand Jury which sets forth certain  
18 charges. In this particular indictment it stated that  
19 here in Charleston County on about February 5 of this year  
20 with malice aforethought Antonio Moultrie did kill and  
21 murder Daniel Jones by stabbing the victim. And that as a  
22 result Mr. Jones died as a result -- proximate result of  
23 that stabbing on February 5th. Of course this is against  
24 the laws of South Carolina.

25 Mr. Moultrie has entered a plea of not guilty to this

1 charge. By entering a plea of not guilty that places the  
2 burden on the State of South Carolina to prove his guilt  
3 of each element of the offense beyond a reasonable doubt.  
4 Every citizen is presumed innocent of any charge that's  
5 brought against them by the State of South Carolina. And  
6 by entering his plea of not guilty that places the burden  
7 on the State to prove that guilt beyond any reasonable  
8 doubt.

9 You and I are going to be judges in this case. I'm  
10 going to be the judge of the law to decide what law is  
11 applicable in this particular matter. We need to select  
12 jurors to be judges of the facts in the case. You will be  
13 working with me as the judges of the facts. We need fair  
14 and impartial jurors. Mr. Moultrie desires to have fair  
15 and impartial jurors and so does the State of South  
16 Carolina. They deserve to have fair and impartial jurors.  
17 So even though I've qualified you to serve a jury, I need  
18 to ask you some additional questions about this particular  
19 case to verify that you are qualified to hear this matter.  
20 First of all, is there any member of the jury panel who  
21 has any firsthand information about this particular  
22 incident, either by being a witness to it or hearing about  
23 it in the neighborhood or seeing something on television  
24 or reading about it in the newspaper? This particular  
25 incident, according to the indictment, happen back in

1 February of this year. Is there any member of the panel  
2 have any familiarity with this particular factual  
3 situation? If so would you please stand?

4 (No response.)

5 THE COURT: Thank you. There's no response. Is  
6 there any member of the jury panel who knows Mr. Antonio  
7 Moultrie, either knows him by relationship, being kin to  
8 him, went to school with him, have a social or personal  
9 contact with him in any way? If so would you please  
10 stand?

11 (No response.)

12 THE COURT: Thank you. There's no response. Is  
13 there any member of the jury panel who has expressed or  
14 formed an opinion about the particular facts of this case  
15 in anyway? If so would you please stand?

16 (No response.)

17 THE COURT: Is there any member of the jury  
18 panel who has any bias or prejudice that would interfere  
19 with your ability to be a fair juror in this case? If so  
20 would you please stand?

21 Yes, sir. Your name, please, sir?

22 JUROR: My name is Shaun Bollig.

23 THE COURT: Okay. You don't believe you could  
24 be a fair juror in this case?

25 JUROR: Not at all.

1 THE COURT: All right, Sir. If you would please  
2 be seated. I will talk with you later. You don't have to  
3 respond to any of the other questions I ask. I will  
4 discuss it with you later.

5 Your number please, sir?

6 JUROR: 14.

7 THE COURT: All right, Sir. At this time I'm  
8 going to ask the attorneys if you would to please stand  
9 and introduce yourselves to the jury.

10 Mr. Leventis.

11 MR. LEVENTIS: Good morning, ladies and  
12 gentlemen. My name is Henry Leventis. I work for the  
13 solicitor's office. With me I have Peter McCoy helping me  
14 with this trial.

15 THE COURT: Ms. Runey.

16 MS. RUNEY: my name is Martha Kent Runey and  
17 this is my client, Antonio Moultrie. And he's also  
18 represented by Mr. Beattie Butler.

19 THE COURT: Thank you, ladies and gentlemen.  
20 You may be seated.

21 Is there any member of the jury panel who has a --  
22 related by blood or marriage to any of these attorneys or  
23 anyone in the solicitor's office? If you're related by  
24 blood or marriage to any of these individuals would you  
25 please stand?



1 (No response.)

2 THE COURT: Is there any member of the jury  
3 panel who has a close business, a social or a personal  
4 relationship with any of these attorneys or are members of  
5 their organizations? If so would you please stand?

6 Yes, sir, your name, please?

7 JUROR: Thomas Heyward Hamilton, number 89.

8 THE COURT: All right, Sir. And which of the  
9 attorneys do you have a personal or social relationship  
10 with?

11 JUROR: Mr. Reisen.

12 MR. MCCOY: Your Honor, he is another assistant  
13 solicitor that's in our office.

14 THE COURT: All right, Sir. I'll excuse you  
15 from the trial of this case.

16 JUROR: Is it anyone that's worked in the  
17 solicitor's office?

18 THE COURT: He works in the Solicitor's office,  
19 is that right? And you work in the Solicitor's office?

20 JUROR: No. We have a personal ---

21 THE COURT: Yes, ma'am. What is your name and  
22 number please?

23 JUROR: I'm sorry. Joline Milligan, juror  
24 number 150.

25 THE COURT: And you have a friend among the

1 lawyers?

2 JUROR: Not among the lawyers, but works in the  
3 solicitor's office.

4 THE COURT: All right. You have a friend that  
5 works in the Solicitor's office?

6 JUROR: Yes.

7 THE COURT: And who is that friend if you don't  
8 mind telling us?

9 JUROR: Nicole Smith.

10 THE COURT: All right. And what kind of work  
11 does she do?

12 JUROR: I'm not sure, but I also know a couple  
13 of people in the solicitor's office.

14 THE COURT: You have social contact with them?

15 JUROR: (Affirmative nod.)

16 THE COURT: All right.

17 MS. RUNEY: Your Honor, I think that's an  
18 employee of our office.

19 THE COURT: Excuse me?

20 MS. RUNEY: I think that's an -- my paralegal is  
21 Nicole Smith --

22 THE COURT: All right.

23 MS. RUNEY: -- in our office. So that may be  
24 who she's talking about.

25 THE COURT: If you would stand again, please,

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Jury Voir Dire

13

1 ma'am. The fact that you have friendships in these  
2 offices of the attorneys, would that affect your ability  
3 to be a fair juror?

4 JUROR: No. Because we wouldn't discuss it.

5 THE COURT: Okay. I know you wouldn't now, but  
6 the fact that you know that they work there, would you  
7 want to favor one side or the other? Do you believe you  
8 could be fair to both the State and to Mr. Moultrie?

9 JUROR: Yeah.

10 THE COURT: Thank you, ma'am. You may be  
11 seated.

12 MR. MCCOY: Your Honor, if I may, I didn't mean  
13 to misinterpret. Juror number 89 is not an employee with  
14 the Solicitor's office. He is a friend of somebody.

15 THE COURT: Okay. I'm sorry. I thought you  
16 said he worked at your office.

17 MR. MCCOY: That's my -- I'm sorry. The man  
18 that he mentioned his Tripp Riesen.

19 MR. RIESEN: That's me, Your Honor. I work in  
20 the Solicitor's office.

21 THE COURT: All right. Let me ask you the same  
22 questions I asked the other juror. The fact that you are  
23 a friend with someone who works in the Solicitor's office,  
24 Mr. -- you're not going to be working in this case, are  
25 you?

1 MR. RIESEN: No, Your Honor, I'm not.

2 THE COURT: The fact that he's a friend of  
3 yours, would that affect your ability to be a fair juror?

4 JUROR: No.

5 THE COURT: You could be fair to both the State  
6 and to the defense and listen to the facts, decide the  
7 case just on what you hear from the witness stand, the  
8 evidence that's presented, the law I give you, and nothing  
9 else?

10 JUROR: Yes, Your Honor.

11 THE COURT: All right. You're qualified. I'll  
12 have you -- you can be seated, please, sir.

13 Is there any member of the jury panel who has a  
14 member of your immediate family or you work in law  
15 enforcement in any way? If so would you please stand?

16 (No response.)

17 THE COURT: Thank you. There is no response.

18 Is there any member of the jury panel who is a  
19 contributing member of any organization whose primary  
20 concern is the promotion of law enforcement or victims'  
21 rights such as MADD or SADD or PAR, CAVE, any of those  
22 organizations? If you are a contributing member of any of  
23 those, would you please stand?

24 JUROR: I have a question.

25 THE COURT: Yes, ma'am.

1 JUROR: Detail that a little bit more. What  
2 participation in these organizations?

3 THE COURT: As a contributing member or an  
4 activity or serve on a committee, or any of those  
5 organizations?

6 JUROR: I work for a nonprofit. It's the  
7 Children's Advocacy Center.

8 THE COURT: All right. If you would remain  
9 standing, please, ma'am. Your name please.

10 JUROR: Beverly Hutchison.

11 THE COURT: All right. Thank you, ma'am. Yes,  
12 ma'am, and your name?

13 JUROR: Danielle Palka, number 160. As recently  
14 as 2002 I did volunteer for people against rape for six  
15 years.

16 THE COURT: Okay. Let me ask both of you ladies  
17 who are standing, you've been members of these  
18 organizations in the past or maybe now. The fact that you  
19 are a member of these organizations, would that affect  
20 your ability to be a fair juror in this case in any way?

21 JURORS: No.

22 THE COURT: You believe you could be fair to the  
23 State and to the defense and make a decision not on those  
24 activities that you participate in, but what you hear in  
25 this court room, factually and law?

1 JURORS: Yes, sir.

2 THE COURT: All right. Thank you. You may be  
3 seated.

4 Is there any member of the jury panel or a member of  
5 your immediate family who has ever been a victim of a  
6 violent crime of assault or assault and battery of a high  
7 and aggravated nature or murder or any crime of violence  
8 against a person? Is there any member of your family or  
9 you that's ever been a victim of that? If so would you  
10 please stand?

11 JUROR: Are you saying immediate as in -- I'm  
12 sorry, Vernon Curnell, juror 52.

13 THE COURT: All right. And what family member?  
14 Would that be a family member? Would that be a cousin or  
15 ---

16 JUROR: I've had cousins, yes.

17 THE COURT: All right. If you would remain  
18 standing, sir. Yes, ma'am.

19 JUROR: Would that mean like a semi-violent  
20 mugging of a grandmother?

21 THE COURT: Of your grandmother?

22 JUROR: Uh-huh (affirmative).

23 THE COURT: Okay. How long ago was that?

24 JUROR: Eight months. This year.

25 THE COURT: All right. If you would remain

1 standing, please, ma'am.

2 Yes, ma'am, in the back, your name, please.

3 JUROR: Stephanie Trainum, 225. My brother was  
4 shot in downtown Charleston three years ago.

5 THE COURT: Survived?

6 JUROR: Yes.

7 THE COURT: All right. Yes, ma'am, again if you  
8 would state your name again please.

9 JUROR: Jolene Milligan, number 150.

10 THE COURT: All right. And what relatives -- or  
11 have you been a victim?

12 JUROR: I've been cut in high school, but I had  
13 a relative shot and killed three weeks ago.

14 THE COURT: Three weeks again?

15 JUROR: And another one in Charleston this  
16 January will be two years.

17 THE COURT: Do you believe that would affect  
18 your ability to be a fair juror in this case?

19 JUROR: Could be.

20 THE COURT: I'm going to not put you in a bind.  
21 I'm going to excuse you from that trial of this case. You  
22 don't need to respond any more to the questions I ask.

23 Your number again, please, ma'am?

24 JUROR: 150.

25 THE COURT: Number 150. Thank you, ma'am.

1 All right. There's three of you who remain standing,  
2 how long ago was it that you had the relative that was ---

3 JUROR: It was in, I believe it was like '93 or  
4 '94, double murder of my two cousins in Adams Run, South  
5 Carolina.

6 THE COURT: Those of you who are standing, Mr.  
7 Moultrie deserves to have a fair juror to hear this case,  
8 panel of jurors. The State does too. Those of you  
9 standing, if you believe this incident that happened in  
10 your life would affect your ability in any way to be a  
11 fair juror, certainly you can serve on other juries, but  
12 if you believe you could be fair to the State, fair to the  
13 Defendant, and decide this case on the facts that you  
14 hear, the law then I give you and nothing else, if you  
15 believe you can do, that I'd ask you if you would to be  
16 seated. Otherwise remain standing. Let the record---  
17 reflect that all jurors have been seated.

18 Is there any member of the jury panel who has ever  
19 been accused of committing a violent crime? If so would  
20 you please stand.

21 (No response.)

22 THE COURT: Thank you. There's no response.

23 Is there any member of the jury panel who has  
24 criminal charges pending against you in Charleston County?  
25 If so would you please stand?



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Jury Voir Dire*

19

1 (No response.)

2 THE COURT: Thank you. There's no response.

3 Ladies and gentlemen, as I've said and tried to emphasize,  
4 both sides deserve to have fair and impartial jurors hear  
5 this case. Is there any member of the panel aware of any  
6 reason whatsoever, matters that I haven't gone over, that  
7 you believe that you could not be a fair juror in this  
8 case, that you could not render a verdict that speaks the  
9 truth based upon the fact that you hear, the law that I  
10 give you, for any reason whatsoever you believe you could  
11 not be a fair juror, would you please stand?

12 (No response.)

13 THE COURT: Thank you. There's no response.

14 Any other questions from the State?

15 MR. LEVENTIS: No, Your Honor.

16 THE COURT: From the defense?

17 MS. RUNEY: No, Your Honor.

18 THE COURT: All right. If I could have the  
19 juror over here that stood up, if you would come forward  
20 please for just a minute. I'd like to talk with you  
21 briefly. The attorneys can certainly come forward also.

22 Is there any particular reason you do not believe you  
23 could be a fair juror in this case?

24 JUROR: Absolutely. I don't believe in the --  
25 not to be against America, but I don't believe in our

1 government system. I think it's all wrong. Everything  
2 about it.

3 THE COURT: Have you ever served as a juror  
4 before?

5 JUROR: No. I spent six years in the Marine  
6 Corps and that just gave me a bad taste in my mouth  
7 against the whole government and society.

8 THE COURT: You probably don't need to serve on  
9 any juries this week; do you.

10 JUROR: Honestly, no.

11 THE COURT: What was your name again?

12 JUROR: Shaun Bollig.

13 THE COURT: Okay. What I'm going to ask you to  
14 do is to stay with us a while this morning and I'll talk  
15 with you a little bit later. Also, I might let you watch  
16 part of it.

17 JUROR: Okay.

18 THE COURT: If you would just -- tell you what,  
19 if he would be back at two o'clock, come to this  
20 courtroom, you won't be serving on this jury, but just  
21 watch.

22 JUROR: All right.

23 THE COURT: You've never served as a juror? You  
24 never been in a courtroom before?

25 JUROR: Just for my own criminal being, but ...

1 THE COURT: Okay. You've had some charges?

2 JUROR: Yes, sir. Criminal DUI.

3 THE COURT: Okay. Well, if you would just stay  
4 with us this afternoon. I'm going to dismiss the jury in  
5 a little while we take up some other matters. If you  
6 would be back at two, we'll let you at least get an  
7 opportunity to hear a little bit. Thank you for sharing  
8 that with us. I appreciate it. Have a seat back in the  
9 audience.

10 (Pause.)

11 THE COURT: Ladies and gentlemen, we are now  
12 going to select a jury for the trial of this case. Mr.  
13 Callaham will give you your instructions about that as he  
14 calls your name.

15 MISTER CLERK: Ladies and gentlemen, if I call  
16 your name, if you will please gather your belongings, come  
17 up to this podium, turned and face the parties. I'll then  
18 asked the parties different questions and I'll direct you  
19 where to go, either to the jury box or have a seat back in  
20 the audience.

21 Juror number 199, James Sherman. 199.

22 What say you for the State?

23 MR. LEVENTIS: Beg the court's indulgence one  
24 moment. Please excuse this juror.

25 MISTER CLERK: Mr. Sherman, please have a seat

1 back in the audience. You've been excused from the trial  
2 of this case.

3 Juror number 284, Frances Mosley. 284.

4 What say you for the State?

5 MR. LEVENTIS: Beg the court's indulgence one  
6 moment. Please seat this juror.

7 MISTER CLERK: What say you for the defendant?

8 MS. RUNEY: Beg the court's indulgence. Please  
9 excuse Ms. Mosley.

10 MISTER CLERK: Ms. Mosley, please have a seat  
11 back in the audience. You've been excused from the trial  
12 of this case.

13 Juror number 225, Stephanie Trainum. 225.

14 What say you for the State?

15 MR. LEVENTIS: Beg the court's indulgence one  
16 moment. Please seat this juror.

17 MISTER CLERK: What say you for the defendant?

18 MS. RUNEY: Please excuse Ms. Trainum.

19 MISTER CLERK: Ms. Trainum, please have a seat  
20 back in the audience. You've been excused from the trial  
21 of this case.

22 Juror number 102, Joseph Huger. 102.

23 What say you for the State?

24 MR. LEVENTIS: Please seat this juror.

25 MISTER CLERK: What say you for the defendant?

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Jury Voir Dire*

23

1 MS. RUNEY: Please seat Mr. Huger.

2 MISTER CLERK: Mr. Huger, please have a seat in  
3 the jury box. You've been selected as a juror in this  
4 case.

5 Juror number 54, Catherine Cusick. 54.

6 What say you for the State?

7 MR. LEVENTIS: Please seat this juror.

8 MISTER CLERK: What say you for the defendant?

9 MS. RUNEY: Please seat Ms. Cusick.

10 MISTER CLERK: Ms. Cusick, please have a seat in  
11 the jury box. You've been selected as a juror in this  
12 case.

13 Juror number 256, David Bolus. 256.

14 What say you for the State?

15 MR. LEVENTIS: Please seat this juror.

16 MISTER CLERK: What say you for the defendant?

17 MS. RUNEY: Please seat Mr. Bolus.

18 MISTER CLERK: Mr. Bolus, please have a seat in  
19 the jury box. You've been selected as a juror in this  
20 case.

21 Juror number 134, Leslie Lovingood. 134.

22 What say you for the State?

23 MR. LEVENTIS: Beg the court's indulgence one  
24 moment. Please seat this juror.

25 MISTER CLERK: What say you for the defendant?

1 MS. RUNEY: Please seat Ms. Lovingood.

2 MISTER CLERK: Ms. Lovingood, please have a seat  
3 in the jury box. You've been selected as a juror in this  
4 case.

5 Juror number 56, Charitta Dean. 56.

6 What say you for the State?

7 MR. LEVENTIS: Beg the court's indulgence one  
8 moment. Please seat this juror.

9 MISTER CLERK: What say you for the defendant?

10 MS. RUNEY: Please seat Ms. Dean.

11 MISTER CLERK: Ms. Dean, please have a seat in  
12 the jury box. You've been selected as a juror in this  
13 case.

14 Juror number 287, Douglas Pommering. 287.

15 What say you for the State?

16 MR. LEVENTIS: You said 287?

17 MISTER CLERK: Yes, 287.

18 What say you for the State?

19 MR. LEVENTIS: Please excuse this juror.

20 MISTER CLERK: Mr. Pommering, please have a seat  
21 back in the audience. You've been excused from the trial  
22 of this case.

23 Juror number 305, Nicole Estock. 305.

24 What say you for the State?

25 MR. LEVENTIS: Please seat this juror.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Jury Voir Dire*

25

1 MISTER CLERK: What say you for the defendant?

2 MS. RUNEY: Please seat Ms. Estock.

3 MISTER CLERK: Ms. Estock, please have a seat in  
4 the jury box. You've been selected as a juror in this  
5 case.

6 Juror number 276, Melissa McConnell. 276.

7 What say you for the State?

8 MR. LEVENTIS: Beg the court's indulgence one  
9 moment. Please seat this juror.

10 MISTER CLERK: What say you for the defendant?

11 MS. RUNEY: Beg the court's indulgence. Please  
12 seat Ms. McConnell.

13 MISTER CLERK: Ms. McConnell, please have a seat  
14 in the jury box. You've been selected as a juror in this  
15 case.

16 Juror number 36, Rickie Carroll. 36.

17 What say you for the State?

18 MR. LEVENTIS: Beg the court's indulgence one  
19 moment.

20 Your Honor, may we approach for a moment?

21 THE COURT: Yes, sir.

22 (WHEREUPON, Mr. Leventis, Mr. McCoy, Ms. Runey and  
23 Mr. Butler approached the bar.)

24 MR. LEVENTIS: Please excuse this juror from  
25 this trial.

1 MISTER CLERK: Please have a seat back in the  
2 audience. You've been excused from the trial of this  
3 case. That's three strikes for the State.

4 Juror number 288, Andrea Rodriguez. 288.

5 What say you for the State?

6 MR. LEVENTIS: Please seat this juror.

7 MISTER CLERK: What say you for the defendant?

8 MS. RUNEY: Beg the court's indulgence. Please  
9 seat Ms. Rodriguez.

10 MISTER CLERK: Ms. Rodrigues, please have a seat  
11 in the jury box. You've been selected as a juror in this  
12 case.

13 Juror number 103, Beverly Hutchison. 203.

14 What say you for the State?

15 MR. LEVENTIS: Beg the court's indulgence for  
16 just one moment. Please seat this juror.

17 MISTER CLERK: What say you for the defendant?

18 MS. RUNEY: Please excuse Ms. Hutchison.

19 MISTER CLERK: Ms. Hutchison, please have a seat  
20 back in the audience. You've been excused from the trial  
21 of this case. That's three strikes for the defendant.

22 Juror number 258, Walter Brezinski. 258.

23 What say you for the State?

24 MR. LEVENTIS: Please seat this juror.

25 MISTER CLERK: What say you for the defendant?



1 MS. RUNEY: Please seat Dr. Brezinski.

2 MISTER CLERK: Dr. Brezinski, please have a seat  
3 in the jury box. You've been selected as a juror in this  
4 case.

5 Juror number 261, Carolyn Cox. 261.

6 What say you for the State?

7 MR. LEVENTIS: Beg the court's indulgence one  
8 moment. Please seat this juror.

9 MISTER CLERK: What say you for the defendant?

10 MS. RUNEY: Please seat Ms. Cox.

11 MISTER CLERK: Ms. Cox, please have a seat in  
12 the jury box. You've been selected as a juror in this  
13 case.

14 Juror number 42, Betty Coffee. 42.

15 What say you for the State?

16 MR. LEVENTIS: Please seat this juror.

17 MISTER CLERK: What say you for the defendant?

18 MS. RUNEY: Please seat Ms. Coffee.

19 MISTER CLERK: Ms. Coffee, please have a seat in  
20 the jury box. You've been selected as a juror in this  
21 case.

22 Juror number 89, Thomas Hamilton. 89.

23 What say you for the State?

24 MR. LEVENTIS: Please seat this juror.

25 MISTER CLERK: What say you for the defendant?

1 MS. RUNEY: Please excuse Mr. Hamilton.

2 MISTER CLERK: Mr. Hamilton, please have a seat  
3 back in the audience. You've been excused from the trial  
4 of this case.

5 Juror number 45, Robert Condon. 45.

6 What say you for the State?

7 MR. LEVENTIS: Please seat Mr. Condon.

8 MISTER CLERK: What say you for the defendant?

9 MS. RUNEY: Please seat Mr. Condon.

10 MISTER CLERK: Mr. Condon, please have a seat in  
11 the jury box. You've been selected as a juror in this  
12 case.

13 Now picking for the first alternate. Strikes are one  
14 and two.

15 Juror number 299, Mary Todd. 299.

16 What say you for the State?

17 MR. LEVENTIS: Please seat Ms. Todd.

18 MISTER CLERK: What say you for the defendant?

19 MS. RUNEY: Please seat Ms. Todd.

20 MISTER CLERK: Ms. Todd, please have a seat in  
21 the jury box. You've been selected as a juror in this  
22 case.

23 Now picking for the second alternate.

24 Juror number 298, Marylee Thompson. 298.

25 What say you for the State?

1 MR. LEVENTIS: Please seat Ms. Thompson.

2 MISTER CLERK: What say you for the defendant?

3 MS. RUNEY: Please seat Ms. Thompson.

4 MISTER CLERK: Ms. Thompson, please have a seat  
5 in the jury box. You've been selected as a juror in this  
6 case.

7 Your Honor, the jury has been selected and seated.

8 THE COURT: Are there any matters we need to  
9 take care of as far as the selection of the jury in this  
10 case?

11 MR. LEVENTIS: None from the State, Your Honor.

12 MS. RUNEY: No, Your Honor.

13 THE COURT: All right. Those of you who were  
14 not selected for the trial of this case, I'll let you go  
15 back to the jury assembly room. I understand that we have  
16 a jury selected in the other case, so you can be excused  
17 for the day. You've been given a number to call back. If  
18 you would please call back after six o'clock tonight.  
19 There will be instructions for you then as to when you  
20 need to either report back or call back in. You're  
21 excused at this time. Thank you very much for your  
22 patience with us today. If you'll call back tonight after  
23 six.

24 (WHEREUPON, the jury panel was excused for the day.)

25 THE COURT: Ladies and gentlemen, you've been

1 selected for this case. You've seen the process by which  
2 it goes through. You've been sitting a good long while  
3 today. We're going to take a lunch break and actually not  
4 start the trial of the case until this afternoon. The  
5 bailiffs will show you where you are to report back and  
6 where you need to come and so forth.

7 Let me give you just a few preliminary remarks about  
8 jury service and about the trial of this case. Then  
9 hopefully this afternoon we'll be ready to proceed with  
10 the actual trial. At that time I'll have a few remarks to  
11 make for you to lead into the trial of the case itself.  
12 I'll instruct you on the law of the case when it's over  
13 and done with at the end of the case.

14 It's very important while the trial is going on,  
15 you've see the process by which you were selected. It's  
16 one in which both of these parties, the State and the  
17 Defendant, Mr. Moultrie, have selected you to hear this  
18 case and you've now made a commitment to them by the  
19 answers that you've given me and the oath that you will  
20 soon take that you're going to be fair and impartial and  
21 make a decision about the facts of this case based upon  
22 the evidence that you hear and the law and that alone.

23 While you're out and about for lunch, I'm sure that  
24 you're going to have a lot of family members or business  
25 associates or whoever, or even fellow jurors that may want

1 to talk to you about this case, wonder what it's all  
2 about, do some speculation, things of that nature. That  
3 would be improper. You've now made a commitment that  
4 you're going to decide this case on what takes place in  
5 this courtroom. The curiosity your family or friends may  
6 have about, well, did you get selected, what's the case  
7 about, what do you know about it, what are the facts,  
8 those kinds of things, it would be improper for you to  
9 talk about that while the trial is in progress or before  
10 it starts. You'll have an opportunity when this case is  
11 over and done with to share your experiences with your  
12 loved ones and friends. But while the case is going on is  
13 not the time to do that. Likewise, I wouldn't expect  
14 anyone would approach you while you're out for lunch and  
15 want to talk about the case or give you information or ask  
16 you questions. If that were to happen, please explain to  
17 that person that you're a juror, you've been selected and  
18 you can't talk about the case, I've instructed you not to  
19 talk about the case. If someone were to persist in  
20 wanting to give you information or ask you questions,  
21 please excuse yourself as quick as you can. And if  
22 possible, get the name of that individual and report it  
23 back to us and I'll certainly take care of that matter, I  
24 can assure you. But I don't expect anything like that to  
25 happen while you're out for lunch.

1           When you come back in sitting in the jury box,  
2 sometimes you might want to sit in the same seat that  
3 you've got accustomed to.. Sometimes you might want to sit  
4 in other seats. The last two jurors who were picked will  
5 be the alternates. They're selected. They're going to be  
6 every bit as much a part of the case as the others, but  
7 they are picked in case -- I understand from the attorneys  
8 it will take more than a day, but it's not going to take  
9 more than a week. Probably just a few days. But in case  
10 something were to happen to one of you, an emergency comes  
11 up or illness besets you, then those alternates are here  
12 to fill in in case one of the original twelve has to be  
13 excused for any reason. So they'll be active participants  
14 as far as observations and listening. I'm going to -- Mr.  
15 Condon, I'll appoint him as the foreperson of the jury.  
16 He's seated in the right seat now. That will always be  
17 his seat when you come and go.

18           As foreperson, that doesn't mean that ultimately when  
19 the case is over and done with and you start your  
20 deliberations that he has more votes than anyone else.  
21 Sometimes when you're out in the jury room back there and  
22 we're taking care of matters out here, there might be a  
23 need that you have, a question that you have, the  
24 foreperson will be the one that will be the liaison with  
25 the court so to speak. He will be the one that if you

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Jury Voir Dire*

33

1 have a special need he can ride it out on behalf of all  
2 the jurors and send it to the bailiffs. The bailiffs will  
3 then get it to me and we'll try to take care of that  
4 matter. Sometimes there's evidence that's presented  
5 during the trial of the case. I don't know if this case  
6 will have any evidence, such as a document or whatever.  
7 Sometimes when it's admitted into evidence the lawyer  
8 might want to pass it around to the jury. They'll hand it  
9 to the foreperson. He'll look at it and pass it around to  
10 the others. He'll be the one that will always sit in that  
11 seat. The others of you can sit anywhere you like other  
12 than the two alternates, as I mentioned. Ultimately when  
13 all the evidence is in and you're ready to start your  
14 deliberations and discuss the case, the foreperson will be  
15 the one who will facilitate that discussion. He'll make  
16 sure everyone has their say and input is gathered from  
17 everyone and will be the one who will ultimately on behalf  
18 of all of you will sign the verdict form to render a  
19 unanimous verdict that you all feel is appropriate based  
20 upon the facts and the evidence.

21 We're going to have some matters we need to take care  
22 of to hopefully expedite this case and make it run in a  
23 smooth manner. I'll talk with you more when you come back  
24 briefly about the procedures that we'll follow. But  
25 hopefully we'll try to be through by five or five thirty

1 this afternoon so that if you've got other matters that  
2 you need to take care of. I'll let you know when we'll  
3 come back tomorrow.

4 While we take care of these matters, you can enjoy  
5 your lunch and then we'll take a few minutes for lunch  
6 ourselves. I'm going to ask that if you would be back at  
7 two o'clock in your jury room. We'll then be ready to  
8 start with the trial of the case at two o'clock or as soon  
9 thereafter as we are finished with the matters we need to  
10 take care of. If you will go with the bailiff now, he'll  
11 show you where you need to go and where to come back.  
12 You're excused at this time until two o'clock.

13 (WHEREUPON, the jury exited the open court at  
14 approximately 12:43 p.m.)

15 (WHEREUPON, State Exhibit Numbers 1 through 42 were  
16 marked for identification.)

17 THE COURT: All right. Are y'all going to  
18 always stand when the jury is in and out? It doesn't  
19 matter to me as long as y'all are consistent. If you want  
20 to stand up that's fine. If you want to sit down while  
21 they are coming and going, I just want to make sure that  
22 y'all -- if y'all would talk together about that and if  
23 you can't agree to it then I'll tell you what to do. But  
24 we don't want one side standing and the other side  
25 sitting.



1 MR. LEVENTIS: Sure.

2 THE COURT: All right. Are there any matters we  
3 need to take care of? We can do it now or we can come  
4 back a little beforehand. Are there any motions or any  
5 other issues we need to take care of outside the jury's  
6 presence?

7 MR. LEVENTIS: Your Honor, in addition to the  
8 motions that Ms. Runey put in front of you, I've got just  
9 three pretty brief pretrial motions regarding some  
10 statements the Defendant made and a blood alcohol test  
11 that was taken from the victim.

12 THE COURT: All right. So you've seen the  
13 motions that the Defendant had I guess, Mr. Leventis?

14 MR. LEVENTIS: Yes, Your Honor.

15 THE COURT: Have y'all shared information about  
16 prior charges as far as Lyle.

17 MS. RUNEY: I'm not aware of anything that they  
18 would introduce. I'd just like to put on the record that  
19 there will be no evidence that will be introduced ---

20 MR. LEVENTIS: It's not our intent at this point  
21 to introduce any Lyle evidence in our case in chief. If  
22 the Defendant takes the stand, and it's my understanding  
23 that he will, and opens the door for prior bad acts, then  
24 I would like to revisit that issue.

25 THE COURT: All right, sir. We'll talk about

1 that after the State rests and we're done with the State's  
2 case in chief. How about sequestration? Is there any  
3 objection the State has to sequestering the witnesses?

4 MR. LEVENTIS: Your Honor, Ms. Runey and I  
5 agreed that the State is okay with sequestering our  
6 witnesses. We would like the defense's witnesses to be  
7 sequestered as well.

8 THE COURT: I didn't read the list of witnesses.  
9 I forgot about that. I hope the jury's -- we might have  
10 to go down to an alternate now. We'll just see what they  
11 come up with. I'll verify that with these jurors when we  
12 come back.

13 Are there defense witnesses?

14 MS. RUNEY: Your Honor, I have a list of  
15 witnesses, but most of them are repetitive of the State's  
16 witness list. I would only add Linda Watson. And I've  
17 given the solicitor her date of birth.

18 THE COURT: Tell me that name again.

19 MS. RUNEY: Linda Watson.

20 THE COURT: Linda Watson?

21 MS. RUNEY: Yes, sir.

22 THE COURT: All right. How about the -- is  
23 there anything we need to take care of as far as Jackson  
24 Denno and a Biggers hearing?

25 MR. LEVENTIS: Your Honor, all the statements of

1 the Defendant that we intend to introduce at trial were  
2 made outside of custody. They were made to our lay  
3 witnesses. None of our officers are going to be  
4 testifying about any statements. Likewise with the  
5 identification, the people the State intends to offer,  
6 they're lay witnesses. They're the Defendant's friends  
7 who have known him for years. So there was no custodial  
8 identification at issue in this case.

9 MS. RUNEY: That's my understanding.

10 THE COURT: All right. Any other motions from  
11 the Defendant?

12 MR. BUTLER: Judge, we have a motion with  
13 respect to a 911 tape that the victim made. I don't know  
14 if you want to do that now or when we come back. I can  
15 argue it now or I can argue it later.

16 THE COURT: Okay. That's denying the  
17 admissibility of it?

18 MR. BUTLER: Yes, sir. Our position initially  
19 is just going to be that it's hearsay in the confrontation  
20 clause and I'm going to sit down and reserve the right to  
21 respond to any argument by the State, if that pleases the  
22 court.

23 THE COURT: All right. So it's hearsay ---

24 MR. BUTLER: In violation of the confrontation  
25 clause. Yes, sir. And depending upon what the State's

1 position is, I'd have more to say about that.

2 THE COURT: All right. Does the State have a  
3 position about that?

4 MR. LEVENTIS: Surprisingly, Your Honor, our  
5 position is that it does not violate the confrontation  
6 clause and it's hearsay within clearly defined exceptions.  
7 Several actually.

8 THE COURT: This is a -- how long is the tape?

9 MR. LEVENTIS: The tape is about two and a half  
10 minutes, Your Honor.

11 THE COURT: And it's the dispatcher talking to  
12 the victim?

13 MR. LEVENTIS: She is, Your Honor. And then she  
14 actually calls the EMS dispatch and it ends up being a  
15 three-way call.

16 THE COURT: What exceptions to hearsay do you  
17 believe are applicable?

18 MR. LEVENTIS: Well, among others, present sense  
19 impression, excited utterance, business records exception,  
20 statements made for medical diagnosis, statements made  
21 upon belief of impending death. There may be others.  
22 Certainly my position is that the first two, 801-1 --  
23 excuse me, 803-1 and 2 covered the entire phone call,  
24 including statements made to the 911 operator, the EMS  
25 dispatch and statements made to a friend at the crime

1 scene that were recorded on the 911 call.

2 THE COURT: And while the call was going on, he  
3 was talking to a friend?

4 MR. LEVENTIS: Correct, Your Honor. He just  
5 blurted out statements to a friend.

6 THE COURT: All right. Mr. Butler, do you feel  
7 like those are not substituted exceptions to the hearsay  
8 rule?

9 MR. BUTLER: I think it's probably an excited  
10 utterance. The rest I disagree with. The bigger issue is  
11 the confrontation problem. And if you want to hear from  
12 me first or if you would like for me to respond to the  
13 State.

14 THE COURT: Well, tell me -- I presume you're  
15 talking about confrontation under Crawford?

16 MR. BUTLER: Davis versus Washington, the most  
17 recent case dealing specifically with a 911 tape setting  
18 forth the parameters of what portions of the 911 tape  
19 would not be testimony and what portions would be. If you  
20 would like for me to get into that, we have a transcript  
21 of the 911 tape I could pass up to Your Honor.

22 THE COURT: I probably need to look at that.  
23 Yeah, I would rather get into it now rather than later.

24 MR. BUTLER: That's fine.

25 May I approach, Your Honor?

1 THE COURT: Yes, sir.

2 MR. BUTLER: And I'd like to make this a part of  
3 the record as Defendant 1.

4 (WHEREUPON, Defendant Exhibit 1 was marked for  
5 identification.)

6 MR. LEVENTIS: Your Honor, if it's your  
7 preference to argue the 911 admissibility, specifically  
8 the Crawford issue and the Davis issue. I've actually put  
9 together a presentation on that. My colleague has gone  
10 to get it. If you would indulge me ten minutes, we can  
11 have that I think ---

12 THE COURT: How along -- is there any -- well,  
13 I'll tell it want, let's jump. Tell me what three motions  
14 you have.

15 MR. LEVENTIS: My motions, the first two are  
16 specifically in regard to statements the Defendant made at  
17 the scene of the crime and then when he turned himself in  
18 to the Charleston County Sheriff's Department the  
19 following day. At the scene of the crime he told one of  
20 my lay witnesses that the victim pulled a knife on him.  
21 That is self serving hearsay without any exception to get  
22 in and certainly, if offered, wouldn't be offered against  
23 the Defendant. It would be offered to favor his position.  
24 Likewise, when he turned himself into the Charleston  
25 County Sheriff's Department, he made statements along the

1 lines of, you don't know the whole story, you don't know  
2 the whole story. After that he asked for, asked for an  
3 attorney and made no further statements. It falls under  
4 the same category, Your Honor. It is hearsay. It's not  
5 within any exception and under Rule 802 of the South  
6 Carolina Rules of Evidence, it should be precluded and all  
7 references to it, especially in Defense's opening  
8 statement should be precluded and prohibited. Those are  
9 my first two motions.

10 THE COURT: All right. To prevent those from  
11 coming in or ---

12 MR. LEVENTIS: To prevent those from coming in  
13 and to prevent any of counsel's reference to those  
14 statements.

15 THE COURT: Yes, ma'am.

16 MS. RUNEY: Your Honor, I think that becomes an  
17 issue once Mr. Moultrie decides to testify or Mr.  
18 Hemingway or Mr. Blake, either of the lay witnesses, and  
19 he can object at that point if he thinks it's hearsay. He  
20 can object and we can argue whether ---

21 THE COURT: I agree. But I guess he's wondering  
22 about whether you're going to talk about that in your  
23 opening statement.

24 MR. LEVENTIS: That's correct, Your Honor.

25 MS. RUNEY: I'm not.

1 THE COURT: Okay. Nothing in the opening  
2 statement.

3 MR. LEVENTIS: Okay. And then the other motion  
4 I have, just quickly, is that the victim's blood alcohol  
5 content was tested at or around the time of his death and  
6 he had an elevated alcohol level. I think it's  
7 irrelevant. And to the extent you find it relevant, I  
8 think it's clearly prejudicial and would confused the jury  
9 under Rule 403. I don't even know if it's the defense's  
10 intent to introduce that report, but ---

11 THE COURT: Well, that again would be in the  
12 Defense's case, I guess, or are you talking about maybe  
13 under Crawford? Is there any medical expert going to be  
14 testifying? I guess the forensic ---

15 MR. LEVENTIS: The pathologist will be  
16 testifying, yes, Your Honor.

17 THE COURT: All right. Your objection to it is  
18 that it's irrelevant and prejudicial?

19 MR. LEVENTIS: That's correct.

20 THE COURT: Are you going to get into that?

21 MR. BUTLER: Yes, sir. And if I could respond?

22 THE COURT: Yes, sir.

23 MR. BUTLER: It's not fair. It should be -- the  
24 defense in this case is self defense. The parties knew  
25 each other. The evidence is going to be that there was an



1 argument and disagreement that led to an altercation. If  
2 the toxicology of Mr. Moultrie had come back positive,  
3 there's no way the State would be able to get into that.  
4 It's part of res gestae. It happened at the time of the  
5 event. It clearly comes in. If this had been a blood  
6 alcohol test from the day before or so many hours before  
7 that it could not have affected the conduct of the victim  
8 in the case then we wouldn't be here talking about it.  
9 But if his blood alcohol level was .19, which is more than  
10 double the legal limit, we clearly get to get into that as  
11 part of the res gestae. Also the pathologist would have  
12 had to consider the effect of alcohol in making his or her  
13 determination of the cause of death and manner of death.  
14 We get to ask the pathologist what it is that he or she  
15 relied upon in coming up or deriving an opinion as to  
16 cause of death. But more specifically it goes to the res  
17 gestae. If he's under the influence at the time at the  
18 offense, it would go to his aggressiveness, his behavior.  
19 And I can't believe for a minute that if the shoe were on  
20 the other foot that the State wouldn't be saying that in  
21 an assault case, a violent crime case or a murder case  
22 when a person's conduct is at issue, their ability to  
23 proceed, et cetera and so forth, they wouldn't be able to  
24 get into that and they would be able to. It's for all  
25 those reasons we believe that the blood alcohol content of

1 the victim would be admissible.

2 MR. LEVENTIS: May I respond briefly? As you  
3 will hear, there were only two eyewitnesses to this crime.  
4 There was the Defendant and there was the victim. The  
5 Defendant certainly has the right to get up on the stand  
6 and tell us what happened at that time. But introducing  
7 the blood alcohol content of the victim is just going to  
8 confuse the jury about how he may have acted, what he  
9 might have done and I feel like it would be prejudicial  
10 and I feel like it clearly would confuse the jury. And to  
11 the extent it is relevant, which I disagree, I don't think  
12 it's relevant. It's certainly not relevant to our case in  
13 chief. It may be relevant to their defense, if they  
14 decide to offer a defense in this case, it would be  
15 prejudicial.

16 THE COURT: You're saying high alcohol content  
17 means that a person is more aggressive?

18 MR. BUTLER: It means that he could be. And the  
19 fact that he could be goes to the weight, not its  
20 admissibility. Every time I've had a defendant who comes  
21 back with a positive drug or alcohol or evidence that he's  
22 been using drugs or alcohol, it wouldn't necessarily come  
23 back in the toxicology report, it always comes in. Every  
24 time. And it should if you're talking about at the time  
25 of the crime. And as far as Mr. Moultrie gets to testify

1 about his perceptions, sure, that's no substitute for  
2 corroboration. He has a right to present a defense and if  
3 there's anything that comes in under the constitutional  
4 right to present a defense, it's evidence that  
5 corroborates the Defendant's version of events. If his  
6 testimony is, I perceived him to be under the influence or  
7 agitated or hostile and there is corroborating evidence of  
8 that, we get to put it in. I've never had a case where  
9 the shoe was on the other foot where I was able to make  
10 that argument and keep it out. It's clearly relevant and  
11 probative because it happened at the time of the event.

12 MR. LEVENTIS: Your Honor, if I may respond to  
13 that.

14 THE COURT: Yes, sir.

15 MR. LEVENTIS: One thing that's not relevant is  
16 Mr. Beattie -- Mr. Butler's anecdotal experiences and how  
17 they apply to this case. They don't. And second of all,  
18 as he admitted just a second ago, alcohol doesn't  
19 necessarily make you more aggressive. It doesn't  
20 necessarily make you less aggressive. It does what it  
21 does to each individual person. And there's no evidence,  
22 certainly no evidence in the case in chief that's going to  
23 suggest that Mr. Jones, the victim in this case, became  
24 more aggressive as a result of alcohol. In fact, all the  
25 evidence shows that he became less aggressive and tried to

1 get out of this dispute. And so I just don't understand  
2 how it's relevant.

3 THE COURT: Well, let's let the evidence develop  
4 and we'll see. You can make your objection at the time  
5 that he asks the question.

6 MR. LEVENTIS: Very good, Your Honor.

7 MR. BUTLER: And Judge, it's no violations of  
8 any ruling or ruling in abeyance, there's going to be  
9 testimony from their witnesses that people were drinking.  
10 There's not going to be any big surprise.

11 THE COURT: The shoe might fit both feet.

12 MR. BUTLER: I understand that.

13 THE COURT: All right. Any other motions from  
14 the State?

15 MR. LEVENTIS: None at this time, Your Honor.

16 THE COURT: You got your stuff ready?

17 MR. LEVENTIS: I think I'll have to do it from  
18 memory, which will be fine.

19 THE COURT: Okay. Well, or we can take a lunch  
20 break and come back at -- let's do that. Can y'all be  
21 back at a quarter of two?

22 MR. LEVENTIS: Yes, Your Honor.

23 MS. RUNEY: Yes, sir.

24 THE COURT: That'll give you time to get it  
25 ready. We'll just take a lunch break now. So all we've

1 got left is the Davis issue about the 911? Is there any  
2 other ---

3 MR. BUTLER: From us, yes, sir.

4 MR. LEVENTIS: That's correct, Your Honor.

5 THE COURT: All right. Then we'll swear the  
6 jury in and be ready for openings. All right. We'll be  
7 at ease until a quarter of two.

8 (WHEREUPON, court stood at recess for a lunch break.)

9 THE COURT: All right, solicitor, be glad to  
10 hear from you about the confrontational issue.

11 MR. LEVENTIS: Thank you, Your Honor. This is  
12 actually Mr. Butler's motion, his objection to our  
13 introduction of the 911 call. He stipulated for purposes  
14 of this hearing to us playing the 911 call for you without  
15 authenticating it. We would like to play it and then I  
16 would like to talk about it.

17 THE COURT: All right, sir. Be glad to hear  
18 from you.

19 (WHEREUPON, the 911 call was played in open court.)

20 MR. LEVENTIS: Your Honor, while Mr. McCoy gets  
21 this set up, it's the State's opinion that it's a two-part  
22 analysis here. First of all, are these statements  
23 testimony such as they are precluded from admission  
24 because the declarant is not available? Are they  
25 testimony under Crawford v. Washington, under Davis v.

1 Washington, and under the sixth amendment of the United  
2 State's Constitution? It's our position that they are  
3 clearly not testimonial. And then if you find them to be  
4 not testimonial as we discussed earlier, do they fall  
5 within the hearsay exception? And like I mentioned  
6 earlier, they fall within several hearsay exceptions which  
7 I will expand on later if you would like me to. Slide  
8 three, please.

9 Crawford v. Washington, I'm sure you're familiar with  
10 it, held the confrontation clause of the sixth amendment,  
11 bars admission of testimonial statements of a witness who  
12 did not appear at trial unless he was unavailable to  
13 testify, and the Defendant had a prior opportunity to  
14 cross-examine the declarant. Here there was no prior  
15 opportunity to cross-examine. Our declarant is not  
16 available. Crawford Court, however, did not define  
17 testimonial. Next slide, please. However, in Davis v.  
18 Washington, the United States Supreme Court revisited the  
19 issue. And that issue was whether a 911 call introduced  
20 at trial for a felony violation of a no contact order was  
21 testimonial such that the confrontational clause in  
22 Crawford v. Washington precluded the call from being  
23 admitted. In Davis it was a 911 call regarding a domestic  
24 disturbance. In response to the operator's questions, the  
25 caller/complainant reported the crime, gave the

1 Defendant's first name, his last name, his middle initial,  
2 his date of birth, on and on, information about the  
3 Defendant. Said the Defendant had just went out the door.  
4 Said the Defendant was leaving in a car with someone else.  
5 Said the Defendant's purpose in coming to the house was to  
6 get his stuff. And then obviously the issue was brought  
7 up because the caller/victim in that case did not attend  
8 the trial. Go to the next one.

9 The United States Supreme Court in Davis held,  
10 statements are non-testimonial when made in the course of  
11 police interrogation under circumstances objectively  
12 indicating that the primary purpose of the interrogation  
13 is to enable police assistance to meet an ongoing  
14 emergency. And then they gave us an idea of what is  
15 testimonial. They are testimonial when the circumstances  
16 objectively indicate that there is no ongoing emergency  
17 and, and that the primary purpose of the interrogation is  
18 to establish or prove past events relative to later  
19 criminal prosecution. What slide is that?

20 MR. MCCOY: Six.

21 MR. LEVENTIS: The Davis Court found the 911  
22 call to be nontestimonial because the caller was speaking  
23 about events as they were actually happening. Any  
24 reasonable listener would recognize the caller was facing  
25 an ongoing emergency. The call was plainly a call for

1 help. The nature of what was asked and answered viewed  
2 objectively was such that the elicited statements were  
3 necessary to be able to resolve the present emergency  
4 rather than simply to learn what had happened in the past.

5 And then the court noted the difference in the level  
6 of formality between the interrogation in Crawford, which  
7 it found to be very formal, and the phone call in Davis,  
8 which it found to be non-formal. And with regard to that  
9 they found the Davis interview was frantic. It was over  
10 the phone. It was in a non-tranquil, potentially non-safe  
11 environment, whereas the interview in Crawford was calm,  
12 at a station house, the declarant was responding to a  
13 series of questions from my police officer interrogator  
14 who was taping and making notes. Slide seven, please.

15 There really are, in my opinion, three types of  
16 statements in the 911 call you just heard, Your Honor.  
17 The victim's responses to the 911 operator, the victim's  
18 responses to the EMS dispatch and the victim's statements  
19 to a friend on the scene of the crime. As you heard, Your  
20 Honor, all of the 911 operator's questions were clearly  
21 designed to address an exigent emergency. And that is the  
22 victim's stab wound. He was bleeding to death. Likewise,  
23 all of the EMS dispatch questions were designed to address  
24 an emergency situation.

25 And finally I would submit to you that the victim's



1 statements to his friend on the scene of the crime that  
2 were recorded were not part of any interrogation. They  
3 were not made to any law enforcement officer. They were  
4 clearly not made in anticipation of litigation. They were  
5 not the controversial examination practices that the  
6 Supreme Court in Crawford refers to as the foundation of  
7 the sixth amendment. Rather, they will want the Supreme  
8 Court was talking about when they said, an accuser who  
9 makes a formal statement to government officers, there is  
10 testimony in a sense that a person who makes a casual  
11 remark to an acquaintance does not. This was clearly not  
12 a remark to a law enforcement officer, rather it was an  
13 excited utterance at the scene of the crime. Go to slide  
14 eight, please.

15 So what I would like to do is go over the factors  
16 that the Davis court used to evaluate that 911 call as  
17 they relate to the 911 call you just listened to. The  
18 exigent nature ongoing emergency, I point you to the text  
19 of the call. Yeah, somebody just stabbed me, Daniel  
20 Jones. Is this person still there? 911 operator. Where  
21 did he stab you? I'm bleeding kind of heavy. And then  
22 the EMS is instructing him on how to preserve his life  
23 until emergency responders can get to the scene, Your  
24 Honor. Slide nine, please.

25 This was clearly a call for help. The questions and

1 responses dealt with the victim's identity, with the  
2 victim's location and with the victim's injuries. The  
3 Defendant's identity was never asked about nor was it ever  
4 given. Slide ten.

5 The nature of what was asked and answered, viewed  
6 objectively, was such that the elicited statements were  
7 necessary to be able to resolve the present emergency  
8 rather than to simply learn what happened in the past. I  
9 believe an objective review of the statements made on that  
10 call, you can't come back with any other opinion of the  
11 statements made. Next slide, please. Which slide is  
12 this?

13 MR. MCCOY: It's eleven.

14 MR. LEVENTIS: Okay. Furthermore, the  
15 statements made were clearly not made with a eye toward  
16 trial, neither EMS nor Joe Blake or law enforcement agents  
17 -- or agents of law enforcement, which were the primary  
18 concern of Crawford v. Washington, and by extension the  
19 sixth amendment in the confrontation clause.

20 I've kind of lined up side-by-side what Davis looked  
21 at versus what we've got in this call. In Davis the  
22 Supreme Court noted that call was frantic. In this call  
23 the victim had just been stabbed and was bleeding to  
24 death. In fact, he died several minutes after he hung up  
25 the phone. Davis was over the phone. This call was over

1 the phone. Crawford found to be testimonial was not over  
2 the phone. It was at the station house. It was in -- the  
3 Davis call was in a non-tranquil environment. The victim  
4 in this call was still at the scene of the crime, hardly a  
5 tranquil environment. And finally, in the Davis case, the  
6 court noted that the victim in the call was in a  
7 potentially non-safe environment.

8 In this case Daniel Jones was still at the scene of  
9 the crime. The 911 operator is asking, is the person that  
10 stabbed you still there, a potentially non-safe  
11 environment. Testimony will probably show that he had  
12 driven away at that point. But there was nothing to keep  
13 him away from driving back and continuing to attack the  
14 victim in this case. Next slide.

15 Finally, Tony Moultrie -- it's our position that Tony  
16 Moultrie forfeited his right to claim protection afforded  
17 in the constitution of the confrontation clause because he  
18 killed Daniel Jones. Taking the language of Davis, we  
19 reiterate, like we said in Crawford, that the rule of  
20 forfeiture by wrongdoing extinguishes confrontation claims  
21 on essentially equitable grounds. That is, one who  
22 obtains the absence of a witness by wrongdoing forfeits  
23 the constitutional right to confrontation. Next slide,  
24 please.

25 In conclusion, Your Honor, as in Davis, Daniel

1 Jones's 911 call was clearly non-testimonial. The  
2 statements made to the 911 operator were analogous to  
3 those made in Davis where the Supreme Court found the 911  
4 call to be nontestimonial. To the extent there are  
5 distinctions between the 911 call in Davis and this 911  
6 call, those distinctions err on the side of this 911 call  
7 being less testimonial, further outside the realm of  
8 testimonial statements that the Supreme Court in the sixth  
9 amendment was concerned with.

10 The statements made to EMS and Gerald Blake fall even  
11 further outside that realm of testimonial. They are  
12 clearly not a part of any interrogation or criminal  
13 investigation that the Crawford court focused on. They  
14 were not made to law enforcement. They were not made to  
15 an agent of law enforcement. They fall well outside the  
16 category of statements the confrontation clause was  
17 designed to protect against.

18 And for those reasons it's our position that the  
19 entirety of Daniel Jones's 911 call is nontestimonial and  
20 should be admitted subject to a showing of those  
21 statements falling within a hearsay exception. That's my  
22 speech on Crawford and the sixth amendment. If you would  
23 like me to address hearsay at this time, I'll be happy to  
24 do that.

25 THE COURT: Let me hear from Mr. Butler or Ms.

1 Runey. What part of the statement do you feel ought to be  
2 excluded, Mr. Butler?

3 MR. BUTLER: Well, let me back up. All of it or  
4 parts of it in varying degrees. There are some parts of  
5 it that I feel less strongly about. For example, I think  
6 that the statements he made to his friend, those can  
7 clearly come in. I can't think of any reason why they  
8 couldn't come in for the confrontation purpose.

9 THE COURT: All right.

10 MR. BUTLER: For hearsay purposes, I have a  
11 separate argument as to why none of it should come in.  
12 You want me to stick with just the confrontational ---

13 THE COURT: Tell me the confrontational issues  
14 first.

15 MR. BUTLER: Yes, sir. First, because this  
16 isn't in my outline, I didn't know it would come up,  
17 forfeiture by wrongdoing has no application here because  
18 -- for two reasons. We don't have a rule of evidence  
19 recognizing that exception of forfeiture by wrongdoing.  
20 And if we did, that would mean that in every murder case  
21 where the State claims that the Defendant murdered the  
22 victim, the victim's statements would come in. That's not  
23 the rule. Luckily, there was a U.S. Supreme Court case  
24 after Davis that clarified forfeiture by wrongdoing. I  
25 don't have the name, but I can get it. It happened -- it

1 occurred within the last six months. And what that case  
2 says is that when you have an exception to forfeiture by  
3 wrongdoing it is only applicable when you can show that  
4 the reason that the Defendant procured the witness's  
5 absence by his own wrongdoing, he did so for the purpose  
6 of preventing him from testifying. We don't have that  
7 here because there was no other underlying action. So  
8 that's not an issue.

9 With respect to the confrontation issue in general  
10 under Davis, the portion of the opinion that at least at  
11 first glance looks as if it supports the State's position  
12 -- I'm sorry, Judge. Can I give you a written copy of the  
13 opinion?

14 THE COURT: I'll be glad to look at it again.

15 MR. LEVENTIS: I've got a copy. Thank you.

16 MR. BUTLER: Using the pagination in the upper  
17 right-hand corner, page nine of twenty, statements are  
18 testimonial when made in the course of police  
19 interrogation. Top of the first column, first paragraph,  
20 statements are nontestimonial made in the course of police  
21 interrogation under circumstances objectively indicating  
22 that the primary purpose of the interrogation is to enable  
23 police assistance to an ongoing emergency. Well, that  
24 sounds like this case, at least at first. He's stabbed,  
25 he's bleeding, he's calling for medical assistance. The

1 testimony when the circumstances objectively indicate that  
2 there is no such ongoing emergency, then the primary  
3 purpose of the interrogation is to establish, and this is  
4 the key part, to establish or prove past events.  
5 Potentially irrelevant. Not offered for the purpose of.  
6 Past events potentially relevant to a later criminal  
7 prosecution.

8 And I'm going to appeal to more portions of the text  
9 of the opinion in a second. The key to this issue isn't  
10 just emergency. It's ongoing emergency versus past  
11 events. What's happening now versus what's already  
12 occurred. The facts in Davis are that the perpetrator is  
13 still at the scene actively involved in the assault. He's  
14 jumping on me again is why she says. He's still there.  
15 That's the facts that they highlight that make that  
16 nontestimonial, the statements are nontestimonial.

17 Beg the court's indulgence. On page eleven of  
18 twenty, the right-hand column, last sentence in the first  
19 paragraph, here the court is contrasting testimonial  
20 versus nontestimonial within the context of a 911 call.  
21 Not all 911 calls are testimonial, not all of them are  
22 nontestimonial. A 911 call, on the other hand, and at  
23 least the initial interrogation conducted, initial  
24 interrogation conducted in connection with a 911 call is  
25 ordinarily not designed primarily to, quote, establish or

1 prove some past fact. In other words, it's not  
2 testimonial because it's not being offered for that  
3 purpose. It's not being offered to prove past fact, but  
4 to describe current circumstances requiring police  
5 assistance.

6       Going on to the next paragraph, the second sentence,  
7 and I'm going to read a good majority of that.  
8 Contrasting -- or highlighting facts in Davis versus the  
9 facts and Crawford. In Davis the victim was speaking of  
10 events, emphasizing as they were actually happening rather  
11 than describing past events. Sylvia Crawford's  
12 interrogation, on the other hand, took place hours after  
13 the incident that she described that occurred, moreover  
14 any reasonable listener would recognized that Ms.  
15 McCottry, that's the victim in Davis, her statement is in  
16 an ongoing murder scene. Although one might call 911 to  
17 provide a narrative, here's what's happened, a narrative  
18 report of the crime absent any imminent danger.  
19 McCottry's call was plainly a call for help against a bona  
20 fide physical threat. That's because he's still there.  
21 There's no dispute that Mr. Moultrie had gone.

22       Third, the nature of what was asked and answered to  
23 Davis, again viewed objectively, was such that the  
24 elicited statements were necessary to be able to resolve  
25 the present emergency rather than simply to learn, as in



1 Crawford, what had happened in the past. So statements  
2 like this within this call, I'm bleeding, that would be a  
3 description of a present condition and a present  
4 emergency. He stabbed me is not. He had a box cutter is  
5 not. Especially when towards the end when the question is  
6 put forth to him, tell me exactly what happened, that's a  
7 request for a narration of events, a narrative. That's  
8 clearly testimonial. And although the holding in Davis  
9 doesn't help us resolve this issue squarely because the  
10 facts are different, the court did give us some guidance.

11 On page twelve of twenty, the second paragraph in the  
12 second column, the court there is explaining how you could  
13 have a statement that would be mixed testimonial and  
14 nontestimonial, like I think we have here. Quoting that  
15 first full paragraph, this is not to say the conversation  
16 which begins as an interrogation to determine the need for  
17 emergency, meaning a proper nontestimonial statement,  
18 cannot, as the Indiana Supreme Court put it, quote,  
19 evolved into a testimonial statement once that purpose has  
20 been achieved. That's what we have here. At some point  
21 the purpose has been achieved. He's bleeding, he needs  
22 medical assistance. Anything beyond that is not germane  
23 to the purpose of the call. In this case, talking about  
24 Davis, for example, after the operator gave the  
25 information needed to address the exigency of the moment,

1 the emergency appears to have ended when Davis drove away  
2 from the premises. Well, Mr. Moultrie had driven away  
3 from the premises. Emergency isn't interpreted as broadly  
4 as the State would like for this court to interpret it.  
5 The operator then told McCottry to be quiet and she posed  
6 valued questions. It could readily be maintained that  
7 from that point on, McCottry's statements were  
8 testimonial, not unlike the structured police questioning  
9 that occurred in Crawford. This presents, this presents  
10 no great problems, meaning when you're talking about past  
11 events it's obviously testimonial. Just as for fifth  
12 amendment purposes, police officers can and will  
13 distinguish almost instinctively between questions  
14 necessary to procure their own safety or the safety of the  
15 public and question designed solely to elicit testimonial  
16 evidence from a suspect. Trial courts will recognize the  
17 point at which, for sixth amendment purposes, statements  
18 in response to interrogations become testimonial. Through  
19 in lemine procedures, they should redact portions of any  
20 statement that have become testimonial as they do, for  
21 example, with unduly prejudicial portions of otherwise  
22 admissible evidence.

23 So once you get to the point where we understand what  
24 the emergency is, steps have been taken to meet that  
25 emergency, anything beyond that, which is a question about

1 past events, is now testimonial.

2 THE COURT: Are you saying that if the EMS  
3 person asked how long have you been bleeding or when did  
4 you start bleeding, wouldn't that be a past event?

5 MR. BUTLER: No. I'll concede that one. When  
6 ---

7 THE COURT: So there are some things in the past  
8 you can talk about, you think?

9 MR. BUTLER: Well, that's sort of a mixed  
10 question of past and future. He's currently bleeding, and  
11 how long have you been bleeding, the portion of which that  
12 covers the past, I will say is probably nontestimonial.  
13 But we don't have that here. When he asked him, tell me  
14 what happened, and he goes on to relate that he was  
15 stabbed, there was a box cutter, earlier statements were  
16 not in response to that specific question, but I put them  
17 in the same category. He hit me with a box cutter too.  
18 That's a past event. And that's clearly the line that's  
19 being, that's being delineated in Davis. Beg the court's  
20 indulgence.

21 You know, this is not the Hammond case, but these are  
22 joint opinions. Pages thirteen of twenty, in the first  
23 column, the next to the last sentence, when the officer  
24 questioned Amy, this is in Hammond, and elicited the  
25 challenge statements, he was not seeking to determine, as

1 in Davis, what is happening.. All right? When you are  
2 trying to find out what is going on now, that's  
3 nontestimonial. But rather what happened. Objectively  
4 viewed, the primary -- the sole purpose of the  
5 interrogation in Hammond was to investigate a possible  
6 crime, which is of course precisely what the officer  
7 should have done. But when you are asking about past  
8 events, it now becomes testimonial and the sixth amendment  
9 and its protections kick in.

10 Beg the court's indulgence. Beg the court's  
11 indulgence, please. That's all I have with respect to ---

12 THE COURT: How about the hearsay?

13 MR. BUTLER: The hearsay -- oh, Judge, I did  
14 find one other part I wanted to mention, page fourteen of  
15 twenty, first column towards the end. She was seeking a  
16 -- not telling the story about the past. Again, the  
17 language in the text of the opinion when you are telling  
18 events about the past is now testimony.

19 Hearsay. It's critical to understand for the  
20 purposes of hearsay analysis what statement is being  
21 offered to prove. In one sense everything on the tape is  
22 irrelevant because there's no dispute that he was stabbed.  
23 There's not even a dispute as to who did it, even though  
24 it doesn't establish who did it. If it did, we wouldn't  
25 have a position on that either because it's not in

1 dispute. Statements can be confident. Hearsay statements  
2 are statements that are admitted as an exception to the  
3 hearsay rule can be confident for one purpose but not  
4 necessarily for another. Sure, an excited utterance is  
5 inherently reliable and competent evidence and so are  
6 statements for medical -- for purposes of medical  
7 treatment, but not for all purposes. Yeah, I'm stabbed.  
8 Yes, I'm bleeding. Yes, I'm injured. All of those are  
9 competent for those purposes to establish that it's an  
10 excited utterance statement for medical purposes. But  
11 when the defense is self-defense and the issue isn't what  
12 happened, but why it happened, the statements wouldn't be  
13 competent for that purpose.

14 It would be surprising to me if this victim or any  
15 victim in a 911 call would say, oh, and by the way, I  
16 started the fight. Or, I swung at him. Or, I had a knife  
17 too. And as a matter of fact, the content of this  
18 statement itself proves in part its unreliability, at  
19 least from our perspective. He says, I didn't have a  
20 knife. We are going to be able to prove that he did have  
21 a knife. There was a knife found at the scene that our  
22 witnesses tell us is not the knife that Mr. Moultrie had.  
23 Now, that goes to the weight of the evidence and not its  
24 admissibility, I understand that. But I'm just using that  
25 as an example as to why a hearsay statement that would be

1 competent and otherwise reliable for one purpose is not  
2 necessarily competent and reliable in the context of a  
3 self-defense case.

4 The State is not offering this statement for what is  
5 said, because what is said in the statement is not in  
6 dispute. We agree he was stabbed. We even agree that Mr.  
7 Moultrie stabbed him. What they are offering it for is  
8 for what's not said. And that part is hearsay. It's  
9 negative hearsay. What he doesn't say in the statement, I  
10 had a knife too. As a matter of fact he denies it. I  
11 participated in the fight. I started it. Those things  
12 are missing, and that's hearsay too, negative hearsay.

13 So when viewed from the context of this case, the  
14 statement is being offered for the purpose, the only  
15 legitimate purpose it could be offered for, which would be  
16 to negate self-defense, it doesn't do that for him. It  
17 establishes only things that we all concede occurred. So  
18 in that sense we would move to exclude it as being -- as  
19 not being competent evidence fitting a hearsay exception  
20 for the purpose it's being offered for. And that part of  
21 the equation, that part of the analysis cannot be left  
22 out. Why are they offering? I noticed the State didn't  
23 offer an answer to that question. What are they offering  
24 it for? Well, that he was stabbed? We know he was  
25 stabbed. That he was bleeding? We know he was bleeding.

1 That he was in a state of distress? We know all those  
2 things. This isn't a question of what happened. It is  
3 not even a question of who. It's a question of why. And  
4 that statement in no way competently proves why this  
5 happened. Beg the court's indulgence.

6 I think that's all I have. But I want to be sure  
7 I've made my record. The statement is hearsay. Even if  
8 it's not hearsay or falls under the exception, it's still  
9 irrelevant and prejudicial and in violation of the  
10 confrontation clause.

11 THE COURT: All right. I've had a chance to  
12 review the Davis case and Crawford and even Dunklin from  
13 the U.S. Supreme Court. Also the Davis -- we have another  
14 Davis case here in South Carolina. I believe it's non-  
15 testimonial. I'll allow it in. I believe it meets the  
16 exception under 803 of the hearsay rules. I will allow  
17 the statement into evidence.

18 Anything else we need to take care of before the jury  
19 comes back?

20 MR. LEVENTIS: Nothing from the State, Your  
21 Honor.

22 MS. RUNEY: Your Honor, I just for the record  
23 need to inform the court that I have asked our Chief  
24 Administrative Judge, Judge Jefferson, for a continuance  
25 in this case. I filed the motion on Tuesday, November the

1 18th. And the Solicitor and I had a conference call with  
2 Judge Jefferson on Wednesday of last week, I believe,  
3 which would have been the 25th. The reason for my motion  
4 was that my investigator, Art DeGiovine, is out of the  
5 office this week and out of the state in New Jersey and he  
6 may be needed as a witness. He's taken several statements  
7 from witnesses that the State plans to call. And if they  
8 testify differently or deny making statements to him, he  
9 may be needed as a witness. I say that on the record to  
10 inform the court that I may have to attempt to get him  
11 here or make arrangements for him to testify by video, and  
12 I may need some time to arrange that.

13 THE COURT: I'll certainly work with you every  
14 way I possibly can within the constraints of keeping the  
15 case moving. I'll work with you if that does come up.  
16 We'll see what we can do ---

17 MS. RUNEY: Thank you, Your Honor.

18 THE COURT: -- to try to accommodate you if I  
19 can.

20 MR. LEVENTIS: Your Honor, if we're about to  
21 bring the jury in I would just ask for two minutes to run  
22 to the restroom before we make statements to the jury.

23 THE COURT: And again, we talked about  
24 sequestering the witnesses. I obviously don't know who  
25 they are, but y'all make sure y'all cover each other with



1 that.

2 MR. BUTLER: And Judge, I had -- I'm sorry, but  
3 before you bring the jury in, I had one final motion in  
4 light of our discussions prior to lunch, only because I  
5 don't want it to be deemed later that I've waived anything  
6 with respect to alcohol use on the part of the victim.  
7 Given the State's position that it's irrelevant and  
8 prejudicial, with I guess tongue somewhat in cheek, I have  
9 to move as well that the State be precluded from  
10 mentioning any use of the alcohol use by Mr. Moultrie.

11 I happen to think it would be admissible on both  
12 sides for the same reason. I don't want someone later to  
13 say that I consented to the State's position by not moving  
14 to exclude it on the part of Mr. Moultrie. I, myself,  
15 don't know how they can take both positions, that it's  
16 admissible against Mr. Moultrie but not the victim, but I  
17 need to make that motion just so I'm protected.

18 THE COURT: All right. We'll let the testimony  
19 develop. My inclination is to -- well, I'll see what the  
20 questions are and what the answers are. We will certainly  
21 feed both sides out of the same spoon.

22 MR. BUTLER: Thank you, Judge.

23 THE COURT: All right. We'll take about a two  
24 minute break.

25 (WHEREUPON, Court stood at recess for a short break.)

1 (WHEREUPON, State's Exhibit Number 43 was marked for  
2 identification.)

3 THE COURT: Could I see the attorneys just a  
4 moment, please?

5 (WHEREUPON, Mr. Leventis, Mr. McCoy, Ms. Runey and  
6 Mr. Butler approached the bar.)

7 (WHEREUPON, the jury entered the open court at  
8 approximately 2:39 p.m.)

9 BAILIFF: All jurors are present, Your Honor.

10 THE COURT: All right. Thank you.

11 Ladies and gentlemen, thank you for your patience  
12 with us. I try to do my best at estimating times as to  
13 how long matters are going to take and sometimes I don't  
14 do as well as I had hoped to.

15 One thing I failed to mention to you, I need to read  
16 you a list of potential witnesses. And if you would  
17 listen carefully as I read this list and then I'll need to  
18 ask you some questions about that. Potential witnesses in  
19 the case could be an Angie Bunker from the North  
20 Charleston Police department, a Gerald Blake, George  
21 Hemingway, Shantel Mitchell, David Watson, Linda Watson,  
22 Kelly Murphy, Al Hallman, Scott Wyant, Matthew Phipps,  
23 Stephen Murray, Dr. Erin Presnell, Paula Davis, Alex  
24 Teachie, Rollins Xavier Brown, James Wally. Is there any  
25 member of the jury panel related by blood or marriage to

1 any of these potential witnesses?

2 Yes ma'am, if you would, please, which witness are  
3 you related to?

4 JUROR: Dr. Erin Presnell.

5 THE COURT: And what is the relationship?

6 JUROR: She is my husband's cousin. She  
7 obviously lives here, so I see her on a somewhat regular  
8 basis.

9 THE COURT: All right. Would the fact that she  
10 may be called upon to testify in this case interfere with  
11 your ability to be a fair juror?

12 JUROR: Uh ...

13 THE COURT: In other words, the fact that she  
14 comes and testifies, and I don't know what her testimony  
15 will be, the fact that your husband is related to her,  
16 would that affect your ability to be a fair juror? Could  
17 you be fair still to the State and to the Defendant?

18 JUROR: Possibly because I respect her  
19 immensely. I've known her for a very long time. I see  
20 her often. So I would tend to put value and believe in  
21 what she says.

22 THE COURT: All right. I'll excuse you from the  
23 trial of this case. You may be excused. If you would,  
24 call back tonight after six o'clock.

25 All right. Is there any member of the jury panel who

1 has a close business, a social or a personal relationship  
2 with any of these potential witnesses? If so would you  
3 please stand.

4 (No response.)

5 THE COURT: Thank you. There's no response.  
6 Thank you very much, ladies and gentlemen. At this time  
7 I'll ask the clerk to administer an oath to you. You may  
8 swear the jury.

9 MISTER CLERK: Please have the Defendant stand.  
10 Ladies and gentlemen of the jury, would you please stand  
11 and raise your right hand. After I'm giving you this  
12 oath, please respond back to me verbally. Do you swear or  
13 affirm that you shall well and truly try and a true  
14 deliverance make between the State of South Carolina and  
15 the Defendant at the bar whom you shall have in charge,  
16 and a true verdict render, according to the evidence and  
17 the law, so help you God?

18 (WHEREUPON, the jury was duly sworn.)

19 MISTER CLERK: Thank you. Be seated.

20 THE COURT: Ladies and gentlemen, let me make a  
21 few preliminary remarks to you and after that I'll --  
22 we'll begin with the trial of the case. This is in no way  
23 to be considered an instruction on the law. I'll tell you  
24 what the law is on the case at the end. But as I stated  
25 to you before lunch, you are going to be the fact finders

1 in this case. I know you are here at a personal  
2 sacrifice. You've got lots of other things going on in  
3 your world, particularly in December, I'm confident. But  
4 you have been selected to serve on this jury and I'm going  
5 to do everything I can to minimize your down time during  
6 the course of this trial. You are going to be judges.  
7 The twelve of you who will be hearing this case are going  
8 to be the judges of the facts. You may have never served  
9 as a juror before and you may have some apprehension about  
10 this title I've now given you as a judge. You may be  
11 thinking to yourself, well, how can I be a judge, I've  
12 never been to law school. I haven't even taken a business  
13 law course on the Internet or anything. Let me assure  
14 you, ladies and gentlemen, you bring every skill you need  
15 into this courtroom to be a judge of the facts, because as  
16 the judge of the facts you are going to need to utilize  
17 the good common sense with which you have been blessed,  
18 the everyday experiences that you have had over the course  
19 of your life. You are going to be judging credibility of  
20 the witnesses. You are going to listen to witnesses who  
21 testify and determine what the truth is based upon what  
22 those witnesses have to say.

23 My job as a fellow judge with you is to be the judge  
24 of the law. I'm the one referred to as the judge and I  
25 will be determining what the law is on the case and

1 instruct you on the law at the end of the case. Part of  
2 my job also is to rule upon the admissibility of evidence.  
3 There might be objections made during the course of the  
4 trial. These lawyers have been trained under the rules of  
5 evidence and one of them may say I object to that question  
6 or I object to that piece of paper or an exhibit, and I  
7 will rule upon that. That's part of my job. Sometimes an  
8 objection is made and I can rule promptly by saying over  
9 rules are sustained and we go on to the next question.  
10 Sometimes there might be a bench conference with the  
11 attorneys will approach me up here, as you saw during the  
12 qualification process, and we can whisper and maybe  
13 resolve an objection that may be made.

14 Sometimes it's necessary when an objection is made  
15 that I have to send you back to the jury room for us to  
16 resolve a legal matter that may come up, as we did over  
17 the lunch hour. I hope you understand that while we are  
18 both judges, you're the judges of the facts and I'm the  
19 judge of the law, I want to make the very best decision I  
20 can in ruling upon matters of law. I want to be as  
21 correct as I can. In order to do that sometimes it's  
22 important that the lawyers presented to me matters that  
23 would not even be presented to you. There might be some  
24 testimony that could be offered or matters that would not  
25 be proper to be brought before a court for you to hear for

1 your determination of the facts. But I need to hear them  
2 in order that I can make the best decision under the law.  
3 So it might be necessary for you to go back to your jury  
4 room during the course of the trial for us to resolve that  
5 legal matter that may come up. It's very similar to you  
6 being the sole judges of the facts when you begin your  
7 deliberations when all the evidence is in, it wouldn't be  
8 proper for me to be back with you, even though I'm a  
9 judge. I'm the judge of the law, so I wouldn't be back  
10 with you giving you any information about what I think the  
11 facts are because that's totally your prerogative to  
12 determine the facts just as it's mine to determine the  
13 law. So I hope you understand that sometimes it may be  
14 necessary for you to be excused from the courtroom.

15 You may never have served as a juror before and your  
16 experience as a juror may be your favorite TV program or a  
17 movie or a novel. Let me assure you that most of the time  
18 cases develop much more deliberative than that. It's a  
19 deliberative process whereby questions are asked and  
20 answers are given and you are to determine what the truth  
21 is based upon the testimony that's presented to you.  
22 After the attorneys made their opening statements in a few  
23 moments, then we will hear testimony from the witness  
24 stand. After all the evidence is in then they will again  
25 have a chance to address you in their closing statement.

1 I will then instruct you on what the law is of the case.  
2 Your commitment to these parties under the oath that  
3 you've taken is to render justice to both the State of  
4 South Carolina and to the Defendant. It makes me proud  
5 that you've accepted this responsibility, that you've made  
6 a commitment to these parties to render that just  
7 decision.

8 At this time I'll let the attorneys make their  
9 opening statements. Again, let me remind you, this is not  
10 evidence do you. The statements the attorneys may make in  
11 their opening certainly will be beneficial. I urge you to  
12 listen carefully as they address you. Perhaps they can  
13 give you some insights into what you need to be alerted to  
14 during the course of the trial. And after the opening  
15 statements, we'll begin with the testimony. Solicitor.

16 **OPENING STATEMENT**

17 **MR. LEVENTIS:**

18 Thank you, Your Honor. May it please the court.  
19 Counselor. Good afternoon, ladies and gentlemen. Before  
20 I begin let me thank you for your jury service, and for  
21 your time and for your attention over the course of this  
22 trial. If you don't realize it at this point, you will  
23 realize it certainly by the time this trial concludes, how  
24 critical of a role you play. So thank you.

25 As you heard the judge say, this is a murder trial.



1 This is a murder trial. It's not a murder mystery. This  
2 isn't a whodunit. I submit to you, ladies and gentlemen,  
3 we know who committed this crime. We know who murdered  
4 Daniel Jones. We know when he did it. We know where he  
5 did it. We know how he did it. Ladies and gentlemen, we  
6 even know why this defendant, Tony Moultrie, murdered  
7 Daniel Jones.

8 On February 5, 2008, on East Surrey Avenue in North  
9 Charleston right off Dorchester Road, Danny Jones, George  
10 Hemingway and Gerald Blake were hanging out in a friend's  
11 front yard. At some point the Defendant came into that  
12 yard and when he did he ran his hand into Danny Jones's  
13 pocket. Danny didn't like that. So the two men got into  
14 an argument. And they argued back and forth for a little  
15 bit. Several minutes.

16 So at some point Danny Jones had had enough and he  
17 did what we ask all members of society to do, he removed  
18 himself from the situation, got in his pickup truck with  
19 his friend Gerald Blake, and he went to drive away. And  
20 as he did the Defendant kicked his truck. He kicked it  
21 hard. He kicked it hard enough that George Hemingway came  
22 outside the house to see what was going on.

23 But despite the argument that they had had and  
24 despite the fact that his truck had just been kicked,  
25 Danny Jones drove away. He chose to remove himself from

1 the situation. He had had enough. But unfortunately this  
2 man, Tony Moultrie, had not had enough.

3 And so he got in his car and he chased the victim for  
4 several blocks until he caught up with him at 2605 Wye  
5 Lane. And when he did he approached him, pulled out a  
6 knife and plunged it right into Danny Jones's upper chest.  
7 And in doing so, he severed several major veins, his  
8 subclavian, his jugular, where the two intersect. It  
9 would prove to be a fatal blow. After that the Defendant  
10 hid his knife and got in his cab, he's a taxi driver, and  
11 he fled the scene. And the victim died.

12 Ladies and gentlemen, this is not a murder mystery.  
13 On February 5, 2008, at 2605 Wye Lane, this defendant,  
14 Tony Moultrie, murdered Daniel Jones. Tony Moultrie never  
15 needed to be in the yard that day. He never needed to be  
16 there, but he was.

17 I ask that you pay close attention to every witness  
18 and to each piece of evidence that we put before you  
19 during the course of this trial. If you do that and you  
20 use your common sense, I'm confident there is only one  
21 conclusion that can be reached and that is that this  
22 defendant is guilty as charged. Thank you.

23 THE COURT: Ms. Runey, you may address the jury.

24 OPENING STATEMENT

25 MS. RUNEY:

1 Thank you, Your Honor.

2 He did have a knife. He pulled a knife on Antonio  
3 Moultrie and Antonio Moultrie stabbed him in defense.  
4 There's no doubt about that. We are not here to dispute  
5 that today. He had to. If he didn't, he would be dead  
6 and we would be here because of his death.

7 It's very unfortunate that Daniel Jones is dead. But  
8 just because there has been a death that does not mean  
9 there has been a murder. The police were called for a  
10 stabbing. They respond to Wye Lane. The detectives come,  
11 uniform officers and crime scene techs and they find a  
12 knife, a knife that did not belong to Tony Moultrie. You  
13 know what they did, they stopped right there. They didn't  
14 investigate any further. They didn't check out if there  
15 were any other weapons there. They made assumptions.  
16 Assumptions that Antonio Moultrie was guilty of murder.  
17 And that's why we are here today. He's not guilty of  
18 murder and that's why he has asked for a trial.

19 As the Solicitor and the Judge told you, this is not  
20 a normal case you see on CSI, not a whodunit, no fancy  
21 scientific tests, no fancy lineup shown on computer  
22 screens. You're going to hear from two guys that had been  
23 with Tony Moultrie and Daniel Jones. And the hard job  
24 that you have been given is that you have to judge their  
25 credibility. You have to try to decide what happened out

1 there from them. And you will see that their stories  
2 really don't add up. They don't make sense and that's  
3 what you are left to rely on.

4 I would ask you to put your sympathies aside and  
5 listen to the testimony and it will become clear to you  
6 that Antonio Moultrie is not guilty of murder.

7 THE COURT: You may call your first witness.

8 MR. LEVENTIS: Thank you, Your Honor. State  
9 calls Angie Bunker with North Charleston Police  
10 Department.

11 ANGELA BUNKER,

12 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. MCCOY:

15 Q. Good afternoon. Officer Bunker, can you tell the  
16 jury where you are currently employed?

17 A. I'm currently employed with the City of North  
18 Charleston as a police officer assigned to the forensic  
19 division.

20 Q. And can you tell the jury what the forensic division  
21 does?

22 A. The forensic division response to crime scenes such  
23 as homicides, ABWIKs, robberies, and we respond and  
24 process the scene accordingly.

25 Q. Were you employed as a crime scene technician or with

1 the forensic department on 2/5/2008?

2 A. Yes, sir.

3 Q. And would you tell the jury how long you've been with  
4 the crime scene?

5 A. I've been with North Charleston crime scene for three  
6 years.

7 Q. On 2/5 of 2008 did you happen to respond to a scene  
8 of a crime?

9 A. Yes, sir.

10 Q. And where did you respond?

11 A. To Wye Lane.

12 Q. And do you know why you responded to Wye Lane?

13 A. In reference to a male being stabbed.

14 Q. Can you tell the jury the specific address on Wye  
15 Lane?

16 A. [REDACTED].

17 Q. And can you also tell the court and tell the jury  
18 what county this is located in?

19 A. Charleston County.

20 Q. And once you arrive at 2605 Wye Lane, what was the  
21 scene like right when you arrived?

22 A. Upon my arrival several other officers were just  
23 getting on scene along with EMS and first responders.

24 Corporal Kuechler arrived pretty much right behind me and  
25 he started to prepare the scene for me to process, such as

1 crime logs, crime tape, and also notifying dispatch of the  
2 current status of the scene.

3 Q. Can you tell the jury what is technically a crime  
4 scene?

5 A. A crime scene can be designated as any, any scene an  
6 officer arrives to that may need processed for evidence.  
7 It could be as easy as picking up a pencil to a homicide.

8 Q. Now, is it important to you as a crime scene  
9 technician to establish a crime scene and secure it?

10 A. Yes, sir.

11 Q. And why is it important to establish a crime right  
12 away and secure it?

13 A. It is of great importance to secure a scene in  
14 reference to knowing who was on the scene, why they were  
15 on the scene and how long they were on the scene, for the  
16 simple reason, anytime you enter into a crime scene you  
17 leave something behind, if it's a shoe print, hair, blood,  
18 anything, you leave it behind. And I need to be able to  
19 track back to find out where that shoe print came from or  
20 where that blood came from. I need to be able to  
21 eliminate people from being the actual suspect.

22 Q. Well, is it of critical importance to you as a crime  
23 scene technician to know who comes and enters a crime  
24 scene?

25 A. Yes.

1 Q. Officer Bunker, can you explain to the jury --  
2 described in the jury what 2605 Wye Lane is like? What  
3 kind of scenario is this?

4 A. 2605 Wye Lane is a smaller residence in a common  
5 suburban area. The house had a side porch on it. It also  
6 had a pickup truck in the front yard. The yard itself was  
7 a sanded dirt area. Didn't have very much grass, mostly  
8 just sand area.

9 Q. Now, were you one of the first responders on the  
10 scene?

11 A. Yes, sir.

12 Q. Was the crime scene being established?

13 A. It was being established upon my arrival. Yes, sir.

14 Q. And was the crime scene being secured as you arrived?

15 A. Yes.

16 MR. MCCOY: Your Honor, may I approach the  
17 witness?

18 THE COURT: You may.

19 MR. MCCOY: Thank you.

20 Q. I'm going to show you, Officer Bunker, what's been  
21 labeled for identification purposes as State's 1 through  
22 5. Can you take a look at these and tell me what you have  
23 here?

24 A. Number one is the front of the residence. Upon my  
25 arrival we parked right in this area. Number two has a

1 better shot of the side yard. We pretty much parked right  
2 in this area upon our arrival at the crime scene. Number  
3 three is the actual night of the scene. Also the front of  
4 the residence. Number four is a shot of the pickup truck  
5 that was located on the scene upon our arrival. And  
6 number five is the exact area where the victim was located  
7 on my arrival.

8 Q. Are all these photos, 1 through 5, are they an  
9 accurate representation of 2605 Wye Lane?

10 A. Yes.

11 MR. MCCOY: Your Honor, at this point we move to  
12 add into evidence State's 1 through 5.

13 THE COURT: Any objection?

14 MS. RUNEY: No objection.

15 THE COURT: Without objection exhibits 1 through  
16 5 are into evidence.

17 (WHEREUPON, State's Exhibit Numbers 1 through 5 were  
18 admitted into evidence.)

19 MR. MCCOY: Your Honor, may I publish these to  
20 the jury?

21 THE COURT: You may do so.

22 MR. MCCOY: Thank you.

23 Q. Officer Bunker, I just want to go through a couple of  
24 these photos, and I want to kind of give the jury an idea  
25 of the house and what it looks like where you responded.



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Angela Bunker - Direct Examination by Mr. McCoy*

83

1 I'm going to show you what has been labeled as State's  
2 Exhibit Number 2. And it's going to be behind you there.  
3 It might help if I can give you a point or two.

4 MR. MCCOY: Your Honor, may I approach the  
5 witness again?

6 THE COURT: You may, sir.

7 MR. MCCOY: Thank you.

8 Q. Officer Bunker, can you tell me what you see in  
9 State's 2?

10 A. State 2, this would be a shot of the residence  
11 probably taken after the actual crime scene.

12 Q. Is the front area of the yard basically the entire  
13 driveway?

14 A. Yes. In other words, the vehicle was located -- the  
15 truck was located right in this area the night of the  
16 scene.

17 Q. Okay. I'm going to now show you what is now into  
18 evidence as State's Exhibit 4. Now, is this the scene of  
19 the house that night?

20 A. Yes, sir.

21 Q. Was that truck parked there when you arrived at the  
22 crime scene?

23 A. Yes, sir.

24 Q. Can you tell the jury what that yellow tape is around  
25 the house?

1 A. The yellow tape is crime scene tape. If you cross  
2 that line, your name has to go on to the crime log to  
3 identify that you were in the scene.

4 Q. Now, Officer Bunker, once you arrive on the scene,  
5 what are your duties? What's the first thing -- what's  
6 the most important thing for you to do when you arrive on  
7 the scene?

8 A. In this particular scene I was also one of the  
9 primary officers that had arrived on scene. So my first  
10 duty was not as a crime scene officer. It was as a patrol  
11 officer to ensure the safety of the victim. Upon my  
12 arrival I immediately went to him.

13 Q. Now, the victim was present when you arrived?

14 A. Yes, sir.

15 Q. And where was he situated?

16 A. He was in -- on the stairwell.

17 Q. It may help you if I show you State's Number 5. What  
18 is this a photo of here?

19 A. This is also the front of the residence closer to the  
20 porch area. The victim was located right in here. He was  
21 kind of in a leaning back state on the stairwell.

22 Q. So he was leaning against those stairs?

23 A. Uh-huh (affirmative). He was sitting down but his  
24 back was kind of leaned back towards the other stairs.

25 Q. Did you go to the victim to try to assist him or talk

1 to him to find out what was going on?

2 A. Yes, sir. I asked him some simple questions, his  
3 name, his date of birth, trying to continue to get him to  
4 speak to me. He was unresponsive to any questions that I  
5 asked.

6 Q. Did you observe the wound on him?

7 A. Yes, sir.

8 Q. Did you observe a large amount of blood?

9 A. Yes, sir.

10 Q. Were you concerned for his safety and well-being at  
11 this time?

12 A. Yes, sir.

13 Q. Was EMS on route to your knowledge?

14 A. As far as I know, yes, sir, they had already  
15 requested.

16 Q. Was the victim able to answer any questions that you  
17 asked him whatsoever?

18 A. No, sir.

19 Q. So you just testified right when you get there it's  
20 very important for you to, number one, established the  
21 crime scene; number two, to secure the crime scene; number  
22 three, to make contact with the victim. Now, once EMS has  
23 arrived and taken the victim, what are your duties next?

24 A. My duties are to ensure that the scene has been  
25 secured and then ensured that a log has been started,

1 which Corporal Kuechler had already started that log. I  
2 was speaking to the victim. So prior to EMS even arriving  
3 on scene, the scene had already been secured and a log had  
4 already been started.

5 Q. Now, when do you begin the actual crime scene  
6 investigation or the forensics part of your duties?

7 A. Once the victim was taken off the scene, everybody,  
8 including myself, backed out of the scene and just pretty  
9 much got a picture of everything that was going on. At  
10 that point we started photographing from the outside in.

11 Q. Now, when you say from the outside in, do you start  
12 from the street and move towards the house? Or describe  
13 how you do that?

14 A. Yes, sir. We start from the furthest part where we  
15 can tell that the scene had started. We started from the  
16 street in this instance and moved up towards the vehicle.  
17 And from the vehicle we moved towards where the victim had  
18 been located.

19 Q. Did you start your forensic investigation with the  
20 vehicle?

21 A. No, sir. We started it from the roadway.

22 Q. Okay. From your investigation around the roadway,  
23 were you able to locate anything of importance right  
24 around the roadway at all?

25 A. There was nothing of great importance. We located

1 some shoe prints that ended up being police officer boots.

2 But other than that there was nothing located near the  
3 road.

4 Q. Where did you go from the beginning of the road?

5 Where did you go next?

6 A. From the roadway we went to the passenger side of the  
7 Dodge pickup that you saw in the photographs. In that  
8 general area we located several more shoe prints that we  
9 were unable to identify as being a police officer's. As  
10 far as we could tell and as far as the log went, there was  
11 no officers, no detectives, EMS personnel, over in that  
12 scene. That part of the scene had not been contaminated  
13 in any way at this point. There was also a shoe print,  
14 very faint, on the truck itself on the back part of the  
15 bed. The print was unable to be lifted due to it being  
16 sand. It was attempted and more paint came off the truck  
17 than the shoe print itself. And also there were several  
18 other shoe prints that we located in that area that we  
19 also located throughout the rest of the scene that were  
20 casted later on.

21 Q. Okay. Officer Bunker, you just told me about a shoe  
22 print that you found on the truck?

23 A. Yes, sir.

24 Q. What side of the truck was that on?

25 A. It was on the passenger side, the bed of the truck.

1 Q. Okay. We're going to come back to the shoe prints.

2 In the course of examining the front of the truck, were  
3 you able to find anything of importance?

4 A. Towards the front of the truck there was some blood  
5 droplet located in the sanded area that went back to the  
6 area where we located the victim at.

7 Q. Now, where were these blood droplets?

8 A. They were actually on the ground, on the leaves and  
9 within the sand.

10 Q. Now, obviously this is important. Once you've seen  
11 this kind of evidence and you see this on the scene, what  
12 do you do to preserve this evidence?

13 A. To preserve it as evidence and to identify it, we put  
14 placards. In this case they are white placards with black  
15 numbers. When we located -- each time we located a  
16 droplet, we put a number there, which then was  
17 photographed and swabbed.

18 Q. Now, what's the importance of placards to being able  
19 to identify and separate each individual piece of  
20 evidence?

21 A. The purpose of the placards are, for one, they are  
22 easier to locate within a photographs other than trying to  
23 find a piece of blood. It also identifies the direction  
24 -- it locates how far it was from the last driveway. Also  
25 it prevents any damage from being done from officers or

1 myself.

2 MR. MCCOY: Your Honor, may I approach the  
3 witness again, please?

4 THE COURT: You may, sir.

5 MR. MCCOY: Thank you.

6 Q. Officer Bunker, I'm going to show you a bunch of  
7 photos here that were taken at the scene that have been  
8 labeled to begin with State's 6 through 16 and that have  
9 been labeled as State's 17 through 36. It might take a  
10 second, but I would like for you to look at all those  
11 photos and once you look at those, tell me what those are?

12 (Pause.)

13 Q. Have you had a chance to look at those?

14 A. Yes, sir.

15 Q. I know those are a lot of photos and I appreciate you  
16 looking at those. Can you tell me what those are, just a  
17 rough estimate of what all those photos are?

18 A. All the photos have to do with the part of the scene  
19 that was located near or on the passenger side of the  
20 truck.

21 Q. Do they have to do with the driveway and the shoe  
22 prints that were also found there?

23 A. Yes.

24 Q. Are they a fair and accurate representation of what  
25 you saw that night as a forensics investigator?

1 A. Yes, sir.

2 MR. MCCOY: Your Honor, at this point we move 6  
3 through 36 into evidence.

4 THE COURT: Any objection?

5 MS. RUNEY: No, Your Honor.

6 THE COURT: Without objection Exhibits 6 through  
7 36 will be into evidence.

8 MR. MCCOY: Thank you, Your Honor.

9 (WHEREUPON, State's Exhibit Numbers 6 through 36 were  
10 admitted into evidence.)

11 Q. Now, Officer Bunker, you just testified that on the  
12 passenger side on the ground, you found a small amount of  
13 blood?

14 A. Yes sir, right by the tire.

15 Q. And you also testified that you marked that piece of  
16 blood with a placard?

17 A. Yes, sir.

18 Q. Is there any way to gather this blood and then to  
19 preserve it later for further testing?

20 A. Yes, sir.

21 Q. Were you able to do this?

22 A. Yes, sir.

23 Q. Now, explain to the jury how you take samples of  
24 blood and preserve it?

25 A. Blood is taken with sterile swabs. If you have a



1 drop of blood, we order sterile swabs which are taken out  
2 of their container at the time of use. The blood is then  
3 swabbed and it is then enclosed in its container and then  
4 placed into a small box to be shipped as evidence to SLED  
5 for identification.

6 Q. Now, the blood that was found next to the tire on the  
7 ground -- I'm going to show you what's in State's evidence  
8 as number 17. It'll be tough to see on the overhead, but  
9 I see a placard here by the vehicle. Can you explain the  
10 rough area where the blood was located?

11 A. Right there is one droplet of blood.

12 Q. Now, you marked that as placard 5?

13 A. Yes, sir.

14 Q. And this is the one that's by the tire?

15 A. Yes, sir.

16 Q. Did you swab this blood and preserve it and take it  
17 into evidence?

18 A. Yes, sir.

19 Q. Now, where do you -- once you have it in your  
20 possession and you swab it, where do you put it?

21 A. Our general practice is that we have a central area  
22 for evidence to be -- once it's collected to be located on  
23 the scene. In this instance it was a container in the  
24 back seat of my vehicle that is locked and secured. And  
25 then it's taken to the North Charleston Police Department

1 and locked into the evidence.

2 Q. Now, Officer Bunker, where do you move your  
3 investigation towards next?

4 A. We then start following the blood droplets to the  
5 front of the truck. And then over towards where the  
6 actual victim was located.

7 Q. Were you able to find any more blood that was on the  
8 truck or around the truck?

9 A. Yes, sir. There was some blood located on the area  
10 above the front passenger tire.

11 Q. Okay. Where was -- was this blood on the side of the  
12 car or was it on top of the car?

13 A. It was on the side.

14 Q. Okay. I'm going to show you what's in evidence as  
15 State's 6. Can you tell the jury what this is?

16 A. This is a photograph of the actual blood that is  
17 right in this area.

18 Q. Now, we can see there's blood coming down the side of  
19 this vehicle right here. Did you take and preserve this  
20 blood for further testing?

21 A. Yes, sir.

22 Q. And how did you do that?

23 A. The same concept. A sterile swab was taken out of  
24 its container, the blood was swabbed and then the sterile  
25 swab was then contained within a container and placed in

1 the evidence box.

2 Q. Now, also there was another object that's on this  
3 tire here. Officer Bunker, can you explain to the jury  
4 what that is right there?

5 A. Right here is a small knife with a rugged handle.  
6 It's a blue -- a teal blue and black handle pocket knife.

7 Q. What did you do with this knife once you found it?

8 A. The knife was photographed as it was located and then  
9 it was collected and then photographed again for sizing.  
10 When we located it, the knife was in a closed position.  
11 Upon opening the knife we located several areas of blood  
12 that were also swabbed.

13 Q. So when you found it the knife was close?

14 A. Yes, sir.

15 Q. You take it into evidence, you preserve it?

16 A. Yes, sir.

17 Q. You opened it up and you found that an amount of  
18 blood was on the knife?

19 A. Yes, sir.

20 Q. Where was the blood on the knife once you opened it  
21 up?

22 A. The blood was on the actual handle itself and then  
23 there was also a small amount of blood on the bridges of  
24 the blade. And then there was some on the back part of  
25 the blade.

1 Q. So it's your testimony there was, there was blood on  
2 the handle and there was blood on the actual ridges or  
3 blade part of the knife not on the backside of the knife?

4 A. Yes, sir.

5 Q. Did you do the same swapping technique to preserve  
6 the blood in this instance?

7 A. Yes, sir.

8 Q. Officer Bunker, did you find any other blood that was  
9 on the scene that night?

10 A. His clothing. The victim's clothing had blood on it.

11 Q. Okay. Was the closing on the scene when you arrived?

12 A. Yes, sir.

13 Q. Did you take this clothing into evidence?

14 A. Yes, sir.

15 Q. Who removed the clothing from the Defendant -- I  
16 mean, from the victim? I'm sorry.

17 A. As a common practice EMS, when they respond, if  
18 there's any kind of injury to the person they will cut off  
19 the victim's clothing in reference to ensuring that there  
20 was no other wound or injuries that they need to attend  
21 to. So EMS took the clothing from the victim.

22 Q. Once it was cut ---

23 A. Yes.

24 Q. -- did you take this evidence and preserve it  
25 yourself?

1 A. Yes, sir.

2 Q. Okay. Officer Bunker, you also testified a little  
3 bit earlier, I'm going to take you back to shoe prints and  
4 shoe marks that were found on and around the truck. You  
5 said there was a shoe print that was on the back passenger  
6 side of the truck?

7 A. Yes, sir.

8 Q. I'm going to show you what has been labeled as  
9 State's 10 and ask you to tell the jury what that is. I  
10 know that's hard to discern.

11 A. Right in this area is going to be a close-up of the  
12 shoe print. As I said earlier, it was in sand. Right in  
13 this area right here you can see some of the arrow shaped  
14 design.

15 Q. Are those arrow shaped design, those ridges, are  
16 those part of the shoe print?

17 A. Yes, sir.

18 Q. Now, Officer Bunker, you also testified you found and  
19 located several different kinds of shoe prints around the  
20 truck?

21 A. Yes, sir.

22 Q. Where were these shoe prints located?

23 A. They were located on the passenger side of the  
24 vehicle. There was several located near the passenger  
25 front tire and also underneath the area where the

1 footprint on the truck was located. There was several  
2 partials located in front of the truck. And on the  
3 driver's side there was a few located.

4 Q. Were you able to determine if there was one, two,  
5 three, four, five different kind of shoe prints that were  
6 found on the scene?

7 A. We were able to identify several different shoes on  
8 the scene and they were each labeled.

9 Q. Do you remember how many total shoe prints you  
10 remember observing on the scene?

11 A. Not off the top of my head. No, sir.

12 Q. Would you like to look at your police report from  
13 that night to remember how many you had?

14 A. Yes, sir. We took three castings of three different  
15 shoe prints that evening.

16 Q. Can you tell the jury and explain to the jury what  
17 casting is and why you use it?

18 A. Casting a shoe print would mean to -- normally it's  
19 used with plaster or some kind of dental and it is to seal  
20 the prints. You are able to do it in softer grounds and  
21 sand and areas such as that to preserve the actual shoe  
22 print for impression itself.

23 Q. Were you able to take any castings that night?

24 A. Yes, sir. Three of them were taken.

25 Q. Did you take those castings and put those into

1 evidence?

2 A. Yes, sir.

3 Q. Officer Bunker, was there any point in time during  
4 this investigation that you found out the status of the  
5 victim?

6 A. Yes, sir. Towards the end of the scene we were  
7 starting to go back through the scene and double check  
8 everything, the coroner's office, Ms. Wooten, notified us  
9 that the victim had passed during surgery.

10 Q. Now, as you were taking down the crime scene and  
11 things were wrapping up at 2605 Wye Lane, was the  
12 Defendant, Antonio Moultrie, ever developed as a suspect  
13 in this case?

14 A. Not at that prior time, I had no knowledge of it.

15 Q. Okay. Did you ever learn or was there ever a time  
16 that you learned what kind of car the defendant was  
17 driving?

18 A. Yes. We were notified at that time that a black and  
19 white taxi was witnessed leaving the scene of the  
20 incident.

21 Q. Okay. Later that evening was that black and white  
22 taxi found in North Charleston?

23 A. Yes, sir. Later in the evening I was then notified  
24 that Antonio Moultrie was a suspect and was known to drive  
25 that type of vehicle. The taxi was located at 2761 East

1 Surrey.

2 Q. Did you that night arrived at 2761 East Surrey?

3 A. Yes, sir.

4 Q. And what did you do when you got there?

5 A. Upon my arrival I witnessed the white and black taxi  
6 located in the back of the residence. It was pulled in  
7 the driveway, went straight back, and the vehicle was  
8 parked directly behind the house.

9 MR. MCCOY: Court's indulgence, Your Honor.

10 Your Honor, may I approach the witness?

11 THE COURT: You may, sir.

12 MR. MCCOY: Thank you. I would like to mark  
13 these as State's 44 through 51.

14 (WHEREUPON, State's Exhibit Numbers 44 through 51  
15 were marked for identification.)

16 Q. Officer Bunker, I'm going to show you what is now  
17 part of State's identification 44 through 51. I'll ask  
18 you to take a look at these photos and explain to the jury  
19 what you see here?

20 (Pause.)

21 Q. What are those photos of?

22 A. These photos are of the taxi cab as it was upon my  
23 arrival. And also of the license that was located in the  
24 glove box of the taxi cab belonging to Mr. Antonio  
25 Moultrie.



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Angela Bunker - Direct Examination by Mr. McCoy*

99

1 Q. Now, once you arrived and you observed this taxi cab,  
2 was the victim -- or the Defendant, Antonio Moultrie,  
3 inside the cab at the time?

4 A. Not upon my arrival.

5 Q. Was he near the scene?

6 A. No, sir.

7 Q. Was he at the residence on Surrey Drive when you  
8 arrived?

9 A. Not as far as I know, sir.

10 MR. MCCOY: Your Honor, at this point we would  
11 like to move in State's 44 through 51 into evidence.

12 MS. RUNEY: No objection.

13 THE COURT: Without any objection exhibits 44  
14 through 51 are admitted into evidence.

15 MR. MCCOY: Thank you, Your Honor.

16 (WHEREUPON, State's Exhibit Numbers 44 through 51  
17 were admitted into evidence.)

18 MR. MCCOY: Court's indulgence.

19 Your Honor, may I approach the witness again?

20 THE COURT: You may, sir.

21 MR. MCCOY: Thank you. I would like to label  
22 these State's 52, 53, 54 and 55.

23 (WHEREUPON, State's Exhibit Numbers 52 through 55  
24 were marked for identification.)

25 Q. Thank you. Officer Bunker, can you take a look at

1 State's 52 through 55 and explain to me what those are?

2 A. Yes, sir. State Number 52 is the knife that was  
3 located, the green and white pocket knife that was located  
4 on the tire of the vehicle. State 53 is a shoe cast from  
5 the ground that was labeled numbered 15 with a placard.  
6 Number 54 is a shoe cast of the impression that was left  
7 in the ground that was numbered 14 with a placard. And  
8 number 55 is also a shoe casting and it was labeled number  
9 16 on scene with a placard.

10 Q. Now, Officer Bunker, is State's 52 a fair and  
11 accurate representation of the knife that you secured from  
12 the scene?

13 A. Yes.

14 Q. And is State's 53 through 55, are they a fair and  
15 accurate representation of the shoe prints and the  
16 castings that you took that evening?

17 A. Yes, sir.

18 MR. MCDOY: Your Honor, at this point we move 52  
19 through 55 into evidence.

20 MS. RUNEY: No objection.

21 THE COURT: Without any objection, 52 through 55  
22 is into evidence.

23 (WHEREUPON, State's Exhibit Numbers 52 through 55  
24 were admitted into evidence.)

25 Q. Now, Officer Bunker, you've testified that you

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Angela Bunker - Direct Examination by Mr. McCoy*

101

1 observed the knife and when you found it, it was closed?

2 A. Yes, sir.

3 Q. When you take it and test it and you swab it, do you  
4 actually wipe the blade down?

5 A. Yes, sir.

6 Q. And do you actually wipe the handle down?

7 A. The handle was not wiped down completely, but it had  
8 been disturbed.

9 Q. In deciding whether to wipe a blade down, do you  
10 factor in whether you are going to take into account  
11 finding DNA evidence versus fingerprint evidence?

12 A. Yes, sir.

13 Q. And what was your analysis on this particular  
14 occasion?

15 A. During this particular case the knife was examined by  
16 myself and my sergeant, Sergeant Hallman. Sergeant  
17 Hallman is able to identify fingerprints. And there was a  
18 small bit of latent detail that was located on the print  
19 within the blood. On scene we were unsure if we were  
20 going to be able to identify it or not. So to take the  
21 extra precaution, we decided to take the known DNA that  
22 was on the scene over the possible latent print that might  
23 have been there. So we took the known evidence against  
24 the possible evidence during this case.

25 MR. MCCOY: Court's indulgence, Your Honor.

1 Please answer any questions Ms. Runey may have for  
2 you.

3 THE COURT: You may cross examine the witness.

4 MS. RUNEY: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MS. RUNEY:

7 Q. Detective Bunker, I think you said there were some  
8 blood drops on the hood of the truck; is that correct?

9 A. I do not believe I said so, but there might have  
10 been.. No, ma'am.

11 Q. No blood found on the hood or the passenger side  
12 labeled number four?

13 A. Oh, I'm sorry, ma'am, that was on -- I counted that  
14 as the side. I apologize. The blood was located above  
15 the tire well, in that area. I apologize.

16 Q. In the picture where we saw the knife?

17 A. Yes, ma'am.

18 Q. And was there a trail of blood around the front of  
19 the truck?

20 A. There was droplets, yes, ma'am.

21 Q. And that was marked with number three?

22 A. Yes, ma'am.

23 Q. That's all I have. Thank you.

24 THE COURT: Any redirect?

25 MR. MCCOY: No, sir.

1 THE COURT: All right. Thank you. You may step  
2 down, Officer.

3 You may call your next witness.

4 MR. LEVENTIS: State calls Gerald Blake.

5 GERALD BLAKE,

6 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. LEVENTIS:

9 Q. Thank you, Mr. Blake. Can you tell the jury where  
10 you live?

11 A. [REDACTED], North Charleston.

12 Q. Is that in Charleston County?

13 A. Charleston County.

14 Q. Can you tell the jury what you do for a living?

15 A. I work for AT&T.

16 Q. How long have you worked for them?

17 A. Ten years.

18 Q. Are you married?

19 A. Yes, I am.

20 Q. Do you know the victim in this case, Daniel Jones?

21 A. Yes, I do.

22 Q. How do you know the victim?

23 A. He's married to my wife's niece.

24 Q. Okay. How long had you known Mr. Jones?

25 A. I'd say approximately about ten years.

- 1 Q. Were the two of you friends?
- 2 A. Very good friends.
- 3 Q. And do you know a person named George Hemingway who
- 4 lives on East Surrey Avenue?
- 5 A. Yes, I do.
- 6 Q. And how long have you known Mr. Hemingway?
- 7 A. Three or four years.
- 8 Q. How do you know him?
- 9 A. I know his father.
- 10 Q. So you know him through his father?
- 11 A. Right.
- 12 Q. And tell me, do you know the Defendant in this case,
- 13 Antonio Moultrie?
- 14 A. Yes, I do.
- 15 Q. How do you know Mr. Moultrie?
- 16 A. I met him through George Hemingway.
- 17 Q. You met him through George Hemingway?
- 18 A. Right.
- 19 Q. How long have you known Mr. Moultrie?
- 20 A. About two years, two or three years.
- 21 Q. Okay. I want to take you to the day of Tuesday,
- 22 February 5th of this year. On that afternoon, Tuesday,
- 23 February 5th, where were you?
- 24 A. I was at home. Well, I wasn't at home. I was at
- 25 work and then went home and Daniel called me.

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Gerald Blake - Direct Examination by Mr. Leventis

105

- 1 Q. Daniel Jones called you?
- 2 A. Yes, sir.
- 3 Q. Okay. And at some point did you get to East Surrey
- 4 Avenue?
- 5 A. Yes, I did.
- 6 Q. And that's in North Charleston as well; correct?
- 7 A. Correct.
- 8 Q. About how far from your house is that?
- 9 A. Two streets over.
- 10 Q. Okay. Did you go over there with anyone?
- 11 A. Daniel came and picked me up.
- 12 Q. Daniel Jones, the victim in this case, came and
- 13 picked you up?
- 14 A. Correct.
- 15 Q. Okay. And do you remember the address at East
- 16 Surrey Avenue that you were hanging out at?
- 17 A. No. I don't know the address.
- 18 Q. Okay. Were you inside of the house or were you
- 19 outside?
- 20 A. We were outside.
- 21 Q. In the front yard or the backyard?
- 22 A. In the front yard.
- 23 Q. At some point did the Defendant, Tony Moultrie, come
- 24 into the yard that you were hanging out at?
- 25 A. Yes, he did.

1 Q. Let me ask you this. Who else was there with you at  
2 the -- in the yard on East Surrey Avenue?

3 A. It was George Hemingway and about five more fellows,  
4 guys that were hanging out.

5 Q. Okay. Danny Jones was there?

6 A. And Daniel.

7 Q. And when you originally got there was Tony Moultrie  
8 there?

9 A. No. He wasn't there. He was down the street.

10 Q. He was down the street. Okay. When he came into  
11 the yard did he drive up or did he walk up?

12 A. He walked.

13 Q. Do you know if the Defendant, Tony Moultrie, lived  
14 on East Surrey Avenue at that time, February 5, 2008?

15 A. Yes, he did.

16 Q. He did? Okay. Now, when the Defendant walked into  
17 the yard did he do anything to Danny Jones?

18 A. Yes, he did.

19 Q. Can you tell the jury what he did?

20 A. He came up behind him and ran his hand into his  
21 pocket.

22 Q. He stuck his hand into Danny Jones's pocket?

23 A. Correct.

24 Q. And how did Mr. Jones respond to that?

25 A. He didn't like it. And he told him, don't put your



1 hands in my pocket.

2 Q. Was that the end of it or did Mr. Jones and Mr.

3 Moultrie have an argument?

4 A. It wasn't an argument. They were talking and Tony,

5 he didn't like it. He said, you know, I was playing with

6 you. Danny says, Tony, don't put your hand in my pocket.

7 Q. Okay.

8 A. And Tony was kind of upset about it.

9 Q. At some point did you leave Surrey Avenue, the front

10 yard that you were hanging out in?

11 A. Yes, we did.

12 Q. You left with somebody?

13 A. Me and Daniel.

14 Q. You and Danny Jones left?

15 A. Right.

16 Q. Whose idea was it to leave?

17 A. Well, both of us said we was going in early. He got

18 a phone call from a friend and then he said, let's go out

19 here. Tony was talking.

20 Q. Tony was talking to Danny?

21 A. Right. And Danny was on the phone so he said,

22 Blake, let's go. So we went and got in the truck to go.

23 Q. Danny Jones said, Blake, let's go?

24 A. Right.

25 MS. RUNEY: Objection, Your Honor.

1 THE COURT: What's your objection?

2 MS. RUNEY: Hearsay.

3 THE COURT: I sustain the objection.

4 Q. Was it Daniel Jones's idea to leave?

5 A. Yeah.

6 MS. RUNEY: Objection, Your Honor.

7 THE COURT: Overrule that objection.

8 Q. And how did you leave East Surrey Avenue? Were you  
9 driving or were you walking?

10 A. Driving.

11 Q. Whose car would you driving?

12 A. Daniel Jones's truck.

13 Q. What kind of car were you driving?

14 A. It's a little pickup truck.

15 Q. Pick-up truck. Okay. Were you driving Daniel Jones  
16 truck or was he driving?

17 A. No, he was driving.

18 Q. He was driving. Okay. And as you were driving away  
19 from East Surrey Avenue did the Defendant say anything to  
20 Daniel Jones?

21 A. Yes, he did.

22 MS. RUNEY: Objection, Your Honor.

23 MR. LEVENTIS: What's the objection?

24 THE COURT: This is -- what's the purpose of the  
25 testimony?

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Gerald Blake -Direct Examination by Mr. Leventis*

109

1 MR. LEVENTIS: These are the Defendant's  
2 statements offered against the Defendant. It's not even  
3 hearsay. It's under ---

4 THE COURT: The Defendant is in the truck?

5 MR. LEVENTIS: No. I'm sorry. My question is,  
6 as the victim and Mr. Blake were driving away did the  
7 Defendant say anything to them?

8 THE COURT: Did the Defendant say anything --  
9 oh, as they drove away from the yard? Okay. I'll allow  
10 that.

11 Q. Did the Defendant, Tony Moultrie, say anything to  
12 you as you were driving away that day, excuse me, to  
13 Daniel Jones?

14 A. Before we drove off.

15 Q. What did he say?

16 A. He speak about Daniel's mother.

17 Q. I appreciate your concern for the jury. Can you  
18 tell me exactly what he said?

19 A. He told Daniel his mother suck penis.

20 Q. And did he do anything? Did the Defendant, Tony  
21 Moultrie, do anything as you and Danny were driving away?

22 A. Yes, he did.

23 Q. What did he do?

24 A. Kicked the truck.

25 Q. Did you see him kick it?

1 A. I was in the truck.

2 Q. Okay. So did you see him kick the truck or did you  
3 hear him kick the truck?

4 A. Yes, I heard him kick the truck.

5 Q. Okay. And nonetheless, Danny Jones drove away;  
6 right?

7 A. Danny Jones answered him -- answered his question.

8 Q. And then did Danny Jones stop the truck or did he  
9 continue to drive away?

10 A. No. We backed up and drove off.

11 Q. You drove off. Okay.

12 MR. LEVENTIS: Beg the court's indulgence.

13 Your Honor, may I approach the witness?

14 THE COURT: Yes, sir.

15 Q. I'm going to show you what has been marked State's  
16 Exhibit 22 for identification purposes. I'm going to ask  
17 you to take a look at it. Take as long as you need. Tell  
18 me what that is, if you could?

19 A. It's a map of the area that we lived in.

20 Q. That's a map of the area you live in?

21 A. Uh-huh (affirmative).

22 Q. Is it a fair and accurate depiction of the  
23 neighborhood you live in?

24 A. Pretty much, uh-huh (affirmative).

25 Q. Do you see anything that is not accurate?

1 A. No.

2 MR. LEVENTIS: May I approach the witness, Your  
3 Honor?

4 THE COURT: You may.

5 MR. LEVENTIS: At this time, Your Honor, I would  
6 like to move State's Exhibit 42 into evidence.

7 MS. RUNEY: No objection.

8 THE COURT: Without objection Exhibit 42 is into  
9 evidence.

10 (WHEREUPON, State's Exhibit Number 42 was entered  
11 into evidence.)

12 MR. LEVENTIS: And I would like to publish it.

13 THE COURT: You may, sir.

14 Q. What I would like you to do, Mr. Blake, if you would  
15 ...

16 MR. LEVENTIS: May I approach the witness, Your  
17 Honor?

18 THE COURT: Yes, sir.

19 Q. What I would like you to do, this is a pointed. See  
20 how it puts that on the screen? If you would, using this  
21 pointer, show the jury approximately where on East Surrey  
22 Avenue you were hanging out that day. And I can certainly  
23 move ... Can you use that pointer and show the jury where  
24 you were hanging out? Yes sir, press the red button and  
25 the laser will ...

1 A. (Indicating.)

2 Q. Would you mind speaking a little bit louder, Mr.

3 Blake?

4 A. This would be Accabee Road. Come down Accabee Road

5 and turn onto East Surrey Road and the houses are

6 somewhere right in this area.

7 Q. Okay, sir. You're pointing to the top left part of

8 the screen there? And if you would, using that map,

9 please show the jury the route that you and Danny Jones

10 took to get home or to get to your house at 2605 Wye Lane

11 that afternoon?

12 A. We came down East Surrey, turned on Accabee Road and

13 turned on Wye Lane, which is my street right here. And I

14 live in the third house from the corner on Lowry Drive.

15 Q. Very good. So suffice it to say, it was several

16 miles that you drive to get back to your house? Is that a

17 fair and accurate statement?

18 A. Right.

19 Q. And while you and Danny Jones were driving back to

20 your house from East Surrey Avenue were you aware that

21 anyone was following you?

22 A. No, I wasn't.

23 Q. Okay. And approximately how long would it take you

24 to drive from East Surrey Avenue back to your house on Wye

25 Lane?

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Gerald Blake - Direct Examination by Mr. Leventis

113

1 A. Three to four minutes.

2 Q. Three to four minutes? Did you go anywhere between  
3 East Surrey Avenue and Wye Lane?

4 A. No.

5 Q. Did you go back straight home?

6 A. Straight home.

7 (WHEREUPON, State's Exhibit Numbers 56 and 57 were  
8 marked for identification.)

9 MR. LEVENTIS: Your Honor, may I approach the  
10 witness?

11 THE COURT: You may, sir.

12 Q. I'm going to show you what has been marked State's  
13 Exhibit 56 and 57 and ask you to identify these photos, if  
14 you could, for the jury?

15 A. Yes. They're pictures of my home.

16 Q. Pictures of your home?

17 A. Yeah.

18 Q. Are they fair and accurate representations of your  
19 front yard?

20 A. Yeah.

21 MR. LEVENTIS: Your Honor, at this time I would  
22 move State's 56 and 57 into evidence.

23 MS. RUNEY: No objection.

24 THE COURT: Without any objection, exhibits 56  
25 and 57 are into evidence.

1 (WHEREUPON, State's Exhibit Numbers 56 and 57 were  
2 admitted into evidence.

3 Q. You still have the pointer I gave you or even if you  
4 want to use your fingers, could you tell the jury, please,  
5 where Danny Jones parked his truck in your yard when you  
6 pulled up that afternoon?

7 A. Over here on the right.

8 Q. Over on the right side?

9 A. In front of this tree.

10 Q. In front of the tree?

11 A. Right there.

12 Q. Was the truck facing the house?

13 A. Correct.

14 Q. It was facing the house?

15 A. Right.

16 Q. What did you and Danny Jones do when you pulled up  
17 into your yard?

18 A. We exited the vehicle and Danny went on my porch.

19 Q. Okay. So you exited the vehicle?

20 A. Correct.

21 Q. And is that the porch you are referring to, sir?

22 A. Yes, right here.

23 Q. And after that did you go in the house?

24 A. No, I didn't.

25 Q. Okay. You remained in the yard. At some point did



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Gerald Blake - Direct Examination by Mr. Leventis*

115

1 the Defendant drive in your yard?

2 A. Yes, he did.

3 Q. Was he driving, was he walking?

4 A. He was driving the cab.

5 Q. He was driving the cab?

6 A. Yes, sir.

7 Q. Is he a taxi driver, do you know?

8 A. Yes, he is a taxi driver.

9 Q. Okay. Approximately how long after you and Danny  
10 Jones arrived at your house was it that Tony Moultrie  
11 arrived in your yard?

12 A. Maybe two minutes I guess.

13 Q. About two minutes?

14 A. Yes.

15 Q. Okay. Let me show you State's 57 again. You said  
16 that Danny Jones parked in front of that tree facing the  
17 house; correct?

18 A. Correct.

19 Q. And where did, where did the Defendant park his taxi  
20 cab?

21 A. On the street behind Daniel's truck.

22 Q. On your side of the street or the other side of the  
23 street?

24 A. On my side of the street.

25 Q. On your side of the street. So essentially was he

1 blocking in Daniel Jones?

2 A. Yes, pretty much.

3 Q. Where were you when the Defendant pulled up into the  
4 yard?

5 A. I was at the front step. Daniel was already on the  
6 porch.

7 Q. Danny was on the porch. Did the Defendant get out  
8 of his car?

9 A. Yes, he did.

10 Q. Did he approach you?

11 A. Yes. He was walking toward us.

12 Q. Okay. Did he have anything in his hands at that  
13 time?

14 A. I didn't see anything.

15 Q. You didn't see anything in his hands? Okay. Who  
16 else was in your yard at that time?

17 A. My wife, she had just got in her car. She was  
18 getting ready to back up to go to church.

19 Q. Okay. So the only people in your yard at the moment  
20 the Defendant pulled up was your wife, who was in her car;  
21 is that correct?

22 A. Correct.

23 Q. Danny Jones, yourself and the Defendant?

24 A. Correct.

25 MS. RUNEY: Your Honor, I'm going to object to

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Gerald Blake - Direct Examination by Mr. Leventis

117

1 leading this witness.

2 THE COURT: Sustained.

3 Q. Where was your wife going?

4 A. Church.

5 Q. Did she stopped to see what was going on where did  
6 she pull away?

7 A. No, she didn't stop.

8 Q. She left to driveway?

9 A. Yes, she did.

10 MS. RUNEY: I'm going to object again, Your  
11 Honor, for leading this witness.

12 THE COURT: Overruled.

13 Q. Did the Defendant approached you and Danny Jones?

14 A. He started to walk up toward us.

15 Q. Okay. Without telling the jury what you said, if  
16 you said anything, did you say anything to the Defendant?

17 A. Yes, I did.

18 Q. And did Danny Jones say anything to the Defendant at  
19 that time?

20 A. No. Daniel was talking to me.

21 Q. Okay. What, if anything, did the Defendant say to  
22 you?

23 MS. RUNEY: Objection, Your Honor.

24 THE COURT: What's your objection?

25 MS. RUNEY: Hearsay.

- 1 THE COURT: Overruled.
- 2 Q. You can answer the question, Mr. Blake.
- 3 A. The Defendant told me, he said, I'm not going to
- 4 disrespect your wife.
- 5 Q. He said he wasn't going to disrespect your wife?
- 6 A. Yes.
- 7 Q. At that point what did you do?
- 8 A. I saw they was going to talk, so I said, I'm going
- 9 to walk around the house to take me a leak.
- 10 Q. Had your wife left the yard though?
- 11 A. Yes. She had already gone.
- 12 Q. And you went to the back of your house to urinate,
- 13 is that what you're saying?
- 14 A. Yes.
- 15 Q. How long were you back there?
- 16 A. Maybe a minute, minute and a half.
- 17 Q. Minute, minute and a half. Did you hear anything
- 18 while you were back there?
- 19 A. No, I didn't.
- 20 Q. If you would, using the photo that's behind you, can
- 21 you show the jury which side of the house you went around?
- 22 A. I went around this side, around that tree.
- 23 Q. Okay. You went around to the backyard that way?
- 24 A. (Affirmative nod.)
- 25 Q. And then did you come back into the front yard?

- 1 A. Yes, I did.
- 2 Q. Which side of the house did you come back into the  
3 front yard on?
- 4 A. On this side.
- 5 Q. Okay. Did you see Danny Jones in the front yard when  
6 you came back around?
- 7 A. Yes, I did.
- 8 Q. Where was he?
- 9 A. Standing behind the truck over here.
- 10 Q. He was standing towards the back of the truck?
- 11 A. The back of the truck on the passenger side.
- 12 Q. On the passenger side towards the back. Do you  
13 recall what, if anything, he was doing?
- 14 A. He was on the telephone.
- 15 Q. He was on the telephone. But he was standing? He  
16 hadn't fallen over?
- 17 A. No.
- 18 Q. Okay. Did you see the Defendant when you came into  
19 the front yard?
- 20 A. Yes, I did.
- 21 Q. And where was the Defendant?
- 22 A. He was on the driver's side by the front tire.
- 23 Q. Okay. So he was by the front of the truck?
- 24 A. Right.
- 25 Q. At that point, what, if anything, did Danny Jones say

1 to you?

2 A. I said something to Tony first before Danny answered.

3 Q. Did Danny say anything to you?

4 A. Yes, Danny did.

5 Q. What did he say?

6 A. Daniel said he was ---

7 MS. RUNEY: Objection, Your Honor.

8 MR. LEVENTIS: Excited utterance, Your Honor.

9 THE COURT: Do you have any foundation for this?

10 I sustain the objection at the present time.

11 Q. Did you learn that Danny Jones -- withdraw that.

12 When you came into the front yard, did you learn that

13 Danny Jones had been stabbed?

14 A. No, I didn't know at the time.

15 Q. At some point did you learn that Danny Jones had been

16 stabbed?

17 A. Yes, I did.

18 Q. How did you learn that?

19 A. Daniel told me.

20 Q. What did he say?

21 A. He told me that -- he said, he lied. He said, he

22 lied, he cut me with a box cutter.

23 Q. Who did you understand Danny Jones to be talking

24 about?

25 A. Tony.

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Gerald Blake - Direct Examination by Mr. Leventis

121

1 Q. Tony. Tony Moultrie?

2 A. (Affirmative nod.)

3 Q. And when you came back into your front yard was there  
4 anyone besides Tony Moultrie and Danny Jones in the front  
5 yard?

6 A. No.

7 Q. Okay.

8 MR. LEVENTIS: Beg the court's indulgence one  
9 moment.

10 Q. What did you do at that point when you found out Tony  
11 had been stabbed?

12 A. Repeat the question.

13 Q. Excuse me. My mistake. What did you do at the  
14 moment you found out Danny Jones had been stabbed?

15 A. I grabbed Tony by his arm.

16 Q. Okay.

17 A. And I told him, I said, I told you not to come around  
18 here with that. And he said -- he told me that Danny draw  
19 -- he said, your boy draw a knife on me.

20 Q. And then did Tony remain at the scene?

21 A. No, he didn't.

22 Q. How did he leave?

23 A. He walked away and got in his cab.

24 Q. And then he drove off?

25 A. Yeah.

1 Q. Okay. Prior to the Defendant leaving did George

2 Hemingway arrive on the scene?

3 A. Yes. George and another guy.

4 Q. George and another guy. Where did they come from?

5 A. East Surrey.

6 Q. Okay. And can you tell the jury, looking at this  
7 photo, approximately where George Hemingway and the other  
8 person came into your yard?

9 A. From over there. They parked behind Tony's cab.

10 Q. Okay.

11 MR. LEVENTIS: Beg the court's indulgent for one  
12 moment, Your Honor.

13 THE COURT: Yes, sir.

14 MR. LEVENTIS: I have a few more questions, Your  
15 Honor.

16 Q. Mr. Blake, before you went into the backyard, can you  
17 tell me what was Danny Jones's temperament at that moment?

18 A. He wasn't upset or anything.

19 Q. He wasn't upset?

20 A. No. He just was going in the house and was going to  
21 wait on his wife to pick him up.

22 Q. Okay. Very good.

23 MR. LEVENTIS: No further questions at this  
24 time, Your Honor.

25 Please answer any questions Ms. Runey has.



1 THE COURT: You may cross examine the witness.

2 MS. RUNEY: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. RUNEY:

5 Q. Good afternoon, Mr. Blake. I just want to make sure  
6 I've got this right. When you came out, Tony was on the  
7 driver's side of Mr. Jones's truck?

8 A. Correct.

9 Q. And when you went over to see Mr. Moultrie and say  
10 something to him, he said, your boy drew a knife on me;  
11 right?

12 A. Correct.

13 Q. Tony said that?

14 A. Tony said that.

15 Q. That's all I have. Thank you.

16 THE COURT: Any redirect?

17 MR. LEVENTIS: Nothing from the State, Your  
18 Honor.

19 THE COURT: Thank you, sir. You may step down.

20 Mr. Foreman, ladies and gentlemen, this might be a  
21 good time for us to take a short break. I'll let you go  
22 back to your jury room and refresh yourself. We'll take  
23 about a fifteen minute break.

24 When you come back, what I've had the clerk do, since  
25 one of the jurors got excused for cause based upon a

1 relationship with one of the witnesses, I've had the clerk  
2 select one of the alternates. Ms. Todd, you can just move  
3 over one seat. And then the other alternate. You'll be  
4 the twelfth juror now and then we'll have one alternate to  
5 proceed.

6 Again, don't discuss the case. I'll let you go back  
7 and take a short break.

8 (WHEREUPON, the jury exited the open court at  
9 approximately 3:58 p.m.)

10 THE COURT: We randomly selected one of the two  
11 names of the alternates pursuant to the statutory  
12 requirements. Ms. Todd happened to be the first juror,  
13 but it also happened that she was selected randomly.  
14 She'll be sitting as the twelfth juror. Let's take a  
15 short break.

16 MS. RUNEY: Thank you, Your Honor.

17 MR. LEVENTIS: Thank you, Your Honor.

18 (WHEREUPON, court stood at recess for a short break.)

19 THE COURT: Ready to proceed?

20 MR. LEVENTIS: Your Honor, we wanted to address  
21 one matter before we get going again. I think there's --  
22 we're a little confused as to what's in and what's not  
23 into evidence at this point. I wanted to double check  
24 that before we get started. I've got my list, but it may  
25 be that it doesn't match up exactly with the court

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Gerald Blake - Cross Examination by Ms. Runey*

125

1 reporter's list.

2 THE COURT: All right. Be glad for you and the  
3 court reporter and the defense counsel to work it out.

4 MR. LEVENTIS: I don't think they've objected to  
5 any of this stuff. Okay. Since there are no objections  
6 and Exhibits 1 through 55 have been put in front of the  
7 jury and in front of defense counsel, I would move those  
8 into evidence at this time.

9 THE COURT: All right. I think I've announced  
10 that they are into evidence. 1 through 5 and 6 through  
11 36. Has anything been said about 37 to 42?

12 MR. LEVENTIS: Your Honor, other than the  
13 testimony of Angie Bunker.

14 THE COURT: Are there Exhibits 37, 38, 39, 40,  
15 41?

16 MR. LEVENTIS: Yes, Your Honor. Those are  
17 pictures of the knife that was collected at the scene of  
18 the crime.

19 THE COURT: Have they been marked?

20 MR. MCCOY: Yes, sir.

21 MR. LEVENTIS: They've been marked.

22 THE COURT: Okay. So all exhibits, 1 through  
23 55, without objection, are into evidence.

24 (WHEREUPON, State's Exhibit Numbers 37 through 42  
25 were admitted into evidence.)

1 MR. LEVENTIS: Thank you, Your Honor.

2 THE COURT: We'll try to stop about five fifteen  
3 or so, if we can, or five o'clock, depending on how the  
4 witnesses are flowing. I don't know whether you've got  
5 witnesses to go that long or how long your witnesses are  
6 going to be, but ...

7 MR. LEVENTIS: My next witness will take about  
8 as long as Mr. Blake.

9 THE COURT: All right. Well, we'll see where we  
10 stand then.

11 MR. LEVENTIS: Okay.

12 THE COURT: All right. Let's bring our jury  
13 back.

14 (WHEREUPON, the jury entered the open court at  
15 approximately 4:20 p.m.)

16 BAILIFF: All jurors are present, Your Honor.

17 THE COURT: All right. Thank you.

18 You may call your next witness, Solicitor.

19 MR. LEVENTIS: Thank you, Your Honor. The State  
20 calls George Hemingway.

21 GEORGE HEMINGWAY,

22 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. LEVENTIS:

25 Q. Thank you, Mr. Hemingway. Good afternoon. Can you

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
George Hemingway - Direct Examination by Mr. Leventis

127

- 1 tell the jury where you live?
- 2 A. [REDACTED]
- 3 Q. And that's in North Charleston?
- 4 A. Yes, sir.
- 5 Q. How long have you lived there?
- 6 A. About five years, a little past, little more.
- 7 Q. What do you do for a living?
- 8 A. Drive a cab.
- 9 Q. How long have you done that?
- 10 A. About eighteen, nineteen years.
- 11 Q. Do you know the defendant in this case, Tony
- 12 Moultrie?
- 13 A. Yeah.
- 14 Q. How do you know him?
- 15 A. He lives down the street from me.
- 16 Q. How long have you known him?
- 17 A. About two years or so.
- 18 Q. Are the two of you friends?
- 19 A. Yeah.
- 20 Q. Have you ever seen the Defendant, Tony Moultrie,
- 21 carrying a pocket knife?
- 22 A. Yeah.
- 23 Q. Let me take you back to February 5th of this year.
- 24 Did you see the Defendant, Tony Moultrie, carrying a
- 25 pocket knife on that day?

1 A. Yeah.

2 Q. Okay. Can you tell the jury approximately when  
3 during that day you saw the Defendant carrying a pocket  
4 knife?

5 A. It was that evening, in the evening time, about four  
6 or five o'clock, something like that.

7 Q. Okay. And what type of knife was it?

8 A. A little pocket knife about that size right there.

9 Q. Okay. Was it a folding knife that folded in?

10 A. Yeah.

11 Q. Okay. Can you tell the jury what color it was?

12 A. I couldn't tell you the color. I know it was silver  
13 to the top.

14 Q. It was silver on the top?

15 A. Yeah.

16 Q. The blade was silver?

17 A. Yeah.

18 Q. Okay. And again, can you tell us approximately how  
19 large it was?

20 A. Well, I'd say about two inches, something like that.

21 Q. Okay.

22 MR. LEVENTIS: Your Honor, may I approach the  
23 witness?

24 THE COURT: You may, sir.

25 Q. Mr. Hemingway, I'm going to show you what's been

1 marked as State's for evidence 37 and ask you to examine  
2 that photo for me.

3 A. The top part looked something like that.

4 MR. LEVENTIS: Your Honor, State's 37 is already  
5 into evidence. May I publish it to the jury?

6 THE COURT: You may, sir.

7 Q. Right behind you I've got what's marked State's  
8 evidence 37. Is this the same type of knife that you saw  
9 Tony Moultrie carrying on February 5th of this year?

10 A. It was something like that.

11 Q. Something like that. Okay. And it's the same --  
12 approximately the same size knife?

13 A. Yeah.

14 Q. Okay. Similar color, same color?

15 A. The top of the blade, yeah. But you couldn't tell,  
16 it was so small in his hand in the back, you couldn't tell  
17 what color it was.

18 Q. Couldn't really tell. Can you say one way or the  
19 other whether this is the knife that Tony Moultrie had  
20 that day?

21 A. No, I can't say.

22 Q. Okay. Now, the victim in this case, Daniel Jones,  
23 did you know Danny Jones?

24 A. Yeah.

25 Q. How did you know Danny Jones?

- 1 A. Through Blake.
- 2 Q. Gerald Blake?
- 3 A. Yeah.
- 4 Q. How long had you known Mr. Jones?
- 5 A. I'd say about a year, little over.
- 6 Q. And then you know Gerald Blake?
- 7 A. Yeah.
- 8 Q. And how do you know Mr. Blake?
- 9 A. He's my father.
- 10 Q. Your father. Does Mr. Blake live in the same
- 11 neighborhood as you?
- 12 A. Right around the corner.
- 13 Q. Okay. How long have you known Mr. Blake?
- 14 A. I'd say about two, three years.
- 15 Q. Let me take you back to February 5th of this year.
- 16 Were you hanging out on East Surrey Avenue that afternoon?
- 17 A. Yeah.
- 18 Q. Okay. And where on East Surrey Avenue were you?
- 19 A. We was by a friend of mine house.
- 20 Q. Were you inside the house?
- 21 A. No. We was outside in the yard.
- 22 Q. Outside in the yard. Okay. What were you doing?
- 23 A. Sitting there talking and drinking.
- 24 Q. Was Gerald Blake there with you?
- 25 A. Yeah.



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*George Hemingway - Direct Examination by Mr. Leventis*

131

- 1 Q. Was Danny Jones there with you?
- 2 A. Yeah.
- 3 Q. Okay. At some point did the Defendant, Tony
- 4 Moultrie, go into the yard you were hanging out in?
- 5 A. Yeah.
- 6 Q. Did he drive up or did he walk up?
- 7 A. He walked.
- 8 Q. And do you know whether the Defendant, Tony Moultrie,
- 9 lived on East Surrey Avenue at that time?
- 10 A. Yeah.
- 11 Q. Okay. Did you see the Defendant do anything to Danny
- 12 Jones when the Defendant came up into the yard?
- 13 A. At first he was just standing there and then he put
- 14 his hands in his pocket.
- 15 Q. The Defendant put his hand in Danny Jones's pocket?
- 16 A. Yeah.
- 17 Q. And how did Mr. Jones respond?
- 18 A. Pulled away from him and told him not to put his
- 19 hands in his pocket.
- 20 Q. Did the two men get into an argument?
- 21 A. They argued for just a moment, yeah.
- 22 Q. They argued for a little bit?
- 23 A. Yeah.
- 24 Q. About how long; do you know?
- 25 A. I'd say like five minutes.

- 1 Q. Okay. At some point did you go into the house?
- 2 A. Yeah.
- 3 Q. Okay. And then you came back out of the house?
- 4 A. Yeah.
- 5 Q. Why did you come back out of the house?
- 6 A. I hear something hit.
- 7 Q. I'm sorry?
- 8 A. I hear something hit.
- 9 Q. You heard something hit. What did you see when you
- 10 came back out of the house?
- 11 A. I seen Daniel driving off.
- 12 Q. Okay. Do you know what that noise was that you
- 13 heard?
- 14 A. Not at the time I get to the door. They tell me Tony
- 15 kicked the truck.
- 16 Q. Okay. And then you saw Danny Jones driving off; is
- 17 that correct?
- 18 A. Yeah.
- 19 Q. Okay. When Danny Jones drove away, did the
- 20 Defendant, Tony Moultrie, say anything to you?
- 21 A. Not at the time. But after he's gone, he gets in his
- 22 car. I say, where you going? He say, I'm going to fuck
- 23 him up, I'm going to kill him, and he jumped in his car.
- 24 I say, you ain't going to do shit. I get in my car right
- 25 behind him.

1 Q. Okay. So can you go over that slowly. What did the  
2 Defendant, Tony Moultrie, say to you before he got in his  
3 car?

4 A. He say, I'm going to fuck him up.

5 Q. Okay.

6 A. That's what he say to me. He had his back turned and  
7 he's talking loud and I'm talking too.

8 Q. And then what did the Defendant do?

9 A. He get in his car and he goes.

10 Q. And what did you do?

11 A. I get in my car right behind him.

12 Q. Why did you get in your car and follow the Defendant?

13 A. Because I knowed he was going back to Blake's house  
14 and I didn't want him to start no argument or do nothing  
15 like that.

16 Q. Were you going to stop the Defendant from starting an  
17 argument?

18 A. Yeah.

19 Q. Okay. And the Defendant is your friend?

20 A. Yeah.

21 Q. Okay.

22 MR. LEVENTIS: Beg the court's indulgence.

23 Q. Okay. So when you got in your car could you see the  
24 Defendant -- well, first of all, what kind of car was the  
25 Defendant driving?

1 A. He had a green cab. I think his car was green. No,  
2 white.

3 Q. But it was a taxi cab?

4 A. Yeah.

5 Q. Okay. When you got in your car could you see the  
6 Defendant's taxi cab?

7 A. Not at the time. We was parked different ways.

8 Q. Okay. So how did you know where to go to follow the  
9 Defendant?

10 A. Because I know he was going to Blake's house. I know  
11 where Blake live at.

12 Q. You know where Gerald Blake lives?

13 A. Yeah.

14 Q. And you knew the Defendant was going to go over  
15 there?

16 A. (Affirmative nod.)

17 MR. LEVENTIS: May I approach the witness, Your  
18 Honor?

19 THE COURT: You may, sir.

20 Q. I'm going to show you what's been placed into  
21 evidence as State's Exhibit 42 and ask you to look that  
22 over. Take as long as you need. And then I'm going to  
23 ask you some questions about it.

24 (Pause.)

25 Q. Have you had a chance to look at that now?

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
George Hemingway - Direct Examination by Mr. Leventis

135

- 1 A. Uh-huh (affirmative).
- 2 Q. Do you recognize this neighborhood?
- 3 A. Yeah.
- 4 Q. Is that your neighborhood off Dorchester Road?
- 5 A. Yeah.
- 6 Q. Is it a fair and accurate depiction of your  
7 neighborhood?
- 8 A. Right.
- 9 Q. Mr. Hemingway, ---
- 10 MR. LEVENTIS: May I approach the witness Your  
11 Honor?
- 12 THE COURT: You may, sir.
- 13 Q. I'm going to ask you to take this laser pointer, you  
14 see that?
- 15 A. Uh-huh (affirmative).
- 16 Q. Press that red button. And if you would, show the  
17 jury where you were hanging out on East Surrey Avenue that  
18 afternoon?
- 19 A. What do ---
- 20 Q. The red button, press the red button down and hold  
21 it. It's the top one. Up further. The red button. That  
22 one, yeah.
- 23 A. Right in here.
- 24 Q. You were hanging out around the yard on Surrey  
25 Avenue?

1 A. Yeah.

2 Q. Okay. Using the same map, if you would, show the  
3 jury what route you took to get over to Gerald Blake's  
4 house?

5 A. From here, I make a right, go on past Madden -- take  
6 a right, go on past Madden and make a left.

7 Q. Okay. And did you get -- did you drive straight  
8 there or did you go anywhere first?

9 A. I went straight there, but I passed the turn so I  
10 had to back up.

11 Q. Were you driving fast?

12 A. Yeah.

13 Q. Is that why he passed Wye Lane?

14 A. Uh-huh (affirmative).

15 Q. Why were you driving fast?

16 A. To catch up to him.

17 Q. To catch up to Tony. How long did it take you to  
18 get over to 2605 Wye Lane?

19 A. You be driving -- with the speed I was driving, ten,  
20 twelve seconds. Not very long.

21 Q. Now, let me talk to you about when you were driving  
22 at Gerald Blake's house. Let me show you what's been  
23 marked State's Exhibit 57 and placed into evidence. Do  
24 you recognize that?

25 A. Yeah.

1 Q. Okay. Using the pointer, if you would, can you show  
2 the jury where approximately you parked or where you drive  
3 into Gerald Blake's yard?

4 A. Well, from that you can't see because I was on  
5 further back.

6 Q. Can you see it now?

7 A. Okay. I was parked right around in here. On the  
8 street.

9 Q. And when you pulled up was Danny Jones's pickup  
10 truck in the front yard?

11 A. Yeah.

12 Q. And can you showed the jury where it was parked?

13 A. Right back up here.

14 Q. Okay. Was it facing the house?

15 A. No. It was turned the other way.

16 Q. It was facing away from the house?

17 A. Yeah.

18 Q. And was the Defendant, Tony Moultrie's taxicab, in  
19 the yard when you pulled up?

20 A. Yeah. It was a little to the front.

21 Q. Was it -- where was it parked ---

22 A. Right in here.

23 Q. Okay. Was it part behind Danny Johnson struck?

24 A. No. In front.

25 Q. Okay. Kind of in front? Okay. All right. When

- 1 you came into Gerald Blake's yard, did you see Danny
- 2 Jones?
- 3 A. Yeah.
- 4 Q. Where was he?
- 5 A. Tony was coming from behind back here.
- 6 Q. They were coming -- can you show the jury on that?
- 7 A. They were coming from back here.
- 8 Q. They were coming from over there. Okay. And could
- 9 you see anyone else in the yard?
- 10 A. No.
- 11 Q. Was Tony Moultrie in the yard?
- 12 A. Yeah.
- 13 Q. So the only people you could see in the yard were
- 14 Danny Jones and Tony Moultrie?
- 15 A. Yeah.
- 16 Q. Okay. At some point after you arrived at 2605 Wye
- 17 Lane, did you become aware that Danny Jones had been
- 18 stabbed?
- 19 A. Yeah.
- 20 Q. How did you become aware?
- 21 A. He told me when he came out of the backyard.
- 22 Q. Danny Jones told you?
- 23 A. Yeah.
- 24 Q. Did he say who stabbed him?
- 25 A. Yeah.



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*George Hemingway - Direct Examination by Mr. Leventis*

139

- 1 Q. Who did he say stabbed him?
- 2 A. Tony.
- 3 Q. Did the Defendant say anything to you at that time?
- 4 A. No.
- 5 Q. Did the Defendant remain at Gerald Blake's house?
- 6 A. No.
- 7 Q. What did he do?
- 8 A. He got in the car and he go.
- 9 Q. In his car?
- 10 A. Yeah.
- 11 Q. And he drove away?
- 12 A. (Affirmative nod.)
- 13 Q. Okay. What did you do next?
- 14 A. We called the police.
- 15 Q. You called the police?
- 16 A. He called and I was talking for him because he
- 17 couldn't talk at that time. So I was giving them the
- 18 address and gave him back the phone and he called his
- 19 mama.
- 20 Q. Okay. Can you tell the jury who called the police?
- 21 A. He dialed the number. I did the talking and gave
- 22 him back the phone.
- 23 Q. When you say he are you referring to Daniel Jones?
- 24 A. Yeah.
- 25 Q. And did you hang out at Gerald Blake's house after

1 that?

2 A. No. I left after that.

3 Q. Okay. Did you drive?

4 A. Yeah.

5 Q. Did you come back?

6 A. Yeah.

7 Q. Did you speak with Tony Moultrie later that evening?

8 A. Yeah. Later on in the night he called me on the

9 phone.

10 Q. Tony Moultrie called you on the phone?

11 A. Yeah.

12 Q. Where were you when Tony Moakley called you on the

13 phone?

14 A. I was back at Blake's house by then.

15 Q. You were back at Gerald Blake's house?

16 A. (Affirmative nod.)

17 Q. What did Tony Moultrie say to you when he called you

18 on the phone?

19 A. He called to see how Danny be doing.

20 Q. Okay. Did he tell you anything else?

21 A. Huh?

22 Q. Did he tell you anything else?

23 A. I asked him why he did that. He say he make him

24 mad. That's all he said.

25 Q. You asked Tony Moultrie why he did that?

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*George Hemingway - Direct Examination by Mr. Leventis*

141

- 1 A. Yeah.
- 2 Q. And what was Tony Moultrie's response?
- 3 A. That he make him mad.
- 4 Q. Okay.
- 5 MR. LEVENTIS: Beg the court's indulgence one
- 6 moment, Your Honor.
- 7 Q. Did Tony Moultrie say anything else about why he
- 8 stabbed Danny Jones?
- 9 A. No, that's it. Then he hang up.
- 10 Q. That's it. And he hung up on you?
- 11 A. Uh-huh (affirmative).
- 12 Q. Okay. Subsequent to February 5th, 2008, after the
- 13 day that Danny Jones died, have you spoken to Tony
- 14 Moultrie about this case?
- 15 A. After he get out he mentioned it, but we never did
- 16 talk about it.
- 17 Q. You talked about it?
- 18 A. I said he mentioned it but we never did talk about
- 19 it.
- 20 Q. Okay. He mentioned it to you. Has Tony Moultrie
- 21 ever spoken to you about his Statement -- withdraw the
- 22 question, Your Honor. After you spoke with Tony Moultrie
- 23 on the phone on the day of February 5th, 2008, did you
- 24 speak to any police officers about what had happened?
- 25 A. Yeah.

- 1 Q. Do you remember who you spoke with?
- 2 A. I can't remember his name.
- 3 Q. Can't remember his name. Do you remember where you
- 4 were when you spoke to him? Do you remember where ---
- 5 A. He was standing in the yard.
- 6 Q. He was standing in Gerald Blake's yard?
- 7 A. Yeah, across the street.
- 8 Q. Okay. And was he writing down what you were saying
- 9 to him?
- 10 A. Not at the time. He was doing something else.
- 11 Q. He was doing something else. At some point did he
- 12 write down what you said to him?
- 13 A. Yeah. After me and Tony talked before the second
- 14 time.
- 15 Q. Okay. And did he read back what he wrote to you?
- 16 A. Yeah.
- 17 Q. Did you sign that statement?
- 18 A. Yeah.
- 19 Q. Okay. Now, at some point after February 5th, 2008
- 20 did Tony Moultrie try and speak with you about that
- 21 statement that you gave to the police?
- 22 A. He mentioned it to me.
- 23 Q. What did he say?
- 24 A. He said, I didn't say I was going to kill the
- 25 motherfucker. He said I didn't say that. And he say, why

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
George Hemingway - Cross Examination by Ms. Runey

143

1 are you telling everybody I get on your nerves? I said, I  
2 didn't know he was going to write down everything I say.

3 Q. So he wanted to talk about ---

4 A. No, that's the end of that.

5 Q. That's all? The only portion of your statement he  
6 wanted to talk about was the statement you said he made  
7 before he drove away?

8 A. Something grabbed our attention and we would start  
9 talking about something else and just never went back to  
10 it.

11 Q. Okay. Very good. To this day do you still consider  
12 Tony Moultrie to be your friend?

13 A. Yeah.

14 MR. LEVENTIS: Beg the court's indulgence one  
15 moment, Your Honor.

16 I have no further questions at this time. I would  
17 ask that you answer as any questions Ms. Runey has for  
18 you.

19 THE COURT: You may cross examine the witness.

20 MS. RUNEY: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MS. RUNEY:

23 Q. Good afternoon, Mr. Hemingway.

24 A. Good afternoon.

25 Q. Y'all were drinking on East Surrey?

- 1 A. Yeah.
- 2 Q. And y'all were joking around out there?
- 3 A. Yeah.
- 4 Q. And you saw Daniel Jones pulled out a knife too,
- 5 didn't you?
- 6 A. Yeah. He had a box cutter at one time.
- 7 Q. And that was on East Surrey that you saw this?
- 8 A. Yeah.
- 9 Q. And going to Wye Lane. You called 911?
- 10 A. He did.
- 11 Q. Did you talk to the dispatcher?
- 12 A. I just tell them where we was and I give him back
- 13 the phone.
- 14 Q. So he talked?
- 15 A. Yeah.
- 16 Q. And Tony left and you left too; didn't you?
- 17 A. Yeah. I left about -- I would say about a fifteen
- 18 minutes behind him.
- 19 Q. You didn't wait for the police; did you?
- 20 A. No, we didn't.
- 21 Q. And that's because you were drunk; right?
- 22 A. Blake was already come back by then.
- 23 Q. I'm sorry. I didn't hear you.
- 24 A. I said Blake had already come back outside by then.
- 25 And I was driving the car and I was afraid the police

1 would come running and I needed to move the car from  
2 around by there. That's when he tell me to leave.

3 Q. So you didn't know -- you didn't want the police to  
4 know that you were drunk?

5 MR. LEVENTIS: Objection, Your Honor,  
6 foundation.

7 THE COURT: I overrule the objection.

8 Q. Now, you know that Daniel Jones and Tony Moultrie  
9 already knew each other?

10 A. Huh?

11 Q. They know each -- they knew each other?

12 A. Yeah. I know that.

13 Q. And Tony Moultrie had helped him out in the past;  
14 hadn't he?

15 A. Yeah.

16 Q. What happened?

17 A. He got ganged one night and Tony got out there and  
18 help him. That's all I know.

19 Q. And Tony came to his rescue?

20 A. Yeah.

21 Q. And you came back but you had to leave because you  
22 were drunk; right?

23 A. Uh-huh (affirmative).

24 MS. RUNEY: That's all the questions I have.

25 THE COURT: Any redirect?

1 MR. LEVENTIS: Just a few questions, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. LEVENTIS:

4 Q. Mr. Hemingway, you said you saw Daniel Jones with a  
5 box cutter earlier. Was that on February 5th, or when did  
6 you see him with a box cutter?

7 A. At the same time when Tony put his hand in his  
8 pocket. That's where he had his knife. He called it a  
9 switchblade. It was a box cutter.

10 Q. Okay. And box cutter -- when you say box cutter, do  
11 you mean a knife that has a razor blade on it?

12 A. Yeah.

13 Q. Okay. So not your standard pocket knife?

14 A. No.

15 Q. Okay. Very good. Those are all the questions I  
16 have.

17 THE COURT: All right. Thank you, sir. You may  
18 step down.

19 You may call your next witness.

20 MR. MCCOY: Thank you, Your Honor. State calls  
21 Detective Watson.

22 DAVID DONALD WATSON, SR.,

23 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION



State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
David Donald Watson, Sr. - Direct Examination by Mr. McCoy

147

1 BY MR. MCCOY:

2 Q. Good afternoon, Detective Watson.

3 A. Good afternoon, sir.

4 Q. Can you tell the jury where you are currently  
5 employed?

6 A. I'm employed with the North Charleston Police  
7 Department.

8 Q. How long have you been with the North Charleston  
9 Police Department?

10 A. Approximately ten years, sir.

11 Q. What were your duties with North Charleston on 2/5  
12 and 2/6 of 2008?

13 A. I was personally assigned to the person's crime  
14 unit.

15 Q. Can you tell the jury what the person's crime unit  
16 is?

17 A. That unit, we especially investigate any violent  
18 crimes, whether it be murders, assaults, rapes, sexual  
19 assaults, stuff like that.

20 Q. And as a member of that unit or that team, were you  
21 assigned as the case agent on a stabbing that occurred on  
22 2/5 of 2008?

23 A. Yes sir, that's correct.

24 Q. Can you tell the jury where you responded that  
25 evening?

1 A. That evening I was with Detective Sergeant Eric  
2 Jordan at the Charleston County Jail. We were just  
3 finishing requesting a suspect in another case. As we  
4 were leaving the call went out from our dispatch saying  
5 that there had been a standing at 2605 Wye Lane. And we  
6 responded from the Charleston County Detention Center.

7 Q. Can you explain to the jury what it means to be a  
8 case agent?

9 A. Basically the case agent is responsible for  
10 collecting all the evidence. He basically forms the team.  
11 He especially interacts with the crime scene personnel who  
12 are responsible for collecting any forensic evidence at  
13 the scene.

14 Q. Was the victim, Danny Jones, present at Wye Lane  
15 when you arrived that evening?

16 A. No, sir. He was not.

17 Q. Had EMS already taken him?

18 A. Yes, sir, they had.

19 Q. When you a ride on Wye Lane was the crime scene  
20 already secured?

21 A. Yes sir, it was.

22 Q. Once you arrived on the scene as the case agent were  
23 you able to investigate or talk to any witness on the  
24 scene?

25 A. Yes, sir, we were.

1 Q. Who did you talk to?

2 A. I spoke directly to Mr. Gerald Blake, the homeowner.

3 Q. Once you did your investigation did you develop the  
4 Defendant, Tony Moultrie, as a suspect in this case?

5 A. Yes, sir, several minutes after our arrival.

6 Q. Did you know the type of vehicle the suspect fled  
7 the scene in?

8 A. Yes, sir, we did.

9 Q. What type of vehicle was that?

10 A. It was a taxicab.

11 Q. After you learned who the suspect was and you  
12 learned what kind of vehicle he fled in, did you make an  
13 attempt to try to find this vehicle or to try to find Tony  
14 Moultrie?

15 A. Yes, sir, we did.

16 Q. What kind of attempts did you make?

17 A. Our standard procedure and basically from the  
18 information that we received from the two witnesses. Both  
19 Mr. Blake and Mr. Hemingway stated that Mr. Moultrie lived  
20 in the neighborhood that they lived in. So at that time  
21 we had our patrol officers set up a perimeter in the  
22 neighborhood which is known as Accabee. And several  
23 patrol units were patrolling the area looking for the  
24 cab.

25 Q. Once you developed Tony Moultrie as a suspect in

1 this case, did you attempt to contact friends or family of  
2 Tony Moultrie in an attempt to locate him?

3 A. Yes sir, that's standard procedure. We again,  
4 through the witnesses and through police records, we knew  
5 that he had a grandmother in the area. We knew that he  
6 had a sister that lived off of Trammell Road in North  
7 Charleston. And we sent units into both of those areas  
8 looking for Mr. Moultrie.

9 Q. What were the results of your investigation?

10 A. They were negative until eventually the cab was  
11 found.

12 Q. So you're saying results were negative, you could  
13 not locate Mr. Moultrie that evening?

14 A. No, sir, not Mr. Moultrie.

15 Q. Was there a point in time that evening where you  
16 located -- or the defendant's tax cab was located.

17 A. Yes, sir, it was located.

18 Q. And where was that found?

19 A. That was found on East Surrey.

20 Q. Detective Watson, I'm going to take you a day later.  
21 Actually, I'm going to take you back one more step. At  
22 the conclusion of the night, the end of the night, did you  
23 have any idea of the whereabouts of Mr. Moultrie?

24 A. No, sir, none at all.

25 Q. I'm going to take you to 2/6 of 2008, the next day,

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*David Donald Watson, Sr. - Direct Examination by Mr. McCoy*

151

1 did there come a point in time where you did learn the  
2 whereabouts of Tony Moultrie?

3 A. Yes, sir, we did.

4 Q. Explain to the jury how you came about understanding  
5 this?

6 A. At approximately, I believe, three forty-five in the  
7 afternoon Detective Sergeant Eric Jordan received a phone  
8 call from Detective Rywelski of the Charleston County  
9 Sheriff's office stating that Mr. Moultrie was there with  
10 a friend of the family and he wanted to turn himself in.

11 Q. Did you go to the Sheriff's office or did he come to  
12 you?

13 A. No, sir, we went to him.

14 MR. MCCOY: Your Honor, may I approach the  
15 witness?

16 THE COURT: You may, sir.

17 MR. MCCOY: Thank you.

18 I would like to label these for ID purposes as 58,  
19 59, 60, 61, 62, 63, 64, 65.

20 (WHEREUPON, State's Exhibit Numbers 58 through 65  
21 were marked for identification.)

22 MR. MCCOY: Thank you.

23 Q. Detective Watson, I'm going to show you what has  
24 been labeled only for ID purposes as State's 58 through  
25 65. Would you take a look at these and tell me what those

1 are.

2 A. Yes, sir. These are the clothes and shoes that Mr.  
3 Moultrie was wearing the day he turned himself in.

4 Q. Are those also photos of Mr. Moultrie once he did  
5 turn himself in?

6 A. Yes, sir, they are.

7 Q. Once he did come and turn himself in, did you have  
8 an opportunity to observe him and see him once he came in?

9 A. Yes, sir.

10 Q. And what did you observe about this person?

11 A. For my initial observation I noticed that there  
12 wasn't any blood on his clothes. There was no injuries to  
13 him, which normally in an offense like this, as violent as  
14 it is, you know, that's the first thing I wanted to look  
15 for. I wanted to see if there was any bruising on his  
16 face, any injuries to his hands or to his arms or anything  
17 else.

18 Q. Did you see any cuts, bruises, open wounds or  
19 scrapes on his hands, fingers, arms or face?

20 A. No, sir, not at all.

21 Q. Did you make it a point to examine each one of those  
22 areas carefully?

23 A. Yes, sir.

24 Q. The photos that I showed you, are those a fair and  
25 accurate representation of what Mr. Moultrie appeared to

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*David Donald Watson, Sr. - Direct Examination by Mr. McCoy*

153

1 look like once he turned himself in on 2/6?

2 A. Yes, sir. That is correct, sir.

3 MR. MCCOY: Your Honor, we move for evidence 58  
4 through 65 to be admitted into evidence.

5 THE COURT: Without objection -- or is there an  
6 objection to these exhibits?

7 MS. RUNEY: Just a minute, Your Honor.

8 THE COURT: All right.

9 MS. RUNEY: No objection.

10 THE COURT: Without objection then, Exhibits 58  
11 through 65 or admitted into evidence.

12 (WHEREUPON, State's Exhibit Numbers 58 through 65  
13 were admitted into evidence.)

14 Q. I'm going to take you to the last couple of photos  
15 I've shown you, the photos of the Defendant's shoes.

16 A. Yes, sir.

17 Q. Were those the same shoe, were those the shoes that  
18 you observed once the Defendant turned himself in on 2/6  
19 of 2008?

20 A. Yes, sir, they are.

21 MR. MCCOY: Court's indulgence.

22 Q. Please answer any questions that Ms. Runey may have  
23 for you.

24 A. Yes, sir.

25 THE COURT: You may cross examine the witness.

1 MS. RUNEY: I don't have any questions for  
2 Detective Watson.

3 THE COURT: All right. Thank you, sir. You may  
4 step down.

5 You may call your next witness.

6 MR. LEVENTIS: Thank you, Your Honor. State  
7 calls Shantel Mitchell.

8 MR. BUTLER: Judge, if we could we would just  
9 renew our objections made at pretrial with regard to this  
10 witness.

11 THE COURT: All right.

12 SHANTEL MITCHELL,

13 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. LEVENTIS:

16 Q. Good afternoon, Ms. Mitchell. If you would, please  
17 tell the jury where you work?

18 A. I work for the North Charleston Police Department in  
19 the dispatch center.

20 Q. And how long have you worked there?

21 A. Four years, eight months.

22 Q. And what are your job responsibilities at North  
23 Charleston dispatch?

24 A. My job duties are to answer all emergency and non-  
25 emergency calls and also dispatch to either the police



1 personnel or the fire department.

2 Q. Were you at work on the afternoon of February 5,  
3 2008?

4 A. Yes, sir.

5 Q. Did you receive a 911 call about a stabbing on Wye  
6 Lane?

7 A. Yes, sir.

8 Q. Did the caller identified himself?

9 A. Yes, sir.

10 Q. Was the call recorded?

11 A. Yes.

12 Q. Is it your office's standard policy to record 911  
13 calls?

14 A. Yes, sir.

15 MR. LEVENTIS: Your Honor, may I approach the  
16 witness?

17 THE COURT: You may, sir.

18 Q. I'm going to show you what has been marked as State's  
19 Exhibit 43 and ask you to examine that. Ms. Mitchell, do  
20 you recognize this exhibit?

21 A. Yes.

22 Q. Do you recognize the handwriting on the exhibit?

23 A. Yes, I do.

24 Q. Whose handwriting is that?

25 A. This is my supervisor operator one Tonya Mallette's

1 handwriting.

2 Q. Could you tell the jury what the exhibit is?

3 A. This is the disc on which the recorded call that I  
4 took is on this disc.

5 Q. And for the record, you are referring to the call on

6 ---

7 A. On Wye Lane.

8 Q. Wye Lane. On February 5, 2008?

9 A. Yes.

10 Q. And did Ms. Mallette produce this exhibit?

11 A. Yes.

12 Q. Did you witness her producing it?

13 A. Uh-huh (affirmative). Yes, sir.

14 MR. LEVENTIS: Your Honor, at this time I would  
15 move State's Exhibit 43 into evidence.

16 THE COURT: Subject to the objection previously  
17 made, it's admitted into evidence.

18 (WHEREUPON, State's Exhibit Number 43 was admitted  
19 into evidence.)

20 MR. LEVENTIS: May I approach the witness?

21 THE COURT: That's Exhibit 43?

22 MR. LEVENTIS: Correct.

23 THE COURT: All right, sir.

24 MR. LEVENTIS: At this time I would like to  
25 publish the recording to the jury.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Shantel Mitchell - Direct Examination by Mr. Leventis*

157

1 THE COURT: All right, sir.

2 (WHEREUPON, State's Exhibit 43 was played in open  
3 court.)

4 Q. Ms. Mitchell, during that call you transferred the  
5 caller to Charleston County EMS; is that correct?

6 A. Yes.

7 Q. Did you remain on the line after you transferred the  
8 call to Charleston County EMS?

9 A. Yes, I did.

10 Q. So you were able to hear the entirety of the 911  
11 call?

12 A. Yes.

13 Q. Is that recording we just listened to a fair and  
14 accurate description of the call you received that day?

15 A. Yes, sir.

16 MR. LEVENTIS: Beg the court's indulgence.

17 Those are all the questions I have for you at this  
18 time. I would ask that you answer any questions Ms. Runey  
19 may have.

20 THE COURT: You may cross examine the witness.

21 MS. RUNEY: I don't have any questions for this  
22 witness.

23 THE COURT: Thank you. You may step down.

24 Do you have another short witness or ...

25 MR. LEVENTIS: The next witness we call is going

1 to take quite some time.

2 THE COURT: All right. Mr. Foreman, ladies and  
3 gentlemen, I believe this would be a good time for us to  
4 break for the evening. You've heard some of the  
5 testimony. You haven't heard all the testimony though and  
6 you certainly haven't heard my instructions on the law to  
7 you. We'll break for the evening. I'll have you come  
8 back at nine thirty in the morning. We'll be ready to  
9 start hopefully right on time and we'll have any necessary  
10 things we need take care of out of the way.

11 Let me remind you again not to discuss the case,  
12 again, with family or friends or fellow jurors when you  
13 get back in the jury room in the morning. That would be  
14 improper for you to do that. I say this not by way to  
15 tempt you in any way but just by way of instruction.  
16 Sometimes you get all inquisitive about a case like this  
17 and you want to get on the Internet or go by the scene and  
18 check things out, do your own investigation. That would  
19 be totally improper for you to do that. These fine  
20 attorneys are going to present everything they need to  
21 present to you for you to make a good determination, so  
22 refrain from any information from any other source.

23 You can tell your loved ones and your spouses and  
24 family that you will be able to share this with them after  
25 you've completed the case. But during the course of the

1 trial is not the time to do that. Likewise, I don't know  
2 if there will be anything in the newspaper or anything on  
3 TV about this particular case, but you should refrain from  
4 reading any kind of news reports. Again, your family can  
5 save those matters for you if you want to read about it  
6 later. But during the course of the trial -- you've made  
7 a commitment that you're going to make a decision just on  
8 what takes place here and that along.

9 With that in mind, I'll dismiss you for the day.  
10 I've noticed that some of you are taking notes. If you  
11 wish to take notes there's nothing the matter with that.  
12 The bailiffs can certainly provide you with paper and pen.  
13 But let me emphasize to you about note taking. When you  
14 take notes, those are just for your personal use only and  
15 they should be left with the bailiff as you leave. Write  
16 your name on the notepad or on the notes and they will  
17 give them back to you tomorrow. They are not to be shared  
18 with others. They are for your benefit.

19 Let me also remind you that if you decide to take  
20 notes just let the bailiffs know tomorrow and they will  
21 have paper and pens available for you. I don't want you  
22 to miss the trial either. Sometimes you get busy taking  
23 notes and you miss the demeanor of the witnesses and what  
24 takes place in the courtroom, the questions that may be  
25 asked. And while it certainly is permissible for you to

1 take notes, let me remind you that those notes are not  
2 evidence. Your own recollection is what's going to  
3 matter, not what's in the notepad. As we all know,  
4 sometimes notes can be in error too. So if you wish to  
5 take notes, you are certainly free to do that, but let me  
6 do caution you to be careful in doing so. And if you  
7 decide to take notes, they will be collected by the  
8 bailiffs and given back to you each day.

9 You're dismissed for the evening. If you'll be back  
10 at nine thirty.

11 If everyone in the audience would remain seated while  
12 the jury departs for the evening.

13 (WHEREUPON, the jury exited the open court at  
14 approximately 5:03 p.m.)

15 THE COURT: All right. We'll be at ease until  
16 nine thirty in the morning.

17 MR. LEVENTIS: Thank you, Your Honor.

18 THE COURT: If there's anything else we need to  
19 take care of, I'll be here early if y'all will let me  
20 know. I'm sure Ms. Hanks will be here early too.

21 MR. BUTLER: I don't know to what extent the  
22 forfeiture by wrongdoing argument is at all specific to  
23 your ruling. I was just embarrassed that I didn't know  
24 the name of that U.S. Supreme Court case, but it's Giles  
25 versus California, 128 Supreme Court 2678. And I got

1 Holden wrong a little bit too. Forfeiture by wrongdoing  
2 is not an exception to the confrontation clause. That was  
3 decided last summer.

4 THE COURT: Last summer?

5 MR. BUTLER: Yes, sir. Giles versus California.

6 THE COURT: All right.

7 MR. BUTLER: And when we take back up the issue  
8 of the victim's blood alcohol, I have several cases, but  
9 I'll rely principally on a South Carolina case of Day, D-  
10 a-y, 535 SE 2nd 431.

11 THE COURT: All right, sir. We'll be back at  
12 nine thirty in the morning.

13 MR. BUTLER: Thank you.

14 MR. LEVENTIS: Thank you, Your Honor.

15 MR. MCCOY: Thank you, Judge.

16 (WHEREUPON, Court was adjourned for the day at  
17 approximately 5:10 p.m.)

18 December 2, 2008

19 THE COURT: Anything we need to take care of  
20 before we bring the jury in?

21 MR. LEVENTIS: Nothing from the State.

22 THE COURT: We're still waiting on the jury. I  
23 think the last one just got here, so we'll give them a  
24 little time to settle in. They're running a little late  
25 today.

1 (Pause.)

2 THE COURT: Mr. Williams, if you will just check  
3 the jury to see if they're ready. If everybody's ready to  
4 come in, bring them on in, if they're ready.

5 BAILIFF: They're ready, Your Honor.

6 THE COURT: All right. Bring them on in.

7 (WHEREUPON, the jury entered the open court at  
8 approximately 9:47 a.m.)

9 BAILIFF: All jurors are seated, Your Honor.

10 THE COURT: All right. Good morning, ladies and  
11 gentlemen. We're now ready to proceed with the trial of  
12 the case.

13 Solicitor, you can call your next witness.

14 MR. MCCOY: Thank you, Your Honor. State will  
15 call Kelly Murphy with North Charleston Police Department.

16 KELLY MURPHY,

17 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. MCCOY:

20 Q. Good morning, Ms. Murphy.

21 A. Good morning.

22 Q. Can you tell the jury where you're employed?

23 A. North Charleston Police Department.

24 Q. And how long have you been with North Charleston?

25 A. Approximately one year.



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Kelly Murphy - Direct Examination by Mr. McCoy*

163

1 Q. And can you tell the jury what division or department  
2 you work in at North Charleston?

3 A. I work for the crime scene unit.

4 Q. Have you been with the crime scene unit the entirety  
5 of your employment with North Charleston?

6 A. Yes.

7 Q. Can you tell the jury your responsibilities as a  
8 crime scene technician?

9 A. As a crime scene technician, I respond to any call,  
10 any crime scene. Could be anything from a robbery to a  
11 homicide. Process the scene, photograph the scene,  
12 collect evidence, perform any testing on the evidence that  
13 we can do at the police department, send other evidence up  
14 to SLED for further testing.

15 Q. Now, Ms. Murphy, are you aware of a homicide that  
16 occurred on 2/5 of 2008 ---

17 A. Yes.

18 Q. -- on Wye Lane?

19 A. Yes, sir.

20 Q. Now, were you a member of the crime scene team that  
21 helped analyze the scene?

22 A. Yes.

23 Q. Can you tell the jury what your part was in this  
24 analysis?

25 A. Okay. I arrived on scene with another crime scene

1 investigator and I helped photograph the scene, looked for  
2 evidence, labeled evidence and collected and packaged that  
3 evidence from the scene.

4 Q. Okay. Were you on the scene with Ms. Bunker?

5 A. Yes.

6 Q. I'm going to take you to several days later ---

7 A. Okay.

8 Q. -- where a cab was found and located and then  
9 transported to a warehouse. And this was February 8th,  
10 2008. Can you tell the jury where you responded that day?

11 A. On February 8th I responded to the North Carolina  
12 police warehouse located on Fourth Street in North  
13 Charleston to process the cab that was found the evening  
14 of the homicide.

15 Q. Why was the cab taken from North Charleston to the  
16 North Charleston warehouse?

17 A. Okay. The cab was towed from the location it was  
18 located at and stored at the North Charleston warehouse  
19 because it's a secure compound. It was behind two locked  
20 gates inside a locked warehouse that only law enforcement  
21 officers have access to. It protects it from the elements  
22 and from any outside contamination.

23 Q. Who did you go to this warehouse with?

24 A. Corporate Scott Wyant.

25 Q. Once you arrived at the warehouse, what were your

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Kelly Murphy - Direct Examination by Mr. McCoy*

165

1 duties and what did you do?

2 A. Once I arrived at the warehouse, Corporal Wyant  
3 photographed the cab. And then we both processed the cab  
4 for latent fingerprints and any DNA evidence.

5 Q. Explain to the jury how you go about processing  
6 anything, let alone a cab, for latent fingerprints?

7 A. The first thing we do, obviously, is photograph any  
8 item as it is when it's found. And then we use black  
9 powder to dust the car to look for any latent  
10 fingerprints. And then they're lifted and placed on white  
11 fingerprint cards.

12 Q. So you processed part of the cab for fingerprints?

13 A. Yes, sir, the passenger side.

14 Q. Did you also have the opportunity to investigate the  
15 inside of the cab?

16 A. Yes, sir.

17 Q. And what did you do with the inside of the cab?

18 A. From the inside of the cab we took several DNA swabs  
19 from the door handles, the steering wheel and the ignition  
20 and the gear shifter to analyze to see who possibly was in  
21 that cab.

22 Q. What's the importance of taking a DNA swab from  
23 inside the car?

24 A. Anytime you come in contact with a surface, you leave  
25 behind DNA. And that can put anybody in that cab that was

1 potentially in that cab.

2 MR. MCCOY: Court's indulgence, Your Honor.

3 Q. And a couple of last questions. Once you collected  
4 the swabs and swabbed the interior of the car, is there  
5 anything that you looked for particularly when you swabbed  
6 the inside of the cab?

7 A. Not necessarily. We just swab any surface that human  
8 skin will come in contact with within the car.

9 Q. Once Officer Wyant and yourself finished with your  
10 fingerprinting and your swabbing the inside of the car,  
11 what did you do with the prints that were lifted or the  
12 swabs that were taken from the inside of the car?

13 A. All of the swabs that were taken from the inside of  
14 the car, as well as the prints, were secured in my city  
15 issued vehicle, returned to our police station. The swabs  
16 were then dried in a forensic dryer and packaged and sent  
17 to SLED for analysis.

18 Q. If you could answer any questions Ms. Runey may have  
19 for you. Thank you.

20 MS. RUNEY: I don't have any questions of this  
21 witness. Thank you.

22 THE COURT: All right. Thank you, ma'am. You  
23 may step down.

24 MR. MCCOY: State would call next Scott Wyant  
25 from the North Charleston Police Department.

1 SCOTT WYANT,

2 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. MCCOY:

5 Q. Good morning, Officer Wyant.

6 A. Good morning.

7 Q. Thank you for being here today. Officer Wyant, can  
8 you tell the jury where you are currently employed?

9 A. North Charleston Police Department.

10 Q. And what are your duties with North Charleston Police  
11 Department?

12 A. I'm a forensic investigator with them.

13 Q. How long have you been a forensic investigator?

14 A. A little over eleven years now.

15 Q. And Officer Wyant, did you happen to be part of the  
16 forensic investigation team that investigated the murder  
17 on 2/5 of 2008 on Wye Lane?

18 A. That's correct. I was.

19 Q. Officer Wyant, did you happen to respond to the scene  
20 that evening?

21 A. No, I did not.

22 Q. Can you tell the jury what your duties were as an  
23 investigator on this homicide?

24 A. The following day when they performed the autopsy of  
25 the victim, I responded to MUSC to the autopsy. And

1 several days later I also went to our secured warehouse  
2 and processed a taxicab involved in the incident.

3 Q. So you were involved with the autopsy and the  
4 processing of the cab later on; is that correct?

5 A. That's correct.

6 Q. Officer Wyant, I'm going to take you step by step.  
7 Let's start with the autopsy. Explain to the jury what  
8 the importance is of having an officer on location or on  
9 the scene when an autopsy is performed?

10 A. One thing they have us do is take photographs to  
11 document the autopsy. We also collect some evidence while  
12 we're there. And we're also there to help answer any  
13 questions that the forensic pathologist may have about  
14 what occurred at the scene.

15 Q. There was earlier testimony, Officer Wyant, that EMS  
16 had removed the clothing from the victim prior to him  
17 being -- or a shirt, excuse me, prior to being transported  
18 to MUSC. And Officer Bunker testified that she took this  
19 shirt and placed it into evidence. Did you have an  
20 opportunity to, to observe this shirt and to take it back  
21 down to the autopsy?

22 A. Yes, I did.

23 Q. And why did you take the shirt back down to the  
24 autopsy?

25 A. Especially in a shooting or stabbing case, Dr.

1 Presnell likes to have the shirt or the clothing at the  
2 scene so she can photograph it and take her measurements  
3 and examine the clothing.

4 Q. Once she was finished with this shirt, did you then  
5 collect the evidence and secure it once again?

6 A. Yes, I did. I took it back to the station and logged  
7 it back in.

8 Q. Okay. Now you also talked a little bit earlier about  
9 you take samples, you're there to observe the autopsy but  
10 also to take samples from the victim in the case. Explain  
11 to the jury what you actually take and why you take  
12 these?

13 A. What we -- we have a policy that when we go to the  
14 autopsy we take that purple top tube of blood from the  
15 victim, which is DNA blood from the victim. We also take  
16 fingernail clippings from both hands. And I usually pull  
17 head hair from the victim. So if there was anything at  
18 the scene, blood, hair, if there's any skin cells on the  
19 fingernails, that we have them to compare to ---

20 Q. So everything that you took from ---

21 A. -- evidence at the scene.

22 Q. -- the victim in the case, you secured yourself?

23 A. That's correct.

24 Q. And did you take that down to North Charleston as  
25 well?

1 A. Yes. I took it to the police station.

2 Q. And where did you secure that?

3 A. The blood gets secured in the evidence refrigerator.

4 It has to be refrigerated. And the fingernail clipping

5 and the hair and stuff can be just logged into the

6 property room.

7 Q. Okay. I'm going to take you now to the second part

8 of your investigation. This is on February 8 of 2008.

9 Can you tell the jury where you responded?

10 A. At approximately eight thirty in the morning I

11 responded to the North Charleston warehouse. We have a

12 warehouse where we secure vehicles for processing and

13 stuff out of the inclement weather. So I responded there

14 to process this taxicab.

15 Q. And who responded with you at the warehouse?

16 A. Investigator Murphy, Kelly Murphy.

17 Q. And what did you do once you got there?

18 A. Once I got there I photographed the vehicle from

19 different angles to show where it was and the condition it

20 was in upon my arrival. I processed the passenger side of

21 the vehicle. I took some swabs, some sterile swabs, and

22 took DNA swabs from the vehicle. And I also processed the

23 driver's side of the vehicle for fingerprints.

24 (WHEREUPON, State's Exhibit Numbers 66 through 82

25 were marked for identification.)



State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Scott Wyant - Direct Examination by Mr. McCoy

171

1 MR. MCCOY: May I approach the witness, Your  
2 Honor?

3 THE COURT: You may, sir.

4 MR. MCCOY: Thank you.

5 Q. Officer Wyant, I'm going to show you a series of  
6 photographs that have been marked as State's 66 through  
7 82. Can you go through each one of those and tell me what  
8 those are and what you see in those?

9 A. These are photographs that I took of the taxicab  
10 inside the warehouse on February 8th.

11 Q. Are those a fair and accurate representation of what  
12 you observed that morning and what you photographed that  
13 morning?

14 A. That's correct, it is.

15 MR. MCCOY: Your Honor, we ask to move Exhibits  
16 66 through 82 into evidence.

17 THE COURT: Without objection, these exhibits  
18 will be entered into evidence.

19 (WHEREUPON, State's Exhibit Numbers 66 through 82  
20 were admitted into evidence.)

21 MR. MCCOY: Thank you, Your Honor.

22 Please answer any questions that Ms. Runey may have  
23 for you.

24 MS. RUNEY: I don't have any questions for  
25 Officer Wyant.

1 THE COURT: No questions? You may step down,  
2 Officer.

3 MR. MCCOY: State would now call Al Hallman with  
4 North Charleston Police Department.

5 AL HALLMAN,

6 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. MCCOY:

9 Q. State your full name and spell your last name for the  
10 jury?

11 A. Al Hallman, H-a-l-l-m-a-n.

12 Q. Good morning, Sergeant Hallman?

13 A. Morning.

14 Q. Sergeant Hallman, can you tell the jury where you're  
15 currently employed?

16 A. City of North Charleston Police Department.

17 Q. And what are your duties at the City of North  
18 Charleston Police Department?

19 A. I am currently the forensic investigation supervisor.

20 Q. Are you in charge of all forensic investigations in  
21 North Charleston?

22 A. That's correct.

23 Q. And Officer Hallman, in your numerous years at North  
24 Charleston, what type of training or courses have you  
25 taken, education have you received to assist you in your

1 job?

2 A. I've received advanced training in most of the fifty  
3 states, believe it or not, in the advanced procedures of  
4 crime scene recognition, shooting incident reconstruction,  
5 crime scene reconstruction, just about every class offered  
6 for latent fingerprint comparisons and identifications.

7 And I've also got a diploma from the American Institute of  
8 Applied Sciences and Forensic Sciences.

9 Q. In your numerous years with North Charleston on an  
10 average, or a guess, how many crime scenes have you  
11 investigated since you've been here?

12 A. Thousands.

13 Q. Thousands of crime scenes?

14 A. Yes, sir.

15 Q. Let's take it a little step further. How many  
16 homicides, how many crime scenes have you investigated?

17 A. Well, as a supervisor of the unit I respond to every  
18 single homicide we have to be the scene supervisor. To  
19 give you an example, in the last three years we've been to  
20 almost one hundred homicides in three years.

21 Q. So North Charleston keeps you busy?

22 A. Yeah. I've been in forensics, I've been in forensics  
23 sixteen years now. So that'll give you kind of an idea  
24 how many homicides we've handled.

25 MR. MCCOY: Your Honor, at this point we move

1 Officer Hallman in as an expert in forensic  
2 investigations.

3 THE COURT: Any objection or any voir dire?

4 MS. RUNEY: No, Your Honor.

5 THE COURT: Okay. Without objection, this  
6 witness will be considered as an expert.

7 Ladies and gentlemen, let me explain a little bit to  
8 you. Most of the time in a trial the witness is allowed  
9 to testify to what they see or observe or hear, but there  
10 are exceptions when witnesses are qualified as experts.  
11 Then they can give an opinion and the basis of that  
12 opinion. Just because a witness is qualified as an expert  
13 doesn't mean that the evidence has to be accepted. You  
14 can consider this evidence as you would any other evidence  
15 and give it the weight and the value that you think is  
16 appropriate.

17 You may continue, sir.

18 MR. MCCOY: Thank you, Your Honor.

19 Q. Officer Hallman, you are in charge, you are the lead  
20 forensic investigator in North Charleston?

21 A. That's correct.

22 Q. You just testified that you respond to every  
23 homicide?

24 A. Every homicide.

25 Q. Did you become involved in a homicide that occurred

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Al Hallman - Direct Examination by Mr. McCoy*

175

1 on 2/5/2008 on Wye Lane?

2 A. Yes, sir, I did.

3 Q. And tell me what you did that evening?

4 A. I was notified by our dispatch that we had a homicide  
5 at that location and I responded. Upon my arrival,  
6 Investigator Bunker and crime scene technician Kelly  
7 Murphy were already on the scene. They had already began  
8 identifying items of evidence at the scene. The scene had  
9 been secured with yellow crime scene tape. And I believe  
10 Investigator Bunker had already begun photographing the  
11 scene and the items of evidence they had located. I got  
12 there. They walked me through the scene. Showed me what  
13 was going on. And we made -- I basically, at that point,  
14 I started assisting them in the processing of the scene  
15 itself. I began processing a black or dark blue pickup  
16 truck for latent fingerprints. We also identified several  
17 footwear impressions in the dirt in and around the pickup  
18 truck itself. I believe there was also a footprint on the  
19 passenger side door, looked like somebody had kicked the  
20 door, something to that effect. Once we had identified  
21 everything that were potentially items of evidence, either  
22 collectible or processible, that's when I started lifting  
23 the latent fingerprints from the truck. We then  
24 photographed the footwear impressions that I mentioned  
25 from several angles and to scale and then we began to

1 apply a plaster cast of dental stone material to these  
2 footwear impressions to secure them for evidence for  
3 future comparisons or anything like that, should that  
4 become available. As we were examining the black pickup  
5 truck, we noticed that there was a -- what appeared to be  
6 a drop of blood on the front passenger side quarter panel  
7 just above the tire. That was noticed. It was  
8 photographed. I believe a swap was taken of that for DNA  
9 examination. And while we were actually looking at that  
10 and looking at footwear impressions, right next to the  
11 front passenger tire, crime scene technician Murphy  
12 noticed a knife laying on top of the tire. So this was  
13 then photographed and the knife was presented to me for  
14 examination. I looked at the knife. The knife had blood  
15 on the serrated edge of the blade. There was a very faint  
16 partial latent fingerprint. And just so you know, the  
17 word latent means invisible to the naked eye. And the  
18 only way to make it visible is with a chemical process, a  
19 powder process or oblique lighting. So basically I used  
20 my flashlight to create an oblique lighting and I could  
21 see partial latent detail. There was not enough detail  
22 there in my professional opinion to effect an  
23 identification. So I instructed Investigator Bunker to  
24 swab the knife to collect the DNA that we could see was  
25 there because of blood on the cutting edge. So at that

1 time I believe Investigator Bunker swabbed the knife and  
2 collected a DNA sample from the knife.

3 Q. And in making that call to go for a DNA swab as  
4 opposed to a fingerprint, explain to the jury why you made  
5 that call?

6 A. Well, as I said, looked at the latent from several  
7 angles and I could see one or two points of identification  
8 within the print. Now, in forensic science or crime scene  
9 -- in the crime scene world, so to speak, it has always  
10 been a myth that you had to have a certain number of  
11 points to effect a positive identification on a  
12 fingerprint. So that's just -- that's totally not true.  
13 It's what the examiner's comfortable with to justify a  
14 positive identification. I looked at this print, and as I  
15 said, I could only see about one or two points, which I'm  
16 definitely not confident enough or comfortable enough to  
17 call an ID, and I elected to go with the known evidence  
18 that was present on the knife, which was the blood. I  
19 know that it was -- you know, we could get DNA from it and  
20 that would be more crucial than to attempt to process the  
21 knife for the print and end up losing or destroying the  
22 DNA as well. So I made the judgment call to take the DNA,  
23 which was definitely there, rather than taking the chance  
24 of losing them all.

25 Q. For clarification purposes, did you observe blood on

1 the back end of the blade or the actual blade end?

2 A. No. The cutting ---

3 Q. The cutting edge?

4 A. The cutting edge of the blade.

5 Q. Okay. After you made the call to go ahead and swab  
6 for DNA, is DNA evidence going to be just as powerful as a  
7 fingerprint?

8 A. DNA -- they go hand-in-hand. If you take your common  
9 fingerprint identification -- when I testify in court to a  
10 fingerprint identification, I tell the jury that the odds  
11 of that fingerprint belonging to someone other than the  
12 person I've identified is one in ten to the twenty-seventh  
13 power. That's one in twenty-seven zeroes. I don't even  
14 know what number that is. I know it's a lot. A DNA  
15 positive comparison can -- we've had indications of the  
16 possibility of anyone other than the person named for the  
17 DNA contributor would be one in fifteen quintillion. So  
18 personally DNA to me is much more substantial than a  
19 fingerprint evidence. But I'm a fingerprint examiner. I  
20 love fingerprints. Fingerprint evidence is one hundred  
21 percent.

22 Q. So both are surefire ways to identify?

23 A. Absolutely.

24 Q. Moving past the night, moving past the DNA swab, when  
25 you were called to duty, you also testified that you also



1    tried to get some latent prints off of the truck?

2    A.    Correct.

3    Q.    Explain to the jury, I know you have a little bit,

4    but explain to them how you go about trying to get a

5    latent print and explain to them again what a latent print

6    is?

7    A.    Well, basically like I said before, a latent print is

8    an impression that is placed on a surface by the palms or

9    fingertips of your hands and it's invisible to the naked

10   eye. The only way it can be seen is to be enhanced by

11   chemicals or fingerprint powders or, you know, or oblique

12   lighting. What I did was I went to this pickup truck and

13   we noticed the foot traffic, you know, with the footprints

14   in the dirt and everything. You could tell that there

15   were certain locations around this truck where there was

16   activity at some point in time. So I elected to

17   concentrate on those areas which was the front passenger

18   side of the vehicle and the front driver's side of the

19   vehicle. Those areas are where I concentrated processing

20   for latent prints. I simply used a black phosphorus

21   powder and a fibrous brush and I applied the powder to the

22   areas that I thought might have latent prints on them. A

23   couple of prints were developed and they were lifted and

24   secured by me. The footprint impression that was on the

25   side of the passenger door that looked like someone had

1 kicked the door, there was not a lot of identifiable  
2 detail in that print, but there was some comparable detail  
3 to it, so I went to attempt to lift that print and I  
4 pulled the entire paint off the truck, so the print was  
5 lost. And that was the only footwear impression print  
6 that I saw on the truck, so that one was not recovered.

7 Q. But photos were taken of the shoe print before you  
8 attempted ---

9 A. Yes. It was definitely photographed before we  
10 attempted to lift it.

11 Q. Okay. And in going back to fingerprints and talking  
12 about fingerprints, is it possible for you to be  
13 somewhere, for anybody to be somewhere, and to not leave a  
14 fingerprint?

15 A. Certainly. There are several factors that would  
16 constitute not leaving fingerprints. One would naturally  
17 be to have gloves on your hands or have some substance or  
18 surface between your hands and the surface that the print  
19 would want to be left on. Another thing is, is if you  
20 were to bring a crime scene investigator into the  
21 courtroom right now and have them process this witness  
22 box, they're not going to find my prints, because I  
23 haven't touched anything since I've been sitting here.  
24 But that doesn't mean that I'm not sitting here. It just  
25 means simply that I have not touched anything. And we've

1 got several scenes where people will go in and they just  
2 flat won't touch anything. And naturally we're not going  
3 to get latent prints that way.

4 Q. You also talked briefly about there was some shoe  
5 casts, or I mean, shoe prints that were found in the dirt  
6 in the driveway near the passenger side front tire?

7 A. Correct.

8 Q. Were these distinct shoe patterns?

9 A. Yes, they were.

10 Q. These were shoe patterns that you observed and there  
11 were different ones?

12 A. Yeah, there were at least, to the best of my  
13 recollection, there were at least two individual sets of  
14 footwear impressions next to the front passenger tire of  
15 this truck. One set was facing outward away from the  
16 truck and one set was actually in front of that set facing  
17 towards the truck. And those were the points of interest  
18 that we identified with the numbered placards and we  
19 photographed.

20 Q. How important are finding shoe prints or shoe molds?  
21 I mean, is that important in a crime scene?

22 A. It's evidence. Absolutely.

23 Q. And what steps do you take to preserve a shoe print  
24 that's on the ground?

25 A. If we identify a footwear impression that is

1 identifiable or at least comparable to a known footprint  
2 or a known shoe, so to speak, then we photograph it to  
3 scale first. We photograph it from several angles using  
4 oblique lighting to cast shadows so that, you know, you  
5 can see every ridge and every detail of the footprint.  
6 Then once it's been photographed and documented, we come  
7 back with a dental stone or a plaster cast and we apply  
8 plaster to the print itself, allow that to harden and dry  
9 and then it's secured and stored for evidence or later  
10 comparisons.

11 MR. MCCOY: Your Honor, may I have the witness  
12 step down?

13 THE COURT: You may, sir.

14 Q. Officer Hallman, if you could come down here in front  
15 of the jury, I am going to show you several photos that  
16 are already into evidence and ask you to examine these in  
17 front of the jury and then show the jury what you find  
18 here. I'm going to show you, the first one is State's 36.  
19 Can you show the jury what that is and also explain where  
20 that is?

21 A. I believe this is the front passenger tire that I was  
22 testifying to a minute ago. It's got several foot  
23 impressions, footwear impressions. As I said, you've got  
24 this footwear impression here facing the truck. And if  
25 you'll look, you've got other footwear impressions, this

1 one here, facing away from the truck, indicating that  
2 there was -- at some given point in time, there were at  
3 least two different individuals next to this tire in  
4 different positions relative to the truck. This footwear,  
5 this impression here, was identified as a police officer's  
6 boot. This also was a police officer's boot. Those were  
7 identified at the scene and they were ruled out as  
8 evidence. This one and this one, these prints here, were  
9 basically evidentiary prints because we could not match  
10 them at the scene at that time.

11 Q. And Officer Hallman, I'm going to show you what's  
12 been marked as State's 35, which is a little bit of a  
13 closer image of some shoe prints that were found on the  
14 scene, if you would explain that ---

15 A. Yeah. Those are the same prints that we just went  
16 over. Again, this is a police officer print. This was a  
17 police officer's print. And these, if you look at these  
18 two, they're almost standing towards the tire, for lack of  
19 a better term, in a defensive posture, you know, one foot  
20 is flatly in front of the other foot. The other prints  
21 were over here and over here facing away from the truck.  
22 Okay. I cannot say why those prints were in that  
23 position. All I can say is that these two prints are  
24 relative to each other. You can tell that this is a right  
25 foot, this is a left foot, due to the insole. And you can

1 tell that it's a defensive posture so-to-speak. That's  
2 what we refer to as ---

3 Q. And Officer Hallman, briefly for the jury too, I have  
4 33 and 34, if you could explain what those are?

5 A. These are just simply actually closer photos of the  
6 prints. This is a close-up of this print right here. It  
7 shows a very distinct pattern on the footwear impression  
8 itself. And this just shows its relative location to the  
9 footprint that was actually closer to the tire. And you  
10 can see, that's what I'm talking about as a defensive  
11 posture. You've got one foot slightly in front of the  
12 other foot.

13 Q. And Officer Hallman, in looking at those photos and  
14 looking at what you've just shown the jury, the several  
15 photos, we had Detective Watson in here yesterday and what  
16 he did was that he testified as to when the Defendant  
17 turned himself in and photographed the Defendant and he  
18 photographed the shoes that he was wearing when he turned  
19 himself in the next day. I'm going to show you what's  
20 been marked as 63, 64 and 65, and if you could show those  
21 to the jury and -- just show those to the jury first for  
22 me.

23 A. This is 63, 64 and 65.

24 Q. Now, in your expert opinion, in your numerous years  
25 of crime scene investigation, ---

1 MR. BUTLER: Judge may we approach? We have an  
2 issue.

3 (WHEREUPON, Ms. Runey, Mr. Butler, Mr. Leventis and  
4 Mr. McCoy approached the bar.)

5 THE COURT: Ladies and gentlemen, we have a  
6 matter of law we need to take care of outside of your  
7 presence, so I'll ask you to go back to your jury room.  
8 Don't discuss the case at this time. We'll call you back  
9 just as quick as we can.

10 (WHEREUPON, the jury exited the open court at  
11 approximately 10:20 a.m.)

12 THE COURT: All right, Mr. Butler or Ms. Runey,  
13 be glad to hear from you.

14 MR. BUTLER: There's several matters. First,  
15 they qualified this witness as an expert. They're about  
16 to ask him an opinion about the consistency between the  
17 Defendant's shoes upon arrest and impressions that were  
18 photographed at the scene. Under Rule 5(d), upon request,  
19 which we made a Rule 5 request, we're entitled to the  
20 results of any tests that are performed. This is a test.  
21 It's a comparison. He's being qualified as an expert.

22 Beyond that, Ms. Runey specifically asked of the  
23 State whether or not they intended to offer any evidence  
24 that these -- that the footwear impressions at the scene  
25 matched the shoes that the Defendant was wearing. And I

1 understand from the -- perhaps from a brief sidebar that  
2 there's going to be some quibbling about the terms either  
3 consistency or match. Forget it. I mean, that's just  
4 playing word games. She asked him specifically and was  
5 told no.

6 Beyond that, I don't know if the State has a  
7 transcript of the preliminary hearing -- Ms. Runey tells  
8 me she gave them a copy. They're on notice that we think  
9 they don't match. I want to make this part of the record  
10 at the appropriate time. Page 12, this is the testimony  
11 of Detective Watson. You referred to footprints at the  
12 scene. That's the question. The answer, yes, ma'am. Did  
13 you collect anything from Mr. Moultrie's property at the  
14 jail? No, ma'am, Mr. Moultrie turned himself in to us and  
15 we had him at our station trying to conduct the interview.  
16 He was advised of his rights. Refused to give a  
17 statement. He voluntarily showed us the bottom of his  
18 shoes, which did not match the imprints that we had. They  
19 did not match? Correct, they did not match.

20 So everything we have up until now is that not only  
21 are they not consistent but they didn't match. She asked  
22 for it in a Rule 5 request and then made a specific  
23 request and was told no. This is -- obviously complies on  
24 the face of the Rules and the requests that we made in  
25 this case and we'd ask that, that the Sergeant not be



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Al Hallman - Direct Examination by Mr. McCoy*

187

1 allowed to offer that opinion.

2 THE COURT: All right. Mr. Leventis.

3 MR. LEVENTIS: Your Honor, I would respectfully  
4 disagree with Mr. Butler. First of all, no test needs to  
5 be performed with regard to comparing footprints. A lay  
6 witness could easily, under Rule 70 -- under Rule 701  
7 could easily compare the two and say, yes, they're  
8 similar. Officer Hallman can't say whether they're the  
9 same shoe. He's not able to say that. As an expert or as  
10 a lay witness he can't say that. He didn't perform any  
11 tests because it doesn't require any tests. You look at  
12 one picture, you look at the other, are the two  
13 consistent? Yes, they are. Ms. Runey has had a picture  
14 of the shoe prints as long as she's had discovery. She's  
15 known about the shoe prints as long as this case has been  
16 pending. So I don't see any problem with Officer Hallman  
17 saying, these two shoe prints are consistent. And I don't  
18 think it's a surprise. I don't think it's a violation of  
19 the Rules. There was no test. Had there been a test done  
20 on the shoe prints, certainly we would have turned that  
21 over to the Defendant, Defense counsel, but because there  
22 was no test done, because no test is required in this  
23 case, we didn't turn anything over.

24 MR. BUTLER: Before I put Ms. Runey on the  
25 stand, does Mr. Leventis want to respond to what we put

1   forth, that she specifically asked him and he said, no,  
2   this testimony would not be forthcoming.

3               MR. LEVENTIS: Ms. Runey asked me when we were  
4   in Charleston County evidence locker whether you intend to  
5   use these shoe castings at this time and I said, no, not  
6   at this time, I don't intend to use them. Subsequent to  
7   that conversation Mr. McCoy pointed out the consistency  
8   between the shoe print down at the scene and the shoes  
9   that the Defendant was wearing when he turned himself in  
10  the next day, and so I decided I did want to use them.  
11  That's not within the Rules for me to tell Ms. Runey what  
12  I -- what, of all the evidence out there, I'm going to use  
13  in my case in chief. That's not what the Rules say. The  
14  Rules say that I have to turn over discoverable evidence.  
15  She's had this evidence ever since this case has been  
16  pending.

17              MR. BUTLER: Well, I disagree with what Rule 5  
18  requires. Rule 5 is not limited to experts. It's the  
19  results of tests. When you have -- and they qualified him  
20  as an expert to make these -- it's a comparison. That's a  
21  test. And when the detective, the lead detective, says  
22  they didn't match, I mean, how many negatives are we  
23  supposed to prove in preparing our case? When the lead  
24  detective says under oath they don't match and when the  
25  prosecutor assigned to prosecute the case says, we're not

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Al Hallman - Direct Examination by Mr. McCoy*

189

1 offering this, I mean, just how suspicious do we have to  
2 be?

3 MR. LEVENTIS: Your Honor, they're more than  
4 welcomed to put Detective Watson back on the stand.  
5 Detective Watson can give his opinion as a lay witness  
6 about whether those shoe prints match and ultimately the  
7 jury will get the picture of the footprint and they will  
8 get the picture of the Defendant's shoe when he turned  
9 himself in and they will make their own determination,  
10 because it doesn't require an expert. It doesn't require  
11 testing.

12 MR. BUTLER: And then what happens in closing  
13 argument, is this person's opinion -- this witness's  
14 opinion is elevated because he's an expert.

15 THE COURT: Well, that's what concerns me, that  
16 the jury give undue weight to him because he's been  
17 qualified now as an expert. And even if he's making that  
18 comparison in his lay capacity rather than as an expert.

19 MR. LEVENTIS: If I may, Your Honor.

20 THE COURT: Yes, sir.

21 MR. LEVENTIS: The Defense counsel has every  
22 opportunity to get up and say, Officer Hallman, can you  
23 say with any certainty whether these are the same --  
24 whether this shoe print was made by this shoe? No. He  
25 can't say that. He can't say that, because nobody can say

1 that. He can't say the two are consistent. And that's  
2 circumstantial evidence and we're entitled to present  
3 circumstantial evidence.

4 MR. BUTLER: Except that had we known about  
5 this, I would have had Don Gerndt, who I've used time in  
6 and time out, to look at them, and he very well may have  
7 said, these are consistent. But I don't know that. I've  
8 had them -- when they have fingerprints, say that they  
9 don't match, I've had Don Gerndt come and say, I can  
10 eliminate this person. Not only are they not consistent,  
11 but I can eliminate. But we didn't do that because  
12 everything we were told, that this wasn't coming.

13 MR. LEVENTIS: Fingerprints and shoe prints are  
14 distinguishable. Fingerprints require an expert to  
15 testify. Shoe prints do not require an expert. The jury  
16 can't look at fingerprints in the back and make heads or  
17 tails of them. Shoe prints are layman's testimony. I can  
18 look at a pair of shoes and say, yeah, that looks  
19 consistent. There's Michael Jordan's sticker on one,  
20 there's Michael Jordan's sticker on the other.  
21 Consistent. Is it the same shoe? Have no idea. But it's  
22 consistent and that's circumstantial evidence and we're  
23 entitled to put that into our case.

24 MR. BUTLER: Well, I guess it's just a  
25 coincidence that they're putting through an expert. And I

1 disagree. If I had a footwear impression expert I could  
2 have had them look at them and tell you whether or not  
3 they were consistent or inconsistent. But they had --  
4 they made -- they went out of their way to qualify this  
5 witness as an expert.

6 MR. LEVENTIS: An expert in forensic science is  
7 not an expert in shoe prints.

8 THE COURT: I still believe that the prejudicial  
9 effect would outweigh any probative values. I'm not going  
10 to allow this witness to testify to that. I'll grant your  
11 motion.

12 MR. LEVENTIS: Thank you, Your Honor. Just so  
13 I'm clear, could we put Detective Watson back on the stand  
14 and ask him about the consistency of the shoe prints?

15 THE COURT: That's the same one who testified at  
16 the preliminary hearing or is that the other Watson that  
17 testified ---

18 MR. LEVENTIS: It's the same one.

19 MR. BUTLER: No. Our position is no. We were  
20 told this wasn't coming. We didn't have the opportunity  
21 to have our expert review the evidence, which we  
22 definitely would have.

23 MR. LEVENTIS: Again, this isn't evidence that  
24 requires an expert, Your Honor, so I think Mr. Butler's  
25 reference, continual reference to bringing in an expert

1 and having him review shoe prints is beside the point.

2 MR. BUTLER: That it doesn't require an expert  
3 doesn't mean that we couldn't have one to look at it. The  
4 fact that the State thinks it doesn't require an expert  
5 doesn't mean that we couldn't have an expert look at it.

6 MR. LEVENTIS: What additional -- I'm sorry. Go  
7 ahead.

8 MR. BUTLER: It doesn't mean that we couldn't  
9 have had an expert look at it. Don Gerndt is a --  
10 formerly with SLED, is an expert in fingerprints, crime  
11 scene analysis and footwear impressions. I've had him  
12 qualified in all those areas. I would have had him review  
13 this evidence. Just because laymen can make the  
14 comparisons and can have an opinion doesn't mean that you  
15 can't also have an expert who has an opinion. We were  
16 told -- she specifically asked and was told that this  
17 wasn't coming.

18 THE COURT: All right. I'm not going to allow  
19 you to get into the footprints.

20 MR. LEVENTIS: Your Honor, for the record, the  
21 footprints -- the pictures of the footprints are already  
22 into ---

23 THE COURT: They're already into evidence,  
24 right. That'll be evidence to speak for itself.

25 MR. LEVENTIS: And I can speak about those in my

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Al Hallman - Direct Examination by Mr. McCoy

193

1 closing.

2 THE COURT: Certainly.

3 MR. LEVENTIS: Thank you, Your Honor.

4 MR. MCCOY: So Your Honor, just so I'm clear, we  
5 are to move on from this topic?

6 THE COURT: As far as this witness, right.

7 MR. MCCOY: Okay.

8 THE COURT: I'm sure there's other things he's  
9 going to be testifying to.

10 MR. MCCOY: Okay.

11 THE COURT: All right. Let's have our jury come  
12 back.

13 (WHEREUPON, the jury entered the open court at  
14 approximately 10:31 a.m.)

15 BAILIFF: The jury is seated, Your Honor.

16 THE COURT: All right. Thank you. You may  
17 proceed with your examination of the witness.

18 MR. MCCOY: Thank you, Your Honor.

19 Q. Sergeant Hallman, we're going to move on and we're  
20 going to talk about the fingerprints that were lifted from  
21 the cab and the fingerprints that were lifted from the  
22 truck. Now, you had an opportunity to look at these  
23 latent prints. Can you tell the jury, was there -- in the  
24 lifts you examined was there a positive match to Antonio  
25 Moultrie at all?

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Al Hallman - Direct Examination by Mr. McCoy  
Al Hallman - Cross Examination by Mr. Butler

194

1 A. No, sir, there wasn't.

2 Q. Did any of the prints that you looked at, be it from  
3 the cab or from the truck, was there a positive match to  
4 the victim, Danny Jones, in this case?

5 A. No.

6 Q. Sergeant Hallman, as lead investigator of the  
7 forensic area on this case, were you aware, was there a  
8 suspect kit done on the Defendant in this case?

9 A. Yeah. I believe David Watson served a search warrant  
10 for that evidence and that was collected.

11 Q. And what is a suspect kit?

12 A. It's simply a kit that collects hair fibers, known  
13 hair fibers, blood, saliva, things of that nature, from a  
14 particular individual for the use of comparison, DNA  
15 comparison.

16 MR. MCCOY: Court's indulgence, Your Honor.

17 THE COURT: Yes, sir.

18 MR. MCCOY: Please answer any questions Ms.  
19 Runey may have for you.

20 MR. BUTLER: Please the court.

21 MR. MCCOY: Excuse me, Mr. Butler.

22 MR. BUTLER: That's okay.

23 THE COURT: Mr. Butler.

24 MR. BUTLER: We get confused all the time.

25

CROSS EXAMINATION



1 BY MR. BUTLER:

2 Q. Good morning, Sergeant, how are you?

3 A. I'm fine. How about yourself?

4 Q. I just have a few questions in general about crime  
5 scene investigation?

6 A. Yes, sir.

7 Q. That's your field?

8 A. Yes, sir.

9 Q. And CSI is the shorthand for that, a popular term  
10 these days?

11 A. Very popular.

12 Q. And you're smiling because that's on television and a  
13 lot of times the expectations of television carry over to  
14 the real world and they're not always fair; are they?

15 A. That's absolutely correct.

16 Q. I'm with you. Do people in the field still use the  
17 term ID tech, identification technician?

18 A. That has been used -- we've got so many different  
19 monikers out there, ID tech, crime scene, forensic unit,  
20 crime unit. I mean, they go on and on.

21 Q. Identification technician, another term for CSI  
22 investigator. The term identification means that the --  
23 is used because the evidence that you collect ultimately,  
24 hopefully, can identify a suspect?

25 A. Correct.

1 Q. Okay. Evidence like fingerprints, DNA, hairs, trace  
2 evidence fibers, all of those things are ultimately used  
3 to identify a person?

4 A. Correct.

5 Q. Right? And as you testified on direct, you can,  
6 especially with DNA, give probabilities and statistics as  
7 to whether or not physical evidence taken from a crime  
8 scene matches a suspect?

9 A. Yes.

10 Q. Again, leaving the identification of the perpetrator?

11 A. Correct.

12 Q. Same with fingerprints?

13 A. Yep.

14 Q. Probabilities. And the probabilities can be  
15 astronomical, meaning that the probability is so low there  
16 aren't enough people on the planet to find another person?

17 A. That is correct.

18 Q. Right? So therefore you can say conclusively, one  
19 hundred percent, it's a person?

20 A. Correct. They refer to that as an exact science.

21 Q. So in a who-done-it case, this is critical evidence?

22 A. Yes.

23 Q. But not all cases are who-done-it cases; are they?

24 A. No, not all cases. No.

25 Q. Can't tell you whether or not what happened at a

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Al Hallman - Redirect Examination by Mr. McCoy

197

1 crime scene was an accident?

2 A. No.

3 Q. Can't tell you whether or not it was self defense?

4 A. No.

5 Q. Once you assume that the person is there, none of  
6 these things really matter; do they?

7 A. Everything matters.

8 Q. Well, if you're trying to learn the identification of  
9 a suspect, if it's beyond dispute that the person is  
10 there, footwear and fingerprints, they don't help to  
11 establish whether or not it was self defense or an  
12 accident; do they?

13 A. No. That's usually done through witness testimony  
14 and things like that.

15 Q. Thank you very much.

16 THE COURT: Any redirect?

17 MR. MCCOY: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. MCCOY:

20 Q. Sergeant Hallman, be it a who-done-it case or be it  
21 we know who did it, is it still important for you to  
22 follow procedure and to test everything known and  
23 everything possible on the scene of a crime?

24 A. Absolutely.

25 MR. MCCOY: Thank you, Your Honor.

1 THE COURT: Thank you, sir. You may step down.

2 Yes, sir, you may call your next witness.

3 MR. MCCOY: Thank you, Your Honor. State would  
4 call Alex Teachey with North Charleston.

5 ALEXANDRIA TEACHEY,

6 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. MCCOY:

9 Q. Good morning, Ms. Teachey?

10 A. Good morning.

11 Q. Can you please tell the jury where you are employed?

12 A. I'm employed with the North Charleston Police  
13 Department.

14 Q. And how long have you been with North Charleston?

15 A. Four and a half years.

16 Q. Can you also tell the jury, Officer Teachey, what  
17 your duties are at North Charleston?

18 A. My duties are to process the evidence that the  
19 officers drop off and make sure that it's secured and to  
20 organize it so that it will be actually found in a proper  
21 manner when it's time for court.

22 Q. Tell the jury, what is an evidence custodian? How do  
23 officers drop off pieces of evidence?

24 A. We have secured locations in the evidence department.

25 A drop box, for one, where they will take the evidence.

1 It's locked. They cannot open it. If it needs to be  
2 opened, they have to call one of three people. We get  
3 there in the mornings, we unlock it, make sure that all  
4 the case numbers match the evidence that they have written  
5 down and the chain of custody matches. If anything is  
6 missing, we call them in to make sure that they go through  
7 with us to review it, add it to the chain if everything's  
8 okay. We go ahead and label it and put it in the proper  
9 area that it needs to be in so when it's ready for court  
10 all we have to do is pull it up in our system for Kart  
11 Digital and it gives us the location. We get it and get  
12 it to the officer, make sure they've followed the chain of  
13 custody showing that they are taking the custody from us  
14 to them for court.

15 Q. Once evidence is dropped off, does anyone else have  
16 access to it other than an evidence custodian?

17 A. One of three people for evidence is only able to  
18 actually put their hands on it. No one else is able to  
19 get in the evidence room unless it's one of the three  
20 custodians.

21 Q. Now, Officer Teachey, in North Charleston as the  
22 evidence custodian, one of three, you handle a ton of  
23 evidence?

24 A. Yes, sir.

25 Q. Did you handle the specific evidence for a murder

1 that occurred on 2/5 of 2008 on Wye Lane?

2 A. On 2/8 I handled the swabs, yes, sir.

3 Q. And explain to the jury, once you received this  
4 evidence from this homicide, what did you do with it?

5 A. I set it up to go to SLED. That means that on that  
6 Friday the evidence is processed as far as placed together  
7 in a locked area so that when we're ready to transport it,  
8 everything is together and we pass it off to SLED.

9 Q. Can you tell the jury, where is SLED?

10 A. SLED is in Columbia, South Carolina.

11 Q. And what does SLED do?

12 A. They process as far as analyzing, in this case swabs,  
13 for court purposes.

14 Q. Now, Officer Teachey, if you can, please tell the  
15 jury exactly what swabs you took up and did they have  
16 numbers, did they have identification on them at all?

17 A. Yes, sir.

18 Q. Explain to the jury what you sent up?

19 A. Okay. On 2/8/08 I took to SLED a purple top tube of  
20 blood and ---

21 Q. Who was that purple top tube of blood from?

22 A. It's from the victim at the autopsy.

23 Q. Okay.

24 A. I also took the right hand fingernail clippings and  
25 the left hand fingernail clippings.

1 Q. Okay. Did you have a chance to take any other items

2 ---

3 A. Yes, sir.

4 Q. -- up to SLED?

5 A. I did.

6 Q. What were those?

7 A. On the same day I took swabs 7, 4 and 1, I also took  
8 a swab of blood from the 9th and another swab of blood  
9 from the 9th.

10 Q. Now, Officer Teachey, as an evidence custodian, do  
11 you have any idea what these pieces of evidence mean or  
12 how they even link together?

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

14 Q. And your job is to do what?

15 A. Process it and make sure it's ready for court.

16 Q. And you drove these items up to SLED for further  
17 testing?

18 A. Yes, sir.

19 Q. Is there anything else that you happened to send up  
20 to SLED for testing?

21 A. Let's see.

22 Q. Did you happen to send any kind of swab from a car at  
23 all?

24 A. Yes, sir. On 10/17/08 I took DNA swabs from the  
25 gearshift handle. Also from the passenger door handle

1 exterior, passenger door handle interior, passenger side  
2 hood of car, swab from the driver's door handle exterior  
3 and interior, and swab from the ignition and also the  
4 steering wheel.

5 Q. Okay. So we've got, Officer Teachey, you took some  
6 swabs from the car, you took some blood, fingernail  
7 clippings and other evidence from the victim and you took  
8 swabs labeled 7, 4 and 1 and two swabs from a knife up to  
9 SLED?

10 A. Yes, sir.

11 Q. This was two separate trips; is that correct?

12 A. Yes, sir.

13 Q. Now, when you take these items to SLED, explain to  
14 the jury what you do once you arrive in Columbia?

15 A. Once I'm there the evidence technician that helps me  
16 for that day, we go with the items together to make sure  
17 that they match. And she packages them and gets them  
18 ready for whichever analyst is assigned to it.

19 Q. And the person who you just described is helping you,  
20 is this person an employee or works for SLED?

21 A. They work for SLED.

22 MR. MCCOY: Court's indulgence, Your Honor.

23 THE COURT: Yes, sir.

24 Q. Please answer any questions Ms. Runey may have for  
25 you.



State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Paula Davis - Direct Examination by Mr. McCoy

203

1 MS. RUNEY: I don't have any questions for Ms.

2 Teachey. Thank you.

3 THE COURT: Okay. You may step down, Ms.

4 Teachey.

5 OFFICER TEACHEY: Thank you.

6 THE COURT: You may call your next witness.

7 MR. MCCOY: Thank you, Your Honor. State would  
8 call Paula Davis with the North Charleston Police  
9 Department.

10 PAULA DAVIS,

11 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. MCCOY:

14 Q. Good morning, Officer Davis. Thank you for being  
15 here today.

16 A. Good morning.

17 Q. Officer Davis, where are you currently employed?

18 A. North Charleston Police Department.

19 Q. And how long have you been with North Charleston?

20 A. Four years.

21 Q. Did you say forty years?

22 A. Four.

23 Q. Four.

24 A. Four.

25 Q. Officer Davis, forgive me for that. Can you tell the

1 jury what your duties are with North Charleston?

2 A. Well, as an evidence technician, what we do is when  
3 the officer presents evidence to us we secure it under an  
4 OCA number and it's secured in our evidence locker under,  
5 I guess you can say, strenuous condition. No one can get  
6 in or out without us knowing.

7 Q. Now, take the jury through a typical scenario where  
8 an officer will drop off some evidence and how you  
9 actually come into handling it?

10 A. Okay. We have secured lockers that we put -- the  
11 officers put that -- put the evidence in those lockers and  
12 we retrieve them. Okay. And nobody else knows the  
13 combinations. So we retrieve them. Then once it's  
14 retrieved, we enter it into the system under the OCA  
15 numbers. And then we are -- after that's done, it's also  
16 secured in our evidence room.

17 Q. Okay. So Officer Davis, is it your testimony today  
18 that there's very few people and it's very hard to have  
19 access ---

20 A. Very hard.

21 Q. -- to evidence ---

22 A. Yes.

23 Q. -- once it's been turned into evidence?

24 A. Right.

25 Q. Now, Officer Davis, did you happen to come into any

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Paula Davis - Direct Examination by Mr. McCoy*

205

1 contact with some evidence that occurred -- a homicide  
2 that occurred on 2/5 of 2008?

3 A. Yes.

4 Q. And what evidence is that?

5 A. You want me to read them all?

6 Q. Sure. Read them all.

7 A. Okay. A white t-shirt, a dark shirt, a dark blue  
8 jean jacket, silver flip phone with a black case, it's a  
9 cell phone. We had swabs of blood from leaves. There's  
10 one -- one from a leaf, one from a truck, two from a  
11 knife, another from leaves and a casting from a shoe,  
12 another casting from a shoe, a casting from another shoe.  
13 They are numbers 14, 15 and 16.

14 Q. Okay.

15 A. Green and black pocket knife. You want me to  
16 continue?

17 Q. That's okay. Thank you, Officer Davis.

18 A. It's a lot.

19 Q. It is a lot.

20 A. Yes.

21 Q. And you helped processed this evidence once it was at  
22 North Charleston; is that correct?

23 A. Yes. Well, when you say process, what do you mean?

24 Q. Well, you helped enter it into OCA?

25 A. Right. Right. And secure it.

- 1 Q. Now, Officer Davis, did you happen to drive any of  
2 this evidence from this homicide to Columbia?  
3 A. No. Ms. Teachey, the other evidence custodian, did.  
4 Q. Thank you, Officer Davis.  
5 A. Uh-huh (affirmative).  
6 Q. Please answer any questions Ms. Runey may have for  
7 you.

8 CROSS EXAMINATION

9 BY MS. RUNEY:

- 10 Q. Ms. Davis, you were referring to the chain of custody  
11 sheet produced by the North Charleston Police Department?  
12 A. Yes. That's correct.  
13 Q. And there are no shoes listed from the victim.  
14 You've got a white t-shirt, a dark shift and a jean  
15 jacket; is that correct?  
16 A. Hold on. I have to look at the rest of it. No, not  
17 of this one. No.  
18 Q. And that sheet contains all of the evidence that was  
19 collected?  
20 A. The ones I have in front of me. Yes. Everything  
21 that was submitted.  
22 Q. Thank you, ma'am.  
23 A. Uh-huh (affirmative).  
24 A. That's all I have.  
25 THE COURT: Any redirect?

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Paula Davis - Redirect Examination by Mr. McCoy*

207

1 MR. MCCOY: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. MCCOY:

4 Q. The evidence that you have collected -- or did not  
5 collect, but that you were a part of with this case, ---

6 A. Uh-huh (affirmative).

7 Q. -- is there anyway for you to tell what day this  
8 evidence was collected?

9 A. By the submission date, which you can see, items one  
10 through ten came into our evidence room on 2/6/08.

11 Q. Okay. Thank you, Officer Davis.

12 A. Uh-huh (affirmative).

13 Q. No further questions.

14 THE COURT: You may step down. Thank you.

15 OFFICER TEACHEY: Thank you.

16 THE COURT: Let's take a short break, ladies and  
17 gentlemen. I'll let you go back to your jury room. We'll  
18 call you back in just a few minutes. Don't discuss the  
19 case while you're out.

20 (WHEREUPON, the jury exited the open court at  
21 approximately 10:51 a.m.)

22 THE COURT: We'll take about a ten minute break.

23 MR. LEVENTIS: Thank you, Your Honor.

24 MS. RUNEY: Thank you, Your Honor.

25 MR. MCCOY: Thank you, Your Honor.

1 (WHEREUPON, court stood at recess for a short break.)

2 THE COURT: Let's have our jury come back.

3 MR. BUTLER: Judge, may it please the court.

4 THE COURT: Hang on a minute. Yes, sir.

5 MR. BUTLER: I know the pathologist is coming up  
6 here shortly. I don't know if she's next or we'll get to  
7 her before lunch. But before she testifies, we would need  
8 to take up the matter of the victim's blood alcohol  
9 content. As I understand, you reserved ruling on that.

10 THE COURT: I'm going to allow the testimony.

11 MR. BUTLER: Thank you, Judge.

12 MR. MCCOY: And Your Honor, for planning  
13 purposes, we anticipate -- we have a SLED expert coming in  
14 now and then the pathologist. And we plan on that being  
15 our last witness unless we need to call somebody else for  
16 rebuttal or ...

17 THE COURT: Okay. Do you think we can get it to  
18 the jury today?

19 MR. BUTLER: If I had to guess, I'm terrible at  
20 forecasting, I'd say argue and charge first thing in the  
21 morning, unless you ---

22 THE COURT: That's what, that's what I  
23 anticipate. But, you know, things have moved pretty ...  
24 We might send the jury out at two thirty for the day or  
25 not? We'll get all the State's evidence in surely before

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Matthew Fitts - Direct Examination by Mr. McCoy*

209

1 lunch.

2 MR. BUTLER: I think so, but then we've got two  
3 witnesses, including the Defendant, which usually is  
4 lengthy, the Defendant. So ...

5 THE COURT: All right. We'll certainly get all  
6 the testimony in today. We'll have time for motions and  
7 all. We'll shoot for -- even if we take an early lunch,  
8 getting all the State's evidence in before lunch. We'll  
9 take the motions up before lunch and then ---

10 MR. BUTLER: If we finished at three or three  
11 thirty, would you have us go ahead and argue and charge?

12 THE COURT: Probably not.

13 MR. BUTLER: Okay. Good.

14 THE COURT: If we get that far, we'll wait till  
15 tomorrow.

16 MR. BUTLER: Martha Kent is very experienced,  
17 but she's still somewhat training, so I'd like to give her  
18 overnight.

19 THE COURT: Sometimes it's better to just go on  
20 and do it. Not think about it too long.

21 We'll see if we can, if we don't get through too  
22 early. We'll give them a little longer lunch.

23 All right. Let's have our jury come in, Mr.

24 Williams.

25 (WHEREUPON, the jury entered the open court at

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Matthew Fitts - Direct Examination by Mr. McCoy

210

1 approximately 11:16 a.m.)

2 BAILIFF: All jurors are seated, your honor.

3 THE COURT: Thank you.

4 You may call your next witness, Solicitor.

5 MR. MCCOY: Thank you, Your Honor. State will  
6 call Matthew Fitts with the South Carolina Law Enforcement  
7 Division.

8 MATTHEW FITTS,

9 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. MCCOY:

12 Q. Good morning, Mr. Fitts.

13 A. Good morning.

14 Q. Thank you for being here with us today. Can you tell  
15 the jury where you are employed?

16 A. I work at South Carolina Law Enforcement Division's  
17 Forensic, DNA and Serology Department.

18 Q. And where is that located?

19 A. In Columbia.

20 Q. In Columbia? How long have you been with SLED?

21 A. I was with SLED for nine years. I left for three and  
22 I've come back and I'm coming up on another four years.

23 Q. Coming up on another four years. So thirteen years  
24 with SLED?

25 A. That's correct.



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Matthew Fitts - Direct Examination by Mr. McCoy*

211

1 Q. Can you tell the jury -- you just testified that you  
2 work in the DNA area, forensics area, of SLED. Can you  
3 tell the jury your educational background and your  
4 training background that helps you with your everyday  
5 services there?

6 A. I have a BS degree and Ph.D. degree in microbiology  
7 from Clemson University. From there I was at St. Jude  
8 Children's Research Hospital for three years in the  
9 laboratory of immunology. From there I was at the  
10 National Institutes of Health in the laboratory of  
11 molecular endogenetics. And then that's when I left  
12 there, I joined the forensic department at SLED.

13 Q. Have you received any other types of training or  
14 courses throughout your thirteen years with SLED?

15 A. Yes. In-house training with a qualified DNA and  
16 serology analyst, external training, short courses in  
17 workshops and also meetings. And we also undergo  
18 proficiency testing in forensic, DNA and serology as well.

19 Q. Would you say your specialty is in DNA and serology?

20 A. Yes.

21 Q. Have you ever testified as an expert in state court  
22 or federal court?

23 A. In state I have.

24 Q. And approximately how many times?

25 A. I would approximate forty, forty-five times.

1 MR. MCCOY: Your Honor, at this point we would  
2 admit Mr. Fitts as an expert in DNA and serology.

3 THE COURT: Any voir dire or any objection?

4 MS. RUNEY: No, Your Honor.

5 THE COURT: Without objection, he will be  
6 considered as an expert in that field.

7 MR. MCCOY: Thank you, Your Honor.

8 Q. Mr. Fitts, I'm going to go through just the basic  
9 procedures of how you receive evidence while you're at  
10 SLED. Obviously you're in Columbia and we are in  
11 Charleston and evidence is taken from here up to SLED.  
12 And can you explain to the jury, how is it you go about  
13 receiving evidence in Columbia?

14 A. There's a -- on the first floor of our building  
15 there's an evidence log-in work area that has the evidence  
16 log-in technicians. And so individuals from around the  
17 state bring in this evidence. The evidence technician  
18 will take that evidence, put it in a heat sealed pouch,  
19 seal that pouch, and then using the computer, you know,  
20 put what items are in that sealed pouch. The case gets  
21 assigned and that heat sealed pouch will move from the  
22 evidence intake to the fourth floor where our DNA/serology  
23 laboratory is and it's placed in my evidence bin when that  
24 case has been assigned to me.

25 Q. So once you receive the evidence, is it your

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Matthew Fitts - Direct Examination by Mr. McCoy*

213

1 testimony today that it's sealed, it's protected and it's  
2 secured?

3 A. Yes, it is.

4 Q. Now, Mr. Fitts, every time you examine a piece of  
5 evidence or any kind of item that's sent to SLED, is it  
6 your standard procedure to fill out and to make a report  
7 of your findings?

8 A. Yes, it is.

9 Q. And you do this no matter if you're examining DNA or  
10 you're examining serology or you're examining anything?

11 A. Yes. If I examine it, I issue a report.

12 Q. Okay. Did you happen to come into some evidence that  
13 was carried up from Charleston relating to a homicide that  
14 occurred on 2/5 of 2008?

15 A. Yes, I did.

16 Q. And you just testified that you always prepare a  
17 report and I guess that's what you have up front with you  
18 right now. Can you tell the jury the items that were  
19 submitted to you for your testing?

20 A. I received a blood standard from Daniel Jones, finger  
21 nail clippings from the right and left hand, some swab --  
22 several swabs, one labeled number 7, one labeled number 4,  
23 a swab labeled number 1, a swab from a knife blade, a swab  
24 from the back of a knife blade. I received about, I  
25 believe it's eight swabs from various locations of a car,

1 a swab from the gearshift, the exterior of a passenger  
2 door handle, the interior of a passenger door handle,  
3 passenger side hood, the driver's side door handle  
4 exterior, driver's side door handle interior, swab from  
5 the ignition and swab from the steering wheel.

6 Q. Now, Mr. Fitts, just as with any other evidence you  
7 receive, in this case do you have any idea what's happened  
8 in this case?

9 A. No. Only if I read the incident report. I get  
10 paperwork associated with it, and if there's an incident  
11 report, it may tell me the nature of what's occurred. But  
12 for the most part, as you can tell, I don't know where a  
13 lot of this comes from.

14 Q. So you don't know every player that's involved in the  
15 case?

16 A. No, I don't.

17 Q. Is it still important to you to somewhat have a  
18 layout of what's happening?

19 A. Yes, to have an idea of what's the most probative  
20 samples to analyze.

21 Q. Now, going into your analysis, you received this  
22 evidence. It's been sealed and it's secure and it's now  
23 in your possession. What's the first step you take in  
24 looking at evidence or pulling it out?

25 A. It depends on the request. What we do for forensic

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Matthew Fitts - Direct Examination by Mr. McCoy*

215

1 applications is we receive evidence from crime scenes and  
2 our department will identify the biological evidence,  
3 predominantly whether there's blood present or semen is  
4 present. And once we identify those, we attempt to get a  
5 DNA profile from that evidence. And then we'll also  
6 receive standards from victims or other individuals and  
7 we'll develop profiles from those. And we just compare  
8 the profiles to either include or exclude someone as a  
9 possible contributor to that biological stain at a crime  
10 scene.

11 Q. Can you explain to the jury how you leave your DNA  
12 somewhere?

13 A. It's any -- any nucleated cell, which means almost  
14 any tissue or fluid from you is going to have cells in it  
15 that's going to contain your DNA. So it can -- your blood  
16 will leave it, semen will leave it, saliva will leave it,  
17 urinals leave it. Just touching and handling an item,  
18 your skin cells could be transferred. So any of these  
19 nucleated cells will contain copies of your DNA that could  
20 be transferred.

21 Q. So it's fairly easy to leave your DNA somewhere?

22 A. Yes, it is.

23 Q. How powerful is DNA evidence? Explain to the jury  
24 how important it is and how almost sure you are of your  
25 results?

1 A. Well, when you develop -- we look at enough sites,  
2 when -- if you think of your, if you think of your DNA as  
3 a copy of a big book that you've left, and what we do is  
4 we look at just -- not the entire book because it's too  
5 big, but we look at very specific pages and make these  
6 comparisons to the books that got left at a crime scene  
7 and the book that was the standard of somebody's. And we  
8 look at up to fifteen different genetic sites. And the  
9 more sites you look at, the more unique that profile is  
10 and the rarer it's going to be that you'll find it in the  
11 general population. So if we get a full profile, these  
12 profiles generate numbers that are well beyond the  
13 population of the world.

14 Q. So once you have a full profile, how concrete are  
15 your conclusions?

16 A. I feel very confident that that profile is unique and  
17 that it's the -- you would only see that once in the world  
18 population unless you have an identical twin.

19 Q. Okay. You just testified that you received from  
20 Charleston a blood standard from Daniel Jones, fingernail  
21 clippings, three swabs labeled 7, 4 and 1, a swab from the  
22 knife blade, a swab from the back of a knife blade,  
23 several swabs from the interior of a car, swab from the  
24 ignition on a car and a swab from the steering wheel.  
25 Explain to the jury how you go about testing. I mean,

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*

217

*Matthew Fitts - Direct Examination by Mr. McCoy*

1 what's the procedure you follow when you actually test?

2 A. Well, if you think of a cell as a balloon and inside  
3 that balloon is your DNA, but also a whole lot of other  
4 cellular components. So we go through a process of just  
5 popping that balloon, capturing the DNA and washing  
6 everything else away. And then once we have that DNA  
7 purified, we'll quantify it so that we know how much we  
8 have and then we have a chemical process that we use to  
9 develop a profile from that purified DNA.

10 Q. Do you use any types of machines or instruments to  
11 help you test?

12 A. Yes.

13 Q. What do you use?

14 A. Well, we use instruments that perform the DNA  
15 extraction and clean-up process. We use another  
16 instrument that quantifies the DNA for us. We use an  
17 additional instrument that actually does what's called the  
18 amplification of like what I told you before, the fifteen  
19 sites we look at. There's -- it's almost like a Xerox  
20 machine that you're Xeroxing these fifteen different  
21 pages. And then we have an additional instrument that  
22 detects those pages and develops the profile, the DNA  
23 profile.

24 Q. To your knowledge are these instruments and testing  
25 materials in proper order, in proper functioning order?

1 A. Yes. Yes, they are. They have all the scheduled  
2 maintenances, you know, that are required and they follow  
3 that annually.

4 Q. All right. I'm going to take you to the items that  
5 you did analyze in this particular case. What were the  
6 results from your testing of swab labeled number 7, number  
7 4, number 1, item 7, item 6 and item 8?

8 A. The DNA profiles from those items matched the DNA  
9 profile of Daniel Jones.

10 Q. And how do you know they matched the profile of  
11 Daniel Jones?

12 A. Well, because at all fifteen sites that we, that we  
13 analyzed and compared, at all fifteen sites they were  
14 identical with the profile that was developed from Daniel  
15 Jones.

16 Q. And again for the jury, can you tell them the  
17 probability of this being anybody else other than Daniel  
18 Jones?

19 A. We use the standard forensic equations and data bases  
20 to calculate this full DNA profile, how often you would  
21 see that in the population. And if I just started  
22 randomly testing people, you wouldn't expect to see this  
23 profile once in every 1.5 quadrillion times.

24 Q. That's quite a number.

25 A. Yes.



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Matthew Fitts - Direct Examination by Mr. McCoy*

219

1 Q. So you're fairly certain of your findings?

2 A. Yes.

3 Q. Now, when you examined these things and these swabs,  
4 was this -- you just testified about several different  
5 kinds of DNA and how you leave it. Is this what you refer  
6 to as touch DNA or was this blood DNA?

7 A. These items were -- I believe most of those items  
8 blood was indicated that it was present on those swabs.

9 Q. Okay.

10 A. So that these are -- the most likely scenario was  
11 that this was DNA obtained from the blood.

12 Q. And you also had an instance to test swabs that were  
13 found on the interior of a car. These are later swabs  
14 that you received?

15 A. That's correct.

16 Q. Was this touch DNA?

17 A. Yes. This was primarily someone handling an object  
18 or grabbing an object and looking to see the possibility  
19 if any cells were transferred. So we're not doing any  
20 serology testing to see if there was blood or anything.  
21 We're just seeing if some cells transferred. And so we  
22 call this touch DNA and we test just to see what type of  
23 DNA profile we can get from those swabs.

24 Q. And from the touch DNA swabs that you examined from  
25 the interior of the car, were you able to match the victim

1 in this case, Danny Jones, at all?

2 A. No. On all of the swabs that were received, the  
3 victim's -- he could be excluded as a contributor to any  
4 of the DNA profiles developed from that car.

5 MR. MCCOY: Court's indulgence, Your Honor.

6 THE COURT: Yes, sir.

7 Q. Just for clarification purposes, Mr. Fitts, I'm going  
8 to take you back to your results from the first actual  
9 items that you tested, and this is items 2, 4, 5, 6, 7 and  
10 8. You testified that those were a match to Danny Jones.  
11 But can you tell the jury what actually items 2, 4, 5, 6,  
12 7 and 8 are? I mean, let's just compare those for  
13 clarification purposes.

14 A. Item 2 were the right hand fingernail clippings. And  
15 again, 4 was labeled as -- it's swab labeled number 7. 5  
16 was the swab labeled number 4. 6 was the swab labeled  
17 number 1. 7 was a swab from the knife blade. And 8 was  
18 swab from the back of the knife blade.

19 Q. So it's your testimony here today that swabs from the  
20 scene, swabs from the knife, came back as Danny Jones -- a  
21 positive for Danny Jones's DNA?

22 A. Yes.

23 Q. Please answer any questions Ms. Runey may have for  
24 you. Thank you, Mr. Fitts.

25 THE COURT: Mr. Butler, you may cross examine.

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Matthew Fitts - Cross Examination by Mr. Butler

221

1 CROSS EXAMINATION

2 BY MR. BUTLER:

3 Q. Mr. Fitts, I just have a few questions for you.

4 There aren't two types of DNA, I mean, there's just DNA;

5 right? We were talking about as opposed to mitochondria

6 versus nuclear, the difference between touch DNA and blood

7 DNA, those aren't two different types of DNA?

8 A. Correct.

9 Q. They're both nuclear DNA?

10 A. Correct.

11 Q. From the nucleus of a cell?

12 A. Correct.

13 Q. Okay. This is just a different term that you guys

14 use to try to designate the source of the DNA?

15 A. Correct.

16 Q. Okay. And so what you told us today is that Mr.

17 Jones's own DNA was on his knife; right?

18 MR. LEVENTIS: Objection, Your Honor. Lacks

19 foundation.

20 THE COURT: Overrule the objection.

21 Q. Mr. Jones's DNA was on his knife?

22 MR. LEVENTIS: Same objection.

23 THE COURT: Overruled.

24 A. On the swabs from -- that were -- they were on the

25 swab from that knife blade, which I never saw the knife

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Matthew Flitts - Redirect Examination by Mr. McCoy*  
*Matthew Flitts - Recross Examination by Mr. Butler*

222

1 blade, but it was on those swabs. Right.

2 Q. And the swabs from Mr. Moultrie's cab had his DNA?

3 A. Yes. That's true.

4 Q. Now, you've identified the samples from the knife as

5 -- you designated those as blood DNA because the samples

6 from the knife had blood on them?

7 A. That's correct..

8 Q. And touch DNA would come from epithelial cells, skin

9 cells?

10 A. Correct.

11 Q. We're constantly sluffing off dead skin which contain

12 cells which will have nuclear DNA?

13 A. That's correct.

14 Q. So you can find those cells in saliva?

15 A. Correct.

16 Q. Sweat?

17 A. Yes.

18 Q. Okay. And so when you say that this is blood DNA

19 from the knife, that's an assumption because the swabs had

20 blood on them; right?

21 A. It's the -- it's -- the likelihood -- if blood is

22 present it would almost overwhelm the presence of any what

23 we refer to as transfer or touch DNA because the blood

24 would be such a stronger source. So the likelihood is

25 that it came from the source of blood because it would

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*

223

**Matthew Fitts - Redirect Examination by Mr. McCoy**

*Matthew Fitts - Recross Examination by Mr. Butler*

1 overwhelm the amount of touch DNA that would be present

2 just from sloughing of skin cells. But that is an

3 assumption in essence that it came from the blood.

4 Q. Okay. A person whose hand is sweating and they're

5 holding a knife, will leave epithelial cells, skin cells

6 ---

7 A. That's correct.

8 Q. -- on the object and you can get DNA from that?

9 A. That's correct.

10 Q. And you weren't given any comparative samples from

11 the knife; were you? And by comparative samples, I mean

12 swabs where there was no blood?

13 A. No. Those were the only two swabs.

14 Q. So if you were given a swab -- do you know what I

15 mean by comparative sample?

16 A. I'm assuming, sir, just from a different location on

17 the knife?

18 A. From a different location on the knife where there

19 was no blood, you might very well expect to find what

20 we're calling touch DNA on that part of the knife?

21 A. That's possible, yes.

22 Q. Okay. Thank you very much.

23 THE COURT: Any redirect?

24 MR. MCCOY: Briefly, Your Honor.

25 REDIRECT EXAMINATION

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Matthew Fitts - Redirect Examination by Mr. McCoy*  
*Matthew Fitts - Recross Examination by Mr. Butler*

224

1 BY MR. MCCOY:

2 Q. Again, Mr. Fitts, going back to the knife that you  
3 tested for DNA, you don't know where this knife came from,  
4 you don't know who the knife belonged to?

5 A. That's correct.

6 Q. And it came back -- the results of your testing were  
7 that Danny Jones's blood was found on the blade of that  
8 knife?

9 A. Yes.

10 MR. MCCOY: No further questions, Your Honor.

11 THE COURT: Thank you, sir. You may step down.

12 MR. BUTLER: Briefly, Judge, if I could.

13 THE COURT: Yes, sir.

14 RECCROSS EXAMINATION

15 BY MR. BUTLER:

16 Q. One quick question: His DNA was found on the knife.  
17 We're assuming that it's from the blood, as you've  
18 testified?

19 A. Yes. It would be, again, my opinion that it was  
20 derived from the blood because the amount of DNA you would  
21 get from the blood would overwhelm any type of touch or  
22 transfer DNA that would have been present.

23 Q. The specific crux of your opinion is that it's his  
24 DNA that's on the knife?

25 A. Yes.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell- Direct Examination by Mr. McCoy*

225

1 Q. Thank you.

2 THE COURT: All right. Thank you, Dr. Fitts,  
3 you may step down.

4 You may call your next witness, Solicitor.

5 MR. MCCOY: Thank you, Your Honor. The State  
6 would call Erin Presnell with MUSC.

7 ERIN PRESNELL,

8 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. MCCOY:

11 Q. Good morning, Dr. Presnell.

12 A. Good morning.

13 Q. Thank you for being here with us today.

14 A. Yes.

15 Q. Dr. Presnell, can you tell the jury where you work?

16 A. I work at the Medical University of South Carolina.

17 I'm right down the road as a forensic pathologist in the  
18 Department of Pathology.

19 Q. Can you tell the jury what a forensic pathologist is?

20 A. Well, I've been saying lately, most people are being  
21 real familiar with a forensic pathologist tests because of  
22 all the shows on TV. But really, forensics is a  
23 subspecialty of the broader field of pathology. Pathology  
24 is the study of disease. So if you were to go to your  
25 personal physician and he does a skin biopsy or for the

1 women a pap smear, any tissue that a physician would take  
2 from you, they send to the pathologist, they look at it  
3 under a microscope and they diagnose cancer, infection,  
4 benign, et cetera. Forensics is the subspecialty of that.  
5 So once you've done your general pathology training, you  
6 do your subspecialty of forensics where we're not just  
7 looking at a single tissue, we're looking at a whole body.  
8 And the process is called an autopsy. We're not just  
9 looking for diseases, but we're also looking at injuries  
10 and interpreting different types of trauma and ultimately  
11 trying to deduce the cause and manner of death.

12 Q. Dr. Presnell, how long have you been a forensic  
13 pathologist?

14 A. I took my boards in 1999. I was board certified in  
15 lab -- I was board certified in general pathology in 1998  
16 and then forensics is a subspecialty, so that's 1999.

17 Q. Can you tell the jury your educational background?

18 A. Well, pathologists are not doctors. You go to  
19 college and then you go to med school. After med school  
20 everybody's kind of got the same -- in the same area and  
21 you decide what specialty you want to go to, whether it be  
22 pediatrics or surgery. And I chose pathology. So that  
23 was a five year training program and then go one  
24 additional year as just forensics.

25 Q. So not only do you do college, med school and then



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell- Direct Examination by Mr. McCoy*

227

1 you took training after med school?

2 A. Well, the pathology residency -- it's called a  
3 residency, whichever specialty you go into, not -- that's  
4 a training time that you spend..

5 Q. How long was your residency, Dr. Presnell?

6 A. Well, now pathology is a four year residency. But  
7 back when I did it, it was five years.

8 Q. Dr. Presnell, you just testified that as a forensic  
9 pathologist you perform autopsies. Approximately how many  
10 autopsies do you think you've performed?

11 A. I would have to estimate approximately two thousand.

12 Q. All right. Have you ever testified in state or  
13 federal court as an expert?

14 A. Yes, I have.

15 MR. MCCOY: Your Honor, at this point we'd like  
16 to put forth Dr. Presnell as an expert in forensic  
17 pathology.

18 THE COURT: Any objection or any voir dire?

19 MR. BUTLER: No, sir.

20 THE COURT: Without objection, she will be  
21 considered an expert in the field of forensic pathology.

22 MR. MCCOY: Thank you, Your Honor.

23 Q. Dr. Presnell, I'm going to take you right to the  
24 autopsy that you performed for a homicide that occurred on  
25 2/5 of 2008. How did you become involved in this and how

1 did you get to be the one to actually perform this

2 autopsy?

3 A. Well, South Carolina is a coroner state, so coroners  
4 are elected. You might have voted for one this last  
5 election. They actually respond to the death scenes and  
6 they decide who gets autopsied. This was a Charleston  
7 County case, and the Charleston County coroners usually  
8 send -- pretty much all the time, send their cases to us  
9 at MUSC to do the forensic autopsy. So in this particular  
10 time I was the attending or the -- attending pathologist  
11 on call. And so when the coroner referred it to us, I was  
12 up and received this case to do.

13 Q. Now, was anybody else with you as you did perform  
14 this autopsy?

15 A. Well, the -- as far as participating?

16 Q. Participating, anybody else in the room with you?  
17 Anybody else assist you or help?

18 A. There's always other people in the room. We have an  
19 autopsy technician. We also have a pathology resident  
20 who's in training at MUSC training program. Also, one of  
21 the police officers was there, Scott Wyant. And probably  
22 the coroner came by as well.

23 Q. Dr. Presnell, can you describe to the jury what you  
24 saw when you came and performed this autopsy? What -- who  
25 was the subject and how did he appear to you?

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell- Direct Examination by Mr. McCoy*

229

1 A. Well, the subject was identified to us as Daniel  
2 Jones. And he was a thirty-four year old black man who  
3 had an injury to the lower right neck area. It was  
4 considered a sharp force injury. And then he also had a  
5 fair amount of surgical medical intervention where  
6 extensive resuscitative efforts attempting to save his  
7 life.

8 Q. So he had received care before he came for an  
9 autopsy?

10 A. Right. He was transported to MUSC where they  
11 attempted to repair his injuries. Because of -- in the  
12 process of attempting to repair the injuries, they did  
13 what they call thoracotomy, which is where they open the  
14 chest. And they also did a sternotomy, which is where  
15 they cut through the sternum also to gain access to the  
16 chest. And then they also -- it appears that they opened  
17 up the incision, the cut that was already on his neck, to  
18 try to get to the vessels that were underneath that had  
19 been injured from the stab wound.

20 Q. So numerous attempts had already been made to try to  
21 help Mr. Jones along?

22 A. Well, the attempts appeared to be that they were  
23 trying to localize where exactly the injury was.  
24 According to what you have is the stab wound to the lower  
25 neck kind of chest area, so you know, at the time on the

1 outside, you don't know if it cut any vessels, if it  
2 actually went into the chest and got the lung. Whether it  
3 might have gotten the aorta. So I believe their first  
4 step was probably try to localize where the actual injury  
5 was.

6 Q. Dr. Presnell, when you perform autopsies, do you make  
7 an evidence of what you -- do you make a record of what  
8 you find?

9 A. Yes. The autopsy report.

10 Q. And do you always make a report from every instance  
11 that you do?

12 A. Yes.

13 Q. Do you make a thorough examination of everything you  
14 find?

15 A. We certainly try to.

16 Q. Do you examine the outside of the body?

17 A. Well, all of our forensic autopsies are complete  
18 autopsies. So we do the external exam, we do diagrams, we  
19 do photographs. Then we do the internal exam and we --  
20 even if the injury is localized in one area, we still do  
21 the full exam. We map all the organs, dissecting all the  
22 organs, including the brain as well. Of course, we did in  
23 this case as well.

24 Q. Dr. Presnell, I'm going to take you to page three of  
25 your report. It's labeled evidence of injury. If you

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell- Direct Examination by Mr. McCoy*

231

1 could, explain to the jury the injury that you observed on  
2 Mr. Jones and where it was located?  
3 A. Okay. He has a what we call sharp force injury.  
4 Sharp force, our basic terminology, sharp force is caused  
5 based on being with a sharp edge. This is in comparison  
6 to what we call blunt trauma where blunt trauma sometimes  
7 -- blunt trauma to the skin might actually cause the skin  
8 to split and separate. That's actually called a  
9 laceration. A sharp force or sharp edge on the skin will  
10 make a sharp incision. An incision is considered a cut.  
11 It's longer on the skin than it is deep into the body.  
12 And a stab wound, which is one of the other types of sharp  
13 force injuries are -- excuse me -- a stab wound, one of  
14 the other types of sharp force injuries is deeper in the  
15 body than the width of the injury on the skin. In this  
16 case he had approximately a two inch sharp opening on his  
17 skin at the base of the right side of his neck, at the  
18 base. Remember that the surgeons had a standard test and  
19 we don't know exactly how wide it was on the -- the  
20 original stab wound was. However, trying to estimate how  
21 deep that injury that is, it goes for approximately two  
22 inches into the neck area. Through the process of going  
23 through the neck, the neck tissues and went through some  
24 of the neck muscles, soft tissue around the neck, it also  
25 injured three of the great vessels bringing blood back to

1 the heart from the head and the arm area. That would be  
2 the jugular, the subclavian and then where those two join  
3 it's called the brachiocephalic vein. So three major  
4 vessels bringing blood back to the heart. And ultimately  
5 that was the source of the -- that was the fatal injury.  
6 He ended up what we call exsanguinating or bleeding to  
7 death from that injury. In that area there was actually  
8 sutures where the surgeons had attempted to repair the  
9 openings in those vessels. And the other, you know,  
10 additional injuries that we can see from that was some  
11 blood collection in the right chest cavity and the left  
12 chest cavity just from the wound from that.

13 Q. Just to take you a step back, Dr. Presnell, you spoke  
14 of this area where the wound was being a key area for the  
15 three major arteries, veins, and please correct me if I  
16 say the wrong thing, but where these three come together  
17 as well is also located in this area; is that correct?

18 A. Well, yes. Well, we had two major types of vessels,  
19 the arteries, which take blood away from the heart, takes  
20 the oxygenated blood away from the heart to the body so it  
21 can receive oxygenated blood. And the veins, the little  
22 ones, bring all the blood back to the heart so it can get  
23 oxygen in the lungs again. And so what was in this area  
24 that the knife got kind of deep down at its two inch depth  
25 were the -- well, the subclavian and the jugular, the

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell- Direct Examination by Mr. McCoy*

233

1 jugular coming from the neck, subclavian is coming from  
2 the arm, the right arm, and then where they join they  
3 become one larger vein called the brachiocephalic vein.

4 Q. And did this wound appear to hit where they come  
5 together or can you tell that from your observations?

6 A. Well, remember that the surgeons had been in there.  
7 So there were sutures in multiple area. So we considered  
8 that whole kind of conglomerate as an area that was  
9 injured.

10 Q. Now, you also just testified that there was a  
11 significant amount of blood that was found in the chest  
12 cavity?

13 A. Well, I just said that there was blood found in the  
14 chest cavity. There is four hundred millimeters in the  
15 right chest and a hundred fifty in the left. But  
16 remember, he's got a thoracotomy, so his chest has been  
17 opened up all the way and a sternotomy, so again his chest  
18 had been opened up all the way so there may have been  
19 blood in there that, you know, came out during that  
20 surgical procedure.

21 Q. Now, is it typical for a normal human being to have  
22 that amount of blood in any sort of chest cavity?

23 A. Oh, there should not be any blood in the chest  
24 cavity.

25 Q. And can you give the jury a fair estimate of how much

1 that amount of blood is? Can you give them something to  
2 compare to?

3 A. Five hundred millimeters, five hundred fifty  
4 millimeters total is -- well, think of a two liter Coke  
5 bottle, that's two thousand millimeters. So ...

6 Q. Now also during your examination of this wound of Mr.  
7 Jones, are you able to determine what direction or the  
8 path this sharp object may have taken once it entered his  
9 body?

10 A. We did a general direction, not like specific angles  
11 and stuff, because again, the surgeons had been there.  
12 But obviously it's going down and it's going back a little  
13 and it's actually going what we would call lateral or a  
14 little bit out towards his right. So it's going kind of  
15 in this direction. Again, a very general direction, not  
16 very specific.

17 Q. So more or less your testimony is that it's down and  
18 to the right?

19 A. Down, back and to the right.

20 Q. Down, back and to the right. Dr. Presnell, in  
21 looking at this victim, Danny Jones, and in performing the  
22 autopsy, in your professional conclusion, what's the cause  
23 of death of Mr. Jones?

24 A. Well, the cause of death is the disruption of those  
25 veins, the great veins, due to the stab wound to the neck



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell - Cross Examination by Mr. Butler*

235

1 area.

2 Q. And can, again, from your professional standpoint and  
3 your expert standpoint, can you tell what type of  
4 instrument may have caused this injury?

5 A. Well, it's consistent with a knife. But as far as  
6 being specific, no. It's some type of sharp instrument  
7 that was used.

8 Q. Dr. Presnell, also as part of performing an autopsy,  
9 several blood tests are run throughout the course, be it  
10 on the victim Danny Jones, did he have a toxicology report  
11 done on him at all?

12 A. He did. He actually -- because he had received  
13 fluids and transfusions and all, we had tried to collect  
14 his blood that they had taken from him when he first got  
15 to the hospital, because that would be more reflective of  
16 his state at the time of the injury. We sent that out.  
17 It wasn't a lot. But they did do an alcohol level on him,  
18 which was 0.19. Just for clear context, 0.08 is the limit  
19 for drinking under the influence. And so .08 is drinking  
20 under the influence limit and his was .19 or .19.

21 Q. And on your report, well, you document everything.  
22 Again, what would be the probable cause of death taking  
23 page one of your conclusions of your, of your report?

24 A. His cause of death was the disruption of the great  
25 vessels -- the great veins coming back to his heart from

1 the stab wound to the neck.

2 Q. Please answer any questions that -- or excuse me.

3 Briefly, Dr. Presnell, you testified to the fact that some  
4 blood work was done on Danny Jones and he had a blood  
5 alcohol level that you just indicated. Do you know  
6 approximately how many drinks that would be?

7 A. Not off the top of my head. You can kind of estimate  
8 for a seventy kilogram, normal size man, approximately  
9 .015. Adding up .015 per drink and then there's the whole  
10 metabolism thing in there and weight and how long he had  
11 been drinking. So no, not off the top of my head.

12 Q. Thank you, Dr. Presnell. Please answer any questions  
13 Mr. Butler may have for you.

14 THE COURT: You may cross examine the witness.

15 CROSS EXAMINATION

16 BY MR. BUTLER:

17 Q. Good morning, Doctor.

18 A. Good morning.

19 Q. Just to clarify the questions that you were asked  
20 about the quantity of blood taken from the chest cavity of  
21 Mr. Jones, you can't attribute, you can't attribute what  
22 portion of that quantity is from his injury and what from  
23 the attempts to resuscitate him; is that right?

24 A. Well, I just -- I can't -- at autopsy we're  
25 documenting how much is left. So four hundred in the

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell - Cross Examination by Mr. Butler*

237

1 right and one hundred fifty in the left. There is --  
2 during the process of, you know, him being transfused and  
3 all, some of that blood that ends up being in the chest  
4 cavity may have come from some of the transfusion. So I  
5 can't say what the total amount was, because obviously  
6 they wouldn't have wanted to leave blood in there because  
7 it kind of squished the lungs. So how much they removed  
8 versus how much was additional bleeding during the  
9 resuscitative efforts.

10 Q. And with respect to the toxicology, .19 is more than  
11 double the legal limit; is that right?

12 A. Right. The double the legal limit would be .16.

13 Q. And you said that there's a standard number of .015  
14 per drink?

15 A. I think that's the approximation, yes, without  
16 considering metabolism, et cetera.

17 Q. Sometimes when we talk about this we use the zeros  
18 differently. If we're saying that Mr. Jones's blood  
19 alcohol content was .19, sometimes it's .019, it's up a  
20 percentage point?

21 A. Right.

22 Q. So I want to make sure that we're consistent?

23 A. If we said -- okay. If we said that the limit for  
24 driving is .80 -- excuse me, .080, so .08 -- let's back  
25 up, .080. And if you wanted to estimate how much you're

1 drinking, .015. So 80 compared to 15. And then his is  
2 .19 -- actually it was .191, so we have -- let's take away  
3 the decimals for a second. His was 191, legal limit is  
4 80, and estimating a drink is 15. Does that kind of  
5 verify, 15 versus 80 versus 191.

6 Q. 191 versus 15?

7 A. Per drink, approximately.

8 Q. I didn't want to make it -- to leave the impression  
9 that .19 was only four one hundredths higher than .15.  
10 It's -- you're the doc. Do the math. The comparison  
11 would be 15 to 191?

12 A. Exactly.

13 MR. BUTLER: Beg the court's indulgence one  
14 moment.

15 Q. We're going to do it on the board for you.

16 A. Thanks.

17 Q. So if we're talking about the legal limit, that would  
18 be .08?

19 A. Correct.

20 Q. So .08. One drink ---

21 A. Now, remember y'all asked me about how much a drink  
22 is off the top of my head, and I'm -- I said .105, but it  
23 might be .025. I'd have to clarify that. But regardless  
24 it's -- yeah, do .025. Metabolism might be .015, but  
25 don't worry about that.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell - Cross Examination by Mr. Butler*

239

- 1 Q. All right. And then Mr. Jones, . ---  
2 A. .191.  
3 Q. -- 191.  
4 A. Put a zero and then the eight ...  
5 Q. All right. I saw that you were doing some  
6 computations.  
7 A. Yes. Well, I was originally doing .015 into -- or 15  
8 into 191 is approximately 12, so approximately 12 drinks  
9 with no metabolism. However, I was also trying to figure  
10 out what the .025, which is, let's see, -- I guess you  
11 guys can't contribute. Yeah, seven. Seven to eightish.  
12 Q. Seven to eightish, you used one number ---  
13 A. If someone has a calculator I can do this a little  
14 easier. I know I should be able to ... Mathematics.  
15 Q. Yeah, I know.  
16 A. There we go. 7.6.  
17 Q. If you use the .025 number?  
18 A. Right.  
19 Q. With your earlier number it was 12?  
20 A. Approximately 12, yes.  
21 Q. All right. And you say without taking into  
22 consideration metabolizing ---  
23 A. Right. For example, when you drink alcohol or when  
24 you drink a drink it doesn't just -- your body doesn't  
25 just give nothing to it and it doesn't just accumulate as

1 you drink more. Your body is also metabolizing and  
2 breaking it down and so that its toxic effects go away.

3 Q. With time your blood alcohol content goes down if  
4 you're no longer drinking?

5 A. Right. If you're no longer drinking then eventually  
6 your alcohol will go away.

7 Q. So in this case Mr. Jones's blood alcohol content  
8 would have been higher prior to the time his blood was  
9 submitted to the toxicology department?

10 A. Well, at the time that we draw it, then the  
11 metabolism is going to quit. You know, the liver is, you  
12 know, metabolizing it and all. So at the time that he was  
13 taken to the hospital was actually, you know, a period of  
14 time after the actual event, and he would be transported  
15 and all. The time actually drew, that would be his blood  
16 alcohol at the time of his ... It wouldn't continued to  
17 metabolize significantly afterwards as long as it's  
18 properly stored, et cetera.

19 Q. But it goes down -- after the event, it goes down?

20 A. Right. It probably would have dropped, depending on  
21 the length of time -- yes, it would have been metabolized  
22 and how much depends on the length of time between the  
23 event and when the blood was drawn.

24 Q. Do we know how long?

25 A. The event happened at approximately six forty p.m.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell - Cross Examination by Mr. Butler*

241

1 and -- the event happened at six forty -- at approximately  
2 six forty p.m. He was pronounced dead at eight --  
3 approximately eight forty p.m. The hospital blood was  
4 when he arrived, and I don't have the specific time of  
5 when it was drawn, but it would have been sometime between  
6 the event and the time of his death. And that's all I can  
7 say. Between six forty and eight forty. So within a two  
8 hour period.

9 Q. So it could have been as long as two hours?

10 A. It could have been as long as two hours.

11 Q. And you're familiar with Werner Spitz's Medicolegal  
12 Investigation of Death?

13 A. Yes, sir.

14 Q. And that's a standard text book in forensic  
15 pathology?

16 A. It is a standard reference book that we use. Yes.

17 Q. And you agree with the number that is in Spitz &  
18 Fisher that concentration of alcohol decreases by .015 to  
19 .02 percent per hour?

20 A. That was the approximation I was trying to remember.

21 Q. Okay. I won't make this anymore complicated. If you  
22 take that number, .015 to .02 percent, take .015 over two  
23 hours, how much would the blood alcohol concentration have  
24 been higher two hours earlier?

25 A. If we estimate at .015, to be generous, then it would

1 be .03 over a two hour period. So if you've got .03 to  
2 .19, then we're up at .2 -- I'm sorry. 221.

3 Q. .221?

4 A. Right.

5 Q. And in medicine and in forensic pathology, you're  
6 familiar with the physiological effects of alcohol?

7 A. Yes.

8 Q. And what does that mean, physiological effect?

9 A. Well, it's the effect that the alcohol is going to  
10 have on your body.

11 Q. And in general what kind of effect does alcohol have  
12 on a person?

13 A. Well, it depends on the level consumed. Alcohol is  
14 actually a depressant. And it depresses the cortical  
15 structures in the brain. That sounds kind of strange,  
16 because when we act out when we've been drinking, but  
17 that's because it's depressing the inhibitory parts of  
18 your brain. So if you're depressing the inhibitory parts,  
19 it kind of, you know, lets the other -- you know, the  
20 person act out more. So that's one of the major things.  
21 Now, if you start to get the alcohol level too high, the  
22 depression becomes so great that the person can stop  
23 breathing and they can actually die from high levels.

24 Q. And are you familiar with a table in Spitz & Fisher  
25 that designates the different effects in the different



State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Erin Presnell - Cross Examination by Mr. Butler

243

1 levels of alcohol concentration?

2 A. There is an estimate of different ranges of alcohol  
3 levels and what they might expect the person to act like  
4 under those different levels.

5 Q. And if you talk about the lowest level of  
6 concentration, 0.04, no significant effect, that's the  
7 first stage.

8 MR. LEVENTIS: Objection, Your Honor. Mr.  
9 Butler is testifying at this point.

10 MR. BUTLER: This is cross examination.

11 THE COURT: I'll give him some leeway with the  
12 way he phrases his questions.

13 Q. You want to hold that?

14 A. Please.

15 Q. Take your time to review that?

16 A. I've seen this. I'm very familiar with it. But just  
17 as far as actual cutouts for the different levels. But  
18 the lower level, .04, and again we use .08 as the limit  
19 for driving under the influence. But at .04 you might not  
20 feel much or there might be some what they call euphoria,  
21 or feeling a little bit buzzed. From .05 to .09, remember  
22 we use .08 as the cutoff, you start to get that release of  
23 inhibitions. Starts to show out. You might have some  
24 change in attention span and maybe even some change of --  
25 an alteration in judgment. As you get up to .1 to .14 --

1 .1 used to be the limit for driving under the influence,  
2 but now it's .08. So .1 to .14, you may develop some more  
3 loss of inhibitions. There may be some emotional  
4 instability. You may have impaired memory.

5 Q. Emotional instability at .14, what does that mean?

6 A. Well, just emotional instability. You can be  
7 extremely happy, extremely sad, angry, a range of  
8 emotions.

9 Q. And that's at .14?

10 A. This is the estimate -- and remember too, these  
11 estimates are for a general population. Chronic  
12 alcoholics are in a different category. Individuals may  
13 actually -- again, we'll apply generalities to a specific  
14 incident. When these are just generalities and, again, in  
15 general what happens to kind of the normal population at  
16 these levels. So .15 to .29, which is the range that we  
17 estimated our -- Mr. Jones to be in, and you can  
18 experience loss of muscular control. You can get more  
19 exaggeration of your emotions or emotional instabilities,  
20 disoriented and you may have some memory impairment. When  
21 we get up to .3 to .39, this is where I was talking about  
22 you become so depressed that the inhibition on your vortex  
23 is so great that you can pass out. You might go into a  
24 coma. And above .39, when you get to .4, then many times  
25 that's lethal. Now, having said that, I must say that

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell - Cross Examination by Mr. Butler*

245

1 people get tolerant to alcohol. And so there are chronic  
2 habitual users that can tolerate much greater levels  
3 without necessarily showing these effects. They still may  
4 be under the influence, but they may not -- you may not be  
5 able to tell -- really appreciate that their level is that  
6 high. Just as an example, they're had people come into  
7 the emergency room with levels at .5. Remember .4 is  
8 supposed to be lethal. And they're walking around and  
9 having to stay there to dry out before they're let back  
10 out.

11 Q. So we're just speaking in generalities. But using  
12 that table, Mr. Jones's blood alcohol concentration would  
13 have been at the level just before what you characterized  
14 as a stupor?

15 A. To the point -- well, the level -- his range is in  
16 .15 to .29, and then the next range, .3 to .39 is when you  
17 start to progress towards the depressed condition.

18 Q. All right. So he wasn't there yet?

19 A. No.

20 Q. He was at the level where, amongst other features,  
21 generally exhibited exaggeration of emotions. What does  
22 that mean?

23 A. That's the reference to emotional instability. You  
24 know, when somebody becomes very happy or very sad or  
25 angry or -- you know, any of the range of emotions.

1 Q. Angry, hostile?

2 A. Possibly.

3 Q. And so somebody with a blood alcohol content of .19,  
4 in layman's terms, they're drunk?

5 A. They could be, they could be drunk. Yes. I would be  
6 drunk. Again, chronic alcoholics may not show the same  
7 signs at the same levels as somebody that's not tolerant  
8 to alcohol.

9 Q. And not just tipsy? I mean, highly intoxicated?

10 A. He could be. And I don't know whether he was a long  
11 term drinker or not, Mr. Jones.

12 MR. BUTLER: Beg the court's indulgence.

13 Q. Oh, what effect can alcohol consumption have on the  
14 bleeding process?

15 A. Well, alcohol can cause dilation of your vessels, so  
16 it's kind of -- if you're drinking alcohol and you kind of  
17 felt warm or flushed it's because the vessels in your  
18 subcutaneous tissue are dilating. So it can cause  
19 dilation of vessels. Dilated blood vessels, when they're  
20 disrupted, could exacerbate the rate of bleeding.

21 Q. And just -- exacerbate means bleed more readily and  
22 easily?

23 A. Right. It wouldn't, it wouldn't help the situation.  
24 They would probably -- they could bleed more easily.

25 Yes.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell- Redirect Examination by Mr. McCoy*

247

1 MR. BUTLER: Beg the court's indulgence.

2 Q. That's all I have. Thank you, Doctor.

3 THE COURT: Any redirect?

4 MR. MCCOY: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. MCCOY:

7 Q. Dr. Presnell, just for clarification. There have  
8 been some numbers up on the board. There's been a lot of  
9 talk about blood alcohol and blood alcohol, blood alcohol  
10 levels. That's legal driving limit. That's not legal  
11 consumption limit?

12 A. Right. I apologize if I didn't discuss that. The  
13 .08 is legal driving. There is no legal existence  
14 drinking limit.

15 Q. And again, everything we have just discussed is a  
16 generalization?

17 A. Right. The levels that we just went through. Yes.

18 Q. Everything -- is it true that everything can have an  
19 effect on a person and a person's blood alcohol level such  
20 as food, if the person drinks every day, everything can  
21 have a factor on what a person's blood alcohol level would  
22 be?

23 A. Well, yes. I mean, food for example would hinder the  
24 absorption of it, so your level would actually be lower.

25 But I think what we're asking is the main effect to your

1    mentality and your ability to function would be how  
2    tolerant you are to that alcohol, how long you've used it  
3    and how tolerant you've become.

4    Q.    What effect alcohol will have on you is a  
5    generalization as well? You can either have a very  
6    calming almost falling asleep effect, or it could be the  
7    other range. Is that correct?

8    A.    Yes.

9    Q.    And Dr. Presnell, aside from all of the alcohol  
10   discussion that's happened this afternoon, again, what was  
11   the cause of death of Mr. Jones?

12   A.    Stab wound to the neck disrupting the great vessels  
13   coming back to the heart.

14   Q.    Thank you. No further questions.

15           THE COURT: All right. Thank you, Dr. Presnell.  
16   You may step down.

17           The State may call its next witness.

18           MR.. MCCOY: Court's indulgence one moment, Your  
19   Honor.

20           THE COURT: Yes, sir.

21           MR. MCCOY: Your Honor, may I look at our  
22   evidence briefly?

23           THE COURT: Yeah. Just take a moment to review  
24   it ---

25           MR. MCCOY: Thank you.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell- Redirect Examination by Mr. McCoy*

249

1 THE COURT: -- and make sure everything's  
2 marked.

3 MR. MCCOY: For the record, can I clarify if 66  
4 through 82 are into evidence?

5 COURT REPORTER: All of the exhibits are into  
6 evidence.

7 MR. MCCOY: All of the exhibits are into  
8 evidence?

9 COURT REPORTER: Yes.

10 MR. LEVENTIS: Your Honor, at this time the  
11 State rests its case.

12 THE COURT: All right. Ladies and gentlemen,  
13 this is a good time for us to take a lunch break. We have  
14 some legal matters we need to take care of and we're going  
15 to take care of those. And rather than keeping you  
16 waiting there and going until one o'clock or so, I'm just  
17 going to send you on to lunch now.

18 Hopefully we'll be able to get these resolved and be  
19 ready to start back about two fifteen. That gives you a  
20 longer lunch hour, but we've got some work to do here.

21 Again, let me remind you not to discuss the case  
22 while you're out and about. Have a good lunch and I'll  
23 see you back at two fifteen.

24 (WHEREUPON, the jury exited the open court at  
25 approximately 12:15 p.m.)

1           THE COURT: All right. Anything we need to take  
2 up now before -- I'd like to have an opportunity to  
3 explain to Mr. Moultrie his right to testify and so forth.  
4 I think we've still got two motions also about settling  
5 the record as far as evidence of prior bad acts or  
6 offenses. Be glad to hear from you on anything you have  
7 from the defense.

8           MS. RUNEY: Thank you, Your Honor. I would just  
9 renew my earlier pretrial motion and make a motion for a  
10 directed verdict under Rule 19 in that the State has  
11 failed to produce competent evidence to prove the charge  
12 of murder. Thank you.

13           THE COURT: As far as the motion for directed  
14 verdict, I believe there is a jury issue for that, that  
15 there's sufficient evidence to take it to the jury. So  
16 I'll deny your motion.

17           How about the -- have y'all discussed with each other  
18 about prior records or other matters under Lyle? In other  
19 words, I want the Defendant to, if he chooses to testify,  
20 have full knowledge of what might be expected as far as a  
21 criminal record.

22           MR. BUTLER: Judge, I think our position is that  
23 merely by testifying he doesn't have a record that would  
24 be impeachable under 609. And of course, if he says  
25 something like I'm a great guy, things change. Or I've



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell- Redirect Examination by Mr. McCoy*

251

1 never been in trouble, things change. But notwithstanding  
2 his opening the door, I don't believe that any of his  
3 record is admissible under 609.

4 MR. LEVENTIS: Judge, we're pretty much on the  
5 same page. If the Defendant gets on the stand and tells  
6 this jury that he has a propensity for peace, he doesn't  
7 start fights, he walks away from fights, something along  
8 those lines, it's our intent to introduce a conviction  
9 that he has that will impeach him on that. But other than  
10 that, I think we're on the same page there.

11 THE COURT: Well, I think you are -- both  
12 understand each other as far as that's concerned.

13 Any other matters we need to take care of?

14 MR. LEVENTIS: Nothing from the State, Your  
15 Honor.

16 THE COURT: I thought there might have been  
17 more. All right. Mr. Moultrie, if you would come  
18 forward, please, with your attorneys.

19 If you would, please, raise your right hand. Do you  
20 swear or affirm the testimony you're about to give me will  
21 be the truth, the whole truth and nothing but the truth,  
22 so help you God?

23 DEFENDANT: I do.

24 (WHEREUPON, the Defendant was duly sworn.)

25 THE COURT: All right. We've come to the stage

1 in the trial, Mr. Moultrie, where I need to make sure that  
2 you understand certain rights. You've got good, capable  
3 attorneys representing you and I'm sure you've had a  
4 chance to go over all this with them. But I need to be  
5 satisfied in my own mind that you understand the rights  
6 that you enjoy under our constitution.

7 Among the rights that you have, under our state's  
8 constitution and the federal constitution, is that which  
9 states that no person in any trial of a criminal case can  
10 be compelled to be a witness against himself. You can't  
11 be required to testify in this case therefore. And you  
12 have the right to testify in your own behalf if you choose  
13 to, but nobody can make you testify. It's a personal  
14 right that you enjoy. And nobody can waive that right but  
15 you. If you decide to testify, you'll be subject to the  
16 same rules that govern other witnesses who testify and you  
17 may be examined and cross examined on any relevant issue  
18 in the case.

19 If there is any evidence of prior convictions of a  
20 false statement or a crime punishable by more than one  
21 year, other evidentiary matters that the court determines  
22 admitting those matters would outweigh any prejudicial  
23 effect to you under the rules, then the Solicitor would be  
24 able to attack your credibility.

25 If you decide to testify, Mr. Moultrie, the decision

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Erin Presnell- Redirect Examination by Mr. McCoy*

253

1 on your part has got to be freely and voluntarily made,  
2 intelligently made, with the knowledge that you have the  
3 protections under the Fifth Amendment that I've explained  
4 to you and with the knowledge of the consequences of your  
5 decision to testify. You may choose not to testify, and  
6 if that happens, I'll instruct the jury, they cannot give  
7 that fact that you didn't testify any consideration  
8 whatsoever. There can be no prejudice to you because you  
9 didn't testify. I'll tell them they can't even talk about  
10 that fact in their deliberations.

11 It's left entirely up to you, Mr. Moultrie, as to  
12 whether or not you wish to testify. You certainly have, I'm  
13 confident, you have a right to talk with your attorneys  
14 further. You can talk with family and friends and anybody  
15 else. But ultimately that decision is going to have to be  
16 yours and yours alone to make. Do you understand what  
17 I've discussed with you?

18 DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions of me  
20 about that?

21 DEFENDANT: No, sir.

22 THE COURT: Have you discussed with your  
23 attorneys whether or not you wish to testify?

24 DEFENDANT: Yeah. But I would like to speak  
25 with him again about it.

1 THE COURT: All right. We'll have a lunch break  
2 and you can testify, and if there's other questions that  
3 you have after our break I'll certainly be glad to answer  
4 those for you.

5 DEFENDANT: Okay.

6 THE COURT: Anything else you need to ask me?

7 DEFENDANT: No, sir.

8 THE COURT: You can return to your seat.

9 MR. LEVENTIS: Your Honor.

10 THE COURT: Yes, sir.

11 MR. LEVENTIS: There's one other matter I'd like  
12 to take up and do it now.

13 THE COURT: All right. This would be a good  
14 time.

15 MR. LEVENTIS: It's the same objection I had to  
16 the Defendant's statements that he made at the crime  
17 scene. It's my understanding that the defense counsel  
18 seeks to introduce a witness that the Defendant allegedly  
19 went to see after this crime was committed. And to that  
20 end, we would object to any statements that the Defendant  
21 made to that witness thereafter as inadmissible hearsay  
22 under Rules 801, 802 and 803. Any reference to it -- I'd  
23 like to object now, because I don't want those statements  
24 to be elicited on the stand and me be forced to object and  
25 it get in front of the jury.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Direct Examination by Ms. Runey*

255

1 THE COURT: All right, sir.

2 MR. BUTLER: Without knowing the content of the  
3 statement, I don't know how to respond. What if he said,  
4 I confess, I did it. I mean, I don't even know what it is  
5 you think that he said.

6 MR. LEVENTIS: Any statement that you elicit  
7 from that Defendant is going to -- or the witness you put  
8 up is going to -- not going to be offered against the  
9 Defendant, it's going to be offered for the Defendant, in  
10 favor of the Defendant. And therefore it's inadmissible  
11 hearsay.

12 MR. BUTLER: Well, it can still be an excited  
13 utterance, depending on what it is, but I don't know the  
14 content of the statement he's seeking to exclude.

15 THE COURT: Well, I don't either. You make the  
16 objections you feel are necessary at the appropriate time.  
17 If we have to send the jury out, we'll certainly do that.

18 MR. LEVENTIS: Thank you, Your Honor.

19 MR. MCCOY: On a side note, this other witness  
20 that is going to come in on the Defense's side, I have not  
21 had a chance to review the rap sheet. I know they've  
22 given me the information. I don't foresee there being any  
23 kind of record or anything like that, but I ---

24 THE COURT: Maybe you can look that over at  
25 lunch and if there is something then we can talk about

1 that right before we start back with the jury.

2 MR. MCCOY: Take that up. Yes, sir. Thank you.

3 THE COURT: Okay. We'll be at ease till two  
4 fifteen.

5 (WHEREUPON, court stood at recess for a lunch break.)

6 THE COURT: Let's have our jury in, please.

7 (WHEREUPON, the jury entered the open court at  
8 approximately 2:45 p.m.)

9 BAILIFF: All jurors are seated, Your Honor.

10 THE COURT: Thank you.

11 Does the Defense wish to call any witnesses?

12 MS. RUNEY: Yes, Your Honor, the Defense calls  
13 Antonio Moultrie.

14 THE COURT: All right. You can come around and  
15 be sworn, please, sir.

16 ANTONIO MOULTRIE,

17 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MS. RUNEY:

20 Q. Antonio, do you go by a nickname?

21 A. Tony.

22 Q. Tony, how old are you?

23 A. Thirty-two.

24 Q. And where did you grown up?

25 A. Charleston, North Charleston.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Direct Examination by Ms. Runey*

257

- 1 Q. What area?
- 2 A. Gideon Heights and on the streets in Charleston
- 3 downtown.
- 4 Q. And is your family still in that area?
- 5 A. All of my family is there.
- 6 Q. And you've got your family here in court with you
- 7 today?
- 8 A. Yes, ma'am.
- 9 Q. And they're on the back row?
- 10 A. Yes, ma'am.
- 11 Q. Second row?
- 12 A. Second row.
- 13 Q. And you've pretty much lived in Charleston the whole
- 14 time?
- 15 A. Yes, ma'am.
- 16 Q. What do you do for a living?
- 17 A. I drive a taxi.
- 18 Q. I want to take you back to February 2008. That's why
- 19 we're here. February the 5th. Tell me what you were
- 20 doing that day?
- 21 A. Early that day I was at a friend's house playing with
- 22 her kids and we were in the yard. George Hemingway,
- 23 Gerald Blake, Daniel Jones, all were down the street. And
- 24 we were cracking jokes back and forth across the two yards
- 25 every now and then. I was still at this house.

- 1 Q. Is that something that you would normally do?
- 2 A. On a daily basis, yeah.
- 3 Q. Y'all would do it back and forth?
- 4 A. Yeah, crack jokes, curse each other out, things like
- 5 that. Drinking.
- 6 Q. And then what did you do?
- 7 A. So I left there and started walking towards Gerald
- 8 and, Gerald and -- oh, what's his name -- Hemingway and
- 9 then they were down there by Daniel's truck. They were a
- 10 couple of other people out there.
- 11 Q. What were y'all going to do?
- 12 A. Drink, crack jokes, curse each other out.
- 13 Q. You were drinking?
- 14 A. Yes, ma'am, I had a beer.
- 15 Q. And the other people there were drinking too?
- 16 A. Yes, ma'am.
- 17 Q. And so y'all were hanging out, talking?
- 18 A. Uh-huh (affirmative).
- 19 Q. What else happened?
- 20 A. So I walked down there. Blake kind of just sat
- 21 there. But I went up to Daniel and I took and I pulled
- 22 his pocket and I said, well, let me get something.
- 23 Q. Stand up and show the jury what you did.
- 24 A. I walked by his left pocket. I said, let me get
- 25 something.



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Direct Examination by Ms. Runey*

259

1 Q. What does that mean?

2 A. That means -- it means a lot of things. Let me get a  
3 beer, or who's going to buy the beer for that day, or  
4 anything like that.

5 Q. And that's how y'all normally talked?

6 A. All the time.

7 Q. Not just you, but other people?

8 A. Everybody.

9 Q. Okay. Then what happened?

10 A. So Gerald said to him, you going to let that man  
11 touch your pocket like that? So then Daniel started,  
12 don't touch my pocket like that. I said, well, if it's a  
13 big issue about it, I apologize. My bad. So then he kept  
14 on with it, kept on with it. So I told him, I said ---

15 Q. He was mad?

16 A. Yeah, he was mad. So I told him, I said, well, my  
17 bad. I said, from now on we don't have to say nothing to  
18 each other no more.

19 Q. Y'all were verbally arguing with each other?

20 A. Yes, ma'am.

21 Q. Then what happened after that?

22 A. After that I started talking to somebody else. He  
23 kept on with it, kept on with it, kept on with it. I  
24 said, man, I already told you, we don't have to conversate  
25 with each other no more. And he kept on. He said, your

1   mama's a crack head. I said, your mama suck dick. And  
2   then words were exchanged from there. Everybody -- anger  
3   was around.

4   Q.   You were angry?

5   A.   Yeah. And he was too. Okay. So Gerald said, you  
6   know that wasn't right. I said, well, you heard what he  
7   said about what my mama did. Gerald said, I didn't hear  
8   that. I said, well now you're going to take up for your  
9   home boy.

10  Q.   And you didn't like the way he was talking to you?

11  A.   Yes, ma'am.

12  Q.   And he didn't like the way you were talking to him?

13  A.   Yes, ma'am.

14  Q.   And then what happened?

15  A.   So then they were getting in the truck. I kicked the  
16  truck.

17  Q.   You did?

18  A.   I kicked the truck. And then they left.

19  Q.   And why did you kick the truck?

20  A.   Mad.

21  Q.   And what he was saying?

22  A.   Yeah. Well, I got mad, but it wasn't to the point to  
23  where -- that left the conversation right there.

24  Q.   So he left?

25  A.   Yes, ma'am.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Direct Examination by Ms. Runey*

261

1 Q. And then what did you do?

2 A. I was still around there with Dred. Hemingway had  
3 done walked to his house. And I think it was -- I  
4 conversate with him for a second and everybody left.

5 Q. Everybody that was hanging out?

6 A. Yeah. Everybody left.

7 Q. And so you left too?

8 A. Yes, ma'am.

9 Q. Where did you go?

10 A. I walked to my car.

11 Q. Where was your car parked?

12 A. My car was parked in front of my grandmother's house.

13 Q. And there was -- and you got in your car?

14 A. Yes, ma'am.

15 Q. Where did you go?

16 A. I got in my car, started my car up and I pulled up.

17 I got next door to the house from Hemingway and he saw me.

18 So I stopped and opened my door. He was back by his car.

19 He said, where you going? I said, I'm going to the store

20 to get a beer and gas my car up for tonight.

21 Q. Then where did you go?

22 A. Then I went -- I headed towards the store. I left

23 off of East Surrey, turned onto Accabee Road and I turned  
24 down Wye Lane.

25 Q. All right. What did you do on Wye Lane?

1 A. Driving down Wye Lane I saw Gerald and Daniel, so I  
2 stopped.

3 Q. Why, why would you stop?

4 A. Because we were just arguing so I went to apologize.

5 Q. So you pulled up and what happened?

6 A. So I pulled up, went to Daniel, I said, my bad for  
7 the incident we had around the corner. He said, Blake,  
8 you ready to get him? So after that I walked back off to  
9 my car and leaned up against my car. He was in his truck  
10 with his door open.

11 Q. Did you see Blake's wife there?

12 A. Yes, ma'am. She was parked in the driveway. She was  
13 sitting in the car, so it looked like she was waiting on  
14 them.

15 Q. And you didn't go there to fight?

16 A. No, ma'am. So Blake said to me ---

17 Q. What were you going to do when you got there?

18 A. I apologized. I apologized. And Blake said to me,  
19 don't come around here with that mess. And I told him, I  
20 said, I didn't come around here to disrespect you and your  
21 wife. I said, I came to apologize. At that time he still  
22 was talking to his wife and I still was leaning up against  
23 my car.

24 Q. Then what happened?

25 A. So while Daniel was still in his truck -- his wife

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Direct Examination by Ms. Runey*

263

1 left. He walked behind his house and said, I'm going to  
2 pee. I still was leaning on my car. Daniel started  
3 walking towards me. So as he's walking towards me, I  
4 stood straight up instead of leaning on my car. He came  
5 out of his pocket with a box cutter in his left hand and a  
6 knife in his right hand. He came up and started swinging  
7 at me. He swung two times. I pushed him. He came back  
8 again. He swung two more time. I pushed him again. By  
9 that time I went in my pocket, opened up my knife and  
10 swung and stabbed him.

11 Q. What did you do after that?

12 A. After that -- after I stabbed him, I looked and I saw  
13 the blood on the knife, started walking backward, and  
14 Gerald came from behind the house and he told him, he just  
15 stabbed me. So Gerald told me, why you stab him? I said,  
16 because he tried to stab me. And as I was walking to my  
17 car, Hemingway pulled up and was coming on the passenger  
18 side of Daniel's truck.

19 Q. Why were you going to leave? Why didn't you stay  
20 there?

21 A. I was scared. I've never stabbed anybody before.

22 Q. And where did you go?

23 A. I left. I went to the stop sign and made a left down  
24 Ferrara, turned on Madden, went back on the East Surrey.

25 Q. All right. That knife you had in your pocket?

1 A. I still had it in my hand.

2 Q. You took it with you?

3 A. Yes, ma'am.

4 Q. And where did you go?

5 A. I went to Linda's house because I didn't want to go  
6 to my grandmother's house. She's eighty years old. I  
7 didn't want to upset her. So I went to Linda's house.

8 Q. Who's Linda?

9 A. She's a female across the street, the house that I be  
10 at, the house that I be at, too.

11 Q. So you went to her house?

12 A. Yeah. She's pretty close to my aunt and my sister,  
13 so I went ---

14 Q. Did you knock on the door?

15 A. Yeah. I spend the night there from time to time.

16 Q. And she let you in?

17 A. Yes, ma'am. The screen door was closed, the back  
18 door was opened, so I went in the house. I was on the  
19 phone. And I said, Linda, I'm trying to call my sister,  
20 whatever, I can't get in touch with her. I said, I just  
21 stabbed Daniel. Daniel tried to stab me and I stabbed  
22 him. She looked at me sort of ---

23 MR. LEVENTIS: Your Honor, I object to this  
24 testimony as hearsay.

25 THE COURT: Okay. I sustain the objection as to

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Direct Examination by Ms. Runzy*

265

1 hearsay as to what others said.

2 A. She saw blood on the knife and she told me to leave  
3 her house. I left.

4 Q. She told you to leave when she saw that there was  
5 blood on the knife?

6 MR. LEVENTIS: Same objection, Your Honor.

7 THE COURT: Sustain the objection.

8 Q. You took the knife with you?

9 A. Yes, ma'am.

10 Q. Where did you go?

11 A. North -- as I was walking out the door, North  
12 Charleston police had just passed. So I got in my car --  
13 he passed me. I got in my car.

14 Q. What did you think when you saw the cops?

15 A. I was scared. And I still had the knife in my hand.

16 Q. Then what did you do?

17 A. So then I passed my grandmother's house. I pulled  
18 into the next door neighbor's yard and parked the car  
19 behind her house. I got out and jumped the fence and I  
20 ran.

21 Q. Why didn't you take it to your grandmother's house?

22 A. I didn't want the police to go to my grandmother's  
23 and upset her.

24 Q. And then you ran on foot?

25 A. Yes, ma'am.

1 Q. And where did you go?

2 A. I started to jump the fence -- well, I dropped the  
3 knife and kept running.

4 Q. Do you know where you dropped it?

5 A. No, ma'am.

6 Q. How did you feel?

7 A. Scared.

8 Q. Let me ask you about the next day. What did you do  
9 the next day?

10 A. Well, that, well that night before, I go through the  
11 phone book and got to the section for attorneys. I  
12 started calling people that night, leaving messages on  
13 their answering machine. So that next morning Lawyer Guy  
14 Vitetta called me back. I talked to him. I told him what  
15 had happened.

16 MR. LEVENTIS: Objection to hearsay.

17 THE COURT: Overruled.

18 Q. You talked to an attorney?

19 A. Yes, ma'am.

20 Q. And then what did you do?

21 A. He told me to come down there to his office and I  
22 went down to his office.

23 Q. At some point did you go to the police station?

24 A. Yes, ma'am.

25 Q. And why did you do that?



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Direct Examination by Ms. Runey*

267

1 A. After I left Guy Vitetta's office, he said he  
2 couldn't take my case because his case load was too -- he  
3 had too much cases.

4 Q. Where did you go?

5 A. I went to my grandmother's house on Woodlawn Street.

6 Q. And then when did you go to the police department?

7 A. My grandmother called Ronald Brown, he's a private  
8 investigator and he's a friend of our family. So she  
9 called him and told him that I was ready to turn myself  
10 in.

11 Q. Okay. Did you turn yourself in to North Charleston?

12 A. I went to county.

13 Q. Sheriff's Department?

14 A. Yes, ma'am.

15 Q. Did you have on the same clothes that you had on the  
16 day before?

17 A. No, ma'am.

18 Q. Did you have on the same shoes?

19 A. Yes, ma'am.

20 Q. Tony, I want to show you State's Exhibit Number 58.

21 Is this a picture of you that day?

22 A. Yes, ma'am.

23 Q. I'm also going to show you State's Number 64. Tell  
24 me what this is?

25 A. It's a picture of my sneakers, my tennis shoes.

1 Q. And you had those on the next day?

2 A. Yes, ma'am.

3 Q. Are these the same shoes you were wearing that night?

4 A. Yes, ma'am.

5 Q. Okay. Tony, we've generally gone over everything  
6 that happened, but I want to go back specifically to what  
7 happened when Daniel pulled a knife on you. Why didn't  
8 you run?

9 A. Because when he swung at me the first time, I felt if  
10 I ran he would stab me in my back.

11 Q. How were you feeling at that point?

12 A. I was afraid for my life. Because the first two  
13 times he swung at me, it was up towards my throat.

14 Q. And so why did you pull out your knife?

15 A. Because I was trying to get him off me.

16 Q. And what did you think would happen if you didn't  
17 pull your knife?

18 A. I would be the one dead.

19 Q. How did it make you feel that you had just stabbed  
20 him?

21 A. I felt bad. Because like I said, we were friends for  
22 a long time. I didn't want to stab him. But I feared for  
23 my life.

24 Q. That's all I have. Thank you.

25 THE COURT: You may cross examine the witness.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

269

1 MR. LEVENTIS: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. LEVENTIS:

4 Q. Good afternoon, Mr. Moultrie.

5 A. How you doing?

6 Q. You just gave quite a bit of testimony to the jury.

7 I want to get into all of it, but first let's see what we  
8 can agree on. Okay?

9 A. Okay.

10 Q. You admit that you were hanging out on East Surrey  
11 Avenue the afternoon of February 5th, 2008; correct?

12 A. Yes, sir.

13 Q. You admit that you had a knife with you at the time;  
14 is that correct?

15 A. Yes, sir.

16 Q. What kind of knife was it?

17 A. It was a silver knife. The name of the knife is  
18 Smith & Wesson.

19 Q. A Smith & Wesson silver knife. Is it a folding knife

20 ---

21 A. Yes, sir.

22 Q. -- or was it a straight knife? It was a folding  
23 knife?

24 A. Folding knife.

25 Q. A knife you had to unfold?

- 1 A. Yes, sir.
- 2 Q. So it wasn't a box cutter?
- 3 A. No, sir.
- 4 Q. Okay. And you admit Danny Jones and Gerald Blake and
- 5 George Hemingway were also on East Surrey that afternoon?
- 6 A. Yes, sir.
- 7 Q. That's something we agree on; right?
- 8 A. Yes, sir.
- 9 Q. Okay. In fact, you knew all three of those men prior
- 10 to that day; isn't that correct?
- 11 A. Yes, sir.
- 12 Q. George Hemingway is a friend of yours; isn't that
- 13 correct?
- 14 A. Yes, sir.
- 15 Q. Okay. How long have you known him?
- 16 A. I'd say about two football seasons. What, two years.
- 17 Q. Football seasons. Okay. And you admit that you and
- 18 Daniel Jones had an argument on East Surrey Avenue; is
- 19 that correct?
- 20 A. Yes, sir.
- 21 Q. Okay. And your argument started because you grabbed
- 22 Danny Jones's pocket and stuck his hand -- your hand in
- 23 his pocket; is that correct?
- 24 A. I pulled the side of his pants.
- 25 Q. And that's how the argument began?

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

271

1 A. Yes, sir.

2 Q. And on East Surrey Avenue it was a verbal argument;  
3 correct?

4 A. Yes, sir.

5 Q. Okay. And you admitted earlier that you were still  
6 in the yard on East Surrey Avenue when Daniel Jones chose  
7 to leave; is that correct?

8 A. Yes, sir.

9 Q. And you admitted that you insulted his mother as he  
10 was leaving; isn't that correct?

11 A. Yes, sir.

12 Q. And you admitted that you kicked his truck as he was  
13 leaving?

14 A. Yes, sir.

15 Q. And still he chose to leave. Is that your testimony?

16 A. Yes, sir.

17 Q. And then something you didn't talk about, but you  
18 heard your friend George Hemingway testify to was that you  
19 said, I'm going to go kill that boy?

20 A. Yes, sir.

21 Q. Did you say that? Can we agree that you said that?

22 A. No, sir.

23 Q. Your testimony here today is that you didn't say  
24 that? Your friend George Hemingway said you said that?

25 A. I didn't say that.

1 Q. You didn't say that. Did you say anything like that?

2 A. No, sir.

3 Q. You didn't make any statements to George Hemingway?

4 A. The only thing I said to George Hemingway, I was  
5 going to the store to get some gas and to gas my car up  
6 for that night.

7 Q. And he mixed that -- he confused that with, I'm going  
8 to kill that boy?

9 A. Yes, sir.

10 Q. Okay. And you admit that you were mad at Danny Jones  
11 when you went over to his house? When you went over to  
12 Gerald Blake's house? Excuse me.

13 A. I wasn't mad then.

14 Q. You weren't mad at Danny Jones? Okay. You admit  
15 that when you went over to Gerald Blake's house you  
16 carried a knife with you in the car; is that correct?

17 A. I had a knife in my pocket. It was a pocket knife.

18 Q. It was a pocket knife. Yeah, we spoke about that.  
19 Okay. You admit that when you took the knife -- when you  
20 got out of the car in Gerald Blake's yard, you took the  
21 knife with you; correct?

22 A. It was in my pocket.

23 Q. It was in your pocket. Okay. Tell me again, where  
24 did you park on Wye Lane when you got out to approach  
25 Daniel Jones and George -- Gerald Blake?

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

273

1 A. I would say my bumper was, I would say, in between  
2 the middle of his tailgate, because Blake's wife was  
3 getting ready to leave. So I didn't want to block her in.

4 Q. So you were actually blocking Mr. Jones in?

5 A. Yeah.

6 Q. And you admit that the entirety of the incident that  
7 we've been talking about for the last two days took place  
8 in Gerald Blake's front yard; is that correct?

9 A. Yes, sir.

10 Q. And you saw the photos of the yard. You're familiar  
11 with the yard and you would admit there's no fence in that  
12 yard; correct?

13 A. Yes, sir.

14 Q. In fact, there was nothing blocking you in Mr.  
15 Blake's yard, keeping you in Mr. Blake's yard that day?  
16 You were there on your own free will; correct?

17 A. Yes, sir.

18 Q. You could have run away from Mr. Blake's yard if you  
19 had wanted to?

20 A. If I ran I felt, I felt fear for my life, he would  
21 have stabbed me in my back.

22 Q. I understand that's your testimony. During the  
23 entire incident that you just spoke about, we can agree  
24 you were never more than a few feet away from the car you  
25 drove over to Mr. Blake's house; is that correct?

- 1 A. The majority of the time when I pushed him the first  
2 time, I tried -- I moved further to try to get my back  
3 away off my car so I wouldn't be trapped on my car.  
4 Q. So he pulled out -- your testimony was he pulled out  
5 not one knife but two knives; right?  
6 A. A box cutter and ---  
7 Q. A knife and a box cutter?  
8 A. Yes, sir.  
9 Q. And started swinging at you?  
10 A. Yes, sir.  
11 Q. And you pushed him ---  
12 A. Yes, sir.  
13 Q. -- off of you?  
14 A. Yes, sir.  
15 Q. And then you had to push him again, I think is your  
16 testimony?  
17 A. Yes, sir.  
18 Q. What confused me a little bit is, if your knife was  
19 in fact in your pocket at that time and you didn't feel  
20 like you had time to turn around and leave, but you felt  
21 like you had time to reach into your pocket and pull your  
22 knife out and extend the blade without someone who's  
23 allegedly attacking you getting any strikes on you?  
24 A. Uh-huh (affirmative). My knife was one of the quick  
25 release knives.



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

275

1 Q. That's a yes or no question. Can we agree that when  
2 you came into the yard, into Gerald Blake's yard, Gerald  
3 Blake was there, Danny Jones was there, and at some point  
4 Gerald Blake's wife was there; correct?

5 A. She was there the whole time that I pulled up. She  
6 was ---

7 Q. She pulled away. Are you saying that she witnessed  
8 this whole thing?

9 A. No, sir.

10 Q. She didn't?

11 A. When I pulled up she was there and then she left.

12 Q. She left. And you're not telling this jury that  
13 Danny Jones pulled two knives on you while Gerald Blake  
14 was still in the front yard; are you?

15 A. No.

16 Q. That's not your testimony; is it?

17 A. No.

18 Q. We agree that you told Gerald Blake you weren't going  
19 to disrespect his wife?

20 A. Him and his wife, yes, sir.

21 Q. Do we agree that at some point shortly after you  
22 pulled into Gerald Blake's yard and got out of the car  
23 with your knife that Gerald Blake walked in the back yard,  
24 leaving you and Danny Jones in the front yard together  
25 alone?

1 A. Yes, sir.

2 Q. Right? And we agree -- in fact, you admit that you  
3 did stab Mr. Jones; correct?

4 A. Yes, sir.

5 Q. And that stab killed him. You admit that Gerald  
6 Blake eventually came back into the front yard; didn't he?

7 A. Yes, sir.

8 Q. And at some point your friend George Hemingway pulled  
9 into the yard while you were still in the yard and Danny  
10 Jones was still in the yard; isn't that correct?

11 A. Yes, sir.

12 Q. And let me make sure we agree on this. You agree  
13 that when Gerald Blake came back in the yard, Danny Jones  
14 wasn't attacking you; was he?

15 A. No.

16 Q. And in fact, Danny Jones didn't have the two knives  
17 in his hands when Gerald Blake came back in the front  
18 yard; did he?

19 A. When he came back in the front yard, the box cutter  
20 was on the ground and he was on -- he got on the phone to  
21 the police as I was leaving.

22 Q. But he wasn't attacking you at that point? Just so  
23 we're on the same page ---

24 A. No. He wasn't attacking me.

25 Q. He was still standing; correct?

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

277

1 A. Yes, sir.

2 Q. And he was able to make a phone call as we heard  
3 earlier; is that correct?

4 A. Yes, sir.

5 Q. But he wasn't attacking you?

6 A. Not right then.

7 Q. Not right then. Okay. That's because Danny Jones  
8 never attacked you at all in fact; isn't that correct?

9 A. That's not true.

10 Q. Okay. He didn't attack you on East Surrey Avenue, we  
11 agree on that?

12 A. Yes, sir.

13 Q. Despite your argument. He didn't attack you when you  
14 insulted his mother; did he?

15 A. No.

16 Q. He didn't attack you when you kicked his truck; did  
17 he?

18 A. No.

19 Q. Okay. He didn't even attack you when you came --  
20 when you followed him over to Gerald Blake's yard, entered  
21 the yard and Gerald Blake was still in the yard, he didn't  
22 attack you then; did he?

23 A. Repeat that.

24 Q. You came over to Gerald Blake's house after you left  
25 East Surrey Avenue; correct?

1 A. Correct.

2 Q. You drove into Gerald Blake's yard and two men were  
3 in the yard, Gerald Blake and Danny Jones?

4 A. Yes.

5 Q. When Gerald Blake was still in the front yard, Danny  
6 Jones wasn't attacking you; was he?

7 A. No, sir.

8 Q. And when Gerald Blake came back into the front yard,  
9 Danny Jones wasn't attacking you; was he?

10 A. No, sir.

11 Q. Okay. When George Hemingway came into the yard,  
12 Danny Jones wasn't attacking you; isn't that correct?

13 A. No, sir.

14 Q. That's because he never attacked you; isn't that  
15 correct?

16 A. He attacked me.

17 Q. And you expect this jury to believe that Danny Jones  
18 waited until his friend Gerald Blake left the scene, went  
19 behind the house, he waited until that point and that's  
20 when he decided to ---

21 MS. RUNEY: Objection, Your Honor.

22 THE COURT: What's your objection.

23 MS. RUNEY: The form of the question.

24 THE COURT: I sustain the objection. If you'll  
25 rephrase the question, please, sir.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

279

1 Q. Do you agree Danny Jones didn't attack you when  
2 Gerald Blake was in the front yard?

3 A. I didn't hear you.

4 Q. Do you agree that Gerald -- excuse me. Do you agree  
5 that Danny Jones did not attack you when Gerald Blake was  
6 still in the front yard?

7 A. Yes.

8 Q. What was he doing?

9 A. When he was in the front yard, he was in his truck  
10 with the door open.

11 Q. Okay. You heard Mr. Blake testify that he was in  
12 fact sitting on Mr. Blake's front porch; didn't you?

13 A. Yes, I heard that.

14 Q. And you admit that Danny Jones didn't stab you?  
15 There's no question about that; right?

16 A. There's no question.

17 Q. In fact, you didn't have any injuries as a result of  
18 this incident; did you?

19 A. I had a knot on my elbow.

20 Q. You had a knot on your elbow?

21 A. Yeah.

22 Q. And your story is Danny Jones wasn't just slinging  
23 one knife ---

24 MS. RUNEY: Objection.

25 Q. -- but two knives ---

1 THE COURT: What's your objection?

2 MS. RUNEY: Same thing, form of the question.  
3 Your story.

4 THE COURT: Just rephrase the question. Ask him  
5 the question.

6 Q. Your testimony is, your testimony is Danny Jones was  
7 not slinging one knife, but in fact two knives at you, and  
8 you were able to get in there and stab him in the chest  
9 and he didn't get one strike on you?

10 A. Yes, sir.

11 Q. You're not saying that the bump on your elbow came  
12 from the knife; are you?

13 A. No. But he swung at me and I hit my elbow on my car.

14 Q. Okay. Not one strike on you even though you got  
15 close enough to stab him in the chest?

16 A. Correct.

17 Q. Okay. After you stabbed Danny Jones in the chest,  
18 you hid your knife underneath the wheel well of Danny  
19 Jones's truck; isn't that correct?

20 A. No.

21 Q. Isn't that in fact why your shoe prints are facing  
22 the tire where the crime scene found the knife with Danny  
23 Jones's blood on it? Why else would your shoe prints be  
24 facing the tire?

25 MR. BUTLER: Objection.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

281

1 THE COURT: What's the objection?

2 MS. RUNEY: It's assuming facts that aren't in  
3 evidence and making him ---

4 THE COURT: I'll allow him to cross examine the  
5 witness. It's overruled.

6 Q. Why were you facing the passenger side front tire of  
7 Danny Jones's truck?

8 A. I was never on the passenger side.

9 Q. Okay. And yet your shoe prints are right there?

10 A. Those are not my shoe prints.

11 MS. RUNEY: Objection, Your Honor. I don't  
12 think that was a question.

13 THE COURT: Just ask a question and he'll give  
14 an answer. We'll keep it moving along.

15 Q. And yet your shoe prints were right there; correct?

16 A. No, sir.

17 Q. Okay. Then you fled the scene in your cab; is that  
18 your story? Excuse me. Your testimony was you fled the  
19 scene in your cab?

20 A. Yes, sir.

21 Q. And you took your knife with you?

22 A. Yes, sir.

23 Q. The knife that you allegedly stabbed Danny Jones  
24 with?

25 A. Yes, sir.

1 Q. And can we assume -- can we all agree that if you had  
2 in fact taken your knife with you, the knife that you  
3 stabbed Danny Jones with, it would have had blood on it?

4 A. Excuse me.

5 Q. Did your knife have blood on it when you got in the  
6 car and fled the scene, Mr. Moultrie?

7 A. Yes, sir.

8 Q. It did?

9 A. Yes, sir.

10 Q. And that was the victim's blood because you were not  
11 bleeding; right?

12 A. Yes, sir.

13 Q. And then you heard crime scene talk about examining  
14 your taxicab and finding none of the victim's blood in it?

15 A. Yes, sir.

16 Q. Okay. And you think that's a coincidence; is that  
17 right?

18 A. It's the truth.

19 Q. And then later you called your friend George  
20 Hemingway; is that correct?

21 A. Yes, sir.

22 Q. You don't dispute that?

23 A. I don't dispute that.

24 Q. He asked you why you stabbed that boy?

25 A. That's not what he asked me.



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

283

1 Q. And you told him, because he made me mad. Is that  
2 correct?

3 A. No.

4 Q. George Hemingway is a liar?

5 A. Yes, he is.

6 MR. LEVENTIS: Beg the court's indulgence for  
7 one moment.

8 Q. Mr. Moultrie, when you left 2605 Wye Lane that  
9 afternoon, did you take Danny Jones's box cutter that you  
10 allege Danny Jones had with him?

11 A. Did I take it?

12 Q. Yeah?

13 A. No, sir.

14 Q. You said it was on the ground at some point?

15 A. Yes, sir.

16 Q. When you spoke with George Hemingway later that  
17 evening did you ask him why he came over to the scene of  
18 the crime?

19 A. No, sir.

20 Q. Were you confused as to why George Hemingway showed  
21 up just seconds after you had stabbed Danny Jones?

22 A. No, sir.

23 Q. That didn't confuse you at all?

24 A. No, sir.

25 Q. Okay. What's your understanding of why he came over

1 there?

2 A. I don't know why he came over there.

3 Q. You heard his testimony. He was driving fast. He  
4 said it took him ten to twelve seconds to get over there.

5 A. I heard him say that.

6 Q. Were you driving fast when you set out for 2605 Wye  
7 Lane?

8 A. When I was on the way there?

9 Q. Right?

10 A. No.

11 Q. You weren't driving fast?

12 A. No.

13 Q. And yet you managed to get there with enough time to  
14 stab Danny Jones before George Hemingway showed up at the  
15 scene?

16 A. I stabbed Danny before George Hemingway came.

17 Q. Okay. Those are all the questions I have.

18 THE COURT: Any redirect?

19 MS. RUNEY: No redirect.

20 THE COURT: All right. Thank you, sir. You may  
21 step down.

22 MS. RUNEY: Your Honor, may we approach?

23 THE COURT: Yes, ma'am.

24 (WHEREUPON, Mr. Leventis, Mr. McCoy, Ms. Runey and  
25 Mr. Butler approached the bar.)

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

285

1           THE COURT: Mr. Foreman, ladies and gentlemen, I  
2 understand that there's another witness, but there's some  
3 -- I understand from a bench conference there was a  
4 doctor's appointment that the witness had to attend today  
5 and that -- I don't know that she'll be here anytime soon.  
6 Rather than keeping you tied up while we try to find when  
7 she would be here, I understand the witness's testimony  
8 will not be very long, so we're going to break for the  
9 day.

10          We have some other legal matters we have to take care  
11 of. This is certainly mighty early for us to break, but I  
12 think the case is about to conclude as far as witnesses.  
13 There might be some more, but they won't be very long, I  
14 understand from the attorneys. We'll be ready to conclude  
15 all the testimony, have these attorneys make their closing  
16 statement to you tomorrow morning first thing. So we're  
17 going to start at nine o'clock, if that's possible, in the  
18 morning. If that creates a problem for any of you, then  
19 please let me know by raising your hand now. I don't know  
20 what kind of responsibilities you may have. But if we can  
21 start at nine then we can hopefully be ready to start  
22 another trial later. Not with you, of course, but with  
23 other jurors tomorrow.

24          Let me remind you again not to discuss the case, not  
25 to do any kind of investigation or read any newspaper

1 reports about this case. You haven't heard all the  
2 testimony. And you certainly haven't heard the  
3 instructions that I'll give you about the law. So be  
4 mindful of that and to the commitment that you've made to  
5 these attorneys and to the parties. I'll see you back in  
6 the morning at nine o'clock and we'll be ready to conclude  
7 the case at that time.

8 (WHEREUPON, the jury exited the open court at  
9 approximately 3:19 p.m.)

10 THE COURT: All right. Are there any -- I  
11 understand from our bench conference there's one other  
12 witness that'll be very brief and then we'll be ready to  
13 conclude with the witnesses in the morning and then argue  
14 and charge it first thing in the morning.

15 Is there any particular requests for charge on this  
16 matter? And obviously we'll have time for motions  
17 tomorrow as well, once the Defense has rested. I'm  
18 thinking ahead. If you have any requests, I'll be glad to  
19 look at them or have my law clerk look at them.

20 MR. BUTLER: Judge, obviously we're going to be  
21 requesting the charge of self-defense and we have several  
22 special self-defense charges. I have not finished  
23 drafting them, but I can give you the cases that I'm  
24 relying upon.

25 Most of it is standard. The only thing that might

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Antonio Moultrie - Cross Examination by Mr. Leventis

287

1 generate some discussion is under Fuller, the element --  
2 the Defendant must be without fault in bringing about the  
3 difficulty. Recent case law has further expanded that  
4 concept. I'm speaking specifically about State versus  
5 Slater, 664 SE 2nd 50, a 2007 case, defining bringing  
6 about difficulty as acting in such a way reasonably  
7 calculated to produce the difficulty. And more recently a  
8 case from the October advance sheets. So there's not a  
9 Southeast Reporter's cite. It's now Cooper Advance  
10 Sheets. State versus Dickie, also elaborating on that  
11 element of self-defense, and we would be asking that that  
12 language from Dickie and Slater, specifically, the  
13 Defendant must not have acted in such a way that is  
14 reasonably calculated to produce the difficulty. You can  
15 look at those two cases, the clerk can, and I'll try to  
16 draft something that I think reflects that principal,  
17 either as a substitute from -- for bringing about the  
18 difficulty or as a further explanation of that concept.

19 The only other non-standard charge in respect to  
20 self-defense would be from the case I referenced yesterday  
21 concerning alcohol consumption from the victim, and that  
22 is State versus Day, 553 SE 2nd 431, a 2000 case. In  
23 assessing whether the Defendant -- excuse me. In  
24 assessing whether the State has proven the Defendant did  
25 not act in self-defense, I now charge you that the

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Antonio Moultrie - Cross Examination by Mr. Leventis

288

1 Defendant had the right to judge the conduct of the  
2 deceased more harshly than otherwise because of the  
3 deceased's alcohol consumption on the date of the  
4 incident. That's the charge in Day that our -- I believe  
5 it's the Supreme Court, might have been the court of  
6 Appeals, -- reversed because the trial judge did not  
7 charge that specific charge.

8 The others that we'll be asking for are more or less  
9 standard. The right to act on appearances, no duty to  
10 retreat if doing so would expose a person to further harm.  
11 The State has the burden of disproving self-defense. And  
12 I believe that's it. Oh, if I didn't say, I meant to say  
13 the right to act on appearances. And the Defendant does  
14 not have to let the deceased get the jump on him. I think  
15 all this comes from State versus Starnes, 531 SE 2nd 907.

16 And I can submit them in writing within the hour.

17 THE COURT: All right. That might be helpful,  
18 if you could do that.

19 MR. BUTLER: Be happy to.

20 MR. LEVENTIS: We would just ask that Mr. Butler  
21 copy me on that.

22 THE COURT: Yeah. He'll certainly give you a  
23 copy.

24 All right. We'll be at ease until nine o'clock in  
25 the morning, if we can be ready to start then. If you can

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

289

1 get any of your charges to us, from the State that you may  
2 have, this afternoon. We'll be at ease till nine..

3 MR. LEVENTIS: Thank you.

4 MS. RUNEY: Thank you, Your Honor.

5 MR. MCCOY: Thank you, Judge.

6 (WHEREUPON, Court adjourned for the day at  
7 approximately 3:25 p.m.)

8 December 3, 2008

9 MS. RUNEY: Your Honor, we have contacted the  
10 Sheriff's Department. We have a reluctant witness this  
11 morning and they have informed me that they can go pick  
12 her up and bring her in. I've supplied them with a copy  
13 of a subpoena as well as her address and where she works.

14 THE COURT: Are they doing that now?

15 MS. RUNEY: Yes, sir.

16 THE COURT: Can we find out what the status is?  
17 Have they gotten her yet?

18 MS. RUNEY: I think they're going now and they  
19 said it could take about ---

20 BAILIFF: They're leaving now, Judge.

21 THE COURT: They're leaving from where now?

22 BAILIFF: Here.

23 THE COURT: They're leaving from here to go to  
24 North Charleston?

25 BAILIFF: Yes, sir.

1 THE COURT: So how long are we talking about?

2 An hour?

3 BAILIFF: Approximately. Yes, sir.

4 THE COURT: That's if they find her?

5 MS. RUNEY: Yes. I spoke to her yesterday and  
6 informed her that she was under subpoena and that if she  
7 didn't come in we'd have to send the Sheriff's Department  
8 out for her. Our client's sister went to her house today,  
9 knocked on the door, but nobody would come to the door.

10 THE COURT: And the nature of this witness's  
11 testimony is what?

12 MS. RUNEY: Your Honor, my client testified  
13 yesterday that when he left Wye Lane that he went to a  
14 woman's house that he had had a relationship with, Glenda  
15 Watson, and she saw him after the incident. And that's  
16 what she'll testify to. And that she saw a knife  
17 different from the one that is into evidence. I've talked  
18 to her. She confirmed that yesterday.

19 THE COURT: State going to stipulate to that,  
20 that that would be her testimony?

21 MR. LEVENTIS: No, Your Honor.

22 MS. RUNEY: I do also have a written document  
23 from my investigator when he talked to her as well stating  
24 those same facts.

25 THE COURT: And what do you propose that we do,



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

291

1 Ms. Runey, if she's not found?

2 MS. RUNEY: I really don't know, Your Honor. I  
3 think she's a crucial witness. I think my client deserves  
4 to have her ---

5 THE COURT: I gave you overnight to have her  
6 here. She was going to be here yesterday afternoon;  
7 wasn't she?

8 MS. RUNEY: Yes, sir. You know, I could go out  
9 there, but I don't think that I have -- I'm going to have  
10 much control over this witness. She's under a court  
11 subpoena.

12 THE COURT: But you knew yesterday that she was  
13 reluctant. I mean, we could have had her picked up  
14 yesterday for that matter.

15 MS. RUNEY: She told me that she was going to go  
16 to a doctor's appointment at two and then she would be  
17 here. So I sent my ---

18 THE COURT: But she didn't come?

19 MS. RUNEY: She didn't, not that I'm aware of.  
20 So I sent my client's sister there, and she lives in the  
21 neighborhood, this morning, and nobody would answer the  
22 door. And I don't want to put my client's sister in a bad  
23 situation trying to get this lady here.

24 MR. BUTLER: Judge, so it's clear, she's been  
25 subpoenaed for how long?

1 MS. RUNEY: Since the 19th of November.

2 MR. BUTLER: And we've talked to her several  
3 times. She's never said, oh, I'm not coming or you don't  
4 need me.

5 MS. RUNEY: She doesn't want to come.

6 MR. BUTLER: We don't think that she wants to  
7 come, but we've told her that she's under a court order  
8 and she has said she would be coming.

9 MS. RUNEY: And what I told her if not, the  
10 sheriff would be coming to get her.

11 THE COURT: But she was under subpoena to be  
12 here Monday, I guess; right?

13 MR. BUTLER: As with all witnesses, you know, we  
14 have to tell them the first day.

15 THE COURT: And this is Wednesday.

16 MS. RUNEY: It says on -- we did it by telephone  
17 standby, and she was to call in to see when we needed her.

18 THE COURT: But she didn't call in?

19 MS. RUNEY: No. My client's sister got her on  
20 the phone yesterday and I -- she went over to her house  
21 during lunch break. I got her on the phone and that's how  
22 I talked to her, from my client's sister's cell phone.

23 THE COURT: If she wasn't here Monday and she  
24 wasn't here Tuesday ...

25 MR. BUTLER: Judge, I don't know how it's done

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

293

1 other places, but this may be not a good practice, but we  
2 don't typically have witnesses that we expect to get later  
3 in the week here all throughout the week, because it's an  
4 inconvenience to them. If we know they're not going to  
5 come, then we probably should, but we ---

6 THE COURT: If this one has had reluctance ---

7 MR. BUTLER: Yes, sir.

8 THE COURT: -- it might have been prudent to  
9 worked a little different system with this particular one  
10 ---

11 MR. BUTLER: Yes, sir.

12 THE COURT: -- rather than having the jury out  
13 here coming in at nine to be ready to start and now we're  
14 ten thirty going to be starting, at best.

15 MR. BUTLER: Yes, sir. I think we still  
16 expected her to be here this morning. And I guess we  
17 wouldn't want to have to send the deputies out and create  
18 potentially a hostile witness if we don't, if we don't  
19 need to. I hate having them drug in against their will,  
20 if she would have come in on her own. I guess we don't  
21 know that until now. But hopefully they'll be able to  
22 track her down and get her here and we won't have to worry  
23 about what to do. But I guess we'll have to cross that  
24 bridge when we get to it. Absent the State stipulating to  
25 either the -- the other problem is, I mean, it would still

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

294

1 be hearsay, but our investigator she spoke to, of course,  
2 is in New Jersey. That's the issue we brought up ...

3 THE COURT: Yeah. I don't believe he would  
4 testify in her stead; would he?

5 MR. BUTLER: No. Unless the State would  
6 stipulate, which I guess they would not. So  
7 unfortunately, the last remedy, if we could not find her  
8 and we could not wait, would be a mistrial, which I know  
9 nobody wants. Least of all us.

10 THE COURT: Well, I'm willing to give a  
11 reasonable time and I'm willing to stress that when she  
12 says she has a doctor's appointment, we could certainly  
13 have had the deputy go to the doctor yesterday and bring  
14 her from there.

15 MR. BUTLER: Yes, sir.

16 THE COURT: All right. I'm going to tell the  
17 jury to go home and to come back at ten thirty. Is that a  
18 reasonable time to try to find her, as far as your  
19 deputies?

20 BAILIFF: Yes, sir.

21 THE COURT: I mean, if they don't find her in an  
22 hour then ---

23 BAILIFF: They're to let us know when they get  
24 there and have located her.

25 THE COURT: But they're not going to ask around

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

295

1 to see if they -- they're just going to that one location

2 I guess; right?

3 BAILIFF: Yes, sir.

4 THE COURT: They'll be there in another ten

5 minutes?

6 BAILIFF: It don't take that long to get there

7 from here.

8 THE COURT: All right. Let's just sit tight.

9 How about any requests to charge? Let's go ahead -- I

10 know that those may change based upon the witness's

11 testimony, but is there any requests to charge that the

12 State has?

13 MR. LEVENTIS: Yes, Your Honor. It's my

14 understanding that the Defense counsel is not going to be

15 requesting a voluntary charge. However, based on the

16 Defendant's testimony yesterday, the State will be

17 requesting a voluntary charge.

18 THE COURT: The Defense does not want a

19 voluntary manslaughter charge? Is that what I understand?

20 MR. BUTLER: Beg the court's indulgence. I

21 think we're on the same page with that. We are not

22 requesting a manslaughter charge.

23 THE COURT: So, are you opposing the State's

24 request for manslaughter? Then you just want a straight

25 up murder or not guilty?

1 MR. BUTLER: Yes, sir.

2 THE COURT: Is that what I understand?

3 MR. BUTLER: Yes, sir.

4 THE COURT: That's the Defense's position?

5 MR. BUTLER: Yes, sir.

6 THE COURT: All right.

7 MR. LEVENTIS: Would you like me to expand on

8 our ---

9 THE COURT: I'll be glad to hear from you about  
10 why -- where's the heat of passion here?

11 MR. LEVENTIS: So it's our position that the  
12 jury could choose to believe that the Defendant went over  
13 there to apologize and that the victim did in fact pull  
14 two knives on the Defendant and that the Defendant had  
15 every opportunity to get away out of that yard. In that  
16 instance, self-defense would be not applicable to what --  
17 the pulling of two knives on the Defendant would be  
18 sufficient provocation. That would be our position.  
19 Likewise, they could believe that the Defendant was  
20 culpable in bringing about the situation but that he --  
21 but that the victim did in fact pull two knives on him.  
22 Again, self-defense wouldn't be applicable. You would  
23 have a victim with two knives approaching the Defendant.  
24 And that, in my opinion, is sufficient provocation to  
25 justify a voluntary charge.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

297

1           THE COURT: Well, isn't it sort of muddling with  
2 self-defense? For there to be voluntary manslaughter,  
3 where's the passion and the ... You're saying a  
4 provocation?

5           MR. LEVENTIS: The State's -- the cases I would  
6 be relying on aren't -- admittedly aren't the greatest  
7 cases in the world because in those cases the court did  
8 not find voluntary as an appropriate charge. And the  
9 first would be Harris v. State, and that's 354 SC 382, 581  
10 SE 2nd 154. In that case, that was a PCR case and the  
11 Defendant asked for a finding of insufficiency of his  
12 counsel because the counsel refused to object to the judge  
13 not charging voluntary manslaughter in that case. And the  
14 facts of that case were essentially that the victim and  
15 another victim were running away from the Defendant. The  
16 Defendant was shooting at the two people and the second  
17 victim who did not die had a refrigerator grate, in an  
18 aggressive stance, and was essentially -- and it was the  
19 Defendant's position that he was defending himself against  
20 this fellow with the refrigerator grate. But in fact he  
21 killed the lady without the refrigerator grate.

22           Implicit in the court's decision is that the victim  
23 who had the refrigerator grate would have been -- that  
24 would have been sufficient provocation but that the court  
25 couldn't transfer intent to the victim who actually died

1 who didn't have the refrigerator grate. I think if you  
2 read that opinion you'll agree that the South Carolina  
3 Supreme Court implicitly suggests that that would have  
4 been sufficient provocation for a voluntary manslaughter  
5 charge.

6 And the other case that I would be relying on is  
7 State v. Cooley. Again, it's not the greatest case in the  
8 world because the court ends up reversing State v. Cooley  
9 and finding that there wasn't sufficient evidence in the  
10 record to justify a voluntary charge in that case. But in  
11 doing so they kind of gave us an idea of what might be  
12 sufficient to justify a voluntary charge and we feel ...  
13 Beg the court's indulgence for one second so I can refresh  
14 my memory on State v. Cooley. Okay. In State v. Cooley,  
15 the court is essentially saying that all the ---

16 MR. BUTLER: I hate to interrupt, but I think we  
17 can make this easier. After conferring with our client we  
18 would not oppose a charge of manslaughter.

19 THE COURT: All right. We'll charge voluntary  
20 manslaughter then, if both sides are in agreement with it.

21 Any other charges -- as far as the charges, Mr.  
22 Leventis, you've got copies of the charges ---

23 MR. LEVENTIS: That's correct, Your Honor.

24 THE COURT: -- that we talked about yesterday.  
25 Do you have any opposition to those?



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

299

1 MR. LEVENTIS: Specifically with regard to the  
2 Defendant's request to charge number -- and I don't have  
3 the number in front of me. It's self-defense basic  
4 charge, an excited State v. Fuller as modified by State v.  
5 Addison and State v. Burkhardt, I believe the language in  
6 that charge expands the State's burden inappropriately  
7 insomuch as it says there are four elements the State must  
8 disprove to rebut the defense of self-defense. We don't  
9 have to disprove all four elements. What we have to do is  
10 prove beyond a reasonable doubt that any one of those  
11 elements applied to this case.

12 So I can prove that Mr. Moultrie was culpable in  
13 bringing about the difficulty and that would be sufficient  
14 to meet our burden to disprove self-defense. Likewise, I  
15 can prove beyond a reasonable doubt that he had the  
16 opportunity to remove himself from the situation and that  
17 would be sufficient. I don't have to prove or disprove  
18 all four elements. So I think the charge as written is  
19 inappropriate and I ---

20 THE COURT: I'll use my charge on the burden of  
21 proof of self-defense.

22 MR. LEVENTIS: Okay. That's the only, that's  
23 the only objection I would have.

24 THE COURT: No objection to the others that he  
25 listed? And again, most of those were covered in the

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Antonio Moultrie - Cross Examination by Mr. Leventis

300

1 general charge.

2 MR. LEVENTIS: I didn't have any specific  
3 objection to the other charges Mr. Butler said yesterday.

4 MR. BUTLER: Judge, does that mean that you're  
5 going to use your basic charge, your basic charge to cover  
6 the -- contain the language in further expanding on  
7 bringing about difficulty meaning not acting in such a way  
8 reasonably calculated to produce the difficulty from  
9 Slater and Dickie?

10 THE COURT: Are you doing different charges?

11 MR. BUTLER: It's contained in what I call the  
12 basic charge.

13 MR. LEVENTIS: The basic charge is the one I  
14 just ---

15 MR. BUTLER: Right. The part that you ---

16 THE COURT: Do you have copies of those or not?

17 MR. BUTLER: Yes, sir.

18 THE COURT: Could you give me a copy. I don't  
19 have my computer in here.

20 MR. BUTLER: If Mr. Leventis's objection is to  
21 the way I phrased it, within what I call the basic charge  
22 there's a statement about the burden of proof which I  
23 agree is confusing, but I think it comes from Burkhart,  
24 but I understand it's the State's position. But what I'm  
25 asking about particularly now is the Defendant must not

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

301

1 have acted in a way -- the Defendant must not have acted  
2 in such a way that was reasonably calculated to produce  
3 the difficulty. If you look at Fuller it just says,  
4 didn't bring about the difficulty. That's further  
5 explained in Slater and Dickie to mean not have acted in  
6 such a way to reasonably -- that it was reasonably  
7 calculated to produce the difficulty.

8 THE COURT: What line -- I'm trying to find  
9 that. Okay. There it is. It's not going to be using  
10 your exact language. The sentence I'll have is if  
11 Defendant's conduct was of the type which was reasonable  
12 calculated to and did provoke the deadly assault the  
13 Defendant would be at fault in bringing on the difficulty  
14 and would not be entitled ...

15 MR. BUTLER: That's fine.

16 THE COURT: That's the same ---

17 MR. BUTLER: Yes, sir.

18 THE COURT: -- same language basically?

19 MR. BUTLER: Yes, sir.

20 THE COURT: And I'll certainly talk about  
21 appearances and burden of proof. I might not use exactly  
22 the same language you have, but I'll cover the -- some of  
23 the points that you have.

24 MR. BUTLER: And getting the drop, not having  
25 ...

1 THE COURT: Well, I might not use getting the  
2 drop on some ---

3 MR. BUTLER: No, sir.

4 THE COURT: More like arguments that have been  
5 charged to me. But I'll -- substantially I'll include the  
6 charges on the ---

7 MR. BUTLER: The charge on intoxication?

8 THE COURT: Intoxication.

9 MR. BUTLER: Okay. Thank you.

10 THE COURT: -- Day and Fuller and Starnes will  
11 be substantially what you have there.

12 MR. BUTLER: Thank you.

13 THE COURT: All right. At this time I'm going  
14 to have the bailiff to just look in the jury room and tell  
15 them that we're waiting on a witness -- well, I'll just  
16 tell them that we're taking care of legal matters and that  
17 we apologize and if they want any snacks or whatever. I  
18 told them to be here at nine o'clock thinking we were  
19 going to be ready to go.

20 If you would, just tell them that we're -- apologize  
21 for the delay, but we're taking care of some legal matters  
22 and be right with them as soon as we can.

23 (WHEREUPON, court stood at recess for a short break.)

24 THE COURT: I understand the witness wasn't  
25 found; is that correct? We're back on the record.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

303

1 MS. RUNEY: Yes, sir, that's correct.

2 THE COURT: Found no one at home, I understand  
3 from the deputy. Are we ready to proceed with any other  
4 witnesses the defense has to call?

5 MR. LEVENTIS: State's ready, Your Honor.

6 THE COURT: Defense ready?

7 MS. RUNEY: Your Honor, at this time I would  
8 like to request the court for a recess to locate Ms.  
9 Watson. The sheriff's deputies have informed me that  
10 deputies have been out to her house at 2756 East Surrey  
11 Drive in North Charleston and that nobody is coming to the  
12 door. Neighbors saw her and her mother go in the house  
13 this morning, but nobody is coming out when they respond.  
14 We would ask for time to go get her or for the deputies to  
15 attempt to wait for her to come out of the house if she is  
16 in fact in there.

17 I would like to make a part of the record the  
18 subpoena for Ms. Linda Watson, which was served on her  
19 November the 19th of this year. Also, I'd like to make a  
20 part of the record the report that was generated by my  
21 investigator, Art DeGiovine, to me, which details his  
22 interview with her and what she would testify to. Ms.  
23 Watson would testify that Mr. Moultrie came into her house  
24 on February the 5th of 2008. He was carrying a pocket  
25 knife and talking on his cell phone. And my investigator

1 was able to show her a picture of the knife which is in  
2 evidence in this case and she was able to tell him that  
3 that was the -- not the knife that he was carrying when  
4 she entered -- when he entered her house that day in  
5 February of 2008. The Defense feels like she would be a  
6 crucial witness to us and to Mr. Moultrie being able to  
7 present his entire case. And therefore we ask the court  
8 to consider a recess in this matter.

9 THE COURT: All right. What's the State's  
10 position?

11 MR. LEVENTIS: Your Honor, I don't have any  
12 opposition to a recess that's reasonable. We're ready to  
13 get going right now.

14 THE COURT: Aren't we just at a standoff? Are  
15 they still sitting outside the ---

16 DEPUTY: They're on the way back now, Judge.

17 THE COURT: They're back?

18 DEPUTY: They're on their way back.

19 THE COURT: They're on their way back. So what  
20 are we going to do, have a standoff if she's -- do they  
21 have any evidence she's in the house except some neighbor  
22 says that they saw her go in, but I mean, the neighbor is  
23 just not watching the house constantly. She might have  
24 gone out too.

25 MS. RUNEY: The only other thing that would go

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

305

1 to her going in the house this morning is that she works  
2 nights, so she's usually at home during the day sleeping  
3 and goes to work from eleven p.m. at night till seven in  
4 the morning.

5 THE COURT: But she knew under subpoena she was  
6 to be here and she had a doctor's appointment yesterday,  
7 we didn't -- we broke early so that you could arrange to  
8 talk with her now to get her here. And we've had since  
9 she got off this morning until nine o'clock and now ten  
10 o'clock to get her here. I don't know what benefit we're  
11 going to have to recess when it's ---

12 MS. RUNEY: The only other way that I could  
13 figure to have her here is to issue a warrant for her for  
14 contempt of court and they can go in and get her. I don't  
15 think for a subpoena that they can, you know, force entry  
16 into the house, but for a warrant they certainly could. I  
17 would ask the court to consider that.

18 THE COURT: You want a warrant for her arrest?

19 MS. RUNEY: Yes, sir, for contempt.

20 THE COURT: All right. Is two hours enough time  
21 for the sheriff's department to acquire her if she's  
22 there?

23 DEPUTY: Yes, sir.

24 THE COURT: All right. I'll have the jury come  
25 back at twelve o'clock. I'll issue an arrest warrant if

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

306

1 you'll get me one prepared.

2 All right. Let's bring our jury in.

3 (WHEREUPON, the jury entered the open court at  
4 approximately 10:02 a.m.)

5 THE COURT: Mr. Foreman, ladies and gentlemen, I  
6 again apologize. Sometimes things happen and we have a  
7 witness who -- we've taken care of some legal matters that  
8 we're trying to expedite the case so that we'll have those  
9 out of the way when all the testimony is in. We need to  
10 take a short break to see if we can locate this witness.  
11 I don't need you to stay back in your jury room, so I want  
12 to let you take a break till -- if you'd be back at twelve  
13 o'clock, hopefully we're going to be ready to have the  
14 witness there then or else we're going to go ahead and  
15 conclude the case, one way or the other.

16 Let me remind you not to talk about the case. You  
17 haven't heard all the evidence yet. There might be more  
18 testimony. There may be some reply testimony. I haven't  
19 instructed you on the law. When all the evidence is in  
20 and when I've instructed you on the law, there will be  
21 ample opportunity then for you to discuss the case. What  
22 we're do is I'll have the bailiffs have lunch here for you  
23 so when we come back and start we'll have lunch for you as  
24 soon as we complete the closing statements and the  
25 instruction to you. But if you'll be back at twelve



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

307

1 o'clock we'll be ready to conclude the case at that time  
2 and then you can start your deliberations then.

3 Certainly when you start your deliberations we'll  
4 have all the necessary tools you need, then you'll have  
5 all the evidence, of course, and I'll give you further  
6 instructions about what will take place during your  
7 deliberations. But that doesn't take place until all the  
8 evidence is in and I've instructed you on the law.

9 I apologize that you came early. I thought that we  
10 would have the witness here. We'll give a little time to  
11 try to locate this particular witness and if not then  
12 we'll conclude the case for you this morning.

13 If you'll be back at twelve o'clock in your jury room  
14 we'll be ready to begin again at that time.

15 (WHEREUPON, the jury exited the open court at  
16 approximately 10:06 a.m.)

17 THE COURT: I need an -- anybody got an arrest  
18 warrant ready?

19 MR. BUTLER: Judge, we're -- this is new  
20 territory for us.

21 THE COURT: Well, has State got like a bench  
22 warrant or -- give me something to ---

23 MR. LEVENTIS: We can put together a bench  
24 warrant fairly quickly.

25 THE COURT: Well, you need to move.

1 MR. MCCOY: Let me go do that right now, Your  
2 Honor.

3 (WHEREUPON, Court stood at recess for a short break.)

4 THE COURT: I understand the witness wasn't  
5 found; is that correct? We're back on the record.

6 MS. RUNEY: Yes, sir, that's correct.

7 THE COURT: Found no one at home I understand  
8 from the deputy. So are you ready to proceed with any  
9 other witnesses the Defense has to call?

10 MS. RUNEY: No, Your Honor, if I could just make  
11 her subpoena as well as my investigator's report part of  
12 the record.

13 THE COURT: All right. Will be Court Exhibits 1  
14 and 2.

15 MS. RUNEY: Thank you, Your Honor.

16 (WHEREUPON, Court's Exhibit Numbers 1 and 2 were  
17 marked for identification.)

18 THE COURT: Anything else that we need to take  
19 care of before we bring the jury back?

20 MR. LEVENTIS: Nothing from the State, Your  
21 Honor.

22 THE COURT: Anything from the Defense?

23 MR. BUTLER: Yes, sir, as we discussed at the  
24 bench moments ago, during the extended break, a member of  
25 the Defendant's family informed us that while she and

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

309

1 another member of the Defendant's family were in the  
2 canteen, that a juror that we suspect is the alternate was  
3 overheard speaking to two other jurors. One is the, I  
4 think, only African American male on the jury and another  
5 is a Caucasian woman that we have yet to be able to  
6 determine her identity, but was expressing her concern  
7 that they would be here all day and that it was obvious  
8 what should happen, that she hoped that this wouldn't take  
9 any longer, that the Defendant was obviously guilty. She  
10 mentioned that, of course, she didn't get to vote, which  
11 makes us think it was the alternate, but that it was  
12 obvious what the verdict should be.

13 She also had some less than kind things to say about  
14 Ms. Runey, and knew some of her biographical information  
15 like her age and her date that she became a member of the  
16 bar. I don't know if that means she's been on the  
17 internet or not, but obviously it's a serious concern to  
18 us because it -- for us it constitutes premature  
19 deliberations, even though on the part of an alternate,  
20 that she's expressing these to members of the jury. It's  
21 a problem for two reasons. I don't think the alternate is  
22 supposed to have any contact with the jury until she is  
23 made a member of the jury. Secondly, it's premature  
24 deliberations. We would ask the court to please bring her  
25 in independently and inquire of her conversation and I

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

310

1 guess depending upon her response, take it from there.

2 MR. LEVENTIS: Your Honor, if I may.

3 THE COURT: Yes, sir.

4 MR. LEVENTIS: I would just object to bringing  
5 out any single member of the jury and singling them out.  
6 Given everything that Mr. Butler just said as truth,  
7 there's still no indication there was any premature  
8 deliberation on the part of any of the jurors, just the  
9 alternate. And to the extent that is the case, I would  
10 just point you to State v. Aldret, 333 SC 307, 509 SE 2nd  
11 811, curative instruction should suffice to address that  
12 issue, if in fact there was premature deliberation.  
13 That's all I have.

14 THE COURT: Thank you, sir.

15 All right. Let's bring our jury in.

16 (WHEREUPON, the jury entered the open court at  
17 approximately 12:05 p.m.)

18 BAILIFF: The jurors are all present, Your  
19 Honor.

20 THE COURT: Thank you very much.

21 Mr. Foreman, ladies and gentlemen, I apologize again  
22 for keeping you waiting. I know that that's an  
23 inconvenience for you, but we're trying to get some other  
24 matters taken care of. We selected a jury for the next  
25 case.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

311

1           During the course of the break there's been some  
2   indication made that perhaps some of the jurors have been  
3   discussing the case. I don't know whether that's true or  
4   not and certainly we want to make sure that our  
5   instructions are complied with. It would be improper, of  
6   course, for you to discuss the case and deliberate in the  
7   case in anyway, and as I've stated to you every time, to  
8   have any discussions or let anyone discuss with you about  
9   the case.

10          What I would like for you to do, ladies and  
11   gentlemen, I want to try to clarify this and make sure  
12   that there's no prejudice to the State of South Carolina  
13   or to the Defendant in this case. I'd like for the jurors  
14   to each go back. I'll have legal pads for you. I want  
15   each of you on a separate pad to just write down if  
16   there's been any discussion whatsoever with you with  
17   anyone, I would like for you to write that out. It  
18   doesn't obviously need to be an essay, but if you've had  
19   any discussion or if anybody has talked with you about  
20   this case in anyway, I would like for you to write it down  
21   outside of the -- out in the street or in a business or  
22   anywhere else.

23          I'm confident you haven't discussed the case in your  
24   jury room, but if you have, I need to know that too. If  
25   you would, please, just write that down. If you've not

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

312

1 had any, just put no down. I need your name or your  
2 number on that piece of paper. If you would go back now  
3 and do that privately one with another without talking  
4 about it, fold those, give them to the bailiff and I'll  
5 examine them and I'll call you right back.

6 As soon as you do that, you can go ahead and have  
7 your lunch. I understand it's here. And we'll -- I need  
8 to review those statements from you. If we need to talk  
9 about it further we can. But hopefully those things can  
10 be taken care of in a way that we can continue with this  
11 trial in just a few minutes.

12 If you would go back, they'll give you a legal pad to  
13 write on individually without any discussion with anyone  
14 else. You write down if you've had any discussion  
15 whatsoever, if anyone has talked to you and what that  
16 information was that was shared and what effect it had  
17 upon you. And then if we need to talk further we'll do  
18 that. I'll send you back to your jury room at this time.

19 (WHEREUPON, the jury exited the open court at  
20 approximately 12:11 p.m.)

21 THE COURT: All right. We'll be at ease.

22 (WHEREUPON, court stood at recess for a short break.)

23 THE COURT: I'll just read these and make them  
24 court exhibits. I don't think any of them are elaborate.  
25 Number 56 said nothing discussed. Number 45 said no.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

313

1 Number 261 said no discussion. Number 258 said I have not  
2 discussed the case with anyone. 305 nothing discussed  
3 with anyone about details of the trial. Number 102 no,  
4 no. 134 no discussions. 256 no discussions. 42 told  
5 family members selected for a criminal murder trial. 288  
6 no discussions in the room or outside the room. 298 no  
7 discussion. Number 54 no. 299, who is the alternate,  
8 nothing in particular, mainly just about the process,  
9 general observations about the court. That's it. That's  
10 about it. Okay.

11 Be glad to hear from you or be glad to call them out  
12 individually if you want to voir dire each one of them.

13 MR. BUTLER: Beg the court's indulgence. We  
14 don't have anything further. We appreciate the ---

15 THE COURT: All right. Well, the alternate will  
16 be discharged after the completion of the case.

17 I guess y'all are getting hungry too. We'll do our  
18 argument and charge and then we'll be at ease while  
19 they're deliberating and y'all get a bite to eat.

20 All right. When the jury comes back we'll let you  
21 put on the record that the Defense rests. I'll ask if  
22 there's anything in reply. You'll say no and then I'll  
23 tell the jury we're ready for closing statements.

24 MR. BUTLER: You will remind them not to hold it  
25 against either of the parties ---

1 THE COURT: Right.

2 MR. BUTLER: -- about the problems ---

3 THE COURT: In fact, I'm going to try to take  
4 the blame myself and tell them -- I've already told them  
5 we had to start another trial, I've been trying to work on  
6 other cases to help the docket move along. I'll let them  
7 be mad at me, as best I can. And that we have worked on  
8 things ourselves while they're out to try to expedite the  
9 trial. Okay. I guess we need to check with the jury to  
10 see if they're finished eating. I told them -- I thought  
11 they ---

12 BAILIFF: No. You said after the notes, so I  
13 ---

14 THE COURT: Okay. Good. All right. They  
15 haven't eaten. We'll have time to do all this now.

16 All right. Let's bring our jury in.

17 These will be cumulative court number 3. Okay?

18 (WHEREUPON, Court's Exhibit Number 3 was marked for  
19 identification.)

20 (WHEREUPON, the jury entered the open court at  
21 approximately 12:31 p.m.)

22 BAILIFF: All jurors are seated, Your Honor.

23 THE COURT: Thank you.

24 Mr. Foreman, ladies and gentlemen, we're now ready to  
25 proceed with the trial of the case. We'll let the Defense



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Antonio Moultrie - Cross Examination by Mr. Leventis*

315

1 present anything it wishes now.

2 MS. RUNEY: Your Honor, the Defense rests.

3 THE COURT: All right. Is there anything in  
4 reply from the State?

5 MR. LEVENTIS: Nothing from the State, Your  
6 Honor.

7 THE COURT: Ladies and gentlemen, all the  
8 evidence is in and I appreciate your patience with us as  
9 we not only worked through legal matters we had in this  
10 case, but we also worked through some other matters that I  
11 had. I apologize.

12 It would be nice if, as the Judge, I could just focus  
13 on one trial all the time, but there's other cases coming  
14 up and lawyers wanting to see what can be done about how  
15 long a trial is going to be and getting witnesses here and  
16 so forth. So I hope you understand that I do the best I  
17 can in trying to estimate times, but sometimes when I get  
18 tied up on other matters, I don't realize it's going to  
19 take that long and I try to do everything I can to  
20 accommodate you, as well as the other jurors that I had  
21 downstairs today as well.

22 We're now ready for the part of the trial where the  
23 attorneys will have an opportunity to address you in  
24 closing argument. As I told you at the beginning, this is  
25 not evidence in the matter. You've heard all the evidence

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement of Mr. Leventis.*

316

1 now since -- there's no more testimony, all the exhibits  
2 are in. But even though it's not evidence, I urge you to  
3 listen carefully as these attorneys address you that  
4 they'll perhaps give you some insight that'll help you in  
5 the deliberations that will take place soon. If you'll  
6 give your attention to the solicitor now as he makes his  
7 closing.

8 **CLOSING STATEMENT**

9 **BY MR. LEVENTIS:**

10 Thank you, Your Honor. May it please the court.  
11 Good afternoon, ladies and gentlemen. I'm going to speak  
12 with you briefly about the law in this case. Then I'm  
13 going to sit down and Ms. Runey is going to address you  
14 and then I'm going to come back and speak to you about the  
15 facts of the case.

16 This is State v. Antonio Moultrie, and as you know  
17 it's a murder trial.

18 The elements of murder. Killing another person with  
19 malice aforethought expressed or implied. Absence of any  
20 of those elements is murder. The State does not have to  
21 prove that Antonio Moultrie is a murderer.

22 Malice aforethought. It's a term some of you may not  
23 be familiar with. It means doing a wrongful act  
24 intentionally and without just cause or excuse. It can be  
25 found through the Defendant's expressed words or through

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement of Ms. Runey*

317

1 his actions.

2 Self-defense. The State must prove any one, any one  
3 of the following. The Defendant had some fault in  
4 bringing on the difficulty. Or it can prove the Defendant  
5 did not actually believe he was in imminent danger. Or it  
6 can prove that a reasonably prudent person with ordinary  
7 firmness could not have believed that they were in  
8 imminent danger. Or it can prove that the Defendant had  
9 other probable means of avoiding the danger. Then self-  
10 defense could not be an appropriate finding in this case.

11 And finally, beyond a reasonable doubt, because it's  
12 a term that confuses some people. It doesn't mean beyond  
13 any doubt. It doesn't mean absence of a doubt. Beyond a  
14 shadow of a doubt. It means proof which leaves you firmly  
15 convinced of the Defendant's guilt. Thank you.

16 THE COURT: Ms. Runey, you may address the jury.

17 MS. RUNEY: Thank you, Your Honor.

18 CLOSING STATEMENT

19 BY MS. RUNEY:

20 Assumptions. Assumptions were made from the get-go  
21 in this case. And that's one of the very reason we have  
22 juries. It makes your job very important. Juries analyze  
23 all of the evidence that's put in front of you. And you  
24 are getting the job of determining what actually happened.

25 From the beginning this case was based on one huge

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement of Ms. Runey*

318

1 assumption. And they were right, right about one thing.

2 Whoever put that knife on that tire was guilty.

3 This is State's Exhibit Number 6. That's the knife  
4 on the tire. There's blood dripping up above it. Once  
5 the State decided that this is the knife that was used to  
6 stab Daniel Jones, they took that and they ran with it.

7 And then they decided that that was Tony Moultrie's  
8 footprint underneath this tire. And that's why you as a  
9 jury has to look at these thing -- have to look at these  
10 things. And it's going to make your job easy when you go  
11 back there to deliberate. I want you to make them

12 convince you that this is not Daniel Jones's footprint.

13 This knife on the passenger tire, found by crime  
14 scene, this knife with blood on the handle, it has blood  
15 on the handle because Daniel Jones was holding it. He was  
16 holding it when he got stabbed. He jumped in Tony  
17 Moultrie's face with this knife and Tony had to do, not  
18 what he wanted to do, but what he had to do to save his  
19 own life.

20 All of this happened on the driver's side of Daniel  
21 Jones's truck. And after Daniel got stabbed, he walked  
22 around to the front of the hood of the car -- truck.  
23 Detective Bunker who works with crime scene told' you there  
24 were drops of blood all along the front of the hood and  
25 then there were drops of blood over by this same passenger

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement of Ms. Runey*

319

1 tire and blood running down the side. Daniel Jones walked  
2 around, placed this knife on that tire. He's leaning up  
3 against this tire and dripping blood.

4 When Blake comes out from around the back, that's  
5 exactly what he tells you, that Daniel Jones is standing  
6 on the driver's side -- I'm sorry. Daniel Jones is on the  
7 passenger side and Tony Moultrie is on the driver's side.  
8 If Tony had stabbed him with this knife there would be a  
9 lot more blood on it.

10 Tony said to Blake, your boy drew a knife on me. And  
11 Daniel leans against his truck and stashes the knife.  
12 George Hemingway told you he saw Daniel Jones with the box  
13 cutter earlier that day. Tony told you that too. This  
14 jacket is on the back of the truck, and you'll see these  
15 pictures when you go back to deliberate. He took off his  
16 jacket. That's what men do sometimes when they're about  
17 to fight. And he jumped in Tony Moultrie's face.

18 Daniel tells 911 that it was a box cutter that cut  
19 him. Why? I don't know. Maybe because he had to ditch a  
20 box cutter. And it's not just a coincidence that he had a  
21 box cutter. And you know what else isn't a coincidence,  
22 that the knife found on this tire was right where Daniel  
23 Jones's footprint was.

24 There are several things that are important that we  
25 need to talk about that the State would like for you to

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement of Ms. Runey*

320

1 believe in this case. They want you to believe that Tony  
2 Moultrie goes over to Wye Lane looking for trouble, that  
3 he was hell bent and determined to stab his friend. And  
4 he goes over there and he stabs him and he leaves the  
5 weapon that he used to stab his friend on the tire when he  
6 ran. He's going to run. He's got all of Charleston to  
7 get rid of that knife and he leaves it at the scene?  
8 Charleston is surrounded by water. I think that he could  
9 get away with taking that with him and getting rid of it  
10 quickly.

11 They want you to believe that Tony Moultrie is a  
12 murderer. That he's a murderer and he called George  
13 Hemingway to find out how Daniel Jones was doing. They  
14 want you to believe that this murderer turned himself in  
15 the next day to the police. Murderers don't do that. And  
16 Mr. Leventis tried real hard to trip Tony up. And he  
17 couldn't. And you know why? Because he was telling the  
18 truth.

19 The State has also made big deals about a couple of  
20 things and I'd like to go through those as well. Antonio  
21 Moultrie tried to block Daniel Jones in that day? When he  
22 pulled up, Gerald Blake's wife is coming out of the  
23 driveway as well. She's going to church.

24 There was blood -- there was no blood in Tony  
25 Moultrie's car. The victim was stabbed with a pocket

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement of Ms. Runey*

321

1 knife, a pocket knife that you fold and put in your  
2 pocket. Tony didn't get in his car and throw the knife on  
3 the seat. He didn't put it under the seat and he didn't  
4 throw it in the back. And that's why there's no blood in  
5 his car.

6 They told you that this is Daniel Jones's blood on  
7 the knife. Yes, it's his blood. He was holding it. He  
8 had it in his hand when he got stabbed. And don't you  
9 think that if he had gotten stabbed with that knife that  
10 it would be a lot bloodier.

11 They also make a big deal about DNA. That this knife  
12 belongs to Tony Moultrie, yet his DNA is not on it. They  
13 told you that you can get DNA from sweat. If it was his  
14 knife, he had been carrying it around in his pocket,  
15 holding it, put it in there. You know why it doesn't have  
16 his DNA on it? Because it's not his.

17 They also make a big deal that Tony doesn't have any  
18 injuries. He doesn't have any injuries because he didn't  
19 get cut. And that's because Daniel Jones was drunk. You  
20 don't have to wait till somebody stabs you to stab them  
21 back. And you don't have to wait till somebody has a  
22 better shot to try to protect yourself.

23 Daniel Jones was almost three times the legal limit.  
24 And you heard from Dr. Presnell from MUSC, and she did a  
25 lot of calculations for you, and she put them up on this

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement of Ms. Runey*

322

1 board. I don't want to pull this back up, but I want you  
2 to think about this board and remember that -- how drunk  
3 he really was. And just because he came out swinging at  
4 Tony, he didn't have to wait until he was stabbed, and  
5 that's why he's not bleeding.

6 They also want to make a big deal that Tony was  
7 angry. Yeah, he was angry. He told you that. They were  
8 cussing at each other, talking about each other's mom, and  
9 he kicked his car. That doesn't mean he went over and  
10 stabbed him. George Hemingway told you how quickly he  
11 made it over there to Wye Lane. And George was drunk too.  
12 He told you he made it there in fifteen seconds. Gerald  
13 Blake drove over there with Daniel Jones. Tony walked to  
14 his car down Surrey. He told you that he had walked to  
15 the house on Surrey Drive. George and Daniel made it to  
16 Wye Lane and Tony made it to Wye Lane. And George  
17 Hemingway didn't make it till after that, till after the  
18 stabbing had occurred. I don't know how much you can rely  
19 on him.

20 The Solicitor is also going to talk to you about  
21 bringing on the difficulties. They're going to try to  
22 tell you that Tony Moultrie tried to bring this on. And  
23 you can't -- what this means is that you cannot antagonize  
24 somebody in such a way that you cause them to swing at you  
25 so then you can pull out your weapon and you can hurt



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement of Ms. Runey*

323

1   them. That's not what happened. That's not what this is  
2   about. And don't let them make you compromise. They're  
3   going to talk to you about murder and they're going to  
4   talk to you about voluntary manslaughter. And just  
5   because the case didn't go the way they wanted it to, they  
6   don't get to ask you to convict him of voluntary  
7   manslaughter too. This was either self-defense or it  
8   wasn't. It was not murder. And it was not manslaughter.  
9   You cannot compromise on that. It's too important.

10       I want to go through a couple of pictures, and you'll  
11   have these pictures with you in the jury room. I just  
12   want to point out a couple of them. And I'm certainly not  
13   the best with this equipment. I want you to look at this  
14   knife. And please pay close attention to the blood that's  
15   above it, and as I talk to you about it, please keep in  
16   mind that the fight happened on the driver's side of the  
17   truck and Daniel Jones walked around and was leaning on  
18   it. This blood just points right at the knife. I want  
19   you to keep that into consideration when you're  
20   deliberating.

21       And most importantly, the shoe print. The State  
22   wants to make you think that this is Antonio Moultrie's  
23   shoe print from where he went over there and stashed the  
24   knife. And you'll get a good look at his shoe as well  
25   when he turned himself in. This isn't the same shoe and

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement of Ms. Runey*

324

1 it's not even a close match. This is just a closer shot  
2 of it. I want you to look at the circle and the lines on  
3 the shoe. Tony Moultrie was wearing a shoe that had a  
4 number 23 on it. And I learned later that those are Air  
5 Jordans and there's no 23 on here. And you know why?  
6 That's because it's not his shoe.

7 This other shoe print, Detective Hallman told you  
8 that that was a police officer's boot that came later on  
9 the scene.

10 When they talked about all this blood on the knife,  
11 this was later after it was collected into evidence that  
12 you can see the knife with the blood on the handle and  
13 that's what the officers testified and told you, that  
14 there's blood on the handle of this knife and not on the  
15 tip of the blade.

16 And lastly, I want to show you the shoe that Tony  
17 Moultrie was wearing when he turned himself in. And it's  
18 a lot easier when you -- you'll be able to hold them and  
19 look at them individually. But you will see how there's  
20 no way, there's no way that this could be the same shoe.

21 I told you in my opening that this was not a  
22 whodunit. And the Solicitor told you the same thing. And  
23 it's not. It's not about what happened, when it happened  
24 or how it happened. It's about why. But instead of  
25 telling you what -- instead of telling you that that was

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement of Ms. Runey*

325

1 the case in this situation, they told you that it wasn't a  
2 whodunit and instead they went on to present the case as  
3 if it was a whodunit. They brought in all these crime  
4 scene techs and got Mr. Fitts from SLED to drive from  
5 Columbia. And they really only needed Dr. Presnell and  
6 the two guys that were out there, Gerald Blake and Mr.  
7 Hemingway. But lucky for us and for everyone else, that  
8 they did do that, because now we know. We know who put  
9 that knife there. We know that the footprint by the tire,  
10 the same tire where the knife is, belongs to Daniel Jones.  
11 Daniel Jones's footprint is there because he put it there  
12 -- put the knife there. The blood points right to it, and  
13 that's what's so bad.

14 Shame on the State and Mr. Leventis for trying to  
15 argue otherwise. It's his job to seek justice and not a  
16 conviction. Especially when lives are at stake.

17 Freedom. Freedom's at stake. Children's birthdays,  
18 graduations and growing old with the people you love. You  
19 would think that they would take it seriously. It's one  
20 of the most important decisions that you will ever have to  
21 make. And it's one of the most important decisions that  
22 somebody else will make for Tony Moultrie.

23 Assumptions were made from the very beginning. Make  
24 the comparisons yourself. It's easy. We appreciate them  
25 being thorough because it will make things easier, easy

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement continued by Mr. Leventis*

326

1 for you to decide. This isn't murder and it's not  
2 manslaughter. This is clearly a case of self-defense.  
3 Is it tragic? Yes, it's tragic. Is it sad? Yes,  
4 it's sad. But that's not to say that Tony Moultrie didn't  
5 act the way he did to protect himself. He acted in self-  
6 defense. A person doesn't have to have acted  
7 appropriately to have acted in self-defense. And you  
8 can't even consider how you would have acted. Don't judge  
9 Tony Moultrie as a person. Don't judge Daniel Jones as a  
10 person either. And don't judge the qualities of their  
11 lives. It's not a morality contest.

12 The State has not proven this was a murder, a  
13 malicious intentional killing. And they haven't proven  
14 that this was manslaughter. They have not disproved to  
15 you, disproved to you, that this was not self-defense, and  
16 that's what they're required to do.

17 What's important to remember is that you have no  
18 friends to reward and no enemies to punish. You must  
19 follow the law. And this is clearly self-defense.

20 Tony Moultrie is not charged with making poor  
21 judgment. He's charged with murder. You heard from him  
22 and you have to judge him yourself. He told you that  
23 Daniel Jones was his friend, that he didn't want this to  
24 happen. He's not a murderer.

25 As I told you from the very beginning, we're here

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Closing Statement continued by Mr. Leventis

327

1 because assumptions were made. Assumptions from the very  
2 beginning on February the 5th, 2008, from crime scene  
3 techs to the prosecutors. And that's why Tony Moultrie  
4 stands before you here today charged with murder. They  
5 were wrong. They were wrong in the assumptions that they  
6 made. If Tony Moultrie had not responded the way that he  
7 did, his family would be in this courtroom, only because  
8 he would be dead and Daniel Jones would be prosecuted for  
9 his murder. Tony Moultrie did what he had to do. If he  
10 didn't, he would be dead.

11 You make them prove to you beyond a reasonable doubt  
12 that this was not self-defense. They can't. Look at the  
13 shoe prints. You must find Tony Moultrie not guilty.

14 THE COURT: Solicitor.

15 MR. LEVENTIS: Thank you, Your Honor. May it  
16 please the court.

17 CLOSING STATEMENT CONTINUED

18 BY MR. LEVENTIS:

19 I just spoke to you about the law in this case. Now  
20 I'll be speaking about the facts. First I want to go over  
21 the elements of murder and how those elements are met by  
22 these facts.

23 Killing another person with malice aforethought,  
24 expressed or implied. How do we know Tony Moultrie  
25 stabbed Daniel Jones? That's easy. He told us. But

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement continued by Mr. Leventis*

328

1 Daniel Jones also told us. He told us through the 911  
2 call. He told us through his statements to Gerald Blake  
3 and George Hemingway. So we know that.

4 How do we know the stab wound caused Daniel Jones's  
5 death? Dr. Presnell told us that. How do we determine  
6 malice aforethought, expressed or implied? Expressed  
7 would be the Defendant's words. I'm going to go kill that  
8 boy. I'm going to go kill that boy. Or his response to  
9 George Hemingway, why did you do that? Because he made me  
10 mad. Those statements alone are more than sufficient to  
11 find malice aforethought. Or we can look at the  
12 Defendant's actions. For example, use of a deadly weapon,  
13 use of a knife, allows you to infer malice aforethought.  
14 So those are the elements of murder.

15 Now I want to talk about Tony Moultrie's behavior on  
16 February 5th, 2008. First off, he argues with the victim.  
17 He insults the victim's mother. He kicks the victim's  
18 truck. That's not illegal. But I bring it to your  
19 attention because it shows his mind set before he gets in  
20 the car and chases out after the victim in this case.  
21 Then he turns around and he tells George Hemingway, his  
22 friend, I'm going to go kill that boy. Then he gets in  
23 his car with a knife and he follows the victim. He gets  
24 out of the car at Gerald Blake's house with a knife. He  
25 confronts the victim. He does in fact kill Daniel Jones.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement continued by Mr. Leventis*

329

1 Then he fleas the scene.

2 Today they're claiming that Daniel Jones is Tony  
3 Moultrie's friend. On February 5th of 2008 he didn't  
4 stick around to say, I just defended myself. He got in  
5 his car and he fled the scene. Then he calls George  
6 Hemingway and says, I killed that boy because he made me  
7 mad. Not because he pulled out two knives. Because he  
8 made me mad. He hides out overnight. He showers and  
9 changes his clothes. He forgets to change his shoes.  
10 That was February 5th, 2008 for Tony Moultrie.

11 Now I want to talk about the victim's behavior in  
12 this case. Specifically I want to talk about it in  
13 response to Tony Moultrie's provocations. Tony Moultrie  
14 sticks his hand in the victim's pocket. What does Daniel  
15 Jones do? He doesn't attack him. He shows no  
16 propensities of violence. He doesn't pull out a knife and  
17 stab the Defendant. Tony Moultrie insults his mother and  
18 kicks his truck. What does Daniel Jones do? He drives  
19 away. He doesn't throw the car in park and get out and  
20 say, okay, let's fight. He drives away. He chooses to  
21 remove himself from the situation. Tony Moultrie  
22 confronts the victim in Gerald Blake's front yard. And as  
23 you heard Tony Moultrie testify to you yesterday, Danny  
24 Jones did not start a fight with him while Gerald Blake  
25 was in the front yard. In fact, Gerald Blake testified

1 that Danny Jones sat there on the porch. He was calm.  
2 Wasn't angry. He said, I'm going to go inside and wait  
3 for my girlfriend to come pick me up. And regrettably,  
4 Gerald Blake went in the back yard after that. And  
5 finally, the Defendant stabs Daniel Jones in the chest.  
6 And when George Hemingway and Gerald Blake come back into  
7 the yard seconds later, the victim is still not attacking  
8 the Defendant. Still standing. Still able to make a  
9 phone call. But not attacking the Defendant, because he  
10 was never attacking the Defendant.

11 Next I want to talk about George Hemingway's actions  
12 on that day, because they're important. George Hemingway  
13 got in his car and followed this Defendant over to 2605  
14 Wye Lane. Not because he thought the Defendant was  
15 heading to the store to pick something up, ladies and  
16 gentlemen. You heard his testimony. He sped over there.  
17 He said it took him ten to twelve seconds. That wasn't  
18 because he thought Tony Moultrie was going to the store to  
19 pick something up. That was because he wanted to keep his  
20 friend from doing something stupid. And unfortunately he  
21 didn't get there soon enough. Then he did the right  
22 thing. He came into this courtroom and he testified  
23 against his friend, despite how difficult that must have  
24 been. He told the truth.

25 Now I'm going to talk about the Defendant's story and



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement continued by Mr. Leventis*

331

1    why it doesn't make sense. First of all, why would Daniel  
2    Jones wait until after his friend Gerald Blake has gone  
3    away and only at that point decide to attack the  
4    Defendant? Why would Daniel Jones stop attacking the  
5    Defendant upon being stabbed? You've got a man who's  
6    allegedly upset bringing out two knives and then attacking  
7    the Defendant, oh, you've got me. Never mind, never mind,  
8    I don't want to fight anymore. That doesn't make any  
9    sense. And the answer to that question is because it  
10   didn't happen. Daniel Jones never attacked him.

11        I went over this in cross examination yesterday. I  
12   want to reiterate. Even if we were to accept the  
13   Defendant's story as true, how can he get out of that  
14   without getting so much as a scratch. A grown man with  
15   allegedly two knives in his hand and the Defendant says, I  
16   pushed him away once and I pushed him away twice. Then I  
17   reached into my pocket and pulled out my knife and stabbed  
18   him and he never got a scratch on him. And those aren't  
19   my words. The Defendant sat on that stand and admitted he  
20   had no marks on him. He didn't get a scratch. That  
21   doesn't make any sense.

22        And you heard the Defendant testify about the alleged  
23   box cutter. Well, you also heard Angie Bunker sit up  
24   there and tell you how they taped off the crime scene and  
25   heard Detective Watson and Scott Wyant from the North

1 Charleston Police Department talk about how they searched  
2 the crime scene thoroughly. There wasn't a box cutter.  
3 The box cutter wasn't found. And the Defendant sat there  
4 and said, it was on the ground. Did you take it with you?  
5 No, I didn't take it with me. So why didn't they find the  
6 alleged box cutter on the scene? The answer is because  
7 Danny Jones was mistaken. He wasn't stabbed with a box  
8 cutter. Daniel Jones was mistaken and Tony Moultrie was  
9 gone too. That's why they didn't find a box cutter on  
10 that scene. Why was there no blood in the Defendant's  
11 cab? According to the Defendant's testimony, he was  
12 driving all over Charleston County with a bloody knife in  
13 his hand. And yet Scott Wyant, Tony Murphy, Angie Bunker,  
14 the North Charleston crime scene officers, who do this  
15 kind of work everyday, couldn't find a single speck of the  
16 victim's blood or the victim's DNA in that cab. The  
17 answer to that is because the Defendant didn't have a  
18 knife with him when he drove away and fled that crime  
19 scene. That's the answer.

20 And then the footprints. Why were the Defendant's  
21 footprints facing a tire where the knife was and the  
22 victim's blood on the blade was found?

23 Ladies and gentlemen, you'll have these photos back  
24 in the jury room with you. Don't take my word for it.  
25 Look at them yourself. I think they look exactly like the

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement continued by Mr. Leventis*

333

1 Defendant's footprints. I think the Defendant forgot to  
2 change his shoes that night. He showered. He cleaned  
3 himself up. Put on new clothes. Got all the blood off of  
4 him. I think he made a mistake. But nonetheless, that  
5 don't answer the question and that doesn't make any sense.  
6 Why is the Defendant over there standing in front of the  
7 tire where the bloody knife was found? And based on Ms.  
8 Runey's statement to you, I think that counsel and the  
9 Defendant actually disagree on where the fight took place.  
10 I heard the Defendant himself saying yesterday, saying the  
11 fight took place on the hood of his car. Ms. Runey stood  
12 in front of you today and said the fight took place over  
13 by the victim's truck. Nonetheless, it doesn't make  
14 sense.

15 Self-defense does not work in this case. Self-  
16 defense does not work in this case because the Defendant  
17 was at fault in bringing about the difficulty and the  
18 Defendant did have the opportunity to avoid the danger  
19 even if you accept his story as he stated it yesterday.

20 So let's talk about his fault. He kicks the victim's  
21 truck. He insults the victim's mother. He gets in his  
22 car and follows the victim over to his friend's house. He  
23 has a knife with him the whole time. He brings it in the  
24 car. He gets out and confronts the victim in the yard and  
25 he's got a knife with him. He's got fault in this matter

1 even if you accept his version of the story, which I  
2 don't.

3 Finally, the Defendant had other probable means of  
4 avoiding the danger. You heard his testimony. He push me  
5 -- or excuse me, he tried to attack me, I push him. He  
6 tried to attack me, I pushed him. I reached in my pocket  
7 and pulled out my knife. Extended it. It was a extending  
8 blade he said he had. I was able to stab him. But there  
9 was no fence in that yard. His car was right there. And  
10 he said he didn't have enough time to walk away -- scratch  
11 that -- run away. And that's just not true. Even if we  
12 accept his testimony as true, he still had enough time to  
13 run away. He had a duty to retreat, and the Judge will  
14 tell you about his duty to retreat.

15 There were two eyewitnesses to this crime. There was  
16 the victim, Danny Jones, and there was the Defendant, Tony  
17 Moultrie. And I want to talk about their statements. Not  
18 when Tony Moultrie comes in here on trial for murder, but  
19 on February 5th of this year. On February 5th of this  
20 year, the eyewitness/Defendant, Tony Moultrie, told his  
21 friend, George Hemingway, I did it because he made me mad,  
22 in response to George Hemingway's question, why did you  
23 stab my boy? Not because I'm defending myself. Because  
24 he made me mad. And then fortunately Daniel Jones got to  
25 give us his side of the story. And I know you've already

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Closing Statement continued by Mr. Leventis*

335

1 heard it, but I think it's worth listening to again.

2 Danny Jones's 911 call. .

3 (WHEREUPON, State's Exhibit Number 43, 911 call, was  
4 played in open court.)

5 MR. LEVENTIS: Those were the statements from  
6 the other eyewitness to this crime at the time immediately  
7 after the crime was committed.

8 As Ms. Runey noted, we've presented you with a lot of  
9 evidence over the course of a short period of time. And  
10 we did that because we owe that to you. And if we didn't  
11 do that, we didn't present you with all the evidence, you  
12 would be correct to ask why not? What are you hiding?  
13 And I can guarantee you that the Defense counsel would be  
14 standing up here pointing out what we didn't put in front  
15 of you. So you've got a lot to look at when you go back  
16 to the jury room. But as I said at the outset of this  
17 trial, this is not a murder mystery. It doesn't become a  
18 murder mystery just because Daniel Jones [sic] takes the  
19 stand and gives an entirely separate version of the facts  
20 as he gave to his friend George Hemingway the day that he  
21 murdered Daniel Jones. That doesn't make it a murder.  
22 There were two men in that yard. Two men. One, Daniel  
23 Jones, who was trying to get away from the fight. The  
24 other, Tony Moultrie, who's trying to start a fight.  
25 George -- excuse me. Tony Moultrie told his friend George

1 Hemingway that he was going to kill that boy. He got in  
2 his car. He went over there. And he did in fact kill  
3 Daniel Jones. Then he called his friend and said, I did  
4 it because he made me mad.

5 Ladies and gentlemen, that's not self-defense. That  
6 is murder, plain and simple. Thank you.

7 **CHARGE**

8 **BY THE COURT:**

9 Mr. Foreman, ladies and gentlemen, it is now my  
10 responsibility to instruct you on the law of the case.  
11 The indictment that we have before us that's been a part  
12 of this trial is charging the Defendant with the crime of  
13 murder. Let me remind you the fact that he's been  
14 arrested and indicted, that's not evidence in the case and  
15 cannot be considered by you as evidence in the case of any  
16 guilt. It's simply the paper that brings this case before  
17 this court. It's the formal document by which the charges  
18 are made against the Defendant.

19 He's pled not guilty to the charge and that places  
20 the burden on the State to prove his guilt beyond a  
21 reasonable doubt. Any person charged with committing an  
22 offense in our state is never required to prove themselves  
23 innocent. And I charge you, ladies and gentlemen, that's  
24 an important rule of law under our cases and under our  
25 constitution, that no matter how serious the charge may

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

337

1 be, an individual will always be presumed to be innocent  
2 of that crime for which the indictment was issued unless  
3 the guilt has been proven by evidence satisfying you of  
4 that guilt beyond a reasonable doubt. This presumption of  
5 innocence doesn't end when you begin your deliberations.  
6 It accompanies the Defendant throughout the trial until  
7 you reach a verdict of guilt based upon evidence  
8 satisfying you of that guilt beyond a reasonable doubt.

9 Presumption of innocence has often been described as  
10 a robe of righteousness that's placed about the shoulders  
11 of a Defendant and which remains with that person until  
12 it's been stripped by evidence satisfying you of that  
13 guilt beyond a reasonable doubt. Presumption of innocence  
14 isn't a mere legal theory. It's not a phrase that's  
15 tossed around. It is a substantial right to which every  
16 Defendant is entitled unless you the jury are satisfied  
17 that the evidence establishes guilt beyond a reasonable  
18 doubt.

19 Now, I've been using the phrase reasonable doubt.  
20 What is a reasonable doubt in the law? A reasonable doubt  
21 is the kind of doubt that would cause a reasonable person  
22 to hesitate to act. The State has the burden of proving  
23 guilt beyond a reasonable doubt. In the past some of you  
24 may have served as jurors on a civil case where a judge  
25 told you it was only necessary to prove a fact that was

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
Charge

338

1 more likely true than not true, such as by the greater  
2 weight or the preponderance of the evidence. In a  
3 criminal case the State's proof is more powerful than  
4 that. It must be proof beyond a reasonable doubt.

5 Proof beyond a reasonable doubt is proof that would  
6 leave you firmly convinced of the Defendant's guilt. Now,  
7 ladies and gentlemen, there are very few things in this  
8 world that we know with absolute certainty. And in  
9 criminal cases the law doesn't require proof that  
10 overcomes every possible doubt. If, based upon your  
11 consideration of the evidence, you're firmly convinced  
12 that the Defendant is guilty of the crime charged, then  
13 you must find the Defendant guilty. If on the other hand,  
14 you believe there's a real possibility that the Defendant  
15 is not guilty, then you must give the Defendant the  
16 benefit of the doubt and find him not guilty.

17 Let me remind you that during the course of the  
18 trial, you and I have had certain duties to perform. As  
19 the trial judge it's been my responsibility to preside  
20 over the trial of the case. I also have the duty to rule  
21 upon the admissibility of evidence that's been offered  
22 during the trial. You're to consider only the competent  
23 evidence that's before you. If there was testimony that  
24 an objection was made and sustained during the trial of  
25 the case, then you should disregard that testimony. You



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*

339

*Charge*

1 are to consider only the testimony that's been presented  
2 from the witness stand, the exhibits that have been made a  
3 part of the record in this case. My job also is to  
4 instruct you on the law applicable to the case. As the  
5 presiding judge, I'm the sole judge of the law in the  
6 case. And it's your duty as jurors to accept and apply  
7 the law as I state it to you. You may already have an  
8 opinion about what the law is or an opinion about what the  
9 law ought to be. And if that doesn't agree with what I  
10 now tell you the law is, you must abandon such notions  
11 because you're sworn to accept the law and apply the law  
12 exactly as I state it to you.

13 Every case that's tried in this court room before a  
14 jury, the jury becomes the sole and exclusive judge of the  
15 facts in the case. A trial judge cannot intimating or  
16 state or comment on or make any statement whatsoever  
17 during a jury trial about the facts of the case. Our  
18 constitution in South Carolina prohibits that. Since you  
19 the jury are the sole judges of the facts in this case,  
20 you're not to infer from what I've said during the course  
21 of the trial, any rulings I've made on the admissibility  
22 of evidence or otherwise, or anything that I say even now  
23 to you during the course of this instruction that I have  
24 an opinion about the facts in the case. I don't have an  
25 opinion about the facts. That's totally and exclusively

1 up to you and you alone to make that determination.

2 Mr. Foreman, ladies and gentlemen, in a case there's  
3 usually two types of evidence that are presented. There's  
4 direct evidence and there's circumstantial evidence.

5 Direct evidence is the testimony of a person who claims to  
6 have an actual knowledge of a fact in a case such as an  
7 eyewitness. It's evidence which would immediately  
8 establish the main fact to be proved.

9 Circumstantial evidence is proof of a chain of facts  
10 and circumstances that would indicate the existence of a  
11 fact. It's evidence which immediately establishes  
12 collateral fact from which the main fact may be inferred.  
13 In other words, circumstantial evidence is based on  
14 inference and not on personal knowledge or observation.

15 The law makes absolutely no distinction between the weight  
16 or value to be given to either direct evidence or  
17 circumstantial evidence, nor is a greater degree of  
18 certainty required for circumstantial evidence than for  
19 direct evidence. You should weigh all the evidence in the  
20 case and after weighing the evidence if you're not  
21 convinced of the guilt of the Defendant beyond a  
22 reasonable doubt, you must find the Defendant not guilty.

23 Necessarily, you must determine the credibility of  
24 witnesses who testified in the case. Credibility simply  
25 means believability. It's your duty as jurors to analyze

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

341

1 and evaluate the evidence and determine which evidence  
2 convinces you of its truth. In determining the  
3 believability of witnesses who have testified in the case  
4 you can believe one witness over several witnesses. You  
5 can believe several witnesses over one witness. In your  
6 discretion, ladies and gentlemen, you can believe part of  
7 the testimony of a witness and reject the remaining part,  
8 of the testimony of that very same witness. You can  
9 believe the testimony of a witness in its entirety. You  
10 can reject the testimony of a witness in its entirety.  
11 You can consider any witness if they've exhibited to you  
12 any bias or prejudice or other motive in the case. You  
13 can consider the appearance, the manner of the witness  
14 while on the witness stand. Was that witness  
15 straightforward or hesitant in answering? Was that  
16 witness's testimony consistent or inconsistent? Was it  
17 consistent or inconsistent with other witnesses who have  
18 testified? Or was the testimony strengthened or weakened  
19 by other testimony? It's totally your prerogative, ladies  
20 and gentlemen, to determine the credibility of the  
21 witnesses.

22 As I stated to you briefly during the course of the  
23 trial, the rules of evidence ordinarily would not permit a  
24 witness to testify to opinions or conclusions. An  
25 exception to this rule exists for witnesses that we call

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
Charge

342

1 expert witnesses. And any witness who by education and  
2 training has become an expert in some art or science or  
3 profession or calling, may give an opinion as to relevant  
4 and material matters which that witness claims to be an  
5 expert in and may also state the reasons for the opinion.  
6 Now, you should consider any expert opinions received in  
7 the evidence in this case and like any other evidence,  
8 give it the weight that you think it deserves. If you  
9 decide the opinion of the expert is not based on  
10 sufficient education or experience or you conclude that  
11 the reasons given in support of that opinion are not sound  
12 or that the opinion is outweighed by other evidence, you  
13 can disregard the opinion entirely. An expert witness's  
14 testimony is given no greater weight than that of any  
15 other witness simply because the witness is an expert.  
16 Furthermore, you're not required to accept an expert's  
17 opinion, even though it may be uncontradicted.

18 In order to establish criminal liability, criminal  
19 intent is required and the mental state required by the  
20 State to prove a particular offense. Criminal intent must  
21 be proven by the State beyond a reasonable doubt. It's  
22 always a matter that must be determined by the jury from  
23 the circumstances surrounding the situation to prove that  
24 intent. There's no way to prove intent to a mathematical  
25 certainty. There's no way that medical science can

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*

343

*Charge*

1 dissect a person's brain and determine what the person had  
2 in mind. So the law says that criminal intent can be  
3 inferred from the circumstances shown to have existed.  
4 This is how you make a determination of whether or not the  
5 element requiring intent was present. It can be  
6 established -- the intent can be established by inference  
7 in the same way as any other fact, by taking into  
8 consideration the acts of the parties and all the facts  
9 and circumstances of the case. Criminal intent, ladies  
10 and gentlemen, is a mental state. It's a conscious  
11 wrongdoing. It's up to you as the jury to determine what  
12 the Defendant intended to do based upon the circumstances  
13 shown to have existed.

14 Now, in this case, Mr. Foreman, ladies and gentlemen,  
15 the Defendant is charged with murder. The State must  
16 prove beyond a reasonable doubt that the Defendant killed  
17 another person with malice aforethought. Malice is hatred  
18 and ill-will or hostility toward another person. It's the  
19 intentional doing of a wrongful act without just cause or  
20 excuse and with an intent to inflict an injury or under  
21 circumstances that the law will infer an evil intent.

22 Malice aforethought does not require that malice  
23 exist from any particular time before the act is  
24 committed. But malice must exist in the mind of the  
25 Defendant just before and at the time of the act's

1 commission. Therefore, there must be a combination of the  
2 evil intent and the act. Malice aforethought may be  
3 expressed or inferred. These terms expressed and inferred  
4 do not mean different kinds of malice but merely the  
5 manner in which malice must be shown to exist. That is  
6 either by direct evidence or by inference from the facts  
7 and circumstances which are proved. Expressed malice is  
8 shown when a person speaks words which express hatred or  
9 ill-will for another or when the person prepared  
10 beforehand to do the act which was later accomplished.  
11 Malice may be inferred from conduct showing a total  
12 disregard for human life. Inferred malice may also arise  
13 when the deed is done with a deadly weapon.

14 A deadly weapon is any article, instrument or a  
15 substance which is likely to cause death or great bodily  
16 harm. Whether an instrument has been used as a deadly  
17 weapon depends upon the facts and circumstances of each  
18 case. Examples of instruments which may be deadly weapons  
19 would be a pistol or shotgun or rifle, a dagger, a knife,  
20 a razor, gasoline. Any manners of use of those particular  
21 examples can be considered deadly weapons.

22 Now, if you find that the State has failed to prove  
23 beyond a reasonable doubt that the Defendant committed  
24 murder, you may also consider whether the State has proved  
25 beyond a reasonable doubt that the Defendant committed

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
Charge

345

1 voluntary manslaughter. To prove voluntary manslaughter,  
2 the State must prove beyond a reasonable doubt that the  
3 Defendant took the life of another individual in the  
4 sudden heat of passion based upon sufficient legal  
5 provocation.

6 Both heat of passion and sufficient legal provocation  
7 must be present at the time of the killing to constitute  
8 voluntary manslaughter. Sudden heat of passion may, for a  
9 time, affect a person's self-control and temporarily  
10 disturb a person's reason. The sudden heat of passion  
11 must be the type that would make an ordinary person unable  
12 to cool and reflect on his actions and would produce an  
13 uncontrollable impulse and do violence. Sufficient legal  
14 provocation must be the type that would make a person of  
15 ordinary reason and caution become enraged and lose  
16 control temporarily.

17 The provocation needed for voluntary manslaughter  
18 must come from some act of or related to the victim.  
19 Words alone, however vulgar or insulting, are not enough  
20 for -- to be legal provocation. Where death is caused by  
21 the use of a deadly weapon, the words must be accompanied  
22 by some overt, threatening act which could have produced  
23 the heat of passion. The exercise of a legal right, no  
24 matter how offensive it is to another is never sufficient  
25 legal provocation for voluntary manslaughter. If the heat

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

346

1 of passion had cooled or there had been enough time  
2 between the provocation, if any, and the killing for the  
3 passion of a reasonable person to cool, the killing would  
4 not be voluntary manslaughter.

5 In deciding whether a reasonable person would have  
6 had enough time to cool off, you should consider all the  
7 circumstances surrounding the killing. You may consider  
8 the nature of the provocation, if any, and the Defendant's  
9 mental and physical state, the circumstances and  
10 relationships between the parties.

11 Now, in this case, the Defendant has raised the  
12 defense of self-defense. Self-defense is a complete  
13 defense and if it is established, you must find the  
14 Defendant not guilty. The State has the burden of  
15 disproving self-defense by proof beyond a reasonable  
16 doubt. If you have a reasonable doubt as to the  
17 Defendant's guilt after considering all the evidence,  
18 including the evidence of self-defense, then you must find  
19 the Defendant not guilty.

20 On the other hand, if you have no reasonable doubt of  
21 the Defendant's guilt after considering all the evidence,  
22 including that evidence of self-defense, then you must  
23 find the Defendant guilty.

24 Now, the following elements are required to be  
25 established for self-defense. First of all, the Defendant



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*

347

*Charge*

1 must be without fault in bringing on the difficulty. If  
2 the Defendant's conduct was the type which was reasonably  
3 calculated to and did provoke a deadly assault, the  
4 Defendant would be at fault in bringing on the difficulty  
5 and would not be entitled to acquittal based upon self-  
6 defense.

7 The second element of self-defense is that the  
8 Defendant was actually in imminent danger of death or  
9 serious bodily injury or that the Defendant actually  
10 believed that he was in imminent danger of death or  
11 serious bodily injury. If the Defendant was actually in  
12 imminent danger, it must be shown that the circumstances  
13 would have warranted a person of ordinary firmness and  
14 courage to strike a fatal blow to prevent death or serious  
15 bodily injury. If the Defendant believed that he was in  
16 imminent danger of death or serious bodily injury, it must  
17 be shown that a reasonably prudent person of ordinary  
18 firmness and courage would have had the same belief.

19 In deciding whether the Defendant actually was or  
20 believed he was in imminent danger of death or serious  
21 bodily injury, you should consider all the facts and  
22 circumstances surrounding the crime, including the  
23 physical condition, the characteristics of the Defendant  
24 and the victim.

25 The Defendant does not have to show that he was

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
Charge

348

1 actually in danger. It's enough if the Defendant believed  
2 he was in imminent danger and a reasonably prudent person  
3 of ordinary firmness and courage would have had the same  
4 belief. The Defendant has the right to act on  
5 appearances, even though the Defendant's belief may have  
6 been mistaken. It's for you to decide whether the  
7 Defendant's fear of imminent danger or of death or serious  
8 bodily injury was reasonable and would have been felt by  
9 an ordinary person in the same situation.

10 Before defending himself, a person is not required to  
11 wait until his adversary is on equal terms with him.  
12 Instead he has the right to act upon the law of self-  
13 preservation under our law.

14 Now, the intoxication of a victim may be considered  
15 in deciding whether or not the Defendant's fear of death  
16 or bodily harm to the person -- to the Defendant was  
17 reasonable.

18 In assessing whether the State has proven that the  
19 Defendant did not act in self-defense, I charge you that  
20 the Defendant had the right to judge the conduct of the  
21 deceased more partially than otherwise because the  
22 Defendant -- because of the deceased's alcohol consumption  
23 on the day of the incident.

24 Finally, the final element of self-defense is that  
25 the Defendant had no other probable way to avoid the

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*

349

Charge

1 danger of death or serious bodily injury than the act as  
2 the Defendant did in this particular incident..

3 Now, as I previously explained to you and instructed  
4 you, a man may not act in self-defense unless he has no  
5 other probable means of avoiding the danger. This  
6 requirement is sometimes called the duty to retreat. Now,  
7 this requirement is subject to the following limitation.

8 A man need not retreat before acting in self-defense if  
9 doing so would apparently increase his risk of danger. A  
10 person cannot be required to make an exact calculation as  
11 to the degree or force, amount of force, which may be  
12 needed to avoid death or serious bodily harm. Therefore,  
13 in self-defense the Defendant has the right to use the  
14 force needed to avoid death or serious bodily harm and  
15 that force used in self-defense does not have to be  
16 limited to the degree or amount of force used by the  
17 victim. The Defendant has the right to use so much force  
18 as appears to be necessary for the complete self-  
19 protection in which a person of ordinary reason and  
20 firmness would believe to be needed to prevent death or  
21 serious bodily harm.

22 Now, Mr. Foreman, ladies and gentlemen, I have a  
23 verdict form for you to do your deliberations with.  
24 Obviously, there's possible verdicts that you can make  
25 either under the charge of murder, if you find the State

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

350

1 has met all the elements of proof beyond a reasonable  
2 doubt, then of course you would make a decision as to  
3 guilty on murder. If you find that the State has not met  
4 its burden then of course, the verdict would be not  
5 guilty. I've given you the lesser included offense of  
6 voluntary manslaughter. Again, you have the same options  
7 there. If you -- obviously if you find that they're not  
8 guilty as far as murder, then you would look at the  
9 voluntary manslaughter. Again, deciding whether or not  
10 the State has met its burden of proof as far as voluntary  
11 manslaughter either as guilty or not guilty.

12 Once you have reached a unanimous verdict on these,  
13 then, Mr. Foreman, you may merely sign your name on behalf  
14 of your fellow jurors, date it and let the bailiff know  
15 that you have reached a verdict. Of course, there's no  
16 particular -- one has to be listed first as to whether  
17 it's not guilty or guilty, so there's no significance  
18 whatsoever in the order in which these are listed. It's  
19 for your determination based upon all the evidence to  
20 determine whether or not the State has met its burden of  
21 proof beyond a reasonable doubt as to the charge of  
22 murder. If not, then as to the charge of voluntary  
23 manslaughter.

24 Ladies and gentlemen, your verdict must be unanimous.  
25 All twelve of you must agree on the verdict. Your verdict

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

351

1 should not be based -- cannot be based on sympathy or  
2 prejudice, emotion, or any other consideration not in  
3 evidence in this case.

4 At this time I'm going to ask you to go back to your  
5 jury room. Don't start your deliberations just yet.  
6 There's one final matter of law that I need to take care  
7 of with the attorneys. If you will go back to the jury  
8 room now, I'll call you right back in a moment or either  
9 we've give you instructions to begin your deliberations.

10 (WHEREUPON, the jury exited the open court at  
11 approximately 1:36 p.m.)

12 THE COURT: Any exceptions to the charge, from  
13 the State?

14 MR. LEVENTIS: None from the State, Your Honor.

15 THE COURT: From the Defense?

16 MR. BUTLER: No, sir.

17 THE COURT: All right. If we can get all the  
18 exhibits together. Have you -- I understand the attorneys  
19 have looked over the verdict form and find it in proper  
20 order. Is that correct?

21 MR. LEVENTIS: That's correct, Your Honor.

22 MS. RUNEY: Yes, Your Honor.

23 THE COURT: All right. We'll get the verdict  
24 form and get all the exhibits together. If you'll have  
25 the foreperson -- the alternate come out for me right now,

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

352

1 please, sir.

2 (Pause.)

3 Yes, ma'am. Thank you very much for your  
4 participation in the case. The other twelve will be able  
5 to resolve the matter now. I think they've ordered lunch.  
6 You can certainly get your lunch. Obviously you can't eat  
7 it with the jury, but you can take it with you. You need  
8 to call back tonight after six o'clock. Thank you very  
9 much for your service.

10 When the bailiff comes back we'll let him -- if you  
11 could, take the verdict form back with the exhibits and  
12 tell them they can have their lunch and begin their  
13 deliberations.

14 All right. We'll be at ease till two twenty.

15 (WHEREUPON, Court stood at recess for a lunch break  
16 and to await the verdict of the jury.)

17 THE COURT: If the other attorneys are here on  
18 the first case, I'd like to see them up here.

19 (WHEREUPON, Mr. Leventis, Mr. McCoy, Ms. Runey and  
20 Mr. Butler approached the bar.)

21 THE COURT: All right. We've received some  
22 messages from the jury requesting certain information.  
23 They wanted a marker, a grease board and things like that.  
24 The Clerk has taken care of those needs for them. The two  
25 that haven't been taken care of is that they asked for a

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

353

1 copy of the transcript. And then the other note says,  
2 whose jacket is -- whose jacket in photo 17, State Exhibit  
3 Number 16? They sent the exhibit back also. I'll  
4 certainly have that go back with them.

5 I'm going to bring the jury back and tell them that  
6 obviously I can't talk about the facts of the case,  
7 explain that again. If they want to hear any part of the  
8 transcript of any testimony, we'll be glad to accommodate  
9 them and play it to them, if they'll just let us know.  
10 We'll have the court reporter locate it and play it to  
11 them and see if that satisfies them for now.

12 All right. Let's have our jury number one come back  
13 in, please, sir.

14 (WHEREUPON, the jury entered the open court at  
15 approximately 3:40 p.m.)

16 BAILIFF: Jurors are all present, Your Honor.

17 THE COURT: All right. Thank you, sir.

18 Mr. Foreman, thank you very much. You, on behalf of  
19 your jurors, have made a couple of inquiries. I apologize  
20 for the delay in getting with you. We've been involved in  
21 another trial. I try to respond as best I can.

22 One inquiry is about Exhibit Number 16. Obviously I  
23 can't, as I've stated to you, I can't comment on facts of  
24 the case. The facts are going to be determined by you  
25 from the evidence that's being presented, this being a

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

354

1 document that's been presented into evidence, the  
2 testimony that has come from the witness stand.

3 The other inquiry you have is a copy of the  
4 transcript. That sort of ties in. Obviously any part of  
5 the testimony you feel like you need to hear again, we'll  
6 be glad to play that for you. We can have our court  
7 reporter locate it if you'll just give us some instruction  
8 as to which witness and what part of it, we'll find it and  
9 we'll play as much of the testimony as you feel you need  
10 to hear from whatever witnesses or any other matters. But  
11 we don't have a transcript already made up of the  
12 testimony. Ms. Hanks takes the testimony down and she can  
13 locate it and play it back to you if you feel like you  
14 need that, and we'll be glad to do that at any time.

15 So if you would, just write out what you do need, if  
16 you feel that you do need to listen to any part of the  
17 testimony.

18 But obviously I can't comment about the facts into  
19 evidence. The facts that you have before you are what  
20 you're going to need to determine the verdict in this  
21 particular matter.

22 So with that I'll have the bailiff bring this exhibit  
23 back that you sent to me, Exhibit 16, with the  
24 instruction, so that you'll have it with your other  
25 exhibits and you can continue your deliberations. I hope



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

355

1 that gives you some insight. We'll be glad to help you  
2 anyway we can. If you need any other -- you mentioned  
3 that you needed some ink markers. I believe -- I  
4 understand those have been provided for you. Any other  
5 matters you need, we want to certainly assist you in your  
6 deliberations.

7 At this time I'll ask you to go back to your jury  
8 room and continue your deliberations.

9 (WHEREUPON, the jury exited the open court at  
10 approximately 3:42 p.m.)

11 THE COURT: Any objections to the instruction I  
12 gave them? From the State?

13 MR. LEVENTIS: None from the State.

14 THE COURT: From the Defense?

15 MS. RUNEY: No, Your Honor.

16 THE COURT: Again, we'll be at ease. We'll  
17 continue with the case -- we might not want to go far and  
18 see if they immediately have a question. Sometimes they  
19 might. Otherwise, we'll start the other case back. We've  
20 got your numbers to call you.

21 I'll make these Court exhibits as well for the court  
22 reporter to have.

23 We'll be at ease for about ten minutes. Okay.

24 (WHEREUPON, Court's Exhibit Numbers 4 and 5 were  
25 marked for identification.)

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

356

1 (WHEREUPON, court stood at recess for a short break.)

2 THE COURT: The jury has asked for a player to  
3 play the 911 tape. You indicated earlier that there was  
4 no objection. You can decide. I was making sure that we  
5 had a player. Any objection to them having a player to  
6 hear that? All right. As soon as he gets back -- I'll  
7 wait till he gets back. He had consented at the bench to  
8 sending a player back to them. This will be a court  
9 exhibit too.

10 (WHEREUPON, Court's Exhibit Number 6 was marked for  
11 identification.)

12 THE COURT: Y'all can be at ease and as soon as  
13 Mr. Leventis comes back I'll be sure he's got a player.

14 (WHEREUPON, court stood at recess for a short break.)

15 THE COURT: Is there any -- is that a backup?  
16 Is that the same as the evidence they have? I'll have  
17 them bring that one back out.

18 MR. MCCOY: This is a copy. We can flip them  
19 out though.

20 THE COURT: Well, we'll use the one they have.  
21 It'll work now, I'm sure.

22 All right. The first jury, if you'll have them come  
23 back in with the CD, please. Tell them to bring the CD.

24 (WHEREUPON, the jury entered the open court at  
25 approximately 4:08 p.m.)

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

357

1 BAILIFF: All jurors are seated, Your Honor.

2 THE COURT: If you would, just lay it on the  
3 table there, or on the bar, that'll be fine.

4 Ladies and gentlemen, we thought we might be able to  
5 work it out so that you would be able to play it back in  
6 your room. But we don't have the technology here to do  
7 that. But we have it to play here in the courtroom. And  
8 we'll do that. It's not a very long tape. What I'm going  
9 to do is have the tape played, the one that is into  
10 evidence, and if the jury -- Mr. Foreman, if you could  
11 just informally poll the jury, we'll play it as many times  
12 as you want to. If you want to come back out and hear it  
13 later, we'll do that as well. But we'll repeat playing it  
14 now if you feel like you need to hear it more than once.  
15 So I'm going to get it started, it's going to play, and if  
16 you want to hear it again, we'll play it again, ever how  
17 long you want to. Okay, sir. You just let us know.

18 All right, Solicitor, you can play the exhibit at  
19 this time.

20 (WHEREUPON, State's Exhibit Number 43, 911 tape, was  
21 played in open court.)

22 THE COURT: Would you like to have it played  
23 again?

24 MR. FOREMAN: One more time.

25 THE COURT: One more time, if you could play it

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

358

1 again, please.

2 MR. MCCOY: Yes, sir.

3 (WHEREUPON, State's Exhibit Number 43, 911 tape, was  
4 played in open court.)

5 THE COURT: All right. If you need to hear any  
6 testimony again we'll be glad to play it for you. You may  
7 go back to your jury room and continue your deliberations  
8 at this time, please.

9 (WHEREUPON, the jury exited the open court at  
10 approximately 4:15 p.m.)

11 MR. MCCOY: Your Honor, do I need to place this  
12 up front?

13 THE COURT: Yeah. The bailiff will take it back  
14 to them. Just give that back to him.

15 All right. We'll be at ease till we hear back from  
16 the jury.

17 (WHEREUPON, Court stood at recess awaiting the  
18 verdict of the jury.)

19 THE COURT: All right. We have an inquiry from  
20 the jury about wanting in writing the legal definition of  
21 murder and manslaughter. Of course, I don't necessarily  
22 have a writing for them for a definition. I'm going to  
23 call them back in and reinstruct them on murder and  
24 manslaughter. Let them go back out and continue their  
25 deliberations for a while. I won't be sending any charges

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

359

1 back. What I said might not be the same thing as what I  
2 would send back. So I'll recharge them on murder and  
3 manslaughter, that's what they've asked, can we have in  
4 writing the legal definitions of murder and manslaughter?  
5 We'll bring them out and I'll recharge them and let them  
6 deliberate a little bit longer, then ask them if they need  
7 any snacks or whatever to keep them comfortable. If they  
8 want to continue to deliberate tonight or go home tonight,  
9 I'll let them come back tomorrow, if that's what they want  
10 to do. I'll let them make that call.

11 All right. Let's have our jury come in.

12 (WHEREUPON, the jury entered the open court at  
13 approximately 5:08 p.m.)

14 BAILIFF: Jury is seated, Your Honor.

15 THE COURT: Thank you.

16 Mr. Foreman, you've made an inquiry. I apologize for  
17 keeping you waiting as we finished up some of the  
18 testimony in the other case. But you've asked for a legal  
19 definition of murder and for voluntary manslaughter. I  
20 can recharge you on that. If you'll -- I'll be glad to do  
21 that at this time.

22 As I stated to you before, this is a charge of murder  
23 and the State has got to prove beyond a reasonable doubt  
24 that the Defendant killed another person with malice  
25 aforethought. Now, malice is hatred or ill-will or

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
Charge

360

1 hostility toward another person. It's the intentional  
2 doing of a wrongful act without just cause or excuse and  
3 with the intent to inflict an injury under circumstances  
4 that the law will infer an evil intent. Malice  
5 aforethought does not require that malice exist for any  
6 particular time before the act is committed. But malice  
7 must exist in the mind of the Defendant just before and at  
8 the time of the act being committed. Therefore, there  
9 must be a combination of the previous evil intent and the  
10 act. Malice aforethought can be expressed or inferred.  
11 Now, as I stated to you, these terms expressed and  
12 inferred do not mean different kinds of malice but merely  
13 the manner in which malice may be shown to exist. In  
14 other words, either by direct evidence or by inference  
15 from the facts and circumstances which are proved.  
16 Expressed malice is shown when a person speaks words which  
17 express hatred or ill-will for another or when that person  
18 prepared beforehand to do the acts or act which was later  
19 accomplished. Malice can be inferred from conduct showing  
20 a total disregard for human life. Inferred malice can  
21 also arise when the deed is done with a deadly weapon. I  
22 explained to you, a deadly weapon is any article or  
23 instrument or substance which is likely to cause death or  
24 great bodily harm. Whether an instrument has been used as  
25 a deadly weapon depends upon the facts and the

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

361

1 circumstances of each case. I gave you certain examples  
2 of what can be considered a deadly weapons such as a  
3 pistol, a shotgun, a rifle, a dagger, a knife, a razor,  
4 gasoline, lighter fluid. A gun can be a deadly weapon  
5 even if it's not operating.

6 Now, you also have the instructions I gave you about  
7 the offense to prove voluntary manslaughter. For the  
8 State to prove its case for voluntary manslaughter, it  
9 must prove beyond a reasonable doubt that the Defendant  
10 took the life of another and that it was in a sudden heat  
11 or a passion based upon sufficient legal provocation.

12 Both heat of passion and sufficient legal provocation  
13 must be present at the time of the killing to constitute  
14 voluntary manslaughter. Sudden heat of passion may, for a  
15 time, affect a person's self-control and temporarily  
16 disturb a person's reason. The sudden heat of passion  
17 must be the type that would make an ordinary person unable  
18 to coolly reflect on his actions and would produce an  
19 uncontrollable impulse to do violence. Sufficient legal  
20 provocation must be the type that would make a person of  
21 ordinary reason and caution become enraged and lose  
22 control temporarily.

23 The provocation needed for voluntary manslaughter  
24 must come from some act of or related to the victim.  
25 Words alone, however vulgar or insulting, are not enough

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

362

1 to be legal provocation. Where death is caused by the use  
2 of a deadly weapon, the words must be accompanied by some  
3 overt, threatening act which would have produced the heat  
4 of passion. The exercise of a legal right, no matter how  
5 offensive it is to another is never sufficient legal  
6 provocation for voluntary manslaughter. If the heat of  
7 passion had cooled or if there was enough time between the  
8 provocation, if any, and the killing for the passion of a  
9 reasonable person to cool, the killing would not be  
10 voluntary manslaughter.

11 In deciding whether a reasonable person would have  
12 had enough time to cool off, you should consider all the  
13 circumstances surrounding the killing. You may consider  
14 the nature of the provocation, if any, the Defendant's  
15 mental and physical state, the circumstances and  
16 relationships between the parties.

17 I hope that this further clarification for murder and  
18 for voluntary manslaughter is some help to you. I'll ask,  
19 if you would, to go back and continue your deliberations.  
20 If you need further instructions on the law, I'll be glad  
21 to help you with that. Again, I can't discuss the facts  
22 in the case. While you're deliberating if there's any  
23 particular needs you may have, you can just ask the  
24 bailiffs, if you need snacks or anything of that nature.

25 I'll be glad to let you work as long as you want to.



State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

363

1 If you feel like that you are making some progress, we'll  
2 let you continue working. If any of you need to make  
3 calls right now to make sure your family is taken care of,  
4 we'll certainly do that. If you feel like you're not  
5 making any progress with your deliberations, then I'll let  
6 you make the decision as jurors if you wish to come back  
7 tomorrow and continue your deliberations. I'm going to  
8 ask you now to go back and continue deliberating for a  
9 while.

10 You let us know, Mr. Foreman, what your wishes are as  
11 far as anything you need. Thank you very much. You may  
12 return back to your jury room.

13 (WHEREUPON, the jury exited the open court at  
14 approximately 10:15 a.m.)

15 THE COURT: Any objection to the charge? From  
16 the State?

17 MR. LEVENTIS: None from the State, Your Honor.

18 THE COURT: From the Defense?

19 MS. RUNEY: No, Your Honor.

20 THE COURT: All right. Thank you. We'll be at  
21 ease till we hear from our jury.

22 I'll make this a court exhibit as well, the inquiry  
23 from the jury.

24 (WHEREUPON, Court's Exhibit Number 7 was marked for  
25 identification.)

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

364

1 (WHEREUPON, Court stood are recess awaiting the  
2 verdict of the jury.)

3 THE COURT: The jury sent a note out that they  
4 would like to continue their deliberations tomorrow. So  
5 I'm going to call them back in and send them home for the  
6 evening. If you'll call the jury, please.

7 This will be another exhibit.

8 (WHEREUPON, Court's Exhibit Number 8 was marked for  
9 identification.)

10 (WHEREUPON, the jury entered the open court at  
11 approximately 10:31 a.m.)

12 BAILIFF: The jurors are all seated, Your Honor.

13 THE COURT: Thank you.

14 Mr. Foreman, ladies and gentlemen, I understand that  
15 you would like to continue your deliberations tomorrow and  
16 I gave you that option. I appreciate your conscientious  
17 effort this afternoon.

18 I need to remind you again about discussing the case.  
19 I know that perhaps you're starting to hear that too much.  
20 But I emphasize it because it's so important. And while  
21 you now have started your deliberations, while you're out  
22 and about this evening with friends or family, you  
23 obviously should not discuss this case with anyone. You  
24 should not do any kind of independent research. You  
25 should not read anything in the newspaper or watch

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*

365

*Charge*

1 anything on TV if there were to be anything of that  
2 nature. You need to fulfill the commitment that you've  
3 begun to decide this case on what's been presented by  
4 evidence, the law, and that alone. So refrain from any  
5 other outside sources of information. Don't do any  
6 independent research of any kind into any issues that you  
7 may have. That would be highly improper for you to do  
8 that as well.

9 You can start back tomorrow when all of the jurors  
10 are here. Mr. Foreman, you can begin your deliberations  
11 then. Is nine o'clock suitable for everybody to come in  
12 at nine? Again, if everybody is here before then, you can  
13 begin your deliberations when everyone is here, not before  
14 everyone is here and they'll have the exhibits for you to  
15 continue your deliberations at that time.

16 Thank you very much, ladies and gentlemen. Have a  
17 good evening. See you back in the morning at nine  
18 o'clock.

19 (WHEREUPON, the jury exited the open court at  
20 approximately 5:38 p.m.)

21 THE COURT: Again, we've got your numbers.  
22 Y'all can be on standby tomorrow. They won't be coming in  
23 here. We'll call you if we need you as far as any  
24 questions they might have.

25 MR. BUTLER: So we don't need to come in first

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

366

1 thing at nine?

2 THE COURT: No. They'll go straight to the jury  
3 room and we'll let them start deliberating when they're  
4 all here.

5 All right. Have a good evening.

6 (WHEREUPON, Court stood at recess for the day at  
7 approximately 5:40 p.m.)

8 December 4, 2008

9 (WHEREUPON, the jury continued their deliberations at  
10 approximately 9:16 a.m.)

11 THE COURT: Bring them on in.

12 (WHEREUPON, the jury entered the open court at  
13 approximately 11:26 a.m.)

14 BAILIFF: All jurors are seated, Your Honor.

15 THE COURT: Thank you.

16 Thank you for being patient with us, Mr. Foreman,  
17 ladies and gentlemen. We've now got the transcript set up  
18 for you to hear the testimony you requested. You  
19 requested to play the testimony of the witnesses Blake and  
20 Hemingway. You asked for a magic marker. I certainly  
21 trust that the bailiffs have taken care of that need for  
22 you as well. We'll play this and if you need -- as  
23 before, if you need to hear it more often, we'll play it  
24 as much as you need. If you need it backtracked, please  
25 just let the court reporter know and she'll accommodate

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*

367

*Charge*

1 you any way. If you feel that you've heard enough, then  
2 that's fine too. But she's prepared to play the entire  
3 testimony of both of those witnesses. If you'll just  
4 listen carefully and let us know if the volume is too loud  
5 or too soft. All right, Madam Court Reporter.

6 (WHEREUPON, the testimony of Gerald Blake and George  
7 Hemingway was played in open court.)

8 THE COURT: We'll ask you to go back and  
9 continue your deliberations at this time. If you need  
10 other testimony we'll certainly be glad to play it for  
11 you.

12 (WHEREUPON, the jury exited the open court at  
13 approximately 12:16 a.m.)

14 (WHEREUPON, Court's Exhibit Number 9 was marked for  
15 identification.)

16 THE COURT: All right. We'll be at ease in this  
17 case.

18 (WHEREUPON, Court stood at recess awaiting the  
19 verdict of the jury.)

20 THE COURT: They've deliberated long and hard.  
21 Let me just mainly address this instruction to the  
22 audience. Maybe it applies to the lawyers and the parties  
23 as well. We're going to respect the verdict of the jury.  
24 They've been working on this case since yesterday.

25 I know that this is a very emotional case for

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

368

1 everyone involved. Lawyers get emotionally involved in a  
2 case. Certainly not like the family would be on either  
3 side. We're going to show respect for the verdict. We're  
4 going to show decorum for the verdict. And we're not  
5 going to have any outcries about whatever the verdict is  
6 or whatever. Whether it's cries of agony or cries of  
7 pleasure. But if there's anybody here that just feels  
8 like they can't hold their emotion in, you can step  
9 outside now, which would be the time to do that. You will  
10 hear the verdict very soon after I've discharged the jury.  
11 There won't be that much delay.

12 But I want to make sure everyone understands that now  
13 is the time for you to leave if you feel like you just  
14 can't control yourself once the verdict is reached. We're  
15 going to respect this jury, whatever it is. So if anybody  
16 feels like they just can't control themselves, this is the  
17 time you need to leave. Otherwise, we'll have to take  
18 care of that afterwards.

19 All right. Everybody is staying in. Let's have our  
20 jury come back.

21 (WHEREUPON, the jury entered the open court at  
22 approximately 1:13 p.m.)

23 BAILIFF: Jurors are seated, Your Honor.

24 THE COURT: Mr. Foreman, I understand the jury  
25 has reached a verdict. Is that correct?

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*

369

*Charge*

1 MR. FOREMAN: Yes, Your Honor.

2 THE COURT: Is it a unanimous verdict?

3 MR. FOREMAN: It is.

4 THE COURT: If you would, please hand the  
5 verdict form to the bailiff. If you'll forward it over.

6 All right. Mr. Clerk, you may publish the verdict.

7 MISTER CLERK: Yes, Your Honor. The verdict  
8 form in the matter of the State of South Carolina versus  
9 Antonio B. Moultrie, Defendant. We the jury unanimous  
10 find the Defendant, Antonio B. Moultrie, as to the charge  
11 of murder, guilty. Signed Robert Condon, Foreperson of  
12 the jury, on December 4, 2008.

13 Ladies and gentlemen of the jury, if this was your  
14 verdict, please raise your right hand.

15 (WHEREUPON, all jurors' hands were raised.)

16 MISTER CLERK: Thank you. Please let the record  
17 reflect that all twelve jurors raised their right hand.

18 THE COURT: Is there anything we need to take  
19 care of with this jury before they're discharged in the  
20 case?

21 MR. BUTLER: Request a poll, please,  
22 individually.

23 THE COURT: If you would, poll the jury, please.

24 MISTER CLERK: Ladies and gentlemen of the jury,  
25 what's going to happen now is called polling of the jury.

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

370

1 When I call your juror number, please raise your hand and  
2 then I'll ask you two questions. Please answer to me --  
3 back to me verbally each question.

4 Juror number 45. Was that your verdict?

5 JUROR: Yes.

6 MISTER CLERK: Is that still your verdict?

7 JUROR: Yes.

8 MISTER CLERK: Thank you.

9 Juror number 42. Was that your verdict?

10 JUROR: Yes.

11 MISTER CLERK: Is that still your verdict?

12 JUROR: Yes.

13 MISTER CLERK: Thank you.

14 Juror number 54. Was that your verdict?

15 JUROR: Yes.

16 MISTER CLERK: Is that still your verdict?

17 JUROR: Yes.

18 MISTER CLERK: Thank you.

19 Juror number 56. Was that your verdict?

20 JUROR: Yes.

21 MISTER CLERK: Is that still your verdict?

22 JUROR: Yes.

23 MISTER CLERK: Juror number 102. Was that your  
24 verdict?

25 JUROR: Yes.



*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

371

1 MISTER CLERK: Is that still your verdict?  
2 JUROR: Yes.  
3 MISTER CLERK: Thank you.  
4 Juror number 54. Was that your verdict?  
5 JUROR: Yes.  
6 MISTER CLERK: Is that still your verdict?  
7 JUROR: Yes.  
8 MISTER CLERK: Thank you.  
9 Juror number 256. Was that your verdict?  
10 JUROR: Yes.  
11 MISTER CLERK: Is that still your verdict?  
12 JUROR: Yes.  
13 MISTER CLERK: Juror 258. Was that your  
14 verdict?  
15 JUROR: Yes.  
16 MISTER CLERK: Is that still your verdict?  
17 JUROR: Yes.  
18 MISTER CLERK: Juror 261. Was that your  
19 verdict?  
20 JUROR: Yes.  
21 MISTER CLERK: Is that still your verdict?  
22 JUROR: Yes.  
23 MISTER CLERK: Thank you.  
24 Juror number 288. Was that your verdict?  
25 JUROR: Yes.

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

372

1 MISTER CLERK: Is that still your verdict?

2 JUROR: Yes.

3 MISTER CLERK: Thank you.

4 Juror number 299. Was that your verdict?

5 JUROR: Yes.

6 MISTER CLERK: Is that still your verdict?

7 JUROR: Yes.

8 MISTER CLERK: Thank you.

9 Juror 305. Was that your verdict?

10 JUROR: Yes.

11 MISTER CLERK: Is that still your verdict?

12 JUROR: Yes.

13 MISTER CLERK: Is there any juror who I did not  
14 call upon? Please raise your hand. Your Honor, the jury  
15 has been polled and the verdict stands.

16 THE COURT: Thank you very much, Mr. Foreman,  
17 ladies and gentlemen. I appreciate having the honor to  
18 get to work with you. You've been a diligent,  
19 conscientious jury. It's been a treat for me to get to  
20 work with you in this matter. It's not everyday that  
21 you're going to have jury service. And you perhaps might  
22 never have it again. But your service to the Charleston  
23 community is certainly appreciated. We couldn't conduct  
24 the judicial system without the presence of jurors who are  
25 willing to serve even on difficult cases. And I know that

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

373

1 none of you volunteered to do this, but you were selected  
2 and I appreciate your service so much.

3 Hopefully you won't ever have to come to court as a  
4 litigant, but certainly if that ever happens to you, you  
5 would want good, conscientious jurors such as you to  
6 decide the facts of the dispute that you might find  
7 yourself involved in. You've done a valuable service.  
8 You've actually served as a member of the judiciary by  
9 being the fact finders in this particular case and  
10 directly participated in your government.

11 Your services for the week are concluded. We have  
12 another trial going on. I don't believe we'll have enough  
13 time left in the week to start another one, so you should  
14 not need to call back tonight or come in tomorrow.  
15 Furthermore, as you heard on the qualification on Monday,  
16 this should conclude your jury service for the next couple  
17 of years. Certainly in state court. I can't guarantee  
18 you that you won't be called in another court. But for  
19 state court purposes, you are exempted from further jury  
20 service. Obviously you can serve if you choose to.

21 Thank you very much, ladies and gentlemen, you've  
22 been a good jury. I appreciate your service. You're  
23 discharged at this time. I do need for the foreperson, if  
24 you would, please to meet the clerk out back. I need you  
25 to sign one other piece of paper for us. Otherwise,

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

374

1 you're discharged for the week. Thank you very much,  
2 ladies and gentlemen.

3 Please remain seated while the jury departs, those in  
4 the audience.

5 All right. Any other matters we need to take care of  
6 before sentencing is imposed?

7 MR. LEVENTIS: Nothing from the State, Your  
8 Honor.

9 THE COURT: We'll be at ease just for a minute  
10 until Mr. Callahan gets back.

11 MR. MCCOY: Your Honor, may I be excused for a  
12 moment?

13 THE COURT: Yes, sir.

14 MR. BUTLER: Judge, do you want to hear from the  
15 Defendant post trial motions at this point?

16 THE COURT: Yeah. That's what I was asking for.

17 MS. RUNEY: I'm sorry, Your Honor. At this  
18 point I would move to renew all my previous objections as  
19 well as my motion for a directed verdict. And Your Honor,  
20 at this time the Defense would move for a new trial based  
21 on all previous objections and motions for a directed  
22 verdict.

23 THE COURT: I've had a chance while the jury has  
24 been deliberating while not in trial to review my notes  
25 and recollect what transpired during the course of the

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

375

1 trial. I believe the motion was properly denied at the  
2 time and I continue to rule accordingly, that this was a  
3 question for the jury and I think they've spoken. I deny  
4 your motion respectfully. Any other motions?

5 MR. LEVENTIS: Your Honor, if I may. Your  
6 Honor, two members of the family, the victim's family,  
7 would like to speak at the appropriate time.

8 THE COURT: All right. Has the sentencing sheet  
9 been prepared?

10 MR. LEVENTIS: Mr. McCoy has gone to draw that  
11 up.

12 THE COURT: All right. Can we go on and proceed  
13 with the sentencing process? We'll have the sentencing  
14 sheet here -- I'm sure Mr. McCoy is bringing that.

15 MR. LEVENTIS: That's correct, Your Honor.

16 THE COURT: All right. If you'll bring the  
17 Defendant forward, please, sir.

18 All right. Ms. Runey or Mr. Butler, or both of you,  
19 I'll be glad to hear from you if you have anything that  
20 you want me to ---

21 MR. BUTLER: Judge, I'm going to let Ms. Runey  
22 do most of the talking. I did want to speak briefly.  
23 We're obviously disappointed with the verdict,  
24 respectfully. It not only is not the one we wanted, but  
25 it's not the one we expected either. I think we had some

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

376

1 discussions about that before we got started. But we  
2 still don't know -- one of the unfortunate things about  
3 this process is that even when we have the verdict, we  
4 don't know what specific facts the jury found. They could  
5 have still found that the victim in this case was armed  
6 and it was still murder. The reason that we asked you to  
7 review those photographs we submitted this morning was  
8 because we think that they do show that the shoe prints  
9 that the State maintains were Mr. Moultrie's were clearly  
10 not. We don't want to retry the case, but I have to  
11 present what we think is mitigating evidence. And clearly  
12 the fact that the victim was armed, that clearly is  
13 mitigation, we think that the photographs show blood just  
14 above where the knife was found and a shoe print that  
15 could not be our client's or law enforcement's. So we  
16 offer that by way of mitigation. You know, you have a  
17 wide range of sentences for murder. But obviously no less  
18 than thirty day to day. He's thirty-two years old. I'm  
19 going to let Ms. Runey give more of the biographical  
20 information. His record is as minimal as a person charged  
21 with murder could have, in my experience. He's never been  
22 to prison. And I believe -- criminal domestic violence  
23 and marijuana are his only charges. With the mandatory  
24 minimum of thirty years, he would be out at sixty-two. We  
25 think that would be the appropriate sentence. Thank you.

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

377

1 THE COURT: All right. Ms. Runey, be glad to  
2 hear from you.

3 MS. RUNEY: Thank you, Your Honor. I want to  
4 add some information about Tony. He grew up here in  
5 Charleston. He's here today with his mother, Andrea  
6 Moultrie, his sister Candace and his brother Derrick and  
7 they've been here on and off all week to support him.  
8 They love him. And they want things to be the best for  
9 him. They understand that he's in a bad situation. He  
10 told me when we met that he wished that this had never  
11 happened. That he was friends with this victim. He has  
12 been a cab driver. He's worked all of his life. He  
13 worked for Flag-a-Cab for six years. He was most recently  
14 with North Area Taxi for a year and a half. He was able  
15 to get out on bond for a while and continue to work,  
16 return to work to support his family. He has nine month  
17 old twins that live with their mother. As Mr. Butler told  
18 you, he has a minimal record, especially for his age, and  
19 finding himself in this situation.

20 I ask you to take all of these things into  
21 consideration. And we would ask you to consider the  
22 minimum sentence. I do believe that Mr. Moultrie would  
23 like to speak.

24 THE COURT: I'd certainly like to hear from him.  
25 I'll be glad to hear from you, Mr. Moultrie.

1           DEFENDANT: Daniel Jones was my friend. I had  
2 never had any intentions or want to hurt this man. I was  
3 clearly protecting myself. I put myself to the grace of  
4 the court.

5           THE COURT: Thank you, Mr. Moultrie.

6           Mr. Leventis, be glad to hear from the victims who  
7 might wish to testify.

8           Yes, ma'am, if you would, state your name for the  
9 record, please. I'll be glad to hear from you.

10          ROBIN GREEN: My name is Robin Green and I'm  
11 Daniel Jones's sister-in-law. This has been a big impact  
12 on our family, not only on me but on his mother. And I'm  
13 asking that Antonio Moultrie gets the maximum sentence for  
14 this charge.

15          THE COURT: All right. Thank you, ma'am.

16          MS. GREEN: You're welcome.

17          BRENDA JONES: My name is Brenda Jones. Daniel  
18 Jones was my nephew. He was my sister's only child. We  
19 do wish he gets the maximum sentence because he has, he  
20 has devastated our family. We went through a murder trial  
21 before with my mom and to have to go through it again with  
22 another family member, it is devastating. And I feel for  
23 his family, but I feel you should not hold back, and just  
24 give him the maximum, because he knew what he was doing.  
25 Thank you.



State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Charge

379

1 THE COURT: Thank you, ma'am. If you would,  
2 state your name, please.

3 DENESHA JONES: My name is ---

4 THE COURT: I can't hear you, ma'am. You're  
5 going to have to speak up.

6 DENESHA JONES: I'm Denesha Jones. I'm Daniel's  
7 daughter and I would appreciate it if he would please get  
8 the maximum sentence for this charge because he took away  
9 my own father. My life is devastated without him. He was  
10 my best friend. That's all I wanted to say.

11 THE COURT: Thank you, ma'am.

12 DIANE ANDERSON: My name is Diane Anderson. And  
13 I just told her I wasn't going to say anything. But for  
14 me, I never thought that this would be a part of my world.  
15 I've always been a law abiding citizen. I never thought  
16 that the man that woke up that morning and dressed my son,  
17 and I called him at six twenty-eight that afternoon and  
18 said I was coming to pick him up. And twenty minutes --  
19 twenty to twenty-five minutes, that was it. I was on my  
20 way to pick him up. Then to have to explain to my six  
21 year old son, mommy, because someone hurt Daniel and  
22 Daniel's not here anymore, does that mean that you're  
23 going to leave me too? And to have to live through that  
24 when I thought that would never be a part of my world, is  
25 a lot. And I just have to ask that the court would give

*State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)*  
*Charge*

380

1 me and my son some kind of justice so I can explain to him  
2 that the court system is still justice and that you cannot  
3 do that and destroy somebody's world and have to have a  
4 mother explain to her six year old son why the person that  
5 dressed him that morning is no longer here. And I just  
6 have to ask this Court to do justice for me and my son.

7 THE COURT: Thank you, Ms. Anderson.

8 It's certainly a tragic event. Senseless event that  
9 something like this could happen and destroy two families.  
10 This is case 2008-GS-10-4135. The sentence of the court  
11 is that the Defendant be committed to the State Department  
12 of Corrections for a period of forty-five years. Wish you  
13 the very best, Mr. Moultrie, and I certainly wish the  
14 family the very best.

15

16 END OF REQUESTED TRANSCRIPT OF RECORD

State of South Carolina -vs- Antonio Moultrie (2008-GS-10-4135)  
Certificate of Reporter

381

## 1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court  
4 Reporter for the Thirteenth Judicial Circuit of the State  
5 of South Carolina, do hereby certify that the foregoing is  
6 a true, accurate, and complete transcript of record of all  
7 the proceedings had and evidence introduced in the  
8 trial/hearing of the captioned case, relative to appeal,  
9 in the Circuit Court for Charleston County, South  
10 Carolina, on December 1st through 4th, 2008.

11 This transcript may contain quoted material. Such  
12 material is reproduced as read by the speaker.

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

15 July 6, 2009

16

17

18

19



Circuit Court Reporter

NIB20080200858

## WITNESSES

DAVID WATSON

North Charleston Police Department

## AGENCY CASE NUMBER

2008005172

## ARREST WARRANT NUMBER

F969654

## DATE OF ARREST

2008-02-06

ACTED BY GRAND JURY

TRUE BILL

Foreperson of Grand Jury  
Date:

MAY 06 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1004135

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2008

THE STATE

vs.

ANTONIO V MOULTRIE

DOB: [REDACTED]

B/M

Indictment for

Murder

FILED

2008 MAY 12 PM 3:28

JULIE J. ARMSTRONG  
CLERK OF COURT

37

08-865(1)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

## INDICTMENT

At a Court of General Sessions, convened on May 5, 2008 the Grand Jurors of Charleston County present upon their oath:

**Murder**

That in Charleston County on or about February 5, 2008, with malice aforethought, ANTONIO V MOULTRIE did kill and murder Daniel Jones by means of stabbing the victim, and that Daniel Jones did die in Charleston County as a proximate result thereof on February 5, 2008; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
NICK BIANCHI  
ASSISTANT SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF Charleston  
STATE VS.

ANTONIO V MOULTRIE

AKA:

Race: R Sex: M Age: 32DOB: 01/17/76

Address:

DL#: SC0114047 SID#: SC0114047

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS1004135

A/W#: F969654Date of Offense: 2/5/2008S.C. Code § : 16-03-0010.0020CDR Code #: 0116

## SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS  
TO: Murderin violation of § 16-03-0010.0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45  
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Leventis, Henry

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCJA Surcharge)

TOTAL

\$

\$

\$100

\$

\$12

\$

\$500

\$

\$25

\$

\$50

\$

\$40/ea

\$

\$3.75

\$

\$5

\$

\$133.75

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, §35.13 TP  
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE Ch. W. JohnsonJudge Code: 75-13-13Sentence Date: 7-2-4-2008

SCCA/217 (07/2008)

Court Reporter: S. Darville Hanks

Clerk of Court/ Deputy Clerk

## FORM 5

STATE OF SOUTH CAROLINA )

County of Charleston )2011-CP-10-9422  
IN THE COURT OF COMMON PLEASAntonio Moultrie )

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

v. )

State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEFFILED  
2011 DEC 21 AM 9:35  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BYINSTRUCTIONS - 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 Lieber Correctional Institution, P.O. Box 205  
Ridgeville, South Carolina
2. Name and location of Court which imposed sentence Charleston County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2008-GS-10-4135 (murder)

(b) \_\_\_\_\_

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) December 4, 2008 (45 years)

(b) \_\_\_\_\_

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty trial by jury

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. South Carolina Supreme Court

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. affirmed conviction and sentence

ii. same as above

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) n/a



- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) Denial of Sixth and Fourteenth Amendments U.S. Const.
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached issues and memorandum in support
- (b) same as above
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. n/a

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. n/a

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. n/a

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

~~first filing for post conviction relief~~

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) first filing for post conviction relief
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? n/a
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Martha Runey, Esq.
- Beattie Butler, Esq.
- ii. Robert Dudek, Esq.
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. trial & sentencing
- trial & sentencing
- ii. direct appeal
- iii. \_\_\_\_\_

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

vacate sentence and conviction and remand for new trial

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

no

Revised 3/2003

STATE OF SOUTH CAROLINA )

CHARLESTON AYM )

DOCKNEY )

County of X DOCKNEY XXXX )

VERIFICATION

I, Antoni Moultrie, 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.

Antoni Moultrie

SWORN to and subscribed before me this 12th  
day of December, 2011.

Sylvia Jones (L.S.)  
Notary Public

My Commission Expires: 1/24/2018

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

I, Antonio Moultrie, 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.

Antonio Moultrie

Applicant

SWORN or affirmed to and subscribed before me this

12th day of December, 2011.

Sylvia Jones  
Notary Public

My Commission Expires: 1/24/2018

392

NIB20080200858

WITNESSES

DAVID WATSON  
North Charleston Police Department

AGENCY CASE NUMBER

2008005172

ARREST WARRANT NUMBER

F969654

DATE OF ARREST

2008-02-06

ACT. MON. GRAND JURY

TRUE BILL

*E. J. Cochran*  
Foreperson of Grand Jury

Date: MAY 06 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1004135

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS

May Term 2008

THE STATE

vs.

ANTONIO V MOULTRIE  
DOB: [REDACTED]  
B/M

08-865(1)

Indictment for

Murder

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2008 MAY 12 PM 3:28

FILED

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

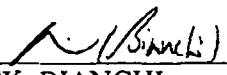
## INDICTMENT

At a Court of General Sessions, convened on May 5, 2008 the Grand Jurors of Charleston County present upon their oath:

**Murder**

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
NICK BIANCHI  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

Indict.No. 2008-GS-10-4135

Antonio Moultrie -- Petitioner,

-Vs-

State of South Carolina -- Respondent,

**MEMORANDUM IN SUPPORT OF  
APPLICATION FOR POST CONVICTION RELIEF**

**PURSUANT TO S.C.CODE ANN.**

**§§ 17-27-20 THROUGH 17-27-160**

Respectfully Submitted,

/s/ Antonio Moultrie  
Antonio Moultrie

FILED  
2011 DEC 21 AM 9:35  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_



TABLE OF CONTENTS

|                         |    |
|-------------------------|----|
| INDEX.....              | i  |
| Memorandum of law,..... | 1  |
| Issue (A),.....         | 2  |
| Issue (B),.....         | 10 |
| Issue (C),.....         | 13 |
| Issue (D),.....         | 15 |
| Issue (E),.....         | 19 |
| Conclusion,.....        | 25 |

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON )

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Antonio Moultrie ) Indict.No. 2008-GS-10-4135  
Petitioner, )  
-V- ) **MEMORANDUM IN SUPPORT OF**  
State of South Carolina ) **APPLICATION FOR POST CONVICTION**  
Respondent, ) **RELIEF PURSUANT TO: S.C. CODE ANN**  
) **§§ 17-27-20 THROUGH 17-27-160**

**COMES NOW**, Antonio Moultrie, pro-se, herein after, Petitioner, seeking relief in this Honorable Court, claiming that his constitutional rights were violated in a number of ways, including, but not limited to his Sixth Amendment Right to the effective assistance of trial counsel, as well as his right to a fair trial that is protected under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Petitioner presents this application and memorandum of law in support pursuant to S.C. Code Ann. §§ 17-27-20 through 17-27-160. The issues included herein along with Petitioner's statement of facts will show unto this Honorable that Petitioner is entitled to the requested relief stated herein.

Respectfully Submitted,

/s/ Antonio Moultrie  
Antonio Moultrie

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S MALICE INSTRUCTIONS THAT WERE UNCONSTITUTIONALLY BURDEN SHIFTING IN VIOLATION OF DUE PROCESS?

### FACTS

During closing summation to the jury the Solicitor argued the following; as was recorded:

The elements of murder. Killing another person with malice aforethought expressed or **implied**. Absence of any of the those elements is murder. The State does not have to prove that Antonio Moultrie is a murderer. Malice aforethought. It's a term some of you may not be familiar with. It means doing a wrongful act intentionally and without just cause or excuse. [Tr.p.316, L.18-25].

I just spoke to you about the law in this case. Now, I'll be speaking about the facts. First I want to go over the elements of murder and how those elements are met by these facts. Killing another person with malice aforethought, expressed or **implied**. [Tr.p.327, L.19-24].

Those statements alone are more than sufficient to find malice aforethought. Or we can look at the defendant's actions. For example, use of a deadly weapon, use of a knife, allows you to infer malice aforethought. So those are the elements of murder. [Tr.p.328, L.10-14].

Coming directly after the Trial Court instructed the jury as follows:

Malice aforethought may be expressed or inferred. These terms expressed and inferred do not mean different kinds of malice but merely the manner in which malice must be shown to exist.

That is either by direct evidence or by inference from the facts and circumstances which are proved. Expressed malice is shown when a person speaks words which express hatred or ill-will for another or when the person prepared beforehand to do the act which was later accomplished.

Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. [Tr.p.344, L.2-13].

Directly after the above referenced instruction on malice the court very briefly told the jury what constitutes a "deadly weapon" and subsequently went on to charge the jury regarding voluntary manslaughter and self-defense, yet the trial judge "failed" to instruct the jury that the use of a deadly weapon is a permissive inference and the jury could either "accept or reject" the inference and give it such weight as the jury deemed proper under the circumstances and facts of the case. Yet, by the court failing to charge the jury they may accept or reject the inference from the "use of a deadly weapon" a jurist of reason could have interpreted the instruction as being mandatory if the state proved Petitioner used a deadly weapon.

Petitioner asserts counsel's failure to object to erroneous instructions denied him his right to the effective assistance of counsel as his right to a fair trial.

### DISCUSSION

This Court has long held that burden-shifting presumptions are unconstitutional. See State v. Peterson, 287 S.C. 244, 355 S.E.2d 800 (1985). Specifically, a charge that a prima facie case may be rebutted by other evidence is impermissible. State v. Key, 282 S.C. 413, 319 S.E.2d 338 (1984).

Evidentiary presumptions [must] be charged as permissive inferences with specific instructions that the jury may "accept or reject" them. State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987), State v. Peterson supra; the trial court in the instant case "failed" to properly instruct the jury regarding evidentiary presumptions and therefore a reasonable jurist could have interpreted the instructions as mandatory since "a deadly weapon" was involved.

In a long line of cases culminating in Yates v. Evatt, 111 S.Ct. 1884 (1991), the United States Supreme Court has recognized that the prosecution "must prove each and every element" of the crime charged beyond a reasonable doubt. In re Winship, 397 U.S. 158 (1970).

The burden of proof on any element cannot be shifted to the defendant, because in doing so decreases the State's burden of proving the crime beyond a reasonable doubt.

As early as 1975, the Supreme Court considered a Maine Rule which required the defendant charged with murder to prove that he acted in the heat of passion in order to reduce the homicide to manslaughter. The Court determined that a state could not shift the burden of proof on [any element] of the crime to the defendant. See Mullaney v. Wilbur, 421 U.S. 684 at 701 (1975).

The Court found the risk to be intolerable and reversed Wilbur's conviction.

The Supreme Court overturned another conviction in Sandstrom v. Montana, 442 U.S. 510 (1979). Montana law provided that a person could be charged with deliberate homicide when that person purposely or knowingly caused the death of another and at Sandstrom's trial, the judge instructed the jury that "the law presumes that a person intends the ordinary consequences of his voluntary acts. Sandstrom supra at 512.

After considering Sandstrom's argument the Court agreed that the effect of that was to shift the burden of proof to Sandstrom on a critical element of the offense, "that he purposely or knowingly killed another person". The Court noted again that the State must prove every element of the crime charged beyond a reasonable doubt and that the defendant cannot be required to prove any element of his defense or disprove any element of his crime. A reasonable juror might have interpreted the instructions either as a conclusive presumption or as a burden shifting presumption, but either interpretation, the Court rendered the instruction unconstitutional.

The United States Supreme Court was confronted with another burden shifting jury instruction in Francis v. Franklin, 471 U.S. 307 (1985). The Court found that the use of a rebuttable presumption was also unconstitutional for the same reasons set forth in Sandstrom, supra. The defendant there was charged with malice murder, and his sole defense was that he lacked the

requisite intent to kill. The Court focused on and held unconstitutional two (2) sentences of the trial court's jury instructions; as was noted: "the acts of a person of sound mind and discretion are presumed to be the product of the persons's will, but the presumption may be rebutted. A person of sound mind and discretion is presumed to intent the natural and probable consequences of his acts, but the presumption may be rebutted. Francis v. Franklin, supra at 311.

The Franklin Court evaluated both conclusive and rebuttable mandatory presumptions and concluded that both place the burden of persuasion on the defendant. Franklin supra at 314. Both types of presumptions were deemed unconstitutional because they relieved the state of the affirmative burden of persuasion on the presumed element by instructing the jury that it must find the presumed element unless the defendant persuades the jury not to make the finding. Franklin supra at 355; "[S]uch shifting of the burden of persuasion with respect to a fact the state deems so important that it must either be proved or presumed is impermissible under the Due Process Clause." See Patterson v. New York, 432 U.S. 197, 215 (1977). As part of it's decision the court refused to find that a presumptive jury instruction is cured if the jury is told that the presumption may be rebutted by the defendant. The Court noted that such an instruction does not cure the violation of the Due Process Clause because telling the jury the defendant may rebut the presumption only serves to shift the burden of proof more firmly to the defense.

In deciding Fancis v. Franklin, the Court relied on it's decision in Mullaney v. Wilbur, supra, just as the Court did in Sandstrom, supra. But more importantly all three cases relied on the bedrock constitutional principles set forth in In re Winship, supra "that a state must prove every fact of every element of the crime charged beyond a reasonable doubt, and mandatory burden shifting jury instructions relieves the state of the burden of proof in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Shortly after Fanklin was decide a South Carolina case began winding it's way through the appeals process on it's way to consideration by the United States Supreme Court. Dale Robert Yates was convicted of murder and sentenced to death. His direct appeals were denied at all levels. See State v. Yates, 310 S.E.2d 805 (1982), cert. denied Yates v. South Carolina 462 U.S. 1124 (1983).

Yates filed petition for writ of habeas corpus to the South Carolina Supreme Court in which Yates claimed the trial court erred in charging the jury "that malice is implied or presumed from the use of a deadly weapon" because that presumption relieves the state of it's burden of proof on an essential element of the crime. his application was summarily denied by the court. Yates then filed an appeal to the U.S. Supreme Court in 1985. That Court remanded his case to the South Carolina Supreme Court for reconsideration in light of Francis v. Franklin, supra. See Yates v. Aiken 474 U.S. 896 (1985). On remand the Supreme



Court of South Carolina noted that the jury instructions at Yates' trial suffered from the same infirmities present in State v. Elmore, 308 S.E.2d 781 (1983) and addressed in Francis v. Franklin. See Yates 349 S.E.2d 84 (1986). The Court neglected to consider Yates in light of Francis v. Franklin and only questioned whether it's previous decision in Elmore should be applied retroactively, and the court affirmed Yates conviction.

Yates again appealed to the U.S. Supreme Court. In a second decision issued early in 1998, the Court briefly recounted the procedural history of Yates against the background of the decisions in Sandstrom, Elmore, Franklin and In re Winship. The Court noted the South Carolina opinion apparently concluded that Franklin was not to be applied retroactively because it had announced a new rule of law. The Supreme Court disagreed saying Franklin was merely an extension and reaffirmation of it's prior decisions. The Yates opinion concluded, since it [The South Carolina Supreme Court] has considered the merits of the federal claim, it therefore has a duty to grant the relief that federal law requires. Yates v. Aiken, 484 U.S. 211 (1988). Again the South Carolina Supreme Court refused to vacate Yates' conviction, finding the charge used was harmless error. Yates v. Aiken, 391 S.E.2d 530 (1989). Once again Yates appealed this denial to the U.S. Supreme Court. In it's third review of his conviction, the U.S. Supreme Court set aside Yates conviction without a third remand to the South Carolina Supreme Court. See Yates v. Evatt, 500 U.S. 391.

Based on case law there is no doubt the malice instruction given were unconstitutional, mandatory and burden shifting and was additionally confusing because the Court told the jury malice could be inferred from the deliberate intentional doing of a wrongful act [or] from the use of a deadly weapon. While the trial court instructed the jury regarding murder, manslaughter and self-defense, the court charged the jury "the exercise of a legal right, no matter how offensive it is to another is never sufficient legal provocation for voluntary manslaughter" (Tr.p.345, L.23-25), therefore the jury couldn't possibly consider self-defense or voluntary manslaughter. The only reasonable conclusion the jury could have reached based on the the trial court's charge that "malice could be inferred from the use of a deadly weapon" could only mean one thing "if Petitioner had a deadly weapon then it was no doubt murder".

This was all the more damaging since the trial court "failed" to instruct the inference could either be accepted or rejected and given such weight as the jury deemed proper under the circumstances of the case. A jurist of reason could have easily understood this to be a mandatory burden shifting instruction from the use of a deadly weapon.

The instruction given was unconstitutionally burden shifting and counsel should have objected. See Carter v. State 392 S.E.2d at 185 (counsel ineffective in failing to object to the malice instruction given by the trial court).

Based on the foregoing, Petitioner believes he has carried his burden through a preponderance of the evidence that he received ineffective assistance of counsel. Therefore, Petitioner respectfully prays this Court will grant a new trial.

ISSUE (B) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S MALICE INSTRUCTIONS THAT RESULTED IN A MANDATORY BURDEN SHIFTING INSTRUCTION WHEN THE TRIAL COURT "FAILED" TO INSTRUCT THE JURY THAT THEY MAY ACCEPT OR REJECT THE INFERENCE OF MALICE FROM THE USE OF A DEADLY WEAPON?

### FACTS

During Petitioner's trial Petitioner never denied stabbing the victim that resulted in the victims death. Petitioner sole defense was that of self-defense. Yet when the trial court instructed the jury regarding malice the trial court "failed" to instruct the jury that they may **accept or reject** the inference of malice from the use of a deadly weapon and may give it such weight as they deem appropriate under the circumstances of the case. The following instruction was given:

Malice aforethought may be expressed or inferred. These terms expressed and inferred do not mean different kinds of malice but merely the manner in which malice must be shown to exist.

That is either by direct evidence or by inference from the facts and circumstances which are proved. Expressed malice is shown when a person speaks words which express hatred or ill-will for another or when the person prepared beforehand to do the act which was later accomplished.

Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. [Tr.p.344, L.2-13].

As is seen above the court failed to charge the jury the use of a deadly weapon was a permissive inference and they could accept or reject the inference based on their consideration of the facts presented.

### DISCUSSION

In a long line of cases culminating in Yates v. Evatt, 111 S.Ct. 1884 (1991), the United States Supreme Court has recognized that the prosecution "must prove each and every element" of the crime charged beyond a reasonable doubt. In re Winship, 397 U.S. 158 (1970).

The burden of proof on any element cannot be shifted to the defendant, because in doing so decreases the State's burden of proving the crime beyond a reasonable doubt.

As early as 1975, the Supreme Court considered a Maine Rule which required the defendant charged with murder to prove that he acted in the heat of passion in order to reduce the homicide to manslaughter. The Court determined that a state could not shift the burden of proof on [any element] of the crime to the defendant. See Mullaney v. Wilbur, 421 U.S. 684 at 701 (1975). The Court found the risk to be intolerable and reversed Wilbur's conviction.

The Supreme Court overturned another conviction in Sandstrom v. Montana, 442 U.S. 510 (1979). Montana law provided that a person could be charged with deliberate homicide when that person purposely or knowingly caused the death of another and at Sandstrom's trial, the judge instructed the jury that "the law presumes that a person intends the ordinary consequences of his voluntary acts. Sandstrom supra at 512.

After considering Sandstrom's argument the Court agreed that

the effect of that was to shift the burden of proof to Sandstrom on a critical element of the offense, "that he purposely or knowingly killed another person". The Court noted again that the State must prove every element of the crime charged beyond a reasonable doubt and that the defendant cannot be required to prove any element of his defense or disprove any element of his crime. A reasonable juror might have interpreted the instructions either as a conclusive presumption or as a burden shifting presumption, but either interpretation, the Court rendered the instruction unconstitutional.

This Court has long held that burden-shifting presumptions are unconstitutional. See State v. Peterson, 287 S.C. 244, 355 S.E.2d 800 (1985). Specifically, a charge that a prima facie case may be rebutted by other evidence is impermissible. State v. Key, 282 S.C. 413, 319 S.E.2d 338 (1984).

Evidentiary presumptions [must] be charged as permissive inferences with specific instructions that the jury may "accept or reject" them. State v. Adams, 291 S.C. 132, 352 S.E.2d 483 (1987), State v. Peterson supra; the trial court in the instant case "failed" to properly instruct the jury regarding evidentiary presumptions and therefore a reasonable jurist could have interpreted the instructions as mandatory since "a deadly weapon" was involved.

Surely Petitioner was denied the effective assistance of counsel. Petitioner respectfully prays this Court will grant the requested relief of a new trial.

ISSUE (c) WAS COUNSEL INEFFECTIVE FOR FAILING TO REQUEST THE TRIAL JUDGE TO INSTRUCT THE JURY ON THE KING CHARGE?

### FACTS

During Petitioner's trial the trial judge instructed the jury on murder, manslaughter and self-defense. The jury ultimately convicted Petitioner of murder.

Petitioner asserts counsel was ineffective for failing to request the trial court to give the King charge. State v. King, 158 S.C. 297, 155 S.E.2d 426.

### DISCUSSION

Petitioner asserts he was denied the effective assistance of counsel when counsel failed to request the trial judge to give the King charge, that when a jury is instructed on "murder" and "manslaughter", if the jury has any reasonable doubt about whether the defendant is guilty of murder or manslaughter the defendant is to be given the benefit of the doubt and the jury should find the defendant guilty of the lesser (manslaughter). See State v. King, 158 S.C. 297, 155 S.E.2d 426; Carter v. State, 392 S.E.2d 184 (1990).

The trial judge in the instant case failed to give the King instruction to the jury, mainly because trial counsel failed to request the King charge. In Carter, supra, the Court held counsel was ineffective in failing to request the jury instruction in

accordance with King.

By failing to request the King instruction to the jury, trial counsel's representation fell below an objective standard which resulted in insurmountable prejudice to Petitioner.

Not submitting a King charge to the Court is tantamount to submitting the jury with no voluntary manslaughter charge at all. In fact, such inaction has been found to be a clear breach of the duty a defense attorney owes to his client. Davis v. Alabama, 596 F.2d 1214 (5th Cir.1979). Moreover, not submitting a proper jury charge on voluntary manslaughter cannot be found to be a tactical decision, it simply represents ineffective assistance of counsel.

Petitioner was greatly prejudiced by counsel's omission. The jury found that Petitioner committed an unlawful killing. However, without a proper King instruction, the jury could not adequately consider the lesser included offense of manslaughter. Thus, murder was virtually their only option.

Surely counsel's failure to request the King charge was unduly prejudicial based on the evidence presented during trial.

For the aforementioned reasons, Petitioner respectfully prays this Court will grant the requested relief of a new trial.

ISSUE (D) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE BURDEN-SHIFTING JURY INSTRUCTIONS GIVEN BY THE COURT WHEN THE COURT INSTRUCTED THE JURY ON SELF-DEFENSE AND IN DOING SO THE COURT INSTRUCTED THE JURY THAT PETITIONER HAD THE BURDEN OF ESTABLISHING SELF-DEFENSE?

#### FACTS

During trial the trial judge charged the jury on the crimes of murder and manslaughter, as well as self-defense. During the self-defense charge, the judge gave the following instructions:

Now, in this case, the Defendant has raised the defense of self-defense. Self-defense is a complete defense and if it is established, you must find the Defendant not guilty. [Tr.p.346, L.11-14].

Prior to jury instructions the trial judge told the jury "the defendant's pled not guilty to the charge and that places the burden on the State to prove his guilt beyond a reasonable doubt. Any person charged with committing an offense in our state is never required to prove themselves innocent" [Tr.p.336, L.19-23]. Petitioner therefore asserts that it is upon the State to prove every element of the offense charged and that Petitioner is not required to prove anything. Especially, whether he acted in self-defense, as that was a fact to be determined by the jury. Yet, the trial judge told the jury that [if Petitioner had established self-defense], they (the jury) could find him not



guilty. This charge to the jury regarding self-defense must be considered by the jury along with all the other instructions given to the jury, including, but not limited to the instructions on malice.

### DISCUSSION

Petitioner asserts that under South Carolina Law it is impossible for a jury to find that the State has proven beyond a reasonable doubt each element of the crime, and still acquit Petitioner by finding he acted in self-defense. For if the State has proven beyond a reasonable doubt, each element of the crime and still acquit Petitioner by finding he acted in self-defense, [if] the State proves beyond a reasonable doubt that Petitioner killed the victim (Daniel Jones) with malice, or by a wrongful act without just cause or excuse, self-defense cannot be proven by any of the evidence presented. (emphasis supplied). The inverse is also true under South Carolina Law. Therefore, the trial judge's charge placed the burden on Petitioner to prove that he acted in self-defense invariably places the burden on Petitioner to prove his innocence, and to disprove that he acted with malice, an essential element of the crime of murder.

In essence, this charge by the trial court requires Petitioner to prove self-defense by established evidence requires Petitioner to (negative facts of the crime [MALICE] which the State is required to prove), in order to convict Petitioner of

murder. See Patterson v. New York, 432 U.S. 197 (1977). Further it runs afoul of the principles of Martin v. Ohio, 107 S.Ct. 1098 and the principles set forth in In re Winship, 397 U.S. 158 (1970)(which requires the state to bear the burden of proof beyond a reasonable doubt on every element of the crime charged). Also in Davis v. United States, 16 S.Ct. 353, the Supreme Court said "in order for the prosecution to obtain a conviction the state must prove "beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged."

The trial judge committed plain error, once he told the jury that malice is defined as a wrongful act without just cause or excuse, then told the jury that "Petitioner" had to establish that he acted in self-defense by the evidence submitted during trial. Thus squarely placing the burden on "Petitioner" to prove he acted with just cause or excuse in order for the jury to even consider self-defense.

Any error in the trial court's instructions regarding self-defense is reversible error. See Wynn v. Mahoney, 600 F.2d 448 (4th Cir.1979)(because proof of self-defense constitutes an absolute defense in that it renders the homicide justifiable, and any error in the trial court's instructions concerning self-defense is prejudicial).

Before the decision in Wynn supra, the Supreme Court set the standard for error in Chapman v. California, 87 S.Ct. 824 (1967) was applicable to jury instructions that violate the principles of Sandstrom v. Montana, 99 S.Ct. 2450 and Francis v. Franklin,

105 S.Ct. 1965 (1985). Petitioner asserts that because of the likeness between Sandstrom and Franklin, the plain error standard of Chapman should be applied to this case.

As to the due process violation, which will have to be viewed on a separate and independent ground. Petitioner asserts that in considering the challenged instructions in this case, it is apparent that the trial court instructed the jury that the burden of proof was upon the state to prove malice, an essential element of murder, beyond a reasonable doubt. However, if the jury chose to obey that instruction, they would have needed to ignore the judge's further instructions that Petitioner must prove self-defense, a legal justification for killing, by established evidence. Thomas v. Leeke, 725 F.2d 246, and State v. Martin, 57 S.E.2d 55 (1949). There can be no doubt that these instructions were conflicting, confusing and shifted the burden to Petitioner to prove that he did not act with malice, but in self defense.

Here there can be no doubt of the error in the trial court's instructions to the jury, which clearly establishes ineffective assistance of counsel for failing to object to the faulty jury instructions that were plain error. The failure to object did amount to a deficient performance that fell below the objective standard of reasonableness. As there is a reasonable probability that but for this deficiency the results of the trial would have been different, that is a deficiency that undermines the confidence in the outcome of the proceeding.

For the aforementioned reasons, Petitioner respectfully prays this Court will grant the requested relief of a new trial.

ISSUE (E) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT WHEN THE TRIAL COURT IMPERMISSIBLY COMMENTED ON THE FACTS OF THE CASE: AND AS A RESULT THE TRIAL COURT PREMATURELY DIRECTED A VERDICT FOR THE STATE?

### FACTS

Petitioner asserts counsel was ineffective for failing to object to the trial court's jury instructions that impermissibly commented directly on the facts of the case [TWICE] in two different instances. First the trial court instructed the jury that malice could be inferred from the "use of a deadly weapon" and secondly after the trial court charged the jury with murder the trial court charged the jury with voluntary manslaughter the trial court then told the jury "The exercise of a legal right, no matter how offensive it is to another is never sufficient legal provocation for voluntary manslaughter." [Tr.p.345, L.23-25]. This was highly prejudicial to Petitioner's case since his sole defense was that of self-defense and after this instruction the jury could not even consider voluntary manslaughter as an option.

During Petitioner's trial the State tried to establish malice from the "use of a deadly weapon", as was recorded in the Solicitor's closing summation to the jury:

The elements of murder. Killing another person with malice aforethought expressed or **implied**. Absence of any of those elements is murder. The State does not have to prove that Antonio Moutlrie is a murder. Malice aforethought. It's a term some of you may not be familiar with. It means doing a

wrongful act intentionally and without just cause or excuse. [Tr.p.316, L.18-24.

I just spoke to you about the law in this case. Now, I'll be speaking about the facts. First I want to go over the elements of murder and how those elements are met by these facts.

Killing another person with malice aforethought expressed or implied. [Tr.p.327, L.19-24].

Or we can look at the Defendant's actions. For example, use of a deadly weapon, allows you to infer malice aforethought. So those are the elements of murder. [Tr.p.328, L.11-14].

Coming directly after the Trial judge instructed the jury on murder, manslaughter and self defense.

Malice aforethought may be expressed or inferred. These terms expressed and inferred do not mean different kinds of malice but merely the manner in which malice must exist. That is either by direct evidence or by inference from facts and circumstances which are proved. Expressed malice is shown when a person speaks words which was later accomplished.

Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. [Tr.p.344, L.2-13]

As was seen above while charging the jury with murder the judge told the jury malice could be inferred from the "use of a deadly weapon", but failed to instruct the jury that they could accept the inference and give it such weight as they (the jury) deemed appropriate. The trial court then charged the jury with voluntary manslaughter and directly after the trial court made

the following statement as was recorded:

The exercise of a legal right, no matter how offensive it is to another is never sufficient legal provocation for voluntary manslaughter. [Tr.p.345., L.23-25].

Petitioner's defense was that of self-defense and therefore asserts the trial judge's instructions that malice could be inferred from "the use of a deadly weapon" resulted in an impermissible comment on the facts and this was further exploited to the maximum as is seen from the "comment" in the above reference statement. It was readily apparent the trial court's instructions were confusing and conflicting since the jury requested to have the "written" legal definition of murder and manslaughter. [Tr.p.358, L.19-21].

Petitioner asserts that he was denied his constitutional right to the effective assistance of counsel when counsel failed to lodge an objection to the deceased burden shifting instructions that unduly prejudice Petitioner and denied him his right to a fair trial and the right to present a complete defense.

Had counsel of objected there is a reasonable probability the results of the trial would have been different and further had counsel of lodged a timely objection and preserved this meritorious issue for appeal there is a reasonable probability the results of the appeal would have been different since the trial judge's comments violated the S.C. Constitution's prohibition against trial judge's commenting on the facts.

### DISCUSSION

Judicial comments on the facts of a case is prohibited in South Carolina. See South Carolina Constitution Article 5, §17: "a trial judge may not instruct the jury regarding what weight should be given to certain evidence or that certain evidence is or is not entitled to consideration from them. As the South Carolina Supreme Court said in State v. Hartley, 414 S.E.2d 182 at 183:

Judges shall not charge in respect to matters of fact, but shall declare the law. State v. Bagwell, 23 S.E.2d 244 (1942)(a judge cannot express in his charge, or intimate any opinion as to the weight or sufficiency of testimony without violating the prohibition of the constitution as to charging upon the facts). See 75A Am.Jur.2d Trial §1203 at 693 (1991)(the trial court may not instruct the jury what weight should be given [to the evidence], or even that any particular evidence is or is not entitled to receive weight or consideration from them). State v. Edwards 120 S.E. 490 (1923)(wherein our Supreme Court held the absence of motive is a mere circumstance to be considered by the jury and rejected an instruction that the absence of motive may raise a reasonable doubt as to the defendant's guilt because it was a charge on the facts).

In the instant case the two comments given by the trial court cannot be considered anything other than "impermissible" comments on the facts of the case. The law today speaks in terms of permissive inferences, not presumptions. This transition resulted from the United States Supreme Court's pronouncement that the Due Process Clause of the Fourteenth Amendment is violated when a

jury charge creates a mandatory presumption and impermissibly shifts the burden of proof to the defendant. Sandstrom v. Montana, 442 U.S. 510, 524 (1979)(holding that burden shifting presumptions or conclusive presumptions deprive a defendant of the due process of law and therefore is unconstitutional); Mullaney v. Wilbur, 421 U.S. 684, 703-03 (1975)(holding that the Due Process Clause forbids a state from placing the burden on the accused to prove his actions reduced the crime from murder to manslaughter).

Following Sandstrom supra and its progeny, this Court followed in State v. Mattison, 276 S.C. 235, 277 (1981) when the court stated an "appropriate instruction on implied malice would deal with the evidentiary nature of the presumption and that the implication does not require the infer malice but only permits it. The jury in Mattison was charged: "The law says if one intentionally kills another with a deadly weapon, the implication of malice arises. In other words, the law implies malice from the use of a deadly weapon. Id at 237. The transparent error in the word "intentional" is that self-defense involves an intentional act. (emphasis supplied).

One appellate court has described this charge as a "half-truth". Glenn v. State, 511 A.2d 1110, 1126 (Md.Ct.Spec.App.1986). In discussing its meaning behind this observation, Glenn notes that malice includes the [absence] of justification, excuse and mitigation. Glenn 511 A.2d at 1122. When malice viewed in light of these components parts, it becomes clear that inferring malice from the use of a deadly weapon is only a "half-truth."



When considering the trial judge's two distinct comments it is clear the trial court's instructions impermissibly commented on the facts. When considering this charge as a whole in connection with the previous issues argued, certain portions of the malice instructions may not be incorrect, but when considering all the issues together as a whole the trial court's instructions are so decess with burden shifting presumptions that it violates Sandstrom v. Montana, 442 U.S. 510 (1979); Francis v. Franklin, 471 U.S. 307 (1985) and Mullaney v. Wilbur supra.

For the aforementioned reasons, Petitioner respectfully prays this Court will grant the requested relief of new trial.

CONCLUSION

WHEREFORE, Petitioner believes through the issues presented, statement of facts and citations of authorities relied on he has shown this Honorable Court his entitlement to the requested relief of a new trial.

THEREFORE, Petitioner respectfully prays this Honorable Court will grant the requested relief of a new trial.

Respectfully Submitted,  
/s/ Antonio Moultrie  
Antonio Moultrie

|                            |   |                              |
|----------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA    | ) |                              |
|                            | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON       | ) |                              |
|                            | ) |                              |
|                            | ) | 2011-CP-10-9422              |
|                            | ) |                              |
| Antonio Moultrie, #332073, | ) |                              |
|                            | ) |                              |
| Applicant,                 | ) |                              |
|                            | ) |                              |
| v.                         | ) | <b>RETURN</b>                |
|                            | ) |                              |
| State of South Carolina,   | ) |                              |
|                            | ) |                              |
| Respondent.                | ) |                              |

---

The Respondent, making its Return to the application for post-conviction relief (PCR) filed December 21, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the May 2008 term of the Charleston County Grand Jury for Murder (2008-GS-10-4135). Applicant was represented by Martha Runey Jenkinson, Esquire and Beattie Butler, Esquire.

On December 4, 2008, the Applicant proceeded to trial and was convicted of Murder. Applicant was sentenced by the Honorable G. Edward Welmaker to confinement for a period of forty-five (45) years. The Applicant appealed his conviction and sentence. The Court of Appeals affirmed the Applicant's conviction and sentence (2011-UP-543). The Remittitur was sent December 22, 2011.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

### 1. Ineffective assistance of counsel.

- a. "Was counsel ineffective for failing to object to the trial court's malice instructions that were unconstitutionally burden shifting in violation of due process"
- b. "Was counsel ineffective for failing to object to the trial court's malice instruction that resulted in a mandatory burden shifting instruction when the trial court failed to instruct the jury that they may accept or reject the inference of malice from the use of a deadly weapon"
- c. "Was counsel ineffective for failing to request the trial judge to instruct the jury on the King charge"
- d. "Was counsel ineffective for failing to object to the burden shifting jury instructions given by the court when the court instructed the jury on self-defense and in doing so the court instructed the jury that Petitioner had the burden of establishing self-defense"
- e. "Was counsel ineffective for failing to object when the trial court impermissibly commented on the facts of the case: and as a result the trial court prematurely directed a verdict for the state"

## III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

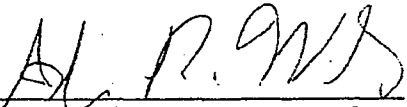
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON  
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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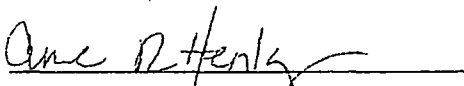
June 20, 2012.

|                           |   |                              |
|---------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA   | ) |                              |
|                           | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON      | ) |                              |
|                           | ) |                              |
|                           | ) | 2011-CP-10-9422              |
|                           | ) |                              |
| ANTONIO MOULTRIE, #332073 | ) |                              |
|                           | ) |                              |
| Applicant,                | ) |                              |
|                           | ) |                              |
| vs                        | ) | AFFIDAVIT OF SERVICE BY MAIL |
|                           | ) |                              |
| STATE OF SOUTH CAROLINA,  | ) |                              |
|                           | ) |                              |
| Respondent.               | ) |                              |
| <hr/>                     |   |                              |

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

Lesley A. Sasser, Esquire  
 39 Broad Street  
 Suite 206  
 Charleston, SC 29401

DATED this 20<sup>th</sup> day of June, 2012

  
 Anne R. Henley, Legal Assistant  
 For Respondent

State of South Carolina ) In the Court of Common Pleas  
                                  ) Ninth Judicial Circuit  
County of Charleston ) 2011-CP-10-09422

Antonio Moultrie, )  
 )  
 Plaintiff, )  
 )  
 Vs. ) Transcript of Record.  
 )  
 State of South Carolina, )  
 )  
 Defendant. )  
 )  
 )  
 )  
 )

January 22, 2013  
Charleston, South Carolina

B e f o r e:

The Honorable R. Markley Dennis, Judge

A p p e a r a n c e s:

Lesley A. Sasser, Esquire  
Attorney for the Plaintiff

Ashleigh Wilson, Esquire  
Attorney for the Defendant

Bonnie H. Kelly, CVR  
Circuit Court Reporter





EXHIBITS

| <u>NO.</u> | <u>DESCRIPTION</u>          | <u>I.D.</u> | <u>EV.</u> |
|------------|-----------------------------|-------------|------------|
| A-1        | Photo                       |             | 15         |
| A-2        | Photo                       |             | 15         |
| A-3        | 3-page subpoena document    |             | 35         |
| A-4        | 2-page investigative report |             | 52         |
| A-5        | Photo                       | 53          | 54         |
| A-6        | Photo                       | 53          | 54         |
| A-7        | Photo                       | 53          | 54         |

1 THE COURT: You're Antonio Moultrie?

2 THE APPLICANT: Yes, sir.

3 THE COURT: Good morning, sir.

4 THE APPLICANT: How you doing?

5 THE COURT: I'm well. This is your application that  
6 you filed seeking post-conviction relief. Your lawyer has  
7 discussed with you what possible outcome you could  
8 receive; is that correct, sir?

9 THE APPLICANT: Yes, sir.

10 THE COURT: And basically, you understand it's to  
11 return to square one, start over.

12 THE APPLICANT: Yes, sir.

13 THE COURT: And I understand you received a 45-year  
14 sentence, but there is a potential, with a charge of  
15 murder, of a life sentence. You understand that?

16 THE APPLICANT: Yes, sir.

17 THE COURT: It is still your desire to go forward with  
18 your application?

19 THE APPLICANT: Yes, sir.

20 THE COURT: Thank you. Ms. Sasser, you'd indicated  
21 you had a motion. I'll be happy to hear from you.

22 MS. SASSER: Yes, Your Honor. I've got a motion for  
23 continuance. The case has been continued before because I  
24 believe one of the witnesses was unavailable.

25 However, I'm asking to have time to hire Don Girndt, a

1 shoe print impression expert, to testify at this PCR and  
2 have -- being paid by Indigent Defense.

3 THE COURT: Okay. What's the State's position?

4 MS. WILSON: Your Honor, the State would object to  
5 this request. This case is a 2011 case. It's been  
6 continued twice: first in July of 2011 at the request of  
7 the applicant; and December 2012, because the State's  
8 witness was unavailable. We've expended resources to be  
9 here present, and we also have both witnesses available.  
10 So we're here, ready to proceed.

11 THE COURT: Okay. Do you wish to reply?

12 MS. SASSER: Your Honor, it has been continued twice  
13 before. The last time I don't believe the applicant was  
14 here. It was at a pre-trial, but I would ask for time to  
15 hire the expert and have him come and testify. I've  
16 spoken to him, and he's willing to do that.

17 THE COURT: When were you appointed to the file?

18 MS. SASSER: Your Honor, I believe I got it in July of  
19 2011 ---

20 THE COURT: Okay.

21 MS. SASSER: --- or June.

22 THE COURT: All right. Okay. Your motion for  
23 continuance is considered and denied. Thank you.

24 Are you ready to go forward then with the application,  
25 notwithstanding your inability to hire the expert right

1 now?

2 MS. SASSER: Your Honor, I am. May I have a few  
3 minutes to ---

4 THE COURT: Oh, yeah. We're not ---

5 MS. SASSER: Oh, okay.

6 THE COURT: I still have another two cases. But it  
7 will be the first case we'll hear as soon as I hear from  
8 Mr. Peper.

9 MS. SASSER: Okay.

10 THE COURT: Okay?

11 MS. SASSER: Thank you, Your Honor.

12 THE COURT: We'll -- we'll -- Mr. Moultrie, your case  
13 will be the first one up very shortly, sir.

14 THE APPLICANT: Yes, sir.

15 THE COURT: Thank you, sir.

16 MS. WILSON: Thank you, Your Honor.

17 (Briefly off the record.)

18 THE COURT: All right. The State ready to proceed?

19 MS. WILSON: Yes, Your Honor.

20 THE COURT: Mr. Moultrie's ready to proceed?

21 MS. SASSER: Your Honor, yes. He actually needs his  
22 paperwork though.

23 THE COURT: Okay. Where is the paperwork?

24 CLERK OF COURT: Downstairs.

25 THE COURT: Okay. Well, we'll -- can we get that,

DIRECT EXAMINATION BY MS. SASSER - BEATTIE BUTLER

7

1 bring it up to him.

2 We'll get it to you shortly, Mr. Moultrie. We need to  
3 get started.

4 MS. SASSER: Thank you, Your Honor.

5 THE COURT: Okay. You may call your first witness.

6 MS. SASSER: Your Honor, I call to the stand Beattie  
7 Butler.

8 THE COURT: All right.

9 BEATTIE BUTLER, having been first  
10 duly sworn, testifies as follows:

11 THE BAILIFF: Please state your full name, and spell  
12 your last name for the record.

13 THE WITNESS: Beattie Butler; B-u-t-l-e-r.

14 THE COURT REPORTER: And your first name, too, please.

15 THE WITNESS: B-e-a-t-t-i-e.

16 THE COURT: You may proceed.

17 MS. SASSER: Thank you, Your Honor.

18 DIRECT EXAMINATION BY MS. SASSER:

19 Q Mr. Butler, when did you start working with the Public  
20 Defender's Office?

21 A This office, 2003.

22 Q Did you represent Antonio Moultrie?

23 A I was the second chair, with the case being assigned  
24 to Martha Kent Runey. It was her case, but I assisted her  
25 at trial.

DIRECT EXAMINATION BY MS. SASSER - BEATTIE BUTLER

8

1 Q And do you remember when the trial was?

2 A I do not.

3 Q As second chair, when do you get the evidence, or when  
4 -- when does your part step into the case?

5 A Probably at the point where she decides that the case  
6 is going to be a trial, in which -- at that time, I would  
7 probably review all of the discovery. It varies with  
8 every case, and I couldn't tell you exactly when.

9 But usually when I'm -- part of my responsibilities in  
10 the office is that I assist the other lawyers in trying  
11 big cases. And this was a murder case, so this would be  
12 one where I would have been the logical choice as second  
13 chair.

14 I would have reviewed the discovery in the weeks  
15 leading up to it, and been there to answer any questions  
16 that she'd have. And usually would allow the first chair  
17 to decide what my role would be: Whether I would just be  
18 sitting there to answer questions, or whether I would  
19 actively participate.

20 Q Do you remember one piece of the evidence being a  
21 footwear impression or impressions?

22 A Yeah, I do. And that was -- that ended up being a --  
23 in my opinion, a critical issue in the case that we did  
24 not foresee being critical.

25 Q Why was it important to Mr. Moultrie's case?

1       A    What happened, Judge, was during the testimony of a  
2       member of law enforcement -- I can't remember if it was  
3       the prosecuting agency or SLED -- but it became clear that  
4       the Assistant Solicitor, Henry Leventis, was about to  
5       elicit from the witness an opinion about a footwear  
6       impression; and that he was about to say that it was a  
7       match to Mr. Moultrie. And where that footwear impression  
8       was just happened to be right next to where a bloody knife  
9       was.

10       The bloody knife was on the wheel well of a car --  
11       truck. And the blood was the victim's blood; DNA evidence  
12       showed that.

13       The State's position was that the knife that they  
14       found on the wheel well of the car had been possessed by  
15       Mr. Moultrie and used to stab the victim, which at first  
16       glance might seem to be a logical position to take since  
17       the victim's blood was on the knife.

18       However, the footwear impression turned out to not be  
19       Mr. Moultrie's. We didn't know about it. We didn't know  
20       about it because Mr. Leventis told Ms. then-Jenkinson that  
21       he wasn't going to get into any of the footwear  
22       impressions. And this is clear in the transcript. I take  
23       this -- this matter up.

24       When I start to hear this -- him start to qualify this  
25       witness in footwear impressions, I lean over to Martha



DIRECT EXAMINATION BY MS. SASSER - BEATTIE BUTLER 10

1 Kent and I'm like, "Wait a minute. I would have known if  
2 there was going to be an opinion that -- that he had  
3 performed some comparison to -- to judge that this was Mr.  
4 Moultrie's shoe -- shoe wear. And I hadn't seen any of  
5 that."

6 And Martha Kent told me, "He said he wasn't going to  
7 get into that."

8 Well, I jumped up and said, "Hold on. We need to send  
9 the jury out."

10 And Mr. Leventis's position was, yes, he told Ms. --  
11 Ms. -- Ms. Runey that. He, at that time, did not plan to  
12 get into the footwear impression evidence. But he changed  
13 his mind, and was under no obligation to tell us that he  
14 had done so. That's in the transcript.

15 Well, I didn't look. I assumed that if Mr. Leventis  
16 was going to use it and he had an expert prepared to say  
17 they were a match, that they were a match. I hadn't seen  
18 them. I made the argument that I hadn't looked at them.

19 The judge agreed with me: "No, Mr. Leventis. Not  
20 only did you not show them or disclose to them this  
21 evidence, you told them you weren't going to use it. I'm  
22 not going to let you get into it."

23 Well, sometime between that point and the end of the  
24 trial, I looked at them. And if I would have known that  
25 that -- that that witness was going to say they were a

1 match, I'd have been happy to let him testify, because it  
2 could not be more obvious that this footwear impression  
3 that was right next to the knife by the wheel well was not  
4 Mr. Moultrie's shoe.

5 And you can look at them -- the photographs and tell.  
6 The tread pattern is clearly different. One is what's  
7 called a "waffle pattern," which is like a "V" that goes -  
8 - you're probably familiar with.

9 Mr. Moultrie's shoe had a chevron pattern, which looks  
10 like that sort of Chevron symbol, like the Chevron gas  
11 symbol.

12 And they both had circles, but the circles are  
13 different. And the circles on Mr. Moultrie's shoe had the  
14 name of the shoe in them; and the impression in the sand  
15 did not.

16 I couldn't believe that they were prepared to argue  
17 that those were matches.

18 So -- but the mistake that we made was when Mr.  
19 Leventis told Ms. Jenkinson he wasn't going to get into  
20 that, we should have looked at it anyway. Because it  
21 helped us.

22 And yes, we were able to make use of that and argue  
23 that it -- that it must be the victim's shoe, but we  
24 didn't have the victim's shoe to compare because we didn't  
25 know about it.

DIRECT EXAMINATION BY MS. SASSER - BEATTIE BUTLER 12

1           And had Ms. Jenkinson looked at that evidence early  
2           on, regardless of whether Mr. Leventis was going to use it  
3           -- in other words, Mr. Leventis says, "I'm not going to  
4           use it, so we don't look at it."

5           But she should have, because if we'd have been able to  
6           get the victim's shoe, we could have conclusively proven  
7           that that was the victim's shoe, and consistent with what  
8           Mr. Moultrie testified that the victim had a knife.

9           This was a self-defense case. And Mr. Moultrie had  
10          always said the victim had a knife, and that he stabbed  
11          him in self-defense.

12          The fact that the -- what we say is the victim's shoe  
13          print, right next to where the knife is found and there's  
14          blood -- we have photographed blood leaking down the side  
15          of the vehicle, pointing directly to where the knife is,  
16          and standing right in front of that is a shoe print that  
17          they knew wasn't law enforcement.

18          The only other shoe print that they found I'm fairly  
19          certain they said, "We excluded. That was law  
20          enforcement. This must be Mr. Moultrie's."

21          It wasn't Mr. Moultrie's.

22          So our position should have been at trial -- I think  
23          this still was our position -- that the blood is the  
24          victim's blood, but he's been stabbed.

25          And if you look at the autopsy photos, he's stabbed in

DIRECT EXAMINATION BY MS. SASSER - BEATTIE BUTLER 13

1 the neck, and his own blood, trickling down his arm, got  
2 on the knife. And he, the victim, put the knife there.  
3 That puts the knife in his hand.

4 The State's position was that the victim was not armed  
5 and that that knife was Mr. Moultrie's, because -- Judge,  
6 I want you to look at the photographs. It still amazes me  
7 that they could think that these two were -- were a match.

8 But they took the position that the knife was placed  
9 there by Mr. Moultrie after the stabbing, because it was  
10 the victim's blood and his shoe print. It's clearly not  
11 his shoe print.

12 Sorry for that long -- I -- I figured that I could  
13 save about 20 questions if I just did it that way.

14 MS. SASSER: Your Honor, may I approach the witness?

15 THE COURT: You may.

16 (Ms. Butler hands a photograph to the witness.)

17 Q Mr. Butler, can you identify this shoe for me, please?

18 A That's Mr. Moultrie's shoe.

19 Q And ---

20 A The bottom of his shoe.

21 Q And was that in evidence during the trial?

22 A It should have been admitted. I can't remember if it  
23 was or not. But that's definitely what that is.

24 I actually gave that to you taken from -- from -- from  
25 my records.

DIRECT EXAMINATION BY MS. SASSER - BEATTIE BUTLER

14

1 Q Okay.

2 MS. SASSER: Your Honor, may I enter this as an  
3 exhibit?

4 THE COURT: Applicant's Exhibit 1. Any objection?

5 MS. WILSON: No objection, Your Honor.

6 THE COURT: Without objection it's admitted.

7 DIRECT EXAMINATION BY MS. SASSER (continues):

8 Q And Mr. Butler, can you identify that picture for me  
9 as well.

10 A That's the footwear impression that -- they were taken  
11 from the scene, that they were prepared to say was Mr.  
12 Moultrie's -- made by Mr. Moultrie's shoe, but they don't  
13 match.

14 Q Do you know --

15 MS. SASSER: Your Honor, may I enter that as Exhibit  
16 2?

17 THE COURT: Any objection?

18 MS. WILSON: What's the title -- what's the statement  
19 of this exhibit?

20 MS. SASSER: It's ---

21 THE COURT: It's the impression of the shoe.

22 (Ms. Sasser and Ms. Wison confer.)

23 MS. WILSON: No objection, Your Honor.

24 THE COURT: Applicant's 2, without objection;  
25 admitted.

DIRECT EXAMINATION BY MS. SASSER - BEATTIE BUTLER 15

1 (Ms. Sasser hands documents to the court reporter.)

2 DIRECT EXAMINATION BY MS. SASSER (continues):

3 Q And I know you spoke ---

4 A Yeah.

5 THE COURT: Hold on just a second.

6 MS. SASSER: Sorry.

7 THE COURT REPORTER: Which one is 1 and which one is  
8 2?

9 THE WITNESS: The one on top is 2, and the other one  
10 is 1.

11 (Marked Applicant's Exhibit No. 1 and 2, photographs.)

12 THE COURT: Okay.

13 DIRECT EXAMINATION BY MS. SASSER (continues):

14 Q I know you talked a little bit about the differences.  
15 But can you explain the differences again?

16 A Sure. Judge, do you want to look at these?

17 THE COURT: Yeah. He's already given that explanation  
18 I think.

19 (The Court looks at the exhibits.)

20 THE COURT: Yeah. It speaks for itself.

21 THE WITNESS: Okay.

22 THE COURT: You don't need to ask a question about  
23 that. Thank you.

24 DIRECT EXAMINATION BY MS. SASSER (continues):

25 Q And Mr. Butler, were you -- did you have a transcript

DIRECT EXAMINATION BY MS. SASSER - BEATTIE BUTLER 16

1 of the preliminary hearing?

2 A I've looked at it since. I can't tell you if we had  
3 it at the time.

4 Q Okay.

5 A Or I can't tell you -- I'm sure we had it. I can't  
6 tell you if I, as the second chair, had reviewed it at the  
7 time.

8 Q And were the footprints identified as two different  
9 footprints?

10 A I know that now, that the officer at the -- at the  
11 preliminary hearing said that they did not match; however,  
12 that is not the -- the witness that was prepared to  
13 testify. The witness that was prepared to testify was  
14 their crime scene person who was qualified as an expert,  
15 not the lead detective.

16 Why the change in opinion, I couldn't -- I couldn't  
17 say. But at the very least, we should have been on notice  
18 that they didn't match as early as the prelim, and then  
19 looked at them and gotten the victim's shoes so we could  
20 say, "This was the -- the victim's shoe that was right  
21 next to the tire."

22 And if you have that photograph, you should probably  
23 show that to me.

24 MS. SASSER: Your Honor, I have it on my computer.  
25 And I understand that I can look it up and --

DIRECT EXAMINATION BY MS. SASSER - BEATTIE BUTLER 17

1 THE COURT: Just need to have a -- do we have a copy  
2 of it? State -- does the State have a copy of the  
3 picture?

4 MS. WILSON: Of the --

5 THE COURT: Are we talking about the victim's shoe?

6 MS. SASSER: We're talking about the tire with the  
7 knife on it.

8 THE COURT: Oh, okay. Well, that -- if you want to  
9 produce that -- can you print it -- have it printed?

10 MS. SASSER: Yes, Your Honor.

11 THE COURT: Well, let's print it and we'll have it  
12 marked at some point in time.

13 MS. SASSER: Okay.

14 THE COURT: Okay.

15 MS. SASSER: Okay. You want me to do that at break?

16 THE COURT: You can.

17 MS. SASSER: Okay. Thank you, Your Honor.

18 THE COURT: Uh-huh.

19 DIRECT EXAMINATION BY MS. SASSER (continues):

20 Q Did at any time you talk to a foot -- footprint  
21 impression expert?

22 A No. Because once we heard that they weren't going to  
23 use it, we didn't look into any further. And that was a  
24 mistake that we made.

25 Q Do you believe now that you should have had a footwear



DIRECT EXAMINATION BY MS. SASSER - BEATTIE BUTLER. 18

1. impression expert at the case?

2. A That's -- you know, it wouldn't have hurt to have one.  
3. But I think it's just obvious that it's not his -- it's  
4. not his shoe.

5. The problem was this: The problem wasn't that we  
6. couldn't prove it wasn't his shoes, because we didn't know  
7. about it til mid-trial. And I'm taking the blame for it,  
8. but I'm partly going to brain -- blame Mr. Leventis,  
9. because he told us he wasn't going to use it and then did.

10. I guess in -- in hindsight, I guess it's good that he  
11. did that, because then we would have never looked at it.

12. But the problem wasn't that we couldn't say  
13. conclusively, in my opinion, that it wasn't a match, but  
14. it still left open, well, whose shoe is it? And if we had  
15. had the victim's shoe, we could have made the comparison.

16. And I also want to make this clear: There were no  
17. other shoe impressions in that area by the tire, except  
18. one that they said was a member of law enforcement's.

19. Q Was the victim's shoe -- was it turned over to you  
20. during discovery?

21. A No. And we tried to get it after the trial, and what  
22. we were told was that -- from MUSC, where the autopsy was  
23. done, was that it returned to the family. And we could  
24. not get -- for fairly obvious reasons -- the victim's  
25. family to cooperate with us in getting the shoe.

1 Q Do you know if -- if y'all looked or investigated  
2 where the victim's shoe was before the actual trial?

3 A No. We would -- hadn't -- we had no reason to look at  
4 it, because when -- when the State told us they weren't  
5 going to get into that, we didn't look.

6 Q Were you -- who was responsible for the jury charges  
7 or getting those ---

8 A Probably ---

9 Q --- together?

10 A Probably me.

11 Q With -- with malice, do you remember what y'all  
12 presented?

13 A No. But this would have been -- the -- the jury was  
14 charged malice can be presumed from the use of a deadly  
15 weapon. This was before *Belcher* had come out, which says  
16 that that's an unconstitutional judicial comment on the  
17 facts, I believe is the precise holding. In any case,  
18 they're not entitled to that charge.

19 I have, however, another case where, before *Belcher*  
20 came out, I made that argument. And so I was able to  
21 preserve that issue even before *Belcher*, and it did not  
22 occur to me to do that in this case. So I did not object  
23 to the charge.

24 Q So it was not objected to, so ...

25 A It was not.

DIRECT EXAMINATION BY MS. SASSER - BEATTIE BUTLER 20

1 MS. SASSER: The Court's indulgence?

2 THE COURT: Certainly.

3 (Ms. Sasser and the applicant confer.)

4 DIRECT EXAMINATION BY MS. SASSER (continues):

5 Q With result to malice, do you believe that the burden  
6 shifted to your -- your side during the trial?

7 A I'm not sure what you're asking me.

8 Q When the jury instructions were presented to the jury,  
9 do you believe that malice was shifted to the defendant to  
10 prove?

11 A You mean disprove in light of that charge? I mean, I-  
12 --

13 Q Yes.

14 A --- I -- I couldn't say what the jury thought of the  
15 charge. I'm not in a position to do that. I -- all I can  
16 say is that charge has since been found unconstitutional.  
17 I didn't object to it; however, in another trial, pre-  
18 Belcher, I did object to it. So certainly, that argument  
19 was there for me to make, and I did not make it.

20 MS. SASSER: Okay. That's all I have for this  
21 witness, Your Honor.

22 THE COURT: Cross-examination.

23 MS. WILSON: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MS. WILSON:

25 Q Mr. Butler, you testified that when you were second

1 chair on Mr. Moultrie's trial, that you didn't know that  
2 the footprints on the -- the footprints in the impression  
3 did not match the footprints of the shoe that Mr. Moultrie  
4 was wearing when he turned himself into the -- to the  
5 police; is that correct?

6 A I didn't know that the footprints -- shoe  
7 print/footwear impressions were going to be an issue at  
8 all. And the reason it struck me as odd is because  
9 typically, when there's scientific/forensic evidence, I  
10 handle that.

11 As soon as I heard them start to qualify him, I leaned  
12 over to Martha Kent and said, "What's this about?" And  
13 she goes, "He told me he wasn't going to get into it."

14 I hadn't seen any of those photographs or the -- I  
15 believe there were casts also at the -- at the -- in the  
16 evidence room. I hadn't seen any of those because I  
17 didn't know that was going to be an issue.

18 Q And had you looked into -- or had you known that  
19 footprints would have been an issue, you -- you would have  
20 looked into it, and you would have investigated. That's  
21 your general course of practice.

22 A Yes. What should have been done was -- despite the  
23 fact that Mr. Leventis wasn't going to get into them, if  
24 it -- if it were not a match, we would want to be able to  
25 prove that it was the victim's shoe that made that

1 impression.

2 Q Okay. And you also testified though that, after the  
3 fact, you discovered that the victim's shoe was  
4 unavailable, so you would not have been able to get that  
5 information.

6 A It was unavailable by the time we started to ask for  
7 it. We started to ask for it at -- I believe after the  
8 case was over, to try to make a motion for a new trial  
9 based on after-discovered evidence. And MUSC told us it  
10 was with the family, and the family would not cooperate.

11 However, I don't know how long this case came to -- to  
12 get to trial, but it usually takes a couple of years. If  
13 we'd have known well in advance, this would have been  
14 Brady evidence, and the State would have been on notice  
15 and they would have been -- they would have been required,  
16 in my opinion, to track down that evidence and give it to  
17 us.

18 Q Okay. Do you recall when you requested this  
19 information?

20 A It was after the trial.

21 Q Shortly after?

22 A Right. Shortly after the trial. Within the 10 days  
23 that you're supposed to make a motion for a new trial.

24 Q Okay. How would you have been able to establish a  
25 chain of custody of that had you wanted to use that ---

1 A Well ---

2 Q --- in further proceedings?

3 A I didn't get that far because I didn't get the shoe.  
4 I guess I'd have gotten the shoe and tried to figure that  
5 out.

6 But again, at that point, it's not nearly the same  
7 situation you'd be in a year ahead of trial when you --  
8 when the State then would have been, in my opinion,  
9 obliged to get that evidence if it was exculpatory.

10 Q Okay. When you -- during the trial when this issue  
11 came up, you did object to the jury being able to hear any  
12 -- any comparison or any testimony on whether the shoes  
13 matched from the State's forensic expert; is that correct?

14 A That's right. But that was a mistake on my part, too,  
15 because I didn't look at it. Had I looked at it, in a --  
16 trust me, I'd have had a field day with that guy if I had  
17 looked at those -- if I had looked at those two -- two  
18 images, because they don't match.

19 Q And as a result of your objection, the expert was  
20 unable to testify and no information went before the jury  
21 about the shoes matching.

22 A That's right. It did not.

23 Q And you also told the Court that there was some  
24 testimony from the preliminary hearing about the shoe  
25 matching.

1 A Not matching.

2 Q Not matching.

3 A That's right.

4 Q Correct. Sorry.

5 A The lead detective at the preliminary hearing said  
6 that they did not match.

7 Q And both of -- both the pictures that were presented  
8 today -- Applicant's Exhibit No. 1, showing a picture of  
9 the applicant's shoe when he turned himself in to the  
10 police; and Exhibit 2, photo of the footprint imprint --  
11 both of those were presented to the jury during the trial;  
12 is that correct?

13 A Yes.

14 Q And they saw both pictures, and according to you, it's  
15 easy to determine the fact that they both don't match.

16 A Yes. But what's missing is the victim's shoe to show  
17 it conclusively was his shoe.

18 Q And as far as you know, you had pictures of the  
19 imprint and the picture of the applicant's shoe prior to  
20 trial?

21 A We did.

22 Q And you also testified that you can't say that you  
23 needed a footprint expert to establish that.

24 A I don't -- in my opinion, no. I -- in my opinion it's  
25 obvious that that -- that impression in the sand was not

1 made by Mr. Moultrie's shoe.

2 Q Okay. So it's obvious that no expert was needed.

3 That's your testimony; is that correct?

4 A That's my opinion. I mean, I can't speak for  
5 everybody. It -- it -- it doesn't hurt.

6 I can say this: I would have had an expert prepared  
7 at trial, because you just never know what -- what a jury  
8 thinks. And it would not have hurt to have Don Girndt say  
9 that these do not match.

10 Q It wouldn't have hurt it, but it was obvious from the  
11 photos that the jury could have determined that they did  
12 not match.

13 A To me -- to me, it is obvious they did not match.

14 Q And can you recall what the -- what the applicant's  
15 trial strategy was? Can you replay that for the Court?

16 A It was self-defense. And I should say there was  
17 another -- there was another witness, that we had  
18 subpoenaed, that saw Mr. Moultrie shortly after the  
19 incident with a knife.

20 That witness was subpoenaed; deputies were sent out;  
21 she never came; and we did not ask for a mistrial. And my  
22 thinking right now is that we should have asked for a  
23 mistrial when that witness, who would have corroborated --

24 The whole thing was this: We said there were two  
25 knives; State said there was one. The one knife that's



1 found at the scene on the wheel well of the car they said  
2 was Mr. Moultrie's. We said there were two and that the  
3 victim had a knife.

4 We had a witness after the incident, who has Mr.  
5 Moultrie with a knife, that we say was the knife that  
6 stabbed the victim.

7 She did not show up. The deputies could not go get  
8 her, and we did not move for a recess or a mistrial. And  
9 I think that we should have.

10 Q Okay. And -- but you did -- can you replay for the  
11 Court what you did to procure the availability of this  
12 witness during trial?

13 A She was subpoenaed, my recollection is. We had our  
14 investigator, lead investigator -- well, we only have one  
15 per case. So our investigator had a statement from that  
16 witness saying that she saw Mr. Moultrie after the  
17 incident, with a knife.

18 He was on vacation. And not just at home on vacation,  
19 he was out of state, I believe. And we did not have him  
20 prepared to be here. And I believe Judge Jefferson  
21 refused our request. Ms. Runey can speak to that more  
22 directly. But I -- I believe that we were told it wasn't  
23 going to be an issue that he wasn't here.

24 But in any case, we did not have -- we had the witness  
25 subpoenaed. She didn't show. Deputies didn't go -- they

1       went to go look for her; couldn't find her.

2               And that was towards the end of our presentation of  
3       evidence. So we were waiting for it to go to the jury,  
4       and we did not move for a mistrial. And I think we should  
5       have.

6       Q    Okay. And do you think that motion would have been  
7       successful at trial?

8       A    I -- I couldn't say.

9       Q    And isn't it true that had you -- had you presented  
10      testimony saying that the shoe -- the victim's shoe,  
11      matched or the two prints -- the -- the victim's -- the  
12      defendant's shoe imprint that was taken from the scene and  
13      the shoe photo, isn't it true that had you presented that  
14      evidence, the State would have also been able to procure  
15      an expert to say that the -- the shoe did match who -- in  
16      their opinion, they may have been able to do so?

17      A    Oh, they had that witness -- I don't have to speculate  
18      about that. They had somebody prepared to do that. They  
19      were just wrong.

20      Q    But ultimately you objected to the expert testimony  
21      regarding the shoe print.

22      A    Yeah. As a Rule 5 violation, and it was excluded.

23      Q    Okay. But do you recall that -- that you were  
24      questioning the State's forensic expert, you were able to  
25      get -- to get before the jury testimony from the -- from

1       that expert where he said that shoe prints and  
2       fingerprints really don't add anything to the fact of  
3       self-defense. Do you remember that testimony?

4       A    I don't, but it wouldn't have been about the shoe --  
5       that particular shoe print. You'd have to give me more of  
6       a context.

7       Q    Okay.

8           MS. WILSON: Beg the Court's indulgence.

9           THE COURT: Certainly.

10       A    I definitely would do that with the DNA person, but  
11       I'm not -- I'm not recalling that with the crime scene  
12       person.

13           MS. WILSON: Your Honor, may I approach the witness?

14           THE COURT: You may.

15           MS. WILSON: Thank you.

16       (Ms. Wilson hands a document to the witness.)

17       CROSS-EXAMINATION BY MS. WILSON (continues):

18           THE WITNESS: Okay. I see that.

19           MS. WILSON: And Your Honor, I -- for the record, I'm  
20       indicating on page 97 of the trial transcript.

21           THE COURT: You may. For the record, that is a part  
22       of the record of this proceeding, is it not?

23           MS. WILSON: Yes, Your Honor.

24           THE WITNESS: I think you mean ---

25           THE COURT: You agree with that?

1 MS. WILSON: Sorry. 197.

2 THE COURT: Do you agree with that, Ms. Sasser?

3 MS. SASSER: Yes, Your Honor.

4 THE COURT: The record is a part, and so we don't have  
5 to make it a Court's Exhibit. It -- it already becomes a  
6 part of the record.

7 So what page was it?

8 MS. WILSON: It's page 197.

9 THE COURT: Thank you.

10 CROSS-EXAMINATION BY MS. WILSON (continues):

11 Q And after -- after you review this, Mr. Butler, you  
12 see that you were able to elicit testimony from this  
13 expert saying that, you know -- it said -- this is what it  
14 says (as read): "Well, if you're trying to learn ---"

15 THE COURT REPORTER: Ma'am, if you're going to read,  
16 you need to read a little bit slower.

17 MS. WILSON: I'm sorry. I'm sorry.

18 THE COURT: Slow down. I can't even think that fast.

19 MS. WILSON: Sorry, Your Honor. Page 97 on line 8.

20 Mr. Butler, he asked the witness, Mr. Hallman, who was the  
21 State's forensic expert (as read): "Well, if you're  
22 trying to learn the identification of a suspect, if it is  
23 beyond dispute that the person is there, footwear and  
24 footprints, they don't help to establish whether or not it  
25 was self-defense of accident."

1           And the expert said, "No."

2           So you were able to elicit that testimony from the  
3 expert.

4       A    Yes. But that's not speaking to the issue that --  
5 about this particular footwear impression.

6           What I'm basically saying is once you know that  
7 someone's there, that doesn't tell you who started the  
8 fight, doesn't tell you who's at fault. Once you concede,  
9 as we did, that Mr. Moultrie was there -- in other words,  
10 it's no longer a "who done it," but a "what happened."

11          Yes. The testimony that -- whatever testimony he'd  
12 given was irrelevant. However, the footwear impression  
13 evidence, to be able to say that was the victim's shoe,  
14 would corroborate Mr. Moultrie's account of what happened;  
15 not who done it, but what happened.

16       Q    And can you also replay for us the other -- other  
17 argument that you made before the jury to support Mr.  
18 Moultrie's self-defense claim?

19       A    Ms. -- Ms. Runey would have done the closing arguments  
20 to the jury, so I couldn't really speak to that.

21           MS. WILSON: No further questions, Your Honor.

22           THE COURT: Re-direct, Ms. Sasser?

23           MS. SASSER: Just a couple of questions, Your Honor.

24           THE COURT: Sure.

25       RE-DIRECT EXAMINATION BY MS. SASSER:

1 Q Was it strategic for you not to ask for a mistrial  
2 after Glenda Watson was not called?

3 A I don't recall why we didn't. I really do not. I  
4 don't know if it was discussed or not.

5 Q And do you remember if the solicitor talked about --  
6 about the footprint impressions during his closing  
7 argument?

8 A I -- I -- I -- I think he did, but all I can -- I do  
9 remember that Ms. Runey did argue that they weren't a  
10 match. I don't know what Mr. Leventis did.

11 Q Do you remember if any objections were made to his  
12 closing argument?

13 A I do not.

14 Q Do you know of anything else you could have done?

15 A No. I mean, the big thing is -- is -- is the shoe.  
16 And I -- some -- the line of this questioning makes me  
17 think we're kind of getting off track.

18 It's not just that we could have proven it didn't  
19 match, it's that if -- if we'd -- we'd had the victim's  
20 shoe, we could have shown it was the victim that was  
21 standing right where the knife was, the knife that we  
22 claimed he had, the knife that Mr. Moultrie claimed he  
23 had.

24 Other than that, no.

25 MS. SASSER: I don't have any further questions.

RE-CROSS-EXAMINATION BY MS. WILSON - BEATTIE BUTLER 32

1 THE COURT: Re-cross?

2 MS. WILSON: Thank you, Your Honor.

3 RE-CROSS-EXAMINATION BY MS. WILSON:

4 Q Mister Beattie, when you were present at the trial,  
5 did you think that the closing arguments made by the  
6 solicitor were objectionable?

7 A I don't -- I -- I haven't -- that's one thing I don't  
8 -- I have not looked back at. So I couldn't tell you. If  
9 you wanted to show me some part of it, I could look at it,  
10 but I don't recall.

11 Q And from your general practice, had it been  
12 objectionable, would you have objected?

13 A I would have told Ms. Runey to object, because she was  
14 doing the closing.

15 MS. WILSON: No further questions.

16 THE COURT: Okay. You can come down. Thank you, sir.

17 (The witness exits the stand.)

18 THE COURT: Call your next witness, please.

19 MS. SASSER: Your Honor, I would call Martha Kent  
20 Runey to the stand, please.

21 THE COURT: Okay.

22 MARTHA KENT RONEY, having been  
23 first duly sworn, testifies as follows:

24 THE BAILIFF: If you'll, please, state your full name,  
25 and spell your last name for the record.

1 THE WITNESS: Martha Kent Runey, R-u-n-e-y.

2 DIRECT EXAMINATION BY MS. SASSER:

3 Q Ms. Runey, you were the lead attorney on this case..

4 A I was.

5 Q And what are the -- what is the job of the lead  
6 attorney as opposed to second chair?

7 A Well, we take the case. It is assigned to us upon  
8 arrest. Mr. Moultrie was in jail. He was arrested on  
9 February the 6 of 2008; and the file was opened to me on  
10 February the 11 of 2008. So this case is primarily mine  
11 to visit with him, prepare for plea or trial, and have all  
12 those discussions with my client and let him make that  
13 decision.

14 Q How long have you been with the Public Defender's  
15 Office?

16 A Since November, 2002.

17 Q And how many murder trials have you handled?

18 A I don't know specifically how many. I would say four  
19 to five.

20 Q You heard testimony from Mr. Butler regarding the  
21 shoes.

22 A I have..

23 Q Do you remember when you first got pictures of the  
24 footwear impressions?

25 A I don't remember. I could probably tell you when I



DIRECT EXAMINATION BY MS. SASSER - MARTHA KENT RUNEY 34

1 received discovery, but generally we received CDs with  
2 pictures after the initial discovery packet.

3 Q When did you first receive discovery?

4 A Somewhere in my file would be the cover letter that  
5 comes on the discovery. But I do see listed in my case  
6 notes that I reviewed the discovery, probably for the  
7 first time; because usually when I review it for the first  
8 time, I note that in my file, and that is May 30 of 2008.

9 Q Were you present at the preliminary hearing on March  
10 26, 2008?

11 A I was.

12 Q And at that time, were you aware that the footprints  
13 did not match?

14 A Detective Watson testified at the preliminary hearing  
15 that the footprint at the scene was not a match to my  
16 client's shoe that he was wearing when he turned himself  
17 in.

18 Q And before the trial, did you investigate that any  
19 further?

20 A I did not.

21 Q Why was that an important factor to the case?

22 A It was important because although we could tell that  
23 it was not a match to Mr. -- Mr. Moultrie's shoe, as Mr.  
24 Butler told you, we would have and should have tried to  
25 get the shoe that the victim was wearing, and to hire an

DIRECT EXAMINATION BY MS. SASSER - MARTHA KENT RUNEY 35

1 expert to compare that shoe to the footprint that was  
2 found by the tire.

3 And where it becomes the most important is to show  
4 that the victim was carrying a knife that day, and that he  
5 was the one who placed the knife on the tire -- or the  
6 car.

7 Q Did you try to find the victim's shoes after the  
8 trial?

9 A I did.

10 MS. SASSER: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 (Ms. Sasser hands a document to the witness.)

13 Q Is this the subpoena you sent after the trial to EMS  
14 Management to try to find the victim's shoe?

15 A Yes. This is a subpoena that my investigator, Art  
16 DiGiovine, sent out at my request.

17 Q And why wasn't that done before the trial?

18 A It wasn't and it should have been done.

19 MS. SASSER: Your Honor, may I enter this into --

20 THE COURT: Any objection?

21 MS. WILSON: No objection, Your Honor.

22 THE COURT: Applicant's 4 -- excuse me, 3.

23 Applicant's 3, without objection, is admitted.

24 (Marked Applicant's Exhibit No. 3, subpoena document,  
25 3 pages.)

DIRECT EXAMINATION BY MS. SASSER - MARTHA KENT RUNEY 36

1 MS. SASSER: Thank you, Your Honor.

2 THE COURT: That was a subpoena for whom?

3 MS. SASSER: For EMS Management.

4 THE COURT: Okay. Thank you.

5 DIRECT EXAMINATION BY MS. SASSER (continues):

6 Q Did someone make a call on your behalf to MUSC to try  
7 to find the victim's shoe as well?

8 A I believe so. My investigator, Art DiGiovine, would  
9 have done that. And I believe the information that we  
10 received was that those items of clothing and shoes were  
11 returned to the victim's family.

12 Q Do you remember if you talked about the shoe print  
13 during your closing argument?

14 A I did.

15 Q Do you remember if the solicitor talked about it  
16 during his closing argument?

17 A I don't remember that specifically.

18 Q You were told by the State that they were not going to  
19 use the evidence.

20 A I was.

21 Q Do you remember when you were told that?

22 A I -- I don't remember exactly when before the trial.  
23 I know that it was discussed when we reviewed what was in  
24 evidence at the North Charleston Police Department,  
25 because that -- the actual casts that were taking of -- of

1 -- taken of the prints were in evidence at North  
2 Charleston.

3 Q Regarding Glenda Watson, did you ever speak to her  
4 directly?

5 A I don't remember if I spoke to her directly. What I  
6 would have done and what I -- I generally do is have my  
7 investigator speak to her so an independent person, not  
8 me, is taking down her statement. And that's what we did  
9 in this case.

10 I may have tried to call her when we were trying to  
11 get her in as a witness. She did not come in. And I may  
12 have had my paralegal try to -- try to call her as well.

13 But I know that my investigator, Mr. DiGiovine,  
14 interviewed her and took a statement.

15 Q Do you remember telling the Court she was a crucial  
16 witness?

17 A She was.

18 Q And the first day she said there was -- there was a  
19 doctor's appointment, so she couldn't come testify.

20 A I believe that's correct.

21 Q Okay. And when she didn't show up the second day, you  
22 asked for a warrant?

23 A I did. The judge gave us a couple of hours --  
24 actually gave the Sheriff's Department a couple of hours  
25 to see if they could get her to come out of the house.

DIRECT EXAMINATION BY MS. SASSER - MARTHA KENT RUNEY 38

1           They came back, and I believe they reported that they  
2           thought someone was in her home, but she would not come  
3           out.

4           I did ask for a warrant. I think -- if I remember  
5           correctly, I think the Sheriff's Department advised me  
6           that they could take more steps in trying to get her here  
7           if that was the case. But they were not able to get her  
8           here to court.

9           Q   Was she brought in a couple of days later?

10          A   She was.

11          Q   And the jury had already made their decision ---

12          A   The trial was over, yes. And we had a verdict.

13          Q   After she didn't show up at trial, did you ask for a  
14          mistrial?

15          A   I did not.

16          Q   Why did you not?

17          A   I don't remember specifically why, but I should have.

18          Q   Do you remember David Watson testifying during trial.  
19          I believe he's with North Charleston ---

20          A   I think he's the lead detective, yes.

21          Q   Do you remember why you did not cross-examine him?

22          A   I do not.

23          Q   Was he the one who testified at the preliminary  
24          hearing?

25          A   And -- and had I known that they were going to try to

DIRECT EXAMINATION BY MS. SASSER - MARTHA KENT RUNEY 39

1 elicit this footprint evidence, I would have asked him  
2 about his testimony at the prelim, that it wasn't a match.

3 Q Regarding your investigator's testimony, or his  
4 presence not there, did you ask the Court for a  
5 continuance?

6 A I did. I believe that Judge Jefferson was our chief  
7 criminal administrative judge. And on November the 25 of  
8 2008, we had a conference call with Judge Jefferson and  
9 Mr. Leventis. And my motion for a continuance was denied.

10 Q Do you believe you needed his testimony at the trial?

11 A It may have been helpful to have him there to get Ms.  
12 Watson in because he had spoken to her before. I believe  
13 I put his statement that he took from Ms. Watson into  
14 evidence. But I would have liked to put him on the stand  
15 so that he could testify as to what she told him, and what  
16 she would have been able testify to at trial.

17 Q Did you at any time during the trial ask for him to be  
18 conferenced in to testify, or to be flown back to testify?

19 A No, I did not.

20 MS. SASSER: That's all the questions I have for this  
21 witness, Your Honor.

22 THE COURT: Cross-examination.

23 MS. WILSON: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MS. WILSON:

25 Q Ms. Runey, how long have you been practicing law?

CROSS-EXAMINATION BY MS. WILSON - MARTHA KENT RUNEY

40

1 A I've been at the Public Defender's Office for 10  
2 years. I clerked for Judge Rawl a little over a year  
3 before that. Eleven years.

4 Q So the majority of your time has been spent doing  
5 criminal law.

6 A It has.

7 Q And you were appointed to represent Mr. Moultrie; is  
8 that correct?

9 A I was.

10 Q And how many times did you meet with him prior to  
11 trial?

12 A Thirteen.

13 Q Thirteen? Thank you. And you filed a *Brady* -- *Brady*  
14 or -- or Rule 5 motion on his behalf?

15 A I did.

16 Q And you reviewed the discovery material with the  
17 applicant?

18 A I did.

19 Q Okay. Can you recall what was in that discovery  
20 packet? What did you receive from the State?

21 A Well, you -- you know, usually we have them in a  
22 packet. This is -- has been pulled apart and made into a  
23 trial notebook, and it's ---

24 Q You don't really remember ---

25 A I ---

1 Q --- for sure ---

2 A I do not.

3 Q Can you think of maybe any pieces of evidence that you  
4 wanted to use at trial that you received from the State?

5 A Not specifically.

6 Q And prior to trial, you discussed with Mr. Moultrie  
7 the -- the elements of the charge against him?

8 A Yes.

9 Q And did you discuss his version of the facts?

10 A I did many times.

11 Q And any possible defenses that you might put forth on  
12 his behalf?

13 A Yes.

14 Q And could you briefly characterize the State's  
15 evidence against Mr. Moultrie.

16 A There were two witnesses, Gerald Blake and George  
17 Hemingway, who had been with the victim and Mr. Moultrie  
18 the night of the incident. There had been some banter  
19 between Mr. Moultrie and Mr. Jones. They were at one  
20 house drinking beer, I believe, and left to go to another  
21 friend's house.

22 The friend, Gerald Blake, went behind the house to go  
23 to use the bathroom; and when he came back, Mr. Jones had  
24 been stabbed.

25 The other witness, Gerald [sic] Hemingway, drove up



1 after the victim had been stabbed.

2 So basically, only Mr. Jones and Mr. Moultrie were out  
3 there when the stabbing occurred.

4 Q And do you recall at trial these two witnesses  
5 testifying that the victim told them that Mr. Moultrie had  
6 stabbed him, that both those victims testified that -- to  
7 that fact?

8 A I believe so. I -- I do know -- I just read the  
9 transcript of Gerald Blake, and -- and he testified to  
10 that.

11 Q Did Mr. Moultrie give you any potential witnesses or  
12 leads to investigate?

13 A He did.

14 Q And what ---

15 A That's how we found out about Ms. Watson.

16 Q Okay. You spoke to her and discussed the case with  
17 her to get her side or what she could contribute to his  
18 case?

19 A My investigator did, yes.

20 Q Okay. And what other kind of investigation did you do  
21 on this case?

22 A We would have -- I know that we talked to all of the  
23 State's witnesses and had our own independent written  
24 statements from them that Mr. DiGiovine took. And we  
25 would have spoken to any other possible lay witnesses and

1 re-interviewed them to see if their story was consistent  
2 with what they told police that night.

3 Q Did you feel you had ample time to prepare for trial?

4 A I do.

5 Q And what was Mr. Moultrie's trial strategy in this  
6 case?

7 A Self-defense.

8 Q Can you expound on that, exactly how you were going to  
9 argue that to the jury, how you did argue it to the jury.

10 A That the victim was armed and he pulled a knife on Mr.  
11 Moultrie. And Mr. Moultrie stabbed him in self-defense.

12 That's why it would -- would have been so important  
13 for us to establish that this was Mr. Jones's footprint,  
14 right where the knife was placed on the wheel.

15 Q In going into trial, did you feel like you could --  
16 you could -- going into trial and not being prepared to  
17 present that evidence about the victim's shoe print, did  
18 you think -- still think that you could potentially -- a  
19 successful self-defense claim without that particular  
20 information about ---

21 A I -- I think I should have done that.

22 Q Okay. Well, my question is: Without that information  
23 going into trial, because when you -- when you went to  
24 trial, your -- it's your testimony today that you hadn't  
25 prepared to present any evidence about the victim's

1 footprint; is that correct?

2 A I had not.

3 Q Okay. Going into trial with that strategy, did you  
4 feel like you could ---

5 A Did I think we could win without it?

6 Q No. Did you -- did you feel like you could present a  
7 self-defense claim to the jury without that particular  
8 information?

9 A I -- I did. I -- I did present self-defense to the  
10 jury.

11 Q And at the time, you developed that self-defense  
12 strategy without any footprint experts.

13 A (No audible response.)

14 THE COURT: Was that a "yes"? I'm sorry.

15 A Is that -- that -- that is what I argued at trial.

16 Q Okay.

17 A And I -- and I also thought that Ms. Watson's  
18 testimony would have been very helpful.

19 Q And do you think an expert, a footprint expert, would  
20 have been helpful to you?

21 A Yes. Absolutely.

22 Q But you were also -- you were able to argue to the  
23 jury that the footprints didn't match; that's correct?

24 A I did.

25 Q And you also -- well, also before the jury were the

1 two pictures of the imprints.

2 A Yes.

3 Q And who else testified at Mr. Moultrie's preliminary  
4 hearing other than Detective Watson? I believe he  
5 testified.

6 A I think it was just Detective Watson.

7 Q Can you recall what information was presented when  
8 Detective Watson testified at the preliminary hearing?

9 A Specific -- what he testified to?

10 Q Right. What did he -- what did he testify to that was  
11 sufficient to establish probable cause to have the case --  
12 -

13 A I -- I'd have to review the transcript to -- to say  
14 exactly what he testified to, but ...

15 Q Well, do you have it with you to review briefly?

16 A I do in -- in my box, in the back of the courtroom.

17 (Mr. Butler brings a box to Ms. Runey.)

18 THE COURT: You need a moment to review that?

19 THE WITNESS: Yes, sir, please.

20 THE COURT: I'm not sure what the relevance of all  
21 that is, but we're going to take about a five minute break  
22 and let you do that.

23 Thank you very much. We'll be at ease.

24 (Briefly off the record.)

25 THE COURT: All right.. We're ready to continue.

CROSS-EXAMINATION BY MS. WILSON - MARTHA KENT RUNEY

46

1 MS. WILSON: Thank you, Your Honor.

2 THE COURT: You may continue.

3 CROSS-EXAMINATION BY MS. WILSON(continues):

4 Q My last question, when I asked you to review the  
5 preliminary hearing -- hearing transcript, was what other  
6 evidence, other than Detective Watson, did the State  
7 present to establish their probable cause?

8 A The only witness that was called at the preliminary  
9 hearing was Detective Watson. He testified to the  
10 interview of Mr. Gerald Blake and Mr. George Hemingway in  
11 regards to what they saw that night.

12 Basically, what the evidence was at trial was that  
13 Gerald Blake had been with the victim and Mr. Moultrie at  
14 one residence. Mr. Blake and Mr Moultrie -- or Mr. Blake  
15 and Mr. Jones left that house and went to Mr. Blake's home  
16 on Wye Lane. Mr. Moultrie arrived there shortly after  
17 they did. Mr. Blake went behind the house to go to the  
18 bathroom, and when he came back, Mr. Jones had been  
19 stabbed.

20 He also testified to interviewing or someone from  
21 North Charleston inter -- interviewing Mr. Hemingway, who  
22 arrived on Wye Lane after Mr. Jones had been stabbed.

23 He also -- Detective Watson also testified to some  
24 forensic evidence that was collected, including  
25 fingerprints and DNA. Those results were not known at the

1 time of the preliminary hearing. He did testify that some  
2 casts were taken of some footprints on scene.

3 He also testified that Mr. Moultrie turned himself in.  
4 He was advised of his rights, refused to give a statement,  
5 and he voluntarily showed him -- showed them the bottom of  
6 his shoes, which did not match the imprints that they had.

7 Q Okay. So after the preliminary hearing and going into  
8 trial, you were aware of what the State's case was,  
9 because essentially it was the same as what was presented  
10 at the preliminary hearing.

11 A Yes, that's correct.

12 Q Okay. And you were also aware that the shoes didn't  
13 match; that's correct?

14 A That's what was testified to at the preliminary  
15 hearing, yes.

16 Q Okay. And so having all this evidence, you -- you  
17 could -- you had this evidence to consider when you were  
18 developing your trial strategy; is that correct?

19 A I did.

20 MS. WILSON: Beg the Court's indulgence.

21 THE COURT: Certainly.

22 Q And you were able to argue before the jury that the  
23 shoes did -- the shoe cast or the shoe print didn't match;  
24 that's correct?

25 A I did.

CROSS-EXAMINATION BY MS. WILSON - MARTHA KENT RUNEY 48

1 Q And you subpoenaed this witness, whose first name was  
2 "Glenda," to come and testify?

3 A I did.

4 Q Okay. And you also -- they sent the deputies to her  
5 home to find --

6 A That's correct.

7 Q Okay. You testified that you should have -- you  
8 didn't request a mistrial. Did you feel like that motion  
9 would have been successful?

10 A I don't know.

11 Q And you also made some -- you also testified about  
12 your investigator being unavailable to testify. Do you  
13 wish that he -- he should have -- you wish that he had  
14 been present to testify?

15 A I always like to have my investigator when I'm in  
16 trial, especially a murder trial. That's why I felt like  
17 it was necessary to make a motion for a continuance in  
18 November when I found out that he was not going to be  
19 available.

20 Q And do you recall renewing that -- that request for a  
21 continuance at the trial?

22 A I believe I did before the trial started, but I'd --  
23 I'd have to look at the transcript to make sure -- be  
24 sure.

25 Q Do you also recall suggesting to the Court that maybe

1 he could be available to testify by phone?

2 A I know that was discussed in the conference call with  
3 Judge Jefferson. I don't remember if that was discussed  
4 with Judge Wellmaker or not.

5 Q Did you make any preliminary motions prior to trial,  
6 any pre-trial motions?

7 A I don't remember any motions other than the basic  
8 motions that I would make prior to the trial starting.

9 MS. WILSON: No further questions. Thank you.

10 THE COURT: Re-direct.

11 RE-DIRECT EXAMINATION BY MS. SASSER:

12 Q When Glenda Watson was not available, did you put her  
13 -- the statement from your detective/investigator on the  
14 record or as an exhibit?

15 A An exhibit..

16 MS. SASSER: May I have the Court's indulgence?

17 THE COURT: Certainly.

18 (Brief pause.)

19 MS. SASSER: I'm sorry, Your Honor.

20 THE COURT: It's okay. Take your time.

21 MS. SASSER: Thank you.

22 (Brief pause.)

23 MS. SASSER: Your Honor, may I approach the witness?

24 THE COURT: You may.

25 RE-DIRECT EXAMINATION BY MS. SASSER (continues):



RE-DIRECT EXAMINATION BY MS. SASSER - MARTHA KENT RUNEY 50

1 Q As part of the transcript, on page 303, could you read  
2 --

3 THE COURT: She doesn't need to publish it. What is  
4 it you're asking about?

5 Q Did -- did you subpoena -- did you put the subpoena  
6 into record or as an exhibit?

7 A I did.

8 Q You did put it as an exhibit or -- or on the record?

9 A I say to the Court (as read): "I would like to make  
10 part of the record the subpoena for Ms. Watson, served on  
11 her November the 19th. And I'd like to make a part of the  
12 record the report that was generated by my investigator,  
13 Art DiGiovine, to me, which detailed his interview with  
14 her and what she would testify to."

15 I thought it was listed as an exhibit in the  
16 transcript as well.

17 Q Okay.

18 A As a Court's Exhibit.

19 THE COURT: Okay. That's -- that's important. If it  
20 wasn't -- when you say "an exhibit," did it go to the  
21 jury?

22 THE WITNESS: No, it did not.

23 THE COURT: Okay. That's -- that's the important  
24 part. Part of the record's fine. But the jury never saw  
25 this ---

RE-DIRECT EXAMINATION BY MS. SASSER - MARTHA KENT RUNEY 51

1 THE WITNESS: No, sir.

2 THE COURT: Okay.

3 RE-DIRECT EXAMINATION BY MS. SASSER (continues):

4 Q And you made Mr. DiGiovine's report a part of the  
5 record also?

6 A I did. A Court's Exhibit.

7 Q It was not an exhibit?

8 A A Court's Exhibit.

9 Q (Shows document to the witness) And is this his  
10 report?

11 A It is.

12 MS. SASSER: Your Honor, I would like to enter this  
13 into evidence.

14 THE COURT: Okay. That's fine. It didn't go to the  
15 jury. That's -- I mean, there's no question there was a  
16 report. There's no question what he said, but the jury  
17 never heard it.

18 So you can put it in ---

19 MS. SASSER: I gotcha.

20 THE COURT: I mean, it's already part ---

21 MS. SASSER: I gotcha.

22 THE COURT: --- of the record, I assume.

23 MS. SASSER: Okay. I'll withdraw it.

24 THE COURT: But -- but don't -- go ahead and put it in  
25 just to make sure. It's Applicant's 4, with any

RE-DIRECT EXAMINATION BY MS. SASSER - MARTHA KENT RUNEY 52

1 objection?

2 MS. WILSON: No objection, Your Honor.

3 THE COURT: All right. That's the report of the  
4 investigator I assume; is that correct?

5 THE WITNESS: Yes.

6 MS. SASSER: Yes, sir.

7 THE COURT: Okay. Thank you.

8 MS. SASSER: Thank you, Your Honor.

9 THE COURT: Uh-huh.

10 (Brief pause.)

11 (Marked Applicant's Exhibit No. 4, investigator's  
12 report, 2 pages.)

13 RE-DIRECT EXAMINATION BY MS. SASSER:

14 Q While meeting with Mr. Moultrie, the defense was  
15 always self-defense, correct?

16 A That's correct.

17 Q Could you identify these three pictures.

18 THE COURT REPORTER: I'm sorry. Identify what?

19 MS. SASSER: (Hands documents to the witness.) These  
20 three pictures.

21 A The first one is a picture of the truck tire with the  
22 knife on top of the tire. This is the knife that was in  
23 evidence. And you can see -- all those -- these are black  
24 and white. You can see the blood that's dripping down,  
25 leading to where the knife is.

RE-DIRECT EXAMINATION BY MS. SASSER - MARTHA KENT RUNEY 53

1           The second one is a closer shot of the knife that was  
2           found on the tire.

3           And -- and the third picture is a picture of just the  
4           knife being held by probably a police officer or crime  
5           scene technician.

6           MS. SASSER: Your Honor, at this time I would like to  
7           move to enter these into evidence.

8           THE COURT: Okay. Do you intend to ask her any  
9           additional questions concerning those photographs?

10          MS. SASSER: Yes, I do.

11          THE COURT: All right. Very well. Let's mark them  
12          separately, please. Applicant's 4 -- be 5, 6, and 7.

13          (Marked Applicant's Exhibits Nos. 5, 6, and 7,  
14          photographs, for identification.)

15          MS. SASSER: Do you ---

16          THE COURT: Hold on just a second. I'm sorry.

17          (Brief pause.)

18          THE COURT: Okay.

19          RE-DIRECT EXAMINATION BY MS. SASSER (continues):

20          Q Do you remember there being some dispute whether there  
21          was blood on the actual handle of the knife?

22          MS. WILSON: Objection, Your Honor. This line of  
23          questioning is outside the scope of the cross-examination.

24          (Brief pause.)

25          MS. WILSON: I'll withdraw that objection, Your Honor.

RE-DIRECT EXAMINATION BY MS. SASSER - MARTHA KENT RUNEY 54

1 THE COURT: Wait a minute. I don't think so. She's -  
2 --

3 MS. WILSON: Sorry.

4 THE COURT: I'm going to allow it.

5 MS. WILSON: Jumped ahead.

6 THE COURT: You -- you get -- you get -- I think you  
7 opened up enough and you get to re-cross. So I'm going to  
8 overrule that objection. Thank you.

9 RE-DIRECT EXAMINATION BY MS. SASSER (continues):

10 Q Do you remember if there was discrepancy on whether  
11 there was blood -- DNA on the knife handle or the blade?

12 A I don't remember if it was -- I know that swabs were  
13 taken from the -- from the knife. But I don't remember  
14 the difference between the blade or the handle.

15 Q Did you consult with a DNA expert?

16 A I did not.

17 MS. SASSER: That's all the questions I have.

18 THE COURT: Do you want 5, 6, and 7 admitted?

19 MS. SASSER: Yes, Your Honor.

20 THE COURT: Any objection?

21 MS. WILSON: No objection, Your Honor.

22 THE COURT: Without objection, they're admitted into  
23 evidence.

24 (Applicant's Exhibit Nos. 5, 6, and 7, photographs,  
25 admitted.)

RE-CROSS EXAMINATION BY MS. WILSON - MARTHA KENT RUNEY 55

1 THE COURT: Re-cross.

2 MS. WILSON: Thank you, Your Honor.

3 RE-CROSS-EXAMINATION BY MS. WILSON:

4 Q Ms. Runey, you testified that no DNA -- no DNA expert  
5 was consulted about the blood on found on the knife;  
6 that's correct?

7 A That's correct.

8 Q Okay. And also, that the defendant's DNA was not  
9 found on the knife; is that correct?

10 A That's correct.

11 Q Thank you.

12 MS. WILSON: Nothing further.

13 THE COURT: You may come down. Thank you.

14 (The witness exits the stand.)

15 THE COURT: Call your next witness.

16 MS. SASSER: Thank you, Your Honor. I would call to  
17 the stand Antonio Moultrie.

18 THE COURT: Okay.

19 ANTONIO MOULTRIE, having been  
20 first duly sworn, testifies as follows:

21 THE BAILIFF: Mr. Moultrie, if you'll please state  
22 your full name, and then spell your last name for the  
23 record.

24 THE WITNESS: Antonio Moultrie; M-o-u-l-t-r-i-e.

25 THE COURT: You may proceed.

1 DIRECT EXAMINATION BY MS. SASSER:

2 Q Mr. Moultrie, did you file a post-conviction relief  
3 application with this Court?

4 A Yes, I did.

5 Q Why did you feel your counsel was not effective?

6 A Counsel was ineffective for failing to object to the  
7 trial Court's malice instructions.

8 THE COURT REPORTER: I'm sorry?

9 A Counsel was ineffective for failing to object to the  
10 trial Court's malice instructions; inferred malice may  
11 also arise when the deed is done with a deadly weapon.

12 The trial judge ---

13 THE COURT: He doesn't -- he doesn't need to go into  
14 that. That's a matter of law. He's raised the issue. We  
15 don't need to publish what the -- for him to read out what  
16 the -- the law is. Thank you.

17 MS. SASSER: Yes, Your Honor.

18 DIRECT EXAMINATION BY MS. SASSER (continues):

19 Q Do you believe that your lawyers's inability to  
20 properly represent you hurt your case?

21 A Yes, I do.

22 MS. SASSER: I don't have any further questions, Your  
23 Honor.

24 THE COURT: Cross-examination.

25 MS. WILSON: Thank you, Your Honor.

1 CROSS-EXAMINATION BY MS. WILSON:

2 Q Mr. Moultrie, did you meet with your attorneys before  
3 -- prior to trial?

4 A Yes, I did.

5 Q Do you recall about how many times you met with them?

6 A I don't know exactly.

7 Q Can you give a range, like, less than five, five to  
8 ten?

9 A Five to ten.

10 Q And did you review discovery with Ms. Runey and Mr.  
11 Butler?

12 A Yes, I did.

13 Q And they discussed with you possible defenses that  
14 they could present for you?

15 A Yes.

16 MS. WILSON: No further questions. Thank you, Your  
17 Honor.

18 THE COURT: Re-direct?

19 MS. SASSER: None, Your Honor.

20 THE COURT: You may come down. Thank you.

21 (The witness exits the stand.)

22 THE COURT: Any additional witnesses?

23 MS. SASSER: That's all, Your Honor.

24 THE COURT: State have any witnesses?

25 MS. WILSON: Nothing from the State.



1 THE COURT: Be happy to hear from you in argument, Ms.  
2 Sasser.

3 MS. SASSER: Your Honor, I -- my client has shown  
4 ineffectiveness of counsel, I believe. The shoe prints  
5 were very important to the case. They did not look into -  
6 - into them before the case. And there were several other  
7 reasons: They failed to ask for a mistrial.

8 We believe that he has shown the unreasonableness and  
9 the prejudice to this case.

10 Thank you, Your Honor.

11 THE COURT: Be happy to hear from you.

12 MS. WILSON: May it please the Court, Your Honor.  
13 With regard to counsel being ineffective for failing to  
14 object to a malice charge, Mr. Butler testified that he  
15 did not object to the malice charge at the time because it  
16 wasn't objectionable.

17 THE COURT: Yeah. I -- I'm not -- you don't have to  
18 waste a lot of time on why they weren't clairvoyant. But  
19 I'm not going to find that one. So let's focus on the  
20 remaining issues.

21 MS. WILSON: Yes, Your Honor. With regard to failing  
22 to call Ms. Glenda Watson as a witness, the law requires  
23 that Ms. Watson be here to -- here and present at PCR  
24 hearing to testify to what she would have -- what she  
25 would have said at trial had she been presented. She's

1 not here to testify to that today.

2 And also, both counsels testified that they had --  
3 they subpoenaed the witness; they sent the deputy to find  
4 her. So they did what they could to procure her  
5 testimony.

6 Also, Your Honor, with regards to ---

7 THE COURT: Did they move for a continuance again,  
8 renew their motion for continuance after they were unable  
9 to produce the witness? I don't see it in the record.  
10 Maybe I missed it.

11 MS. WILSON: I don't -- I don't think so. It's  
12 probably unlikely that would have been granted ---

13 THE COURT: That doesn't matter. Then you would  
14 preserve that issue for appeal, don't you? Don't you have  
15 to do that to preserve it for appeal?

16 MS. WILSON: Thank you, Your Honor.

17 THE COURT: No. I'm just asking the question.

18 MS. WILSON: Oh. Yes, Your Honor.

19 THE COURT: Wouldn't you have to -- okay. Thank you.

20 MS. WILSON: Also, with regards to the footprints and  
21 them being ineffective for getting a footprint expert, we  
22 don't have any expert here today to testify to what he  
23 would have testified to at trial.

24 THE COURT: What about -- what about the -- the fact  
25 that we -- we have this -- obviously it's not his. So I

1 mean, I -- the footprint expert may or may not have been  
2 that critical.

3 I think the issue about the footprint is: Whose shoe  
4 is it? And is -- it ties into, as Mr. Butler articulated,  
5 I think very clearly -- it goes in -- while they don't  
6 have any burden to prove self-defense, it creates,  
7 obviously, obviously, an incredible reasonable doubt, if  
8 the shoe is the victim's shoe and the knife -- and we have  
9 the problem now compounded because Watson is not present -  
10 - we only have one knife present.

11 If that becomes the victim's knife, doesn't that then  
12 further support, without any question, the issue or a  
13 reasonable doubt that it was a self-defense case?

14 MS. WILSON: No, Your Honor. Because also present in  
15 the record was testimony from the -- from one of the  
16 State's witnesses that they saw the -- they saw the victim  
17 with a knife earlier that day, the same way that they saw  
18 the -- the applicant with a knife.

19 And the -- the -- the defense attorneys knew at the  
20 State's -- after the preliminary hearing what the State's  
21 case would have been, they knew what evidence and  
22 testimony they had regarding the footprints. And in light  
23 of all that, considering ---

24 THE COURT: What about -- what about a motion to have  
25 the State produce the shoes?

1 MS. WILSON: Well, Your Honor, it's their testimony  
2 they knew of the evidence ---

3 THE COURT: That's precisely my point. What about a  
4 motion by the defense counsel that -- to produce the  
5 shoes? They were in -- within a relatively short period  
6 of time after the incident occurred -- I understand that  
7 the shoes have been destroyed. There's no way for that,  
8 but at least we would have had an attempt to do so, and  
9 that creates a problem in my opinion. Can you address why  
10 that isn't a problem?

11 MS. WILSON: Well, Your Honor, it's not our -- it's  
12 not our problem because ---

13 THE COURT: Doesn't that fall below the standard?

14 MS. WILSON: Your Honor, that doesn't fall below the  
15 standard because ---

16 THE COURT: Why not?

17 MS. WILSON: They haven't proved they're prejudiced.  
18 They haven't produced a shoe that showed that ---

19 THE COURT: Oh, it's prejudice. Big time. Big time.  
20 I think it's obvious prejudice. I don't think there's any  
21 -- I don't think you can really -- I don't think you can  
22 legitimately argue that with a straight face that it's not  
23 prejudice.

24 Because if it comes back his shoe, then it shows the  
25 blood -- everything -- confirms everything that there's

1       been a fight and he's been involved. He's holding the  
2       knife, because that's the only way the blood could have  
3       gotten on the knife. And bingo, now we have a knife in  
4       the hands of the victim ---

5           MS. WILSON: Well ---

6           THE COURT: --- at the fight.

7           MS. WILSON: Yes, Your Honor. Nothing further. Thank  
8       you.

9           THE COURT: No, no, no. Please take -- it's ---

10          MS. WILSON: Well, Your Honor ---

11          THE COURT: --- a note being passed.

12          MS. WILSON: Well, Your Honor, I was just going to say  
13       it was argued before the jury that the knife was in the  
14       victim's hand, and that -- as a result, there wasn't any  
15       DNA from the applicant on the knife handle. So that was  
16       argued before the jury, so they were given that argument.

17          THE COURT: Okay. All right.

18          MS. WILSON: And with that request, Your Honor, the  
19       State requests that you deny this applicant's application  
20       for post-conviction relief with prejudice. Thank you.

21          THE COURT: Okay. You wish to respond?

22          MS. SASSER: No, Your Honor, I don't.

23          THE COURT: All right. I'm going to read the record.  
24       I'm going to read the -- I don't disagree with you at all,  
25       Ms. Wilson, about what was argued. I just have got to

1 read it and see where we are with -- with that evidence,  
2 how it would have played in or strengthened it.

3 So I'm going to take this one under advisement. Thank  
4 you.

5 MS. WILSON: Thank you, Your Honor.

6 MS. SASSER: Thank you.

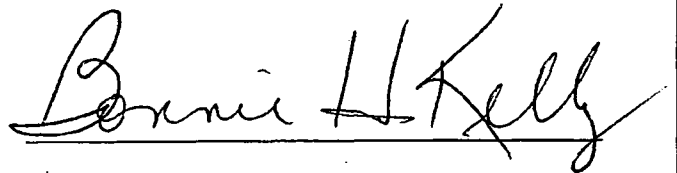
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**CERTIFICATE**

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Ninth Circuit Court for Charleston County, South Carolina, on the 22nd day of January, 2013.

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

A handwritten signature in cursive script that reads "Bonnie H. Kelly". The signature is written in dark ink and is positioned above the printed name and title.

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

July 3, 2013

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Antonio Moultrie, #332073, )  
 )  
Applicant, )  
 )  
v. )  
 )  
State of South Carolina, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2011-CP-10-9422

**ORDER OF DISMISSAL**

FILED  
2013 MAR 11 PM 2:30  
JULIE J. ARYSTONG  
CLERK OF COURT  
BY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 21, 2011. The Respondent made its Return on June 20, 2012. An evidentiary hearing on the matter was convened on January 22, 2013 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Lesley Ann Sasser, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying were Martha Kent Runey, Esquire, and Beattie Butler, Esquire. The Court had before it the trial transcript, the Charleston County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's Return, the exhibits submitted by the Applicant, and the appellate court records.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant

for 4/11/12



was indicted at the May 2008 term of the Charleston County Grand Jury for murder (2008-GS-10-4135). He was represented by Martha Kent Runey, Esquire, and Beattie Butler, Esquire.

The Applicant proceeded to trial and was found guilty. On December 4, 2008, the Applicant was sentenced by the Honorable G. Edward Welmaker to confinement for a period of 45 years.

A Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert Dudek, Esquire, of the South Carolina Office of the Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Murray, Op. No. 2011-UP-543 (S.C. Ct. App. filed December 5, 2011).

### ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

- a. "Was counsel ineffective for failing to object to the trial court's malice instructions that were unconstitutionally burden shifting in violation of due process"
- b. "Was counsel ineffective for failing to object to the trial court's malice instruction that resulted in a mandatory burden shifting instruction when the trial court failed to instruct the jury that they may accept or reject the inference of malice from the use of a deadly weapon"
- c. "Was counsel ineffective for failing to request the trial judge to instruct the jury on the King charge"
- d. "Was counsel ineffective for failing to object to the burden shifting jury instructions given by the court when the court instructed the jury on self-defense and in doing so the court instructed the jury that Petitioner had the burden of establishing self-defense"
- e. "Was counsel ineffective for failing to object when the trial court impermissibly commented on the facts of the case: and as a result the trial court prematurely directed a verdict for the state"

On January 11, 2013, the Applicant amended his post-conviction relief application to include the following allegations:

1. Ineffective assistance of counsel.
  - a. Failure to investigate.
  - b. Failure to subpoena and call witnesses.
  - c. Failure to move suppress/object to evidence.
  - d. Failure to object to arguments.
  - e. Failure to request/object to instructions.

At the hearing, the Applicant proceeded solely on allegations of ineffective assistance of counsel.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record and submitted exhibits in their entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

#### **Summary of the Testimony**

Martha Runey, the lead attorney during the Applicant's trial testified she has been a public defender for 10 years and the majority of her legal experience has been in criminal law. Counsel testified that prior to being appointed to represent the Applicant, she had handled four or five murder trials. Counsel testified she met with the Applicant at least 13 times prior to trial. She testified she filed Brady and Rule 5 motions on the Applicant's behalf and reviewed the discovery materials with the Applicant prior to trial on May 30, 2008. Counsel testified that prior to trial, she discussed the elements of the charges the Applicant was facing and what the State

was required to prove with the Applicant. Counsel also testified she discussed with the Applicant his version of the facts and possible defenses.

Counsel characterized the State's evidence against the Applicant as two witnesses who were to testify the victim told them that the Applicant stabbed him. Counsel testified the Applicant gave her witnesses and leads to investigate which led to them finding Linda Watson. She testified her investigation of the case included talking to all the witnesses, reviewing all statements, re-interviewing the State's witnesses and any other witnesses they could use. Counsel testified she had ample time to prepare for trial.

Counsel testified the Applicant's strategy at trial was self-defense. Counsel testified she planned to argue that the victim was armed and the Applicant stabbed the victim in self-defense. She did not recall making any pre-trial motions other than basic motions. Counsel testified she believed she could argue self-defense to the jury without evidence about the victim's shoe.

Counsel testified she was present at the Applicant's preliminary hearing and was aware of Officer David Watson's testimony that the shoe print found at the scene did not match the shoes the Applicant was wearing when he turned himself in to police. Counsel also testified that when reviewing the evidence with the State, she was told by the State they would not use the shoe print evidence at trial. Counsel testified she did not investigate the Applicant's shoe prints any further.

Counsel testified that prior to trial she was able to develop a trial strategy without needing the assistance of a footprint expert. She testified that when developing her trial strategy she had the shoe print evidence to consider. She testified further she was able to argue to the jury that the prints taken at the scene did not match the Applicant's shoe prints.

AmDTT/4

Counsel also testified it was possible that a shoe print expert could have been helpful to determine where the victim was standing during the incident and to show that the victim put the knife on the car tire. Counsel testified she should have tried to get the victim's shoes and her attempts to obtain the victim's shoes post-trial were unfruitful.

Counsel also testified that at trial one of the Applicant's crucial witnesses Linda Watson did not show up to court to testify. Counsel testified she subpoenaed the witness prior to trial, had her investigator speak with her on the phone, and sent deputies to her home to bring her to court when she did not show up to testify. Counsel testified the deputies were unable to find the witness and she did not request a mistrial because of the missing witness. Counsel testified she made Ms. Watson's subpoena a court exhibit. She testified she was unsure whether a request for a mistrial would have been successful at trial.

Beattie Butler sat second chair during the Applicant's trial to assist Ms. Runey. Counsel testified he has been a public defender since 2003. He testified he reviewed discovery prior to trial and recalls reviewing the footprint impressions. He testified he did not foresee the footprint impressions being a critical issue prior to trial, but the evidence ended up being critical during trial.

Counsel testified that during trial, the State attempted to elicit an opinion from one of their witnesses about the footwear impressions. Counsel testified a knife found on the car was near the footprint impression. He testified he had not further reviewed the footwear impressions because he was told by the State they would not present the footprint evidence at trial. Counsel testified that had he known that the footprint impression would have been an issue at trial, he would have further investigated the matter.

RM/PT/5

Counsel testified had he known that the State's witness would testify that the footprint impression found at the scene was not a match to the Applicant's shoe print, he would not have objected to the testimony at trial. Counsel testified it was obvious the shoeprint impression closest to the knife did not match the Applicant's shoe print. Counsel testified his position at trial should have been that the blood on the knife found on the car was the victim's blood and the victim put the knife on the car.

Counsel also testified he did not consult a footprint expert and he could not say for certain he needed a footprint expert at trial. He testified further it would not have hurt his case to have a footprint expert available. He also testified he attempted to get the victim's shoes post-trial, but was unable to retrieve them.

Counsel testified he was responsible for the jury charges submitted at trial. He testified he did not object to the malice charge given to the jury. He testified further the malice charge in the Applicant's case was given pre-Belcher, but that in another case he argued that a pre-Belcher malice charge was improper. Lastly, counsel testified that he did not recall objecting to any portions of the State's closing argument. He testified that had the argument been objectionable, he would have instructed Ms. Runey to object.

The Applicant was present and testified that his attorneys were ineffective for failing to object to the malice instruction given the jury. He testified that he met with his attorneys five to ten times prior to trial, reviewed discovery, and discussed possible defenses with his attorneys.

#### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

RMPTT/16

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

This Court finds counsel has extensive experience in the practice of criminal law and has been practicing law for several years. This Court finds counsel met with the Applicant numerous times prior to trial and fully investigated the Applicant's case. This Court finds counsel filed Brady and Rule 5 motions on the Applicant's behalf and reviewed the received discovery with the Applicant. This Court finds counsel discussed with the Applicant the elements of the charges against him and what the State was required to prove. This Court finds counsel discussed the Applicant's version of the facts and possible defenses with the Applicant.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds that the Applicant failed to meet his burden of proving trial counsel should have objected to the malice jury charge given at trial. This Court finds the malice jury

Rm 17

charge given at trial was not objectionable at the time given. This Court also finds that the Supreme Court's ruling in Belcher v. State<sup>1</sup>, had no effect on the validity of the Applicant's conviction. In Belcher, the South Carolina Supreme Court held that "the 'use of a deadly weapon' implied malice instruction had no place in a murder (or assault and battery with intent to kill) prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing." Id. at 610, 685 S.E.2d at 809. The Court held further that "the permissive inference charge concerning the use of a deadly weapon remains a correct statement under the law where the only issue presented to the jury is whether the defendant has committed murder." Id. at 612, 685 S.E.2d at 810. The Court addressed the retroactivity of its ruling by concluding that the ruling was effective in "all cases which are pending on direct review or not yet final where the issue is preserved." Id. The Court held further that "our ruling, however, will not apply to convictions challenged on post-conviction relief." Id.

Belcher was decided on October 12, 2009, several months after the Applicant's trial. In this case, Belcher was not retroactive because the Applicant's case was not pending on direct review where the issue was preserved when the case was decided. Also, Belcher specifically prohibits the Applicant from asserting this claim in a post-conviction relief action for cases decided pre-Belcher. Therefore, this Court finds the Applicant has failed to carry his burden of proving that counsel provided ineffective assistance of counsel by failing to object to the malice charge given at trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have called Linda Watson as a witness and moved for a mistrial when she could not be found. This Court finds counsel was not deficient when they were unable to procure Linda Watson's presence at trial. Counsel's failure to ensure the presence of a witness at trial does not constitute

<sup>1</sup> 385 S.C. 597, 685 S.E.2d 802 (2009).

Rm 07/18

deficient performance nor does it prejudice the defendant when the witness' testimony would have been cumulative. Cherry v. State, 300 S.C. 115, 118-19, 386 S.E.2d 624, 625-26 (1989).

In this case, counsel gave credible testimony they subpoenaed Ms. Watson and had an investigator speak with her prior to trial. Counsel also testified that when Ms. Watson did not show up for the Applicant's trial, they sent a deputy to her home to bring her to court to no avail. This Court finds counsel did all they could to procure Ms. Watson's presence at trial.

Further, the record reflects that Ms. Watson's testimony was cumulative to the testimony given by the Applicant at trial. At trial, the Applicant testified: "I went to Linda's house because I didn't want to go to my grandmother's house" and "[s]he saw blood on the knife and she told me to leave her house. I left." (T:264-265). During the PCR hearing, evidence was presented by the Applicant that Ms. Watson would testify that on the evening in question the Applicant came to her home and walked in holding a silver colored pocket knife in his hand with blood on the tip. (Applicant's Exhibit 4). This Court finds that the testimony to have been given by Ms. Watson at trial was cumulative to that given by the Applicant at trial and the Applicant was not prejudiced by counsel's inability to procure Watson's presence at trial. This Court further finds counsel was not ineffective for failing to move for a mistrial on the basis of the missing witness because the Applicant has failed to show that the motion would not have been futile.

This Court finds the Applicant failed to meet his burden of proving trial counsel was ineffective for failing to investigate the victim's shoe prints. While counsel testified at the evidentiary hearing they should have investigated further the footprint impressions prior to trial, both testified they were unaware the footprint impressions would be an issue until it was raised through a line of questioning elicited by the State during the Applicant's trial. Both also testified

Rm 11/9



they were able to prepare the Applicant's self-defense claim without the footprint impression evidence.

In Strickland v. Washington, the United States Supreme Court cautioned courts against weighing counsel's performance in light of "the distorting effects of hindsight". 466 U.S. 668, 689, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984). The Court stated that while "the Sixth Amendment imposes on counsel a duty to investigate", "counsel's investigatory decisions must be assessed in light of the information known at the time of the decisions, not in hindsight." Id. at 680, 104 S. Ct. at 2060-61, 80 L. Ed. 2d 674. The Court opined further that "[a]fter an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome." Id. at 689, 104 S. Ct. at 2065, 80 L. Ed. 2d 674. This Court finds that in light of the evidence counsel anticipated would be presented by the State during to trial, counsel was able to adequately prepare a defense and proceed to trial on the basis on the Applicant's self-defense claim without further consideration of the footprint impressions.

This Court also finds counsel was not ineffective for failing to investigate the possibility that the victim's shoes matched the footprint impression taken at the scene. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006). Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. Wiggins v. Smith, 539 U.S. 510, 521-22, 123 S. Ct. 2527, 2535, 156 L. Ed. 2d 471 (2003).

Rm-275/110

Counsel gave credible testimony that she was aware prior to trial that the applicant's shoeprint did not match the footprint impression taken from the scene. Further investigation into whether the footprint impression at the scene matched the shoeprint of the victim was not necessary as the record and the Applicant's testimony at trial reflects that the victim and the defendant were the only persons present during the incident. It is cognizable that during counsels' investigation of the Applicant's footprint impressions, counsel logically deduced that if the prints were not that of the Applicant they were the victim's footprint which would not warrant any further investigation. This Court finds that the Applicant has presented no evidence showing what would have resulted had counsel investigated whether the victim's shoeprint matched the footprint impressions taken at the scene. This Court finds counsel made a reasonably independent investigation of the facts surrounding the Applicant's case prior to trial and fully investigated all evidence that would assist with the presentation of a self-defense claim at trial. Therefore, this Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to investigate the possibility that the footprint impressions found at the scene belonged to the victim.

This Court further finds counsel was not ineffective for failing to hire a footprint impression expert for trial. The South Carolina Supreme Court has repeatedly held "a PCR applicant *must produce the testimony* of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis in original). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. Counsel gave credible testimony that while a footprint impression expert could have been helpful

Rm 07/11