

1 CROSS EXAMINATION BY MR. QUINN:

2 Q. Mr. Carver, did you give a statement to the police
3 about this case?

4 A. No, sir, because at the time the detective asked me, I
5 was just getting out of surgery and I was on medication.

6 Q. And they didn't ever have you come back to give them a
7 statement?

8 A. No, sir.

9 Q. What about the solicitor's office? Have you met with
10 Mr. Steinberg before?

11 A. Once or twice.

12 Q. And did he ask you to write out a statement or give any
13 statement?

14 A. No, sir.

15 Q. Okay. Why were you living with Kenyatta and Gloria in
16 June of 2002?

17 A. It was the summertime. I was dating the girl. We were
18 selling drugs.

19 Q. And what -- you were selling --

20 A. Pot.

21 Q. -- pills and marijuana?

22 A. No, we were just selling pot.

23 Q. And why did they Kenyatta Yoda?

24 A. The only reason I can tell you is that he had a dog on
25 his arm. I guess his nickname, I guess. I don't know.

1 A. No, sir, I did not.

2 Q. Were you in the chain of custody of any evidence that
3 was collected by others?

4 A. None whatsoever, sir.

5 Q. So your role primarily was that of just backup
6 detective, backup investigator?

7 A. Yes, sir, more of a support role.

8 Q. Were you present during the interview of Robert Joel
9 Smith?

10 A. Yes, sir.

11 Q. All right. And was the procedure and the protocol
12 pretty much the same as you described as for Mr. Hinojós'
13 interview?

14 A. Yes, sir, it was.

15 Q. All right. Was there a waiver taken?

16 A. It was, sir.

17 Q. And was there a subsequent statement taken from him?

18 A. Yes, sir, it was.

19 Q. Was that done in the form of question and question, or
20 was that primarily done as a narrative?

21 A. A narrative as he's telling his story.

22 Q. All right, sir.

23 When did you first arrive on the crime scene, at the
24 crime scene that morning?

25 A. The date it happened, I don't remember the exact time.

1 10:30 in the morning, I believe, somewhere around in that
2 area.

3 Q. And were the victims bodies still at the crime scene?

4 A. There were two bodies on the scene and a victim -- one
5 victim had been transported by EMS for medical.

6 Q. And you didn't -- I think I have asked you this
7 already, but you didn't participate in the collection of or
8 the placing any evidence into property and evidence?

9 A. No, sir.

10 MR. QUINN: Objection, leading.

11 THE COURT: Okay.

12 BY MR. WESTON:

13 Q. Let me rephrase it.

14 Did you participate in the collection of any evidence?

15 A. No, sir, I did not.

16 MR. QUINN: Objection. Asked and answered.

17 THE COURT: We have been over that already.

18 MR. WESTON: All right.

19 That's all I have of this witness.

20 CROSS EXAMINATION BY MR. QUINN:

21 Q. You say that you had this statement notarized?

22 A. Yes.

23 Q. Did the notary see anybody sign the statement?

24 A. Yes, sir, they were brought into the room when all the
25 signatures were done and present in the room when the

1 signatures were signed and saw the defendant sign it.

2 Q. So they were there for four and a half hours?

3 A. No, sir, they were not.

4 Q. Were they there during the provision of the rights?

5 A. No, sir, they were not.

6 Q. And so the first page is notarized, the notary didn't
7 see any of those signatures being attached to?

8 A. On the waiver of rights, no, sir.

9 Q. And if that's the only page that's notarized, then the
10 notary may not be real effective, isn't that right?

11 A. Repeat the question, sir, I'm sorry.

12 Q. Isn't the notary supposed to come in and say I saw so
13 and so sign a document?

14 A. Yes.

15 Q. And I believe your testimony is that the notary was not
16 there during the advise of rights?

17 A. My mistake. I do see where the notary was -- his seal
18 was done -- or her seal was done, I'm sorry, and was in the
19 room when it was the signatures were made. Not during the
20 reading of it, but the signatures are made, they were there,
21 sir.

22 Q. Did you just tell me something different?

23 A. I did, sir, but I was looking at the statement and not
24 the waiver, but they were present because their seal is
25 here. They were brought in the room for their signatures.

1 Q. So they were present throughout the entire --

2 MR. WESTON: Objection.

3 THE WITNESS: They were there for the purposes of
4 signatures.

5 MR. WESTON: Objection, Your Honor.

6 THE COURT: I'm going to let him try to clear it
7 up because it was confusing. Go ahead.

8 MR. QUINN: I'm sorry.

9 BY MR. QUINN:

10 Q. So was the notary present throughout the entire
11 statement?

12 A. No, sir, they were not.

13 Q. Did the notary come in, leave, and come back?

14 A. Yes, sir, they did. They were there just for the
15 purposes of the signatures being notarized, that that was
16 their statement. They saw the signatures being done and
17 notarized that that was their person or that person that was
18 signing the statement.

19 Q. So how many times does the notary come into the room?

20 A. Just twice that I know of, during the statement itself
21 and the waiver of rights.

22 Q. And do you agree that the only thing that's notarized
23 is, in fact, the waiver of rights?

24 A. The waiver and the statements themselves are notarized.

25 Q. And I believe you said that you as investigators

1 normally travel with a laptop, is that correct?

2 A. That's correct.

3 Q. You also normally travel with pen and paper?

4 A. Yes, sir, we do.

5 Q. And was there any reason that Mario physically could
6 not have written the statement?

7 A. He was asked if he would like to write his statement or
8 if he had any objections to Investigator Silvaggio typing
9 his statement on the computer, and that's what he preferred
10 to do.

11 Q. Why don't you try my question?

12 A. Yes, sir.

13 Q. Was there any physical reason that Mario could not have
14 written his own statement?

15 A. No, sir, there was not.

16 Q. Now, on June 25th, when you responded to the scene,
17 didn't you also speak with the neighbor at 162 Woodside
18 Road, Alma Forester?

19 A. There were several other persons on this --
20 investigators that responded. I did not personally speak
21 with them.

22 Q. Investigator Alexander, let me show you your report
23 dated July 1st, 2002. Tell me if that helps refresh your
24 memory.

25 A. I spoke with them and didn't take any statements from

1. them.

2. Q. But now you do remember now at least speaking with Ms.
3. Forester?

4. A. Yes, sir.

5. Q. And were you also involved with serving search warrants
6. on the white Honda Civic and the dark blue Chrysler
7. Imperial?

8. A. Yes, sir.

9. Q. And did you do that with Chris Bryan and Brad Henderson
10. from the ID department?

11. A. From the forensics division, yes, sir.

12. Q. And did Chris Bryan or Brad Henderson seize any
13. evidence on that day?

14. A. I was there for the service. They take care of
15. handling the key evidence that's processed or seized.

16. Q. And I understand. I'm just asking do you remember did
17. they seize any?

18. A. Not that I remember. I'm not sure.

19. Q. Let me show you a report dated July 3rd, 2002, and tell
20. me if it appears that some evidence was, in fact, seized by
21. Officer Bryan?

22. A. Apparently they did take the wheels and tires, yes,
23. sir.

24. MR. QUINN: I don't have any other questions.

25. Thank you.

1 it into evidence.

2 MR. WESTON: All right.

3 BY MR. WESTON:

4 Q. Investigator Silvaggio, before you publish this
5 statement, let me ask you one other question.

6 There is -- a couple other questions. There is a
7 notary seal and signature affixed to the bottom of the page.
8 Can you describe how that came about?

9 A. Yes. At the conclusion of the interview and once Mario
10 Hinojos, Jr. reviewed the statement, initialed the
11 beginning and end of each paragraph, made any corrections,
12 initialed those, and signed each portion of the statement
13 form, I then signed it, Detective Underwood then signed it,
14 Bobby Alexander -- Investigator Bobby Alexander signed it.
15 Subsequent to that interview went into June the 31st, after
16 the midnight hour. And I then requested that Detective Ron
17 Underwood get a notary public for the State of Georgia to
18 come into the room, affirm with Mario Hinojos, Jr. that
19 this is his statement, this is his initials, these are his
20 signatures, and at that point to have them notarize this
21 document, series of documents, and place the seal -- the
22 State of Georgia notary public seal on each of the
23 documents.

24 Q. All right, sir,

25 A. That was conducted.

1 there was blood spatter evidence available? I think you
2 said a panel was removed?

3 A. Yes, sir.

4 Q. And can blood spatter be determined by someone in
5 Greenville County, or do you have to use SLED?

6 A. Someone in Greenville County.

7 Q. And you took tire markings, is that correct?

8 A. Actually took two sections of the road, yes.

9 Q. And seized the tires off the vehicle at some point?

10 A. Yes, we did.

11 Q. Okay. I think Detective Alexander testified about
12 that.

13 Now, let's talk about these statements. Is it routine,
14 or policy, or protocol, whatever word you think is
15 appropriate, to take a statement from an eyewitness to a
16 case?

17 A. Yes, sir.

18 Q. Why wasn't a statement taken from Jason Carver?

19 A. Jason Carver was under medical care. And when an
20 individual is under medical care and subsequent to that on
21 medication, altering-type medication for pain, nerves, such
22 as that nature, it's improper and unethical for a law
23 enforcement officer to take a statement from an individual
24 under those conditions.

25 Q. Is he still on that medication?

1 shooting in South Carolina because they F'd me for stealing
2 my marijuana and I was not going to let them rip me off. I
3 was not going to come across as being weak and then they
4 take advantage of me, for I was going to show them that I
5 was not going to put up with that disrespect. Joel and I
6 were in this together. We both got the guns and we both
7 knew what we were going to do. We were going back to Yoda's
8 trailer and shoot them for what they did to me." His words.
9 Mario Hinojos, Jr.'s words.

10 At the outset of this trial I told you this case
11 would about pride and reputation and a skewed sense of
12 respect and disrespect in this community.

13 I'm not talking about what I heard. I'm not
14 talking about rumor. I'm talking about what he said. You
15 will have this back there with you to look at. We are
16 talking about a cold blooded killer. We are talking about a
17 man who puts his reputation, his respect in the community
18 and his pride way above the lives of three human beings.
19 \$900 worth of marijuana.

20 Let me begin by talking about the law with you.
21 I'm going to be very brief about it. His Honor is going to
22 tell you about the law, and one of the things that he's
23 going to tell you is that what I say and what Mr. Quinn says
24 are not evidence. And that's true. It's just our feeling
25 on what the law is.

1 We have the burden of proof, we being the State.
2 We have to prove to your satisfaction beyond a reasonable
3 doubt Mario Hinojos, Jr.^ took the life of Gloria Heslep
4 with malice aforethought.

5 We have to prove this defendant took the life of
6 Kenyatta Campbell with malice aforethought.

7 If we have proved that to your satisfaction beyond
8 a reasonable doubt, then it would your duty to find him
9 guilty of murder on each one of those counts.

10 We also have to prove this defendant committed an
11 aggravated assault and battery upon Jason Carver with the
12 intent to kill him.

13 How am I going to do all that? Let me explain it
14 right quick. He shot him in the head. My God. What does
15 it take? What's more an egregious? What's more emphasis on
16 intending to kill somebody than to shoot them in the head at
17 point blank range with a revolver? If that's not assault
18 and battery with intent to kill, ladies and gentlemen, I
19 don't know what is.

20 We have to establish that to you beyond a
21 reasonable doubt. I think we have established that.

22 With regard to malice, His Honor will tell you a
23 legal definition of malice. I believe he will tell you
24 something along the line of malice being evidenced by a
25 malignant heart, a heart devoid of human -- of the common

1 human decency.

2 Another thing I think he will tell you is that
3 malice can be inferred by the use of a deadly weapon. This
4 gun. If you take the gun -- if you take a gun and shoot
5 somebody with it, there is enough evidence for you as jurors
6 to find someone guilty of murder, because you infer malice
7 when you take this gun and use it as a gun.

8 And in this particular case we are not talking
9 about someone who was just playing with a gun and slipped
10 sliding and bam, somebody is dead.

11 We have to establish that to you beyond a
12 reasonable doubt. I'm go through the evidence to show you
13 why I think we have established that.

14 With regard to malice. Once again, His Honor will
15 tell you a legal definition of malice. I believe he will
16 tell you something along the line of malice being -- can be
17 evidenced by a malignant heart, a heart devoid of the common
18 human decency.

19 One thing I think he will tell you is that
20 malpractice can be inferred by the use of a deadly weapon.
21 This weapon. If you take a gun -- or what that means, if
22 you take a gun and shoot somebody with it, that is enough
23 evidence for you as jurors to find someone guilty of murder,
24 because you infer malice in the fact that someone uses a
25 gun.

1 In this particular case we're not talking about
2 someone who just playing with a gun and slip sliding and
3 bam, somebody is dead. We're talking about a man who tells
4 you. Kenyatta said something like call the police. Bang, I
5 shot him in head. Gloria Heslep then screamed. Bang, I
6 shot her in head. And as I was going out the door, Cheech
7 was sitting by the door. Bang, I shot him in the head.
8 Then we went to Georgia. And just like that, two lives are
9 gone, and a third has been altered intractably forever. If
10 that ain't malice, ladies and gentlemen, I don't know what
11 is.

12 You look through this statement. Look through
13 here and listen to those words. Read those words and just
14 imagine. Just think about those words, how cold-blooded is
15 is that this man sat there and talked to law enforcement for
16 four hours about what he did and how cold-blooded as he
17 described what happened. He didn't care about Kenyatta
18 Campbell. He didn't care about Gloria Heslep. He certainly
19 didn't care about Jason Carver. Probably that he didn't
20 die, but he didn't care about those people. All he cared
21 about was getting away to Georgia and getting on through to
22 Mexico, or somewhere. Hiding from the police.

23 He said he didn't shoot any police officers. When
24 they were chasing him he didn't shoot at them, because they
25 didn't do anything to me. Remember when he said when

1 Investigator Silvaggio read it? It kind of stuck to me. He
2 well, well, I didn't shoot at police officers when they were
3 chasing me because they didn't do anything to me. Well,
4 what did Gloria Heslep do to him, except scream when he shot
5 her friend. That's all she did to him. What was he mad at
6 her about?

7 There's a saying, sort of jokingly that I used to
8 here a lot of times when I was growing up. They would make
9 this joke about this crazy guy who was in jail and they
10 would say why did you kill everybody in the house? Eight
11 people. Why did you kill all eight people in the house?
12 And he would say they was home, and that was the reason.
13 They happened to be there, so I killed them. That has never
14 been brought home to me more clearly than right here today,
15 ladies and gentlemen.

16 Why did you kill Gloria Heslep? She was home.
17 Why did you shoot Jason Carver? He was there. Why did this
18 other guy, Terrance or Travis not get killed? He wasn't
19 home. His grandmother said he wasn't there. They went by
20 his house first. Remember? He walked up to the door,
21 according to his statement, showed the gun to his
22 grandmother and said I'm looking for him, he's in trouble.
23 Imagine if he had been home. Gloria Heslep was home.
24 Kenyatta Campbell was home. Jason Carver was there. And
25 just because they happened to be there, this man shoots

1 them. Ladies and gentlemen, that's murder. When you kill
2 somebody simply because they were home, that's murder.

3 Let's talk about the evidence for a moment. You
4 heard the testimony of Officer Roe and Officer Atwell and
5 Officer Bryan. Is there any question that what they were
6 telling you was true?

7 When Officer Roe arrived on the scene, he found
8 Jason Carver sitting on the porch with a towel up to his
9 head with an obvious blood wound. He sees two deceased
10 parties lying just inside the doorway, sort of over each
11 other. Kenyatta Campbell laying across the chair. Gloria
12 Heslep on the floor right next to him, right next to the
13 front door inside that residence. Obviously dead.

14 Officer Atwell arrives on the scene a few minutes
15 later and he sweeps the residence to make sure there was no
16 one in the house, there is no one else there. They were on
17 their way to Georgia at that point.

18 Officer Bryan comes. He investigates the scene.
19 He finds these four bullet casings throughout somewhere in
20 the house. Two in the living room and two in the back
21 bedroom. They don't find the fifth one. It doesn't mean he
22 didn't shoot five times. Just means he didn't find it.

23 And let me just point out right now. I'm not even
24 going to touch on this a lot. Nobody in this case, none of
25 the lay witnesses in this case said the exact same things

1 him. Fifth graders know \$975 worth of marijuana ain't worth
2 killing somebody for. Sixth graders, third graders know
3 that. They have more decency of human beings than that to
4 suggest, and he put on paper to admit that for \$975 worth of
5 marijuana, I will kill somebody. I will not only kill
6 somebody, I will kill two people, and hopefully a third if
7 he dies. My god, ladies and gentlemen, that's murder.
8 That's senseless murder with malice aforethought. That's
9 what that is.

10 Robert Joel Smith testified that he got a deal.
11 The State -- well, Mr. Steinberg and I all y'all see is the
12 State. We are the solicitor's office. It is your
13 responsibility to prosecutor cases here in Greenville
14 County, as I told you at the outset. The State offered him
15 the opportunity to plead guilty to two counts of voluntary
16 manslaughter, one count of assault and battery with intent
17 to kill if he agreed to testify against the guy who shot
18 these people. Sometimes in order to get to the devil, you
19 got to go deep down in the mud to get down to where he is.
20 In order the get way down to where he is, we had to deal and
21 do some things that we otherwise might not have done, but
22 let me just give you a couple of distinctions. Do not be
23 bamboozled to believe into believing that this man is guilty
24 of voluntary manslaughter.

25 His Honor will give you a definition of what

1 voluntary manslaughter is. He will say something along the
2 line of voluntary manslaughter is the killing of another
3 human being without malice aforethought. And as I told you,
4 as simple as this, malice can simply be inferred by the use
5 of a deadly weapon. I mean, he's going to tell you that.
6 The fact that he used a gun and shot somebody is enough for
7 you to find him guilty of murder.

8 This, and things he told, and the things that you
9 are going to read that he said that you have heard him say
10 puts its way over the top of malice aforethought. But
11 that's enough.

12 But let me show you some distinctions between this
13 man and Robert Joel Smith. There's no question, based on
14 the evidence, it was this guy's marijuana. This was his
15 gig. Robert Smith was just with him. He went and got the
16 marijuana from his place. He brought it back. He was
17 selling the marijuana. He was out \$975, not Robert Joel
18 Smith. He said when the marijuana is gone, let's go back to
19 my house. He went back to his house. He got the guns from
20 his father's gun cabinet. Not Robert Joel Smith. He did
21 give Robert Joel Smith this .38, and there's no question
22 about that. They then went -- oh, excuse me. He is driving
23 the car. It's his car. This is his show. They then go to
24 Travis' grandmother's house. He drives to Travis'
25 grandmother's house. Robert Joel Smith once again is a

1 passenger. He's riding along. He's his boy. Every drug
2 dealer has to have a boy that just kind of hanging out with
3 him. A gopher, so to speak. He's the one, according to
4 what he says, who gets out of the car, knocks on the door,
5 talks to Travis' grandmother and shows her the gun and says
6 hey, where is Travis, because I'm looking for him, because
7 he stole his marijuana, he thought. Fortunately Travis
8 wasn't home, but Robert Joel Smith didn't do that. He did.
9 They then get back in the car and they drive back to the
10 trailer.

11 And this is the most important thing, ladies and
12 gentlemen. He shot Gloria Heslep in this head. Not Roger
13 Joel Smith. He shot Kenyatta Campbell in the head. Not
14 Robert Joel Smith. He shot Jason Carver in the head and
15 left him for dead. Not Robert Joel Smith.

16 And I'm not going to try to minimize Robert Joel
17 Smith. I'm not inviting him for dinner to my house. He has
18 a .38-caliber gun with him. And I'm not suggesting that he
19 is not responsible, but is he as responsible as this guy?
20 Oh, hell no.

21 And do not be bamboozled say -- well, yeah, the
22 handle of one is the hand of all, which is why both of them
23 were charged. But do not get suckered into the argument
24 that, well, that's all he got, that's all he should get.
25 Heaven help us if we think that a man who shoots two people

1 and leaves a third for dead and who says this to you -- or
2 says to the officers what he said is guilty of voluntary
3 manslaughter. He is guilty of murder, ladies and gentlemen,
4 and that that's all there is to that.

5 Ladies and gentlemen, I told you at the outset
6 this case is not about drugs. It is not. It is not about
7 people being in the wrong place at the wrong time. It is
8 not about well, these folks, these victims, it's tragic
9 they're victims, but they -- they hadn't been doing drugs
10 and hadn't have been there, they -- if they hadn't nothing.
11 Nobody deserves to die because they smoked a few joints or
12 bought so little bit of pot, and I'm not condoning that by
13 any means, but it goes back to what I said about talking to
14 the kids. Nobody deserves to die for any reason, unless
15 they are trying to kill somebody else. Nobody deserves to
16 be blamed at all for their deaths because somebody decides
17 that their lives are worth less than \$975 of marijuana.
18 That is not their fault. And shame on anybody who would
19 suggest that it is, that were even in the wrong place at the
20 wrong time. They were in their home. Gloria Heslep was in
21 her home. Kenyatta Campbell was staying at that home. That
22 was his home for the time being. Jason Carver was a
23 consensual guest in their home.

24 If this man gets mad because somebody does
25 something that he doesn't like and leaves, he has absolutely

1 no right to go arm himself, come back there and shoot the
2 occupants in that home. If anybody was in the wrong place
3 at the wrong time, he was. He was in the wrong place at the
4 wrong time with the wrong thing.

5 And do not -- do not think that this is somehow
6 their responsibility because they had some drugs in their
7 system.

8 Ladies and gentlemen, I'm going to close. And I
9 know I have a tendency to ramble, and I apologize for that,
10 but let me just say if murder is the killing of another
11 human being with malice aforethought, the only issue you
12 have to decide, I would say think, is whether there was
13 malice aforethought, because he told you in his statement,
14 and you are going have the statement back there, I killed
15 them. So you know that. And as to whether or not there was
16 malice aforethought, as I said, His Honor, will tell you
17 that you can infer malice simply because he had a gun.
18 That's enough, but that ain't nowhere near all you got.

19 Let me leave you with these words, ladies and
20 gentlemen. His words. "Joel and I made up our minds and
21 said to one another we were going back to the trailer to
22 kill them all because of what they did about stealing my
23 dope. The girl was going so call the cops because Yoda said
24 for her to call the cops while she was holding him in the
25 living room. I freaked out because she was going to call

1 the cops and I did not have enough time to get away." Thank
2 you.

3 THE COURT: Mr. Quinn.

4 MR. QUINN: The judge told you at the beginning of
5 the case, or earlier in this case, that the System of
6 Justice in South Carolina, the trial system, works well, but
7 y'all are going to have the opportunity to take part and see
8 how it works. And it works well and it stays on track as
9 long as the trial remains a search for truth. As long as it
10 remains that you twelve get to decide what the facts are,
11 because that is your role. The judge will tell you what the
12 law is. You twelve decide what the facts are.

13 When the courtroom becomes a contest, when it
14 becomes no longer a search for truth but an I-want-to-win
15 situation, then you get off skew. We get off track
16 sometimes.

17 Evidence, if nothing else, means that what is
18 presented to you is consistent, that it's reliable, that
19 it's something upon which you can place your trust, that you
20 can make a decision, without, as the solicitor describes it,
21 any doubt.

22 Investigator Silvaggio talks about how many police
23 officers there were involved from each different agency. I
24 asked him to go through his report. I think we determined
25 there were 15 Greenville County, and four from Cobb County,

1 Now, ladies and gentlemen, murder, I'll define
2 that for you.

3 Murder is the killing of one person by another
4 person, the unlawful killing of one person by another person
5 with malice aforethought, either expressed malice or implied
6 malice.

7 In order to convict of murder, the State must not
8 only prove that the deceased was killed by the defendant,
9 but it also must prove beyond a reasonable doubt that the
10 killing was done with malice aforethought.

11 Now, malice in the law of homicide is a term of
12 art; that is, a technical term. It imports wickedness and
13 excludes just cause or excuse. Murder is the malicious
14 taking of human life. It is something which springs from
15 depravity, from a heart devoid of social duty, and fatally
16 bent on wrongdoing.

17 * Malice has been defined as the wrongful intent to
18 injure another and indicates a wicked or depraved spirit
19 intent on doing wrong.

20 Now, the words expressed malice or implied malice
21 do not mean different kinds of malice, but merely the manner
22 in which the only kind of malice known to the law may be
23 shown to exist.

24 Now, of course, expressed malice is malice that
25 comes from the lips of the person, an expression of the

1 intent and the malice. Expressed by words that you intend
2 to -- intent on bent -- fatally bent on intent on doing
3 wrong and killing someone else.

4 Now, malice may be inferred considering all the
5 circumstances that surround the case.

6 Now, an inferred malice, as I said, they are not
7 different kinds of malice, but malice may be inferred from
8 the conduct showing a total disregard for human life.

9 Inferred malice can also rise when the deed is
10 done with a deadly weapon.

11 A deadly weapon is an article or instrument which
12 is likely to cause death or great bodily harm.

13 Whether an instrument has been used as a deadly
14 weapon, of course, depends on the facts and circumstances
15 from the case. You have to determine that.

16 Of course, a pistol under our law is defined as a
17 deadly weapon.

18 Now, if you find from the facts that a pistol was
19 used in the death of another person, then there may be an
20 inference of malice. That inference of malice is simply a
21 evidentiary fact to be taken into consideration by you, the
22 jury, along with all the other evidence in the case, and you
23 may give it such weight as you think it deserves.

24 You may accept or reject this permissive inference
25 of malice, depending upon your view of all the evidence

1 that's been introduced in the case. Now, that is the
2 definition of malice.

3 Now, malice must be a forethought. It must exist
4 in the mind of the individual for some length of time before
5 the incident in question. It doesn't have to exist for any
6 particular length of time before the commission of the act,
7 but the malice must be a forethought. That meant there must
8 be a combination of the previous evil intent and the act
9 which produces the fatal result.

10 And then, of course, the act accompanied with
11 malice aforethought must be a direct or proximate cause of
12 the death of the individual.

13 Now, ladies and gentlemen, if you find that the
14 State has proven each and every element of the crime of
15 murder beyond a reasonable doubt, then your verdict would be
16 guilty of murder.

17 If you should find that the State has failed to
18 prove any element of the crime of murder beyond a reasonable
19 doubt, then you may consider a lesser included offense of
20 manslaughter.

21 A defendant indicted for murder may be convicted
22 of manslaughter, if the evidence warrants it.

23 Manslaughter is defined under our Code of Laws as
24 the unlawful killing of one person by another without
25 malice.

1 The absence of malice is what distinguishes
2 manslaughter from murder.

3 Voluntary manslaughter is the felonious taking of
4 the life of another in the sudden heat of passion upon
5 sufficient legal adequate provocation.

6 If the killing is committed during the heat of
7 passion aroused by legally adequate provocation, then it is
8 considered to be without malice and is manslaughter.

9 If, on the other hand, the killing does not occur
10 during the heat of passion, or the provocation is
11 inadequate, then the killing is with malice and is murder.

12 In order for an intentional and unlawful killing
13 to be without malice, and, therefore, manslaughter instead
14 of murder, the killing must occur during the heat of passion
15 aroused by adequate promise of provocation and before the
16 passion has cooled or has had time to cool.

17 The sudden heat of passion upon sufficient legal
18 provocation which mitigates a felonious killing to
19 manslaughter, while it need not be such as to dethrone
20 reason entirely or to shut out knowledge and volition, it
21 must be such as would naturally disturb the sway of reason
22 and render the mind of an ordinary person capable of cool
23 reflection and produce, according to human experience -- and
24 produce what, according to human experience, may be an
25 uncontrollable impulse to do violence.

1 Now, if you should find, as I said, they haven't
2 proved all the elements of murder, you may consider the
3 elements of the manslaughter, as I have explained it to you.

4 And if you find that the murders, or if there was
5 a killing, that it was done without malice, then you could
6 find the defendant guilty of manslaughter, as I have defined
7 that to you, if all those elements are met.

8 Now, if the State has failed to prove any elements
9 of either murder or manslaughter, your verdict would be not
10 guilty.

11 Now, ladies and gentlemen, in regard to assault
12 and battery with intent to kill, then you would need to
13 determine if an assault was committed upon Mr. Carver and if
14 a battery was committed upon Mr. Carver, and if that assault
15 and battery was done with malice aforethought, which I have
16 already defined that to you, and that there was an intent to
17 kill Mr. Carver.

18 If all of those elements have been proven to you
19 beyond a reasonable doubt, your verdict would be guilty of
20 assault and battery with intent to kill Mr. Carver.

21 If any of these elements have not been proven to
22 you beyond a reasonable doubt, then your verdict would be
23 not guilty of assault and battery with intent to kill Mr.
24 Carver.

25 Now, ladies and gentlemen, whatever verdict you

1 reach, and you can only reach one of three of the verdicts .
2 that I have given you on each of the indictments, whichever
3 the verdict that you reach of the three must be unanimous.
4 All twelve of you have to agree on the verdict.

5 When you reach a unanimous verdict, then you
6 notify the bailiff and we will bring you out and take the
7 verdict. I'm going to send all the evidence back to the
8 jury room with you.

9 All of you -- each person on the jury has an equal
10 vote and equal input into the case, but someone has to
11 preside. And, ma'am, that would be your responsibility. I
12 picked your name out. I don't think that I know personally
13 any of you, I may, but some of us change and get a little
14 older, if we known each other in our younger days and may
15 not recognize that, but I just picked your name out, so you
16 have to preside back there. Okay.

17 When you reach a unanimous verdict, let us know.

18 I'm going to ask y'all to step back to the jury
19 room.

20 Of course, this is an important case to the State.
21 It's an important case to Mr. Hinojos. Let me go over the
22 law that I have explained to you. Now, I could have made a
23 misstatement and not intended to and I may have to bring you
24 back out and cover something else. But if not, I would send
25 word back and then you can begin your deliberations. Thank

1 the suffering Mario Hinojos, Jr. ^ has caused, not only to
2 our lives, but also to the other two families with the power
3 vested in you have no mercy for Mario Hinojos, Jr., and give
4 him the maximum allowed by South Carolina law. I ask you of
5 this not only for my son, but the Kenyatta and Gloria that
6 are no longer here.

7 THE COURT: Anything else?

8 MR. STEINBERG: No, sir, Your Honor.

9 We appreciate law enforcements assistance and hard
10 work on this case.

11 THE COURT: Mr. Quinn?

12 MR. QUINN: Your Honor, as you heard, Mario was 18
13 when this incident occurred. He's been in jail since he was
14 arrested. He has no prior criminal record.

15 I would ask, Your Honor, you obviously heard the
16 facts. There is no need for me to belabor or go through any
17 of the facts with the court.

18 I would say ask the court to be as merciful,
19 although I understand the families, of course, don't think
20 mercy is appropriate, but I would ask you to be as merciful
21 as you could.

22 I don't know if Your Honor will sentence Joel
23 Smith. He obviously was involved in this in some fashion.

24 Mario has expressed consistently his
25 responsibility for this action, has never denied it. We

1 have attempted for an extensive length of time to work out a
2 plea to try to come before the court and have not been able
3 to. I would ask Your Honor just to at least know that he
4 has not every denied these actions. He didn't take the
5 stand to any attempt to mislead anybody. In fact, he told
6 me he could not do that. He has consistently expressed
7 remorse to his family about this. He has not had the
8 opportunity, of course, to express remorse to anyone else.
9 That would have been a violation of his bond.

10 I would ask Your Honor to be as merciful as you
11 could.

12 THE COURT: Okay. Anything that you want to say
13 before I sentence you, Mr. Hinojos?

14 THE DEFENDANT: I would like to ask for, you know,
15 for forgiveness from the families, but it seems like they
16 don't really care to forgive nobody right at the time, but I
17 just pray that the Lord Jesus will give them the strength to
18 forgive me for what I've done.

19 I don't have nothing else to say, Your Honor.

20 MR. QUINN: Your Honor, if I might also. His
21 family is present the courtroom. A number of members of his
22 family have been present throughout the trial. Obviously
23 they care for him and stand by him. They don't have any
24 interest to address the court.

25 THE COURT: Okay. This is one of the most