

VOLUME TWO OF TWO

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

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HAROLD JAMAR WILSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000871

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APPENDIX

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HEARING

498

1 BETWEEN US.

2 Q: HOW CLOSE DID YOU GET TO HIM?

3 A: HO, HO, HO, HO. YOU NEED TO STEP BACK. STEP BACK. ABOUT  
4 TWO ... I'D SAY JUST THOSE LITTLE TWO ...

5 THE COURT: SPEAK UP.

6 A: PLEASE TAKE ONE OR TWO STEPS BACK. HO, HO, HO. COME ON  
7 ... HO ... ROUND RIGHT UP IN ... GO AHEAD AND STEP ANOTHER  
8 STEP BACK. STEP ANOTHER STEP BACK. RIGHT UP IN THERE.

9 Q: ABOUT FIVE OR SIX FEET AWAY?

10 A: YES, SIR.

11 Q: SO YOU MOVED UP FROM BACK THERE UP THIS CLOSE TO HIM  
12 WITH A GUN OUT.

13 A: YES, SIR.

14 Q: AND YOU WERE TRYING TO GET TO THE GUN.

15 A: IN WHICH MANNER?

16 Q: I THOUGHT YOU SAID YOU WERE GONNA KEEP HIM FROM  
17 SHOOTING.

18 A: YEAH, BUT I'M SAYING WHICH MANNER. LIKE YOU SAY FROM  
19 TAKING HIS GUN TO PREVENT HIM FROM STOPPING ...

20 Q: I'M ASKING YOU THE QUESTIONS. YOU ... YOU JUST GIVE US  
21 YOUR ANSWERS.

22 A: YES, SIR.

23 Q: AND WHEN YOU CAME UP TOWARD HIM YOU WERE TRYING TO  
24 STOP HIM FROM SHOOTING, IS THAT YOUR TESTIMONY?

25 A: YES, SIR.

HEARING

499

1 Q: AND WHEN DID YOU GET YOUR GUN OUT?

2 A: WHEN THE BOYS START SHOOTING AND I'M RUNNING, GOING  
3 THROUGH THE ... THROUGH THE GRAVEYARD.

4 Q: YOU WERE JUST SHOOTING ALL OVER EVERYWHERE.

5 A: NO, SIR, I AIN'T NEVER HAD TWO. I HAD ONE IN THE CHAMBER  
6 AND ONE IN ... ONE IN THE HEAD AND ONE IN THE CLIP. SO I  
7 COULDN'T ...

8 Q: HOW MANY SHOTS WERE THERE OUT THERE THAT NIGHT OR  
9 THAT DAY?

10 A: YOU MEAN LIKE HOW MANY SHOTS WERE FIRED?

11 Q: YEAH.

12 A: I CAN'T GIVE YOU ... I CAN'T ANSWER THAT, ESTIMATE RIGHT  
13 BUT TO GIVE YOU THE RIGHT AMOUNT. BUT IT BEEN A LOT OF  
14 SHOTS FIRED.

15 Q: A LOT?

16 A: YES, SIR.

17 Q: IT SOUNDED LIKE WORLD WAR TWO OUT THERE, DIDN'T IT?

18 A: IT SOUNDED ... SHOTS COMING, BULLETS PASSING MY HEAD.

19 Q: AND WHO ALL HAD A GUN?

20 A: ALL OF US HAD A GUN BUT AIN'T NOTHING BUT THREE OF US  
21 HAD GUNS OUT THAT DAY. LIKE WE ALL ... EVERYBODY HAD  
22 GUNS ON THEM BUT WHO ALL HAS THEIR GUNS OUT LIKE FOR  
23 BE SHOOTING, THREE OF US THAT WAS SHOOTING.

24 Q: WHO DID THE SHOOTING?

25 A: ME, TREZ AND REESE.

THIRD JUDICIAL CIRCUIT

HEARING

500

- 1 Q: NOW, HERBERT BUTLER NEVER HAD A GUN, DID HE?
- 2 A: DID HE HAD A GUN?
- 3 Q: LINWOOD BUTLER, THAT FELLOW SEATED OVER THERE IN THE
- 4 MIDDLE WITH THE GRAY COAT ON ... STAND UP, BUTLER ...
- 5 A: I KNOW, I KNOW HIM. I KNOW HIM.
- 6 Q: YOU CAN SIT DOWN. HE DIDN'T HAVE A GUN, DID HE?
- 7 A: I AIN'T KNOW IF HE HAD A GUN IN HIS PRESENCE BUT I KNOW HE
- 8 HAVE A GUN.
- 9 Q: BUT YOU DIDN'T SEE ONE ON HIM THAT DAY, DID YOU?
- 10 A: NO, SIR.
- 11 Q: AND D.L. ... STAND UP, D.L. ... YOU CAN SIT DOWN. HE DIDN'T
- 12 HAVE A GUN, DID HE?
- 13 A: NO, SIR, NOT TO MY KNOWLEDGE. BUT I ... I CAN'T ...
- 14 Q: YOU DIDN'T SEE A GUN ON HIM, DID YOU?
- 15 A: I AIN'T SEE THE GUN, NO BUT I CAN'T SAY DID HE HAD NONE OR
- 16 DIDN'T HAD NONE.
- 17 Q: LITTLE REGGIE. LITTLE REGGIE DIDN'T HAVE A GUN, DID HE?
- 18 A: YES, SIR.
- 19 Q: LITTLE REGGIE ... LITTLE REGGIE DIDN'T SHOW YOU A GUN, DID
- 20 HE?
- 21 A: YES, SIR.
- 22 Q: YOU'RE SAYING HE DID?
- 23 A: YES, SIR.
- 24 Q: WERE YOU SCARED LITTLE REGGIE WAS GOING TO SHOOT YOU?
- 25 A: I BE SCARED ... NO, I AIN'T BEEN SCARED LITTLE REGGIE SHOOT

1 ME, THAT MY MAN. AIN'T NO REASON FOR HIM TO TRY TO  
2 SHOOT ME. I AIN'T NEVER DID ANYTHING TO CAUSE ANY  
3 PHYSICAL HARM TO HIM.

4 Q: DID LITTLE REGGIE SHOOT A GUN?

5 A: NO, SIR.

6 Q: HE DIDN'T SHOOT A GUN?

7 A: NO, SIR.

8 Q: AND YOU WASN'T SCARED OF HIM?

9 A: NO, SIR.

10 Q: WASN'T ANY NEED TO KILL HIM?

11 A: NO, SIR. AIN'T NO NEED. I'M A MAN. I AIN'T GONNA KILL  
12 SOMEBODY ...

13 Q: YOU WERE ALL SMOKED UP ON COCAINE.

14 A: COKE. I AIN'T HAD ... I AIN'T HAD THAT MUCH, I SAY I DID  
15 AROUND ABOUT ... I HAD AROUND ABOUT A ONE ON ONE OR  
16 SOMETHING BUT ...

17 Q: ONE AND WHAT?

18 A: A ONE ON ONE.

19 Q: WHAT IS A ONE ON ONE?

20 A: ONE IN EACH NOSE LIKE A LITTLE BIT AMOUNT IN EACH NOSE.

21 Q: LITTLE BIT IN EACH NOSTRIL?

22 A: YES, SIR.

23 Q: BUT YOU WERE HIGH ON IT.

24 A: NO, SIR, I AIN'T BEEN HIGH. I BEEN MELLOW. I AIN'T BEEN HIGH.

25 Q: MELLOW.

HEARING

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- 1 A: YES, SIR.
- 2 Q: THE TRUTH OF THE MATTER IS YOU JUST WENT CRAZY OUT  
3 THERE AND STARTED TRYING TO SHOOT THESE FELLOWS,  
4 DIDN'T YOU?
- 5 A: NO, SIR.
- 6 Q: AND ... AND YOU WERE THERE PLOTTING TO ROB THEM,  
7 WEREN'T YOU?
- 8 A: NO, SIR.
- 9 Q: YOU WERE GONNA TAKE WHAT REESE HAD.
- 10 A: NO, SIR. IF I CAN SAY SOMETHING?
- 11 THE COURT: NO, SIR.
- 12 A: OH.
- 13 Q: NOW, WHEN YOU WERE DOWN THERE AT THE JAIL, TALKING TO  
14 MR. BRANNON, HE TOLD YOU ABOUT YOUR MIRANDA RIGHTS,  
15 DIDN'T HE?
- 16 A: YES, SIR.
- 17 Q: YOU KNOW YOUR MIRANDA RIGHTS, DON'T YOU?
- 18 A: NOW I KNOW THEM.
- 19 Q: NOW YOU KNOW THEM?
- 20 A: YES, SIR.
- 21 Q: AND THIS FORM HERE, STATE'S EXHIBIT NUMBER 31, DOWN  
22 THERE AT THE BOTTOM THERE IN THE RIGHT HAND CORNER,  
23 THAT'S YOUR SIGNATURE, ISN'T IT?
- 24 A: YES, SIR.
- 25 Q: YOU SIGNED THAT FORM ...

- 1 A: YES, SIR.
- 2 Q: ... AFTER HE GAVE YOU MIRANDA RIGHTS.
- 3 A: AFTER ... I SIGNED THAT FORM AFTER I HAD DID MY STATEMENT.
- 4 BUT HE ... WELL, I SIGNED IT AFTER HE READ THAT TO ME,
- 5 THOUGH.
- 6 Q: AFTER HE READ THIS TO YOU ...
- 7 A: YES, SIR.
- 8 Q: ... YOU SIGNED.
- 9 A: YES, SIR.
- 10 Q: YOU INDICATED TO HIM THAT YOU WOULD BE ... YOU WANTED
- 11 TO SEND LITTLE REGGIE'S MAMA A MESSAGE, HER NAME IS MS.
- 12 CLARK, ISN'T IT?
- 13 A: YES, SIR.
- 14 Q: AND YOU TOLD HIM YOU WANTED TO WRITE IT OUT.
- 15 A: NO, SIR. IT WASN'T WRITE IT OUT.
- 16 Q: WRITE ... WRITE MS. ... MS. FOSTER A MESSAGE.
- 17 A: TALKING ABOUT DELIVER A MESSAGE THROUGH BECAUSE I HAD
- 18 WANT HIM TO DELIVER A MESSAGE THROUGH.
- 19 Q: AND YOU ... AND YOU WROTE IT DOWN ON THESE FORMS RIGHT
- 20 HERE. THAT'S YOUR HANDWRITING, ISN'T IT?
- 21 A: YES, SIR.
- 22 Q: AND SHOW US MS. ... MS. ... MS. CLARK, REGGIE FOSTER'S
- 23 MOTHER.
- 24 A: RIGHT THERE BEHIND DETECTIVE HOLSTON.
- 25 Q: STAND UP, MA'AM. IS THAT ... IS THAT LITTLE REGGIE'S MAMA?

HEARING

504

1 A: YES, SIR.

2 Q: THANK YOU, MA'AM. AND YOU WERE WRITING THIS MESSAGE  
3 TO HER?

4 A: SIR?

5 Q: THIS ... THIS STATEMENT HERE THAT YOU GAVE, YOU WERE  
6 WRITING TO HER?

7 A: I ... DETECTIVE SAID I COULDN'T GIVE IT TO HER BECAUSE IT HAD  
8 TO GO TO THE FILE.

9 THE COURT: WHAT?

10 A: DETECTIVE SAID I COULDN'T GIVE IT TO THEM BECAUSE IT HAD  
11 TO GO IN THE FILE. SO HE JUST SAY TO PUT THAT DOWN BUT I ...  
12 CAUSE I WANTED TO SPEAK WITH HER.

13 Q: YOU PUT IT DOWN ON THIS FORM.

14 A: YES, SIR.

15 Q: AND YOU SAID, "ME AND MY MAN, TREZ, WAS ON CARVER  
16 PLOTTING TO ROB REESE'S FOR DRUGS AND HIS GUN."

17 A: I PUT THAT DOWN AFTER THE DETECTIVE TELL ME TO PUT THAT  
18 DOWN.

19 Q: AND THEN YOU SAID, "WHEN I REACHED FOR THE GUN REESE  
20 JUST STARTED BUSTING HIS GUN. ON THE SECOND SHOT I SAW  
21 LITTLE REGGIE FALL" AND THEN YOU SAY YOU SAW LITTLE  
22 REGGIE SHOT AND FALL ON THE FIRST SHOT.

23 A: YES, SIR.

24 Q: "THEN I STARTED BUSTING. I SHOT AT LEAST TWICE. LITTLE  
25 REGGIE NEVER GOT BACK UP." THAT WHAT YOU SAID?

1 A: YES, SIR.

2 Q: AFTER... AFTER HE NEVER GOT BACK UP RIGHT AFTER HE FELL.  
3 I KNOW FOR A FACT THAT REESE SHOT LITTLE REGGIE. IS THAT  
4 YOUR STORY?

5 A: THAT'S A STORY. I KNOW FOR A FACT HE SHOT HIM.

6 Q: "I'M SORRY THAT MY MAN HAD TO GET KILLED IN MY STUPID  
7 PLACE."

8 A: YES, SIR, I PUT THAT ON THERE.

9 Q: THAT'S WHAT YOU PUT ON THERE?

10 A: YES, DOWN THERE WHERE MY DESCRIPTION GO.

11 Q: IF THERE'S ANYTHING THAT I CAN HELP I WILL, I'D LIKE TO HELP  
12 MS. FOSTER WITH MY LITTLE HOME BOY'S FUNERAL

13 A: YES, SIR, BECAUSE THE DETECTIVE TELL ME THAT THEY BEEN  
14 LIKE TRYING ...

15 THE COURT: SPEAK UP, PLEASE, SIR.

16 A: THE DETECTIVE TELL ME THAT THEY WAS TRYING TO GATHER  
17 MONEY FOR LITTLE REGGIE'S FUNERAL SO WE SAY, YOU KNOW,  
18 YOU GOT TO REMEMBER I CAME BACK AND THEY SAID TO ME  
19 GO AHEAD, THAT'S YOUR LITTLE HOME BOY, GO AHEAD AND  
20 WRITE DUDE AND SAY YOU WANT TO GIVE MS. CLARK SOME  
21 MONEY TO HELP LITTLE REGGIE FOR YOUR FUNERAL. BEING  
22 THE MAN THAT MY LITTLE HOME BOY I AIN'T WANT THE PEOPLE  
23 GO THROUGH ALL THAT STRESS TO TRY ... TRYING TO HAVE A  
24 FUNERAL AND I'M LIKE YEAH, I'LL DONATE THEM SOME MONEY.  
25 THAT'S MY MAN. HE CAN GET IT.

HEARING

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- 1 Q: THEN YOU SAID, "MS. CLARK, I'M GUILTY FOR ACCESSORY OF  
2 LITTLE REGGIE'S DEATH BECAUSE IF I WASN'T TRYING TO ROB  
3 HE WOULD STILL BE HERE ON THE EARTH TODAY."
- 4 A: YES, SIR, I SAY THAT. BUT ALL THAT WAS ... BUT ALL THAT  
5 WASN'T IN MY DISCRESTION, THOUGH.
- 6 Q: YOU WROTE THIS DOWN. THIS IS YOUR HANDWRITING.
- 7 A: YES, SIR, BECAUSE ... CAUSE DETECTIVE BRANNON SAY HE  
8 COULDN'T WRITE IT DOWN CAUSE IT WOULD HAVE BEEN  
9 FRIVOLOUS SO I HAD TO WRITE IT DOWN. THAT WHY I WRITE IT  
10 DOWN CAUSE HE SAY IT WOULD HAVE BEEN FRIVOLOUS.
- 11 Q: AND YOU COULD WRITE DOWN ANYTHING YOU WANT TO ON  
12 THIS PAPER, COULDN'T YOU? AND YOU WROTE DOWN THERE ...
- 13 A: I ... I WRITE THAT DOWN FAR AS ...
- 14 Q: ... IS THAT YOU WERE GUILTY IN HIS DEATH BECAUSE IF I  
15 WASN'T TRYING TO ROB HE WOULD STILL BE HERE ON THE  
16 EARTH TODAY. AND THAT'S THE TRUTH, ISN'T IT? IF YOU  
17 HADN'T BEEN OVER THERE TRYING TO ROB AND IF YOU HADN'T  
18 OF HAD THAT GUN WITH YOU HE WOULD STILL BE ALIVE,  
19 WOULDN'T HE?
- 20 A: NO, SIR. HE ... IF I ... IF I AIN'T ... IF I WOULDN'T SHOOT I DON'T  
21 KNOW. BUT I AIN'T BEEN TRYING TO ROB NOBODY THAT'S THE  
22 THING ABOUT IT.
- 23 Q: NOW, ... NOW, WHEN YOU WERE FIRST BROUGHT IN THERE THAT  
24 NIGHT YOU ... YOU TALKED TO MR. HOLSTON OR LIEUTENANT  
25 HOLSTON AND MS. RABON, DIDN'T YOU?

- 1 A: YES, SIR.
- 2 Q: AND YOU ALL TALKED IN MR. HOLSTON'S OFFICE.
- 3 A: I AIN'T KNOW WHO'S OFFICE WE BEEN IN BUT I KNOW WE
- 4 TALKED.
- 5 Q: AND ... AND THEY READ YOU YOUR MIRANDA RIGHTS, TOO,
- 6 DIDN'T THEY?
- 7 A: AFTER I.. AFTER EVERYTHING BEEN OVER.
- 8 Q: AND THIS FORM HERE THIS IS STATE'S EXHIBIT NUMBER 33, YOU
- 9 SIGNED THAT, DIDN'T YOU?
- 10 A: YES, SIR.
- 11 Q: THAT'S YOUR SIGNATURE DOWN THERE ...
- 12 A: YES, SIR.
- 13 Q: ... IN THE RIGHT HAND CORNER?
- 14 A: LIKE AN X BUT THAT WHITEOUT DON'T RIGHT ...
- 15 THE COURT: SPEAK UP, PLEASE, SIR.
- 16 Q: HOW ABOUT THAT SIGNATURE DOWN THERE IN THE CORNER, IS
- 17 THAT YOURS?
- 18 A: THAT'S MINE BUT ... I WANT TO KNOW WHAT NAME YOU
- 19 SCRATCHED OUT THERE RIGHT THERE THAT WHITEOUT
- 20 COVERING UP RIGHT THERE.
- 21 Q: IT LOOKS LIKE MS. RABON WROTE HERS IN THERE.
- 22 A: YEAH, SHE LOOK ... YEAH, SHE ... HER NAME ... HER NAME RIGHT
- 23 THERE BUT I'M CONCERNED ABOUT ...
- 24 THE COURT: ANSWER THE QUESTION, PLEASE, SIR.
- 25 Q: YOUR ... YOU SIGNED IT. THEY READ YOU YOUR RIGHTS, DIDN'T

HEARING

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- 1           THEY?
- 2       A:    YES, SIR, BUT AFTER ... AFTER EVERYTHING ...
- 3           THE COURT: SPEAK UP.
- 4       A:    AFTER EVERYTHING DONE.
- 5       Q:    AND YOU GAVE THEM A STATEMENT, DIDN'T YOU?
- 6       A:    YES, SIR.
- 7       Q:    AND THIS ... AND YOU SIGNED THIS FORM RIGHT DOWN HERE ON
- 8           THE LEFT HAND SIDE RIGHT THERE.
- 9       A:    YES, SIR.
- 10      Q:    THAT'S YOUR SIGNATURE.
- 11      A:    NO, SIR.
- 12      Q:    AND IN THAT STATEMENT YOU SAID THAT YOU WERE TRYING
- 13           TO KILL REESE, DIDN'T YOU?
- 14      A:    DID I SAY I WAS TRYING TO KILL REESE?
- 15      Q:    YES.
- 16      A:    YES, SIR.
- 17      Q:    YOU DID SAY YOU WERE TRYING TO SHOOT REESE. YOU WERE
- 18           TRYING TO KILL REESE, WEREN'T YOU?
- 19      A:    BUT AFTER THE INCIDENT OR BEFORE THE INCIDENT?
- 20      Q:    YOU SAID IN THIS STATEMENT THAT ... THAT I'VE BEEN TRYING
- 21           TO KILL REESE WHEN I SEEN LITTLE REGGIE FALL.
- 22      A:    YEAH, THAT WHAT THAT STATEMENT GOT, SIR.
- 23      Q:    THAT'S WHAT YOU SAID?
- 24      A:    YES, SIR.
- 25      Q:    BUT NOW TODAY YOU SAY YOU WERE JUST GOING ON LIKE

- 1           THIS, JUST SHOOTING U[ IN THE AIR, BUSTING YOUR GUN OFF.
- 2       A:     I AIN'T ... IT AIN'T SAY I BEEN WAIVING IT ALL LIKE THAT.
- 3       Q:     BUT YOU WERE SHOOTING AT REESE, WEREN'T YOU?
- 4       A:     NO, SIR.
- 5       Q:     AND YOU HIT LITTLE REGGIE ...
- 6       A:     NO, SIR.
- 7       Q:     AND YOU WANT TO THROW TREZ IN THERE, TOO, DON'T YOU?
- 8       A:     TREZ ... TREZ IN THERE?
- 9       Q:     YOU ... YOU PUT ... THE LAST SENTENCE IN HERE YOU SAY AFTER
- 10            THINKING ABOUT THINGS I KNOW I SHOT DADDY RABBIT,
- 11            LINWOOD BUTLER.
- 12       A:     YES, SIR.
- 13       Q:     REESE OR TREZ SHOT REGGIE.
- 14       A:     YES, SIR.
- 15       Q:     SO YOU'RE TRYING TO LAY IT EITHER ON REESE OR TREZ.
- 16       A:     I AIN'T BEEN TRYING TO LAY ON REESE OR TREZ.
- 17       Q:     AND ... AND ... AND LET ME ASK YOU ONE OTHER THING ...
- 18       A:     YES, SIR.
- 19       Q:     ... LET ME GET BACK HERE TO LINWOOD BUTLER.
- 20       A:     YES, SIR.
- 21       Q:     YOU JUST TOLD ME A FEW MINUTES AGO, DIDN'T YOU THAT YOU
- 22            DIDN'T SEE A GUN ON LINWOOD BUTLER.
- 23       A:     YES, SIR.
- 24       Q:     THAT'S WHAT YOU SAID ...
- 25       A:     YES, SIR.

HEARING

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- 1 Q: YOU HAD NO REASON TO SHOOT LINWOOD BUTLER.
- 2 A: NO, SIR.
- 3 Q: BUT YOU SHOT HIM.
- 4 A: NO, SIR.
- 5 Q: YOU WOULD HAVE KILLED EVERYONE OF THEM IF THEY HADN'T
- 6 ALL BEEN RUNNING.
- 7 A: NO, SIR. IF I WOULD HAVE PULLED MY GUN OUT AND START
- 8 SHOOTING EVERYBODY SEE, WHERE EVERYBODY BEEN IN THE
- 9 GROUP EVERYBODY WOULDN'T BE HERE.
- 10 Q: EVERYBODY WOULD BE WHAT?
- 11 A: EVERYBODY WOULD HAVE BEEN SHOT. AND THEN THEY SAY
- 12 I'M WAIVING THE GUN AND SHOOTING, EVERYBODY WOULD
- 13 HAVE BE SHOT AT ... AT ... AT THE ... THE --- THEY SAY I WAS
- 14 POINTING THE GUN TO THE VETERANS, ALL OF THEM BE SHOT.
- 15 Q: YOU AND TREZ WERE TALKING ABOUT ROBBING REESE, ISN'T
- 16 THAT WHAT ... THAT'S WHAT THIS WAS ALL ABOUT. THAT'S WHY
- 17 YOU ALL WENT OVER THERE, WASN'T IT?
- 18 A: NO, SIR. WE WENT OVER THERE TO COP SOME REEFER.
- 19 Q: WELL, IN THIS STATEMENT DIDN'T YOU SAY RIGHT IN THE FIRST
- 20 PARAGRAPH THERE IF YOU WANT TO READ IT SAID, "TREZ WAS
- 21 TALKING ABOUT ROBBING FOR WHAT THE WEIGHT MAN WAS
- 22 BRINGING. I WAS TELLING TREZ TO CHILL OUT.
- 23 A: BUT ...
- 24 Q: AND IN THE OTHER STATEMENT YOU SAY THAT YOU ALL WERE
- 25 PLOTTING TO ROB HIM.

1 A: YES, SIR.

2 Q: AND THAT NONE OF IT WOULD HAVE HAPPENED IF YOU ALL  
3 HADN'T BEEN THERE TRYING TO ROB HIM.

4 A: I DIDN'T BE TRYING TO ROB HIM, THAT THE THING ABOUT IT.  
5 SEE THE DETECTIVES TELL ME I HAD TO SAY WE WERE TRYING  
6 TO ROB HIM BEFORE EVERYTHING WOULD HAVE WENT  
7 THROUGH BECAUSE THAT BEEN THE MOTIVE OF THE CRIME  
8 THEY WAS SAYING AT THE TIME SO I GAVE A STATEMENT BUT  
9 THE OFFICERS TELLING ME BUT I AIN'T TRYING TO ROB NOBODY.  
10 BUT MY STATEMENT ALSO SAY WE WENT OVER THERE TO GET  
11 SOME REEFER.

12 Q: NOW TELL US ABOUT THIS GANG. IS THE CRYPTS OR THE FOLKS  
13 OR IS THAT TWO DIFFERENT ORGANIZATIONS?

14 A: WELL, EVERYTHING START IT WAS BUT SINCE THE EIGHT BALL,  
15 THEY FORM THE EIGHT BALL THE CRYPTS AND THE FOLKS THEY  
16 COMBINE AS ONE NATION.

17 Q: SO THE CRYPTS AND THE FOLKS ARE ALL IN ONE GROUP?

18 A: YES, SIR. AND YOU A CRYPTS OR A FOLK OR ARE YOU A PART OF  
19 THE WHOLE GROUP?

20 A: WELL, YOU CAN SAY I'M A FRIEND.

21 Q: A FRIEND?

22 A: YES, SIR.

23 Q: BUT YOU WEREN'T ANY FRIENDS OF DADDY RABBIT AND D.L.  
24 AND REESE, WERE YOU?

25 A: I BEEN FRIENDS WITH THEM BECAUSE EVERY DAY BEEN JUST TO

HEARING

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1 CHILL AND SMOKE REEFER AND GET HIGH.

2 Q: AND YOU'RE NOT ANY FRIEND WITH LITTLE REGGIE, ARE YOU?

3 A: I BEEN A FRIEND OF LITTLE REGGIE BECAUSE EVERY DAY I USE  
4 TO COME GET LITTLE REGGIE FROM SCHOOL AND GIVE HIM  
5 MONEY AND BEFORE ... IT HAPPENED ON MOTHER'S DAY ME AND  
6 LITTLE REGGIE WAS IN MY HOUSE LOOKING AT TELEVISION  
7 SMOKING REEFER. SO THAT HAD TO BEEN MY FRIEND.

8 Q: AND WHEN IT WAS ALL OVER WITH YOU DIDN'T HANG AROUND  
9 AND TALK WITH THE POLICE, DID YOU?

10 A: AT THE SCENE? NO, SIR, WHEN I TALKED TO THE ... THE  
11 OFFICERS WHEN THEY HAD CAME AND ARREST ME.

12 Q: WHEN THEY ARRESTED, THEY HAD TO LOOK FOR YOU, DIDN'T  
13 YOU?

14 A: YES, SIR.

15 Q: YOU DIDN'T EVEN GO HOME TO YOUR OWN HOUSE, DID YOU?

16 A: YES, SIR.

17 Q: YOU WENT TO SOMEBODY ELSE'S HOUSE, DIDN'T YOU?

18 A: I WENT TO MY HOUSE. MY AUNT'S AND ALL TELLING ME DON'T  
19 COME TO HER HOUSE BECAUSE THEM BOYS CAME THERE WITH  
20 GUNS, SHE SAID SHE DIDN'T WANT TO BE NO SHOOTING SO I  
21 BEEN LIKE, I'M STRAIGHT, I'M STRAIGHT.

22 Q: INSTEAD OF GOING HOME WHERE YOU USUALLY STAY,  
23 YOU WERE AT ANOTHER ADDRESS, WEREN'T YOU?

24 A: I WENT AT ... I WAS AT AND I ALSO STAY AT  
25 STREET BECAUSE MY AUNT, SHE ALSO HAD

1 HAD ADOPTED ME. SO I'M STAYING THERE, TOO. I HAD A ROOM  
2 THERE AND MY ROOM BEEN A ROOM THAT THEY ARRESTED ME  
3 IN.

4 Q: YOU WENT TO AND THEN YOU LEFT  
5 AND WENT OVER TO THIS SALEM STREET ADDRESS, DIDN'T YOU?

6 A: YES, SIR.

7 Q: YOU DIDN'T HANG AROUND THERE AND TALK TO THE POLICE  
8 AND GIVE A STATEMENT LIKE THESE OTHER GUYS DID, DID  
9 YOU?

10 A: NO, SIR. I AIN'T GONNA STAND THERE WHEN BULLETS COMING,  
11 AIN'T GONNA STAND THERE AND TAKE A BREAK.

12 Q: I'M SORRY, I CAN'T UNDERSTAND.

13 A: I SAID I AIN'T GONNA STAND THERE TIL THE POLICE COME  
14 BECAUSE I BEEN RUNNING OUT GETTING OUT OF DODGE. IN  
15 AIN'T ABOUT TO STAND THERE AND SEE ... UH-UH (NEGATIVE  
16 RESPONSE).

17 Q: IN OTHER WORDS, WHEN YOU'VE DONE WRONG THE BEST THING  
18 TO-DO IS RUN, IS THAT YOUR PHILOSOPHY?

19 A: NO, SIR. ANY MAN THAT IN TROUBLE THAT SCARED FOR THEIR  
20 LIFE, THEY'LL RUN. IF SOMEBODY GONNA STAND THERE AND  
21 THEY KNOW THEIR LIFE IN DANGER, HE AIN'T GONNA PANIC NO  
22 MORE TRYING TO GET OUT OF DODGE THEN THEY'RE A FOOL.

23 Q: WHO HAD THIS CONTRACT ON YOU?

24 A: WHO HAD A CONTRACT ON ME?

25 Q: YEAH.

HEARING

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- 1 A: FROM MY KNOWLEDGE IT BEEN THAT GENTLEMAN BACK  
2 THERE NAME DREAD WHO EVERYBODY ON CARVER STREET  
3 AND IN THE PROJECTS SELL DOPE FOR. THAT THE GENTLEMAN  
4 BACK THERE WITH THE DREADS.
- 5 Q: SO YOU WERE OVER THERE ... YOU THOUGHT THEY HAD A  
6 CONTRACT ON YOU?
- 7 A: MY ... I ... I KNOW HE HAD A CON ... THEY TELL ME HE HAD A  
8 CONTRACT ON ME BUT I AIN'T HAD KNOWED UNTIL THEY  
9 KILLED MY GIRL.
- 10 Q: SO YOU WENT ON OVER THERE SMOKING DOPE, SMOKING ...  
11 SNORTING COCAINE ACCORDING TO YOUR OWN STORY ...
- 12 A: YES, SIR, YES, SIR. YEAH.
- 13 Q: ... AND YOU ... THAT'S YOUR OWN WORD.
- 14 A: YES, SIR.
- 15 Q: EVEN THOUGH YOU KNEW THERE WAS A CONTRACT OUT ON  
16 YOU.
- 17 A: I JUST NOW SAID I AIN'T KNOW THEY HAD A CONTRACT ... I JUST  
18 THEY WERE TELLING ME A CONTRACT ON ME BUT I AIN'T KNOW  
19 THEY HAD A CONTRACT ON ME CAUSE DREAD, HE'S A NICE  
20 DUDE IN MY KNOWLEDGE. HE A NICE DUDE. YOU KNOW, HE  
21 TAUGHT THE KID IN THE NEIGHBORHOOD, AROUND THE SCENE,  
22 ENLIGHTENING THEM ON STUFF LIKE KNOWLEDGE BUT ... BUT  
23 WHEN MY GIRL GOT KILLED THEN THEY BEEN LIKE DREAD DID  
24 IT AND I'M LIKE OH, MAN. THEN THAT BE TRUE HE HAD A  
25 CONTRACT OVER MY HEAD AND THEN ... THEN THEY SAY THEY

1 HAD A CONTRACT ON TREZ HEAD TOO. THEN WE HAD TO TELL  
2 TREZ AND THEM BOYS OVER THERE HAD CONTRACTS ON OUR  
3 HEAD. AND THEN WHEN THE CONTRACT STILL WAS ON TREZ  
4 HEAD WHEN TREZ HAD GOT OUT O F JUVENILE JUSTICE, THEY  
5 HAD SHOT AT TREZ, A LITTLE SIDE SCOOP AT HARMONY COURT  
6 AND HE WENT IN FRIENDSHIP AND WAS SHOOTING AT TREZ.  
7 AND THEY HAD TAKEN TREZ BACK TO JUVENILE JUSTICE IN  
8 PROTECTIVE CUSTODY.

9 Q: AND WHEN ... WHEN THE POLICE ARRESTED YOU THAT NIGHT  
10 THE ... THE WHITE ESCALADE WAS PARKED IN THE YARD,  
11 WASN'T IT?

12 A: YES, SIR.

13 MR. CONNER: I HAVE NOTHING FURTHER AT THIS POINT,  
14 YOUR HONOR.

15 THE COURT: REDIRECT, MR. BLACKMON?

16 MR. WILSON - REDIRECT EXAMINATION BY MR. BLACKMON:

17 Q: SO YOU PREVIOUSLY TOLD MR. CONNER YOU HAD ONE BULLET  
18 IN THE CLIP AND ...

19 A: AND ONE IN ...

20 Q: ... YOU SAID I BELIEVE YOU HAD ONE IN THE CHAMBER.

21 A: ONE IN THE CLIP, YES, SIR.

22 Q: SO YOU HAD A TOTAL OF TWO BULLETS ALL TOGETHER?

23 A: YES, SIR.

24 MR. CONNER: YOUR HONOR, I OBJECT TO HIM LEADING.

25 THE COURT: YES, SIR, YOUR WITNESS, MR. BLACKMON.

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1 MR. BLACKMON: YES, SIR.

2 THE COURT: THE OBJECTION IS SUSTAINED.

3 Q: SO HOW ANY BULLETS DID YOU HAVE THEN?

4 A: I HAD A TOTAL OF TWO. ONE IN THE CLIP AND ONE IN THE  
5 CHAMBER, THE HEAD WITH IT, HOW YOU ALL WANT TO PUT IT.

6 Q: OKAY. AND HOW MANY OF THOSE TWO DID YOU SHOOT?

7 A: FIRE OFF BOTH OF THEM.

8 Q: OKAY. AT ANY TIME DID YOU TALK TO REESE OR ANYBODY  
9 ELSE ABOUT PLANNING TO SHOOT ANYBODY ON MAY 19<sup>TH</sup> OF  
10 2003?

11 A: NO, SIR.

12 Q: DID YOU ... AT WHAT POINT DID YOU TELL REESE TO PULL OUT  
13 HIS GUN AND START SHOOTING?

14 A: NO, SIR, I AIN'T GONNA TELL HIM TO PULL A GUN AND START  
15 SHOOTING. ALL US HAVING A GOOD TIME.

16 Q: AT WHAT POINT DID YOU TELL TREZ TO PULL A GUN AND START  
17 SHOOTING?

18 A: I AIN'T NEVER TELL TREZ TO PULL OUT A GUN AND START  
19 SHOOTING.

20 Q: WHEN ON MAY 19<sup>TH</sup> OR ANY OTHER DAY DID YOU AND TREZ  
21 PLAN TO DO ANY SHOOTING ON CARVER STREET?

22 A: NONE. AND WE ... AND MY KNOWLEDGE IF I WAS GONNA ROB  
23 REESE AND THEM BOY WHEN I SEE ALL OF THEM FROM THAT  
24 PEOPLE STORE GETTING HOTDOGS AND WATER AND ALL THAT  
25 WE DONE CHILLING OUT THE BACK OF THE PROJECTS ALL THAT

1 DAY I WOULD HAVE ROBBED THEM BOYS THEN BACK OF THE  
2 PROJECTS AT THE PEOPLE'S STORE WHEN WE SITTING DOWN  
3 EATING HOTDOGS, SHAKING EACH OTHER HAND AND LAUGHING  
4 AND I AIN'T LYING CAUSE REESE HAS GOT THAT ON HIS  
5 STATEMENT.

6 MR. BLACKMON: NOTHING FURTHER.

7 THE COURT: REDIRECT OR RECROSS?

8 MR. CONNER: I HAVE NOTHING, YOUR HONOR.

9 THE COURT: ALL RIGHT. THANK YOU, SIR, YOU MAY STEP  
10 DOWN. ALL RIGHT, MR. BLACKMON, YOU MAY CALL YOUR NEXT  
11 WITNESS.

12 MR. BLACKMON: THAT WILL BE ALL, YOUR HONOR.

13 THE COURT: ALL RIGHT. DEFENSE RESTS. ANYTHING IN  
14 REPLY, MR. CONNER?

15 MR. CONNER: NOTHING IN REPLY, YOUR HONOR.

16 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE  
17 JURY, EXCUSE ME, I'M GONNA ASK YOU TO GO TO YOUR JURY ROOM  
18 FOR JUST A MINUTE. I'VE GOT TO TALK WITH THE LAWYERS BOTH  
19 ABOUT SOME SCHEDULING PROBLEMS AND SOME ... AND SOME LEGAL  
20 MATTERS AND ... BUT I WILL BRING YOU BACK VERY SHORTLY. I  
21 PROMISE YOU YOU WILL NOT BE SITTING IN THE JURY ROOM THIS TIME  
22 AS LONG AS YOU WERE THE LAST TIME. PLEASE DO NOT BEGIN ANY  
23 DELIBERATIONS ABOUT THIS CASE YET. YOU STILL HAVE NOT HEARD  
24 EVERYTHING THAT YOU WILL HEAR. YOU ... THE LAWYERS STILL  
25 HAVE THE RIGHT TO MAKE THEIR CLOSING ARGUMENTS TO YOU AND

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1 THE COURT HAS TO GIVE YOU THE INSTRUCTIONS ON THE LAW AND  
2 THEN IT WILL BE APPROPRIATE FOR YOU TO BEGIN YOUR  
3 DELIBERATIONS BUT NOT UNTIL THEN SO IF YOU WOULD GO TO YOUR  
4 JURY ROOM FOR JUST A FEW MINUTES BUT DO NOT BEGIN YOUR  
5 DISCUSSIONS OF THE MATTER JUST YET. THANK YOU.

6 (JURY OUT AT 12:49 P.M.).

7 THE COURT: MOTIONS BY THE DEFENDANT, MR.  
8 BLACKMON?

9 MR. BLACKMON: MAY IT PLEASE THE COURT, WE WOULD  
10 RENEW THE MOTIONS THAT WE PREVIOUSLY MADE OPPOSING THE  
11 STATE'S CASE ON THE SAME BASICS AND MOVE TO DISMISS THE  
12 ENTIRE CHARGES ON THE SAME BASIS.

13 THE COURT: I WOULD RESPECTFULLY DENY THOSE  
14 MOTIONS. I THINK THERE IS EVIDENCE IN THE RECORD OF THE  
15 ELEMENTS OF THESE OFFENSES. IT WILL BE UP TO THE JURY TO  
16 DETERMINE WHAT EVIDENCE TO BELIEVE. IT'S NOT THE COURT'S JOB  
17 TO WEIGH THE EVIDENCE BUT TO ONLY DETERMINE THE EXISTENCE  
18 OF THE EVIDENCE AND I WOULD RESPECTFULLY DENY THOSE  
19 MOTIONS.

20 MR. BLACKMON: FOR THE RECORD, YOUR HONOR, WE'D  
21 ALSO MOVE FOR A MISTRIAL ON THE BASIS THAT THE COURT  
22 IMPROPERLY ADMITTED THE CRIMINAL RECORD AS A JUVENILE OF  
23 THE DEFENDANT OVER OUR OBJECTION AND OUR MOTION TO  
24 SUPPRESS SAME AND THAT CONSTITUTED SUCH EXTREME PREJUDICE  
25 IN THE CROSS EXAMINATION AFTER THE DEFENDANT TESTIFIED THAT

1 HE COULD NOT HAVE RECEIVED A FAIR TRIAL.

2 THE COURT: WHAT'S IMPROPER ADMISSION INTO THE  
3 RECORD? WHAT'S THE PROBLEM?

4 MR. BLACKMON: IT WAS OUR ORIGINAL POSITION AND  
5 FOR THE RECORD WE WOULD HAVE TO MAINTAIN OUR POSITION ...

6 THE COURT: I KNOW THAT BUT I WANT TO KNOW WHAT IT  
7 IS. WHAT'S THE BASIS FOR YOUR MOTION FOR MISTRIAL AND WHY DO  
8 YOU THINK THAT THAT RECORD WAS IMPROPERLY ADMITTED?

9 MR. BLACKMON: MAY IT PLEASE THE COURT?

10 THE COURT: THE STATE DID NOT USE THE ... THE DJJ  
11 RECORD. THEY ACTUALLY USED AND ADMITTED INTO EVIDENCE THE  
12 RECORD FROM THE ... FROM THE ... FROM THE FAMILY COURT AFTER  
13 HE DENIED THE CONTENTS OF HIS RECORD AND THEY ... THEY  
14 INTRODUCED THE RECORD TO IMPEACH HIM. NOW, WHAT'S THE  
15 OBJECTION TO THE USE OF THAT RECORD FOR IMPEACHMENT  
16 PURPOSES?

17 MR. BLACKMON: THE OBJECTION, YOUR HONOR, IS THAT  
18 THOSE RECORDS ARE REQUIRED BY SECTIONS 20-7-780 AND 20-7-1360  
19 AS WELL AS 20-7-690 AND 20-7-8910 TO REMAIN CONFIDENTIAL. THEY  
20 SHOULD NOT HAVE BEEN RELEASED TO MR. CONNER FOR USE IN  
21 IMPEACHMENT PURPOSES ABSENT THE PROPER COURT ORDER FROM  
22 THE FAMILY COURT JUDGE ON PROPER MOTION AND SINCE HE  
23 RECEIVED THOSE ... THAT ORDER FROM THE FAMILY COURT WHICH IS  
24 A NORMALLY MAINTAINED JUVENILE RECORD OF THE FAMILY COURT  
25 PURSUANT TO THE SECTIONS THAT I HAVE SITED HE RECEIVED THAT

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1 IN VIOLATION OF THOSE STATUTES AND USED THAT WITHOUT A  
2 PROPER COURT ORDER FROM THE FAMILY COURT ALLOWING THEIR  
3 RELEASE AND THEIR USE. THE USE OF SUCH IMPROPERLY RETRIEVED  
4 FAMILY COURT RECORDS WITHOUT AN ORDER ALLOWING THEIR  
5 RELEASE DENIES THE DEFENDANT DUE PROCESS, DENIES HIM THE  
6 STATUTORY RIGHTS TO WHICH HE'S ENTITLED.

7 THE COURT: DO YOU THINK I DON'T HAVE THE PROPER  
8 AUTHORITY TO ORDER THE RELEASE OF THOSE RECORDS?

9 MR. BLACKMON: I BELIEVE UNDER SECTIONS 20-7-780, 1360,  
10 AND 690 AND 8910 NO, SIR, YOU DO NOT.

11 THE COURT: I DISAGREE.

12 MR. BLACKMON: YES, SIR.

13 THE COURT: I THINK THAT WE ... YOU CAN'T USE THOSE  
14 SECTIONS TO OBSTRUCT JUSTICE AND THAT'S WHAT THE ATTEMPT IS  
15 HERE. AND SO I JUST DON'T BELIEVE THAT IS WHAT THE PURPOSE OF  
16 THE STATUTE WAS INTENDED FOR AND THAT STATUTE IS APPLICABLE  
17 TO THE PROOF OF RECORDS WHICH THEY LAWFULLY HAD TO DISPUTE  
18 ... IN OTHER WORDS, WHEN YOUR CLIENT DISPUTED WHAT THE STATE  
19 LAWFULLY HAD WHICH WAS A MATTER OF PUBLIC RECORD THAT IS  
20 THE REPORTS FROM THE DEPARTMENT OF JUVENILE JUSTICE AND  
21 YOUR CLIENT DISAGREED WITH THAT AND WHAT THE RELEASE OF  
22 THESE RECORDS WAS TO SHOW WHETHER THOSE RECORDS WERE OR  
23 WERE NOT CORRECT AND THIS SHOWS THAT THOSE RECORDS WERE  
24 CORRECT, THEY USED THE ACTUAL RECORDS OF THE CONVICTION  
25 RATHER THAN THE SUMMARY OF THE RECORD OF WHAT HIS JUVENILE

1 RECORD WAS. I DON'T NEED TO HEAR FROM YOU ANYMORE. YOUR  
2 POSITION IS ... IS NOTED BUT I RESPECTFULLY THINK THAT IT IS  
3 INCORRECT AND I BELIEVE THAT THE RECORD WAS PROPERLY  
4 ADMITTED.

5 MR. BLACKMON: THANK YOU, SIR.

6 (DISCUSSIONS ON CHARGES HELD OFF THE RECORD).

7 (JURY BROUGHT IN AT 12:55 P.M.).

8 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

9 LADIES AND GENTLEMEN, I HAVE BEEN DISCUSSING SOME MATTERS  
10 OF LAW WITH THE ATTORNEYS. IT'S GOING TO TAKE A FEW MORE  
11 MINUTES OR A LITTLE WHILE LONGER TO RESOLVE THOSE MATTERS  
12 AND ALSO I HAVE A COMMITMENT OF SOMETHING THAT I HAVE TO DO  
13 RIGHT AFTER LUNCH SO I AM GOING TO ASK THAT YOU GO AND GET  
14 YOUR LUNCH AND COME BACK TO YOUR JURY ROOM AT 2:45. WE'LL  
15 TRY TO BE READY TO START PROMPTLY AT THAT TIME AND HAVE  
16 EVERYTHING OUT OF THE WAY. AT THAT TIME WE WILL HAVE THE  
17 ARGUMENTS OF COUNSEL AND THEN I WILL INSTRUCT YOU ON THE  
18 LAW AND THEN YOU WILL BE ABLE TO GO TO YOUR JURY ROOM TO  
19 DELIBERATE AND ... AND MAKE YOUR DECISION IN THIS CASE. AGAIN,  
20 OVER THE LUNCH RECESS DO NOT DISCUSS THE CASE WITH ANYONE,  
21 DO NOT ALLOW ANYONE TO DISCUSS IT WITH YOU AND DO NOT BEGIN  
22 YOUR DISCUSSIONS AMONG YOURSELVES WHEN YOU'RE  
23 REASSEMBLING IN THE JURY ROOM. IT STILL WOULD BE PREMATURE  
24 FOR YOU TO BEGIN ANY DISCUSSIONS AT THAT TIME. BUT WITH  
25 THOSE ADMONITIONS I'M GONNA GO AHEAD AND EXCUSE YOU AND

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1 ASK YOU TO GO TO YOUR LUNCH. IT'S GONNA BE A LITTLE BIT LONG  
2 LUNCH HOUR BUT MAKE IT AN HOUR AND 45 MINUTES AND PLEASE BE  
3 BACK IN YOUR JURY ROOM AT 2:45. THANK YOU. EVERYONE ELSE  
4 REMAIN SEATED, PLEASE.

5 (JURY OUT AT 12:56 P.M.).

6 (DISCUSSIONS ON CHARGES HELD OFF THE RECORD).

7 THE COURT: ALL RIGHT. COUNSEL, I HAVE REVIEWED THE  
8 LAW AND AS I SEE IT WITH REGARD TO THE QUESTION OF ISSUES THAT  
9 WILL GO THE JURY. FIRST OF ALL, WITH REGARD TO COUNT ONE AND  
10 THE CHARGE OF MURDER OF REGINALD FOSTER I DON'T BELIEVE THAT  
11 THERE IS ANY EVIDENCE OF VOLUNTARY OR INVOLUNTARY  
12 MANSLAUGHTER IN THIS CASE. TO BE ABLE TO INSTRUCT THE  
13 CHARGE OF VOLUNTARY AND INVOLUNTARY MANSLAUGHTER THE  
14 DEFENDANT WOULD BASICALLY HAVE TO ADMIT THAT HE SHOT THE  
15 VICTIM BUT THAT IT WAS IN THE HEAT OF PASSION FOR VOLUNTARY  
16 MANSLAUGHTER OR THAT IT WAS WITH DISREGARD TO THE SAFETY  
17 OF ANOTHER OR CRIMINAL NEGLIGENCE FOR INVOLUNTARY  
18 MANSLAUGHTER. ACCORDING TO THE TESTIMONY THE ... ALL OF THE  
19 ... THE ONLY TESTIMONY IN THE RECORD IS THAT THE DECEDENT, MR.  
20 FOSTER, WAS DOWN BEFORE MR. WILSON EVEN PULLED HIS GUN AND  
21 HE DENIES SHOOTING HIM AT ALL AND SO IF HE DENIES SHOOTING HIM  
22 AT ALL I DON'T SEE HOW THE DEFENSES OF VOLUNTARY OR  
23 INVOLUNTARY MANSLAUGHTER ARE APPROPRIATE. SO I AM NOT  
24 GOING TO SUBMIT THE ISSUES OF VOLUNTARY OR INVOLUNTARY  
25 MANSLAUGHTER TO THE JURY. WITH REGARD TO COUNT TWO OF

1       ASSAULT AND BATTERY WITH INTENT TO KILL WHETHER THE LESSER  
2       INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND  
3       AGGRAVATED NATURE IS APPROPRIATE I HAVE CONCLUDED THAT IT  
4       IS. I THINK YOU HAVE A DIFFERENT SITUATION BECAUSE THE VICTIM  
5       IN THAT COUNT IS MR. BUTLER AND NOBODY ... THERE IS NO  
6       TESTIMONY IN THE RECORD AS TO EXACTLY WHEN HE WAS SHOT. IN  
7       FACT, I BELIEVE THE DEFENDANT ADMITS THAT HE COULD HAVE SHOT  
8       HIM WHEN HE WAS SHOOTING OVER HIS HEAD AND I THINK THAT  
9       THERE COULD BE A SHOWING OF ABSENCE OF MALICE IN THAT  
10       SITUATION THAT WOULD ENTITLE THE JURY TO FIND HIM GUILTY OF  
11       ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE  
12       RATHER THAN ASSAULT AND BATTERY WITH INTENT TO KILL ON MR.  
13       BUTLER. SO WITH REGARD TO COUNT TWO THE LESSER INCLUDED  
14       OFFENSE WILL BE SUBMITTED TO THE JURY. COUNT THREE OF  
15       COURSE DOES NOT HAVE ANY LESSER INCLUDED AND COUNT FOUR  
16       DEALS WITH THE POSSESSION OF A WEAPON DURING A VIOLENT  
17       CRIME. I'M ALSO GOING TO CHARGE THE REQUESTED CHARGE FOR  
18       NORRIS I BELIEVE IT IS ABOUT MALICE BEING INFERRED FROM THE  
19       COMMISSION OF A FELONY THAT CAN BE ... IT CAN BE INFERRED SO I ...  
20       I WILL CHARGE THAT INFERENCE AS WELL. COUNSEL, I THINK I  
21       ALREADY KNOW ALL OF YOUR POSITIONS BUT I DON'T THINK THEY  
22       NEED TO BE RESTATED ON THE RECORD OTHER THAN THAT I BELIEVE  
23       WE'RE READY TO GO FORWARD. YOU READY, MR. CONNER?

24               MR. CONNER: WE'RE READY, YOUR HONOR.

25               THE COURT: READY, MR. BLACKMON?

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1 MR. BLACKMON: YES, SIR, YOUR HONOR.

2 THE COURT: ALL RIGHT. MR. HERRING, BRING THE JURY  
3 IN, PLEASE.

4 (JURY BROUGHT IN AT 2:50 P.M.).

5 THE COURT: ALL RIGHT. THANK YOU VERY MUCH AND  
6 THANK YOU FOR YOUR PROMPTNESS IN BEING BACK HERE. AS I SAY  
7 WE DID TAKE A LITTLE BIT LONGER RECESS TODAY. I WOULD HAVE  
8 LIKED TO GONE STRAIGHT THROUGH BUT I HAD A COMMITMENT THAT  
9 I HAD TO DO SOMETHING ON BEHALF OF THE BAR AS FAR AS A NEW  
10 LAWYER'S OATH HAD TO BE ADMINISTERED AND I HAD TO TAKE CARE  
11 OF THAT AND THAT'S THE REASON WE STARTED BACK AT 2:45 RATHER  
12 THAN AT 2:30. IN ANY EVENT WE ARE NOW READY TO GO FORWARD  
13 WITH THIS CASE. I WILL TELL YOU AS I DID BEFORE LUNCH THAT YOU  
14 HAVE NOW HEARD ALL OF THE TESTIMONY IN THIS CASE AND YOU  
15 WILL NOT HEAR ANYMORE EVIDENCE. THE ONLY TWO THINGS THAT  
16 REMAIN TO BE DONE ARE FOR THE LAWYERS TO GIVE THEIR CLOSING  
17 STATEMENTS OR SUMMATIONS TO YOU AND THEN I WILL INSTRUCT  
18 YOU IN THE LAW OF SOUTH CAROLINA AS IT APPLIES TO THE ISSUES OF  
19 THIS CASE AND TO THE FACTS OF THIS CASE AS YOU MAY FIND THOSE  
20 FACTS TO BE AS SOON AS THEY HAVE FINISHED THEIR CLOSING  
21 STATEMENTS OR SUMMATIONS. AGAIN, I WOULD TELL YOU THAT HE  
22 CLOSING STATEMENTS OR SUMMATIONS OF THE LAWYERS ARE NOT  
23 EVIDENCE. THEY ARE SIMPLY THE LAWYER'S VIEWS OF WHAT THEY  
24 THINK THE EVIDENCE SHOWS. YOU WILL DECIDE THIS CASE BASED  
25 UPON EVIDENCE THAT YOU HAVE HEARD FROM THIS WITNESS STAND

1 AND FROM VIEWING THE EXHIBITS THAT HAVE BEEN INTRODUCED  
2 INTO EVIDENCE. BUT THE LAWYERS DO HAVE THE RIGHT AND NOT  
3 ONLY THE RIGHT BUT THE DUTY ON BEHALF OF THEIR CLIENTS TO  
4 ADDRESS YOU NOW AND TO GIVE YOU THEIR VIEWS OF THE  
5 EVIDENCE. WHEN THEY HAVE CONCLUDED THAT I WILL THEN GIVE  
6 YOU THE LAW OF SOUTH CAROLINA AND YOU WILL BE PERMITTED TO  
7 GO AND TO DELIBERATE YOUR VERDICT. YOU'LL HEAR FIRST FROM ...  
8 MR. CONNER, ARE YOU GONNA WAIVE OPENING?

9 MR. CONNER: I'M GONNA WAIVE OPENING.

10 THE COURT: ALL RIGHT. YOU WILL HEAR FIRST FROM MR.  
11 BLACKMON ON BEHALF OF THE DEFENDANT AND THEN FROM MR.  
12 CONNER ON BEHALF OF THE STATE. MR. BLACKMON.

13 MR. BLACKMON: MAY IT PLEASE THE COURT.

14 THE COURT: YES, SIR.

15 MR. BLACKMON: MR. FOREMAN, LADIES AND GENTLEMEN  
16 OF THE JURY, YOU'VE NOW HEARD ALL OF THE EVIDENCE AS THE  
17 COURT HAS ADVISED YOU AND HE WILL TELL YOU WHAT THE LAW IS  
18 AFTER MR. CONNER AND I MAKE OUR ARGUMENTS, OUR STATEMENTS.  
19 AS THE COURT'S INDICATED WHAT WE SAY NOW IS NOT EVIDENCE  
20 AND IF I SAY ANYTHING THAT SOUNDS TO YOU LIKE IT'S A LITTLE  
21 DIFFERENT FROM WHAT YOU HAVE HEARD FROM THIS WITNESS  
22 STAND UNDERSTAND THAT I HEARD IT FROM SITTING OVER THERE IN  
23 THE LIGHT THAT I THOUGHT IT WAS SAID, USUALLY MOST FAVORABLE  
24 TO MY CLIENT AS DID MR. CONNER FOR HIS SIDE. AS MR. CONNER  
25 POINTED OUT TO US AT THE BEGINNING DIFFERENT PEOPLE HEAR

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1 THINGS AND SEE THINGS DIFFERENT WAYS. FIVE WITNESSES TO  
2 SOMETHING HAPPENING COULD SEE THINGS A LOT DIFFERENTLY.  
3 HOWEVER, MR. CONNER POINTED OUT THAT YOU SHOULD LISTEN TO  
4 THE BIG THINGS I BELIEVE AND NOT WORRY SO MUCH ABOUT THE  
5 LITTLE INCONSISTENCIES THAT MIGHT APPEAR BECAUSE ONE PERSON  
6 IS STANDING HERE AND ONE PERSON IS STANDING OVER THERE AND  
7 ANOTHER PERSON IS IN A DIFFERENT PLACE SO THEY SEE THINGS IN A  
8 DIFFERENT ANGLE. AND I WOULD TEND TO AGREE WITH THAT. BUT I  
9 WOULD NOT AGREE TO DISREGARD ANY OF THEIR TESTIMONY IF ALL  
10 OF THEIR TESTIMONY IS DIAMETRICALLY OPPOSED ON IMPORTANT  
11 ISSUES.

12 NOW, THERE ARE TWO IMPORTANT THINGS THAT ALL OF THESE  
13 WITNESSES HAD SOMETHING TO DO WITH ON MAY 19<sup>TH</sup> OF 2003. THEY  
14 WERE ALL PRESENT IN THE GENERAL AREA OF CARVER STREET AND  
15 WHILE THEY WERE THERE THEY SAW THINGS AND THEY HEARD  
16 THINGS. THEY SAW THINGS OR DIDN'T SEE SOME THINGS OR THEY  
17 HEARD THINGS OR DIDN'T HEAR SOME THINGS. NOW, FROM MY  
18 RECOLLECTION OF THE TESTIMONY AND I'M NOT GONNA AD NAUSEAM  
19 GO OVER ALL THIS TESTIMONY BECAUSE THERE IS JUST TOO MUCH OF  
20 IT. YOU'VE ALREADY HEARD ALL THAT. I'M GONNA TRY AND HIT  
21 SOME OF THE HIGH POINTS. I DON'T THINK ANY OF THE PEOPLE THAT  
22 TESTIFIED SAID ANYTHING OTHER THAN THESE PEOPLE WERE ALL  
23 TOGETHER IN A GROUP. AND ONE GROUP SEEMED TO BE CENTERED  
24 RIGHT IN FRONT OF SOME TRASH CANS AND ONE GROUP WAS COMING  
25 UP THE ROAD. AND THERE MAY HAVE BEEN SOME DIFFERENCES OF

1 OPINION ON HOW LONG THEY WERE THERE AND WHERE THEY'D BEEN  
2 EARLIER AND WHERE THEY WENT LATER AND ... AND WHO  
3 SPECIFICALLY WENT WHERE BUT FROM MY STANDPOINT TODAY ONE  
4 OF THE IMPORTANT THINGS IS WHERE WAS EVERYBODY SO THAT  
5 THEY COULD HEAR WHAT WAS BEING SAID AND GOING ON AND SEE  
6 WHAT WENT ON AND I THINK IT IS UNDISPUTED THAT LITTLE  
7 REGINALD FOSTER WHO WAS KILLED WAS SITTING OR STANDING ON  
8 HIS BICYCLE, SITTING ON HIS BICYCLE OR STANDING NEAR IT IN THE  
9 MIDST OF THE MIDDLE TRASH CAN. THAT IS WHAT EVERYONE I  
10 BELIEVE TESTIFIED TO. I THINK IT IS UNDISPUTED THAT MAURICE OR  
11 REESE DINGLE WAS SOMEWHERE OVER IN THIS AREA NEAR THE  
12 OTHER TRASH CAN AND THAT D.L. AND DADDY RABBIT AND VARIOUS  
13 AND SUNDRY OTHER PEOPLE WERE IN THE GENERAL AREA. I DON'T  
14 THINK IT WAS DISPUTED THAT TREZ AND HAROLD WILSON CAME  
15 DOWN ON CARVER STREET AND ENDED UP AT LEAST AS FAR AS  
16 HAROLD WILSON IS CONCERNED FOR US TODAY IN THE MIDDLE OF  
17 THIS ROAD ON CARVER STREET. I DON'T THINK IT HAS EVER BEEN  
18 DISPUTED THAT HAROLD JAMAR WILSON WAS IN THE MIDDLE OF  
19 CARVER STREET. I DON'T REMEMBER A SINGLE WITNESS SAYING  
20 HAROLD WILSON EVER CAME OVER IN THIS DRIVEWAY, CAME OVER IN  
21 THIS YARD, OR DID ANYTHING OTHER THAN STAND IN THE STREET  
22 AND THEN RUN BACK DOWN THE STREET OR SOMETHING LIKE THAT.  
23 BUT STANDING IN THE MIDDLE OF THE STREET AND RUNNING BACK  
24 DOWN THE STREET. SO HAROLD WILSON AT ALL RELEVANT TIMES ON  
25 MAY 19<sup>TH</sup> OF 2003, FOR THESE CHARGES IS IN THE MIDDLE OF CARVER

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1 STREET AND RUNNING DOWN CARVER STREET. ALSO NOT DISPUTED IS  
2 THE FACT THAT AT THE RELEVANT TIMES ON MAY 19<sup>TH</sup> OF 2003  
3 REGINALD FOSTER WAS IN FRONT OF THE MIDDLE TRASH CAN. THAT'S  
4 GONNA BE VERY IMPORTANT. I WANT YOU ALL TO REMEMBER. HE'S  
5 IN FRONT OF THE MIDDLE TRASH CAN AND HAROLD IS IN THE MIDDLE  
6 OF THE STREET. NOW, WHY IS ALL THAT IMPORTANT? WELL, IT'S  
7 IMPORTANT BECAUSE THESE OTHER FOUR OR FIVE ODD PEOPLE WHO  
8 ARE AROUND WHO TESTIFIED SAW AND HEARD THINGS VERY  
9 DIFFERENTLY. SOME PEOPLE CLAIM THEY HEARD HAROLD WILSON  
10 SAY I SHOULD HAVE KILLED YOU ALL'S ASS FOR WHAT YOU DID  
11 SOMEWHERE SOME OTHER TIME. NOW, AS I RECALL TWO PEOPLE  
12 TESTIFIED TO THAT. AND TWO OR THREE PEOPLE NEVER SAID  
13 ANYTHING ABOUT IT. AS I RECALL THE PEOPLE WHO TESTIFIED TO IT  
14 DIDN'T PUT THAT DOWN IN THEIR WRITTEN STATEMENT WHEN THEY  
15 WROTE IT OVER A YEAR AND A HALF AGO AND I BELIEVE THEY ALL  
16 ADMITTED THAT SOME PEOPLE PUT OTHER WORDS INTO THEIR  
17 MOUTH. I'M NOT REAL SURE. ALL I KNOW IS EVERYBODY WHO SAID IT  
18 DIDN'T PUT IT IN THEIR WRITTEN STATEMENT. EVERYBODY WHO DID  
19 A WRITTEN STATEMENT DIDN'T SAY IT AND HALF THE PEOPLE WHO  
20 TESTIFIED NEVER HEARD IT. NOW, THE WORST POSSIBLE WORDING I  
21 REMEMBER COMING FROM SOME OF THESE PEOPLE IS REESE, LET ME  
22 GET THAT, REESE, GIVE ME THAT. THAT'S IN SOME STATEMENTS AND  
23 NOT IN SOME STATEMENTS. I'M NOT REAL SURE I PERSONALLY THINK  
24 THAT'S OVERLY RELEVANT ANYWAY. YOU ALL ARE WEIGHING ALL  
25 THE EVIDENCE, YOU ALL GET TO CHOOSE WHO TO BELIEVE, HOW

1 MUCH OF THEIR TESTIMONY TO BELIEVE, WHETHER IT'S SOME, LITTLE,  
2 ALL OR NONE. AND THAT'S YOUR PROVINCE AS THE JURY. BUT  
3 FROM OUR STANDPOINT THE TWO THINGS I WANT YOU TO REMEMBER  
4 OVER AND BEYOND EVERYTHING ELSE IS HAROLD WILSON IS  
5 UNDISPUTEDLY IN THE MIDDLE OF CARVER STREET AND REGINALD  
6 FOSTER IS UNDISPUTEDLY IN FRONT OF THIS TRASH CAN. AND NE'ER  
7 DOES HAROLD WILSON GO OVER HERE IN THE YARD OR THE  
8 DRIVEWAY. NOW, WHY IS THAT? I WANT YOU TO PAY VERY CLOSE  
9 ATTENTION TO THE PICTURES THAT HAVE ALREADY BEEN PUT INTO  
10 EVIDENCE. AND I WANT YOU TO LOOK UP AND DOWN THE STREET  
11 ALONG THESE PHOTOGRAPHS AND I WANT YOU TO PAY ESPECIALLY  
12 CLOSE ATTENTION TO STATE'S EXHIBIT SEVEN WHICH IS THE PICTURE  
13 THAT'S DIRECTLY IN FRONT OF AND CARVER STREET WHICH IS  
14 ... IT CLEARLY IN THE DAYTIME SHOWS THE MAILBOX THAT SO MUCH  
15 HAS BEEN MADE OF AND IT SHOWS THE TWO HOUSES. THEY'RE  
16 SHOWN ON HERE AS AND . NOW HOW DOES THAT MATTER?  
17 WHAT IS ALSO IMPORTANT IS THAT YOU LOOK AT THE TRASH CANS  
18 WITH THE MAILBOX AS THEY'RE SHOWN ON STATE'S NINE AND TEN  
19 THAT WERE TAKEN THAT VERY NIGHT. NOW, IT'S UNDISPUTED THAT  
20 THERE WERE THREE TRASH CANS THERE. AND IT'S UNDISPUTED THAT  
21 THE THREE TRASH CANS ARE IN A GROUPING FAIRLY SIMILAR TO THIS  
22 ... TO THIS DRAWING ALTHOUGH IT'S NOT TO SCALE. BUT THAT'S THE  
23 GROUPING. WHAT THESE PHOTOGRAPHS CLEARLY SHOW THAT  
24 NOBODY BOTHERED TO PUT ON THIS DRAWING IS WHERE THAT  
25 MAILBOX IS. THE MAILBOX FOR . WHERE IS IT? WELL, IF IT HAD

HEARING

530

1 BEEN PUT ON THIS DRAWING IT WOULD BE RIGHT ABOUT HERE BESIDE  
2 THE INSIDE TRASH CAN AND THAT'S WHY I MADE SUCH A PRODUCTION  
3 OUT OF BEING INSIDE. OUTSIDE THE MIDDLE. IT WOULD BE UP HERE ON  
4 THE INSIDE TRASH CAN. AS IT IS SHOWN ON THESE PHOTOGRAPHS  
5 THAT WERE TAKEN THAT NIGHT. NOW, IS THERE SOME IMPORTANCE  
6 TO THAT? YES, THERE IS. BECAUSE THE SOLICITOR WANTS TO TELL  
7 YOU THAT A BULLET FIRED BY HAROLD WILSON ENTERED INTO THE  
8 FRONT LEFT SIDE OF THE MAILBOX AT . AND EXITED OUT THE  
9 RIGHT REAR OF THE MAILBOX AT AND THEY WANT YOU TO  
10 BELIEVE THAT THAT'S THE BULLET THAT WENT THROUGH SOMETHING  
11 THAT KILLED REGINALD FOSTER. THINK ABOUT IT.

12 HAROLD WILSON WAS IN THE MIDDLE OF THE ROAD. REGINALD  
13 FOSTER IS IN FRONT OF THE MIDDLE TRASH CAN. THE MAILBOX IS  
14 OVER HERE TO MR. WILSON'S RIGHT AND MR. FOSTER'S LEFT. FOR THE  
15 BULLET TO HAVE GONE THROUGH THE MAILBOX AT GOING IN THE  
16 TOP LEFT AND OUT THE BOTTOM RIGHT THE BULLET WOULD HAVE  
17 HAD TO HAVE BEEN FIRED NOT FROM DIRECTLY IN FRONT OF ANY OF  
18 THESE TRASH CANS BUT FROM SOMEWHERE DOWN THE STREET. AND  
19 IT WOULD HAD TO HAVE GONE THROUGH THE MAILBOX BUT GUESS  
20 WHAT, REGINALD FOSTER WAS NEVER OVER HERE BY THE MAILBOX.  
21 HE WAS NEVER OVER HERE BEHIND THE MAILBOX. HE WAS ALWAYS  
22 IN FRONT OF THE MIDDLE TRASH CAN. SO IF THE BULLET WENT IN THE  
23 FRONT LEFT SIDE OF THE MAILBOX AND CAME OUT THE BACK RIGHT  
24 SIDE AS THESE PHOTOGRAPHS INDICATE IF THAT'S WHAT THESE ARE  
25 THEN THAT BULLET DIDN'T KILL REGINALD FOSTER. UNLESS ...

1 UNLESS THE RIGHT REAR PART IS THE ENTRANCE AND THE LEFT  
2 FRONT PART IS THE EXIT. AND IF THAT'S WHAT HAPPENED THEN THE  
3 BULLET THAT WENT THROUGH THE MAILBOX CAME THROUGH THE  
4 BACK OF THE MAILBOX, WENT OUT THE FRONT OF THE MAILBOX.  
5 NOW, I'M NOT SURE OF HOW IT COULD HAVE HIT REGINALD FOSTER  
6 BECAUSE HE'S STILL IN FRONT OF THE MIDDLE TRASH CAN. BUT IF IT  
7 WENT THROUGH THE MAILBOX THAT WAY THEN THAT SHOT HAD TO  
8 COME FROM BACK HERE SOMEWHERE. BACK UP IN THE YARD OR IN  
9 THE DRIVEWAY. THAT'S THE ONLY WAY IT MAKES ANY SENSE.  
10 PERSONALLY I DON'T KNOW THAT THAT'S WHAT KILLED HIM. BUT I DO  
11 KNOW THAT THE ONLY WAY IT COULD HAVE COME FROM THE BACK  
12 TO THE FRONT WOULD HAVE BEEN FROM THIS BACK AREA BACK  
13 HERE. AND IF IT WENT FROM THE FRONT TO THE BACK THEN IT  
14 COULDN'T POSSIBLY HAVE HIT REGINALD FOSTER BECAUSE HE'S IN  
15 THE FRONT OF THE MIDDLE TRASH CAN. IT COULD NOT PHYSICALLY  
16 HAVE HAPPENED. NOW, WHY IS THAT IMPORTANT? BECAUSE OUT OF  
17 ALL OF THE WITNESSES THAT TESTIFIED, WE GOT ALL OF THESE  
18 PEOPLE WHO LIVE, STAY, AND DO DRUGS AND CARRY GUNS ON  
19 CARVER STREET. INCLUDING THE DEFENDANT. NOW, WE HAVE THREE  
20 WITNESSES FROM SLED AND WE HAVE A NUMBER OF FINE  
21 OUTSTANDING SUMTER COUNTY OFFICERS AND SHERIFF'S  
22 DEPARTMENT REPRESENTATIVES BUT NONE OF THEM WERE AT THE  
23 SCENE WHEN IT HAPPENED. ALL THEY CAN DO IS TELL YOU WHAT THE  
24 PEOPLE WHO WERE THERE TOLD THEM AND WHAT THEY FIND FROM  
25 THE EVIDENCE. SO IN THIS CASE THE TRUTH IS THAT EVIDENCE IS

HEARING

532

1       REALLY MOST IMPORTANT. WE DON'T HAVE TO HAVE CSI PEOPLE  
2       HERE TO TELL YOU HOW IMPORTANT IT IS. WE KNOW THAT ONE SLED  
3       REPRESENTATIVE DID SOME GUNSHOT RESIDUE KITS. WELL, LO AND  
4       BEHOLD HAROLD WILSON'S CAME BACK NEGATIVE BUT THAT COULD  
5       BE EXPLAINED AND I'M NOT GONNA WORRY TOO MUCH ABOUT THAT  
6       BECAUSE HE ADMITTED HE SHOT THE .25 CALIBER PISTOL. ANY OF  
7       THEM COULD HAVE WIPED IT OFF ON THEIR PANTS, PUT THEIR HANDS  
8       IN THEIR POCKETS, OR WASHED THEM OFF. HAROLD WILSON COULD  
9       HAVE DONE THAT AS COULD MAURICE DINGLE. CEANTE HARVIN  
10      APPARENTLY DID NOT BECAUSE HE NOT ONLY HAD LEAD BALL  
11      RESIDUE ON HIS WRIST HE HAD THE ELEVATED LEVELS OF THE OTHER  
12      COMPONENT OF GUNSHOT RESIDUE. BUT THAT'S NEITHER HERE NOR  
13      THERE OTHER THAN THAT GIVES YOU SOMETHING TO THINK ABOUT  
14      BECAUSE CEANTE HARVIN ALSO RAN THIS WAY. AND DID HAVE  
15      GUNSHOT RESIDUE ON HIS HANDS. SO IF THE SHOT CAME FROM THE  
16      FRONT OF THE MAILBOX TO THE BACK OF THE MAILBOX IT COULD  
17      HAVE COME FROM THIS AREA, SOMEBODY COULD HAVE SHOT HIM.  
18      THERE WAS NO TESTIMONY ON THE SIZE OF THE BULLET HOLE THAT I  
19      RECALL EITHER.

20           BUT WHAT'S SO IMPORTANT ABOUT THE SLED ANALYSIS? WELL,  
21      THE BULLET ANALYSIS, DR. PAAVEL, WAS VERY IMPORTANT BECAUSE  
22      HE GAVE YOU A LOT OF VERY GOOD AND VERY SPECIFIC TESTIMONY  
23      ABOUT BALLISTICS. AND IN THIS MATTER THEY'RE VERY IMPORTANT.  
24      THREE SHELL CASINGS WERE FOUND THAT ARE CLEARLY IDENTIFIED  
25      AS NINE MILLIMETER LUGERS. AND ONE PROJECTILE WAS FOUND

1        THAT'S CLEARLY BEEN IDENTIFIED BY HIM AS BEING A NINE  
2        MILLIMETER LUGER. AND SOMEWHERE IN ALL THIS EVIDENCE YOU  
3        WILL HAVE ALL OF THESE THINGS WITH YOU. THEY WERE ... THEY  
4        WERE CLEARLY EXAMINED UNDER A MICROSCOPE BY THAT  
5        OUTSTANDING SLED CHEMIST AND YOU'LL GET TO TAKE THESE BACK  
6        TO THE ROOM WITH YOU AND WHAT YOU WILL FIND ARE THE TWO  
7        THINGS THAT I FEEL ARE IMPORTANT OTHER THAN THE FACT THAT  
8        NONE OF THEM ARE .25 CALIBER THE BULLET THAT WAS FOUND  
9        HAVING BEEN SHOT BY SOMEBODY SOME TIME IS COPPER JACKETED.  
10       AND IT PROBABLY HAS LEAD IN THE MIDDLE. I'M NOT SURE. BUT IT  
11       DEFINITELY HAS COPPER JACKET AND IT CAME FROM A NINE  
12       MILLIMETER. THE THREE SHELL CASINGS CAME FROM A NINE  
13       MILLIMETER. THEY WERE IDENTIFIED AS ALL COMING FROM THE  
14       SAME GUN. THE PROJECTILE OR FRAGMENT THAT WAS RETRIEVED  
15       FROM REGINALD FOSTER'S BRAIN WAS A LEADED FRAGMENT. NOW  
16       THAT'S IMPORTANT FOR TWO REASONS. UNDER A MICROSCOPIC  
17       EXAMINATION THE BALLISTICS EXPERT FROM SLED FOUND NO  
18       EVIDENCE OF ANY COPPER MATERIAL IN THAT BULLET. IF THERE WAS  
19       NO COPPER MATERIAL IN THAT BULLET THEN THAT GIVES ME SOME  
20       CONCERN THAT IT'S THE SAME KIND OF BULLET THAT THESE NINE  
21       MILLIMETER BULLETS ARE. MEANING THAT IT DID NOT OR COULD NOT  
22       COMPARE OR ANALYZE THE LEAD THAT'S IN THE FRAGMENT IN THE  
23       BRAIN WITH THE LEAD THAT'S ON THE INTERIOR OF THE ONE BULLET  
24       THAT WAS RECOVERED. SO HE COULD NOT SAY IF IT CAME FROM THE  
25       SAME KIND OF BULLET. BUT HE DID SAY THAT IN HIS I THINK 17 ODD

HEARING

534

1 YEARS OF EXPERIENCE HE HAD NEVER HEARD OF OR KNOWN OF LEAD  
2 BULLETS BEING USED IN .25 CALIBER. AND THAT'S IMPORTANT.  
3 BECAUSE HAROLD WILSON HAS ADMITTED THAT HE PULLED A GUN  
4 OUT AND SHOT IT BUT IT WAS A .25 CALIBER. IT WAS NOT A NINE  
5 MILLIMETER. IT WAS NOT A .38. A NINE MILLIMETER AND A .38 AND  
6 SOMETIMES EVEN A .45 THE SLED EXPERT SAYS IS A MEDIUM CALIBER  
7 BULLET. AND THAT'S IMPORTANT. BECAUSE THE BULLET THAT  
8 KILLED REGINALD FOSTER BASED UPON THE WOUNDS WAS A MEDIUM  
9 CALIBER BULLET. IT WAS NOT UNDER ANY CIRCUMSTANCES A SMALL  
10 CALIBER BULLET. SO IF HAROLD WILSON ONLY HAD A .25 CALIBER  
11 PISTOL THAT HE SAYS HE SHOT TWICE HE COULD NOT HAVE KILLED  
12 REGINALD FOSTER BECAUSE A .25 CALIBER BULLET DID NOT MAKE  
13 THE MEDIUM CALIBER BULLET ENTRY THAT REGINALD FOSTER  
14 SUFFERED.

15 NOW, REGINALD FOSTER'S BULLET ENTRY CAME THROUGH THE I  
16 BELIEVE THE BACK LEFT AND OUT THE RIGHT EYE AND REGINALD  
17 FOSTER AS WE'VE SAID AND AS EVERYONE HAS SAID WAS IN FRONT OF  
18 THIS MIDDLE TRASH CAN. SO THE ONLY WAY THAT A BULLET COULD  
19 HAVE GONE THROUGH THE BACK LEFT AND COME OUT THE RIGHT EYE  
20 WAS IF HE WAS FACING TO THE BACK OR FACING TO THE FRONT. IF  
21 HE'S FACING TO THE BACK THEN THE BULLET COULD HAVE COME  
22 FROM OUT OF THIS AREA IN FRONT WHERE HAROLD WILSON WAS.  
23 BUT IF HE WAS FACING TO THE FRONT WITH THE BACK OF HIS HEAD  
24 FACING THE HOUSES THEN THE SHOT THAT ENTERED THE BACK OF HIS  
25 HEAD COULD ONLY HAVE COME FROM THIS AREA OVER BY THE

1 DRIVEWAY AND THE YARD. THAT WOULD BE CONSISTENT. NOW,  
2 WHAT ELSE IS IMPORTANT ABOUT THE SLED PEOPLE'S TESTIMONY?  
3 DR. SEXTON SAID AND IT'S UNDISPUTED THAT THIS BULLET DID NOT  
4 GO STRAIGHT IN AND STRAIGHT OUT. THIS BULLET ABSOLUTELY HAD  
5 TO GO THROUGH SOMETHING TO CAUSE IT TO TURN SIDEWAYS SO  
6 THAT IT ENTERED REGINALD FOSTER'S HEAD SIDEWAYS. THAT'S  
7 WHAT CAUSED THIS FRAGMENT TO RIP UP. BUT IT WAS HIS  
8 UNDISPUTED OPINION THE BULLET WENT THROUGH SOMETHING  
9 BEFORE IT ENTERED REGINALD FOSTER'S HEAD SIDEWAYS. NOW,  
10 THAT TIES BACK IN TO THE IMPORTANCE OF WHERE WAS EVERYBODY  
11 THIS WHOLE TIME BECAUSE I THINK IF YOU LOOK AT ALL THESE  
12 PHOTOGRAPHS BOTH DAY AND NIGHT OF THE THREE TRASH CANS  
13 AND THE MAILBOX, UP AND DOWN THE STREET THESE FINE LAW  
14 ENFORCEMENT OFFICERS DID CANVAS THE AREA UNTIL I BELIEVE  
15 11:00, 11:30 OR ALMOST 12:00 O'CLOCK THAT NIGHT AND THEN THEY  
16 LEFT THE SCENE UNSECURED UNTIL SOME TIME AFTER DAYLIGHT THE  
17 NEXT DAY. THAT LEFT ALL THESE FOLKS WHO LIVED IN THAT  
18 NEIGHBORHOOD THE FREEDOM TO ROAM ABOUT THAT  
19 NEIGHBORHOOD ALL NIGHT AND ALL MORNING UNTIL LAW  
20 ENFORCEMENT RETURNED. NOW, I CAN'T SAY A .25 CALIBER SHELL IS  
21 BIG ENOUGH TO STAND OUT IN A CROWD ANYWHERE NEAR A  
22 GRAVEYARD DOWN THE STREET. I DON'T KNOW WHO REMOVED  
23 WHAT. I DON'T KNOW WHO REMOVED GUNS, IF ANY. I DON'T KNOW  
24 WHO REMOVED WHAT SHELLS, IF ANY. I DO KNOW IT'S UNDISPUTED  
25 THAT THE SCENE WAS LEFT UNSECURED FOR A NUMBER OF HOURS

HEARING

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1 WHICH GAVE PEOPLE ACCESS TO IT. BUT, THE IMPORTANT THING TO  
2 REMEMBER NO MATTER WHO SAID WHAT, NO MATTER WHO LIED  
3 ABOUT ONE THING, WHO HEARD SOMETHING DIFFERENT, WHO SAW  
4 SOMETHING DIFFERENT, IS DR. SEXTON SAYS BEYOND A DOUBT THE  
5 BULLET THAT KILLED REGINALD FOSTER WENT THROUGH SOMETHING  
6 FIRST BEFORE IT WENT INTO HIS HEAD SIDEWAYS. WELL, NOW, WHY IS  
7 THAT IMPORTANT? BECAUSE WHEN YOU LOOK AT THESE  
8 PHOTOGRAPHS, WHEN YOU LOOK DOWN THE ROAD, WHEN YOU LOOK  
9 AT THE SCENE FROM THE STREET IF YOU LOOK AT ANY PICTURE OR  
10 THIS DRAWING FROM WHERE HAROLD WILSON WAS STANDING IN THE  
11 MIDDLE OF THE STREET NO MATTER WHERE DOWN HERE HE SHOT  
12 FROM THERE IS ABSOLUTELY NOTHING HIS BULLET COULD HAVE  
13 GONE THROUGH BEFORE IT HIT REGINALD FOSTER. BUT DR. SEXTON  
14 SAID IT HAD TO GO THROUGH SOMETHING BEFORE IT ENTERED  
15 REGINALD FOSTER'S HEAD BECAUSE THAT BULLET WENT THROUGH  
16 SOMETHING CAUSING IT TO TURN SIDEWAYS. SO IF EVERYBODY TOLD  
17 THE TRUTH ABOUT AT LEAST ONE THING THAT HAROLD WILSON WAS  
18 IN THE MIDDLE OF THE STREET AND IF EVERYBODY TOLD THE TRUTH  
19 ABOUT AT LEAST ONE OTHER THING REGINALD FOSTER WAS IN FRONT  
20 OF THE SECOND TRASH CAN THERE IS NOTHING IN THIS STREET  
21 ANYWHERE THAT HAROLD WILSON'S BULLET COULD HAVE GONE  
22 THROUGH BEFORE IT HIT REGINALD FOSTER. IT'S NOT PHYSICALLY  
23 POSSIBLE. IT IS ONLY PHYSICALLY POSSIBLE IF THE BULLET WENT  
24 THROUGH THE BACK OF THE MAILBOX TO THE FRONT OF THE  
25 MAILBOX AND THEN HIT REGINALD FOSTER. OR IF THE BULLET WENT

1 THROUGH SOMETHING ELSE SOMEWHERE ELSE AND HIT HIM. BUT  
2 LAW ENFORCEMENT CHECKED THE ENTIRE NEIGHBORHOOD. THEY  
3 SAID THEY WENT HOUSE TO HOUSE. THEY LOOKED AT ALL THE OTHER  
4 MAILBOXES AND THEY FOUND NOTHING THAT LOOKED LIKE A  
5 GUNSHOT HOLE, PROJECTILE OR ANYTHING ANYWHERE. SO  
6 ASSUMING THAT HAROLD WILSON WAS STANDING IN THE MIDDLE OF  
7 THE YARD AND RAN DOWN THE ROAD SHOOTING A .25 OR EITHER RAN  
8 DOWN THE ROAD SHOOTING ANYTHING ELSE WHICH HE DENIES  
9 NOTHING THAT HE COULD HAVE SHOT FROM THE ROAD COULD HAVE  
10 GONE THROUGH ANYTHING ESPECIALLY THAT MAILBOX AND THEN  
11 HIT REGINALD FOSTER. SO IF THE STATE'S STORY IS THAT HAROLD  
12 WILSON COMES OUT, GUNS A BLAZING, SHOOTS A BULLET THROUGH  
13 THE MAILBOX, TURNS IT SIDEWAYS AND IT HITS REGINALD FOSTER IT  
14 CAN'T PHYSICALLY HAVE HAPPENED. FROM WHERE THEY'RE  
15 STANDING IT CAN'T GO IN THE FRONT OF THAT MAILBOX, COME OUT  
16 THE BACK OF THAT MAILBOX, AND GO ANYWHERE CLOSE TO  
17 REGINALD FOSTER BECAUSE HE'S OVER TO THE OTHER SIDE OF IT.  
18 HE'S SOMEWHERE ELSE. SO THE SHOT WOULD HAVE HAD TO COME  
19 FROM SOMEWHERE ELSE. AND THE SHOT WOULD HAVE TO COME  
20 FROM SOMEBODY ELSE. BECAUSE HAROLD WILSON WAS IN THE  
21 MIDDLE OF THE ROAD. THERE'S NOTHING BETWEEN HIM AND  
22 REGINALD FOSTER ANYWHERE DOWN THERE. AND IF THERE IS  
23 NOTHING THAT HE COULD HAVE SHOT THAT IT COULD HAVE GONE  
24 THROUGH FIRST HIS BULLET OR HIS TWO BULLETS COULD NOT HAVE  
25 KILLED REGINALD FOSTER.

HEARING

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1 THE JUDGE I BELIEVE IS GOING TO CHARGE YOU ON THE LAW ON  
2 MURDER, ASSAULT AND BATTERY WITH INTENT TO KILL, ASSAULT  
3 AND BATTERY OF A HIGH AND AGGRAVATED NATURE AS A LESSER  
4 INCLUDED OFFENSE, STRONG ARMED ROBBERY, OR ATTEMPTED  
5 STRONG ARMED ROBBERY, AND POSSESSION OF A WEAPON DURING A  
6 VIOLENT CRIME. THE WAY I LOOK AT IT IS KIND OF LIKE THIS THE  
7 STATE SAYS HAROLD WILSON MURDERED REGINALD FOSTER AND ALL  
8 THE REST FALLS UNDER THAT. THEIR STORY IS THAT HAROLD WILSON  
9 WENT TO ROB DRUGS AND GUNS. IT WAS UNDISPUTED THAT HAROLD  
10 WILSON HAD \$3,500.00 IN HIS POCKET, WHY WOULD HE NEED A  
11 HUNDRED DOLLARS? AND HE HAD A GUN, WHY WOULD HE NEED  
12 ANOTHER? SURE HE WROTE THE STATEMENT. AT THE BEHEST OF  
13 LAW ENFORCEMENT. HE ADMITTED THAT. BUT HE WAS IN CUSTODY  
14 AT THE TIME AND HAD BEEN FOR AN HOUR OR SO. IT WAS AFTER HE'D  
15 BEEN WOKEN, AFTER ... AND HE HAD ALL THESE OTHER WHO WE  
16 BELIEVED HAD USED SOME DRUGS. WELL WHAT IS THE REAL  
17 IMPORTANT THING HERE? THE REAL IMPORTANT THING FIRST IS WHO  
18 KILLED REGINALD FOSTER? THE BULLET HAD TO GO THROUGH  
19 SOMETHING. HAD TO TURN SIDEWAYS. FROM WHERE HAROLD  
20 WILSON WAS AND FROM WHERE REGINALD FOSTER WAS HAROLD  
21 WILSON COULDN'T HAVE DONE IT. AND IF HE DIDN'T DO THAT AND  
22 YET ALL THESE WITNESSES ARE SAYING HE'S THE ONE WHO DID IT  
23 EVEN THOUGH NONE OF THEM SAW THE SHOT ACTUALLY FIRED, EVEN  
24 THOUGH NONE OF THEM ACTUALLY SAW THE FIRING PARTICLES  
25 ERUPT FROM THE WEAPON THEY CLAIM HE HELD, EVEN THOUGH

1 NONE OF THEM ADMITTEDLY WAS LOOKING AT HIM WHEN THE  
2 TRIGGER WAS PULLED, EVEN THOUGH THEY NOW ADMITTEDLY DIDN'T  
3 SEE ANYBODY ELSE PULL A GUN AND WERE LOOKING IN DIFFERENT  
4 DIRECTIONS, HAROLD WILSON COULDN'T HAVE KILLED REGINALD  
5 FOSTER. IF THEY ARE NOT TELLING THE TRUTH ABOUT THAT HOW  
6 MUCH MORE ARE THEY NOT TELLING THE TRUTH ABOUT? THAT'S NOT  
7 AND I DON'T ... I'M SORRY, I DON'T SPEAK STREET TALK. I DON'T  
8 UNDERSTAND THAT TO MEAN GIVE ME YOUR MONEY OR I'M GONNA  
9 SHOOT YOU. GIVE ME YOUR GUN OR I'M GONNA SHOOT YOU. THAT'S  
10 NOT THE TESTIMONY ... NOBODY AS I RECALL SAID THAT HAROLD  
11 WILSON SAID GIVE ME YOUR GUN, GIVE ME YOUR MONEY, GIVE ME  
12 YOUR JEWELRY, GIVE ME YOUR DRUGS, GIVE ME ANYTHING. I'M  
13 GONNA STEAL IT FROM YOU. I WANT YOUR STUFF FOR FREE. NOBODY  
14 SAID THAT. IF HAROLD WILSON WAS STANDING THERE FOR AN HOUR  
15 JAWING WITH THESE PEOPLE, IN HIS WORDS DOING SOME DRUGS, AND  
16 AT LEAST REGGIE HAD DRUGS IN HIS SYSTEM WHEN THE AUTOPSY  
17 WAS DONE. AND DRUGS WERE FOUND ON HIM. AND I BELIEVE SOME  
18 RESIDUE WAS FOUND SOMEWHERE ELSE AND THEN THERE WERE THE  
19 OTHER BULLETS THAT WERE FOUND ON ONE OF THE OTHER  
20 WITNESSES BUT HE DIDN'T HAVE A GUN. IF ALL THEY'RE DOING IS  
21 STANDING THERE JAWING AND ALL HE SAID WAS WHAT HAS BEEN  
22 SAID THAT HE SAID TO ME THAT'S NOT YOU I'M ROBBING, GIVE ME  
23 YOUR STUFF AND SO IF HAROLD WILSON IS NOT ROBBING MAURICE  
24 DINGLE THEN THERE'S NOT STRONG ARMED ROBBERY. AND IF  
25 THERE'S NO STRONG ARMED ROBBERY AND IF YOU BELIEVE THAT

HEARING

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1 HAROLD WILSON COULD NOT HAVE KILLED REGINALD FOSTER  
2 BECAUSE OF WHERE THEY WERE AND HOW THE BULLET HAD TO GO  
3 THEN WHY WOULD HE NOT BE TELLING THE TRUTH ABOUT SOME OF  
4 THESE OTHER THINGS? LIKE I'M RUNNING AND SHOOTING? I'M NOT  
5 RUNNING AND SHOOTING DOWN. I'M NOT RUNNING AND SHOOTING  
6 ACROSS. I'M SCARED AND I'M RUNNING AND SHOOTING MY TWO  
7 LITTLE BULLETS. WELL, NOBODY'S LEG WAS THIS HIGH IN THE AIR TO  
8 GET SHOT. AND NO SHOT WAS LOW ENOUGH TO HIT SOMEBODY IN  
9 THE LEG. WELL, THEN THAT MEANS SOMEBODY ELSE HAD TO SHOOT  
10 DADDY RABBIT, TOO. ALL YOU HAVE TO FIND IS A REASONABLE  
11 DOUBT. IS THERE A DOUBT FOR WHICH YOU CAN GIVE A LITTLE  
12 REASON AND IF YOU FIND A REASONABLE DOUBT AS I TOLD YOU AT  
13 THE BEGINNING HAROLD WILSON WAS INNOCENT WHEN HE WALKED  
14 INTO THIS COURTROOM AND HE WILL REMAIN INNOCENT UNTIL EACH  
15 AND EVERYONE OF YOU FINDS HIM GUILTY OF EACH OF THESE  
16 CHARGES BEYOND A REASONABLE DOUBT. IF THEIR WITNESS IS NOT  
17 TELLING THE TRUTH ABOUT WHO SHOT OR WHO DID WHAT THEN OF  
18 COURSE LIKE I SAID I DON'T REMEMBER THEM SAYING THEY  
19 ACTUALLY SAW THE SHOOT TAKE PLACE BUT EVEN IF THEY TESTIFIED  
20 TO THAT WHICH I DON'T BELIEVE THEY DID IT COULD NOT HAVE  
21 TAKEN PLACE THE WAY THEY SAID. SIMPLY BECAUSE OF WHERE  
22 THEY ADMITTED EVERYBODY WAS AND WHERE THE MAILBOX IS. SO  
23 WHAT DO I WANT YOU TO DO? I WANT YOU TO LOOK AT THE  
24 PICTURES. I WANT YOU TO PAY VERY CLOSE ATTENTION TO THEM  
25 AND THE THREE TRASH CANS AND THE MAIL BOX. AND UP AND DOWN

1 THE STREET. I WANT YOU TO TAKE THAT DRAWING IN EVIDENCE AS  
2 STATE'S NUMBER ONE AND PAY CLOSE ATTENTION TO THAT. LOOK AT  
3 THE PICTURES AND THEN COMPARE THEM TO THAT. I KNOW IT'S NOT  
4 TO SCALE BUT THAT DOESN'T MATTER MUCH. BECAUSE WHAT  
5 MATTERS IS WHERE WAS HAROLD WILSON WHEN THE SHOOTING  
6 STARTED AND WHERE WAS REGINALD FOSTER WHEN HE GOT HIT AND  
7 PHYSICALLY HE WASN'T HIT BY A BULLET THAT WENT THROUGH THAT  
8 MAILBOX UNLESS IT CAME BACKWARDS THE OTHER WAY. I DON'T  
9 KNOW WHO HAD ACCESS TO PLAYING WITH IT OVER NIGHT AND I  
10 DON'T REALLY CARE. ALL I CARE ABOUT IS IS THERE SOME  
11 REASONABLE DOUBT IN YOUR MIND AS THERE IS IN MINE THAT  
12 HAROLD WILSON SHOT REGINALD FOSTER. COULDN'T HAVE  
13 HAPPENED THAT WAY. LOOK AT THE PHYSICAL EVIDENCE. BELIEVE  
14 AS MUCH OF ANYBODY'S TESTIMONY AS YOU WANT TO BECAUSE  
15 THAT'S YOUR RIGHT. BUT MORE THAN ANYTHING ELSE BELIEVE THE  
16 PHYSICAL EVIDENCE AND BELIEVE THE SLED AGENTS BECAUSE THEY  
17 DON'T HAVE AN IRON IN THIS FIRE. THEY'RE NOT HERE TO HELP  
18 ANYBODY OR HURT ANYBODY. THEY'RE HERE TO TESTIFY TO WHAT  
19 THEY EXAMINED AND WHAT THEY FOUND. AND I DIDN'T DISPUTE ANY  
20 OF THEIR FINDINGS. I FIND THEM TO BE HIGHLY RELIABLE. THEY'RE  
21 HIGHLY RELIABLE AS FAR AS THERE NOT BEING ANY LEAD .25  
22 CALIBER BULLETS. THEY'RE HIGHLY RELIABLE TO FIND THERE WAS  
23 NO COPPER JACKETING ON THE BULLET FRAGMENT IN REGGIE'S BRAIN.  
24 THEY'RE HIGHLY RELIABLE TO FIND THAT THAT BULLET HAD TO BE  
25 TURNED BY SOMETHING AFTER IT CAME OUT OF THE GUN BARREL

HEARING

542

1 BEFORE IT WENT INTO REGINALD FOSTER'S BRAIN. AND IF THAT IS  
2 TRUE AND THAT'S UNDISPUTED THEN HAROLD WILSON COULD NOT  
3 HAVE KILLED REGINALD FOSTER AND IF HE DIDN'T KILL REGINALD  
4 FOSTER THE REST OF THIS NONSENSE IS LIKEWISE NOT TRUE. YOU  
5 PAY ATTENTION TO THE EVIDENCE. I KNOW I FORGOT A LOT OF  
6 THINGS. LISTEN TO MR. CONNER. GIVE HIM GOOD CLOSE ATTENTION.  
7 BUT AFTER YOU LISTEN TO HIM, AFTER YOU LISTEN TO THE LAW FROM  
8 THE JUDGE'S CHARGES, LOOK AT THESE PICTURES, LOOK AT THAT  
9 DRAWING AND REMEMBER WHAT DR. PAAVEL SAID AND REMEMBER  
10 WHAT DR. SEXTON SAID. THANK YOU VERY MUCH.

11 THE COURT: MR. CONNER.

12 MR. CONNER: LADIES AND GENTLEMEN OF THE JURY, I  
13 WANT TO THANK YOU FOR YOUR ATTENTION THROUGHOUT THIS CASE  
14 AND ASK FOR YOUR ATTENTION FOR A FEW MORE MINUTES. I FEEL  
15 LIKE THAT THIS TIME IN THE CASE THAT I'M THE SECOND PREACHER  
16 COMING UP ON SUNDAY MORNING AND IT WOULD BE HARD FOR ME TO  
17 MAINTAIN MY ATTENTION THROUGH A SECOND SERMON. BUT I'LL  
18 TRY TO BE BRIEF. BUT ON THE OTHER HAND I FEEL LIKE WE HAVE A  
19 DUTY TO BRING UP SOME OF THESE POINTS. I'D LIKE TO START AT A  
20 LITTLE BIT DIFFERENT KIND OF IDEA FROM WHAT MR. BLACKMON  
21 TOOK IN THAT I'D LIKE TO EXCLUDE CERTAIN PEOPLE FROM ... FROM  
22 THIS SHOOTING. FOR EXAMPLE, THERE WAS LINWOOD BUTLER. HE'S  
23 THE ONE THEY CALL DADDY RABBIT. HE'S THE FELLOW WHO WAS  
24 SHOT IN THE LEG. WELL, THE DEFENDANT ON THE STAND SAID THAT  
25 LIN ... HE DIDN'T SEE A GUN IN LINWOOD BUTLER'S HANDS SO LET'S

1 TAKE HIM OUT OF THE PICTURE. HE'S CERTAINLY NOT THE SHOOTER.  
2 NOW, I ALSO ASKED HIM ABOUT D.L., DALAMAR BURROUGHS. I SAID  
3 DID HE HAVE A GUN IN HIS HAND. NO, HE DIDN'T HAVE A GUN EITHER.  
4 SO LET'S TAKE HIM OUT OF THE EQUATION AND THIS CEANTE FELLOW  
5 IS FROM OUT OF TOWN WHO'S VISITING AND HE WAS JUST COMING UP,  
6 HE NEVER EVEN GOT INTO THE CROWD AND TURNED AND RAN. SO,  
7 LET'S TAKE HIM OUT OF THE CROWD. NOW, HE DID SAY THAT HE  
8 THOUGHT LITTLE REGGIE HAD A GUN BUT HE DIDN'T ... HE FELT NO  
9 FEAR IN ... IN REGARDS TO LITTLE FRED ... LITTLE REGGIE AND HE  
10 DIDN'T THINK LITTLE REGGIE WAS ENDANGERING HIS LIFE IN ANY  
11 WAY. THERE WAS NO NEED TO SHOOT AT LITTLE REGGIE SO HE SAYS.  
12 SO, I DON'T THINK ANYONE OF THESE PEOPLE ... WELL, CERTAINLY  
13 LITTLE REGGIE DIDN'T SHOOT HIMSELF AS I BELIEVE THE DOCTOR  
14 WOULD HAVE BEEN TESTIFYING ABOUT GUNPOWDER ON HIM AND ALL  
15 THAT SHOOTING HIMSELF WITH A GUN ... GUN UP CLOSE AND  
16 ANOTHER THING PEOPLE THAT SHOOT THEMSELVES DON'T SHOOT  
17 THEMSELVES IN THE BACK OF THE HEAD USUALLY. IN ANY EVENT I  
18 WOULD SUBMIT TO YOU THAT LINWOOD BUTLER, DALAMAR  
19 BURROUGHS, LITTLE REGGIE AND CEANTE DIDN'T DO THE SHOOTING.  
20 SO THAT LEAVES IT DOWN TO ... TO REESE OR TREZ AND ... WHERE IS  
21 THAT STUFF ON THE STATEMENTS? ACCORDING TO THE DEFENDANT  
22 THEN I BELIEVE ACTUALLY IT LEAVES THE THREE PEOPLE ... IT LEAVES  
23 IT TO MAURICE OR REESE DINGLE, OR TREZ. AND THAT'S WHAT THIS  
24 DEFENDANT SAYS IN HIS ... EXHIBIT NUMBER 34 WHICH IS HIS  
25 STATEMENT THAT HE GAVE TO MR. HOLSTON AND MS. RABON. HE

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1 SAYS AFTER THINKING ABOUT THINGS I KNOW I SHOT DADDY RABBIT,  
2 LINWOOD BUTLER. REESE OR TREZ SHOT REGGIE. NOW THAT'S HIS  
3 VERSION OF IT. AND NOW, LET'S LOOK AT ... AT THE REESE AND TREZ.  
4 TREZ WAS THE RUNNING MATE OF MR. WILSON. HE CAME THERE WITH  
5 MR. WILSON. AS YOU NOTICE IN THE OTHER STATEMENT WILSON  
6 SAYS TREZ ... ME AND TREZ WERE PLOTTING TO ROB ... TO ROB REESE  
7 OF HIS DRUGS AND GUN I BELIEVE IS THE WAY HE PUT IT AND I'M  
8 GONNA READ THAT IN A MINUTE. BUT LET'S SEE IF I'VE GOT IT HERE, I  
9 CAN READ EXACTLY. HE SAID ... THIS IS STATE'S EXHIBIT NUMBER 32 ...  
10 SAID, "ME AND MY MAN, TREZ, WAS ON CARVER PLOTTING TO ROB  
11 REESE FOR DRUGS AND HIS GUN." AND THEN ON THE NEXT PAGE HE  
12 SAID, "MS. CLARK, I'M GUILTY FOR ACCESSORY OF LITTLE REGGIE'S  
13 DEATH BECAUSE IF I WASN'T TRYING TO ROB HE WOULD STILL BE  
14 HERE ON THE EARTH TODAY." THAT'S IN HIS OWN HANDWRITING, HIS  
15 OWN STATEMENT. SO, ... BUT IN THIS FIRST STATEMENT HE SAYS THAT  
16 ... THAT TREZ WAS SHOOTING ... IN FACT EARLIER ON IN THE  
17 STATEMENT HE SAYS TREZ HAD A NINE SO HE'S TRYING TO PUT IT ON  
18 TREZ. I TELL YOU ONE THING EVERYONE OF THOSE WITNESSES, THEY  
19 KNEW THAT TREZ WAS WITH WILSON AND THAT TREZ HAD A GUN AND  
20 WAS PULLING IT OUT THERE WOULD BE ABSOLUTELY NO REASON FOR  
21 THEM TO SIT HERE AND TELL YOU THAT TREZ DIDN'T ... TREZ WASN'T  
22 THE SHOOTER. AND THAT'S WHAT THEY'RE ALL SAYING. TREZ WAS  
23 NOT THE SHOOTER. THE SHOOTER WAS WILSON AND THAT'S WHAT  
24 THEY ALL SAID. EVERYBODY SAYS THAT EXCEPT WILSON. AND ...  
25 AND THOSE FELLOWS, THEY'VE GOT NO ... NO INTEREST IN TREZ.

1       THEY'D JUST AS SOON TREZ GO DOWN THE TUBES, TOO. SO I SUBMIT  
2       TO YOU THAT MR. WILSON IS ... HE ... THIS IS A SELF-SERVING  
3       STATEMENT AND HE'S TRYING TO COVER HIS OWN REAR END.

4               NOW, LET'S TALK ABOUT ANOTHER WITNESS. MS. EARP. THE  
5       GIRL THAT STAYED NEXT DOOR AND HER TESTIMONY AND QUITE  
6       FRANKLY SHE MADE A GOOD IMPRESSION ON ME IN THAT SHE'S A ...  
7       SHE'S NOT PART OF THE CROWD THAT'S HANGING OUT THERE ON THE  
8       STREET. SHE'S AT THE UNIVERSITY OF SOUTH CAROLINA GETTING  
9       HERSELF AN EDUCATION AND SHE'S ... AND SHE'S HOME FOR A  
10      HOLIDAY OR A ... A WEEKEND OR WHATEVER IT WAS SHE WAS OFF FOR  
11      A FEW DAYS AND SHE'S BACK VISITING AT HOME. AND SHE HEARS SHE  
12      SAID TWO GUNSHOTS. AND SHE GOES TO THE WINDOW TO LOOK OUT  
13      TO SEE WHAT WAS GOING ON AND YOU'VE GOT THE PICTURES HERE  
14      AND THE PICTURES ARE REALLY TOO SMALL ... YOU'LL HAVE THEM  
15      BACK THERE IN THE JURY ROOM SO YOU'RE WELCOME TO GO  
16      THROUGH THEM BUT HER HOUSE IS 210 WHICH IS RIGHT NEXT DOOR  
17      TO 208 AND IT'S SHOWN HERE ON THIS SKETCH. NOW, THIS ... WAIT A  
18      MINUTE, THIS IS 210. THIS IS 208. AND SHE ... THE WINDOW THAT SHE'S  
19      LOOKING OUT OF IS RIGHT HERE ... AM I IN YOUR WAY? ... RIGHT HERE  
20      ON THE SIDE. NOW, SHE SAYS SHE SEES ... SHE HEARS TWO GUNSHOTS,  
21      SHE GOES TO THIS WINDOW AND SHE LOOKS OUT. NOW, SHE CAN SEE  
22      LINWOOD BUTLER. THE WAY THIS IS DRAWN YOU CAN'T SEE THAT  
23      AND I'D HAVE TO ASSUME SINCE SHE SAID SHE SAW LINWOOD BUTLER  
24      CRAWLING ON THE ... ON THE GROUND THAT HE CRAWLED OUT HERE  
25      TO THE BACK YARD. AT THE TIME THE POLICE FOUND HIM HE'S RIGHT

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1        HERE ON THIS CORNER. BUT SHE SAID SHE SAW HIM CRAWLING ON  
2        THE GROUND. NOW, SHE ALSO SAID SHE SAW MAURICE TRYING TO  
3        GET IN HIS BACK DOOR WHICH WAS ON THIS SIDE OF HIS TRAILER,  
4        RIGHT HERE WHERE I'M POINTING. AND SHE SAW LITTLE REGGIE ON A  
5        BICYCLE UP HERE IN THE VICINITY OF THE MAILBOX. AND WHEN ...  
6        WHEN THAT HAPPENED SHE HEARD ANOTHER SHOT AND SHE LOOKED  
7        BACK AND AT THAT POINT IN TIME REGGIE FELL OFF HIS BIKE AND HIT  
8        THE GROUND. NOW, IF REESE WAS BACK THERE TRYING TO GET IN  
9        THE BACK DOOR HE WASN'T SHOOTING AT LITTLE REGGIE. I MEAN  
10       HE'S RIGHT OUT OF HER WINDOW THERE. SHE SEES HIM THERE  
11       TRYING TO GET IN HIS DOOR. SO I SUBMIT TO YOU REESE WASN'T THE  
12       SHOOTER. SO TREZ WASN'T THE SHOOTER, REESE WASN'T THE  
13       SHOOTER AND WE'VE ALREADY TAKEN D.L., DADDY RABBIT AND  
14       CEANTE AND LITTLE REGGIE OUT AS NOT BEING THE SHOOTER. SO  
15       WHAT DOES THAT LEAVE? THAT LEAVES THE SHOOTER NAMED  
16       WILSON.

17            ANOTHER THING ABOUT THE SHOTS IS SHE SAID SHE HEARD  
18       THREE SHOTS. SHE HEARD TWO AND THEN SHE HEARD ... AND THEN  
19       THERE WAS A PAUSE, THAT'S WHEN SHE WAS LOOKING OUT THE  
20       WINDOW AND THEN THAT'S WHEN SHE HEARD THIS THIRD SHOT AND  
21       THAT'S WHEN LITTLE REGGIE FELL. AND THE DOCTOR INDICATED  
22       THAT HE WOULD HAVE FALLEN PRETTY QUICKLY AFTER BEING HIT  
23       BECAUSE OF THE NATURE OF THE WOUND HE HAD IN THE HEAD.  
24       ANOTHER THING IS BRIAN CHRISTMAS, THIS OFFICER SEATED RIGHT  
25       OVER HERE ON THE END OF THE TABLE. HE WAS AROUND AT A FIRE

1 MEETING, FIRE STATION MEETING NOT TOO FAR FROM WHERE THIS  
2 HAPPENED, I BELIEVE HE SAID ABOUT 250 YARDS OR SO AND HE  
3 INDICATED HE ... HE HEARD THREE OR POSSIBLY FOUR SHOTS BUT HE  
4 ... AND THE WAY HE DESCRIBED IT WHEN HE TESTIFIED IS HE HEARD A  
5 COUPLE SHOTS AND THEN THERE WAS A PAUSE AND THEN HE HEARD  
6 ANOTHER SHOT AND IF YOU NOTICE MR. ... THE POLICE TOOK A  
7 STATEMENT FROM WILSON'S GIRLFRIEND NAMED ANGELETTA NICOLE  
8 MELTON AND THE DEFENSE HAS INTRODUCED THAT. WE PROVIDED  
9 THEM WITH A COPY OF IT AND THEY'VE INTRODUCED IT INTO  
10 EVIDENCE AND IF YOU'LL NOTICE IN HER STATEMENT SHE INDICATES  
11 SHE WAS NEARBY AND SHE HEARD TWO SHOTS. NOW, WILSON WOULD  
12 MAKE YOU THINK IT WAS LIKE WORLD WAR 2 OVER THERE.  
13 EVERYBODY WAS SHOOTING ALL OF A SUDDEN AT ONE TIME AND WAS  
14 JUST HUNDREDS OF SHOTS BUT I TELL YOU ANOTHER THING, THE  
15 POLICE FOUND THREE HULLS. NOW, I'M NOT GONNA STAND HERE AND  
16 TELL YOU THEY FOUND EVERY HULL AND EVERY CASING OUT THERE  
17 BECAUSE THESE LITTLE OLD CASINGS FALL ON THE GROUND ... IF  
18 THEY FALL ON THE GROUND, FALL OUT THERE ON THE PAVEMENT  
19 THEY'RE PRETTY EASY TO SEE. BUT IF THEY FALL ON THE GROUND  
20 AND SOMEBODY STEPS ON ONE OF THEM AND IT DISAPPEARS PRETTY  
21 EASILY BECAUSE IT'S ... IT'S ... YOU CAN TAKE THEM OUT OF THE  
22 CONTAINER THERE AND YOU CAN SEE THAT IF SOMEBODY STEPPED  
23 ON ONE IT WOULD BE PRETTY EASY TO MASH INTO THE GROUND AND  
24 NOT BE VISIBLE. BUT THEY ... THEY DID A PRETTY THOROUGH JOB  
25 BECAUSE THAT'S THEIR JOB OF LOOKING FOR THEM AND THEY FOUND

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1 THREE AND ALL THOSE THREE CASINGS MATCHED. THEY WERE  
2 SHOOTING ... ACCORDING TO MR. PAAVEL FROM SLED, THEY WERE  
3 SHOT BY THE SAME GUN AND HE SAID IT WAS A NINE MILLIMETER  
4 PISTOL. THE BULLET THEY RECOVERED OFF THE GROUND AROUND  
5 THERE CAME OUT OF A NINE MILLIMETER PISTOL. THEY CAN'T EVEN ...  
6 HE CAN'T EVEN SAY THAT IT CAME OUT OF THESE CASINGS. IT'S THE ...  
7 IT'S THE NATURE OF THE SCIENCE, THEY DON'T HAVE THE ABILITY TO  
8 DO THAT. AND UNFORTUNATELY WE WERE NOT ABLE TO RECOVER  
9 THE PISTOL BECAUSE I WOULD EVEN SUBMIT TO YOU THAT  
10 SOMEBODY WHO'S USED A PISTOL IN SOMETHING LIKE THIS THEY  
11 WANT TO GET RID OF IT BECAUSE THEY DON'T WANT ... THEY DON'T  
12 WANT IT TO BE FOUND.

13 NOW, ANOTHER THING THAT I'D LIKE TO POINT OUT HERE IS MR.  
14 BLACKMON SAYS ALL THESE PEOPLE ARE LYING. ALL OF THEM ARE  
15 JUST LIARS. I TELL YOU THAT KIND OF RUBS ME THE WRONG WAY. I  
16 SAID THAT IT WAS THE WAY THEY SAID IT, THEY SAID I THINK THE  
17 YOUNG FELLOW SAID SOMETHING LIKE GIVE ME WHAT YOU'VE ...  
18 THAT WILSON SAID GIVE ME WHAT YOU'VE GOT IN YOUR POCKETS  
19 AND HE SAID WELL, THAT WASN'T REALLY A DEMAND THAT  
20 SOMEBODY WOULD ROB SOMEBODY. THAT ... THAT WAS JUST  
21 FRIENDLY TALK I RECKON ACCORDING TO MR. BLACKMON BUT I  
22 DON'T SEE IT THAT WAY. AND ONE THING THAT MAKES IT REAL  
23 CLEAR IS THIS STATEMENT HERE, "ME AND MY MAN, TREZ WAS ON  
24 CARVER PLOTTING TO ROB REESE'S FOR DRUGS AND HIS GUN." I TELL  
25 YOU THIS HANDWRITING IS NOT TOO GOOD BUT YOU ... YOU'RE GONNA

1 HAVE IT, YOU CAN LOOK AT IT AND ON THE SECOND PAGE HE SAID,  
2 "MS. CLARK, I'M GUILTY FOR ACCESSORY OF LITTLE REGGIE'S DEATH  
3 BECAUSE IF I WASN'T TRYING TO ROB HE WOULD STILL BE HERE ON  
4 THE EARTH TODAY." AND IN THIS ONE HERE HE SAYS, HE BLAMES IT  
5 ON HIS BUDDY. HE'S LOOKING FOR SOMEBODY ELSE TO BLAME. I CAN  
6 TELL YOU THAT. IT'S RIGHT IN THE MIDDLE OF THE PAGE, "TREZ WAS  
7 TALKING ABOUT ROBBING FOR WHAT THE WEIGHT MAN WAS  
8 BRINGING." IN OTHER WORDS, HE WAS INSINUATING THAT TREZ WAS  
9 THE ONE WHO WAS PUSHING THE ROBBERY.

10 IN ANY EVENT, LADIES AND GENTLEMEN, THESE ... THESE  
11 YOUNG MEN ARE NOT THE MOST ARTICULATE PEOPLE IN THE WORLD.  
12 AS YOU NOTICED ONE OF THEM HAD A LOT OF DIFFICULTY TRYING TO  
13 READ HIS STATEMENT THAT SOMEBODY ELSE HAD WRITTEN FOR HIM.  
14 THEY ARE NOT WORD MASTERS. BUT THEIR STORIES HAVE BEEN  
15 CONSISTENT AND THERE'S NO QUESTION ABOUT IT BASED ON THE  
16 DEFENDANT'S OWN STATEMENTS HE WAS THERE WITH THE INTENT TO  
17 ROB THEM AND HE WAS PREPARED TO ROB THEM BECAUSE HE HAD A  
18 GUN ON HIS HIP AND I SUBMIT TO YOU THAT HE SHOULD BE FOUND  
19 GUILTY OF ATTEMPTED ARMED ROBBERY IN THIS CASE.

20 NOW, LET'S TALK A LITTLE BIT ABOUT CREDIBILITY AND WHAT  
21 YOU BELIEVE BECAUSE MR. WILSON HAS TAKEN THE STAND HERE IN  
22 HIS OWN DEFENSE AND LET'S SEE IF WE ... IF WHAT HE SAID MAKES  
23 COMMON SENSE AND I ... ALL I'M DOING IS USING MY COMMON SENSE  
24 TO TRY AND EVALUATE HIS TESTIMONY AND I INVITE YOU TO DO THE  
25 SAME. ONE THING THAT I THOUGHT WAS A LITTLE BIT NOT SO

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1 CREDIBLE WAS THAT HE WAS TALKING ABOUT ADVANCING ON A  
2 MANN WITH A GUN LIKE HE ... HE SAID THAT I WAS STANDING RIGHT  
3 HERE I BELIEVE AND HE WAS SEATED IN THE STAND AND HE SAID  
4 THAT HE WAS ABOUT THAT FAR FROM THIS FELLOW MAURICE DINGLE  
5 OR REESE AS THEY CALL HIM AND THAT REESE PULLED OUT HIS GUN  
6 AND HE WAS GONNA CHARGE OVER AND GET THE GUN OUT OF HIS  
7 HAND ... THAT'S THE WAY I UNDERSTOOD IT AND I TELL YOU IF YOU  
8 UNDERSTOOD IT ANY DIFFERENTLY YOU'RE WELCOME TO ... TO THAT  
9 INTERPRETATION OF IT BUT HE SAID HE WAS GONNA GET THE GUN  
10 FROM REESE. WELL, IT JUST DOESN'T MAKE SENSE THAT HE WOULD  
11 CHARGE ON A MAN WITH A GUN. ESPECIALLY AFTER HE HAD TOLD  
12 HIM HE WAS GONNA GET WHAT HE ... WHAT WAS IN HIS POCKETS.  
13 THAT DIDN'T MAKE SENSE TO ME AND I THINK YOU CAN ... HERE ARE  
14 SOME OTHER THINGS, HE'S SAYING HE WAS BUSTING, HE WAS BUST ... I  
15 BUSTED BACK AT REESE. I'VE BEEN TRYING TO KILL REESE. THAT'S IN  
16 THIS STATEMENT HE GAVE MR. HOLSTON. IT'S RIGHT DOWN ON ...  
17 NEAR THE LAST ... IT'S IN THE LAST PARAGRAPH OR THE LAST  
18 PARAGRAPH AND IT SAYS, "I BUSTED BACK AT REESE. I BEEN TRYING  
19 TO KILL REESE WHEN I SEEN REGGIE FALL." HE WAS SHOOTING WHEN  
20 REGGIE FELL. NOW, ANOTHER THING IS YOU KNOW, SOMETHING  
21 CAME INTO THIS CASE ABOUT HIS PRIOR RECORD, HIS RECORD IN THE  
22 JUVENILE COURT FOR COMMON LAW ROBBERY AND ALSO FOR  
23 BURGLARY SECOND DEGREE AND HE ACTUALLY ... THAT HAS  
24 NOTHING TO DO ... IN OTHER WORDS, YOU CAN'T SAY THAT THAT'S  
25 FACT THAT SHOWS THAT HE DID THIS CRIME BUT IT'S CERTAINLY A

1 FACTOR THAT YOU CAN CONSIDER AS TO WHETHER YOU BELIEVE HIM  
2 OR NOT BECAUSE PEOPLE THAT DO THAT KIND OF CRIME, ROBBERY  
3 AND BURGLARY, THEY CERTAINLY ... I WOULD SUBMIT TO YOU ARE  
4 NOT TRUTHFUL PEOPLE AND HE SAID, "OH, NO, THAT WAS DISMISSED  
5 AND THAT I WAS FOUND GUILTY OF SOMETHING TO DO WITH  
6 BURGLARY TOOLS." WELL, THIS IS STATE'S EXHIBIT NUMBER 35 AND  
7 THIS IS ... I'LL READ THE MIDDLE OF THE ORDER THAT CAME FROM THE  
8 FAMILY COURT IN REGARDS TO IT. IT SAYS, "AN ADJUDICATORY  
9 HEARING WAS ON JUNE THE 28<sup>TH</sup>, 2001. THE MINOR WAS ADJUDICATED  
10 DELINQUENT FOR HAVING COMMITTED THE OFFENSE OF STRONG  
11 ARMED ROBBERY. THE POSSESSION OF BURGLARY TOOLS CHARGE  
12 WAS DISMISSED. AT THE DISPOSITION HEARING ON JUNE THE 28<sup>TH</sup>,  
13 2001, HE PLED GUILTY TO BURGLARY SECOND DEGREE." SO HERE HE IS  
14 DENYING HIS OWN RECORD. HE WANTS TO MAKE IT SOUND LIKE  
15 SOMETHING DIFFERENT HAPPENED THINKING THAT HIS RECORD  
16 WOULD BE ... THAT HE WOULDN'T BE EXPOSED TO IT I ASSUME. I DON'T  
17 KNOW WHAT HE THINKS.

18 ANOTHER THING THAT DOESN'T SEEM QUITE CREDIBLE TO ME IS  
19 THAT YOU WOULD GO TO A ROBBERY, GO SOMEWHERE WITH THE  
20 INTENT TO ROB SOMEBODY, HAVE ... CARRY A PISTOL WITH YOU  
21 WHICH HE ADMITS HE DID, AND THEN NOT PULL OUT THE PISTOL  
22 UNTIL THE VICTIM, MR. REESE, DECIDED TO DEFEND HIMSELF. THEN  
23 YOU PULLED OUT YOUR PISTOL. THAT JUST DOESN'T MAKE SENSE.  
24 THE WHOLE THING DOESN'T MAKE SENSE. BUT I'LL TELL YOU ONE  
25 THING, PEOPLE THAT DO THE KIND OF CRIMES THAT WE HAVE HERE

HEARING

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1 THEY DON'T ALWAYS MAKE SENSE. LADIES AND GENTLEMEN, IN  
2 SUMMARY I'D LIKE TO POINT OUT TO YOU WE'VE GOT CERTAIN  
3 CHARGES, WE'VE GOT ATTEMPTED ARMED ROBBERY. GIVE ME WHAT  
4 YOU'VE GOT IN YOUR POCKETS. THAT SEEMS PRETTY CLEAR TO ME  
5 WHEN YOU POINT A GUN AT SOMEBODY, GIVE ME WHAT YOU'VE GOT  
6 IN YOUR POCKETS AND ALSO HIS ADMISSION IN HIS STATEMENT.  
7 ASSAULT AND BATTERY WITH INTENT TO KILL. HE SHOT THIS FELLOW,  
8 BUTLER, SHOT HIM IN THE LEG. HE SPENT A WEEK IN THE ... IN THE  
9 HOSPITAL. HE SAID HIS ARTERY WAS SEVERED. IT'S A WONDER HE  
10 DIDN'T BLEED TO DEATH. THAT'S THE LONG AND SHORT OF IT. THIS  
11 WAS A DANGEROUS ATTACK AND HE SHOT THESE PEOPLE DOWN LIKE  
12 ANIMALS. AND ... AND THEN OF COURSE WE'VE GOT THE ... WE'VE GOT  
13 THE ASSAULT AND BATTERY WITH INTENT TO KILL, THE ARMED  
14 ROBBERY AND POSSESSION OF A WEAPON DURING A VIOLENT CRIME  
15 AND HE'S ADMITTED ... OF COURSE HE ... HE DOESN'T ADMIT THAT HE  
16 DID ANY KILLING BUT HE DOES ADMIT THAT HE SHOT MR. BUTLER BUT  
17 HE ... HE HAD A PISTOL. HE ADMITS THE PISTOL. IN OTHER WORDS, HE  
18 WANTS TO MAKE EVERYTHING SOUND A LITTLE BIT BETTER THAN IT  
19 REALLY WAS IS WHAT HIS GAME IS. AND LAST OF ALL, OF COURSE, IS  
20 THE MURDER. THE INTENTIONAL KILLING OF ANOTHER HUMAN BEING  
21 WITH WHAT'S CALLED MALICE AFORETHOUGHT. AND MALICE ... THE  
22 JUDGE IS GONNA INSTRUCT YOU ON THIS IN A FEW MINUTES AND HE'S  
23 GONNA TELL YOU SOMETHING SIMILAR TO THIS THAT MALICE IS A  
24 WICKED INTENT. YOU CAN HAVE A EXPRESSED MALICE OR YOU CAN  
25 HAVE IMPLIED, INFERRED MALICE. EXPRESSED IS WHEN YOU TELL

1       SOMEBODY SOMETHING AND YOU KNOW, YOU CUSS THEM OUT AND  
2       TELL THEM YOU'RE GONNA SHOOT THEM OR SOMETHING, THAT'S  
3       EXPRESSED. THAT INDICATES THE PERSON'S INTENT TO DO  
4       SOMETHING WICKED WHICH IS WHAT MALICE IS ALL ABOUT. BUT  
5       MOST OF THE TIME IN MOST CASES YOU DON'T HAVE THAT. PEOPLE  
6       DON'T USE A WHOLE LOT OF WORDS, THEY JUST START SHOOTING.  
7       AND YOU CAN ... BUT YOU CAN INFER MALICE FROM WHAT THEY DO.  
8       THE DOING OF A CRIME LIKE ROBBERY, THAT'S A FELONY. AND THAT  
9       IN ITSELF IMPLIES MALICE. AND ANOTHER THING THAT IMPLIES  
10      MALICE IS THE USE OF A DEADLY WEAPON, A PISTOL. ONE OTHER  
11      THING I'D LIKE TO ADDRESS REAL BRIEFLY IS THIS THING THAT MR.  
12      BLACKMON BROUGHT UP ABOUT THE ... THE BULLET. AND ABOUT  
13      REGGIE'S LOCATION. MAYBE I DIDN'T UNDERSTAND IT ALL BUT ... AND  
14      I DON'T THINK ANYBODY ... I DON'T THINK ANY OF THESE WITNESSES  
15      CAN TELL YOU EXACTLY WHERE THEY WERE STANDING BUT THEY  
16      WERE STANDING OUT HERE IN FRONT OF THESE THREE TRASH CANS IN  
17      THAT VICINITY AND WHAT HAPPENED WHEN THE GUN FIRE STARTED?  
18      THEY ALL STARTED MOVING. THEY ALL STARTED RUNNING. TWO OF  
19      THEM RAN ACROSS THE ROAD THIS WAY AND CUT THROUGH THIS  
20      WOMAN'S YARD AND ENDED UP SOMEWHERE BACK IN HERE. D.L. AND  
21      CEANTE. THOSE TWO. MR. REESE, MAURICE RAN BETWEEN THESE  
22      TWO TRAILERS AND TRIED TO GET IN HIS BACKDOOR BACK HERE.  
23      DADDY RABBIT OR LINWOOD BUTLER RAN THIS WAY AND HE SAID HE  
24      GOT HIT HERE JUST AS HE STARTED TO RUN. HIS LEG FOLDED UP ON  
25      HIM AND HE HOPPED BACK HERE AND HE FELL ON THE GROUND AND

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1 HE CRAWLED. AND SO EVERYBODY WAS MOVING AND IT JUST ... NOW,  
2 LITTLE REGGIE APPARENTLY DIDN'T MOVE AS FAR AND AS FAST AS HE  
3 SHOULD HAVE OR COULD HAVE, MAYBE COULD HAVE OR SHOULD  
4 HAVE. BUT THERE'S NO DOUBT IN MY MIND THAT HE DIDN'T STAY  
5 PARKED RIGHT THERE IN FRONT OF THE TRASH CAN. NOW, THE LADY,  
6 MS. EARP, SHE SAYS HE WAS IN THE VICINITY OF THE MAILBOX, HE  
7 WAS OUT THERE IN THAT VICINITY. I CAN'T TELL YOU AND ... AND  
8 NONE OF THESE WITNESSES CAN TELL YOU EXACTLY WHERE HE WAS  
9 STANDING BECAUSE THEY WERE SCARED AND THEY WERE RUNNING  
10 FOR THEIR LIVES. I SUBMIT IT'S NOT ... IT'S NOT UNREASONABLE TO  
11 BELIEVE THAT HE HAD MOVED OVER ... HE WAS SITTING ON THAT  
12 LITTLE BICYCLE, YOU'VE GOT A PICTURE OF THE BICYCLE, IT'S NOT A ...  
13 A FULL ADULT SIZE BICYCLE. IT DOESN'T APPEAR TO BE TO ME. IT  
14 APPEARS TO BE ABOUT A 20 INCHES. BUT IT'S ... IT'S IN ONE OF THESE  
15 PHOTOGRAPHS. IT'S GOT SOME BLOOD ON IT, IT'S LAYING THERE ON  
16 THE GROUND. THIS IS IT RIGHT HERE, STATE'S EXHIBIT NUMBER 11.  
17 BUT IF HE WAS SITTING THERE ON THAT BICYCLE AND HE HAD  
18 LOCATED ... HAD GOTTEN TOT HE POSITION WHERE HE WAS RIGHT  
19 BEHIND THE ... THE MAILBOX, THE SHOT COULD GO THROUGH THE  
20 MAILBOX AND THERE'S NO DOUBT ABOUT IT FROM LOOKING AT THE  
21 MAILBOX THAT THE BULLET WENT ... THAT ONE BULLET WENT IN THE  
22 FRONT OF THE MAILBOX AND CAME OUT ON THE SIDE OF THE  
23 MAILBOX BECAUSE YOU ... THE OFFICERS WERE TESTIFYING TO THAT.  
24 THAT IT WAS INDENTED AND JUST FROM THE INDENTIONS AND YOU  
25 CAN SEE THAT THE ONE THAT CAME OUT PUSHED THE METAL OUT.

1 THE ... THAT THAT VERY WELL COULD HAVE BEEN THE BULLET THAT  
2 KILLED LITTLE REGGIE, IT COULD HAVE BEEN SOME OTHER BULLET.  
3 BUT IN ANY EVENT, LADIES AND GENTLEMEN, I THINK THERE'S  
4 REASONABLE EVIDENCE IN THIS RECORD THAT HE CAN BE CONVICTED  
5 OF MURDER AND I SUBMIT TO YOU THAT THE EVIDENCE JUSTIFIES A  
6 VERDICT OF MURDER. THANK YOU.

7 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE  
8 JURY, IF YOU WOULD GIVE ME YOUR ATTENTION. YOU HAVE  
9 FOLLOWED VERY PATIENTLY AND LISTENED VERY ATTENTIVELY TO  
10 THE PRESENTATION OF THE EVIDENCE IN THIS CASE AND I THANK YOU  
11 FOR THAT. ALSO TO THE ABLE ARGUMENTS MADE BY THE SOLICITOR,  
12 MR. CONNER, ON BEHALF OF THE STATE AND MR. BLACKMON ON  
13 BEHALF OF THE DEFENDANT. IT NOW BECOMES THE DUTY OF THIS  
14 COURT UNDER OUR CONSTITUTION TO INSTRUCT AND CHARGE YOU  
15 ON THE LAW APPLICABLE TO THIS CASE. AND IT IS YOUR DUTY AS  
16 JURORS TO ACCEPT AND APPLY THE LAW AS THE COURT WILL NOW  
17 STATE IT TO YOU. AS JURORS IT IS YOUR EXCLUSIVE DUTY TO DECIDE  
18 ALL OF THE ISSUES OF FACT IN THIS CASE. AND FOR THAT PURPOSE TO  
19 DETERMINE THE EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH OF  
20 THE EVIDENCE PRESENTED. BOTH THE STATE OF SOUTH CAROLINA  
21 AND THE DEFENDANT, HAROLD WILSON, HAVE THE RIGHT TO EXPECT  
22 THAT YOU INDIVIDUALLY AND COLLECTIVELY CONSCIENTIOUSLY  
23 CONSIDER AND EVALUATE THE EVIDENCE IN THIS CASE AND APPLY  
24 THE LAW OF THE CASE THERETO TO THE END THAT BOTH THE STATE  
25 AND THE DEFENDANT, MR. WILSON, WILL RECEIVE AND OBTAIN A FAIR

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1 AND IMPARTIAL TRIAL. NOW, I'M GOING TO SUMMARIZE TO YOU OR  
2 READ FOR YOU AT THIS TIME THE CHARGES MADE IN THE  
3 INDICTMENT. I WILL TELL YOU NOW AND ONCE AGAIN AS I DID IN THE  
4 FIRST OF THIS CASE THAT THE INDICTMENT IS NOT EVIDENCE AND  
5 CANNOT BE CONSIDERED BY YOU AS EVIDENCE IN THIS CASE. BUT  
6 THIS IS CASE NUMBER 2003-GS-43-763 AND IS ENTITLED THE STATE  
7 AGAINST HAROLD WILSON, HAROLD JAMAR WILSON WITH THE  
8 CHARGES MADE IN THE INDICTMENT AND THEY ARE FOUR. THE FIRST  
9 CHARGE IN COUNT ONE IS THAT HAROLD WILSON DID IN SUMTER  
10 COUNTY ON OR ABOUT MAY 19<sup>TH</sup>, 2003, FELONIOUSLY, WILLFULLY,  
11 AND WITH MALICE AFORETHOUGHT KILLED ONE REGINALD FOSTER  
12 BY MEANS OF SHOOTING HIM AND THAT SAID REGINALD FOSTER DID  
13 DIE AS A PROXIMATE RESULT THEREOF. THE SECOND COUNT IS FOR  
14 ASSAULT AND BATTERY WITH INTENT TO KILL AND IT CHARGES THAT  
15 HAROLD WILSON DID IN SUMTER COUNTY ON OR ABOUT MAY 19<sup>TH</sup>,  
16 2003, VIOLATE SOUTH CAROLINA LAW IN THAT HE WITH MALICE  
17 AFORETHOUGHT WHILE PARTICIPATING IN A ROBBERY COMMITTED  
18 AN ASSAULT AND BATTERY UPON ONE HERBERT LINWOOD BUTLER BY  
19 SHOOTING HIM WITH INTENT TO KILL THE SAID HERBERT LINWOOD  
20 BUTLER. AND THAT IS THE CHARGE FOR ASSAULT AND BATTERY  
21 WITH INTENT TO KILL. THE THIRD CHARGE IS THAT OF ATTEMPTED  
22 ROBBERY AND THE INDICTMENT ALLEGES THAT HAROLD WILSON DID  
23 IN SUMTER COUNTY ON OR ABOUT MAY 19<sup>TH</sup>, 2003, VIOLATE SOUTH  
24 CAROLINA LAW IN THAT WHILE ARMED WITH A DEADLY WEAPON,  
25 SPECIFICALLY A PISTOL, HE DID FELONIOUSLY ATTEMPT TO TAKE

1 FROM THE PERSON AND PRESENCE OF EDWARD MAUREESE DINGLE BY  
2 MEANS OF FORCE OR INTIMIDATION GOODS OR MONIES OF THE SAID  
3 EDWARD MAUREESE DINGLE. AND THE FINAL COUNT, COUNT FOUR IS  
4 POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME OF  
5 VIOLENCE AND ALLEGES THAT MR. WILSON DID IN SUMTER COUNTY  
6 ON OR ABOUT MAY 19<sup>TH</sup>, 2003, HAVE IN HIS POSSESSION OR DID VISIBLY  
7 DISPLAY A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME,  
8 SPECIFICALLY THE FIREARM BEING A PISTOL.

9 NOW TO THESE CHARGES AND TO THIS INDICTMENT THE  
10 DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY. THIS PLEA OF NOT  
11 GUILTY BY THE DEFENDANT PLACES THE BURDEN OF PROOF ON THE  
12 STATE TO PROVE THE GUILT OF THE DEFENDANT BEYOND A  
13 REASONABLE DOUBT BEFORE YOU THE JURY CAN FIND THE  
14 DEFENDANT GUILTY. THE DEFENDANT, MR. WILSON, IS PRESUMED IN  
15 THE LAW INNOCENT OF THE CHARGES MADE IN THIS INDICTMENT. IT  
16 IS A CARDINAL AND FUNDAMENTAL RULE OF THE LAW OF EVIDENCE  
17 THAT A DEFENDANT IRRESPECTIVE OF THE ENORMITY OF THE  
18 CHARGES AGAINST HIM WILL ALWAYS BE PRESUMED INNOCENT OF  
19 THE CRIME FOR WHICH HE IS INDICTED UNLESS AND UNTIL THE GUILT  
20 OF THE DEFENDANT HAS BEEN PROVEN BY EVIDENCE WHICH  
21 SATISFIES YOU, THE JURY, OF HIS GUILT BEYOND A REASONABLE  
22 DOUBT. THIS PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL  
23 THEORY. IT IS NOT JUST A LEGAL PHRASE. THE PRESUMPTION OF  
24 INNOCENCE IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT  
25 INCLUDING THIS DEFENDANT IS ENTITLED. THE SUPREME COURT OF

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1 OUR STATE HAS DECLARED THAT THE PRESUMPTION OF INNOCENCE IS  
2 LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF  
3 THE DEFENDANT AND IT REMAINS WITH HIM AND ASSIGNS TO HIM  
4 THAT CLASS THE INNOCENT UNTIL THAT PRESUMPTIVE ROBE OF  
5 RIGHTEOUSNESS HAS BEEN STRIPPED FROM HIS PERSON BY EVIDENCE  
6 SATISFYING YOU, THE JURY, OF THE GUILT OF THE DEFENDANT  
7 BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE  
8 ACCOMPANIES THE DEFENDANT FROM THE TIME OF HIS  
9 ARRAIGNMENT, FROM THE TIME OF HIS APPEARANCE IN THIS  
10 COURTROOM AND THROUGHOUT EVERY STAGE OF THIS TRIAL AND  
11 CONTINUES WITH HIM EVEN AFTER YOU RETIRE TO YOUR JURY ROOM  
12 TO CONSIDER YOUR VERDICT IN THIS CASE. THE PRESUMPTION OF  
13 INNOCENCE CONTINUES IN EXISTENCE TO THE BENEFIT OF THE  
14 DEFENDANT UNLESS AND UNTIL YOU, THE JURY, REACH THE  
15 CONCLUSION THAT THE STATE HAS PROVEN THE GUILT OF THE  
16 DEFENDANT BEYOND A REASONABLE DOUBT.

17 THE STATE IS NOT REQUIRED TO PROVE THE GUILT OF THE  
18 DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT. BUT  
19 BEYOND A REASONABLE DOUBT. PROOF BEYOND A REASONABLE  
20 DOUBT AS USED IN THESE INSTRUCTIONS MEANS THE KIND OF DOUBT  
21 THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT. I  
22 INSTRUCT YOU THAT THE DEFENDANT IS ENTITLED TO EVERY  
23 REASONABLE DOUBT ARISING IN THE WHOLE CASE OR ARISING IN ANY  
24 DEFENSES MADE BY THE DEFENDANT. IF THEN UPON ANY ISSUE OF  
25 FACT ESSENTIAL TO CONVICTION AND THE VERDICT OF GUILTY YOU

1 HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE  
2 RESOLVED IT WOULD BE YOUR DUTY TO RESOLVE THAT ISSUE IN  
3 FAVOR OF THE DEFENDANT. A DEFENDANT, LADIES AND GENTLEMEN,  
4 IS NOT REQUIRED TO PROVE HIS INNOCENCE. BUT THE STATE IS  
5 REQUIRED BY LAW TO PROVE EVERY ELEMENT OF THE OFFENSES  
6 CHARGED AGAINST HIM BY EVIDENCE WHICH SATISFIES YOU, THE  
7 JURY, OF HIS GUILT BEYOND A REASONABLE DOUBT BEFORE YOU CAN  
8 CONVICT THE DEFENDANT AND FIND HIM GUILTY ON ANY CHARGE. IF  
9 THEN UPON THE WHOLE CASE YOU HAVE A REASONABLE DOUBT AS  
10 TO THE GUILT OR THE INNOCENCE OF THE DEFENDANT ON ANY OF THE  
11 CHARGES, HE IS ENTITLED TO THAT REASONABLE DOUBT AND WOULD  
12 BE ENTITLED TO AN ACQUITTAL AND A VERDICT OF NOT GUILTY. AND  
13 I WOULD ALSO TELL YOU THAT YOU ARE TO CONSIDER EACH CHARGE  
14 SEPARATELY AND EACH CHARGE MUST BE DECIDED BY YOU  
15 SEPARATELY AND YOU MUST MAKE A VERDICT AND HAVE A VERDICT  
16 ON EACH OF THE FOUR CHARGES. SO IF YOU HAVE A REASONABLE  
17 DOUBT AS TO WHETHER OR NOT THE DEFENDANT HAS MADE OUT HIS  
18 DEFENSES AS WELL AS THE STATE'S FAILURE TO PROVE IT BEYOND A  
19 REASONABLE DOUBT THEN HE'D BE ENTITLED TO THAT ... BE ENTITLED  
20 TO AN ACQUITTAL AND A VERDICT OF NOT GUILTY. BUT ON THE  
21 OTHER HAND, IF UPON THE WHOLE CASE YOU FIND THAT THE STATE  
22 HAS PROVEN BY EVIDENCE WHICH SATISFIES YOU, THE JURY, OF THE  
23 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT THEN IN  
24 SUCH CIRCUMSTANCES IT WOULD EQUALLY BE YOUR DUTY TO  
25 CONVICT THE DEFENDANT AND FIND HIM GUILTY. NOW WITH ONE OF

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1       THESE CHARGES AND I'M GONNA TELL YOU ABOUT IT LATER ON  
2       THERE IS A LESSER INCLUDED OFFENSE AND IN THAT CONNECTION I  
3       WILL TELL YOU THAT IF YOU FIND THE DEFENDANT GUILTY BUT HAVE  
4       A REASONABLE DOUBT AS TO WHETHER THE DEFENDANT IS GUILTY  
5       OF THE GREATER CRIME CHARGED OR THE LESSER CRIME CHARGED  
6       THEN YOU WOULD RESOLVE THAT REASONABLE DOUBT IN FAVOR OF  
7       THE DEFENDANT AND CHOOSE A VERDICT OF GUILT ONLY ON THE  
8       LESSER CRIME, LESSER CHARGE. BUT OF COURSE YOU CANNOT  
9       CHOOSE A VERDICT OF GUILTY TO ANY CHARGE UNLESS AS TO THAT  
10      PARTICULAR CHARGE YOU FIND ALL ELEMENTS OF THE CHARGE HAVE  
11      BEEN PROVEN BY THE STATE BEYOND A REASONABLE DOUBT.

12           NOW, AS I SAID I INSTRUCT YOU NOW AND ONCE AGAIN THAT  
13      THE INDICTMENT IN THIS CASE IS NOT EVIDENCE AND CANNOT BE  
14      CONSIDERED BY THE YOU AS EVIDENCE IN THE CASE. IS IT SIMPLY  
15      THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGES  
16      AGAINST THE DEFENDANT AND IT SERVES AS THE FORMAL  
17      DOCUMENT BY WHICH THIS CASE IS PROCESSED OR BROUGHT INTO  
18      THIS COURT.

19           NOW, DURING THIS TRIAL, YOU AND I, LADIES AND GENTLEMEN,  
20      HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE IT IS MY  
21      RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE AND I  
22      ALSO HAVE THE DUTY TO RULE UPON OR PASS UPON THE  
23      ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. THE  
24      COURT RULES ONLY ON THE ADMISSIBILITY OF THE EVIDENCE, NOT  
25      THE WEIGHT OR THE CREDIBILITY THAT YOU ARE TO GIVE TO IT. THAT

1 IS A MATTER SOLELY UP TO YOU. YOU ARE TO CONSIDER ONLY THE  
2 COMPETENT EVIDENCE BEFORE YOU AND YOU ARE TO DISREGARD  
3 AND DISABUSE FROM YOUR MIND ANY TESTIMONY ORDERED  
4 STRICKEN FROM THE RECORD IN THIS CASE DURING THE PROGRESS OF  
5 THE TRIAL IF THERE BE ANY AND YOU ARE TO CONSIDER ONLY THE  
6 EVIDENCE WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND  
7 TOGETHER WITH ANY EXHIBITS THAT HAVE BEEN MADE A PART OF  
8 THE RECORD AND ANY STIPULATIONS OF COUNSEL MADE INTO THE  
9 RECORD. NOW, THERE ARE TYPICALLY TWO TYPES OF EVIDENCE  
10 WHICH ARE PRESENTED DURING A TRIAL. DIRECT EVIDENCE AND  
11 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY  
12 OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL  
13 KNOWLEDGE OF THE FACTS SUCH AS AN EYEWITNESS.  
14 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND  
15 CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. THE LAW  
16 MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR  
17 VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL  
18 EVIDENCE. LET ME ILLUSTRATE THE DIFFERENCE BETWEEN DIRECT  
19 EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. IF THE ... TONIGHT I  
20 WENT TO BED AND THERE WAS NO SNOW ON THE GROUND AND I  
21 WAKE UP IN THE MIDDLE OF THE NIGHT AND I SAW IT WAS SNOWING  
22 AND THEN WENT BACK TO BED AND THEN THE NEXT DAY AND THERE  
23 WAS SNOW ON THE GROUND THAT WOULD BE DIRECT EVIDENCE THAT  
24 IT SNOWED LAST NIGHT. ON THE OTHER HAND, IF I WENT TO BED  
25 TONIGHT, THERE WAS NO SNOW ON THE GROUND AND THEN THE NEXT

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1 MORNING I GOT UP AND THERE WAS SNOW ON THE GROUND I DID NOT  
2 SEE IT SNOWING BUT THAT WOULD BE CIRCUMSTANTIAL EVIDENCE  
3 THAT IT HAD SNOWED LAST NIGHT. SO THERE IS NO DISTINCTION  
4 BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO DIRECT OR  
5 CIRCUMSTANTIAL EVIDENCE AND A GREATER DEGREE OF CERTAINTY  
6 IS NOT REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT  
7 EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THIS CASE.  
8 AFTER WEIGHING ALL OF THE EVIDENCE IF YOU ARE NOT CONVINCED  
9 OF THE DEFENDANT BEYOND A REASONABLE DOUBT YOU WOULD  
10 FIND HIM NOT GUILTY. ON THE OTHER HAND AFTER WEIGHING ALL OF  
11 THE EVIDENCE YOU FIND THAT THE STATE HAS CONVINCED YOU OF  
12 HIS GUILT BEYOND A REASONABLE DOUBT YOU WOULD FIND HIM  
13 GUILTY.

14 I WOULD ALSO TELL YOU THE RULES OF EVIDENCE ORDINARILY  
15 DO NOT PERMIT WITNESSES TO TESTIFY AS TO OPINIONS OR  
16 CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES  
17 WE CALL EXPERT WITNESSES. A WITNESS WHO BY EDUCATION AND  
18 EXPERIENCE HAS BECOME EXPERT IN SOME ART, SCIENCE,  
19 PROFESSION OR CALLING MAY STATE AN OPINION AS TO RELEVANT  
20 AND MATERIAL MATTERS IN WHICH THE WITNESS CLAIMS TO BE AN  
21 EXPERT AND MAY ALSO STATE THE REASONS FOR THAT OPINION. YOU  
22 SHOULD CONSIDER ANY EXPERT OPINION RECEIVED INTO EVIDENCE IN  
23 THIS CASE AND LIKE ALL OTHER EVIDENCE GIVE IT THE WEIGHT YOU  
24 THINK THAT IT DESERVES. IF YOU DECIDE THE OPINION OF AN EXPERT  
25 IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE OR IF YOU

1 CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION  
2 ARE NOT SOUND OR THAT THE OPINION IS OUTWEIGHED BY OTHER  
3 EVIDENCE YOU MAY DISREGARD THE OPINION ENTIRELY IN ITS  
4 ENTIRETY. AN EXPERT'S OPINION IS TO BE GIVEN NO GREATER  
5 WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE  
6 WITNESS IS AN EXPERT. FURTHERMORE YOU ARE NOT REQUIRED TO  
7 ACCEPT AN EXPERT'S OPINION EVEN THOUGH IT IS NOT  
8 CONTRADICTED.

9 NOW, LADIES AND GENTLEMEN, IN ADDITION TO THE DUTY  
10 THAT I HAD ADMITTING EVIDENCE INTO THE RECORD I HAD THE  
11 ADDITIONAL DUTY TO CHARGE YOU ON THE LAW APPLICABLE IN THIS  
12 CASE. AS THE PRESIDING JUDGE I AM THE SOLE JUDGE OF THE LAW.  
13 AND IT IS YOUR DUTY TO ACCEPT AND APPLY THE LAW AS I NOW  
14 STATE IT TO YOU. IF YOU HAVE ANY PRECONCEIVED IDEAS AS TO  
15 WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE YOU ARE  
16 OBLIGATED UNDER YOUR OATH WHICH YOU HAVE TAKEN TO  
17 ABANDON THIS PRECONCEPTION ON YOUR PART BECAUSE YOU ARE  
18 SWORN TO ACCEPT THE LAW PRECISELY AS THE COURT STATES IT TO  
19 YOU.

20 IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY THE JURY  
21 BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS. YOU, THE  
22 JURY, ARE THE EXCLUSIVE JUDGE OF THE FACTS IN THIS CASE. THE  
23 COURT IS THE JUDGE OF THE LAW. THE CONSTITUTION OF THIS STATE  
24 HAS DECLARED THAT THE TRIAL JUDGE SHALL NOT INTIMATE, STATE,  
25 COMMENT UPON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT

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1 THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF  
2 THE FACTS OF THIS CASE YOU ARE NOT TO INFER FROM ANYTHING  
3 THAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING  
4 UPON THE ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR ANYTHING  
5 THAT I SAY TO YOU NOW DURING THE COURSE OF THESE  
6 INSTRUCTIONS TO YOU THAT I HAVE AN OPINION ABOUT THE FACTS  
7 OF THIS CASE. I DO NOT. THE LAW DOES NOT PERMIT ME TO HAVE AN  
8 OPINION ABOUT THE FACTS. THAT IS A MATTER SOLELY FOR YOU AND  
9 FOR YOU ONLY TO DETERMINE.

10 AS JURORS IT IS YOUR DUTY AS I HAVE INSTRUCTED YOU TO  
11 DETERMINE THE EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH OF  
12 THE EVIDENCE PRESENTED DURING THIS TRIAL. NECESSARILY THEN  
13 YOU MUST ASSESS THE CREDIBILITY OF THE WITNESSES WHO HAVE  
14 TESTIFIED IN THIS CASE. CREDIBILITY IS SIMPLY A LEGALISTIC TERM  
15 MEANING BELIEVABLE. IT BECOMES YOUR DUTY AS JURORS TO  
16 ANALYZE AND EVALUATE THE EVIDENCE AND TO DETERMINE WHICH  
17 EVIDENCE CONVINCES YOU OF ITS TRUTH. I INSTRUCT YOU THAT IN  
18 DETERMINING THE QUESTION OF CREDIBILITY OR BELIEVABILITY OF  
19 THE WITNESSES YOU HAVE THE RIGHT TO BELIEVE ONE WITNESS AS  
20 AGAINST SEVERAL WITNESSES OR SEVERAL WITNESSES AS AGAINST  
21 ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A  
22 WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF  
23 THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A  
24 WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS  
25 IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESSES

1 EXHIBITED TO YOU ANY INTEREST, ANY BIAS, OR ANY PREJUDICE IN  
2 THE CASE. YOU MAY CONSIDER THE Demeanor OF A WITNESS, THAT  
3 IS THE APPEARANCE OF A WITNESS FROM THE WITNESS STAND. AND  
4 YOU MAY CONSIDER THE OPPORTUNITY FOR KNOWLEDGE  
5 CONCERNING THOSE THINGS ABOUT WHICH A WITNESS TESTIFIED.  
6 THESE CONSIDERATIONS YOU DO NOT EXERCISE ARBITRARILY BUT IF  
7 IN YOUR GOOD JUDGEMENT THERE IS SOUND REASON IN THE RECORD  
8 FOR SO DOING. BECAUSE YOUR OBJECTIVE, LADIES AND GENTLEMEN,  
9 IS TO FIND THE TRUTH WHETHER IT COMES FROM A WITNESS OR  
10 WITNESSES FOR THE STATE OF SOUTH CAROLINA OR A WITNESS FOR  
11 THE DEFENDANT. AND IN DOING SO, IN EXERCISING YOUR MENTAL  
12 PROCESS, AND IN DETERMINING WHAT YOU CONSIDER TO BE TRUE  
13 THE LAW SIMPLY REQUIRES THAT YOU EXERCISE YOUR GOOD  
14 JUDGEMENT, YOUR COMMON SENSE, YOUR SENSE OF LOGIC AND  
15 REASON AND YOUR EXPERIENCES IN LIFE. YOU THEN APPLY THESE  
16 ATTRIBUTES OF ABILITY TO THE EVIDENCE AND DETERMINE WHAT  
17 YOU, THE JURY, CONSIDER TO BE THE TRUTHFUL EVIDENCE. AND TO  
18 THESE TRUE STATE OF FACTS AS DETERMINED BY YOU, THE JURY,  
19 YOU THEN TAKE AND APPLY THE LAW AS I NOW STATE IT TO YOU AND  
20 THUS ARRIVE AT A TRUE VERDICT IN THIS CASE.

21 NOW, I'M GOING TO INSTRUCT YOU IN THE LAW APPLICABLE TO  
22 THE VARIOUS CHARGES OF THIS CASE. I AM GOING TO IDENTIFY THE  
23 CHARGES AND I'M GOING TO ADDRESS EACH ONE OF THEM  
24 INDIVIDUALLY. THE CHARGE MADE IN COUNT ONE OF THE  
25 INDICTMENT BEING MURDER. SECTION 16-3-10 OF THE CODE OF LAWS

HEARING

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1 OF SOUTH CAROLINA STATES MURDER IS THE KILLING OF ANY PERSON  
2 WITH MALICE AFORETHOUGHT EITHER EXPRESSED OR IMPLIED.  
3 MURDER IS THEN THE UNLAWFUL KILLING OF ANY PERSON WITH  
4 MALICE AFORETHOUGHT EITHER EXPRESSED OR IMPLIED. HENCE IN  
5 ORDER TO CONVICT SOMEONE OF MURDER THE STATE MUST NOT  
6 ONLY PROVE THAT THE DEFENDANT KILLED THE DECEDENT BUT THAT  
7 HE DID SO ... FOUND OF MURDER. WHAT IS MALICE? MALICE IS  
8 DEFINED IN THE LAW OF HOMICIDE AS A TERM OF LAW. THIS IS A  
9 TECHNICAL TERM EMPLOYING WICKEDNESS AND EXCLUDING JUST  
10 CAUSE OR LEGAL EXCUSE. IT IS SOMETHING WHICH SPRINGS FROM  
11 WICKEDNESS, FROM DEPRAVITY, FROM A DEPRAVED SPIRIT, FROM A  
12 HEART VOID OF SOCIAL DUTY FATALLY BENT ON MISCHIEF. THE  
13 WORDS EXPRESSED OR IMPLIED MALICE DO NOT MEAN DIFFERENT  
14 KINDS OF MALICE. BUT MERELY THE MANNER OR WAY IN WHICH THE  
15 ONLY KIND OF MALICE KNOWN TO THE LAW MAY BE SHOWN TO EXIST.  
16 THAT IS TO SAY EITHER BY DIRECT EVIDENCE OR BY INFERENCE.  
17 MALICE MAY BE EXPRESSED AS WHERE PREVIOUS THREATS OF  
18 VENGEANCE OR LYING IN WAIT OR OTHER CIRCUMSTANCES SHOWING  
19 DIRECTLY THAT AN INTENT TO KILL WAS ENTERTAINED. MALICE MAY  
20 BE INFERRED WHERE THOUGH THERE IS NO EXPRESSED INTENT TO  
21 KILL IS PROVED BY DIRECT EVIDENCE IT MAY BE INFERRED FROM THE  
22 FACTS AND CIRCUMSTANCES WHICH ARE PROVED. MALICE MAY BE  
23 INFERRED FROM THE WILLFUL, DELIBERATE AND INTENTIONAL DOING  
24 OF AN UNLAWFUL ACT WITHOUT JUST CAUSE OR EXCUSE. IN OTHER  
25 WORDS, IN IT'S GENERAL SIGNIFICATION MALICE MEANS THE DOING

1 OF A WRONGFUL ACT INTENTIONALLY WITHOUT JUSTIFICATION OR  
2 LEGAL EXCUSE. BUT EVEN IF FACTS PROVEN ARE SUFFICIENT TO  
3 RAISE AN INFERENCE OF MALICE THE INFERENCE WOULD BE SIMPLY  
4 AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU,  
5 THE JURY, ALONG WITH THE OTHER EVIDENCE IN THIS CASE AND YOU  
6 MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE  
7 AS TO WHETHER OR NOT THAT MALICE HAS BEEN PROVEN BEYOND A  
8 REASONABLE DOUBT. NOW, AGAIN, MALICE MAY BE INFERRED BY  
9 THE USE OF DEADLY WEAPONS WHERE THE CIRCUMSTANCES  
10 RELATED TO THE HOMICIDE ARE BROUGHT IN THE EVIDENCE, THIS  
11 INFERENCE VANISHES AND THE BURDEN IS ON THE STATE TO PROVE  
12 MALICE WHEREBY EVIDENCE SATISFYING YOU, THE JURY OF  
13 REASONABLE DOUBT THAT THE DEADLY WEAPON WAS USED. I  
14 WOULD ALSO TELL YOU THAT THE LAW SAYS IF ONE INTENTIONALLY  
15 KILLS ANOTHER DURING THE COMMISSION OF A FELONY THE  
16 INVOCATION OF MALICE MAY ARISE. IF FACTS ARE PROVEN BEYOND A  
17 REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE  
18 TO YOUR SATISFACTION THIS INFERENCE WILL BE SIMPLY AN  
19 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, THE  
20 JURY, ALONG WITH OTHER EVIDENCE IN THIS CASE AND YOU MAY  
21 GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE. AND  
22 IT WILL BE OBSERVED, LADIES AND GENTLEMEN, THAT MALICE MUST  
23 BE AFORETHOUGHT. WHILE THE LAW DOES NOT REQUIRE THAT  
24 MALICE SHALL EXIST ANY PARTICULAR LENGTH OF TIME BEFORE THE  
25 COMMISSION OF THE ACT IT MUST BE AFORETHOUGHT. THERE MUST

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1 BE A COMBINATION OF PREVIOUS EVIL INTENT AND THE ACT  
2 PRODUCING THE FATAL RESULT BUT THE STATE IS NOT REQUIRED TO  
3 PROVE A MOTIVE FOR A HOMICIDE.

4 NOW, I WANT TO GO TO THE NEXT CHARGE IN THE INDICTMENT  
5 WHICH WAS ASSAULT AND BATTERY OR IS ASSAULT AND BATTERY  
6 WITH INTENT TO KILL. AND I WILL INSTRUCT YOU THE LAW  
7 APPLICABLE TO THAT OFFENSE. I'M FIRST GOING TO DEFINE FOR YOU  
8 THE WORD ASSAULT AND THEN THE WORD BATTERY AND THEN THE  
9 WORDS ASSAULT AND BATTERY WITH INTENT TO KILL. WHAT IS AN  
10 ASSAULT? AN ASSAULT IS THE UNLAWFUL ATTEMPT TO OFFER WITH  
11 FORCE OR VIOLENCE TO DO CORPORAL HURT OR INJURY TO THE  
12 PERSON OF ANOTHER WHERE THERE IS A PRESENT ABILITY TO  
13 COMPLETE THE ATTEMPT TO OFFER BY A BATTERY. WHAT IS A  
14 BATTERY? A BATTERY IS THE UNLAWFUL TOUCHING OF A PERSON OF  
15 ANOTHER BY THE PARTY COMMITTING THE ASSAULT HIMSELF OR BY  
16 AN OBJECT PUT IN MOTION BY THE PARTY COMMITTING THE ASSAULT.  
17 A BATTERY MAY BE FURTHER DEFINED AS THE CARRYING INTO  
18 EFFECT OF AN ASSAULT BY USING OR APPLYING FORCE TO THE  
19 PERSON OF ANOTHER HOWEVER SLIGHT IN A RUDE, ANGRY OR  
20 RESENTFUL MANNER WITHOUT LEGAL JUSTIFICATION.

21 SO LET ME DEFINE THEM A LITTLE BIT FURTHER FOR YOU.  
22 ASSAULT AND BATTERY WITH INTENT TO KILL IS DEFINED AS AN  
23 UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER  
24 ACCOMPANIED BY MALICE AFORETHOUGHT. ASSAULT AND BATTERY  
25 WITH INTENT TO KILL CONTAINS ALL OF THE ELEMENTS OF MURDER

1 EXCEPT THE ACTUAL DEATH OF THE PERSON ASSAULTED. SO BEFORE  
2 THE DEFENDANT CAN BE CONVICTED OF ASSAULT AND BATTERY  
3 WITH INTENT TO KILL YOU, THE JURY, MUST BE CONVINCED BEYOND A  
4 REASONABLE DOUBT THAT IF THE VICTIM OR THE PERSON ASSAULTED  
5 HAD DIED AS A RESULT OF THE INJURY THEN THE DEFENDANT WOULD  
6 HAVE BEEN GUILTY OF MURDER. IN ORDER FOR YOU TO FULLY  
7 UNDERSTAND ASSAULT AND BATTERY WITH INTENT TO KILL IT IS  
8 NECESSARY THAT YOU UNDERSTAND THE LAW OF MURDER AND I  
9 HAVE ALREADY CHARGED YOU WITH THE LAW OF MURDER DO I  
10 WOULDN'T ... THE DIFFERENCE BETWEEN ASSAULT AND BATTERY  
11 WITH INTENT TO KILL AND MURDER IS THAT IN MURDER THE VICTIM  
12 DIED. IN ASSAULT AND BATTERY WITH INTENT TO KILL THE VICTIM  
13 DID NOT DIE WITH THE OTHER ELEMENTS OF MURDER INCLUDING  
14 MALICE MUST BE PRESENT. BUT I AM NOT GOING TO REDEFINE ALL OF  
15 THE TERMS OF MALICE WHICH I DID EARLIER ON THE CHARGE OF  
16 MURDER. SO ASK YOURSELF THIS QUESTION, IF THE PERSON  
17 ASSAULTED HAD DIED AS A RESULT OF THE INJURY WOULD THE  
18 DEFENDANT HAVE BEEN GUILTY OF MURDER. IF YOUR ANSWER TO  
19 THIS QUESTION IS YES THE DEFENDANT IS GUILTY OF ASSAULT AND  
20 BATTERY WITH INTENT TO KILL. THEN YOUR JOB AS THE JURY ON  
21 THIS CHARGE WOULD BE DONE AND YOU WOULD RETURN A VERDICT.

22 IF YOU FIND THAT THE STATE HAS NOT PROVEN THAT THE  
23 DEFENDANT IS GUILTY OF ASSAULT AND BATTERY WITH INTENT TO  
24 KILL YOU MUST THEN DETERMINE WHETHER THE STATE HAS PROVEN  
25 THAT THE DEFENDANT WAS GUILTY OF ASSAULT AND BATTERY OF A

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1 HIGH AND AGGRAVATED NATURE WHICH IS A LESSER INCLUDED  
2 OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO KILL. ASSAULT  
3 AND BATTERY OF A HIGH AND AGGRAVATED NATURE INCLUDES ALL  
4 OF THE ELEMENTS OF ASSAULT AND BATTERY WITH INTENT TO KILL  
5 EXCEPT THE MALICE AFORETHOUGHT IS NOT REQUIRED. IN ADDITION  
6 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT AN  
7 AGGRAVATING CIRCUMSTANCE. SO ASSAULT AND BATTERY OF A  
8 HIGH AND AGGRAVATED NATURE IS AN UNLAWFUL ACT OF VIOLENT  
9 INJURY TO THE PERSON OF ANOTHER ACCOMPANIED BY  
10 CIRCUMSTANCES OF AGGRAVATION. AN ASSAULT OCCURS WHEN A  
11 PERSON UNLAWFULLY ATTEMPTS OR OFFERS TO COMMIT A VIOLENT  
12 INJURY UPON THE PERSON OF ANOTHER AND HAD THE PRESENT  
13 ABILITY TO COMPLETE THE ATTEMPTED INJURY. THE STATE MUST  
14 PROVE A CIRCUMSTANCE OF AGGRAVATION. CIRCUMSTANCES OF  
15 AGGRAVATION INCLUDE THE USE OF A DEADLY WEAPON, THE INTENT  
16 TO COMMIT A FELONY, THE INFLECTION OF SERIOUS BODILY INJURY, A  
17 GREAT DISPARITY BETWEEN THE AGES OR PHYSICAL CONDITIONS OF  
18 THE PARTIES, A DIFFERENCE IN THE GENDERS OF THE PARTIES ARE  
19 ALL CONSIDERED THE ... OR ARE ALL CONSIDERED CIRCUMSTANCES  
20 OF AGGRAVATION. AND THOSE THAT I GIVE TO YOU ARE ONLY AS  
21 EXAMPLES.

22 NOW, THAT BRINGS US TO THE THIRD CHARGE OF THE  
23 INDICTMENT AND THAT IS ATTEMPTED ARMED ROBBERY. SOUTH  
24 CAROLINA CODE SECTION 16-11-330B PROVIDES THAT A PERSON WHO  
25 COMMITS ATTEMPTED ROBBERY WHILE ARMED WITH A PISTOL, DIRK,

1 SLINGSHOT, RAZOR OR OTHER DEADLY WEAPONS OR WHILE  
2 ALLEGEDLY EITHER BY ACTION OR WORDS HE WAS ARMED USING A  
3 DEADLY ... USING A REPRESENTATION OF A DEADLY WEAPON OR ANY  
4 OBJECT WHICH A PERSON PRESENT DURING THE COMMISSION OF THE  
5 ROBBERY REASONABLY BELIEVED TO BE A DEADLY WEAPON IS  
6 GUILTY OF ATTEMPTED ARMED ROBBERY. I NEED TO BREAK THAT  
7 DOWN A LITTLE BIT SO LET ME DEFINE FOR YOU THE OFFENSE OF  
8 ROBBERY WHILE ARMED OR ATTEMPTED ROBBERY WHILE ARMED OR  
9 REASONABLY APPEARING TO BE ARMED. I'M FIRST GOING TO DEFINE  
10 FOR YOU THE CRIME OR LARCENY BECAUSE LARCENY IS EMBRACED  
11 WITHIN ROBBERY AND ARMED ROBBERY IS THE AGGRAVATION OF  
12 THE CRIME OF ROBBERY. LARCENY IS THE FELONIOUS TAKING AND  
13 CARRYING AWAY BY ANY PERSON OF GOODS OR PERSONAL PROPERTY  
14 OF ANOTHER WITH FELONIOUS INTENT TO PERMANENTLY DEPRIVE  
15 THE OWNER OF THIS PROPERTY AND TO CONVERT IT TO THE TAKER'S  
16 OWN USE. THE ESSENTIAL ELEMENTS OF THE CRIME OF LARCENY  
17 WHICH IS ORDINARILY CALLED STEALING ARE ONE, ONE IS TAKING  
18 INTO POSSESSION THE PERSONAL PROPERTY OF ANOTHER. TWO, THE  
19 CARRYING AWAY AND REMOVAL OF THE PERSONAL PROPERTY.  
20 THREE, THE FELONIOUS INTENT, THE INTENT TO STEAL ON THE PART  
21 OF THE TAKER TO PERMANENTLY DEPRIVE THE OWNER OF THE  
22 PERSONAL PROPERTY AND TO CONVERT TO PROPERTY TO THE  
23 TAKER'S OWN USE. NOW, ROBBERY IS THE FELONIOUS TAKING AND  
24 CARRYING AWAY OF THE PERSONAL PROPERTY OF A VALUE ... OF ANY  
25 VALUE OF ANOTHER FROM HIS PERSON OR PRESENCE BY VIOLENCE OR

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1 BY PUTTING HIM OR HER IN FEAR OF VIOLENCE. ROBBERY INCLUDES  
2 LARCENY IF ALL THE ELEMENTS WHICH ARE NECESSARY TO  
3 CONSTITUTE LARCENY ARE ALSO NECESSARY TO CONSTITUTE  
4 ROBBERY. SO THE ELEMENTS OF ROBBERY OR ATTEMPTED ARMED  
5 ROBBERY ARE THE PROPERTY ... THE PROPERTY TAKEN OR  
6 ATTEMPTED TO BE TAKEN MUST BE THE SUBJECT OF THE LARCENY,  
7 THAT IS PERSONAL PROPERTY. SECONDLY, IT MUST BE AN ATTEMPT  
8 TO MAKE A FELONIOUS TAKING AND CARRYING AWAY OF THE  
9 PERSONAL PROPERTY. THIRD, THERE MUST BE AN ATTEMPT AT  
10 TAKING AND CARRYING AWAY OF THE PERSONAL PROPERTY BE DONE  
11 WITH A FELONIOUS INTENT, THAT IS WITH THE INTENT TO STEAL ON  
12 THE PART OF THE TAKER AND TO PERMANENTLY DEPRIVE THE OWNER  
13 OF THE PERSONAL PROPERTY AND CONVERT THE PERSONAL  
14 PROPERTY TO THE TAKER'S OWN USE AND FOURTH, THE ATTEMPTED  
15 ROBBERY MUST HAVE AGGRAVATED CIRCUMSTANCES AS  
16 DISTINGUISHED FOR ROBBERY. THESE INCLUDE THE TAKING OF THE  
17 PROPERTY FROM THE PERSON OF ANOTHER OR ATTEMPTING TO TAKE  
18 IT FROM THE PERSON OF ANOTHER WHILE ARMED WITH A WEAPON.  
19 SO IN ORDER TO BE GUILTY OF ROBBERY OR ATTEMPTED ROBBERY  
20 WHILE ARMED WITH A DEADLY WEAPON I CHARGE YOU THAT THE  
21 LAW REQUIRES THAT ONE MUST EITHER HAVE USED A DEADLY  
22 WEAPON TO ATTEMPT TO ACCOMPLISH THE PURPOSE OF THE  
23 ROBBERY OR ONE MUST HAVE REPRESENTED EITHER THROUGH  
24 ACTIONS OR WORDS AN OBJECT TO BE A DEADLY WEAPON AND THE  
25 PERSON PRESENT DURING THE COMMISSION OF THE ROBBERY

1 REASONABLY BELIEVED THE OBJECT TO BE A DEADLY WEAPON. I  
2 WILL CHARGE YOU THAT A PISTOL IS A DEADLY WEAPON AS DEFINED  
3 BY THE STATUTE WHICH I HAVE READ TO YOU. AGAIN, LADIES AND  
4 GENTLEMEN, I WILL CHARGE YOU THE STATE OF SOUTH CAROLINA IS  
5 REQUIRED TO PROVE ALL THE MATERIAL OR ESSENTIAL ALLEGATIONS  
6 OF THE CHARGE MADE IN THE INDICTMENT BEFORE ... BEYOND A  
7 REASONABLE DOUBT BEFORE YOU CAN CONVICT THE DEFENDANT  
8 AND FIND HIM GUILTY.

9 NOW, FINALLY WE COME TO THE LAST CHARGE OF THE  
10 INDICTMENT AND THAT IS FOR POSSESSION OF A WEAPON DURING THE  
11 COMMISSION OF A CRIME OR A VIOLENT CRIME. THE STATE MUST  
12 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS IN  
13 THE POSSESSION OF A FIREARM OR VISIBLY DISPLAYED WHAT  
14 APPEARED TO BE A FIREARM DURING THE COMMISSION OF A VIOLENT  
15 CRIME. A FIREARM MEANS MACHINE GUN, AUTOMATIC RIFLE,  
16 REVOLVER, PISTOL OR ANY WEAPON WHICH IS DESIGNED TO OR MAY  
17 BE READILY CONVERTED TO EXPEL A PROJECTILE. IN ORDER TO FIND  
18 THE DEFENDANT GUILTY OF A POSSESSION OF A WEAPON DURING A  
19 COMMISSION OF A VIOLENT CRIME YOU MUST FIRST FIND THE  
20 DEFENDANT GUILTY OF EITHER COMMITTING A VIOLENT CRIME OR  
21 ATTEMPTING TO COMMIT A VIOLENT CRIME. AND YOU'LL SEE THIS A  
22 LITTLE BIT CLEARER, YOU WILL NOT EVEN GET TO THIS QUESTION AS  
23 FAR AS A DECISION IS CONCERNED UNLESS YOU FIND THE DEFENDANT  
24 GUILTY OF ONE OF THE FIRST THREE CHARGES ON THE INDICTMENT.  
25 AND I WILL EXPLAIN THAT TO YOU A LITTLE BIT MORE JUST BEFORE I

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1 GIVE YOU THE VERDICT FORM.

2 NOW, LADIES AND GENTLEMEN, NO ALLEGED CONFESSION OR  
3 ADMISSION ON THE PART OF A DEFENDANT OR PART OF THE  
4 DEFENDANT CAN BE AFFORDED OR CONSIDERED AS EVIDENCE  
5 BEFORE YOU DETERMINE THAT THE STATEMENT WAS FREELY AND  
6 VOLUNTARILY GIVEN. THE COURT DETERMINES WHETHER THE  
7 EVIDENCE IS ADMISSIBLE BUT YOU, THE JURY, MUST DETERMINE THE  
8 EXISTENCE OF VOLUNTARINESS AND WEIGHT OF ANY ALLEGED  
9 STATEMENT MADE BY THE DEFENDANT. YOU MUST MAKE THE  
10 ULTIMATE DETERMINATION OF WHETHER OR NOT THE DEFENDANT IN  
11 FACT MADE THE ALLEGED STATEMENT. IF YOU DETERMINE THE  
12 STATEMENT ... IF YOU DETERMINE THAT THE DEFENDANT MADE THE  
13 STATEMENT YOU MUST THEN DETERMINE WHETHER THE STATEMENT  
14 WAS MADE VOLUNTARILY. FINALLY YOU WILL WEIGHT ... YOU WILL  
15 DECIDE WHAT WEIGHT, IF ANY, YOU SHOULD GIVE TO ANY ALLEGED  
16 STATEMENT. IF YOU WILL RECALL THAT I TOLD YOU AT THE TIME  
17 THAT THE STATEMENTS WERE PRESENTED TO YOU WHAT THE  
18 REQUIREMENTS WERE FOR A VOLUNTARY STATEMENT.

19 NOW, LADIES AND GENTLEMEN, I WILL ALSO TELL YOU THAT IF  
20 A CRIME IS COMMITTED BY TWO OR MORE PERSONS WHO ARE ACTING  
21 TOGETHER IN COMMITTING THE CRIME THE ACT OF ONE IS THE ACT OF  
22 ALL. A PERSON WHO JOINS WITH ANOTHER TO ACCOMPLISH AN  
23 ILLEGAL PURPOSE IS CRIMINALLY RESPONSIBLE FOR EVERYTHING  
24 DONE BY THE OTHER PERSON WHICH OCCURS AS A NATURAL  
25 CONSEQUENCE OF THE ACTS. FOR EXAMPLE, TWO PEOPLE CAN BE

1 GUILTY OF KILLING ANOTHER PERSON AND ONLY ONE OF THE TWO  
2 HAVE A GUN. THERE'S ONLY ONE BULLET. ONLY ONE OF THE TWO  
3 FIRED THE SHOT, THE ONE THAT CAUSED THE DEATH. IF TWO OR  
4 MORE PERSONS ARE TOGETHER ACTING TOGETHER ASSISTING EACH  
5 OTHER IN COMMITTING THE OFFENSE THE ACT OF ONE IS THE ACT OF  
6 ALL OR AS SOMETIMES SAID THE HAND OF THE ONE IS THE HAND OF  
7 ALL.

8 NOW, LADIES AND GENTLEMEN, I'VE ALMOST COMPLETED MY  
9 INSTRUCTIONS TO YOU AND I KNOW THEY WERE SOMEWHAT  
10 LENGTHY BUT WE HAD FOUR CHARGES IN THIS CASE AND THERE ARE  
11 FOUR CHARGES IN THIS CASE AND I NEEDED TO GIVE YOU DETAILED  
12 INSTRUCTIONS ON ALL FOUR. BUT YOU'VE BEEN VERY ATTENTIVE TO  
13 MY COMMENTS AND I THANK YOU FOR THAT. I WANT TO TELL YOU,  
14 LADIES AND GENTLEMEN, THAT YOU ARE NOT PARTISANS OR  
15 ADVOCATES FOR THE STATE OF SOUTH CAROLINA OR FOR THIS  
16 DEFENDANT. YOU DO NOT SERVE AS JURORS TO REWARD YOUR  
17 FRIENDS OR PUNISH YOUR ENEMIES. OBVIOUSLY SUCH A PERVERTED  
18 SYSTEM OF JUSTICE WOULD BE INTOLERABLE. YOU HAVE BEEN  
19 SELECTED BY THE STATE AND BY THIS DEFENDANT AS FAIR AND  
20 IMPARTIAL JURORS IN THIS CASE. IT IS YOUR DUTY THEN BY YOUR  
21 JOINT DELIBERATIONS TO DETERMINE THE TRUTH IN THIS CASE, THEN  
22 TO THE FACTS WHICH YOU DETERMINE TO BE TRUE YOU TAKE AND  
23 APPLY THE LAW WHICH THE COURT HAS GIVEN TO YOU AND THUS  
24 ARRIVE AT A VERDICT WHICH DOES SPEAK THE TRUTH. THE WORD  
25 VERDICT, LADIES AND GENTLEMEN, HAS A LATIN DERIVATIVE, IT

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1 COMES FROM THE LATIN PHRASE, VEREDICTO, OR THE LATIN VERB,  
2 VEREDICTO, MEANING TO SPEAK THE TRUTH OR TRUTH SAYING. AND  
3 WHEN YOU HAVE ACCOMPLISHED THESE RESPONSIBILITIES YOU WILL  
4 HAVE SATISFIED YOUR OATH AS JURORS AND YOU WILL HAVE  
5 DISCHARGED YOUR DUTY TO THIS COURT.

6 (INSTRUCTIONS ON FORMS OF VERDICT WERE GIVEN).

7 THE COURT: NOW, I'M GOING TO SEND YOU TO YOUR JURY  
8 ROOM. I'M GONNA ASK THAT YOU NOT BEGIN YOUR DELIBERATIONS  
9 JUST YET. THE LAW REQUIRES THAT I TAKE UP CERTAIN MATTERS  
10 WITH THE ATTORNEYS AND IF IT IS NOT NECESSARY FOR ME TO GIVE  
11 YOU ANY ADDITIONAL INSTRUCTIONS THE BAILIFF WILL BRING YOU  
12 THE VERDICT FORM WHICH I HAVE HERE. THEY WILL ALSO BRING YOU  
13 THE EXHIBITS AND INSTRUCT YOU TO BEGIN YOUR DELIBERATIONS  
14 AND YOU MAY KNOCK ON THE DOOR WHENEVER YOU HAVE  
15 COMPLETED YOUR DELIBERATIONS AND WE WILL BRING YOU TO THE  
16 COURTROOM AS SOON AS POSSIBLE. THE BAILIFFS WILL BE  
17 STATIONED OUTSIDE THE JURY ROOM WHILE YOU DELIBERATE YOUR  
18 VERDICT. I'M GONNA ASK IF EVERYONE WILL GO THE JURY ROOM  
19 WITH THE EXCEPTION OF THE ALTERNATE. MR. ALTERNATE, I'M  
20 GONNA ASK THAT YOU STAY WITH ME. THANK YOU. WHILE THEY'RE  
21 GOING OUT, COUNSEL, LET ME ASK YOU TO COME UP.

22 (JURY OUT AT 4:35 P.M.).

23 THE COURT: MR. ALTERNATE, YOU HAVE HEARD THE  
24 TESTIMONY IN THIS CASE BUT YOU'RE NOT GONNA PARTICIPATE IN  
25 THE DECISION BUT I CAN'T EXCUSE YOU SO I'M GONNA HAVE TO ASK

1 THAT THE BAILIFF SEND YOU TO ... I MEAN TAKE YOU DOWN TO THE  
2 VISITING JUDGE'S CHAMBERS AND LET YOU RELAX IN THERE AND  
3 THEY'LL GET YOU SOME MAGAZINES OR SOMETHING BUT YOU WON'T  
4 BE PARTICIPATING IN THE VERDICT ON THIS CASE BUT I DO HAVE TO  
5 KEEP YOU HERE. IF YOU WOULD GO WITH THE BAILIFF TO THE  
6 VISITING JUDGE'S CHAMBERS. ANY ADDITIONS OR EXCEPTIONS TO  
7 THE INSTRUCTIONS TO THE JURY ON BEHALF OF THE STATE, MR.  
8 CONNER?

9 MR. CONNER: NONE.

10 THE COURT: OKAY. THANK YOU. MR. BLACKMON?

11 MR. BLACKMON: YES, YOUR HONOR, JUST FOR THE  
12 RECORD WE WOULD RENEW OUT EXCEPTION TO THE COURT  
13 CHARGING THE HAND OF ONE IS THE HAND OF ALL UNDER THE  
14 CIRCUMSTANCES OF THIS CASE THERE WAS NO OTHER HAND WHICH  
15 COULD BE IMPUTED TO MR. WILSON AS I THOUGHT WE PREVIOUSLY  
16 ARGUED. THERE IS NO CO-DEFENDANT WHO WAS CHARGED WITH ANY  
17 OF THESE CRIMES AND NO OTHER PERSON WHO IS ALLEGED IN THIS  
18 TRIAL TO HAVE COMMITTED ANY OF THESE CRIMES THAT ARE ...

19 THE COURT: BUT ISN'T THERE EVIDENCE FROM YOUR MAN  
20 THAT THERE A DIFFERENT SHOOTER?

21 MR. BLACKMON: SIR?

22 THE COURT: ISN'T THERE EVIDENCE FROM YOUR  
23 DEFENDANT THAT THERE WAS A DIFFERENT SHOOTER?

24 MR. BLACKMON: ABSOLUTELY, YOUR HONOR ...

25 THE COURT: ALL RIGHT.

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1 MR. BLACKMON: ... BUT HE'S NOT BEEN CHARGED WITH A  
2 CRIME.

3 THE COURT: OKAY. I DON'T THINK IT HAS TO BE CHARGED  
4 IN ORDER FOR IT TO BE THE HAND OF ONE IS THE HAND OF ALL.

5 MR. BLACKMON: OKAY.

6 THE COURT: ALL RIGHT, SIR. ALL RIGHT, YOUR OBJECTION  
7 IS NOTED AND MR. HERRING, GIVE THEM THE FORM, THE VERDICT  
8 FORM AND ALSO GET THE EVIDENCE AND TELL THE JURY TO BEGIN  
9 THEIR DELIBERATIONS. ALL RIGHT, WE'LL BE AT EASE ON THIS  
10 MATTER UNTIL WE HEAR FROM THE JURY AND MR. CONNER, YOU MAY  
11 WANT TO CHECK WITH THE ... YOUR OFFICE TO SEE IF THERE'S  
12 ANYTHING THEY'D LIKE ME TO DO AFTER WE TAKE A RECESS. WE CAN  
13 TAKE A RECESS AT THIS TIME AND WE'LL BE AT EACH ON THIS  
14 MATTER UNTIL WE HEAR FROM THEM. THANK YOU VERY MUCH.

15 (WHEREUPON THERE WAS A PAUSE).

16 THE COURT: ALL RIGHT. LET'S GO BACK ON THE RECORD  
17 NOW WITH REGARD TO THE MATTER OF THE STATE VS. HAROLD  
18 JAMAR WILSON, INDICTMENT NUMBER 03-GS-43-763. LET THE RECORD  
19 REFLECT THAT MR. WILSON IS PRESENT IN COURT WITH HIS  
20 ATTORNEY. THE STATE IS PRESENT AND REPRESENTED BY MR.  
21 CONNER. COUNSEL, I HAVE NOT HEARD ANYTHING FROM THE JURY  
22 AND IT IS ABOUT 6:00 O'CLOCK. THEY'VE BEEN OUT ABOUT AN HOUR  
23 AND A HALF. I JUST WANT TO THE JURY TO KNOW AND UNDERSTAND  
24 THAT WE ARE WILLING ... WANT THEM TO FEEL FREE TO TAKE AS  
25 MUCH TIME AS THEY NEED TO ADEQUATELY COVER ... TO

1 ADEQUATELY CONSIDER THIS MATTER. I PROPOSE CALLING THE  
2 FOREMAN OUT AND ASKING HIM OR BASICALLY WORDS TO THE  
3 EFFECT THAT IF HE THINKS THEY'RE GOING TO REACH A VERDICT  
4 WITHIN A SHORT PERIOD OF TIME I'LL ALLOW THEM TO GO AHEAD  
5 AND CONTINUE TO DELIBERATE BUT IF HE WOULD LIKE FOR US TO  
6 ORDER SOMETHING FOR THEM TO EAT THEN WE WILL DO THAT, TOO  
7 AND FOR HIM TO GET A CONSENSUS FROM THE FELLOW JURY  
8 MEMBERS WHAT THEY WOULD LIKE TO DO. ANY PROBLEM WITH  
9 HANDLING IT THAT WAY, MR. CONNER?

10 MR. CONNER: NONE FROM US, YOUR HONOR.

11 THE COURT: MR. BLACKMON?

12 MR. BLACKMON: NO PROBLEM, YOUR HONOR.

13 THE COURT: ALL RIGHT. ASK THE FOREMAN TO COME IN,  
14 PLEASE. ASK THE REST OF THEM TO STOP DELIBERATING WHILE HE'S  
15 OUT.

16 (FOREMAN BROUGHT IN AT 6:05 P.M.).

17 THE COURT: MR. FOREMAN, IF YOU'LL JUST STAND RIGHT  
18 THERE FOR A MINUTE. I WANT YOU TO KNOW THAT WE WANT YOU TO  
19 TAKE AS MUCH TIME AS YOU FEEL THAT YOU NEED AND I WANT YOU  
20 TO GET KIND OF A FEELING FROM THE JURORS AS TO WHAT YOU  
21 WOULD LIKE TO DO. IF YOU THINK YOU ALL WILL BE ABLE TO REACH  
22 A VERDICT SHORTLY WE CAN ALLOW YOU TO GO AHEAD AND  
23 CONTINUE DELIBERATING. IF YOU WOULD LIKE FOR US TO SEND OUT  
24 AND GET SOMETHING TO EAT IT'LL TAKE ABOUT 30 OR 40 MINUTES TO  
25 GET IT HERE.

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1 MR. FOREMAN: SO WHERE ARE WE SENDING TO?  
2 OUTBACK?

3 THE COURT: THAT REMAINS TO BE SEEN. PROBABLY  
4 SANDWICHES. BUT IF YOU WOULD LIKE FOR US TO SEND AND GET  
5 SOMETHING TO EAT WE'LL BE GLAD TO DO THAT.

6 MR. FOREMAN: OKAY. CAN I ASK THEM?

7 THE COURT: YES, SIR. OKAY.

8 MR. FOREMAN: I THINK THEY'RE FINISHED FOR THE NIGHT  
9 IS THE GENERAL CONSENSUS.

10 THE COURT: GENERAL CONSENSUS OF WHAT? THAT YOU  
11 ALL AGREE TO BREAK OR NOT LIABLE TO AGREE?

12 MR. FOREMAN: WELL, TWO COUNTS, YES. THE FOURTH  
13 COUNT, NO. IN OTHER WORDS, ON COUNT THREE AND ...

14 THE COURT: DON'T TELL ME WHAT THE VOTE IS. DON'T  
15 TELL ME ...

16 MR. FOREMAN: THREE AND TWO, YES. ON FOUR, NO.

17 THE COURT: ONE, TWO AND THREE?

18 MR. FOREMAN: WELL ...

19 THE COURT: IN OTHER WORDS ...

20 MR. FOREMAN: YES, TWO AND THREE ...

21 THE COURT: MY QUESTION IS DO YOU NEED MORE TIME,  
22 THAT'S WHAT YOU ...

23 MR. FOREMAN: YES. I THINK ... SINCE YOU BROUGHT UP  
24 THE DINNER THING THEY ARE WANTING TO GO HOME AND THINK  
25 ABOUT THE FIRST COUNT.

1 THE COURT: I'M NOT GONNA BE ABLE TO ALLOW THEM TO  
2 DO THAT.

3 MR. FOREMAN: OKAY. I JUST SAID THAT OUT FRONT  
4 THERE.

5 THE COURT: THAT WASN'T AN OPTION. THE OPTION IS  
6 WHETHER THEY WISH FOR ME TO BRING THEM DINNER OR NOT.

7 MR. FOREMAN: OKAY. I DID NOT UNDERSTAND.

8 THE COURT: SEEING WHETHER SOME PEOPLE WANT TO  
9 EAT OR JUST CONTINUE WITHOUT THAT IF THEY CAN REACH A  
10 VERDICT AND THEN I WILL ALLOW ... I WILL ADD THIS, TOO, IF ANY OF  
11 THEM NEED TO MAKE A CALL I'LL LET THEM MAKE A CALL IF  
12 ANYBODY NEEDS TO MAKE A CALL. BUT I REALLY WANT YOU TO  
13 KNOW AT THIS TIME WE'RE GONNA CONTINUE WORKING A WHILE  
14 TONIGHT SO I NEED TO KNOW IF THEY WANT SOMETHING BROUGHT IN  
15 OR IF YOU THINK YOU CAN REACH A VERDICT IN THE NEXT 30 OR 40  
16 MINUTES IT WILL TAKE US THAT LONG TO GET SOMETHING HERE.

17 MR. FOREMAN: RIGHT.

18 THE COURT: OKAY? YOU CHECK ON THAT AND ...

19 MR. FOREMAN: YES, SIR. NO DINNER. A COUPLE OF THEM  
20 NEED TO MAKE A PHONE CALL.

21 THE COURT: ALL RIGHT. ALL RIGHT. THEN WE'LL ALLOW YOU  
22 TO GO AHEAD AND FINISH ... KEEP YOUR DELIBERATIONS GOING AND  
23 WE'LL ALLOW THOSE THAT NEED TO MAKE PHONE CALLS, MR.  
24 HERRING, MAKE THE PHONE CALLS AND WHILE THEY'RE OUT OF THE  
25 ROOM WE'D PREFER THAT DELIBERATIONS DON'T GO ON UNTIL ALL

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1 THE JURORS ARE BACK IN THE JURY ROOM. OKAY. THANK YOU. ANY  
2 ... ANY OBJECTION TO THAT — WITH THE JURY, MR. CONNER?

3 MR. CONNER: NONE FROM US, YOUR HONOR.

4 THE COURT: MR. BLACKMON?

5 MR. BLACKMON: NONE FROM US, YOUR HONOR.

6 THE COURT: ALL RIGHT. THANK YOU.

7 (WHEREUPON THERE WAS A PAUSE).

8 THE COURT: ALL RIGHT. ON THE RECORD WITH REGARD  
9 TO THE MATTER OF THE STATE VS. HAROLD JAMAR WILSON. THE  
10 COURT HAS RECEIVED A NOTE FROM THE FOREMAN OF THE JURY  
11 WHICH I HAVE SHARED WITH COUNSEL AND AM GOING TO GIVE TO  
12 THE COURT REPORTER AND ASK THAT SHE MARK IT AS THE NEXT  
13 COURT'S EXHIBIT AND GIVE IT BACK TO ME, PLEASE.

14 (WHEREUPON COURT'S EXHIBIT NUMBER SIX WAS MARKED FOR  
15 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

16 THE COURT: RESPONDING TO THIS QUESTION AS WRITTEN  
17 WOULD REQUIRE THE COURT TO COMMENT ON THE FACTS. I PROPOSE  
18 TO ASK THE FOREMAN TO COME IN AND ADVISE HIM THAT I CANNOT  
19 COMMENT ON THE FACTS AND THAT ANY RESPONSE THAT I WERE TO  
20 GIVE HIM TO THIS QUESTION WOULD BE A COMMENT ON THE FACTS  
21 BUT THAT IF THERE'S ANY LAW THAT THEY WOULD LIKE A FURTHER  
22 EXPLANATION FROM THE COURT THAT I WILL BE GLAD TO GIVE IT TO  
23 THEM AND ASK HIM IF HE WOULD LIKE TO CONFER WITH HIS FELLOW  
24 JURORS AND SEE IF THERE'S FURTHER CHARGE ON THE LAW THAT  
25 THEY WOULD LIKE. IS THERE ANY OBJECTION TO HANDLING IT IN

1 THAT FASHION, MR. CONNER?

2 MR. CONNER: NONE, YOUR HONOR.

3 THE COURT: MR. BLACKMON?

4 MR. BLACKMON: NO, SIR, YOUR HONOR ...

5 THE COURT: ALL RIGHT.

6 MR. BLACKMON: ... BUT SUBJECT TO OUR PREVIOUS  
7 OBJECTIONS ON THE CHARGE.

8 THE COURT: SIR?

9 MR. BLACKMON: NO, SIR, OTHER THAN IF IT REQUIRED  
10 YOU TO MAKE A ... WE RAISE OUR PREVIOUS OBJECTION TO THE  
11 CHARGE.

12 THE COURT: WE'LL WAIT AND SEE WHAT THEY WANT.

13 (FOREMAN BROUGHT IN AT 6:40 P.M.).

14 THE COURT: MR. STEWART, I HAVE YOUR NOTE AND I ...  
15 ONLY THING THAT I CAN TELL YOU ABOUT THIS IS I CANNOT  
16 COMMENT ON THIS BECAUSE IT WOULD BE A COMMENT ON THE FACTS  
17 WHICH THE COURT CANNOT DO. BUT I WILL TELL YOU THAT IF  
18 THERE'S ANY OF THE LAW OR INSTRUCTIONS OR FURTHER  
19 INSTRUCTIONS ON THE LAW THAT YOU OR MEMBERS OF THE JURY  
20 WOULD LIKE I'LL BE GLAD TO BRING YOU BACK IN TO GIVE YOU THOSE  
21 ADDITIONAL INSTRUCTIONS.

22 FOREMAN: DIDN'T YOU READ SOMETHING THAT ... BUT IT  
23 SEEMED LIKE THAT THERE WAS SOMETHING IN THERE THAT SAID YOU  
24 WERE GUILTY BY ASSOCIATION TO NARROW THE CONVERSATION  
25 DOWN.

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1 THE COURT: I UNDERSTAND WHAT YOU'RE ASKING AND  
2 LET ME CONSULT WITH THE LAWYERS AND I'LL SEND FOR YOU IN JUST  
3 A MINUTE. THANK YOU.

4 (DISCUSSION HELD OFF THE RECORD).

5 THE COURT: ALL RIGHT. IT APPEARS THE COMMENTS TO  
6 THE COURT BY THE FOREMAN THAT THE COURT HAS INTERPRETED  
7 THE SECOND FORM TO BE A REQUEST FOR INSTRUCTIONS ON THE  
8 ACCOMPLICE LIABILITY OR HAND OF ONE IS THE HAND OF ALL AND SO  
9 THE COURT IS GOING TO REINSTRUCT THEM ON THAT AND SEE IF THAT  
10 IS WHAT THEY'RE LOOKING FOR. IS THAT AGREEABLE WITH THE  
11 STATE, MR. CONNER?

12 MR. CONNER: I HAVE NO OBJECTION.

13 THE COURT: ALL RIGHT. I UNDERSTAND, MR. BLACKMON,  
14 THAT YOU OBJECTED TO THAT CHARGE TO BEGIN WITH SO I'M SURE  
15 THAT YOU OBJECT TO IT AGAIN.

16 MR. BLACKMON: YES, SIR, WE ... WE WOULD OBJECT TO IT  
17 AGAIN FOR THE RECORD ON THE PREVIOUSLY STATED BASIS AS WELL  
18 AS I THINK THAT SHOULD OCCUR.

19 THE COURT: ALL RIGHT. ALL RIGHT, MR. HERRING, IF  
20 YOU'LL BRING THE JURY IN, PLEASE.

21 MR. HERRING: DO YOU WANT THE ALTERNATE ALSO?

22 THE COURT: YES, ALSO THE ALTERNATE.

23 (JURY BROUGHT IN AT 6:45 P.M.).

24 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, LADIES  
25 AND GENTLEMEN, AND I DO HAVE A NOTE FROM YOUR FOREMAN AND

1 I JUST WANTED TO MAKE A FEW BRIEF REMARKS ABOUT THAT. FIRST  
2 OF ALL, AS I TOLD THE FOREMAN WHEN I ASKED HIM TO COME BACK I  
3 CANNOT ANSWER THE QUESTION THAT WERE PUT IN THAT NOTE  
4 BECAUSE IT WOULD REQUIRE THAT THE COURT COMMENT ON THE  
5 FACTS AND I TOLD YOU IN THE INSTRUCTIONS TO YOU THAT THE  
6 COURT CANNOT COMMENT ON THE FACTS AND CANNOT INTIMATE TO  
7 YOU IN ANY MANNER WHATSOEVER WHAT I THINK ARE THE FACTS OF  
8 THIS CASE, THAT IS A MATTER THAT IS SOLELY UP TO YOU AND TRIAL  
9 JUDGES ARE RESTRICTED AND PREVENTED FROM MAKING ANY  
10 COMMENT TO A TRIAL JURY ABOUT THE FACTS OF THE CASE AND  
11 THEREFORE I CANNOT ANSWER THAT QUESTION AS WRITTEN.  
12 HOWEVER, I ALSO GOT FROM THE FOREMAN AND FROM THE INPUT  
13 WHAT THE TENOR OF THE NOTE WAS THAT YOU ALL WERE ASKING  
14 FOR SOME ADDITIONAL INSTRUCTIONS ON SOME OF THE LAW AND IN  
15 THAT CONNECTION I WANT TO GIVE YOU SOME BRIEF INSTRUCTION  
16 AND I THINK THIS IS IN RESPONSE TO THE NOTE THAT WAS GIVEN TO  
17 ME. YOU'LL RECALL THAT I DID INSTRUCT YOU THAT IF A CRIME IS  
18 COMMITTED AND I WILL CHARGE YOU AGAIN AND INSTRUCT YOU  
19 THAT IF A CRIME IS COMMITTED BY TWO OR MORE PEOPLE WHO ARE  
20 ACTING TOGETHER IN COMMITTING THE CRIME THE ACT OF ONE IS  
21 THE ACT OF ALL. THE PERSON WHO JOINS WITH ANOTHER TO  
22 ACCOMPLISH AN ILLEGAL PURPOSE IS CRIMINALLY RESPONSIBLE FOR  
23 EVERYTHING DONE BY THE OTHER PERSON WHICH OCCURS AS A  
24 NATURAL CONSEQUENCE OF THE ACTS DONE IN CARRYING OUT THE  
25 COMMON PLAN AND PURPOSE. FOR EXAMPLE, TWO PEOPLE CAN BE

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1 GUILTY OF KILLING ANOTHER PERSON WHEN ONLY ONE OF THE TWO  
2 HAD A GUN. THERE WAS ONLY ONE BULLET AND ONLY ONE OF THE  
3 TWO FIRED THE SHOT THAT CAUSED THE DEATH. IF TWO OR MORE  
4 PEOPLE ARE TOGETHER, ACTING TOGETHER, ASSISTING EACH OTHER  
5 IN THE COMMISSION ... IN COMMITTING THE OFFENSE THE ACT OF ONE  
6 IS THE ACT OF ALL. OR IS SOMETIMES IS SAID THE HAND OF ONE IS  
7 THE HAND OF ALL. NOW, WITH THOSE ADDITIONAL LEGAL  
8 INSTRUCTIONS I'LL ASK YOU TO GO AND SEE IF YOU CAN REACH A  
9 VERDICT AT THIS TIME. THANK YOU.

10 (JURY OUT AT 6:47 P.M.).

11 THE COURT: ALL RIGHT, ANY OBJECTIONS, MR. CONNER,  
12 TO THE METHOD OF HANDLING THE ADDITIONAL INSTRUCTIONS TO  
13 THE JURY?

14 MR. CONNER: NONE, YOUR HONOR.

15 THE COURT: OTHER THAN THE OBJECTIONS ALREADY  
16 RAISED, MR. BLACKMON, FOR WHICH YOU ARE PROTECTED, IS THERE  
17 ANY ADDITIONAL OBJECTION?

18 MR. BLACKMON: JUST FOR THE RECORD, YOUR HONOR,  
19 SINCE THE COURT CHARGED THE JURY THAT CHARGE OVER OUR  
20 OBJECTION WE WOULD ADDITIONALLY MOVE FOR A MISTRIAL AT THIS  
21 TIME ON THE BASIS THAT THE JURY WAS JUST RECHARGED THAT  
22 SAME CHARGE. THERE'S ONLY ONE DEFENDANT HERE. THERE ARE NO  
23 TWO PEOPLE CHARGED WITH COMMITTING A CRIME SO BECAUSE OF  
24 THAT IMPROPER CHARGE THAT WOULD CONSTITUTE SUFFICIENT  
25 PREJUDICE FOR THIS DEFENDANT NOW TO RECEIVE A FAIR AND

1 IMPARTIAL JURY DELIBERATIONS AND WE WOULD FURTHER ASK THE  
2 COURT TO GRANT A MISTRIAL.

3 THE COURT: MOTION IS RESPECTFULLY DENIED.

4 MR. BLACKMON: THANK YOU, SIR.

5 THE COURT: ALL RIGHT. WE'LL ... BUT LET THE COURT  
6 PEOPLE TAKE A BREAK FOR ABOUT TEN MINUTES AND WE'LL DO  
7 WHATEVER ELSE THE SOLICITOR'S OFFICE HAS GOT.

8 (WHEREUPON THERE WAS A PAUSE).

9 \*\*\* TAPE MESSED UP \*\*\*\*

10 (JURY AND ALTERNATE BROUGHT BACK INTO THE COURTROOM 7:35  
11 P.M.)

12 THE COURT: WE'RE GOING TO ADJOURN FOR TONIGHT. I  
13 ASK THAT YOU REPORT BACK AT 9:00 A.M. IN THE MORNING. I WILL  
14 GIVE YOU INSTRUCTIONS TOMORROW AFTER WHICH I'LL ASK YOU TO  
15 DELIBERATE FURTHER. IF THERE ARE SOME ADDITIONAL  
16 INSTRUCTIONS THAT THE LAW REQUIRES THEN I WILL GIVE YOU AT  
17 THAT TIME. BUT I DON'T WANT TO DO THAT TONIGHT BECAUSE OF  
18 THE LATENESS OF THE HOUR AND BECAUSE WE DID NOT ORDER  
19 DINNER AND I'M NOT TRYING TO STARVE YOU TO DEATH SO I AM  
20 GOING TO EXCUSE YOU AND ALLOW YOU TO GO TO YOUR HOMES AND  
21 FAMILIES AND I WOULD INSTRUCT YOU THAT OVER THE EVENING  
22 RECESS WHILE YOU ARE AWAY FROM THE COURTHOUSE DO NOT  
23 DISCUSS THE CASE WITH ANYONE. IT WOULD BE INAPPROPRIATE FOR  
24 YOU TO DISCUSS IT WITH YOUR FAMILY OR YOUR FRIENDS, TO REVEAL  
25 TO ANYONE WHAT YOUR DISCUSSIONS ARE OR WHAT YOUR

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1 DELIBERATIONS CONSIST OF. I WOULD ALSO TELL YOU THAT IT  
2 WOULD BE IMPROPER OF COURSE FOR ANYBODY TO DISCUSS IT WITH  
3 YOU AND IF ANYBODY DOES TRY TO CONTACT YOU ABOUT IT YOU LET  
4 ME KNOW THAT TOMORROW. AND WHAT I'M GOING TO DO, MR.  
5 FOREMAN, IS I'M GOING TO HAVE THE BAILIFF GIVE YOU THIS  
6 ENVELOPE AND I WANT YOU TO TAKE THE VERDICT FORM THAT YOU  
7 HAVE ALREADY BEEN WORKING WITH AND SEAL IT UP AND PUT IT IN  
8 THIS ENVELOPE TO BE OPENED ONLY BY THE JURY TOMORROW  
9 MORNING AFTER YOU RETURN SO NO ONE WILL KNOW WHAT YOUR  
10 DELIBERATIONS HAVE BEEN UP TO THIS POINT. I WOULD ALSO TELL  
11 YOU THAT AT NO TIME DURING YOUR FUTURE COMMUNICATIONS  
12 WITH THE COURT OR ANYONE ELSE FOR THAT MATTER BUT EVEN  
13 WITH THE COURT DO I WANT YOU TO EXPRESS TO ME ANYTHING  
14 ABOUT WHAT THE VERDICT OR WHAT THE SPLIT OF THE JURY IS OR  
15 WHAT THE NUMBER OF PEOPLE, THAT'S SOMETHING THE COURT DOES  
16 NOT WANT TO KNOW ANYTHING ABOUT AT ANY TIME BUT I WILL GIVE  
17 YOU SOME MORE INSTRUCTIONS TOMORROW WITH REGARD TO  
18 REACHING A VERDICT IN THIS CASE. I THINK FOR TODAY YOU HAVE  
19 BEEN HERE, IT'S BEEN A LONG DAY, YOU'VE LISTENED ATTENTIVELY  
20 TO THE TESTIMONY AND HAVE WORKED VERY HARD AND VERY  
21 DILIGENTLY, I COULD TELL BY THE QUESTIONS THAT YOU'VE ASKED  
22 AND YOU'RE TAKING YOUR DUTIES VERY SERIOUSLY AND I DO THINK  
23 THAT IT IS APPROPRIATE THAT I LET EVERYONE GO HOME FOR THE  
24 EVENING AND RETURN TOMORROW MORNING ... 9:00 O'CLOCK LET'S  
25 SAY, IF YOU WOULD ALL BE BACK AT 9:00 O'CLOCK TOMORROW

1 MORNING. DO NOT DISCUSS THE CASE AMONG YOURSELVES WHEN  
2 YOU'RE REASSEMBLING IN THE JURY ROOM UNTIL EVERYONE GETS  
3 THERE. ONCE EVERYONE GETS THERE YOU CAN RESUME YOUR  
4 DELIBERATIONS AGAIN AT 9:00 O'CLOCK AND I WILL BE HERE AT 9:00  
5 O'CLOCK AND AS SOON AS EVERYONE IS PRESENT I'LL BRING YOU IN  
6 FOR SOME ADDITIONAL INSTRUCTIONS TOMORROW MORNING. OTHER  
7 THAN THAT THEN WE'LL LET YOU ALL GO TO YOUR JURY ROOM RIGHT  
8 NOW, LET THE FOREMAN SEAL UP THE VERDICT AND AFTER HE HAS  
9 HANDED THAT BACK TO THE BAILIFF ALONG WITH THE EXHIBITS WE  
10 WOULD EXCUSE YOU FOR THE EVENING AND THEN COME BACK  
11 TOMORROW MORNING. IF EVERYBODY WILL GO BACK IN YOUR JURY  
12 ROOM UNTIL THAT'S TAKEN CARE OF AND I'LL SEE YOU TOMORROW.

13 (JURY OUT AT 7:39 P.M.).

14 THE COURT: MR. ALTERNATE, I'M GONNA GO AHEAD AND  
15 EXCUSE YOU BUT I WILL TELL YOU WE'LL HAVE TO HAVE YOU COME  
16 BACK TOMORROW MORNING AT 9:00 O'CLOCK, TOO AND REPORT TO  
17 THE BAILIFF WHEN YOU COME BACK IN AND WE'LL HAVE A PLACE FOR  
18 YOU. IF YOU'VE GOT SOMETHING PARTICULARLY YOU WANT TO READ  
19 OR WORK ON YOU CAN BRING THAT WITH YOU. AND WE'LL HAVE YOU  
20 COME BACK TOMORROW MORNING AT 9:00 O'CLOCK AS WELL. THANK  
21 YOU.

22 (WHEREUPON THERE WAS A PAUSE).

23 THE COURT: ANY OBJECTION TO THE PROCEDURE IN  
24 HAVING THE COURT'S EXHIBIT NUMBER SEVEN WITH THE JURY, WITH  
25 EXCUSING THE JURY FOR THE EVENING TO BE BROUGHT BACK IN

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1 TOMORROW FOR THE ALLEN CHARGE, ANY OBJECTION TO THAT  
2 PROCEDURE ON THE PART OF THE STATE, MR. CONNER?

3 MR. CONNER: NONE, YOUR HONOR.

4 THE COURT: AS FAR AS THE DEFENDANT?

5 MR. BLACKMON: NONE, YOUR HONOR.

6 THE COURT: ALL RIGHT. ALL RIGHT, LET'S WAIT JUST A  
7 MINUTE AND LET ME GIVE THE JURY A FEW MINUTES TO CLEAR THE  
8 COURTROOM ... THE COURTHOUSE. I BELIEVE THE JURY HAS HAD  
9 TIME TO CLEAR THE BUILDING NOW AND SO WE WILL BE IN RECESS  
10 UNTIL 9:00 O'CLOCK TOMORROW MORNING AND I'M NOT GOING TO  
11 HEAR ANYMORE PLEAS OR ANYTHING TONIGHT. EVERYBODY HAS  
12 BEEN IN COURT ALL DAY AND PRETTY WELL WASHED OUT SO I THINK  
13 WE'LL BE IN RECESS UNTIL 9:00 TOMORROW MORNING AT WHICH TIME  
14 I'LL BRING THE JURY BACK IN FOR THE ALLEN CHARGE. THANK YOU,  
15 WE'LL BE IN RECESS.

16 (WHEREUPON THERE WAS A PAUSE)

17 (THURSDAY, NOVEMBER 18, 29904)

18 THE COURT: ALL RIGHT. BACK ON THE RECORD WITH  
19 REGARD TO THE MATTER OF THE STATE VS. WILSON. LET THE RECORD  
20 REFLECT THAT THE DEFENDANT IS PRESENT IN ... IN COURT WITH HIS  
21 ATTORNEY, MR. BLACKMON. THE STATE IS REPRESENTED BY MR.  
22 CONNER. YESTERDAY AFTERNOON WE OR LAST EVENING WE  
23 EXCUSED THE JURY AFTER WE HAD RECEIVED THE NOTE THAT'S  
24 SHOWN AS COURT'S EXHIBIT NUMBER SEVEN AND I HAVE CONCLUDED  
25 THAT AT THIS POINT BASED ON THAT NOTE THAT THE APPROPRIATE

1       THING TO DO IS TO GIVE THE JURY THE ALLEN CHARGE AND ALLOW  
2       THEM TO CONTINUE THEIR DELIBERATIONS. IS THERE ANY OBJECTION  
3       TO THAT PROCEDURE, MR. CONNER?

4               MR. CONNER: NONE FROM US, YOUR HONOR.

5               THE COURT: MR. BLACKMON?

6               MR. BLACKMON: NONE, YOUR HONOR.

7               THE COURT: ALL RIGHT. BRING THE JURY IN, PLEASE.

8                       (JURY BROUGHT IN AT 9:05 A.M.).

9               THE COURT: ALL RIGHT. THANK YOU. GOOD MORNING,  
10       MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY. I HOPE  
11       EVERYONE HAD A PLEASANT EVENING AND GOT SOME REST. I AM  
12       GOING TO GIVE YOU AN ADDITIONAL CHARGE. IT HAS TO DO WITH  
13       TRYING TO REACH A VERDICT BECAUSE HOPEFULLY YOU CAN MAKE  
14       ANOTHER EFFORT TO REACH A VERDICT IN THIS CASE. AND I HAVE  
15       SOME VERY BRIEF COMMENTS THAT I WOULD LIKE TO MAKE BY WAY  
16       OF FURTHER INSTRUCTIONS ON THE MATTER OF YOUR BEING ABLE TO  
17       REACH A VERDICT. AS I HAVE ALREADY TOLD YOU YOU ARE THE  
18       SOLE JUDGES OF THE FACTS AND THE EVIDENCE IN THIS CASE. NOW,  
19       AS THE JUDGE, AS I HAVE ALREADY TOLD YOU I AM NOT PERMITTED  
20       TO EVEN GIVE YOU A HINT OF HOW I FEEL ABOUT ANY FACTUAL  
21       MATTER. AND CERTAINLY TO GIVE YOU NO HINT ABOUT WHAT  
22       VERDICT YOU OUGHT TO BRING IN THIS CASE. IT IS MY DUTY TO  
23       STATE THE LAW OF THE CASE AS I HAVE DONE AND IT IS YOUR DUTY  
24       TO BRING IN A VERDICT. BUT I CAN SAY THIS, THAT WHEN A MATTER  
25       IS IN DISPUTE IT IS NOT ALWAYS EASY FOR EVEN TWO MEN OR TWO

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1 OR THREE OR TWO PERSONS OR TWO WOMEN, TWO MEN OR TWO  
2 WOMEN AND WHEN 12 MUST AGREE IT BECOMES OBVIOUSLY  
3 CORRESPONDINGLY MORE DIFFICULT. BUT IT IS IMPORTANT WITH  
4 LITIGATION AND THIS IS LITIGATION BE ENDED ... IT MAY BE ENDED  
5 WITHOUT A SINGLE ONE OF YOU DOING VIOLENCE TO YOUR  
6 CONSCIENCE. NO JUROR IS EXPECTED TO GIVE UP AN OPINION BASED  
7 ON REASON SATISFACTORY TO HIMSELF OR HERSELF MERELY FOR THE  
8 PURPOSE OF BEING IN AGREEMENT AND I WANT THAT TO BE  
9 UNDERSTOOD.

10 YOU'RE NOT CALLED UPON OFTEN TO TRY CASES. THERE ARE 46  
11 CIRCUIT COURT JUDGES WHOSE WORK IT IS TO TRY CASES FROM DAY  
12 TO DAY THROUGHOUT THE YEAR AND THROUGHOUT THE STATE. AND  
13 IT IS VERY UNUSUAL, ALMOST UNHEARD OF FOR A JURY TO GO OUT  
14 AND RETURN PROMPTLY WITH A VERDICT. THIS IS WHAT WOULD  
15 HAPPEN IF A JURY NORMALLY WAS IN AGREEMENT TO BEGIN WITH.  
16 AT THE SAME TIME WE USUALLY GET A VERDICT. WHAT THAT MEANS  
17 IS THAT IT IS NORMAL FOR JURORS TO DISAGREE AT FIRST BUT THE  
18 FACT THAT WE NORMALLY GET A VERDICT ALSO MEANS THAT AFTER  
19 REASONABLE PERSONS LAY ASIDE ALL EXTRANEIOUS MATTERS AND  
20 DETERMINE TO DECIDE A CASE ON THE BASIS OF THE LAW AND THE  
21 EVIDENCE THEY DO COME TO A COMMON UNDERSTANDING AND  
22 REACH A VERDICT. IT HAS NEVER BEEN INTENDED THAT THE VERDICT  
23 OF A JURY SHOULD BE THE VERDICT OF ANY ONE PERSON.  
24 CONVERSELY, THE VERDICT OF THE JURY IS TO BE COLLECTIVE  
25 REASONING OF ALL PERSONS PUT TOGETHER AND THAT IS WHY WE

1 HAVE THE JURY SO THAT WE HAVE THE BENEFIT OF COLLECTIVE  
2 THOUGHT. COLLECTIVE REASONING. IT BECOMES YOUR DUTY TO  
3 TELL THE OTHER JURORS HOW YOU FEEL ABOUT THE CASE AND WHY  
4 YOU THINK AS YOU DO. AND I'M SURE THAT YOU'VE BEEN DOING  
5 THAT. IT ALSO BECOMES THE OTHER JURORS DUTIES TO EXCHANGE  
6 VIEWS WITH YOU. AND YOU SHOULD LISTEN TO EACH OTHER, ADHERE  
7 TO EACH OTHER ... TO EACH OTHER'S THOUGHTS SUCH MEANING AS  
8 YOU THINK IT SHOULD HAVE. AND TO SOME DEGREE IT CAN BE SAID  
9 THAT JURY SERVICE IS A MATTER OF GIVE AND TAKE. IF YOU DO NOT  
10 AGREE ON A VERDICT IT JUST MEANS THAT AT SOME FUTURE TERM OF  
11 COURT BEFORE SOME OTHER JUDGE PERHAPS AND THAT SOME OTHER  
12 JURY WILL SIT WHERE YOU ARE. THE SAME PARTICIPANTS WILL COME  
13 AND THE SAME LAWYERS WILL COME AND THEY WILL ASK THE SAME  
14 QUESTIONS AND PRESUMABLY GET PRETTY MUCH THE SAME  
15 ANSWERS AND WE WILL GO THROUGH THE WHOLE PROCESS ALL OVER  
16 AGAIN. I HAVE NO REASON NOW TO THINK THAT ANY OTHER 12  
17 CITIZENS OF SUMTER COUNTY WILL BE MORE CAPABLE OF SOLVING  
18 THIS CONTROVERSY THAN YOU. AND SO I'M GOING TO ASK THAT YOU  
19 AT THIS TIME TO DELIBERATE FURTHER AND SEE IF YOU CANNOT  
20 WRITE A VERDICT IN THIS CASE. NOW I WANT TO CLOSE THIS PART OF  
21 THE ALLEN CHARGE BY REMINDING YOU AGAIN WHILE IT IS  
22 IMPORTANT FOR LITIGATION TO BE ENDED IT SHOULD BE ENDED IN  
23 THE FORM OF A VERDICT BY NO JUROR IN VIOLENCE TO HIS OWN  
24 CONSCIENCE. NO JUROR IS EXPECTED TO GIVE UP AN OPINION BASED  
25 ON BEING SATISFACTORY TO HIMSELF OR HERSELF MERELY FOR THE

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1 PURPOSE OF BEING AGREEMENT. WITH THESE ADDED INSTRUCTIONS  
2 THEN I'M GOING TO ASK THAT YOU GO BACK TO YOUR JURY ROOM  
3 AND DELIBERATE YOUR VERDICT AND WE WILL BE AVAILABLE IF YOU  
4 NEED TO COMMUNICATE WITH ME. THANK YOU, YOU WILL RETURN  
5 TO YOUR JURY ROOM.

6 (JURY OUT AT 9:10 A.M.).

7 THE COURT: ANY ADDITIONS OR EXCEPTIONS ON BEHALF  
8 OF THE STATE, MR. CONNER?

9 MR. CONNER: NOTHING, YOUR HONOR.

10 THE COURT: ON BEHALF OF THE DEFENDANT?

11 MR. BLACKMON: NONE, YOUR HONOR.

12 THE COURT: ALL RIGHT. WE WILL BE AT EASE UNTIL WE  
13 HEAR FROM THE JURY. THE DEFENDANT CAN BE RETURNED TO THE  
14 HOLDING CELL.

15 (WHEREUPON THERE WAS A PAUSE).

16 THE COURT: IN THE CASE OF THE STATE VS. WILSON.  
17 WE'RE BACK ON THE RECORD. MR. WILSON IS PRESENT WITH HIS  
18 ATTORNEY. THE STATE IS PRESENT AND REPRESENTED BY MR.  
19 CONNER. THIS IS FIRST NOTE.

20 (DISCUSSION HELD OFF THE RECORD).

21 THE COURT: ALL RIGHT, LET THE RECORD REFLECT THAT  
22 WE HAVE RECEIVED TWO NOTES FROM THE JURY. MR. HERRING I'M  
23 GONNA HAND THEM TO YOU AND ASK YOU TO MAKE SURE THAT WE  
24 GET THEM IN THE ORDER IN WHICH THE COURT RECEIVED THEM, THAT  
25 IS THE FIRST ONE AND THAT WOULD BE THE NEXT COURT'S EXHIBIT,

1 MS. WINFIELD.

2 (WHEREUPON COURT'S EXHIBIT NUMBER EIGHT WAS MARKED FOR  
3 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

4 THE COURT: ALL RIGHT, THE FIRST NOTE THAT WAS  
5 RECEIVED THIS TIME IS COURT'S EXHIBIT NUMBER EIGHT AND THE  
6 GIST OF THAT INQUIRY WAS IF THE JURY COULD NOT ARRIVE AT A  
7 VERDICT ON ONE OF THE COUNTS BUT COULD ARRIVE AT A VERDICT  
8 ON THE OTHER COUNTS WOULD THE ENTIRE INDICTMENT BE MISTRIED  
9 OR WOULD THE COUNTS THAT THEY COULD AGREE ON COUNT AND  
10 ONLY THE COUNT THAT THEY COULD NOT AGREE ON REQUIRE A  
11 MISTRIAL. THAT WAS THE GIST OF THE NOTE. AND THAT HAS BEEN  
12 MARKED AS COURT'S EXHIBIT NUMBER EIGHT. MY PLAN WAS TO  
13 BRING THE JURY IN AND TO ANSWER THAT NOTE BECAUSE THAT IS A  
14 LEGAL QUESTION BUT BEFORE THAT COULD BE DONE I RECEIVED  
15 ANOTHER NOTE FROM THE JURY WHICH INDICATED THAT THEY  
16 WANTED TO BE LEFT ALONE FOR A WHILE MORE WHICH MEANS THEY  
17 MUST BE MAKING PROGRESS. SO WITH THAT I'M GOING TO GIVE THESE  
18 TWO NOTES TO THE COURT REPORTER AND MAKE THEM A PART OF  
19 THE RECORD AND WE'LL CONTINUE TO WAIT UNTIL WE HEAR FROM  
20 THE JURY ON THIS CASE.

21 (WHEREUPON COURT'S EXHIBIT NUMBER NINE WAS MARKED FOR  
22 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

23 THE COURT: THANK YOU. WE'LL BE AT EASE UNTIL WE  
24 HEAR FROM THE JURY.

25 (WHEREUPON THERE WAS A PAUSE).

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1 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I DO  
2 UNDERSTAND THAT WE HAVE A VERDICT IN THE MATTER OF THE  
3 STATE VS. HAROLD WILSON. WE WANT TO TAKE JUST A FEW MINUTES  
4 BEFORE WE ACCEPT THAT VERDICT. I'VE GOT A FEW THINGS THAT I  
5 NEED TO DO. AND WE'RE GOING TO DO THAT RIGHT NOW AND WE'LL  
6 BE READY TO TAKE IT IN JUST A FEW MINUTES. LET ME TELL  
7 EVERYONE IN THE COURTROOM THAT THE COURT DOES NOT KNOW  
8 WHAT THIS VERDICT IS GOING TO BE AND NO ONE ELSE DOES EXCEPT  
9 THOSE 12 PEOPLE THAT ARE IN THE ... IN THE JURY ROOM. WHEN THE  
10 VERDICT IS READ I EXPECT EVERYONE IN THE COURT ... COURTROOM  
11 TO MAINTAIN THEIR COMPOSURE. I EXPECT EVERYONE TO SIT  
12 QUIETLY AND ACCEPT THE VERDICT THAT IS RETURNED BY THE JURY  
13 WITHOUT ANY DISPLAYS OF EMOTION WHATSOEVER. IF ANYBODY  
14 FEELS THAT THEY CANNOT DO THAT WHEN WE RECONVENE TO TAKE  
15 THAT VERDICT I WANT TO ASK THAT YOU NOT BE IN THE COURTROOM  
16 BECAUSE I WILL ISSUE A WARNING AT THIS TIME IF THERE IS ANY  
17 DISTURBANCE WHATSOEVER THAT THE COURT WILL VIEW THE  
18 MATTER AS BEING IN CONTEMPT OF THIS COURT AND WILL TAKE THE  
19 APPROPRIATE ACTION WHICH MAY BE JAIL TIME FOR ANYONE THAT  
20 DISTURBS THE ORDER AND DECORUM OF THIS COURTROOM. SO IF  
21 YOU FEEL LIKE THAT YOU CANNOT ACCEPT THE VERDICT THAT THE  
22 JURY RENDERS WITHOUT EMOTION THEN PLEASE REMAIN OUTSIDE.  
23 ALL RIGHT. I'M GOING TO TAKE A FEW MINUTES UNTIL WE GET THE  
24 MATTERS LINED UP AND WE'RE READY TO TAKE THE VERDICT IN THIS  
25 CASE. THANK YOU.

1 (WHEREUPON THERE WAS A PAUSE).

2 THE COURT: THIS IS THE LAST NOTE THAT WE HAD THAT  
3 CAME FROM THE FOREMAN THAT SAID WE HAVE COME TO A  
4 DECISION, PLEASE GIVE US A FEW MINUTES TO FILL OUT THE  
5 PAPERWORK AND THAT WILL BE MARKED AS THE NEXT COURT  
6 EXHIBIT AND MADE A PART OF THE RECORD.

7 (WHEREUPON COURT'S EXHIBIT NUMBER TEN WAS MARKED FOR  
8 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

9 THE COURT: THANK YOU. WE'LL BE IN RECESS FOR A FEW  
10 MINUTES.

11 (WHEREUPON THERE WAS A PAUSE).

12 THE COURT: BACK ON THE RECORD WITH REGARD TO THE  
13 MATTER OF THE STATE VS. WILSON, INDICTMENT NUMBER 03-763. I  
14 REALIZE THAT ... BRING IN MR. WILSON NOW BECAUSE I AGAIN WANT  
15 TO TELL THE SPECTATORS AND THOSE OF YOU THAT WERE NOT IN  
16 HERE WHEN WE ... BEFORE WE TOOK THE RECESS THAT I EXPECT  
17 EVERYONE TO MAINTAIN THEIR COMPOSURE WHEN THE VERDICT IS  
18 READ. I DO NOT KNOW WHAT THE VERDICT IS GOING TO BE. NO ONE  
19 KNOWS WHAT THE VERDICT IS GOING TO BE. AND I KNOW THAT THIS  
20 IS AN EMOTIONAL CASE TO EVERYBODY THAT IS INVOLVED BUT IF  
21 YOU ARE NOT ABLE TO SIT QUIETLY AND MAINTAIN YOUR  
22 COMPOSURE I WOULD ASK THAT YOU LEAVE NOW. I WILL ALSO ASK  
23 THAT IF SUCH TIME AS ... OR NOT ASK BUT TELL YOU THAT AT SUCH  
24 TIME AS COURT IS ADJOURNED AFTER THE VERDICT I EXPECT  
25 EVERYONE TO MAINTAIN GOOD ORDER IN AND AROUND THE

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1 COURTHOUSE. ANY DISORDER AROUND THE COURTHOUSE WILL BE  
2 TREATED AS THAT. IT WOULD BE TREATED AS CONTEMPT OF COURT.  
3 ALL RIGHT. MR. CONNER AND MR. BLACKMON AND MR. WILSON, I  
4 UNDERSTAND THAT THE JURY HAS REACHED A VERDICT. ANYTHING  
5 BEFORE WE BRING THE JURY IN ON BEHALF OF THE STATE, MR.  
6 CONNER?

7 MR. CONNER: NONE ON BEHALF OF THE STATE.

8 THE COURT: ON BEHALF OF THE ...

9 MR. BLACKMON: NO, SIR, YOUR HONOR.

10 THE COURT: ALL RIGHT. BRING THE JURY IN, PLEASE.

11 (JURY BROUGHT IN AT 11:42 A.M.).

12 THE COURT: ALL RIGHT. MR. FOREMAN, I UNDERSTAND  
13 YOU HAVE REACHED A VERDICT, IS THAT CORRECT?

14 FOREMAN: YES, SIR.

15 THE COURT: WOULD YOU HAND IT UP TO THE BAILIFF,  
16 PLEASE? ALL RIGHT, FROM THE STANDPOINT OF FORM THE VERDICT  
17 APPEARS TO BE CORRECT. MR. BLACKMON, WOULD YOU AND YOUR  
18 CLIENT STAND, PLEASE? MR. CLERK, YOU MAY PUBLISH THE  
19 VERDICT.

20 CLERK: CASE NUMBER 2003-GS-43-763, STATE OF SOUTH  
21 CAROLINA VS. HAROLD JAMAR WILSON. WE THE JURY BY UNANIMOUS  
22 CONSENT FIND THE DEFENDANT, HAROLD JAMAR WILSON, AS TO  
23 COUNT ONE, GUILTY OF MURDER OF REGINALD FOSTER. AS TO COUNT  
24 TWO, GUILTY OF ASSAULT AND BATTERY WITH INTENT TO KILL OF  
25 HERBERT LINWOOD BUTLER. GUILTY OF ASSAULT AND BATTERY OF A

1 HIGH AND AGGRAVATED NATURE. AS TO COUNT THREE, GUILTY OF  
2 ATTEMPTED ARMED ROBBERY OF EDWARD MAURICE DINGLE. AS TO  
3 COUNT FOUR, GUILTY OF POSSESSION OF A FIREARM DURING A CRIME  
4 OF VIOLENCE. SIGNED BY THE FOREPERSON, JAMES A. STEWART  
5 DATED NOVEMBER 16<sup>TH</sup>, 2004. THIS BE YOUR VERDICT SO SAY YOU ALL  
6 BY RAISING YOUR RIGHT HAND. THANK YOU.

7 THE COURT: THANK YOU. YOU MAY BE SEATED. I STAND  
8 CORRECTED ON SOMETHING. HAVE A SEAT, MR. BLACKMON. THERE IS  
9 ONE ERROR IN THE FORM OF THE INDICTMENT, MR. FOREMAN AND I'M  
10 GONNA ASK THAT YOU GO BACK AND CORRECT THAT AND I DID NOT  
11 CATCH THIS WHEN I LOOKED AT IT AND I SHOULD HAVE. BUT ON  
12 COUNT TWO, HE CAN BE GUILTY ONLY OF ASSAULT AND BATTERY  
13 WITH INTENT TO KILL OR ASSAULT AND BATTERY OF A HIGH AND  
14 AGGRAVATED NATURE OR NOT GUILTY. THERE SHOULD BE AN OR  
15 BETWEEN EACH ONE OF THOSE THREE AND SO ONLY ONE OF THE  
16 VERDICTS IS APPROPRIATE ON COUNT TWO. SO I'M GONNA ASK IF  
17 YOU'LL GO BACK TO YOUR ... TO YOUR JURY ROOM AND CORRECT  
18 THAT AS TO WHAT THE VERDICT OF THE JURY IS INTENDED TO BE AND  
19 LET US KNOW AND WE'LL BRING YOU RIGHT BACK. THANK YOU, IF  
20 ALL OF YOU WILL GO WITH HIM WHILE YOU CORRECT THAT MISTAKE.

21 (JURY OUT AT 11:45 A.M.).

22 THE COURT: WE'LL WAIT JUST A MOMENT. I DON'T THINK  
23 IT WILL TAKE THEM BUT A FEW MINUTES TO CORRECT THAT.

24 (JURY BROUGHT IN AT 11:47 A.M.).

25 THE COURT: ALL RIGHT. MR. FOREMAN, HAVE YOU ... HAS

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1 THE ENTIRE JURY MADE THE CORRECTION TO COUNT TWO OF THE  
2 INDICTMENT?

3 FOREMAN: YES, SIR.

4 THE COURT: AND DOES THIS CHANGE ON HERE INDICATE  
5 YOUR VERDICT ON COUNT TWO?

6 FOREMAN: YES, SIR.

7 THE COURT: ALL RIGHT. ALL RIGHT, MR. BLACKMON, IF  
8 YOU WOULD HAVE YOUR CLIENT STAND PLEASE AND PUBLISH JUST  
9 COUNT TWO.

10 CLERK: AS TO COUNT TWO, GUILTY OF ASSAULT AND  
11 BATTERY WITH INTENT TO KILL HERBERT LINWOOD BUTLER. THIS BE  
12 YOUR VERDICT SO SAY YOU ALL BY RAISING YOUR RIGHT HAND.  
13 THANK YOU.

14 THE COURT: THANK YOU, YOU MAY BE SEATED. MR.  
15 BLACKMON, ANYTHING BEFORE THE JURY IS EXCUSED?

16 MR. BLACKMON: YES, SIR, WE RESPECTFULLY REQUEST  
17 YOU POLL THE JURY.

18 THE COURT: ALL RIGHT. MR. CLERK, IF YOU WOULD POLL  
19 THE JURY, PLEASE.

20 CLERK: LADIES AND GENTLEMEN, WHEN YOUR NAME IS  
21 CALLED I'M GONNA ASK YOU TWO QUESTIONS. WHEN YOUR NAME IS  
22 CALLED PLEASE STAND. PINESE CARTER. IS THIS YOUR VERDICT AND  
23 STILL YOUR VERDICT?

24 MS. CARTER: YES, SIR.

25 CLERK: THANK YOU. BOBBY BENENHALEY, IS THIS YOUR

1 VERDICT AND STILL YOUR VERDICT?

2 MR. BENENHALEY: YES, SIR.

3 CLERK: THANK YOU. HELEN STUKES. IS THIS YOUR  
4 VERDICT AND STILL YOUR VERDICT?

5 MS. STUKES: YES, SIR.

6 CLERK: THANK YOU. CHARLENE JEFFERSON. IS THIS  
7 YOUR VERDICT AND STILL YOUR VERDICT?

8 MS. JEFFERSON: YES, SIR.

9 CLERK: THANK YOU. ROUMANIA COOPER. IS THIS YOUR  
10 VERDICT AND STILL YOUR VERDICT?

11 MS. COOPER: YES, SIR.

12 CLERK: THANK YOU. JAMES STEWART. IS THIS YOUR  
13 VERDICT AND STILL YOUR VERDICT?

14 MR. STEWART: YES, SIR.

15 CLERK: THANK YOU. DAVID HICKMAN. IS THIS YOUR  
16 VERDICT AND STILL YOUR VERDICT?

17 MR. HICKMAN: YES, SIR.

18 CLERK: THANK YOU. JIMMY LYON. IS THIS YOUR  
19 VERDICT AND STILL YOUR VERDICT?

20 MR. LYON: YES, SIR.

21 CLERK: THANK YOU. ROBERT FESER. IS THIS YOUR  
22 VERDICT AND STILL YOUR VERDICT?

23 MR. FESER: YES, SIR.

24 CLERK: THANK YOU. JASON ALBRIGHT. IS THIS YOUR  
25 VERDICT AND STILL YOUR VERDICT?

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1 MR. ALBRIGHT: YES, SIR.

2 CLERK: THANK YOU. KENNETH MORRIS. IS THIS YOUR  
3 VERDICT AND STILL YOUR VERDICT?

4 MR. MORRIS: YES.

5 CLERK: THANK YOU. HEYWARD WILSON. IS THIS YOUR  
6 VERDICT AND STILL YOUR VERDICT?

7 MR. WILSON: YES, SIR.

8 CLERK: THANK YOU. YOUR HONOR, THE JURY'S BEEN  
9 POLLED AND THE VERDICT STANDS.

10 THE COURT: ALL RIGHT. THANK YOU, SIR. MR.  
11 BLACKMON, ANYTHING BEFORE THE JURY IS EXCUSED?

12 MR. BLACKMON: NO, SIR, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 (JURY DISMISSED).

15 THE COURT: ALL RIGHT. MR. BLACKMON, MOTIONS ON  
16 BEHALF OF THE DEFENDANT.

17 MR. BLACKMON: YES, YOUR HONOR. ADDITIONALLY WE  
18 WOULD AT THIS TIME MOVE FOR A NEW TRIAL ON SEVERAL BASIS.  
19 FIRST THAT THE TRIAL COURT'S EARLIER DECISIONS ON OUR PRIOR  
20 MOTIONS FIRST TO ALLOW THE USE OF HIS JUVENILE RECORD AND  
21 THE ADMISSION OF THE FAMILY COURT ORDER AS TO HIS JUVENILE  
22 RECORD INTO EVIDENCE AS WELL AS THE COURT'S CHARGING THE  
23 HAND OF ONE IS THE HAND OF ALL TWICE AND ONCE AFTER A  
24 QUESTION BY THE JURY CONSTITUTED SUCH AN ABUSE OF  
25 DISCRETION INSOFAR AS THE FORMAL MERIT OF THE LAW OF THE

1 LATTER IS UNSUPPORTED BY THE EVIDENCE. THAT COMBINED TO  
2 CAUSE SUCH UNDUE PREJUDICE IN THE ... IN THE JURY'S  
3 DETERMINATION THAT THE DEFENDANT COULD NOT HAVE RECEIVED  
4 A FAIR TRIAL AND AS A RESULT OF THAT IS ENTITLED TO A NEW TRIAL.  
5 SECONDARILY, JUST UPON THE FAILURE OF THE COURT TO GRANT THE  
6 PREVIOUS MISTRIAL AS PREVIOUSLY REQUESTED ON THE GROUNDS  
7 FOR WHICH IT WAS REQUESTED AT THAT TIME WHICH I BELIEVE ALSO  
8 SPECIFICALLY INCLUDED THE USE OF THE JUVENILE RECORD AND THE  
9 CHARGE OF THE HAND OF ONE IS THE HAND OF ALL. AND FINALLY,  
10 THAT THE COURT ERRED IN FAILING TO GRANT THE DEFENDANT'S  
11 INITIAL MOTION TO QUASH THE INDICTMENT ITSELF FOR VIOLATION  
12 OF THE SOUTH CAROLINA RULE OF CRIMINAL PROCEDURE 3C INSOFAR  
13 AS IT WAS NOT TRANSMITTED AND ACTED UPON AS REQUIRED WITHIN  
14 THE 90 DAYS OF RECEIPT. IN FACT ...

15 THE COURT: WHOA. GO BACK TO THAT.

16 MR. BLACKMON: UNDER SOUTH CAROLINA RULE OF CIVIL  
17 PROCEDURE 3C THE RULE REQUIRES THAT WITHIN 90 DAYS OF THE  
18 TRANSMISSION OF THE INDICTMENT BY THE CLERK TO THE  
19 SOLICITOR'S OFFICE THAT THE CASE NUMBER BE PREPARED AND BE  
20 SUBMITTED TO THE GRAND JURY AND ACTED UPON ...

21 THE COURT: I UNDERSTAND. THAT'S AN ADMINISTRATIVE  
22 RULE BUT IT'S NOT A STATUTE.

23 MR. BLACKMON: THAT'S CORRECT. AND FINALLY THAT  
24 EVEN TAKING ALL OF THE EVIDENCE IN THE LIGHT MOST FAVORABLE  
25 TO THE STATE THERE WAS INSUFFICIENT EVIDENCE BY WHICH THE

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1 JURY COULD HAVE RENDERED A VERDICT OF GUILTY ON ALL OF  
2 THOSE COUNTS SO WE WOULD THEREFORE RESPECTFULLY REQUEST A  
3 NEW TRIAL. AND/OR IN THE ALTERNATE A DIRECTION OF NOT  
4 VERDICT ON THE SAME GROUNDS.

5 THE COURT: ALL RIGHT. THANK YOU, MR. BLACKMON,  
6 AND I CAN CERTAINLY APPRECIATE YOUR POSITION. I THINK THAT  
7 THE COURT'S RULINGS AT THE TIME WERE CORRECT. THE COURT DID  
8 NOT MAKE THOSE RULINGS LIGHTLY. ALL OF THESE MATTERS WERE  
9 BROUGHT UP AND THOROUGHLY EXPLORED AT THE TIME THE  
10 RULINGS WERE MADE. I DO THINK THAT THE PRESENTMENT TO THE  
11 GRAND JURY WITHIN A CERTAIN PERIOD IS A COURT RULE, NOT A  
12 STATUTE, IT DOES NOT INFER ANY SUBSTITUTE RIGHTS. NOT ONLY  
13 THAT, THE DEFENDANT CAN POINT TO NO PREJUDICE AS A RESULT OF  
14 THAT. I DO NOT THINK THAT IT IS ANYTHING THAT CREATES A  
15 CONSTITUTIONAL RIGHT OR A RIGHT TO HAVE THE CHARGES  
16 DISMISSED. IT IS AN ADMINISTRATIVE PROCEDURE FOR THE ORDERLY  
17 DISPOSITION OF CASES AND I SEE NO PREJUDICE. WITH REGARD TO  
18 THE CONFIDENTIALITY STATUTE AND THE FAMILY COURT RECORDS IT  
19 STRIKES ME AS A LITTLE BIT INCONGRUOUS WITH THE DEFENDANT  
20 WANTS TO INVOKE THE CONFIDENTIALITY OF THE STATUTE ... THE  
21 CONFIDENTIALITY OF JUVENILE RECORDS TO PREVENT HIM FROM  
22 BEING IMPEACHED REGARDING HIS OWN CRIMES WHEN HE DENIED  
23 THAT THAT'S WHAT HIS RECORD WAS. THAT RECORD WOULD NOT  
24 HAVE BEEN INTRODUCED IF HE HAD ADMITTED TO THE STATE ON  
25 DIRECT EXAMINE ... ON CROSS EXAMINATION THAT THIS WAS HIS

1 CRIMINAL RECORD WHEN THE DEFENDANT WAS ASKED THAT BY THE  
2 STATE. BUT WHEN HE DENIED THAT THAT WAS HIS CRIMINAL RECORD  
3 THE STATE CERTAINLY HAS THE RIGHT TO USE THAT RECORD TO  
4 IMPEACH HIM WITH. THE OTHER GROUNDS FOR THE MOTION WERE  
5 ALSO FULLY EXPLORED AT THE TIME THAT THE ... DURING THE TRIAL  
6 OF THIS CASE SO THE COURT WOULD RESPECTFULLY DENY THE  
7 MOTION FOR NEW TRIAL OR JUDGEMENT IN ARRESTED VERDICT AND  
8 GO FORWARD FROM THERE. THANK YOU VERY MUCH.

9 MR. BLACKMON: THANK YOU, SIR.

10 THE COURT: ALL RIGHT, ANYTHING BEFORE WE GO INTO  
11 THE SENTENCING PHASE, MR. BLACKMON?

12 MR. BLACKMON: NO, SIR, YOUR HONOR.

13 THE COURT: ALL RIGHT. HAVE THE DEFENDANT COME  
14 AROUND. MR. CONNER, I'M GOING TO CALL ON YOUR TO GIVE ME ... I  
15 THINK I KNOW WHAT THE PRIOR RECORD IS BUT I'M GONNA ASK YOU  
16 TO GIVE ME WHAT CRIMINAL RECORD YOU HAVE AND THEN I WILL  
17 HEAR FROM THE MOTHER OF THE VICTIM.

18 MR. CONNER: MAY IT PLEASE THE COURT. HE WAS AN  
19 ADJUDICATED DELINQUENT IN FAMILY COURT ON JUNE 28<sup>TH</sup>, 2001, FOR  
20 COMMON LAW OR WHAT SOMETIMES PEOPLE CALL STRONG ARMED  
21 ROBBERY. HE WAS ALSO AT THE SAME TIME, JUNE 28<sup>TH</sup>, 2001, HE PLED  
22 GUILTY TO BURGLARY SECOND DEGREE AND HE ACTUALLY CAME  
23 INTO THE DEPARTMENT OF JUVENILE JUSTICE BACK IN 1999  
24 ACCORDING TO THE RECORD ... THE RECORD WE HAVE FOR HINDERING  
25 OFFICERS WHILE SERVING WARRANTS. THE ... HE HAD IN ... IN ...

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1 ACCORDING TO DEPARTMENT OF JUVENILE JUSTICE NINE CRIME  
2 REFERRALS AS A JUVENILE. SOME OF THOSE WERE DISMISSED AND  
3 CONVERTED TO CONTRACT. SOME WERE SENT HIM FOR PTI DOWN  
4 THERE.

5 THE COURT: ALL RIGHT. ALL RIGHT. MA'AM, AS THE  
6 MOTHER OF THE VICTIM IN THIS CASE, YOU ARE MS. FOSTER, IS THAT  
7 CORRECT?

8 MS. FOSTER: YES, SIR.

9 THE COURT: ALL RIGHT, MS. FOSTER, YOU OF COURSE  
10 HAVE THE RIGHT TO BE KEPT ADVISED OF EVERYTHING THAT IS GOING  
11 ON DURING THE PROCESS OF THIS CASE AND I'M SURE THAT THE  
12 SOLICITOR'S OFFICE HAS DONE THAT. YOU ALSO HAVE THE RIGHT TO  
13 BE PRESENT AND YOU HAVE THE RIGHT TO ADDRESS THE COURT OR  
14 TO TELL ME ANYTHING THAT YOU WOULD LIKE TO TELL ME SO I'LL BE  
15 GLAD TO HEAR FROM YOU AT THIS TIME.

16 MS. FOSTER: ALL RIGHT. WELL, YOUR HONOR, I LIKE TO  
17 SAY I NEVER THOUGHT ON THAT DAY WHEN REGINALD GOT UP TO GO  
18 TO SCHOOL AND I LEFT TO GO TO WORK THAT THAT WOULD BE THE  
19 LAST DAY THAT I ... I WOULD SEE HIM. SO ON BEHALF OF MY FAMILY  
20 AND SPEAKING ON BEHALF FOR REGINALD, I DON'T BELIEVE THAT HE  
21 SHOULD BE SHOWN ANY MERCY AND I JUST WANTED TO SAY THAT  
22 IT'S BEEN HARD ON MY FAMILY AND MYSELF. AND IT'S GONNA TAKE A  
23 LONG TIME FOR US TO GET OVER THIS BECAUSE I'VE HEARD A LOT OF  
24 THINGS IN HERE ABOUT REGINALD BUT REGINALD WAS A NICE, KIND,  
25 SWEET 14 YEAR OLD CHILD, JUST LIKE ANY REGULAR 14 YEAR OLD. HE

1 WOULD GIVE YOU THE SHIRT OFF HIS BACK AND IT WAS JUST SAD  
2 THAT HE HAD TO BE IN THE WRONG PLACE AT THE WRONG TIME AND  
3 BECAUSE OF HIS DEATH I DONATED HIS ORGANS SO THAT REGINALD  
4 WOULD LIVE ON IN OTHER PEOPLE BECAUSE HE WAS REALLY A  
5 SWEET, YOUNG 14 YEAR OLD BOY. AND I JUST WANTED TO SAY THAT  
6 I'M SORRY ...

7 THE COURT: I'LL TELL YOU, MS. FOSTER, THAT I'M SORRY  
8 AS WELL. THERE'S NOTHING THAT I CAN DO THAT WOULD EASE YOUR  
9 PAIN. I DO EMPATHIZE WITH YOU AND ALL THE COURT CAN DO IS TO  
10 IMPOSE A SENTENCE THAT THE LAW ALLOWS FOR THE ... FOR THE ...  
11 FOR THE OFFENSES FOR WHICH HE HAS BEEN FOUND GUILTY AND I  
12 REALIZE THAT THIS DOES NOT EASE YOUR PAIN BUT I HOPE IT WILL  
13 BRING SOME CLOSURE TO THE SITUATION FOR YOU.

14 MS. FOSTER: THANK YOU, SIR.

15 THE COURT: ALL RIGHT, MR. BLACKMON, BE GLAD TO  
16 HEAR FROM YOU.

17 MR. BLACKMON: MAY IT PLEASE THE COURT. HAROLD  
18 WILSON IS NOW 19 YEARS OLD. HE WAS 17 WHEN THIS INCIDENT  
19 OCCURRED IN MAY OF 2003. HIS RECORD AS GIVEN TO THE COURT BY  
20 MR. CONNER IS PRIMARILY FROM JUNE OF 2001 AND SOME PRIOR  
21 JUVENILE MATTERS THE MAJORITY OF WHICH I BELIEVE WERE  
22 DISMISSED. THOSE OCCURRED WHEN HE WAS 13 AND 15. HE'S BEEN  
23 TREATED AT THE WILLIAM S. HALL INSTITUTE EFFECTIVE BEGINNING  
24 1999 FOR HIS MENTAL CONDITION ... PREVIOUSLY DETERMINED TO  
25 HAVE BEEN EDUCABLY MENTALLY HANDICAPPED AND TO HAVE

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1 VARIOUS PSYCHIATRIC OR PSYCHOLOGICAL DISRUPTIVE BEHAVIOR. I  
2 THINK HE SAID IN ONE OF HIS STATEMENTS HE WAS VERY GREATLY  
3 SORRY THAT REGINALD FOSTER DIED IN THIS INCIDENT AND HE HAS  
4 INDICATED TO ME IN THE PAST THAT THERE WAS NO REASON FOR  
5 REGINALD FOSTER TO DIE, THAT THEY GOT ALONG FINE, THEY WERE  
6 FRIENDS AS WERE MANY OF THOSE IN THAT NEIGHBORHOOD AT THE  
7 TIME. I THINK HE HAD SOME CONTACT WITH REGINALD DURING AND  
8 AFTER SCHOOL BACK THEN AND ... AND HE IS TRULY SORRY THAT MR.  
9 FOSTER DIED. WE WOULD ASK THE COURT TO RENDER AN  
10 APPROPRIATE SENTENCE TAKING INTO ACCOUNT HIS CONDITION  
11 WHILE STILL MEETING THE ENDS OF JUSTICE AT THIS TIME.

12 THE COURT: ALL RIGHT.

13 MR. BLACKMON: AND I HAVEN'T ASKED MR. WILSON IF  
14 HE'D LIKE TO SAY ANYTHING EITHER TO THE COURT OR MS. FOSTER.

15 THE COURT: I'LL ASK HIM. MR. WILSON, IS THERE  
16 ANYTHING YOU'D LIKE TO SAY? SIR?

17 MR. WILSON: SIR?

18 THE COURT: IS THERE ANYTHING YOU WOULD LIKE TO  
19 TELL ME?

20 MR. WILSON: I'D LIKE TO SAY I'M SORRY THAT REGGIE  
21 HAD TO DIE.

22 THE COURT: ALL RIGHT. ALL RIGHT, MR. WILSON, I KNOW  
23 THAT YOU ARE A FAIRLY YOUNG MAN OR ARE A YOUNG MAN BUT  
24 YOU HAVE JUST GOTTEN YOURSELF IN A PILE OF TROUBLE AND BEEN  
25 HEADED THAT WAY. FROM THE TESTIMONY THAT I HEARD IN THIS

1 COURT I AM CONVINCED THAT THIS WHOLE SITUATION AS A RESULT  
2 OF GANGS IN OUR COMMUNITY OF WHICH YOU MUST BE A MEMBER OF  
3 ONE. THAT'S A PART OF THE REASON FOR IMPOSING THE SENTENCE  
4 THAT I'M GONNA IMPOSE TO SEND OUT A MESSAGE TO THOSE PEOPLE  
5 IN OUR COMMUNITY WHO ARE MEMBERS OF GANGS AND THIS IS  
6 WHAT'S GONNA HAPPEN IF YOU GET IN TROUBLE AS A RESULT OF  
7 BEING A MEMBER OF A GANG AND GANG ACTIVITY. THAT IS ONLY  
8 PART OF THE REASON FOR THE SENTENCE. THE OTHER PART IS THAT I  
9 THINK THAT IT IS APPROPRIATE FOR THIS ... FOR THE ... YOUR  
10 CONDUCT IN THIS CASE WITH REGARD TO THE YOUNG MAN WHO WAS  
11 KILLED, THE YOUNG MAN WHO WAS INJURED, THE ONE THAT YOU  
12 TRIED TO ROB ACCORDING TO THE JURY'S VERDICT AND OF COURSE  
13 THE FACT THAT YOU DID HAVE A WEAPON OUT IN THE COMMUNITY.  
14 IT'S GONNA BE A SEVERE SENTENCE THE END RESULT OF WHICH IS  
15 THAT YOU PROBABLY WILL NEVER GET OUT OF PRISON. SENTENCE OF  
16 THE COURT ON THE MURDER IS THE DEFENDANT IS COMMITTED TO  
17 THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM OF LIFE IN  
18 PRISON. ON COUNT TWO FOR ASSAULT AND BATTERY WITH INTENT  
19 TO KILL THE SENTENCE OF THE COURT IS THE DEFENDANT IS  
20 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A  
21 TERM OF 20 YEARS CONSECUTIVE TO COUNT ONE. ON COUNT THREE,  
22 THE SENTENCE OF THE COURT IS DEFENDANT IS COMMITTED TO STATE  
23 DEPARTMENT OF CORRECTIONS FOR A TERM OF 20 YEARS. IT IS  
24 CONSECUTIVE TO COUNT ONE BUT CONCURRENT WITH COUNT TWO.  
25 AND FINALLY ON THE CHARGE OF POSSESSION OF A FIREARM DURING

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1 THE COMMISSION OF A CRIME OF VIOLENCE THE SENTENCE OF THE  
2 COURT IS DEFENDANT IS COMMITTED TO STATE DEPARTMENT OF  
3 CORRECTIONS FOR A TERM OF FIVE YEARS CONSECUTIVE TO ONE,  
4 TWO, AND THREE. SO THE NET EFFECT OF THE SENTENCE IS LIFE  
5 IMPRISONMENT PLUS 25 YEARS. GOOD LUCK TO YOU, SIR. WE ARE  
6 ADJOURNED.

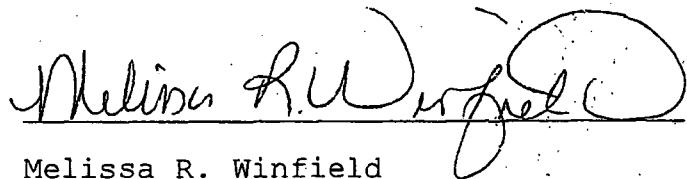
7 (WHEREUPON THERE WAS A PAUSE).  
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**CERTIFICATE**

This is to certify that the hearing in The State vs. Harold J. Wilson, consisting of Six Hundred Ten (610) pages is a true and correct transcript of the testimony given after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 28<sup>th</sup> day of December, 2005.

A handwritten signature in cursive script, reading "Melissa R. Winfield", is written over a horizontal line. To the right of the signature is a large, circular, loopy flourish.

Melissa R. Winfield  
Certified Court Reporter

Notary Public for South Carolina  
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Sumter County

Howard P. King, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

HAROLD JAMAR WILSON,

APPELLANT

---

BRIEF OF APPELLANT

---

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court err in allowing Wilson's juvenile record to be published to the jury without first receiving an order from the family court judge?

STATEMENT OF THE CASE

Appellant was indicted at the September 4, 2003 term of the Sumter County grand jury for the offenses of murder, assault and battery with intent to kill, attempted armed robbery, possession of a firearm during the commission of a violent crime, and accessory after the fact. R 616 – 617. Appellant's case was called to trial on November 15, 2004 before the Honorable Howard P. King, and a jury. Richard Blackman represented appellant. W. Harry Conner, Jr. was the Assistant Solicitor. R. 1.

At the conclusion of the trial on November 18, 2004 the jury found appellant guilty of murder, assault and battery with intent to kill, attempted armed robbery, and possession of a firearm during a violent crime. R. 598, l. 20 – 599, l. 6.

Judge King sentenced appellant to life imprisonment for murder, twenty years consecutive for assault and battery with intent to kill, twenty years concurrent for attempted armed robbery and five years consecutive for possession of a firearm during a crime of violence. R. 609, l. 14 – 610, l. 6.

Former appellate counsel filed an Anders brief, and petitioned to be relieved. This Court in its order denied the petition to be relieved and directed former appellate counsel and the state to brief the issue which follows.<sup>1</sup>

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<sup>1</sup> Present appellate counsel would most respectfully request that if this Court notes in the opinion that an Anders brief was originally filed in this case, that it consider also stating in the opinion that it was filed by former appellate counsel.

### ARGUMENT

The circuit court erred in allowing Wilson's juvenile record to be published to the jury where the solicitor did not receive an order from the family court judge to obtain that record as mandated by the case law and statute. The circuit court judge's phone call to the family court judge to "confirm" the juvenile records in the solicitor's possession did not comply with the intent of the confidentiality statute.

#### **Relevant Facts**

The state presented the testimony of several witnesses who were standing around Carver Street in a residential neighborhood in Sumter on the evening of May 19, 2003. Herbert Linwood "Daddy Rabbit" Butler testified that he was sitting on his bicycle and talking with Dalamar "D.L." Burroughs, Reginald "Reggie" Forster, and Edward Maurice "Reese" Dingle, when appellant, known as "Twinkie," walked up with Dwauntrez "Trez" Keith from a "path in the cemetery." R. 339, ll. 12-15.

According to Butler, appellant said to Dingle "let me get that what's in your pocket." "So Reese [Dingle] was like go ahead with that." R. 339, ll. 17-25. Appellant "chilled for a minute" and then "pointed the gun at" Dingle and again asked for what he had in his pocket. R. 339, ll. 20-24. He then said, "I should have kill y'all ass right now for what y'all done to me up there by the church." R. 339, l. 24 -340, l. 2.

Butler put his head down to eat his newly purchased cookies and then heard gun shots. He claimed that he looked up and saw appellant, "Twinkie," with the gun pointing. Butler tried to run but he said he was hit and fell to the ground. He eventually made it to an area behind a house where the police found him shortly thereafter. R. 340, ll. 2-9. He suffered injuries to his groin and leg. R. 343.

According to Butler and Dingle, appellant was the only person at the scene with a gun. Appellant would strongly dispute that assertion. R. 344; R. 382

Dingle testified that appellant and Keith came up to him and his friends and he said that appellant pointed his gun and said "let me get that Reese." R. 377, ll. 16-18. Appellant then mumbled something that Dingle could not hear and then started firing his gun. R. 377, ll. 18-23. Dingle testified he thought appellant was trying to rob him. R. 378, ll. 3-6.

Burroughs testified that appellant was asking the group questions. Then he looked back and appellant "already had a gun out and stuff. A few minutes after that it was like seconds there was like shooting after that." R. 253, ll. 4-8. He also testified that appellant said he should shoot them for what they had done in the graveyard. R. 254, ll. 12-18.

Ceante Harvin testified that he was coming up the street on his bike when he saw Dingle, Keith, Butler, Burroughs, and appellant. He saw appellant with a gun in the middle of the street pointing it towards a mailbox. R. 237, ll. 6-16. He testified he saw appellant fire a shot. R. 242, ll. 12-16.

The police arrived on the scene and found Foster shot in the head on his bicycle and Butler shot in the groin lying behind a nearby house. The police found three casing on the ground from a 9 millimeter weapon. R. 98, ll. 23-24. Tests showed that only Ceante Harvin had gun-shot residue on his hands. Tests were not done on Foster. R. 103; R. 110. No weapons were recovered.

The bullet from Foster's body was identified as a medium size caliber, not a .25 and it had gone through something else before hitting Foster. The police arrested appellant and his girlfriend. R. 139, ll. 2-11.

Appellant gave the police a statement early in the morning of May 20, 2003, in which he said that he and Keith had planned to rob Dingle of drugs and guns. R. 176. "When I reach for he gun Reese [Dingle] start busting his gun on the second shot. I saw little Reggie [Foster] fall. Then I started busting and shot at least twice. Little Reggie never got back up after he fell. I know for sure that Resse [Dingle] shot little Reggie . . . I'm guilty for accessory of little Reggie's death because if I wasn't trying to rob he would still be there on this earth today and I'm in jail thinking about this." R. 176, l. 3 – 177, l. 12.

According to police, appellant gave a second statement in which he said that he was in the same gang as the men gathered, except for Reese Dingle. Keith and Dingle apparently had some sort of dispute and Dingle went for his gun and Keith started shooting his 9 millimeter. R. 419, ll. 17-19. Reggie Foster apparently took a bullet Dingle intended appellant to take. R. 419, ll. 20-21. Appellant fired a couple of shots as he ran up the street. He stated that everyone had a gun, including Foster. R. 419, ll. 22-25. He stated he believed he had shot Herbert Linwood "Daddy Rabbit" Butler. He told the police that Dingle or Keith shot Foster. R. 420, ll. 15-16.

Appellant's girlfriend also gave a statement to police. She was killed before the trial but the judge allowed her statement into evidence as a statement against interest. She told the police that she dropped off appellant and Keith to buy some drugs from Maurice and waited nearby. She said she heard gun shots and then appellant came toward the car "running and ducking like he was running from bullets." He said he thought he was hit.

She checked him over and brought him to the car. By the time she got back, Keith was in the back seat holding a black 9 millimeter gun. R. 202. She said that Dingle was shooting at them. R. 202.

### **Appellant's Juvenile Records**

After the court denied appellant's motion for a directed verdict the court had a colloquy with appellant about his right to testify or remain silent. R. 437, l. 15 – 442, l. 8. Appellant told the judge he wished to testify. R. 442, ll. 7 – 8.

The judge then told appellant that he needed to be sure he understood that he may be impeached with "certain criminal convictions" if he testified. R. 443, l. 19 – 444, l. 3. Assistant Solicitor Conner then told the judge "*in the records we've been given* he was convicted of common law robbery in juvenile court on May 28, 2001 and also at the same time burglary second degree." R. 444, ll. 4 – 11. (emphasis added). The judge then told appellant the solicitor "will have the right to bring out these two prior crimes if you take the stand but [he] will not have the right to bring them out if you do not take the stand." R. 444, ll. 12 – 24.

Defense counsel and the judge then engaged in a colloquy about whether appellant's juvenile adjudications were admissible under Rule 609(a)(1)(d), SCRE. R. 444, l. 12 – 446, l. 1. They discussed whether the probative value of these convictions were outweighed by their unduly prejudicial effect under Rule 609 (a)(1), SCRE.<sup>2</sup>

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<sup>2</sup> As this Court is aware, in State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003), it held that a conviction of armed robbery was a crime of dishonesty under Rule 609(a)(2), SCRE, and it therefore did not require the balancing of the probative value against its prejudicial affect. Thus, appellant's adjudication for common law robbery did not require a balancing test because it was a crime of dishonesty. However, as to the burglary, appellant notes that not all burglaries involve crimes of dishonesty. Someone could enter a dwelling

Defense counsel also argued that under S.C. Code § 20-7-780 that appellant's juvenile record "is not even properly before this court" because the court and solicitor were first obligated to get an order from the family court judge allowing their release. R. 446, l. 2 – 452, l. 11. In response, the trial judge asked if he could not solve this problem by ordering the family court to "furnish the record right now." Defense counsel stated he was not sure the judge had the authority to order the family court to release these records. The judge ultimately said that he was calling Family Court Judge McFadden who would check appellant's juvenile record to see if the records the solicitor had were accurate. R. 446, l. 2 – 452, l. 11. The judge again told appellant if his juvenile record was what the state represented it to be, he could be impeached with those two juvenile adjudications if he took the stand. R. 452, l. 13 – 453, l. 24.

Defense counsel again argued that appellant's juvenile records were confidential and that only the family court judge could order them disclosed. R. 453, l. 25 – 454, l. 7; R. 456, ll. 16 – 23. Defense counsel argued that Rule 609(d), SCRE did not override the statute which mandated that the family court approve the release of appellant's juvenile records. R. 457, ll. 4 – 13. The judge refused to alter his ruling that appellant could be impeached with these family court adjudications.

#### **Jury in**

---

with the intent to commit various crimes that don't involve dishonesty including criminal sexual conduct, a lewd act, and any other such violent crime not involving dishonesty. Appellant's point is that without an inquiry establishing that a burglary involved stealing or some other form of dishonesty (including trickery to get into the house) the burglary conviction should not be assumed to be a crime of dishonesty automatically rendering it admissible for impeachment purposes under Rule 609 (a)(2), SCRE. In short, part of this colloquy -- the part about the robbery-- was unnecessary.

Appellant was nineteen-years-old at the time of this November, 2004 trial, and he was apparently only seventeen on that fatal May 19, 2003 day when the shootout occurred. Appellant testified "they" were just "chilling, kicking, smoking reefer. . .[things] that we always do on Carver Street." R. 460, l. 6 – 461, l. 22; r.476, ll. 13 – 15. Appellant testified that Reese was the first person to pull a gun out. R. 476, ll. 16 – 17.

Appellant also said he had three thousand five hundred dollars in his pocket and that he did not need to attempt to rob anyone that day. R. 480, ll. 4 – 20. Appellant said he only gave a statement to the police because he was promised by Detective Brannon that at the preliminary hearing he would "tell them to drop your charge to involuntary manslaughter." R. 487, ll. 11 – 20.

On cross-examination the solicitor immediately went to impeach appellant with his family court convictions for strong armed robbery and burglary second. Defense counsel objected, and appellant denied having been convicted of burglary in the second degree. Appellant said his family court conviction was for being an accessory to possession of burglary tools. R. 489, l. 23 – 493, l. 22. The solicitor then introduced a certified record of appellant's family court adjudications as State's Exhibit 35. R. 490, l. 20 – 491, l. 9.

#### **Appellant testifies further**

Appellant also testified that he had a .25 caliber weapon when he went to Carver Street that day. As stated, the other young men on the street were Dingle, Burroughs, Butler, Foster, and Keith. R. 462, ll. 1 - 4; R. 464, ll. 14 - 15. They were all using illegal drugs and they all had guns. R. 463, ll. 5 - 8; R. 465, ll. 1 - 2. Dingle drew his pistol and appellant tried to stop him. R. 469, ll. 16 - 20. As stated, appellant denied trying to rob Dingle. R. 476, ll. 1 - 9.

After Dingle fired first, Keith went for his weapon and everybody started shooting, including appellant. R. 476, ll. 19 - 21. Appellant testified that he saw Foster fall when Dingle began shooting. R. 477, ll. 1 - 4. Appellant ran from the scene, shooting and ducking bullets. R. 486, ll. 21 - 25.

### Discussion

In State v. Sparkman, 287 S.C. 489, 339 S.E.2d 865 (1986) the Supreme Court noted that Sparkman had petitioned the family court requesting that the Department of Juvenile Justice release the records of a key witness against appellant. The family court judge denied the petition.

The Supreme Court found there was no direct prohibition against the release of juvenile adjudication records so that they could be used to impeach either a defendant or a witness during a trial. State v. Mallory, 277 S.C. 519, 242 S.E.2d 693 (1978); State v. Plath, 277 S.C. 126, 284 S.E.2d 221 (1981). The Supreme Court noted that the juvenile at issue was a sole witness placing Sparkman at the scene of the crime, and therefore his credibility was very important. The Court held that the right to confrontation was paramount to the state's policy of protecting a juvenile offender. Davis v. Alaska, 415 U.S. 308 (1974).

The Court ruled that S.C. Code § 20-7-780 permitted access to a juvenile's record if a legitimate interest could be shown. Even then, the family court could still place appropriate and reasonable restrictions upon the use of the juvenile's record by counsel. The Court held that counsel for Sparkman had shown a substantial need and legitimate interest in obtaining the juvenile accuser's record, and that Sparkman was unable to secure the information from any other source. The Court made no determination as to the admissibility of the juvenile's record at trial.

In Hayden v. State, 283 S.C. 121, 322 S.E.2d 14 (1984) the Supreme Court held that the purpose of S.C. Code § 20-7-780 was to give the juvenile a chance to respond to be rehabilitated -- "a fresh start." Hayden v. State, 283 S.C. at 123, 322 S.E.2d at 15. The Court noted that once a person stands convicted in General Sessions Court that the need for assessing an appropriate sentence far outweighed any possible rehabilitative purpose of the confidentiality statute. The Court therefore held that S.C. Code § 20-7-780 did not require the circuit court judge to obtain the permission of the family court before considering a juvenile adjudication at the defendant's sentencing proceeding.

In this case, the solicitor apparently obtained appellant's juvenile record without a prior court order from the family court judge. Defense counsel took strong exception to that arguing the family court had to order the release of these records. Whatever can be said in the final analysis there is no indication in this record that any of the policy and procedural limitations above were ever considered by a court before appellant's juvenile record was disclosed.

Appellant would note that the trial in this case began on Monday, November 15, 2004. What happened here violated the statute and the holding of State v. Sparkman which mandated the showing of a legitimate purpose and a substantial need for the family court records before the family court could order them released.

The General Assembly subsequently enacted S.C. Code § 20-7-8510 which provided with limited exceptions that an employee of a court could not release confidential information unless otherwise ordered by the court. S.C. Code § 20-7-8510(A) provided an exception for "the judge, the child's attorney, or others entitled under this article." Other than those limited persons, the statute stated that "the court may order the records be

disclosed to a person having a legitimate interest to the extent necessary to respond to that legitimate interest.”<sup>3</sup>

S.C. Code § 63-19-2030 followed that statute, and it became effective June 16, 2008, so it clearly does not apply to this November, 2004 trial. That statute allows the release of records of children to various law enforcement agencies including the solicitor’s office. See S.C. Code § 63-19-2030(D).

Thus, it appears *the solicitor* in this case, at some time prior to November 15, 2004 -- the first day of appellant’s trial -- wrongfully came into the possession of appellant’s juvenile records without a court order. The judge therefore should not have allowed appellant to be impeached with his juvenile record because the proper procedure for disclosure of appellant’s juvenile record was not followed. The trial judge’s phone call to the family court judge in this case asking him to confirm the validity of the appellant’s juvenile records the solicitor had in his possession did not comply with the intent of the confidentiality statute.

This error was not harmless because appellant was only seventeen-years-old at the time the crimes for which he was convicted of in this case were allegedly committed. Appellant’s credibility was crucial to his defense in this case given the conflicting evidence about what occurred that day, who shot who, and with what if any intent. Allowing to the jury to consider appellant juvenile adjudications for common law robbery and burglary in the second degree made appellant out to be a criminal from a very young age in the jury’s eyes, and that was highly prejudicial to his defense.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and this case remanded to the Sumter County Court of General Sessions for a new trial.

Respectfully submitted,

---

Robert M. Dudek  
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT.

This 13th day of March, 2009.

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<sup>3</sup> The editor's note states this section was added by 1996 Act No. 383, Section 1, effective July 1, 1996. The Westlaw version of this statute states it was "Current through End of 2004 Reg. Sess."

RECEIVED

MAY 12 2010

STATE OF SOUTH CAROLINA )

In the Court of Common Pleas

Referred to L. W. NIS.County of SUMTER )

Answered \_\_\_\_\_

Harold Jamar Wilson #306094

2010-CP-43-976

Full name and prison number, if any, of applicant )

APPLICATION FOR

v. )

POST-CONVICTION RELIEF

Sumter County S.C. )

Name of Respondent )

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 South Carolina Department of Corrections  
Lieber Correctional Institution, Ridgelyville, S.C.
2. Name and location of Court which imposed sentence General Sessions Court,  
Sumter, S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 2003-GS-43-0763 Count 1-Murder; Count 2-Assault
  - (b) and Battery with Intent to Kill; Count 3-Attempted Armed
  - (c) Robbery; Count 4-Possession of Firearm During Commission of...
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) November 18, 2004 - Murder, Life in Prison; ABWIK, 20
  - (b) years; Attempted Armed Robbery, 20 years; Possession of
  - (c) Firearm During Commission of Crime of Violence, 5 years.

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. S.C. Supreme Court (Direct Appeal).
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. Conviction affirmed.
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. December 14, 2009
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. Unpublished Opinion No. 2009-UP-588
    - 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) See attached sheet, page 2(a).
  - (b) See attached Sheet, page 2(a).
  - (c) \_\_\_\_\_

. attach sheet.

9. (a) IneFFective Assistance OF Trial Counsel.

9. (b) Denial OF A Fair Trial.

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See attached sheets pages 1 - 3.

FACTS IN SUPPORT OF GROUNDS.

(b) See attached sheets pages 4 - 5.

FACTS IN SUPPORT OF GROUNDS.

(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-conviction 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. \_\_\_\_\_

## FACTS IN SUPPORT OF GROUNDS

10.(a) Applicant's Trial Counsel Richard A. Blackmon was Ineffective, when he :

- Failed to object to Solicitor's statement in his closing that "... witness, Ms. Earp. The girl that stayed next door and her testimony and quite Frankly she made a good impression on me ...", See Trial Transcript p. 545, lines 4-6, in effect vouching for the credibility of the state's witness.
- Failed to object to Solicitor's statement in his closing introducing into the trial assertions which were not introduced or proven by evidence during trial, that all casings (bullets) were Found. See Trial Transcript p. 547, lines 15-24.
- Failed to object to trial Judge's instruction to the jury, "so if you have a reasonable doubt as to whether or not the defendant has made out his defenses...", See Trial Transcript p. 559, lines 16-18, in effect shifting the burden of proof to Applicant to prove his innocence.
- Failed to object to trial Judge's instruction to the jury, the elements of the crime of Larceny. See Trial Transcript p. 571, lines 9-23. Applicant was not charged or indicted for the crime of Larceny, and nor was Larceny presented to the jury as a lesser included offense of Attempted Armed Robbery. Such instructions to the jury violated Applicant's

## FACTS IN SUPPORT OF GROUNDS (cont.)

### 10. (a) (Cont.)

Constitutional right not to be subject to prosecution of a crime which one has not been indicted, and such instructions was followed by the jury and contributed to their verdict of guilty.

- Failed to request the trial court to instruct the jury that the evidence which was introduced of Applicant's prior juvenile convictions, was admissible only for impeachment purposes.
- Failed to properly acquaint (investigate) himself with the current and correct law and facts surrounding Applicant's case, and as a result Applicant's trial counsel made a prejudicial error in the assessment of both the law and the facts concerning the admissibility of Applicant's prior juvenile records (convictions) as evidence during his trial. See Trial Transcript p. 446, lines 2-23; p. 453, lines 25; and p. 454, lines 1-10. Had Mr. Blackmon properly prepared himself concerning the current and correct law, as it relates to the admission of a defendant's prior juvenile convictions into an adult trial, he would have known of the changes in the S.C. Code of Law. Applicant's trial counsel relied upon outdated S.C. Code of Law § 20-7-780, which was repealed in 1996 and replaced by S.C. Code of Law Ann. §§ 20-7-8510 and 20-7-8515, which were the current, correct, and relevant sections of the S.C. Code of Law in

## FACTS IN SUPPORT OF GROUNDS (Cont.)

### 10. (a) (Cont.)

November of 2004, as it related to the admissibility of a defendant's prior juvenile records into an adult trial. Applicant's trial counsel was not aware of these changes in S.C. Law, and relied upon outdated and repealed S.C. Code of Law to argue against the admissibility of Applicant's prior juvenile records, clearly demonstrating that Applicant's trial counsel failed to properly investigate and/or adequately prepare to defend Applicant at trial. Such failure prejudiced the outcome of Applicant's trial.

- Failed to challenge the sufficiency of Count One - Murder of the Indictment No. 2003-GS-43-0763, wherein it fails to state the section of the S.C. Code of Law which was violated.

Based on the foregoing grounds, Applicant's trial counsel Richard A. Blackmon's representation fell below an objective standard of reasonableness, and but for Mr. Blackmon's errors stated herein, there is a reasonable probability that the result at Applicant's trial would have been different.

## FACTS IN SUPPORT OF GROUNDS (Cont.)

### 10. (b) Applicant Was Denied A Fair Trial When:

- The trial Judge instructed the jury "So if you have a reasonable doubt as to whether or not the defendant has made out his defenses...", See Trial Transcript p. 559, lines 16-18, shifting the burden of proof to Applicant to prove his innocence.
- The trial Judge instructed the jury on "hand of one hand of all" doctrine, when Applicant was the only defendant, on trial under indictment No. 2003-GS-43-0763. See Trial Transcript p. 574, lines 19-25; p. 575, lines 1-7; p. 577, lines 11-25; p. 578, lines 1-5; p. 584, lines 5-18; p. 585, lines 17-25; p. 586, lines 1-25; p. 587, lines 1-3. Under the "hand of one hand of all" doctrine, the defendant which is on trial and such instruction is given to his jury, the defendant must be charged as the accessory to the principal committer of the crime. Applicant was indicted and being tried as the principal committer of the crimes charged in the indictment, and by the trial Judge instructing the jury under the "hand of one hand of all" doctrine at Applicant's trial, the trial Judge essentially instructed the jury that Applicant was being tried as the principal committer and as the accessory to the crimes charged in the indictment. Under such instructions Applicant was clearly denied a Fair trial.
- The trial Judge instructed the jury on the elements of the crime of Larceny. See Trial Transcript p. 571, lines 9-23. A crime for which Applicant was not

## FACTS IN SUPPORT OF GROUNDS (cont.)

### 10. (b) (cont.)

indicted, and which was not presented to the jury as a lesser included offense of Attempted Armed Robbery. The trial Judge in effect subjected Applicant to prosecution of a crime to which he was not indicted on tried, violating Applicant's constitutional right to a Fair trial under Article 1 § 11 of the S.C. Constitution, and the Fifth Amendment to the U.S. Constitution.

- The trial Judge Failed to give limiting instructions to the jury that evidence of Applicant's prior juvenile conviction was admissible only for impeachment purposes, and by failing to do so, the jury may have concluded that because his prior juvenile conviction was also for Robbery, Applicant also committed the crimes charged in the indictment because he had demonstrated a prior criminal tendency.

**Based** on the foregoing grounds, Applicant was denied a Fair trial in violation of his constitutional rights protected under the S.C. and U.S. Constitutions.

(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.

14. If you answered "yes" to (13), identify:

(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) Ineffective Assistance of Trial Counsel and Denial of A
- (b) Fair Trial. Applicant Filed a Direct Appeal and Appellate Defense
- (c) Counsel did not raise them as issues in their Anders Brief

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

- (a) your arraignment and plea? \_\_\_\_\_
- (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 application 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. Richard A. Blackmon, P.O. Box 2427, Sumter, S.C. 29151.
- ii. Robert M. Dudek, Chief Appellate Defender, P.O. Box 11589,
- iii. Columbia, S.C. 29211.

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

- i. Richard A. Blackmon at trial and sentencing.
- ii. Robert M. Dudek on Direct Appeal.
- iii. \_\_\_\_\_

18. State clearly the relief you seek in filing this application.

Reversal and vacation of conviction, and sentence, and the  
granting of a new trial.

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

No.

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

VERIFICATION

RECORDED  
2010 MAY 10 PM 12:08

I, Harold Jamar Wilson, 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.

Harold Jamar Wilson

Sworn to and subscribed before me

This 4 day of MAY, 2010

2010-CP-43- 976

[Signature] L.S.

Notary Public for South Carolina

My Commission Expires 27 June 2012

APPLICATION TO PROCEED WITHOUT PREPAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Harold Jamar Wilson, 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 proceeding or give security therefor.

Harold Jamar Wilson  
Applicant

Sworn to and subscribed before me

This 6 day of MAY, 2010

[Signature] L.S.

Notary Public for South Carolina

My Commission Expires: 27 June 2012

|                               |   |                                    |
|-------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA       | ) |                                    |
|                               | ) | IN THE COURT OF COMMON PLEAS       |
| COUNTY OF SUMTER              | ) |                                    |
|                               | ) |                                    |
|                               | ) | 2010-CP-43-0976                    |
|                               | ) |                                    |
| Harold Jamar Wilson, #306094, | ) |                                    |
|                               | ) |                                    |
| Applicant,                    | ) |                                    |
|                               | ) |                                    |
| v.                            | ) | RETURN                             |
|                               | ) | (Appointment of Counsel Requested) |
| State of South Carolina,      | ) |                                    |
|                               | ) |                                    |
| Respondent.                   | ) |                                    |

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The Respondent, making its Return to the application for post conviction relief (PCR) filed May 10, 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 Sumter County Clerk of Court. The Applicant was indicted at the September 2003 term of the Sumter County Grand Jury for (1) Murder, (2) Assault and Battery with Intent to Kill ("ABWIK"), (3) Attempted Armed Robbery, and (4) Possession of Firearm During Commission of Crime of Violence (2003-GS-43-0763). Richard Blackmon, Esquire, represented him. Applicant was convicted following a jury trial before the Honorable Howard P. King. On November 18, 2004, Judge King sentenced him to life imprisonment for Murder, a consecutive term of twenty (20) years for ABWIK, a consecutive term of twenty (20) years for Attempted Armed Robbery, and a consecutive term of five (5) years for Possession of Firearm During Commission of Crime of Violence.

A notice of appeal was filed and an appeal perfected. The conviction and sentence were affirmed. State v. Wilson, Op. No. 2009-UP-588 (S.C. Ct. App. filed December 14, 2009).

Attached herewith and incorporated herein are the records of the Sumter 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.
  - a. "Failed to object to solicitor's statement in his closing that '...witness, Ms. Earp. The girl that stayed next door and her testimony and quite frankly she made a good impression on me...' See Trial Transcript p. 545, lines 4-6, in effect vouching for the credibility of the State's witnesses."
  - b. "Failed to object to solicitor's statement in his closing introducing into the trial assertions which were not introduced or proven by evidence during trial, that all casings (bullets) were found. See Trial Transcript p. 547, lines 15-24."
  - c. "Failed to object to trial judge's instruction to the jury, 'so if you have a reasonable doubt as to whether or not the defendant has made out his defenses...', See Trial Transcript p. 559, lines 16-18, in effect shifting the burden of proof to Applicant to prove his innocence."
  - d. "Failed to object to trial judge's instruction to the jury, the elements of the crime of larceny. See Trial Transcript p. 571, lines 9-23. Applicant was not charged or indicted for the crime of Larceny, and nor was Larceny presented to the jury as a lesser included offense of Attempted Armed Robbery. ..."
  - e. "Failed to request the trial court to instruct the jury that the evidence which was introduced of Applicant's prior juvenile convictions, was admissible only for impeachment purposes."
  - f. "Failed to properly acquaint (investigate) himself with the current and correct law and Facts surrounding Applicant's case, and as a result Applicant's trial counsel made a prejudicial error in the assessment of both the law and the facts concerning the admissibility of Applicant's prior juvenile records (convictions) as evidence during his trial. See Trial Transcript p. 446, lines 2-23; p. 453, line 25; and p. 454, lines 1-10. ...trial

counsel was not aware of these changes in S.C. Law, and relied upon out dated and repealed S.C. Code of Law to argue against the admissibility of Applicant's prior juvenile records..."

- g. "Failed to challenge the sufficiency of Count One – Murder of the Indictment No. 2003-GS-43-0763, wherein it fails to state the section of the S.C. Code of Law that was violated."
- 2. "Denial of a Fair Trial."
  - a. "The trial judge instructed the jury 'So if you have a reasonable doubt as to whether or not the defendant has made out his defenses...' See Trial Transcript p. 559, lines 16-18, shifting the burden of proof to Applicant to prove his innocence."
  - b. Trial court erred in instructing jury on "hand of one, hand of all" because Applicant was tried as a principal.
  - c. Trial court erred in instructing the jury on larceny because Applicant was not charged with larceny.
  - d. Trial court failed to give limiting instructions on admissibility of prior juvenile record.

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. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCR.

### 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.

The Respondent submits that the second allegation 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. Trial court error is not a basis for collateral review. 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.

#### V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

#### VI.

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:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Feb-17, 2011.

State of South Carolina       )  
                                      )  
County of Sumter               )

Harold Jamar Wilson,        )  
  Plaintiff                    )  
                                      )  
                                      )  
vs.                                )  
                                      )  
                                      )     September 19, 2012  
                                      )     Sumter, S.C.

The State of South Carolina,  
Defendants

Before the Honorable W. Jeffrey Young, Judge.

A-P-P-E-A-R-A-N-C-E-

Mr. Charles T. Brooks,  
Attorney for Plaintiff

Ms. Megan E. Harrigan,  
Attorney for the Defendants

Margaret T. Sullivan  
Court Reporter

|    | <u>WITNESS</u>   | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|----|------------------|---------------|--------------|-----------------|----------------|
| 1  | Harold Wilson    |               |              |                 |                |
| 2  | by Mr. Brooks    | 4             |              | 17              |                |
|    | by Ms. Harrigan  |               | 14           |                 |                |
| 3  | Richard Blackmon |               |              |                 |                |
|    | by Ms. Harrigan  | 18            |              |                 |                |
| 4  | by Mr. Brooks    |               | 32           |                 |                |
| 5  |                  |               |              |                 |                |
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1 MS. HARRIGAN: May it the Please the  
2 Court, this is the case of Harold Jamar Wilson  
3 versus the State of South Carolina. Docket No.  
4 2010-CP-43-0976. The applicant was indicted at  
5 the September 2003, term of the Sumter County  
6 grand jury for murder, assault and battery with  
7 intent to kill, attempted armed robbery, and  
8 possession of a firearm during the commission of a  
9 crime of violence.

10 Richard Blackmon represented him, who is  
11 present in the courtroom today. Following a jury  
12 trial before the Honorable Howard P. King, the  
13 applicant was convicted as indicted on all  
14 charges.

15 On November 18th 2004, Judge King  
16 sentenced him to life imprisonment for murder.  
17 And a consecutive term of 20 years for assault and  
18 battery with intent to kill. And consecutive term  
19 of 20 years for attempted armed robbery. And a  
20 consecutive term of 5 years for possession of a  
21 firearm during the commission of a crime of  
22 violence.

23 A notice of appeal was filed and an appeal  
24 perfected on applicant's behalf. The conviction  
25 and sentence were affirmed. On May 10th 2010,

Harold Wilson-direct by Brooks

1 applicant filed a timely application for  
2 post-conviction relief. The state made it's  
3 return on February 17th 2011. And applicant is  
4 represented in his current action by Charles T.  
5 Brooks, III.

6 THE COURT: Mr. Brooks.

7 MR. BROOKS: We are ready to proceed,  
8 Judge.

9 THE COURT: You may call your first  
10 witness.

11 MR. BROOKS: We would call Mr. Harold  
12 Wilson to the stand.

13 HAROLD WILSON, after being duly  
14 sworn, testified as follows:

15 THE BAILIFF: Please state your full name  
16 and spell your last name for the record.

17 A Harold Jamar Wilson. W-I-L-S-O-N.

18 MR. BROOKS: Are you ready, Judge?

19 THE COURT: I am ready, Judge.

20 Direct Examination by Mr. Brooks:

21 Q Harold, how are you doing today?

22 A Fine, sir. How are you?

23 Q How old are you now, Harold?

24 A 27.

25 Q Now all of this whole incident went down.

Harold Wilson-direct by Brooks

1       when you were what?

2       A     18.

3       Q     18 years old?

4       A     Yes, sir.

5       Q     And you had Mr. Blackmon hired to  
6       represent you on this case; is that correct?

7       A     Yes, sir.

8       Q     Okay. Now you've raised a bunch of issues  
9       as a part of your post-conviction relief because  
10      you are seeking a new trial; is that correct?

11      A     Yes, sir.

12      Q     Now one of the issues that I know you  
13      wanted to talk about was your juvenile convictions  
14      that came up. Can you tell the court about that?

15      A     My juvenile convictions in improperly  
16      introducing some evidence. Trying impeachment  
17      reasons. And the judge failed to give a limited  
18      instruction that my juvenile conviction only  
19      introduces a matter for impeachment reasons. My  
20      trial attorney failed to object to that, because  
21      they were improperly introducing evidence that to  
22      make the jury believe that I probably, do a  
23      probable history, because my juvenile conviction  
24      is for armed robbery.

25      Q     Okay. Now let me maybe kind of help

Harold Wilson-direct by Brooks

1 explain and help you articulate this to the  
2 judge. Is what you are saying that Mr. Blackmon  
3 should have objected to the juvenile stuff coming  
4 in?

5 A Yes, sir.

6 Q Okay. And that was stuff that occurred  
7 down in Family Court; is that right?

8 A Yes, sir.

9 Q And do you feel that that hurt you in your  
10 trial?

11 A Yes, sir.

12 Q Okay. And that was prejudicial against  
13 you.

14 A Yes, sir.

15 Q Okay. Now one of the other issues that  
16 you raised was, Mr. Blackmon didn't investigate  
17 this case. Remember you raised that as an issue.  
18 Do you want to talk about that?

19 A Right. That he had investigated it  
20 improperly. Because the case laws that he cited  
21 of the South Carolina Code of Procedures, he  
22 ordered the wrong out of date procedure to order  
23 my issues. And by doing that, he then took a  
24 procedure that the outcome of my trial.

25 Q Okay.

Harold Wilson-direct by Brooks

1 A My out of date case law.

2 Q Well let me help you out. To your  
3 knowledge, did Mr. Blackmon have an investigator  
4 assist him in preparing your case?

5 A No, not off hand, no.

6 Q Do you remember how many times you talked  
7 to him? Because you were at the county the whole  
8 time; right?

9 A Two.

10 Q I mean you were--

11 A Twice.

12 Q You were at the county waiting to go to  
13 trial.

14 A Yes, sir.

15 Q Do you remember how long you were in the  
16 county before you went to trial?

17 A From May to November.

18 Q Okay. Of that same year?

19 A From May 2003 to November 2004.

20 Q So you were in jail roughly 18 months.

21 A Yes, sir.

22 Q And you're saying you only talked to  
23 Mr. Blackmon on two occasions?

24 A Yes, sir. He failed to accept my calls.  
25 I sent witness letters, witness phone calls and

Harold Wilson-direct by Brooks

1 everything.

2 Q Okay. Now one of the other things that  
3 you raised in your application was some statements  
4 made by the prosecution in the closing of the  
5 case.

6 THE COURT: Let me back up for just a  
7 minute. Is he talking about this juvenile  
8 conviction coming up during the trial of the case,  
9 or when the judge asked for the criminal record?

10 MR. BROOKS: Okay. He's talking about it  
11 coming up in the trial of the case, and it  
12 prejudicing the jury.

13 MS. HARRIGAN: It was used to impeach,  
14 Your Honor, when he took the stand.

15 THE COURT: When he took the stand.

16 MS. HARRIGAN: Yes, Your Honor.

17 THE COURT: Okay. He probably said he  
18 never did anything wrong. Is that the context  
19 that it came up?

20 A For impeachment reasons.

21 MR. BROOKS: Hold on now. I think it just  
22 case---

23 THE COURT: I've seen where it came up  
24 after he was found guilty---

25 MR. BROOKS: Right.

Harold Wilson-direct by Brooks

1 THE COURT: ---on the sentencing part.

2 MR. BROOKS: Right. We don't have any  
3 issue with that, Judge.

4 THE COURT: He took the stand and then  
5 said something, and they were able to impeach him  
6 on.

7 MR. BROOKS: Right. And, of course, Your  
8 Honor, you may just have to read the transcript.

9 THE COURT: Right, that's fine.

10 MR. BROOKS: For that particular issue.

11 MS. HARRIGAN: Court's indulgence while I  
12 find the exact part of the testimony.

13 THE COURT: That's okay. I was just  
14 trying to figure out.

15 Q Harry said that Mr. Blackmon did not have  
16 an investigator; is that correct?

17 A Yes, sir.

18 Q And the next issue I talked about you  
19 raised was, the prosecutor made some statements  
20 during the closing in the trial that you felt was  
21 prejudicial. Do you remember what that was?

22 A He say the witness Ms. Bird, the girl that  
23 stayed next door, and her testimony quite frankly  
24 she made a good impression of me. But during that  
25 ineffective watching for the credibility of the

Harold Wilson-direct by Brooks

1 state witness.

2 Q And you're saying at the point that is  
3 something that Mr. Blackmon should have objected  
4 to.

5 A Yeah, he should have objected to, because  
6 it's up to the jury to make its own impression  
7 from a state witness.

8 Q Okay. And then they also made some other  
9 statements as well in their closing arguments that  
10 you felt was improper; is that correct?

11 A Yes, sir.

12 Q Do you remember what those were?

13 A All the shell casings and bullets they  
14 found.

15 Q And why do you think that was improper?

16 A Because right there in the evidence that  
17 wasn't brought up during the trial.

18 Q Okay. That's something that Mr. Blackmon  
19 should have objected to?

20 A Yes, sir.

21 Q Now one of the other things is you talked  
22 about what you felt was a burden shifting and the  
23 reasonable doubt. Do you remember that?

24 A Yes, sir.

25 Q Can you tell the judge what you mean by

Harold Wilson-direct by Brooks

1       that?

2           A     You mean like the jury had a reasonable  
3       doubt whether the defendants had made out a  
4       defense. He is shifting the burden of proof on  
5       me. The burden is on the state to prove that I am  
6       guilty. I am innocent until I am proven guilty.

7           Q     And is that something Mr. Blackmon should  
8       have objected to?

9           A     Yes, sir.

10          Q     And you also talked about a jury  
11       instruction on larceny?

12          A     Yes, sir.

13          Q     Do you want to tell the court about that?

14          A     We was like charged with larceny.  
15       Presented to the jury of a lesser included attempt  
16       of armed robbery. Larceny, I was never indicted  
17       for larceny. It was never presented to the jury  
18       for a lesser included. For that, he subjected me  
19       to a prosecution of a charge I have never been  
20       indicted for.

21          Q     And one of the other things you talked  
22       about was that Mr. Blackmon didn't challenge the  
23       murder indictment.

24          A     Yes.

25          Q     Can you tell the court about that?

Harold Wilson-direct by Brooks

1           A     That receiving -- he ain't charged the  
2     murder indictment. The murder indictment failed  
3     to state the section of the South Carolina Code of  
4     Law wasn't violated. Section 16-13-1020 for the  
5     murder, for the robbery code. By him doing that,  
6     he showed that before the trial, it states that  
7     the attorney is supposed to raise an issue to the  
8     judicial as sufficient for an indictment before  
9     trial proceeds. But he ain't done that. When he  
10    done that, he was supposed to, that murder damage  
11    have been -- could have been squashed.

12          Q     Okay. Now Harold, I am making sure we are  
13    covering all your issues. Is there anything we  
14    left out? Take your time and look back through  
15    your stuff while you are up here. Is there  
16    anything we haven't covered? I want you to.

17          A     For the ineffective assistance of counsel?

18          Q     Yes, sir.

19          A     No, sir. Everything has been covered on  
20    that.

21          Q     Say that again?

22          A     Everything has been covered on that.

23          Q     Are you sure?

24          A     Yes, sir.

25          Q     Is there anything else that we need to

## Harold Wilson-direct by Brooks

1 tell the judge in regards to this post-conviction  
2 relief that we haven't said thus far?

3 A Well that part where I was denied a fair  
4 trial.

5 Q Okay. Go ahead, talk about that.

6 A But the judge instructed the jury, on the  
7 hand of one, hand of all. And I don't have no  
8 co-defendants. On the hand of one, hand of all  
9 doctrine, I am supposed to have co-defendants.  
10 But bring that up numerous times when he drew with  
11 his own mouth, when they couldn't find me guilty  
12 for murder. But he instructed the jury on the  
13 hand of one, hand of all. The judge -- the jury  
14 came to the conclusion and found me guilty of  
15 murder. And he would not bring the hand of one,  
16 hand of all theory into a plea. And I don't have  
17 a co-defendant, then that's what my charge. I got  
18 a guilty verdict for murder.

19 Q Now do you think that's something that  
20 Mr. Blackmon should have objected to and raised as  
21 an issue?

22 A That right there, I bring that issue up,  
23 that the trial judge failed -- denied a fair  
24 trial. I remember the issue on that.

25 Q Okay. Is there anything else we haven't

Harold Wilson-direct by Brooks

1 covered?

2 A Everything else is covered.

3 Q Are you sure?

4 A Yes, sir.

5 MR. BROOKS: Answer any questions the  
6 attorney has.

7 THE COURT: Yes, ma'am.

8 MS. HARRIGAN: Your Honor, the state would  
9 like to start out by objecting to any of the  
10 applicant's grounds in regards to a denial for a  
11 fair trial.

12 THE COURT: That would be with the trial  
13 judge.

14 MS. HARRIGAN: Those are direct appeal  
15 issues.

16 THE COURT: Those are direct on appeal.  
17 That is not proper on post conviction relief.

18 MS. HARRIGAN: Thank you, Your Honor.

19 Cross Examination by Ms. Harrigan:

20 Q Mr. Wilson, in regards to the first  
21 allegation involving your juvenile conviction,  
22 your attorney did make a motion to the court to  
23 suppress those records to keep them from coming  
24 in; correct?

25 A Yes, ma'am.

Harold Wilson-cross by Harrigan

1 Q And when the solicitor cross examined you  
2 in regards to your juvenile record, your attorney  
3 did object on the record; correct?

4 A Yes, ma'am.

5 Q In regards to your allegation involving  
6 failure to investigate, your testimony here today  
7 is that your attorney only met with you twice  
8 during your trial.

9 A Yes, ma'am.

10 Q And to your knowledge, he did not employee  
11 a private investigator; correct?

12 A Yes, ma'am. That's what I hired him for.

13 Q And in regards to your allegation  
14 involving your indictment, your attorney did make  
15 a motion to quash and or dismiss your indictment  
16 for murder; did he not?

17 A No, ma'am. He made a motion for that, for  
18 the two warrants; for the assault and battery with  
19 intent to kill and robbery. Introducing into  
20 evidence he ain't never charged the murder of  
21 that. And for the record about the juvenile  
22 records on the impeachment. The juvenile record  
23 was introduced in a matter for impeachment  
24 reasons. He should have objected to it. And  
25 instructed the jury, for the judge to instruct the

## Harold Wilson-cross by Harrigan

1 jury that I was in -- on my juvenile record in  
2 matters in evidence for impeachment reasons.

3 Q And, Mr. Wilson, when it was brought up  
4 for impeachment reasons during your cross  
5 examination on page 4 and 89 and 490, your  
6 attorney did object; correct?

7 A Not to the impeachment reason. He  
8 objected to that, they can't bring my juvenile  
9 records up into adult trial. And by doing that,  
10 he argued the wrong case. He argued that. All  
11 that been changed.

12 Q By Ms. Harrigan) Your Honor, the record  
13 speaks for itself on 489---

14 THE COURT: What page are you talking  
15 about?

16 MS. HARRIGAN: 489 and 490. During the  
17 cross examination by the state of Mr. Wilson.

18 THE COURT: Okay.

19 A I read it.

20 MS. HARRIGAN: And the motion, Your Honor,  
21 is on page 446 in regards to the juvenile record.  
22 No further questions.

23 MR. BROOKS: No other questions, Judge.

24 THE COURT: Thank you.

25 A Now---

Harold Wilson-cross by Harrigan

1 THE Court: Unless your attorney directs  
2 your questions. Do you have any other questions?

3 MR. BROOKS: Yes, sir.

4 A I would like it to be challenged and put  
5 it on the record everything left from my juvenile  
6 record. Everything that cites that he ordered  
7 wrong that was prepared by the new case law that  
8 he should have investigated and been acquainted  
9 with it. May I read that?

10 Redirect Examination by Mr. Brooks:

11 Q Well I mean, the court has got the law.  
12 But we wanted to make sure we covered the issue  
13 for the record. And we covered that.

14 A I understand. What I'm saying, he argued  
15 the wrong law.

16 Q That's fine. And the judge will take note  
17 of that, and read the transcript. And that's an  
18 issue. You are saying Mr. Blackmon argued the  
19 wrong law in regards to your juvenile convictions;  
20 is that correct?

21 A Yes, sir.

22 MR. BROOKS: Okay. No other questions.

23 THE COURT: Thank you. You may step down.

24 MR. BROOKS: The applicant rests, Judge.

25 MS. HARRIGAN: The state calls attorney

## Harold Wilson-redirect by Brooks

1 Richard Blackmon.

2 Richard A. Blackmon, Sr.,

3 first duly sworn, testified as follows:

4 THE BAILIFF: Please state your full name  
5 and spell your last name for the record.

6 A Richard A. Blackmon, Sr. B-L-A-C-K-M-O-N.

7 Direct Examination by Ms. Harrigan:

8 Q Good morning, Mr. Blackmon. How long have  
9 you been practicing law?

10 A I was admitted to the South Carolina bar  
11 in November of 1981.

12 Q Were you retained or appointed in this  
13 case?

14 A I was retained in this case.

15 Q Do you recall the date or around the date  
16 you were retained?

17 A I don't recall the exact date. There was  
18 a written retainer agreement signed that  
19 Mr. Wilson has.

20 Q How many times do you recall meeting with  
21 the applicant prior?

22 A Several times. I don't recall the exact  
23 number.

24 Q Would you estimate more than twice?

25 A I would believe so; yes, ma'am.

Richard Blackmon-direct by Harrigan

1 Q Did you file any Brady or Rule 5 motions  
2 in this case?

3 A Several; yes, ma'am.

4 Q And do you believe that you brought all of  
5 the material through the state, as per your  
6 requests?

7 A I believe so.

8 Q Did you go over this material with your  
9 client?

10 A Yes, ma'am.

11 Q Did he ever indicate that he didn't  
12 understand any of this material as you went over  
13 it with him?

14 A He did not. We didn't necessarily agree  
15 with it, but he understood it.

16 Q And based on your review of this material  
17 and the facts that the applicant gave you, were  
18 you able to start preparing a defense in this  
19 case?

20 A Yes, ma'am.

21 Q Could you summarize what your defense was  
22 for the court?

23 A Basically Mr. Wilson denied that he was  
24 responsible for the gunshot that killed this young  
25 man. And subsequently, through that, the other

Richard Blackmon-direct by Harrigan

1 charges.

2 Q Would you briefly characterize the state's  
3 evidence in this case?

4 A There were bullet casings that were found.  
5 The bullet that killed the young man was found.  
6 There was some blood evidence. There were a  
7 number of witnesses in the neighborhood when it  
8 happened. And there were several people who were  
9 present during the shootout.

10 Q What sort of investigation did you do in  
11 this case?

12 A I reviewed all the discovery materials. I  
13 talked with Mr. Wilson. I talked with members of  
14 his family. I talked with anybody who they asked  
15 or indicated to me might be a witness. I reviewed  
16 all of the statements of the witnesses that were  
17 provided by the solicitor's office. I reviewed  
18 all those statements with Mr. Wilson to  
19 investigate possible other witnesses who might  
20 corroborate or not corroborate them. We reviewed  
21 the photographs that were provided to us, and all  
22 the sled results.

23 Q Do you feel that you did a thorough  
24 investigation in this case?

25 A Yes, ma'am.

Richard Blackmon-direct by Harrigan

1 Q Did you hire a private investigator in  
2 this case?

3 A I did not hire.

4 Q Did you feel a private investigator was  
5 needed in your professional opinion?

6 A No, ma'am.

7 Q And you interview all the witnesses.

8 A Yes, ma'am.

9 Q Do you feel you had ample time to get  
10 ready for trial?

11 A I thought we did. I think we did file a  
12 a motion for a continuance prior to actual call in  
13 the matter. I don't recall the specific reason.  
14 But I believe it was in writing so.

15 Q If you could briefly characterize your  
16 trial strategy in this case.

17 A Basically we just wanted to confront all  
18 the witnesses and bring forth sufficient evidence  
19 that would bring some reasonable doubt that it was  
20 actually Mr. Wilson's gunshot that killed this  
21 young man. And I think we actually did a fairly  
22 good job of that.

23 Q And did applicant ever deny having a  
24 weapon or being involved in the incident?

25 A No, ma'am.

Richard Blackmon-direct by Harrigan

1           Q     Do you feel that during your cross  
2           examination of the state's witnesses, you were  
3           able to bring out inconsistencies of their  
4           testimony?

5           A     Well it's not so much that there were a  
6           whole lot of inconsistencies. I believe that  
7           there were a few inconsistencies in what some of  
8           the witnesses who were in the neighborhood saw or  
9           heard on the day in question. But the biggest  
10          inconsistency that I believe we found was in the  
11          state's theory that it was Mr. Wilson's bullet  
12          from his gun that killed the young man. But the  
13          evidence that we believe came out was that the  
14          young man was killed from a shot that entered from  
15          behind his head, and the bullet that entered his  
16          head was tumbling when it entered his head. So  
17          the bullet had to pass through some other object  
18          before it hit him in the head. There was pictures  
19          and evidence that there was a mailbox that was  
20          right behind the young man that apparently had  
21          bullet holes in it.

22                     And it was our opinion and it seemed clear  
23                     to us that a bullet went through the mailbox, then  
24                     hit the young man from behind. Mr. Wilson was not  
25                     behind him, he was in front and to the side

Richard Blackmon-direct by Harrigan

1 further down the road. So a bullet that came from  
2 his gun could not possibly have killed him based  
3 on the evidence the coroner presented. And I  
4 thought that was inconsistent enough to raise  
5 sufficient probable cause.

6 Q In regards to applicant's allegations that  
7 regarding that he was not properly indicted, did  
8 you believe the applicant was properly indicted  
9 this case?

10 A I believe the indictment was sufficient at  
11 the minimum extent required in order to indictment  
12 him.

13 Q And did you make a motion?

14 A But I did move to quash or dismiss.

15 Q Did you ever move to enter into plea  
16 negotiations with the state in regards to this  
17 case?

18 A I don't recall the state offering any real  
19 negotiations other than to plead straight up to  
20 the charges. And Mr. Wilson wasn't interested in  
21 pleading to murder. We didn't believe he did it.  
22 He vehemently denied doing it, and believe him to  
23 this day.

24 Q Did the state ever make an offer for him  
25 to plead to a lesser included offense?

Richard Blackmon-direct by Harrigan

1 A No, ma'am.

2 MS. HARRIGAN: Court's indulgence.

3 THE COURT: Yes.

4 Q Mr. Blackmon, before coming to court  
5 today, did you have an opportunity to review the  
6 witness packet the state sent to you?

7 A I did.

8 Q So you've seen the allegations the  
9 applicant is raising today---

10 A Yes, sir.

11 Q ---in regards to you.

12 A Yes.

13 Q In regards to his allegation that you  
14 failed to object to the solicitor's closing  
15 statement. I would like to give you that if I  
16 may. In regards to the solicitor vouching for the  
17 credibility of the state's witness, do you have a  
18 copy of the trial transcript?

19 A I left it there. I have it on your table.

20 MS. HARRIGAN: May I approach the witness?

21 THE COURT: You May.

22 MS. HARRIGAN: Thank you, Your Honor.

23 Q And if you could turn to page 4, 545,  
24 excuse me.

25 A Okay.

Richard Blackmon-direct by Harrigan

1 Q If you could look at line four through  
2 six.

3 A Yes, ma'am.

4 Q In your professional opinion, do you feel  
5 that this statement from the solicitor in his  
6 closing arguments is vouching the credibility of  
7 the state's witness?

8 A When it was said I did not interpret or  
9 hear it as vouching for her credibility. Looking  
10 at it in black and white it might have looked a  
11 little bit that way. But my impression then would  
12 have been then if you raise that issue, it would  
13 make it sound a lot worse to the jury then just  
14 brushing over it as I recall the solicitor doing  
15 when he was making this statement. Mr. Conner was  
16 very slow spoken, drawing kind of individual, and  
17 he made that statement. And he didn't slow down  
18 or pause him. He just keep going through the  
19 whole statement. So it did not sound prejudicial  
20 to me. And it didn't sound like to me that he was  
21 improperly bolstering her.

22 Q In your normal course as a trial lawyer if  
23 you feel that a comment in a closing argument is  
24 prejudicial, is your normal practice to object?

25 A Yes, ma'am.

Richard Blackmon-direct by Harrigan

1 Q If you could turn to pages 547.

2 Specifically lines 15 through 24.

3 A Okay.

4 Q In regards to the solicitor's statement  
5 that all the bull -- shell bullet casings were  
6 found, did you see any reason to object to this?

7 A No, ma'am. I mean the solicitor  
8 acknowledged that they didn't find all of the  
9 casings. But there casings if they fall on the  
10 ground, or they could be stepped on and disappear  
11 pretty easy. His only point was that they did  
12 find three casings, and that the three casings  
13 that they did find, all matched and were all shot  
14 by the same gun being a 9 millimeter. But there  
15 was no evidence and testimony to specifically tie  
16 those three casings that were found amongst all  
17 the others that were found, to a gun that was held  
18 by Mr. Wilson. I didn't find any reason to object  
19 to that either.

20 Q If you could, please turn to page 559.

21 And this allegation is in regards to the trial  
22 judge's jury instruction. And if you will briefly  
23 review that entire alternate page. The  
24 allegations in regards to line 16 through 18. The  
25 page as a whole.

Richard Blackmon-direct by Harrigan

1           A     Okay.

2           Q     When you look at this page in regard to  
3     the whole context, do you feel in your  
4     professional opinion, that it shifts the burden or  
5     it confuses the jury?

6           A     No, ma'am. I think that the page as a  
7     whole, and as I recall the statements that were  
8     made by Judge King, clearly made it evident to the  
9     jury that reasonable doubt is an issue that the  
10    state is required to prove to them reasonable  
11    doubt, not the defendant having to prove anything  
12    beyond a reasonable doubt.

13                   The court specified several times on this  
14    page alone, that the reasonable doubt issue should  
15    be resolved in favor of the defendant. He did  
16    bury down on the lines 16, 17, 18, 19, 20 the one  
17    statement that Mr. Wilson has raised so we can  
18    have a reasonable doubt as to whether or not the  
19    defendant had made out of defenses, as well as,  
20    the state's failure to prove beyond a reasonable  
21    doubt that he be entitled to that; be entitled to  
22    an acquittal and a verdict of not guilty.

23                   I didn't read that as improperly shifting  
24    the burden, but kind of bolstering the burden  
25    being for his benefit but not against him.

Richard Blackmon-direct by Harrigan

1 Q If you will flip one more time to page  
2 571. I apologize for jumping back and forth. I  
3 want to make sure I hit all the applicant's  
4 allegations.

5 A Okay.

6 Q And this allegation is in regards to the  
7 trial judge's instruction on the charge of  
8 larceny, and that you were ineffective for failing  
9 to object to this.

10 A Okay.

11 Q Is larceny in your professional opinion,  
12 usually charged in regards to armed robbery?

13 A Larceny per se is not in fact, you know, I  
14 am reading he is charging larceny. Mr. Wilson is  
15 not charged with larceny. And he was not indicted  
16 for larceny. Larceny is not a lesser included  
17 offense. But the judge did not appear to me to be  
18 charging the jury larceny for the purpose of  
19 giving them an option of finding him guilty of  
20 larceny. He was charging larceny, apparently it  
21 appeared to me anyway, because he wanted to use  
22 the definitions of what larceny was to tie into  
23 what robbery is.

24 Robbery tends to be a common law kind of  
25 crime. There's a statute that says if you are

Richard Blackmon-direct by Harrigan

1 guilty of robbery this is what get. But the  
2 statute is not as clear on I think all the other  
3 ones. So he was basically telling the jury what a  
4 robbery was and consisted of things like a  
5 larceny. But not telling the jury they could find  
6 Mr. Wilson guilty of larceny either as a lesser  
7 included offense or anything like that.

8 So no, I didn't see any reason to object  
9 to anything like that.

10 Q In your experience as a trial attorney if  
11 you feel that the judge is mischarging the jury in  
12 your client's case, is it your standard practice  
13 to make an objection?

14 A Yes, ma'am.

15 Q And you do not feel that this larceny  
16 within the jury charge on page 571 was prejudicial  
17 to your client?

18 A I don't think so.

19 MS. HARRIGAN: Court's indulgence.

20 THE COURT: Yes, ma'am.

21 Q In regard's to applicant's allegations  
22 that you were ineffective regarding his juvenile  
23 convictions.

24 A Uh-huh. (Affirmative.)

25 Q You did make a motion -- did you make a

Richard Blackmon-direct by Harrigan

1 motion before the court in regards to the juvenile  
2 record?

3 A Yes, ma'am.

4 Q And what was the judge's ruling in regards  
5 to that?

6 A The judge overruled that objection and  
7 allowed it in for impeachment. Mr. Wilson is  
8 right, I did cite the wrong statute as being the  
9 one for which we wanted to keep even the use of  
10 the juvenile record out. I did use the outdated  
11 code section 20-7 something, which had been  
12 repealed, I believe some time earlier. But it had  
13 been replaced the same date it was repealed, with  
14 two other statutes that basically had the same  
15 verbatim wording in it. So I quoted the wrong  
16 code section. But the wording from the code  
17 section was the same as it was in the other  
18 section. But our whole overall basis for keeping  
19 the record out completely was, that it our reading  
20 of the law, and I believe it correctly cited that  
21 section, and so the transcript; that the juvenile  
22 record could only be released upon order from the  
23 Family Court judge. And up to that point, they  
24 didn't have an order from a Family Court judge, so  
25 the record should not have been properly released.

Richard Blackmon-direct by Harrigan

1           It would have been our position that  
2           should have been a legitimate basis for a ground  
3           for appeal that should have been considered by the  
4           appropriate authorities on direct appeal.

5           Q     And do you have any knowledge of  
6           applicant's direct appeal following your  
7           representation of him?

8           A     No, ma'am. He understood clearly that I  
9           did not do appeals. I think I filed a notice in  
10          order to protect his rights. And so contacted the  
11          office of Appellate Defense and delivered all the  
12          appropriate information to them.

13          MS. HARRIGAN: And Your Honor contained in  
14          the packet which is before this court today,  
15          there are applicant's direct appeals.

16          THE COURT: I have got it all.

17          Q     That issue was addressed. Do you feel  
18          your client was prejudiced by misquoting the code  
19          section with virtually the appeal?

20          A     I don't think that made any difference at  
21          all. If I would have quoted the same other  
22          section, with the same exact wording, Judge King  
23          would have made the same ruling.

24          The whole point was there no order signed  
25          by a Family Court judge to release the records.

Richard Blackmon-direct by Harrigan

1 And under Section 20-7 or code section 27 dash  
2 whatever it would have made no difference.

3 Q And when applicant's juvenile convictions  
4 were used for impeachment purposes on page 489,  
5 did you object?

6 A I had objected originally before it  
7 happened. And allowed the objection to continue  
8 running throughout, and I placed it back on the  
9 record.

10 MS. HARRIGAN: No further questions at  
11 this time.

12 THE COURT: Mr. Brooks.

13 Cross Examination by Mr. Brooks:

14 Q Mr. Blackmon.

15 A Mr. Brooks.

16 Q How are you doing today?

17 A Pretty good, how about you?

18 Q Now I heard you talk a little earlier  
19 about shell casings. Some shell casings were  
20 picked up. Some of them weren't. Something of  
21 that nature.

22 A Yes, sir.

23 Q You didn't -- did you consult a  
24 ballistic's expert in this case?

25 A I didn't need to. I didn't feel there was

## Richard Blackmon-cross by Brooks

1 a need to, because there was no gun that  
2 Mr. Wilson was found with. No gun that was found  
3 with his fingerprints on. And no gun that was  
4 identified as having been in the possession that  
5 was tied to any of the casings that were found  
6 anywhere.

7 Q Okay.

8 A And the bullet or part of the fragments of  
9 the bullet, as I recall, that were recovered that  
10 killed the young man, none of those or none of any  
11 of them had his fingerprints on them. There was  
12 no testimony to that effect.

13 Q But couldn't a ballistic's expert help  
14 define which bullet killed the young man and from  
15 which trajectory it was fired?

16 A I believe that the coroners pretty well do  
17 that.

18 Q But couldn't a ballistic's expert---

19 A I don't think a ballistic's expert could  
20 have made it any more apparent to the jury.

21 Q Okay. But a coroner, they basically give  
22 you the cause of death; isn't that correct?

23 A They did. And this coroner told us how a  
24 bullet entered and exited.

25 Q But wouldn't a ballistic's expert give you

Richard Blackmon-cross by Brooks

1 more of a knowledge of about where a particular  
2 bullet entered the body?

3 MS. HARRIGAN: Your Honor, the state would  
4 object that any reference to a ballistic's expert  
5 was not raised in the allegation in this  
6 application.

7 THE COURT: Sustained. We are not going  
8 to plow through ground the attorney general had no  
9 notice of.

10 Q Did you hire an investigator in this case?

11 A No, I did not.

12 Q Did you -- why did you feel there was no  
13 need to hire an investigator in this case?

14 A When the solicitor's office provided all  
15 the discovery material, Mr. Wilson and I sat down  
16 and went over all of it. I did not see anything  
17 in there that was at such an issue or was so  
18 confusing. Or even that it was one to be disputed  
19 that would have necessitated hiring any additional  
20 experts or investigators.

21 Q Was there -- this was characterized as a  
22 shootout; is that correct?

23 A That's correct.

24 Q And obviously in this shootout, it would  
25 have been more than Mr. Wilson involved. How many

## Richard Blackmon-cross by Brooks

1 people were charged in this case?

2 A I don't recall personally. It has been a  
3 while.

4 Q Okay.

5 A I know we had 6 or 8 statements from  
6 people who were there and who allegedly  
7 participated.

8 Q Okay. And do you know whether or not  
9 these individuals were charged?

10 A I don't recall right now; no. I know  
11 there were no co-defendants in this trial.

12 Q So he went -- were there -- let me ask you  
13 this. Were there other people charged with the  
14 same incident but didn't go to trial?

15 MS. HARRIGAN: Objection to relevance.

16 THE COURT: I am going to give him a  
17 little bit of lee way.

18 Q Were there other people?

19 A I believe there were other charges that  
20 arose from the shooting, because I only  
21 represented Mr. Wilson. I don't know that I was  
22 familiar with what specific other charges were  
23 preferred against other people. There were other  
24 people involved in the shooting that agreed to  
25 testify against him. So I don't know what if any

Richard Blackmon-cross by Brooks

1 arrangements were made for or against them.

2 Q Okay. And do you think it would have been  
3 prudent to have an investigator to have access or  
4 have information as far as, delving into what  
5 actually happened on that day from the defendant's  
6 perspective?

7 A No, the defendant, we had access to all  
8 the statements of all the witnesses, all the law  
9 enforcement folks who were participants. And the  
10 defendant explained to me, what did or didn't  
11 happened from his standpoint. From the standpoint  
12 of what he did see. What he personally knew had  
13 happened. What he believed might have been  
14 motivations from other people. And so from his  
15 personal knowledge of that, I did not see the need  
16 for any additional outside investigation by way of  
17 any professional investigator.

18 MR. BROOKS: I beg the court's indulgence.

19 THE COURT: Yes, sir.

20 Q Did Mr. Wilson give you names of any other  
21 witnesses?

22 A I don't remember specifics. I do  
23 remember at one point his girlfriend at the time  
24 was a witness, but she was killed prior to the  
25 time of it being called for trial. She had given

## Richard Blackmon-cross by Brooks

1 a statement. So I know he had mentioned other  
2 witnesses.

3 Q Okay.

4 A I don't specifically recall her. That  
5 would have been in the file, if you have the file.

6 Q Any other witnesses besides her?

7 A I don't recall specifically.

8 MR. BROOKS: I beg the court's indulgence.  
9 No other questions.

10 MS. HARRIGAN: No redirect.

11 THE COURT: Thank you. You may step  
12 down. Any reply testimony?

13 MR. BROOKS: No, sir.

14 THE COURT: I will take the matter under  
15 advisement. And I will review the transcript on  
16 the issues proper for post-conviction relief.

17 MS. HARRIGAN: Thank you, Your Honor.

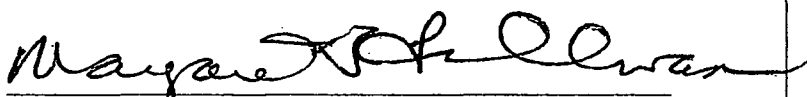
18 --End of Requested Transcript of Record--  
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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Common Pleas nonjury Court on September 19, 2012 in Sumter County, Sumter, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

7/10/13  
DATE



COURT REPORTER

My Commission expires: 9/7/21

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT  
2012 NOV 27 PM 2:26

Harold Jamar Wilson, #306094,

Case No. 2010-CP-43-0976

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL**

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

*[Signature]*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

**PROCEDURAL HISTORY**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 10, 2010. The Respondent made its Return on February 17, 2011. An evidentiary hearing into the matter was convened on September 19, 2012, at the Sumter 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 Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted during the September 2003 term of the Sumter County Grand Jury for (1) Murder; (2) Assault and Battery with Intent to Kill; (3) Attempted Armed Robbery; and (4) Possession of Firearm during Commission of Crime of Violence (2003-GS-43-0763). Richard Blackmon, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Howard P. King, where he was found guilty as indicted. On November 18, 2004, Judge King sentenced him to life imprisonment for Murder, a consecutive term of twenty years for Assault and Battery with Intent to Kill, a consecutive term

of twenty years for Attempted Armed Robbery, and a consecutive term of five years for Possession of Firearm during Commission of Crime of Violence.

A notice of appeal was filed and an appeal perfected. The conviction and sentence were affirmed. State v. Wilson, Op. No. 2009-UP-588 (S.C. Ct. App. filed December 14, 2009).

In Applicant's post-conviction relief application, he alleged that he is being held in custody unlawfully based on the following claims:

1. Ineffective assistance of counsel.

- a. "Failed to object to solicitor's statement in his closing that '...witness, Ms. Earp. The girl that stayed next door and her testimony and quite frankly she made a good impression on me...' See Trial Transcript p. 545, lines 4-6, in effect vouching for the credibility of the State's witnesses."
- b. "Failed to object to solicitor's statement in his closing introducing into the trial assertions which were not introduced or proven by evidence during trial, that all casings (bullets) were found. See Trial Transcript p. 547, lines 15-24."
- c. "Failed to object to trial judge's instruction to the jury, 'so if you have a reasonable doubt as to whether or not the defendant has made out his defenses...', See Trial Transcript p. 559, lines 16-18, in effect shifting the burden of proof to Applicant to prove his innocence."
- d. "Failed to object to trial judge's instruction to the jury, the elements of the crime of larceny. See Trial Transcript p. 571, lines 9-23. Applicant was not charged or indicted for the crime of Larceny, and nor was Larceny presented to the jury as a lesser included offense of Attempted Armed Robbery. ..."
- e. "Failed to request the trial court to instruct the jury that the evidence which was introduced of Applicant's prior juvenile convictions, was admissible only for impeachment purposes."
- f. "Failed to properly acquaint (investigate) himself with the current and correct law and Facts surrounding Applicant's case, and as a result Applicant's trial counsel made a prejudicial error in the assessment of both the law and the facts concerning the admissibility of Applicant's prior juvenile records (convictions) as evidence during his trial. See Trial Transcript p. 446, lines 2-23; p. 453, line 25; and p. 454, lines 1-10.... trial counsel was not aware of these changes in S.C. Law, and relied upon out dated and repealed S.C. Code of Law to argue against the admissibility of Applicant's prior juvenile records..."
- g. "Failed to challenge the sufficiency of Count One - Murder of the Indictment No. 2003-GS-43-0763, wherein it fails to state the section of the S.C. Code of Law that was violated."

2. "Denial of a Fair Trial."

- a. "The trial judge instructed the jury 'So if you have a reasonable doubt as to whether or not the defendant has made out his defenses...' See Trial Transcript p. 559, lines 16-18, shifting the burden of proof to Applicant to prove his innocence."
- b. Trial court erred in instructing jury on "hand of one, hand of all" because Applicant was tried as a principal.
- c. Trial court erred in instructing the jury on larceny because Applicant was not charged with larceny.
- d. Trial court failed to give limiting instructions on admissibility of prior juvenile record.

At the evidentiary hearing, the Applicant testified on his own behalf. The State presented testimony from trial counsel, Richard Blackmon, Esquire ("Counsel"). This Court also had before it a copy of the Applicant's trial transcript, the records of the Sumter County Clerk of Court, and Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

#### 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. 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*

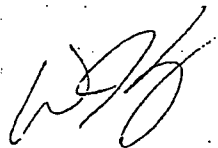
In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this 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, Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant and that he was prejudiced by any of Counsel's alleged deficiencies. Below are the following findings of this Court regarding Applicant's specific allegations of ineffective assistance of counsel:



*"Failed to object to solicitor's statement in his closing that '...witness, Ms. Earp. The girl that stayed next door and her testimony and quite frankly she made a good impression on me...' See Trial Transcript p. 545, lines 4-6, in effect vouching for the credibility of the State's witnesses."*

Applicant alleged that Counsel was ineffective for failing to object to Assistant Solicitor Conner's statement during the State's closing argument regarding State's witness Alexis Earp, a neighbor who heard the shooting and called the police. Applicant asserts that Assistant Solicitor Conner's comments that "quite frankly she made a good impression on me" amounted to improper vouching and Counsel was ineffective for not objecting to such a comment.

At the evidentiary hearing, Counsel testified that he did not believe that Assistant Solicitor Conner's statement amounted to vouching for the credibility of the State's witness and that is why he did not object. Specifically, Counsel stated that the comment did not sound prejudicial or improper at the time of the trial and that he does not think that the comment is improper or prejudicial now as well. See Trial Tr. p. 545, lines 4-6.

In regards to this allegation of ineffective assistance of counsel, this Court finds that Counsel's performance was reasonable and effective. Counsel testified that in his professional opinion, he did not think that this passage from the State's closing argument were objectionable or prejudicial to his client. Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from plea counsel's alleged ineffective assistance of counsel. Vouching occurs when a Solicitor attempts to bolster the credibility of a witness by "placing the government's prestige behind a witness by making explicit personal assurances of a witness' veracity," or by "implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony." Gilchrist v. State, 350 S.C. 221, 227, 565 S.E.2d 281, 285 (2002), quoting State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001). This



Court finds that the comment made by Assistant Solicitor Conner did not amount to improper vouching. Furthermore, the jury was charged by the trial court that determinations of credibility were solely within the province of the jury. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

*"Failed to object to solicitor's statement in his closing introducing into the trial assertions which were not introduced or proven by evidence during trial, that all casings (bullets) were found. See Trial Transcript p. 547, lines 15-24."*

This Court finds that Applicant abandoned this allegation, as he did not present sufficient evidence or testimony in its regard. Therefore, this Court finds that this allegation of ineffective assistance of counsel is denied and dismissed with prejudice.

*"Failed to object to trial judge's instruction to the jury, 'so if you have a reasonable doubt as to whether or not the defendant has made out his defenses ..., ' See Trial Transcript p. 559, lines 16-18, in effect shifting the burden of proof to Applicant to prove his innocence."*

Applicant alleges that Counsel was ineffective for failing to object to this portion of the trial court's jury instruction, which amounted to impermissible burden shifting and prejudiced him. At the evidentiary hearing, Counsel testified that although the specific passage noted by Applicant could be read as placing a burden on the defendant, jury instructions must be read as a whole, and that when he looked at the jury charge as a whole, the trial court did not shift the burden to the Defendant or confuse the jury. Counsel testified that the jury charge clearly instructed the jury that the State had the burden of proof. Counsel stated that he did not and does not believe that the jury charge was objectionable or prejudicial to his client.

This Court finds that Counsel was not deficient for not objecting to this portion of the jury charge, as the passage was not objectionable when viewed together with the entirety of the



trial court's instructions to the jury. South Carolina law dictates that jury instructions, when analyzed, must be considered in their entirety. See Todd v. State, 355 S.C. 396, 585 S.E.2d 305 (2003). Additionally, Applicant failed to prove that he was prejudiced by any alleged deficiency in this regard, as the jury charge when viewed as a whole does not impermissibly shift the burden away from the State. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

*"Failed to object to trial judge's instruction to the jury, the elements of the crime of larceny. See Trial Transcript p. 571, lines 9-23. Applicant was not charged or indicted for the crime of Larceny, and nor was Larceny presented to the jury as a lesser included offense of Attempted Armed Robbery. ..."*

Applicant asserts that Counsel was ineffective for failing to object to the trial court's jury instructions on the elements of larceny within the Court's charge of attempted armed robbery, as he was not charged with larceny and larceny is not a lesser included offense of attempted armed robbery. At the evidentiary hearing, Counsel testified that the attempted armed robbery charge given by the trial Court is the widely used charge given by courts across the state. Counsel elaborated that he did not object to this charge as it correctly instructs the jury as to the law regarding attempted armed robbery and was not prejudicial to his client. Counsel stated that if he felt that this instruction to the jury was improper, he would have objected as is his general practice. Counsel testified that the jury was properly instructed on attempted armed robbery, as was supported by the facts developed throughout the trial.

This Court finds that Counsel was <sup>not</sup> deficient for not objecting to this portion of the jury charge, as the passage was not objectionable when viewed together with the entirety of the trial Court's instructions to the jury. See State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (S.C. 2003) (holding the facts must support a jury instruction for it to be proper). Additionally, Applicant

failed to prove that he was prejudiced by any alleged deficiency in this regard, as the jury charge when viewed as a whole does not impermissibly shift the burden away from the State. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

*"Failed to request the trial court to instruct the jury that the evidence which was introduced of Applicant's prior juvenile convictions, was admissible only for impeachment purposes."*

Applicant alleges that Counsel was ineffective for not objecting to trial court's instructions to the jury, as it failed to include instruction that Applicant's prior juvenile conviction was only admissible for impeachment purposes. Counsel testified that he did not feel his client was prejudiced by this omission, or else he would have objected as is his standard practice when a jury instruction is prejudicial to his clients. Applicant presented no evidence or testimony as to how this was prejudicial to him or how it impacted his trial.

This Court finds that Counsel was not ineffective in regard to this allegation, as Applicant was not prejudiced by any alleged deficient representation because there was overwhelming evidence of the Applicant's guilt. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991). In Ford, trial counsel failed to request an alibi instruction and his representation was found deficient as a result. However, the evidence of the applicant's guilt in Ford was overwhelming and this Court held that the applicant failed to prove the second prong of Strickland, which requires that an Applicant show prejudice by the deficient representation. Here, there is overwhelming evidence of Applicant's guilt, as he and Counsel both testified that Applicant never denied his involvement in the incident or that he discharged a

firearm. Therefore, this Court finds that Applicant was not prejudiced by this omission of a limiting jury instruction regarding Applicant's prior juvenile record and this allegation must be denied and dismissed.

*"Failed to properly acquaint (investigate) himself with the current and correct law and Facts surrounding Applicant's case, and as a result Applicant's trial counsel made a prejudicial error in the assessment of both the law and the facts concerning the admissibility of Applicant's prior juvenile records (convictions) as evidence during his trial. See Trial Transcript p. 446, lines 2-23; p. 453, line 25; and p. 454, lines 1-10. ...trial counsel was not aware of these changes in S.C. Law, and relied upon out outdated and repealed S.C. Code of Law to argue against the admissibility of Applicant's prior juvenile records..."*

This Court finds that Applicant abandoned this allegation, as he did not present sufficient evidence or testimony in its regard. Therefore, this Court finds that this allegation of ineffective assistance of counsel is denied and dismissed with prejudice.

*"Failed to challenge the sufficiency of Count One – Murder of the Indictment No. 2003-GS-43-0763, wherein it fails to state the section of the S.C. Code of Law that was violated."*

This Court finds that Applicant abandoned this allegation, as he did not present sufficient evidence or testimony in its regard. Therefore, this Court finds that this allegation of ineffective assistance of counsel is denied and dismissed with prejudice.

#### ***"Denial of a Fair Trial"***

Applicant asserts that he is being held in custody unlawfully based on various allegations of "denial of a fair trial" that all purport that the trial court erred in a certain regard. Below are the specific findings in regards to each allegation.



*"The trial judge instructed the jury 'So if you have a reasonable doubt as to whether or not the defendant has made out his defenses...' See Trial Transcript p. 559, lines 16-18, shifting the burden of proof to Applicant to prove his innocence."*

This Court finds that Applicant abandoned this allegation, as he did not present sufficient evidence or testimony in its regard. Therefore, this Court finds that this allegation of "denial of fair trial" is denied and dismissed with prejudice.

*Trial court erred in instructing jury on "hand of one, hand of all" because Applicant was tried as a principal.*

This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). 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). Applicant could have raised this issue on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, this Court find this allegation should be denied and dismissed with prejudice.

*Trial court erred in instructing the jury on larceny because Applicant was not charged with larceny.*

This Court finds that Applicant abandoned this allegation, as he did not present sufficient evidence or testimony in its regard. Therefore, this Court finds that this allegation of "denial of fair trial" is denied and dismissed with prejudice.

*Trial court failed to give limiting instructions on admissibility of prior juvenile record.*

This Court finds that Applicant abandoned this allegation, as he did not present sufficient evidence or testimony in its regard. Therefore, this Court finds that this allegation of "denial of fair trial" is denied and dismissed with prejudice.



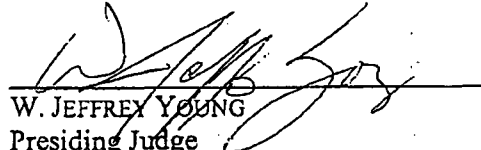
**CONCLUSION**

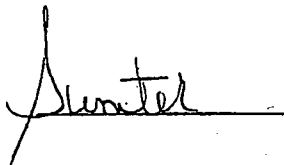
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

**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 13 day of Nov, 2012.

  
W. JEFFREY YOUNG  
Presiding Judge  
Third Judicial Circuit

, South Carolina.

WITNESSES

SUMTER PD

Brannon

ARREST WARRANT NUMBER

H280927 (1); H363154 (2-4)

H280932 (5)

D/A: 5/20/03

ACTION OF GRAND JURY

*Law Bill*

Foreperson of Grand Jury

Date:

*5-4-03*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2003-GS-43-

*763*

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2003

THE STATE

vs.

DWAUNTREZ CHRISHAUD KEITH

*✓* HAROLD JAMAR WILSON

Indictment for

MURDER, ASSAULT AND BATTERY  
WITH INTENT TO KILL, ATTEMPTED  
ARMED ROBBERY, POSSESSION OF  
A FIREARM DURING COMMISSION  
OF CRIME OF VIOLENCE AND  
ACCESSORY AFTER THE FACT

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )

INDICTMENT FOR  
MURDER, ASSAULT AND BATTERY WITH INTENT  
TO KILL, ATTEMPTED ARMED ROBBERY,  
POSSESSION OF A FIREARM DURING  
COMMISSION OF CRIME OF VIOLENCE AND  
ACCESSORY AFTER THE FACT

At a Court of General Sessions, convened on September 4, 2003, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – MURDER

That HAROLD WILSON did in Sumter County on or about May 19, 2003, feloniously, wilfully and with malice aforethought, kill one Reginald Foster by means of shooting him, and that the said Reginald Foster did die as a proximate result thereof.

COUNT TWO – ASSAULT AND BATTERY WITH INTENT TO KILL

That HAROLD WILSON did in Sumter County on or about May 19, 2003, violate Section 16-3-620 of the Code of Laws of South Carolina (1976), as amended, in that he with malice aforethought, while participating in a robbery, committed an assault and battery upon one Herbert Lynwood Butler by shooting him, with intent to kill the said Herbert Lynwood Butler.

COUNT THREE – ATTEMPTED ARMED ROBBERY

That HAROLD WILSON did in Sumter County on or about May 19, 2003, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, to-wit: a pistol, he did feloniously attempt to take from the person in the presence of Edward Maurice Dingle, by means of force or intimidation, goods or monies of the said Edward Maurice Dingle, such goods or monies being described as follows: good and lawful monies and/or other personal items.

COUNT FOUR – POSSESSION OF FIREARM DURING  
COMMISSION OF CRIME OF VIOLENCE

That HAROLD WILSON in Sumter County on or about May 19, 2003, was in possession of and did visibly display a firearm during the commission of a violent crime, to-wit: a pistol, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

  
SOLICITOR

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER, ASSAULT AND BATTERY WITH INTENT TO KILL, ATTEMPTED ARMED ROBBERY, POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME OF VIOLENCE AND ACCESSORY AFTER THE FACT WITH THE AFORESAID NAMES OF DWAUNTREZ CHRISHAUND KEITH AND HAROLD WILSON SHOWN THEREON:

COUNT FIVE – ACCESSORY AFTER THE FACT

That DWAUNTREZ CHRISHAUND KEITH did in Sumter County on or about May 19, 2003, render assistance to a felon, namely, HAROLD WILSON who, on or about May 19, 2003, committed the crime of murder of murder and armed robbery.

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

P. Kelly Jackson  
SOLICITOR

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