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S.C. SUPREME COURT

Form Approved by
S.C. Attorney General
July 28, 1980
SCA 128

ARREST WARRANT
E-049225
STATE OF SOUTH CAROLINA
☐ County/ ☐ Municipality of
Mount Pleasant
THE STATE
against
ANTONIO KINLOCK aka TIG TIG
Address: [REDACTED]
Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: B Height: 5' 4 Weight: 130
OL State: DL: Unknown
DOB: [REDACTED] Agency ORI#: SC0100300
Prosecuting Agency: MPD
Prosecuting Officer: Det. A.B. Kerestury
Offense: MURDER
Offense Code:
Code/Ordinance Sec. 16-3-10
This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to law.
Signature of Judge (L.S.)
Date:

RETURN
A copy of this arrest warrant was delivered to
defendant **Antonio Kinlock**
on **4-28-94**
Stanley E. Davis
Signature of Constable/Law Enforcement Officer
RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Mount Pleasant
AFFIDAVIT
Personally appeared before me the affiant **Det. A.B. Kerestury**
being duly sworn: deposes and says that defendant **ANTONIO KINLOCK aka TIG TIG**
did within this county and state on **April 17, 1994** violate the criminal laws of
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Mount Pleasant
in the following particulars:
DESCRIPTION OF OFFENSE: **MURDER 16-3-10**
I further state that there is probable cause to believe that the defendant named above did con-
the crime set forth and that probable cause is based on the following facts:
SEE ATTACHED AFFIDAVIT

Sworn to and subscribed before me
on **April 28, 1994**
Signature of Affiant: **Det. A.B. Kerestury**
Affiant's Address: [REDACTED]
Affiant's Telephone: [REDACTED]
Signature of Issuing Judge: **Francis J. Cornely** (L.S.)

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Mount Pleasant
ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe
on **April 27, 1994** defendant **ANTONIO KINLOCK aka TIG TIG**
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of Mount Pleasant) as set forth below:
DESCRIPTION OF OFFENSE: **MURDER 16-3-10**
Now, therefore, you are empowered, and directed to arrest the said defendant and bring him or her be-
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
defendant at the time of its execution, or as soon thereafter as is practicable.
Francis J. Cornely (L.S.)
Judge's Address: **100 Ann Edwards Lane**
Judge's Telephone: **MT. Pleasant, SC 29464**
Issuing Court: ☐ Magistrate ☒ Municipal ☐ City

DEFENDANT COPY

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

GENERAL SESSIONS COURT
SENTENCE MURDER
16-3-10 JURY VERDICT - GUILTY
(116) CASE NO. 94-GS-10-3523
TICKET/WARRANT NO. E049225
TICKET WARRANT NO. _____

The defendant, Antonio D. Kinloch, is committed to the State Dept.
of Corrections / County Detention Center / under Youthful Offender Act for a term of LIFE IMPRISONMENT days/months/
years and/or to pay a fine of \$ _____ provided the sentence be suspended upon the service of
_____ days/months/years and/or payment of \$ _____ plus pay/waive costs and assess-
ment as applicable*, the balance suspended with probation for _____ months/years.
Special conditions: _____

Restitution (YES/NO)\$ _____ /3% _____ Total \$ _____
Weekly/Monthly \$ _____
to Clerk for _____

Public Defender Fund\$ _____
Date: June 14, 1995

[Signature]
Resident/Presiding Judge, Ninth Judicial Circuit

Fine\$ _____
Law Enforcement and Hall
of Fame\$ _____
Community Corrections
Assessment/Waive Indigent\$ _____
25% of Fine or \$50.00\$ _____
DUI Test, if Applicable\$ _____
10.00 G.S. Assessment\$ _____
3% County, if Applicable\$ _____
Indigent Defense Fee\$ _____
Total\$ _____

INFORMATION ON DEFENDANT

Age: _____ S.S. No. _____
M ☒ F _____ Married _____ Single _____
Date of Birth: _____
Attorney: T. Anderson

ALL PAYMENTS MUST BE MADE BY CASH
MONEY ORDER OR CASHIER CHECK. WE
CANNOT ACCEPT PERSONAL CHECKS.

Clerk of County/Deputy Clerk
White copyto Clerk
Canaryto Detention Center
Pinkto Probation
Goldenrodto Defendant
Greento Solicitor

CLERK OF COURT
2144 MELBOURNE AVE.
CHARLESTON, SC 29405
740-5700

OCA# 94008604

AFFIDAVIT

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
Town of Mount Pleasant**

Personally appeared before me, a Magistrate of this County, one Det. Amy B. Kerestury, Mount Pleasant Police, who first being duly sworn deposes and says that one ANTONIO KINLOCK did within the Town of Mount Pleasant, County of Charleston, State of South Carolina, on or about the 27th day of April 1994, did violate the Criminal Code of Laws of South Carolina in the following particulars:

Violation Section 16-3-10 of the Criminal Code of Laws of South Carolina, 1976, as amended, MURDER.

The affiant states there is probable cause to believe that the defendant did commit the crime set forth, and that such probable cause is based upon the following facts:

That on or about 27 April 1994, at approximately 9:30 PM, while at Jenkins Homes, in the Town, county and State aforesaid, one Eddie Palmer was shot and mortally wounded, during a fight among several individuals. That the said Eddie Palmer subsequently died from his wounds.

That on or about 28 April 1994, one Eddie Jermain Terry admitted to officers of the Mount Pleasant Police that he had been present when the confrontation occurred on the night of 27 April 1994, at the Jenkins Homes in Mount Pleasant. That the said Eddie Jermain Terry further stated that he personally observed the said ANTONIO KINLOCK also known as TIC TAG, shoot the victim with a pistol, against the form of the Statute, and that the said Eddie Jermain Terry and the affiant, through investigation, are witnesses to prove the same in such case made and provided against the peace and dignity of the

94-05-RB-1507

WITNESSES

JOHN BURNETT AND/OR

BOB BALCERZAK

KERESTURY, MPPD

OCA#: 94008604

ARREST WARRANT NO.

ACTION OF GRAND JURY

TRUE BILL 7-13-94

James L. Haffner
Foreman of Grand Jury

VERDICT

Guilty - Murder

James L. Haffner 6/14/95
Foreman of Petit Jury Date:

ROCKET NO. 94-GS-10-3523

The State of South Carolina

County of CHARLESTON

COURT OF GENERAL SESSIONS

~~XXXXXX~~ JULY TERM 1994

THE STATE

vs.

ANTONIO DECATUR KINLOCK

DOA: APRIL 28, 1994

AW#: E049225

Indictment for

MURDER

- Exhibit - Self defense / Judge, Solicitor - agreed -

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THE COURT: ALL RIGHT, FINISH IT.

MS. CUNNINGHAM: YOUR HONOR, I HAVE REVIEWED THEM.

THE COURT: ALL RIGHT.

MS. ANDERSON, THE COURT IS WAITING. ARE YOU READY TO PROCEED ON THE REQUESTS TO CHARGE?

MS. ANDERSON: YES, YOUR HONOR.

THE COURT: ALL RIGHT. WE'LL TAKE UP THE STATE'S FIRST. THE STATE REQUESTS ONE, TWO, THREE, FOUR. ANY OBJECTIONS TO THOSE REQUESTS BY THE DEFENSE? IF SO, STATE THE OBJECTION AND WHICH REQUEST YOU OBJECT TO.

MS. ANDERSON: YOUR HONOR, I THINK BASICALLY ALL FOUR OF THESE REQUESTS REGARDING MALICE ARE COVERED IN THE SAME CHARGE THAT I REQUEST REGARDING MALICE.

THE COURT: THE QUESTION, MS. ANDERSON -- AND I APOLOGIZE FOR INTERRUPTING YOU BECAUSE YOU DON'T RESPOND TO MY REQUEST -- THE QUESTION IS, DO YOU OBJECT TO IT AS BEING AN IMPROPER CHARGE ON THE LAW? IF IT'S A CORRECT PRINCIPLE OF THE LAW THEN, OF COURSE, WHAT WOULD BE THERE -- WHY WOULD THERE BE AN OBJECTION? THE QUESTION IS, IS IT A CORRECT PRINCIPLE OF LAW---

MS. ANDERSON: YES, YOUR HONOR.

THE COURT: ALL RIGHT.

MS. ANDERSON: I BELIEVE THEY ARE CORRECT PRINCIPLES OF THE LAW.

1 THE COURT: OKAY. GOOD.

2 AS TO THE DEFENSE REQUESTS, SHE'S SUBMITTED
3 SIXTEEN NUMBERED; ONE HAS BEEN WITHDRAWN, NUMBER FOUR WAS
4 THROWN OUT BECAUSE IT WAS REPETITIVE TO NUMBER THREE. TAKE
5 THEM IN THE ORDER, IF YOU WILL, JUST PLEASE TELL ME AS TO
6 ANY OBJECTIONS TO THE CHARGE.

7 MS. CUNNINGHAM: YOUR HONOR, I'M SORRY, IS NUMBER
8 ONE -- YOU SAID IT'S---

9 THE COURT: NO, MA'AM. NUMBER THREE, FOUR,
10 REPETITIVE, THEY WERE THE SAME.

11 MS. CUNNINGHAM: OKAY.

12 THE COURT: SO I THREW FOUR OUT.

13 MS. CUNNINGHAM: OKAY.

14 THE COURT: THEY WERE THE SAME. SO THERE ARE
15 FIFTEEN. THERE'S ONE, TWO, THREE, SKIPPING FOUR, NOW FIVE
16 THROUGH SIXTEEN.

17 MS. CUNNINGHAM: YOUR HONOR, ASSUMING WE HAVE
18 OURS IN THE SAME ORDER, I HAVE NUMBER ONE, THE SELF-DEFENSE
19 CHARGE.

20 THE COURT: YES, MA'AM.

21 MS. CUNNINGHAM: IT WOULD BE THE STATE'S POSITION
22 THAT THERE HAS BEEN NO EVIDENCE AT ALL OF A SELF-DEFENSE
23 AND IT WOULD BE IMPROPER TO CHARGE SELF-DEFENSE IN THIS
24 CASE.

25 THE COURT: LET ME HEAR YOU ON THAT, MS.

1 ANDERSON.

2 MS. ANDERSON: YOUR HONOR, I BELIEVE THAT A
3 NUMBER OF THE STATE'S WITNESSES INDICATED THAT, IN FACT,
4 THERE WAS SELF-DEFENSE IN THIS CASE. THERE WAS TESTIMONY
5 THAT -- THAT DEEK, RICHARD WASHINGTON, BROUGHT ON THE
6 INCIDENT BY FLASHING A GUN OR WHAT APPEARED WHAT COULD HAVE
7 BEEN A GUN, AND THAT CAUSED BENNY FISHBURNE TO -- TO GRAB
8 HIM. AT THAT POINT, PHAROAH CAME OUT.

9 THE COURT: LET'S JUST STOP A MINUTE, MS.
10 ANDERSON. IT'S NOT SELF-DEFENSE IN THE ORDINARY SENSE AT
11 ALL. THERE IS NO EVIDENCE THAT HE WAS DEFENDING HIMSELF IN
12 THIS CASE. IF SELF-DEFENSE EXISTED ALL THAT HAS TO BE
13 PREMISED UPON DEFENSE OF ANOTHER.

14 MS. ANDERSON: I WAS GETTING TO THAT, YOUR HONOR.

15 THE COURT: WELL, LET'S GET RIGHT TO THE POINT.
16 WE NEED TO QUIT JUMPING AROUND.

17 MADAM PROSECUTOR, WHY WOULDN'T -- WHAT ABOUT THE
18 EVIDENCE OF THE DEFENSE OF ANOTHER? YOU HAVE THE RIGHT TO
19 ACCEPT DEFENSE IF YOU ARE DEFENDING A RELATIVE OR FRIEND.
20 OF COURSE, THE SAME REQUIREMENTS APPLY AND THAT IS THAT, OF
21 COURSE, YOU CANNOT BE AT FAULT WITHOUT BRINGING ON THE
22 DIFFICULTY, OBVIOUSLY, AND YOU REACT ON APPEARANCES, AND
23 THAT YOU MUST USE SUCH REASONABLE FORCE, AND YOU HAVE THE
24 DUTY TO RETREAT. THE PERSON WHO DEFENDS ANOTHER, IN
25 DEFENSE OF ANOTHER, STEPS IN THE SHOES OF THE OTHER, SO

1 THAT PERSON MUST HAVE HAD THE RIGHT TO SELF-DEFENSE.

2 ISN'T THE TESTIMONY IN THIS CASE THAT THE VICTIM
3 IN THIS CASE -- AND I'M NOT SAYING IT'S THE TRUTH BUT
4 THERE'S TESTIMONY THERE, WHEN HE CAME OUT OF HIS HOUSE, AND
5 THEN WENT BACK IN, AND WHEN HE CAME BACK OUT THAT HE HAD
6 SOMETHING IN HIS HAND? NOW, THERE'S -- SOMEWHAT ILLUSORY
7 AS TO WHAT WAS IN HIS HAND, WHETHER IT WAS A WEAPON.
8 THERE'S BEEN NO TESTIMONY THAT IT WAS A GUN BUT YOU CAN
9 HAVE A WEAPON OTHER THAN IT BEING A GUN. SOME INFERENCE IT
10 MAY HAVE BEEN A FLASHLIGHT, AND THAT HE GOT INTO A FIGHT
11 WITH AT LEAST ONE OR MORE PEOPLE. AND THERE'S SOME DISPUTE
12 ABOUT THAT, WHETHER OR NOT IT WAS ONE, TWO, OR THREE. AND
13 THAT HE WAS GETTING THE BEST OF ONE OF THEM.

14 AND THE TESTIMONY IS THAT THE DEFENDANT THEN SHOT
15 THE VICTIM. NOW, ISN'T THAT PRETTY MUCH THE SCENARIO OF
16 FROM ONE POINT OF VIEW AS TO WHAT THE TESTIMONY IS IN THE
17 CASE?

18 MS. CUNNINGHAM: I THINK SO, YES, YOUR HONOR.

19 THE COURT: WELL, FROM THE LAW OF SELF-DEFENSE
20 YOU HAVE THE RIGHT TO DEFEND A CLOSE FRIEND OR RELATIVE.
21 THE TESTIMONY, AS I UNDERSTAND, THE PERSON ON THE GROUND
22 WAS A CLOSE FRIEND. THEY ALL CAME OVER TOGETHER, AT LEAST
23 AN INFERENCE OF THAT. AND, ARGUABLY, IF YOU WANT TO
24 BELIEVE IT IS THAT THE VICTIM STARTED IT BY VIRTUE OF
25 JUMPING ON THE OTHER PERSON, EVEN THOUGH, ARGUABLY, IT

1 COULD BE ARGUED THAT THE ALTERCATION WAS ALREADY GOING ON
2 BECAUSE OF DEEK AND THE OTHER GUY.

3 BUT, YOU KNOW, I'M NOT CONCERNED WITH
4 BELIEVABILITY. I'M MORE CONCERNED WITH WHETHER OR NOT
5 THERE'S ANY EVIDENCE UNDER ANY FORM, IF BELIEVED, WOULD
6 FIT. SO AND I ASK YOU, LEGITIMATELY HOW CAN I GET AROUND
7 NOT CHARGING THE JURY ON SELF-DEFENSE UNDER THE PRINCIPLE
8 OF DEFENSE OF ANOTHER? PLEASE TELL ME HOW I CAN DO THAT,
9 KNOWING THE FACTS OF THIS CASE.

10 I'M NOT SAYING THAT THEY'RE THE ONLY FACTS, BUT
11 TELL ME HOW, WHEN OUR SUPREME COURT SAYS THAT IF THERE ARE
12 ANY FACTS WHICH, IF BELIEVED, WOULD SUPPORT THAT POSITION.
13 I'M NOT ENTITLED TO DECIDE WHO I'M GOING TO BELIEVE. I'M
14 ONLY PERMITTED TO SAY, ARE THERE ANY FACTS WHICH, IF
15 BELIEVED, WOULD FIT?

16 MS. CUNNINGHAM: YOUR HONOR, IT WOULD BE THE
17 STATE'S POSITION THAT THERE IS NO EVIDENCE THAT THE
18 DEFENDANT WAS FAULTLESS IN BRINGING ON THE ALTERCATION.
19 THERE IS NO EVIDENCE THAT HE WAS UNABLE TO FLEE. THERE WAS
20 NO EVIDENCE THAT THERE WAS A NEED TO DEFEND HIS LIFE OR
21 SOMEONE ELSE'S LIFE.

22 THE COURT: WELL, YOU'RE SAYING THAT THERE'S NO
23 EVIDENCE. OF COURSE, YOU MAY CLEARLY ARGUE THE USE OF
24 FORCE MAY HAVE BEEN EXCESSIVE, BUT YOU'VE GOT TO REMEMBER
25 WHEN YOU ARGUE ABOUT DEFENSE OF ANOTHER, YOU DON'T ARGUE

1 THE DEFENDANT; YOU ARGUE THE PERSON THAT HE WAS DEFENDING.
2 BUT YOU'RE RIGHT, THERE IS NO EVIDENCE IN THIS CASE THAT
3 WOULD SUPPORT A SELF-DEFENSE OF THE DEFENDANT. HE'S
4 SAYING, "I HAVE SELF-DEFENSE OF ANOTHER," WHICH PUTS HIM IN
5 SHOES OF THE PERSON.

6 SO THE FACTS OF THE CASE ARE, AT LEAST ONE VIEW
7 OF IT, IS THAT THE PERSON THAT THE VICTIM WAS BEATING ON,
8 THAT HE WAS SUBSTANTIALLY BIGGER THAN HIM, AND THAT HE HAD
9 HIM ON THE GROUND, AND WAS GETTING THE BETTER OF HIM.

10 NOW, THE QUESTION THEN IS WHETHER OR NOT THE
11 FORCE USED BY THE DEFENDANT WOULD HAVE BEEN APPROPRIATE
12 FORCE OR EXCESSIVE FORCE, IF THE PERSON WHO WAS BEING
13 ASSAILED BY THE DEFENDANT? DO YOU SEE WHAT I MEAN? BY THE
14 VICTIM OF HIM? IT'S THE PERSON WHO WAS ON THE GROUND. YOU
15 LOOK -- YOU HAVE TO PUT YOURSELF IN HIS SHOES 'CAUSE IT'S
16 DEFENSE OF ANOTHER.

17 YOU ONLY HAVE THE RIGHT TO USE SUCH FORCE THAT HE
18 WOULD HAVE HAD THE RIGHT TO USE. SEE, WE'RE NOT JUDGING
19 THE DEFENDANT, WE'RE NOW JUDGING THE PERSON ON THE GROUND,
20 'CAUSE THAT'S WHAT HE SAID, THAT'S THE DEFENSE OF ANOTHER.
21 SEE, HE'S NOT SAYING, "I WAS DEFENDING MYSELF."

22 WHATEVER HE DOES HAS TO COMPORT WITH THE RIGHT OF
23 THE PERSON WHO HE SAYS HE'S DEFENDING, WHETHER IT'S A
24 RELATIVE OR FRIEND. SO THE EVIDENCE MUST SHOW THAT THE
25 PERSON WHO HE SAYS THAT "I AM EXERCISING THE RIGHT OF

1 DEFENSE OF ANOTHER, THAT I WAS NOT THE PERSON THAT BROUGHT
2 ON THE ALTERCATION." SO IF THE PERSON ON THE GROUND WAS
3 THE PERSON WHO STARTED THE ALTERCATION, SELF-DEFENSE
4 DOESN'T APPLY.

5 BUT IF HE WASN'T THE PERSON WHO STARTED IT, THEN
6 WOULD THE CIRCUMSTANCES SUPPORT A FINDING THAT A REASONABLE
7 PERSON, THE PERSON ON THE GROUND, WOULD BELIEVE THAT HE WAS
8 IN IMMINENT DANGER OF RECEIVING SERIOUS BODILY HARM OR
9 INJURY? AND WAS THAT A REASONABLE APPREHENSION AND THAT HE
10 HAD NO OTHER WAY OF RETREATING, EXCEPT TO USE THE FORCE
11 THAT HE USED, WITHOUT CAUSING SERIOUSLY BODILY HARM TO
12 HIMSELF? WHICH IS, IN ESSENCE, SAYING SELF-DEFENSE NOT FOR
13 ME BUT FOR THE PERSON. AND SO I TOOK THE LIFE OF THE
14 VICTIM WHO WE SAY WAS THE AGGRESSOR, WHO -- WE SAY IT WAS
15 REASONABLE AND THE FORCE THAT WAS USED WAS NOT EXCESSIVE,
16 AND WE HAD NO ABILITY TO RETREAT. SEE, THEY WEREN'T ON
17 THEIR OWN PREMISES SO THEY HAD A DUTY TO RETREAT. BUT THE
18 PERSON WHO HAD THE DUTY TO RETREAT, ONCE AGAIN, IS THE
19 PERSON WHO HE'S DEFENDING. SEE, IT'S DEFENSE OF ANOTHER,
20 AND THAT'S GOOD LAW IN SOUTH CAROLINA. IT'S DEFENSE OF
21 ANOTHER.

22 MS. CUNNINGHAM: I UNDERSTAND. YOUR HONOR, I
23 STILL WOULD SUBMIT THAT THERE WAS NO EVIDENCE THAT THE GUY
24 ON THE GROUND, WHETHER IT WAS LARRY FRANKLIN OR OTIS
25 HARPER, WERE FAULTLESS IN BRINGING ON THE ALTERCATION. NOT

1 ONE PERSON SAID THAT THEY WENT OUT THERE FOR ANY OTHER
2 REASON THAN TO SEEK REVENGE AND FIND SOME GUYS TO FIGHT.

3 THE COURT: I HEARD THAT. BUT ISN'T THERE ONE
4 VIEW OF THE TESTIMONY BY AT LEAST ONE WITNESS WHO SAYS THAT
5 THE VICTIM -- AND I'M NOT SAYING THAT THIS IS WHAT HAPPENED
6 BUT AT LEAST A WITNESS SAID IT -- THAT THE VICTIM CAME OUT
7 OF THE HOUSE, TOLD THEM NO GANGING. AT THAT TIME THERE WAS
8 NO GANGING BY ANY TESTIMONY. THERE WAS JUST DEEK AND THE
9 OTHER GUY -- GOES BACK IN THE HOUSE, COMES OUT WITH
10 SOMETHING, AND THEN HE JUMPED ON ONE OF THE GUYS; AND THEN
11 TWO OR THREE. THERE'S ANOTHER VERSION THAT SAID TWO OR
12 THREE JOINED IN WITH HIM.

13 SEE NOW, WHY WOULDN'T THAT SUPPORT A FINDING THAT
14 THE VICTIM WAS THE AGGRESSOR, THE PERSON WHO STARTED THE
15 ALTERCATION, THAT ALTERCATION? NOW, I KNOW WHAT YOU'RE
16 SAYING. YOU'RE SAYING THAT THERE WAS ONE ALTERCATION. BUT
17 ARGUABLY, THERE COULD BE TWO. DO YOU SEE WHAT I MEAN?

18 MS. CUNNINGHAM: YES.

19 THE COURT: SEE, AND THAT'S MY PROBLEM, WERE IT
20 NOT THAT FACTUAL SCENARIO. AND ONCE AGAIN, AS I SAID, I'M
21 NOT TELLING YOU I NECESSARILY FIND THAT THAT WHAT'S THE
22 TRUTH IS. I'M NOT -- THAT'S NOT WHAT I'M PERMITTED TO DO.
23 I DON'T THINK I'VE GOT ANY CHOICE BUT TO GIVE THEM DEFENSE
24 OF ANOTHER. I'LL BE HONEST WITH YOU, I DON'T -- I DON'T
25 THINK THERE'S ANY QUESTION ABOUT IT.

CAROL L. LeFEBVRE, CIRCUIT COURT REPORTER

1 HER REQUEST IS NOT IN THAT FASHION. HER REQUEST
2 IS MORE -- AND I'M NOT GOING TO GIVE IT IN THE FASHION THAT
3 SHE'S GIVEN IT BECAUSE IT'S NOT PROPER THE WAY SHE'S GIVEN
4 IT TO THE COURT. SHE COMPASSES IT AS A PERSON ACTING ON
5 APPEARANCES, SHE DOES NOT SET IT OUT. BUT I'LL GIVE THE
6 DEFENSE OF ANOTHER AND, OF COURSE, THE PRINCIPLE IS HE
7 STANDS IN THE SHOES OF THE PERSON WHO WAS BEING ASSAILED.
8 AND THAT'S THE WAY I'LL GIVE IT 'CAUSE THAT'S WHAT THE
9 FACTS OF THE CASE SUPPORT.

10 HER SECOND REQUEST IS A CORRECT STATEMENT. THE
11 LAW OF SOUTH CAROLINA IS THAT BASICALLY IF THEY HAVE A
12 REASONABLE DOUBT AS TO WHETHER THE STATE HAS PROVED BEYOND
13 A REASONABLE DOUBT THE CRIME OF MURDER, VOLUNTARY
14 MANSLAUGHTER, OR SELF-DEFENSE, THEN THEY MUST RESOLVE THAT
15 DOUBT IN FAVOR OF THE DEFENDANT.

16 MS. CUNNINGHAM: YES, I AGREE.

17 THE COURT: I'LL BE HONEST WITH YOU, I'VE LOOKED
18 AT THE REST OF THE CHARGES THAT SHE'S GOT. ONE SPECIFIC --
19 SHE IS A LITTLE REPETITIVE IN SOME OF THEM BUT THEY'RE
20 CORRECT PRINCIPLES OF LAW. I MEAN, I'M GOING TO PUT IT IN
21 MY GENERAL, I'LL COVER THEM IN MY GENERAL CHARGE. BUT MOST
22 OF THEM, I DIDN'T SEE ANYTHING WITHOUT A CORRECT PRINCIPLE.
23 IF YOU DID, PLEASE SHOW ME AND TELL ME.

24 MS. CUNNINGHAM: NO, YOUR HONOR.

25 THE COURT: LET ME TELL YOU ONE PRINCIPLE THAT

1 NEITHER ONE OF YOU SUBMITTED AND THAT'S THE PRINCIPLE OF
2 MUTUAL COMBAT. SELF-DEFENSE IS NOT A DEFENSE FOR MUTUAL
3 COMBAT.

4 MS. CUNNINGHAM: YOUR HONOR, I HAVE THE CASES ON
5 THAT. THE REASON I DID NOT SUBMIT THAT UP IS BECAUSE I DID
6 NOT THINK THERE WAS GOING TO BE A CHARGE OF SELF-DEFENSE.

7 THE COURT: OKAY.

8 MS. CUNNINGHAM: SINCE THERE IS, THEN I WOULD
9 REQUEST THE MUTUAL COMBAT CHARGE.

10 THE COURT: I'LL BE HAPPY TO. YOU CAN SUBMIT
11 WHATEVER YOU LIKE. AND I HAVE THOSE CHARGES ON IT. BUT AT
12 LEAST ONE THEORY OR SCENARIO WOULD BE THAT MUTUAL COMBAT
13 OCCURRED, AND THAT'S ANOTHER VERSION BECAUSE OF THE
14 TESTIMONY THEY WERE GOING OVER THERE TO FIGHT. SO AND,
15 OBVIOUSLY, IF YOU FIND THAT MUTUAL COMBAT WAS THERE, THEN
16 MUTUAL COMBAT IN AND OF ITSELF EXCLUDES SELF-DEFENSE OR THE
17 DEFENSE OF ANOTHER. IT'S A CORRECT PRINCIPLE OF THE LAW,
18 TOO. OF COURSE, ONCE AGAIN, NOW, IT DOESN'T MEAN THAT IT
19 WOULDN'T BE A SUFFICIENT PROVOCATION FOR MANSLAUGHTER.

20 MS. CUNNINGHAM: I UNDERSTAND.

21 THE COURT: I THINK THAT'S WHERE YOU ARE THERE,
22 UNLESS I HEAR SOME DISAGREEMENT ABOUT THAT OR SOME QUESTION
23 ABOUT THAT.

24 MS. CUNNINGHAM: YOUR HONOR, I HAVE NO OBJECTION
25 TO YOU GIVING YOUR CHARGE ON MUTUAL COMBAT, UNLESS YOU WANT

1 ME TO HAND UP SPECIFIC---

2 **THE COURT:** WELL, I'LL BE HAPPY TO READ TO BOTH
3 OF YOU WHAT I WOULD GIVE IN THAT REGARD SO THAT YOU'LL
4 KNOW. THIS IS BASICALLY IT. OF COURSE, ONCE AGAIN, I
5 THINK YOU'RE ALSO ENTITLED UNDER SELF-DEFENSE THE ISSUE OF
6 EXCESSIVE FORCE. BECAUSE ORDINARILY A PERSON IS NOT
7 JUSTIFIED IN SHOOTING OR EMPLOYING A DEADLY WEAPON AFTER
8 THE ADVERSE HAS BEEN DISARMED AND DISABLED. AND BUT YOU
9 ALSO HAVE THE COROLLARY TO THAT RULE: IF YOU'VE GOT A
10 RIGHT TO FIRE THE FIRST SHOT, YOU'VE GOT THE RIGHT TO SHOOT
11 THE SECOND SHOT, AND THE THIRD AND THE FOURTH.

12 **"MUTUAL COMBAT:** THE PLEA OF SELF-DEFENSE IS NOT
13 AVAILABLE TO ONE WHO USES DEADLY FORCE AGAINST ANOTHER IN
14 MUTUAL COMBAT. MUTUAL COMBAT, WHAT DOES IT MEAN? FOR AN
15 ALTERCATION BETWEEN TWO PARTIES TO CONSTITUTE A MUTUAL
16 COMBAT THERE MUST EXIST A MUTUAL INTENT AND WILLINGNESS TO
17 FIGHT. AND THIS INTENT MAY BE MANIFESTED BY THE ACTS,
18 CONDUCTS OF -- CONDUCT OF THE PARTIES AND THE CIRCUMSTANCES
19 ATTENDING AND LEADING UP TO THE COMBAT.

20 **"WHERE A PERSON VOLUNTARILY PARTICIPATES IN**
21 **MUTUAL COMBAT FOR PURPOSES OTHER THAN PROTECTION, HE CANNOT**
22 **JUSTIFY OR EXCUSE THE INJURY OR DEATH TO HIS ADVERSARY IN**
23 **THE COURSE OF SUCH CONFLICT ON THE GROUNDS OF SELF-DEFENSE,**
24 **REGARDLESS OF WHAT EXTREMITY OR IN IMMINENT PERIL HE MAY BE**
25 **REDUCED TO IN THE PROGRESS OF THE COMBAT, UNLESS AND BEFORE**

1 THE DEADLY FORCE IS USED THAT PERSON WITHDRAWS AND
2 ENDEAVORS IN GOOD FAITH TO DECLINE FURTHER CONFLICT, AND
3 EITHER BY WORD OR ACT MAKES THAT FACT KNOWN TO THE
4 ADVERSARY."

5 SO I WILL TELL THEM, "THAT IF YOU FIND BEYOND A
6 REASONABLE DOUBT THAT THE DEFENDANT AND THE VICTIM IN THIS
7 CASE DID MUTUALLY ENGAGE IN COMBAT AND THAT THE DEFENDANT
8 DID SHOOT OR INJURE THE VICTIM AS ALLEGED BY THE STATE,
9 SUCH THAT HAD THE VICTIM -- SUCH THAT THE VICTIM DIED AS A
10 RESULT OF SAID INJURY, AND THAT AT THE TIME OF THE ACT BY
11 THE DEFENDANT WHICH CAUSED THE RESULTING DEATH WAS DONE
12 WITH MALICE AFORETHOUGHT, THEN HE WOULD BE GUILTY OF
13 MURDER.

14 "HOWEVER, IF THE ACT ALLEGED BY THE STATE, THE
15 SHOOTING OF THE VICTIM, WAS DONE IN THE SUDDEN HEAT OF
16 PASSION UPON A SUFFICIENT LEGAL PROVOCATION AND WAS NOT AN
17 ACT ATTRIBUTED TO MALICE, THEN THE DEFENDANT WOULD BE
18 GUILTY OF MANSLAUGHTER.

19 "IF YOU HAVE A REASONABLE DOUBT AS TO WHETHER THE
20 STATE HAS PROVED SUCH ACT OR ACTS WERE DONE BY THE
21 DEFENDANT WHILE ENGAGED IN MUTUAL COMBAT WITH THE
22 DEFENDANT, OR SUCH ACT WAS DONE IN SELF-DEFENSE AS DEFINED
23 FOR YOU, THE DEFENSE OF ANOTHER, THEN YOU WILL RESOLVE THAT
24 DOUBT IN FAVOR OF THE DEFENDANT AND FIND HIM NOT GUILTY,
25 SINCE SELF-DEFENSE OF ANOTHER IS A COMPLETE DEFENSE."

CAROL L. LefEBVRE, CIRCUIT COURT REPORTER

1 SO THAT'S GENERALLY WHAT WILL BE TOLD TO THEM.
2 ALL RIGHT. NOW, IS THERE ANYTHING ELSE? HAVE YOU FOUND
3 THESE WITNESSES?

4 MS. ANDERSON: YOUR HONOR, ONE OF THEM IS HERE.

5 THE COURT: WHO IS IT?

6 MS. ANDERSON: MR. FISHBURNE.

7 THE COURT: ALL RIGHT. WHERE'S MR. FISHBURNE?

8 MS. ANDERSON: I BELIEVE HE'S OUTSIDE. IF I CAN
9 JUST GO GET HIM?

10 THE COURT: YES, MA'AM.

11 MS. ANDERSON: OKAY.

12 (WHEREUPON, MS. ANDERSON LEAVES
13 THE COURTROOM AND RETURNS WITH MR. FISHBURNE.)

14 THE COURT: WHERE'S MR. FISHBURNE?

15 MS. ANDERSON: RIGHT HERE, YOUR HONOR.

16 THE COURT: MR. FISHBURNE, WOULD YOU COME UP,
17 PLEASE? RIGHT THERE'S JUST FINE. MR. FISHBURNE, WHAT TIME
18 DID THEY TELL YOU TO BE BACK THIS MORNING?

19 MR. FISHBURNE: 9:30.

20 THE COURT: WERE YOU HERE?

21 MR. FISHBURNE: NO. I WAS ON MY WAY HERE. I HAD
22 TO DROP MY CAR OFF AT THE SHOP.

23 THE COURT: HAD THEY SUBPOENAED YOU, MR.
24 FISHBURNE?

25 MR. FISHBURNE: YEAH.

Exhibit - Indictment - ps. ~~8,9~~
- Name Changed at Trial -

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT FOR
MURDER

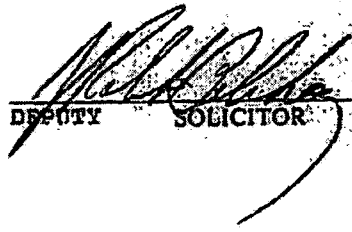
JULY 11, 1994

At a Court of General Sessions, convened on ~~XXXXXXXXXX~~

the Grand Jurors of CHARLESTON County present upon their oath:

THAT ANTONIO DECATUR KINLOCK DID IN CHARLESTON COUNTY ON OR ABOUT
THE 27TH DAY OF APRIL, 1994, feloniously, wilfully and with
malice aforethought kill one Eddie ^{Pharrah} Palmer by shooting Eddie ^{Pharrah} Palmer
with a pistol, and that Eddie ^{Pharrah} Palmer did die in Charleston
County as a proximate result on or about the 27th day of April,
1994, in violation of Section 16-3-10 of the South Carolina Code
of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


DEPUTY SOLICITOR