

17456

VOLUME TWO OF TWO
STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

John C Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V

DARIAN K ROBINSON,

APPELLANT

RECORD ON APPEAL

ROBERT M DUDEK
Deputy Chief Appellate Defender
for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

HENRY DARGAN MCMASTER
Attorney General

JOHN W MCINTOSH
Chief Deputy Attorney General

DONALD J ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

ROBERT M ARIAIL
Solicitor, Thirteenth Judicial Circuit
Greenville County Courthouse
305 E North Street Suite 325
Greenville, SC 29601-2185
(864) 467-8282

Attorneys for Respondent

INDEX

INDEX	1
TRIAL TRANSCRIPT	1
MOTIONS	2
JURY QUALIFICATIONS	20
JURY SELECTION	42
COURT REMARKS	70
OPENING STATEMENT BY MRS PAOLETTI	75
OPENING STATEMENT BY MR SCALZO	81
TESTIMONY	
SAMMY GROVES	
Direct Examination by Mrs Paoletti	86
Cross Examination by Mr Scalzo	99
Redirect Examination by Mrs Paoletti	126
Recross Examination by Mr Scalzo	127
NATASHA LATRICE ATKINSON	
Direct Examination by Mrs Paoletti	128
Cross Examination by Mr Scalzo	171
Redirect Examination by Mrs Paoletti	219
ANNA PAULETTE EDENS	
Direct Examination by Mrs Paoletti	228
Cross Examination by Mr Scalzo	245
Redirect Examination by Mrs Paoletti	253
KEITH ROBINSON	
Direct Examination by Mrs Paoletti	254
MARTY CLAPP	
Direct Examination by Mrs Paoletti	266
Cross Examination by Mr Scalzo	279
Redirect Examination by Mrs Paoletti	284
Recross Examination by Mr Scalzo	285

AUBRY TOMLIN	
Direct Examination by Mrs Paoletti	288
Cross Examination by Mr Scalzo	298
JAMES ARMSTRONG	
Direct Examination by Mrs Paoletti	300
Cross Examination by Mr Scalzo	311
Redirect Examination by Mrs Paoletti	315
DR MICHAEL WARD	
Direct Examination by Mrs Paoletti	316
Cross Examination by Mr Scalzo	329
Redirect Examination by Mrs Paoletti	347
BRANDON BROWN	
Direct Examination by Mrs Paoletti	365
Cross Examination by Mr Scalzo	382
Redirect Examination by Mrs Paoletti	387
RUSSELL IRVIN	
Direct Examination by Mrs Paoletti	390
Cross Examination by Mr Scalzo	395
Redirect Examination by Mrs Paoletti	396
ALICIA ROBINSON	
Direct Examination by Mr Scalzo	409
Cross Examination by Mrs Paoletti	410
Direct Examination by Mr Scalzo	426
Cross Examination by Mrs Paoletti	435
Redirect Examination by Mr Scalzo	441
DARIAN KYLE ROBINSON	
Direct Examination by Mr Scalzo	449
Cross Examination by Mrs Paoletti	554
MICHAEL J MCNAMARA	
Direct Examination by Mrs Paoletti	556
Cross Examination by Mr Scalzo	578
Redirect Examination by Mrs Paoletti	582
DARIAN KYLE ROBINSON	
Direct Examination by Mr Scalzo	582
Cross Examination by Mrs Paoletti	586
Redirect Examination by Mr Scalzo	591
Cross Examination by Mrs Paoletti	595
Redirect Examination by Mr Scalzo	629
Recross Examination by Mrs Paoletti	639

MICHAEL J MCNAMARA	
Direct Examination by Mrs Paoletti	651
Cross Examination by Mr Scalzo	658
Redirect Examination by Mrs Paoletti	662
CLOSING ARGUMENTS BY MR SCALZO	676
CLOSING ARGUMENTS BY MRS PAOLETTI	706
MOTIONS	726
JURY CHARGE	737
JURY QUESTION	754
VERDICT	755
SENTENCING OF THE COURT	757
INDICTMENTS	762
CERTIFICATE OF COUNSEL	766

1 A Nah, no, sir, he's still coming towards me or whatever

2 Q When you fired the third shot, can you tell where that
3 went?

4 A No, sir

5 Q Does Will change at that point after you followed the --
6 fired the third shot?

7 A Okay Well, after I fired the third shot, I fired
8 another shot and so therefore that's when that's when he fall
9 like he was fallin' on his knees like he was praying or
10 whatever

11 Q All right Do you get -- do you fire all four shots
12 before he's gone to his knees or as he's going down?

13 A I shot all four before he went down

14 Q All right And at the -- where were you when you fired
15 the very last shot?

16 A I'm pretty much in in the living room now, all the way in
17 the living room

18 A Okay

19 Q And you said he went to his knees?

20 A Yes, sir

21 Q And then fell forwards or back backwards?

22 A He fell forward

23 Q And what did you do?

24 A I mean, when I, when I see him when I seen him fell he
25 look like he was -- he fell on his knees prior to like

1 similarly like this (demonstrating) He was like this
2 (demonstrating)

3 Q Okay And you -- what you what you did was you leaned
4 forward and put your hands on your -- your head on your hands
5 with your face down, ---

6 A I mean, when ---

7 Q --- is that right?

8 A Yeah, when he fell on his knees or whatever he also he
9 fell like this (demonstrating) like he like it was like a slow
10 motion when he like he fell He fell like this
11 (demonstrating) like he was praying, well, like I said, like
12 he was praying

13 Q Okay And and what did you think happened at that
14 point?

15 A Well, I didn't think as far as I didn't think he was dead
16 or nothing, you know what I mean I thought he was just as
17 far as injured, you know, I mean So then ---

18 Q Well, well why not? Why didn't you think he was dead?

19 A Because the way he had fell like in slow motion, you know
20 what I mean, you know, you see it on like, you know, me -- for
21 me being there usually see it on TV If a person shoots you,
22 you know, you just like you gonna fall back or or you gonna be
23 making, um, gestures or sounds or something like that, but it
24 didn't happen like that It was like he was just like he was
25 on his knees praying like he was injured

1 Q Okay And what did you do?

2 A I mean, I just when I seen him I I left I just walked
3 out, you know what I mean, just walked out of there or
4 whatever

5 Q What were you feeling at the point where you decided to
6 walk out?

7 A I mean, at that time now my mind is racing all kinda ways
8 like is he is he dead or or is he just hurt or I'm like pretty
9 much I'm scared, you know, I'm like

10 Q Before you had gone into the apartment, did you believe
11 when you went in there that anything violent or physical was
12 going to take place?

13 A No, sir

14 Q Did you believe, when you went into the apartment or
15 before you went into the apartment, that Will would act any
16 differently towards you in front of Latrice and Ms Paulette
17 than he had at any other time?

18 A Well, like I say when he's in front of Ms Paulette, like
19 I say he plays a different image so I didn't have him no
20 attention that he was gonna do that right there what he had
21 did or whatever

22 Q Had he ever on any occasion other occasion occasion came
23 in front of Latrice or her mother made that movement ---

24 MS PAOLETTI Objection, ---

25 MR SCALZO --- towards you?

1 MS PAOLETTI --- Your Honor, to relevance of that
2 THE COURT Say it again

3 BY MR SCALZO

4 Q Had he at any other time in the presence of Latrice or
5 Ms Paulette ever made a movement like that toward you the one
6 he did in the apartment?

7 A No, sir

8 THE COURT Sustained

9 BY MR SCALZO

10 Q When you went, um, bear with me for a moment My brain
11 is kinda tired

12 (Pause)

13 When you went outside the apartment, did you know what you
14 were gonna do or where you were gonna go?

15 A No, sir

16 Q Why didn't you just stay either outside the apartment or
17 inside the apartment?

18 A I mean, I had like pretty much like at this time I done
19 panicked and I'm scared I don't know what to do Uh, I
20 mean, like it's like my mind is else, you know, it's so far
21 out there I I can't really just explain but I know it was so
22 far out there now that, you know, me seeing this incident or
23 whatever

24 Q Okay When you get outside, you're feeling like that, do
25 you see anybody? Do you come in contact with anybody?

1 A I mean, when I when I walk out of the apartment, the only
2 person that was out there which¹ was Travis He was ---

3 Q Is that is that the Travis that you had called on the
4 phone?

5 A Yes, sir

6 Q What did you do?

7 A I mean, he asked me what had happened 'cause he had heard
8 the shots or whatever so he asked me was I all right I I --
9 he said, "What happened in the apartment?"

10 I said, "Well," I couldn't just really get into it

11 He said, "Man, get in the car Let's let's get off
12 nowhere or whatever " So I got in the car with him

13 Q You have the gun on you still?

14 A Yes, sir

15 Q What did you do with the gun?

16 A Okay, as -- when I -- okay, do I need to tell you where
17 I'm going from there?

18 Q That -- that's fine if it helps you describe what you did
19 with the gun

20 A Okay When I get in the car my homeboy, Travis, I'm
21 explainin' him what's going on or whatever So he tells me
22 that well, now I need to go ---

23 MS PAOLETTI Objection to to what Travis said, Your
24 Honor

25 THE COURT I have to hear the answer

1 BY MR SCALZO

2 Q I'm not concerned with the answer Tell me this You're
3 in the car, you're with Travis, do you do something with the
4 gun?

5 A Yes, sir

6 Q What do you do?

7 A Well, I immediately I dismounts the gun -- well, it broke
8 it in pieces what I took the 'cause the, um, the barrel part
9 it was holding on by a a little thing that I had, you know,
10 where you put the pin basically the pin so I dismount the gun
11 I took the the what's the part, that revolver part, the part
12 you put the bullets in, ---

13 Q Okay

14 A --- the chamber I took that and throw that one way,
15 took the gun and broke it in all kinda pieces and throw that
16 all kinda different ways

17 Q All right Why did you do that?

18 A I mean, 'cause see, from the beginning, the gun that I
19 had I had bought that gun off the streets or whatever so

20 Q How long before ---

21 BY MS PAOLETTI Objection, ---

22 MR SCALZO --- before this time?

23 BY MS PAOLETTI --- Your Honor, to the relevance of
24 that And I I may have misunderstood his answer If he could
25 repeat it I might withdraw that

1 (Laughter)

2 THE COURT If he repeats the answer it would be too late
3 to object I I think it's relevant

4 MS PAOLETTI Okay

5 THE COURT Overruled

6 BY MR SCALZO

7 Q Why did you do that with the gun? Why did you break it
8 apart and throw it out?

9 A So as I'm bringing a gun up or whatever and I told you I
10 throw the throw the pieces all different kinda ways or
11 whatever, I broke the gun up because when you by a gun hot off
12 the streets, you don't know what's as far as what another
13 person has done with this gun, you know what I mean So
14 therefore, that's why I dismount the gun like that

15 Q How long before this day had you bought the gun?

16 A I mean, prior to that I had bought it from a homeboy,
17 Troy, which is they cousin Troy

18 Q Okay I had bought the gun from him or whatever I had
19 prior probably four (4) to six (6) months before this even
20 happened

21 Q Where did you go from there where -- when you're with
22 Travis?

23 A Okay Well, Travis he takes me to, um, homeboy Stefan's
24 house So I'm out I'm out there, I gets out of the car He
25 said, "Well, I'll be back Let me go get you some, um,

1 cigarettes," or whatever, "and I'm gonna roll a blunt up with
2 you or whatever 'cause I know your mind is racing all kinda
3 ways "

4 Q At that point do you believe the police are probably
5 gonna be looking for you?

6 A Yes Yes, sir

7 Q And even after that you know the police are looking for
8 you at some point, isn't that right?

9 A Yes, sir

10 Q How do you know?

11 A Okay As the day like I say that I left from Travis took
12 me over to my homeboy Stefan, I left his house because I told
13 him I didn't want to get him in no trouble or whatever so now
14 I'm from West Greenville now I'm end up on Augusta Road

15 Q Okay

16 A So when I get on Augusta Road, I'm at this lady's house
17 that I know and I'm watching TV So I see myself on TV

18 Q And what do you see on the TV?

19 A I mean, prior to that they telling like they like name my
20 charges, that I'm a fugitive of law, um, he's possibly armed
21 and all this type stuff

22 Q When you saw that, how did it make you feel?

23 A I mean, I'm I'm scared at this point because now they
24 saying that they're obligated to shoot on site because they
25 thinking that I got a weapon on me So I'm I'm I'm in fear of

1 my life to the point where I'm scared, I don't know whether
2 turn myself in or what, you know what I mean

3 Q Do you leave Greenville?

4 A No, sir

5 Q And when the, uh, police officers come to that hotel, the
6 police officer described coming to the hotel, was he accurate
7 when he said that you just put your hands up and you said you
8 didn't want any problems?

9 A Yes, sir, he was accurate

10 Q Let me talk to you about 187

11 A Latrice said 187 then we had the police officer talk
12 about 187 Latrice said she didn't know what it was Do you
13 know what 187 means?

14 A Yes, sir

15 Q Did you know before that officer testified?

16 A Yes, sir

17 Q How did you hear about that? How did you learn about
18 that term?

19 A I mean, I learned from the term as far as what he told me
20 yesterday what 187 means, you know I knew what it mean
21 'cause it means -- it could mean a variety of different
22 things

23 Q Well, let -- let's separate it Tell me what you knew
24 about it before that officer testified first

25 A Well I I always thought that a 187 was a murder of a

1 police officer

2 Q Okay Where had you heard that term before?

3 A I mean, I heard it in the the street and I heard it -- I
4 had heard officers call this code in or whatever

5 Q You ever hear it in a song, in a movie, anything like
6 that?

7 A Yeah, I heard in plenty a songs It be in plenty a
8 songs

9 Q And then you heard the officer testify Did he tell you
10 anything that you didn't know about 187?

11 A Well, from what he had presented yesterday and showed me
12 on paper, I mean, I didn't know it was from -- originated from
13 California or whatever

14 Q Okay

15 A Did you use that term the way Latrice said you did when
16 she said she's talking to you that you said something to the
17 effect that, "Don't they know that I'm 187?" Did you say
18 that?

19 A I never used the term that -- about anything about 187

20 Q Okay

21 MR SCALZO Judge, can we approach for a second?

22 THE COURT Um-hum

23 (Whereupon, a bench conference was held off the record)

24 THE COURT All right, ladies and gentlemen, I have a
25 legal matter that I need to take up for a few minutes and I'm

1 sending you back into the jury room

2 (The following takes place outside the presence of the
3 jury)

4 THE COURT All right, Mr Scalzo

5 BY MR SCALZO

6 Q Darian, I I need to talk about the subject of Keith at
7 this point and any connection that he has in your mind at the
8 time of this shooting, that there's any connection between
9 Keith coming with the gun and William and your experience with
10 William and causing you to shoot, that's what I'm trying to
11 talk to you about, okay?

12 Was there any connection in your mind, when you're inside
13 Ms Eden's apartment, was there any connection in your mind
14 between Keith showing you a gun and Will?

15 MS PAOLETTI I object to that, Judge, for the record

16 THE COURT Leading Sustained

17 BY MR SCALZO

18 Q While you're in the kitchen, does it come to mind
19 anything relating to Keith Williams and what happened earlier
20 that night?

21 MS PAOLETTI Objection, Your Honor

22 THE COURT Sustained Leading

23 BY MR SCALZO

24 Q When you're standing in the kitchen, do you think at all
25 about Keith Williams?

1 A Yes, he's in my thoughts

2 Q Okay What thoughts are there?

3 A I mean, my thought is, you know, when he when he
4 presented this gun to me, it puts my it puts my life in a
5 whole different position where I'm thinking my life is about
6 to be took so therefore that leads to what happens to
7 William

8 Q Why?

9 A Because they are they are like together 'cause each one
10 each one, every time they came they kept saying that Antonia
11 said so they al -- they had to be around the same vicinity to
12 know what was going on

13 Q All right

14 MR SCALZO I think based on him making in his mind the
15 correction that they were working together having been shown a
16 gun, makes the Keith Williams aspect relevant to his state of
17 mind inside the apartment

18 THE COURT Okay The state has raised an objection to
19 all of this goings on before the event actually begins to
20 unfold as being irrelevant because it would relate to the
21 case, if at all, only through the issue of self-defense And
22 that's true, right? I mean, the stuff that happened with
23 Keith, the comments made by whoever the guy Keith was quoting,
24 the the previous confrontation between Will and the defendant,
25 none of that is relevant to any issue in this case except

1 possibly self-defense, correct?

2 MR SCALZO It's relevant to his over all state of
3 mind, the defendant's over all state of mind

4 THE COURT But but only as to self-defense, right? Only
5 as to his fear, his -- whether his fear was reasonable

6 MR SCALZO Wh -- or whether he had fear, yes

7 THE COURT Right So ---

8 MR SCALZO Actually having the fear

9 THE COURT So all of that evidence that -- well, that
10 you've been proffering outside the presence of the jury
11 relates to this case, is relevant to this case only on the
12 issue of self-defense and the four elements of self-defense,
13 is that correct? That is correct

14 MR SCALZO My position would be would be overall state
15 of mind and they would have to decide whether if it's
16 self-defense or not I mean, it's it's his ---

17 THE COURT That's a yes That's a yes I mean, because
18 you're you're saying you want the jury to think about this
19 evidence in terms of whether or not it fits self-defense

20 MR SCALZO Certainly that would be my argument but if
21 you're asking what ---

22 THE COURT Well, is there any other, any other issue in
23 the case, any issue in that case that's not part of
24 self-defense that this previous confrontation with Keith or
25 previous confrontation with Will relates to?

1 MR SCALZO I don't think so

2 THE COURT All right So if self-defense is not an
3 issue in the case, then the evidence that you just offered is
4 not relevant and not admissible

5 MR SCALZO I I disagree because I believe the role is
6 if the evidence that can be presented it's -- I feel like the
7 Court has reversed it If there is evidence that establishes
8 self-defense, then in and of itself it is relevant to this
9 shooting My -- I'm proffering and other evidence that is
10 already in evidence The combination of those two things I
11 believe before the Court, the evidence before the Court,
12 creates an issue of self-defense

13 THE COURT The evidence that relates to what happened is
14 is what I consider to determine whether or not self-defense is
15 an issue The evidence that relates to something that
16 happened eighteen (18) months ago or eighteen (18) hours ago
17 is not relevant unless it unless unless self-defense is an
18 issue In other words, like let's take a couple of specific
19 examples The the conviction -- the defendant -- the victim's
20 conviction for second degree murder in North Carolina, ---

21 MR SCALZO Um-hum

22 THE COURT --- that would have nothing whatsoever to do
23 with this case if self-defense is not an issue, right?

24 MR SCALZO Yeah

25 THE COURT All right The the the conversation that he

1 had, the defendant had, with Keith in which Keith pulls a gun
2 on him and says, "Get away from my baby momma and don't be
3 beating her up anymore," that that conversation has nothing to
4 do with this case unless self-defense is an issue, right?

5 MR SCALZO My issue with the way you're characterizing
6 is I think that evidence creates the issue You're saying
7 this is no issue and I'm saying the evidence ---

8 THE COURT And I -- I'm ---

9 MR SCALZO --- creates the issue

10 THE COURT --- not even I'm not even getting to the
11 question of whether or not self-defense is an issue I'm just
12 trying to frame -- the the question's whether or not this
13 evidence comes in I'm trying to figure out whether or not
14 it's relevant

15 MR SCALZO And I believe it is relevant 'cause it's
16 relevant to establishing self-defense

17 THE COURT But if there -- all right Let's let's -- I
18 agree with that, but if there's something else that eliminates
19 self-defense then there would be no need to bring in let's say
20 the conviction from North Carolina ---

21 MR SCALZO Um-hum

22 THE COURT --- because self-defense we know is not gonna
23 be an issue

24 MR SCALZO Then I I think what I understand the Court
25 to be saying causes me to then raise the issue of this I

1 would move that the -- it be, the charge of self-defense be
2 made and I would hand up auto memorandum of law regarding that
3 and I have a copy for the solicitor

4 THE COURT Pass it up

5 (Counsel handed the document to the Court)

6 MR SCALZO Cause we might as well just get to the
7 issue

8 THE COURT That's exactly where I'm trying to get I
9 think that -- I I think that if that -- and we're talking
10 about my dear friend Lord Byron

11 MR SCALZO Yes, you are, sir

12 THE COURT And if if if Lord Byron keeps self-defense
13 out of the case, then there's no relevance to all this other
14 stuff

15 MR SCALZO I think Lord Byron actually makes it
16 relevant

17 THE COURT Okay All right Well, I have been studying
18 Lord Byron for most of my adult life but particularly this
19 morning I have been reading *Lord Byron Slater* and -- is it --
20 do I need to -- is there any argument in this brief that
21 relates to cases other than *Slater vs Santiago*?

22 MR SCALZO No, it it pretty much is confined to the
23 cases that are cited within those cases

24 THE COURT All right Well, then let's -- I'm -- all
25 right So by the defendant's own testimony, under the

1 defendant's scenario, as ne as ne has described it, ---

2 MR SCALZO Um-hum

3 THE COURT --- this man comes along, the victim, ---

4 MR SCALZO Um-hum

5 THE COURT --- and threatens to kill him

6 MR SCALZO Um-hum

7 THE COURT And says, "I will kill you if you don't get
8 away from my cousin "

9 MR SCALZO Um-hum

10 THE COURT He says it to him twice ---

11 MR SCALZO Um -- hum

12 THE COURT --- on two different occasions, all on the
13 same day that -- of this shooting Then after he says it to
14 him twice, he comes over to the apartment where the defendant
15 is inside behind a locked door and on at least one occasion
16 beats on the door and yells and screams in a threatening
17 manner saying, "Let me in "

18 MR SCALZO Um-hum

19 THE COURT I think he actually said that the victim had
20 done that twice

21 MR SCALZO Yes, sir

22 THE COURT Twice at -- so two different times when the
23 victim says, "I will kill you if you don't get away from
24 Latrice," or maybe he said, "If you don't stop beating
25 Latrice "

1 MR SCALZO Something to that effect

2 THE COURT All right Two different times he says that
3 and then two different times after that he comes back to that
4 same apartment, beats on the door in a threatening manner
5 trying to get in, all in the same day in the hours leading up
6 to this event Then not long after that what's -- so as a
7 result of that the defendant arms himself with a pistol

8 MR SCALZO Um-hum

9 THE COURT The defendant then goes outside and is
10 hanging around talking to these other guys What's the name
11 of the guy?

12 MS PAOLETTI Mr Groves

13 MR SCALZO Sammy Grove

14 THE COURT Sammy

15 MR SCALZO The first witness

16 THE COURT All right Latrice then comes back to the
17 apart -- to her apartment --

18 MR SCALZO Um-hum

19 THE COURT --- and goes to her momma's apartment

20 MR SCALZO Um-hum

21 THE COURT Will Godwin, the victim, then comes back to
22 the scene and goes inside ---

23 MR SCALZO Um-hum

24 THE COURT --- his momma's apartment

25 MR SCALZO His ant's ---

1 THE COURT I mean, ---

2 MR SCALZO --- apartment His ant's, right

3 THE COURT He goes inside Trice's momma's apartment

4 MR SCALZO Right

5 THE COURT And the defendant sees all that happen,
6 right?

7 MR SCALZO Um-hum

8 THE COURT So at that point in time, at that point in
9 time you got Will and Latrice and Latrice's momma inside her
10 apartment

11 MR SCALZO Um-hum

12 THE COURT The defendant is outside

13 MR SCALZO Um-hum

14 THE COURT And there's no threatening environment,
15 there's no reason, no evidence at that point in time that the
16 defendant might reasonably fear death or serious bodily
17 injury

18 MR SCALZO Well, I I don't know about that

19 THE COURT Eminent death or serious bodily injury

20 MR SCALZO It it depends If Keith Williams were to
21 come along, if Will were to come out ---

22 THE COURT But those are ---

23 MR SCALZO --- and confront him on ---

24 THE COURT --- those are "ifs " That's "ifs " At that
25 point in time the defendant could leave ---

1 MR SCALZO That's true

2 THE COURT --- safely

3 MR SCALZO That's true

4 THE COURT And he has, in fact, at that point in time a
5 duty to retreat from any danger that he fears to be imminent

6 MR SCALZO If he fears it to be imminent I would
7 guess

8 THE COURT He has a duty to retreat, right?

9 MR SCALZO But the -- you just said there's no imminent
10 fear so

11 THE COURT Right So if there was the -- all right So
12 you're right There's no imminent fear of serious bodily
13 injury or death and if one were to arrive right then while
14 he's standing outside, he would have a duty to retreat

15 MR SCALZO Unless retreating would create a a greater
16 danger

17 THE COURT Right All right He then, illegally and
18 knowingly armed with a pistol, goes into the apartment ---

19 MR SCALZO Um-hum

20 THE COURT --- in order to, with the intention of having
21 a discussion with Trice ---

22 MR SCALZO Um-hum

23 THE COURT --- about the subject matter on which or over
24 which Will threatened to kill him Try as I might I cannot
25 distinguish that factual scenario from *Lord Byron Slater*

1 MR SCALZO Okay

2 THE COURT That to me is an even more compelling factual
3 situation of bringing on the difficulty as a matter of law
4 than was found in Slater because because when when when in
5 Slater, when when the guy walks over to that ---

6 MR SCALZO Group of people

7 THE COURT --- that group of people, he doesn't know for
8 sure that he is going to be involved in a confrontation

9 MR SCALZO I don't think that that's true be ---

10 THE COURT He doesn't know that for sure I mean, this
11 guy's going over there to initiate a conversation That's the
12 reason he went in there He went in there to initiate a
13 conversation about the volatile subject of violence between
14 him and Trice over which he had recently been threatened death
15 by the man who's sitting in the apartment with Trice I don't
16 see how that is possibly without difficulty in bringing on the
17 difficulty, without fault at bringing on the difficulty

18 MR SCALZO May I put my argument?

19 THE COURT Sure That's that's why I'm setting it up
20 for you to make your argument

21 MR SCALZO What Slater is doing is it's taking a
22 proximate cause analysis out of Burriss Burriss applies to a
23 charge of accident Burriss used a proximate cause analysis
24 to decide if a person is unlawfully in possession of a weapon,
25 can they then get a charge of accident And what the Court in

1 Burriss is saying is the mere of fact of being in unlawful
 2 possession of that weapon on on it's own wouldn't
 3 automatically say you can't get the charge In order to bar
 4 the charge, it has to be that the weapon itself was the
 5 proximate cause of the occasion and they have a couple of
 6 different ways of phrasing that proximate cause phrase

7 In one -- in Slater they describe it as showing that the
 8 violation of a unlawful possession of the weapon was
 9 reasonably calculated to produce the occasion, meaning produce
 10 the confr -- produce the shooting Where I think Slater is
 11 different and Burriss is actually similar, Burriss they allow
 12 it to be charged and say it was error to not be charged and
 13 Slater they say, "No, it was proper not to charge it "

14 In Slater, the defendant is outside and there's a melee,
 15 there's some violent confrontation between people he ain't - -
 16 even involved with And he goes over and he -- as he's going
 17 over there, he has the gun out and cocked and he walks over
 18 and interjects himself into the melee with the gun And what
 19 the Court was saying was he is doing that 'cause he has the
 20 gun and goes into something where he doesn't even know
 21 anybody, that is what caused the people in the melee to begin
 22 to exchange gunfire and it was that exchange of gunfire that
 23 ultimately caused the death

24 In this case he never shows the gun The weapon in and
 25 of itself is not the proximate cause of what brings about the

1 shooting The gun remains in his pocket the entire time and
2 the state's witness even said they didn't even know he had the
3 gun They were surprised when it came out They had no
4 anticipation of it and as a matter of law I think there is no
5 proximate cause for the unlawful possession of a weapon and
6 in, I believe it's Burriss, let me find it, in Burriss, I
7 believe, is where they talk about, the Court talks about, they
8 cite the Am Jur Maybe I'm confusing it It might be
9 Slater

10 THE COURT You know, there -- you're correct in in
11 pointing out that in Slater the defendant had the gun out
12 But there are two issues going on here

13 MR SCALZO Um-hum

14 THE COURT One is the issue of bringing on the
15 difficulty

16 MR SCALZO Um-hum

17 THE COURT The other is the issue of an automatic
18 disqualification for an ill -- for the illegal possession of
19 the weapon being the proximate cause of the of the death

20 MR SCALZO Right

21 THE COURT They're two -- it's two separate issues And
22 and the point about the having the gun out, being the reason
23 he was fired on, in other words, it's almost like the guy who
24 ultimately died fired on the defendant because the defendant
25 was acting in a threatening manner

1 MR SCALZO Right

2 THE COURT And almost like the the victim was acting in
3 self-defense

4 MR SCALZO Correct

5 THE COURT That's not the point here The point here is
6 this guy takes a loaded weapon and voluntarily and
7 intentionally and illegally enters into a a situation that he
8 knows relates to the subject matter over which the the
9 supposed victim just got -- just threatened to kill him

10 MR SCALZO Okay And if the if the Court is separating
11 those two, you said there's ---

12 THE COURT And then I've got ---

13 MR SCALZO --- the legal bar ---

14 THE COURT I'm I'm separating 'em because the Supreme
15 Court separated 'em And you look at the advance sheet on
16 on -- as Page 35 begins, they they say "additionally" and
17 they're talking about a different reason And and the second
18 reason they discuss is the proximate cause question So I'm
19 not talking about the proximate cause question I agree that
20 that in that respect Slater is different, but in the respect
21 of of him bringing on the difficulty, I don't see a
22 difference

23 MR SCALZO I believe the differ -- I think what the
24 Court is doing in anal -- in analyzing it that way is there's
25 the legal issue, the bar, if you, from a legal standpoint if

1 you have the unlawful weapon, the legal analysis say, "as a
2 matter of law you're barred,"¹ is the proximate cause analysis
3 You're talking about a factual dispute. If
4 he's testified and there's evidence that he did not believe
5 Will would act that way in front of the women, well the
6 credibility of that is obviously up to the jury to decide, but
7 in and of itself that fact creates an issue as to whether or
8 not he believed a difficulty would even be brought on that I
9 believe that's -- that is a fact difference, not as a matter
10 of law in the same sense that Slater and Burriss are
11 addressing. Slater and Burriss aren't addressing a dispute
12 over facts about other difficulties, it's Slater and Burriss
13 are addressing the proximate cause analysis as a matter of law
14 if you possess a weapon. And so the controlling law, when a
15 defendant is asserting self-defense and he unlawfully
16 possesses weapon, the controlling law to decide as a matter of
17 law whether he has the charge of self-defense is the proximate
18 cause analysis. I believe what the Court is describing in the
19 other context is a fact dispute and that fact dispute is
20 resolved by the jury.

21 And and I will point out, Your Honor, that it is in
22 Burriss the quote I was looking for was that, "Death cannot be
23 said to be naturally or necessarily as a result of carrying
24 the weapon." They're they're they're citing the Am Jur on
25 homicide for that authority which they use in deciding Burriss

1 in developing this proximate analysis But it even speaks to
2 the idea that from a fact standpoint, if the jury believes
3 that created difficulty, that maybe something that they
4 decide, but from a legal standpoint the Court is saying,
5 "Look, there's no law or legal basis for saying that unlawful
6 carrying of the weapon automatically creates a difficulty
7 regardless of anything else " And so I think, I think it's a
8 fact issue that the jury has to resolve as to whether or not
9 this was brought on as a difficulty which the state can argue
10 I mean, that will be an element that they would have to
11 overcome and the jury's gonna have to weigh that

12 THE COURT All right I I agree with you that if there
13 is a factual dispute, it -- it's to be decided by the jury
14 But the way self-defense is structured is you've you've got a
15 burden of presentation, a burden to present evidence ---

16 MR SCALZO Um-hum

17 THE COURT --- on each of the issues

18 MR SCALZO Um-hum

19 THE COURT You have presented evidence as to, as to what
20 happened as he was -- as this was about to unfold

21 MR SCALZO Yes

22 THE COURT And that evidence is that he voluntarily
23 walked into the apartment to discuss an issue over which he
24 had just had his life threatened by someone he believed would
25 carry out that threat with that person in the room

1 MR SCALZO That is a fact issue There is nothing
2 illegal about -- the the conversation that he has ---

3 THE COURT But that's ---

4 MR SCALZO --- there's nothing illegal about that so as
5 a matter of law there's no bar to that

6 THE COURT No doubt there's nothing illegal about that
7 There's nothing illegal about in in -- about beginning that
8 conversation But he knows that the conversation is the
9 matter over which the difficulty exists He's threat -- he
10 had his life threatened by a man who for for the very reason
11 of this discussion he's about to bring up

12 MR SCALZO But, Judge, I think ---

13 THE COURT So the guy says, "I'll kill you if you don't
14 get away from my sister or my cousin," and it's like he says,
15 "Oh, yeah, let's talk about it " Now, how is it that that is
16 not -- so he -- he's saying, "Let's keep this going " How --
17 it's just like Slater He says Slater looks over there and he
18 sees a -- an altercation that was already under way

19 MR SCALZO But that the Court is relying on that fact
20 only in the context of deciding the proximate cause issue of
21 the weapon It is not considering whether or not that fact in
22 and of itself negates difficulty What the Court has just
23 said is the per -- it may be the great argument for the
24 prosecutor to make and certainly the jury could say, "You know
25 what, I don't buy that," but the fact is is there is

1 evidence that is in the record that he did not believe going
2 in there would create a difficulty If the jury doesn't find
3 that reasonable, then they would disagree And the -- as far
4 as getting the charges, if there is any evidence in the record
5 from which it could reasonably be inferred that the defendant
6 acted in self-defense and he's entitled to that instruction,
7 it could be reasonably inferred based on his description of
8 the relationship that he saw Will had with him and then Will
9 had when he was in front of the women in the presence of

10 Darian If they believe that, they could reasonably infer
11 that he didn't believe there would be any difficult in there
12 that would rise to the occasion of that -- of a physical
13 con -- conflict

14 THE COURT But the -- I I don't -- I think, I think that
15 when you say the difficulty, the difficulty is not when Will
16 gets up and comes out in a threatening way The difficulty is
17 the question of whether or not Robinson, the defendant, is
18 gonna keep beating up Trice and whether or not Trice can can
19 tell her cousin to to stand up for her That's the
20 difficulty The difficulty is this discussion that's going
21 on, these threats that are being made The previous
22 confrontations all of that is part of the difficulty and it's
23 the -- that leads to the shooting It's not just the
24 shooting that is the difficulty So in other words, the
25 difficulty's been going on all day The difficulty began a

1 long time ago when when when Will comes up and says, "Hey, if
2 you don't get away from Trice I'll kill ya " And so when he,
3 when the defendant voluntarily decides to walk into an
4 apartment where the same guy who just threatened to kill him
5 over a subject is sitting ---

6 MR SCALZO Um-hum

7 THE COURT --- in order to bring up that subject in
8 conversation, he is perpetuating the difficulty He is
9 bringing on the difficulty and that's what I think the Supreme
10 Court has looked at in Slater and said -- now, and and think
11 about this too in Slater You know, obviously Chief Justice
12 Toal knows that if there is a factual dispute as to whether or
13 not Slater brought on the difficulty, it's for the jury and
14 not for the judge And so she nevertheless writes this
15 opinion saying that under these circumstances there's no
16 material factual dispute It doesn't make any difference in
17 her mind what Slater might have been thinking because his
18 actions are what brought on the difficulty And here doesn't
19 make any difference what Robinson might have been thinking
20 about whether or not there would be a shooting because his
21 actions perpetuated the discussion, the threats, the now hours
22 long difficulty over what's gonna happen over this beating of
23 Trice and the cousin's intervention into it

24 MR SCALZO I read the case differently

25 THE COURT In other words, what's in my reading of

1 Slater, what it says is that if there's, if there's a problem
2 going on in in somewhere that might lead to violence, you
3 cannot gain the benefit of self-defense if you do something to
4 perpetuate that problem You gotta get out of the problem,
5 get away from it if you, if you want the benefit of
6 self-defense And if you take action, if a defendant takes
7 action that allows this difficulty to lead to a shooting then,
8 and you're at fault in doing so, then you don't get
9 self-defense

10 MR SCALZO I think you can't -- you have to read Slater
11 and Burriss in conjunction with each other and the fact
12 patterns are very instructive What Slater is -- I don't
13 believe Slater, the Court is saying that we ignore the factual
14 dispute, that there is none What it's saying is in the
15 context of a case where a defendant claiming self-defense
16 unlawfully possesses a weapon, that fact of unlawfully
17 possessing a weapon as a matter of law will decide whether or
18 not that negates that first prong of self-defense In order
19 to rely on that, it has, the weapon itself has to be or the
20 use of the weapon has to be the proximate cause And the
21 reason it is in Slater is because the manner in which the
22 weapon is used and it's the weapon

23 If you then look at Burriss, Burriss they say, "Look, he
24 was armed unlawfully but he didn't show it to anybody and
25 given the context of what was happening, he was being attacked

1 by somebody else, two people, that he only brought it out at
2 the point at which he was being attacked," it's that point as
3 a matter of law it doesn't take away the first element and
4 what the Court is then saying is that's an issue for the jury
5 to decide whether or not you satisfy from a factual basis the
6 first prong of self-defense, meaning, have you brought on the
7 difficulty I think it's the distinction ---

8 THE COURT All right

9 MR SCALZO --- between Burr ---

10 THE COURT Hold on just, hold on just a second

11 (Pause)

12 THE COURT All right I interrupted your argument in
13 order to read those cases and so I'm done If you want to
14 finish your argument, you may proceed

15 MR SCALZO Thank you, Your Honor, granted it's moving
16 very slowly I think I would just sum it up by saying I
17 believe it's the proximate cause analysis from the legal
18 standpoint as determined that first element that any of the
19 difficulty evidence is a jury issue because there is evidence
20 that is a juror could reasonably infer he did not -- it did
21 not bring on the difficulty

22 With regard to the other elements of self-defense, I
23 believe those fall under the same category as being jury
24 issues because the evidence can be reasonably inferred in
25 favor of the defendant With regard to imminent danger, you

1 have size difference, you have proximity in in distance,
2 they're very close to each other With regard to his ability
3 to retreat or even a duty to retreat, you have several issues,
4 you have the confined area and could he have gotten away from
5 a real -- in reality but did he also have the notion whether
6 he believed he could get away And the jury could reasonably
7 infer he couldn't reasonably get away They could also
8 reasonably infer that if he had turned his back it would have
9 been unreasonable for him to believe that he would have put
10 himself in a greater danger

11 I will point out that it -- self-defense does not -- is
12 not limited to the apprehension of death only, it has serious
13 bodily injury as well even if the person apprehends serious
14 bodily injury and certainly someone who is six (6) inches
15 to -- and almost sixty (60) pounds heavier than the defendant
16 can create that There is evidence of that from the doctor,
17 on Dr Ward on one punch could kill somebody and ---

18 MS PAOLETTI Your Honor, I don't believe that's in
19 evidence actually

20 MR SCALZO --- even if it is not, it could be
21 reasonably inferred by the jury just in size difference and
22 abilities I would just ask the Court if the Court needed me
23 to address any of those specific issues that they felt I have
24 not addressed

25 THE COURT All right Thank you

1 MR SCALZO And additionally I would just ask that this
2 motion and or this memorandum along with any of my other
3 motions be made a court exhibit I forgot to ask about
4 that

5 THE COURT All right They they will be

6 MR SCALZO Thank you

7 THE COURT I sustain the objection In in my opinion,
8 the defendant is at fault or not without fault in bringing on
9 the difficulty as a matter of law The difficulty is not when
10 the victim gets up from the table and rushes him The
11 difficulty is the situation that has been going on all day

12 The de -- the victim, according to the defendant, the
13 victim threatens to kill him if he doesn't get away from Trice
14 or if he doesn't stop beating Trice or whatever it is that he
15 said In fact, I think he probably said it several different
16 ways In response to that activity, the defendant chooses to
17 walk into an apartment where both the victim and the woman are
18 present in order to tell her, however you want to describe it,
19 light most favorable to the defendant, in order to have a
20 discussion with her in which he basically tells her, "You have
21 you have no right to get your cousin and your family to come
22 talk to me about what has been happening between us " I don't
23 I don't mischaracterize that, do I?

24 MR SCALZO I think so I think it could reasonably be
25 inferred from what he said that he was trying to resolve the

1 issue, that it wasn't that he was going in there saying, "Make
2 it stop," he believed there was a misunderstanding and he was
3 trying to get her to correct the misunderstanding It
4 doesn't, in the light most favorable to the defendant, it
5 doesn't have to be confrontational in the sense of I'm trying
6 to create a fight, it's confrontational ---

7 THE COURT I I ---

8 MR SCALZO --- as resolution

9 THE COURT --- completely agree with that, completely
10 agree with that But in the light most favorable to the
11 defendant, what he went in there to discuss is the same
12 subject matter over which the man present in the room had just
13 threatened to kill him

14 MR SCALZO With the belief that in the presence of
15 these women he would not act out in front of the women That
16 was his belief That's what he testified

17 THE COURT So so you mean yes, but with the belief that
18 that in the presence of those women he would not act out And
19 you agree with what I just said then?

20 MR SCALZO You're gonna have to say it again 'cause
21 I ---

22 THE COURT He went into the apartment with the st --
23 with the in -- intended purpose of discussing the subject
24 matter over which the victim had just threatened to kill him

25 MR SCALZO The subject matter, yes, with the -- my

1 added part about it was, it was conflict resolution approach
2 not inciteful In other words, not going in intending to
3 incite anything, intending to resolve the conflict because he
4 believed at that point in front of the women he would not
5 incite, nothing would be incited based on prior experience,
6 and that, I believe, highlights the factual dispute and why
7 it's a jury issue

8 (Pause)

9 MR SCALZO Judge, can I add something for the Court's
10 consideration?

11 THE COURT Yeah

12 MR SCALZO I don't think that the, that the Court in
13 Slater meant this, but Your Honor talked about believing that
14 with the understanding that the Court would know there could
15 be jury issues, that in Slater it could be read that bringing
16 on the difficulty, him entering into that melee was bringing
17 on a difficulty and since that was not -- it could be a jury
18 issue since the Court nixed it, it was in essence saying as a
19 matter of law someone going into that type of melee is
20 bringing on the difficulty I don't think the Court was
21 saying that but even if the Court was saying that, it it
22 wouldn't have -- it would be saying that within the context of
23 proximate cause bringing it on and you don't have that same
24 kind of nexus here But I don't think the Court was saying
25 that I don't think it -- the Court was saying that we're

1 negating the jury issue, I think the Court was focused solely
2 on the matter of law being the the unlawful carrying of the
3 weapon and does that in and of itself constitute the
4 difficulty in bringing it on

5 Thank you, Your Honor

6 (Whereupon, the witness left the stand)

7 THE COURT All right I'll be right back

8 (Whereupon, a recess was taken)

9 THE COURT All right Well, I'll tell you what I I
10 where's -- there it is I think it's a difficult question and
11 I I -- the the unlawfulness of the conduct has a confusing
12 role in the bringing on the difficulty And in -- I'm not
13 sure that the Court has made it clear that the unlawfulness
14 has to play a role in the proximate cause side I I
15 definitely -- there are two ways of looking at it One is
16 does the violation -- is the violation of the law a proximate
17 cause? And the other is is he bringing on the difficulty?
18 And as I look back over all the cases, the only cases that are
19 decided as a matter of law are the ones where the unlawfulness
20 is a proximate cause like Slater which is where he had -- when
21 he had the gun out by his side But if you look at, if you
22 look at Burriss, you look at, now and that's not a
23 self-defense, it's an accident case, but but the question
24 there is whether or not he was lawfully armed in self-defense
25 when the accident occurred So it is in some sense a

1 self-defense case

2 There's some old cases that I just found reference to in
3 *Machenitch* (phonetic) in which the issue is discussed but it's
4 treated as a question of fact, the que -- the the -- where
5 it's not an unlawful act So my concern is that, is that even
6 though I think when when someone walks into a situation that
7 he has just been told will lead to his being killed, he is at
8 fault in bringing on the difficulty

9 I don't -- I'm not convinced that the Court would allow
10 me to make that decision as a matter of law as they did in
11 Slater, and so I I feel that I I'm gonna change my decision
12 and I am going to allow self-defense to be charged and because
13 I believe that there is a factual scenario that the jury could
14 buy that that would where they would find that he wa -- that
15 he was without fault in bringing on the difficulty As a
16 fact -- from a factual standpoint, I mean, I'm not looking at
17 it from -- I mean, it's difficult sometimes because to me the
18 difficulty is in is in Slater They didn't look at it from a
19 factual standpoint and they didn't, they didn't discuss the
20 importance of the weapon in that first paragraph then they,
21 then they stop their discussion, it's over, self-defense is
22 out and then they go on to discuss what appears to be an
23 alternative reason which is the weapon But looking it at a
24 whole I'm not positive they didn't mean that to be one
25 continuous discussion And so I'm gonna change my mind and I

1 think that self-defense is gonna be charged, that raises the
2 question of what what additional evidence might come in

3 The -- and and there are -- you've already gotten in all
4 the evidence that -- of what Will said, right? I haven't
5 excluded anything that Will said

6 MS PAOLETTI Yes, sir

7 THE COURT No dealings between Will and the defendant
8 earlier in the day has been excluded

9 MR SCALZO That's correct

10 THE COURT The only evidence that that I have not yet
11 admitted is the conversation between Keith Williams and the
12 defendant

13 MR SCALZO As well as the victim's priors

14 THE COURT As well as the prior conviction

15 THE COURT All right

16 MS PAOLETTI Your Honor, we have separate arguments ---

17 THE COURT I realize that

18 MS PAOLETTI --- on admissibility of those pieces of
19 evidence

20 (Pause)

21 THE COURT All right Now, as far as the -- as the
22 testimony about what what Williams told the defendant and
23 pulling the gun on him, the objection to that is relevance
24 Okay I'm gonna admit it because the relevance of that goes
25 in two directions The relevance of that is not only what

1 might have been in the mind of the defendant at the time he
2 pulled the weapon, but the relevance is also what was in the
3 mind of the defendant at the time he chose to enter the
4 apartment And and that relates not so much to his fear of
5 imminent bodily danger, but it relates to whether or not he
6 was at fault in bringing on the difficulty So in other
7 words, because he had been threatened by two people with his
8 life and because he felt that that the threats were connected
9 and the two people had talked because of who they said they,
10 um, because both had mentioned this Rocko or whatever his ---

11 MR SCALZO Antonia you're talking about

12 THE COURT Antonia That has increased -- that
13 increases the likelihood that he believed there was going to
14 be a physical confrontation once he got inside the apartment
15 So in my opinion then the question, and I'm just looking at it
16 from a relevant standpoint, I think it's relevant I'm gonna
17 admit it

18 As far as the conviction is concerned, you know, again,
19 it it because if if he thinks if in, if in his mind at the
20 time he pulls the gun the victim is this extremely dangerous
21 person because he was previously convicted of second degree
22 murder, well then also at the time he made the decision to go
23 in the victim is this extremely dangerous person because he
24 was convicted of second degree murder So I understand ---

25 MS PAOLETTI Go ahead Sorry It's all right

1 THE COURT I understand the argument that is, that
2 is -- that it is remote in time and and that it and that it --
3 and that that remoteness in time at the point where he pulls
4 the gun is likely not to have come into the defendant's mind
5 But the defendant has said -- well, the suggestion has been
6 made that the defendant is going to say or you're gonna argue
7 at least, that it was in his mind when he pulled the weapon
8 and he thought it significant enough at the time he pulled the
9 weapon to create fear It flows from that that it was
10 -- significant enough for the fear to keep him out of the
11 apartment in the first place So that adds, that that removes
12 the remoteness from the from the problem in my opinion So
13 I'm gonna admit 'em both

14 Anything else?

15 MS PAOLETTI Your Honor, the state would move that you
16 restrict that evidence to the existence of the conviction and
17 not what the defendant thought he knew about the facts of the
18 case

19 THE COURT Well, I think that the the proper scope of
20 what's admissible is what the defendant knew and if he knew
21 the facts of the case then it would be admissible

22 MS PAOLETTI And and so he can completely
23 mischaracterize and I guess maybe I'll have to call a re --
24 rebuttal witness if it's -- if he, you know, completely and
25 totally makes up ---

1 THE COURT Yeah

2 MS PAOLETTI --- some some ---

3 THE COURT Yeah

4 MS PAOLETTI --- horrific story

5 THE COURT And what what greater privilege would a trial
6 lawyer have than a witness who allows an opportunity for you
7 to come back at him with with the truth like that

8 MS PAOLETTI I'm ready, Your Honor

9 THE COURT All right Bring in the jury

10 (The defendant returned to the stand)

11 (The following takes place in the presence of the jury)

12 BY MR SCALZO

13 Q Darian, I have no idea where I left off with you so some
14 of what I go over with you may repetitive but we just need to
15 get back into our discussion Let me start here Why --
16 when I started out questioning you, I neglected to ask you
17 about an armed robbery charge that went along with this 1995
18 other conviction Do you have that? Is that correct?

19 A Yes, sir

20 Q Did they happen at the same time?

21 A Yes, sir

22 Q The conviction?

23 A Yes, sir

24 Q All right Let's talk about Will and your experience
25 with him When did you first meet him?

1 A I met him like in the summertime 'cause it was Trice's
2 little girl's birthday

3 Q What year?

4 A Um, 2000 -- 2004

5 Q Okay And you said it was Trice's daughter's birthday
6 Where were you?

7 A I was at, um, Latrice's, at Latrice's house

8 Q And what was going on?

9 A Well, it was Trice's daughter's birthday so we was having
10 a birthday party for her, me and Keith was hav -- having a
11 birthday party for her daughters or whatever Zae ---

12 Q Keith who what Keith are you talking about? ~

13 A Um, Trice's baby dad

14 Q William, Keith Williams he was there?

15 A Yes, sir

16 Q Okay And where is it that you meet Will? What what
17 what happened? Tell us about that

18 A Okay Um, it was a knock on the door so I can't remember
19 if me or Trice went to the door but both of us end up at the
20 door some kinda way but he had, um, when I opened the door
21 whatever, uh, whatever one is what -- which one of us open the
22 door, he came in and he introduced hisself and Trice was like
23 she didn't know who he was or whatever

24 Q Okay And did you stand there and talk with him or what
25 did you do?

1 A No, I stood there for a minute because I was wondering
2 who he was

3 Q And then what did -- you say you stood there for a
4 minute Where did you go after that?

5 A I went right back in the kitchen

6 Q Okay And that was basically the first time you ever met
7 him?

8 A Yes, sir

9 Q Did he begin to stay in Greenville after that?

10 A At the time when I met him, he was like, I don't know if
11 he was coming in and out of North Carolina or whatever, but I
12 like see him like spurts of the moment He would come over,
13 um, Trice's house or her mother's house

14 Q Okay But you start -- did you start having an
15 interaction with him over time?

16 A Yeah, you could say that

17 Q Talk to him?

18 A Yes, sir

19 Q Okay And was there a point in time when he discussed a
20 criminal charge that he had with you or in the presence of
21 you?

22 A Yes, sir

23 Q Tell us when that was about as best you can

24 A I can't remember when but I remember me and him was
25 having a discussion at the table or whatever He was talking

1 about, um, have I ever been in jail or whatever and I was
2 telling him, "Yeah, I been in jail " And he got --

3 Q And wha'd he say?

4 A He got explaining that he had been in jail and that when
5 he had went to jail he explained that whatever he went to jail
6 for he used to taste blood or whatever So then that began to
7 make me want to know why, "What what you mean by tasting
8 blood?" There would be certain around -- just times when I'm
9 around he'd be like well he had committed a murder with his,
10 um, stepfather or whatever, you know

11 Q Okay Was anybody else there with you?

12 A I mean, not the whole conversation but I think like Trice
13 walks in and hears like the part we talking about the blood or
14 whatever, that he taste blood like that or whatever

15 Q Okay And about when in the time frame of after the
16 meeting, how long after the meeting with him does this take
17 place?

18 A It's pro -- probly a probly a month or two or something
19 like that

20 Q Okay Let's fa -- let's fast forward to or back to
21 January 26, 2005 in talking about Keith Williams coming to the
22 apartment Did Keith Williams come to the apartment that
23 night or that evening?

24 A Um, he came in the afternoon

25 Q Afternoon?

1 A Uh-huh

2 Q Okay And was Latrice there?

3 A No

4 Q Were you there?

5 A Yes

6 Q Alone?

7 A Yes, sir

8 Q And when he came to the apartment, what takes place
9 between the two of you?

10 A Okay Well, he he knocks on the door and I open the door
11 and he he comes in You can tell he was like upset or
12 whatever He got -- asked me whether what happened between me
13 and Trice or whatever But mainly his conversation wasn't
14 really about Trice, he was just wondering why, um, I had hit
15 Trice in front of his little girl or whatever

16 Q Okay And did he do or show you anything?

17 A I mean, as he's talking, he had a gun in his hand at the
18 same token, you know what I mean

19 Q Did he point it at you?

20 A I wouldn't say more like pointing but he had it out

21 Q Okay Now, how long is he there before he leaves?

22 A I say probly probly five (5) minutes

23 Q Okay And does -- after he leaves what do you do?

24 A I mean, after he leaves I lock the door and then, you
25 know, I get to wondering what is all this evolving to, you

1 know what I mean, for him to pull a gun out 'cause me and him
2 go all the way back to like kids or whatever

3 Q When -- does he say anything to you during that
4 conversation about his understanding about what you had done
5 to Latrice?

6 MS PAOLETTI Your Honor, I object to that leading
7 question

8 THE COURT Overruled

9 DEFENDANT Well, he got to tell me that, um, Antonia had
10 told him or was trying to show him that Trice face was swollen
11 or something in that nature

12 BY MR SCALZO

13 Q And who is Antonia?

14 A 'That's Trice' cousin

15 Q Okay And where does she stay at?

16 A She stay with Geneva

17 Q Who is?

18 A Trice's sister

19 Q Okay We talked about after -- well, let me ask you
20 this Will had come by the apartment we talked about about
21 four times?

22 A Yes, sir

23 Q Is that before or after Keith Williams came by?

24 A It was after Keith came by

25 Q All right And does anything that Will says at any of

1 those times when he came back after Keith give you any
2 indication about any contact between the two of them, Keith
3 and William?

4 A I mean, like I say, he was saying the same thing what
5 Keith was saying that Antonia had told him that I had beat up
6 Trice or whatever swollen and that nature

7 Q Okay Based on the fact that they were referring to the
8 same people or events, did you have a belief about what that
9 meant?

10 A I mean, for them to hear it from the same person
11 evidently they had to be in the same vicinity of this person
12 because they saying, they all saying the same thing So
13 either they was there at the same time or they came at
14 different times I don't know

15 Q Okay Let's go over -- jumbled around, I'm trying to
16 make it as clear as I can Let's talk about after the
17 confrontations with Keith and with Will that after -- evening
18 into late evening, describe to the jury what you're feeling

19 A I mean, I have like butterflies and my my legs are
20 shakin' and I'm scared and like my mind's going all kind of
21 ways, you know, trying to avoid the situation

22 Q Are you scared for your life in general at that point
23 when they're not around?

24 A I would say that

25 Q Okay And what did you believe would have to happen to

1 help resolve whatever issue was taking place?

2 A I mean, to resolve the situation I either had to get me a
3 ride off to nowhere and leave the scene, ---

4 Q Okay

5 A --- get away from the situation

6 Q You said either?

7 A Either

8 Q Besides getting the ride is there any other thing that
9 could happen to resolve the issue?

10 A By talking to Trice

11 Q And what would talking to Trice do or what would have --
12 would it have done?

13 A I mean, I felt by talking with her if this is what the
14 whole situation involving her which was her, like I felt that
15 she could explain to her family members better than I could

16 Q Okay Did you have the impression based on talking to
17 Will and Keith that they thought she was hurt more than she
18 wa -- you believed she was?

19 A I think they thought she was hurt from what was explained
20 to him 'cause they aint never, they haven't never seen it
21 going off hearsay

22 Q And Latrice was the only one who could resolve both
23 problems?

24 A Yes, sir

25 Q If you, you talk about getting a ride out of there, if

1 you were to have gotten a ride out of there, would that have
2 solved the problem with regard to, in your mind would it have
3 solved the problem with regard to Will and Keiths' concern
4 about your situation?

5 A I don't think so

6 Q Why not?

7 A Because if a person, if a person got, a person got in
8 their mind that you're as they say I was jumping on their
9 cousin and I always have gotten reminded that they don't like
10 me or they'll have as far as a altercation's gonna continue to
11 keep going on and on and eventually if it had occurred or if
12 it didn't occur anything that I do wrong

13 Q You talk -- we talked about you had called a ride and you
14 called Travis Workman is what you testified to

15 A Yes, sir

16 Q And when did they a -- when does Travis arrive at the
17 scene?

18 A Okay Well, we didn't just get into that but we was --
19 when me and Sammy was standing out there, they was just
20 pullin' up

21 A Um-hum

22 Q So they got out of the car and they was asking me what
23 was going on and I explained the situation to them So then
24 my homeboys they're wantin' to go in there and gang or
25 whatever

1 Q What do you mean by -- what do you mean by "gang"?

2 A I mean they wanna jump on him

3 Q Okay Fight?

4 A Fight

5 Q Okay And what do you do?

6 A So I tell them, "Nah, it aint, it ain't like that," you
7 know what I mean, "It ain't even got to be like that Just
8 just, you know, go on about your business or whatever I just
9 called you all for a ride It ain't like that "

10 Q Okay And did they cooperate with you? They agree with
11 with you? What 1 -- what was their response?

12 A I mean, when I told 'em that they said, "Well, if you all
13 right then just," you know, "let's ride out or whatever," you
14 know what I mean

15 Q All right And -- but you didn't get in the car right
16 away though

17 A I didn't get in the car right then

18 Q Why not?

19 A Because see Trice's -- Trice had her two kids in the
20 house so in order for me to lock the door, like I said, I had
21 to pull the door and lock the dead bolt with the key

22 Q Okay

23 A So that would put me in a position where I have to take
24 the key to Latrice

25 Q All right

1 A Plus she already wanted to talk to me anyway

2 Q You said she already wanted to talk to you Why do you
3 think that?

4 A 'cause when she got outta the the car with her mother or
5 whatever, I was explaining to her that her family members had
6 been threatening me all day, that she needed to talk to 'em
7 She and she was like nonchalant because she was thinking what
8 I'm talking about So she said, "I got something to say I
9 got to talk to you anyway " So then she goes upstairs and put
10 the kids in their bed and then she's gonna go to her mother's
11 house

12 Q Okay So you believe there was an unfinished
13 conversation that needed to be finished?

14 A Yes, sir

15 Q All right And we talked about it earlier but I want to
16 make sure we cover all of this When you decide to go inside
17 the apartment, Trice's mom's apartment, who do you believe is
18 inside?

19 A Well, Will, Will, Trice and her mothers 'cause he had got
20 outta the car, you know, and, you know, if I rewind back he
21 had got outta the car and asked where Trice was so ---

22 Q Okay

23 A --- Sammy told he was next door or whatever

24 Q All right Now, in preparing to go into the apartment,
25 in your mind do you believe you're gonna walk into something

1 tnat is violent or could become violent?

2 A No, sir

3 Q Why not?

4 A Because like I say, when he's around Ms Paulette or
5 whatever he portrays a different image so I didn't feel that
6 he was gonna show out or or make a scene like that

7 Q And you said a different image describe the different
8 image

9 A I mean, you know like, you know like as I quote us people
10 that's like try to be around your parents they try to portray
11 a role like they don't do it, but when they're outside their
12 home they do things that they tend not to do

13 Q Okay

14 A So I'll put like that

15 Q Kinda like -- is it kind of like when guys talk with guys
16 but don't say that kind of stuff in front of girls?

17 A Yes, sir

18 Q When you got inside, did -- when you first got inside the
19 apartment, before you get into the kitchen, did you hear or
20 see anything that would make you think that anything violent
21 was about to happen?

22 A No, sir

23 Q Where was your gun?

24 A My gun was in my right pocket on my leather coat

25 Q Okay Did you ever, and we we are not, we have not

1 gotten to the kitchen yet, we're still in that hallway, did
2 you ever pull it out and show Latrice?

3 A No, sir

4 Q And when you get into the kitchen, Latrice is sitting
5 down and you're talking to her, the -- when is the first time
6 you pull out the gun?

7 A Okay As I'm talkin' to Latrice explaining her the
8 situation is going on, Will gets up and say, "Who you talking
9 to me?" So he had balled his hands up like he was rushing me
10 or whatever so I started started shooting or whatever

11 Q All right And we talked about this but since you're
12 there why did you shoot? What was going on in your mind that
13 made you do that?

14 A I mean, from I'm gonna say from 5 30 all the way till
15 like eleven o'clock, I've been threatened all day repeatedly
16 to where somewhere that where I exposed to that, that they
17 come to me I never came to them no time with no altercation
18 or none of that They came to me each time and I avoided one
19 Ea -- I avoided five situations, four times that William came
20 and one time that, um, Keith came

21 Q Okay Did you have any indication from Will,
22 Ms Paulette, or Latrice that they were aware that you had a
23 gun?

24 A No, sir

25 Q And think I asked you this but when you went into the

1 kitchen with Latrice, did you address -- did you directly
2 address anyone else in the kitchen?

3 A No, sir

4 MR SCALZO Judge, I think that's all I have at this
5 time

6 MS PAOLETTI You want me to start, Your Honor?

7 THE COURT Yes, ma'am

8 MS PAOLETTI All right

9 CROSS-EXAMINATION BY MS PAOLETTI

10 Q Mr Robinson, this is not the time, the first time you've
11 been to the courthouse here in Greenville, is that right?

12 A No, ma'am

13 Q You've got convictions for kidnapping, armed robbery,
14 burglary and also false information to police, right? From
15 2001? Is that right?

16 A No, no ma'am, 1995

17 Q Two thousand one (2001) you were convicted of false
18 information to police, isn't that right?

19 A Yes, ma'am

20 Q Okay

21 A I thought you was talking about the armed robbery

22 Q Yeah, that's all from '95, right?

23 A No, the armed robbery does not consist of 2001 or 2

24 Q In 1995 you were convicted of burglary, kidnapping and
25 armed robbery

1 A Yes, ma'am

2 Q Two thousand one (2001) you were convicted of giving
3 false information to police

4 A Yes, ma'am

5 Q Okay You gave a statement in this case to police,
6 didn't ya?

7 A Yes, ma'am

8 Q You remember that?

9 A Yes, ma'am

10 Q And you gave it to 'em the night that you were
11 arrested?

12 A Yes, ma'am

13 Q Talked to investigator McNamara, right?

14 A Yes, ma'am

15 MR SCALZO Your Honor, may we approach for a second?

16 THE COURT Yes, sir

17 (Whereupon, a bench conference was held off the record)

18 THE COURT We are going to break for lunch right now I
19 am going to have to do -- take care of some legal matters that
20 relate to this case It'll take me perhaps as long as thirty
21 (30) minutes to do that and then we're gonna have to also have
22 a lunch break I am going to ask you all to return to your
23 jury room at two o'clock and I hope that we will be ready to
24 begin at two o'clock and I realize you all have spent a lot of
25 time back there already today All of the time that you have

1 spent back there I have been sitting in this chair or I did
2 actually spend a moment pacing the halls thinking about what
3 decision I had to make, but other than we've been working so
4 and I apologize for you all having to stay back there but
5 we're gonna break for lunch now Please be back in your jury
6 room at two o'clock Remember that you may not discuss the
7 case and I'll see at two o'clock

8 (The following takes place outside the presence of the
9 jury)

10 THE COURT All right Sir, you can step down

11 (The witness left the stand)

12 MR SCALZO Judge, I'm just gonna talk to him so he
13 understands what's going on but I'm not gonna talk to him
14 about any ---

15 THE COURT Okay

16 MR SCALZO --- testimony

17 MS PAOLETTI State calls Investigator Mike McNamara to
18 the stand

19 MICHAEL J MCNAMARA, having been
20 first duly sworn, testified as follows

21 THE CLERK Please state your full name for the record

22 MR MCNAMARA Michael J McNamara

23 DIRECT EXAMINATION BY MS PAOLETTI

24 Q Mr McNamara, will you tell Judge Few who you work for

25 A Greenville County Sheriff's Office, ma'am

1 Q And what is your position with Greenville County
2 Sheriff's Office?

3 A Currently am a sergeant over investigations with sex
4 crimes and youth services

5 Q Were you with the sheriff's office January 27th 2005?

6 A Yes, ma'am

7 Q And did you have an occasion to interview the defendant
8 Darian Robinson?

9 A I did not on that day but I did shortly after that On
10 February 1st I interviewed him

11 Q Thank you for reminding me that it was February 1st when
12 he was arrested

13 A Yes, ma'am

14 Q Did you, did you interview him on that day?

15 A Yes, ma'am, I did

16 Q Where was the defendant when you interviewed him?

17 A He was at the law enforcement center up in the criminal
18 investigations division in the back office that we use for
19 violent crimes

20 Q And ultimately did he give a statement that he signed?

21 A Yes, ma'am, he did

22 Q Okay Who was present when he gave the statement?

23 A If it's -- we do a waiver before the statement and Deputy
24 White was present and witnessed and that part of the statement
25 when we took the original, the actual written statement,

1 Deputy James McNealy was present and witnessed the taking of
2 that statement

3 Q Was the defendant under arrest?

4 A Yes, ma'am, he was

5 Q How long he -- had he been detained when he made the
6 statement?

7 A Approximately an hour or so It might have been slightly
8 longer than that

9 A Did you ask him questions?

10 A Yes, ma'am, I did

11 Q And did he volunteer information?

12 A Yes, he did

13 Q Did you give the defendant his Miranda warnings?

14 A Yes, ma'am, I did

15 Q Did you use a card or a waiver form?

16 A We have a form, a preprinted form that we use anytime we
17 read somebody their Miranda rights

18 Q Did you -- did the defendant initial and signed the
19 waiver form?

20 A Yes, he did, ma'am

21 Q Will you tell the Court how many times you see the
22 defendant's initials on that waiver form Do you have it in
23 front of you?

24 A Yes, ma'am His initial's in there seven times

25 (Waiver of rights form marked State's Exhibit No 24 for

1 identification)

2 Q Is your signature on that form?

3 A Yes, ma'am, it is

4 Q How many times is the defendant's signature appear on
5 that form or his name?

6 A His name is there His written name is there once and I
7 placed that there at the top of the form but then his
8 signature and his handwriting is there twice

9 Q Okay I'm gonna show you what's been marked for ID as
10 State's Exhibit 24 Is that the the waiver form that you're
11 referring to?

12 A Yes, ma'am, it is

13 MS PAOLETTI And, Your Honor, at this time we move the
14 waiver of rights by the defendant into evidence

15 MR SCALZO No objection for the limited purpose of this
16 hearing

17 THE COURT All right It's admitted

18 (Waiver of rights form marked State's Exhibit No 24
19 admitted into evidence)

20 BY MS PAOLETTI

21 Q Investigator McNamara, will you explain the procedure
22 that you went through when you went over the defendant's
23 rights with him using this form for the Court?

24 A Yes, ma'am First had the defendant in the room with me
25 and I asked if he needed anything, if he was okay, if

1 everything was all right, and if I could do anything for him
2 at that time before we got started

3 Q And what is that? You mean use the restroom?

4 A Does he need to use the restroom, does he need something
5 to drink Normally we could provide something to drink right
6 away there Certainly if he needed something to eat we could
7 arrange that, it would just take longer but I'm gonna be
8 prepared to do whatever we need to do to make him comfortable
9 at the time we start to take his statement

10 After those questions are asked, I produced this written
11 waiver And in the situation in my office I had my desks and
12 then just to the left of my desk is a chair and that's where
13 Mr Robinson sat So I slid myself over to where his chair
14 was and I placed this form like this (demonstrating) on the
15 desktop and I asked him to follow along with me as I read
16 Let me back up just a bit The first thing I did was put his
17 personal information up at the top

18 Q And is that information that he related to you or did you
19 have it already? Do you know?

20 A I had it already One of the things I do though is ask
21 him to verify once I write it down that that that information
22 is correct

23 Q And did he do that?

24 A Yes, on this form he did

25 Q Okay

1 A He looked at it, read it, said that that information
2 about him was correct

3 Q Okay

4 A I also added the case number up at the top and then the
5 date and the time at which we begun this whole process

6 Q And what was, we discussed the date, what was the time?

7 A The time was 1 36 a m and that's the time that I began
8 to read this form to him and put the information on it

9 Q Okay Whadya do after that?

10 A Then I read out loud to him and asked him to follow along
11 each of these questions in that top half of the form Once I
12 read those questions to him I asked him did he understand what
13 I just read and did he follow along and read with me

14 Q And do go over the the the individual rights listed in
15 the form one by one and then have him initial or all of them
16 together and have him, have him initial each one?

17 A I read them all at once and ask him if he understands
18 that and he doesn't even do any initials at that point until I
19 go down to the bottom and read the waiver out loud, ask him to
20 follow along with that and then ask him if he understands what
21 I just read him in the waiver

22 Q And did the defendant appear to understand his rights
23 when he -- when you went over this form with him?

24 A He did And he specifically told me that he understood
25 what we read on the form

1 Q Did you and the defendant have any problems
2 communicating?

3 A No, ma'am, he he listened to what I had to say, he looked
4 at me when he spoke, his answers were responsive to any
5 questions that I asked and he seemed to be having no
6 difficulties at the time that we did this form

7 Q Did he appear intoxicated at all?

8 A Not at all and I asked him if he was under the influence
9 of any alcohol, drugs, over-the-counter medications, anything

10 Q And that's noted in his statement, is ---

11 A Yes, ma'am

12 Q --- that correct? Did the defendant ask you any
13 questions about his rights?

14 A No, ma'am, not about this form at all

15 Q Did he do anything to indicate that he did not understand
16 his rights?

17 A No, ma'am, he did not

18 Q Did the defendant waive his rights and agree to make a
19 statement?

20 A Yes, ma'am, he did

21 Q Did he ever ask for an attorney?

22 A No, he did not

23 Q Did he ever invoke his right to remain silent?

24 A No, ma'am

25 Q How long -- first of all, let's talk about how long it

1 took you to go over the waiver of rights form Is there a way
2 for you to tell that?

3 A Yes, ma'am, at the bottom the time there indicated is the
4 time that his signature had been placed on the form and that
5 we had completed the form

6 Q And what time was that?

7 A 1 41 a m

8 Q So it took you five minutes to go over this form with
9 him?

10 A Yes, ma'am

11 Q How long did the taking of the entire two-page statement
12 take? Do you remember?

13 A No, I I couldn't tell you exactly It would be a -- an
14 estimate on my part, ma'am

15 Q Okay Was he restrained when he was making the
16 statement?

17 A I do not remember Typically, at that point -- I I can
18 only answer I don't remember I don't believe he was but I
19 don't remember specifically

20 Q Was he allowed to take breaks to use the restroom if
21 requested?

22 A Yes, he was told specifically at the beginning of the
23 taking of his statement if he needed to stop for whatever
24 reason, ---

25 Q And ---

1 A --- ne decided he was hungry, he decided he did need
2 something to drink, he decided he needed to use the restroom
3 he'd only have to say so and we would take him down there to
4 go

5 Q Did he request a break for anything at any time ---

6 A No, ma'am

7 Q --- that you remember? Would he have access to a
8 telephone if he asked for it?

9 A If he had asked for it, yes I don't know if we would
10 have allowed him at that point right then and there to use the
11 telephone, but certainly once the statement was completed we
12 could have allowed him to use the telephone if he needed

13 Q If he'd asked to use the telephone to speak to an
14 attorney or invoked his right to an attorney, would he have
15 been allowed to do that?

16 A Yes, ma'am, and had ---

17 Q And did he do that?

18 A No, ma'am, and had he done that the interview simply
19 would have been ended at that point

20 Q And so he made no requests, is that correct, during the
21 entire taking of the statement?

22 A That's correct

23 Q And you mentioned this earlier, how many officers were
24 present when he gave the statement?

25 A At least Deputy McNealy and at this point I can't

1 remember if Deputy White stepped out of the office at the
2 point after he witnessed the waiver and we took the original
3 statement

4 Q Did you or anyone else promise the defendant anything in
5 return for making this statement?

6 A No, ma'am, not at all

7 Q Was it given freely and voluntarily?

8 A Yes, ma'am, it was

9 Q And did you go back over the statement after it was
10 written out and ask the defendant if he wanted to make any
11 changes to it?

12 A I gave it to him We print it out once it's completed
13 It's easier for him to read it on the page than it is on the
14 computer screen so we print it out, hand it to him and ask him
15 to read it thoroughly

16 Q And and tell Judge Few exactly how you get this written
17 statement that the defendant made

18 A Actually, it's quite simple I would just type what he
19 tells me As he speaks I type into the computer and we slow
20 down from time to time, my skills don't allow me to keep up
21 specifically with somebody speaking as we are speaking here, I
22 have to ask him to slow down from time to time, but other than
23 asking him to slow so I can catch up, I simply let him speak,
24 give his version of what happened, type it into the statement,
25 put anything he wants in there, that's his statement, and

1 complete it that way

2 Q And did you give him the opportunity to read the
3 statement and make any additions to the statement?

4 A Yes, ma'am

5 Q And did he make any additions?

6 A He made some minor corrections either a spelling of a
7 word corrections and you can see that in his statement I had
8 him initial those points where he did that

9 Q So he did that in his own handwriting?

10 A Yes, ma'am

11 Q Did the defendant sign the statement?

12 A Yes, ma'am, he did

13 (Voluntary statement marked State's Exhibit No 25 for
14 identification)

15 Q I'm gonna show you State's 25, ask you if you recognize
16 that

17 (Defendant examined the exhibit)

18 A Yes, ma'am, I do

19 Q What is that?

20 A That is the written statement I took from Darian Robinson
21 on that night, February 1st 2005

22 Q And was the defendant provided with a copy of his
23 statement?

24 A He was and he indicates that at the bottom that, uh,
25 printed name is where he indicates that he has received a copy

1 of the statement

2 Q And who notarized that again? |

3 A Deputy James McNealy witnessed the taking of the
4 statement

5 MS PAOLETTI Your Honor, at this time we'd move State's
6 Exhibit 25 into evidence for purposes of this hearing

7 MR SCALZO Without objection for this hearing

8 THE COURT It's admitted

9 (Voluntary statement marked State's Exhibit No 25
10 admitted into evidence)

11 MS PAOLETTI Your Honor, would you like for me to have
12 the investigator publish the statement into the record?

13 THE COURT I'd rather just hand it to me and let me read
14 it

15 MS PAOLETTI Yes, sir

16 (Counsel handed the document to the Court)

17 MS PAOLETTI And -- I ha -- Your Honor, there's a ---

18 THE COURT Go ahead

19 MS PAOLETTI The the defendant was taken, later on
20 February 1st the day he was arrested, he was taken out of
21 detention and was taken to where the defendant told
22 investigators that he put the gun He signed another waiver
23 of counsel rights later that day and I think we need to to go
24 over the voluntariness of -- he he drew sketches, Your Honor
25 Um

1 THE COURT Are you gonna introduce the sketches?

2 MS PAOLETTI I don't necessarily think I need to
3 introduce the sketches, but the -- what happened was
4 Investigator McNamara and Silvaggio took the defendant out of
5 detention, took him to this field where he said he hid the gun
6 and they were not able to find it And I do intend to impeach
7 the defendant on that issue I don't know if the
8 voluntariness ---

9 THE COURT On the fact that he took 'em -- that he told
10 'em he could show 'em where the gun was?

11 MS PAOLETTI Yes, sir

12 THE COURT And that was later?

13 MS PAOLETTI It was the same day as the statement The
14 statement was at 1 30 in the morning Shortly after he was
15 arrested, they took him back out of detention at 8 39 the next
16 morning and did a separate waiver of counsel

17 THE COURT Okay

18 (Waiver of counsel marked State's Exhibit No 26 for
19 identification)

20 BY MS PAOLETTI

21 Q Mr McNamara, I'm showing you what's been marked State's
22 Exhibit, State's Exhibit 26 Can you tell the Court what that
23 document is?

24 A That is a waiver of counsel that we produced at the jail
25 on that same day when we went over there to speak to Darian

1 about his agreement to take us out to where he says he had
2 placed the gun

3 Q And that was also on February 1st?

4 A Yes, ma'am

5 Q What time?

6 A We started that form at 8 39 in the morning

7 Q And what is the purpose of this form?

8 A This form is to let us know that Darian was willing to
9 take us out, again, without any representation of counsel or
10 without the requirement to speak or talk to anybody, is
11 willing to take us out voluntarily, get in the car and go show
12 us where he says he took the gun, where he put the gun

13 Q And did you go over that form with him?

14 A Again, yes He stood, at this point we were at the sign
15 out desk in detention down in the back, and he stood before us
16 stood before myself at a counter We placed this on the
17 counter I again asked him to follow along with me as I read
18 out loud and I read the entire top part of the form

19 Q And did he initial that as you are reading it to him or
20 after?

21 A Afterwards

22 Q Okay

23 A Once I did that I asked him if he understood that part of
24 the form He indicated to me that he did He said yes that
25 he did so we went ahead and I read the second part of the form

1 out loud to him

2 Q Okay What's the second part of the form?

3 A It's similar to the rights that we read the night before
4 in that, "I have the right to remain silent, things can be
5 used against me," he's entitled to an attorney if he so
6 chooses

7 Q Miranda?

8 A His Miranda warning, yes, ma'am

9 Q Okay Did he initial the second part of that form?

10 A Yes, he did

11 Q How many times did he initial it? How many times are the
12 defendant's initials on this document that you can tell with
13 my hole punch in it?

14 A It looks like eighteen (18)

15 Q Did he sign the document?

16 A He did in two different places

17 Q Okay Did he appear to understand his rights at this
18 time?

19 A Yes, he said that he did understand his rights and was
20 willing to waive them and accompany us out to the scene to try
21 and find the gun

22 Q You didn't have any problems communicating with him this
23 time?

24 A No, ma'am He seemed exactly the same as he had earlier
25 that morning when I I spoke with him in the office, and no

1 difficulty understanding my questions or comments and things
2 that he said were easily understandable It was just a
3 typical conversation like we're having now

4 Q Did he ask any questions about his rights in -- at 8 30
5 in the morning or 8 39 when you started going over this form
6 with him?

7 A No, ma'am

8 Q Did he do anything to indicate he did not understand his
9 rights at that point?

10 A No, ma'am

11 Q Did he again waive his rights and agree to accompany you
12 to try and find the gun in this case?

13 A Yes, he did

14 Q Did he ever ask for an attorney?

15 A No, he did not

16 Q Did he ever invoke his right to remain silent?

17 A No, he did not

18 Q And you mentioned this earlier, where did he execute this
19 waiver of counsel form?

20 A This was over at the Greenville County Detention
21 Center

22 Q And how -- do you remember approximately how long it took
23 you to go over this document with him?

24 A About six minutes because we have a closing time at the
25 bottom as well where Mr Robinson indicated with initials the

1 time that we completed the form

2 Q 8 46 a m ?

3 A Yes, ma'am

4 Q And who besides you and Investigator Silvaggio was
5 present for this?

6 A It would have a detention officer at the desk I don't
7 remember at this point who that was

8 Q If he had wanted to take any breaks or ask any questions
9 during the execution of this waiver of counsel, would you have
10 allowed him to do that?

11 A Yes, ma'am

12 Q And did he ask for anything?

13 A No, he did not

14 Q What were you and Investigator Silvaggio wearing when
15 when you went over this form with him, do you remember?

16 A I guess business casual clothes, a pair of slacks, shoes
17 and either like a Powder shirt, like a golf shirt or a long
18 sleeved shirt and tie

19 Q You were not in uniform?

20 A No No, ma'am

21 Q What -- how about Investigator Silvaggio?

22 A No, he was dressed as I was

23 Q Did you or Investigator Silvaggio promise the defendant
24 anything in exchange for going out to help you find the gun?

25 A No, ma'am

1 Q Did you or Investigator Silvaggio coerce him in anyway
2 and agree -- to get him to agree to go to try and help you
3 find this gun?

4 A No, ma'am

5 Q Did you, you or Investigator Silvaggio or anyone else
6 threaten the defendant into make -- into going with you to
7 help locate this gun?

8 A No, ma'am

9 Q He waived his rights again that morning freely and
10 voluntarily?

11 A Yes, he did

12 Q And did he go with you to try and find -- locate the
13 weapon freely and voluntarily?

14 A Yes, he did

15 Q And did he have an opportunity to to go over there form
16 and read it at that time?

17 A Yes, ma'am In fact, I asked him to follow along again
18 as I read it out loud to him

19 Q How -- what kind of education does the defendant have?

20 A He grad -- he completed the 11th grade in school, ma'am

21 MS PAOLETTI And, Your Honor, that's on the top of the
22 State's Exhibit 26 -- I'm sorry, 25

23 MR MCNAMARA And in order to ensure when we do both of
24 these forms that the defendant can read, the reason that his
25 signature is on the form more than once, for example, after

1 the 1, 2, 3, 4th line on the rights form ---

2 BY MS PAOLETTI

3 Q And that's Exhibit No 24

4 A --- after the 4th line on this form, I asked him to read
5 out loud to me that entire line that says, "You have the right
6 to talk to a lawyer for advice," and that's twofold Number
7 one is so that we understand that he can read and number two
8 it's to reiterate to him again that he does have the right to
9 an attorney before he does anything else

10 Q And did he indicate by putting his name by line or that
11 fourth paragraph on the waiver of rights No 24 that he read
12 and understood that?

13 A Yes, and I heard him out loud I I was satisfied that he
14 sufficiently was able to read that without difficulty and then
15 he signed his name after that just as he did similarly but it
16 was just the third line on this form but it's the same basic
17 content in the line about his right to an attorney And
18 again, it ensures us that he can read And number two, that
19 he is aware that he does have the right to have an attorney
20 present

21 MS PAOLETTI And, Your Honor, I'm not sure if I moved
22 Exhibit 26 into evidence, but at this time the state would
23 move State's Exhibit 26 which is entitled "waiver of counsel"
24 into evidence

25 MR SCALZO Without objection for this hearing

1 THE COURT It's admitted

2 (Waiver of counsel marked State's Exhibit No 26 admitted
3 into evidence)

4 BY MS PAOLETTI

5 Q Investigator McNamara, after the defendant executed the
6 waiver of counsel in the morning, did did you go out to try
7 and find the gun?

8 A Yes, we did

9 Q Were you able to find the gun?

10 A No, ma'am, we were not

11 Q All right Tell tell Judge Few what those two documents
12 are that you've got in front of you right here (indicating)

13 A We'll start with this (indicating) one here This
14 document is a diagram, a hand drawn diagram of the apartment
15 where the shooting took place the night before, um, the week
16 before

17 Q Who who drew that diagram?

18 A I asked Darian Robinson to draw that diagram and he drew
19 that

20 Q And you saw him do that?

21 A Yes, ma'am

22 Q Is that your handwriting up top?

23 A That is

24 Q Okay And that says Chateau Apartments and bamboo

25 A Yes, ma'am

1 Q And what is this other sketch here?

2 A This other sketch was drawn when we tried to get Darian
3 to show us exactly where it was that he had left the gun We
4 were trying to understand the directions he was giving us and
5 the lot or the place where he said left it and we said, "Well,
6 draw this "

7 I said, "Well, draw this for me and let me know where
8 this is at," and that's that's what that is

9 Q And you were present when he drew that diagram?

10 A Yes, ma'am

11 Q I ask you the same questions about these two diagrams
12 which I believe will be 27 and 28 and I'll stop talking

13 (Diagrams marked State's Exhibit Nos 27 and 28 for
14 identification)

15 Q Did you threaten the defendant in anyway to get him to do
16 what you wanted or draw what you wanted him to draw?

17 A No, ma'am, not at all

18 Q Did you promise him anything for drawing those diagrams
19 to try and help you find the gun?

20 A No, ma'am, I did not

21 Q Did you coerce him in anyway to get you -- to get him to
22 to make those drawings?

23 A No, ma'am

24 MS PAOLETTI Your Honor, the state moves 27 and 28 into
25 evidence for the purpose of this hearing

1 MR SCALZO Without objection

2 THE COURT Admitted

3 (Diagrams marked State's Exhibit Nos 27 and 28 admitted
4 into evidence)

5 BY MS PAOLETTI

6 Q While he was drawing these documents for you, did he ever
7 invoke his right to counsel?

8 A No, he did not

9 Q Did he ever say he didn't wa -- he just didn't want to
10 talk to you anymore?

11 A No, ma'am

12 Q Did he appear to be intoxicated?

13 A No, ma'am, not at all

14 Q Do you believe that he understood what he was doing ---

15 A Yes, I ---

16 Q --- at the time that he did, he made these drawings?

17 A Yes, I do

18 Q And did he have an opportunity to look at 'em and and
19 see ---

20 A Um-hum

21 Q --- what he had done and talk about 'em ---

22 A Yes, ma'am

23 Q --- and make changes or corrections?

24 A Yes, he did

25 Q Did he make any changes or corrections?

1 A No, ma'am, I don't believe he did on those

2 Q Please answer any questions Mr Scalzo might have

3 A Yes, ma'am

4 CROSS-EXAMINATION BY MR SCALZO

5 Q Investigator McNamara, you were aware that Darian had
6 pending charges --- before you arrested him, while they -- you
7 were looking for him, you aware he had some pending charges
8 and bench warrants?

9 A Yes, sir

10 Q And did you -- were you aware that Tim Sullivan was his
11 lawyer on those charges?

12 A No The only thing I was aware of at that point was the
13 the bench warrant

14 Q Okay Did you make yourself aware or look into whether
15 or not he had an attorney for the charge on the underlying
16 bench warrant, the underlying charge and the bench warrant?

17 A No, sir, I did not

18 Q Okay The first interview where he gives the longer
19 statement you said that was in the morning or 1 30 or
20 something like that in the morning?

21 A Yes, sir

22 Q And is he booked in and then taken out or how did that
23 happen?

24 A No, sir, he was brought directly from the location where
25 he was arrested to the law enforcement center not the jail

1 We sent a uniform patrol, was able to get into the office and
2 then we transferred him to my office where we had that
3 interview

4 Q Okay Then so he wasn't booked into the jail until after
5 the statement was given?

6 A Yes, sir, that's right

7 Q Okay And in the room is how many officers?

8 A At the time we took the statement?

9 Q Yes

10 A Maximum of three (3) I believe two (2) but there there
11 could have been that third officer in there with us

12 Q Okay And he's sitting at the table and you're sitting
13 at the table Are the rest of them standing or are they
14 sitting?

15 A Sitting

16 Q I guess initially you got some biographical information
17 from him, information about the ---

18 A It's information that we had but I certainly talked to
19 him to make sure that the information we had was ---

20 Q Correct?

21 A Yes, sir

22 Q And then you move into the waiver of rights form after
23 the biographical information is confirmed?

24 A Yes, sir

25 Q That's the -- your normal procedure?

1 A Yes, sir

2 Q And while you're doing that or even before you do that,
3 you're not talking about the case at all, you just need to get
4 through these preliminary issues

5 A That's right

6 Q So you've gotten through those preliminary issues and now
7 you're at the point where you're gonna talk to him,
8 interrogate him about this, the subjects you want to know
9 about, is that right?

10 A Yes, sir

11 Q And you said that you had a a laptop out ---

12 A Yes

13 Q --- and you were typing on the laptop?

14 A Yes, sir

15 Q I mean, you you didn't say that you were asking him
16 questions, you sorta made it seem like you just said, "Tell me
17 what happened " I mean, is that really how it went?

18 A To a point yes, sir We ask him just to simply say what
19 happens If there are points along the way where I need to
20 hold him off or clarify if I just don't understand what he's
21 telling me ---

22 Q Okay

23 A --- then certainly I'll ask any questions I need to
24 clarify what he's saying but it's still pretty much a, "You
25 tell me what happened and I'll write it down "

1 Q Okay There was not a point in time when he posed the
2 question, "Do I need a lawyer," or do "I need my lawyer?"

3 A No, sir

4 Q And wasn't -- well let me ask you this way You are
5 aware obviously that he might have had contact with people
6 before you apprehended him?

7 A Yes, sir

8 Q In other words, they could have provided assistance to
9 him well before you apprehended or he was apprehended?

10 A Yes, sir

11 Q Isn't it true that you talked to him about those people
12 or some of those people?

13 A Towards the end of the statement when we got to that
14 point where he was telling me about his travels after the
15 shooting then yes, we discussed that

16 Q You didn't talk to him about his father prior to him
17 getting into the substance of the statement?

18 A No, we simply began with, "Tell me what happened out
19 there," ---

20 Q You didn't ---

21 A --- that's how we got along to that

22 Q You didn't talk to him about his father perhaps being
23 arrested for providing assistance before he's given the
24 substance of the statement?

25 A No, sir

1 MR SCALZO That's all I have right now

2 THE COURT Re ---

3 MS PAOLETTI Briefly, Your Honor

4 REDIRECT EXAMINATION BY MS PAOLETTI

5 Q Investigator McNamara, did you get any information from
6 Mr Robinson about any outstanding charges that he had?

7 A No, we never discussed any charges he was currently under
8 at that time

9 Q And did he at any time ask to speak to an attorney or
10 indicate that he had an attorney?

11 A No, ma'am

12 MS PAOLETTI That's all I got, Judge

13 MR SCALZO I don't have any recross

14 THE COURT All right, sir You can step down Anything
15 further from the state?

16 MS PAOLETTI Not on Jackson v Denno, Your Honor

17 THE COURT Any evidence from the defense?

18 MR SCALZO Yeah, I would call Mr Robinson

19 THE COURT Okay You're still under oath, Mr Robinson

20 MR SCALZO No, you're still under oath You don't have
21 to do that

22 THE COURT Go ahead

23 MR SCALZO Thank you, Your Honor

24 DIRECT EXAMINATION BY MR SCALZO

25 Q Darian, we're just gonna talk about your giving the

1 statement and when you talked to the police, okay?

2 Investigator McNamara described that they arrested you and
3 they brought you directly to the police station, is that what
4 you remember?

5 A Um, yes

6 Q And when you get into the room where you're talking with
7 Investigator McNamara, you remember that room?

8 A Yes, sir

9 Q Are you handcuffed?

10 A Yes, sir

11 Q And how many offic -- officers do you remember being in
12 there?

13 A Well, about -- it was a a good bit of officers that brung
14 me in so it was it was a lot of variety of different officers
15 that ---

16 Q Okay

17 A --- had come in

18 Q And do you remember Investigator McNamara going through
19 these forms? We've got some of 'em up here I guess this one
20 (indicating) is the first one, the one at 1 36 a m Do you
21 remember going through that form?

22 A Yes, sir

23 Q And do you remember him going over your bi -- your
24 address and your name and making sure all that stuff's
25 correct?

1 A Yes, sir

2 Q At any point do you remember talking or asking any of the
3 officers about needing a lawyer or wanting a lawyer?

4 A Well, after I had signed the waiver of right, did I have
5 a lawyer? I didn't really just comprehend what he was really
6 talking about 'cause I already had prior charges, meaning,
7 that Tim Sullivan's on my other case

8 Q Okay

9 A So there fortunately, I didn't have a lawyer present

10 Period

11 Q I didn't quite understand all that so let's -- you said
12 that Tim Sullivan was your lawyer ---

13 A For my ---

14 Q --- on these other charges

15 A For my prior, uh, failure to appear, bench ---

16 Q Yeah

17 A --- bench warrants

18 Q So when you're sitting there with the Investigator and
19 you've gone through the waiver of rights form, what are you
20 thinking about Tim Sullivan as your lawyer? Is he your lawyer
21 or is he not your lawyer? What are you what are you
22 thinking?

23 A Well, at the time I don't -- I didn't have a lawyer
24 period so I didn't I didn't felt there -- I felt it was
25 irrevelent [sic] I'm gonna say really that I needed a lawyer

1 at the time but at at at this time that he's signed this form,
2 he had circled and I asked him did he -- "Did I need a lawyer
3 or whatever?"

4 He said, um, "Didn't you just sign a waiver that you
5 didn't need no lawyer?" So I was tryin' to get a
6 understanding of what he mean 'bout getting a lawyer He was
7 sitting there -- I always thought that if, uh, if you were
8 being questioned, I thought that you got to have your lawyer
9 right there That's basically what I was asking

10 Q Okay Now do -- you didn't -- did you say it that way?

11 A Yes, I said it that way

12 Q You told him that you thought you you have a lawyer
13 sitting next to you when you give a statement?

14 A Yes, sir

15 Q All right Did -- what was the response?

16 A I mean, then he jumps from that to telling me, "Well,
17 what is your what was your father doing up at the the hotel
18 'cause we ran his tag and that, you know, we know we can get
19 him for aiding and abetting fugitive "

20 Q Okay And what did you do in response to that?

21 A So that's when I jump, just get off that subject there
22 and jump right into the conversation of what happened

23 Q Okay Why? Why did you jump into the other
24 conversation?

25 A I mean, that he was gonna -- he was telling me like my

1 father could get locked up for this and I'm telling him, "Yo,"
2 you know, "my father aint got nothing to do with this This
3 is something that I did"

4 A Okay

5 Q All right

6 MR SCALZO That's all I have, Judge

7 CROSS-EXAMINATION BY MS PAOLETTI

8 Q Mr Robinson, you just said you didn't have a lawyer
9 period?

10 A No, ma'am

11 Q So Tim Sullivan was not your attorney?

12 A I had a, I had a attorney attorney for my crack charges
13 which are distribution and manufacturing

14 Q Um-hum

15 A And this for a failure a failure to appear, that's what
16 my lawyer was for, ---

17 Q So ---

18 A --- Tim Sullivan was for

19 Q So you didn't show up for court so they got a bench
20 warrant for ya?

21 A Yes, ma'am

22 Q Okay And Tim Sullivan was appointed to represent you on
23 the bench warrant?

24 A On them charges

25 Q The bench warrant? Yes or no

1 A Yes, ma'am

2 Q And the PWID crack charge?

3 A Yes, ma'am

4 Q And the manufacturing which is also PWID ---

5 A Yes, ma'am

6 Q --- crack

7 A Yes, ma'am

8 Q Okay And you heard Investigator McNamara testify just
9 now, right?

10 A Yes, ma'am

11 Q He didn't say anything to you about your sister, did
12 he?

13 A No, ma'am, he just referring to what the tag had he ran
14 and came back to my father which is Roosevelt Robinson

15 Q And that's actually something that you heard in court
16 today, right?

17 A No

18 Q Or yesterday I'm sorry

19 A No, this is -- this happened on that day where he brung
20 me in

21 Q Was your dad at the hotel bringing you food?

22 A Yes, he was at the hotel

23 Q Investigator McNamara didn't threaten you, did he?

24 A Basically, yes, he threatened me When he when he when
25 he when he brung my father into the situation he was

1 threatening me

2 Q Did he threaten you?

3 A Yes

4 Q How did he threaten you?

5 A Because due to something that I did, you're threatenin'
6 me saying that you gonna lock my old -- my father up ---

7 Q I understand ---

8 A --- for abetting and aiding a fugitive

9 Q I understand your your testimony is that Investigator

10 McNamara made some comment about your father being an
11 accessory I understand that I'm talking about you

12 A No

13 Q Did he make you any promises?

14 A I mean, you know, they had their little tricks They
15 give you cigarettes or or ---

16 Q So you asked ---

17 A --- give you something to drink

18 Q --- you asked for a cigarette and they gave it to ya, is
19 that what you're saying?

20 A Yes, ma'am

21 Q Remember drawing this (indicating)?

22 A I remember draw -- I remember doing all a that

23 Q Okay So you weren't under the influence of alcohol or
24 drugs or anything like that, right?

25 A No, ma'am, it's circled on the paper and signed by with

1 my signature on it

2 Q So you're not saying that all these initials on th -- on
3 all these exhibits are -- they're not yours, right?

4 A No, ma'am

5 Q That's not what you're telling the Court They they are
6 yours?

7 A They are my signatures

8 Q You can read, right?

9 A I can read very well

10 Q You went to the 11th grade

11 A Yes, ma'am

12 Q I'm gonna, um, -- I've got bunches of copies of this
13 I'm gonna let you look at State's Exhibit No 25 and I want
14 you to read it along with me while I read the the first
15 paragraph there up at the top under "additional particulars,"
16 do you see that?

17 A Yes, ma'am

18 Q Go to the second sentence, "I am giving this statement of
19 my own free will " Is that what that says?

20 A Yes, ma'am

21 Q Is that (indicating) your signature at the bottom?

22 A Like I say, all the signatures -- all these ---

23 Q Is that your signature at the bottom?

24 A That's my signature at the bottom

25 Q Okay That's State's Exhibit No 24 That's all your

1 initials on that (indicating) document, right?

2 A Yes, ma'am

3 Q And that's your name written by that fourth line down
4 Darian Kyle Robinson?

5 A Yes, ma'am

6 Q And that sentence says, "You have the right to talk to a
7 lawyer for advice before we ask you any questions and have him
8 with you during questioning," right?

9 A That's right

10 Q "You have the right to remain silent's" that second line
11 up there, right?

12 A Yes, ma'am

13 Q Look at that last paragraph of that last sentence just
14 above waiver of rights on No 24, "If you decide to answer
15 questions now without a lawyer present, you will still have
16 the right to stop answering at any time You also have the
17 right to stop answering at any time until you talk to a
18 lawyer " Those are your initials by that sentence, right

19 A Yes, ma'am, but you finish reading it

20 Q Oh yeah, I'm gonna finish reading it Waiver of rights
21 Read along with me that last paragraph "I have read the
22 statement of my rights and I understand what my rights are I
23 am willing to make a statement and answer questions I do not
24 want a lawyer at this time I understand and know what I'm
25 doing No promises or threats have been made to me and no

1 pressure or coercion of any kind has been used against me," is
2 that what that says?

3 A That's what it says

4 Q And that's what your sig -- and you signed down below
5 that, right? Is that your signature at the bottom of that
6 right there (indicating)?

7 A Yes, ma'am

8 MS PAOLETTI That's all I've got, Judge

9 MR SCALZO Judge, can I ask one question?

10 THE COURT Sure

11 REDIRECT EXAMINATION BY MR SCALZO

12 Q Are the -- or maybe two questions Sorry The crack
13 charges, are they on the same day day that you're arrested or
14 do you get them at different times?

15 A I mean, I was notified that I had those charges

16 Q What I'm say -- what I'm saying is when you were arrested
17 for those charges, were you arrested on the same day or on
18 different days?

19 A The crack charge was before that other incident

20 Q I'm not talking about the bench warrant

21 A Okay

22 Q I'm just talking about the crack charges

23 A They were before

24 Q There were two of 'em

25 A Yeah, it was before, two different time dates

1 Q Two different times each charge You had one crack
2 charge and then another one

3 A Yes, sir

4 Q And was Tim Sullivan appointed to you on the first one?

5 A Um, yes

6 Q And when you got the second one, did you ask for Tim
7 Sullivan again or ask for a new lawyer?

8 A No, sir

9 Q Did you get Tim Sullivan as your lawyer again ---

10 A Yes, sir

11 Q --- for that charge?

12 Q Okay Did you -- what was your understanding of the
13 process of how you got a lawyer when you were talking with
14 Investigator McNamara?

15 A Um, I don't understand that question

16 Q Based on how you got Tim Sullivan in those other charges,
17 did you have any -- did you have any thoughts on how you would
18 you might or whether you would get either Tim Sullivan or
19 another lawyer on the new charges when you were talking to
20 Investigator McNamara?

21 A I didn't know whether I was gonna get the same lawyer or
22 appointed a new one I didn't know either of that

23 Q Okay Did you think you were not going to get a lawyer
24 at all?

25 A I mean, Tim Sullivan couldn't even handle the crack

1 charges so I know he wasn't gonna be on the case as far as the
2 the murder itself, you know what I mean

3 Q Okay Well, I guess what I'm asking you is were -- did
4 you assume it was gonna be automatic or that you had to do
5 something to get the lawyer?

6 A I mean, I always thought if you got into additional
7 charges like another charge that you would get a -- be given
8 another lawyer

9 Q Okay That's all I have

10 MS PAOLETTI I got nothing else, Judge

11 THE COURT All right You can step down, sir

12 (The witness left the stand)

13 THE COURT Anything el -- any other evidence from the
14 defense?

15 MR SCALZO No, sir

16 THE COURT Any argument?

17 MR SCALZO The only argument I admit goes with regard
18 to his testimony I'd cite *State v Corn* (phonetic), valid
19 threats about family members being arrested does amount to
20 coercion And if Your Honor needs the cite, I can give you
21 the cite to

22 *State v Corn* or I can hand up a a copy to you, Your Honor
23 And I would just argue that it falls under *Corn* to the fact
24 that in his mind he believes the process is he's getting
25 lawyers in essence automatically the way the prior charges

1 were handled, that when he asks about his lawyer, he's asking
2 about his lawyer, he's not asking about some lawyer in in
3 general and that's what we all have on that, Judge

4 THE COURT All right Any further argument at all?

5 MR SCALZO No, sir, not with regard to those two

6 THE COURT All right Then as far as the written
7 statement and the series of statements that are made the next
8 morning or that morning when when the officers ask him if he
9 will take them to where he dropped the gun, I find that he did

10 make the statements, that that before he made the statements
11 on both occasions he had been advised of his Miranda warnings,
12 that he understood his Miranda rights before he made either of
13 those statements, that he waived those Miranda rights before
14 he made the statements and that the statements were made
15 voluntarily

16 Anything further?

17 MR SCALZO Not from the defense at this point

18 THE COURT Okay We're gonna go ahead and break for
19 lunch

20 THE CLERK What time?

21 THE COURT When we come -- we will come back at about --
22 let's -- there's nothing else to do until we get -- till we
23 put the defendant back on the stand and resume his
24 cross-examination

25 MR SCALZO I believe so That's right

1 THE COURT All right We'll start at two o'clock And
2 it's my intention to, and I don't know how much longer this is
3 gonna take but if we finish with testimony before about 3 30,
4 we're going straight into closing arguments

5 MS PAOLETTI Yes, sir

6 MR SCALZO Before 3 30, Judge?

7 THE COURT Before -- about 3 30

8 (Whereupon, a recess was taken)

9 (The following takes place in the presence of the jury)

10 CROSS-EXAMINATION BY MS PAOLETTI

11 Q Mr Robinson, when we we left we were talking about your
12 criminal record, is that right?

13 A Yes, ma'am Yes, ma'am

14 Q Now, I want to talk to ya about -- actually, when we left
15 we were talking about the statement that you gave to police on
16 the night you were arrested, February 1st 2005 You you
17 remember giving a statement to police?

18 A Yes, ma'am

19 Q And when you gave that statement, did you waive your
20 rights to your attorney?

21 A Yes, ma'am

22 Q And did you give that statement -- you gave it
23 voluntarily, isn't that right?

24 A Yes, ma'am

25 Q And you signed your name to it?

1 A Yes, ma'am

2 Q Nobody coerced you

3 A No, ma'am

4 Q Nobody threatened ya

5 A No, ma'am

6 Q Nobody promised ya anything give you tha -- to give that
7 statement, did they?

8 A No, ma'am

9 Q And you've got a copy of it there in front of ya,
10 right?

11 A Yes, ma'am

12 Q I'm gonna try to direct you, direct you to what I'm
13 talking about so you can read along with me as I read parts of
14 this statement and correct me if I read anything incorrectly

15 First thing you talk about is Keith Williams coming to
16 see you, right?

17 A Yes, ma'am

18 Q And you said that Keith Williams was upset with you,
19 right?

20 A Yes, ma'am

21 Q And he was upset because you hit Trice in front of
22 Zae (phonetic) and Milly

23 A Yes, ma'am

24 Q He didn't like that You said on direct that he got a
25 gun out and waived it, right?

1 A Yes, ma'am

2 Q But in your statement to police you said, "He showed me a
3 gun in the waistband of his pants," right? Is that what your
4 statement says?

5 A Yes, ma'am

6 Q Okay William Godwin was not with Keith Williams at that
7 time

8 A No, ma'am

9 Q William Godwin and and Keith Wi -- you didn't see them
10 together at any point during the day

11 A No, ma'am

12 Q Okay Let's talk -- let's let's talk first before we go
13 through your statement about this gun You told Sammy that ya
14 had a 38, right?

15 A Yes, ma'am

16 Q And that's -- that you didn't need -- you weren't gonna
17 fight anybody 'cause you had a 38

18 A I -- no, I didn't tell him that

19 Q Okay And that's the gun that you had in your coat
20 pocket?

21 A Yes, ma'am

22 Q And and you say that it was upstairs in your closet,
23 right?

24 A Yes, ma'am

25 Q And that at some point you went upstairs and got the

1 jacket that had the gun in it and put the jacket on and came
2 downstairs, right?

3 A Yes, ma'am

4 Q You you said, told the jury that William Godwin came to
5 your apartment four times, is that right?

6 A Yes, ma'am

7 Q Okay You actually told police that he only came to your
8 apartment twice, right?

9 A Yes, ma'am

10 Q And you never told police that he threatened to kill you

11 A I mean, the way I wrote my statement is saying that I was
12 threatened

13 Q All right Well, let's read it "When he came to the
14 house, I let him in and we got into a little argument of
15 words He was mad at me about what I did and I told him, 'All
16 right ' He left, came back, knocked on the door again and
17 came in This time he told me he was gonna get me and went
18 back out to his car," is that right?

19 A Yes, ma'am

20 Q You never told police that William Godwin said that he
21 was gonna kill you, did ya?

22 A Not on that statement at that time

23 Q Well, Mr Robinson, you had six days to think about what
24 you were gonna tell police when you got arrested

25 A Not really

1 Q Not really?

2 A No, ma'am

3 Q All right Well, you were arrested six days after you
4 shot William, right?

5 A That doesn't mean that I had the nature of that on my
6 mind of what ---

7 Q You weren't ---

8 A --- I'm gonna tell them

9 Q You weren't thinking about what happened?

10 A Yeah, I was thinking about what happened but I didn't
11 know what I was gonna tell him six days prior to whenever they
12 caught me

13 Q So is it your testimony that six days after the shooting
14 that you forgot to tell police that William Godwin threatened
15 to kill you?

16 A Yes, ma'am

17 Q And you forgot that he actually came four times in --
18 that he came two times instead of four

19 A At that time when I wrote my statement, you gotta think
20 that my mind was racin' all kinda a ways and the way I wanted
21 to phrase it or or phrase the statement that I wrote I did --
22 I wasn't given that chance

23 Q Oh, so you you you -- is it your testimony that you
24 weren't allowed to review this statement and makes changes?

25 A I mean, you gotta look at the situation that I was in I

1 I mean, I -- they had me locked up for murder, you know what I
2 mean

3 Q Oh

4 A So for me to be sittin' there telling somebody something,
5 my mind is far beyond of really writing a statement

6 Q You weren't thinking about your statement to police when
7 you'd been charged with murder? Is that your testimony?

8 A No, what I'm saying is at the time when I was writin' the
9 statement I'm allowed to say anything at any given time

10 Q Mr Robinson, my question to you was whether you were
11 permitted to read this statement before you signed it Yes or
12 no

13 A I mean, but you still -- it's the same ---

14 Q The answer is ---

15 A --- questions all in one though

16 Q --- either yes or no Were you permitted to read this
17 and make changes before you signed it?

18 A Yes, ma'am

19 Q Did you make any changes?

20 A No, ma'am

21 Q Let's talk about your conversation with Sammy outside
22 your apartment You remember that, right?

23 A Yes, ma'am

24 Q And you told police that you -- that -- or you told the
25 jury today that you went down to basically get Sammy's phone,

1 right?

2 A No, I went to the door and Sammy went and got his own
3 phone

4 Q You didn't ask Sammy to use his -- you ---

5 A Yes

6 Q --- asked to use his phone? And the reason why you say
7 that you wanted to use his phone was to get a ride outta
8 there, right, ---

9 A Yes, ma'am

10 Q --- 'cause you were scared

11 A Yes, ma'am

12 Q And your ride came, didn't it?

13 A Yes, ma'am

14 Q And your ride got there before you went into that
15 apartment and shot William

16 A Yes, ma'am

17 Q All right Well, let me refer you to your statement
18 again On the second page, "I panicked and I just left I
19 walked out and I jumped in a car with Travis Workman He was
20 pulling up to see what was going on and I jumped in with him "
21 Is that what your statement says?

22 A Yes, that's what it said at that time

23 Q You called Travis Workman to come over before you went
24 into that apartment and he got there before you went into that
25 apartment, right?

1 A Yes, ma'am

2 Q But you didn't get in the car with him and run off 'cause
3 you were scared

4 A I mean, after the incident yes, I was scared

5 Q Well, I know you ran after the incident I'm talking
6 about before you went into the into the apartment and the
7 shooting

8 A I mean, I don't understand what it is you're trying to
9 say

10 Q You were scared to death and you needed a ride outta
11 there, right?

12 A Yes, ma'am

13 Q And that's why you called Travis

14 A Yes, ma'am

15 Q And Travis got there before you went into Paulette's
16 apartment He was there, right?

17 A Yes, ma'am

18 Q But instead of Travis whisking you away to the west side,
19 you went into Paulette's apartment

20 A Well, ---

21 Q Yes or no

22 A I mean, you ain't giving me time to explain You trying
23 to brush me into something that you don't let me explain

24 Q Judge Few will explain to you that you can explain your
25 answer after you answer yes or no if you need to Was he

1 there before ---

2 A Yes, ma'am

3 Q --- you got into the apartment? And you didn't leave?

4 A No, ma'am

5 Q And when you were using Sammy's phone to get a ride,
6 that's not the only thing you were calling to get, is it?

7 A Whatcha mean by that?

8 Q You didn't call Travis just to get a ride You needed
9 somethin' else

10 A I didn't need nuthin' else but a ride

11 Q You needed a gun

12 A How you figure that? Was you there?

13 Q Mr Robinson, ---

14 A I'm asking you a question You tell me that You ---

15 Q I'm a ---

16 A --- saying I got a gun from this man I ain't get no ---

17 THE COURT Hold on ---

18 DEFENDANT --- gun from this man

19 THE COURT --- just a second Mr Robinson, she will

20 ask the questions and you answer the questions This is not a
21 chance for you to ask questions

22 BY MS PAOLETTI

23 Q You needed a gun

24 A No, I didn't need a gun I already had a gun

25 Q All right Well you said -- it's your story that William

1 came to your house four times that day, right?

2 A Yes, ma'am

3 Q And the first time he came he was banging (demonstrating)
4 on the door, "Let me in," right?

5 A Yes, ma'am

6 Q And ya let him in

7 A Yes, ma'am

8 Q And he actually said, "Trice, let me in " He thought
9 Trice was there, right?

10 A Yes, ma'am

11 Q Okay He left According to you, you shut the door and
12 locked it, right?

13 A Yes, ma'am, he ---

14 Q He came back, right?

15 A But you didn't put in the phrase that he threatened and
16 say he was gonna kill me Make sure you put that in there
17 when you phrase that question

18 Q Well, Mr Robinson, did you tell police that in your
19 statement?

20 A I mean, like I said when I wrote ---

21 Q Did you tell police that William Godwin threatened to
22 kill you? Yes or no

23 A No, ma'am

24 Q Okay William came back a second time, right, banging
25 (demonstrating) on the door, "Let me in Are you still here,"

1 right?

2 A Yes, ma'am

3 Q And in between the first time that he came and the second
4 time that he came, you didn't go upstairs to get your gun, did
5 ya?

6 A No, ma'am

7 Q No problem?

8 A No, ma'am

9 Q Okay He left again according to you, right?

10 A Yes, ma'am

11 Q Came back a third time

12 A Yes, ma'am

13 Q Bangin' (demonstrating) on the door, "Let me in " And
14 according to you he's threatened to kill you twice, is that
15 right?

16 A Yes, ma'am

17 Q And you didn't go upstairs and get the jacket with the
18 gun, yes or no

19 A No, ma'am But you trying you trying to make -- you
20 ain't putting the full, whole question You paintin' a
21 picture that I just didn't go upstairs I was in the room
22 You said -- in elaboration you put that I was in the room when
23 I looked out the window

24 Q When you went downstairs and let William Godwin back in
25 through a locked door, you didn't have the gun with you, did

1 you?

2 A Through a locked door?

3 Q Mr Robinson, you testified that every time William left
4 you locked the door behind him, right?

5 A Yes, ma'am

6 Q So when he would come back all these times, according to
7 you, you would have to unlock the door to let him back in,
8 right?

9 A I ain't let him in but twice You said keep -- you

10 saying that I keep letting him in I just let him in twice

11 Q So he just would come to the door, is that your
12 testimony?

13 A Yes, ma'am He would knock on the door

14 Q The third and fourth time?

15 A The third and fourth time

16 Q Okay And it wasn't until after this third time that you
17 say that he came back that you went and got the gun or was it
18 the fourth time?

19 A Okay The the fourth time I'm -- like I say, I'm still
20 sitting here laughing that he keeps knockin' on the door or
21 whatever

22 Q You were laughing?

23 A 'cause it's funny I -- he can't, he can't hurt me
24 inside no house Yeah, it's funny

25 Q He cou -- he couldn't hurt you because he didn't have a

1 gun, right? And you did, right? You were laughing

2 A No, I'm laughing 'cause you keep saying about ---

3 Q I'm not ---

4 A --- a gun

5 Q --- talking about right now I'm talking about on
6 January 26th 2005 you said you were laughing 'cause he
7 couldn't hurt you, right?

8 A Yes, ma'am, I guess I was laughing

9 Q You called Trina from Sammy's phone too, didn't ya?

10 A Yes, ma'am

11 Q And you told Trina, "If you see me on the news tonight,
12 you'll know what happened," right?

13 A No, ma'am

14 Q That that -- Sammy made that up?

15 A Yes, ma'am

16 Q Okay And you didn't, you didn't tell police that you
17 called Trina before you went to the apartment, did ya?

18 A I can't tell you specifically which which person I called
19 in which order

20 Q Well, you said on -- on direct your attorney asked you if
21 you called Trina and Travis before you went in there and you
22 said you did

23 A Yes, I said I did

24 Q Okay

25 A But that's not specifically saying that I knew in that

1 order that she called, that's to let you know that I did call
2 her

3 Q Well, my question to you is you called her before you
4 went in and shot William from Sammy's phone, isn't that
5 correct?

6 A Yes, ma'am

7 Q And you did not tell police that you called her before
8 you went in there to tell her you were in trouble

9 A ' Hey, I mean, he made up a story, a bogus story saying
10 that I called Trina and said that I was gonna be on the
11 news

12 Q Sammy made that story up?

13 A Yeah, Sammy made that story up

14 Q And 'cause 'cause Sammy's got it out for ya, right?

15 A I mean, every -- everybody that that that gave you a
16 statement was lying I'm sitting here telling you truth up
17 here now

18 Q Everybody else is lying except for you Let's talk about
19 when you went to -- after the shooting you left, right? With
20 Travis? In his car, in his Honda, right? Is that right?

21 A Yes, ma'am

22 Q And he took you over to the west side, right?

23 A Yes, ma'am

24 Q You all went to Stefan's house?

25 A Yes, ma'am

1 Q And you stayed there about twenty (20) or thirty (30)
2 minutes and then you called -- you say you called Trina again,
3 right?

4 A Yes, ma'am

5 Q And after that, you were skippin' from house to house
6 trying to make sure you didn't get caught by police, right?

7 A Yes, ma'am

8 Q And finally you got your homeboy Mike Sloan to take you
9 to the motel on Wade Hampton, right?

10 A Yes, ma'am

11 Q And he didn't just drop you off at the motel, did he?

12 A Yes, ma'am

13 Q He did?

14 A I mean, he went and got the room, then he left

15 Q He went and got the room He paid cash for the room,
16 right?

17 A Yes, ma'am

18 Q And he used his name to get the room, right?

19 A Yes, ma'am

20 Q That's because hotel couldn't have your name on the
21 records because police in Greenville were fru -- looking for
22 you, right?

23 A Yes, ma'am

24 Q And you knew that?

25 A Yes, ma'am

1 Q You told police in your statement that he just dropped ya
2 off, right? It's right there in front of ya

3 A Yes, ma'am

4 Q You told Ms Paulette you were waitin' for a ride when
5 she and Trice came back from cleanin', right?

6 A Yes, ma'am

7 Q And you were waitin' for a ride You were waitin' for
8 Travis, right?

9 A Yes, ma'am

10 Q And Travis is also bringing you the gun

11 A No, ma'am

12 Q Riri's [phonetic] your cousin, right?

13 A Yes, ma'am

14 Q And she and Will used to date?

15 A Yes, ma'am

16 Q And William was -- had broken up with her, right?

17 A No, ma'am

18 Q William wasn't livin' with Lisa?

19 A Yes, he was livin' with Lisa but he was also messing with
20 Riri

21 Q Riri was mad that Will had moved out, wasn't she?

22 A I mean, as far as that, I don't know because he, like I
23 said, he stayed down there with my sister so I don't know

24 Q Let's talk about -- go back to the gun I'm skippin'
25 around I know You said on direct that when you were in

1 Travis's car on your way over to the west side, you took the
2 gun apart, you busted it up, right?

3 A Yes, ma'am

4 Q Where'd ya throw it?

5 A I mean, where did I throw it?

6 Q Yeah, you said you threw it out

7 A What that got to do with anything?

8 Q I'm asking the questions, Mr Robinson Where'd you
9 throw it?

10 A I mean, the gun doesn't have anything, I mean, it
11 initiate the situation but that doesn't -- they don't have a
12 gun so what has the gun got to do with anything looking at
13 your hand?

14 Q Mr Robinson, what did ya do with the gun?

15 A I throwed it I can't, I can't sit here and tell you
16 where I throw it I know I threw it out the window in
17 broken ---

18 Q What ---

19 A --- pieces

20 Q Where did you throw it?

21 A I mean, where I sent Mr McNara [sic] at

22 Q Okay So you threw it in the field where you told police
23 that that it was?

24 A No, I got out of the car I throw the piece here as I'm
25 riding I took the the, um, chamber off of it which is the

1 little part you put the bullets I throwed that out I got
2 out the car and throwed the which was the broken handle and --
3 of the gun in the bushes where I took Mr McNara [sic] to

4 Q You told Investigator McNamara that you put the gun in
5 the field You didn't tell him anything about bustin' it up,
6 did ya?

7 A Nope No, ma'am

8 Q And you told him that you marked where you put it with a
9 stick

10 A Yes, ma'am

11 Q And you found the stick and the can out there, right,
12 when you went out there to try and show him where the gun was?

13 A Yes, ma'am

14 Q And the gun was gone, right?

15 A Yes, ma'am

16 Q That's not where you put the gun, is it?

17 A Yes, ma'am

18 Q Mr Robinson, you have no idea if Keith Williams and
19 William Godwin spoke to each other on January 26th 2005, do
20 you?

21 A I mean, as far as they told me that every time each one
22 of 'em came they said that Antonia had told 'em as for not my
23 knowledge

24 Q They both talked to Antonia but no no indication that
25 they had spoken to each other?

1 A No, ma'am

2 Q And you never told police that William threatened to kill
3 ya?

4 A Not on my statement

5 Q And you never told police that William -- that that Keith
6 threatened to kill ya, ---

7 A I mean ---

8 Q --- did ya? You didn't tell police that anybody had
9 threatened to kill you, did you?

10 A Not at that time

11 Q Did you not think that that might be important if you
12 were claiming self-defense?

13 A No, ma'am

14 (Pause)

15 Q Let's get -- let's get clear on what was going on when
16 you went inside Ms Paulette's apartment You called for a
17 ride because you were scared and you needed to get out of
18 there, right?

19 A Yes, ma'am

20 Q And you say that that William who's in the apartment ---

21 A Yes, ma'am

22 Q --- had come and threatened to kill you four times,
23 right?

24 A Yes, ma'am

25 Q And you knew he was inside?

1 A Yes, ma'am

2 Q You knew that what he was upset with you about, according
3 to you, was the fact that you were beatin' up Trice, right?

4 A Yes, ma'am

5 Q You went inside the apartment, right?

6 A Yes, ma'am

7 Q You immediately started confronting Trice again about her
8 family, right?

9 A Yes, ma'am

10 Q And she had family in the room, right?

11 A Yes, ma'am

12 Q Her mom was there

13 A Yes, ma'am

14 Q Paulette didn't know what you were talking about, did
15 she?

16 A No, ma'am

17 Q And William was in the room, right?

18 A Yes, ma'am

19 Q So you were, you were directing your comments to Trice
20 but you were talking to William

21 A Not exactly

22 Q Not exactly You were talking to Trice about what you
23 say was her family jumpin' out on you and her cousin sits
24 right there, you were talkin' to William

25 A Not necessarily If you sittin' there trying to explain

1 to somebody what's going on and they don't have no knowledge
2 of what you talking about

3 Q You were trying to explain to Trice why she shouldn't
4 tell her family that you beat her up?

5 A I mean, she knew, she knew who -- really she knew who I
6 was talking about so I wouldn't have to mention no names

7 Q How would she -- if she didn't know any -- if she didn't
8 know about any of these meetings that you and say that you had
9 with Keith ---

10 A Okay

11 Q --- and, let me finish, and William, how would she know
12 what in the world you were talking about? She didn't know
13 what you were ---

14 A Okay, if ---

15 Q --- talking about

16 A --- you notice or if you read -- if you was keepin' up on
17 your paperwork that, um, Keith was over at Antonia and Trice
18 was telling him telling far as, "Don't worry about what's
19 wrong with my eye," or whatever, and his kid told him so you
20 got to know he does know what's going on

21 Q You said that Trina put you up when you get into trouble,
22 right?

23 A Yes, ma'am

24 Q Is that a lot?

25 A Nah, not far as like trouble, I'm talkin' about like if

1 I'm about to, you know, get into any kind a altercation with
2 anybody, you know, that's the person I go codify with or, you
3 know, go talk about my problems

4 Q When Troy or Travis and Troy and all those guys come
5 over, it's getting close to midnight, right?

6 A Yes, ma'am

7 Q So it's been several hours since you say you had these
8 confrontations about beating up Trice, right?

9 A Yes, ma'am

10 Q And when they came over, they knew what was going on,
11 didn't they?

12 A Not right then

13 Q When they came over to Boulder Creek, they knew what was
14 going on

15 A Not right then

16 Q All right So you told 'em when they got here?

17 A When they got -- when they pulled up, me and Sammy was
18 still out there and I told 'em what was going on and they was
19 like I wanna say krunk or or ready to do what they want, ready
20 to fight or whatever, but I told 'em it wasn't even like that
21 I just wanted to go over there and tell her that I'm gonna get
22 up outta here like that

23 Q That's right You said, "Ain't no use in ya'll catchin'
24 a misdemeanor," right?

25 A That's what Sammy said I said

1 Q So you did -- you're just saying that you didn't say
2 that?

3 A No, ma'am

4 Q And let's talk about inside that apartment Let's talk
5 about what you said on direct and what you told police You
6 never told police that William balled up his fists at you, did
7 you?

8 A No, ma'am

9 Q When you were standing next to Trice talking to her with
10 your hands in your pockets like that (demonstrating) with your
11 hand on the gun (demonstrating) you said that William got up
12 and walked around the end of the table, right?

13 A Everything's right about -- but about my hand in my
14 pocket My hands wasn't in my pocket

15 Q Well, Ms Paulette testified your hands were in your
16 pocket, right?

17 A Okay Okay Just as well as you sittin' up here tryin'
18 to cross and sayin' I'm lyin', how you feel they ain't lying?

19 Q I'm asking the questions, Mr Robinson

20 A I'm I'm asking a question too

21 Q You heard Ms Paulette testify that your hands were in
22 your pockets, did you?

23 A That's what -- that is what she said

24 Q You heard Trice say that your hands were in your pockets
25 the whole time, right?

1 A So you mean to tell me if a if a person comes in ---

2 Q Mr Robinson, I'm sorry I'm asking the questions

3 A I'm sorry My life is on the line here too

4 THE COURT Let's let's get something straight When she
5 asks you a question, you're gonna answer it When when he
6 starts off, and even though it may sound like he might not be
7 answering it, let him finish and let's see if he answers it
8 before you interrupt him again

9 MS PAOLETTI Yes, sir

10 THE COURT Ask the question again and answer the
11 question

12 BY MS PAOLETTI

13 Q Trice said you had your hands in your pockets the entire
14 time, right?

15 A That's what she said

16 Q Trice and Paulette also said that William got up, walked
17 around the table, right?

18 A Yes, ma'am

19 Q And that he rested his hand on the wall, right?

20 A I mean, he didn't rest his hand on the wall period He
21 was sittin' down on the far end of the table You wanna put
22 your pictures up there like you been doing?

23 Q Mr Robinson, my question to you is you heard Trice and
24 Paulette say that William got up, walked around ---

25 A No, you trying to ---

1 Q --- walked around the table and and asked you, "Are you
2 talking about me," right?

3 A I mean, you trying to implicate what somebody else
4 saying ---

5 Q I'm ---

6 A --- and trying to sit here and say that I'm ly -- how can
7 you say that that I'm lying?

8 MR SCALZO Judge, I'm gonna object I think she's
9 trying to pit the witnesses against him -- each other She
10 can ask him what did he see or what did he do and then if she
11 wants to argue pitting the witnesses against each other she
12 can do that, but she's putting him in the position of having
13 to go against what another witness said He can testify what
14 he knows

15 THE COURT I overrule the objection I do not believe
16 that she is pitting the witnesses Answer the question,
17 sir

18 DEFENDANT Could you ask the question again please
19 BY MS PAOLETTI

20 Q Trice and Paulette said that William got up from his seat
21 at the end of the table, walked around to the middle of the
22 kitchen, and put his hand hand up on the wall, right?

23 A As they say

24 Q And you say that got up from his chair at the end of the
25 table and rushed you, right?

1 A Yes, ma'am

2 Q And that when he was, according to you on your -- on
3 direct, when he was about this far (indicating) away from you,
4 from the blue tape you started shooting, right?

5 A Yes, ma'am, as I was -- yes, ma'am

6 Q You know exactly what happened every time you fired that
7 gun, don't you?

8 A Not exactly but I know certain things that happened as
9 far as what certain bullets may have hit

10 Q You told police that the first shot you fired you missed
11 and hit the wall, right?

12 A Yes, ma'am

13 Q You told police that the second time you fired 'cause you
14 missed, you connected and hit William in the head, right?

15 A I may have said that, yeah

16 Q Is it your testimony then that you were lying to police
17 when you said that?

18 A No, I wasn't so much of lying I was so much of, like I
19 say, you gotta think of the heat of the moment what you --
20 they got me coercin' me saying they taking me to Hardees, ---

21 Q Mr Robin ---

22 A --- all this other stuff

23 Q Mr Robinson, ---

24 A Your Honor I'm saying you aint ---

25 THE COURT Wait a minute

1 DEFENDANT --- giving me a chance to answer my question

2 MS PAOLETTI Sure

3 THE COURT Let him finish his answer

4 DEFENDANT Okay These people are coercin' me, taking
5 me to Hardees but they don't tell you all that, but he gets up
6 here and say that, you know, that he don't coerce me or
7 nothing, you believe him?

8 BY MS PAOLETTI

9 Q Mr Robinson, you told this jury when I asked you earlier
10 that you were not coerced when you gave this statement

11 A You didn't, you didn't, you didn't go into detail was I
12 coerced That's why I asked you to go ahead and finish
13 reading that waivers of rights to get you to implicate that I
14 was coerced That's why I told you to read the rest of it

15 Q Mr Robinson, I asked you if you were coerced and your
16 answer was no Are you changing your answer?

17 A I never said that I wasn't coerced I told you that he
18 he said that I didn't -- he didn't coerce me I told you he
19 had gave me cigarettes and, um, drinks and all that type
20 stuff He took me to Hard -- I didn't get to get into it that
21 you had took me to Hard -- he had took me Hardees or whatever
22 You didn't give me the opportunity to get to that

23 Q Okay So we've gone from, "No, I was not coerced," to
24 "They gave me a cigarette," to, "They took me to Hardees "

25 All right You want to talk about the waiver of rights? It's

1 right there in front of ya

2 A I mean, I don't need to read it I know -- I I've been
3 locked up plenty other time to know what a waiver of right is

4 Q Okay So you're familiar with that document?

5 A Yes, I'm familiar with that

6 Q And you know, you know what it means to waive your
7 rights?

8 A Yes, ma'am

9 Q The last sentence of the waiver of rights, "No promises
10 or threats have been made to me and no pressure or coercion of
11 any kind has been used against me," is that what it says?

12 A That's what it says

13 Q And then there's your signature underneath that, right?
14 Yes or no?

15 A Yes, ma'am

16 Q You talked about Will's having a tattoo on his arm that
17 said G-man, right?

18 A Yes, ma'am

19 Q And you said that that was something that you were
20 thinking about when you were inside that apartment, right?

21 A Yes, ma'am

22 Q You didn't tell police about that

23 A I mean, I didn't know what G-man was until I got
24 incarcerated in the Greenville County Detention Center because
25 I am around gangs and all this type stuff every day

1 Q Wnen?

2 A When I got, when I got locked up, uh, February 1st which
3 when I came into Greenville County Detention Center ---

4 Q Okay, so you ---

5 A --- I was --- I

6 Q I'm sorry Go ahead Go ahead

7 A When I came in detention February 1st, they puts me in
8 population with everybody which is murderers, gangs and all
9 this type stuff and that's when I learned what G-man is

10 Q So you didn't know what it meant ---

11 A Before

12 Q --- when when you shot William?

13 A No, ma'am

14 MS PAOLETTI Your Honor, I'd move that all that
15 testimony be stricken from the record That is irrelevant

16 THE COURT I'm not gonna strike it from the record

17 MS PAOLETTI

18 Q Am I correct in remembering that you told the jury that
19 after you shot William you went to the west side with Travis
20 and he went and got you cigarettes and rolled you a blunt?

21 A Yes, ma'am

22 Q So you smoked marijuana to calm down after this, is that,
23 is that what you're testifying to?

24 A Yes, ma'am

25 Q So if you're, if you're telling us that you didn't know

1 what G-man meant on February 26th 2000 and 2 and 2 -- 26th and
2 27th 2005, you did know what 187 meant though, right?

3 A Yes, I know what 187 is

4 Q And you said to Trice, "Don't you know why they call me
5 the 187?"

6 A No, I didn't say that to Trice

7 Q She is making that up?

8 A So ---

9 MS PAOLETTI Objection, Your Honor She's asking a
10 question he has no way to know

11 THE COURT Overruled

12 DEFENDANT So you saying that everything everybody say
13 is not a lie but everything that I say is a lie You think
14 I'm gonna sit up here and tell you that I killed somebody and
15 that I may have done killed somebody? Is you outta your mind?
16 I mean, I want you to be technically and tell me this is how I
17 feel, you know, when you sitting here trying to cross-examine
18 me to the point where you thinking that I'm sitting up here
19 lyin' You think I'm gonna admit that I murdered somebody,
20 ma'am?

21 Q That's for the jury to decide, Mr Robinson

22 A Nah Nah I ain't -- I mean, for me to even take this
23 trial right here it is for the awful strength 'cause I got to
24 realize I have a mother, you see what I'm saying So really
25 what I'm taking this trial for is really to let this man momma

1 know what really happened See, they're tellin' him his
2 mother pieces and pieces and his kid's pieces and pieces but
3 this is what really happened This is my -- it was my life on
4 the line here

5 Q Mr Robinson, ---

6 A But I'm but I'm lying

7 Q Well, you ---

8 A Well, nah, ---

9 Q You ---

10 A --- ain't no well nothing

11 Q --- you said it, Mr Robinson, not me Let's talk
12 about -- let's talk about the shots again, okay? You know
13 exactly the order of shots that you fired at William Godwin
14 and you know where they all went, don't you? You told police
15 that you did

16 A I mean, it's impossible for me to sit here and say that I
17 know where all the shot -- where all these possible shots went
18 at this time I mean, like I said, at the heat of the moment
19 when I took -- when I made this statement, I was in a -- it
20 was a mind frame that I was outta my mind That's what I'm
21 sittin' here telling you So I could have elaborate anything
22 on that paper, you see what I'm saying, but this is what
23 really happened I'm here to let this man -- like I say, I'm
24 here to let this man family know what really happened I
25 ain't, I aint got to come up here in and lie to you 'cause ---

1 Q Mr Rob --

2 A --- whatever happens to me, is gonna happen It's
3 already predestined, you know what I mean If I'm, if I'm
4 gonna go to jail, I'm gonna get a life sentence or whatever
5 but I'm gonna let this man's momma know what really happened
6 But you trying to paint a picture like I'm sittin' up here
7 lyin' to you so I ain't got to lie to you

8 Q Mr Robinson, you told police that the first shot you
9 fired missed William and hit the wall, right?

10 A Like I said ---

11 Q Mr Robinson, the answer is yes or no and then you can
12 explain

13 MR SCALZO Your Honor, if she's gonna ask a yes or no
14 question, she needs to say, "Dan, yes or no," and then ask the
15 question He doesn't know it's a yes or no until she she ---

16 THE COURT She asked a fairly clear yes or no question
17 He can answer it yes or no and then explain

18 BY MS PAOLETTI

19 Q Mr Robinson, you told police six days after the
20 shooting, not in the heat of the moment, six days later you
21 told them the first shot you fired missed and hit the wall,
22 yes or no?

23 A Yes, ma'am

24 Q You said to police, "The second shot I fired and I
25 connected," right?

1 A I mean, now is that possible if ---

2 Q Mr Robinson, I ---

3 A No, no, no, no, no There ain't no Mr Robinson Like I
4 tell you, my life right like right now, my life is on the line
5 here not you and you sittin' here trying to cross-examine
6 something that you really don't even know what you talking
7 about, you see what I'm saying I'm here to tell you what
8 really happened I'm not -- I don't -- like I say, I don't
9 gotta get up here and lie to you I'm telling you the truth
10 and nothing but the truth

11 Q Mr Robinson, you told police, "The second shot I
12 connected and hit him in his head," yes or no? It's right
13 there in front of ya

14 A I mean, I don't -- I mean, I don't have to read my
15 statement but when your clients get up here you can give them
16 that statement to read, you know what I mean I don't need
17 that I don't need that I I live this every day when I wake
18 up, you see what I'm sayin' So I don't need that Period

19 MS PAOLETTI Judge, I've tried to do it on my own

20 THE COURT Mr Robinson, she's gonna ask you the
21 question one more time Answer the question yes or no or I
22 don't know

23 DEFENDANT Mr Judge, she's asking me questions it's
24 like she's saying she's implicating ---

25 THE COURT This is not a debate, Mr Robinson I've

1 instructed you to answer the question

2 DEFENDANT Yes, sir

3 THE COURT Ask it again

4 BY MS PAOLETTI

5 Q Mr Robinson, you told the police, "The second shot I
6 connected and hit him in his head," yes or no?

7 A Yes, ma'am

8 Q You said, "Then he just fell straight down," right?

9 A Yes, ma'am

10 Q "I panicked and I guess I let a couple more shots go,"
11 right?

12 A Yes, ma'am, but if I let a couple more shots go and he
13 fell on his knees or whatever, don't you think a a bullet
14 would be in the back of his head or on his back I mean,
15 hypothetically, common sense

16 Q Mr Robinson, this is your version of what happened

17 A No

18 Q "The gun was a 38 revolver but I don't know how many
19 shots it had," right? Is that what you told police,
20 Mr Robinson?

21 A Yeah, like I told you, that's what I wrote at the time

22 Q And William Godwin was totally unarmed when he was
23 standing with his hand on the wall when you shot him in the
24 face and killed him

25 A I'm saying you still saying that he was propped up

1 against the wall He's never been propped up against this
2 wall You keep repeatin' the same question You done said
3 that three times

4 Q Mr Robinson, William Godwin was totally unarmed when you
5 shot him in the face and killed him, yes or no?

6 A Yes, to my knowledge he was

7 MR SCALZO I think she's done, Your Honor

8 THE COURT Redirect

9 MR SCALZO Thank you, Your Honor

10 REDIRECT EXAMINATION BY MR SCALZO

11 Q All right Let's talk about giving the statement, okay?
12 This is what we're gonna talk about for right now When you
13 get in the room with the police officers and you're talking to
14 them, do they ask you questions like we've been asking you
15 questions?

16 A I mean -- yes, sir

17 Q Do they ask you questions -- let me do it this way We
18 ask you a question about a little subject then we ask you
19 another question about another little subject Did they do it
20 that way or did they do it where they said, "Tell me what you
21 know," and then let you just tell the story?

22 A I mean, when I was, when I was making my statement or
23 whatever, he is, you know, after I sign all these waivers or
24 rights whatever you wanna -- if that's what, that's what you
25 want to call 'em, this man is sitting here telling me that,

1 'Kid don't you know that I can get your father with," um,
2 "aiding and abetting a fugitive " So yeah, I'm gonna here and
3 and tell you want to hear at that time to get you outta my
4 face as far as lockin' my old man up, yeah

5 Q Okay Well, let's let's talk about that a little bit
6 You're upset

7 A Yes, I'm upset plus I'm scared 'cause they they talkin'
8 about lockin' my father, has never been in jail and hasn't
9 done anything Period

10 Q And at the point where you're brought into the room by
11 the police, are you feeling scared?

12 A I mean, yes, I'm scared

13 Q Do you believe that the police are there to help you or
14 not help you?

15 A I mean, as Mr McNara [sic] here says he's here to help
16 me

17 Q I'm asking you what did you believe they ---

18 A Nah, they -- I mean, nah, they weren't there to help
19 me

20 Q Okay And you were talking about -- let me make sure
21 I -- I wrote down that you said your mind was all over the
22 place Well, here's what I'd like you to do As best as you
23 can describe to the jury your mind, what you mean by your mind
24 was all over the place

25 A I mean, you gotta, you gotta, you gotta to look at the --

1 I done watch my my face on TV for six days When I -- I'm
2 gonna say five days looking at myself on TV repeatedly These
3 people saying that they gonna if they apprehend me it's dead
4 on site, you know what I mean, that I'm still on in that
5 nature right there so my mind is I'm gonna get killed, you
6 know what I mean, I'm scared, you know what I mean So yeah,
7 my mind was elsewhere when I was writin' the statement

8 Q And did Investigator McNamara when he was taking your
9 statement, was he typing on a computer or writing it down?

10 A He was typing

11 Q And did he say to you -- did he seem to know the story?

12 A I mean, not as far as what ---

13 MS PAOLETTI Objection, Your Honor, that's leading

14 THE COURT Overruled

15 DEFENDANT As far as what he seen on TV, I guess he
16 should have knew about it

17 BY MR SCALZO

18 Q What I'm and what I'm saying is that when he's asking you
19 questions, does it appear that he knew or had an idea about
20 what he thought happened or was he just saying, "Tell me what
21 happened, tell me what happened next?"

22 A I mean, he's asking me to tell what happened

23 Q Okay So does he a -- he's not asking you very specific
24 questions the way I'm asking you a specific question about
25 where you were at a certain time?

1 A No

2 Q Okay And when you're talking to the police, is your
3 goal to tell them the truth?

4 A Yes, my goal is to tell them the truth

5 Q Did -- were you afraid of telling them the truth?

6 A I mean, when I was making my statement, like I say, I was
7 so far out there that that really wasn't -- is -- was
8 irrevelent [sic] of what was going on in my mind 'cause I'm
9 charged with murder, you know what I mean I'm -- that's

10 that's -- this is a charge for somethin' that I aint never
11 been through in my life so this is something knew to me

12 Q And were you scared of that?

13 A I mean, I was scared to the point where I didn't know --
14 I I didn't even have a chain of thought or really no words
15 I'm just really just talking to the man My mind is elsewhere
16 when I'm talking to him

17 Q And when you're sitting there, you hadn't talked to a
18 lawyer or anybody else about what you were gonna talk to the
19 police about?

20 A No, sir

21 Q And did you plan out what you were going to say or not
22 say?

23 A No, sir

24 Q Did you trust the police?

25 A I mean, no I ain't trust the police

1 Q Okay When the prosecutor was asking you questions about
2 what other people were saying, you appeared to be frustrated
3 Were you frustrated?

4 A Yeah, frustrated Yeah, mo -- most like frustrated

5 Q Okay Let's talk about what you remember happening and
6 well, we'll -- we're not gonna talk about what other people
7 have said for the moment Do you remember seeing Will Godwin
8 standing with his arm against the wall?

9 A No, sir

10 Q Do you remember seeing will Godwin coming at you in that
11 kitchen?

12 A Yes, sir

13 Q Do you remember what you felt like as he was coming at
14 ya?

15 A I mean, like I said I was intimidated and I was fearing
16 my life at the time that he came in there

17 Q When you're talking to the, we go back to when you were
18 talking to the police and you remember the state of mind that
19 you were in, you described your mind being all over the place,
20 is your mind all over the place now?

21 A Now? No

22 Q Do you do you remember better now than you did when you
23 were talking to the police?

24 A Yes, sir, 'cause now I have a piece of mind to recall
25 what really, you know, what really really happened

1 Q Okay And let me ask you this Even though it was five
2 or six days after the fact, had you ever gotten that peace of
3 mind that you have right now?

4 A At the time?

5 Q At the time

6 A Nah, I mean, I had time to -- at that time no but now,
7 you know what I mean, I had time to pace myself and, I mean, I
8 I visualize this everyday that I wake up so it comes to me
9 like everyday This is like everyday This is something I'll
10 never forget

11 Q Um-hum Did it take some time for your mind too slow
12 down and be able to do what you just described which is
13 visualize it?

14 A Yes, sir

15 Q Okay Let's talk about a little bit about there was a
16 discussion about coerced and Hardees and and it was a bit all
17 over the place so let's try to break that down so we can
18 understand what you were trying to say The prosecutor was
19 asking you questions about what that waiver of rights form
20 said and one of the things on there it says about being
21 coerced Do you know what coerced means? Can you tell us
22 what you think coerced means?

23 A Coerced means when somebody is leading you on to tell
24 something that they want you to tell, how they want to be
25 told, how they want a incident told

1 Q Okay Does it involve putting pressure on you?

2 A Yeah

3 Q All right When you signed the waiver of rights form and
4 you put the little initials near all those lines, were they
5 putting pressure on you at that point or after you signed?

6 A I mean, after I signed all these waivers of rights this
7 is when the, this is when the coercion is is is coming in,
8 you know what I mean All that signing, that doesn't mean
9 nothing I mean, you all can put my signature and all of that
10 on there but that doesn't mean he ain't gonna coerce me
11 afterwards, you know what I'm saying That's what I'm saying

12 Q Okay So are you talking about -- let me ask you this
13 Are they putting pressure on you? Is that what you're
14 feeling?

15 A Yes, sir

16 Q And the pressure that you're feeling, what are you
17 feeling pressured to do?

18 A I mean, I'm pressured to say things that I don't really
19 wanna say

20 Q And what is making you say things you don't want to say?
21 Why don't just be quiet?

22 A I mean, I can't be quite He's he's he's sitting here
23 telling me as a conversation, "You know, we can lock your old
24 man up for aid and abetting a fugitive Um, we done ran his
25 tag and it came back to Roosevelt Robinson " So yeah, I mean,

1 due to that fact, yeah, I'm allowed to say anything to get my
2 old man outta jail 'cause I'll take the fall

3 Q And they got some times on here, 1 36 looks like when
4 they started and 1 41 when they, a m , when they end it so
5 five (5) or so minutes Do you remember spending about five
6 minutes to go over this (indicating) form? Does that ---

7 A Yes, sir

8 Q Does that sound accurate?

9 A Yes, sir

10 Q When you began the interrogation with Investigator
11 McNamara, did it last longer than five (5) minutes?

12 A Yes, it last longer

13 Q About how long do you remember it lasting?

14 A Probably last probably about two (2) hours at the most
15 About two (2) hours

16 Q Okay The prosecutor asked you about knowing whether
17 Will Godwin was armed so let's talk about that issue Having
18 sat in this trial, do you now know that Mr Godwin was not
19 armed?

20 A Yes, sir

21 Q When you're standing in the kitchen, did you know one way
22 or the other whether he was armed?

23 A I don't really know what he had I can't say he had one
24 or not one but at the time I didn't see, I didn't see -- he
25 didn't present me no weapon so I'll say he wasn't armed

1 Q All right

2 (Pause)

3 Darian, let me ask you this With regard to the gun, you
4 described getting rid of it

5 A Yes, sir

6 Q At the time that you were getting rid of the gun, did you
7 believe that by getting rid of the gun they would somehow not
8 be able to prove you shot Will?

9 A No, sir, that wasn't even in the scenario of me really
10 gettin' rid of the gun

11 Q Did you ever try to hide the fact from the investigators
12 that you had shot him?

13 A I told him when I came in as well as I'm telling 'em now,
14 yeah, I told on my statement that I had shot him I never
15 denied that I shot anyone

16 Q In -- the prosecutor asked you a lot of questions about
17 your statement and the words that are in there, and one of the
18 questions she was asking you about whether or not you used the
19 words that you thought Will was gonna kill you or kill you
20 maybe those two words being primarily a concern Is it true
21 that you didn't use those words in your statement?

22 A No, I didn't use those words in my statement

23 Q As best as you can recall in talking to Investigator
24 McNamara or any of the police, was it your intention to convey
25 that message to them that you felt he was trying to kill

1 you?

2 A I mean, that's what I was trying to get at but it didn't
3 come out that way That's why I said it I'm -- when -- the
4 statement -- when I was wr -- well, I aint even say I wrote
5 it I mean, that's what he wanted typed, you know what I
6 mean He's sitting there at typewriter, you know, as far as I
7 felt I shoulda had a pencil and wrote it myself, you know what
8 I mean That would be a statement but he coulda he coulda
9 typed anything at that time the way the way my mind was at
10 that time that I would have been signing anything at that
11 given time

12 Q Okay When you were being cross-examined, you said, "Push
13 your statement aside I don't need the statement " Why did
14 you say that?

15 A I mean, why would I, why would I have to base myself off
16 that? That's once something that I said when I was outta my
17 mind Now, I'm in my right frame a mind so this is what I'm
18 telling you what really happened

19 Q Okay Do you deny that you shot Will?

20 A I never denied that I shot Will

21 Q And did you want to shoot Will?

22 A No, I didn't want to shoot Will

23 Q Why did you shoot him?

24 A Out, like I said, out of fear and that I thought it was
25 either my life or his I, you know, tooken a person's life I

1 was like I would say negilent [sic] thinkin' that's what I
2 would call it

3 Q Say that again

4 A Negilent thinkin'

5 Q Negligent?

6 A Negilent That means that fear will rule out everything
7 as far as I thought the wrong way and I -- it cost me by
8 takin' somebody life over fear

9 Q Okay Did you think that you had another choice standing
10 there?

11 A I mean, I felt it was like I said, it was either me or
12 him at that time 'cause I don't know what he had

13 Q Okay

14 MR SCALZO I don't have any further questions

15 RECROSS-EXAMINATION BY MS PAOLETTI

16 Q Mr Robinson, you are experienced in criminal matters,
17 aren't you?

18 A What you mean by criminal, like getting in trouble?

19 Q You've got convictions for armed robbery, burglary and
20 kidnapping, right?

21 A Yes, ma'am

22 Q So you understand the implication ---

23 MS PAOLETTI Ob -- objection, Your Honor May we
24 approach for a second?

25 (Whereupon, a bench conference was held off record)

1 THE COURT Overruled

2 BY MS PAOLETTI

3 Q Mr Robinson, you've got convictions for armed robbery,
4 kidnapping and burglary and false information to police,
5 correct?

6 A Yes, ma'am

7 Q You understand the implications of signing that document,
8 don't you?

9 A Yes, ma'am

10 Q You were given the opportunity to read it, right? After
11 it was printed?

12 A I mean, back in '95 it wasn't no typing nothing on no
13 computer, it was what you wrote down

14 Q I'm asking you about this statement (indicating) that you
15 gave to ---

16 A No, ---

17 Q --- police in this case

18 A --- you asking about my prior cases that I know about
19 Back in '95 I knew about writing it on a piece of paper not
20 no -- know nothing about typing it

21 Q You understand the implications of signing a written
22 statement in a criminal case, don't you?

23 A Yeah, as you say

24 Q You had a chance to read this statement after it was
25 printed, correct?

1 A Yes, ma'am

2 Q You can read

3 A I said yes, ma'am

4 Q You didn't make any substantive changes to this
5 statement, did you?

6 A How can I change something that was already typed? What
7 I supposed to rephrase it, went back over and said, "Okay, um,
8 let's start all over again Let's retype it "

9 Q Yes, actually

10 A No I wasn't given the opportunity

11 Q You said, we're talking this situation that was going on
12 inside Paulette's apartment right at midnight, and you
13 testified on direct that you were trying to avoid that
14 situation, right, and that's why you called to get a ride?

15 A Yes, ma'am

16 Q And you were afraid of William, right?

17 A Yes, ma'am

18 Q And you didn't leave when your ride got there, right?

19 A No, ma'am

20 Q Mr Robinson, you've had two and a half years to think
21 about what you were gonna stay -- say on the stand, haven't
22 ya?

23 A Exactly I had thirty (30) months

24 Q Thank you

25 MR SCALZO Redirect, Judge?

1 REDIRECT EXAMINATION BY MR SCALZO

2 Q The prosecutor asked you about when you're talking to the
3 investigator and you have the waiver of rights and the
4 statements, that you understood "the implication" is what she
5 said to you Do you remember her talking to you about that
6 just a minute ago?

7 A Yes, sir

8 Q Looking backward from now, do you believe you could
9 appreciate that, what that really meant back then?

10 A What I wrote?

11 Q No The prosecutor said, Do you -- did you understand
12 the implications of what you were writing when you read that
13 waiver of rights form?"

14 And you said, "Yes," did you understand what the words
15 meant?

16 A As far as what?

17 Q When you read -- when they read that s -- that -- when
18 they were reading the waiver of rights form to you and they
19 were having you talk ab -- reading to you, "You have the right
20 to remain silent, right to a lawyer," all of that, did you
21 understand what the words meant?

22 A I understood what the words meant

23 Q What I'm asking you now is this Looking backwards from
24 now, thinking back to what your mindset was back then, you
25 understood the words, what I'm saying is were you able to

1 appreciate what they meant?

2 A No, sir

3 Q Why not?

4 A Because, I mean, back back when I did it, when I wrote it
5 or whatever I was scarred, you see what I'm sayin' I had
6 time to heal as time went by to realize what I wrote because
7 now I'm dealing with my motion of discovery and and read my
8 motion of discovery like, Woe, I I said this? That -- this
9 ain't what happened, you know what I mean So I didn't
10 appreciate it any, no

11 Q Okay Did you think, at the time you were talking to the
12 police, that anything you were saying to them was going to
13 somehow make it that they -- that you didn't shoot Will?

14 A No

15 MR SCALZO That's all I have

16 RECROSS-EXAMINATION BY MS PAOLETTI

17 Q Mr Robinson, you didn't have much of a choice about
18 admitting that ya shot Will, did ya?

19 A No, ma'am

20 Q Your father was never charged with any crime, was he?

21 A No, ma'am

22 Q That's all

23 THE COURT All right, sir, come down

24 (The witness left the stand)

25 MR SCALZO Judge, that's all the testimonial evidence I

1 have I do have one issue that we may wanna take up with
2 reg -- regards to additional piece of evidence

3 THE COURT Okay Let's take a short break I'm gonna
4 send you all back to the jury room For, let me just say
5 this, for planning purposes I expect that -- well, let
6 let m -- I'll wait I'll wait You all go on back

7 (The following takes place outside the presence of the
8 jury)

9 THE COURT Okay

10 MR SCALZO Judge, I would ask you to take judicial
11 notice of the certified conviction of Mr Godwin and just
12 ins -- tell the jury that he was in fact convicted of second
13 degree murder and the date I'm not asking for any more than
14 that piece of information And I have the certified copy here
15 if the Court needs to ---

16 MS PAOLETTI Your Honor, the glue is not gonna keep me
17 down on that one

18 (Laughter)

19 THE COURT I'm sorry I may have overdone the glue
20 thing yesterday when I said it, but you're unglued in just ---

21 MS PAOLETTI Well, I'm ---

22 THE COURT I will I will unglue you

23 MS PAOLETTI I'm gonna come unglued on that one

24 THE COURT If your client had been told that Will Godwin
25 had been convicted of second degree murder in North Carolina

1 in the past and had served time, and if that was in his mind,
2 if he believed that on January 27th when this event occurred
3 of 2005, ---

4 MR SCALZO Um-hum

5 THE COURT --- what difference would it make whether it
6 was true or untrue?

7 MR SCALZO I would analogize this to the 187 testimony
8 that was put forth The allegation was that 187 was the term
9 that was used and that it meant "x" based on this California
10 Penal Code And what the state wanted to do was say, "To show
11 that we're just making something up, this is a judicial fact,
12 in reality the statute is No 187, Section 187 " I think it's
13 the exact same scenario that this is not something that's made
14 up, this is a fact in real life

15 MS PAOLETTI But, Your Honor, whether or not the the
16 defendant was aware that it was actual fact is not relevant at
17 all The testimony is in that he, that he thought that he did
18 or that he he that the that the victim himself told him that
19 he did and that would be highly prejudicial for the Court to
20 take judicial notice of that Furthermore, Your Honor, the
21 the jury won't know what second degree murder in North
22 Carolina in 1989 meant

23 THE COURT Well, uh

24 MS PAOLETTI And it is ---

25 THE COURT What's important though to the to the

1 self-defense claim is not what's true or untrue about the
2 conviction, but what was in the mind of the defendant That's
3 why the evidence does not become relevant until you prove that
4 he knew about it So it's -- what's important is what's -- is
5 what he knew or what he thought he knew Or just taking it
6 the other way around If if he had been told that the guy had
7 been convicted of second degree murder and in, and in his mind
8 and in the defendant's mind at the time this shooting occurred
9 the defendant believed that it was true, the -- that the

10 victim had been convicted of second degree murder, but in fact
11 it was not true, that the victim never had been convicted of
12 second degree murder, that would be irrelevant 'cause what's
13 important is what's in the mind of the defendant at that time

14 I sustain the objection

15 MR SCALZO And, Your Honor, just for the record in
16 terms of my grounds the rule on 201 says if it falls under the
17 definition of the kind of facts that can be judicially taken
18 note of, um, (d) says when mandatory, a court shall take
19 judicial notice if requested by a party and supplied with the
20 necessary information I think it fits a ---

21 THE COURT You're ---

22 MR SCALZO --- kind of ---

23 THE COURT --- you're you're a step ahead Judicial
24 notice and its requirements does not even come into play until
25 the evidence is shown to be relevant And the truth or the

1 the existence or nonexistence of the conviction is -- the the
2 point -- the -- what's relevant is what the defendant believed
3 and remembered and had in his mind about what he had been told
4 about the conviction from North Carolina He had no idea of
5 the -- he he had not seen or or any of this documentation of
6 the conviction at the time There's no evidence that he had
7 If he had, I would admit it But since he hadn't it it it
8 goes no -- not one way or the other in in assisting the jury
9 to understand what was in his mind, I mean, assisting the jury
10 in understanding whether or not what he says about what he'd
11 been told was true

12 MR SCALZO I think it goes to the credi -- there's a,
13 there's credibility battle that's going on The state's
14 witnesses have testified they -- either they didn't know and
15 the defendant didn't know or that they didn't know

16 MS PAOLETTI That's ---

17 MR SCALZO And what it creates is this credibility
18 battle of then the state gets to say, "You don't need to
19 believe anything that he says, here's the credibility reason,
20 don't believe it," but meanwhile, in fact, it is a known
21 undisputed fact and that the fact that the state's witnesses
22 create that dispute makes it a relevant issue as to whether or
23 not that fact is true

24 MS PAOLETTI Your Honor, ---

25 MR SCALZO And it's undisputed fact

1 MS PAOLETTI --- none of that testimony was in front of
2 the jury That was all outside the presence of the jury on
3 those other witnesses

4 MR SCALZO But it is still a credibility issue because
5 it's the believability of state's witnesses versus defense
6 wit -- defendant

7 MS PAOLETTI None, none of the state's witnesses
8 testified anything ---

9 THE COURT Let ---

10 MS PAOLETTI --- about that

11 THE COURT Let's let's -- I'll I'll let you say anything
12 you wanna say but let -- let's -- let me finish over here
13 Let me, let me see the document

14 MR SCALZO The document

15 THE COURT What is it exactly you want me to take
16 judicial notice of?

17 MR SCALZO The fact of Will Godwin was convicted of
18 second degree murder, the date 3/25/1989 I'm not asking for
19 any more or less than that Do you want the document?

20 THE COURT All right I'll hear from ya

21 MS PAOLETTI Your Honor, the the prejudice and the the
22 unfairly prejudicial effect that that piece of ha -- evidence
23 has and what it is intended for is to prejudice the jury
24 against this guy that they they can't hear from And and it
25 is not relevant whether or not it was actually true as long as

1 the defendant testified that he knew about it and the jury's
2 gonna hear that about self-defense

3 And furthermore, Your Honor, it goes -- it completely
4 confuses the issues They're not gonna know anything about
5 the facts, they're not gonna know anything about what second
6 degree murder is, all they're gonna hear is murder If it was
7 South Carolina, they'd hear voluntary manslaughter or
8 something to that effect

9 THE COURT I sustain the objection Anything further
10 from the defense?

11 MR SCALZO One moment, Judge Let me just make sure
12 that I'm not, I'm not missing anything

13 Defense would rest at this time

14 THE COURT Is there gonna be any reply?

15 MS PAOLETTI Your Honor, I believe I need to put up
16 Investigator McNamara

17 THE COURT Bring in the jury Let me hold the jury just
18 one second Let me let me say something a little bit further
19 in explanation of my last ruling I've already delineated
20 what I think is the difference in relevance between the
21 conviction itself and what the defendant, what the defendant
22 knew The the probative value of the truth of the conviction
23 is is is extremely slight which which means that what I said
24 about it not being relevant is not actually correct It is
25 relevant but its probative value is is -- goes no farther than

1 whether or not, I mean, if if the de -- if the victim told the
2 defendant, "I've been convicted of second degree murder in
3 North Carolina," then the defendant is put to the task of
4 deciding whether or not to believe what he's just been told
5 If the de -- if the victim was actually, was actually telling
6 the truth, then the defendant is more likely to believe what
7 he what he has been told So to that extent only it's
8 relevant The probative value of that in my view is
9 extraordinarily slight The potential for unfair prejudice is
10 that we turn this thing into a character conflict between the
11 defendant and the victim and the and the the actual character
12 of the victim weighs into the deliberations where that should
13 never happen What should weigh into the deliberations is
14 what the defendant believed about his propensity for violence,
15 and so for that reason I think the potential for unfair
16 prejudice is significant and it outweighs, it substantially
17 outweighs the probative value and so I exclude it under Rule
18 403 Bring 'em in

19 MR SCALZO And, judge, I don't have a, I don't have any
20 argue with regards to that I would just ask for
21 clarification with regards to the meaning, the result of that
22 ruling and we can approach and I can explain it better what
23 I'm getting at

24 THE COURT We'll take it up in a minute

25 (The following takes place in the presence of the jury)

1 MS PAOLETTI Your Honor, the state calls Investigator
2 Mike McNamara to the stand

3 MICHAEL J MCNAMARA, having been
4 first duly sworn, testified as follows

5 THE CLERK State your full name for the record

6 INVESTIGATOR MCNAMARA Michael J McNamara

7 DIRECT EXAMINATION BY MS PAOLETTI

8 Q Investigator McNamara, will you tell the jury who you
9 work for please

10 A I work for the Greenville County Sheriff's Office

11 Q How long have you been with the sheriff's office here in
12 Greenville?

13 A For twelve (12) years

14 Q What about before that?

15 A I was in law enforcement in New York for an additional
16 twelve (12) years

17 Q What's your position in the Greenville County Sheriff's
18 Office?

19 A Right now I'm a sergeant over criminal investigations I
20 supervise detectives that do work in sex crimes and youth
21 services

22 Q And how long have you been in that position?

23 A Just about one year now

24 Q Did you have an occasion to interview the defendant,
25 Darian Robinson, in this case?

1 A Yes, ma'am, I did

2 Q And when did you interview him?

3 A On February the 1st 2005

4 Q And was that the date he was arrested?

5 A Yes, ma'am, it is

6 Q Did he give a statement?

7 A Yes, he did

8 Q I'm gonna refer you to that document that's right there
9 in front of you, it's for ID is I believe it's State's 24

10 A Yes, ma'am

11 Q Can you, can you tell the jury what that document is?

12 A This document is the preprinted waiver of rights form we
13 use before we take a statement from the individual in a
14 criminal case where we read them their rights, find out if
15 they wanna waive their rights or invoke their right to counsel
16 and attorney

17 Q And tell the jury how you go through that document with a
18 defendant

19 A Yes, ma'am

20 Q Or a suspect

21 A There's some information that I need to put at the top
22 The first thing I'm gonna put at the top of this in my own
23 handwriting is the defendant's information, name, address,
24 date of birth, social security number, whatever identifying
25 information that we have So the right hand side there's a

1 space for me to put the date and then the time that we begin
2 the taking of this form And so I would put at the very
3 beginning, the first things I would put would be the date and
4 then it's 1 30 in the morning, note that time right there
5 (indicating) I'll check with the person who I'm taking the
6 statement from and ask them if their personal information is
7 correct to make sure it's all right on the form Once I do
8 that I'll ask them to read along with me as I read this form
9 out loud and it's kinda got two sections to it and I kinda
10 split it into two different parts

11 Q What's the first section?

12 A The first section on the upper half has six different
13 sentences on it that pertain to a person's rights and things
14 they may or may not be entitled to before we do the
15 questioning I read those out loud I also ask the person to
16 read along with me In this instance I can have the person
17 very close right by my desk where they can look at it and I
18 can see they're looking at it and I ask them to read with me
19 as I read out loud

20 Once I read that first section I ask if they understand
21 what was read to them and what they read and if there are no
22 questions or concerns about that first section, I move on to
23 the section section which is titled "waiver of rights " It's
24 the same exact thing I just read it out loud to them as I
25 show them the form and ask them to read along with me Once I

1 complete that I ask them again if they understood what's
2 contained in that paragraph

3 Q Do you do anything special with regards to the fourth
4 sentence that's typed down there?

5 A Yes, ma'am, on the fourth sentence we -- I ask the
6 defendant to read that sentence to me out loud

7 Q What's the purpose of that?

8 A Actually there are two reasons for that, the first being
9 that we understand that they can read They demonstrate that
10 they can read the English language Second, it reiterates to
11 them, because it talks about their right to have an attorney,
12 it reiterates to them that before they begin to do this
13 process they've got the right to have an attorney with them or
14 an attorney present that they can ask questions of before they
15 undertake this process

16 Q So two important things they can read and they
17 understand their waiver of rights to an attorney, correct?

18 A Yes, sir -- yes, ma'am

19 Q Did you go over a waiver of rights form like Exhibit 24
20 with the defendant?

21 A Yes, I did

22 Q And did you do with the defendant in that specific waiver
23 of right form what you just described to the jury?

24 A Yes, ma -- yes ma'am, I did He sat right beside my desk
25 in violent crimes and leaned over as I put this right to the

1 edge of the desk and read it all out loud and asked him to
2 verify the personal information, name, date of birth, social,
3 address He did that and we did the form just as I've
4 explained to you

5 Q Investigator McNamara, you heard the defendant tell the
6 jury that you made some comment to him about prosecuting his
7 father in regards to an accessory charge?

8 A Yes, I heard that

9 Q Is that true?

10 A No, ma'am, that is not true No threats were ever made
11 to the defendant to arrest anybody else, his family or anybody
12 else involved in the case

13 Q Was anybody in his family charged with accessory?

14 A Nobody else was charged in this case, certainly nobody in
15 his family

16 Q Read the, um, well, let me, let me ask you this There
17 are several initials on the left side of this document Who
18 who put those initials there?

19 A Mr Robinson did

20 Q And what are the initials?

21 A After we explained that section or after I explained that
22 section to him, I'm telling him, "Do you understand which each
23 of those lines means," excuse me, "what each of those lines
24 means? Please put your initials to the left of that
25 indicating that you understand " And he did that for all six

1 lines on the way down Before I go to the second part is when
2 we go back and do that fourth line where I ask him to read it
3 out loud I asked him if he understood that would he please
4 sign his name after that line and he did that He signed his
5 name after that line

6 Q And did you sign the document?

7 A I signed it at the bottom and Mr Robinson also signed it
8 at the very bottom to indicate he understands the entire
9 form

10 Q And who else witnessed the document?

11 A Deputy White was in the room at the time and witnessed
12 the reading of the waiver and he witnessed that as well and
13 signed in that regard

14 Q How long did it take you based on the time notations that
15 you've got on this to go over this document with the
16 defendant?

17 A It took us five minutes to go over this form from start
18 to finish

19 MS PAOLETTI Your Honor, the state moves Exhibit 24
20 from the previous hearing into evidence

21 MR SCALZO Can I just see which one's 24?

22 MS PAOLETTI It's the the waiver

23 MR SCALZO Judge, I would object based on that they had
24 the opportunity to put this in in their case and she's ---

25 THE COURT Overruled

1 (Waiver of rights form marked State's Exhibit No 24 was
2 admitted into evidence)

3 BY MS PAOLETTI

4 Q Investigator McNamara, will you read the the paragraph
5 that's at the bottom of this page called and it's entitled
6 "waiver of rights " And actually, if you'll give me one
7 second This portion of the document right here (indicating)
8 And I'm gonna bring you one so you can read it 'cause I know
9 you can't read it from there think no one can read it from
10 there Never mind Will you just publish it to the jury

11 A Again, which portion ma'am?

12 Q The the paragraph under the waiver of rights down at the
13 bottom

14 A Yes, ma'am, it reads, "I have read this statement of my
15 rights and I understand what my rights are I am willing to
16 make a statement and answer questions I do not want a lawyer
17 at this time I understand and know what I am doing No
18 promises or threats have been made to me and no pressure or
19 coercion of any kind has been used against me "

20 Q And did the defendant sign this document?

21 A Yes, he did

22 Q In your presence?

23 A Yes, ma'am

24 Q Investigator McNamara, did you make any promises to the
25 defendant in exchange for him giving the statement?

1 A No, none whatsoever

2 Q Did you threaten him in any way?

3 A Not at all

4 Q Did anyone else make any threats or promises to him?

5 A No, nobody did

6 Q Was this statement given completely voluntarily on the
7 part of the defendant?

8 A It was If he didn't wanna give a statement, I wouldn't
9 have taken a statement Many times people come in and won't
10 give a statement and that's fine and then the interview is
11 ended Had he invoked its -- his right to counsel, the
12 interview would have ended Had he said, "I want an
13 attorney," the interview would have ended It happens many
14 times and we do it, but it also happens many times that
15 they'll come in and sit there and tell you everything you
16 wanna know

17 Q And is that what the defendant did?

18 A That's exactly what he did

19 Q Thank you

20 CROSS-EXAMINATION BY MR SCALZO

21 Q You just said that sometimes they'll come in and tell you
22 everything you wanna know, meaning "you" as the
23 investigator?

24 A Yes, sir

25 Q And ---

1 A And what we want to know is what happened

2 Q Okay Let me make sure I understand sort of the process
3 of what you were doing

4 A Yes

5 Q You said you were sitting next to him, you went over the
6 waiver of rights form

7 A Yes, sir

8 Q After you were done with that, that when you moved into
9 actually creating the statement, the typed out statement ---

10 A Yes, sir

11 Q --- right? And what you were doing is you were sitting
12 at a laptop computer or a desktop computer?

13 A A laptop, yes, sir

14 Q And you were typing was he was saying?

15 A Yes, indeed

16 Q And the way you got him to say was you said, "Tell me
17 what you want to tell me?"

18 A Yes, sir, initially said, "Tell me what happened tonight
19 back ---

20 Q Okay

21 A --- at the apartments "

22 Q And so it wasn't this kind of a conversation where I ask
23 you one question about a small little fact, you tell me and
24 then we move onto the next issue

25 A No, sir, only there, at a lengthy interview like that

1 over an hour, a couple of hours, there are gonna be points
2 that need to be clarified so I will have to ask him questions
3 based on some of the things that he's told me But other than
4 that it's not this question and answer type session It's
5 simply, "Tell me You tell me and I'll type it," and that's
6 what we did

7 Q Okay And as you say, you just wanna kinda know what
8 happened

9 A Say again, Sir

10 Q You said you basically wanted to know what happened and
11 his wanting to tell ya

12 A Yes

13 Q All right It's not audio or video recorded, that
14 correct?

15 A No, it's not

16 Q And I'm not trying to be a wise guy but the sheriff's
17 office has tape recorders and video cameras, they -- you got
18 access to that kinda stuff

19 A We've got access to certain instruments we use in the
20 field but as a normal course of business we don't audio tape
21 or videotape any of our written statements

22 Q What what you're saying is as a choice of a procedure you
23 don't do that but you have the technology to be able to do
24 that

25 A The technology is there, yes, sir

1 Q And you would agree with me that when a statement is
2 written out and, in fact, the way you did it you typed it out
3 written out, typed out, it is the words that you have
4 attributed to the defendant or the person talking could be a
5 witness, right?

6 A No, sir, those are the words that are actually spoken to
7 me As he speaks I type If I have to stop and clarify and
8 certainly I can't keep up with the spoken word, I don't type
9 that well but I type well enough to stay right behind him and
10 I might slow him down but as he speaks I type What he tells
11 me to put on that page I put on that page Anything he wants
12 to put on that page I'll type it down And he has the
13 opportunity to sign it, review it, change it, do whatever he
14 likes with it

15 Q And what is not in that statement and what is not part of
16 your normal procedure as you described it is you're not typing
17 out question by Investigator McNamara and then the question,
18 his response whether it's long or short

19 A That's right

20 Q So in a written statement what is absent from the written
21 statement is any input or anything said by the other people in
22 the room besides the defendants It's only his words, isn't
23 that right?

24 A That's correct

25 Q And you would agree with me that a tape recorder or a or

1 a or a video camera would capture at least the audio of
2 everybody that's in that room if it's working properly?

3 A It would capture that, yes

4 MR SCALZO I don't have any further questions, Judge
5 REDIRECT EXAMINATION BY MS PAOLETTI

6 Q Investigator McNamara, did you print out the statement
7 that the dave -- that the defendant gave ---

8 A Yes, ma'am

9 Q --- after after you all were finished?

10 A Yes, ma'am, I did

11 Q Did you give him an opportunity to review it?

12 A I did in fact I handed it to him and asked him to read
13 it and make any notations or tell me if anything needed to be
14 changed I explained both before the interview and after,
15 that at the end of this process when he was reading it, that
16 if something needed to be changed, I would change it It's
17 all on a Word program on the laptop Move the cursor, press
18 delete, it goes out Something that's in there isn't supposed
19 to be there, we'll take it out If he said something that I
20 didn't include, type the keys and it types right on the
21 statement It's very easy to do and he was made well aware of
22 that both at the beginning and at the end

23 Q And in fact did you go over this statement paragraph by
24 paragraph with him after it was printed?

25 A I did not ask him specifically about each paragraph

1 Again, I simply asked him to read it And I sat there and
2 waited for a period of time until he said he was finished
3 reading it

4 Q And did he, did he initial each paragraph after he read
5 it?

6 A He did He initialed at the beginning of each paragraph
7 He signed his name at the end of one a miscommunication of
8 what we were asking him to do but other than that, he
9 initialed at the beginning and the end of each paragraph

10 Q And he and he actually did make a few grammatical
11 changes, correct?

12 A He did

13 Q And he initialed those, right?

14 A Yes, he did

15 Q And it looks likes he picked up your typos on typing the
16 word "my" instead of "me"?

17 A Yes, he did

18 Q Investigator McNamara, did you include anything in this
19 statement that was something that you wanted the defendant to
20 say?

21 A No, not at all

22 Q Who else was in the room when the defendant gave the
23 statement?

24 A Deputy Jimmy McNealy was there to witness the statement
25 I don't believe Deputy White remained but I am not positive

1 He may have remained

2 Q But his signature's not on the statement

3 A No, ma'am, and had ---

4 Q He may have been there

5 A And had he remained I would have asked him to sign as a
6 witness while Deputy McNealy was the notary on the statement
7 so that at this point leads me to believe that he had not
8 remained in that -- in the room at that time

9 Q So at most three of you present when he was giving the
10 statement?

11 A Yes, ma'am

12 Q More than likely two?

13 A Yes, ma'am

14 Q Did anybody else make any threats or promises or coerce
15 Mr Robinson for any part of his statement?

16 A No, not at all

17 Q Thank you

18 MR SCALZO No recross, Judge

19 THE COURT You can come down, sir

20 (The witness left the stand)

21 THE COURT Anything -- any further reply?

22 MS PAOLETTI No, sir, Your Honor

23 THE COURT All right Ladies and gentlemen, that's all
24 of the testimony and evidence that you will hear in this case
25 We're gonna take about a ten (10) to fifteen (15) minute break

1 to give the lawyers a chance to put their closing arguments
2 together and we'll have you back out here during that time
3 frame to begin

4 The closing arguments probably will take an -- hopefully
5 a little bit less than an hour then I'll charge you on the
6 law You should be deliberating around 5 maybe 5 15 That's
7 a -- just a prediction It could be off Are there any of
8 you who have any special scheduling issues that that I need to
9 know about for tonight for this for that that time frame of 5,
10 5 30 to 6, possibly 6 30 or so?

11 UNIDENTIFIED JUROR Other than just being able to make a
12 call to let my husband know

13 THE COURT Okay, just let the bailiffs know Any of you
14 who need to make a telephone call can If you have special
15 concerns that just can't be dealt with, tell me about it and I
16 will accommodate in in some other way, otherwise, I'm gonna
17 let you all deliberate and then we'll just see how it goes
18 All right? You all can go back in the jury room now

19 (The following takes place outside the presence of the
20 jury)

21 MR SCALZO Judge, I just wanna ask the Court to make
22 this a court exhibit, that certified conviction

23 THE COURT All right

24 (Judgment and commitment marked Court's Exhibit No 1)

25 MR SCALZO And can we address my -- it's not an

1 argument, just a clarification on the basis of your ruling on
2 that judicial notice

3 THE COURT Yeah, what's just been handed to you is a
4 draft of the jury charge

5 MR SCALZO Okay

6 THE COURT Most of it is standard but pay particularly
7 close attention to the section on murder and self-defense

8 All right Go head

9 MR SCALZO Based on the fact that you ruled that you

10 cannot take judicial notice of the conviction because it's not
11 relevant but you did acknowledge -- well, it is relevant but
12 its probative value is not great enough to be put in in
13 comparison to its prejudicial effect` My concern is this I
14 don't think it would be fair for the prosecution to be able to
15 get up there and start saying, "Look, he just made that up
16 Will never told that to him," and in a vacuum, there's no
17 counterbalance of saying, "Hey, wait a minute "
18 Credibility-wise there is a reality that this is in fact a
19 fact, that if Will -- if you know it's a fact, that's true,
20 and he's saying, "Will told this to me," then it -- then they
21 can balance that credibility as to whether or not he actually
22 knew or didn't know, but the -- for the prosecution to be able
23 to get up and then argue, "He just made that up," and in a
24 vacuum they have no idea whether that's true or not, that
25 would unfairly prejudice the defendant So I I think they

1 wo -- should be limited to be able to do that, make that
2 argument if that's the Court's ruling

3 THE COURT Yes, ma'am

4 MS PAOLETTI Your Honor, I I think if the credibility
5 of the defendant were -- weren't such an issue, than that
6 wouldn't be necessary and that's that's not ---

7 THE COURT If what now?

8 MS PAOLETTI The the defense wants you to take judicial
9 notice of this because essentially the defendant's credibility
10 has taken a major hit and they want to bolster that with this
11 information and that the existence and the truth of whether or
12 not this victim had this conviction is not relevant in the
13 self-defense context What is relevant is that the defendant
14 thought he he had the conviction And and in fact what the
15 jury has heard is that the victim told him that and I don't
16 have any evidence to rebut that the victim told him that
17 Even if the victim had been lying and was was trying to be,
18 you know, convinced the defendant that he was, you know, a big
19 tough guy And I don't, you know, Your Honor, I I don't have
20 any intentions of being disingenuous I'm not gonna tell the
21 jury that that, that that is true, but I'm not gonna, I'm not
22 gonna step up on ethical lines on that matter

23 THE COURT Well, he he's su -- he's anticipating that
24 you are going to argue that not that the conviction doesn't
25 exist, but that the defendant never was told about it

1 MS PAOLETTI I don't, I don't have -- that's -- I don't
2 have any evidence of that I mean, I -- it's general
3 credibility Can they believe what he tells them? I don't, I
4 mean, I don't have any -- obviously can't put up a rebuttal
5 witness to say that it's not true And and, you know,
6 I -- supposedly that's something they could have put in in
7 their case in chief for the -- in the defense case They
8 could have recalled any of those other witnesses

9 THE COURT So you don't intend to argue that the
10 defendant came into this knowledge after the crime was
11 committed and lied about whether or not he knew about it at
12 the time?

13 MS PAOLETTI I mean, I guess, Your Honor, that that
14 that I can't deny that that would be the implication in
15 arguing generally can you believe anything he told you, but
16 that, I mean, then you're offering, you know, taking -- trying
17 to take judicial notice of everything the defendant said just
18 so if to prove to the jury that it may or may not be true

19 THE COURT Let me -- I'm gonna think about it I might
20 I might -- while while you all are are taking a minute to
21 organize your thoughts on closing, I'm gonna think about
22 whether or not there is a limiting instruction that I could
23 fashion that would allow the introduction of the conviction
24 but limit the prejudice that it might unfairly cause to the
25 state So I'll work on that while you all look over the

1 charge and get ready for closing

2 MR SCALZO And ---

3 THE COURT I haven't changed my mind necessarily yet but
4 I might

5 (Whereupon, a recess was taken)

6 THE COURT All right Any comments about the charge?
7 I've I've -- in the future if you have -- I've been done with
8 the jury charge for a long time so if you you have jury
9 charges in the future, I'd appreciate you'd giving 'em to me
10 farther in advance

11 MR SCALZO Yeah, I ---

12 THE COURT Other than what you have requested, which I
13 will consider, are there any problems or objections to the
14 charge that you've been given?

15 MR SCALZO Yes, let me get to the section It's with
16 regard to the law on the unlawful carrying of -- the
17 paragraph, "Also regarding the first element South Carolina
18 Code Section 16-23-20 provides that "it is unlawful for anyone
19 to carry about their person any pistol, weapon concealed or
20 not " I think that that is improper to charge them because
21 the analysis in Slater already takes that into account as a
22 matter of law In other words, wh -- by doing that what
23 you're effectively doing is you're saying for the jury to
24 make, do an analysis of law They may not realize that that's
25 what they're doing but that's what they would be doing by

1 ma -- by relying on that as the rule

2 THE COURT You don't think that that the defendant is
3 acting unlawfully in carrying a pistol that that relates to
4 whether or not he is at fault in bringing on the
5 controversy?

6 MR SCALZO Not if as a matter of law it's been found
7 that it -- the use of the carrying of the pistol is not the
8 proximate cause of the difficulty

9 THE COURT No, I did not find -- I I I did not find that
10 as a matter of law I refrained from finding as a matter of
11 law that it was the proximate cause I did not find that it
12 was the proximate cause I'm gonna charge it

13 Anything else?

14 MR SCALZO Um

15 MS PAOLETTI Judge, we'll move this too I'm not using
16 this

17 MR SCALZO I think other than what's absent from it and
18 what I have proposed, I don't, I don't think that there are
19 any other changes to what's in here

20 THE COURT All right then Are you all ready?

21 MS PAOLETTI Yes, sir

22 THE COURT All right I'm gonna, um, the the reason
23 that you offer the conviction or the reason that you, that you
24 want me to take judicial notice of the of the of the
25 conviction it relates to -- allow -- is because it allows the

1 jury to assess the credibility of whoever it was who testified
2 that there was such a conviction Here's what I wrote You
3 see see if you have any objection to this "You have heard
4 evidence that the victim was convicted of a crime This
5 evidence was admitted for the sole purpose of allowing you to
6 assess the credibility of testimony about what the defendant
7 knew about the victim's conviction and his propensity for
8 violence Other than for this purpose you may not consider
9 the victim's criminal conviction in any manner "

10 MS PAOLETTI State's fine with that

11 MR SCALZO Can you read it one more time, Judge I'm
12 sorry It's a lot harder for me to hear it than to ---

13 THE COURT "This evidence was admitted for the sole
14 purpose of allowing you to assess the credibility of testimony
15 about what the defendant knew about the victim's conviction
16 and his propensity for violence Other than for this purpose
17 you may not consider the victim's criminal conviction in any
18 manner "

19 MR SCALZO I I think that's -- I think that would be
20 okay, um

21 THE COURT "For the purpose of allowing you to assess
22 the credibility of testimony about what the defendant knew
23 about the victim's conviction and his propensity for
24 violence "

25 MR SCALZO There was also the the aspect of

1 self-defense of actual danger In other words, it's the
2 defendant's apprehension but there's also actual danger as an
3 aspect of the charge so in limiting it to the defendant's
4 assessment, you may be limiting it too much

5 THE COURT The the charge that I have included regarding
6 the third element of self-defense says that, "If the defendant
7 actually was in imminent danger, the circumstances must have
8 been such as would warrant a man of ordinary prudence,
9 firmness and courage to strike a fatal blow in order to save
10 himself " So even in that circumstance it relates back to the
11 appearance that the defendant saw and what he believed at that
12 time

13 MR SCALZO I agree with that I was just concerned
14 with the language being, um, the jury having a problem, sir,
15 of understanding that that could apply to both aspects of
16 those elements, actual versus his apprehension That --
17 that's my concern about it

18 THE COURT Okay Do you -- so do you agree to what I
19 proposed or do you have an alternative?

20 MR SCALZO I think my alternative would be that -- I
21 think that my alternative would be that I don't think they
22 need a limiting instructive -- instruction

23 THE COURT I didn't give you that alternative

24 MR SCALZO That would be his -- that would be what I
25 would ask the Court to do I realize you would overrule me

1 but I would a -- that's what I would ask the Court to do

2 THE COURT Well, would you like me to not give a
3 limiting instruction regarding the defendant's criminal
4 conviction as well?

5 THE COURT No I think, I think that that would be,
6 that would be in vi -- that would be in violation of the law
7 I don't think leaving that lim -- eliminating instruction out
8 with regard to the victim would ha -- would -- is even on the
9 same page There a whole different set of rights and
10 requirements when it comes to the defendant that don't apply
11 so

12 THE COURT All right I will -- I'm going to -- you
13 want -- what you want me to say regarding judicial notice is I
14 take judicial notice of the fact that the de -- that the
15 victim was convicted of second degree murder in 19 -- in North
16 Carolina in 1989, is that what we want?

17 MR SCALZO Yes

18 THE COURT That's what you want me to say?

19 MR SCALZO Yes, sir

20 THE COURT All right You all ready?

21 MR SCALZO I have a question about the jury
22 instructions that we put forth

23 THE COURT I hadn't had a chance to look at it I mean,
24 I can't answer your question I'm gonna look at 'em while you
25 all are making arguments You just handed 'em to me

1 MR SCALZO Well, well, my concern is in terms of the
2 language that we're using if we don't know what you're gonna
3 charge that would be a ---

4 THE COURT Who had the opportunity to alleviate that
5 concern?

6 MR SCALZO Well, Judge, ---

7 THE COURT I will, I will include language about the
8 duty to retreat I'm not sure, I'm not sure about the duty to
9 retreat being eliminated if it increases the danger but wait a
10 minute Well, wait a minute The reason I'm not sure about
11 that is because what evidence is there in the record that that
12 his danger increased by retreating?

13 MR SCALZO Well, it's a factual determination by the
14 jury that if they believe ---

15 THE COURT If -- it's a factual determination if there
16 is any evidence in the record that would support such a
17 determination

18 MR SCALZO And the e ---

19 THE COURT What evidence is there in the record that if
20 he had retreated his danger would have increased?

21 MR SCALZO The evidence would be the proximity that the
22 victim was to the defendant, the location that the defendant
23 was inside the house, where he would have had to have gone in
24 order to get out of the apartment or to get free from the
25 victim, that is all evidence of -- that would be used by the

1 jury to make a determination as to whether or not retreating
2 would increase the likelihood of greater harm

3 MS PAOLETTI And if if you're gonna charge that, Your
4 Honor, ask for just the standard charge on the duty to retreat
5 if they can find one way or the other

6 THE COURT I will All right I'll charge the duty to
7 retreat and I'll charge the right to act on appearances I'll
8 I'll work on -- I think I'll include something about words and
9 hostile acts That's probably it Now every -- a lot of the
10 other stuff is already covered but I don't intend to -- I I
11 will in in -- I will charge No 4 that the -- that he's
12 justified in firing till the threat ceases I've already
13 covered No 5 I'll think about 6 I've covered 7 Eight
14 (8) is -- I'm not charging that because it is -- it's obvious
15 that, uh, that that's true

16 MS PAOLETTI State opposes 8 and 9, Your Honor

17 THE COURT And I, and I don't intend to -- the charge on
18 self-defense is that the defendant must have acted reasonably
19 and that includes the implication that he didn't have to --
20 doesn't have to act perfectly so I -- I'm gonna leave it like
21 it is and I'm not gonna charge No 9 specifically

22 MR SCALZO I would just ask in terms of 8 I think that
23 is entirely that is one of the major issues in the in the case
24 and if the Court's gonna charge about sort of the definition
25 of unlawful carrying of a pistol, that this is just goes right

1 along with it, No 8, person being entitled It doesn't
2 automatically preclude self-defense

3 THE COURT I'm not intending to charge No 8

4 MS PAOLETTI Eight (8) or 9, Your Honor?

5 THE COURT Or 9 You waive opening?

6 MS PAOLETTI Yes, sir, Your Honor

7 THE COURT All right Bring in the jury How much time
8 do you think you need, Mr Scalzo?

9 MR SCALZO It's hard to tell, Judge It's -- I think
10 it would certainly probably be more than a half hour I don't
11 really want to but I'm gonna try to be honest, I mean, it's a
12 murder case, it's been complicated, a serious case I
13 wouldn't wanna mislead ya into thinking I was definitely gonna
14 be done in twenty (20) minutes

15 (The following takes place in the presence of the jury)

16 THE COURT Ladies and gentlemen, one last piece of
17 evidence and that is that I am taking judicial notice of the
18 fact that the victim in this case was or had been convicted of
19 second degree murder in North Carolina in 1989

20 Mr Scalzo, you may proceed

21 MR SCALZO It's been a long trial I told you a couple
22 of days ago at the beginning of the trial what this case was
23 about the kind of perspective that I thought it was about, the
24 difference between want to and have to It may have taken a
25 long time for ha -- for that to really become clear but it

1 still is the issue in the case

2 I'm gonna try to tell it in a story and I think that'll
3 still hit all of the points in what witnesses said I'm gonna
4 try to do my best to tell it from a story point of view You
5 have Darian and Latrice They lived together for sometime
6 Clearly, neither of the -- neither of them describes a perfect
7 little relationship Darian didn't get up there to say that
8 he was the greatest boyfriend ever Something happened It
9 wasn't right He even didn't think it was right But it's
10 important in this case because it is one of the things that
11 begins a process that becomes bigger and bigger and bigger and
12 ultimately gets us to a have to situation And it's not easy
13 to get into the mind of somebody else It -- you're capable
14 of doing it to a certain extent but it's not easy and this
15 case is entirely about that It's entirely about trying to
16 figure out what was going on inside of his mind What was he
17 thinking before certain actions take -- took place or didn't
18 take place

19 When I told ya in the opening about seeing my son go in
20 the water and that creating something and setting off a chain
21 of events to start acting and that taking place in a split
22 second or two seconds but so many things happening Again,
23 that still applies 'cause your brain is aware of things that
24 are going on in a weird way It can be split but you're also
25 not aware You could be acting in a way that seemingly could

1 be autopilot but there is a side of you that really does kinda
2 know and it's a strange thing And this is that kind of a
3 case which is why it's just so hard to get in there And its
4 taken me a while to get warmed up because it is that difficult
5 to do

6 I'm gonna try to start from the point of view of Darian
7 inside that apartment Latrice is gone He's in the
8 apartment by himself Perfectly believable that he just in
9 there and had no place to go and they had the one key
10 Latrice even testified at the time they had the one key and it
11 makes sense to have that sort of concern, "If I leave and
12 Latrice is gone and I lock the door, how do I -- I don't have
13 a cell phone " I don't think there was any testimony about
14 her having a cell phone So you're hanging around and waiting
15 and you know maybe that things aren't perfect yet You may
16 have to have a conversation, um, what -- you're just waiting
17 around for her to come back And you don't believe at that
18 point, while you may have thought you did something wrong and
19 it wasn't the right thing and you may have caused some pain,
20 you don't believe there's any great amount of injury, and
21 somebody comes knocking on the door and tells you otherwise,
22 that they think that And that them thinking that has gotten
23 them angry and it may be a very legitimate anger Nobody's up
24 here to say that it's illegitimate for Keith Williams or Will
25 Godwin or anybody to be upset at Darian about that but,

1 nonetheless, them being upset and then crea -- then
2 confronting him in a certain way begins to develop a state of
3 mind

4 Darian told you, "He came to the apartment, wanted to
5 talk to me, was concerned about it, primarily about his
6 daughter having seen it," again, extremely legitimate, but
7 that in the process he flashes a gun He flashes it like this
8 (demonstrating) or pulls it out However he did it doesn't
9 really matter He showed it to them and he's trying to tell
10 him, "Let me tell ya, I'm here to tell ya words now, but if
11 I've got to come back, if if words aren't gonna work, this is
12 what I'm saying " And that's a very important gesture because
13 what he did is he showed it and the intention of showing it
14 was to say to you, "I don't need to say a word," but Darian
15 didn't, he didn't, nobody testified that he said, "Get the
16 hell out of here," go after him or anything like that And
17 Darian didn't say -- he said that's all he said

18 Now, you would expect that to be a kinda scary thing
19 He testified about it's confusing What does he really mean?
20 Is he really gonna come after me or is he just really -- you
21 don't necessarily know what's going on in that other person's
22 head It's not easy But you do know he's upset and he's
23 showing you a gun And he's told you, "You need to leave "
24 But even at that point how can you leave? You got the key
25 not -- forget about the fact that he's telling you to move out

1 of your house and it's not even coming from Latrice and it s
2 based on a story that you just don't think is accurate, that
3 she's more beat up than you even thought, that there's some --
4 something's wrong there And you're hoping that that could be
5 resolved and you think that you could be easily resolved
6 because in your memory she isn't that beat up and if he would
7 just talk to her maybe or if he could talk -- if Darian could
8 talk to Latrice, he could get it straightened out But there
9 are several things going on there and that's not necessarily

10 easy to sort out but that's what's going on so you have these
11 beginnings

12 Enter Will Godwin into the mix And it's more than
13 simply that confrontation of Will coming to the apartment,
14 it's more than just simply sort of the words or even the
15 actual conduct, that's important, very important, but it is
16 the person There is no way to get get around any of it It
17 is that person Dr Ward testified about how tall he was,
18 seventy-four (74) inches and he put some marks on the floor, I
19 don't know if you can see if, but that was sort of the rough
20 height So I pull this out (demonstrating) at seventy-four
21 (74) inches, that's how tall he is And if 5'8 is here
22 (indicating) and he's seventy-four (74) inches in that rough
23 distance, that's without shoes on He also testified that he
24 had six (6) inches of hair Now, the odds of him having
25 six (6) inches of hair straight up is very low, but it may add

1 a little bit Even if it adds an inch, you're up here
2 (indicating) That's his height¹ That's simply his height
3 He's two hundred and seven (207) pounds Darian Robinson is a
4 hundred forty, (140), hundred fifty (150) Sixty (60) pounds,
5 that's a big difference Physically it's a big difference
6 And one of the pictures and again, I don't know how to use
7 that thing sometimes to be able to put it up there, but you're
8 gonna have the pictures to look through It's not a pretty
9 picture and I wish I didn't have to show you the picture but
10 nonetheless, it's an important picture, that there's a picture
11 of Will laying down on the ground and the perspective that you
12 get from it is his length He stands and the
13 seventy-four (74) inches if as seemed to be confirmed by most
14 of the witnesses, there wasn't a whole lot of dispute about
15 sorta where he might have been standi -- where he was standing
16 at the point that he went down There's not a, it's Defense
17 Exhibit No 3, not a tremendous dispute that he likely was
18 right where his feet are but standing up Maybe he's a couple
19 inches this way (indicating), a couple inches that way
20 (indicating), but we're not really talking about a great
21 dispute that's the distance And if you look at this picture
22 (indicating), you get a sense for that distance to where
23 Darian is standing or the vicinity of where he is And
24 remember, he starts off in that doorway in the kitchen
25 probably moving around slightly but not in a great sense So

1 you have somebody that's pretty close and I think Darian had
2 said this mark here (indicating) was the distance Now, when
3 you're standing and we're doing it you can see the distance,
4 but if I'm running (demonstrating), I can move very fast And
5 I'm taller and the longer arms than me makes a difference So
6 those are things that are going on there that starts at that
7 first encounter The knowledge of the conviction, the
8 knowledge of all the things that are associated with that is
9 part of it It can't be extracted It's as much a part of it
10 as it is the height and the weight because you're -- you don't
11 have the luxury in that at that point of moving
12 (demonstrating), you don't have the luxury of saying, "Okay
13 I can give him one more second to really try to figure out
14 what he has or he doesn't have, if he can grab me, what can he
15 do, if he can punch me, what can he do?" You don't have that
16 luxury It's you got to do that That's the have to That's
17 the difference between want to and have to That's what's
18 going on

19 In the apartment he's confronted, "I'm gonna kill you
20 You need to stop beatin' her up," whatever it is Well, let's
21 talk about that kind of language Certainly, Darian said it
22 scared him And perhaps Will legitimately meant that was what
23 he was going to do or he used it in the way that was often
24 used, "I'm gonna kill you I mean, I'm really gonna mess you
25 up and it's not that I'm just gonna kill ya like ha ha ha

1 we're joking here, I'm gonna really mess you up," but did he
2 mean to kill him? I don't know Nobody knows But he
3 certainly was serious about it, banging on the door yelling
4 from the outside, but Darian let's him in He doesn't have a
5 weapon to present to him and doesn't even seem to engage him
6 He leaves, comes back, similar situation but you have things
7 still still you don't know what's going on You know that
8 there's some way to solve the problem but you don't have the
9 ability to do it just yet

10 A third time now you decide I'm gonna look the door, I'm
11 just not gonna respond to it I can watch from the outside, I
12 could see why he's going but I know he he can't get in and I
13 won't engage him and I'll sorta keep me safe Are you
14 paralyzed with fear? No, but it doesn't mean that you're not
15 scared

16 Fourth time you come back Now he said he was laughing
17 Just because you're laughing doesn't mean you're not worried,
18 you're not scared, you're not -- you know, you can laugh out
19 of the nervousness of it It doesn't mean like, "Ha ha no big
20 deal I'm laughing at you You're out there, I'm here It
21 doesn't -- that's not really what he described I'm laughing
22 at your being ridiculous but it doesn't change the butterflies
23 in my stom -- I'm not sure what's going on here And I know
24 that Keith and you have talked And you both have come to
25 confront me and, you know, I don't really know everything

1 that's going on You're mad, he's mad He's snowing me a
2 gun I don't really know what to make of this I've gotta
3 talk to Latrice about it 'cause it's seemingly that's the only
4 way to resolve it " I can't -- you know, you have all that
5 stuff remains going on for hours

6 He sees Sammy outside and Sammy -- it was a difficult
7 witness or he was uncomfortable I don't think he really --
8 it didn't seem like he wanted to be here and, I mean, even at
9 the end finally he just basically said, "Look, I don't
10 remember but my statement " So he wanted to stick with his
11 statement And the problem with the statement is this
12 You're in the neighborhood, you're giving the statement and
13 and there's no way around this, you're a young black male in
14 the neighborhood giving a statement to the police and it's
15 about a murder and you just talked to your friend about it and
16 you're saying you saw the gun or you were with him before he
17 went in The odds are that your story is going to be a little
18 bit more get away from me and a little bit more on him Maybe
19 not because you want him to go down but because you just want
20 to get a little bit of distance between you You may want to
21 help but you're also torn about what you wanna say And the
22 fact of the matter is that's just a simple reality and to
23 ignore it is just to ignore an elephant in the room And you
24 could see that and he was moving around Literally So when
25 you get the statement about Darian's sorta saying, "Here's

1 what I'm gonna go do Mow down 187 " All these statements
2 attributed to him that what the state wants you to believe is
3 he's setting what this is my intent Okay Well, let's slow
4 down for a second because one of the things that almost all --
5 everybody testified to was that Darian Robinson wasn't
6 screaming his head off He knew he had a gun but he wasn't
7 waiving it around, that nobody thought he was going to shoot
8 He's telling Sammy, "Not only do I have a gun, but here's
9 what's going on, so here's the background of it " What's
10 Sammy's description really? At the end of the day, what's
11 Sammy's description? It's a distress call That's the word
12 That's what he real -- one of the most competent things he had
13 up there where that he felt it was distress, "I need your
14 help, I need to get outta here and I'm trying to sort all that
15 out " That's what's the heart of it Not, "I'm gonna go get
16 that guy, deaths -- I'm gonna kill him," He's not talking
17 like that He doesn't -- that's not the description of
18 distress And I'm gonna come back to that whole idea about
19 the district -- distress sort of feeling versus the very
20 aggressive, mad, controlled, "I have a plan, I want to,"
21 concept

22 Latrice and Ms Paulette, they didn't describe Darian
23 Robinson off the handle, pushin' his way into the room right
24 past Latrice, right up to Will, never even give him a chance,
25 that's not what they described Ms Paulette said, "Aah, he

1 was agitated or they were bickering but I didn't really pay no
2 mind to it I was talking to Will It didn't even really
3 register for me " That's not consistent, doesn't make sense,
4 with five minutes before that he's outside going, "187,"
5 meaning, I want to kill That doesn't match up Latrice is
6 coming into the court and say, "He's saying 187 I'm this,
7 don't they know, keep away," right? She admitted that the 187
8 isn't in her statement

9 And let's sorta step back and really take the 187 out of
10 it and substitute what the gang expert guy or slang expert guy
11 testified to And I tried my hardest to say he doesn't know
12 what he was talking about, but I think at the end of the day
13 he really did know what he was talking about "It's in
14 movies," he said, "it's where it comes from, the origin " He
15 knew a lotta stuff But one of the important things he said
16 is, "It's very well known It's in movies, rap songs "

17 Darian says, "I heard about it "

18 For Latrice to say, "I didn't know what it meant," is a
19 little hard to believe And then for her to say to the
20 poli -- "Now I say it but I didn't say it in my statement,"
21 it's like, okay Darian comes up to me, "Yo, these people,
22 you gotta get 'em to back off of me I'm gonna kill," and
23 then five minutes later he shoots somebody but you don't tell
24 the police 'cause you're not involved The police don't ever
25 think that you're in -- you're just standing there, you're a

1 witness to it, but you don't say to them, 'Oh, he said -- five
2 minutes before that he said he was gonna kill the guy and
3 now," and, you know, you make the connection, you don't say
4 that Two and a half years later you get on the stand and now
5 you said it? Don't make sense What was going on then? What
6 going on was trying to sweeten the story, trying to create the
7 story that didn't exist, a version that was against Darian for
8 whatever reason she had for saying that And we may
9 understand the reason but it doesn't change the inaccuracy of
10 it

11 Go back to Will standing at the wall with his hand on the
12 wall In her statement she didn't ever describe his hand on
13 the wall And he was, she's saying he's stationery standing
14 there That's wrong The evidence doesn't support that in
15 anyway and it has nothing to do with who's testifying or why
16 as far as what they observed I think the science shows that
17 that was wrong

18 Dr Ward and the CSI guys they're collecting the bullets
19 and the locations will demonstrate that that is just not how
20 it could have happened One, Dr ward said it's consistent
21 with movement Look, did he say that that meant the guy was
22 running? No, but he didn't rule it out But he said it's
23 forward momentum because that's what instead of making him
24 fall backwards, he might not have jumped backwards but falling
25 backwards, he' falling forwards Well, if he's standing like

1 this (demonstrating), he's not moving, he's more likely to
2 fall backwards maybe not a great distance but he's more likely
3 to go this way (demonstrating)

4 Other idea is Dr Ward is measuring where the wounds are
5 from a height distance He started from the head so that
6 the -- but nonetheless, and what begins to line up is the
7 graze is I think he said five (5) or so inches below the
8 through and through And I'll have to go back but I believe
9 I'm correct in saying we're somewhere in the forty-six (46)
10 inch range of the through and through And so if that's
11 forty-six (46) inches (indicating) and it's a little bit lower
12 looking more in between three (3) and four (4) feet for the
13 graze and then the through and through, the bullet in the wall
14 behind him is roughly in that three and a half (3 1/2) foot
15 range to Right at that -- you got to the door knob and then
16 the lock right above it and the bullet's basically next to it
17 So likely it's one of those wounds where that bullet comes
18 from And then you have the fatal wound goes all the way up
19 to somewhere in the sixty (60) something at his eye level,
20 sixty (60) plus the seventy (70) inches so up All of the
21 wounds -- you got the through and through and he says front to
22 back, slightly upward Front to back, slightly upward in a
23 different direction He didn't say he could really tell with
24 the graze but that was level And I don't think he ever -- he
25 he basically agreed that given the relative positions of

1 everybody and what would have had to have happened if ne was
2 shot in the eye first and fell, I mean, you gotta go start
3 here (indicating) and come down (indicating) to have any kind
4 of upward angle or head-on So what's going on is this
5 (demonstrating) motion, not this motion (demonstrating)
6 because if you're shoo -- if you shoot 'em and they're going
7 down and you begin to shoot down, the bullets are going down
8 and you don't see any of that And so what we know is, and
9 you don't have the eye wound first, you have likely the graze
10 'cause it's lower, the through and through first and then the
11 eye and then that last bullet in the wall is likely the last
12 bullet And here's why all that's important If this
13 (indicating) is the doorway and he's coming from this
14 (indicating) direction and he's right there (indicating) and I
15 begin to react because I believe what he's gonna do is grab
16 me, and you're gonna get charged on the law with regard to
17 self-defense, it's not simply killing although that's what
18 Darian's describing he thinks could happen, it's also serious
19 bodily injury, so really causing you some serious injury that
20 a 6'2, two hundred and seventy (270) pound man can cause if he
21 gets a hold of you, I'm rea -- I never had the gun out He's
22 not running at me because I pulled a gun And I didn't even
23 direct my words directly to him I mean, I don't know what
24 somebody else was talking about I didn't direct it to him
25 I realize he's coming and I don't even have time to go like

1 this (demonstrating) to begin to shoot because if it's su --
2 if he's far enough away, then I just wait and I just go like
3 that (demonstrating) and then that first wound is at the eye
4 level And you don't have that So what you have is I feel
5 somebody coming at me and I'm reacting to and moving And by
6 the time he falls, my last shot I'm so far away out of the
7 kitchen that the last shot aint -- isn't even on target with a
8 man who's probably already laying down because it's over here
9 (indicating) and his head's right here (indicating) And if
10 you look at the pictures a door with him and his head is at
11 the entranceway so if I'm just a couple of feet away and I
12 really wanted to shoot him in the head, he's already down,
13 likely I -- that's just the the end of the reaction, move away
14 and then he's fallen and I'm still just scared excited and I
15 pull off But I'm not trying to execute I don't want to
16 shoot, I have to shoot That's physically was going on That
17 has nothing to do with one witness saying his hands on the
18 wall and he's just standing there No, that -- this simply
19 couldn't happen

20 Another interesting thing about what Darian testified to,
21 I asked him about the first shot and if you recall what he
22 said was he heard like glass Well, the CSI people testified
23 that that one bullet that went into the stud that they ended
24 up having to cut out and I think is in one of the pictures, is
25 here (indicating) and the china cabinet is like a foot away,

1 two (2) feet away Well, don't you you think that the impact
2 of hittin' (demonstrating) that might have rattled something
3 and that's what he heard? And so his memory is just that's
4 what I heard, one of the first things I heard And this is
5 happening fast It's not immediate but it's fast

6 The -- physically what's happened coupled with his
7 actions on coming in tell you this is not, "I want to go in
8 there and kill you," this is, "I have to " And here's why
9 it's not I want to Because when you're mad and as the
10 prosecutor said your ego's bruised and that's your motivation
11 and you just want to get back at somebody, you don't become
12 haphazard You don't become ha -- you want to run away
13 You're mad and you want to, you go after (indicating) and what
14 you do is, especially if you said 187 outside and you're
15 really broadcasting, and if you're broadcasting it and you
16 don't care about shooting somebody in front of the women, then
17 you just wo -- you wouldn't care about her, what you do is
18 knock on the door if it's locked or try to even get in and
19 just to see if it's locked, they didn't testify that he even
20 tried to jiggle the handle, they heard somebody trying to get
21 in, or you're banging on the door, "Open up " Or you -- once
22 the door has opened up, "Got nothing to with you," you walk
23 right past everybody and before anything happened you put the
24 gun down and you just shoot that person because that will
25 increase the likelihood that you're going to kill them before

1 they can get away, do anything to you 'cause you're focused
2 And when you're mad and pride is hurt, if that's the theory,
3 then that's the kind of conduct you'd expect And you're
4 calculated What does that mean? It means that you're
5 thinkin' about things and you're figuring out how do I
6 accomplish it and you have a level of control And what
7 you're doing is if you're outside saying you're 1 -- you're
8 187 and you want to do all this stuff and you calculate it and
9 your prides hurt and that's your motivation, it's this, I want
10 to but when he walks up and he wants no or he is walking up --
11 and he has no -- he don't suspect anything's gonna happen, you
12 get the drop on him outside if that's what you wanna do You
13 don't go inside and put the other people in danger or create
14 witnesses if what you intended to do was that There is an
15 intent thing going on there It's not I want to, it's I have
16 to And it's clear You know, when things start lining up
17 when it goes from physical evidence that we can't dispute to
18 even to the testi -- you start lining those things up and it
19 starts to stay, you know, that's most likely how it happened
20 It didn't happen as I want to and this is what I want to
21 happen

22 He was upset on the stand, antagonistic with the
23 prosecutor, difficult to handle He was upset You saw that
24 Think about some of the things that he said and also think
25 about some of the description that he had of what was going on

1 for him He's describing just emotional (sighs) and you can't
2 explain it It's the kind of emo -- you know, you can't --
3 you're overwhelmed with emotion You're scared, you're made,
4 you're -- you feel so many different things at the same time
5 That's probably similar to how he felt when it happened, after
6 it happened, having seen, not knowing is it the possibility
7 that he's dead, not really want -- think about all the
8 conflicting things that are going on and when he gets up on
9 the stand and say, you know what, my mind (whistles) That
10 makes sense He was tr -- the struggle he was having he was
11 saying, "Look, I'm here to tell you I shot that man I'm
12 gonna tell you how it happened I'm not hiding the fact that
13 I shot him You're trying to tell me his hand was on the wall
14 and he was just standing and I'm telling you this that's not
15 what happened I was frustrated and I'm on edge because of the
16 emotions and I'm reacting but I'm trying to tell ya how it
17 happened " And that's what you saw The prosecutor's
18 probably gonna come up and try to say that, "Nah, that's not
19 what he's doing That's the mad Darian coming out and that's
20 the purposeful Darian coming out " Okay If you want to
21 consider that, and that's sort of the picture, that just falls
22 right back to the conduct on the scene What would you have
23 had a person who is in control, this is what I'd like to do,
24 I'm mad and I'm gonna solve my problem in anger, what I do is
25 I go solve my problem He was trying, he may not have done

1 the best thing the mo -- it -- the perfect thing He didn't
2 go consult twelve (12) people or or his priest about, okay,
3 how -- what's the best lot thing I could do here? You don't
4 have to do that You've got to do something reasonable but it
5 doesn't have to be the perfect decision ,

6 Think about where he finds himself at the point where
7 he's gotta decide, Do I go inside the apartment, give the key,
8 talk to Latrice, just get in the car with these guys who came
9 and picked me up? What's the dilemma there? And that's
10 something you've gotta sort out, gotta sort that out Looking
11 backwards, my guess is he probably looked backward and say it
12 was probably not -- I probably should have just left but
13 that's that old hindsight is 20/20 In the moment of the
14 emotion of it feeling like I have a problem, if I leave do I
15 really solve the problem, then I've got the key and it's sorta
16 like you're torn And then the idea is well, you know, He
17 really doesn't act this way in front of those girls My
18 dealings with him have been, you know, he kinda is a little
19 hard with me, you know, he's got this persona with me and is a
20 little rough and tough, but once he gets in front of Latrice
21 and Ms Paulette he's kinda like he's my friend He's not
22 hugging me but he's a little less -- the edge is a little
23 duller So I don't think -- I mean, come on, you know, "I'm
24 I'm gonna walk into his ant's house and he's gonna attack me
25 in his ant's house? That could kinda be a little

1 disrespectful of him to the ant creatin' a big fight in there
2 I got my ride, I can just get outta here " So there's a logic
3 to going in there and say, "Look, I need to talk to ya I
4 need to give you the key but I also need to talk to ya," and
5 say, "Look, I'm -- I am upset " I mean, it's an upsetting
6 thing to have some people come at ya and say, "We're angry and
7 we might wanna do something bad to you," because of something
8 that you only feel that he did and there's a miscommunication
9 that you feel could easily be solved, yeah, you're agitated
10 and you're angry But we don't have any evidence that he's
11 screaming at the top of his lung demanding anything, banging
12 on the door We have a frustrated, agitated person but that's
13 not, "I want to go kill " That's not what you have And so
14 many times it happens a lot, there's a lot of things you don't
15 see and didn't happen are pretty big and some -- sometimes
16 bigger than some of the things you do find and you do see and
17 you have a lot of that here And at, you know, the end of the
18 day you've got to sort out that state of mind

19 One of the things that's going to come up based on what
20 the judge charges you as far as the law and sort of the
21 elements they call it of self-defense is this idea that you
22 can't say, claim it's self-defense if you sort of brought
23 about the problem So let's talk about whether or not he
24 brought about the problem

25 One of the things I think is important to note is I don't

1 show you my gun I could but I don't I don't think that
2 when I go in there you're going to act out in front of them so
3 maybe I can get in there quick five minutes, get her to talk,
4 you know, not really plan to be there long, skate out without
5 really having much of a confrontation, get back with a friend
6 and get out of there I can -- maybe I can do that And
7 you thi -- and that's reasonable It's a reasonable decision
8 Going in there with the gun hidden with no plan to use the gun
9 to somehow now create a big problem, that is -- that's not
10 causing a difficulty Causing a difficulty is going in there
11 and demanding that we -- me and you who I have a problem with
12 we now resolve this I show you my gun like Keith Williams
13 did, I pull it out or let you know I had it, I start to try to
14 do that kind of thing and bring you out like that Going in
15 there saying, "Look, I know he's standing right there but
16 there's a problem going on here I need you to help me with
17 it I am a little agitated but I still need you to help me "
18 That's not creating a difficulty One, he doesn't, he doesn't
19 reasonably believe that he's gonna do anything to him in front
20 of the women but two, why should he believe -- why should he
21 not believe that Latrice could resolve the problem right
22 there? He knows her face isn't messed up the way they're
23 describing it She's right there It's reasonable for him to
24 believe there's no difficulty gonna be brought about I can
25 get a resolution And so that even I'm still planning on

1 leaving but instead of me plan -- me leaving and still naving
2 to deal with this issue floating around out there, running
3 into them, how do I get back without running, right there,
4 let's deal with it, that's not a difficulty, that's a
5 resolution And so I'd hate for you to get confused about the
6 whole idea that maybe it was illegal, was it bad to have the
7 gun, so just because you do one thing bad, now all of a sudden
8 it colors everything else No, the fact of the matter is you
9 have a gun and you don't use the gun in a way that insights
10 something, now let me show it to you, get you all hopped up,
11 maybe get you to respond to me, and it's hidden and you only
12 pull it out at the point at which you believe it is necessary
13 for you to use it and it's reasonable for you to believe that,
14 that any other person in your position would reasonably
15 believe that I need to stop him, this is the only way I'm
16 gonna stop him before he seriously injures me or kills me,
17 that's what we're talking about

18 And part of the other aspects of self-defense that the
19 judge is gonna charge you with, you know, a duty to retreat
20 You know, you get -- just because somebody starts something
21 are coming at you doesn't mean that you can just say, "You
22 know what, forget about it, I don't have to back down " No,
23 you have a duty to retreat but apply a little reason here
24 That doesn't mean that you always have to just turn and run
25 away as soon as some conflict's coming up It would be

1 unreasonable to think that because what if we're standing a
2 foot away and you're trying to grab me? I'm supposed to go,
3 "Okay, I'll turn around, I'll turn my back to you so that when
4 you grab me by the back of the collar or the hair or you
5 tackle me from behind, I can't do anything to defend myself or
6 it's less -- it's not as easy for me to defend myself?" You
7 don't have to do that There's a danger coming at you head on
8 you don't go like this (demonstrating) And that is what
9 ya -- what he found himself in You'll see the -- look at
10 Defense 4, State's 1 Look at the room Where's he gonna go?
11 He could turn around and jump on the couch but the odds of a
12 6 foot 2 guy running, if he wanted to get him, running,
13 getting to him by the time he jumps on the couch is pretty
14 high If he scoots through that little narrow passageway and
15 finally gets to the door, does he get the door open? And
16 again, the whole time his back is to Will That's the duty to
17 retreat You don't turn around It's reasonable at that
18 point to say, "If I don't deal with this, he's gonna grab me
19 and something bad is gonna happen and my knowledge of all the
20 things I know about him, everything that I see and hear at
21 that moment is telling me is I have to stop him " And the
22 reason we know is I have to stop him is what's going on in his
23 head is this (demonstrating), not that (demonstrating), never
24 moving my arm up or down, always in a position where I
25 maximize what I want to accomplish I start here

1 (demonstrating) because I want to I don't start here
2 (demonstrating) because I want to I don't wanna kill
3 somebody by shooting them in the foot or the leg, it's only
4 when I can't I don't have the time 'cause he's closing in
5 That's what's going on

6 This is a murder charge Malice aforethought, you've
7 probably heard about it before and the judge is gonna talk to
8 you about what it means here, but roughly what it means is a
9 bad heart This is what I -- I want to do this for a bad
10 reason, I don't like you or I'm mad at you and my pri -- it's
11 a bad reason to shoot somebody or kill them, that's what
12 malice is It's a bad reason Self-defense says ya shot him
13 but you had a justification, you had a reasonable position, a
14 reasonable situation that you found yourself in that if
15 anybody else would have found themselves in that position they
16 would have done the same thing And what's really going on is
17 it's cutting against your malice, your bad intent I don't
18 want to It's not I'm not mad at you and I, meaning, I want
19 to kill you I might be mad at you but that's not what's
20 making me want to kill you I don't want to kill you I'll
21 keep you away from me It's like that That's I don't
22 That's I I have to stop I want to is grab And he did that
23 with the weapon And because of everything that happened
24 prior to that and we're only talking about a couple a hours
25 when he puts the weapon in his pocket or or takes the jacket

1 that has the weapon in his pocket, that is reasonable too
2 It's reasonable to say, "Look, I don't know what's gonna
3 happen, let me put this on here just in case," that's
4 reasonable And it's reasonable, just as reasonable, just as
5 reasonable as if you were standing there and there was a gun
6 or a weapon right next to you and as the person decided to
7 come at you, you realize, "I've gotta do something," you pick
8 something up to stop them because if you don't pick it up, you
9 can't stop them Well, the fact that you already had it on
10 you doesn't change the fact that you needed to use it and it--
11 was reasonable for you to use it I I have to I have to
12 I'm sorry if I stop a lot I stopped a lot in the whole
13 trial to try to make sure that I cover everything but I simply
14 have to do that to try to keep track And I think I've
15 addressed it but I think I've got to address it again This
16 whole idea about it's an obvious question when you first sorta
17 hear the story If you got like the first two sentences out
18 of it well here's what's the summary of the case, probably
19 your -- one of your first questions is gonna be why did he go
20 in But it's only after three days of talking about things
21 that you realize it's not quite that simple of a scenario
22 It's just not quite that simple and so many things in real
23 life just aren't quite that simple For instance, as an
24 example, Investigator McNamara is describing taking a
25 statement from him and then in court the prosecutor is trying

1 to say, "Well, you just testified to this and now let me take
2 the statement and show you you said that " Legitimate to
3 try to sort out what's true, but let's not pretend that
4 somehow we know that has to definitely be true or this has to
5 definitely be true like I get to sort -- pick it out You may
6 want to try to work through it but you don't get to just say,
7 "Yes, just 'cause I want to and no, and therefore I try to pit
8 ya together so prove that it's not " No If you wanna try to
9 find out what happened one, you don't just type out the --
10 you don't say, "Hey, tell me your story and type it out " How
11 does that help you find out what happened? Have you ever
12 talked to anybody and just said, "Tell me, just tell me where
13 you went " They tell you the story and then you're -- it
14 dawns on you that they probably left out they stopped at the
15 store on their way here Why? Because it -- it's it's hard
16 to do that unless you sit down and write the story out or
17 you're intentionally trying to do every fact You always tell
18 it shorthand It's just normal Why do ya think when we're
19 in here asking questions it's like broken down, step by step?
20 Why, 'cause you're trying to cover every detail That -- the
21 investigator didn't describe that kind of an interrogation,
22 that kind of a dis -- discussion So let's not pretend like,
23 "Oh, I really wanted to know what was going on " If you
24 really wanted to know what was going on, you take a tape
25 recorder, you put it down and you say record, you tell me now

1 we can hear in your own words the inflection in your voice,
2 the conviction or lack of it and you'll know what I wanted to
3 say right at that moment And if if my mind is out here,
4 you'll hear it in my voice, you'll be able to get a much
5 better idea But that's not what they did and frankly,
6 there's not -- I mean look, if I type it out and I know most
7 likely you're not gonna leave every detail in, you don't have
8 to put every detail in, well, lo and behold when you get to
9 trial, I've done this a long time as an investigator, lo and
10 behold we get to trial and guess what? Of course now the --
11 details are really gonna come out 'cause why? "Yeah, I've
12 been sittin' around for two years thinkin' about it " How
13 could you not? That in and of itself doesn't mean you're a
14 liar, it just means you're a human being You're scared to
15 death It's not a scared to death because you're guilty, it's
16 a scared to death of, "Oh my God do they think this? No,
17 that's not what I intended It was I have to I didn't want
18 to " And now you're trying to just -- they're to say, "Well,
19 oh, you must have been true here and now you're saying
20 something different here," meanwhile your brain is about to
21 explode because for five days you've been scared about what
22 happened, scared about getting shot from the police Are the
23 police illegitimate for looking for you? No, it doesn't
24 change the fact that that's scary And I think it would be
25 different if he was so callous as to say, "See ya I'm going

1 to Mexico " He stayed in Greenville What does that say
2 about guilt? That doesn't say, "I'm afraid you're gonna catch
3 me 'cause I'm guilty," that says, "I'm just scared and I don't
4 know what to do And the only thing I can think of 'cause my
5 brain is so overloaded is that I get somebody to get me a
6 hotel room and I stay there and I just try to sort it out I
7 don't know what to do " And eventually you get found and what
8 do you do? "Please don't hurt me," that's not the conduct of
9 somebody who feels guilty about doing something wrong, that's
10 the conduct of somebody who's scared, upset, probably does
11 feel bad about what happened, but didn't want it and wished it
12 didn't but now is faced with the fact of it having happened
13 and, "I just don't -- what do I do because my experience is
14 the police aren't gonna believe me or wanna believe me They
15 don't want to help me " He may be wrong about that but that's
16 his perception of it And because that's his perception of
17 it, what he's doing makes sense now, "I I may have left
18 something out, I may have intentionally misled you, but at the
19 heart of the matter, when I could have said, if I planned on
20 intentionally misleading you, what I could have said is
21 everybody else was lying I saw a gun He was gonna shoot me
22 so I shot " I mean, he could have just made the story
23 better He didn't really tell a great story He basically
24 told the same story that he told with minor variations and the
25 minor variations make a whole lotta sense Five days after

1 having that experience and your head is swirling, you're
2 gonna -- you don't get it right When you find out later on
3 from a CSI where these bullets were and in your mind you're
4 like, "Well, I I thought I hit him on the second shot, but now
5 I know in reality I couldn't have done that " Does it change
6 what he was sayin' here? No, he didn't try to hide from that
7 He didn't try to have it that way And while he was
8 frustrated I -- one of the interesting -- I shoulda done a
9 count, but one of the interesting things he was doing he kept
10 saying, "No, ma'am Yes, ma'am " Yes, he went back but it
11 was frustration It's not, "I want to lie to you I I don't
12 don't -- I don't want you to figure out what happened " He
13 didn't do that He wasn't trying to evade what happened and
14 that's important

15 You're you're trying to make an assessment of him
16 Credibility, I'm gonna talk to you about that And it has
17 been consistent throughout for him It's been consistent
18 You cannot deny the difference between a need to and a have
19 to It don't make ya feel better necessarily The fact is
20 the fact that he's dead is a fact but it doesn't mean because
21 that fact is bad that that meant that in your head what you
22 wanted to do was bad, evil, malicious You didn't want to do
23 that You didn't enjoy it I didn't -- I wouldn't have
24 enjoyed jumping in the lake You didn't desire to do it You
25 weren't satisfied after it happened like, "Oh, great " You

1 just had to do it You just had to You just nad to

2 MS PAOLETTI Can we approach briefly?

3 (Whereupon, a bench conference was held off the record)

4 THE COURT All right We'll take a short break before
5 we come back to the State's closing argument, very short

6 (Whereupon, a recess was taken)

7 (The following takes place outside the presence of the
8 jury)

9 THE COURT Is there any objection to changing course,
10 lettin' Leigh make her closing argument I'll I'll charge in
11 the morning and let the jury deliberate startin' tomorrow
12 morning?

13 MR SCALZO The only ---

14 THE COURT I don't care It suits me I don't -- it it
15 doesn't make any difference to me I just don't want the, uh,
16 I mean it's gonna be 6 15 probably 6 00, 6 15 before they
17 start deliberating

18 MR SCALZO And I understand that, Judge, and I
19 certainly am not trying to just be mean to Leigh, but the fact
20 of the matter is is I could have taken a whole night to go
21 over all of my notes if you ---

22 THE COURT No, ---

23 MS PAOLETTI You don't understand ---

24 THE COURT --- she's gonna argue right now

25 MR SCALZO Oh, you meant argue and then do the

1 charge ---

2 THE COURT I wouldn't ---

3 MR SCALZO --- tomorrow Oh, okay

4 THE COURT I wouldn't do that

5 MR SCALZO No, I don't have a ---

6 THE COURT I get to prepare all night for the charge

7 (Laughter)

8 MR SCALZO Yeah Wait a minute You already did your
9 homework

10 THE COURT But I don't need it All right If there's
11 no objection, I think that's what we'll do Bring the jury in
12 please

13 (The following takes place in the presence of the jury)

14 THE COURT I don't know whether this will relieve you or
15 increase your anxiety over deliberating but because it's
16 getting so late, I -- I've decided to change course and we're
17 gonna let the state make, Ms Paoletti's gonna make her
18 closing argument then we're gonna adjourn for the day We'll
19 come back tomorrow morning I'll charge you on the law at
20 nine o'clock and then you will be deliberating after that
21 Let me make sure I can do it at nine Yes, nine o'clock So
22 we got -- we'll listen to this argument then we'll be done for
23 the day

24 Ms Paoletti

25 MS PAOLETTI Thank you, Your Honor May it please the

1 Court Ladies and gentlemen, ya'll know that we're we're now
2 at the end of the case You've heard all of the evidence that
3 you're gonna hear from the witness stand and you and you've
4 got all the evidence that's gonna that's gonna be admitted in
5 the trial that you're gonna get to take back to the jury room
6 and look at and consider And I wanna tell you that we can't
7 resolve these disputes without you and we appreciate you being
8 here and hope that you understand the valuable service that
9 you provide to Greenville County when you do this I think
10 it's easy to get lost when you're in the process and you're
11 sittin' up here for three days and going into four but it's
12 it's extremely important and we appreciate your service

13 You took an oath to consider the evidence in this case
14 and to apply the law that Judge Few is gonna give you to that
15 evidence And you're gonna go back to your jury room and you
16 all are gonna collectively decide together what the truth is
17 about this case And it's that collective process that
18 is, that generates a good, true and fair verdict And when I
19 finish with my argument, and I'm gonna try to be as brief as I
20 can but I would be remiss if I did not go over what I thought
21 were the most important things that I needed to to point out
22 for you, so I hope that you will be patient with me, there's
23 there's been a lot that's thrown out there and I want to make
24 sure I address the things that need to be addressed, when I
25 finish I'm gonna ask you to find the defendant guilty of

1 possession of a weapon during the commission of a violent
2 crime and murder And I want to just get something out of the
3 way before I go into self-defense, murder, possession of a
4 weapon and all the elements of those those issues and the
5 evidence that that you have before you But first, let's
6 let's let's get something out in the open here The defense
7 wants you looking at this case like the defendant was somebody
8 who needed to be saved from something and he was forced to
9 save himself And that is not what the evidence in this case
10 supports If the defendant is Mr Scalzo's young child
11 drowning in the lake, he's got a life jacket on And it's a
12 38 revolver versus a man who is completely unarmed So let me
13 remind you of that important piece of evidence as we go
14 forward and and talk about the realities of this case and what
15 the evidence shows

16 Judge Few is gonna tell you what the law is and what the
17 state is required to prove to satisfy our burden of proof
18 And he's gonna talk to you about what reasonable doubt is as
19 he's -- he's gonna tell you what it is and what it's not
20 He's gonna tell you that there are very few things in life
21 that we know for sure but if the state has presented evidence,
22 as we have and I'm gonna point out that we have, that leaves
23 you firmly convinced of the defendant's guilt, then we have
24 met our burden and you should find him guilty

25 The first thing that I wanna talk to you about is this

1 self-defense issue that the defendant has has raised and that
2 the judge is gonna charge you on the law And he's going to
3 tell you that there are four different elements of
4 self-defense and the state has to disprove each of those
5 beyond reasonable doubt which is is sort of hard to wrap your
6 brain around sometimes but if you find that the defendant,
7 that we have disproved any one of these elements, the
8 defendant is not entitled to an acquittal on the basis of
9 self-defense and that's very important for you to remember and
10 understand The judge is is gonna tell you that if if you
11 find that we have disproved any one of these four beyond
12 reasonable doubt, then he is not entitled to an acquittal on
13 the basis of self-defense

14 And the very first element of self-defense that is
15 required is that the defendant be without fault in bringing
16 about the difficulty Those are the words And ladies and
17 gentlemen, there is a difficulty in this case And the
18 difficulty does not start at midnight on January 26th 2005,
19 um, the 27th when William was killed, it starts early that
20 morning when the defendant beats Trice in the face That's
21 when the difficulty started That is the genesis of this
22 entire scenario He committed the action that that he says
23 caused Keith Williams -- and ladies and gentlemen, Keith,
24 let's talk about Keith Williams while we're talking about --
25 since I said that name Keith Williams and what he did or did

1 not do to the defendant or did or did not say to the defendant
2 on that day is not an issue before you There is no evidence
3 that Keith Williams was anywhere near apartment 17-B between
4 11 30 and midnight that night There is -- and the defense
5 wants you -- and and and let me remind you what the defendant
6 told you about Keith Williams is that he -- there was no,
7 there was no indication to him that the defendant or that
8 Keith Williams and William Godwin say had had been together at
9 any point in time that day He says because they both talked
10 to the same person about what happened to Trice that they must
11 have talked to each other and they they got together on this
12 and how they were going to go and kick Darian out of the
13 apartment And you know frankly I don't kn -- I don't have
14 any doubt that William probably wanted Darian out of there but
15 the -- this Keith Williams and and what he may have done and
16 the -- and this gun issue it is just -- it's not relevant to
17 the issue of what happened that night And the defendant when
18 he started this whole problem with Trice and William, he
19 started the difficulty that that resulted in William Godwin's
20 death that day and he continued the difficulty He continued
21 it by arming himself And the state's position is that he did
22 not go upstairs and get a jacket that had a gun in it out of
23 his closet He made a phone call from Sammy's phone and he
24 told his boys from the west side to come over, "Bring me a
25 gun, wait outside and then get me outta here," which is

1 exactly what they did He had a way out He testified that
2 that his ride got there before he went into that apartment
3 where he knew William was He didn't get in the car and run
4 off He -- when he went inside, he continued to talk to Trice
5 and make veiled threats to her family And, ladies and
6 gentlemen, he may have been talking at Trice, he may have been
7 looking at her, but he was talking to William and he was
8 provoking him And all he needed was for William to stand up
9 or do something And and he knew what he was gonna do when he
10 went in there He called and got the gun, that's why he had
11 the gun in his pocket because he knew what he was gonna do
12 Ladies and gentlemen, if he had gone banging on the door,
13 "Hey, let me in I'm mad," would he have expected anyone to
14 answer? No No He had to get in there first He continued
15 to perpetuate the problem that had been the problem the entire
16 day right there in front of the man that he says threatened to
17 kill him four times that day He brought on that difficulty
18 He went there with a loaded gun He also, while he said that
19 that William threatened to kill him four times, never said
20 anything about William threatening him with a gun and that's
21 because William didn't have a gun and he knew that He knew
22 that and went in there and brought about this difficulty
23 'cause he was trying to prove to William and Trice, who told
24 you she told him, "Ya hit me in the face one more time and
25 this is over," he was about to be out of a place to leave, he

1 was embarrassed and he was mad and he went over there to prove
2 to William and Trice that they could not tell him what he was
3 and was not going to do

4 And ladies and gentlemen, if he had -- if the reasons why
5 he said that he went over to the apartment and and what the
6 defendant has told you is that he didn't think William would
7 do anything to him because he was well behaved in front of
8 Paulette, right? And but at the same time he had -- he needed
9 to go give the key to Trice to lock -- so he could lock the
10 kids in the apartment and he wanted to resolve this issue
11 about how badly he had hit her And ladies and gentlemen, if
12 you noticed, he was upset that he was gettin' a bad rap
13 because she was exaggerating how hard he hit her in the face
14 I don't want to leave that point out That's what he was
15 upset about That's what he was mad about, that they -- that
16 she was exaggerating that point, not, "I'm sorry, I shouldn't
17 have done that, but you're giving me a bad rap because I
18 really didn't hit you that hard " And if that's what he
19 wanted to do was resolve things with Trice and give her the
20 key, she came and answered the door, ladies and gentlemen,
21 "Trice, here's the key You know I didn't hit you that hard
22 Everybody's talking about think -- you know, saying I hit you
23 and caused marks on your face but you know I just slapped you
24 I didn't hit you that hard Why don't you tell 'em that " If
25 that's what he wanted to do, he did not have to come inside to

1 do that He came inside anyway with the loaded gun and you're
2 gonna hear a charge on the law that when -- in considering
3 whether the defendant was at fault in bringing about the
4 difficulty, you have to consider the fact that he went in
5 there unlawfully armed with a loaded weapon And there's no
6 dispute about that He told you that he did that He could
7 have resolved whatever he needed to resolve with her outside
8 the door without going into the room where a man that he said
9 threatened to kill him was and he can't have it both ways
10 Was he scared? Was he not scared? And we're gonna talk about
11 that issue that of self-defense

12 And I also I wanna talk to you about this too, and all
13 these issues overlap, and it's it's, you know, it's hard to
14 talk about one without talking about the other, but a major
15 issue in this case, ladies and gentlemen, are -- is the
16 credibility of the witnesses And that's something Judge
17 Few's gonna tell you that you are the sole judges of because
18 you got to watch him testify and you saw him from here and you
19 get to decide who's telling the truth and who has a motive to
20 lie

21 The defendant wants you to believe that he was deathly
22 afraid of this victim because he threatened to kill him and
23 that's something he was thinking about when the defendant
24 when -- was rushing him as he said from this far away
25 (indicating), he had threatened to kill him, he had had a

1 murder conviction himself for second degree murder, important
2 things to tell the police when you give a statement and we
3 will go back through that statement and talk about what he did
4 and didn't tell police He said he knew that -- of that about
5 the defendant but he still went in there anyway Which is it?
6 Which one is it? You can't have it both ways

7 The second element of self-defense and I would, and this
8 may go without saying, suggest to you that the evidence proves
9 beyond a reasonable doubt that this defendant was the only one
10 who brought about the difficulty in this case And he is not
11 entitled to an acquittal on the basis of self-defense for that
12 fact

13 The defendant must also actually fear serious bodily harm
14 or death And again, these sort of overlap If he was really
15 afraid of the defendant, would he have gone in there in the
16 first place? If he was waiting for a ride out, why didn't he
17 just go? And and I understand that that there's a, that
18 there's a there is a big issue here about the defendant
19 rushing -- the victim rushing Mr Robinson and that's what the
20 defendant wants you to believe And as he told you, it's his
21 life on the line so you can judge his credibility on the basis
22 of that

23 Did you hear what Deputy Robinson said that he did when
24 he first got to the scene? He was the first responder on the
25 scene that testified The first thing he did was left Trice

1 there holdin' the towel on William's eye wound And he took
2 Paulette away and they were separated until they gave their
3 statement and they gave the same statements, ladies and
4 gentlemen And that's because they're telling the truth The
5 defendant did -- the victim did not rush, William did not rush
6 the defendant They told you he walked around the table said,
7 "Are you talking about me, are you talking about family,"
8 yeah, and he was and the defendant was provoking him And
9 when William stopped and stood and propped his hand on the
10 wall, he saw his chance He was not in actual fear of bodily
11 harm William made no threatening gestures Trice and
12 Paulette told you William made no verbal threats He was not
13 armed He did not have a weapon of any kind He didn't even
14 have a cell phone in his hand They told you that it was
15 still on the table, that they had to pick it up when he was
16 shot He didn't have anything that could remotely resemble --
17 defense said, "Well I didn't know what he had " Yes he did
18 He knew he did not have anything There was no evidence from
19 it earlier in the day and there was no evidence ever found
20 He was completely and totally unarmed

21 The defendant needs for you to believe that he was afraid
22 and he can get up here and tell you that he was afraid But
23 the third part of self-defense that you have to that that
24 you've got to consider and that the state has to disprove and
25 we will, is whether it was reasonable for him to be in that

1 fear that he said that he was in And based on those same
2 circumstances, ladies and gentlemen, it was not reasonable for
3 him to fear It is not reasonable for him to fear someone who
4 is standing like this (demonstrating) on the on the wall It
5 is not reasonable for him to think is it -- would he would he
6 think that that William was going to -- what what did he was
7 gonna do from here? Swing at him with his left hand? No
8 No He was not in actual fear and it was not reasonable And
9 what the defendant says William threatened him about was, "If
10 you hit her again, I'll kill ya," that's what he wants you to
11 say, "If this happens again, if you all are in trouble again,"
12 and he he hadn't why would he think that the defendant was
13 gonna do it now? There -- he was talking to Trice He was
14 talking to Tri -- at Trice but he was talking to William
15 Trice wasn't involved in this He hadn't done anything extra
16 to hurt him that would make him think that that William was
17 gonna fly off the handle right there in front of his his ant
18 and his cousin

19 And finally, and I may overlap here and go -- when I go
20 back and talk to you about the the physical evidence in the
21 case, I know this is maybe making sound like this is gonna be
22 a whole lot longer than it was but -- or that it is, but I'm
23 trying to be brief, the fourth element of self-defense that
24 you have to be convinced that the state has not proven
25 beyond -- disproven beyond a reasonable doubt, that you have

1 to find that there is evidence of this is that there is no
2 other means of the defendant to avoid the danger And, ladies
3 and gentlemen, let me suggest several other means he had of
4 avoiding the danger that he created When William stood up,
5 he coulda left You're gonna have the pictures You can see
6 how he could get out of that apartment There's no testimony
7 that anything was behind him other than a couch that he walked
8 around to get there and there was nobody blocking that front
9 door There's no reason he couldn't leave at any point from
10 the time that he got into that apartment If he did feel like
11 that he was in in fear and that William was was rushing him if
12 you -- if -- even if you believe that, point the gun at him
13 say, "I've got a gun," fire a warning shot, shoot him in the,
14 in the legs, anywhere else And, ladies and gentlemen, the
15 defendant told ya the order of the shots six days after it
16 happened, "I missed I hit the wall The second time I shot
17 I connected and hit him in the face, panicked and fired two
18 more shots " Ladies and gentlemen, I am gonna talk to you
19 about this right now Dr ward testified that he couldn't
20 tell you the direction of this graze wound to Williams' side
21 He didn't know if it was front to back or back to front And
22 I suggest to you that it was back to front and William was
23 falling almost to the ground, and you're gonna see pictures of
24 that, that's that's the the defendant firing down, panicking,
25 firing those two more shots that he just let go, as he said,

1 that's it as William was falling

2 And, ladies and gentlemen, we're talking about the the
3 physical evidence and what it shows the defendant's testimony
4 is that he is talking to Latrice right here in the kitchen
5 with his hands in his pockets (demonstrating) He's told you
6 that the gun was in his right pocket because he's, I presume,
7 right-handed Does it makes sense that he would start down
8 here (demonstrating) and go this way (demonstrating)? No
9 When he saw William get up, he started this way

10 (demonstrating) and he told police that in his statement And
11 he can't agree to it now, ladies and gentlemen He does not
12 have a choice but to tell you that it happened the other way
13 around And that's not the way it happened And the physical
14 evidence does support that and you all are gonna get to look
15 at that and you can decide He didn't have to shoot William
16 in the head and he did not have to go in there in the first
17 place He had other means of avoiding the danger, ladies and
18 gentlemen This is not self-defense This is about malice
19 And that's what murder is about, unlawful killing of another
20 person with malice aforethought And you've heard a lot of
21 evidence about malice and I'm gonna talk to you now about
22 that

23 Judge Few is gonna tell you that malice can be expressed
24 or pro -- or shown in two different ways, I talked a little
25 bit about this in my opening statement to you, it can either

1 be expressed malice or implied malice And the most, I'll
2 I'll -- we'll start with implied malice The most common
3 example of that, and Judge Few is gonna tell you, is that the
4 use of a deadly weapon to kill someone implies malice on their
5 behalf Check

6 Expressed malice can be words or actions of the defendant
7 in anticipation and in preparation to kill somebody or to
8 intentionally call -- cause them harm that eventually does
9 kill them which is exactly what happened in this case And,
10 ladies and gentlemen, there -- there's a lot of expressed
11 malice Hatred, wickedness, ill will, it's there and it's
12 there in the defendant's statements He told Sammy, "I'm not
13 gonna fight I have a gun It's a 38 If you send your
14 family out on me again, I will lay them down " And ladies and
15 gentlemen, that's how William Godwin ended up Defendant said
16 it He said it right before it happened and that's what
17 happened, "If you see me on the news tomorrow, you'll know
18 what happened " He is calling to tell them what he's gonna
19 do He's not calling to say, "I'm gonna be the victim on TV "
20 He had not intentions of that happening "Don't you know what
21 I'm capable of? Don't you know why they call me 187," minutes
22 before the defendant went in and shot William Godwin in the
23 face and two other times and killed him Ladies and
24 gentlemen, that is evidence of expressed malice He also
25 armed himself with a gun These are the actions that he did

1 in preparation Whether or not you believe that Travis
2 Workman brought the defendant the gun from the west side that
3 night or whether or not he belie -- you believe that the
4 defendant went up and got his jacket, he said he kept his -- I
5 guess it was hanging in the closet, that he didn't go get
6 until after the third time the victim threatened to kill him
7 apparently He armed himself with the gun before he went into
8 the apartment where the victim was He called for a getaway
9 car He shot William Godwins three ti -- William Godwin three
10 times, once in the face He shot at him four times He
11 missed the first time and kept shooting He shot him as he
12 was falling and dying He shot him within feet of his
13 girlfriend, her cousin He shot him within feet of his -- of
14 her ant Paulette He was -- look at look at the chairs where
15 they're sitting and look, you're gonna have this picture where
16 this room was, he was basically shooting over her head That
17 is evidence of expressed malice, ladies and gentlemen And
18 then what did he do? He walked out the door and shut the door
19 behind him Calculated, cool, he had made, he made his
20 point

21 If we prove to ya the elements of murder and you're also
22 convinced beyond a reasonable doubt that the defendant was in
23 possession of a weapon during the time he committed the
24 murder, which he he was and that's what the evidence supports,
25 and you find him guilty of murder you should also find him

1 guilty of the separate crime of possession of a weapon during
2 a violent crime And that's statutory offense that Judge Few
3 is gonna tell you about And the evidence is there to support
4 it

5 I wanna go back briefly and talk to you about credibility
6 of the witnesses Sammy got up here and Sammy was scared
7 because he knew he told the truth and he knew it hurt his
8 friend Darian That's what he, that's what he didn't want to
9 talk about He he -- "It didn't look like a 38 " He was
10 trying to help but he can't help because he heard the
11 defendant say, "Trice, if your family says anything to me
12 again, I'm gonna lay 'em down " And Mr Scalzo made some
13 reference about Sammy telling you about 187, that did not come
14 from Sammy that came from Latrice who at one point loved him,
15 and if you believe him helped her take care of her children
16 and helped support her and buy them clothes What motive does
17 she have to to lie about what the defendant did? She was
18 there She saw it She saw the defendant shoot William as he
19 just stood there Is that not enough that she has to make up
20 the statement that the defendant says he didn't say? This
21 ha -- that that does not make sense, ladies and gentlemen
22 Defendant said, "It's my life on the line," and and when
23 you're judging the credibility of the witnesses, those are the
24 type of statements that you have to consider

25 Dr Ward told you that if William had been running when

1 he was shot, that momentum would have carried him forward He
2 told you if he had been walking, it may -- he may have gone a
3 little bit forward He told you if he was standing that when
4 he was shot he would just collapse and fall which exactly what
5 the defendant even described to you about what William did
6 If you remember what he said, he just fell to his knees and he
7 thought he was praying He didn't know he killed him although
8 he did know that he shot him in the face That's exactly the
9 the defendant's own words corroborate what Dr Ward told you
10 about what William would have done when he was shot in the
11 eye Look at the pictures If William jumped up and rushed
12 the defendant, that table is completely undisturbed There's
13 no evidence of that

14 We've heard some other talk about William Godwin in his
15 past and there's reference to a tattoo that he had that says
16 G-man and, ladies and gentlemen, there is -- there -- his last
17 name was Godwin You don't have to believe that he was in a
18 gang He's from North Carolina He was 36-years-old 187
19 pretty specific A vague reference to this G-man could mean
20 anything and that is not an issue for you And the defense is
21 trying to make that an issue And what they want to do is
22 make you feel better about cuttin' him a break because they
23 want you to think that William was a bad guy And the
24 defendant wants you to believe that he knew about, he was
25 thinking about the fact that, "Oh, man William went to went

1 to jail when he was 21 in 1989 " Ladies and gentlemen, you
2 saw him testify and he was not flustered because he hadn't
3 told the truth before and he was trying to tell the truth now,
4 it's quite the opposite And he's lying about the fact that
5 he knew anything about that He told you, "I've been, I've
6 been looking through my discovery I've been looking through
7 my discovery for two and a half (2 1/2) years " Ladies and
8 gentlemen, I propose to you that he did not know anything
9 about that And that is a diversion and a distraction and I
10 urge you not to take the bait on that William Godwin is not
11 on trial The defendant is the one who's on trial

12 What we have is the defendant playing a game with us He
13 told -- he he beat Trice up that morning and when William told
14 him to cut it out and he knew that Trice was gonna put him
15 out, he was mad and he was embarrassed and he was really mad
16 at Trice because he thought she was the one who was causing
17 all this stir, "If you send your people after me again I will
18 lay them down " He went to that apartment He knew William
19 was there He told Trice again, "Tell your family to leave me
20 alone," talking at her, provoking him He knew what he was
21 doing when he did that and he knew when he said that that
22 William would be upset And he also knew that William didn't
23 have a gun and that he did William walks up to the
24 defendant, he stops, he rests his hand against the wall
25 completely unarmed, Darian shoots and he missed and if he'd

1 stopped there we probably would not be here today He fired
2 again and connected, those are his words, "I connected " That
3 sounds intentional to me He was aiming, ladies and
4 gentlemen He was aiming, "I connected " Shot him in the
5 face William starts to fall When he's firing the gun with
6 Trice and Paulette within inches of him, he keeps firing He
7 fires down on the defendant as he's on the ground, no longer
8 any type of threat like he wants you to believe And finally,
9 he's satisfied that he's done enough and he turns around and
10 leaves and shuts the door behind him and then, ladies and
11 gentlemen, yes he does run and hide If he said, "I didn't
12 want to get anybo -- any of my friends in trouble," for what,
13 harboring a fugitive, that is evidence that he had guilty
14 knowledge that he knew he had done something wrong, not that
15 he was scared And, ladies and gentlemen, ask yourself and
16 and when is the last time, when you put those yellow badges
17 on, you are not required to exchange your common sense for
18 him, when is the last time that you heard on the news that if
19 a suspect is located they will be killed on site?

20 Ladies and gentlemen, he skulks around around Greenville
21 for six days until good police work finds him He's arrested
22 Before that, ladies and gentlemen, he disassembles the gun, he
23 ditches it and then lies to police about what he did with it
24 The evidence, ladies and gentlemen, against this self-defense
25 claim and towards malice clearly points to murder

1 And let me tell you this in considering your verdict
2 You have been charged with speaking the truth about what
3 happened in this case and you know it now as well as anybody
4 and I urge you to do that, to speak the truth This is not
5 about giving the defendant a break or making excuses for his
6 bad decisions and his bad choices, bad decisions and bad
7 choices have consequences and that is something the defendant
8 is acutely aware of and you heard about his experience in this
9 courthouse before, it's about justice for William Godwin and
10 what he was to his family He was a big brother to Trice, he
11 was a father to his children, he was trying to get them into a
12 home where they could all be together, out of that apartment
13 complex and when and and and he was not okay with the
14 defendant using his cousin for a punching bag And when the
15 defendant murdered William Godwin, he snuffed all that out for
16 all of 'em "If you call your family out on me again, I will
17 lay them down " He told her he was gonna do it "Don't you
18 know why they call me the 187?" He said he was gonna do it
19 and he did it and you should convict him

20 THE COURT All right, ladies and gentlemen, we're going
21 to break here and we will resume tomorrow morning at 9 15
22 There may be a few matters of law I need to take up before we
23 actually begin with the jury charge So you all be in the
24 jury room and ready to go at 9 15 and you should be
25 deliberating by 10 Have a nice evening Remember that you

P R O C E E D I N G S

(WHEREUPON, the Court resumes on July 19, 2007 at approximately 9 00 a m)

THE COURT All right Any exceptions to the jury charges I gave y'all last night?

MRS PAOLETTI Your Honor, the State has one issue with the first element of self-defense 'I

understand that the second element is tailored to

the fact that the Defendant is a male My

concern in the third element is with the

continuous reference to a reasonably prudent man

The reasonably prudent person standard There

are females on the jury I just thought that

they might not, it's not a huge issue The way I

read it, it sounded like could be a little

confusing to the element

THE COURT All right I think it's probably a good time to break with the convention and make my self-defense charge gender neutral Okay

MR SCALZO Your Honor, the defense again would request its proposed charge which is a person is entitled to arm themselves in self-defense even if the Defendant has been unlawful possession of a weapon, such possession does not proclude self-defense I think that is based on

1 justification If they find themselves what they
2 are finding is justification, it goes back to
3 what the State says that murder is at the
4 unlawful killing without justification They
5 need to understand that connection that self-
6 defense is, the reason he is not guilty is
7 because of a justification --

8 **THE COURT** Why add in another, uh, step for
9 them to take? I have told them in language that
10 could not possibly be must understood that if the
11 State doesn't disprove one of those elements,
12 they can not find the Defendant not guilty They
13 must find him not guilty Why add in another
14 step for them to have to understand? I am going
15 to leave it like it is What else?

16 **MRS PAOLETTI** Your Honor, I would ask that
17 you include the last sentence On the other
18 hand, if you have no reasonable doubt that the
19 defendant's guilt after considering all of the
20 evidence including the evidence of self-defense,
21 you must find him guilty Just replace the first
22 sentence with what you say

23 **THE COURT** Okay I think I will do that
24 All right What else?

25 **MR SCALZO** Nothing else with regard to the

1 charge I would like to put something on the
2 record just for preservation of issue

3 **THE COURT** Okay

4 **MR SCALZO** Your Honor, during the State's
5 case, the Court ruled that self-defense had to be
6 established prior to it being relevant We have
7 a long period of time where we were trying to get
8 in self-defense

9 **THE COURT** I ruled that there had to be
10 evidence to support all of the elements before
11 something that was unrelated to the case other
12 than to prove self-defense became relevant and
13 therefore became admissible

14 **MR SCALZO** And when we get to the point of
15 the defense case and the Court ruled self-defense
16 and other items coming in that are all evidence
17 relating to self-defense, what that in effect
18 does is procludes the defense the right of
19 confrontation during the State's case You can't
20 let them go backwards and then cross-examine the
21 State's witnesses in the defense case Those
22 witnesses have already testified The
23 opportunity for cross-examination is gone at that
24 point

25 That is the issue that I am attempting to

1 preserve by raising it to the Court at this
2 point I guess the way to preserve that is
3 that's a motion for a mistrial based on the order
4 in which we have to challenge the State case In
5 essence, it is a burden shift It would shift
6 the burden into the defense case to say you now
7 have to present this evidence at this time as
8 well as a confrontational problem

9 **THE COURT** The only evidence that was
10 excluded, the only objection Tell me if I'm
11 correct The only objection that was made during
12 your cross-examination of State's witnesses based
13 on this notion that self-defense was not an issue
14 yet was the, uh, I don't remember who it was, one
15 of the female witnesses you wanted to ask her
16 whether or not she knew that the Defendant knew
17 about this conviction that the victim had, right?

18 **MR SCALZO** The conviction that the victim
19 had?

20 **THE COURT** Yes

21 **MR SCALZO** There was that issue but there
22 was also the issue of Keith Williams and his
23 connection

24 **THE COURT** Who was going to testify to that?

25 **MR SCALZO** I believe it was Latrice

1 Obviously, she had connection to Keith Williams

2 **THE COURT** I don't recall you asking her
3 about Keith Williams I remember discussing it
4 Wait a minute now

5 **MR SCALZO** I don't remember if it was
6 during the proffer of some the evidence or if it
7 was in front of the jury

8 **THE COURT** Talking about a confrontation
9 that there are several things that come to mind
10 First of all, these witnesses were here What
11 witnesses are we talking about? Latrice?
12 Latrice is still here, isn't she?

13 **MRS PAOLETTI** Yes, sir

14 **MR SCALZO** That would be the primary
15 witness

16 **THE COURT** Who is the other one?

17 **MR SCALZO** Uh, well, all of the witnesses
18 could potentially know except for law
19 enforcement That was connection They all
20 know Mrs Paulette --

21 **THE COURT** We are not talking about
22 abstract, what could happen We are talking
23 about questions that you specifically asked that
24 you say I sustained an objection to that denied
25 you the right of confrontation

1 **MR SCALZO** What I'm saying is that it does
2 not have to be a specific question Once the
3 Court procludes even the discussion of the issue
4 with the witness, it procludes the confrontation
5 I then can't ask the question

6 **THE COURT** I disagree that I foreclosed you
7 from asking any questions What we -- I gave you
8 the opportunity to ask any questions you wanted
9 to outside the presence of the jury for any
10 witness We took several breaks when I sent the
11 jury out in the middle of the witness' testimony
12 so that you could make a proffer or make an
13 inquiry There were several witnesses where you
14 wanted to explore whether or not there was going
15 to be evidence that he knew of this conviction
16 We sent the jury out Am I wrong? You asked the
17 witness One of them said no -- I can not
18 remember exactly what she said But she said I
19 don't know, I've never told him that or he never
20 mentioned that to me or something like that

21 **MR SCALZO** That proffer took place within
22 the context of the Court ruling that there had to
23 be evidence of some sort of self-defense in
24 before we could create the relevance before you
25 can make the inquiry That was at the first

1 level of the discussion The Court was requiring
2 us to somehow established elements of self-
3 defense before we would ever get to the issues

4 **THE COURT** I know that That is the second
5 time you repeated that At least the third time
6 I understand that I am getting back to the
7 specific facts of the situation I am wanting to
8 know what evidence are you talking about that you --
9 did not get to present or that you didn't get to
10 confront a witness about I don't think I can
11 deal in the abstract here You have to have, I
12 think you need to show me something specific that
13 you were unable to present because of what you
14 are talking about I haven't heard that yet

15 **MR SCALZO** Certainly, we would have the
16 murder conviction of the victim We would have
17 the knowledge of Latrice with regard to Keith
18 Williams ever having a gun before, owning a gun,
19 talking about, showing a gun to Darian even on
20 the night in question Those type of questions
21 and those issues

22 **THE COURT** As far as Latrice, you were not
23 denied, I don't believe, any right of
24 confrontation She has been here the whole time
25 You chose to put up evidence You could have

1 recalled her

2 **MR SCALZO** That is not, that evidence, the
3 right of confrontation is the right of
4 confrontation with regard to the State evidence

5 **THE COURT** The State did not put up any
6 evidence regarding Keith Williams having a
7 weapon The State did not put up any evidence
8 regarding the victim's conviction in North
9 Carolina

10 **MR SCALZO** I have a right to challenge and
11 cross-examine the State's witnesses

12 **THE COURT** On issues relevant to the case?

13 **MR SCALZO** Exactly Our position is self-
14 defense was relevant from Day 1 I guess what
15 I'm saying is I disagree with the Court's initial
16 ruling and the way the Court was ruling at the
17 beginning of the trial was that there had to be
18 established evidence to create self-defense I
19 guess what I am saying is I disagree with that as
20 the law The law would be the evidence comes in
21 to begin to establish self-defense That is how
22 you make something relevant You can not say it
23 is relevant because there is no existence of
24 evidence I think that process is the proclulsion
25 of the conflict Again, I say that as a

1 preservation of the issue for appellate review if
2 that should come I want to make sure that I was
3 clear on the record as far as what my ground was

4 **THE COURT** If you are standing it for the
5 first-time right now just to preserve the issue
6 It is probably too late I am looking at it from
7 the standpoint that it was in a fact or is in
8 - - - - - stack fact an ongoing denial of the right of - -
9 confrontation that it is not too late, is it

10 **MR SCALZO** I guess not

11 **THE COURT** Would you like to call Latrice
12 and put her up on the stand?

13 **MR SCALZO** The problem with doing that is
14 you are doing that out of context That is as
15 far as the denial of the confrontation You are
16 doing it out lot of context One, you are
17 forcing the defense to put the witnesses up You
18 are forcing the defense to make it evidentiary
19 The right of confrontation comes from the fact
20 that the State has called the witness You have
21 to right to challenge the witness, to cross-
22 examine the witness and as the witness questions
23 as presented as a State's witness, not as a
24 defense witness I don't think it is incurable,
25 at this time, don't think it is a curable event

1 **THE COURT** I think the record is clear as to
2 what your position is You are not entitled to,
3 in an ordinary case when self-defense is not an
4 issue, you are entitled to you are not entitled
5 to attack the character of the victim, correct?

6 **MR SCALZO** It depends If the victim is
7 testifying and their credibility is a witness
8 issue, yes, if a murder victim is testifying

9 **MR SCALZO** You said in a normal case I
10 didn't know that you were talking about a murder
11 case, in a murder case when self-defense is not
12 an issue, you are not entitled to attack the
13 character of the victim True

14 **MR SCALZO** That appears to be true

15 **THE COURT** Before you can attack the
16 character of a victim, there has got to be some
17 evidence that makes self defense relevant As I
18 am sitting here in the State's case, it is
19 impossible to look forward into your case to see
20 whether or not evidence is going to come forward
21 that might make self-defense an issue I have no
22 choice I don't think as an evidentiary matter but
23 to foreclose the attack of the character of the
24 victim during the State's case when it is not yet
25 clear that self-defense is ever going to be an

1 issue That is my view of it You can take it
2 to appellate defense if it is not yet if it gets
3 convicted, if he gets convicted You can explore
4 that with Supreme Court Any other --

5 **MR SCALZO** No

6 **THE COURT** We will take a short break and
7 come back to charge the jury

8 **MRS PAOLETTI** Your Honor, one question, do --
9 you intend to give the jury a copy of the written
10 charge if they request it

11 **THE COURT** Actually, I was going to give
12 them a written copy of it anyway I think that
13 there are so many different variables, this is ,
14 the self-defense charge here is kind of
15 complicated It has got a lot of different
16 things that might not be an ordinary self-defense
17 charge It seems to me that it is going to be
18 difficult for the jury to remember all of that
19 and that having the written charge back there
20 would assist them in understanding where the law
21 not only on murder is but also on self-defense

22 In addition, we have got different context in
23 which the jury can consider criminal convictions
24 For the Defendant, they can consider criminal
25 convictions only to assess his credibility For

1 the victim, they can consider criminal
2 convictions for a different reason I think that
3 might be confusing to the jury I am planning
4 on, I think it is one of those cases where it
5 would assist the jury in having a written copy

6 **MRS PAOLETTI** I think it will cut down on
7 some questions initially too The only request
8 that I would make of that is that we give all of
9 them a copy so that they are not passing one copy
10 around

11 **THE COURT** All right We will take a short
12 break I will be back in about five minutes
13 (WHEREUPON, a short recess is taken at
14 approximately 9 32 a m)

15 (WHEREUPON, the Court resumes at approximately
16 9 39 a m)

17 **THE COURT** Bring in the jury
18 (WHEREUPON, the jury enter at approximately
19 9 39 a m)

20 **THE COURT** Ladies and Gentlemen, now that
21 you have heard all of the evidence and the
22 arguments of the lawyers, it becomes my
23 responsibility to explain to you the law that is
24 applicable to this case Under our Constitution
25 and Code of Laws here in South Carolina, only the

1 jury to make the finding of fact in this case I
2 am not permitted to indicate to you how I might
3 feel about the facts If I have said anything or
4 done anything during the course of this trial
5 that might lead you to believe that I have an
6 opinion about the facts, you must disregard
7 that

8 ~~--- -- To determine the facts in the case, you will --~~
9 have to evaluate the credibility which of course
10 means the believability of the witnesses who have
11 been called on to testify. Some of the things
12 you might wish to consider in deciding whether or
13 not to believe a witness' particular testimony
14 include the following the manner and appearance
15 of the witness who testified, was he or she
16 straightforward or hesitant in answering
17 questions, is the testimony of a witness
18 consistent or inconsistent, how did the witness
19 come to know the facts that he or she is
20 testifying to and what is that witness' ability
21 to know those facts, is there some reason that a
22 witness might want to give testimony that might
23 help or hurt one side or the other, is a
24 testimony of a witness strengthened or weakened
25 by other testimony and evidence?

1 As members of the jury, you can believe as
2 much or as little of each witness' testimony as
3 you think it is appropriate to do You can
4 believe the testimony of one witness against all
5 the rest of them or you can do just the opposite
6 You are not required to accept testimony as true
7 even if it is contradicted

8 You have heard evidence that the Defendant
9 has been convicted of crimes other than the
10 crimes for which he is now on trial This
11 evidence may be considered by you if you conclude
12 that it is true only in deciding whether the
13 witness testimony is believable and for no other
14 purpose You must not considered the Defendant's
15 prior criminal record as evidence of his guilt on
16 the crime with which he has been charged in this
17 case Further, you may not draw from this
18 evidence the inference that because the Defendant
19 committed the crime prior crime that he is the
20 type of person who would have committed this
21 crime That is an absolutely impermissible
22 inference to draw

23 You heard the testimony of an expert witness
24 Expert witnesses are those witnesses who have
25 special knowledge, skill, experience, training or

1 education in a particular field or occupation
2 Because of these special qualifications, experts
3 are allowed to give opinions as to the matters
4 within their areas of expertise In determining
5 the weight to be given the opinion of experts,
6 you should consider the qualifications and
7 credibility of the witness and the reason for

8 giving his or her opinion --You are not bound by --
9 such an opinion - Give it the weight, if any,
10 that you believe that it should receive

11 The same Constitution and Code of Laws that
12 make you the exclusive judge of the facts also
13 makes me the exclusive judge of the law If you
14 have some idea as to what the law is or what the
15 law should be and if that differs from I now tell
16 you the law is, you're obligated under the oath
17 that you have taken as jurors to set your notion
18 of the law aside and to accept and apply the law
19 precisely as I now explain it to you

20 The fact that the Defendant was arrested and
21 charged and indicted in this case is not evidence
22 and can not be considered by you in any way as
23 evidence of the Defendant's guilt Nor, does it
24 create any presumption or inference of guilt
25 The indictment is simply the formal written

1 instrument that contains the charges and the
2 allegation that have been made against the
3 Defendant and it serves to process this case and
4 bring it into this court for trial

5 The Defendant has pled not guilty to these
6 indictments The plea of not guilty cast the
7 burden on the State to prove the Defendant beyond
8 a reasonable doubt A person charged with
9 committing a criminal offense in South Carolina
10 is never required to prove themselves innocent
11 It's a very important rule of law in our country
12 that a Defendant in a criminal trial will always
13 be presumed to be innocent of the crimes with
14 which he has been charged unless and until his
15 guilt has been proven by evidence that satisfies
16 you of that guilt beyond a reasonable doubt
17 This is the presumption of innocence

18 The presumption of innocence is not merely a
19 legal theory It is not a legal phrase that we
20 use It is a substantial constitutional right to
21 which every defendant is entitled The
22 presumption of innocence accompanies the
23 Defendant from the time he is charged throughout
24 trial and into the jury room until you reach a
25 verdict of guilt that is based on evidence that

1 has satisfied you of that guilt beyond a
2 reasonable doubt

3 A reasonable doubt is a doubt which makes a
4 honest sincere, conscientious juror in search of
5 the truth in the case to hesitate to act Proof
6 beyond a reasonable doubt must therefore be proof
7 of such a convincing character that a reasonable
8 person would not hesitate to rely on it and act
9 on it in the most important of his or her own
10 affairs Proof beyond a reasonable doubt can
11 also be described as proof that leaves you firmly
12 convinced of the Defendant's guilt

13 There are very few things in this world that
14 we know with absolute certainty In criminal
15 cases, the law does not require proof that
16 overcomes every possible doubt If, based on
17 your consideration of the evidence, you are
18 firmly convinced that the Defendant is guilty of
19 the crimes charged, you must find him guilty On
20 the other hand, if you think there is a real
21 possibility that he is not guilty, you must give
22 him the benefit of the doubt and find him not
23 guilty

24 I have admitted into evidence in this case
25 statements alleged to have been made by the

1 Defendant before you may consider the statements
2 as evidence for any purpose, you must find that
3 the State has proven beyond a reasonable doubt
4 that the answer is yes to both of the following
5 questions, the questions are did the Defendant
6 make the statements and was the statement made
7 voluntarily

8 The word "voluntarily" of course means that
9 he freely chose to make the statement, that it
10 was not induced by pressure, force or
11 intimidation If the statement was voluntarily
12 made, it may be used against the Defendant If
13 the statement was not voluntary, it can not be
14 used against him In determining whether or not
15 the statement of the Defendant was voluntary, you
16 should consider all the facts and circumstances
17 surrounding the statement including the
18 Defendant's age and maturity, his level of
19 education and intelligence, his physical and
20 mental health, his background and environment,
21 the nature of any questioning and other evidence
22 that you believe bears on the voluntariness of
23 the Defendant's statement

24 If the Defendant was in custody at the time
25 the statement was made, you should also consider

1 the place and length of his custody and whether
2 or not he was given and whether or not he will
3 understand his constitutional rights or what was
4 commonly referred to as his Miranda rights
5 These rights are that he has the right to remain
6 silent Any statement that he does make can and
7 will be used against him in a court of law, that
8 he has the right to consult a lawyer before and
9 during any questions, that if he can not afford a
10 lawyer the Court will appoint one to represent
11 him at no cost to him, he has the right to
12 exercise these rights at any time and terminate
13 questioning or not answer any questions or not
14 make any statements I find as a matter of law
15 that the Defendant was taken into, that the
16 Defendant was in custody at the time the
17 statements were made

18 Murder is the killing of a person with malice
19 aforethought This is what the State must have
20 proven in order to convict the Defendant of
21 murder They have to have proven this beyond a
22 reasonable doubt that the Defendant did kill a
23 person and the killing was done with malice
24 aforethought

25 "Malice" is the intentional doing of a

1 wrongful act without just cause or excuse and
2 with the intent to inflict injury Malice is a
3 word that suggests wickedness or hatred or a
4 determination to do what one knows to be wrong
5 without just cause or excuse or legal
6 provocation "Aforethought" is a word that we
7 don't normally use It means thought of before
8 or previously in mind It means the intention to
9 do the unlawful act was conceived or planned
10 sometime before the actual commission of the
11 unlawful act

12 However, malice need not be in the mind of
13 the one doing the killing for particular length
14 of time before the act of killing in order to do
15 render the killing murder If malice is present
16 in the mind of the one doing the killing for any
17 length of time before the act, its presence would
18 be sufficient to render the killing murder

19 Malice may be inferred when one intentionally
20 or deliberately does an unlawful act which he or
21 she knows to be wrong and in violation of his
22 duty to another Malice may be inferred with no
23 excuse or legal provocation for the killing The
24 law provides that the inference of malice may
25 also arise if one intentionally kills another

1 person with a deadly weapon A deadly weapon is
2 any object or substance which reasonably could be
3 used to cause death or bring great bodily harm

4 If facts are proven beyond a reasonable doubt
5 sufficient to raise an inference of malice for
6 any of these circumstances, this inference would
7 simply be one evidentiary fact to be taken into

8 consideration by you along with all the other

9 evidence in the case bearing on the issue of

10 malice You may give it the weight that you

11 determine it should receive You may accept or

12 reject this inference of malice Remember, the

13 State bears the burden of proving malice The

14 Defendant is not required to prove the absence of
15 malice

16 The Defendant has raised the defense of self-

17 defense Self-defense is a complete defense to

18 the charge of murder There are four elements to

19 self-defense The Defendant need not prove these

20 elements, rather, the absence of self-defense

21 must be proven by the State by proving to you

22 beyond a reasonable doubt that at least one of

23 these elements does not exist in this case The

24 State does not have to disprove all four them

25 The State has to disprove one of them beyond a

1 reasonable doubt before the Defendant can be
2 found guilty of murder

3 The following are the elements of self-
4 defense First, the Defendant must have been
5 without fault in bringing on the difficulty The
6 phrase "the difficulty" refers to the set of
7 circumstances existing at the time between the
8 Defendant and deceased which brought about the
9 imminent danger to the Defendant of losing his
10 life or sustaining serious bodily injury or the
11 belief that he was in imminent danger of losing
12 his life or sustaining serious bodily injury

13 Regarding the first element, South Carolina
14 Code Section 16-23-20 provides that it is
15 unlawful for anyone to carry about the person a
16 pistol whether concealed or not However, the
17 unlawful possession of a pistol does not preclude
18 the claim of self-defense if the Defendant's
19 unlawful possession of the weapon is merely
20 incidental to him arming himself in self-defense
21 Second, the second element, the Defendant must
22 have been in imminent danger of losing his life
23 or sustaining serious bodily injury or he must
24 have believed that he was in imminent danger of
25 losing his life or sustaining serious bodily

1 injury

2 Third, if his defense is based upon his
3 belief of imminent danger, self-defense is
4 established only if a reasonably prudent person
5 of ordinary fitness and courage would have
6 entertained the same belief In that regard, the
7 person is the judge of his or her own danger and
8 is entitled to act on the appearance of the--
9 circumstances as it appear at the time Even
10 though he or she might have been mistaken so long
11 as the apprehension of the immediate danger of
12 death or serious bodily harm was reasonable and
13 would have been felt by a person of ordinary
14 prudence and firmness

15 Also as to the third element, if the
16 Defendant actually was in imminent danger, the
17 circumstances much have been such that would
18 warrant a person of ordinary prudence, firmness
19 and courage to strike the fatal blow in order to
20 save himself or herself from serious bodily harm
21 of losing his own life And victims words
22 accompanied by possible acts maybe sufficient
23 depending on the circumstances to establish that
24 the Defendant was in or believed he was imminent
25 danger of losing his life sustaining serious

1 bodily injury

2 You have heard evidence that the victim had
3 been convicted of a crime This evidence was
4 admitted for the sole purpose of allowing you to
5 determine whether the Defendant actually was in
6 or believe he was in imminent danger of death or
7 serious bodily injury Other than for this
8 purpose, you may not consider the victim's
9 criminal conviction in any manner In
10 considering this third element, the jury consider
11 all the facts and circumstances in the case

12 The fourth element, the Defendant must have
13 had other probable means of avoiding the danger
14 of losing his own life or sustaining serious
15 bodily injury and other than to act as he did in
16 this particular instant A person has a duty to
17 retreat from danger of serious bodily injury or
18 death before using deadly force to defend
19 himself However, there is no duty to retreat if
20 doing so would increase the danger of serious
21 bodily injury or death

22 In regards to the fourth element, the person
23 has a right to use so much force as appears to be
24 necessary for his complete self protection which
25 in the mind of a person of ordinary prudence and

1 firmness would have appeared to be necessary to
2 prevent death or serious bodily injury If the
3 Defendant is justified in defending himself in
4 firing the first shot, the Defendant is also
5 justified in continuing to shoot until it is
6 apparent that the danger of death or serious
7 bodily injury has completely ended

8 If the State fails to prove beyond a
9 reasonable doubt that at least one of these
10 elements of self-defense is does not exist, you
11 must find the Defendant not guilty On the other
12 hand, if you have no reasonable doubt of the
13 Defendant's guilt after considering all of the
14 evidence including the evidence of self-defense,
15 you must find him not guilty

16 The Defendant is also charged with possession
17 of the weapon during the commission of a violent
18 crime In order to convict the defendant of this
19 crime, you must first find the Defendant guilty
20 of murder which is classified as a violent crime
21 under South Carolina law In addition, you must
22 find that the State has proven beyond a
23 reasonable doubt that the Defendant possessed a
24 firearm during the commission of the crime of
25 murder The definition of the term "a firearm",

1 of course, includes pistol

2 Ladies and Gentlemen, your verdict must be
3 unanimous All 12 of you must agree before you
4 can write a verdict In just a second, I'm going
5 to send you back into the jury room I'm going
6 to ask you not yet to begin your deliberations
7 I have some matters of law that I need to take up
8 with the attorneys

9 While I am doing that, I would like for you
10 all to selected foreperson to serve the jury
11 The job of the foreperson is to preside over the
12 deliberations When it becomes necessary to do
13 so to communicate the Court and those
14 communications have to be in writing One of the
15 times that you will have to communicate with me
16 is when you have reached a verdict

17 You will have with you in the jury room the
18 indictment On the back of the indictment on the
19 lower left hand corner, you will see the word
20 verdict Below that word, there are four blank
21 lines When the jury has unanimously reached a
22 verdict, the foreperson would write that verdict
23 on one of those blank lines, sign it and date it
24 and notify the bailiff that you have reached a
25 verdict and we will get you back out here in the

1 courtroom to receive that verdict

2 Now, on each of these indictments, you have
3 two verdict options They are -- I am listing
4 them in no particular order, but they are guilty
5 and not guilty Your verdict has to be one of
6 those two options Ladies and Gentlemen, what
7 goes on in the jury room is internal to the jury
8 You should not disclose at any time during your
9 deliberations what goes on back there including
10 what votes you may take and the results of those
11 votes Do not disclose that to me or to the
12 bailiffs or to anyone else So, at this time, I
13 am going to send all of you except for Ms
14 Ferguson and Mr Loguidice back to the jury room

15 If you all have anything in the jury room,
16 the bailiffs will get that out for you

17 You, folks, let us know as soon as you have
18 selected foreperson We will send back to you
19 the exhibits and the indictments At that time,
20 you also be instructed that you may begin your
21 deliberations Until you are given that
22 instruction, do not discuss this case other than
23 to select a foreperson All right, you may go
24 back into the jury room now

25 (WHEREUPON, the jury exit at approximately

1 10 01 a m)

2 **THE COURT** Any exception to the charge?

3 **MRS PAOLETTI** None from the State, Judge

4 **MR SCALZO** None

5 **THE COURT** Make sure you have the proper set
6 of exhibits And then when you have done that,
7 let's put it on the record We will send
8 everything back and let them began

9 You folks are welcome to stick around and see
10 how this turns out You have the other jury room
11 back there They can put you in the other jury
12 room We have a hearing to do in here, right?
13 It won't take long It doesn't relate to this
14 case You can go back in the jury room whichever
15 you like If you like to be excused, whichever
16 you would like to do

17 **THE COURT** Do you all have an agreement as
18 to what the exhibits are?

19 **MR SCALZO** We do, Your Honor

20 **THE COURT** They are all there on the table

21 **MR SCALZO** Yes, sir

22 **THE COURT** Here are the indictments The
23 foreperson is Brian Calhoun, Number 35 I am
24 instructing the bailiff to take the exhibits
25 back, look at the indictments Instruct the jury

1 to began their deliberation

2 (WHEREUPON, deliberations begins approximately

3 10 01 a m)

4 (WHEREUPON, Court's Exhibit 2 is marked for

5 identification purposes)

6 (WHEREUPON, the Court resumes at approximately

7 11 38 p m)

8 **THE COURT** Come up here for a second please-

9 (WHEREUPON, a bench conference is held)

10 (WHEREUPON, Court's Exhibit 3 is marked for

11 identification purposes)

12 **THE COURT** Before you begin, let me go back

13 to the other case, the Robinson case We have a

14 note from the jury, can we see a copy of Sammy

15 and Darian's testimony when they were on the

16 stand With the consent of counsel, I have

17 written my answer on here which is the

18 transcripts of this testimony has not been

19 prepared If you feel you have a compelling

20 reason to listen to their testimony, we can play

21 the audio for you I want the Court Reporter to

22 mark this as a Court's Exhibit

23 Mrs Friar, take it back to the jury

24 You all consent to that answer?

25 **MRS PAOLETTI** Yes, sir Judge

1 **MR SCALZO** Yes, sir

2 **THE COURT** All right

3 (WHEREUPON, deliberation continues)

4 (WHEREUPON, the Court resumes at approximately
5 12 01 p m)

6 **THE COURT** Okay, I have been given another
7 note from the jury in the Robinson case It says
8 what time frame could be should be considered
9 from the time he went into the apartment or from
10 the time the whole thing started My answer is
11 with the consent of counsel other than to refer
12 you to the jury charge, I can not answer this
13 question Do you all consent to that?

14 **MRS PAOLETTI** The State does

15 **MR SCALZO** Yes, sir

16 **THE COURT** I want that marked as a State's
17 six verdict Court's Exhibit and sent back to the
18 jury room

19 (WHEREUPON, Court's Exhibit 4 is marked for
20 identification purposes)

21 (WHEREUPON, deliberation continues)

22 (WHEREUPON, the Court resumes at approximately
23 2 21 p m)

24 **THE COURT** The verdict is in in this case
25 I know there are a lot of people in the courtroom

1 who are present representing both the family of
2 the Defendant and also the family of the
3 Defendant Obviously, you folks have done a good
4 job during the course of this case and keeping
5 your emotions in check and behaving the way you
6 should in the Courtroom If there is anybody who
7 feels they can not continue to do that when this
8 verdict is read, now is the time to get up and
9 leave the Courtroom - I will not tolerate any
10 outbursts when this verdict is read

11 " Bring in the jury

12 (WHEREUPON, the jury enter at approximately
13 2 23 p m)

14 **THE COURT** Mr Foreman, has the jury reached
15 a verdict?

16 **THE FOREPERSON** Yes, we have

17 **THE COURT** Will you pass it to the bailiff
18 please

19 **THE CLERK** Your Honor, this is case number
20 2005-GS-23-5874, the State versus Darian Kyle
21 Robinson indicted for murder The verdict is
22 guilty On the case of 2005-GS-23-5889,
23 indictment for possession of a weapon during the
24 commission of a crime, the verdict is guilty
25 This is both signed by the foreperson Mr

1 Calhoun

2 Ladies and Gentlemen of the jury, if you
3 believe agree these are the verdict you reached
4 in your deliberation room, please raise your
5 right hand

6 (WHEREUPON, each juror raises right hand)

7 **THE CLERK** Thank you

8 **THE COURT** Mr Scalzo, is there anything
9 before we move into sentencing?

10 **MR SCALZO** Motion for a new trial and I re-
11 raise my prior motions in the matter

12 **THE COURT** Motions for a new trial are
13 denied Your renewal of your prior motions are
14 also denied All right Bring him around

15 **THE COURT** Mr Scalzo, I'm going to hand you
16 the sentencing sheet on the murder indictment and
17 ask if you with your client will review the
18 information that is above the signature lines for
19 correctness If it is correct, I would like for
20 you to sign it and you can allow your client to
21 sign it if he would like The statute provides
22 that there would be no sentence imposed on the
23 possession of a weapon

24 **MRS PAOLETTI** The sentencing sheet? I am
25 sorry, Your Honor

1 **THE COURT** 16-23-490 says the five-year
2 sentence does not apply in cases where the death
3 penalty or life sentence without parole is
4 imposed for a violent crime I don't think I can
5 impose sentence on that

6 **MRS PAOLETTI** Agreed, Judge

7 **MR SCALZO** I signed it, Judge

8 **THE COURT** Mrs Paoletti, - you served on the -
9 Defendant and on his attorneys Chris Scalzo on
10 July 3rd, 2007 notice of the State's intent to
11 seek mandatory life sentence under 17-25-45

12 **MRS PAOLETTI** Yes, sir Your Honor

13 **THE COURT** You have any --

14 **MR SCALZO** Issues with that?

15 **THE COURT** Issues or motions with that,
16 with the validity of service or applicability of
17 the code section?

18 **MR SCALZO** Not at this time, Your Honor

19 **THE COURT** I want to hear his entire prior
20 record

21 **MRS PAOLETTI** Your Honor, I believe that
22 you did He has got 2001 of false information to
23 police and then the charges that you let the jury
24 hear about armed robbery, kidnaping, burglary
25 third, pointing and presenting a firearm that the

1 jury did not hear about and --

2 **THE COURT** The Assault and Battery with
3 Intent to Kill

4 **MRS PAOLETTI** With a deadly weapon, yes,
5 sir

6 **THE COURT** Assault with a deadly weapon

7 **MRS PAOLETTI** Yes, sir

8 **THE COURT** Anything else from the State?

9 **MRS PAOLETTI** Yes, sir, Your Honor We
10 have a spokesperson from Mr Godwin's family who
11 would like to address the Court They have asked
12 that I hand you some pictures of the victim and
13 his family

14 **THE COURT** Is this his daughter? The
15 children? There are several children in here

16 **MRS PAOLETTI** Those are his children, Your
17 Honor and a grandchild that he does not know
18 Ms Atkinson is going to speak for the family

19 **THE COURT** Ms Atkinson Ma'am, you can
20 stay there if you would like or if you would like
21 or if you would like to come up over here next to
22 Mrs Paoletti, you can do that

23 **THE VICTIM** No, this is fine I would like
24 to stand right here with my family

25 **THE COURT** All right I will hear from you

1 witnessed, his inability to humble himself in
2 this courtroom, he quite clearly presents himself
3 as this week as a man who presents himself to be
4 above the the law

5 Because of these reasons, our family request
6 that you sentence Mr Robinson to the maximum
7 time in prison of afforded by the law We felt
8 ~~that a maximum prison sentence is the only~~
9 guarantee that justice will be served in this
10 case and for our family it will offer as comfort
11 it will offer as comfort as we began to move on
12 with our lives And William can finally rest in
13 peace Thank you

14 **MRS PAOLETTI** That is all the State has

15 **MR SCALZO** Your Honor, in this case, the
16 service of the notice takes it out of your hands
17 You are required to sentence him to life without
18 the possibility parole At this time, the
19 defense will not offer anything further

20 **THE COURT** Mr Robinson, is there anything
21 you want to say?

22 **MR ROBINSON** No, sir

23 **THE COURT** The sentence of this Court is
24 that you be committed to the South Carolina
25 Department of Corrections for life without the

1 possibility of parole

2 (WHEREUPON, the Defendant exits the courtroom)

3 **THE COURT** Ladies and Gentlemen, I am going
4 to ask you to return to your jury room for a
5 moment I will come back there and speak to you
6 and release you from there

7 (WHEREUPON, the jury exit at approximately

8 2 34 p m)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DOCKET NO 2005-GS-23-

005874

DMR

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2005

THE STATE

VS

DARIAN KYLE ROBINSON

WITNESSES

Michael Monamara

Greenville County Sheriff's Office

2/1/2005

ARREST WARRANT NUMBER

H673853

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0116

MURDER

VIOLATION § 16 03 0010

Foreperson of Petit Jury

Date

854

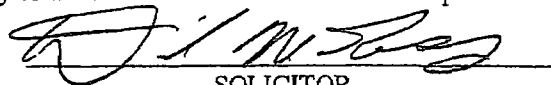
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions convened on July 26 2005 the Grand Jurors of Greenville
County present upon their oath

That DARIAN KYLE ROBINSON did in Greenville County, on or about the 27th day of January 2005,
unlawfully and with malice aforethought kill WILLIAM GOODWIN by means of shooting the victim with a
handgun and that WILLIAM GOODWIN died as a proximate result thereof This is in violation of §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


SOLICITOR

005889

DOCKET NO 2005 GS-23

DMR

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2005

THE STATE

VS

DARIAN KYLE ROBINSON

WITNESSES

Michael McNamara

Greenville County Sheriff's Office

2/1/2005

ARREST WARRANT NUMBER

H673854

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date

Indictment for

0549

POSSESSION OF WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16 23 0490

855

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)

INDICTMENT FOR
POSSESSION OF WEAPON DURING THE COMMISSION OF A
CRIME

At a Court of General Sessions, convened on July 26, 2005 the Grand Jurors of Greenville
County present upon their oath

That DARIAN KYLE ROBINSON did in Greenville County on or about the 27th day of January 2005, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: 38 caliber revolver. This is in violation of §16-23-490 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


SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings "

May 11th, 2009



Robert M Dudek
Deputy Chief Appellate Defender for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S C 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT