

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Edgar W. Dickson, Circuit Court Judge

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S.C. Supreme Court

LOUIS SHEPPARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002488

APPENDIX

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~~ORIGINAL~~

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF GENERAL SESSIONS
2006-GS-18-767

THE STATE OF SOUTH CAROLINA :

-VS-

TRANSCRIPT OF RECORD

LOUIS SHEPPARD :

JULY 23 - 25, 2007

ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE, AND
JURY.

A P P E A R A N C E S:

DONALD N. SORENSON, ESQUIRE
RUSSELL D. HILTON, ESQUIRE
ATTORNEYS FOR THE STATE

MARVA HARDEE-THOMAS, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

I N D E XWITNESSJAMES HOLMES

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County: Dorchester
 Date: 7-25-07

VOIR DIRE

Case No: 2006-65-18-767Judge: Diane GoodsteinPl. / State: StateState/Pl's. Atty: Don SorensonRussell HiltnerDefendant: Louis SheppardDefense Atty: Maura Harder-Thomas

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff	Defense	Accept
142	Amore Wiggins	F	B				✓
37	Jason Dodgins	M	W				✓
104	Rebecca Moore	F	W			✓	
126	Walter Slater	M	W				✓
72	Robert Truck	M	W			✓	
145	Amy Wilson	F	W				✓
134	Kathryn Terry	F	W				✓
54	Terry Green	M	B		✓		
71	Susan Infinger	F	W				✓
26	Darrel Carter	M	B				✓
150	Nancy Wysocki	F	W				✓
97	Elizabeth McMillan	F	W				✓
105	Yana Masley	M	B	✓			
166	Alonna Landry	F	B				✓
17	Sylvestra Bradley	F	B				✓
11	Edna Bayles	F	W				✓

* For the Court column, indicate who made the motion to strike the jurors "for cause."
 C-Court, P-Plaintiff, D-Defense

1 THE COURT: THANK YOU GUYS, AND PLEASE BE SEATED. ALL
2 RIGHT. NOW, LET'S SEE. ALL RIGHT. YOU'RE MR. SHEPPARD, MR.
3 LOUIS SHEPPARD?

4 MR. SHEPPARD: YES, MA'AM.

5 THE COURT: HOW ARE YOU DOING THIS AFTERNOON, MR.
6 SHEPPARD? ARE YOU OKAY?

7 MR. SHEPPARD: YES, MA'AM.

8 THE COURT: GOOD. GOOD. THE RECORD SHOULD REFLECT THAT
9 MR. SHEPPARD CAME IN DURING OUR BREAK. HOWEVER, THERE WAS
10 ONE JUROR SEATED IN THE COURTROOM READING A BOOK, MR. NEIL
11 JACOBS, AND THAT WAS BROUGHT TO MY ATTENTION THAT HE WAS IN
12 THE COURTROOM WHEN MR. SHEPPARD WAS BROUGHT OUT AND SEATED.
13 AND COUNSEL'S AWARE OF THAT; RIGHT?

14 MR. SORENSON: YES, YOUR HONOR.

15 MS. HARDEE-THOMAS: AND I AM, TOO, YOUR HONOR.

16 THE COURT: VERY WELL. AND WHAT I HAVE PROPOSED THAT WE
17 DO IS THAT WE SIMPLY EXCUSE MR. JACOBS IN THE FORM OF JUST
18 NOT SUBMITTING HIS NAME TO EITHER SIDE. AND I JUST ASK IF
19 THAT'S ACCEPTABLE TO THE STATE.

20 MR. SORENSON: AS YOUR HONOR INDICATED, HE -- I SAW HIM.
21 WHEN I SAW HIM, HE WAS READING, SO I'M NOT EVEN SURE HE WAS
22 PAYING ANY ATTENTION TO WHAT WAS GOING ON.

23 THE COURT: I DON'T CARE. I TOLD HIM TO LEAVE; HE
24 DIDN'T LEAVE.

25 MR. SORENSON: HE LEFT AND CAME BACK ACTUALLY. THEY HAD

1 ALL LEFT. I MEAN, I'LL LEAVE THAT UP TO YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 MS. HARDEE-THOMAS: ONE MOMENT.

4 THE COURT: OKAY. SURE.

5 MS. HARDEE-THOMAS: WHEN HE'S SITTING DOWN -- I TOLD HIM
6 TO STAND UP TO SEE IF HE COULD PULL THE PANTS DOWN BECAUSE
7 YOU CAN SEE THE STRAPS ON HIS WHITE SHOES.

8 THE COURT: YES, YOU CAN. I CAN SEE THE STRAP ON HIS
9 WHITE. YOU CAN SEE THE STRAP ON THE -- ON HIS SOCK.

10 MS. HARDEE-THOMAS: RIGHT.

11 THE COURT: THAT IS -- THAT IS CORRECT.

12 MS. HARDEE-THOMAS: NOW, THIS ONE IS -- I TOLD HIM TO
13 STAND UP SO HE CAN PULL THE PANTS DOWN JUST A LITTLE BIT.
14 THIS ONE WAS WORKING ON THE LEFT SIDE, BUT THE RIGHT SIDE I
15 DON'T KNOW WHAT'S GOING ON WITH THAT.

16 THE COURT: THAT'S RIGHT. I AGREE.

17 OFFICER: I'LL TAKE HIM AND...

18 MS. HARDEE-THOMAS: SEE, THE JURY CAN SEE FROM OVER
19 THERE.

20 THE COURT: I KNOW.

21 MS. HARDEE-THOMAS: THAT'S THE FIRST THING I LOOK AT---

22 THE COURT: I KNOW.

23 MS. HARDEE-THOMAS: ---IS PEOPLES' FEET.

24 THE COURT: ABSOLUTELY. MAJOR MOULTRIE IS TRYING TO
25 WORK WITH HIM TO FIX THAT PROBLEM.

1 (PAUSE IN PROCEEDINGS.)

2 THE COURT: ALL RIGHT. ALL RIGHT. MS. HARDEE-THOMAS,
3 THERE WAS A JUROR THAT SPOKE WITH---

4 THE CLERK: I'VE GOT TWO.

5 THE COURT: TWO JURORS THAT SPOKE WITH MS. GRAHAM ABOUT
6 MATTERS -- ISSUES THAT THEY HAD, AND I WANTED HER TO REPORT
7 BACK TO ALL OF US WHAT THAT'S ABOUT.

8 MS. HARDEE-THOMAS: OKAY.

9 THE CLERK: OKAY. JUROR NUMBER 72, MR. ROBERT IRICK, HE
10 HAD AN AUNT THAT PASSED AWAY IN VIRGINIA. HE UNDERSTANDS THE
11 FUNERAL IS GOING TO BE THURSDAY. HE WOULD LIKE TO GO TO IT,
12 BUT HE DOESN'T REALLY HAVE TO. HE WANTS TO GET HIS JURY DUTY
13 OVER WITH. SO HE STATED THAT IF HE DID GET PICKED AND HAD TO
14 BE HERE ON THURSDAY, HE WOULD BE WILLING TO STAY.

15 THE COURT: OKAY. VERY WELL. AND THERE WAS THE OTHER
16 JUROR.

17 THE CLERK: THE NEXT ONE IS MS. BLACKWELL. CHERYL
18 BLACKWELL, JUROR NUMBER 15. MS. BLACKWELL'S DAUGHTER IS
19 EXPECTING A BABY. IT'S NOT DUE UNTIL AUGUST THE 6TH, BUT SHE
20 DID COME EARLY LAST TIME. SHE WANTS TO STAY WITH US ALSO,
21 BUT IF IN SOME CASE THAT SHE DID GO INTO LABOR, IF SHE WAS
22 HERE, COULD SHE BE EXCUSED?

23 THE COURT: YES, SHE CAN. I HAVE AN ALTERNATE FOR THAT
24 REASON. OKAY. GREAT. VERY WELL. COUNSEL, UNLESS YOU ALL
25 AGREE OTHERWISE, I WOULD BE INCLINED TO ASK HER TO REMAIN,

1 AND THEN IF SHE'S TO BE EXCUSED, THEN WE'LL EXCUSE HER IN THE
2 EVENT THAT THE BLESSED EVENT COMES EARLIER.

3 ALL RIGHT. NOW, WE TOOK A LITTLE BREAK, AND MR.
4 SHEPPARD HAS GONE BACK OUTSIDE THE COURTROOM AND HE HAS
5 APPARENTLY DONE SOMETHING.

6 MS. HARDEE-THOMAS: YES.

7 THE COURT: PULLED THE SOCK MAYBE OVER THE STRAP?

8 MS. HARDEE-THOMAS: YEAH, PULLED THE SOCK OVER THE STRAP
9 AND PULLED THE PANTS DOWN.

10 THE COURT: IT'S NOT WORKING.

11 MS. HARDEE-THOMAS: IT'S NOT?

12 THE COURT: NO. IT'S...

13 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN A
14 BAILIFF AND THE COURT.)

15 THE COURT: WE HAVE A JUROR WITH A HEADACHE, AND MR.
16 TAYLOR WANTED TO KNOW IF WE COULD GIVE THE JUROR SOME
17 IBUPROFEN. OKAY. HERE'S WHAT WE'RE GOING TO DO. I'M NOT
18 GOING TO PICK THE JURY TODAY. I'M GOING TO EXCUSE THEM, AND
19 THE REASON FOR THAT - I WANT EVERYONE TO BE CLEAR - IS THAT I
20 THINK IT IS VERY IMPORTANT THAT THE RESTRAINTS THAT WE USE ON
21 AN INDIVIDUAL ARE NOT VISIBLE TO THE JURY. THAT'S VISIBLE TO
22 THE JURY. I DON'T KNOW THAT THEY'LL NOTICE IT. BUT, YOU
23 KNOW, WE'RE GOING TO START THIS CASE ON WEDNESDAY. WE'RE
24 PLANNING ON STARTING THIS CASE AT 11:00 ON WEDNESDAY. I WILL
25 PICK THIS JURY AT 9:30 ON WEDNESDAY. THERE'S ABSOLUTELY NO

1 REASON NOT TO ASSURE THAT THE RESTRAINTS THAT ARE PLACED ON
2 MR. SHEPPARD ARE PROPERLY DONE. I AM NOT COMFORTABLE WITH
3 THIS.

4 MS. HARDEE-THOMAS, THANK YOU SO MUCH FOR YOUR ATTEMPTS
5 TO HAVE THIS WORK, BUT AS HE SITS DOWN, THE PANTS ARE TOO
6 SHORT. THE SOCKS ARE WHITE. IF THE SOCKS WERE DARK, YOU
7 VERY WELL MAY NOT NOTICE ANYTHING, BUT THERE'S AN OBVIOUS
8 DEFORMITY ON HIS RIGHT LOWER ANKLE AND I SEE IT. AND THIS IS
9 A LIFE-WITHOUT-THE-POSSIBILITY-OF-PAROLE CASE, AND THERE'S
10 ABSOLUTELY NO REASON FOR US TO BE RUSHED AND -- AND SO BE IT.
11 WE WILL PICK THIS JURY WEDNESDAY MORNING. NOTE THE EXCEPTION
12 BY THE STATE. ANY EXCEPTION BY THE DEFENSE?

13 MS. HARDEE-THOMAS: NONE.

14 THE COURT: ALL RIGHT. NOW, I HAVE OTHER -- I HAVE
15 OTHER CONCERNS, AND I DON'T KNOW WHAT YOU GUYS CAN DO TO HELP
16 ME WITH THE CONCERNS. I HAVE A CONCERN NOT WITH THE FACT
17 THAT YOU'RE WEARING WHAT YOU'RE WEARING BECAUSE YOU NEED TO
18 WEAR WHAT IS APPROPRIATE FOR YOU TO WEAR. I WOULD APPRECIATE
19 IT IF YOU ALL COULD COME MORE AS PLAIN-CLOTHES OFFICERS. I
20 DON'T KNOW IF YOU CAN WEAR WHAT YOU HAVE ON WITH A JACKET
21 OVER IT, YOU KNOW, A BLAZER OF SOME SORT, BUT I THINK IT IS
22 IMPORTANT THAT -- THAT YOU -- THAT YOU APPEAR AS INNOCUOUS...
23 WE NEED YOU; WE WANT YOU. IT'S APPROPRIATE THAT YOU'RE HERE,
24 BUT I NEED YOU TO HAVE PLAIN CLOTHES ON, IF YOU'D BE SO KIND
25 TO HELP ME IN THAT REGARD WHILE COURT IS ONGOING. YOU'VE GOT

1 'TIL WEDNESDAY TO WORK ON THAT, SO IF YOU ALL WOULD DO THAT
2 FOR ME, I WOULD REALLY APPRECIATE THAT.

3 I KNOW THAT THE TESTIMONY WILL -- WILL CERTAINLY -- IT
4 WILL COME OUT WHERE THESE EVENTS OCCURRED AND I'M AWARE OF
5 THAT, BUT WE HAVE THE TIME TO BE VERY CAREFUL AND PRUDENT
6 ABOUT THAT AND THERE'S NO REASON NOT TO. SO IF YOU ALL WOULD
7 HELP ME IN THAT REGARD, I WOULD BE SO GRATEFUL TO YOU.

8 ALL RIGHT? ALL RIGHT. NOW, I'M GOING TO BRING THE JURY
9 BACK OUT AND I'M GOING TO DISMISS THEM AND TELL THEM WE'RE
10 GOING TO PICK THIS JURY WEDNESDAY MORNING AT 9:30 AND ASK
11 THEM TO RETURN. ANYTHING THAT I NEED TO TELL THEM?

12 MR. SORENSON: NO, YOUR HONOR.

13 THE COURT: NO.

14 MS. HARDEE-THOMAS: DO I NEED HIM HERE OR DOES HE GO
15 BACK?

16 THE COURT: I WOULD PREFER -- I WOULD PREFER THAT MR.
17 SHEPPARD -- I CAN'T IMAGINE THAT THEY COULD LOOK UNDER AND
18 OVER AND ALL THAT, BUT I WOULD LIKE FOR MR. SHEPPARD, UNLESS
19 YOU TELL ME OTHERWISE, JUST AS I DISMISS THIS JURY NOT TO BE
20 PRESENT IN THE COURTROOM PRIMARILY BECAUSE HE DOES HAVE THIS
21 CONCERN THAT I'M WORRIED ABOUT ON HIS LOWER ANKLE AND---

22 MS. HARDEE-THOMAS: RIGHT.

23 THE COURT: ---HIS -- YOU KNOW, HIS FOLKS ARE HERE WITH
24 HIM FROM S.C.D.C. I JUST THINK IT'S BEST.

25 MS. HARDEE-THOMAS: YES.

1 THE COURT: OKAY? IF Y'ALL WOULD BE SO KIND. AND Y'ALL
2 GET TO GO. YOU HAVE PLACES TO GO AND PEOPLE TO SEE. THANK
3 YOU.

4 (WHEREUPON, THE DEFENDANT WAS EXCUSED FROM THE
5 COURTROOM. THE PROCEEDINGS CONCLUDED FOR THE DAY. THE
6 FOLLOWING SHORT COLLOQUY TOOK PLACE THE FOLLOWING DAY,
7 JULY 24, 2007:)

8 THE COURT: MR. HILTON, DOES THE STATE HAVE ANY MOTIONS
9 PRETRIAL?

10 MR. HILTON: I DON'T THINK WE DO OTHER THAN -- NO, WE
11 DON'T HAVE ANY MOTIONS.

12 THE COURT: OKAY.

13 MS. HARDEE-THOMAS: HUH-UH.

14 THE COURT: NONE THAT YOU'RE AWARE OF?

15 MS. HARDEE-THOMAS: NO, MA'AM.

16 THE COURT: 9:15, PLEASE.

17 MS. HARDEE-THOMAS: OKAY.

18 THE COURT: AND JUST MEET WITH ME IN CHAMBERS TO BE SURE
19 ALL IS READY TO GO. WILL YOU PASS THAT ALONG TO MR.
20 SORENSON?

21 MR. HILTON: YES.

22 THE COURT: THANK YOU VERY MUCH. ALL RIGHT. I WILL SEE
23 EVERYBODY IN THE MORNING.

24 (THE PROCEEDINGS CONCLUDED. THE TRIAL RESUMED THE
25 FOLLOWING DAY, JULY 25, 2007, AS FOLLOWS. STATE'S EXHIBIT 1

1 WAS MARKED FOR IDENTIFICATION ONLY.)

2 THE COURT: GOOD MORNING, EVERYONE, AND PLEASE BE
3 SEATED. THANK YOU ALL SO MUCH. LADIES AND GENTLEMEN, I --
4 FIRST OF ALL, LET ME GET ENERGIZED AND LET ME TELL YOU I AM
5 SO, SO SORRY THAT WE HAD TO KEEP YOU OUT SO LONG THIS
6 MORNING. A TRIAL IS -- THERE ARE SO MANY COMPONENT PARTS
7 THAT HAVE TO COME TOGETHER AND, YOU KNOW, WE WERE ALL HERE
8 UNTIL AFTER 5 YESTERDAY, AND THE LAST THING WE ALL DID WAS,
9 YOU KNOW, ORCHESTRATE SO WE WOULD BE READY.

10 IF I HADN'T DONE THAT, WE'D HAVE BEEN RIGHT ON TIME, BUT
11 IT'S BECAUSE -- I THINK IT'S BECAUSE WE, YOU KNOW, FOCUSED ON
12 BEING READY AND IT'S LIKE -- IT'S LIKE EVERYTHING... AND
13 NOTHING OF ANY REALLY IMPORT. VERY SIMPLE THINGS. BUT IT'S
14 LIKE I WAS HERDING -- WE WERE ALL HERDING IN LITTLE PIECES
15 THIS MORNING, BUT WE GOT ALL TOGETHER. I AM SO SORRY TO KEEP
16 YOU ALL WAITING. WE ARE NOW READY TO SELECT OUR JURY FOR OUR
17 FIRST CASE FOR TRIAL, AND AGAIN I APOLOGIZE FOR KEEPING YOU
18 WAITING.

19 LET ME TELL YOU SOMETHING: EVERY SINGLE MINUTE THAT A
20 JURY IS NOT WORKING, NOT DOING WHAT THEY'RE HERE TO DO, IT
21 JUST -- IT GIVES ME GREAT ANGST. SO WE'RE READY TO GO, AND
22 THANK YOU ALL SO MUCH FOR YOUR PATIENCE. AND, MR. SORENSON,
23 IF YOU'D BE SO KIND AS TO CALL OUR FIRST CASE FOR TRIAL THIS
24 WEEK.

25 MR. SORENSON: THANK YOU, YOUR HONOR. MAY IT PLEASE THE

1 COURT?

2 THE COURT: YES, SIR.

3 MR. SORENSON: AT THIS TIME THE STATE CALLS THE CASE OF
4 THE STATE VERSUS LOUIS SHEPPARD. IT'S INDICTMENT
5 2006-GS-18-767 CHARGING HIM WITH ONE COUNT OF ASSAULT AND
6 BATTERY WITH INTENT TO KILL. THE STATE'S REPRESENTED BY MR.
7 HILTON AND MYSELF, AND THE DEFENDANT IS PRESENT WITH HIS
8 LAWYER, MS. HARDEE-THOMAS.

9 THE COURT: THANK YOU SO MUCH, MR. SORENSON. LADIES AND
10 GENTLEMEN, I WANT TO TELL YOU WHAT JUST HAPPENED, AND THEN I
11 WANT TO GIVE YOU JUST A LITTLE BIT OF INFORMATION. I'M GOING
12 TO ASK YOU A FEW QUESTIONS, AND WE'RE GOING TO GET RIGHT INTO
13 OUR JURY SELECTION. WHAT HAS JUST OCCURRED IS THAT MR.
14 SORENSON, WHO IS THE DEPUTY SOLICITOR FOR THE FIRST CIRCUIT
15 -- IN SOUTH CAROLINA - YOU ALL MAY OR MAY NOT KNOW THE
16 DIFFERENCE - BUT WE CALL OUR PROSECUTORS SOLICITORS. I THINK
17 THERE'S ONE OTHER STATE IN THE COUNTRY THAT CALLS THEM
18 SOLICITORS. I THINK IT'S IN VIRGINIA THEY CALL THEM
19 SOLICITORS. BUT MOST PLACES IN THE COUNTRY THE PROSECUTING
20 ATTORNEY IS CALLED THE DISTRICT ATTORNEY, AND ON TELEVISION
21 IT'S ALWAYS THE DISTRICT ATTORNEY. IN SOUTH CAROLINA WE CALL
22 OUR PROSECUTORS SOLICITORS. AND MR. SORENSON AND MR. HILTON
23 AND MR. BELL, WHO YOU'LL MEET IN A MINUTE, THEY ARE
24 SOLICITORS. THEY ARE -- IN NORTH CAROLINA, IF WE WERE IN
25 NORTH CAROLINA THEY'D BE CALLED DISTRICT ATTORNEYS.

1 LADIES AND GENTLEMEN, WHAT'S JUST HAPPENED IS THAT MR.
2 SORENSON HAS JUST INTRODUCED THE FIRST CASE. HE'S CALLED THE
3 FIRST CASE FOR TRIAL, AND HE HAS GIVEN YOU THE INDICTMENT
4 NUMBER. I'LL TELL YOU ABOUT THAT IN JUST A MINUTE. HE'S
5 INTRODUCED YOU BY NAME TO MS. HARDEE-THOMAS WHO IS PRESENT
6 AND ALSO TO THE DEFENDANT, MR. LOUIS SHEPPARD, WHO IS ALSO
7 PRESENT THIS MORNING.

8 SO, LADIES AND GENTLEMEN, LET'S TALK ABOUT THIS PROCESS
9 AND LET'S GET RIGHT TO IT. LADIES AND GENTLEMEN, MR.
10 SORENSON MENTIONED INDICTMENT. HE USED THE WORD INDICTMENT.
11 I WANT TO TELL YOU WHAT AN INDICTMENT IS AND WHAT AN
12 INDICTMENT IS NOT. LADIES AND GENTLEMEN, UNDER OUR LAW AN
13 INDICTMENT IS A PIECE OF PAPER AND IT IS THE NOTICE DOCUMENT.
14 IT'S A DOCUMENT THAT GOES TO A CITIZEN AND IT COMES FROM THE
15 STATE AND IT'S TO THE CITIZEN TO TELL THE CITIZEN THAT THE
16 STATE ALLEGES, THE STATE MAINTAINS, THAT THE CITIZEN HAS
17 VIOLATED ONE OR MORE OF THE CRIMINAL LAWS OF THE STATE OF
18 SOUTH CAROLINA. IT'S JUST A NOTICE DOCUMENT. IT IS NO MORE
19 THAN THAT.

20 WHAT IT CLEARLY IS NOT IS EVIDENCE OF ANY OF THE
21 ALLEGATIONS THAT IT CONTAINS. IT'S SIMPLY A NOTIFYING
22 DOCUMENT. IN A MOMENT I'M GOING TO BE READING TO YOU THE
23 ALLEGATIONS OF THE INDICTMENT. AND WHY WOULD I DO THAT, YOU
24 MIGHT ASK? WELL, I NEED TO KNOW, LADIES AND GENTLEMEN,
25 WHETHER OR NOT ANY OF YOU KNOW OR THINK YOU KNOW OR HAVE

1 HEARD OR THINK YOU MAY HAVE HEARD ANYTHING, TO INCLUDE TODAY,
2 ANYTHING ABOUT THIS MATTER. I NEED TO KNOW THAT. THAT'S
3 VERY IMPORTANT.

4 SO, LADIES AND GENTLEMEN, THAT IS WHY I'M GOING TO BE
5 READING TO YOU SOME OF THE ALLEGATIONS IN THE INDICTMENT, FOR
6 THAT REASON ONLY. AND, LADIES AND GENTLEMEN, LET ME HASTEN
7 TO TELL YOU THAT TO THIS INDICTMENT, TO EACH AND EVERY
8 ALLEGATION OF THIS INDICTMENT, MR. SHEPPARD HAS PLED NOT
9 GUILTY, NOT GUILTY, AND YOU WILL LEARN, THOSE OF YOU WHO ARE
10 SELECTED TO SERVE ON THIS JURY, THAT PLACES UPON THE STATE OF
11 SOUTH CAROLINA THE BURDEN OF PROVING EACH AND EVERY
12 ALLEGATION BEYOND A REASONABLE DOUBT.

13 SO, LADIES AND GENTLEMEN, I WANTED YOU TO KNOW BEFORE I
14 EVEN READ YOU THE INDICTMENT -- I WANTED YOU TO KNOW THAT THE
15 ONLY REASON I'M READING YOU SOME OF THESE ALLEGATIONS IS
16 SIMPLY TO FIND OUT WHETHER OR NOT ANYBODY KNOWS OR THINK THEY
17 KNOW ANYTHING ABOUT THIS MATTER. I NEED TO KNOW IF YOU DO.

18 SO, LADIES AND GENTLEMEN, INDICTMENT 2006-GS-18-0767
19 STATES IN PART, ALLEGES IN PART, THAT THE DEFENDANT, LOUIS
20 SHEPPARD, DID IN DORCHESTER COUNTY ON OR ABOUT OCTOBER
21 THE 10TH, 2005, 2005, WITH MALICE AFORETHOUGHT DID COMMIT AN
22 ASSAULT AND BATTERY UPON THE VICTIM, JAMES HOLMES, BY
23 STABBING HIM SEVERAL TIMES ON HIS BODY. AND THEN IT GOES ON
24 TO SAY THAT THIS IS -- THESE ACTIONS ARE AGAINST THE LAW OF
25 THE STATE OF SOUTH CAROLINA.

1 LADIES AND GENTLEMEN, I ASK: DO YOU KNOW, DO YOU THINK
2 YOU MAY KNOW, HAVE YOU HEARD, DO YOU THINK THAT YOU MAY HAVE
3 HEARD, TO INCLUDE TODAY, ANYTHING, ANYTHING, ABOUT THESE
4 ALLEGATIONS? IF SO, PLEASE STAND AT THIS TIME. AND I FIND
5 NO ONE STANDING.

6 NOW, LADIES AND GENTLEMEN, I WANT TO INTRODUCE YOU TO
7 SOME FOLKS. I'M GOING TO BE BEGIN -- I'M GOING TO INTRODUCE
8 YOU TO DON SORENSON. IF YOU'D STAND AND FACE OUR JURY PANEL.
9 THIS IS MR. SORENSON. THIS IS MR. RUSSELL HILTON. THIS IS
10 MR. HARRISON BELL. AND THEY ARE ALL LAWYERS WITH THE
11 SOLICITOR'S OFFICE. AND, MR. SORENSON, IF YOU'D BE SO KIND
12 AS TO JUST INTRODUCE THE NAMES OF THE OTHER LAWYERS IN THE
13 OFFICE.

14 MR. SORENSON: OKAY. IN JUST THE DORCHESTER OFFICE
15 OR---

16 THE COURT: PLEASE.

17 MR. SORENSON: WE HAVE BILL MCINTOSH, VIRGIL DEAS, SUSAN
18 WILLIAMS, AND JEAN POPOWSKI.

19 THE COURT: THANK YOU SO MUCH. NOW, LADIES AND
20 GENTLEMEN, THOSE ARE THE OTHER LAWYERS WHO WORK IN THE
21 SOLICITOR'S OFFICE THAT ARE SOLICITORS, ASSISTANT SOLICITORS.
22 OF COURSE, SOLICITOR PASCOE IS THE SOLICITOR. AND I WOULD
23 ASK WHETHER OR NOT ANY OF YOU KNOW OR THINK YOU KNOW OR ARE
24 ACQUAINTED WITH ANY OF THOSE INDIVIDUALS, BUT BEFORE -- BUT
25 BEFORE I MOVE ON, LET ME DEFINE THE TERM ACQUAINTED WITH

1 BECAUSE YOU'LL HEAR ME USE THAT QUITE A BIT. AND I NEED TO
2 DEFINE THAT FOR YOU BECAUSE I USE INTENTIONALLY A VERY, VERY
3 GENERAL DEFINITION OF ACQUAINTED WITH BECAUSE, YOU SEE, I'M
4 TRYING TO FIND OUT IF YOU HAVE ANY CONNECTION WHATSOEVER WITH
5 THESE FOLKS THAT I'LL BE ASKING YOU ABOUT.

6 LET ME GIVE YOU A COUPLE OF EXAMPLES. WHEN I USE THE
7 TERM ACQUAINTED WITH, THIS RELATIONSHIP WOULD BE INCLUDED,
8 WOULD BE ENCOMPASSED, WITHIN THE DEFINITION. LADIES AND
9 GENTLEMEN, YOU MAY HAVE GONE TO SCHOOL WITH SOMEONE WHO I'LL
10 MENTION 20 YEARS AGO. YOU HAVEN'T SEEN THEM, HAVEN'T REALLY
11 THOUGHT ABOUT THEM IN 20 YEARS, BUT YOU KNOW THAT YOU WENT TO
12 SCHOOL WITH THIS PERSON 20 YEARS AGO. BELIEVE IT OR NOT,
13 THAT RELATIONSHIP WOULD BE ENCOMPASSED WITHIN MY DEFINITION
14 OF ACQUAINTED WITH.

15 IT MAY BE THAT YOU SIMPLY WORK AT THE SAME LOCATION WITH
16 SOMEONE WHOSE NAME I'LL MENTION AND MAYBE OCCASIONALLY WAVE
17 AT EACH OTHER ACROSS THE PARKING LOT AND THERE'S NO MORE
18 RELATIONSHIP THAN THAT. BELIEVE IT OR NOT, THAT
19 RELATIONSHIP, AS LIMITED AS IT IS, WOULD BE ENCOMPASSED
20 WITHIN MY DEFINITION OF ACQUAINTED WITH. AGAIN, I'M SIMPLY
21 TRYING TO FIND OUT IF YOU HAVE ANY CONNECTION WHATSOEVER WITH
22 THE FOLKS THAT I'LL BE ASKING YOU ABOUT.

23 SO WITH THAT IN MIND I ASK: LADIES AND GENTLEMEN, ARE
24 YOU RELATED BY BLOOD OR MARRIAGE OR ACQUAINTED WITH ANY OF
25 THE LAWYERS THAT MR. SORENSON JUST MENTIONED? THESE FOLKS:

1 MR. RUSSELL HILTON, HARRISON BELL, DON SORENSON THAT I JUST
2 MENTIONED OR ANY OF THE OTHER LAWYERS IN THE ST. MATTHEWS'
3 OFFICE, ORANGEBURG OFFICE, OR ANY OF THE EMPLOYEES, ANY OF
4 THE EMPLOYEES, FOR THE CIRCUIT SOLICITOR FOR THE FIRST
5 CIRCUIT SOLICITOR'S OFFICE? IF SO, PLEASE STAND AT THIS
6 TIME. YES, SIR, TELL ME YOUR NAME.

7 JUROR SMITH: JANTZEN SMITH.

8 THE COURT: AND, MR. SMITH, WHO DO YOU KNOW?

9 JUROR SMITH: MR. RUSSELL HILTON.

10 THE COURT: YOU KNOW MR. HILTON?

11 JUROR SMITH: (NODDED HEAD UP AND DOWN.)

12 THE COURT: DO YOU ALL VISIT IN EACH OTHERS' HOMES?

13 JUROR SMITH: YES, MA'AM.

14 THE COURT: YOU DO?

15 JUROR SMITH: WE DO.

16 THE COURT: ALL RIGHT. AND SO YOU WOULD DESCRIBE YOUR
17 RELATIONSHIP AS ONE OF FRIENDSHIP?

18 JUROR SMITH: YES, MA'AM.

19 THE COURT: LET ME ASK YOU THIS, AND THIS IS A YES-OR-NO
20 QUESTION, MR. SMITH. THE QUESTION IS THIS: DO YOU BELIEVE
21 THAT YOU CAN SET YOUR RELATIONSHIP, YOUR FRIENDSHIP, WITH MR.
22 HILTON COMPLETELY ASIDE AND MAKE UP YOUR MIND FOR THIS CASE
23 BASED SOLELY ON WHAT YOU HEAR IN COURT WHILE COURT IS IN
24 SESSION?

25 JUROR SMITH: YES, MA'AM.

1 THE COURT: DO YOU BELIEVE THAT YOU WOULD BE AFFECTED IN
2 ANY REGARD, IN ANY REGARD, BY YOUR FRIENDSHIP WITH MR.
3 HILTON?

4 JUROR SMITH: NO, MA'AM.

5 THE COURT: OKAY. AND YOU CAN MAKE UP YOUR MIND BASED
6 UPON WHAT YOU HEAR IN THIS COURTROOM SOLELY?

7 JUROR SMITH: YES, MA'AM.

8 THE COURT: VERY WELL. THANK YOU, MR. SMITH. TELL ME
9 YOUR NAME.

10 JUROR NEWTON: DIANNE NEWTON. I KNEW A BILL MCINTOSH.

11 THE COURT: YOU KNOW BILL MCINTOSH?

12 JUROR NEWTON: I DON'T KNOW WHO THIS BILL MCINTOSH IS.
13 I KNEW ONE IN NORTH CAROLINA.

14 THE COURT: A BILL MCINTOSH IN NORTH CAROLINA? ALL
15 RIGHT. AND MAY I ASK THIS OF YOU: DO YOU KNOW THE
16 APPROXIMATE AGE OF BILL MCINTOSH THAT YOU KNOW?

17 JUROR NEWTON: HE WOULD BE IN HIS FIFTIES.

18 THE COURT: HE WOULD BE IN HIS FIFTIES? THAT IS NOT
19 THIS BILL MCINTOSH. THIS BILL MCINTOSH IS IN HIS THIRTIES;
20 RIGHT?

21 MR. SORENSON: 39 OR 40.

22 THE COURT: 39 TO 40.

23 MR. SORENSON: HE JUST TURNED 40.

24 THE COURT: TO ME HE LOOKS LIKE A MERE CHILD. ALL
25 RIGHT. THANK YOU. I'M SATISFIED THAT IF YOU KNOW THAT ONE

1 THAT'S IN THE FIFTIES THAT WOULD NOT BE THE SAME PERSON.

2 VERY WELL. NOW, ANYONE ELSE? VERY WELL.

3 LADIES AND GENTLEMEN, PLEASE ALLOW ME TO INTRODUCE YOU
4 TO MR. LOUIS SHEPPARD. IF HE COULD STAND AND FACE OUR JURY
5 PANEL. AND THIS IS MR. LOUIS SHEPPARD. THANK YOU, MR.
6 SHEPPARD, AND YOU MAY BE SEATED. AND, LADIES AND GENTLEMEN,
7 I WOULD ASK: ARE YOU RELATED BY BLOOD OR MARRIAGE OR
8 ACQUAINTED WITH MR. LOUIS SHEPPARD? IF SO, PLEASE STAND AT
9 THIS TIME. AND I FIND NO ONE STANDING.

10 HE IS REPRESENTED BY MS. MARVA HARDEE-THOMAS, AND THIS
11 IS MS. HARDEE-THOMAS WHO IS A SOLE PRACTITIONER. AND I ASK:
12 ARE YOU RELATED BY BLOOD OR MARRIAGE OR ACQUAINTED WITH OR
13 HAVE YOU OR ANY MEMBER OF YOUR IMMEDIATE FAMILY, TO YOUR
14 KNOWLEDGE, EVER BEEN REPRESENTED BY MS. HARDEE-THOMAS? IF
15 SO, PLEASE STAND AT THIS TIME. ALL RIGHT. YES, MA'AM. TELL
16 ME YOUR NAME.

17 JUROR GRANT: CYNTHIA GRANT. CYNTHIA GRANT.

18 THE COURT: MS. GRANT. OF COURSE, MS. GRANT. NOW, I
19 DON'T NEED ANY MORE INFORMATION THAN I NEED. ALL RIGHT.
20 WOULD YOU DESCRIBE YOUR RELATIONSHIP WITH MS. HARDEE-THOMAS
21 AS ONE THAT IS PERSONAL OR PROFESSIONAL?

22 JUROR GRANT: IT'S PROFESSIONAL.

23 THE COURT: PROFESSIONAL? SHE REPRESENTED YOU IN THE
24 PAST; IS THAT CORRECT?

25 JUROR GRANT: YES.

1 THE COURT: VERY WELL. DOES NOT -- BUT SHE DOES NOT
2 CURRENTLY REPRESENT YOU. THAT WAS IN THE PAST.

3 JUROR GRANT: YES.

4 THE COURT: AS A RESULT OF THAT PROFESSIONAL
5 RELATIONSHIP, DO YOU BELIEVE THAT THAT RELATIONSHIP MIGHT OR
6 COULD IN ANY REGARD, IN ANY REGARD, INTERFERE WITH YOUR
7 ABILITY TO BE COMPLETELY FAIR AND IMPARTIAL TO THE STATE AND
8 TO MR. SHEPPARD? THAT WOULD BE YES OR NO.

9 JUROR GRANT: NO.

10 THE COURT: DO YOU BELIEVE THAT YOU CAN SET THAT
11 RELATIONSHIP COMPLETELY ASIDE AND MAKE UP YOUR MIND BASED
12 UPON WHAT YOU HEAR IN COURT WHILE COURT IS IN SESSION?

13 JUROR GRANT: YES.

14 THE COURT: THANK YOU, MS. GRANT. AND YOUR LAST NAME,
15 PLEASE?

16 JUROR MCGILL: MCGILL.

17 THE COURT: MR. MCGILL, IS YOUR RELATIONSHIP WITH MS.
18 HARDEE-THOMAS ONE THAT IS -- WOULD BE DESCRIBED AS
19 PROFESSIONAL OR ONE THAT IS MORE DESCRIBED AS A PERSONAL
20 RELATIONSHIP?

21 JUROR MCGILL: IT WAS PROFESSIONAL.

22 THE COURT: MORE OF A PROFESSIONAL?

23 JUROR MCGILL: YES.

24 THE COURT: DID SHE REPRESENT YOU IN THE PAST OR
25 CURRENTLY?

1 JUROR MCGILL: PAST.

2 THE COURT: IN THE PAST. AS A RESULT OF THAT
3 PROFESSIONAL RELATIONSHIP, DO YOU BELIEVE THAT THAT
4 RELATIONSHIP MIGHT OR COULD IN ANY REGARD INTERFERE WITH YOUR
5 ABILITY TO BE COMPLETELY FAIR AND IMPARTIAL TO THE STATE AS
6 WELL AS TO MR. SHEPPARD? AND THAT'S A YES-OR-NO QUESTION.

7 JUROR MCGILL: NO. NO, MA'AM.

8 THE COURT: AND DO YOU BELIEVE THAT YOU COULD SET THAT
9 RELATIONSHIP ASIDE, COMPLETELY ASIDE, MAKE UP YOUR MIND BASED
10 UPON WHAT YOU HEAR IN COURT WHILE COURT IS IN SESSION?

11 JUROR MCGILL: YES.

12 THE COURT: THANK YOU SO MUCH, SIR. PLEASE STAY WITH
13 US. YES, MA'AM, YOUR NAME?

14 JUROR BLACKWELL: I BELIEVE SHE REPRESENTED MY SON.

15 THE COURT: OH, ALL RIGHT. AND TELL ME YOUR NAME.

16 JUROR BLACKWELL: CHERYL BLACKWELL.

17 THE COURT: MS. BLACKWELL, AS A RESULT OF THE -- YOU
18 BELIEVE A PROFESSIONAL RELATIONSHIP IN -- IN THE PAST?
19 THAT'S A YES OR NO.

20 JUROR BLACKWELL: DO WHAT NOW?

21 THE COURT: DID SHE -- SO FAR AS YOU KNOW, IF SHE
22 REPRESENTED HIM, IT WAS IN THE PAST?

23 JUROR BLACKWELL: YES.

24 THE COURT: NOT CURRENTLY.

25 JUROR BLACKWELL: A COUPLE OF YEARS AGO.

1 THE COURT: OKAY. AS A RESULT OF THAT RELATIONSHIP, AS
2 YOU KNOW IT, COULD THAT, MIGHT THAT, IN ANY REGARD INTERFERE
3 WITH YOUR ABILITY TO BE COMPLETELY FAIR AND IMPARTIAL TO THE
4 STATE AS WELL AS TO MR. SHEPPARD?

5 JUROR BLACKWELL: NO, MA'AM, I CAN...

6 THE COURT: WOULD THAT RELATIONSHIP INTERFERE?

7 JUROR BLACKWELL: NO, NOT AT ALL.

8 THE COURT: CAN YOU SET THAT RELATIONSHIP AS YOU KNOW IT
9 COMPLETELY ASIDE AND MAKE UP YOUR MIND BASED UPON WHAT YOU
10 HEAR IN COURT WHILE COURT IS IN SESSION?

11 JUROR BLACKWELL: YES, MA'AM.

12 THE COURT: THANK YOU SO MUCH. ANYONE ELSE? ALL RIGHT.
13 NOW, LADIES AND GENTLEMEN, I AM GOING TO BE READING TO YOU A
14 LIST OF POTENTIAL WITNESSES, AND IF THESE FOLKS HAPPEN TO BE
15 HERE IN THE COURTROOM, PLEASE STAND FOR ME SO OUR JURORS CAN
16 PUT PERHAPS A FACE WITH A NAME. MY QUESTION AS TO EACH AND
17 EVERY ONE OF THESE INDIVIDUALS IS: ARE YOU RELATED BY BLOOD
18 OR MARRIAGE OR ACQUAINTED WITH ANY OF THESE INDIVIDUALS? AND
19 WE'LL START NOW.

20 MR. JAMES HOLMES, BRYAN BELLAMY, CARVIN ELMORE, MERV
21 POWELL, CARLITA JENKINS, JERMAINE MILES. RELATED BY BLOOD OR
22 MARRIAGE OR ACQUAINTED WITH ANY OF THOSE INDIVIDUALS. IF SO,
23 PLEASE STAND. AND I FIND NO ONE STANDING. NOW, ANY FURTHER
24 VOIR DIRE FROM THE STATE?

25 MR. SORENSON: NO, YOUR HONOR.

1 THE COURT: FROM THE DEFENSE?

2 MS. HARDEE-THOMAS: NOTHING FROM DEFENSE, YOUR HONOR.

3 THE COURT: VERY WELL. LADIES AND GENTLEMEN, LET ME
4 SHARE WITH YOU WHAT HAPPENS NEXT. WE NOW HAVE -- IN JUST A
5 MOMENT WE WILL HAVE HOPPER TURNING WHICH I LOVE. DO YOU --
6 DO YOU WAIVE THE SELECTION OF THE JURY FROM A SMALL CHILD OR
7 BLIND PERSON?

8 MR. SORENSON: YES, YOUR HONOR.

9 MS. HARDEE-THOMAS: SAME.

10 THE COURT: ALL RIGHT. WE'RE GOING TO -- HOPPER
11 TURNING. LADIES AND GENTLEMEN, YOUR NAMES WERE PLACED IN
12 LITTLE CAPSULES. THEY WERE PLACED IN THE HOPPER. WE NOW
13 HAVE HOPPER TURNING. I LOVE HOPPER TURNING. I DON'T KNOW
14 WHY, BUT I DO. HERE'S WHAT'S GOING TO HAPPEN NEXT. NOW THAT
15 WE'VE HAD HOPPER TURNING, MS. GRAHAM WILL SELECT ONE AT THE
16 TIME NAMES OF OUR JURORS. WHEN YOUR NAME IS SELECTED, I'M
17 GOING TO ASK YOU TO JUST EXIT YOUR ROW AND COME DOWN THE
18 MIDDLE. LET ME -- I'M GOING TO COME DOWN THERE SO YOU KNOW
19 WHERE TO STAND. COME THROUGH THE LITTLE SWINGING GATES AND
20 STAND SOMEWHERE IN THIS VICINITY.

21 I AM SO HAPPY TO TELL YOU THAT ABOUT A MILLION YEARS AGO
22 I WAS ON A JURY PANEL, GOT CALLED UP AND STOOD RIGHT HERE,
23 AND ALL I CAN REMEMBER IS I WISH I COULD HAVE LEFT MY HANDS
24 AT MY SEAT. I DIDN'T KNOW WHAT TO DO WITH THEM WHEN I GOT
25 THERE. IT'S OKAY; JUST BRING YOUR HANDS WITH YOU. IT'S

1 PERFECTLY OKAY.

2 STAND HERE, AND THIS IS WHAT YOU WILL HEAR. YOU WILL
3 FIRST HEAR FROM -- FROM ONE OF THE LAWYERS FROM THE STATE
4 YOU'LL HEAR ONE OF TWO THINGS: EITHER, "PRESENT THE JUROR,"
5 OR, "EXCUSE THE JUROR." IF YOU GET EXCUSED, LADIES AND
6 GENTLEMEN, PLEASE DON'T TAKE ANY OFFENSE OR ANY
7 EMBARRASSMENT. THIS IS A VERY OLD -- GOSH, IT'S -- WELL, 200
8 -- MAYBE 200 YEARS OLD THIS PROCESS AND WE'VE BEEN DOING IT
9 FOR A LONG TIME. I PROMISE YOU THAT NO ONE MEANS YOU ANY
10 EMBARRASSMENT; I CAN ASSURE YOU.

11 BUT, ANYWAY, COME THROUGH. STAND HERE. YOU'LL FIRST
12 HEAR EITHER, "PRESENT THE JUROR," OR, "EXCUSE THE JUROR."
13 THEN YOU'LL HEAR FROM MS. HARDEE-THOMAS, AND SHE WILL SAY ONE
14 OF TWO THINGS: EITHER SHE WILL SAY, "SEAT THE JUROR," AND
15 THEN YOU'LL COME AND TAKE A SEAT IN ONE OF THESE LOVELY JUROR
16 SEATS THAT WE HAVE FOR YOU OR YOU'LL HEAR HER SAY, "EXCUSE
17 THE JUROR," AND IF YOU DO, JUST TAKE YOUR SEAT BACK IN THE
18 AUDIENCE. AND, AGAIN, PLEASE DON'T THINK ANYONE MEANS ANY
19 EMBARRASSMENT; I ASSURE YOU THEY DO NOT. I WAS EXCUSED AND
20 LIKE BARELY JUST GOT THE CHANCE TO SLOW DOWN. BUT IN ANY
21 EVENT, I ASSURE YOU NO ONE MEANS YOU ANY EMBARRASSMENT
22 WHATSOEVER.

23 NOW, LADIES AND GENTLEMEN, WE'LL BE GOING THROUGH THAT
24 PROCESS. IN JUST A MOMENT I'M GOING TO TURN IT OVER TO MS.
25 GRAHAM, FIVE AND FIVE. WE'RE GOING TO HAVE ONE ALTERNATE,

1 ONE FOR THE STATE, TWO FOR THE DEFENSE, STRIKES ON THE -- ON
2 THE ALTERNATE. ALL RIGHT. HOLD ON. LET ME GET BACK UP
3 HERE, MS. GRAHAM, AND I'LL TURN IT OVER TO YOU.

4 OH, AND IF YOU HAVE LIKE A POCKETBOOK OR A NEWSPAPER OR
5 SOMETHING, BRING THAT WITH YOU, UMBRELLA OR WHATEVER. JUST
6 -- I MEAN, DON'T LEAVE YOUR THINGS OUT IN THE -- IN THE
7 AUDIENCE. JUST BRING THEM ON UP WITH YOU. OKAY.

8 THE CLERK: THANK YOU, JUDGE. JUROR NUMBER 142, ANIECE
9 WIGGINS. WHAT SAITH THE STATE?

10 MR. SORENSON: PLEASE PRESENT MS. WIGGINS.

11 THE CLERK: THE DEFENSE?

12 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

13 THE CLERK: HAVE A SEAT IN OUR JURY BOX. JUROR NUMBER
14 37, JASON DODGINS. WHAT SAITH THE STATE?

15 MR. SORENSON: PLEASE PRESENT MR. DODGINS.

16 THE CLERK: THE DEFENSE?

17 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

18 THE CLERK: JUROR 104, REBECCA MOORE. WHAT SAITH THE
19 STATE?

20 MR. SORENSON: PLEASE PRESENT MS. MOORE.

21 THE CLERK: THE DEFENSE?

22 MS. HARDEE-THOMAS: PLEASE EXCUSE THE JUROR IN THIS
23 TRIAL.

24 THE CLERK: JUROR NUMBER 126, WALTER SLATER. WHAT SAITH
25 THE STATE?

1 MR. SORENSON: PLEASE PRESENT MR. SLATER.

2 THE CLERK: THE DEFENSE?

3 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

4 THE CLERK: JUROR NUMBER 72, ROBERT IRICK. WHAT SAITH
5 THE STATE?

6 MR. SORENSON: PLEASE PRESENT MR. IRICK.

7 THE CLERK: THE DEFENSE?

8 MS. HARDEE-THOMAS: PLEASE EXCUSE THE JUROR FROM THIS
9 TRIAL.

10 THE CLERK: JUROR 145, AMY WILSON. WHAT SAITH THE
11 STATE?

12 MR. SORENSON: PLEASE PRESENT MS. WILSON.

13 THE CLERK: THE DEFENSE?

14 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

15 THE CLERK: JUROR 134, KATHRYN TERRY. WHAT SAITH THE
16 STATE?

17 MR. SORENSON: PLEASE PRESENT MS. TERRY.

18 THE CLERK: THE DEFENSE?

19 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

20 THE CLERK: JUROR NUMBER 54, TERRY GREEN. WHAT SAITH
21 THE STATE?

22 MR. SORENSON: PLEASE EXCUSE MR. GREEN.

23 THE CLERK: HAVE A SEAT BACK IN THE AUDIENCE, PLEASE.

24 JUROR NUMBER 71, SUSAN INFINGER. WHAT SAITH THE STATE?

25 MR. SORENSON: PLEASE PRESENT MS. INFINGER.

1 THE CLERK: THE DEFENSE?

2 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

3 THE CLERK: JUROR NUMBER 26, DAVAU CARTER. WHAT SAITH
4 THE STATE?

5 MR. SORENSON: PLEASE PRESENT MR. CARTER.

6 THE CLERK: THE DEFENSE?

7 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

8 THE CLERK: JUROR 150, NANCY WYSOCKI. WHAT SAITH THE
9 STATE?

10 MR. SORENSON: PLEASE PRESENT MS. WYSOCKI.

11 THE CLERK: THE DEFENSE?

12 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

13 THE CLERK: JUROR NUMBER 97, ELIZABETH MCMILLAN. WHAT
14 SAITH THE STATE?

15 MR. SORENSON: PLEASE PRESENT MS. MCMILLAN.

16 THE CLERK: THE DEFENSE?

17 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

18 THE CLERK: HAVE A SEAT IN THE JURY BOX. JUROR 105,
19 YANCY MOSLEY. YANCY MOSLEY.

20 MS. HARDEE-THOMAS: SHE'S A STUDENT.

21 THE COURT: COUNSEL, LET ME SEE YOU A SECOND.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

23 THE COURT: LADIES AND GENTLEMEN, YOU'VE PROBABLY
24 NOTICED THAT THERE'S NOW A BREAK IN THE ACTION AS WE HAVE
25 CALLED FOR YANCY MOSLEY. YANCY MOSLEY. NO YANCY MOSLEY.

1 OKAY. LADIES AND GENTLEMEN, THIS IS A JUROR THAT HAS BEEN
2 CALLED OUT OF THE BOX AND I HAVE TO -- I HAVE TO UNDER OUR
3 LAW MAKE REASONABLE ATTEMPTS TO FIND OUT WHERE IS YANCY
4 MOSLEY. I APOLOGIZE TO YOU. WE THOUGHT ALL OF OUR JURORS
5 WERE HERE THIS MORNING AND HAD REPORTED BACK. APPARENTLY WE
6 MISSED MR. OR MS. MOSLEY AND I APOLOGIZE TO YOU, BUT UNTIL I
7 CAN MAKE REASONABLE EFFORTS TO FIND THIS JUROR AND FIND OUT
8 WHERE THIS PERSON IS, WE HAVE TO HAVE -- WE HAVE TO PAUSE IN
9 THE PROCESS.

10 SO, LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A BREAK,
11 AND I WANT YOU TO BE ABLE TO BE AT EASE. IT PROBABLY WILL
12 TAKE US WHAT? FIVE OR SIX MINUTES TO MAKE A PHONE CALL AND
13 TRY TO FIND THIS PERSON WHICH IS WHAT WE WILL DO. THEN I
14 WILL REPORT BACK TO YOU WHAT I HEAR. SO WITH THAT IN MIND,
15 LADIES AND GENTLEMEN, IF YOU WANT TO RUN TO THE LADIES
16 ROOM... THOSE OF YOU THAT STILL SMOKE, IF YOU WANT TO SMOKE,
17 THAT'S FINE, BUT I MUST GIVE YOU THIS ADMONITION: PLEASE DO
18 NOT DISCUSS THIS MATTER OR ALLOW ANYONE TO DISCUSS IT WITH
19 YOU OR ANYONE THAT HAS ANYTHING TO DO WITH IT. THE REASON
20 THAT I GIVE YOU THAT INSTRUCTION, LADIES AND GENTLEMEN, IS
21 JUST TO PRESERVE THE PROCESS OBVIOUSLY AT THIS POINT. YOU
22 DON'T KNOW MUCH, BUT I TALKED TO YOU A LITTLE BIT ABOUT THE
23 MATTER AND I'VE BEEN OVER SOME OF THE ALLEGATIONS OF THE
24 INDICTMENT. AND BECAUSE I HAVE SPOKEN THOSE WORDS TO YOU, I
25 NECESSARILY THEN GIVE YOU THE DIRECTION AND THE ORDER: DO

1 NOT DISCUSS THIS MATTER OR ALLOW ANYONE TO DISCUSS IT WITH
2 YOU. AND WE WILL BE WITH -- WITH YOU JUST AS QUICKLY -- JUST
3 AS QUICKLY AS WE POSSIBLY CAN. CLEARLY LET'S TAKE -- I KNOW
4 IT TAKES SEVEN MINUTES TO SMOKE A CIGARETTE. SO WHAT WE'LL
5 DO IS WE'LL TAKE ABOUT A SEVEN-MINUTE BREAK BECAUSE WE ARE
6 PREPARED NOW TO MAKE THE PHONE CALL.

7 LADIES AND GENTLEMEN, THOSE OF YOU WHO ARE IN OUR JURY
8 BOX, SAME FOR YOU. PLEASE DO NOT DISCUSS THIS MATTER OR
9 ALLOW ANYONE TO DISCUSS IT WITH YOU. YOU ALL MIGHT LIKE TO
10 GO TO THE -- TO THE LADIES ROOM, MEN'S ROOM, AND WHAT I'M
11 GOING TO DO IS FOR THIS VERY SHORT PERIOD LIKEWISE IF
12 YOU'LL -- MS. SALISBURY IS GOING TO ESCORT YOU TO THE JURY
13 ROOM. THOSE OF YOU THAT WANT TO -- IF ANY OF YOU ARE STILL
14 SMOKING AND WANT TO HAVE A QUICK SMOKE, THAT'S PERFECTLY
15 FINE. MS. SALISBURY WILL ACCOMMODATE YOU IN THAT REGARD AS
16 WELL, BUT AGAIN WE'LL TAKE ABOUT -- PROBABLY ABOUT SIX OR
17 SEVEN MINUTES. THANK YOU.

18 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

19 THE COURT: THANK YOU ALL AND PLEASE BE SEATED. ALL
20 RIGHT. LET'S SEE. I HAVE NO JURORS IN THE COURTROOM. AND
21 TWO THINGS, OF COURSE, HAVE OCCURRED. THE FIRST IS THAT
22 JUROR 105, MR. YANCY MOSLEY'S NAME, CAME OUT OF THE BOX AND
23 HE OR SHE IS NOT PRESENT. IT'S YANCY A. MOSLEY. I AM
24 CONCERNED THE JUROR DID NOT SHOW THIS MORNING. OBVIOUSLY THE
25 FACT THAT THE JUROR DID NOT SHOW I'M SATISFIED THAT -- AND WE

1 CANNOT REACH THE JUROR. THE JUROR WAS NOT EXCLUDED, AND I AM
2 CONCERNED REGARDING THE JUROR'S FAILURE TO BE PRESENT AND I
3 DON'T THINK THAT THE JUROR'S FIT TO SERVE, SOMEONE THAT
4 CANNOT FOLLOW THE SIMPLEST OF INSTRUCTIONS TO RETURN TO COURT
5 WHEN TOLD OR ASKED, INSTRUCTED. AND, THEREFORE, I'M GOING TO
6 EXCLUDE MR. OR MS., WHICHEVER, MOSLEY FROM THIS JURY AND I AM
7 GOING TO -- WE'RE GOING TO SEND THE SHERIFF'S DEPUTY FOR
8 MOSLEY, YANCY MOSLEY, AND I WILL DEAL WITH YANCY MOSLEY AS A
9 POTENTIAL CONTEMPT MATTER. SO THAT'S HOW I'M GOING -- I
10 INTEND TO DEAL WITH YANCY MOSLEY. I NOTE THE DEFENDANT'S
11 EXCEPTION TO MY DOING SO.

12 MS. HARDEE-THOMAS: THANK YOU, YOUR HONOR.

13 THE COURT: THAT'S BEEN EXPRESSED IN CHAMBERS AND WOULD
14 FURTHER NOTE FOR THE RECORD THAT YANCY MOSLEY IS AN AFRICAN
15 AMERICAN, SAME RACE AS THE DEFENDANT. SO -- BUT THAT IS THE
16 COURT'S RULING.

17 MS. HARDEE-THOMAS: THANK YOU, YOUR HONOR.

18 THE COURT: WITH REGARDS TO THE OTHER MATTER, I WAS
19 INFORMED BY MR. TAYLOR, ONE OF OUR SECURITY FOLKS, THAT JUROR
20 NUMBER 56 APPROACHED HIM DURING THIS BREAK AND JUROR NUMBER
21 56 IS JENNIFER L. HALL, AND JENNIFER L. HALL TOLD MR. TAYLOR
22 -- HE RELATED TO ME THAT SHE KNEW MR. SORENSON, IN CHAMBERS
23 WITH BOTH COUNSEL PRESENT. I INFORMED BOTH COUNSEL THAT MR.
24 TAYLOR HAD MENTIONED THAT, AND MR. SORENSON THEN TOLD ME THAT
25 MS. HALL APPARENTLY WAS AN EMPLOYEE WHO WAS PRESENT IN A BANK

1 DURING A BANK ROBBERY AND, THEREFORE, WAS A VICTIM, AND AT
2 THE TIME OF THE PLEA OF THE DEFENDANT IN THAT MATTER, MS.
3 HALL WAS THE PERSON WHO APPEARED ON BEHALF OF THE BANK AND
4 HAD THAT PROFESSIONAL INTERACTION WITH MR. SORENSON DURING
5 THE COURSE OF THAT PLEA. AND HOW LONG AGO WAS THAT, MR.
6 SORENSON, APPROXIMATELY?

7 MR. SORENSON: MY GUESS WOULD BE IT WAS PROBABLY TWO
8 MONTHS AGO.

9 THE COURT: TWO MONTHS AGO.

10 MR. SORENSON: I DON'T BELIEVE IT WAS IN JULY -- I MEAN
11 JUNE. I THINK IT WAS IN MAY.

12 THE COURT: VERY WELL. I GO TO A FAIR AMOUNT OF EFFORT
13 TO DEFINE ACQUAINTED WITH. IT IS REMARKABLE TO ME THAT MS.
14 HALL WOULD HAVE THOUGHT THAT HER RELATIONSHIP WITH MR.
15 SORENSON WOULD NOT HAVE BEEN ENCOMPASSED WITHIN THAT
16 DEFINITION. IT IS REMARKABLE TO ME THAT THAT KIND OF
17 EXPERIENCE WOULD BE ONE THAT SHE COULD FORGET SO QUICKLY. SO
18 I'M GOING TO EXCUSE HER FROM THIS JURY.

19 I DO NOT FIND THAT IT IS APPROPRIATE FOR HER NOT TO HAVE
20 DISCLOSED THAT. I THINK IT SHOULD HAVE BEEN DISCLOSED, AND I
21 AM SUBSTANTIALLY CONCERNED THAT IT WAS NOT DISCLOSED GIVEN --
22 GIVEN THE DEFINITION OF ACQUAINTED WITH WHICH I WOULD ADD IS
23 ANY CONTACT, WHAT CONNECTION WHATSOEVER. IT IS REMARKABLE TO
24 ME THAT SHE CHOSE NOT TO DISCLOSE THAT INFORMATION AT THE
25 APPROPRIATE TIME. AND BECAUSE SHE NOW DISCLOSED THE

1 INFORMATION, I AM GREATLY CONCERNED WITH HER BEING A PART OF
2 THIS JURY. THEREFORE, I'M GOING TO EXCLUDE HER. SO, MS.
3 GRAHAM, IF YOU'D BE SO KIND AS TO REMOVE HER FROM THIS---

4 THE CLERK: YES, MA'AM.

5 THE COURT: ---JURY STRIKE. VERY WELL. NOTING THE
6 STATE'S EXCEPTION. NOW, ANYTHING FURTHER BEFORE WE BRING OUR
7 JURY BACK IN FROM THE STATE?

8 MR. SORENSON: NO, YOUR HONOR.

9 THE COURT: FROM DEFENSE?

10 MS. HARDEE-THOMAS: NOTHING FROM THE DEFENSE.

11 (PAUSE IN PROCEEDINGS.)

12 THE COURT: ALL RIGHT. ANYTHING NOW BEFORE WE BRING THE
13 JURY OUT? FROM THE STATE?

14 MR. SORENSON: NOTHING, YOUR HONOR.

15 THE COURT: FROM THE DEFENSE?

16 MS. HARDEE-THOMAS: NOTHING.

17 THE COURT: NOW LET'S GO GET THE JURY. GO GET THEM.

18 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
19 11:15 A.M.)

20 THE COURT: LET ME SEE Y'ALL QUICKLY UP HERE.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

22 THE COURT: LADIES AND GENTLEMEN, I WOULD REPORT TO YOU
23 THAT AFTER TELEPHONE CALLS AND I THINK DUE DILIGENCE, WE HAVE
24 BEEN TO THIS MOMENT UNABLE TO LOCATE YOUNG MR. MOSLEY, BUT I
25 HAVE SENT A CHAUFFEURED-DRIVEN RIDE TO FIND HIM, MR. MOSLEY,

1 AND TO BRING HIM TO JOIN US. HOWEVER, WE WILL NOT DELAY. WE
2 WILL BE PROCEEDING. THANK YOU. MS. GRAHAM, IF YOU WOULD
3 CONTINUE SELECTING OUR JURY.

4 THE CLERK: JUROR 166, ALONNA LANDRY. WHAT SAITH THE
5 STATE?

6 MR. SORENSON: PLEASE PRESENT MS. LANDRY.

7 THE CLERK: THE DEFENSE?

8 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

9 THE CLERK: JUROR NUMBER 17, SYLVESTRA BRADLEY. WHAT
10 SAITH THE STATE?

11 MR. SORENSON: PLEASE PRESENT MS. BRADLEY.

12 THE CLERK: THE DEFENSE?

13 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

14 THE CLERK: HAVE A SEAT IN OUR JURY BOX. JUROR NUMBER
15 11, EDNA BAYLES. WHAT SAITH THE STATE?

16 MR. SORENSON: PLEASE PRESENT THE JUROR.

17 THE CLERK: THE DEFENSE?

18 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

19 THE CLERK: THAT'S 12.

20 THE COURT: THAT'S 12.

21 THE CLERK: ALTERNATE?

22 THE COURT: PLEASE.

23 THE CLERK: JUROR 168, ROBERT SHEAKS. WHAT SAITH THE
24 STATE?

25 MR. SORENSON: PLEASE EXCUSE MR. SHEAKS.

1 THE CLERK: HAVE A SEAT BACK IN THE AUDIENCE. JUROR
2 169, JANTZEN SMITH. WHAT SAITH THE STATE?

3 MR. SORENSON: PLEASE PRESENT MR. SMITH.

4 THE CLERK: THE DEFENSE?

5 MS. HARDEE-THOMAS: PLEASE EXCUSE THE JUROR FROM THIS
6 TRIAL.

7 THE CLERK: JUROR 128, GARY SOUTHARD. WHAT SAITH THE
8 STATE?

9 MR. SORENSON: PLEASE PRESENT MR. SOUTHARD.

10 THE CLERK: THE DEFENSE?

11 MS. HARDEE-THOMAS: PLEASE SEAT THE JUROR IN THIS TRIAL.

12 THE CLERK: HAVE A SEAT IN OUR JURY BOX.

13 (WHEREUPON, THE JURY WAS IMPANELED AT 11:20 A.M.)

14 THE COURT: THANK YOU SO MUCH. ALL RIGHT. COUNSEL, ARE
15 THERE ANY MATTERS REGARDING THE QUALIFICATION OR THE
16 SELECTION OF THE JURY FROM THE STATE?

17 MR. SORENSON: NO, YOUR HONOR.

18 THE COURT: FROM THE DEFENSE?

19 MS. HARDEE-THOMAS: NOTHING FROM THE DEFENSE, YOUR
20 HONOR.

21 THE COURT: VERY WELL.

22 (WHEREUPON, THE JURY PANEL WAS EXCUSED FROM THE
23 COURTROOM.)

24 THE COURT: ALL RIGHT. NOW, LADIES AND GENTLEMEN, I
25 HAVE JUST A FEW, IF YOU WILL, HOUSEKEEPING MATTERS FOR YOU,

1 AND THEN WE ARE GOING TO GET RIGHT INTO MY PRELIMINARY
2 REMARKS AND THEN RIGHT INTO THE TRIAL OF THIS CASE. LADIES
3 AND GENTLEMEN, OUR LAW INDICATES THAT THERE SHOULD BE ONE OF
4 YOUR NUMBER WHO SERVES AS THE PRESIDING JUROR. THE PRESIDING
5 JUROR HAS THREE ADDITIONAL TASKS, IN ADDITION TO THE OTHER
6 TASKS OF A JUROR, AND THEY ARE AS FOLLOWS: THE PRESIDING
7 JUROR IS THE INDIVIDUAL WHO WILL ACTUALLY TAKE PHYSICAL
8 POSSESSION OF THE VERDICT FORM AND WRITE THE VERDICT OF THE
9 JURY ON THE VERDICT FORM ONCE THE DELIBERATIONS ARE
10 CONCLUDED. THE PRESIDING JUROR ALSO PRESIDES IN THE JURY
11 ROOM DURING THOSE DELIBERATIONS JUST TO BE SURE THAT
12 EVERYBODY HAS A CHANCE TO TALK. AND, FINALLY, THE PRESIDING
13 JUROR IS THE JURY SPOKESPERSON HERE IN COURT, AND IN THE
14 EVENT THAT THE JURY NEEDS TO COMMUNICATE WITH ME FOR WHATEVER
15 REASON, THE PRESIDING JUROR TAKES THAT DOWN IN WRITING AND
16 YOU GIVE THAT PROBABLY TO MS. SALISBURY, PERHAPS TO MR.
17 TAYLOR, OR ONE OF OUR OTHER BAILIFFS OR SECURITY WHO WILL IN
18 TURN GIVE THAT TO ME. THOSE ARE THE ADDITIONAL TASKS OF THE
19 PRESIDING JUROR.

20 NOW, I AM GOING -- MS. BRADLEY? MS. BRADLEY, I'M GOING
21 TO ASK THAT YOU PLEASE SERVE AS THE PRESIDING JUROR ON THIS
22 JURY, AND THAT WILL BE YOUR SEAT. YOU DON'T HAVE TO MOVE
23 NOW, BUT WHEN YOU RETURN AFTER OUR BREAK, IF YOU'LL COME
24 BACK, TAKE THAT SEAT AND KEEP THAT SEAT THROUGHOUT THE TRIAL
25 SO I CAN KEEP UP WITH YOU AS OUR PRESIDING JUROR AND JUST

1 KEEP THAT SEAT THROUGHOUT THE TRIAL. AND IS IT SOUTHARD?

2 JUROR SOUTHARD: YEAH.

3 THE COURT: MR. SOUTHARD, YOU ARE OUR ALTERNATE, AND I
4 NEED TO KEEP UP WITH YOU AS OUR ALTERNATE. SO IF YOU WOULD
5 BE SO KIND AS TO KEEP THAT SEAT -- IF YOU DON'T LIKE THAT
6 SEAT, HAVE THE OTHER ONE RIGHT NEXT TO YOU, BUT IF YOU WOULD
7 KEEP ONE OF THOSE TWO DURING THE COURSE OF THE TRIAL, I CAN
8 KEEP UP WITH YOU AS WELL AND I PROMISE IT'S NOT THE ONE WHERE
9 WE'RE GOING TO PUT THE WHOOPEE CUSHION. IT'S SIMPLY SO THAT
10 I CAN KEEP UP WITH YOU AS OUR ALTERNATE.

11 THE REST OF YOU, IF YOU GET A SEAT AND YOU LIKE IT, KEEP
12 IT, IF YOU DON'T GET HERE EARLIER AS YOU ALL COME OUT AND
13 TAKE DIFFERENT SEATS. THERE'S NO OTHER ASSIGNED SEATING.
14 NOW, COUNSEL, IF I MAY JUST SEE YOU VERY BRIEFLY, AND I WOULD
15 ASK: DOES ANYBODY NEED A COMFORT -- THEY CALL IT IN BEAUFORT
16 COUNTY - I LOVE IT - A COMFORT BREAK. ANYBODY NEED A COMFORT
17 BREAK? Y'ALL ALL RIGHT?

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

19 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, AT THIS
20 TIME I'M GOING TO ASK THAT YOU PLEASE STAND BECAUSE MS.
21 GRAHAM IS GOING TO SWEAR YOU IN AS THE JURY IN THIS CASE.

22 (WHEREUPON, THE JURY WAS SWORN AT 11:26 A.M.)

23 THE COURT: AND DO WE HAVE ANY JUROR WHO FAILED TO TAKE
24 THE OATH? IF SO, PLEASE STAND. AND I FIND NO ONE STANDING.
25 NOW, LADIES AND GENTLEMEN, YOU ARE NOW THE JURY IN THIS CASE,

1 AND THE CASE THAT WE ARE ABOUT TO TRY IS THE CASE OF THE
2 STATE OF SOUTH CAROLINA VERSUS MR. LOUIS SHEPPARD WHO, OF
3 COURSE, IS THE DEFENDANT.

4 LADIES AND GENTLEMEN, WHAT I WILL NOW SAY IS INTENDED TO
5 SERVE AS AN INTRODUCTION TO THE TRIAL OF THIS CASE. THESE
6 REMARKS ARE NOT A CHARGE ON THE LAW OF THIS CASE. I WILL
7 INSTRUCT YOU ON THE LAW APPLICABLE TO THIS CASE AT THE END OF
8 THE TRIAL BEFORE YOU RETIRE TO CONSIDER YOUR VERDICT. THIS
9 IS MERELY AN EXPLANATION OF THE PROCEDURE THAT WE WILL FOLLOW
10 IN THE TRIAL OF THIS CASE SO THAT YOU MAY BETTER UNDERSTAND
11 WHAT MAY BE HAPPENING.

12 LADIES AND GENTLEMEN, OFTTIMES JURORS WANT TO KNOW ABOUT
13 TAKING NOTES. SOME OF US ARE NOTE-TAKERS AND, LADIES AND
14 GENTLEMEN, IN THE TRIAL OF A CASE THERE IS AN ONGOING DEBATE
15 ABOUT NOTE-TAKING AND IT'S THIS: THERE IS A REAL CONCERN
16 THAT A JUROR CAN MISS SOMETHING AS IT COMES FROM THE WITNESS
17 STAND TAKING A NOTE, SO THERE'S A REAL CONCERN ABOUT THAT.
18 THERE'S ALSO A CONCERN THAT IF ONE JUROR HAS A NOTE IN THE
19 JURY ROOM THAT SAYS SOMETHING AND ANOTHER JUROR HAS A MEMORY
20 AND THERE'S A CONFLICT THAT THERE CAN BE AN UNDUE AMOUNT OF
21 INFLUENCE PLACED UPON THE NOTE.

22 LADIES AND GENTLEMEN, OBVIOUSLY WHEN A TRIAL --
23 PARTICULARLY A TRIAL THAT IS MORE LENGTHY, THEN IT IS A GOOD
24 THING FOR JURORS TO TAKE NOTES TO ALLOW JURORS TO REFRESH
25 THEIR RECOLLECTION BEFORE THEIR DELIBERATIONS, AND THAT'S THE

1 DEBATE. LET ME TELL YOU AS A POLICY MATTER WHERE I HAVE SORT
2 OF COME TO. WHEN CASES ARE EXPECTED TO BE OF RELATIVELY
3 SHORT DURATION, THEN I ASK JURORS TO JUST LISTEN VERY
4 CAREFULLY, TRUST THEIR MEMORY, AND NOT TAKE NOTES. IF A
5 TRIAL IS ANTICIPATED TO BE A MORE LENGTHY TRIAL, THEN I
6 ENCOURAGE AND PROVIDE FOR JURORS TO TAKE NOTES. BECAUSE I AM
7 INFORMED THAT THIS TRIAL IS ANTICIPATED TO BE OF RELATIVELY
8 SHORT DURATION, I'M GOING TO ASK YOU TO JUST LISTEN SO VERY
9 CAREFULLY AND CLOSELY AND ATTENTIVELY AND NOT TAKE NOTES.

10 NOW, I'VE COMMENTED ON THE EXPECTED DURATION OF THIS
11 TRIAL. I WANT YOU TO KNOW THAT I'VE ONLY COMMENTED ON THE
12 ANTICIPATED LENGTH. I IN NO WAY -- I IN NO WAY COMMENT ON
13 THE IMPORTANCE OF THIS TRIAL. THIS TRIAL IS OF THE UTMOST
14 IMPORTANCE, THE UTMOST IMPORTANCE TO THE STATE AND TO MR.
15 SHEPPARD AND TO OUR SYSTEM. IT IS SIMPLY THAT I DID NOT WANT
16 YOU TO BE CONCERNED ABOUT MY DETERMINATION THAT YOU NOT TAKE
17 NOTES. SO, LADIES AND GENTLEMEN, I ASK THAT YOU JUST LISTEN
18 CAREFULLY AND NOT TAKE NOTES.

19 LADIES AND GENTLEMEN, MR. SHEPPARD, THE DEFENDANT, IS
20 CHARGED BY AN INDICTMENT FILED IN THIS COURT WITH THE CRIME
21 OF ASSAULT AND BATTERY WITH INTENT TO KILL, THE ELEMENTS OF
22 WHICH WILL BE EXPLAINED TO YOU LATER. AS WE TALKED A LITTLE
23 BIT EARLIER, AN INDICTMENT IS SIMPLY THE CHARGE BY WHICH THE
24 CASE IS BROUGHT TO COURT. IT'S THE NOTICE DOCUMENT, AND IT
25 IS NOT IN ANY SENSE EVIDENCE OF ANY OF THE ALLEGATIONS THAT

1 IT CONTAINS.

2 MR. SHEPPARD'S PLED NOT GUILTY TO THIS INDICTMENT. THE
3 STATE, THEREFORE, HAS THE BURDEN OF PROVING EACH OF THE
4 ELEMENTS OF THE INDICTMENT BEYOND A REASONABLE DOUBT, AND IT
5 WILL BE YOUR DUTY, LADIES AND GENTLEMEN, TO DECIDE WHETHER
6 THE STATE HAS MET THAT BURDEN. YOUR PURPOSE AS JURORS IS TO
7 FIND AND TO DETERMINE THE FACTS. YOU ARE THE SOLE, THE ONLY,
8 DETERMINER OF THE FACTS.

9 IF AT ANY TIME, IF AT ANY TIME, I MAKE ANY COMMENT WHICH
10 YOU PERCEIVE TO BE A COMMENT REGARDING THE FACTS, YOU MUST
11 DISREGARD IT BECAUSE I ASSURE YOU, LADIES AND GENTLEMEN, I
12 HAVE ABSOLUTELY NO OPINION REGARDING THESE FACTS. I KNOW
13 THAT IS SOLELY WITHIN YOUR PURVIEW. YOU ARE THE ONLY, THE
14 SOLE, JUDGES OF THE FACTS.

15 YOU ARE TO DETERMINE THE FACTS FROM THE TESTIMONY THAT
16 YOU HEAR FROM THE SWORN WITNESSES AND OTHER EVIDENCE WHICH IS
17 INTRODUCED INTO COURT. IT IS UP TO YOU TO DETERMINE THE
18 INFERENCES WHICH YOU FEEL MAY PROPERLY BE DRAWN FROM THE
19 EVIDENCE. IT IS ESPECIALLY IMPORTANT THAT YOU PERFORM YOUR
20 DUTY OF DETERMINING THE FACTS DILIGENTLY AND CONSCIENTIOUSLY
21 BECAUSE ORDINARILY THERE IS NO WAY, THERE IS NO WAY, UNDER
22 OUR LAW TO CORRECT AN ERRONEOUS DETERMINATION OF THE FACTS BY
23 A JURY.

24 ON THE OTHER HAND AND WITH EQUAL EMPHASIS, THE SAME LAW
25 THAT MAKES YOU THE JUDGES OF THE FACTS MAKES ME THE JUDGE OF

1 THE LAW. THE LAW AS GIVEN TO YOU BY THE COURT IS THE ONLY
2 LAW THAT YOU MAY CONSIDER. YOU MUST ACCEPT AND FOLLOW THE
3 LAW AS GIVEN TO YOU BY THE COURT EVEN THOUGH YOU MAY DISAGREE
4 WITH IT. I CANNOT TELL YOU WHAT THE FACTS ARE, AND YOU
5 CANNOT DISAGREE WITH ME ABOUT WHAT THE LAW IS OR SHOULD BE.

6 YOUR JOB IS TO TAKE THE LAW AS I GIVE IT TO YOU AND
7 APPLY IT TO THE FACTS AS YOU FIND THEM TO BE FROM THE
8 TESTIMONY OF THE WITNESSES AND ANY OTHER EVIDENCE THAT IS
9 INTRODUCED. AFTER DOING THAT, YOU WILL RENDER YOUR VERDICT,
10 A TRUE AND JUST VERDICT UNDER THE SOLEMN OATH THAT YOU JUST
11 TOOK AS JURORS.

12 LADIES AND GENTLEMEN, UNTIL I ADVISE YOU TO BEGIN YOUR
13 DELIBERATIONS - AND I PROMISE YOU THERE WILL BE NO QUESTION
14 IN YOUR MIND WHEN THAT TIME HAS COME - YOU MUST NOT DISCUSS
15 THIS CASE WITH ANYONE INCLUDING YOUR FELLOW JURORS, YOUR
16 FRIENDS, YOUR FAMILY MEMBERS, AND ANYONE INVOLVED IN THIS
17 CASE. AFTER THE CASE IS SUBMITTED TO YOU, YOU MUST DISCUSS
18 IT ONLY IN THE JURY ROOM WITH YOUR FELLOW JURORS.

19 LADIES AND GENTLEMEN, THE ATTORNEYS, THE PARTIES IN THIS
20 CASE, HAVE BEEN ADVISED THEY ARE NOT TO TALK TO YOU AT ALL.
21 SO IF YOU HAPPEN TO SEE ANYONE INVOLVED IN THIS CASE AND THEY
22 DO NOT EVEN SAY HELLO, PLEASE KNOW THEY'RE NOT BEING
23 UNFRIENDLY. THEY ARE SIMPLY FOLLOWING MY INSTRUCTIONS.

24 DURING THIS TRIAL DO NOT READ, LISTEN TO, OR WATCH ANY
25 NEWS REPORTS ABOUT THIS CASE. I HAVE NO WAY OF KNOWING

1 WHETHER OR NOT THERE WILL BE ANY NEWS REPORTS ABOUT THIS
2 CASE. HOWEVER, IN AN ABUNDANCE OF CAUTION I TELL YOU: DO
3 NOT. THIS INCLUDES ANYTHING THAT MAY BE IN THE NEWSPAPERS,
4 ON THE RADIO, TELEVISION, AND NOW WE SAY OR ON THE INTERNET.
5 YOU MUST NOT CONSIDER ANYTHING YOU MAY HAVE READ OR HEARD
6 ABOUT THE CASE OUTSIDE THE COURTROOM, WHETHER BEFORE OR
7 DURING THE TRIAL.

8 DO NOT DO ANY TYPE OF RESEARCH. DO NOT RESEARCH TERMS
9 ON THE INTERNET OR DICTIONARY OR ANY OTHER PLACE. DO NOT
10 RESEARCH LOCATIONS. DO -- DO NONE OF THAT, LADIES AND
11 GENTLEMEN. YOU MUST RECEIVE ALL OF THE INFORMATION FROM
12 WHICH YOU WILL MAKE UP YOUR MINDS HERE IN COURT WHILE COURT
13 IS IN SESSION.

14 IT IS IMPORTANT THAT YOU KEEP AN OPEN MIND AND THAT YOU
15 NOT DECIDE ANY ISSUE IN THIS CASE UNTIL ALL OF THE EVIDENCE
16 HAS BEEN PRESENTED, THE PARTIES HAVE MADE THEIR CLOSING
17 ARGUMENTS, AND I HAVE INSTRUCTED YOU ON THE LAW IN THIS CASE.
18 IT IS YOUR SOLEMN RESPONSIBILITY TO DETERMINE WHETHER MR.
19 SHEPPARD IS GUILTY OR NOT GUILTY, AND YOUR VERDICT MUST BE
20 BASED SOLELY ON THE EVIDENCE AS IT IS PRESENTED TO YOU IN
21 THIS TRIAL AND ON THE LAW AS I INSTRUCT YOU DURING AND AT THE
22 CLOSE OF THE TRIAL.

23 NOW, IN JUST A MOMENT THE PARTIES WILL MAKE WHAT IS
24 CALLED AN OPENING STATEMENT. THE SOLICITOR WILL EXPLAIN TO
25 YOU WHAT THE SOLICITOR THINKS THE ISSUES ARE IN THIS CASE,

1 AND MS. HARDEE-THOMAS LIKEWISE WILL DO THE SAME. LADIES AND
2 GENTLEMEN, KEEP IN MIND THAT WHAT THE ATTORNEYS SAY -- WHILE
3 IT IS VERY IMPORTANT, I URGE YOU: GIVE THEM YOUR UNDIVIDED
4 ATTENTION, BUT PLEASE BE MINDFUL THAT WHAT THE ATTORNEYS SAY
5 IS NOT EVIDENCE. EVIDENCE COMES FROM THE WITNESS STAND AND
6 FROM EXHIBITS WHICH ARE ADMITTED INTO EVIDENCE.

7 NOW, LADIES AND GENTLEMEN, FROM TIME TO TIME, NO DOUBT,
8 YOU WILL HEAR ONE OF THESE LAWYERS OR BOTH OF THESE LAWYERS
9 SAY SOMETHING LIKE, "OBJECTION," OR, "YOUR HONOR, I BELIEVE
10 WE HAVE A QUESTION OF LAW OR A MATTER OF LAW TO DISCUSS WITH
11 YOU. MAY WE APPROACH THE BENCH?" SOMETHING OF THAT NATURE.
12 LADIES AND GENTLEMEN, I WANT TO EXPLAIN TO YOU WHAT IS
13 HAPPENING. IN BUSINESS, SPORTS OR ANY -- OR ANY OTHER
14 STRUCTURED ACTIVITY - AND A TRIAL IS A STRUCTURED ACTIVITY -
15 THERE ARE CERTAIN RULES THAT BOTH SIDES MUST OBEY WHEN
16 PRESENTING EVIDENCE. THESE RULES HAVE A DEFINITE PURPOSE.
17 THEIR PURPOSE IS TO INSURE THAT THE INFORMATION THAT YOU
18 RECEIVE IS THE MOST TRUSTWORTHY AND RELIABLE INFORMATION THAT
19 IS AVAILABLE.

20 LADIES AND GENTLEMEN, WHEN A LAWYER SAYS, "OBJECTION,"
21 THAT IS OUR PROCEDURE AFFORDED TO THEM TO CALL A POSSIBLE
22 VIOLATION OF THE RULES OF EVIDENCE TO MY ATTENTION AS THE
23 JUDGE IN THIS CASE, AND FOR THIS REASON YOU MUST NOT HOLD AN
24 ATTORNEY'S OBJECTION AGAINST HIS OR HER CLIENT NOR SHOULD YOU
25 CONCLUDE FROM MY RULING ON AN OBJECTION THAT I FAVOR ONE OF

1 THESE SIDES BECAUSE I CAN ASSURE YOU I DO NOT. THIS IS
2 SIMPLY THE PROCEDURE AFFORDED LAWYERS TO CALL A POSSIBLE
3 VIOLATION OF THE RULES OF EVIDENCE TO MY ATTENTION.

4 LADIES AND GENTLEMEN, WHEN I ASK COUNSEL TO APPROACH AND
5 SOMETIMES I MAY NEED TO ASK YOU TO PLEASE STEP TO THE JURY
6 ROOM, I WANT YOU TO KNOW WHAT IS OCCURRING. THAT WILL AFFORD
7 ME AN OPPORTUNITY TO HAVE A LITTLE MORE DISCUSSION WITH THE
8 LAWYERS ABOUT WHAT I'M HEARING. THAT WILL ENABLE ME TO RULE
9 ON MATTERS OF LAW, MATTERS OF -- RULING ON EVIDENCE OR RULING
10 ON MATTERS OF LAW, AND I WOULD NOT WANT ANYTHING THAT I MIGHT
11 SAY IN THOSE DISCUSSIONS TO BE PERCEIVED BY YOU AS BEING A
12 COMMENT ON THE FACTS. THAT'S THE REASON THAT I'LL EITHER ASK
13 THE LAWYERS TO APPROACH OR ASK YOU TO STEP TO YOUR JURY ROOM
14 FOR A BRIEF TIME SO THAT I CAN HAVE THOSE DISCUSSIONS.

15 NOW, LADIES AND GENTLEMEN, IN DETERMINING WHAT THE TRUE
16 FACTS ARE IN THIS CASE, YOU MUST -- YOU MUST DECIDE WHETHER
17 OR NOT THE TESTIMONY OF THE WITNESS, THE WITNESSES, IS
18 BELIEVABLE. BELIEVABLE. IT WILL BE MY RESPONSIBILITY TO
19 RULE AS A MATTER OF LAW AS TO WHETHER CERTAIN TESTIMONY IS
20 ADMISSIBLE AT ALL OR NOT, BUT ONCE THE TESTIMONY IS ADMITTED,
21 WHETHER OR NOT YOU BELIEVE IT IS SOLELY FOR YOU TO DETERMINE.

22 IN DECIDING WHETHER TO BELIEVE A WITNESS ABOUT A
23 PARTICULAR MATTER, YOU HAVE THE RIGHT TO CONSIDER ANY
24 INTEREST OF ANY WITNESS, THE BIAS OF ANY WITNESS, ANY
25 PREJUDICE OF THE WITNESS, AND THE OPPORTUNITY FOR THE WITNESS

1 TO HAVE SEEN THE MATTERS AND THINGS ABOUT WHICH THE WITNESS
2 MAY TESTIFY AND THE WAY THE WITNESS ACTS ON THE WITNESS
3 STAND. YOU HAVE A RIGHT TO CONSIDER ANYTHING THAT IS IN THE
4 RECORD THAT WILL HELP YOU EVALUATE THE TESTIMONY OF THE
5 WITNESSES, AND THIS MEANS THAT IT IS YOUR DUTY TO PAY CLOSE
6 ATTENTION TO THESE WITNESSES, OBSERVE THEM, LISTEN TO THEM,
7 AND PAY CLOSE ATTENTION TO THE ATTORNEYS AND TO THE COURT.

8 DO NOT LET YOUR THOUGHTS WANDER, BUT GIVE THE STRICTEST
9 ATTENTION TO THE TESTIMONY IN THIS CASE SO THAT AT THE END OF
10 ALL THE TESTIMONY, AFTER THE ARGUMENTS OF COUNSEL AND THE
11 CHARGE ON THE LAW BY THE COURT, YOU WILL THEN BE IN A
12 POSITION TO DETERMINE WHAT THE TRUE FACTS ARE AND TO APPLY
13 THE LAW TO THOSE FACTS AND, THUS, RENDER A TRUE AND JUST
14 VERDICT.

15 AS WE HAVE DISCUSSED -- THERE YOU ARE. AS WE HAVE
16 DISCUSSED, MADAM PRESIDING JUROR, IT WILL BE YOUR DUTY TO
17 PRESIDE IN THE JURY ROOM AT THE TIME OF THE DELIBERATION AND,
18 OF COURSE, TO BE THE JURY'S SPOKESPERSON HERE IN COURT. AS
19 WE TALKED EARLIER, IT WILL BE YOUR DUTY ALSO TO WRITE THE
20 VERDICT UPON THE CONCLUSION OF THE DELIBERATIONS BY THE JURY,
21 BUT WE'LL TALK MORE ABOUT THAT AT THE CONCLUSION OF THE CASE.

22 IN ORDER TO PRESERVE EVERYONE'S RIGHTS, I'M GOING TO
23 GIVE THE PARTIES NOW AN OPPORTUNITY TO OBJECT TO ANYTHING
24 THAT I MAY HAVE SAID. ANY EXCEPTIONS FROM THE STATE?

25 MR. SORENSON: NO, YOUR HONOR.

1 MS. HARDEE-THOMAS: NONE FROM THE DEFENSE.

2 THE COURT: DEFENSE? LADIES AND GENTLEMEN, AT THIS TIME
3 PLEASE DRAW CLOSE AS WE LISTEN TO THE OPENING STATEMENTS OF
4 THESE ATTORNEYS. MR. HILTON.

5 MR. HILTON: GOOD MORNING. I'LL START OUT BY SAYING
6 Y'ALL GOT LUCKY TWICE TODAY, ONE BY GETTING YOUR NAME PULLED
7 OUT OF THE CAGE AND THE OTHER -- THIS IS A RELATIVELY SHORT
8 TRIAL IN THE SCHEME OF THINGS. I THINK THE JUDGE MENTIONED
9 THAT TO YOU EARLIER. IT'S A SIMPLE CASE, A SIMPLE TRIAL,
10 WITH MR. LOUIS SHEPPARD. HE'S CHARGED WITH ASSAULT AND
11 BATTERY WITH INTENT TO KILL.

12 FIRST OF ALL, I'M RUSSELL HILTON. I THINK MY NAME WAS
13 MENTIONED EARLIER. I'M ONE OF THE ASSISTANT SOLICITORS HERE
14 IN DORCHESTER COUNTY, THE DISTRICT ATTORNEYS AS MENTIONED
15 PREVIOUSLY, AND SITTING AT THE TABLE WITH ME IS MR. DON
16 SORENSON WHO IS OUR DEPUTY SOLICITOR. AND THIS CASE IS ABOUT
17 TWO INMATES WHO WERE AT THE DEPARTMENT OF CORRECTIONS SERVING
18 TIME BACK IN OCTOBER 10TH OF 2005.

19 BEFORE I GET INTO THE FACTS OF THE CASE I WANT TO TELL
20 YOU RIGHT UP FRONT THAT THIS IS NO C.S.I. TYPE OF CASE. YOU
21 SEE THOSE SHOWS ON TELEVISION AND THEY'RE INTERESTING TO
22 WATCH AND I WATCH THEM MYSELF, AND IT'S AMAZING WHAT THEY CAN
23 DO WITH A LITTLE FIBER AND A FOOTPRINT. SOME OF THAT STUFF
24 IS TRUE; SOME OF IT IS NOT.

25 WHAT YOU WON'T SEE ON ANY OF THOSE SHOWS IS A CASE WHERE

1 YOU'VE GOT EYEWITNESSES, GOT EYEWITNESSES, OR WHERE THE
2 DEFENDANT WAS CAUGHT RED-HANDED, CAUGHT IN THE ACT. I SUBMIT
3 TO YOU, LADIES AND GENTLEMEN, THAT THAT'S -- THAT THIS CASE
4 IS THAT TYPE OF CASE WHERE THE DEFENDANT WAS CAUGHT RED-
5 HANDED. THERE'S EYEWITNESSES. YOU DON'T SEE A CASE LIKE
6 THAT ON THOSE T.V. SHOWS BECAUSE IT'S TOO EASY.

7 THE EVIDENCE WILL SHOW THAT BACK ON OCTOBER THE 10TH,
8 2005, THE VICTIM WHOM YOU'LL MEET, JAMES HOLMES, WAS WATCHING
9 T.V. I THINK HE SAID HE WAS WATCHING A FOOTBALL GAME. AND
10 YOU CAN PUT ALL MY SPORTS KNOWLEDGE IN A THIMBLE, SO DON'T
11 HOLD ME TO THAT.

12 HE WAS IN THE RECREATIONAL ROOM THERE AT THE PRISON.
13 THIS DEFENDANT, MR. LOUIS SHEPPARD, CAME UP BEHIND HIM TRYING
14 TO START SOME TROUBLE. MR. SHEPPARD TRIED TO STAB MR. HOLMES
15 WITH A SHANK. FORTUNATELY, MR. HOLMES WAS ABLE TO GET A HOLD
16 OF MR. SHEPPARD AND WARD OFF SOME OF THAT. BUT EVEN -- EVEN
17 THOUGH HE GOT A HOLD OF HIM, MR. HOLMES STILL RECEIVED ABOUT
18 EIGHT CUTS TO HIS FACE, HIS ARMS, HIS CHEST, HIS BACK. THAT
19 WAS BEFORE TWO OF THE PRISON GUARDS WERE ABLE TO BREAK IT UP
20 AND GET HOLMES AND SHEPPARD AWAY FROM EACH OTHER, GET MR.
21 SHEPPARD AWAY FROM MR. HOLMES.

22 YOU'RE GOING TO HEAR TESTIMONY FROM THOSE TWO GUARDS AS
23 TO WHAT THEY SAW HAPPEN, AND UNFORTUNATELY THEY WEREN'T ABLE
24 TO RECOVER THAT SHANK. IT'S SUSPECTED THAT ONE OF THE OTHER
25 INMATES PICKED IT UP EITHER TO PROTECT MR. SHEPPARD, TO LOOK

1 OUT FOR MR. SHEPPARD, OR JUST SIMPLY TO HAVE IT FOR
2 THEMSELVES. WHATEVER HAPPENED TO IT, THE PRISON STAFF WAS
3 UNABLE TO RECOVER IT.

4 YOU'LL ALSO HEAR TESTIMONY FROM MR. HOLMES ABOUT WHAT
5 HAPPENED TO HIM. AND SPEAKING OF THE VICTIM, I WANT TO TAKE
6 A MOMENT TO TALK ABOUT HIM. FIRST OF ALL, HE'S THE VICTIM OF
7 MR. LOUIS SHEPPARD'S RAMPAGE AND SHANKING ON OCTOBER 10TH,
8 2005, AND DON'T THINK FOR ONE MINUTE THAT I'M STANDING UP
9 HERE TELLING YOU THAT JAMES HOLMES IS A GOOD GUY. HE'S NOT.
10 HE'S SERVING 20 YEARS FOR ARMED ROBBERY, AND YOU'LL FIND THAT
11 OUT SOON ENOUGH.

12 AND WITH THAT SAID, AS TEMPTING AS IT IS, DON'T GET
13 CALLOUSED TO THE FACTS OF THIS CASE AND SAY, "OH, WELL, HE
14 GOT WHAT HE DESERVED. HE'S IN THERE FOR ARMED ROBBERY;
15 THAT'S JUST PART OF PRISON LIFE," BECAUSE IT'S NOT. NOWHERE
16 ON HIS SENTENCING PAPERWORK WILL YOU SEE THAT HE WAS
17 SENTENCED TO BE SLICED UP BY A HOMEMADE SHANK MADE LOUIS
18 SHEPPARD. DON'T FALL INTO THAT CRACK, LADIES AND GENTLEMEN.

19 NOW, YOU AS JURORS IN THIS CASE HAVE THE DUTY OF HEARING
20 ALL THE EVIDENCE, AND AFTER THAT EVIDENCE IS PRESENTED BY THE
21 STATE, MR. SORENSON AND I ARE GOING TO ASK YOU TO FIND MR.
22 SHEPPARD GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL.
23 AN ASSAULT AND BATTERY WITH INTENT TO KILL IS AN UNLAWFUL ACT
24 OF VIOLENT INJURY UPON THE PERSON OF ANOTHER WITH MALICE
25 AFORETHOUGHT. AND MALICE AFORETHOUGHT IS SOMETIMES REFERRED

1 TO AS ILL WILL OR HATRED OR SOMETIMES DEFINED AS A DEPRAVED
2 HEART OR A DEPRAVED MIND FATALLY BENT ON MISCHIEF. WE'LL
3 TALK MORE ABOUT THAT AT THE END OF THE TRIAL, BUT I SUBMIT TO
4 YOU, LADIES AND GENTLEMEN, THAT AT THE END OF THIS CASE THE
5 EVIDENCE WILL BE CRYSTAL CLEAR THAT MR. SHEPPARD CAME UP
6 BEHIND JAMES HOLMES AND SHANKED HIM WITH A HOMEMADE SHANK
7 MADE AT THE PRISON THERE.

8 I KNOW IT'S INCONVENIENT, JURY SERVICE THAT IS, BUT I'M
9 GOING TO TAKE THIS BRIEF OPPORTUNITY TO THANK YOU FOR YOUR
10 COOPERATION AND SOMEWHAT ARM-TWISTED WILLINGNESS TO SERVE AND
11 I ASK YOU TO GIVE YOUR ATTENTION NOW TO MS. HARDEE-THOMAS AS
12 SHE GIVES HER OPENING STATEMENT BEFORE WE START TAKING
13 TESTIMONY. THANK YOU.

14 MS. HARDEE-THOMAS: SOLICITORS. GOOD MORNING, LADIES
15 AND GENTLEMEN. MADAM JUDGE.

16 THE COURT: MS. HARDEE-THOMAS.

17 MS. HARDEE-THOMAS: GOOD MORNING, LADIES AND GENTLEMEN.
18 ON OCTOBER 10, 2005, AN ALTERCATION, HORSEPLAY, APPEARED TO
19 TURN SERIOUS WHEN GUARD ELMORE, WHICH YOU'RE GOING TO HEAR
20 FROM THIS WITNESS STAND, CAME TO THE A. WING WHERE EVERYONE
21 WAS LOOKING AT THIS FOOTBALL GAME. THEY HEARD GUARD BELLAMY
22 YELL OUT. IT IS MY UNDERSTANDING THAT SOME INMATES WERE
23 THERE AFTER THE YELL-OUT AND HEARING OFFICER, EXCUSE ME,
24 GUARD ELMORE CAME INTO THE A. WING. SOME PEOPLE WERE MOVING
25 AROUND GOING BACK TO THEIR CELLS. IT WAS JUST -- I WOULDN'T

1 SAY IT WAS CHAOS. PEOPLE WERE JUST TRYING TO GET BACK TO
2 THEIR CELLS BECAUSE THEY KNEW IT WAS GOING TO BE A SHAKEDOWN
3 BECAUSE OF WHAT WAS OCCURRING IN A. WING.

4 DID THIS INCIDENT ARISE TO AN ASSAULT AND BATTERY WITH
5 INTENT TO KILL? THAT'S WHAT I WANT YOU TO LISTEN TO THE
6 EVIDENCE FOR. WE SAY IT DID NOT. WAS IT A SIMPLE ASSAULT OR
7 AT MOST ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE?
8 THAT'S FOR YOU TO DECIDE.

9 NO WEAPON WAS FOUND. YOU HEARD THE SOLICITOR COME UP IN
10 HERE AND SAY THAT, YOU KNOW, THESE C.S.I.'S -- YOU'VE GOT
11 EVIDENCE AND ALL THIS OTHER STUFF, BUT THE ONE THING YOU
12 CAN'T TAKE AWAY FROM HUMAN BEINGS IS COMMON SENSE AND LIFE
13 EXPERIENCES. MR. HOLMES, THE VICTIM IN THIS PARTICULAR
14 MATTER, HAD SUPERFICIAL WOUNDS, SUPERFICIAL WOUNDS, NOT
15 SERIOUS. MR. SHEPPARD REFUSED ANY MEDICAL TREATMENT.

16 AGAIN, WE ASK THAT YOU USE YOUR COMMON SENSE AND LIFE
17 EXPERIENCES WHEN YOU HEAR THE WITNESSES TESTIFY ON THE
18 WITNESS STAND. WE FEEL THAT AFTER YOU'VE HEARD ALL THE
19 EVIDENCE IN THIS CASE THAT YOU WILL COME BACK WITH A VERDICT
20 OF NOT GUILTY TO ASSAULT AND BATTERY WITH INTENT TO KILL.

21 NOW, YOU CAN LOOK AT THE SIZES OF THESE INDIVIDUALS.
22 YOU CAN SEE MR. LOUIS SHEPPARD. YOU CAN SEE MR. HOLMES WHEN
23 HE COMES ON THE STAND. AND THERE'S GOING TO BE ANOTHER
24 INMATE THAT'S GOING TO BE TESTIFYING, MR. JERMAINE MILES,
25 THAT'S THE BARBER THAT WAS CUTTING HAIR, NOT AT THAT TIME --

1 BUT HE'S THE BARBER THAT WAS IN THE JAIL. HE WILL TESTIFY TO
2 WHAT HE SAW. IT WASN'T ANYTHING SERIOUS. HE SAW -- YOU'RE
3 GOING TO HEAR TESTIMONY THAT THEY APPEARED AS IF THEY WERE
4 HORSE-PLAYING. IRREGARDLESS, WE'RE HERE.

5 MR. LOUIS SHEPPARD AND I WOULD LIKE TO THANK YOU FOR
6 DOING YOUR CIVIC DUTY, TAKING TIME OUT TO HEAR A CASE THAT
7 HAPPENED IN DORCHESTER COUNTY. WE UNDERSTAND THAT YOU'RE
8 TAKING TIME TO DO THAT BECAUSE THIS IS AN OBLIGATION THAT
9 EVERYONE HAS TO DO IN LIFE, AND WE FEEL THAT AFTER YOU'VE
10 HEARD ALL THE EVIDENCE IT WILL BE CLEAR THAT THIS WAS NOT AN
11 ASSAULT AND BATTERY WITH INTENT TO KILL CASE.

12 THE COURT: THANK YOU VERY MUCH. COUNSEL, IF YOU'D
13 PLEASE CALL YOUR FIRST WITNESS.

14 MR. SORENSON: THE STATE CALLS JAMES HOLMES, YOUR HONOR.

15 THE COURT: ALL RIGHT. MR. HOLMES, JUST COME ON -- IF
16 YOU WOULD JUST COME ON AROUND HERE AND BE SEATED FOR ME. MR.
17 HOLMES, THERE YOU GO.

18 JAMES HOLMES, AFTER BEING DULY SWORN, TESTIFIED AS
19 FOLLOWS:

20 THE COURT: MR. TAYLOR IS GOING TO PUT THE MICROPHONE
21 THERE FOR YOU, MR. HOLMES. YOU'RE GOING TO HAVE TO SCOOT UP
22 A LITTLE BIT. OUR MICROPHONE SYSTEM IS NOT THE BEST IN THE
23 WORLD, BUT WOULD YOU STATE YOUR FULL NAME FOR OUR RECORD,
24 PLEASE?

25 THE WITNESS: JAMES HOLMES.

1 THE COURT: AND SPELL YOUR LAST NAME.

2 THE WITNESS: H-O-L-M-E-S.

3 THE COURT: ALL RIGHT. AND JUST -- IF YOU WOULD JUST
4 KEEP YOUR VOICE UP FOR US, WE WOULD APPRECIATE THAT, MR.
5 HOLMES. MR. SORENSON, YOUR WITNESS.

6 MR. SORENSON: THANK YOU, YOUR HONOR.

7 THE COURT: UH-HUH.

8 MR. SORENSON: MAY IT PLEASE THE COURT?

9 DIRECT EXAMINATION

10 BY MR. SORENSON:

11 Q. MR. HOLMES, YOU NEED TO MAKE SURE YOU KEEP YOUR VOICE UP
12 NICE AND LOUD SO WE ALL CAN HEAR YOU. OKAY? IF YOU WOULD,
13 TELL THE JURY HOW OLD YOU ARE.

14 A. TWENTY-THREE.

15 Q. TWENTY-THREE? AND WHERE ARE YOU ORIGINALLY FROM?

16 A. GEORGETOWN.

17 Q. GEORGETOWN? AND OBVIOUSLY FROM YOUR -- FROM HOW YOU'RE
18 DRESSED HERE TODAY AND YOUR RESTRAINTS, YOU'RE CURRENTLY
19 INCARCERATED?

20 A. YEAH.

21 Q. HOW LONG HAVE YOU BEEN IN THE DEPARTMENT OF CORRECTIONS?

22 A. FOUR YEARS.

23 Q. ABOUT FOUR YEARS? IN FACT, YOU PLED I GUESS BACK IN
24 2003 TO ARMED ROBBERY, POSSESSION OF A WEAPON DURING THE
25 COMMISSION OF A VIOLENT CRIME, AND TWO COUNTS OF FINANCIAL.

1 TRANSACTION CARD, I GUESS ONE THEFT AND ONE FRAUD? IS THAT
2 CORRECT?

3 A. YEAH.

4 Q. ALL RIGHT.

5 A. THAT'S CORRECT.

6 Q. AND YOU'RE CURRENTLY SERVING A 20-YEAR SENTENCE?

7 A. YES, SIR.

8 Q. AND DID YOU GO TO THE DEPARTMENT OF CORRECTIONS BACK
9 WHEN YOU PLED BACK IN 2003?

10 A. YEAH.

11 Q. OKAY. ALL RIGHT. BACK IN OCTOBER OF 2005 WHERE WERE --
12 IN WHAT -- WHAT FACILITY WERE YOU IN AT THAT TIME?

13 A. I WAS HOUSED AT LIEBER.

14 Q. OKAY. THAT'S HERE IN DORCHESTER COUNTY?

15 A. IT'S DORCHESTER COUNTY.

16 Q. OKAY. AND IN OCTOBER OF 2005 WAS THAT THE FIRST
17 INSTITUTION THAT YOU HAD BEEN TO WHEN YOU WENT INTO THE
18 DEPARTMENT OF CORRECTIONS?

19 A. NO.

20 Q. WHERE HAD YOU BEEN PRIOR TO COMING TO LIEBER?

21 A. I'D BEEN TO LEE, LEE CORRECTIONAL INSTITUTION, AND I WAS
22 TRANSFERRED TO LIEBER.

23 Q. OKAY. DO YOU REMEMBER WHEN IT WAS THAT YOU CAME TO
24 LIEBER?

25 A. BACK IN LIKE OCTOBER 2004.

1 Q. SO ABOUT A YEAR BEFORE THIS HAPPENED?

2 A. YEAH, ABOUT A YEAR BEFORE---

3 Q. OKAY.

4 A. ---THIS HAPPENED.

5 Q. ALL RIGHT. AND LET ME ASK YOU THIS: BACK IN -- DO YOU
6 -- DO YOU HAVE ANY IDEA ABOUT HOW MUCH YOU WEIGH RIGHT NOW,
7 MR. HOLMES?

8 A. NO.

9 Q. OKAY. COMPARED TO OCTOBER OF 2005, HAVE YOU PUT ON ANY
10 WEIGHT OR LOST ANY WEIGHT SINCE OCTOBER OF 2005?

11 A. I'VE PUT ON SOME WEIGHT.

12 Q. OKAY. DO YOU KNOW ABOUT HOW MUCH?

13 A. NO. PROBABLY ABOUT A HUNDRED POUNDS, SOMETHING LIKE
14 THAT.

15 Q. SO YOU'VE BEEFED UP A LOT IN THE LAST YEAR AND A HALF?

16 A. (WITNESS NODDED HEAD UP AND DOWN.)

17 Q. ALL RIGHT. LET ME ASK YOU THIS: THE DEFENDANT IN THIS
18 CASE, LOUIS SHEPPARD, DO YOU KNOW MR. SHEPPARD?

19 A. YES, SIR.

20 Q. OKAY. HOW DO YOU KNOW -- TELL THIS JURY HOW YOU KNOW
21 MR. SHEPPARD.

22 A. I KNOW HIM FROM WHEN WE'VE BEEN ON THE STREETS AND FROM
23 AROUND THE WAY. HE'S FROM THE SAME AREA WHERE I'M FROM.

24 Q. SO HE'S FROM GEORGETOWN ALSO, THAT AREA?

25 A. YEAH, FROM THE PAWLEYS ISLAND AREA THOUGH.

1 Q. OKAY. AND WERE YOU EVER INCARCERATED WITH MR. SHEPPARD?

2 A. YES.

3 Q. OKAY. YOU HAD INDICATED THAT YOU WERE AT LEE
4 CORRECTIONAL FACILITY AT ONE POINT IN TIME. WAS HE AT LEE
5 CORRECTIONAL FACILITY WITH YOU?

6 A. YEAH, WE WAS HOUSED AT LIEBER -- I MEAN LEE CORRECTIONAL
7 INSTITUTION TOGETHER.

8 Q. AND THEN IN OCTOBER OF 2005 YOU SAID YOU WERE HOUSED AT
9 LIEBER AT THAT POINT IN TIME. WHAT UNIT WERE YOU HOUSED IN
10 AT LIEBER BACK IN OCTOBER OF 2005?

11 A. I WAS HOUSED IN THE ASHLEY UNIT.

12 Q. OKAY. AND WAS MR. SHEPPARD HOUSED IN THE ASHLEY UNIT OF
13 LIEBER AT THAT SAME TIME IN OCTOBER OF 2005?

14 A. YES.

15 Q. SO DID YOU KNOW HIM BY NAME AND SIGHT AND KNOW HIM TO
16 TALK TO BACK IN OCTOBER 2005?

17 A. YES.

18 Q. MR. HOLMES, I WANT TO TURN YOUR ATTENTION BACK TO THE
19 EVENING OF OCTOBER 10TH OF 2005. YOU INDICATED YOU WERE
20 HOUSED IN THE ASHLEY UNIT AT THAT TIME. IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. ALL RIGHT. AND WHAT WERE YOU DOING THAT EVENING?

23 A. THAT EVENING WE WAS SITTING ON THE BENCH WATCHING THE
24 COLLEGE FOOTBALL GAME.

25 Q. OKAY. AND WERE THERE OTHER INMATES THAT WERE OUT -- OUT

1 OF THEIR CELLS AT THAT POINT IN TIME ALSO, KIND OF MINGLING
2 AROUND, WATCHING T.V. AND DOING STUFF?

3 A. YES.

4 Q. OKAY. SO I ASSUME THIS WAS ALL PRIOR TO Y'ALL BEING
5 LOCKED DOWN FOR THE NIGHT?

6 A. YEAH.

7 Q. OKAY. AND WAS MR. SHEPPARD ON THE UNIT THAT EVENING?

8 A. YEAH, HE WAS IN THE UNIT.

9 Q. OKAY. AND IF YOU WOULD, DO YOU RECALL WHAT HAPPENED TO
10 YOU THAT NIGHT?

11 A. THAT NIGHT I WAS SITTING ON THE BENCH WATCHING T.V.
12 GETTING READY FOR THE -- LIKE TO STAY UP FOR THE LITTLE
13 OUTCOME; RIGHT? AND THEN I WAS SITTING ON THE BACK BENCH,
14 AND AS I WAS SITTING ON THE BACK BENCH WITH MY HEADSET ON
15 WATCHING THE GAME, IN A LITTLE QUICK SECOND THAT'S WHEN
16 SOMETHING WAS JABBING ME, STICKING ME IN THE BACK, WHICH WAS
17 A SHANK OR SOMETHING. AS I TURNED AROUND, IT WAS LOUIS
18 SHEPPARD---

19 Q. OKAY.

20 A. ---WITH A SHANK IN HIS HAND.

21 Q. SO YOU ACTUALLY SAW THE SHANK IN MR. SHEPPARD'S HAND?

22 A. YES.

23 Q. ANY DOUBT ABOUT IT THAT IT WAS THAT MAN THAT RIGHT THERE
24 THAT HAD THE SHANK IN HIS HAND?

25 A. HE HAD THE SHANK IN HIS HAND.

1 Q. WHAT HAPPENED THEN?

2 A. HE WAS STABBING ME LIKE MULTIPLE TIMES, A COUPLE OF
3 TIMES, AND I TURNED AROUND TO TRY TO DEFEND MYSELF, YOU KNOW,
4 AND HE JUST KEEP COMING AT ME, STICKING THE KNIFE AT ME, AND
5 WE WAS BACKING UP LIKE BACKING UP TOWARDS THE MICROWAVE LIKE
6 GOING OUT BY THE DOOR. THAT'S WHEN OFFICER BELLAMY AND
7 SERGEANT ELMORE -- THEY WAS AT THE DOOR AND THEY SEE ALL THE
8 COMMOTION THAT WAS GOING ON AND STUFF. THEY CALLED FIRST
9 RESPONSE, AND LOUIS SHEPPARD IS STILL JIGGING AT ME WITH THE
10 KNIFE, HITTING ME - YOU KNOW WHAT I'M SAYING - ALL OVER MY
11 BODY IN SMALL AREAS LIKE THAT, AS WE WERE BACKING UP GOING TO
12 THE DOOR.

13 AND I HAD TO GRAB HIM AND HOLD HIM, AND WE WAS LIKE -- I
14 HOLD HIM IN THE HEADLOCK. WE WAS BACKING OUT, BACKING UP AND
15 GOING IN TO OPEN THE DOOR BECAUSE THE SERGEANT AND OFFICER
16 BELLAMY -- THEY OPENED THE DOOR. AND WE WAS OUT THERE AND
17 THEY WERE TELLING ME TO, "LET HIM GO. LET HIM GO. LET HIM
18 GO." AND I WAS TRYING TO LET THEM KNOW THAT HE HAD A SHANK
19 AND HE WAS STABBING ME AND THEY SEE ALL THE BLOOD AND SO...

20 Q. OKAY. LET ME ASK YOU: WERE THERE OTHER INMATES AROUND
21 WHEN THIS WAS HAPPENING?

22 A. YEAH.

23 Q. OKAY. AND THOSE CORRECTIONAL OFFICERS THAT YOU SPOKE
24 ABOUT, SERGEANT ELMORE AND OFFICER BELLAMY, DID THEY
25 ULTIMATELY GET THE TWO OF Y'ALL SEPARATED?

1 A. YEAH.

2 Q. HOW DID THEY DO THAT?

3 A. AFTER WE WAS TUSSLING AND BACKING OUT LIKE -- BECAUSE
4 THEY HAD -- PEOPLE WANTED US TO GET OFF THE ROCK, YOU KNOW
5 WHAT I'M SAYING, BECAUSE THE ROCK STARTED SHIFTING AND A LOT
6 OF PEOPLE WAS GOING ON AND, YOU KNOW WHAT I'M SAYING, AND
7 THEY WERE TRYING TO DISSOLVE IT.

8 Q. YOU SAID THERE WERE A LOT OF OTHER INMATES OUT OF THEIR
9 CELLS AT THAT TIME?

10 A. INMATES ON THE GROUND AND EVERYTHING. LIKE UP IN THE
11 AREA WHERE THEY'RE MIXING, THEY WERE TRYING TO PUSH THEM TO
12 GET THEM OUT OF THE AREA, YOU KNOW, BECAUSE OFFICER BELLAMY
13 WAS SCREAMING FOR THE KNIFE OR WHATEVER LIKE THAT RIGHT
14 THERE.

15 Q. AND DO YOU KNOW WHAT -- LET ME ASK YOU THIS: DO YOU
16 KNOW WHAT HAPPENED TO THAT -- YOU DESCRIBED IT AS A KNIFE.
17 COULD YOU DESCRIBE TO THE JURY WHAT EXACTLY WAS IT MR.
18 SHEPPARD HAD? WAS IT LIKE A KITCHEN KNIFE OR WAS IT -- DO
19 YOU KNOW WHAT IT WAS?

20 A. IT WAS LIKE A -- PROBABLY A BROKE METAL SHAVED DOWN LIKE
21 WITH A LITTLE HANDLE ON IT LIKE AN ICE PICK.

22 Q. LOOKED LIKE A SHARPENED PIECE OF METAL?

23 A. YEAH, A SHARPENED PIECE OF METAL.

24 Q. DO YOU KNOW WHAT HAPPENED TO THAT PIECE OF METAL?

25 A. PROBABLY PASSED IT OFF OR, YOU KNOW, ONE OF HIS BUDDIES

1 DONE GRABBED IT LIKE THAT RIGHT THERE.

2 Q. SO IT WASN'T -- IT WASN'T -- BY THE TIME THEY GOT THE
3 TWO OF Y'ALL SEPARATED, DID HE HAVE IT IN HIS HAND ANYMORE?

4 A. DID HE HAVE IT IN THE HAND? NO, BECAUSE THERE WAS SO
5 MUCH PEOPLE AROUND AND ALL IN THE WAY, AND GUYS WERE GETTING
6 IN THE WAY AND STUFF LIKE THAT AND THEY WERE TRYING TO GET
7 GUYS OUT OF THE WAY, YOU KNOW.

8 Q. DID THE OFFICERS EVENTUALLY GET THE TWO OF Y'ALL
9 SEPARATED THOUGH?

10 A. THEY DID GET US SEPARATED.

11 Q. LET ME ASK YOU THIS: WHILE ALL THIS WAS GOING ON AND
12 YOU WERE WRESTLING WITH MR. SHEPPARD AND HE WAS COMING AT
13 YOU, AS YOU SAID, WITH THAT KNIFE TRYING TO STAB YOU, WAS HE
14 SAYING ANYTHING TO YOU?

15 A. YEAH.

16 Q. WHAT WAS HE SAYING TO YOU WHEN THIS WAS GOING ON?

17 A. HE SAID WORD HAD COME TO HIM THAT HE HAD TO TOUCH ME UP.

18 Q. WORD HAD COME TO HIM THAT HE HAD TO TOUCH YOU UP?

19 A. YEAH.

20 Q. IN THINKING ABOUT THAT, DO YOU KNOW WHAT HE MEANT BY
21 THAT?

22 A. NOT REALLY. AND THEN AFTER I THINK ABOUT IT, LIKE I
23 SAID, HE SAID WORD COME TO ME TO TOUCH ME UP, I WAS LIKE
24 PUZZLED FOR A LITTLE MINUTE 'TIL I SIT DOWN AND FIGURE OUT
25 WHAT'S GOING ON.

1 Q. THIS IS OCTOBER OF 2005; RIGHT? OCTOBER 10TH OF 2005?

2 A. YEAH.

3 Q. LET ME ASK YOU: HAD SOMETHING HAPPENED, MR. SHEPPARD
4 (SIC), IN THE DEPARTMENT OF CORRECTIONS INVOLVING YOU ABOUT A
5 YEAR PRIOR TO THIS, ABOUT ELEVEN MONTHS PRIOR TO?

6 A. YEAH.

7 Q. OKAY. AND THAT INVOLVED YOUR CELL MATE AT THAT TIME
8 ATTEMPTING TO ESCAPE FROM THE DEPARTMENT OF CORRECTIONS?

9 A. YES.

10 Q. ALL RIGHT. HAD YOU PROVIDED SOME INFORMATION TO LAW
11 ENFORCEMENT REGARDING THAT?

12 A. YES.

13 Q. OKAY. DURING THAT PERIOD OF TIME FROM NOVEMBER OF 2004
14 UP 'TIL OCTOBER OF 2005, WERE YOU AWARE OF WHETHER THAT
15 INFORMATION HAD GOTTEN OUT TO THE PRISON POPULATION THAT YOU
16 HAD COOPERATED WITH LAW ENFORCEMENT?

17 A. YES.

18 Q. OKAY. AND, IN FACT, YOU SAID THIS WAS OCTOBER 10TH OF
19 2005. DID YOU HAVE AN OPPORTUNITY TWO WEEKS AFTER THAT TO
20 COME TESTIFY AGAINST THAT FORMER CELL MATE OF YOURS HERE IN
21 THIS COURTROOM?

22 A. YES.

23 Q. ALL RIGHT. AND NOW THINKING BACK TO THOSE WORDS HE SAID
24 TO YOU, DID THAT THEN HAVE SOME SIGNIFICANCE TO YOU?

25 A. YES.

1 Q. WHAT WAS THAT?

2 A. THAT WAS REGARDING TO THE INCIDENT WHERE THAT HAPPENED
3 WITH MY CELL MATE, CHRISTOPHER WILLIAMS. THAT WAS A PARTNER
4 OF HIS.

5 Q. IT WAS A PARTNER OF HIS?

6 A. YEAH.

7 Q. OKAY. BACK IN OCTOBER OF 2005 WERE YOU WORRIED AT THAT
8 POINT IN TIME THAT SOMEBODY MIGHT BE OUT TO GET YOU IN THE
9 DEPARTMENT OF CORRECTIONS DUE TO YOUR COOPERATION WITH LAW
10 ENFORCEMENT?

11 A. YEAH. THERE WAS A LITTLE -- A LITTLE ANIMOSITY AND A
12 LITTLE SAY-SO WAS GOING ON ABOUT IT.

13 Q. NOW, LET'S MAKE SURE WE GOT THIS STRAIGHT, MR. HOLMES.
14 YOU TESTIFIED THAT INITIALLY YOU FELT SOMEONE KIND OF JIG YOU
15 IN YOUR BACK?

16 A. YEAH, IT WAS POKING IN MY LOWER BACK.

17 Q. YOU TURNED AROUND AND YOU INDICATED THAT YOU SAW
18 SOMEBODY YOU SAID WAS LOUIS SHEPPARD HOLDING A KNIFE COMING
19 AT YOU OR KIND OF A HOMEMADE SHANK?

20 A. YEAH, A SHANK.

21 Q. DO YOU SEE THAT PERSON THAT HAD THAT SHANK COMING AT
22 YOU? DO YOU SEE HIM HERE IN THE COURTROOM?

23 A. YES.

24 Q. WOULD YOU POINT HIM OUT FOR THIS JURY?

25 A. (THE WITNESS POINTS.)

1 Q. THE DEFENDANT SEATED OVER THERE NEXT TO MS.

2 HARDEE-THOMAS?

3 A. YEAH.

4 Q. ANY DOUBT IN YOUR MIND THAT WAS THE PERSON THAT WAS

5 STABBING AT YOU AND CUTTING YOU BACK ON OCTOBER 10TH OF 2005?

6 A. THAT'S HIM.

7 Q. THAT'S HIM? ALL RIGHT. NOW, WHAT -- AFTER THEY GOT THE

8 TWO OF Y'ALL SEPARATED, WHERE DID YOU GO?

9 A. I WENT TO MEDICAL.

10 Q. OKAY. AND WHAT, IF ANY, INJURIES DID YOU SUFFER AS A

11 RESULT OF THIS ASSAULT BACK THEN?

12 A. I SUFFERED LIKE NINE PUNCTURE WOUNDS TO THE LOWER BACK,

13 MID CHEST, FOREARMS, ARMS, AND RIGHT ARMS (SIC) AND A SCAR

14 RIGHT THERE.

15 Q. A SCAR -- YOU'VE STILL GOT A SCAR UP UNDER YOUR NOSE

16 THERE?

17 A. YEAH.

18 Q. AND THAT'S ALL FROM WHO STABBING YOU AND SLICING AT YOU?

19 A. LOUIS SHEPPARD.

20 Q. SHEPPARD? I SHOW YOU WHAT'S BEEN MARKED AS STATE'S

21 EXHIBIT NUMBER 1. DO YOU RECOGNIZE THIS DIAGRAM, MR. HOLMES?

22 A. YEAH, THAT'S THE DIAGRAM OF THE ASHLEY UNIT.

23 MR. SORENSON: YOUR HONOR, AT THIS TIME WE WOULD OFFER

24 STATE'S 1 INTO EVIDENCE, I BELIEVE WITHOUT OBJECTION.

25 MS. HARDEE-THOMAS: I HAVE NO OBJECTION.

1 THE COURT: ALL RIGHT. STATE'S EXHIBIT NUMBER 1 IN
2 EVIDENCE WITHOUT OBJECTION. IT IS A DIAGRAM.

3 (STATE'S EXHIBIT 1 WAS RECEIVED IN EVIDENCE.)

4 BY MR. SORENSON:

5 Q. ALL RIGHT. AND, MR. HOLMES, I'M NOT SURE IF YOU CAN GET
6 YOUR HAND UP HIGH ENOUGH, BUT IF YOU CAN USE THIS LASER
7 POINTER RIGHT HERE... AT THE TOP RIGHT THERE IS THE RED DOT.
8 KIND OF -- KIND OF POINT OUT TO THE JURY INITIALLY -- ALL
9 RIGHT. THAT'S THE -- WHERE -- DO YOU RECALL WHAT CELL YOU
10 WERE IN BACK IN OCTOBER OF 2005?

11 A. I WAS HOUSED IN CELL A-17.

12 Q. OKAY. AND YOU TALKED EARLIER ABOUT SITTING WATCHING
13 TELEVISION. WHERE -- WHERE WERE YOU SEATED AT?

14 A. I WAS SEATED LIKE -- THIS IS THE BENCH AREA RIGHT HERE.

15 Q. OKAY.

16 A. THEY GOT BENCHES RIGHT HERE IN THIS LITTLE AREA RIGHT
17 HERE.

18 Q. ALL RIGHT. THEN THERE'S A TELEVISION I GUESS SOMEWHERE
19 IN THERE?

20 A. YEAH. THE TELEVISION SIT RIGHT HERE, BUT IT SIT UP.

21 Q. ALL RIGHT. AND YOU INDICATED THAT MR. SHEPPARD CAME UP
22 AND INITIALLY STABBED YOU IN THE BACK. WHERE -- WHERE WOULD
23 HE HAVE COME FROM FOR THAT TO HAVE HAPPENED?

24 A. SEE, RIGHT HERE IS THE BENCH AREA RIGHT -- DOWN RIGHT --
25 DOWN RIGHT AT THE BOTTOM RIGHT HERE THERE'S A STAIR. YOU CAN

1 COME FROM RIGHT HERE AND COME DOWN FROM THE BOTTOM AND
2 THERE'S SHOWERS RIGHT THERE, AND YOU CAN COME FROM RIGHT
3 HERE. AND THERE'S ANOTHER STAIRWELL RIGHT HERE; RIGHT? SO
4 HE HAD TO HAVE CAME FROM RIGHT HERE AROUND THIS CORNER RIGHT
5 HERE AND CREEP UP BEHIND THE BENCH WHILE I WAS SITTING DOWN
6 ON THE END RIGHT HERE. HE CAME FROM LIKE DOWN BY THE AREA
7 RIGHT THERE AND CREEP UP, COME UP BEHIND ME RIGHT THERE. WE
8 WAS TUSSLING UP IN THE AREA.

9 Q. OKAY. WELL, WHERE -- YOU INDICATED THAT YOU WERE
10 TUSSLING AND ENDED UP OVER TOWARDS THE MICROWAVE? WHERE DOES
11 THE MICROWAVE SIT?

12 A. THE MICROWAVE SITS LIKE UP OVER THERE UNDER THERE;
13 RIGHT? BECAUSE THERE'S LIKE A TIER ON TOP.

14 Q. SO THERE'S AN UPPER TIER THAT---

15 A. YEAH, THAT'S THE UPPER TIER RIGHT THERE, YOU KNOW.

16 Q. ALL RIGHT. AND WHEN YOU INDICATED THAT OFFICER BELLAMY
17 AND SERGEANT ELMORE HAD COME INTO THE UNIT, WHERE DID THEY
18 COME FROM?

19 A. THEY WOULD HAVE HAD TO COME IN FROM THE UNIT RIGHT HERE
20 BECAUSE THIS IS THE ENTRANCE; RIGHT? THAT'S HOW YOU GET IN
21 THERE.

22 Q. ALL RIGHT. AND ULTIMATELY WHEN THE TWO OF Y'ALL WERE
23 SEPARATED, WHERE -- WHERE DID THAT OCCUR AT?

24 A. WE WERE SEPARATED OUT IN THE LOBBY BECAUSE WE -- HE WAS
25 PUNCHING ME AND STABBING ME FROM RIGHT HERE, AND WE WAS

1 TUSSLING, BACKING UP. LIKE I SAID, YOU KNOW, WHEN I WAS
2 DEFENDING MYSELF AND WE WERE TRYING -- GOING BACK ON OUT
3 TUSSLING AND GOING BACK OUT NEAR THE DOOR AREA LIKE THAT
4 RIGHT THERE, SERGEANT ELMORE AND OFFICER BELLAMY WAS AT THE
5 DOOR AND BACKING UP THERE TOWARDS THE MICROWAVE AND ALL THAT
6 RIGHT THERE AND GOING BACK OUT THE DOOR THAT WAY. - AND THEY
7 WERE TRYING TO CLEAR EVERYBODY FROM OUT AROUND THAT AREA, YOU
8 KNOW WHAT I'M SAYING, AND SEPARATE -- AND SEPARATED US OUT IN
9 THE LOBBY.

10 Q. SO WHEN THEY GOT YOU IN THE -- THE TWO OF Y'ALL IN THE
11 LOBBY, THAT THEN ESSENTIALLY GOT Y'ALL AWAY FROM ALL THE
12 OTHER INMATES THAT WERE ON THE UNIT?

13 A. YES.

14 MR. SORENSON: OKAY. BEG THE COURT'S INDULGENCE.

15 THE COURT: ALL RIGHT.

16 BY MR. SORENSON:

17 Q. THIS IS SOMETHING I HEARD YOU SAY EARLIER ALSO, MR.
18 HOLMES, THAT WHEN YOU WERE WATCHING T.V. YOU HAD HEADPHONES
19 ON?

20 A. YEAH, I HAD MY HEADPHONES ON.

21 Q. ALL RIGHT. WAS THAT -- YOU WERE LISTENING TO MUSIC OR
22 IS THAT SOMETHING THAT'S CONNECTED WITH THE TELEVISION?

23 A. YEAH, YOU GOT TO -- YOU GOT TO USE YOUR RADIO TO WATCH
24 THE T.V.

25 Q. GOT YOU. WERE THERE OTHER INMATES THAT WERE SITTING IN

1 THAT AREA RIGHT THERE WATCHING T.V. WITH YOU?

2 A. THEY HAD INMATES STANDING IN FRONT OF THEIR -- UP IN THE
3 T.V. THEN YOU HAD INMATES SITTING DOWN ON THE BENCH AND
4 INMATES WALKING AROUND AND ALL OVER THE ROCK.

5 MR. SORENSON: THANK YOU, MR. HOLMES. PLEASE ANSWER ANY
6 QUESTIONS MS. HARDEE-THOMAS HAS.

7 THE COURT: CROSS-EXAMINATION?

8 CROSS-EXAMINATION

9 BY MS. HARDEE-THOMAS:

10 Q. GOOD AFTERNOON, MR. HOLMES. NOW, MR. HOLMES, WE HEARD
11 ABOUT THIS ASPECT THAT YOU CAME TO COURT TO TESTIFY. THIS
12 WAS A YEAR AND A HALF AGO?

13 A. YES.

14 Q. OKAY. HOW TALL ARE YOU, SIR?

15 A. I'M ABOUT -- NOT QUITE SIX -- ABOUT 6'4".

16 Q. 6'4". AND HOW BIG WERE YOU THEN?

17 A. I WAS LIKE 210 POUNDS, SOMETHING LIKE THAT.

18 Q. AND HOW BIG ARE YOU NOW?

19 A. I CAN'T EVEN -- YOU KNOW WHAT I'M SAYING? AFTER I LOOK
20 AT MYSELF IN THE MIRROR, I KNOW I PUT A COUPLE -- LITTLE
21 WEIGHT, BUT I'M SUPPOSED TO WEIGH NO MORE THAN---

22 Q. MY QUESTION IS: AS THE STATE INDICATED THAT YOU
23 SUBSTANTIALLY GOT SOME POUNDS, DO YOU HAVE AN IDEA OF HOW
24 MANY POUNDS YOU'VE GAINED?

25 A. I'D SAY PROBABLY ABOUT A HUNDRED.

1 Q. YOU GAINED A HUNDRED POUNDS?

2 A. NOT QUITE. I SAID PROBABLY.

3 Q. OKAY. DID YOU CHANGE YOUR CLOTHING?

4 A. YEAH.

5 Q. OKAY. FROM WHAT SIZE TO WHAT SIZE?

6 A. REALLY, I PROBABLY WENT UP A SIZE OR TWO.

7 Q. OKAY. FROM WHAT SIZE TO WHAT SIZE?

8 A. MAYBE LIKE A 3X RIGHT UP TO ABOUT 4X.

9 Q. OKAY. TO FEEL COMFORTABLE, YOU HAVE A 4X ON NOW.

10 A. THIS IS A 5X.

11 Q. 5X.

12 A. IT'S A JUMPSUIT.

13 Q. ALL RIGHT. MR. HOLMES, MY QUESTION IS: YOU DIDN'T --
14 YOU DIDN'T INCREASE IN SIZE WHEN YOU WERE IN PRISON THE FOUR
15 YEARS THAT YOU WERE THERE. YOU WERE ALWAYS 6'4".

16 A. YEAH.

17 Q. OKAY. SO MY QUESTION IS: YOUR MASS -- YOU INDICATED
18 THAT YOU'VE GOTTEN MASSIVE WITHIN THE FOUR YEARS THAT YOU
19 WERE THERE.

20 A. I'M STILL GROWING, YOU KNOW.

21 Q. I UNDERSTAND YOU'RE STILL GROWING. YOU'RE 23.

22 A. YEAH, I'M 23.

23 Q. I UNDERSTAND. NOW, DO YOU LIFT WEIGHTS?

24 A. I LIFT WEIGHTS. I USED TO WORK OUT.

25 Q. AND YOU DID THAT FROM THE TIME YOU GOT INTO THE

1 DEPARTMENT OF CORRECTIONS.

2 A. I WAS DOING THAT EVER SINCE I WAS IN THE COUNTY JAIL.

3 Q. THANK YOU. AND THAT STARTED FROM WHAT TIME?

4 A. BACK IN LIKE 2001.

5 Q. OKAY. AND HOW OLD WERE YOU THEN?

6 A. I WAS LIKE 17.

7 Q. 17, 18, 19, 20, 21, 22, 23. YOU HAD SEVEN YEARS TO WORK
8 ON YOUR MASS AND YOU'RE STILL WORKING.

9 A. YEAH, A LITTLE SOMETHING.

10 Q. OKAY. NOW, GETTING BACK TO OCTOBER 10TH A SECOND,
11 GETTING BACK TO OCTOBER 10TH, 2005, YOU INDICATED YOU HAD
12 HEADSETS ON AND YOU WERE SITTING IN THE BENCH AREA IN A.
13 WING.

14 A. YES.

15 Q. YOU DIDN'T REALIZE SOMEONE HAD COME BEHIND YOU OR
16 ANYTHING LIKE THAT.

17 A. I REALIZED SOMEONE WAS BEHIND ME BECAUSE HE WAS PUNCHING
18 ME.

19 Q. I CAN'T HEAR YOU. WHAT WAS THAT?

20 A. I SAID I REALIZED SOMEONE WAS BEHIND ME STICKING ME.

21 Q. OKAY. HOW MANY TIMES DID THEY STICK YOU?

22 A. NINE TIMES.

23 Q. EXCUSE ME?

24 A. NINE.

25 Q. AND YOU DIDN'T -- DID YOU MOVE?

1 A. NO. I WAS -- ALL THAT HE WAS JUGGING---

2 Q. OKAY.

3 A. ---AND POKING ON ME...

4 Q. WHAT WERE YOU DOING WHEN THAT WAS HAPPENING?

5 A. I WAS SITTING DOWN WATCHING T.V.

6 Q. DID YOU GET UP?

7 A. YEAH, I DID.

8 Q. SWAT AT THE PERSON?

9 A. YEAH, I GET UP.

10 Q. THE NINE TIMES THAT SOMEONE GOT YOU, WAS JIGGING YOU IN
11 THE BACK---

12 A. HE WASN'T JIGGING ME NINE TIMES AS I WAS SITTING DOWN.
13 I WAS SITTING DOWN WATCHING T.V. HE CAME UP BEHIND ME AND HE
14 WAS STICKING ME, AND AS HE WAS STICKING ME I STAND UP.

15 Q. OKAY.

16 A. THAT'S WHEN HE WAS -- LIKE HE KEEP ON SWINGING. THAT'S
17 HOW MANY HITS HE WAS HITTING ME WITH.

18 Q. SIR, DO YOU REALIZE -- DID YOU GET IN FRONT OF HIM?

19 A. I TURNED -- I TURNED AND FACED HIM.

20 Q. YOU FACED HIM.

21 A. MY BACK WAS TURNED TO HIM.

22 Q. SO THE NINE TIMES THAT YOU GOT JUGGED IN THE BACK, YOU
23 WERE FACING HIM WHEN? AFTER THE NINE TIMES OR HE WAS ABLE TO
24 GET HIS HAND AROUND YOU TO STILL JIG AT YOU?

25 A. I DIDN'T GOT JUGGED IN MY BACK NINE TIMES.

- 1 Q. OKAY.
- 2 A. HE STUCK---
- 3 Q. I'M JUST GOING BY WHAT YOU SAID.
- 4 A. HE STUCK ME IN THE BACK.
- 5 Q. OKAY.
- 6 A. THEN AS HE STUCK ME IN THE BACK, I STAND UP AND FACE
- 7 HIM.
- 8 Q. GOT YOU.
- 9 A. AS I FACE HIM, HE STILL WAS SWINGING THE KNIFE AT ME.
- 10 WE WAS TUSSLING, AND AS WE WAS TUSSLING, THAT'S HOW HE HIT ME
- 11 NINE TIMES.
- 12 Q. OKAY.
- 13 A. IN SMALL LITTLE AREAS AND PUNCTURE WOUNDS.
- 14 Q. NOW, HAS MR. LOUIS LOST WEIGHT?
- 15 A. HE HAS DID BEEN ABOUT THAT SIZE.
- 16 Q. HE'S ALWAYS BEEN THIS SIZE.
- 17 A. PROBABLY BEEN THAT SIZE.
- 18 Q. THANK YOU. AND HEIGHT, TOO.
- 19 A. YEAH.
- 20 Q. NOW, MY QUESTION TO YOU IS: YOU INDICATED YOU WERE
- 21 DEFENDING YOURSELF AGAINST SOMEONE WHO HAD A KNIFE OR A
- 22 SHANK. WHAT DID YOU SEE?
- 23 A. WE CALL IT -- IT'S A SHANK.
- 24 Q. YOU SAW A SHANK, NOT A KNIFE.
- 25 A. YOU COULD CALL IT BOTH, YOU KNOW, BUT LIKE AROUND THERE

1 WE CALL IT A SHANK.

2 Q. YOU KNOW THE DIFFERENCE BETWEEN A KNIFE, DON'T YOU?

3 A. YEAH.

4 Q. OKAY. A KNIFE CAN ACTUALLY, YOU KNOW, GET DEPTH,
5 PUNCTURE YOU. DID THAT SHANK DO THAT?

6 A. THE SHANK? YEAH.

7 Q. EXCUSE ME?

8 A. YOU SAID A SHANK?

9 Q. DID THAT SHANK DO THAT?

10 A. YEAH, HE HAD A SHANK.

11 Q. I UNDERSTAND, BUT DID THAT -- THE DIFFERENCE BETWEEN A
12 KNIFE AND A SHANK IS WITH A KNIFE YOU CAN GET DEPTH.

13 A. UH-HUH.

14 Q. WHERE THE SHANK -- THE SHANK THAT HE SUPPOSEDLY HAD, DID
15 THAT GET DEPTH? DID YOU HAVE ANY VERY SERIOUS SUPERFICIAL
16 WOUNDS?

17 A. NO.

18 Q. EXACTLY. NOW, LET'S TALK ABOUT THE WOUNDS THAT YOU DID
19 HAVE. THE NINE TIMES THAT YOU SAID THAT YOU HAD HITS TO YOUR
20 BACK, DID YOU GO TO THE HOSPITAL FOR THOSE?

21 A. MEDICAL.

22 Q. OKAY. MEDICAL MEANING WHERE? WHERE DID YOU GO?

23 A. TO THE INFIRMARY.

24 Q. OKAY. IF IT WAS SERIOUS, WOULDN'T YOU HAVE GONE TO THE
25 HOSPITAL?

1 A. YES.

2 Q. YES. THEY WOULD NOT HAVE LET AN INMATE STAY
3 INCARCERATED WITHOUT GOING TO THE HOSPITAL. CORRECT?

4 A. YES.

5 Q. HOW DID THEY TAKE CARE OF THESE WOUNDS?

6 A. SHE LIKE -- I WENT TO THE INFIRMARY AND THEY CHECKED THE
7 WOUNDS OUT AND THEY MEASURE IT AND THEN THEY CLEAN IT UP AND
8 ALL THAT AND LOOK AROUND AND SIZE IT UP.

9 Q. OKAY. HOW DID THEY TAKE CARE OF IT? DID THEY PUT A
10 BANDAGE ON IT, OINTMENT, OR WHAT?

11 A. NO, SHE HAD -- LIKE SHE PUT -- I FORGET WHAT IT'S
12 CALLED. SHE HAD TO PATCH ME UP, YOU KNOW.

13 Q. YEAH. HOW? THAT'S WHAT WE WANT TO KNOW. WE WEREN'T
14 THERE. HOW DID THEY PATCH YOU UP?

15 A. PATCHED ME UP LIKE CHECKED THE WOUNDS OUT, SEE HOW DEEP
16 IT WAS LIKE THAT RIGHT THERE. SHE'D MEASURE IT AND CLEAN IT
17 UP AND THEN WRAP IT UP, AND I HAD TO PUT AN ACE BANDAGE ON IT
18 AND THEY GIVE ME---

19 Q. ACE BANDAGE.

20 A. NO, NOT AN ACE BANDAGE. LIKE ANTIBIOTIC STUFF AND I HAD
21 TO TAKE SOME PENICILLIN AND STUFF LIKE THAT.

22 Q. OKAY. JUST IN CASE THERE WAS ANY---

23 A. INFECTION OR WHATEVER LIKE THAT.

24 Q. OKAY. BUT WHAT DID YOU HAVE ON THE WOUND? WE DON'T --
25 WE WEREN'T THERE. WE WEREN'T ABLE TO SEE ANYTHING. WHAT DID

1 YOU HAVE ON THE WOUNDS? DID YOU HAVE ANYTHING ON THEM?

2 A. WHERE? ON MY WOUNDS?

3 Q. YES.

4 A. YES.

5 Q. WHAT DID YOU HAVE ON THEM?

6 A. WE HAD WRAPPED IT UP.

7 Q. WRAPPED UP WITH WHAT?

8 A. WITH LIKE WHITE -- I CAN'T RECALL THE NAME TO IT BUT---

9 Q. GAUZE?

10 A. I THINK THAT'S WHAT IT IS PROBABLY.

11 Q. OKAY. WAS IT SECURED BY SOMETHING?

12 A. YEAH.

13 Q. WHAT?

14 A. I CAN'T REMEMBER -- RECALL THE NAME OF IT, BUT SHE HAD
15 SECURED IT.

16 Q. YOU EVER -- YOU EVER SAW A BANDAGE?

17 A. A BANDAGE?

18 Q. LIKE A BAND-AID.

19 A. YEAH.

20 Q. OKAY. WAS IT SECURED BY A BAND-AID?

21 A. NO.

22 Q. OKAY. WAS IT SECURED BY A GAUZE, A CLOTH, LONGER CLOTH?

23 A. (WITNESS NODDED HEAD UP AND DOWN.)

24 Q. WAS IT WRAPPED?

25 A. YEAH, WITH A CLOTH.

1 Q. WHITE CLOTH. AND THEN WAS TAPE AROUND IT?

2 A. TAPE?

3 Q. YES, SIR. HOW DID THEY SECURE -- HOW DID THE GAUZE STAY
4 ON YOUR BODY?

5 A. THE GAUZE? SHE -- LIKE WHEN THEY COME THROUGH, SHE SEE
6 ME LIKE THAT AND THEY CALL ME DOWN TO THE INFIRMARY AND I GO
7 DOWN THERE.

8 Q. NO, SIR. WHAT I'M TRYING TO SAY IS IF YOU DIDN'T USE A
9 BAND-AID TO BE TAPED DOWN, HOW WAS THE WOUND SECURED?

10 A. IT WAS LIKE YOU -- IT WAS HOOKED UP WITH THE BANDAGE.
11 YOU JUST HOLD IT DOWN RIGHT THERE AND----

12 Q. OKAY. I JUST WANT TO GO OVER YOUR WOUNDS. NOW, YOU
13 INDICATED YOU HAD A CUT NEAR YOUR RIGHT SIDE OF YOUR NOSE?

14 A. YEAH.

15 Q. WHERE? CAN YOU POINT TO THAT?

16 A. RIGHT HERE.

17 Q. OKAY. DO YOU REMEMBER HOW DEEP THAT WAS?

18 A. IT WAS PRETTY -- ABOUT SEVEN -- IT WAS PRETTY DEEP.

19 Q. OKAY. IT WASN'T DEEP ENOUGH TO BASICALLY GO TO THE
20 HOSPITAL AND GET STITCHED UP OR ANYTHING OF THAT NATURE. IT
21 WAS -- WAS IT A CUT OR SCRATCH?

22 A. IT WAS A STAB.

23 Q. IT WAS A STAB. OKAY. DO YOU FEEL IT WAS LIFE-
24 THREATENING, SIR?

25 A. YES.

1 Q. HOW?

2 A. IT COULD HAVE DONE WORSE. I MEAN...

3 Q. COULD HAVE DONE WORSE? I DON'T UNDERSTAND.

4 A. I SAID IT COULD HAVE DONE WORSE, YOU KNOW.

5 Q. WERE YOU ABLE TO EAT?

6 A. NO.

7 Q. OKAY. SO HOW DID THEY -- DID THEY FEED YOU? HOW DID
8 YOU GET FED?

9 A. WELL, I HAD TO TAKE MY TIME TO EAT, YOU KNOW.

10 Q. OKAY. SO YOU DID EAT WITH A SPOON OR A FORK?

11 A. I HAD TO LIKE BREAK IT DOWN, YOU KNOW.

12 Q. RIGHT. AND YOU HAD ONE CUT TO THE NOSE?

13 A. (WITNESS NODDED HEAD UP AND DOWN.)

14 Q. HOW ABOUT TO THE RIGHT ARM?

15 A. THE RIGHT ARM.

16 Q. WHAT HAPPENED? HOW DEEP WAS YOUR CUT TO YOUR RIGHT ARM?

17 A. I DON'T KNOW THE REGIMEN OF IT, BUT IT WAS -- SAID IT
18 WAS...

19 Q. DID THEY PUT A GAUZE ON YOU THERE?

20 A. YES.

21 Q. OKAY. WOULD YOU CONSIDER IT A SERIOUS WOUND?

22 A. YES.

23 Q. HOW?

24 A. IT COULD HAVE BEEN WORSE.

25 Q. WERE YOU ABLE TO USE YOUR ARM?

1 A. I HAD TO HOLD MY ARM IN A LITTLE SLING---

2 Q. OKAY.

3 A. ---WITH A LITTLE...

4 Q. MY QUESTION IS: WAS IT A SERIOUS CUT OR WAS IT A
5 PUNCTURE WOUND OR A SCRATCH?

6 A. IT WAS A STAB.

7 Q. THAT'S WHAT WE NEED TO KNOW.

8 A. IT WAS A STAB WOUND.

9 Q. OKAY. ALL RIGHT. HOW DID THEY TREAT THAT STAB WOUND?
10 WHAT DID THEY DO TO YOUR RIGHT ARM?

11 A. MY RIGHT ARM, SHE CLEANED IT UP AND THEY CHECKED IT AND
12 THEY -- AS I TOLD YOU, THEY MEASURED AND ALL THAT TO SEE HOW
13 DEEP IT WAS LIKE EVERY DAY AND THEY HAD TO PUT MEDICINE AND
14 STUFF AROUND IT.

15 Q. SO YOU GOT OINTMENT. YOU DIDN'T NEED STITCHES.

16 A. NO, NOT REALLY. YOU DON'T NEED STITCHES FROM LIKE --
17 FROM -- WHEN YOU'RE GETTING HIT WITH OBJECTS SHOT DOWN LIKE
18 THAT RIGHT THERE, THAT GIVE YOU LIKE STAB WOUNDS.

19 Q. BUT IF IT WAS SHARP ENOUGH, YOU WOULD HAVE NEEDED---

20 A. IF IT WAS---

21 Q. ---A STITCH.

22 A. IF IT WAS A KNIFE, YEAH.

23 Q. BUT YOU DID NOT IN THIS PARTICULAR CASE.

24 A. YEAH, YOU CAN, BUT IT---

25 Q. I'M TALKING ABOUT YOUR CASE, SIR. DID YOU NEED STITCHES

1 TO YOUR RIGHT ARM?

2 A. NO.

3 Q. OKAY. THEY SECURED IT BY PUTTING OINTMENT ON THERE.

4 A. OINTMENT.

5 Q. AND PUTTING A BANDAGE?

6 A. NO.

7 Q. A GAUZE.

8 A. GAUZE, YEAH.

9 Q. OKAY. IF IT NEEDED STITCHES, YOU WOULD HAVE GOTTEN
10 STITCHES.

11 A. YES.

12 Q. YOU HAD TWO WOUNDS TO THE RIGHT CHEST, RIGHT SIDE OF
13 YOUR CHEST?

14 A. YEAH, TO THE RIGHT CHEST. YEAH.

15 Q. WHERE WAS THAT?

16 A. LIKE RIGHT IN HERE.

17 Q. OKAY. DID YOU NEED STITCHES FOR THAT?

18 A. LIKE I TOLD YOU, YOU DON'T NEED STITCHES FROM LIKE STAB
19 WOUNDS AND LIKE THAT. IT WILL CLOSE UP ITSELF; RIGHT? IF
20 IT'S DEEP, IF IT WAS A KNIFE, IT WOULD HAVE BEEN DIFFERENT.

21 Q. BUT IF IT WAS A SERIOUS STAB YOU WOULD HAVE GOTTEN
22 STITCHES IS WHAT I'M TRYING TO ASK. DID YOU GET STITCHES,
23 SIR?

24 A. DID I GET STITCHES?

25 Q. ON YOUR RIGHT CHEST.

- 1 A. NO.
- 2 Q. OKAY. HOW DID THEY SECURE THAT?
- 3 A. THE SAME WAY AS THEY DID THE ARM.
- 4 Q. PUT SALVE ON IT AND PUT A GAUZE ON IT?
- 5 A. I GOT A PATCH.
- 6 Q. A PATCH. THEY SAID YOU HAD TO THE RIGHT -- TO A STAB
- 7 WOUND TO YOUR BACK, ANTERIOR BACK?
- 8 A. YEAH, MY RIGHT LOWER---
- 9 Q. WHERE WAS THAT?
- 10 A. RIGHT LOWER BACK -- BACK.
- 11 Q. YOU DIDN'T NEED STITCHES FOR THAT.
- 12 A. NO.
- 13 Q. I DIDN'T HEAR YOU.
- 14 A. NO.
- 15 Q. OKAY. SAME TREATMENT?
- 16 A. THE SAME TREATMENT.
- 17 Q. SALVE AND THE GAUZE?
- 18 A. AND THEY PUT A PATCH RIGHT THERE.
- 19 Q. A PATCH.
- 20 A. BECAUSE IT WAS IN THE BACK AREA.
- 21 Q. OKAY. YOU HAD TWO SUPERFICIAL STAB WOUNDS TO YOUR LEFT
- 22 EYEBROW?
- 23 A. YEAH.
- 24 Q. WHERE WAS THAT?
- 25 A. IT'S PROBABLY DOWN HERE.

1 Q. EXCUSE ME?

2 A. WHAT? THE LEFT?

3 Q. LEFT EYEBROW.

4 A. LEFT EYEBROW, YEAH.

5 Q. WHERE WAS IT? ON TOP OF YOUR...

6 A. YEAH.

7 Q. OKAY. SAME TREATMENT?

8 A. SAME TREATMENT.

9 Q. NO STITCHES.

10 A. NO STITCHES. THAT WAS LIKE A LITTLE -- LIKE A LITTLE

11 SLIDE. A SLIDE.

12 Q. A LITTLE SCRATCH?

13 A. NOT REALLY BUT IT WAS...

14 Q. WAS THERE A DEPTH?

15 A. A DEPTH? NO.

16 Q. OKAY. YOU HAD A SUPERFICIAL STAB WOUND TO THE INNER
17 ELBOW.

18 A. YEAH.

19 Q. WHERE IS THAT?

20 A. RIGHT HERE.

21 Q. LEFT ELBOW.

22 A. (WITNESS NODDED HEAD UP AND DOWN.)

23 Q. OKAY. SAME TREATMENT?

24 A. YEAH, THE SAME TREATMENT.

25 Q. GAUZE?

1 A. YEAH, HAD TO WRAP IT UP.

2 Q. SALVE? AND THEY HAD WRAPPED IT UP? ONE SCRATCH TO THE
3 LEFT HAND.

4 A. YEAH.

5 Q. OKAY. SAME TREATMENT?

6 A. (WITNESS NODDED HEAD UP AND DOWN.)

7 THE COURT: I NEED YOU TO ANSWER AUDIBLY.

8 THE WITNESS: YEAH, SAME TREATMENT.

9 BY MS. HARDEE-THOMAS:

10 Q. SAME TREATMENT? NO STITCHES.

11 A. NO STITCHES.

12 Q. ONE SCRATCH TO THE LEFT FOREARM?

13 A. UH-HUH.

14 Q. SAME TREATMENT---

15 THE COURT: I NEED YOU TO ANSWER UP.

16 THE WITNESS: YES.

17 BY MS. HARDEE-THOMAS:

18 Q. NOW, SIR, I WANT TO ASK YOU: DID YOU HAVE AN OPTION
19 AFTER YOU TESTIFIED -- BECAUSE USUALLY WHEN YOU TESTIFY IN
20 PRISON YOU'RE CONSIDERED A SNITCH. DID YOU HAVE AN OPTION OF
21 ASKING FOR PROTECTIVE CUSTODY?

22 A. NO.

23 Q. YOU NEVER ASKED FOR THAT?

24 A. NO.

25 Q. DID THEY MOVE YOU TO A DIFFERENT LOCATION?

1 A. YEAH.

2 Q. WHERE DID THEY MOVE YOU?

3 A. THEY SHIPPED ME TO MCCORMICK.

4 Q. OKAY. ALL RIGHT. AND HOW LONG DID YOU STAY THERE?

5 A. I'M STILL THERE.

6 Q. OKAY. I'M TALKING ABOUT AFTER YOU TESTIFIED. YOU WERE
7 BROUGHT BACK TO LIEBER?

8 A. NO. NO.

9 Q. SO YOU WERE SECURED.

10 A. SECURED? YES.

11 Q. DID YOU ASK FOR THAT SECURITY?

12 A. NO. THAT'S HOW THEY DO IT. THEY DO SEPARATION.

13 Q. THEY DO IT THEMSELVES.

14 A. YEAH.

15 Q. NOW, THE AREA THAT YOU WERE IN THE A. WING, YOU SAID
16 THERE WERE OTHER PEOPLE THERE. WHEN YOU AND MR. SHEPPARD
17 WERE TUSSLING WITH EACH OTHER, DID ANYBODY ELSE INTERVENE?

18 A. YOU GOT GUYS -- YOU HAVE MORE INMATES AROUND.

19 Q. I UNDERSTAND THAT THEY WERE AROUND. DO YOU REMEMBER
20 ANYBODY ELSE HITTING YOU?

21 A. NO. INMATE SHEPPARD.

22 Q. ONLY SHEPPARD.

23 A. YEAH.

24 Q. SO YOU WERE AWARE OF YOUR SURROUNDINGS.

25 A. YEAH.

1 Q. NOBODY ELSE CAME AROUND YOU.

2 A. YOU HAVE MORE GUYS THAT WAS AROUND.

3 Q. THEY WERE AROUND. WERE THEY AROUND ENOUGH TO HAVE
4 SOMEBODY ELSE HIT YOU OR HARM YOU OR GET NEXT TO YOU?

5 A. THEY CAME, BUT THEY WERE---

6 Q. DID THEY DO THAT TO YOU? THAT'S WHAT WE NEED TO KNOW.

7 A. HAD SOMEBODY AROUND WHO ELSE COULD GET TO ME TO HIT ME?

8 Q. YES.

9 A. NO.

10 Q. OKAY. SO YOU WERE AWARE OF YOUR SURROUNDINGS.

11 A. NOT QUITE.

12 Q. NOT QUITE. SO IF SOMEBODY ELSE COULD HAVE COME UP AND
13 HIT YOU, YOU WOULDN'T HAVE KNOWN.

14 A. YEAH, I WOULD HAVE KNOWN.

15 Q. OKAY. DID SOMEONE ELSE COME UP AND HIT YOU?

16 A. NO.

17 Q. NOBODY. YOU WERE SURE THAT NOBODY ELSE CAME UP TOWARDS
18 YOU.

19 A. NOBODY ELSE.

20 Q. HOW MANY PEOPLE -- SO WHEN YOU -- OKAY. SO WHEN YOU
21 INDICATED THAT YOU SAW THIS SHANK, IT WAS IN MR. SHEPPARD'S
22 HANDS.

23 A. YEAH. IT WAS IN HIS RIGHT HAND.

24 Q. YOU HAD HIM IN A HEADLOCK.

25 A. YEAH, THAT'S WHEN WE WAS TUSSLING.

1 Q. WHEN YOU WERE TUSSLING. OKAY.

2 A. AFTER I GET A HOLD TO HIM.

3 Q. YOU NEVER LET HIM GO, DID YOU?

4 A. 'TIL THE OFFICERS SEPARATED US.

5 Q. EXACTLY. DURING THAT TIME PERIOD, DID ANYONE COME
6 AROUND YOU?

7 A. LIKE I SAID, YOU HAD A LOT OF INMATES AROUND DURING THE
8 TIME SCATTERING AND MIXING UP.

9 Q. GOT YOU. DID YOU SEE THIS SUPPOSED SHANK FALL?

10 A. IT WAS IN HIS HAND, AND A LOT OF TUSSLING WAS GOING ON.
11 AND AS I -- I BE LIKE FOCUSED ON IT BY TELLING THE POLICE,
12 YOU KNOW---

13 Q. I UNDERSTAND.

14 A. ---HE HAD A KNIFE.

15 Q. WHERE DID THIS SHANK GO?

16 A. HE PROBABLY KICKED IT, PASSED IT OFF TO ONE OF HIS
17 LITTLE PARTNERS OR WHATEVER.

18 Q. DID YOU SEE THAT?

19 A. NO.

20 Q. OKAY. SO WHEN YOU HAD HIM IN THE HEADLOCK, YOU DIDN'T
21 LET HIM GO BECAUSE YOU'RE SURE HE HAD A KNIFE OR A SHANK.

22 A. YES.

23 Q. AND NO ONE CAME AROUND YOU THAT YOU KNEW OF, AND YOU
24 DIDN'T LET HIM GO BECAUSE HE HAD THIS SHANK. CORRECT?

25 A. UH-HUH.

1 Q. SO WHERE DID THE SHANK GO?

2 A. HE PROBABLY DROPPED IT.

3 Q. EXCUSE ME?

4 A. KICKED IT OFF. DROPPED IT. HE PROBABLY KICKED IT OFF,
5 PASSED IT TO HIS BUDDY.

6 Q. DID YOU SEE THAT?

7 A. DID I SEE THAT? NO.

8 Q. OKAY. YOU DIDN'T SEE THAT THEN. YOU'RE JUST JUSTIFYING
9 WHERE THE KNIFE WENT NOW BECAUSE IT'S NOT THERE.

10 A. IT'S NOT THERE.

11 Q. EXCUSE ME?

12 A. NO. I SAID IT'S NOT THERE.

13 Q. IT WASN'T THERE WHEN YOU GUYS WERE SEPARATED BY THE---

14 A. WHEN THE OFFICER WAS SCREAMING WHERE THE KNIFE'S AT.

15 MS. HARDEE-THOMAS: NO FURTHER QUESTIONS. THANK YOU,
16 MR. HOLMES.

17 THE COURT: REDIRECT?

18 MR. SORENSON: VERY BRIEFLY, YOUR HONOR.

19 REDIRECT EXAMINATION

20 BY MR. SORENSON:

21 Q. JUST SO I CAN UNDERSTAND, MR. HOLMES, WHEN YOU WERE
22 INITIALLY SEATED WATCHING THE FOOTBALL GAME, HOW MANY TIMES
23 DID YOU GET STABBED IN THE BACK?

24 A. I GOT STABBED IN THE BACK ONE TIME.

25 Q. OKAY. SO THE NINE TIMES THAT YOU WERE TALKING ABOUT WAS

1 WHAT HAPPENED THROUGHOUT THE ENTIRE ALTERCATION.

2 A. YES, SIR.

3 Q. IS THAT CORRECT? MS. HARDEE-THOMAS ASKED YOU ABOUT HOW
4 SERIOUS THESE INJURIES WERE. MR. HOLMES, IF YOU DIDN'T FIGHT
5 BACK AND GET A HOLD OF MR. SHEPPARD AND ULTIMATELY GET THE
6 CORRECTIONAL OFFICERS OUT THERE TO SEPARATE THE TWO OF YOU,
7 WHAT DO YOU THINK WOULD HAVE HAPPENED TO YOU IF YOU DIDN'T
8 FIGHT BACK?

9 A. WELL, HE COULD HAVE PARALYZED ME OR IT COULD HAVE BEEN
10 WORSE, YOU KNOW.

11 Q. DO YOU FEEL LIKE YOUR LIFE WAS IN DANGER AT THAT POINT
12 IN TIME?

13 A. YES, SIR.

14 MR. SORENSON: THANK YOU, MR. HOLMES.

15 THE COURT: RECROSS?

16 RECROSS EXAMINATION

17 BY MS. HARDEE-THOMAS:

18 Q. MR. SHEPPARD (SIC), DID YOU REALLY TAKE MR. HOLMES (SIC)
19 SERIOUS WHEN HE CAME AFTER YOU?

20 A. YES.

21 Q. YOU COULD HAVE JUST HIT HIM OUT OF THE WAY WITH YOUR
22 HANDS.

23 A. NO.

24 Q. YOU WERE TUSSLING WITH HIM BECAUSE YOU HAD TO HOLD HIM
25 DOWN.

- 1 A. BECAUSE HE WAS COMING WITH FORCE.
- 2 Q. OKAY. HOW LONG DID IT TAKE YOU TO SUBDUE HIM?
- 3 A. IT TAKE -- IT TAKE A -- IT TAKE AWHILE BECAUSE HE WAS
- 4 COMING WITH FORCE, AND AS HE WAS COMING WITH FORCE, HE WAS
- 5 JUST SWINGING AND SWINGING AND I WAS SITTING RIGHT THERE AND
- 6 JUST...
- 7 Q. WHO WAS SITTING RIGHT THERE?
- 8 A. I SAID I WAS RIGHT THERE AS HE WAS COMING. HE WAS JUST
- 9 SWINGING AND SWINGING. I SAID WE WAS TUSSLING. I JUST HAD
- 10 TO...
- 11 Q. SO BASICALLY HOW LONG DID THAT TAKE BEFORE YOU SUBDUED
- 12 HIM?
- 13 A. I CAN'T RECALL.
- 14 Q. THE OFFICER WOULD HAVE ALLOWED YOU GUYS JUST TO FIGHT
- 15 ON?
- 16 A. NO.
- 17 Q. IT WAS A SHORT PERIOD OF TIME, WASN'T IT?
- 18 A. IT WAS---
- 19 Q. CORRECT?
- 20 A. IT WAS A LITTLE MINUTE.
- 21 Q. A LITTLE MINUTE. CAN YOU GUESSTIMATE?
- 22 A. IT WAS GOING ON FOR A LITTLE BIT UNTIL THE OFFICERS
- 23 JUST...
- 24 Q. THE OFFICER WAS ON THE WING.
- 25 A. HE WASN'T. HE WAS AT THE DOOR AND ABOUT TO COME ON THE

1 WING.

2 Q. OKAY. OFFICER BELLAMY WAS NOT STANDING NEAR THE
3 MICROWAVE?

4 A. NO.

5 MR. SORENSON: YOUR HONOR, I THINK IT'S GETTING A LITTLE
6 KIND OF BEYOND MY REDIRECT. I ONLY ASKED HIM TWO QUESTIONS
7 ON REDIRECT.

8 THE COURT: I UNDERSTAND.

9 BY MS. HARDEE-THOMAS:

10 Q. NO OFFICER WAS ON THE WING.

11 A. NO.

12 Q. SO NO ONE SAW ANYTHING.

13 A. THE OFFICER WAS COMING ON THE WING.

14 Q. OKAY. WHAT OFFICER?

15 A. OFFICER BELLAMY AND SERGEANT ELMORE.

16 MS. HARDEE-THOMAS: OKAY. NO FURTHER QUESTIONS.

17 THE COURT: VERY GOOD. ALL RIGHT. HAVE YOU CONCLUDED
18 THIS WITNESS? YES? AND HE IS FREE TO GO, COUNSEL?

19 MS. HARDEE-THOMAS: NO OBJECTION.

20 THE COURT: ANY OBJECTION TO THIS WITNESS LEAVING?

21 MR. SORENSON: NO, MA'AM.

22 THE COURT: VERY WELL. LET ME -- BEFORE HE DOES THAT,
23 LET ME SEE YOU.

24 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

25 THE COURT: LADIES AND GENTLEMEN, WE ARE NOW GOING TO

1 TAKE OUR LUNCH BREAK, AND I'M GOING TO ASK YOU TO PLEASE BE
2 MINDFUL NOT TO DISCUSS THIS MATTER OR ALLOW ANYONE TO DISCUSS
3 IT WITH YOU. OF COURSE, DON'T READ ANYTHING. DON'T DO ANY
4 KIND OF RESEARCH REGARDING THIS PARTICULAR MATTER.

5 LADIES AND GENTLEMEN, I THINK -- ST. GEORGE IS A SMALL
6 TOWN. I THINK YOU CAN PROBABLY GET SOME LUNCH AND GET BACK
7 IN ABOUT -- CAN WE SAY AN HOUR AND 15 MINUTES? DO YOU THINK
8 THAT WILL GIVE YOU ENOUGH TIME? SO I'LL EXTEND IT TO AN HOUR
9 AND A HALF IF ANYBODY IS CONCERNED. ALL RIGHT. VERY WELL,
10 LADIES AND GENTLEMEN. WE'RE GOING TO TAKE OUR LUNCH BREAK
11 UNTIL 1:45. 1:45. THAT'S A QUARTER 'TIL 2 IF YOU'LL BE BACK
12 IN YOUR JURY ROOM. IF YOU WILL GO WITH MR. TAYLOR, HE'LL
13 SHOW YOU YOUR JURY ROOM, HOW TO COME AND GO FROM THE JURY
14 ROOM. HAVE A GOOD LUNCH.

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

17 THE COURT: VERY WELL. ALL RIGHT. ANYTHING BEFORE WE
18 TAKE OUR LUNCH BREAK? FROM THE STATE?

19 MR. SORENSON: NO, YOUR HONOR.

20 THE COURT: FROM THE DEFENSE?

21 MS. HARDEE-THOMAS: NOTHING FROM THE DEFENSE.

22 THE COURT: VERY WELL. I WILL SEE YOU ALL PROBABLY
23 ABOUT -- THE JURY IS GOING TO BE BACK ABOUT A QUARTER 'TIL,
24 SO 20 'TIL IF Y'ALL WILL COME BACK. IF YOU ALL COULD JUST BE
25 MINDFUL OF THAT TIME.

1 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

2 THE COURT: THANK YOU ALL, AND PLEASE BE SEATED. WE GOT
3 THEM ALL, MAJOR?

4 BAILIFF: YES, MA'AM.

5 THE COURT: GREAT. ANYTHING BEFORE WE BRING THE JURY
6 OUT? FROM THE STATE?

7 MR. SORENSON: NO, MA'AM.

8 MS. HARDEE-THOMAS: NOTHING FROM THE DEFENSE, YOUR
9 HONOR.

10 THE COURT: LET'S HAVE THE JURY. HAVE YOUR WITNESS COME
11 UP.

12 MR. HILTON: IT WOULD BE BRIAN BELLAMY.

13 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 1:55
14 P.M.)

15 THE COURT: ALL RIGHT. MR. HILTON, CALL YOUR NEXT
16 WITNESS, PLEASE.

17 MR. HILTON: IT WOULD BE BRIAN BELLAMY.

18 BRIAN L. BELLAMY, AFTER BEING DULY SWORN, TESTIFIED
19 AS FOLLOWS:

20 THE COURT: VERY WELL. IF YOU'D PLEASE STATE YOUR FULL
21 NAME FOR THE RECORD.

22 THE WITNESS: MY NAME IS BRIAN LAVAR BELLAMY.

23 THE COURT: WOULD YOU SPELL LAVAR AND THEN BELLAMY?

24 THE WITNESS: LAVAR IS SPELLED L-A-V-A-R. BELLAMY IS
25 SPELLED B-E-L-L-A-M-Y.

1 THE COURT: AND JUST TO BE ABSOLUTELY CERTAIN, ARE YOU A
2 BRIAN OR A BRYANT?

3 THE WITNESS: BRIAN.

4 THE COURT: WITH NO T.

5 THE WITNESS: NO T. YES.

6 THE COURT: FAIR ENOUGH. THANK YOU. YOUR WITNESS.

7 DIRECT EXAMINATION

8 BY MR. HILTON:

9 Q. THANK YOU, MR. BELLAMY. WHERE ARE YOU WORKING RIGHT
10 NOW?

11 A. I AM CURRENTLY -- I CURRENTLY AM EMPLOYED BY THE
12 DEPARTMENT OF JUVENILE JUSTICE.

13 Q. AND IS THAT IN COLUMBIA OR IN RIDGEVILLE?

14 A. THAT'S IN COLUMBIA, SOUTH CAROLINA.

15 Q. WHERE ARE YOU LIVING NOW?

16 A. I'M STILL LIVING IN BRANCHVILLE, SOUTH CAROLINA.

17 Q. ALL RIGHT. BACK IN OCTOBER OF 2005, WHERE WERE YOU
18 WORKING?

19 A. IN 2005 I WAS EMPLOYED BY SOUTH CAROLINA DEPARTMENT OF
20 CORRECTIONS AT LIEBER INSTITUTION.

21 Q. IS THAT UP IN RIDGEVILLE?

22 A. YES.

23 Q. DORCHESTER COUNTY?

24 A. THAT'S IN RIDGEVILLE.

25 Q. IS THAT DORCHESTER COUNTY?

1 A. DORCHESTER COUNTY. RIDGEVILLE.

2 Q. HOW LONG HAD YOU WORKED OUT THERE AT THAT POINT?

3 A. I WAS AT LIEBER FOR APPROXIMATELY NINE MONTHS.

4 Q. UP THROUGH OCTOBER 10TH OF 2005?

5 A. I THINK MY EMPLOYMENT ACTUALLY BEGAN IN MAY OF THAT YEAR
6 AND SPANNED THROUGH THE NEXT YEAR AND ENDED IN FEBRUARY.

7 Q. OKAY. WHAT POSITION DID YOU HOLD OUT AT LIEBER?

8 A. I WAS A CORRECTIONAL OFFICER.

9 Q. LET ME TURN YOUR ATTENTION TO OCTOBER 10TH, 2005. DO
10 YOU REMEMBER AN EPISODE OCCURRING BETWEEN MR. LOUIS SHEPPARD
11 AND THE DEFENDANT -- AND THE VICTIM, JAMES HOLMES?

12 A. YES.

13 Q. ALL RIGHT. LET ME -- I SHOULD HAVE DONE THIS A SECOND
14 AGO. LET ME SHOW YOU WHAT'S BEEN ENTERED INTO EVIDENCE AS
15 STATE'S EXHIBIT 1 AND ASK IF YOU WILL -- AND I'M GOING TO
16 GIVE YOU A LITTLE POINTER. IF YOU WILL, JUST KIND OF
17 DESCRIBE FOR THE JURY THE PICTURE AND THE LAYOUT OF THAT MAP.

18 A. ALL RIGHT. THE ENTRANCE TO A. WING WOULD HAVE BEEN
19 WHERE I WAS AT WHEN I OBSERVED THE INCIDENT. I'M SEEING --
20 JUST KIND OF TURN THE -- ALL THE WAY I CAN'T SEE OVER THERE.

21 Q. IF YOU NEED TO STEP DOWN, I MEAN, FEEL FREE.

22 A. YEAH.

23 THE COURT: JUST REMEMBER TO KEEP YOUR VOICE UP.

24 THE WITNESS: RIGHT HERE IN THE LOBBY AREA WOULD HAVE
25 BEEN WHERE I WOULD HAVE ENTERED A. WING, AND I OBSERVED THE

1 INCIDENT TO BE IN THE LEFT PORTION OF A. WING.

2 BY MR. HILTON:

3 Q. ALL RIGHT. NOW, YOU SAID YOU WERE STANDING WHERE OR
4 WHERE WERE YOU AT THAT TIME?

5 A. I WAS ACTUALLY AT THE MICROWAVE AREA -- CAN I GO BACK?

6 Q. SURE. AND WILL YOU POINT OUT WHERE THE MICROWAVE AREA
7 WAS?

8 A. THE MICROWAVE AREA IS TO THE IMMEDIATE RIGHT AT THE
9 ENTRANCE OF A. WING, SO... I CAN'T EXACTLY SEE WHERE YOUR
10 ENTRANCE IS THERE. UP IN THIS AREA LEADING -- AS SOON AS I
11 EXIT FROM THE LOBBY AREA ON TO A. WING, THE MICROWAVE AREA IS
12 RIGHT AND TO MY IMMEDIATE RIGHT.

13 Q. AND WHERE THAT DOCUMENT IS LABELED A. WING RIGHT IN
14 HERE, WHAT IS THAT AREA?

15 A. THIS AREA SHOULD BE THE OPEN ROCK IS WHAT WE REFER TO IT
16 AS. THIS IS WHERE THE INMATES HAVE THEIR RECREATIONAL TIME,
17 WHERE A T.V. IS LOCATED.

18 Q. AND WERE THERE ANY BENCHES OR ANYTHING OUT THERE?

19 A. YES. THERE WERE BENCHES IN THE CENTER OF THAT A. WING.

20 Q. ALL RIGHT. NOW, I ASK YOU ABOUT THAT INCIDENT BETWEEN
21 MR. SHEPPARD AND MR. HOLMES. DESCRIBE -- YOU'VE TOLD THE
22 JURY WHERE YOU WERE. DESCRIBE WHAT YOU SAW HAPPENING ON
23 OCTOBER 10TH.

24 A. ALL RIGHT. AS I WAS PREPARING TO LOCK DOWN THE
25 FACILITY, THE MICROWAVE FACILITY, FOR THE NIGHT, I WAS

1 LETTING THE LAST FEW INMATES USE THE MICROWAVE WHEN I
2 OBSERVED THE TWO INMATES ON THE ROCK WHICH FROM WHERE I WAS
3 STANDING APPEARED TO BE HORSE-PLAYING. WELL, IN MY JOB
4 RESPONSIBILITIES IT WOULD BE TO DIFFUSE ANY SITUATION THAT
5 MIGHT LEAD TO SOMETHING AGGRESSIVE. SO---

6 Q. MR. BELLAMY, LET ME JUST INTERRUPT YOU AND ASK IF YOU---

7 A. OKAY.

8 Q. ---WILL JUST STEP BACK TO THE WITNESS BOX THERE.

9 A. ALL RIGHT.

10 Q. ALL RIGHT. AND YOU WERE SAYING YOUR JOB WAS TO?

11 A. YES. MY JOB DESCRIPTION WOULD BE TO DIFFUSE
12 HORSE-PLAYING ALSO. SO I IMMEDIATELY DIVERTED MY ATTENTION
13 AND MY DIRECTION OVER TO WHERE THE INMATES WERE LOCATED. AS
14 I GOT CLOSER, I REALIZED THAT THEY WERE NOT HORSE-PLAYING AND
15 THIS WAS ACTUALLY AN ACT OF AGGRESSION.

16 Q. ALL RIGHT. AND WHO DID YOU SEE AS THE AGGRESSOR AT THAT
17 POINT?

18 A. AT THAT POINT I SAW MR. SHEPPARD AS THE AGGRESSOR.

19 Q. ALL RIGHT. AT ANY POINT IN TIME DID YOU SEE A KNIFE OR
20 A SHANK?

21 A. NOT ON THE A. WING AT THAT POINT, NO.

22 Q. ALL RIGHT. HOW DID THAT INCIDENT PROGRESS? WHAT
23 HAPPENED?

24 A. I BASICALLY SAW INMATE HOLMES WALKING BACKWARD IN A
25 BACKWARD DIRECTION, FLAILING HIS ARMS, TRYING TO DEFEND HIS

1 AGGRESSOR FROM OFF OF HIM, BASICALLY TRYING TO DEFEND HIMSELF
2 BUT GET AWAY AT THE SAME TIME. SO I WAS A RELATIVELY NEW
3 EMPLOYEE AT THE TIME. I KNOW THAT I HAD TO CALL FIRST
4 RESPONDERS OR LET SOMEONE BE AWARE OF THE SITUATION.

5 AT THE TIME I MOVED BACK TO THE DOOR AND IMMEDIATELY
6 WENT TO FIND MY SERGEANT WHICH IS THE DORM SERGEANT AT THE
7 TIME, SERGEANT ELMORE. WHEN I OPENED THE DOOR, THE INMATES
8 HAD BEEN MOVED FROM WHERE THEY WERE BY THE DOOR, BY THE A.
9 WING ENTRANCE.

10 Q. WHEN YOU SAY INMATES, YOU MEAN MR. HOLMES AND MR.
11 SHEPPARD?

12 A. CORRECT.

13 Q. OKAY.

14 A. WHEN I OPENED THE DOOR, SERGEANT ELMORE WAS IN THE LOBBY
15 AREA, AND AS I WENT TO EXPLAIN TO HIM A FEW SECONDS LATER, I
16 THINK BEFORE I CLOSED THE DOOR GOOD THEY WERE COMING OUT INTO
17 THE LOBBY. WHEN THEY MOVED OUT INTO THE LOBBY, I IMMEDIATELY
18 SECURED THE DOOR TO ISOLATE THE OTHER INMATES IN THE -- ON
19 THE ROCK AWAY FROM THE ALTERCATION.

20 Q. ALL RIGHT. AT WHAT POINT IN TIME OR AT ANY POINT DID
21 YOU SEE A KNIFE OR SHANK?

22 A. YES, AT THIS POINT I DID.

23 Q. AND CAN YOU DESCRIBE THAT FOR THE JURY?

24 A. IT WAS A WEAPON. IT SEEMED TO HAVE A WHITE TAPE OR
25 SOMETHING USED TO BE AN ADHESIVE TO HOLD ITS COMPOSITION AT

1 THE END, APPROXIMATELY SIX INCHES LONG AND IN A CYLINDER
2 SHAPE OR BASICALLY A HOMEMADE WEAPON IS WHAT IT APPEARED TO
3 BE.

4 Q. ABOUT HOW LARGE WOULD THAT HAVE BEEN?

5 A. APPROXIMATELY -- I WOULD SAY APPROXIMATELY SIX INCHES OR
6 LESS.

7 Q. AND YOU SAID IT WAS CYLINDRICAL. HOW BIG AROUND?

8 A. ABOUT THAT BIG.

9 Q. OKAY.

10 A. THAT BIG.

11 Q. WHERE -- ALL RIGHT. YOU SAID YOU OPENED THE DOOR AND AT
12 THAT POINT THEY WERE IN THE SALLY PORT AREA?

13 A. CORRECT.

14 Q. ALL RIGHT. AT THAT TIME WHERE WAS MR. HOLMES, JAMES
15 HOLMES?

16 A. MR. HOLMES WAS ALSO IN THE SALLY PORT AREA AND WITH
17 INMATE SHEPPARD. BOTH INMATES WERE IN THE SALLY PORT AREA.

18 Q. ALL RIGHT. WERE THEY JUST LOCKED IN THE CELL GOING AT
19 IT AGAIN OR WHAT?

20 A. THEY WAS INTERLOCKED AT THIS POINT. INMATE SHEPPARD HAD
21 CAUGHT UP WITH HOLMES AND IN A -- SEEMED WHAT APPEARED TO ME
22 IN AN ATTEMPT TO DIFFUSE HIS AGGRESSIVE ACTIONS. HE HAD HIM
23 IN A HEADLOCK POSITION TRYING TO STOP HIM FROM THE STAB-LIKE
24 MOTIONS THAT HE WAS MAKING TO INMATE HOLMES.

25 Q. DID ANYBODY TRY TO BREAK UP -- BREAK MR. SHEPPARD AWAY

1 FROM MR. HOLMES?

2 A. YES. AT THIS POINT SERGEANT ELMORE USED A RESTRAINT OR
3 ATTEMPTED A RESTRAINT TO SEPARATE THE TWO INMATES AND GAVE
4 INMATE HOLMES A DIRECTIVE TO RELEASE INMATE SHEPPARD.

5 Q. AND DID THAT HAPPEN?

6 A. BEFORE HE ACTUALLY DID RELEASE HIM, HE SAID, "HE'S GOT A
7 KNIFE."

8 Q. WHO SAID, "HE'S GOT A KNIFE"?

9 A. INMATE HOLMES SAID THIS.

10 Q. OKAY. WERE YOU AND SERGEANT ELMORE ABLE TO GET THE TWO
11 OF THEM APART?

12 A. SERGEANT ELMORE PRIMARILY DID ALL OF THE RESTRAINING
13 THAT WAS REQUIRED BECAUSE FOR INMATE HOLMES RESTRAINING WAS
14 NOT NECESSARY BECAUSE HE WAS NOT THE AGGRESSOR. IT SEEMED AS
15 IF INMATE SHEPPARD WAS THE MAIN AGGRESSOR AND WAS
16 CONTINUOUSLY, EVEN AFTER OUR VERBAL DEMANDS AND SERGEANT
17 HOLMES' (SIC) ATTEMPTED RESTRAINT, TRYING TO STILL PURSUE
18 INMATE HOLMES.

19 Q. HE KEPT GOING FOR HIM.

20 A. YES.

21 Q. ALL RIGHT. ONCE YOU GOT THE TWO OF THEM APART, ONCE
22 SHEPPARD WAS OVER HERE AND HOLMES WAS OVER HERE, WHO WAS WITH
23 MR. SHEPPARD?

24 A. WITH MR. SHEPPARD WOULD HAVE BEEN SERGEANT HOLMES -- I'M
25 SORRY -- SERGEANT ELMORE. HE ACTUALLY HAD TO SPRAY -- USE

1 MK4 GAS TO PROMPT A RELEASE BECAUSE THE---

2 Q. IS THAT LIKE A PEPPER SPRAY?

3 A. YES.

4 Q. ALL RIGHT. WAS MR. SHEPPARD RESTRAINED IN ANY SORT OF
5 FASHION?

6 A. MR. SHEPPARD WAS RESTRAINED INITIALLY. HOWEVER, AFTER
7 THE TWO WERE SEPARATED AND WE WERE DIRECTING INMATE HOLMES
8 OUT, THEY WERE A GREAT DISTANCE APART IN THE SALLY PORT BUT
9 THE RESTRAINTS WERE ON. INMATE SHEPPARD WAS STILL SUFFERING
10 FROM THE SPRAY OF THE PEPPER SPRAY.

11 Q. OKAY. AND WHERE WAS INMATE HOLMES AT THE TIME?

12 A. IN THE REAR PART OR I GUESS YOU COULD SAY THE FRONT PART
13 OF THE SALLY PORT, CLOSE TO THE ENTRANCE UP IN HERE.

14 Q. ALL RIGHT. ALL RIGHT. YOU GOT SHEPPARD IN ONE CORNER,
15 HOLMES IN ONE CORNER, AND SHEPPARD IS RESTRAINED, RUBBING HIS
16 EYES OR WHATEVER AT THE TIME?

17 A. CORRECT.

18 Q. OKAY. NOW, INMATE HOLMES, JAMES HOLMES, DID HE HAVE ANY
19 INJURIES?

20 A. YES. AND FROM EVEN OBSERVING HIS INJURIES BRIEFLY, THEY
21 SEEMED TO BE LACERATIONS THAT HAD A CYLINDER PATTERN. THEY
22 WEREN'T SLASHES.

23 Q. WAS HE BLOODY AT ALL?

24 A. YES, HE WAS.

25 Q. WAS IT ON HIS CLOTHES?

1 A. IT WAS ON HIS CLOTHES AS WELL AS ON THE SALLY PORT AND
2 WING FLOOR.

3 Q. SO IT WAS ENOUGH TO GET ON THE FLOOR?

4 A. YES.

5 Q. OKAY. ALL RIGHT. WHEN THEY WERE IN THE SALLY PORT
6 AREA, AT ANY POINT IN TIME DID MR. SHEPPARD BREAK AWAY FROM
7 MR. ELMORE?

8 A. WHEN THEY WERE IN THE -- COULD YOU REPEAT THAT QUESTION?

9 Q. AT ANY POINT IN TIME WERE -- WAS MR. SHEPPARD ABLE TO
10 BREAK AWAY FROM MR. ELMORE, SERGEANT ELMORE?

11 A. YES.

12 Q. AND TELL US ABOUT THAT.

13 A. WHEN THE TWO WERE SEPARATED AS WE WERE -- ME AND THE
14 OFFICER ON THE OTHER WING WERE ESCORTING OFFICER -- INMATE
15 HOLMES OFF OF THE -- OUT OF THE SALLY PORT WHICH WAS THE
16 DIRECTIVE OF SERGEANT ELMORE TO REMOVE HIM FROM THE SALLY
17 PORT. BEFORE WE COULD DO THAT, HE OBVIOUSLY OVERCAME THE
18 PEPPER SPRAY OR WHATNOT AND PRESUMED TO BREAK THE POSITION
19 BECAUSE SERGEANT ELMORE BASICALLY HAD HIM CORNERED, DIDN'T
20 HAVE A PHYSICAL RESTRAINT ON HIM AT THE TIME BUT STILL HAD
21 HIM IN A CORNER STANDING IN HIS DIRECTION WHERE HE, YOU KNOW,
22 COULDN'T HAVE GOTTEN PAST WITHOUT PUSHING.

23 LIKE I SAID, AFTER HE OVERCAME THE SPRAY, HE PUSHED PAST
24 SERGEANT ELMORE AND PRESUMED TO GO AFTER INMATE HOLMES AGAIN.
25 INMATE HOLMES AT THIS POINT EXITED THE FRONT DOOR.

1 Q. WHEN YOU SAY EXITED, DID HE LOLLYGAG OUT THE DOOR OR
2 WHAT?

3 A. NO, HE VERY FASTLY (SIC) RAN OUT THE DOOR.

4 Q. SO MR. HOLMES WAS RUNNING AWAY FROM MR. SHEPPARD AT THAT
5 TIME?

6 A. CORRECT.

7 Q. AND MR. SHEPPARD WAS PROCEEDING AFTER HIM.

8 A. CORRECT.

9 Q. IS THAT RIGHT? ALL RIGHT. AND THIS WAS AFTER Y'ALL HAD
10 SEPARATED THEM FOR THE FIRST TIME.

11 A. CORRECT.

12 Q. OKAY. ALL RIGHT. DID YOU GET A GOOD LOOK AT LOUIS
13 SHEPPARD AT THE TIME AND HIS ATTITUDE AND DEMEANOR AND HOW HE
14 WAS ACTING?

15 A. YES, I DID.

16 Q. AND HOW DID HE APPEAR TO ACT TO YOU?

17 A. HE SEEMED TO BE IN SORT OF A TRANSFIXED STATE LIKE
18 SOMEONE WHOSE ENTIRE MISSION AT THAT TIME WAS TO DO AS MUCH
19 DAMAGE AS HE COULD TO INMATE HOLMES.

20 Q. WHEN LOUIS SHEPPARD TOOK OFF AFTER JAMES HOLMES, DO YOU
21 THINK HE WAS GOING TO TEND TO HIS WOUNDS?

22 A. NO. I BELIEVE THAT HE WAS -- HAD A MINDSET TO COMPLETE
23 OR TRY TO COMPLETE OR ADD ON TO THE DAMAGE THAT HE HAD
24 ALREADY DONE.

25 Q. ALL RIGHT. DID IT LOOK LIKE HE WAS TRYING TO KILL HIM?

1 A. I WOULD SAY SO.

2 MR. HILTON: PLEASE ANSWER ANY QUESTIONS MS. HARDEE-
3 THOMAS MAY HAVE FOR YOU.

4 THE COURT: CROSS-EXAMINATION.

5 MS. HARDEE-THOMAS: YES.

6 CROSS-EXAMINATION

7 BY MS. HARDEE-THOMAS:

8 Q. NOW, WHEN THE SOLICITOR JUST ASKED YOU IF IT LOOKED AS
9 IF MR. SHEPPARD WAS TRYING TO KILL MR. HOLMES, THEY WERE
10 ALREADY SEPARATED FROM EACH OTHER?

11 A. WHEN I ANSWERED THE QUESTION THAT HE JUST ASKED ME, THAT
12 WAS A TOTAL SUMMARY OF THEM BEING SEPARATED AND APART BECAUSE
13 BOTH HIS ACTIONS AT ANY GIVEN TIME APPEARED TO BE SOMEONE
14 THAT WAS VIGOROUSLY PURSUING SOMEONE TO CAUSE AS MUCH DAMAGE
15 AS POSSIBLE.

16 Q. I UNDERSTAND THAT. BUT THAT WAS YOUR OPINION AT THE
17 TIME, BUT THERE WAS NO WAY BASED ON THE WOUNDS THAT HE HAD
18 THAT HE WAS TRYING TO KILL HIM, THE CYLINDER WOUNDS THAT HE
19 HAD.

20 A. I'M NOT -- YOU KNOW, I DIDN'T EXAMINE HIM MEDICALLY.

21 Q. I UNDERSTAND.

22 A. SO I WOULDN'T KNOW.

23 Q. BUT YOU SAW THE CYLINDER WOUNDS THAT WAS ON HIM?

24 A. YES.

25 Q. AND BASICALLY THEY WEREN'T KNIFE-ORIENTED, MEANING GOING

1 Q. NOW, THERE WAS AN AREA WHERE YOU SAID YOU ACTUALLY LEFT
2 AND WENT INTO THE SALLY PORT THAT SEPARATES THE A. WING? IS
3 THAT A GATE?

4 A. IT'S ACTUALLY -- THE BUILDING ITSELF WHERE YOU HAVE A
5 MAIN ENTRANCE---

6 Q. RIGHT.

7 A. ---WHEN YOU -- FROM THE SALLY PORT, YOU HAVE ACCESS TO A
8 LIEUTENANT'S OFFICE ON THE RIGHT.

9 Q. IS IT BEHIND THE GATE?

10 A. NO.

11 Q. OKAY.

12 A. THIS IS THE INSIDE OF THE BUILDING. IT'S IN A LOBBY
13 AREA.

14 Q. YOU SAID INSIDE A BUILDING. IS EVERYTHING INSIDE A.
15 WING? BECAUSE, SEE, YOU INDICATED THAT YOU WERE IN A. WING
16 BY THE MICROWAVE.

17 A. RIGHT.

18 Q. DID YOU LEAVE AT ANY POINT TO GO GET A SUPERVISOR?

19 A. NO.

20 Q. YOU DIDN'T.

21 A. I DIDN'T LEAVE. IN MY -- IN MY TRANSPORTING, IN MY
22 WALKING TO THE DOOR---

23 Q. UH-HUH.

24 A. ---TO OPEN FOR THE SUPERVISOR, I NEVER ACTUALLY LEFT THE
25 WING BECAUSE BEFORE I COULD CLOSE THE WING, THERE THEY WERE.

1 Q. SO YOU DIDN'T EVEN LEAVE THE WING.

2 A. NO.

3 Q. ALL RIGHT.

4 A. NOT UNTIL THEY LEFT WITH ME AS WELL.

5 Q. INTO THE LOBBY.

6 A. RIGHT.

7 Q. YOU SEE WHERE THE LOBBY IS ON THERE? CAN YOU POINT THAT
8 OUT?

9 A. I'M OBSERVING THE LOBBY TO BE THIS AREA.

10 Q. JUST MARK THAT AND PUT LOBBY. MARK THE BLUE AREA AND
11 PUT LOBBY FOR US.

12 A. (THE WITNESS COMPLIES.)

13 Q. AND YOU INDICATED THAT WHEN YOU WERE IN THE A. WING
14 WHERE DID YOU SEE THEM ACTUALLY TUSSLING?

15 A. TO THE LEFT SIDE OF WHAT IS KNOWN AS THE ROCK, THE AREA
16 THAT THE INMATES ARE PRIVILEGED TO BE OUT ON REC -- DURING
17 RECREATIONAL TIME.

18 Q. AND I WANT YOU TO PUT A MARK THERE AND PUT STRUGGLE SO
19 WE'LL KNOW.

20 A. ALL RIGHT. (THE WITNESS COMPLIES.)

21 MS. HARDEE-THOMAS: YOUR HONOR, MAY I APPROACH?

22 THE COURT: YOU MAY.

23 BY MS. HARDEE-THOMAS:

24 Q. THANK YOU.

25 A. UH-HUH.

1 FOR THE RECORD.

2 THE WITNESS: CARVIN ELMORE.

3 THE COURT: AND CAN YOU SPELL YOUR FIRST NAME?

4 THE WITNESS: E-L-M-O-R-E.

5 THE COURT: THAT'S YOUR LAST NAME. SPELL YOUR FIRST
6 NAME.

7 THE WITNESS: C-A-R-V-I-N.

8 THE COURT: THANK YOU. YOUR WITNESS.

9 MR. SORENSON: THANK YOU, YOUR HONOR.

10 DIRECT EXAMINATION

11 BY MR. SORENSON:

12 Q. PLEASE TELL THE JURY WHERE IT IS THAT YOU'RE EMPLOYED.

13 A. I'M EMPLOYED AT LIEBER CORRECTIONAL INSTITUTION.

14 Q. ALL RIGHT. AND HOW LONG HAVE YOU BEEN EMPLOYED AT
15 LIEBER?

16 A. SINCE JANUARY OF '89.

17 Q. SO ABOUT EIGHT AND A HALF YEARS I GUESS?

18 A. CLOSE TO 18.

19 Q. OH, SINCE '89. I WAS THINKING '99. THAT'S TESTING MY
20 MATH THERE. WHAT ARE YOUR CURRENT DUTIES AND
21 RESPONSIBILITIES OUT THERE?

22 A. I'M A CORRECTIONAL SUPERVISOR.

23 Q. OKAY. AND YOU HEARD TESTIMONY REFERRING TO SERGEANT
24 ELMORE. IS THAT YOU THAT---

25 A. YES, SIR.

1 Q. ---OFFICER BELLAMY WAS JUST TALKING ABOUT? SO BACK
2 IN -- BACK IN OCTOBER OF 2005 YOU WERE EMPLOYED AT LIEBER AT
3 THAT TIME.

4 A. YES, SIR.

5 Q. AS A SUPERVISOR?

6 A. YES, SIR.

7 Q. ALL RIGHT. AND IF YOU WOULD JUST BRIEFLY KIND OF TELL
8 THE JURY WHAT YOUR DAY-TO-DAY DUTIES AND RESPONSIBILITIES ARE
9 AS A SUPERVISOR OUT THERE.

10 A. WE DO POST-OFFS ON THEIR ASSIGNMENT AND MAKE SURE THAT
11 THEIR DUTIES ARE CARRIED OUT AND MAINTAIN SECURITY COURTESY
12 OF THE UNITS THAT WE'RE ASSIGNED TO.

13 Q. OKAY. AND OUT AT LIEBER, IS ONE OF THE UNITS OUT THERE
14 REFERRED TO AS THE ASHLEY UNIT?

15 A. YES, SIR.

16 Q. AND HOW MANY -- APPROXIMATELY HOW MANY INMATES ARE
17 HOUSED AT ANY GIVEN TIME IN ASHLEY UNIT?

18 A. YOU'VE GOT AN A. SIDE AND A B. SIDE, AND APPROXIMATELY
19 JUST ONE WING ITSELF IS ABOUT 130 JUST ON ONE SIDE.

20 Q. SO IT'S UPWARDS OF 250 INMATES IN EACH---

21 A. YES, SIR.

22 Q. ---UNIT? OKAY. AND IS THAT HOW IT WAS BACK IN OCTOBER
23 OF 2005?

24 A. YES, SIR.

25 Q. OKAY. AND AS YOU REFERRED TO, EACH ASHLEY UNIT IS

1 BROKEN DOWN INTO AN A. WING AND A B. WING?

2 A. YES, SIR.

3 Q. ARE THEY SEPARATED FROM EACH OTHER?

4 A. YES, SIR.

5 Q. OKAY. HOW MANY OFFICERS ARE ASSIGNED TO EACH OF THOSE
6 WINGS?

7 A. WE HAVE ONE OFFICER ON EACH WING.

8 Q. AND ARE THERE ANY OTHER OFFICERS THEN ASSIGNED TO THAT
9 ACTUAL OVERALL UNIT?

10 A. NO, SIR.

11 Q. OKAY. AND BACK ON THE EVENING OF OCTOBER 10TH OF 2005,
12 WHAT OFFICER WAS ASSIGNED TO A. WING OF THE ASHLEY UNIT?

13 A. OFFICER BELLAMY.

14 Q. OKAY. ALL RIGHT. AND WERE YOU WORKING THAT NIGHT ALSO,
15 SERGEANT?

16 A. YES, SIR.

17 Q. AND DO YOU RECALL THERE BEING AN OCCURRENCE ON ASHLEY
18 UNIT THAT EVENING?

19 A. YES, SIR.

20 Q. OKAY. TELL THE JURY WHAT -- HOW YOU BECAME AWARE OF
21 WHAT WAS GOING ON OVER ON THE A. WING.

22 A. I ENTERED THE UNIT APPROXIMATELY -- I'D SAY ABOUT 10:15,
23 MAYBE A LITTLE BIT EARLIER THAT NIGHT, AND THERE WAS AN
24 ALTERCATION. OFFICER BELLAMY RADIOED AND SAID THERE WAS AN
25 ALTERCATION ON A. WING. SO AS I ENTERED THE LOBBY -- AND

1 BELLAMY WAS STANDING AT THE DOOR, SO I INSTRUCTED HIM TO OPEN
2 THE WING SO I COULD SEE WHAT WAS GOING ON.

3 SO AS HE OPENED THE WING DOOR TO THE ASHLEY UNIT, TWO
4 INMATES WAS IN THE DOOR, RIGHT AT THE DOOR. SO WHEN THE DOOR
5 WAS OPENED, I IMMEDIATELY GRABBED HOLD OF BOTH OF THE INMATES
6 AND PULLED THEM INTO THE SALLY PORT.

7 Q. WHO WERE THOSE TWO INMATES THAT WERE INVOLVED IN THAT
8 ALTERCATION RIGHT OUTSIDE -- RIGHT INSIDE OF THE A. WING?

9 A. INMATE SHEPPARD AND INMATE HOLMES.

10 Q. OKAY. DO YOU RECOGNIZE THE DEFENDANT HERE, LOUIS
11 SHEPPARD, AS BEING ONE OF THOSE INMATES?

12 A. YES, SIR.

13 Q. OKAY. SO WHEN THEY THEN KIND OF -- KIND OF SPILLED OVER
14 INTO THAT LOBBY OF THAT SALLY PORT AREA, WHAT HAPPENED THEN,
15 SIR?

16 A. THE TWO INMATES WAS INTERLOCKED. INMATE HOLMES HAD
17 INMATE SHEPPARD MORE LIKE IN A HEADLOCK, AND I GIVE HIM AN
18 ORDER TO RELEASE INMATE SHEPPARD. HE SAID, "SERGEANT, I
19 CAN'T RELEASE HIM BECAUSE THE INMATE HAS A KNIFE." SO I
20 STEPPED BACK AND I OBSERVED, BUT I DIDN'T SAW ANY WEAPON.

21 Q. SO YOU DID NOT SEE A WEAPON AT THAT POINT IN TIME?

22 A. I DIDN'T SAW ANY WEAPONS, NO.

23 Q. OKAY. WHAT -- LET ME ASK YOU: OUT OF THE TWO OF THEM,
24 YOU INDICATED THAT INMATE HOLMES HAD INMATE SHEPPARD IN A
25 HEADLOCK?

1 A. YES, SIR.

2 Q. DID IT APPEAR THAT EITHER ONE OF THEM WAS BEING THE MORE
3 AGGRESSIVE OUT OF TWO OF THEM, HOWEVER, IN THAT ALTERCATION?

4 A. EVEN THOUGH HOLMES HAD SHEPPARD IN A HEADLOCK, TO ME
5 SHEPPARD WAS THE MOST AGGRESSIVE ONE.

6 Q. OKAY. WHAT DID -- WHAT DID YOU THEN DO AFTER GIVING
7 THAT ORDER TO -- THE INITIAL ORDER TO INMATE HOLMES TO
8 RELEASE THE DEFENDANT, MR. SHEPPARD? WHAT DID YOU DO?

9 A. AFTER I GIVE THEM A SECOND ORDER TO CEASE, I
10 ADMINISTERED MK4 IN THE FACIAL AREA OF INMATE SHEPPARD, AND
11 THEY RELEASED EACH OTHER. AND ONCE THEY WERE SEPARATED, I
12 LIKE PUSHED HOLMES AWAY; RIGHT? I WAS TELLING OFFICER
13 BELLAMY AND THE OTHER OFFICER OFF ON B. WING -- HE WAS IN THE
14 LOBBY AREA ALSO. SO I INSTRUCTED THEM TO GET INMATE HOLMES
15 OUT OF THE BUILDING, AND I WAS LIKE HOLDING INMATE SHEPPARD
16 BACK PINNED AGAINST THE WALL WITH ONE HAND. SO WHEN THEY WAS
17 EXITING HOLMES OUT OF THE BUILDING, SHEPPARD, YOU KNOW, HE
18 BROKE LOOSE AND PROCEEDED TO GO AFTER INMATE HOLMES, BUT HE
19 NEVER MADE CONTACT WITH HIM. WE RESTRAINED HIM BEFORE HE GOT
20 TO HIM.

21 Q. GOT YOU. ALL RIGHT. AND AS FAR AS -- LET ME BACK YOU
22 UP THERE A SECOND, SERGEANT. YOU INDICATED THAT YOU
23 ADMINISTERED -- IT WAS MK4?

24 A. PEPPER SPRAY.

25 Q. WHAT? PEPPER SPRAY?

1 A. YES.

2 Q. OKAY. AND WERE THERE ANY OTHER INMATES INSIDE THAT
3 SALLY PORT AREA THAT YOU'RE AWARE OF AT THAT POINT IN TIME?

4 A. THERE WERE INMATES -- WHEN WE OPENED THE DOOR TO A.
5 WING, THERE WERE INMATES, YOU KNOW, CLOSELY IN THAT AREA, AND
6 I WAS ALSO TELLING BELLAMY, YOU KNOW, TO CLEAR THE LOBBY TO
7 GET THE INMATES BACK ON THE WING. SO AT THAT TIME, YOU KNOW,
8 HE MANAGED TO GET THE OTHER INMATES BACK ON THE WING AND
9 SECURED THE DOOR.

10 Q. SO THERE WAS A LOT OF OTHER COMMOTION GOING ON---

11 A. YES.

12 Q. ---DURING ALL THIS.

13 A. BECAUSE THEY WANTED TO SEE WHAT WAS GOING ON AND, YOU
14 KNOW...

15 Q. ALL RIGHT. NOW, YOU INDICATED ONCE YOU GOT THE TWO OF
16 THEM SEPARATED -- LET ME ASK YOU: WERE YOU ABLE TO RECOVER A
17 WEAPON AT THAT POINT IN TIME?

18 A. NO. WE DID A RANDOM CHECK OF THE COMMON AREA AND THE
19 CELL BLOCK, BUT WE DIDN'T FIND ANY WEAPONS. THERE WAS NO
20 WEAPON FOUND.

21 Q. SO IT WAS SEARCHED FOR THAT EVENING?

22 A. YES, SIR.

23 Q. OKAY. YOU SAID YOU'VE BEEN OUT AT LIEBER FOR 18 PLUS
24 YEARS. IS IT COMMON OR UNCOMMON FOR THERE TO BE WEAPONS
25 UNFORTUNATELY IN THE DEPARTMENT OF CORRECTIONS?

1 A. YES, THERE ARE WEAPONS. YES. EVEN THOUGH WE SEARCHED
2 THAT DAY, WE DIDN'T FIND ANY WEAPON. I THINK IT WAS THE NEXT
3 DAY, YOU KNOW, WE DID ANOTHER SEARCH AND WE DID FIND WEAPONS.
4 WELL, WE FOUND A WEAPON IN THE -- IN THE -- WHAT THEY CALL
5 THE DAY ROOM ON THE A. WING UP IN THE CEILING. IT WAS MORE
6 LIKE AN ICE SHIP -- I MEAN, AN ICE PICK, YOU KNOW, SHAPE OR
7 WHATNOT.

8 Q. NO OTHER INDICATION---

9 A. WE CAN'T SAY THAT WAS THE WEAPON THAT---

10 Q. ---THAT THAT---

11 A. WE CAN'T SAY THAT WAS THE WEAPON THAT WAS USED.

12 Q. GOT YOU. NOW, YOU INDICATED YOU HAD GOT THE TWO OF THEM
13 SEPARATED AND KIND OF PUSHED INMATE HOLMES OFF TO THE SIDE
14 INITIALLY. COULD YOU TELL ANYTHING ABOUT HIS CONDITION AT
15 THAT POINT IN TIME, IF HE HAD ANY INJURIES?

16 A. HE DID.

17 Q. OKAY. TELL THE JURY.

18 A. I COULDN'T REALLY TELL, YOU KNOW, WHAT TYPE OF INJURIES
19 HE HAD.

20 Q. OKAY. WAS HE BLEEDING AT ALL DID YOU SEE?

21 A. YES.

22 Q. DO YOU RECALL WHERE HE WAS BLEEDING FROM EVEN?

23 A. IN LIKE THE CHEST AREA.

24 Q. CHEST AREA? OKAY. YOU HAD INDICATED THAT YOUR FOCUS AT
25 THAT POINT IN TIME WAS MOSTLY ON WHO?

1 A. ON INMATE SHEPPARD.

2 Q. OKAY. ARE YOU AWARE OF WHETHER INMATE HOLMES WAS SEEN
3 BY ANY MEDICAL PERSONNEL OUT THERE?

4 A. HE DID. HE DID.

5 Q. HOW ABOUT THIS DEFENDANT, INMATE SHEPPARD? DID HE HAVE
6 ANY INJURIES TO HIM THAT YOU RECALL?

7 A. I DON'T THINK HE DID BECAUSE I THINK HE REFUSED MEDICAL
8 ATTENTION, AND I DID REMEMBER SPEAKING TO HIM. HE DIDN'T --
9 HE HAD NO -- HE DIDN'T SAY -- HE SAID VERY FEW WORDS. HE
10 DIDN'T SAY A WHOLE LOT.

11 Q. AS FAR AS MEDICAL ATTENTION, SIR, DID HE -- DID YOU SEE
12 ANY PHYSICAL INJURIES TO HIM?

13 A. TO WHOM NOW?

14 Q. TO THE DEFENDANT, MR. SHEPPARD.

15 A. I DIDN'T, NOT MYSELF. NO, I DIDN'T SAW ANY.

16 Q. YOU HAD ADMINISTERED PEPPER SPRAY TO HIM.

17 A. YES.

18 Q. AS A RESULT OF THAT OR---

19 A. YES.

20 Q. ---ANY TIME---

21 A. I MEAN, HE WAS LIKE FROM HIS EYES AND, YOU KNOW...

22 Q. ANY TIME PEPPER SPRAY IS USED ON AN INMATE, DO THEY HAVE
23 TO AT LEAST BE OFFERED MEDICAL ATTENTION?

24 A. YES, SIR.

25 Q. OKAY. AND YOU INDICATED THAT HE REFUSED ANY MEDICAL

1 ATTENTION?

2 A. YES, SIR.

3 Q. AS FAR AS WHAT HAD OCCURRED ACTUALLY -- LET ME KIND OF
4 POINT YOU UP HERE TO THIS DIAGRAM UP HERE. ACTUALLY IN THE
5 -- OUT IN THE A. WING AREA, DID YOU HAVE AN OPPORTUNITY TO
6 EVER SEE WHAT ACTUALLY HAD OCCURRED OUT THERE AT ALL?

7 A. NO, SIR.

8 Q. THE TIME YOU SAW THEM, THEY WERE ACTUALLY AT THE
9 DOORWAY; IS THAT CORRECT?

10 A. WHEN I SAW THEM, THEY WAS AT -- THEY WAS AT THE DOOR.

11 Q. HOW LONG DO YOU THINK IT TOOK YOU FROM THE TIME THEY
12 KIND OF SPILLED INTO THAT LOBBY AREA -- HOW LONG DO YOU THINK
13 IT TOOK FOR YOU TO GET THE TWO OF THEM SEPARATED AND THE
14 SITUATION UNDER CONTROL?

15 A. PROBABLY LESS THAN A MINUTE.

16 MR. SORENSON: THANK YOU, SERGEANT. PLEASE ANSWER ANY
17 QUESTIONS THAT MS. HARDEE-THOMAS MIGHT HAVE.

18 THE COURT: CROSS-EXAMINATION?

19 MS. HARDEE-THOMAS: I'LL TRY TO BE BRIEF.

20 CROSS-EXAMINATION

21 BY MS. HARDEE-THOMAS:

22 Q. GOOD AFTERNOON, SIR, MR. ELMORE. NOW, YOU INDICATED
23 THAT YOU CAME IN AFTER THEY WERE IN THE LOBBY AREA?

24 A. NO, I DIDN'T.

25 Q. WHEN DID YOU COME IN, SIR?

1 A. I CAME IN WHEN OFFICER BELLAMY RADIOED ME BY RADIO
2 SAYING THAT HE NEED SOME ASSISTANCE.

3 Q. OKAY.

4 A. AND I WAS COMING AT THE SAME TIME BUT, YOU KNOW, BUT I
5 WAS RIGHT THERE, YOU KNOW. AND SO HE OPENED -- SO I TOLD HIM
6 TO OPEN THE DOOR; RIGHT? SO WHEN HE OPENED THE DOOR TO THE

7 A. WING---

8 Q. OPENED THE DOOR TO THE LOBBY?

9 A. NO, NO. TO A. WING.

10 Q. A. WING.

11 A. SO WHEN HE OPENED THE DOOR TO A. WING, I WAS ALREADY,
12 YOU KNOW, IN THE SALLY PORT AREA. SO HE HAD TO OPEN THE
13 DOOR, YOU KNOW, TO LET ME ON.

14 Q. OKAY.

15 A. SO WHEN HE OPENED THE DOOR, THE TWO INMATES WAS RIGHT AT
16 THE DOOR LIKE THEIR BACK WAS AGAINST THE DOOR. SO HE OPENED
17 THE DOOR. AND WHEN HE PUT THE KEY IN THERE AND TURNED THE
18 DOOR, I PULLED -- BECAUSE THE DOOR OPENS FROM THE INSIDE. I
19 PULLED THE DOOR OPEN AND I REACHED IN AND I GRABBED THE TWO
20 INMATES AND PULLED THEM INTO THE SALLY PORT AREA.

21 Q. SO YOU SAW THEM IN THE SALLY PORT AREA. THE SALLY PORT
22 AREA IS A DOOR WITH A GLASS TO IT?

23 A. NO, THAT'S THE WING DOOR, BUT YOU CAN SEE IN -- YOU
24 KNOW, YOU CAN SEE FROM THE SALLY PORT AREA UP TO WING.

25 Q. OKAY. IS IT A SMALL GLASS OR IT'S JUST A -- WHAT TYPE

1 OF STRUCTURE IS IT?

2 A. IT'S LIKE A METAL -- IT'S A METAL DOOR. THE GLASS IS
3 PROBABLY MAYBE FOUR INCHES WIDE AND MAYBE TWO TO -- MAYBE TWO
4 FEET, YOU KNOW, IN HEIGHT.

5 Q. THAT'S WHAT YOU CAME THROUGH.

6 A. EXCUSE ME?

7 Q. THAT'S WHAT YOU CAME THROUGH.

8 A. NO, THAT'S THE GLASS IN THE DOOR THAT YOU CAN LOOK
9 THROUGH FROM THE ONE -- FROM THE SALLY PORT TO THE A. WING.
10 THAT'S THE DOOR THAT OFFICER BELLAMY OPENED, YOU KNOW, SO I
11 COULD ENTER.

12 Q. SO THAT'S THE DOOR YOU CAME THROUGH.

13 A. TO THE A. WING, YES.

14 Q. ALL RIGHT. NOW, THEY WERE ALREADY -- WHEN YOU SAW
15 HOLMES AND SHEPPARD, WERE THEY HEAD-LOCKED TOGETHER OR THEY
16 WERE JUST TUSSLING AT EACH OTHER?

17 A. THEY WERE JUST TUSSLING AT EACH OTHER.

18 Q. OKAY. AND DID YOU SEE THEM TUSSLING FROM -- FROM WHAT
19 AREA? WHEN YOU CAME IN, YOU SAW THE WHOLE STRUGGLE AREA FROM
20 OVER HERE ALL THE WAY UP TO LOBBY---

21 A. NO, YOU CANNOT SEE THE WHOLE STRUGGLE AREA FROM WHERE I
22 WAS AT. I WAS IN THE SALLY PORT AREA, THE LOBBY AREA.
23 THAT'S WHAT YOU CALL THE LOBBY AREA.

24 Q. OKAY. YOU WERE IN THIS AREA?

25 A. RIGHT WHERE THE ARROW IS AT?

- 1 Q. YES, SIR.
- 2 A. COME DOWN.
- 3 Q. THAT'S SALLY PORT.
- 4 A. YEAH. I WAS IN THAT AREA, YES.
- 5 Q. OKAY. ALL RIGHT. SO YOU WOULD BE ABLE TO SEE
- 6 EVERYTHING.
- 7 A. NOT EVERYTHING.
- 8 Q. WHAT DID YOU SEE?
- 9 A. YOU COULD BE ABLE TO SEE RIGHT, YOU KNOW, RIGHT IN FRONT
- 10 OF THE MICROWAVE AREA.
- 11 Q. OKAY. WHAT DID YOU SEE?
- 12 A. WHAT I SAW IS WHEN BELLAMY OPENED THE DOOR -- WHEN HE
- 13 OPENED THE DOOR, THE INMATES WERE THERE.
- 14 Q. AT THE DOOR?
- 15 A. AT THE DOOR.
- 16 Q. OKAY.
- 17 A. YEAH.
- 18 Q. ALL RIGHT. SO THEY WERE -- WERE THEY INTERLOCKED AT
- 19 THAT TIME?
- 20 A. THEY WERE STRUGGLING, BUT THEY WASN'T INTERLOCKED.
- 21 Q. OKAY. AT WHAT POINT DID THEY BECOME INTERLOCKED?
- 22 A. ONCE WE GOT THEM OUT OF THE -- OFF THE WING..
- 23 Q. A. WING.
- 24 A. OFF A. WING INTO THE SALLY PORT AREA. THAT'S WHEN THEY
- 25 WAS INTERLOCKED.

1 Q. GOT YOU. AND THEN YOU SAID YOU DIDN'T SEE A WEAPON.

2 A. NO, I DIDN'T SAW NO WEAPON. NO.

3 Q. WHEN WERE YOU -- BECAME AWARE THAT THERE WAS A WEAPON
4 INVOLVED?

5 A. WHEN I BECAME AWARE IS WHEN I TOLD HIM TO, YOU KNOW,
6 STOP THE ACTION, AND INMATE HOLMES STATED THAT SHEPPARD HAD A
7 WEAPON.

8 Q. OKAY.

9 A. BUT -- SO I STEPPED BACK AND I DIDN'T OBSERVE ANY
10 WEAPON. WHEN I ORDERED THEM TO RELEASE AGAIN, THEY DIDN'T.
11 SO THAT'S WHEN I MACED 'EM.

12 Q. OKAY. YOU GOT CLOSE TO MACE MR. SHEPPARD.

13 A. YES.

14 Q. NOT MR. HOLMES.

15 A. YES. BOTH OF THEM GOT IT BECAUSE, YOU KNOW, MACE -- I
16 MEAN, EVEN I GOT SOME OF IT BUT, YOU KNOW...

17 Q. BUT YOU DIRECTLY WENT INTO MR. SHEPPARD'S FACE WITH THE
18 MACE.

19 A. YES.

20 Q. HOW FAR -- HOW FAR WERE YOU FROM HIM?

21 A. ABOUT -- WE-- I WAS CLOSE TO HIM.

22 Q. ALL RIGHT. YOU SEPARATED THE TWO. YOU INDICATED THAT
23 YOU SAW -- WHAT TYPE OF WOUNDS DID YOU SEE ON MR. HOLMES?

24 A. I DIDN'T SAW ANY WOUNDS. JUST BLOOD.

25 Q. JUST BLOOD.

1 A. YEAH.

2 Q. ALL RIGHT. HE HAD A SHIRT ON.

3 A. YES.

4 Q. OKAY. WHERE DID YOU SEE THE BLOOD?

5 A. THE BLOOD WAS ON HIS SHIRT IN HIS CHEST AREA.

6 Q. THAT'S THE ONLY AREA?

7 A. THAT'S THE ONLY ONE THAT I OBSERVED.

8 Q. AND HE WAS TOLD TO GO IN A CERTAIN AREA WHERE YOU
9 SECURED MR. SHEPPARD NEXT TO THE WALL.

10 A. I CAN SHOW YOU ON THE DIAGRAM.

11 Q. PLEASE. YOUR HONOR, MAY I APPROACH?

12 THE COURT: SURE.

13 MS. HARDEE-THOMAS: WE HAD SOME MARKINGS. I WANTED TO
14 GET A RED PEN. HERE IT IS.

15 THE COURT: DO YOU NEED A MARKER OR A PEN?

16 MS. HARDEE-THOMAS: A MARKER. I'M SORRY. A RED PEN.

17 BY MS. HARDEE-THOMAS:

18 Q. NOW, WHAT I WANT YOU TO DO IS I WANT YOU TO MARK WHERE
19 THE SALLY PORT IS. I KNOW YOU SHOWED IT TO US. PUT SALLY
20 PORT THERE. AND YOU CAN PUT SALLY PORT BESIDE THAT.

21 A. (THE WITNESS COMPLIES.)

22 THE COURT: MS. HARDEE-THOMAS?

23 MS. HARDEE-THOMAS: YES, MA'AM.

24 THE COURT: LET ME GIVE YOU THIS. THAT WAY BOTH OF YOU
25 HAVE A LASER POINTER. THAT MIGHT BE HELPFUL.

1 BY MS. HARDEE-THOMAS:

2 Q. OKAY. YOU GOT WHERE THE SALLY PORT WAS?

3 A. YES.

4 Q. NOW, YOU INDICATED THAT THERE'S THE LOBBY AREA WHERE YOU
5 AND WHO ELSE WERE IN THAT LOBBY AREA?

6 A. IT WAS ME, MR. SHEPPARD, AND INMATE HOLMES. AND ONCE
7 OFFICER BELLAMY SECURED THE WING DOOR, IT WAS OFFICER BELLAMY
8 AND THE OFFICER OFF THE B. WING.

9 Q. SO FIVE -- FIVE INDIVIDUALS IN THAT AREA.

10 A. YEAH, AS FAR AS I KNOW. YES, MA'AM.

11 Q. OKAY. THE EXIT THAT YOU INDICATED MR. HOLMES LEFT OUT
12 OF, WAS THAT -- WHAT DOOR DID HE LEAVE OUT OF?

13 A. THAT WAS THE FRONT ENTRANCE TO THE UNIT.

14 Q. WHERE IS THAT? CAN YOU MARK THAT ON THERE? AND YOU CAN
15 SAY HOLMES LEFT OUT OF HERE.

16 A. (THE WITNESS DRAWS ON THE DIAGRAM.)

17 Q. AND THAT DOOR IS USUALLY CLOSED UNTIL AN OFFICER OPENS
18 IT UP.

19 A. NO, THAT DOOR IS ALWAYS OPEN.

20 Q. ALWAYS OPEN?

21 A. UNTIL I'D SAY ABOUT 10:30 AT NIGHT. THEN AN OFFICER
22 COMES AROUND AND SECURES BOTH OF THE DOORS.

23 Q. OKAY. SO INMATES CAN GO IN AND OUT OF THAT AREA?

24 A. ONLY IF THE WING DOORS ARE OPEN. BEFORE THE INMATE CAN
25 GET OUT THE EXIT DOOR TO THE UNIT, THEY HAVE TO COME OFF THE

1 WING, AND THE WING DOORS ARE MOSTLY SECURED UNLESSEN
2 (PHONETIC) AN OFFICER OPENS THEM.

3 Q. SO BASICALLY YOU GUYS HAD TO OPEN THAT. THAT'S THE ONLY
4 WAY HE WAS ABLE TO GET THROUGH.

5 A. NOT REALLY.

6 Q. OKAY. MY QUESTION IS: WERE ANY OTHER INMATES COMING IN
7 AND OUT OF THAT AREA DURING THE TIME THAT YOU GUYS WERE
8 THERE?

9 A. NOT AT THIS TIME OF NIGHT.

10 Q. OKAY.

11 A. THE ONLY OTHER INMATE THAT WOULD HAVE BEEN IN THE SALLY
12 PORT, IN THE LOBBY AREA, IS WHEN OFFICER BELLAMY OPENED THE
13 DOOR AND INMATES WANTED, YOU KNOW, TO SEE WHAT WAS GOING ON.
14 THERE MIGHT HAVE BEEN INMATES CAME OFF THE A. WING FOR A
15 BRIEF PERIOD OF TIME; I DON'T KNOW.

16 Q. BUT Y'ALL SECURED THAT AREA BECAUSE YOU HAD---

17 A. YEAH.

18 Q. ---THESE TWO PEOPLE.

19 A. BECAUSE WE HAD THESE TWO IN THERE, YES.

20 MS. HARDEE-THOMAS: YOUR HONOR, MAY I APPROACH?

21 THE COURT: YOU MAY.

22 BY MS. HARDEE-THOMAS:

23 Q. THANK YOU, SIR. I APPRECIATE IT.

24 A. THIS RIGHT HERE.

25 Q. OKAY. THANK YOU, SIR. JUST TO REITERATE, DID YOU HAVE

1 ANYTHING TO DO WITH MAKING SURE THAT MR. HOLMES OR MR.
2 SHEPPARD WENT TO SEEK ANY MEDICAL ATTENTION?

3 A. DID I HAVE ANYTHING TO DO WITH IT?

4 Q. YES, SIR.

5 A. NO, I DIDN'T.

6 Q. OKAY. SO' BASICALLY THAT WOULD HAVE BEEN ANOTHER
7 PERSON---

8 A. YES, MA'AM.

9 Q. ---THAT WOULD HAVE BEEN CALLED.

10 A. YES, MA'AM.

11 Q. ALL RIGHT. BUT AS FAR AS SECURING MR. SHEPPARD, DID YOU
12 HAVE ANYTHING TO DO WITH HIM BEING TAKEN OUT OF THE LOBBY
13 AREA?

14 A. I THINK I WAS THE ONE THAT ESCORTED MR. SHEPPARD OUT.

15 Q. TO WHERE?

16 A. TO THE HOLDING CELL UP FRONT.

17 Q. OKAY. WHAT HAPPENED IN THE HOLDING CELL?

18 A. THAT WOULD BE SOMEONE ELSE.

19 Q. SO YOU LEFT HIM THERE.

20 A. WE LOCKED HIM UP IN THE HOLDING CELL.

21 Q. OKAY. WOULD SOMEONE HAVE COME AND CHECKED HIM OUT?

22 A. YES.

23 Q. MEANING FOR WHAT---

24 A. HE WOULD -- HE WOULD -- HE WOULD BE OFFERED MEDICAL
25 ATTENTION FROM THE MACE AND ANYTHING ELSE THAT HAPPENED TO

1 HIM.

2 Q. I'M NOT TALKING ABOUT THAT PART. I'M TALKING ABOUT FOR
3 THIS WEAPON THAT THEY CAN'T FIND.

4 A. YES, MA'AM.

5 Q. WOULD SOMEONE BE ABLE TO---

6 A. HE WAS SEARCHED.

7 Q. BY WHOM?

8 A. I DON'T KNOW IF I DID IT OR WHO, BUT HE -- WELL, LET ME
9 BACK UP. HE WOULD NORMALLY BE SEARCHED.

10 Q. RIGHT.

11 A. AN INMATE THAT WE TAKE IN THE HOLDING CELL, WE WILL
12 SEARCH HIM.

13 Q. STRIP SEARCH.

14 A. YES, MA'AM.

15 Q. THANK YOU. DO YOU REMEMBER STRIP-SEARCHING MR.
16 SHEPPARD?

17 A. I DON'T REMEMBER.

18 Q. Y'ALL JUST TOOK HIM INTO THAT CELL AREA, AND YOU JUST
19 REMEMBER TAKING HIM---

20 A. YES, MA'AM..

21 Q. ---INTO THE CELL AREA? AND DID SOMEBODY ELSE COMES
22 AFTER YOU?

23 A. THEY WOULD HAVE; YES, MA'AM.

24 Q. OKAY. TYPICALLY WHERE WOULD HE HAVE BEEN SEARCHED? HE
25 WOULD HAVE BEEN PATTED DOWN AT THE AREA THAT HE WAS IN AND

1 THEN TAKEN TO THE CELL AND STRIP-SEARCHED?

2 A. NO. IT WOULD BE LIKE A REST ROOM THAT WE'VE GOT UP
3 FRONT, AND THEY WOULD TAKE HIM BACK THERE AND STRIP-SEARCH
4 HIM.

5 Q. BUT YOU DON'T KNOW IF -- YOU DIDN'T SEARCH HIM.

6 A. NO, MA'AM.

7 Q. YOU JUST TOOK HIM TO THE CELL.

8 A. YES, MA'AM.

9 Q. SOMEBODY ELSE CAME---

10 A. THEY SHOULD HAVE, YES.

11 Q. ---AND SECURED HIM AND MADE SURE THAT WAS DONE.

12 A. THEY SHOULD HAVE.

13 Q. OKAY. NOW, YOU WOULDN'T BE RESPONSIBLE FOR CALLING AN
14 AMBULANCE OR ANYTHING LIKE THAT.

15 A. NO, MA'AM.

16 Q. THAT WOULD BE SOMEBODY ELSE'S RESPONSIBILITY.

17 A. OTHER THAN MYSELF, YES.

18 Q. SIR?

19 A. IT WOULD HAVE BEEN SOMEONE ELSE.

20 Q. OKAY. YOU WOULD JUST BASICALLY TELL THAT OTHER PERSON
21 THE ASPECT OF WHAT INJURIES THESE INDIVIDUALS HAD TO GO TO
22 THAT NEXT LEVEL.

23 A. NO, I WON'T BE ABLE TO TELL THEM THAT EITHER BECAUSE I
24 WON'T KNOW. MEDICAL WOULD BE THE ONE TO TELL WHETHER THEY
25 REQUIRED AN AMBULANCE OR NOT.

1 Q. SO IF SOMEONE FELL OUT ON THE FLOOR, YOU'D JUST TELL
2 THEM SOMEONE'S ON THE FLOOR; SEND SOMEBODY IN HERE TO HELP
3 THEM?

4 A. WE WOULD CALL FOR MEDICAL ATTENTION.

5 Q. OKAY. ALL RIGHT. AND THAT MEDICAL PERSONNEL WOULD TAKE
6 CARE OF THAT MATTER.

7 A. YES.

8 Q. YOU'RE JUST -- YOU'RE JUST MAKING SURE THAT EVERYTHING
9 IS SECURED.

10 A. YES, MA'AM.

11 Q. SO NO OTHER INMATES, ESPECIALLY YOURSELF, WOULD NOT BE
12 INJURED.

13 A. YES, MA'AM.

14 MS. HARDEE-THOMAS: THANK YOU, SIR.

15 THE COURT: REDIRECT?

16 MR. SORENSON: NO, MA'AM.

17 THE COURT: IS THIS WITNESS FREE TO LEAVE?

18 MR. SORENSON: PLEASE.

19 THE COURT: YOU ARE FREE TO GO. CALL YOUR NEXT WITNESS,
20 PLEASE.

21 MR. HILTON: THE STATE CALLS CARLITA JENKINS.

22 CARLITA F. JENKINS, AFTER BEING DULY SWORN,
23 TESTIFIED AS FOLLOWS:

24 THE COURT: IF YOU'D PLEASE BE SEATED AND THEN STATE
25 YOUR FULL NAME FOR THE RECORD.

1 THE WITNESS: CARLITA FRANCINE JENKINS.

2 THE COURT: AND SPELL YOUR FIRST -- FIRST AND LAST
3 NAMES.

4 THE WITNESS: CARLITA, C-A-R-L-I-T-A. JENKINS,
5 J-E-N-K-I-N-S.

6 THE COURT: YOUR WITNESS.

7 DIRECT EXAMINATION

8 BY MR. HILTON:

9 Q. MS. JENKINS, I'M GOING TO ASK YOU TO SPEAK LOUD BECAUSE
10 IT'S KIND OF HARD TO HEAR---

11 A. OKAY.

12 Q. ---ESPECIALLY WITH THE AIR CONDITIONING GOING.

13 A. ALL RIGHT.

14 Q. WHERE ARE YOU WORKING RIGHT NOW, MS. JENKINS?

15 A. RIGHT NOW I'M WORKING AT SOUTHERN CARE HOSPICE AS A
16 HOSPICE NURSE.

17 Q. AS A NURSE? HOW LONG HAVE YOU BEEN A NURSE?

18 A. RIGHT AT ABOUT 20 YEARS.

19 Q. ALL RIGHT. BACK IN OCTOBER OF 2005 YOU WERE A NURSE
20 THEN?

21 A. YES, SIR.

22 Q. AND WHERE WERE YOU WORKING AT THAT TIME?

23 A. I WAS WORKING AT LIEBER UNDER CONTRACT WITH SUPPLEMENTAL
24 STAFFING.

25 Q. ALL RIGHT. AND WHAT WAS YOUR POSITION OUT AT LIEBER?

1 A. I WAS THE HEAD NURSE ON THE NIGHT SHIFT.

2 Q. AND AS THE HEAD NURSE ON NIGHT SHIFT, I MEAN, WHAT WOULD
3 SOME OF YOUR DUTIES HAVE CONSISTED OF?

4 A. IF ANY EMERGENCIES CAME IN, I WOULD TAKE CARE OF THEM IN
5 THE EMERGENCY ROOM AND ALSO OVERSEE WHAT WENT ON IN OUR
6 PHARMACY.

7 Q. WOULD YOU TEND TO WOUNDS OF INMATES AND THAT SORT OF
8 THING?

9 A. YES, I WOULD.

10 Q. ALL RIGHT. DO YOU RECALL SEEING AN INMATE BY THE NAME
11 OF JAMES HOLMES ON OCTOBER 10TH, 2005?

12 A. BARELY, YES, I DO.

13 Q. ALL RIGHT. WERE YOU THE NURSE THAT TREATED MR. HOLMES?

14 A. YES, I WAS.

15 Q. WHENEVER YOU EXAMINE AN INMATE, WHAT PROCEDURE DO YOU
16 FOLLOW? WHAT DO YOU DO AS STANDARD PROCEDURE?

17 A. AS STANDARD PROCEDURE, IF THERE IS LIKE STABBING WOUNDS
18 WE WILL CLEAN THEM OFF AFTER GLOVING UP AND MEASURE THEIR
19 WOUNDS AND CHECK TO SEE IF THEY'RE -- HOW DEEP THEY ARE AND
20 CONTACT THE DOCTOR AND TELL HIM WHAT HAS GONE ON AND IF
21 THEY -- HE WILL DECIDE IF THEY NEED TO BE SENT OUT OR NOT.

22 Q. ALL RIGHT. WHEN MR. HOLMES CAME IN THAT DAY, WHAT
23 CONDITION WAS HE IN?

24 A. HE HAD SUPERFICIAL STAB WOUNDS OVER HIS CHEST AND HIS
25 BACK AREA AND ON HIS LEFT ARM.

1 Q. NOTWITHSTANDING THE WOUNDS, I MEAN, WHAT WAS HIS DRESS
2 AND THAT SORT OF THING?

3 A. HE WAS IN A TEE SHIRT, AND HIS SHIRT -- AND IT WAS --
4 HAD BLOOD ON IT.

5 Q. OKAY. HE WAS PRETTY BLOODY?

6 A. FAIRLY BLOODY, YES.

7 Q. ALL RIGHT. AND DID YOU GET AN OPPORTUNITY TO CLEAN UP
8 SOME OF THOSE WOUNDS?

9 A. YES, WE DID.

10 Q. ALL RIGHT. AND YOU SAID IT'S STANDARD PROCEDURE TO
11 MEASURE THOSE WOUNDS?

12 A. YES, IT IS.

13 Q. DO YOU HAVE A COPY OF YOUR REPORT WITH YOU?

14 A. NOT RIGHT WITH ME, NO, SIR.

15 Q. LET ME JUST ASK YOU, MS. JENKINS: OFF THE TOP OF YOUR
16 HEAD DO YOU REMEMBER THE DIMENSIONS OF THOSE WOUNDS OR
17 ANYTHING? JUST YES OR NO.

18 A. ONE OF THEM, IT WAS DEEP. IT WAS ON THE LIP, BUT OTHER
19 THAN THAT, THEY WERE MOSTLY SUPERFICIAL.

20 Q. DO YOU RECALL MAKING A REPORT ON THAT---

21 A. YES, SIR, I DO.

22 Q. ---ON THAT DAY? THAT WAS STANDARD PROCEDURE AS WELL?

23 A. YES, SIR, IT WAS.

24 Q. IF YOU HAD A CHANCE TO LOOK AT THAT REPORT, WOULD THAT
25 REFRESH YOUR MEMORY?

1 A. YES, SIR, SOMEWHAT.

2 MR. HILTON: MAY I APPROACH THE WITNESS, YOUR HONOR?

3 THE COURT: YOU MAY.

4 THE WITNESS: THANK YOU.

5 BY MR. HILTON:

6 Q. MS. JENKINS, IS THAT A COPY OF THE REPORT THAT YOU WOULD
7 HAVE MADE ON THAT DAY?

8 A. YES, SIR, IT IS.

9 Q. AND LOOKING AT THAT, DOES THAT REFRESH YOUR MEMORY OF---

10 A. YES, SIR.

11 Q. ---THE TYPES OF WOUNDS THAT HE HAD?

12 A. YES, SIR.

13 Q. ALL RIGHT. LET'S JUST GO THROUGH THAT, IF YOU WILL, AND
14 JUST START -- START WITH THE FIRST ONE AND GO ON THROUGH.

15 A. OKAY. ONE LACERATION UNDER THE RIGHT SIDE OF THE NOSE
16 THREE CENTIMETERS LONG, TWO CENTIMETERS DEEP, TWO SUPERFICIAL
17 STAB WOUNDS---

18 Q. MA'AM.

19 THE COURT: EXCUSE ME, MA'AM.

20 BY MR. HILTON:

21 Q. DON'T JUST READ IT. LET'S JUST TALK ABOUT---

22 A. OH, OKAY. SORRY.

23 Q. ---EACH WOUND INDIVIDUALLY.

24 THE COURT: MS. JENKINS, IF I MAY, THE DOCUMENT IS -- IF
25 IT HELPS YOU REFRESH YOUR RECOLLECTION, THAT'S PERFECTLY

1 FINE, BUT IT MUST BE YOUR RECOLLECTION---

2 THE WITNESS: OH.

3 THE COURT: ---THAT IS REFRESHED.

4 THE WITNESS: ALL RIGHT.

5 THE COURT: IF YOU NEED THE DOCUMENT IN ORDER TO BE ABLE
6 TO TESTIFY, THERE ARE OTHER THINGS...

7 THE WITNESS: OKAY.

8 THE COURT: BUT WHEN YOU SIMPLY READ THE DOCUMENT,
9 THAT'S NOT YOUR MEMORY; THAT'S THE DOCUMENT.

10 THE WITNESS: OKAY.

11 THE COURT: ALL RIGHT?

12 THE WITNESS: SORRY.

13 BY MR. HILTON:

14 Q. THE FIRST WOUND, MS. JENKINS, WHICHEVER ONE YOU WANT TO
15 TALK ABOUT.

16 A. WAS THE ONE -- WAS UNDER THE LIP -- I MEAN, UNDER THE
17 NOSE ON THE RIGHT SIDE. IT WAS FAIRLY DEEP AND WAS TWO
18 CENTIMETERS, AND I HAD CHECKED IT BY USING A Q-TIP AT THE
19 OTHER END OF IT AND MEASURING IT INTO THE WOUND AND THEN
20 MEASURING AGAINST THE SIZE SHEET THAT WE USE FOR -- TO
21 MEASURE WOUNDS.

22 Q. ALL RIGHT. AND TWO CENTIMETERS DEEP IS ABOUT HOW DEEP?

23 A. RIGHT AT ABOUT LIKE THIS.

24 Q. ABOUT A LITTLE OVER A HALF INCH OR SO?

25 A. YEAH, QUITE -- ABOUT THAT.

1 Q. OKAY. AND YOU SAY IT WAS THREE CENTIMETERS LONG?

2 A. UH-HUH. YES, SIR.

3 Q. AND THAT'S OBVIOUSLY A LITTLE BIT LONGER THAN TWO
4 CENTIMETERS.

5 A. A LITTLE BIT LONGER.

6 Q. ALL RIGHT. WHAT ABOUT THE NEXT WOUND?

7 A. THEN HE HAD -- LET'S SEE. THERE WERE A COUPLE OF WOUNDS
8 THAT HE HAD THAT WAS ON HIS RIGHT ARM, AND THEY WERE MOSTLY
9 SUPERFICIAL. THEY WEREN'T VERY -- THEY WERE LESS THAN POINT
10 FIVE CENTIMETERS DEEP, SO THEY WERE CONSIDERED SUPERFICIAL
11 WOUNDS.

12 Q. WERE THEY BLEEDING AT ALL?

13 A. YES, THEY WERE BLEEDING.

14 Q. ALL RIGHT.

15 A. THE SKIN WAS BROKEN.

16 Q. ALL RIGHT. OTHER THAN THE ARMS, DID HE HAVE ANY OTHER
17 WOUNDS?

18 A. HE ALSO HAD A COUPLE ON HIS RIGHT SIDE OF HIS CHEST THAT
19 WERE IN THE UPPER AREA OF THE CHEST, AND THEN HE HAD SOME
20 THAT WAS ON HIS ANTERIOR OF HIS RIGHT AREA OF THE BACK THAT
21 WERE SUPERFICIAL ALSO.

22 Q. JUST POINT - WHERE WOULD THAT WOUND HAVE BEEN?

23 A. RIGHT ABOUT IN THIS AREA HERE THAT WERE SUPERFICIAL, BUT
24 THEY WERE CURVED LIKE. SO I WAS KIND OF WONDERING ABOUT, YOU
25 KNOW, WHETHER THEY NEEDED STERI STRIPS OR NOT, AND I SPOKE TO

1 ANOTHER NURSE AND WE CONTACTED THE DOCTOR AND HE SAID THEY
2 JUST NEEDED TO BE CLEANED AND THAT THEY WERE GOOD TO -- AFTER
3 THEY WERE DRESSED AND CLEANED THAT THEY WOULD BE OKAY.

4 Q. ALL RIGHT. THERE WAS A TOTAL OF HOW MANY WOUNDS ON MR.
5 HOLMES?

6 A. LET'S SEE. IF I REMEMBER RIGHT, THERE WAS LIKE RIGHT AT
7 ABOUT EIGHT OR NINE---

8 Q. ALL RIGHT.

9 A. ---IN THE PROCESS OF ALL OF THEM.

10 Q. AND, MS. JENKINS, LET'S TALK ABOUT THE TWO MOST SERIOUS.
11 OBVIOUSLY THAT WOULD BE THE DEEPER ONES---

12 A. RIGHT.

13 Q. ---I WOULD ASSUME.

14 A. THAT WOULD BE THE ONE ON THE -- UNDER THE NOSE AND IT
15 HAD TO BE STERI STRIPPED WHICH IS A TYPE OF TOPICAL SUTURING
16 THAT IS USED IN THE MEDICAL FIELD TO CLOSE A WOUND.

17 Q. IS THAT LIKE A STITCH REPLACEMENT, SOMETHING THAT WOULD
18 BE USED---

19 A. EXACTLY.

20 Q. ---OTHER THAN A STITCH?

21 A. YES, SIR.

22 Q. OKAY. AND YOU SAY THAT WOUND HAD TO BE CLOSED UP WITH A
23 STERI STRIP?

24 A. A STERI STRIP IS WHAT THEY CALL IT.

25 Q. ALL RIGHT. WHAT WAS THE OTHER MOST SERIOUS WOUND THAT

1 HE HAD?

2 A. THE ONE THAT HE HAD ON HIS ANTERIOR BACK. ON THE RIGHT
3 SIDE IT WAS TO THE POINT THAT IT WAS CURVED, AND IF IT HAD
4 GOTTEN CLOSER TO THE SPINAL COLUMN IT WOULD HAVE CAUSED
5 PROBLEMS, BUT AT THE WAY THAT IT WAS SITUATED IT DID NOT.

6 Q. BUT YOU SAY PROBLEMS. WHAT KIND OF PROBLEMS?

7 A. IT WOULD HAVE CAUSED PROBLEMS WITH HIS NERVES IN THE
8 SPINAL COLUMN.

9 Q. COULD IT HAVE KILLED HIM?

10 A. IT MAY NOT HAVE KILLED HIM, BUT IT MIGHT HAVE PARALYZED
11 HIM.

12 Q. ALL RIGHT. IF ANY OF THESE WOUNDS HAD BEEN LOCATED
13 ANYWHERE ELSE, I MEAN, COULD THEY HAVE KILLED HIM?

14 A. THE ONE THAT WAS ON HIS FACE, IF IT WAS IN AN AREA
15 LIKE---

16 MS. HARDEE-THOMAS: YOUR HONOR---

17 THE COURT: SUSTAINED.

18 MS. HARDEE-THOMAS: YOUR HONOR---

19 BY MR. HILTON:

20 Q. MS. JENKINS, LOOKING AT THOSE WOUNDS, WAS IT -- WERE
21 THEY THE TYPE OF WOUNDS THAT WOULD HAVE BEEN CONSISTENT WITH,
22 SAY, A SCRATCH OR A FINGERNAIL OR WHAT?

23 A. NO. THEY WERE -- THEY WERE STAB WOUNDS. THEY WERE NOT
24 FINGERNAIL-TYPE WOUNDS.

25 MR. HILTON: PLEASE ANSWER ANY QUESTIONS THAT MS.

1 HARDEE-THOMAS MAY HAVE FOR YOU.

2 THE COURT: CROSS-EXAMINATION.

3 CROSS-EXAMINATION

4 BY MS. HARDEE-THOMAS:

5 Q. MS. JENKINS, YOU INDICATED THAT YOU'RE A NURSE.

6 A. YES, MA'AM.

7 Q. A PROFESSIONAL NURSE.

8 A. YES, MA'AM.

9 Q. NOW---

10 A. A REGISTERED NURSE.

11 Q. YES, MA'AM. NOW, YOU INDICATED THAT YOU HAD TO CALL A
12 DOCTOR TO DETERMINE WHETHER OR NOT THE WOUNDS WERE SERIOUS OR
13 NOT?

14 A. YES. AT ANY TIME THAT ANY PROCEDURE IS DONE, WE WILL DO
15 THE IMMEDIATE TAKING CARE OF THE PATIENT.

16 Q. UH-HUH.

17 A. AND THEN WE WILL CONTACT THE DOCTOR AND GET HIS OKAY TO
18 SEND THE PATIENT OUT OR TO HAVE THE PATIENT GO BACK TO THE
19 AREA THAT HE WAS FROM.

20 Q. ALL RIGHT. SO BASICALLY THIS DOCTOR WAS NOT IN LIEBER.
21 THIS DOCTOR WAS IN A HOSPITAL OR AT HIS HOME OR SOMETHING?

22 A. EXACTLY.

23 Q. OKAY. WHAT DOCTOR WAS THIS?

24 A. TO BE HONEST WITH YOU, I DON'T REMEMBER THE NAME OF THE
25 DOCTOR BECAUSE EVERY DAY WE WOULD HAVE A DIFFERENT DOCTOR.

1 Q. I GOT YOU. BUT YOU DIDN'T WRITE DOWN WHO YOU SPOKE TO?

2 A. ALL I DID WAS PUT DOWN THAT HE HAD MULTIPLE SUPERFICIAL
3 WOUNDS AND THAT HE WAS RETURNED TO THE OFFICERS TO GO BACK TO
4 HIS AREA.

5 Q. OKAY. BUT INTERNALLY YOU DIDN'T EVEN MAKE A REPORT IN
6 REGARDS TO WHO YOU SPOKE TO?

7 A. NO, MA'AM.

8 Q. THIS DOESN'T HAVE TO BE REPORTED OR ANYTHING LIKE THAT?

9 A. NO, MA'AM. IT JUST HAS TO BE STATED WHAT HAPPENS WITH
10 THE INMATE AND WHAT WE DO FOR THEM.

11 Q. OKAY. SO BASICALLY IN CALLING THIS DOCTOR YOU FELT THAT
12 THE SUPERFICIAL WOUNDS AND THE WOUNDS THAT YOU SAID THAT WAS
13 CLOSE TO THE NOSE---

14 A. YES.

15 Q. ---AND THE ANTERIOR BACK RIGHT SIDE---

16 A. RIGHT.

17 Q. ---WAS IMPORTANT ENOUGH TO CALL THE DOCTOR TO SEE IF --
18 HE COULDN'T SEE THAT. HE JUST WENT ON WHAT YOUR EYESIGHT
19 WAS.

20 A. RIGHT. AND I GAVE HIM THE SPECIFICATIONS OF EACH OF THE
21 WOUNDS AND THE DEPTH OF THEM, AND HE STATED AT THAT TIME THAT
22 HE FELT THAT THEY DID NOT NEED TO BE TAKEN TO THE EMERGENCY
23 ROOM, JUST TO STERI STRIP THE ONE UNDER THE NOSE AND TO SEND
24 HIM BACK---

25 Q. NOW---

1 A. ---TO HIS BEDROOM.

2 Q. ---THE STERI STRIP OVER THE NOSE---

3 A. UNDER THE NOSE.

4 Q. UNDER THE NOSE. WAS THAT LIFE-THREATENING?

5 A. NO, MA'AM. IT WAS JUST THAT IT WAS OPENED TO THREE
6 CENTIMETERS IN LENGTH AND TWO CENTIMETERS DEEP, SO IT NEEDED
7 TO BE STERI STRIPPED TO KEEP FROM BLEEDING.

8 Q. OKAY. AND WHAT DO YOU REMEMBER DOING WITH THAT OTHER
9 THAN STERI STRIPPING? DID YOU PUT OINTMENT OR ANYTHING ELSE
10 ON IT?

11 A. YES, MA'AM. ALL OF THE AREAS THAT WERE OPEN WOUNDS HAD
12 BACITRACIN APPLIED TO THEM.

13 Q. OKAY. DID THE DOCTOR TELL YOU TO DO THAT OR YOU DID
14 THAT ON YOUR OWN?

15 A. I DID THAT ON MY OWN. THAT IS A NORMAL PROCEDURE TO DO.

16 Q. ALL RIGHT. BUT SINCE THESE TWO WOUNDS WERE CONSIDERED A
17 LITTLE BIT DEEPER THAN THE SUPERFICIAL WOUNDS, HE DIDN'T GIVE
18 YOU INSTRUCTIONS IN REGARDS TO WHAT TO DO?

19 A. NO.

20 Q. OR---

21 A. HE JUST ASKED ME WHAT DID I DO WITH THEM AND I TOLD HIM,
22 AND HE SAID THEN HE DOESN'T FEEL THAT THEY WERE DEEP ENOUGH
23 TO NEED TO GO TO AN EMERGENCY ROOM.

24 Q. OKAY. NOW, THIS ANTERIOR BACK RIGHT SIDE---

25 A. YES, MA'AM.

1 Q. ---EXACTLY WHERE WAS THAT, MA'AM?

2 A. IT WAS RIGHT UP RIGHT IN THIS AREA HERE.

3 Q. OKAY.

4 A. AND IT WAS CLOSE TO THE SPINAL COLUMN, BUT IT WAS NOT ON
5 THE SPINAL COLUMN.

6 Q. SO IT WASN'T NEAR THE BONE.

7 A. RIGHT.

8 Q. BUT IT WAS CLOSE TO A BONE.

9 A. RIGHT.

10 Q. SO IF IT DIDN'T TOUCH THE BONE, YOU FELT---

11 A. IF IT DID NOT TOUCH THE SPINAL COLUMN AREA AND NOT
12 GETTING CLOSE TO THE NERVES, THAT IT WAS SUPERFICIAL.

13 Q. WE KNOW THAT THE SPINAL COLUMN IS PROTECTED BY THE
14 BONES.

15 A. RIGHT.

16 Q. SO IF YOU'RE NOT NEAR THE BONES, THAT'S NOWHERE NEAR---

17 A. EXACTLY.

18 Q. ---ANY SPINAL COLUMN.

19 A. EXACTLY.

20 Q. ALL RIGHT. SO BASICALLY YOU JUST FELT COMFORTABLE IN
21 CHECKING WITH THE DOCTOR TO SEE IF THERE WAS A NEED FOR HIM
22 TO BE SENT OUT?

23 A. EXACTLY.

24 Q. OKAY. BUT IT DIDN'T TOUCH ANY SPINAL COLUMN.

25 A. NO, MA'AM.

1 Q. NOWHERE NEAR IT.

2 A. NO.

3 Q. SO HOW IS THAT LIFE-THREATENING?

4 A. BECAUSE IF IT HAD BEEN CLOSER TO THE AREA THAT -- IN THE
5 NECK, THERE ARE NERVES AND STUFF THAT COME OUT OF THE SPINAL
6 COLUMN THAT WOULD HAVE BEEN HURT AND THAT THAT COULD HAVE
7 BEEN LIFE-THREATENING IN THAT SENSE.

8 Q. BUT THERE WERE NO NERVES -- THERE WAS NO EXCESSIVE
9 BLEEDING BACK THERE---

10 A. RIGHT.

11 Q. ---TO SHOW THAT THERE WAS ANY NERVES THAT WERE DAMAGED.

12 A. EXACTLY.

13 Q. AND YOU WERE ABLE TO EXPLAIN THAT TO THE DOCTOR.

14 A. YES, MA'AM.

15 Q. THAT'S WHY HE INDICATED IT WAS NOT -- IT WAS
16 SUPERFICIAL.

17 A. RIGHT.

18 Q. AND NOT LIFE-THREATENING.

19 A. EXACTLY.

20 Q. DID THE DOCTOR ASK YOU THE FACTS OF WHAT HAPPENED?

21 A. HE ASKED WHAT HAPPENED. I SAID THE PATIENT HAD BEEN
22 STABBED AND THAT HE WAS BROUGHT TO THE EMERGENCY ROOM AND
23 THAT WE DID THE -- CLEANED THE WOUNDS AND DRESSED THEM AND
24 CONTACTED HIM.

25 Q. NOW, IF THERE WAS A SITUATION WHERE THERE WAS SERIOUS

1 WOUNDS, THERE WOULD BE NO QUESTION THAT YOU WOULD SEND THIS
2 PERSON OUT FOR---

3 A. OH, YES. I WOULD SEND THE PERSON OUT BEFOREHAND AND
4 CALL THE DOCTOR AND TELL THEM THAT I HAD SENT THEM, THAT I
5 FELT THAT THEY NEEDED TO BE SENT.

6 Q. SO YOU MADE THAT DETERMINATION.

7 A. YES, MA'AM.

8 Q. OKAY. BUT IN THIS SITUATION YOU MADE THE DETERMINATION
9 TO SECURE THE WOUNDS BUT JUST COVER YOURSELF JUST TO MAKE
10 SURE.

11 A. EXACTLY.

12 Q. OKAY. IS THAT A POLICY?

13 A. YES, MA'AM, IT IS. IF THERE'S AN EMERGENCY SITUATION
14 THAT OCCURS, I AM ABLE TO AS THE NURSE IN CHARGE TO CALL
15 9-1-1 AND HAVE THEM PICK UP THE INDIVIDUAL AND THEN IN THE
16 INTERIM CALL THE DOCTOR AND LET THEM KNOW WHAT HAS HAPPENED.

17 Q. WHEN YOU INITIALLY SAW THIS GENTLEMAN, YOU DIDN'T FIND
18 THAT THAT WAS THE SITUATION.

19 A. EXACTLY.

20 Q. EVEN BEFORE CALLING THE DOCTOR.

21 A. EXACTLY.

22 Q. THANK YOU, MA'AM.

23 A. THANK YOU.

24 THE COURT: REDIRECT?

25 MR. HILTON: NO, YOUR HONOR.

1 THE COURT: ALL RIGHT. IS THIS WITNESS FREE TO LEAVE?

2 MS. HARDEE-THOMAS: YES.

3 THE COURT: YOU ARE FREE TO GO. CALL YOUR NEXT WITNESS,
4 PLEASE.

5 MR. SORENSON: YOUR HONOR, THE STATE WOULD REST.

6 THE COURT: VERY WELL. LADIES AND GENTLEMEN, YOU HAVE
7 NOW HEARD THE WITNESSES AND RECEIVED THE EVIDENCE WHICH YOU
8 WILL FROM THE STATE IN ITS CASE IN CHIEF. THAT SIGNIFIES TO
9 ME THAT THERE ARE MATTERS WHICH I MUST TAKE UP OUTSIDE YOUR
10 PRESENCE, BUT IT'S A GOOD TIME TO TAKE OUR AFTERNOON BREAK.

11 LADIES AND GENTLEMEN, PLEASE BE MINDFUL: DO NOT DISCUSS
12 THIS MATTER OR ALLOW ANYONE TO DISCUSS IT WITH YOU, AND WE'LL
13 TAKE OUR BREAK. WE WILL PROBABLY TAKE PROBABLY A LITTLE OVER
14 -- ABOUT -- PROBABLY BE ABOUT 15 MINUTES. IF YOU'D PLEASE
15 STEP TO YOUR JURY ROOM, AND IF THEY NEED TO SMOKE, LET THEM
16 SMOKE.

17 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 3:05
18 P.M.)

19 THE COURT: ALL RIGHT. ARE THERE ANY MOTIONS?

20 MS. HARDEE-THOMAS: YOUR HONOR, JUST THE FACT THAT WE'VE
21 HEARD EVIDENCE THAT CAME IN WITH REGARDS TO SUPERFICIAL
22 WOUNDS. WE'VE JUST HEARD FROM THE NURSE, CARLITA JENKINS,
23 THAT THE MOST -- THAT THERE WERE SUPERFICIAL WOUNDS, ABOUT
24 EIGHT OR NINE. HOWEVER, OUT OF THE EIGHT OR NINE THERE WERE
25 TWO - THE NOSE AND ANTERIOR BACK - THAT WERE A LITTLE BIT

1 DEEPER THAN THE OTHERS, BUT SHE CONSIDERED THEM NOT LIFE-
2 THREATENING. AND SO, THEREFORE, WE'RE ASKING THE COURT BASED
3 ON THE INFORMATION PROVIDED BY THE ONLY MEDICAL PERSON THAT'S
4 IN THIS PARTICULAR MATTER THAT THERE'S NOT ENOUGH EVIDENCE
5 FOR ASSAULT AND BATTERY WITH INTENT TO KILL. MAYBE ASSAULT
6 AND BATTERY, MAYBE ASSAULT AND BATTERY OF A HIGH AND
7 AGGRAVATED NATURE, BUT NOT ASSAULT AND BATTERY WITH INTENT TO
8 KILL.

9 THE COURT: THANK YOU SO MUCH. YES, SIR.

10 MR. SORENSON: VERY BRIEFLY, YOUR HONOR.

11 THE COURT: SURE.

12 MR. SORENSON: THE DEFINITION OF ASSAULT AND BATTERY
13 WITH INTENT TO KILL IS ESSENTIALLY AN ASSAULT AND BATTERY
14 WITH MALICE AFORETHOUGHT, AND THERE'S NO ELEMENT THERE THAT
15 WE HAVE TO PROVE SERIOUS BODILY INJURY OR GREAT BODILY INJURY
16 OR ANY DEGREE OF INJURY. IT HAS TO BE AN ASSAULT, A BATTERY
17 WITH MALICE AFORETHOUGHT. AND CLEARLY, YOUR HONOR, THIS JURY
18 CAN INFER THAT THAT MALICE EXISTED BY -- FROM THE USE OF A
19 DEADLY WEAPON.

20 THE COURT: THANK YOU VERY MUCH. AND I WOULD
21 RESPECTFULLY DENY YOUR MOTION, MS. HARDEE-THOMAS, AND WITH
22 THE USE OF A WEAPON THAT COULD BE CONSIDERED A DEADLY WEAPON
23 I THINK THE JURY CHOOSES AND SO THE JURY IS ALLOWED TO
24 CONSIDER THE USE OF A DEADLY WEAPON. AND, OF COURSE, I'M AT
25 THIS JUNCTURE CHARGED WITH THE RESPONSIBILITY OF DETERMINING

1 WHETHER THERE IS EVIDENCE ON EACH AND EVERY ELEMENT FROM
2 WHICH THE JURY COULD DETERMINE, AND GIVEN THAT THERE WAS A
3 WEAPON -- THERE IS EVIDENCE THAT THERE IS A WEAPON USED AND A
4 DESCRIPTION OF THE WEAPON BEING A CYLINDRICAL WEAPON SIX
5 INCHES IN LENGTH, I THINK THAT CERTAINLY IS EVIDENCE OF EACH
6 AND EVERY ELEMENT. SO I WOULD RESPECTFULLY DENY YOUR MOTION,
7 NOTING YOUR EXCEPTION THERETO.

8 MS. HARDEE-THOMAS: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. ANYTHING FURTHER?

10 MS. HARDEE-THOMAS: WE REST.

11 THE COURT: OKAY. VERY WELL. ALL RIGHT. WELL, LET ME
12 -- I TELL YOU WHAT I'D LIKE TO DO WHILE THE JURY IS OUT IS
13 LET ME EXAMINE MR. SHEPPARD. ALL RIGHT. BUT I TELL YOU
14 WHAT: BEFORE WE DO THAT, LET'S TAKE OUR COMFORT BREAK, AS
15 IT'S KNOWN IN BEAUFORT COUNTY, AND THEN WE'LL DO THAT AFTER
16 OUR BREAK. Y'ALL COME ON BACK IN ABOUT, I DON'T KNOW, IN
17 ABOUT TEN MINUTES.

18 MR. SORENSON: CAN WE APPROACH?

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD. A SHORT BREAK
20 WAS TAKEN.)

21 THE COURT: THANK Y'ALL. PLEASE BE SEATED. ALL RIGHT.
22 ALL RIGHT. IF YOU'D PLEASE JUST STAND FOR ME AND RAISE YOUR
23 RIGHT HAND, MR. SHEPPARD. YOU'RE LOUIS SHEPPARD?

24 MR. SHEPPARD: YES, MA'AM.

25 THE COURT: LOUIS SHEPPARD, I'M GOING TO PLACE YOU UNDER

1 OATH AT THIS TIME BECAUSE I NEED TO EXPLAIN A COUPLE OF
2 THINGS TO YOU. OKAY?

3 MR. SHEPPARD: YES, MA'AM.

4 THE COURT: ALL RIGHT.

5 LOUIS SHEPPARD, AFTER BEING DULY SWORN, TESTIFIED
6 AS FOLLOWS IN CAMERA:

7 EXAMINATION BY THE COURT

8 Q. AND YOU CAN BE SEATED, IF YOU WILL, MR. SHEPPARD. MR.
9 SHEPPARD, FIRST AND FOREMOST I'M GOING TO TALK TO YOU
10 CONCERNING YOUR RIGHT TO TESTIFY IN THIS CASE. IF AT ANY
11 POINT IN TIME YOU DON'T UNDERSTAND SOMETHING THAT I'M TELLING
12 YOU, I WANT YOU TO EITHER MAKE A LITTLE NOTE EITHER WITH
13 PENCIL OR MENTALLY OR STOP ME BECAUSE IT'S REALLY IMPORTANT
14 THAT YOU UNDERSTAND WHAT I'M TELLING YOU. OKAY? OKAY?

15 A. YES, MA'AM.

16 Q. THANK YOU. NOW, AT THIS TIME, MR. SHEPPARD, I'M GOING
17 TO EXPLAIN TO YOU CERTAIN OF YOUR RIGHTS AND, AGAIN, IF YOU
18 DON'T UNDERSTAND ANYTHING I SAY, YOU JUST LET ME KNOW. THERE
19 ARE MANY WAYS TO EXPLAIN ANY ONE THING. IF YOU NEED ME TO
20 EXPLAIN SOMETHING IN MORE DETAIL, LET ME KNOW THAT AS WELL.
21 OKAY?

22 A. ALL RIGHT.

23 Q. ALL RIGHT. NOW, WE'VE REACHED THE STAGE OF THE TRIAL
24 WHERE YOU MAY PRESENT YOUR DEFENSE. YOU HAVE THE RIGHT, MR.
25 SHEPPARD, TO CLAIM THE PROTECTIONS GIVEN TO YOU BY THE FIFTH

1 AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. THIS
2 AMENDMENT STATES IN PART THAT NO PERSON SHALL BE COMPELLED IN
3 ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF. THIS
4 MEANS THAT YOU CANNOT BE REQUIRED TO TESTIFY IN THIS CASE.
5 YOU HAVE THE RIGHT TO TESTIFY ON YOUR OWN BEHALF. HOWEVER,
6 NO ONE CAN MAKE YOU TESTIFY. THIS IS A PERSONAL RIGHT, MR.
7 SHEPPARD, AND NO ONE CAN WAIVE THIS RIGHT EXCEPT YOU. NOW,
8 IF YOU DECIDE TO TESTIFY, YOU WILL BE SUBJECT TO THE SAME
9 RULES THAT GOVERN OTHER WITNESSES, AND YOU MAY BE EXAMINED
10 AND CROSS-EXAMINED ON ANY RELEVANT ISSUE IN THIS CASE.

11 IN ADDITION, IF YOU HAVE ANY CONVICTIONS INVOLVING
12 DISHONESTY OR FALSE STATEMENT OR FOR CRIMES PUNISHABLE BY
13 IMPRISONMENT FOR MORE THAN ONE YEAR AND THIS COURT DETERMINES
14 THAT THE PROBATIVE VALUE OF ADMITTING THIS EVIDENCE OUTWEIGHS
15 ITS PREJUDICIAL EFFECT TO YOU, THE SOLICITOR WILL BE ABLE TO
16 INTRODUCE YOUR RECORD TO ATTACK YOUR CREDIBILITY. AND THERE
17 WOULD BE, OF COURSE, A LIMITING INSTRUCTION THAT THAT -- THAT
18 THE CONVICTION IS ADMITTED SOLELY AND FOR THAT LIMITED
19 PURPOSE ON THE ISSUE OF CREDIBILITY.

20 IF YOU DECIDE TO TESTIFY, THIS DECISION ON YOUR PART
21 MUST BE FREELY, VOLUNTARILY, AND INTELLIGENTLY MADE WITH
22 KNOWLEDGE OF THE PROTECTIONS GIVEN TO YOU BY THE FIFTH
23 AMENDMENT AND THE CONSEQUENCES OF YOUR DECISION TO TESTIFY.
24 IF YOU DECIDE NOT TO TESTIFY, I WILL INSTRUCT THE JURORS THAT
25 THEY CANNOT GIVE THE FACT THAT YOU DID NOT TESTIFY ANY

1 CONSIDERATION WHATSOEVER AND THAT THERE IS TO BE ABSOLUTELY
2 NO PREJUDICE TO YOU BECAUSE YOU DID NOT TESTIFY. IT IS LEFT
3 ENTIRELY UP TO YOU WHETHER OR NOT YOU TESTIFY. YOU MAY TALK
4 WITH YOUR ATTORNEY, MS. HARDEE-THOMAS, YOUR FAMILY, FRIENDS,
5 OR ANYONE ELSE, BUT THE FINAL DECISION WILL BE LEFT ENTIRELY
6 UP TO YOU. MR. SHEPPARD, DO YOU UNDERSTAND WHAT I HAVE
7 EXPLAINED TO YOU?

8 A. YES, MA'AM.

9 Q. DO YOU HAVE ANY QUESTIONS ABOUT WHAT I HAVE EXPLAINED TO
10 YOU?

11 A. NO, MA'AM.

12 Q. HAVE YOU DISCUSSED WITH YOUR LAWYER, MS. HARDEE-THOMAS,
13 WHETHER YOU SHOULD OR SHOULD NOT TESTIFY? HAVE Y'ALL HAD A
14 CHANCE TO TALK ABOUT THAT ISSUE?

15 A. YES, MA'AM.

16 Q. AND Y'ALL HAVE TALKED ABOUT IT?

17 A. (WITNESS NODDED HEAD UP AND DOWN.)

18 Q. ALL RIGHT. AND YOU'VE HAD A CHANCE TO THINK ABOUT IT?

19 A. YES, MA'AM.

20 Q. ALL RIGHT. AND ARE YOU PREPARED AT THIS TIME TO TELL ME
21 WHETHER YOU WISH TO TESTIFY?

22 A. I WOULD LIKE TO CONSULT WITH MY LAWYER ONE MORE TIME.

23 Q. SAY IT ONE MORE TIME. I'M SO SORRY.

24 A. I'D LIKE TO TALK TO MY LAWYER ONE MORE TIME.

25 Q. OF COURSE YOU CAN TALK TO YOUR LAWYER ONE MORE TIME.

1 YOU ALL TAKE ALL THE TIME YOU NEED. THAT'S NOT A PROBLEM AT
2 ALL.

3 (WHEREUPON, AN OFF-THE-RECORD DISCUSSION TAKES PLACE
4 BETWEEN MR. SHEPPARD AND MS. HARDEE-THOMAS.)

5 THE COURT: ALL RIGHT. NOW, I SEE BOTH OF YOU LOOKING
6 AT ME, MR. SHEPPARD AND MS. HARDEE-THOMAS. IS THAT -- IS
7 THAT A SIGNAL TO ME THAT YOU ALL HAVE FINISHED---

8 MS. HARDEE-THOMAS: YES, YOUR HONOR.

9 THE COURT: ---YOUR TALKING? AND DO YOU -- HAVE YOU ALL
10 HAD ENOUGH TIME AND IS IT AN APPROPRIATE PLACE FOR YOU TO
11 DISCUSS THIS MATTER? DO YOU NEED TO EXIT THE COURTROOM?

12 MS. HARDEE-THOMAS: NO, WE DO NOT, YOUR HONOR.

13 THE COURT: ALL RIGHT. VERY WELL. ALL RIGHT.
14 BY THE COURT:

15 Q. AND, MR. SHEPPARD, DO YOU FEEL NOW AS THOUGH YOU'VE HAD
16 ENOUGH TIME TO TALK TO MS. HARDEE-THOMAS?

17 A. YES, MA'AM..

18 Q. OKAY. AND ARE YOU PREPARED TO TELL ME NOW IF YOU WISH
19 TO TESTIFY OR NOT?

20 A. I DON'T WANT TO TESTIFY.

21 Q. YOU DO NOT WANT TO TESTIFY? AM I UNDERSTANDING THAT
22 CORRECTLY?

23 A. YES, MA'AM.

24 Q. OKAY. AND YOU FEEL LIKE YOU UNDERSTAND ABOUT YOUR RIGHT
25 TO TESTIFY AND YOUR RIGHT NOT TO TESTIFY?

1 A. YES, MA'AM.

2 Q. ALL RIGHT. AND CONSIDERING ALL THESE MATTERS AND IN
3 CONSULTATION WITH YOUR LAWYER, YOU FEEL AS THOUGH YOU WISH
4 NOT TO TESTIFY.

5 A. YES, MA'AM.

6 THE COURT: OKAY. ALL RIGHT. VERY WELL. ALL RIGHT. I
7 THINK WHAT -- ANYTHING FURTHER YOU NEED ME TO ASK OF YOUR
8 CLIENT? DO YOU THINK THAT'S COVERED, MS. HARDEE-THOMAS?

9 MS. HARDEE-THOMAS: YOU COVERED EVERYTHING, YOUR HONOR.

10 THE COURT: VERY WELL. I THINK THEN WHAT WE'RE GOING TO
11 DO -- IT'S ABOUT -- GIVEN THE TIME THAT WE ARE NOW, I THINK
12 WHAT WE'LL DO BASED ON OUR DISCUSSIONS, COUNSEL, IS THAT WE
13 WILL ARGUE AND CHARGE IN THE MORNING.

14 MS. HARDEE-THOMAS: THANK YOU, YOUR HONOR.

15 THE COURT: AND, YOU KNOW, WE'RE CLOSE TO THAT MAGICAL
16 TIME, BUT I THINK THAT'S PROBABLY WHAT WE'LL DO. ALL RIGHT.
17 LET ME HAVE -- ANYTHING BEFORE WE BRING THE JURY OUT FROM THE
18 STATE?

19 MR. SORENSON: NO.

20 THE COURT: FROM THE DEFENSE? FROM THE DEFENSE?

21 MS. HARDEE-THOMAS: NOTHING FROM THE DEFENSE, YOUR
22 HONOR.

23 THE COURT: AND YOU'RE GOING TO REST IN FRONT OF THE
24 JURY.

25 MS. HARDEE-THOMAS: YES.

1 THE COURT: ALL RIGHT. AND GO AHEAD AND -- AND, OF
2 COURSE, THE MOTIONS THEN WOULD STAND?

3 MS. HARDEE-THOMAS: YES, MA'AM, SAME MOTIONS.

4 THE COURT: SAME MOTIONS. YOU JUST DON'T NEED TO MAKE
5 THEM AGAIN, BUT IF YOU DID, YOU DID AND THEY'RE DENIED ON THE
6 SAME BASIS. OKAY.

7 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 3:35
8 P.M.)

9 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'VE
10 HEARD FROM THE STATE. MS. HARDEE-THOMAS?

11 MS. HARDEE-THOMAS: THE DEFENSE RESTS.

12 THE COURT: VERY WELL. LADIES AND GENTLEMEN, YOU HAVE
13 NOW HEARD THE WITNESSES AND RECEIVED THE EVIDENCE WHICH YOU
14 WILL IN THIS MATTER. WHAT REMAINS FOR US ARE THE ARGUMENTS
15 OF COUNSEL AND MY CHARGE OR INSTRUCTION ON THE LAW. LADIES
16 AND GENTLEMEN, THIS IS WHERE WE ARE, TEMPORALLY SPEAKING.
17 THERE ARE MATTERS IN TERMS OF MY INSTRUCTION ON THE LAW THAT
18 IT HAS BECOME MY POLICY JUST TO REVIEW WITH THE LAWYERS. SO
19 I'M GOING TO ASK THEM TO HELP ME IN A LITTLE BIT IN THAT
20 REGARD AND, OF COURSE, YOU HAVE THE ARGUMENTS OF COUNSEL.

21 LADIES AND GENTLEMEN, IF WE WERE TO DO THAT WORK THIS
22 AFTERNOON, YOU WOULD RECEIVE THIS CASE PROBABLY ABOUT 5:30.
23 I'M NOT GOING TO DO THAT. WE'RE GOING TO START IN THE
24 MORNING FRESH, AND IN THE MORNING YOU WILL HEAR THE ARGUMENTS
25 OF COUNSEL. YOU WILL HEAR MY CHARGE ON THE LAW, AND THEN YOU

1 WILL RECEIVE THIS CASE FOR YOUR DELIBERATIONS. SO WE'RE
2 GOING TO BEGIN IN THE MORNING AT 9:30, AT 9:30.

3 LADIES AND GENTLEMEN, A COUPLE OF THINGS. FIRST OF ALL,
4 YOU HAVE NOT HEARD THE ARGUMENTS OF COUNSEL NOR MY CHARGE ON
5 THE LAW, SO YOU ARE NOT PREPARED TO DELIBERATE. THEREFORE,
6 THE INSTRUCTION CONTINUES. DO NOT DISCUSS THIS MATTER OR
7 ALLOW ANYONE TO DISCUSS IT WITH YOU. BUT LET'S TALK A MINUTE
8 BECAUSE YOU'RE GOING TO BE GOING HOME AND THERE'S GOING TO BE
9 SOMEBODY CURIOUS ABOUT WHAT YOU HAVE BEEN UP TO TODAY. AND
10 YOU CERTAINLY DON'T WANT TO SAY, "I CAN'T TELL YOU WHERE I'VE
11 BEEN AND WHAT I'VE BEEN DOING TODAY," BECAUSE THAT ISN'T
12 GOING TO SERVE ANY OF YOU VERY WELL. CERTAINLY YOU CAN SAY,
13 "I SHOWED BACK UP FOR MY JURY DUTY AND I WAS SELECTED TO
14 SERVE ON A JURY, AND THE MATTER THAT WE ARE TRYING IS A
15 CRIMINAL MATTER AS OPPOSED TO A CIVIL MATTER," BUT BEYOND
16 THAT YOU MUST NOT DISCUSS THIS MATTER OR ALLOW ANYONE TO
17 DISCUSS IT WITH YOU.

18 LADIES AND GENTLEMEN, BE MINDFUL NOT TO READ ANYTHING
19 ABOUT THIS MATTER. DON'T LISTEN TO ANYTHING, DON'T WATCH
20 ANYTHING ABOUT THIS MATTER AND THAT'S THE TELEVISION, RADIO,
21 NEWSPAPER, OR INTERNET. PLEASE DO NOT DO ANY KIND OF
22 RESEARCH. DON'T LOOK UP ANY TERMS. DON'T -- DON'T DO ANY
23 SORT OF WORK IN THAT REGARD BECAUSE YOU MUST RECEIVE ALL OF
24 THE INFORMATION FROM WHICH YOU WILL MAKE UP -- MAKE UP YOUR
25 MIND, MAKE YOUR DECISION HERE IN COURT WHILE COURT IS IN

1 SESSION. SO PLEASE BE MINDFUL OF THAT AS WELL.

2 LADIES AND GENTLEMEN, HAVE A WONDERFUL EVENING, AND I
3 LOOK FORWARD TO -- I LOOK FORWARD TO SEEING YOU IN THE
4 MORNING AT 9:30, BUT I FEEL AS THOUGH I MUST GIVE YOU -- MS.
5 SALISBURY, WHO I HOPE Y'ALL HAVE MET COMING AND GOING -- MS.
6 SALISBURY IS FAMOUS FOR BREAKFAST. SO HAVING SAID THAT,
7 DON'T BE EATING A LOT OF BREAKFAST AT HOME IN THE MORNING
8 BECAUSE SHE ALWAYS BRINGS BISCUITS. YOU KNOW, LAST WEEK SHE
9 HAD LIKE A -- OR WEEK BEFORE LAST SHE HAD HOMEMADE BLUEBERRY
10 -- YOU HAD A HOMEMADE BLUEBERRY CAKE.

11 BAILIFF: THAT WAS ME.

12 THE COURT: SO YOU NEVER KNOW. YOU NEVER KNOW. SO JUST
13 AS A HINT, WHEN YOU COME IN THE MORNING I KNOW SHE'LL HAVE
14 SOMETHING FOR YOU IN THE MORNING.. SO AS YOU DECIDE WHETHER
15 OR NOT TO EAT THE SPECIAL K. OR THE WHEATIES, YOU MIGHT WANT
16 TO PASS IT BY IN THE MORNING.

17 IN ANY EVENT, I LOOK FORWARD TO SEEING YOU IN THE
18 MORNING AT 9:30. IF YOU'LL BE IN YOUR JURY ROOM AT 9:30 IN
19 THE MORNING OR A LITTLE BIT BEFORE, THEN WE'LL GET RIGHT INTO
20 THE TRIAL. THANK YOU SO MUCH. HAVE A GREAT EVENING.

21 (THE FOLLOWING COLLOQUY TOOK PLACE AT THE BENCH BETWEEN
22 JUROR SOUTHARD AND THE COURT AS THE JURY WAS EXITING THE
23 COURTROOM.)

24 JUROR SOUTHARD: YOUR HONOR, MAY I ASK A QUESTION? IT
25 HAS NOTHING TO DO WITH THE CASE. WHEN THE JURY DELIBERATES,

1 DO I INVOLVE MYSELF IN THE DELIBERATION?

2 THE COURT: IF YOU ARE -- THERE'S A LITTLE BIT OF TIME
3 WHEN I ASK OUR ALTERNATES TO REMAIN AND I'LL EXPLAIN THAT
4 WHEN WE REACH THAT POINT BUT NOT IN THE ACTUAL DELIBERATION.

5 JUROR SOUTHARD: SO UNLESS SOMEBODY GETS SICK, I STAY
6 OUT OF THERE.

7 THE COURT: THANK YOU. EXACTLY.

8 JUROR SOUTHARD: I JUST WANTED TO MAKE SURE.

9 THE COURT: YOU GOT IT. THANK YOU SO MUCH.

10 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR THE
11 DAY AT 3:40 P.M.)

12 THE COURT: MR. -- IS IT SOUTHARD? I THINK HIS NAME IS
13 SOUTHARD. MR. SOUTHARD WAS CONCERNED ABOUT THE DUTIES OF AN
14 ALTERNATE AND WANTED TO KNOW IF AN ALTERNATE ACTUALLY
15 DELIBERATES OR IF THEY DELIBERATE IN INSTANCES THAT THEY ARE
16 NEEDED. AND I JUST SHARED WITH HIM THAT, YOU KNOW, MY POLICY
17 IS TO ASK ALTERNATES TO REMAIN JUST A FEW MINUTES WHILE THE
18 DELIBERATION GETS UNDERWAY BUT HE WOULD NOT DELIBERATE UNLESS
19 HE WAS NEEDED.

20 MS. HARDEE-THOMAS: THANK YOU.

21 THE COURT: THAT WAS THAT. ANY OBJECTION? ANYTHING
22 FROM THE STATE ON BEHALF OF THE STATE THAT YOU WOULD CARE FOR
23 ME TO DO OTHERWISE WITH MR. SOUTHARD?

24 MR. SORENSON: NO, YOUR HONOR.

25 THE COURT: ON BEHALF OF THE DEFENSE?

1 MS. HARDEE-THOMAS: NOTHING FURTHER.

2 THE COURT: OKAY. VERY WELL. NOW, WHAT I'M GOING TO
3 ASK YOU ALL TO DO IS TO GO OVER THE CHARGE WITH ME SO WE'LL
4 BE READY TO GO IN THE MORNING, AND IF YOU ALL HAVE ANY PLEAS,
5 IF Y'ALL WANT TO GET -- MAYBE, RUSSELL, IF YOU WANT TO CALL
6 SOMEBODY OR JUST TELL HARRISON IF THEY'VE GOT -- IF Y'ALL
7 HAVE GOT ANYTHING WE CAN DO, I'LL BE HAPPY TO DO THAT.

8 MR. HILTON: I THINK THEY'RE GETTING SOME PEOPLE FROM
9 THE JAIL.

10 THE COURT: FANTASTIC. FANTASTIC. ALL RIGHT. Y'ALL
11 COME ON BACK WHILE THAT HAPPENS.

12 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AND RESUMED
13 THE FOLLOWING DAY, JULY 26, 2007, AS FOLLOWS.)

14 THE COURT: THANK YOU, AND PLEASE BE SEATED. ALL RIGHT.
15 MR. SORENSON HAS BEEN SO KIND TO SHARE WITH ME A CASE CALLED
16 STATE V. GEIGER OR GEIGER (DIFFERENT PRONUNCIATION). I HAVE
17 NOT HAD A CHANCE TO REVIEW IT. I INTEND TO DO THAT DURING
18 YOUR ARGUMENT. I WILL BE PAYING ATTENTION TO YOU. I DON'T
19 THINK YOU ALL -- I DON'T WANT YOU TO THINK I'M NOT GOING TO
20 PAY ATTENTION TO WHAT YOU HAVE TO TELL ME, BUT I AM GOING TO
21 BE REVIEWING THE CASE AND THEN -- OH, YOU WANT TO KNOW
22 BECAUSE YOU WANT TO KNOW ABOUT YOUR ARGUMENT. YOU'RE RIGHT.
23 GIVE ME JUST A MINUTE. I'LL TRY TO DO IT NOW. OKAY. AND
24 THERE'S ANOTHER CASE I WANT TO LOOK AT QUICKLY.

25 MR. SORENSON: I THINK ON PAGE 5 IS KIND OF WHERE IT

1 REALLY STARTS.

2 THE COURT: IS THE RELEVANT... THANK YOU VERY MUCH.

3 MR. SORENSON: IT STARTS DEALING WITH THE CHARGE ON PAGE
4 5 AND THEN PAGE 6 AND PAGE 7, PRETTY MUCH THE THREE PAGES.

5 THE COURT: YEAH. THIS IS THE CASE -- THIS IS THE CASE.
6 WELL, MAYBE NOT. LET'S SEE.

7 MR. SORENSON: SUBSECTION 3, YOUR HONOR, ON PAGE 6 HAS A
8 BUNCH OF KIND OF I THINK VERY SIMILAR---

9 THE COURT: OKAY.

10 MR. SORENSON: ---KIND OF SITUATIONS AS FAR AS DEALING
11 WITH ACTUAL ABHANS AND WHETHER YOU CHARGE SIMPLE ASSAULT AND
12 BATTERY.

13 (PAUSE IN PROCEEDINGS.)

14 THE COURT: ALL RIGHT. MR. SORENSON, I HAVE READ THE
15 CASE. LET ME HEAR FROM YOU.

16 MR. SORENSON: THANK YOU. MAY IT PLEASE THE COURT, YOUR
17 HONOR?

18 THE COURT: UH-HUH. YES.

19 MR. SORENSON: IT'S THE STATE'S POSITION, YOUR HONOR,
20 THAT THIS CASE ESSENTIALLY BOILS DOWN TO -- I POINT, YOUR
21 HONOR, TO PAGE 6 OF THE GEIGER OPINION, HEAD NOTE 13. "THE
22 MERE CONTENTION THAT THE JURY MIGHT ACCEPT THE STATE'S
23 EVIDENCE IN PART AND REJECT IT IN PART IS INSUFFICIENT TO
24 SATISFY THE REQUIREMENT THAT SOME EVIDENCE TENDS TO SHOW THE
25 DEFENDANT WAS GUILTY OF ONLY THE LESSER OFFENSE." IT GOES

1 ON, YOUR HONOR. THERE'S SEVERAL CASES CITED AFTER THAT THAT
2 ARE ESSENTIALLY SITUATIONS WHERE THEY'RE SAYING THAT, "THE
3 CONTENTION THAT THE JURY MIGHT HAVE DISBELIEVED THE STATE'S
4 EVIDENCE AS TO THE CIRCUMSTANCES OF AGGRAVATION AND ON THE
5 REMAINING EVIDENCE FOUND THE DEFENDANT GUILTY OF THE LESSER
6 CHARGE OF SIMPLE ASSAULT AND BATTERY DID NOT ENTITLE THE
7 DEFENDANT TO THE LESSER OFFENSE SUBMITTED TO THE JURY WHERE
8 APPELLANT PRESENTED NO EVIDENCE SHE COMMITTED SOME ACT THAT
9 COULD BE VIEWED BY THE JURY AS A SIMPLE ASSAULT."

10 THAT, I THINK, IS WHAT WE HAVE IN THIS SITUATION. YOUR
11 HONOR, ALL THE EVIDENCE THAT WAS PRESENTED -- ALL THE
12 EVIDENCE THAT WAS PRESENTED SUGGESTS THAT AN AGGRAVATED
13 ASSAULT OCCURRED, NOT A SIMPLE ASSAULT AND BATTERY. AND FOR
14 THE JURY TO FIND HIM GUILTY OF SIMPLE ASSAULT AND BATTERY,
15 THEY WOULD HAVE TO BASICALLY JUST, AS THIS CASE SAYS, WHAT
16 THEY CAN'T DO AND THAT'S BASICALLY JUST NOT BELIEVE -- NOT
17 BELIEVE THE AGGRAVATION BUT SOMEHOW BELIEVE THE ASSAULT
18 OCCURRED, AND I THINK THAT'S THE EXACT SITUATION WE'RE IN
19 HERE.

20 I MEAN, THERE'S BEEN NO EVIDENCE PRESENTED EITHER
21 THROUGH THE STATE'S WITNESSES OR THROUGH WITNESSES CALLED BY
22 THE DEFENSE THAT A SIMPLE ASSAULT AND BATTERY OCCURRED. ALL
23 THE EVIDENCE IS THAT SOME SORT OF AGGRAVATED ASSAULT
24 OCCURRED. OBVIOUSLY IF THE JURY FEELS THAT WE'VE FAILED TO
25 MEET OUR BURDEN, THEN THEY WOULD FIND HIM NOT GUILTY.

1 I MEAN, THERE'S TWO OR THREE CASES CITED HERE AT THE
2 RIGHT -- AT THE KIND OF TAIL END OF SUBSECTION 3, ROMAN
3 NUMERAL THREE, THAT ARE, I MEAN, RIGHT ON POINT, I MEAN,
4 WHERE THE DEFENSE WAS SEEKING TO HAVE THE JURY CHARGED FOR
5 THE LESSER OF SIMPLE ASSAULT AND BATTERY WHERE THEY'VE SAID
6 THAT IT'S NOT APPROPRIATE.

7 THE COURT: LET ME ASK YOU THIS QUESTION. WHAT IS
8 THE -- AND WHY DO YOU -- WHAT DO YOU THINK TAKES IT OUT OF --
9 TAKES IT OUT OF THE POSSIBILITY THAT IT COULD BE SIMPLE
10 ASSAULT? THAT THE FACT THAT THE SHANK WAS USED? IS THAT
11 WHAT YOU THINK?

12 MR. SORENSON: YES, MA'AM, THAT A WEAPON WAS USED AND
13 THAT HE WAS -- I MEAN, THE VICTIM WAS ESSENTIALLY STABBED
14 ABOUT NINE TIMES.

15 THE COURT: WELL, UNDER THE ABHAN CHARGE IT'S THE
16 INFLECTION OF SERIOUS BODILY INJURY AND---

17 MR. SORENSON: OR THE USE OF A DEADLY WEAPON.

18 THE COURT: WELL, I'M ISOLATING THAT FOR THE MOMENT.

19 MR. SORENSON: OKAY.

20 THE COURT: I'M ISOLATING THAT.

21 MR. SORENSON: YES, MA'AM.

22 THE COURT: AND THIS JURY COULD DETERMINE THAT THIS WAS
23 CERTAINLY NOT THE INFLECTION OF SERIOUS BODILY INJURY.

24 MR. SORENSON: I AGREE WITH YOU.

25 THE COURT: AND THAT'S CLEARLY A JURY ISSUE.

1 MR. SORENSON: YES, MA'AM.

2 THE COURT: AND I THINK WHAT YOUR ARGUMENT 'IS IS THAT
3 BECAUSE A SHANK WAS USED -- THAT THE MERE FACT THAT THE SHANK
4 WAS USED IS SUFFICIENT SO THAT IT COULD NOT BE A SIMPLE
5 ASSAULT AND BATTERY. WHAT TROUBLES ME ABOUT THAT IS THAT
6 ANY, ANY, OBJECT COULD BE A DEADLY WEAPON. ANY OBJECT CAN BE
7 A DEADLY WEAPON.

8 SO THIS IS NOT A KNIFE; IT IS A SHANK. WE DON'T KNOW
9 WHAT IT IS. WE DON'T KNOW WHAT IT LOOKS LIKE. IT'S BEEN
10 DESCRIBED BY -- CERTAINLY BY THE VICTIM AND -- AND BY
11 BELLAMY, OFFICER BELLAMY. CLEARLY OFFICER BELLAMY, IF I CAN
12 JUST CHARACTERIZE HIS TESTIMONY, WAS QUITE VARIED ABOUT WHAT
13 IT LOOKED LIKE.

14 MR. SORENSON: UH-HUH.

15 THE COURT: AND WE KNOW THAT THE DEEPEST WOUND WAS TWO
16 SONAMETERS AND FOUR SONAMETERS IN WIDTH AND TWO SONAMETERS
17 DEEP. AND SO IN ORDER TO EXCLUDE SIMPLE ASSAULT AND BATTERY,
18 IT SEEMS TO ME THAT IT WOULD BE EXCLUDED ONLY BECAUSE THERE
19 WAS SOME INSTRUMENT USED AND NOT A KNIFE. WHAT TROUBLES ME,
20 WHAT IS DIFFICULT ABOUT THE ISSUE FOR ME, IS THAT ANY OBJECT
21 CAN BE A DEADLY WEAPON. SO IF THAT'S THE LAW, IF THERE'S ANY
22 OBJECT USED IN -- THEN THERE CAN NEVER BE A SIMPLE ASSAULT
23 AND BATTERY. THAT'S THE PART OF THIS THAT TROUBLES ME.

24 IT'S NOT LIKE -- IT'S NOT LIKE SOME OF THE OTHER
25 INSTANCES IN SOME OF THE OTHER CASES THAT ARE TALKED ABOUT IN

1 THE GEIGER CASE. WHAT TROUBLES ME ALSO IS THAT IN THE
2 DEFINITION OF A BATTERY YOU CAN BATTER SOMEONE BY HAVING
3 CLEARLY SOMETHING IN YOUR HAND, BUT BY VIRTUE OF THE FACT
4 THAT YOU HAVE SOMETHING IN YOUR HAND -- I'M TROUBLED BY A
5 FINDING THAT WHENEVER YOU HAVE SOMETHING IN YOUR HAND, AN
6 OBJECT IN YOUR HAND, AND YOU STRIKE SOMEONE WITH AN OBJECT
7 THAT THAT IS -- CAN NEVER BE SIMPLE ASSAULT AND BATTERY.
8 THAT'S WHAT MAKES THIS VERY DIFFICULT.

9 IT CLEARLY IS A JURY ISSUE WHETHER OR NOT THESE INJURIES
10 CAUSED THIS TO BE ASSAULT AND BATTERY OF A HIGH AND
11 AGGRAVATED NATURE. IT'S A JURY ISSUE ABOUT WHETHER OR NOT
12 THE INFLICTION -- THESE ARE SERIOUS -- THIS IS SERIOUS BODILY
13 INJURY, AND BECAUSE OF THAT, IT CLEARLY IS A JURY ISSUE. AND
14 OBVIOUSLY IF THEY FOUND THAT IT WAS NOT SERIOUS BODILY
15 INJURY, THEN IT COULD CERTAINLY BE A SIMPLE ASSAULT AND
16 BATTERY AND THAT'S THE PIECE OF THIS THAT TROUBLES ME,
17 PARTICULARLY WHEN WE DO NOT HAVE THE INSTRUMENT THAT WAS
18 USED. WE HAVE DESCRIPTIONS OF IT. IT TROUBLES ME THAT THERE
19 ARE NO CLEAR DESCRIPTIONS OF IT. YOU KNOW, I'M -- I'M
20 CONCERNED ABOUT IT. YES, MA'AM, MS. HARDEE-THOMAS.

21 MS. HARDEE-THOMAS: YOUR HONOR, WHEN I GOT THIS THIS
22 MORNING I WAS THINKING, WELL, THE STATE HAS BEEN TRYING TO I
23 GUESS ASK THE WITNESSES, "WHO WAS THE AGGRESSOR? WHO WAS THE
24 PERSON DOING ALL THE ACTS IN THIS PARTICULAR MATTER?" I
25 UNDERSTOOD WHERE THEY WERE GOING WITH REGARDS TO THAT, BUT I

1 WAS LOOKING AT THE FACT THAT THE INTERPRETATION IN REGARDS TO
2 ASSAULT AND BATTERY WITH INTENT TO KILL, ABHAN, AND ASSAULT
3 WOULD HAVE TO BE UP TO THE JURY MAINLY BECAUSE WE DO HAVE AN
4 INJURY. IT'S NOT SERIOUS. HOWEVER, WE HAVE THE VICTIM AND
5 MR. BELLAMY INDICATING THAT THERE WAS A WEAPON, BUT WE DON'T
6 HAVE THE WEAPON. NO ONE KNOWS WHERE IT WENT.

7 I MEAN, I COULD USE THE INTERPRETATION THAT IT COULD
8 HAVE BEEN A FINGER WRAPPED UP WITH WHITE GAUZE - NOBODY SAID
9 ANYTHING ABOUT THAT - AND USED, YOU KNOW, AS A WEAPON. BUT
10 THE POINT IS LIKE -- I THINK IT'S A JURY QUESTION FOR THEM TO
11 CONSIDER. THAT'S WHAT I WAS LOOKING AT, AND I DON'T -- I
12 DON'T SEE HOW ALL OF A SUDDEN JUST BECAUSE -- I FEEL THAT
13 THERE IS EVIDENCE THAT'S BEEN PRESENTED TO THE FACT THAT A
14 PERSON HAD BEEN INJURED, AND WHETHER OR NOT THE JURY
15 DETERMINES WHETHER OR NOT IT'S ACCOMPANIED BY CIRCUMSTANCES
16 OF AGGRAVATION, THAT'S FOR THEM TO DETERMINE.

17 NOW, THEY'RE HERE. THEY LISTENED TO ALL THE EVIDENCE
18 THAT WAS HERE. IT'S UP TO THEM. I MEAN, FOR US TO TAKE THAT
19 AWAY... THEY CAN USE THEIR COMMON SENSES IN REGARDS TO
20 DETERMINING WHETHER OR NOT IT'S ABHAN OR ASSAULT AND BATTERY.

21 THE COURT: I WAS FOCUSING ON THOSE PAGES. WHAT ARE THE
22 FACTS OF STATE VERSUS GEIGER?

23 MR. SORENSON: WELL, THIS ACTUALLY DEALS -- TO BE HONEST
24 WITH YOUR HONOR, IT DOES NOT DEAL WITH A SIMPLE ASSAULT. I
25 MEAN, IT'S ACTUALLY A SEXUAL ASSAULT.

1 THE COURT: OH, OKAY.

2 MR. SORENSON: AND WHETHER THEY'RE GOING TO CHARGE THE
3 LESSER OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
4 NATURE. I THINK HE WAS CONVICTED OF ASSAULT WITH INTENT TO
5 COMMIT CRIMINAL SEXUAL CONDUCT, SO IT'S REALLY -- THE FACTS
6 OF THAT CASE IS NOT -- DOESN'T REALLY HELP.

7 THE COURT: LET ME ASK YOU THIS QUESTION -- BECAUSE
8 THERE WAS A CASE -- THERE WAS A CASE AND THAT'S WHY I BROUGHT
9 MY ADVANCE SHEETS. IT DAWNED ON ME DRIVING UP HERE ACTUALLY
10 TODAY... THERE WAS A CASE - IT'S A LITTLE BIT DIFFERENT -
11 WHERE THERE WAS A REQUEST FOR A CHARGE OF ABHAN, AND THE
12 DEFENDANT WAS CONVICTED OF ABWIK, BUT THERE WAS A REQUEST FOR
13 A CHARGE OF ABHAN AND IT HAD TO DO WITH -- IT WAS A -- IT
14 STARTED OUT AS A DOMESTIC DISPUTE AND THE PERSON -- I DON'T
15 THINK IT WAS A MURDER. I THINK IT WAS ABWIK. AND HE HAD
16 STALKED THE WOMAN AND FOLLOWED THE WOMAN, AND HE HAD ASKED
17 FOR AN ABHAN CHARGE. AND THE COURT ERRING ON THE -- AND I
18 DON'T EVEN REMEMBER IF IT'S THE COURT OF APPEALS OR SUPREME
19 COURT THAT SAID THAT ABHAN WAS NOT APPROPRIATE UNDER THE
20 FACTS BECAUSE HE SHOT THE WOMAN, AND I REALLY WANTED TO LOOK
21 AT THAT BECAUSE THAT'S SORT OF THE SAME -- I KNOW IT'S A
22 DIFFERENT LEVEL, BUT IT'S SOME OF WHAT WE'RE TALKING ABOUT.

23 MR. SORENSON: I'M NOT AWARE OF THAT. I KNOW THERE'S A
24 CASE WITH THAT SIMILAR -- THAT'S A RICHLAND COUNTY CASE WHERE
25 THERE WAS AN ARMED ROBBERY---

1 THE COURT: HUH-UH.

2 MR. SORENSON: ---OF A SUBWAY RESTAURANT.

3 THE COURT: NO, THIS ISN'T AN ARMED ROBBERY. THIS IS---

4 MR. SORENSON: BUT THERE WAS---

5 THE COURT: THIS IS A RELATIONSHIP.

6 MR. SORENSON: OKAY. BUT IT HAD THE SAME ARGUMENT
7 THOUGH BECAUSE THE VICTIM WAS SHOT DURING THE ROBBERY, AND IT
8 WAS JUDGE SHULER THAT HAD REFUSED TO CHARGE ABHAN IN THAT
9 CASE. SO IT -- AND PART OF IT IS JUST THE FACT THAT I THINK
10 HE HAD EVEN SAID ON THE RECORD THAT I JUST DON'T SEE HOW
11 SHOOTING SOMEBODY POINTBLANK IN THE HEAD---

12 THE COURT: RIGHT, COULD EVER BE A---

13 MR. SORENSON: THE VICTIM SURPRISINGLY LIVED BUT WAS
14 SHOT LIKE RIGHT IN THE EYE THAT POINT -- THAT HOW THAT COULD
15 EVER BE AN ABHAN...

16 THE COURT: AND I AGREE, I MEAN TRULY. OKAY. WELL, YOU
17 KNOW, I KNOW THAT OUR JURY IS WAITING, AND I'VE LOOKED AT
18 THAT. BUT I THINK I'M GOING TO TAKE MAYBE TWO MORE MINUTES
19 BECAUSE I'VE GOT MY CASES. OH, AND IT'S -- I KNOW IT WAS IN
20 2006. I WANT TO SAY IT WAS IN THE FALL OF 2006, BECAUSE I
21 SEE YOU LOOKING, MR. HILTON, BUT I THINK IT HAD TO DO -- IT
22 WAS ABWIK AND ABHAN, BUT LET'S TAKE -- LET THE GENIUS WORK
23 THERE A MINUTE AND LOOK AT THE LAW BOOK.

24 HERE IT IS. STATE VERSUS WILLIE EARL REESE, JR.

25 AUGUST. NOT QUITE THE FALL. OH, I AM WRONG. IT WAS --

1 REESE SPLIT UP AND ESTRANGED WIFE MOVED IN WITH PARENTS.
2 CALLED THE HOUSE THREE OR FOUR TIMES. STALKED HER THAT
3 EVENING. SHOT AND KILLED HER---

4 MR. SORENSON: UH-HUH.

5 THE COURT: ---LATER IN THE EVENING. AND THE COURT
6 REFUSED TO GIVE AN INVOLUNTARY MANSLAUGHTER INSTRUCTION.
7 INVOLUNTARY MANSLAUGHTER IS THE KILLING OF ANOTHER WITHOUT
8 MALICE AND UNINTENTIONALLY WHILE ENGAGED IN EITHER AN
9 UNLAWFUL ACT NOT AMOUNTING TO A FELONY AND THAT'S WHAT CAUGHT
10 THEM, THAT CLEARLY THE ACT... SINCE WILLIE POINTED A LOADED
11 FIREARM AT ANOTHER PERSON, WHICH IS A FELONY, HE COMMITTED A
12 FELONY AND, THEREFORE, AN INVOLUNTARY MANSLAUGHTER CHARGE
13 WOULD BE PRECLUDED. OKAY. THAT WAS IT. IT REALLY ISN'T ON
14 POINT, BUT I'M GLAD TO NOW SEE IT.

15 OKAY. I THINK ON THESE FACTS AND ABSOLUTELY
16 UNDERSTANDING THE POINT BY THE STATE, GIVEN THESE FACTS,
17 GIVEN THE DESCRIPTIONS OF THE OBJECT, GIVEN THE FACT THAT WE
18 DON'T HAVE THE OBJECT PRESENT, GIVEN THE WOUNDS THAT WERE
19 INFLECTED, I BELIEVE THAT IT WOULD BE ERROR FOR ME NOT TO
20 GIVE THE CHARGE ON THE LESSER INCLUDED OFFENSE OF SIMPLE
21 ASSAULT. I'M NOTING THE STATE'S EXCEPTION, BUT I BELIEVE IT
22 IS APPROPRIATE THAT THAT BE GIVEN ALSO, AND I WOULD
23 RESPECTFULLY DENY YOUR MOTION TO EXCLUDE THE CHARGE OF SIMPLE
24 ASSAULT. I THINK IT WOULD BE ERROR NOT TO. AND SO FOR YOUR
25 ARGUMENT PURPOSES---

1 MR. SORENSON: THANK YOU.

2 THE COURT: ---I'M GOING TO -- I'M GOING TO CHARGE IT.
3 OKAY.

4 MS. HARDEE-THOMAS: THANK YOU, YOUR HONOR.

5 THE COURT: ANYTHING ELSE BEFORE WE BRING THE JURY OUT?

6 MS. HARDEE-THOMAS: NOTHING ELSE FROM THE DEFENSE.

7 MR. SORENSON: NOTHING.

8 THE COURT: GREAT. ALL RIGHT. THANK YOU. LET US HAVE
9 THE JURY. AND YOU ARE GIVING MS. HARDEE-THOMAS HER ARGUMENT.
10 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
11 10:15 A.M.)

12 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. WAS IT
13 -- WAS IT BISCUITS THIS MORNING?

14 BAILIFF: YES, MA'AM.

15 THE COURT: HOW WONDERFUL. LADIES AND GENTLEMEN, LET ME
16 TELL YOU HOW WE'RE GOING TO BE PROCEEDING THIS MORNING. YOU
17 ARE FIRST GOING TO HEAR THE CLOSING ARGUMENT FROM THE STATE,
18 AND THEN YOU WILL HEAR CLOSING ARGUMENT FROM MS. HARDEE-
19 THOMAS ON BEHALF OF THE DEFENDANT. ONCE THOSE ARGUMENTS ARE
20 CONCLUDED, THERE WILL BE A VERY SHORT BREAK BECAUSE I'M GOING
21 TO ASK YOU IF ANYBODY NEEDS A COMFORT BREAK. I CAN JUST TELL
22 YOU THAT'S WHAT THAT'S GOING TO BE ABOUT. AND THEN AFTER THE
23 CLOSING ARGUMENTS ARE CONCLUDED, THEN I WILL DELIVER MY
24 CHARGE OR INSTRUCTION TO YOU ON THE LAW. I THINK THAT'S
25 GOING TO TAKE ME PROBABLY 20 MINUTES TO 25 MINUTES, AND THEN

1 THERE WILL BE ANOTHER VERY, VERY SHORT BREAK WHICH I'LL
2 EXPLAIN TO YOU WHEN WE REACH THAT POINT, AND THEN YOU WILL
3 RECEIVE THIS CASE FOR YOUR DELIBERATIONS.

4 LADIES AND GENTLEMEN, AT THIS TIME I INVITE YOU TO DRAW
5 CLOSE AS WE LISTEN TO THE CLOSING ARGUMENTS OF THE ATTORNEYS.
6 MR. SORENSON?

7 MR. SORENSON: MAY IT PLEASE THE COURT, YOUR HONOR?

8 THE COURT: YES. AND IF I MAY, MR. TAYLOR, DURING THE
9 LAWYERS' CLOSING ARGUMENTS AND THE CHARGE, I DON'T WANT
10 PEOPLE COMING AND GOING FROM THE COURTROOM. I DON'T WANT
11 THEM TO DISTRACT OUR JURY. THANK YOU.

12 MR. SORENSON: THANK YOU. GOOD MORNING, MADAM FORELADY
13 AND LADIES AND GENTLEMEN OF THE JURY. THERE'S NO DOUBT THAT
14 BACK ON OCTOBER 10TH, 2005, THAT MAN RIGHT THERE, LOUIS
15 SHEPPARD, ASSAULTED INMATE JAMES HOLMES. THERE'S NO DOUBT HE
16 STABBED HIM, CUT HIM REPEATEDLY THAT DAY AT THE DEPARTMENT OF
17 CORRECTIONS. THERE'S JUST NO DOUBT THAT HE'S GUILTY. THE
18 ONLY QUESTION, LADIES AND GENTLEMEN, WHEN YOU GET BACK TO
19 THAT JURY ROOM THAT YOU'RE GOING TO HAVE TO DECIDE IS: WHAT
20 IS HE GUILTY OF? WHAT IS HE GUILTY OF?

21 AS YOU WERE TOLD YESTERDAY, THIS IS NOT GOING TO BE A
22 VERY LONG CASE NOR IS IT A VERY COMPLICATED CASE, BUT
23 NONETHELESS IT'S STILL A VERY SERIOUS MATTER, VERY SERIOUS TO
24 THE STATE OF SOUTH CAROLINA, THE PEOPLE OF DORCHESTER COUNTY,
25 TO THAT MAN, LOUIS SHEPPARD, AND I SUBMIT TO YOU FOR JAMES

1 HOLMES, ESPECIALLY FOR JAMES HOLMES.

2 WE KNOW FOR A YOUNG MAN HE'S DONE SOME THINGS IN HIS
3 LIFE THAT I'M SURE HE'S NOT PROUD OF, SOME BAD THINGS, SOME
4 THINGS THAT HE'S GOING TO BE PAYING FOR FOR MANY YEARS TO
5 COME, FOR MANY YEARS TO COME. I SUBMIT TO YOU HE DID NOT
6 DESERVE, DID NOT DESERVE, WHAT THAT MAN DID TO HIM A YEAR AND
7 A HALF AGO. LADIES AND GENTLEMEN, I ASK YOU, PLEASE, WHEN
8 YOU GET BACK TO THAT JURY ROOM -- THE FACT THAT THIS HAPPENED
9 OUT IN THE DEPARTMENT OF CORRECTIONS AND NOT OUT ACTUALLY IN
10 OUR COMMUNITY DOESN'T MAKE IT ANY LESS SERIOUS, DOESN'T MAKE
11 IT ANY LESS AGAINST THE LAW, ANY LESS AGAINST THE LAW.

12 I'M GOING TO TAKE JUST A FEW MOMENTS OF YOUR TIME. I'M
13 GOING TO GO OVER BASICALLY KIND OF TWO DIFFERENT -- TWO
14 DIFFERENT THINGS WITH YOU. I WANT TO TALK TO YOU A LITTLE
15 BIT ABOUT THE EVIDENCE THAT WAS PRESENTED HERE IN THE
16 COURTROOM YESTERDAY, THE WITNESSES THAT YOU HEARD FROM. THEN
17 I WANT TO TAKE A LITTLE BIT OF TIME TO TALK TO YOU ABOUT THE
18 POSSIBLE VERDICTS THAT YOU'RE GOING TO HAVE WHEN YOU GET BACK
19 IN YOUR JURY ROOM -- GET BACK IN THE JURY ROOM.

20 THE FIRST WITNESS YOU HEARD FROM YESTERDAY WAS JAMES
21 HOLMES SERVING A 20-YEAR SENTENCE FOR ARMED ROBBERY OUT IN
22 OUR DEPARTMENT OF CORRECTIONS BACK IN OCTOBER OF 2005 OUT AT
23 LIEBER IN RIDGEVILLE HERE, BETWEEN HERE AND SUMMERVILLE.
24 NOW, THE IRONIC THING ABOUT MR. HOLMES, LADIES AND GENTLEMEN
25 -- YOU KNOW, AS I TOLD YOU, HE'S DONE SOME THINGS, SOME

1 PRETTY BAD THINGS IN HIS LIFE, BUT THE ONE TIME THAT HE
2 FINALLY STANDS UP AND DOES THE RIGHT THING, DOES THE RIGHT
3 THING, BACK IN NOVEMBER OF '04 WHEN HE COOPERATED WITH LAW
4 ENFORCEMENT AND ULTIMATELY ENDED UP TESTIFYING AGAINST HIS
5 CELL MATE WHO HAD TRIED TO ESCAPE FROM THE DEPARTMENT OF
6 CORRECTIONS, WHAT HAPPENS TO HIM THE ONE TIME HE DOES THE
7 RIGHT THING IN HIS LIFE? HE SAYS THAT MAN RIGHT THERE TRIED
8 TO TURN HIM INTO A PIN CUSHION, STICKING HIM OVER AND OVER
9 AGAIN WITH A SHANK.

10 WHAT DOES HE TELL US HAPPENED TO HIM THAT DAY,
11 OCTOBER THE 10TH? HE'S SITTING THERE WATCHING A FOOTBALL
12 GAME, HE'S GOT HEADPHONES ON, WHEN SOMEBODY COMES UP BEHIND
13 HIM, COMES UP BEHIND HIM AND STABS HIM IN THE BACK, TURNS
14 AROUND AND SQUARES UP WITH HIM, NO DOUBT ABOUT WHO IT IS, THE
15 PERSON THAT HE'S KNOWN SINCE BACK ON THE STREETS OF
16 GEORGETOWN, THE DEFENDANT, LOUIS SHEPPARD. HE'S GOT A
17 HOMEMADE PRISON SHANK IN HIS HAND, AND THEY START WRESTLING.

18 YOU KNOW, MS. HARDEE-THOMAS MADE A BIG DEAL AND I'M SURE
19 SHE'S GOING TO MAKE A BIG DEAL IN HER CLOSING ARGUMENT ABOUT
20 HOW BIG JAMES HOLMES IS. HE'S A BIG BOY. PROBABLY EVEN WITH
21 THE WEIGHT HE'S GAINED WAS PROBABLY A BIG BOY BACK IN OCTOBER
22 OF 2005. WELL, I'LL TELL YOU WHAT, LADIES AND GENTLEMEN:
23 IT'S A GOOD THING HE'S AS BIG AS HE WAS. IF NOT, THIS
24 PROBABLY WOULD BE A MURDER CASE HERE INSTEAD OF AN ASSAULT
25 AND BATTERY WITH INTENT TO KILL. IT'S ONLY HIS SIZE IS THE

1 REASON THAT HE WAS ABLE TO FEND OFF THAT MAN AND NOT BE
2 INJURED ANY WORSE THAN HE REALLY WAS.

3 WHAT DOES HE TELL US? THAT HE'S WRESTLING WITH HIM,
4 CALLING FOR THE GUARDS. HE FINALLY ENDS UP GETTING HIM IN A
5 HEADLOCK AND IS ABLE TO GET A HOLD OF HIS HAND AND KIND OF
6 SECURED SO HE STOPS STABBING HIM. I SUBMIT TO YOU: WHAT
7 INJURIES DOES HE END UP SUFFERING? WHAT INJURIES DOES HE END
8 UP SUFFERING? YOU HEARD FROM THE NURSE THAT TESTIFIED, MS.
9 JENKINS: LACERATION UNDER HIS RIGHT NOSE, THREE INCHES LONG,
10 TWO CENTIMETERS -- THREE CENTIMETERS LONG AND TWO CENTIMETERS
11 DEEP. TWO SUPERFICIAL STAB WOUNDS TO HIS RIGHT ARM. TWO
12 SUPERFICIAL STAB WOUNDS TO HIS RIGHT CHEST. ONE TO HIS RIGHT
13 BACK. TWO TO HIS LEFT EYEBROW. ONE TO HIS LEFT INNER ELBOW.
14 A SCRATCH ON HIS HAND AND A SCRATCH ON HIS FOREARM AND A
15 SCRATCH ON HIS LEFT UPPER ARM, I SUBMIT TO YOU INJURIES
16 CONSISTENT, LADIES AND GENTLEMEN, WITH WHAT HE TOLD YOU
17 HAPPENED. STABBED ONCE IN THE BACK, TURNS AROUND. HE'S GOT
18 A MAN, LOUIS SHEPPARD, SWINGING AT HIM AND STABBING AT HIM,
19 FIGHTING HIM OFF, DEFENSIVE WOUNDS ON HIS ARMS AND HIS HANDS,
20 OTHER AREAS WHERE HE WAS ABLE TO HIT HIM IN THE CHEST WHEN HE
21 SQUARED OFF WITH HIM, INJURIES TOTALLY CONSISTENT WITH WHAT
22 MR. HOLMES TOLD YOU HAPPENED, TOLD YOU HAPPENED, BACK ON
23 OCTOBER 10TH.

24 AND YOU HEARD FROM THE CORRECTIONAL OFFICERS, OFFICER
25 BELLAMY AND SERGEANT ELMORE. LET ME START WITH OFFICER

1 BELLAMY. AND THE ONE THING, LADIES AND GENTLEMEN, THE ONE
2 THING I'M SURE THAT YOU'VE PICKED UP THAT I DEFINITELY HAVE
3 LEARNED AFTER LISTENING TO THE TESTIMONY YESTERDAY IS THAT
4 THOSE CORRECTIONAL OFFICERS HAVE A PRETTY TOUGH JOB, PRETTY
5 TOUGH JOB. 125 PLUS INMATES IN THAT UNIT. 125 PLUS INMATES
6 HOUSED IN EACH ONE OF THESE WINGS. THERE'S ONE CORRECTIONAL
7 OFFICER, ONE CORRECTIONAL OVER, WATCHING OVER THEM.

8 IT'S AMAZING MORE STUFF LIKE THIS DOESN'T HAPPEN OUT
9 THERE. BUT WHAT DOES HE TELL YOU HE SAW? INITIALLY SEES
10 WHAT HE THINKS IS JUST SOME HORSEPLAY GOING ON, TWO GUYS KIND
11 OF WRESTLING AND GOOFING AROUND. HE GOES OVER TO TRY TO STOP
12 THEM, AT THAT POINT IN TIME REALIZES IT'S SOMETHING SERIOUS.

13 HE SEES MR. HOLMES BACKING UP TOWARDS HIM WITH HIS
14 HANDS... I SUBMIT TO YOU THAT'S WHEN HE WAS TRYING TO FEND
15 OFF THAT SHANK. HE'S BACKING UP TO HIM. HE GOES AND CALLS
16 FOR HELP, CALLS FOR HELP. SERGEANT ELMORE COMES IN. THEY
17 ULTIMATELY ARE ABLE TO GET THE TWO OF THEM INTO THAT SALLY
18 PORT AREA.

19 I SUBMIT TO YOU, LADIES AND GENTLEMEN, UNFORTUNATELY WE
20 DON'T HAVE THE WEAPON USED. WE DON'T HAVE THE WEAPON USED.
21 I'M SORRY ABOUT THAT, BUT WE DON'T. IT DISAPPEARED SOMEWHERE
22 OUT THERE. I SUBMIT TO YOU THERE'S NO DOUBT, NO DOUBT, THAT
23 HE WAS STABBED. THAT'S NOT THE ISSUE. THERE'S NO DOUBT THAT
24 HE WAS CUT. IT WASN'T A FINGERNAIL. IT WASN'T A SCRATCH
25 THAT DID THAT, THAT PUT THOSE PUNCTURE WOUNDS ON HIS BACK AND

1 HIS STOMACH AND HIS CHEST, HIS ARMS, AND A SLICE ACROSS HIS
2 LIP. BUT IT DISAPPEARED SOMEWHERE OUT THERE. UNFORTUNATELY,
3 IT'S PROBABLY NOT THE ONLY WEAPON OUT THERE IN THE DEPARTMENT
4 OF CORRECTIONS AT LIEBER.

5 BUT THEY WERE ABLE TO GET THE TWO OF THEM ISOLATED FROM
6 OTHER INMATES AND ULTIMATELY ABLE TO GET THE TWO OF THEM
7 SEPARATED. AND WHAT'S THE MOST IMPORTANT THING THAT YOU
8 LEARNED OUT OF THE TWO OF THEM FROM BOTH OFFICER BELLAMY AND
9 SERGEANT ELMORE? WHO IS THE AGGRESSOR IN ALL THIS? LOUIS
10 SHEPPARD. LOUIS SHEPPARD. BOTH OF THEM SAY THAT. WHO DID
11 THEY HAVE TO PEPPER-SPRAY? EVEN THOUGH INMATE HOLMES HAD MR.
12 SHEPPARD IN A HEADLOCK, WHO DO THEY HAVE TO PEPPER-SPRAY TO
13 GET THE TWO OF THEM SEPARATED? THE AGGRESSOR, LOUIS
14 SHEPPARD.

15 AND WHAT ELSE DO THEY TELL YOU? THAT AFTER THEY FINALLY
16 GET THE TWO OF THEM SEPARATED, MR. HOLMES IS STANDING OFF TO
17 THE SIDE BLEEDING, GOT BLOOD COMING FROM HIS -- FROM HIS
18 FACE, BLOOD COMING ALL OVER HIS CHEST, HIS BACK, WAITING TO
19 GO GET TREATED. WHAT DOES MR. SHEPPARD DO? HE BREAKS AWAY
20 FROM THE OFFICERS AND STILL IS TRYING TO GO AFTER JAMES
21 HOLMES, STILL TRIES TO GO AFTER HIM. THAT SHOWS WHAT'S GOING
22 ON IN THAT MAN'S HEAD AND THAT MAN'S HEART BACK ON
23 OCTOBER 10TH. LADIES AND GENTLEMEN, I SUBMIT TO YOU AFTER
24 YOU LOOK AT ALL THAT AND YOU LOOK AT THE EVIDENCE IN THIS
25 CASE, AS I TOLD YOU FROM THE OUTSET, THERE IS NO DOUBT, NO

1 DOUBT, THAT LOUIS SHEPPARD IS GUILTY OF ASSAULTING JAMES
2 HOLMES BACK ON OCTOBER 10TH OF 2005.

3 NOW, I WANT TO TAKE A FEW MINUTES OF YOUR TIME TO TALK
4 ABOUT THE POSSIBLE -- THE POSSIBLE VERDICTS THAT YOU CAN COME
5 TO BACK THERE WHEN YOU GET IN YOUR JURY ROOM. HER HONOR IS
6 GOING TO CHARGE YOU WHEN MYSELF AND MS. HARDEE-THOMAS ARE
7 DONE -- DONE COMING BEFORE YOU. SHE'S GOING TO CHARGE YOU ON
8 THE LAW IN THIS CASE, AND SHE'S GOING TO ESSENTIALLY CHARGE
9 YOU THAT AS YOU -- AS YOU KNOW BY NOW, MR. SHEPPARD WAS
10 INDICTED BY THE GRAND JURY FOR ONE COUNT OF ASSAULT AND
11 BATTERY WITH INTENT TO KILL, AND I'M GOING TO GO INTO A
12 LITTLE BIT WITH YOU ABOUT WHAT THAT MEANS.

13 YOU'RE ALSO GOING TO HAVE TWO OTHER POSSIBLE CHARGES TO
14 CONSIDER. THEY'RE CALLED LESSER INCLUDED CHARGES. YOU HAVE
15 ASSAULT AND BATTERY WITH INTENT TO KILL. YOU HAVE A LESSER
16 CHARGE CALLED ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
17 NATURE, AND THEN YOU HAVE A SIMPLE ASSAULT AND BATTERY. AND
18 OBVIOUSLY IF YOU FIND THAT THE STATE HAS NOT PROVEN HE'S
19 GUILTY OF THE ASSAULT, THEN YOU FIND HIM NOT GUILTY.

20 THE COURT: HOLD ON ONE SECOND.

21 (PAUSE IN PROCEEDINGS WHILE A TRAIN GOES BY.)

22 THE COURT: ALL RIGHT. THANK YOU, MR. SORENSON.

23 MR. SORENSON: ASSAULT AND BATTERY WITH INTENT TO KILL,
24 AS MR. HILTON I THINK TOLD YOU IN HIS OPENING YESTERDAY, IS
25 SIMPLY AN ASSAULT AND BATTERY, AN OFFER -- I GUESS THE BEST

1 WAY IS TO KIND OF BREAK DOWN WHAT AN ASSAULT AND BATTERY IS.
2 AN ASSAULT IS AN OFFER TO DO INJURY TO ANOTHER. IF I RAISE
3 BACK MY FIST WITH THE ABILITY AND IN CLOSE ENOUGH RANGE TO
4 MR. HILTON, THAT'S AN ASSAULT. FOLLOWING THROUGH AND
5 ACTUALLY HITTING HIM WOULD BE THE BATTERY. THAT'S ASSAULT
6 AND BATTERY.

7 AN ASSAULT AND BATTERY WITH INTENT TO KILL IS THE OFFER
8 TO DO VIOLENT INJURY TO ANOTHER ACCOMPANIED BY MALICE
9 AFORETHOUGHT. MALICE AFORETHOUGHT. WHAT MALICE
10 AFORETHOUGHT, LADIES AND GENTLEMEN, IS IS ESSENTIALLY A STATE
11 OF MIND, WHAT THE DEFENDANT HAD IN HIS HEART AND IN HIS MIND
12 BACK ON OCTOBER 10TH OF 2005. IT'S ILL WILL TOWARDS ANOTHER
13 PERSON. IT'S A HEART DEVOID OF SOCIAL DUTY, FATALLY BENT ON
14 MISCHIEF.

15 ASSAULT AND BATTERY WITH INTENT TO KILL IS AN OFFER TO
16 DO VIOLENT INJURY TO ANOTHER ACCOMPANIED BY MALICE
17 AFORETHOUGHT. THAT MALICE CAN EITHER BE IMPLIED THROUGH THE
18 USE OF A WEAPON SUCH AS WE HAD IN THIS CASE. IT CAN BE
19 INFERRED -- I MEAN, IT CAN BE EXPRESSED BY SOMEBODY ACTUALLY
20 SAYING, "I'M GOING TO KILL YOU." IN THIS CASE THE WORD CAME
21 DOWN, "I'M GOING TO TOUCH YOU UP BECAUSE OF WHAT YOU'RE
22 GETTING READY TO DO TO COME TESTIFY AGAINST MR. WILLIAMS,
23 YOUR OLD CELL MATE." EXPRESS MALICE.

24 LADIES AND GENTLEMEN, WHEN YOU LOOK AND LISTEN TO THAT
25 DEFINITION OF ASSAULT AND BATTERY WITH INTENT TO KILL, THE

1 ONE THING THAT IT DOESN'T REQUIRE, THAT IT DOESN'T REQUIRE:
2 IT DOESN'T REQUIRE SERIOUS BODILY INJURY, DOESN'T REQUIRE
3 LIFE-THREATENING INJURY. IT DOESN'T REQUIRE A PERSON TO HAVE
4 TO GO GET STITCHED UP. IT DOESN'T REQUIRE A TRIP TO THE
5 EMERGENCY ROOM. WHAT IT REQUIRES IS THAT ASSAULT AND BATTERY
6 ACCOMPANIED BY MALICE AFORETHOUGHT, THAT EVIL MIND, THAT
7 WICKED MIND, THAT EVIL INTENT.

8 THE INTENT BEHIND THIS CHARGE, LADIES AND GENTLEMEN, IS
9 NOT THE SERIOUSNESS OF THE RESULT BUT WHAT'S GOING ON INSIDE
10 THAT MAN'S MIND, INSIDE HIS HEART, WHEN HE WALKED UP BEHIND
11 LOUIS SHEPPARD -- WALKED UP BEHIND JAMES HOLMES, TOOK THAT
12 SHANK AND STABBED HIM IN THE BACK, STABBED HIM IN THE BACK.
13 IT WAS AN UNARMED MAN WITH HEADPHONES ON WATCHING TELEVISION,
14 STABS HIM IN THE BACK AND THEN PROCEEDS TO STAB HIM AGAIN IN
15 THE CHEST, IN THE ARMS, SLICES HIM IN THE FACE. I SUBMIT TO
16 YOU, LADIES AND GENTLEMEN, IT DOESN'T GET ANY MORE MALICIOUS
17 THAN THAT. IT DOESN'T GET ANY MORE MALICIOUS THAN THAT.

18 NOW, LADIES AND GENTLEMEN, IF YOU FIND THAT WE HAVE NOT
19 PROVEN TO YOU BEYOND A REASONABLE DOUBT, BEYOND A REASONABLE
20 DOUBT, THAT HE'S GUILTY OF ASSAULT AND BATTERY WITH INTENT TO
21 KILL, THAT HE HAD THAT MALICIOUS INTENT WHEN HE ASSAULTED MR.
22 HOLMES, THEN THE NEXT CHARGE THAT YOU'RE GOING TO CONSIDER IS
23 A LESSER CHARGE CALLED ASSAULT AND BATTERY OF A HIGH AND
24 AGGRAVATED NATURE. AND ESSENTIALLY WHAT THAT IS IS THAT SAME
25 -- YOU HAVE TO HAVE THAT SAME ASSAULT AND BATTERY, THAT

1 SAME -- THAT UNWANTED TOUCHING, SO TO SPEAK, ACCOMPANIED BY
2 CIRCUMSTANCES OF AGGRAVATION. THOSE CIRCUMSTANCES OF
3 AGGRAVATION COULD BE THE DIFFERENCE IN THEIR PHYSICAL SIZES,
4 IF YOU HAD AN ADULT COMMITTING A BATTERY ON A CHILD OR A
5 SMALLER PERSON, A DIFFERENCE IN THE SEXES, A MALE BEATING UP
6 A WOMAN, COULD BE THE USE OF A DEADLY WEAPON SUCH AS IN THIS
7 CASE, A SHANK OR A KNIFE OR A GUN. COULD BE THE INFLICTION
8 OF SERIOUS BODILY INJURY. THOSE ARE ALL CIRCUMSTANCES OF
9 AGGRAVATION. I SUBMIT TO YOU THERE'S NO DOUBT THAT HE'S
10 GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
11 NATURE, BUT HE'S ALSO GUILTY OF THAT GREATER OFFENSE -
12 ASSAULT AND BATTERY WITH INTENT TO KILL - BECAUSE YOU SEE
13 THEY ALL ENCOMPASS EACH OTHER.

14 AND LASTLY, LADIES AND GENTLEMEN, IF YOU FIND THAT WE
15 HAVE NOT PROVEN TO YOU BEYOND A REASONABLE DOUBT THAT MR.
16 SHEPPARD IS GUILTY OF ASSAULT AND BATTERY OF A HIGH AND
17 AGGRAVATED NATURE, IF YOU FIND THAT THIS WAS NOT AN
18 AGGRAVATED ASSAULT THAT HE GOT STABBED AND CUT NINE TIMES, IF
19 YOU FIND THAT, THEN THE LAST OFFENSE THAT YOU'RE TO CONSIDER
20 IS SIMPLE ASSAULT AND BATTERY. I SUBMIT TO YOU, LADIES AND
21 GENTLEMEN, THAT WOULD BE AN INJUSTICE, AN INJUSTICE, TO
22 SOCIETY AND TO JAMES HOLMES TO FIND THAT MAN GUILTY OF SIMPLE
23 ASSAULT AND BATTERY FOR STABBING SOMEBODY AND CUTTING
24 SOMEBODY NINE TIMES.

25 A SIMPLE ASSAULT AND BATTERY IS WHEN YOU PUSH SOMEBODY

1 DOWN, WHEN YOU PUNCH SOMEBODY. THAT'S A SIMPLE ASSAULT AND
2 BATTERY. TAKING A WEAPON AND STABBING SOMEBODY NINE TIMES
3 AND CUTTING THEM IN THE FACE IS NOT A SIMPLE ASSAULT AND
4 BATTERY.

5 AS I MENTIONED -- I'M JUST ABOUT DONE, LADIES AND
6 GENTLEMEN. I APPRECIATE YOUR ATTENTION IMMENSELY. AS I
7 MENTIONED AT THE OUTSET, LADIES AND GENTLEMEN, JUST THE FACT
8 THAT THIS HAPPENED AT THE DEPARTMENT OF CORRECTIONS, HAPPENED
9 BEHIND THOSE BARBED WIRE FENCES, BEHIND THOSE CONCRETE WALLS,
10 DON'T GIVE HIM A PASS BECAUSE OF THAT. IF THIS HAD HAPPENED
11 OUT IN OUR COMMUNITY, IF IT HAD HAPPENED IN A LOCAL
12 RESTAURANT, A LOCAL PARK, THERE WOULD BE NO DOUBT, NO DOUBT,
13 NO QUESTION IN ANYBODY'S MIND THAT THAT MAN'S GUILTY OF
14 ASSAULT AND BATTERY WITH INTENT TO KILL.

15 I SUBMIT TO YOU THE MERE FACT THAT IT HAPPENED IN THE
16 DEPARTMENT OF CORRECTIONS DOESN'T CHANGE THAT. THE LAWS ARE
17 NO DIFFERENT OUT THERE THAN THEY ARE IN THIS COURTROOM OR OUT
18 IN THIS COMMUNITY HERE. I SUBMIT TO YOU WHAT HAPPENED TO
19 JAMES HOLMES HE DIDN'T DESERVE. NO MATTER WHAT HE'S DONE IN
20 HIS LIFE, HE IS SERVING HIS TIME FOR IT. HE DIDN'T DESERVE
21 WHAT LOUIS SHEPPARD DID TO HIM BACK ON OCTOBER 10TH, AND I
22 SUBMIT TO YOU IT'S TIME NOW FOR MR. SHEPPARD TO BE HELD
23 ACCOUNTABLE, HELD RESPONSIBLE FOR THOSE ACTIONS, HELD
24 RESPONSIBLE AND ACCOUNTABLE FOR WHAT HE HAD GOING ON IN HIS
25 MIND AND HIS HEART, THAT MALICE, BACK ON OCTOBER 10TH. THE

1 WAY THAT CAN BE DONE, LADIES AND GENTLEMEN, IS TO FIND HIM
2 GUILTY. FIND HIM GUILTY OF ASSAULT AND BATTERY WITH INTENT
3 TO KILL. THANK YOU.

4 THE COURT: THANK YOU, MR. SORENSON.

5 MS. HARDEE-THOMAS: MAY IT PLEASE THE COURT?

6 THE COURT: MS. HARDEE-THOMAS, YES.

7 MS. HARDEE-THOMAS: SOLICITOR. MADAM JUDGE. GOOD
8 MORNING, LADIES AND GENTLEMEN. AS I SAID TO YOU YESTERDAY, I
9 ASKED YOU TO LISTEN TO WHAT HAD BEEN PRESENTED IN THIS CHAIR,
10 THE EVIDENCE CHAIR, AND TO USE YOUR COMMON SENSE AND LIFE
11 EXPERIENCES AND FROM THERE COME TO THE CONCLUSION IN REGARDS
12 TO WHAT'S HAPPENED IN THIS PARTICULAR MATTER.

13 YOU HEARD FROM NURSE CARLITA JENKINS. SHE STATES THAT
14 SUPERFICIAL WOUNDS WHICH SHE TREATED WITH SALVE AND BANDAGE,
15 DEEPER WOUND TO THE NOSE AND TO THE ANTERIOR BACK RIGHT SIDE,
16 SHE TREATED WITH A STITCHER (SIC) -- A STRIP, STERI STRIP TO
17 THE NOSE, AND SALVE AND BANDAGE TO THE RIGHT SIDE OF THE
18 BACK. NOW, SHE INDICATED -- THERE WAS SOME TESTIMONY THAT
19 CAME IN THAT IT MAY HAVE BEEN CLOSE TO THE SPINAL CORD, BUT
20 THE SPINAL CORD IS PROTECTED BY BONES. SHE INDICATED THAT
21 THE WOUNDS WERE NOT SERIOUS. SHE APPLIED SALVE AND BANDAGE
22 AND INDICATED STILL NON-SERIOUS WOUNDS, NON-LIFE-THREATENING
23 WOUNDS. AS THE STATE WOULD SAY, THE STABS AND CUTS WERE
24 NON-SERIOUS. THEY WANT YOU TO THINK OTHERWISE BECAUSE THAT'S
25 WHY WE'RE HERE.

1 WHAT DO WE HAVE HERE? WE SIMPLY HAVE A FIGHT BETWEEN
2 TWO INMATES WHICH OCCURS DAILY IN PRISON. WELL, HOW DID THIS
3 FIGHT GET IN HERE? WELL, BECAUSE MR. HOLMES HELPED THE STATE
4 IN SOME FASHION AND THEY BROUGHT THE CASE TO PROTECT HIM.
5 HE'S STILL CONSIDERED A CITIZEN OF DORCHESTER COUNTY WHILE
6 HE'S HERE, AND HE HAS A RIGHT TO BE PROTECTED ALSO. BUT
7 THINK ABOUT IT. WHY IS A FIGHTING CASE HERE?

8 MR. BELLAMY SAW A PEN-LIKE STRUCTURE IN THE DIAMETERS OF
9 TWO INCHES, SIX INCHES LONG IN CYLINDER, SHANK-TYPE AREA, AND
10 INDICATED MR. SHEPPARD HAD IT IN HIS HAND. MR. BELLAMY
11 INDICATED HE SAW THIS. MR. HOLMES INDICATED THAT THIS IS
12 WHAT HE FELT ON HIS BACK FIRST. WHEN OFFICER ELMO (SIC) CAME
13 ON THE SCENE, HE INDICATED HE DIDN'T EVEN SEE THIS. NEVER
14 SAW A WEAPON IN MR. SHEPPARD'S HAND.

15 WE FOUND OUT FROM MR. HOLMES THAT WHEN HE AND MR.
16 SHEPPARD WERE, FROM WHAT WE STARTED -- WHAT WE BELIEVE WERE
17 TUSSLING WITH EACH OTHER, HORSE-PLAYING, THEN HE REALIZED IT
18 WAS A FIGHT. HE WAS NEAR -- HE WAS ON THE A. WING NEAR THE
19 MICROWAVE WHICH HE INDICATES WHERE HE WAS. IT'S IMPORTANT
20 FOR YOU TO LOOK AT WHERE THESE PEOPLE INDICATED THAT THEY
21 SAID THEY WERE BECAUSE MR. HOLMES SAID HE DIDN'T SEE ANY
22 OFFICERS ON THE WING, MAYBE BECAUSE HE WAS PAYING ATTENTION
23 TO MR. SHEPPARD.

24 BUT MR. -- OFFICER BELLAMY INDICATED THAT HE WAS IN THE
25 WING. HE INDICATED IN BLUE WHERE HE WAS STANDING. HE

1 INDICATED IN BLUE WHERE HE WENT TO IN THE LOBBY TO MAKE THE
2 PHONE CALL, AND HE INDICATED WHERE MR. ELMO CAME IN. YOU CAN
3 LOOK AT ALL THESE DIAGRAMS TO SEE WHERE THESE PEOPLE WERE.

4 HOWEVER, THE IMPORTANT PART IS WHEN THEY GOT -- WHEN HE
5 AND MR. SHEPPARD WERE TUSSLING WITH EACH OTHER, THEY GOT INTO
6 THE LOBBY AREA WHICH IS A MORE LIKE SECURE AREA WHERE THERE
7 WERE FIVE PEOPLE: MR. SHEPPARD, MR. HOLMES, MR. ELMO, MR.
8 BELLAMY, AND ANOTHER OFFICER FROM THE B. WING. AND THEY
9 WEREN'T ABLE TO FIND ANY WEAPON, EVEN THOUGH MR. HOLMES
10 INDICATED THAT HE FELT A WEAPON, WOULDN'T LET MR. HOLMES
11 (SIC) GO OUT OF THE HEADLOCK BECAUSE HE KNEW HE HAD A WEAPON,
12 AND WHEN MR. ELMO CAME WITH PEPPER SPRAY TO ACTUALLY GET THEM
13 APART, HE NEVER SAW A WEAPON AND NO WEAPON WAS FOUND.

14 MR. HOLMES SAID THAT HE RECEIVED NINE PUNCTURE WOUNDS TO
15 THE LOWER BACK. HIS MEDICAL REPORT FROM THE NURSE DIDN'T
16 INDICATE THAT. THE ACTUAL REPORT FROM NURSE CARLITA JENKINS
17 INDICATED WHAT WAS FOUND ON HIS PERSON. YOU CAN HAVE HER
18 TESTIMONY READ BACK TO ACTUALLY HEAR WHAT SHE ACTUALLY SAID.
19 SHE INDICATED THE WOUNDS FOUND ON MR. HOLMES: ONE LACERATION
20 UNDER THE RIGHT SIDE NOSE, SUPERFICIAL STAB WOUND - RIGHT
21 ARM, SUPERFICIAL STAB WOUND - RIGHT CHEST, SUPERFICIAL STAB
22 WOUND - RIGHT ANTERIOR BACK, SUPERFICIAL STAB WOUND - LEFT
23 EYEBROW, SUPERFICIAL STAB WOUND - INNER ELBOW, ONE SCRATCH -
24 LEFT HAND, ONE SCRATCH - LEFT FOREARM, ONE SCRATCH - LEFT
25 UPPER ARM WHICH SHE APPLIED SALVE AND BANDAGE TO. MULTIPLE

1 SUPERFICIAL STAB WOUNDS, TWO A LITTLE BIT DEEPER THAN THE
2 OTHER, STILL NON-SERIOUS INJURIES. A FIGHT BETWEEN TWO
3 INMATES.

4 WHAT MAKES THIS CASE DIFFERENT IS BECAUSE THE STATE
5 WANTS YOU TO BELIEVE THAT THIS IS A CASE THAT REQUIRES A
6 CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL. NOW, I
7 ASKED YOU TO LISTEN TO THE EVIDENCE IN -- WHEREVER PEOPLE
8 COME IN AND SAY WHAT HAPPENED, BUT THE JUDGE IS GOING TO GO
9 GIVE YOU THE LAW OF THE STATE OF SOUTH CAROLINA AS TO WHAT
10 THE LAW IS IN THIS STATE, AS TO WHAT THESE CHARGES ARE:
11 ASSAULT AND BATTERY, ASSAULT AND BATTERY OF A HIGH AND
12 AGGRAVATED NATURE, AND ASSAULT AND BATTERY WITH INTENT TO
13 KILL. SHE'S THE JUDGE ON THE LAW IN THIS. I WANT YOU TO
14 LISTEN VERY CAREFULLY TO WHAT SHE SAYS TO EACH OF THESE
15 ELEMENTS.

16 NOW, WE INDICATED A FIGHT BETWEEN THE TWO INDIVIDUALS IS
17 A SIMPLE ASSAULT. WHAT IS A SIMPLE ASSAULT? YOU'RE GOING TO
18 HEAR FROM THE JUDGE IN THIS PARTICULAR CASE: AN UNLAWFUL ACT
19 OF VIOLENT INJURY TO THE PERSON OF ANOTHER UNACCOMPANIED BY
20 ANY CIRCUMSTANCES OF AGGRAVATION. WHY WOULD WE -- WHY WOULD
21 IT BE UNJUST FOR YOU TO THINK THAT? BECAUSE IT'S A FIGHT
22 BETWEEN TWO INDIVIDUALS? THE INJURIES WERE NOT SERIOUS. NO
23 WEAPON FOUND. WHAT ACTUALLY DO WE HAVE HERE? DO WE HAVE
24 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE? WE
25 THINK IT'S ASSAULT AND BATTERY, BUT DO WE HAVE ASSAULT AND

1 BATTERY OF A HIGH AND AGGRAVATED NATURE? AN UNLAWFUL ACT OF
2 VIOLENT INJURY TO THE PERSON OF ANOTHER ACCOMPANIED BY
3 CIRCUMSTANCES OF AGGRAVATION, BY THE USE OF A DEADLY WEAPON.
4 WAS THIS SHANK CONSIDERED A DEADLY WEAPON?

5 THE FACT THAT THE STATE WAS TRYING TO GET YOUR ATTENTION
6 IN REGARDS TO HOW AGGRESSIVE MR. SHEPPARD SEEMED TO BE, LOOK
7 AT THE SITUATION BETWEEN THE TWO PARTIES. YOU HAVE A 5X
8 INDIVIDUAL -- AND I HAVE TO SAY THIS BECAUSE IT'S NOT LOOKING
9 AT THE SIZE. IT'S LOOKING AT WHAT YOU HAVE TO DEAL WITH.
10 YOU HAVE A 5X INDIVIDUAL. WHY WOULD SOMEONE THINK OF HAVING
11 A FIGHT WITH SOMEONE LIKE THAT? IT MADE ME THINK OF MIKE
12 TYSON. WHY WOULD SOMEBODY WANT TO EVEN HAVE A FIGHT WITH
13 HIM? FOR MILLIONS OF DOLLARS? IT'S CRAZY. BUT IN DOING
14 THAT, MR. SHEPPARD WAS SEEN FIGHTING WITH MR. HOLMES.

15 THEY HAD A FIGHT LIKE ANY OTHER FIGHTS IN JAIL. IT
16 HAPPENS DAILY. WHAT -- LOOK AT WHAT THEY INDICATED HAPPENED.
17 LOOK AT WHAT WAS DONE. MR. SHEPPARD -- HE COULD HAVE TRIED
18 ANYTHING HE WANTED TO, BUT THERE IS NO WAY HE COULD HAVE
19 TRIED TO HAVE GOTTEN CLOSE TO MR. HOLMES TO TRY TO INJURE HIM
20 SERIOUSLY.

21 NOW, MAYBE IF WE HAD THE WEAPON TO SEE WHAT IT LOOKED
22 LIKE -- YOU KNEW WHAT DAMAGE IT DIDN'T DO BECAUSE YOU HEARD
23 ABOUT THE WOUNDS. MAYBE IF WE WOULD HAVE SEEN WHAT THIS
24 WEAPON WAS, IF IT WAS A WEAPON, WE WOULD HAVE A BETTER
25 UNDERSTANDING, BUT WE ONLY HAVE TWO PEOPLE, MR. HOLMES AND

1 MR. BELLAMY, WHO ACTUALLY SAW IT.

2 BUT ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE,
3 NO SERIOUS BODILY INJURY. WE INDICATE NO DEADLY WEAPON
4 BECAUSE OF WHAT HAPPENED TO MR. HOLMES. WE KNOW ABOUT THE
5 INJURIES. A PEN-SIZED TWO-INCH CYLINDER-TYPE TWO-INCH SIZE
6 -- A PEN-SIZED TWO-INCH CYLINDER-TYPE ITEM WRAPPED IN WHITE
7 TAPE, BUT MR. BELLAMY INDICATED THAT HE REMEMBERS SEEING IT
8 WAS LIKE SIX INCHES.

9 NOW, THE MOST SERIOUS OFFENSE: ASSAULT AND BATTERY WITH
10 INTENT TO KILL WITH MALICE AFORETHOUGHT, WITH MALICE
11 AFORETHOUGHT. A VIOLENT INJURY TO THE PERSON OF ANOTHER
12 ACCOMPANIED WITH MALICE AFORETHOUGHT. THE STATE WOULD WANT
13 YOU TO THINK THAT THAT'S THE STATE OF MIND MR. SHEPPARD WAS
14 IN, BUT DON'T LOSE SIGHT IN REGARDS TO WHAT HAS OCCURRED. DO
15 WE HAVE A SERIOUS INJURY? NO. DO WE HAVE A DEADLY WEAPON?
16 NO. WE DON'T HAVE A WEAPON AT ALL.

17 NOW, BUT FOR THIS PERSON'S INJURIES HE COULD HAVE DIED,
18 WE DON'T HAVE THAT HERE. WE HAVE A SIMPLE FIGHT BETWEEN TWO
19 INDIVIDUALS. THAT'S ALL WE HAVE. YOU WILL HAVE THE
20 TESTIMONY THAT YOU CAN HAVE PLAYED BACK TO YOU TO HEAR WHAT
21 EVERYONE SAID IN THIS PARTICULAR MATTER. THIS IS A TRULY
22 SHORT CASE. IT'S A COMMON-SENSE CASE. THE EVIDENCE DOESN'T
23 SUPPORT ASSAULT AND BATTERY WITH INTENT TO KILL.

24 WE FEEL THAT AFTER YOU'VE LISTENED TO ALL THE EVIDENCE
25 AND HAVE SPOKE ABOUT IT, WE FIND THAT YOU'RE GOING TO COME

1 BACK SHOWING THAT THERE'S NOT AN ASSAULT AND BATTERY WITH
2 INTENT TO KILL IN THIS MATTER. THANK YOU.

3 THE COURT: THANK YOU VERY MUCH. LADIES AND GENTLEMEN,
4 DOES ANYONE NEED TO TAKE A SHORT COMFORT BREAK? IF YOU DO,
5 DON'T BE SHY. RAISE YOUR HAND. VERY WELL. STAND UP WHERE
6 YOU ARE. JUST STRETCH JUST A MINUTE. SEE, I'M GOING TO -- I
7 WANT TO TAKE A LITTLE BREAK SO THAT I HAVE YOUR ATTENTION AND
8 I HOPEFULLY CAN KEEP IT FOR ABOUT 20, 25 MINUTES. JUST
9 STRETCH A MINUTE, AND WHEN YOU ALL ARE READY TO BE SEATED, BE
10 SEATED.

11 NOW, WITH ALL THAT MOVEMENT, ANYBODY CHANGE THEIR MIND?
12 DO THEY NEED A COMFORT BREAK? Y'ALL COME ON. YOU ALL COME
13 ON OUT. JUST I WANT YOU ALL TO BE ABLE TO COME ON OUT AND
14 TAKE YOUR COMFORT BREAK, IF YOU NEED IT. DO NOT DISCUSS THIS
15 MATTER OR ALLOW ANYONE TO DISCUSS IT WITH YOU. WHEN ALL OF
16 YOU WHO CHOOSE TO TAKE A COMFORT BREAK HAVE DONE THAT, KNOCK
17 ON THE DOOR AND WE WILL BEGIN IN A MINUTE. IF YOU WILL
18 FOLLOW, PLEASE, MS. SALISBURY, ALL OF YOU. WE WILL AWAIT
19 YOU.

20 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
21 10:46 A.M.)

22 THE COURT: THANK YOU, MS. SALISBURY.

23 BAILIFF: THE SMOKER WANTS TO KNOW IF SHE CAN GO SMOKE.

24 THE COURT: YEAH, SHE CAN SMOKE. YEAH, I WANT HER TO
25 PAY ATTENTION. ALL RIGHT. ANYTHING BEFORE WE TAKE OUR SHORT

1 BREAK HERE? Y'ALL DON'T GO FAR BECAUSE I REALLY DO WANT TO
2 BEGIN WHEN THEY ARE READY.

3 MR. SORENSON: YES, MA'AM.

4 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

5 THE COURT: THANK YOU. THE JURY IS READY TO PROCEED.
6 ANYTHING BEFORE WE BRING THE JURY OUT?

7 MR. SORENSON: NO, YOUR HONOR.

8 THE COURT: VERY WELL. LET'S HAVE -- BRING THE JURY
9 OUT.

10 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
11 10:58 A.M.)

12 THE COURT: LADIES AND GENTLEMEN, YOU HAVE NOW HEARD THE
13 EVIDENCE AND THE ARGUMENTS OF COUNSEL. IT IS NOW MY TASK AND
14 MY DUTY TO INSTRUCT OR CHARGE YOU ON THE LAW APPLICABLE TO
15 THIS CASE. LADIES AND GENTLEMEN, AS YOU NOW KNOW, THE
16 INDICTMENT IN THIS CASE CHARGES THE DEFENDANT -- AND, OF
17 COURSE, THE DEFENDANT IS MR. LOUIS SHEPPARD. AND, LADIES AND
18 GENTLEMEN, I MAY REFER TO MR. SHEPPARD AS THE DEFENDANT. IF
19 YOU HEAR ME USE THE WORD DEFENDANT, PLEASE KNOW THAT'S WHO
20 I'M REFERRING TO. I'M REFERRING TO MR. SHEPPARD.

21 LADIES AND GENTLEMEN, THE INDICTMENT IN THIS CASE
22 CHARGES THE DEFENDANT, CHARGES MR. SHEPPARD, WITH ASSAULT AND
23 BATTERY WITH INTENT TO KILL. I REMIND YOU THAT THE FACT THAT
24 THE DEFENDANT WAS ARRESTED, CHARGED, AND INDICTED IN THIS
25 CASE IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY

1 YOU AS EVIDENCE OF GUILT IN THIS CASE NOR DOES IT CREATE ANY
2 PRESUMPTION OR ANY INFERENCE OF GUILT.

3 LADIES AND GENTLEMEN, AN INDICTMENT IS SIMPLY THE FORMAL
4 WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGE MADE AGAINST THE
5 DEFENDANT. IT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS
6 BROUGHT INTO THIS COURT. IT'S, IF YOU WILL, THE NOTICE
7 DOCUMENT, LADIES AND GENTLEMEN.

8 NOW, LADIES AND GENTLEMEN, TO THIS INDICTMENT THE
9 DEFENDANT HAS PLED NOT GUILTY, AND THIS PLEA OF NOT GUILTY
10 PLACES THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY.
11 A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH
12 CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF OR HERSELF
13 INNOCENT. I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE
14 LAW THAT THE DEFENDANT IN A CRIMINAL CASE, NO MATTER WHAT THE
15 SERIOUSNESS OF THE CHARGE MAY BE, BUT THAT PERSON WILL ALWAYS
16 BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE
17 INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY
18 EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE
19 DOUBT.

20 THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU
21 BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT
22 THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED
23 ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE
24 DOUBT. THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
25 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT

1 WHICH REMAINS WITH HIM UNTIL IT HAS BEEN STRIPPED FROM HIM BY
2 EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A
3 REASONABLE DOUBT.

4 THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY.
5 IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO
6 WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE
7 SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A
8 REASONABLE DOUBT.

9 LADIES AND GENTLEMEN, WHAT THEN IS REASONABLE DOUBT IN
10 THE LAW? REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD
11 CAUSE A REASONABLE PERSON TO HESITATE TO ACT. REASONABLE
12 DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE
13 PERSON TO HESITATE TO ACT. THE STATE OF SOUTH CAROLINA HAS
14 THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
15 REASONABLE DOUBT.

16 SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES
17 WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A
18 FACT IS MORE LIKELY TRUE THAN NOT TRUE SUCH AS BY THE GREATER
19 WEIGHT OR THE PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL
20 CASES THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT
21 MUST BE BEYOND A REASONABLE DOUBT.

22 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
23 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY
24 FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
25 CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE

1 PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED UPON
2 YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED
3 THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST
4 FIND THE DEFENDANT GUILTY. IF, ON THE OTHER HAND, YOU THINK
5 THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY,
6 YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND
7 HIM NOT GUILTY.

8 I REMIND YOU, LADIES AND GENTLEMEN, THAT DURING THIS
9 TRIAL YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL
10 JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF
11 THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE
12 ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU
13 ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. YOU
14 ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED
15 FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A
16 PART OF THIS RECORD IN THIS CASE, AND THAT, OF COURSE, WOULD
17 BE THE TESTIMONY AND THE EVIDENCE IN THIS CASE, THE TESTIMONY
18 AND THE EXHIBITS.

19 I HAVE THE ADDITIONAL DUTY, LADIES AND GENTLEMEN, TO
20 CHARGE YOU ON THE LAW APPLICABLE TO THIS CASE. AS THE
21 PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW IN THIS CASE,
22 AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND TO APPLY THE LAW
23 AS I NOW STATE IT TO YOU. IF YOU ALREADY HAD AN IDEA AS TO
24 WHAT THE LAW IS OR WHAT THE LAW SHOULD BE AND IT SHOULD
25 DISAGREE WITH WHAT I TELL YOU THE LAW IS, YOU MUST BY YOUR

1 OATH ABANDON YOUR PRECONCEIVED IDEA BECAUSE YOU ARE SWORN TO
2 ACCEPT AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

3 LADIES AND GENTLEMEN, IN EVERY CASE TRIED IN THIS COURT
4 BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE
5 OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE,
6 STATE, COMMENT ON OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT
7 THE FACTS IN THE CASE. YOU ARE NOT TO INFER FROM WHAT I HAVE
8 SAID DURING THE PROGRESS OF THIS TRIAL AND IN RULING UPON THE
9 ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR ANYTHING THAT I SAY
10 TO YOU NOW DURING THE COURSE OF THIS INSTRUCTION TO YOU THAT
11 I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW
12 DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS
13 CASE AND I DO NOT. THIS, LADIES AND GENTLEMEN, THE
14 DETERMINATION OF THE FACTS IN THIS CASE, IS A MATTER SOLELY
15 FOR YOU TO DETERMINE.

16 LADIES AND GENTLEMEN, IT IS YOUR DUTY TO DETERMINE THE
17 EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE
18 PRESENTED DURING THIS TRIAL. LADIES AND GENTLEMEN, THERE ARE
19 TYPICALLY IN A CASE TWO TYPES OF EVIDENCE. ONE, DIRECT
20 EVIDENCE. THE OTHER, CIRCUMSTANTIAL EVIDENCE.

21 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS
22 TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYEWITNESS. IT
23 IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE
24 PROVED. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS
25 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS

1 EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM
2 WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE
3 IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR
4 OBSERVATION.

5 LET ME GIVE YOU AN EXAMPLE OF WHAT WE -- WHAT THE
6 DIFFERENCE IS BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE.
7 IT'S FEBRUARY. IT'S COLD. THE SKY IS GRAY. YOU GO -- YOU
8 GO TO BED AT NIGHT. THE GRASS IS KIND OF BROWN, BUT IT'S
9 REAL COLD. AND YOU WAKE UP IN THE MORNING AND THERE'S SNOW
10 ON THE GROUND. THAT'S CIRCUMSTANTIAL EVIDENCE THAT IT SNOWED
11 DURING THE NIGHT. YOU DON'T SEE IT SNOWING, BUT IT WAS COLD
12 AND IT WAS THE TIME OF THE YEAR WHEN THERE WOULD BE SNOW.
13 WHEN YOU WENT TO BED, THERE WASN'T ANY SNOW. WHEN YOU WOKE
14 UP, THERE WAS SNOW ON THE GROUND. THAT'S CIRCUMSTANTIAL
15 EVIDENCE THAT IT SNOWED DURING THE NIGHT. OBVIOUSLY IF YOU
16 WERE STANDING THERE IN THE MIDDLE OF THE NIGHT WATCHING IT
17 SNOW, THAT WOULD BE DIRECT EVIDENCE. YOU WOULD BE AN
18 EYEWITNESS TO THE SNOWING, IF YOU WILL.

19 LADIES AND GENTLEMEN, THE LAW MAKES ABSOLUTELY NO
20 DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER
21 DIRECT OR CIRCUMSTANTIAL EVIDENCE NOR IS A GREATER DEGREE OF
22 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT
23 EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE,
24 AND AFTER WEIGHING ALL OF THE EVIDENCE, IF YOU ARE NOT
25 CONVINCED OF THE GUILT OF THE DEFENDANT, MR. SHEPPARD, BEYOND

1 A REASONABLE DOUBT, YOU MUST FIND HIM NOT GUILTY.

2 NECESSARILY THEN, LADIES AND GENTLEMEN, YOU MUST
3 DETERMINE THE CREDIBILITY OF THE WITNESSES WHO HAVE TESTIFIED
4 IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT
5 BECOMES YOUR DUTY AS JURORS TO ANALYZE AND EVALUATE THE
6 EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS
7 TRUTH.

8 IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE
9 TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS'S -- ONE
10 WITNESS OVER SEVERAL WITNESSES OR SEVERAL OVER ONE. YOU MAY
11 BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE
12 REMAINING PART OF THE TESTIMONY OF THE SAME WITNESS. YOU MAY
13 BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR YOU MAY
14 REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY
15 CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY
16 INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU
17 MAY ALSO CONSIDER THE APPEARANCE AND THE MANNER OF A WITNESS
18 WHILE ON THE WITNESS STAND.

19 LADIES AND GENTLEMEN, I INSTRUCT YOU AND EMPHASIZE THAT
20 THE FACT THAT THE DEFENDANT CHOSE NOT TO TESTIFY IS NOT A
21 FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
22 DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF
23 WHETHER HE IS GUILTY OR NOT GUILTY. IT MUST NOT BE
24 CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A DEFENDANT HAS
25 THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION

1 OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR
2 DELIBERATIONS. I REPEAT: UNDER YOUR OATH, YOU ARE TO DRAW
3 NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN
4 THIS CASE CHOSE TO NOT TESTIFY. THE FACT THAT THIS DEFENDANT
5 CHOSE TO NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY
6 ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS AND
7 REMAINS ON THE STATE OF SOUTH CAROLINA. MR. SHEPPARD, THE
8 DEFENDANT, IS NOT REQUIRED TO PROVE HE'S NOT GUILTY. HE IS
9 NOT REQUIRED TO PROVE ANYTHING. THE BURDEN IS AND REMAINS ON
10 THE STATE OF SOUTH CAROLINA TO PROVE GUILT BEYOND A
11 REASONABLE DOUBT.

12 NOW, LADIES AND GENTLEMEN, IN ORDER TO ESTABLISH
13 CRIMINAL LIABILITY, CRIMINAL INTENT IS REQUIRED. FOR
14 EXAMPLE, THE MENTAL STATE REQUIRED TO BE PROVEN BY THE STATE
15 FOR A PARTICULAR CRIME MIGHT BE -- AND, OF COURSE, IT GETS
16 DEFINED BASED ON THE PARTICULAR CRIME, BUT EXAMPLES OF
17 DIFFERENT INTENT WHICH THE STATE MUST IMPROVE -- OR MUST
18 PROVE WOULD BE, FOR EXAMPLE, INTENT, KNOWLEDGE, RECKLESSNESS,
19 OR CRIMINAL NEGLIGENCE.

20 CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A
21 REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT
22 MUST BE DETERMINED BY A JURY FROM THE CIRCUMSTANCES
23 SURROUNDING THE SITUATION, AND THAT MAKES SENSE BECAUSE
24 THERE'S NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY
25 AND THERE'S CERTAINLY NO WAY THAT MEDICAL SCIENCE CAN DISSECT

1 A PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND.

2 SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED
3 FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW
4 YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT
5 REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO
6 ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT
7 MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER
8 FACT: BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES
9 AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE.

10 CRIMINAL INTENT IS A MENTAL STATE. IT'S A MENTAL STATE,
11 A CONSCIOUS WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT
12 THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN
13 TO HAVE EXISTED. CRIMINAL INTENT CAN ARISE FROM SOME ACTION
14 OR FAILURE TO ACT. IT MAY ARISE FROM INDIFFERENCE TO DUTY,
15 CONSEQUENCES CONSIDERED BY THE LAW TO BE THE EQUIVALENT OF
16 CRIMINAL INTENT. CRIMINAL INTENT CAN ARISE DEPENDING ON THE
17 PARTICULAR CHARGE FROM NEGLIGENCE OR RECKLESSNESS AND THE
18 LIKE.

19 NOW, LADIES AND GENTLEMEN, I'M NOW GOING TO DEFINE FOR
20 YOU THE CHARGE AGAINST MR. SHEPPARD CONTAINED IN THE
21 INDICTMENT: ASSAULT WITH INTENT TO KILL. THAT IS THE CHARGE
22 FOR WHICH HE HAS BEEN INDICTED. THIS PARTICULAR CHARGE,
23 ASSAULT AND BATTERY WITH INTENT TO KILL, HAS TWO -- LESSER
24 INCLUDED CHARGES IS WHAT WE CALL THEM. LESSER INCLUDED
25 CHARGES. AND IF YOU WILL, WHAT COMES TO MY MIND -- YOU KNOW

1 THE LITTLE EGGS YOU'VE SEEN AROUND THE HOLIDAYS WHERE THERE'S
2 A LITTLE EGG INSIDE OF ANOTHER EGG, INSIDE OF ANOTHER EGG?
3 AND WHEN YOU LOOK AT IT, YOU REMOVE THE BIGGER EGG AND THEN
4 THERE'S A SMALLER ONE AND THEN A SMALLER ONE YET.

5 LADIES AND GENTLEMEN, I'M FIRST GOING TO TALK TO YOU
6 ABOUT ASSAULT AND BATTERY WITH INTENT TO KILL. THEN I'M
7 GOING TO TALK TO YOU ABOUT ASSAULT AND BATTERY OF A HIGH AND
8 AGGRAVATED NATURE AND THEN FINALLY ABOUT ASSAULT AND BATTERY.
9 IT'S ALSO REFERRED TO AS SIMPLE ASSAULT AND BATTERY, BUT IT'S
10 ASSAULT AND BATTERY. ASSAULT AND BATTERY, ALSO KNOWN AS
11 SIMPLE ASSAULT AND BATTERY, IS A LESSER INCLUDED OFFENSE OF
12 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE WHICH IS
13 A LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY WITH INTENT
14 TO KILL.

15 FIRST, ASSAULT AND BATTERY WITH INTENT TO KILL. THE
16 DEFENDANT, MR. SHEPPARD, HAS BEEN CHARGED AND INDICTED WITH
17 ASSAULT AND BATTERY WITH INTENT TO KILL. IN ORDER TO PROVE
18 ASSAULT AND BATTERY WITH INTENT TO KILL, THE STATE MUST PROVE
19 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED AN
20 UNLAWFUL ACT OF A VIOLENT NATURE TO THE PERSON OF ANOTHER
21 WITH MALICE AFORETHOUGHT. I'M GOING TO SAY THAT AGAIN,
22 LADIES AND GENTLEMEN. THE STATE MUST PROVE BEYOND A
23 REASONABLE DOUBT THAT THE DEFENDANT COMMITTED AN UNLAWFUL ACT
24 OF A VIOLENT NATURE TO THE PERSON OF ANOTHER WITH MALICE
25 AFORETHOUGHT.

1 NOW, WHAT IS AN ASSAULT? I'M GOING TO TRY TO BREAK THIS
2 DOWN. WHAT IS AN ASSAULT IN THE LAW? AN ASSAULT OCCURS WHEN
3 A PERSON UNLAWFULLY ATTEMPTS OR OFFERS TO COMMIT A VIOLENT
4 INJURY UPON ANOTHER PERSON AND HAD THE PRESENT ABILITY TO
5 COMPLETE THE ATTEMPTED INJURY. AN ASSAULT IS THE INTENTIONAL
6 CREATION OF A REASONABLE FEAR OF IMMEDIATE BODILY HARM. IT
7 IS NOT NECESSARY THAT THE ATTEMPTED INJURY OR HARM ACTUALLY
8 TAKE PLACE FOR THERE TO BE AN ASSAULT. FOR EXAMPLE, IF I
9 WALK UP TO YOU AND WHEN WE ARE WITHIN ARM'S REACH I DRAW BACK
10 TO HIT YOU, THAT IS AN ASSAULT.

11 WHAT THEN IS A BATTERY? BECAUSE YOU REMEMBER IT'S
12 ASSAULT AND BATTERY. WHAT IS A BATTERY? A BATTERY IS THE
13 UNLAWFUL TOUCHING OF ANOTHER PERSON BY A PERSON WHO HAS
14 COMMITTED THE ASSAULT. AN UNLAWFUL TOUCHING CAN BE CAUSED BY
15 A PART OF THE ACCUSED -- THE ACCUSED PERSON'S BODY OR BY ANY
16 OBJECT THE ACCUSED PUTS IN MOTION. A BATTERY IS THE
17 COMPLETION OF THE ASSAULT BY USING OR APPLYING FORCE TO
18 ANOTHER PERSON, HOW EVER SLIGHT, IN A RUDE, ANGRY, OR
19 RESENTFUL MANNER WITHOUT LEGAL JUSTIFICATION FOR DOING SO.

20 USING MY EARLIER EXAMPLE, DO YOU REMEMBER THE -- IF I
21 COME UP TO YOU WITHIN ARM'S REACH AND REACH BACK TO HIT YOU,
22 THAT'S THE ASSAULT, BUT IF I CARRY THROUGH WITH THE ACTION
23 AND TOUCH YOU IN A -- IN LAW SCHOOL WE LEARNED A HARMFUL OR
24 OFFENSIVE MANNER IS WHAT WE LEARNED IN LAW SCHOOL. THAT IS
25 THE BATTERY. SO YOU HAVE THE ASSAULT AND THEN THE BATTERY.

1 NOW, WHAT IS MALICE? WHAT IS MALICE? MALICE IS HATRED,
2 ILL WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE
3 INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR
4 EXCUSE AND WITH AN INTENT TO INFLICT AN INJURY OR UNDER
5 CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

6 WHAT THEN IS MALICE AFORETHOUGHT? WELL, MALICE
7 AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXIST FOR ANY
8 PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST
9 EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE
10 TIME THAT THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A
11 COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

12 MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE
13 WORDS EXPRESS AND INFERRED DO NOT MEAN DIFFERENT KINDS OF
14 MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO
15 EXIST, THAT IS, EITHER BY DIRECT EVIDENCE OR BY INFERENCE
16 FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS
17 MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS
18 HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED
19 BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED. FOR
20 EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF
21 PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN -- WAS
22 WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

23 NOW, MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL
24 DISREGARD FOR HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE
25 WHEN THE DEED IS DONE WITH A DEADLY WEAPON. WHAT IS A DEADLY

1 WEAPON? A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR
2 SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY
3 HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON
4 DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

5 LADIES AND GENTLEMEN, THE FOLLOWING ARE EXAMPLES OF
6 INSTRUMENTS WHICH MAY BE DEADLY WEAPONS: A PISTOL, A
7 SHOTGUN, A RIFLE, A DIRK, A SLINGSHOT, METAL KNUCKLES, A
8 RAZOR, GASOLINE, A FIRE BOMB OR A MOLOTOV COCKTAIL, LIGHTER
9 FLUID. A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT
10 OPERATING. NOW, LADIES AND GENTLEMEN, ORDINARY OBJECTS MAY
11 BECOME DEADLY WEAPONS WHEN THE FACTS SHOW THAT THEY HAVE BEEN
12 USED TO INFLICT SERIOUS BODILY HARM OR DEATH.

13 LADIES AND GENTLEMEN, IF FACTS ARE PROVED BEYOND A
14 REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE
15 TO YOUR SATISFACTION, THIS INFERENCE WOULD BE SIMPLY AN
16 EVIDENTIARY FACT TO BE CONSIDERED BY YOU ALONG WITH THE OTHER
17 EVIDENCE IN THE CASE, AND YOU MAY GIVE IT THE WEIGHT TO WHICH
18 YOU DECIDE IT IS ENTITLED. A SPECIFIC INTENT TO KILL IS NOT
19 AN ELEMENT OF ASSAULT AND BATTERY WITH INTENT TO KILL, BUT
20 THERE MUST BE A GENERAL INTENT TO COMMIT SERIOUS BODILY
21 INJURY. INTENT MEANS INTENDING THE RESULT WHICH ACTUALLY
22 OCCURS, NOT ACCIDENTALLY OR INVOLUNTARILY. INTENT MAY BE
23 SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT AND OTHER
24 CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND REASONABLY
25 INFER INTENT.

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

9 NOW, LADIES AND GENTLEMEN, THAT CONCLUDES MY DISCUSSION
10 ABOUT ASSAULT AND BATTERY WITH INTENT TO KILL. NOW, LADIES
11 AND GENTLEMEN, IF YOU FIND THAT THE STATE HAS FAILED TO PROVE
12 THE ELEMENTS OF ASSAULT AND BATTERY WITH INTENT TO KILL, THEN
13 YOU WOULD CONSIDER THE LESSER INCLUDED OFFENSE OF ASSAULT AND
14 BATTERY OF A HIGH AND AGGRAVATED NATURE. WE'RE GOING TO TALK
15 ABOUT THAT OFFENSE NOW. IT IS A LESSER INCLUDED OFFENSE OF
16 ASSAULT AND BATTERY WITH INTENT TO KILL.

17 NOW, ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE
18 IS AN UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER
19 ACCOMPANIED BY CIRCUMSTANCES OF AGGRAVATION. LADIES AND
20 GENTLEMEN, IT IS THE ASSAULT THAT WE TALKED ABOUT EARLIER.
21 IT IS THE -- I SHOULD SAY IT'S THE ASSAULT THAT WE TALKED
22 ABOUT EARLIER. IT IS THE BATTERY THAT WE TALKED ABOUT
23 EARLIER, BUT THE ASSAULT AND BATTERY ARE ACCOMPANIED BY
24 CIRCUMSTANCES OF AGGRAVATION. THE DIFFERENCE IS THAT YOU
25 HAVE THE ASSAULT AND BATTERY, SAME DEFINITION AS EARLIER, BUT

1 ASSAULT AND BATTERY WITH INTENT TO KILL HAS THE -- AS WE'VE
2 ALREADY TALKED ABOUT, IS THE ASSAULT AND BATTERY ACCOMPANIED
3 BY THE MALICE AFORETHOUGHT. NOW WE'RE TALKING ABOUT ASSAULT
4 AND BATTERY OF A HIGH AND AGGRAVATED NATURE. THIS LESSER
5 INCLUDED OFFENSE IS THE ASSAULT AND BATTERY ACCOMPANIED BY
6 CIRCUMSTANCES OF AGGRAVATION.

7 LET'S TALK ABOUT THAT. WE'VE TALKED ABOUT WHAT IS
8 ASSAULT. WE TALKED ABOUT WHAT IS BATTERY. LET'S TALK ABOUT
9 WHAT ARE THE CIRCUMSTANCES OF AGGRAVATION BECAUSE THE STATE
10 MUST ALSO PROVE A CIRCUMSTANCE OF AGGRAVATION. CIRCUMSTANCES
11 OF AGGRAVATION INCLUDE THE USE OF DEADLY WEAPON, THE INTENT
12 TO COMMIT A FELONY, THE INFLICTION OF SERIOUS BODILY INJURY,
13 A GREAT DISPARITY BETWEEN THE AGES OR PHYSICAL CONDITIONS OF
14 THE PARTIES, A DIFFERENCE IN THE GENDERS OF THE PARTIES. THE
15 TAKING OF INDECENT LIBERTIES OR FAMILIARITIES WITH A FEMALE
16 CAN ALSO BE CONSIDERED. THROUGH THE USE OF FORCE CAN BE
17 CONSIDERED A CIRCUMSTANCE OF AGGRAVATION -- THE AGGRAVATION.
18 THE PURPOSEFUL INFLICTION OF SHAME AND DISGRACE CAN BE A
19 CIRCUMSTANCE OF AGGRAVATION AND THE RESISTANCE OF LAWFUL
20 AUTHORITIES.

21 WHAT I'VE JUST TALKED ABOUT, LADIES AND GENTLEMEN, ARE
22 SIMPLY EXAMPLES OF AGGRAVATION. I SHOULD SAY ALSO ARE
23 EXAMPLES OF CIRCUMSTANCES OF AGGRAVATION. IT'S FOR YOU TO
24 DETERMINE, LADIES AND GENTLEMEN, WHETHER OR NOT THE STATE HAS
25 MET ITS BURDEN OF PROVING A CIRCUMSTANCE OF AGGRAVATION

1 BEYOND A REASONABLE DOUBT.

2 NOW, IF YOU FIND THAT THE STATE HAS FAILED TO PROVE
3 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, THEN YOU
4 WOULD CONSIDER THE LESSER INCLUDED OFFENSE OF ASSAULT AND
5 BATTERY. IT'S ALSO CALLED SIMPLE ASSAULT AND BATTERY.

6 NOW, IF YOU FIND THAT THE STATE HAS FAILED TO PROVE THAT
7 THE DEFENDANT IS GUILTY OF ASSAULT AND BATTERY OF A HIGH AND
8 AGGRAVATED NATURE, YOU MUST THEN DECIDE WHETHER THE STATE HAS
9 PROVED THAT THE DEFENDANT IS GUILTY OF SIMPLE ASSAULT AND
10 BATTERY. SIMPLE ASSAULT AND BATTERY CONTAIN ALL THE ELEMENTS
11 OF ASSAULT AND BATTERY THAT WE'VE ALREADY DISCUSSED WHICH ARE
12 CONTAINED IN ASSAULT AND BATTERY WITH INTENT TO KILL, ASSAULT
13 AND BATTERY OF A HIGH AND AGGRAVATED NATURE EXCEPT A
14 CIRCUMSTANCE OF AGGRAVATION OR WITH THE INTENT TO KILL. IN
15 OTHER WORDS, AGAIN, IT'S A LESSER INCLUDED OFFENSE. IF YOU
16 FIND THAT THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE
17 DOUBT THAT THE DEFENDANT IS GUILTY OF SIMPLE ASSAULT AND
18 BATTERY, YOU MUST RETURN A VERDICT OF NOT GUILTY.

19 NOW, LADIES AND GENTLEMEN, WE ARE GOING TO GO OVER THE
20 VERDICT FORM, AND I'M GOING TO COME OVER THERE TO DO THIS.
21 LADIES AND GENTLEMEN, TWO THINGS BEFORE WE EVEN START
22 DISCUSSING THE VERDICT FORM. FIRST OF ALL, YOUR VERDICT MUST
23 BE UNANIMOUS. THIS MUST BE THE VERDICT OF EACH AND EVERY ONE
24 OF YOU. THIS IS NOT THE VERDICT OF ANY ONE OF YOU OR THE
25 VERDICT OF THE MAJORITY. THE MAJORITY DOESN'T RULE HERE.

1 THIS VERDICT MUST BE UNANIMOUS, AND THAT MEANS IT MUST BE THE
2 VERDICT OF EACH AND EVERY ONE OF YOU. MR. SOUTHARD, THIS
3 SHOULD BE A HINT FOR YOU BECAUSE I'M SORT OF LOOKING AT THE
4 12.

5 LADIES AND GENTLEMEN, THE OTHER THING THAT I WANT YOU TO
6 KEEP IN MIND AS WE GO THROUGH THE VERDICT FORM IS THERE IS
7 ABSOLUTELY NO INTENDED MESSAGE OR COMMENT ON WHAT OUGHT TO BE
8 YOUR VERDICT BY THE COURT BASED ON THE ORDER IN WHICH THESE
9 THINGS HAVE BEEN PUT ON A PIECE OF PAPER. IT'S SIMPLY THAT
10 IF YOU'RE GOING TO WRITE SOMETHING ON PAPER, SOMETHING'S GOT
11 TO BE FIRST AND SOMETHING'S GOT TO BE NEXT. SO PLEASE DON'T
12 TAKE ANY HIDDEN MEANING FROM THE ORDER IN WHICH THESE THINGS
13 HAVE BEEN PUT ON PAPER BECAUSE I CAN ASSURE YOU NONE IS
14 INTENDED. IT'S JUST AS YOU PUT THINGS ON PAPER, SOMETHING'S
15 GOT TO BE FIRST AND SOMETHING HAS GOT TO BE NEXT.

16 NOW, LET'S TALK ABOUT THE VERDICT FORM, AND AGAIN YOUR
17 VERDICT MUST BE UNANIMOUS. AND WE BEGIN WITH THE CHARGE, THE
18 INDICTED CHARGE, OF ASSAULT AND BATTERY WITH INTENT TO KILL,
19 AND THIS IS WHAT THE VERDICT FORM SAYS: AS TO THE CHARGE OF
20 ASSAULT AND BATTERY WITH INTENT TO KILL, WE, THE JURY,
21 UNANIMOUSLY FIND THE DEFENDANT -- AND THE TWO POSSIBLE
22 VERDICTS ARE GUILTY AND NOT GUILTY. IRRESPECTIVE OF WHAT
23 YOUR VERDICT IS, YOUR UNANIMOUS VERDICT IS, MADAM PRESIDING
24 JUROR, IF YOU'LL CIRCLE IT AND BE REAL CLEAR THAT YOU HAVE
25 INDICATED ON THE VERDICT FORM WHICH IS YOUR VERDICT.

1 LADIES AND GENTLEMEN, IF YOU FIND THAT THE STATE HAS NOT
2 PROVED THAT THE DEFENDANT IS GUILTY OF ASSAULT AND BATTERY
3 WITH INTENT TO KILL BEYOND A REASONABLE DOUBT, THEN YOU
4 CONSIDER THE LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY
5 OF A HIGH AND AGGRAVATED NATURE. IF YOU CONSIDER THE OFFENSE
6 OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, THE
7 LESSER INCLUDED OFFENSE, THEN YOU WOULD GO TO NUMBER TWO: AS
8 TO THE CHARGE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
9 NATURE, WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT -- AND,
10 AGAIN, TWO POSSIBLE VERDICTS: GUILTY OR NOT GUILTY.

11 IRRESPECTIVE OF WHAT YOUR UNANIMOUS VERDICT IS, BE IT NOT
12 GUILTY OR GUILTY, GUILTY OR NOT, WHICHEVER IT IS, JUST CIRCLE
13 IT SO IT'S CLEAR AS TO THE VERDICT OF THE JURY.

14 IN THE EVENT THAT YOU, THE JURY, DETERMINE THAT THE
15 STATE HAS NOT PROVED THE DEFENDANT GUILTY OF EITHER ASSAULT
16 AND BATTERY WITH INTENT TO KILL OR ASSAULT AND BATTERY OF A
17 HIGH AND AGGRAVATED NATURE, THEN YOU CONSIDER THE LESSER
18 INCLUDED OFFENSE OF SIMPLE ASSAULT AND BATTERY. AND IF YOU
19 CONSIDER THIS OFFENSE, THEN YOU WOULD RESPOND TO THE LAST
20 WHICH SAYS: AS TO THE CHARGE OF SIMPLE ASSAULT AND BATTERY,
21 WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT -- AND, AGAIN,
22 BASED UPON YOUR UNANIMOUS DETERMINATION, YOU WOULD EITHER
23 CIRCLE NOT GUILTY OR GUILTY. WHICHEVER IS YOUR VERDICT, YOU
24 WOULD CIRCLE THAT ONE.

25 LADIES AND GENTLEMEN, WHEN YOU HAVE COMPLETED YOUR

1 DELIBERATIONS AND INDICATED YOUR VERDICT, THEN, OF COURSE,
2 YOU WOULD SIGN IT AND DATE IT, AND TODAY IS JULY THE 26TH OF
3 2007. IF YOU WILL KNOCK ON THE DOOR AND RETURN TO THE
4 COURTROOM AND YOU'LL PASS YOUR VERDICT FORM PROBABLY TO MS.
5 SALISBURY OR MR. TAYLOR WHO IN TURN WILL PASS THAT TO ME.
6 YOU DO NOT PUBLISH YOUR VERDICT WHEN YOU RETURN TO THE
7 COURTROOM.

8 NOW, LADIES AND GENTLEMEN, IN A MOMENT I'M GOING TO BE
9 ASKING YOU TO STEP TO YOUR JURY ROOM WITH THIS INSTRUCTION:
10 DO NOT DISCUSS THIS MATTER OR ALLOW ANYONE TO DISCUSS IT WITH
11 YOU. NOW, YOU WOULD BE ALL WITHIN YOUR RIGHT AT THIS POINT
12 TO SAY, "NOW, WAIT A MINUTE. YOU'VE BEEN TELLING US WHEN WE
13 HAVE HEARD THE EVIDENCE AND ARGUMENTS AND YOUR CHARGE THAT
14 WE'RE GOING TO BEGIN OUR DELIBERATIONS."

15 SO I WANT TO EXPLAIN TO YOU EXACTLY WHAT'S GOING TO
16 HAPPEN WHEN YOU STEP TO YOUR JURY ROOM THIS NEXT TIME. I'M
17 SIMPLY GOING TO TURN TO THESE LAWYERS AND I'M GOING TO ASK
18 THEM TWO QUESTIONS. NUMBER ONE, HAVE I GIVEN THIS JURY ALL
19 OF THE LAW THAT THEY MAY NEED FOR THEIR DELIBERATIONS, AND
20 NUMBER TWO, HAVE I STATED IT CORRECTLY? BECAUSE IT IS MY
21 DUTY, LADIES AND GENTLEMEN, TO DO THOSE TWO THINGS, TO GIVE
22 YOU ALL THE LAW, TO INSTRUCT YOU ON ALL THE LAW THAT YOU MAY
23 NEED FOR YOUR DELIBERATIONS AND, SECONDLY, TO STATE IT FOR
24 YOU CORRECTLY.

25 NOW, LADIES AND GENTLEMEN, SOMETIMES I SIMPLY FAIL -- I

1 SIMPLY FAIL TO GIVE THE JURY ALL THE LAW THAT THEY MAY NEED,
2 AND SOMETIMES I NEED TO BRING THEM BACK OUT BECAUSE I HAVE
3 FAILED TO GIVE THE JURY AN INSTRUCTION THAT THEY MAY NEED AND
4 THESE LAWYERS ARE GOOD ENOUGH TO HELP ME KNOW THAT, AND THEN
5 I MAY NEED TO BRING YOU BACK OUT FOR THAT REASON. IN THE
6 EVENT THAT I DO NEED TO BRING YOU BACK OUT FOR THAT REASON,
7 PLEASE I ASK YOU IN ADVANCE: DO NOT CONSIDER THAT
8 INSTRUCTION WITH ANY EMPHASIS. JUST KNOW IT'S MY CHANCE TO
9 GET THIS RIGHT, TO GIVE YOU ALL OF THE LAW THAT YOU MAY NEED
10 FOR YOUR CONSIDERATION.

11 SOMETIMES - AND CERTAINLY IT'S UNINTENTIONAL - BUT
12 SOMETIMES SOMETHING JUST COMES OUT WRONG. I USE NOT WHEN I
13 SHOULDN'T USE THE NOT OR WHATEVER, BUT SOMETHING COULD JUST
14 POP OUT WRONG AND I DON'T CATCH IT. THESE LAWYERS HELP ME IN
15 THAT REGARD TO SAY, JUDGE, YOU KNOW, YOU SAID THIS AND I
16 DON'T THINK YOU MEANT TO SAY THIS, BUT THAT WASN'T QUITE
17 RIGHT. AND SO, LADIES AND GENTLEMEN, I ASK YOU IN ADVANCE:
18 IF I NEED TO BRING YOU BACK OUT TO CORRECT SOMETHING THAT I
19 HAVE STATED TO YOU THAT IS INCORRECT, I ASK YOU IN ADVANCE:
20 PLEASE ALLOW ME TO CORRECT MY ERROR IN YOUR MIND. AGAIN,
21 THIS IS MY ONE CHANCE TO GET THIS RIGHT AND TO GIVE YOU ALL
22 THE LAW THAT YOU MAY NEED AND TO STATE IT FOR YOU CORRECTLY.

23 IN THE EVENT THAT I DO NOT NEED TO BRING YOU BACK OUT,
24 YOU WILL BE BROUGHT THE EXHIBIT AND I THINK THERE'S ONLY ONE
25 EXHIBIT. YOU WILL BE BROUGHT THE EXHIBIT AND THE VERDICT

1 FORM. AND IT WILL BE MS. SALISBURY -- WE'VE BEEN DOING THIS
2 A LONG TIME. MS. SALISBURY WILL TELL YOU TO BEGIN YOUR
3 DELIBERATIONS, BUT IF SHE FOR THE FIRST TIME FAILS TO SAY,
4 "BEGIN YOUR DELIBERATION," YOU WILL NOT HAVE THIS VERDICT
5 FORM AND THE EXHIBIT UNLESS YOU ARE PREPARED TO DELIBERATE.

6 NOW, LET ME TELL YOU A COUPLE OF OTHER THINGS. ALL 12
7 OF YOU, ALL 12 OF YOU, MUST BE TOGETHER FOR YOU TO
8 DELIBERATE. IN THE EVENT THAT YOU NEED TO TAKE A BREAK FOR
9 WHATEVER REASON, STOP YOUR DELIBERATIONS, TAKE YOUR BREAK,
10 AND THEN RECONVENE YOUR DELIBERATIONS WHEN YOU ARE ALL 12
11 BACK TOGETHER AGAIN. IN OTHER WORDS, IF SOMEBODY NEEDS TO
12 RUN TO THE LADIES' ROOM AND THE MEN'S ROOM, JUST STOP. RUN
13 TO THE LADIES' ROOM AND THE MEN'S ROOM AND THEN RECONVENE
14 YOUR DELIBERATIONS WHEN YOU'RE BACK TOGETHER AGAIN.

15 NOW, MS. SALISBURY HAS GOT SOMETHING PLANNED FOR YOU FOR
16 LUNCH, SO DON'T WORRY ABOUT YOUR BLOOD SUGAR PLUMMETING
17 BECAUSE SHE'S GOING TO TAKE CARE OF YOU. AND WHEN YOUR LUNCH
18 IS HERE, SHE'LL KNOCK ON THE DOOR AND JUST STOP LONG ENOUGH
19 FOR HER TO BRING THAT TO YOU, CERTAINLY WITH SOME HELP, AND
20 THEN ONCE YOU HAVE YOUR FOOD YOU CAN EITHER CONTINUE TO
21 DELIBERATE OR NOT. IT'S SOLELY WITHIN YOUR PURVIEW WHATEVER
22 YOU ALL CHOOSE TO DO.

23 NOW, I WANT TO LEAVE YOU WITH ONE CONCLUDING THOUGHT AND
24 IT'S THIS: THE WORD VERDICT, THE WORD VERDICT, COMES FROM
25 THE LATIN PHRASE VEREDICTO, AND THAT MEANS TO SPEAK THE

1 TRUTH, TO SPEAK THE TRUTH. LADIES AND GENTLEMEN, THAT IS NOW
2 YOUR TASK. PLEASE STEP TO YOUR JURY ROOM. DO NOT DISCUSS
3 THIS MATTER OR ALLOW ANYONE TO DISCUSS IT WITH YOU, AND MR.
4 -- IF YOU WOULD PLACE MR. SOUTHARD AWAY FROM THE 12, BUT STAY
5 WITH ME JUST A FEW MORE MINUTES. THANK YOU.

6 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
7 11:44 A.M.)

8 THE COURT: OTHER THAN THE STATE'S OBJECTING FOR THE
9 CHARGE OF SIMPLE ASSAULT AND BATTERY, ARE THERE ANY OTHER
10 EXCEPTIONS?

11 MR. SORENSON: NOTHING ELSE FROM THE STATE, YOUR HONOR.

12 THE COURT: OR ADDITIONS? ALL RIGHT. VERY WELL.

13 MS. HARDEE-THOMAS: WE DIDN'T PUT NOT GUILTY ON THERE?

14 THE COURT: WHAT DO YOU MEAN?

15 MS. HARDEE-THOMAS: ASSAULT AND BATTERY WITH INTENT TO
16 KILL, ABHAN, SIMPLE ASSAULT, NOT GUILTY.

17 MR. SORENSON: ESSENTIALLY IF THEY CIRCLE NOT GUILTY
18 ON---

19 THE COURT: YOU NEED TO LOOK AT THE VERDICT FORM.

20 MS. HARDEE-THOMAS: OKAY.

21 MR. SORENSON: ---ALL THREE OF THEM, THEY'RE NOT GUILTY.

22 THE COURT: COME ON AND LOOK AT THE VERDICT FORM AND SEE
23 IF YOU HAVE ANY CONCERNS WHATSOEVER. BUT, OF COURSE -- BUT,
24 YOU KNOW, TAKE A LOOK AT THAT AND THEN I'LL...

25 MR. SORENSON: IF THEY ANSWER ALL THREE OF THEM NO, THEN

1 IT'S OBVIOUSLY NOT GUILTY. IF THEY CIRCLE THAT, THEN NOT
2 GUILTY. MOVE ON TO THIS, NOT GUILTY. AND THEN BASICALLY
3 GUILTY OR NOT GUILTY AND THAT'S...

4 MS. HARDEE-THOMAS: SEE -- OKAY. ALL RIGHT. I THOUGHT
5 THAT THERE WOULD BE A FOURTH.

6 MR. SORENSON: THAT'S THE WAY SHE WANTED IT.

7 MS. HARDEE-THOMAS: OKAY. ALL RIGHT.

8 THE COURT: VERY WELL. ALL RIGHT. ARE THERE ANY
9 EXCEPTIONS OR ADDITIONS?

10 MS. HARDEE-THOMAS: NOTHING FROM THE DEFENSE.

11 THE COURT: VERY WELL. NOW, YOU ALL, IF YOU'D BE SO
12 KIND FOR ME, LOOK AT WHAT'S GOING TO THE JURY. SPECIFICALLY
13 REMEMBER I'M THE JUDGE THAT HAD THE PANTS WITH THE POSSESSION
14 IN THE PANTS POCKET AND Y'ALL LOOK AT THE EXHIBIT AND THE
15 VERDICT FORM, AND THEN WE WILL BE IN RECESS UNTIL WE HEAR
16 FROM THE JURY.

17 MR. HILTON: JUDGE, WE DO NEED TO GET THE ALTERNATE OUT
18 OF THERE.

19 THE COURT: WHAT DO YOU MEAN?

20 MR. SORENSON: SHE SEPARATED IT.

21 THE COURT: I SEPARATED IT.

22 MR. HILTON: OH, OKAY. I DIDN'T HEAR THAT.

23 THE COURT: THANKS, RUSSELL. YOU'RE EXACTLY RIGHT.
24 THAT CAN BE---

25 MR. HILTON: I DIDN'T HEAR THAT.

1 THE COURT: THAT CAN BE A TERRIBLE THING. THAT CAN BE A
2 TERRIBLE THING.

3 (PAUSE IN PROCEEDINGS.)

4 THE COURT: MR. SOUTHARD IS NOT IN WITH THE JURY; RIGHT?

5 BAILIFF: NO, MA'AM, HE IS NOT IN WITH THE JURY.

6 THE COURT: TELL THEM TO BEGIN DELIBERATING, AND WE'LL
7 BE IN RECESS IN THIS CASE.

8 (WHEREUPON, THE JURY BEGAN DELIBERATING AT 11:49 A.M.)

9 THE COURT: I NEED YOU -- I DON'T SEE DON IN THE
10 COURTROOM.

11 THE CLERK: SHE'S GONE TO GET HIM.

12 THE COURT: THEY'VE GOT A QUESTION. NOT GOOD.

13 (PAUSE IN PROCEEDINGS. COURT'S EXHIBIT 1 WAS MARKED FOR
14 IDENTIFICATION ONLY.)

15 THE COURT: ALL RIGHT. ALL RIGHT. WE ARE BACK ON THE
16 RECORD IN THE STATE VERSUS SHEPPARD. AND MR. SHEPPARD'S
17 PRESENT WITH COUNSEL, MS. HARDEE-THOMAS, AND MR. SORENSON IS
18 PRESENT FROM THE SOLICITOR'S OFFICE. WE HAVE HAD A NOTE FROM
19 THE JURY AND THIS IS WHAT IT SAYS: "FOR THE OTHER TWO
20 CHARGES, HIGH AND AGGRAVATED AND SIMPLE A. AND B., DO WE ALSO
21 CIRCLE AN APPROPRIATE CHOICE FOR THE VERDICT?" AND THIS HAS
22 BEEN MARKED AS A COURT'S EXHIBIT NUMBER 1.

23 WHAT I WOULD PROPOSE TO DO AT THIS POINT IS TO BRING THE
24 JURY BACK OUT AND GO OVER THE VERDICT FORM WITH THEM.

25 WHETHER THEY BRING THE VERDICT FORM OR NOT DOESN'T MATTER. I

1 CAN -- I REMEMBER WHAT IT SAID AND WILL GO OVER THAT WITH
2 THEM. ANY OBJECTION FROM THE STATE?

3 MR. SORENSON: NO, MA'AM. I GUESS THE ONLY THING I
4 WOULD JUST LIKE TO, JUST IN LOOKING OVER THE QUESTION, MAKE
5 SURE THEY UNDERSTAND IS THAT WHEN THEY LOOK AT THE FIRST
6 CHARGE, OBVIOUSLY IF THEY FIND HIM GUILTY BEYOND A REASONABLE
7 DOUBT, THAT ENDS IT.

8 THE COURT: THAT'S RIGHT.

9 MR. SORENSON: IF THEY FIND---

10 THE COURT: I'M NOT GOING TO SAY IT THAT WAY, YOU
11 UNDERSTAND.

12 MR. SORENSON: RIGHT.

13 THE COURT: I'M GOING TO SAY IT -- TRY TO DO IT IN A
14 DIFFERENT WAY.

15 MR. SORENSON: I UNDERSTAND.

16 THE COURT: AND HOPEFULLY IT WILL MAKE SENSE TO THEM.
17 ANY OBJECTION FROM THE DEFENSE?

18 MS. HARDEE-THOMAS: NONE.

19 THE COURT: OKAY. GREAT. LET'S HAVE THE JURY, PLEASE.

20 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 1:16
21 P.M.)

22 THE COURT: LADIES AND GENTLEMEN, I HAVE YOUR QUESTION,
23 AND THIS IS GOING TO BE HOW I'M GOING TO ATTEMPT TO ANSWER
24 IT. I'M GOING TO TRY TO GO BACK OVER WITH YOU THE VERDICT
25 FORM. LADIES AND GENTLEMEN, OF COURSE BEING MINDFUL THAT

1 YOUR VERDICT MUST BE UNANIMOUS, NUMBER -- THE FIRST CHARGE,
2 OF COURSE, WHICH IS THE CHARGE CONTAINED IN THE INDICTMENT,
3 ASSAULT AND BATTERY WITH INTENT TO KILL, YOU WOULD
4 CONSIDER -- YOU WOULD CONSIDER THAT CHARGE AND YOU WILL
5 DETERMINE WHETHER OR NOT YOU FIND THAT THE STATE HAS PROVEN
6 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS -- WHETHER
7 THEY HAVE SUSTAINED THEIR BURDEN OF PROOF, AND YOU WILL
8 INDICATE WITH REGARDS TO ASSAULT AND BATTERY WITH INTENT TO
9 KILL UNANIMOUSLY. YOUR VERDICT, OF COURSE, MUST BE EITHER
10 GUILTY OR NOT GUILTY.

11 IN THE EVENT -- IN THE EVENT THAT YOU FIND MR. SHEPPARD
12 NOT GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL, THEN
13 YOU CONSIDER THE LESSER INCLUDED OFFENSE OF ASSAULT AND
14 BATTERY OF A HIGH AND AGGRAVATED NATURE. IN THE EVENT THAT
15 YOU CONSIDER ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
16 NATURE, THEN YOU WOULD DETERMINE WHETHER THE STATE HAS
17 SUSTAINED ITS BURDEN OF PROOF, THAT, OF COURSE, BEING BEYOND
18 A REASONABLE DOUBT, AND YOU WILL UNANIMOUSLY DETERMINE
19 WHETHER YOU FIND THAT -- WHETHER OR NOT YOU FIND THAT BURDEN
20 HAS BEEN SUSTAINED AND IF IT'S BEEN MET. AND THEN YOU WILL
21 MAKE YOUR DETERMINATION WHETHER OR NOT MR. SHEPPARD IS GUILTY
22 OR NOT GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
23 NATURE.

24 IN THE EVENT THAT YOU FIND MR. SHEPPARD NOT GUILTY OF
25 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, THEN

1 YOU'D CONSIDER THE LESSER INCLUDED OFFENSE OF SIMPLE ASSAULT
2 AND BATTERY. IF YOU FIND THAT -- AND THEN YOU CONSIDER THE
3 LESSER INCLUDED OFFENSE. IF YOU FIND HIM NOT GUILTY OF
4 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, THEN YOU
5 CONSIDER SIMPLE ASSAULT AND BATTERY, AND AS TO THEN SIMPLE
6 ASSAULT AND BATTERY, YOU WOULD DETERMINE UNANIMOUSLY IF YOU
7 FIND HIM GUILTY OR NOT GUILTY. IN OTHER WORDS, IT'S A STEP
8 PROCESS AND HOPEFULLY SET OUT IN THE -- IN THE VERDICT FORM.
9 AND YOU WILL ANSWER THAT, OF COURSE, IN ACCORDANCE WITH HOW
10 YOU ANSWER EACH LAYER, EACH LEVEL. I HOPE THAT IS CLEAR.
11 LADIES AND GENTLEMEN, PLEASE RETIRE TO YOUR JURY ROOM TO
12 CONTINUE YOUR DELIBERATIONS.

13 (WHEREUPON, THE JURY BEGINS EXITING THE COURTROOM AT
14 1:20 P.M., AND THE FORELADY STEPS BACK INTO THE COURTROOM AS
15 JURORS ARE LEAVING AND STATES THE FOLLOWING TO THE COURT:)

16 FORELADY: THEN WE HAVE A VERDICT AFTER ALL.

17 THE COURT: SO YOU'RE TELLING ME NOW THEN YOU HAVE --
18 YOU HAVE A VERDICT?

19 FORELADY: YES.

20 THE COURT: ALL RIGHT. HERE'S WHAT I WOULD LIKE YOU TO
21 DO. HERE'S WHAT I'M GOING TO ASK YOU TO DO. I'M GOING TO
22 ASK -- LET ME TELL YOU WHY. I'VE JUST GIVEN YOU AN
23 INSTRUCTION. YOU HAVE NOT RETIRED TO BE SURE THAT THAT
24 SATISFIES WHATEVER YOUR CONCERN WAS AND YOU'VE NOT DONE THAT.
25 SO THAT'S WHY I SAID STEP BACK TO YOUR JURY ROOM. STEP BACK

1 TO YOUR JURY ROOM. CONSIDER THE -- MY INSTRUCTION, AND THEN
2 IF YOU'RE PREPARED -- IF YOU'VE REACHED YOUR VERDICT, THEN
3 KNOCK ON THE DOOR AND YOU WILL RETURN. OKAY?

4 FORELADY: THANK YOU.

5 THE COURT: THANK YOU.

6 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 1:22
7 P.M.)

8 THE COURT: ANY EXCEPTIONS TO MY INSTRUCTION?

9 MR. SORENSON: NO, YOUR HONOR.

10 THE COURT: ANY EXCEPTIONS?

11 MS. HARDEE-THOMAS: NO, YOUR HONOR.

12 THE COURT: VERY WELL. LET THE RECORD REFLECT -- AND I
13 THINK I WANT TO PUT THAT ON THE RECORD THAT THE PRESIDING
14 JUROR INDICATED TO ME -- SHE SAID, WELL, WE HAVE A VERDICT,
15 AND I SAID, I'VE JUST GIVEN AN INSTRUCTION. I THINK IT IS
16 IMPORTANT THAT YOU STEP BACK TO YOUR JURY ROOM. BE SURE THAT
17 ALL JURY MEMBERS HAVE CONSIDERED THE INSTRUCTION. IF YOU
18 HAVE A VERDICT, THEN YOU KNOCK ON THE DOOR AND YOU RETURN TO
19 THE COURTROOM, BUT I THINK IT IS IMPORTANT IN THAT I HAVE
20 JUST INSTRUCTED THE JURY THAT THE JURY PANEL AS A WHOLE HAS
21 AN OPPORTUNITY TO STEP BACK TO THE JURY ROOM AND THEN RETURN,
22 AND THAT'S WHY I SENT THEM TO THE -- TO THE JURY ROOM. SO
23 THEY MAY OR MAY NOT---

24 BAILIFF: WE'LL SEE.

25 THE COURT: ---RETURN. ALL RIGHT. BUT LET'S GIVE THEM

1 JUST A MOMENT AND THEN, IF NOT, THEN WE WILL CONTINUE.

2 (PAUSE IN PROCEEDINGS.)

3 THE COURT: THANK YOU SO MUCH, AND PLEASE BE SEATED.

4 ANYTHING BEFORE WE BRING THE JURY OUT FROM THE STATE?

5 MR. SORENSON: NO, YOUR HONOR.

6 THE COURT: FROM THE DEFENSE?

7 MS. HARDEE-THOMAS: NOTHING FROM THE DEFENSE, YOUR
8 HONOR.

9 THE COURT: LET'S HAVE THE JURY, PLEASE.

10 (WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH A
11 VERDICT AT 1:32 P.M.)

12 THE COURT: ALL RIGHT. MADAM PRESIDING JUROR, IT'S MY
13 UNDERSTANDING THE JURY HAS REACHED ITS VERDICT. IS THAT
14 CORRECT?

15 FORELADY: YES, MA'AM.

16 THE COURT: VERY WELL. IF YOU WOULD PASS IT, PLEASE, TO
17 MR. TAYLOR. THANK YOU. ALL RIGHT. I FIND THAT THE VERDICT
18 IS IN DUE FORM. STATE OF SOUTH CAROLINA, COUNTY OF
19 DORCHESTER, IN THE COURT OF GENERAL SESSIONS FOR THE FIRST
20 JUDICIAL CIRCUIT. INDICTMENT NUMBER 2006-GS-18-767. AS TO
21 THE CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL, WE,
22 THE JURY, UNANIMOUSLY FIND THE DEFENDANT GUILTY, SIGNED BY
23 SYLVESTRA C. BRADLEY, 7/26/07.

24 LADIES AND GENTLEMEN, IF THIS WAS YOUR VERDICT IN YOUR
25 JURY ROOM AND CONTINUES TO BE YOUR VERDICT HERE IN THE

1 COURTROOM, PLEASE INDICATE BY RAISING YOUR RIGHT HAND. LET
2 ME OBSERVE FOR THE RECORD THAT ALL OF OUR JURORS HAVE THEIR
3 RIGHT HANDS RAISED. YOU CAN PUT YOUR HANDS DOWN. ALL RIGHT.
4 ANYTHING BEFORE WE DISMISS THE JURY FROM THE STATE?

5 MR. SORENSON: NO, YOUR HONOR.

6 THE COURT: FROM THE DEFENSE?

7 MS. HARDEE-THOMAS: NOTHING FROM THE DEFENSE, YOUR
8 HONOR.

9 THE COURT: VERY WELL. LADIES AND GENTLEMEN, I WANT TO
10 THANK YOU SO MUCH FOR YOUR SERVICE ON THIS JURY. I THANK YOU
11 ON BEHALF OF ALL OF US INVOLVED IN THE COURT SYSTEM BUT ON
12 BEHALF OF OUR COMMUNITY AND OUR STATE AND OUR COUNTRY. YOU
13 HAVE GIVEN A PRECIOUS GIFT OF YOUR TIME TO OUR SYSTEM, AND I
14 AM TRULY GRATEFUL FOR IT.

15 (WHEREUPON, THE JURY WAS EXCUSED FROM THE TRIAL.)

16 THE COURT: ALL RIGHT. COME AROUND, PLEASE, MA'AM, FOR
17 SENTENCING.

18 MS. HARDEE-THOMAS: SAME MOTIONS AS BEFORE, YOUR HONOR.

19 THE COURT: CERTAINLY. CERTAINLY. I DO UNDERSTAND.
20 AND I BELIEVE THAT THERE WAS EVIDENCE ON EACH AND EVERY
21 ELEMENT OF THE OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO
22 KILL, AND I WOULD RESPECTFULLY DENY YOUR MOTION, NOTING YOUR
23 EXCEPTION THERETO.

24 MR. SORENSON: MAY IT PLEASE THE COURT, YOUR HONOR?

25 THE COURT: YES, SIR.

1 MR. SORENSON: BACK ON MARCH THE 22ND OF THIS YEAR,
2 PURSUANT TO SOUTH CAROLINA CODE OF LAWS SECTION 17-25-45, WE
3 SERVED ON MR. SHEPPARD AND MS. HARDEE-THOMAS A NOTICE OF
4 INTENTION TO SEEK A SENTENCE OF LIFE WITHOUT PAROLE. I HAND
5 A COPY OF THAT UP TO THE COURT.

6 THE COURT: ALL RIGHT.

7 MR. SORENSON: THAT IS BASED, YOUR HONOR, ON HIS PRIOR
8 CONVICTIONS. HE'S GOT FROM 1999 OUT OF GEORGETOWN COUNTY AN
9 INDICTMENT 99-GS-22-348, A CONVICTION FOR ARMED ROBBERY, AND
10 99-GS-22-349, A CONVICTION FOR ASSAULT AND BATTERY WITH
11 INTENT TO KILL. AN ADDITIONAL PRIOR RECORD, HE HAS -- AT THE
12 SAME TIME HE PLED GUILTY TO COMMON LAW ROBBERY ALSO.

13 THE COURT: VERY WELL. YES, MA'AM. MS. HARDEE-THOMAS,
14 ANYTHING WITH REGARDS TO 17-25-45?

15 MS. HARDEE-THOMAS: YOUR HONOR, THE CHARGES HE HAS ARE
16 CORRECT. WE WERE GIVEN NOTICE IN REGARDS TO A NOTICE OF
17 L-WOP---

18 THE COURT: YES.

19 MS. HARDEE-THOMAS: ---THAT THEY WERE GOING TO SEEK
20 THIS. WE DISCUSSED THIS WITH MY CLIENT, AND HE WANTED TO
21 PROCEED WITH REGARDS TO THESE CHARGES. YOUR HONOR, WE'RE
22 BEFORE YOU. THE JURY HAS SPOKEN. YOU'VE GOT A 26-YEAR-OLD
23 WHO IS LOOKING AT LIFE. THAT'S WHERE WE'RE AT, YOUR HONOR.

24 THE COURT: YES, MA'AM. LET ME SEE THAT FILE JUST -- I
25 THOUGHT THAT WAS MR. SORENSON'S, BUT I REALIZED IT'S NOT.

1 ALL RIGHT. JUST LET ME TAKE A LOOK.

2 (PAUSE IN PROCEEDINGS.)

3 THE COURT: I TOOK A MOMENT BECAUSE OF THE SERIOUSNESS
4 OF THE OFFENSE TO REVIEW THE STATUTE YET AGAIN.

5 MR. SORENSON: YES, MA'AM. YES, MA'AM.

6 THE COURT: AND I'VE DONE THAT, TAKEN THAT INTO REVIEW,
7 THE STATUTORY PROVISION. AND IT IS CLEAR TO ME THAT PURSUANT
8 TO 17-25-45 AND CERTAINLY ACKNOWLEDGING THAT THE STATE SENT
9 NOTICE -- AND THERE'S, OF COURSE, AN ISSUE WHETHER OR NOT
10 THAT WAS REQUIRED, BUT CERTAINLY I THINK YOU DID SO IN AN
11 ABUNDANCE OF CAUTION SO APPROPRIATELY. BUT IN THAT THIS IS A
12 CONVICTION OF TEMPORALLY -- THERE'S THE '99 CONVICTIONS,
13 ACTUALLY ON THE SAME DATE, BUT TWO MOST SERIOUS OFFENSES BUT
14 ON THE SAME DATE AND THEN NOW IN 2007 THE THIRD ACTUALLY MOST
15 SERIOUS OFFENSE BUT SECOND OCCASION FOR THE MOST SERIOUS
16 OFFENSE.

17 IN ACCORDANCE WITH 17-25-45, THEN, MR. SHEPPARD, I
18 COMMIT YOU TO THE STATE DEPARTMENT OF CORRECTIONS FOR --
19 PURSUANT TO 17-25-45 FOR THE BALANCE OF YOUR NATURAL LIFE.

20 MS. HARDEE-THOMAS: THANK YOU, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)
23
24
25

STATE OF SOUTH CAROLINA

County of Dorchester

2010 JUL 26 PM 3:03

In the Court of Common Pleas

CLERK OF COURT
DORCHESTER COUNTY2010-CP-18-2042Louie Sheppard SCDC # 262090

Full name and prison number (if any) of Applicant,

vs.

State of South Carolina

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF2010 JUL 26 PM 3:16
CLERK OF COURT
DORCHESTER COUNTYINSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
990 Wisacky Highway Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Dorchester County Courthouse
101 Ridge Street St. George, S.C. 29477
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Indictment number: 2006GS18-0767 ; Warrant Number: K053850
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) sentence date imposed on: July 26, 2007 ; term of Life without parole pursuant § 17-
 - (b) 25-45 (1995).
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 11, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel ; Prosecutorial Misconduct ; Indictments / Subject matter Jurisdiction ; Erroneous Jury Instruction ;
- (b) The State's failure to give Applicant written notice of its intent to seek a life without parole sentence pursuant to § 17-25-45(H).
- (c) _____
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) _____
- (b) _____
- (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court?
No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) All grounds mentioned in (9) being preserved issues for PCR
- (b) _____
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Marva A. Hardee-Thomas
130 East Richardson Avenue Summerville, S.C. 29483 ; P.O. Box 50503 Summerville,
- ii. S.C. 29485
- iii. Chief Appellate Defender Joseph L. Savitz, III
P.O. Box 11589 Columbia, S.C. 29211

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

- i. trial and sentencing
- ii. _____
- iii. appeal

18. State clearly the relief you seek in filing this application.

New trial ; re-sentencing

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

No

STATE OF SOUTH CAROLINA

County of Dorchester

VERIFICATION

I, Louis Sheppard, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Louis Sheppard

SWORN to and subscribed before me this 11day of June, 2015

[Signature] (L.S.)
Notary Public

My Commission Expires: 11-4-2015

2010 JUL 26 PM 3:03
CLERK OF COURT
DORCHESTER COUNTY

2010 JUL 26 PM 3:16
CLERK OF COURT
DORCHESTER COUNTY

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

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

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

Louis Sheppard
Applicant

SWORN or affirmed to and subscribed before me this

11 day of June, 2015

[Signature]
Notary Public

My Commission Expires 11-4-2015

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
COUNTY OF DORCHESTER	)	
Louis Sheppard, 262090	)	DOCKET NO.: 2010-CP-18-2042
Applicant	)	
	)	AMENDED APPLICATION FOR POST
	)	CONVICTION RELIEF
STATE OF SOUTH CAROLINA	)	
Respondent,	)	

The Applicant through undersigned Counsel states that the Amended Application for Post Conviction Relief was filed on July 26, 2010, and wishes to add the following to that application:

INEFFECTIVE ASSISTANCE OF COUNSEL

Trial Counsel was ineffective for failing to object to trial judge's erroneous instruction on "reasonable doubt" charge which is prejudicial because it is misleading and highly confusing to the jury in trying to distinguish the difference between reasonable doubt in criminal and civil proceedings. On trial transcript pages 195 line 25 and page 196 line1 trial judge gives a deficient instruction stating:

"...and in criminal cases the law does not require proof that overcomes every possible doubt."

Also, every issue raised under erroneous jury instruction/trial court abuse of discretion I would like to submit as grounds for ineffective assistance of counsel.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, Louis Sheppard


Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

March 4, 2011

CLERK OF COURT
DORCHESTER COUNTY

2011 MAR -8 PM 1:28

CERTIFIED COPY

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	2010-CP-18-2042
	)	
Louis Sheppard, #262090,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 26, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the April 2006 term of the Dorchester County Grand Jury for Assault and Battery with Intent to Kill ("ABWIK) (2006-GS-18-0767). Marva Hardee-Thomas, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. Applicant was found guilty, and on July 26, 2007, Applicant was sentenced to life imprisonment without parole pursuant to S.C. Code §17-25-45.

A notice of appeal was filed and an appeal perfected. The appeal was dismissed following submission of an Anders brief. State v. Sheppard, Op. No. 2010-UP-118 (S.C. Ct. App. filed February 11, 2010). The Remittitur was sent on April 8, 2010.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. "Prosecutorial misconduct."
3. "Indictments / Subject Matter Jurisdiction."
4. "Erroneous Jury Instruction."
5. "The State's failure to give Applicant written notice of its intent to seek a life without parole sentence pursuant to §17-25-45(H)."

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made

in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

V.

The Respondent submits that the fourth and fifth allegations should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss this application for post-conviction relief.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Feb. 4, 20 11.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LOUIS SHEPPARD, 262090,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-18-2042

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter, SC 29150

DATED this 7th day of February, 2011.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

I N D E X

	Direct-Redirect	Cross-Recross
1		
2		
3	LOUIS SHEPPARD	
4	By Mr. Brooks	4-24
5	By Mr. Corn�y	18
6	MARVA HARDEE-THOMAS	
7	By Mr. Brooks	26-38
8	By Mr. Corn�y	35-39
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EXHIBITS

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NOTE: No exhibits were proffered.

1 (The within matter came before the Court for hearing
2 on August 30, 2011)

3 THE COURT: Ms. Harry Dot, this is 2010 CP 18 2042,
4 a Dorchester County case. Louis Sheppard versus State of
5 South Carolina.

6 This is an application for post-conviction relief.
7 All right. He's represented by Mr. Brooks.

8 Are you prepared to go forward?

9 MR. BROOKS: Yes, sir.

10 THE COURT: All right, call your first witness.

11 MR. BROOKS: We'd call Louis Sheppard.

12 THE COURT: Mr. Sheppard.

13 LOUIS SHEPPARD, being duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BROOKS:

17 CLERK: Have a seat, please.

18 THE COURT: Get comfortable, please, and state your
19 name.

20 WITNESS: Louis Sheppard.

21 Q. Mr. Sheppard, how you doing today?

22 A. All right so far.

23 Q. And you have filed this application?

24 A. Yes, sir.

25 Q. And basically this whole Petition involves -- you

APPLICANT ON DIRECT

1 were already in prison..

2 Is that correct?

3 A. Yes, sir.

4 Q. And this basically involved an incident while you
5 were in prison?

6 A. Yes, sir.

7 Q. And I believe your lawyer was appointed to you, is
8 that correct?

9 A. Yes, sir.

10 Q. Okay, and one of the things that you and I've dis-
11 cussed, as far as your allegations, is that you had got
12 word that they were intending to seek life without parole?

13 A. Yes, sir.

14 Q. And there is an issue about that, is that correct?

15 A. Yes, there was.

16 Q. And what is the problem with that?

17 A. My attorney told me they was going to seek a life
18 sentence on a prior conviction.

19 I was charged with armed robbery and assault and bat-
20 tery with intent to kill, and I didn't know I had been
21 charged with assault and battery with intent to kill and
22 what had went on in the process.

23 I talked to my attorney and told her I didn't want
24 to take no plea to nothing like that, and I was going to
25 trial; that I wanted a trial.

APPLICANT ON DIRECT

1 At the time my attorney -- she did give me a copy of
2 a notice but the Solicitor didn't give me a copy of the
3 notice.

4 Q. Okay.

5 A. But the Solicitor didn't give me a copy of the no-
6 tice, and according to Section 545 the Solicitor must
7 serve the Defendant and Defendant's attorney with a copy
8 of the notice.

9 Q. So you were never served. Is that correct?

10 A. Yes, that's correct.

11 Q. And that issue has never been raised in the record
12 before?

13 A. It was never raised, it was never testified at my
14 trial, and it was never raised in the appeal process or
15 nothing by my attorney.

16 Q. Okay, and that was never raised at the time of the
17 trial or during the trial?

18 A. No, sir.

19 Q. And the Rule required that the Solicitor had to
20 serve you prior to trial?

21 A. Yes, sir.

22 Q. Now, also, you also had this offer -- your attorney
23 came to you with an offer and what was that offer, if you
24 recall?

25 A. Eight years.

APPLICANT ON DIRECT

1 Q. Eight years for assault and battery of a high and
2 aggravated nature?

3 A. Yes, sir.

4 Q. Okay. Now, one of the things that caused you to
5 raise ineffectiveness is because you didn't get served
6 with life without parole?

7 A. Yes, sir.

8 Q. Is it fair to say that you really didn't appreciate
9 that you were looking at life?

10 A. Oh, no. They came to me with a plea, and they said
11 the Solicitor will recommend this if I plead guilty to
12 assault and battery of a high and aggravated nature.

13 Q. And that would have been consecutive?

14 A. Yes, sir.

15 Q. That was the offer?

16 A. Yes, that was what the Solicitor offered, eight . .

17 Q. And you didn't like that?

18 A. No.

19 Q. And the only things you raised in the allegation was
20 that you didn't have this higher thing explained to you,
21 in the big picture? The entire thing wasn't explained?

22 A. Yes.

23 Q. Is that correct?

24 A. Yes, sir.

25 Q. And because there was an issue about you being served,

APPLICANT ON DIRECT

1 you really couldn't appreciate that you were looking at
2 life?

3 A. No, sir.

4 Q. But what you know now is that because you had these
5 two prior convictions, a guilty plea would put you in a
6 situation where you would be looking at life?

7 A. Yes, sir.

8 Q. Okay. Now, if you had been -- did your attorney ex-
9 plain it to you that way?

10 A. No, she didn't explain it to me. She tried to explain
11 it to me but I didn't really understand what I was looking
12 at at the time.

13 What she did explain to me was that if I pled guilty
14 to -- she said if I pled guilty to assault and battery of
15 a high and aggravated nature they would give me a mandatory
16 consecutive sentence.

17 And I tried to explain to her that I didn't know no-
18 thing about the law. I tried to explain to her that, well,
19 if I pled guilty to assault and battery of a high and ag-
20 gravated nature I would be sentenced on the armed robbery
21 as well as that.

22 Q. That's right.

23 A. And I was like, well, I don't mind pleading guilty
24 if she would see if they would grant a . .

25 Q. Concurrent.

APPLICANT ON DIRECT

1 A. . . concurrent sentence to what I was serving.

2 Q. Right.

3 A. She started explaining to me about consecutive sen-
4 tencing on the armed robbery charge, and what the law said,
5 and stuff like that.

6 Q. Okay.

7 A. But I was thinking and trying to understand, and I
8 was thinking about right and wrong and black and white, so
9 I didn't really understand what she was explaining to me.

10 So instead of arguing and having her keep trying to
11 explain it to me when I didn't understand, I said, well,
12 I would go to trial.

13 Q. You would go to trial?

14 A. Yeah.

15 Q. Now, obviously when I took time to explain it to you,
16 you said, I would have taken the deal?

17 A. . .

18 Q. Remember that?

19 A. Explain what? I would have taken the deal as to
20 what?

21 Q. The ABHAN and eight years consecutive, knowing that
22 the State could seek life without parole based on your
23 conviction.

24 A. Yeah. Definitely.

25 Q. You would have taken that deal?

APPLICANT ON DIRECT

1 A. Yeah.

2 Q. In other words, when I sat down and explained to you
3 that you were dealing with the issue of not having been
4 served, we could have stood up -- if I was your lawyer and
5 stood up -- we talked about this -- and said that you
6 weren't served, then we could have rectified that real
7 quick?

8 A. Right.

9 Q. If I stood up and said, hey, you haven't served him --
10 they would have gone on and served you, right?

11 A. Right.

12 Q. And they could still have sought life without parole
13 because of your circumstances with the armed robbery and
14 assault and battery with intent to kill?

15 A. Yes.

16 Q. All right.

17 A. If she would have explained that . . .

18 Q. If she would have explained to you that you were in
19 that dilemma?

20 A. Yes. I would have gone on and took the plea then.

21 Q. Because you would have took the eight years and the
22 only thing you didn't like was it being consecutive?

23 A. Yes, sir. I told her I was willing to plead but I
24 wanted her to explain to the Court that -- I needed a full
25 understanding of it. I would have pled if I had known the

APPLICANT ON DIRECT

1 full extent of it all.

2 Q. And you said back there when we went through your
3 case that if it had been explained you would have taken
4 the plea because you had so much more at risk?

5 A. Yes.

6 Q. All right. As a matter of fact, based on what you
7 were in prison for, you would have maxed out in 2013?

8 A. Yes.

9 Q. So eight years consecutive on the ABHAN -- you would --
10 based on how things worked out, you would have had two or
11 three years tacked on?

12 A. Yes.

13 MR. CORNEY: Objection to leading, Your Honor. He is
14 giving testimony for the Applicant.

15 THE COURT: Rephrase your question.

16 MR. BROOKS: Yes, sir.

17 BY MR. BROOKS:

18 Q. Did you have an idea what that would have meant or
19 how to calculate your time?

20 A. No, but if I had thought a possible sentence was
21 a life sentence, I would have took the eight years.

22 Q. You could have figured out ABHAN, eight years consecu-
23 tive, and how that would have affected you, couldn't you?

24 A. Yes, I could have.

25 Q. Okay. So if it had been explained to you, you would

APPLICANT ON DIRECT

1 -- do you feel you would have been able to understand it
2 better?

3 A. Yes, sir. If it had been explained to me?

4 Q. Right.

5 A. Yes, sir.

6 Q. And that's one of your rights, isn't that correct?
7 That's basically your right?

8 A. That's one of them.

9 Q. We talked about the fact that they didn't serve no-
10 tice? We talked about that?

11 A. Yes, sir.

12 Q. Now, during the trial, there was another issue. You
13 did not testify, is that right?

14 A. No, I did not testify.

15 Q. You didn't put up any case?

16 A. No.

17 Q. So no Defense was put up?

18 A. No, none.

19 Q. Okay. Now, what would you have said if you had got
20 a chance to testify?

21 A. If I had got on the stand?

22 Q. If you had got on the stand?

23 A. I would have told the truth as to what happened, tell
24 them what occurred.

25 Q. Okay. Now, you were in prison and everybody knew

APPLICANT ON DIRECT

1 you were in prison. Isn't that correct?

2 A. Yes.

3 Q. What would you have said if you had got on that
4 stand?

5 A. I would tell them what happened that day.

6 Q. Tell us what happened?

7 A. In November -- October or November I got involved in
8 an incident involving my friend of mine and the victim. A
9 friend of mine tried to escape from prison, and the victim
10 went and told is what happened. So . . .

11 Q. So the victim now has become known as a snitch?

12 A. Yeah.

13 Q. Okay, and that's not good?

14 A. That's not good.

15 Q. Okay.

16 A. So he came to me and told me what he had done, and
17 I told him that if I could help you I would help you, but
18 I'd have a problem trying to help you and putting myself
19 backward . . .

20 Q. You didn't want it to go negative on you?

21 A. Yeah. I didn't want to put myself at risk too.

22 Q. Okay.

23 A. I couldn't be classified as a snitch too. That was
24 the only thing, and we went to watch some football, you
25 know.

APPLICANT ON DIRECT

1 Q. Right.

2 A. And what happened when we was watching football --
3 it was college football, you understand, and his team
4 was losing. Know what I'm saying?

5 A. Right.

6 Q. I was sitting there and watching football, and he
7 gets mad at me, and (portion not audible on tape).

8 So he gets mad at me and I got mad back to him, you
9 understand?

10 Q. Okay.

11 A. He was insinuating some things and . .

12 Q. So things got hostile?

13 A. Yeah. It gets hostile. He was saying some things.

14 Q. He was already upset because of the prior situation
15 you just described?

16 A. Right, exactly. He start fighting me.

17 Q. Okay.

18 A. And we start fighting and so I had a weapon on me.

19 Q. You had a shank?

20 A. Yeah. I used my weapon to protect myself from him,
21 know what I'm saying?

22 A. Okay.

23 Q. But the officers pull me up and he was bleeding and
24 stuff. That's what happened.

25 Q. And a lot of times people have to do something that

APPLICANT ON DIRECT

1 is in self defense?

2 A. Yes.

3 Q. And were you doing anything different than anybody
4 else?

5 A. No.

6 Q. Okay.

7 A. I'm telling you what happened. I'm not sitting here
8 telling you I'm an angel or nothing because I'm not, but
9 it really was not my fault. I had to protect myself.

10 Q. If you had got a chance to talk to the jury, that's
11 what you would have told them happened?

12 A. Yes.

13 Q. You know that if you had that the assault and battery
14 and armed robbery you had prior would have come out?

15 A. Yes.

16 Q. But you pled to those?

17 A. . .

18 Q. The prior convictions you had, you pled to those?

19 A. Yes.

20 Q. Okay, and in that situation there between you and this
21 guy, there was an indication there of self defense?

22 A. Yes.

23 Q. Okay. You never got a chance to talk about that?

24 A. No, I didn't.

25 Q. Okay.

APPLICANT ON DIRECT

1 A. I had told my lawyer I wanted to testify. I had told
2 her that when I said I wanted to go to trial. You know
3 what I'm saying?

4 Q. Okay.

5 A. And she never took the time out to really contact me
6 and go over what I wanted to say or what I had wanted to
7 bring out, what I wanted to do.

8 You know, every time she spoke to me it was about tak-
9 ing a plea, taking a plea. You understand?

10 I never had an opportunity to sit down and discuss
11 anything with her that I wanted to say, so when we got to
12 that point in the trial she didn't want me to testify, you
13 know. I had wanted to testify and I had already told her
14 that.

15 Q. At that point, did you have anything at all to lose?

16 A. No. If I had got on the stand and testified, then I
17 could give my side of the story and tell them what had
18 really happened.

19 Q. But you never got to say that?

20 A. No, sir.

21 Q. Okay. Is there anything else you want to say on it?
22 Anything you want to bring up?

23 A. Well, I had a witness who could testify for me.

24 Q. But they never got to testify?

25 A. No, sir.

APPLICANT ON DIRECT

1 Q. There was another inmate who was sitting there who
2 could have testified for you?

3 A. Yes, sir.

4 Q. That saw what happened and saw what went down?

5 A. They saw what happened, yes. She even explained to
6 the jury in opening that she would furnish a witness that
7 knew what had gone on, and I don't know why she didn't
8 present anybody.

9 Q. Okay.

10 A. And I never got a chance to get on the witness stand
11 to tell what happened.

12 Q. And you had a different version of what happened that
13 the jury didn't hear?

14 A. They never did hear it.

15 Q. Okay, all right. Anything else?

16 A. No, sir.

17 Q. All right, please answer any questions the State has
18 for you.

19 A. Yes, sir.

20 THE COURT: Any questions?

21 CROSS EXAMINATION

22 BY MR. CORNEY:

23 Q. Mr. Sheppard, ..

24 THE COURT: Mr. Corney, excuse me. Before you ask him
25 any questions, I want to make sure I've got everything

Q BY COURT

1 straight.

2 Mr. Sheppard, I just want to make sure -- you were
3 complaining or saying that she was ineffective for failing
4 to raise an objection about your never being served.

5 Is that correct?

6 APPLICANT: Yes, sir.

7 THE COURT: And you did not understand the full extent
8 of the plea you were offered, the eight year offer?

9 APPLICANT: No, I didn't.

10 THE COURT: And during the trial you wanted to testify
11 but she wouldn't allow you to testify?

12 APPLICANT: She told me not to testify because they
13 would bring in things to impeach my testimony, my prior
14 convictions for armed robbery and assault and battery.

15 She went on to explain under the South Carolina Rules
16 of Evidence they could bring that out. I knew they had
17 assault and battery and armed robbery, but I was already on
18 trial for assault and battery with intent to kill, and there
19 -- well, I thought I might as well testify anyway.

20 But that's why she said she didn't want me to testify,
21 and she didn't put me up or put up any testimony, and she
22 -- I was surprised when she said that we rested and didn't
23 let me put up anything.

24 THE COURT: Thank you.

25 CROSS EXAMINATION

APPLICANT ON CROSS

1 BY MR. CORNEY:

2 Q. Mr. Sheppard, during the trial just before sentencing,
3 the Solicitor who was prosecuting your case presented the
4 Court with a copy of the notice of intent to seek the
5 sentence of life without parole, is that correct?

6 A. . .

7 Q. Do you recall that?

8 A. When was that?

9 A. At the trial right before you were sentenced?

10 A. Yes.

11 Q. You remember that? You remember he presented the
12 Court with the notice to seek the sentence of life without
13 parole?

14 A. Yes.

15 Q. And it was dated March 22nd of 2007. Right?

16 A. . .

17 Q. And that was well before your date of trial, right?

18 A. Yes.

19 Q. And you said you never got served with the notice, is
20 that right?

21 A. He didn't serve me. He didn't personally serve me.

22 Q. But you knew at some point . .

23 A. I knew from talking with my attorney.

24 Q. So you had actual knowledge before the trial that
25 the Solicitor was going to go after that, whether you got

APPLICANT ON CROSS

- 1 the actual written paper or not?
- 2 A. Yes, from my attorney.
- 3 Q. Okay, you knew they were going to go after that, is
- 4 that correct?
- 5 A. Yes, she told me.
- 6 Q. Okay, and when the Solicitor was speaking to the
- 7 Court about requesting a life sentence without parole, he
- 8 talked about your prior convictions?
- 9 A. Yes.
- 10 Q. The prior convictions on your record?
- 11 A. Yes.
- 12 Q. You had been convicted of assault and battery with
- 13 intent to kill and you had a prior armed robbery, an as-
- 14 sault and battery, a common law robbery charge?
- 15 A. I had the actual notice from talking to my lawyer.
- 16 That's where I got the actual knowledge.
- 17 Q. But you knew they were going after that?
- 18 A. She told me.
- 19 Q. And she had told the Judge during the trial that she
- 20 had received notice?
- 21 A. And I got notice from her.
- 22 Q. She told you she had gotten notice?
- 23 A. Yes, she told me.
- 24 Q. And she represented you, knowing they were going to
- 25 seek a life sentence?

APPLICANT ON CROSS

1 A. Yes, sir.

2 Q. And she represented you at the trial?

3 A. Yes.

4 Q. And knowing she told you they were going after a life
5 sentence, you still wanted to go to trial?

6 A. I was the one who wanted a trial.

7 Q. Even after she told you that?

8 A. During the trial -- I don't understand that.

9 Q. But on the record she said that?

10 A. During the trial?

11 Q. During the trial, she said you wanted a trial even
12 if they were going after a life sentence?

13 A. I don't understand what you're saying.

14 Q. You still wanted to go to trial and your attorney
15 said -- do you remember whether or not at trial your at-
16 torney said she had received notice the State was going to
17 seek life without parole but Mr. Sheppard still wanted to
18 go forward with a trial?

19 A. I don't know that she said that.

20 Q. She did pursue assault and battery of a high and aggra-
21 vated nature at trial rather than assault and battery with
22 intent to kill?

23 A. At the trial?

24 Q. Yes.

25 A. Right.

APPLICANT ON CROSS

1 Q. You said you wished you would have testified at your
2 trial. Did the Court go over with you whether or not you
3 wanted to testify?

4 A. Yes, he asked me to talk to my lawyer about it, and
5 at that time we talked and I say I wanted to testify.

6 Q. But you told the Court after you consulted with her
7 that you didn't want to testify?

8 A. After talking with my attorney when she told me not to
9 testify.

10 Q. But it was your charges, your trial, and you were the
11 one who would go to jail. Right?

12 A. Yes, sir.

13 Q. Your attorney wouldn't go to jail if you were con-
14 victed, is that right?

15 A. Right, but she was also my attorney.

16 Q. But you made the decision not to testify?

17 A. It was on her advice. I didn't know nothing about the
18 law myself, so I took her advice.

19 Q. And that case got down to the victim and the shank, is
20 that right?

21 A. That's right.

22 Q. Okay.

23 A. See, the whole thing -- it was just arguing and the
24 witnesses all said that they never seen who starts the
25 fight or how the fight started. All they said was they seen

APPLICANT ON CROSS

1 the fight and come to break it up.

2 The witnesses I had talked to said I was not the ag-
3 gressor, and I was protecting myself.

4 Q. I think you said during Mr. Brooks' questions that
5 you weren't doing anything different from anyone else, is
6 that right?

7 A. As far as what?

8 Q. But you had a shank on you?

9 A. Yes, I said that. People carry weapons in prison,
10 but it was not my thinking that I was going to go around and
11 stab somebody. My thinking was that if somebody comes at
12 me I'm going to help myself. People carry weapons in
13 prison.

14 Q. So you were carrying a weapon in case someone came at
15 you?

16 A. Yes.

17 Q. You were carrying a knife to stab somebody?

18 A. No.

19 Q. The witness you said you wanted to testify at your
20 trial, is he or she in the Courtroom today?

21 A. No.

22 Q. So that witness is not here to give your side of
23 the testimony as to what happened?

24 A. No, I told my attorney about him but he is not here,
25 no. My lawyer failed to subpoena him.

APPLICANT ON CROSS

1 Q. I believe that's all the questions I have. Thank you.

2 THE COURT: Anything further?

3 MR. BROOKS: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. BROOKS:

6 Q. Mr. Sheppard, what happened basically started with an
7 altercation while you were watching TV?

8 A. Yes, sir.

9 Q. And a lot of other people who were sitting around there
10 they might not have been privy to what actually had started
11 it, is that correct?

12 A. Yes.

13 Q. And these other witnesses, they knew there was basic-
14 ally an altercation between you and the victim?

15 A. Yes.

16 Q. What went on was between you and him, and all the
17 State's witnesses could say is you were fighting?

18 A. Yes.

19 Q. And who was the aggressor became a big deal, is that
20 correct?

21 A. Yes.

22 Q. But all these other people couldn't determine whose
23 fault it was, so the only thing is you had something on
24 your person that you said was to protect yourself?

25 A. Yes.

APPLICANT ON REDIRECT

1 Q. Is that correct?

2 A. Yes, and if I would have got on the stand and told my
3 side of the story . . .

4 Q. That's the only way it could have come out, is that
5 correct?

6 A. Yes.

7 Q. And you would have said what you have told us in
8 here today?

9 A. Yes.

10 Q. And the fact that you had these other things on your
11 record, it would have been overshadowed by the fact that
12 this happened and you were not the aggressor, is that
13 right?

14 A. Yes, if I could have got on the stand then I would
15 have told what happened.

16 Q. But that never happened?

17 A. No, sir.

18 Q. And it was not your intention to go around stabbing
19 people, but you had it in case something happened?

20 A. That's right. I could have explained it if I had
21 got on the stand.

22 Q. You had something on you for self-preservation, is
23 that right, as the fight started

24 A. Yes:

25 (Portion not audible on tape)

APPLICANT ON REDIRECT

1 Q. Because you pulled it out to protect yourself, that's
2 why you got charged?

3 A. Yeah, after that.

4 Q. I understand, but that's why you got charged?

5 A. That's why I got charged.

6 Q. You pulled out something to have to protect yourself,
7 and that's how you ended up being charged?

8 A. Oh, yeah.

9 Q. He might have had something too?

10 A. Yes.

11 Q. But you didn't know?

12 A. No.

13 Q. And the jury didn't get to hear all of that?

14 A. They didn't, no.

15 Q. Okay, all right. No other questions..

16 THE COURT: Anything on Recross?

17 MR. CORNEY: No, sir, not at this time.

18 THE COURT: All right, Mr. Sheppard, you can step down.

19 (Applicant excused from witness stand)

20 THE COURT: All right, Mr. Brooks.

21 MR. BROOKS: We'd call Ms. Hardee-Thomas.

22 MARVA HARDEE-THOMAS,

23 being duly sworn, testified as follows:

24
25
26

MS. HARDEE-THOMAS ON DIRECT

1 DIRECT EXAMINATION

2 BY MR. BROOKS:

3 Q. How are you today?

4 A. I'm fine. Thank you, sir.

5 Q. You were Court-appointed to represent Mr. Sheppard?

6 A. I was.

7 Q. Do you recall how long you received this case prior
8 to it going to trial?

9 A. I can guess. I can only guess.

10 Q. Okay.

11 A. I would say three months.

12 Q. Do you recall a lot about this case?

13 A. Just some things about it. On and off.

14 Q. Do you remember going over with him about the statu-
15 tory obligations concerning the State's notice to seek
16 life without parole?

17 A. I remember talking to him about it.

18 Q. Do you remember going over the State's obligation
19 to serve him with the notice of that intention?

20 A. I just remember telling him that I was notified about
21 that. I was never -- I don't remember anything about him
22 being served.

23 Q. Do you recall asking him?

24 A. I remember talking with him, you know, about the notice.

25 Q. All right. Do you remember talking to him about a

27

MS. HARDEE-THOMAS ON DIRECT

1 plea offer?

2 A. Yes, I remember talking to him about a plea offer.

3 Q. What was that plea offer, if you recall?

4 A. A plea to assault and battery of a high and aggra-
5 vated nature, to my understanding, consecutive to what
6 he already had.

7 Q. Well, do you remember talking to him about the rela-
8 tionship of that to what he could be facing at a trial?

9 A. I told him what he was facing and from my understand-
10 ing he understood that.

11 Q. Had you already gotten the notice of life without
12 parole when they made the offer?

13 A. I believe when I went to talk with him about that
14 they had already indicated to me that was what he was fac-
15 ing in the matter. In talking to him, I believe we had
16 talked about that aspect of it.

17 Q. So the chances are that you already knew the State
18 was going to seek life without parole at the time that
19 you talked to him?

20 A. It is my understanding that they had told me that --
21 they said he was going to be looking at it if he had a trial.

22 Q. You told him, hey, they've offered ABHAN, eight years,
23 or otherwise the State is going to seek life -- the State
24 is going to be looking for life without parole because of
25 prior convictions?

MS. HARDEE-THOMAS ON DIRECT

1 A. It was my understanding the offer the Solicitor gave
2 him what what I have said, eight years on ABHAN consecutive
3 to what he already had, and we talked about that.

4 Q. At the same time you talked to him about the plea?

5 A. I told him what the Solicitor offered as far as the
6 plea.

7 Q. And do you remember if you talked to him about the
8 notice at the same time?

9 A. I believe over a period of time when -- each time I
10 talked to him about this matter.

11 Q. I'm just trying to figure out when it was that this
12 offer was extended. Was the notice that they were going
13 to try to seek the life without parole first, or was it
14 second?

15 A. . .

16 Q. I'm just trying to figure that out.

17 A. I believe when I was first appointed to him, I don't
18 believe I had that information with regard to them seeking
19 life. I believe when I was first appointed to him the
20 information was about assault and battery with intent to
21 kill.

22 That's what I remember, and then later on they informed
23 me about their intent to seek life.

24 Q. Okay.

25 A. They told me what they were going to do later on.

MS. HARDEE-THOMAS ON DIRECT

1 Q. And do you recall whether the offer of ABHAN and eight
2 years consecutive was extended before they were seeking
3 life or after they were seeking life?

4 A. I would think they offered him ABHAN before -- before-
5 hand, and . .

6 Q. Okay.

7 A. . . it was his option on whether or not he wanted to
8 take it and he felt it was a simple assault.

9 Q. Did you have his record and the discovery at the
10 time you talked to him about that plea offer?

11 A. Yes. The record from . .

12 Q. His criminal record.

13 A. Yes.

14 Q. Okay.

15 A. I was given discovery from when he was incarcerated
16 and what he was charged with.

17 Q. So you had his record when you talked to him about
18 the offer?

19 A. Yes.

20 Q. Did you -- at that time even if the State had not
21 notified you of their intention to seek life, you knew based
22 on the three strike rule he could be sentenced to that?

23 A. Yes.

24 Q. And did you explain that to him, that he could get
25 life without parole?

MS. HARDEE-THOMAS ON DIRECT

1 A. We discussed all of that. It was his understanding that
2 this was a simple assault matter, and he wasn't thinking
3 of anything else.

4 Q. And did you explain to him that if he was found guilty
5 he could be gone the rest of his life?

6 A. That was a part of our discussions, yes, you know,
7 after we got served with the notice.

8 Q. Was the plea offer made to him again?

9 A. I think when we started to go to trial it was off. It
10 was my understanding after the Solicitor made the offer
11 that it was taken away before the trial.

12 Q. Did you explain all that to Mr. Sheppard?

13 A. Well, at the time they hadn't taken it away but it was
14 taken away when we went to trial.

15 Q. He didn't testify in his case?

16 A. No, he did not.

17 Q. Did you confer with him about what would happen if
18 he did or did not take the stand?

19 A. Yes, I did.

20 Q. And did he want to testify?

21 A. Yes, he did want to testify, but I told him not to
22 testify. I can't hold him by his hand. I can only advise
23 him.

24 Q. Okay, and after you told him that, he didn't testify?

25 A. Right.

MS. HARDEE-THOMAS ON DIRECT

1 Q. You gave him advise on whether to testify or not to
2 testify?

3 A. Yes. He thought it was a simple assault case, and based
4 ically upon hearing what went on in the case -- if he felt
5 he needed to testify, I guess he would have testified, and
6 I think he was asked if he wanted to and he never indicated
7 he wanted to.

8 Q. Do you ever remember talking to him about his prior
9 convictions and how that would relate to him actually tes-
10 tifying?

11 A. I believe we talked about that, yes.

12 Q. About if he testified his prior convictions would
13 come out on the record?

14 A. Yes.

15 Q. Did you talk to him about how his story would come
16 out if he didn't testify?

17 A. I don't -- you'd have to explain that.

18 How would it come out if he didn't testify?

19 Q. About there being a fight with the victim, and getting
20 into an altercation, etcetera, etcetera? The victim fight-
21 ing him, hitting him?

22 A. I remember talking to him about the fact that the
23 jury looking at it as being a fight, and he basically said
24 he understood, and the jury would know he was in jail at
25 the time of the fight.

MS. HARDEE-THOMAS ON DIRECT

1 I do remember talking to him about that.

2 Q. He didn't get a self defense charge, did he?

3 A. No, sir.

4 Q. And that's because there was no evidence presented
5 about self-defense, is that correct?

6 A. Right. My concern was, okay, if we presented informa-
7 tion about what happened and the facts -- as the facts came
8 out, and if we directed it any other way, then it would
9 probably change the thing a lot. Do you understand?

10 Q. No, I don't.

11 A. The victim testified exactly to what happened to him.
12 Okay? If I was to direct the witness in regard to some-
13 thing else happening, then he was going to have to say
14 that something else happened.

15 Q. They got into a fight, and is that what he told you?

16 A. He stated he was just sitting down; that they were
17 watching a football game, and this guy came after him, you
18 know, and he defended himself.

19 Q. Which is pretty much what he has said today? The
20 victim came after him and he had a shank, and that is why
21 he was arrested?

22 A. Right. I'm looking at what he indicated initially
23 about who was the aggressor and that it was a simple as-
24 sault type situation.

25 We were concentrating more on what in effect happened

MS. HARDEE-THOMAS ON DIRECT

1 with the witness, you understand. That he was the aggres-
2 sor.

3 Q. But if he had testified, then the best thing you could
4 get was . . .

5 MR. CORNEY: Objection, Your Honor. She can't tes-
6 tify to what might have happened. She can only testify
7 to what occurred.

8 MR. BROOKS: Self defense is what I'm getting at,
9 Your Honor.

10 THE COURT: Rephrase your question.

11 BY MR. BROOKS:

12 Q. Self defense is what I'm talking about.

13 A. Yes, sir.

14 Q. You could have gotten a jury charge if he had tes-
15 tified? From what he told us happened, he could have got-
16 ten a self defense charge?

17 A. I don't know.

18 MR. CORNEY: He's asking for speculation, Your Honor.

19 THE COURT: I understand what he's getting at. Con-
20 tinue, please.

21 Q. Would you have asked for that?

22 A. If there was evidence of a simple assault I would
23 have.

24 Q. And if he had testified he would have presented a
25 self defense issue?

MS. HARDEE THOMAS ON DIRECT

1 A. I don't know.

2 Q. If he told at trial consistent with what he's told
3 us here today. Correct?

4 A. What would be consistent?

5 Q. Consistent with that he was sitting there watching
6 football and the guy comes after him. If he had given
7 that story at trial -- is that correct?

8 A. Yes, probably so.

9 Q. If he said then what he has said today, he would get
10 a self defense charge, wouldn't he?

11 A. I don't know.

12 Q. But would you have asked for it?

13 A. I would have asked, but I don't know.

14 Q. But since he didn't testify, there was no way you
15 could ask for that?

16 A. No.

17 Q. Self defense didn't come out?

18 A. No.

19 MR. BROOKS: No other questions, Judge.

20 THE COURT: Thank you. Mr. Cornly, you may examine
21 the witness.

22 CROSS EXAMINATION

23 BY MR. CORNEY:

24 Q. Ms. Hardee-Thomas, you discussed the charges with
25 Mr. Sheppard, you said?

MS. HARDEE-THOMAS ON CROSS

1 Q. And you were aware that there were some outstanding --
2 not outstanding charges but most serious charges on his
3 record?

4 A. Yes.

5 Q. And another ABHAN would make him at risk for a sentence
6 of life without parole?

7 A. Yes.

8 Q. And after you were advised that the State planned to
9 seek life without parole, you said you discussed that with
10 him?

11 A. I did.

12 Q. And you don't remember when you discussed it speci-
13 fically?

14 A. I don't remember.

15 Q. Okay, but after you got actual notice that was what
16 the State intended to do?

17 A. Yes, I would have discussed it with him.

18 Q. And he turned down the plea offer?

19 A. Yes, he did.

20 Q. And with the understanding that he had prior charges
21 that might make it helpful for him to accept the plea offer,
22 correct?

23 A. Yes, we talked about it, but he believed it was a simple
24 assault case.

25 Q. Did you ever discuss with him if he testified he could

MS. HARDEE-THOMAS ON CROSS

1 bring up self defense at trial?

2 A. I don't recall but I know I talked about the circum-
3 stances of what occurred. As I said, he wanted simple as-
4 sault as a lesser charge. He wanted simple assault brought
5 out however I could.

6 Q. Based on your memory of the facts, do you believe that
7 self defense is consistant with the facts?

8 A. I would think it was a little bit more of a simple
9 assault, from what I remember.

10 Q. Do you thing that assault and battery of a high and ag-
11 gravated nature was consistent with the facts as you re-
12 member them?

13 A. I don't really remember. The assault was certainly
14 brought out, but I don't remember all of the specifics of
15 the incident.

16 Q. And was his contention of a simple assault a part
17 of your strategy going to trial?

18 A. Yes, it was.

19 Q. Going to Mr. Sheppard's decision not to testify, do
20 you recall conversations with him about that?

21 A. I know I talked to him about it and his background,
22 the charges and his being incarcerated and the weapon. I
23 believe it was a decision he made not to testify.

24 Q. It was his decision?

25 A. Yes.

MS. HARDEE-THOMAS ON CROSS

1 Q. And you didn't threaten or coerce him in any way to
2 get him to make that decision?

3 A. No, sir.

4 MR. CORNEY: Ask the Court's indulgence.

5 (Brief pause)

6 MR. CORNEY: That's all the questions I would have
7 at this time.

8 THE COURT: Any Redirect?

9 MR. BROOKS: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. BROOKS:

12 Q. Ms. Hardee-Thomas, if you remember, do you remember
13 how long before you went to trial you came to know that
14 the State was intending to seek life without parole?

15 A. I couldn't really give you the exact time, but I know
16 it was well before trial.

17 Q. Substantially before the trial?

18 A. Without question.

19 Q. And you say as soon as you found out about it, you
20 made him aware of it?

21 A. Yes.

22 Q. Do you remember if you were called to Court and given
23 in Court the notice about that?

24 A. No.

25 Q. Do you remember where Mr. Sheppard was when you were

MS. HARDEE-THOMAS ON REDIRECT

1 given notice about that?

2 A. No.

3 Q. Do you remember Mr. Sheppard actually getting notice
4 of that?

5 A. No, I was not aware of that.

6 Q. Thank you, maam.

7 THE COURT: Anything further?

8 MR. CORNLY: Just one question.

9 THE COURT: Okay.

10 RECROSS EXAMINATION

11 BY MR. CORNLY:

12 Q. Did you tell Mr. Sheppard that without him testify-
13 ing that the jury wouldn't know his version of the events?

14 A. I don't know that I said that to him. It was my un-
15 derstanding that . .

16 Q. The victim didn't take the stand and talk about being
17 at a football game and having words and then this hap-
18 pened?

19 A. No.

20 Q. The victim-witness said Mr. Sheppard attacked him?

21 A. Right.

22 Q. Mr. Sheppard had told you prior to going to trial
23 that the victim-witness attacked Mr. Sheppard?

24 A. Correct.

25 Q. Did you tell Mr. Sheppard that without him testifying

MS. HARDEE-THOMAS ON RECROSS

1 that the jury would have no way of knowing what his story
2 was other than what the victim said?

3 A. I didn't phrase it like that, no. I told him if he
4 did not testify the jury would not hear his version. How-
5 ever, that would counteract, which was more important, his
6 version or the victim's version.

7 However, I know that he understood what he was facing
8 if the jury found him guilty.

9 Q. Yet he decided not to testify?

10 A. Correct, and I know we had that discussion.

11 Q. Based upon your having that discussion, he still chose
12 not to testify?

13 A. That's correct. I could only advise him. He had
14 to make the decision.

15 Q. And you went over his version of what happened, which
16 was that the victim attacked him?

17 A. Yes, we talked about that. I remember saying the
18 only way the jury is going to find for your side is if
19 you tell them that side. I said that at the time.

20 THE COURT: I have a question. Were you aware of the
21 witness he talked about during his examination?

22 WITNESS: A witness?

23 THE COURT: Did he give you the name of anyone? Do
24 you remember anything about that?

25 WITNESS: I don't remember that.

1 THE COURT: Okay.

2 WITNESS: I understand there were officers there on
3 the scene but I don't remember any witness he told me
4 about.

5 THE COURT: Okay, thank you.

6 (Portion not audible on tape)

7 RECROSS EXAMINATION

8 BY MR. CORNEY CONTINUED

9 Q. The victim had testified before Mr. Sheppard actually
10 decided not to testify?

11 A. Well, it was my understanding that he was not going
12 to testify. I mean, it didn't change. I mean, if he had
13 ever said he wanted to testify I would have put him on the
14 stand.

15 Q. What I'm asking you is, the victim had already tes-
16 tified during the State's case?

17 A. Yes.

18 Q. And that was before you got to the beginning of your
19 case?

20 A. Right.

21 Q. And he had decided not to testify already?

22 A. Right. If he had decided to testify, it would have
23 been a flip-flop, a change from what he had said. He had
24 said he was not going to testify.

25 Q. And he stuck with that throughout?

41

MS. HARDEE-THOMAS ON RECROSS

1 A. Right.

2 Q. Thank you.

3 THE COURT: Anything further, Mr. Brooks?

4 MR. BROOKS: No, sir. That's the Applicant's case.

5 THE COURT: Anything from the State?

6 MR. CORNEY: Nothing further.

7 THE COURT: Thank you, gentlemen. I will give you my
8 decision.

9 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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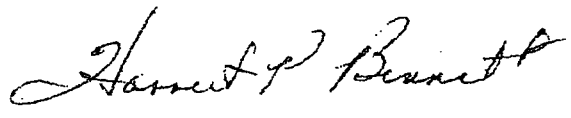
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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Harry A. Walker to the best of my ability, having been heard in the Court of Common Pleas for Orangeburg County on August 30, 2011.

FURTHER, I certify that I am neither of kin nor counsel to any party to this action, nor do I have any interest in the same.

September 19, 2013



STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Louis Sheppard, #262090,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2010-CP-18-2042

ORDER OF DISMISSAL

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DORCHESTER COUNTY

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed July 26, 2010. The Respondent made its Return on February 4, 2011. Applicant submitted an Amended Application for Post-Conviction Relief on March 8, 2011. An evidentiary hearing into the matter was convened on August 30, 2011, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Assistant Attorney General Robert D. Corney of the South Carolina Attorney General's Office.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was indicted during the April 2006 term of the Dorchester County Grand Jury for Assault and Battery with Intent to Kill (2006-GS-18-0767). Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein, where he was convicted as indicted. On July, 26, 2007, Judge Goodstein sentenced Applicant to life imprisonment without parole pursuant to S.C. Code § 17-25-45.

A Notice of Appeal was filed and an appeal was perfected. The appeal was dismissed following submission of an Anders¹ brief. State v. Sheppard, No. 2010-UP-118 (S.C. Ct. App. filed February 11, 2010). The Remittitur was issued on April 8, 2010.

In his application for post-conviction relief and amendment, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel, in that;
 - a. "For failing to object to trial judge's erroneous instruction on "reasonable doubt" charge which is prejudicial because it is misleading and highly confusing to the jury in trying to distinguish the difference between reasonable doubt in criminal and civil proceedings."
2. "Procedural misconduct."
3. "Indictments/Subject Matter Jurisdiction."
4. "Erroneous Jury Instruction"
5. "The State's failure to give Applicant written notice of his intent to seek a life without parole sentence pursuant to § 17-25-45(H)."

Applicant proceeded forward on the following issues: Applicant was not properly served with notice of the State's intent to seek Life without Parole, ineffective assistance of counsel for failing to properly explain the State's plea offer, and ineffective assistance of counsel for advising him not to testify at trial.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from trial counsel, Marva Hardee-Thomas, Esquire (hereafter "Counsel"). This Court also had before it a copy of the Applicant's trial transcript, the records of the Dorchester County Clerk of

¹ Anders v. California, 386 U.S. 738 (1967).

Court, Applicant's records from the South Carolina Department of Corrections, and an Affidavit from prosecuting Deputy Solicitor Don Sorensen with attachments.²

During the evidentiary hearing, Applicant testified that that he was appointed Counsel to represent him for this charge. Applicant testified that he told Counsel he did not want to plea and that he wanted to proceed to trial on this charge. Applicant testified that he was not personally served with the State's Notice of Intention to Seek Life without Parole. However, Applicant testified that Counsel informed him well before the trial that the State intended to seek with without parole if he was convicted at trial and that he had actual knowledge of the possible sentence well in advance of the trial.

Additionally, Applicant testified that Counsel informed him that the State offered a plea deal of eight years consecutive to his current SCDC sentence. Specifically, Applicant testified that Counsel failed to discuss the ramifications of him going to trial for the third conviction as opposed to taking the plea deal. Applicant testified that he would have taken the plea deal had he known he could be sentenced to life without parole at trial. However, Applicant acknowledged that he was the one who insisted on going to trial, even after Counsel suggested he take the plea deal.

Furthermore, Applicant testified that he feels Counsel was ineffective because she did not allow him to testify at trial. Applicant elaborated that his side of the story was never presented at trial and the only way that was possible is if he was allowed to testify. Applicant testified that he

² Following the evidentiary hearing, Respondent moved to re-open the record to supplement the record with an Affidavit from prosecuting Deputy Solicitor Don Sorensen indicating that Applicant was properly served with "Notice of Intention to Seek a Sentence of Life without Parole" on March 22, 2007, along with attachments including the "Notice of Intention to Seek a Sentence of Life without Parole", dated March 22, 2007, docket notes from March 22, 2007 indicating that Applicant and Counsel were both personally served with the Notice on March 22, 2007, and Applicant's SCDC records indicating that he was transferred to Dorchester County for a court appearance on March 22, 2007. Applicant consented to Respondent's motion and the record was subsequently supplemented with the abovementioned documents.

was not the aggressor in the action leading to the charge, but that he was defending himself when he stabbed the victim. Applicant testified he told Counsel he wanted to testify, but Counsel told advised him not to do so because he would be impeached with his prior convictions. Applicant testified that it was his decision not to take the stand in his defense, but he only made this decision based on the advice of Counsel. However, Applicant testified he told the trial court that he did not want to testify at the trial and it was his decision not to testify.

Following Applicant's testimony, Counsel was called to testify by Applicant. Counsel testified that she was appointed three months prior to the case going to trial. Counsel testified that she informed Applicant that the State had served its Notice of Intention to Seek with Life Without Parole based on his prior convictions. Counsel testified that she had no independent recollection if Applicant was personally served with this Notice. Counsel testified that she discussed the benefits of the plea deal with Applicant. Counsel stated that she believed Applicant understood what was explained to him about the trial process. Counsel also testified she made Applicant aware of the State's intention to seek life without parole if the case went to trial. Counsel discussed with Applicant what that the case was about a simple assault and he was just trying to defend himself from an attack.

Counsel testified that she only told Applicant what would happen if he testified at trial, and that the decision to testify was his to make. Counsel testified that she thought it would be in his best interest not to testify because the State could have cross examined him on his prior convictions. She testified that the State presented the testimony of the victim and other witnesses, and Applicant's testimony would have looked bad in front of the jury in light of the previous statements. Counsel testified that she had a strategy for her not presenting any evidence, and Applicant agreed to the strategy during the trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient



performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, this Court finds that the Applicant has failed to carry his burden in this action. The Court finds that nothing in Counsel's representation fell below any reasonable professional standard. The Court hereby finds that the Applicant's decision not to testify was his own and that he understood the ramifications therefrom, including the effect that would have on his theory of the case. The Court finds that the Applicant rejected the State's plea knowingly and voluntarily and proceeded to trial of his own volition. The Court is satisfied that the Applicant was indeed served by the State with Notice of Intent to Seek Life Without Parole, pursuant to S.C. Code Ann. § 17-45-25(H), and that Applicant's trial counsel properly explained the consequences thereof. The Court finds nothing else in Counsel's representation that fell below any reasonable professional standard. Additionally, because Counsel's representation was not deficient, Applicant can show no prejudice therefrom. As such, the Court hereby denies the Applicant's Post-Conviction Relief action.

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's

failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

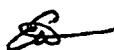
AND IT IS SO ORDERED this 1st day of November, 2013.



EDGAR W. DICKSON
Presiding Judge
First Judicial Circuit



, South Carolina



The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

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Email: cbrooks@ctbrooks.com

November 19, 2013

RECEIVED

NOV 22 2013

S.C. SUPREME COURT

South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

RE: Louis Sheppard #262090 v State of South Carolina
Case No. 2010-CP-18-2042

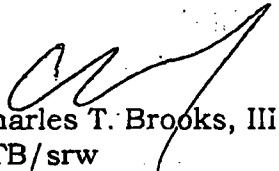
Dear Sir or Madam:

Enclosed herewith you will find the **Notice of Appeal, Order of Dismissal**, along with a **Proof of Service** in reference to the above named Applicant.

If you have any questions or concerns, please contact my office at the number stated above.

With kind regards, I am

Sincerely,


Charles T. Brooks, III
CTB/srw

Enclosed as stated

Cc: Robert D. Corney, Office of Attorney's General
South Carolina Office of Appellate Defense
Louis Sheppard, 262090

WITNESSES

Powell, Merv

SCDC

ARREST WARRANT NUMBER

K053850

Arrested: Feb 16, 2006

**ACTING GRAND JURY
ROSEBELL****DATE**

4/13/06

Foreperson of Grand Jury

Date: April 13, 2006

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006GS18-0767**The State of South Carolina**

County of

DORCHESTER**COURT OF GENERAL SESSIONS****April 17, 2006 TERM****THE STATE**

vs.

Louis Sheppard**Indictment for****ASSAULT AND BATTERY WITH INTENT
TO KILL**

SC Code: 16-3-620

CDR Code: 0014

Class: FEL-C

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

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RECORDED
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

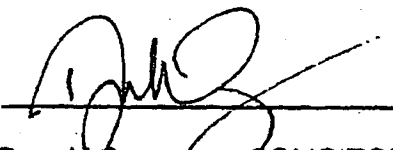
INDICTMENT
2006GS18-0767

At a Court of General Sessions, convened on April 17, 2006 the Grand Jurors of
Dorchester County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

The defendant, Louis Sheppard, did in Dorchester County on or about October 10, 2005, with malice aforethought did commit an assault and battery upon the victim, James Holmes, by stabbing him several times on his body. This offense being a violation of Section 16-3-620 of the South Carolina Code of Laws, as amended.

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



Donald Sorenson, SOLICITOR