

VOLUME TWO OF TWO
RECEIVED

DEC 20 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Lee County

R. Ferrell Cothran, Jr., Circuit Court Judge

EFRAIN THOMAS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000591

A P P E N D I X

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

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

DANIEL GOURLEY
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (APRIL 4 – 6, 2006)	1
COURT OF APPEALS' OPINION NO. 2009-UP-059 (FILED JANUARY 22, 2009)	742
APPLICATION FOR POST-CONVICTION RELIEF	743
RETURN	750
POST-CONVICTION RELIEF HEARING TRANSCRIPT (DECEMBER 12, 2012)	755
PLAINTIFF'S EXHIBIT #1	832
PLAINTIFF'S EXHIBIT #5	833
ORDER OF DISMISSAL	837
INDICTMENTS	848

1 A YES, SIR. LENNY GREEN AND KEITH HANNABEL.

2 Q AND WHO WAS IN THE MIDDLE?

3 A EUNICE AND TROY.

4 Q AND WERE YOU IN THE REAR?

5 A YES, SIR.

6 Q AND WHEN YOU ALL WERE DOING THAT, DID YOU STOP?

7 A YES.

8 Q WHY DID YOU STOP?

9 A I WAS TAKING MY SNEAKERS AND MY PANTS, I WAS WIPING

10 THE DUST OFF OF MY SNEAKERS.

11 Q WHAT DID YOU NOTICE AS YOU WERE BENT OVER FIXING,

12 TYING YOUR SHOES OR FIXING YOUR PANTS?

13 A THE FIRST THING I NOTICED, TROY HAD HIS ARM AROUND

14 EUNICE AND THEY WERE WALKING. HE WAS TALKING TO HIM. AND

15 HE SNATCHED THE HAT OFF FROM HIS HEAD.

16 Q DID THEY DO ANYTHING AFTER THAT, DID THEY TUSSLE?

17 A YES.

18 Q DID YOU THINK ANYTHING OF THAT AT FIRST?

19 A I THOUGHT THEY WAS PLAYING.

20 Q DID YOU CONTINUE GOING ABOUT DOING WHAT YOU WERE

21 DOING? WHAT HAPPENED WHEN YOU LOOKED BACK UP?

22 A THEY WERE FIST FIGHTING.

23 Q DID IT APPEAR TO BE A SERIOUS FIGHT AT THAT POINT?

24 A YES, SIR.

25 Q WHAT DID YOU DO?

1 A I STARTING RUNNING TOWARD THEM. I RAN.

2 Q YOU RAN TO THEM?

3 A YES.

4 Q WHAT WAS THE SITUATION WHEN YOU ARRIVED AT WHERE THEY
5 WERE TOGETHER?

6 A THEY WERE STILL FIGHTING FOR A MINUTE. AND AT THAT
7 POINT AND TIME, TROY STARTED CHOKING EUNICE.

8 Q HE WAS CHOKING HIM?

9 A YES.

10 Q DID YOU TRY AND GET HIM TO STOP?

11 A YES, SIR.

12 Q WHAT DID YOU DO?

13 A I TRIED TO GET IN BETWEEN THEM. I TOLD TROY, "THE
14 FIGHT IS OVER, YOU WON."

15 Q WHAT WAS TROY'S RESPONSE?

16 A HE TOLD ME "NO, I AM GOING TO KILL THIS NIGGER."

17 Q THAT'S WHAT HE TOLD YOU?

18 A YES, SIR.

19 Q DID YOU AT ANY TIME CALL OUT FOR HELP OF ANYONE ELSE?

20 A YES, SIR.

21 Q DID YOU GET ANY RESPONSE?

22 A NO, SIR.

23 Q AS YOU WERE TRYING TO BREAK THIS UP, WHAT HAPPENED?

24 A I HEARD A SHOT, AND I JUMPED BACK TO SEE IF I WAS HIT
25 AND I WASN'T. AND SECONDS LATER, I HEARD ANOTHER SHOT.

1 Q NOW HAD YOU KNOWN ANYTHING ABOUT ANYBODY HAVING A GUN
2 BEFORE YOU WENT TO BREAK UP THIS FIGHT?

3 A NO, SIR.

4 Q WAS YOUR FIRST NOTICE OF HIM WHEN YOU HEARD A SHOT?

5 A EXCUSE ME?

6 Q WAS YOUR FIRST NOTICE OF THE GUN WHEN YOU HEARD A
7 SHOT?

8 A YES, SIR.

9 Q DID YOU KNOW WHO THE SHOT CAME FROM THE MOMENT YOU
10 HEARD IT, OR DID YOU HAVE TO LOOK AND SEE WHO IT CAME
11 FROM?

12 A I HAD TO LOOK AND SEE.

13 Q WERE YOU ABLE TO DETERMINE AFTER YOU LOOKED, WHO HAD
14 FIRED THE SHOT?

15 A YES, SIR.

16 Q DID YOU KNOW WHO THE SHOT CAME FROM THE MOMENT YOU
17 HEARD IT, OR DID YOU HAVE TO LOOK AND SEE WHO IT CAME
18 FROM?

19 A I HAD TO LOOK AND SEE.

20 Q WERE YOU ABLE TO DETERMINE AFTER YOU LOOKED, WHO HAD
21 FIRED THE SHOT?

22 A YES, SIR.

23 Q AND WHO WAS IT?

24 A EUNICE.

25 Q NOW EVEN AFTER THE SECOND SHOT, DID MR. ROUSE GO

1 DOWN?

2 A NO; SIR.

3 Q WHAT HAPPENED? WHAT WAS GOING ON EVEN AFTER THE
4 SECOND SHOT?

5 A AFTER THE SECOND SHOT, TROY WAS STILL HANGING ON
6 EUNICE'S NECK.

7 Q DID HE SHOW ANY SIGNS OF LOOSENING OR WEAKENING?

8 A NO, SIR.

9 Q AND LET ME ASK YOU THIS, WHEN YOU HAD ENCOUNTERED
10 TROY EARLIER IN THE EVENING, WAS HE INTOXICATED?

11 A YES, SIR.

12 Q HAD HE BEEN DRINKING WITH YOU ALL, OR WAS HE DRUNK
13 WHEN HE GOT TO WHERE YOU ALL WERE?

14 A HE WAS VERY INTOXICATED WHEN I CAME TO THE FRONT YARD
15 OF CHAD'S HOUSE.

16 Q CHAD'S HOUSE?

17 A YES, SIR.

18 Q AFTER HE DIDN'T GO DOWN AFTER THE SHOTS HAD BEEN
19 FIRED, DID YOU HAVE ANY IDEA AS TO WHAT OTHER THAN HAVING
20 HEARD THE SHOTS, DID YOU KNOW ANYTHING MORE ABOUT WHETHER
21 HE HAD BEEN HIT OR NOT, OR WHAT HAD HAPPENED?

22 A I DIDN'T KNOW.

23 Q WHAT DECISIONS DID YOU MAKE AT THAT TIME?

24 A I SHOT HIM. I CAME TO THE CONCLUSION I HAD TO SHOOT
25 HIM. I SHOT HIM.

1 Q DID YOU DO THAT OUT OF FEAR FOR YOURSELF OR FEAR FOR
2 SOMEBODY ELSE?

3 MR. SAVERANCE: OBJECTION, YOUR HONOR, LEADING---

4 THE COURT: OBJECTION SUSTAINED.

5 A I DID IT OUT OF FEAR---

6 THE COURT: I SUSTAINED THE OBJECTION. ASK ANOTHER
7 QUESTION.

8 Q WHY DID TO DO IT?

9 A BECAUSE HE WAS STILL CHOKING EUNICE AFTER HE WAS
10 SHOT.

11 Q DID YOU FEAR FOR EUNICE?

12 A YES, SIR.

13 Q DID THIS MAN SHOW ANY SIGNS OF WEAKENING OR STOPPING
14 EVEN AFTER THE FIRST SHOTS WERE FIRED?

15 A NO, SIR.

16 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT TO
17 LEADING.

18 THE COURT: OBJECTION IS OVERRULED.

19 Q YOU CAN ANSWER THE QUESTION.

20 A NO, SIR.

21 Q HOW LARGE A MAN WAS MR. ROUSE? WAS HE BIGGER THAN
22 YOU?

23 A YES, SIR.

24 Q WAS HE BIGGER THAN EUNICE?

25 A YES, SIR.

1 Q WAS HE ALREADY WINNING WHEN YOU ARRIVED?

2 A EXCUSE ME?

3 Q THE FIGHT. WAS HE ALREADY -- DID HE HAVE EUNICE WHEN
4 YOU GOT TO WHERE THE SCENE OF THE FIGHT WAS?

5 A IT WAS ME HIDING.

6 Q WAS HE WINNING?

7 A OH, YES, SIR.

8 Q HAD HE DRAGGED EUNICE AROUND THE NECK EVEN AFTER HE
9 WAS WINNING THE FIGHT?

10 A YES, SIR.

11 Q NOW YOU SAID YOU KNEW MR. ROUSE AND HAD NEVER HAD A
12 PROBLEM WITH HIM. WERE YOU AWARE OF ANYBODY ELSE HAVING A
13 PROBLEM WITH HIM?

14 A NOT ME HAVING A PROBLEM, NO. NO.

15 Q WERE YOU EVER AWARE OF HIM DOING VIOLENCE TO ANYONE
16 ELSE?

17 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT.

18 A YES, SIR.

19 THE COURT: YES, SIR. BASIS FOR THE OBJECTION?

20 MR. SAVERANCE: IT CALLS FOR -- LEADING. SECOND OF
21 ALL, IT IS SOMETHING THAT WAS ALLEGED BUT NOT PROVEN. I
22 JUST THINK IT IS PREJUDICIAL AND SHOULDN'T BE ALLOWED.

23 Q LET ME GO BACK TO MY QUESTION. WERE YOU AWARE OF HIM
24 EVER HAVING DONE VIOLENCE TO ANYONE ELSE?

25 A YES, SIR.

1 Q WHO WAS THAT?

2 A CORY.

3 Q WAS THAT INCIDENT WIDELY KNOWN IN YOUR COMMUNITY?

4 A YES, SIR.

5 Q AMONG YOUR CIRCLE OF FRIENDS?

6 A YES, SIR.

7 Q AND HAD IT BEEN FAIRLY RECENT TO WHEN THIS INCIDENT
8 HAPPENED?

9 A YES, SIR.

10 Q AND WHAT DID YOU UNDERSTAND HAPPENED TO MR. MCCLEM?

11 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT ON THE
12 GROUNDS OF HEARSAY.

13 THE COURT: OBJECTION IS SUSTAINED. COUNSEL
14 APPROACH.

15 (THEREUPON, THE ATTORNEYS APPROACH AND CONFER WITH
16 THE JUDGE.)

17 Q WERE YOU AWARE -- WHAT WAS YOUR UNDERSTANDING OF WHAT
18 MR. ROUSE HAD DONE TO MR. MCCLEM?

19 A I UNDERSTOOD THAT HE CUT CORY'S THROAT.

20 Q AND DID THAT UNDERSTANDING AND KNOWLEDGE OF WHAT HAD
21 HAPPENED, HAVE AN AFFECT TO CAUSE YOUR DECISION TO TAKE
22 THE ACTION THAT YOU DID?

23 A YES, SIR.

24 Q AND AGAIN, EFRAIN, FROM YOUR VANTAGE POINT FROM
25 HAVING WATCHED THIS FIGHT AS YOU HEARD IT COMING UP TO --

1 HAD YOU HAD ANY KNOWLEDGE OF THE GUN PLAY, OR WHAT WAS
2 GOING ON WITH ANY GUN BEFORE THAT FIRST SHOT WAS FIRED?

3 A NO, SIR.

4 Q BUT YOU KNEW THAT MR. ROUSE DIDN'T STOP AFTER THAT
5 FIRST SHOT WAS FIRED.

6 A YES, SIR.

7 Q OR THE NEXT SHOT?

8 A YES, SIR.

9 Q AND AFTER AGAIN, AFTER YOU SHOT, DO YOU REMEMBER
10 EXACTLY HOW MANY TIMES YOU SHOT?

11 A ABOUT FOUR.

12 Q NOW IS THAT EXACT? DID YOU COUNT THEM, OR COULD IT
13 HAVE BEEN MORE OR LESS?

14 A I REMEMBER FOUR.

15 Q WHAT HAPPENED AFTER YOU SHOT, DID HE GO DOWN AT THAT
16 POINT?

17 A NO, SIR.

18 Q DID HE STILL CONTINUE TO STRUGGLE WITH MR. MCCLEM?
19 (SIC.)

20 A YES, SIR.

21 Q BEFORE YOU TOOK THE ACTION THAT YOU DID, COULD
22 MR. MCCLEM (SIC) HAVE ESCAPED FROM ROUSE'S GRASP?

23 MR. SAVERANCE: OBJECTION, YOUR HONOR.

24 THE COURT: BASIS FOR THE OBJECTION?

25 MR. SAVERANCE: I THINK THAT WOULD CALL FOR SOME

1 SPECULATION ON THE WITNESS' PART.

2 THE COURT: THE OBJECTION IS OVERRULED.

3 Q DID IT APPEAR TO YOU THAT EUNICE COULD HAVE GOTTEN
4 AWAY FROM HIM WHEN YOU MADE YOUR DECISION?

5 A NO, SIR.

6 Q EFRAIN, AS ALL THIS WENT ON, HOW MUCH TIME DID YOU
7 HAVE TO DECIDE WHAT YOU HAD TO DO?

8 A SECONDS.

9 Q NOW WHAT HAPPENED AFTER THEY CONTINUED TO STRUGGLE
10 AFTER YOU HAD SHOT?

11 A OH, AFTER I SHOT HIM, HE LET GO OF EUNICE'S NECK BUT
12 HE GRABBED HIM IN HIS HAND THAT HAD THE GUN. AND THEY
13 TUSSLED OVER THE GUN.

14 Q DO YOU THINK ANOTHER SHOT WENT OFF AS THEY WERE
15 TUSSLING OVER THE GUN?

16 A YES, ANOTHER SHOT WENT OFF.

17 Q DID HE STOP AT THAT POINT?

18 A YES.

19 Q WHAT DID YOU DO?

20 A I RAN.

21 Q WHERE DID YOU RUN?

22 A I RAN BACK TO CHAD JAMES' HOUSE.

23 Q WERE YOU ALONE IN RUNNING THERE?

24 A YES, SIR.

25 Q YOU JUST DIDN'T GO TO THE SAME PLACE YOU WENT IF HE

1 WENT SOMEWHERE?

2 A NO, SIR.

3 Q AND WERE YOU SCARED WHEN YOU GOT TO CHAD'S?

4 A YES, SIR.

5 Q NOW DID YOU TELL COURTNEY GENERALLY WHAT HAD HAPPENED
6 WHEN YOU GOT TO CHAD'S? OR AT SOME POINT AFTER YOU GET TO
7 CHAD'S?

8 A YES.

9 Q SHE WAS YOUR GIRLFRIEND OR IS YOUR GIRLFRIEND?

10 A YES, SIR.

11 Q DO YOU REMEMBER EXACTLY -- YOU DIDN'T GET HER A
12 NOTARIZED STATEMENT OR ANYTHING? DO YOU REMEMBER
13 GENERALLY TELLING HER WHAT HAPPENED THAT NIGHT?

14 A YES, SIR.

15 Q NOW DID YOU GO ON TO CAMDEN WITH THEM WHEN THEY WENT
16 TO CAMDEN?

17 A YES.

18 Q HOW MANY DAYS OR WHAT PERIOD OF TIME DID YOU SPEND IN
19 CAMDEN BEFORE COMING BACK TO BISHOPVILLE?

20 A THREE.

21 Q NOW WHEN YOU CAME BACK, DID YOU UNDERSTAND THAT THE
22 POLICE WERE LOOKING FOR YOU?

23 A YES, SIR.

24 Q DID YOU VOLUNTARILY GO TALK TO CAPTAIN BURKE?

25 A YES.

1 Q DID YOU KNOW HIS OFFICE AT THE POLICE STATION
2 HERE IN BISHOP?

3 A YES.

4 Q NOW DID YOU TELL THE TRUTH WHEN YOU TALKED TO
5 HIM?

6 A NO.

7 Q WHY NOT?

8 A I WAS AFRAID.

9 Q AFRAID OF WHAT?

10 A OF GETTING KILLED.

11 Q SO YOU HAD SOMEONE THAT HAD BEEN IN CAMDEN AND
12 DIDN'T KNOW ANYTHING ABOUT IT. IS THAT PRETTY MUCH IT?

13 A YES, SIR.

14 Q HE LET YOU GO AT THAT POINT.

15 A YES, SIR.

16 Q YOU WENT HOME AFTER YOU LEFT HIS OFFICE THAT DAY,
17 DID YOU EVER LEAVE HOPVILLE AND DECIDE TO GO BACK TO
18 NEW YORK OR GO ANYWHERE ELSE?

19 A NO, SIR.

20 Q SO YOU DIDN'T SEE?

21 A NO, SIR.

22 Q THE POLICE EVENTUALLY CAME AND ARRESTED YOU, DIDN'T
23 THEY?

24 A YES.

25 Q WAS THAT ON THE 29TH OF APRIL?

1 A YES.

2 Q DID THEY COME TO GRANDER'S HOUSE, YOUR GREAT
3 GRANDMOTHER'S HOUSE?

4 A YES.

5 Q WERE YOU ALL THAT USED SEE THEM WHEN THEY
6 CAME?

7 A NO.

8 Q DO YOU TO GO WITH T

9 A YES.

10 Q NOW, EFRAIN, YOU GA END UP GIVING A CONFESSION
11 TO INVESTIGATOR THOMPSON

12 A YES, SIR.

13 Q AND YOU HEARD US GO THROGH -- YOU HEARD HIM TALK
14 ABOUT THE STATEMENT YESTER. NOW YOU ACTUALLY TOLD HIM
15 THAT THERE WERE MORE -- T THERE WAS ANOTHER PERSON
16 THERE, DIDN'T YOU?

17 A YES, SIR.

18 Q IN FACT YOU DESCRIBED FIGHT IN YOUR STATEMENT,
19 DIDN'T YOU?

20 A YES.

21 Q BUT YOU DIDN'T NAME EUCE, DID YOU?

22 A NO.

23 Q AND IN FACT, IN YOUR STATEMENT TO HIM, DID YOU TELL
24 HIM THAT MR. ROUSE HAD ATTAGED YOU OR COME AT YOU?

25 A YES.

1 Q WAS THAT TRUE?

2 A NO.

3 Q WHY DIDN'T YOU TELL HIM WHAT HAPPENED AS REGARDING
4 EUNICE?

5 A I JUST DIDN'T WANT TO GET NOBODY ELSE IN TROUBLE.

6 Q DID YOU JUST WANT TO TAKE RESPONSIBILITY FOR YOUR
7 PART IN THIS?

8 A YES.

9 Q DID YOU TELL HIM WHAT YOU HAD DONE?

10 A YES.

11 Q SO DID YOU TAKE YOUR ACTION OUT OF FEAR FOR YOURSELF
12 OR FOR EUNICE?

13 A FOR EUNICE.

14 Q NOW EVEN IN TAKING THE ACTION THAT YOU TOOK, DID YOU
15 INTEND TO KILL TROY ROUSE?

16 A NO.

17 Q WHAT WERE YOU TRYING TO DO?

18 A I JUST WANTED HIM TO GET OFF OF EUNICE.

19 Q DID HE SHOW ANY SIGNS OF LEAVING EUNICE OR REMOVING
20 HIS HANDS FROM HIS THROAT IF YOU HADN'T DONE SO?

21 A NO.

22 Q AND AGAIN, DID YOUR KNOWLEDGE OF WHAT HE HAD DONE TO
23 SOMEBODY ELSE IN THE PAST 2 MONTHS EARLIER, HAVE AN AFFECT
24 ON YOUR DECISION?

25 A YES, IT DID.

1 Q DID THE FACT THAT HE WAS INTOXICATED HAVE AN AFFECT
2 ON YOUR DECISION?

3 A YES, IT DID.

4 Q EFRAIN, KNOWING WHAT HAPPENED, HOW DO YOU FEEL ABOUT
5 WHAT HAPPENED?

6 A I HATE THAT TROY WAS SHOT, MAN.

7 Q DID YOU FEEL LIKE YOU HAD A CHOICE THOUGH IN WHAT YOU
8 HAD TO DO?

9 A NO.

10 Q AND AGAIN, YOU APPEARED TO MAKE THE DECISION YOU
11 MADE. HOW LONG DID YOU HAVE TO REFLECT AND MAKE SOME
12 DECISIONS OF WHAT YOU WERE GOING TO DO?

13 A SECONDS.

14 Q CAN YOU THINK OF ANYTHING THAT YOU COULD HAVE DONE
15 DIFFERENTLY THAT WOULD HAVE SPARED MR. ROUSE BUT NOT SAVE
16 MR. MCCALL?

17 A NO.

18 MR. WHEELER: THANK YOU.

19 THE COURT: MR. SAVERANCE.

20 MR. SAVERANCE: MAY IT PLEASE THE COURT, YOUR HONOR.

21 THE COURT: YES, SIR.

22 CROSS EXAMINATION BY MR. SAVERANCE:

23 Q MR. THOMAS, SO YOU ARE TELLING THIS JURY UNDER OATH
24 THAT YOU LIED TO CAPTAIN BURKE IN THE INITIAL INTERVIEW
25 YOU HAD WITH HIM?

1 A YES.

2 Q YOU TOLD HIM YOU WERE IN CAMDEN. YOU HAD NOTHING TO
3 DO WITH THE MURDER OF TROY ROUSE, DIDN'T YOU?

4 A YES.

5 Q YOU DIDN'T MENTION THAT YOU WERE ACTING IN SELF
6 DEFENSE AT THAT TIME, DID YOU?

7 A I WAS ACTING IN SELF DEFENSE.

8 Q MY QUESTION IS, YOU DIDN'T TELL CAPTAIN BURKE YOU DID
9 THIS IN SELF DEFENSE, DID YOU?

10 A NO, SIR.

11 Q YOU DIDN'T TELL CAPTAIN BURKE AT THAT TIME THAT YOU
12 SHOT AND KILLED TROY ROUSE BECAUSE EUNICE MCCALL WAS ABOUT
13 TO BE KILLED BY HIM DID YOU?

14 A NO, SIR.

15 Q NONE OF THAT WAS MENTIONED?

16 A NONE OF THAT WAS MENTIONED.

17 Q THE ONLY THING YOU SAID WAS, I WASN'T INVOLVED IN THE
18 MURDER. I WAS IN CAMDEN WHEN IT HAPPENED.

19 A THAT'S WHAT I SAID.

20 Q AND THAT WAS A LIE.

21 A YES, IT WAS.

22 Q AND I BELIEVE YOU TESTIFIED JUST A MINUTE AGO THAT
23 YOU LIED IN YOUR SECOND INTERVIEW WITH THE POLICE, IS THAT
24 CORRECT?

25 A YES, I DID.

1 Q AND THAT WAS WITH INVESTIGATOR THOMPSON?

2 A YES.

3 Q I BELIEVE YOU SAID IN THAT INTERVIEW THAT TROY ROUSE
4 CAME AT YOU AND ATTACKED YOU. AND THAT'S WHY YOU KILLED
5 HIM, CORRECT?

6 A YES.

7 Q NOW YOU'RE SAYING THAT'S NOT WHY YOU KILLED HIM,
8 CORRECT?

9 A YES.

10 Q IN THE INTERVIEW WITH INVESTIGATOR THOMPSON, AND I'LL
11 TELL YOU WHAT, LET'S GET THE DATE ON THAT. APRIL 29TH
12 2005, DOES THAT SOUND CORRECT?

13 A YES.

14 Q AND IN THAT INTERVIEW YOU DIDN'T SAY, OH, I WAS
15 COMING TO MY FRIEND EUNICE MCCALL'S DEFENSE WHEN I SHOT
16 TROY ROUSE, DIDN'T YOU?

17 A NO, I DIDN'T SAY THAT.

18 Q YOU DIDN'T SAY, DEFENSE OF OTHERS? I DID THIS
19 BECAUSE I WAS DEFENDING SOMEBODY ELSE?

20 A NO, I DIDN'T SAY THAT.

21 Q ISN'T IT TRUE THAT THE REASON YOU ARE HERE TODAY NOW,
22 AFTER LYING TWICE, SAYING IT WASN'T SELF DEFENSE, IT WAS
23 DEFENSE OF EUNICE MCCALL---

24 MR. WHEELER: OBJECTION, YOUR HONOR. COMPOUND
25 QUESTION.

1 THE COURT: LET ME HEAR THE QUESTION.

2 MR. SAVERANCE: I WILL REPHRASE IT, YOUR HONOR.

3 THE COURT: 1ALL RIGHT.

4 Q ISN'T IT TRUE THAT AFTER YOU GAVE THE FIRST TWO
5 STATEMENTS, YOU FIGURED OUT SELF DEFENSE WAS NOT GOING TO
6 WORK IN THIS CASE? ISN'T THAT TRUE?

7 A EXCUSE ME?

8 Q AFTER YOU GAVE THE TWO STATEMENTS ONE TO CAPTAIN
9 BURKE SAYING YOU WEREN'T INVOLVED, AND ONE TO CAPTAIN,
10 INVESTIGATOR THOMPSON THAT IT WAS SELF DEFENSE, AT SOME
11 POINT AFTER THAT YOU REALIZED SELF DEFENSE WAS NOT GOING
12 TO WORK IN THIS CASE, DIDN'T YOU?

13 A YES, SIR.

14 Q YOU KNEW THAT YOUR STATEMENT SAYING THAT YOU SHOT
15 TROY ROUSE IN THE BACK THREE TIMES, WAS NOT GOING TO BE
16 SELF DEFENSE, DIDN'T YOU?

17 A YES.

18 Q THAT'S WHY YOU CAME UP WITH THE DEFENSE OF EUNICE
19 MCCALL TODAY, CORRECT?

20 A NO.

21 Q ARE YOU SURE?

22 A POSITIVE.

23 Q NOW YOU WERE UNTRUTHFUL BEFORE. ARE YOUR SURE YOU
24 ARE TRUTHFUL TODAY?

25 A YES.

1 Q NOW YOU SAID YOU WERE CONVICTED OF POSSESSION OF A
2 WEAPON. WAS THAT BACK IN 2003?

3 A YES.

4 Q AND YOU GOT A ONE YEAR SENTENCE ON THAT?

5 A YEAH.

6 MR. SAVERANCE: YOUR HONOR, I WOULD LIKE TO GET THIS
7 MARKED FOR IDENTIFICATION BY THE STATE. IT IS MR. THOMAS'
8 STATEMENT TO INVESTIGATOR THOMPSON ON 4/29/05.

9 (STATEMENT MARKED STATE'S EXHIBIT NO. 43 FOR ID.)

10 Q MR. THOMAS, I WANT YOU TO LOOK THROUGH THERE AND READ
11 IT. AND WHEN YOU FINISH, I AM GOING TO ASK YOU SOME
12 QUESTIONS. I JUST WANT YOU TO MAKE SURE THAT THAT IS WHAT
13 YOU TOLD INVESTIGATOR THOMPSON.

14 A READ IT OUT LOUD?

15 Q NO, NO. YOU CAN JUST LOOK AT IT. JUST KIND OF SKIM
16 THROUGH AND MAKE SURE THAT IS CORRECT. MR. THOMAS, JUST
17 LET ME KNOW WHEN YOU FINISH REVIEWING THAT, OKAY?

18 A I AM FINISHED.

19 Q LET ME GET YOU TO SPEAK UP.

20 A YES, SIR.

21 Q IS THAT THE STATEMENT YOU GAVE INVESTIGATOR
22 THOMPSON?

23 A YES, IT IS.

24 Q IS THAT A TRUE REPRESENTATION OF WHAT YOU TOLD
25 INVESTIGATOR THOMPSON ON 4/29/05?

1 A YES, SIR.

2 MR. SAVERANCE: YOUR HONOR, I WOULD MOVE TO HAVE THIS
3 ADMITTED INTO EVIDENCE.

4 THE COURT: WHAT SAYS THE DEFENSE?

5 MR. WHEELER: I DON'T HAVE ANY OBJECTION.

6 MR. WATTS: YOUR HONOR, OBJECTION AS FOR RECORD, AS
7 WE DESCRIBED EARLIER, I THINK IT WOULD BE, THE STATEMENT
8 SHOULD BE ADMITTED FOR LIMITED PURPOSES AS IT WAS BEFORE.

9 THE COURT: MR. JOHNSON OF.

10 MR. JOHNSON: YOUR HONOR, I WOULD JOIN IN THE SAME
11 OBJECTION.

12 THE COURT: THE STATEMENT IS ADMITTED. LADIES AND
13 GENTLEMEN, THIS STATEMENT AS TO, THIS STATEMENT IS
14 ADMITTED ONLY AS IT RELATES TO THE GUILT OR INNOCENCE OF
15 THIS DEFENDANT.

16 MR. SAVERANCE: MAY I APPROACH AND GET THE STATEMENT?

17 THE COURT: YES, SIR.

18 (STATEMENT IS MARKED STATE'S EXHIBIT NO. 43 INTO
19 EVIDENCE.)

20 Q STATE'S 43. AND THAT FIRST PAGE IS WHERE YOU SIGNED
21 OFF AGREEING TO GIVE A STATEMENT TO INVESTIGATOR THOMPSON?

22 A YES, SIR.

23 Q IS THAT INVESTIGATOR THOMPSON SITTING THERE?

24 A YES, SIR.

25 Q WHAT I WANT YOU TO DO, AND YOUR SIGNATURE IS ON THIS

1 PAGE, CORRECT?

2 A YES, SIR.

3 Q AND YOU UNDERSTOOD WHAT YOU WERE DOING?

4 A YES, SIR.

5 Q YOU VOLUNTARILY GAVE THIS STATEMENT?

6 A YES, SIR.

7 Q YOU WEREN'T UNDER THE INFLUENCE OF ANYTHING WHEN YOU
8 DID THIS?

9 A NO, SIR.

10 Q HOW ABOUT FLIP OVER TO THE NEXT PAGE FOR ME PLEASE.
11 NOW INVESTIGATOR THOMPSON ASKED YOU IF YOU WERE INVOLVED
12 WITH THE HOMICIDE OF TROY ROUSE ON APRIL 7TH 2005, AND
13 WHAT DID YOU SAY?

14 A I SAID YES.

15 Q YOU ADMITTED TO BEING INVOLVED IN THE HOMICIDE OF
16 TROY ROUSE?

17 A YES.

18 Q AND THEN HE ASKED YOU WHAT OCCURRED ON THE EVENING IN
19 QUESTION. YOU SAID ME, TROY AND TWO OTHER PEOPLE WERE ON
20 THE WAY TO PLAY POOL. WHO WERE THOSE TWO OTHER PEOPLE?

21 A I WAS SAYING EUNICE AND LITTLE CHARLES.

22 Q YOU'RE SURE THOSE ARE THE ONLY PEOPLE THAT WERE WITH
23 YOU?

24 A THE ONLY TWO PEOPLE WITH ME.

25 Q AND THEN INVESTIGATOR THOMPSON ASKED YOU IF WHEN YOU

1 SAY SCUFFLE DO YOU MEAN FIGHT. AND WHAT DID YOU SAY?

2 A I SAID NO, THEY WERE SO CLOSE TO EACH OTHER.

3 SWINGING EACH OTHER AROUND.

4 Q SO WHEN HE SAID DOES SCUFFLE MEAN FIGHTING YOU SAID

5 NO?

6 A YES.

7 Q YOU SAY WE TRIED TO BREAK IT UP. WHO IS WE?

8 A IT WASN'T WE.

9 Q ARE YOU SURE?

10 A YES.

11 Q SO THAT'S ANOTHER LIE?

12 A YES, IT IS.

13 Q ARE YOU SURE CHAD JAMES WASN'T AT THE SCENE WITH YOU

14 ALL?

15 A YES.

16 Q ISN'T IT TRUE THAT YOU AND CHAD JAMES WERE TRYING TO

17 BREAK THIS FIGHT UP?

18 A NO, IT'S NOT.

19 Q ARE YOU AND CHAD FRIENDS?

20 A YES.

21 Q AND YOU WOULD LIKE TO HELP YOUR FRIENDS, DON'T YOU?

22 A YES.

23 Q AND YOU WANT TO HELP CHAD, DON'T YOU?

24 A WHAT DO YOU MEAN?

25 Q HE'S YOUR FRIEND. YOU WOULD LIKE TO HELP YOUR

1 FRIENDS, DON'T YOU?

2 A YES.

3 Q AND THAT'S WHY YOU DON'T WANT TO NAME HIM, DON'T YOU?

4 MR. JOHNSON: YOUR HONOR, I OBJECT. THIS IS OUTSIDE
5 THE SCOPE OF DIRECT.

6 THE COURT: THE OBJECTION IS SUSTAINED. THE JURY IS
7 TO DISREGARD THE QUESTION AND THE ANSWER.

8 Q YOU SAID YOU HEARD THE FIRST SHOT. WHERE WERE YOU?
9 AND I AM SORRY, YOU DON'T HAVE TO LOOK AT THE ANSWER ON
10 THIS PART. WHEN YOU HEARD THE FIRST SHOT, WHERE WERE YOU?

11 A I WAS TRYING TO GET IN BETWEEN TROY AND EUNICE.

12 MR. SAVERANCE: CAN I HAVE THE WITNESS STEP DOWN,
13 YOUR HONOR?

14 THE COURT: YES, STEP DOWN.

15 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
16 STAND.)

17 Q STAND TO THE SIDE. AND YOUR HONOR, THIS IS STATE'S 1
18 THAT HE IS POINTING TO. NOW TELL ME WHERE YOU, FIRST OF
19 ALL, DO YOU KNOW WHAT THIS IS? THIS REPRESENTS? IS THAT
20 A BLUE BUILDING?

21 A YES.

22 Q AND THAT'S WILSON STREET, IS THAT CORRECT?

23 A YES.

24 Q AND THIS IS RAY STREET?

25 A YES.

1 Q SO WHERE, JUST SHOW ME WHERE YOU AND EUNICE MCCALL
2 AND TROY WERE COMING.

3 A WHICH DIRECTION WE WERE COMING?

4 Q YEAH, BEFORE THE SHOTS.

5 A BEFORE WE WERE COMING IN THIS WAY RIGHT HERE.

6 Q I MEAN DID YOU ALL DO THIS, OR DID YOU CUT IN FRONT
7 OF THE STORE?

8 A LIKE THIS. (WITNESS INDICATING.)

9 Q WELL YOU ALL WERE WALKING, WEREN'T YOU?

10 A YES.

11 Q AND SO WHY WERE YOU WALKING IN THE STREET AND NOT
12 CUTTING THROUGH THE GRASS? AND THEN WHICH WAY DID YOU ALL
13 GO WHEN YOU GOT TO THE END OF THE STREET?

14 A THIS WAY.

15 Q I NEED YOU TO SPEAK UP WHEN YOU ANSWER, OKAY.

16 A LIKE THIS IS IN FRONT OF THE STORE. THIS AREA RIGHT
17 HERE.

18 Q AND TIFFANY HILL PASSED YOU ALL RIGHT BEFORE THAT,
19 CORRECT?

20 A I AM NOT SURE.

21 Q YOU'RE NOT SURE?

22 A NO.

23 Q DID YOU SEE HER?

24 A NO.

25 Q YOU CAN'T SAY SHE WASN'T THERE THOUGH.

1 A I CAN'T.

2 Q YOU CAN'T SAY SHE DIDN'T SEE YOU.

3 A I CAN'T.

4 Q TELL ME, I AM GOING TO TELL, TELL YOU WHAT THIS

5 SHOWS, AND YOU TELL ME THE ANSWER. THIS IS T, IS

6 REPRESENTING TROY AND THAT M IS REPRESENTING EUNICE MCCALL

7 BY A PRIOR WITNESS. AND I AM NOT, YOU JUST TELL ME WHERE

8 THEY WERE AT WHEN THE FIRST SHOT WENT DOWN.

9 A WHAT DO YOU MEAN WHERE WERE THEY AT?

10 Q WHERE WERE THEY LOCATED?

11 A ON THE STREET. THE AREA?

12 Q YEAH, IF YOU WOULD SHOW ME ON THERE ROUGHLY WHERE

13 THEY WERE AT.

14 A AROUND HERE. AROUND THIS AREA. THERE IS A STOP SIGN

15 RIGHT HERE. NOT TOO FAR FROM THE STOP SIGN ON RAY STREET.

16 Q YOU CAN GO BACK TO THE STAND.

17 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

18 Q HOW FAR IN DISTANCE WERE YOU FROM TROY AND EUNICE

19 WHEN THE FIRST SHOT WENT OFF?

20 A I WAS TRYING TO GET IN BETWEEN THEM.

21 Q OKAY. I MEAN WERE YOU CLOSER THAN WHERE I AM AT?

22 A I WAS CLOSE ON HIM.

23 Q RIGHT UP ON HIM?

24 A RIGHT UP ON HIM.

25 Q YOU SAID WHEN THE OTHER PERSON FINISHED SHOOTING.

1 WOULD THAT BE EUNICE MCCALL?

2 A YES.

3 Q AND YOU DIDN'T MENTION THAT TO CAPTAIN BURKE IN YOUR
4 FIRST INTERVIEW, CORRECT?

5 A NO, SIR.

6 Q SO THAT WASN'T TRUE?

7 A IT WASN'T TRUE.

8 Q HOW ABOUT PLEASE TURN OVER TO PAGE TWO. YOU SEE
9 WHERE IT SAYS WHEN HE CHARGED ME?

10 A YES, SIR.

11 Q COULD YOU PLEASE READ THAT ENTIRE PARAGRAPH?

12 A IT SAYS WHEN HE CHARGED ME, I RAN AROUND. AND WHEN I
13 RAN AROUND, I SHOT HIM THREE TIMES IN THE BACK. I SHOT
14 HIM THEN RAN.

15 Q YOU SHOT HIM THEN RAN.

16 A YES, SIR.

17 Q YOU DIDN'T STAY TO HELP HIM, DID YOU?

18 A EXCUSE ME?

19 Q YOU DIDN'T STAY TO HELP HIM AFTER YOU SHOT HIM, DID
20 YOU?

21 A YOU MEAN AFTER I SHOT TROY? DID I STAY?

22 Q UH-HUH. (AFFIRMATIVE.)

23 A YES, I DID.

24 Q WELL WHAT DO YOU MEAN WHEN YOU SAY YOU RAN?

25 A I SAID I RAN? THAT'S WHAT I SAID IN THE STATEMENT.

- 1 Q NOW YOU'RE SAYING YOU STAYED AT THE SCENE?
- 2 A YES, SIR.
- 3 Q DID YOU SEE THE POLICE SHOW UP?
- 4 A NO, SIR, I DIDN'T SEE THE POLICE SHOW UP.
- 5 Q SO YOU LEFT BEFORE THEY GOT THERE?
- 6 A YES, SIR.
- 7 Q AND YOU LEFT TROY ROUSE LYING IN THE STREET?
- 8 A YES, SIR.
- 9 Q TO DIE LIKE A DOG.
- 10 MR. JOHNSON: OBJECTION, YOUR HONOR.
- 11 MR. WHEELER: OBJECTION.
- 12 Q WHY DIDN'T YOU CALL ON YOUR CELL PHONE TO HELP TROY?
- 13 A EXCUSE ME?
- 14 Q WHY DIDN'T YOU CALL ON YOUR CELL PHONE TO GET HELP
- 15 FOR TROY?
- 16 A I DON'T OWN A CELL PHONE.
- 17 Q YOU DON'T HAVE ACCESS TO A CELL PHONE?
- 18 A NO, SIR.
- 19 Q WHY DIDN'T YOU CALL FOR HELP WHEN YOU GOT BACK TO
- 20 CHAD JAMES' HOUSE?
- 21 A I WAS SCARED, SIR.
- 22 Q SO YOU CHOSE NOT TO CALL AND TRY TO HELP THE PERSON
- 23 YOU SHOT AT LEAST THREE TIMES?
- 24 A YES, SIR.
- 25 Q DO YOU KNOW WHETHER OR NOT MR. ROUSE WAS DEAD WHEN

1 YOU RAN FROM THE SCENE?

2 A I WASN'T SURE.

3 Q DON'T YOU THINK IT WOULD HAVE BEEN GOOD FOR YOU TO
4 CALL AND GET EMS AND SOME AMBULANCES THERE TO HELP HIM?

5 A IT WOULD HAVE BEEN.

6 Q IN THIS STATEMENT THOUGH, YOU SAID HE CHARGED YOU.
7 HE RAN AROUND YOU, AND YOU SHOT HIM THREE TIMES IN BACK,
8 RIGHT?

9 A YES, I DID.

10 Q MR. THOMAS, ISN'T IT TRUE WHAT HAPPENED IS, YOU SAW
11 EUNICE SHOOT TROY? AND TROY CAME IN YOUR DIRECTION. YOU
12 MOVED OUT OF THE WAY, AND UNLOADED IN HIS BACK. ISN'T
13 THAT WHAT HAPPENED?

14 A NO, SIR.

15 Q ISN'T THAT WHAT MAKES SENSE WITH THAT STATEMENT,
16 THOUGH?

17 A IT'S A STATEMENT, YES.

18 Q BUT YOU'RE SAYING THIS IS A LIE.

19 A YES, SIR.

20 Q ANOTHER ONE?

21 A YES, SIR.

22 Q WHAT DID YOU SHOOT HIM WITH?

23 A A 22.

24 Q CALIBER?

25 A YES.

1 Q PISTOL?

2 A YES, PISTOL.

3 Q AND ARE YOU AWARE THAT THE BULLETS AND CASINGS WERE
4 CONSISTENT, FIVE OF THEM WITH A 22 CALIBER GUN, ARE YOU
5 AWARE OF THAT?

6 A YES.

7 Q SO YOU DON'T DENY THAT YOU FIRED SEVERAL SHOTS FROM A
8 22 CALIBER PISTOL IN TO TROY ROUSE, CORRECT?

9 A NO, I DON'T DENY IT.

10 Q SO IN THAT STATEMENT YOU'RE ASKED DID YOU FEEL YOUR
11 LIFE WAS IN JEOPARDY AND YOU SAY YES. YOU DIDN'T TELL
12 CAPTAIN BURKE YOUR LIFE WAS IN JEOPARDY BACK ON APRIL 11TH
13 2005?

14 A THAT'S CORRECT.

15 Q AND NOW YOU'RE TELLING US TODAY THAT IT WAS NOT SELF
16 DEFENSE, THAT YOUR LIFE WAS NOT IN JEOPARDY, CORRECT?

17 A CORRECT.

18 Q SO THAT'S ANOTHER LIE AND MISSTATEMENT IN HERE?

19 A YES, IT IS.

20 Q NOW YOU'RE SAYING SOMEBODY ELSE'S LIFE WAS IN
21 JEOPARDY?

22 A YES.

23 Q WHAT DID YOU DO WITH YOUR CLOTHES?

24 A WHAT DID I DO WITH THEM?

25 Q UH-HUH (AFFIRMATIVE.)

1 A I KEPT THEM ON.

2 Q DIDN'T YOU TELL INVESTIGATOR THOMPSON YOU THREW THEM
3 AWAY?

4 A YES, SIR.

5 Q WHY DID YOU DO THAT, WERE YOU SCARED OF WHAT SOMEBODY
6 WOULD FIND ON THEM?

7 A NO.

8 Q WHY WOULD YOU THROW THEM AWAY?

9 A THAT'S JUST WHAT I TOLD HIM. I DIDN'T THROW MY
10 CLOTHES AWAY.

11 Q SO THAT WAS ANOTHER LIE?

12 A YES.

13 Q YOU DIDN'T HAVE A BUNCH OF BLOOD OR ANYTHING ON THEM,
14 DID YOU?

15 A NO, SIR.

16 Q IN YOUR STATEMENT, YOU SAY TROY ROUSE WAS A GOOD
17 PERSON. IS THAT TRUE?

18 A YES, SIR.

19 Q DID HE DESERVE TO DIE?

20 A NO, SIR.

21 Q AND YOU SAY I AM ONE OF THE ONES RESPONSIBLE FOR
22 TROY'S DEATH?

23 A YES, SIR.

24 Q IS EUNICE MCCALL ALSO RESPONSIBLE FOR TROY'S DEATH?

25 A YES, SIR.

1 Q BOTH OF YOU ALL?

2 A YES, SIR.

3 Q YOU'RE NOT TRYING TO BLAME TROY ROUSE, ARE YOU?

4 A NO, I DON'T KNOW WHO TO BLAME.

5 Q AND YOU ADMIT THAT YOU AND EUNICE MCCALL BOTH FIRED A
6 WEAPON, A GUN, AND THOSE BULLETS HIT TROY ROUSE, IS THAT
7 TRUE?

8 A YES SIR.

9 Q AND THAT'S EUNICE MCCALL?

10 A YES, SIR.

11 Q AND TODAY WHEN YOU SAY EUNICE MCCALL'S LIFE WAS IN
12 JEOPARDY, THAT'S THE FIRST TIME THAT YOU'VE GIVEN A
13 STATEMENT OR MENTIONED THAT AS FAR AS THESE PRIOR
14 STATEMENTS, CORRECT?

15 A YES, SIR.

16 Q THE AUTOPSY SHOWED THAT TROY ROUSE WAS I THINK RIGHT
17 AT 6'1, 170 POUNDS. DOES THAT SOUND ABOUT RIGHT?

18 A YEAH.

19 Q THAT'S ABOUT MY SIZE. IT IS FAIR TO SAY HE WAS ABOUT
20 MY SIZE?

21 A A LITTLE BIT BIGGER---

22 Q OKAY.

23 A ---IN HEIGHT.

24 Q BUT 170 POUNDS IS A GOOD ESTIMATE OF WHAT HE WEIGHED?

25 A YES, SIR.

1 Q IS IT TRUE THAT YOU SHOT TROY ROUSE 6 TIMES?

2 A I AM NOT SURE.

3 Q BUT YOU COULD HAVE?

4 A UM....

5 Q WELL THERE WAS TESTIMONY THAT THERE WERE 7 GUNSHOT
6 WOUNDS ON TROY ROUSE, ON HIS BODY?

7 MR. WHEELER: OBJECTION, YOUR HONOR. HE'S PITTING
8 THE WITNESSES AS TO PREVIOUS TESTIMONY.

9 MR. SAVERANCE: IF I COULD,---

10 THE COURT: THE OBJECTION IS SUSTAINED.

11 Q HOW MANY PEOPLE SHOT TROY ROUSE?

12 A TWO.

13 Q HOW MANY GUNS WERE USED TO SHOOT TROY ROUSE?

14 A TWO.

15 Q ONE FROM YOU AND ONE FROM EUNICE MCCALL?

16 A YES, SIR.

17 Q THE TRUTH IS, YOU FIRED SIX TIMES AT TROY, DIDN'T
18 YOU?

19 A I DON'T REMEMBER.

20 Q YOU DON'T REMEMBER BUT YOU COULD HAVE.

21 A I DON'T KNOW.

22 Q THE TYPE OF GUN YOU HAD, DOESN'T IT CARRY 6 BULLETS?

23 A NO.

24 Q HOW MANY DOES IT CARRY?

25 A TEN.

1 Q TEN? AND YOU DON'T KNOW HOW MANY TIMES YOU FIRED?

2 A NO.

3 Q WOULD YOU AGREE THAT YOU SHOT TROY ROUSE IN THE BACK
4 AT LEAST TWICE?

5 A YES.

6 Q ARE YOU AWARE THAT BOTH OF THOSE SHOTS IN THE BACK
7 LACERATED HIS LUNG AND CONTRIBUTED TO HIS DEATH?

8 MR. WHEELER: OBJECTION, YOUR HONOR. THAT'S IN THE
9 AUTOPSY REPORT. MY CLIENT IS NOT A DOCTOR.

10 THE COURT: THE OBJECTION IS SUSTAINED. IT CALLS FOR
11 THE WITNESS TO GIVE A MEDICAL OPINION AND CONCLUSION.

12 Q YOU ALSO SHOT TROY ROUSE, THE VICTIM, IN THE LEG,
13 DIDN'T YOU?

14 A I AM NOT SURE. I DON'T REMEMBER. I JUST RAN AND
15 FIRED SEVERAL TIMES, SIR.

16 Q ISN'T IT TRUE THAT AFTER TROY ROUSE WAS HIT, HE WAS
17 ON THE GROUND IN A DEFENSIVE POSITION, AND YOU FIRED? AND
18 ONE SHOT WENT UP INTO THE BOTTOM OF HIS KNEE CAP AND UP IN
19 TO HIS LEG, ISN'T THAT THE TRUTH?

20 A NO, SIR, THAT IS NOT TRUE.

21 Q DO YOU KNOW HOW THAT BULLET GOT THERE?

22 A NO, SIR.

23 Q DO YOU KNOW, IF YOU KNOW, DID YOU SEE EUNICE MCCALL
24 SHOOT TROY ROUSE IN THE BOTTOM OF THE KNEE CAP IN AN UPPER
25 POSITION?

1 A EXCUSE ME?

2 Q DID YOU SEE EUNICE MCCALL SHOOT TROY ROUSE IN THE
3 LEG?

4 A I COULDN'T EXACTLY SEE WHERE HE SHOT HIM. THEY WERE
5 SO CLOSE TOGETHER.

6 Q TROY ROUSE DIDN'T HAVE A GUN THAT NIGHT, DID HE?

7 A NOT TO MY KNOWLEDGE. NO, SIR.

8 Q WELL DON'T YOU THINK HE WOULD HAVE USED IT IF HE HAD
9 ONE?

10 A YES, SIR.

11 Q AND HE DIDN'T HAVE ONE, DID HE?

12 A NO, SIR.

13 Q AND HE DIDN'T SHOOT A GUN, DID HE?

14 A NO, SIR.

15 Q YOU DIDN'T SEE HIM WITH ANY OTHER TYPE OF WEAPON, DID
16 YOU?

17 A NO, I DIDN'T.

18 Q DID YOU SEE ANY VISIBLE INJURIES ON EUNICE MCCALL
19 DURING OR AFTER THE SCUFFLE?

20 A NO. NO, SIR.

21 Q YOU DIDN'T SEE A BLACK EYE ON HIM?

22 A WELL, HE RAN THE OTHER WAY.

23 Q WELL WHEN YOU WENT TO BREAK UP THE FIGHT, YOU DIDN'T
24 SEE ANY VISIBLE INJURIES ON HIM, DID YOU?

25 A NO, SIR.

1 Q YOU DIDN'T SEE ANY BUSTED TEETH?

2 A NO, SIR..

3 MR. WHEELER: YOUR HONOR,---

4 MR. SMITH: OBJECTION, YOUR HONOR.

5 MR. JOHNSON: THAT HAS BEEN ASKED AND ANSWERED FIVE
6 TIMES..

7 THE COURT: THE OBJECTION IS OVERRULED.

8 Q YOU DIDN'T SEE A BROKEN NOSE?

9 A NO, SIR.

10 Q YOU DIDN'T SEE SCARS OR MARKS ON HIS FACE, DID YOU?

11 A IT WAS DARK. YOU COULDN'T SEE.

12 Q BUT YOU COULD SEE GOOD ENOUGH TO SAY THAT EUNICE
13 MCCALL WAS BEING ATTACKED AND YOU HAD TO SAVE HIM?

14 A YES.

15 Q YOU COULD SEE FOR THAT?

16 A YES.

17 Q YOU SAID THAT YOU RAN TO CHAD JAMES' HOUSE AFTER THE
18 SHOOTING?

19 A YES, SIR.

20 Q WHY DID YOU GO TO CHAD'S HOUSE?

21 A THE FIRST THING ON MY MIND.

22 Q DID YOU THINK HE WOULD HELP YOU?

23 A HUH?

24 Q DID YOU THINK HE WOULD HELP YOU?

25 A WHO, CHAD? I WASN'T LOOKING FOR NO HELP.

1 Q YOU HAD JUST RUN FROM THE SCENE OF THE CRIME, HADN'T
2 YOU?

3 A YES.

4 Q BUT YOU WEREN'T LOOKING FOR ANY HELP?

5 A NO, SIR.

6 Q WEREN'T YOU TALKING TO CHAD JAMES AT HIS HOUSE AFTER
7 THIS HAPPENED?

8 A YES, SIR.

9 Q DID YOU TELL HIM WHAT HAD HAPPENED?

10 A NO, SIR.

11 Q ARE YOU SURE ABOUT THAT?

12 A I AM POSITIVE.

13 Q AND YOU ALL ARE FRIENDS, RIGHT?

14 A YES, SIR.

15 Q DIDN'T HE DRIVE YOU OUT OF THIS COUNTY INTO ANOTHER
16 COUNTY AFTER THIS HAPPENED?

17 A YES.

18 Q AND THAT WAS PRETTY SOON AFTER THIS HAPPENED, WASN'T
19 IT?

20 A YES.

21 Q A FEW MINUTES AFTER IT HAPPENED?

22 A NO, SIR.

23 Q WHY WERE YOU IN THE TRUNK ON THE WAY TO CAMDEN?

24 A WELL I WAS SHAKING. I WAS NERVOUS. AND I DIDN'T
25 WANT NOBODY TO ASK ME NO QUESTIONS. AND I WANTED TO LAY

1 DOWN. AND THERE WAS FIVE PEOPLE IN THAT CAR, AND IT
2 WASN'T ENOUGH ROOM FOR ME TO LAY DOWN.

3 Q SO TO BE ABLE TO LAY DOWN, YOU DECIDED TO RIDE FROM
4 LEE COUNTY TO CAMDEN IN THE TRUNK OF A CAR?

5 A YES, SIR.

6 Q DO YOU NORMALLY RIDE IN THE TRUNK OF A CAR WHEN YOU
7 ARE TIRED?

8 A NO, SIR.

9 Q THE TRUTH IS, YOU RODE IN THE TRUNK OF THAT CAR
10 BECAUSE YOU KNEW YOU HAD JUST KILLED TROY ROUSE. YOU WERE
11 TRYING TO GET OUT OF TOWN, ISN'T THAT TRUE?

12 A NO, SIR.

13 Q YOU WERE TRYING TO HIDE IN THAT TRUNK, WEREN'T YOU?

14 A NO, SIR.

15 Q DID CHAD JAMES TELL YOU TO GET IN THE TRUNK?

16 A NO, SIR.

17 Q SO YOU JUST DECIDED TO HOP IN THE TRUNK BY YOURSELF.

18 A YES.

19 Q WELL HE KNEW YOU WERE IN THE TRUNK, DIDN'T HE?

20 A YES.

21 Q WHERE DID YOU ALL GO?

22 A EXCUSE ME?

23 Q WHAT DID YOU ALL GO?

24 A FROM WHERE?

25 Q WHERE DID YOU ALL GO IN THE CAR?

1 A OH, WE WENT, FIRST WE STOPPED AT THE INTERSTATE
2 SHELL. THAT'S WHEN I GOT INTO THE TRUNK. AND AFTER THAT
3 I GOT TO CAMDEN.

4 Q DID YOU ALL CALL FOR HELP FOR TROY ROUSE AT THE
5 INTERSTATE SHELL?

6 A I DIDN'T, NO. NOBODY CALLED FOR HELP.

7 Q DON'T THEY HAVE PAY PHONES OUT THERE THAT YOU CAN
8 USE?

9 A I DON'T HAVE AN HONEST ANSWER FOR THAT.

10 Q THE TRUTH IS, YOU DIDN'T CARE ABOUT HELPING TROY AT
11 THAT TIME, DID YOU?

12 MR. WHEELER: OBJECTION, YOUR HONOR. IT'S
13 ARGUMENTATIVE. ASKED AND ANSWERED. I THINK TWICE.

14 THE COURT: OBJECTION IS SUSTAINED.

15 Q WHERE DID YOU ALL GO WHEN YOU LEFT THE INTERSTATE
16 SHELL?

17 A WE WENT TO CAMDEN, SIR.

18 Q WHERE DID YOU GO IN CAMDEN?

19 A TO SOME APARTMENTS.

20 Q WHAT DID YOU DO WHEN YOU GOT THERE?

21 A I GOT OUT OF THE BACK SEAT. I STOOD UP. HE ASKED ME
22 WHAT IS WRONG. I SAID I JUST DON'T FEEL GOOD. AND I TOLD
23 HIM, I ASKED HIM TO COME PICK ME UP TOMORROW. AND HE
24 SAID HE WOULD. AND I WENT IN THE HOUSE.

25 Q WHO WENT INSIDE?

- 1 A MYSELF, COURTNEY AND SAMANTHA.
- 2 Q AND YOU HAD TOLD COURTNEY WHAT HAD HAPPENED?
- 3 A YES, SIR.
- 4 Q DIDN'T YOU TELL HER EVERYTHING COULD HAVE BEEN
- 5 AVOIDED IF EUNICE WOULDN'T HAVE SHOT TROY?
- 6 A YES, SIR.
- 7 Q ARE YOU SAYING THIS IS EUNICE MCCALL'S FAULT?
- 8 A NO, I AM NOT.
- 9 Q EARLIER YOU ADMITTED IT WAS YOURS AND EUNICE MCCALL'S
- 10 FAULT WHEN I QUESTIONED YOU, DIDN'T YOU?
- 11 A I CAN'T REMEMBER.
- 12 Q OH, YEAH, I ALMOST FORGOT. YOU SAID THAT YOU HEARD A
- 13 SHOT WHEN YOU WERE TRYING TO BREAK UP EUNICE AND TROY,
- 14 RIGHT?
- 15 A YES, SIR.
- 16 Q YOU STEPPED BACK TO SEE WHAT WAS GOING ON.
- 17 A I STEPPED BACK TO SEE IF I WAS HIT.
- 18 Q OKAY, AND I AM NOT TRYING TO TRICK YOU. YOU STEPPED
- 19 BACK TO CHECK YOURSELF?
- 20 A I STEPPED BACK TO SEE IF I WAS HIT.
- 21 Q AND YOU WEREN'T?
- 22 A NO.
- 23 Q AND YOU CLAIM THAT THEY WERE STILL SCUFFLING?
- 24 A HE WAS STILL CHOKING EUNICE.
- 25 Q HOW WERE THEY IN POSITION TO YOU? WHAT COULD YOU

1 SEE?

2 A I COULD SEE THE LEFT SIDE OF TROY. AND OPPOSITE,
3 THEY WAS FACED TOGETHER.

4 Q OKAY, AND I AM NOT TRYING TO TRIP YOU UP. BUT THIS
5 WOULD BE THE LEFT SIDE. SO YOU COULD SEE THE LEFT SIDE
6 OF?

7 A YES.

8 Q OF TROY?

9 A YES.

10 Q AND EUNICE WAS LIKE THIS?

11 A THE RIGHT SIDE. YES, SIR.

12 Q AFTER YOU REALIZED YOU WEREN'T HIT, HOW FAR AWAY WERE
13 YOU FROM HIM? DO I NEED TO COME CLOSER OR BACK UP?

14 A CLOSE. A COUPLE OF INCHES AWAY FROM HIM.

15 Q SO WHEN YOU BACKED UP, YOU DIDN'T BACK UP THAT MUCH?

16 A NO, SIR.

17 Q IS THAT THE POINT AND TIME WHERE YOU FIRED INTO
18 TROY'S BACK?

19 A NO, SIR.

20 Q WELL HOW DID THAT COME ABOUT?

21 A WELL SECONDS LATER, ANOTHER SHOT WENT OFF. AND HE
22 WAS STILL HOLDING ON TO EUNICE'S NECK. AND SO I MADE THE
23 DECISION TO STEP BEHIND TROY AND FIRE.

24 Q OKAY. AND I AM TROY. YOU SAID YOU COULD SEE HIS
25 LEFT SIDE.

1 A YES, SIR.

2 Q AFTER THE SECOND SHOT YOU SAY HE WAS STILL GOING AT
3 IT?

4 A YES, SIR.

5 Q WELL HOW DID YOU SHOOT HIM IN THE BACK IF YOU ARE
6 LOOKING THAT WAY?

7 A I STATED I STEPPED BEHIND HIM AND SHOT HIM IN THE
8 BACK.

9 Q WERE YOU ABOUT THIS CLOSE TO HIM?

10 A YEAH. ARE YOU TALKING ABOUT AS CLOSE FROM ME TO YOU
11 OR WHATEVER? YES.

12 Q AFTER TROY WAS SHOT THE SECOND TIME, YOU WENT BEHIND
13 HIS BACK, RIGHT?

14 A YES.

15 Q AND SHOT THREE TIMES IN HIS BACK?

16 A I FIRED MULTIPLE TIMES, SIR.

17 Q WHY DID YOU SHOOT HIM THREE TIMES?

18 A WELL I SHOT ONE TIME FIRST, SIR. HE DIDN'T RESPOND.
19 I SHOT HIM AGAIN.

20 Q SO IT WAS HIS FAULT HE WOULDN'T GO DOWN?

21 A I GUESS SO.

22 Q HOW DO YOU KNOW HE WASN'T STRUGGLING FOR HIS LIFE OR
23 FOR HELP.

24 MR. SMITH: OBJECTION. CALLS FOR SPECULATION.

25 MR. SAVERANCE: I SAID HOW DO YOU KNOW IT.

1 THE COURT: HOW DO YOU KNOW WHAT?

2 MR. SAVERANCE: I JUST ASKED HIM HOW DID HE KNOW---

3 THE COURT: HOW DID HE KNOW WHAT?

4 MR. SAVERANCE: THAT TROY WASN'T STRUGGLING FOR HIS
5 LIFE OR FOR HELP?

6 THE COURT: OBJECTION IS OVERRULED.

7 A ANSWER IT?

8 Q HOW DO YOU KNOW AFTER HE HAD BEEN SHOT TWICE, TROY
9 ROUSE?

10 A HE WAS STILL CHOKING EUNICE.

11 Q WHY DID YOU WALK AROUND AND SHOOT HIM IN THE BACK
12 THREE TIMES?

13 A I COULDN'T HAVE SHOT HIM IN THE FRONT, HE WAS STILL
14 CHOKING EUNICE.

15 Q AND AGAIN, YOU DIDN'T SEE ANY MARKS ON EUNICE IS WHAT
16 YOU SAID JUST A MINUTE AGO.

17 A I DIDN'T.

18 Q WELL WHEN YOU SHOT INTO THE BACK, IF IT HAPPENED THAT
19 WAY, YOU WEREN'T RISKING SHOOTING EUNICE ALSO?

20 A NO, SIR. I WAS DIRECTLY BEHIND MR. ROUSE.

21 Q ARE YOU SAYING YOU ARE A GOOD SHOT AND YOU KNEW YOU
22 WOULDN'T HIT EUNICE MCCALL?

23 A NO, I AM NOT SAYING THAT. I KNOW I WASN'T -- I
24 COULDN'T HAVE HIT EUNICE BECAUSE I WAS DIRECTLY BEHIND
25 TROY.

1 Q BUT YOU COULD HAVE MISFIRED, COULDN'T YOU?

2 MR. WHEELER: OBJECTION, YOUR HONOR. THIS CALLS FOR
3 SPECULATION. I DON'T UNDERSTAND IT.

4 THE COURT: OBJECTION IS SUSTAINED.

5 Q YOU INTENDED TO SHOOT TROY THOSE THREE TIMES IN THE
6 BACK THOUGH, RIGHT?

7 A I INTENDED TO GET TROY OFF OF EUNICE.

8 Q NO MATTER WHAT IT TOOK?

9 A NO MATTER WHAT IT TOOK.

10 Q AFTER THOSE THREE SHOTS, WHEN DID YOU FIRE AGAIN AT
11 TROY?

12 A WELL AFTER THE FIRST SHOT, I SEE HE DIDN'T GET OFF OF
13 EUNICE. THAT'S WHEN I FIRED SEVERAL MORE TIMES AFTER
14 THAT. AND HE LET GO OF EUNICE THEN. AND GRABBED EUNICE'S
15 HAND.

16 Q DID YOU KNOW COURTNEY JOHNSON BACK WHEN THIS
17 HAPPENED?

18 A YES, SIR.

19 Q DID YOU ASK HER TO TELL THE POLICE THAT YOU WERE WITH
20 HER WHEN THIS HAPPENED?

21 A YES.

22 Q SO YOU ASKED HER TO LIE FOR YOU?

23 A YES, I DID.

24 Q SO THAT WAS ANOTHER LIE?

25 A YES, IT WAS.

1 Q THAT'S A LOT OF LIES YOU TOLD, RIGHT?

2 A YES, SIR.

3 Q WHY SHOULD WE BELIEVE YOU TODAY?

4 A BECAUSE IT IS TRUE.

5 Q NOW IS THE TRUTH, TODAY IS THE TRUTH?

6 A TODAY IS THE TRUTH.

7 MR. SAVERANCE: ALL RIGHT, CAN I HAVE ONE SECOND,
8 YOUR HONOR?

9 THE COURT: YES, LADIES AND GENTLEMEN LET'S STAND FOR
10 A MOMENT. ANYTHING FURTHER, MR. SAVERANCE?

11 MR. SAVERANCE: VERY BRIEFLY, YOUR HONOR.

12 RECROSS EXAMINATION BY MR. SAVERANCE:

13 Q DO YOU LIVE NEAR WHERE THIS CRIME OCCURRED?

14 A I LIVE ON JACKSON STREET, SIR.

15 Q WHY DIDN'T YOU GO HOME AFTER THE SHOOTING?

16 A I DON'T KNOW.

17 Q YOU WENT TO CHAD'S HOUSE?

18 A YES, SIR.

19 Q NOW MR. WHEELER ASKED WHEN YOU MENTIONED SOMETHING
20 ABOUT TROY ROUSE DOING SOMETHING TO CORY MCCLEM. IF HE
21 WAS SUCH A DANGEROUS PERSON, WHY WERE YOU WALKING WITH HIM
22 AT NIGHTTIME DOWN THE STREET?

23 A TROY AIN'T DID NOTHING TO ME.

24 Q AND HE DIDN'T TRY TO DO ANYTHING TO YOU THAT NIGHT
25 EITHER, DID HE?

1 A NO, SIR.

2 Q NOBODY FORCED Y'ALL TO WALK TOGETHER, DID THEY?

3 A NO, SIR.

4 MR. SAVERANCE: THAT'S ALL I HAVE, YOUR HONOR.

5 THE COURT: MR. WATTS.

6 MR. WATTS: MAY IT PLEASE THE COURT, YOUR HONOR.

7 DIRECT EXAMINATION BY MR. WATTS:

8 Q A FEW QUESTIONS, FIRST OFF, I WANT YOU, DO YOU STILL
9 HAVE YOUR STATEMENT IN FRONT OF YOU?

10 A YES, SIR.

11 Q LET'S LOOK AT PAGE TWO. I AM GOING TO ASK YOU
12 SOMETHING YOU MAY NOT HAVE SAID ALREADY. READ WHERE THERE
13 IS A QUESTION. IT SAYS, "WHAT WAS TROY'S CONDITION."
14 WOULD YOU READ THAT FOR ME?

15 A WHAT WAS TROY'S CONDITION.

16 Q READ THAT ANSWER FOR ME PLEASE.

17 A ANSWER: "HE WAS FUCKED UP. I DON'T KNOW, IT COULD
18 HAVE BEEN CRACK, COKE, ALCOHOL. HE WAS FUCKED UP."

19 Q WERE YOU HERE WHEN THE EXPERT CAME IN AND TALKED
20 ABOUT THE TOXICOLOGY?

21 A YES, SIR.

22 Q DID YOU HEAR HER TALK ABOUT HOW MUCH ALCOHOL CONTENT
23 WAS IN THE DECEASED'S BLOOD SYSTEM?

24 A YES, SIR.

25 Q LET'S GO TO ANOTHER PART. LET'S GO TO PAGE THREE.

1 READ THE THIRD QUESTION WHERE IT STARTS WITH, WAS THE.

2 A READ IT?

3 Q YES, SIR.

4 A OUT LOUD?

5 Q YES, SIR.

6 A QUESTION: "WAS THERE ANY PREEXISTING ALTERCATION
7 GOING ON BETWEEN YOU, THE OTHER PERSON AND TROY?" ANSWER:
8 NO, SIR.

9 Q READ THE NEXT QUESTION.

10 A WAS THE INCIDENT A SPONTANEOUS ONE? ANSWER: "YES."

11 Q NOW I WANT YOU TO READ THE SECOND TO THE LAST
12 QUESTION. I DON'T THINK WE HAVE READ THAT YET.

13 A SECOND TO THE LAST?

14 Q WHERE IT TALKS ABOUT, ARE YOU SAYING.

15 A QUESTION: ARE YOU SAYING THAT PERSON ONE WAS THE ONE
16 THAT INITIALLY WAS ASSAULTED BY TROY. ANSWER: YES.

17 Q YOU WITNESSED THE ALTERCATION AND THE FIGHT BETWEEN
18 THE DECEASED AND EUNICE, CORRECT?

19 A YES, SIR.

20 Q WERE THEY STANDING STILL THE WHOLE TIME?

21 A NO, SIR.

22 Q WERE THEY MOVING AROUND?

23 A YES, SIR.

24 Q WERE THEY GRAPPLING?

25 A NO, SIR.

1 Q WERE THEY THROWING PUNCHES?
2 A YES, SIR.
3 Q WERE THEY TANGLED UP IN EACH OTHER'S LIMBS?
4 A NO, SIR.
5 Q SO THEY WERE FACE TO FACE?
6 A YES, SIR.
7 Q WERE THEY MOVING AROUND?
8 A YES, SIR.
9 Q THEY DIDN'T STAND IN ONE PLACE THE WHOLE TIME?
10 A NO, SIR.
11 Q WERE THEY MOVING AROUND WHEN YOU TRIED TO COME UP AND
12 GET BETWEEN THEM?
13 A NO, SIR.
14 Q THEY WERE STANDING STILL AT THAT TIME?
15 A AT THAT TIME.
16 Q WHERE WAS HIS HAND PENDING AT THAT TIME?
17 A TROY WAS CHOKING EUNICE.
18 Q SO TROY WAS CHOKING EUNICE.
19 A YES, SIR.
20 Q THEY HAD BEEN MOVING AROUND IN THIS FIGHT BEFORE AND
21 NOW THEY WERE BOTH STANDING STILL?
22 A YES, SIR.
23 Q WAS EUNICE STRUGGLING?
24 A YES, SIR.
25 Q DO YOU HAVE MY MEDICAL TRAINING?

1 A EXCUSE ME?

2 Q DO YOU HAVE ANY MEDICAL TRAINING?

3 A NO, SIR.

4 Q DO YOU KNOW HOW LONG IT TAKES A BRUISE TO SHOW UP?

5 A NO, SIR.

6 Q DO YOU HOW LONG IT TAKES A SCRATCH OR AN ABRASION TO
7 START BLEEDING?

8 A NO, SIR.

9 Q DID YOU TAKE A LONG, CLOSE HARD LOOK AT EUNICE MCCALL
10 TO SEE IF HE HAD ANY CUTS?

11 A NO, SIR.

12 Q WHAT WERE YOU TRYING TO DO?

13 A I WAS JUST TRYING TO BREAK IT UP.

14 Q SO YOU DIDN'T INSPECT MR. MCCALL TO SEE IF HE HAD ANY
15 KIND OF BRUISES OR CONTUSIONS OR CUTS OR BROKEN TEETH.
16 YOU DIDN'T TAKE A LONG HARD LOOK AT HIM TO DO THAT, DID
17 YOU?

18 A NO, SIR.

19 Q WHEN THEY WERE FIGHTING BEFORE, DID THEY COVER A
20 PRETTY GOOD AREA?

21 A EXCUSE ME?

22 Q DID THEY COVER A PRETTY GOOD AREA WHEN THEY WERE
23 FIGHTING?

24 A YES, SIR.

25 Q YOU TESTIFIED YOU WERE COMING UP TO TRY TO GET

1 MR. ROUSE OFF OF EUNICE, IS THAT CORRECT?

2 A YES, SIR.

3 Q AND THEN YOU TESTIFIED YOU HEARD A SHOT.

4 A YES, SIR.

5 Q WHEN YOU HEARD THAT SHOT, DID YOU KNOW WHO FIRED IT?

6 A YES, SIR.

7 Q YOU DID?

8 A YES, SIR.

9 Q HOW DID YOU KNOW?

10 A BECAUSE TROY HAD BOTH OF HIS HANDS AROUND EUNICE'S
11 NECK.

12 Q SO HE WAS THROTTLING HIM?

13 A YES, SIR.

14 Q OKAY. DID MR. ROUSE LOOK LIKE HE WAS TENSED UP?

15 A YES, SIR.

16 Q WAS HE SQUEEZING HIM?

17 A YES, SIR.

18 Q DID IT LOOK LIKE MR. MCCALL WAS IN DISTRESS?

19 A YES, SIR.

20 Q DID IT LOOK LIKE HE WAS BEING CHOKED?

21 A YES, SIR.

22 Q YOU KNEW THE DECEASED'S REPUTATION, IS THAT CORRECT?

23 A YES.

24 Q YOU KNEW WHAT HAD GONE ON A COUPLE OF MONTHS PRIOR,
25 IS THAT CORRECT?

1 A YES, SIR.

2 Q YOU SAID EARLIER HE CAME UP TO YOU IN THIS YARD. HE
3 CAME UP TO THE GROUP.

4 A I WENT UP TO HIM.

5 Q YOU CAME OUT OF THE HOUSE?

6 A YES, SIR.

7 Q THEY WERE IN THE YARD?

8 A YES, SIR.

9 Q THERE WAS A DECISION TO GO TO THE POOL HALL?

10 A YES, SIR.

11 Q OKAY. WAS THAT DECISION MADE WHEN YOU WALKED OUT?

12 A NOT IMMEDIATELY.

13 Q SO YOU ALL TALKED ABOUT GOING?

14 A YES, SIR.

15 Q ARE YOU ALL GOING TO TELL TROY ROUSE THAT HE CAN'T GO
16 WITH YOU?

17 A NO, SIR.

18 Q OKAY. SO YOU WEREN'T GOING TO TELL HIM NO, HE CAN'T
19 GO?

20 A NO, SIR.

21 Q OKAY. WHEN YOU WOKE UP AND SAW THEM IN THIS SERIOUS
22 FIGHT, HOW FAR AWAY DO YOU THINK YOU WERE?

23 A ABOUT 20, 20, 25 FEET AWAY.

24 Q AND YOU TESTIFIED EARLIER, YOU KNEW FROM EARLIER IN
25 THE EVENING THAT THE DECEASED HAD BEEN DRINKING?

- 1 A YES, SIR.
- 2 Q YOU COULD TELL HE WAS INTOXICATED?
- 3 A YES, SIR.
- 4 Q COULD YOU TELL IF HE WAS A LITTLE INTOXICATED, OR A
- 5 LOT INTOXICATED?
- 6 A I COULD TELL HE WAS A LOT INTOXICATED.
- 7 Q YOU SAID HE WAS VERY INTOXICATED?
- 8 A YES, SIR.
- 9 Q YOU TESTIFIED EARLIER THAT THE FIRST SHOT, THE
- 10 DECEASED STILL HAD HIS HANDS AROUND EUNICE'S NECK?
- 11 A YES, SIR.
- 12 Q YOU TESTIFIED EARLIER THAT THE SECOND SHOT YOU HEARD
- 13 THE DECEASED STILL HAD HIS HANDS AROUND EUNICE'S NECK?
- 14 A THAT'S CORRECT, SIR.
- 15 Q YOU TESTIFIED YOU FIRED.
- 16 A YES, SIR.
- 17 Q AND YOU TESTIFIED THE DECEASED STILL HAD HIS HANDS
- 18 AROUND EUNICE'S NECK?
- 19 A THAT'S CORRECT.
- 20 Q YOU FIRED AGAIN?
- 21 A YES, SIR.
- 22 Q STILL THERE?
- 23 A NO, SIR.
- 24 Q OKAY, AFTER THAT, WHAT WAS HE DOING?
- 25 A HE GRABBED EUNICE'S HAND.

1 Q HE GRABBED HIS HAND?

2 A YES, SIR.

3 Q AND YOU'RE STILL MAKING AN ATTEMPT TO GO AFTER HIM.

4 A YES, SIR.

5 Q YOU SAID AT THAT TIME THEY WERE FACE TO FACE?

6 A YES, SIR.

7 Q SO THE DECEASED MADE A FORWARD MOTION TOWARD YOU?

8 A HE WAS ALREADY TOWARDS ME.

9 Q I MEAN, THEY WERE COMING AT YOU ANY WAY, RIGHT?

10 A YES, SIR.

11 Q THEY CONTINUED THAT MOTION.

12 A YES, SIR.

13 MR. WATTS: ONE SECOND, YOUR HONOR.

14 Q AND YOU TRIED, YOU CAME UP AND TRIED TO BREAK UP THE
15 DECEASED AND EUNICE. WHAT DID YOU SAY?

16 A I TOLD TROY YOU WON. THE FIGHT IS OVER. YOU WON.

17 Q WHAT DID MR. ROUSE SAY?

18 A HE SAID NAH, "I AM GOING TO KILL THIS NIGGER."

19 Q HE SAID HE WAS GOING TO KILL HIM?

20 A YES, SIR.

21 Q AND THAT WAS AT THE TIME HE HAD HIS HANDS AROUND
22 EUNICE'S THROAT?

23 A YES, SIR.

24 Q DO YOU HAVE ANY REASON TO DISBELIEVE THAT?

25 A NO, SIR.

1 Q THE ACTIONS THAT YOU WITNESSED THERE, DO YOU BELIEVE
2 WHAT HE SAID?

3 A YES, I DO.

4 MR. WATTS: NO FURTHER QUESTIONS, YOUR HONOR.

5 THE COURT: MR. JOHNSON.

6 MR. JOHNSON: THANK YOU, YOUR HONOR. MAY IT PLEASE
7 THE COURT.

8 CROSS EXAMINATION BY MR. JOHNSON:

9 Q GOOD MORNING, MR. THOMAS.

10 A GOOD MORNING.

11 Q MR. THOMAS, I JUST NEED TO ASK YOU A COUPLE OF
12 QUESTIONS CONCERNING MY CLIENT CHAD JAMES. THE STATE HAD
13 ASKED YOU A NUMBER OF TIMES AND HAS ATTEMPTED TO PUT CHAD
14 JAMES OR MAKE HIM INVOLVED IN THIS. JUST THE FIRST
15 QUESTION, DID CHAD HAVE ANYTHING TO DO WITH ANY OF THIS?

16 A NO, SIR, HE DOESN'T.

17 Q LET'S START AT THE HOUSE EARLIER BEFORE YOU WERE
18 LEAVING TO GO PLAY POOL. I GUESS IT WAS AT ROME'S OR
19 WHATEVER. YOU NAMED SOME PEOPLE THAT LEFT TO GO TO THE
20 HOUSE. WHO WERE THE PEOPLE THAT LEFT THE HOUSE THAT DAY?
21 LEFT CHAD'S HOUSE WHEN YOU LEFT THE FRONT PORCH. WHO LEFT
22 TO GO THERE?

23 A WHO LEFT?

24 Q RIGHT?

25 A MYSELF, LENNY GREEN, KEITH HANNABEL, TROY AND EUNICE

1 MCCALL.

2 Q LENNY GREEN, KEITH HANNABEL.

3 A YES, SIR.

4 Q THOSE ARE NAMES THAT NOBODY MENTIONED TODAY, DID
5 THEY?

6 A NO, SIR.

7 Q BUT THOSE WERE THE OTHER PEOPLE THAT WERE WITH YOU?

8 A YES, SIR.

9 Q WAS CHAD JAMES WALKING WITH YOU WHEN Y'ALL LEFT
10 THERE?

11 A NO, SIR.

12 Q CHAD DIDN'T GO WITH YOU, DID HE?

13 A NO, SIR.

14 Q BUT IT WAS LENNY GREEN AND KEITH HANNABEL WERE THE
15 ADDITIONAL PEOPLE WITH YOU THAT DAY, IS THAT CORRECT?

16 A YES, SIR.

17 Q SO YOU ALL WAS WALKING THERE TO GO TO THE STORE?

18 A YES, SIR.

19 Q AT ANY TIME AFTER YOU LEFT THE HOUSE, DID CHAD CATCH
20 UP WITH YOU OR ANYTHING?

21 A NO, SIR.

22 Q DID HE EVER CATCH UP WITH YOU BEFORE THE FIGHT
23 STARTED?

24 A NO, SIR.

25 Q THE FIGHT THAT STARTED, CAN YOU SEE THE BOARD FROM

1 WHERE YOU ARE SITTING?

2 A YES, SIR.

3 Q CAN YOU STILL SEE IT?

4 A YES, SIR.

5 Q YOU SAID THAT THE FIGHT APPARENTLY HAPPENED ON THE
6 CORNER HERE IN THIS AREA.

7 A THAT'S CORRECT.

8 Q SO DOWN HERE WAS TIFFANY HILL WHO THE STATE SAYS
9 THEIR KEY WITNESS---

10 MR. SAVERANCE: OBJECTION, YOUR HONOR.

11 THE COURT: I DIDN'T HEAR THE FULL QUESTION.

12 Q TIFFANY HILL SAID THAT SHE SAW THE FIGHT UP HERE
13 ALMOST IN THE MIDDLE OF THE STREET IN FRONT OF HER. DID
14 THE FIGHT HAPPEN THERE?

15 A NO, SIR.

16 Q SO SHE WAS INCORRECT?

17 MR. SAVERANCE: OBJECTION, YOUR HONOR.

18 Q IF SHE SAID THE FIGHT HAPPENED HERE, TO YOUR
19 KNOWLEDGE, WAS SHE INCORRECT?

20 MR. SAVERANCE: OBJECTION, YOUR HONOR.

21 THE COURT: OBJECTION IS OVERRULED.

22 Q YOU CAN ANSWER THAT.

23 A YES, SIR, SHE WAS.

24 Q THE FIGHT HAPPENED ON THE CORNER, IS THAT CORRECT?

25 A YES, SIR.

1 Q WAS CHAD JAMES THERE?

2 A NO, SIR, HE WASN'T.

3 Q THE OTHER INDIVIDUALS THAT WAS IN FRONT OF YOU, WHO
4 WAS IN FRONT OF THE FIGHT, OR WHO TOOK OFF TO GET IN FRONT
5 OF YOU?

6 A LENNY GREEN AND KEITH HANNABEL.

7 Q THOSE WERE THE INDIVIDUALS THAT WERE IN FRONT OF YOU,
8 IS THAT CORRECT?

9 A YES, SIR.

10 Q DO YOU THINK THEY SAW, OR COULD HAVE HEARD THE SHOTS?
11 MR. SAVERANCE: OBJECTION.

12 Q TO YOUR KNOWLEDGE.

13 THE COURT: BASIS FOR THE OBJECTION?

14 MR. SAVERANCE: SPECULATION AS TO WHAT OTHER PEOPLE
15 SAW OR HEARD.

16 Q I WILL REPHRASE YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 Q TO YOUR PERSONAL KNOWLEDGE, WERE THEY CLOSE ENOUGH
19 THAT THEY COULD HAVE HEARD THE SHOTS?

20 A YES, SIR.

21 Q BUT CHAD JAMES WASN'T THERE, WAS HE?

22 A NO, SIR.

23 Q AFTER THE FIGHT WHEN YOU RAN BACK TO CHAD JAMES'
24 HOUSE, DID YOU GO THERE BECAUSE YOUR GIRLFRIEND WAS THERE?

25 A YES, SIR.

1 Q AND YOU KNEW THAT SHE WAS THERE?

2 A YES, SIR.

3 Q IS THAT THE REASON YOU WENT BACK THERE?

4 A YES, SIR.

5 Q WHEN YOU GOT BACK TO THE HOUSE, WHO DID YOU GO AND
6 TALK TO FIRST?

7 A COURTNEY.

8 Q DID YOU TALK TO CHAD JAMES?

9 A NO, SIR.

10 Q DID YOU TELL CHAD JAMES YOU HAD SHOT SOMEBODY?

11 A NO, SIR.

12 Q WHO DID YOU TELL?

13 A I TOLD COURTNEY.

14 Q SHE KNEW, RIGHT?

15 A SHE KNEW.

16 Q SHE KNEW BEFORE YOU LEFT THE HOUSE, BEFORE YOU LEFT
17 THE HOUSE TO GO TO CAMDEN YOU HAD SHOT SOMEBODY, IS THAT
18 CORRECT?

19 A YES, SIR.

20 Q DID SHE TELL CHAD JAMES, TO YOUR KNOWLEDGE, DID SHE
21 TELL CHAD JAMES ANYTHING ABOUT IT?

22 A NOT TO MY KNOWLEDGE.

23 Q WHERE WAS CHAD AT?

24 A I AM NOT SURE.

25 Q YOU DIDN'T SEE HIM AT ALL, DID YOU, INITIALLY?

1 A NO, SIR.

2 Q WHEN WAS THE FIRST TIME YOU SAW CHAD AFTER YOU GOT
3 BACK TO THE HOUSE?

4 A I WAS SITTING IN THE ROOM WITH COURTNEY.

5 Q AND WHERE DID CHAD COME FROM?

6 A I DON'T KNOW. HE WALKED OUT OF THE ROOM. THE DOOR
7 WAS CLOSED.

8 Q HE WALKED OUT OF HIS BEDROOM?

9 A I AM NOT SURE WHERE HE WALKED FROM.

10 Q BUT HE WALKED INTO THE ROOM?

11 A YES, SIR.

12 Q AT THAT TIME, WHO ASKED CHAD TO TAKE THEM TO CAMDEN?

13 A MYSELF.

14 Q YOU ASKED CHAD?

15 A YES, SIR.

16 Q DID YOU TELL HIM BECAUSE YOU HAD SHOT SOMEBODY AND
17 YOU WAS AFRAID, AND YOU WANTED HIM TO HIDE YOU OR GET YOU
18 AWAY FROM THE POLICE?

19 A NO.

20 Q WHAT DID YOU TELL HIM?

21 A I JUST ASKED HIM TO TAKE ME TO CAMDEN.

22 Q DID HE ASK WHY?

23 A NO.

24 Q DO YOU NORMALLY GO TO CAMDEN, OR HAVE YOU BEEN TO
25 CAMDEN BEFORE?

1 A YES, SIR.

2 Q EARLIER THAT DAY, HAD YOU ALL PLANNED ON GOING TO
3 CAMDEN EARLIER THAT DAY?

4 A YES, SIR.

5 Q WHY HAD YOU ALL PLANNED ON GOING TO CAMDEN EARLIER
6 THAT DAY?

7 A I WANTED TO GO WITH MY GIRLFRIEND, SPEND SOME TIME
8 WITH HER OVER THERE. IT'S PRIVATE.

9 Q I DIDN'T HEAR YOU.

10 A THERE IS PRIVACY OVER THERE.

11 Q DID YOU TELL THAT TO THE POLICE IN YOUR STATEMENT?

12 A NO, SIR.

13 Q BUT YOU HAD PLANNED EARLIER TO GO TO CAMDEN, IS THAT
14 CORRECT?

15 A YES, SIR, THAT IS CORRECT.

16 Q AND YOU HAD SAID THAT TO CHAD EARLIER THAT DAY?

17 A YES, SIR.

18 Q SO IT WAS NOTHING UNUSUAL FOR YOU TO ASK HIM THAT,
19 WAS IT?

20 A NO, SIR.

21 Q AND JUST TO BE CLEAR, DID YOU TELL CHAD BEFORE
22 LEAVING TO GO TO CAMDEN THAT YOU HAD SHOT SOMEBODY AND YOU
23 WAS AFRAID?

24 A NO, SIR, I DIDN'T.

25 Q WHEN YOU FIRST GOT IN THE CAR TO GO TO CAMDEN, DID

1 CHAD OPEN THE TRUNK AND LET YOU IN THE TRUNK OF THE CAR?

2 A NO, SIR.

3 Q YOU WERE SITTING IN THE BACK SEAT, WEREN'T YOU?

4 A YES, I WAS.

5 Q AND WHEN DID YOU GET INTO THE TRUNK?

6 A AT THE INTERSTATE SHELL, SIR.

7 Q AND LET'S TALK ABOUT THIS GETTING INTO THE TRUNK.

8 THAT IS NOT CORRECT, IS IT? YOU WASN'T TOTALLY IN THE

9 TRUNK, WERE YOU?

10 A NO, SIR.

11 Q HOW DID YOU SUPPOSEDLY GET INTO THE TRUNK?

12 A I LIFT THE BACK SEAT BACK.

13 Q IS IT ONE OF THOSE SEATS THAT LIFTS DOWN?

14 A YES, SIR.

15 Q AND WHAT DID YOU DO?

16 A I SLID IN THE TRUNK LEGS FIRST. AND I HAD MY HEAD

17 LAYING ON THE SEAT THAT WAS DOWN.

18 Q SO YOU WERE HALF IN AND HALF OUT---

19 A YES, SIR.

20 Q AND YOU WAS LAYING DOWN LIKE STRETCHED OUT?

21 A YES, SIR.

22 Q SO YOU WASN'T IN THE TRUNK?

23 A NO, SIR, NOT THE WHOLE WAY IN THE TRUNK.

24 Q BUT YOU WERE STRETCHED OUT IN THE BACK OF THE CAR?

25 A YES, SIR.

1 Q SO YOUR HEAD WAS INSIDE THE CAR?

2 A YES, SIR, IT WAS.

3 Q DID ANYBODY ASK YOU WHY YOU WAS LAYING THAT WAY?

4 A YES.

5 Q WHO ASKED YOU THAT?

6 A CHAD ASKED ME WHAT WAS THE MATTER WITH ME.

7 Q AND WHAT DID YOU TELL HIM?

8 A I TOLD HIM I DIDN'T FEEL GOOD, I WANTED TO LAY DOWN.

9 Q AND THAT'S WHAT YOU TOLD CHAD ABOUT WHY YOU WERE
10 DOING THAT?

11 A YES, SIR.

12 Q AND DID THAT MAN ASK YOU WHY WERE YOU LAYING DOWN IN
13 THE BACK OF THE CAR?

14 A YES, HE DID.

15 Q DID YOU TELL HIM BECAUSE YOU WERE RUNNING FROM THE
16 POLICE OR TRYING TO ESCAPE OR SOMETHING?

17 A NO, SIR.

18 Q WHAT DID YOU SAY AGAIN?

19 A I TOLD HIM---

20 MR. SAVERANCE: OBJECTION YOUR HONOR.

21 THE COURT: YES, SIR.

22 MR. SAVERANCE: I BELIEVE HE HAS ASKED HIM A COUPLE
23 OF TIMES ALREADY THE SAME QUESTION.

24 THE COURT: THE OBJECTION IS OVERRULED.

25 Q WOULD YOU PLEASE ANSWER THAT? WHAT DID YOU TELL HIM

1 WHEN HE ASKED YOU THAT?

2 A I TOLD HIM I WASN'T FEELING WELL, I WAS GOING TO LAY
3 DOWN.

4 Q DID OTHER PEOPLE, WHO ELSE IN THAT CAR KNEW THAT YOU
5 HAD SHOT SOMEBODY?

6 A COURTNEY, SAMANTHA.

7 Q DID THEY TELL CHAD WHY YOU WERE LAYING DOWN?

8 A NOT TO MY KNOWLEDGE.

9 Q WHILE YOU WAS IN THE CAR, DID THEY TELL CHAD YOU HAD
10 SHOT SOMEBODY?

11 A NO, SIR.

12 Q SO CHAD DIDN'T KNOW, DID HE?

13 A NO, SIR.

14 Q WHEN DID, DO YOU HAVE ANY KNOWLEDGE AS TO WHEN CHAD
15 FOUND OUT THAT YOU HAD SHOT SOMEBODY?

16 A YEAH, I TOLD HIM THE NEXT DAY.

17 Q THE NEXT DAY. IS THAT AFTER HE HAD ALREADY TAKEN YOU
18 TO CAMDEN?

19 A YES, SIR.

20 Q THAT'S WHEN YOU TALKED TO HIM AND TOLD HIM THAT.

21 A YES, SIR.

22 Q ARE YOU TELLING THE TRUTH?

23 A YES, SIR.

24 MR. JOHNSON: NO OTHER QUESTIONS.

25 THE COURT: MR. WHEELER?

1 MR. WHEELER: NO REDIRECT, YOUR HONOR.

2 THE COURT: MR. SAVERANCE?

3 MR. SAVERANCE: NOTHING, YOUR HONOR.

4 THE COURT: MR. WATTS?

5 MR. WATTS: NOTHING, YOUR HONOR.

6 THE COURT: STEP DOWN. LET'S TAKE A SHORT RECESS.

7 IF YOU WOULD GO TO THE JURY ROOM. PLEASE DO NOT DISCUSS
8 THE CASE.

9 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
10 PRESENCE THE JURY.)

11 THE COURT: ANYTHING FURTHER BEFORE WE BRING THE JURY
12 BACK, FROM THE STATE?

13 MR. SAVERANCE: THE ONLY THING IS THE NEXT WITNESS
14 BEFORE THE JURY COMES BACK FOR THE RECORD.

15 THE COURT: GO AHEAD.

16 MR. SAVERANCE: IT IS MY UNDERSTANDING THE NEXT
17 PERSON THEY ARE GOING TO CALL IS CORY MCCLEM. YOUR HONOR,
18 AND JUST FOR THE RECORD AS I SAID BEFORE, IT HAS BEEN
19 ESTABLISHED THAT TROY ROUSE WAS CHARGED WITH CUTTING CORY
20 MCCLEM. THAT HAS BEEN BROUGHT UP SEVERAL TIMES. WE
21 HAVEN'T DISPUTED THAT. YOUR HONOR, THE DEFENDANT
22 TESTIFIED TO THAT FACT. I DON'T HAVE ANY PROBLEM. I
23 UNDERSTAND THE OBJECTION IS OVERRULED. I DON'T HAVE ANY
24 PROBLEM NOW THAT THAT'S BEEN OUT THERE. THE JURY HEARD
25 THAT. AND THAT'S OKAY. I UNDERSTAND THAT. BUT I THINK

1 ANYTHING ELSE WOULD BE IMPROPER CHARACTER ASSIGNATION .
2 BECAUSE WHY IS MR. WHEELER OFFERING THIS WITNESS OTHER
3 THAN TO ESTABLISH THAT TROY ROUSE COMMITTED THE CRIME .

4 WE KNOW HE WAS CHARGED. WE KNOW THE JURY KNEW. WE
5 KNOW HE SUPPOSEDLY CUT CORY MCCLEM. ANY OTHER REASONS HE
6 WAS OFFERING IT IS TO PROVE THAT CASE. AND MR. ROUSE IS
7 DEAD. HE HAS NO WAY TO REBUT THAT.

8 THE COURT: MR. WHEELER?

9 MR. WHEELER: YOUR HONOR, TO THE CONTRARY, THEY HAVE
10 NEVER ADMITTED THAT. IN FACT, THEY'VE OBJECTED TO ANY
11 REFERENCE OF IT. THEY'VE NEVER ADMITTED THE MAN WAS
12 CHARGED WITH IT IN OPEN OR CROSS OR ANY WITNESS THAT HAS
13 TESTIFIED.

14 THE COURT: THAT'S IRRELEVANT ANY WAY. GO AHEAD.

15 MR. WHEELER: YES, SIR. ALL IT DOES, WE ARE NOT
16 TRYING TO PUT MR. ROUSE ON TRIAL FOR IT. BUT MY CLIENT
17 HAS TESTIFIED TO SOMETHING. TWO QUESTIONS WERE SOMETHING
18 THAT WERE CORROBORATED THAT HE IS NOT MAKING UP WHAT HE
19 HAS TOLD THE JURORS IN THIS CASE. THAT IN FACT THE
20 INCIDENT DID OCCUR. AND WE CERTAINLY BELIEVE HE LAID THE
21 FOUNDATION FOR HIS FEARS. AND THE REASON THAT HE ACTED;
22 THAT HE DID SO IN HIS TESTIMONY. AND NOW WHAT WE WOULD
23 JUST LIKE IS A VERY BRIEF FEW QUESTIONS TO GO AHEAD AND
24 CORROBORATE IT SO THE JURY DOESN'T THINK THAT HE'S JUST --
25 FOR ALL THEY KNOW, THE JURY MAY NOT KNOW ABOUT THESE

1 THINGS. JUST TO CORROBORATE THAT.

2 THE COURT: WHAT DO YOU WANT TO ASK HIM?

3 MR. WHEELER: DID MR. ROUSE ATTACK YOU WITH A KNIFE
4 ON JANUARY 25, 2005.

5 THE COURT: SOLICITOR?

6 MR. SAVERANCE: YOUR HONOR, I HAVE NO DISAGREEMENT
7 WITH STIPULATING OR AGREEING THAT THERE WAS A PENDING
8 CHARGE, THAT HE -- I JUST THINK IF WE ARE GOING TO GET IN
9 TO WHAT HAPPENED, JUST TRYING TO PROVE THAT THAT HAPPENED.
10 PROVE THE CASE. AND IT'S A CASE INSIDE OF A CASE. LIKE I
11 SAID, I HAVE NO PROBLEM WITH WHAT THE COURT HAS ALLOWED
12 IN. I HAVE NO PROBLEM STIPULATING THAT THERE WAS A
13 PENDING CHARGE. IT HAS ALREADY BEEN TRUE BILLED.

14 THE COURT: I WILL ALLOW ANY QUESTIONS AS TO TIME AND
15 PLACE ONLY AS TO THIS WITNESS.

16 MR. WHEELER: AND IF MR. SAVERANCE WANTED TO
17 STIPULATE TO THIS AS WELL, HE HAS GOT A CERTIFIED COPY OF
18 THE INDICTMENT THAT HIS OFFICE PREPARED.

19 THE COURT: YOU SAID AS WELL.

20 MR. WHEELER: AS WELL.

21 MR. SAVERANCE: AND WOULD CERTAINLY AGREE TO LIMIT
22 IT TO THAT ONE QUESTION, YOUR HONOR.

23 THE COURT: WELL WHETHER YOU AGREE OR NOT IS BESIDE
24 THE POINT AS WELL. THE QUESTION IS WHETHER OR NOT THIS
25 STIPULATION HAS A LITTLE BIT OF TESTIMONY OR IN ADDITION

1 TO THE TESTIMONY. WHAT ARE YOU SAYING, MR. WHEELER?

2 MR. WHEELER: WE WOULD LIKE TO DO BOTH. THIS IS JUST
3 AN INDICTMENT THAT THE SOLICITOR'S OFFICE HAS PREPARED.

4 MR. SAVERANCE: YOUR HONOR, IF IT IS NOT IN MOVEMENT,
5 I WOULD STIPULATE TO IT. AND ALSO I WOULD OBJECT TO AN
6 INDICTMENT BEING ADMITTED INTO EVIDENCE AND SHOWN TO A
7 JURY.

8 THE COURT: YOU DON'T HAVE TO AGREE TO ANYTHING THAT
9 YOU DON'T WANT TO AGREE TO. YOU CAN OBJECT TO IT. YOU
10 DON'T HAVE TO AGREE TO IT.

11 MR. SAVERANCE: YES, SIR.

12 THE COURT: WELL I AM NOT GOING TO ALLOW THE
13 INDICTMENT. I WILL ALLOW THE ONE QUESTION.

14 MR. WHEELER: YOUR HONOR, GIVE US ONE SECOND, AND I
15 WILL ASK MR. SAVERANCE ABOUT IT.

16 THE COURT: ALL RIGHT, YOU MAY BRING THE JURY.

17 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
18 PRESENCE OF THE JURY.)

19 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

20 MR. WHEELER: THANK YOU, YOUR HONOR. I WOULD CALL
21 MR. CORY MCCLEM.

22 CORY MCCLEM-BEING FIRST DULY
23 SWORN, TESTFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MR. WHEELER:

25 Q IF YOU WILL, STATE YOUR FULL NAME FOR THE RECORD

1 PLEASE.

2 A CORY MCCLEM.

3 Q MR. MCCLEM, ARE YOU HERE UNDER SUBPOENA TODAY?

4 A YES, SIR.

5 Q WERE YOU ATTACKED BY MR. TROY ROUSE ON JANUARY 25,
6 2005?

7 A YES, SIR.

8 Q AND WHAT HAPPENED AT THAT TIME?

9 MR. SAVERANCE: OBJECTION, YOUR HONOR.

10 THE COURT: THE OBJECTION IS SUSTAINED.

11 Q WHAT WAS THE NATURE OF THAT ATTACK? WERE YOU
12 STABBED?

13 MR. SAVERANCE: OBJECTION, YOUR HONOR.

14 THE COURT: THE OBJECTION IS OVERRULED.

15 A EXCUSE ME, SIR?

16 Q WERE YOU STABBED?

17 A YES, SIR.

18 Q WHERE?

19 A ON MY NECK.

20 MR. WHEELER: THANK YOU.

21 THE COURT: MR. SAVERANCE, CROSS EXAMINATION?

22 CROSS EXAMINATION BY MR. SAVERANCE:

23 Q WERE YOU CHARGED WITH SHOPLIFTING IN THE 2002?

24 A YES, SIR.

25 Q CONVICTED OF RESISTING ARREST IN 2003?

1 A YES, SIR.

2 Q AND YOU CURRENTLY HAVE A PENDING CHARGE TOO, DON'T
3 YOU?

4 A YES, SIR.

5 Q WHAT IS THAT FOR?

6 A ARMED ROBBERY AND KIDNAPPING.

7 Q ARMED ROBBERY AND KIDNAPPING?

8 A YES, SIR.

9 Q MR. ROUSE WASN'T CONVICTED OF STABBING YOU, BUT IT
10 WAS A PENDING CHARGE.

11 MR. WHEELER: OBJECTION, YOUR HONOR.

12 THE COURT: OBJECTION IS SUSTAINED.

13 MR. SAVERANCE: THAT'S ALL I HAVE.

14 THE COURT: MR. WATTS, MR. SMITH?

15 MR. SMITH: THANK YOU, YOUR HONOR.

16 CROSS EXAMINATION BY MR. SMITH:

17 Q DID YOU TAKE OUT A WARRANT AGAINST MR. ROUSE FOR THE
18 ATTACK UPON YOU?

19 A NO, SIR.

20 Q THERE WAS NO WARRANT EVER TAKEN OUT AGAINST HIM FOR
21 HIM CUTTING YOUR THROAT?

22 A THERE WAS, BUT I DIDN'T DO IT.

23 Q SO DO YOU KNOW WHO TOOK OUT THE WARRANT?

24 A I GUESS THE POLICE TOOK THE WARRANT OUT.

25 Q DO YOU HAVE A SCAR ON YOUR NECK FROM THIS ATTACK?

1 A YES, SIR.

2 Q CAN YOU TILT YOUR HEAD BACK? CAN YOU PUT YOUR FINGER
3 ACROSS THE SCAR?

4 A (THEREUPON, WITNESS INDICATES.)

5 Q OKAY. CAN YOU STEP DOWN, SIR, PLEASE, SIR? CAN YOU
6 STEP DOWN?

7 MR. SAVERANCE: YOUR HONOR, I WOULD OBJECT TO ANY
8 DEMONSTRATION. IT IS GOING OUTSIDE---

9 MR. SMITH: NO, HE DOESN'T EVEN KNOW WHAT I AM GOING
10 TO DO, YOUR HONOR. WOULD YOU PLEASE STEP DOWN AND LET ME
11 SEE HOW TALL YOU ARE?

12 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
13 STAND.)

14 Q HOW TALL ARE YOU, SIR?

15 A ABOUT 6 FOOT FIVE.

16 Q 6'5?

17 A NO, 6 FOOT.

18 Q HOW MUCH DO YOU WEIGH?

19 A 250, 260.

20 Q 250, 260. DO YOU REMEMBER MR. ROUSE BEING TALLER
21 THAN YOU?

22 A PROBABLY ABOUT THE SAME HEIGHT OR A LITTLE SHORTER.

23 Q OKAY. AND YOU THINK YOU ARE 6 FEET TALL. I AM 6'1.

24 A I AM JUST TAKING A GUESS.

25 Q YOU'RE JUST TAKING A GUESS?

1 A YES.

2 Q THANK YOU, SIR. IF YOU WOULD RETURN TO YOUR SEAT.

3 THE COURT: MR. JOHNSON.

4 MR. JOHNSON: I HAVE NO QUESTIONS, YOUR HONOR.

5 THE COURT: MR. WHEELER?

6 MR. WHEELER: I DON'T HAVE ANYTHING FURTHER, YOUR
7 HONOR.

8 THE COURT: MR. SAVERANCE?

9 MR. SAVERANCE: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: YOU MAY STEP DOWN. YOUR NEXT WITNESS
11 MR. WHEELER?

12 MR. WHEELER: YOUR HONOR, WE WOULD REST AT THIS TIME.

13 THE COURT: LADIES AND GENTLEMEN, THE DEFENDANT
14 MCCALL, OR THE DEFENDANT THOMAS' CASE RESTS. MR. WATTS.

15 MR. WATTS: YES, YOUR HONOR.

16 THE COURT: HOW MANY WITNESSES DO YOU HAVE?

17 MR. WATTS: THREE.

18 THE COURT: CALL YOUR FIRST WITNESS.

19 MR. WATTS: I WOULD CALL MARLANDIA WESLEY.

20 MARLANDIA WESLEY, BEING FIRST
21 DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY WATTS:

23 Q MARLANDIA, I WANT TO ASK YOU, DO YOU KNOW EUNICE
24 MCCALL?

25 A YES.

1 Q WHAT IS YOUR RELATIONSHIP WITH YOU EUNICE MCCALL?

2 A HE IS MY FIANCEE.

3 Q ARE YOU PREGNANT RIGHT NOW?

4 A YES.

5 Q ARE YOU CARRYING HIS CHILD?

6 A YES.

7 Q DO YOU REMEMBER THE NIGHT OF APRIL 7TH 2005?

8 A YES.

9 Q HOW DO YOU REMEMBER THAT?

10 A SOMEBODY GOT KILLED IN MY NEIGHBORHOOD.

11 Q DO YOU RECALL WHERE YOU WERE THAT NIGHT?

12 A AT HOME.

13 Q DO YOU RECALL HEARING ANY GUNSHOTS THAT EVENING?

14 A YES, I DID.

15 Q DO YOU RECALL ABOUT WHAT TIME IT WAS WHEN YOU FIRST
16 HEARD THE SHOTS?

17 A YES.

18 Q OKAY WHAT TIME WAS THAT?

19 A 10:00 P.M.

20 Q OKAY AROUND 10:00 O'CLOCK. WHERE WERE YOU WHEN YOU
21 HEARD THE SHOTS?

22 A IN MY HOME.

23 Q WHAT DID YOU DO AFTER YOU HEARD THE SHOTS?

24 A STEPPED OUTSIDE.

25 Q AFTER YOU STEPPED OUTSIDE, DID YOU HEAR ANY MORE

1 SHOTS?

2 A YES, I DID.

3 Q AFTER YOU HEARD THESE SHOTS, WHERE WERE YOU?

4 A I WAS ON MY PORCH.

5 Q OKAY. YOU WERE ON YOUR PORCH. OKAY.

6 A YES, SIR.

7 Q DO YOU RECALL SEEING MS. TIFFANY HILL?

8 A YES, I DID.

9 Q SO YOU SAW TIFFANY HILL AFTER YOU HEARD THE FIRST TWO
10 SHOTS?

11 A AFTER I HEARD THE FIRST TWO SHOTS?

12 Q UH-HUH. (AFFIRMATIVE.)

13 A YES, SIR.

14 Q YOU HEARD AND YOU SAW HER AFTER YOU HEARD THE OTHER
15 SHOTS?

16 A YES.

17 Q BECAUSE I THINK YOU SAID YOU WERE IN YOUR HOUSE WHEN
18 THE FIRST TWO WERE FIRED AND YOU CAME OUTSIDE.

19 A YES.

20 Q YOU HEARD MORE SHOTS?

21 A YES.

22 Q AND THEN YOU SAW MRS. HILL?

23 A YES.

24 Q WHERE WAS MS. HILL?

25 A COMING OUT OF HER DOOR.

1 Q SHE WAS COMING OUT OF HER HOUSE?

2 A YES.

3 Q FROM WHERE YOU WERE STAYING, YOU COULD SEE HER HOUSE?

4 A YES.

5 Q AND YOU COULD RECOGNIZE HER COMING OUT OF THE DOOR?

6 A YES, I DID.

7 Q DO YOU KNOW MS. HILL?

8 A YES.

9 Q YOU KNEW HER BEFORE THAT DAY?

10 A YES.

11 Q OKAY. YOU HAVE KNOWN HER FOR A WHILE?

12 A YES.

13 Q YOU TESTIFIED YOU SAW HER COMING OUT OF THE HOUSE.

14 A YES.

15 Q WAS THERE ANY WAY SHE COULD HAVE BEEN PRESENT, I
16 THINK IT'S COOTS STORE, THE BLUE BUILDING, WHEN THE FIRST
17 SHOTS WERE FIRED AND THEN COME OUT OF HER HOUSE?

18 MR. SAVERANCE: OBJECTION, YOUR HONOR.

19 THE COURT: BASIS FOR THE OBJECTION?

20 MR. SAVERANCE: LEADING AND SPECULATION.

21 THE COURT: OBJECTION IS OVERRULED.

22 A NO, SHE COULDN'T.

23 MR. WATTS: NO FURTHER QUESTIONS, YOUR HONOR.

24 THE COURT: MR. SAVERANCE.

25 CROSS EXAMINATION BY MR. SAVERANCE:

1 Q TELL ME AGAIN YOUR RELATIONSHIP TO EUNICE MCCALL?

2 A THAT'S MY FIANCEE.

3 Q YOU ARE HERE TO HELP HIM, AREN'T YOU?

4 A NO, I AM NOT.

5 Q YOU HAVEN'T TALKED TO THE POLICE PRIOR TO TODAY, HAVE
6 YOU?

7 A THEY NEVER CAME TO MY HOUSE AND TALKED TO ME.

8 Q BUT YOU KNEW ABOUT THIS CASE COMING UP, DIDN'T YOU?

9 A YES.

10 Q DON'T YOU THINK IT WOULD HAVE BEEN WISE TO GO TELL
11 THE POLICE WHAT YOU SAW AND GIVE THE STATEMENT?

12 A I DIDN'T SEE ANYTHING IN REGARD TO THE CASE.

13 Q BUT YOU WERE THERE NEAR THE AREA WHERE THE SHOTS WERE
14 FIRED?

15 A I WASN'T NEAR THE AREA WHERE THE SHOTS WERE FIRED.

16 Q YOU WEREN'T?

17 A NO, I WAS NOT.

18 Q BUT YOU STILL BELIEVE YOU COULD HAVE AT LEAST COME
19 FORWARD AND TALKED TO THE POLICE ABOUT WHAT YOU HEARD THAT
20 NIGHT?

21 A ABOUT GUNSHOTS BEING HEARD?

22 Q YES.

23 A THERE WAS NO NEED FOR ME TO TELL THE POLICE I HEARD
24 GUNSHOTS.

25 Q YOU DID WHAT?

1 A THERE WAS NO NEED TO TELL THE POLICE, POLICE TO SAY
2 NOTHING ABOUT HEARING GUNSHOTS.

3 Q THE TRUTH IS, YOU DIDN'T SEE MS. HILL THAT NIGHT, DID
4 YOU?

5 A YES, I DID.

6 Q WERE YOU AT THE SCENE OF THE CRIME TOO?

7 A NO, I WASN'T.

8 Q THAT'S WHERE YOU SAW HER AT THE SCENE OF THE CRIME?

9 A NO, I DIDN'T.

10 Q DO YOU HAVE ANY CHILDREN BY MR. MCCALL?

11 A YES.

12 Q HOW MANY?

13 A I HAVE TWO KIDS.

14 MR. SAVERANCE: ONE SECOND, YOUR HONOR.

15 Q WHAT TIME WAS THIS?

16 A THE TIME WHAT?

17 Q THE TIME YOU CLAIM YOU SAW TIFFANY, MS. TIFFANY?

18 A WHEN I WALKED IN MY HOUSE IT WAS 10:00 O'CLOCK.

19 Q HOW DO YOU KNOW?

20 A I JUST LOOK AT MY TIME BOX ON MY CABLE BOX.

21 Q WELL THAT'S CONVENIENT BECAUSE NOW A YEAR LATER
22 YOU'RE SAYING YOU REMEMBER EXACTLY WHAT TIME IT WAS.

23 A I REMEMBER LOOKING AT MY CABLE BOX AND IT HAD
24 10:00 O'CLOCK.

25 Q AND THAT WAS A YEAR AGO?

1 A YES.

2 Q SO YOU DIDN'T SEE TROY ROUSE GET SHOT?

3 A NO, I DIDN'T.

4 Q YOU DIDN'T WITNESS ANYTHING THAT WENT ON THAT EVENING
5 INVOLVING TROY ROUSE AND THE DEFENDANTS?

6 A NO.

7 MR. SAVERANCE: THAT'S ALL, YOUR HONOR.

8 THE COURT: MR. WHEELER?

9 MR. WHEELER: I DON'T HAVE ANY QUESTIONS, YOUR HONOR.

10 THE COURT: MR. JOHNSON.

11 CROSS EXAMINATION BY MR. JOHNSON:

12 Q GOOD MORNING. CAN YOU SEE THE BOARD? I WILL BRING
13 IT OVER TO YOU. WHAT STREET DO YOU LIVE ON?

14 A KENNEDY.

15 Q COMPARED TO RAY STREET---

16 A KENNEDY IS OFF OF RAY STREET.

17 Q FURTHER BACK THIS WAY?

18 A YES.

19 Q ABOUT HOW FAR BACK DO YOU THINK?

20 A HOW FAR IS WHAT?

21 Q WELL FROM THE CORNER OF WILSON AND RAY, HOW MANY
22 BLOCKS?

23 A TWO.

24 Q TWO BLOCKS BACK. JUST ONE SIMPLE QUESTION. DOES
25 TIFFANY HILL LIVE HERE? THIS IS THE LITTLE STORE ON

1 WILSON STREET. THE CORNER OF RAY AND WILSON. THERE'S A
2 LITTLE BUILDING THERE. ARE YOU AWARE OF THAT BUILDING?

3 A YES, I AM.

4 Q DOES TIFFANY HILL LIVE THERE?

5 A NO.

6 Q DO YOU LIVE THERE?

7 A NO.

8 Q AT THE TIME OF THIS SHOOTING, WAS TIFFANY HILL
9 STANDING HERE ON THE SIDE OF THE BUILDING?

10 A NO.

11 Q HOW DO YOU KNOW THAT?

12 A BECAUSE I SAW HER COMING OUT OF THE HOUSE.

13 Q YOU SAW HER WITH YOUR OWN EYES?

14 A WITH MY OWN EYES.

15 Q IF SHE SAYS SHE WAS STANDING THERE, WAS SHE -- AS FAR
16 AS YOU KNOW, COULD THAT HAVE BEEN POSSIBLE?

17 A NO, IT COULDN'T.

18 MR. JOHNSON: NO OTHER QUESTIONS, YOUR HONOR.

19 THE COURT: MR. WATTS?

20 MR. WATTS: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: MR. SAVERANCE?

22 MR. SAVERANCE: NOTHING, YOUR HONOR.

23 THE COURT: MR. WHEELER?

24 MR. WHEELER: NOTHING FURTHER.

25 THE COURT: NEXT WITNESS.

1 MR. WATTS: WE WOULD CALL LEROY DIXON.

2 LEROY DIXON, BEING FIRST DULY SWORN,
3 TESTIFIED AS FOLLOWS:

4 THE CLERK: STATE YOUR FULL NAME AND SPELL YOUR LAST
5 NAME FOR THE RECORD.

6 A LEROY DIXON. D-I-X-O-N.

7 MR. SAVERANCE: YOUR HONOR, CAN WE APPROACH?

8 (THE ATTORNEYS APPROACH THE BENCH AND CONFER WITH THE
9 JUDGE.)

10 DIRECT EXAMINATION BY MR. WATTS:

11 Q ARE YOU MR. DIXON?

12 A CORRECT.

13 Q AND, MR. DIXON, I NEED YOU TO SPEAK LOUD SO THIS JURY
14 CAN HEAR YOU.

15 A YES, I AM.

16 Q DO YOU LIVE IN LEE COUNTY?

17 A I DO.

18 Q HOW LONG HAVE YOU LIVED IN LEE COUNTY?

19 A ALL MY LIFE.

20 Q AND WHAT---

21 A SIXTY-NINE YEARS.

22 Q SIXTY-NINE?

23 A YES, SIR.

24 Q AND WHAT DO YOU DO FOR A LIVING?

25 A I AM RETIRED NOW.

1 Q WHAT ARE YOU RETIRED FROM?

2 A FIRST JOB FROM HILL PLUMBING COMPANY FOR 25 YEARS.

3 SECOND JOB FROM LEE COUNTY SCHOOL DISTRICT 21 YEARS.

4 Q DO YOU KNOW LUCILLE WESLEY?

5 A YES, I DO.

6 Q HOW DO YOU KNOW HER?

7 A I HAVE TO PASS HER HOUSE EVERY DAY GOING HOME IN
8 FRONT OF MY HOUSE.

9 Q AT SOME POINT DURING THE TIME AFTER THIS INCIDENT
10 THAT WE ARE HERE FOR THIS TRIAL, DID SHE CONTACT YOU?

11 A DID MS. WESLEY?

12 Q MS. WESLEY CONTACT YOU?

13 A YES, SHE DID.

14 Q WHEN SHE CONTACTED YOU, DID SHE WANT TO TALK TO YOU
15 ABOUT THIS CASE?

16 A SHE DID.

17 MR. SAVERANCE: OBJECTION YOUR HONOR.

18 THE COURT: BASIS FOR THE OBJECTION?

19 MR. SAVERANCE: HEARSAY.

20 THE COURT: MR. SMITH.

21 MR. SMITH: I ASKED---

22 THE COURT: YOUR RESPONSE TO THE OBJECTION.

23 MR. SMITH: YOUR HONOR, I DON'T KNOW HOW IT CAN BE
24 HEARSAY WHEN HE HASN'T SAID ANYTHING SHE IS GOING TO SAY.
25 I BELIEVE MY QUESTION WAS, DID SHE WANT TO BE SPECIFIC TO

1 YOU ABOUT THIS CASE.

2 THE COURT: OBJECTION OVERRULED. ANSWER YES OR NO.

3 Q IS, DID SHE WANT TO SPEAK TO YOU ABOUT THIS CASE?

4 A YES, SHE DID.

5 Q DID SHE, WITHOUT TELLING ME WHAT SHE SAID, DID SHE
6 TELL YOU SOME FACTS THAT SHE KNEW ABOUT THIS CASE?

7 A YES, SHE DID.

8 Q WHAT DID YOU ADVISE HER TO DO WHEN SHE TOLD YOU ABOUT
9 THAT?

10 A FIRST SHE APPROACHED ME AND WAS TELLING ME THAT---

11 Q DON'T TELL ME WHAT SHE TOLD YOU. OKAY, BUT SHE DID
12 TELL YOU SOMETHING?

13 A YES, SHE DID.

14 Q WHAT DID YOU TELL HER TO DO WITH THAT KNOWLEDGE?

15 A I TOLD HER THAT SHE NEEDED TO TALK TO EUNICE'S
16 LAWYER.

17 Q AND DO YOU KNOW WHETHER OR NOT SHE MADE AN EFFORT TO
18 GO TALK TO EUNICE'S LAWYERS?

19 A YES, HE DID.

20 Q WERE YOU ACTUALLY, WERE YOU INVOLVED IN HER GOING TO
21 SEE EUNICE'S LAWYERS?

22 A I DID NOT.

23 Q DO YOU KNOW WHETHER OR NOT SHE ACTUALLY WENT TO SEE
24 THEM?

25 A YES, SHE DID.

1 MR. SAVERANCE: OBJECTION, YOUR HONOR. THEY ARE
2 TRYING TO ASK HER STUFF.

3 THE COURT: BASIS FOR THE OBJECTION?

4 MR. SAVERANCE: SPECULATION, AND HEARSAY. ALSO
5 RELEVANCE. IF HE DOESN'T HAVE ANY DIRECT KNOWLEDGE OF
6 WHAT HAPPENED, IT CALLS FOR RELEVANCE.

7 THE COURT: MR. SMITH.

8 MR. SMITH: YOUR HONOR, I AM ASKING YES OR NO
9 QUESTIONS. I AM NOT ASKING ANYTHING ABOUT THE CONTENT AT
10 ALL.

11 THE COURT: NOW WHAT'S THE QUESTION?

12 MR. SMITH: THAT PARTICULAR QUESTION WAS WHETHER OR
13 NOT HE WAS AWARE THAT SHE ACTUALLY WENT TO SEE EUNICE
14 MCCALL'S ATTORNEY.

15 THE COURT: ANSWER YES OR NO.

16 A YES.

17 Q ARE YOU AWARE OF WHETHER OR NOT SHE GIVE A STATEMENT
18 TO THOSE ATTORNEYS?

19 A YES.

20 Q WERE YOU PRESENT DURING THAT STATEMENT?

21 A I WAS THERE, BUT I WAS NOT IN THE PRESENCE OF THE
22 CONVERSATION.

23 Q AFTER THAT CONVERSATION WAS DONE WITH EUNICE MCCALL'S
24 ATTORNEYS, WERE YOU AWARE THAT HER STATEMENT WAS DIFFERENT
25 FROM THE TESTIMONY SHE GAVE HERE?

1 MR. SAVERANCE: OBJECTION, YOUR HONOR.

2 THE COURT: THE OBJECTION IS SUSTAINED.

3 Q YOU ARE AWARE THAT SHE WENT AND GAVE A STATEMENT TO
4 THE ATTORNEYS?

5 A I DID. WHAT IT IS, I DO NOT KNOW.

6 Q OKAY. YOU DID HEAR HER TESTIMONY IN HERE YESTERDAY
7 OR THE DAY BEFORE I BELIEVE. TUESDAY, IS THAT CORRECT?

8 A YES.

9 MR. SMITH: THANK YOU.

10 THE COURT: MR. SAVERANCE?

11 MR. SAVERANCE: NOTHING, YOUR HONOR.

12 THE COURT: MR. WHEELER?

13 MR. WHEELER: NO QUESTIONS, YOUR HONOR.

14 THE COURT: MR. JOHNSON?

15 MR. JOHNSON: NO QUESTIONS, YOUR HONOR.

16 THE COURT: YOU MAY STEP DOWN, SIR.

17 MR. WATTS: YOUR HONOR, AT THIS TIME I WOULD CALL
18 EUNICE MCCALL.

19 EUNICE MCCALL, BEING FIRST
20 DULY SWORN, TESTIFIED AS FOLLOWS:

21 THE CLERK: SPEAK INTO THE MIC AND STATE YOUR FULL
22 NAME FOR THE RECORD.

23 A MY NAME IS EUNICE DAVIS MCCALL.

24 DIRECTION EXAMINATION BY MR. WATTS:

25 Q EUNICE, HOW OLD ARE YOU?

1 A TWENTY-THREE.

2 Q DO YOU HAVE FAMILY HERE IN LEE COUNTY?

3 A YES, SIR.

4 Q DOES YOUR FAMILY LIVE IN BISHOPVILLE?

5 A YES, SIR.

6 Q SPEAK UP.

7 A YES, SIR.

8 Q ARE YOU PRESENTLY WORKING?

9 A YES, SIR.

10 Q WHERE ARE YOU WORKING AT?

11 A I WORK FOR COCA COLA.

12 Q I AM GOING TO GO AHEAD AND GET YOU TO THIS NIGHT THAT

13 WE ARE TALKING ABOUT HERE TODAY. OKAY. DO YOU REMEMBER

14 APRIL 7TH 2005?

15 A YES, SIR.

16 Q AT ANY TIME THAT AFTERNOON, WERE YOU OVER AT CHAD

17 JAMES' HOUSE?

18 A YES, I WAS.

19 Q WERE YOU THERE EARLY THAT AFTERNOON?

20 A YES, SIR.

21 Q DID YOU STAY THERE THE WHOLE TIME?

22 A NO, I DIDN'T.

23 Q DID YOU RETURN BACK TO WHERE YOU WERE STAYING?

24 A NO, I LEFT HIS HOUSE.

25 Q WHEN YOU LEFT HIS HOUSE, WHERE DID YOU GO?

1 A COLUMBIA.

2 Q SO THAT EVENING YOU WERE GOING TO PLAY POOL?

3 A YES, I WAS.

4 Q DO YOU RECALL ABOUT WHAT TIME IT WAS?

5 A AROUND TEN.

6 Q OKAY, AROUND TEN. WHO WAS THERE, YOU ALL LEFT FROM

7 WHERE?

8 A CHAD.

9 Q CHAD JAMES' HOUSE?

10 A YES.

11 Q WHO WAS IN THAT GROUP?

12 A ME, EFRAIN THOMAS, KEITH HANNABEL AND LENNY GREEN.

13 Q ANYBODY ELSE?

14 A THAT'S ALL.

15 Q YOU ALL WENT TO PROCEED DOWN TO THE POOL HALL?

16 A YES.

17 Q AT SOME TIME DID TROY ROUSE COME AND JOIN YOUR GROUP?

18 A YES, HE DID.

19 Q PROCEEDED TO GO TOWARDS THAT AREA OF THE POOL HALL?

20 A YES, HE DID.

21 Q SO IT WAS THE FIVE OF YOU?

22 A YES.

23 Q AT ANY TIME DID THE GROUP BREAK UP WHERE YOU WEREN'T

24 ALL FIVE TOGETHER?

25 A YES.

1 Q HOW DID IT BREAK UP?

2 A KEITH HANNABEL AND LENNY GREEN WAS IN FRONT OF ME.
3 ME, EFRAIN THOMAS AND TROY ROUSE.

4 Q SO LENNY GREEN AND KEITH HANNABEL WERE UP IN FRONT?

5 A YES.

6 Q DO YOU RECALL HOW FAR?

7 A A GOOD DISTANCE.

8 Q A GOOD DISTANCE. NOW THAT LEFT THE OTHER PEOPLE
9 BEHIND THEM. DO YOU REMEMBER MR. THOMAS DOING ANYTHING
10 WHILE Y'ALL WERE WALKING?

11 A I SEEN HIM KNEEL DOWN.

12 Q HE STOPPED AND KNELT DOWN?

13 A YES.

14 Q DID HE KEEP WALKING?

15 A YES, HE DID.

16 Q WAS MR. ROUSE NEAR YOU?

17 A YES, HE WAS.

18 Q DID YOU ALL END UP HAVING ANY KIND OF CONVERSATION
19 WHILE YOU WERE WALKING?

20 A YES.

21 Q DO YOU REMEMBER THE CONTEXT OF THAT CONVERSATION?

22 A YES, SIR.

23 Q DO YOU RECALL WHAT MR. ROUSE SAID TO YOU?

24 A YES, SIR.

25 Q WHAT DID HE SAY?

1 A HE ASKED ME ABOUT CHARLES ROBINSON. A CONFRONTATION
2 WITH CHARLES ROBINSON.

3 Q HE ASKED YOU ABOUT A CONFRONTATION WITH CHARLES
4 ROBINSON?

5 A YES, HE DID.

6 Q DO YOU KNOW WHAT KIND OF RELATIONSHIP -- DO YOU KNOW
7 WHO CHARLES ROBINSON IS?

8 A THAT IS TROY ROUSE'S COUSIN.

9 Q OKAY. THAT'S HIS COUSIN. SO HE ASKED YOU ABOUT SOME
10 KIND OF ISSUE BETWEEN YOU AND CHARLES?

11 A YES, HE DID.

12 Q WHAT DID HE SAY TO YOU?

13 A HE ASKED WHAT'S UP BETWEEN ME AND CHARLES.

14 Q AND WHAT DID YOU TELL HIM?

15 A THAT AIN'T GOT NOTHING TO DO WITH YOU.

16 Q THAT DOESN'T HAVE ANYTHING TO DO WITH IT. WHAT WAS
17 HIS RESPONSE?

18 A HE SAID ANYBODY THAT FUCK WITH HIM OR HIS FAMILY, HE
19 WOULD FUCK THEM UP.

20 Q HE SAID, I AM NOT SURE YOU ARE SPEAKING LOUD ENOUGH
21 WHERE ANYBODY CAN UNDERSTAND YOU.

22 MR. SAVERANCE: OBJECTION, YOUR HONOR.

23 THE COURT: JUST A MOMENT. YES, SIR.

24 MR. SAVERANCE: HE IS TESTIFYING FOR THE WITNESS.

25 REPEATING WHAT HAS BEEN SAID.

1 THE COURT: THE OBJECTION IS OVERRULED. YOU MAY
2 PROCEED.

3 Q DO YOU RECALL WHAT HIS -- WHAT YOUR RESPONSE WAS TO
4 HIS STATEMENT?

5 A YES, SIR.

6 Q WHAT DID YOU SAY?

7 A WHEN---

8 Q WHEN HE TOLD YOU THAT.

9 A ANYBODY THAT MESS WITH HIM OR HIS FAMILY?

10 Q UH-HUH. (AFFIRMATIVE.) WHAT DID YOU SAY BACK?

11 A YEAH, WHATEVER.

12 Q OKAY, WHAT HAPPENED AFTER THAT?

13 A HE APPROACHED ME.

14 Q HE APPROACHED YOU AND THEN WHAT HAPPENED?

15 A HE KNOCKED THE HAT OFF MY HEAD.

16 Q HE HIT YOU?

17 A YES, HE DID.

18 Q DID HE CONTINUE TO ADVANCE TOWARDS YOU?

19 A YES, HE DID.

20 Q DID HE STRIKE YOU?

21 A YES, HE DID.

22 Q DID YOU GET INVOLVED IN A FIGHT?

23 A YES, WE DID.

24 Q WERE YOU ALL TRADING BLOWS?

25 A YES, WE DID.

1 Q DID YOU ALL END UP GETTING TANGLED UP AND GRAPPLING
2 WITH EACH OTHER?

3 A YES, WE DID.

4 Q AT SOME POINT AND TIME, MR. ROUSE PUT HIS HANDS
5 AROUND YOUR THROAT?

6 A YES, HE DID.

7 Q WHAT WAS HE TRYING TO DO TO YOU?

8 A HE WAS TRYING TO SQUEEZE THE BREATH OUT OF ME REALLY.

9 Q CHOKING YOU?

10 A YES, HE WAS.

11 Q HE WASN'T JUST TRYING TO HOLD YOU BACK, WAS HE?

12 A NO.

13 Q WAS HE APPLYING PRESSURE TO YOUR NECK?

14 A YES, HE WAS.

15 Q HOW TALL DO YOU THINK MR. ROUSE WAS?

16 A 6 FEET. 6'1.

17 Q WAS HE TALLER THAN YOU?

18 A HE WAS.

19 Q ARMS LONGER THAN YOU?

20 A YES, HE WAS.

21 Q DID YOU FEEL MR. ROUSE WAS TRYING TO DO SERIOUS
22 BODILY HARM TO YOU?

23 A YES, I DID.

24 Q DID YOU FEEL AT THAT TIME MR. ROUSE WAS MAKING AN
25 ATTEMPT ON YOUR LIFE?

- 1 A YES, I DID.
- 2 Q DID MR. ROUSE' GRIP ON YOUR THROAT LAPSE AT ANY TIME?
- 3 A AT ONE POINT.
- 4 Q WHEN DID THAT HAPPEN?
- 5 A WHEN HE REMOVED ONE HAND FROM MY NECK.
- 6 Q SO HE DID TAKE A HAND OFF YOUR NECK?
- 7 A HE DID.
- 8 Q WAS THIS AFTER HE HAD BEEN, HAD HIS HANDS AROUND YOUR
- 9 THROAT FOR SOME PERIOD OF TIME?
- 10 A YES.
- 11 Q HE HAD BEEN APPLYING PRESSURE?
- 12 A YES.
- 13 Q HE REMOVED HIS HANDS-- ONE OF HIS HANDS FROM YOUR
- 14 THROAT. DID HE STILL HAVE A HOLD OF YOU WITH HIS OTHER?
- 15 MR. SAVERANCE: OBJECTION, YOUR HONOR.
- 16 THE COURT: OBJECTION IS SUSTAINED. THAT'S LEADING.
- 17 Q AT SOME POINT WAS THERE LESS THAN TWO HANDS ON YOUR
- 18 THROAT?
- 19 A YES, SIR.
- 20 Q AT THAT TIME, WHAT HAPPENED?
- 21 A I FELT HIM MOVE ONE HAND FROM BEHIND THE OTHER HAND.
- 22 IT APPEARED HE WAS REACHING FOR SOMETHING. HE WAS GOING
- 23 TO GET SOMETHING.
- 24 Q OKAY. HE WAS REACHING FOR SOMETHING?
- 25 A YES.

1 Q DO YOU RECALL WHAT HE WAS REACHING FOR?

2 A NO, I DON'T.

3 Q WHAT WERE YOU TRYING TO DO AS HE WAS REACHING DOWN
4 FOR WHATEVER IT WAS YOU THOUGHT HE WAS GOING AFTER?

5 A I WAS TRYING TO GRAB HIS HAND.

6 Q OKAY, YOU WERE TRYING TO GRAB HIS HAND. YOU KNEW
7 MR. ROUSE OR KNEW OF HIM, CORRECT?

8 A SIR?

9 Q YOU KNEW MR. ROUSE?

10 A YES, I DID.

11 Q YOU KNEW ABOUT THE INCIDENT THAT HAPPENED TWO MONTHS
12 PRIOR?

13 A YES, I DID.

14 Q DO YOU KNOW MR. CORY MCCLEM?

15 A YES, I DO.

16 Q HOW DO YOU KNOW MR. MCCLEM?

17 A I WENT TO SCHOOL WITH HIM. AND WHEN I USED TO LIVE
18 OUT AT RIVER TREE APARTMENTS, HE USED TO LIVE RIGHT NEXT
19 DOOR TO ME.

20 Q SO YOU SAW HIM BEFORE JANUARY OF 2005?

21 A YES, I DID.

22 Q AND YOU SAW HIM SUBSEQUENT TO JANUARY OF 2005?

23 A YES, SIR, I DID.

24 Q ARE YOU AWARE OF WHAT HAPPENED TO HIM?

25 A YES, I DID.

1 Q HOW BIG DO YOU THINK MR. MCCLEM IS?

2 A ABOUT TROY'S SIZE OR A LITTLE HEAVIER.

3 Q YOU WERE AWARE THAT HE HAD HIS THROAT CUT?

4 A YES, I DID.

5 Q DO YOU RECALL MR. ROUSE REACHING FOR SOMETHING?

6 A YES, I DID.

7 Q YOU WERE GOING AFTER HIS HAND?

8 A YES, I DID.

9 Q AND WERE YOU ABLE TO GRAB HIS HAND?

10 A SIR?

11 Q WERE YOU ABLE TO GET YOUR HAND OR A HAND ON HIS HAND?

12 A YES.

13 Q WERE YOU STRUGGLING AND TUSSLING AND PULLING BACK AND
14 FORTH?

15 MR. SAVERANCE: OBJECTION, YOUR HONOR.

16 THE COURT: YES, SIR.

17 MR. SAVERANCE: I THINK HE IS TESTIFYING FOR THE
18 WITNESS. AND HE'S CONTINUING TO LEAD HIM.

19 THE COURT: YES, SIR. DON'T SUGGEST THE ANSWERS TO
20 THE WITNESS, SIR.

21 MR. WATTS: YES, SIR.

22 Q WAS THERE A STRUGGLE?

23 A YES, SIR.

24 Q WERE YOU ALL STATIONARY? DID YOU ALL MOVE AROUND?

25 A YES, WE DID.

1 Q DID Y'ALL COVER A GOOD BIT OF DISTANCE?

2 A YES.

3 Q DO YOU RECALL THE SHOT BEING FIRED?

4 A YES, I DID.

5 Q OKAY. WAS IT WHILE YOU WERE STRUGGLING?

6 A YES, SIR.

7 Q WHAT HAPPENED, WHAT DO YOU RECALL AFTER THE SHOT WAS
8 FIRED? DO YOU REMEMBER WHAT HAPPENED AFTER THE SHOT WAS
9 FIRED?

10 A YES, I DO.

11 Q OKAY, WHAT HAPPENED?

12 A WHEN THE FIRST SHOT WAS FIRED, BOTH OF US WAS
13 TUSSLING OVER THE GUN.

14 Q OKAY. SO YOU ALL WERE TALKING AND TUSSLING OVER A
15 GUN?

16 A YES, SIR.

17 Q DID HE STILL HAVE ONE HAND AROUND YOUR THROAT?

18 A NO, SIR.

19 Q YOU ALL HAD, WHERE WERE YOUR HANDS?

20 A AT THAT POINT WHEN I PUT MY HAND ON HIS HAND---

21 Q OKAY.

22 A ---WHEN HE REACHED FOR THE GUN.

23 Q OKAY. WERE BOTH OF YOUR HANDS -- WHERE WERE BOTH OF
24 YOUR HANDS?

25 A REACHING FOR THE GUN.

1 Q WERE YOU ALL STANDING STILL AT THAT TIME?

2 A NO, SIR, WE WERE STILL MOVING.

3 Q OKAY. SO YOU ALL WERE STILL FIGHTING AND MOVING?

4 A YES, SIR.

5 Q DO YOU RECALL MR. THOMAS COMING UP ON YOU AND
6 MR. ROUSE WHILE YOU ALL WERE STRUGGLING?

7 A YES, SIR.

8 Q AND DO YOU RECALL WHAT MR. THOMAS SAID?

9 A YES, SIR.

10 Q WHAT DID HE SAY?

11 A WHEN TROY ROUSE WAS CHOKING ME, HE ASKED TROY TO LET
12 ME GO. HE TOLD HIM WE DIDN'T WANT TO FIGHT.

13 Q OKAY, DO YOU RECALL WHAT MR. ROUSE SAID?

14 A YES, I DID.

15 Q WHAT DID HE SAY?

16 A HE TOLD TROY THAT HE WAS GOING TO KILL ME.

17 Q DID YOU BELIEVE HIM?

18 A YES, I DID.

19 Q AFTER THE FIRST SHOT WAS FIRED, DID YOU CONTINUE TO
20 STRUGGLE?

21 A YES, I DID.

22 Q DO YOU RECALL AND WAS THERE A SECOND SHOT FIRED?

23 A YES, THERE WAS.

24 Q DID YOU CONTINUE TO STRUGGLE AFTER THAT?

25 MR. SAVERANCE: OBJECTION, YOUR HONOR.

1 THE COURT: BASIS FOR THE OBJECTION?

2 MR. SAVERANCE: YOUR HONOR, I JUST THINK HE IS
3 CONTINUALLY LEADING AND TESTIFYING FOR THE WITNESS INSTEAD
4 OF ASKING HIM WHAT HAPPENED.

5 THE COURT: THE OBJECTION IS OVERRULED.

6 Q DID YOU CONTINUE TO STRUGGLE?

7 A YES, I DID.

8 Q DO YOU RECALL MORE SHOTS BEING FIRED?

9 A WHEN?

10 Q DO YOU RECALL MORE SHOTS BEING FIRED?

11 A YES, I DO.

12 Q DID THE STRUGGLE CONTINUE?

13 A YES, IT DID.

14 Q DID THE STRUGGLE EVENTUALLY END?

15 A AT ONE POINT.

16 Q AT ONE POINT IT DID. WHAT DID YOU DO AFTER THAT?

17 A I RAN.

18 Q YOU LEFT THE SCENE?

19 A YES, I DID.

20 Q DO YOU RECALL WHEN YOU LEARNED THAT ANYONE WAS
21 LOOKING FOR YOU? DO YOU RECALL WHEN ANYONE FROM LAW
22 ENFORCEMENT WAS LOOKING FOR YOU?

23 A DO I RECALL ANYONE---

24 Q DO YOU RECALL WHEN YOU FOUND OUT ANYONE FROM LAW
25 ENFORCEMENT WAS LOOKING FOR YOU?

1 A YES, I DID, LATER ON.

2 Q WHEN DID YOU LEARN THAT LAW ENFORCEMENT WAS LOOKING
3 FOR YOU?

4 A AFTER THEY PUBLISHED IT IN THE NEWSPAPER.

5 Q DO YOU RECALL ABOUT WHAT TIME IT WAS THAT YOU LEARNED
6 THERE WAS A NEWSPAPER ARTICLE?

7 A APRIL 22ND.

8 Q WHO DID YOU FIND OUT ABOUT THE ARTICLE FROM?

9 A MY MOTHER.

10 Q WHEN YOU FOUND OUT THAT LAW ENFORCEMENT WAS LOOKING
11 FOR YOU, WHAT DID YOU DO?

12 A MY MOTHER CALLED ME AND I HAD TALKED TO HER, AND
13 TURNED MYSELF IN.

14 Q DID YOU TURN YOURSELF IN?

15 A YES, I DID.

16 Q WHEN YOU TURNED YOURSELF IN, WERE YOU SERVED WITH ANY
17 WARRANTS?

18 A YES, I WAS.

19 Q WERE YOU IN FEAR OF YOUR LIFE BEING TAKEN BY
20 MR. ROUSE?

21 A YES, I WAS.

22 Q DID YOU TRY TO GET HIM TO RELEASE HIS GRIP OFF OF
23 YOUR NECK?

24 A YES, I DID.

25 Q DID YOU STRUGGLE WITH HIM TO TRY TO PROTECT YOURSELF?

1 A YES, I DID.

2 Q DID YOU HAVE ANY WAY OF GETTING AWAY FROM MR. ROUSE
3 WHEN HE HAD HIS HANDS AROUND YOUR THROAT?

4 A THERE WAS NO WAY POSSIBLE.

5 Q IS HE STRONGER THAN YOU?

6 A YES, HE WAS.

7 Q WHEN THE GUN WENT OFF, DO YOU KNOW IF YOU WERE HIT?

8 A WHEN THE GUN WENT OFF DID I KNOW IF---

9 Q THE FIRST SHOT.

10 A DID I KNOW IF I WAS HIT, NO, I DIDN'T.

11 Q YOU DIDN'T KNOW WHEN THE FIRST SHOT WAS FIRED. DO
12 YOU KNOW IF IT STRUCK YOU?

13 A NO, I DIDN'T.

14 Q COULD YOU TELL IF IT STRUCK MR. ROUSE?

15 A NO, I COULDN'T.

16 Q THE STRUGGLE WAS STILL GOING ON AT THAT TIME?

17 A YES, IT WAS.

18 Q WHEN DID YOU FIRST SEE THE GUN?

19 A AFTER MR. ROUSE REMOVED ONE HAND FROM MY NECK TO GO
20 REACH.

21 Q SO MR. ROUSE REACHED DOWN AND THEN YOU SAW THE GUN?

22 A YES, I DID.

23 Q THE GUN CAME FROM WHO?

24 A MR. ROUSE.

25 Q AFTER YOU RAN FROM THE SCENE, DID YOU EVER GO TO MS.

1 WESLEY'S HOUSE?

2 A WHEN I GET ARRESTED?

3 Q LUCILLE WESLEY.

4 A LUCILLE WESLEY, NO, I DIDN'T.

5 Q YOU DIDN'T GO TO HER HOUSE?

6 A NO, I DIDN'T.

7 Q DID YOU EVER TELL HER YOU SHOT ANYONE?

8 A NO, I DIDN'T.

9 Q DO YOU KNOW WHAT HAPPENED TO THE GUN AFTER YOU LEFT

10 THE SCENE?

11 A NO, SIR.

12 Q DID YOU TAKE IT WITH YOU?

13 A NO, SIR.

14 MR. WATTS: YOUR HONOR, IF I MAY, CAN I HAVE THE

15 WITNESS STEP DOWN?

16 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS

17 STAND.)

18 Q DO YOU KIND OF RECOGNIZE WHAT THIS IS SUPPOSED TO

19 REPRESENT?

20 A YES, SIR.

21 Q DO YOU KNOW WHAT THIS BUILDING IS SUPPOSED TO

22 REPRESENT?

23 A IT'S COOTS STORE.

24 Q COOTS STORE?

25 A YES.

1 Q DO YOU RECALL THERE BEING AN OUTCROPPING OR SOME
2 OTHER KIND OF STRUCTURE ON THE SIDE OF THIS BUILDING?

3 A YES, SIR.

4 Q FROM WILSON STREET DOES THAT LOOK ACCURATE WHAT WOULD
5 BE RAY?

6 A YES.

7 Q WHERE WERE YOU WHEN THE ALTERCATION STARTED?

8 A RIGHT HERE.

9 Q YOU WHERE UP IN HERE?

10 A YES.

11 Q WHICH WAY DID Y'ALL PROCESS AS THE FIGHT WENT ON?

12 A TOWARDS THIS WAY.

13 Q SO YOU WERE COMING DOWN RAY TOWARD WILSON?

14 A YES, SIR.

15 Q AND WHERE DID THE FIGHT END?

16 A UP IN HERE, SIR.

17 THE COURT: SPEAK UP, SIR.

18 A A LITTLE UP IN HERE SOMEWHERE.

19 Q AND YOU WERE TAKING THE INTERSECTION OF RAY AND
20 WILSON?

21 A YES.

22 Q AND THAT'S WHERE THE FIGHT, THE SITUATION ENDED?

23 A YES, SIR.

24 Q DO YOU RECALL A STOP SIGN GOING HERE?

25 A YES, SIR.

1 Q DO YOU RECALL ANY KIND OF MOUNDS OR STOP SIGNS OVER
2 HERE?

3 A NO, SIR.

4 MR. WATTS: YOU CAN TAKE YOUR SEAT.

5 (THEREUPON, THE WITNESS RESUMES THE WITNESS STAND.)

6 Q WHY DID YOU ACT THE WAY YOU DID THAT NIGHT?

7 A WHAT DO YOU MEAN?

8 Q WHY DID YOU TAKE THE ACTIONS THAT YOU TOOK THAT
9 NIGHT?

10 A BECAUSE I WAS IN FEAR FOR MY LIFE.

11 Q BECAUSE YOU WERE IN FEAR FOR YOUR LIFE?

12 A YES, SIR.

13 MR. WATTS: NO FURTHER QUESTIONS, YOUR HONOR.

14 THE COURT: MR. SAVERANCE.

15 CROSS EXAMINATION BY MR. SAVERANCE:

16 Q YOU SAID YOU KNEW CORY MCCLEM?

17 A YES, I DO.

18 Q Y'ALL ARE FRIENDS?

19 A YES, SIR.

20 Q HUNG AROUND TOGETHER?

21 A I KNEW HIM.

22 Q YOU KNEW HE HAD A SHOPLIFTING CONVICTION?

23 A I DIDN'T KNOW THAT.

24 Q HOW ABOUT RESISTING ARREST?

25 A I DIDN'T KNOW ABOUT THAT EITHER.

1 Q HOW ABOUT A PENDING CHARGE FOR ARMED ROBBERY?

2 A I DIDN'T KNOW ABOUT THAT.

3 Q AND KIDNAPPING?

4 A I DIDN'T KNOW ABOUT THAT EITHER.

5 Q ARE YOU NOW SAYING, IS WHAT YOU SAID THAT TROY ROUSE
6 HAD A GUN?

7 A YES, HE DID.

8 Q SO TROY IS BIGGER THAN YOU, STRONGER THAN YOU,
9 BEATING ON YOU, AND HE HAS A GUN, AND HE'S THE ONE THAT
10 ENDS UP SHOT AND DEAD? IS THAT WHAT YOU'RE TELLING US?

11 A YES, SIR.

12 Q DOES MAKE ANY SENSE TO YOU?

13 A IT MADE SENSE THAT NIGHT.

14 Q THAT NIGHT. YOU DIDN'T HAVE ANY SERIOUS INJURIES,
15 DID YOU?

16 A I HAD A LACERATION AROUND MY THROAT.

17 Q DO YOU STILL HAVE IT?

18 A I HAD FINGERNAIL PRINTS IN MY THROAT.

19 Q BUT YOU DON'T HAVE ANY MARKS TODAY FROM IT.

20 A NO, THAT WAS A YEAR AGO.

21 Q THAT'S ALL YOU HAD THOUGH, THAT YOU CAN RECALL, WAS
22 THE MARKS?

23 A AROUND MY NECK, YES.

24 Q WHAT REALLY HAPPENED WAS, Y'ALL GOT IN A FIGHT. TROY
25 HIT YOUR HAT TO START WITH, DIDN'T HE? DIDN'T HE HIT YOUR

1 HAT AND KNOCK IT OFF OF YOUR HEAD?

2 A YEAH. HE HIT MY HEAD AND KNOCKED MY HAT OFF. YES.

3 Q AND YOU GOT MAD, DIDN'T YOU?

4 A SURELY.

5 Q OKAY. AND THEN HE STARTED PUSHING YOU AROUND A
6 LITTLE BIT?

7 A NO. HE APPROACHED ME TO CHOKE ME.

8 Q OKAY. SO YOU GET YOUR HAT KNOCKED OFF, HE GOES TO
9 CHOKE TO YOU, AND THEN Y'ALL ARE TUSSLING?

10 A YES, SIR.

11 Q THE TRUTH IS, IS IT NOT, THAT YOU WERE MAD THAT YOUR
12 HAT GOT KNOCKED OFF. YOU WERE MAD THAT YOU WERE GETTING
13 BEAT UP. SO YOU WERE GOING TO GET SOME PAY BACK BY
14 SHOOTING AND KILLING TROY ROUSE.

15 A WHAT ARE YOU ASKING ME?

16 Q WEREN'T YOU PAYING HIM BACK FOR KNOCKING YOUR HAT
17 OFF, AND GETTING YOU MAD WHEN YOU SHOT HIM?

18 A YES. DID I WANT TO PAY HIM BACK FOR KNOCKING MY HAT
19 OFF?

20 Q YEAH.

21 A WHAT DO YOU MEAN, AS FAR AS THE FIGHT?

22 Q YOU TELL ME.

23 A WE HAD A FIGHT BECAUSE OF THAT. AND WE WERE ARGUING
24 BECAUSE OF THAT, YES.

25 Q AND YOU WANTED TO SHOOT HIM BECAUSE HE HAD STARTED

1 FIGHTING AND MESSING WITH YOU.

2 A DID I WANT TO SHOOT HIM?

3 Q YEAH.

4 A NO, I DIDN'T WANT TO SHOOT HIM.

5 Q WELL WHOSE FAULT IS IT THAT HE WAS SHOT?

6 A IT WAS HIS FAULT, HE HAD THE GUN.

7 Q SO IT'S MR. ROUSE'S FAULT THAT HE WAS DEAD.

8 A HE PULLED THE WEAPON OUT.

9 Q SO IS IT HIS FAULT THAT HE IS DEAD?

10 A YES, IT IS.

11 Q SO YOU DON'T AGREE WITH MR. THOMAS THAT IT'S YOURS
12 AND HIS FAULT?

13 A SAY WHAT?

14 Q MR. THOMAS SAID IT WAS HIS FAULT AND YOUR FAULT THAT
15 TROY ROUSE WAS DEAD. AND YOU AGREE WITH THAT?

16 MR. WHEELER: OBJECTION, YOUR HONOR.

17 THE COURT: SUSTAINED. PITTING WITNESSES.

18 Q YOU SAY YOU NEVER WENT TO LUCILLE WESLEY'S HOUSE
19 AFTER THE SHOOTING?

20 A YES, SIR.

21 Q SHE DOES LIVE RIGHT NEAR WHERE THE SHOOTING OCCURRED,
22 DOESN'T SHE?

23 A SHE LIVES ON FRIERSON STREET.

24 Q ON FRIERSON STREET. ARE YOU SURE?

25 A YES.

1 Q DID EFRAIN THOMAS HAVE A GUN?

2 A YES, HE DID.

3 Q I DON'T KNOW IF YOU MENTIONED THIS A FEW MINUTES AGO,
4 BUT TELL ME HOW HE SHOT TROY ROUSE.

5 A TO GET HIM OFF OF ME.

6 Q HOW DID HE DO IT?

7 A HOW DID HE DO IT? WHAT DO YOU MEAN HOW DID HE DO IT?

8 Q WHERE DID HE GO, WHERE DID HE SHOOT HIM AT?

9 A HE STEPPED BEHIND HIM, AND SHOT HIM IN THE BACK.

10 Q IS IT FAIR TO SAY THAT TROY WAS HERE AND YOU WERE IN
11 FRONT OF HIM, AND Y'ALL WERE GOING AT IT?

12 A YES.

13 Q DID EFRAIN THOMAS GO BEHIND AND SHOOT TROY IN THE
14 BACK?

15 A WHAT DO YOU MEAN DID HE GO BEHIND HIM AND SHOOT HIM
16 IN THE BACK?

17 Q YES.

18 A YES, HE DID.

19 Q HOW MANY TIMES?

20 A I DON'T KNOW.

21 Q AND YOU DIDN'T GET HIT BY ANY PARTIAL BULLETS OR
22 BLOOD OR ANYTHING FROM MR. ROUSE?

23 A NO.

24 Q WELL HE COULD HAVE SHOT YOU, COULDN'T HE? MR.
25 THOMAS?

1 A COULD HE HAVE SHOT ME? NO, HE COULDN'T.

2 Q WEREN'T YOU RIGHT THERE IN FRONT OF MR. ROUSE?

3 A YES, AND HE WAS BEHIND MR. ROUSE.

4 Q AND WHAT DID YOU DO AFTER THIS TOOK PLACE? AFTER THE

5 SHOOTING OF TROY ROUSE TOOK PLACE?

6 A WHAT DID I DO AFTER IT TOOK PLACE?

7 Q YEP.

8 A I WENT HOME.

9 Q YOU DIDN'T STAY AT THE SCENE?

10 A NO, I DIDN'T.

11 Q WHY?

12 A BECAUSE I RAN.

13 Q WHY?

14 A WHAT DO YOU MEAN, WHY?

15 Q WHY DID YOU RUN?

16 A BECAUSE I RAN. I RAN TO GET AWAY.

17 Q BECAUSE YOU KNEW YOU DID SOMETHING WRONG, DIDN'T YOU?

18 A I KNEW THAT I HAD A FIGHT WITH TROY ROUSE AND HE WAS

19 SHOT.

20 Q WELL WHY DID YOU RUN?

21 MR. SMITH: ASKED AND ANSWERED, YOUR HONOR.

22 OBJECTION.

23 THE COURT: THE OBJECTION IS SUSTAINED.

24 Q DID YOU CALL EMS OR ANYBODY ELSE TO HELP MR. ROUSE?

25 A NO.

1 Q WHEN YOU LEFT, WAS HE DEAD?

2 A HE WAS STILL MOVING WHEN I LEFT.

3 Q WHY WOULDN'T YOU CALL FOR HELP FOR HIM?

4 A I DON'T KNOW.

5 Q HE WASN'T A THREAT ONCE HE WAS ON THE GROUND AND HAD
6 BEEN SHOT FIVE OR SIX TIMES, WAS HE?

7 A WELL HE WAS A THREAT WHEN HE HAD HIS HANDS AROUND MY
8 NECK.

9 Q THAT'S NOT WHAT I ASKED YOU. I SAID WHEN HE WAS
10 LAYING ON THE GROUND FROM FIVE OR SIX SHOTS, WAS HE A
11 THREAT THEN?

12 A I DIDN'T SEE HIM LAYING ON THE GROUND THEN.

13 Q WHEN YOU RAN, WHAT IS THE LAST THING YOU SAW OF TROY
14 ROUSE? WHAT WAS HE DOING?

15 A HE WAS STILL MOVING. STILL UP.

16 Q STANDING UP?

17 A NO, HE WASN'T STANDING UP. BUT HE WAS UP.

18 Q SO HE WAS STILL ALIVE.

19 A YES, HE WAS.

20 Q AND YOU DIDN'T CALL FOR HELP FOR MR. ROUSE WHEN YOU
21 -- WHOSE HOUSE DID YOU GO TO?

22 A I WENT HOME.

23 Q WHY DIDN'T YOU CALL FOR HELP WHEN YOU GOT HOME FOR
24 HIM?

25 A BECAUSE I DIDN'T.

1 Q WHY?

2 A I DON'T HAVE A REASON WHY, I JUST DIDN'T.

3 Q DON'T YOU THINK IT WOULD HAVE BEEN GOOD TO CALL AND
4 TRY TO GET SOME HELP FOR MR. ROUSE?

5 A YES, IT PROBABLY WOULD HAVE.

6 Q MR. MCCALL, DO YOU HAVE A PRIOR CONVICTION FOR
7 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE?

8 A YES, I DID.

9 Q YOU RECEIVED A YOA SENTENCE NOT TO EXCEED 6 YEARS?

10 A YES, I DID.

11 Q IN 2002.

12 A YES, I DID.

13 Q AND YOU WERE CONVICTED OF ASSAULT AND BATTERY OF A
14 HIGH AND AGGRAVATED NATURE?

15 A YES, I WAS.

16 Q THE AUTOPSY SHOWED THAT MR. ROUSE WEIGHED 170 POUNDS.
17 WOULD YOU SAY THAT IS ACCURATE OR NOT ACCURATE?

18 A TO TELL YOU THE TRUTH, I THOUGHT HE WEIGHED MORE THAN
19 THAT.

20 Q I MEAN, YOU NEVER WEIGHED HIM, DID YOU?

21 A NOT PERSONALLY, NO, I DIDN'T.

22 Q SO YOU DON'T HOW MUCH HE WEIGHED.

23 MR. SMITH: OBJECTION, YOUR HONOR. ARGUMENTATIVE.

24 HE ASKED THE QUESTION, HE ANSWERED IT. NOW HE'S ARGUING.

25 THE COURT: EXAMINING COUNSEL MUST CONDUCT ALL

1 OBJECTIONS.

2 MR. WATTS: WELL, JUDGE, YOUR HONOR, I WOULD SAY
3 EXACTLY ASKED AND ANSWERED. IT'S ARGUMENTATIVE.

4 THE COURT: OBJECTION SUSTAINED.

5 Q HOW MANY TIMES DID YOU SHOOT TROY ROUSE?

6 A I DIDN'T SHOOT TROY ROUSE AT ALL.

7 Q YOU DIDN'T?

8 A NO, I DIDN'T.

9 Q NOT AT ALL?

10 A NOT AT ALL.

11 Q HOW MANY TIMES DID EFRAIN THOMAS SHOOT TROY ROUSE?

12 A I DON'T KNOW.

13 Q DO YOU KNOW HOW MANY GUNSHOTS YOU HEARD?

14 A I HEARD TWO SHOTS WHEN ME AND TROY ROUSE WAS TUSSLING
15 OVER THE GUN.

16 Q AND WHERE DID THOSE SHOTS COME?

17 A FROM THE GUN ME AND TROY ROUSE WAS TUSSLING OVER.

18 Q AND YOU CLAIM THAT YOU SAW SOME GUN HE HAD?

19 A I DIDN'T SAY I SEEN THE GUN HE HAD.

20 Q DID YOU HAVE A GUN ON YOU?

21 A NO, I DIDN'T.

22 Q ARE YOU SURE?

23 A POSITIVE.

24 Q WHERE DID THAT GUN COME FROM?

25 A TROY ROUSE.

1 Q WHERE DID HE HAVE IT?

2 A IN HIS WAIST.

3 Q WHAT KIND OF GUN WAS IT?

4 A I DON'T KNOW.

5 Q WELL HE DIDN'T SHOOT YOU, DID HE?

6 A NO, HE DIDN'T.

7 Q AND YOU'RE SAYING THAT YOU DIDN'T TAKE THAT GUN AND
8 SHOOT TROY ROUSE WITH IT?

9 A YES.

10 Q YOU DIDN'T SHOOT HIM IN THE CHEST AT POINT BLANK
11 RANGE AS Y'ALL WERE SCUFFLING?

12 A NO, I DIDN'T.

13 Q MR. THOMAS SAID YOU DID.

14 A THAT'S WHAT MR. THOMAS SAID.

15 MR. WHEELER: OBJECTION, YOUR HONOR. HE'S PITTING
16 THE WITNESSES. AND MISCHARACTERIZING TESTIMONY.

17 THE COURT: OBJECTION IS SUSTAINED.

18 Q SO IF MR. ROUSE IS BIGGER THAN YOU, STRONGER THAN
19 YOU, HE HAS A GUN, YOU DON'T. HE SAYS HE IS GOING TO KILL
20 YOU AND HE ENDS UP DEAD. IS THAT WHAT YOU'RE SAYING
21 HAPPENED?

22 MR. WATTS: OBJECTION TO THE FORM OF THE QUESTION,
23 YOUR HONOR.

24 THE COURT: OBJECTION IS OVERRULED.

25 A WHAT WAS THE QUESTION?

1 Q I SAID YOUR TESTIMONY WAS, THAT MR. ROUSE WAS BIGGER
2 THAN YOU, STRONGER THAN YOU, HEAVIER THAN YOU; THAT HE HAD
3 A GUN AND SAID HE WAS GOING TO KILL YOU. BUT HE DIDN'T
4 KILL YOU, DID HE?

5 A NO, I DIDN'T.

6 Q HE'S THE ONE THAT ENDED UP SHOT AND DEAD, DIDN'T HE?

7 A YES, HE DID.

8 Q DO YOU KNOW WHY HE DIDN'T KILL YOU?

9 A DO I KNOW WHY HE DIDN'T KILL ME? I KNOW HE TRIED.

10 Q WHY DIDN'T HE JUST PULL OUT THE GUN AND SHOOT YOU?

11 A HE DID TRY TO DO THAT TOO.

12 Q HE POINTED THE GUN AT YOU?

13 A NO. WHEN HE REACHED FOR THE GUN, OBVIOUSLY HE WAS
14 TRYING TO SHOOT ME WITH IT.

15 Q DID HE EVER GRAB THE GUN?

16 A YES, HE DID.

17 Q STAND RIGHT THERE. CAN HE STAND RIGHT THERE FOR ME,
18 YOUR HONOR?

19 THE COURT: YES, SIR.

20 Q STAND RIGHT THERE, PLEASE.

21 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
22 STAND.)

23 Q IF YOU ARE TROY ROUSE, SHOW ME WHAT HE DID TO GO FOR
24 THE GUN.

25 A WHAT DID HE DO TO GO FOR THE GUN?

1 Q WHAT DID HE DO?

2 A HE REACHED FOR THE GUN LIKE THIS. (WITNESS

3 INDICATING.)

4 Q DID HE ACTUALLY POINT THE GUN AT YOU?

5 A HE WAS TRYING.

6 Q DID HE POINT THE GUN AT YOU?

7 A HE WAS TRYING TO.

8 Q SO HE DIDN'T GET THE GUN ALL THE WAY POINTED AT YOU?

9 A NO, HE DIDN'T.

10 Q WHY NOT?

11 A BECAUSE I REACHED FOR THE GUN.

12 Q AND WHAT HAPPENED TO THE GUN?

13 A WE WAS TUSSLING OVER IT.

14 Q YOU NEVER GOT CONTROL OF IT?

15 A NO, SIR.

16 Q DID IT FALL TO THE GROUND?

17 A NO, SIR.

18 Q WHAT HAPPENED TO IT AS Y'ALL WERE TUSSLING?

19 A HE HAD THE GUN IN HIS HAND.

20 Q THE ENTIRE TIME Y'ALL WERE TUSSLING, HE HAD IT IN HIS

21 HAND?

22 A YES, SIR.

23 Q BUT HE DIDN'T SHOOT YOU.

24 A NO, SIR.

25 Q DO YOU KNOW WHY HE JUST DIDN'T BACK AWAY AND SHOOT

1 YOU?

2 A HE COULDN'T.

3 Q HE COULDN'T? I THOUGHT HE WAS STRONGER THAN YOU. HE
4 COULDN'T PUSH AND BACK UP?

5 A I WAS HOLDING ON TO HIM.

6 MR. SAVERANCE: YOU CAN GO AHEAD AND HAVE A SEAT.

7 (THEREUPON, THE WITNESS STEPS DOWN FROM THE WITNESS
8 STAND.)

9 Q WHY WERE YOU HOLDING ON TO HIM?

10 A BECAUSE IF I DIDN'T, HE WOULD HAVE SHOT ME WITH THE
11 GUN.

12 Q UH-HUH. (AFFIRMATIVE.) DID THAT GUN GO OFF?

13 A THE GUN ME AND TROY ROUSE WAS TUSSLING OVER? YES, IT
14 DID IT.

15 Q WHERE DID THE BULLETS GO? I MEAN, LET ME REPHRASE,
16 YOUR HONOR. WHERE WAS THE GUN POINTED WHEN IT WENT OFF?

17 A I CAN'T YOU TELL YOU.

18 Q WAS IT POINTED AT YOU?

19 A NO, IT WASN'T.

20 Q WAS IT POINTED DIRECTLY AT MR. ROUSE?

21 A NO, IT WASN'T.

22 Q WAS IT POINTED TO ONE OF THE SIDES?

23 A WE WAS TUSSLING OVER THE GUN. IT WAS POINTED IN ALL
24 DIRECTIONS.

25 Q SO WHO PULLED THE TRIGGER FOR IT TO SHOOT TWICE?

1 A HE HAD HIS HAND ON THE TRIGGER.

2 Q DID YOU PULL THE TRIGGER?

3 A NO, I DIDN'T.

4 Q DID HE KEEP THE GUN IN HIS HAND THE ENTIRE TIME FROM
5 THE TIME SHOTS STARTED UNTIL THE TIME HE RAN?

6 A I DON'T KNOW.

7 Q WELL AFTER Y'ALL WERE STRUGGLING AND TUSSLING AND TWO
8 SHOTS WENT OFF, WHAT HAPPENED TO THE GUN?

9 A I DON'T KNOW.

10 Q YOU DON'T KNOW?

11 A MY GUESS IS, IT WAS STILL IN HIS HAND.

12 Q IT WAS STILL IN HIS HAND?

13 A YES, SIR.

14 Q WAS IT IN HIS HAND WHEN HE WAS SHOT IN THE BACK BY
15 EFRAIN THOMAS?

16 A YES, IT WAS.

17 Q AFTER HE WAS SHOT IN THE BACK BY EFRAIN THOMAS, IS
18 THAT THE POINT AND TIME YOU AND HE SEPARATED?

19 A REPEAT THE QUESTION.

20 Q AFTER MR. ROUSE WAS SHOT IN THE BACK BY EFRAIN
21 THOMAS, DID YOU AND MR. ROUSE SEPARATE?

22 A YES, WE DID.

23 Q AND HE STILL HAD THE GUN IN HIS HAND?

24 A YES, HE DID.

25 Q AND YOU WERE IN FRONT OF HIM?

1 A WAS I IN FRONT OF HIM? YES, I WAS.

2 Q MAYBE FROM ME TO THE COURT REPORTER?

3 A CLOSER THAN THAT.

4 Q CLOSER? MAYBE THIS?

5 A CLOSER THAN THAT. BODY TO BODY.

6 Q WELL DID YOU BACK UP, OR DID HE BACK UP?

7 A AT ONE POINT, YES.

8 Q WHO BACKED UP?

9 A WE STEPPED AWAY FROM EACH OTHER. I STEPPED AWAY FROM

10 HIM.

11 Q AND HE STILL HAD THE GUN, RIGHT?

12 A YES, HE DID.

13 Q AND HOW FAR WERE Y'ALL APART FROM THAT POINT? FROM

14 ME TO YOU? OR DO YOU WANT ME TO MOVE UP SOME?

15 A ABOUT FROM HERE TO HERE.

16 Q WHY DIDN'T HE SHOOT YOU AT THAT POINT?

17 A BECAUSE HE COULDN'T.

18 Q WHY?

19 A BECAUSE I HAD MY ARM AROUND HIS HAND.

20 Q AT SOME POINT DID YOUR ARMS REMOVE -- DID YOUR ARMS

21 AND HANDS BECOME REMOVED FROM MR. ROUSE AT SOME POINT?

22 A NOT WHILE HE HAD THE GUN, NO.

23 Q OKAY. SO WHAT HAPPENED TO THE GUN?

24 A HE STILL HAD THE GUN IN HIS POSSESSION.

25 Q WELL YOU DIDN'T KNOCK IT TO THE GROUND, DID YOU?

1 A NO, I DIDN'T.

2 Q AT SOME POINT DID YOU BACK AWAY FROM MR. ROUSE WHERE
3 Y'ALL WERE NOT IN CONTACT WITH EACH OTHER?

4 A WHAT ARE YOU ASKING?

5 Q AT SOME POINT WHEN YOU AND MR. ROUSE WERE SCUFFLING
6 AND GOING AT IT -- CAN I STRIKE THAT, YOUR HONOR? I'LL
7 WITHDRAW THAT. MR. ROUSE WAS SHOT IN THE BACK BY MR.
8 THOMAS, CORRECT?

9 A YES.

10 Q AND AFTER HE WAS SHOT IN THE BACK, WERE Y'ALL STILL
11 SCUFFLING?

12 A YES, WE WERE.

13 Q HOW LONG DID Y'ALL SCUFFLE AFTER THAT?

14 A UNTIL I WAS ABLE TO GET OUT.

15 Q HOW LONG?

16 A I DON'T KNOW.

17 Q A MINUTE?

18 A I'M NOT SURE HOW LONG.

19 Q WHAT ENDED THE SCUFFLE?

20 A WHEN TROY ROUSE GOT OFF OF ME.

21 Q HOW DID HE GET OFF OF YOU?

22 A I DON'T KNOW.

23 Q DID YOU MOVE AWAY, OR DID HE MOVE AWAY?

24 MR. WATTS: OBJECTION, YOUR HONOR. ASKED AND

25 ANSWERED. WE'RE GOING OVER THE SAME GROUND OVER AND OVER

1 AGAIN.

2 THE COURT: OBJECTION IS SUSTAINED.

3 Q AT WHAT POINT DID YOU LEAVE THE SCENE?

4 A WHEN I RAN.

5 Q WHEN YOU RAN, WHERE WAS TROY ROUSE?

6 A STILL AT THE SCENE.

7 Q STANDING UP OR LAYING DOWN?

8 A HE WASN'T STANDING UP OR LAYING DOWN.

9 Q WHAT WAS HE DOING?

10 A HE WAS MORE LIKE IN THE POSITION OF ONE KNEE UP, ONE
11 KNEE DOWN.

12 Q DO YOU KNOW HOW HE GOT SHOT IN THE KNEE?

13 A NO, I DON'T.

14 Q ANYBODY SHOOT MR. ROUSE BESIDES MR. THOMAS?

15 A NO, SIR.

16 Q DID MR. THOMAS HAVE A GUN THAT NIGHT?

17 A YES, SIR.

18 Q DID HE SHOOT MR. ROUSE?

19 A YES, SIR.

20 Q WELL WHEN YOU WENT TO RUN FROM MR. ROUSE, WHY DIDN'T
21 HE SHOOT YOU THEN?

22 A BECAUSE HE TURNED AROUND---

23 MR. WHEELER: OBJECTION, YOUR HONOR.

24 MR. WATTS: OBJECTION, YOUR HONOR.

25 THE COURT: OBJECTION IS OVERRULED.

1 A REPEAT THE QUESTION.

2 Q WHEN YOU RAN FROM MR. ROUSE, WHY DIDN'T HE SHOOT YOU
3 THEN?

4 A I DON'T KNOW.

5 Q HE STILL HAD THE GUN, DIDN'T HE?

6 A SURE.

7 Q AND YOU DIDN'T GET SHOT AT ALL?

8 A NO, SIR.

9 MR. SAVERANCE: ONE SECOND, YOUR HONOR. THAT'S ALL,
10 YOUR HONOR.

11 THE COURT: MR. WHEELER.

12 MR. WHEELER: THANK, YOUR HONOR.

13 CROSS EXAMINATION BY MR. WHEELER:

14 Q MR. MCCALL, THE NIGHT YOU SAID THIS HAPPENED BEFORE
15 ANY ALTERCATION OCCURRED BETWEEN YOU AND MR. ROUSE, MR.
16 THOMAS HAD STOPPED AND KNEELED DOWN, IS THAT CORRECT?

17 A YES, SIR.

18 Q AND HE WAS SOME, WAS IT SOME 20 TO 25 FEET BEHIND
19 Y'ALL FAIRLY ACCURATE AS TO HOW FAR BEHIND YOU HE WAS?

20 A I'M NOT SURE HE WAS BEHIND ME.

21 Q DID Y'ALL KEEP WALKING AFTER HE STOPPED AND KNEELED
22 DOWN?

23 A YES, SIR.

24 Q AND WAS THAT BEFORE WHATEVER SET THIS SITUATION OFF
25 OCCURRED?

1 A YES, SIR.

2 Q SO WITH REGARD TO THE FIGHT THAT OCCURRED BETWEEN YOU
3 AND MR. ROUSE AS IT STARTED, MR. THOMAS HAD NO FAULT IN
4 BRINGING THAT ON. IS THAT FAIR TO SAY?

5 A YES, SIR.

6 Q NOW AS Y'ALL WENT TO FIGHTING, WERE MR. ROUSE'S HANDS
7 OR HAND AROUND YOUR NECK AT THE TIME MR. THOMAS ARRIVED?

8 A YES, SIR.

9 Q AND WHENEVER THESE SHOTS WENT OFF, DID HE FALL, OR
10 DID HE DO ANYTHING TO WITHDRAW FROM THE ATTACK ON YOU?

11 A NO, SIR.

12 Q DID, TO YOUR KNOWLEDGE, MR. THOMAS THEN DISCHARGE A
13 WEAPON THAT HE HAD?

14 A YES, SIR.

15 Q THE 22 PISTOL?

16 A YES, SIR.

17 Q IS THAT CORRECT? AND DID MR. ROUSE CONTINUE TO
18 STRUGGLE WITH YOU AFTER THAT HAPPENED?

19 A YES, SIR.

20 Q BUT DID HE EVENTUALLY STOP AFTER, WAS IT ANOTHER SHOT
21 FROM THE PISTOL THAT Y'ALL WERE TUSSLING OVER, IS THAT
22 CORRECT?

23 A YES, SIR.

24 Q DO YOU BELIEVE THAT MR. ROUSE INTENDED TO KILL YOU?

25 A YES, SIR.

1 Q AND DO YOU BELIEVE THAT MR. THOMAS TRIED TO SAVE YOUR
2 LIFE?

3 MR. SAVERANCE: OBJECTION, YOUR HONOR.

4 A HE DID.

5 THE COURT: THE OBJECTION IS OVERRULED.

6 MR. WHEELER: THANK YOU, MR. MCCALL.

7 THE COURT: MR. JOHNSON.

8 MR. JOHNSON: THANK YOUR HONOR. MAY IT PLEASE THE
9 COURT.

10 CROSS EXAMINATION BY MR. JOHNSON:

11 Q EUNICE, YOU WAS AT THE HOUSE OF CHAD JAMES?

12 A YES, SIR.

13 Q WHEN YOU GOT READY TO LEAVE TO GO TO PLAY POOL, WHO
14 WENT WITH YOU?

15 A ME, EFRAIN THOMAS, KEITH HANNABEL AND TROY ROUSE
16 AFTERWARDS.

17 Q WAS THERE A MR. GREEN THERE AS WELL?

18 A YES, SIR. LENNY GREEN.

19 Q DID CHAD JAMES GO WITH YOU?

20 A NO, SIR.

21 Q AFTER YOU LEFT THAT HOUSE, DID YOU SEE CHAD JAMES
22 ANYMORE?

23 A NO, SIR.

24 Q DID HE ASSIST YOU IN ANY WAY AFTER THE SHOOTING IN
25 RUNNING, HIDING, ---

1 A NO, SIR.

2 Q ---THROWING AWAY THE GUN?

3 A NO, SIR.

4 Q CALLING ANYBODY FOR YOU?

5 A NO, SIR.

6 Q DID HE DO ANYTHING AT ALL TO HELP YOU?

7 A NO, SIR.

8 Q AND WAS HE PRESENT WHEN THIS HAPPENED?

9 A NO, SIR.

10 Q AND IF TIFFANY HILL SAYS THAT SHE WAS STANDING IN THE
11 MIDDLE OF WILSON STREET---

12 MR. SAVERANCE: OBJECTION, YOUR HONOR.

13 THE COURT: TO WHAT?

14 MR. SAVERANCE: ASKING WHAT SOMEBODY ELSE SAID TO
15 ANOTHER WITNESS.

16 THE COURT: HE HASN'T ASKED THE QUESTION.

17 Q IF TIFFANY HILL SAID SHE SAW THE FIGHT HAPPEN HERE IN
18 THE MIDDLE OF WILSON STREET, WOULD SHE BE CORRECT?

19 A NO, SHE WOULDN'T.

20 Q WAS THE FIGHT AT THE CORNER OF RAY AND WILSON?

21 A YES, SIR.

22 Q IS THERE ANY WAY THAT IT EVER ENDED UP HERE?

23 A NO, SIR.

24 MR. JOHNSON: NO OTHER QUESTIONS.

25 THE COURT: MR. WATTS.

1 MR. WATTS: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: MR. SAVERANCE.

3 MR. SAVERANCE: NOTHING, YOUR HONOR.

4 THE COURT: MR. WHEELER.

5 MR. WHEELER: NOTHING, YOUR HONOR.

6 THE COURT: STEP DOWN, SIR. LADIES AND GENTLEMEN,
7 THAT BRINGS US TO LUNCH TIME. WE WILL BREAK FOR LUNCH AT
8 THIS TIME. WE WILL TAKE AN HOUR AND 15 MINUTES FOR LUNCH.
9 WE WILL SEE YOU BACK AFTER LUNCH.

10 (THEREUPON, THE JURY GOES TO LUNCH AT 1:10 P.M.)

11 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
12 PRESENCE OF THE JURY.)

13 THE COURT: MR. JOHNSON, ARE YOU GOING TO PUT UP ANY
14 WITNESSES?

15 MR. JOHNSON: YOUR HONOR, I THINK WE---

16 MR. WATTS: YOUR HONOR, IF YOU WOULD LIKE IF I CAN
17 BRIEFLY SEE, I BELIEVE WE HAVE FINISHED.

18 THE COURT: WE ARE GOING TO LUNCH.

19 MR. JOHNSON: WELL I JUST WANTED TO, SINCE THEY
20 HAVEN'T DECIDED WHETHER THEY ARE GOING TO FINISH OR NOT
21 YET, YOUR HONOR, I WILL DIRECT THAT AFTER LUNCH THEN.

22 THE COURT: WHAT IS IT?

23 MR. JOHNSON: WELL IT IS MY PLAN THAT I PROBABLY
24 WON'T BE PUTTING UP A DEFENSE. I WILL BE RESTING. AND I
25 DIDN'T KNOW IF THAT MIGHT HELP THE COURT IN SCHEDULING

1 THIS STUFF OR NOT.

2 THE COURT: ALL RIGHT.

3 MR. JOHNSON: BUT THAT DEPENDS ON.

4 THE COURT: HOW ABOUT REQUEST OF CHARGES? DOES
5 ANYONE HAVE ANY PREPARED REQUEST OF CHARGES?

6 MR. JOHNSON: I HAVE ONE, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 MR. WHEELER: I HAVE NOTHING TO MENTION TO REBUT
9 FURTHER, YOUR HONOR.

10 THE COURT: MR. WATTS.

11 MR. WATTS: YOUR HONOR, I HAVE CARRIED SOME OF OUR
12 REQUESTS WITH THE CLERK.

13 THE COURT: THE PREPARED CHARGES---

14 MR. WATTS: NO, SIR.

15 THE COURT: ---THAT YOU HAVE?

16 MR. WATTS: WE TALKED. WE DON'T HAVE ANY PREPARED
17 YET.

18 THE COURT: DOES ANYONE HAVE ANY PREPARED REQUEST OF
19 CHARGES?

20 MR. WATTS: NOT TO SUBMIT RIGHT NOW, YOUR HONOR.

21 THE COURT: MR. SAVERANCE?

22 MR. SAVERANCE: NOTHING, YOUR HONOR.

23 THE COURT: ANYTHING ELSE BEFORE WE BREAK FOR LUNCH?

24 MR. SAVERANCE: NOT FROM THE STATE, YOUR HONOR.

25 MR WATTS: NOTHING.

1 MR. JOHNSON: NOTHING FROM US, YOUR HONOR.

2 THE COURT: WE WILL TAKE AN HOUR AND 15 MINUTES.

3 (THEREUPON, THE COURT TAKES A LUNCH RECESS.)

4 MR. MCCALL: YOUR HONOR, WE HAVE NO ADDITIONAL
5 WITNESSES. MR. MCCALL CLOSES HIS CASE AT THIS TIME.

6 THE COURT: YOU WILL BE ABLE TO REST IN FRONT OF THE
7 JURY. MR. JOHNSON?

8 MR. JOHNSON: YOUR HONOR, AT THIS TIME AFTER
9 CONFERRING WITH MY CLIENT WE DECIDED NOT TO PUT ON ANY
10 EVIDENCE AND WE REST AT THIS TIME.

11 THE COURT: AGAIN, ANY REPLY, MR. SAVERANCE?

12 MR. SAVERANCE: NONE FROM THE STATE, YOUR HONOR.

13 THE COURT: IF ALL THE TESTIMONY IS IN THEN, WE WILL
14 DO ALL THE RESTING IN FRONT OF THE JURY. AND WE WILL GO
15 TO CLOSING ARGUMENTS. ANYTHING FURTHER REGARDING THE
16 REQUEST OF CHARGE, MR. SAVERANCE?

17 MR. SAVERANCE: YOUR HONOR, AFTER SPEAKING WITH YOUR
18 LAW CLERK, I THINK Y'ALL ALREADY HAVE THE THINGS THAT I
19 WOULD REQUEST. Y'ALL ALREADY HAVE THOSE. IF THOSE ARE
20 SPECIAL OR DIFFERENT CHARGES, I ASK THEY BE SUBMITTED.

21 THE COURT: MR. WHEELER.

22 MR. WHEELER: YOUR HONOR, WITH REGARD TO THE REQUEST
23 TO CHARGE, I BELIEVE EVERYTHING THAT WE HAD TALKED ABOUT
24 EARLIER HAS BEEN -- THE DISCOVERY CHARGE HAS BEEN DECIDED.
25 I DO WANT TO MOVE ON THE RECORD AND ASK FOR A CHARGE

1 REGARDING INVOLUNTARY MANSLAUGHTER.

2 THE COURT: INVOLUNTARY MANSLAUGHTER?

3 MR. WHEELER: INVOLUNTARY MANSLAUGHTER. WE WOULD
4 JUST REQUEST TO CHARGING THAT. AND I DON'T THINK I HAD
5 MADE ANY REQUEST ON THE RECORD PREVIOUSLY.

6 THE COURT: MR. WATTS.

7 MR. WATTS: YOUR HONOR, I WOULD CONCUR IN ASKING FOR
8 A CHARGE ON INVOLUNTARY MANSLAUGHTER. I ACTUALLY PREPARED
9 A STATEMENT THAT I WOULD LIKE TO SHARE WITH YOUR LAW
10 CLERK. WE SPOKE BEFORE. I'M THINKING THESE CHARGES THAT
11 I AM BRINGING UP ARE PROBABLY CONTAINED IN THE COURT'S
12 CHARGES.

13 THE COURT: INVOLUNTARY MANSLAUGHTER?

14 MR. WATTS: YES, SIR. INVOLUNTARY MANSLAUGHTER. AND
15 THERE ARE SOME OTHER, I BELIEVE, THAT ARE COVERED IN THE
16 STANDARD CHARGES. I JUST WANTED TO PRESENT TO YOUR CLERK
17 TO MAKE SURE THEY COINCIDE.

18 THE COURT: YOU BETTER PRESENT THEM TO ME.

19 MR. WATTS: YES, SIR. I'LL PRESENT THEM TO YOU, YOUR
20 HONOR. THANK YOU.

21 THE COURT: YES, SIR. MR. JOHNSON.

22 MR. JOHNSON: THANK YOUR HONOR. YOUR HONOR, THE ONLY
23 REQUEST TO CHARGE WE HAVE WAS THE KNOWLEDGE OF THE FACT
24 CHARGE. THE OTHER---

25 THE COURT: LET ME GO BACK TO MR. WATTS AGAIN. YOU

1 SAID YOU WANTED -- THAT YOU PREFERRED VOLUNTARY
2 MANSLAUGHTER AND YOUR REQUEST TO REPLY STATES INVOLUNTARY
3 MANSLAUGHTER?

4 MR. WATTS: THAT'S CORRECT. INVOLUNTARY MANSLAUGHTER
5 IS WHAT I AM REFERRING TO.

6 THE COURT: WHICH ONE DO YOU MEAN, ONE OR THE OTHER
7 OR BOTH?

8 MR. WATTS: YOUR HONOR, I WOULD REQUEST INVOLUNTARY
9 MANSLAUGHTER. I AM NOT SURE IF THE CHARGE FOR VOLUNTARY
10 HAS ALREADY BEEN PLACED BEFORE YOU.

11 THE COURT: WELL THE CHARGE IS -- THE DEFENDANT IS
12 CHARGED WITH MURDER.

13 MR. WATTS: YES, YOUR HONOR.

14 THE COURT: AND ACCESSORY AFTER THE FACT. DON'T
15 ASSUME ANYTHING IS IN THE CHARGE.

16 MR. WATTS: YES, YOUR HONOR.

17 THE COURT: YOU JUST HAVE TO TELL ME. AND I'LL
18 DECIDE WHETHER I AM GOING TO CHARGE. NOT BASED ON---

19 MR. WATTS: YES, YOUR HONOR.

20 THE COURT: WHAT YOU MIGHT HAVE SEEN FROM ANYONE
21 ELSE.

22 MR. WATTS: YES, SIR. YOUR HONOR, I WOULD REQUEST AN
23 INVOLUNTARY MANSLAUGHTER CHARGE.

24 THE COURT: DO YOU REQUEST A VOLUNTARY MANSLAUGHTER
25 CHARGE?

1 MR. WATTS: NO, YOUR HONOR.

2 THE COURT: AND, MR. WHEELER, DO YOU REQUEST A
3 VOLUNTARY MANSLAUGHTER CHARGE?

4 MR. WHEELER: YOUR HONOR, WE WOULD REQUEST BOTH.

5 THE COURT: YOU REQUEST BOTH.

6 MR. WHEELER: AND JUST TO BE CLEAR, AND NOT TO ASSUME
7 ANYTHING HAS BEEN CHARGED. IF YOU WOULD LIKE TO RUN
8 THROUGH THE OTHER THINGS, I THINK THEY HAVE ALREADY BEEN
9 COVERED JUST FOR CLARIFICATION. JUST TO MAKE SURE. YOUR
10 HONOR, WE ARE ASKING THAT THE DEFENSE OF OTHERS BE
11 CHARGED. AND GENERALLY USING THE CHARGE FROM -- THAT YOU
12 WOULD NORMALLY USE. INCLUDING ALL THE FACTORS THAT WOULD
13 BE CONSIDERED THEREIN. THEY ARE PRETTY MUCH THE SAME,
14 SIZE, AND AGE, PRIOR DIFFICULTIES. PRIOR VIOLENCE BY A
15 VICTIM, THREATS BY THE VICTIM, INTOXICATION. AND SUCH
16 THINGS. AND THE RIGHT TO ACT ON APPEARANCES. AS I SAID,
17 MAYBE INCLUDED. JUST POINT IT OUT.

18 THE COURT: YES, SIR.

19 MR. WATTS: YOUR HONOR, MAY I ALSO REQUEST A SELF
20 DEFENSE CHARGE? CONCURRING WITH THOSE FACTORS THAT MR.
21 WHEELER HAS JUST SAID; ALL THE UNDERLYING PARTS OF SELF
22 DEFENSE. INTOXICATION, SIZE, REPUTATION, USE OF FORCE,
23 ALL OF THOSE OTHER PARTS OF THAT SELF DEFENSE CHARGE.

24 THE COURT: MR. JOHNSON, I CUT YOU OFF. GO AHEAD.

25 MR. JOHNSON: THANK YOUR HONOR. YOUR HONOR, AS I

1 STATED BEFORE, WE PRESENTED TO THE COURT A KNOWLEDGE OF
2 FACT CHARGE THAT WE REQUEST. WE ALSO REQUEST ACCESSORY
3 AFTER THE FACT WHERE THERE ARE FOUR ELEMENTS OF. I TALKED
4 WITH YOUR CLERK BEFORE AND PRESENTED A COPY TO HER.

5 THE COURT: AND WHAT ARE THE FOUR ELEMENTS THAT YOU
6 ARE REFERRING TO?

7 MR. JOHNSON: MY UNDERSTANDING, YOUR HONOR, THAT
8 BASICALLY THE PRINCIPAL HAD COMPLETED THE COMMISSION OF
9 THE CRIME OF MURDER. WHICH IS WHAT HE IS CHARGED WITH.
10 THE DEFENDANT KNEW THAT THE PRINCIPAL HAD COMMITTED THE
11 CRIME OF MURDER. THE DEFENDANT THEN PROVIDED HELP TO THE
12 PRINCIPAL IN AVOIDING ARREST. THE DEFENDANT PROVIDED THIS
13 HELP FOR THE SPECIFIC PURPOSE OR PLAN OF HELPING PRINCIPAL
14 TO AVOID ARREST, TRIAL OR PUNISHMENT FOR THE CRIME OF
15 MURDER.

16 THE COURT: ALL RIGHT.

17 MR. JOHNSON: ALSO, YOUR HONOR, IN ADDITION, I WAS
18 TOLD THAT IT WOULD BE YOUR STANDARD CHARGE, BUT I GUESS I
19 NEED TO MAKE IT PART OF THE RECORD IF IT'S NOT. I WOULD
20 ALSO REQUEST A CHARGE OF MERE PRESENCE.

21 THE COURT: PRESENCE AT THE SCENE OF THE CRIME?

22 MR. JOHNSON: THAT'S CORRECT, YOUR HONOR. ONE OF THE
23 FACTORS IN REQUIRING THAT REQUEST IS THAT THE STATE,
24 BASICALLY THE ONLY EVIDENCE CONNECTING MY CLIENT TO
25 KNOWLEDGE IS THAT HE WAS PRESENT OR MERE PRESENCE OR

1 SHOULD HAVE KNOWN. AND I THINK A MERE PRESENCE CHARGE IS
2 ACCEPTABLE IN THAT MATTER AS WELL.

3 THE COURT: SOLICITOR.

4 MR. SAVERANCE: YOUR HONOR, WITH MR. WHEELER, I WOULD
5 AGREE THAT A CHARGE IF THE COURT APPROVES A CHARGE OF
6 VOLUNTARY MANSLAUGHTER ON EFRAIN THOMAS. I WOULD DISAGREE
7 AND OBJECT TO A CHARGE OF INVOLUNTARY MANSLAUGHTER. I
8 THINK CLEARLY IN LOOKING AT WHAT'S BEEN PRESENTED,
9 INVOLUNTARY WOULD BE SOMETHING NON-INTENTIONAL AND THAT
10 SORT OF THING IN THE EVIDENCE THAT HAS BEEN PRESENTED.
11 AND MR. THOMAS DID INTENTIONALLY SHOOT THE VICTIM IN THE
12 CASE.

13 THE COURT: DID HE SAY THAT HE INTENDED TO SHOOT HIM,
14 OR DID HE SAY THAT HE DID NOT INTEND TO SHOOT HIM? THE
15 GUN WENT OFF WHILE THEY WERE STRUGGLING.

16 MR. SAVERANCE: YOUR HONOR, I'M TALKING ABOUT EFRAIN
17 THOMAS. MY UNDERSTANDING WAS HE WENT BEHIND THE VICTIM,
18 AND DID INTEND TO SHOOT THE VICTIM. BECAUSE I ASKED
19 WHY---

20 THE COURT: WELL I UNDERSTAND. I'M SORRY.

21 MR. SAVERANCE: ---HE WAS -- HE WOULD HIT MR. MCCALL.

22 THE COURT: I WAS NOT REFERRING TO MR. MCCALL.

23 MR. SAVERANCE: YES, SIR. OKAY. BUT THAT'S AS FAR AS
24 I WOULD AGREE ON THE VOLUNTARY MANSLAUGHTER BUT NOT ON THE
25 INVOLUNTARY. AS FAR AS MR. EUNICE MCCALL, WE WOULD

1 REQUEST A MURDER CHARGE, THE VOLUNTARY MANSLAUGHTER CHARGE
2 BASED ON THE FACT THERE WAS TESTIMONY BY THE CO-DEFENDANT
3 THAT MR. MCCALL DID PULL OUT A GUN AND FIRE AND SHOOT THE
4 VICTIM ON THAT. ON THAT, I WOULD PROBABLY DISAPPROVE OF
5 THE INVOLUNTARY CHARGE OR INVOLUNTARY MANSLAUGHTER ON
6 THAT. BUT I UNDERSTAND IT'S A LITTLE BIT DIFFERENT ON THE
7 FACTS INVOLVING MR. THOMAS. AND WITH MR. JOHNSON I DON'T
8 HAVE ANY PROBLEMS WITH WHAT HE HAS SUBMITTED.

9 THE COURT: AND DO YOU REQUEST A CHARGE ON THE HANDS
10 OF ONE IS THE HANDS OF ALL?

11 MR. SAVERANCE: YES, SIR, YOUR HONOR.

12 THE COURT: RESPONSES, MR. WHEELER?

13 MR. WHEELER: THANK YOUR HONOR. WITH REGARD TO OUR
14 REQUEST FOR INVOLUNTARY MANSLAUGHTER WE WOULD JUST ASK THE
15 COURT TO CONSIDER CHARGING THAT ALONG WITH THE OTHER. WE
16 BELIEVE THAT THE EVIDENCE LEADS TO REASONABLY TEND TO
17 PROVE ON THAT MR. THOMAS THAT HE UNINTENTIONALLY, ANY
18 KILLING OF MR. ROUSE WAS UNINTENTIONAL AS REGARDS TO
19 MR. THOMAS. HE DIDN'T INTEND THE CONSEQUENCES OF HIS
20 ACTION. CERTAINLY---

21 THE COURT: WHAT TESTIMONY WOULD ESTABLISH THAT?

22 MR. WHEELER: YOUR HONOR, HE SAYS HE DIDN'T MEAN TO
23 KILL HIM.

24 THE COURT: WELL IF YOU SHOOT SOMEONE AND THEY DIE,
25 YOU CAN'T SAY IT'S UNINTENTIONAL. IF YOU INTENTIONALLY

1 SHOOT THEM, AND THEN YOU INTEND THE CONSEQUENCES OF THE
2 ACT.

3 MR. WHEELER: I UNDERSTAND, YOUR HONOR.

4 THE COURT: SO I AM TRYING TO FIGURE OUT, I'M TRYING
5 TO UNDERSTAND WHAT FACTS IN EVIDENCE WOULD SUPPORT THAT.

6 MR. WHEELER: YOUR HONOR, I WOULDN'T ASSERT ANYTHING
7 BEFORE YOU OTHER THAN THE TESTIMONY OF MR. THOMAS. AND I
8 UNDERSTAND YOUR CONCERN IN THAT REGARD. I CAN'T POINT TO
9 ANYTHING OTHER THAN THAT. AND OF COURSE THE OTHER, IT
10 WOULD APPEAR THAT ONE OF THE REQUIREMENTS IS WHATEVER
11 ACTION IS TAKEN WITHOUT MALICE. AND WE CERTAINLY CONTEND
12 THAT THERE WAS NO TESTIMONY THERE WAS ANY ILL WILL TOWARDS
13 MR. ROUSE. NO PRIOR DIFFICULTIES OTHER THAN THAT PROVED.
14 I CAN'T POINT YOU TO THE EVIDENCE OTHER THAN THE LACK
15 THEREOF WITH REGARD TO THAT. NOW I UNDERSTAND THE
16 INFERENCE THAT MAY BE CHARGED FROM THE USE OF THE WEAPON.

17 THE COURT: ANYTHING ELSE, MR. WHEELER?

18 MR. WHEELER: NOT IN REGARD TO THAT. YOUR HONOR, WE
19 WOULD OBJECT TO THE HAND OF ONE CHARGE. I DON'T FEEL THAT
20 THE STATE MADE ANY EVIDENCE OF ANY SHOWING OF THE EVIDENCE
21 OTHER THAN THAT BOTH OF THESE PEOPLE WERE AT THE SCENE OR
22 SOMETHING; THAT THERE WAS ANY PLAN OR COMING TOGETHER OF
23 THE MINDS OF WHAT HAPPENED. AND I DON'T BELIEVE THAT
24 THEIR MERELY ACTION AT THE SAME TIME WAS PART OF ANY
25 COLLABORATIVE EVIDENCE. THEREFORE OBJECT TO THAT CHARGE.

1 THAT'S ALL I HAVE WITH REGARD TO THE CHARGES. THANK YOUR
2 HONOR.

3 THE COURT: ALL RIGHT. YES, SIR.

4 MR. SMITH: AS TO THE HAND OF ONE HAND OF ALL, WE
5 ALSO OBJECT TO THAT, YOUR HONOR. MY BELIEF, IF MY MEMORY
6 SERVES ME, THAT IS WHERE THE PARTICIPANTS ARE INVOLVED IN
7 THE CRIMINAL OFFENSE. AND SOMETHING HAPPENS DURING THE
8 COMMISSION OF THE OFFENSE. IN THIS CASE, YOUR HONOR,
9 THERE IS NO FACTS THAT THEY WERE INVOLVED IN AN OFFENSE.
10 A FIGHT BROKE OUT ON THE WAY TO SHOOT POOL. THEY WEREN'T
11 GOING TO ROB THE POOL HALL. THEY WEREN'T GOING TO DO
12 ANYTHING AS AN OFFENSE, SO WE WOULD OBJECT TO THAT. AND
13 AGAIN, YOUR HONOR, WE FEEL THERE IS SOME CAUSE TESTIMONY
14 AS TO VOLUNTARY MANSLAUGHTER AS TO HIM. BECAUSE HIS
15 TESTIMONY DIRECTLY WAS THAT HE DIDN'T EVEN -- HE HEARD TWO
16 SHOTS. HE DIDN'T EVEN KNOW WHETHER OR NOT, BY HIS
17 TESTIMONY, WHETHER THE DECEASED WAS STRUCK WITH ONE OF
18 THOSE BULLETS OR NOT. HE DID NOT KNOW.

19 AND HIS TESTIMONY WAS, THERE WAS A STRUGGLE INVOLVING
20 THE WEAPON. SO WE FEEL LIKE VOLUNTARY MANSLAUGHTER IS A
21 PROPER CHARGE IN HIS CASE.

22 THE COURT: ALL RIGHT.

23 MR. SMITH: THANK YOU, YOUR HONOR.

24 THE COURT: MR. JOHNSON.

25 MR. JOHNSON: THANK YOUR HONOR.

1 THE COURT: YOU DIDN'T OBJECT TO ANYTHING ABOUT YOUR
2 GUY.

3 MR. JOHNSON: I UNDERSTAND. BUT IF YOU ASKED ANY
4 QUESTIONS CONCERNING THE HAND OF ONE, I'M ASSUMING IT'S
5 NOT RELATED TO MY GUY AS FAR AS THE HAND OF ONE IS
6 CONCERNED. WELL I OBJECT TO THE HAND OF ONE, IT HAS NO
7 CONNECTION TO MY GUY. THE HAND OF ONE I THINK IN HIS CASE
8 WILL BE AS FAR AS THE MURDER IS CONCERNED. AFTER THE
9 FACT, I DO NOT THINK THE HAND OF ONE SITUATION WOULD BE
10 APPLICABLE AS IT APPLIED TO MY PARTICULAR CLIENT.

11 THE COURT: BECAUSE OTHERWISE HE WOULD BE GUILTY OF
12 MURDER TOO.

13 MR. JOHNSON: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: WELL THE LAW REGARDING THE HAND OF ONE,
15 IS THAT A PERSON WHO JOINS IN ANOTHER TO ACCOMPLISH AN
16 ILLEGAL PURPOSE IS CRIMINALLY RESPONSIBLE FOR EVERYTHING
17 DONE BY THE OTHER. WHICH OCCURS AS THE NATURAL
18 CONSEQUENCE OF AN ACT DONE IN CARRYING OUT THE COMMON PLAN
19 AND PURPOSE. SO I AGREE WITH MR. SMITH THERE IS NO
20 EVIDENCE OF ANY COMMON PLAN OR PURPOSE. IT APPEARS BASED
21 ON THE TESTIMONY TO HAVE BEEN A RATHER SPONTANEOUS
22 OCCURRENCE. IN THE SENSE THAT THERE IS NO PRIOR
23 ARRANGEMENT THAT APPEARS TO COMMIT ANY CRIMINAL OFFENSE.
24 SO I WILL NOT CHARGE THE HAND OF ONE BASED ON THAT.

25 I WILL CHARGE, ONCE AGAIN, AS FAR AS MR. THOMAS'

1 CHARGE, INVOLUNTARY. WHAT DO YOU SAY, MR. SAVERANCE?

2 MR. SAVERANCE: YOUR HONOR, I THINK WITH MR. THOMAS
3 THE MURDER AND THE VOLUNTARY MANSLAUGHTER WAS A PROBLEM.
4 BUT INVOLUNTARY WOULDN'T. BECAUSE HE NOT ONLY HE SHOT
5 INTENTIONALLY AT TROY ROUSE. IT WASN'T, I MEAN, YOU
6 KNOW, I ASKED HIM ABOUT HITTING HIS FRIEND. HE SAID, NO,
7 I WASN'T GOING TO SHOOT EUNICE. I INTENTIONALLY SHOT TROY
8 ROUSE IN THE BACK. WHEN YOU INTEND TO SHOOT SOMEBODY AND
9 YOU SHOOT THEM, THAT'S NOT AN ACCIDENT.

10 THE COURT: EITHER SELF DEFENSE OR GUILTY OF---

11 MR. SAVERANCE: YES, SIR, YOUR HONOR. IT WOULD BE,
12 IT'S NOT NEGLIGENCE OR ACCIDENT OR WHATEVER.

13 THE COURT: I AGREE WITH MR. SAVERANCE ON THAT. I'M
14 NOT GOING TO CHARGE INVOLUNTARY AS TO MR. THOMAS. AS TO
15 BOTH DEFENDANTS I'M CHARGING, BOTH MURDER DEFENDANTS I'M
16 CHARGING VOLUNTARY MANSLAUGHTER. I'M ALSO CHARGING SELF
17 DEFENSE. AS TO MR. MCCALL I'M ALSO CHARGING INVOLUNTARY.
18 AND AS TO MR., THE THIRD GUY, MR. JAMES, I AM CHARGING THE
19 REQUEST OF CHARGES OF MR. JOHNSON.

20 YES, SIR. ANYTHING ELSE?

21 MR. SAVERANCE: THE ONLY THING JUST TO BE CLEAR ON
22 MR. CHARLIE JOHNSON, YOUR HONOR, I WOULD REQUEST THAT
23 THERE BE ACCESSORY AFTER THE FACT OF THE MURDER. BUT
24 THERE ALSO BE ACCESSORY AFTER THE FACT OF VOLUNTARY
25 MANSLAUGHTER SINCE THAT'S A LESSER INCLUDED OF MURDER.

1 JUST TO TOUCH BASE WITH THAT, YOUR HONOR.

2 THE COURT: WHAT DO YOU SAY, MR. JOHNSON?

3 MR. JOHNSON: YOUR HONOR, I WOULD DISAGREE. MY
4 CLIENT WAS INDICTED FOR ACCESSORY AFTER THE FACT OF
5 MURDER. THAT IT IS MY BELIEF THAT IF THE MURDER IS NOT
6 FOUND THAT HE CAN BE HELD TO THE LESSER INCLUDED OFFENSE.

7 THE COURT: IN ORDER TO PROVE THIS CRIME, THE STATE
8 MUST PROVE THAT THE DEFENDANT KNEW THE OTHER PERSON, THE
9 PRINCIPAL COMMITTED A FELONY AFTER THE CRIME, AND
10 INTENTIONALLY HELPED THE PRINCIPAL TO ESCAPE AN ARREST,
11 CONVICTION OR PUNISHMENT. SO I GUESS IF A JURY FINDS THAT
12 HE WAS -- THAT MR. THOMAS IS GUILTY OF VOLUNTARY
13 MANSLAUGHTER THEY CAN'T FIND THAT MR. JAMES IS GUILTY OF
14 ACCESSORY AFTER THE FACT OF THAT CRIME, THAT FELONY.

15 MR. JOHNSON: THANK YOU, YOUR HONOR. JUDGE, YOUR
16 HONOR, JUST ONE OTHER QUESTION AS FAR AS THE ORDER OF
17 CLOSING.

18 THE COURT: THE ORDER OF CLOSING, MR. SAVERANCE, MR.
19 WHEELER, MR. WATTS, OR, MR. SMITH, AND YOU. GO AHEAD.

20 MR. JOHNSON: WELL IT'S MY UNDERSTANDING, YOUR HONOR,
21 THAT I WOULD BE ALLOWED LAST ARGUMENT.

22 THE COURT: YOU DIDN'T PRESENT ANYTHING?

23 MR. JOHNSON: I DIDN'T PRESENT ANYTHING, YOUR HONOR.

24 THE COURT: YES, SIR.

25 MR. SAVERANCE: YOUR HONOR, MY POSITION ON THAT IS,

1 IF ONE THE DEFENDANT'S PRESENTS SOMETHING, I BELIEVE I AM
2 ENTITLED TO FINAL THE ARGUMENT. AND THAT WAY IF I IN THIS
3 CASE WAIVE, BEGIN THE OPENING AND ALLOW MR. WHEELER AND
4 MR. WATTS TO GO, I BELIEVE MR. JOHNSON HAS GOT TO GO. AND
5 THEN I WOULD BE LAST.

6 THE COURT: WHAT IS THAT BELIEF BASED ON?

7 MR. SAVERANCE: YOUR HONOR, QUITE FRANKLY, I DO NOT
8 HAVE THE CASE IN FRONT OF ME. I'M NOT TRYING TO MISLEAD
9 THE COURT. THAT'S MY UNDERSTANDING. I MAY BE WRONG, BUT
10 THAT'S MY UNDERSTANDING SINCE THE DEFENSE DID PUT UP SOME
11 OF THE EVIDENCE. I MEAN, I DO ACKNOWLEDGE MR. JOHNSON DID
12 NOT PUT ANYTHING IN TO EVIDENCE.

13 THE COURT: HE DIDN'T PUT ANYTHING IN?

14 MR. JOHNSON: NO, I DID NOT, YOUR HONOR.

15 THE COURT: YOU WERE CAREFUL NOT TO PUT ANYTHING IN?

16 MR. JOHNSON: EXTREMELY CAREFUL, YOUR HONOR.

17 THE COURT: MR. SMITH.

18 MR. SMITH: YOUR HONOR, AGAIN, THE SOLICITOR'S OFFICE
19 CHOSE, THE STATE CHOSE TO PROSECUTE THE DEFENDANT'S AS A
20 GROUP. THE FACT THAT ONE OF THE DEFENDANT'S PUT NO
21 EVIDENCE IN, SHOULD ALLOW US AS A GROUP TO GO LAST. THE
22 SOLICITOR SHOULD GO FIRST.

23 THE COURT: AND WHAT AUTHORITY DO YOU HAVE FOR THAT
24 PROPOSITION?

25 MR. SMITH: THE SAME AUTHORITY MR. SAVERANCE HAS,

1 YOUR HONOR.

2 THE COURT: OKAY.

3 MR. JOHNSON: YOUR HONOR, I HAVE SOME AUTHORITY FOR
4 MY POSITION.

5 THE COURT: WHAT'S YOUR AUTHORITY?

6 MR. JOHNSON: MY AUTHORITY IS I THINK THAT IT IS
7 CLEAR TO STATE THAT THE DEFENSE DID NOT PUT UP ANY
8 EVIDENCE, THAT THEY HAVE THE RIGHT TO HAVE FINAL ARGUMENT.
9 IF THE STATE HAD DECIDED TO TRY ALL THREE DEFENDANTS
10 SEPARATELY; I MEAN TOGETHER HOWEVER, EACH ONE OF US HAD
11 ALL SEPARATE DEFENSES. AND BY ME NOT PUTTING UP ANY
12 DEFENSE AND NOT PUTTING IN ANY EVIDENCE, I AM THEREFORE
13 ALLOWED TO HAVE FINAL ARGUMENT.

14 THE COURT: THE CASE OF STATE V. MOUZON SAYS THAT IN
15 SOUTH CAROLINA IT IS WELL ESTABLISHED WHEREAS THE
16 DEFENDANT CALLS NO WITNESSES AND OFFERS NO EVIDENCE IN HIS
17 BEHALF, HIS COUNSEL IS ENTITLED TO HAVE THE CONCLUDING
18 ARGUMENT TO THE JURY. THE RIGHT TO OPEN AND CLOSE
19 ARGUMENT TO THE JURY IS A SUBSTANTIAL RIGHT. THE DENIAL
20 WHICH IS REVERSIBLE ERROR. THIS ADDRESSES IT AS TO MR.
21 JOHNSON'S MAN. THE COURT OF APPEALS REVERSED A CONVICTION
22 AND FOUND THAT MOUZON SHOULD HAVE HAD THE FINAL ARGUMENT
23 BECAUSE THE ONLY EVIDENCE HE OFFERED WAS TO HAVE THE JURY
24 VIEW THE SCENE. SO THE COURT OF APPEALS SAID THAT THAT
25 DID NOT CONSTITUTE OFFERING EVIDENCE. HE WAS STILL

1 ENTITLED TO LAST ARGUMENT. AND THEY REVERSED THE
2 CONVICTION. THE SUPREME COURT THEN REVERSED THE COURT OF
3 APPEALS HOLDING THAT THOUGH IT IS A SUBSTANTIAL RIGHT, IT
4 IS STILL SUBJECT TO THE HARMLESS ERROR ANALYSIS. AND THAT
5 DESPITE THE FACT THAT THE STRUCTURE OF THE TRIAL SHOULD
6 HAVE GIVEN HIM THE RIGHT TO ARGUE LAST. THE EVIDENCE
7 INDICATING THAT HE WAS GUILTY IS STILL SO OVERWHELMING
8 THAT CONVICTION SHOULD STAND. OR SHOULD HAVE STOOD. THEY
9 REVERSED THE COURT OF APPEALS.

10 SO I THINK THAT THE RIGHT, CLEARLY THE RIGHT TO AN
11 INDIVIDUAL DEFENDANT, THE MANNER IN WHICH THE STATE CHOOSE
12 TO PROSECUTE WOULD NOT ENTITLE ALL DEFENDANTS TO A FINAL
13 ARGUMENT. SO THEREFORE, THE ONLY DEFENDANT GIVING THE
14 FINAL ARGUMENT WOULD BE MR. JOHNSON. SO THAT MEANS MR.
15 SEVERANCE THAT YOU MUST OPEN IN FULL AS TO THE -- OR YOU
16 MAY OPEN IN FULL -- OR IF YOU WAIVE OPENING, WAIVE BY MR.
17 JOHNSON. AND MR. JAMES, IF THERE IS ANY ARGUMENT AS TO
18 MR. JAMES YOU WILL NOT REPLY AT ALL IN REFERENCE TO MR. --
19 I MEAN ANY FOLLOW UP AS TO MR. JAMES. AND MR. JOHNSON
20 WILL GIVE THE FINAL ARGUMENT.

21 MR. SAVERANCE: WHAT IS THE POINT AND POSITION ON THE
22 OPENING ON THE LAW, AND THEN WAIVING TO THE OTHER TWO
23 DEFENDANTS?

24 THE COURT: YOU CAN WAIVE THEM AS TO THAT PART. I
25 WANT YOU TO MAKE AN OPENING ON THE LAW.

1 MR. SAVERANCE: AND, YOUR HONOR, JUST FOR
2 CLARIFICATION---

3 THE COURT: BUT YOU HAVE TO OPEN AS TO MR. JAMES
4 ANYWAY. SO YOU ARE GOING TO DO SOME TALKING.

5 MR. SAVERANCE: OKAY. BUT, YOUR HONOR, I WOULD JUST
6 FOR THE RECORD, I AM GOING TO DO THAT. BUT I WOULD
7 PRESERVE THE RIGHT TO ALLOW MR. WHEELER OR MR. WATTS TO GO
8 AFTER THAT.

9 THE COURT: THEN COME BACK.

10 MR. SAVERANCE: YES.

11 THE COURT: AND THEN MR. JOHNSON CLEANS UP.

12 MR. SAVERANCE: THANK YOUR HONOR.

13 MR. WHEELER: YOUR HONOR,---

14 THE COURT: YES, SIR.

15 MR. WHEELER: ---THE ONLY OTHER THING I HAVE JUST
16 FOR THE RECORD, MS. SULLIVAN MENTIONED TO ME EARLIER
17 TODAY. OUR DEFENDANT'S EXHIBIT NO. 7 IS MISSING. I DON'T
18 KNOW WHERE IT IS. IT IS A PHOTOGRAPH. AND I JUST WANTED
19 TO PUT THAT ON THE RECORD.

20 THE COURT: IT IS A PHOTOGRAPH OF WHAT?

21 MR. WHEELER: OF THE CRIME SCENE. I KNOW THAT'S A
22 SILLY ANSWER. BUT I DON'T KNOW EXACTLY WHAT, I KNOW IT'S
23 ONE OF THOSE CRIME SCENE PHOTOS.

24 THE COURT: IT IS NOT ANYTHING YOU ARE LOOKING FOR.

25 MR. WHEELER: NO, SIR. WE JUST WANTED TO -- SHE HAD

1 ASKED. IT DOES APPEAR TO BE MISSING. WE'VE LOOKED FOR
2 IT.

3 THE COURT: EVERYONE HAS LOOKED FOR IT? THE
4 PHOTOGRAPH? THERE IS NOTHING WE CAN DO ABOUT IT.

5 MR. WHEELER: NO, SIR. I DON'T THINK SO. I JUST
6 WANTED TO PUT THAT ON THE RECORD.

7 THE COURT: AS FAR AS THE DEFENDANT MCCALL, WHO IS
8 ARUGING FOR HIM?

9 MR. WATTS: YOUR HONOR, I WOULD BE PRESENTING THE
10 CLOSING ARGUMENT.

11 THE COURT: YOU WOULD DO THE ENTIRE CLOSING FOR HIM?

12 MR. WATTS: YES, SIR.

13 THE COURT: WE WILL BRING THE JURY OUT. AND THEN
14 THIS RESTING WILL TAKE PLACE IN THE PRESENCE OF THE JURY.
15 THEN WE WILL GO TO CLOSING ARGUMENTS. AND BEFORE THAT, WE
16 WILL TAKE ABOUT 3 MINUTES TO GET READY TO DO THAT.

17 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

18 MR. JOHNSON: YOUR HONOR, BEFORE WE BRING THE JURY
19 OUT, WE DIDN'T MAKE ANY, BUT WE FORGOT TO MAKE OUR
20 DIRECTED VERDICT MOTIONS.

21 THE COURT: YES, SIR. YOU CAN DO THAT AT THIS TIME.

22 MR. JOHNSON: YOU SET THE STANDARD ALREADY, YOUR
23 HONOR. ON BEHALF OF MY CLIENT, I WOULD LIKE TO MAKE A
24 MOTION FOR A DIRECTED VERDICT IN THIS CASE. I DO NOT FEEL
25 THAT THE STATE HAS GIVEN SUFFICIENT EVIDENCE TO PROVE ITS

1 CASE. THE ONLY EVIDENCE HE HAS CONNECTED MY CLIENT CLOSE
2 TO THE CRIME WAS THAT THERE WAS TESTIMONY OF MS. HILL,
3 YOUR HONOR, WHO STATED THAT SHE SAW MY CLIENT IN THE
4 MIDDLE OF WILSON STREET. ALL EVIDENCE GIVEN THUS FAR HAS
5 STATED THAT THE CRIME ACTUALLY OCCURRED AT THE CORNER OF
6 RAY AND HILL (SIC). THERE'S ALSO ADDITIONAL EVIDENCE
7 TO STATE THAT MS. HILL WAS SEEN AT ANOTHER LOCATION AT THE
8 TIME THAT THIS HAPPENED. AND SHORT OF THAT, YOUR HONOR,
9 THE STATE HAS NO EVIDENCE, HAS GIVEN ANY EVIDENCE
10 CONNECTING MY CLIENT.

11 AS A RESULT, I THINK THEY HAVE PROVEN, THEY HAVE
12 FAILED TO PROVE ALL THE REQUIREMENTS, ALL OF THE ELEMENTS
13 OF THE CRIME. AT LEAST CALLS THEM TO BE QUESTIONED. I
14 THINK THAT MY CLIENT IS ENTITLED TO A DIRECTED VERDICT.

15 THE COURT: WELL HER TESTIMONY CERTAINLY HAS BEEN
16 VIGOROUSLY ATTACKED. AND SIGNIFICANTLY ASSAULTED AND PUT
17 UNDER THE MICROSCOPE BY OTHER WITNESSES. BUT IT STILL
18 REMAINS A CREDIBILITY ISSUE BASED ON THE TOTALITY OF HER
19 INITIAL TESTIMONY AND HER INITIAL STATEMENT THAT SHE SAW
20 MR. JAMES THERE WITH HIM WHILE WALKING DOWN THE STREET
21 RIGHT AT OR NEAR THE TIME THE SHOOTING OCCURRED. SO I
22 THINK THAT THERE IS NO QUESTION THAT THE JURY COULD
23 BELIEVE THE FIRST PART OF WHAT SHE SAID. AND THEREFORE
24 COULD CONCLUDE THAT HE WAS THERE TO A STANDARD. HE WOULD
25 HAVE BEEN THERE DURING THE SHOOTING. HE DROVE MR. THOMAS.

1 SO I DENY THE MOTION.

2 MR. JOHNSON: THANK YOUR HONOR.

3 THE COURT: MR. SMITH.

4 MR. SMITH: YOUR HONOR, ON BEHALF OF MR. MCCALL, WE
5 WOULD ALSO MAKE THE SAME MOTION FOR A DIRECTED VERDICT.
6 AS I STATED EARLIER, YOUR HONOR, THE STATE PROVIDED NO
7 TESTIMONY, NO EVIDENCE TO IMPLICATE MY CLIENT AT ALL.
8 THERE WAS SOME TESTIMONY BY TWO WITNESSES THAT WAS VAGUE,
9 IT WAS UNCERTAIN. IN FACT, THE CROSS EXAMINATION OF BOTH
10 OF THEM WAS VERY UNCLEAR. YOUR HONOR, I REALIZE THE JURY
11 MIGHT HAVE A RIGHT TO LOOK AT THOSE WITNESSES STATEMENT'S
12 AND DETERMINE THEIR CREDIBILITY. BUT IN LOOKING AT THIS
13 WITHOUT BEING PREJUDICE TO MY CLIENT, CLEARLY, THE STATE
14 IS ASKING THIS JURY TO FILL IN THE BLANKS. THEY'RE ASKING
15 THEM TO TRY AND FIND A WAY TO CONVICT EUNICE MCCALL OF
16 MURDER. AND, IN FACT, THERE HAS BEEN VERY LITTLE, IF ANY,
17 TO INDICATE SUCH A CHARGE. AND WE WOULD MOVE FOR A
18 DIRECTED VERDICT ON THAT CHARGE.

19 AS FAR AS THE GUN, YOUR HONOR, THE GUN CHARGE ITSELF,
20 THEY NEVER PUT ANY EVIDENCE FORWARD THAT MY CLIENT HAD A
21 GUN. MY CLIENT IN HIS TESTIMONY SAID THAT THE DECEASED
22 HAD THE GUN; THAT HE STRUGGLED WITH HIM FOR IT. SO WE
23 WOULD MOVE FOR A DIRECTED VERDICT ON THAT ISSUE ALSO.

24 THE COURT: WELL THE TESTIMONY OF MR. THOMAS
25 ESTABLISHES IF BELIEVED BY THE JURY THAT MR. MCCALL SHOT

1 MR. ROUSE SEVERAL TIMES. THE OTHER WITNESS ON THE SCENE
2 SAID SHE HEARD TWO GUNSHOTS. BASED ON THE TESTIMONY IN
3 THE LIGHT MOST FAVORABLE TO THE STATE, THERE IS CERTAINLY
4 A QUESTION MADE AS TO WHETHER OR NOT TWO PEOPLE WALKING
5 DOWN THE STREET, AND ONE KNOCKING THE OTHER'S HAT OR HAT
6 OFF, WOULD GIVE THE OTHER PERSON A SUFFICIENT BASIS TO
7 SHOOT HIM. SO THERE IS A QUESTION AS TO WHETHER OR NOT
8 EXCESSIVE FORCE WAS USED ON THE DECEASED. AND IF THE JURY
9 IS TO BELIEVE ALL THE EVIDENCE AND THE INFERENCES FROM THE
10 STATE THEY COULD CONCLUDE THAT MR. MCCALL IS GUILTY AS
11 CHARGED. I DENY THE MOTION.

12 THE COURT: YES, SIR.

13 MR. WHEELER: THANK YOUR HONOR. MAY IT PLEASE THE
14 COURT, YOUR HONOR, AT THIS TIME WE WOULD RENEW OUR
15 PREVIOUS MOTION FOR A DIRECTED VERDICT. AND, YOUR HONOR,
16 I WILL MAKE THE SAME ARGUMENT I MADE PREVIOUSLY. AND IT
17 MAY BE A LITTLE MORE CLEAR AS TO WHY YOUR RULING A LITTLE
18 WHILE AGO ON THE HAND OF ONE, IS THE HAND OF ALL CHARGE.
19 YOUR HONOR, I WOULD SUBMIT THAT THE ACTIONS OF MR. THOMAS
20 AND MR. MCCALL MUST BE VIEWED INDEPENDENTLY IF IT'S NOT
21 THE HAND OF ONE, THE HAND OF ALL, WHICH YOU SAID IT'S NOT
22 GIVEN THE LAW ON THAT. THEREFORE, THE STATE HAS TO PROVE
23 BEYOND A REASONABLE DOUBT THAT MY CLIENT'S ACTIONS WOULD
24 BE A PROXIMATE CAUSE OF MR. ROUSE'S DEATH. THEY MUST
25 PROVE THAT IT IS THE IMMEDIATE CAUSE, THE EFFICIENT CAUSE,

1 AND THAT CAUSE WITHOUT WHICH THE DEATH WOULD NOT HAVE
2 OCCURRED.

3 THE ONLY TESTIMONY THEY PUT UP HERE IN THAT REGARD IS
4 DR. ROSS, OF COURSE. SHE TESTIFIED IT WAS A 38 CALIBER
5 BULLET WHICH NOBODY CONTENDS MY CLIENT SHOT, WAS THE
6 EFFICIENT CAUSE OF DEATH OF TROY ROUSE. NOT THE 22
7 BULLETS. THERE IS NO HAND OF ONE, HAND OF ALL SEPARATING
8 WHAT THESE GENTLEMEN DID FIRING THESE BULLETS. AND
9 THERE'S NO QUESTION THAT MY CLIENT DIDN'T FIRE THE 38
10 BULLET. THERE IS NO PROOF THAT HE PROXIMATELY CAUSED THE
11 DEATH TROY ROUSE. AND I WOULD RENEW THAT ALSO.

12 THE COURT: WELL THE JURY CAN BELIEVE ANY WITNESSES.
13 THE JURY IS NOT OBLIGATED TO BELIEVE A WITNESS BECAUSE THE
14 WITNESS IS AN EXPERT. AND THE TESTIMONY OF MR. MCCALL WAS
15 TO THE EFFECT THAT EVEN THOUGH MR. ROUSE HAD BEEN SHOT
16 SEVERAL TIMES, IT DIDN'T DO ANY GOOD UNTIL MR. THOMAS
17 INTERCEDED TO SHOOT HIM IN THE BACK, AND SHOOT HIM THE
18 MOST NUMBER OF TIMES THAT HE DID. SO CONSIDERING THE
19 TESTIMONY OF MR. MCCALL AND THE TESTIMONY OF MR. THOMAS
20 CONCERNING THE FACT THAT THE INITIAL SHOTS DID NOT CAUSE
21 MR. ROUSE TO LOOSEN HIS GRIP, THAT'S WHY HE SHOT HIM. AND
22 THE QUESTION IS WHETHER OR NOT HE USED APPROPRIATE FORCE.
23 WHETHER HE HAD ANY BASIS TO DO WHAT HE DID. WHETHER OR
24 NOT SOMETHING WAS INVOLVED WITH THESE FRIENDS, WITH BOTH
25 OF THEM TO SHOOT. ONE IN THE BACK THREE TIMES, THREE,

1 FOUR, FIVE TIMES.

2 THE JURY MIGHT WONDER WHO ASSIGNED HIM THAT
3 RESPONSIBILITY. THEY DECIDED THAT HE WAS THE PERSON TO
4 SOLVE THE ISSUE DURING THAT NIGHT BY SHOOTING MR. ROUSE IN
5 THE BACK. BUT I THINK TAKING THE TESTIMONY AS A WHOLE THE
6 CHARGE IS A CHARGE FOR WHICH THE JURY HAS TO EVALUATE ON
7 THAT ISSUE.

8 MR. WHEELER: THANK YOU, YOUR HONOR.

9 THE COURT: ARE YOU READY FOR THE JURY?

10 MR. SAVERANCE: THE STATE IS, YOUR HONOR.

11 THE COURT: BRING THEM ON.

12 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
13 PRESENCE OF THE JURY.)

14 THE COURT: WELCOME BACK, LADIES AND GENTLEMEN. MR.
15 WATTS.

16 MR. WATTS: YES, YOUR HONOR.

17 THE COURT: ANYTHING FURTHER FROM THE DEFENDANT
18 MCCALL?

19 MR. MCCALL: YOUR HONOR, THE DEFENDANT MCCALL RESTS.

20 THE COURT: LADIES AND GENTLEMEN, YOU'VE HEARD
21 MR. MCCALL'S DEFENSE. MR. JOHNSON.

22 MR. JOHNSON: YOUR HONOR, ON BEHALF OF MY CLIENT CHAD
23 JAMES, WE REST OUR CASE.

24 THE COURT: MR. SAVERANCE, ANY REPLY BY THE STATE?

25 MR. SAVERANCE: NO REPLY FROM THE STATE, YOUR HONOR.

1 THE COURT: LADIES AND GENTLEMEN, YOU HAVE NOW HEARD
2 ALL OF THE EVIDENCE IN THIS CASE. IT IS NOW TIME FOR THE
3 LAWYERS TO GIVE THEIR CLOSING ARGUMENTS. PLEASE GIVE THEM
4 YOUR ATTENTION, MR. SAVERANCE.

5 MR. SAVERANCE: MAY IT PLEASE THE COURT, YOUR HONOR.

6 THE COURT: YES, SIR.

7 MR. SAVERANCE: LADIES AND GENTLEMEN, WE APPRECIATE
8 YOU SITTING HERE ALL WEEK AND GIVING US YOUR TIME. WE
9 KNOW IT WASN'T SOMETHING YOU PROBABLY WANTED TO DO. WE
10 HAVE BEEN AS QUICK AS POSSIBLE. AT THE TIME SAME TIME,
11 TAKING OUR JOB SERIOUSLY AND PUTTING UP WHAT WE FELT WAS
12 NECESSARY AND NEEDED TO BE HEARD.

13 NOW I AM GOING TO TALK TO YOU A LITTLE BIT ABOUT THIS
14 CASE AS IT MAINLY PERTAINS TO CHAD JAMES. YOU KNOW, SOME
15 OF THE OTHER ATTORNEYS WILL GET A CHANCE TO TALK. MR.
16 MCCALL, HIS ATTORNEY, AND THE OTHER ATTORNEYS. AND I'LL
17 COME BACK UP AND SPEAK TO YOU ABOUT MR. MCCALL AND
18 MR. THOMAS AT THAT POINT AND TIME. SO I JUST WANTED TO
19 EXPLAIN TO YOU THAT WHAT I TELL YOU NOW IS NOT THE ENTIRE
20 OPENING STATEMENT I AM GOING TO GIVE YOU. IT'S IN
21 RELATION TO MR. JAMES. AND I WILL COME BACK UP AND TALK A
22 LITTLE BIT MORE. SO AS WE SAID IN THE BEGINNING, THIS IS
23 A CASE ABOUT MURDER. THE UNLAWFUL KILLING OF A HUMAN
24 BEING. THE TAKING OF A LIFE WITHOUT JUSTIFICATION.

25 AND AS FAR AS CHAD JAMES GOES, HE'S BEEN CHARGED WITH

1 ACCESSORY AFTER THE FACT. NOW WHAT DOES THAT MEAN? THAT
2 MEANS THAT HE HAD SOME KNOWLEDGE OF WHAT HAPPENED ON THE
3 NIGHT OF APRIL 7, 2005, WHEN TROY ROUSE WAS KILLED. AND
4 THAT'S NOT IN DISPUTE. THAT'S NOT IN DISPUTE. TROY ROUSE
5 WAS SHOT AND KILLED. SHOT SEVERAL TIMES AND KILLED THAT
6 NIGHT. HERE IN BISHOPVILLE, HERE IN LEE COUNTY. NOW
7 TIFFANY HILL TESTIFIED THAT SHE WAS IN THE AREA, AND THIS
8 WAS A CLUB OR A LITTLE STORE, BLUE STORE, AND THAT SHE SAW
9 ALL THE DEFENDANTS, MR. MCCALL, MR. THOMAS, AND MR. JAMES.
10 SHE KNEW THEM ALL. KNEW THEM ALL FOR A LONG TIME. AND
11 KNEW THEM ALL WELL. THERE WAS SOME LIGHTING OUT THERE.
12 SHE COULD CLEARLY IDENTIFY THEY WERE ALL THREE TOGETHER.
13 AND WHO WERE THEY WITH THAT NIGHT? TROY ROUSE.

14 AND SHE STATED WHEN SHE'S WALKING THIS WAY, THEY
15 PASSED BY HER. AND SHE WAS CLOSE TO THEM. AND SHE I.D.'D
16 ALL FOUR OF THEM WALKING TOGETHER. AND HER TESTIMONY WAS,
17 THAT AS SHE GOT UP TO THIS PART OF THE STORE, SHE HEARD AN
18 ALTERCATION AND TURNED AROUND. AND AT THAT POINT, SHE SAW
19 EUNICE MCCALL FIRING AND SHOTS TROY ROUSE. REMEMBER SHE
20 SAID THAT SHE SAW HIM LOOKING THIS WAY AND THEY WERE FACE
21 TO FACE. AND SHE SAID THAT MR. ROUSE DID NOT HAVE EUNICE
22 MCCALL IN A HEADLOCK AT THAT POINT AND TIME; THAT THEY
23 WERE FACE TO FACE, AND PULLED OUT A GUN AND FIRED. NOW
24 FROM HER TESTIMONY THAT SHE JUST PASSED BY THE THREE
25 DEFENDANTS THAT WILL TELL YOU THAT CHAD JAMES WAS RIGHT

1 THERE. HE'S RIGHT UP IN THIS AREA. AND A VERY SHORT TIME
2 LATER, THE GUNSHOTS GO OFF. THE GUNSHOTS GO OFF. SO HE
3 WAS IN THE AREA AND AT THE SCENE WHEN IT HAPPENED.

4 WE'RE NOT SAYING THAT HE DID ANYTHING AS FAR AS
5 SHOOTING OR ANYTHING LIKE THAT, BUT HE WAS THERE. HE WAS
6 THERE. AND WE KNOW THAT FROM MS. HILL'S TESTIMONY. AND I
7 BELIEVE SHE DID SEE ALL THREE DEFENDANTS THERE RIGHT
8 BEFORE THE SHOOTING. NOW WHAT'S IMPORTANT ABOUT THAT?
9 WELL WHAT'S IMPORTANT IS, MR. JAMES IS RIGHT THERE AT THE
10 SCENE. RIGHT IN THE AREA WHEN IT HAPPENED. NOT THAT HE
11 DID ANYTHING NECESSARILY, BUT HE KNEW SOMETHING WENT DOWN.
12 HE WAS RIGHT THERE. HE HEARD THE SHOTS. I CAN'T TELL YOU
13 AND I WON'T TELL YOU WHAT, YOU KNOW, THE OTHER PEOPLE SAW.
14 THEY KNEW HIM BETTER THAN I DO. BUT HE WAS RIGHT THERE AT
15 THE SCENE WHEN THE SHOTS WERE FIRED. WHEN THE SHOTS WERE
16 FIRED. AND THEN WHAT HAPPENED EVEN MORE IMPORTANT WAS
17 THAT EFRAIN THOMAS, WHO JUST GOT THROUGH KILLING TROY
18 ROUSE. JUST GOT THROUGH SHOOTING HIM SIX TIMES. SIX
19 TIMES.

20 WHERE DOES HE GO? HE DOESN'T GO HOME. HE DOESN'T
21 STAY AT THE SCENE. HE GOES TO HIS BUDDY'S HOUSE, HIS
22 FRIEND, CHAD JAMES. HIS FRIEND'S HOUSE, THAT'S WHERE HE
23 GOES. WHY? I SUBMIT TO YOU, HE KNOWS HE'S GOING TO GET
24 SOME HELP. AND HE KNEW HE WAS GOING TO GET SOME HELP FROM
25 MR. JAMES. HE GOES BACK TO MR. JAMES' HOUSE. AND YOU

1 HEARD FROM COURTNEY JOHNSON AND SAMANTHA HICKMAN, AND THEY
2 TESTIFIED. YOU HEARD TESTIMONY THAT MR. THOMAS CAME BACK
3 TO CHAD JAMES' HOUSE, SWEATING, WINDED, AND TO WASH HIS
4 FACE DOWN. AND THEN WAS OUTSIDE AFTER TALKING TO CHAD
5 JAMES. THE WITNESSES STATED THEY WERE TALKING TOGETHER
6 OUTSIDE RIGHT AFTER THIS SHOOTING HAPPENED. MR. THOMAS IS
7 SWEATING AND WINDED, AND THEY'RE TALKING TOGETHER SHORTLY
8 AFTER THAT. AND YOU MAY SAY, MR. SAVERANCE, THE TWO
9 WITNESSES DIDN'T SAY WHAT THEY HEARD. THEY COULDN'T HEAR
10 TALKING. AND THAT'S RIGHT.

11 BUT WHAT HAPPENED NEXT? WHAT HAPPENED NEXT WAS, CHAD
12 JAMES DRIVES A VEHICLE THAT EFRAIN THOMAS GETS IN. NOT
13 ONLY DOES HE GET IN THE VEHICLE, BUT HE GETS IN THE TRUNK.
14 HE GETS IN THE TRUNK OF THE VEHICLE. NOW THAT SHOULD SET
15 SOME ALARMS RIGHT THERE. WHAT SENSE DOES THAT MAKE? WHAT
16 NORMAL SITUATION WOULD SOMEBODY? MR. THOMAS SAID
17 SOMETHING ABOUT THERE WASN'T ENOUGH ROOM. WHAT NORMAL
18 SITUATION WOULD COME ABOUT WHERE SOMEBODY SAYS, I NEED
19 SOME ROOM, AND GETS IN A TRUNK? A TRUNK OF A CAR? YOU
20 KNOW, IF HE LAID THE SEAT DOWN, HE WOULD HAVE TAKEN UP
21 EVEN MORE SPACE UP IN THE BACK SEAT. WHICH IT JUST
22 DOESN'T MAKE SENSE IF HE WAS LOOKING FOR ROOM TO LAY DOWN.
23 AND WHAT DO THEY DO? CHAD JAMES DRIVES THE PERSON THAT
24 JUST -- ONE OF THE PEOPLE WHO JUST FINISHED SHOOTING AND
25 KILLING TROY ROUSE TO THE GAS STATION. AND THEN HE DRIVES

1 HIM OUT OF THE COUNTY, OVER TO CAMDEN.

2 SO, LADIES AND GENTLEMEN, YOU KNOW WHAT THE WITNESSES
3 SAID. I'M NOT TRYING TO PUT WORDS IN THEIR MOUTH. BUT
4 YOU CAME IN HERE AND YOU HAD YOUR COMMON SENSE AND YOUR
5 GOOD JUDGMENT. AND WE KNOW THAT YOU KEPT THAT WITH YOU
6 ALL WEEK AND YOU'RE GOING TO KEEP IT WITH YOU WHEN YOU
7 LEAVE. AND WHAT DOES COMMON SENSE TELL YOU? CHAD JAMES
8 WAS THERE AT THE SCENE IN THE AREA AT THE TIME THE SHOTS
9 WERE FIRED. EFRAIN THOMAS GOES BACK TO CHAD JAMES' HOUSE.
10 EFRAIN THOMAS WAS WINDED AND SWEATY. EFRAIN THOMAS WAS
11 TALKING TO CHAD JAMES. THEN EFRAIN THOMAS GETS IN THE
12 TRUNK OF A CAR THAT CHAD JAMES DRIVES TO ANOTHER COUNTY.
13 AND MR. JOHNSON HAS SAID LITTLE BITS AND COMMENTS MADE
14 EARLIER ABOUT WHETHER HE WAS WANTED OR NOT. I DON'T --
15 THAT DOESN'T MAKE ANY DIFFERENCE. IF CHAD JAMES HAD
16 KNOWLEDGE OF THE SHOOTING THAT OCCURRED AND THEN DROVE THE
17 DEFENDANT MR. THOMAS OUT OF THE COUNTY, IT DOESN'T MATTER
18 ~~WHETHER THERE WERE WARRANTS AT THE TIME OR SOMEBODY WAS~~
19 TRYING TO SPEAK TO THEM. YOU CAN'T JUST HAVE SOMEBODY
20 TRYING TO DRIVE THEM AWAY AND SAY, OH, THE POLICE WEREN'T
21 LOOKING FOR MR. THOMAS AT THAT POINT AND TIME, SO HE COULD
22 DRIVE THEM AWAY. THAT DOES NOT MAKE ANY SENSE, AND THAT
23 IS NOT THE LAW.

24 SO WHEN YOU GO BACK TO DELIBERATE, I WANT YOU TO SAY,
25 HEY, WHAT MAKES SENSE HERE. CHAD JAMES WAS AT THE SCENE.

1 EFRAIN THOMAS ADMITTED HE WAS FRIENDS WITH CHAD JAMES.
2 YEAH, EFRAIN THOMAS TOOK THE STAND AND SAID CHAD JAMES
3 DIDN'T KNOW NOTHING ABOUT IT. I DIDN'T TELL CHAD JAMES
4 ANYTHING. HE PROBABLY -- HE DIDN'T SEE ME IN THE TRUNK.
5 WHAT ARE Y'ALL GOING TO SAY? CHAD JAMES IS MY FRIEND. I
6 SAID, YOU WANT TO HELP YOUR FRIEND DON'T YOU. AND HE
7 SAID, YEAH, I'M GOING TO HELP MY FRIEND. THAT'S WHAT HE
8 WAS DOING. EFRAIN THOMAS ACKNOWLEDGED TO ME ON THE
9 WITNESS STAND THAT HE LIED NINE OR TEN TIMES. AT LEAST.
10 SO WHY WOULD YOU BELIEVE HIM WHEN HE TRIED TO HELP HIS
11 FRIEND CHAD JAMES? SO JUST THINK ABOUT THAT WHEN YOU'RE
12 DELIBERATING.

13 AND LASTLY, WE HAVE CHARGED MR. JAMES WITH ACCESSORY
14 AFTER THE FACT OF MURDER. NOW IF YOU BELIEVE, IF YOU FIND
15 EUNICE MCCALL AND OR EFRAIN THOMAS GUILTY OF MURDER, WE
16 ASK THAT YOU FIND CHAD JAMES GUILTY OF THE ACCESSORY. A
17 MURDER WAS COMMITTED AND HE HELPED, AFTER THE FACT. AFTER
18 THE FACT, THAT'S WHAT WE'RE CHARGING HIM WITH. NOT BEFORE
19 THE FACT, BUT AFTER. WHAT WERE HIS ACTIONS AFTER THE
20 FACT? DO THEY MAKE SENSE, OR DO THEY NOT MAKE SENSE? IF
21 YOU, AND WE'LL TALK MORE ABOUT THIS LATER. BUT IF YOU
22 FIND THE DEFENDANTS, EFRAIN THOMAS AND OR EUNICE MCCALL
23 GUILTY OF VOLUNTARY MANSLAUGHTER, WE ARE GOING TO ALSO ASK
24 THAT YOU FIND CHAD JAMES GUILTY OF ACCESSORY AFTER THE
25 FACT OF VOLUNTARY MANSLAUGHTER. EITHER WAY YOU CUT IT,

1 TROY ROUSE WAS KILLED. WAS SHOT IN THE STREET AND LEFT TO
2 DIE. AND HE DID DIE. SO HE WAS KILLED WHETHER IT
3 WAS MURDER OR VOLUNTARY MANSLAUGHTER. AND BECAUSE CHAD
4 JAMES ASSISTED EPHRAIN THOMAS AFTER THE KILLING OF TROY
5 ROUSE, HE IS GUILTY. HOLD HIM ACCOUNTABLE, LADIES AND
6 GENTLEMEN, HOLD HIM ACCOUNTABLE.

7 THE COURT: MR. WHEELER.

8 MR. WHEELER: THANK YOU, YOUR HONOR, MAY IT PLEASE
9 THE COURT. I WANT TO FIRST THANK Y'ALL FOR YOUR ATTENTION
10 DURING THIS TRIAL. I'VE TRIED A GOOD NUMBER OF CASES NOW.
11 AND I THINK I'VE SEEN Y'ALL PAY AS CLOSE OR CLOSER
12 ATTENTION THAN ANY JURY I'VE EVER SEEN. LEANING UP,
13 LOOKING AT THIS. AND LISTENING TO THESE WITNESSES. AND I
14 REALLY DO APPRECIATE THAT. I KNOW THIS WHOLE SYSTEM
15 APPRECIATES THAT. AND NOBODY WANTS HAVING PEOPLE GOING
16 TO SLEEP AND DON'T SEEM TO CARE. ESPECIALLY WHEN THE
17 STAKES ARE THIS HIGH.

18 LADIES AND GENTLEMEN, IN THAT VEIN ABOUT APPRECIATING
19 SOMETHING, I WOULD APPRECIATE IT IF Y'ALL WOULD PLEASE
20 HEAR ME REAL CLOSE DURING THIS CLOSING. THE REASON I
21 ASKED THAT IS THIS, MR. SAVERANCE EXPLAINED TO YOU HE'S
22 GOING TO TELL YOU A LITTLE BIT NOW. I'M GOING TO TALK A
23 LITTLE BIT ABOUT CHAD JAMES. BUT HE'S SAVING HIS BEST FOR
24 LAST. AND HE'S GOING TO WAIT UNTIL EVERYBODY ELSE TALKS,
25 AND THEN HE'S GOING TO GET TO COME UP AND SAY WHATEVER HE

1 WANTS TO SAY. AND I'M GOING TO HAVE TO SIT HERE WITH MY
2 MOUTH SHUT AND I'M NOT GOING TO HAVE ANOTHER CHANCE TO
3 COME BACK UP HERE. AND IT'S MY JOB TO REPRESENT MR.
4 THOMAS THE BEST I CAN. AND IF I DON'T LIKE SOMETHING MR.
5 SAVERANCE SAYS, I'M NEVER GOING TO GET TO TELL YOU ABOUT
6 IT AGAIN.

7 I'M GOING TO TRY TO DO MY BEST SHOT OF EXPLAINING TO
8 YOU NOW, AND THAT'S WHY I TELL Y'ALL THAT. BECAUSE I
9 WON'T GET TO TALK TO YOU AGAIN. MR. WATTS AND MR. JOHNSON
10 WILL. AND ALL THAT TIME IS GOING FURTHER WHEN Y'ALL GO
11 BACK TO THE JURY ROOM. SO I'M GOING TO BE FIRST AND THAT
12 MAKES ME LAST WHEN IT COMES TO REMEMBERING WHAT I SAID.
13 SO I APPRECIATE IT. LADIES AND GENTLEMEN, WE'VE TRIED TO
14 BE VERY CLEAR ABOUT MR. THOMAS' INVOLVEMENT IN THIS CASE
15 FROM THE FIRST MINUTE THAT I WALKED UP IN FRONT OF YOU
16 WHEN WE STARTED THIS TRIAL. WE'VE GOT 45, 42 EXHIBITS.
17 CLOTHES, BULLETS, BALLISTIC TESTS. THESE THINGS THAT SHOW
18 ROUNDS WERE SHOT. I TOLD YOU THE FIRST TIME I WALKED UP,
19 NONE OF THAT IS INVALID.

20 MR. THOMAS SAID HE SHOT HIM WITH A 22-PISTOL JUST
21 LIKE HE TOLD YOU HE DID. HE DIDN'T TRY TO SAY ANYTHING HE
22 DIDN'T KNOW. HE SAID HE DISCHARGED THE WEAPON. HE DIDN'T
23 AIM FOR ANYTHING IN PARTICULAR. ONE HITS HIM IN THE LEG.
24 A COUPLE IN THE SHOULDER. AND I THINK THAT'S PROBABLY
25 MOST OF THEM THAT HIT. BUT HE DIDN'T TRY AND SAY I

1 DIDN'T. HE SHOT HIM. WHATEVER 22 BULLETS THAT Y'ALL SEE
2 IN THIS AUTOPSY REPORT YOU CAN INFER CAME FROM HIS
3 FIREARM. HE HADN'T TRIED TO PLAY ANY GAMES. HIDE ANY
4 BALLS FROM YOU ABOUT WHAT WAS GOING ON. NOW MR. SAVERANCE
5 SAYS HE LIED 9 TIMES. AND HE DID. HE TOLD YOU HE DID.
6 WHEN HE TALKED TO CAPTAIN BURKE ON HIS OWN WHEN HE WAS
7 FIRST CONFRONTED ABOUT THIS, OR ASKED TO COME IN, AND HE
8 LIED. AND HE TOLD Y'ALL HE LIED. HE'S 23-YEARS-OLD. 22
9 AT THE TIME. SHOT SOMEBODY WHO HE THOUGHT WOULD SAVE HIS
10 FRIEND'S LIFE. BUT HE OBVIOUSLY WAS NOT HAPPY ABOUT WHAT
11 HE DID. AND HE DIDN'T TELL THE POLICE THE TRUTH AND THEY
12 LET HIM GO. AND HE DIDN'T COME IN HERE, HE COMES TO
13 Y'ALL, BUT I SUBMIT TO YOU HE DIDN'T DUCK AND DODGE THAT
14 QUESTION. I MEAN EVERY TIME MR. SAVERANCE ASKED HIM, DID
15 YOU LIE ABOUT ANYTHING FURTHER. NO, SIR. ABOUT A
16 SPECIFIC QUESTION IN YOUR STATEMENT, IS THIS TRUE ABOUT
17 HIM RUNNING AT YOU. NO.

18 ~~SO WHY SHOULD YOU BELIEVE HIM BECAUSE HE LIED? WHY~~
19 SHOULDN'T YOU BELIEVE HIM BECAUSE OF THESE 42 PIECES OF
20 EVIDENCE THAT THEY PUT IN; THAT THE STATE PUT IN. THAT
21 ALL SUPPORT, IF NOT ANYBODY ELSE'S, EFRAIN THOMAS' VERSION
22 OF WHAT HAPPENED. I TOLD YOU WHEN WE FIRST TALKED THAT
23 YOU WERE GOING TO HEAR FROM A LOT OF PEOPLE. Y'ALL ARE
24 THE SOLE JUDGE OF THE CREDIBILITY OF WHAT WITNESSES YOU
25 BELIEVE AND WHAT ONES YOU DON'T. YOU CAN FIT THESE PIECES

1 YOU LIKE. YOU CAN FIT PIECES YOU DON'T. THIS STUFF CAN'T
2 BE CHANGED. NOW A BUNCH OF IT WASN'T NECESSARY IF YOU
3 BELIEVE THIS HAPPENED. BUT A BUNCH OF IT SUPPORTS WHAT
4 EFRAIN THOMAS TELLS YOU. GO OVER THESE PICTURES THAT WE
5 TALKED A LOT ABOUT. AND THESE THAT COME IN FROM
6 YESTERDAY. PICTURES ABOUT THE BOOTS. PICTURES ABOUT THE
7 CASH AND THE CELL PHONE. THE CRACK IN MR. ROUSE'S POCKET.
8 THESE ARE ALL THESE PICTURES.

9 NOW IF I HOLD THEM UP TO THE LIGHT, Y'ALL CAN SEE
10 THEY ARE ALL MADE BY SLED. Y'ALL KNOW WHO SLED IS. THEY
11 JUST CAME AND TESTIFIED. WHY DID THESE PICTURES HELP TELL
12 EFRAIN THOMAS' STORY? WELL HE SAID HE DIDN'T HAVE A
13 PROBLEM WITH MR. ROUSE. HE NEVER HAD A PROBLEM WITH HIM.
14 NO WITNESS AT ALL INDICATED OTHERWISE. NOBODY OUT THERE
15 SAID THAT EFRAIN THOMAS WAS ANYTHING, THERE WAS NOTHING
16 OTHER THAN TO BE FRIENDS. NOBODY SAID ANYTHING DIFFERENT
17 AT ALL. NOTHING AT ALL WOULD SUGGEST THIS. IT WASN'T
18 ROBBERY. IT DIDN'T HAVE ANYTHING TO DO WITH TAKING
19 ANYBODY'S DRUGS. YOU'VE GOT THE BOOT HERE IN THE ROAD.
20 Y'ALL CAN JUDGE DISTANCES ON YOUR OWN. I'M NOT SUGGESTING
21 ANYTHING TO YOU, 20 SOME ODD FEET FROM WHERE ROUSE'S BODY
22 WAS. THAT TELLS YOU A STRUGGLE TOOK PLACE. NOBODY MADE
23 THAT UP. AND THAT BOOT DIDN'T JUST FALL OFF THAT DISTANCE
24 FROM WHERE THE BODY WAS. THESE PICTURES THAT SLED TOOK
25 SUBSTANTIATE WHAT MR. THOMAS TOLD YOU. THEY BACK THAT UP.

1 LADIES AND GENTLEMEN, I'M NOT GOING TO TAKE YOUR
2 TIME. Y'ALL WILL GET THESE THINGS WHEN YOU GET BACK TO
3 THE JURY ROOM. ONE OF THE THINGS Y'ALL WILL SEE IS THE
4 TOXICOLOGY REPORTS OF ALCOHOL CONTENT IN MR. ROUSE. WHEN
5 YOU SEE IT, AND YOU HEARD WHAT DR. ROSS SAID ABOUT IT
6 YESTERDAY I THINK IT WAS. Y'ALL SEE IT WAS WELL OVER 2.
7 ALL OF Y'ALL PROBABLY KNOW FROM READING THE PAPER AND JUST
8 YOUR COMMON KNOWLEDGE THAT 08 IS ABOUT THE LEGAL LIMIT.
9 AND THEREFORE, THAT'S INTOXICATED. DOES THAT MEAN
10 SOMEBODY NEEDS TO BE SHOT BECAUSE THEY'RE DRUNK? OF
11 COURSE NOT. BUT IT SUPPORTS WHAT MR. THOMAS TOLD YOU.

12 YOU KNOW, THE STATE HAS RUN RABBITS ACTUALLY ABOUT
13 WHY THIS HAPPENED. I ASK YOU WOULD THEY BE ABLE TO PROVE
14 ANY WHY WHEN I TALKED TO YOU AT THE START OF THIS CASE.
15 THEY PROVED IT WAS, A MAN WAS SHOT. HAVE THEY GIVEN ANY
16 ALTERNATIVE FOR WHY, OTHER THAN WHAT MR. THOMAS SAID?
17 NONE. THERE'S NO OTHER REASON HE WOULD HAVE DONE THIS
18 ~~OTHER THAN THE REASON THAT HE TOLD YOU, TO SAVE HIS~~
19 FRIEND. AND HE HAD EVERY REASON TO BE WORRIED. MR.
20 ROUSE, YOU HEARD FROM MR. MCCLEM. YOU HEARD FROM THE
21 OTHER WITNESS; TO BE A VIOLENT MAN. CORY MCCLEM SHOWED
22 YOU HIS SCAR. NOW DID HE GO AROUND PICKING ON THE WEAK
23 AND FEEBLE? NO. WHO HERE WOULD TANGLE WITH CORY MCCLEM?
24 MR. SAVERANCE BROUGHT IN HIS RECORD. HE'S A ROBBER, A
25 KIDNAPPER ACCORDING TO THEM, AND ALL THESE OTHER THINGS.

1 HE'S NOT A FEEBLE, OLD MAN. AND HE'S A BIG GUY. HE'S
2 BIGGER THAN BOTH OF THESE GUYS.

3 TROY ROUSE TOOK HIM ON IN A HEARTBEAT AND CUT HIS
4 THROAT. HE KNEW ABOUT THAT. HE KNEW ABOUT THAT BECAUSE
5 HE HELD HIM BY THE THROAT. WHAT OTHER DECISION DID HE
6 MAKE? HE MAY HAVE CHOSE ONE OVER THE OTHER. BUT HE CHOSE
7 THE ONE THAT WAS DURING THE ATTACK. AND THERE IS NO OTHER
8 REASON HE WOULD HAVE DONE THIS. JUST NONE. NOT ONLY HAS
9 THE STATE NOT PRODUCED ANY EVIDENCE OF ANY OTHER REASON,
10 EVEN IF THEY HAD, Y'ALL KNOW THAT NOT ONLY DO THEY HAVE TO
11 PROVE SOME, THEY HAVE TO PROVE IT BEYOND A REASONABLE
12 DOUBT. I SUBMIT THEY HAVEN'T DONE THAT. CERTAINLY NOT
13 BEYOND A REASONABLE DOUBT WHEN THEY WANT Y'ALL TO BELIEVE
14 THAT IT WAS MALICE WITH INTENT TO KILL THIS MAN. THEY
15 WANT YOU TO GUESS. THEY WANT YOU TO GUESS. EMPTY GUESS.
16 EMPTY WANDERING. THEY NEED TO SHOW SOME REASON. THERE IS
17 NO MOTIVE AT ALL.

18 YOU ALSO SEE THE GUNSHOT RESIDUE TEST. THAT'S WHAT
19 THEY TALKED ABOUT MR. ROUSE'S HANDS WERE BAGGED. THEY PUT
20 BAGS ON THEM. THEY TESTED FOR THAT. I'M NOT REACHING,
21 I'M NOT SAYING ANYTHING OVER THAN WHAT THEY SAID. BUT THE
22 FACT THAT THE MATERIAL STOOD OUT THERE, AND THAT THE LADY
23 FROM SLED SAID IT SHOWED IT WAS CLOSE. THIS WASN'T SOME
24 EXECUTION WHERE SOMEBODY STOOD BACK AND SHOT. AND
25 SOMETHING WAS CLOSE. IT WAS THE BACK OF THE HANDS. THOSE

1 HANDS GOT THAT WAY. THEY WEREN'T DOING LIKE THIS. THEY
2 WERE PRIMARILY LIKE THAT. (ATTORNEY INDICATING.) NOW
3 EFRAIN THOMAS DID TELL THE TRUTH TO THE POLICE TO BEGIN
4 WITH. AND HE DIDN'T TELL THEM THE EXACT TRUTH WHEN HE WAS
5 ARRESTED. HE ADMITTED THAT TO YOU.

6 IN THE STATE'S CONDUCTING OF THIS TEST, I SUBMIT TO
7 YOU THAT YOU CAN SEE SOME REASONS WHY HE HAD TO BE SCARED.
8 HAS HE BEEN GIVEN CREDIT FOR ANYTHING THAT HE SHOULD HAVE?
9 HAS HE BEEN TREATED OBJECTIVELY FOR A BETTER WORD? OR IS
10 THERE SOME ZEAL IN THIS PROSECUTION BEYOND WHAT IT WOULD
11 TAKE TO JUST CONVICT SOMEBODY? TRY AND CONVICT SOMEBODY?
12 HE GOT UP AND ADMITTED TO YOU EVERY LIE HE TOLD AND ANY
13 INCONSISTENCY AND WHAT HAPPENED AND THAT HE SHOT SOMEBODY.
14 I SUBMIT TO YOU THAT'S NOT AN EASY THING TO DO. OKAY.
15 YOU CAN JUDGE A LOT FROM SOMEBODY BY THE BAD THINGS THEY
16 SAY ABOUT THEMSELVES MORE THAN THE OTHER THINGS THEY'LL
17 SAY. IT HURTS SOMEONE TO GET UP IN FRONT OF A ROOM FULL
18 OF PEOPLE AND SAY, I DID THIS. SOME PEOPLE CAN'T DO IT.
19 SOME PEOPLE JUST COME OUT AND SAY THEY DID IT.

20 COMPARE HIS TESTIMONY TO SOME OF THE POLICE OFFICERS
21 IN THIS CASE WHERE ANY OF THEM WANTED TO DUCK AND DODGE
22 ANYTHING. WHEN WE TALKED ABOUT THE MONEY, WHATEVER
23 HAPPENED TO IT? EVERYBODY HAD ANOTHER EXPLANATION. IT'S
24 NOT AS IMPORTANT THAT IT WAS GONE. WHAT'S IMPORTANT IS,
25 NOBODY WANTED TO TALK ABOUT. NOBODY IS WANTING TO COME

1 AND SAY ANYTHING ABOUT IT. WHEN I ASKED ABOUT SOME OF
2 THESE THINGS IN DETAIL, I MEAN, LET'S JUST TALK ABOUT
3 THIS, THIS WAS IMPORTANT TO ME. ALL OF THE STUFF THAT
4 MIGHT HAVE HELPED EFRAIN THOMAS, DID THE STATE JUST COME
5 ON OUT AND ADMIT ANY OF IT, OR DID WE HAVE TO DRAG IT OUT
6 OF THEM KICKING AND SCREAMING? THINGS LIKE THE CAP THEY
7 FOUND ON HIM. THAT DIDN'T COME OUT ON CROSS EXAMINATION.
8 THEY DIDN'T ASK ABOUT THAT. THE FACT THAT MR. MCCLEM HAD
9 HIS THROAT CUT, WE HAD TO FIGHT ABOUT THAT. THEIR OWN
10 PHOTOGRAPHS TAKEN BY SLED WERE OBJECTED TO THAT MIGHT HAVE
11 HELPED THEM.

12 AND DR. ROSS, Y'ALL HEARD DR. ROSS' TESTIMONY. Y'ALL
13 WILL SEE HER REPORT IN EVIDENCE. NOTHING WRONG WITH HER
14 REPORT. I DON'T HAVE ANY PROBLEM WITH IT. SAID SHE HAS
15 BEEN DOING THIS FOR 30 YEARS. SHE SAID SHE'S TESTIFIED
16 FOR THE STATE AND PROSECUTION MORE THAN SHE'S EVER
17 TESTIFIED IN DEFENSE. Y'ALL ARE NOT GOING TO THINK ABOUT
18 THAT. AND THERE'S AN OLD SAYING, "WHOSE BREAD I EAT,
19 WHOSE SONG I SING." THE MAN WHO IS PAYING USUALLY GETS A
20 LITTLE BETTER RESULT. NOW DR. ROSS HAS A REPORT. AND
21 THAT WAS ALL WELL AND GOOD. THERE IS NO QUESTION MR.
22 ROUSE WAS SHOT. OKAY. THAT WASN'T ENOUGH. HAD TO ADMIT
23 TO MET WITH MR. SAVERANCE BEFORE WE CAME IN THE COURTROOM
24 AND COMING UP TO THE DEFENSE TO MEET WITH HIM, NEVER
25 MENTIONED THIS REPORT. WERE THERE POSSIBLY OTHER WAYS IT

1 COULD HAVE HAPPENED? SURE. LOTS OF WAYS. DIDN'T NEED TO
2 BRING THOSE UP.

3 IS THERE ANY THEORY AT ALL THAT THE STATE GAVE TO
4 SUPPORT A MOVE THAT WAY, OR WERE THEY JUST REACHING,
5 TRYING TO GRAB SOMETHING EXTRA OUT OF THIS WITNESS? IS
6 THERE ANY REASON FOR IT? SHE DIDN'T KNOW WHAT HAPPENED.
7 SHE SAID WHEN ASKED, COULD IT HAVE BEEN AN AGGRESSIVE
8 WOUND, COULD IT BEEN FROM BITING OR CHOKING SOMEBODY.
9 YES. JUST AS POSSIBLY HAPPENED THAT WAY. BUT THAT'S NOW
10 WHAT YOU HEARD BEFORE SHE CAME AND TESTIFIED. THE SAME
11 THING WHEN IT CAME TO THE ALCOHOL WITH DR. ROSS. ON
12 DIRECT EXAMINATION DID MR. ROUSE HAVE SOME ALCOHOL IN HIS
13 SYSTEM. HE HAD SOME ALCOHOL IN HIS SYSTEM. ON CROSS
14 EXAMINATION HE WAS DRUNK. I WOULDN'T HAVE GOTTEN IN THE
15 CAR WITH HIM. HE WAS TWO TO THREE TIMES THE LEGAL LIMIT.
16 I KNOW THEY WANT TO GET A CONVICTION. BUT IS IT ABOUT
17 WINNING OR IS IT ABOUT FINDING OUT WHAT THE CASE IS ABOUT?

18 LADIES AND GENTLEMEN, THE SCALES THE JUSTICE, Y'ALL
19 ARE THE ONES, THANK GOODNESS, THAT ARE GOING TO HAVE TO
20 DECIDE THIS CASE. Y'ALL CAN LOOK AT THESE WITNESSES
21 TESTIMONY. CERTAINLY I DON'T ASK YOU TO REJECT THE OTHER
22 FINDINGS. BUT WHY, WHY REACH LIKE THAT? LADIES AND
23 GENTLEMEN, THE DEFENSE IS THE DEFENSE OF OTHERS IN THIS
24 TRIAL. AND AS I SAID, NOTHING AT ALL CONTRADICTS WHAT HE
25 HAS TOLD YOU. NOTHING AT ALL. WE HAVE BY MR. MCCALL'S

1 OWN ADMISSION, NOTHING EFRAIN THOMAS DID WOULD HAVE
2 STARTED THAT FIGHT THEY WERE IN. BY THE STATE'S OTHER
3 WITNESSES, MS. HILL, THEY MAY WANT YOU TO, SOME OF THE
4 OTHER PEOPLE SITTING AT MY TABLE MAY WANT YOU TO IGNORE.
5 BUT SHE SAID THAT WHATEVER HAPPENED, HAPPENED AND MR.
6 THOMAS RAN TO IT. SO THEIR TESTIMONY IN COURT, HE HAD
7 NOTHING TO DO WITH WHAT STARTED IT. BUT HE ESSENTIALLY
8 FOUND WHEN HE GOT THERE.

9 NOW HE SAID THESE THINGS HAPPENED AND HE HAD TO MAKE
10 A QUICK DECISION TO TRY TO SAVE HIS FRIEND. AND THAT'S
11 WHAT HE DID. IF YOU DECIDE THAT MR. MCCALL'S REASON FOR
12 THE FIGHT OR WHATEVER HE WAS DOING WERE NOT CORRECT, OR
13 WERE NOT THE WAY HE DESCRIBED IT, THAT DOESN'T GIVE YOU
14 ANY REASON NOT TO TAKE IT AS MR. THOMAS SAYS. BECAUSE BY
15 EVERYBODY'S ADMISSION, HE DIDN'T HAVE ANYTHING TO DO WITH
16 WHY THE FIGHT WAS GOING ON. BUT HE CAN TELL YOU WHAT
17 HAPPENED WHEN HE GOT THERE. HE TELLS YOU A SOMEWHAT
18 VERSION OF WHAT HAPPENED WHEN HE GOT THERE. IT MAY NOT BE
19 FAVORABLE TO MR. MCCALL, BUT THERE IS NO REASON FOR YOU
20 NOT TO BELIEVE MR. THOMAS.

21 FINALLY, LADIES AND GENTLEMEN, YOU WILL HEAR FROM THE
22 JUDGE AS HE CHARGES YOU THE LAW ABOUT THE FACTORS IN THE
23 DEFENSE OF OTHERS CASE. IT'S VERY SIMILAR FACTORS THAT
24 YOU TAKE INTO ACCOUNT IN A SELF DEFENSE CASE. WHAT THINGS
25 SOMEBODY MAY CONSIDER IN DETERMINING WHETHER IT WAS USE OF

1 FORCE AND WHETHER A DECISION WAS PROPER. LISTEN TO HIM
2 CLOSE NOW, I'M NOT GOING TO GO OVER. BUT YOU ARE GOING TO
3 HEAR SOME FAMILIAR THINGS. THE SIZE OF SOMEBODY. THE
4 VIOLENT REPUTATION. WHETHER THEY WERE INTOXICATED.
5 WHETHER THE PERSON COULD HAVE GOTTEN AWAY. MR. THOMAS
6 HAS AN ABSOLUTE RIGHT TO DEFEND ANOTHER PERSON. EVEN A
7 BYSTANDER UNDER THE LAW. JUST AS HE COULD DEFEND HIMSELF.
8 IF SOMEONE IS BEING ATTACKED ON THE STREET, WHAT DO YOU
9 DO? THE LAW IS THERE FOR A REASON. DO YOU LET THEM BE
10 ATTACKED? DO YOU WALK AWAY? DECIDE WHO GETS HURT? WHAT
11 ARE WE TO INCUR? LET THEM FIGHT IT OUT? LET THEM CHOKE
12 YOU? IT'S NOT A GOOD DECISION TO HAVE TO MAKE, BUT IT'S A
13 MURDER. I SUBMIT TO YOU IT'S NOT EVEN CLOSE TO MURDER.
14 CERTAINLY ONE OF THE ELEMENTS TO MURDER IS MALICE.
15 CERTAINLY NO ILL WILL IS EXPRESSED. AT THE LEAST IT'S
16 VOLUNTARILY MANSLAUGHTER. AND IT SHOULD BE CHARGED.
17 I SUBMIT TO YOU MORE IMPORTANTLY THAN THAT,
18 MR. THOMAS IS ASKING FOR AN ACQUITTAL BECAUSE IT'S THE
19 DEFENSE OF THE OTHERS. AND NOT BASED ON WHAT OTHERS DID,
20 BUT BASED ON WHAT HE PERCEIVED. AND I ASK THAT YOU KEEP
21 IN MIND WHAT PERCEPTION. WHAT HE SAW. IS THERE ANY
22 REASON TO BELIEVE ANYTHING DIFFERENT THAN WHAT HE TOLD
23 YOU. FINALLY, I SUBMIT THE STATE, THERE IS NO EVIDENCE AT
24 ALL THAT THERE IS ANY REASON TO DISBELIEVE, OTHER THAN
25 WHATEVER CONTRADICTIONS THEY POINT OUT IN HIS TESTIMONY.

1 HAVE THEY GIVEN YOU ANY ALTERNATIVE? THAT'S THE BURDEN.
2 NOT TO PICK MR. THOMAS. THEY'VE GOT TO PROVE TO YOU
3 SOMETHING DIFFERENT. THANK YOU VERY MUCH, LADIES AND
4 GENTLEMEN, I APPRECIATE YOUR TIME THROUGHOUT THIS CASE.

5 THE COURT: MR. WATTS.

6 MR. WATTS: THANK YOUR HONOR. MR. SMITH AND I WANT
7 TO CONCUR WITH MR. WHEELER IN THANKING Y'ALL. YOU'VE BEEN
8 VERY ATTENTIVE. WE APPRECIATE THAT. IT'S A VERY
9 IMPORTANT ISSUE, AND Y'ALL KNOW THAT. IT'S VERY IMPORTANT
10 THAT YOU ARE HERE TODAY. NO DENYING IT. ONE PERSON HAS
11 ALREADY LOST A LIFE. THE STATE HAS SPENT A LOT OF TIME
12 TALKING ABOUT THAT. AND THERE IS A LOT OF STUFF THAT GOES
13 ALONG WITH THAT. IF YOU RECALL TOO WHEN WE STARTED THIS,
14 I TOLD YOU IT WASN'T ANY QUESTION ABOUT THAT.

15 IT'S UNFORTUNATE NOT ONLY FOR MR. ROUSE AND HIS
16 FAMILY, IT'S UNFORTUNATE FOR EUNICE AND OTHER DEFENDANTS
17 WHO IS SITTING AT THE TABLE, AND THEIR FAMILY. BECAUSE
18 WHEN WE GO THROUGH AND TALK ABOUT THOSE DEFENSES TO
19 REVIEW IN THE MATTER, AND EUNICE WAS ON THE WAY DOWN TO
20 PLAY POOL. AND TESTIFIED TO THAT FACT. AN ARGUMENT
21 OCCURRED WITH MR. ROUSE. THERE'S BEEN TESTIMONY TO THAT
22 AND CORROBORATED. TRYING TO SOOTH, AND EUNICE LOSSES.
23 AND THAT'S BEEN CORROBORATED. THERE'S BEEN TESTIMONY TO
24 THAT. EUNICE WAS IN FEAR OF HIS LIFE. MR. THOMAS WAS
25 EVEN IN FEAR FOR EUNICE. THERE WAS TESTIMONY ABOUT A

1 CHOKER HOLD. THAT'S WHAT YOU HEARD. WHO'S GIVING THESE
2 FACTS? WHO'S TELLING YOU WHAT HAPPENED WHEN IT HAPPENED?
3 THE DEFENDANTS. BECAUSE THEY'RE THE ONES WHO ARE THERE.

4 WHAT HAS THE STATE TOLD YOU? THE STATE HAS TOLD YOU
5 MR. ROUSE WAS SHOT. THEY TOLD YOU THERE WERE BULLETS.
6 THEY TOLD YOU THERE WERE SHELL CASINGS. THEY TOLD YOU
7 ABOUT SOME OF THE EVIDENCE, AND SHOWED YOU SOME PICTURES
8 OF THE SCENE. THEY HAVEN'T TOLD YOU EVERYTHING. THEY
9 DIDN'T TELL YOU EVERYTHING. CHERRY PICKING. WHAT ARE
10 THEY GOING TO BRING OUT AND WHAT ARE THEY GOING TO TELL
11 YOU ABOUT THIS CASE. WE'RE GOING TO TELL YOU ABOUT
12 EUNICE. WE'RE GOING TO HOLD BACK. WHAT ARE WE GOING TO
13 LET YOU KNOW ABOUT, AND WHAT ARE WE GOING TO KEEP FROM YOU
14 BEFORE YOU GO THROUGH AND GET A CONVICTION? WHEN YOU TALK
15 ABOUT A KILLING, MOTIVE IS IMPORTANT. OKAY. WHAT IS A
16 MOTIVE? THERE HAS BEEN TESTIMONY FROM STATE WITNESSES
17 AND THE DEFENDANTS WHEN THIS ALTERCATION OCCURRED. AND
18 ~~THIS IS A FIGHT. -- THERE HAS BEEN TESTIMONY FROM THE STATE~~
19 AND THE DEFENSE ABOUT THEIR BEING A FIGHT. A SERIOUS
20 FIGHT. THE FIGHT MOVED. IT MOVED AROUND A LOT OF AREA.
21 A SERIOUS FIGHT.

22 YOU HEARD TESTIMONY AGAIN ABOUT THE FEAR FOR HIS
23 LIFE, AND WE'RE NOT TALKING THAT IT WAS JUST A SLIGHT SPAT
24 OR A LITTLE TUSSLE AND A SLIGHT ALTERCATION. THIS WAS A
25 SERIOUS FIGHT. YOU KNOW WHAT HAPPENED BETWEEN HIM AND MR.

1 ROUSE. EUNICE STAND. THE AUTOPSY REPORTS MR. ROUSE'S
2 ABOUT 73 INCHES WHICH IS ABOUT 6'1, 6'1/2. I'M ABOUT 6'2.
3 THEY ESTIMATED MR. ROUSE AT 170. THEIR SCALES DIDN'T
4 PERFORM THAT. THAT'S PUT IN THE AUTOPSY TO FIND THE
5 REASON WHY, WHAT'S GOING ON, SCIENTIFIC EVIDENCE TO FIGURE
6 OUT. THEY ESTIMATED HIS WEIGHT. THEY ESTIMATED AT 170.
7 TAKE A LOOK AT EUNICE. YOU'VE HEARD ABOUT THE FIGHT.
8 THERE'S NOBODY CONTRADICTING THERE WAS A FIGHT. YOU'VE
9 HEARD TESTIMONY ABOUT THE CHOKING. WHY DID HE ACT AS HE
10 DID? WELL THE MOTIVE FOR HIS ACTIONS IS BECAUSE HE IS
11 TRYING TO SAVE HIS OWN LIFE. IT'S NOT UNREASONABLE TO TRY
12 TO PROTECT YOURSELF. IT'S NOT UNREASONABLE TO ACT IN A
13 WAY TO PRESERVE YOUR OWN LIFE.

14 I SUBMIT TO YOU IF THINGS HAD GONE DOWN DIFFERENTLY
15 THAT EVENING, THEN THERE WOULD BE A DIFFERENT PERSON
16 SITTING HERE TODAY. IT WOULD BE A DIFFERENT PERSON YOU
17 WOULD BE REFERRING TO IN THAT SEAT. AND MR. MCCALL WOULD
18 BE DECEASED. AND MR. ROUSE WOULD BE AT THAT TABLE. AND
19 YOU'VE HEARD TESTIMONY ABOUT WHAT HAPPENED. AND THE
20 ACTIONS THAT MR. ROUSE HAD TAKEN. IT'S AN UNFORTUNATE
21 SITUATION, BUT IT'S REASONABLE. YOU CAN PROTECT YOURSELF.
22 AND AFTER YOU CONSIDER THAT UNDER THE LAW, YOU CAN PROTECT
23 YOURSELF. THAT'S YOUR RIGHT. YOU DON'T HAVE TO LAY IDLY
24 BY AND LET SOMEONE DO HARM TO YOU. YOU HAVE THE RIGHT.
25 THERE ARE OTHER FACTORS THAT GO ALONG WITH SELF DEFENSE.

1 MR. WHEELER SAID SOMETHING ABOUT IT. THE JUDGE IS GOING
2 TO CHARGE YOU. YOU WILL HEAR THAT SOME OF THOSE ARE
3 FACTORS OF INTOXICATION, REPUTATION, AND SIZE OF SOMEONE
4 ELSE COMPARED TO YOURSELF.

5 YOU'RE NOT GOING TO HEAR FROM ME AGAIN, AND YOU'RE
6 NOT GOING TO HEAR FROM MR. WHEELER. AND I AM PROUD TO
7 REPRESENT EUNICE. AND I DON'T WANT TO KEEP YOU. AND I
8 APPRECIATE THE ATTENTION YOU HAVE SHOWN ME. BUT THIS IS
9 IMPORTANT, BECAUSE THE STAKES ARE HIGH. WHEN DID YOU HEAR
10 FROM THE STATE'S WITNESSES AND LAW ENFORCEMENT ABOUT
11 EUNICE? WE HAD THE EXPERTS THAT TALKED ABOUT THE GUNS AND
12 THE BULLETS THAT WERE FIRED. NONE OF THEM EVER MENTIONED
13 EUNICE MCCALL. NOW THEY TALKED ABOUT THESE CERTAIN
14 TESTINGS, AND THEY TALKED ABOUT THE BULLETS AND THE
15 AUTOPSY REPORTS. AND YOU MIGHT NOT EXPECT THEM TO. LET
16 ME ASK YOU THIS, WE HAD THREE, THREE FROM THE BISHOPVILLE
17 POLICE DEPARTMENT, INVESTIGATOR THOMPSON, INVESTIGATOR
18 ~~WILSON WAS FIRST. AND THEN IT WAS CAPTAIN BURKE. AND~~
19 THEN INVESTIGATOR THOMPSON. I WANT YOU TO THINK BACK AND
20 TRY TO REMEMBER WHEN ANY ONE OF THE SPECIFICALLY SAID
21 EUNICE MCCALL. MENTIONED HIS NAME. PROVIDED ANY EVIDENCE
22 ABOUT EUNICE MCCALL. I WANT YOU TO THINK BACK. DID THEY
23 EVER STRAY FROM THAT? I SUBMIT TO YOU THEY NEVER
24 MENTIONED IT.

25 DETAILS OF WHAT HAPPENED THAT NIGHT HAVE BEEN

1 PROVIDED BY EUNICE. HE TOLD YOU. HE SAT ON THE STAND AND
2 ANSWERED QUESTIONS. HE ANSWERED MY QUESTIONS, AND HE
3 ANSWERED THE SOLICITOR'S QUESTIONS. WHEN HE ANSWERED, YOU
4 DIDN'T SEE HIM REACHING. HE ANSWERED THEM. HE ANSWERED
5 THE WHOLE TRUTH. HE DIDN'T STALL. HE DIDN'T BACK PADDLE.
6 IF THERE WAS AN UNREASONABLE QUESTION AND HE DIDN'T
7 UNDERSTAND IT, HE ASKED THEM TO REPHRASE IT. BUT HE
8 ANSWERED THE QUESTION. HE'S TELLING YOU WHAT HAPPENED.
9 THE STATE IS ASKING YOU TO GUESS AND FILL IN THE BLANK; TO
10 GO AHEAD AND SOMEHOW USE YOUR IDEAS THAT WHATEVER HAS BEEN
11 ADMITTED INTO EVIDENCE, JUST GO AHEAD AND TRY TO FIGURE
12 OUT HOW EUNICE WAS INVOLVED. AND FIGURE OUT HOW HE DID
13 SOMETHING WRONG. YOU GO AHEAD AND PUT THAT IN THERE.
14 FILL IN THE BLANK, SO YOU CAN HELP US, BECAUSE THEY
15 HAVEN'T PROVIDED ANYTHING TO YOU TO THE CONTRARY OF WHAT
16 EUNICE SAID.

17 BRIEFLY I GO TO THIS. YOU'RE GOING TO TAKE SOME OF
18 THE EVIDENCE BACK IN PICTURES. THE SCENE IS HERE IN THIS
19 AREA. WHO IS THE FIRST WITNESS THEY PUT UP? MS. HILL.
20 AND YOU HEARD SOME TESTIMONY ABOUT MS. HILL AND WHAT WAS
21 GOING ON WITH HER. SHE'S THE ONE WHO MARKED ON THIS. SHE
22 WAS THE FIRST ONE TO TOUCH IT. AND THIS IS SOMETHING
23 CREATED BY THE SOLICITOR'S OFFICE. I THINK IT WAS CAPTAIN
24 BURKE THAT MADE THIS. WHERE DID SHE PUT US AT? OVER HERE
25 ON THIS SIDE OF THE BUILDING. EVERYONE FROM LAW

1 ENFORCEMENT, SLED, EVERYBODY WHO WAS AT THE CRIME SCENE,
2 YOU'VE GOT SOME PICTURES. AND YOU'LL SEE THOSE PICTURES
3 WHEN YOU GO BACK. THEY'RE TALKING ABOUT OVER THERE. SO
4 LET'S JUST SAY THAT SHE WAS HERE. AND LET'S JUST SAY WE
5 ADD ON THIS LITTLE SIDE CROPPING, THE BOX ON THE SIDE OF
6 IT. AND LET'S JUST SAY NOW WE REMEMBER ABOUT THIS OTHER
7 BUILDING THAT WAS OVER HERE. THAT'S WHERE SHE PUT IT, NOT
8 ME.

9 MS. WESLEY. TALKED TO HER. SHE ADMITTED GIVING A
10 CONTRARY STATEMENT. SAYING SHE SAW EUNICE. AND THEY
11 HEARD THOSE SHOTS. ALSO SAID THAT, YOU KNOW, SHE SAID
12 EUNICE CAME UP AND TOLD HER HE SHOT SOMEBODY. YOU HEARD
13 TESTIMONY FROM MR. MCCALL HE DIDN'T STOP THERE. SHE
14 DIDN'T TALK TO HIM. WHAT I SUBMIT TO YOU IS, WHERE IS THE
15 PROOF THAT THE STATE IS GIVING YOU TO GO BEYOND A
16 REASONABLE DOUBT TO CONVICT EUNICE MCCALL OF MURDER?
17 MALICE? HAVE THEY GIVEN YOU A REASON WHY? THEY HAVEN'T.

18 ~~HE TOLD YOU WHAT HAPPENED THAT NIGHT. THERE WAS A FIGHT,~~
19 HE WAS TRYING PROTECT HIMSELF. WHO IS CONTRADICTING THAT?
20 AND I DON'T MEAN TO BELABOR THE POINT, BUT YOU HEARD
21 TESTIMONY ABOUT WHEN THIS FIGHT WAS GOING ON. EFRAIN
22 THOMAS CAME UP AND SAID, YOU WIN. LET'S GO, YOU WON THE
23 FIGHT. YOU HEARD WHAT HE SAID. HE SAID NO, I'M GOING TO
24 KILL HIM. HE SAID HE WAS GOING TO KILL HIM. BY THAT
25 TIME YOU HEARD TESTIMONY ABOUT HIM REACHING AROUND. IT

1 MAKES SENSE THAT HE'S GOING FOR A WEAPON AFTER THAT
2 STATEMENT. AND WHAT WAS HE GOING TO USE THE WEAPON FOR?
3 TO HURT MR. MCCALL. EUNICE SAID HE DIDN'T KNOW WHAT HE
4 WAS GOING FOR. HE WENT FOR IT.

5 IT WASN'T A NATURAL REACTION WHEN SOMEONE IS REACHING
6 DOWN TO GET SOMETHING AND USE IT AGAINST YOU, ARE YOU
7 GOING LET THEM DO IT? ARE YOU GOING TO TRY TO BLOCK THAT
8 ACTION? I SUBMIT YOU'RE GOING TO DO WHATEVER YOU CAN TO
9 PROTECT YOURSELF. AGAIN, I GOT TO TELL YOU, THE TRUTH
10 COMES AND THE ANSWERS COME EASY WHEN YOU ARE TELLING THE
11 TRUTH. AND I WANT YOU TO REMEMBER THIS, THAT THIS IS
12 SOMETHING THAT THE STATE HAS THE BURDEN. THEY HAVE TO
13 PROVE TO YOU WHAT MR. MCCALL DID. AND THE FACTORS AND
14 THE LAW. I DON'T WANT TO TELL YOU ABOUT THE LAW. THE
15 JUDGE IS GOING TO TELL YOU ABOUT THE LAW. I JUST WANT YOU
16 TO THINK ABOUT IT, AND THINK ABOUT IT RATIONALLY. DOES IT
17 MAKE SENSE FROM WHAT YOU'VE HEARD, AND THE EVIDENCE THAT'S
18 BEEN PROVIDED? NOT WHAT THEY'RE ASKING YOU TO JUST FILL
19 IN THE BLANKS. NOT WHAT THEY'RE ASKING YOU TO BRING IN
20 FROM OUTSIDE. FROM WHAT YOU'VE HEARD, DOES IT MAKE SENSE.
21 AND I SUGGEST TO YOU THE TESTIMONY THAT YOU HEARD FROM
22 EUNICE DOES MAKE SENSE? IT'S A STORY THAT MAKES THE
23 VERSION OF THE TRUTH COME EASY WHAT HE'S TELLING YOU. THE
24 ANSWERS. THANK YOU AGAIN, LADIES AND GENTLEMEN. EUNICE
25 THANKS YOU. AND I HOPE YOU KEEP THAT CONSIDERATION AND GO

1 BACK AND DELIBERATE AND COME TO YOUR DECISION. THANK YOU.

2 THE COURT: LADIES AND GENTLEMEN, LET'S STAND FOR A
3 MOMENT OR TWO AND STRETCH. MR. SAVERANCE.

4 MR. SAVERANCE: MAY IT PLEASE THE COURT, YOUR HONOR.

5 THE COURT: YES, SIR.

6 MR. SAVERANCE: LADIES AND GENTLEMEN, YOU ARE GOING
7 TO HAVE SOME PICTURES WHEN YOU GO BACK. BUT I AM NOT --
8 YOU WILL LOOK AT THEM WHEN YOU GO BACK, BUT I AM JUST
9 GOING TO KIND OF REMIND YOU ABOUT SOME OF THESE THINGS
10 RIGHT NOW. BUT I'M NOT GOING TO GO THROUGH ALL THESE
11 PICTURES. MR. WHEELER MENTIONED WHY. TALK ABOUT WHAT IF.
12 WHAT IF. WHAT IF THEY HADN'T SHOT TROY ROUSE? WELL I
13 CAN'T TELL YOU ABOUT WHAT IF. BUT WHAT HAPPENED ARE THE
14 FACTS. BECAUSE TROY ROUSE HIS BODY WAS LAYING IN THE
15 STREET LIFELESS. I DON'T HAVE TO GUESS WHAT IF. WE KNOW
16 THAT HE WAS SHOT 6 OR 7 TIMES. THAT'S NOT WHAT IF. IT
17 HASN'T EVEN BEEN DISPUTED. AND WE KNOW THAT HE DIED OF
18 GUNSHOT WOUNDS. THAT HASN'T BEEN DISPUTED. WHO GAVE
19 EFRAIN THOMAS THAT RIGHT TO DECIDE WHO LIVED AND WHO DIED
20 THAT NIGHT? WHO APPOINTED HIM THAT POWER AND DUTY TO
21 DECIDE WHICH PERSON MAY LIVE AND WHICH PERSON MAY DIE?
22 WELL THEY SAY IT HAS NOTHING TO DO WITH IT. WE MAY
23 BE HERE BECAUSE TROY ROUSE MAY HAVE KILLED EUNICE MCCALL.
24 WE DON'T KNOW THAT. WE DON'T KNOW THAT AT ALL. AND WHAT
25 IF'S DON'T MATTER. IT'S NOT A WHAT IF, BUT WHAT HAPPENED,

1 LADIES AND GENTLEMEN. IT'S WHAT HAPPENED. AND WHAT
2 HAPPENED WAS, TROY ROUSE WAS SHOT 7 TIMES AND LEFT LAYING
3 IN THE STREET TO DIE LIKE AN ANIMAL. AND HE DID DIE. AND
4 THE TWO MEN THAT DID THIS HEINOUS CRIME AND PUT THESE
5 BULLETS IN HIS BODY DID NOT CALL FOR HELP. DIDN'T CALL
6 FOR HELP AT THE SCENE. DIDN'T CALL FOR HELP AT ONE OF THE
7 OTHER HOUSES. DIDN'T CALL FOR HELP ANY TIME. WHAT DOES
8 THAT SHOW YOU, DOES THAT SHOW COMPASSION AND REMORSE? OR
9 DOES THAT SHOW GUILT AND CONCERN FOR THEIR OWN SELVES NOT
10 TO CALL AND GET INVOLVED?

11 WHAT IS COMMON SENSE? COMMON SENSE TELLS YOU IF THEY
12 DIDN'T DO ANYTHING WRONG, AND THEIR FRIEND WAS LYING IN
13 THE STREET AND THEY DIDN'T CARE ABOUT HIM AND DIDN'T MEAN
14 TO KILL HIM, WHY WOULDN'T THEY HAVE CALLED? WHY WOULDN'T
15 THEY HAVE CALLED? THEY SEEM TO KNOW A LOT OF PEOPLE IN
16 THIS NEIGHBORHOOD. WHENEVER MR. JAMES' HOUSE WAS NEARBY,
17 HE DIDN'T COME OUT AND SEE WHAT WAS GOING ON. WHY DIDN'T
18 THEY SAY, CALL AND GET HELP? OH, MY GOD, TROY IS DYING.
19 CALL AND GET HELP. COME ON, EMS. COME ON AND SAVE HIM.
20 BECAUSE AT THAT POINT THEY KNEW WHAT THEY HAD DONE. THEY
21 HAD KILLED TROY ROUSE WITHOUT JUSTIFICATION. AND THEY
22 KNEW THEY WERE WRONG. AND THAT WAS GUILT THEY HAD.
23 THAT'S WHY THEY DIDN'T CALL FOR HELP. THEY WERE MORE
24 CONCERNED WITH SAVING THEMSELVES THEN THEIR FRIEND, OR
25 THEIR SO CALLED FRIEND.

1 NOW, IF WE GO BACK AND THINK ABOUT SOME THINGS THAT
2 HAVE BEEN BROUGHT UP, AND ALSO LET ME ADD THIS. MR.
3 WHEELER SAYS, WHY, WHY, WHY. WELL I DON'T NEED TO
4 NECESSARILY SHOW YOU WHY SOMETHING HAPPENED. I MEAN IF
5 SOMEBODY WALKS UP AND SHOOTS SOMEBODY SEVERAL TIMES, DOES
6 IT SOMETIMES MATTER WHY HE DID IT? HIT SOMEBODY IN THE
7 BACK THREE TIMES AND YOU LEFT THEM THERE TO DIE? IF YOU
8 USE TOO MUCH FORCE? AT THAT POINT WHY DOES IT MATTER?
9 IT'S WHAT HAPPENED. MR. WHEELER ACKNOWLEDGED THAT HIS
10 CLIENT SHOT THE VICTIM TROY ROUSE, SIX, AT LEAST 5 OR 6
11 TIMES. HE DOESN'T DISPUTE THAT SOME TWO OF THOSE SHOTS
12 DIDN'T HELP CAUSE THE DEATH OF TROY ROUSE. IT'S NOT WHY,
13 WHAT HAPPENED. WHAT HAPPENED IS WHAT'S MORE IMPORTANT.
14 AND I DIDN'T PUT UP TESTIMONY THAT THIS WAS A ROBBERY OR
15 ANYTHING ELSE. BECAUSE I DIDN'T HAVE ANYTHING TO SAY IT
16 WAS. DOES THAT MEAN TROY ROUSE SHOULD HAVE BEEN ALLOWED
17 TO BE SHOT 7 TIMES, AND LEFT THERE DYING IN THE STREET?
18 THAT'S WHAT MR. WHEELER WOULD HAVE YOU BELIEVE. THAT'S
19 NOT CORRECT.

20 THE USE OF FORCE IN THIS CASE EXCEEDED THE BOUNDS OF
21 WHAT SHOULD HAVE BEEN USED. SHOOTING SOMEBODY, MR. THOMAS
22 SHOT THE VICTIM 6 TIMES. THERE WERE 7 GUNSHOT WOUNDS.
23 ONE CAME FROM A MEDIUM CALIBER TYPE, 38 TYPE OF GUN. AND
24 THAT WAS FROM MR. MCCALL SHOOTING THE VICTIM IN THE CHEST.
25 THE OTHER 6 WOUNDS WERE CONSISTENT WITH A SMALL CALIBER

1 GUN. AND 5 OF THOSE THERE WERE RECOVERED WERE CONSISTENT
2 WITH A 22 CALIBER. WHAT DID MR. THOMAS ACKNOWLEDGE HE
3 SHOT THE VICTIM WITH? A 22 CALIBER. BUT HE SHOOTS THE
4 VICTIM 6 TIMES AFTER THE VICTIM HAD BEEN SHOT IN THE CHEST
5 AT CLOSE RANGE. AND YOU TELL US, IS THAT NOT EXCESSIVE
6 FORCE? IS THAT NOT EXCESSIVE FORCE? I SUBMIT TO YOU IT
7 IS. IT IS. AND MR. THOMAS DID NOT HAVE THE RIGHT THAT
8 NIGHT TO DECIDE WHO WAS GOING TO DIE.

9 AND THEY MAY SAY WELL WE DIDN'T. AND Y'ALL KNOW, WE
10 KNOW TROY ROUSE WAS KILLED BY THESE TWO GENTLEMEN SITTING
11 RIGHT HERE BEFORE YOU. NOW YOU HEARD TIFFANY HILL, AND
12 SHE TESTIFIED SHE WAS IN THIS AREA NEAR THE TIME OF THE
13 SHOOTING. AND SHE IDENTIFIED ALL THREE DEFENDANTS, CHAD
14 JAMES, EFRAIN THOMAS, AND EUNICE MCCALL, AS BEING WITH
15 WHO? TROY ROUSE. WHY IS THAT IMPORTANT? WELL MR. MCCALL
16 AND MR. THOMAS WERE RIGHT THERE WITH THE VICTIM. AND THEY
17 WALKED BACK AND SHE GOES THIS WAY. AND SHE SAID SHE KNEW
18 THEM. THERE WERE SOME LIGHTS THERE. SHE KNEW WHO THEY
19 WERE AND THAT'S WHO WAS THERE. AND AGAIN, SHE SAID THAT
20 WHEN SHE GETS TO ABOUT THIS POINT, SHE HEARS A SCUFFLE.
21 AND SHE TURNS. AND SHE SEES TROY ROUSE AND EUNICE MCCALL
22 RIGHT HERE. SHE SAID NOTHING WAS BLOCKING HER VIEW.

23 AND WHAT DOES SHE SAY? SHE SAYS THAT SHE WAS
24 LOOKING THIS WAY. AND IT WAS TROY AND EUNICE FACE TO
25 FACE. AND I SAID WAS EUNICE MCCALL IN A HEADLOCK. DID

1 TROY ROUSE HAVE HIM IN A HEADLOCK. AND SHE SAID NO, NO.
2 AND HOW GOOD. FACE TO FACE. AND SHE SAID, NO, NO,
3 HEADLOCK. SHE SAID THEY WERE FACE TO FACE. AND SHE SAID
4 EUNICE MCCALL HAD A WEAPON AND HE FIRED IT. BAM. CLOSE
5 RANGE. CLOSE RANGE FROM WHERE SHE WAS AT. SHE ALSO TOLD
6 YOU THAT EFRAIN THOMAS WAS OVER IN THIS AREA. AND I
7 BELIEVE THAT SHE DID ALSO SAY THAT SHE DIDN'T NECESSARILY
8 SEE MR. THOMAS DO THE SHOOTING. SHE SAID HE WAS OVER IN
9 THAT AREA. AND IT WAS HARD FOR HER TO SEE BECAUSE OF THAT
10 BUILD. SHE COULD SEE TROY AND EUNICE. SHE SAW EUNICE
11 SHOOT TROY. AND THEN SHE SAW -- AND THEN SHE HEARD
12 SEVERAL SHOTS FROM HER LEFT, WHICH WOULD HAVE BEEN EFRAIN
13 THOMAS. AND THEN SHE RAN. AND THEN SHE RAN.

14 SO WE KNOW FROM HER TESTIMONY, THAT MR. ROUSE DIDN'T
15 HAVE ANYBODY IN A HEADLOCK AT THAT TIME. AND EVEN IF HE
16 DID, THAT DOES NOT MEAN THAT HE COULD SHOOT SOMEBODY 6
17 TIMES AFTER THEY HAD ALREADY BEEN SHOT ONCE IN THE CHEST
18 JUST BECAUSE SOMEBODY MAY HAVE BEEN IN A HEADLOCK. THAT'S
19 TOO MUCH FORCE. TOO MUCH FORCE.

20 NOW THEY WANT YOU BELIEVE THAT AFTER EUNICE MCCALL
21 SHOT TROY ROUSE AT POINT BLANK RANGE WITH A MEDIUM CALIBER
22 WEAPON, SHOT HIM IN THE CHEST, AND THAT WAS A FATAL WOUND,
23 THAT HE WAS STILL A DANGER; THAT HE WAS STILL A THREAT;
24 THAT THEY HAD NO CHOICE; THAT THERE WAS NO CHOICE BUT TO
25 SHOOT TROY ROUSE 6 MORE TIMES. REMEMBER I ASKED EUNICE

1 MCCALL WHOSE FAULT IT WAS THAT Y'ALL WOULD KEEP SHOOTING.
2 THEY WOULD KEEP SHOOTING TROY ROUSE, AND HE SAID TROY
3 ROUSE'S. BASICALLY THOUGHT HE WOULDN'T GO DOWN THE FIRST
4 COUPLE OF SHOTS. HOW DO WE KNOW THAT TROY ROUSE WASN'T
5 TRYING TO SHUFFLE FOR HELP OR MOVE AROUND AFTER HE HAD
6 BEEN SEVERELY WOUNDED? THAT WOULD MAKE SENSE. WHAT KIND
7 OF DANGER IS HE AT THAT POINT AFTER HE HAD BEEN SHOT IN
8 THE CHEST AT POINT BLANK RANGE. AND THEN MR. THOMAS
9 SHOOTS HIM IN THE BACK THREE TIMES. HE DOESN'T REMEMBER
10 ANYTHING BESIDES THAT. AND YOU CAN LOOK AT THE DIAGRAM
11 FROM THE PATHOLOGIST AND THERE'S ONE SHOT THAT'S
12 CONSISTENT WITH A 22 CALIBER THAT ENTERS. ENTERS HERE AND
13 GOES UPWARD. AND WHY IS THAT IMPORTANT?

14 WELL I WASN'T THERE, SO I CAN'T TELL YOU I KNOW HE
15 WAS LAYING HERE OR LAYING THERE. BUT LET'S JUST THINK
16 ABOUT IT. COMMON SENSE AND GOOD JUDGMENT. THE
17 PATHOLOGIST TOLD YOU, DR. ROSS, THAT THAT WOULD BE
18 CONSISTENT WITH A DEFENSIVE WOUND. WHY IS THAT, AFTER HE
19 HAD BEEN SHOT IN THE BACK THREE TIMES IF HE HAD GONE TO
20 THE GROUND AND WAS LAYING THERE AND WAS IN A DEFENSIVE
21 POSITION SOMEBODY COULD SHOOT AGAIN AND THE BULLET WOULD
22 ENTER HERE AND GO UP THIS WAY? THAT WOULD BE CONSISTENT
23 WITH MR. THOMAS SHOOTING THE VICTIM IN THE BACK, AND AS HE
24 TURNED AND FELL ANOTHER SHOT TO THE KNEE. I MEAN, HOW DO
25 YOU SHOOT HERE AND COME UP THIS WAY? BECAUSE MR. ROUSE

1 WOULD HAVE TO BE WAY UP HERE ABOUT TWICE THE HEIGHT THAT
2 HE IS. SO THAT IS A DEFENSIVE WOUND. A DEFENSIVE WOUND.
3 MR. ROUSE WAS TRYING TO PROTECT HIMSELF AFTER HE HAD BEEN
4 SHOT SEVERAL TIMES. AND THEN HE WAS SHOT SOME MORE UNTIL
5 HE DIED.

6 AND MR. WHEELER TALKED ABOUT HIS CLIENT GETTING ON
7 THE STAND AND COMING CLEAN. COMING CLEAN. AND HE SAID,
8 WHY SHOULDN'T WE BELIEVE. WELL MAYBE ALL THE TIMES HE
9 ADMITTED TO LYING BEFORE WHEN HE TOOK THE STAND. THAT
10 WOULD BE A GOOD START. THAT WOULD BE A GOOD START. HE
11 DIDN'T DISPUTE THAT HE LIED TO CAPTAIN BURKE. A SHORT
12 TIME AFTER THIS CRIME OCCURRED, HE TALKED TO CAPTAIN
13 BURKE. HE DIDN'T SAY HE WAS THREATENED OR COERCED TO SAY
14 ANYTHING. HE ACKNOWLEDGED THAT HE TOLD CAPTAIN BURKE HE
15 HAD NOTHING TO DO WITH IT. HE WAS IN CAMDEN. HE DIDN'T
16 SAY, I WAS DEFENDING MY FRIEND. DIDN'T SAY SELF DEFENSE.
17 HE SAID I WASN'T INVOLVED AT ALL. A LIE. A LIE, LADIES
18 AND GENTLEMEN. AND YOU DETERMINE HOW MUCH YOU BELIEVE IN
19 OF WHAT SOMEBODY SAYS. LOOK AT THE TRACK RECORD. THE
20 PAST HISTORY.

21 THEN HE GIVES A STATEMENT, A CONFESSION TO
22 INVESTIGATOR THOMPSON. AND IN THERE HE SAID, Y'ALL HAVE
23 THIS CONFESSION. BUT YOU HEARD HIM ON THE STAND. HE
24 SAID, WHEN HE, WHICH WOULD BE TROY, CHARGED ME, I RAN
25 AROUND HIM. WHEN I RAN AROUND HIM, I SHOT HIM THREE TIMES

1 IN HIS BACK. SO IN THIS STATEMENT TO INVESTIGATOR
2 THOMPSON, HE CLAIMS THAT TROY ROUSE WAS CHARGING HIM.
3 TROY ROUSE IS COMING AT HIM. HE MOVED TO THE SIDE, AND
4 THEN HE TURNS AND FIRES THREE TIMES IN THE BACK OF MR.
5 ROUSE. THAT'S HIS OWN STATEMENT. THAT'S HIS OWN
6 STATEMENT THAT MR. ROUSE WAS SHOT IN THE BACK. TWICE IN
7 THE BACK AND ONCE IN THE ABDOMEN. WHAT DOES THAT TELL
8 YOU? WHAT THAT TELLS YOU IS THAT AT THAT POINT, MR. ROUSE
9 WAS NO LONGER ENGAGED IN FIGHTING WITH MR. MCCALL BECAUSE
10 HE HAD TO DISENGAGE IN THE SCUFFLE WITH MR. MCCALL TO COME
11 AFTER MR. THOMAS. AND THAT MAKES SENSE. AND OF COURSE
12 AFTER BEING SHOT IN THE CHEST, IF TROY ROUSE WAS COMING
13 TOWARDS EFRAIN, MR. THOMAS COULD HAVE EASILY HAVE MOVED
14 OUT OF THE WAY. AND AT THAT POINT WHAT SHOULD HE HAVE
15 DONE? HE COULD HAVE RAN. HE COULD HAVE DONE A LOT OF
16 THINGS.

17 I MEAN AT THIS POINT TROY ROUSE HAD BEEN SHOT IN THE
18 CHEST AT POINT BLANK RANGE. AT THAT POINT HE'S NOT A
19 THREAT. HE'S NOT GOING TO RUN SOMEBODY DOWN. HOW IS HE
20 GOING TO BEAT SOMEBODY DOWN WHEN HE HAS BEEN SHOT IN THE
21 CHEST? BUT EFRAIN THOMAS CHOSE, MADE A CONSCIOUS DECISION
22 TO PUMP THREE ROUNDS, TWO IN THE BACK AND ONE IN THE
23 ABDOMEN OF TROY ROUSE. THEN HE ALSO PROCEEDED AND HE SAID
24 HE DIDN'T REMEMBER. BUT WE KNOW THERE WERE THREE OTHER
25 WOUNDS CONSISTENT WITH COMING FROM A 22 CALIBER. SO HE

1 SHOT HIM SIX TIMES. SIX TIMES, LADIES AND GENTLEMEN.

2 NOW MR. THOMAS TELLS US ON THE STAND, SAID, OH, I
3 WASN'T DEFENDING MYSELF. REMEMBER I SAID, SELF DEFENSE.
4 AND HE SAID, NO. JUST I WAS DEFENDING MR. MCCALL. SO
5 EVEN MR. THOMAS ACKNOWLEDGED THAT THIS WAS A LIE. THAT
6 TROY ROUSE DIDN'T COME AFTER HIM, AND NO, IT'S NOT SELF
7 DEFENSE. DO YOU REMEMBER WHAT I SAID? THE FIRST
8 STATEMENT HE SAID HE HAD NOTHING TO DO WITH IT. HIS
9 SECOND STATEMENT WAS SELF DEFENSE. HE CAME AFTER ME. NOW
10 HE'S SAYING, NO, I WAS DEFENDING MY FRIEND. WHY?
11 BECAUSE HE KNEW SELF DEFENSE WASN'T GOING TO PLAY. HE
12 KNEW SELF DEFENSE WASN'T GOING OT CUT IT. SHOOTING
13 SOMEBODY IN THE BACK THREE TIMES. YOU TELL ME HOW THAT IS
14 SELF DEFENSE. AND AS FAR DEFENDING HIS FRIEND, AS I SAID,
15 HE SHOT THE VICTIM THREE TIMES IN THE BACK. AND WE KNOW
16 MR. ROUSE DIED BECAUSE OF IT.

17 AND, LADIES AND GENTLEMEN, YOU CAN THINK ABOUT WHAT
18 WAS SAID ON THE STAND AND PRIOR STATEMENTS AND WERE THEY
19 CONSISTENT OR NOT CONSISTENT AND THAT SORT OF THING. BUT
20 EFRAIN THOMAS WAS NOT CONSISTENT FROM THE VERY BEGINNING.
21 FROM THE VERY BEGINNING. AND THAT GOES TO HIS
22 CREDIBILITY. AND WHAT YOU MAY BELIEVE AND WHAT YOU MAY
23 NOT, THAT'S UP TO YOU. BUT IT DOESN'T MAKE SENSE. NOW AS
24 FAR AS MR. MCCALL GOES, THERE IS A KIND OF TWO DIFFERENT
25 VERSIONS OF WHAT HAPPENED. I MEAN EFRAIN THOMAS SAYS OH,

1 I WAS DEFENDING MY FRIEND. AND WHAT DOES HE SAY? HE SAYS
2 EUNICE MCCALL SHOT TROY ROUSE. REMEMBER THAT? AND THAT
3 HE DIDN'T GO DOWN. AND THAT HE CAME AROUND AND SHOT HIM
4 IN THE BACK. AND WHAT DOES EUNICE MCCALL SAY? NO, HE
5 SAID WE WERE STRUGGLING. WE WERE FIGHTING. THE GUN WENT
6 OFF TWICE. IT DIDN'T HIT ME. IT DIDN'T HIT TROY ROUSE.
7 IT JUST WENT, I DON'T KNOW, IT JUST WENT OFF. AND THEN
8 WHAT DID HE SAY? THAT EFRAIN THOMAS CAME AROUND AND FIRED
9 THREE SHOTS INTO THE BACK OF TROY ROUSE.

10 SO THAT DOESN'T MAKE SENSE. WHAT EUNICE MCCALL SAID
11 HAPPENED DOESN'T MATCH WHAT EFRAIN THOMAS SAID HAPPENED.
12 AND BY THE WAY, WHY IS MR. EUNICE MCCALL, WHY DO THEY TALK
13 ABOUT SELF DEFENSE IF HE DIDN'T EVEN SHOOT THE VICTIM?
14 WHAT SENSE DOES THAT MAKE? IS IT SELF DEFENSE OR DID HE
15 NOT DO ANYTHING AT ALL. THAT'S NOT CONSISTENT. NOW YOU
16 ALSO HEARD ON CROSS EXAMINATION THAT EUNICE MCCALL IN MY
17 QUESTIONS, THAT HE DID ACKNOWLEDGE AT SOME POINT HE AND
18 TROY ROUSE DISENGAGED. AND THAT HE TURNED AND RAN. AND I
19 SAID WELL WHY DIDN'T TROY ROUSE SHOOT YOU AT THAT POINT
20 AND TIME. AND HE SAID THAT HE DIDN'T KNOW. AND HE
21 ADMITTED THAT TROY ROUSE STILL HAD THE GUN AND WAS RIGHT
22 THERE AT HIM. SO, YOU KNOW, IF HE IS TELLING THE TRUTH,
23 WHY WOULDN'T MR. ROUSE HAVE GONE AHEAD AND SHOT HIM?
24 BECAUSE TROY ROUSE NEVER HAD THE GUN.

25 EFRAIN THOMAS SAID EUNICE MCCALL SHOT TROY ROUSE.

1 EFRAIN THOMAS SAID TROY ROUSE DID NOT HAVE A GUN OR A
2 WEAPON ON HIM THAT NIGHT. EFRAIN THOMAS, NOT ONLY DID THE
3 VICTIM DID NOT EVER GET HOLD OF A WEAPON. SO THAT DOES
4 NOT MAKE SENSE AND MATCH UP. IT DOES NOT MATCH UP AND
5 MAKE SENSE, BECAUSE IT IS NOT CONSISTENT. AND NOT
6 ACCURATE. NOW AGAIN, WHEN YOU GO BACK THERE AND THERE ARE
7 GOING TO BE SOME CHARGES AND DIFFERENT KINDS OF THINGS.
8 MURDER IS TAKING SOMEBODY'S LIFE WITHOUT JUSTIFICATION AND
9 WITH MALICE. NOW MALICE MAY BE SOMETHING YOU HAVE A LONG
10 TIME OR A SHORT TIME. AND ALSO BY USING A GUN YOU CAN
11 INFER MALICE. WHEN YOU SHOOT SOMEBODY SIX TIMES, THAT'S
12 MALICE. MAYBE IF HE HAD SHOT MR. ROUSE IN THE LEG, MAYBE
13 THAT WAS A REASON. BUT THREE SHOTS IN THE BACK? AND
14 THREE MORE SHOTS? AND ONE IN THE KNEE? THIS IS A
15 DEFENSIVE WOUND. AND THE MAN IS DOWN ABOUT TO DIE? THAT
16 IS NOT REASONABLE.

17 AND AS FAR AS EUNICE MCCALL, EFRAIN THOMAS SAID
18 EUNICE MCCALL SHOT TROY ROUSE AT POINT BLANK RANGE IN THIS
19 AREA. IN THIS AREA. EUNICE MCCALL DIDN'T HAVE ANY
20 EVIDENCE OF WOUNDS ON HIM. LUCILLE WESLEY TESTIFIED THAT
21 AFTER THE SHOOTING, HE CAME IN HER HOUSE AND ADMITTED
22 WHAT? THAT HE HAD SHOT SOMEBODY. LUCILLE WESLEY SAID HE
23 SAID THAT HE SHOT SOMEBODY. NOW HE'S SAYING THERE WAS NO
24 MOTIVE. WE WERE JUST FIGHTING. I RAN OFF. SHOTS JUST
25 RANG OUT. WHAT SENSE DOES THAT MAKE? AND LUCILLE WESLEY

1 SAID WHAT ELSE? SHE SAID I DIDN'T SEE A BROKEN NOSE. I
2 DIDN'T SEE A BLACK EYE. I DIDN'T SEE BUSTED LIP. I
3 DIDN'T SEE BLOOD ON THE SHIRT. SHE SAID I DIDN'T SEE ANY
4 SIGNS OF ANY KIND OF INJURIES OF A STRUGGLE.

5 EFRAIN THOMAS SAID THE SAME THING. I DIDN'T NOTICE
6 ANY BLACK EYE, BROKEN NOSE, BLOODY LIP, ANY KIND OF
7 INJURIES ON MR. MCCALL. SO EVEN IF THERE WAS A STRUGGLE,
8 WAS SHOOTING HIM IN THE CHEST SUFFICIENT? WAS THERE A
9 REASON TO DO THAT? THERE WASN'T. NEITHER ONE OF THESE
10 DEFENDANTS HAD A REASON TO KILL TROY ROUSE. A LEGAL
11 JUSTIFICATION. A REASON TO JUSTIFY BY LAW. BY LAW. MR.
12 MCCALL WANTS YOU TO BELIEVE THAT TROY ROUSE HAD A GUN.
13 BUT THE OTHER EVIDENCE PRESENTED WAS THAT HE DIDN'T. EVEN
14 FROM MR. THOMAS. HE WANTS YOU TO BELIEVE THAT TROY ROUSE
15 WAS BIGGER, STRONGER, HEAVIER AND HAD THE GUN. AND HE
16 HAD NOTHING. WHAT SENSE DOES THAT MAKE? IF HE IS THAT
17 MUCH SMALLER AND DIDN'T HAVE A WEAPON, THEN WHY DIDN'T HE
18 HAVE MARKS ON HIM? WHY DIDN'T HE HAVE A BROKEN NOSE OR A
19 BLACK EYE? WHY DIDN'T TROY ROUSE JUST PUSH HIM BACK WITH
20 ALL HIS STRENGTH AND BAM, SHOOT HIM? IT WOULD HAVE BEEN
21 EASIER IF HE'S THAT STRONG. IT WOULD HAVE BEEN EASIER.
22 BECAUSE THAT'S NOT WHAT HAPPENED.

23 LADIES AND GENTLEMEN, YOU KNOW, HE ACKNOWLEDGED,
24 TROY ROUSE HIT HIM IN THE BACK OF THE HEAD AND STARTED
25 KIND OF PUSHING AND SHOVING. AND WHAT PROBABLY HAPPENED

1 IS HE JUST GOT TIRED OF IT. MR. MCCALL GOT TIRED OF IT
2 AND SAID YOU AIN'T GOING TO PUSH ME AROUND. I GOT A GUN.
3 YOU'RE GOING TO SLAP MY HAT AND PUSH ME AROUND A LITTLE
4 BIT. YOU'RE AIN'T GOING TO PUSH ME AROUND. I'M TOUGHER.
5 SO HE PULLED THAT WEAPON OUT AND SHOT THE VICTIM AT CLOSE
6 RANGE. NOW WE TALKED ABOUT WHERE THE BODY WAS FOUND OVER
7 HERE. AND I SUBMIT TO YOU THAT FROM TIFFANY HILL'S
8 TESTIMONY WHEN EUNICE MCCALL SHOT TROY ROUSE AND THEN WENT
9 THIS WAY, THAT'S WHEN EFRAIN THOMAS MOVED OUT OF THE WAY
10 AND FIRED INTO THE BACK. SO IT WOULDN'T BE CONSISTENT
11 WITH THE BODY ENDING UP OVER HERE.

12 WE ALSO DON'T KNOW IF TROY ROUSE MAY HAVE STRUGGLED
13 AND MOVED SOME. BECAUSE THEY LEFT THE SCENE AND RAN OFF
14 AND DIDN'T CALL FOR HELP. WE DON'T KNOW WHAT HAPPENED.
15 TROY ROUSE'S BODY, HE STILL COULD HAVE BEEN BARELY
16 BREATHING AND LIVING. AND HE COULD HAVE BEEN DRAGGING
17 HIMSELF OR MOVING DOWN THE ROAD. WE DON'T KNOW. ALSO,
18 THE AUTOPSY, THE PATHOLOGIST, SHE SAID THAT THE SHOTS TO
19 THE CHEST, WHICH WE SHOWED CAME FROM THE DEFENDANT, WAS
20 FATAL. WAS FATAL. SHE ALSO SAID SHOTS 6 AND 7 TO THE
21 BACK, WHICH THE DEFENDANT ADMITTED BEING THE SHOOTER, WERE
22 POTENTIALLY FATAL TOO. AND WHAT DID SHE SAY? THOSE SHOTS
23 CONTRIBUTED TO THE DEATH BECAUSE OF THE DAMAGE THEY DID TO
24 MR. ROUSE'S BODY. AND MR. WHEELER HASN'T DISPUTED THAT;
25 THAT THE SHOTS CAME FROM HIS CLIENT AND THOSE ARE THE

1 SHOTS THAT DID HELP KILL TROY ROUSE.

2 SO, LADIES AND GENTLEMEN, AS I SAID IN THE BEGINNING
3 WHEN WE FIRST STARTED OPENING STATEMENTS, TWO PEOPLE CAN
4 BE CONVICTED OF MURDER. ESPECIALLY WHEN BOTH PEOPLE ARE
5 UNLOADING SHOTS INTO THE VICTIM. AND THAT'S WHAT HAPPENED
6 IN THIS CASE. AND WE KNOW EUNICE MCCALL DID NOT HAVE ANY
7 WOUNDS OR INJURIES AFTER THE SHOOTING. WE KNOW THAT
8 EFRAIN THOMAS HAS CHANGED HIS STORY NUMEROUS TIMES. NOW
9 HE'S SAYING TROY SAYS, NO, I AM NOT GOING TO STOP. I AM
10 GOING TO KILL THAT SO AND SO. I WON'T SAY WHAT HE SAID.
11 BUT THAT WASN'T IN HIS STATEMENT, WAS IT? IT WASN'T IN
12 HIS STATEMENT THAT TROY SAID THAT. HE SAID A LOT OF OTHER
13 THINGS. BUT WHO TO BELIEVE? WHAT MAKES SENSE?

14 AS I SAID BEFORE, LADIES AND GENTLEMEN, THE
15 DEFENDANTS ARE GUILTY OF MURDER, EFRAIN THOMAS AND EUNICE
16 MCCALL. THEIR STORIES DON'T MATCH UP. MR. THOMAS' SURE
17 DON'T MATCH UP GOING BACK TO CAPTAIN BURKE TALKING. SURE
18 DON'T MATCH UP. WE BELIEVE THAT WHEN YOU GO BACK TO
19 DELIBERATE, THAT WE HAVE PROVEN OUR CASE BEYOND A
20 REASONABLE DOUBT. THAT YOU WILL FIND EFRAIN THOMAS AND
21 EUNICE MCCALL GUILTY OF MURDER OF THE KILLING OF TROY
22 ROUSE. THE FORCE THEY USED WAS MORE THAN THEY HAD A RIGHT
23 TO USE. AND THEY DIDN'T HAVE THAT POWER THAT NIGHT TO
24 DECIDE WHO WAS GOING TO DIE. WHO MAYBE WAS GOING TO LIVE.
25 THAT WASN'T THEIR RIGHT THAT NIGHT. AND THEY COULD HAVE

1 DONE A LOT OF OTHER THINGS BESIDES PUTTING 7 ROUNDS INTO
2 THE VICTIM, TROY ROUSE. A LOT OF OTHER THINGS. AND IF
3 FOR SOME REASON YOU DON'T FEEL LIKE IT WAS MALICE BY THE
4 FACT THAT THEY PUT SOME OF THESE BULLETS INTO THE VICTIM,
5 YOU CAN ALSO FIND HIM GUILTY OF VOLUNTARY MANSLAUGHTER.
6 AND THAT MEANS THEY KILLED TROY ROUSE AND THERE WASN'T ANY
7 MALICE. AND I'LL LEAVE THAT UP TO Y'ALL. BUT THE BOTTOM
8 LINE IS, THESE TWO DEFENDANTS KILLED TROY ROUSE. KILLED
9 HIM WITHOUT PROPER JUSTIFICATION. WITHOUT A REASON. AND
10 WE BELIEVE THEY ARE GUILTY OF MURDER.

11 THEY HAD POSSESSION OF A WEAPON, A FIREARM, DURING
12 THIS CRIME. WE HAVE CHARGED THEM WITH POSSESSION OF A
13 FIREARM DURING A VIOLENT CRIME. THAT'S WHAT MURDER AND
14 MANSLAUGHTER IS, VIOLENCE. EVEN THOUGH EUNICE MCCALL SAYS
15 HE DIDN'T HAVE THE WEAPON. EFRAIN THOMAS SAYS, YES,
16 EUNICE MCCALL DID. WE HAVE PRESENTED EVIDENCE THAT BOTH
17 OF THEM WERE THE SHOOTERS. AND BOTH OF THEM HAD A WEAPON,
18 SO THEY ARE GUILTY OF THAT CHARGE. AGAIN, LADIES AND
19 GENTLEMEN, THANK YOU FOR YOUR TIME AND YOUR ATTENTION TO
20 THIS MATTER. AND WE FEEL WE HAVE PRESENTED OUR CASE
21 BEYOND A REASONABLE DOUBT. AND WE JUST ASK THAT YOU USE
22 YOUR COMMON SENSE AND GOOD JUDGMENT. AND JUST THINK ABOUT
23 WHAT YOU'VE HEARD ON THE STAND. AND LOOK AT THE EVIDENCE
24 THAT'S BEEN PRESENTED TO YOU. AND WHAT MAKES SENSE.
25 THANK YOU.

1 THE COURT: MR. JOHNSON.

2 MR. JOHNSON: THANK YOUR HONOR. MAY IT PLEASE THE
3 COURT.

4 THE COURT: YES, SIR.

5 MR. JOHNSON: GOOD AFTERNOON, LADIES AND GENTLEMEN.
6 FIRST OF ALL, I WOULD LIKE TO EXPLAIN SOME THINGS TO YOU.
7 MY CLIENT, CHAD JAMES, DID NOT TESTIFY. IT'S HIS
8 CONSTITUTIONAL RIGHT NOT TO TESTIFY. I THINK THE COURT
9 HAS TOLD YOU THAT YOU SHOULDN'T HOLD THAT AGAINST HIM.
10 THERE ARE BASICALLY TWO REASONS FOR THAT. ONE REASON IS
11 IT'S HIS CONSTITUTIONAL RIGHT TO REMAIN SILENT. BUT ALSO
12 THAT THERE WAS NO NEED FOR HIM TO TESTIFY. YOU HEARD THIS
13 WHOLE CASE. THE STATE PRESENTED IT, AND THE DEFENDANT
14 PRESENTED IT. EVERYTHING THAT WE COULD HAVE TOLD YOU,
15 HAS ALREADY BEEN TOLD TO YOU. THE STATE EVEN TOLD YOU
16 ABOUT THE STATEMENT THAT HE HAD GIVEN AS HE EXPLAINED WHAT
17 HAPPENED. THERE'S ALSO A SECOND REASON. THE SECOND
18 REASON IS THAT BECAUSE HE DIDN'T GIVE ANY TESTIMONY, I GET
19 TO BE THE LAST PERSON TO TALK TO YOU. YOU WILL NOT HEAR
20 ANYTHING ELSE FROM THE STATE AND OR THE DEFENDANT, JUST
21 ME. AND IT'S VERY IMPORTANT FOR CHAD JAMES THAT YOU
22 LISTEN TO ME RIGHT NOW. IT'S EXTREMELY IMPORTANT BECAUSE
23 EVERYBODY THAT YOU HAVE HEARD FROM SINCE YOU HAVE BEEN
24 HERE, EVERYBODY HAS GIVEN TWO STATEMENTS. SUPPOSEDLY ONE
25 IS A LIE AND ONE IS THE TRUTH. THE ONLY PERSON THAT HAS

1 ONLY GIVEN ONE STATEMENT WAS CHAD JAMES. HIS STATEMENT
2 THAT WAS GIVEN TO THE POLICE WHICH WAS READ BY OFFICER
3 THOMPSON. AND BEFORE I GO ANY FURTHER, I NEED TO
4 APOLOGIZE, OFFICER THOMPSON. I WAS A LITTLE SHORT WITH
5 HIM WHEN HE WAS ON THE WITNESS STAND. SOMETIMES I AM
6 OVERZEALOUS IN REPRESENTING MY CLIENT. BUT SEE, MY
7 CLIENT'S LIFE IS ON THE LINE. AND I WOULD BE LESS OF A
8 LAWYER IF I WASN'T ZEALOUS. BUT I DO OWE HIM AN APOLOGY,
9 BECAUSE HE IS A FRIEND OF MINE. AND THERE IS A CERTAIN
10 WAY THAT EVERYBODY SHOULD BE TREATED, AND I BECAME
11 OVERZEALOUS.

12 HOWEVER, HE READ THIS TO YOU. THIS WITNESS STATEMENT
13 WAS GIVEN TO HIM BY MY CLIENT. HE SAID HE PROCEEDED TO
14 TURN LEFT ON FRIERSON. WAS GOING TO MAKE A LEFT. THAT HE
15 WROTE IN THERE. A LEFT ON WILSON STREET WHEN HE SAW ALL
16 THE POLICE CARS. HE TURNED AROUND, DROVE BACK TO THE
17 CLUB. HE THEN DROVE TO THE RESIDENCE A SHORT TIME LATER
18 WHERE HE TOOK EFRAIN, COURTNEY, SAMANTHA, KENO, TO CAMDEN
19 IN CORY JAMES' GREEN NEON. THEY PROCEEDED ON THE SHELL
20 STATION ON US 15 TO GET SOME GAS. THEY THEN TOOK I-20 TO
21 RIVER WIND APARTMENTS IN CAMDEN WHERE THEY DROPPED OFF
22 COURTNEY AND EFRAIN. HE STATED THAT HE HAD NO KNOWLEDGE
23 ABOUT THE MURDERS OF EFRAIN, OR EFRAIN'S INVOLVEMENT IN
24 THE MURDER UNTIL THE NEXT DAY. ACCORDING TO THE SUBJECT
25 3, WHICH WAS CHAD, HE MERELY HAD GIVEN EFRAIN AND HIS GIRL

1 A RIDE TO SAMANTHA'S HOUSE.

2 AND THAT WAS HIS STATEMENT. THE FIRST TIME, THE
3 FIRST ATTEMPT, THAT WAS HIS STATEMENT. THE ONLY THING
4 THAT WAS DIFFERENT IN HIS STATEMENT WAS THE WORD LEFT. IF
5 YOU LOOK AT THE BOARD, I ASKED THE OFFICER. HE SAID CAME
6 DOWN FRIERSON, AND LEFT. WHICH WOULD HAVE BEEN THIS WAY.
7 IT DOESN'T MATCH, TRUE. BUT THE OFFICER WAS WRITING THIS,
8 NOT CHAD. HE DID NOT WRITE THE STATEMENT, THE OFFICER
9 WROTE IT. I ASKED THE OFFICER IF HE CHANGED THAT
10 STATEMENT TO RIGHT. HE MADE A RIGHT. SAW THE POLICE
11 OFFICER. TURNED AROUND. WENT BACK. AND IF YOU KNOW
12 ANYTHING ABOUT HIS AREA, THERE IS A CIRCLE GOING THAT WAY.
13 IT GOES BACK TO THE CLUB. A FEW MINUTES LATER, A FEW
14 LATER ON, HE GOES BACK TO HIS HOUSE. IT MATCHES. HE
15 DIDN'T LIE. HE DIDN'T PRETEND. HE DIDN'T SAY, I DIDN'T
16 SEE HIM. HE DIDN'T SAY, I DIDN'T TAKE THEM, I DIDN'T
17 DRIVE THEM. HE ADMITTED IT. HE'S THE ONLY PERSON THAT
18 TOLD THE TRUTH. AND FOR TELLING THE TRUTH, HE'S SITTING
19 HERE NOW.

20 NOW THE STATE WOULD ASK YOU TO, I GUESS THEY WOULD
21 ASK YOU TO STRETCH THE TRUTH. BECAUSE, LADIES AND
22 GENTLEMEN, EVEN IF YOU BELIEVE, LET'S TALK ABOUT TIFFANY
23 HILL, WHO'S THE ONLY PERSON THAT EVEN PLACES MY CLIENT AT
24 THE SCENE. AND EVEN SHE SAYS WHEN I CROSS EXAMINED HER,
25 YOU KNOW, SHE SAID, I SAW HIM EARLIER. I DON'T REMEMBER

1 SEEING HIM DURING THE FIGHT. OR I DON'T KNOW WHAT
2 HAPPENED TO HIM. BUT SHE SAYS SHE WAS COMING FROM A
3 FRIEND'S HOUSE GOING HOME TOWARDS THIS SIDE, TOWARDS RAY
4 STREET THAT SHE PASSED THEM. I SUBMIT TO YOU, HOW COULD
5 SHE PASS THEM ON FRIERSON WHEN THEY ARE WALKING DOWN RAY
6 STREET? AND WHY WOULD SHE PASS THEM ON FRIERSON, SHE
7 LIVES ON RAY STREET TWO BLOCKS DOWN? SHE GOES BACK AROUND
8 THE STORE. THAT DOESN'T MAKE SENSE.

9 NOW I'M FROM THE LOW COUNTRY ORIGINALLY. AND MY
10 PARENTS TOLD ME TO CALL A DOG A DOG, A CAT A CAT. SHE
11 LIED, PLAIN AND SIMPLE. YOU HAD SOMEONE ELSE. I DID NOT
12 EVEN HAVE TO PUT UP ANY WITNESSES. WHEN THE DEFENDANT
13 PUT UP A WITNESS WHO SAID SHE HEARD THE SHOTS, WALKED OUT
14 ON THE PORCH. LIVED NEXT DOOR TO TIFFANY HILL. TIFFANY
15 HILL WALKS OUT OF HER HOUSE. UNLESS SHE'S A TRACK STAR, I
16 DON'T SEE HOW THAT CAN HAPPEN. SOMEBODY IS LYING. THAT'S
17 IMPOSSIBLE. A LOT OF PEOPLE WANT TO BE INVOLVED IN
18 THINGS. THEY LIKE BEING INVOLVED IN THINGS. THEY LIKE
19 THE THRILL OF SITTING HERE AND BEING SEEN AND HAVING THEIR
20 NAMES IN THE PAPER. THEY SIT AROUND AND LISTEN TO OTHER
21 PEOPLE SAY THINGS. AND SOMETIMES LIKE MY FATHER TOLD ME,
22 WHEN YOU OPEN YOUR MOUTH YOU GET IN TROUBLE. SHE LIKED
23 WALKING AROUND SAYING, I KNOW WHAT HAPPENED. AND NOW
24 SHE'S GOT TO CONTINUE WITH THE LIE. BUT THE LIE DOESN'T
25 MATCH. SHE MARKED THAT BOARD. NOBODY DIDN'T PUT -- THAT

1 BOARD DIDN'T HAVE ANY MARKS ON IT.

2 EVERYBODY THAT CAME AFTER THAT SAID THAT IT HAPPENED
3 OVER HERE. NOW THE STATE WANTS TO SAY THAT AFTER THIS MAN
4 HAD BEEN SHOT 7 TIMES, HE CRAWLED ALL THE WAY TO THE
5 CORNER? THERE IS NO -- THEY PICKED UP THE ROUNDS FROM THE
6 CORNER. SO I GUESS HE TOOK THE BULLETS WHEN HE WENT TO
7 THE CORNER. BECAUSE SHE COULD NOT SEE THROUGH THAT
8 BUILDING. BUT THAT'S ENOUGH FOR HER. BOTH DEFENDANTS
9 TOLD YOU WHO WALKED TO THIS STORE. THEY GAVE YOU CLEAR,
10 CONVINCING EVIDENCE. THEY TOLD YOU TWO INDIVIDUALS THAT
11 THE STATE KNEW ABOUT, AND DIDN'T EVEN PRESENT. BECAUSE IT
12 DIDN'T MATCH THEIR STORY.

13 NOW I UNDERSTAND THAT EACH PERSON HAS A PURPOSE. THE
14 STATE'S PURPOSE IS TO PROSECUTE. THE DEFENDANT'S IS TO
15 DEFEND. THE JUDGE IS THE JUDGE. AND THE JURY IS TO
16 DECIDE THE EVIDENCE, AND MAKE A DETERMINATION OF GUILT.
17 BUT THERE ARE CERTAIN STRETCHES THAT YOU SHOULD DO. THERE
18 WAS EVIDENCE GIVEN THAT WOULD INDICATE THAT MY CLIENT, THE
19 ONLY THING HE DID WAS GIVE SOMEBODY A RIDE. NOW IF THAT
20 BY ITSELF IS ENOUGH THAT HE IS GUILTY OF ASSISTING THE
21 DEFENDANT IN ESCAPING, THEN YOU HAVE EVERY REASON TO FIND
22 HIM GUILTY. BUT THINK ABOUT THIS, HE WASN'T TRYING TO
23 ESCAPE, HE WAS SCARED. HE WENT AND TOLD HIS GIRLFRIEND.
24 HE WENT TO -- THERE HAS BEEN A LOT OF THE USE OF THE WORD
25 WHY. WELL I CAN TELL YOU WHY CHAD DIDN'T CALL ANYBODY,

1 BECAUSE HE DIDN'T KNOW WHAT HAPPENED.

2 I CAN TELL YOU WHY CHAD DROVE EFRAIN TO CAMDEN.
3 BECAUSE HE DIDN'T KNOW EFRAIN HAD KILLED ANYBODY. HE
4 ASKED EFRAIN WHY ARE YOU LAYING DOWN IN THE BACK OF THE
5 CAR. REMEMBER EFRAIN SAID THAT? AND HE TOLD HIM HE
6 WASN'T FEELING GOOD. AND I NEEDED TO LAY DOWN. HE
7 BROUGHT THAT OUT HIMSELF. THERE IS -- THAT'S THE ONLY
8 THING THAT HE COULD ASK. WHY ARE YOU LAYING DOWN. ALSO
9 REMEMBER SAMANTHA SAID THEY HAD PLANNED EARLIER THAT DAY
10 TO GO TO CAMDEN. SO THERE WAS NOTHING THAT CHAD EVEN KNEW
11 WITHOUT GOING THERE. HE ALWAYS TOOK THEM TO CAMDEN TO HER
12 HOUSE. THEY WAS ALL OVER TO HER HOUSE EARLIER THAT DAY.
13 NOW YOU HAVE BEEN SITTING HERE. AND I KNOW YOU'RE TIRED
14 OF SITTING DOWN. AND I'M NOT GOING TO BRING THIS ON. YOU
15 SAT THROUGH THE SAME TRIAL THAT I SAT THROUGH. IF YOU SAW
16 WHAT I SAW, LISTENED TO WHAT I LISTENED TO, AND AS THE
17 STATE WOULD LIKE TO SAY, GOT COMMON SENSE AND GOOD
18 JUDGMENT, FIND MY CLIENT GUILTY (SIC) AND SEND HIM HOME
19 TODAY. THANK YOU.

20 THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE A
21 SHORT BREAK. GO TO THE JURY ROOM FOR A SHORT BREAK.
22 PLEASE DO NOT DISCUSS THE CASE. WE WILL COME BACK WITH
23 THE FINAL INSTRUCTIONS BEFORE DELIBERATIONS. PLEASE DO
24 NOT DISCUSS THE CASE.

25 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE

1 PRESENCE OF THE JURY.)

2 THE COURT: MR. JOHNSON, DID YOU WANT TO CORRECT THE
3 RECORD?

4 MR. JOHNSON: NOT GUILTY, YOUR HONOR.

5 THE COURT: WE WILL TAKE ABOUT 5 MINUTES.

6 (THEREUPON, THE COURT TAKES A SHORT RECESS.)

7 THE COURT: YOU MAY BRING THE JURY.

8 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
9 PRESENCE OF THE JURY.)

10 THE COURT: MR. FOREMAN AND MEMBERS OF THE JURY, YOU
11 HAVE HEARD THE EVIDENCE AND THE ARGUMENTS OF THE PARTIES.
12 I WILL NOW EXPLAIN TO YOU THE LAW THAT APPLIES TO THIS
13 MATTER. I CHARGE YOU THAT THERE ARE THREE DEFENDANTS IN
14 THIS CASE. EUNICE DAVIS MCCALL AND EFRAIN THOMAS ARE
15 CHARGED WITH MURDER AND POSSESSION OF A WEAPON DURING THE
16 COMMISSION OF A VIOLENT CRIME. AND CHAD JAMES IS CHARGED
17 WITH ACCESSORY AFTER THE FACT OF MURDER.

18 THE CASE OF EACH DEFENDANT AND THE EVIDENCE AND THE
19 LAW CONCERNING THAT DEFENDANT SHOULD BE CONSIDERED
20 SEPARATELY AND INDIVIDUALLY. YOUR VERDICT DOES NOT HAVE
21 TO BE THE SAME FOR ALL DEFENDANTS. THE FACT THAT YOU MAY
22 FIND ONE DEFENDANT GUILTY OR NOT GUILTY SHOULD NOT CONTROL
23 YOUR VERDICT AS TO ANY OTHER DEFENDANT. WHERE MORE THAN
24 ONE PERSON IS CHARGED WITH A CRIME, IF THE EVIDENCE
25 WARRANTS IT, YOU MAY CONVICT ONE AND ACQUIT OTHERS. OR

1 YOU MAY ACQUIT ALL. OR YOU MAY CONVICT ALL. IT WILL
2 DEPEND ON YOUR VIEW OF THE TESTIMONY AND THE EVIDENCE.
3 YOU MUST TAKE EACH DEFENDANT AND CONSIDER THE EVIDENCE AS
4 TO THAT DEFENDANT AND MY INSTRUCTION TO YOU ON THE LAW.
5 YOU WILL THEN WRITE A SEPARATE VERDICT OF GUILTY OR NOT
6 GUILTY FOR EACH INDIVIDUAL DEFENDANT.

7 THE DEFENDANTS HAVE PLED NOT GUILTY TO THIS
8 INDICTMENT. AND THAT PLEA PUTS THE BURDEN ON THE STATE TO
9 PROVE THE DEFENDANTS GUILTY. PERSONS CHARGED WITH
10 COMMITTING A CRIME IN THE STATE OF SOUTH CAROLINA ARE
11 NEVER REQUIRED TO PROVE THEMSELVES INNOCENT. I CHARGE YOU
12 THAT IT IS AN IMPORTANT RULE OF THE LAW THAT A DEFENDANT
13 IN A CRIMINAL TRIAL NOT MATTER WHAT THE SERIOUSNESS OF THE
14 CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF
15 THE CRIME FOR WHICH THE INDICTMENT IS ISSUED UNLESS GUILT
16 HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT
17 BEYOND A REASONABLE DOUBT. AND THIS PRESUMPTION OF
18 INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS.
19 BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL
20 UNTIL YOU HAVE REACHED A VERDICT OF GUILT BASED ON
21 EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE
22 DOUBT.

23 THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
24 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT,
25 WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN

1 STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF
2 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. AND THIS
3 PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY. IT'S
4 NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO
5 WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU THE JURY ARE
6 SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT
7 BEYOND A REASONABLE DOUBT. I REMIND YOU THAT DURING THE
8 TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE
9 TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE
10 TRIAL AND ALSO TO RULE ON THE ADMISSIBILITY OF THE
11 EVIDENCE DURING THE TRIAL. AND YOU ARE TO CONSIDER ONLY
12 THE COMPETENT EVIDENCE BEFORE YOU. IF THERE IS ANY
13 EVIDENCE ORDERED STRICKEN FROM THE RECORD IN THIS CASE,
14 YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER
15 ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS
16 WITNESS STAND, ALONG WITH ANY EXHIBITS WHICH HAVE BEEN
17 MADE A PART OF THE RECORD IN THIS CASE AND STIPULATIONS OF
18 COUNSEL.

19 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW THAT
20 IS APPLICABLE TO THIS CASE. AND AS THE PRESIDING JUDGE, I
21 AM THE SOLE JUDGE OF THE LAW OF THIS CASE. AND IT IS YOUR
22 DUTY AS JURORS TO ACCEPT AND APPLY THE LAW EXACTLY AS I
23 STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT
24 THE LAW IS, OR WHAT THE LAW OUGHT TO BE, AND IT DOES NOT
25 AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST

1 ABANDON THIS IDEA, BECAUSE YOU ARE SWORN TO ACCEPT AND
2 APPLY THE LAW EXACTLY AS I STATE IT TO YOU. IN EVERY CASE
3 TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE
4 SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN THE CASE. THE
5 TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON OR MAKE ANY
6 STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. AND
7 SINCE YOU THE JURY ARE SOLE JUDGE OF THE FACTS IN THIS
8 CASE, YOU ARE NOT TO INFER FROM WHAT I SAID DURING THE
9 PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF
10 THE EVIDENCE OR OTHERWISE, OR ANYTHING THAT I NOW STATE TO
11 YOU DURING THE COURSE OF THIS INSTRUCTION TO INDICATE THAT
12 I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW
13 DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN
14 THIS CASE. THAT IS A MATTER SOLELY FOR YOU THE JURY TO
15 DETERMINE. AND AS JURORS, IT IS YOUR DUTY TO DETERMINE
16 THE EFFECT AND VALUE AND THE TRUTH OF THE EVIDENCE
17 PRESENTED DURING THIS TRIAL.

18 NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF
19 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY
20 SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS
21 JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE, AND TO
22 DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH. IN
23 DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE
24 TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER
25 SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS.

1 YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND
2 REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME
3 WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN
4 ITS ENTIRETY, OR REJECT THE TESTIMONY OF A WITNESS IN ITS
5 ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS
6 EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER
7 MOTIVE IN THIS CASE. AND YOU MAY CONSIDER THE APPEARANCE
8 AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND.

9 YOU HAVE HEARD EVIDENCE THAT SOME OF THE DEFENDANTS,
10 MR. THOMAS AND MR. MCCALL HAVE PRIOR, PRIOR CRIMINAL
11 RECORDS. THIS EVIDENCE MAY BE CONSIDERED BY YOU IF YOU
12 CONCLUDED THAT ONLY IN DECIDING WHETHER THE DEFENDANT'S
13 TESTIMONY IS BELIEVABLE, AND FOR NO OTHER PURPOSE. YOU
14 MUST NOT CONSIDER THE DEFENDANT'S PRIOR RECORD AS ANY
15 EVIDENCE OF THE DEFENDANT'S GUILT OF THE CHARGE WE ARE
16 TRYING TODAY. A STATEMENT ALLEGED TO HAVE BEEN MADE BY
17 THE DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS
18 CASE. AND WHILE THE COURT HAS DETERMINED THAT THE
19 STATEMENT IS ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE
20 ULTIMATE DECISION OF WHETHER OR NOT -- THAT THE DEFENDANT
21 MADE THE STATEMENT. IF THE DEFENDANT DID MAKE THE
22 STATEMENT, YOU MUST DETERMINE WHETHER THE STATEMENT WAS
23 MADE BY THE DEFENDANT VOLUNTARILY AND OF HIS OWN FREE
24 WILL.

25 THIS MEANS THAT THE STATEMENT WAS NOT CAUSED BY

1 PRESSURE OR FORCE, FEAR, THREATS, COERCION OR
2 INTIMIDATION. OR BY HOPE OF PROMISE OF LENIENCY OR REWARD
3 OF ANY KIND. IN DETERMINING WHETHER THE STATEMENT WAS
4 VOLUNTARY, YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF
5 THE DEFENDANT AND THE DETAILS OF THE QUESTIONS. AND SOME
6 OF THE FACTS YOU MUST CONSIDER ARE THE AGE OF THE
7 DEFENDANT, DEFENDANT'S EDUCATION OR LACK OF EDUCATION.
8 THE DEFENDANT'S MENTAL ABILITY OR CAPACITY, THE
9 DEFENDANT'S I.Q. OR INTELLIGENCE, THE DEFENDANT'S
10 BACKGROUND AND ENVIRONMENT, PLACE, LENGTH OF DETENTION,
11 THE NATURE OF THE QUESTIONING, AND THE ADVICE OR LACK
12 THEREOF TO THE DEFENDANT OF HIS CONSTITUTIONAL RIGHTS.
13 INCLUDING BUT NOT LIMITED TO, THE RIGHT TO REMAIN SILENT;
14 THAT ANY STATEMENT WOULD BE USED AGAINST HIM IN A COURT OF
15 LAW. THE RIGHT TO HAVE A LAWYER PRESENT. IF HE CANNOT
16 AFFORD A LAWYER, A LAWYER WOULD BE APPOINTED TO REPRESENT
17 HIM WITHOUT ANY COSTS. AND THAT HE SHOULD STOP MAKING A
18 -- AND HE CAN STOP MAKING A STATEMENT AT ANY TIME. BUT
19 CAREFULLY CONSIDER ALL THE SURROUNDING CIRCUMSTANCES
20 BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED STATEMENT.

21 THE STATE HAS THE BURDEN OF PROVING BEYOND A
22 REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS VOLUNTARY.
23 IF YOU DETERMINE THAT IT WAS, YOU MAY GIVE THE STATEMENT
24 ANY FURTHER CONSIDERATION THAT YOU DEEM PROPER. YOU MUST
25 DECIDE WHAT WEIGHT IF ANY SHOULD BE GIVEN TO THE ALLEGED

1 STATEMENT. IF YOU DETERMINE THAT THE ALLEGED STATEMENT
2 WAS NOT THE FREE AND VOLUNTARY STATEMENT OF THE DEFENDANT,
3 YOU SHOULD NOT CONSIDER THE STATEMENT AT ALL. I ALSO
4 INSTRUCT YOU AND EMPHASIZE THE FACT THAT A DEFENDANT, IN
5 THIS CASE DEFENDANT JAMES, DID NOT TESTIFY, IS NOT A
6 FACTOR TO BE CONSIDERED BY YOU IN ANY MANNER IN YOUR
7 DELIBERATIONS AND IN YOUR CONSIDERATION ON THE QUESTION OF
8 HIS GUILT OR INNOCENCE. IT MUST NOT BE CONSIDERED BY YOU
9 IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE
10 CONSTITUTIONAL RIGHT TO REMAIN SILENT. AND THE ASSERTION
11 OF THIS RIGHT SHOULD NOT BE CONSIDERED BY YOU IN YOUR
12 DELIBERATIONS.

13 AND I REPEAT, THAT UNDER YOUR OATH, YOU CAN DRAW NO
14 CONCLUSIONS WHATSOEVER FROM THE FACT THAT THIS DEFENDANT
15 DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT
16 TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM.
17 THE BURDEN AS I HAVE SAID, STATED TO YOU, IS ON THE STATE.
18 THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. THE
19 DEFENDANT -- THE BURDEN OF PROOF REMAINS ON THE STATE TO
20 PROVE GUILT BEYOND A REASONABLE DOUBT. AND WHAT IS A
21 REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS THE
22 KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
23 HESITATE TO ACT. PROOF BEYOND A REASONABLE DOUBT IS PROOF
24 THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
25 PROOF BEYOND A REASONABLE DOUBT MUST THEREFORE BE PROOF OF

1 SUCH A CONVINCING CHARACTER THAT A REASONABLE PERSON WOULD
2 NOT HESITATE TO ACT AND TO RELY UPON IT IN THE MOST
3 IMPORTANT OF HIS OR HER OWN AFFAIRS.

4 REASONABLE DOUBT MAY ARISE FROM THE EVIDENCE WHICH IS
5 IN THE CASE OR FROM THE LACK OF EVIDENCE IN THE CASE. YOU
6 THE JURY MUST DETERMINE WHETHER OR NOT REASONABLE DOUBT
7 EXISTS AS TO THE GUILT OF THE DEFENDANT. THE STATE HAS
8 THE BURDEN OF PROVING EACH AND EVERY ELEMENT OF A CRIME
9 BEYOND A DOUBT. AND ANY DOUBT WHICH YOU MAY HAVE IN YOUR
10 DELIBERATIONS SHOULD BE RESOLVED IN FAVOR OF THE
11 DEFENDANT. IF YOU HAVE A REASONABLE DOUBT AS TO THE GUILT
12 OF A DEFENDANT, THEY ARE ENTITLED TO THAT DOUBT AND WOULD
13 BE ENTITLED TO AN ACQUITTAL. PROOF BEYOND A REASONABLE
14 DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
15 DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS THAT WE KNOW
16 IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY. AND
17 IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT
18 OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON YOUR
19 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED
20 THAT A DEFENDANT IS GUILTY OF A CRIME CHARGED, THEN YOU
21 MUST FIND HIM GUILTY.

22 ON THE OTHER HAND, IF YOU THINK THAT THERE IS A REAL
23 POSSIBILITY THAT A PARTICULAR DEFENDANT IS GUILTY, OR THAT
24 THEY ARE NOT GUILTY, YOU MUST GIVE THEM THE BENEFIT OF THE
25 DOUBT AND FIND THEM NOT GUILTY.

1 THE DEFENDANTS, EUNICE DAVIS MCCALL AND EFRAIN THOMAS
2 ARE CHARGED WITH MURDER. THE STATE MUST PROVE BEYOND A
3 REASONABLE DOUBT THAT THESE TWO DEFENDANTS KILLED ANOTHER
4 PERSON WITH MALICE AFORETHOUGHT. MALICE IS HATRED, ILL
5 WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE
6 INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR
7 EXCUSE AND WITH AN INTENT TO INFLECT AN INJURY, OR UNDER
8 CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.
9 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXIST FOR
10 ANY PARTICULAR TIME BEFORE THE ACT WAS COMMITTED. BUT
11 MALICE MUST EXIST IN THE MIND OF DEFENDANT JUST BEFORE AND
12 AT THE TIME THAT THE ACT IS COMMITTED. THEREFORE, THERE
13 MUST BE A COMBINATION OF A PREVIOUS EVIL INTENT AND THE
14 ACT.

15 MALICE AFORETHOUGHT MAY BE EXPRESSED OR INFERRED.
16 THESE TERMS EXPRESSED AND INFERRED DO NOT MEAN DIFFERENT
17 KINDS OF MALICE, BUT MERELY THE MANNER IN WHICH MALICE MAY
18 BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR
19 BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE
20 PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS
21 WORDS, EXPRESSES HATRED OR ILL WILL TOWARDS ANOTHER, OR
22 WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH IT
23 LATER ACCOMPLISHED; SUCH AS, LYING IN WAIT FOR A PERSON.
24 OR ANY OTHER ACT OF PREPARATION GOING TO SHOW THAT THE
25 DEED WAS WITHIN THE DEFENDANT'S MIND IS EXPRESS MALICE.

1 MALICE MAY BE INFERRED FROM THE CONDUCT SHOWING TOTAL
2 DISREGARD OF HUMAN LIFE.

3 INFERRED MALICE MAY ALSO ARISE WHEN THE DEED IS DONE
4 WITH A DEADLY WEAPON. AND A DEADLY WEAPON IS ANY ARTICLE,
5 INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR
6 GREAT BODILY HARM. AND WHETHER AN INSTRUMENT HAS BEEN
7 USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND
8 CIRCUMSTANCES OF EACH CASE. AND THE FOLLOWING ARE
9 INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL, A
10 SHOTGUN, A RIFLE, DAGGER OR KNIFE. NOW IF YOU FIND THAT
11 THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT
12 THAT ANY OF THE DEFENDANTS CHARGED WITH MURDER COMMITTED
13 MURDER, YOU MAY CONSIDER WHETHER THE STATE HAS PROVED
14 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT OR THESE
15 DEFENDANTS COMMITTED VOLUNTARY MANSLAUGHTER. TO PROVE
16 VOLUNTARY MANSLAUGHTER THE STATE MUST PROVE BEYOND A
17 REASONABLE THAT THE DEFENDANTS TOOK THE LIFE OF ANOTHER IN
18 SUDDEN HEAT OF PASSION BASED ON SUFFICIENT PROVOCATION.

19 BOTH HEAT OF PASSION AND SUFFICIENT LEGAL PROVOCATION
20 MUST BE PRESENT AT THE TIME OF THE KILLING TO CONSTITUTE
21 VOLUNTARY MANSLAUGHTER. SUDDEN HEAT OF PASSION MAY FOR A
22 TIME AND EFFECT A PERSON'S SELF CONTROL AND TEMPORARILY
23 DISTURB A PERSON'S REASON. AND SUDDEN HEAT OF PASSION
24 MUST BE THE TYPE THAT WOULD MAKE AN ORDINARY PERSON UNABLE
25 TO TRULY REFLECT HIS ACTIONS AND WOULD PRODUCE AN

1 UNCONTROLLABLE IMPULSE TO DO VIOLENCE. SUFFICIENT LEGAL
2 PROVOCATION MUST BE THE TYPE THAT WOULD MAKE A PERSON OF
3 ORDINARY REASON AND CAUTION TO BECOME ENRAGED AND TO LOSE
4 CONTROL TEMPORARILY. THE PROVOCATION NEEDED FOR VOLUNTARY
5 MANSLAUGHTER MUST COME TO SOME ACT OR RELATED TO THE
6 VICTIM. AND WORDS ALONE HOWEVER VULGAR OR INSULTING ARE
7 NOT ENOUGH TO BE A LEGAL PROVOCATION.

8 WHERE DEATH IS CAUSED BY THE USE OF A DEADLY WEAPON,
9 THE WORDS MUST BE ACCOMPANIED BY SOME OVERT, THREATENING
10 ACT WHICH COULD HAVE PRODUCED THE HEAT OF PASSION. THE
11 EXERCISE OF A LEGAL RIGHT NO MATTER HOW OFFENSIVE IT IS,
12 IS NEVER SUFFICIENT LEGAL PROVOCATION FOR VOLUNTARY
13 MANSLAUGHTER. IF THE HEAT OF PASSION HAD COOLED OR IF
14 THERE WAS ENOUGH TIME BETWEEN THE PROVOCATION IF ANY AND
15 THE KILLING FOR THE PASSION OF A REASONABLE PERSON TO
16 COOL, THE KILLING WOULD NOT BE VOLUNTARY MANSLAUGHTER. IN
17 DECIDING WHETHER A REASONABLE PERSON WOULD HAVE HAD ENOUGH
18 TIME TO COOL OFF, YOU SHOULD CONSIDER ALL THE
19 CIRCUMSTANCES SURROUNDING THE KILLING. YOU MAY CONSIDER
20 THE NATURE OF THE PROVOCATION IF ANY, THE DEFENDANT'S
21 MENTAL AND PHYSICAL STATE AND THE CIRCUMSTANCES AND
22 RELATIONSHIPS BETWEEN THE PARTIES.

23 NOW AS TO EUNICE DAVIS MCCALL, IF YOU FIND THAT THE
24 STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT
25 THE DEFENDANT EUNICE DAVIS MCCALL IS GUILTY OF MURDER OR

1 VOLUNTARY MANSLAUGHTER, YOU MAY CONSIDER WHETHER THE STATE
2 HAS PROVED BEYOND A REASONABLE DOUBT THAT THIS DEFENDANT
3 IS GUILTY OF INVOLUNTARY MANSLAUGHTER. TO PROVE
4 INVOLUNTARY MANSLAUGHTER THAT THE DEFENDANT
5 UNINTENTIONALLY KILLED THE VICTIM WITHOUT MALICE, BUT
6 WHILE ENGAGED IN AN UNLAWFUL ACTIVITY NOT NATURALLY
7 INTENDING TO CAUSE THE DEATH OR GREAT BODILY HARM, OR THAT
8 THE DEFENDANT UNINTENTIONALLY KILLED THE VICTIM WITHOUT
9 MALICE WHILE ENGAGED IN A LAWFUL ACTIVITY WITH RECKLESS
10 DISREGARD FOR THE SAFETY OF OTHERS.

11 UNINTENTIONAL MEANS THAT THE DEFENDANT DID NOT INTEND
12 FOR ANYONE TO BE KILLED OR SERIOUSLY INJURED. RECKLESS
13 DISREGARD FOR THE SAFETY OF OTHERS IS MORE THAN MERE
14 NEGLIGENCE OR CARELESSNESS. MERE NEGLIGENCE OR
15 CARELESSNESS IS THE FAILURE TO USE THE CARE THAT A PERSON
16 OF ORDINARY REASON WOULD UNDER THE SAME CIRCUMSTANCES.
17 RECKLESSNESS IS A CONSCIOUS FAILURE TO USE ORDINARY CARE.
18 RECKLESS DISREGARD FOR THE SAFETY OF OTHERS MEANS THAT YOU
19 ARE NOT INTERESTED IN THE CONSEQUENCES OF YOUR ACTS OR THE
20 RIGHTS AND SAFETY OF OTHERS.

21 IF A PERSON WHO KNOWS OR SHOULD KNOW THAT ORDINARY
22 CARE REQUIRES CERTAIN PRECAUTIONS TO BE TAKEN FOR THE
23 SAFETY OF OTHERS WHEN USING A DANGEROUS INSTRUMENTALITY;
24 SUCH AS, A GUN TO CAUSE OR THAT PERSON FAILS TO USE THOSE
25 PRECAUTIONS WITHOUT CONCERN, THE PERSON'S ACTIONS ARE

1 CONSIDERED RECKLESS. AND THE STATE MUST PROVE BEYOND A
2 REASONABLE DOUBT THAT THE DEFENDANT'S ACTS WAS THE
3 PROXIMATE CAUSE FOR THE DEATH. PROXIMATE CAUSE IS A
4 DIRECT CAUSE. IT IS AN IMMEDIATE CAUSE. IT IS THE
5 EFFICIENT CAUSE. IT IS THAT CAUSE WITHOUT WHICH THE DEATH
6 OF THE VICTIM WOULD NOT HAVE RESULTED. THERE MUST BE
7 CHAIN OF CAUSATION FROM THE TIME OF THE INJURY INFLICTED
8 BY THE DEFENDANT UNTIL THE TIME OF THE VICTIM'S DEATH.
9 PROXIMATE CAUSE DOES NOT NECESSARILY MEAN THAT IT OCCURRED
10 IMMEDIATELY PRIOR TO DEATH. THERE CAN BE MORE THAN ONE
11 PROXIMATE CAUSE. THE ACTS OF TWO OR MORE PERSONS MAY
12 COMBINE TOGETHER TO BE A PROXIMATE CAUSE OF THE DEATH OF
13 THE PERSON.

14 THE DEFENDANT'S ACTS MAY BE REGARDED AS THE PROXIMATE
15 CAUSE IF IT IS A CONTRIBUTING CAUSE TO THE DEATH OF THE
16 VICTIM. THE FACT THAT THERE ARE OTHER CAUSES ALSO
17 CONTRIBUTING TO THE DEATH OF THE VICTIM WOULD NOT RELIEVE
18 A DEFENDANT FROM RESPONSIBILITY. THE DEFENDANTS ACTS NEED
19 NOT BE THE SOLE CAUSE OF THE DEATH BUT MUST BE A PROXIMATE
20 CONTRIBUTING CAUSE TO THE DEATH OF THE VICTIM. AND AS
21 NOTED EARLIER, YOU WOULD ONLY CONSIDER INVOLUNTARY
22 MANSLAUGHTER AS TO THE DEFENDANT MCCALL. NOW THE
23 DEFENDANT CHAD JAMES IS CHARGED WITH BEING AN ACCESSORY
24 AFTER THE FACT OF MURDER. IN ORDER TO PROVE THIS CLIENT,
25 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE

1 DEFENDANT KNEW THAT ANOTHER PERSON, THE PRINCIPAL,
2 COMMITTED A FELONY AND AFTER THE CRIME INTENTIONALLY
3 HELPED THE PRINCIPAL TO ESCAPE FROM ARREST, CONVICTION OR
4 PUNISHMENT.

5 INTENTIONALLY MEANS WILFULLY. INTENDING THE RESULTS
6 WHICH ACTUALLY OCCURRED. IT IS NOT ACCIDENTALLY OR
7 INVOLUNTARY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF
8 THE DEFENDANT AND FROM OTHER CIRCUMSTANCES FROM WHICH YOU
9 MAY NATURALLY AND REASONABLY INFER INTENT. ABSENCE IS NOT
10 AN ELEMENT OF THE CRIME OF ACCESSORY AFTER THE FACT. IF
11 YOU FIND THAT THE DEFENDANT WAS MERELY PRESENT AT THE
12 SCENE AT THE TIME AND DID NOT PARTICIPATE IN THE CRIME BUT
13 BECAME INVOLVED AFTER THE COMMISSION OF THE CRIME, YOU MAY
14 FIND THE DEFENDANT OF BEING AN ACCESSORY AFTER THE FACT.
15 ALTHOUGH THE ACTIONS OF THE DEFENDANT MAY HAVE HELPED THE
16 PRINCIPAL TO ESCAPE PROTECTION OR ARREST, THIS IS NOT
17 ENOUGH TO BE AN ACCESSORY AFTER THE FACT. THE STATE MUST
18 ALSO PROVE THAT THE DEFENDANT ACTED WITH THE INTENTION OR
19 WITH THE PURPOSE OF HELPING THE PRINCIPAL TO ESCAPE
20 DETECTION OR ARREST. SO IF A PERSON CHARGED WITH BEING AN
21 ACCESSORY AFTER THE FACT DID NOT INTEND THAT HIS ACTION
22 HELPED THE PRINCIPAL ESCAPE DETECTION OR ARREST, THEN HE
23 IS NOT AN ACCESSORY AFTER THE FACT. EVEN THOUGH THE ACT
24 IN FACT MAY HAVE HELPED IN HELPING THE PRINCIPAL ESCAPE
25 DETECTION OR ARREST. THERE MUST BE SOME AFFIRMATIVE ACTS

1 TENDING TOWARDS THE CONCEALMENT OF THE COMMISSION OF A
2 CRIME. VIOLENCE ALONE IS NOT SUFFICIENT TO MAKE A PERSON
3 AN ACCESSORY AFTER THE FACT OF A FELONY.

4 EUNICE DAVIS MCCALL AND EFRAIN THOMAS ARE ALSO
5 CHARGED WITH POSSESSION OF A WEAPON DURING THE COMMISSION
6 OF A VIOLENT CRIME. THE STATE MUST PROVE BEYOND A
7 REASONABLE DOUBT THAT THE DEFENDANT WAS IN POSSESSION OF A
8 FIREARM OR DID VISIBLY DISPLAY WHAT APPEARED TO BE A
9 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. AND A
10 FIREARM MEANS ANY WEAPON WHICH WILL OR DESIGN MAY BE
11 READILY CONVERTED TO EXPEL A PROJECTILE. IN ORDER TO FIND
12 A DEFENDANT GUILTY OF POSSESSION OF A WEAPON DURING THE
13 COMMISSION OF A VIOLENT CRIME, YOU MUST FIRST FIND THE
14 DEFENDANT GUILTY OF EITHER COMMITTING OR ATTEMPTING TO
15 COMMIT A VIOLENT CRIME. MURDER AND VOLUNTARY MANSLAUGHTER
16 ARE VIOLENT CRIMES.

17 NOW A DEFENDANT WHO IS NOT CONSCIOUS OF A FACT AND
18 DOES NOT ACT WITH KNOWLEDGE OF THAT FACT, EVEN THOUGH A
19 REASONABLE PERSON IN THE SAME SITUATION AS THE DEFENDANT
20 WOULD HAVE BEEN CONSCIOUSLY AWARE OF THAT FACT. KNOWLEDGE
21 IS BASED ON WHAT A PERSON WAS AWARE OF, NOT WHAT HE OUGHT
22 TO BE OR SHOULD HAVE BEEN AWARE OF. NOW THE DEFENDANT'S
23 MCCALL AND THOMAS RAISE THE DEFENSE OF SELF DEFENSE. SELF
24 DEFENSE IS A COMPLETE DEFENSE. AND IF ESTABLISHED, YOU
25 MUST FIND THE DEFENDANT NOT GUILTY. THE STATE HAS THE

1 BURDEN OF DISPROVING SELF DEFENSE BY PROOF BEYOND A
2 REASONABLE DOUBT. IF YOU HAVE A REASONABLE DOUBT OF ANY
3 OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL OF THE
4 EVIDENCE INCLUDING THE EVIDENCE OF SELF DEFENSE, THEN YOU
5 MUST FIND THAT DEFENDANT NOT GUILTY.

6 ON THE OTHER HAND, IF YOU HAVE NO REASONABLE DOUBT OF
7 ANY OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE
8 EVIDENCE INCLUDING THE EVIDENCE OF SELF DEFENSE, THEN YOU
9 MUST FIND THAT DEFENDANT GUILTY. THE FOLLOWING ELEMENTS
10 ARE REQUIRED IN ORDER TO ESTABLISH SELF DEFENSE. FIRST,
11 THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON THE
12 DIFFICULTY. IF THE DEFENDANT'S CONDUCT WAS THE TYPE THAT
13 WAS REASONABLY CALCULATED TO AND DID PROVOKE THE DEADLY
14 ASSAULT, THE DEFENDANT WOULD BE AT FAULT IN BRINGING ON
15 THE DIFFICULTY AND WOULD NOT BE ENTITLED TO AN ACQUITTAL
16 BASED ON SELF DEFENSE.

17 THE SECOND ELEMENT OF SELF DEFENSE IS THAT DEFENDANT
18 WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY
19 INJURY. OR THAT THE DEFENDANT ACTUALLY BELIEVED THAT HE
20 WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY.
21 IF ANY OF THE DEFENDANTS WERE ACTUALLY IN IMMINENT DANGER,
22 IT MUST BE SHOWN THAT THE CIRCUMSTANCES WOULD HAVE
23 WARRANTED A PERSON OF ORDINARY FIRMNESS AND COURAGE TO
24 STRIKE THE FATAL BLOW IN ORDER TO PREVENT DEATH OR SERIOUS
25 BODILY INJURY. IF THE DEFENDANT BELIEVED HE WAS IN

1 IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY IT MUST
2 BE SHOWN THAT A REASONABLY PRUDENT PERSON OF ORDINARY
3 FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF.

4 IN DECIDING WHETHER THE DEFENDANT ACTUALLY WAS OR
5 BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS
6 BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND
7 CIRCUMSTANCES SURROUNDING THE CRIME. INCLUDING THE
8 PHYSICAL CONDITIONS AND THE CHARACTERISTICS OF THE
9 DEFENDANT AND THE VICTIM. THE DEFENDANT DOES NOT HAVE TO
10 SHOW THAT THERE WAS ACTUAL DANGER. IT IS ENOUGH THAT THE
11 DEFENDANT BELIEVED THEY WERE IN IMMINENT DANGER AND A
12 REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE
13 WOULD HAVE HAD THE SAME BELIEF. THE DEFENDANT HAS A RIGHT
14 TO ACT ON APPEARANCES EVEN THOUGH THE DEFENDANT'S BELIEF
15 MAY HAVE BEEN MISTAKEN. IT IS FOR YOU DECIDE WHETHER THE
16 DEFENDANT'S FEAR OF IMMINENT DANGER OF DEATH OR SERIOUS
17 BODILY INJURY WAS REASONABLE AND WOULD HAVE BEEN FELT BY
18 AN ORDINARY PERSON IN THE SAME SITUATION.

19 WORDS ACCOMPANIED BY HOSTILE ACTS MAY DEPENDING ON
20 THE CIRCUMSTANCES ESTABLISH SELF DEFENSE. THERE IS ALSO
21 THE SIZE, THE AGES AND WEIGHT OF THE DEFENDANT AND THE
22 VICTIM AND MAY BE CONSIDERED IN DECIDING THE APPEARANCE OR
23 ACTUAL NEED FOR FORCE IN SELF DEFENSE. AND THE AMOUNT OF
24 SELF DEFENSE. THE REPUTATION OF THE VICTIM AS A VIOLENT
25 PERSON MAY BE CONSIDERED IN DECIDING WHETHER THERE WAS A

1 NEED FOR FORCE. WHETHER THE DEFENDANT HAD A REASON TO
2 BELIEVE THAT THERE WAS A NEED FOR FORCE. AND WHETHER
3 DEADLY FORCE WAS REASONABLY NECESSARY.

4 PRIOR INSTANCES OF VIOLENCE BY THE VICTIM MAY BE
5 CONSIDERED IN DECIDING WHETHER THE DEFENDANT ACTUALLY
6 BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS
7 BODILY INJURY. OR WAS ACTUALLY IN IMMINENT DANGER. THE
8 INTOXICATION OF THE VICTIM MAY BE CONSIDERED IN DECIDING
9 WHETHER THE DEFENDANT'S FEAR OF DEATH OR BODILY HARM WAS
10 REASONABLE. AND THE FINAL ELEMENT OF SELF DEFENSE IS THAT
11 A DEFENDANT HAD NO OTHER PROBABLE WAY TO AVOID THE DANGER
12 OF DEATH OR SERIOUS BODILY THAN TO ACT AS THE DEFENDANT
13 DID IN THIS PARTICULAR INSTANCE. THE DEFENDANT HAD NO
14 DUTY TO RETREAT IF BY DOING SO THE DANGER OF BEING KILLED
15 OR SUFFERING SERIOUS BODILY INJURY WOULD HAVE INCREASED.

16 NOW A PERSON CANNOT BE REQUIRED TO MAKE AN EXACT
17 CALCULATION AS TO THE DEGREE OR THE AMOUNT OF FORCE WHICH
18 MAY BE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM.
19 THEREFORE, IN SELF DEFENSE THE DEFENDANT HAS THE RIGHT TO
20 USE THE FORCE NEEDED TO AVOID DEATH OR SERIOUS BODILY
21 HARM. FORCE USED IN SELF DEFENSE DOES NOT HAVE TO BE
22 LIMITED TO THE DEGREE OR AMOUNT OF FORCE USED BY THE
23 VICTIM. THE DEFENDANT HAS THE RIGHT TO USE SO MUCH FORCE
24 AS APPEARS TO BE REASONABLY NECESSARY FOR COMPLETE SELF
25 PROTECTION IN WHICH A PERSON OF ORDINARY REASON AND

1 FIRMNESS WOULD HAVE BELIEVED TO BE NEEDED TO PREVENT DEATH
2 OR SERIOUS BODILY HARM. NOW IF THE DEFENDANT IS JUSTIFIED
3 IN DEFENDING HIMSELF OR OTHERS AND THEN FIRES THE FIRST
4 SHOT, THEN THE DEFENDANT IS ALSO JUSTIFIED IN CONTINUING
5 TO SHOOT UNTIL IT IS APPARENT THAT THE DANGER OF DEATH OR
6 SERIOUS BODILY INJURY HAS COMPLETELY ENDED.

7 NOW UNDER THE LAW OF SELF DEFENSE, THE DEFENDANT MAY
8 TAKE ANOTHER'S LIFE IN THE DEFENSE OF OTHERS. THE RIGHT
9 TO INTERVENE TO PROTECT ANOTHER PERSON IS SUBJECT TO THE
10 SAME RIGHTS AND LIMITATIONS AS THE RIGHT OF SELF DEFENSE.
11 THE DEFENDANT MAY TAKE THE LIFE OF A PERSON WHO ASSAULTS A
12 FRIEND OR ALSO A BYSTANDER IF THAT FRIEND OR RELATIVE OR
13 BYSTANDER WOULD HAVE HAD THE RIGHTS OF SELF DEFENSE. TO
14 SHOW THAT THE PERSON BEING DEFENDED HAS THE RIGHT TO SELF
15 DEFENSE IT MUST FIRST BE SHOWN THAT THE PERSON BEING
16 DEFENDED AND THE DEFENDANT WERE BOTH WITHOUT FAULT IN
17 BRINGING ON THE DIFFICULTY. IF THE CONDUCT OF THE PERSON
18 DEFENDED OR THE DEFENDANT WAS REASONABLY CALCULATED TO AND
19 DID PROVOKE THE DEADLY ASSAULT, THE PERSON WOULD BE AT
20 FAULT IN BRINGING ON THE DIFFICULTY AND WOULD NOT HAVE THE
21 RIGHT TO SELF DEFENSE. THEREFORE THE DEFENDANT WOULD NOT
22 HAVE THE RIGHT TO USE DEADLY FORCE IN DEFENDING THAT
23 PERSON.

24 THE DEFENSE OF ANOTHER PERSON IS EXCUSABLE IF THE
25 DEFENDANT HAD REASONABLE GROUND TO BELIEVE AND IN GOOD

1 FAITH DID BELIEVE THAT THE PERSON BEING DEFENDED WAS IN
2 IMMINENT DANGER OF DEATH OR SERIOUS BODILY HARM FROM THE
3 VICTIM. IN DECIDING WHETHER THE PERSON DEFENDED WAS OR
4 THAT PERSON ACTUALLY BELIEVED THE PERSON WAS IN IMMINENT
5 DANGER OF DEATH OR SERIOUS BODILY INJURY, YOU SHOULD
6 CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE
7 CRIME, INCLUDING THE CHARACTERISTICS OF THE PARTIES.

8 MR. FOREMAN AND MEMBERS, I AM REQUIRED TO DECLARE THE
9 LAW AS I HAVE DONE, AND THROUGHOUT THESE INSTRUCTIONS NOW
10 BEING GIVEN. AND THEY ARE BEING GIVEN TO HELP GUIDE YOU
11 IN LAWFUL AND JUST VERDICT. AND YOU HAVE NOTICED THAT I
12 HAVE READ THESE INSTRUCTIONS. AND I DO SO IN ORDER TO
13 GIVE YOU THE LAW AS ACCURATELY AS POSSIBLE. WHETHER SOME
14 OF THESE INSTRUCTIONS WILL APPLY WILL DEPEND ON WHAT YOU
15 FIND THE FACTS TO BE. THE FACT THAT I HAVE INSTRUCTED ON
16 VARIOUS SUBJECTS IN THIS CASE MUST NOT BE TAKEN AS ANY
17 INDICATION OF THIS COURT AS TO WHAT YOU FIND THE FACTS TO
18 BE OR AS TO WHICH PARTY IS ENTITLED TO YOUR VERDICT. AND
19 YOU HAVE BEEN SWORN TO GIVE BOTH SIDES IN THIS CASE, ALL
20 SIDES IN THIS CASE, A FAIR AND IMPARTIAL TRIAL. AND WHEN
21 YOU HAVE DONE THAT, YOU WILL HAVE COMPLIED WITH YOUR OATH
22 AND NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT.
23 YOU MUST NOT BE INFLUENCED BY OPINIONS OR EXPRESSIONS OF
24 OPINIONS THAT YOU MAY HAVE HEARD OUTSIDE OF THIS
25 COURTROOM. BUT RATHER SHOULD BASE YOUR VERDICT ONLY ON

1 THE TESTIMONY OF THE SWORN WITNESSES WHO TOOK THE STAND
2 ALONG WITH THE OTHER EVIDENCE.

3 YOU SHOULD NOT SWAYED BY CAPRICE, PASSION, PREJUDICE,
4 OR IMPROPER SYMPATHY FOR OR AGAINST ANY OF THE PARTIES IN
5 THIS CASE. AND REMEMBER YOU HAVE NO FRIENDS TO REWARD OR
6 ENEMIES TO PUNISH. AND BOTH SIDES ARE ENTITLED, OR ALL
7 SIDES ARE ENTITLED TO A FAIR AND IMPARTIAL TRIAL AT YOUR
8 HANDS. THE POSSIBLE VERDICTS IN THIS CASE ARE STATED AND
9 ESTIMATED ON THE VERDICT FORM WHICH I HAVE AND WHICH WILL
10 GO BACK TO THE JURY ROOM WITH YOU. FIRST, AS TO THE
11 DEFENDANT EUNICE DAVIS MCCALL AS TO MURDER, THE CHARGE OF
12 MURDER OF TROY ROUSE, THE VERDICT IS EITHER GUILTY OF
13 MURDER, GUILTY OF VOLUNTARY MANSLAUGHTER, GUILTY OF
14 INVOLUNTARY MANSLAUGHTER OR NOT GUILTY.

15 AND IF YOU FIND HIM EITHER GUILTY OF MURDER OR
16 VOLUNTARY MANSLAUGHTER OR INVOLUNTARY MANSLAUGHTER, THEN
17 YOU WILL GO TO B, WHICH IS POSSESSION OF A WEAPON DURING
18 THE COMMISSION OF A VIOLENT CRIME. AND AS TO THAT COUNT
19 EITHER THE VERDICT WILL BE GUILTY OR NOT GUILTY. THE
20 REASON YOU WOULD ONLY CONSIDER B IS THAT YOU CAN ONLY FIND
21 HIM GUILTY OF POSSESSION OF WEAPON DURING THE COMMISSION
22 OF VIOLENT CRIME IF YOU FIND HIM GUILTY OF A VIOLENT
23 CRIME. MURDER AND MANSLAUGHTER ARE VIOLENT CRIMES.

24 AS TO EFRAIN THOMAS, FOR MURDER, CHARGING MURDER OF
25 TROY ROUSE, EITHER THE VERDICT IS GUILTY OF MURDER, GUILTY

1 OF VOLUNTARY MANSLAUGHTER OR NOT GUILTY. AND IF YOU FIND
2 HIM GUILTY OF EITHER MURDER OR VOLUNTARY MANSLAUGHTER,
3 THEN YOU ARE TO CONSIDER B, WHICH IS WHETHER OR NOT HE IS
4 GUILTY OF POSSESSION OF A WEAPON DURING A VIOLENT CRIME.
5 YOUR VERDICTS EITHER BEING GUILTY OR NOT GUILTY.

6 AS TO CHAD JAMES ACCESSORY AFTER THE FACT OF MURDER,
7 YOUR VERDICT WOULD EITHER BE GUILTY OR NOT GUILTY. AND
8 CERTAINLY YOU CANNOT FIND HIM GUILTY OF BEING ACCESSORY
9 AFTER THE FACT OF MURDER UNLESS YOU FIND HIM GUILTY OF --
10 UNLESS YOU FIND ONE OF THE OTHER DEFENDANTS GUILTY OF
11 MURDER OR VOLUNTARY MANSLAUGHTER. AND YOU WILL CHECK THE
12 APPROPRIATE BOX REFLECTING THE VERDICT OF THE JURY.
13 THERE ARE LINES NEXT TO THE VARIOUS THINGS. AND CERTAINLY
14 THERE IS NO ORDER IN WHICH I HAVE -- THERE IS NO BASIS FOR
15 THE ORDER IN WHICH I READ THE POSSIBLE FORMS OF THE
16 VERDICT. SIMPLY ONE MUST BE READ BEFORE THE OTHER.

17 ALL 12 OF YOU WHO ARE DELIBERATING MUST AGREE ON A
18 VERDICT. AND WHEN THE OTHERS GO BACK TO THE JURY ROOM THE
19 ALTERNATES, IF Y'ALL WILL JUST STAY OUT HERE WITH ME. ALL
20 12 OF YOU MUST AGREE ON A VERDICT. THE ONLY REQUEST I
21 HAVE IS THAT THE CLERK ORDER SOMETHING TO EAT FOR THE
22 JURORS. ALL 12 OF YOU MUST AGREE ON A VERDICT. AND IF
23 YOU AGREE ON THE VERDICT, YOU WILL WRITE IT ON THE VERDICT
24 FORM. AND, MR. FOREMAN, IF YOU WILL COMPLETE THE VERDICT
25 FORM, KNOCK ON THE JURY ROOM DOOR, OR PUSH THE BUTTON AND

1 AT THAT TIME AND WE WILL RECEIVE YOU BACK INTO THE
2 COURTROOM. AND I WILL GIVE YOU A COPY OF THESE
3 INSTRUCTIONS IN WRITTEN FORM. AND DURING YOUR
4 DELIBERATIONS YOU MAY REFER TO THESE INSTRUCTIONS TO GUIDE
5 YOU IN YOUR DECISION MAKING. YOU MUST CONSIDER THEM AS A
6 WHOLE AND NOT FOLLOW SOME AND IGNORE OTHERS. AND YOU ARE
7 REQUIRED TO RETURN THEM AT THE TIME OF YOUR VERDICT.

8 I WOULD ASK THAT YOU GO TO YOUR JURY ROOM, BUT DO NOT
9 BEGIN YOUR DELIBERATIONS UNTIL YOU HAVE RECEIVED THE
10 VERDICT FORM, THE INSTRUCTIONS AND THE EXHIBITS. AND IF
11 YOU RECEIVE ALL OF THOSE THINGS, THEN THAT WILL BE YOUR
12 SIGNAL TO BEGIN YOUR DELIBERATIONS. IF YOU WILL PLEASE
13 GO TO THE JURY ROOM.

14 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
15 PRESENCE OF THE JURY.)

16 THE COURT: ARE THERE ANY ADDITIONS OR EXCEPTIONS TO
17 THE CHARGE?

18 MR. SAVERANCE: NONE FOR THE STATE, YOUR HONOR.

19 MR. WHEELER: ON BEHALF OF DEFENDANT THOMAS, I SHOULD
20 PROBABLY RENEW OUR INVOLUNTARY REQUEST AND OBJECTION TO
21 THAT CHARGE AT THIS TIME.

22 THE COURT: CHARGE AS TO WHAT?

23 MR. WHEELER: NOT CHARGING INVOLUNTARY.

24 THE COURT: NOT CHARGING INVOLUNTARY.

25 MR. WHEELER: OTHERWISE NOTHING ELSE.

1 THE COURT: MR. WATTS?

2 MR. WATTS: NONE, YOUR HONOR.

3 THE COURT: MR. JOHNSON?

4 MR. JOHNSON: YOUR HONOR, AS I WAS LISTENING TO THE
5 COURT, I DO HAVE ONE QUESTION CONCERNING THE CHARGE..

6 THE COURT: ALL RIGHT.

7 MR. JOHNSON: YOUR HONOR, MY CLIENT WAS CHARGED ON A
8 SEPARATE INDICTMENT FOR ACCESSORY AFTER THE FACT AS TO
9 EACH DEFENDANT. WHICH ARE SEPARATE DEFENDANTS. THEY ARE
10 NOT UNDER THE HAND OF ONE AS I UNDERSTAND IT, IS THAT
11 CORRECT?

12 THE COURT: THAT'S RIGHT.

13 MR. JOHNSON: THERE WAS NO EVIDENCE PRESENTED BY THE
14 STATE DURING THE TRIAL THAT MY CLIENT ASSISTED EUNICE AT
15 ALL. AS A RESULT OF YOUR CHARGE TO THE JURY, YOU
16 MENTIONED THAT IF THEY -- THEY HAD TO FIND FOR INSTANCE,
17 IF THE JURY FOUND EFRAIN NOT GUILTY, BUT FOUND EUNICE
18 GUILTY UNDER YOUR CHARGE, IT WOULD MEAN THAT THEY COULD
19 POSSIBLY THEN FIND MY CLIENT GUILTY OF ACCESSORY AFTER THE
20 FACT.

21 THE COURT: HOLD ON ONE SECOND. SO IT STATES THE
22 JURY CAN ONLY CONSIDER FINDING CHAD JAMES GUILTY OF
23 ACCESSORY ONLY IF THEY FIND EFRAIN THOMAS GUILTY OF MURDER
24 OR MANSLAUGHTER.

25 MR. JOHNSON: THAT'S CORRECT, YOUR HONOR.

1 THE COURT: I THINK YOU ARE CERTAINLY CORRECT ON
2 THAT, BECAUSE THERE IS EVIDENCE THAT HE AIDED MCCALL.

3 MR. JOHNSON: THAT'S CORRECT. AND I GUESS FOR THE
4 RECORD, YOUR HONOR, I GUESS I NEED TO MAKE A MOTION FOR A
5 DIRECTED VERDICT AS FAR AS IT RELATES TO ACCESSORY AFTER
6 THE FACT FOR EUNICE MCCALL. AND I GUESS THAT WOULD BE A
7 WAY TO SOLVE IT.

8 THE COURT: MR. SAVERANCE.

9 MR. SAVERANCE: YOUR HONOR, WE GIVE THE NAMES OF BOTH
10 DEFENDANTS THAT MR. JAMES HELPED MCCALL OR THOMAS. BUT I
11 WOULD ACKNOWLEDGE THE ONLY EVIDENCE THAT WE PUT IN TRIAL
12 WAS THAT CHAD JAMES ATTEMPTED TO ASSIST EFRAIN THOMAS. SO
13 I MEAN OTHER THAN THAT, YOUR HONOR, WE DIDN'T PUT ANY
14 EVIDENCE UP WITH MR. MCCALL AT ALL IN THIS.

15 THE COURT: I THINK IF YOU WANT ME TO BRING THEM
16 BACK, I WILL BRING THEM BACK AND GIVE THAT CLARIFICATION.

17 MR. JOHNSON: THANK YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 THE COURT: IF YOU WILL BRING THE JURY BACK OUT,
20 PLEASE.

21 (THEREUPON, THE FOLLOWING TAKES PLACE IN THE PRESENCE
22 OF THE JURY.)

23 THE COURT: LADIES AND GENTLEMEN, ONE ADDITIONAL
24 INSTRUCTION AND THIS IS AS TO CHAD JAMES AND THE CHARGE OF
25 ACCESSORY AFTER THE FACT OF MURDER. AS I INSTRUCTED YOU

1 THAT HE CAN ONLY BE FOUND GUILTY OF ACCESSORY AFTER THE
2 FACT OF MURDER IF YOU FIND THAT THE DEFENDANT WAS GUILTY
3 OF MURDER OR A FELONY WHICH INCLUDED VOLUNTARY
4 MANSLAUGHTER. AND IN THIS INSTANCE YOU CAN ONLY CONSIDER
5 FINDING CHAD JAMES GUILTY OF ACCESSORY AFTER THE FACT OF
6 MURDER. YOU CAN ONLY CONSIDER THAT IF YOU FIND EFRAIN
7 THOMAS GUILTY OF MURDER OR MANSLAUGHTER SINCE THE
8 ALLEGATIONS REGARDING MR. THOMAS ONLY RELATED TO EFRAIN
9 THOMAS. YOUR VERDICT FORM WILL REPRESENT IT AS WELL THAT
10 YOU ARE TO CONSIDER THAT ONLY IN RELATION TO YOUR FINDINGS
11 REGARDING MR. EFRAIN THOMAS.

12 AND WITH THAT INSTRUCTION, I ASK THAT YOU GO BACK TO
13 THE JURY ROOM. AND WHEN YOU RECEIVE THESE DOCUMENTS, YOU
14 CAN BEGIN YOUR DELIBERATIONS. AND THE JURY CHARGE.

15 THE COURT: ANY ADDITIONS OR EXCEPTIONS?

16 MR. SAVERANCE: NONE, YOUR HONOR.

17 THE COURT: REGARDING THE ALTERNATES, I THINK I MAY
18 HAVE THE ALTERNATES REMAIN. CERTAINLY Y'ALL CANNOT
19 PARTICIPATE IN THE JURY DELIBERATIONS BECAUSE IT TAKES 12
20 AND WE ONLY USE 12. BUT IN THE EVENT SOMETHING SHOULD
21 HAPPEN TO ONE OF THE 12, WE WILL NEED AN ALTERNATE. AND
22 THE FIRST ALTERNATE CHOSEN, WE WILL GO IN ORDER. SO WE
23 JUST HAVE Y'ALL STAY HERE WHILE THEY ARE DELIBERATING. WE
24 WILL MAKE LIFE AS COMFORTABLE FOR YOU AS WE POSSIBLY CAN.
25 AND WE WILL HAVE YOU GO TO THE FAMILY COURTROOM UNTIL WE

1 GET NOTICE OF THE VERDICT. OKAY. PLEASE DO NOT DISCUSS
2 THE CASE HOWEVER WHILE YOU ARE IN THERE.

3 MR. JOHNSON: YOUR HONOR.

4 THE COURT: YES, SIR.

5 MR. JOHNSON: I HATE TO KEEP DISTURBING THE COURT,
6 BUT I HAVE TO MAKE A MOTION CONCERNING YOUR DECISION TO
7 KEEP THE ALTERNATE HERE.

8 THE COURT: ALL RIGHT.

9 MR. JOHNSON: I THINK UNDER THE STATUTE IT IS
10 REQUIRED THAT YOU MUST RELEASE THEM ONCE YOU GIVE THE
11 VERDICT TO THE -- ONCE YOU GIVE THE EVIDENCE TO THE JURY;
12 THAT YOU MUST RELEASE THEM. I THINK IT'S WRITTEN IN THE
13 STATUTE. I HAD A PCR CASE ON THAT RECENTLY.

14 THE COURT: I MUST RELEASE THEM?

15 MR. JOHNSON: YOU MUST RELEASE THEM?

16 THE COURT: WHY IS THAT?

17 MR. JOHNSON: I THINK THE STATUTE READS THAT THE
18 POWER OF THE COURT TO REPLACE A JURY MEMBER AFTER THEY
19 START DELIBERATIONS IS NOT ALLOWED AFTER THEY START
20 DELIBERATION.

21 THE COURT: ALL RIGHT.

22 MR. JOHNSON: I DON'T HAVE THE STATUTE BEFORE ME,
23 YOUR HONOR. BUT I AM SURE YOU CAN PULL IT UP. I HAD A
24 RECENT PCR CASE ON THAT WHERE THAT WAS THE ISSUE.

25 THE COURT: WHAT DO YOU SAY ABOUT, MR. SAVERANCE?

1 MR. SAVERANCE: WELL, YOUR HONOR, THAT'S THE PERSON.
2 THAT'S THE ALTERNATE. GOING THROUGH A WEEK LONG TRIAL.
3 THEY'VE HEARD EVERYTHING. AND THEY'RE NOT PARTICIPATING
4 IN DELIBERATIONS. IF SOMETHING HAPPENS WHERE SOMEBODY
5 FALLS OUT FOR SOME REASON, YOU'VE GOT SOMEBODY THERE TO
6 PLUG IN. WE'VE SPENT ALL WEEK TRYING THIS. I'M NOT
7 AWARE OF ANY -- I'M NOT AWARE OF ANY LAW THAT SAYS THAT
8 YOU DON'T HAVE THE POWER TO KEEP THEM HERE SEPARATED FROM
9 THE JURY.

10 MR. JOHNSON: JUST IN RESPONSE, YOUR HONOR. IT'S MY
11 UNDERSTANDING THAT THE ALTERNATE SHOULD BE REPLACED DURING
12 THE TRIAL AND NOT DURING THE DELIBERATIONS.

13 THE COURT: WELL, YOU KNOW, I USUALLY LET THEM GO.
14 THIS IS MY FIRST TIME EVER TO KEEP THEM.

15 MR. JOHNSON: BUT I THINK IT---

16 THE COURT: I AM GOING TO LOOK AT THE LAW YOU ARE
17 TALKING ABOUT, MR. JOHNSON, AND SEE WHAT IT SAYS. LET ME
18 SEE WE HAVE ONE WHERE THE JUROR WAS DISMISSED BECAUSE THE
19 JUROR DECLINED TO TAKE A RELIGIOUS OATH. Y'ALL PROBABLY
20 REMEMBER THAT ONE. LET'S SEE, MEANWHILE IN DECIDING THAT
21 ISSUE THAT DOESN'T AFFECT THE DELIBERATION OF THIS JURY.
22 IF YOU WILL REVIEW THE EXHIBITS OF THIS JURY, THEY CAN
23 START DELIBERATING.

24 MR. SEVERANCE: WE'VE GOTTEN THE ORIGINAL, THE
25 COMPLETE ALREADY ADMITTED INTO EVIDENCE. I DON'T HAVE A

1 PROBLEM WITH THAT.

2 THE COURT: THE REDACTED PORTION WAS OFFERED ADMITTED
3 FOR IDENTIFICATION ONLY. NOT FOR THE JURY.

4 (STATEMENT MARKED STATE'S 42 FOR ID ONLY.)

5 THE COURT: ARE THE PARTIES IN AGREEMENT AS TO THE
6 EXHIBITS?

7 MR. WHEELER: THE DEFENDANT THOMAS IS, YOUR HONOR.

8 MR. SAVERANCE: YES, SIR, YOUR HONOR. AND FOR THE
9 RECORD, I THINK STATE'S 42 WAS JUST FOR JUST
10 IDENTIFICATION PURPOSES SO THAT'S NOT GOING TO THE JURY.

11 THE COURT: IS THAT CORRECT, MR. WHEELER?

12 MR. WHEELER: DEFENDANT THOMAS AGREES WITH THAT.

13 YES, SIR, YOUR HONOR.

14 THE COURT: MR. WATTS?

15 MR. WATTS: CORRECT, YOUR HONOR.

16 THE COURT: MR. JOHNSON?

17 MR. JOHNSON: THAT'S CORRECT, YOUR HONOR.

18 THE COURT: YOU CAN GIVE THEM THE EXHIBITS AND THEY
19 CAN HAVE AT IT. THE EXHIBITS AND INSTRUCTIONS.

20 MR. WATTS: YOUR HONOR, CAN I BRIEFLY ON THE RECORD
21 A SECOND CONCUR THIS ISSUE THAT MR. JOHNSON MENTIONED WITH
22 THE ALTERNATES AND THE RELEASE IN KEEPING THEM HERE?

23 THE COURT: MR. WHEELER, WHAT IS YOUR VIEW ON THAT?

24 MR. WHEELER: YOUR HONOR, I'LL JOIN IN THE MOTION
25 JUST FOR THE RECORD.

1 THE COURT: AND WHAT IS YOUR VIEW ON THAT? ARE YOU
2 STILL DISAGREEING, MR. SAVERANCE?

3 MR. SAVERANCE: YOUR HONOR, MY UNDERSTANDING WAS
4 THAT'S WHAT THE JURORS ARE FOR. BUT I'M NOT -- I
5 HAVEN'T -- I'M NOT AWARE OF THAT PCR ISSUE MR. JOHNSON IS
6 TALKING ABOUT. SO I JUST -- I'M NOT SURE, YOUR HONOR. MY
7 VIEW WOULD BE FOR THEM TO STAY. BUT OF COURSE IF THE LAW
8 IS DIFFERENT THEN THEY WON'T. BUT I WOULD PREFER FOR THEM
9 TO STAY.

10 MR. JOHNSON: I THINK I CAN FIND THAT PARTICULAR
11 RULE.

12 THE COURT: BRING THOSE ALTERNATES IN. I AM GOING TO
13 ACCEPT THE CHALLENGE OF LAW.

14 (THEREUPON, THE ALTERNATES RETURN TO THE JURY ROOM.)

15 THE COURT: LADIES, IT APPEARS THAT ONE LAWYER WANTS
16 Y'ALL TO STAY, AND THREE WANT YOU TO GO WHILE THE JURY IS
17 DELIBERATING. AND CHANCES ARE YOU WANT TO GO. SO THAT
18 MEANS FIVE WANT TO GO AND ONE WANTS YOU TO STAY. THE 12
19 JURORS WHO ARE DELIBERATING WILL SEE THIS CASE THROUGH TO
20 THE END. SO RATHER THAN HAVE Y'ALL STAY WHILE
21 DELIBERATIONS ARE TAKING PLACE, I AM GOING TO RELEASE
22 Y'ALL. AND JUST ASK THAT YOU NOT DISCUSS WHAT YOU THINK
23 YOUR VERDICT SHOULD BE UNTIL YOU HEAR THAT THERE IS A
24 VERDICT IN THIS CASE. AND I WANT TO THANK YOU FOR YOUR
25 SERVICE ON JURY DUTY THIS WEEK. I HOPE YOU GAINED SOME

1 INSIGHT THAT WILL BENEFICIAL TO YOU. I CERTAINLY HOPE YOU
2 WON'T BENEFIT A WHOLE LOT FROM HEARING ABOUT SOME OF THE
3 BAD THINGS YOU HEARD DURING THE TRIAL. I HOPE YOU WILL
4 BENEFIT FROM SOME OTHER THINGS. I HOPE IT IS A POSITIVE
5 THING YOU EXPERIENCED THIS WEEK. THIS IS LAST CASE AND
6 ONLY CASE WE ARE GOING TO BE ABLE TO DO THIS WEEK. SO
7 YOUR SERVICE OF JURY DUTY IS NOW OVER. YOU WILL NOT BE
8 ELIGIBLE FOR SERVICE NEXT YEAR, TWO YEARS. BEYOND THAT
9 YOU CAN CHOOSE NOT TO SERVE. I WANT TO THANK YOU. IF YOU
10 NEED ANY CERTIFICATES FOR YOUR JOB YOU CAN GET THAT FROM
11 THE CLERK'S OFFICE I THINK. THEY WILL HAVE THOSE FOR YOU.
12 AND THEY WILL MAIL FOR YOUR JURY SERVICE. I WANT TO THANK
13 YOU AND LET YOU GO.

14 (THEREUPON, THE ALTERNATES ARE EXCUSED.)

15 THE COURT: WE WILL BE AT EASE.

16 MR. SAVERANCE: YOUR HONOR, THERE IS ONE ISSUE THAT I
17 WOULD BRING BEFORE THE COURT.

18 THE COURT: YES, SIR.

19 MR. SAVERANCE: SINCE THE CASE HAS NOW GONE TO THE
20 JURY, WE WOULD REQUEST THAT THE DEFENDANTS BE PLACED INTO
21 CUSTODY PENDING THAT. I UNDERSTAND WE HAD SOME BAIL
22 PEOPLE HERE DURING THE TRIAL. BUT AT THIS POINT SINCE THE
23 CASE HAS NOW GONE TO THE JURY, AND WE WOULD JUST REQUEST
24 THE DEFENDANTS BE PLACED INTO CUSTODY PENDING THE
25 DELIBERATIONS.

1 THE COURT: YES, SIR, MR. WATTS.

2 MR. WATTS: YOUR HONOR, MY CLIENT HAS BEEN HERE THE
3 WHOLE TWO WEEKS BEFORE THE TRIAL. HE'S APPEARED EVERY
4 TIME THE COURT WAS BACK. I WOULD ASK THAT HE BE ALLOWED
5 TO BE WITH HIS FAMILY. BE ABLE TO GO OUTSIDE FOR BRIEF
6 MOMENTS. IF AN ESCORT IS NECESSARY, WE WOULD ASK FOR
7 THAT. THAT'S NO PROBLEM AT ALL. WE WOULD ASK THAT HE NOT
8 BE PLACED IN CUSTODY.

9 THE COURT: MR. JOHNSON.

10 MR. JOHNSON: I WOULD ALSO ASK FOR THE SAME FOR MY
11 CLIENT.

12 THE COURT: THE DEFENDANTS ARE IN CUSTODY UNTIL THE
13 JURY COMES OUT WITH A VERDICT.

14 (THEREUPON, AT 6:50 P.M. THE JURY HAS A QUESTION.)

15 THE COURT: THE JURY HAS A FEW QUESTIONS. YOU MAY
16 BRING THEM IN.

17 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
18 PRESENCE THE JURY.)

19 THE COURT: MR. FOREMAN, AND MEMBERS OF THE JURY, I
20 RECEIVED A FEW QUESTIONS. NO. 1, DO WE KNOW IF EUNICE
21 DAVIS MCCALL WAS RIGHT HANDED OR LEFT HANDED. NO. 2, WE
22 NEED TO SEE CHAD JAMES' STATEMENT HE GAVE TO THE POLICE.
23 PAGE 1 OF THE INSTRUCTIONS I GAVE YOU, YOU PROBABLY
24 REMEMBER THE FIRST THING I SAID TO YOU IS THAT YOU HAVE
25 HEARD THE EVIDENCE AND THE ARGUMENTS OF THE PARTIES. AND

1 FURTHER, THAT YOU ARE DECIDE THE CASE BASED ON THE
2 EVIDENCE ALREADY PRESENTED AND THE LAW. YOU HAVE HEARD
3 ALL OF THE EVIDENCE. YOU HAVE RECEIVED ALL OF THE
4 EVIDENCE, AS WELL AS THE ARGUMENTS OF COUNSEL, AS WELL AS
5 MY INSTRUCTIONS OF LAW. AND YOU ARE TO DELIBERATE BASED
6 ON THE EVIDENCE THAT YOU HAVE, THAT YOU HAVE RECEIVED.

7 PLEASE RETURN TO THE JURY ROOM. CONTINUE YOUR
8 DELIBERATIONS.

9 (THEREUPON, THE FOLLOWING TAKES PLACE OUTSIDE THE
10 PRESENCE OF THE JURY.)

11 THE COURT: ANY EXCEPTIONS TO THE CHARGE?

12 MR. SAVERANCE: NONE FROM THE STATE, YOUR HONOR.

13 MR. WHEELER: NONE, YOUR HONOR.

14 MR. WATTS: NONE, YOUR HONOR.

15 MR. JOHNSON: NONE, YOUR HONOR.

16 THE COURT: BACK AT EASE UNTIL WE HEAR FROM THE JURY.

17 (THEREUPON, AT 6:53 P.M. JURY COMMENCES
18 DELIBERATIONS.)

19 (THEREUPON, AT 7:55 P.M. JURY REACHES VERDICT.)

20 THE COURT: AS I UNDERSTAND IT, THE JURY HAS A
21 VERDICT. AND WHEN THE JURY REACHES ITS VERDICT, AND THE
22 VERDICT IS ANNOUNCED THERE WILL BE SOME PEOPLE WHO WILL BE
23 HAPPY AND SOME PEOPLE WHO WILL BE SAD. I WANT TO LET
24 EVERYONE KNOW THAT WE ARE IN COURT. AND ORDER MUST BE
25 KEPT IN COURT ALL TIMES. THERE WILL BE NO VERBAL

1 OUTBURSTS BY ANYONE IN THE COURTROOM. ANY VERBAL
2 OUTBREAKS BY ANYONE WILL RESULT IN THAT PERSON BEING HELD
3 IN CONTEMPT OF COURT. I AM JUST GIVING YOU FAIR WARNING
4 SO YOU CAN CONTROL YOURSELF. OKAY, BRING THE JURY.

5 (THEREUPON, THE FOLLOWING TAKES PLACE WITHIN THE
6 PRESENCE OF THE JURY.)

7 THE COURT: THE DEFENDANTS PLEASE STAND. MR.
8 FOREMAN, IF YOU WILL STAND, PLEASE. HAVE YOU REACHED A
9 VERDICT?

10 MR. FOREMAN: YES, YOUR HONOR, WE HAVE.

11 THE COURT: IS IT A UNANIMOUS VERDICT?

12 MR. FOREMAN: YES, SIR.

13 THE COURT: IF YOU WILL PASS IT TO THE BAILIFF FOR
14 ME. MADAM CLERK, YOU MAY PUBLISH THE VERDICT.

15 THE CLERK: WE THE JURY FIND UNANIMOUSLY AS TO THE
16 DEFENDANT EUNICE DAVIS MCCALL, GUILTY OF VOLUNTARY
17 MANSLAUGHTER. GUILTY OF POSSESSION OF A WEAPON DURING THE
18 COMMISSION OF A VIOLENT CRIME. WE THE JURY FIND
19 UNANIMOUSLY AS TO THE DEFENDANT, EFRAIN THOMAS, GUILTY OF
20 MURDER OF TROY ROUSE. GUILTY OF POSSESSION OF A WEAPON
21 DURING THE COMMISSION OF A VIOLENT CRIME. AND WE THE JURY
22 FIND UNANIMOUSLY AS TO THE DEFENDANT CHAD JAMES, ACCESSORY
23 AFTER THE FACT OF MURDER, NOT GUILTY.

24 THE COURT: LADIES AND GENTLEMEN, IF THAT'S THE
25 VERDICT OF EACH AND EVERY JUROR, PLEASE LET IT BE KNOWN BY

1 RAISING YOUR RIGHT HANDS.

2 (ALL JURORS AFFIRM.)

3 THE COURT: ANY ADDITIONAL POLLING REQUESTED BY ANY
4 PARTIES?

5 MR. SAVERANCE: NONE FROM THE STATE, YOUR HONOR.

6 MR. WHEELER: YOUR HONOR, DEFENDANT THOMAS, WE
7 REQUEST THAT YOU POLL THE JURY.

8 MR. WATTS: DEFENDANT MCCALL REQUESTS POLLING OF THE
9 JURY, YOUR HONOR.

10 MR. JOHNSON: I DO NOT REQUEST IT, YOUR HONOR.

11 THE COURT: MADAM CLERK, IF YOU WILL POLL EACH JUROR
12 INDIVIDUALLY.

13 THE CLERK: MR. FOREMAN, PLEASE STAND. IS THIS YOUR
14 VERDICT, AND STILL YOUR VERDICT?

15 THE FOREMAN: YES, IT IS STILL MY VERDICT.

16 THE COURT: IF YOU WILL CALL EACH JUROR'S NAME
17 INDIVIDUALLY PLEASE.

18 THE CLERK: MS. MICHAEL, IS THIS YOUR VERDICT AND IS
19 IT STILL YOUR VERDICT?

20 MS. MICHAEL: YES.

21 THE CLERK: MR. BAKER, IS THIS YOUR VERDICT AND STILL
22 YOUR VERDICT?

23 MR. BARKER: YES, MA'AM.

24 THE CLERK: PLEASE BE SEATED. MS. MCFADDEN, IS THIS
25 YOUR VERDICT AND IS IT STILL YOUR VERDICT?

1 MS. MCFADDEN: YES.

2 THE CLERK: BE SEATED. MR. MONTGOMERY, IS THIS YOUR
3 VERDICT AND STILL YOUR VERDICT?

4 MR. MONTGOMERY: YES, MA'AM.

5 THE CLERK: MS. PRESCOTT, IS THIS YOUR VERDICT AND
6 STILL YOUR VERDICT?

7 MS. PRESCOTT: YES, IT IS.

8 THE CLERK: MR. GRANTHAM, IS THIS YOUR VERDICT AND
9 STILL YOUR VERDICT?

10 MR. GRANTHAM: YES, MA'AM.

11 THE CLERK: MR. LUCAS, IS THIS YOUR VERDICT AND STILL
12 YOUR VERDICT?

13 MR. LUCAS: YES, MA'AM.

14 THE CLERK: MS. COOPER, IS THIS YOUR VERDICT AND
15 STILL YOUR VERDICT?

16 MS. COOPER: YES, IT IS.

17 THE CLERK: MS. CANNON, IS THIS YOUR VERDICT AND
18 STILL YOUR VERDICT?

19 MS. CANNON: YES.

20 THE CLERK: MR. SHERMAN, IS THIS YOUR VERDICT AND
21 STILL YOUR VERDICT?

22 MR. SHERMAN: YES, IT IS.

23 THE CLERK: MR. KEENAN, IS THIS YOUR VERDICT AND
24 STILL YOUR VERDICT?

25 MR. KEENAN: YES, MA'AM.

1 THE COURT: THE VERDICT APPEARS TO BE A UNANIMOUS
2 VERDICT OF EACH AND EVERY JUROR. A UNANIMOUS VERDICT OF
3 THE JURY. ANY POSTTRIAL MOTIONS?

4 MR. WHEELER: YES, SIR, YOUR HONOR. THE DEFENDANT
5 THOMAS WOULD RESPECTFULLY MAKE A MOTION FOR A NEW TRIAL
6 PURSUANT TO CODE SECTION 17-23-110. AND ASK THE COURT TO
7 GRANT A NEW TRIAL LARGELY BASED ON THE MOTIONS PREVIOUSLY
8 MADE AT THE DIRECTED VERDICT STAGE. AND WE WOULD RENEW
9 THOSE MOTIONS AT THIS TIME. THANK YOU, YOUR HONOR.

10 THE COURT: MR. WATTS.

11 MR. WATTS: YOUR HONOR, MR. MCCALL WOULD ALSO MAKE A
12 MOTION FOR A NEW TRIAL BASED ON 17-23-10. BASED ON THE
13 DIRECTED VERDICT MOTIONS ALSO. AND ALSO REGARDING A
14 QUESTION THAT WAS PROVIDED BY THE JURY EARLIER REGARDING
15 THE QUESTION THAT THE JURY HAD DURING DELIBERATIONS, WHICH
16 BECOMES A QUESTION OF REASONABLENESS AND REASONABLE DOUBT.
17 AND THAT RAISES A QUESTION THAT YOU GRANT NEW TRIAL FOR
18 MR. MCCALL.

19 THE COURT: SAY THAT AGAIN.

20 MR. WATTS: THAT THERE WAS A QUESTION OF DOUBT THAT
21 WAS RAISED UP BY THE QUESTION OF THE JURY EARLIER. I
22 BELIEVE THAT IS GROUNDS FOR A NEW TRIAL AS WELL.

23 THE COURT: WHAT QUESTION IS THAT?

24 MR. WATTS: REGARDING THE DOMINANT HAND OF MR. MCCALL
25 THAT WAS PRESENTED APPROXIMATELY AT 6:50, YOUR HONOR.

1 THE COURT: WELL WHEN THE JURY CAME WITH THE QUESTION
2 AND I HAD RESPONDED TO THE JURY'S QUESTION THAT GAVE
3 COUNSEL ANY OPPORTUNITY TO VOICE ANY OBJECTION TO OR ANY
4 EXCEPTION TO THE COURT'S INSTRUCTION TO THE JURY, AND
5 THERE WAS NONE. BUT I WILL TAKE THAT INTO CONSIDERATION
6 ALONG WITH THE OTHER GROUND THAT YOU RAISED. AND I
7 RESPECTFULLY DENY BOTH MOTIONS. THE MOTION AS TO THOMAS
8 AS WELL THE MOTION AS TO MR. MCCALL. THE QUESTIONS RAISED
9 IN THIS CASE WERE QUESTIONS FOR THE JURY TO DETERMINE, TO
10 WEIGH THE CREDIBILITY OF THE WITNESSES AND THE EVIDENCE
11 AND APPLY THE LAW.

12 AND THE JURY HAS DONE THAT. THE JURY HAS SPOKEN.
13 AND I WILL NOT DISTURB THE VERDICT OF THE JURY. I FIND
14 THE VERDICT IS SUPPORTED BY THE EVIDENCE. THE POSTTRIAL
15 MOTIONS ARE DENIED.

16 MR. WATTS: YES, YOUR HONOR.

17 THE COURT: LADIES AND GENTLEMEN, I WANT TO THANK YOU
18 FOR YOUR SERVICES IN REGARD TO THIS CASE. YOU WERE
19 SUBPOENAED TO APPEAR. AND IT'S NOT SOMETHING YOU ARE
20 CALLED UPON TO DO EVERY DAY. BUT YOU RESPONDED TO THE
21 SUMMONS. AND WERE CALLED AND YOU HAVE ACTUALLY DONE WHAT
22 WAS ASKED OF YOU TO DO. YOU LISTENED TO THE EVIDENCE.
23 YOU DEVOTED A GOOD PORTION OF THIS WEEK TO THIS CASE AND
24 DELIBERATED AND YOU'VE REACHED A VERDICT. I WANT TO THANK
25 YOU FOR THAT.

1 WHERE THE JURY HAS DETERMINED A GUILTY VERDICT, IT
2 BECOMES MY DUTY TO IMPOSE A SENTENCE. CERTAINLY YOU HAVE
3 NO ROLE IN THAT, BUT I DO. AND WE WILL PROCEED TO THAT AT
4 THIS TIME. AS TO MR. JAMES, THE JURY HAS FOUND HE IS NOT
5 GUILTY. YOU ARE DISCHARGED FROM THIS CASE.

6 MR. JOHNSON: THANK YOU, YOUR HONOR.

7 THE COURT: IS THE STATE READY TO PROCEED WITH
8 SENTENCING?

9 MR. SAVERANCE: WE ARE, YOUR HONOR.

10 THE COURT: IS THE DEFENSE READY?

11 MR. WHEELER: YES, SIR.

12 MR. WATTS: YES, YOUR HONOR.

13 MR. WHEELER: YOUR HONOR, WOULD YOU LIKE US TO
14 APPROACH OR STAND HERE?

15 THE COURT: I WOULD LIKE YOU TO STAND. MR. WHEELER,
16 REGARDING DID YOU SAY 17-23-10?

17 MR. WHEELER: I THINK I SAID 110. I MAY HAVE BEEN IN
18 ERROR.

19 THE COURT: 10. 17-23-10.

20 MR. WHEELER: I THINK I PROBABLY MISSPOKE.

21 THE COURT: YES, SIR, MR. SOLICITOR.

22 MR. SAVERANCE: DO I GO FIRST, YOUR HONOR?

23 THE COURT: YES, SIR.

24 MR. SAVERANCE: YOUR HONOR, THOSE ARE THE SHEETS ON
25 EFRAIN THOMAS. YOUR HONOR, YOU'RE AWARE OF THE FACTS OF

1 THE CASE. BUT BRIEFLY AS YOU KNOW, THE JURY FOUND EFRAIN
2 THOMAS GUILTY OF MURDER. THIS HAPPENED ON APRIL 7, 2005.
3 HE SHOT TROY ROUSE NUMEROUS TIMES. FIVE OR SIX TIMES.
4 LEFT HIM FOR DEAD. HE DID DIE. YOUR HONOR, OUR POSITION
5 FOR THE STATE THE VICTIM, YOU KNOW, WAS KILLED UNJUSTLY.
6 AND NOTHING CAN BRING HIM BACK. AND WE FEEL THAT A PROPER
7 PUNISHMENT WOULD BE LIFE IMPRISONMENT WITHOUT PAROLE FOR
8 THE DEFENDANT SINCE HE WAS CONVICTED BY A JURY OF MURDER.
9 YOU CAN'T REPLACE ONE LIFE FOR ANOTHER. BUT AT THE SAME
10 TIME YOU CAN PUNISH SOMEBODY TO THE FULL EXTENT IF IT'S IN
11 YOUR -- IF YOUR HONOR SEES FIT. BUT THAT'S OUR POSITION.
12 WE WOULD ASK FOR THE MAXIMUM PENALTY. I BELIEVE THAT'S
13 ALSO THE POSITION OF THE VICTIM'S FAMILY.

14 MS. ROGERS: MY NAME IS LAKAVIA ROGERS. I'M TROY
15 ROUSE'S SISTER. I DO WANT TO SAY THAT THE ACCIDENT FOR MY
16 BROTHER, YOU KNOW, AND EVERYTHING THEY CAN STILL SEE THEIR
17 FAMILY. WE CAN'T EVER SEE OUR BROTHER EVER AGAIN, YOU
18 KNOW. I MEAN, I JUST FEEL LIKE THEY SHOULD GET EVERYTHING
19 THAT THEY DESERVE. I DON'T FEEL LIKE IT SHOULD BE NO LESS
20 THAN THE MAX. LIKE I SAID, THEY CAN STILL SEE THEIR
21 FAMILY. MY BROTHER CANNOT SEE HIS KIDS ANYMORE. THEY CAN
22 STILL VISIT THEIR KIDS. YOU KNOW. HE WAS NOT A BAD
23 PERSON. CAME DOWN HERE TO CHANGE HIS LIFE AND HE GOT
24 INVOLVED IN THE WRONG CROWD.

25 THE COURT: AND WHAT IS YOUR NAME?

1 MS. ROGERS: I'M LAKAVIA ROGERS. I'M THE DECEASED'S
2 SISTER.

3 MR. SAVERANCE: YOUR HONOR, THAT'S THE ONE PERSON
4 THAT WANTS TO SPEAK ON BEHALF OF THE VICTIM. I BELIEVE
5 THE VICTIM'S MOTHER AND SOME OTHER PEOPLE JOIN IN IN WHAT
6 SHE IS SAYING. BUT I'VE MET WITH THEM SEVERAL TIMES. AND
7 THEY SHARE HER SENTIMENTS. BUT I THINK THAT'S ALL AS FAR
8 AS SPEAKING AT THIS TIME. WOULD YOU LIKE THE RECORD ON
9 THIS DEFENDANT, YOUR HONOR?

10 THE COURT: YES.

11 MR. SAVERANCE: YOUR HONOR, WE HAVE A NARCOTIC DRUG
12 CONVICTION ON 2003. HE RECEIVED THREE YEARS. WE HAVE
13 CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE 7TH. I
14 DON'T HAVE ANY PRIOR OFFENSE, BUT 7 IS BESIDE. HE GOT A
15 SENTENCE OF ONE YEAR AND THAT WAS ON 3-18-84. THERE'S A
16 CONVICTION OF POSSESSION OF A WEAPON IN 2004. A PLEA OF
17 GUILTY AND A ONE YEAR SENTENCE. AND THAT WAS ON 3-18-04.
18 AND THAT'S WHAT I HAVE AS FAR AS A PRIOR OFFENSE, YOUR
19 HONOR.

20 THE COURT: AND AS TO THE OTHER DEFENDANT? DID YOU
21 TELL ME AS TO BOTH OR---

22 MR. SAVERANCE: THAT WAS JUST ONE, YOUR HONOR. I'VE
23 GOT THE SHEETS ON THOSE OTHERS ALSO.

24 THE COURT: YES, SIR. TELL ME THAT RECORD ONE MORE
25 TIME. MR. THOMAS' RECORD.

1 MR. SAVERANCE: YOUR HONOR, I HAVE A NARCOTICS DRUG
2 CONVICTION IN 2003. THESE RAP SHEETS ARE DIFFERENT IN THE
3 UNITED STATES. BUT I CAN TELL THAT WAS IN 2003. HE GOT A
4 THREE-YEAR SENTENCE. THERE IS A CRIMINAL POSSESSION OF
5 CONTROLLED SUBSTANCE 7. I DON'T KNOW WHAT THAT 7 MEANS.
6 BUT THAT WAS ON 3-18-04 A ONE-YEAR SENTENCE. CRIMINAL
7 POSSESSION OF WEAPON. A CONVICTION OF 2-26-04 AND A
8 ONE-YEAR SENTENCE.

9 THE COURT: ALL THOSE WERE IN THE STATE OF NEW YORK?

10 MR. SAVERANCE: YES, SIR, YOUR HONOR. THEY APPEAR TO
11 BE ALL IN THE STATE OF NEW YORK.

12 THE COURT: AS FAR AS MR. MCCALL.

13 MR. SAVERANCE: YOUR HONOR, AS FAR AS MR. MCCALL
14 GOES, HE WAS CONVICTED BY A JURY OF A MOST SERIOUS
15 OFFENSE, WHICH IS VOLUNTARY MANSLAUGHTER. AGAIN, THE
16 VICTIM WAS SHOT CLOSE RANGE BY HIM. THEY LEFT HIM THERE
17 TO DIE. AND HE DID DIE IN THE STREET. HE DIDN'T CALL
18 FOR HELP. WE FEEL WAS A HEINOUS CRIME. THE FAMILY OF THE
19 VICTIM HAS BEEN ROBBED BEING ABLE TO BE WITH HIM AND SPEND
20 TIME NOW THAT HE'S DEAD. WE JUST ASK FOR THE MAXIMUM
21 PENALTY UNDER THE VOLUNTARY MANSLAUGHTER STATUTE. I
22 BELIEVE IT IS 30 YEARS. AND THE WEAPONS CHARGE IS 5. WE
23 ARE REQUESTING THE MAXIMUM AMOUNT OF TIME BASED ON THE
24 TYPE OF CRIME THIS IS. I WILL LET THE FAMILY SPEAK AGAIN
25 IF THEY WANT TO.

1 THE COURT: YES, SIR. I'LL BE HAPPY TO HEAR FROM
2 YOU. TELL ME YOUR NAME, SIR.

3 MR. ROGERS: CARNELL ROGERS.

4 THE COURT: YES, SIR.

5 MR. ROGERS: I WOULD REQUEST THE MAXIMUM TIME TOO
6 ALSO.

7 MS. ROGERS: LIKE I SAID HIS FAMILY CAN'T SEE HIM.
8 MY BROTHER CANNOT COME BACK.

9 MR. ROGERS: EXACTLY.

10 MS. ROGERS: AND HE HAS THREE KIDS. ONE THAT HE
11 HASN'T EVEN SEEN THAT HAS JUST BEEN BORN.

12 MR. SAVERANCE: PRIOR RECORD, YOUR HONOR?

13 THE COURT: YES.

14 MR. SAVERANCE: AGGRAVATED ASSAULT AND BATTERY OF A
15 HIGH AND AGGRAVATED -- I'M SORRY, ASSAULT AND BATTERY OF A
16 HIGH AND AGGRAVATED NATURE. A CONVICTION IN 2002. A YOA
17 NOT TO EXCEED 6 YEARS. PROBATION 5 YEARS. YOUR HONOR,
18 THAT'S THE ONLY CONVICTION I'M SHOWING.

19 THE COURT: MR. WHEELER.

20 MR. WHEELER: THANK YOUR HONOR. MAY IT PLEASE THE
21 COURT. YOUR HONOR, MR. THOMAS SAYS HE HAD INDICATED
22 DURING THE TESTIMONY AT TRIAL HE IS 23-YEARS-OLD. WHICH
23 MAKES HIM A PRETTY YOUNG MAN. YOUR HONOR, I WON'T, AND
24 CERTAINLY THERE IS NO NEED TO REHASH ANY OF THE FACTS.
25 YOU HEARD THEM. HE ADMITTED WHAT HAPPENED AT TRIAL.

1 I AM SAYING?

2 MR. THOMAS: LET ME FINISH TALKING TO YOU. I KNOW
3 YOU ARE HURTING. I HAVE BEEN HURTING EVER SINCE IT
4 HAPPENED. HE'S BEEN ON MY MIND. I HAVE BEEN GOING
5 THROUGH PHYSICAL AND EMOTIONAL TORMENT EVER SINCE. IF I
6 WASN'T -- IF I FEEL LIKE I SHOULDN'T SUFFER THE
7 REPERCUSSIONS FROM MY ACTIONS, I WOULDN'T HAVE ADMITTED TO
8 BEING INVOLVED IN THIS THING. I FELT BAD, YOU KNOW WHAT I
9 AM SAYING? YOU LOST A BROTHER. MS. JEAN, SHE LOST A SON.
10 LIKE YOUR SISTER SAID, Y'ALL AIN'T NEVER GOING TO BE ABLE
11 TO TOUCH HIM NO MORE. HIS KIDS AIN'T NEVER GOING TO BE
12 ABLE TO TOUCH HIM NO MORE. AND THAT'S IMPORTANT. I JUST
13 WANT YOU TO UNDERSTAND THAT I WAS BLINDFOLDED AND TRYING
14 TO WALK A STRAIGHT LINE, YOU KNOW. I THOUGHT I COULD, YOU
15 KNOW.

16 MR. ROGERS: Y'ALL ALL I SAY IS, YOU KNOW, I CAN
17 FORGIVE, BUT I CAN'T FORGET. YOU KNOW WHAT I MEAN? I'M
18 GOING TO LET GOD HANDLE ALL THIS.

19 MR. THOMAS: I RESPECT THAT.

20 MR. ROGERS: YOU KNOW WHAT I MEAN? BECAUSE I'VE
21 DEALT WITH Y'ALL. I KNOW, YOU KNOW WHAT I'M SAYING? I
22 PUT Y'ALL IN THE CAR WITH ME. I RODE Y'ALL AROUND WITH
23 ME.

24 MR. THOMAS: EXACTLY.

25 MR. ROGERS: WE HANG WITH EACH OTHER. AND THIS IS

1 WHAT HAPPENED TO MY BROTHER? I CAN'T -- THAT'S SOMETHING
2 I CAN'T UNDERSTAND. THAT'S WHY I CAN FORGIVE, BUT I CAN'T
3 FORGET.

4 MR. THOMAS: I KNOW. I'M DON'T EXPECT YOU TO FORGET.
5 LIKE I SAID, YOU KNEW ALL OF US. WE ALL KNEW TROY.
6 HOWEVER WE PLAYED A PART IN THIS TOO. BUT I DON'T, YOU
7 KNOW, YOU LEFT IT IN GOD'S HANDS. AND THIS IS GOD'S
8 DECISION RIGHT HERE. I'LL LEAVE IT IN HIS HANDS TOO. I
9 WANT TO APOLOGIZE TO MS. RUBY JEAN BECAUSE I KNOW THAT WAS
10 HER BOY. THAT WAS HER BABY. I APOLOGIZE, MS. RUBY JEAN,
11 IF THAT MEANS ANYTHING TO YOU. FORGIVE ME FOR WHAT I DID.
12 FOR THE WHOLE FAMILY. LITTLE CHARLIE. THANK YOU. THANK
13 YOU, JUDGE.

14 THE COURT: YES, SIR, MR. THOMAS, IS THERE ANYTHING
15 ELSE YOU WANT TO SAY?

16 MR. THOMAS: JUDGE, YOUR HONOR, THESE PAST 12 MONTHS
17 I'VE BEEN INCARCERATED, I'VE HAD TIME TO THINK ABOUT A
18 LOT. AND BEING AWARE OF THE VERDICT I JUST RECEIVED, I
19 MIGHT NOT GET A CHANCE TO COME HOME TO MY MOTHER NO MORE.
20 MY KIDS NO MORE. MY GIRL NO MORE. MY FAMILY NO MORE. I
21 DON'T THINK I AM GOING TO BE ABLE TO LIVE WITH THAT. SO
22 I'M ASKING YOU, I DON'T WANT YOU TO TAKE MY LIFE. AS FAR
23 AS EMOTIONAL AND MENTAL, I AIN'T GOING TO BE ABLE TO LIVE
24 THAT LONG AWAY FROM THEM. I WANT TO DIE. I CAN'T STAY
25 ALIVE WITHOUT THEM. I DIDN'T WANT TO DO THAT TO HIM. I

1 JUST WANTED TO SAVE MY FRIEND. THAT'S ALL. THAT'S ALL,
2 YOUR HONOR. THAT'S ALL I WANTED TO DO. I AIN'T HAD NO
3 PROBLEMS WITH TROY. NEVER. I NEVER HAD A PROBLEM WITH
4 HIM.

5 HE'S GONE AND I CAN'T BRING HIM BACK. BUT I PRAY FOR
6 HIM EVERY DAY. I FEEL BAD FOR HIM, YOUR HONOR. I THINK
7 ABOUT HIM ALL THE TIME. LIKE HIS BROTHER SAY, HE KNOW ALL
8 OF US.

9 THE COURT: ANYTHING ELSE, MR. WHEELER?

10 MR. WHEELER: NO, SIR, YOUR HONOR. THANK YOU.

11 THE COURT: MR. WATTS.

12 MR. WATTS: YOUR HONOR, AGAIN, AS MR. WHEELER SAID,
13 THE JURY HAS MADE ITS DECISIONS BASED ON THE FACTS OF THIS
14 CASE. THE JURY HAS MADE A DETERMINATION THAT THIS
15 OCCURRED IN THE SUDDEN OF HEAT OF PASSION. WASN'T
16 PROVOCATION. LEGALLY SUFFICIENT PROVOCATION IN THIS
17 INSTANCE. NOTHING THAT WE CAN DO TO BRING MR. ROUSE
18 BACK. MR. MCCALL IS DEEPLY SORRY FOR THAT. MR. ROUSE'S
19 FAMILY HAS LOST HIM. SOME OF HIS CHILDREN HAVE LOST A
20 FATHER. MR. MCCALL IS VERY SORRY ABOUT THAT. I WOULD
21 ASK, JUDGE, THAT YOU WOULD CONSIDER AS WELL, THAT MR.
22 MCCALL IS A YOUNG MAN. HE'S GOT FOUR CHILDREN. TWO WITH
23 HIS FIANCEE, AND THERE IS ONE ON THE WAY.

24 HE IS HERE SUPPORTED BY HIS FAMILY. HIS PRIOR RECORD
25 IS CLASSIFIED AS A NONVIOLENT CRIME. YOUR HONOR KNOWS

1 AND LIKE YOU SAID, YOU CAN NEVER BRING TROY BACK. AND I'M
2 SORRY FOR THAT. BUT I ASK THAT YOU GIVE MY COUSIN ANOTHER
3 CHANCE TO RAISE HIS CHILDREN AND TEACH THEM THE RIGHT
4 THINGS SO THEY DON'T HAVE TO GO THROUGH THIS IN THEIR LIFE
5 TIME. PLEASE JUST SHOW MERCY ON HIM, AND GIVE HIM ANOTHER
6 CHANCE TO COME HOME WITH HIS FAMILY SO THAT HE CAN DO THE
7 RIGHT THING IN HIS LIFE.

8 THAT'S ALL I HAVE TO SAY.

9 THE COURT: YES, SIR.

10 MR. WATTS: MR. DIXON, HIS GRANDFATHER WHO YOU HEARD
11 FROM EARLIER, HE HAD A COUPLE OF WORDS THAT HE WOULD ASK
12 TO BE ALLOWED TO SPEAK.

13 THE COURT: YES, SIR, MR. DIXON.

14 MR. DIXON: YOUR HONOR, YOU SEE THE FAMILY. YOU
15 CANNOT HOLD ACCOUNTABLE FOR ANY ACTION. THE ONLY THING I
16 CAN SAY IS EUNICE IS MY GRANDSON. BUT HE DON'T SEEM LIKE
17 A GRANDSON. I RAISED HIM FROM A BABY UNTIL HE WAS 20
18 SOMETHING YEARS OLD AND HE GOT ON HIS OWN. AND I ALWAYS
19 TEACH THEM TO TRY, DON'T CAUSE TROUBLE, STAY OUT OF
20 TROUBLE. AND I CAN SAY WE HAVE BEEN SUCCESSFUL UP UNTIL
21 THIS TIME. WE ALWAYS HAD THEM IN CHURCH. HE WENT TO
22 SCHOOL. WHEN HE GOT HOME, HE ALWAYS HAD A CHORE TO DO.
23 WE ALWAYS IN OUR FAMILY, HAD, WE TRY TO WHEN THE CHILDREN
24 WERE COMING UP, WE TRIED TO CHOOSE ACTIVITIES FOR THEM.
25 BUT WHEN THEY GET GROWN, YOU KNOW, THEY CHOOSE THEIR OWN

1 ACTIVITY. AND THIS IS WHAT HAPPENED TO EUNICE. BECAUSE
2 HAVING THE WRONG ACTIVITY AND GOT CAUGHT UP IN IT.

3 AS WE SAY, WE ASK YOU TO LOOK AT WHAT WE ARE SAYING.
4 HE HAVE A FAMILY. HE HAS NO ONE OTHER THAN HIMSELF TO,
5 YOU KNOW, TO PROVIDE FOR THEM. THESE ARE OUR GREAT
6 GRANDCHILDREN. WE RAISE GRANDS. NOW IT LOOKS LIKE WE ARE
7 GOING TO HAVE TO TAKE ON ANOTHER RESPONSIBILITY. AND I'M
8 69-YEARS-OLD. AND MY WIFE IS 66. AND WE'RE GETTING, YOU
9 KNOW, OLD. LIKE I SAY, WE RAISED, THIS IS MY DAUGHTER'S
10 BABY. SHE HAS THREE CHILDREN, EUNICE, LARRY AND LAKESHA.
11 SHE HAS ONE GIRL AND TWO BOYS. AND WE RAISE ALL THREE OF
12 THEM FROM ARM BABIES. AND THIS IS A GRAND HERE. A
13 GRANDCHILD TOO. AND WE HELPED RAISE HER AND WE BRING HER
14 UP THE SAME WAY. AND WE'RE JUST A FAMILY OF PEOPLE. I
15 WOULD LIKE TO SAY TO THE FAMILY, SOME OF THEM I KNOW AND
16 SOME OF THEM I DON'T. BUT JUST BECAUSE THIS HAPPENED, WE
17 SHOULD NOT LET THIS COME BETWEEN US IN THE COMMUNITY.
18 BECAUSE LIKE I SAY, THE CHILDREN GOT ALONG WITH US. WE
19 COULD TELL THEM WHAT TO DO. BUT WHEN THEY GET OUT, THEN
20 WE CAN'T TELL THEM WHAT TO DO.

21 AND THE ONLY THING I CAN SAY TO THEM THAT, I'M SORRY
22 THAT IT HAPPENED, BUT LIFE MUST GO ON. AND I HOPE THAT
23 WE CAN HAVE A FAMILY IN THE COMMUNITY THAT WE CAN PUT THIS
24 BEHIND US AND MOVE ON WITH OURS. THANK YOU, YOUR HONOR.

25 THE COURT: YES, SIR. MR. WATTS.

1 MR. WATTS: YOUR HONOR, IF I COULD BEG THE COURT'S
2 INDULGENCE. MS. MCCALL, VIVIAN MCCALL, IS HERE. MR.
3 MCCALL'S MOTHER. IF THE COURT WOULD ALLOW HER TO SPEAK.

4 THE COURT: YES, MA'AM, MS. MCCALL.

5 MS. MCCALL: YES, THANK YOU AGAIN. TO THE FAMILY, I
6 AM VERY SORRY. AND I'M ALSO HURT BY THE FACT THAT TROY IS
7 MISSING OUT OF Y'ALLS LIFE. AS FAR AS EUNICE, I CAN SPEAK
8 ACCORDING TO HIM AS A CHILD, BUT HE'S NOT A CHILD ANYMORE.
9 HE IS A YOUNG MAN. AND I AM VERY SORRY AGAIN ABOUT TROY.
10 BUT I DID NOT RAISE EUNICE TO KILL ANYONE. IT'S ALWAYS
11 BEEN A SITUATION WHERE YOU DO GOOD TO PEOPLE. DON'T THINK
12 ABOUT THE BAD THINGS, OR DO BAD THINGS TO PEOPLE. AND
13 THIS IS WHAT I RAISED HIM UP TO DO. AND I FEEL THAT I AM
14 NOT STANDING HERE TRYING TO JUSTIFY THE LIFE THAT WAS
15 TAKEN. BUT I KNOW EUNICE IS MY SON. AND I KNOW HIM
16 BECAUSE I HELPED RAISE HIM. AND I DID NOT RAISE HIM AS A
17 MURDERER. I CAN TRULY SAY THIS IS IN MY HEART THAT I KNOW
18 I DID NOT RAISE A MURDERER. AND I WOULDN'T BE HERE IN
19 THIS COURT TRYING TO TALK TO YOU AS A FAMILY AND TALK TO
20 THE JUDGE AND EVERYONE ELSE. JUST I KNOW. AND I AM
21 TRULY SORRY.

22 THE COURT: MS. MCCALL, ANYTHING FURTHER?

23 MS. MCCALL: AND I'M TRULY SORRY. AND I TRULY AM
24 SORRY. AND I ASK THE COURT AND THE JUDGE TO BE LENIENT
25 WITH HIM.

1 THE COURT: ANYTHING FURTHER FROM THE STATE?

2 MR. ROGERS: AND I WOULD LIKE TO SAY SOMETHING ELSE.
3 I MEAN THIS IS SOMETHING ABOUT CHANCES. YOU KNOW WHAT I'M
4 SAYING? WHAT CHANCES DID MY BROTHER HAVE? NONE. HE'S
5 GONE. HE'S GOT KIDS JUST LIKE YOU'VE GOT. HE'S NOT HERE
6 TO RAISE THEM. BUT THEY ASKED FOR LENIENCY. YOU KNOW, I
7 UNDERSTAND THAT, YOU KNOW, THAT THEY ARE SORRY AND
8 EVERYTHING. BUT IT DOESN'T YOU KNOW WHAT I'M SAYING, YOU
9 KNOW, I MEAN IT DOESN'T TAKE THE PLACE OF, IT'S A LIFE
10 THAT'S GONE, MAN. YOU KNOW. AND JUSTICE SAYS IT'S NO
11 RIGHT TO KILL. IT'S NO RIGHT TO KILL. YOU HAD NO RIGHT
12 TO KILL. SO AS FAR AS LENIENCY, I FEEL LIKE, YOU KNOW,
13 THERE SHOULD BE SOME SUFFERING. BECAUSE WE ARE GOING TO
14 SUFFER FOR THE REST OF OUR LIFE.

15 IF THEY ARE GIVEN CHANCES, YOU KNOW, THEY'RE GOING TO
16 SUFFER BUT IT'S GOING TO BE PART-TIME, YOU KNOW. IT'S A
17 FULL-TIME JOB. IT'S PART-TIME JOB. BUT IF THERE'S
18 LENIENCY ON THEM, THEY'VE GOT ANOTHER CHANCE. I MEAN
19 WE'VE GOT TO LIVE WITH THIS FOR THE REST OF OUR LIFE. AND
20 WE LOST ONE. AND HE HAVE KIDS. HE'S NOT THERE TO RAISE
21 HIS KIDS. WHICH LEAVES A MOTHER RAISING THREE KIDS ON HER
22 OWN. AND THESE ARE BABIES. THEY JUST STARTING WALKING.
23 ONE HAS JUST BEEN BORN BEFORE HE GOT KILLED.

24 MS. ROGERS: IT DOESN'T EXCUSE ANYTHING THEY HAVE
25 DONE. THEY TOOK JUSTICE IN THEIR OWN HANDS. THEY TOOK

1 THE LIFE OF ANOTHER HUMAN BEING. AND IT DOES NOT EXCUSE
2 WHAT THEY HAVE DONE. AND MY BROTHER CANNOT COME BACK. HE
3 HAVE A FOUR-MONTH-YEAR OLD SON THAT HE WILL NEVER HOLD IN
4 HIS LIFE. HE HAVE A ONE-YEAR-OLD DAUGHTER THAT'S NEVER
5 GOING TO SEE HER FATHER. HE'S GOT AN 18-YEAR-OLD MONTH
6 DAUGHTER THAT'S NEVER GOING TO SEE HER FATHER. I FEEL
7 LIKE....

8 MR. ROGERS: IT EVEN PUT ME IN A POSITION AFTER THIS
9 SITUATION IT FORCED ME IN TO HAVING ANXIETY ATTACKS. I AM
10 ON THE HIGHEST MILLIGRAM OF, YOU KNOW, XANAX. I TAKE
11 XANAX RIGHT NOW. THEY'RE RIGHT IN MY POCKET RIGHT NOW.
12 BECAUSE IF MY MIND FUNCTIONS AND THINKS ABOUT MY BROTHER,
13 I HAVE TO BE RUSHED TO THE HOSPITAL SOMETIMES, YOU KNOW.
14 I MEAN THIS IS MESSING WITH ME REAL BAD. REAL BAD. AND,
15 YOU KNOW, I'M A MAN, JUST LIKE THEY'RE A MAN. I COULD
16 HAVE EASILY TOOK IT, YOU KNOW WHAT I'M SAYING, IN MY
17 HANDS. THERE IS A FIGHT, THIS IS HOW THEY FOUGHT FOR.
18 BUT I AM A MAN, AND I DON'T -- I'M NOT -- YOU KNOW WHAT
19 I'M SAYING, I'M NOT CRIMINAL JUSTICE. I'M A MAN, YOU
20 KNOW, DOING THE RIGHT THING. I'M NOT PUTTING MYSELF IN
21 THESE SITUATIONS WHERE I WOULD HAVE TO BRING FAULT. YOU
22 KNOW, I MEAN, AND, YOU KNOW, ANY WRONG TO ANYBODY. AND
23 THEY ARE A MAN JUST LIKE ME.

24 THE COURT: MR. SAVERANCE, ANYTHING FURTHER?

25 MR. SAVERANCE: NOTHING FROM THE STATE, YOUR HONOR.

1 THE COURT: IT LOOKS LIKE A VERY SENSELESS THING THAT
2 WAS CREATED IN THIS COURTROOM TODAY AS FAR AS, IT STARTED
3 OUT WITH THREE PEOPLE TOGETHER WHO ARE -- WERE SUPPOSEDLY
4 FRIENDS. AND IT'S VERY HARD TO EVALUATE HOW THEY COULD
5 FIND THAT A FRIENDSHIP WHICH CAN RESULT IN TWO FRIENDS
6 SHOOTING THEIR FRIEND AND KILLING HIM. AND ALL THE THINGS
7 THAT OCCURRED THERE ON THE STREET IN BISHOPVILLE THAT
8 NIGHT. IT'S ENOUGH SADNESS TO GO AROUND. EVERYONE IN THE
9 TOWN, IN THIS ENTIRE COMMUNITY IS SADDENED BY THE
10 SEQUENCE OF EVENTS.

11 IT'S PARTICULARLY UNFORTUNATE BECAUSE AS I LISTEN TO
12 ALL OF YOU, ALL OF YOU FROM BOTH SIDES, SOUNDS REAL
13 ARTICULATE, INTELLIGENT. IT CERTAINLY SOUNDS AS IF
14 PARTICULARLY ON THE SIDE OF THE DEFENDANT, THAT YOU
15 CERTAINLY COULD HAVE PUT YOUR LIFE IN A DIFFERENT
16 DIRECTION IN THIS LIFE. MR. DIXON, I FEEL YOUR PAIN.
17 THE YOUNG LADY SOUNDS REAL ARTICULATE. SPEAKS REAL WELL.
18 I KNOW YOUR PAIN.

19 AND, MR. THOMAS, YOU CAME HERE FROM NEW YORK. AFTER
20 GETTING IN TROUBLE UP THERE, YOU'VE GOTTEN IN THE WORSE
21 TROUBLE YOU COULD HAVE POSSIBLY GOTTEN AFTER YOU GOT HERE.
22 NEVERTHELESS, YOU SOUND LIKE A VERY INTELLIGENT PERSON WHO
23 COULD HAVE DIRECTED THEIR LIFE IN A MUCH DIFFERENT
24 DIRECTION. I'M NOT HERE TO JUDGE ANYONE'S HEART. BUT I
25 HAVE TO JUDGE THE WICKEDNESS OF THE ACT COMMITTED THAT

1 NIGHT.

2 MR. THOMAS, YOU HAVE BEEN CONVICTED OF MURDER AND
3 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
4 CRIME. CONSIDERING ALL THAT I HAVE HEARD THROUGHOUT THE
5 COURSE OF THIS WEEK, THE SENTENCE YOU WILL RECEIVE IS AS
6 FOLLOWS: FOR MURDER, I SENTENCE YOU TO THE STATE
7 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30 YEARS. FOR
8 POSSESSION OF A WEAPON DURING THE COMMISSION OF A CRIME OF
9 VIOLENCE THE SENTENCE IS FIVE YEARS.

10 MR. MCCALL, FOR VOLUNTARY MANSLAUGHTER, THE SENTENCE
11 OF THE COURT IS THAT YOU BE COMMITTED TO THE STATE
12 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 18 YEARS. FOR
13 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
14 CRIME, THE SENTENCE IS FIVE YEARS. YOU WILL RECEIVE
15 CREDIT FOR ANY TIME THAT YOU HAVE SERVED. GOOD LUCK TO
16 YOU ALL.

17 MR. WHEELER: THANK YOU, YOUR HONOR.

18 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
19
20
21
22
23
24
25

CERTIFICATE

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

I, MARGARET T. SULLIVAN, OFFICIAL COURT REPORTER FOR
THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD
AND EVIDENCE INTRODUCED IN ABOVE CAPTIONED CASE, RELATIVE
TO APPEAL, IN GENERAL SESSIONS COURT, ON APRIL 4TH-6TH
2006, FOR LEE COUNTY, BISHOPVILLE, SOUTH CAROLINA.

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

8.19.06

DATE.Margaret T. Sullivan

COURT REPORTER
MY COMMISSION EXPIRES OCTOBER 3, 2011

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Efrain Thomas, Appellant.

Appeal From Lee County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2009-UP-059
Submitted January 2, 2009 – Filed January 22, 2009

AFFIRMED

Chief Appellant Defender Joseph L. Savitz, III, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, and Assistant Deputy Attorney General Donald J. Zelenka, all of Columbia; and Solicitor C. Kelly Jackson, of Sumter, for Respondent.

PER CURIAM: Efrain Thomas appeals his conviction for murder and possession of a firearm during a violent crime and his sentence of thirty years' imprisonment, arguing the circuit court erred in permitting the State to impeach him at trial using a prior conviction for unlawful possession of a weapon, arguing the prejudice he suffered because of this testimony was unfair and outweighed any probative value. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: Ohler v. U.S., 529 U.S. 753, 755 (2000) ("Generally, a party introducing evidence cannot complain on appeal that the evidence was erroneously admitted."); State v. Wannamaker, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001) (holding a party must object contemporaneously to the admission of evidence to preserve that issue for appellate review); State v. Mitchell, 330 S.C. 189, 199, 498 S.E.2d 642, 647 (1998) (placing on appellant the burden of presenting a sufficient record to allow review); State v. Mueller, 319 S.C. 266, 268, 460 S.E.2d 409, 410 (Ct. App. 1995) (requiring a ruling on a motion in limine to exclude evidence to be elicited from a witness must be obtained immediately prior to the witness's testimony in order to preserve the ruling for appellate review without a contemporaneous objection).

AFFIRMED.

WILLIAMS, PIEPER, and GEATHERS, JJ., concur.

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Lee)Efrain Thomas #)

Full name and prison number, if any, of applicant.)

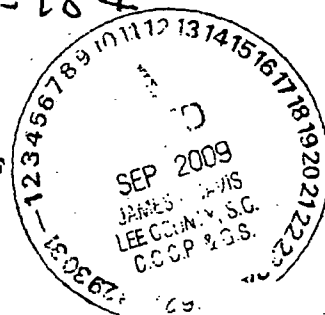
v.)

The State of South Carolina)

Name of Respondent)

09 - CP - 31 - 184

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution, 430 Oaklawn Road, Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence General Sessions Court for Lee County
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2005-GS-31-102 (Murder; Possession of a firearm during Violent Crime)
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 6, 2006 (30 years; five years)
 - (b) _____
 - (c) _____

H(a) Eunice Davis McCall was Codefendant; also Chad James was charged with Accessory after the fact to murder

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? _____

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Conviction Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) N/A

(b) N/A

(c) N/A

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

(a) Ineffective assistance of trial Counsel

(b) 11

(c) 11

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

(a) See attached Memorandum of Law in Support of PCR application.

(b) 11

(c) 11

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

(a) any petition in a State Court under South Carolina Law ?

NO

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

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

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? no

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

(a) which grounds have been presented:

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

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

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

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

- (a) Exclusive PCR Grounds
- (b) 1
- (c) 1

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? no

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

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

- i. William W. Wheeler, III, (Public Defender) ^{Jennings & Jennings}
Bishopville, S.C. 290
P.O. Box 106
- ii. Joseph Savitz, III, S.C. Commission on Indigent Defense,
- iii. Division of Appellate Defense, 1205 Pendleton St., Rm 306, Columbia, S.C.
29201

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

- i. Trial
- ii. Direct Appeal
- iii. _____

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

That my convictions be overturned and a new trial granted

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

NO

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Lee)

VERIFICATION

I, Efrain Thomas, scnc*, 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.

Sworn to and subscribed before me

This _____ day of _____, 20__.

 L.S.

Notary Public for South Carolina

My Commission Expires _____

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

I, Efrain Thomas, scnc*, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

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

 Applicant

Sworn to and subscribed before me

This _____ day of _____, 20__.

 L.S.

Notary Public for South Carolina

My Commission Expires: _____

Date: September 9, 2009

Honorable James I. Davis
Clerk of Court, Lee County
Lee County Courthouse
Bishopville, S.C. 29010

Re: My PCR Application

Dear Mr. Davis:

Enclosed please find my original PCR Application and Memorandum of Law in Support of same for filing with your office. I am enclosing a self-addressed envelope for return of a clock-stamped copy for my file.

Thank you for your kind attention to this matter.

Sincerely Yours

/s/ Erwin Thomas
Erwin Thomas, No. 314836
Perry Correctional Inst.
430 Oaklawn Road-Q2
Pelzer, S.C. 29669

cc: file

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEE	)	
	)	
	)	2009-CP-31-0184
	)	
Efrain Thomas,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 11, 2009, 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 Lee County Clerk of Court. The Applicant was indicted for Murder and Possession of a Weapon During a Crime of Violence (2005-CP-31-0102). Applicant was represented by William W. Wheeler, III, Esquire. Applicant proceeded to a jury trial before the Honorable Clifton Newman on April 4-6, 2006. Applicant was found guilty, and on April 6, 2006, Applicant was sentenced to thirty (30) years imprisonment for Murder and to five (5) years imprisonment for Possession of a Weapon During a Crime of Violence.

A notice of appeal was filed and an appeal perfected. Applicant's conviction and sentence were affirmed. State v. Thomas, Op. No. 2009-UP-059 (S.C. Ct. App. filed January 22, 2009). The remittitur was sent on February 11, 2009.

Attached herewith and incorporated herein are the records of the Lee County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. "Ineffective assistance of counsel."
 - a. "...failure to request a jury charge on assault and Battery with Intent to Kill (ABIK)."
 - b. "...failure to object to judge's charge on 'proximate cause' of the victim's death."
 - c. "...failure to object to judge's admission of his prior weapon charge to impeach his credibility."
 - d. "...failure to object to solicitor's comment on his post-arrest silence."
 - e. "...failure to object to solicitor's comment on his lack of remorse."
 - f. "...failure to move for dismissal of his indictment based on solicitor's noncompliance with constitutional and statutory laws, jurisdictional in nature, in obtaining his indictment."

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

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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 hereinbefore 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,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEY'S FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

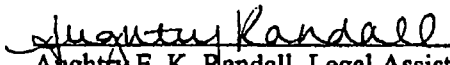
January 11, 2010.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEE	)	
	)	
	)	2009-CP-31-0184
	)	
EFRAIN THOMAS, 314836	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

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:

Charles T. Brooks, III, Esquire
The Brooks Law Firm
309 Broad Street
Sumter SC 29150

DATED this 16th day of January, 2010.


 Augustus E. K. Randall, Legal Assistant
 For Respondent

State of South Carolina) In the Court of Common Pleas
) Third Judicial Circuit
 County of Sumter) 2009-CP-31-00184

Efrain Thomas,)
)
 Plaintiff,)
)
 Vs.) Transcript of Record
)
 State of South Carolina,)
)
 Defendant.)
)
 _____)

December 12, 2012
 Sumter, South Carolina

B e f o r e:

The Honorable R. Ferrell Cothran, Jr., Judge

A p p e a r a n c e s:

Kenneth R. Young, Jr., Esquire
 Attorney for the Plaintiff

Megan Harrigan, Esquire
 Ben Aplin, Esquire
 Attorneys for the Defendant

Bonnie H. Kelly, CVR
 Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION		PAGE NO.
Case Called/Ms. Harrigan		4
Motion/Mr. Young		5
Response/Ms. Harrigan		5
Motion/Mr. Young		5
Response/Ms. Harrigan		6
Decision by the Court		10
	DIRECT	CROSS
		REDIRECT
		RE-CROSS
		Efrain Thomas
Mr. Young	11	70/75
Ms. Harrigan	28	73
Objection Withdrawn/Ms. Harrigan		34
	DIRECT	CROSS
		REDIRECT
		RE-CROSS
		William Wheeler
Ms. Harrigan	35	66
Mr. Young	49	
Decision by the Court		
Certificate Page		77

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
A-1	Lee County Term of Court for 11/05, 1-page document		27
A-2	Indictment, 1-page document	51	
A-3	Indictment, 2-page document		56
A-4	Indictment, 1-page document		56
A-5	Statement of Applicant, 4-page document		59

1 MS. HARRIGAN: May it please the Court.

2 THE COURT: Yes, ma'am.

3 MS. HARRIGAN: The next case is Efrain Thomas vs. the
4 State of South Carolina; Docket No. 2009-CP-31-0184. The
5 applicant was indicted for murder and possession of a
6 weapon during a crime of violence. He was represented by
7 William W. Wheeler III.

8 Applicant proceeded to a jury trial before the
9 honorable Clifton Newman, where applicant was found guilty
10 as indicted.

11 On April 6, 2006, applicant was sentenced to 30 years
12 imprisonment for murder, and 5 years imprisonment for
13 possession of a weapon during a crime of violence.

14 The notice of appeal was filed and an appeal was
15 perfected. Applicant's conviction and sentence were
16 affirmed. Remittitur was sent on February 11, 2009.

17 Applicant filed a timely application for post-
18 conviction relief on September 11, 2009, alleging that
19 he's being held in custody unlawfully based on the
20 following claims of ineffective assistance of counsel:
21 Failure to request a jury charge on assault and battery
22 with intent to kill; failure to object to judge's -- the
23 judge's charge on proximate cause of the victim's death;
24 failure to object to the judge's admission of his prior
25 weapons charge to impeach his credibility; failure to

1 object to solicitor's comments on his post-arrest silence;
2 failure to object to solicitor's comments on his lack of
3 remorse; and failure to move for dismissal of his
4 indictment based on the solicitor's non-compliance with
5 constitutional and statutory laws.

6 The State made it's return on January 11, 2010.

7 Applicant is represented by Charles T. Brooks III in
8 this matter, but Mr. Young has a motion for the Court at
9 this time.

10 THE COURT: Yes, sir.

11 MR. YOUNG: If it please the Court. I've had an
12 opportunity to meet with Mr. Thomas, both at his prison
13 and here this morning. And he wants me to take over this
14 case. I have been retained by his grandmother to do that.
15 And I would respectfully ask that I be allowed to continue
16 with Mr. Thomas's post-conviction relief hearing.

17 THE COURT: All right. What's the State's position?

18 MS. HARRIGAN: And there is no objection from the
19 State. The State would ask: Are you moving forward on
20 the same allegations that are raised in his application?

21 MR. YOUNG: I would ask to consider one other that
22 I've been thinking about is the failure to seek a separate
23 trial for the defendants. And so in reviewing the
24 transcript, talking with my client, it seems to me that
25 one of the appropriate motions would have been to seek a

1 separate trial for Mr. Thomas from his co-defendant. And
2 would add that as a -- excuse me -- seventh cause.

3 THE COURT: Okay.

4 MS. HARRIGAN: And the State would object, for the
5 record, due to a lack of notice, but we'll leave it in the
6 Court's discretion.

7 THE COURT: The -- what's it -- it's being continued,
8 right, you -- you don't object ---

9 MS. HARRIGAN: No, Your Honor. The State is prepared
10 to go forward right now.

11 THE COURT: I thought you said you'd agree with a
12 continuance.

13 MR. YOUNG: I didn't ask for a continuance.

14 MS. HARRIGAN: Mr. Young didn't ---

15 THE COURT: Oh. Oh. I thought you wanted a
16 continuance because you were representing ---

17 MR. YOUNG: Oh. No. I'm fine ---

18 THE COURT: I mean, if we're not going to continue the
19 case, then I'm going to deny your motion to severance
20 issue, because they haven't been prepared to -- unless
21 you've given them notice before right now. I guess you
22 assumed that -- or -- or at least alleging, the fact that
23 defense counsel did not make a motion to severe the trial
24 from the co-defendant and I assume there was a co-
25 defendant? More than one co-defendant?

1 MR. YOUNG: There was a co-defendant, Your Honor. May
2 I explain?

3 THE COURT: Yes, sir.

4 MR. YOUNG: In reading the transcript, in particular
5 reading the testimony of the co-defendant, some instances
6 he helps and some instances he didn't help. One of the
7 things that is striking is that it becomes quite apparent
8 with the attorneys for the respective defendants, they're
9 competing with each other as to who is responsible for
10 this action. And that should have been foreseen.

11 The co-defendant, basically, is saying that the
12 deceased pulled the weapon out and shot himself with the
13 fatal bullet. That should have been anticipated, and the
14 only way you can control a situation like that is to have
15 a severance and separate trials.

16 It was described to me as, basically, the co-defendant
17 threw my client under the bus. And in some instances not
18 only did the co-defendant, but his lawyer did a very
19 effective job of throwing Mr. Thomas under the bus.

20 So that's just something that -- in reading the
21 transcript, it just kind of jumps out at you as something
22 that probably should have been considered and should have
23 been done.

24 MS. HARRIGAN: And the State would leave it in Your
25 Honor's discretion and we would just would like our

1 objection noted on the record. This case was prepared for
2 last term of court. This is the second time the State has
3 prepared this case. The State has prepared it for the
4 specific allegations that were raised in the application,
5 but we'll leave it in the Court's discretion.

6 THE COURT: Okay. Was the co-defendant convicted?

7 MR. YOUNG: Yes ---

8 MS. HARRIGAN: There were two co-defendants, Your
9 Honor. There was ---

10 THE COURT: There were three people tried -- being
11 tried?

12 MR. YOUNG: Yes, sir.

13 MS. HARRIGAN: Yes, Your Honor.

14 THE COURT: Did they all testify?

15 MR. YOUNG: No. One did not testify.

16 THE COURT: Which one?

17 MR. YOUNG: My client and a fellow -- another person
18 did testify, a Mr. McCabe or McCob.

19 THE COURT REPORTER: C-a-b-e?

20 MR. YOUNG: M-c-c ---

21 MS. HARRIGAN: C-a-l -- McCall.

22 MR. YOUNG: McCall.

23 MS. HARRIGAN: Mr. Thomas and Mr. McCall were both
24 indicted for murder. Mr. James -- I believe it's Chi
25 James -- was indicted for accessory after the fact to

1 murder, and he was acquitted by the jury. And his co-
2 defendant, Mr. McCall, was found guilty for voluntary
3 manslaughter.

4 THE COURT: Okay. Well --

5 MR. YOUNG: May I explain a little further?

6 THE COURT: Yes.

7 MR. YOUNG: I realize this is new to you. Your Honor,
8 a struggle started between the deceased and Mr. McCall.
9 While they were in this struggle, Mr. McCall testified
10 that he was being strangled by the deceased. The deceased
11 said he was going to kill him. During this struggle, the
12 deceased introduced a .38 caliber pistol into this
13 struggle. During the struggle, while Mr. McCall was
14 trying to grab the weapon from the deceased, apparently
15 there were two shots fired. One of the shots struck the
16 deceased in the chest, which pathologist, I believe,
17 testified that that was really the fatal wound, but others
18 contributed.

19 During this struggle though, and when my client
20 couldn't get Mr. -- the deceased off of my -- of Mr.
21 McCall, their testimony was that my client fired several
22 rounds into the deceased's back. That's when he released
23 his grip.

24 One of the good things about what Mr. McCall said was
25 that he thought the shots were fired by Mr. Thomas to save

1 his life, and it did save his life. Apparently the jury
2 just did not buy that.

3 But it would have been -- all during the testimony
4 it's, "Mr. Thomas shot him in the back; Mr. Thomas shot
5 him three, four, five, six times." It was just repeatedly
6 that Thomas shot him in the back, and that testimony came
7 out through Mr. McCall. The defense lawyers for the other
8 two defendants were asking those questions repeatedly, and
9 I think that had a very bad affect on Mr. Thomas's right
10 to a fair trial.

11 And if it had been a separate trial, then the defense
12 lawyer would have an opportunity to control that flow a
13 little bit better, and I think it would have been to the
14 advantage of Mr. -- Mr. Thomas.

15 THE COURT: Okay. Well, let me hear this -- some
16 evidence in this case before I rule on that issue.

17 MR. YOUNG: Yes, sir. Thank you.

18 MS. HARRIGAN: And Your Honor, when you're ruling, if
19 may -- if we may have a brief minute to talk to the
20 witness if Your Honor does allow him to amend his
21 application.

22 THE COURT: Okay.

23 MS. HARRIGAN: Thank you.

24 THE COURT: All right. You can call your first
25 witness.

DIRECT EXAMINATION BY MR. YOUNG - EFRAIN THOMAS

11

1 MR. YOUNG: Our first witness is Mr. Thomas.

2 EFRAIN THOMAS, having been first
3 duly sworn, testifies as follows:

4 THE BAILIFF: State your name, please, and spell your
5 first and last name for the record.

6 THE APPLICANT: Efrain Thomas; E-f-r-a-i-n T-h-o-m-a-
7 s.

8 MR. YOUNG: If it please the Court.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION BY MR. YOUNG:

11 Q Mr. Thomas, would you please tell the judge how old
12 you are.

13 A Thirty years old.

14 Q Thirty years old?

15 A Yes, sir.

16 Q And before you were convicted of this crime, did you
17 have a job?

18 A No, sir.

19 Q You were not employed?

20 A No, sir.

21 Q And I believe you had one prior conviction to this?

22 A Yes, sir.

23 Q A pistol charge in New York?

24 A Yes, sir.

25 Q Any other problems with the law?

1 A No, sir.

2 Q Now, so the Court can have a little bit of history of
3 this in evidence, what is your relationship to the
4 deceased?

5 A He's a mutual friend.

6 Q Friend.

7 A Yes, sir.

8 Q How ---

9 THE COURT: You got to speak up a little bit. I can't
10 ---

11 A A mutual friend.

12 THE COURT: Okay.

13 Q How bout Mr. McCall?

14 A Best friend.

15 Q Best friend.

16 A Yes, sir.

17 Q Was there a difference in the size of Mr. Rouse, I
18 believe, and Mr. McCall?

19 A Yes, there was.

20 Q How much difference?

21 A I believe Mr. Rouse like six two, six one. Mr. McCall
22 was around five three, five four.

23 Q Did Mr. Rouse have a reputation of being a rough
24 character?

25 A Yes, sir.

1 Q Did ---

2 A Yes, sir.

3 Q Did you know about this reputation?

4 A Yes, sir. Yes, sir.

5 Q Very briefly, would you state what happened on the day
6 this incident took place.

7 A I can remember a scuffle taking place between the two,
8 between Mr. McCall and Mr. Rouse. I remember Mr. Rouse
9 choking Mr. McCall and I tried to get him off, I tried to
10 help -- I tried to relieve him from being choked. But the
11 words that came out of Mr. Rouse mouth was, "No. I'm going
12 to kill him."

13 At that time I asked for some aid. Some other people
14 was on the scene. Nobody helped, and I couldn't get the
15 grip off of Mr. McCall neck. Mr. -- Mr. Rouse had a tight
16 grip on his neck.

17 Q Were shots fired?

18 A Yes, sir.

19 Q Did you step back to see if you'd been hit?

20 A Yes, sir.

21 Q All right. At what point in time -- did you know
22 where the shots came from?

23 A No. Initially, no.

24 Q Did you ever see a pistol in Mr. Rouse's hand?

25 A It was like I seen it in both of their hands. I don't

1 know who hands it was in.

2 Q When did you introduce a .22 caliber pistol into this
3 fight?

4 A When Mr. Rouse fell on top of Mr. McCall and the shot
5 went off, I automatically thought he shot Mr. McCall.

6 Q Okay. So what did you do?

7 A I shot him in the back.

8 Q You shot Mr. Rouse in the back?

9 A Yes, sir.

10 Q Okay. Was that to save Mr. McCall?

11 A Yes, sir.

12 Q And that's basically what happened; was that not
13 correct?

14 A Yes, sir.

15 Q And that's been testified to by not only you, but to -
16 - by Mr. McCall as well.

17 A Yes, sir.

18 Q Okay. Now, when you turned yourself into law
19 enforcement, did you give them a statement?

20 A I never turned myself in.

21 Q You were arrested?

22 A Yes, sir.

23 Q Okay. But you still gave them a statement; is that
24 right?

25 A Yes, sir.

1 Q Mr. McCall turned himself in.

2 A Yes, sir.

3 Q Okay. And you went to trial on these issues; is that
4 right?

5 A Yes, sir.

6 Q Prior to trial, did you know there was going to be any
7 problems with Mr. McCall's testimony as far as you were
8 concerned?

9 A No. No, sir.

10 Q Did not know that. All right. Mr. Wheeler was your
11 duly appointed counsel?

12 A He was

13 Q Public Defender?

14 A He was.

15 Q All right. And he tried this case from the very
16 beginning to the end; is that right?

17 A Yes, sir.

18 Q Did he provide you with information concerning the
19 State's case? Did he give you Rule 5 information,
20 discovery?

21 A Motion for discovery, yes, sir.

22 Q All right. Did you review that and go over it with
23 him?

24 A Yes, sir, we did.

25 Q Did y'all talk various strategies as to how you were

1 going to approach this case?

2 A We did.

3 Q And was one of the strategies that you were going to
4 claim self-defense or defense of others?

5 A Defense of others, yes, sir.

6 Q And is that the approach that you had going into this
7 trial?

8 A Yes, sir.

9 Q And you have alleged that Mr. Wheeler -- and I'm just
10 going to take them in the order that you've presented them
11 -- that he was ineffective as far as counsel is concerned,
12 because he failed to seek a jury charge of assault and
13 battery with intent to kill. Would you please tell this
14 Court why you feel that his failure to seek that
15 particular charge hurt your case and resulted in your
16 conviction.

17 A Well, like you said, according to the evidence, you
18 know, Mr. McCall first -- the victim was shot during a
19 fight between them. And I shot the victim after that with
20 a .22 small-caliber pistol.

21 The State pathologist, who conducted the post-mortem
22 examination on the victim, determined that the victim's
23 death was caused by this .38 medium-caliber gunshot wound
24 to the chest. And we know that it may have seemed that I
25 intended to kill the victim, but the State pathologist

DIRECT EXAMINATION BY MR. YOUNG - EFRAIN THOMAS

17

1 finding testimony clearly stated that the wounds inflicted
2 by me were potentially fatal and non-fatal, but it wasn't
3 the actual cause of death.

4 I may have been guilty of assault and battery with
5 intent to kill or assault and battery of a high and
6 aggravated nature for inflicting the potentially fatal
7 wound after the fatal wound was inflicted, but I don't
8 think I was guilty of murder. And the jury find -- found
9 my co-defendant guilty of manslaughter for inflicting the
10 fatal wound, and I inflicted the potentially fatal wound
11 subsequent to the fatal wound being inflicted. And that
12 clearly warranted a requested charge of assault and
13 battery with intent to kill or assault and battery of a
14 high and aggravated nature by Mr. Wheeler.

15 Q Did you and Mr. Wheeler ever discuss the charge of
16 assault and battery with intent to kill?

17 A We did.

18 Q Was there a decision made not to seek that charge?

19 A Yeah.

20 Q Why did y'all make that decision?

21 A No, I didn't make the decision. The counsel made the
22 decision.

23 Q Okay. Do you think if that charge had been given to
24 the jury, the jury had had another option, that you might
25 not have been found guilty of murder?

1 A Yes. I believe it was sufficient finding for -- it
2 was sufficient evidence for a finding of this assault and
3 battery with intent to kill or assault and battery of a
4 high and aggravated nature theory. And maybe the jury may
5 have discerned there was sufficient evidence for a
6 finding.

7 Also you know, my counsel had to challenge the
8 sufficiency of the State's evidence to convict me of
9 murder in the motion for a direct verdict. And you know,
10 that would further been support to my claim that he was
11 ineffective for failing to request the charge of assault
12 and battery with intent to kill or assault and battery of
13 a high and aggravated nature theory.

14 He pursued this assault and battery with intent to
15 kill or assault and battery of a high and aggravated
16 nature theory by vigorously cross-examining the State's
17 pathologist as to the victim's actual cause of death.
18 However, he failed to request this charge of a lesser
19 degree of crime of the assault and battery with intent to
20 kill or assault and battery of a high and aggravated
21 nature theory for me; which, under the evidence presented,
22 maybe the judge would have been required to charge this
23 for the jury's consideration.

24 Q Okay. The second -- second allegation that you've
25 made is Mr. Wheeler was ineffective -- ineffective as your

1 counsel because he failed to object to the judge's charge
2 or proximate cause of the victim's death.

3 A Yes, sir.

4 Q Would you please tell the Court why you feel that's
5 important.

6 A May I refer to my transcript?

7 Q Yes, sir. You have it marked in your transcript?

8 A Yes, sir.

9 Q If you'll tell us what page you're going to.

10 A Yes, sir.

11 Q I assume you're going to page 696?

12 A I'm on page 696. 696, lines 3 through 20. And this
13 is what the judge said as follows. He said (as read):
14 "Proximate cause is a direct cause. It is an immediate
15 cause. It is the efficient cause. It is that cause
16 without which the death of the victim would not have
17 resulted. There must be chain of causation from the time
18 of the injury inflicted by the defendant until the time of
19 the victim's death.

20 "Proximate cause does not necessarily mean that it
21 occurred immediately prior to death. There can be more
22 than one proximate cause. The acts of two or more persons
23 may combine together to be a proximate cause of the death
24 of the person.

25 "The defendant's acts may be regarded as the proximate

1 cause if it is a contributing cause to the death of the
2 victim. The fact that there are other causes also
3 contributing to the death of the victim will not relieve
4 the defendant from responsibility. The defendant's acts
5 need not be the sole cause of the death, but must be a
6 proximate contributing cause of the death of the victim."

7 Okay. You know, the Black's Law Dictionary says that
8 proximate cause is a direct cause. It's a cause that
9 directly produces an event, and without which this event
10 would not have occurred.

11 In this case, the State pathologist who performed the
12 autopsy determined that the victim's death was caused by
13 this .38 medium-caliber gunshot wound to the chest, which
14 contradicted the judge's charge to include me in the
15 homicide.

16 Q Do you think that's another reason why you should have
17 had a separate trial from the co-defendant?

18 A Come again?

19 Q Do you think this is another reason why you should
20 have had a separate trial from your co-defendant?

21 A I never took that into consideration, because if I did
22 have a separate trial with him or we went to trial
23 together, the fact still remains that the -- the shots I
24 fired wasn't the cause of death. And I'm submitting that
25 the charge given by the judge, that proximate cause is

1 direct and immediate cause in one instance and then
2 charging that it doesn't mean it occurs immediately, was -
3 - it could be confusing and misleading to the jury; and
4 the jury, being laymen, may misunderstand the evidence in
5 every case instruction not to this standard that they
6 supposed to apply.

7 An error and omission of this instruction is
8 compounded with the legal standard as complex as in this
9 case, and requires that some kind of fine line be made
10 regarding blame worthiness.

11 Q Do you think Mr. Wheeler should have objected to this
12 charge then?

13 A Yes. Yes.

14 Q Okay.

15 A Yes, sir.

16 Q And his failure to object to this led to your
17 conviction; is that what you're saying?

18 A It's a possibility.

19 Q Okay. The third thing that you said is that Mr.
20 Wheeler was ineffective assistance of counsel for his
21 failure to object to the judge's admission of a prior
22 weapons charge to impeach your credibility. Would you
23 please tell the Court what you mean by that.

24 A Well, I had been previously convicted of possession of
25 a weapon in New York, and I was on trial for possession of

1 a weapon during the commission of a violent crime. He did
2 make a motion to exclude the judge's admission of the
3 prior weapon charge, but he compounded his error by
4 directly examining me on the prior weapon charge.

5 Q And isn't this the issue that turned in your appeal to
6 the appellate court?

7 A It was. It was.

8 Q And resulted in you -- your appeal being denied?

9 A It was.

10 Q Now, the fourth thing that you have alleged is that
11 Mr. Wheeler failed to object to the solicitor's comment on
12 your post-arrest silence. Would you please tell the Court
13 what you mean by that.

14 A During cross-examination and closing argument, the
15 solicitor commented on my post-arrest silence, and Mr.
16 Wheeler didn't object to it.

17 Is a -- it's a case called *State vs. McIntosh* where
18 the Court reversed a case on the grounds that the judge --
19 the defendant opened the door to the solicitor's comments
20 on the post-arrest silence. And the comments by the
21 solicitor on McIntosh's post-arrest silence violated his
22 due -- his due process -- his right to due process. And I
23 think it's *Doyle vs. Ohio* --

24 Q That's right.

25 A -- that's *D-o-y-l-e vs. Ohio*.

1 Now, if you allow me to explain the *Doyle* open to you,
2 I think it says that it's fundamentally unfair to promise
3 an arrested person that his silence will not be used
4 against him; and thereafter, they use that promise -- to
5 breach that promise by using that silence to impeach his
6 testimony, relying on *Doyle*, the statement incumbent on
7 nor present evidence that could be used in the guilt -- in
8 the guilty phase or the -- you know what I'm saying?

9 Q You think Mr. Wheeler's failure to object to that led
10 to your conviction of murder.

11 A It's a possibility.

12 Q Okay. The next thing that you allege is that Mr.
13 Wheeler failed to object to the solicitor's comment on
14 your lack of remorse. Would you please tell the Court
15 about that.

16 A Yeah. May I refer to my transcript again, please?

17 Q Yes, sir.

18 A Thank you.

19 Q On page 684?

20 A I'm going to page 664.

21 Q Okay.

22 A 664, lines 1 through 10. And it says this (as read):
23 "This is what happened, and what happened was Troy Rouse
24 was shot seven times and left laying in the street to die
25 like an animal. And he did die. And the two men that did

1 this heinous crime, put these bullets in his body, and did
2 not call for help -- didn't call for help at the scene,
3 didn't call for help at one of the other houses, didn't
4 call for help any time. What does that show you? Does
5 that show you compassion and remorse? Or does that show
6 guilt and concerns for their own self, not to call and get
7 involved?"

8 It's a -- it's a -- it's a case -- and forgive me --
9 it's the State of -- it's a case called *State vs.*
10 *Copeland*. And it says that the solicitor's closing
11 argument may not be calculated to arouse juror's passion
12 or prejudice, and it's conscious should stay within the
13 record and reasonable inference to it.

14 Here Mr. Wheeler -- I mean, the solicitor engaged in
15 improper argument that was sufficiently prejudicial by him
16 -- on my lack of remorse. And as a result, you know, Mr.
17 Wheeler's failure to object and request instruction was
18 ineffective assistance of counsel. You know, comments by
19 the prosecution upon an accused failure to express
20 remorse, it would invite the jury to draw and adverse
21 inference mainly because the defendant didn't appear
22 penitent.

23 Q Don't ---

24 THE COURT: Don't get quite so close to that mic,
25 okay.

1 THE DEFENDANT: Sorry.

2 Q You recall Mr. McCall being cross-examined and asked
3 why he didn't call for help, why he didn't call for an
4 ambulance?

5 A Come again?

6 Q Do you recall Mr. McCall being cross-examined by the
7 solicitor, and being asked by the solicitor why he did not
8 seek help for Mr. Rouse, why he did not call for an
9 ambulance for Mr. Rouse?

10 A I think so.

11 Q Okay. You think that's another reason why you should
12 have had a separate trial?

13 A Like I say, I -- I didn't really take it into
14 consideration. But now I'm saying that, maybe it would
15 have been a good thing.

16 Q Okay. The next item that you raised in -- you've
17 raised the question of whether or not Mr. Wheeler should
18 have moved to dismiss the indictment because of the fact
19 that the indictment was delivered at a time in which
20 general sessions court was not being held in Lee County;
21 is that correct?

22 A Yes, sir.

23 Q Would you please tell the Court about that.

24 A I was just contending that Mr. Wheeler was ineffective
25 for failing to object to the solicitor's failure to obtain

1 a lawful indictment for the general sessions court to
2 exercise it's original criminal jurisdiction to try and
3 convict me of a murder offense that was not presented by a
4 lawfully constituted grand jury or true billed.

5 We know that under Article 1, Section 11 of the South
6 Carolina Constitution -- it says that no person may be
7 held to answer for any crime unless on a presentment of
8 the indictment of the grand jury, of the county where the
9 crime has been committed.

10 And Article 5, Section 22 of the South Carolina
11 Constitution says that the grand jury of each county shall
12 consist of 18 members, 12 of whom must agree on a true
13 bill before this indictment can be presented for a trial
14 of a case.

15 Now, under South Carolina Code of Law, 14-9-170, it
16 says that the grand jury, as lawfully drawn for service
17 upon a general sessions court, shall meet with the Court
18 at each of its terms to deliberate and return true bill
19 and no bill indictments.

20 In accordance with 14-9-170, the grand jury's a
21 constituent part of the general sessions court and without
22 its presence at a term of court, the Court has no
23 authority to try an unindicted offense under its criminal
24 jurisdiction.

25 In conjunction to that, South Carolina Code of Law 14-

DIRECT EXAMINATION BY MR. YOUNG - EFRAIN THOMAS

27

1 9-210 mandates that the county solicitor shall prepare the
2 duly presiding judge at a general sessions court, while in
3 attendance upon a general sessions court, in accordance
4 with 14-9-170, bills of indictments.

5 My indictment indicates that I was indicted by the Lee
6 County Grand Jury during the November 22, 2005 term of
7 general sessions court. Contrary to that indication, the
8 South Carolina Legislature hasn't scheduled any November
9 22, 2005 term of general sessions court in Lee County
10 under South Carolina Code of Law 14-5-640 for attendance
11 by a grand jury to deliberate and return a true bill or no
12 bill indictments.

13 Q Did you obtain under the Freedom of Information the
14 terms of court for circuit court in 2005.

15 A I did.

16 Q All right. And does this show that during the week of
17 November 22, it was actually a common pleas court?

18 A Yes, sir.

19 MR. YOUNG: We would offer this in evidence.

20 THE COURT: Any objection?

21 MS. HARRIGAN: No objection from the State.

22 (Marked A-1, Term of Court for November 2005, one page
23 document.)

24 Q So it's your opinion that Mr. Wheeler, from the git-
25 go, should have moved to quash the indictment.

1 A Yes, sir.

2 Q Okay. Now, the last thing that's been raised, again,
3 is do you think that the results would have been
4 substantially different if you, in fact, had a separate
5 trial from your co-defendant Mr. McCall?

6 MS. HARRIGAN: And the State would just object for the
7 record.

8 THE COURT: Okay.

9 MS. HARRIGAN: We understand that it's under
10 advisement, but for the record's purposes ...

11 THE COURT: All right.

12 A I don't know. Maybe. Like I say, it really wouldn't
13 have mattered if -- I don't know -- I don't know. Because
14 he was ineffective -- the issues would still remain.

15 Q All right. Would you please answer any questions that
16 the assistant attorney general has for you.

17 A Yes, sir.

18 MS. HARRIGAN: May it please the Court.

19 THE COURT: Yes, ma'am.

20 CROSS-EXAMINATION BY MS. HARRIGAN:

21 Q Mr. Thomas, how many times did you meet with your
22 attorney Mr. Wheeler before your trial?

23 A I can't remember the exact number of times.

24 Q A rough estimate.

25 A Maybe four, maybe three or four times.

1 Q Do you recall going over your discovery with your
2 attorney?

3 A A portion of it. A portion of it.

4 Q Did he provide you with a copy of the ---

5 A Yes.

6 Q --- discovery?

7 A Yes, ma'am.

8 Q Did you review that on your own?

9 A Yes, ma'am.

10 Q Did you ask him any questions based on your review of
11 this discovery?

12 A Yes. Yes, ma'am.

13 Q Was he able to answer your questions for you?

14 A Yes, ma'am.

15 Q Do you recall discussing possible defenses you might
16 set forth at trial with your attorney?

17 A Yes, ma'am.

18 Q And I believe you testified on direct that the defense
19 you proceeded with was defense of others and self-defense,
20 correct?

21 A It was. Yes, ma'am.

22 Q Did you ever discuss a motion to sever with your
23 attorney?

24 A A motion --

25 Q To sever the trials so you could be tried

1 independently from your co-defendant?

2 A No. No.

3 Q And I believe you stated a moment ago you were not
4 sure if it would have made any difference.

5 A Not sure.

6 Q You testified at your trial in your defense, correct?

7 A Yes, ma'am.

8 Q And your attorney called three additional witnesses,
9 correct?

10 A Yes, ma'am. Yes, ma'am.

11 Q And I believe your testimony on direct was that you
12 only have one prior conviction, correct?

13 A (No audible response.)

14 Q Do you have the transcript in front of you?

15 A I do.

16 Q Would you mind turning to page 442, please.

17 A Yes, ma'am.

18 Q Actually 443. I'm sorry.

19 A Yes, ma'am.

20 Q And if you'll look at the bottom, lines 21 through 25,
21 if you'll just read that to yourself, please.

22 (Brief pause.)

23 THE COURT: What page was this?

24 MS. HARRIGAN: This is page 443, Your Honor.

25 THE COURT: Okay.

1 MS. HARRIGAN: The specific line --

2 A Yes, ma'am.

3 MS. HARRIGAN: -- is 21 through 25.

4 Q Do you see where it states here you also have a
5 criminal possession of a controlled substance charge?

6 A Yes, ma'am.

7 Q So you do have two prior charges, a pistol charge and
8 this charge, correct?

9 A Yes, ma'am.

10 Q Okay.

11 A Yes, ma'am.

12 Q And your attorney did make a motion to not let your
13 prior pistol charge come in, correct?

14 A Yes, ma'am.

15 Q And the judge overruled him, correct?

16 A Yes, ma'am.

17 Q And in fact, your attorney brought out your weapons
18 charge during his ---

19 A On direct examination.

20 Q --- direct examination, correct.

21 And I believe your testimony before was that you had
22 never turned yourself in to police in this case, correct?

23 A No, never.

24 Q Actually, directly after the shooting, you went to
25 Camden, correct?

1 A Yes, ma'am.

2 Q And you stayed in Camden for three days?

3 A Yes, ma'am.

4 MS. HARRIGAN: Court's indulgence briefly.

5 THE COURT: Okay.

6 (Ms. Harrigan and Mr. Aplin confer.)

7 Q In regards to your first allegation that you raised in
8 your application that your attorney was ineffective for
9 failure to request an assault and battery with intent to
10 kill charge, the testimony from the pathologist was that
11 there were several shots that were potentially fatal,
12 correct?

13 A (No audible response.)

14 Q And you testified for the defense, you and your
15 attorney had agreed to put forward was a defense of
16 others, correct?

17 A (No audible response.)

18 THE COURT REPORTER: Was that a "yes"?

19 THE APPLICANT: Yes, ma'am. Yes, ma'am. I'm sorry.

20 Q So based on this defense, you weren't denying that you
21 had a gun, correct?

22 A Oh, no.

23 Q You weren't denying that you had shot at him, correct?

24 A No. No.

25 Q And the victim in this case, he did die as a result of

1 the -- of being shot, correct?

2 A He didn't die as a result of my gunshot wound.

3 Q But he did die as a result ---

4 A Yes, he did.

5 Q --- of shooting, correct?

6 A Yes, ma'am.

7 Q And the pathologist testified that there were several
8 potentially fatal shots, correct?

9 A I think it was three or four potentially fatal ones.

10 MS. HARRIGAN: Court's indulgence.

11 (Ms. Harrigan and Mr. Aplin confer.)

12 Q In regards to your fifth allegation that your attorney
13 Mr. Wheeler failed to object to the solicitor's comments
14 on your lack of remorse, you didn't call the police in
15 this case, did you?

16 A No, ma'am.

17 Q And you were asked about this by the solicitor when
18 you were on the stand, correct?

19 A Yes, ma'am.

20 Q And the record reflects that on page 522, you did
21 indicate that you did leave the defendant -- or the victim
22 in the street, correct?

23 A Yes, ma'am.

24 MS. HARRIGAN: No further questions, Your Honor.

25 THE COURT: Okay. Anything further, Mr. Young?

1 MR. YOUNG: Nothing further.

2 THE COURT: Okay. You can step down.

3 THE APPLICANT: Thank you, Your Honor.

4 (The witness exits the stand.)

5 THE COURT: Any further witnesses?

6 MR. YOUNG: If it please the Court, we have no further
7 witnesses.

8 THE COURT: Okay. The State?

9 MS. HARRIGAN: Yes, Your Honor. The State at this
10 time would remove -- withdraw it's objection to amending
11 the application based -- on the motion to sever based on
12 the testimony today.

13 THE COURT: Okay.

14 MS. HARRIGAN: We believe the applicant said that it
15 would not have made a difference. So we would remove our
16 objection to amending the application to include this
17 ground.

18 THE COURT: Okay.

19 MS. HARRIGAN: At this time we would call William
20 Wheeler III to the stand.

21 THE COURT: Okay.

22 WILLIAM WHEELER III, having been
23 first duly sworn, testifies as follows:

24 THE BAILIFF: State your name, please, and spell your
25 first and last name for the record.

DIRECT EXAMINATION BY MS. HARRIGAN - WILLIAM WHEELER 35

1 THE WITNESS: William W. Wheeler III; W-i-l-l-i-a-m,
2 middle initial "W"; Wheeler, W-h-e-e-l-e-r.

3 MS. HARRIGAN: May it please the Court.

4 THE COURT: Yes, ma'am.

5 DIRECT EXAMINATION BY MS. HARRIGAN:

6 Q Good afternoon, Mr. Wheeler. How long have you been
7 practicing law?

8 A Twelve years.

9 Q What percentage would you catagorize as criminal
10 defense practice?

11 A Probably 40 percent.

12 Q Do you consider yourself proficient in criminal
13 defense work?

14 A I would.

15 Q Did you have any experience representing the client
16 indicted for murder before this case?

17 A I believe I had -- I know I represented a couple of
18 people with murder charges and maybe tried one. Yes.

19 Q Were you retained or appointed in this case?

20 A I was appointed.

21 Q Do you recall approximately what date you were
22 appointed or how long before trial?

23 A I believe it was a good while. Yeah. Six or eight
24 months or something like that seems like.

25 Q Do you recall approximately how many times you met

1 with your client?

2 A I don't recall exactly how many times. I remember
3 meeting with him a good bit. I -- I remember taking some
4 discovery materials out to the jail and preparing with him
5 there. Probably two or three times just prior to trial,
6 and then probably other times, you know, farther away from
7 trial.

8 Q And in your meetings with Mr. Thomas, were you able to
9 discuss the elements of the charges he was facing?

10 A I was.

11 Q Did you discuss with him what the State would be
12 required to prove if he pursued a trial on these charges?

13 A Yes, ma'am.

14 Q Did you discuss Mr. Thomas's version of the facts,
15 what had led to this homicide?

16 A We did.

17 Q If you wouldn't mind categorizing those -- his version
18 of the facts for the Court.

19 A Well, largely what he testified to this morning. I
20 mean, it was a case where there was no way -- and -- and
21 he'd given some statements. There was no way to separate
22 him from the pistol. I mean, you couldn't say he didn't
23 shoot and have any -- any defense -- that .22 caliber
24 pistol. So it had to be some defense other than "it
25 wasn't me" or "it wasn't my gun." That wasn't going to

DIRECT EXAMINATION BY MS. HARRIGAN - WILLIAM WHEELER 37

1 work.

2 So it had to be -- and the version of the facts that
3 he gave always supported the defense of others or self-
4 defense-type defense. The situation Mr. McCall was in --
5 it's been about six years, but I don't remember all -- I
6 think the grab around the throat the -- the murder victim
7 in this case, we were able to establish some prior bad
8 acts on his -- on his part. He was a big guy. Mr. McCall
9 was a pretty small guy is my recollection.

10 I mean, it all -- it all made sense, that defense. It
11 supported the facts that he told me.

12 Q In regards to your defense that -- this defense of --
13 self-defense of others and that the victim in this case
14 had prior bad acts, you called a witness to testify to
15 these prior bad acts, correct?

16 A I believe, Mr. -- Mr. Clem, wasn't it Clem?

17 Q Yes, Your Honor. I mean, yes, Mr. Wheeler, according
18 to the -- the transcript.

19 And can you categorize for the Court why you decided
20 to call Mr. Clem?

21 A I believe he'd been a victim of an assault by the --
22 the victim in -- in our case. I think he had cut his
23 throat or something to that effect.

24 Q You called three additional -- two additional
25 witnesses including your client during your case in chief,

1 correct?

2 A I -- I just remember having some witnesses. I tried
3 to review the transcript this morning. I can't remember,
4 but it seems like there were a few ladies that -- and I
5 don't know if that was to events after the shooting or
6 not. I -- I can't remember. I know there were some
7 additional witnesses though.

8 Q Did you feel that your client was properly indicted by
9 the Lee County Grand Jury?

10 A I -- I wasn't aware of any defects in the indictment
11 at the time.

12 Q If you had felt that he was not properly indicted, is
13 your standard practice to object or move to quash these
14 indictments?

15 A If I'd have thought there was a problem with the
16 indictment, I would have. But I don't -- I -- I wasn't
17 aware of any problem with the indictments, so I didn't.

18 Q Have you had an opportunity to review the indictments
19 prior to coming to court today?

20 A I -- I have not reviewed the indictments. I don't
21 know that they were in the material that I was -- that I
22 still have.

23 Q Did you file any *Brady* or Rule 5 motions in this case?

24 A I did.

25 Q Did you review this material with your client?

DIRECT EXAMINATION BY MS. HARRIGAN - WILLIAM WHEELER 39

1 A I did.

2 Q Do you recall how many times you reviewed the
3 discovery with him?

4 A I'd say two or three times at least.

5 Q Do you have any reason to believe the State did not
6 fulfill it's requirements under *Brady* or Rule 5?

7 A The only thing that they didn't was excluding -- they
8 tried to put in -- I -- I think I recall them trying to
9 put in some pictures through Dr. Ross that they had not
10 provided in discovery. And -- and we objected and those
11 pictures were kept out.

12 Q You did ---

13 A There's nothing else that I can recall was an issue
14 except the pictures.

15 Q So you do recall making a motion to exclude these
16 pictures as a *Brady* violation.

17 A Yes. And I -- I -- and I believe the motion was
18 successful and they were excluded. I think, anyway.

19 Q If the record reflects there were excluded, would you
20 refute that?

21 A Yeah. The record would say -- I remember -- I think
22 there's a colloquy in there. We object to some pictures
23 she had brought with them and the solicitor didn't add,
24 and they tried to put them in and we kept them out.

25 MS. HARRIGAN: And Your Honor, this is on page 289 and

1 290 --

2 THE COURT: Okay.

3 MS. HARRIGAN: -- of the transcript.

4 Q Would you briefly categorize the State's evidence in
5 this case for the Court?

6 A I'm just trying to remember. Mr. Thomas had given
7 some statements, and Mr. McCall, I think, had given less
8 or no statements. I don't think Mr. McCall had said quite
9 as much.

10 Mr. Thomas had, I think, given two statements that
11 were -- I think the first one, maybe, denied any
12 involvement. Then he came back and told a version much
13 more like what he testified to at trial with some minor
14 discrepancies, but generally in the same -- same vein.

15 Q Did you file or move to suppress these statements and
16 have a *Jackson v Denno* hearing before the trial began?

17 A I believe we did. That would have been my practice.
18 I believe we had a *Jackson v Denno* hearing.

19 Q And I believe you testified to this prior, but the
20 defense you went forward with at trial was defense of self
21 and defense of others, correct?

22 A Correct.

23 Q Did your client give you any potential witnesses or
24 leads for you to investigate before trial?

25 A I can't remember any specific. I -- I think if he

DIRECT EXAMINATION BY MS. HARRIGAN - WILLIAM WHEELER 41

1 did, we looked into them. I tell you, Mr. Thomas and I
2 prepared pretty well together for this trial. I mean, we
3 were -- I remember having some pretty lengthy discussions
4 with him about potential -- potential witnesses and -- and
5 what went on.

6 You know, six years later I can't remember
7 specifically anything, but he was pretty involved in his
8 defense, and -- and I enjoyed getting to know him and
9 working with him, but I can't remember the name of the
10 witness or anything at this point.

11 Q Did you have the use of a private investigator on this
12 case?

13 A I may have. I can't remember for sure. I -- I had
14 another murder case not too long after this, and I think I
15 had the same investigator on both of them. But I can't --
16 I don't want to say for sure, because I can't recall.

17 Q Did you enter into plea negotiations on behalf of Mr.
18 Thomas with the State?

19 A We tried. They -- I think they offered nothing less
20 than murder, and I'm thinking nothing less than 25 years.
21 And I think there was some plea offer, but it just -- and
22 -- and I remember presenting it to Mr. Thomas, and it just
23 wasn't worth the -- wasn't worth taking. And I can
24 understand why he didn't take it.

25 It may have been -- it was either 20 or 25 years I

1 think though.

2 Q Was it possibly to voluntary manslaughter?

3 A It might have been. It might have been to voluntary,
4 but I -- I remember it being -- seem like 20 or 25 years.

5 Q And you communicated this to Mr. Thomas?

6 A Yeah. We were talking to him about it.

7 Q And he decided to decline this offer.

8 A Yeah. He decided to go to trial.

9 Q Do you feel you had ample time to prepare for trial?

10 A Yes, I did..

11 Q During the jury selection process, did you request a
12 Batson hearing?

13 A I don't remember.

14 Q If -- if the record reflects that you did request such
15 a hearing, do you have any reason to believe ---

16 A No.

17 Q --- it didn't occur?

18 A No. If the record says it, I did.

19 Q And I believe we discussed this previously, but you
20 did request a *Jackson v Denno* hearing for Mr. Thomas's
21 statements?

22 A I believe so.

23 Q Do you recall what the Court's ruling was?

24 A I believe they let the statements in -- or the Court
25 let the statements in.

DIRECT EXAMINATION BY MS. HARRIGAN - WILLIAM WHEELER 43

1 Q Did you move for a directed verdict at the close of
2 the State's case?

3 A I did.

4 Q Did you renew the motion at the close of defense?

5 A The --

6 Q Directed verdict motion at the close of ---

7 A Oh.

8 Q --- your ---

9 A Yes. Yeah.

10 Q In regards to Mr. Thomas's specific allegations, his
11 first one is that you failed to request a jury charge on
12 assault and battery with intent to kill. The defense you
13 put forward in this case was defense of others, correct?

14 A Correct.

15 Q Would you state, in your professional opinion, that an
16 ABWIK charge would have been incongruent with a defense of
17 others defense?

18 A I think to some extent. Now -- and I say that now. I
19 -- I can't recall -- and this may -- but I can't recall
20 discussing beforehand, this is my looking back now.

21 I just don't remember thinking if we were very focused
22 on the defense that we had, and -- and I don't
23 specifically recall talking about the ABWIK then. But to
24 some extent, looking back, I don't know that it would --
25 it would have gotten us anywhere.

1 Q You don't feel your client was prejudiced by the
2 failure to request a jury charge on ABWIK?

3 MR. YOUNG: Leading. Objection.

4 MS. HARRIGAN: So noted. I'll -- I'll rephrase the
5 question.

6 THE COURT: Okay.

7 Q Do you -- do you recall the testimony of the
8 pathologist, Dr. Janice Ross?

9 A Generally, yes, ma'am.

10 Q Was she able to reach a conclusion as to which shot
11 was fatal to the victim in this case?

12 A I believe largely she -- she did. I think she said
13 that the larger caliber bullet penetrated the heart, or
14 something to that effect. And that the other -- I think
15 it was a .38 and a .22 were the two bullets.

16 Q Do you recall whether her report and testimony
17 indicated there were other potentially fatal bullet
18 wounds?

19 A I think that was part of the problem. She classified
20 some of our -- and I say "our" -- the .22 -- the testimony
21 was we had -- Mr. Thomas had the .22. Maybe one or more
22 of those shots was potentially fatal.

23 Q Do you recall where these shots were found in the
24 victim?

25 A I think there were a couple towards the back, and

DIRECT EXAMINATION BY MS. HARRIGAN - WILLIAM WHEELER 45

1 maybe one in the leg or something like that. I -- you
2 know, I can't remember now, but like four shots, something
3 like that, with the .22.

4 Q In regards to Mr. Thomas's second allegation that you
5 failed to object to the judge's charge on proximate cause
6 of the victim's death, have you had an opportunity to
7 review the judge's charge on proximate cause?

8 A I did.

9 Q Would you categorize this charge as a standard jury
10 charge?

11 A It appeared to be a standard proximate charge cause.
12 I mean, I didn't see anything inappropriate about it.

13 Q In regard to Mr. Thomas's third allegation that you
14 failed to object to the judge's admission of a prior
15 weapons charge to impeach his credibility, do you recall
16 objecting to this charge coming in?

17 A The pistol charge?

18 Q Yes.

19 A We tried to -- we tried to keep that out, and I wish
20 we had gotten a different ruling, but that's the ruling we
21 got. And it was going to come in.

22 Q Do you recall what the judge's ruling was?

23 A He was going to allow it.

24 Q And how was the weapons charge first brought into the
25 jury?

1 A I brought it in, I mean, once I knew it was going to
2 come in either way. You know, the whole case hinged on
3 Mr. Thomas's and -- and to some extent his -- but to a
4 large extent both defendants's testimony. You know, it
5 was either save that issue for an appeal, or risk the jury
6 not believe me when it came out on cross because it was
7 coming in.

8 You know, I -- I thought that the -- the jury had to
9 be able to believe what Mr. Thomas was telling them, and
10 he had -- they had to hear it from me.

11 Q Did Mr. Thomas ever deny possessing a weapon during
12 this incident?

13 A The previous one?

14 Q This -- the incident giving rise to the trial.

15 A Oh. No. He -- there was no question he had the --
16 the .22.

17 Q Do you feel that this prior conviction coming in --
18 where he had previously had a weapon, do you feel it
19 prejudiced -- was prejudicial to your client?

20 A I disagreed with the -- with the ruling, but at that
21 point, there was nothing I -- that was the ruling. It was
22 risk the -- the appellate issue or, you know, the jury was
23 going to hear it on cross.

24 Q Mr. Wheeler, do you have a copy of the transcript in
25 front of you?

DIRECT EXAMINATION BY MS. HARRIGAN - WILLIAM WHEELER 47

1 A Yes, ma'am.

2 Q In regard to applicant's ground No. 4, that you failed
3 to object to the solicitor's comments on his post-arrest
4 silence, if you wouldn't mind turning to page 669.

5 A Okay.

6 Q And if you would please review lines 12 through 20,
7 please.

8 A You want me to read those out loud or just read them

9 Q You can just read it.

10 (Brief pause.)

11 A Okay.

12 Q Would you categorize this passage as the solicitor
13 commenting on his post-arrest silence?

14 A No. This was -- I think, like he said, he gave two
15 statements. The first time he told the police he'd had
16 nothing to do with it, and the second time he was
17 interviewed he -- I think largely confessed the second
18 time, what he said -- testified at trial. I wouldn't
19 classify this as a comment on post-arrest silence.

20 Q In regards to Mr. Thomas's fifth allegation that you
21 failed to object to the solicitor's comments on his lack
22 of remorse, if you'll please turn back a few pages to 664.

23 And if you'll specifically review lines 1 through 10,
24 please.

25 (Brief pause.)

1 A Okay.

2 Q Would you categorize this comment -- these comments
3 from the solicitor as a comment on the facts of the case?

4 A They are the solicitor's comments on the facts of the
5 case. Frankly, that's a close call. My thinking on
6 that's going to be if you're going to object to that in a
7 solicitor's closing, you better make sure you win that
8 objection. If not, you're just painting a big yellow sign
9 in front of the jury that this hurts. I don't know which
10 way that would have gone.

11 Q Would you agree in your 12 years of practicing law
12 that solicitors and defense attorneys have a wide latitude
13 in their closing arguments?

14 A There's generally a fair amount of latitude, that's
15 fair to say.

16 Q In regards to Mr. Thomas's sixth allegation that you
17 failed to move for a dismissal of his indictments, your
18 testimony before, I believe, was that you did not notice
19 any inconsistencies or defects in his indictment.

20 A I did not.

21 MS. HARRIGAN: Court's indulgence.

22 (Ms. Harrigan and Mr. Alpin confer.)

23 MS. HARRIGAN: May I approach, Your Honor.

24 THE COURT: Yes, ma'am.

25 (Ms. Harrigan and Mr. Young confer.)

CROSS-EXAMINATION BY MR. YOUNG - WILLIAM WHEELER

49

1 (Ms. Harrigan hands a document to the witness.)

2 Q Do you recall ever seeing this document before?

3 A I believe this is the indictment in the case.

4 Q Would you look on the second page of the indictment.

5 (The witness complies.)

6 Q Do you see a signature in the true-bill portion of the
7 indictment?

8 A Yes, ma'am.

9 Q Based on your review of the indictment right now,
10 which is part of the records before the Court, do you
11 notice any defects in the indictment?

12 A I do not.

13 MS. HARRIGAN: No further questions, Your Honor.

14 THE COURT: Okay.

15 MR. YOUNG: If it please the Court.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION BY MR. YOUNG:

18 Q Since we're talking about the indictment, Mr. Wheeler,
19 do you know how many indictments were issued?

20 A I don't recall offhand. In -- in this case between
21 the co-defendants?

22 Q Yes, sir.

23 A I don't.

24 Q Okay. Do you recall when you were furnished the Rule
25 5 materials?

1 A Not off -- not offhand, I don't. I believe it was
2 sometime -- you know, several months prior to -- to trial.

3 Q All right. And you went to trial in 2006; is that
4 right?

5 A April, 2006. I just looked --

6 Q Okay.

7 A -- at the transcript.

8 Q You know whether or not there were any other
9 indictments issued against my client Mr. Thomas?

10 A Other than the one in this -- the -- that I just
11 looked at?

12 Q Yes, sir.

13 A I do not.

14 Q Let me show you this and ask you whether or not you've
15 ever seen this indictment.

16 (Mr. Young hands a document to the witness.)

17 A It -- yeah, I see it was prepared during the course of
18 the case. I don't think it's acted upon because I don't
19 see a signature on it. I don't know. I don't doubt that
20 it came from somewhere within the case, but I don't know -
21 --

22 Q Okay.

23 A --- where it came from.

24 MS. HARRIGAN: May the State have a chance to review
25 that?

CROSS-EXAMINATION BY MR. YOUNG - WILLIAM WHEELER

51

1 (Mr. Young and Ms. Harrigan confer.)

2 (Marked Applicant's Exhibit No. 2, Indictment; 1-page
3 document, for ID only.)

4 MR. YOUNG: We would offer this into evidence.

5 THE COURT: What says the State?

6 MS. HARRIGAN: The State would object. It's not part
7 of the official clerk's records in this case, and we're
8 not sure where this document has come from.

9 THE COURT: Okay.

10 MR. YOUNG: If it please the Court --

11 THE COURT: How do you ---

12 MR. YOUNG: -- I'm informed that my client obtained it
13 through the Freedom of Information -- by filing a Freedom
14 of Information request with the Clerk of Court's Office in
15 Lee County. Somehow this document showed up as a
16 September indictment.

17 THE COURT: Well, is it --

18 MR. YOUNG: It's unsigned. It's just --

19 THE COURT: Is it a stamped -- from the Clerk of Court
20 --

21 MR. YOUNG: I don't know if it came through the Rule 5
22 procedures or whether or not it came through with the
23 Freedom of Information. But I'm told Freedom of
24 Information.

25 THE COURT: But it's unnumbered -- it's unnumbered

1 indictment --

2 MR. YOUNG: And unsigned.

3 THE COURT: And unsigned -- other than stamped by --

4 MR. YOUNG: By the county.

5 THE COURT: Right. But it doesn't have anything
6 authenticating it came from the Clerk's Office. There's
7 no stamp on it, there's no anything.

8 MR. YOUNG: Well, I assure the Court that my client
9 lacks the ability to manufacture these in prison. And ---

10 THE COURT: All right. Well, let ---

11 MR. YOUNG: --- that's where I got it from.

12 THE COURT: Well, let me ask you what is the purpose
13 of it anyway?

14 MR. YOUNG: Just to show there was another indictment
15 pre-dating this one.

16 THE COURT: Okay. Well, I don't know what difference
17 does it make in that it wasn't presented to anybody.

18 MR. YOUNG: Well, my next questions are about --
19 involving the indictment of the November term. If I've
20 got an unsigned grand jury indictment here that is
21 unsigned by the foreman of the grand jury, the question is
22 when did the foreman of the grand jury sign it?

23 THE COURT: Do you have an indictment that was signed
24 by the grand jury?

25 MR. YOUNG: Yes, sir. Right here. It was signed

CROSS-EXAMINATION BY MR. YOUNG - WILLIAM WHEELER

53

1 November 22, which is the date of this indictment.

2 MS. HARRIGAN: That should be part of the -- Your
3 Honor's packet in ---

4 THE COURT: Right.

5 MS. HARRIGAN: --- this case as well.

6 THE COURT: Okay. Well, this -- this indictment was a
7 copy -- I assume was created by the Solicitor's Office.

8 MR. YOUNG: Yes, sir. I assume that, too.

9 THE COURT: Right. Okay.

10 MR. YOUNG: And then we've got this one, which is part
11 of your package --

12 THE COURT: Okay.

13 MR. YOUNG: -- which -- the significance, I would
14 submit, is the fact that the indictment is signed the week
15 before general sessions court. And the question is
16 whether or not the grand jury was convening during the
17 civil term of court in Lee County, or whether or not it
18 was actually signed on November 22. Because certainly the
19 indictment is dated that day and it's typed in there, and
20 it's -- it's obviously signed by the foreman, who also
21 dated it November 22 --

22 THE COURT: Right.

23 MR. YOUNG: -- '05.

24 THE COURT: And I think, from my understanding, the
25 grand jury in Lee County meets the Thursday before a term

1 of court, just like they do in every other county in this
2 circuit. And that's when it was presented.

3 MR. YOUNG: Yes, sir. I -- I would assume that's
4 probably correct.

5 THE COURT: Right.

6 MR. YOUNG: But I would ask that these be submitted
7 into evidence.

8 THE COURT: Well, I mean -- and I don't know what
9 affect the non-sign have. I mean, the -- I don't know
10 what they prove other than one that was signed on the 22nd
11 -- was -- was that a Thursday?

12 MS. HARRIGAN: Your Honor, I don't have a court -- a
13 calendar for 2005 currently.

14 THE COURT: Okay.

15 MS. HARRIGAN: I'm sorry.

16 MR. YOUNG: This is part of my client's case though.
17 He's alleged that he should have moved to quash the
18 indictment. I'm simply trying to show there was an
19 indictment for September -- there was an unsigned
20 indictment, and then there's a signed indictment for
21 November the 22, 2005.

22 THE COURT: Okay. And is -- is there any difference
23 in those indictments other -- any verbal difference in
24 those indictments, other than one was finally signed on
25 the 22nd?

CROSS-EXAMINATION BY MR. YOUNG - WILLIAM WHEELER 55

1 MR. YOUNG: The one that's been admitted into evidence
2 is September 29th, and there is a difference in this one.

3 THE COURT: But it was never submitted to the grand
4 jury or you have no ---

5 MR. YOUNG: I have no evidence ---

6 THE COURT: And you have no way to authenticate that
7 document ---

8 MR. YOUNG: No, sir.

9 THE COURT: --- that it was in ---

10 MS. HARRIGAN: The State would object that it can't be
11 authenticated, but we'll leave it in the Court's
12 discretion.

13 THE COURT: Okay. Well, wait a second.

14 (The Court confers with law clerk.)

15 MR. YOUNG: We still offer into evidence.

16 THE COURT: And I don't know whether that makes any
17 difference whatsoever. The one that seems to make a
18 difference, at least he's alleging, is the 22nd one that
19 was true-billed. And that, I guess, his argument was it
20 was not a term of general sessions court.

21 MR. YOUNG: That's correct.

22 THE COURT: And that therefore, it's an improper
23 indictment, because the grand jury met at some time that
24 wasn't a term of court.

25 MR. YOUNG: I've explained to my client that grand

1 juries typically meet the week before court, and then
2 sometimes the foreman of the grand jury would simply come
3 in ---

4 THE COURT: Right.

5 MR. YOUNG: --- and make a report at the beginning of
6 general sessions court.

7 THE COURT: Right.

8 MR. YOUNG: We understand that, but this is part of
9 his case which I'd ask be admitted into evidence.

10 THE COURT: Okay.

11 (Mr. Young confers briefly with the court reporter.)

12 (Marked Applicant's Exhibit No. 3, 2-page indictment
13 document; Applicant's Exhibit No. 4, one-page indictment
14 document.)

15 THE COURT: Either side have the report produced by
16 the Clerk of Court on the first day of general sessions
17 that this indictment was presented to the Court?

18 MS. HARRIGAN: No, Your Honor. We do not have the
19 record of that.

20 THE COURT: Okay. All right.

21 MR. YOUNG: If it please the Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION BY MR. YOUNG (continues):

24 Q Mr. Wheeler, based on the face of the indictment, you
25 had no reason to challenge the indictment based upon just

1 looking at the indictment and knowing what has been the
2 usual and normal course of business for Lee County, as far
3 as indictments being presented to the grand jury, signed
4 by the foreman, and then turned back over to the clerk for
5 presentation to the Solicitor's Office?

6 A Nothing on the face of it appeared --

7 Q Okay.

8 A -- problematic to me.

9 Q And so based on that, you prepared for trial, and the
10 theory of your case is self-defense or defense of others.

11 A Defense of others.

12 Q Okay. Now, let me jump to the trial strategy of not
13 seeking a separate trial for Mr. Thomas as opposed to
14 being there with Mr. McCall. Is -- did y'all ever discuss
15 that at all?

16 A I can't remember specifically a discussion, but you
17 know, seems like -- I mean, Mr. Thomas and I talked about
18 it a good bit, of course. But the possibility that
19 something's going to change is always there.

20 But they were pretty well together on what they were
21 going to do. I think they both had to be credible, Mr.
22 McCall and Mr. Thomas, and -- and I think they -- there
23 was some benefit in trying the case together. Seems like
24 there may have been some *Bruton* issues that we were able
25 to take advantage of ---

1 Q Right.

2 A --- that we wouldn't otherwise been able to.

3 Q In other words, he could have remained silent, Mr.
4 McCall?

5 A Exactly.

6 (Mr. Young hands a document to the witness.)

7 Q As far as the statements were concerned, you were
8 aware that Mr. Thomas gave this written statement to law
9 enforcement with respect to his involvement in this
10 incident?

11 A I -- I think I was aware of every -- any statement he
12 gave.

13 Q Right.

14 A You know, it's been a long time since I looked at it.

15 Q And this statement was initiated just shortly after
16 his arrest; is that correct?

17 A It says "April the 29th, '05," is when -- the time on
18 this.

19 Q Okay.

20 A So I -- I would think it's shortly after he was
21 arrested.

22 Q And it was based upon this that the strategy was for
23 self-defense/defense of others.

24 A That and probably whatever else he told me. I didn't
25 just read the whole statement. I think that's consistent

CROSS-EXAMINATION BY MR. YOUNG - WILLIAM WHEELER

59

1 with what he testified to later.

2 MR. YOUNG: We would offer the statement into
3 evidence.

4 MS. HARRIGAN: Your Honor, if we could at least see
5 these and any additional documents that he plans to
6 introduce, because the State has not seen these documents.

7 MR. YOUNG: Oh, I thought you had seen all these.

8 MS. HARRIGAN: No. We don't have a copy --

9 THE COURT: Did that document -- was that presented in
10 trial?

11 MR. YOUNG: Yes, sir.

12 MS. HARRIGAN: No objection. Thank you.

13 THE COURT: Okay. It's in without objection.

14 (Applicant's Exhibit No. 5, 4-page statement document,
15 in evidence.)

16 CROSS-EXAMINATION BY MR. YOUNG (continues):

17 Q So as far as trial strategy's concerned, you made a
18 decision that it was better not to try and separate the
19 trials; is that right?

20 A I think we were better served by keeping them
21 together.

22 Q Right. Was that discussed with Mr. Thomas?

23 A I can't recall. I mean, I can't recall having one
24 single conversation with him about that, but you know, I
25 do remember having some right lengthy discussions with him

1 about what all was going to come together, and -- and what
2 our plan was.

3 I mean, I remember meeting with him a lot as we
4 prepared for trial. And he was -- I tend to think we
5 talked about it, but I can't tell you what day and time we
6 did.

7 Q Okay. Part of the whole trial strategy was that Mr.
8 Thomas's testimony was he tried to get the deceased off of
9 Mr. McCall. He couldn't. Shots were fired, he fell back,
10 and then he pulls his pistol and shoots the deceased in
11 the back a couple of times; is that right?

12 A I believe that's ---

13 Q And when you shoot somebody in the back with a pistol,
14 that's intent to kill; is that right?

15 A I think that could be inferred.

16 Q Wasn't trying to wound him or anything like that. All
17 right.

18 Why did you not request a charge with assault and
19 battery with intent to kill as a lesser included offense
20 to murder?

21 A And that's what I can't -- I can't specifically recall
22 considering that. So I wouldn't sit here and say I
23 debated it one way or the other, because I can't now think
24 of a time beforehand -- I'm just telling -- thinking in
25 retrospect that it wouldn't -- I -- I don't know if it

CROSS-EXAMINATION BY MR. YOUNG - WILLIAM WHEELER

61

1 would have been consistent, but -- and I don't know
2 whether the coroner's report was definite in that it
3 didn't say that there was no possibility that the .22
4 bullets contributed to the man's death.

5 Q But wasn't the whole theory that the .38 caliber
6 pistol bullet had already entered the heart?

7 A Well, that was -- I was looking back at that -- that
8 line of questioning to Dr. Ross. Still, our focus was on
9 the self-defense aspect of it. And the questions were
10 more important, I think, at the time I was asking to
11 establish -- I think there's no question that the first
12 two -- the larger caliber weapon fired the first two
13 shots.

14 And I think both Mr. Thomas and Mr. McCall's
15 testimonies were consistent in that the -- that engagement
16 did not stop after those first two shots, which, you know,
17 may have been the -- the fatal shot.

18 He had a high blood alcohol; he was a big guy as I
19 recall.

20 Q You're talking about the deceased.

21 A The deceased. And I think that was more towards the
22 view that -- you know, it took a lot to get his -- to stop
23 him. I mean, the first two shots didn't make him release
24 Mr. McCall, I believe. So I think that's where I was --
25 that was where we were driving with that at the time. I

1 think that's what I had in mind.

2 Q You would agree, though, this would have given the
3 jury another or an alternative verdict, wouldn't you?

4 A It would have been an alternative. I have to agree --
5 -

6 Q And it would have been ---

7 A --- with that.

8 Q --- lesser than the charge of murder.

9 A That's true.

10 Q Okay. You did not object to the judge's charge on
11 proximate cause. Did you submit any other charges which
12 would have directed the jury's attention to the larger
13 caliber bullet, based upon the testimony of the parties,
14 being fired first and that that had -- would have been the
15 fatal bullet? Did you submit any charges like that?

16 A I did -- I did not.

17 Q Okay. You were kind of put in a funny situation with
18 the prior weapons charge. You filed a motion in limine to
19 keep that charge out, and the Court ruled against you.
20 Then apparently you made an election to go ahead and bring
21 it out on Mr. Thomas's direct testimony.

22 Did you ask the Court for any type of protection based
23 upon his ruling in -- that he would not grant your motion
24 for limine to protect the record?

25 A I don't believe I did. If it's not in the record, I

1 didn't. I don't remember.

2 Q With respect to the solicitor's comments on post-
3 arrest silence, is there a reason why you didn't say
4 anything on that or did not object?

5 A In that portion of the transcript that I looked at
6 earlier?

7 Q Yes, sir.

8 A That particular line? I don't know that that went
9 towards post-arrest silence being inferred that he did
10 something, as much as it was a comment on he -- he told
11 something different, that he wasn't there; he was in
12 Camden, something to that effect.

13 Q But wasn't this also part of Mr. McCall's testimony,
14 too, that the solicitor's making comments on? And then
15 that had an overflow effect of Mr. Thomas's case?

16 A If y'all direct me back to the transcript, I'll look
17 at it again. I'd have to --

18 Q If you'll look on page 511, lines 5 through 13.

19 A Okay. On line 5 through 13 on 511?

20 Q Yes, sir.

21 A I'm there.

22 Q Do you remember these questions (as read): "You
23 didn't mention that you were acting in self-defense at the
24 time, did you?"

25 You didn't object to that line of questioning being

1 put to Mr. Thomas?

2 A No, sir.

3 Q Okay. Then if you'll go to page 699.

4 A Okay.

5 Q I'm sorry. Mine's loose leaf here. Lines 12 through
6 17. Did you object to any of that?

7 A No, sir.

8 Q Now, did you find yourself in a problematic situation
9 with going to trial with both these defendants taking the
10 stand, Mr. McCall and Mr. Thomas?

11 A I was looking back this morning, trying to recall.
12 Mr. McCall's version was not exactly what we had
13 anticipated. And I looked back this morning -- and I
14 think this is what you're asking me -- but -- what did he
15 change on. And really, I don't know if it was as much in
16 the words that he testified to as his manner of
17 delivering. It wasn't -- I think he tried to minimize his
18 own involvement in it by his description of the struggle
19 over the pistol between he and Mr. Rouse.

20 Q And that was -- that was the cross-examination by Mr.
21 Severance, wasn't it?

22 A I can't -- I can't recall now where exactly it came
23 out. But I think that was -- I remember when he finished,
24 I was somewhat dissatisfied with what he had had to say.

25 Q Okay. The bottom line was and still, all things

CROSS-EXAMINATION BY MR. YOUNG - WILLIAM WHEELER

65

1 considered, Mr. McCall basically said that Mr. Thomas
2 fired to save Mr. McCall's life.

3 A He -- he maintained that. That didn't change. And
4 that's why I said it wasn't -- the basic facts were the
5 same. It was more concern, maybe, with delivery ---

6 Q But it still came out time and time and time again
7 that Mr. Thomas shot Mr. Rouse in the back: Shot Mr.
8 Rouse in the back; shot him more than once; shot him more
9 than twice.

10 A Uh-huh.

11 Q And that's -- really it came out repeatedly in front
12 of the jury.

13 A It did.

14 Q Okay.

15 MR. YOUNG: One second, please, Your Honor.

16 (Mr. Young confers with the applicant.)

17 MR. YOUNG: If it please the Court.

18 THE COURT: Yes, sir.

19 MR. YOUNG: That's all the questions I have.

20 THE COURT: Okay. Anything from the State?

21 MS. HARRIGAN: Court's indulgence for one moment
22 briefly.

23 THE COURT: Okay.

24 MS. HARRIGAN: May it please the Court.

25 THE COURT: Yes.

RE-DIRECT EXAMINATION BY MS. HARRIGAN - WILLIAM WHEELER 66

RE-DIRECT EXAMINATION BY MS. HARRIGAN:

Q Mr. Wheeler, did you request any lesser included offense charges in this case besides murder?

A I believe we got voluntary as well.

Q Do you recall if the Court did charge the jury with voluntary manslaughter?

A I believe he did. I had -- I'd asked for involuntary as well, and I didn't get that. We got voluntary.

Q And your client was ultimately convicted of murder, correct?

A He was.

MS. HARRIGAN: No further questions, Your Honor.

MR. YOUNG: No additional questions.

THE COURT: All right. You can step down.

(The witness exits the stand.)

MS. HARRIGAN: The State has no additional witnesses to call.

THE COURT: Okay.

MR. YOUNG: If it please the Court. My client advised me he'd like to re-take the stand for just a minute to inform the Court something. Quite frankly I haven't had a chance to find out what he wants to state to the Court. So I don't know.

THE COURT: All right. Find out.

(Mr. Young confers with the applicant.)

1 MR. YOUNG: If it please the Court, he would like to
2 further explain, based upon what Mr. Wheeler said, some of
3 the issues that he raised.

4 THE COURT: Okay.

5 (The applicant re-takes the stand.)

6 THE COURT: You're still under oath.

7 THE APPLICANT: Thank you, Your Honor. I just want to
8 get this on the record, Your Honor. As far as the
9 proximate cause of the victim death go, and if you could
10 bear with me, the State's pathologist who conducted the
11 autopsy on the victim stated that the victim's death was
12 caused by this -- this .38 medium caliber gunshot wound to
13 the chest, which nobody contend that I shot.

14 If -- if you could go to the transcript page 626,
15 lines 16 through 24, the judge declined the charge
16 accomplice liability, which is the hands of one is the
17 hands of all theory. And that being the case, me and my
18 co-defendant's actions and conduct should have been viewed
19 independently as it's not the hands of one, hands of all
20 charge, which the judge said that's not the law given on
21 that.

22 It's like saying my co-defendant manslaughtered [sic]
23 the victim, and I turned around and murdered the victim
24 after that.

25 The State failed to prove beyond a reasonable doubt

1 that the gunshot wound inflicted by me was the proximate
2 cause of the victim's death. They failed to prove that it
3 was the efficient cause or the sole cause or the immediate
4 cause of the victim's death. The State failed to prove
5 beyond a reasonable doubt that the gunshot wound inflicted
6 by me was the cause that directly produced this event, and
7 without which the event would not have occurred.

8 And forgive me, but it's a -- it's -- it's -- it's a
9 case called *State vs. Riley* where it says that ---

10 THE COURT REPORTER: I'm sorry. State ---

11 THE COURT: *State vs. Riley*?

12 THE APPLICANT: Riley; R-i-l-e-y.

13 --- where it says that (as read): "Where injury is
14 inflicted on another and contributes mediately or
15 immediately to his death, the actor deemed guilty of
16 homicide and is not from responsibility, though other
17 causes also contribute to the death."

18 Your Honor, without a proper definition of causation
19 relative to me and my co-defendant's action or conduct in
20 the judge's charge, if the jury considered causation at
21 all, they could have -- that my action or conduct, no
22 matter how reckless, could merely supplement not supervene
23 my culpability as to assault and battery with intent to
24 kill or assault and battery of a high and aggravated
25 nature or either mutilating a dead body.

1 And finally, as the State's pathologist testimony and
2 medical report regarding the fatal wound inflicted by my
3 co-defendant an the jury's manslaughter conviction for my
4 co-defendant, the judge's proximate cause charge permitted
5 the jury to find me guilty of murder when, in point of
6 fact, no evidence was even presented at trial to show that
7 the fatal wound inflicted by my co-defendant was
8 admittedly -- as to a potentially fatal wound inflicted by
9 me, subsequent to the fatal wound inflicted by my co-
10 defendant, actually or directly or immediately causing
11 victim's death. That's why I was saying Mr. Wheeler's
12 failure to object to the judge's erroneous charge on the
13 proximate cause of death was ineffective assistance.

14 And I would like to go into the assault and battery
15 with intent to kill or assault and battery of a high and
16 aggravated nature argument that I presented. And forgive
17 me again, there's a case called *Kanaren vs. Everett*, and
18 that's ---

19 THE COURT REPORTER: I'm sorry. The first name?

20 THE WITNESS: Karnaren. That's K-a-r-n-a ---

21 MS. HARRIGAN: Your Honor, the State would object, for
22 the record that this is a narrative, not a line of
23 questioning.

24 THE COURT: Okay. And that's true.

25 MR. YOUNG: Well, he started talking soon as he got up

RE-DIRECT EXAMINATION BY MR. YOUNG - EFRAIN THOMAS 70

1 there, Your Honor. And you were quiet and I was quiet,
2 and of course, she was quiet and I was going to keep being
3 quiet.

4 THE COURT: I understand. But now, she -- you got ask
5 some questions, he's got to answer them

6 MR. YOUNG: Okay.

7 RE-DIRECT EXAMINATION BY MR. YOUNG:

8 Q Mr. Thomas, did you want to tell the Court anything
9 about the proximate cause issue?

10 A Yes, I did.

11 Q Well, go ahead and tell him.

12 THE COURT: Well, I -- now he's always told me all he
13 wanted about proximate cause. I don't want to go back
14 there. I thought he was telling me about assault and
15 battery with intent to kill. Isn't that where you were
16 going?

17 MR. YOUNG: He started to.

18 Q If you'll go ahead and finish that.

19 THE COURT: And you finished proximate cause, right?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. Now, go over -- ask him about
22 assault and battery.

23 MR. YOUNG: All right.

24 RE-DIRECT EXAMINATION BY MR. YOUNG (continues):

25 Q Mr. Thomas, what do you want to tell the Court about

1 assault and battery?

2 A There's a case ---

3 MS. HARRIGAN: The Court -- the State would again
4 object, for the record, that this is going to be a
5 narrative, not a line of questioning.

6 THE COURT: I understand. And when -- you can have a
7 short narrative and you can get this over with.

8 MR. YOUNG: Yes, sir.

9 THE COURT: I -- I understand your objections, and I'm
10 not going to sit hear and listen to 30 minutes. But you
11 better tell me what you want to quick.

12 THE WITNESS: All right.

13 THE COURT: All right.

14 THE WITNESS: They say in *Kanaren vs. Everett* it says
15 that a defendant was -- a defendant is entitled to a
16 charge on a lesser degree of crime where there's support
17 for it in the evidence; and due process requires that this
18 lesser degree offense be given when the evidence warrants
19 such instruction. And then it also says if a defendant
20 has a particular theory of defense, he is constitutionally
21 entitled to instruction on that theory where the evidence
22 supports it.

23 And that's where it comes in as far as my counsel
24 submitting -- I'm submitting that my counsel did challenge
25 this assault and battery with intent or assault and

1 battery of a high and aggravated nature theory by cross-
2 examining the State pathologist as to the victim's actual
3 cause of death, to where she said my gunshot wounds were -
4 - were potentially fatal. And he also asked her, well,
5 that -- does that mean the wounds were potentially fatal,
6 and she said yes. And he said did he have the potential
7 to live, and he said yes -- she said yes, he had the
8 potential to live.

9 THE COURT: Okay.

10 RE-DIRECT EXAMINATION BY MR. YOUNG (continues):

11 Q That's from the wounds inflicted by you.

12 A The wounds inflicted by me.

13 Q Okay.

14 THE WITNESS: I did not fire the fatal shot, Your
15 Honor. That's like saying he was killed and then I turned
16 around and murdered him right after that.

17 Q Is there anything else ---

18 THE COURT: Okay.

19 Q --- you want to tell the Court on any other issues
20 that you haven't raised in just these last few minutes?

21 A As far as the post-arrest silence issue goes, when I
22 brought up the *Doyle* -- there's another case called *State*
23 *vs. Craig*, where it says ---

24 THE COURT REPORTER: *State vs. --*

25 THE WITNESS: *Craig*. That's C-r-a-i-g.

RE-CROSS-EXAMINATION BY MS. HARRIGAN - EFRAIN THOMAS 73

1 A --- where it says that a person arrested for a crime
2 has the constitutional right to not say anything that
3 could be used to incriminate himself. And the fact that
4 this person does not say anything about any particular
5 fact or issue in this case cannot be used against him in
6 any way at any time, Your Honor.

7 Q Mr. Thomas, you gave a voluntary statement to law
8 enforcement that was introduced against you at the trial;
9 is that correct?

10 A Yes, sir.

11 Q Okay. Just wanted to clear that up.

12 THE COURT: Okay. And you testified at trial.

13 THE WITNESS: Yes, sir, I did.

14 THE COURT: Okay. Thank you. Anything else?

15 THE WITNESS: I'm finished, Your Honor. Thank you.

16 THE COURT: Okay. You're welcome.

17 THE WITNESS: Thank you.

18 MR. YOUNG: Answer any questions ---

19 THE COURT: You want to ask him any questions?

20 MR. YOUNG: --- that counsel may have for you.

21 MS. HARRIGAN: Briefly on cross, Your Honor.

22 RE-CROSS-EXAMINATION BY MS. HARRIGAN:

23 Q Mr. Thomas, do you recall the State pathologist, Dr.
24 Janice Ross, testifying?

25 A Yes, ma'am.

RE-CROSS-EXAMINATION BY MS. HARRIGAN - EFRAIN THOMAS 74

1 Q Do you have a copy of the transcript in front of you?

2 A Yes, ma'am.

3 Q If you would please turn to page 283 and 284 for me.

4 A Yes, ma'am.

5 Q And if you'll specifically look at lines 19 through
6 25. If you'll read that to yourself, please.

7 (Brief pause.)

8 (Mr. Young confers with Ms. Harrigan.)

9 A Yes.

10 Q Does it state there that shots fired by you are
11 potentially fatal as well?

12 A Yes, ma'am.

13 Q And if you'll look to the next page, 284, lines 18
14 through 22, please.

15 A Yes, ma'am.

16 Q If you'll read that, please, into the record.

17 A (As read) "And you say one of the gunshot wounds to
18 the back would have killed Mr. Rouse in your opinion,
19 either one in the back would have killed him?" "Yes."
20 "How about look at your report for me. Is that your
21 report?" "Yes."

22 Q Thank you.

23 MS. HARRIGAN: No further questions, Your Honor.

24 THE COURT: Okay.

25 THE WITNESS: Can I present something, Your Honor?

RE-DIRECT EXAMINATION BY MR. YOUNG - EFRAIN THOMAS

75

1 THE COURT: Well --

2 MS. HARRIGAN: The State would object. It would be a
3 narrative, not a line of questioning.

4 MR. YOUNG: Let me just ask a question.

5 RE-DIRECT EXAMINATION BY MR. YOUNG:

6 Q Based upon the questions that the Attorney General's
7 just put to you, do you have anything else to inform the
8 Court?

9 A Yes, I would.

10 Q What is that?

11 A I have a document -- I have an exhibit I would like to
12 present stemming from the respondent's brief of my direct
13 appeal process on page 14, where it says that -- it's
14 stating clearly by the State that the wounds inflicted by
15 me were potentially fatal; however, the fatal cause of
16 death derived from a larger caliber gun however.

17 THE COURT: Okay.

18 MS. HARRIGAN: And Your Honor, the briefs on appeal
19 from respondent and appellate are part of the record
20 before the Court at this time.

21 THE COURT: I have those and I'll review that.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Okay. Thank you, sir.

24 (The witness exits the stand.)

25 MR. YOUNG: If it please the Court, again, that's our

1 case.

2 THE COURT: Okay. Anything else from either side?

3 MS. HARRIGAN: Nothing ---

4 THE COURT: I'll review this entire record and let
5 y'all know.

6 MS. HARRIGAN: Thank you, Your Honor.

7 MR. YOUNG: Thank you, Your Honor.

8

9 -- END OF TRANSCRIPT OF RECORD --

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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 Third Circuit Court for Sumter County, South Carolina, on the 13th day of January, 2012.

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

A handwritten signature in dark ink, reading "Bonnie H. Kelly", is written over a horizontal line.

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

August 19, 2013

STATEMENT

TIME 1418 DATE 10/29/05 PLACE 114 E. Council St.
 I, Ephraim Thomas having been advised of my rights under the FIFTH AMENDMENT to the CONSTITUTION as to compulsory self incrimination, my right of counsel and my right of trial, and knowing that anything that I say may be used against me in a court of law, and knowing that I do not have to make any statement at all, do hereby volunteer the following to INV. C.L. Thompson who has identified himself/herself as a police officer. I wish to make the following statement under oath:

Thompson - Q

E. Thomas - A

Q - Ephraim, were you involved with the homicide of
Troy Brown on 10/17/05?

A - Yes.

Q - What occurred on the evening in question?

A - Me, Troy, and two other people were on our way to play pool. All I know was him and the other person was hugging. I bent down to fix my pants in my sneakers. When I got up Troy and the other person was scuffling.

Q - When you say "scuffle" do you mean "fighting"?

A - Now, they was so close to each other, swinging each other around.

Q - Continue.

A - We tried to break in up and I heard the first shot. I jumped back and stood there letting them scuffle because I ain't know who had the gun. Then when the other person finished shooting him, Troy came out and the other person, direction, Troy told me to "suck his dick" and he ran at me, he charged toward me. (Can't)

I have read the above statement consisting of 4 pages and attest that it is a true and accurate account of the events which took place on Wilson St at Ray St

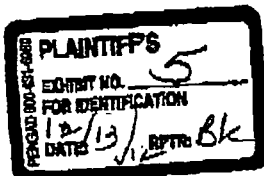
It was given by me freely and voluntarily, and without fear of threat or promise of reward and I swear or affirm that it is true.

Witnessed by: [Signature]

SIGNED: Ephraim Thomas

Witnessed by: [Signature]

Page 1 of 4 Pages



834

STATEMENT of: Thom, Efrain DATE: 1/29/05 (continued) 1418 hr.
SSN: 057-68-5442 DOB: 6/25/82

Thompson: Q

Efrain Thompson: A

(Con't)

When he charged me, I ran around him. When I ran around him, I shot him three times in his back. I shot him, then ran.

Q- When you say "him" are you referring to Troy?

A- Yes.

Q- What kind of gun did you have?

A- 22 caliber. Semi-automatic.

Q- ^{CT} Was it your intent to kill Troy?

A- No.

Q- What was Troy's condition?

A- He was "fucked up" I don't know. It could have been crack, cocaine, alcohol; he was "fucked up".

Q- Did you feel your life was in jeopardy?

A- Yes.

Q- What were you wearing at the time?

A- Black jeans, Black sweater, white T-shirt hanging out, and Black Jordans.

(Con't)

I have read the above statement consisting of 4 pages and attest that it is a true and accurate account of the events which took place on Wilson St at Ray St. It was given freely and voluntarily, and without fear of threat or promise of reward and I swear or affirm that it is true.

Witnessed by:

SIGNED: Efrain Thompson

Witnessed by:

STATEMENT OF:

(Cont)

Therapist, Brian DATE: 1/25/08 (continued)

Q - What did you do with the clothes that you wore that night?

A - Threw them away.

Q - Where is the weapon?

A - Gave it to somebody.

Q - Was there any pre-existing altercation going on between you, the other person, and Troy?

A - No sir.

Q - Was the incident a spontaneous one?

A - Yeah.

Q - So in total, there were four people on the scene; two you don't wish to ID?

A - Yes.

Q - In reference to the unidentified subjects that we'll label person 1 and person 2, did person 2 have anything to do with the incident?

A - Now.

Q - Are you saying that person 1 was the one that was initially assaulted by Troy?

A - Yeah.

Q - Other than what you told me, is there anything that you wish to add to your statement?

A - (See additional)

(Cont)

I have read the above statement consisting of 4 pages and attest that it is a true and accurate account of the events which took place on Wilson St at Ray St.
 It was given freely and voluntarily, and without fear of threat or promise of reward and I swear or affirm that it is true.

Witnessed by:

SIGNED:

Witnessed by:

Page 3 of 4 Pages

STATEMENT of: Thom, E. Brain DATE: 6/29/05 (continued)
 SSN 051-68-5442 DOB 06/25/82

A - For the record, Mr. Troy Rouse was a good person, and my intentions were never to harm him on purpose. I think he acted the way he did because he was intoxicated. Everyday I pray for him, I pray for his family and I pray for myself. I made a terrible mistake, but I felt my life was in danger. I'm not a killer. I am prepared to take the repercussions for my actions and I pray that I get a second chance at life. To his family, I apologize from my soul. I hope they can go on with their lives knowing that I am one of the ones responsible for Troy's death. They deserve to know the truth. Lord have mercy on me. R.I.P. Troy.

I feel I shouldn't incriminate anyone but myself because the murder wasn't intentional. One life was lost, and mine is on the line. No one else's life should be in jeopardy, whether it's death or prison. That is why I confessed to what R. Efrain M. Thomas did. I did what I did because I feared for myself at the time. But I regret every second of it. My sympathy goes to his family. I'm sorry.)

(End of Statement 15, 2 hr)

Efrain Thomas

I have read the above statement consisting of 4 pages and attest that it is a true and accurate account of the events which took place on Wilson St at Ray St. It was given freely and voluntarily, and without fear of threat or promise of reward and I swear or affirm that it is true.

Witnessed by:

SIGNED:

Efrain Thomas

Witnessed by:

STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Efrain Thomas, #314836,

Case No. 2009-CP-31-0184

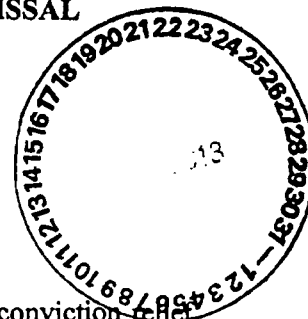
Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.



PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed September 11, 2009. The Respondent made its Return on January 11, 2010. An evidentiary hearing into the matter was convened on December 13, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Kenneth R. Young, Jr., Esquire.¹ The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. The Applicant was indicted during the November 2005 term of the Lee County Grand Jury for Murder and Possession of a Weapon During a Crime of Violence (2005-CP-31-0102). Applicant was represented by William W. Wheeler, III, Esquire. On April 4-6, 2006, Applicant proceeded to a jury trial before the Honorable Clifton Newman, where he was convicted as indicted. Judge Newman sentenced to Applicant to thirty years imprisonment for

¹ Applicant was represented by Charles T. Brooks, Esquire, who was appointed to this matter. At the beginning of the evidentiary hearing, Mr. Young moved to be substituted as counsel, as he was retained by Applicant's grandmother. This Court granted Mr. Young's motion and Mr. Young represented Applicant at the hearing.

Murder and to five years imprisonment for Possession of a Weapon During a Crime of Violence, with both sentences to be served concurrently.

A notice of appeal was filed and an appeal perfected. Applicant's conviction and sentence were affirmed. State v. Thomas, Op. No. 2009-UP-059 (S.C. Ct. App. filed January 22, 2009). The Remittitur was sent on February 11, 2009.

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

1. "Ineffective assistance of counsel."
 - a. "...failure to request a jury charge on assault and Battery with Intent to Kill (ABIK)."
 - b. "...failure to object to judge's charge on 'proximate cause' of the victim's death."
 - c. "...failure to object to judge's admission of his prior weapon charge to impeach his credibility."
 - d. "...failure to object to solicitor's comment on his post-arrest silence."
 - e. "...failure to object to solicitor's comment on his lack of remorse."
 - f. "...failure to move for dismissal of his indictment based on solicitor's noncompliance with constitutional and statutory laws, jurisdictional in nature, in obtaining his indictment."

At the evidentiary hearing, Applicant moved to amend his application to include the allegation that counsel was ineffective for failing to move for a severance of his trial from his co-defendants. Respondent objected to this amendment, citing a lack of notice. Respondent later withdrew this objection and this Court granted Applicant's motion to amend his application to include this ground.

At the evidentiary hearing, Applicant testified on his own behalf. The Respondent presented testimony from trial counsel William W. Wheeler, III, Esquire ("Counsel"). This

Court also had before it a copy of the Applicant's trial transcript, the records of the Lee County Clerk of Court, Applicant's appellate records, and the Applicant's records from the South Carolina Department of Corrections.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in his application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

"Counsel was ineffective for failing to request a jury charge on Assault and Battery with Intent to Kill"

Applicant alleges that Counsel was ineffective for failing request the trial court instruct the jury on the crime of Assault and Battery with Intent to Kill. At the evidentiary hearing, Applicant testified that the victim was shot during a fight and acknowledged that he fired a weapon at the victim, but that it was his co-defendant's shots that actually caused the victim's death. Applicant testified that he never intended to kill the victim, but acknowledged that the victim did die as a result of multiple gunshot wounds. Applicant testified that his defense at trial was self-defense and defense of others. He stated that he discussed the issue of whether to request a jury charge of Assault and Battery with Intent to Kill with Counsel and the decision was made not to do so, because the defense strategy was to show that Applicant was acting in self-defense and defense of his co-defendant, Eunice McCall. Counsel testified that the defense

put forth at trial was defense of others, as Applicant shot the victim while he was attacking his co-defendant Eunice McCall. Counsel testified that an Assault and Battery with Intent to Kill jury instruction would have been incongruent with this defense. Counsel also testified that this charge was not warranted based on the evidence presented because the autopsy performed on the victim showed that small caliber bullets from Applicant's weapon were potentially fatal as well and the victim did die as a result of multiple gunshot wounds.

Based on the foregoing, this Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Based on this Court's review of the trial transcript and the testimony presented at the evidentiary hearing, this Court finds that Counsel's decision not to request an Assault and Battery with Intent to Kill jury instruction was not error. This Court finds that the testimony of the pathologist who testified at trial reveals that Applicant's gun shots would have killed the victim. The fact that the co-defendant's bullet may have killed the victim first does not warrant an Assault and Battery with Intent to Kill instruction, as the victim did die, and could have died as a result of Applicant's two gun shots. Thus, there is evidence on the record that his actions would have led to death and he is not entitled to the lesser charge because "there is [no] evidence from which it could be inferred the lesser, *rather than the greater*, offense was committed." Dempsey v. State, 363 S.C. 365, 371, 610 S.E.2d 812, 815 (2005) (emphasis added). Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

"Counsel was ineffective for failing to object to the trial court's instruction on the proximate cause of the victim's death"

Applicant alleges that Counsel was ineffective for failing to object to the trial court's instruction on proximate cause of the victim's death. See Tr. pp. 696 lines 3-20. At the

evidentiary hearing, Applicant testified that because the pathologist testified that his shots were "potentially fatal" to the victim, he did not proximately cause the victim's death. Counsel testified that the trial court's instruction on proximate cause is the standard proximate cause jury charge given by courts across South Carolina and that he saw no reason to object to this charge. Counsel testified that he thought this charge was proper based on the evidence presented at trial. Based on this Court's review of the trial transcript and the testimony presented at the evidentiary hearing, this Court finds that Counsel's performance was not deficient for not objecting to the trial court's proximate cause instruction. This Court finds that the testimony of the pathologist who testified at trial reveals that Applicant's gun shots would have killed the victim and that a proximate cause instruction was warranted and supported by the evidence. Based on the foregoing, this Court finds that Counsel's performance was not deficient in regards to this allegation, which must be denied and dismissed with prejudice.

"Counsel was ineffective for failing to object to the trial court's admission of his prior weapon charge to impeach his credibility"

Applicant alleges that Counsel was ineffective for failing to object to the trial court's admission of his prior weapon charge to impeach his credibility. Counsel testified that he made a motion to exclude Applicant's 2003 Possession of a Weapon charge from New York, arguing that it would be prejudicial to his client. See Tr. pp. 444 lines 5-21. Counsel testified, and the trial transcript shows, that the trial court ruled that Applicant's prior conviction was admissible for impeachment purposes. See Tr. pp. 449 lines 6-8. Counsel testified that after the trial court ruled this prior conviction could be used to impeach Applicant, he made a strategic decision to bring up this prior conviction during his direct examination of Applicant so that the jury would not think he was attempting to hide anything or be dishonest. See Tr. pp. 493 lines 8-16.

Counsel testified that he did not think Applicant suffered any prejudice, as Applicant never denied possessing or shooting a weapon in this case. Counsel elaborated that Applicant's entire defense centered on Applicant shooting the victim in defense of co-defendant McCall and the trial was full of admissions that Applicant had not only possessed a weapon but had also fired a weapon.

Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Here, Counsel articulated valid strategic reasons for introducing Applicant's prior weapon charge during his direct examination after the trial court ruled such charge was admissible for impeachment purposes. The Applicant has not shown that counsel was deficient in that choice of tactics. Additionally, Applicant has failed to establish any prejudice resulting from Counsel's performance in this regard, as his defense did not challenge that he possessed, and fired, a weapon during this incident. Therefore, this Court finds Counsel's performance was not ineffective and this allegation must be denied and dismissed with prejudice.

"Counsel was ineffective for failing to object to the prosecuting assistant solicitor's comments on his post arrest silence"

Applicant alleges that Counsel was ineffective for failing to object to the following comments made by the prosecuting assistant solicitor during his closing argument:

"A short time after this crime occurred, he talked to Captain Burke. He didn't say he was threatened or coerced to say anything. He acknowledged that he told Captain Burke he had nothing to do with it. He was in Camden. He didn't say, I was defending my friend. Didn't say self defense. He said I wasn't involved at all. A lie. A lie, ladies and gentleman. And you determine how much

you believe in of what somebody says. Look at the track record. The past history."

Tr. pp. 669 lines 12-20. Counsel testified that these comments are not regarding Applicant's post-arrest silence, but rather are highlighting that Applicant did talk to law enforcement and gave a contradictory statement to his in-court testimony. This Court has reviewed the trial transcript, as well as testimony presented at the evidentiary hearing, and finds that Counsel was not deficient in his performance. This Court agrees with Counsel that these comments do not refer to any post-arrest silence but to Applicant's contradictory statements. Therefore, this Court finds Counsel's performance was not ineffective and this allegation must be denied and dismissed with prejudice.

"Counsel was ineffective for failing to object to the prosecuting assistant solicitor's comments on his lack of remorse"

Applicant alleges that Counsel was ineffective for failing to object to the following comments made by the prosecuting assistant solicitor during his closing argument:

"And what happened was, [victim] was shot 7 times and left laying [sic] in the street to die like an animal. And he did die. And the two men that did this heinous crime and put these bullets in his body did not call for help. Didn't call for help at the scene. Didn't call for help at one of the other houses. Didn't call for help any time. What does that show you, does that show compassion and remorse? Or does that show guilt and concern for their own selves not to call and get involved."

Tr. pp. 664 lines 1-10. Counsel testified that in his professional opinion, he did not think these comments were objectionable. He elaborated that this argument amounts to a comment on the facts and is allowed, as solicitors and defense attorneys have wide latitude in their closing arguments.

This Court finds that Counsel's performance was not deficient in regards to this allegation. The trial judge is allowed wide discretion in dealing with the range and propriety of argument of the solicitor to the jury. State v. White, 246 S.C. 502, 144 S.E.2d 481 (1965); State v. New, 338 S.C. 313, 526 S.E.2d 237 (Ct. App. 1999). A solicitor's closing argument must not appeal to the personal biases of the juror nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it. State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999). A solicitor has a right to state his version of the testimony and to comment on the weight to be given to such testimony. Id. Here, the prosecutor's comments were related directly to the record as presented to the jury. This Court finds Counsel was not ineffective in this regard and this allegation must be denied and dismissed with prejudice.

"Counsel was ineffective for failing to move for dismissal if his indictment based on solicitor's noncompliance with constitutional and statutory laws, jurisdictional in nature, in obtaining indictment."

Applicant alleges that Counsel was ineffective for failing to move to quash his indictment, asserting that the Lee County grand jury did not convene during a General Sessions term and was therefore unlawful. Applicant provided no additional documentation to support this allegation. Counsel testified that he reviewed Applicant's indictment, which were marked "True Bill" and did not appear to have any defects. This Court has reviewed Applicant's indictment, which was from the November/December 2005 term of Lee County General Sessions and shows that the action of the grand jury was "True Bill," signed by Grand Jury Forman Ernest Johnson on November 22, 2005. Additionally, this Court has reviewed the records of the Lee County Clerk of Court's office, which show that Applicant's indictments were read in open court of November 28, 2005 during a Lee County General Sessions Term.

Therefore, this Court finds that Applicant's assertions that his indictment is invalid are without merit. Therefore, this Court finds that Counsel was not ineffective in regards to this allegation, which must be denied and dismissed with prejudice.

"Counsel was ineffective for failing to move for a severance of Applicant's trial from his co-defendants."

At the beginning of the evidentiary hearing, Applicant moved to amend his application to include the new allegation that Counsel was ineffective for failing to move for a severance of his trial from his co-defendants, Eunice McCall and Chad James. Applicant testified that he did not know if severing his trial from his co-defendant would have made any difference in the outcome of his trial. Counsel testified that he considered moving for a severance of Applicant's case, but made a strategic decision not to do so. Counsel testified that his defense worked well with the defense of Applicant's co-defendants and thought it would be beneficial for the jury to hear from both Applicant and co-defendant McCall during the same trial. Additionally, Counsel testified that by trying the cases together, he was able to take advantage of Bruton issues from which he would not have been able to benefit if Applicant was tried separately.

This Court finds that Counsel was not deficient in regards to this allegation. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Here, Counsel articulated valid strategic reasons for not moving for a severance of Applicant's trial from his co-defendant. The Applicant has not shown that counsel was deficient in that choice of tactics. Additionally, Applicant has failed to meet his

burden of establishing prejudice; Applicant's own testimony shows that it is unclear whether a separate trial would have had any impact. There, this Court finds that Counsel was not ineffective in regards to this allegation, which must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

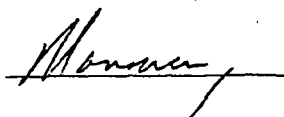
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14 day of Feb, 2013.


 R. FERRELL COTHAN, JR.
 Presiding Judge
 Third Judicial Circuit

, South Carolina.

DOCKET NO. 2005-GS-31-102

The State of South Carolina,

County of LEE

COURT OF GENERAL SESSIONS

NOVEMBER/DECEMBER TERM 2005

THE STATE

vs.

CHAD JAMES

EUNICE DAVIS MCCALL

EFRAIN THOMAS

Indictment for

MURDER

ACCESSORY AFTER THE FACT TO

MURDER

POSSESSION OF A FIREARM DURING

A CRIME OF VIOLENCE

WITNESSES

BISHOPVILLE POLICE DEPARTMENT

Captain T. S. Burke

ARREST WARRANT NO. H772670, H772752

(1): H772760 (2): No Warrant (3)

D/A 04/07/05

ACTION OF GRAND JURY

True Bill

11-22-05

Ernest Johnson
Foreman of Grand Jury

VERDICT

Verdict of Petit Jury

Date:

At a Court of General Sessions, convened on November 22, 2005,
the Grand Jurors of LEE County present upon their oath:

That EUNICE DAVIS MCCALL AND EFRAIN THOMAS did in Lee County on or about April 7, 2005, violate Section 16-3-10 of the Code of Laws of South Carolina (1976), as amended, in that they did feloniously, willfully and with malice aforethought, kill one TROY ROUSE by means of shooting him with a handgun and that the said TROY ROUSE did die as a proximate result thereof.

That CHAD JAMES did in Lee County on or about April 7, 2005, render assistance to felons, namely, EUNICE DAVIS MCCALL AND EFRAIN THOMAS who, on or about April 7, 2005, committed the crime of Murder, as prohibited by Section 16-1-55 of the Code of Laws of South Carolina (1976), as amended.

That EUNICE DAVIS MCCALL AND EFRAIN THOMAS did in Lee County on or about April 7, 2005, was in possession of and did visibly display a firearm during the commission of a violent crime, to-wit: Murder, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

C. Kelly Jackson
SOLICITOR