

Volume II of II

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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

ERIC MANCE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case no. 2013-001039

APPENDIX

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 IMPULSIVITY. HE DID TELL ME HE WAS USING DAILY, SO I GUESS
2 YOU CAN INFER THAT THAT WAS AN ISSUE THEN---

3 Q. YOU CAN LOOK AT HER REPORT AND IT'S IN THERE.

4 A. I KIND OF DID WHAT A LOT OF PEOPLE DO AND I SKIPPED TO
5 THE LAST -- THE LAST -- I DIDN'T READ THE WHOLE THING ONCE
6 SHE HANDED IT TO ME. I'D BE HAPPY TO READ THE WHOLE THING.

7 Q. LET ME LOOK AT IT.

8 A. OKAY. SURE. I THINK I CAN ANSWER YOUR QUESTION. ANY
9 TIME YOU USE DRUGS AND ALCOHOL IT'S GOING TO AFFECT THE WAY
10 YOUR BRAIN FUNCTIONS, AND WHEN YOU'VE GOT A BAD BRAIN TO
11 BEGIN WITH AND YOU PUT DRUGS AND/OR ALCOHOL ON TOP OF IT,
12 IT'S -- IT'S GOING TO CAUSE A DECREASE IN FUNCTION FURTHER.

13 Q. BUT THAT DOESN'T AFFECT HIS CRIMINAL RESPONSIBILITY.

14 A. I -- I DON'T -- I DON'T WANT TO ANSWER QUESTIONS ABOUT
15 CRIMINAL RESPONSIBILITY. THAT'S FOR A FORENSIC PSYCHIATRIST,
16 NOT FOR A NEUROPSYCHOLOGIST.

17 Q. AGAIN, YOU TALKED ABOUT HIS ABILITY TO TELL A STORY.
18 YOU AREN'T GOING TO SIT HERE AND TELL THE JURY EVEN IF HE
19 WAS, SAY -- ABOVE 70 TO 80 CAN BE CALLED WHAT'S REFERRED TO
20 AS BORDERLINE?

21 A. CORRECT.

22 Q. AND THAT'S WHAT HE WAS DIAGNOSED WITH AS HAVING,
23 BORDERLINE INTELLIGENCE, PRIOR TO YOU COMING INTO THE
24 PICTURE?

25 A. CORRECT.

1 Q. AND THEN YOU PUT HIM IN, I BELIEVE YOU'VE MENTIONED, A
2 FIRST PERCENTILE?

3 A. FOR HIS OVERALL I.Q. A 66 FALLS INTO THE FIRST
4 PERCENTILE.

5 Q. YEAH.

6 A. HIS VERBAL MEMORY FOR THE IMMEDIATE TRIALS WAS AT THE
7 FOURTH PERCENTILE, AND THEN I PLAY A DIRTY TRICK ON THEM AND
8 I COME BACK ABOUT 20 MINUTES LATER AND HAVE THEM TELL ME THE
9 STORY AGAIN FROM MEMORY AND HE WAS AT THE FIRST PERCENTILE
10 FOR THAT.

11 Q. AND YOU AREN'T HERE TO TELL THIS JURY THAT THIS MAN
12 COULDN'T SPEAK TO YOU COHERENTLY.

13 A. NO.

14 Q. COULDN'T RECITE TO YOU WHAT HE WANTS YOU TO KNOW.

15 A. NO. HE DID HIS BEST TO GIVE ME AS MUCH INFORMATION AS
16 HE COULD.

17 Q. AND HAVE YOU HAD AN OPPORTUNITY TO REVIEW HIS
18 CONFESSION?

19 A. NO, I HAVE NOT.

20 Q. AND A PERSON, WHETHER THEY'RE BORDERLINE FUNCTIONING,
21 MILDLY MENTALLY RETARDED, THEY'RE STILL ABLE TO PERHAPS TRY
22 TO PROTECT THEMSELVES.

23 A. CERTAINLY.

24 Q. JUST AS ANY---

25 A. YES.

1 Q. ---PERSON, REGARDLESS OF THEIR INTELLIGENCE.

2 A. THAT'S ADAPTIVE, YES.

3 Q. AND YOU'RE FAMILIAR WITH THE PHRASE OF MINIMIZING
4 INVOLVEMENT?

5 A. I'M SORRY?

6 Q. MINIMIZING INVOLVEMENT?

7 A. YES.

8 Q. AND CERTAINLY HE HAD THE ABILITY TO MINIMIZE HIS ROLE IN
9 WHAT HAPPENED.

10 A. YES.

11 Q. YOU MENTIONED THAT THE REASON HE WAS REFERRED BACK IN
12 1980 WHATEVER - 257 I THINK WAS THE REPORT YOU'RE REFERRING
13 TO - WAS FOR WHAT REASON DID YOU SAY IT WAS? BECAUSE HE
14 COULDN'T LISTEN TO THE TEACHERS?

15 A. LET'S SEE. IT SAYS HE WAS BROUGHT BY HIS AUNT DURING
16 THE SUMMER OF '87 FOR EVALUATION OF BEHAVIORAL PROBLEMS.
17 HE'S BEEN DIAGNOSED AS HAVING ATTENTION DEFICIT
18 HYPERACTIVITY, A.D.H.D., AND BORDERLINE INTELLECTUAL
19 FUNCTIONING.

20 Q. DID THE TEACHERS ALSO REPORT OPPOSITIONAL BEHAVIOR?
21 FIGHTING? PREVIOUSLY SUSPENDED?

22 A. YEAH, HE WAS HAVING SOME BEHAVE -- SOME SERIOUS
23 DISTURBANCES, BEHAVIORS, BEEN SUSPENDED FROM SCHOOL IT SAYS
24 FOR FIGHTING.

25 Q. 1986 PULLED A KNIFE ON SOMEONE?

1 A. I THINK IT HAS STOLE MONEY FROM THE AUNT'S PURSE.

2 Q. 1986.

3 A. IT DOESN'T GIVE YEARS HERE; I'M SORRY. AND I DON'T -- I
4 DON'T LOOK AT LEGAL HISTORY---

5 Q. YOU WOULDN'T DISPUTE THAT'S IN THE RECORDS.

6 A. NO.

7 Q. OKAY.

8 A. IT'S IN THE RECORD.

9 Q. THAT HE WAS ARRESTED FOR BRINGING BRASS KNUCKLES TO
10 SCHOOL AND THAT'S WHEN HE WAS 15? YOU ALSO MENTIONED A
11 HISTORY OF A HEAD INJURY WHEN HE WAS TWO YEARS OLD?

12 A. CORRECT.

13 Q. AGAIN, THE E.E.G. AND ALL THOSE THINGS, THOSE WOULD TEST
14 FOR ANY KIND OF PERMANENT DAMAGE FROM THAT?

15 A. RIGHT, ANY RESIDUAL UNDERLYING SEIZURE DISORDER AND
16 THAT'S PART OF WHY I WANTED THAT EVALUATION, TOO, GIVEN HIS
17 HISTORY JUST TO MAKE SURE THOSE---

18 Q. THERE'S NOTHING IN THOSE RECORDS OR IN DR. GAINES' OR
19 ANYONE ELSE'S RECORDS THAT SHOWS HIM AS HAVING ANYTHING BUT
20 NORMAL AFFECT.

21 A. RIGHT.

22 Q. BEG THE COURT'S INDULGENCE. AND YOU NEVER SPOKE TO ANY
23 FAMILY MEMBERS.

24 A. NO, I DID NOT.

25 Q. AND YOU WOULD AGREE THAT THERE ARE MORE RECORDS OUT

1 THERE. YOU JUST DIDN'T HAVE AN OPPORTUNITY TO REVIEW THEM.

2 A. CORRECT.

3 Q. BEG THE COURT'S INDULGENCE. AND, DOCTOR, JUST TO BE
4 SURE, IT DOES SAY IT WAS DAILY DRUG USE.

5 A. YES.

6 MS. CAMPBELL: OKAY. THANK YOU.

7 THE COURT: MR. TARR?

8 REDIRECT EXAMINATION

9 BY MR. TARR:

10 Q. DR. BRAWLEY, DID ANYTHING IN DR. GAINES' REPORT OR
11 ANYTHING ABOUT THE RESULTS OF THE C.T. SCAN OR E.E.G. CHANGE
12 YOUR FINDINGS?

13 A. NO. THAT'S JUST PART OF BEING THOROUGH. EVEN IF I FIND
14 BRAIN DEFICITS, I WANT TO MAKE SURE THERE'S NOT SOMETHING
15 GOING ON THERE THAT NEEDS TO BE TREATED.

16 Q. OKAY. AND THESE I.Q.'S THAT MS. CAMPBELL WROTE UP HERE,
17 THOSE ARE JUST I.Q.'S FROM PREVIOUS TESTS THAT WERE LISTED IN
18 THE '87 EVALUATION. RIGHT?

19 A. THE LOW ONES, YES.

20 Q. THE '82 AND '85.

21 A. YES.

22 Q. IN '87 THERE WAS ALSO AN I.Q. TEST THAT'S LISTED IN THAT
23 REPORT, ISN'T THERE?

24 A. CORRECT.

25 Q. AND THAT WAS 73.

1 A. YES.

2 Q. AND THAT LISTED HIM TO BE IN THE BOTTOM THREE PERCENTILE
3 AT THAT TIME.

4 A. RIGHT.

5 Q. OKAY. SO THAT MEANS THAT OUT OF A HUNDRED PEOPLE, 97
6 WERE---

7 A. WELL, BUT I WANT TO SAY THOUGH THAT WAS ON A DIFFERENT
8 TEST. SHE GAVE HIM THE P.P.B.T.---

9 Q. UH-HUH.

10 A. ---I.Q. OF 73 WHICH IS WHY I DIDN'T LIST IT. THAT'S --
11 IT'S BASICALLY A VOCABULARY LIST. IT'S NOT THAT THOROUGH
12 I.Q. EVALUATION THAT THE WEISS AND THE WISC ARE.

13 Q. OKAY. SO THEY DIDN'T GIVE HIM THAT ON THE '87---

14 A. NO, SHE LISTED HIS PREVIOUS I.Q.'S AND THEN DID THE
15 SHORTER -- THE P.P.B.T. SHE DIDN'T GIVE HIM A WEISS WHICH IS
16 WHY I DIDN'T---

17 Q. OKAY.

18 A. YOU CAN'T COMPARE APPLES TO APPLES ON THAT.

19 Q. OKAY. I HAD NO IDEA WHAT THAT WAS.

20 A. THAT'S ALL RIGHT.

21 Q. BUT YOU FOUND HIM TO BE IN THE MENTAL RETARDATION RANGE
22 OF FUNCTIONING.

23 A. HE FALLS INTO THAT RANGE. IN ORDER TO BE GIVEN A
24 DIAGNOSE OF M. R., YOU HAVE TO HAVE HAD THAT DIAGNOSIS PRIOR
25 TO THE AGE OF 18, BUT HE FALLS IN THAT RANGE OF FUNCTIONING.

1 ON THE DAY THAT I SAW HIM, THAT'S -- THEY CALL IT, YOU KNOW,
2 EXTREMELY LOW OR MENTAL RETARDATION RANGE. OKAY? JUST
3 BECAUSE SOMEBODY'S, LIKE I SAY, GOT AN I.Q. OF 66 DOESN'T
4 MEAN THEY'RE MENTALLY RETARDED. THEY CAN HAVE DEMENTIA.
5 THEY CAN HAVE MULTIPLE THINGS GOING ON THAT WOULD CAUSE THE
6 I.Q. TO BE LOW, BUT HE'S FUNCTIONING IN THE SAME RANGE THAT A
7 MILDLY MENTALLY RETARDED PERSON SCORES.

8 Q. AND THE FIRST PERCENTILE AS YOU SAID PREVIOUSLY---

9 A. CORRECT.

10 Q. ---A HUNDRED PEOPLE, HE WOULD BE THE BOTTOM.

11 A. CORRECT.

12 Q. OKAY. AND THIS IS YOUR JOB, ISN'T IT?

13 A. YES.

14 Q. WHAT YOU'RE DOING HERE TODAY?

15 A. YES.

16 Q. DO YOU KNOW MANY PEOPLE WHO DON'T GET PAID FOR THEIR
17 WORK?

18 A. NO.

19 MR. TARR: ALL RIGHT. THANK YOU VERY MUCH.

20 THE COURT: ANYTHING FURTHER OF THIS WITNESS?

21 RECROSS EXAMINATION

22 BY MS. CAMPBELL:

23 Q. DOCTOR, JUST ONE THING. YOU JUST MENTIONED YOU WERE
24 GETTING PAID. WHAT IS YOUR RATE?

25 A. MY RATE IS SET BY THE UNIVERSITY, THE SAME IF I'M

1 TESTING OR TESTIFYING IN COURT. IT'S 180 AN HOUR.

2 Q. \$180 AN HOUR?

3 A. YES, MA'AM.

4 Q. SO YOU'RE GETTING PAID FOR YOUR TESTIMONY HERE TODAY.

5 A. I AM.

6 Q. THANK YOU.

7 A. IT TAKES ME AWAY FROM THE OFFICE WHERE I COULD BE
8 TESTING PATIENTS SO...

9 THE COURT: ALL RIGHT. THANK YOU, DOCTOR. YOU CAN STEP
10 DOWN.

11 THE WITNESS: MAY I BE EXCUSED, YOUR HONOR?

12 THE COURT: YES.

13 THE WITNESS: THANK YOU.

14 THE COURT: MR. TARR?

15 MR. TARR: THE DEFENSE RESTS, YOUR HONOR.

16 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M GOING
17 TO HAVE YOU GO TO THE JURY ROOM FOR JUST A MOMENT OR TWO.
18 WE'LL HAVE YOU COME BACK SOON. PLEASE DO NOT DISCUSS THE
19 CASE.

20 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
21 12:21 P.M.)

22 THE COURT: MR. TARR, DO YOU WISH FOR ME TO SPEAK WITH
23 MR. MANCE CONCERNING HIS RIGHT TO TESTIFY?

24 MR. TARR: YES, YOUR HONOR.

25 THE COURT: ALL RIGHT. IF YOU'LL COME AND STAND AT THAT

1 MIC RIGHT IN FRONT OF ME, MR. MANCE. I'LL SWEAR YOU IN.

2 ERIC MANCE, AFTER BEING DULY SWORN, TESTIFIED AS
3 FOLLOWS IN CAMERA:

4 EXAMINATION BY THE COURT

5 Q. ALL RIGHT. YOU CAN PUT YOUR HANDS DOWN. MR. MANCE, AT
6 THIS TIME I'M GOING TO EXPLAIN TO YOU CERTAIN OF YOUR RIGHTS.
7 IF YOU DO NOT UNDERSTAND ANYTHING THAT I SAY TO YOU, LET ME
8 KNOW AND I WILL EXPLAIN IT TO YOU IN MORE DETAIL. DO YOU
9 UNDERSTAND?

10 A. YES, SIR.

11 Q. ALL RIGHT. WE HAVE NOW REACHED THE STAGE OF THE TRIAL
12 WHERE YOU ARE PRESENTING YOUR DEFENSE, AND YOU HAVE THE RIGHT
13 TO CLAIM THE PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT
14 TO THE CONSTITUTION OF THE UNITED STATES. THIS AMENDMENT
15 SAYS IN PART THAT NO PERSON CAN BE COMPELLED IN ANY CRIMINAL
16 CASE TO BE A WITNESS AGAINST HIMSELF. THIS MEANS THAT YOU
17 CANNOT BE REQUIRED TO TESTIFY. THAT IS, NO ONE CAN MAKE YOU
18 TESTIFY IN THIS CASE. BUT YOU DO HAVE THE RIGHT TO TESTIFY
19 ON YOUR OWN BEHALF IF YOU WANT TO. DO YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. NOW, IF YOU DECIDE TO TESTIFY, YOU WILL BE SUBJECT TO
22 THE SAME RULES THAT GOVERN OTHER WITNESSES, AND YOU MAY BE
23 EXAMINED BY YOUR LAWYER, MR. TARR, AND CROSS-EXAMINED BY THE
24 SOLICITORS ON ANY RELEVANT ISSUE IN THIS CASE. IN ADDITION,
25 IF I DETERMINE THAT THE PROBATIVE VALUE OF ADMITTING YOUR

1 CRIMINAL RECORD INTO EVIDENCE OUTWEIGHS ANY PREJUDICIAL
2 EFFECT TO YOU, THE SOLICITOR THEN WILL BE ABLE TO PUT YOUR
3 CRIMINAL RECORD INTO EVIDENCE TO ATTACK YOUR CREDIBILITY. DO
4 YOU UNDERSTAND THAT?

5 A. MOST OF IT.

6 Q. ALL RIGHT. WHAT PART DO YOU NOT UNDERSTAND?

7 A. WHEN YOU SAID WHEN HE'LL BE TALKING TO ME AND SHE'LL BE
8 TALKING TO ME.

9 Q. RIGHT.

10 A. WHAT DO YOU MEAN BY THAT?

11 Q. WELL, IF YOU -- IF YOU GET ON THE WITNESS STAND, YOUR
12 LAWYER WILL ASK YOU SOME QUESTIONS. YOU DO KNOW THAT.

13 A. YES, SIR.

14 Q. AND THEN AFTER HE GETS THROUGH, THEN THE SOLICITOR WILL
15 ASK YOU SOME QUESTIONS. DO YOU UNDERSTAND THAT?

16 A. YES, SIR.

17 Q. THAT'S WHAT I'M TALKING ABOUT.

18 A. ALL RIGHT.

19 Q. NOW, IF YOU DECIDE TO TESTIFY, IT MUST BE A FREE AND
20 VOLUNTARY DECISION MADE BY YOU WITH THE FULL KNOWLEDGE AND
21 UNDERSTANDING OF YOUR CONSTITUTIONAL RIGHTS. DO YOU
22 UNDERSTAND THAT, SIR?

23 A. MOST OF IT. WHAT DO YOU MEAN?

24 Q. I MEAN THAT IT'S UP TO YOU. IT MUST BE -- YOU -- NO ONE
25 CAN MAKE YOU TESTIFY. IF YOU DECIDE TO TESTIFY, IT MUST BE

1 VOLUNTARY. IT MUST BE YOUR DECISION BEFORE YOU TESTIFY. DO
2 YOU UNDERSTAND?

3 A. YES, SIR.

4 Q. HAVE YOU TALKED WITH YOUR LAWYER ABOUT WHETHER OR NOT
5 YOU SHOULD TESTIFY IN THIS CASE?

6 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN MR.
7 MANCE AND MR. TARR.)

8 BY THE COURT:

9 Q. HAVE YOU TALKED WITH HIM ABOUT WHETHER OR NOT YOU SHOULD
10 TAKE THE STAND?

11 A. NO, SIR, I AIN'T TALKED TO HIM YET ABOUT THAT.

12 Q. DO YOU WANT TO TALK TO HIM ABOUT WHETHER OR NOT YOU NEED
13 TO -- YOU WANT TO TESTIFY?

14 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN MR.
15 MANCE AND MR. TARR.)

16 MR. TARR: I THINK HE MEANS WE HAVEN'T TALKED ABOUT IT
17 TODAY, YOUR HONOR. WE'VE TALKED ABOUT IT SEVERAL TIMES OVER
18 A TWO-YEAR PERIOD BUT...

19 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN MR.
20 MANCE AND MR. TARR.)

21 MR. MANCE: NO, SIR, I---

22 BY THE COURT:

23 Q. LET ME EXPLAIN TO YOU THAT NOW. IF YOU DECIDE NOT TO
24 TESTIFY, I WILL INSTRUCT THE JURY THAT THEY CANNOT GIVE THE
25 FACT THAT YOU DID NOT TESTIFY ANY CONSIDERATION WHATSOEVER.

1 THEY CAN'T HOLD THAT AGAINST YOU AND THAT THEY ARE TO HAVE
2 ABSOLUTELY NO PREJUDICE AGAINST YOU BASED ON THE FACT THAT
3 YOU DID NOT TESTIFY. IN FACT, I WOULD TELL THEM THAT THEY
4 SHOULD NOT EVEN DISCUSS THE FACT THAT YOU DID NOT TESTIFY IN
5 THE JURY ROOM, BUT IT'S UP TO YOU WHETHER OR NOT YOU TESTIFY.
6 YOU CAN TALK TO MR. TARR SOME MORE ABOUT IT. YOU CAN TALK
7 WITH YOUR FAMILY, YOUR FRIENDS, OR ANYONE ELSE THAT YOU WOULD
8 LIKE TO TALK TO ABOUT WHETHER OR NOT YOU SHOULD TESTIFY, BUT
9 THE FINAL DECISION IS LEFT ENTIRELY UP TO YOU WHETHER OR NOT
10 YOU GET ON THAT STAND AND TESTIFY. DO YOU UNDERSTAND WHAT I
11 MEAN?

12 A. YES, SIR.

13 Q. ALL RIGHT. DO YOU NEED TO TALK WITH YOUR LAWYER SOME
14 MORE ABOUT IT?

15 A. (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN MR.
16 MANCE AND MR. TARR.) I DON'T WANT TO TESTIFY.

17 Q. YOU DON'T WANT TO TESTIFY?

18 A. NO, SIR.

19 Q. ARE YOU SURE ABOUT THAT?

20 A. YES, SIR.

21 THE COURT: OKAY. VERY GOOD. THANK YOU, SIR.

22 MR. TARR: THANK YOU, YOUR HONOR.

23 THE COURT: ALL RIGHT. I THOUGHT I NEEDED TO DO THAT
24 BEFORE YOU FORMALLY---

25 MR. TARR: YES, YOUR HONOR.

1 THE COURT: ---REST IN THE PRESENCE OF THE JURY. BUT
2 HAVING INDICATED THAT YOU'RE RESTING, I'LL TELL THE JURY WHEN
3 THEY COME OUT THAT YOU -- THAT THE DEFENSE HAS RESTED. AND
4 WILL THERE BE ANY REPLY BY THE STATE?

5 MS. CAMPBELL: NO, SIR.

6 THE COURT: ALL RIGHT. SO THAT'S IT FOR THE TESTIMONY.
7 THEN WE'LL LET THE JURY GO TO LUNCH UNTIL 2. WE'LL TAKE SOME
8 TIME AND TALK ABOUT THE CHARGES BEFORE WE GO TO LUNCH, AND
9 WE'LL COME BACK AT 2 FOR CLOSING ARGUMENTS. ALL RIGHT. SO
10 LET'S BRING THEM OUT SO I CAN TELL THEM THAT.

11 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
12 12:28 P.M.)

13 THE COURT: MR. TARR, YOU SAY THE DEFENSE RESTS?

14 MR. TARR: YES, YOUR HONOR.

15 THE COURT: ALL RIGHT. ANY REPLY BY THE STATE?

16 MS. CAMPBELL: NO, SIR.

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THAT MEANS
18 THAT YOU HAVE HEARD ALL OF THE TESTIMONY IN THIS CASE, AND
19 THE NEXT THING THAT WILL HAPPEN WILL BE CLOSING ARGUMENTS BY
20 THE LAWYERS. I WILL THEN GIVE YOU A CHARGE AS TO THE LAW
21 THAT YOU ARE TO FIND -- TO APPLY TO THE FACTS AS YOU FIND
22 THEM. THEN YOU WILL DELIBERATE, DECIDING THE CASE, AND THAT
23 WILL TAKE PLACE AFTER LUNCH.

24 WE'RE GOING TO BREAK AND COME BACK AT 2, 2:00, FOR
25 CLOSING ARGUMENTS AND JURY CHARGE AND YOUR DELIBERATIONS. SO

1 HAVE A GOOD LUNCH. WE'LL SEE YOU BACK AT 2. PLEASE DO NOT
2 DISCUSS THE CASE OR ALLOW ANYONE TO TALK ABOUT IT IN YOUR
3 PRESENCE.

4 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO GO
5 TO LUNCH AT 12:30 P.M.)

6 THE COURT: ALL RIGHT. ANY REQUESTED CHARGES?

7 MR. TARR: YOUR HONOR, THESE AREN'T NUMBERED, SO I'M
8 GOING TO TRY TO IDENTIFY THEM. THERE ARE ONLY THREE OF THEM
9 THAT I OBJECT TO.

10 THE COURT: ALL RIGHT.

11 MR. TARR: THE FIRST ONE THAT I OBJECT TO AND I'VE BEEN
12 TOLD THAT SHE'S -- MS. CAMPBELL HAS CHANGED THIS CHARGE TO
13 SAY ATTEMPTED FELONY MURDER IS THE COMMISSION OR ATTEMPTED
14 COMMISSION OF A FELONY THAT CREATES ANY SUBSTANTIAL
15 FORESEEABLE HUMAN RISK. I OBJECT TO THAT. I JUST THINK IT
16 CONFUSES THE ISSUE. HE'S NOT CHARGED WITH FELONY MURDER;
17 HE'S CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO KILL.
18 AND I JUST THINK IT WOULD BE VERY CONFUSING TO THE JURY
19 WHAT'S ALREADY GOING TO BE A FAIRLY CONFUSING CHARGE. THERE
20 ARE A LOT OF ELEMENTS TO THESE OFFENSES AND A LOT OF BIG
21 WORDS, AND I DON'T THINK THROWING IN SOMETHING THAT HE'S NOT
22 CHARGED WITH IS APPROPRIATE.

23 THE COURT: ALL RIGHT.

24 MR. TARR: AND THE OTHER TWO THAT I OBJECT TO INVOLVE
25 THE ISSUE OF TAKING AS FAR AS LARCENY GOES, AND WE'RE NOT

1 CONTESTING THE ISSUE OF TAKING, AND IT LOOKS LIKE THESE
2 CHARGES WOULD CONFUSE THE JURY. IT LOOKS LIKE THEY'RE
3 DESIGNED TO MAKE IT LOOK LIKE THE INTENT TO DEPRIVE
4 PERMANENTLY -- WHICH THEY'RE NOT -- THAT'S THE ISSUE THAT WE
5 HAVE -- THAT'S THE ELEMENT THAT WE'RE CONTESTING.

6 THESE INVOLVE -- WE DON'T -- WE DO NOT DENY THAT HE TOOK
7 THE CAR AWAY FROM THAT AREA, AND I THINK TO EMPHASIZE THAT
8 ELEMENT IS CONFUSING TO THE JURY. UNLESS, YOUR HONOR, WE'RE
9 GOING TO ALSO COUPLE EACH TIME YOU READ THOSE WITH A CHARGE
10 ON THE INTENT TO DEPRIVE PERMANENTLY, WE WOULD OBJECT TO
11 THOSE BEING CHARGED.

12 THE COURT: ALL RIGHT.

13 MR. TARR: THAT'S ALL. THE OTHER ONES ARE FINE, YOUR
14 HONOR.

15 THE COURT: OKAY. WHAT SAYS THE STATE?

16 MS. CAMPBELL: YOUR HONOR, I'LL WITHDRAW THE FELONY
17 MURDER ONE.

18 THE COURT: ALL RIGHT.

19 MS. CAMPBELL: AS FAR AS THE OTHER TWO, YOUR HONOR, I'LL
20 HAND UP STATE VERSUS TINDALL WHICH IS THE LANGUAGE THAT WE
21 GOT FROM THE SOUTH CAROLINA CASE WHICH WE FEEL IT IS RELEVANT
22 IN THIS CASE BECAUSE -- AND I HAVE IT HIGHLIGHTED. DO YOU
23 WANT TO SEE THIS? OKAY. AND I JUST SHOWED HIM THE LANGUAGE
24 THAT I'M HANDING UP, YOUR HONOR, THAT'S VERBATIM FROM THE
25 CASE ITSELF.

1 THE OTHER CHARGE, YOUR HONOR, IS TAKEN FROM SOME U.S.
2 SUPREME COURT CASES, AND I'LL WITHDRAW THAT ONE IN DEFERENCE
3 TO TINDALL. I THINK TINDALL IS SOUTH CAROLINA LAW AND WOULD
4 STIPULATE TO THAT.

5 THE COURT: MR. TARR?

6 MR. TARR: I JUST -- YOU KNOW, I OBJECT TO THE LAST
7 SENTENCE OF THIS: THE SLIGHTEST REMOVAL OF THE CHATTEL WITH
8 FELONIOUS INTENT FULFILLS THIS REQUIREMENT. I JUST THINK
9 IT'S GOING TO BE CONFUSING BECAUSE THE LAST ELEMENT IS THE
10 INTENT ELEMENT OF THIS CHARGE, THAT HE INTENDED TO DEPRIVE
11 HIM PERMANENTLY, AND I DON'T WANT THEM TO GET CONFUSED AND
12 THINK THAT JUST BECAUSE YOU TAKE IT THAT YOU CAN IMPLY THAT
13 THERE WAS INTENT THERE BECAUSE IT'S A DIFFERENT TYPE OF
14 INTENT THEY'RE TALKING ABOUT. CLEARLY TAKING -- WE ARE NOT
15 CONTESTING THE TAKING. SO I DON'T THINK THEY NEED TO BE --
16 THAT ELEMENT NEEDS TO BE EMPHASIZED. I MEAN, OTHERWISE WE
17 SHOULD JUST HAVE A SEPARATE CHARGE FOR EVERY ELEMENT AND ADD
18 IT TO THE CHARGE.

19 MS. CAMPBELL: YOUR HONOR, WE AREN'T ASKING FOR THIS
20 INSTEAD OF YOUR NORMAL CHARGE. THIS IS JUST AS AN ELEMENT OF
21 YOUR CHARGE.

22 THE COURT: WELL, THE STANDARD CHARGE FOR ARMED ROBBERY
23 IS THAT THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT
24 THE DEFENDANT CARRIED AWAY THE PROPERTY -- CARRIED THE
25 PROPERTY AWAY INTENDING TO DEPRIVE THE -- PERMANENTLY DEPRIVE

1 THE OWNER OF THE PROPERTY AND TO KEEP THE PROPERTY FOR THE
2 DEFENDANT'S OWN USE. THE SLIGHTEST REMOVAL OF THE PROPERTY
3 OR THE COMPLETE POSSESSION OF THE PROPERTY, EVEN FOR AN
4 INSTANT, BY THE DEFENDANT IS SUFFICIENT TO SHOW A TAKING AND
5 CARRYING AWAY OF THE PROPERTY.

6 MS. CAMPBELL: THAT'S IN YOUR CHARGE, YOUR HONOR?

7 THE COURT: YES.

8 MS. CAMPBELL: THEN I'LL WITHDRAW MINE.

9 THE COURT: ALL RIGHT.

10 MR. TARR: DOES IT SAY AFTER THAT THAT IT ALSO HAS TO BE
11 -- HE HAS TO INTEND TO DEPRIVE HIM PERMANENTLY?

12 MS. CAMPBELL: HE JUST SAID THAT.

13 MR. TARR: WELL, THAT WAS -- THAT CAME FIRST AND THEN IT
14 WENT BACK TO THE TAKING.

15 THE COURT: WELL, IT SAYS THE STATE MUST PROVE THAT THE
16 DEFENDANT CARRIED AWAY THE PROPERTY INTENDING TO PERMANENTLY
17 DEPRIVE THE OWNER OF THE PROPERTY AND TO KEEP THE PROPERTY
18 FOR THE DEFENDANT'S OWN USE.

19 MR. TARR: THAT'S FINE, YOUR HONOR.

20 THE COURT: THAT'S THE STANDARD BASIC ARMED ROBBERY
21 CHARGE.

22 MR. TARR: YES, YOUR HONOR. I'M FINE WITH THAT.

23 MS. CAMPBELL: CAN I GET A COPY OF THAT? JUST THAT ONE
24 PARAGRAPH?

25 THE COURT: ALL RIGHT.

1 MS. CAMPBELL: IF IT'S TOO MUCH TROUBLE, I'LL WRITE IT
2 DOWN.

3 THE COURT: WELL, WE DON'T HAVE A PRINTER, SO YOU CAN
4 WRITE IT DOWN IF YOU WOULD LIKE. YOU KNOW, ALL THESE JURY
5 CHARGES ARE ON THE INTERNET ON THE CHARLESTON BAR WEBSITE.

6 MS. CAMPBELL: CHARLESTON BAR WEBSITE? IT'S STANDARD
7 ONLINE.

8 THE COURT: YEAH.

9 MS. CAMPBELL: THANK YOU.

10 THE COURT: OKAY. ANYTHING ELSE?

11 MR. TARR: NO, YOUR HONOR.

12 THE COURT: ALL RIGHT. THE STATE'S GOING TO OPEN ON THE
13 LAW?

14 MS. CAMPBELL: YES, SIR. I'LL OPEN, AND MR. GOLDBERG
15 WILL CLOSE WITH THE FACTS.

16 THE COURT: ALL RIGHT. ANY REQUEST BY THE DEFENSE? ANY
17 REQUESTS TO CHARGE BY THE DEFENSE?

18 MR. TARR: JUST THE ASSAULT AND BATTERY OF A HIGH AND
19 AGGRAVATED NATURE THAT WE TALKED ABOUT YESTERDAY AND THAT
20 THEY'VE SAID WAS APPROPRIATE.

21 THE COURT: ALL RIGHT. I'LL CHARGE THEM ALSO THE
22 STATEMENT OF THE DEFENDANT, FAILURE OF THE DEFENDANT TO
23 TESTIFY, CRIMINAL INTENT.

24 MR. TARR: CREDIBILITY OF THE WITNESSES.

25 THE COURT: CREDIBILITY OF THE WITNESSES.

1 **MR. TARR:** AND I GUESS WITNESS CONVICTIONS OR CRIMES
2 SINCE THERE WAS ONE WITNESS THAT HAD A CRIMINAL CONVICTION.
3 609 CHARGE.

4 **MS. CAMPBELL:** YOUR HONOR, ONE OTHER THING I HAD BROUGHT
5 UP EARLIER WAS THAT THERE'S BEEN SOME ISSUE OR SOME TESTIMONY
6 IN THIS CASE ABOUT THE DEFENDANT'S MENTAL STATE. I DIDN'T
7 KNOW IF YOU THOUGHT IT WOULD BE APPROPRIATE TO -- I GUESS I
8 COULD JUST ARGUE IT THAT YOU WILL NOT HEAR FROM YOUR HONOR
9 THAT THIS IS A POSSIBLE VERDICT. THE ONLY VERDICTS... MY
10 ONLY CONCERN IS THAT THEY'RE GOING TO SAY, YOU KNOW, MAYBE
11 HE'S GUILTY BUT MENTALLY ILL OR THAT SHOULD BE A POSSIBLE
12 VERDICT JUST BECAUSE---

13 **THE COURT:** THEY'LL BE GIVEN THEIR CHOICES AND, YOU
14 KNOW, THEY'LL -- REGARDING THE STATEMENT, THEY'LL BE GIVEN:
15 THE I.Q. OF THE DEFENDANT IS A CONSIDERATION IN EVALUATING
16 THE VOLUNTARINESS OF THE STATEMENT. THAT'S ONE REFERENCE.
17 AND THEN ON CRIMINAL INTENT ABOUT YOU CAN'T DISSECT HIS BRAIN
18 TO SAY WHAT HE INTENDED TO DO...

19 **MS. CAMPBELL:** OKAY.

20 **THE COURT:** SO THAT'S ENOUGH OF A REFERENCE TO IT TO
21 WHERE YOU ALL CAN ARGUE WHATEVER YOU WANT TO ABOUT IT.

22 **MS. CAMPBELL:** OKAY. THANK YOU.

23 **MR. TARR:** YOU'RE GOING TO DO A -- OR YOUR LAW CLERK IS
24 GOING TO DO A SENTENCE SHEET?

25 **THE COURT:** YES, SIR.

1 MR. TARR: SO THAT THEY'LL BE ABLE TO JUST CHECK OFF FOR
2 EACH CHARGE AND POSSIBLE LESSER INCLUDED?

3 THE COURT: YES, SIR.

4 MR. TARR: AND SO THE INDICTMENTS WILL -- ARE YOU
5 SENDING THOSE BACK? I WOULD JUST ASK IF YOU ARE GOING TO
6 SEND THOSE BACK THAT WE REDACT THAT PORTION OF THE POSSESSION
7 OF A WEAPON AND BLANK OUT THE '93 CONVICTION FOR ASSAULT AND
8 BATTERY WITH INTENT TO KILL.

9 THE COURT: THE INDICTMENTS WILL NOT GO BACK.

10 MR. TARR: THANK YOU, YOUR HONOR.

11 THE COURT: BECAUSE OF THAT PURPOSE.

12 MR. TARR: THANK YOU, YOUR HONOR.

13 THE COURT: BECAUSE OF THAT REASON. OKAY? 2:00.

14 MS. CAMPBELL: THANK YOU, YOUR HONOR.

15 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

16 THE COURT: THANK YOU. BE SEATED. ALL RIGHT.

17 MS. CAMPBELL: MAY IT PLEASE THE COURT?

18 THE COURT: YES.

19 MS. CAMPBELL: YOUR HONOR, OVER THE LUNCH PERIOD IT CAME
20 TO MY ATTENTION THAT THERE WAS SOME QUESTION THAT THE DEFENSE
21 EXPERT -- ABOUT THE DEFENDANT HAVING TAKEN INTOXICATING DRUGS
22 ON THE DATE OF THE EVENT. OUT OF PRECAUTION, I WOULD REQUEST
23 - AND YOU MAY HAVE A STANDARD ONE - JUST A VOLUNTARY
24 INTOXICATION CHARGE.

25 THE COURT: ALL RIGHT. YES, SIR.

1 **MR. TARR:** YOUR HONOR, AS I RECALL, THAT INFORMATION
2 CAME OUT ON HER QUESTION. IT WASN'T ANY ELICITED TESTIMONY.
3 SHE SAID THAT MY CLIENT HAD TOLD HER THAT HE USED DRUGS ON A
4 DAILY BASIS BUT HADN'T SAID ANYTHING TO HER ABOUT THAT
5 SPECIFIC DAY. I'M NOT GOING TO ARGUE THAT HE WAS ON DRUGS OR
6 ALCOHOL OR THAT THAT DRUGS OR ALCOHOL PLAYED ANY ROLE IN THIS
7 CASE. SO I'M NOT -- I DON'T THINK THIS IS AN APPROPRIATE
8 CHARGE.

9 **THE COURT:** WHAT DO YOU SAY, MS. CAMPBELL?

10 **MS. CAMPBELL:** YOUR HONOR, I THINK THE TESTIMONY WAS
11 THAT SHE AGREED HE WOULD HAVE BEEN USING THAT DAY BECAUSE HE
12 SAID HE USED ON A DAILY BASIS, AND EVEN IF HE HADN'T USED
13 THAT DAY, OF COURSE DRUGS CAN HAVE AN EFFECT. AND I
14 UNDERSTAND THAT THE DEFENSE MAY NOT ARGUE IT. HOWEVER, IT'S
15 WHAT THE JURY PERCEIVES.

16 **THE COURT:** MR. TARR, ANYTHING ELSE?

17 **MR. TARR:** NO, YOUR HONOR. I WOULD ASK FOR A POSSIBLE
18 LIMITED INSTRUCTION SAYING THERE'S BEEN SOME TESTIMONY THAT
19 THE DEFENDANT MAY OR MAY NOT HAVE USED ALCOHOL OR DRUGS ON
20 THE DAY IN QUESTION. THAT FACT IS NOT TO BE CONSIDERED BY
21 YOU IN ANY WAY IN YOUR DELIBERATIONS. I DON'T KNOW IF THAT
22 SATISFIES THESE THINGS IN THE NATURE OF WHAT THEY'RE TRYING
23 TO DO. I JUST REALIZED I'M NOT GOING TO BE ARGUING THAT. IT
24 REALLY DIDN'T COME OUT. SHE JUST SAID, YES, YOU COULD
25 POSSIBLY INFER THAT HE WAS USING IT BECAUSE HE SAID DAILY

1 BASIS. THAT WAS THE TESTIMONY.

2 THE COURT: THE PURPOSE OF THE WITNESS'S TESTIMONY WAS
3 TO SOMEHOW -- HAD TO BE TO SOMEHOW LESSEN THE DEFENDANT'S
4 CULPABILITY. WASN'T THAT YOUR PURPOSE FOR HAVING HER?

5 MR. TARR: YES, YOUR HONOR, BUT I BROUGHT OUT NOTHING
6 REGARDING DRUGS AND ALCOHOL. THAT WAS A QUESTION ASKED OF
7 HER BY THE STATE, AND SHE BASICALLY SAID HE TOLD ME THAT HE
8 HAD USED IT ON A DAILY BASIS. HE DIDN'T SAY ANYTHING ABOUT
9 THAT DAY AND SHE DIDN'T ASK HIM ABOUT THAT DAY. SHE SAID ONE
10 MIGHT INFER THAT HE DID USE IT THAT DAY DUE TO THE FACT THAT
11 HE TOLD ME DAILY BASIS, BUT I DON'T -- I JUST CAN'T SEE --
12 I'M NOT ARGUING THAT---

13 THE COURT: YOU BELIEVE THAT IF I WERE TO TELL THEM THIS
14 THAT IT WOULD SUGGEST THAT HE WAS UNDER THE INFLUENCE?

15 MR. TARR: YEAH, I THINK THAT PLAYS A PART IN MY
16 OBJECTION, YOUR HONOR.

17 THE COURT: ALL RIGHT. SINCE IT'S NOT A DEFENSE NOR AN
18 EXCUSE OFFERED BY THE DEFENDANT, I'M NOT GOING TO CHARGE IT.

19 MS. CAMPBELL: YOUR HONOR, THE TESTIMONY DID COME OUT
20 THAT SHE SAID THAT WOULDN'T BE A DEFENSE, AND I CAN JUST
21 ARGUE THAT. THAT'S FINE. LET ME JUST GET THIS BOARD OUT OF
22 MY PILE.

23 THE COURT: ALL RIGHT. OF COURSE, IF THE CLOSING
24 ARGUMENTS REVEAL SOMETHING ELSE THEN AT THE TIME OF THE
25 CHARGE...

1 MR. TARR: YES, YOUR HONOR. I DON'T ANTICIPATE SAYING
2 ANYTHING LIKE THAT.

3 THE COURT: ALL RIGHT.

4 MR. GOLDBERG: SORRY FOR THE INTERRUPTION, YOUR HONOR.
5 I WAS JUST ASKING THE COURT REPORTER IF THE GUN WAS BROUGHT
6 BACK IN THE COURTROOM. IT HAD BEEN TAKEN OUT.

7 (PAUSE IN PROCEEDINGS.)

8 MR. TARR: YOUR HONOR?

9 THE COURT: YES, SIR.

10 MR. TARR: I WOULD ALSO ASK JUST THAT THE STATE BE
11 LIMITED IN THEIR OPENING ON THE FACTS TO THE FACTS AND JUST
12 TO THE FACTS. I DON'T WANT TO---

13 THE COURT: THE FACTS OR THE LAW?

14 MR. TARR: EXCUSE ME. JUST THE LAW. I DON'T WANT TO
15 GET INTO TWO SEPARATE CLOSING ARGUMENTS. I ONLY GET TO DO
16 ONE. SOMETIMES -- I'M NOT SAYING MS. CAMPBELL DOES IT.
17 SOMETIMES SOLICITORS THROW IN A LOT OF FACTS IN THE LAW.

18 THE COURT: ALL RIGHT.

19 MS. CAMPBELL: YOUR HONOR, THERE'S A CASE ON POINT AS
20 LONG AS WE -- AS LONG AS WE MENTION THE FACTS, I MEAN THE
21 LAW, WE CAN GO INTO THE FACTS.

22 THE COURT: SAY IT AGAIN.

23 MS. CAMPBELL: THERE'S A CASE ON POINT THAT SAYS AS LONG
24 AS WE MENTION THE LAW THAT WE CAN ALSO TALK ABOUT THE FACTS
25 IN THE OPENING AND CLOSING, I GUESS IS WHAT YOU WOULD CALL IT

1 IN THE FIRST PART, BUT I'M GETTING YOU THAT CASE, YOUR HONOR.
2 IT'S IN MY CLOSING FILE; I APOLOGIZE. I DO NOT INTEND TO GO
3 INTO ANY LENGTHY DISCUSSION OF FACTS OTHER THAN AS IT APPLIES
4 TO THE LAW.

5 MR. TARR: I'LL JUST LEAVE IT TO YOUR HONOR'S DISCRETION
6 OBVIOUSLY.

7 THE COURT: WELL---

8 MR. TARR: I DON'T LIKE TO OBJECT IN PEOPLES' ARGUMENTS,
9 SO THAT'S WHY I BROUGHT IT UP NOW.

10 THE COURT: WELL, IN DISCUSSING THE LAW, THE SOLICITOR
11 CAN INTEGRATE THE LAW TO THE FACTS AND HOW THE LAW APPLIES TO
12 THE PARTICULAR FACTS IN THIS CASE. SO IT'S VERY DIFFICULT TO
13 PARSE THAT, BUT I'LL LOOK FOR OBJECTIONS IF IT EXCEEDS THE
14 BOUNDARIES.

15 MR. TARR: YES, YOUR HONOR. I JUST---

16 THE COURT: AND THE REASONABLENESS---

17 MR. TARR: I DON'T SEE WHY THEY WOULD SEPARATE THEM IN
18 TWO IF YOU CAN JUST DO TWO ARGUMENTS. THAT'S MY ONLY
19 OBJECTION ON IT.

20 THE COURT: ALL RIGHT.

21 (PAUSE IN PROCEEDINGS.)

22 THE COURT: ARE YOU READY?

23 MS. CAMPBELL: JUST BEG THE COURT'S INDULGENCE. I
24 APOLOGIZE, YOUR HONOR.

25 THE COURT: ALL RIGHT. IF YOU'LL BRING THE JURY,

1 PLEASE.

2 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 2:25
3 P.M.)

4 THE COURT: LADIES AND GENTLEMEN, IT'S NOW TIME FOR
5 CLOSING ARGUMENTS. FROM THE STATE?

6 MS. CAMPBELL: MAY IT PLEASE THE COURT?

7 THE COURT: MS. CAMPBELL?

8 MS. CAMPBELL: GOOD AFTERNOON. I WOULD LIKE TO TAKE
9 THIS OPPORTUNITY TO THANK YOU ON BEHALF OF THE STATE OF SOUTH
10 CAROLINA, ON BEHALF OF THE HAWKINS' FAMILY FOR BEING HERE
11 THIS WEEK. I KNOW THAT WHEN YOU SHOWED UP FOR JURY DUTY ON
12 MONDAY MORNING YOU DID NOT NECESSARILY WANT TO BE A PART OF
13 THIS OR EXPECT TO BE A PART OF A TRIAL OF THIS NATURE.
14 HOWEVER, OVER THE LAST SEVERAL DAYS THE TESTIMONY HAS GONE
15 QUICKLY. YOU HAVE BEEN VERY ATTENTIVE IN THIS CASE, AND I
16 THINK YOU PROBABLY REALIZE THAT THIS IS AN IMPORTANT CASE
17 BOTH FOR THE STATE OF SOUTH CAROLINA AND FOR DARYL HAWKINS
18 AND HIS FAMILY AND FOR THE DEFENDANT. SO ON BEHALF OF THE
19 STATE, I DO THANK YOU FOR THAT.

20 NOW, I'M GOING TO HAVE AN OPPORTUNITY TO TALK TO YOU A
21 LITTLE BIT ABOUT THE LAW IN THE CASE. YOU'RE GOING TO HEAR
22 FROM THE DEFENSE, AND THEN MR. GOLDBERG IS GOING TO GET UP
23 HERE AND TALK TO YOU A LITTLE BIT ABOUT THE FACTS. THIS IS
24 GOING TO BE THE LAST TIME I HAVE THE OPPORTUNITY TO ADDRESS
25 YOU, AND ON THAT VEIN IF I MISQUOTE THE LAW IN ANY WAY, YOU

1 TAKE THE LAW AS THE JUDGE GIVES IT TO YOU BECAUSE THAT'S HIS
2 ROLE IN THIS COURTROOM.

3 HE WILL, AFTER YOU HEAR FROM ALL OF US, INSTRUCT YOU AS
4 TO WHAT THE LAW IS, AND IN THAT SAME VEIN, LADIES AND
5 GENTLEMEN, IF ANYONE GETS UP HERE AND MISCHARACTERIZES THE
6 FACTS IN THE CASE, YOU REMEMBER THE FACTS AS YOU HEARD THEM
7 FROM THAT WITNESS STAND BECAUSE NOW YOU'VE HEARD ALL THE
8 EVIDENCE YOU CAN CONSIDER IN THIS CASE. AND WHAT IS
9 EVIDENCE? IT IS THE SWORN TESTIMONY, THE PHYSICAL EXHIBITS
10 THAT WILL ACTUALLY BE GOING BACK TO THE JURY ROOM WITH YOU.
11 IT'S NOT QUESTIONS BY THE DEFENSE ATTORNEY OR BY THE STATE.
12 IT'S NOT INNUENDO, CONJECTURE, SPECULATION, OR JUST PLAIN
13 WISHFUL THINKING. YOU HAVE TO CONSIDER WHAT HAPPENED BACK ON
14 JUNE THE 2ND OF 2006 BASED ON THE EVIDENCE BEFORE YOU
15 INCLUDING THE DEFENDANT'S STATEMENTS, THE VICTIM'S TESTIMONY,
16 THE EYEWITNESS TESTIMONY, AND THE CIRCUMSTANCES SURROUNDING
17 THAT.

18 I ALSO WANT TO TAKE THIS CHANCE AND APOLOGIZE IF OVER
19 THE LAST SEVERAL DAYS WE HAVE DONE ANYTHING TO OFFEND YOU IN
20 ANY WAY. SOMETIMES IN OUR HASTE TO TRY TO GET THINGS UP, OUR
21 QUESTIONING HAS BEEN CLUMSY OR INARTFUL AT TIMES. AT TIMES
22 EVIDENCE HAS BEEN ADMISSIBLE OR NOT ADMISSIBLE AND THEN LATER
23 ADMISSIBLE. PLEASE DON'T HOLD THAT AGAINST THE STATE,
24 AGAINST THE COLUMBIA POLICE DEPARTMENT AND THE OFFICERS, THE
25 VICTIM THAT PUT FORTH THEIR EFFORTS IN BRINGING THIS CASE AND

1 SOLVING IT FOR YOU.

2 CRIMINAL CASES ARE SOMEWHAT UNIQUE. AS YOU HAVE HEARD
3 OVER THE LAST SEVERAL DAYS, THERE HAVE BEEN REFERENCES TO
4 STATEMENTS GIVEN BY WITNESSES TO REPORTS SUCH AS BY D.N.A.
5 EXPERTS AND THINGS OF THAT NATURE. AND IN CRIMINAL CASES THE
6 LAW RECOGNIZES THAT YOU, THE JURY, SHOULD HAVE THE
7 OPPORTUNITY TO HAVE EVERY SINGLE PERSON COME BEFORE YOU AND
8 TESTIFY, LIVE TESTIMONY. THE DEFENDANT HAS AN ABSOLUTE RIGHT
9 TO CONFRONT EACH AND EVERY WITNESS AGAINST HIM, AS HE SHOULD.
10 THAT IS IN OUR CONSTITUTION, AND THAT'S THE WAY IT SHOULD
11 WORK.

12 THAT'S WHY WHEN YOU'VE HEARD REFERENCES TO REPORTS --
13 THERE HAVE BEEN NO DEPOSITIONS. THERE HAVE BEEN NO
14 VIDEOTAPED DEPOSITIONS, AND THAT'S THE REASON FOR IT, BECAUSE
15 YOU MUST HAVE THE OPPORTUNITY, BE IT AN EXPERT OR A LAY
16 WITNESS OR WHOMEVER, TO JUDGE THEIR CREDIBILITY WHEN THEY
17 COME BEFORE YOU BECAUSE WHAT THEY MAY WRITE ON A PAPER MAY
18 NOT ACTUALLY BE ACTUALLY WHAT IT IS LATER ON DOWN THE ROAD,
19 AND THAT'S THE REASON THAT YOU HAVE HEARD FROM EXPERTS ON
20 D.N.A., FROM BALLISTICS EXPERTS, AND ALL THOSE TYPE PEOPLE.
21 THAT'S THE REASON FOR THAT.

22 THE STATE HAS CALLED ALL THE WITNESSES THAT HAVE
23 SOMETHING TO ADD TO THIS CASE. IN THIS CASE, LIKE I JUST
24 MENTIONED A MINUTE AGO, IT WAS VERY UNIQUE BECAUSE IN HIS
25 OPENING ARGUMENT THE DEFENSE PRETTY MUCH NARROWED DOWN THE

1 PARAMETERS OF WHAT THE ISSUES ARE IN THIS CASE. IT'S NOT
2 WHETHER OR NOT THE DEFENDANT WAS OUT THERE THAT NIGHT. THIS
3 IS NOT AN I.D. CASE. IT'S NOT WHETHER OR NOT THE DEFENDANT
4 WAS SHOOTING THAT NIGHT. HE ADMITS TO SHOOTING.

5 THE ONLY ISSUES IN THIS CASE THAT YOU HAVE TO JUDGE FROM
6 THE DEFENDANT'S ACTIONS IN THE WEEKS BEFORE THAT NIGHT AND
7 AFTER HE LEFT IS AS TO WHAT HIS INTENT WAS. WHAT WAS HE
8 DOING OUT THERE WITH THE GUN AND A MASK? SO THAT SOMEWHAT
9 NARROWED THE FIELD. SO THERE WERE MANY WITNESSES YOU MAY
10 HAVE HEARD REFERENCE TO THAT WEREN'T BROUGHT BEFORE YOU
11 BECAUSE THEY HAVE NOTHING NEW OR DIFFERENT TO ADD ABOUT WHAT
12 HAPPENED THERE.

13 IN THIS CASE YOU'VE HEARD HOW POLICE INTERVIEWED FAMILY
14 MEMBERS OF THE DEFENDANT. WE DID NOT BRING THEM BEFORE YOU
15 TO TALK ABOUT WHAT HAPPENED THAT NIGHT BECAUSE THERE'S NO
16 DISPUTE THAT THEY WERE NOT THERE THAT NIGHT. WHAT THEY MAY
17 HAVE OBSERVED LATER HAS NOTHING TO DO WITH WHAT HAPPENED THAT
18 NIGHT, THAT THEY WERE COOPERATIVE WITH THE POLICE BACK THEN
19 BUT MAYBE NOT LATER.

20 ALSO, YOU'VE HEARD FROM OTHER POLICE OFFICERS AT SCENES
21 AND THINGS. IT'S WHAT WE CALL CUMULATIVE EVIDENCE. WE CAN'T
22 BRING IN THE SAME PEOPLE OR DIFFERENT PEOPLE TO JUST SAY THE
23 SAME THING AND PROVE THE SAME FACT OVER AND OVER AND OVER.
24 THE LIST WOULD BE ENDLESS. THAT'S WHAT'S CALLED CUMULATIVE
25 EVIDENCE. SO IF YOU HEARD REFERENCE TO SOME PEOPLE AND

1 WONDERED WHY THEY WEREN'T CALLED, THOSE ARE THE REASONS,
2 LADIES AND GENTLEMEN.

3 NOW, THE BURDEN OF PROOF IN EVERY CRIMINAL CASE, AS I
4 TOLD YOU IN OPENING, IS ON THE STATE OF SOUTH CAROLINA TO
5 PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. AND
6 WHAT DOES THAT MEAN, LADIES AND GENTLEMEN? REASONABLE DOUBT
7 IS THE HIGHEST LEVEL OF PROOF, BEYOND A REASONABLE DOUBT,
8 THAT WE HAVE IN OUR COURT SYSTEMS, AS IT SHOULD BE, AS THE
9 CONSTITUTION GUARANTEES.

10 WHAT IS PROOF BEYOND A REASONABLE DOUBT? THE JUDGE WILL
11 INSTRUCT YOU THAT ANYONE CAN DOUBT ANYTHING. SOME PEOPLE
12 LIKE TO CHARACTERIZE A REASONABLE DOUBT AS THE TYPE OF DOUBT
13 THAT MAKES A REASONABLE PERSON TO HESITATE TO ACT, BUT THE
14 COURTS HAVE GONE A LITTLE FARTHER IN DEFINING WHAT IS A
15 REASONABLE DOUBT. VERY SIMPLY, LADIES AND GENTLEMEN: PROOF
16 BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
17 CONVINCED OF THE DEFENDANT'S GUILT.

18 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW
19 WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES
20 NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF,
21 BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY
22 CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED,
23 YOU MUST FIND HIM GUILTY. IF, ON THE OTHER HAND, YOU THINK
24 THAT THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU
25 MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT

1 GUILTY.

2 NOW, LET ME JUST REITERATE A LITTLE BIT OF THAT. PROOF
3 THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
4 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH
5 ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THAT IS NOT
6 REQUIRED. IT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF
7 THE DEFENDANT'S GUILT.

8 EVEN AT THIS LEVEL, THE LAW RECOGNIZES THAT YOU CAN'T
9 OVERCOME EVERY POSSIBLE DOUBT. IT IS JUST THE KIND OF PROOF
10 THAT LEAVES YOU FIRMLY CONVINCED OF WHAT THE DEFENDANT DID
11 THAT NIGHT, AND IN THIS CASE, LADIES AND GENTLEMEN, THERE IS
12 NO DISPUTE, I WOULD SUBMIT, THAT THE DEFENDANT WAS OUT THERE
13 ARMED WITH A GUN, WITH A MASK, AND THAT HE SHOT THE DEFENDANT
14 (SIC) AND TOOK HIS CAR. THAT IS PROOF BEYOND A REASONABLE
15 DOUBT.

16 NOW, AS WE TALKED ABOUT, THERE ARE GOING TO BE THREE
17 INDICTMENTS BACK IN FRONT OF YOU. THE FIRST OF THE CHARGES I
18 WANT TO DISCUSS - I'M NOT TAKING THESE IN ANY ORDER; THE
19 JUDGE MAY TAKE THEM IN A DIFFERENT ORDER - IS ARMED ROBBERY.
20 AND VERY SIMPLY, LADIES AND GENTLEMEN, WHAT IS ARMED ROBBERY?
21 THIS IS ACTUALLY WHAT OUR STATUTE SAYS: WHEN A PERSON WHO
22 COMMITS ROBBERY WHILE ARMED WITH A PISTOL, DIRK, SLINGSHOT,
23 METAL KNUCKLES, RAZOR, OR OTHER DEADLY WEAPON OR, IN OUR
24 STATE, IN OUR LAW, WHILE ALLEGING EITHER BY ACTION OR WORDS
25 HE WAS ARMED WHILE USING A REPRESENTATION OF A DEADLY WEAPON

1 OR ANY OBJECT WHICH A PERSON PRESENT DURING THE COMMISSION OF
2 THE ROBBERY REASONABLY BELIEVED TO BE A DEADLY WEAPON IS
3 GUILTY.

4 THERE'S NOT GOING TO BE MUCH ARGUMENT THAT HE USED A
5 FAKE GUN IN THIS CASE, LADIES AND GENTLEMEN. IT WAS A REAL
6 GUN. SO BASICALLY THE BASIC DEFINITION IS COMMITS A ROBBERY
7 WHILE ARMED WITH A DEADLY WEAPON INCLUDING A PISTOL. IN THIS
8 CASE IT WAS A REVOLVER.

9 THE JUDGE WILL CHARGE YOU THAT THE ELEMENTS OF ARMED
10 ROBBERY IS THAT THE DEFENDANT TOOK PERSONAL PROPERTY FROM THE
11 PERSON OR PRESENCE OF ANOTHER PERSON. PROPERTY IS IN THE
12 PRESENCE OF THE PERSON IF IT IS WITHIN THE PERSON'S REACH,
13 INSPECTION, OBSERVATION, OR CONTROL SO THAT THE PERSON COULD,
14 IF NOT OVERCOME WITH VIOLENCE OR PREVENTED BY FEAR, KEEP
15 POSSESSION OF THE PROPERTY. WHAT DOES THAT MEAN? THAT HE
16 TAKES FROM THE PRESENCE OF ANOTHER.

17 A LESSER INCLUDED OF ROBBERY IS LARCENY, AND THE
18 SIMPLEST WAY FOR ME TO EXPLAIN THIS IS TO GO BACK. WHAT IS
19 LARCENY? THE SIMPLEST DEFINITION OF IT MEANS STEALING,
20 STEALING FROM ANOTHER PERSON. THE PERSON, HOWEVER, DOESN'T
21 HAVE TO BE THERE WHEN YOU DO THE STEALING. IF I WALK INTO A
22 SCHOOL AND OPEN UP A BOOKMARKER (SIC) THAT'S NOT MINE AND
23 REACH IN AND TAKE SOMEONE'S BOOKS, LEAVE WITH IT, EVEN IF
24 THEY AREN'T THERE, THAT IS A LARCENY.

25 WHAT ELEVATES A LARCENY TO A ROBBERY IS THE PERSON OR

1 PRESENCE. IF IT'S DONE WITH FEAR OR INTIMIDATION, THAT MAKES
2 IT A ROBBERY. WHAT THEN ELEVATES IT TO AN ARMED ROBBERY IS
3 WHEN THE PERSON USES A DEADLY WEAPON. VERY SIMPLY, THE
4 SIMPLEST WAY TO THINK OF IT IS TO THINK OF IT AS STEALING
5 FROM ANOTHER PERSON'S PRESENCE AND THEY'RE ARMED WITH A
6 DEADLY WEAPON.

7 WE MUST ALSO PROVE BEYOND A REASONABLE DOUBT THE
8 DEFENDANT CARRIED THE PROPERTY AWAY INTENDING TO PERMANENTLY
9 DEPRIVE THE OWNER OF THE PROPERTY AND TO KEEP THE PROPERTY
10 FOR THE DEFENDANT'S OWN USE, AND THAT IS PART OF WHAT WE MUST
11 PROVE. HOWEVER, THE LAW ALSO SAYS, LADIES AND GENTLEMEN, THE
12 SLIGHTEST REMOVAL OF THE PROPERTY OR THE COMPLETE POSSESSION
13 OF THE PROPERTY, EVEN FOR AN INSTANT, BY THE DEFENDANT IS
14 SUFFICIENT TO SHOW A TAKING AND CARRYING AWAY OF THE
15 PROPERTY.

16 IN THIS CASE THE DEFENDANT IN HIS STATEMENT, WHICH WILL
17 BE BEFORE YOU AND I'LL TALK ABOUT THAT IN A MINUTE, SAYS THAT
18 HE JUST WANTED A RIDE THAT NIGHT. HE WENT DOWNTOWN. HE HAD
19 A GUN, HE HAD A MASK, AND HIS STORY IS HE JUST WANTED A RIDE.
20 HE WAS BORROWING THE CAR IN THE DEFENSE THEORY. BUT FOR THE
21 VICTIM REACTING, NOTHING EVER WOULD HAVE BEEN WRONG, AND HE
22 WOULD HAVE BEEN GIVEN THE CAR BACK. BUT HE HAD TO HIDE THE
23 CAR? IF HE'S JUST BORROWING THE CAR, WHY NOT DRIVE IT INTO
24 HIS FRONT DRIVEWAY?

25 THOSE ARE THE FACTORS YOU'LL CONSIDER THAT MR. GOLDBERG

1 WILL GO OVER IN MORE DETAIL WITH YOU, BUT THE LAW SAYS YOU
2 DON'T EVEN HAVE TO GET THAT FAR. THE SLIGHTEST REMOVAL OF
3 THE PROPERTY, OF THE COMPLETE POSSESSION OF THE PROPERTY -
4 AND THERE'S NO DISPUTE THAT NO ONE ELSE WAS THERE THAT NIGHT
5 - THAT TOOK THE PROPERTY, AND THAT WOULD BE THE TAHOE, OTHER
6 THAN THE DEFENDANT EVEN FOR AN INSTANT - IN THIS CASE HE TOOK
7 IT AND HID IT IN THE WOODS BEHIND HIS HOUSE - BY THE
8 DEFENDANT IS SUFFICIENT TO SHOW A TAKING AND CARRYING AWAY OF
9 THE PROPERTY. LISTEN CAREFULLY BECAUSE THE JUDGE WILL
10 INSTRUCT YOU ON THOSE ELEMENTS AS WELL AS SOME OTHERS I'M NOT
11 GOING OVER IN THIS CASE.

12 ANOTHER INDICTMENT THAT IS GOING TO BE BEFORE YOU IS
13 ASSAULT AND BATTERY WITH INTENT TO KILL. VERY SIMPLY, IT'S
14 AN ACT OF VIOLENT NATURE TOWARD THE PERSON OF ANOTHER WITH
15 MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED. IT REQUIRES
16 THE INTENT TO KILL. HOWEVER, IT NEED ONLY BE A GENERAL
17 INTENT, DEMONSTRATED BY ACTS AND CONDUCT FROM WHICH A JURY
18 MAY NATURALLY AND REASONABLY INFER INTENT.

19 THE JUDGE MAY EVEN GO SO FAR: THERE'S NO SPECIFIC
20 INTENT TO KILL THAT HAS TO BE SHOWN. INTENT MAY BE PROVED IF
21 EVIDENCE OF THE CHARACTER OF THE MEANS OR THE INSTRUMENT
22 USED... INTENT TO KILL MAY BE INFERRED FROM THE CHARACTER OF
23 THE ASSAULT, USE OF A DEADLY WEAPON WITH AN OPPORTUNITY TO
24 DELIBERATE OR THE USE OF A DANGEROUS OR DEADLY WEAPON IN A
25 MANNER REASONABLY CALCULATED TO CAUSE DEATH OR GREAT BODILY

1 HARM. LIKEWISE, THE MANNER IN WHICH THE INSTRUMENT WAS USED,
2 THE PURPOSES TO BE ACCOMPLISHED, AND THE RESULTING INJURIES
3 MAY ALSO PROVE INTENT.

4 THAT'S WHY WE BROUGHT IN DR. WILSON TO TALK TO YOU ABOUT
5 THE GRAVITY OF THE INJURIES THAT WERE SUFFERED BY THE VICTIM
6 IN THIS CASE. BUT FOR THE FACT THAT THAT MAN, THAT YOUNG
7 MAN, WHO HELPED HIM INSIDE, DID NOT WITNESS THE SHOOTING
8 HIMSELF BUT HELPED HIM INSIDE, CAME AND GOT HIM AND GOT HIM
9 INTO THE EMERGENCY ROOM, I BELIEVE DR. WILSON - AND I DON'T
10 THINK ANYBODY WILL ARGUE WITH THIS - TESTIFIED THAT HE WOULD
11 HAVE DIED.

12 THE EASIEST WAY TO THINK OF SOMETHING AS AN ASSAULT AND
13 BATTERY WITH INTENT TO KILL: WOULD IT HAVE BEEN A MURDER BUT
14 FOR THE FACT HE SURVIVED? LUCKILY IN THIS CASE HE HAD A
15 GREAT DOCTOR, AND DARYL HAWKINS SURVIVED. THAT IS ASSAULT
16 AND BATTERY WITH INTENT TO KILL.

17 THE EASIEST WAY TO THINK OF IT IS WHAT ELEVATES THE
18 LESSER INCLUDED OF ASSAULT AND BATTERY WITH INTENT TO KILL IS
19 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE WHICH IS
20 ALSO GOING TO BE A LESSER INCLUDED THAT YOU CAN CONSIDER IN
21 THIS CASE. AND THEN THERE'S SIMPLE ASSAULT. WHAT IS A
22 SIMPLE ASSAULT? A SIMPLE ASSAULT IS WHEN I WALK UP TO
23 ANOTHER PERSON AND I PULL BACK MY FIST AND I STRIKE AT HIM.
24 IT'S THE OFFER TO DO VIOLENCE TO ANOTHER PERSON WITH THE
25 APPARENT ABILITY TO CARRY IT OUT. IF I MISS, IT'S JUST A

1 SIMPLE ASSAULT. IT BECOMES A SIMPLE ASSAULT AND BATTERY IF I
2 CONNECT WITH THEIR JAW BECAUSE AT THAT POINT YOU HAVE
3 TOUCHING. THAT'S THE BATTERY. THAT'S THE DISTINCTION
4 BETWEEN SIMPLE ASSAULT AND SIMPLE ASSAULT AND BATTERY.....

5 WHAT MAKES IT ASSAULT AND BATTERY OF A HIGH AND
6 AGGRAVATED NATURE IS IF CERTAIN FACTORS ARE PRESENT. ANY ONE
7 OF THESE IS ENOUGH TO ELEVATE SIMPLE ASSAULT UP TO ASSAULT
8 AND BATTERY OF A HIGH AND AGGRAVATED NATURE. IT'S AN
9 UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER - AND
10 THIS IS AN ACTUAL TOUCHING WHICH MAKES IT A BATTERY -
11 ACCOMPANIED BY CIRCUMSTANCES OF AGGRAVATION OR SERIOUS BODILY
12 INJURY - AND THAT DOESN'T MEAN LIFE-THREATENING INJURY, JUST
13 SERIOUS BODILY INJURY - THE DIFFERENCE IN SEXES, THE USE OF A
14 DEADLY WEAPON. THE MANNER IN WHICH IT'S USED IS SOMETHING TO
15 CONSIDER, SUCH THINGS AS HOW MANY TIMES WAS HE SHOT? HOW
16 MANY TIMES DID HE OFFER TO SHOOT? GREAT DISPARITY BETWEEN
17 THE AGES AND PHYSICAL CONDITIONS WITH INTENT TO COMMIT A
18 FELONY, THE PURPOSEFUL INFLECTION OF SHAME, DISGRACE, AND
19 INDECENT LIBERTIES WITH FEMALES CARRIES IT INTO A LITTLE BIT
20 DIFFERENT REALM.

21 THOSE ARE SOME OF THE AGGRAVATING CIRCUMSTANCES - AND
22 YOU CAN COME UP WITH YOUR OWN - THAT RAISE A SIMPLE ASSAULT
23 TO ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. WHAT
24 RAISES IT TO ASSAULT AND BATTERY WITH INTENT TO KILL, AS IS
25 CHARGED HERE AS THE GRAND JURY TRUE BILLED, IS THE PRESENCE

1 OF MALICE, EITHER EXPRESS OR IMPLIED. FROM THAT YOU CAN
2 INFER THE INTENT TO KILL. WHAT IS EXPRESS MALICE VERSUS
3 INFERRED MALICE? THEY AREN'T TWO DIFFERENT KINDS OF MALICE;
4 IT'S JUST THE MANNER IN WHICH THEY'RE DONE.

5 OUR LEGISLATORS RECOGNIZED THAT NECESSARILY WHEN SOMEONE
6 GOES UP AND COMMITS A MURDER THEY MAY NOT STOP FIRST AND SAY,
7 "I AM GOING TO KILL YOU." THAT'S EXPRESS MALICE. ANOTHER
8 WAY TO SHOW EXPRESS MALICE IS LYING IN WAIT. THEY'RE WAITING
9 ON SOMEONE TO DRIVE UP BEFORE HE'S SHOT. LYING IN WAIT,
10 WORDS OF, "I'M GOING TO KILL YOU," ALTHOUGH I SUBMIT, LADIES
11 AND GENTLEMEN, YOU DO HAVE EXPRESS MALICE IN THIS CASE IN HIS
12 -- WHAT WE CHARACTERIZE AS IDLE THREATS THAT HE CARRIED OUT
13 WITHIN A WEEK. THAT'S EXPRESS MALICE. YOU DON'T HAVE TO
14 HAVE ONE OR THE OTHER OR BOTH.

15 IN THIS CASE, LADIES AND GENTLEMEN, I SUBMIT YOU DO HAVE
16 BOTH. YOU HAVE HIS ACTIONS A WEEK EARLIER AND HIS WORDS
17 ABOUT WHAT HE INTENDED TO DO, AND THEN HE CARRIED THROUGH
18 WITH THAT THREAT. THE SAME IS TRUE FOR THE ARMED ROBBERY.
19 HE DIDN'T SAY HE WANTED TO BORROW SOMEONE'S CAR. HE SAID HE
20 WANTED TO ROB SOMEONE. THAT IS A DISTINCTION. THOSE ARE
21 BEFORE YOU SO YOU CAN CONSIDER WHAT HIS INTENT WAS AND WHAT
22 HE ULTIMATELY DID.

23 INFERRED MALICE IS INFERRED FROM MANY WAYS. THE JUDGE
24 WILL TELL YOU AND HE WILL CHARGE YOU: INFERRED MALICE, YOU
25 HAVE TO LOOK AT THE ACTIONS SURROUNDING THE EVENTS. WAS

1 THERE THE USE OF A DEADLY WEAPON? AND I'LL GET BACK TO THAT.
2 THAT'S WHEN YOU CAN INFER MALICE FROM A PERSON'S ACTIONS.

3 THE JUDGE WILL TELL YOU IN THIS CASE WITH ASSAULT AND
4 BATTERY WITH INTENT TO KILL IF YOU FIND THERE IS MALICE, THEN
5 IT IS ASSAULT AND BATTERY WITH INTENT TO KILL VERSUS ASSAULT
6 AND BATTERY OF A HIGH AND AGGRAVATED NATURE. THE DEFENSE
7 WILL GET UP HERE AND TELL YOU THAT HE'S ONLY GUILTY OF
8 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE BECAUSE
9 HE DID NOT ACT WITH MALICE AFORETHOUGHT. THE JUDGE WILL
10 INSTRUCT YOU MALICE DOES NOT NECESSARILY IMPART ILL WILL
11 TOWARDS THE INDIVIDUAL INJURED BUT SIGNIFIES, RATHER, A
12 GENERAL MALIGNANT RECKLESSNESS OF THE LIVES AND SAFETY OF
13 OTHERS OR A CONDITION OF MIND THAT SHOWS A HEART, REGARDLESS
14 OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF. AND, LADIES AND
15 GENTLEMEN, IF THAT DOES NOT DESCRIBE THE ACTIONS OF ERIC
16 MANCE ON JUNE THE 2ND OF 2006 -- THE WORDS EPITOMIZE HIS
17 ACTIONS THAT NIGHT: A GENERAL MALIGNANT RECKLESSNESS OF THE
18 LIVES AND SAFETY OF OTHERS OR A CONDITION OF MIND WHICH SHOWS
19 A HEART, REGARDLESS OF SOCIAL DUTY AND FATALLY BENT ON
20 MISCHIEF.

21 MALICE, AS I TOLD YOU, MAY BE INFERRED FROM CONDUCT
22 SHOWING A TOTAL DISREGARD FOR HUMAN LIFE. INFERRED MALICE
23 MAY ALSO ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON.
24 THAT FACT ALONE IS ENOUGH TO INFER AND, LADIES AND GENTLEMEN,
25 IN THIS WAY -- IN THIS CASE THERE'S MUCH MORE THAN JUST THE

1 USE OF A DEADLY WEAPON. THE GUN DIDN'T GO OFF ONCE. IT
2 DIDN'T GO OFF TWICE. HE SHOT FIVE TIMES. LOOKING AT THE
3 CONDITIONS, THE USE OF A WEAPON ALONE, IS ENOUGH TO INFER
4 MALICE AND TO MAKE IT ASSAULT AND BATTERY WITH INTENT TO
5 KILL.

6 NOW, YOU HEARD THE TERM MALICE AFORETHOUGHT, AND LISTEN
7 TO THE JUDGE'S INSTRUCTIONS ON THESE THINGS. WHAT DOES
8 AFORETHOUGHT MEAN? MALICE DOES NOT NEED TO EXIST FOR ANY
9 APPRECIABLE PERIOD BEFORE THE TIME -- BEFORE THE ADMISSION OF
10 THE ACT. INDEED, IT MAY BE CONCEIVED THE VERY MOMENT THE
11 FATAL BLOW IS STRUCK. VERY SIMPLY, LADIES AND GENTLEMEN, THE
12 STATE MUST PROVE THAT AT THE TIME ONE OF THOSE SHOTS WAS
13 FIRED, JUST BEFORE AND AT THE TIME HE WAS FIRING IT, HE WAS
14 ACTING, SHOWING A TOTAL DISREGARD FOR THE LIVES AND SAFETY OF
15 OTHERS, A HEART FATALLY BENT ON MISCHIEF, FOR ANY ONE OF
16 THESE DEFINITIONS. AGAIN, LADIES AND GENTLEMEN, WE DON'T
17 HAVE TO PROVE EVERY ONE OF THESE. IF ANY ONE OF THESE
18 DEFINITIONS APPLIES, THEN IT IS ASSAULT AND BATTERY WITH
19 INTENT TO KILL.

20 ALSO, THE JURY CAN INFER MALICE IF YOU CONCLUDE YOU HAVE
21 ASSAULT AND BATTERY WITH INTENT TO KILL AS A PROXIMATE AND
22 DIRECT RESULT IN THE COMMISSION OF A FELONY, AND THE JUDGE
23 WILL INSTRUCT YOU ARMED ROBBERY IS A FELONY UNDER OUR LAW.
24 SO IF YOU FIND THAT THE ASSAULT WAS COMMITTED AS A PROXIMATE
25 RESULT OF THE ARMED ROBBERY, THEN THAT IS ENOUGH TO INFER

1 MALICE.

2 THE FINAL INDICTMENT THAT'S GOING TO BE BEFORE YOU --
3 BEFORE YOU IS GOING TO BE THE POSSESSION OF A PISTOL BY A
4 PERSON CONVICTED OF A CRIME OF VIOLENCE, AND VERY SIMPLY,
5 LADIES AND GENTLEMEN, THE JUDGE IS GOING TO READ TO YOU A
6 STIPULATION, AND WHEN THERE'S A STIPULATION IT'S NOT A
7 QUESTION OF LAW OR OF FACT ANYMORE. THE STIPULATION HE'LL
8 READ TO YOU -- ALL WE HAVE TO PROVE IS THAT HE UNLAWFULLY
9 POSSESSED THE FIREARM WHICH HAS BEEN FREELY ADMITTED AND HE
10 HAD BEEN CONVICTED OF A CRIME OF VIOLENCE PRIOR TO JUNE THE
11 2ND OF AN UNRELATED CRIME OF VIOLENCE, AND THE DEFENSE HAS
12 STIPULATED THAT FOR THE PURPOSE OF THE CHARGE OF POSSESSION
13 OF A PISTOL BY A PERSON CONVICTED OF A CRIME OF VIOLENCE, THE
14 PARTIES AGREE THAT PRIOR TO JUNE THE 2ND OF 2006, THE TIME OF
15 THIS EVENT, THE DEFENDANT IN THIS CASE, ERIC MANCE, HAD BEEN
16 CONVICTED OF A CRIME OF VIOLENCE UNRELATED TO THIS INCIDENT.
17 THOSE ARE THE ELEMENTS OF THAT CHARGE. SO THIS ELEMENT HAS
18 BEEN SATISFIED, AS I SUBMIT THE DEFENDANT ALSO ADMITTED IN
19 HIS OPENING THAT HE POSSESSED THE FIREARM AND HE WASN'T
20 LEGALLY ALLOWED TO DO THAT BECAUSE OF HIS PRIOR CONVICTION
21 FOR A CRIME OF VIOLENCE.

22 NOW, THE JUDGE WILL INSTRUCT YOU THERE ARE TWO TYPES OF
23 EVIDENCE THAT YOU CAN CONSIDER. THERE'S DIRECT EVIDENCE AND
24 THERE'S CIRCUMSTANTIAL EVIDENCE. ONE IS NOT BETTER THAN THE
25 OTHER; THE JUDGE WILL ALSO TELL YOU THAT. WHAT IS DIRECT

1 EVIDENCE? IT'S EYEWITNESS EVIDENCE, THAT TYPE OF EVIDENCE
2 THAT IS PERCEIVED THROUGH THE SENSES, WHAT YOU HEAR, WHAT YOU
3 SEE, WHAT YOU SMELL, WHAT YOU TOUCH. THAT'S DIRECT EVIDENCE.

4 CIRCUMSTANTIAL EVIDENCE IS A PROOF OF A CHAIN OF
5 CIRCUMSTANCES OR FACTS THAT LEAD YOU TO THE CONCLUSION OF AN
6 INDEPENDENT FACT, AND THE JUDGE WILL PUT THIS MUCH MORE
7 ARTICULATELY THAN I AM. IS ONE BETTER THAN THE OTHER? THE
8 BEST REPRESENTATION IN THIS CASE OF CIRCUMSTANTIAL EVIDENCE:
9 THERE WAS A MASK AT THE SCENE. THERE WAS A MASK IDENTIFIED
10 BY THE VICTIM. THE MASK WAS FOUND UNDERNEATH THE BACK STOOP
11 OF THE DEFENDANT'S HOUSE. D.N.A. WAS COLLECTED FROM THAT,
12 AND THE D.N.A. MATCHED ERIC MANCE.

13 THE BALLISTICS IN THE CASE. THE PROJECTILES RECOVERED
14 FROM THE SCENE, THE GUNS RECOVERED FROM ERIC MANCE'S HOUSE
15 WHERE HE SAID IT WOULD BE, THEY MATCH. THOSE PROJECTILES
16 WERE FIRED BY THE GUN FOUND UNDERNEATH THE BACK PORCH OF ERIC
17 MANCE. THAT'S CIRCUMSTANTIAL EVIDENCE.

18 IN THIS CASE THOUGH YOU DON'T HAVE JUST CIRCUMSTANTIAL
19 OR DIRECT EVIDENCE. IT'S A COMBINATION OF BOTH, AND I BEG
20 YOU, LADIES AND GENTLEMEN, TO THINK ABOUT HOW THE DIRECT
21 EVIDENCE IS CORROBORATED BY THE CIRCUMSTANTIAL EVIDENCE IN
22 THIS CASE, CIRCUMSTANTIAL EVIDENCE, MOST OF WHICH WASN'T
23 TESTED UNTIL MONTHS, WEEKS, WHENEVER AFTER THE DEFENDANT GAVE
24 HIS VERSION OF WHAT HAPPENED.

25 NOW, IN EVERY CASE ALSO THE JUDGE WILL TELL YOU THE

1 STATE MUST PROVE THAT THE DEFENDANT ACTED WITH CRIMINAL
2 INTENT, THAT IT WAS NOT AN ACCIDENT. AND I WILL TELL YOU
3 ACCIDENT IS A DEFENSE. LISTEN CAREFULLY TO THE JUDGE.
4 ACCIDENT DOES NOT APPLY IN THIS CASE. HE WILL NOT CHARGE YOU
5 ON THE LAW OF ACCIDENT.

6 WHETHER THE DEFENDANT ACTED -- THE JUDGE WILL ALSO TELL
7 YOU THAT WE CAN'T SIT HERE AND DISSECT A PERSON'S BRAIN AND
8 FIGURE OUT TO A MATHEMATICAL CERTAINTY WHAT HE WAS THINKING
9 THAT NIGHT. SO, THEREFORE, YOU, THE JURORS, INDIVIDUALLY AND
10 BACK THERE COLLECTIVELY MUST LOOK AT THE CIRCUMSTANCES
11 SURROUNDING HIS ACTIONS, THE CIRCUMSTANCES LEADING UP TO IT,
12 THE CIRCUMSTANCES THERE AT THE SCENE, AND ALSO THE ONES
13 AFTERWARDS.

14 THAT'S HOW YOU DETERMINE CRIMINAL INTENT. AND, LADIES
15 AND GENTLEMEN, I SUBMIT THIS CASE WREAKS OF CRIMINAL INTENT.
16 HE SAID HE WANTED TO DO IT. HE PLANNED IT THAT DAY. HE
17 EXECUTED IT, AND HE GOT THE CAR. THAT'S CRIMINAL INTENT.

18 YOU ALSO HEARD FROM A NUMBER OF WITNESSES CALLED EXPERT
19 WITNESSES, AND AS THE JUDGE HAS ALREADY TOLD YOU, THEY ARE
20 QUALIFIED FOR JUST ONE PURPOSE. IF THEY HAVE CERTAIN LEGAL
21 TRAINING OR CERTAIN EDUCATIONAL TRAINING IN A CERTAIN FIELD,
22 THEN THEY ARE ALLOWED, NO MATTER FOR THE STATE OR THE
23 DEFENSE, TO GIVE AN OPINION. THAT IS THEIR RIGHT BECAUSE OF
24 CERTAIN TRAINING.

25 IN THIS CASE YOU HAVE HEARD FROM SEVERAL EXPERTS, BUT

1 THE JUDGE WILL TELL YOU THIS. YOU CONSIDER EACH EXPERT, BE
2 IT THE D.N.A. GUY, THE BALLISTICS, THE DOCTOR, THE DEFENSE
3 WITNESS. YOU JUDGE THEIR CREDIBILITY THE SAME WAY YOU JUDGE
4 ANYONE ELSE'S. DO THEY HAVE A BASIS FOR THEIR OPINION? IS
5 IT A REASONABLE BASIS? DOES IT MAKE SENSE? DO THEY HAVE A
6 REASON TO TRY TO SKEW THEIR TESTIMONY A CERTAIN WAY OR NOT?
7 CONSIDER EACH EXPERT IN THIS CASE INDEPENDENTLY AND WHETHER
8 OR NOT THEY HAVE SOMETHING TO GAIN OR LOSE OR A REASON TO
9 CHANGE THEIR TESTIMONY.

10 NOW, IN THIS CASE ALSO YOU'RE GOING TO HEAR ABOUT HOW
11 AND YOU'RE GOING TO HAVE TO MAKE A DETERMINATION ABOUT WHY --
12 ABOUT IF THIS DEFENDANT MADE A VOLUNTARY STATEMENT TO THE
13 POLICE, AND YOU HEARD US GO ON ABOUT CERTAIN THINGS. AND
14 SOME RIGHTS WERE READ TO HIM, AND THAT'S IMPORTANT BECAUSE
15 BEFORE YOU CAN CONSIDER THE DEFENDANT'S STATEMENT YOU MUST
16 CONSIDER WHETHER OR NOT HIS STATEMENT WAS GIVEN VOLUNTARILY.

17 THAT'S WHY IN THIS CASE LUCKILY WE HAD INVESTIGATOR
18 THOMAS AND INVESTIGATOR REESE WHO MADE SURE THIS DEFENDANT
19 WAS NOT ONLY ADVISED OF HIS RIGHTS BUT THAT WHEN HE EXERCISED
20 THAT RIGHT, AS IS HIS RIGHT, THEY DIDN'T QUESTION HIM ANY
21 FURTHER. THEY DIDN'T DO ANYTHING EXCEPT BY THE BOOK. IN
22 THIS CASE, LADIES AND GENTLEMEN, THEY JUMPED THROUGH EVERY
23 HOOP THEY SHOULD AS THEY SHOULD, AND THEY MADE SURE HIS
24 RIGHTS WERE PROTECTED.

25 YOU'LL HAVE THE STATEMENT BACK THERE. THEY WENT BACK

1 THROUGH IT. YOU SAID YOU DIDN'T WANT TO TALK ANYMORE. ARE
2 YOU SURE YOU WANT TO NOW? THE ONLY PERSON HE REQUESTED TO
3 SEE WAS HIS WIFE, AND THEY GOT HER. WAS HIS STATEMENT
4 VOLUNTARY? AND IN CONSIDERING THAT, YOU MUST CONSIDER
5 WHETHER OR NOT HE UNDERSTOOD WHAT HE WAS DOING. AND, LADIES
6 AND GENTLEMEN, NOT ONLY DID HE UNDERSTAND WHAT HE WAS DOING,
7 HE EXERCISED HIS RIGHTS. THAT ALONE IS TELLING ON WHETHER OR
8 NOT HE KNEW WHAT HE WAS DOING AND HE UNDERSTOOD HIS RIGHTS.

9 SOME FACTORS YOU CAN CONSIDER ON WHETHER A STATEMENT WAS
10 MADE BY A DEFENDANT VOLUNTARILY AND OF HIS OWN FREE... YOU
11 MAY HAVE UNDERSTOOD WHY I ASKED THAT LINE OF QUESTIONING OVER
12 AND OVER. DID YOU PROMISE HIM ANYTHING? IT'S VERY IMPORTANT
13 BECAUSE THIS IS ALSO GUARANTEED BY OUR CONSTITUTION AND BY
14 OUR LAWS NATIONWIDE AS IT SHOULD BE. EVERYONE SHOULD BE
15 APPRISED OF THEIR RIGHTS BEFORE BEING QUESTIONED BY POLICE.

16 THE STATEMENT WAS NOT CAUSED BY PRESSURE, FORCE, FEAR OF
17 THREATS, COERCION OR INTIMIDATION OR BY HOPE OR PROMISE OF
18 LENIENCY OR REWARD OF ANY KIND. IN DETERMINING IF THE
19 STATEMENT WAS VOLUNTARY, YOU CAN CONSIDER THE CHARACTERISTICS
20 OF THE DEFENDANT AND THE DETAILS OF THE QUESTIONING. SOME
21 FACTORS: THE AGE OF THE DEFENDANT. IS IT A 13-YEAR-OLD OR A
22 35-YEAR-OLD? THE DEFENDANT'S LACK OF EDUCATION. LACK OF
23 EDUCATION. THE DEFENDANT'S MENTAL ABILITY OR CAPACITY, HIS
24 I.Q. OR INTELLIGENCE, HIS BACKGROUND AND ENVIRONMENT, THE
25 PLACE AND LENGTH OF DETENTION, THE NATURE OF THE QUESTIONING.

1 FINALLY, LADIES AND GENTLEMEN, THE ADVICE OR LACK THEREOF OF
2 HIS ADVICE OF RIGHTS.

3 ALL THOSE ARE CHARACTERISTICS YOU CAN CONSIDER, BUT I
4 SUBMIT, LADIES AND GENTLEMEN, THAT IN THIS CASE THE DEFENDANT
5 NOT ONLY UNDERSTOOD HIS RIGHTS, HE EXERCISED THAT RIGHT. AND
6 WHEN THE WARRANTS WERE BEING READ TO HIM AND HE REALIZED HE
7 WOULD HAVE TALKED -- HE WANTED TO GET HIS VERSION OUT THERE
8 WHICH HE NOW IS SAYING HE JUST WANTED A RIDE HOME WHICH IS
9 WHAT HE SAYS IN HIS STATEMENT. SO WHETHER OR NOT HIS
10 STATEMENT IS VOLUNTARY IS SOMETHING YOU MUST DETERMINE BEFORE
11 YOU CONSIDER IT, AND I SUBMIT, LADIES AND GENTLEMEN, IN THIS
12 CASE THERE IS NO QUESTION THAT THE POLICE DID EVERYTHING AS
13 THEY SHOULD HAVE.

14 THE LAST THING I WANT TO TALK TO YOU ABOUT BRIEFLY IS
15 CREDIBILITY BECAUSE THAT'S WHAT THIS CASE BOILS DOWN TO, AS
16 IN EVERY ONE. YOU CAN BELIEVE ONE WITNESS AGAINST MANY.
17 MANY AGAINST ONE. YOU CAN BELIEVE ALL OF WHAT A WITNESS
18 TELLS YOU, NONE, PART; IT'S TOTALLY UP TO YOU. YOU CAN
19 CONSIDER THE WITNESS'S DEMEANOR ON THE STAND. WAS THEIR
20 TESTIMONY CORROBORATED BY OTHER TESTIMONY OR BY THE EVIDENCE
21 IN THE CASE? DID THEY HAVE A REASON TO BE BIASED OR
22 PREJUDICED? DID THEY HAVE ANYTHING TO GAIN OR LOSE?

23 DR. WILSON CAME IN HERE AND TESTIFIED. HE WAS THE
24 DOCTOR THAT SAVED DARYL HAWKINS' LIFE. DOES HE HAVE
25 SOMETHING TO GAIN OR TO LOSE? THE PEOPLE THAT WERE IN THE

1 BUILDING, THE TAPP'S BUILDING NEXT TO IT, DID THEY HAVE
2 SOMETHING TO GAIN OR LOSE? DO THESE POLICE OFFICERS HAVE
3 SOMETHING TO GAIN OR LOSE THAT THEY WOULD STAKE THEIR CAREERS
4 ON ERIC MANCE WHO THEY DIDN'T EVEN KNOW EXISTED UNTIL HE
5 STARTED SCREAMING AT THEM IN THE WOODS?

6 I BEG YOU: JUDGE THEIR CREDIBILITY. JUDGE DARYL
7 HAWKINS' CREDIBILITY. JUDGE INVESTIGATOR REESE, INVESTIGATOR
8 THOMAS, AND EVERY OTHER WITNESS THAT WAS BROUGHT BEFORE YOU
9 BECAUSE I SUBMIT, LADIES AND GENTLEMEN, WHEN YOU LOOK AT THIS
10 EVIDENCE, AT THE WHOLE PICTURE FROM START TO FINISH, THIS
11 DEFENDANT IS GUILTY AS CHARGED. LUCKILY FOR HIM AND MORE
12 IMPORTANTLY FOR DARYL HAWKINS, DR. WILSON WAS THERE TO HELP.

13 ALL WE ASK IS THAT YOU HOLD HIM RESPONSIBLE FOR HIS
14 CHOICES AND HIS ACTIONS AND WHAT HE DID THAT NIGHT. THANK
15 YOU.

16 THE COURT: MR. TARR?

17 MR. TARR: LADIES AND GENTLEMEN OF THE JURY, FIRST
18 BEFORE I GET STARTED WITH MY ARGUMENT I WANTED TO APOLOGIZE
19 TO YOU FOR A MISSTATEMENT THAT I MADE IN MY OPENING
20 STATEMENT. I REPEATEDLY REFERRED TO MR. MANCE AS MENTALLY
21 RETARDED, AND THAT WAS MY FAULT. FROM READING DR. BRAWLEY'S
22 REPORT, THAT'S WHAT I THOUGHT IT SAID.

23 WHAT WE NOW KNOW IS SHE FOUND HIS I.Q. TO BE AT A LEVEL
24 INDICATING MENTAL RETARDATION. AND SO IT'S A SLIGHT
25 DIFFERENCE IN WORDS, BUT I JUST WANTED TO MAKE SURE THAT YOU

1 UNDERSTOOD THAT IT WAS JUST AN INNOCENT MISTAKE ON MY PART,
2 AND I WANT YOU TO CONSIDER HER TESTIMONY FOR WHAT IT IS AND
3 WHAT SHE SAID BECAUSE SHE'S THE EXPERT, NOT ME. I'M JUST A
4 LAWYER AND I MAKE MISTAKES.

5 WHEN I TALKED TO YOU AT THE BEGINNING OF THE CASE - THE
6 SOLICITOR IS RIGHT - I TRIED TO NARROW DOWN THE ISSUES FOR
7 YOU TO CONSIDER IN THIS CASE. WHAT ARE THE ISSUES? AND I
8 TOLD YOU THAT MY CLIENT HAS AN I.Q. OF 66, GOT CAUGHT IN THE
9 RAIN, NEEDED A RIDE HOME, NEVER INTENDED TO HURT ANYBODY.
10 THAT'S WHAT HE TOLD THE POLICE. THAT'S WHAT HE'S MAINTAINED.

11 THERE ARE THREE CHARGES IN THIS CASE. WE'RE ASKING YOU
12 TO FIND HIM GUILTY FOR POSSESSING THE GUN. WE'VE ADMITTED HE
13 POSSESSED THE GUN AND THAT HE SHOULDN'T HAVE HAD THE GUN.
14 FIND HIM GUILTY OF THAT. ALL WE'RE ASKING YOU TO DO IS FIND
15 HIM GUILTY FOR WHAT HE DID, AND THE CHARGE OF ASSAULT AND
16 BATTERY WITH INTENT TO KILL IS SOMETHING THAT YOU HAVE TO
17 CONSIDER, BUT YOU ALSO HAVE THE CHARGE OF ASSAULT AND BATTERY
18 OF A HIGH AND AGGRAVATED NATURE. THE DIFFERENCE IS: WAS
19 THERE MALICE ON ONE HAND OR WAS THERE NOT? BECAUSE EITHER
20 CHARGE CAN APPLY BECAUSE THERE WAS THE USE OF A DEADLY
21 WEAPON.

22 THE DIFFERENCE IS -- THE KEY DIFFERENCE IS: WAS THERE
23 MALICE? AND THE SOLICITOR WENT OVER A LITTLE BIT ABOUT WHAT
24 THAT MEANS, BUT WAS HIS HEART FATALLY BENT ON MISCHIEF? DID
25 HE ABSOLUTELY NOT HAVE A CARE IN THE WORLD OUT THERE? LADIES

1 AND GENTLEMEN, I'M GOING TO SUBMIT TO YOU THE EVIDENCE DOES
2 NOT SHOW THAT. ONE OF THE BIGGEST PIECES OF EVIDENCE IN THIS
3 CASE IS WHAT CAME OUT OF THE MOUTH OF THE VICTIM IN THIS
4 CASE, AND I DO NOT WANT YOU TO MISUNDERSTAND ME. IF I...
5 SOUNDED LIKE I'VE TRIED TO BLAME HIM AT ALL THROUGHOUT THIS
6 WHOLE PROCESS, THAT IS NOT WHAT I MEAN TO DO. I'VE ONLY
7 POINTED OUT WHAT HE SAID HAPPENED THE DAY AFTER THE INCIDENT
8 BECAUSE IT'S A BIG DIFFERENCE.

9 LADIES AND GENTLEMEN, YOU HAVE A VICTIM WHO ALSO IS A
10 LAWYER. HE KNOWS THE ELEMENTS OF THE OFFENSE. WHAT HE TOLD
11 THE TWO INVESTIGATORS THE DAY AFTER THE OFFENSE IS THAT EVERY
12 TIME HE WENT TO EITHER GRAB THE GUN, HIT THE GUN, THROW
13 SOMETHING AT MY CLIENT, HIT MY CLIENT, OR KICK MY CLIENT,
14 THAT EACH TIME HE DID SOMETHING LIKE THAT IS WHEN THE GUN
15 WENT OFF. WHEN HE GOT ON THE STAND - AND SHE ASKED YOU TO
16 JUDGE EVERYBODY'S CREDIBILITY - THAT IS THE FIRST TIME THAT
17 HE EVER TOLD ANYBODY THAT HE LIFTED HIS HANDS UP AND BACKED
18 UP AND SAID, "PLEASE DON'T SHOOT ME." IT'S THE FIRST TIME HE
19 EVER SAID THAT HE GOT SHOT AT WHILE HE WAS TRYING TO GO TO
20 THE HOSPITAL. NEVER TOLD ANYBODY ELSE THAT. THOSE ARE
21 SIGNIFICANT DIFFERENCES.

22 AND THEY'RE GOING TO SAY THAT HE WAS UNDER MEDICATION.
23 LADIES AND GENTLEMEN, IF SOMETHING THAT HORRIBLE HAPPENED TO
24 YOU, EVEN IF YOU WERE SEDATED A LITTLE BIT, YOU WOULD KNOW
25 WHETHER OR NOT YOU BEGGED FOR YOUR LIFE OR WHETHER OR NOT YOU

1 WERE IN A STRUGGLE OVER A GUN. AND I SUBMIT TO YOU WHAT WAS
2 SAID THE DAY AFTER THE INCIDENT IS MUCH MORE IMPORTANT THAN
3 WHAT WAS SAID TWO YEARS LATER.

4 I WANT TO TALK TO YOU A LITTLE BIT ABOUT WHAT THE
5 SOLICITOR SAID, AND PLEASE DON'T LET THE STATE TELL YOU THAT
6 THEY DIDN'T CALL SOMEBODY BECAUSE IT WOULD JUST BE ANOTHER
7 WITNESS THAT WOULD HAVE SAID THE SAME THING. THAT DOESN'T
8 MAKE ANY SENSE. THEY BROUGHT IN SOMEBODY WHO TESTIFIED ABOUT
9 EVERYTHING THAT COULD POSSIBLY HELP THEM IN THIS CASE. THERE
10 WERE THREE PEOPLE THAT GAVE STATEMENTS TO THE POLICE ABOUT
11 WHAT THEY SAW OUT OF THEIR APARTMENT WINDOWS. YOU ONLY HEARD
12 FROM TWO OF THEM.

13 TIM WALSH'S NAME WAS ON THE WITNESS LIST. OFFICER
14 DOUGHERTY'S NAME WAS ON THE WITNESS LIST. HE'S THE ONE THAT
15 TOOK THE STATEMENT FROM HIM. THEY DIDN'T BRING THEM IN.
16 THAT'S ONLY THREE PEOPLE. TIM WALSH WAS IN APARTMENT [REDACTED],
17 ONE FLOOR LOWER THAN NICOLE PERRILL.

18 THESE PHOTOGRAPHS ARE VERY IMPORTANT, LADIES AND
19 GENTLEMEN. BECAUSE YOU DID NOT HAVE AN OPPORTUNITY TO GO TO
20 THE SCENE, I WANT YOU TO PAY VERY CAREFUL ATTENTION IN YOUR
21 DELIBERATIONS AND GO THROUGH ALL THE EVIDENCE, NOT JUST THE
22 PHOTOGRAPHS, BUT THERE'S SOME VERY IMPORTANT THINGS I WANT
23 YOU TO SEE.

24 NICOLE PERRILL'S APARTMENT, SHE POINTED OUT, WAS THIS
25 VERY TOP ONE. THE INCIDENT OCCURRED THREE SPACES AWAY FROM

1 THAT BUILDING RIGHT THERE. SHE TRIED TO SAY IT HAPPENED
2 RIGHT HERE WHERE THIS RED CAR IS UNDER THIS TREE. SHE ALSO
3 COULDN'T EVEN REMEMBER WHETHER THERE WAS A CAR NEXT TO THE
4 CAR. SHE SAID THAT THE TWO PEOPLE SHE SAW WERE STANDING ON
5 THE DRIVER'S SIDE OF THE TAHOE, BUT SHE COULDN'T REMEMBER IF
6 THERE WAS A CAR NEXT TO IT OR WHETHER IT WAS ANOTHER SPACE
7 DOWN. THAT'S A BIG DIFFERENCE. WHEN YOU'VE GOT TWO CARS
8 PARKED BESIDE EACH OTHER, ESPECIALLY WHEN ONE OF THEM IS AS
9 BIG AS A TAHOE, YOU MIGHT HAVE THIS MUCH ROOM IN BETWEEN
10 THEM. YOU WOULD THINK THAT SOMEBODY WHO SAW EXACTLY WHAT
11 HAPPENED WOULD KNOW WHETHER THE PEOPLE WERE LIKE THIS OR
12 WHETHER THEY HAD PLENTY OF ROOM TO MOVE ABOUT FREELY. IT WAS
13 POURING DOWN RAIN. IT WAS DARK. AND SHE WAS AT THE FARTHEST
14 POSSIBLE PLACE IN THAT BUILDING FROM WHERE THIS HAPPENED.

15 YOU CAN SEE IN THIS PHOTOGRAPH THE PARKING SPACE WAS
16 RIGHT HERE. IT'S ONLY THREE AWAY FROM THE BUILDING, AND
17 WHERE SHE POINTED AND WHERE SHE SAID IT HAPPENED WAS MUCH
18 FARTHER AWAY. LADIES AND GENTLEMEN, I'M NOT SAYING SHE'S
19 LYING; I'M SAYING SHE'S MISTAKEN. AND THERE ARE -- ALL THE
20 FACTORS THAT I'VE JUST DISCUSSED ARE VERY IMPORTANT IN
21 DETERMINING WHETHER OR NOT YOU SHOULD DEEM HER TESTIMONY TO
22 BE CREDIBLE.

23 ONE THING THAT SHE DID SAY AND MATTHEW THIELKER SAID --
24 THEY DIDN'T SEE -- THEY SAW THE VERY END OF IT AND THAT THERE
25 WAS NEVER A TIME WHERE HE WAS BEING SHOT AT FROM THE BACK.

1 THAT'S A BIG DEAL WHEN IT COMES TO MALICE.

2 MY CLIENT TURNED HIMSELF IN. HE GAVE A STATEMENT TO THE
3 POLICE, AND YOU'RE GOING TO HAVE THIS BACK THERE TO LOOK AT.
4 I WAS CAUGHT IN THE RAIN AND I NEEDED A RIDE HOME. I DIDN'T
5 WANT TO SHOOT THE MAN. ALL I WANTED WAS THE TRUCK SO I COULD
6 GET HOME. I APOLOGIZE. MY COPY IS HIGHLIGHTED, SO I HAD
7 SOME TROUBLE FINDING THAT.

8 ANOTHER THING I WANT TO TALK TO YOU ABOUT ABOUT THIS
9 ISSUE AND ABOUT THE INTENT AND ABOUT THESE ALLEGED THREATS
10 THAT MY CLIENT MADE: CREDIBILITY. NOT ONLY IS IT IMPORTANT
11 FOR MR. HAWKINS' TESTIMONY AND ALL THE OTHER WITNESSES BUT
12 SHERRY BOLIN AND IRENA FULLER, THE LAST TWO WITNESSES THE
13 STATE PUT UP. SHERRY ADMITTED -- AND THEY'RE GIRLFRIENDS.
14 THEY KNOW EACH OTHER. AND SHERRY ADMITTED THAT IRENA HAD HAD
15 PROBLEMS WITH ERIC MANCE. SHE IS HIS WIFE'S COUSIN AND THAT
16 THEY HAD GOTTEN INTO IT FROM TIME TO TIME. THEY WORKED AT
17 MCDONALD'S TOGETHER, AND THEY HAD GOTTEN INTO IT.

18 YOU HEARD IRENA UP HERE: NEVER, NEVER ONCE, NEVER ONCE
19 BEEN IN AN ARGUMENT. LADIES AND GENTLEMEN, I WANT YOU TO
20 JUDGE THEIR CREDIBILITY. SHERRY BOLIN, SHE'S BEEN CONVICTED
21 OF FORGERY AND SHOPLIFTING, BOTH CRIMES INVOLVING DISHONESTY,
22 AND THESE TWO WOMEN ARE THE WOMEN THAT ARE GOING TO COME IN
23 HERE AND SAY THAT ERIC SAID THESE HORRIBLE THINGS, THAT HE
24 WAS GOING TO GO GET HIM A TRUCK AND ROB SOMEBODY AND NOT
25 GOING TO GO OUT WITHOUT KILLING SOMEBODY. LADIES AND

1 GENTLEMEN, THIS WAS THEIR CHANCE TO SAY SOMETHING BAD ABOUT
2 SOMEBODY THAT THEY HAD PROBLEMS WITH, AND THAT'S WHAT THEY
3 DID. AND THEN IRENA WANTS TO ACT LIKE SHE NEVER HAD A
4 PROBLEM WITH HIM. SHERRY ALSO SAID THAT BARBARA W [REDACTED] -
5 ODESSA'S DAUGHTER - AND ODESSA MANCE WERE THERE WHEN THOSE
6 STATEMENTS WERE MADE. THEY WEREN'T CALLED TO TESTIFY.

7 THE LAST CHARGE, LADIES AND GENTLEMEN: ARMED ROBBERY.
8 ON THIS CHARGE WE'RE ASKING YOU TO FIND HIM NOT GUILTY, AND
9 THERE ARE A NUMBER OF REASONS FOR THAT. HIS OWN WORDS WERE
10 HE JUST WANTED A CAR. HE JUST NEEDED TO GET HOME. WE TALKED
11 A LITTLE BIT ABOUT THIS IN THE BEGINNING OF THE CASE. THAT'S
12 GENERALLY NOT GOING TO BE AN EXCUSE. THAT'S WHY I BROUGHT IN
13 DR. BRAWLEY TO TELL YOU ABOUT ERIC MANCE AND ABOUT HIS MENTAL
14 STATE, ABOUT HOW SOMEBODY COULD THINK IN THEIR MIND THAT THIS
15 WAS THE RIGHT WAY TO DO THIS, TO TAKE A GUN AND TAKE A CAR.
16 WE'RE NOT ARGUING THAT HE TOOK THE CAR. WHAT WE'RE SAYING IS
17 HE NEVER INTENDED TO STEAL THE CAR AND DEPRIVE MR. HAWKINS
18 PERMANENTLY OF THE CAR. HE DIDN'T EVEN THINK ABOUT THAT.

19 HOW DO WE KNOW THAT HE DIDN'T INTEND TO STEAL ANYTHING
20 FROM MR. HAWKINS? BECAUSE HE DIDN'T TAKE ANYTHING BUT THE
21 CAR. HE LEFT A WALLET FULL OF CREDIT CARDS AND DEBIT CARDS
22 ON THE GROUND AND MONEY ON THE GROUND. HE LEFT A CHECKBOOK
23 ON THE GROUND THAT HE COULD HAVE TAKEN AND GONE AND WRITTEN
24 FORGED CHECKS ON LIKE SHERRY BOLIN DID. HE LEFT IT ON THE
25 GROUND. HE LEFT THE CELL PHONE ON THE GROUND.

1 WHEN THEY WENT OUT AND FOUND THE CAR, WHERE IS THE
2 OFFICER THAT WENT THROUGH THE CAR TO COME IN HERE AND TELL
3 YOU WHAT THEY FOUND IN THE CAR? THEY DON'T WANT TO TELL YOU
4 WHAT THEY FOUND IN THE CAR. I HAD TO PRY OUT OF THEM THE
5 FACT THAT THEY FOUND THE VICTIM'S GUN IN THE GLOVE BOX OR
6 SOMEWHERE IN THE CAR. THERE WAS A GUN IN THE CAR THAT ERIC
7 DIDN'T TAKE. WHAT ELSE WAS IN THERE? NOT ONE OFFICER OUT OF
8 EVERY SINGLE PERSON THAT YOU SAW COULD TELL YOU WHAT WAS IN
9 THE CAR.

10 NOW, YOU THINK IF ALL THE VALUABLES WERE TAKEN OUT OF
11 THE CAR THEY WOULDN'T HAVE TOLD YOU ABOUT IT? WHAT ELSE WAS
12 THERE? WHERE ARE THE PICTURES OF THE INTERIOR OF THE CAR
13 SHOWING YOU WHAT WAS LEFT IN THE CAR? HE DID NOT INTEND TO
14 STEAL ANYTHING. HE DIDN'T STEAL ANYTHING FROM MR. HAWKINS.
15 HE USED HIS CAR.

16 LADIES AND GENTLEMEN, THERE ARE OTHER CHARGES THAT HE
17 COULD HAVE BEEN CHARGED WITH SUCH AS USE OF VEHICLE WITHOUT
18 OWNER'S PERMISSION. THEY CHOSE NOT TO CHARGE HIM WITH THAT,
19 AND BECAUSE THEY CHOSE NOT TO CHARGE HIM WITH THAT, THEY HAVE
20 TO PROVE THAT HE PERMANENTLY INTENDED TO DEPRIVE THIS CAR
21 FROM DARYL HAWKINS AND CONVERT IT TO HIS OWN USE.

22 NOW, WE'VE TALKED ABOUT THE KEYS TO THE CAR AND WHERE
23 THEY WERE. MR. MANCE TOLD THEM HE THREW THE KEYS IN THE AIR
24 VENT OF THE HOUSE, AND THE INVESTIGATOR SAID YOU WOULD HAVE
25 HAD TO TEAR UP THE HOUSE TO GET TO THE KEYS. BUT THEY WANT

1 YOU TO THINK THAT HE COULD JUST EASILY GET THE KEYS IF HE
2 WANTED TO GO BACK TO THE CAR AND TAKE THE CAR AND DO
3 SOMETHING. THE KEYS ARE DOWN SOMEWHERE WHERE YOU WOULD HAVE
4 TO ACTUALLY TEAR UP HIS HOUSE TO DO ANYTHING WITH THE CAR.

5 LADIES AND GENTLEMEN, GASTON, AS YOU'VE HEARD, IS 15, 20
6 MILES AWAY FROM WHERE THIS HAPPENED. THE TIME IT TOOK FOR
7 THIS INCIDENT TO HAPPEN FOR ERIC TO DRIVE HOME IS HOW LONG IT
8 TOOK. HE WENT STRAIGHT HOME. HE LEFT THE CAR OUT IN THE BIG
9 FIELD RIGHT NEAR HIS HOUSE, THREW THE KEYS AWAY. YEAH, HE
10 HID THE MASK AND GUN AND HE DID THINGS BECAUSE HE WAS SCARED.
11 HE DID NOT INTEND TO HURT SOMEBODY. HE JUST WANTED A CAR TO
12 GET HOME, BUT HE DID HURT SOMEBODY AND HE WAS SCARED. AND
13 WHEN HE FOUND OUT THAT THEY WERE LOOKING FOR HIM, HE WENT
14 DOWN TO THE POLICE STATION AND HE TOLD THEM EXACTLY WHAT
15 HAPPENED.

16 LADIES AND GENTLEMEN, I JUST WANT YOU TO CONSIDER
17 EVERYTHING THAT YOU'VE HEARD HERE IN THESE THREE DAYS. I'VE
18 TRIED TO BE BRIEF WITH THE WITNESSES. I'VE TRIED TO ONLY
19 BRING OUT THE THINGS THAT WERE RELEVANT TO THE ISSUES THAT WE
20 WANT YOU TO CONSIDER. WHEN YOU GO BACK IN YOUR JURY ROOM, WE
21 WANT YOU TO FIND HIM GUILTY OF POSSESSING THE GUN. WE WANT
22 YOU TO FIND HIM GUILTY OF ASSAULT AND BATTERY OF A HIGH AND
23 AGGRAVATED NATURE. THAT IS A SERIOUS CHARGE, BUT IT'S THE
24 APPROPRIATE CHARGE. HE DID NOT INTEND TO HURT MR. HAWKINS,
25 AND HE APOLOGIZED AND SAID HE HOPED HE WAS OKAY. DOES THAT

1 SOUND LIKE A HEART FATALLY BENT ON MISCHIEF AND DISREGARD FOR
2 ANYBODY ELSE'S WELL-BEING? NO.

3 AND THE ARMED ROBBERY WE'RE ASKING YOU TO FIND HIM NOT
4 GUILTY BECAUSE HE DID NOT STEAL ANYTHING FROM DARYL HAWKINS.
5 HE USED THE CAR. HE DROVE IT STRAIGHT HOME, AND HE THREW THE
6 KEYS IN THE AIR VENT. TOOK NOTHING FROM HIM BUT THE KEYS AND
7 THE CAR. THANK YOU VERY MUCH.

8 THE COURT: LADIES AND GENTLEMEN, LET'S STAND FOR A
9 MOMENT. LADIES AND GENTLEMEN, I'LL HAVE YOU GO TO THE REST
10 ROOM -- I MEAN TO THE JURY ROOM FOR JUST A FEW MINUTES.
11 PLEASE DO NOT DISCUSS THE CASE. WE'LL HAVE YOU GO THERE FOR
12 JUST A FEW MINUTES.

13 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 3:13
14 P.M.)

15 THE COURT: MR. TARR, DOES HE NEED A BREAK?

16 MR. TARR: NO, HE DOESN'T NEED A BREAK.

17 THE COURT: HE SAYS HE NEEDS TO GO TO THE REST ROOM.

18 MR. TARR: HE WAS ASKING ME IF HE NEEDED TO GO. HE SAID
19 NO.

20 THE COURT: YOU DO NOT NEED TO GO.

21 MR. MANCE: NO, SIR.

22 THE COURT: OKAY. ALL RIGHT. WE'LL JUST TAKE A BREAK
23 ABOUT TWO MINUTES AND PRESS ON.

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

25 THE COURT: THANK YOU. BE SEATED. IF YOU'LL BRING THE

1 JURY BACK FOR US.

2 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 3:19
3 P.M.)

4 THE COURT: ALL RIGHT. MR. GOLDBERG?

5 MR. GOLDBERG: MAY IT PLEASE THE COURT?

6 THE COURT: YES, SIR.

7 MR. GOLDBERG: MR. TARR. I'M GOING TO GO DOWNTOWN AND
8 GET ME A CAR. I'M GOING TO ROB ME SOMEBODY. HE SAID BEFORE
9 HE LEAVES THIS WORLD HE'S GOING TO KILL SOMEBODY, AND HE
10 ALMOST DID. YOU WANT TO TALK ABOUT MALICE? YOU WANT TO TALK
11 ABOUT INTENT? LISTEN TO THOSE WORDS. YOU THINK ABOUT THOSE
12 WORDS AND YOU THINK ABOUT WHAT HE DID A WEEK AFTER THAT AND
13 YOU THINK ABOUT WHAT HE TOLD THE POLICE. MALICE? NO INTENT?
14 THIS CASE WREAKS OF MALICE.

15 MR. TARR TOLD YOU EARLIER THAT WHAT HAPPENED ON THAT
16 NIGHT IS A HORRIBLE THING. HE TOLD YOU THAT HE WOULD NOT
17 WISH IT UPON ANYONE. HE EVEN WENT SO FAR IN HIS OPENING TO
18 TELL YOU THAT HE WAS NOT ASKING YOU TO NOT HOLD HIS CLIENT
19 ACCOUNTABLE FOR HIS ACTIONS. I COULDN'T AGREE WITH HIM MORE.
20 ERIC MANCE MUST BE HELD ACCOUNTABLE FOR HIS ACTIONS, AND THEY
21 WERE HIS ACTIONS, MIND YOU. THEY WERE HIS WORDS TO THE
22 POLICE. THEY WERE HIS ACTIONS. THEY WERE HIS CHOICES.

23 THIS CASE IS ABOUT BEING HELD ACCOUNTABLE FOR YOUR
24 ACTIONS. DON'T LET YOURSELVES GET DISTRACTED FROM ALL THE
25 OTHER ISSUES THAT HAVE BEEN RAISED. ERIC MANCE THAT NIGHT

1 TOOK THIS MASK, THIS ONE. HE TOOK THIS GUN WHEN HE LEFT HIS
2 HOUSE. HE TOOK THESE ITEMS. HE TOOK IT INTO THE PARKING LOT
3 AT 1634 MAIN STREET, AND HE PULLED IT OUT ON DARYL HAWKINS.
4 HIS ACTIONS. HE PULLED THE TRIGGER FIVE TIMES. FIVE TIMES
5 HE PULLED THAT TRIGGER. AND HE, ERIC MANCE, LEFT DARYL
6 HAWKINS FOR DEAD AS HE DROVE OFF IN HIS CAR. HIS ACTIONS.
7 MALICIOUS AND INTENTIONAL ACTIONS. HE MUST BE HELD
8 ACCOUNTABLE FOR THOSE INTENTIONAL ACTIONS.

9 MR.. TARR TOLD YOU THAT ERIC MANCE DID NOT INTEND TO
10 SHOOT DARYL HAWKINS THAT NIGHT, THAT HE DIDN'T INTEND TO TAKE
11 ANYTHING FROM HIM, THAT HE DIDN'T INTEND TO PERMANENTLY
12 DEPRIVE HIM OF HIS VEHICLE. HE'S TOLD YOU ALL ABOUT HIS I.Q.
13 HE'S TOLD YOU THAT HE DIDN'T WANT TO HURT ANYONE THAT NIGHT.
14 HE'S TOLD YOU THAT ALL HE WANTED WAS THE TRUCK SO THAT HE
15 COULD GET HOME AND THAT WHEN THEY WERE IN THE PARKING LOT
16 THAT NIGHT THAT SOMEHOW THE GUN JUST WENT OFF.

17 A LOT OF THAT REMINDS ME OF A STORY THAT THEY USED TO
18 TELL IN LAW SCHOOL WHERE AN OLD MAN AND A DEFENSE ATTORNEY
19 WERE WALKING DOWN THE STREET. WHEN THEY GOT TO THE STREET
20 CORNER, THERE WAS BIG MUD PUDDLE RIGHT THERE BECAUSE IT HAD
21 RAINED EARLIER.. THE OLD MAN LOOKS DOWN IN THE PUDDLE AND HE
22 SEES A BRIGHT SHINY SILVER DOLLAR AT THE BOTTOM OF IT, COULD
23 SEE IT RIGHT THROUGH THE WATER. HE SAYS, "HEY, LOOK.. A
24 SILVER DOLLAR." THE DEFENSE ATTORNEY PICKS UP A STICK AND
25 STIRS UP THE PUDDLE, RAISES UP ALL THE SILT AND MUD FROM THE

1 BOTTOM, AND HE LOOKS AT THAT OLD MAN AND HE SAYS, "WHAT
2 SILVER DOLLAR?"

3 DON'T BE DISTRACTED BY ALL THE OTHER FACTORS RAISED BY
4 MR. TARR IN THIS CASE. THIS CASE IS NOT ABOUT THE
5 DISCREPANCIES BETWEEN WHAT NICOLE PERRILL AND MATTHEW
6 THIELKER TOLD YOU. THEY TOLD IT TO YOU AS BEST THEY COULD
7 REMEMBER IT. THIS CASE IS NOT ABOUT WHAT DARYL HAWKINS TOLD
8 LAW ENFORCEMENT WHEN HE WAS HEMORRHAGING IN THE EMERGENCY
9 ROOM RIGHT AFTER THE INCIDENT VERSUS WHAT HE TOLD THEM THE
10 NEXT DAY IN THE INTENSIVE CARE UNIT WHEN HE WAS HEAVILY
11 MEDICATED. REMEMBER, DR. WILSON TOLD YOU THAT IT DEFINITELY
12 HAD AN IMPACT ON HIS ABILITY TO RECALL DETAILS AT THAT TIME.
13 IT'S NOT ABOUT WHAT HE TOLD THE POLICE THEN VERSUS WHAT HE
14 TOLD THEM NOW. HE'S GOT NO REASON TO MAKE THIS ANY BETTER OR
15 ANY WORSE THAN IT IS. THIS CASE ISN'T ABOUT WHETHER OR NOT
16 MR. MANCE IS APOLOGETIC FOR HIS ACTIONS, AND IT'S CERTAINLY,
17 NO QUESTION ABOUT IT -- THIS CASE IS NOT ABOUT ERIC MANCE'S
18 I.Q.

19 THIS CASE IS ABOUT THE TRUTH. IT'S ABOUT FINDING THE
20 SILVER DOLLAR AT THE BOTTOM OF THAT PUDDLE. SEEKING THE
21 TRUTH. AND THE TRUTH IS THAT ERIC MANCE COMMITTED THESE
22 OFFENSES, AND HE DID IT MALICIOUSLY AND HE DID IT
23 INTENTIONALLY. THAT IS UNDENIABLE.

24 ON JUNE THE 2ND OF 2006 MR. MANCE LEFT HIS HOME IN
25 GASTON, AND HE HAD THE MASK AND THE GUN ALREADY IN HIS

1 POSSESSION. HE PLANNED TO TAKE THEM WITH HIM, AND HE TOOK
2 THEM WITH HIM INTO DOWNTOWN COLUMBIA AND FOR WHAT REASON? HE
3 INTENTIONALLY TOOK IT WITH HIM. HE INTENTIONALLY PUT THAT
4 MASK ON. HE INTENTIONALLY PULLED IT OUT ON MR. HAWKINS, AND
5 HE INTENTIONALLY PULLED THE TRIGGER FIVE TIMES. FIVE TIMES.

6 AFTER THAT, HE INTENTIONALLY DROVE OFF WITH MR. HAWKINS'
7 CAR OUT TO GASTON. AND HOW DO WE KNOW ALL THESE FACTS?

8 WELL, FOR ONE THING HE ADMITTED IT. YOU'LL HAVE HIS
9 STATEMENT IN THE BACK WITH YOU. LOOK AT IT. I'M JUST
10 HIGHLIGHTING A FEW THINGS HE SAID IN THERE. I HAD A MASK ON.
11 I SHOT HIM. I SHOT THE GUN FIVE TIMES. IT'S A FIVE-SHOT .38
12 CALIBER. AND I KNEW I HIT HIM. HE STARTED RUNNING AND FELL.
13 GOT IN HIS TRUCK AND DROVE OFF. I HOPE HE FORGIVES ME.

14 LADIES AND GENTLEMEN, A PLEA FOR FORGIVENESS DOES NOT
15 EXCUSE ONE'S ACTIONS. IT DOES NOT CHANGE THE CHOICES THAT HE
16 MAKES. IT DOES NOT GIVE HIM AN EXCUSE.

17 I WANT TO TALK TO YOU BRIEFLY ABOUT WHAT THE WITNESSES
18 WHO CAME IN HERE AND TESTIFIED TOLD YOU. FIRST, THERE WAS
19 DARYL HAWKINS, OF COURSE. HE TOLD YOU ABOUT WHAT HAPPENED
20 THAT NIGHT. HE DESCRIBED IT FOR YOU IN DETAIL. HE NEVER
21 SAID THAT HE BACKED UP AND SAID, "DON'T SHOOT." THOSE WORDS
22 NEVER CAME OUT OF HIS MOUTH, BUT YOU REMEMBER. YOU THINK
23 ABOUT WHEN HE TESTIFIED IF HE EVER SAID THAT. THAT CAME FROM
24 NICOLE PERRILL. NICOLE PERRILL IS THE ONE WHO TESTIFIED THAT
25 THERE WAS SIX FEET IN BETWEEN THEM, AND WHEN SHE SAW THAT,

1 SHE SAW MR. MANCE FIRE THE GUN AT DARYL HAWKINS.

2 MR. HAWKINS TOLD YOU ABOUT HOW WHEN HE LEFT HIS OFFICE
3 THAT NIGHT HE WALKED OUT. HE CLICKED TO UNLOCK THE CAR. THE
4 LIGHT CAME ON. AT THIS POINT HE SEES THIS BALLOON-LIKE THING
5 FLOATING IN THE AREA, SAID IT WAS WHITE OUT OF THE CORNER OF
6 HIS EYE. HE TURNS AROUND AND HE SEES THIS AND HE SEES THIS.

7 FROM THAT POINT ON DARYL HAWKINS WAS THINKING ABOUT
8 SURVIVAL. MR. MANCE FIRES THE GUN -- EXCUSE ME. DARYL TRIES
9 TO KNOCK THE GUN AWAY FROM HIM. HE'S UNSUCCESSFUL. MANCE
10 RECOVERS. THERE'S A LITTLE BIT OF SEPARATION BETWEEN THEM,
11 AND HE FIRES AND HE FIRES SEVERAL TIMES AND HE HITS HIM
12 SEVERAL TIMES.

13 AT THIS POINT I BELIEVE HE EVEN TOLD YOU HE THOUGHT
14 ABOUT THIS OTHER SITUATION ABOUT A GUY WHO WAS DODGING
15 BULLETS, AND THAT'S WHAT HE TRIED TO DO. HE DIDN'T THINK IT
16 WAS GOING TO WORK, SO HE WENT AT MR. MANCE. IT WAS HIS ONLY
17 ALTERNATIVE. IT'S EITHER STAND THERE AND GET SHOT OR TRY AND
18 SAVE YOURSELF, AND HE WENT AT HIM. HE CHARGED HIM; HE MADE
19 CONTACT. THEY WENT TO THE GROUND, AND HE GOT UP AND HEADED
20 IN THE OTHER DIRECTION.

21 HE WENT ON TO TELL YOU THAT AS HE WAS FLEEING HE HEARD
22 WHAT SOUNDED LIKE A GUNSHOT. MR. TARR HAS MADE A BIG DEAL
23 ABOUT HOW HE DIDN'T TELL THE POLICE THAT BACK THEN. NO OTHER
24 WITNESSES SAID THAT THEY SAW A SHOT FIRED AS MR. HAWKINS WAS
25 FLEEING THE AREA.

1 LOOK AT THE PHYSICAL EVIDENCE. REMEMBER WHAT KERMIT
2 SCOTT TOLD YOU, THE INVESTIGATOR WHO PROCESSED THAT PARKING
3 LOT, WHO COLLECTED THE BULLET FRAGMENTS. HE FOUND A HOLE IN
4 THE WALL, NOT THIS WALL WHERE THE INCIDENT TOOK PLACE, NOT
5 OVER HERE, BUT OVER HERE IN THIS WALL. DARYL HAWKINS WAS
6 FLEEING TOWARDS SUMTER STREET. THAT IS UNDISPUTED. NO ONE
7 HAS SAID OTHERWISE. AND KERMIT SCOTT TOLD YOU THAT THERE WAS
8 A BULLET HOLE IN THIS WALL THAT WENT IN IN A STRAIGHT ANGLE
9 INTO THAT WALL. NOW, WHAT CAN YOU INFER FROM HOW THAT BULLET
10 GOT THERE?

11 HE TOLD YOU ABOUT HOW HE WENT TO THE HOSPITAL.
12 THANKFULLY, CHRIS MILLHOUSE WAS OUT THERE AND WAS ABLE TO
13 HELP HIM GET TO THE HOSPITAL, THAT THEY RUSHED HIM IN FOR
14 TREATMENT, PERFORMED EMERGENCY SURGERY THAT NIGHT, AND HE WAS
15 IN THE HOSPITAL FOR APPROXIMATELY TEN DAYS. HE TOLD YOU THAT
16 WHEN HE THOUGHT IT WAS A LAW ENFORCEMENT OFFICER THAT NIGHT
17 ASKING HIM SOME QUESTIONS HE TRIED TO GIVE HIM INFORMATION AS
18 BEST HE COULD, AND THAT OFFICER WAS OFFICER HICKS WHO ALSO
19 TESTIFIED ABOUT THE INFORMATION HE TOOK.

20 LET'S BE CLEAR ABOUT ONE THING. OFFICER HICKS TOLD YOU
21 HIS PURPOSE THERE IS NOT TO GET EVERY SINGLE DETAIL OF THE
22 INCIDENT AS IT HAPPENED. HIS PURPOSE AT THAT TIME WAS TO GET
23 AS MUCH INFORMATION AS HE COULD ABOUT MR. HAWKINS AND ABOUT
24 THE SUSPECT SO THAT THEY COULD GET INVESTIGATORS OUT THERE
25 LOOKING FOR WHO DID THIS, THE BASICS: SEX, RACE, BUILD,

1 GENERALLY HOW IT HAPPENED.

2 IT'S NOT HIS JOB TO TAKE A DETAILED STATEMENT FROM THE
3 VICTIM. HE GOT THE INFORMATION HE NEEDED, AND AS A RESULT,
4 IT WAS FORWARDED ON TO SERGEANT CLARK. THEY FOUND OUT ABOUT
5 ONSTAR BEING ON THE VEHICLE. SERGEANT CLARK TOLD YOU ABOUT
6 HOW DISPATCH WAS IN COMMUNICATION WITH ONSTAR. THE SCENE HAD
7 BEEN SECURED. INVESTIGATORS WERE CALLED OUT TO START WORKING
8 THE CASE. INVESTIGATOR SCOTT WAS OUT THERE TO START
9 PROCESSING THE SCENE, COLLECTING PIECES OF EVIDENCE.

10 YOU HEARD FROM INVESTIGATOR PETOSKEY AS WELL AS
11 SERGEANTS BLACK AND STONER FROM LEXINGTON COUNTY. THEY ALL
12 TALKED TO YOU ABOUT HOW THE CAR WAS BEING TRACKED, THAT THEY
13 WERE UTILIZING ONSTAR TO FIND OUT WHERE IT WAS. I FIND IT
14 VERY INTERESTING THAT INVESTIGATOR PETOSKEY GOT TO THE SCENE
15 IN LEXINGTON IN ABOUT A HALF AN HOUR OR 45 MINUTES OR SO FROM
16 THE TIME THAT THIS INCIDENT TOOK PLACE.

17 WHAT I FIND EVEN MORE INTERESTING IS SERGEANT STONER'S
18 TESTIMONY. IF YOU RECALL, HE TOLD YOU WHERE HE FOUND THAT
19 CAR. HE RESPONDED OUT AT WILD BIRD AND PEELER, OUT IN THAT
20 AREA. HE TOLD YOU BASED ON THE INFORMATION HE HAD ABOUT IT,
21 HE WENT TO [REDACTED] PEELER ROAD, RIGHT HERE ON THE CORNER, LOOKING
22 FOR THE CAR. HE COULDN'T FIND IT. THIS IS [REDACTED]. THIS IS
23 [REDACTED]. THAT'S ERIC MANCE'S HOUSE.

24 SERGEANT STONER IS RIGHT HERE. HE SAYS HE DOESN'T SEE
25 THE VEHICLE THERE EVEN THOUGH ONSTAR IS SAYING IT'S AT [REDACTED]

1 PEELER ROAD. HE CONTINUES ON TO LOOK FURTHER. HE GOES DOWN
2 PEELER ROAD ONTO PEELER COURT, AND HE CANNOT SEE THE TAHOE
3 ANYWHERE, NOT IN FRONT OF MANCE'S HOUSE, NOT IN HIS DRIVEWAY,
4 NOT THAT AT THAT TIME HE KNEW HE WAS A SUSPECT, BUT HE STILL
5 COULD NOT SEE THE CAR. SO WHAT HE DID IS HE PULLED UP IN
6 THIS LITTLE PATH AND EVENTUALLY GOT OUT ON FOOT UP A DIRT
7 ROAD WHERE THERE WAS SOME FRESH KNOCKED-DOWN -- WHERE GRASS
8 HAD BEEN RUN OVER, AND HE WENT LOOKING AND HE FINALLY FOUND
9 IT SOMEWHERE BACK IN HERE IN THE WOODS.

10 THE CAR WAS NOT VISIBLE FROM THE ROAD. IF ERIC MANCE
11 DID NOT INTEND TO KEEP THAT CAR, IF HE WAS JUST USING IT FOR
12 A RIDE HOME, WHY IS IT PARKED IN A PLACE WHERE IT'S NOT EVEN
13 VISIBLE FROM THE ROAD? WHY ISN'T IT IN HIS DRIVEWAY OR IN
14 FRONT OF HIS HOUSE?

15 KERMIT SCOTT AGAIN TALKED TO YOU ABOUT THE ITEMS HE
16 COLLECTED. THEY WEREN'T ALTERED. THEY WEREN'T TAMPERED IN
17 ANY WAY. HE COLLECTED BULLET FRAGMENTS FROM THE SCENE,
18 TURNED THEM OVER TO S.L.E.D. AGAIN, HE TOLD YOU ABOUT THE
19 BULLET HOLE HE FOUND IN THIS WALL, FOUND IN THE DIRECTION
20 WHERE DARYL HAWKINS WAS RUNNING.

21 SERGEANT DESROCHERS TOLD YOU ABOUT HOW HE COLLECTED A
22 PIECE OF A BULLET FRAGMENT THE NEXT DAY. INVESTIGATOR
23 CURRIE, ROSE, THEY ALL TALKED ABOUT THEIR ROLES. ROSE:
24 ESPECIALLY IMPORTANT IS ONCE THEY FOUND OUT ABOUT MANCE, HE
25 WAS THE ONE THAT WENT TO HIS HOUSE AND HE FOUND THE GUN AND

1 HE FOUND THE MASK BURIED IN HIS BACKYARD.

2 YOU ALSO HEARD FROM ALL OF OUR CHAIN WITNESSES, TENA
3 GOFF AND THE LIKE... THEIR SOLE PURPOSE IS TO TELL YOU THAT
4 THE ITEMS THEY COLLECTED - THE BULLETS, THE GUN, THE MASK,
5 ANYTHING THAT WAS SUBMITTED FOR ANALYSIS - WASN'T ALTERED,
6 WASN'T TAMPERED IN ANY WAY BEFORE IT WAS ACTUALLY TESTED.

7 KATHLEEN AMICK, SHE TOLD YOU THAT A G.S.R. KIT WAS
8 TAKEN, GUNSHOT RESIDUE ON NORRIS REED, AN INDIVIDUAL THAT
9 LEXINGTON HAD STOPPED THAT NIGHT. THEY HAD CLEARED HIM THAT
10 NIGHT. THEY KNEW HE WASN'T A SUSPECT, BUT THEY RAN THE TEST
11 ANYWAY AND HE HADN'T FIRED A GUN.

12 THE OTHER THING SHE TOLD YOU ABOUT THE SIX-HOUR RULE:
13 THEY DIDN'T PERFORM A G.S.R. TEST ON ERIC MANCE BECAUSE BY
14 THE TIME THEY KNEW WHO HE WAS, IT WAS TWO OR THREE DAYS
15 LATER. THERE WAS NO WAY THEY WERE GOING TO GET ANY GUNSHOT
16 RESIDUE OFF HIS HANDS.

17 YOU HEARD FROM MATTHEW THIELKER AND NICOLE PERRILL, AND
18 AGAIN MR. TARR MADE AN ISSUE ABOUT THE DIFFERENCES IN WHAT
19 THEY HAD TO SAY, SPECIFICALLY MS. PERRILL. MR. THIELKER TOLD
20 YOU HE HEARD THREE SHOTS. HE WENT TO THE WINDOW. HE SEES A
21 MAN IN A WHITE MASK, WHITE AND BLACK MASK, GET IN THE WHITE
22 TAHOE AND DRIVE OFF, AND HE SEES ANOTHER MAN HOBBLING OFF
23 TOWARDS SUMTER STREET.

24 MS. PERRILL, ON THE OTHER HAND, TOLD YOU THAT SHE WAS IN
25 HER APARTMENT. SHE HEARS MULTIPLE GUNSHOTS AND GOES TO THE

1 WINDOW TO SEE WHAT'S GOING ON. WHEN SHE GETS TO THE WINDOW,
2 SHE SEES - HER WORDS - ERIC MANCE POINTING A GUN AT WHAT
3 WOULD TURN OUT TO BE DARYL HAWKINS. SHE EVEN TESTIFIED THAT
4 THERE WAS APPROXIMATELY SIX TO SEVEN FEET BETWEEN THEM,
5 DISTANCE BETWEEN THEM, AND THAT HE FIRED THE GUN. AND IT WAS
6 AT THIS POINT THAT SHE THEN WENT BACK AWAY FROM THE WINDOW TO
7 TRY AND FIND HER CELL PHONE TO CALL 9-1-1. I BELIEVE SHE
8 EVEN TESTIFIED THAT SHE HAD SOME DIFFICULTY FINDING HER CELL
9 PHONE, AND WHO WOULDN'T? YOU'VE JUST HEARD MULTIPLE GUNSHOTS
10 AS YOU'RE CHECKING YOUR E-MAIL. YOU GO TO THE WINDOW. YOU
11 SEE A MAN WITH A GUN FIRE IT AT ANOTHER INDIVIDUAL. THAT'S A
12 FRANTIC SITUATION. IT'S EASY TO MISTAKE SOME OF THE DETAILS
13 WHEN YOU'VE JUST WITNESSED SOMETHING LIKE THAT. IT'S GOING
14 TO SHAKE YOU UP.

15 SHE WENT TO TRY AND FIND HER PHONE. IT TOOK HER A
16 MINUTE. WE DON'T KNOW WHAT HAPPENED FROM HER PERSPECTIVE
17 WHILE SHE WAS DOING THAT. IS THAT THE TIME WHEN THE SHOT WAS
18 FIRED AT DARYL AS HE'S FLEEING THE SCENE? SHE TESTIFIED THAT
19 BY THE TIME SHE GOT BACK TO THE WINDOW HE WAS HEADING AWAY
20 FROM THE SCENE. MAYBE IT HAPPENED THEN.

21 IT WAS CHAOTIC. SHOTS WERE FIRED. SHE WAS SCARED, I'M
22 SURE. SHE'S GOT NO DOG IN THIS FIGHT. SHE CAME IN HERE AND
23 SHE TOLD THIS INFORMATION TO YOU AS BEST SHE COULD, THE BEST
24 WAY THAT SHE REMEMBERED IT. AND IF THERE WAS A DISCREPANCY
25 ABOUT WHETHER OR NOT THERE WAS A CAR RIGHT UP ON THE TAHOE OR

1 IF THERE WAS A SPACE IN BETWEEN AND MR. THIELKER SAID IT WAS
2 A DIFFERENT WAY AND MR. HAWKINS SAID IT WAS A DIFFERENT WAY,
3 THAT'S WHAT MAKES THESE WITNESSES CREDIBLE. IT'S THE LITTLE
4 DIFFERENCES THAT MAKE THEM BELIEVABLE.

5 IF EVERY ONE OF THOSE PEOPLE CAME IN HERE AND TOLD YOU
6 WORD FOR WORD THE EXACT SAME THING, WOULDN'T THAT BE A LITTLE
7 BIT ODD THAT THREE PEOPLE FROM THREE DIFFERENT PERSPECTIVES
8 WITH THREE DIFFERENT THINGS RUNNING THROUGH THEIR MIND TOLD
9 YOU EXACTLY THE SAME THING? THEY ALL MAYBE GOT TOGETHER AND
10 CREATED A STORY? THEY ALL TOLD IT THE WAY THAT THEY
11 REMEMBERED IT, THE LITTLE DETAILS IN THEIR MIND. THAT'S WHAT
12 MAKES THEM BELIEVABLE. THAT'S WHAT MAKES THEM CREDIBLE.

13 JOHN BARRON TESTIFIED. HE TOLD YOU ABOUT THE MASK, THAT
14 HE TESTED IT FOR D.N.A., THAT IT HAD MR. MANCE'S D.N.A. ON IT
15 AND THAT HE HAD WORN IT, AND I BELIEVE THE ODDS WERE ONE OUT
16 OF 14 TRILLION THAT THE D.N.A. BELONGED TO SOMEBODY ELSE.

17 IRA PARNELL FROM S.L.E.D. TESTIFIED, AND I FOUND HIS
18 TESTIMONY FASCINATING. NUMBER ONE, HE TELLS YOU THAT THE .38
19 CALIBER WEAPON THAT'S DUG UP FROM ERIC MANCE'S BACKYARD IS
20 UNQUESTIONABLY THE ONE THAT FIRED THE BULLET FRAGMENTS FOUND
21 AT THE SCENE. HE TESTED THOSE FRAGMENTS. HE COMPARED THEM
22 TO THAT GUN FOUND AT MANCE'S HOUSE. AND HE WAS CLEAR: THAT
23 GUN FIRED THOSE BULLETS.

24 BUT THE THING THAT REALLY GOT MY ATTENTION WAS HIS
25 DESCRIPTION OF THE GUN. NUMBER ONE, HE SAID THERE WAS

1 NOTHING ABOUT IT THAT WOULD CAUSE IT TO MALFUNCTION. HE SAID
2 THIS TRIGGER GUARD IS MISSING, BUT THAT DOESN'T AFFECT ITS
3 ABILITY TO FUNCTION IN ANY WAY. WHAT HE ALSO TOLD YOU IS
4 THAT THE TRIGGER HAS TO BE PULLED EACH TIME A ROUND IS TO BE
5 FIRED.

6 MR. MANCE FREELY ADMITS THAT HE FIRED FIVE DIFFERENT
7 SHOTS. IF YOU BELIEVE MR. PARNELL ABOUT HOW THIS GUN WORKS,
8 THAT MEANS HE HAD TO PULL THAT TRIGGER ONE, TWO, THREE, FOUR,
9 FIVE SEPARATE TIMES. THERE WAS NO INCIDENT OF THE GUN JUST
10 GOING OFF DURING THE STRUGGLE. HE INTENTIONALLY HAD TO TAKE
11 HIS HAND AND PULL THE TRIGGER FIVE TIMES. FIVE TIMES.

12 AFTER THAT, YOU HEARD FROM INVESTIGATOR SLOAN, REESE,
13 AND THOMAS. INVESTIGATOR SLOAN TESTIFIED ABOUT HOW HE WAS
14 THERE FOR THE ADVICE OF RIGHTS AND MR. MANCE'S STATEMENT. HE
15 UNDERSTOOD HIS RIGHTS. HE WAIVED HIS RIGHTS. THERE WAS
16 NOTHING TO INDICATE THAT HE DIDN'T UNDERSTAND WHAT HE WAS
17 DOING OR HE DIDN'T UNDERSTAND ANY OF THESE QUESTIONS, THAT HE
18 DIDN'T SAY ANYTHING ABOUT IT AND THAT HE WAIVED ALL OF HIS
19 RIGHTS.

20 INVESTIGATOR REESE TALKED ABOUT HIS INVOLVEMENT AS THE
21 LEAD INVESTIGATOR IN THE CASE. HE TOLD YOU THAT FORTUNATELY
22 HE WAS ABLE TO OBTAIN SOME INFORMATION FROM SHERRY BOLIN AND
23 IRENA FULLER. AS A RESULT OF THAT, HE WAS ABLE TO GO TALK
24 WITH BARBARA W [REDACTED], ERIC MANCE'S STEPDAUGHTER, AND THAT
25 WHILE SHE WAS COOPERATIVE, SHE WAS SCARED. OF COURSE SHE WAS

1 SCARED. SHE LIVES IN THE SAME HOUSE WITH MR. MANCE. SHE
2 DIDN'T WANT TO PUT A STATEMENT IN WRITING. SHE TOLD THEM
3 WHAT SHE KNEW. BUT IF SHE DIDN'T WANT TO PUT HER STATEMENT
4 IN WRITING, WOULD YOU EXPECT TO SEE HER HERE TESTIFYING IF
5 SHE WAS THAT SCARED THEN?

6 THEY TALKED TO HIS WIFE. THEY TALKED TO HIS SISTER-IN-
7 LAW. LADIES AND GENTLEMEN, WE CAN'T MAKE HIS WIFE COME IN
8 HERE AND TESTIFY. HIS WIFE ABSOLUTELY DOES NOT HAVE TO DO
9 THAT, AND WE CAN'T MAKE HER DO IT. THAT'S WHY YOU DIDN'T SEE
10 HER HERE TODAY OR DURING THIS WEEK.

11 INVESTIGATOR REESE TALKED ABOUT THE STATEMENT. HE
12 TALKED ABOUT WHEN THEY FIRST BEGAN DISCUSSING THE SITUATION
13 WITH MR. MANCE THAT HE TOLD THEM THE STORY THAT HE JUST SAW
14 THE CAR BEHIND THE HOUSE AND HE WENT TO IT, LOOKED AROUND BUT
15 DIDN'T TAKE ANYTHING. AS HE'S CONFRONTED WITH MORE, HE
16 CHANGES THE STORY AGAIN, THIS TIME SAYING, "WELL, OKAY. YOU
17 KNOW, I WAS DOWNTOWN. SO, YEAH, I WENT TO KING'S BARBERSHOP
18 AND GOT A SHAVE." THEN AS THEY CONFRONT HIM WITH MORE OF
19 THEIR EVIDENCE, HE STARTS GETTING UPSET AND HE DOESN'T WANT
20 TO TALK UNTIL HIS WIFE GETS THERE, AND HE FINALLY DECIDES HE
21 WANTS TO TALK.

22 INVESTIGATOR THOMAS WORKED THE CASE WITH REESE. HE TOLD
23 YOU SOMETHING REALLY, REALLY IMPORTANT, THAT WHEN THEY WENT
24 BACK OUT TO PEELER ROAD HE WAS WALKING ALONG IN THAT WOODED
25 FIELD AREA THE NEXT DAY AFTER THE INCIDENT. THEY WERE

1 LOOKING FOR ANYTHING, LOOKING FOR ANY EVIDENCE OF HOW THIS
2 CAR HAD GOTTEN THERE, WHO HAD TAKEN IT, WHAT HAPPENED.

3 HE WAS SEPARATED FROM REESE. HE'S WALKING ALONG, AND A
4 MAN COMES OUT ON HIS BACK PORCH AND STARTS SCREAMING
5 OBSCENITIES AT HIM, AND HE KNEW WHO HE WAS. HE, BEING THE
6 MAN SCREAMING, KNEW THAT THOMAS WAS A POLICE OFFICER. HE
7 TESTIFIED HE HAD HIS BADGE AND HIS GUN IN PLAIN SIGHT. THE
8 MAN STARTS VERBALLY ABUSING HIM, AND HE TELLS HIM, "YOU ALL
9 AREN'T SMART ENOUGH TO FIND ANYTHING."

10 LO AND BEHOLD, WHEN ERIC MANCE CAME IN TO GIVE HIS
11 STATEMENT TO INVESTIGATORS REESE AND THOMAS, THOMAS SAID,
12 YOU'VE GOT TO BE KIDDING ME. IT'S THE SAME GUY, TELLING ME
13 THAT I WASN'T SMART ENOUGH TO FIND ANYTHING OUT THERE. NOW,
14 DOES THAT SOUND LIKE A MAN WHO DIDN'T INTEND TO COMMIT THESE
15 ACTIONS, A MAN WHO WAS TAUNTING THE POLICE AS THEY WERE
16 SEARCHING FOR EVIDENCE?

17 DR. WILSON TOOK THE STAND. HE TOLD YOU ALL ABOUT MR.
18 HAWKINS' MEDICAL CONDITION AND EXACTLY HOW DIRE IT WAS. HE
19 TOLD YOU IN NO UNCERTAIN TERMS THAT IF DARYL HAWKINS HAD NOT
20 BEEN RUSHED INTO EMERGENCY SURGERY THAT NIGHT HE'D BE DEAD.
21 IF CHRIS MILLHOUSE HADN'T BEEN OUT THERE AND HELPED HIM ALONG
22 INTO THE HOSPITAL, HE WOULD HAVE BLED TO DEATH, AND HE WAS
23 CLEAR ABOUT THAT.

24 HE TOLD YOU ABOUT THE INJURIES TO HIS BOWELS. THEY HAD
25 TO ACTUALLY REMOVE PART OF HIS SMALL BOWEL, THE AMOUNT OF

1 BLEEDING THERE WAS. HE HAD AN INJURY TO HIS BLADDER. IT
2 REQUIRED A SEPARATE PROCEDURE TO CORRECT. HE WAS IN
3 INTENSIVE CARE FOR SEVERAL DAYS. THIS WAS A LIFE-THREATENING
4 INJURY. HE WAS IN THE HOSPITAL FOR ABOUT TEN DAYS.

5 HE TOLD YOU THAT THE DAY AFTER THE SURGERY MR. HAWKINS
6 WAS NOT, I BELIEVE THE PHRASE, SLIGHTLY MEDICATED OR
7 SOMETHING TO THAT EFFECT THAT MR. TARR TOLD YOU. HE TOLD YOU
8 HE WAS HEAVILY MEDICATED, HEAVILY SEDATED, AND THAT IT
9 ABSOLUTELY WOULD HAVE COMPROMISED HIS ABILITY TO GIVE DETAILS
10 ABOUT WHAT HAD HAPPENED THE DAY BEFORE. SO IF WE WANT TO
11 TALK ABOUT WHAT HE TOLD THE POLICE, THE GUY HAD JUST GOTTEN
12 OUT OF EMERGENCY SURGERY. HE TOLD IT THE BEST HE COULD.
13 THAT'S WHY THEY CUT THE INTERVIEW SHORT. THAT'S WHY THEY
14 DIDN'T TAKE A WRITTEN STATEMENT FROM HIM.

15 YOU HEARD FROM IRENA FULLER AND SHERRY BOLIN. SHERRY
16 BOLIN TOLD YOU HERSELF THAT WHEN SHE WAS 17 YEARS OLD SHE
17 STOLE A COUPLE OF CHECKS FROM HER MOM AND SHE BOUGHT SOME
18 STUFF WITH THEM AND THAT SHE SHOPLIFTED SOMETHING TWO MONTHS
19 LATER. THAT WAS 11 YEARS AGO. SHE HASN'T BEEN IN TROUBLE
20 SINCE. SHE'S GOT NO REASON TO COME IN HERE AND LIE.

21 MR. TARR PUT INTO QUESTION WHETHER OR NOT IRENA HAD SOME
22 GRUDGE AGAINST MR. MANCE AND THAT IRENA SAID, "NO, WE NEVER
23 GOT INTO AN ARGUMENT," WHICH HE SEEMED TO BELIEVE SHERRY'S
24 TESTIMONY THAT THERE HAD BEEN ARGUMENTS. THAT'S FINE.
25 SHERRY WAS UPFRONT ABOUT IT. SHE SAID, YEAH, THEY HAD HAD

1 ARGUMENTS, BUT IT DIDN'T HAVE ANYTHING TO DO WITH ME, AND I
2 KNOW WHAT I HEARD THAT DAY. AND SHE TOLD YOU THAT WEEKS
3 PRIOR TO THIS INCIDENT SHE HEARD HIM SAY EXACTLY WHAT I TOLD
4 YOU BEFORE: I'M GOING TO GO DOWNTOWN AND GET ME A CAR. I'M
5 GOING TO ROB SOMEBODY. AND THEN THEY BOTH HEARD A WEEK
6 BEFORE THIS INCIDENT MR. MANCE ON HIS FRONT PORCH SLAMMING
7 HIS FRONT DOOR REPEATEDLY IN ANGER, UPSET, SCREAMED AT
8 WHOEVER WOULD HEAR IT, INCLUDING HIS WIFE: BEFORE I LEAVE
9 THIS WORLD, I'M GOING TO KILL SOMEBODY.

10 DR. BRAWLEY WAS CALLED TO THE STAND BY MR. TARR. HE
11 TALKED ABOUT -- EXCUSE ME. SHE TALKED ABOUT A NUMBER OF
12 THINGS. A COUPLE OF THINGS. I WANT TO POINT OUT. SHE TALKED
13 ABOUT HOW DRUG ABUSE, AMONG OTHER THINGS, CAN DEFINITELY HAVE
14 AN IMPACT ON A PERSON'S I.Q., THAT IT CAN LOWER IT, AND BASED
15 UPON THE RECORDS SHE REVIEWED, HE'S BEEN USING DRUGS FOR A
16 LONG TIME. MAYBE THAT HAD SOMETHING TO DO WITH WHERE HIS
17 I.Q. IS, BUT SHE ALSO TOLD YOU THAT SHE CANNOT SIT HERE AND
18 TELL YOU THAT HE'S MENTALLY RETARDED. SHE COULD NOT TELL YOU
19 THAT. AND EVEN IF HE WAS, CONSIDERING WHATEVER YOU WANT TO
20 CLASSIFY HIS STATE AS, WHETHER IT BE POSSIBLY MENTALLY
21 RETARDED, SLIGHTLY MENTALLY RETARDED, WHATEVER THAT CATEGORY
22 WAS THAT SHE CALLED HIM, SHE SPECIFICALLY TOLD YOU THAT THAT
23 DOES NOT IN ANY WAY, SHAPE, OR FORM EXCUSE HIM FROM HIS
24 ACTIONS, NOT ONE BIT.

25 A FEW THINGS MR. TARR MENTIONED TO YOU. I THINK I

1 ACTUALLY ADDRESSED MOST OF THEM. UNDER THEIR THEORY, ERIC
2 MANCE DID NOT INTEND TO SHOOT DARYL HAWKINS. UNDER THEIR
3 THEORY HE DID NOT INTEND TO PERMANENTLY DEPRIVE HIM OF HIS
4 VEHICLE. HE HAS A LOW I.Q. THAT'S BEEN BROUGHT UP NUMEROUS
5 TIMES. HIS INTELLIGENCE LEVEL HAS BEEN BROUGHT UP THROUGHOUT
6 THIS TRIAL.

7 DON'T BE DISTRACTED BY THESE THINGS. FOCUS ON WHAT HE
8 CAN DO. ERIC MANCE WAS SMART ENOUGH TO ARM HIMSELF WITH A
9 GUN AND A MASK WHEN HE CAME DOWN TO COLUMBIA, SOUTH CAROLINA.
10 HE WAS SMART ENOUGH TO TAKE THOSE THINGS WITH HIM. HE GOT A
11 RIDE INTO TOWN WITH THESE THINGS, SPEAKING OF WHICH: HOW DID
12 HE GET DOWN THERE? WHO DID HE GET A RIDE FROM? AND I'M JUST
13 ASSUMING THAT THERE WAS NO POSSIBLE WAY OF USING THAT RIDE ON
14 THE WAY BACK HOME LATER THAT NIGHT?

15 HE WAS SMART ENOUGH TO ACTUALLY LOAD THE BULLETS INTO
16 THE GUN. HE WAS SMART ENOUGH TO PUT THE MASK ON BEFORE HE
17 APPROACHED MR. HAWKINS TO CONCEAL HIS IDENTITY. HE WAS SMART
18 ENOUGH TO PULL THAT GUN OUT, AND HE WAS SMART ENOUGH TO KNOW
19 THAT HE HAD TO PULL THAT TRIGGER FIVE SEPARATE TIMES.
20 REMEMBER WHAT IRA PARNELL TOLD YOU: FIVE SHOTS, FIVE
21 DIFFERENT PULLS ON THE TRIGGER.

22 HE WAS SMART ENOUGH TO FIND THE KEYS, FIGURE OUT HOW TO
23 START THE CAR AND DRIVE IT BACK TO GASTON. HE WAS SMART
24 ENOUGH, AS I TOLD YOU EARLIER, TO HIDE THE CAR. YOU WANT TO
25 TALK ABOUT WHETHER HE HAD THE INTENTION OF KEEPING THE CAR?

1 IF HE DIDN'T HAVE AN INTENTION OF KEEPING THE CAR -- EXCUSE
2 ME. IF HE DID HAVE THE INTENTION -- SORRY. IF HE DID NOT
3 HAVE THE INTENTION OF KEEPING IT, WHY WOULD HE HAVE NOT JUST
4 PARKED IT IN HIS DRIVEWAY RIGHT IN FRONT OF HIS HOUSE INSTEAD
5 OF PUTTING IT IN A FIELD AT LEAST 50 YARDS OFF THE ROAD WHERE
6 IT WASN'T VISIBLE TO ANYONE AT WHICH POINT HE LOCKS THE CAR
7 AND TAKES THE KEYS WITH IT? DOESN'T CALL ANYONE. DOESN'T
8 TELL ANYONE HE'S GOT THE CAR. AND KEEP IN MIND: ONSTAR IS
9 TRACKING THE CAR, BUT HE DOESN'T KNOW THAT. IT'S NOT LIKE HE
10 ASSUMED, "OH, WELL, ONSTAR IS TRACKING THE CAR, SO THEY'RE
11 GOING TO BE HERE ANY MINUTE AND I CAN JUST TELL SOMEBODY THAT
12 I DIDN'T MEAN TO TAKE IT." HE DIDN'T KNOW THAT. HE LEFT
13 THAT CAR IN A PLACE WHERE IT WAS HIDDEN AND IT COULDN'T BE
14 SEEN, AND HE KEPT THE KEYS SO THAT HE COULD GO BACK TO IT
15 LATER WHEN THINGS HAD DIED DOWN. HE WAS SMART ENOUGH TO HIDE
16 IT.

17 YOU WANT TO TALK ABOUT THE VALUABLES THAT WERE TAKEN,
18 WHETHER THERE WERE ITEMS TAKEN FROM THE CAR. THERE'S NO
19 DISPUTE THAT THERE WERE NO PERSONAL BELONGINGS TAKEN FROM THE
20 CAR. NO ONE IS SAYING ANYTHING OTHERWISE. HE DID TAKE THE
21 KEYS, AND THAT IS MR. HAWKINS' PROPERTY AND HE DID ADMIT THAT
22 HE TOOK THE KEYS AND THAT HE HID THEM IN HIS HOUSE. OF
23 COURSE, HE TOOK THE CAR, WHICH WAS THE MOST VALUABLE THING,
24 OTHER THAN DARYL HAWKINS' LIFE, THAT HE POSSESSED AT THAT
25 TIME.

1 NOT ONLY THAT, HE WAS SMART ENOUGH TO HIDE THE MASK AND
2 TO HIDE THE GUN. HE BURIED THEM IN HIS BACKYARD. HE WAS
3 SMART ENOUGH TO HIDE THE KEYS SOMEWHERE. HE WAS SMART ENOUGH
4 THAT WHEN HE SAW INVESTIGATOR THOMAS AND HE SAW HIS BADGE AND
5 HE SAW HIS GUN -- AT THAT POINT INVESTIGATOR THOMAS DIDN'T
6 KNOW WHO HE WAS, JUST THOUGHT HE WAS A CITIZEN OF THAT
7 NEIGHBORHOOD. HE WAS SMART ENOUGH TO TELL INVESTIGATOR
8 THOMAS THAT THE POLICE WERE THE ONES WHO WERE NOT SMART
9 ENOUGH TO FIGURE THIS OUT OR TO FIND ANYTHING. HE'S THE ONE
10 QUESTIONING THEIR INTELLIGENCE. YOU WANT TO TALK ABOUT HIS
11 I.Q.? HE WAS SMART ENOUGH TO MAKE THAT PROMISE TO
12 INVESTIGATOR THOMAS.

13 WHEN HE FINALLY WAS CONFRONTED WITH THE FACT THAT THE
14 POLICE WERE LOOKING FOR HIM, HE AND HIS WIFE GO TO THE
15 COLUMBIA POLICE DEPARTMENT HEADQUARTERS TO SEE INVESTIGATOR
16 REESE. HE STILL KNEW WHAT HE WAS DOING. WHEN THEY FIRST
17 STARTED TALKING TO HIM, ERIC MANCE WAS SMART ENOUGH TO TELL
18 THEM A LIE.

19 DO YOU RECALL WHAT REESE TOLD YOU? THE FIRST THING THAT
20 HE TOLD THEM WAS: I FOUND THE CAR BEHIND THE HOUSE
21 SOMEWHERE. I WENT UP TO IT. I POKED AROUND, BUT I DIDN'T
22 TAKE ANYTHING. THAT'S ALL HE SAID HE DID. IF HE DIDN'T MEAN
23 TO TAKE THE CAR, IF HE DIDN'T MEAN TO SHOOT DARYL HAWKINS,
24 WHY IS HE LYING? WHAT HAS HE GOT TO HIDE AT THIS POINT IF IT
25 WAS SOMETHING HE DIDN'T INTEND TO DO?

1 WHEN THEY CONFRONT HIM WITH EVIDENCE THAT THEY HAVE THAT
2 HE WAS DOWNTOWN, HE GIVES THEM ANOTHER STORY.. HE SAYS, WELL,
3 OKAY. I WAS DOWNTOWN. I WAS GETTING A SHAVE OR SOMETHING
4 OVER AT KING'S BARBERSHOP. KING'S BARBERSHOP CLOSSES AT 6:00.
5 THIS INCIDENT WAS AT 9:30. WHAT WAS HE DOING FOR THREE AND A
6 HALF HOURS? HE HADN'T FOUND A RIDE ANYWHERE ELSE AT THAT
7 POINT? HE WAS STUCK IN THE RAIN FOR THREE AND A HALF HOURS
8 BEFORE HE DECIDES THAT THIS WAS HIS ONLY OPTION?

9 HE WAS SMART ENOUGH THAT HE REALIZED WHEN HE WAS EVEN
10 CONFRONTED WITH MORE EVIDENCE THAT THEY HAD THAT HE WAS
11 GETTING UPSET AND HE DIDN'T WANT TO TALK, AT LEAST NOT 'TIL
12 HIS WIFE CAME BACK. AND HE WAS SMART ENOUGH TO ASK FOR HER
13 TO COME BACK WHEN THEY WERE READING THE WARRANTS TO HIM, WHEN
14 THEY WERE SERVING THEM ON HIM. IT BOUGHT HIM SOME TIME. IT
15 TOOK HER 10 OR 15 MINUTES TO GET BACK, AND IT GAVE HIM THE
16 CHANCE TO GET HIS STORY TOGETHER SO THAT WHEN THEY TALKED TO
17 HIM AFTER HE HAD BEEN ADVISED OF HIS RIGHTS -- WHICH IS, TO
18 MY KNOWLEDGE, NOT IN DISPUTE THAT HE WAS ADVISED OF HIS
19 RIGHTS.

20 LOOK AT THE STATEMENT WHEN YOU GET BACK THERE. THEY
21 ASKED HIM REPEATEDLY WHETHER HE'S BEEN ADVISED, WHETHER HE
22 UNDERSTANDS, WHETHER HE WANTS TO STOP TALKING. NOW HE WANTS
23 TO TALK BECAUSE HIS WIFE IS BACK. IT'S CLEAR HE WAS FREELY
24 AND VOLUNTARILY SPEAKING WITH THEM THAT NIGHT, BUT HE HAD
25 BOUGHT HIMSELF ENOUGH TIME TO COME UP WITH THIS STORY SO THAT

1 HE COULD GET HIS VERSION OF THE EVENTS OUT. I WAS CAUGHT IN
2 THE RAIN. I HAD NOWHERE TO GO. I WANTED A RIDE HOME. I
3 DIDN'T WANT TO SHOOT ANYBODY. I JUST WANTED THE TRUCK SO I
4 COULD GET HOME. AND THEN HE ASKED FOR FORGIVENESS.

5 LIKE I'VE SAID BEFORE, BEING APOLOGETIC OR REMORSEFUL
6 DOES NOT EXCUSE YOUR ACTIONS, NOT THESE ACTIONS. MALICIOUS
7 ACTIONS. INTENTIONAL ACTIONS. YOU KNOW, THEY SAY AS A JURY
8 YOU HAVE TO TAKE YOUR LIFE EXPERIENCES INTO ACCOUNT AS YOU'RE
9 DELIBERATING AND JUDGING CREDIBILITY. NOBODY SAYS YOU CAN'T
10 USE YOUR COMMON SENSE EITHER. IF THIS MAN DIDN'T INTEND TO
11 HURT ANYONE, REGARDLESS OF THE FACT THAT HE CAME DOWN THERE
12 WITH THE GUN AND THE MASK -- IF HE DIDN'T WANT TO HURT
13 ANYBODY AND HE DIDN'T WANT TO SHOOT ANYBODY AND HE JUST
14 WANTED TO GET HOME, WHY DIDN'T HE JUST ASK FOR A RIDE? ALL
15 HE HAD TO DO WAS ASK.

16 MAYBE MR. HAWKINS GIVES HIM A RIDE; MAYBE HE DOESN'T.
17 MAYBE MR. HAWKINS SAYS, "WELL, I'M NOT GIVING YOU A RIDE, BUT
18 I'LL GIVE YOU A COUPLE OF BUCKS TO HAIL A CAB." MAYBE HE
19 DOES THAT; MAYBE HE DOESN'T. THE POINT IS: HE NEVER GOT THE
20 CHANCE TO OFFER HIM THAT. MR. MANCE CREATED THE SITUATION.
21 HE APPROACHED HIM, GUN OUT, MASK ON. HE DIDN'T GIVE HIM A
22 CHANCE.

23 UNDER THEIR THEORY, IF DARYL HAWKINS HAD STAGGERED OUT
24 OF THAT PARKING LOT AND DIED IN THE STREET, IT PRETTY MUCH
25 WOULD HAVE BEEN HIS OWN FAULT BECAUSE HE HAD THE NERVE WHEN

1 CONFRONTED BY THIS MAN TO TRY AND SAVE HIMSELF AFTER ALREADY
2 HAVING BEEN SHOT. HE HAD ALREADY BEEN SHOT AND HE CHARGED AT
3 HIM. HE HAD THE NERVE TO DO THAT. AND UNDER THEIR THEORY,
4 IF HE DROPPED DEAD AS A RESULT, IT WOULD HAVE BEEN HIS OWN
5 FAULT BECAUSE HE TRIED TO SAVE HIMSELF.

6 MR. TARR TOLD YOU THAT THEY ARE NOT CONTESTING THE
7 CHARGE OF POSSESSION OF A PISTOL BY A PERSON CONVICTED OF A
8 CRIME OF VIOLENCE. MR. MANCE FREELY ADMITS HE HAD A PISTOL
9 THAT NIGHT, AND THEY AGREE OR STIPULATE, WHICH IS A FANCY
10 WORD FOR US AGREEING, THAT IN THE PAST, UNRELATED TO THIS,
11 ERIC MANCE HAS BEEN CONVICTED OF A CRIME OF VIOLENCE. THAT'S
12 NOT IN DISPUTE.

13 HOLD MR. MANCE ACCOUNTABLE FOR HIS ACTIONS. THINK ABOUT
14 THE TESTIMONY THAT YOU'VE HEARD, THE WITNESSES THAT
15 TESTIFIED, WHAT THEY HAD TO SAY, WHAT MR. MANCE HAD TO TELL
16 YOU HIMSELF. USE YOUR COMMON SENSE. AS MS. CAMPBELL TOLD
17 YOU, ALL WE'RE ASKING IS THAT YOU SPEAK THE TRUTH. SO YOU
18 LOOK DEEP DOWN INTO THAT PUDDLE AND YOU FIND THAT TRUTH AND
19 RECOGNIZE IT, GRAB IT, AND YOU TELL EVERYONE WHAT THAT TRUTH
20 IS: ERIC MANCE MALICIOUSLY AND INTENTIONALLY SHOT AND ROBBED
21 DARYL HAWKINS AND HE INTENTIONALLY LEFT HIM FOR DEAD AS HE
22 DROVE OFF IN THE MAN'S OWN CAR.

23 AS A RESULT, YOU MUST HOLD HIM ACCOUNTABLE AND YOU MUST
24 FIND HIM GUILTY NOT ONLY OF THE POSSESSION OF A PISTOL BY A
25 PERSON CONVICTED OF A CRIME OF VIOLENCE BUT THAT MALICE AND

1 THAT INTENT... I'M GOING TO GO DOWNTOWN AND GET ME A CAR.
2 I'M GOING TO ROB ME SOMEBODY. HE SAID HE WAS NOT GOING TO
3 LEAVE THIS WORLD UNTIL HE KILLED SOMEBODY. YOU MUST FIND HIM
4 GUILTY ON ALL THREE CHARGES AS CHARGED: ARMED ROBBERY,
5 ASSAULT AND BATTERY WITH INTENT TO KILL, POSSESSION OF A
6 PISTOL BY A PERSON CONVICTED OF A CRIME OF VIOLENCE. THANK
7 YOU.

8 THE COURT: LADIES AND GENTLEMEN, LET'S STAND FOR A
9 MOMENT. ALL RIGHT. MADAM FORELADY AND MEMBERS OF THE JURY,
10 YOU HAVE NOW HEARD THE TESTIMONY AND EVIDENCE AND ARGUMENTS
11 OF THE STATE AND THE DEFENDANT. I WILL NOW EXPLAIN TO YOU
12 THE LAW THAT APPLIES TO THIS CASE. UNDER THE CONSTITUTION
13 AND LAWS OF SOUTH CAROLINA, YOU ARE THE FINDERS OF THE FACTS
14 IN THIS CASE. I DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS
15 OR EVEN EXPRESS ANY OPINION I MAY HAVE AS TO THEM. THIS IS A
16 MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AND AS JURORS
17 THEN, IT IS YOUR DUTY TO DETERMINE THE EFFECT, THE VALUE, THE
18 WEIGHT, AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THIS
19 TRIAL.

20 YOU ARE ALSO THE JUDGES, THE SOLE JUDGES, OF THE
21 CREDIBILITY, THAT IS, THE BELIEVABILITY OF THE WITNESSES WHO
22 HAVE TESTIFIED IN THIS CASE. AND IN PASSING UPON THEIR
23 CREDIBILITY, YOU MAY TAKE INTO CONSIDERATION MANY THINGS SUCH
24 AS THE Demeanor OR MANNER OF TESTIFYING, WHETHER THE WITNESS
25 HAD REASON TO BE BIASED OR PREJUDICED, WHETHER A WITNESS'S

1 TESTIMONY WAS CONTRADICTED ON THE ONE HAND OR SUPPORTED AND
2 CORROBORATED ON THE OTHER HAND.

3 YOU MAY BELIEVE A SMALL PORTION OF A WITNESS'S TESTIMONY
4 AND DISREGARD THE LARGER OR VICE VERSA. YOU MAY BELIEVE ONE
5 WITNESS AGAINST MANY OR MANY AGAINST ONE. ALL THESE THINGS
6 YOU WILL CONSIDER, BEARING IN MIND THAT YOU SHOULD GIVE THE
7 DEFENDANT THE BENEFIT OF ANY REASONABLE DOUBT. IT BECOMES
8 YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE
9 AND DETERMINE THAT EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH.

10 THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES
11 TO TESTIFY AS TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO
12 THIS RULE EXISTS AS TO THOSE WHOM WE CALL EXPERT WITNESSES,
13 WITNESSES WHO BY EDUCATION AND EXPERIENCE WHO HAVE BECOME
14 EXPERT IN SOME ART, SCIENCE OR PROFESSION OR CALLING, AND
15 THEY MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTER
16 IN WHICH THEY PROFESS TO BE EXPERT AND MAY ALSO STATE THEIR
17 REASONS FOR THE OPINION.

18 YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN
19 EVIDENCE IN THIS CASE AND GIVE IT SUCH WEIGHT AS YOU MAY
20 THINK IT DESERVES. IF YOU -- IF YOU SHOULD DECIDE THAT THE
21 OPINION OF AN EXPERT IS NOT BASED UPON SUFFICIENT EDUCATION
22 OR EXPERIENCE OR IF YOU SHOULD CONCLUDE THAT THE REASONS
23 GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND OR THAT THE
24 OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD
25 THE OPINION ENTIRELY. AN EXPERT'S TESTIMONY IS TO BE GIVEN

1 NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE
2 HE OR SHE IS AN EXPERT. YOU ARE NOT REQUIRED TO ACCEPT A
3 PURPORTED EXPERT'S OPINION EVEN THOUGH IT IS UNCONTRADICTED.

4 NOW, A PERSON WHO HAS A PAST CRIMINAL RECORD IS
5 COMPETENT TO TESTIFY DURING A TRIAL. A PAST RECORD DOES NOT
6 AFFECT THE ABILITY OF THAT WITNESS TO TESTIFY. THE PAST
7 RECORD MAY BE CONSIDERED BY YOU -- ONLY CONSIDERED BY YOU, IF
8 AT ALL, IN DETERMINING THE WITNESS'S BELIEVABILITY. REMEMBER
9 NOW THAT YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE
10 AND THE -- AND OF THE BELIEVABILITY OF ANY AND ALL WITNESSES.

11 I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THAT THE
12 DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY
13 YOU IN ANY MANNER IN YOUR DELIBERATIONS AND IN YOUR
14 CONSIDERATION OF THE QUESTION OF THE GUILT OR INNOCENCE OF
15 THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY
16 MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT
17 TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE
18 CONSIDERED BY YOU IN YOUR DELIBERATIONS.

19 AND I REPEAT: UNDER YOUR OATH YOU ARE TO DRAW NO
20 CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN
21 THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID
22 NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM.
23 THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE
24 STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE.
25 THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT

1 BEYOND A REASONABLE DOUBT.

2 NOW, AS THE TRIAL JUDGE IT IS MY RESPONSIBILITY TO
3 PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY
4 TO RULE UPON OR PASS UPON THE ADMISSIBILITY OF THE EVIDENCE
5 OFFERED DURING THIS TRIAL. AND YOU ARE TO CONSIDER ONLY THE
6 TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND
7 TOGETHER WITH ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE
8 RECORD IN THIS CASE AND ANY STIPULATIONS OF COUNSEL MADE INTO
9 THE RECORD.

10 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW
11 APPLICABLE TO THIS CASE, AND AS THE PRESIDING JUDGE I'M THE
12 SOLE JUDGE OF THE LAW OF THIS CASE. AND IT IS YOUR DUTY AS
13 JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU
14 AND THEN REACH YOUR VERDICT. AND FINALLY I CHARGE YOU IN
15 THIS REGARD: THAT YOU SHOULD NOT BE CONCERNED WITH WHAT YOU
16 THINK THE LAW OUGHT TO BE BUT WHAT I CHARGE YOU THE LAW TO
17 BE.

18 NOW, THE FACT THAT THE DEFENDANT WAS ARRESTED, CHARGED,
19 AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS CASE AND
20 CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE
21 NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT.
22 THIS DOCUMENT OR THESE DOCUMENTS ARE SIMPLY THE FORMAL
23 WRITTEN INSTRUMENTS WHICH CONTAINS THE CHARGE OR CHARGES MADE
24 AGAINST THE DEFENDANT. THE INDICTMENT IS THE FORMAL DOCUMENT
25 BY WHICH THE CASE IS BROUGHT INTO THIS COURT.

1 THE DEFENDANT HAS PLED NOT GUILTY TO THESE INDICTMENTS,
2 AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE
3 DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A
4 CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE
5 HIMSELF INNOCENT. I CHARGE YOU THAT IT IS AN IMPORTANT RULE
6 OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER
7 WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE
8 PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT
9 WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE
10 SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

11 NOW, THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU
12 BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT
13 THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED
14 ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE
15 DOUBT. THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
16 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT
17 WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED
18 FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE
19 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

20 THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY.
21 IT'S NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO
22 WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE
23 SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A
24 REASONABLE DOUBT.

25 THE STATE MUST PROVE THE DEFENDANT GUILTY BEYOND A

1 REASONABLE DOUBT. SO WHAT IS A REASONABLE DOUBT IN THE LAW?
2 A REASONABLE DOUBT IS THE KIND OF DOUBT WHICH WOULD CAUSE A
3 REASONABLE PERSON TO HESITATE TO ACT. THE STATE HAS THE
4 BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE
5 DOUBT.

6 SOME OF YOU MAY HAVE SERVED AS A -- AS JURORS IN CIVIL
7 CASES WHERE YOU WERE TOLD THAT IT'S ONLY NECESSARY THAT A
8 FACT -- TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT
9 TRUE SUCH AS BY THE GREATER WEIGHT OR THE PREPONDERANCE OF
10 THE EVIDENCE. IN CRIMINAL CASES THE STATE'S PROOF MUST BE
11 MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE
12 DOUBT.

13 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
14 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY
15 FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
16 CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE
17 PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON YOUR
18 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT
19 THE DEFENDANT IS GUILTY, THEN YOU MUST FIND HIM GUILTY. IF,
20 ON THE OTHER HAND, YOU THINK THAT THERE'S A REAL POSSIBILITY
21 THAT HE IS NOT GUILTY, YOU MUST THEN GIVE THE DEFENDANT THE
22 BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

23 IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL
24 INTENT IS REQUIRED. CRIMINAL INTENT MUST BE PROVEN BY THE
25 STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A

1 MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE
2 CIRCUMSTANCES SURROUNDING THE SITUATION.

3 THERE'S NO WAY TO PROVE INTENT TO A MATHEMATICAL
4 CERTAINTY. THERE'S NO WAY MEDICAL SCIENCE CAN DISSECT A
5 PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND. SO
6 THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE
7 CIRCUMSTANCES SHOWN TO HAVE EXISTED.

8 THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR NOT
9 THE ELEMENT REQUIRING INTENT WAS PRESENT. IT IS NOT
10 NECESSARY TO ESTABLISH INTENT BY DIRECT AND POSITIVE
11 EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE
12 SAME WAY AS ANY OTHER FACT, BY TAKING INTO CONSIDERATION THE
13 ACTS OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF
14 THE CASE. CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS
15 WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT THE DEFENDANT
16 INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE
17 EXISTED. CRIMINAL INTENT CAN ARISE FROM ACTIONS OR A FAILURE
18 TO ACT.

19 NOW, A STATEMENT ALLEGED TO HAVE BEEN MADE BY THE
20 DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS CASE.
21 WHILE THE COURT HAS DETERMINED THAT THE STATEMENT IS
22 ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE
23 DECISION OF WHETHER OR NOT THE DEFENDANT MADE THE STATEMENT.
24 IF THE DEFENDANT DID MAKE THE STATEMENT, YOU MUST DETERMINE
25 WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT VOLUNTARILY

1 AND OF HIS OWN FREE WILL. THIS MEANS THAT THE STATEMENT WAS
2 NOT CAUSED BY PRESSURE, FORCE, FEAR, THREATS, COERCION, OR
3 INTIMIDATION OR BY HOPE OR A PROMISE OF LENIENCY OR A REWARD
4 OF ANY KIND.

5 IN DETERMINING WHETHER THE STATEMENT WAS VOLUNTARY, YOU
6 SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT AND
7 THE DETAILS OF THE QUESTIONING. AND SOME OF THE FACTORS YOU
8 MUST CONSIDER ARE THE AGE OF THE DEFENDANT, THE DEFENDANT'S
9 EDUCATION OR LACK OF EDUCATION, THE DEFENDANT'S MENTAL
10 ABILITY OR CAPACITY, THE DEFENDANT'S I.Q. OR INTELLIGENCE,
11 THE DEFENDANT'S BACKGROUND AND ENVIRONMENT, THE PLACE AND THE
12 LENGTH OF THE DETENTION, THE NATURE OF THE QUESTIONING, AND
13 THE ADVICE OR LACK THEREOF TO THE DEFENDANT OF HIS
14 CONSTITUTIONAL RIGHTS INCLUDING BUT NOT LIMITED TO THE RIGHT
15 TO REMAIN SILENT, THAT ANY STATEMENT COULD BE USED AGAINST
16 HIM IN A COURT OF LAW, THE RIGHT TO HAVE A LAWYER PRESENT,
17 THAT IF HE COULD NOT AFFORD A LAWYER, A LAWYER WOULD BE
18 APPOINTED TO REPRESENT HIM WITHOUT COST AND THAT HE COULD
19 STOP MAKING A STATEMENT AT ANY TIME. YOU MUST CAREFULLY
20 CONSIDER ALL OF THE SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE
21 ANY CONSIDERATION TO AN ALLEGED STATEMENT.

22 THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE
23 DOUBT THAT THE ALLEGED STATEMENT WAS VOLUNTARY. IF YOU
24 DETERMINE THAT IT WAS, YOU MAY GIVE THE STATEMENT ANY FURTHER
25 CONSIDERATION THAT YOU DEEM PROPER. YOU MUST DECIDE WHAT

1 WEIGHT, IF ANY, SHOULD BE GIVEN TO THE ALLEGED STATEMENT. IF
2 YOU DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE AND
3 VOLUNTARY STATEMENT OF THE DEFENDANT, YOU SHOULD NOT CONSIDER
4 THE STATEMENT AT ALL.

5 NOW, THE INDICTMENTS IN THIS CASE ALLEGE SEVERAL
6 DIFFERENT OFFENSES AGAINST THE DEFENDANT. THE CHARGES ARE ON
7 INDICTMENT NUMBER ONE, ASSAULT AND BATTERY WITH INTENT TO
8 KILL; INDICTMENT NUMBER TWO, ARMED ROBBERY; INDICTMENT NUMBER
9 THREE, POSSESSION OF A PISTOL BY A PERSON CONVICTED OF A
10 CRIME OF VIOLENCE.

11 EACH INDICTMENT CHARGES SEPARATE AND DISTINCT -- CHARGES
12 A SEPARATE AND DISTINCT OFFENSE. YOU MUST DECIDE EACH
13 INDICTMENT SEPARATELY ON THE EVIDENCE AND THE LAW APPLICABLE
14 TO IT, UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER
15 INDICTMENT. THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON
16 ANY OR ALL OF THE OFFENSES CHARGED. YOU WILL BE ASKED TO
17 WRITE A SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH
18 INDICTMENT.

19 THE DEFENDANT HAS BEEN CHARGED WITH ASSAULT AND BATTERY
20 WITH INTENT TO KILL. IN ORDER TO PROVE ASSAULT AND BATTERY
21 WITH INTENT TO KILL, THE STATE MUST PROVE BEYOND A REASONABLE
22 DOUBT THAT THE DEFENDANT COMMITTED AN UNLAWFUL ACT OF A
23 VIOLENT NATURE TO THE PERSON OF ANOTHER WITH MALICE
24 AFORETHOUGHT. AN ASSAULT OCCURS WHEN A PERSON UNLAWFULLY
25 ATTEMPTS OR OFFERS TO COMMIT A VIOLENT INJURY UPON ANOTHER

1 PERSON AND HAD THE PRESENT ABILITY TO COMPLETE THE ATTEMPTED
2 ASSAULT.

3 AN ASSAULT IS THE INTENTIONAL CREATION OF A REASONABLE
4 FEAR OF IMMEDIATE BODILY HARM. IT IS NOT NECESSARY THAT THE
5 ATTEMPTED INJURY OR HARM ACTUALLY TAKE PLACE. A BATTERY IS
6 THE UNLAWFUL TOUCHING OF ANOTHER PERSON BY A PERSON WHO HAS
7 COMMITTED THE ASSAULT. AN UNLAWFUL TOUCHING CAN BE CAUSED BY
8 A PART OF THE ACCUSED'S BODY OR ANY OBJECT THE ACCUSED PUTS
9 IN MOTION. A BATTERY IS THE COMPLETION OF THE ASSAULT BY
10 USING OR APPLYING FORCE TO ANOTHER PERSON, HOW EVER SLIGHT,
11 IN A RUDE, ANGRY, OR RESENTFUL MANNER WITHOUT LEGAL
12 JUSTIFICATION FOR DOING SO.

13 MALICE IS HATRED, ILL WILL, OR HOSTILITY TOWARD ANOTHER
14 PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT
15 WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLECT AN
16 INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL
17 INTENT. MALICE DOES NOT NECESSARILY IMPART ILL WILL TOWARDS
18 THE INDIVIDUAL INJURED BUT SIGNIFIES, RATHER, A GENERAL
19 MALIGNANT RECKLESSNESS OF THE LIVES AND SAFETY OF OTHERS OR A
20 CONDITION OF MIND WHICH SHOWS A HEART, REGARDLESS OF SOCIAL
21 DUTY AND FATALLY BENT ON MISCHIEF.

22 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXIST
23 FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT
24 MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE
25 AND AT THE TIME THE ACT IS COMMITTED. THEREFORE, THERE MUST

1 BE A COMBINATION OF A PREVIOUS EVIL INTENT AND THE ACT.

2 MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE
3 TERMS EXPRESS AND INFERRED DO NOT MEAN DIFFERENT KINDS OF
4 MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO
5 EXIST, THAT IS, EITHER BY DIRECT EVIDENCE OR BY INFERENCE
6 FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED.

7 EXPRESS MALICE IS SHOWN WHERE A PERSON SPEAKS WORDS
8 WHICH EXPRESSES HATRED OR ILL WILL FOR ANOTHER OR WHEN THE
9 PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER
10 ACCOMPLISHED. FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY
11 OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS
12 WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

13 MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL
14 DISREGARD FOR HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE
15 WHEN THE DEED IS DONE WITH A DEADLY WEAPON, AND A DEADLY
16 WEAPON IS ANY ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS
17 LIKELY TO CAUSE DEATH OR SERIOUS BODILY HARM. WHETHER AN
18 INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS UPON THE
19 FACTS AND CIRCUMSTANCES OF EACH CASE. IF FACTS ARE PROVED
20 BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF
21 MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD SIMPLY BE
22 AN EVIDENTIARY FACT TO BE CONSIDERED BY YOU ALONG WITH ALL
23 THE OTHER EVIDENCE IN THIS CASE, AND YOU MAY GIVE IT THE
24 WEIGHT YOU SHOULD DECIDE IT SHOULD RECEIVE.

25 NOW, A SPECIFIC INTENT TO KILL IS NOT AN ELEMENT OF

1 ASSAULT AND BATTERY WITH INTENT TO KILL, BUT THERE MUST BE A
2 GENERAL INTENT TO COMMIT SERIOUS BODILY INJURY. INTENT MEANS
3 INTENDING THE RESULT WHICH ACTUALLY OCCURS, NOT ACCIDENTALLY
4 OR INVOLUNTARY. AN INTENT MAY BE SHOWN BY ACTS OF CONDUCT OF
5 THE DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
6 NATURALLY AND REASONABLY INFER INTENT.

7 EVIDENCE OF THE CHARACTER OF THE ASSAULT, THE CHARACTER
8 OF THE INSTRUMENT USED, THE MANNER IN WHICH IT WAS USED, THE
9 PURPOSE TO BE ACCOMPLISHED, AND THE RESULTING WOUNDS OR
10 INJURIES MAY BE CONSIDERED IN DETERMINING THE INTENT WITH
11 WHICH THE ASSAULT WAS COMMITTED. INTENT MAY BE INFERRED WHEN
12 IT IS DEMONSTRATED THAT THE DEFENDANT VOLUNTARILY AND
13 WILLFULLY COMMITS AN ACT, THE NATURAL TENDENCY OF WHICH IS TO
14 DESTROY ANOTHER'S LIFE.

15 IF YOU FIND THAT THE STATE HAS NOT PROVEN THAT THE
16 DEFENDANT IS GUILTY OF ASSAULT AND BATTERY WITH INTENT TO
17 KILL, YOU MUST THEN DETERMINE WHETHER THE STATE HAS PROVED
18 THAT THE DEFENDANT IS GUILTY OF ASSAULT AND BATTERY OF A HIGH
19 AND AGGRAVATED NATURE. ASSAULT AND BATTERY OF A HIGH AND
20 AGGRAVATED NATURE INCLUDES ALL OF THE ELEMENTS OF ASSAULT AND
21 BATTERY WITH INTENT TO KILL EXCEPT MALICE AFORETHOUGHT.

22 IN ADDITION, THE STATE MUST PROVE BEYOND A REASONABLE
23 DOUBT AN AGGRAVATING CIRCUMSTANCE. CIRCUMSTANCES OF
24 AGGRAVATION INCLUDE THE USE OF A DEADLY WEAPON, THE INTENT TO
25 COMMIT A FELONY, OR THE SERIOUS INFLICTION OF SERIOUS BODILY

1 INJURY. THESE ARE ONLY EXAMPLES OF CIRCUMSTANCES OF
2 AGGRAVATION.

3 THE DEFENDANT IS CHARGED WITH ARMED ROBBERY. IN ORDER
4 TO PROVE THIS OFFENSE, THE STATE MUST PROVE BEYOND A
5 REASONABLE DOUBT THAT THE DEFENDANT TOOK PERSONAL PROPERTY
6 FROM THE PERSON OR PRESENCE OF ANOTHER PERSON. PROPERTY IS
7 IN THE PRESENCE OF ANOTHER PERSON IF IT'S WITHIN THE PERSON'S
8 REACH, INSPECTION, OBSERVATION, OR CONTROL SO THAT THE PERSON
9 COULD HAVE NOT OVERCOME WITH VIOLENCE OR PREVENTED BY FEAR --
10 KEEP POSSESSION OF THE PROPERTY.

11 THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT THAT
12 THE DEFENDANT CARRIED THE PROPERTY AWAY INTENDING TO
13 PERMANENTLY DEPRIVE THE OWNER OF THE PROPERTY AND TO KEEP THE
14 PROPERTY FOR THE DEFENDANT'S OWN USE. THE SLIGHTEST REMOVAL
15 OF THE PROPERTY OR THE COMPLETE POSSESSION OF THE PROPERTY,
16 EVEN FOR AN INSTANT, BY THE DEFENDANT IS SUFFICIENT TO SHOW A
17 TAKING AND CARRYING AWAY OF THE PROPERTY. THE TAKING AND
18 CARRYING AWAY OF THE PROPERTY MUST HAVE BEEN DONE WITH
19 VIOLENCE OR BY PUTTING THE OWNER OF THE PROPERTY IN FEAR OF
20 VIOLENCE.

21 FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
22 THAT THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON DURING THE
23 ROBBERY. AND AS I INSTRUCTED YOU EARLIER, A DEADLY WEAPON IS
24 AN ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE
25 DEATH OR GREAT BODILY HARM.

1 THE DEFENDANT IS ALSO CHARGED WITH POSSESSION OF A
2 PISTOL BY A PERSON CONVICTED OF A CRIME OF VIOLENCE. TO
3 PROVE THE DEFENDANT GUILTY OF POSSESSION OF A PISTOL BY A
4 PERSON CONVICTED OF A CRIME OF VIOLENCE, THE STATE MUST PROVE
5 BEYOND A REASONABLE DOUBT, FIRST, THAT THE DEFENDANT
6 KNOWINGLY POSSESSED A PISTOL AND, SECOND, THE DEFENDANT HAS
7 BEEN CONVICTED OF A CRIME OF VIOLENCE. IN THIS CASE THE
8 DEFENDANT HAS STIPULATED OR AGREED THAT HE WAS PREVIOUSLY
9 CONVICTED OF A CRIME OF VIOLENCE.

10 NOW, MADAM FORELADY AND MEMBERS OF THE JURY, YOU'VE BEEN
11 SELECTED BY BOTH THE STATE AND THE DEFENDANT TO BE FAIR AND
12 IMPARTIAL JURORS. IT IS YOUR DUTY THEN BY YOUR JOINT
13 DELIBERATIONS TO DETERMINE THE TRUTH IN THIS CASE, GIVING THE
14 DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT ON EACH AND
15 EVERY ISSUE. AND FROM THE FACTS WHICH YOU DETERMINE TO BE
16 TRUE, YOU TAKE AND APPLY THE LAW WHICH I HAVE JUST GIVEN YOU
17 AND THUS ARRIVE AT A VERDICT WHICH SPEAKS THE TRUTH OF THIS
18 CASE.

19 I'VE TOLD YOU THE STANDARDS YOU HAVE TO APPLY TO THE
20 CHARGES OF ASSAULT AND BATTERY WITH INTENT TO KILL, ARMED
21 ROBBERY, AND POSSESSION OF A PISTOL BY A PERSON CONVICTED OF
22 A CRIME OF VIOLENCE. YOU'VE HEARD THE EVIDENCE, AND NOW YOU
23 HAVE HEARD THE LAW. WHATEVER YOUR VERDICT AS TO THESE
24 CHARGES, MADAM FORELADY, YOU WILL INDICATE IT BY PUTTING AN
25 X. RIGHT NEXT TO THE SPACE, NEXT TO NOT GUILTY OR GUILTY FOR

1 EACH OF THE CHARGES ON THE VERDICT FORM. THERE IS NO
2 SIGNIFICANCE IN WHICH I STATE THESE POSSIBLE VERDICTS.
3 SIMPLY ONE MUST BE STATED FIRST, AND YOU WILL SIGN THE BOTTOM
4 OF THE VERDICT FORM.

5 AS TO THE VERDICT FORM, THERE ARE THREE CHARGES THAT ARE
6 THERE IN BOLD. AND AS TO ASSAULT AND BATTERY WITH INTENT TO
7 KILL, IT SAYS, WE, THE JURY UNANIMOUSLY FIND THE DEFENDANT,
8 ERIC MANCE -- THE FIRST CHOICE, GUILTY OF ASSAULT AND BATTERY
9 WITH INTENT TO KILL, OR GUILTY OF ASSAULT AND BATTERY OF A
10 HIGH AND AGGRAVATED NATURE, OR NOT GUILTY. YOU WOULD CHECK
11 ONE OF THE THREE.

12 AS TO ARMED ROBBERY, YOU'LL EITHER CHECK GUILTY OR NOT
13 GUILTY. AS TO POSSESSION OF A PISTOL BY A PERSON CONVICTED
14 OF A VIOLENT CRIME, YOU WOULD CHECK GUILTY OR NOT GUILTY.

15 REMEMBER THAT ALTHOUGH THE FOREPERSON IS THE ONLY JUROR
16 WHO SIGNS THIS VERDICT, IT IS NOT TO BE HERS ALONE. THE
17 VERDICT HAS TO BE A UNANIMOUS VERDICT AS TO EACH CHARGE.
18 MADAM FORELADY, YOU'RE NOT AUTHORIZED TO WRITE NOR SIGN THAT
19 VERDICT UNTIL ALL OF YOU HAVE AGREED AS TO WHAT THE VERDICT
20 SHOULD BE.

21 NOW, LADIES AND GENTLEMEN, I'M GOING TO SEND YOU TO THE
22 JURY ROOM, ALL OF YOU, EXCEPT THE LAST TWO JURORS SELECTED.
23 BUT DO NOT BEGIN TO DISCUSS THIS CASE UNTIL YOU HAVE RECEIVED
24 A COPY OF THIS JURY CHARGE WHICH I'VE JUST READ TO YOU AND
25 THE EXHIBITS WHICH WERE ADMITTED INTO EVIDENCE.

1 ONCE YOU RECEIVE THESE THINGS, THAT WILL BE YOUR SIGNAL
2 TO BEGIN YOUR DELIBERATIONS. ONCE YOU BEGIN YOUR
3 DELIBERATIONS, YOU WILL DELIBERATE UNTIL YOU HAVE REACHED A
4 VERDICT AT WHICH TIME YOU'LL KNOCK ON THE DOOR, ADVISE THE
5 BAILIFF, AND WE WILL BRING YOU OUT TO RECEIVE YOUR VERDICT.
6 SO PLEASE GO TO THE JURY ROOM.

7 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 4:29
8 P.M.)

9 **THE COURT:** ARE THERE ANY ADDITIONS OR EXCEPTIONS TO THE
10 CHARGE FROM THE STATE OR THE DEFENSE?

11 **MR. GOLDBERG:** NONE FROM THE STATE.

12 **MR. TARR:** IT JUST OCCURRED TO ME - I'VE NEVER THOUGHT
13 OF THIS - THAT YOU MIGHT DO A LIMITING INSTRUCTION ON THE
14 POSSESSION OF A PISTOL BY A PERSON CONVICTED OF A CRIME OF
15 VIOLENCE TO SAY THAT THEY SHOULD NOT USE THE FACT THAT HE WAS
16 PREVIOUSLY CONVICTED OF AN UNRELATED CASE AGAINST HIM IN THIS
17 CASE IN REFERENCE TO EITHER OF THE OTHER TWO CHARGES IN THIS
18 CASE.

19 **THE COURT:** ALL RIGHT. RUN THAT BY ME AGAIN.

20 **MR. TARR:** I'LL WITHDRAW IT.

21 **THE COURT:** OKAY. ALL RIGHT. WELL, IF Y'ALL WILL CHECK
22 THE EXHIBITS AND THEN THE JURY CAN HAVE AT IT.

23 (THE ALTERNATES WERE EXCUSED FROM THE TRIAL OF THE CASE.
24 THE JURY BEGAN DELIBERATING AT 4:36 P.M.)

25 **THE COURT:** THANK YOU. PLEASE BE SEATED. ALL RIGHT.

VERDICT

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1 I'VE BEEN INFORMED THAT THE JURY HAS REACHED A VERDICT. I
2 WANT TO CAUTION EVERYONE THAT WE CAN'T HAVE ANY OUTBREAKS IN
3 COURT. I WOULD HATE TO HAVE TO HOLD ANYONE IN CONTEMPT OF
4 COURT FOR SCREAMING OR SHOUTING OR MAKING ANY NOISES THAT
5 SHOULDN'T BE MADE. LET'S BRING THE JURY.

6 (WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH A
7 VERDICT AT 5:29 P.M.)

8 THE COURT: MADAM FORELADY, IF YOU'LL STAND FOR ME.
9 JUST THE FORELADY. HAVE YOU REACHED A VERDICT?

10 FORELADY: YES, WE HAVE.

11 THE COURT: IS IT A UNANIMOUS VERDICT?

12 FORELADY: YES, IT IS.

13 THE COURT: OKAY. IF YOU'LL PASS IT TO THE BAILIFF WHO
14 WILL PASS IT TO ME -- THE CLERK, THEN TO ME. MA'AM, YOU MAY
15 BE SEATED. OKAY. IF THE DEFENDANT WILL STAND. MADAM CLERK,
16 YOU MAY PUBLISH THE VERDICT.

17 THE CLERK: THE STATE OF SOUTH CAROLINA, COUNTY OF
18 RICHLAND. THE STATE OF SOUTH CAROLINA VERSUS ERIC MANCE ON
19 2006-GS-40-4738, 2006-GS-40-4739, 2006-GS-40-4741. COUNT 1,
20 ASSAULT AND BATTERY WITH INTENT TO KILL: WE, THE JURY,
21 UNANIMOUSLY FIND THE DEFENDANT, ERIC MANCE, GUILTY OF ASSAULT
22 AND BATTERY WITH INTENT TO KILL. COUNT 2, ARMED ROBBERY,
23 GUILTY. COUNT 3, POSSESSION OF A PISTOL BY A PERSON
24 CONVICTED OF A VIOLENT CRIME, GUILTY. SIGNED BY THE
25 FOREPERSON, JEREATHA PENDARVIS, AUGUST 27TH, 2008.

1 **THE COURT:** ALL RIGHT. MADAM FORELADY AND MEMBERS OF
2 THE JURY, IF THAT IS THE VERDICT OF EACH AND EVERY JUROR,
3 PLEASE LET IT BE KNOWN BY RAISING YOUR RIGHT HAND. ALL
4 RIGHT. ALL HANDS ARE RAISED.. THANK YOU VERY MUCH. ANY
5 ADDITIONAL POLLING REQUESTED BY THE DEFENSE?

6 **MR. TARR:** NO, YOUR HONOR.

7 **THE COURT:** ALL RIGHT. THE VERDICT APPEARS TO BE A
8 UNANIMOUS VERDICT OF THE JURY. ANY POST-TRIAL MOTIONS?

9 **MR. TARR:** I JUST WOULD MAKE A MOTION FOR A NEW TRIAL.
10 JUST TAKING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE
11 STATE, WE JUST FEEL THAT THERE'S INSUFFICIENT SUPPORT FOR THE
12 VERDICTS AND ALSO RENEW OUR OBJECTIONS TO THE TESTIMONY OF
13 SHERRY BOLIN AND IRENA FULLER. WE BELIEVE THAT THE
14 PREJUDICIAL VALUE OF SUCH TESTIMONY FAR OUTWEIGHED ANY
15 PROBATIVE VALUE.

16 **THE COURT:** ALL RIGHT. FROM THE STATE? ANY RESPONSE?

17 **MS. CAMPBELL:** NO, YOUR HONOR.

18 **THE COURT:** WELL, WITH REGARD TO THE TESTIMONY OF I
19 BELIEVE MS. BOLDER -- WHAT'S HER NAME? BOLIN? IS IT BOLIN?

20 **MR. TARR:** BOLIN, I THINK.

21 **THE COURT:** BOLIN? SHE -- HER INITIAL TESTIMONY WAS NOT
22 TOTALLY CLEAR AND WASN'T THAT DAMAGING TO THE DEFENDANT. SHE
23 SAID THAT HE SAID HE WAS GOING DOWNTOWN TO -- WHAT DID HE
24 SAY?

25 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN JUDGE

1 NEWMAN AND HIS LAW CLERK.)

2 THE COURT: SHE DIDN'T SAY INITIALLY THAT -- SHE DIDN'T
3 TESTIFY INITIALLY AS SHE TESTIFIED IN THE STATEMENT THAT I
4 RULED AT THE PRETRIAL HEARING BASED ON, BUT THE DEFENSE DID
5 NOT LEAVE IT THERE THROUGH YOUR CROSS-EXAMINATION IN WHICH IN
6 EFFECT YOU ASKED HER FOR CLARIFICATION. YOU ELICITED FROM
7 HER THE MORE DAMAGING STATEMENT THAT SHE SAID THAT HE WAS NOT
8 LEAVING THIS WORLD UNTIL HE KILLED SOMEONE. SHE DID NOT
9 TESTIFY TO THAT EXTENT INITIALLY ON DIRECT, BUT THE -- BUT IT
10 WAS ELICITED DURING CROSS-EXAMINATION.

11 BUT ASIDE FROM ALL OF THAT, I FIND THAT GIVEN THE
12 DEFENSE RAISED, IT WAS APPROPRIATE TO -- ON THE ISSUE OF
13 MALICE TO ALLOW THAT TESTIMONY FROM MS. BOLIN. AND ON THE
14 ISSUE OF INTENT TO STEAL, INTENT TO ROB, THE TESTIMONY OF MS.
15 FULLER WAS ALSO MORE PROBATIVE THAN PREJUDICIAL, AND I
16 RESPECTFULLY DENY THE MOTION ON THAT BASIS. FURTHERMORE, THE
17 EVIDENCE OF GUILT IN THIS CASE WAS OVERWHELMING, AND I HAVE
18 NO BASIS TO DISAGREE OR DO ANYTHING TO DISTURB THE JURY'S
19 VERDICT. ALL RIGHT. ANYTHING FURTHER PRIOR TO SENTENCING?

20 MR. TARR: ARE YOU GOING TO SENTENCE HIM AT THIS POINT?

21 THE COURT: YES, SIR.

22 MR. TARR: WOULD YOU LIKE HIM TO COME FORWARD?

23 THE COURT: YES, SIR. LADIES AND GENTLEMEN, WHEN YOU
24 FIND SOMEONE GUILTY, THEN IT BECOMES MY DUTY TO IMPOSE A
25 SENTENCE. AND WHEREAS YOU HAVE NO ROLE IN THE SENTENCE AND

1 YOUR DUTY AND YOUR RESPONSIBILITY IS OVER AS IT RELATES TO
2 THIS CASE, CONSIDERING YOUR INVESTMENT OF TIME AND ENERGY
3 INTO THIS TRIAL YOU'RE CERTAINLY WELCOME TO STAY WHERE YOU
4 ARE AS WE MOVE TO THE SENTENCING PHASE OF THIS TRIAL. YES,
5 SIR?

6 MR. GOLDBERG: MAY IT PLEASE THE COURT, YOUR HONOR?
7 YOUR HONOR IS AWARE OF THE FACTS IN THIS CASE THAT LED TO MR.
8 MANCE'S CONVICTION. I WOULD JUST HAND UP -- IF I COULD HAVE
9 THIS MARKED AS A COURT'S EXHIBIT.

10 (COURT'S EXHIBIT 3 WAS MARKED FOR IDENTIFICATION ONLY.)

11 MR. GOLDBERG: I HAND UP THIS STATE'S NOTICE OF
12 INTENTION TO SEEK A LIFE-WITHOUT-PAROLE SENTENCE. IN JUNE OF
13 THIS YEAR IT WAS SERVED ON THE DEFENDANT, FILED IN THE
14 CLERK'S OFFICE.

15 THE DEFENDANT'S PRIOR RECORD CONSISTS OF A CONVICTION
16 BACK IN 1992 FOR POSSESSION OF CRACK AS WELL AS A SIMPLE
17 ASSAULT. HE WAS ALSO CONVICTED IN 1992 OF ASSAULT AND
18 BATTERY WITH INTENT TO KILL. THAT WOULD BE THE PRIOR MOST
19 SERIOUS CONVICTION, GIVING THE STATE THE OPPORTUNITY TO SEEK
20 A LIFE-WITHOUT-PAROLE SENTENCE.

21 ADDITIONALLY, AT THAT TIME HE WAS CONVICTED -- WELL, HE
22 WAS GIVEN A SENTENCE FOR THAT CHARGE OF 20 YEARS SUSPENDED ON
23 THE SERVICE OF SEVEN AND FIVE YEARS PROBATION. HE WAS ALSO
24 CONVICTED OF GRAND LARCENY AND GOT SEVEN YEARS AND STRONG ARM
25 ROBBERY SEVEN YEARS. IT'S MY UNDERSTANDING HE SERVED HIS

1 TIME ON THAT CHARGE. IT DID NOT END UNTIL MARCH OF 2004,
2 ULTIMATELY AFTER ALL THE PROBATION AND SERVICE AND EVERYTHING
3 WAS DONE.

4 HE THEN HAD ANOTHER CONVICTION IN MARCH OF '04 FOR
5 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. HE
6 RECEIVED A ONE-YEAR SENTENCE. THE ONLY ADDITIONAL FACT I
7 WOULD POINT OUT IN REGARDS TO THE PRIOR A.B.I.K. IN 1993: IT
8 WAS A VERY SIMILAR INCIDENT WHERE HE WAS ALLEGED AND
9 CONVICTED OF SHOOTING HIS -- I BELIEVE IT WOULD BE HIS
10 ADOPTIVE MOTHER AT THE TIME AND TAKING HER CAR FROM HER AT
11 THAT TIME.

12 THE COURT: IS THERE ANYTHING THAT THE VICTIM OR
13 VICTIM'S SPOUSE OR THE FAMILY WOULD LIKE TO SAY---

14 MR. GOLDBERG: BEG THE COURT'S INDULGENCE.

15 THE COURT: ---AT THIS TIME?

16 MR. GOLDBERG: NO, SIR.

17 THE COURT: ALL RIGHT. MR. MANCE OR MR. -- NOT MR.
18 MANCE. MR. TARR.

19 MR. TARR: ERIC IS 36 YEARS OF AGE. HE'S MARRIED. HIS
20 WIFE, ODESSA MANCE, IS HERE IN THE COURTROOM ALONG WITH OTHER
21 MEMBERS OF HIS FAMILY AND HIS FRIENDS. AS YOU HEARD
22 PREVIOUSLY, HE WENT THROUGH THE NINTH GRADE AT OLYMPIA HIGH
23 SCHOOL. HE IS -- AT THE TIME OF THE INCIDENT HE HAD BEEN
24 FIRED FROM HIS JOB AT MCDONALD'S FOR ABOUT A WEEK, SO HE WAS
25 NOT WORKING AT THAT TIME.

1 HE HAS BEEN INCARCERATED EVER SINCE JUNE 5TH OF 2006.
2 I'M SORRY IT GOT TO THIS POINT. WE HAD MADE AN OFFER TO
3 PLEAD TO 30 YEARS AND IT WAS REJECTED, AND SO WE WERE FORCED
4 TO GO TO TRIAL BECAUSE HE'S FACING LIFE WITHOUT PAROLE.
5 THERE'S NO SENSE IN PLEADING GUILTY IF YOU'RE NEVER GOING TO
6 GET OUT OF PRISON.

7 WE WOULD ASK YOUR HONOR -- WE WOULD OBJECT TO IMPOSING
8 LIFE WITHOUT PAROLE AS A VIOLATION ON THE CONSTITUTION'S BAN
9 FOR CRUEL AND UNUSUAL PUNISHMENT AS PROVIDED FOR IN THE
10 EIGHTH AND FOURTEENTH AMENDMENTS. I SAY THAT JUST FOR THE
11 RECORD. I UNDERSTAND OUR COURTS HAVE FOUND THAT IT IS NOT,
12 BUT IF IN THE FUTURE THEY CHANGE THEIR MIND, I'M OBJECTING,
13 YOUR HONOR.

14 I DON'T KNOW IF MR. MANCE HAS ANYTHING HE'D LIKE TO SAY.
15 OH, I WOULD SAY, YOUR HONOR, THAT HIS ADOPTIVE MOTHER WOULD
16 MAKE A REQUEST THAT THE JUDGE OR THE COURT RECOMMEND TO THE
17 DEPARTMENT OF CORRECTIONS -- I'VE TOLD HER THAT IT'S NOT IN
18 YOUR PROVINCE TO TELL THEM WHERE TO PUT MR. MANCE BUT IF AT
19 ANY WAY POSSIBLE TO HOUSE HIM IN COLUMBIA SO THAT SHE CAN
20 VISIT HIM AND SO THAT HIS FAMILY CAN VISIT HIM FROM TIME TO
21 TIME WITHOUT IT BEING TOO MUCH OF A HARDSHIP. THEY DON'T
22 HAVE A LOT OF MONEY AND THEY WOULD LIKE TO SEE HIM.

23 THE COURT: ALL RIGHT. MR. MANCE, WHAT DO YOU SAY?

24 MR. MANCE: ABOUT WHAT?

25 THE COURT: ABOUT ANYTHING YOU'D LIKE TO SAY. YOU'RE

1 STANDING THERE CRYING. YOU MUST HAVE SOMETHING ON YOUR MIND.

2 MR. MANCE: YOUR HONOR, I HAVE SOMETHING TO SAY. CAN I
3 TURN TO MY VICTIM TO SAY WHAT I'VE GOT TO SAY, PLEASE?

4 THE COURT: GO AHEAD.

5 MR. MANCE: I KNOW WHAT I DID WAS WRONG. I SHOULDN'T
6 HAVE EVEN BEEN AROUND---

7 THE COURT: THE COURT REPORTER CAN'T HEAR YOU. TALK
8 LOUDER.

9 MR. MANCE: LIKE YOU SAID, I SHOULD HAVE CALLED
10 SOMEBODY, BUT THAT WAS YOUR DAY AND YOU WAS WORKING. I HAD
11 NO RIGHT TO DO WHAT I DID. YOU WERE GETTING OFF FROM YOUR
12 FAMILY -- GETTING OFF FROM WORK, GOING HOME TO YOUR FAMILY.

13 I DIDN'T MEAN TO HURT YOU, FROM THE BOTTOM OF MY HEART.
14 I KNOW I CAN'T TAKE IT ALL BACK, BUT I'M STILL SORRY. I
15 SHOULD HAVE NEVER BEEN ANYWHERE AROUND YOUR PLACE. I DON'T
16 WANT LIFE. WHAT CAN I DO IN JAIL?

17 I WANT TO DO MY TIME AND COME HOME, AND IF I EVER DID
18 COME HOME, I WAS GOING TO COME TO YOU AND ASK YOU TO FORGIVE
19 ME FOREVER FOR WHAT I DID IN TAKING YOUR CAR, FOR HURTING
20 YOU, PUTTING YOU IN ANY KIND OF DANGER. ALL I'M ASKING IS
21 FOR YOU TO FORGIVE ME. DON'T JUST THROW ME AWAY LIKE THAT.
22 I'M NOT A BAD PERSON. I KNOW I'VE MADE SOME MISTAKES.
23 EVERYBODY MAKES MISTAKES. ALL I'M ASKING IS DON'T THROW ME
24 AWAY LIKE THIS, PLEASE.

25 THE COURT: ALL RIGHT. MR. MANCE, YOU'VE GOT TO TALK TO

1 ME. HE'S NOT GOING TO SENTENCE YOU. SO YOU HAVE APOLOGIZED
2 AND I'M SURE HE APPRECIATES IT.

3 MR. MANCE: ALL I'M ASKING YOU, JUDGE: DON'T THROW ME
4 AWAY LIKE THIS.

5 THE COURT: DON'T THROW YOU AWAY..

6 MR. MANCE: WHAT CAN I DO? LIFE WITHOUT PAROLE, MAN.

7 THE COURT: WELL, IF YOU HAD -- HAD HE DIED, YOU WOULD
8 BE FACING THE DEATH PENALTY, THE ELECTRIC CHAIR, LETHAL
9 INJECTION.

10 MR. MANCE: BUT HE DIDN'T. GOD WAS WITH HIM.

11 THE COURT: FORTUNATELY. SO, THEREFORE, YOU'RE NOT
12 FACING THE DEATH PENALTY, BUT IT'S THE LAW -- I'M SURE YOU
13 HEARD ABOUT THE TWO-STRIKES-AND-YOU'RE-OUT LAW?

14 MR. MANCE: NO, SIR.

15 THE COURT: ONCE YOU'VE COMMITTED A MOST SERIOUS CRIME,
16 IF YOU COMMIT ANOTHER ONE, THEN -- AND WHERE THE STATE SERVES
17 NOTICE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE AND YOU'RE
18 FOUND GUILTY, THEN THAT'S THE SENTENCE YOU'RE FACING. ARMED
19 ROBBERY IS A SERIOUS CRIME AS YOU WELL KNOW, AND SHOOTING
20 SOMEONE IS A VERY SERIOUS CRIME AS YOU WELL KNOW.

21 MR. MANCE: I KNOW.

22 THE COURT: WHAT WAS GOING ON WITH YOU THAT CAUSED YOU
23 TO BE DOWN THERE DURING THAT NIGHT DOING WHAT YOU WERE DOING?

24 MR. MANCE: WHEN I WENT TO THE BARBERSHOP, IT WAS NOT
25 EVEN CLOSED. IT WAS AFTER 7:00 WHEN HE -- BEFORE HE CLOSED.

1 IT WASN'T EVEN CLOSED AT 6. SO WHEN I GOT UP THERE, I GOT UP
2 THERE AROUND ABOUT AFTER 6:00, AND THEN I HAD TO WAIT FOR A
3 SHAVE. SO WHEN I GOT MY SHAVE, THAT'S WHEN IT STARTED
4 RAINING. THAT'S MY FIRST TIME EVER SINCE I EVER BEEN UPTOWN
5 GOING IN THAT ALLEY IN MY LIFE.

6 THE COURT: WHAT WERE YOU LOOKING FOR?

7 MR. MANCE: I WASN'T LOOKING FOR NOTHING. MY INTENTION
8 WAS TO GET FROM ONE POINT TO THE NEXT POINT. HOW CAN I GET
9 OUT OF THIS RAIN? BUT AS I WAS WALKING, I CAME TO -- THAT'S
10 WHEN I CAME THROUGH THE ALLEY AND THAT'S WHEN HE CAME OUT OF
11 THE SHOP -- OUT OF HIS BUSINESS AND THAT'S WHEN HE HIT THE
12 SWITCHES ON HIS TRUCK AND THAT'S WHEN I CAME OUT.

13 THE COURT: YOU WERE JUST HIDING OUT IN THE ALLEY?

14 MR. MANCE: YES, SIR.

15 THE COURT: ALL RIGHT. YOU MADE SOME PRETTY BAD
16 DECISIONS THERE.

17 MR. MANCE: YES, SIR.

18 THE COURT: YOU SHOULD HAVE STAYED HIDING OUT IN THE
19 ALLEY, WHEREVER YOU WERE. WHAT ELSE DO YOU WANT ME TO KNOW
20 ABOUT YOU, MR. MANCE, BEFORE I SENTENCE YOU?

21 MR. MANCE: WHEN CAN WE EVER COME -- WHEN CAN I COME
22 BACK?

23 THE COURT: COME BACK? COME BACK WHERE?

24 MR. MANCE: TO TRY TO GET IT OVERTURNED OR SOMETHING.

25 THE COURT: APPEALING FOR -- BASED ON WHAT YOUR LAWYER

1 JUST SAID?

2 MR. MANCE: YES, SIR.

3 THE COURT: THE LAW BEING UNCONSTITUTIONAL?

4 MR. MANCE: YES, SIR.

5 THE COURT: THAT WOULD BE UP TO THE APPELLATE COURTS.

6 AS MR. TARR HAS INDICATED, THE COURT HAS ALREADY DECIDED THAT
7 IT'S NOT UNCONSTITUTIONAL TO SENTENCE SOMEONE TO LIFE WITHOUT
8 PAROLE WHO HAS PREVIOUSLY COMMITTED A MOST SERIOUS OFFENSE.
9 AND THE OFFENSE THAT THEY GAVE YOU NOTICE THAT YOU COMMITTED
10 WAS ASSAULT AND BATTERY WITH INTENT TO KILL IN 1993 OR THE
11 INDICTMENT NUMBERS ARE 93.

12 THE OFFENSE OCCURRED NOVEMBER OF 1992. THE DEFENDANT
13 ADMITTED SHOOTING THE VICTIM TO A WITNESS WHO SAW THE
14 DEFENDANT IN POSSESSION OF SAID VEHICLE, SHOT THE VICTIM,
15 BETTY JOHNSTON, SEVERAL TIMES, THEN DEMANDED MONEY, AND TOOK
16 THE VICTIM'S CAR, AN '86 PONTIAC. THE DEFENDANT IS THE
17 VICTIM'S ADOPTED SON. THE VICTIM UNDERWENT SURGERY AS A
18 RESULT OF THE GUNSHOT WOUNDS. THAT'S THE WARRANT AND THE
19 INDICTMENT AND ALL THESE PAPERS THE STATE FILED CONCERNING
20 THAT.

21 THE STATUTE UNDER SECTION 17-25-45 SAYS THAT NOTWITH-
22 STANDING ANY OTHER PROVISION OF THE LAW, EXCEPT IN CASES IN
23 WHICH THE DEATH PENALTY IS IMPOSED, UPON A CONVICTION OF A
24 MOST SERIOUS OFFENSE AS DEFINED BY THIS SECTION, A PERSON
25 MUST BE SENTENCED TO LIFE -- TO A TERM OF IMPRISONMENT FOR

1 LIFE WITHOUT THE POSSIBILITY OF PAROLE IF THAT PERSON HAS ONE
2 OR MORE PRIOR CONVICTIONS FOR A MOST SERIOUS OFFENSE, AND
3 ASSAULT AND BATTERY WITH INTENT TO KILL IS FURTHER DEFINED AS
4 A MOST SERIOUS OFFENSE. MY HANDS ARE TIED, MR. MANCE. YOUR
5 HANDS ARE TIED, TOO, BASED ON WHAT YOU DID.

6 DO YOU HAVE ANYONE ELSE WHO WANTS TO SAY ANYTHING ON HIS
7 BEHALF? ANY FAMILY PEOPLE? ANYBODY? YES, MA'AM? WHAT'S
8 YOUR NAME?

9 MS. JOHNSTON: BETTY RUTH JOHNSTON.

10 THE COURT: MS. BETTY JOHNSTON. YOU'RE THE VICTIM IN
11 THE OTHER SHOOTING?

12 MS. JOHNSTON: YES, SIR, BUT HE SERVED THAT TIME;
13 THERE'S NO DOUBT. WOULD YOU PLEASE NOT GIVE HIM LIFE WITHOUT
14 PAROLE, YOUR HONOR, AND SEND HIM DOWN THE ROAD? I KNOW HE'S
15 GOT TO MAKE HIS TIME. I WANT HIM TO MAKE TIME, BUT I WANT
16 HIM TO MAKE IT SO HE CAN COME BACK HOME. AND WOULD YOU
17 PLEASE -- WHEN YOU SENTENCE HIM, WOULD YOU PUT HIM SOMEWHERE
18 WHERE HE CAN GET HELP -- HELP BECAUSE HE NEEDS IT?

19 THE COURT: WHAT KIND OF HELP DOES HE NEED?

20 MS. JOHNSTON: HE NEEDS PSYCH HELP -- HE NEEDS HELP WITH
21 HIS SICKNESS AND STUFF. I STILL SAY HE HAVE A SICKNESS. AND
22 WOULD YOU PUT HIM WHERE I COULD GO SEE HIM? AND I'M SO SORRY
23 HE DID THIS TO THE GENTLEMAN. PLEASE.

24 THE COURT: YOU KNOW, THEY MOVED THE BIG PRISON OUT OF
25 COLUMBIA. THEY TORE DOWN C.C.I.; YOU REMEMBER THAT.

1 **MS. JOHNSTON:** IF HE CAN GO UP TO BROAD RIVER ROAD, THEY
2 HAVE SOMEWHERE UP THERE WHERE HE CAN STAY.

3 **THE COURT:** BROAD RIVER ROAD?

4 **MS. JOHNSTON:** YES, SIR. PLEASE PUT HIM WHERE I CAN GO
5 SEE HIM IF YOU DON'T MIND, AND I'M SO SORRY HE DID THIS TO
6 THE MAN OVER THERE.

7 **THE COURT:** ALL RIGHT. OKAY. THANK YOU, MA'AM.
8 ANYTHING ELSE, MR. TARR?

9 **MR. TARR:** NO.

10 **THE COURT:** ANYTHING FURTHER, MR. GOLDBERG?

11 **MR. GOLDBERG:** JUST BRIEFLY, YOUR HONOR. ON THE ISSUE
12 OF WHERE HE WOULD BE HOUSED, IT'S COME TO OUR ATTENTION
13 THROUGH SOME OF HIS RECORDS THAT HE DOES HAVE SOME SORT OF A
14 HISTORY OF GETTING INTO ALTERCATIONS WITH THE CORRECTIONS
15 OFFICERS. THERE'S BEEN SEVERAL INCIDENTS IN THE PAST. I
16 DON'T KNOW WHAT KIND OF AN IMPLICATION THAT WOULD HAVE ON
17 WHERE HE WOULD BE HOUSED. I JUST WANTED TO BRING IT TO YOUR
18 ATTENTION.

19 **THE COURT:** WELL, THE DEPARTMENT OF CORRECTIONS HAS A
20 RECEPTION AND EVALUATION CENTER AND THEN THEY CLASSIFY THE
21 PRISONERS. THEY EVALUATE THE PRISONERS, AND THEY SEND THEM
22 WHERE THEY WANT THEM TO GO. I DON'T HAVE ANY CONTROL OVER
23 WHERE HE WOULD END UP.

24 **MS. JOHNSTON:** WOULD YOU PLEASE PUT IN HIS -- IN HIS
25 NOTE THAT HE'S BEEN TAKING MEDICINE EVER SINCE HE WAS A

1 LITTLE BOY AND WOULD THEY MAKE SURE THAT HE GET HIS MEDICINE,
2 PLEASE?

3 THE COURT: ALL RIGHT. THE PSYCHIATRIC REPORT OF DR.
4 SCHWARTZ-WATTS IS A PART OF THE RECORDS IN THE CASE WHICH
5 TALKS ABOUT HIS PROBLEMS WITH HIS PSYCHOTIC DISORDER, AND
6 THAT'S PART OF THE RECORDS IN THE CASE AND THAT WILL -- THAT
7 WILL FOLLOW HIM AS WELL.

8 MS. JOHNSTON: WHEN HE WAS A LITTLE BOY, HE USED TO SEE
9 THINGS GOING INSIDE THE WALL.

10 THE COURT: ALL RIGHT.

11 MS. JOHNSTON: HE WOULD COME OVER TO MY ROOM AND GET IN
12 THE BED WITH ME.

13 THE COURT: ALL RIGHT. ANYTHING ELSE, MR. MANCE?

14 MR. MANCE: NO, YOUR HONOR.

15 THE COURT: IT'S A PRETTY SAD DAY, MR. MANCE, FOR YOU
16 AND OBVIOUSLY FOR YOUR FAMILY AND YOUR LOVED ONES AND ALL
17 THEM OVER THERE CRYING. IT'S A SAD DAY FOR THE VICTIM AND
18 THE VICTIM'S FAMILY, AND NO ONE TAKES PLEASURE IN DOING THE
19 JOB THAT THEY HAVE TO DO CONCERNING YOU AND THIS SITUATION
20 THAT YOU BROUGHT ABOUT. WE'RE ALL HERE RIGHT NOW BECAUSE OF
21 YOU AND BECAUSE OF WHAT YOU DID ON THAT DAY AND -- BUT WE
22 HAVE TO DEAL WITH WHAT WE HAVE.

23 AS I STATED TO YOU, THE LAW IS MANDATORY. THE SENTENCE
24 IS AUTOMATIC. YOUR LAWYER SAID HE OFFERED TO PLEAD GUILTY TO
25 30 YEARS IN PRISON OR THAT THAT'S WHAT YOU WANTED TO DO.

1 EVEN IF YOU DID THAT, YOU WOULD HAVE HAD TO DO 85 PERCENT AT
2 THAT TIME. HOW OLD ARE YOU NOW?

3 MR. MANCE: THIRTY-SIX.

4 THE COURT: HOW OLD?

5 MR. MANCE: THIRTY-SIX.

6 THE COURT: THIRTY-SIX. OKAY. BUT THE COURT HAS NO
7 DISCRETION BECAUSE THE SENTENCE IS MANDATORY UNDER THIS
8 PARTICULAR SITUATION. SO THE SENTENCE OF THE COURT, MR.
9 MANCE, ON THE OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO
10 KILL IS THAT YOU BE COMMITTED TO THE STATE DEPARTMENT OF
11 CORRECTIONS FOR A TERM OF IMPRISONMENT FOR LIFE.

12 FOR ARMED ROBBERY, THE SENTENCE IS THAT YOU BE COMMITTED
13 TO THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM OF LIFE.
14 AND FOR POSSESSION OF A PISTOL, THE -- WHAT'S THE MAXIMUM
15 SENTENCE ON THAT?

16 MR. GOLDBERG: FIVE. I BELIEVE IT'S FIVE.

17 THE COURT: IS THAT YOUR UNDERSTANDING, TOO, MR. TARR?

18 MR. TARR: YOUR HONOR, I THINK IT'S FIVE, BUT I WASN'T
19 REAL CONCERNED WITH THAT CHARGE. I DIDN'T EVEN LOOK IT UP.

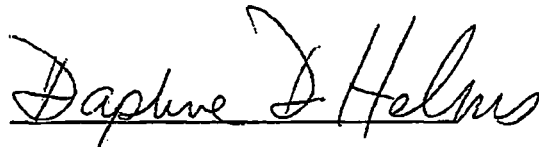
20 THE COURT: ALL RIGHT. WE'LL LOOK IT UP. 16-23-20.
21 THE SENTENCE IS -- THAT YOU'RE GUILTY OF A FELONY. YOU MUST
22 BE FINED NOT MORE THAN \$2,000 OR IMPRISONED NOT MORE THAN
23 FIVE YEARS OR BOTH. THE SENTENCE IS FIVE YEARS ON THAT
24 OFFENSE. ALL RIGHT. GOOD LUCK TO YOU, SIR.

25 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

I, THE UNDERSIGNED DAPHNE D. HELMS, 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 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 25TH THROUGH 27TH DAYS OF AUGUST, 2008.

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

DECEMBER 31, 2008

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

DAPHNE D. HELMS, COURT REPORTER

ORIGINAL

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MAR 02 2009

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC MANCE,

APPELLANT

INITIAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**Cases**

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting statements made by appellant several weeks prior to the armed robbery of a SUV and the shooting of the victim that he would go downtown and get him a car and get him somebody?

STATEMENT OF THE CASE

Appellant was convicted of assault and battery with intent to kill, armed robbery, and possession of a pistol after a jury trial held before the Honorable Clifton Newman in Richland County on August 25-27, 2008. Respective sentences of life without parole, life without parole and five (5) years were imposed.

This appeal follows.

ARGUMENT

The trial court erred in admitting statements made by appellant several weeks prior to the armed robbery of a SUV and the shooting of the victim that he would go downtown and get him a car and get somebody.

Appellant was trying to get home to Gaston on a rainy evening on June 2, 2006. He saw the victim try to enter his SUV on the 1600 block of Main Street. Appellant was wearing a mask, dark clothing and had a .38 revolver. He approached the victim who swung around into appellant. Appellant fired five shots at the victim. Appellant's defense was that he did not intent to kill the victim and only wanted his SUV to get home that evening. He did not intend dot permanently deprive the victim of the vehicle.

The State wanted to introduce statements made by appellant a couple weeks prior to the incident to the effect that he wanted to get a car and to shoot someone to show appellant's intent. (Tr. p. 277, line 15 – p. 28, line 12) Ultimately the trial court decided to admit the prior statements. (Tr. p. 394, line 5 – p. 406, line 1) That ruling was in error.

In State v. Rivers, 273 S.C. 75, 254 S.E.2d 299 (1979) the South Carolina Supreme Court wrote:

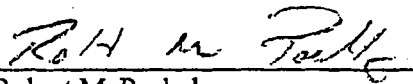
It is well settled that evidence of prior crimes or misconduct is not admissible to prove the specific crime charged unless the submitted evidence tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other; (5) the identity of the person charged with the commission of the crime on trial. State v. Anderson, 253 S.C. 168, 169 S.E.2d 706, cert. denied, 396 U. S. 948, 90 S. Ct. 386, 24 L.Ed.2d 253 (1969); State v. Lyle, 125 S.C.406, 118 S.E. 803 (1923).

As the Court noted in State v. Gore, 283 S.C. 118, 322 S.E.2d (1984), "when, as here, the previous alleged bad act is strikingly similar to the one for which the appellant is being tried, the danger of prejudice is enhanced."

CONCLUSION

Because the statements were improperly admitted appellant's convictions should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of March, 2009.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC MANCE,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Eric Mance states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on August 27, 2008, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Eric Mance.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of March, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Clifton Newman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ERIC MANCE,

APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial transcript

I certify that this designation contains no matter which is irrelevant to this appeal.

March 2nd, 2009

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Clifton Newman, Circuit Court Judge

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THE STATE,

RESPONDENT,

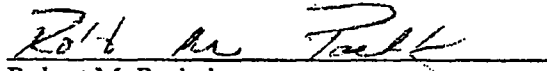
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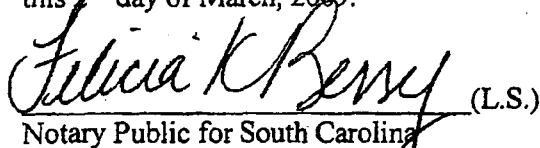
 CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Eric Mance, #200410 at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669; this 2nd day of March, 2009.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of March, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 15, 2010

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Eric Mance, Appellant.

Appeal From Richland County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2010-UP-120
Submitted January 4, 2010 – Filed February 11, 2010

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General Salley W. Elliott; and Solicitor Warren Blair
Giese, all of Columbia, for Respondent.

PER CURIAM: Eric Mance was convicted of assault and battery with intent to kill, armed robbery, and possession of a pistol by a person convicted of a violent crime. Mance appeals arguing the trial court erred in admitting statements he made several weeks prior to the robbery and shooting. After a thorough review of the record and both briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss Mance's appeal and grant counsel's motion to be relieved.[1]

APPEAL DISMISSED.

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

**RECEIVED**

JUN 01 2010

ATTORNEY GENERAL'S
OFFICE

The South Carolina Court of Appeals

TANYA A. GEE
CLERKV. CLAIRE ALLEN
DEPUTY CLERKPOST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 28, 2010

REMITTITURThe Honorable Jeanette W. McBride
1701 Main Street, Room 205
PO Box 2766
Columbia, SC 29202Re: The State v. Mance, Eric
2006-GS-40-04738 2006-GS-40-04739 2006-GS-40-04741

Dear Mrs. McBride:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,


Renee S. Johnson
Administrative SpecialistVA
TAG/rjcc: Appellate Defender Robert M. Pachak
Eric Mance # 200410
Assistant Deputy Attorney General Salley W. Elliott
Warren Blair Giese, Esquire

SR 12

FORM 5

2011 CP 4000741

STATE OF SOUTH CAROLINA

County of Richland

Eric Mance

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

RECEIVED
2011 FEB 14 AM 9:07
CLERK OF COURT
SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Corr. Inst.
2. Name and location of Court which imposed sentence Richland Co
LWOP
3. Name(s) of co-defendant(s) (if any) Desamone, Maurice, Leticia Gutmore
Srene Fuller
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2006-GS-40-4742 ; 2006-GS-40-4741
(b) 2006-GS-40-4740 ; 2006-GS-40-4739

CLERK OF COURT

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 27, 2008 LWOP
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 11, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of trial Counsel
- (b) Due Process Violation
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Memorandums will be sent as soon
- (b) as appointed counsel
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

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

i.

ii.

iii.

iv.

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

NO

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

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

(a) These are ineffective Assistance of Counsel
 (b) Claims and can only be raised
 (c) in PCR

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

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

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

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

i. DAVID TAYLOR
1720 Main Street Ste 202
Columbia, S.C. 29201
Robert Pockett
 iii. Office of Indigent Defense

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

i. Trial
 ii. Appeal
 iii.

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

Sentenced Vacated

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

NO

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Eric Mance, 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.

x Eric Mance

SWORN to and subscribed before me this 1st
day of February, 2011.

Stewart M. Mautley (L.S.)
Notary Public

My Commission Expires: November, 2016

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

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

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

X Eric Mance

Applicant

SWORN or affirmed to and subscribed before me this

1st day of February, 2011.

Steven M. Moulton
Notary Public

My Commission Expires: November 2, 2016

RICH AND COUNTY
 FILED
 2011 FEB 4 AM 9:59
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

MANCE Eric -
00200410,

2011CP4000741

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 4, 2011, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by David Tarr, Esquire. On August 27, 2008, following a trial, the Applicant was sentenced by The Honorable Clifton Newman. The Applicant had been indicted and/or convicted of the following: Armed Robbery,

¹

<http://www4.rcgov.us/publicindex/PlCaseDetails.aspx?County=40+&Casenum=2011CP4000741&CourtType=G&CaseType=Civil&CourtAgency=40002>

ABWIK, Poss. of A Person Convicted of A Crime of Violence - (2006-GS-40-4741;4739;4738). Sentence Start Date 06/05/2006 Sentence Length LIFE SENTENCE ²

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

Direct Appeal

The Applicant appealed his conviction and/or sentence. The appeal was unsuccessful and the Remittitur was dated May 28, 2010.

The application for post conviction relief (PCR) was filed February 4, 2011.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00200410>

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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 cannot be conclusively refuted by the record. **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. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Charles G. Blackburn, Esquire regarding when the hearing should be set.⁴

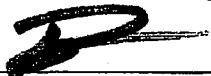
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

September 15, 2011

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>
State's Return - (2011CP4000741) – Applicant: MANCE Eric

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

MANCE Eric -
00200410,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

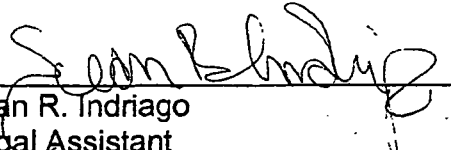
2011CP4000741

CERTIFICATE OF SERVICE

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 a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

Charles G. Blackburn
Post Office Box 6648
Columbia, SC 29260

DATED September ¹⁹~~16~~, 2011.


Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of Richland	)	2011-CP-40-00741
	)	
Eric Mance,	)	
	)	
Applicant,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

May 21st, 2013
Columbia, South Carolina

BEFORE:

THE HONORABLE ALISON RENEE LEE, JUDGE.

APPEARANCES:

TARA DAWN SHURLING, ESQ.
Attorney for the Applicant

ROB D. CORNEY, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

AMINAH R. HARDY, RPR
Official Court Reporter

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EXHIBITS

No.	Description	Marked	Admitted
A-1	Letter dated 5/6/08.	26	28
A-2	Letter dated 7/30/07	28	28
A-3	Subpoena to Wanette Johnson	70	70
A-4	Subpoena to Dr. Schwartz-Watts	70	70

P R O C E E D I N G S

1
2 THE COURT: Good morning, everyone. Here for
3 hearings on post-conviction relief. I understand there's
4 a preliminary matter you want me to take up, something you
5 want to put on the record?

6 MS. SHURLING: Your Honor, if you don't mind, since
7 we have witnesses here for the first proceeding, and the
8 second one doesn't involve anyone whose schedule we're
9 delaying, we can go ahead and do Eric Mance and put that
10 other matter on the record after Mance, if that's
11 acceptable with the Court.

12 THE COURT: That's fine.

13 MS. SHURLING: I just don't want to hold up anyone
14 longer than necessary.

15 THE COURT: Mr. Mance, come and have a seat next to
16 your attorney.

17 MS. SHURLING: Your Honor, may we approach for a
18 quick second?

19 (WHEREUPON, a bench conference was held.)

20 THE COURT: For the record, we are here on docket
21 number 2011-CP-40-00741, Eric Mance versus the State. The
22 applicant is represented by Tara Dawn Shurling, and the
23 State is represented by Rob Corney. We're here on
24 Mr. Mance's postconviction relief application. For the
25 record, he was indicted in September of 2006 for armed

1 robbery, assault and battery with intent to kill, and
2 possession of a pistol during a violent crime. He went to
3 trial in August of 2008, and was convicted of those
4 charges and was sentenced by Judge Newman. And as I
5 understand from reading the record, he was sentenced to
6 life without the possibility of parole. And there was an
7 appeal filed. And it was an unpublished opinion from the
8 Court of Appeals which dismissed the appeal -- and it was
9 dismissed. I think the case was affirmed, and it was
10 dismissed on February the 11th of 2010, and this PCR was
11 filed February 4, 2011, within the one-year statute of
12 limitations.

13 I have before me the application, the return by the
14 State, the brief, the initial Anders brief on appeal, and
15 I have the record on appeal. There are two volumes.

16 Is there anything else we need to take up before we
17 started?

18 MS. SHURLING: Your Honor, I would like to state for
19 the record that I had advised respondent in advance of the
20 last proceeding and reminded him before this one that the
21 issues I will be pursuing on behalf of Mr. Mance involve
22 the failure of defense counsel to adequately explore the
23 possibility of a mental incompetency -- lack of sufficient
24 criminal responsibility based on a claim of legal
25 insanity, and also to explore defense counsel's failure to

1 explore the potential benefits of a GBMI defense in the
2 case. The record reflects that counsel did not pursue the
3 possibility of a GBMI verdict based on the fact the client
4 was going to have an exposure to life without parole
5 whether or not they explored GBMI. It would be our
6 position there is were other benefits to a potential GBMI
7 verdict that should have been recognized and explored on
8 behalf of Mr. Mance.

9 And finally, Your Honor, that defense counsel was
10 ineffective for exploring (sic) the possibility of
11 conflicting this case of out Richland County to another
12 region in this state, based on not only the fact that the
13 victim in the case was a well-known and respected lawyer
14 here in Richland County, but also that the crime itself
15 happened literally within earshot of this courthouse in an
16 area where members of the Solicitor's Office regularly
17 walk and park and the proximity of the offense to the
18 Solicitor's Office, combined with the fact the victim
19 himself was a well-known and respected practitioner in
20 Richland County were factors that should have been
21 considered by defense counsel as a basis for a motion to
22 have this moved to another region. And those are
23 essentially the issues that we will be exploring vis-a-vis
24 testimony here today, Your Honor.

25 THE COURT: And you did not file an amended petition;

1 is that correct?

2 MS. SHURLING: No, ma'am. We simply notified the
3 respondent of what issues we would be exploring. I may
4 have sent an e-mail at one point, I believe, but nothing
5 was filed before. I generally do that, Your Honor, when
6 I'm exploring multiple, complex, inter-related issues, but
7 since the issues that we intended to explore were
8 basically easy to explain to the respondent, we did not do
9 a formal, written remittitur. Thank you.

10 THE COURT: Mr. Corney, anything from you?

11 MR. CORNEY: Nothing from the State. We are ready to
12 proceed.

13 THE COURT: Ms. Shurling, you may call your first
14 witness.

15 MS. SHURLING: Yes, Your Honor. At this time, I
16 would call trial counsel David Tarr to the stand.

17 DAVID TARR, after being duly sworn, testified as
18 follows:

19 THE COURT: And when you are seated comfortably,
20 state your full name for the record.

21 THE WITNESS: David Tarr, T-A-R-R.

22 THE COURT: Thank you. Mr. Tarr, if you would just
23 pull the microphone down toward you. You don't have to
24 speak directly into it, because it does leave a little bit
25 of an echo. Thank you.

DAVID TARR - DIRECT EXAMINATION BY MS. SHURLING

1 DIRECT EXAMINATION

2 BY MS. SHURLING

3 Q. Mr. Tarr, forgive me. I'm going to move up a little
4 closer to you. I had an ear infection and my hearing is a
5 little affected. I want to make sure we can hear each
6 other, okay?

7 Do you recall representing Eric Mance?

8 A. Yes, sir.

9 Q. And at that time, were you in private practice or
10 with the public defender's office?

11 A. Private practice.

12 Q. Were you retained in the matter or court appointed?

13 A. Court appointed.

14 Q. Okay. I assume you filed traditional discovery
15 motions in this case?

16 A. Yes.

17 Q. In addition to doing that, did you obtain copies of
18 your client's medical records, psychiatric records?

19 A. Yes, I did.

20 Q. You did? And I believe you hired to assist you with
21 preparation of the defense Dr. Donna Schwartz-Watts?

22 A. That's correct.

23 Q. And can you state for us with specificity what the
24 assignment, what the task you gave Dr. Schwartz-Watts was?

25 A. Mainly to evaluate him for his competency to stand

DAVID TARR - DIRECT EXAMINATION BY MS. SHURLING

1 trial. I just felt like there were some issues as far as
2 understanding. Just wanted to make sure he was able to
3 assist me in his defense and understand the charges
4 against him.

5 Q. Okay. And Mr. Mance was, because of a prior record,
6 facing prosecution under two-strike application, second
7 most serious offense that would automatically result in
8 life without parole, correct?

9 A. That's correct.

10 Q. And, in fact, his prior offense that was the
11 predicate offense for the LWOP was an incident in which he
12 shot his own mother?

13 A. That's correct.

14 Q. And is it fair to say that this client had an
15 extensive psychiatric record?

16 A. Oh, yes.

17 Q. He did?

18 A. Uh-huh.

19 Q. And I'll get into the details about his mental health
20 history with Dr. Schwartz-Watts, but in addition to having
21 mental health issues of other sorts, he also had been
22 diagnosed with retardation; is that correct?

23 A. I don't know if he had been diagnosed with
24 retardation, but his IQ was very low.

25 Q. 66, does that sound right?

DAVID TARR - DIRECT EXAMINATION BY MS. SHURLING

1 A. Somewhere in that neighborhood.

2 Q. Okay. Did you explore the possibility of pursuing a
3 defense of insanity or arguing that he was not criminally
4 responsible for his actions under the M'Naghten standard?

5 A. I don't remember how much I thought about it. I
6 didn't strike me that he would qualify under that rigid
7 standard that we have in our law, and the circumstances
8 and facts of the case and attempting to hide items that
9 were used in the commission of the crimes indicated to me
10 an understanding that what he had done was wrong, and I
11 didn't think that would be fruitful to look it into any
12 further.

13 Q. Did you discuss that with the expert, with
14 Dr. Schwartz-Watts?

15 A. I'm sure I did, you know, I really -- I don't
16 remember specific discussions most -- you know, most of
17 what I talked to her about. It's been a while now --

18 Q. At trial --

19 MS. SHURLING: And, Your Honor, I had been trying to
20 find the place. I will in a moment.

21 BY MS. SHURLING

22 Q. But the discussion about his psychological record and
23 whether or not they need to have a Blair hearing is found
24 on page 149 going over through page 155. And somewhere in
25 there the statement is made on the record that you were

DAVID TARR - DIRECT EXAMINATION BY MS. SHURLING

1 stipulating that he understood right from wrong and had
2 the ability to conform his conduct. Do you recall that?

3 A. I don't recall, but if it's in there, I guess I did.

4 Q. What was the basis for the stipulation?

5 A. I never thought about a GBMI in the case because he
6 was going to get life without parole if he pled guilty.
7 And my attempts were directed toward trying to get him
8 away from that, and so I took a different strategy. I
9 didn't feel any need -- if I wasn't going to plead him
10 guilty, I didn't care whether he was guilty or mentally
11 ill.

12 Q. I understand, and we'll get to GBMI in a minute. But
13 for now, addressing the question of criminal
14 responsibility and a potential insanity defense. You, as
15 his attorney, stipulated for the record that he knew right
16 from wrong and could conform his conduct. My question
17 was: What was the basis for your stipulation?

18 A. I just didn't think there was any chance that any
19 doctor would ever say that he didn't understand what he
20 was doing was wrong.

21 Q. Okay.

22 A. There was also other testimony at the end of the case
23 from people in the community that he was bragging about
24 what he was going to do. And I think that would have
25 bolstered the opinion that he knew what he was doing was

DAVID TARR - DIRECT EXAMINATION BY MS. SHURLING

1 wrong, and then hiding some of the things that were used
2 in the commission of the crime, that shows indication of
3 trying to not get caught. If he didn't do anything wrong,
4 he wouldn't worry about getting caught.

5 Q. Okay.

6 A. If you think you --

7 Q. Sorry. What was that?

8 A. I said, if you did not think you were doing anything
9 wrong, you wouldn't worry about getting caught, in my
10 opinion.

11 Q. Okay. Now moving on to the issue of GBMI, in South
12 Carolina even if you don't meet the legal standard for an
13 affirmative defense of insanity, we have available an
14 interim option, that being a guilty-but-mentally-ill
15 verdict, correct?

16 A. Correct.

17 Q. And the record reflects that you waived that, you
18 waived any assertion of a potential GBMI finding because
19 your client was going to be exposed to life without parole
20 anyway.

21 A. Correct.

22 Q. Is that fair to say?

23 A. That's exactly right.

24 Q. Did you do anything to investigate through SCDC what
25 the potential benefits of a guilty-but-mentally-ill

DAVID TARR - DIRECT EXAMINATION BY MS. SHURLING

1 verdict would have been for your client, Mr. Mance?

2 A. No.

3 Q. Are you familiar with the policies and procedures of
4 SCDC in terms of how they treat mentality ill inmates who
5 have come into the system with a GBMI finding versus those
6 who don't?

7 A. No.

8 Q. So you waived your client's right to potentially
9 pursue a verdict of guilty but mentally ill without really
10 understanding what the potential benefits to your client
11 of such a finding would be?

12 A. Yes.

13 Q. Okay.

14 A. If they don't have a policy of letting them go early,
15 then I really don't care, you know. I was trying to get
16 it where he was able to get out one day. That was my
17 goal, and that's what he wanted, and that's what I tried
18 do. And I did it the only way I knew how.

19 Q. I understand. But what I'm -- well, then I'll move
20 on.

21 Your client was looking at life without parole, so if
22 he was found guilty, the only issue that you had the
23 ability to impact was his quality of life in prison,
24 correct?

25 A. Correct.

DAVID TARR - DIRECT EXAMINATION BY MS. SHURLING

1 Q. And you did not explore what, if any, difference on
2 his quality of life in SCDC a GBMI verdict might have had
3 as opposed to a straight guilty verdict?

4 A. No, I did not.

5 Q. Okay. And --

6 A. I assume he would have been housed and treated in
7 some type of mental health facility until such time they
8 deemed him able to go into general population or some
9 other more traditional form of institutionalization, but
10 that's my limited assumption about --

11 Q. I understand.

12 A. I didn't look into it any further.

13 Q. And again, you were well aware your client had an
14 extensive psychiatric history?

15 A. Yes.

16 Q. And had had various forms of psychiatric treatment;
17 had been taking various psychotropic drugs, medications,
18 related to his mental illness for many, many years?

19 A. That's correct.

20 Q. All right. In this case the victim, Daryl Hawkins
21 was a successful, well-known Columbia attorney, correct?

22 A. Yes, sir.

23 Q. And this incident happened a virtual stone's throw
24 from where we are now, right? Right near here?

25 A. Right across the street.

DAVID TARR - DIRECT EXAMINATION BY MS. SHURLING

1 Q. Given those two factors, the fact that Daryl Hawkins
2 is a well-respected and liked Columbia attorney, and
3 equally significantly, the shooting happened right here at
4 the courthouse where members of the Solicitor's Office
5 walk and park and --

6 MR. CORNEY: Objection Your Honor. I'm letting her
7 go. I know she's trying to move through it quickly, but
8 at this point, she's testifying.

9 MS. SHURLING: Okay.

10 MR. CORNEY: I prefer she ask a question to him and
11 let him answer it. I know you're trying to move through
12 it.

13 MS. SHURLING: I'll rephrase.

14 MR. CORNEY: Thank you, Judge.

15 BY MS. SHURLING

16 Q. I believe you already testified that the location is
17 right across the street.

18 A. It's kind of behind the building -- one of the
19 buildings across the street in the parking lot.

20 Q. Is it within a block?

21 A. Oh, yeah.

22 Q. Okay. Of this courthouse?

23 A. Yes.

24 Q. And where is the Fifth Circuit Solicitor's Office
25 located?

DAVID TARR - DIRECT EXAMINATION BY MS. SHURLING

1 A. Right next door.

2 Q. Okay.

3 A. I mean next door to this room.

4 Q. And are there are various bars and restaurants in the
5 immediate area that are, to your knowledge, frequented by
6 the staff of the Fifth Circuit Solicitor's Office on
7 occasion?

8 A. At that time there weren't nearly as many as there
9 are now, but yes, there were some.

10 Q. Okay. Did you consider the combination of those two
11 factors, the who the victim was and is his relationship to
12 the legal community of which prosecutors would be a part
13 and the location of the crime? Did you consider, based on
14 those factors, asking for the Fifth Circuit Solicitor's
15 Office to conflict out and have this case assigned to a
16 solicitor's office elsewhere, or perhaps the special
17 prosecution unit at the Attorney General's office?

18 A. No, I didn't. Because it was -- it's my
19 understanding that Mr. Hawkins didn't do criminal work. I
20 had been a criminal defense lawyer for over ten years and
21 I didn't know him. I never met him. The solicitors that
22 I was dealing with on this case informed me they didn't
23 know him. So I didn't consider that at all. The
24 proximity to the courthouse, I mean, there's a fair amount
25 of crime on Main Street and the surrounding areas even

DAVID TARR - DIRECT EXAMINATION BY MS. SHURLING

1 today, and I don't see any reason why the Fifth Circuit
2 Solicitor's Office should be prevented from prosecuting
3 there because they work near there, and they're not.

4 This case was very difficult. If Mr. Hawkins would
5 not have survived as he had, fortunately, it would have
6 been a death penalty case, and I think even in Richland
7 County, Mr. Mance probably would have gotten it. It was
8 pretty bad. I think moving it anywhere else in the state
9 would not have helped him. Now, if the solicitors I was
10 dealing with had acquaintance of him or knew him at all,
11 that might have -- I might have thought about that. But I
12 really didn't -- I really didn't think about it because of
13 those reasons.

14 Q. Did you ever discuss a GBMI verdict or what guilty
15 but mentally ill meant with your client?

16 A. If I -- I would have discussed that it meant that he
17 would never get out as if it was a guilty plea, but
18 obviously didn't discuss anything more than I testified
19 to, because that's my total understanding of what would
20 happen if you received a GBMI.

21 Q. But did you discuss with him that there was a
22 decision to be made whether or not to pursue a possible
23 GBMI verdict?

24 A. I'm sure I did. I can't sit here and tell you that I
25 remember it, but that's the type of thing I would talk to

DAVID TARR - DIRECT EXAMINATION BY MS. SHURLING

1 my clients about. I don't recall.

2 Q. But you don't recall?

3 A. No.

4 Q. And you didn't have him questioned concerning it on
5 the record?

6 A. No.

7 Q. There is one place in the record where you have him
8 questioned on the record about whether or not he knows
9 right from wrong and whether or not he thinks he's
10 competent to stand trial. Do you recall that?

11 A. Not really.

12 Q. Were you with the public defender's office at one
13 time?

14 A. Yeah, I was with the Aiken County Public Defender and
15 the Richland County Public Defender's office. I was there
16 Richland County in between '96 -- actually '98 and 2000.

17 Q. And in your tenure both as a public defender and as a
18 defense attorney, have you had occasion to work in other
19 cases with people with serious mental illness?

20 A. Yeah.

21 Q. Are people who are extremely mentally ill generally
22 in the best position to give an opinion about whether or
23 not they're extremely mentally ill?

24 A. I wouldn't think so.

25 Q. Thank you. No further questions.

DAVID TARR - CROSS-EXAMINATION BY MR. CORNEY

1 CROSS-EXAMINATION

2 BY MR. CORNEY

3 Q. Mr. Tarr, do you recall your pretrial meetings with
4 Mr. Mance about the case?

5 A. I mean, I recall meeting with him many times.
6 Specifics of the conversation, I don't necessarily
7 remember, but I remember some of it.

8 Q. All right. Do you recall overall feeling, his
9 expectation of what he wanted at the trial?

10 A. Yes.

11 Q. And what was that? What was he seeking for you to
12 do?

13 A. We were both seeking to give him a chance to get out
14 of prison one day.

15 Q. And was that's something he specifically discussed
16 with you? That was his goal in your representation at
17 trial?

18 A. Yes, sir.

19 Q. And as part of that discussion, would you have
20 reviewed with him that a guilty-but-mentally-ill verdict
21 would have prevented that option?

22 A. Yes.

23 Q. And he was evaluated by Dr. Schwartz-Watts and found
24 competent to stand trial?

25 A. Yes.

DAVID TARR - CROSS-EXAMINATION BY MR. CORNEY

1 Q. Do you recall ever having any discussions about
2 Dr. Schwartz-Watts to about his ability to understand
3 right from wrong, criminal responsibility? Do you recall
4 any of that?

5 A. No, I don't have a specific recollection. I'm sure
6 we did. But I don't think we ever went very far. I
7 really didn't feel like there was anything there, and I
8 really don't recall what Dr. Schwartz-Watts' impressions
9 were regarding those other possibilities. I just know
10 from working with her that if she thought there was
11 something there, she would tell me for sure.

12 Q. Okay. But based on your discussions with Mr. Mance,
13 did he have any issues participating in your conversations
14 or understanding what you were talking about?

15 A. I hope he did not, but it's very difficult speaking
16 with him. Whenever I would talk to him, he would always
17 nod his head yes and speak in a way that made me feel like
18 he was understanding what I was saying. I can't tell you
19 for sure he did. All I can tell you is he indicated that
20 he understood, and I hope that he did, but I can't read
21 his mind.

22 Q. Absolutely. But were you able to -- you were able to
23 review the evidence from the discovery file from the
24 State?

25 A. Yes.

DAVID TARR - CROSS-EXAMINATION BY MR. CORNEY

1 Q. And were you able to go over the evidence that was
2 pretty condemning against him?

3 A. Oh, yes.

4 Q. Okay. And would you classify that or qualify that as
5 pretty strong evidence against him?

6 A. It's about the strongest evidence you can have in a
7 criminal case. I mean every single way that you can
8 convict somebody, they had it in this case. Confession,
9 DNA, all the things used in the commission of the crime,
10 tool of the crime, the gun, the mask, everything they had,
11 and it was all connected straight to him.

12 Q. Along those lines, Mr. Mance had given written
13 consent for the police to search his house after the
14 crime, correct?

15 A. I believe that's correct.

16 Q. And his wife had given written consent as well?

17 A. I really -- I don't recall that.

18 Q. That was before you got involved, obviously, correct?

19 A. Correct. But I would have had copies of it if it was
20 in discovery.

21 Q. As part of their search of Mr. Mance's house, they
22 were able to find a firearm hidden under the back stairs;
23 is that correct?

24 A. Yes, sir.

25 Q. And they were also able to find a mask?

DAVID TARR - CROSS-EXAMINATION BY MR. CORNEY

1 A. Yes.

2 Q. Okay. And that mask was very similar to what the
3 victim and witnesses were saying the suspect was wearing,
4 correct?

5 A. Yeah. I think it was a Scream mask, like from the
6 movie Scream.

7 Q. And there was DNA found on the mask linking Mr. Mance
8 to the crime?

9 A. Yes.

10 Q. And the ballistics came back showing that that
11 firearm found under his back stairs was the weapon used in
12 the crime, correct?

13 A. Yes.

14 Q. And the victim's car -- which this was a carjacking,
15 correct?

16 A. Yes.

17 Q. And the victim's car was found in the field behind
18 Mr. Mance's house?

19 A. That's correct.

20 Q. All right.

21 A. There was even some testimony from an officer that
22 Mr. Mance had come down to where they were looking at the
23 car before they even realized who he was, and that
24 Mr. Mance had told them they were too stupid to catch the
25 person that did this. And that was another reason why I

DAVID TARR - CROSS-EXAMINATION BY MR. CORNEY

1 felt like any type of NGRI would not be anything that
2 would be worth wasting time looking into.

3 Q. Now, when it comes to a guilty-but-mentally-ill
4 verdict, requesting the jury be charged with that, that
5 being a defense, an affirmative defense that you've used,
6 is there ever any concern with a jury settling on a
7 verdict? Is that something as a defense attorney you've
8 come across?

9 A. I've never had this particular situation other than
10 the case. But yes, that is a concern that you have, is
11 that if you give the jury another option, if they were
12 leaning towards not guilty, they may choose the middle
13 ground and that can definitely be detrimental to your
14 client's chances.

15 Q. Is that something you discussed with Mr. Mance prior
16 the trial?

17 A. I don't think I discussed that because we never
18 really looked into -- we never considered the
19 guilty-but-mentally-ill option.

20 Q. And again, that was because Mr. Mance made clear to
21 you that his expectation or his -- what he wanted out of
22 this was to be able to be out of jail one day right or out
23 of incarceration?

24 A. Yes.

25 Q. All right. Now, there's been testimony about

DAVID TARR - CROSS-EXAMINATION BY MR. CORNEY

1 Mr. Mance having a low IQ. Do you recall that?

2 A. Yes, sir.

3 Q. And that was something that was brought out at trial
4 pretty extensively, correct?

5 A. Yeah, I attempted to use that as mitigation and to
6 explain to the jury how in his mind he may have not
7 intended to kill Mr. Hawkins, and hopefully get the
8 charge -- get him found guilty on something less than the
9 most serious offenses that he was facing, and therefore
10 would not trigger the two strikes, life without parole
11 provision of our sentencing laws.

12 Q. Okay. As part of that defense, you actually called
13 an expert in neuropsychology as part of the defense case?

14 A. Tora Brawley.

15 Q. That was a Dr. Tora Brawley, right?

16 A. Yes.

17 Q. And was it part of your strategy to start -- try to
18 call into question his ability to form intent to kill or
19 anything like that?

20 A. Yes.

21 Q. And calling his IQ into question and bringing that
22 out, was that part of trial strategy?

23 A. That's exactly why.

24 MR. CORNEY: Beg the Court's indulgence just one
25 minute, Your Honor.

DAVID TARR - CROSS-EXAMINATION BY MR. CORNEY

1 BY MR. CORNEY

2 Q. There were statements that were made by Mr. Mance --

3 I think you referenced these a minute ago -- that you

4 fought pretty vigorously at trial, that he had made

5 previously about killing somebody before he left this

6 earth and about going downtown to rob somebody. Do you

7 recall that?

8 A. And those were statements I never even heard prior

9 the trial. They weren't in discovery. They were just...

10 Q. But as far as him making statements that he was going

11 go downtown to rob somebody, I think you referenced that

12 before.

13 A. Yes.

14 Q. That would have played into your decision as to

15 whether or not to pursue an insanity defense or allow

16 criminal responsibility, correct?

17 A. Yeah. Once I was aware of them, that definitely

18 bolstered my opinion.

19 Q. I know you said you weren't familiar with

20 Mr. Hawkins. By the time this trial came around, were you

21 aware of the type of law he practiced or the areas he

22 practiced in?

23 A. Yes. Well, I don't know about the areas. I just

24 knew he worked in common pleas mainly. Some type of civil

25 work. I didn't really know anything else about it.

DAVID TARR - CROSS-EXAMINATION BY MR. CORNEY

1 Q. But you were -- I think you testified a minute ago
2 the solicitors were not familiar with Mr. Hawkins; is that
3 correct?

4 A. I was never made aware they knew him. Luck Campbell
5 and Dan Goldberg, I believe were the solicitors that
6 worked on this case. They may have gotten to know him
7 during the course of representing the State in the matter
8 since he was the victim and the main witness, but I don't
9 recall them knowing him prior to the incident.

10 MR. CORNEY: One more minute, Your Honor. I
11 apologize.

12 BY MR. CORNEY

13 Q. Based on your discussions with Mr. Mance, the
14 evidence you were able to review from the State and your
15 investigation in the case, were you able to formulate an
16 opinion about the State's ability to prove his guilt
17 beyond a reasonable doubt at trial?

18 A. Yeah, I thought it wasn't going to be very difficult.

19 MR. CORNEY: That's all the questions I have. Thank
20 you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. SHURLING

23 Q. Mr. Tarr, at this trial you introduced a -- rather it
24 was introduced as a court's exhibit a letter to you from
25 Dr. Schwartz-Watts?

DAVID TARR - REDIRECT EXAMINATION BY MS. SHURLING

1 A. Yes.

2 MS. SHURLING: Your Honor, I believe I have...

3 BY MS. SHURLING

4 Q. Let me know when you've had a chance to --

5 A. I remember this.

6 MS. SHURLING: Your Honor, I would introduce one copy
7 as Applicant's 1 simply for the convenience of the Court.
8 It's actually a court's exhibit from the first trial, so
9 it would be part of the underlying record.

10 THE COURT: Any objection, Mr. Corney?

11 MR. CORNEY: No objection, Your Honor.

12 THE COURT: We'll mark it as Applicant's Exhibit 1.

13 (Applicant's Exhibit Number 1 was marked.)

14 BY MS. SHURLING

15 Q. And at some point, I believe you were copied on a
16 letter to Dr. Schwartz-Watts from Dr. Tora Brawley?

17 A. Yes.

18 Q. On a consult that was done in this case? Do you
19 recall that? And Mr. -- respondent -- I believe
20 Mr. Corney you were given a copy of the letter as well?

21 MR. CORNEY: Just the one individual letter?

22 MS. SHURLING: No, this is another one.

23 MR. CORNEY: I don't believe I've seen this one.

24 MS. SHURLING: Your Honor, a moment's indulgence. I
25 thought he had been handed a copy. I just found another

DAVID TARR - REDIRECT EXAMINATION BY MS. SHURLING

1 one.

2 BY MS. SHURLING

3 Q. And you recognize that as well?

4 A. Yeah.

5 MS. SHURLING: I would move to introduce this as
6 Applicant's 2.

7 THE COURT: Any objection to that?

8 MR. CORNEY: Your Honor, just subject to -- Donna
9 Schwartz-Watts I believe is going be called as a witness.
10 I believe she might be the better one to testify to this,
11 as it's hearsay otherwise. I know it is a medical
12 diagnosis, but --

13 MS. SHURLING: He's absolutely correctly. Your
14 Honor, to do it the correct way, we'll mark it for ID, and
15 I'll have it verified by Dr. Schwartz-Watts.

16 MR. CORNEY: No objection on that.

17 THE COURT: That's fine, but there was no objection
18 to the first letter, which is from Dr. Schwartz-Watts?

19 MR. CORNEY: It's my understanding that
20 Dr. Schwartz-Watts is going to testify to that as well. I
21 don't have an objection to it assuming she gets up there
22 and testifies to it.

23 THE COURT: So Exhibit Number 2 is marked for ID?

24 MR. CORNEY: It's six of one, half dozen of the
25 other. It doesn't matter to me.

DAVID TARR - REDIRECT EXAMINATION BY MS. SHURLING

1 MS. SHURLING: Your Honor, as I understand, I believe
2 subjective to identification by Dr. Schwartz-Watts, he's
3 willing to allow me to introduce them both, so Applicant's
4 1 and 2, please.

5 THE COURT: They'll be admitted.

6 (Applicant's Exhibit Number 1 was admitted.)

7 (Applicant's Exhibit Number 2 was marked and admitted.)

8 BY MS. SHURLING

9 Q. Just so we're clear, the statement about your client
10 having allegedly made statements concerning a similar plan
11 weeks before the incident, you said you were not aware of
12 those in advance. You found out about them at time of the
13 trial or immediately before the trial?

14 A. I don't think I was aware. I don't they were in the
15 discovery. I could be wrong, but my recollection is that
16 they were brought in, and I can't remember if they were on
17 rebuttal or if they were just at the end of the State's
18 case. But my recollection was it was the first time I
19 heard it.

20 Q. Okay. And when you came to trial, you did not come
21 to trial prepared to present either a defense of insanity
22 or an assertion of guilty but mentally ill as a verdict
23 option?

24 A. No.

25 Q. You didn't have witnesses under subpoena or mental

DAVID TARR - REDIRECT EXAMINATION BY MS. SHURLING

1 health records prepared as court's exhibits or any of the
2 things you would have needed to do in preparation for
3 pursuing either of those courses of action?

4 A. No.

5 Q. Okay. And just for clarity, you mentioned that a
6 mask found, that there was DNA that linked the mask to the
7 crime. To be more accurate, there was DNA that linked
8 your client to the mask; isn't that accurate?

9 A. Yeah. Yeah.

10 Q. Okay. Didn't link the mask, per se, to the crime?

11 A. I think that was the question that the AG asked and I
12 said yes, and I think you're right.

13 Q. Okay. Just want to follow-up on that.

14 Now, with regard to your concerns about a compromise
15 verdict of or the jury settling for GBMI, were there any
16 plea negotiations in case?

17 A. No.

18 Q. There weren't any, were there?

19 A. No.

20 Q. The State was absolutely unwilling to consider
21 anything other than going to trial on these charges?

22 A. No. I would have been shocked if they had based on
23 my experience in Richland County or anywhere based on the
24 facts of this case and his prior record. I don't -- I and
25 the circumstances and just the amount of evidence they had

DAVID TARR - REDIRECT EXAMINATION BY MS. SHURLING

1 against him. They had absolutely no incentive or reason
2 to do that.

3 Q. I understand. So this was one of those cases that
4 went to trial by jury not just because the client wanted a
5 trial, but also because you had no choice?

6 A. If he pled guilty, he would have gotten life without
7 parole.

8 Q. Well, and in fact, don't court rules even require the
9 solicitor's permission for you to enter a plea of guilty,
10 even straight up?

11 A. They would have gladly accepted his plea.

12 Q. Okay. And the respondent has asked for your
13 assessment based on the strength of the State's evidence
14 in the case. Did you have any realistic hope of an
15 acquittal in this case?

16 A. No, I wasn't looking for an acquittal. I was looking
17 for him to be found guilty of lesser-included offenses
18 such he would not be subject to the life without parole
19 provisions of our sentencing laws.

20 Q. Okay. And that was based on his retardation?

21 A. And you keep using the term "retardation." That's
22 something I did at the trial, and I was unaware at the
23 time that just because you have a 66 IQ does not mean that
24 you're mentally retarded. I was corrected during the
25 trial and I still have not forgotten that. There are

DAVID TARR - REDIRECT EXAMINATION BY MS. SHURLING

1 other factors that are looked at by psychologists and
2 psychiatrists to make a determination whether or not
3 somebody is mentally retarded. It's not just the number.
4 But that's why I used his IQ. Was trying to show his lack
5 of understanding, his lack of ability to form intent, his
6 lack of ability to really understand what could possibly
7 happen in a given situation if he chose to do certain
8 things. And so instead of assault and battery with intent
9 to kill, I was trying to get him convicted of assault and
10 battery of a high and aggravated nature.

11 I was trying to show that -- because he had such a
12 limited understanding of consequences that he could have
13 easily thought he could shoot somebody and they not die.
14 So he wasn't intending to kill him, didn't have malice.
15 He was just trying -- basically it was raining, it was
16 cold, he wanted to get home. He didn't have a car, and in
17 his mind this was the best way to do it. That's what I
18 was trying to show the jury.

19 Q. And that was the purpose of your calling Dr. Tora
20 Brawley as a witness for the defense?

21 A. Yes.

22 Q. Okay.

23 A. And I think it's actually in her testimony, her
24 cross-examination where it comes out that mental
25 retardation is not necessarily just the fact that somebody

DAVID TARR - REDIRECT EXAMINATION BY MS. SHURLING

1 has a certain IQ, that there are other factors about the
2 way they live their lives and how they conduct themselves
3 and lots of other things that professionals consider
4 before making that diagnosis. Dr. Schwartz-Watts can, I'm
5 sure, elaborate on that a lot more than I can.

6 Q. And it was your strategy to try to say that he lacked
7 the requisite criminal intent for ABWIK because of the
8 mental health factors?

9 A. Yes.

10 Q. Okay. Did you introduce any of his mental health
11 records or testimony from anyone concerning his extensive
12 mental health history during the trial?

13 A. I don't think I entered any records. I mean, I
14 didn't want to get into all that. I thought some of it
15 could have kind of cut both ways and hurt him. I really
16 just wanted -- I wanted that number out there because it's
17 very low and just generally in the community I think
18 people would hear that and immediately would elicit some
19 sort of sympathy or reaction that, yeah, this person may
20 not have the ability to think about things the way I do
21 and therefore cut him a little break. That's kind of the
22 way I was going --

23 Q. I understand.

24 A. -- with that.

25 Q. If you had pursued the avenue for potential GBMI

DAVID TARR - REDIRECT EXAMINATION BY MS. SHURLING

1 verdict, could you not have asked for a jury verdict form
2 that provided for guilty or not guilty of ABWIK or GBMI
3 ABWIK and also the same three-verdict options for the
4 lesser-included offense?

5 A. You could, and that's where you get into the
6 possibility of a compromise. That's not the way I thought
7 would be the best way to deal with this case.

8 Q. And did your client?

9 A. I know that's why we're here and what you're raising,
10 but I thought then and that's what I still think now.

11 Q. I understand. And can you say here today in this
12 setting under oath that your client was fully advised of
13 all those options and that he participated in making that
14 decision?

15 A. I can tell you we talked about guilty but mentally
16 ill, and that he would never get out of prison -- if he
17 pled -- or if he got that sentence or that verdict or that
18 plea, and it was never considered after that.

19 Q. Okay.

20 A. Because he wanted to try to get out again.

21 Q. So the answer is no, to the best of your recollection
22 you don't recall discussing with him the possibility that
23 at trial you could pursue GBMI with regard to ABWIK and
24 ABHAN?

25 A. I never -- we were never going to try to pursue that.

DAVID TARR - RECROSS-EXAMINATION BY MR. CORNEY

1 So I mean, when we talked about that, he didn't -- he
2 wanted to get out of prison one day. Why pursue that and
3 discuss that if it's going to lead to him never getting
4 out? It's --

5 Q. Thank you. No further questions.

6 MR. CORNEY: Very briefly, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. CORNEY

9 Q. Mr. Tarr, again, Mr. Mance covered his tracks
10 following the crime, correct?

11 A. He tried to.

12 Q. Attempted to. He hid evidence, essentially. And he
13 wanted you to pursue the case in a manner in which he had
14 the possibility of one day being released and being a free
15 man, correct?

16 A. Yes.

17 Q. A guilty-but-mentally-ill verdict would not have
18 allowed for that, correct?

19 A. No.

20 Q. And the evidence or the -- I guess the fact he had
21 covered his tracks, hid the evidence, tried to cover his
22 crime up would have been very detrimental to a lack of
23 criminal responsibility-type defense, correct?

24 A. Yes.

25 Q. So you argued for the lesser-included assault and

DAVID TARR - RECROSS-EXAMINATION BY MR. CORNEY

1 battery of a high and aggravated nature because that would
2 allow for him to one day be released, correct?

3 A. The only other way to get that would have been just
4 to challenge the case and just try to get a not guilty
5 across the board and that was impossible. So basically
6 the strategy I chose was the only reasonable strategy that
7 had any prayer of getting what we were trying to do to
8 happen.

9 Q. And that was to essentially argue that he lacked the
10 understanding of the possible consequences by doing that
11 in the context of challenging intent rather than saying he
12 was guilty but mentally -- guilty but mentally ill,
13 correct?

14 A. Correct.

15 Q. So essentially arguing GBMI but hoping for the
16 lesser-included offense to avoid the two, three strike
17 law?

18 A. Yes.

19 Q. And there's a fair amount in his medical records and
20 letter that have been handed up and things brought up at
21 trial he has a pretty extensive history of drug and
22 alcohol abuse, correct?

23 A. Yes.

24 Q. And that could have played into some of his low
25 functioning or mental health issues in the past?

DAVID TARR - RECROSS-EXAMINATION BY MR. CORNEY

1 A. Yeah, and we did have a Dr. Kenneth Gaines who
2 conducted some testing on him to see if there's any
3 organic brain damage, and that could have played a part in
4 that as well, I would think.

5 Q. And throughout the trial, you wanted to limit the
6 testimony and evidence brought in as far as his prior drug
7 use, correct?

8 A. Oh, yeah.

9 Q. That was something you challenged?

10 A. Yes.

11 Q. And you asked the jury be instructed they couldn't
12 consider that, correct?

13 A. I hope I did.

14 Q. All right. But as far as medical records coming in
15 showing his extensive, 20-year history of drug and alcohol
16 use, is that something you probably wouldn't have wanted
17 to bring in in front of the jury, a long history of drug
18 use?

19 A. I was trying to garner sympathy and doing something
20 to yourself that's detrimental for 20 years is not really,
21 in my opinion, going to do that for you.

22 MR. CORNEY: No further questions. Thank you, Your
23 Honor.

24 MS. SHURLING: Very briefly.

25 REDIRECT EXAMINATION

DAVID TARR - REDIRECT EXAMINATION BY MS. SHURLING

1 BY MS. SHURLING

2 Q. Based on your interaction with experts in this case,
3 you're not suggesting that alcoholism causes retardation,
4 are you?

5 A. No.

6 Q. And you're not suggesting that alcoholism or drug use
7 necessarily had a causal link to his underlying mental
8 health issues, are you?

9 A. No.

10 Q. One last thing. You said that you talked to him and
11 you asked him questions and he answered you yes or no, and
12 you assumed from the yes-or-no answers he understood you?

13 A. Yes.

14 Q. Did you ever ask him to explain anything to you? For
15 example, did you tell him about certain aspects of the
16 trial and then ask him to explain it back to you in his
17 own words so that you could be assured that he understood
18 what you were telling him?

19 A. No, I didn't.

20 Q. And have you had any prior experience dealing with
21 people with very low IQ?

22 MR. CORNEY: Objection, Your Honor. That's been
23 asked and answered on direct first time around, and that's
24 way beyond the scope of where we've gone down this path of
25 cross/direct/recross.

DAVID TARR - REDIRECT EXAMINATION BY MS. SHURLING

1 MS. SHURLING: Your Honor, I believe the respondent's
2 continued to explore the question of the basis for his
3 decision not to pursue mental health issues.

4 THE COURT: I'll allow you to discuss those issues
5 related to the alcohol and drugs as it relates to those
6 charges and the intent.

7 MS. SHURLING: Thank you.

8 BY MS. SHURLING

9 Q. In your experience, is someone with that
10 background -- are their answers to your questions
11 necessarily reliable indicators of their comprehension?

12 A. No, which is why I got the doctors involved to tell
13 me whether he's competent because I'm not qualified to
14 answer that. And they told me he was.

15 Q. Thank you. No further questions.

16 THE COURT: You may step down. Thank you.

17 MS. SHURLING: Your Honor, before I call my next
18 witness, there's something I meant to put on the record
19 before we got started very briefly. There had been
20 previous attorney in this case -- frankly I can't remember
21 his name at the moment -- but who had not felt comfortable
22 keeping the case. And I -- when I went to see Mr. Mance,
23 I addressed with him the problem that virtually anybody
24 that would be court appointed to represent him would be a
25 lawyer from the Columbia community that would know at

1 least peripherally and professionally the victim in this
2 case, Daryl Hawkins. I told him I went to law school with
3 Mr. Hawkins, and his wife, Suzanne. But I also explained
4 to him that they -- while professional acquaintances and
5 had been friends in law school, at least casual friends in
6 law school, that in the many years since law school that
7 we do not socialize with each other, that I've never been
8 out to dinner with Mr. and Mrs. Hawkins, they've never
9 been guests in my home or interacted with me in any other
10 way that would make me feel that I had a potential
11 conflict of interest. And I was concerned that if I
12 didn't agree to keep it, that he might just continue going
13 through a series of lawyers that would use their
14 peripheral knowledge of Daryl Hawkins as a reason to get
15 off the case. And he indicated to me he was comfortable
16 with me keeping the case after I explained my extensive
17 background with both criminal and appellate work. I will
18 briefly when I put him on the stand later confirm that he
19 entered that waiver. But because of the potential
20 conflict issues, I did want the record to be clear that I
21 did explore that possibility and those concerns before
22 moving forward with representation in this case.

23 Your Honor at this time I would call Dr. Donna
24 Schwartz-Watts.

25 DONNA SCHWARTZ-WATTS, M.D., after being duly

DONNA SCHWARTZ-WATTS, M.D. - DIRECT EXAMINATION
BY MS. SHURLING

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. SHURLING

4 Q. Dr. Donna Schwartz-Watts, can you very briefly fill
5 us in on your educational background and your current
6 position?

7 A. Sure. Right now, I'm a senior psychiatrist at Bryan
8 Hospital. I used to work at the medical school at the
9 University of South Carolina School of Medicine. I was
10 there for approximately 17 years. I left there two years
11 ago, and I presently actually take care of patients in an
12 acute psychiatric unit, and I also have a private practice
13 in forensic psychiatry.

14 I worked at the medical school for a number of years.
15 I worked at the Department of Mental Health in the past.
16 I used to perform court-ordered competency to stand trial
17 and criminal responsibility evaluations for the Department
18 of Mental Health when I worked there. I worked on the
19 insanity plea unit for a number of years. I worked at the
20 Department of Juvenile Justice for a number of years while
21 at the university. I also worked at the Department of
22 Corrections for a number of years while employed with the
23 university.

24 Q. Thank you.

25 A. And I'm still licensed in medicine and still have

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BY MS. SHURLING

1 added qualifications in psychiatry and forensic
2 psychiatry.

3 Q. And during the time period, I believe your letter to
4 Attorney Tarr is dated May 2008. Is that during the time
5 period when you were at the medical university?

6 A. It is, when I was at University of South Carolina,
7 yes.

8 Q. And while you were at the medical university, you
9 were able to contract with private defense attorneys to
10 provide psychiatric services, psychiatric evaluations,
11 second opinions in preparation of cases for trial?

12 A. Yes. That was my main job. I was a forensic
13 psychiatrist there. And the university actually paid me a
14 salary, so the university did the billing for my services,
15 but that's correct.

16 Q. And keep taking about in the interest of full
17 disclosure here: You did consulting work for a large
18 number of criminal defense attorneys in the community
19 during that time period, correct?

20 A. Absolutely.

21 Q. And I'm one of them?

22 A. Yes.

23 Q. At some point. I don't even remember the name of the
24 case, but there was at least one case in the past where I
25 have hired you to do an independent psychiatric

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BY MS. SHURLING

1 evaluation; is that correct?

2 A. Absolutely. I think there was actually a few of
3 them.

4 Q. Okay. And once again, obviously I was but one of
5 many, many attorneys who employed your services during
6 that time period, correct?

7 A. That's correct.

8 Q. Okay. Dr. Schwartz-Watts, at my request have you
9 reviewed -- did you retrieve your file from the university
10 and review your file from when you evaluated Mr. Mance?

11 A. No. We tried. What happened, Your Honor, when I
12 left the university in 2010, Ms. Shurling certainly tried
13 to get those records, and I'm no longer employed there,
14 and they're the custodian of the records. And I don't
15 believe the file was ever found that would have had my
16 handwritten notes. But Ms. Shurling very kindly provided
17 me with a letter I would have written to Mr. Tarr at that
18 period of time.

19 MS. SHURLING: And, Your Honor, I can represent as a
20 officer of the court -- I believe I can even retrieve the
21 subpoena -- that we did attempt to subpoena those records
22 and repeatedly followed up on the request. And for some
23 reason, they were unable to locate Dr. Schwartz-Watts'
24 file.

25 BY MS. SHURLING

DONNA SCHWARTZ-WATTS, M.D. - DIRECT EXAMINATION
BY MS. SHURLING

1 Q. It was my understanding you were going to make an
2 independent attempt to get those records located and if I
3 understand your testimony, you weren't successful either.

4 A. That's correct. I had two things happen. The
5 university -- when I left they archived my files, Your
6 Honor, and they put them in boxes and they were not
7 physically on location anymore at the medical school. The
8 other avenue I would have been able to perhaps to be of
9 some assistance was my e-mails with Mr. Tarr, and those
10 were on a Yahoo account that was closed. So I had no way
11 to retrieve any of the documentation. I think Mr. Tarr
12 and I, we would commonly e-mail.

13 Q. Okay. Then based on your recollection here today,
14 were you hired to perform a competency evaluation on
15 Mr. Mance?

16 A. Yes.

17 Q. Were you asked to perform an evaluation with regard
18 to his criminal responsibility, whether he was a potential
19 candidate for a defense of insanity?

20 A. I don't recall. I don't recall that I was. The only
21 question that gives me -- I don't think that was a formal
22 question at all, but Mr. Tarr is right. Probably
23 sometimes I would add an opinion if necessary, but I don't
24 recall looking at that issue.

25 Q. Okay. And the letters from you -- let me go ahead

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BY MS. SHURLING

1 and do this before I forget. What has been marked as
2 Applicant's Exhibit 1 here today and was Court's Exhibit 1
3 at the trial, appears to be an informal report done in
4 correspondence form to Attorney Tarr; is that correct?

5 A. Yes.

6 Q. And would you agree that that letter -- and let me
7 give you a minute to review it, but after reviewing it
8 would you agree that that letter addresses an evaluation
9 for competency?

10 A. It does. And -- but in defense of Mr. Tarr, the last
11 sentence, it does mention I sort of looked at the issues
12 overall and recommended that he perhaps -- that Mr. Mance
13 certainly have mitigation and he certainly may have been
14 eligible for a GBMI defense.

15 Q. Okay. And that letter also indicates that Mr. Mance
16 has not only issues with regard to retardation, but that
17 he also has -- I believe it's referred to as a psychotic
18 disorder?

19 A. That's correct.

20 Q. Can you tell us briefly what a psychotic disorder is?

21 A. Yes. It's a thought disorder. It's a major mental
22 illness, and if I recall correctly -- some of this is by
23 memory, Ms. Shurling, and I wish I had his records. But I
24 remember evaluating him that there were periods of time he
25 was complaining of hallucinations, which would qualify as

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1 a diagnosis of psychosis.

2 Q. And someone who has a psychotic disorder and has
3 episodic delusional behavior, is not necessarily -- let me
4 rephrase. If someone suffers from that, is their mental
5 condition stable across the board, or does it fluctuate
6 depending on whether or not they're experiencing one of
7 those episodes of psychotic delusional disorder?

8 A. Yes and no. Let me answer. There's no evidence -- I
9 don't remember Mr. Mance having delusional thoughts.
10 That's something with psychosis. It's a fixed, false
11 belief. But he certainly -- I recall him complaining of
12 hallucinations.

13 Q. Hallucinations. I apologize. I used the wrong word.
14 I apologize.

15 A. Definitely a symptom of psychosis. But yes, those
16 symptoms can wax and wane. You can have periods of time
17 if you're not using drugs, if you're on medication, if
18 you're in a structured environment where those symptoms
19 may not bother you. They usually are worsened with stress
20 and co-morbid conditions, medical conditions. He also had
21 a medical condition which could have contributed to the
22 hallucinations as well.

23 Q. And do you recall what that medical condition was?

24 A. Yes, he was hyperthyroid. He had -- his thyroid
25 gland was overactive and he was on medication to slow it

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BY MS. SHURLING

1 down. And so you can get behaviors, agitated behaviors,
2 sometimes psychosis. A manic -- it presents as a manic
3 type illness and more of mood disorder, but it is
4 possible.

5 Q. Okay. If someone suffers from that particular type
6 of mental illness, and you were asked to evaluate their
7 criminal responsibility for a specific incident, does it
8 require that you go back and investigate their condition
9 in the time period immediately surrounding the incident?

10 A. That's correct.

11 Q. And was any such investigation done by you or any of
12 your residents that worked on this case to the best of
13 your recollection in this case?

14 A. I don't recall. Normally what I would do -- I
15 remember that Mr. Tarr was very concerned about his
16 competency, obviously. He has very low IQ, Your Honor,
17 and I think Mr. Tarr was very concerned that he was having
18 difficulty communicating with his client. So when I
19 performed the original evaluation, I certainly was looking
20 for his IQ and those sorts of things. But during the
21 course of that evaluation, I also determined he was
22 psychotic. So I probably looked at some of those issues,
23 but I did not conduct a formal exam. I would have talked
24 with people that had been -- who had access to him around
25 that period of time. I would have written a separate

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1 report for that.

2 Q. And again, at the time you were evaluating him, it
3 was many months after the incident for which he was going
4 to trial?

5 A. That's correct. I saw him on June 3rd, 2007.

6 Q. And he had been detained? He had been in jail,
7 correct?

8 A. Oh, yes. He was at the Alvin S. Glenn detention
9 center. I went down there and saw him there.

10 Q. And I believe your letter indicates that he was
11 taking a couple of different medications for mental health
12 issues?

13 A. Actually, it was -- that was Dr. Brawley's report.
14 He had put that he was on a nerve pill and a sleeping
15 pill, but the nerve pill was actually his thyroid
16 medicine. But I do not know what sleeping medicine he was
17 on. I didn't write that in the report.

18 Q. Okay. And I believe your earlier testimony was that
19 his thyroid imbalance could have contributed to
20 hallucinations and his mental health issues?

21 A. It could. It could. It would depend on what his
22 thyroid test studies would have shown. And that's
23 something I would have looked at had I done a formal
24 criminal responsibility evaluation. I would have ordered
25 the labs and those sort of things.

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1 Q. But once again, that would have been based on his
2 condition after many months in the detention center with
3 enforced -- with an enforced treatment regimen. He had
4 been taking thyroid medication at the jail?

5 A. That's correct. So at that point that wouldn't have
6 been valid. But somebody was prescribing him the
7 propylthiouracil in the community, so I would have gotten
8 those records and looked for prior test or things like
9 that. There are things we could have done.

10 Q. Okay. But again, if someone has a psychotic disorder
11 with periods of hallucinations and so forth, and you're
12 trying to figure out if they were sane under legal
13 standards many months earlier when they were on the
14 street, not in detention, how do you go about
15 investigating what their mental condition was at the time
16 of the incident?

17 A. Sure. You look at the incident report. You look for
18 evidence in the police reports that might would indicate
19 there's behavior where they're not being protected. You
20 would get all the medical records that lead up to how that
21 person was doing before the crime. And you talk with
22 various people. If people had interaction with him,
23 you're looking for odd behavior or that sort of thing, and
24 certainly the report of the client.

25 Q. So would you have typically interviewed family

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1 members and people in the community that had day-to-day
2 contact with him during that time period as well?

3 A. Yes.

4 Q. And do you have any recollection of doing any of that
5 in the case?

6 A. I don't -- I have no recollection of that at all. I
7 don't believe I did.

8 Q. Okay. And I would also ask you to identify, if you
9 will, a letter written to you by Dr. Brawley, which has
10 been entered as Plaintiff's 2.

11 A. Yes, and there's also Dr. Gaines report attached to
12 that, yes.

13 Q. Thank you. And that would be the gentleman that did
14 the physical examinations looking for brain damage and
15 that sort of thing?

16 A. Yes, he's a neurologist. He was working at the
17 university at the time.

18 Q. Okay. Thank you.

19 MS. SHURLING: Your Honor, I believe these have
20 already been marked, now been properly identified.

21 BY MS. SHURLING

22 Q. Let's talk about -- you worked for SCDC, now you work
23 for Bryan, so you're pretty familiar with the concept of
24 guilty-but-mentally-ill verdict, aren't you?

25 A. Yes.

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BY MS. SHURLING

1 Q. We don't have a prison for the mentally ill in South
2 Carolina, do we?

3 A. No, we do. It's the Gilliam Psychiatric Hospital.

4 Q. Okay. We don't have a separate institution?

5 A. That's correct. South Carolina, I think, is the only
6 state in United States where the actual mental institution
7 is located within the Department of Corrections. Many
8 other states contract out to the state mental health
9 centers and the inmates are transferred there when they
10 need care. There may be one other state, but we're about
11 the only one.

12 Q. But we do have Gilliam Psychiatric Hospital, which is
13 contained within Kirkland Correctional Institution?

14 A. That's correct. It's an 89-bed unit there.

15 Q. And if someone is found guilty but mentally ill in
16 our judicial system when they go into SCDC, do they go to
17 Gilliam Psychiatric Hospital?

18 A. That's correct. And that's one of the main
19 differences, Your Honor. Instead of going into the
20 regular R & E in general population, people who are found
21 guilty but mentally ill go directly to Gilliam. They
22 undergo psychological testing, psychological evaluations,
23 and they're observed, they're medicated if necessary, and
24 then the decision is made at that point at what level,
25 what classification would they need in terms of mental

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1 health treatment.

2 Q. And I understand that they're not able to serve their
3 entire sentence at Gilliam?

4 A. No, they're usually -- the decision made at Gilliam
5 is whether they need continued inpatient psychiatric care,
6 which means they're remain at Gilliam until they're no
7 longer a danger to themselves or others. Whether they
8 would qualify for intermediate care, which is also at
9 Kirkland, we have a -- there's a program there where
10 inmates who are mentally ill and need more care than a
11 typical outpatient level, or the third decision would be
12 to allow them to go to an institution where there is
13 mental health care, but it's similar to an outpatient
14 treatment.

15 So basically the Department of Corrections has
16 inpatient treatment, they have intermediate level care
17 treatment, excuse me, and then an outpatient level of
18 treatment.

19 Q. Thank you. In your experience, is someone who goes
20 into SCDC with a GBMI verdict more likely to receive
21 immediate adequate mental health evaluation and proper
22 treatment plan than someone who just goes into SCDC
23 through R & E?

24 A. Yes, it's definitely quicker, Your Honor. If you're
25 admitted to Department of Corrections and not identified

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1 as mentally ill, they -- you're still screened at some
2 point, but it usually would take much longer before one
3 has access to services.

4 Q. And if you go in SCDC through the R & E route, the
5 initial screening is being done by caseworkers who are not
6 mental health workers; isn't that correct?

7 A. No, I actually believe since the lawsuit they have
8 had -- the four years I worked there and continuing, they
9 were using actually the same case managers from mental
10 health. So there were some screeners there.

11 Q. For every --

12 A. But you would have had to be identified as mentally
13 ill, but there were screeners who work with mental health
14 there as well.

15 Q. My question is: Any inmate who goes into SCDC,
16 you're saying is evaluated by a mental health counselor?

17 A. No. But the mental health counselors do work at R &
18 E, so if there's an inmate that's having a difficult time
19 or have difficulty adjusting, or perhaps making a
20 psychiatric complaint, there would be a -- there's -- one
21 of the case workers for mental health would go over and
22 evaluate that. But they certainly don't screen every
23 inmate, not at all.

24 Q. So if an inmate came into R & E, someone with a
25 fluctuating mental health pattern as we discussed, someone

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1 with a psychotic disorder there -- they could have
2 episodic problems that causes their condition to
3 fluctuate, correct?

4 A. Yes.

5 Q. If someone came in to R & E and was not experiencing
6 an immediate crisis, was not in a particular time of
7 hallucinating behavior or whatever, and quiet and not
8 disruptive, they might not come to the attention of the
9 mental health counselor?

10 A. That's absolutely correct, and there are many inmates
11 who are mentally ill in the Department of Corrections that
12 never receive psychiatric treatment.

13 Q. Whereas if they go into SCDC with a GBMI label on
14 them, they're automatically evaluated by mental health
15 professionals?

16 A. That's correct.

17 Q. And even after they leave Gilliam and they go into
18 the general population, their records always reflect they
19 came into the custody of SCDC as someone who was guilty
20 but mentally ill, correct?

21 A. That's correct.

22 Q. And does that designation in your judgment and your
23 experience increase the likelihood that problems with
24 those individuals will receive swift attention and they
25 will have, you know, better luck getting the psychiatric

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1 care they need?

2 A. Not necessarily, but it certainly -- they're
3 identified throughout their incarceration, and so they get
4 access to services much more quickly. But certainly
5 there's not a flag that says, "Oh, this person is guilty
6 but mentally ill. We'll make sure that we follow every
7 complaint," but they're in the system earlier, so they're
8 more likely to be followed.

9 Q. And last line of questioning. People who are labeled
10 retarded in the IQ range -- I believe his full scale IQ is
11 66 according to Dr. Brawley -- come through SCDC all the
12 time, don't they?

13 A. Yes.

14 Q. It's not uncommon for someone to be found criminally
15 responsible for an offense simply because they're
16 retarded?

17 A. It happens. Just because you're mentally retarded
18 doesn't mean you don't understand right from wrong in all
19 cases. Depends on the IQ and other conditions.

20 Q. And if someone has a psychotic disorder, they're not
21 necessarily retarded?

22 A. That's correct. Those are two separate conditions.

23 Q. Two separate conditions. So someone could have a IQ
24 of 135 and have a psychotic disorder?

25 A. Correct.

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BY MS. SHURLING

1 Q. But if you have the misfortune of having the
2 combination of an extremely low IQ and a psychotic
3 disorder, does the combination of those conditions -- are
4 the -- is the combination of the two more serious than
5 either one individually?

6 A. Certainly. Certainly. Especially if they're both
7 coexisting at the same time. During the period, for
8 example, for Mr. Mance, if he's psychotic in addition to
9 dealing with his intellectual deficits, he's going to have
10 poorer functioning during those periods when he has
11 symptoms.

12 Q. So again, back to my example, if someone with an IQ
13 of 135 were experiencing hallucinations or psychotic
14 behavior, they might recognize the change in their own
15 behavior, recognize they were having problems, and seek
16 help faster than someone with a lower IQ?

17 A. That would seem to make sense, but that's usually not
18 the case, unfortunately. Most people with mental illness
19 lack insight, so actually they're sometimes more difficult
20 to treat because everyone else recognizes they're mentally
21 ill, but they don't. So it's a mixed bag there.

22 Q. But certainly if someone has a very low IQ and a
23 psychotic disorder, the combination of the two is going to
24 contribute to their inability to understand their behavior
25 or control their behavior?

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BY MS. SHURLING

1 A. Certainly. It's going to affect their judgment.
2 Absolutely.

3 Q. As opposed to someone with a closer-to-average IQ
4 with the same psychotic disorder?

5 A. That's very fair to say, sure.

6 MS. SHURLING: A moment's indulgence.

7 BY MS. SHURLING

8 Q. Do people who suffer a low IQ often hide their
9 inability to understand things?

10 A. Sure. That's called masking. They tend to --
11 they'll nod and affirm things when they may not
12 necessarily fully understand them, yes.

13 Q. And you taught me a long time ago about something
14 called confabulation, what is -- I'm saying it wrong, I'm
15 sure. People who are mentally ill will also at times
16 disguise their condition; is that true?

17 A. Yes, but for different reasons. People who are
18 mentally ill will hide their symptoms because they don't
19 want to be identified as mentally ill. So sometimes they
20 underreport.

21 Q. So you see a certain degree of -- I believe you used
22 the word "masking" or hiding their condition both with
23 people who are retarded and people who suffer from other
24 mental health conditions?

25 A. Yes. For different reasons, but that's a fair

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1 statement.

2 Q. And in your practice, Doctor, would it be unusual for
3 someone to give yes-or-no answers to questions when they
4 didn't really understand the question?

5 A. Yes.

6 Q. That would not be unusual?

7 A. No.

8 Q. And is that why it's necessary to ask questions in a
9 different way to ascertain whether there's really a level
10 of comprehension?

11 A. That's correct.

12 Q. No further questions, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. CORNEY

15 Q. Dr. Schwartz-Watts, just very briefly, just to start
16 off with: How many times approximately have you been
17 qualified in South Carolina circuit courts as an expert?

18 A. Somewhere around 800.

19 Q. 800 times. And how many times in the PCR setting?

20 A. Probably -- I'm going to guess 50. I don't do as
21 much PCR work.

22 Q. And the majority of those times, is it on behalf of
23 the applicant that you're called?

24 A. Probably 50/50.

25 Q. Okay. And you were involved obviously in the

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1 pretrial evaluation of Mr. Mance in this case, correct?

2 A. I was.

3 Q. For competency, correct?

4 A. Yes, sir.

5 Q. Okay. And that was at the request of Mr. Tarr,
6 correct?

7 A. Correct.

8 Q. And you met with Mr. Mance to conduct that
9 evaluation?

10 A. I did.

11 Q. Okay. Do you remember how many times you met with
12 him?

13 A. Yes. I think I just saw him the one time. What had
14 happened, when I first saw Mr. Mance, I shared the same
15 concern about Mr. Tarr did. I was concerned about his IQ.
16 There were some indications on my exam. I wasn't sure how
17 well he understood things, which is why I recommended all
18 of those consultations. The first thing I recommended was
19 that he have a neuropsychological testing so I could see
20 exactly how his brain worked. And then after Dr. Brawley
21 had seen him and we learned he indeed had some
22 intellectual deficits, there were also some concerns he
23 had other neurological things going on. He had a history
24 of falling. He had a pretty significant closed-head
25 injury. He had been in special ed. There were many

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1 things going on.

2 I also had him see Dr. Ken Gaines after that, the
3 neurologist. We did a CAT scan of his brain. We did all
4 kinds of tests to look for any other conditions other than
5 the low intellectual functioning, and did not find any.
6 And since there were no other conditions, I knew at the
7 time I had seen him it was my opinion he was competent,
8 but I wanted to be sure and order other tests.

9 The things that led to me rendering an opinion that
10 he understood, he had already been in jail before. He had
11 been through the criminal system before. He had been
12 through the courts before. He was somewhat familiar with
13 that process, and certainly was cooperative with his
14 lawyer. He was protective, so there were more factors
15 that went into my decision that he was able to understand,
16 and he certainly was able to assist in his defense,
17 although he does have the deficits.

18 Q. Okay. So when you rendered your report, you had the
19 evaluation -- or when you issued your evaluation report,
20 you had the findings of Dr. Brawley and Dr. Gaines in hand
21 at that time?

22 A. I did, and I also sent my residents -- I had forensic
23 fellows at the time. And I had my -- they were already
24 finish with their residency. They're psychiatrists, and
25 these are physicians at a level they are taking an

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1 additional year of training. And I had them go to jail
2 and check up on him sometime later to make sure his
3 condition had not deteriorated, or that he was receiving
4 different medications. And he was fine according to hem.

5 Q. Now, in your experience in doing these evaluations
6 for criminal trials, is it uncommon for a defense attorney
7 to ask you to look into something without asking you to
8 issue a written report?

9 A. They do all the time.

10 Q. All the time. Okay. And you spoke with Mr. Tarr
11 personally during or prior to this evaluation?

12 A. Yes, absolutely. He had sent -- even before I saw
13 Mr. Mance, he had already given me the medical records. I
14 knew that he had had a history of treatment for attention
15 deficit disorder in the past. He had -- the records
16 actually dated back, I believe, in the '80s. He had also
17 been noted to have been recognized to have low
18 intellectual functioning, so there was some existing
19 records from him.

20 Q. Okay. But you spoke to Mr. Tarr by phone? E-mail?
21 How did you correspond with him?

22 A. Both ways, obviously. I remember speaking with
23 Mr. Tarr by telephone, but this report was probably
24 e-mailed to him, would be my guess.

25 Q. Was Mr. Tarr present during the examination of

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1 Mr. Mance, do you recall?

2 A. No.

3 Q. But you said it's very common for defense attorneys
4 to ask you to do some type of testing and not issue a
5 formal report, correct?

6 A. Usually what they'll do is: Would you go see my
7 client and if you find anything, would you let us know?
8 It's usually just a general, blanket, would you perform a
9 psychiatric evaluation and let me know if there's any
10 issue that will pertain to the legal proceedings.

11 Q. And in those situations, they might not want you to
12 put anything in writing?

13 A. That's correct. Sometime they don't. I normally do
14 now. Now my new standard is -- and that's probably what I
15 did in this case. If they don't want a report, I still
16 usually will write a letter to the attorney just so I can
17 remember what the case was about and to outline what my
18 findings are, because I found over the years it's hard for
19 me, having done a lot of evaluations, to recall some of
20 those details.

21 Q. And I think you testified on direct when Ms. Shurling
22 asked you that you don't particularly recall your
23 conversation with Mr. Tarr, exactly what you discussed
24 during the evaluation process?

25 A. No, the only thing that refreshes my memory is that

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1 last sentence when I said he had some mitigating factors
2 which may arise to a GBMI defense, that implied that I
3 didn't think he had a NGRI defense, but I had not formally
4 assessed that either. But there was certainly an
5 indication as I looked at some of the issues about his
6 criminal responsibility.

7 Q. So sitting here today, you can't rule out the
8 possibility that Mr. Tarr asked you to look into criminal
9 responsibility but not to issue a formal opinion or report
10 in writing?

11 A. I'm sorry, I can't. I just don't recall.

12 Q. It's very possible that he may have asked you to do
13 that? He may have discussed it personally by phone or
14 orally?

15 A. I may have.

16 Q. And with your report making a finding as to GBMI, is
17 it your testimony that could be possible because you did
18 issue an opinion as to GBMI and things outside of
19 competency?

20 A. Yes and no. I said it may arise to a GBMI defense,
21 so that means I didn't conduct the evaluation. That's my
22 cue if you want to go there we need to look at that data,
23 and perhaps you would have that defense available. So I
24 didn't opine that he would have been guilty but mentally
25 ill, but I indicated there was a need to perhaps do

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1 another evaluation in that area if requested.

2 Q. Okay. And you're mentioning a GBMI defense.

3 Obviously that standard is different than the M'Naghten
4 standard for criminal responsibility, correct?

5 A. It is.

6 Q. And what does the M'Naghten test say? What is the
7 ultimate finding you're looking at there?

8 A. In South Carolina it means that due to a mental
9 illness or defect, you don't know moral or legal right
10 from wrong, or you're not able to understand the
11 wrongfulness of the specific act charged.

12 Q. And GBMI is more so where a defendant has the ability
13 to distinguish right from wrong but lacks the sufficient
14 capacity to conform his conduct to that moral right and
15 wrongness?

16 A. That's right, if they have no capacity to conform
17 their conduct to the requirements of the law.

18 Q. So the difference is essentially whether the
19 defendant knew that his conduct was wrong or otherwise
20 able to distinguish moral and legal right from wrong?

21 A. That's right.

22 Q. So would you said is it fair to say to there's a
23 lower threshold than a GBMI than a -- insanity or lacking
24 criminal responsibility?

25 A. I'm not sure what you mean by lower threshold. You

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1 still have to prove all those things, and it's quite a bit
2 of work, but they're different standards. Certainly the
3 NGRI requires much more lack of control and behavior and
4 much more serious illness. You have to have specific
5 factors that would cause you not to know something was
6 right or wrong. So it's a little difficult to prove, but
7 they're both substantial.

8 Q. Sure. And in evaluating a defendant, what type of
9 things would you look at to determine whether or not they
10 knew moral right from wrong versus whether they're able to
11 conform their conduct to that moral right from wrong?

12 A. That's a great question. You look at -- for the
13 moral/legal right and wrong, of course you look for a
14 pre-existing psychiatric disorder. And in this case,
15 Mr. Mance certainly had some prior pre-existing history.
16 So that part would be pretty easy. We had some prior
17 records. You look at the incident reports that are
18 related to the offenses. Statements of individuals around
19 at the time of the offense that would perhaps indicate
20 erratic behaviors.

21 You look at the -- Mr. Mance gave a statement to the
22 police, what his words are, what his accounts are. You
23 would talk with people who had been around Mr. Mance on
24 the day of the offense, perhaps immediately after that can
25 observe his behavior. I would look at jail records to see

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1 if there's any evidence that he had been psychotic while
2 confined and he was under some form of observation. And
3 then, of course, you would talk to Mr. Mance and ask him
4 what he was thinking at the time of the offense.

5 Q. Okay. As part of your competency evaluation, were
6 those similar -- were there similar type things done in
7 those two scenarios when you evaluated Mr. Mance?

8 A. The only similar thing that would have been done is
9 an accurate diagnosis. The one thing you do no matter
10 what, all those standards require that you have a mental
11 illness or defect. And so certainly that's how I got the
12 history that he was hallucinating and trying to find
13 whether he suffers from a mental illness or defect, I
14 would have elicited those symptoms. So that part would
15 have been similar.

16 Q. Were you able to also review the incident report and
17 some of those other items you said you might view in a --

18 A. I normally do, but I was looking here. I don't
19 recall. Normally I would list those, and I'm not sure if
20 I did or not. I don't recall all the details of this
21 offense. I recall some, but I'm not sure -- when I do a
22 criminal responsibility evaluation, I look at all of those
23 reports and I write them and list them and take notes. I
24 don't recall that I did.

25 Q. And in determining a GBMI versus insanity, would it

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1 be important to look at how the defendant reacted after
2 the incident occurred?

3 A. Certainly that's important, your behaviors. Those
4 are things that -- those are very important, and they're
5 clues. They don't always indicate what you're thinking,
6 but they're certainly good clues and observable things to
7 measure how you're thinking.

8 Q. Okay. And if a defendant were caught trying to cover
9 his tracks, hide evidence, anything along those lines
10 would that be something you took into consideration in
11 making that determination?

12 A. Sure.

13 Q. Okay. And what would that indicate to you -- or not
14 that it's a finding on its own, but what would that be
15 indicative of to you if a defendant tried to cover his
16 tracks or hide evidence after a crime?

17 A. That's some indication they could get caught and know
18 something's wrong and they're trying to hide evidence.

19 Q. That would be sort of against an insanity defense or
20 not knowing legal right from wrong, correct?

21 A. It can be. It's strong evidence.

22 MR. CORNEY: Beg the Court's indulgence just one
23 minute, Your Honor.

24 BY MR. CORNEY

25 Q. And I think you testified on direct a minute ago that

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1 low IQ, low functioning IQ is not determinative, excuse
2 me, standing alone of ability to know right from wrong or
3 to conform your conduct, correct?

4 A. Not at all. There are some people with very low IQs.
5 There's been a gentleman in our court, Your Honor, I think
6 his IQ was 45, and he knew right from wrong. So it just
7 depends on your IQ, your education, what services you've
8 have, whether you have other co-morbid medical conditions
9 or neurological conditions. So just an IQ alone, you
10 can't make a -- draw a line whether someone is competent
11 or responsible based on that..

12 Q. Okay. And low IQ taken with a -- I guess a psychosis
13 or some kind of psychiatric disorder taken together, that
14 still is not a stand-alone indicative of ability to know
15 right from wrong, is it?

16 A. Not at all.

17 Q. Now, you testified somewhat as to the facility that
18 guilty-but-mentally-ill patients are committed at and you
19 said, I believe, those patients are -- the goal is to
20 incorporate into general population if possible after
21 treatment?

22 A. That's correct. I think more -- and again, this is
23 just from someone who has taken care of those patients.
24 It's more to identify what level of care they need in the
25 Department of Corrections. If you, for example, if you're

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1 able to go to outpatient care, you have a number of
2 institutions that do that. Lieber, Lee County, Perry. So
3 there's a number. It kind of helps the Department of
4 Corrections classify where you're going to receive your
5 services and what level you need.

6 Q. And does that appear fairly often, that people move
7 from Gilliam to general population at Department of
8 Corrections?

9 A. Yes, they do. Usually a lot of the GBMI defendants,
10 they're ready to get out. They're usually well by the
11 time they get to Gilliam because they were competent to
12 stand trial. So a lot of times they're ready to get out.
13 It's difficult over at Gilliam. It's a single-cell unit.
14 They don't get a lot of time out, so many times, they're
15 anxious to get integrated.

16 Q. Okay. And if you're serving a life-without-parole
17 sentence in Gilliam, it's a life without parole,
18 regardless. I mean, you're incarcerated. There's no
19 possibility of parole, is there?

20 A. Not that I'm aware of.

21 Q. It doesn't change the length of sentence you're going
22 to serve, does it?

23 A. Not that I'm aware of.

24 MR. CORNEY: That's all the questions I have. Thank
25 you, Your Honor.

DONNA SCHWARTZ-WATTS, M.D. -- REDIRECT EXAMINATION BY
MS. SHURLING

RE-DIRECT EXAMINATION

1

2 BY MS. SHURLING

3 Q. I believe you just testified that someone with an
4 IQ -- full-scale IQ of 66 combined with a psychotic
5 disorder would not necessarily mean the person didn't know
6 right from wrong.

7 A. That's correct.

8 Q. Wouldn't necessarily mean they couldn't control their
9 conduct, correct?

10 A. That's correct.

11 Q. But would you expect someone with a psychotic
12 disorder on top of a 66 IQ to be more likely to have
13 problems with either of those things than someone who had
14 only one of the problems?

15 A. Yes.

16 Q. And you -- although we don't have your file --

17 MS. SHURLING: And Your Honor, I would, for the
18 record, introduce my subpoena along with return receipt
19 requested card for October 2012 to Wanette Johnson at the
20 University of South Carolina Specialty Clinics for the
21 file of Dr. Donna Schwartz-Watts pertaining to this
22 client.

23 THE COURT: Any objection?

24 MR. CORNEY: No objection from the State, Your Honor.

25 (Applicant's Exhibit Number 3 was marked and admitted.)

DONNA SCHWARTZ-WATTS, M.D. -- REDIRECT EXAMINATION BY
MS. SHURLING

1 MS. SHURLING: And also, Your Honor, my subpoena from
2 a month earlier to Dr. Schwartz-Watts asking that she
3 appear at an earlier scheduled hearing in the matter and
4 bring with her her file. That subpoena is dated
5 September 2012?

6 MR. CORNEY: And I have no objection to that either
7 Your Honor.

8 THE COURT: It's admitted.

9 (Applicant's Exhibit Number 4 was marked and admitted.)

10 BY MS. SHURLING

11 Q. Dr. Schwartz-Watts, when I originally subpoenaed you
12 and asked to bring your file to court, would that be,
13 based on your recollection, when you informed me they
14 would have to go through Ms. Johnson to get your file?

15 A. That's correct.

16 Q. Thank you. I understand that you don't have your
17 file, and obviously I tried to get it for you. But you
18 also have no recollection of having reviewed any of the
19 incident reports, police reports, or other evidence in
20 discovery in the case, correct?

21 A. I have some recollection of knowing some facts, but I
22 don't recall looking at any documents. I just -- I don't
23 recall.

24 Q. Okay. And you didn't interview any one concerning
25 Mr. Mance's condition in the time period immediately

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MS. SHURLING

1 surrounding this incident, did you?

2 A. No.

3 Q. And you have no recollection of asking anyone of your
4 fellows or interns to do so either?

5 A. No.

6 Q. And I believe based on your earlier testimony, those
7 interviews would have been an integral part of a
8 full-scale evaluation for criminal competency?

9 A. Criminal responsibility, yes.

10 Q. Criminal responsibility, I'm sorry.

11 A. Yes.

12 Q. And so even without your file, we simply know that
13 wasn't done?

14 A. That's correct.

15 Q. And would the presence -- okay. You've been asked
16 about certain behaviors after the crime that might have
17 been evidence -- I believe you referred to as good
18 evidence -- whether or not someone understood right from
19 wrong?

20 A. Yes.

21 Q. When you're dealing with someone in the throes of a
22 psychotic break and who experiences hallucinations, is it
23 possible for them to engage in behavior that might look
24 like something other than what it really is?

25 A. Sure. That's happened in many times. That's why

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MS. SHURLING

1 it's important -- you just can't do these evaluations
2 based on behaviors and observation. You have to know what
3 the person is thinking at the time. And there certainly
4 had been cases where someone was mentally ill and they
5 engaged in behaviors that looked -- that indicated some
6 awareness, but they may have had a reason why they were
7 not.

8 Q. So someone might engage in behaviors such as wearing
9 a mask or hiding objects and that behavior might bear a
10 relation to their psychosis and their hallucination and
11 not be rooted in a comprehension of right or wrong because
12 of their psychosis?

13 A. Correct.

14 Q. For example, if I were a paranoid schizophrenic and I
15 believed some individual was out to get me, I might wear a
16 mask because I was hiding from that individual?

17 A. Sure.

18 Q. Okay. So in a vacuum without these other stages of
19 investigation and evaluation you would need for criminal
20 competency, criminal liability evaluation, those things
21 standing alone would not be conclusive?

22 A. That's correct.

23 Q. From what you do recall -- again, I'm heartsick you
24 don't have your records. But what you do recall of
25 Mr. Mance, given his IQ and his other mental health

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MS. SHURLING

1 issues, is his general behavior more likely to be good,
2 for lack of a better adjective, when he's on an
3 appropriate medication regime?

4 A. That one I can't answer completely because he wasn't
5 on -- I remember when I evaluated him, he was not on
6 medications for psychosis and he was doing fine. He was
7 adjusting well. He had a history of hallucinations, but I
8 wasn't aware that he was on any antipsychotic medication.
9 But people with mental retardation, people with psychosis,
10 once they're in a structured environment like a jail,
11 sometimes they do better. They're sleeping, they're
12 eating, they're, you know, they're being taken care of,
13 and sometimes just a structure alone can minimize some of
14 those symptoms, but I don't recall. I don't think there
15 was any point he was on medications for hallucinations
16 that I saw or that I recall.

17 Q. But there again, you can't be certain of that because
18 you don't have your file?

19 A. That's correct.

20 Q. With regard to -- let me rephrase that. When you say
21 he was doing just fine, just fine other than the fact he
22 shot someone, right?

23 A. No. When I say "just fine," I meant when I evaluated
24 him at the detention center. He was -- he was -- he was
25 not acutely psychotic. So concerned -- had I been that

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MS. SHURLING

1 concerned, I would have petitioned the Court to commit him
2 for a hospital for evaluation. So he was functioning.
3 When I say "fine," I mean functioning.

4 Q. Okay. If someone goes in to Gilliam psychiatric unit
5 and they are being evaluated for treatment protocol, would
6 their disciplinary record within SCDC, their history of
7 assaultive behavior and that sort of thing be among the
8 things you would look to to determine whether or not their
9 behavior was being adequately controlled?

10 A. It could be. Normally what they would do, for
11 example, they look at your nature of your charges and your
12 disciplinary records to determine what institution you
13 would go to. So for example, the Department of
14 Corrections actually has an institution for patients with
15 mental retardation; however, you can't have violent
16 charges there. So sometimes they will look at your
17 records to determine if you can go to some of the lower
18 custody institutions when you have a history of mental
19 retardation. That I know.

20 Q. Right. But -- and I apologize. I guess I didn't
21 word my question appropriately. If there is a pattern of
22 assaultive or disruptive behavior with an inmate in SCDC,
23 would that be at least one of the factors you would look
24 at to determine whether or not someone with a mental
25 health history whether or not they -- their treatment

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1. protocol is in line with their needs?

2. A. It should be. I'm not saying it's always done, but it
3. absolutely should be. The problem is a lot of inmates
4. without mental illness have a lot of charges too, but it
5. should be. Absolutely.

6. MS. SHURLING: Your Honor, I believe that Mr. Mance's
7. SCDC records are part of your packet, and I would ask that
8. Your Honor make note of the fact that -- and I believe
9. this goes back also to a previous incarceration. But even
10. only drawing Your Honor's attention to those in the time
11. period following this particular charge, it is apparent
12. that he has had quite a number of problems with
13. disciplinary actions for failure to conform his behavior
14. and so forth since he was in SCDC.

15. BY MS. SHURLING

16. Q. Dr. Schwartz-Watts, can you think of any other avenue
17. you and I have not explored for trying to get hold of your
18. old file?

19. A. No. I'm not employed there. I can't even get in the
20. building anymore. Wanette Johnson was my secretary, Your
21. Honor, and I know she tried. She's very -- she's a
22. very -- has a lot of integrity as a person. She tried to
23. find them and couldn't. The problem was I think we had
24. moved from one upstairs office to another. They had all
25. my files in storage, and then when I left they began --

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MR. CORNEY

1 after I left, they began putting them in files and
2 alphabetizing them. So I know they were physically stored
3 in another building off of the USC campus, and that's as
4 much as I know.

5 Q. Thank you.

6 MS. SHURLING: No further questions.

7 MR. CORNEY: Just two very brief follow-ups, Your
8 Honor, if I may.

9 THE COURT: Yes, sir.

10 RECROSS-EXAMINATION

11 BY MR. CORNEY

12 Q. Dr. Schwartz-Watts, Ms. Shurling mentioned a minute
13 ago that you don't want to take these things in a vacuum.
14 You don't want to take any one of these factors in a
15 vacuum when determining criminal responsibility,
16 competency, any of those type things, correct?

17 A. Correct.

18 Q. All right. And you would say that's an accurate
19 statement? That's what you testified to a minute ago?

20 A. Yes.

21 Q. And along the lines of somebody covering up their
22 crime, how that might relate to criminal responsibility
23 and their ability to know right from wrong? Would it
24 impact your opinion in any way if that individual had,
25 prior to committing the act, actually stated their

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MR. CORNEY

1 intention to do so?

2 A. That would be another piece to consider, and you'd
3 have to look why would they have said that. What I would
4 do if I had that statement -- I'll just make it as
5 specific as I can to Mr. Mance. If I had the statement, I
6 would ask him about it, I would confront him, and ask him
7 to explain that. And I would make a determination before
8 that was coming from psychotic behaviors or perhaps
9 antisocial behaviors.

10 Q. Okay. And the fact that someone might say in advance
11 their intention to commit a crime, then commit the crime,
12 and then cover up the fruits of that crime, would that be
13 a pretty strong indication of they knew what they were
14 doing and they knew right from wrong?

15 A. It would be.

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

17 MS. SHURLING: Nothing further, Your Honor.

18 THE COURT: You may step down. Thank you.

19 THE WITNESS: Thank you, Your Honor. May I be
20 excused?

21 THE COURT: If there's no objection.

22 MS. SHURLING: Without objection, Your Honor.

23 MR. CORNEY: No objection.

24 THE COURT: Yes, you may be excused.

25 At this time, we will take a brief break and continue

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 on.

2 (A recess was taken from 11:22 a.m. to 11:42 a.m..)

3 MS. SHURLING: Thank you, Your Honor. At this time,
4 I would call the applicant, Eric Mance, to the stand.

5 ERIC MANCE, after having first being duly sworn,
6 testified under oath as follows:

7 THE COURT: State your full name, please.

8 THE DEFENDANT: Eric Mance.

9 DIRECT EXAMINATION

10 BY MS. SHURLING

11 Q. Mr. Mance, when you and I have talked before, I've
12 noted two things. One is you're kind of soft spoken, and
13 the other one is you sometimes kind of run your words
14 together a little bit. So I'm going to ask you to sit up
15 a little bit closer to the microphone, and speak up just a
16 little bit and try to be careful to talk slowly so that
17 Her Honor and I and respondent's counsel and I can
18 understand you. Okay?

19 A. Yes, ma'am.

20 Q. Say it again.

21 A. Yes, ma'am.

22 Q. Once more.

23 A. Yes, ma'am.

24 Q. Okay. That's better. Thank you. Now, I've been to
25 visit you at Perry Correctional, is that true?

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 A. Yes, ma'am.

2 Q. And we've talked about your post-conviction relief
3 case?

4 A. Yes, ma'am.

5 Q. Okay. And I did explain to you I went to law school
6 with Mr. Daryl Hawkins, the victim in the case? Do you
7 recall that?

8 A. Yes, ma'am.

9 Q. And I told you that I also went to school with his
10 wife, Suzanne?

11 A. Yes, ma'am.

12 Q. And that in law school, I certainly considered them
13 friends, but in the many years since then, that we don't
14 travel in the same immediate social circles. I explained
15 that to you, didn't I?

16 A. Yes, ma'am.

17 Q. And they've never been to my house for supper and
18 I've never been to theirs. Right? Do you remember me
19 telling you all that?

20 A. Yes, ma'am.

21 Q. But I explained to you that because I had known them
22 in law school that if you wanted me to, I would ask the
23 Court to relieve me as counsel and give you another lawyer
24 that maybe didn't have any previous affiliation with them.
25 Remember us talking about that?

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 A. Yes, ma'am.

2 Q. And I gave you the right to make the decision whether
3 you wanted to keep me as your lawyer or ask for somebody
4 else; right?

5 A. Yes, ma'am.

6 Q. But I also explained to you that I've been a criminal
7 defense lawyer for over 30 years?

8 A. Yes, ma'am.

9 Q. And that my practice has been -- by and large the
10 majority of my practice has been criminal appellate
11 matters, criminal appeals, including post-conviction
12 relief and post-conviction relief appeals. I told you
13 about that, didn't it?

14 A. Yes, ma'am.

15 Q. And I also told you that I'm a fellow in the American
16 Academy of Appellate Lawyers. Do you remember me telling
17 you that?

18 A. Yes, ma'am.

19 Q. Okay. So using all that information, who made the
20 decision about whether or not I should stay your lawyer?

21 A. Me.

22 Q. Okay. And are you still comfortable with that
23 decision?

24 A. Yes, ma'am.

25 Q. Okay. Just want the record to be clear. Because,

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 you know, can't have a situation where after all was said
2 and done, you come back and say I shouldn't have been your
3 lawyer because I went to school with this man. All right?

4 A. Yes, ma'am.

5 Q. And for the record, I'm pointing to the victim, who
6 is present in the courtroom. Do you understand?

7 A. Yes, ma'am.

8 Q. All right. Now, when you were getting ready for your
9 trial in the case, were there ever any plea negotiations
10 that were discussed with you?

11 A. No, ma'am.

12 Q. Did your lawyer ever come to you and tell you that
13 the State was willing to let you plead what we call
14 straight-up?

15 A. No, ma'am.

16 Q. Okay. But your lawyer explained to you the State had
17 served you with a piece of paper that meant they were
18 going to exercise their right to ask to give you a
19 life-without-parole sentence?

20 A. Yes, ma'am.

21 Q. And he explained to you that was based on the fact
22 you had a prior conviction and sentence for a most serious
23 offense?

24 A. Yes, ma'am.

25 Q. Okay. And you understood that part of it?

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 A. Yes, ma'am.

2 Q. Okay. But as far as you know, there weren't any plea
3 negotiations and you were going to trial, period?

4 A. Yes, ma'am.

5 Q. Once it became clear you were going to trial, did
6 your lawyer meet with you and discuss what his trial
7 strategy was going to be?

8 A. Yes, ma'am.

9 Q. And what did he tell you his trial strategy was going
10 to be?

11 A. He's going to play the good guy and let her play the
12 bad guy.

13 Q. "Her" being Luck Campbell?

14 A. Yes, ma'am.

15 Q. Interesting strategy. All right. Did he ever
16 discuss with you your mental health history? Did he talk
17 to you about your having had mental health issues, mental
18 problems and you had to see doctors over the years for
19 various mental issues?

20 A. You said about my mental health?

21 Q. You said what?

22 A. About my mental health.

23 Q. He said stuff about your mental health?

24 A. Yes, ma'am.

25 Q. What did he say about your mental health?

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 A. What's her name who was up here?

2 Q. Huh?

3 A. The lady who was up here?

4 Q. The lady who was up here?

5 A. Yes, ma'am.

6 THE COURT: Dr. Dr. Schwartz-Watts.

7 A. He said he was talking about to her about my mental
8 health and stuff like that.

9 BY MS. SHURLING

10 Q. And did he tell you he wanted you to talk to
11 Dr. Schwartz-Watts and cooperate with her?

12 A. Yes, ma'am.

13 Q. Did your lawyer ever discuss with you the possibility
14 of pursuing a defense at the time you allegedly did this
15 thing that you were so mentally ill you didn't know right
16 from wrong, that you were insane by legal standards?

17 A. No, ma'am.

18 Q. And did he ever discuss with you that there was a --
19 I'm going to call it a middle ground in South Carolina
20 that even if you're not found insane, that there's
21 something guilty but mentally ill. Did he ever discuss
22 that with you?

23 A. No, ma'am.

24 Q. You heard him discuss earlier that his goal was to
25 get you convicted of something other than assault and

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 battery with intent to kill. He referred to it today as a
2 lesser-included offense. Do you remember that?

3 A. No, ma'am.

4 Q. Did he ever discuss with you that there was a crime
5 under assault and battery with intent to kill called
6 assault and battery of a high and aggravated nature?

7 A. Yes, ma'am.

8 Q. He told you about that?

9 A. Yes, ma'am.

10 Q. And did he tell you that was going be his goal was to
11 get you -- maybe that instead of ABWIK instead of assault
12 and battery with intent to kill? If you don't remember,
13 just tell us. Do you remember having that discussion with
14 him?

15 A. No, ma'am.

16 Q. Okay. Did he ever discuss with you the fact that you
17 could ask for the jury to have three options on any crime
18 they were asked to consider instead of two? And by that I
19 mean at your trial the jury to decide whether you were
20 guilty or not guilty of assault and battery with intent to
21 kill, correct?

22 A. Yes, ma'am.

23 Q. And the same thing with the lesser-included offense.
24 You were either guilty or not guilty of the ABHAN,
25 correct?

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 A. Yes, ma'am.

2 Q. Did your lawyer ever discuss with you that in South
3 Carolina there was the option of pursuing what's called
4 GBMI, guilty but mentally ill?

5 A. No, ma'am.

6 Q. Did you know at the time of your trial that if the
7 jury found you guilty but mentally ill that it would
8 affect the way you were treated at the Department of
9 Corrections? It would affect where you went initially and
10 could affect how you received treatment while you lived
11 there the whole time of your sentence? Did your lawyer
12 ever discuss that with you?

13 A. No, ma'am.

14 Q. If you had understood the potential advantages of
15 being found guilty but mentally ill instead of just plain
16 guilty, would you have wanted your lawyer to pursue that
17 jury option?

18 A. Yes, ma'am.

19 Q. And you and I have discussed that a lot, haven't we?

20 A. Yes, ma'am.

21 Q. So if you had understood it at the time of trial, you
22 would have definitely wanted your lawyer to pursue that
23 option?

24 A. Yes, ma'am.

25 Q. During the course of my representation, you asked if

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 I could get you a new trial somewhere other than Columbia?

2 A. Yes, ma'am.

3 Q. You wrote me a letter and said, "Can I please have my
4 trial somewhere else?"

5 A. Yes, ma'am.

6 Q. Right?

7 A. Yes, ma'am.

8 Q. Why would you want -- if you had another trial, why
9 would you have wanted it to be somewhere else?

10 A. Because everybody knew -- knew him.

11 Q. Okay. The nice lady sitting beside you has to record
12 what goes on in the courtroom.

13 A. Yes, ma'am.

14 Q. And unfortunately she doesn't have anyway to record
15 head nods and gestures, okay? So judging by what you
16 said, I'm assuming you meant that because of the victim
17 being a lawyer here in Columbia?

18 A. Yes, ma'am.

19 Q. Okay. And what about the fact that the crime
20 happened near the courthouse? Is that another factor?

21 A. Yes, ma'am.

22 Q. And, of course, I've explained to you that at this
23 stage, this isn't a new trial. This is a PCR. Do you
24 understand that?

25 A. Yes, ma'am.

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 Q. You didn't understand that until I explained it to
2 you, did you?

3 A. Yes, ma'am.

4 Q. You thought you were getting a new trial, didn't you?

5 A. No, ma'am.

6 Q. But you understand that what we're here for today is
7 for Her Honor to decide whether you should get a new
8 trial, correct?

9 A. Yes, ma'am.

10 Q. And so what you were asking me is if you got a new
11 trial, if there was some kind of way it could be somewhere
12 other than Columbia?

13 A. Yes, ma'am.

14 Q. And I also discussed with you the possibility of
15 asking for the Fifth Circuit Solicitor's Office to be
16 disqualified in the case and the case either turned over
17 to the Attorney General's office or the solicitor in
18 another county somewhere. Do you remember I was talking
19 about that?

20 A. Yes, ma'am.

21 Q. Is that something you would have wanted your lawyer
22 to consider doing?

23 A. Yes, ma'am.

24 Q. So you would have wanted your lawyer to pursue -- I
25 explained to you what "change of venue" means a different

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 place for the trial. Do you remember that?

2 A. Yes, ma'am.

3 Q. Okay. So you have affirmatively told me you if you
4 had a new trial, you'd want it to be somewhere else. What
5 we need to know is if you had a say-so way back then,
6 would you have wanted your lawyer to ask for your trial to
7 be somewhere else?

8 MR. CORNEY: I'm going to object, Your Honor, to the
9 leading testimony. I think his testimony has been yes,
10 yes, yes, no, no, no the entire time. I don't think he's
11 given one shred of testimony himself this entire direct
12 examination.

13 MS. SHURLING: I'll be happy to break into it baby
14 steps. It will take a long time, but we'll do it.

15 MR. CORNEY: That's fine. I just want him to be the
16 one testifying. Thank you.

17 THE COURT: If you'd just rephrase the question.

18 BY MS. SHURLING

19 Q. If you had been asked back at the time of the
20 original trial, would you have wanted your trial to be
21 somewhere else?

22 A. Yes, ma'am.

23 Q. If you had known you could request it, would you have
24 wanted a different Solicitor's Office to handle the case
25 other than the one here in Richland County?

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 A. Yes, ma'am.

2 Q. Even if that meant it might be handled by the
3 Attorney General's office?

4 A. Yes, ma'am.

5 Q. Okay. And again, did your court-appointed attorney,
6 Mr. Tarr, ever explain those options to you?

7 A. No, ma'am.

8 Q. Okay. Are you seeing a mental health counselor of
9 any sort at SCDC now?

10 A. Yes, ma'am.

11 Q. And are you on any medications?

12 A. Yes, ma'am.

13 Q. And what kind of medications are you taking?

14 A. I can't even name them.

15 Q. You don't know?

16 A. No, ma'am.

17 Q. Are they medicines that your doctor at SCDC
18 prescribes for you, or medications that the psychiatrist
19 at SCDC prescribes?

20 A. The psychiatrist.

21 Q. The psychiatrist?

22 A. Yes, ma'am.

23 Q. Okay. And you take those medications on a regular
24 basis?

25 A. Yes, ma'am.

ERIC MANCE - DIRECT EXAMINATION BY MS. SHURLING

1 Q. Every day?

2 A. Yes, ma'am.

3 Q. Do you feel better when you take them?

4 A. Yes, ma'am.

5 Q. Have you had any hallucinations since you started
6 taking them?

7 A. No, ma'am.

8 Q. Did you have hallucinations before you took them?

9 A. Yes, ma'am.

10 Q. No further questions.

11 THE COURT: Any cross?

12 MR. CORNEY: Yes, Your Honor. Try to keep it brief.

13 CROSS-EXAMINATION

14 BY MR. CORNEY

15 Q. Mr. Mance, you and your wife went down to the
16 Sheriff's Department because you knew they were looking
17 for you, right?

18 A. Yes, sir.

19 Q. Okay. And when you showed up there, your wife came
20 down -- I guess your wife came down after that; is that
21 correct?

22 A. I don't know.

23 Q. Okay. But your wife came down and asked if you had
24 told the police yet, and at that point in time, you said,
25 "I haven't told them, but I'm about to," correct?

ERIC MANCE - CROSS-EXAMINATION BY MR. CORNEY

1 A. I don't remember that.

2 Q. You don't remember that? Do you remember them
3 talking about that at trial, that you said to your wife,
4 "I haven't told them, but I'm about to," and you sat down
5 and gave a statement to police?

6 A. No, sir.

7 Q. Okay. Do you remember sitting down to give a
8 statement to police?

9 A. Yes, sir.

10 Q. Do you remember when they served the warrants on you
11 there at the police station and they placed you under
12 arrest?

13 A. Yes, sir.

14 Q. Okay, when they served those warrants on you, you
15 started crying, right?

16 A. Yes, sir.

17 Q. And that was because you knew you were under arrest
18 for what you had done, right?

19 A. Yes, sir.

20 Q. And you knew what you had done was wrong, correct?

21 A. Yes, sir.

22 Q. I think you said before to Ms. Shurling that you knew
23 the State was going to try to get a life-without-parole
24 sentence, correct?

25 A. Say it again.

ERIC MANCE - CROSS-EXAMINATION BY MR. CORNEY

1 Q. You said you knew the State at trial was going to ask
2 the Court to give a life-without-parole sentence?

3 A. No, sir.

4 Q. You didn't know that? Did you talk with Mr. Tarr
5 about not wanting to go to jail for the rest of your life?

6 A. No, sir.

7 Q. You never talked with him about that?

8 A. No, sir.

9 Q. That wasn't a concern of yours?

10 A. No, sir.

11 Q. When you went to trial, you weren't concerned about
12 going to jail for the rest of your life?

13 A. No, sir.

14 Q. Okay. Had you known that was an option, is that
15 something you would have told Mr. Tarr you didn't want to
16 do? I mean, if you knew the State was going to ask you to
17 go to jail for the rest of your life, would you have told
18 Mr. Tarr, "I don't want to go to jail for the rest of my
19 life"?

20 A. No, sir.

21 Q. Do you remember at the trial talking to the Court and
22 they asked you about if you knew what was going on? The
23 Court -- it's at the very beginning of the trial, kind of
24 went through and asked you if you knew what was going on
25 and were aware of what the trial was about. Do you

ERIC MANCE - CROSS-EXAMINATION BY MR. CORNEY

1 remember that?

2 A. Yes, sir.

3 Q. You do remember that? Okay. Do you remember the
4 judge asking you if you understood the difference between
5 right and wrong and what it meant to be criminal
6 responsible and you said you did understand that. You
7 knew the difference between right and wrong, correct?

8 A. Is that what it say?

9 Q. If that's what the transcript says, you don't refute
10 that now, do you? If that's what it says in the
11 transcript?

12 A. No, sir.

13 Q. So the transcript says you told the judge you knew
14 the difference between right and wrong. That's what you
15 told the judge, correct?

16 A. I ain't told the judge that.

17 Q. You didn't tell the judge that? Okay. Sitting here
18 today, do you know the difference between right and wrong?

19 A. Yes, sir.

20 Q. Okay. At the time you went and did this, you knew
21 that taking Mr. Hawkins' car wasn't the right thing to do,
22 right?

23 A. Yes, sir.

24 Q. Okay. You knew that shooting an individual with a
25 gun and shooting three, four times, that wasn't the right

ERIC MANCE - CROSS-EXAMINATION BY MR. CORNEY

1 thing to do either, correct?

2 A. Yes, sir.

3 Q. Okay. And you knew that was against the law at the
4 time to shoot somebody. Surely you knew that, correct?

5 A. Yes, sir.

6 Q. And you told -- you told the police where you hid the
7 gun and the mask and everything at your house, correct?

8 A. Yes, sir.

9 Q. And they went out there and found those things right
10 where you told them they were, right?

11 A. Yes, sir.

12 Q. And because you hid them under the back step of your
13 house?

14 A. Yes, sir.

15 Q. And that's because you knew the police were going to
16 be looking for it?

17 A. No, sir.

18 Q. You knew it wasn't good to have those things after
19 you just shot a man, correct?

20 A. Yes, sir.

21 Q. Okay. That's all the questions I have.

22 REDIRECT EXAMINATION

23 BY MS. SHURLING

24 Q. Mr. Mance, today sitting in the courtroom, you
25 understand right from wrong, right?

ERIC MANCE - REDIRECT EXAMINATION BY MS. SHURLING

1 A. Yes, ma'am.

2 Q. Can you remember what you were thinking on the night
3 of the incident involving Mr. Hawkins?

4 A. No, ma'am.

5 Q. Can you remember what you were thinking immediately
6 before or after this terrible thing happened?

7 A. I said I did.

8 Q. Pardon?

9 A. I said I did.

10 Q. But do you remember what you were thinking about the
11 crime before and after it happened?

12 A. No, ma'am.

13 Q. Okay. And since then you've had a bunch of people
14 tell you what happened, haven't you?

15 A. Yes, ma'am.

16 Q. Is your recollection of the events of that evening
17 based on what you remember, or based on what folks have
18 told you?

19 A. Folks told me.

20 Q. Now, your wife, how long had y'all been married about
21 the time this happened?

22 A. About a year and a half.

23 Q. Okay. And is it fair to say that she generally
24 understands things a little bit better than you do?

25 A. Yes, ma'am.

ERIC MANCE - REDIRECT EXAMINATION BY MS. SHURLING

1 Q. And she helps you with things you're not able to
2 understand?

3 A. Yes, ma'am.

4 Q. And after this terrible thing happened, and you went
5 home and she found out about it, she told you you did a
6 terrible thing?

7 A. Yes, ma'am.

8 Q. And she told you what you did was wrong?

9 A. Yes, ma'am.

10 Q. And did she tell you you were going be in bad trouble
11 with the law?

12 A. Yes, ma'am.

13 Q. And based on that, you went and talked to the police?

14 A. Yes, ma'am.

15 Q. Can you remember whether you had any comprehension of
16 what you had done before you talked to your wife about it?

17 A. No, ma'am.

18 Q. You just don't know?

19 A. No, ma'am.

20 Q. Okay. No further questions.

21 MR. CORNEY: Just one follow-up question, Your Honor.

22 RECROSS-EXAMINATION

23 BY MR. CORNEY

24 Q. Your wife telling you that what you had done was
25 wrong when you got back to the house, was that before or

ERIC MANCE - RECROSS-EXAMINATION BY MR. CORNEY

1 after you yelled to the police they were too dumb to
2 figure out who had stolen that car?

3 A. I ain't never -- I ain't never said nothing like
4 that.

5 Q. You did not yell at the back porch of your house that
6 they were too dumb to figure out who stole the car?

7 A. No, sir.

8 Q. That never happened?

9 A. No, sir.

10 MR. CORNEY: Okay. Other than that, Your Honor, I
11 would just point the Court's direction -- I meant to do
12 this a moment ago -- to page 145 to 146. I'm sure you've
13 already seen during the Blair competency hearing.

14 That's all the questions I have. Thank you, Your
15 Honor.

16 MS. SHURLING: Only one very brief follow-up, Your
17 Honor.

18 REDIRECT EXAMINATION

19 BY MS. SHURLING

20 Q. If you did yell something like that the police, you
21 don't remember it, do you?

22 A. No, ma'am.

23 Q. Is it possible you said it and you don't remember it?

24 A. Yes, ma'am.

25 Q. Okay. So all you can tell us here today is you don't

ERIC MANCE - REDIRECT EXAMINATION BY MS. SHURLING

1 remember saying that?

2 A. Yes, ma'am.

3 Q. Okay. Thank you.

4 MS. SHURLING: No further questions.

5 BY MS. SHURLING

6 Q. Oh, well, let me -- I should ask this. I always do,
7 and it's not fair to leave it out you. I have explained
8 to you that you get one post-conviction relief case as a
9 general rule, haven't I?

10 A. Yes, ma'am.

11 Q. And I have explained to you that barring some really
12 unusual things happening, that you're not likely to ever
13 get the opportunity to have another PCR in the circuit
14 court. I explained that to you, didn't I?

15 A. Yes, ma'am.

16 Q. And I've also explained to you if Her Honor grants
17 you -- well, let's start from the other direction: If she
18 doesn't grant you a new trial that you'll have the right
19 to appeal that to the state Supreme Court. I explained
20 that you, didn't I?

21 A. Yes, ma'am.

22 Q. And likewise, if Her Honor were to decide that it's
23 appropriate to find in your favor and grant you a new
24 trial, the State would have the right to appeal that to
25 the Supreme Court. I explained that to you as well, did I

ERIC MANCE - REDIRECT EXAMINATION BY MS. SHURLING

1 not?

2 A. Yes, ma'am.

3 Q. Okay. We also talked about the fact that the only
4 issues that can be raised at the next level are issues
5 that we talked about at this level. Remember that
6 conversation a little bit?

7 A. A little bit of it.

8 Q. Well, I'm going to tell you that now. Okay? Because
9 I can tell by the look on your face -- the issues that we
10 raise at this level of court are the only issues that
11 somebody doing an appeal for you will be able to talk
12 about later. If we don't talk about it here today, we
13 won't be able to talk about it at a bigger court later, a
14 higher court later.

15 A. Yes, ma'am.

16 Q. So I have raised the issues that I felt like Her
17 Honor needed to consider in your case, and I discussed
18 those issues with you right before the hearing. I told
19 you what I was going to raise, didn't I?

20 A. Yes, ma'am.

21 Q. But this is your case. Is there anything that you
22 felt real strongly about wanting to raise as part of your
23 PCR that I haven't talked about here today?

24 A. Yes, ma'am.

25 Q. What allegation did you want to pursue that I have

ERIC MANCE - REDIRECT EXAMINATION BY MS. SHURLING

1 not talked about?

2 A. What he -- what this going on talking about on the
3 back porch. I don't remember -- I don't even remember
4 anything like that or seeing people in the back porch.
5 That's something new to me.

6 Q. Okay. So just a little while ago we talked about the
7 fact you don't remember yelling anything at the police off
8 your porch?

9 A. No, I don't.

10 Q. And is that the same porch you're talking about now?

11 A. Yes, ma'am.

12 Q. So you're saying you don't even remember going out on
13 that porch, much less yelling at the police?

14 A. Yes, ma'am.

15 Q. And you don't remember hiding anything under the
16 porch?

17 A. I remember that.

18 Q. You do remember that?

19 A. Yes, ma'am.

20 Q. All right. Are there any other thing you want would
21 like to bring to the judge's attention? Try to stick to
22 things I haven't talked about already, because she doesn't
23 need to hear about them twice.

24 A. Okay.

25 Q. Anything else?

ERIC MANCE - REDIRECT EXAMINATION BY MS. SHURLING

1 A. No, ma'am.

2 Q. You sure?

3 A. Yes, ma'am.

4 Q. Now is the time. If there's anything else, you got
5 to raise it now.

6 A. That's it.

7 Q. Nothing?

8 A. No, ma'am.

9 Q. You think I talked about everything that I needed to
10 talk about for you?

11 A. Yes, ma'am.

12 MS. SHURLING: Thank you. No further questions.

13 MR. CORNEY: Your Honor, may I ask two follow-up
14 questions?

15 THE COURT: Sure.

16 MR. CORNEY: I'll keep it to two, I promise.

17 RECROSS-EXAMINATION

18 BY MR. CORNEY

19 Q. Mr. Mance, before this crime in the past, you shot
20 your mother and you went to jail for that, correct?

21 A. Yes, sir.

22 Q. So you knew shooting people was against the law and
23 something you could go to jail for, correct?

24 A. Yes, sir.

25 MR. CORNEY: That's all I have. Thank you, Your

ERIC MANCE - RECROSS-EXAMINATION BY MR. CORNEY

1 Honor.

2 MS. SHURLING: Your Honor, I hate to do this, but I
3 have to ask a follow-up to that, if I can be permitted.

4 THE COURT: Yes.

5 REDIRECT EXAMINATION

6 BY MS. SHURLING

7 Q. Mr. Mance, when you were much younger, you shot your
8 mother, correct?

9 A. Yes, ma'am.

10 Q. And you did go to prison for that?

11 A. Yes, ma'am.

12 Q. So you know that when you shot your mother, you went
13 to prison?

14 A. Yes, ma'am.

15 Q. I'm trying to think of a fair way to word this
16 without leading. I apologize. The lawyer from the State
17 asked if you understood if you shot someone you would go
18 to prison?

19 A. Yes, ma'am.

20 Q. What you knew -- is it fair to say that what you knew
21 is that when you shot your mother, you went to prison,
22 correct?

23 A. Yes, ma'am.

24 Q. Do you have any recollection of planning the incident
25 where Mr. Hawkins was shot and hurt?

ERIC MANCE - REDIRECT EXAMINATION BY MS. SHURLING

1 A. No, ma'am.

2 Q. And I asked you earlier: Do you remember anything
3 about what you were doing immediately after that when you
4 left in the car? You don't remember any of that, do you?

5 A. Yes, ma'am.

6 Q. Okay. At the time this happened -- sitting in this
7 courtroom here today can you tell us what you were
8 thinking when all this happened or you don't even remember
9 any of it. Which is it?

10 A. I wasn't planning on nothing.

11 MS. SHURLING: No further questions.

12 MR. CORNEY: Nothing further from the State, Your
13 Honor.

14 EXAMINATION BY THE COURT

15 Q. Mr. Mance, do you remember the events that led to you
16 being arrested?

17 A. No, ma'am.

18 Q. Do you remember talking to the police officers about
19 the event?

20 A. Yes, ma'am.

21 Q. What did you tell them?

22 A. I told them I shot somebody.

23 Q. Were you told to tell the police that?

24 A. No, ma'am.

25 Q. And when you told the police that, did you know

EXAMINATION BY THE COURT

1 whether that was right or wrong to do?

2 A. No, ma'am.

3 Q. So you didn't -- all you knew is -- all you told them
4 is that you shot someone?

5 A. Yes, ma'am.

6 Q. And you didn't know whether it was okay or against
7 the law to do that or not?

8 A. No, ma'am.

9 Q. Do you remember the trial at all?

10 A. Yes, ma'am.

11 Q. And what do you remember about the trial?

12 A. My lawyer tried to help me.

13 Q. Do you remember what he did to try to help you?

14 A. What you mean?

15 Q. You said your lawyer tried to help you. What did he
16 do that you thought was helping you?

17 A. I don't know.

18 Q. Do you know what his job was?

19 A. Yes, ma'am.

20 Q. And tell me what that was.

21 A. To try to help me.

22 Q. During the trial, did you talk to him about what was
23 going on?

24 A. Yes, ma'am.

25 Q. At the time -- it appears that you may not remember

EXAMINATION BY THE COURT

1 everything that happened during the trial. But did you
2 try to help him with the trial and things that he should
3 do during the trial?

4 A. No, ma'am.

5 Q. So -- okay. How far did you go in school?

6 A. Ninth.

7 Q. And what kind of work did you do?

8 A. Nothing.

9 Q. So have you ever had a job?

10 A. Once.

11 Q. And what kind of work -- what kind of job was that?

12 A. McDonald's.

13 Q. And what did you do at McDonald's?

14 A. Cook.

15 Q. And do you remember how long you worked there?

16 A. I don't know.

17 THE COURT: I don't have any additional questions.

18 MS. SHURLING: May I ask one follow-up?

19 REDIRECT EXAMINATION

20 BY MS. SHURLING

21 Q. When you were in school up to the ninth grade, do you
22 remember whether you went to regular classes or whether
23 you went to special classes?

24 A. Special. Special.

25 Q. Special classes?

ERIC MANCE - REDIRECT EXAMINATION BY MS. SHURLING

1 A. Yes, ma'am.

2 Q. And were you in special classes in school pretty much
3 as far back as you can remember?

4 A. Yes, ma'am.

5 Q. Why did you drop out of school in the ninth grade?

6 A. Just stopped going.

7 Q. Thank you.

8 MS. SHURLING: No further questions.

9 THE COURT: You may step down, Mr. Mance. Thank you.
10 I assume you didn't have any more, Mr. Corney?

11 MR. CORNEY: I do not, Your Honor. Thank you.

12 MS. SHURLING: Your Honor the only thing I would add
13 to the record as an officer of the court, I have spent
14 time with Mr. Mance and have tried diligently to ensure he
15 understands me. I know that in one of the letters -- it
16 may have been Dr. Brawley's -- there's a reference to him
17 experiencing episodic depression, and I believe the word
18 "catatonic" was used in conjunction with the depression.
19 I can tell the Court on one occasion in talking to
20 Mr. Mance, I saw behavior that was -- as a layperson I
21 would think of as catatonic and had a very difficult time
22 communicating with him. It took a lot of effort, lot of
23 explaining and going over and over things to get answers
24 from him.

25 That is what prompted my trying to get all of his

1 medical records, the ones that Dr. Schwartz-Watts had
2 access to when she was doing the evaluation. I don't know
3 what else can I do to try to get that file. I mean, I
4 have subpoenaed it from the person who is the custodian of
5 those records, and they have informed both me and
6 Dr. Schwartz-Watts they can't simply can't locate them. I
7 would be -- I served at the pleasure of the Court. I'm
8 court-appointed counsel. If Your Honor can think of
9 anything else that -- if you think potentially an order
10 from the Court demanding the records might have more
11 impact than a subpoena did, I will certainly be willing to
12 draft an order for Your Honor's consideration if you would
13 like for me to try that avenue. Beyond that, all I can
14 say is that I've tried. Thank you.

15 THE COURT: Is there anything further from the
16 applicant? Anything further from the State?

17 MR. CORNEY: Nothing from the State, Your Honor. No
18 witnesses. Thank you.

19 THE COURT: I will tell you honestly, I've not had a
20 chance to read the entire record. What I would ask that
21 you do is to prepare proposed orders and this is the --
22 this is the question that I'm focusing on. I understand
23 that part of the applicant's PCR is to talk about whether
24 or not a guilty-but-mentally-ill verdict form should have
25 been pursued. And so in light of the fact the testimony

1 seems to reveal that if he were convicted under that
2 scenario that at best, it would not have changed his
3 length of sentence. He would have still been sentenced to
4 life without parole. At best it would have governed how
5 he would have been treated in the facility.

6 I have a couple questions. Number 1: Is that a
7 responsibility or a duty that a defense attorney has to
8 keep in consideration; and Number 2, in light of the
9 testimony that he is receiving mental health treatment and
10 that he is at a facility, Perry Correctional Institution,
11 that affords him the opportunity for mental health
12 treatment, is there really any prejudice to him by not
13 pursuing that option, that verdict form? Because as I
14 understand the PCR process, first he to show his
15 attorney's performance was deficient, meaning that it
16 didn't meet the reasonable standard of an attorney
17 practicing in the area. Second, he's got to prove that
18 that deficiency caused him prejudice.

19 And since -- and I understand the other issues that
20 have been raised, but as it relates to the
21 guilty-but-mentally-ill verdict form, those are the two.
22 And like I said I have not read the record in its entirety
23 so you're -- you've pointed out paged to me and I've
24 marked them. I've kind of skimmed over some of those
25 throughout the course of the testimony, and I haven't read

1 the exhibits. I mean, I have looked
2 at Dr. Schwartz-Watts's letter which is Applicant's 1, but
3 I have not seen the one from Dr. Brawley that was
4 addressed to her. So -- and I'll read that. But if
5 you, in your proposed orders, kind of answer those
6 questions for me, I think that would be very helpful.

7 MS. SHURLING: Your Honor, if I might add one
8 additional consideration. I did ask David Tarr whether he
9 had come to court prepared to present evidence either of
10 an insanity defense or evidence in support of a
11 guilty-but-mentally-ill verdict, and he indicated he had
12 not. I recognize he presented testimony from Dr. Tora
13 Brawley; however, I would submit that if he were going for
14 a guilty-but-mentally-ill verdict, he would have had the
15 opportunity to present testimony not only from Dr. Brawley
16 but also Dr. Schwartz-Watts, and that he would have had
17 the opportunity to present additional evidence that might
18 have been developed through the use of Dr. Schwartz-Watts
19 if he had explored that with her as part of her agreement
20 with him. In other words, she indicated that his mental
21 illness might rise to the level of GBMI, but it was never
22 pursued any further than that.

23 So it's our position that if GBMI had been pursued,
24 David Tarr would have had the opportunity to present
25 additional evidence in support of the pursuit of a GBMI

1 verdict. And the reason that becomes critical, Your
2 Honor, is it would have gone not only to whether or not
3 the jury may have found him guilty but mentally ill, but
4 counsel has stated that his strategy was to have the
5 client found guilty of the lesser-included offense of
6 ABHAN as opposed to ABWIK based on his lack of mental
7 capacity to have the requisite intent to kill. The more
8 evidence the jury heard about his mental health issues,
9 the more testimony and evidence from mental health experts
10 they heard, the more likely it would have been that
11 strategy may have been successful.

12 So I believe that the failure to adequately prepare
13 and present a case in favor of GBMI would go not only to
14 whether or not he might potentially have gotten a GBMI
15 verdict, but also potentially would go to whether or not
16 his chances may have been enhanced of being found guilty
17 of a lesser-included offense.

18 THE COURT: And I don't mean to imply that in your
19 proposed order you shouldn't address any other issues.
20 I'm just saying if you would also include within your
21 order matters to address those particular ones.

22 MS. SHURLING: Yes, ma'am. I just wanted -- I wanted
23 to be clear I wasn't limited to what you were --

24 THE COURT: No, no, no.

25 MS. SHURLING: Thank you very much.

1 THE COURT: You're not limited. I mean, I want you
2 to cover all the issues that are been raised, but those
3 are questions that I have as relates to that issue.

4 MS. SHURLING: Yes, ma'am.

5 MR. CORNEY: And along those lines, Your Honor, I'd
6 be happy to address those in my proposed order. I just
7 wanted to let the Court know that I'll probably do that in
8 the alternative because it's the State's contention it was
9 Mr. Tarr's strategic trial strategy to not present a GBMI
10 so the jury couldn't settle on that verdict.

11 THE COURT: I understand, and I gathered that too.
12 So I expect you to talk about the fact whether or not it
13 was a reasonable trial strategy under the circumstances.

14 MR. CORNEY: Absolutely, and that's how I'll address
15 that. Thank you.

16 THE COURT: And if you'd just send them to me in
17 electronic format. Mr. Corney, I know you're leaving the
18 office next week?

19 MR. CORNEY: The end of next week, Your Honor. Yes,
20 ma'am.

21 THE COURT: Ms. Shurling, I know you've got a
22 schedule. How much time do you --

23 MS. SHURLING: Your Honor, unfortunately I'm just now
24 finishing my second round of penicillin and prednisone
25 from a real bad case of bronchitis, and I'm a little

1 behind because I have a number of orders that have stacked
2 up on me while I was out sick. I was going to ask for 30
3 days to get this order done. I would give the Court my
4 word as an officer of the court that if -- and Mr. Corney
5 knows me well enough to know I will stick with this. If
6 he submits his order prior to his departure, I will not
7 review his order until my own order has been submitted to
8 Your Honor so that it will not be responsive in nature.

9 THE COURT: And that's fine. So we're talking
10 Friday. And, of course, you have you my e-mail address.
11 Send it in Word format. As you probably know, I do tinker
12 with them.

13 MS. SHURLING: Yes, ma'am. Your Honor, it is my
14 custom, I usually send it in Word format by e-mail. I
15 also send it over in hard copy in the unlikely event that
16 you don't have access so that you have a hard copy, but I
17 always send it electronically.

18 THE COURT: That's fine. I usually just set the hard
19 copy aside, but it's always nice to have in case something
20 happens electronically. Thank you.

21 (Whereupon, the proceedings were concluded.)
22
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

I, Aminah R. Hardy, RPR, Official Court Reporter
for the 16th 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 the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Richland County, South Carolina, on the
21st day of May, 2013.

July 30th, 2013

Aminah R. Hardy, RPR



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE

UNIVERSITY SPECIALTY CLINICS,

May 6, 2008

Dear Mr. Tarr,

I wanted to update you on the status of my evaluation of Mr. Eric Mance. As you know, I evaluated him at the Richland County detention Center on 6/3/07 for 1.5 hours. At that time, he was 35 years old and charged with Attempting to Kill an attorney in Columbia.

After reviewing his records and evaluating Mr. Mance, I referred him for neuropsychological testing. Dr. Tora Brawley saw him on 6/19/07 and diagnosed him with mental retardation. She was concerned that his deficits could represent an ongoing neurological disorder and referred him to a neurologist. He was seen by Dr. Ken Gaines on 10/31/07 and diagnosed with Moderate mental retardation and headaches. Dr. Gaines did not find pathology consistent with a recent onset but did recommend a CT scan of the head and an EEG. Both consultants have reports of their findings, which should have been forwarded to you.

Since then, he had had the requested CT scan of his brain, with and without contrast, which was completed on 3/13/08. There were no abnormal findings. He also had his EEG exam on 3/13/08, which was also negative. He was evaluated again by my forensic fellow Doug Morris and resident Jason Buckland at the Richland County Detention Center on 4/26/08. He was noted to be on medications for his thyroid disorder.

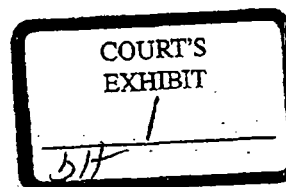
Based on all of the above new information and my prior assessments, it is my opinion with a reasonable degree of medical certainty that Mr. Mance has a rational and factual understanding of the proceedings and the capacity to assist in his defense.

It is clear that Mr. Mance has limited intellectual functioning and a psychotic disorder, which is clearly mitigating and may arise to a GBMI defense. I would need incident reports related to the offense, any statements and his jail records to render a final opinion.

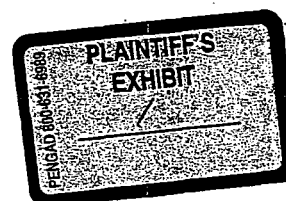
Sincerely,

Donna M. Schwartz-Watts, M.D.

Donna Schwartz-Watts, M.D.



NEUROPSYCHIATRY
AND BEHAVIORAL SCIENCE
15 Medical Park, Suite 141, Columbia, SC 29203
803-434-4300, FAX 803-434-4351





UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE

UNIVERSITY SPECIALTY CLINICS®

July 30, 2007

Dr. Donna Schwartz-Watts
3555 Harden Street Ext., Suite 102
Columbia, SC 29201

RE: Eric Mance



Dear Dr. Schwartz-Watts,

Per your request, I performed an extended clinical interview and neuropsychological evaluation on the above captioned patient June 19, 2007. I also subsequently reviewed records provided by you of previous psychological testing conducted in 1987. I would like to provide you with a brief summary of findings from this evaluation and record review.

As you know, Mr. Mance is a 35 year-old, right handed, African American male. Records reveal he was placed in special education classes in the first grade and had learning problems throughout school. It was also reported that he did not talk well until the age of four. He remained in special education classes and reports to have had to repeat the 9th grade. He states his highest grade completed was the tenth grade. He reports he has never had a driver's license and has only been able to hold a job for a few weeks.

During the interview, he reported to have always had problems with concentration. He also stated that he was "not so good" in reading and spelling. When asked how his ability to read and write was he replied, "so so". Mr. Mance also reports to have poor retention for things he is told. He states he has noticed this most in the past "year or so". He also reports memory loss associated with the use of alcohol and drugs. His reported use of alcohol and crack cocaine is extensive.

Mr. Mance reports a previous head injury as a child where he fell from a building. He states that this resulted in the scar over his left eye but does not know any further details of this accident. Records reveal that this fall occurred from a second floor porch at the age of two and he reportedly landed on his head. He also states that he has been hit on the head a couple of times when he was "jumped" on the street. He denies loss of consciousness with these incidents but does state he felt "woozy" as a result.

NEUROPSYCHIATRY
AND BEHAVIORAL SCIENCE
15 Medical Park, Suite 141, Columbia, SC 29203
803-434-4300, FAX 803-434-4351

Review of records from an evaluation conducted at William S. Hall Psychiatric Institute in 1987 confirms the presence of cognitive deficits at that time. Diagnoses included Mixed Development Disorder, Borderline Intellectual Functioning and receptive and expressive language difficulties.

Mr. Mance currently endorses some vegetative symptoms of depression and reports that he is taking two medications ("one for sleep and one for nerves"). He was unable to provide the names or dosages of these medications.

During the clinical interview Mr. Mance was fully cooperative. He did exhibit word finding problems during conversational speech. Performance on efforts testing was completely within normal limits. Formal neuropsychological testing revealed a Full Scale IQ of 66 (Verbal IQ 63, Performance IQ 77) placing him overall in the Extremely Low/Mental Retardation range of functioning (1st Percentile).

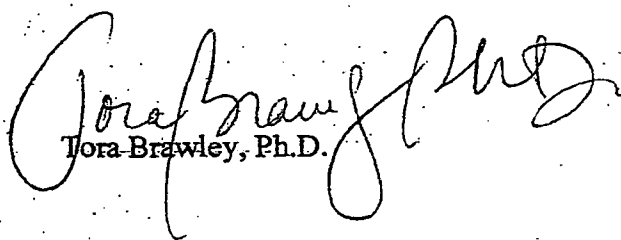
Other areas of deficit noted on this evaluation included poor verbal memory, severely impaired confrontation naming, severely impaired verbal fluency, borderline verbal learning ability, poor trail making ability, severely impaired manual speed on the right hand, severely impaired mental arithmetic, severely impaired expressive vocabulary, severely impaired verbal abstract reasoning, and severely impaired coding ability.

In summary, Mr. Mance is currently functioning at the Extremely Low/Mental Retardation range of intellectual functioning (1st Percentile). He also exhibited several other areas of severe neuropsychological deficit. While some of these may be consistent with premorbid functioning, there is concern that there may be additional factors compounding his developmental disorder.

Given Mr. Mance's history and current neuropsychological results, it is strongly recommended that he be evaluated by a neurologist to fully assess potential brain organicity. The current efficacy of his psychotropic medications should also be assessed by a psychiatrist.

Thank you for asking me to participate in the evaluation of this patient. Please do not hesitate to contact me should you have further questions.

Sincerely,


Tora Brawley, Ph.D.

Mance, Eric. IME.10-31-07

Kenneth Gaines, MD

1

Neurology USC-SOM
Neurological History and Examination

IDENTIFYING DATA

PATIENT NAME	Mance, Eric
DATE	10-31-07
CLINIC NUMBER/DOB	
AGE	35
REFERRING PHYSICIAN	Drs. Schwartz-Watts and Brawley

Chief Complaint: Memory loss**History of Present Illness:**

He reports memory problems since he was a child. He had behavioral problems in school; was frequently "in trouble" and only completed the 11th grade with C and D grades. He was constantly fighting in school, played no sports because he did not like them; he does not recall any problems with vision, balance, coordination. He never had a seizure.

After leaving school he "just hung out"; never worked. He has been in jail 2 times previously and most recently in jail for 2 years.

He says he forgets what people told him the day before; but continues to function in the jail routine. He does not do sports even now but says he is not aware of problems with vision, hearing, balance, and coordination. He does admit to being clumsy.

He has noted headaches about 1/week for years. They are R or L sided- often severe; last 2 hours or less. There is no associated nausea or vomiting. There is no associated visual change, loss of sensation, or weakness.

He reports never having an EEG or CT head.

Current Medications:

Propylthiouracil 50 mg 2 tabs each AM which he feels is for hyperactivity.

Allergies: NKA

Past Medical History:

DISEASE	Yes	No	COMMENT
Stroke		X	
Epilepsy		X	
Seizure		X	
Head injury	X		
Meningitis		X	
Encephalitis		X	
Parkinson's disease		X	
Neuropathy		X	
Carotid endarectomy		X	
Back injury/surgery		X	
Heart disease		X	
High blood pressure		X	
High cholesterol		X	
CABG/heart bypass		X	
Valvular heart disease		X	
Heart attack		X	
Cancer		X	
Liver disease		X	
Pancreas disease		X	
Gallbladder disease		X	
Colon disease		X	
Stomach/bowel cancer		X	
Diabetes mellitus		X	
Thyroid disease		X	
Tuberculosis		X	
Gonorrhea		X	
Syphilis		X	
Polio		X	
HIV/AIDS		X	
Transplant		X	

Additional history:

Additional information:

For Women	Date/Number
Last menstrual period	
Last pap smear	
Last mammogram	
Number of pregnancies	
Number of miscarriages	
For men and women	
Last colonoscopy	
Last chest x-ray	

FAMILY HISTORY

DISEASE	MOTHER	FATHER	SIBLINGS	CHILDREN	GRAND-PARENTS	OTHER
Migraine						
Neuropathy						
Seizures						
Tremor						
Parkinson's						
Stroke	X					
Epilepsy						
Weakness						
Alzheimer's						
Palsy						
Multiple sclerosis						
Heart attack						
High blood pressure						
Diabetes	X					
Cancer						

Other Family History

RELATIVE	DISEASE	COMMENT
Mother		
Father		
Siblings		
Grandparents		
Others		

Social History:**Marital status**

Single	Married	Divorced	Widowed	Separated
X				

Education

None	Grade school	High school	Vocational	College	Professional
		X			

Employment

Employed	Unemployed	Disabled	Workers Comp	Laid off	Retired
	X				

Employer**Job description****Incarcerated****Smoking/Tobacco use**

Cigarettes	Packs/day	Cigar	Chewing	Pipe	Years smoke	Stopped
None						

Alcohol use

None	Occasional	Moderate	Heavy	Drinks/day	Type of alcohol
X					

Street drugs

Never	Occasional	Type/s drug	Alcohol/drug rehab program	When	Where

Additional comment:

REVIEW of SYSTEMS

GENERAL	+	-	STOMACH	+	-	NEUROLOGICAL	+	-
Headache	X		Trouble swallowing		X	Stroke		X
Lethargy/weakness		X	Heart burn/indigestion		X	Seizures		X
Chills/night sweats	X		Change in bowel habits		X	Head injury	X	
Fever		X	Loose stool/diarrhea		X	Memory loss		X
Fainting spells/unconscious		X	Black/bloody stool		X	Confusion		X
Weight loss		X	Frequent stomach pain		X	Trouble speaking		X
Dizziness		X	Vomiting blood		X	Trouble swallowing		X
EYES			Constipation		X	Unsteady gait		X
Wears glasses		X	Irritable bowel		X	Trouble walking		X
Dry eyes		X	Jaundice (yellow skin)		X	Frequent falls		X
Eyesight worsening		X	Ulcers		X	Arm/leg weakness		X
Double vision	X		Stomach/bowel cancer		X	Arm/leg tingling		X
Eye pain		X	KIDNEY/PROSTATE			Arm/leg numbness		X
EAR/NOSE/THROAT			Frequent voiding		X	PSYCHIATRIC		X
Deafness		X	Burning on urination		X	Nervous breakdown		X
Noise in ears	X		Pus/blood in urine		X	Panic attacks		X
Congestion/ sneezing		X	Trouble starting urination		X	Cry often/ depressed		X
Sinus trouble/ hay fever		X	Dribble w/cough/sneeze		X	Worry a lot		X
Nose bleeds		X	Loss of urine control		X	Considered suicide		X
Sore/dry throat or tongue		X	Prostate disease/cancer		X	Loss of interest in eating		X
Hoarse voice		X	Sexual difficulty		X	Anxiety/tension		X
Dental problem		X	SKIN			Loss of energy/fatigue		X
HEART			Rash		X	ENDOCRINE		
Chest pain with exertion		X	Birthmarks		X	Unwanted weight change		X
Heart attack		X	Sores		X	Change in skin		X
Heart murmur		X	Dry/oily skin		X	Breast discharge		X
Heart racing/palpitations		X	Hair growth/loss		X	Excessive thirst		X
Irregular heart beat		X	MUSCLE/BONE			Excessive tiredness		X
Mitral valve prolapse		X	Back pain	X		BREAST/MENSTRUAL		
High blood pressure		X	Neck pain		X	Endometriosis		X
Swollen feet/ankles		X	Back surgery		X	Current pregnancy		X
Heart valve replacement		X	Arthritis		X	Irregular menstrual period		X
Atrial fibrillation		X	Fibromyalgia		X	Breast discharge		X
Leg pain walking		X	Aching muscles/joints		X	Lumps in breast		X
LUNG		X	Shoe lift or brace		X	SLEEP		
Lung cancer		X	Bone/joint injury		X	Dreams/sleep walk		X
Shortness of breath		X	Osteoporosis		X	Legs twitch		X
Chest pain	X		HEMATOLOGIC			Insomnia		X
Coughing up phlegm		X	Blood disease		X	Daytime drowsiness		X
Cough-up blood		X	Enlarged glands		X	Snores		X
Wheezing/cough		X	Bleed/bruise easily		X	Breath holding/gasping		X
Pneumonia		X	Anemia/low blood		X	Restless sleep	X	

PHYSICAL EXAMINATION**CONSTITUTIONAL**

BP	P	R	T	Weight	Height
140/97	54	18		150	

HEENT:

- No masses noted in the neck
- Thyroid gland is normal.
- Oropharynx is clear.

LUNGS:

- Clear to auscultation. No rhonchi. No dyspnea
- No respiratory distress
- No wheezes, rales, or rhonchi present

HEART:

- Regular rate and rhythm. No abnormal heart sounds identified.
- No peripheral edema. No respiratory distress.
- No heart murmur or irregular heart rhythm

ABDOMEN:

- Soft.
- No tenderness
- No bruits.

BREAST. RECTAL:

- Not performed as part of the neurological exam.

NEUROLOGICAL EXAM:**Mental Status:**

- Oriented to time, place and person.
- Recent and remote memory is normal. Shows 3/3 recent memory testing
- Attention span and concentration are normal.
- Fund of knowledge is normal but he could only recall 2 recent US Presidents.
- No hallucinations or delusions. No frontal release signs are noted.
- Mini-Mental Status Exam Score of 25/30. His deficits were in orientation and performance of complex acts.
- Language is normal in receptive, expressive, and repetition functions.

Cranial Nerve Examination:

- CN II Visual acuity is 20/30 R and 20/30 L. Visual fields are full and normal to confrontation. Fundus exam shows no papilledema. OKN responses are symmetrical and normal.
- CN III, IV, VI Pupils are 3 mm on R and 3 mm on L with normal reaction to light. Extraocular movements are full. No nystagmus is noted. No ptosis is noted
- CN V Facial sensation is normal in all three divisions. Corneal reflexes are normal.
- CN VII Facial muscle movements are symmetrical in upper and lower face. Nasolabial fold is symmetrical.
- CN VIII Hearing is normal to tuning fork testing.
- CN IX Speech is normal. Uvula elevates in the midline.
- CN X No hoarseness is noted. The pharynx moves normally.
- CN XI Sternocleidomastoid strength is normal.
- CN XII Tongue protrudes in the midline with normal strength. No tongue atrophy is present.

Motor Examination:

- Muscle strength is normal in the arms and legs. MRC muscle strength is grade 5/5. No apraxic features noted.
- No muscle atrophy, fasciculation, myotonia or myoedema is noted.
- Muscle tone is normal.
- No rigidity is noted. No tremor is noted. No spasticity is noted.
- Gait is fluid and brisk. Fine motor movements are normal.

Mance, Eric. DME.10-31-07

Kenneth Gaines, MD

6

- Deep tendon reflexes are normal and symmetrical.
- BJ + 2/+2, TJ + 2/+2, BrJ + 2/+2, KJ + 2/+2, AJ + 1/+1.
- Babinski and toe signs are normal. Hoffman reflexes are normal.

Sensory Examination:

- Sensation is normal to pin prick.
- Vibratory sensation is normal. Joint position sensation is normal. Romberg is negative.
- Cortical sensation is normal to bilateral simultaneous stimulation and stereognosis.
- Light touch sensation is normal. Temperature sensation is normal.

Cerebellar Examination:

- Station and gait testing is normal.
- Heel to toe walking is normal.
- Cerebellar limb testing is normal = finger-to-nose and heel-to-shin.
- Rapid alternating movements are normal. There is no intention tremor.

Neurovascular:

- No carotid or supraclavicular bruits.
- Temporal arteries are normal to palpation.
- Dorsalis pedis pulses are normal.
- No dysmorphic or neurocutaneous features are noted.

LABORATORY AND RADIOLOGY REVIEWED

Old records were requested and reviewed and incorporated into the consultation.

Records from psychiatric evaluation 1988 found borderline intellectual functioning and hyperactivity syndrome. Evaluation by Dr Brawley 7-07 revealed significant deficits with IQ 66, poor verbal memory, confrontation naming, verbal learning, trail making, arithmetic, expressive vocabulary, verbal abstract reasoning, and coding ability. She found him to lie in the severely low mental retardation range.

IMPRESSION:

1. Memory loss and inattention
2. Headaches

I do not find evidence of significant neurological pathology of recent onset. He had moderate mental retardation and poor educational attainment that is recorded back to 1988. His recent memory currently is not severely impaired. I wonder if some of the NP testing results might have reflected attentional deficits. His headaches are recurrent and sound like vascular headaches but those might merit additional evaluation.

PLAN:

1. CT scan of head with contrast
2. EEG
3. F/U after these are completed.

PATIENT/FAMILY EDUCATION:

1. Plan will be transmitted to Dr Brawley and his attorney for implementation.



Kenneth Gaines, MD, FAAN
Neurology

Cc:

FILE COPY

STATE OF SOUTH CAROLINA

ISSUED BY THE CIVIL COURT IN THE COUNTY OF RICHLAND

ERIC MANCE, 200410, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

State Of South Carolina, Defendant

Case Number: 2011-CP-410-741

Pending in Richland County

TO: Wanette Johnson

☐ YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM:

DATE AND TIME:

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects: Any reports or other documents concerning the evaluation of Eric Mance (date of birth March 15, 1972) for competency and/or criminal responsibility during 2008.

PLACE Law Office of Tara Dawn Shurling
3614 Landmark Dr. Ste A, Columbia SC 29204

DATE AND TIME
October 29, 2012 at 5:00 p.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

DATE AND TIME

U.S. Postal Service
CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL US

Postage \$
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees \$51.75

Sent To
USC Specialty Clinic
Street, Apt. No., or PO Box No. ATN Wanette Johnson
City, State, ZIP+4 15 Medical Park 3555 Harden
PS Form 3800, August 2006 See Rev

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Postage Here

1. Article Addressed to:
University of SC
Specialty Clinics
ATTN Wanette Johnson
15 Medical Park
3555 Harden St. Ext.
Columbia, SC 29203

2. Article Number
(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent
B. Received by (Printed Name) ☐ Address
C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes.
If Yes, enter delivery address below: ☐ No

1 OCT 18 2012

3. Service Type
☒ Certified Mail ☐ Registered Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

7011 0470 0000 0050 8179

Domestic Return Receipt

10259-02-15

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE	☐ YES ☐ NO AMOUNT \$ _____
SERVED ON (PRINT NAME) USC Specialty Clinics, 15 Medical Park 3555 Harden Street Ext., Columbia, SC 29203		MANNER OF SERVICE U. S. Mail and Certified Mail
SERVED BY (PRINT NAME) <u>Suzanne Graham</u>		TITLE <u>Paralegal</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 10/17/12
DATE

SIGNATURE OF SERVER

Law Office of Tara Dawn Shurling, PA

3614 Landmark Dr., Suite A Columbia, SC 29204

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings, and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel production. Such an order to compel production shall protect any person who is not a party or an officer from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which the subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed at a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed, or regularly transacts business in person, except that, subject to the provision of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development or commercial information, or

(ii) requires disclosure of an un-retained expert's opinion or information not describing in specific words events or occurrences in dispute and resulting from the experts study made not at the request of any party, or

(iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed, or regularly transacts business in person, the court may, to protect a person subject to or affected by a subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature or the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

LAW OFFICE OF

**FILE COPY****TARA DAWN SHURLING, PA**

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

(Fax) (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

October 17, 2012

University of South Carolina Specialty Clinics
ATTN WANETTE JOHNSON
15 Medical Park
3555 Harden Street Extension
Columbia, SC 29203

RE: File on Eric Mance (date of birth March 15, 1972)

Dear Ms. Johnson:

Please find enclosed a subpoena for certain records relevant to the above referenced client's evaluation in 2008. As soon as I receive a copy of these documents I will provide Dr. Donna Schwartz-Watts a copy for her use for preparing her testimony at a future Court date. Unfortunately, I do not know at this time when this hearing will be held. As soon as I find out the Court date, I will determine whether the Attorney General's Office will require me to subpoena someone from your office to Court to authenticate these records. Since Dr. Schwartz-Watts will be available to identify these records, I am hoping that subpoenaing someone from your office will not be necessary. Please send me an invoice for the cost of these records, and I will see to it a check goes out promptly. For now thank you for your assistance in obtaining these records. I am,

Sincerely,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosure

FILE COPY

STATE OF SOUTH CAROLINA

ISSUED BY THE CIVIL COURT IN THE COUNTY OF RICHLAND

ERIC MANCE, 200410, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

State Of South Carolina, Defendant

Case Number: 2011-CP-410-741

Pending in Richland County



TO: Dr. Donna Schwartz-Watts, M.D.

☒ **YOU ARE COMMANDED** to appear in the above named court at the place, date and time specified below to testify in the above case.

 PLACE OF TESTIMONY
 Richland County Courthouse

COURTROOM The Honorable J. Ernest Kinard, Jr.

DATE AND TIME: Friday, September 14, 2012 at 9:30 a.m.

☐ **YOU ARE COMMANDED** to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects: Any files or records you have available concerning Eric Mance, date of birth March 15, 1972.

 PLACE
 Richland County Courthouse

 DATE AND TIME
 Friday, September 14, 2012 at 9:30 a.m.

☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY SUPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

 ISSUING OFFICERS NAME, ADDRESS AND PHONE NUMBER
 TARA DAWN SHURLING, ATTORNEY AT LAW 3614 LANDMARK DRIVE, SUITE A, COLUMBIA, SC 29204 (803)738-8622

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULES 45(C) (1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

 ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE
 REPLICA OF SCCA FORM 254 (1/93) (See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on Reverse)

A handwritten signature in black ink, appearing to read "Tara Dawn Shurling".

9/12/12

PROOF OF SERVICE

SERVED	DATE <u>9/12/12</u>	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$ _____
	PLACE <u>Bryan Hosp.</u>	
SERVED ON (PRINT NAME) Dr. Donna Schwartz-Watts 200 Faison Drive, Columbia, SC 29203		MANNER OF SERVICE Hand-delivery
SERVED BY (PRINT NAME) <u>Sharon McCollister</u>		TITLE <u>Paralegal</u>

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on <u>9/12/12</u> DATE	<u>Sharon McCollister</u> SIGNATURE OF SERVER <u>Law Office of Tara Dawn Shurling, PA</u> <u>3614 Landmark Dr., Suite A Columbia, SC 29204</u> ADDRESS OF SERVER
------------------------------------	--

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings, and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel production. Such an order to compel production shall protect any person who is not a party or an officer from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which the subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed at a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed, or regularly transacts business in person, except that, subject to the provision of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena:

- (i) requires disclosure of a trade secret or other confidential research, development or commercial information, or
- (ii) requires disclosure of an un-retained expert's opinion or information not describing in specific words events or occurrences in dispute and resulting from the experts study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed, or regularly transacts business in person, the court may, to protect a person subject to or affected by a subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature or the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

dona.watt@usmc.mil

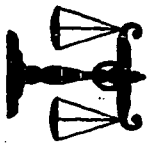
803-834-

9953

USC

School of Medicine

434-4266



Law Office of
Tara Dawn Shurling, P.A.
Attorney and Counselor at Law
3614 Landmark Dr., Suite A
Columbia, South Carolina 29204

Dr. Donna Schwartz-Watts, M.D.
G. Werber Bryan Psychiatric Hospital
200 Faison Drive
Columbia, South Carolina 29203

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Eric Mance, #200410,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2011-CP-40-00741-

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2013 APR 29 AM 9:16
JEANETTE M. MCBRIDE
CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed February 4, 2011. An evidentiary hearing into the matter was convened before this Court on Thursday, March 7, 2013, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Tara D. Shurling, Esquire. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying were Applicant's former trial counsel, David Tarr, Esquire, and forensic psychiatrist Dr. Donna Schwartz-Watts. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, the documents related to Applicant's direct appeal and Applicant's records from the South Carolina Department of Corrections (SCDC).

The records before this Court indicate that Applicant is presently confined at SCDC pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the September 2006 term of the Richland County Grand Jury for Assault and Battery with Intent to Kill, Armed Robbery and Possession of a Pistol by a Person Convicted of a Crime of Violence (2006-GS-40-4738; -4739; -4741). Applicant was represented by David Tarr, Esquire, on the charges. On August 25, 2008, Applicant proceeded to a jury trial before the Honorable Clifton Newman. After a three (3) day trial, Applicant was found guilty of all three charges as indicted and sentenced to life imprisonment without parole for Armed Robbery and ABWIK, as well as five (5) years imprisonment for the Pistol charge. The sentences were to run concurrently.

A notice of appeal was filed on Applicant's behalf and an Anders¹ brief was submitted by Robert Pachak of the South Carolina Office of Appellate Defense. By order filed February 11, 2010, the South Carolina Court of Appeals dismissed the appeal. The remittitur was issued May 28, 2010.

In the current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based upon ineffective assistance of trial counsel and due process violation. At the start of the evidentiary hearing, counsel for Applicant set forth three distinct allegations which Applicant intended to pursue through the current action, all premised on trial counsel's ineffectiveness for failure to: evaluate Applicant for criminal responsibility; advise Applicant of and pursue a guilty but mentally ill (GBMI) verdict; and request recusal of the Fifth Circuit Solicitor's Office from prosecuting the matter or otherwise motion for change of venue.

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 PCR 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 (Rev. 2003).

In a PCR action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984).

The proper measure of performance is whether counsel 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. at 442, 334 S.E.2d at 814. 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

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

prong, counsel's 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.

Evaluation for Criminal Responsibility

Applicant first contends Counsel was ineffective for failing to properly consider the issue of his criminal responsibility at the time of the crime. Specifically, Applicant contends he does not remember a lot of the incident and, had Counsel requested an evaluation for criminal responsibility, a lack of criminal responsibility or insanity defense could have been developed for trial.

Counsel testified he recalled his court-appointed representation of Applicant on the charges. Counsel filed all the usual pre-trial motions for discovery and was able to obtain copies of Applicant's medical and psychiatric records as part of his investigation and preparation of the case. Based upon his meetings with Applicant, Counsel had some concerns regarding Applicant's competency, so he hired Dr. Donna Schwartz-Watts to perform an evaluation on Applicant for competency to stand trial. Counsel wanted to make sure Applicant understood their conversations and was able to adequately assist in his defense.

Counsel testified Applicant had an extensive mental health history and was low functioning based on his reportedly low IQ. However, a low IQ alone is not determinative of whether a person falls within the classification of "retardation". Counsel noted Dr. Schwartz-Watts issued a competency report based upon her meeting with Applicant and the reports of two other doctors, in which she found Applicant was competent to stand trial and assist in his defense.

Counsel could not specifically recall whether he considered having Applicant evaluated for criminal responsibility in addition to competency; however, Applicant did not appear to lack the ability to understand criminal responsibility based on their discussions. There was evidence in the case such as Applicant's fleeing from the scene of the crime, his immediate hiding of the instruments used in the crime, witness statements that Applicant bragged about committing the crime afterwards, and Applicant's mention of carjacking somebody in the downtown area prior to committing the act. All of this evidence led Counsel to believe that there was not a basis to

question Applicant's criminal responsibility. Based on his review of the case, Counsel did not believe it would be beneficial to continue to investigate that defense.

Counsel was "sure" he talked to Dr. Schwartz-Watts about the criminal responsibility, but could not specifically recall when or what was specifically discussed. At trial, Counsel stipulated to Applicant's criminal responsibility during the Blair² hearing because he "did not think there was any chance any doctor would say [Applicant] didn't know right from wrong" based on his perceptions of Applicant and the facts of the case.

On cross-examination, Counsel noted there was some evidence presented at trial that Applicant stood on the back porch of his house and yelled to the investigating police officers that they would never figure out who committed the crimes because they were too dumb. Counsel reiterated that he did not think there was a basis for a lack of criminal responsibility defense. Counsel previously worked as a public defender and represented many clients during that time with mental health issues; thus, he is familiar with recognizing such problems. The State's case was very strong against Applicant and Counsel wanted to use Applicant's low functioning IQ at trial as part of the defense strategy to challenge whether Applicant possessed the required intent for ABWIK. The defense strategy was to convince the jury Applicant was guilty only of the lesser included offense of Assault and Battery of a High and Aggravated Nature, which would not carry a "most-serious" strike for life without parole enhancement purposes.

Dr. Donna Schwartz-Watts, a forensic psychiatrist, testified at the hearing. Schwartz-Watts testified she is currently a senior psychiatrist at G. Weber Bryan Psychiatric Hospital, and previously worked at the Medical University of South Carolina for a number of years, as well as with inmates through the South Carolina Department of Mental Health. She recalled Counsel requesting she complete a competency evaluation of Applicant, but could not recall whether she was asked to evaluate Applicant for criminal responsibility as well.

Schwartz-Watts noted it is not uncommon for a criminal defense attorney to ask for a client to be mentally evaluated with the specific request that the findings not be reduced to writing. Schwartz-Watts had no recollection of whether that may have occurred in this case. She did have conversations with Counsel by telephone regarding Applicant's mental health during which she could have given an oral opinion as to criminal responsibility. Schwartz-Watts generally would keep a log of evaluations she had done on an individual even if no written report

² State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981)

was issued, but she was unable to obtain her file in Applicant's case to confirm or deny whether she rendered such an opinion.

Schwartz-Watts noted Applicant suffers from a psychotic disorder and has a very low-functioning IQ, which she said are wholly separate and distinct mental limitations. It is not uncommon for someone to be found criminally responsible even with a very low IQ. Even a low IQ with the addition of a psychotic disorder is not determinative of one's criminal responsibility, but would be a factor to consider in the evaluation.

On cross-examination, Schwartz-Watts testified the standard for whether a defendant lacks criminal responsibility in South Carolina is based upon the widely accepted M'Naughten test. Schwartz-Watts testified that under the M'Naughten test, a defendant lacks criminal responsibility if, at the time of the crime, he/she lacks the capacity to distinguish moral or legal right from moral or legal wrong due to a mental disease or defect. However, Schwartz-Watts said, a finding of GBMI may be implicated when, at the time of the crime, the defendant *has* the capacity to distinguish right from wrong, but lacks sufficient capacity to conform his/her conduct to the law. Schwartz-Watts noted the difference in the two standards, stating a GBMI finding requires a lesser level of mental defect than a finding related to insufficient criminal responsibility.

In evaluating for criminal responsibility and competency, Schwartz-Watts reviews a defendant's medical history, pre-existing disorders, the incident reports related to the crime, any witness statements, any statements defendant made to police, and the defendant's jail records. She will discuss the case with the defendant to ascertain the rationale for his conduct, and it is very important to consider the defendant's behavior before and after the incident as well. A defendant attempting to hide the instruments used in the commission of a crime is indicative of someone who recognizes the underlying conduct was morally or legally wrong. Where a defendant not only hides the instruments of a crime after its commission, but also states his intention to carry out such a crime prior to doing so, a finding of sufficient criminal responsibility is even more likely.

Applicant testified briefly on the subject, initially saying he did not recall the incident and only realized what he had done was wrong when he returned home and his wife said he had done something wrong. On cross-examination, Applicant agreed he knows right from wrong and said he knew at the time it was wrong to shoot the victim and to take the victim's car. He hid the gun

and mask once he returned home because he knew they could link him to the crimes he had committed. He acknowledged he was imprisoned once before for the shooting of his adoptive mother in 1992. That incident made him clearly understand that shooting people is wrongful conduct that can result in jail time.

After a thorough review of the record, the testimony presented, and the arguments of counsel, this Court finds Counsel was not ineffective in failing to have Applicant evaluated for criminal responsibility prior to trial. Applicant gave conflicting testimony of remembering the incident and whether he was aware that his actions were wrongful. Conversely, this Court finds Counsel's testimony as to his perceptions of Applicant based on their pre-trial meetings to be credible and persuasive.

This Court finds Counsel's decision not to have Applicant evaluated for criminal responsibility was objectively reasonable and, therefore, not deficient. Counsel reasonably relied upon his own perceptions of Applicant based upon their extensive interactions, discussions and meetings in deciding such an evaluation was unnecessary and unwarranted. See Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992) (counsel not deficient for failure to mentally evaluate defendant where he reasonably relied on his own perceptions of defendant's mental capacity). Further, the evidence in the record is clear that Applicant was aware of the wrongful nature of his actions, as he attempted to hide the incriminating tools used in carrying out the crime to avoid accountability, voiced his intentions to commit such a crime prior to doing so, and taunted police about their ability to solve the crime as they scoured the area where victim's car was found. These facts, along with the rest of the record and testimony presented, leave this Court firmly convinced Counsel's decision to not have Applicant undergo evaluation for criminal responsibility was not objectively unreasonable when examined under reasonable professional norms. Accordingly, Applicant has failed to prove deficiency.

Applicant has failed to show there is a reasonable probability that had Counsel requested such an evaluation, Dr. Schwartz-Watts would have returned a report finding Applicant lacked criminal responsibility at the time of the incident. In accordance with the language of S.C. Code Ann. § 17-24-10, "[i]t is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act . . . the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong, or to recognize the particular act charged as morally or legally wrong." The record before this Court and testimony

presented firmly convince this Court Applicant was fully aware of the wrongful nature of his actions at the time of the commission of the crime. Applicant made a recognized and informed decision to carry out the illegal, morally wrong acts knowing the potential consequences he may face as a result. His testimony to the contrary alleging he "blacked out" or otherwise was not cognizant of his actions is wholly not credible and entirely inconsistent with the facts and testimony set forth in the trial record. Applicant has failed to prove he was not criminally responsible at the time of the crimes or that any evaluation conducted before trial would have established he was not criminally responsible. Accordingly, this Court finds Applicant cannot prove resulting prejudice from Counsel's failure to request an evaluation for criminal responsibility.

Failure to Pursue GBMI Verdict

Applicant next contends Counsel was ineffective for failing to pursue a GBMI verdict of at trial. Applicant argues such a verdict could have potentially changed Applicant's quality of life at SCDC.

Counsel testified Applicant was facing life without parole ("LWOP") on the ABWIK charge under S.C. Code Ann. § 17-27-45. The State served notice of intent to seek LWOP, which Counsel discussed with Applicant during their pre-trial meetings to ensure Applicant was well aware of the potential risks of going to trial. Counsel explicitly waived requesting a GBMI verdict during the pre-trial Blair hearing because such a verdict would not prevent Applicant from receiving a LWOP sentence. Counsel discussed with Applicant that a GBMI verdict would not prevent him from serving a LWOP sentence. Applicant made clear he wanted to be able to walk out of jail one day; therefore, Counsel's decision not to pursue GBMI was based upon Applicant's wishes. Counsel conceded he did not specifically investigate the conditions of confinement for a GBMI inmate, but assumed the difference entailed housing at a mental health hospital until such time as doctors approve introduction to general population.

On cross-examination, Counsel testified he met with Applicant before trial several times and was able to review with him the entirety of the discovery materials, which Counsel described as very condemning. Counsel noted during their discussions, Applicant voiced his expectations of Counsel's representation, which focused on the idea that Applicant did not want to receive a LWOP sentence and wanted to one day walk out of SCDC as a free man. Because of that specific goal, Counsel believed pursuing a GBMI verdict was imprudent. Further, in his decade

of experience as a criminal defense attorney, Counsel had seen juries settle or compromise on a verdict of GBMI when faced with several options. With that in mind, Counsel did not want to present the jury with another option which would ultimately result in a LWOP sentence. It was his strategy to essentially argue Applicant's lack of intent mitigated his conduct down to merely Assault and Battery of a High and Aggravated Nature, as such a crime would not invoke a mandatory LWOP sentence under S.C. Code Ann. § 17-27-45.

Schwartz-Watts testified thereafter as to her familiarity with mental health institutions and treatment at SCDC. There is a hospital for mentally ill inmates on the SCDC grounds at Kirkland Institution (Gilliam Psychiatric Hospital). In instances where a defendant is found GBMI at trial, he is sent to Gilliam instead of the routine Reception and Evaluation (R&E) Center at Kirkland. She noted mental health counselors do work at the R&E Center and can send inmates to Gilliam if they perceive mental health issues during the R&E process, but stated GBMI patients housed at Gilliam generally receive quicker mental health treatment. Schwartz-Watts said the ultimate goal is to release the GBMI inmates in Gilliam to general population after treating them. The vast majority of inmates at Gilliam are eventually released to the general prison population. Those inmates convicted as GBMI, she said, are designated as such for the entirety of their time with SCDC, which may or may not help in providing them with further mental health treatment.

Applicant knew the State was seeking a LWOP sentence on the ABWIK charge at trial and he recalled discussing his mental health issues with Counsel. He alleged Counsel never discussed a possible GBMI verdict with him, nor did they discuss the possible benefits of such an outcome. Again, Applicant recognized it was wrongful to shoot the victim in this instance and to carjack him. He acknowledged he hid the items used in the incident under the back stairs of his house because he knew they would be incriminating. Applicant did not recall the shooting or driving away in the victim's car and said he only realized what he had done was wrong upon his wife telling him so.

This Court finds Counsel was not ineffective in failing to investigate, prepare or pursue a GBMI verdict on Applicant's behalf in this instance. Applicant's testimony that Counsel never discussed such an option with him and that Applicant did not understand the wrongful nature of his conduct sufficient to justify a GBMI verdict is entirely not credible. Conversely, Counsel's

testimony as to his discussions with Applicant about a potential GBMI verdict and his rationale for not pursuing such is credible.

Based on Counsel's credible testimony, Applicant's request was that Counsel's main focus was to ensure Applicant did not receive a LWOP sentence on the ABWIK charge. With this as the primary focus of his representation, Counsel made an objectively reasonable decision to forego any attempt to obtain a GBMI verdict, as it would result in the precise result Applicant sought to avoid (a LWOP sentence). Allowing such a verdict to be considered by the jury would simply allow the jurors to consider other possible verdicts pursuant to which a LWOP sentence could be imposed. By eliminating the GBMI as an option, only a verdict of guilty as charged would result in a LWOP sentence. This Court finds Counsel articulated a valid and reasonable trial strategy in this regard in accordance with Applicant's explicit, unambiguous desire to avoid a LWOP jail sentence. "Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective." Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992). Accordingly, this claim is without merit.

Further, this Court finds Counsel's informed decision not to further investigate or prepare an argument for a GBMI verdict to have been objectively reasonable, as it was based entirely on the information and requests supplied to him by Applicant. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or action" as "[c]ounsel's actions are usually based, quite properly, on informed strategic decisions made by the defendant and on information supplied by defendant." Strickland, 466 U.S. at 691, 104 S.Ct. at 2066. "In particular, what investigation decisions are reasonable depends critically on such information." Id. With Counsel's credible testimony as to Applicant's express desires for the outcome of the case, it is clear Counsel's performance was objectively reasonable. Therefore, this Court finds no deficient performance in this regard.

Further, while this Court need not turn to the prejudice prong of the analysis having found Counsel's performance to have been objectively reasonable, this Court would further note Applicant has failed to prove resulting prejudice under the guiding standard set forth under Strickland. Applicant contends had he been found "guilty but mentally ill" at trial, his quality of life at SCDC would have been different. This claim misinterprets the prejudice standard used in evaluating claims of ineffective assistance of Counsel and is entirely without merit.

"When a defendant challenges a conviction, the question" to be considered by the court in measuring prejudice "is whether there is a reasonable probability that, absent the errors, the fact-finder would have had a reasonable doubt respecting guilt." Strickland, 466 U.S. at 695, 104 S.Ct. at 2068- 2069. The South Carolina Supreme Court has interpreted this standard for proving resulting prejudice as set forth in Strickland, stating "[t]he second prong of the Strickland test requires a showing that the deficient performance prejudiced the defendant to the extent 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 118, 386 S.E.2d at 625. "To return a verdict of 'guilty but mentally ill' the burden of proof is upon the State to prove beyond a reasonable doubt to the trier of fact that the defendant committed the crime, and the burden of proof is upon the defendant to prove by a preponderance of the evidence that when he committed the crime he was mentally ill", meaning "he had the capacity to distinguish right from wrong or to recognize his act as being wrong . . . but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law." S.C. Code Ann. § 17-24-10 (A) & (B). Applicant has failed to convince this Court there is a reasonable probability that had Counsel prepared and presented an argument for a verdict of GBMI, the jury would have returned such a verdict. Therefore, this Court finds no reasonable probability of a different result in the proceeding and, thus, no prejudice. That is the proper analysis to be conducted by this Court.

Applicant's claim as to prejudice resulting from the difference in his quality of life at SCDC had he been found GBMI is both erroneous and a misapplication of the test for resulting prejudice under Strickland. Applicant's conditions of confinement are not within the purview of the sentencing judge and are entirely corollary to the result of the proceeding, which is the measure for prejudice. Therefore, Applicant's contention regarding the conditions of confinement is wholly without merit and of no relevance to this Court's prejudice analysis.

Failure to Request Recusal of Solicitor's Office or Change of Venue

Applicant finally contends Counsel was ineffective for failing to move for recusal of the Fifth Circuit Solicitor's Office from prosecuting the case, or alternatively requesting a change of venue because the victim was a practicing attorney in the Columbia area and the incident occurred within close proximity of the Richland County Courthouse.

Counsel testified the victim, Darryl Hawkins, was an attorney whose office was nearby at the time the incident occurred. Neither Counsel nor the prosecuting solicitors were familiar with Mr. Hawkins in either a professional or personal capacity prior to the trial. The shooting occurred next to the Richland County Courthouse on Main Street. The Solicitor's Office is located in the Courthouse. Counsel did not consider filing a motion for change of venue or recusal of the Fifth Circuit Solicitor's Office because the victim did not practice criminal law and none of the parties involved in the case were familiar with the victim. Counsel testified "a lot of crime" occurs on Main Street which ends up being prosecuted at the Richland County Courthouse. He did not believe the proximity to the courthouse was sufficient reason to ask for change of venue. Counsel did not believe having the case heard in any other county would have helped change the outcome of the case, but if the solicitors had been familiar with the victim he may have considered those motions more seriously.

Based on Counsel's credible testimony and a review of the record, this Court finds this claim to be without merit. First, Counsel was not objectively unreasonable in his evaluation of the motions for change of venue and in opting not to file such a motion under the circumstances. Applicant has failed to produce anything to this Court to show victim's occupation as a practicing attorney in Richland County in any way affected the jury's ability to be fair and impartial. Further, Applicant has failed to convince this Court that such a motion would have been granted by the trial court and the outcome of the case would have been different in a new venue. Finally, Applicant has failed to establish any juror prejudice.

A motion for change of venue is addressed to the sound discretion of the trial judge and subject to an abuse of discretion standard on appeal. See e.g. State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (Ct. App. 2008). "When a trial judge grants or denies a motion for change of venue after adequate *voir dire* of prospective jurors, the decision will not be overturned absent extraordinary circumstances." State v. Woods, 382 S.C. 153, 157, 676 S.E.2d 128, 131 (2009). On a motion for change of venue, the moving party has the burden of demonstrating actual juror prejudice. State v. Caldwell, 300 S.C. 494, 388 S.E. 2d 816 (1990). The record reflects the trial judge undertook thorough and adequate *voir dire* of the jury panel prior to the trial, during which no jurors indicated a familiarity with the victim. Accordingly, this Court finds this claim is entirely without merit and Counsel was not ineffective in this regard.

Further, this Court likewise finds Counsel's decision not to move for recusal of the Solicitor's Office from prosecuting the matter to have been objectively reasonable as well. Counsel's credible testimony reflects none of the parties involved in the matter, including the prosecuting solicitors, were familiar with the victim in either a professional or personal capacity. Therefore, Applicant has failed to establish any evidence to provide a basis for such a motion. Further, Applicant has failed to prove any actual conflict existed which would have resulted in the motion being successful, or that the Fifth Circuit Solicitor's Office's involvement resulted in any prejudice to his case. "[A]n Appellant who seeks disqualification of a Solicitor's Office must show actual prejudice." State v. Bell, 374 S.C. 136, 142, 646 S.E.2d 888, 891 (Ct. App. 2007), citing State v. Chisolm, 312 S.C. 235, 439 S.E.2d 850 (1994).

Therefore, this Court finds Applicant has failed entirely to prove Counsel was objectively unreasonable for not filing motions for change of venue and recusal of the 5th Circuit Solicitor's Office. Applicant has also failed to prove those decisions resulted in prejudice to his case. Accordingly, these claims are denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 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.


ALISON RENEE LEE
Presiding Judge
Fifth Judicial Circuit

April 25, 2013
Columbia, South Carolina.

arl
#13

WITNESSES

(S) INV KE REESE - CPD

DOCKET NO. 2006-GS-40-4741

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

42

ARREST WARRANT NUMBER

K133664

ERIC MANCE

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: SEP 13 2006

VERDICT

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

Indictment for

NOTED
I, the undersigned, hereby certify that the above is a true and correct copy of the original file of the case.
J. M. CHANDLER
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

to the Grand Jury.

Defendant

Defendant

Witness:

C.C.C. PLS. AND G.S.

Foreperson of Petit Jury

Date:

776

After being fully advised as to my

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 13, 2006, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Eric Mance did in Richland County on or about June 2, 2006, commit robbery by feloniously taking from the person or presence of Daryl Hawkins by means of force or intimidation goods or monies of Daryl Hawkins, such goods or monies being described as a car, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichland

VS.

Eric Marce

AKA:

Race: BSex: M

Age: _____

DOB: _____

SS#: _____

Address: _____

City, State, Zip _____

DL# _____

SID# _____

2006

INDICTMENT/CASE#:

- GS -

4041
4702AW#: K133664Date of Offense: 6-2-06S.C. Code §: 16-11-330(A)CDR Code #: 0111319☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: ARin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0111319☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☒ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:



Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE ^{without parole} days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35-13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Barbara A Scott

Clerk of Court/Deputy Clerk

Court Reporter: D. Helms

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fu

Other: _____

☐ Appointed PD or appointed the court clerk to pay the fee
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2010-00000000Sentence Date: August 8, 2006
2010-00000000
 SOUTH CAROLINA

WITNESSES

779

(S) INV K E REESE - CPD

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

ARREST WARRANT NUMBER

K133665

42

THE STATE
VS.

ERIC MANCE

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury SEP 13 2006
No bail back

VERDICT

Guilty

Indictment for
ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620
CDR Code: 0014
Class FEL-CV)

Heather Pendleton August 27, 2008
Foreperson of Petit Jury
Date:

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment of to

CERTIFIED TRUE COPY
OF ORIGINAL FILED
COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 13, 2016 the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That Eric Mance did in Richland County on or about June 2, 2006, with malice aforethought commit an assault and battery upon one Daryl Hawkins with intent to kill the said victim. All in violation of §16-03-620 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.Eric ManceAKA: _____
Race: B Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____2006 INDICTMENT/CASE#: 4739
- GS - 40A/W#: K133665
Date of Offense: 6-2-06
S.C. Code §: 16-3-620
CDR Code #: 0 / 0 / 1 / 4☐ CASE RESTORED
SENTENCE SHEET
☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: ABWIKin violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 1 / 4
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC ☒ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (Defendant initiThe plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kan Gun
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE without parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of
\$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years
and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fu

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TF
Requires \$500 be paid to Clerk during probation.Barbara A. Scott
Clerk of Court/ Deputy ClerkCourt Reporter: D. Helms

PRESIDING JUDGE

Judge Code: 2 / 1 / 2 / 1 / 1Sentence Date: August 27, 2008

SOUTH CAROLINA

WITNESSES

(S) INV. KE REESE - CPD

DOCKET NO. 2006-GS-40-4738

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006
42

ARREST WARRANT NUMBER

K133667

THE STATE
vs.

ERIC MANCE

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: SEP 13 2006

VERDICT

Guilty

Indictment for
POSSESSION OF A PISTOL BY A
PERSON CONVICTED OF A CRIME OF
VIOLENCE

SC Code: 16-23-30(a)(1)
CDR Code: 2364
Class FEL/F

Quentin Pendleton August 23, 2008
Foreperson of Petit Jury
Date:

After being fully advised as to my
legal rights, I hereby waive present
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or its

CERTIFIED TRUE COPY
COUNTY

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 13, 2006 Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A PISTOL BY A PERSON CONVICTED OF
A CRIME OF VIOLENCE**

That Eric Mance did in Richland County on or about June 2, 2006, willfully and unlawfully, after having been convicted of a crime of violence to wit: Assault and Battery with Intent to Kill, purchase and/or possess an unlawful weapon, to wit: a .38 cal. pistol. All in violation of SC Code of Laws § 16-23-30.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

RichlandEric Mance

AKA:

Race: BSex: M

Age: _____

DOB: _____

SS#: _____

Address: _____

City, State, Zip _____

DL# _____

SID# _____

INDICTMENT/CASE#:
2006 - GS - 40 - 4738AW#: K133667Date of Offense: 6-2-06S.C. Code §: 16-23-30(a)(1)CDR Code #: 2 / 3 / 6 / 4☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Poss of Pistol by a person convicted of a Violent Crimein violation of § 16-23-30(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2 / 3 / 6 / 4☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lam C. Mel
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of

\$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years

and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:	\$
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

Barbara A. Scott/cr

Clerk of Court/ Deputy Clerk

Court Reporter: D. Helms

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fur

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid original during probationPRESIDING JUDGE: [Signature]Judge Code: 2 / 1 / 2 / 1Sentence Date: August 27, 2008