

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Abbeville County

Frank R. Addy, Circuit Court Judge

VOL. II of II

RECEIVED

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S.C. Supreme Court

ROBERT ORLANDO HILL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002106

APPENDIX

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ROBERT ORLANDO HILL - FURTHER CROSS

1 Q Okay. Well, in those answers you did not say
2 that. Correct?

3 A Those answers --

4 Q In the answers I just read.

5 A I can't remember that.

6 Q Okay. You don't remember what I just read?

7 A I didn't say that. I said at that point in
8 time that I can't remember, recall me saying that
9 on this stand.

10 Q You don't recall, okay, that was my question.
11 You don't recall saying that on the stand?

12 A Yes, sir.

13 Q Okay. And this gun that you took to
14 Eastgate, it was a gun that Frank Tut had given
15 you, correct?

16 A Yes, sir.

17 Q Okay. And you had had that gun about a week?

18 A No, I been having it for longer than a week.

19 Q How long had you had it?

20 A I don't, I can't recall.

21 Q You don't recall how long, okay. All right,
22 I'm going to ask you about another set of questions
23 and answers. I'm reading from page 347, line 21.

24 "QUESTION: Okay. Now, where and when did you
25 get this gun?

ROBERT ORLANDO HILL - FURTHER CROSS

1 ANSWER: Where and when?

2 QUESTION: Yes, sir.

3 ANSWER: I had been got that gun probably
4 about a week ago. A week before all this right
5 here occurred.

6 QUESTION: A week before you killed Artie
7 with it?

8 ANSWER: Yes, sir."

9 A No, sir, I never said nothing like that.

10 Q You never said that?

11 A No, sir.

12 Q Okay. All right. And after you went to your
13 uncle's house, and you agree you went to your
14 uncle's house, right?

15 A Yes, sir.

16 Q And then you left your uncle's house and you
17 came back up to Eastgate, correct?

18 A No, sir. I was shooting dice with Warren
19 Tut, Frank Tut's brother, I didn't come back until
20 35 or 40 minutes, we were shooting dice, gambling.

21 Q Okay. So, before you came back to Eastgate
22 did you stay at your uncle's house or did you go
23 somewhere else first?

24 A Did I go -- when I left from my uncle's house
25 I came to Eastgate Apartments to come tell Tonya

ROBERT ORLANDO HILL - FURTHER CROSS

1 Green to come check on her daughter, come get her
2 daughter.

3 Q All right. So, you left your uncle's house
4 and when you left your uncle's house you didn't
5 stop anywhere, you went on to Eastgate, right?

6 A Right, after 35 or 40 minutes, after I got
7 through shooting dice.

8 Q Okay. You had seen the car that Artell Hill
9 was in up at Eastgate, correct?

10 A Well, at that point in time when I was coming
11 from Gurley's, yes, I did, but when I pulled in I
12 didn't pay it no attention.

13 Q Okay. And you had seen Artell Hill in that
14 car before, correct?

15 A Yes, sir.

16 Q Okay. And when you pulled in at Eastgate you
17 pulled in and you stopped your bicycle there at the
18 handicap spot, is that correct?

19 A No, sir. I was right there, as a matter of
20 fact I was right there beside another car.

21 Q Okay. It wasn't beside another car at the
22 handicap ramp?

23 A Might have been. There was, a little behind
24 the handicap ramp, a car a little farther back.

25 Q Okay. Well, was the actual spot where you

ROBERT ORLANDO HILL - FURTHER CROSS

1 parked, was it at the handicap spot, the spot where
2 you stopped your bicycle?

3 A All I know, I just laid it, at first I was
4 standing right, I was sitting right on the bike,
5 all I know, Jeffrey Tatum, he said something, I
6 looked at Jeffrey Tatum --

7 Q I'm just asking you where did you set your
8 bicycle, where did you stop your bicycle, that's
9 all I'm asking?

10 A I can't remember where I stopped the bike.

11 Q That was my question. All right. I'm going
12 to read you another set of questions and answers.
13 I will just ask you if you have heard these before.

14 MR. GROSE: Which page?

15 MR. ANTHONY: I'm sorry, I'm on page 330,
16 starting at line four.

17 "QUESTIONS: Where were you when you could see
18 Artie, it was Artie in the car, where were you?"
19 That's the question.

20 "ANSWER: I was on my bike.

21 QUESTION: Where on your bike?

22 ANSWER: I was standing on my bike right
23 there where the little handicap spot was.

24 QUESTION: Right. Pointing on State's
25 Exhibit Number 1, you were right here when you

ROBERT ORLANDO HILL - FURTHER CROSS

1 turned around and saw it was Artie, weren't you?

2 ANSWER: Yes, sir, I was." That's the
3 answer.

4 "QUESTION: Pointing to the handicap spot,
5 space. Correct?

6 ANSWER: Yes.

7 QUESTION: And you had the handle bars of
8 your bike right there, didn't you?

9 ANSWER: Yes, sir, I did".

10 Do you remember making those answers to those
11 questions?

12 A No, sir. The only thing I said, when I
13 rolled up on the bike I did not see Artie. Jeffrey
14 Tatum said something, Artie raised up.

15 Q The question is --

16 THE COURT: Let's let the record reflect we
17 just had a big clap of thunder. Answer the
18 question now, Mr. Witness.

19 Q The question was did you make those answers
20 to those questions, Mr. Hill, that's all the
21 question is?

22 A No, sir.

23 Q Okay. That's the question. All right. As
24 for as the people, I just want to ask you a couple
25 more things, Jeff Tatum, you considered yourself

ROBERT ORLANDO HILL - FURTHER CROSS

1 friendly with Jeff Tatum at this time, isn't that
2 correct?

3 A Yes, sir.

4 Q Okay. And you considered yourself friendly
5 with Ira Green, isn't that correct?

6 A Well, I know Ira Green but, we friends but
7 not like that.

8 Q Not people that hang out together but not,
9 certainly not enemies, wouldn't you say?

10 A We no enemies.

11 Q And the two Clinkscale ladies, Geneva
12 Clinkscale and her granddaughter, Geneva Michelle
13 Clinkscale, there were no problems between you and
14 either one of them, were there?

15 A No, sir.

16 Q Okay. And after this, after this occurred,
17 after you fired your gun you got on your bike and
18 rode off, correct?

19 A Yes, but that --

20 Q That's all I'm asking. You got on your bike
21 and rode off and you went, you went to Frank Tut's
22 house, is that correct?

23 A No, huh-uh (negative).

24 Q Where did you go?

25 A Uncle Red's house.

ROBERT ORLANDO HILL - FURTHER CROSS

- 1 Q You went to your Uncle Red's house, then you
2 went and found Frank Tut, didn't you?
- 3 A No, sir.
- 4 Q You never found Frank Tut after the shooting?
- 5 A Huh-uh (negative), no, sir.
- 6 Q Well, who did you give the gun to?
- 7 A Frank Tut.
- 8 Q Okay. You gave the gun to Frank Tut, all
9 right. Well, when did you give it to him?
- 10 A When did I give it to him?
- 11 Q Yes, sir.
- 12 A Well, as soon as I rode off with the bike.
- 13 Q Okay. Where did you go to give it to him?
- 14 A I went to Uncle Red's house.
- 15 Q Frank Tut was at your Uncle Red's house?
- 16 A He was already outside.
- 17 Q All right. Okay. So, you went, you -- and
18 Frank Tut was at your uncle's house and you gave
19 Frank Tut the gun?
- 20 A Yes, sir.
- 21 Q And you did that before you went to Deputy
22 Turman's house, is that correct?
- 23 A Yes, sir.
- 24 Q Okay.
- 25 MR. ANTHONY: If I could have a moment.

ROBERT ORLANDO HILL - FURTHER CROSS

1 THE COURT: Take your time, counsel.

2 MR. ANTHONY: Thank you. That's all on
3 cross.

4 THE COURT: Redirect?

5 MR. GROSE: Beg the Court's indulgence for a
6 moment.

7 No questions, Your Honor.

8 THE COURT: Thank you. Come down, watch your
9 step.

10 (Witness excused).

11 THE COURT: Call your next witness, please.

12 MR. GROSE: Beg the Court's indulgence for
13 just a moment.

14 I'm going to recall Mr. Harvard briefly, Your
15 Honor.

16 THE COURT: Come up and be sworn, sir.
17
18
19
20
21
22
23
24
25

TERRY HARVARD - DIRECT

1 TERRY HARVARD,
2 after being first duly sworn testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. GROSE:

5 Q Very briefly, when you were filling out your
6 incidents report in this case did you note how tall
7 Lanny Hill is in that report?

8 A I can't recall all that. If I can see it?

9 Q I hand you a copy of the front page of your
10 report.

11 A He's listed as 5-11.

12 MR. GROSE: That's all I have, Your Honor.

13 THE COURT: Mr. Anthony?

14 MR. ANTHONY: No cross.

15 THE COURT: Thank you. Come down, please.

16 (Witness excused).

17 MR. GROSE: At this time, Your Honor, the
18 defense would rest.

19 THE COURT: That is the defense in chief,
20 ladies and gentlemen. We will give everyone a
21 little chance to determine whether there will be
22 reply. You recall we talked about reply, the
23 possibility of reply, and we will offer the
24 opportunity for each party to think about what may
25 be proper reply.

1 Do not discuss the case by, between and among
2 yourselves and retire briefly to the jury room.

3 (The jury was excused from the courtroom).

4 THE COURT: Solicitor, do you need time to
5 consider whether you wish to reply and, if so, to
6 what?

7 MR. ANTHONY: Yes, sir, I would like about
8 five minutes.

9 THE COURT: We will take about a ten minute
10 recess.

11 (Recessed at 3:26 p.m.).

12 (Reconvened at 3:44 p.m.).

13 THE COURT: The record will open, please;
14 State of South Carolina versus Robert Orlando Hill,
15 indictment 99-494.

16 Will the State have reply?

17 MR. ANTHONY: Yes, sir, but my reply will
18 just consist in completing the impeachment that was
19 conducted on cross-examination of Mr. Hill. There
20 were three passages from the transcript of the last
21 trial that I read to him and in each instance, as I
22 recall the testimony, he either denied having made
23 the statement I read to him or said he did not
24 remember making the statement I read to him, so I
25 would propose to read those three passages into the

1 record or have them read into the record, however.

2 To be quite honest with Your Honor, I have
3 never done this before so I don't know how the
4 Court would suggest it be handled, but I think the
5 three passages from the trial transcript need to be
6 read into the record and the jury told that these
7 are, these are questions and answers given when Mr.
8 Hill was questioned concerning this incident,
9 giving sworn testimony in a prior proceeding.

10 THE COURT: The Court knows how to handle it
11 but first we would like to have input from defense
12 counsel.

13 MR. GROSE: Your Honor, could I get my
14 computer hooked back up for just a second so I can
15 pull up that rule?

16 THE COURT: Sure, we'll go down for a couple
17 minutes.

18 MR. GROSE: Okay, thank you, Your Honor.

19 THE COURT: Be at ease, please.

20 (Recessed at 3:46 p.m.).

21 (Reconvened at 3:47 p.m.).

22 THE COURT: We'll resume, this is State of
23 South Carolina versus Robert Orlando Hill,
24 indictment 99-494.

25 It's the Court's understanding that the State

1 intends to reply to the case in chief for the
2 defense by impeachment pursuant to 613, Subsection
3 B. Is that correct.

4 MR. ANTHONY: Yes, sir.

5 THE COURT: All right. Mr. Grose?

6 MR. GROSE: Your Honor, 613, Section A, of
7 course says that they don't have to show the
8 contents of the statement to the person. Of course
9 they did show it to him. I think it's important to
10 note when I talk about B that there is nothing says
11 they, that they don't have to show them to them,
12 just says there is no, it doesn't say they are
13 required not to show it to them, they could do
14 that, they chose not to do that, which is allowed
15 under A.

16 Under B, B requires laying a foundation and
17 it requires that the witness be advised of the
18 substance of the statement, the time and the place
19 it was allegedly made, the person to whom it was
20 made. Mr. Anthony did read the substance of the
21 statement but he did not do anything with time and
22 place. He talked about a courtroom generically, he
23 didn't say this courtroom or a specific courtroom
24 or any other specific courtroom. He didn't give
25 the time, the date that the statement was made, and

1 he didn't ask about who the statement was made to.
2 Then I look at State versus McCleod, M-c-C-l-e-o-d,
3 which is 362 South Carolina 73, 606 Southeast 2nd
4 215, South Carolina Court of Appeals, 2004.

5 In that case the judge writing that opinion
6 talks about how the South Carolina rule differs
7 from the federal rule in that the foundation must
8 be laid before admitting the prior inconsistent
9 statement. "It is mandatory that the witness be
10 permitted to admit or deny or explain a prior
11 inconsistent statement under 613(B)."

12 And also of course the foundation of the rule
13 also talks about the time and place and who it was
14 made to, and then this McCleod case, they were
15 actually affirming the trial court for failing to
16 admit the statement when the proper foundation was
17 not laid. Since the government did not lay the
18 proper foundation, they are not allowed the benefit
19 of trying to prove it through extrinsic evidence.

20 THE COURT: Well, the Court finds that the
21 witness was advised of the substance of the
22 statement and that it was made in a courtroom and
23 he was walking a very tight rope in trying to avoid
24 any kind of implication to the jury that this case
25 had been previously tried. He could not say to

1 this witness, your client, the defendant herein,
2 "Didn't the Solicitor ask you this question at a
3 trial in this courtroom?" That would be
4 prejudicial to your client.

5 Do you agree to that?

6 MR. GROSE: I don't know that I necessarily
7 agree with that, Judge. I mean, I don't know
8 that -- it would be prejudicial if we talked about
9 what happened in the prior trial before but I think
10 they, he could have asked the question, you know,
11 "Were you in this courtroom on whatever day it
12 was," I don't even remember the day, "the year
13 2000, being questioned by Solicitor Jones and did
14 you tell him this," and he didn't do that. That
15 doesn't say that it was a prior trial.

16 I have, you know, done similar things when
17 there has been prior trials, you know, we had one
18 in Greenwood a little over a year ago where we
19 tried the same case two weeks in a row and our good
20 court reporter here was able to get us the
21 transcript of the testimony. I was able to ask
22 them about that. I chose to show it to them so
23 they could look at it and read it. Mr. Anthony
24 didn't do that. He wasn't required to by the rule
25 but had he done that, that might have done more to

1 lay the foundation. Like I say, it wasn't required
2 but it might have benefitted him for his current
3 position, but he chose not to do that. He stuck
4 with the decisions that he made. He didn't ask the
5 proper question. McCleod says you've got to lay
6 the foundation.

7 THE COURT: Well, the Court is very concerned
8 about, the Court feels that the substance of the
9 statement was covered, the place of the statement
10 was covered. Although he may not have said this
11 courtroom, he certainly, by inference one could
12 gain it was this courtroom, and the body language
13 and the inflexion of the voice, which the record
14 will not show until the reader reads these words,
15 he did not say the time but that would have been
16 prejudicial because it could have been during a
17 trial, and then the person asking the question, he
18 didn't say that, because that would have been
19 prejudicial to your client because it would have
20 been the Solicitor of the Eighth Judicial Circuit.
21 The jury therefore could infer that it was at a
22 trial, the same charge for which he is now standing
23 trial again. That wouldn't be fair to him.

24 MR. GROSE: Judge, I would be very surprised
25 if this jury has not figured out this is a retrial,

1 given the age of the case. I mean, this is a 1999
2 case. We're days away from being six years of the
3 anniversary of the incident date of this case. I
4 think it would be under estimating the intelligence
5 of the jury. We have teachers on this jury, we
6 have educated people on this jury, we have people
7 with jobs and background and the street smarts like
8 what you were talking about earlier this week. I
9 would, I mean, I believe they have probably figured
10 out that this case has been tried before, you know.
11 I would be surprised if they hadn't.

12 THE COURT: Well, let's see what plank the
13 Solicitor wants to walk.

14 MR. GROSE: Okay.

15 MR. ANTHONY: Your Honor, Mr. Hill has only
16 given sworn testimony about this incident one time
17 and when I asked him if he recalled giving sworn
18 testimony, my position is that is putting him on
19 notice about the statement that I was getting ready
20 to ask him about. I read the statement, the
21 statement verbatim from the transcript, which
22 certainly gave him fair notice of what I was asking
23 him if he had ever said before, and the State's
24 position is that he was given notice when I asked
25 him if he had given sworn testimony before and that

1 it only occurred one time, he was given sufficient
2 notice of what I was getting ready to inquire
3 about, and that is especially true in light of the
4 limitations that I felt like were on me when I was
5 asking those questions, about what I could and
6 could not say.

7 And I understand what Mr. Grose is saying
8 about the jurors, there may be jurors who do
9 suspect that this case has been tried before but
10 that doesn't mean that I can just step right up
11 there and say it. I didn't feel like I could get
12 up there and say, "Well, you have been on trial for
13 murder before, Solicitor Jones cross-examined you."
14 I mean, I think, I think I was asking those
15 questions under that impression, and still feel
16 like that would be improper, so I didn't ask the
17 questions that way. I asked him questions that I
18 thought and still believe would be adequate to put
19 him or anybody else on notice.

20 He's testified under oath one time about
21 this, I asked him if he testified under oath about
22 it before and then read him the statement, read him
23 the statement word for word. So, my position is,
24 given the limitations that the State was facing in
25 trying to do this impeachment in such a way that it

1 wouldn't just, that I wouldn't just have to come
2 right out and say that this was a retrial for
3 murder, I believe I laid as much of a foundation as
4 I could I certainly feel like I laid an adequate
5 foundation to apprise him of what he had said
6 before, and that's the whole, that's the whole
7 purpose, the purpose is so you don't ask people
8 about things when they don't know what you're
9 asking them about, and there is no reason, given
10 the questions I asked him, that he wouldn't know
11 what I, what statement I was asking him if he had
12 made.

13 THE COURT: The Court --

14 MR. GROSE: Can I make two responses, Your
15 Honor?

16 THE COURT: The Court concurs with the
17 Solicitor but is going to grant your motion in
18 limine, Mr. Grose. We're not going to take any
19 chances along those lines.

20 MR. GROSE: I'm not sure I follow you. Our
21 motion is to deny it.

22 THE COURT: Your motion to suppress his
23 effort to impeach your client is granted.

24 MR. GROSE: Thank you.

25 THE COURT: Now, do you have any other reply

1 or anything along those lines?

2 MR. ANTHONY: Your Honor is not going to
3 allow us to tell the jury what he said in the
4 transcript?

5 THE COURT: You're not going to be able to
6 ask him about it, no.

7 MR. ANTHONY: Ask who about it?

8 THE COURT: Mr. Hill.

9 MR. ANTHONY: Well, all I'm asking to do is
10 in reply to read in, to read in front of the jury
11 what I asked him about when I questioned him before
12 so that they will know that this is, this actually
13 occurred in court, because as it stands right now
14 he's just been asked questions and said he doesn't
15 remember the answers. The purpose of proving up
16 impeachment is to let the jury know that he really
17 did say that, so that's all I'm asking to do, is to
18 read the relevant parts of the transcript and have
19 the jury advised that this is actually coming from
20 a transcript of sworn testimony that he gave.

21 THE COURT: Well, the concern the defense
22 puts forward is that he wasn't asked when he made
23 those statements. You did cover, it is believed
24 that you covered adequately from the inflexion of
25 your voice and the tone that you made that it was

1 in this courtroom, the place was covered, but the
2 time was not mentioned, and the Court understands
3 why you couldn't mention the questioner, because
4 that's replete with prejudice against the defendant
5 if you were to say, "Well, were you being asked by
6 the Solicitor?" That would be a taint on the whole
7 situation. The Court understands why you didn't
8 ask that. But the time, the time he said it, you
9 didn't ask him when -- didn't he say in 2000,
10 whenever that transcript was made, these things?

11 MR. ANTHONY: Yes, sir.

12 THE COURT: That part of the rule, you didn't
13 touch on it.

14 MR. ANTHONY: Yes, sir. But he had only
15 given sworn testimony one time.

16 THE COURT: Well, who knows that?

17 MR. ANTHONY: He knows that. That's my
18 point. He would know that. He has been given
19 adequate notice of what I'm asking about because he
20 knows when he gave sworn testimony. It's not like
21 he gave it again in 2003 and I've got to
22 distinguish between the two. He's only done that
23 one time and that's in this courtroom under oath.
24 That's only occurred once, so I don't think -- he
25 would know the time just by me asking him, "Did you

1 ever give testimony under oath before?" It's only
2 happened once.

3 THE COURT: Thank you, Mr. Anthony. Anything
4 further, Mr. Grose?

5 MR. GROSE: Not as long as the ruling stands.

6 THE COURT: Well, the ruling is under
7 reconsideration. We'll be in recess.

8 MR. GROSE: Well, if it is going to be
9 reconsidered I might have some remarks, Your Honor.

10 THE COURT: Very well. Be at ease, please.

11 (Recessed at 4:27 p.m.).

12 (Reconvened at 4:40 p.m.).

13 THE COURT: All right, we'll open the record,
14 State of South Carolina versus Robert Orlando Hill,
15 99-494.

16 Now, the Court has reconsidered the positions
17 of the parties with regard to impeachment by
18 reading the prior inconsistent statements which
19 were either not recalled or denied, having been
20 denied having been made by the defendant. In
21 consideration of 613, Subsection B, the substance
22 of the statement was read, there was no question
23 that that was covered, the foundation laid. The
24 time and place, he was asked in a courtroom and his
25 response, and the record will show that his

1 response was that he did not say that on this
2 stand, quote, on this stand, end of quote.

3 So, although he was not advised, he admitted
4 that the time and place was in this courtroom on
5 this stand, on this witness stand when he was here
6 before, he admitted that. The State is in a
7 position that they cannot ask or lay a foundation
8 of to whom the statement was made because that
9 would be prejudicial to the defendant to say,
10 "Weren't you asked that question by the Solicitor,"
11 or, "Didn't you answer a question that was asked
12 you by the Solicitor?" That would imply that he
13 had already been before a jury at a previous time
14 and that would be prejudicial to him. The rule is
15 deficient in that regard. The Solicitor in this
16 case, Mr. Anthony, is hamstrung because he can't
17 say, "Didn't you tell Solicitor Jones this when you
18 were on this stand, that you admitted at a prior
19 time." So, the Court reverses itself and will
20 admit or allow the impeachment reply.

21 Mr. Grose, you can say whatever you please.

22 MR. GROSE: Judge, you know, if I understand
23 your ruling, you're ruling they didn't comply with
24 the rule and you are ruling they weren't required
25 to comply with the rule. The rule is the rule. If

1 they didn't comply with it they don't get to --

2 THE COURT: Didn't they comply with the rule
3 asking the questions posed by the Solicitor?

4 MR. GROSE: Judge, he was obviously confused
5 by some things. At one point they asked him,
6 "After the shooting who did you go look for?"
7 "Frank Tut." "Who did you give the gun to?"
8 "Frank Tut." "When did you see Frank Tut?"

9 THE COURT: He read that, he answered the
10 question.

11 MR. GROSE: Right, but the whole point is, he
12 was confused in the manner in which the questions
13 was presented to him. This Rule 613 requires that
14 they be clear about it, and they weren't clear
15 about it, they didn't do what the rule requires for
16 them to do and, you know, I don't think that it has
17 to be said that the question was asked at a prior
18 trial.

19 The question was asked in this courtroom on
20 whichever date it was in March of 2000 that the
21 transcript will reflect, and the person who asked
22 the question was Solicitor Jones. That doesn't in
23 and of itself say that there was a prior trial. I
24 came armed with multiple copies of the transcripts,
25 I didn't have to use them, but my customary

1 procedure would have been to ask the witnesses, was
2 there something that I wanted to question them
3 about, would be to ask them did they recall being
4 here and testifying before, given sworn testimony,
5 if necessary show them the date and go through all
6 that and let them look at it so they could see and
7 read the question.

8 I mean, what he essentially did was come in
9 and give a long narrative, you know, of questions
10 and answers. I mean, it was a confusing
11 presentation, it didn't comply with the rule.

12 If we're going to go into it we've got
13 another problem now, because he wants to get up and
14 read it. That's not what Rule 613 provides. It
15 provides for him calling witnesses and presenting
16 evidence. He wants to circumvent that, and we get
17 into the State versus Sierra, 337 South Carolina
18 368, 523 Southeast 2nd 187, Court of Appeals 1999
19 problem, which --

20 THE COURT: We're reading the same stuff.

21 MR. GROSE: I know. Incidentally, Sierra is
22 cited in McCleod about laying the foundation, and
23 Sierra deals with the Solicitor making himself a
24 witness. What Mr. Anthony wants to do is get in
25 here and be a witness, "Say I wasn't here, I didn't

1 say this with you here. I'm going to read the
2 transcript and this is what he said."

3 If he wants to proceed, this is not the way I
4 was taught by very good lawyers about how to use
5 transcripts. What Mr. Anthony is doing, he chose
6 to go down a certain road, he's an experienced
7 trial lawyer, he comes here with a lot of
8 experience from York County and Spartanburg County.
9 He chose to go down a route that was deficient
10 under the rule and now he can't get up and be a
11 witness about it. If he wants to present intrinsic
12 evidence he needs to call a witness and put them on
13 that witness stand and I can cross-examine them if
14 I choose.

15 THE COURT: The only thing he can do would be
16 to call a witness to read that portion of the
17 transcript which he has already read.

18 MR. GROSE: He can't be a witness himself
19 because when the Solicitor becomes a witness it
20 adds the weight of that office. You and I tried a
21 case in this courtroom with the Solicitor from the
22 Fifth Judicial Circuit a few years ago, Knox
23 McMahon, because Solicitor Jones was recused
24 because he had made himself a witness in the case
25 and we called him in two pretrial hearings and in

1 front of the jury and he nor nobody from his office
2 could try that case because when the Solicitor
3 becomes the witness it adds the weight of the
4 office, they are not just an advocate, it makes
5 something more believable because they are using
6 the weight of the office behind it. He can't do
7 that, he can't just get up and read the transcript.
8 I mean, there was a proper way to have done it and
9 he didn't do it.

10 THE COURT: What would you suggest would be
11 the proper way to do it?

12 MR. GROSE: If I had had to do it I was going
13 to, I've got my work copy of the transcript and
14 I've got, you know, copies that I could have handed
15 the witness and said, like I did with statements,
16 "Here, this is your statement, do you remember
17 making it? That's your signature, the date on
18 it." "Yes, I made that statement."

19 I know the rule, part A, doesn't require that
20 but certainly by doing that, by showing them the
21 statement it certainly makes it a lot easier for
22 them to identify the statement, and that was the
23 way I was taught to do it and that's the way I
24 usually do it unless it's not written down some
25 way. If it's just in some officer's notes, then

1 you've got to, "Do you remember talking to officer
2 so and so, you were at such and such a place at
3 such and such a time?" You have to do it
4 differently then. But when it's written down,
5 signed or a transcript of a recorded statement or
6 testimony, it certainly makes it go a lot easier,
7 and I think what part B in McCleod is saying is
8 you've got to, you've got to make it clear with all
9 the details if you're going to do it.

10 THE COURT: Well, assume that it was made
11 clear because Mr. Anthony read the very words of
12 the questions and the very words that your client
13 answered, some of which he didn't recall and some
14 of which he denied.

15 MR. GROSE: Uh-huh (Affirmative).

16 THE COURT: Now, would you concur that that
17 would be proper argument to a jury, that he said
18 something different at another time than he said
19 today?

20 MR. GROSE: I'm sorry, I'm not sure I
21 understood the question.

22 THE COURT: Would it be proper argument to
23 that jury that he said something different at
24 another time than he said today, understanding your
25 disagreement that the Solicitor can't ask him, "Who

1 asked you those questions?"

2 MR. GROSE: Are you saying that, let me make
3 sure I understand that, that if we end this trial
4 right now without him doing this, that he can argue
5 that he asked him about these different statements
6 and he denied them?

7 THE COURT: Yes.

8 MR. GROSE: I beg the Court's indulgence for
9 just a moment.

10 If that's the solution, I will agree to that
11 solution, if Mr. Anthony wants to argue, because it
12 was clear he was reading from a transcript, if he
13 wants to argue --

14 THE COURT: Now, it was clear to you but,
15 now, nothing is obvious and it wasn't necessarily
16 clear to these jurors.

17 MR. GROSE: Your Honor, he said, "I'm reading
18 from the transcript," he said what page and what
19 line each time he did it, I think.

20 THE COURT: A transcript of something.

21 MR. GROSE: Presumably. What he was talking
22 about he wasn't clear on.

23 THE COURT: Your client's answer, he said he
24 never had said that on this stand, meaning,
25 directing his answer to a time and place being when

1 he was sitting in that witness stand at a prior
2 time, which is the only prior time he was there was
3 his trial, and the Solicitor in this case, Mr.
4 Anthony, couldn't ask him who was asking him the
5 questions because that would have prejudiced your
6 client.

7 MR. GROSE: I actually think that he could.
8 I think if we go back to the pretrial motions when
9 I was telling you about the Court of Appeals
10 decision in this case I made a distinction. What I
11 was talking about was I didn't want them going into
12 the statement that was not made after the Miranda
13 rights were given and I said the prior testimony in
14 this trial is a different matter, that I was
15 specifically talking about that other.

16 I think he could, I think he could have asked
17 the question in such a way that it wouldn't have
18 been prejudicial, and I think, and I realize
19 nothing is obvious, but I think when he says, "I'm
20 reading beginning at this page in the transcript,
21 and I'm reading that to you," that the jury, I
22 mean, again I don't want to under estimate the
23 intelligence of the jury, I think because they were
24 told that's what he was doing, they got that. If
25 he wants to argue that, I have no problem with him

1 arguing that.

2 THE COURT: How does that set with you, Mr.
3 Anthony?

4 MR. ANTHONY: If Mr. Grose is saying that
5 there would be no objection to my arguing that the
6 testimony that I impeached him with, that he
7 actually said those things, that I impeached him
8 with, at a prior proceeding --

9 THE COURT: Mr. Grose is not saying that.
10 Mr. Grose is just saying you can argue that his
11 answer at a prior time, according to your record
12 and your question, is inconsistent with what his
13 answer was today, either, "I don't remember or I
14 didn't say it."

15 MR. ANTHONY: Yes, that's what I was trying
16 to get across. If Mr. Grose is saying there would
17 be no objection to that argument on my part, if
18 there is no objection to me getting in front of the
19 jury and arguing that at a prior proceeding he gave
20 this answer, today he gave an inconsistent answer,
21 and that will not be something he will require me
22 to prove up independently of the cross examination
23 I did, then I think at that point my need to
24 present that to the jury independently is not there
25 anymore.

1 THE COURT: It is believed, it's believed
2 that is the agreed solution unless there are
3 amendments.

4 MR. GROSE: It is, Your Honor, as long as he
5 dose it accurately with what happened, as long as
6 it's not objectionable for some other reason.

7 THE COURT: Well, we can't bring in any
8 circumstances that the Solicitor was asking him
9 those questions at some prior time, in your
10 argument, be certain not to say that he was asked
11 by the Solicitor these questions and he gave these
12 answers.

13 MR. ANTHONY: No, sir, I'm not going to do
14 that. I was very careful not to do that this
15 afternoon.

16 THE COURT: The Court understands that
17 because of the rule, and the Court certainly
18 understands Mr. Grose's position, that the person
19 who was asking the questions was not identified but
20 yes, Mr. Grose, a rule is a rule but in this case
21 the rule if complied with precisely is terrifically
22 prejudicial to your client, and to that extent the
23 Court is not going to require the Solicitor to say,
24 "Wasn't Solicitor Jones asking you the questions?"
25 He's already said that on this stand, on this

1 stand, and he can only be questioned by a Solicitor
2 or an officer of the State.

3 MR. GROSE: Well, I just tell you, Judge, I
4 don't want to drag this on, I probably would have
5 asked some of their witnesses, had it come to be
6 needed, and it wasn't, "Didn't Solicitor Jones or
7 Solicitor Coulter ask you this question and this
8 was your answer to them," because I had indexed my
9 crosses in there, you know, if I had asked a
10 question, I probably would have done that. I
11 probably have done that in retrials, I have had
12 several retrials. I think it can be done in a way
13 without calling attention to the retrial. I agree
14 with you on that point but, anyway, I think we've
15 got an agreement, I don't think we need to discuss
16 it any further.

17 THE COURT: Do we have an agreement that's
18 not going to cause appellate problems?

19 MR. GROSE: Yes, because if I'm not here
20 objecting to anything, and I said I'm not going to,
21 and I said I'm going to do this, it's not subject
22 to appeal.

23 THE COURT: Are you in agreement?

24 MR. ANTHONY: Yes, if he's not going to
25 object to anything I'm not going to ask for the

1 proffer.

2 MR. GROSE: In fact I'm going to have the
3 first argument, I'm probably going to get up and
4 address this in my argument tomorrow morning.

5 THE COURT: As you will.

6 MR. GROSE: Thank you.

7 THE COURT: You will cover all the law and
8 the facts.

9 MR. GROSE: Yes, right, I intend to open in
10 full and then, unless they insist on opening on the
11 law, I mean, they get the final argument, I think
12 it will go easier if I just get up and make my
13 argument and they get up and make their argument.
14 I have gone back and forth which way is better, and
15 right now I feel this is the better way.

16 THE COURT: In criminal cases the Court
17 concurs. In civil cases there certainly may be a
18 difference. He will open in full and you will
19 close.

20 MR. ANTHONY: I'm not going to insist on
21 opening on the law.

22 THE COURT: He will close in full, I
23 misspoke, then you will close.

24 MR. ANTHONY: Yes, sir.

25 THE COURT: Close the record at this time.

1 MR. ANTHONY: Your Honor, do we need to
2 excuse the jury?

3 THE COURT: Yes, I'm going to do that, I'm
4 sorry, get them out, Mr. Busby.

5 MR. GROSE: Judge, we have a proffer that
6 we've got to do, too, but we can do that after
7 they're gone.

8 (The jury returned to the courtroom).

9 THE COURT: Mr. Foreman, ladies and gentlemen
10 of the jury, we have been intensely busy since you
11 have been gone. We have been discussing a number
12 of different subjects but we are now ready to give
13 you the case in its finality, but we will do that
14 in the morning. We did not know until just moments
15 ago whether any additional testimony would be
16 necessary but we have now concluded that no
17 additional testimony will be necessary. The State
18 has rested its case, the defense has rested its
19 case, and all of the evidence is in, so we are at
20 the stage where the attorneys will come before you
21 in final summation and the Court will charge you
22 with the law and then you will have the case for
23 your deliberations. We'll do that in the morning.
24 Do not discuss the case by, between and among
25 yourselves nor with any other person, do not allow

1 anyone to discuss the case with you. If anyone
2 attempts to in an innocent fashion please tell that
3 person immediately that you are a juror and you may
4 not discuss the case with them. The Court again is
5 not unaware of the natural curiosity that human
6 beings have, everybody is curious, and you will
7 have questions asked of you in all probability by
8 persons in whom you have the greatest faith and
9 confide, that's just natural they are going to ask
10 you, your very close family members and friends,
11 but you must tell them that you are under an oath
12 not to discuss this case, even the subject of the
13 case, what it's about, you can't reveal anything.

14 Now, for your information, Mr. Foreman,
15 ladies and gentlemen, after the case is over you
16 can stand out on the public square and stop
17 everybody you can and shout about this case. You
18 can write letters to anybody you want to, you can
19 do anything you please to talk about this case
20 after the verdict has been rendered.

21 On the other hand, if anyone bothers you or
22 pesters you and you prefer not to talk about it you
23 call the sheriff. The sheriff will call this judge
24 and that will be stopped immediately. So, after
25 the case is over it's your right to discuss it or

1 not discuss it but before the case is over it's
2 your obligation and your duty and responsibility to
3 not discuss it and allow no one to say anything to
4 you about it and not even let anybody know what the
5 subject is so as not to allow them to suggest
6 something or say something to you that is
7 completely out of order that may even seem innocent
8 at the time but when deliberations start you
9 remember that remark some way and that is something
10 you heard outside the courtroom and it would upset
11 your even balance toward the case. So, for
12 those reasons please do not discuss the case with
13 anyone, not even between and among yourselves nor
14 allow anyone to discuss it with you.

15 And again, of course, if there were to be any
16 media coverage such as newspaper, television or
17 radio, as soon as you know what you are reading or
18 hearing or seeing had to do with this case ignore
19 it, disabuse your mind of it because it's not
20 evidence and you can't consider it as evidence.
21 The only evidence is what has been revealed here in
22 front of you during the course of the trial.

23 Have a pleasant evening and be back in the
24 courtroom at 9:30, back in the jury room at 9:30.
25 Thank you all very much. Everyone else remain

1 seated.

2 (The jury was excused from the courtroom).

3 THE COURT: Mr. Grose, you had a proffer?

4 MR. GROSE: If you want us to mention these,
5 because I want to get my computer back for them to
6 finish scanning some things. Do you want us to
7 deal with the charges real quickly?

8 THE COURT: Yes, sir. Do you want to go down
9 momentarily?

10 MR. GROSE: Yes, let's do that.

11 THE COURT: We'll be at ease just a few
12 minutes, please.

13 (Off the record discussion between
14 counsel and the Court).

15 MR. GROSE: Are you ready?

16 THE COURT: Do you want the record open?

17 MR. GROSE: Yes, sir.

18 THE COURT: The record is open. This is
19 State of South Carolina versus Robert Orlando Hill,
20 indictment 99-494.

21 MR. GROSE: All right. Your Honor, the first
22 proffer I would make would be with regard to
23 Shannon Hill. I think we got some of that in the
24 record but not all of it. I would put in pages 113
25 and 114 of the prior transcript, beginning at line

1 10 and going through, that's line 10 on page 113
2 and going through line 9 on page 114. I mark that
3 just for identification as the next defense
4 exhibit.

5 THE COURT: What do you have to say about
6 that, Mr. Anthony?

7 MR. ANTHONY: Well --

8 THE COURT: Is that impeachment type
9 information?

10 MR. GROSE: No, this is the proffer from what
11 I wasn't able to ask her that was hearsay. There
12 is also a case, State versus Day, which I think is
13 on point, that goes with this.

14 THE COURT: All right.

15 MR. ANTHONY: What he's moving to admit is
16 testimony from the first trial where she talked
17 about what the Court excluded in this trial?

18 THE COURT: About what she had heard.

19 MR. ANTHONY: Yes, sir, on hearsay grounds,
20 yes, sir.

21 MR. GROSE: I'm not trying to put it in front
22 of the jury. All I want to do is put this Exhibit
23 Number 22 sticker on it and put it in the record as
24 a proffer of what we would have asked her about,
25 the same substance.

1 THE COURT: All right. It will be for
2 identification only.

3 (Defendant's Exhibit Number 22 was
4 marked for Identification).

5 THE COURT: The Court will make this remark,
6 that unless that part of the transcript says what
7 she heard was also known by the defendant, then the
8 Court stands by its ruling, but if that says what
9 she has heard either was general knowledge of the
10 community or was known to the defendant we will
11 revisit it.

12 MR. GROSE: What she says was, the question,
13 this is at line 22 on page 113, "You heard when
14 Artie was chasing after your brother that DeeDee's
15 car got dented with the bat, haven't you?

16 ANSWER: Yes, I have heard that, yes, I have.

17 QUESTION: So, you heard that Artie carries
18 bats around, haven't you?

19 ANSWER: No, I haven't heard that Artie
20 carries bats around, no, I haven't.

21 QUESTION: Just that one occasion, that's all
22 you know about?

23 ANSWER: Yes."

24 I think DeeDee is the same person that Mr.
25 Hill identified as DeeDee and as Dedrick Norman and

1 this is the same incident that he was present at
2 and testified about.

3 THE COURT: The Court stands by its ruling,
4 it's not admissible. It's been marked.

5 MR. GROSE: Thank you, Your Honor.
6 I would return Lanny Hill to the stand just for
7 purposes of a proffer.
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ROBERT ORLANDO HILL - DIRECT

1 ROBERT ORLANDO HILL,
2 after being first duly sworn testified as follows:
3 THE COURT: Thank you. You may examine, Mr.
4 Grose.

5 DIRECT EXAMINATION
6 QUESTIONS BY MR. GROSE:

7 Q When you were testifying in front of the jury
8 I asked you about having received threats through
9 other people, right?

10 A Yes, sir.

11 Q And you were getting ready to talk about
12 something that Sammy had said to you?

13 A Yes, sir.

14 Q All right. What was it that Sammy had said
15 to you?

16 A ~~Sammy had sent words from Glenissa Gates,~~
17 ~~After a girl he had at the time, and when I had seen~~
18 ~~me, me and him was going one on one, when he see me~~
19 ~~he was going to handle the business.~~

20 Q Who did you understand was going to handle
21 the business?

22 A Sammy at the time, that is what he said.

23 Q About who?

24 A About me, sent the word, tell me that.

25 Q Who sent the word?

ROBERT ORLANDO HILL - DIRECT

1 A Sammy.

2 Q All right. Was Artie connected with that?

3 A Yes, sir.

4 Q How was Artie connected with that?

5 A Well, Artie and Sammy, they like best
6 friends.

7 Q Okay. And who were you worried about
8 handling the business with you?

9 A Well, Artie, because both of them came with
10 baseball bats.

11 Q They both came with a baseball bat when?

12 A When we was over at the girlfriend,
13 girlfriend house, Glenrissa Gates.

14 Q There was a time when Artie had told you
15 that, that you testified about before, Artie had
16 told you that, you know, he and Sammy could take
17 all of you?

18 A Yes, sir.

19 Q Okay. There was also excluded about Artie
20 having the charge for criminal sexual conduct?

21 A Yes, sir.

22 Q Did you know about that charge?

23 A Yes, sir.

24 Q And do you know who the alleged victim of
25 that charge was?

ROBERT ORLANDO HILL - DIRECT

1 A Yes, sir.

2 Q Who was that?

3 A My cousin.

4 Q Who?

5 A Tot, my cousin, all we call her in the
6 family.

7 Q And did this charge, him getting this charge
8 in any way coincide with some of the changes in how
9 Artie acted toward you?

10 A Yes, sir.

11 Q How so?

12 A Well, it was the point O'Neal Bryant came and
13 told us about the scene that supposed to happen at
14 the swimming pool between him and my cousin, but I
15 ain't had nothing to do with that, at the time in
16 point, but when we come to his house, Glenrissa
17 Gate's house, that's when he said at the point in
18 time he going to handle his business and sent word,
19 they sent word through Glenrissa Gates that when
20 they see me they going to do what they have to do,
21 and at that time I had a cast, what you call it, on
22 my knee, I never got out of the car, I never said
23 nothing, never did no harm to them, I avoided going
24 over there, coming to Bucknelly and everything, I
25 avoided everything and he know on a daily basis, as

ROBERT ORLANDO HILL - DIRECT

1 far as Eastgate Apartments, that's the only little
2 place I have to go, he know that on a daily basis
3 that is where I come at every day, every day, and
4 so I tried everything in my power and my will, even
5 went to the police station and tried to reason, me
6 and some more friends, to try to get a warrant that
7 this man right here has threatened our lives with
8 baseball bats, whatever, he walking the streets
9 with baseball bats. They never said nothing, they
10 never did nothing about it and I didn't know what
11 else to do.

12 Q And are all these things, things that you
13 were taking into account when you decided to defend
14 yourself?

15 A Yes, sir.

16 MR. GROSE: That's all I have, Your Honor. I
17 would like to look at the official court file for
18 just a moment in this case, I think I want to just
19 call the Court's attention to something else.

20 THE COURT: Well, cross-examination?
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ROBERT ORLANDO HILL - CROSS

1 CROSS EXAMINATION

2 QUESTIONS BY MR. ANTHONY:

3 Q This incident that occurred with your
4 cousin Tot --

5 A Yes, sir.

6 Q -- that occurred in June, 1999, is that
7 right?

8 A I don't know when it occurred but I know it
9 happened in the summertime.

10 Q And when did you find out about it?

11 A I found out about it by O'Neal Bryant.

12 Q When did you find out about it?

13 A I can't tell you the exact time.

14 Q Was it sometime before the shooting occurred?

15 A No. This right here, this right here was
16 taking place before all this even happened.

17 Q Okay. You mean the, you mean the things with
18 your cousin took place before all this happened?

19 A I'm saying this is all the same thing
20 included, yes, sir.

21 Q All right. Now, the thing about Artie and
22 your cousin, he put his finger in her vagina at the
23 swimming pool, is that right?

24 A That's what I heard.

25 Q That's what you heard Artie had done?

ROBERT ORLANDO HILL - CROSS

1 A Yes, sir.

2 Q Okay.

3 MR. ANTHONY: All right, that's all.

4 MR. GROSE: Your Honor, the only other thing
5 I would note, it just happens to be in the file,
6 there is already a certified copy, Court's Exhibit
7 Number 3, dated 3/22/00, it's a two page document
8 indicting Terrence Artell Hill for criminal sexual
9 conduct with a minor and committing or attempting a
10 lewd act on a minor child under sixteen years of
11 age, and I will note the CSC charge is defined as a
12 violent crime under South Carolina law. That
13 indictment is already part of the record.

14 I don't have any other questions.

15 THE COURT: Anything further?

16 MR. ANTHONY: No.

17 (Witness excused).

18 THE COURT: All right. Any reason the record
19 should not be closed?

20 MR. GROSE: No, other than you're still
21 denying our motion to present this evidence? I
22 think we just have to have a final ruling after the
23 proffer, like we did on Miss Hill's a moment ago.

24 THE COURT: The Court denies both Miss Hill's
25 testimony before the jury and the defendant's

1 testimony before the jury.

2 MR. GROSE: Thank you, Your Honor.

3 That's all I have, then, we can close the record.

4 THE COURT: All right. Unless you want to be
5 heard on it. Do you want to be heard?

6 MR. ANTHONY: No, sir.

7 THE COURT: Thank you. ~~The Court will remark~~
8 ~~that the reasons for the denial have already been~~
9 ~~stated previously on the record, the reader can~~
10 ~~review the record and find the reasons the Court~~
11 ~~denied them on the basis of relevance, and~~
12 ~~irrelevant, it's not material to this.~~

13 Anything further?

14 MR. GROSE: No, sir.

15 MR. ANTHONY: No, sir.

16 THE COURT: The record is closed. We are in
17 recess until tomorrow at 9:30.

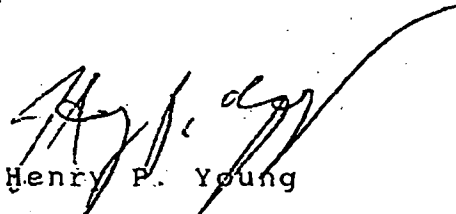
18 (Recessed at 5:15 p.m.).
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Abbeville County, South Carolina, on the 13th day of July, 2005.

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

January 19, 2006


Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
1999-GS-01-494

COUNTY OF ABBEVILLE

STATE OF SOUTH CAROLINA,)

-vs-)

ROBERT ORLANDO HILL,)

Defendant.)

B E F O R E:

HONORABLE WYATT T. SAUNDERS

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

JONATHAN C. ANTHONY, Esquire
Attorney for the State

E. CHARLES GROSE, Esquire
W. ALEXANDER BUERGEY, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

VOLUME IV OF IV
July 14, 2005

1 (Reconvened at 10:14 a.m.).

2 THE COURT: The record is open, State of
3 South Carolina versus Robert Orlando Hill,
4 indictment 99-494.

5 Is there anything from the State before the
6 jurors come out for closing arguments?

7 MR. ANTHONY: No, sir.

8 THE COURT: From the defense?

9 MR. GROSE: Just as a procedural matter, I
10 realized this morning that I did not renew the
11 directed verdict motion, so I would renew it based
12 on the same grounds asserted at the end of the
13 State's case, an insufficiency of the evidence,
14 there is no way a reasonable jury could convict
15 beyond a reasonable doubt.

16 THE COURT: Thank you, Mr. Grose. The motion
17 is denied.

18 MR. GROSE: That's all I have.

19 THE COURT: Show the jury in, please.

20 (The jury returned to the courtroom).

21 THE COURT: All the jurors are present, with
22 the foreman and the alternates properly seated.

23 Mr. Grose, the jurors are with you for final
24 summation.

25 MR. GROSE: Thank you, Your Honor. May it

1 please the Court.

2 THE COURT: Mr. Grose.

3 MR. GROSE: The time is approaching when it's
4 going to be your opportunity and your
5 responsibility to make a decision in this case.
6 When Mr. Anthony and I both started a couple
7 mornings ago we both talked about that with great
8 power comes great responsibility, and I indicated
9 to you that you all, the jurors in this case, are
10 the most powerful people in this room because you
11 are the ones that decide the facts of the case and
12 decide whether or not the government has met their
13 burden of proving their case beyond a reasonable
14 doubt. With that comes a great responsibility,
15 comes a responsibility to follow the law, both the
16 procedural law, the general law that applies in
17 every case, and the specific law that the judge is
18 going to tell you about in the charge on this case.

19 The first place to start, I think, is where
20 we began on the other morning. Mr. Anthony told
21 you their case was going to be that Artell Hill was
22 sitting in the car, that he never stood up, never
23 got out. I have on the screen never opened the
24 door. I told you that is their theory of the case,
25 that's their story, their account of events, what

1 they have to try to prove to show you that it
2 happened a certain way in order, in order to prove
3 murder beyond a reasonable doubt.

4 I also indicated to you there was probably
5 going to be more than one charge submitted to the
6 jury. There is two counts in the indictment. The
7 verdict form is going to have a little bit more
8 explanation on it. It's going to say as to Count
9 One we the jury find the defendant Robert Orlando
10 Hill, and you are going to have three choices,
11 guilty of murder, guilty of voluntary manslaughter,
12 or not guilty. Murder is the intentional or the
13 felonious killing of another person with malice
14 aforethought. Manslaughter, voluntary manslaughter
15 is without malice but during the heat of passion
16 and upon sufficient legal provocation.

17 We go back. You will recall I told you we
18 were going to talk about provocation, self defense
19 and reasonable doubt. The not guilty verdict, the
20 judge is going to tell you about the law of self
21 defense, and I'm going to come back and talk with
22 you about that a little bit more in a minute, but
23 self defense involves provocation, when somebody is
24 provoked, feels under the circumstances and based
25 on what they know that they are in danger and they

1 have to act in order to protect themselves to keep
2 from being killed or hurt, themselves.

3 Count two, possession, it's going to be
4 reading as to Count Two, possession of firearm
5 during commission of a violent crime. We the jury
6 find the defendant Robert Orlando Hill guilty or
7 not guilty. Of course we're asking, I want to be
8 clear about this, we're asking for not guilty
9 verdicts on both counts.

10 The presumption of innocence. There is going
11 to be two parts to the charge. This is not really
12 a legal distinction or anything of that nature,
13 this is more just kind of a way of thinking about
14 it. There is going to be a part where the judge
15 tells you about the procedures, the process that
16 you have to follow, and there is going to be a part
17 that tells you about the substantive law in the
18 case. He's going to tell you that a person charged
19 with committing a crime is never required to prove
20 himself innocent of that crime but the burden
21 remains on the government throughout the case to
22 prove the guilt of the defendant beyond a
23 reasonable doubt.

24 It is a vital, important and fundamental rule
25 of law that a defendant in a criminal trial, no

1 matter how serious, and it don't get more serious
2 than this, must always be presumed innocent until
3 his guilt has been proved to your satisfaction
4 beyond a reasonable doubt. This is where the
5 rubber meets the highway, so to speak. We talk in
6 our schools to our children about the Constitution
7 and the rights that they have, we talk about it in
8 civic meetings, we talk about it in public
9 gatherings. In the courtrooms of America, South
10 Carolina, and right here in Abbeville County is
11 where the rubber meets the highway, because this
12 vital, important and fundamental rule of law
13 doesn't mean anything unless you the jurors carry
14 out the responsibility to apply the presumption of
15 innocence, the responsibility that goes with the
16 great power that you have.

17 Reasonable doubt. The judge is going to tell
18 you that he's not going to attempt to define what
19 is meant by the phrase beyond a reasonable doubt.
20 That's up to you. A reasonable doubt is simply a
21 doubt that you find to be reasonable. Reasonable
22 doubt can arise from the evidence presented or from
23 the lack of evidence presented. We're going to
24 talk about that more as we go through some of the
25 photographs, some of the evidence, some of the

1 testimony that happened in this case, the lack of
2 evidence presented, also going to go into some of
3 the things that were failed to be accomplished in
4 the investigation, they can't talk about it because
5 they didn't do it and they didn't examine things
6 close enough because they didn't do it, and you
7 have to resolve these reasonable doubts in favor of
8 the defendant. In fact, if the State has presented
9 evidence to you that has removed all reasonable
10 doubt from your mind it would be your duty to find
11 Lanny guilty. If you're left with a reasonable
12 doubt in your mind as to the defendant's guilt,
13 then you should find him not guilty. If you have a
14 reasonable doubt, then you should resolve that
15 doubt in favor of the defendant.

16 If there was something that could have been
17 done, could have been examined more closely, that
18 could have definitively answered a question and
19 they didn't do it, resolve that doubt in favor of
20 the defendant. It's not my job to answer questions
21 in this case. It's the government's job with their
22 experts because they have the burden of proof, just
23 like the presumption of innocence, when you are
24 talking about the burden of proof, that's where the
25 rubber meets the highway. Reasonable doubt doesn't

1 mean anything unless you exercise that
2 responsibly.

3 The judge had indicated when you all were
4 sitting out here in a group on Monday afternoon, I
5 guess it was, before you had been selected on this
6 jury, that in this country we have this great
7 right, the jury right and it's under attack because
8 it takes time, and we have taken time this week and
9 there has been some delays and sometimes we
10 apologize for the delays in the process, but we
11 never apologize for the process because the jury
12 system is a vital fundamental right and without it
13 we're not as safe. The judge had mentioned that,
14 you know, it could be you or a family member or
15 loved one that could be charged with a crime one
16 day and all that is asked is fairness.

17 He also talked about, when that storm was
18 coming up right before we got dismissed on Monday,
19 that there is only two things that people can be
20 compelled to do in this country, serve during a
21 time of war, and thank God we don't have the draft
22 right now, and, two, jury service, because every
23 single time in this country, this state and indeed
24 here in Abbeville County that we present a case the
25 jury system is tested. That responsibility is

1 tested, because without people like you following
2 this process these rights would not mean anything
3 for Lanny Hill or for somebody else. It's
4 important every single time.

5 Now, in our opening statement, and I
6 apologize if some of this is small, I had said that
7 the eyewitness testimony in this case is going to
8 leave something to be desired and that I asked your
9 patience, your patience until we get to the part
10 where we talk about the forensics, the pathologist,
11 that was Dr. Woodard. The reason that we have
12 these types of experts is to help determine what
13 happened. Sometimes what eyewitnesses say is not
14 always accurate. Also I went on to say that we
15 intend to go through their evidence, the
16 Government's evidence, their investigation, their
17 experts to show that the door had to have been
18 opened to the car, that there is evidence that
19 Artell Hill had gotten out of the car and that more
20 probably than not he had stood up.

21 We're going to come back and talk about that
22 and go through some of the photographs and
23 hopefully they will be a little easier to see up on
24 this screen than when we were trying to pass around
25 the small ones the other day. But before I do that

1 I want to talk about witness credibility.

2 Now, I don't know why some of these people
3 came in and said things that were absolutely
4 factually refuted, like the distance, putting it to
5 the temple, within a few inches. Objectively Dr.
6 Woodard said it couldn't have been that close.
7 They were all consistent on that and they were all
8 wrong. That's why I asked for your patience. It
9 may be because of their friendship with Artie, it
10 may be because when somebody dies you want to think
11 good things about it. We all go through that
12 process, somebody we know, maybe we had some not
13 real animosity but we weren't really close to them,
14 a lot of times we have fond feelings about them
15 when they pass away. Maybe it's because they
16 thought they saw something and filled in blanks in
17 their mind.

18 We ask you to filter things through your
19 common sense. I bet every single person in this
20 room has had an experience where they thought
21 something happened one way but it really happened
22 another way. Remember, this happened quickly, some
23 of the witnesses testified about being in
24 conversations, taking children inside or going
25 inside the house, being some distance away. I

1 don't know why it is that they were wrong but when
2 we go through this evidence. They were wrong about
3 some important things. And that goes back to what
4 I said, asking for your patience until we get to
5 the part where we talk about the forensics and the
6 pathologist.

7 You're the sole judges of the credibility of
8 the witnesses. You can use lots of things, their
9 demeanor on the witness stand, whether they were
10 forthright or hesitant, whether they were
11 contradicted. The eyewitnesses were contradicted
12 by the science, the objective science, some of it
13 was objective, some of it is theoretical, whether
14 they were supported or corroborated, and the
15 opportunity to observe and any other factor that
16 you think is important.

17 What you don't do is you don't decide the
18 credibility or believability by counting up the
19 number of witnesses that either side might have put
20 up or count the number of exhibits. If you count
21 the number of witnesses they win. If you count the
22 number of exhibits we win. But that's not how you
23 do it. You have to sort it through and see if they
24 met their burden of proof. You can believe a small
25 portion of a witness' testimony, disregard the

1 larger portion, or vice versa. You can believe
2 some or none of one or another witness. You may
3 believe some of a witness' testimony and disbelieve
4 the rest of it. You may believe all of a witness'
5 testimony and none of another witness' testimony.

6 What I submit to you is when we go through
7 this evidence you cannot believe all the testimony
8 of the eyewitnesses because of the factual
9 objective things that were disproved by the
10 forensics examination, and again I remind you it's
11 not my job to figure out why they are wrong, it's
12 just my job to show you they are wrong. The burden
13 of proof is on the State. We're not here to prove
14 neglect. It was their investigators, their crime
15 scene person, the doctor that has the contract with
16 Abbeville County who did the autopsy.

17 Self defense. The defendant without fault in
18 bringing on the difficulty. You heard Lanny tell
19 you that when he got there this all started when
20 Artie got out of the car and was pulling this stick
21 out with him.. Now, they are probably going to talk
22 about some contradictions in some of his testimony,
23 with some transcript they read back. Well, let me
24 point out several things to you. First, whether he
25 got that gun a week earlier or a month earlier or

1 sometime before that, I made them read the part
2 where he said that he got that gun for his
3 protection, that he got that gun for his
4 protection.

5 Lanny also talked to you about a prior
6 incident where he was with Dedrick Norman, or
7 DeeDee Norman, and they were in a car and Artie and
8 somebody else came out with a bat and the car got
9 dented and Lanny at the time had a leg immobilized
10 because he had dislocated his knee and Artie
11 threatened him with a bat and that they went down
12 to the Calhoun Falls Police Department to make a
13 report, to ask for warrants and they didn't get any
14 warrants. They didn't contradict him about that
15 portion of it.

16 You've got Chief Investigator Harvard here
17 and you've got the current Chief of Police of
18 Calhoun Falls here and they didn't contradict that
19 this prior incident happened, that Lanny went to
20 the police department, that they asked for warrants
21 and that they didn't get them. That is something
22 that he can take into account when he makes a
23 decision. They didn't contradict that.

24 I tell you something else. They didn't ask
25 him a single question, a single question about

1 Artell Hill getting out of the car with this stick,
2 not a single question, because they know that that
3 was consistent. And they also know, after this
4 trial and the way things came together, that this
5 case was never put together until right here this
6 week. Their crime scene expert from SLED had never
7 looked at the autopsy before, he didn't even know
8 the number of wounds. We're going to talk about
9 that in a minute. They never contradicted him
10 about the important things. He had the gun for
11 protection, he tried to get a warrant and couldn't,
12 and that Artie came out of that car after him with
13 a stick.

14 You must actually believe you are in imminent
15 danger of losing your life or sustaining injury.
16 He had an experience before with Artie and a stick.
17 He certainly was justified in having a belief, and
18 there was actually such danger. Nobody has said
19 this stick was not part of the case and we'll see
20 it in some photos again and we will talk about it
21 some more.

22 When it's based on the actual belief of
23 imminent danger, a reasonable prudent man of
24 ordinary firmness and courage would have
25 entertained the same belief.

1 If somebody comes after you with a stick and
2 you have had an experience with them before, that's
3 reason to have that same belief. If you're
4 actually in danger, an ordinary man of firmness and
5 courage would strike the blow or respond to keep
6 from being hurt.

7 We all have a right, it comes from natural
8 law, to defend ourselves and self preservation. We
9 do it every day when we eat, when we sleep and we
10 try to stay out of the elements. It's just on a
11 different level and a different context when you're
12 talking about self defense.

13 No other means of avoiding the danger, losing
14 your life and act the way you did in certain
15 circumstance. But there is no duty to retreat if
16 you're going to have the danger increased by doing
17 so.

18 Lanny had an experience where he had been
19 chased with a bat before. You've got to act in a
20 split second. Everybody said how this happened.
21 There is no telling what would have happened to him
22 if somebody had tried to hit him and knock him off
23 that bicycle, if Artie tried to hit him and knock
24 him off the bicycle and he wasn't able to get to
25 the gun that he had.

1 This is important, this goes back to what
2 we're talking about. The State has the burden of
3 disproving self defense beyond a reasonable doubt.
4 It may be charged to you something more like the
5 State has the burden of proving the absence of self
6 defense. But it's on them to prove that it's not
7 self defense, and that's what we're talking about
8 the rubber meets the highway, the presumption of
9 innocence, the burden of proof for not only proving
10 the case, but disproving the defense. If they
11 don't disprove self defense, then there is a
12 reasonable doubt in this case.

13 They may talk about the number of shots, I
14 don't know, but I'm certainly going to. When a
15 person is justified in firing the first shot he's
16 justified in continuing to shoot until it is
17 apparent that the danger to life and body has
18 ceased.

19 We're going to talk about the sequence of
20 wounds and remind you that Dr. Woodard said the
21 first two wounds were to the body, not the head and
22 weren't fatal, and weren't fatal. It is really a
23 four shot case in some respects because we know
24 that the one to the shoulder, the one to the arm,
25 one of those was the first and one of them was the

1 second. One that grazed the head that was non
2 fatal, one that penetrated the head that was fatal,
3 and that is where most of the blood letting took
4 place, and that was a fatal wound.

5 And even though there was an additional fatal
6 wound, that second fatal wound didn't matter, and
7 it all happened real fast. And when you're in that
8 situation and you are justified, you feel justified
9 in doing something, you don't have a lot of time to
10 think, a lot of time to react. You have the right
11 to act on appearances. You could be wrong but if
12 you believe somebody is armed with a weapon you've
13 got the right to take that into account. You also
14 have the right to take into account the prior
15 difficulties, prior incident of being chased or
16 being confronted with a bat.

17 All right, I want to switch gears and start
18 talking about the facts of the case. Mr. Harvard,
19 we wrote on the board he got there at, he was
20 dispatched at 7:18, he got there at 7:21 p.m. I
21 want to move this out of the way to give myself a
22 little bit more room. So, there was a gap of at
23 least a few minutes when he got there but not long.
24 He secured the scene, and we'll see pictures of the
25 yellow tape that was put up. He located four

1 shells.

2 I'm going to contend that there was an
3 assumption made at this point and based on
4 information that he was getting that carried
5 through the case at least through the crime scene,
6 the investigator from SLED, and when it was
7 beginning to be corrected at the autopsy there was
8 never anything done or not much follow-up done.
9 Mr. Harvard attended the autopsy, he received the
10 three projectiles and he learned that there were
11 six shots. So, four became six and there was only
12 three projectiles accounted for.

13 Through the additional investigation of going
14 back to the scene some other officers, he knows
15 what they did, he knows the fifth one was recovered
16 and the sixth one was recovered with the gun. Now,
17 let's stop right there. Let's not get hung up on
18 the gun being in the lake, because Lanny said he
19 gave the gun to Frank Tut. Lanny turned himself in
20 while the sun was still up. Somebody else threw
21 the gun in the lake. I don't know if they are
22 going to talk about that. That's Frank Tut's
23 conduct. Lanny's conduct was he had a family
24 member take him to Mr. Turman, Deputy Turman's
25 house and turned himself in before the sun went

1 down.

2 7:21 when they arrived, even though this is
3 in August, you know, you're getting late in the
4 night, there is not too many more hours of sun
5 left. And he had to go back and review his
6 records. You notice I gave him a chance to look at
7 them and review them and he confirmed that Lanny
8 had turned himself in, and of course we called
9 Deputy Turman to confirm that point.

10 Now, even though, and we're going to start
11 going through these photos, I apologize, I don't
12 know any other way to do this, I know some of them
13 are going to be a little bit graphic but I don't
14 know any other way to do this and talk about this.
15 That's why you all were asked about this and the
16 questions that the judge asked you, because you
17 have got to decide this on the logic, the existence
18 or non existence of the evidence and not the
19 emotion of seeing some of these. A lot of these
20 shots are going to be of the car and some of them
21 are going to be a little bit graphic but they are
22 here in evidence and I'm talking about them to
23 illustrate a purpose.

24 We know this photo was taken by, Defendant's
25 Exhibit, Defendant's Exhibit Number 1 was taken by

1 Mr. Crooks later that night but Mr. Harvard
2 testified that this was what he encountered and he
3 testified that he found, when he got there he found
4 the door shut, and this gets to where people might
5 think they had seen something that they didn't
6 really see. That is what he found when he got
7 there but of course he wasn't there before 7:18
8 when all this was taking place.

9 There is a picture of the back of the car.
10 Instead of being straight in front of the building,
11 it looks like it may be a little left of this
12 building, but that is just showing where it was in
13 the parking place, and I had him identify that
14 photo. And we'll talk about some of these more
15 than once.

16 There is the yellow tape that we're talking
17 about and there may have been some in other places,
18 that is just what you can see in this angle.

19 There is the sheet that he put over the car
20 to help preserve things out of respect, probably to
21 keep curious people back and just the decent thing
22 to do but not anything that affected the integrity
23 of the crime scene, because that is what they were
24 trying to do.

25 Down here is the four cups. Remember he

1 found four shells and they put those over there so
2 nobody would kick them, nobody would, they wouldn't
3 blow around in the wind, you know, they would be
4 protected, because he knew that he was going to
5 call SLED, whatever we call them, consulting
6 agency, somebody who is called in to assist, they
7 have people who analyze scenes like this, they have
8 laboratories, they have people, but a lot of them
9 don't live in Abbeville County and some of them are
10 far away, and so this, what we see in Defendant's
11 Exhibit Number 4 is done to keep things as best and
12 as accurate and as intact as possible until the
13 SLED agent gets there.

14 This is just from a different angle and you
15 can see a little bit about how, you know, where the
16 cups are, still see the tape, there is some over
17 there, just from a different angle.

18 Now, the next step is Mr. Crooks, the SLED
19 expert, the SLED agent, coming from Columbia to
20 Calhoun Falls. I think he said he got the call
21 sometime between 7:30 and 8:00, it took him about
22 two hours, a little bit longer, he put in his notes
23 he got there around 10:00 p.m. He received
24 information from Mr. Harvard and they were talking
25 about witnesses hearing four shots. Some of them

1 talked about hearing four, five or six shots in the
2 trial, but the information was what they had heard.
3 He was told that Artell Hill was sitting in the
4 vehicle and that four shells had been identified.

5 I go back to finding this led to some
6 assumptions in this case that led to some bad
7 investigation and them not getting together and
8 pulling all this information together in a way that
9 makes sense until we get it here this weak in this
10 courtroom.

11 He photographed the scene and he collected
12 some of the evidence. He said, you know, he
13 admitted there was a fifth casing found. Actually
14 he didn't know that until we brought it to his
15 attention in the courtroom, but he did that.

16 This is what he would have found. We have
17 already looked at this once. This is what he would
18 have found. He said this is his bag in the
19 picture. You can kind of imagine that he's
20 standing somewhere over here outside this picture
21 taking the picture and he talked about what he
22 wants to do is start and document it the way it is
23 when he arrives because as he starts examining
24 things and looking through things he's got to move
25 things, things are going to change, so you've got

1 to go from the general to the more specific, and
2 that's what he saw when he arrived and that's it
3 again from that other angle.

4 Now, he did a diagram, it's Number 19. It's
5 a little hard to read up there but up at the top,
6 up here, right up there he's got the vehicle front,
7 and what he did was, he documented more or less
8 where one, two, three, and four, he said those were
9 just numbers he assigned but what he did was to
10 designate them a number and make a graph so we
11 could track if we had to where everything was, and
12 that corresponds more or less with that
13 configuration that we see in Defendant's Number 5.

14 Now, you can't see this, this way you will
15 probably be able to see it clearer, he has writing
16 on this as to which casing that was, and that
17 matches the casing that is in this courtroom. Then
18 we got on a discussion of this right here.

19 Now, remember he said this is a difficult
20 environment because it's at night and you're
21 looking for small items. That shell casing is a
22 small item. You have it, can actually see the real
23 size of it. He said that sometimes when you are
24 working in this difficult environment at night and
25 you are looking for small things you can light up

1 your flash, your flash and everything will light up
2 and there may be things you didn't see because of
3 this being at night, and you can tell up here in
4 the top that's pretty well lit up, and we talked at
5 great length about that, and you are going to have,
6 you can't see the number completely, but this is
7 Defendant's Exhibit Number 14. You are going to
8 have this photograph with you in the jury room
9 because it's part of the evidence in this case.
10 You're going to have an opportunity to examine it
11 and look at it and filter it through your own
12 common sense and your life experiences. We know
13 that was a good bit outside the car. We know that
14 that was right out here. What it shows is the
15 shell casing number one and the cup which was
16 placed on the shell.

17 He cannot rule out that the red spot is
18 blood. That did not get there while Artie was
19 sitting inside the car. It's not something that
20 would splatter out. More probably than not, if it
21 was blood, it's outside the vehicle and it was a
22 drop that dropped straight down. Cannot rule out
23 the red spot as blood, would be Artie Hill's blood
24 because he was the only person that he had
25 information about being injured and the only person

1 that you all have any information about being
2 injured. That's important.

3 They have the burden of proof to prove beyond
4 a reasonable doubt, and it goes back to what we
5 talked about in opening, they told you that their
6 theory was Artell Hill sitting in that car, he
7 never stood up, the door never opened, he never got
8 out of the car. From their SLED agent we have
9 evidence that they cannot rule out, he said it
10 could have been transferred but that happens when
11 you walk through blood. There was no blood to be
12 walked through, nobody was walking through that
13 car. He said it could be a drop, dropped straight
14 down.

15 We're going to talk about some of these
16 wounds and that's where it's going to get graphic,
17 some of these wounds and how they bled differently,
18 how they bled differently and how it would be
19 consistent with the wound and the type of bleeding
20 that we see from those wounds, that there would be
21 a small amount of blood and not a large amount of
22 blood. We're dealing with reasonable doubt.

23 They had never considered that, and I asked
24 them, they can collect evidence, he told you that
25 he went to scenes, he photographed scenes, he

1 collected evidence, he examined fingerprints. He
2 told you that he sent the bucket and the gun to
3 another lab, he told you that there are labs that
4 process evidence and that they have tests that they
5 can do to determine if it's blood. He told you
6 that through procedures and having reviewed the
7 autopsy report, that they have a sample of Artie
8 Hill's blood that could be compared. They asked a
9 lot of questions about this doesn't matter in a
10 case like this. Well, I guarantee you it matters
11 to Lanny Hill and it matters to anybody else in
12 this county or this state who gets accused of a
13 crime and there not be a good investigation.

14 It may be that he didn't find this, just like
15 he didn't find that fifth shell, because it was a
16 poor investigation. That's not our fault. If you
17 do poorly on a test in school you don't get a good
18 grade. If you do poorly on the job site you don't
19 get a raise. If you do poorly in investigating a
20 crime you don't get a conviction because the burden
21 is on the government to prove their case beyond a
22 reasonable doubt, and they can't rule out that
23 that's blood. Their expert said they can't rule
24 that out. Don't let them make an argument, don't
25 let them make an argument that it could be

1 something else, because they're dealing with beyond
2 a reasonable doubt, and that right there is a
3 reasonable doubt to be resolved in Lanny's favor.
4 He couldn't rule it out.

5 Now, we looked at this when we talked about
6 what Mr. Harvard found. We're moving in a little
7 bit closer to the car. This is after Agent Crooks,
8 Defendant's Exhibit Number 1, after he had removed
9 the sheet from the car, and that shows the position
10 he was in after the last shots. It's important to
11 remember that that's where he came to rest after
12 the last shots.

13 When we talk about sequencing and
14 positioning, you've got to think about it. If I
15 stand here and I walk over to that table and sit
16 down I'm not in the same position as I was here.
17 Something that happened to me here may look
18 different when I'm sitting over there at the table.
19 That's a picture of the back of the car again.

20 Now, the shoulder wound. I'm going to talk
21 about these wounds more or less in sequence. I'm
22 going to put the shoulder wound first, I'm talking
23 about the left shoulder, then the right arm, then
24 we'll talk about what Dr. Woodard said was the
25 first two of the four shots to the head, and then

1 the last, and we'll talk about them at different
2 times when we go through this.

3 Now, the purpose of this picture, Defendant's
4 Exhibit Number 8, is because it's one of the
5 pictures that we have of the front of the car, and
6 you can tell how it's kind of lit up, and you can't
7 see everything but what is significant is that this
8 windshield is not broken, the glass is not broken.
9 You can't see the wound to the left shoulder in
10 Number 8 but you can in Number 7. Right here, I
11 think what you are looking at through the glass is
12 the wound to the head, one of the wounds to the
13 head. But when we talk about the shoulder wound
14 we're talking about this spot, I'm sorry, this is
15 wiggling some, but this spot right down here, that
16 would be on his shoulder someplace.

17 And you are going to have these. And the
18 Defendant's Number 9, if you look right there you
19 will see a tear in the shirt, a tear in his shirt
20 which, remember, Dr. Woodard talked about how you
21 examine the clothes and you look to see if that
22 matches up with any wounds. That tear in the shirt
23 is where the exit wound was.

24 Now, he did not know that there were six
25 wounds until he looked at the autopsy report.

1 Remember I started questioning him about the
2 shoulder wound in particular and asked him if he
3 received a copy of the autopsy report and he said
4 he didn't, he said he doesn't do it in every case.
5 I don't know why not, because you have to put these
6 things together.

7 So, he didn't even know, at first I think he
8 even testified that what he was dealing with here
9 he thought was just a blood drop or something. He
10 didn't know that was actually a bullet wound. And
11 that goes back to this assumption that was made
12 when Investigator Harvard was communicating the
13 information about four shots, four shells,
14 assumptions were made that stayed in the case at
15 least up until a certain point and never got
16 cleared up. It entered and exited. And we asked
17 him questions about those pictures. It was level,
18 it dropped only half an inch. They measured down
19 from the shoulder and said it was about three
20 inches down and the exit wound was about three and
21 a half inches down, and he did not recover this
22 projectile, entered and exited, projectile not
23 recovered. Could have occurred while Artell Hill
24 was standing up face to face with Lanny Hill,
25 squared up.

1 That's the same type of language that Dr.
2 Woodard was using when he was talking about that.
3 If you think about it, if this little pointer I
4 have been using is a gun and I'm standing face to
5 face with somebody and I'm pointing it at them, my
6 right arm is pointing at their left shoulder,
7 except we know he wasn't in this position because
8 the glass isn't broken. If we're standing squared
9 up that's where it's going to end up. Remember
10 they are almost the same height, only one inch
11 difference.

12 And there was very little blood flow, so
13 little blood flow that he didn't even identify it,
14 recognize it to be an injury, gunshot injury at the
15 time.

16 We're going to talk about Numbers 10, 11, 12
17 and 13, and this is where we're going to start
18 getting into the fact that the blood flowing from
19 the head was a lot more, heavy flowing blood,
20 flowing faster, more volume. But we're also going
21 to get into the blood on the door, and we talked
22 about the top and the vertical part of the blue
23 strip on the door, I'm going to point that out when
24 we get to it, consistent with the door being open.
25 He tried to explain why it might not have but I'm

1 going to show you something I don't think he took
2 into account, the door would close against the
3 vertical side.

4 Well, this is where it gets bad. You saw the
5 dot. This blood here, there is a hole there, this
6 blood here is from the wound to the right arm.
7 What's flowing down here, on his hand, down into
8 the lap, the blood from the head wound and that, we
9 know that this was at least the third or fourth
10 wound, that it happened after the shoulder wound
11 and after the arm wound, and he talks about the
12 blood flowing down.

13 I'm not going to argue that when this head
14 wound happened he wasn't back in the car. I am
15 going to argue his head at first was in a different
16 position and then it fell to that position but by
17 this point he was back in the car.

18 All right, a little bit further angle. You
19 can see, this is Number 11, you can see here and
20 you can begin seeing things down in this area. But
21 what we've got is a close-up here, and you are
22 going to have these photos and you can examine
23 them, and again I want you to filter this through
24 your common sense and see what this looks like.

25 But right down here, this right here is the

1 blue strip we're talking about. You've got the
2 part down here, the metal part with the ribbings,
3 it comes in this way, and then you've got the blue
4 strip which is going up where my left hand is. He
5 agreed that on the top of this blue strip and on
6 this vertical part, the part where it turns and
7 goes down, that there was blood there. He agrees
8 with that. He disputed that some of this was blood
9 down here because he tells you he thinks, and these
10 pictures, these objects are in different positions.

11 Well, he was surprised by this. He was
12 surprised by this. He said that nobody had ever
13 asked him to do a blood pattern analysis in this
14 case, that you do a blood pattern analysis to
15 confirm a fact. He was doing this for the first
16 time on the witness stand. He said Calhoun Falls
17 didn't ask him to do it, he said Dr. Woodard didn't
18 ask him to do it, he said the Solicitor's office
19 did not ask him to do it. I was the first one who
20 asked him to do it, in this courtroom, in front of
21 you.

22 Now, he said that he couldn't, you know --
23 let me go back one. See how this blood here is
24 draining after the arm drops back down, is draining
25 down the arm, you can see right here at some point

1 his shirt was in that position, making that mark
2 there, you can match that with that band, but it is
3 just sort of flowing down. This is not flowing
4 blood, this is blood droplets that got there
5 somehow.

6 Now, he said that he didn't know what kind of
7 gap there might be in the door. Well, it didn't
8 run down here and over there and then come back
9 over that to get there, it didn't do that. It
10 dropped there somehow, and if you look at this door
11 and you shut it, look at that big pocket right
12 there. Even if there is a gap between that and
13 where it comes flush with this, that would have
14 stopped it from dropping down there. You're not
15 going to see any blood there.

16 That door was open when that blood got on
17 that blue strip, and that's one of the things that
18 I told you that we were going to try to show, and
19 that's directly contrary, in opposition and
20 disproves what they said they were going to try to
21 show in their case. Don't let them get up here and
22 make arguments and explain and try to explain
23 things away, possible this, possible that.
24 Possibilities are not reasonable doubt, beyond a
25 reasonable doubt. They've got to prove it beyond a

1 reasonable doubt. The highest standard that we
2 have, the highest standard we have. Don't let them
3 minimize that standard, because with great power
4 that you have comes the great responsibility to
5 hold them to their burden of proof. That door was
6 open when that blood got there.

7 All right, we're going to look at Number 13
8 in just a second. This is a close-up of the right
9 shoulder. When he took the picture he didn't know
10 the path of the wound, Dr. Woodard would have to
11 explain that. That's important, because there were
12 things beyond his expertise that we had to get from
13 Dr. Woodard. That goes back to why I asked you all
14 to be patient, to get to the forensics and we could
15 get to Dr. Woodard and talk about some of this
16 stuff. And that's, we may have looked at this
17 already, that's the entrance wound through the
18 shirt, Defendant's Exhibit Number 13, close-up.
19 And again you can see how it runs down as opposed
20 to being just dropped blood.

21 All right, Dr. Woodard. We had him pretty
22 much for most of the morning or the first half of
23 the morning yesterday. He is the one who has the
24 contract with the Abbeville County Coroner to do
25 the autopsy reports, the forensic exam, of

1 basically trying to determine how injuries happen
2 to bodies and how death is caused.

3 Six gunshot wounds. This is where that fatal
4 mistake should have been corrected. The
5 information that SLED Agent Crooks had was that
6 there were four shots, and he finds six. Three
7 projectiles were recovered. Six gunshot wounds,
8 three projectiles, three are missing. The magic
9 projectiles, they are going to try to explain all
10 these which went out the window somehow. They
11 don't, the point is they don't got them. It may be
12 because they didn't do a good job finding them, but
13 you don't fill in the gaps that they left. That's
14 not your job, that's their job.

15 He talks about the distance of the wounds.
16 This is a place where he contradicts objectively,
17 scientifically and without question every one of
18 the eyewitnesses.

19 The position of the body at the time of the
20 wounds. Again, with the first two wounds to the
21 arm, the right arm and the left shoulder,
22 objectively, absolutely and completely contradicts
23 the eyewitnesses.

24 And the sequence of the wounds. That goes
25 with the position of the body and the sequence,

1 because he was able to put them in at least groups
2 of three, the first two, one may have happened
3 before the other, the second two, one may have
4 happened before the other, the last two, but we
5 know it was the first two, the second two, the
6 final two, to get to the six.

7 Eyewitnesses. The distance. We had two
8 ladies named Miss Clinkscapes. The first one a few
9 inches from Artie's head. Michelle Clinkscapes,
10 Lanny was standing right next to the car door,
11 point blank. We had some dispute. I hadn't looked
12 at his statement that he gave the police about
13 point blank. When everybody uses point blank
14 that's up close. He's the only one who tried to
15 make that sound a little bit farther, but his
16 statement to the police was point blank. Shannon
17 Hill put the gun to Artie's temple. And Ira Green,
18 within a few inches.

19 Dr. Woodard, distant shots. Remember he
20 talked about with guns, that there is the
21 projectiles that come out of the gun, not the
22 bullet, but these other matters that are expelled
23 out of the gun and that the bullet travels farther
24 and that with a gun this size, if it was within six
25 inches of somebody a gun this size would leave a

1 certain and distinct pattern and he did not observe
2 that pattern. A gun this size from six to twelve
3 inches would leave a distinctive pattern and he did
4 not observe that pattern. This is objective.

5 When we start talking about theories of how
6 something could happen, that's one thing, that may
7 be more subjective. This is subjective, I mean,
8 this is objective, this is conclusive. And you can
9 ask to have the testimony read back to you. If you
10 want to hear what Dr. Woodard said about that you
11 can ask to have that heard again. That absolutely,
12 positively, 100 percent contradicts the
13 eyewitnesses, every single one of them, and when we
14 were talking about you can believe one witness
15 against others or part of what some of them said,
16 because this is objective, more than a foot, more
17 than a foot, they are all wrong. He in fact went
18 farther and said it could not have been within a
19 few inches, the gun could not have been put to the
20 temple. These were objective findings, the
21 patterns are not there. That's why I told you to
22 be patient and wait for the forensic and wait until
23 we got to the pathologist.

24 Never moved in the car. The first Miss
25 Clinkscalses, sitting in the car, never moved.

1 Michelle Clinkscales, never moved once at all,
2 didn't see him turn his body. Jeffrey Tatum, never
3 moved, he never attempted to move or do nothing.
4 Shannon Hill, didn't move around in the car. Ira
5 Green, doing nothing, sitting in the seat.

6 That is not true. For the left shoulder
7 wound the body had to be turned square with the
8 shooter. So, he wasn't just sitting there the way
9 he is photographed in these pictures. For the
10 right arm wound, the arm would have had to have
11 been raised, not down by the side. And for the
12 first two head shots the head had to have been
13 turned towards the shooter.

14 We get back to the sequence, the left
15 shoulder and the arm, we're going to talk about
16 those and why those were the first two. The second
17 two shots, the grazing shot to the front of the
18 head and the shot that entered the brain, that was
19 fatal, may have happened before that one, he can't
20 tell, he can't put those in order. The final two,
21 the head is in a different position, the shot that
22 bounced off the back of the head and the shot to
23 the back of the head and into the brain. Remember
24 when we're talking about the front and back, all
25 these were from the side, it wasn't from the back.

1 The back means the back half of the head from the
2 side and the front, the front half.

3 Now let's talk about the left shoulder. They
4 do not have, I didn't know where to put the number
5 and not cover up anything, this is number 20, this
6 is a Polaroid that was taken 8/16/99. That must be
7 some number that goes with the case, 1940. 7:40 in
8 the evening, so the daylight was still out there at
9 this point. Again we've got, he says this is
10 something he looked at and relied on, we've got no
11 evidence of the windshield being cracked by
12 gunshots. He says that because of that, you can
13 barely make it out in there where that wound is
14 going to be on the shoulder, he says you could not
15 have been in front of the car like this shooting
16 it. It just makes sense, the laws of physics,
17 you've got to, you're going to break the glass.

18 Remember, this also shows where they did
19 nothing. I asked Mr. Crooks could you have stuck
20 that gun in the car and made that wound, reached
21 across? You have to get all the way around in that
22 angle and still have it a foot away. And then
23 where is the projectile? So, it didn't happen
24 shooting from the front this way, and since he's in
25 that position, we know after he came to rest he's

1 in that position after he came to rest, we know he
2 had to be in a different position.

3 Now, I showed him Defendant's Exhibit
4 Number 1. You've got to take into account that the
5 car represents an enclosed area and you've got to
6 take into account this car door, the window is open
7 but you have to take into account this car door.
8 There is no bullets in the car door, went through
9 the car door. You've got to take into account, you
10 know, we looked at the windshield, this support
11 that supports the window there, and so you've got
12 to try to start trying to figure out how does that
13 body get rotated to the position that it would be
14 in to receive that shot. Now, think about it. It
15 would be, it would be fairly difficult to be
16 sitting in the car and get fully rotated to that
17 position. In fact, if you did that your legs would
18 probably go back this way to give you support.
19 That's not how we're going to see that his legs
20 were. That makes sense with getting up, this wound
21 we're talking about would make sense with getting
22 up, being outside the car face to face with
23 somebody. And that's another picture that we have
24 already looked at, that picture of the wound.

25 Artell Hill is five foot ten. We got that

1 from Dr. Woodard in the autopsy. I brought Mr.
2 Harvard back, Lanny is five-eleven. This is
3 consistent with, this is what Dr. Woodard said,
4 this shoulder wound is consistent with Artell Hill
5 standing up, with Artell Hill being outside the
6 car, with Artell Hill squared up facing Lanny Hill,
7 gun in Lanny's right, I misspelled it, right hand,
8 would be pointed directly at the location of the
9 wound. Remember, we had Mr. Harvard sitting down
10 with the ruler and then I had him stand up, and it
11 puts you pretty much more or less in that position,
12 standing up face to face. Guess what, this is the
13 wound with the least amount of bleeding, the wound
14 with the least amount of bleeding.

15 Remember that one drop of blood by the gun
16 casing? This is all consistent with him getting
17 out of the car, Artie getting out of the car with
18 the stick in the left hand, getting squared up
19 towards Lanny, face to face, with the first shot,
20 and one drop of blood. From the injury, we know it
21 was one of the first two and it bleeds less, the
22 lesser of the two. That's the shoulder, or the
23 right arm wound over there and that's the left
24 shoulder. Again, we're not here to prove anything,
25 they've got the burden of proof, and this goes to

1 reasonable doubt. This is what Dr. Woodard said.
2 Again consistent with Artie standing up outside the
3 car, squared up, facing Lanny, gun in his right
4 hand pointed directly at location of the wound.

5 Let's talk about the right arm. We have
6 already looked at this picture, we've got it again,
7 it shows the blood dripping down. Mr. Crooks who
8 had never looked at the autopsy report until I
9 showed it to him said, you know, the hole is about
10 right there. He knew there was a gunshot wound
11 there from a hole in the shirt and from the
12 bleeding, but he said that he didn't know the angle
13 of the wound, that you would have to talk with Dr.
14 Woodard about that. There's a close-up of the
15 hole. And, again, you're going to have all these
16 pictures. The arm would have had to have been
17 raised.

18 Remember he said he couldn't tell what was
19 happening from the elbow, down, but the arm would
20 had to have been raised, it was more or less a
21 level shot, both of these first two were more or
22 less level. Think about it. Five-eleven, standing
23 facing five-ten. The arm up and the gunshot. This
24 is all consistent with this happening the way Lanny
25 said it happened. It could have occurred standing

1 up, could have occurred outside his car, consistent
2 with arm up or getting back into the car.

3 He gets out of the car with the stick, he
4 gets the first gunshot wound, raises his arm,
5 starts going back toward the car, gets the second
6 gunshot wound, gets back in and starts shutting the
7 car door. Remember that blood on that blue strip?
8 And this is also, I said consistent with arm while
9 getting back in the car and that he could have sat
10 back down before the head shots.

11 I'm not sure all the witnesses testified to
12 this issue but you will recall that there was some
13 testimony that there was two shots, a pause, and
14 then some more shots, two shots, a pause and more
15 shots. This all happened quickly. In fact, the
16 guy who came in here and did a very fine job of
17 explaining to you how that gun worked had to
18 concede it takes a lot longer to explain how that
19 gun works than to actually work the gun and that it
20 would all be within a few seconds, even with a
21 pause it could still be in a very short period of
22 time.

23 All right. Before we move on to that, while
24 we're talking about these other wounds, the reason
25 that Dr. Woodard, the wounds to the shoulder and

1 the arm, the reason, one of the reasons Dr. Woodard
2 told you that these had to have happened before the
3 head shots is because of how the body reacts to the
4 different injuries. Remember, as part of being a
5 forensic pathologist that's what he does, is deal
6 with how the body reacts. The shot to the shoulder
7 went into what he referred to, I think, as the
8 beefy muscle and there wasn't as much blood. That
9 was non fatal, you would still be able to stand up
10 and move around after that.

11 The shot to the shoulder, I'm not saying none
12 of these hurt, I'm sure they did, but the shot to
13 the shoulder, and he was able to tell that path
14 because he recovered that projectile, the shot to
15 the shoulder or to the right arm, the shot to the
16 right arm was non fatal, and in both those
17 situations you could still be moving back around.
18 Remember, he said he could have gotten back in the
19 car and sat down before the head shots occurred.

20 The body reacts different ways, depending
21 upon, you know, whether you hit the muscle, whether
22 you hit vital organs, whether you hit important
23 arteries, based on the amount of blood present and
24 the type of trauma.

25 Now, the head shots, that's where we started

1 to see the fatal wound. We had one that grazed the
2 head, was non fatal. The one in the brain, it
3 would instantly incapacitate him. It was fatal and
4 it was heavy bleeding.

5 Now, he also said that the head would had to
6 have been turned. You are going to have, I should
7 have gotten these scanned but I didn't, 11 and 12,
8 State's Exhibits 11 and 12, which is going to show
9 the path, where he drew a diagram of the path of
10 these wounds. If you take and look at Number 12,
11 which is from the top, down, in order for the
12 wounds to be in the direction from where the shots
13 were coming from the head would have to be rotated
14 in that direction. Even if it's outside the
15 window, the head is going to have to be rotated.
16 You can take these, you will have them in the jury
17 room and you can look at them. So, he was sitting
18 down, and remember I said we don't dispute that.
19 But it would still be consistent with the head
20 turned looking out the window.

21 It would have been after the shot that
22 entered the head and went into the brain that he
23 ended up in this position, because it was instantly
24 incapacitating, he would have been unconscious at
25 that point, and that's where, that's where the

1 heavy bleeding started, was from the wound to the
2 head, down that way, and that had to have been
3 after the other shots, because he would have had to
4 have, the one to the shoulder and the one to the
5 arm, he would have had to have the ability to move.
6 We know he was in a different position than that.

7 Then you get to the final two shots, one that
8 bounced off the back of the head and one shot that
9 entered the brain. The one that bounced off the
10 back of the head wasn't fatal, the one that entered
11 the brain would have been, but Dr. Woodard knows
12 that that happened, these two happened afterwards
13 because the head would have rotated, gone to this
14 position after the blood, the fatal wounds, of the
15 fatal wounds. This had the heavy bleeding.
16 Remember that he said that is when there would have
17 had to have been blood pressure and blood flow.
18 That would have had to have been the first one. Of
19 course the head was in a different position. By
20 the time you get to the second one that would have
21 been fatal it was already over, not much bleeding
22 because of loss of blood pressure as a result of
23 the first fatal shot.

24 Going back to where we started two mornings
25 ago, they are going to say that he never got out of

1 the car, never stood up, never opened the door. We
2 talked about provocation, self defense and
3 reasonable doubt. We told you that we were going
4 to use their evidence, their photographs, as it
5 turned out, their expert witnesses, their forensic
6 pathologist, and show you that it happened
7 consistent with provocation, Artie being outside
8 the car with this stick and that Lanny felt that he
9 had to defend himself.

10 And again I go back, and you have to consider
11 all the things that he was taking into account,
12 entitled to take into account in his mind at that
13 time, including the prior difficulties that were
14 not acted upon by the Calhoun Falls Police
15 Department, he had been threatened before with a
16 stick and he was encountered with a situation where
17 he had to react.

18 Now, I have been up here in front of you for
19 now, if you count Monday, going on four days, in
20 the trial for three days. Mr. Anthony is going to
21 get up and have an opportunity to speak to you
22 after I sit down and I'm not going to get another
23 chance. I have tried to present this case in a way
24 where I can give you the information that you need
25 to be able to look at and view yourselves, filter

1 it through your common sense and apply the
2 reasonable doubt standard, because with the great
3 power that you have as jurors comes great
4 responsibility, and I'm certainly not going to be
5 in the jury room, nor is Mr. Anthony, you all are
6 the sole judges of the facts in this case, and
7 while Mr. Anthony goes last, he does not get the
8 last word. You all are the last word on the facts
9 of this case. What I challenge you to do when
10 exercising that great power of responsibility, I
11 challenge you to look at this evidence, to take it
12 and lay it on the table, to pass it around, to look
13 at it.

14 Sometimes you have to look at the same
15 photographs or same diagrams more than once when
16 you're talking about certain things. I challenge
17 you when exercising that responsibility to pick up
18 where I left off and to ask these questions,
19 because when you're talking about reasonable doubt,
20 one definition that some people might give, not the
21 one the judge is going to give but some people
22 might give is that a reasonable doubt is a doubt
23 that would cause you to hesitate to act or to
24 hesitate to convict, a doubt that might, the type
25 that you would have in your important daily affairs

1 that would make you not do something, a doubt in
2 this important situation that would make you not
3 convict.

4 You may have heard of civil cases where
5 people are in an automobile accident and the burden
6 is what we call preponderance of the evidence, the
7 scales of justice tip ever so slightly in favor of
8 one or the other and that's who wins if it's a
9 dispute like who had the green light, who had the
10 red light and there is an accident in the
11 intersection. That's the lowest standard. The
12 next standard up in cases where maybe fraud or
13 something is alleged it's clear and convincing
14 evidence. And you would think, hearing that, that
15 clear and convincing evidence is a high standard,
16 and it very well should be, but clear and
17 convincing is still below beyond a reasonable
18 doubt. It's the highest standard that we have
19 because with the great power that the government
20 has, the police department, the SLED agents, the
21 Solicitor to bring charges comes a great
22 responsibility to fully investigate it and bring
23 you all the information you need to answer the
24 question. So, that Constitution, where the rubber
25 meets the road, what we teach in the schools and

1 our civic meetings, in our community events, it's
2 real here in this courtroom, and if we don't
3 protect it we lose it for everybody.

4 Some people would say that beyond a
5 reasonable doubt is being so convinced that when
6 you leave here and wake up every day for the rest
7 of your life you won't have any questions about
8 what you did, because you are the final word on the
9 facts of the case. I challenge you when you look
10 at those photographs that somebody take up and ask
11 the questions about is this consistent with Artell
12 Hill having gotten out of that car with that stick
13 to confront Lanny Hill? In fact, I want to go back
14 and show you something. Some witnesses might have
15 said that the stick was between the legs. It's
16 not. Look where it is. It's right there. It's
17 consistent with him having gotten back in the car
18 and sat down like that. And look at where his feet
19 are, where his legs are. If I was in the car and
20 was trying to turn toward you, you could do it
21 other ways, it would be real hard to keep your feet
22 over there and get turned in that position, you
23 would have to have them in a different position,
24 where those legs are, or where they would be if you
25 had just pulled them back into the edge of the car.

1 I challenge you to pick up where I left off.
2 Ask questions about these positions, ask questions
3 about the angles of these wounds, ask questions
4 about this blood on this blue part. They concede
5 that. They tried to explain some of it away.
6 Maybe somebody can take up one portion of the
7 evidence and somebody can take up the other portion
8 of the evidence. Everybody is entitled to have
9 their view of the facts in this case and to have
10 them heard and shared in the courtroom. Talk about
11 it, discuss it, go through all this stuff. We're
12 giving it to you for a reason, so you can look at
13 it without us being there.

14 The verdict form, Count One, guilty of
15 murder, guilty of voluntary manslaughter. There is
16 reasonable doubt. The State has not met their
17 burden of proving anything. They certainly didn't
18 prove what they told you they were going to prove
19 in their opening. Not guilty because there is
20 reasonable doubt when you view all this evidence.

21 Murder and voluntary manslaughter are violent
22 crimes under South Carolina law, so we're asking
23 for a not guilty verdict on that. Remember, with
24 the great power that you have comes great
25 responsibility. Don't let them talk to you and

1 lower the burden because they haven't met it in
2 this case.

3 THE COURT: Mr. Foreman, ladies and
4 gentlemen, we will take a recess at this time. Do
5 not discuss the case by, between and among
6 yourselves, you have not heard all of the case.
7 Retire to the jury room.

8 (The jury was excused from the courtroom)..

9 THE COURT: We stand in recess.

10 (Recessed at 11:31 a.m.).

11 (Reconvned at 11:46 a.m.).

12 THE COURT: We'll open the record in the
13 matter of State of South Carolina vs. Robert
14 Orlando Hill, indictment 99-494.

15 THE COURT: Madam Clerk, do you need a little
16 more time?

17 THE CLERK: Judge, they are going to look at
18 the menu for just a second and then I'll go back.

19 THE COURT: Thank you very much, then. We're
20 a little premature, ladies and gentlemen, we will
21 have just a few more minutes in recess.

22 (Recessed at 11:47 a.m.).

23 (Reconvened at 12:10 p.m.).

24 THE COURT: The record is open, State of
25 South Carolina versus Robert Orlando Hill,

1 indictment 99-494.

2 Ask the jury in, please, Mr. Busby.

3 (The jury returned to the courtroom).

4 THE COURT: All jurors are present, with the
5 foreman and alternates properly seated.

6 The jurors are with you, Solicitor Anthony.

7 MR. ANTHONY: Thank you very much, Your
8 Honor.

9 In just a few minutes you twelve people are
10 about to make one of the most important decisions
11 that a jury ever has to make. You're about to
12 decide if it was all right for one person to kill
13 another person, because if you find that Lanny Hill
14 acted in self defense when he killed Artell Hill,
15 then you're saying that what happened out at
16 Eastgate Apartments was okay, that shooting Artell
17 Hill six times was something that Lanny Hill was
18 allowed to do, and the way you decide if this was
19 an all right thing is you take the law that the
20 Judge is going to give you and you apply it to what
21 you decide happened, and the judge is going to tell
22 you that before you can find that this is a case of
23 self defense, that four factors or four elements
24 have to be present and if the State proves beyond a
25 reasonable doubt that one of these factors isn't

1 there, then this isn't self defense.

2 Now, the first of those elements is that
3 Lanny Hill can't be at fault in causing the
4 difficulty, and the whole evaluation you're about
5 to make of self defense, it ought to just end right
6 there. When Mr. Grose gave his opening statement,
7 and again today he said that we the State have to
8 prove that Artell Hill was just sitting there in
9 that car doing nothing. Well, that's not right.
10 We don't have to prove that.

11 Now, Artell Hill didn't get out of the car,
12 even Lanny Hill didn't say that Artell Hill got out
13 of the car. Five people were sitting there looking
14 at this and they all say that Artell Hill never
15 even opened the door. But even if Artell Hill
16 opened up the car door, that wouldn't automatically
17 make this a self defense shooting, because before
18 you can claim self defense you have got to be at
19 fault in causing the difficulty. So, let's just
20 examine that.

21 Lanny Hill drove up there to Eastgate
22 Apartments knowing that Artell Hill was there.
23 Nobody made him do that. Nobody made him pack a
24 gun. When Artell Hill yelled at him from the car
25 window nobody made him stop that bicycle, nobody.

1 made him get off it, nobody made him start walking
2 toward his car, nobody made him pull out the gun,
3 nobody made him pull the trigger.

4 So, who went hunting for whom? Did Artie go
5 hunting for Lanny? Did you hear any evidence in
6 this case about Artie being out looking for Lanny?
7 Lanny Hill made all those choices to go up there
8 with a gun and confront Artell Hill and now the one
9 doing all the hunting wants to say, "Well, I'm not
10 to blame for this having happened, I don't have any
11 responsibility for this confrontation."

12 Well, Lanny Hill is not just at fault in
13 bringing on this difficulty, he is primarily at
14 fault. He's a lot more at fault than Artell Hill
15 was. You know, all Artell Hill did was call to him
16 from a car, but Lanny Hill came to Artie, Artell
17 Hill didn't come to him, and since he's at fault in
18 causing this difficulty, Lanny Hill, this is not a
19 self defense case, Lanny Hill is not excused on the
20 grounds of self defense.

21 Now, the second and third elements of self
22 defense kind of go together. The second element is
23 that the defendant must believe that he was in
24 danger of losing his life or sustaining serious
25 bodily injury or he was in danger. And the third

1 element is the reasonable man or reasonable person
2 element, is that a reasonable man would have
3 believed that he was in danger of losing his life
4 or sustaining serious bodily injury or if he was in
5 danger that a reasonable man would have taken the
6 actions taken, he would have fired the gun.

7 Now, Lanny Hill testified yesterday, he
8 testified that he went to the parking lot, he said
9 that he spoke to Jeff Tatum, he saw Artie rise up
10 in the car with a stick and then he said he saw
11 Artie reach over to open up the door. And what I'm
12 going to do, I'm going to submit to you that this
13 is what Lanny Hill said, and this is what he said
14 when his own lawyer was asking him questions, it's
15 not me up there asking him questions, it's when his
16 lawyer is giving him his chance to get out his side
17 of his story, and of course you can listen to this
18 testimony again if you want to but I would submit
19 to you this is what Lanny Hill said. He said, he's
20 asked the question, "What did Artie do?" "Artie
21 said I heard you been looking for me." Then the
22 question is, "All right, what happened?" And Lanny
23 says, "So I didn't say nothing, so I just, I just
24 sitting on the bike, so when I was getting ready to
25 get off the bike to knock on the door I seen,

1 that's when Artie reached over as far as coming to
2 open the door, so when he reached over, he come to
3 open the door, I seen the door crack, that's when I
4 got off the bike and started shooting."

5 So, just ask yourselves does a guy with a
6 stick cracking open a door make it okay to just
7 start shooting? Lanny Hill was on his feet, Lanny
8 Hill had ridden in there on a bicycle, it was broad
9 daylight, people that he knew were standing all
10 around but the two people he had just been visiting
11 with, Ira Green and Shannon Hill, were just in the
12 building down from where he was, one of his friends
13 Jeff Tatum is standing right beside the car, he has
14 a gun he can pull to threaten somebody if they come
15 at him. Look at all those circumstances and just
16 ask yourself should somebody be in fear for their
17 life under those circumstances? Just because
18 somebody yells something at you and maybe getting
19 out of their car, is that the kind of situation
20 where somebody ought to be in fear to where they
21 have to start shooting at you?

22 Let's go on, because there is more to this.
23 So, after he gives the answer, that first answer,
24 he's asked, "All right, did he start getting out of
25 the car?" And Mr. Hill says, "All I seen, yes,

1 sir, I seen him when the door cracked, so I started
2 shooting whenever I seen him, that's when he shut
3 the door back."

4 So, according to Lanny Hill, he shot Artie
5 back into the car and according to the pathologist,
6 the first two shots would have had to have been to
7 the shoulders, the left shoulder and the shot to
8 the right shoulder, and those weren't the fatal
9 wounds.

10 Well, you would think that that would have
11 been the end of it. Artie is back in the car, he
12 knows that Lanny's got a gun because he's just been
13 shot with it, he's not going anywhere else, so what
14 does Lanny do? He just keeps right on moving in.
15 He walks right up to that window, and to use Dr.
16 Woodard's term, he takes that gun and he carves up
17 Artie Hill's brain with four shots to the head and
18 that's what kills him.

19 So, even according to his own version of this
20 Lanny Hill killed Artell Hill after he had already
21 ran back into the car, when he was in absolutely no
22 danger, when he had absolutely no fear of any
23 injury and nobody else would have either. So, the
24 second and third factors of self defense, they're
25 not present in this case either.

1 Now, the fourth element of self defense is
2 that the defendant had no other means of avoiding
3 the danger of losing his own life or sustaining
4 serious bodily injury other than to act as he did.
5 This is commonly known as what is called the duty
6 to retreat because it requires you to avoid a
7 confrontation unless you just have to, and to have
8 self defense the confrontation has to be something
9 that you can't avoid.

10 Well, let's just keep going, because this
11 takes you to the next answer that's relevant to
12 this. He's asked, Mr. Hill is asked, "All right,
13 how did you feel when you saw Artie opening the
14 door and coming out of the car?" And the answer,
15 "Well, I know that, I seen him, as soon as I'm
16 ready to get off the bike or whatever, he ain't
17 made no point until he seen me there, I'm fixing,
18 getting ready to turn around on the bike, now he
19 making, now he reach and open the door to get out."

20 So, all Mr. Hill has to do, from his own
21 testimony, is just turn the bicycle around and just
22 ride off. He was way down at the end on this
23 picture right here, he is way down at the very end
24 of this picture where the handicap spot is, he has
25 all that distance between himself and Artell Hill.

1 And all he has to do, he is still on his bicycle,
2 so if Artell Hill really was about to get out of
3 that car all Lanny had to do was leave, that's all
4 he had to do, just ease on down the road on that
5 bicycle and this whole horrible thing, it would
6 have just never happened. And if you can leave and
7 you don't, then you can't turn around and say, "I
8 was just defending myself."

9 I've gone through this so far making an
10 assumption that is not accurate, because I have
11 been assuming that Lanny Hill told the truth, I
12 have been assuming that the door actually opened
13 up. But there are five people, five people who are
14 eyewitnesses to this and they all say that Artell
15 Hill never got out of the car and never even opened
16 the door, and nothing about the physical evidence
17 that I heard so much about a few minutes ago
18 contradicts their testimony. From the way Artell
19 Hill was shot, it is possible that he was up out of
20 the car, there is no denying that, it's possible he
21 was standing up, to get the wound he had, but it is
22 just as possible that he was seated in the car. He
23 could have been seated, he sees Lanny Hill coming,
24 he turns his shoulder, he gets shot through the
25 left shoulder. If you get shot through the left

1 shoulder you are going to turn back around, throw
2 your arm up, you get shot through the right
3 shoulder. It is every bit as consistent with being
4 seated in a car as it is standing up, and of course
5 he's obviously seated when his brain gets carved up
6 by the bullets. There is no forensic evidence that
7 excludes Artell Hill sitting in that car when he
8 gets shot.

9 They have talked about a couple things I just
10 want to address. They talked about the red splotch
11 on the ground and how that might be blood, but that
12 little splotch, whatever it is, if you look at
13 Agent Crook's notes where he drew his little
14 diagram showing where these cups were and you match
15 up those notes to this picture of the cups, that
16 cup is all the way out to right here, it is the
17 farthestest cup away from the car, and nobody, not
18 even Mr. Hill claims that Artell Hill got that far
19 out, and Agent Crooks testified if that's blood
20 that it would have dropped straight down. Whoever,
21 if that's blood, whoever bled it was right out
22 there where the cup is, and nobody says Artell Hill
23 ever got that far away from the car. So, whatever
24 that substance is, it's not Artie Hill's blood.

25 And then they want to talk about the strip on

1 the bottom of the car door and talk about how that
2 strip proves the door was open, but Agent Crooks
3 testified that all you need is a little crack
4 between the door and the strip and that blood can
5 seep through there right off Artell Hill, who was
6 sitting there in that car bleeding blood all over
7 the place, dripping all over him.

8 Since the physical evidence in this case does
9 not tell you conclusively what happened, the way to
10 decide is to examine what the witnesses say. And
11 five eyewitnesses who don't have any reason to make
12 this case sound worse than it is say that Artell
13 Hill never got out of the car and that Artell Hill
14 never even opened the door, and it is one thing to
15 be off a little bit about where somebody's hand is
16 that you are looking at from a distance, or where
17 somebody might have turned in a car, but it is
18 another thing to just completely miss, to just
19 completely not see somebody get out of a car, and
20 all five of these people say Artell Hill never got
21 out of the car, and had that happened they wouldn't
22 have missed it.

23 I've gone through this assuming that Lanny
24 Hill was telling the truth and when you go through
25 this making that assumption he can't claim self

1 defense. But when you look at it in light of the
2 fact of what the eyewitnesses say, that Artell Hill
3 never got out of the car, that Artell Hill never
4 even opened the door, that he just sat in the car
5 while Lanny Hill shot him six times, this is even
6 worse and it's even less of a self defense case
7 than it is if you make an assumption that what
8 Lanny Hill said yesterday is the way it happened.

9 So, none of the elements of self defense
10 exist in this case. Mr. Hill is not without fault
11 in causing this difficulty, he didn't have a reason
12 to think he was about to lose his life or be
13 seriously injured, no reasonable person would have
14 thought he was about to lose his life or suffer
15 great bodily injury, and he had an easy way to
16 avoid any kind of danger he might have been in.
17 All he had to do was ride off. So, under the law
18 this is not self defense, this is not close to
19 being self defense.

20 Once you decide this isn't self defense you
21 still have to decide what crime Mr. Hill is guilty
22 of. You have two choices. You have murder and you
23 have voluntary manslaughter. This is a murder
24 because it is a malicious killing and that's what
25 murder is, it's a killing that's committed with,

1 the legal word we use is malice, malice
2 aforethought, which just means that you have a
3 malicious state of mind at some point before and at
4 the time that you do the killing, and the way you
5 determine if somebody has acted maliciously, you
6 just look at what they did.

7 The judge will tell you that you can infer
8 that a person is acting maliciously from their use
9 of a deadly weapon and you can especially infer
10 malice when a deadly weapon gets used to shoot
11 someone who is just sitting in a car, six times,
12 and when four of those shots are to the head.
13 Lanny Hill shot Artell Hill until his gun gave out.
14 He shot him until his gun quit working, and that
15 shows nothing but an intent to kill Artell Hill,
16 and you know that just from what he did.

17 But there is some other things in this case
18 that lets you know that Artell Hill was acting with
19 malice as well. Yesterday he said he hadn't had
20 the gun with him the whole day but when he
21 testified before in that testimony I read back to
22 him he said that he didn't get the gun until he saw
23 Artie in the car and then he went to his uncle's
24 house and that's when he got the gun and he came
25 back up to Eastgate armed with a gun, knowing that

1 the car was up there.

2 Now, that's not going somewhere and getting
3 provoked like you have for manslaughter, where you
4 have provocation and then shooting somebody in the
5 heat of passion. That's a plan, that's a plan to
6 arm yourself, to hunt down your target and to kill
7 it, and that's just what he did. And then remember
8 what Shannon Hill told you, that Lanny Hill had
9 said the night before, she said the night before
10 she talks to him and he said, "People are going to
11 start taking me serious, I'm going to get my
12 respect even if that means taking somebody out."
13 Now, that's malice, or where I come from we've got
14 another word for it, that's just plain old
15 meanness, that's just somebody wanting to make a
16 name for himself by hurting somebody else.

17 So, we've got that attitude and then what do
18 we add to that? Let me go back to this question
19 one more time and we'll see what we add to that.
20 We've got a question, "Had you been smoking or
21 drinking that day?" "Yes, sir." "What had you
22 been smoking or drinking?" "I was smoking weed and
23 drinking beer."

24 And then a few questions later we have, "Do
25 you remember all the details of what happened?"

1 "No, sir." "And why is that?" I was high." It's
2 just like that old country song, "When I drink I
3 start to think I'm ten feet tall and bullet proof,"
4 but Lanny Hill wasn't just bullet proof, he had
5 some bullets of his own and he shot every one of
6 them that he could. Lanny Hill had some power but
7 using that power responsibly was the last thing on
8 his mind. What was in his mind was malice, it was
9 a desire to show everybody who he was and what he
10 could do and he did that by murdering Artell Hill
11 in a parking lot of an apartment building so all of
12 Calhoun Falls could know just what he was capable
13 of.

14 You know, I grew up in a little town that's a
15 lot like Calhoun Falls, as a matter of fact it used
16 to play them in sports, and I know what it's like
17 to be in kind of an out of the way place where you
18 have to drive thirty miles to get to a shopping
19 mall or to a movie theater or get somewhere where
20 there are a lot of restaurants, and it's a good
21 thing that there is still little towns like Calhoun
22 Falls, but Calhoun Falls is in Abbeville County and
23 it's in South Carolina and it's in the United
24 States. We're not in Dodge City, we're not in some
25 free-fire zone.

1 The law applies in Calhoun Falls just like it
2 does everywhere else, and the law still protects
3 people who get shot six times while they're sitting
4 in a car, and the law puts all the power to hold
5 Lanny Hill responsible for his behavior in one
6 place, and that's to a group of twelve people.
7 There is only twelve people in this whole world
8 with the power to do anything about what Lanny Hill
9 did to Artell Hill on August 6th, 1999. There is
10 only twelve people who can get justice, who can
11 give justice to Artell Hill. There is only twelve
12 people who can hold Lanny Hill accountable. That's
13 how much power you have and that's how much
14 responsibility you have. When you go back to the
15 jury room use your power responsibly by giving a
16 verdict that holds Lanny Hill accountable for using
17 his power irresponsibly. Find him guilty of murder
18 and find him guilty of possession of a firearm
19 during the commission of a violent crime.

20 Thank you.

21 THE COURT: Mr. Foreman, and ladies and
22 gentlemen, we will take a very short recess. It's
23 the Court's understanding that you have put in your
24 order for your lunch and we're going to make those
25 arrangements while we allow you to relax

1 momentarily before the Court charges you. After
2 that you will have the matter for deliberation, and
3 this judge allows you to eat while you're
4 deliberating. Some judges don't permit that, but
5 in the opinion of this judge people like to talk
6 and eat and get things done, so we're going to
7 allow you to have your lunch and deliberate at the
8 same time. We hope that we have it timed pretty
9 well that when the charge is completed, then your
10 food should be on hand. We will be pretty close
11 there, I hope we're pretty close with the timing.
12 But we're going to excuse you just momentarily.

13 Do not discuss the case by, between and among
14 yourselves and retire to the jury room, please.

15 (The jury was excused from the courtroom).

16 (Recessed at 12:35 p.m.).

17 (Reconvened at 12:49 p.m.).

18 THE COURT: Ask the jury in, Mr. Busby.
19 State of South Carolina versus Robert Orlando Hill,
20 99-494.

21 (The jury returned to the courtroom).

22 THE COURT: Mr. Foreman, and ladies and
23 gentlemen of the jury, the State of South Carolina
24 charges the defendant Robert Orlando Hill with the
25 crimes of murder and possession of firearm or knife

1 during commission of a violent crime. Now, you
2 have been familiarized with the terms of the
3 indictment, which is not evidence, so the Court
4 will not re-read the allegations contained in the
5 indictment. You should distinctly understand that
6 the indictment contains the allegations made by the
7 State of South Carolina and is no way at anytime to
8 be considered as evidence. The only evidence in
9 the case is the testimony that you have heard from
10 witnesses who have testified from this witness
11 stand in front of you and the evidence that has
12 been introduced during the course of the trial.

13 Now, to this indictment comes the defendant
14 and pleads not guilty. This places upon the State
15 of South Carolina the burden of proving his guilt
16 beyond a reasonable doubt. A person charged with
17 committing a criminal act in our state is never
18 required to prove himself innocent. It is a vital
19 and important rule of law that a defendant in a
20 criminal trial, no matter how serious or great the
21 charge may be, must always be presumed to be
22 innocent until his guilt has been proved beyond a
23 reasonable doubt. This presumption of innocence
24 remains with the defendant at all times throughout
25 the trial and is only removed when and if the State

1 has proved the guilt of the defendant here on trial
2 beyond a reasonable doubt.

3 It is your solemn and sworn duty, ladies and
4 gentlemen, if not clearly convinced of the guilt of
5 the defendant here on trial beyond a reasonable
6 doubt to find him to be not guilty.

7 It has been the intention of the Court to be
8 absolutely fair and impartial both to the State of
9 South Carolina and to the defendant Robert Orlando
10 Hill. If you have drawn any inference from any
11 ruling, word, motion or deed that the Court has
12 done during the course of the trial, no matter how
13 slight, please disabuse yourself of any inference
14 that you may have drawn from anything the Court
15 did, as the Court has no interest in the outcome of
16 the case.

17 So, the burden of proof is upon the State to
18 establish by evidence to your satisfaction, Mr.
19 Foreman and ladies and gentlemen, the guilt of the
20 defendant beyond a reasonable doubt. The Court
21 will not attempt to define for you what is meant by
22 the term beyond a reasonable doubt. This is up to
23 you. A reasonable doubt is simply a doubt that you
24 find in your mind to be reasonable under all the
25 circumstances. A reasonable doubt can arise from

1 the evidence presented or it can arise from the
2 lack of evidence presented. If the evidence
3 presented by the State has removed from your minds
4 all reasonable doubt it's your duty to find the
5 defendant guilty. On the other hand, if you are
6 left with a reasonable doubt as to the defendant's
7 guilt it's your duty to find him to be not guilty.

8 Mr. Foreman and ladies and gentlemen of the
9 jury, under our Constitution you and you alone are
10 the only and sole finders of the facts in this
11 case. The Court has no right to pass upon the
12 facts or even to express in any way what the Court
13 may think about the facts in this case, nor may the
14 Court in any way express what the Court believes
15 about the guilt or the innocence of the defendant
16 here on trial. You should form no opinion at all
17 in any way in that regard from anything the Court
18 may have said or done, as has already been
19 explained to you.

20 You are also the judges and the sole and only
21 judges of the credibility, which means the
22 believability, of the witnesses who testified here
23 before you under oath from this witness stand. In
24 passing upon the credibility of witnesses there are
25 some things that you may consider, ladies and

1 gentlemen. Now, these are mere suggestions because
2 it's your, part of your job and part of your duty
3 to weigh the credibility or the believability of
4 the witnesses who testified during the course of
5 the trial. So, you may want to know how you could
6 go about weighing the credibility or the
7 believability of the witnesses who testified. Here
8 are some things that you may or you may not
9 consider, depending upon your view of the
10 testimony.

11 You may consider the demeanor or the manner
12 that a witness had while he or she testified. You
13 may consider whether the witness was hesitant on
14 the one hand, or forthright on the other. You
15 could consider whether a witness had a reason to be
16 biased or prejudiced for or against one party or
17 the other. You could consider whether a witness'
18 testimony was contradicted on the one hand by
19 something that that same witness said during his or
20 her testimony or by something that another witness
21 said during his or her testimony, or you could
22 consider whether the witness' testimony was
23 corroborated, that means to support it, by
24 something that another witness testified to during
25 the course of the trial. You could consider the

1 observation ability of the witness, how the witness
2 came to know what he or she testified to, their
3 ability to observe and to come to know the facts
4 that they testified to, you could give that such
5 consideration as you believe that it deserved.

6 Now, you don't decide the credibility or the
7 believability of witnesses by counting the
8 witnesses that may have been called by one side or
9 the other. That is completely unimportant. It's
10 up to you to decide the credibility of the
11 witnesses, or as stated another way, the
12 believability of the witnesses and the statements
13 that they have made before you. You may believe a
14 small portion of a witness' testimony or none of a
15 witness' testimony. You may believe all of a
16 witness' testimony and none of another's. You may
17 believe some of one witness' testimony and some of
18 another witness' testimony. So, it's up to you the
19 jury to determine the credibility or the
20 believability of each witness who testified before
21 you.

22 Where a defendant's testimony may have been
23 impeached by prior inconsistent statements you are
24 instructed that the prior inconsistent statements,
25 if any were involved, are introduced only for the

1 purpose of impeachment and it's for you the jury to
2 determine what, if any, effect such prior
3 inconsistent statements may have upon the
4 credibility or believability of a defendant.

5 During the course of this trial you have
6 heard the testimony of witnesses who have been
7 found to be experts in certain fields of knowledge.
8 In considering the opinion of expert witnesses that
9 has been admitted during the course of this trial
10 you should consider the factual evidence first.
11 Before considering the opinion of any experts the
12 factual evidence should be first considered and
13 then consider the opinions of experts. Note that
14 an ordinary witness cannot give an opinion but an
15 expert, because of his knowledge, learning, skill,
16 ability and special expertise in a field can render
17 an opinion. So, first give your attention to the
18 facts, the factual evidence, and then consider, if
19 you will, whatever the expert may have said and
20 give it such weight as you think it deserves.

21 The expert may base an opinion of his or
22 her's upon facts and data which are not in
23 evidence. You may consider the expert's opinion if
24 you find that the testimony is based on facts that
25 are reasonably relied upon by experts in that

1 particular field. You must consider the expert
2 testimony in the same manner as you do any other
3 testimony and give it such weight as you believe
4 that it may deserve and be entitled to be given
5 when considering all other evidence in the case.
6 Such testimony is given for the purpose, Mr.
7 Foreman and ladies and gentlemen, for assisting you
8 in interpreting the evidence but not for the
9 purpose of controlling your judgment concerning the
10 evidence. Therefore, consider the factual evidence
11 first and then turn to the expert testimony and any
12 opinions that they may have rendered.

13 The value of expert testimony does not depend
14 upon the skill and knowledge that an expert
15 professes that he or she may have, but it depends
16 upon the skill and knowledge that that expert
17 actually possesses. In this regard you may
18 consider the training, experience, ability to
19 communicate ideas, the logic of the opinions, the
20 factual support for such opinions, and any other
21 factors just as you would judge and weigh the
22 testimony of any other witness. The value and
23 effect of expert testimony is a matter solely to be
24 estimated by you the jury. No mere opinion of any
25 expert can be accepted in and of itself as truthful

1 or reliable, but must be weighed by you and
2 considered by you and convince your judgments
3 beyond any reasonable doubt with the same force and
4 effect as any other fact to be proved in this case
5 before you can rely upon it as a basis for
6 conviction.

7 You heard the testimony of expert witnesses
8 who have knowledge, skill, training, experience and
9 education in particular fields and who have
10 rendered their opinions as experts. In determining
11 the weight to be given to those opinions you should
12 consider the qualifications and credibility of the
13 experts and the reasons given for those opinions.
14 However, you are not bound by those opinions and
15 you should give them such weight, if any, to which
16 you deem the opinions are entitled.

17 There are two types of evidence, Mr. Foreman
18 and ladies and gentlemen, that always come before
19 the Court during the course of any trial.

20 Direct evidence. Direct evidence is the
21 testimony of a person who has direct and absolute
22 knowledge of a fact or who claims to have same,
23 such as an eyewitness. That is direct evidence.

24 The other kind of evidence is circumstantial
25 evidence. Circumstantial evidence is the proof of

1 a chain of facts and circumstances which in turn
2 indicate the absolute existence of another fact.
3 The law makes no distinction between the weight or
4 value to be given either to direct evidence or to
5 circumstantial evidence, nor is a greater degree of
6 certainty required of circumstantial evidence than
7 is required of direct evidence.

8 Now, you may have some direct evidence and
9 some circumstantial evidence, such as a combination
10 of both types of evidence may have been presented
11 during the trial of any disputed fact. Neither is
12 given any greater weight. Direct evidence and
13 circumstantial evidence are given equal weight in
14 the eyes of the law. You should weigh all of the
15 evidence in the case and after weighing all the
16 evidence, if you are not convinced of the guilt of
17 the defendant beyond a reasonable doubt you must
18 find him to be not guilty.

19 Corroborating evidence is any evidence that
20 tends to strengthen or add to or add weight to or
21 believability to or makes more certain any other
22 evidence which has previously or otherwise been
23 introduced during the course of the trial and the
24 jury may give such corroborating evidence such
25 weight as the jury feels such evidence may deserve.

1 The evidence which you are to use in deciding
2 the facts of this case is the sworn testimony of
3 the witnesses who have testified here before you
4 both on direct and cross-examination, regardless of
5 who called the witness, and the exhibits that have
6 been introduced during the course of the trial. In
7 reaching your verdict you may consider only the
8 evidence that's been introduced, the testimony and
9 exhibits.

10 Certain things are not evidence and the Court
11 reminds you that they are not evidence so that you
12 will not tary away or vary off and consider
13 something that's not evidence. The arguments and
14 statements of the lawyers are not evidence. The
15 attorneys are not witnesses. What they have said
16 in their opening statements, their questioning of
17 the witnesses and their closing arguments and at
18 other times is intended to help you to interpret
19 the evidence but it's not evidence. If the facts
20 as you remember them differ from the way the
21 attorneys have stated them your memory of the facts
22 controls. Also not evidence of course is the
23 questions and objections that the lawyers have
24 made. Things by lawyers such as objections and
25 questions are not evidence.

1 The attorneys have a sworn duty to zealously
2 represent their clients and to object when they
3 believe a question may be improper under our rules
4 of evidence. You should not be influenced by an
5 objection nor by the Court's ruling upon any
6 objection.

7 If any evidence, if you have been instructed
8 to disregard any evidence, then it is excluded, and
9 if instructed to disregard it you may not consider
10 such evidence. Anything that you may have seen or
11 heard when the Court was not in session is not in
12 evidence. It's not evidence, you should not
13 consider it. You are to decide the case solely and
14 only upon the evidence received in the walls of
15 this courtroom during the course of the trial.

16 Now, the same laws and constitutions that
17 make you, Mr. Foreman and ladies and gentlemen, the
18 sole and only finders of the facts makes the Court
19 the sole and only instructor of the law. You must
20 accept as correct the law that the Court charges
21 you or tells you and apply the law to the evidence
22 as you find it to be because you and you alone are
23 the finders of the facts. The Court will tell you
24 the law and you determining what the facts are as
25 you find them to be will find those facts and apply

1 the law to them.

2 You must put aside any conceptions that you
3 may have had as to the law before you were sworn as
4 jurors in this case. You must accept the law as
5 the Court is telling it to you or charging it to
6 you. For the purpose of your duty as jurors you
7 should not be concerned with what the law ought to
8 be, could be, might be, should be or may be, but
9 what the law is as the Court is now telling you it
10 is.

11 The defendant here on trial is charged with
12 the crime of murder. The State must prove beyond a
13 reasonable doubt that the defendant killed another
14 person with malice aforethought. Malice is hatred,
15 ill will or hostility toward another person. It is
16 the intentional doing of a wrongful act without
17 just cause or excuse and with an intent to inflict
18 an injury or under circumstances that the law will
19 infer an evil intent.

20 What is malice? Malice is defined in the law
21 of homicide as importing wickedness and excluding
22 any just cause or legal excuse. It's something
23 which springs from wickedness, from depravity, from
24 a depraved spirit, from a heart devoid of duty and
25 fatally bent upon mischief. The words expressed or

1 inferred malice do not mean different kinds of
2 malice, but merely the manner in which the only
3 kind of malice known to the law may be said to
4 exist. That is to say even by direct evidence or
5 by circumstantial evidence or indirect evidence
6 malice may be expressed as where a previous threat
7 of vengeance, lying in wait or other circumstances
8 show directly that an evil intent to kill was
9 entertained. The jury may also conclude by
10 deductive reasoning that under certain
11 circumstances malice may arise even though there is
12 no expressed or direct evidence of an intent to
13 kill. Malice may be inferred where no expressed
14 intent to kill is proved by direct evidence. It
15 may be, it may be inferred from the facts and
16 circumstances which are proved. Malice may be
17 inferred from the willful, deliberate, intentional
18 doing of an unlawful act without just cause or
19 legal excuse. In other words, in its general
20 signification malice means the doing of a wrongful
21 act intentionally without justification or legal
22 excuse. But even if the facts proved are
23 sufficient to raise an inference of malice this
24 inference would simply be an evidentiary fact to be
25 taken into consideration by you the jury along with

1 all the other evidence in the case and you may give
2 it such weight as you determine it should receive
3 as to whether or not malice has been proved beyond
4 a reasonable doubt.

5 Malice aforethought does not require that
6 malice exist for any particular time before the act
7 is committed, but malice must exist in the mind of
8 the defendant just before and at the time of the
9 act being committed. Therefore, there must be a
10 combination of the previous evil intent, together
11 with the act, in the commission of the crime.

12 Malice aforethought may be expressed or
13 inferred. These terms expressed and inferred do
14 not mean different kinds of malice, but merely the
15 manner in which malice may be shown to have
16 existed, if it did. That is, either by direct
17 evidence or by inference from the facts and
18 circumstances which are proved. Expressed malice
19 is shown when a person speaks words which express
20 hatred or ill will for another or when the person
21 prepared beforehand to do the act which was later
22 accomplished. The doing of any other act of
23 preparation going to show that the deed was within
24 the defendant's mind, that would be expressed
25 malice. Malice may be inferred from conduct

1 showing a total disregard for human life. Inferred
2 malice may arise when the deed is done with a
3 dangerous instrumentality, which is any article,
4 instrument or substance which is likely to cause
5 death or great bodily harm. Whether an instrument
6 has been used as a deadly weapon depends upon the
7 facts and circumstances of each case.

8 So, the State must prove beyond a reasonable
9 doubt that the defendant killed another person with
10 malice aforethought in order for the defendant to
11 be found guilty of murder. If you were to find
12 that the State has failed to prove the crime of
13 murder beyond a reasonable doubt you may consider
14 whether the State has proved beyond a reasonable
15 doubt that the defendant committed voluntary
16 manslaughter, which is the lesser but included
17 crime of murder.

18 To prove voluntary manslaughter the State
19 must prove beyond a reasonable doubt that the
20 defendant took the life of another in the sudden
21 heat of passion based upon sufficient legal
22 provocation. Both heat of passion and sufficient
23 legal provocation must be present at the time of
24 the killing to constitute voluntary manslaughter.
25 Sudden heat of passion may for a time affect a

1 person's self control and temporarily disturb a
2 person's reason. Sudden heat of passion must be
3 the type that would make an ordinary person unable
4 to coolly reflect on his actions and would produce
5 an uncontrollable impulse to do violence.

6 Sufficient legal provocation must be of the type
7 that would make a person of ordinary reason and
8 caution to become enraged and to lose control
9 temporarily. The provocation needed for voluntary
10 manslaughter must come from some act of or related
11 to the victim, the deceased in this case.

12 Words alone, however vulgar or insulting, are
13 not enough to be and become legal provocation.
14 Where death is caused by the use of a deadly weapon
15 the words must be accompanied by some overt
16 threatening act which could have produced sudden
17 heat and passion. The exercise of a legal right,
18 no matter how offensive it is to another, is never
19 sufficient legal provocation for voluntary
20 manslaughter. If the heat of passion had cooled or
21 if there were enough time between the provocation,
22 if any there were, and the killing for the passion
23 of a reasonable person to have cooled the killing
24 would not be voluntary manslaughter. In deciding
25 whether a reasonable person would have had enough

1 time to cool off you should consider all of the
2 circumstances surrounding the killing. You may
3 consider the nature of the provocation, if any, and
4 the defendant's mental and physical state and the
5 circumstances and relationships between the
6 parties.

7 You are to consider each of the charges
8 separately and if the evidence warrants it you may
9 convict the defendant on the count of murder, or if
10 you are not convinced beyond a reasonable doubt of
11 the defendant's guilt of murder you may convict him
12 of the crime of voluntary manslaughter, or you may
13 convict him of no crime at all and find him to be
14 not guilty.

15 Now, to the crimes of murder and voluntary
16 manslaughter comes the defendant and raises the
17 defense of self defense. Self defense is a
18 complete defense and if it is established you must
19 find the defendant to be not guilty. The State has
20 the burden of disproving self defense by proof
21 beyond a reasonable doubt.

22 If you have a reasonable doubt of the
23 defendant's guilt after considering all the
24 evidence, including the evidence of self defense,
25 then you must find the defendant to be not guilty.

1 On the other hand, if you have no reasonable doubt
2 of the defendant's guilt after you consider all of
3 the evidence, including the evidence of self
4 defense, then you must find the defendant to be
5 guilty.

6 The following factors are required to
7 establish self defense, and there are four of them.
8 The first one, the defendant must be without fault
9 in bringing on the difficulty. If the defendant's
10 conduct was the type which was reasonably
11 calculated to and did provoke a deadly assault the
12 defendant would be at fault in bringing on the
13 difficulty and would not be entitled to an
14 acquittal based upon self defense. Self defense is
15 not available to a person who uses language which
16 is so contemptuous that a reasonable person would
17 expect it to bring on physical encounter and which
18 did actually contribute to the physical encounter.

19 The second factor. The second factor of self
20 defense is that the defendant was actually in
21 imminent danger of death or serious bodily injury
22 or that the defendant actually believed he was in
23 imminent danger of death or being seriously injured
24 and harmed. If the defendant was actually in
25 imminent danger it must be shown that the

1 circumstances would have warranted a person of
2 ordinary firmness and courage to strike the fatal
3 blow or to do the fatal act to prevent death or
4 serious bodily injury to himself. If the defendant
5 believed he was in imminent danger of death or
6 serious bodily injury it must be shown that a
7 reasonably prudent person of ordinary firmness and
8 courage would have had the same belief. In
9 deciding whether the defendant actually was or
10 believed he was in imminent danger of death or
11 serious bodily injury you should consider all of
12 the facts and circumstances surrounding the crime,
13 including the physical condition and
14 characteristics of the defendant and of the
15 deceased.

16 The defendant does not have to show he was
17 actually in danger. It is enough if the defendant
18 believed he was in actual and imminent danger and a
19 reasonably prudent person of ordinary firmness and
20 courage would have had the same belief under the
21 same circumstances. The defendant has the right to
22 act on appearances even though the defendant's
23 beliefs may have been mistaken. It's for you to
24 decide whether the defendant's fear of imminent
25 danger, death or serious bodily injury was

1 reasonable under the circumstances and would have
2 been felt by an ordinary person in the same
3 situation.

4 Words accompanied by hostile acts may,
5 depending upon the circumstances, establish self
6 defense. Evidence of prior difficulties between
7 the defendant and the deceased may be considered in
8 deciding whether a threat existed, whether the
9 defendant had a reason to believe that a threat
10 existed and how serious that threat may have been.
11 The relative sizes, ages and weights of the
12 defendant and the deceased may be considered, may
13 be considered in deciding the apparent or actual
14 need for force in self defense and the amount of
15 force needed. Threats made by a victim may be
16 considered in determining whether the defendant
17 actually was or believed he was in imminent danger.

18 The third factor of self defense is that the
19 defendant had no other probable way to avoid the
20 danger of death or serious bodily injury than to
21 act as he did act in this particular instance. The
22 defendant has no duty to retreat if by doing so the
23 danger of being killed or suffering serious bodily
24 injury would in fact increase by his retreating.

25 A person cannot be required to make an exact

1 calculation as to the degree or amount of force
2 which may be needed to avoid death or serious
3 bodily harm. Therefore, in self defense the
4 defendant has the right to use the force needed to
5 avoid death or serious bodily harm. The force used
6 must be reasonable in proportion to the danger
7 feared. The circumstances must be such as would
8 warrant a person of ordinary prudence, firmness and
9 courage to use the degree of force used by the
10 defendant in order to save himself from assault, an
11 assault against him or from sustaining serious
12 bodily harm. When a person is justified in firing
13 a first shot he's justified in continuing to shoot
14 until it is apparent that the danger to his life
15 and body has ceased.

16 If you have a reasonable doubt of the
17 defendant's guilt after considering all the
18 evidence, including the evidence of self defense,
19 then you must find him to be not guilty. If on the
20 other hand you have no reasonable doubt of the
21 defendant's guilt after considering all of the
22 evidence, including the evidence of self defense,
23 you must find him to be guilty.

24 The defendant is not required to prove self
25 defense once he raises the issue. The State, on

1 the other hand, is required to prove an absence of
2 self defense beyond a reasonable doubt.

3 Criminal intent is a necessary element of
4 each crime that must be proved by the State beyond
5 a reasonable doubt. Criminal intent is always a
6 matter to be determined by the jury from the
7 circumstances surrounding the situation. There is
8 no way to prove intent to a mathematical certainty.
9 As a matter of fact, there is no way medical
10 science can dissect a person's brain and determine
11 what he had in mind at the time in question. So,
12 the law says that criminal intent may be inferred
13 from the circumstances shown to have been in
14 existence at the time in question. This is how the
15 jury makes a determination as to whether or not the
16 elements requiring criminal intent was present.

17 Criminal intent is a state of mind which
18 operates jointly with an act in the commission of a
19 crime. Criminal intent is a mental state, a
20 conscious wrong doing, so it's up to you the jury
21 to determine what the defendant intended to do
22 based upon the circumstances shown to have been in
23 existence at the time in question.

24 I charge you that the State must prove
25 criminal intent beyond a reasonable doubt just as

1 the State must prove every element of any crime
2 beyond a reasonable doubt, as has been previously
3 explained to you. It is not necessary to establish
4 intent by direct or positive evidence, but intent
5 may be established by inference in the same way as
6 any other fact, by taking into consideration the
7 acts of the parties and all the facts and
8 circumstances of the case. While the State may
9 prove motive, it is not necessary for the State to
10 prove motive.

11 In order to find the defendant to be guilty
12 of possession of a weapon during commission, a
13 pistol or firearm during commission of a violent
14 crime you must first find the defendant to be
15 guilty of commission of a violent crime. I charge
16 you that murder and voluntary manslaughter are both
17 violent crimes.

18 You have been selected as fair and impartial
19 jurors in this case, sworn to impartially try and
20 determine the facts of this case. When you comply
21 with your oath to do so, then no one will have any
22 right to criticize your verdict and you will have
23 fully discharged your duty as jurors. The word
24 verdict comes from the Latin term verdicto, which
25 means to speak the truth.

1 If you have made any notes during the course
2 of the trial, that is all right and permitted.
3 There is no question that you have a right to make
4 notes. However, before you go into the jury room
5 and commence deliberations any notes that you may
6 have made must be completely, absolutely and
7 utterly destroyed. The reason for that is that
8 each of you is entitled to equal recollection of
9 the facts as you recall them. Were a note to have
10 been made by one of you on a disputed fact, then
11 that note taker may have, may be given greater
12 weight in his or her recollection of the disputed
13 fact than all of the other jurors combined. So,
14 each is entitled to equal recollection of the
15 facts. That you have made notes certainly has made
16 you a better juror and you have paid more conscious
17 attention to the proceedings before you, but that
18 you have made notes may give your recollection
19 greater weight than your other colleague or other
20 colleagues, so don't share the fact you have made
21 notes with any of your fellow jurors. Completely
22 and utterly destroy them. If you wish for that to
23 be done by the court staff you may hand them in a
24 folded fashion to the bailiff before you go in and
25 we will see to it that they are utterly destroyed

1 by shredding or burning, but if you wish to do that
2 yourself you're free to do that.

3 Now, Mr. Foreman, we prepared a verdict form
4 for you. Please be alert that some verdict forms
5 are extremely complicated, particularly in civil
6 cases, but this verdict form is not as complicated,
7 as we sometimes find seven, eight pages of
8 questions and answers. We often have to do that
9 but in this case the top part of the form is simply
10 the title of the case, it's just the name of the
11 case, the number of the case, it says verdict form.
12 It's this bottom portion with which you are
13 concerned, and all of you will will have an
14 opportunity to look at this and inspect it. I know
15 you can't see it from the distance from which you
16 are looking but it says, there is two parts to it,
17 A and B. Part A is, as to Count One -- Count One
18 on the indictment, which is not evidence, is
19 murder. As to Count One we the jury find the
20 defendant Robert Orlando Hill, and there are three
21 alternatives that you may reach. There is a
22 bracket, you can put an X or a check in any bracket
23 once there has been a unanimous decision. The
24 verdict must be unanimous, it must be the verdict
25 of all twelve jurors. Take no inference from the

1 way in which the alternatives appear. It could be
2 reversed. Let's reverse them. You may find the
3 defendant to be not guilty, you may find the
4 defendant to be guilty of voluntary manslaughter,
5 you may find the defendant to be guilty of murder.
6 You make no inference, the Court is not trying to
7 convey any message to you by putting them in a
8 certain order. They could be in any order. They
9 have to be in some order, so the order they appear
10 on the verdict form is guilty of murder, guilty of
11 voluntary manslaughter, not guilty.

12 Now, were you to find the defendant not
13 guilty you would stop there because he would not be
14 guilty of any violent crime and you would not go to
15 the second issue, being number B. B, as to Count
16 Two, the indictment is not evidence. Count Two is
17 possession of a firearm during commission of a
18 violent crime, so as to Count Two, possession of a
19 firearm during the commission of a violent crime,
20 we the jury find the defendant Robert Orlando Hill
21 either guilty or not guilty. You would only go to
22 B if you were to find the defendant guilty of one
23 of the two crimes appearing in A. You would only
24 go to B if you find the defendant to be guilty of
25 one of the two crimes indicated in A.

1 When you have reached your verdict, you and
2 the jury have reached a unanimous verdict you will
3 sign your name as foreperson, and we have dated it
4 today, the 14th of July.

5 Once the jury agrees upon a verdict and
6 unanimously agrees upon a verdict please fill in
7 the verdict, sign your name and knock on the door
8 and we will assemble to receive your verdict.

9 Now, the Court is required to consult with
10 the attorneys at this time, Mr. Foreman, ladies and
11 gentlemen, to see if anything has been left out and
12 not told to you, which is necessary to share with
13 you before you commence your deliberations. If
14 there has been something left out, then we will get
15 you back out and accomplish that end. If nothing
16 has been left out, then you will receive the signal
17 to commence your deliberations. That is the
18 verdict form, together with all of the evidence.

19 Now, once you leave the room, if there is a
20 reason to ask you out, for you to be asked out we
21 will. If not, we will send in the signal, which is
22 the verdict form and all the evidence which has
23 been agreed upon by both parties. They, together
24 with the court reporter, will marshal the evidence,
25 agree that all of the evidence is there and present

1 and it will be handed to you. That's your signal
2 to begin your statement of what you believe
3 occurred, what your verdict may be, and deliberate
4 as long as you wish but don't start your
5 deliberations until you receive the signal. Do not
6 discuss the case until you receive the verdict form
7 and the evidence. It may be necessary to ask you
8 back out.

9 And, Madam Alternate and Mr. Alternate, if
10 you would remain, please, in the courtroom. All
11 regular jurors will retire to the jury room.

12 (The jury was excused from the courtroom
13 at 1:30 p.m.).

14 THE COURT: Exceptions to the charge or
15 requests for additional charges from the State?

16 MR. ANTHONY: No, sir.

17 THE COURT: Thank you. Exceptions to the
18 charge or requests for additional charges from the
19 defense?

20 MR. GROSE: Excuse me, yes, sir, Your Honor.
21 With regard to your charge on expert witnesses, let
22 me find it, okay, it seemed to me that you were
23 telling them an order in which to consider witness
24 statements, factual statement versus expert
25 opinions and expressing a preference of one over

1 the other, and I think it's up to the jurors to
2 decide, you know, what weight to give to the
3 evidence of the expert just as they do any other
4 witness, with the additional explanation about what
5 an expert is. And, so, you know, it sounded to me
6 that you were telling them to express a preference
7 of one over the other, and I would argue that the
8 prejudice of that comes into play because Mr.
9 Anthony, for both arguing one over the other, but
10 it plays into Mr. Anthony's closing argument and I
11 think it is entirely up to them to decide what
12 weight to give to the expert and what weight to
13 give to the lay witness and what order to consider
14 it in. So, I would object to that.

15 THE COURT: Wait just a minute, please.

16 MR. GROSE: Yes, sir.

17 THE COURT: Before you move to another
18 subject.

19 MR. GROSE: Yes, sir.

20 THE COURT: The jury was told these words.
21 In considering the opinion of an expert witness
22 that has been admitted in this case you should
23 consider the factual evidence first. The Court
24 stands by that charge, the factual evidence such as
25 it may have been outside the opinions of any

1 experts. The next sentence is an expert may base
2 his opinion upon factual evidence presented at
3 trial, and alternatively the expert may base his
4 opinion on facts and data not in evidence. So,
5 they were told to base, to consider the factual
6 evidence first. The Court stands by that charge.

7 MR. GROSE: All right.

8 THE COURT: Thank you.

9 MR. GROSE: Your Honor, also, and this was, I
10 think, before the expert charge, you talked about
11 where a defendant, you singled out a defendant as
12 opposed to a witness, may be impeached by a prior
13 inconsistent statement. There was other witnesses,
14 I impeached Mr. Harvard or at least refreshed his
15 memory by showing him a document that led him to
16 recall that Lanny Hill had turned himself in. One
17 of the witnesses, either Ira Green or Jeffrey
18 Tatum, I put their statement in their hand and
19 impeached them, and it was somewhat inconsistent.

20 THE COURT: I'll recharge on that but I felt
21 that was a benefit, to benefit your client, the
22 defendant here on trial. The Court is not
23 concerned, wasn't concerned with the impeachment of
24 any witnesses but was concerned with impeachment of
25 the defendant in the reading of the record from the

1 prior, we can say outside the presence of the jury,
2 the prior trial, so I did say defendant and I said
3 it purposely so as to lead them in what the Court
4 thought was in a direct way, not to hold against
5 him just the fact he was impeached, that he was not
6 to be believed, but to give it such weight as they
7 deemed it entitled.

8 MR. GROSE: Right, but you had already
9 charged that generally with regard to all the
10 witnesses.

11 THE COURT: Do you want me to recharge them?
12 What do you want me to do?

13 MR. GROSE: You charged all the witnesses but
14 then you singled out the defendant and I think
15 that's prejudicial, I think that's one of those
16 things once the bell is rung it can't be unring. I
17 mean, if you're going to give a different
18 instruction, I'm not going to, you know, oppose
19 trying to construct one but I'm not sure, I mean,
20 because you charged it correctly and then you
21 singled him out, and that just seemed to be a
22 little unfair.

23 THE COURT: Well, the Court is not going to
24 sit on this bench and let you interject an
25 objection to a charge and not give a curative

1 instruction that is acceptable to you, so you make
2 up any curative instruction that you want and if
3 it's acceptable to the Court we'll give it to this
4 jury.

5 MR. GROSE: Okay, I'll need a few minutes,
6 then, Your Honor.

7 THE COURT: Of course.

8 MR. GROSE: Then I would want a curative
9 instruction on the experts as well.

10 THE COURT: No, sir.

11 MR. GROSE: Okay. And I know you adjusted
12 the charge from what we do sometimes but when you
13 were talking about malice and inferred malice you
14 talked about a dangerous instrumentality and you
15 talked about also a deadly weapon at some point
16 near the end of that, and we had had a discussion
17 in chambers and I think under State versus Huey,
18 which is a case out of Abbeville County, if the
19 defense can't get examples of what provocation is
20 for manslaughter, you just have a general
21 instruction of malice and not single something out
22 with a deadly weapon or dangerous instrumentality,
23 because a dangerous instrumentality can be used
24 intentionally in manslaughter and intentionally in
25 self defense, and when you say, you know, you can

1 infer from the intentional use of a dangerous
2 instrumentality, that seems to say that that
3 applies here but doesn't apply there but, you know,
4 it would be intentional in self defense, so I would
5 make that objection.

6 THE COURT: The objection is overruled.

7 MR. GROSE: And I would make, I guess, an
8 additional request or I guess even an objection
9 because we had submitted request to charge number
10 three, self defense, the burden of proof, and my
11 copy was one that was faxed over but I think if the
12 Court has a cleaner copy we could use that to make
13 it an exhibit or I could use the fax copy, but my
14 reading of State versus Burkhart, which was what we
15 cited in ours, says that the burden is that the
16 jury must find the defendant not guilty unless the
17 State proves beyond a reasonable doubt that each of
18 the elements or each of the factors of self defense
19 do not exist in the case. I think, and we have had
20 a discussion about that in chambers, too, I think,
21 you know, definitely Mr. Anthony opposes that
22 request, but the way I read Burkhart, they seem to
23 approve of having to disprove all of them. I mean,
24 if you consider all the evidence as a whole and you
25 consider the evidence of self defense and perhaps

1 you're not as convinced of some of the factors as
2 the other factors involved in self defense but you
3 are still left unconvinced that a crime has been
4 committed, you would have to find not guilty, and I
5 think that's what our Supreme Court was trying to
6 say in Burkhart, and I realize this is something
7 that is going to be debated between me and the
8 prosecutors until we get a clarification on that,
9 but I would like to make requested charge number
10 three an exhibit to the record.

11 THE COURT: The request is denied for this
12 reason.

13 MR. GROSE: Can I make it an exhibit?

14 THE COURT: Of course you can make it an
15 exhibit, but the charge is denied for this reason,
16 that it's difficult enough for a jury to absorb
17 most of if not less than half of what the Court is
18 telling them. The Court, this judge does not hand
19 in a written copy of the charge because some people
20 interpret words in different ways, some people have
21 a greater degree to interpret the written language
22 and to read the written language than others. To
23 hand in a written charge would allow one or two of
24 the jurors to control what the law may or may not
25 say, so this judge does not hand in a written

1 charge. But responding directly to your objection,
2 this jury was told that, these words, the State has
3 the burden of disproving self defense by proof
4 beyond a reasonable doubt.

5 Now, that means and could be interpreted to
6 be that the State has the burden to disprove all
7 four of the factors. It may not include all four
8 of the factors. But when you begin to split the
9 hairs as finely as you are saying that the State v.
10 Burkhardt requires, we are over complicating the job
11 of the jury, and the Court refuses to do that.

12 MR. GROSE: All right.

13 THE COURT: You may mark that as an exhibit,
14 your objection is overruled.

15 MR. GROSE: Thank you, Your Honor. If I can
16 have a few minutes on that curative instruction,
17 please.

18 THE COURT: Yes, sir.

19 (Request to charge marked Defendants
20 Exhibit Number 23 for identification).

21 THE COURT: Let the Court take this
22 opportunity to recognize Miss Angela Smith and Mr.
23 Richard Madden. The Court knows that you would
24 prefer to be involved in the final deliberations of
25 this case, to express your feelings concerning this

1 matter. However, were there to have been, and
2 there often are, one or two family emergencies,
3 illnesses, even deaths, that causes us to have to
4 call upon an alternate, and you see that we have
5 been here for, we could have been here tomorrow, we
6 don't know in these matters how long it will take,
7 and we have had to ask one and then the other
8 alternate to take the place of those jurors who
9 were absent. In criminal cases we must have twelve
10 jurors, so you have been of great value but we must
11 excuse you now with the deepest of appreciation to
12 both of you for your service. It has been noted
13 you have paid close attention, you have watched,
14 you have listened, you have examined the evidence
15 as it has been passed about, and the Court hopes
16 that you have appreciated our system of justice and
17 have learned and taken something with you to share
18 with your friends about how we try cases and how we
19 go about it. We do everything we can to show the
20 jury all the facts that are available from both
21 sides, and you have seen quite a debate go on about
22 what the facts may be or may not be, and that's
23 what it's all about, and we appreciate greatly your
24 being here.

25 Now, do we have checks for them?

1 THE CLERK: No, they will be mailed.

2 THE COURT: You will receive a large check
3 very soon. Please do not be astonished by the
4 amount. Thank you both.

5 BAILIFF: We ordered food.

6 JUROR: I have some belongings back there.

7 THE COURT: Wait to get your food, if you
8 want to wait. If you wish to stay here for a while
9 and see if the deliberations may resolve the case
10 within your ability to wait, then you are welcome
11 to wait and see what the jury does and wait and see
12 the proceedings. Whatever you please, but thank
13 you very much.

14 We're going to stand in recess, please.

15 (Recessed at 1:43 p.m.).

16 (Reconvened at 1:56 p.m.).

17 THE COURT: All right, open the record in
18 State versus Robert Orlando Hill, indictment
19 1999-494.

20 Mr. Grose.

21 MR. GROSE: Your Honor, in the recess I
22 considered it, I also consulted with my colleague
23 Rauch Wise, and under the circumstances we couldn't
24 come up with something that could cure it, so I
25 don't have anything to present. I just have to

1 stand by my objection. I think to bring them back
2 out now would just further call attention to the
3 problem.

4 THE COURT: Well, it was the Court's
5 intention to protect the impeachment of the
6 defendant rather than to protect the impeachment of
7 all witnesses together. It was the intention to
8 help and the Court believes it did help rather than
9 hurt the defendant here on trial by saying that if
10 he were impeached then they are to give that such
11 weight as they deem it deserves, rather than just
12 let that impeachment automatically lead to a
13 tendency to convict him. That was the reason that
14 was given.

15 MR. GROSE: Well, I just feel like it played
16 in part right into their closing argument. I was
17 happy with just, you know, the general charge that
18 would normally have been expected.

19 THE COURT: The Court is offering you to
20 recharge this jury on the impeachment of witnesses
21 generally.

22 MR. GROSE: But I don't know that that cures
23 it, because you have to call attention to what
24 we're saying was a mistake, and that's where the
25 problem comes into play.

1 THE COURT: No, sir, it would not be the
2 Court's intention to call in any mistake, but to
3 just charge the impeachment, the impeachment
4 language that was used.

5 MR. GROSE: Well --

6 THE COURT: And to repeat it as to any
7 witness generally.

8 MR. GROSE: But I don't know, without calling
9 attention to what we're calling the mistake, I
10 don't think that that would be curative. You know,
11 if you charged something wrong you have to say, "I
12 made a mistake when I said this but, you know, this
13 is, you know, this is what I really mean."

14 THE COURT: Well, here again the Court is not
15 going to let you stand there and object and not
16 make an effort to cure it. If you're objecting to
17 it and you think it's wrong, then the Court intends
18 to cure it in some way.

19 MR. GROSE: Well, I don't know, I can't
20 conceive of the instruction, because if you call
21 them out and say something to the effect, "When I
22 charged you what I charged you about the
23 impeachment of the defendant --"

24 THE COURT: I'm not going to say that. I'm
25 just going to say something to the effect that

1 where any witness' testimony is impeached by prior
2 inconsistent statements, et cetera. That's what
3 you want, isn't it?

4 MR. GROSE: But that still lets stand what
5 was said before without doing anything to correct
6 it. I don't think charging that as to witnesses
7 generally would amount to a curative instruction,
8 that it would cure the problem.

9 THE COURT: The witnesses aren't on trial,
10 it's the defendant on trial. That's the reason the
11 Court tried to assist him in that way. But if
12 you're going to object, then we'll talk about all
13 witnesses. That's what you started off saying.

14 MR. GROSE: What I started off saying was
15 singling him out over all the other witnesses.

16 THE COURT: Well, we won't single him out.

17 MR. GROSE: Here is the problem, too. I
18 don't know that I want that charge going to all
19 witnesses because actually I'm not sure that charge
20 is the law because what you charged was it could
21 only be considered for impeachment, and I realize
22 you're trying to help us out in that regard, but I
23 want where he impeached him to be considered as
24 substantive evidence, which it is under the law. I
25 researched this two or three weeks ago when we had

1 that trial on the CDV in Greenwood where the lady
2 had recanted, whether or not her prior statements
3 could be substantive evidence or not, and there is
4 case law that says that prior evidence, prior
5 statements are substantive evidence, and I realize
6 in one sense you have given him a benefit, but in
7 another sense it is singling out his impeachment.
8 I think that gets into the minutia of the splitting
9 hairs, the jury heard it about general witnesses,
10 they heard it about Lanny Hill singled out. All
11 they know is that he was singled out. I think
12 that's where the prejudice comes. He's, once he
13 testifies he's like the other witness in the trial,
14 he's on trial but the same rules apply to him as to
15 everybody else.

16 THE COURT: But the Court did not charge the
17 same language as to every witness.

18 MR. GROSE: I know and now you're proposing,
19 now you're proposing to bring them in and charge
20 the same language to every witness, and where I,
21 you know, handed it to Mr. Harvard and said,
22 "Doesn't they refresh your memory that Lanny turned
23 himself in," he said yes, and I want that to be
24 substantive evidence.

25 THE COURT: Everything is evidence that's

1 been admitted during the course of the trial, it
2 depends on what weight the jury gives it. But you
3 can't have both things, Mr. Grose. You are either
4 going to have to allow the Court to recharge them
5 as to witnesses generally or withdraw your
6 objection.

7 MR. GROSE: You recharge them as you see fit
8 and I'll object. I mean, if I think it's
9 objectionable. I mean, that's all I know to do.

10 THE COURT: All right, let's hear from you,
11 Mr. Anthony.

12 MR. ANTHONY: I don't have a position on the
13 issue. I mean, however the Court sees fit to deal
14 with this is agreeable to the State.

15 MR. GROSE: I think the State should have a
16 position on this because they're the ones who are
17 going to have to have a third trial if this turns
18 into being any kind of issue on appeal. I think
19 they should take a position whether you charged
20 them correctly or whether you charged them
21 incorrectly.

22 THE COURT: Well, that might be up to
23 somebody else. The Court is not going to force the
24 State to take a position on an issue you have
25 raised, they don't have to. The Court will leave

1 the charge as it is. Note your objection.

2 MR. GROSE: Thank you. I think we have
3 looked at all the evidence and I think it's ready
4 to go back there, Your Honor.

5 THE COURT: All right. Here's the verdict
6 form. We stand in recess.

7 (The evidence and verdict form was delivered
8 to the jury and recessed at 2:03 p.m.).

9 (Reconvened at 4:09 p.m.).

10 THE COURT: We will open the record in State
11 of South Carolina versus Robert Orlando Hill,
12 indictment 1999-494. The jurors have sent a note,
13 "May we have a copy of the differences in writing
14 of the murder charge and the voluntary charge?"

15 Now, the court can give them the standard,
16 standard charge, it is not known whether it will be
17 precisely the same language that was charged,
18 frankly, because there was some editorializing
19 going on as the charge was being given. But that
20 could be done if you want it to be done or they can
21 be told they have to remember it as they remember
22 it.

23 What's the State's pleasure?

24 MR. ANTHONY: I don't really have a problem
25 with just doing what they're asking for.

1 THE COURT: Okay. Mr. Grose, I think by our
2 previous informal talks you would have no objection
3 to that.

4 MR. GROSE: Well, you know, but in our
5 informal talks I was wanting them to have a copy of
6 the whole charge and not just selected parts of it.

7 THE COURT: That's not what they're asking
8 for.

9 MR. GROSE: I understand that, you know, but
10 I don't know that I mind sending it back there, I
11 would just like to look at what goes back there
12 beforehand.

13 I would still have the same objection with
14 regard to the way, you know, the malice and the
15 inference and the deadly weapon and all that was
16 charged but, you know, if you want to put something
17 together we can look at we can send them something.

18 THE COURT: It will take some time to do it
19 because the standard charge includes the inference
20 may arise when a deed is done with a deadly weapon,
21 which is defined as any article, instrument or
22 substance which may cause death, et cetera, and I
23 of course used instrumentality, which you pointed
24 out earlier, but frankly the Court sees very little
25 difference between dangerous instrumentality and

1 deadly weapon.

2 MR. GROSE: That's why we objected. I think
3 it's still a charge on the facts.

4 THE COURT: Six of one and half a dozen of
5 the other. Deadly weapon and a dangerous
6 instrumentality, or dangerous instrumentality, for
7 all practical purposes is the same thing. How to
8 give this to them without -- maybe our court
9 reporter, is there any way we can print out that
10 particular section of the charge?

11 We'll do that. Very well, stand at ease,
12 please.

13 (Recessed at 4:20 p.m.).

14 (Reconvened at 4:44 p.m.).

15 THE COURT: The record is open, please, state
16 of South Carolina versus Robert Orlando Hill,
17 indictment 1999-494.

18 The jurors sent out a note, "May we have a
19 copy of the differences in writing of the murder
20 charge and the voluntary charge." Signed, Foreman,
21 whose name is not legible, but this will be marked
22 as a Court's exhibit, please. Hand that to the
23 court reporter.

24 (Jury note marked as Court Exhibit Number 2).

25 THE COURT: This charge has been reviewed by

1 both Mr. Anthony and Mr. Grose. Mr. Grose, you
2 have some remarks you wanted to make about it?

3 MR. GROSE: Yes, sir. And we reviewed that
4 as well as the note that you have written and the
5 only objections that I have would be the same
6 objections that we made to this portion of the
7 charge right after the jury was instructed for the
8 first time, which goes to the malice and the
9 inferred malice and the use of a dangerous
10 instrumentality or deadly weapon as being a comment
11 on the facts not approved by the John Kennedy Huey
12 case. Similar to manslaughter charges that were
13 rejected in that case, we feel this does the same
14 thing.

15 THE COURT: Mr. Anthony?

16 MR. ANTHONY: We have no objection to the
17 charge as presented to the jury.

18 THE COURT: The objection stated by the
19 defense is overruled. Mr. Bailiff, if you will
20 hand this in, please. It will be marked as a
21 Court's exhibit. After it comes out we will mark
22 it as a Court's exhibit. They are to hand it to
23 you, Mr. Bailiff, when they are finished, however
24 long they use it. They might even come out with
25 it. I want to retrieve it.

1 (Excerpt from jury charge marked as
2 Court Exhibit Number 3).

3 THE COURT: Anything further?

4 MR. GROSE: Not at this time.

5 MR. ANTHONY: No, sir.

6 THE COURT: We stand in recess, please.

7 (Recessed at 4:49 p.m.).

8 (Reconvened at 5:40 p.m.).

9 THE COURT: We'll open the record, please.

10 This is State of South Carolina versus Robert
11 Orlando Hill, indictment 1999-494.

12 We understand that the jurors have reached a
13 verdict. Ask the jury in, please, Mr. Busby.

14 (The jury returned to the courtroom
15 at 5:41 p.m.).

16 THE COURT: Madam Clerk, will you inquire?

17 THE CLERK: Mr. Foreman, has the jury agreed
18 upon a verdict?

19 JUROR: Yes, ma'am, we have.

20 THE COURT: Thank you. You may be seated,
21 sir.

22 The verdict form is in order, it may be
23 published.

24 THE CLERK: The State of South Carolina,
25 County of Abbeville, in the Court of General

1 Sessions, 99-GS-01-494, the State versus Robert
2 Orlando Hill, defendant. As to Count One we the
3 jury find the defendant Robert Orlando Hill guilty
4 of voluntary manslaughter. B. As to Count Two,
5 possession of a firearm during the commission of a
6 violent crime, we the jury find the defendant
7 Robert Orlando Hill guilty. Dated July the 14th,
8 2005, Abbeville, South Carolina. Signed S. C.
9 Hines, foreperson.

10 Mr. Foreman, ladies and gentlemen of the
11 jury, if this be your verdict please indicate by
12 raising your right hands and saying it is?

13 JURORS: It is.

14 THE CLERK: Thank you.

15 THE COURT: The record will reflect that all
16 jurors raised their right hands in assent and
17 consent to the verdict.

18 Is there anything further from the defense?

19 MR. GROSE: No, sir, Your Honor.

20 THE COURT: From the State?

21 MR. ANTHONY: No, sir, Your Honor.

22 THE COURT: The defendant will approach.

23 MR. GROSE: Your Honor, we would just make
24 the motion for a new trial based on the grounds for
25 our directed verdict motions and the fact that

1 there wasn't sufficient evidence to convict on the
2 voluntary manslaughter, the normal procedural
3 motions at this time, Your Honor.

4 THE COURT: They are denied.

5 MR. GROSE: Thank you, Your Honor.

6 THE COURT: Does the State wish to be heard?

7 MR. ANTHONY: Yes, Your Honor. If I could
8 have a moment, if the Court wants the paperwork
9 before it, I need just a moment and I also need
10 need a moment to talk to Mr. Hill's family.

11 THE COURT: All right. Ladies and gentlemen
12 of the jury, you may remain here during the
13 proceedings that are about to ensue or you may be
14 excused. You will receive your check momentarily.
15 If you want to stay you may stay, just relax
16 momentarily. The Court is going to leave the bench
17 while the paperwork is being prepared, then we will
18 come back into session in just a few minutes. Work
19 as quickly as you can, take about five minutes,
20 please, rest at ease.

21 (Recessed at 5:45 p.m.).

22 (Reconvened at 5:54 p.m.).

23 MR. ANTHONY: Thank you, Your Honor.

24 THE COURT: All right. The defendant will
25 approach together with Mr. Grose.

1 MR. GROSE: Your Honor, we have just one more
2 signature and we'll be right around.

3 THE COURT: Very well, take your time. Madam
4 Clerk, have the foreman sign this, please. Just go
5 ahead and have the foreman sign the indictment.

6 Mr. Anthony, the Court will hear from you
7 please, sir.

8 MR. ANTHONY: Yes, just briefly, Your Honor.
9 I just spoke with the victim's family. He has
10 several family members who have been here for the
11 entire trial and they have advised me that they did
12 not wish to address the Court as to sentence. Just
13 on behalf of the State, Your Honor, I will say that
14 in my experience of doing this I find, I find this
15 to be a particularly heinous, brutal crime and he's
16 exposed, by virtue of these convictions this
17 afternoon he's exposed to 35 years and the State
18 believes he should do every single day of it, Your
19 Honor. Thank you.

20 THE COURT: Thank you, Mr. Anthony.

21 Mr. Grose, sir?

22 MR. GROSE: Your Honor, I think the first
23 thing I need to say is that I do appreciate what
24 these jurors have done, the work they have done,
25 because it's obvious with the amount of time that

1 they did what we asked and go through the evidence
2 in this case. Lanny has always told me that there
3 was some degree of provocation there and today we
4 have had a finding that that was the case.

5 Your Honor, he is exposed to 35 years on
6 these charges. We have never been in the position
7 in the six years we have been litigating this case,
8 me and my colleague Mr. Savitz at the Office of
9 Appellate Defense, have never been in the position
10 where we have had this judicial finding that that
11 took place, and we would ask that you take those
12 circumstances into account.

13 If Lanny had any record at all before this
14 happened it was nominal, magistrate level things.
15 I don't have those rap sheets in front of me but he
16 essentially has no record and we would ask for as
17 much mercy as possible under the circumstances. We
18 would certainly ask the sentence on the gun charge
19 be run concurrent. We hope the Court sees fit to
20 do that.

21 I have asked Lanny, he's a little emotional
22 right now, his family is a little emotional, I know
23 Artie Hill's family is emotional at this time, and
24 I have asked Lanny not to say anything, so I would
25 ask you not hold that against him, but he does have

1 a sister here who has been designated to speak on
2 behalf of the family and I think she's going to be
3 very brief but address you if the Court will take
4 it.

5 THE COURT: Say your name and you will be
6 heard.

7 MS. FORRESTER: My name is Lori Forrester,
8 this is my younger brother, and on behalf of his
9 family we would like to say we're sorry for you
10 all's loss, too. My younger brother has never been
11 in trouble before and I would ask the Court for him
12 to believe this young man, he just made a mistake,
13 so please be merciful on my brother. Thank you,
14 God bless you.

15 THE COURT: Thank you, ma'am. Anything
16 further?

17 MR. GROSE: No, sir, Your Honor.

18 THE COURT: In 1999-494, Count One, Robert
19 Orlando Hill, having been convicted of voluntary
20 manslaughter, is confined to the State Department
21 of Corrections for a term of thirty years.

22 In 1999-494, Count Two, Robert Orlando Hill
23 has been convicted of possession of a firearm
24 during the commission of a violent crime, for which
25 he's confined to the State Department of

1 Corrections for a term of five years consecutive to
2 Count One of this indictment.

3 Anything further from any quarter?

4 MR. GROSE: No, sir, Your Honor.

5 MR. ANTHONY: Nothing from the State, Your
6 Honor.

7 THE COURT: These proceedings are closed.

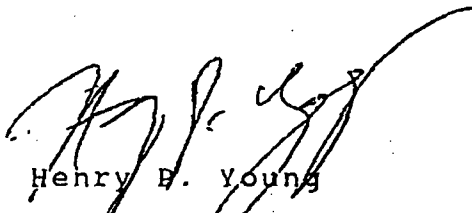
8 (Hearing adjourned at 6:00 p.m.).
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Abbeville County, South Carolina, on the 14th day of July, 2005.

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

January 20, 2006



Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County

Wyatt T. Sanders, Jr. v. Eugene Courtchides

THE STATE

RESPONDENT

ROBERT ORLANDO HILL

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The trial judge erred in refusing to allow Shannon Hill to testify about prior threats from Artie.

II. The trial court erred in failing to permit appellant to testify that Glenrissa told him about threats Artie had made.

STATEMENT OF THE CASE

Appellant Robert Orlando "Lanny" Hill was indicted in Abbeville County for murder and for using a handgun during a crime of violence. ROA p. *. The incident arose out of the shooting death of Artell Hill (no relation) on August 1999. Appellant was tried before the Honorable Wyatt T. Saunders and a jury on July 11, 2005. He was represented by Charles Grose. ROA p. 1. This was appellant's second trial, as his first conviction was reversed after a successful appeal. State v. Hill, 360 S.C. 13, 598 S.E.2d 732 (Ct. App. 2004).

On July 14, 2005, appellant was found guilty of the gun charge and the lesser-included offense of voluntary manslaughter and sentenced to thirty years in prison for voluntary manslaughter and five years for possession of a firearm. ROA p. *.

Appellant filed a motion to reconsider sentence on July 19, 2005, which was ruled upon by Judge Saunders on October 7, 2005. ROA p. *. This appeal follows.

STATEMENT OF THE FACTS

Sergeant Terrence Harvard with the Calhoun Falls police department testified that he received a call at 7:18 p.m. on August 6, 1999 about a shooting at Eastgate Apartments. ROA pp. 2-3. He met a group of people there who pointed him towards a small blue car. ROA p. 4, lines 12-21. There he saw Artell Hill (Artie) slumped forward, having been shot, in the front passenger seat of the car. ROA p. 5. He was gasping and then sat there motionless. ROA p. 5, line 24 – p. 6, line 3. He saw a stick in his left hand, which was the size of a little league baseball bat. ROA p. 38, lines 2-6.

Frank Tut took him to Lake Russell and threw a rock in the water to show where he had thrown a weapon in. ROA p. 17-18. The police retrieved the pistol, which had one round remaining in the magazine. ROA p. 19, lines 14-22. A photograph of the pistol was admitted into evidence. ROA p. 20, lines 14-15. The SLED expert opined that the casings found at the scene could have been fired from the pistol but he could not rule out other pistols as their source of propulsion. He believed that the bullets removed from Artie were fired by the submitted pistol. ROA pp. 237-238. He testified that the gun likely jammed. ROA pp. 231 – 233.

The police found four shell casings at the scene, which they sent to SLED, and one more later, which was not sent to SLED. ROA p. 14 lines 21-23; p. 22, lines 10-12.

Another SLED analyst testified that when he arrived Artie was dead in the passenger seat and the car doors were closed and the window open. ROA p. 146, lines 11-13. He opined that the blood on his body was consistent with him being in the sitting position when he was shot. ROA p. 148, lines 1-4. He could not rule out that the car door may have been open when Artie was shot because there was blood on the vertical part of the door where the

door would normally be closed. ROA p. 181, line 11 – p. 182, line 4. He also testified that the wound in Artie's shoulder was consistent with someone being shot standing face to face with someone. See p. 200-201.

The forensic pathologist testified that Artie was shot six times and two wounds were to the body and four were to the head. ROA p. 244. One of the bullets went into his right upper arm and into his pectoral muscle. ROA p. 245, lines 19-25. Another bullet went into his left shoulder from the front and came out his back. ROA p. 246, lines 1-5. Two wounds were to the front part of his head going from the right side to the left side. Another shot went into his skull above his right ear and lodged in his brain. Another grazed the bones in his head. ROA p. 246.

From the location of the gunshots, the pathologist believed that Artie was turning towards the open window facing his shooter and that his upper arm was raised when he was shot. ROA p. 248, lines 1-5; p. 250, lines 8-21; p. 277. The left shoulder gunshot most likely occurred first. ROA p. 255. He testified it was possible Artie was standing and out of the car when he was shot in the shoulder, as that shot was level. ROA p. 285, lines 16-22. In addition, the projectile from that shot was not in the body or the car. ROA p. 294, lines 15-19.

Because of the blood pattern, he believed Artie was sitting when he was shot in the head. ROA p. 257. He also believed the end of the gun barrel was a foot or more away from Artie when the gun was fired. ROA p. 249, lines 8-10.

Jeffrey Tatum testified that Odell Tillman, lifelong friend Artell Hill (Artie), and he were riding in Odell's car on August 6, 1999 when they stopped at Eastgate Apartments. ROA pp. 79 – 80; p. 90, line 25 – p. 91, line 2. He was in the backseat and when Odell

parked he got out of the car and stood beside Artie's position in the passenger seat. ROA p. 82, lines 17-21. Lanny rode up on his bicycle. Jeffrey knew him from his brother Reggie and stated "we were good friends and all." He testified that he had no dispute or bad feelings with Lanny. ROA p. 81, lines 9-13. He had seen Lanny fifteen minutes earlier at Seneca Circle. ROA p. 81, lines 16-21.

Jeffrey and Artie kept talking when Lanny rode up on his bike. Jeffrey said "What's up, Lan?" and Lanny said "what's up Bodine?" ROA p. 82, lines 18-20. Then, Lanny said "What's up, I heard you was looking for me." ROA p. 82, lines 14-15. Artie sat up in his car seat and said "I heard you was looking for me." ROA p. 83, lines 9-10. Lanny got off his bike and said "all right, stay right there." Lanny then pulled out his gun and started shooting after taking two or three steps toward the car. ROA p. 83, lines 17-24. Jeffrey testified that Lanny shot him from half a parking space away; however, he originally told police it was "point blank." ROA p. 88-89. Jeffrey said he heard four shots. ROA p. 84, line 2. Incredibly, he never moved when Lanny was shooting and continued to lean against the car standing right next to Artie. ROA p. 84, lines 5-10. Artie had both hands on his stick. ROA p. 84, line 17. Lanny did not stick the gun in the car. ROA p. 89, lines 24-25.

Geneva B. Clinkscales testified that she was standing outside her house on the sidewalk when she saw Odell Tillman drive up and get out of his car. He came to the sidewalk where she was. Artie Hill and Jeffrey Tatum were also in the car. Artie was in the front seat. ROA p. 58, lines 8-11. Artie did not leave the car but Jeffrey did and he "was kneeling down on the sidewalk at the front end [passenger side] of the car talking to" Artie. ROA p. 49, lines 13- p. 50, line 4; p. 61, line 18. Lanny came up on his bicycle and got off his bike. He walked up to Odell's car "and put his hand and pulled out the gun and like that

shot him." ROA p. 51, lines 9-12. She heard two shots, a pause, and then four or five more shots. ROA p. 51, lines 23-25. She never saw the door of the car open. ROA p. 52, line 7. Lanny got back on his bicycle and left. ROA p. 52, lines 13-15. She heard no conversation between anyone in the car and Lanny. ROA p. 52, lines 16-21. She said she saw Lanny put the gun a couple of inches from Artie's head. ROA p. 59, line 18 – p. 60, line 2. The forensic pathologist testified that the gunshot could not have come from such a close distance. ROA p. 136, lines 2-12.

Her granddaughter, Geneva Michelle Clinkscales (Michelle), testified that she was with her grandmother. She saw Odell drive up and Artie was in the front seat and Jeffrey was in the back. ROA p. 64, lines 16-21. Artie was her half-brother's first cousin with whom she grew up. ROA p. 65, lines 1-2. Jeffrey got out of the car and talked to Artie. ROA p. 65, lines 18-19. Odell got out of the car and went to talk to Michelle's friend. ROA p. 65, lines 5-7. Lanny came up on a bicycle and walked over to Odell's car. ROA p. 66, lines 22-23. Michelle then heard two gunshots, a pause, and then a "couple more shots." ROA p. 67, lines 4-8. Lanny got back on his bike and left. ROA p. 65, lines 17-19. She never saw Artie get out of the car or the car door open. ROA p. 68, lines 1-7. She heard no conversations. ROA p. 68, lines 10-13. She called 9-1-1. ROA p. 70, line 24. She walked out to the car and called Artie but did not touch him. He was gasping. ROA p. 70, lines 4-12.

Shannon Hill testified that her brother grew up with Lanny. ROA p. 94. She saw Lanny on August 6, 1999, and he was riding his bicycle. ROA p. 94, lines 16-18. He spoke to her and asked about some friend's daughter, said he had to go the grocery store and get his uncle something to eat at Gurley's. ROA p. 94, line 24 -- p. 95, line 9. He went inside

her apartment and spoke to her brother and his girlfriend and then left on his bicycle, heading towards Gurley's. ROA p. 95, lines 14-25. Then Odell and Artie pulled up in Odell's car. ROA p. 96, lines 9-11. A few minutes later, Lanny returned on his bicycle. ROA p. 97, lines 1-6. She heard Jeffrey say "what's up, man" and Artie said "Heard you were looking for me." ROA p. 98, lines 10-17. Lanny dropped the bike and said "Stay right there." Artie said "I'm not worried about you shooting me." ROA p. 99, lines 21-24. Lanny lifted his shirt, pulled something out and pointed it toward Artie as he was walking toward the car. ROA p. 99, lines 1-7. She saw something glaring in the sun. ROA p. 99, lines 10-11. He pointed it toward Artie's head and started shooting. ROA p. 99, lines 14-18. She never saw Artie get out of the car. ROA p. 100, lines 8-17. She also testified that Lanny put the gun to Artie's temple. ROA p. 117, lines 1-7.

Shannon further testified she heard Lanny say the night before that "he was tired of people not taking him seriously; he was going to get his respect one way or another even if it meant taking somebody out." ROA p. 102, lines 16-19.

Ira Green testified he was visiting his cousin, Otis Green, who lived at Eastgate Apartments. ROA p. 119, lines 20-25. His cousin was not home so he talked to Shannon and was talking to her when Lanny came up to talk to them. He said he was going to the grocery store to get something to cook dinner for his uncle. ROA p. 121, lines 6-23. He left on his bicycle toward Gurley's. ROA p. 122, line 1. Fifteen minutes later, he saw Lanny again when he returned and approached the car in which Artie was sitting. ROA pp. 122-123. His testimony about the shooting incident essentially mirrored Shannon's, except that Ira testified the gun jammed after he fired it four or five times and Lanny cocked it back and fired again. See ROA pp. 125 - 126. He testified the gun was "close to his head" and inside

the car when Artie was shot. ROA p. 134, lines 3-17. Ira also testified that he saw a stick between Artie's legs and that Artie was holding the stick tightly with both hands. ROA p. 128, lines 19-20. He testified he had never seen Artie do anything with the stick prior to that night. ROA p. 128, line 21 -- p. 129, line 1. Ira Green was a good friend of Artie's. ROA p. 135, lines 15-17.

Lanny turned himself in on August 6, 1999. ROA p. 308. Lanny testified that on a prior occasion, Artie asked whether he knew that Artie's girlfriend was cheating on him. Lanny said he knew nothing about the matter and Artie said he could "beat all you all." ROA p. 321. On a later occasion when Lanny was in a cast, Artie told him that if he was not in a cast that he "would do what he have to do." ROA p. 322. Artie ran back in and got a baseball bat, as did his friend. ROA p. 323, lines 1-5. Artie hit the car with the bat and dented it. ROA p. 323, lines 15-17. One of Lanny's friends was able to chase them away. ROA p. 323, lines 11-14. Threats from Artie and his friend, Sammy, were conveyed to Lanny so he stopped visiting places where they would be, in an effort to avoid trouble. ROA p. 324, lines 13-25.

He testified that he attempted to avoid Artie on the day of the shooting. He was in Eastgate Apartments to get food for his uncle. ROA p. 328. He saw Artie, who raised his stick. Lanny left and waited 45 minutes to return, thinking Artie would be gone. ROA p. 328, lines 14-25. He needed to tell his girlfriend to get her child. ROA p. 330, lines 6-7. He had a pistol on him because he said the police would not arrest Artie after the incident with the baseball bat. ROA p. 330, lines 16-24. He got the gun from Frank Tut. ROA p. 331, lines 10-11.

He was riding his bike and he did not see Artie. Jeffrey said something to him and then he saw Artie rise up, showing his stick, and saying "I heard you been looking for me." ROA p. 332, lines 13-21. He ignored him and started to get off his bike to go up to the door of his friend's house. Artie reached over and started to open the car door, so Lanny started shooting. ROA p. 333, lines 1-6. He testified he feared for his life based on what had happened with Artie in the past. ROA p. 333, line 21 – p. 334, line 4.

ARGUMENT

I. The trial judge erred in refusing to allow Shannon Hill to testify about prior threats from Artie.

In considering whether Lanny acted in self-defense, the jury was not allowed to hear that one of the state's witnesses, Shannon Hill, had witnessed violent outbursts by Artie that Lanny was also a witness to. According to Shannon, Lanny grew up with her brother, Rico Hill, and they were friends. ROA p. 98, lines 21-22; p. 106, lines 3-6. During cross-examination of Shannon, defense counsel asked her if she was familiar with the time when Artie chased her brother. The solicitor objected to the question based on hearsay. The judge sustained the objection and defense counsel asked for a bench conference. ROA p. 106, lines 10-15.

Defense counsel explained that he wanted to ask if she recalled when Artie chased her brother with a stick or a bat. ROA p. 107, lines 2-5. In the prior trial, she had testified that she had heard about Artie going after Rico with a bat. ROA p. 107, lines 6-11. Defense counsel explained that Lanny knew about the incident and it was relevant to show Artie's reputation in the community for violence because Lanny is entitled to take that into account when he decides to defend himself. ROA p. 107, lines 12-22. The solicitor argued it was still hearsay and the judge sustained the objection. Defense counsel then noted that it was "not being offered for the truth of the matter asserted, it's being offered for what was in Lanny Hill's mind at the time and something that would corroborate his state of mind." ROA p. 108, lines 5-9. The trial court stated the "record is clear on your behalf. The objection is sustained." ROA p. 108, lines 10-11.

After a short recess, argument on the issue continued. Defense counsel argued that under State v. Blurton, discussed *infra*, Lanny should be able to show his beliefs in terms of Artie's violent nature as shown against his good lifelong friend and thus added credence to his assertion that he lacked criminal intent when he shot Artie. See pp. 111 - 112. The trial court again sustained the objection. ROA p. 113, lines 5-16. At the end of the trial, the judge allowed defense counsel to submit Shannon's testimony from the prior trial as defense exhibit 22. ROA p. 359, 367. He restated his ruling that the evidence was inadmissible. This was error.

Hearsay, which is generally inadmissible, is "an out of court statement offered in court to prove the truth of the matter asserted." Rule 801, SCRE. Rule 802, SCRE. A statement that is not offered to prove the truth of the matter asserted should not be excluded as hearsay. State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978).

In appellant's case, the statements about Artie chasing Rico down with a bat were not offered to show their truth – that Artie did chase Rico – but were offered to show that Lanny, Rico's good friend, was aware of Artie's propensity to use his bat as a dangerous weapon.

In State v. Blurton, 342 S.C. 500, 537 S.E.2d 291 (Ct. App. 2000), reversed on other grounds, 352 S.C. 203, 573 S.E.2d 802 (2002), Blurton sought to introduce taped statements between him and a man who led him to believe that the robbery in which he participated was staged as part of a CIA operation. The Court held that the statements were not hearsay because they were not offered to show that the CIA staged the robbery but were offered to show that Blurton lacked criminal intent when he committed the burglary. *Id.* at 508, 537 S.E.2d at 295.

Likewise, Lanny should have been allowed to offer Shannon's hearsay knowledge of Artie's reputation for violence and the reason that he acted in self-defense.

II. The trial court erred in failing to permit appellant to testify that Glenrissa told him about threats Artie had made.

When Lanny took the stand, defense counsel asked him if there were "ever any times where you learned of threats from Artell Hill through some other way?" ROA p. 323, lines 18-20. Lanny stated "yes" and began to explain that Glenrissa, Artie's girlfriend, told him that Sammy, Artie's cohort, relayed threats to him. The solicitor objected and the court sustained the objection. ROA p. 323, lines 22-25. Defense counsel explained that it was relevant to show Lanny's state of "mind at the time that he felt that he had to defend himself." ROA p. 324, lines 3-6. The judge again sustained the state's objection.

After the trial, defense counsel proffered Lanny's testimony on this issue. Lanny stated that Sammy, Artie's best friend, sent word with Glenrissa that the next time he saw Lanny he was going "to handle the business." ROA p. 362, lines 16-19. He testified he took this information into account when he decided to defend himself. ROA p. 365, lines 12-15. The judge again ruled that the testimony was not admissible. ROA pp. 367-368. This was error.

Again, as in Issue I, this testimony was not hearsay because it was not admitted for the truth of the matter asserted. State v. Griffin, 277 S.C. 193, 198, 285 S.E.2d 631, 634 (1981). In that case, the appellant offered evidence that a friend told him that the deceased owned a firearm. The Supreme Court held that the evidence should have been admitted because the evidence was offered to show Griffin believed the deceased owned a firearm, not to prove the deceased in fact owned a gun.

Likewise, Lanny should have been allowed to introduce evidence that he believed Artie had threatened him to show that his actions in self-defense were reasonable.

CONCLUSION

Based on the foregoing, appellant is entitled to a new trial.

Respectfully submitted,



Eleanor Duffy Cleary
Appellate Defender

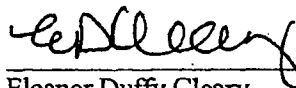
ATTORNEY FOR APPELLANT.

This 25th day of July, 2007.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

July 25th, 2007



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County

Wyatt T. Saunders, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT ORLANDO HILL,

APPELLANT

CERTIFICATE OF SERVICE

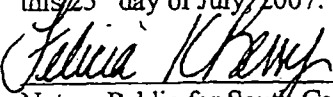
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of July, 2007.



Eleanor Duffy Cleary
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 25th day of July, 2007.



(L.S.)
Notary Public for South Carolina
My Commission Expires: August 15, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Abbeville County
Wyatt T. Saunders, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

ROBERT ORLANDO HILL,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Was the trial judge correct in refusing to allow a witness to testify regarding a prior incident involving the victim where the witness had heard about the prior incident but where the witness did not have any firsthand knowledge of the prior incident?

II.

Was the trial judge correct in refusing to allow Appellant to testify regarding what someone had told the Appellant that the victim had said where the judge did allow Appellant to testify regarding his reaction to what he had heard?

STATEMENT OF THE CASE

Appellant Robert Orlando "Lanny" Hill was indicted in Abbeville County for murder and for possession of a firearm during the commission of a violent crime. At Hill's first jury trial, the jury returned a verdict finding Hill guilty on both charges. However, Hill's conviction and sentence were reversed on appeal. See State v. Hill, 360 S.C. 13, 598 S.E.2d 732 (Ct. App. 2004).

Hill's subsequent jury trial was held on July 11-14, 2005 in the Abbeville County Court of General Sessions before the Honorable Wyatt T. Saunders. The jury returned a verdict finding Hill guilty of voluntary manslaughter and possession of a firearm during the commission of a violent crime. The trial judge sentenced Hill to thirty years in prison for voluntary manslaughter and to five years in prison for possession of a firearm. Hill filed a motion to reconsider sentence. Judge Saunders issued an order modifying Hill's sentence on October 7, 2005, thereby giving Hill credit for time served. Hill served his Notice of Appeal on October 12, 2005.

STATEMENT OF FACTS

Around 7:00 p.m. on August 6, 1999, Odell Tillman, Jeffrey Tatum, and Artell Hill drove to Eastgate Apartments in Calhoun Falls. (R. p. 48, lines 10-17; p. 49, lines 5-20). Odell Tillman got out of the car. (R. p. 49, lines 11-17). Jeffrey Tatum and Artell Hill stayed near the car while Tillman visited a nearby apartment. (R. p. 50, lines 2-4; p. 80, lines 5-21).

Artell Hill remained seated in the front passenger seat of the vehicle. Jeffrey Tatum talked with Artell Hill from just outside the vehicle. (R. p. 50, lines 2-4). Lanny Hill then approached Artell Hill and Jeffrey Tatum on a bicycle. (R. p. 50, lines 7-9). Lanny Hill got off the bicycle and walked up to the car where Artell Hill was seated. (R. p. 51, lines 9-12). Jeffrey Tatum said to Lanny Hill, "What's up, Lan?" (R. p. 82, line 18). Lanny Hill responded, "What's up, Bodine?" (R. p. 82, lines 18-19). Artell Hill then said to Lanny Hill, "What's up, I heard you was looking for me." (R. p. 82, lines 23-24). Lanny Hill said to Artell Hill, "All right, stay right there." (R. p. 83, lines 11-14). At that moment, Lanny Hill reached into his pants, pulled out a gun, and began shooting Artell Hill. (R. p. 51, lines 9-12; p. 83, lines 15-17). When Lanny Hill began shooting Artell Hill, Artell was still sitting in the car. (R. p. 52, lines 1-7; p. 84, lines 11-14). Lanny Hill then put the gun away, got back on the bicycle, and rode away. (R. p. 52, lines 13-15).

Sergeant Terrence Harvard of the Calhoun Falls Police Department received a call to respond to this incident at Eastgate Apartments. (R. p. 3, lines 1-8). When Sergeant Harvard arrived at the scene, he observed Artell Hill sitting in the front seat of a vehicle. (R. p. 5, lines 4-5). Sergeant Harvard immediately observed that Artell had been shot. (R. p. 5, lines 11-12). Artell was slumped forward in the car and was holding a stick in his left hand.

(R. p. 5, lines 18-20; p. 6, lines 4-8). Artell gasped for air a few times after Sergeant Harvard arrived but then just sat motionless. (R. p. 5, line 21-p. 6, line 3). Artell Hill died from four gunshot wounds to the head, one gunshot wound to the right shoulder, and one gunshot wound to the left shoulder. (R. p. 244, lines 15-21).

At trial, Shannon Hill testified that the night prior to this incident, Lanny Hill told her that he was tired of people not taking him seriously. Lanny Hill told Shannon Hill that he was going to get his respect one way or another, even if it meant taking someone out. (R. p. 102, lines 3-19).

ARGUMENT

I.

The trial judge was correct in refusing to allow a witness to testify regarding a prior incident involving the victim where the witness had heard about the prior incident but where the witness did not have any firsthand knowledge of the prior incident.

Shannon Hill had no firsthand knowledge of an alleged incident where Artell Hill had allegedly chased Shannon Hill's brother with a baseball bat. Therefore, the trial judge properly excluded Shannon Hill's testimony regarding that incident. However, the trial judge did allow testimony from Lanny Hill regarding his knowledge of Artell Hill's allegedly violent reputation. So any error in excluding Shannon Hill's testimony was harmless.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id.

Pursuant to Rule 602, SCRE, "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." In State v. Frazier, 357 S.C. 161, 167, 592 S.E.2d 621, 624 (2004), the Supreme Court held that the trial judge erred in admitting a witness' testimony regarding a statement allegedly made by the defendant where that witness did not know when the defendant made the statement, did not know to whom the defendant was speaking, and could not recall the

context of the statement. The Court found that the testimony was too speculative to be admitted. Frazier, 357 S.C. at 167.

In this case, defense counsel tried to elicit testimony from Shannon Hill regarding an incident where the victim Artell Hill had allegedly chased Shannon Hill's brother Rico with a stick or a bat. (R. p. 106, lines 10-13; p. 107, lines 2-11). At Lanny Hill's previous trial, defense counsel had asked the same question to which Shannon Hill responded, "No, I don't know that Artie chased after Rico with a stick...." (R. p. 107, lines 5-9). Defense counsel then asked, "You heard about it though, haven't you?" (R. p. 107, line 10). Shannon Hill responded, "Yes, I have." (R. p. 107, lines 10-11). This testimony was properly excluded in Lanny Hill's second trial because Shannon Hill had no personal knowledge of the matter. Shannon Hill had only heard about the incident. Therefore, the trial judge properly excluded Shannon Hill's testimony pursuant to Rule 602, SCRE.

Shannon Hill's testimony was also properly excluded hearsay evidence pursuant to Rule 802, SCRE. Shannon Hill had heard that Artell Hill had chased her brother with a stick or bat. (R. p. 107, lines 2-11). There is no hearsay exception allowing such testimony. Therefore, the trial judge properly excluded Shannon Hill's hearsay testimony.

Additionally, Shannon Hill's testimony was not relevant to Lanny Hill's state of mind at the time he shot Artell Hill. The trial judge found that "what this witness says she had heard had nothing to do with what this defendant knew or thought he knew." (R. p. 113, lines 11-13). "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Evidence which

is not relevant is not admissible.” Rule 402, SCRE. Shannon Hill’s testimony that she had heard that Artell Hill chased her brother with a stick has nothing to do with what Lanny Hill was thinking at the time of this shooting. Therefore, the trial judge did not abuse his discretion in refusing to admit Shannon Hill’s testimony regarding that incident.

Finally, even if the trial judge erred in excluding Shannon Hill’s testimony, such error was harmless. “Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result.” State v. Douglas, 369 S.C. 424, 632 S.E.2d 845, 849 (2006) (internal citations omitted). “In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict.” Douglas, 632 S.E.2d at 849. “Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.” Id. In this case, defense counsel elicited other testimony that Artell Hill had chased certain individuals with a baseball bat. Lanny Hill testified that he had seen Artell Hill chase someone named Sammy Reid with a baseball bat. (R. p. 322, line 20-p. 323, line 14). Lanny Hill also testified that Artell Hill had hit and damaged a car with a baseball bat. (R. p. 323, lines 15-17). And Lanny Hill testified that he had heard of other threats from Artell Hill. (R. p. 323, lines 18-20; p. 324, lines 10-19). Lanny Hill even testified that he tried to avoid Artell Hill because of threats Artell had made. (R. p. 324, line 20-p. 325, line 1). Because defense counsel presented evidence of threats and violence by Artell Hill, Shannon Hill’s testimony regarding what she had heard about Artell Hill would have been merely cumulative. Therefore, any error in excluding Shannon Hill’s testimony was harmless.

II.

The trial judge was correct in refusing to allow Appellant to testify regarding what someone had told the Appellant that the victim had said where the judge did allow Appellant to testify regarding his reaction to what he had heard.

Similar to the issue regarding Shannon Hill's testimony, the trial judge excluded Lanny Hill's testimony regarding what someone had allegedly told him. Lanny Hill testified that he learned from third parties about threats from Artell Hill against him. (R. p. 323, lines 18-20). Defense counsel asked Lanny Hill what threats he had heard. (R. p. 323, line 21). Lanny Hill began to testify regarding what Glenrissa Gates had told him that Sammy Reid had told Glenrissa, presumably regarding threats by Artell Hill. (R. p. 323, lines 22-23). The trial judge sustained the State's objection to Lanny Hill's testimony. (R. p. 323, lines 24-25).

Again, this is testimony about which the witness had no personal knowledge. See Rule 602, SCRE. The excluded testimony was not about threats Lanny Hill heard from Artell Hill. Instead, Lanny Hill was trying to testify about something he had heard from Glenrissa Gates who had heard it from Sammy Reid. The judge acted within his discretion in excluding such testimony.

This testimony was also hearsay testimony, properly excluded under Rule 802, SCRE. And there is no hearsay exception allowing such testimony at trial. Therefore, the trial judge properly excluded Lanny Hill's hearsay testimony.

Even if the judge erred in excluding Lanny Hill's testimony, such error was harmless. As stated above, defense counsel elicited other evidence of Artell Hill's alleged violence. Lanny Hill testified that he had seen Artell Hill chase someone named Sammy Reid with a baseball bat. (R. p. 322, line 20-p. 323, line 14). Lanny Hill also testified that Artell Hill had

hit and damaged a car with a baseball bat. (R. p. 323, lines 15-17). And Lanny Hill testified that he had heard of other threats from Artell Hill. (R. p. 323, lines 18-20; p. 324, lines 10-19). Lanny Hill even testified that he tried to avoid Artell Hill because of threats Artell had made. (R. p. 324, line 20-p. 325, line 1). Because defense counsel presented evidence of threats and violence by Artell Hill, exclusion of Lanny Hill's testimony regarding the exact wording of those alleged threats was harmless.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

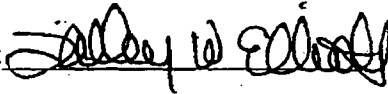
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June 29, 2007

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

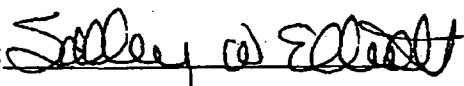
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Appellant.

PROOF OF SERVICE

I, Karen Farrell, certify that I have served the within Final Brief of Respondent on Appellant by depositing three copies of the same in the United States mail, postage prepaid, addressed to:

Eleanor Duffy Cleary, Esquire
Assistant Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
P. O. Box 11589
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Ernest Charles Grose, Jr., Esquire
Box P-133
Greenwood, S. C. 29646

I further certify that all parties required by Rule to be served have been served.

This 29th day of June, 2007.


KAREN FARRELL
Legal Assistant

Office of Attorney General
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Columbia, SC 29211
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville County

Wyatt T. Saunders, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT ORLANDO HILL,

APPELLANT

INITIAL REPLY BRIEF OF APPELLANT

ELEANOR DUFFY CLEARY
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ATTORNEYS FOR APPELLANT

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ARGUMENT IN REPLY

The trial judge erred by excluding testimony from Shannon Hill that she was aware that the deceased had chased her brother with a baseball bat.

After appellant testified, continuing the attempt to admit Shannon Hill's testimony, trial counsel argued that State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000) controlled. Tr. p. 537, line 21 -- p. 538, line 13. The Supreme Court held in Day:

In the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other specific instances of violence on the part of the deceased are not admissible unless they were directed against the defendant or, if directed against others, were so closely connected at point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm.

341 S.C. at 419-20.

Appellant was present when decedent attacked Rico Hill, Shannon Hill's brother, with a baseball bat, as appellant was sitting in a car that was damaged in the attack. Tr. p. 473, line 21 -- p. 475, line 17. This attack was closely connected to the homicide. Appellant testified about several incidents that evidenced a change from a friendly relationship with the decedent to a situation where the decedent was hostile toward appellant. Tr. p. 472, line 18 -- 476, line 19. The decedent's hostility toward appellant produced such an apprehension of great bodily harm that appellant began avoiding locations where he might encounter the decedent. Tr. p. 476, line 20 -- p. 477, line 15.

In Day, the evidence was admissible because the past act of violence "served as strong corroborating evidence that [the decedent] was a vengeful person." Day 341 S.C. at 419. Here, Shannon Hill's testimony corroborated that the decedent was hostile towards

appellant, had a propensity to use a baseball bat when attacking people, and had a reputation for violence in the community.

In its brief, the State argues that the trial judge properly excluded the evidence as (1) not relevant under SCRE Rule 402, (2) not based on lack of personal knowledge under Rule 602, and (3) hearsay under Rule 802. *Brief of Resp.* at 5-7. As discussed above, the evidence was relevant to appellant's theory of self defense and admissible pursuant to Day. Furthermore, the testimony was offered to show appellant's state of mind when he decided to defend himself and to show that the defendant had a reasonable apprehension of bodily harm. The testimony, therefore, is not hearsay. "A statement that is not offered to prove the truth of the matter asserted should not be excluded as hearsay." State v. Blurton, 342 S.C. 500, 508, 537 S.E.2d 291, 295 (Ct. App. 2000) reversed on other grounds. In Blurton, the fact that others were aware of the same information as Blurton was admissible because it corroborated his testimony and trial defense.

The state additionally argues that exclusion of the evidence was not prejudicial. Whether appellant acted in self defense was the most significant issue for the jurors to decide, and appellant's credibility was central to deciding this issue. State v. Burkhardt, 350 S.C. 252, 565 S.E.2d 298 (2002). The testimony corroborated appellant's testimony that the decedent had a propensity to attack people with baseball bats, that the decedent's recent acts of violence were known throughout the Calhoun Falls Community, and that appellant had a reasonable apprehension of great bodily harm.

This error is not harmless as the state argues. The evidence is not rendered harmless simply because appellant testified about the incident. In Blurton, the evidence was still admissible to corroborate Blurton's testimony. The testimony is necessary so that appellant

can fully and fairly present self defense. In this case, "it cannot be concluded that this error was harmless beyond a reasonable doubt, because there is a reasonable possibility that the error complained of might have contributed to the conviction." State v. Mouzon, 326 S.C. 199, 205 485 S.E.2d 918, 921-922 (1997) (quoting Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992), cert. denied, 507 U.S. 927, 113 S.Ct. 1302, 122 L.Ed.2d 691 (1993)). It is clear that the improper exclusion of Shannon Hill's testimony to corroborate appellant's testimony that he was afraid of the decedent contributed to a verdict of guilty.

II. The trial court erroneously prevented appellant from testifying about threats that were made by the decedent and communicated to him by a third person.

Appellant testified outside of the jury's presence that he was worried about decedent and decedent's best friend, Sammy, "going one on one" and "handling the business" with appellant. Tr. p. 541, line 7 -- p. 542, line 10. Appellant further testified that he believed these threats by decedent and Sammy because "both of them came with baseball bats" on another occasion and because the decedent had threatened that "he and Sammy could take care of all of [them]." Tr. p. 542, line 7 to 18. The judge refused to allow the jury to hear this testimony. Tr. pp. 546-547.

Evidence of prior difficulties with a decedent, including threats made by the decedent, are admissible because it is relevant to the relationship between the parties and concerns the appellant's right to judge the decedent harshly at the time of the fatal encounter. State v. Atchison, 268 S.C. 588, 235 S.E.2d 294 (1977). See State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987). For the same reasons discussed in Section I, these threats went to appellant's state of mind, and should not have been excluded. Blurton.

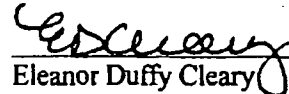
The state argues that exclusion of this evidence is harmless as it did not affect the verdict. The jurors, however, by finding appellant guilty of manslaughter found beyond a reasonable doubt that the decedent legally provoked appellant. The decedent was armed with three weapons: a club-like stick, a knife, and a razorblade. Defendant's exhibits 8, 9, 10, 11 and 12, and Tr. p. 443, line 3 -- p. 445, line 5. Self defense was the most significant issue for the jurors to decide, and appellant's credibility was central to deciding this issue. Burkhart. The excluded evidence was necessary for appellant to fully and fairly present self

defense. Because appellant's credibility was essential to his defense, it is impossible to say that exclusion of the evidence was harmless beyond a reasonable doubt.

CONCLUSION

Based on the foregoing, appellant is entitled to a new trial.

Respectfully submitted,


Eleanor Duffy Cleary
Appellate Defender

ERNEST CHARLES GROSE, JR.
600 Monument Street, Box P-133
Greenwood, SC 29646
(864) 229-9505

ATTORNEYS FOR APPELLANT.

This 4th day of June, 2007.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Robert Orlando Hill, Appellant.

Appeal From Abbeville County
Wyatt T. Saunders, Jr, Circuit Court Judge

Unpublished Opinion No. 2008-UP-081
Submitted February 1, 2008 – Filed February 6, 2008

AFFIRMED

Appellate Defender Eleanor D. Cleary, of
Columbia and Ernest Charles Grose, Jr., of
Greenwood, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W.
Elliott, Assistant Attorney General Shawn L.
Reeves, all of Columbia; and Solicitor Jerry W.
Peace, of Greenwood, for Respondent.

PER CURIAM: In July 2005, Robert Orlando Hill (Hill) was convicted of voluntary manslaughter and possession of a firearm during the commission of a violent crime. He was sentenced to a total of thirty-five years in prison. Hill appeals this conviction contending the trial court erred by refusing to admit testimony regarding prior threats in connection with the deceased victim. We affirm.^[1]

FACTS

Appellant Hill was charged with shooting Artell Hill[2] (Artie) while Artie sat in the passenger seat of a parked car. The shooting occurred shortly after Odell Tillman, Jeffrey Tatum, and Artie rode in Tillman's car to Eastgate Apartments in Calhoun Falls. Tillman parked the car and entered an apartment while Tatum exited the rear of the car and stood next to the passenger side window to talk to Artie. Shortly thereafter, Hill rode into the Eastgate Apartments' parking lot on a bike.

At trial the State presented testimony from five witnesses who were present at the shooting.[3] Hill and three of the State's witnesses testified Tatum said, "What's up?" to Hill as he rode into the parking lot. Hill responded, "Nothing," at which point Artie said "I heard you been looking for me," to Hill. Two witnesses testified Hill responded, "Stay right there," as he disembarked from the bike, walked towards the parked car, pulled his shirt up, removed a gun from his pants, and shot Artie six times.

Hill testified he began shooting when he saw Artie reach over as though he were going to open the car door. None of the State's five witnesses saw Artie move towards the car door or attempt to open the car door. Hill also testified Artie had raised a stick-like bat towards him. After the shooting Artie was found clasp ing a stick-like bat, however, witnesses never saw the stick until after Artie had been shot.

Hill shot Artie six times, including four shots to the head. After the shooting, Hill got back onto his bike and rode away. He turned himself into the police the following morning. Hill was indicted for murder and possession of a firearm during the commission of a violent crime.

During his July 2005[4] trial, Hill admitted to shooting Artie but claimed he did so in self-defense as he felt he was in danger. A jury found Hill guilty of voluntary manslaughter and possession of a firearm during the commission of a violent crime. Hill appeals.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id. This same standard of review applies to a trial court's determination of the admissibility of certain evidence in criminal cases. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). "The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004).

LAW/ANALYSIS

I. Shannon Hill's Testimony

At trial Hill unsuccessfully sought to introduce testimony from Shannon Hill[5] (Shannon) that she had heard of Artie chasing her brother with a stick-like bat. Since Shannon had no first hand knowledge of the incident, the trial court sustained a hearsay objection. Hill then proffered Shannon's testimony from his first trial in which Shannon testified she heard Artie had chased her brother with a bat but denied that Artie frequently carried bats. Hill argues Shannon's testimony regarding this incident should have been admitted into evidence as he could have taken it into account when he decided to defend himself by shooting Artie. We disagree.

"In the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other specific instances of violence on the part of the deceased are not admissible unless they were directed against the defendant or, if directed against others, were so closely connected at point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm." State v. Day, 341 S.C. 410, 419-420, 535 S.E.2d 431, 436 (2000). Whether a specific instance of conduct by the deceased is so closely connected in time as to be admissible is in the trial court's discretion and will not be disturbed on appeal absent an abuse of discretion. Id. at 420, 535 S.E.2d at 436.

In this instance, Artie was allegedly violent toward Shannon's brother, not Hill. The record fails to state when the incident took place or how it was closely connected with the shooting. Accordingly, we find the trial court did not err in refusing to admit testimony from Shannon regarding an incident between her brother and Artie.

II. Appellant Hill's Testimony

The trial court refused to allow Hill to testify that Artie's friend, Sammy, had sent word through Artie's girlfriend, Glenrissa, that when Sammy saw Hill, Sammy "was going to handle the business." Hill argues this testimony should have been admitted to illustrate he believed Artie had threatened him and show Hill's state of mind when he shot Artie. We disagree.

At trial Hill testified to prior threats from Artie. Hill also recounted an incident in which a bunch of their peers were chasing each other with stick-like bats and Artie hit the car Hill was in, denting it twice. Hill further testified that Artie and Sammy conveyed threats to him through other people which caused Hill to avoid being in close proximity with Artie. After the trial court would not allow further testimony regarding instances in which Hill learned of threats through a third person, Hill proffered the following testimony:

Q: When you were testifying in front of the jury, I asked you about having received threats through other people, right?

A: Yes, sir.

Q: And you were getting ready to talk about something that Sammy had said to you?

A: Yes, sir.

Q: All right. What was it that Sammy had said to you?

A: Sammy had sent word from Glenrissa Gates, Artie's girlfriend at the time, that when he seen me, me and him was going one on one, when he see me, he was going to handle the business.

Q: Who did you understand was going to handle the business?

A: Sammy at the time, that is what he said.

Q: About who?

A: About me, sent the word, tell me that.

Q: Who sent the word?

A: Sammy.

Q: All right. Was Artie connected with that?

A: Yes, sir.

Q: How was Artie connected with that?

A: Well, Artie and Sammy, they were like best friends.

Q: Okay. And who were you worried about handling the business with you?

A: Well, Artie....

It is a well-settled rule that in homicide cases, the defendant is permitted to introduce testimony concerning previous difficulties with the decedent. State v. Atchison, 268 S.C. 588, 593, 235 S.E.2d 294, 296 (1977). "The rationale for allowing such evidence is that it is relevant to the issue of the animus of the parties as it relates to the demeanor each party had reason to expect from the other when they met at the time of the fatal difficulty." Id. at 593-94, 235 S.E.2d at 296.

In this instance, Hill is attempting to introduce testimony concerning a threat from a friend of the decedent, not Artie himself. The admission or exclusion of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). We find no such abuse occurred by refusing to admit Hill's testimony regarding a threat from Sammy delivered via Glenrissa. Although Sammy was Artie's friend, Sammy was not present at or in anyway involved with the shooting. In addition, we note the record already contained evidence of Artie's direct threats towards Hill. Any error in excluding Hill's testimony regarding Sammy's threat was harmless and could not have reasonably affected the result of the trial since evidence of Artie's threats was already in the record. State v. Adams, 354 S.C. 361, 380-81, 580 S.E.2d 785, 795 (Ct. App. 2003).

Accordingly, the trial court is

AFFIRMED.

ANDERSON, SHORT, and THOMAS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

[2] The victim, Artell Hill, is not related to Appellant Robert Orlando Hill.

[3] Although the testimony of the five witnesses varies depending on what each heard Hill, Tatum, and Artie say, all agree on the pattern of events preceding the shooting.

[4] The trial held in July 2005 was Hill's second trial. Hill's first conviction was reversed after a successful appeal regarding the State's comments on Hill's post-arrest silence. See State v. Hill, 360 S.C. 13, 598 S.E.2d 732 (Ct. App. 2004).

[5] The witness, Shannon Hill, is not related to Appellant Robert Orlando Hill or the victim, Artell Hill.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ROBERT ORLANDO HILL,

APPELLANT

Appeal from Abbeville County

Wyatt T. Saunders, Jr., Circuit Court Judge

Opinion No. 2008-UP-081

PETITION FOR REHEARING

Counsel for Robert Orlando Hill petitions for rehearing of both the Court's holdings pursuant to *Rule 221(a), SCACR*, because in each instance the Court has misapplied *State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2000), and its predecessors.

First, the Court upheld the exclusion of testimony from Shannon Hill that the victim had previously chased her brother (no relation to Appellant) with a stick or a bat. ROA p. 106, lines 10-13. Defense counsel had argued that this testimony corroborated Lanny Hill's own testimony, particularly in regard to his state of mind at the time he shot the victim. ROA p. 108, lines 5-11. Hill in fact testified that he had seen the victim using a baseball bat as a weapon on this occasion. ROA p. 322, line 20 – p. 323, line 17.

Second, the Court also upheld the exclusion of Hill's own testimony that the victim's best friend had sent word, via the victim's girlfriend, that he and the victim were going to "handle the business" when they next met. ROA p. 323, lines 18-25; ROA p. 362, line 7 - p. 363, line 18. Counsel argued, "[T]his is relevant because its information that came to him that he had in his mind at the time that he felt that he had to defend himself." ROA p. 324, lines 3-6. The Court held that this evidence was properly excluded because the victim's best friend "was not present at or anyway involved with the shooting." This ruling ignores Hill's testimony that he believed the two were acting in concert, so that the threat was attributable to the victim as well. ROA p. 363, lines 7-10.

State v. Day and earlier cases hold that this excluded testimony was admissible for two reasons. See, for example, *State v. Peak*, 134 S.C. 329, 133 S.E. 31 (1926). First, the victim's reputation for violence, if known to the defendant, is relevant to the latter's claim of self-defense.

Second:

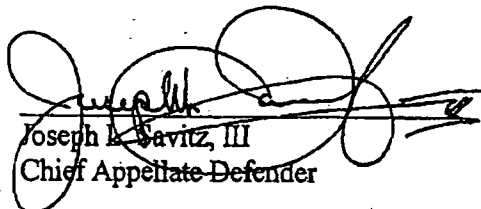
In the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other specific instances of violence on the part of the deceased are not admissible unless they were directed against the defendant or, if directed against others, were so closely connected at point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm.

535 S.E.2d at 436, quoting *Peak*.

In short, the excluded testimony established (1) the victim's propensity for violence involving club-like weapons and (2) a threat of physical violence directed at Hill, all of which was known to him and occurred along a continuum of escalating violence which culminated, Hill testified, when he shot the victim in self-defense.

For these reasons, the Court should grant rehearing and reverse Lanny Hill's convictions for voluntary manslaughter and possession of a firearm during the commission of a violent crime.

Respectfully submitted,



Joseph A. Savitz, III
Chief Appellate Defender

E. Charles Grose, Jr.
Public Defender

ATTORNEYS FOR APPELLANT

This 20th day of February, 2008.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Abbeville CountyWyatt T. Saunders, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

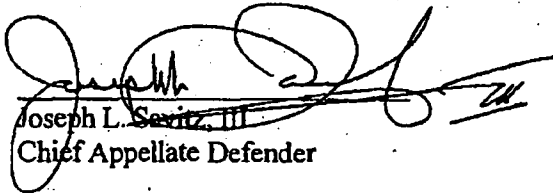
V.

ROBERT ORLANDO HILL,

APPELLANT

CERTIFICATE OF SERVICE

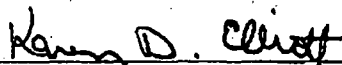
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Shawn L. Reeves, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of February, 2008.



Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 20th day
of February, 2008.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Robert Orlando Hill,

Appellant.

The Honorable Wyatt T. Saunders, Jr
Abbeville County
Trial Court Case No. 1999-GS-01-00494

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

Reke King Anderson, Jr.
Paul E. Shortz, Jr.
Paul R. Thomas, Jr.

Columbia, South Carolina
March 25, 2008.

cc: Appellate Defender Eleanor D. Cleary
Ernest Charles Grose, Jr., Esquire
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Shawn L. Reeves
Jerry W. Peace, Esquire

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Abbeville County

Wyatt T. Saunders, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT ORLANDO HILL,

PETITIONER

PETITION FOR WRIT OF CERTIORARI

JOSEPH L. SAVITZ, III
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ATTORNEYS FOR PETITIONER

ATTORNEY GENERAL'S OFFICE

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ISSUE PRESENTED

The Court of Appeals misinterpreted and then misapplied *State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2000), to exclude defense evidence which established (1) the victim's propensity for violence involving club-like weapons and (2) a threat of physical violence directed at Hill, all of which was known to him and occurred along a continuum of escalating violence which culminated, Hill testified, when he shot the victim in self-defense.

STATEMENT OF FACTS

On July 11 through 14, 2005, Robert Orlando "Lanny" Hill stood trial in Abbeville County on a 1999 indictment charging him with murder and possession of a firearm during the commission of a violent crime. Hill's earlier convictions for these crimes were reversed on direct appeal. *State v. Hill*, 360 S.C. 13, 598 S.E.2d 732 (Ct. App. 2004). Judge Wyatt T. Saunders, Jr. presided at Hill's retrial by jury.

Once again, the State contended that Hill had shot Terrance Artell "Artie" Hill (no apparent relation) without provocation as he sat in the passenger seat of a parked automobile talking with friends. While he admitted shooting the victim, Hill again testified that he had done so in self-defense only after he saw the victim getting out of the car, intending to attack him with a piece of wood the size of a baseball bat. ROA p. 324, line 11 – p. 326, line 14. The victim was, in fact, clutching the weapon described by Hill at the time he was shot. ROA p. 15, lines 6-14; ROA p. 37, line 15 – p. 38, line 8. In addition to murder, the judge instructed the jury on voluntary manslaughter and self-defense. The jury found Hill guilty of manslaughter and the judge sentenced him to imprisonment for thirty years, plus a consecutive sentence of five years for possession of a firearm during the commission of a violent crime.

This time, the Court of Appeals affirmed on direct appeal. *State v. Hill*, Unpublished Opinion No. 2008-UP-081, filed February 6, 2008. The Court denied rehearing by order dated March 25, 2008.

Lanny Hill now asks the Supreme Court to issue a writ of certiorari to review the decision of the Court of Appeals.

ARGUMENT

The Court of Appeals misinterpreted and misapplied *State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2000), to exclude defense evidence which established (1) the victim's propensity for violence involving club-like weapons and (2) a threat of physical violence directed at Hill, all of which was known to him and occurred along a continuum of escalating violence which culminated, Hill testified, when he shot the victim in self-defense.

Lanny Hill's claim of self-defense depended in large measure upon the reasonableness of his belief that the victim was moments away from brutally attacking him with a club-like object. Toward that end, defense counsel sought to introduce evidence establishing (1) the victim's propensity for violence involving such weapons and (2) a threat of physical violence directed at Hill - incidents of escalating violence known to Hill which required him to shoot the victim in self-defense.

First, the Court of Appeals upheld the exclusion of testimony from Shannon Hill that the victim had previously chased her brother (no relation to petitioner) with a stick or bat. ROA p. 106, lines 10-13. Defense counsel argued that this testimony corroborated Lanny Hill's own testimony, particularly in regard to his state of mind at the time he shot the victim. ROA p. 108, lines 5-11. Hill testified that he had seen the victim using a baseball bat as a weapon on this occasion. ROA p. 322, line 20 – p. 323, line 17.

Second, the Court also upheld the exclusion of Hill's own testimony that the victim's best friend had sent word, via the victim's girlfriend, that he and the victim were going to "handle the business" when next they met. ROA p. 323, lines 18-25; ROA p. 362, line 7 – p. 363, line 18. Defense counsel argued, "[T]his is relevant because it is information that came to him that he had in

his mind at the time that he felt that he had to defend himself.” ROA p. 324, lines 3-6. The Court held that this evidence was properly excluded because the victim’s best friend “was not present at or any way involved with the shooting.” This ruling ignores Hill’s testimony that he believed the two were acting in concert, so that the threat was attributable to the victim as well. ROA p. 363, lines 7-10.

State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000) and earlier cases hold that this excluded testimony as admissible for two reasons. First, the victim’s reputation for violence, if known to the defendant, is relevant to the latter’s claim of self-defense. Second:

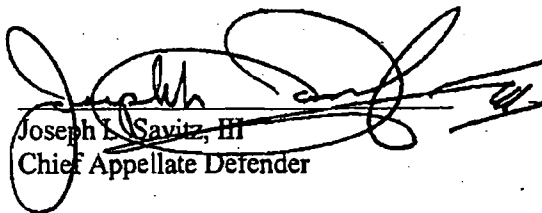
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535 S.E.2d at 436, quoting *State v. Peak*, 134 S.C. 329, 133 S.E. 31 (1926).

The exclusion of this evidence from Hill’s case in defense could not have been harmless error as, contrary to the Court of Appeals’ conclusory exit-line, it was not merely cumulative to other evidence before the jury. See, for example, *State v. McFarlane*, 279 S.C. 327, 306 S.E.2d 611 (1983).

For these reasons, the Court should grant certiorari and ultimately reverse Lanny Hill’s convictions for voluntary manslaughter and possession of a firearm during the commission of a violent crime.

Respectfully submitted,



Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of June, 2008.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Abbeville County

Wyatt T. Saunders, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

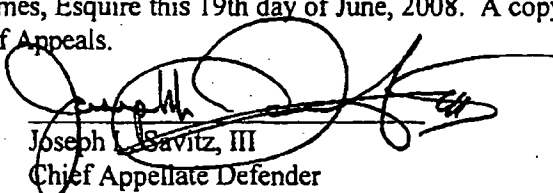
V.

ROBERT ORLANDO HILL,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Julie M. Thames, Esquire this 19th day of June, 2008. A copy of the petition has also been served on the Court of Appeals.



Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 19th day
of June, 2008.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Abbeville County
Wyatt T. Saunders, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

ROBERT ORLANDO HILL,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JULIE M. THAMES
Assistant Attorney General

Post Office Box 11549
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(803) 734-3727

JERRY W. PEACE
Solicitor, Eighth Judicial Circuit

P. O. Box 516
Greenwood, S. C. 29649-0516
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ATTORNEYS FOR RESPONDENT

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QUESTIONS PRESENTED**I.**

Did the Court of Appeals properly find that the trial judge was correct in refusing to allow a witness to testify regarding a prior incident involving the victim where the witness had heard about the prior incident but where the witness did not have any firsthand knowledge of the prior incident?

II.

Did the Court of Appeals properly find that the trial judge was correct in refusing to allow Petitioner to testify regarding what someone had told the Petitioner that the victim had said where the judge did allow Petitioner to testify regarding his reaction to what he had heard?

STATEMENT OF THE CASE

Petitioner Robert Orlando "Lanny" Hill was indicted in Abbeville County for murder and for possession of a firearm during the commission of a violent crime. At Hill's first jury trial, the jury returned a verdict finding Hill guilty on both charges. However, Hill's conviction and sentence were reversed on appeal. See State v. Hill, 360 S.C. 13, 598 S.E.2d 732 (Ct. App. 2004).

Hill's subsequent jury trial was held on July 11-14, 2005 in the Abbeville County Court of General Sessions before the Honorable Wyatt T. Saunders. The jury returned a verdict finding Hill guilty of voluntary manslaughter and possession of a firearm during the commission of a violent crime. The trial judge sentenced Hill to thirty years in prison for voluntary manslaughter and to five years in prison for possession of a firearm. Hill filed a motion to reconsider sentence. Judge Saunders issued an order modifying Hill's sentence on October 7, 2005, thereby giving Hill credit for time served. Hill served his Notice of Appeal on October 12, 2005.

The Court of Appeals affirmed Hill's convictions in Opinion No. 2008-UP-081, filed February 6, 2008. The Court of Appeals denied Hill's Petition for Rehearing by Order dated March 25, 2008. Hill's Petition for Writ of Certiorari followed.

ARGUMENT

I.

The Court of Appeals properly found that the trial judge was correct in refusing to allow a witness to testify regarding a prior incident involving the victim where the witness had heard about the prior incident but where the witness did not have any firsthand knowledge of the prior incident.

The Respondent submits that the Court of Appeals correctly interpreted and applied State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000), to exclude testimony from Shannon Hill when that testimony was that the victim had been violent toward the witness's brother, not toward Petitioner. In addition, the Court of Appeals correctly found that the record failed to establish when the alleged incident took place nor how it was closely related to the shooting at issue. In addition, Petitioner testified about prior threats from the victim and a prior incident in which the victim damaged a car with a baseball bat. Thus, the testimony would have been cumulative.

Pursuant to Rule 602, SCRE, "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." In State v. Frazier, 357 S.C. 161, 167, 592 S.E.2d 621, 624 (2004), the Supreme Court held that the trial judge erred in admitting a witness' testimony regarding a statement allegedly made by the defendant where that witness did not know when the defendant made the statement, did not know to whom the defendant was speaking, and could not recall the context of the statement. The Court found that the testimony was too speculative to be admitted. Frazier, 357 S.C. at 167.

In this case, defense counsel tried to elicit testimony from Shannon Hill regarding an incident where the victim Artell Hill had allegedly chased Shannon Hill's brother Rico with

a stick or a bat. (R. p. 106, lines 10-13; p. 107, lines 2-11). At Petitioner's previous trial, defense counsel had asked the same question to which Shannon Hill responded, "No, I don't know that Artie chased after Rico with a stick...." (R. p. 107, lines 5-9). Defense counsel then asked, "You heard about it though, haven't you?" (R. p. 107, line 10). Shannon Hill responded, "Yes, I have." (R. p. 107, lines 10-11). This testimony was properly excluded in Petitioner's second trial because Shannon Hill had no personal knowledge of the matter. Shannon Hill had only heard about the incident. Therefore, the Court of Appeals correctly found that the trial judge properly excluded Shannon Hill's testimony pursuant to Rule 602, SCRE.

Additionally, Shannon Hill's testimony was not relevant to Petitioner's state of mind at the time he shot Artell Hill. The trial judge found that "what this witness says she had heard had nothing to do with what this defendant knew or thought he knew." (R. p. 113, lines 11-13). "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. "Evidence which is not relevant is not admissible." Rule 402, SCRE. Shannon Hill's testimony that she had heard that Artell Hill chased her brother with a stick has nothing to do with what Petitioner was thinking at the time of this shooting. Therefore, the trial judge did not abuse his discretion in refusing to admit Shannon Hill's testimony regarding that incident and the Court of Appeals correctly affirmed that ruling.

In addition, even if an error was made in the exclusion of the testimony, such error was harmless. "Generally, appellate courts will not set aside convictions due to insubstantial

errors not affecting the result.” State v. Douglas, 369 S.C. 424, 632 S.E.2d 845, 849 (2006) (internal citations omitted). “In determining whether an error is harmless, the reviewing court must review the entire record to determine what effect the error had on the verdict.” Douglas, 632 S.E.2d at 849. “Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.” Id. In this case, defense counsel elicited other testimony that Artell Hill had chased certain individuals with a baseball bat. Petitioner testified that he had seen Artell Hill chase someone named Sammy Reid with a baseball bat. (R. p. 322, line 20-p. 323, line 14). Petitioner also testified that Artell Hill had hit and damaged a car with a baseball bat. (R. p. 323, lines 15-17). And Petitioner testified that he had heard of other threats from Artell Hill. (R. p. 323, lines 18-20; p. 324, lines 10-19). Petitioner even testified that he tried to avoid Artell Hill because of threats Artell had made. (R. p. 324, line 20-p. 325, line 1). Because defense counsel presented evidence of threats and violence by Artell Hill, Shannon Hill’s testimony regarding what she had heard about Artell Hill would have been merely cumulative. Therefore, any error in excluding Shannon Hill’s testimony was harmless.

II.

The Court of Appeals correctly found that the trial judge was correct in refusing to allow Petitioner to testify regarding what someone had told the Petitioner that the victim had said where the judge did allow Petitioner to testify regarding his reaction to what he had heard.

As in the preceding argument, the Respondent submits the Court of Appeals correctly upheld the trial judge's decision to exclude Petitioner's testimony regarding what someone had allegedly told him. Petitioner testified that he learned from third parties about threats from Artell Hill against him. (R. p. 323, lines 18-20). Defense counsel asked Petitioner what threats he had heard. (R. p. 323, line 21). Petitioner began to testify regarding what Glenrissa Gates had told him that Sammy Reid had told Glenrissa, presumably regarding threats by Artell Hill. (R. p. 323, lines 22-23). The trial judge sustained the State's objection to Petitioner's testimony. (R. p. 323, lines 24-25). The Court of Appeals correctly excluded the testimony when Sammy was not present at or in any way involved with the shooting.

This is testimony about which the witness had no personal knowledge. See Rule 602, SCRE. The excluded testimony was not about threats Petitioner heard from Artell Hill. Instead, Petitioner was trying to testify about something he had heard from Glenrissa Gates who had heard it from Sammy Reid. The Court of Appeals correctly found that the judge acted within his discretion in excluding such testimony.

In addition, defense counsel elicited other evidence of Artell Hill's alleged violence. Petitioner testified that he had seen Artell Hill chase someone named Sammy Reid with a baseball bat. (R. p. 322, line 20-p. 323, line 14). Petitioner also testified that Artell Hill had hit and damaged a car with a baseball bat. (R. p. 323, lines 15-17). And Petitioner testified that he had heard of other threats from Artell Hill. (R. p. 323, lines 18-20; p. 324, lines 10-

19). Petitioner even testified that he tried to avoid Artell Hill because of threats Artell had made. (R. p. 324, line 20-p. 325, line 1). Because defense counsel presented evidence of threats and violence by Artell Hill, exclusion of Petitioner's testimony regarding the exact wording of those alleged threats was harmless.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court deny the
Petition for Writ of Certiorari.

Respectfully submitted,

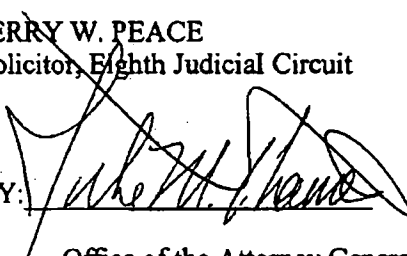
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JULIE M. THAMES
Assistant Attorney General

JERRY W. PEACE
Solicitor, Eighth Judicial Circuit

BY: 

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 20, 2008.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Abbeville County

The Honorable Wyatt T. Saunders, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ROBERT ORLANDO HILL,

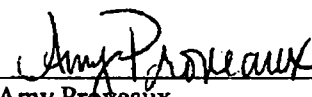
PETITIONER.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Joseph L. Savitz, III
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

This 20th day of August, 2008



Amy Proyeaux
Legal Assistant



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 19, 2009

Chief Appellate Defender Joseph L. Savitz, III
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Hill, Robert Orlando
1999-GS-01-00494

Dear Counsel:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

February 19, 2009."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,

Daniel E. Shearouse

CLERK

DES/dmh

2/19/09

ATTORNEY GENERAL'S OFFICE

RECEIVED FEB 19 2009

ADMINISTRATIVE INSTRUCTIONS

FILE OPEN END

HAVE COPIES MADE

ROUTE TO

ORDER: TRANSCRIPT

PEN RECORDS CLERK RECORDS

OTHER: *Fuller**awatt*
Remittan

Chief Appellate Defender Joseph L. Savitz, III
Page Two
February 19, 2009

cc: ✓ Assistant Attorney General Julie M. Thames
Ernest Charles Grose, Jr., Esquire
The Honorable Emily Yeargin McMahan
The Honorable Jeanette Barber



RECEIVED

The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

ATTORNEY GENERALS

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 24, 2009

REMITTITUR

The Honorable Emily Yeargin McMahan
Courthouse Court Square, Room 103
Post Office Box 99
Abbeville, SC 29620-0099

Re: The State v. Hill, Robert O.
1999-GS-01-00494

Dear Ms. McMahan:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The Exhibits being returned are: Defense Exhibits 8-12 (photographs). Please sign attached copy of the letter and return to acknowledge receipt of these items.

Sincerely,

Renee S. Johnson
Administrative Specialist

JFB/rj

cc: Chief Appellate Defender Joseph L. Savitz, III
Ernest Charles Grose, Jr., Esquire
Assistant Attorney General Shawn L. Reeves
Jerry W. Peace, Esquire

RECEIPT ACKNOWLEDGEMENT:

Name: _____ Date: _____

FORM 5

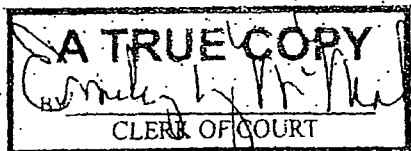
STATE OF SOUTH CAROLINA

County of AbbevilleRobert Hill, #265223

Full name and prison number (if any) of Applicant

v.

State of South Carolina



IN THE COURT OF COMMON PLEAS

09-CP-01-189APPLICATION FOR
POST-CONVICTION RELIEFEMILY MCMAHAN
CLERK OF COURT

2009 AUG 10 AM 11 13

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLEINSTRUCTIONS - 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 clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Department of Corrections
2. Name and location of Court which imposed sentence General Sessions, Post Office Box 99, Abbeville, S.C. 29620
3. Name(s) of co-defendant(s) (if any) No co-defendants
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 99-GS-01-494
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) July 14, 2005, 30 Years, 5 Years Consecutive.
(b) _____
(c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty _____
(b) after a plea of not guilty Yes, after two Jury Trials.
(c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes, through Appointed Trial and Appellate Attorneys.
8. If you answered "yes" to (7), list:
(a) the name of each Court to which you appealed:
i. Court of Appeals
ii. South Carolina Supreme Court
iii. _____
(b) the result in each such Court to which you appealed:
i. Affirmed Petition for Rehearing
ii. Affirmed
iii. _____
(c) the date of each such result:
i. _____
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. _____
ii. _____
iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
(a) Not Applicable.
(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Appointed Appellate Counsel
- (b) Ineffective Assistance of Appointed Trial Counsel
- (c) See Attachment 10. for concise Issues. Applicant reverses right to Amend.
11. State concisely and in the same order the facts which support each of the grounds set out in (10): See Applicant's Affidavit, Exhibits and future Amendment.
- (a) _____
- (b) _____
- (c) _____
12. 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 petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Not Applicable.
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

Issue 1: APPOINTED COUNSEL WAS INEFFECTIVE FOR FAILING TO CALL THE FOLLOWING WITNESSES, INCLUDING BUT NOT LIMITED TO: a) Sammy Reed b) Warren Tutt, c) Garrissa Gates, d) Melissa Tate, e) Chris McIntosh, f) Ditrick Norman (aka "Tiger"), g) Rico Hill, h) Frank Tutt; i) Ricky Holland

Issue 2: TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO SECURE INDEPENDENT EXPERT WITNESSES, INCLUDING BUT NOT LIMITED TO: a) Blood Stain Pattern Pattern, b) Eye Witness Expert

Issue 3: APPELLATE OR TRIAL COUNSEL WAS INEFFECTIVE TO ARGUE MOTION TO QUASH INDICTMENT.

Issue 4: APPELLATE OR IN THE ALTERNATIVE TRIAL COUNSEL WAS INEFFECTIVE FOR ADEQUATELY ARGUING MOTION FOR A NEW TRIAL.

Issue 5: TRIAL OR APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO THOROUGHLY ARGUE MISTRIAL MOTION.

Issue 6: APPOINTED TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO BRING FORTH DEFENDANT'S GOOD CHARACTER.

Issue 7: TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO JURY SELECTION.

Issue 8: TRIAL COUNSEL WAS DEFICIENT WHICH PREJUDICED APPLICANT'S CASE BY NOT SECURING A PRIVATE INVESTIGATOR and otherwise Investigate.

Issue 9: TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE REPEATED USE OF PHRASES CRIME SCENE AND VICTIM WHEN SELF DEFENSE WAS DEFENSE.

Issue 10: TRIAL COUNSEL FAILED TO DEVELOP SPECIFIC ACTS OF VIOLENCE AND DECEASED REPUTATION FOR VIOLENCE, INCLUDING SEVERAL THAT APPLICANT HAD PERSONAL KNOWLEDGE.

Issue 11: TRIAL COUNSEL FAILED TO OBJECT TO PREJUDICIAL PICTURES THAT INFLAMED THE PASSIONS & EMOTIONS OF THE JURY.

Issue 12: TRIAL COUNSEL FAILED TO OBJECT TO STATE WITNESS & PROSECUTOR MISLEADING JURY.

Issue 13: APPELLATE & TRIAL COUNSEL WAS INEFFECTIVE FOR NOT MAKING FACT THAT DECEASED WAS IN POSSESSION & USED CRACK COCAINE WHICH ENTITLED APPLICANT TO JUDGE THE CHARACTER OF DECEASED MORE HARSHLY RESPECTING ADDITIONAL SELF DEFENSE JURY INSTRUCTIONS.

Issue 14: TRIAL COUNSEL INEFFECTIVE FOR FAILING MOVE FOR A CHANGE OF VENUE.

Issue 15: TRIAL COUNSEL FAILED TO PREPARE APPLICANT FOR TRIAL.

Issue 16: TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST INVOLUNTARY MANSLAUGHTER JURY INSTRUCTION BECAUSE SC SUPREME COURT HELD NOT MUTUALLY EXCLUSIVE.

Issue 17: APPOINTED TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO REQUEST CHARGE WHICH INSTRUCTED THE JURY THAT THEY COULD NOT INFER MALICE SOLELY FROM THE POSSESSION OF A DEADLY WEAPON IF THEY OTHERWISE HAD A REASONABLE DOUBT THAT MALICE EXISTED.

Issue 18: APPOINTED TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO SPECIFICALLY REQUEST THE SELF DEFENSE JURY CHARGE THE STATE IS REQUIRED TO PROVE BEYOND A REASONABLE DOUBT EACH ELEMENT OF SELF DEFENSE ACCORDING TO STATE V BURKHART, 565 S.E.2d 298 (Ga.)

(c) the disposition thereof:

Not Applicable.

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

N/A

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

Not Applicable

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Not to my knowledge however, may be relevant as becomes discovered, as I am not an attorney with limited resources.

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

(a) which grounds have been presented:

N/A

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

N/A

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) 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:
Inadequate assistance from state interest appointments.

- (a) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:
No.

- (a) your arraignment and plea? _____
- (b) your trial, if any? **Yes.** _____
- (c) your sentencing? **Yes, but deficiently.** _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? **Yes.** _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? **Reconsideration of Sentence Motion which Judge denied.** _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. **Public Defender, Charles Grose, 600 Monument St., Box P-133**
Greenwood, SC 29646 - Trial Attorney
 - ii. **Eleanor Duffy Cleary, Appointed Appellate Attorney with**
Division of Appellate Defense, PO Box 11589, Columbia, SC 29211.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. **TRIAL & Reconsideration Sentence Motion**
 - ii. **Direct Appeal**
 - iii. _____

*** AFFIDAVIT OF ROBERT O. HILL ***

I, Robert O. Hill (Applicant), (hereinafter "Affiant"), first being duly sworn, hereby deposes as follows in support of Post Conviction Relief for Justice.

I do not have any crimes of violence nor criminal felony offenses. Affiant was appointed Public Defender, Charles Grose (Grose) for the first trial, November 15, 1999, and second trial July 14, 2005. Affiant's first trial was reversed. Affiant primarily defense is legally Self-Defense.

Grose did not provide Affiant with [e]ffective assistance of counsel.

The decedent, (Artie) Hill was a very violent person in which I had personal knowledge. Affiant knew Artie like other family members and observed Artie drink and smoke drugs such a cannabis and crack cocaine which made Artie even more violent while under the influence. Affiant witness Artie use weapons on more than one occasion.

Prior to the second trial Grose did not prepare Affiant whatsoever. In fact, Grose did not notify Affiant was to appear for Jury trial until morning of trial.

During trial Grose admitted on record that this case will have "appellate problems."

Affiant seeks ultimate truth in this tragic incident.

Artie was charged with First Degree Criminal Sexual Conduct for molesting Affiant's ten (10) year old cousin by penetrating her with his finger.

Affiant specifically told Grose that the gun used in the self-defense killing was not the literal gun entered in evidence at trial.

Affiant further sayest not!

Respectfully submitted,

Robert O. Hill

Sworn to before me this
20 day of July, 2009

G. Grose
Notary Public for South Carolina

My Commission Expires

My Commission Expires April 4, 2016

19. State clearly the relief you seek in filing this application:

Vacation of Sentence, New Trial, Fair & Just Relief.

20. Are you now under sentence from any other court that you have not challenged?
No, in fact this is the first time ever being in trouble.

Applicant has no violent history nor any felonies, very young at time of tragic incident.

STATE OF SOUTH CAROLINA)

Abbeville)

County of)

VERIFICATION

Robert Hill

I, _____, 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.

Applicant reserves right to Amend his PCR as information becomes available. Robert Hill

SWORN to and subscribed before me this 30
 day of July 2009

(L.S.)

Eugene Heath
 Notary Public

My Commission Expires: My Commission Expires April 4, 2018

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

Robert Hill

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Robert Hill
Applicant

SWORN or affirmed to and subscribed before me this

30 day of July, 2007

Eugene Hill
Notary Public

My Commission Expires: _____

My Commission Expires April 4, 2008

SHANNON HILL
CROSS-EXAMINATION BY MR. GROSE

1 CROSS-EXAMINATION BY MR. GROSE:

2 Q. IF I UNDERSTAND WHAT YOU'RE TELLING THESE JURORS
3 IS THAT THE SHOTS HAPPENED REAL QUICK, RIGHT?

4 A. YES.

5 Q. THERE WAS A PAUSE, BUT IT WASN'T MUCH OF A PAUSE.
6 IT HAPPENED REAL FAST?

7 A. YES.

8 Q. ~~S~~ SUDDENLY?

9 A. UH-HUH.

10 Q. OKAY. YOU GOT A BROTHER NAMED RICO HALL, DON'T YOU?
11 YOU?

12 A. YES, I DO.

13 Q. AND YOU KNOW THAT THERE WAS A TIME WHEN ARTIE
14 CHASED AFTER RICO WITH A STICK, DON'T YOU? OR A
15 BAT?

16 A. NO, I DON'T KNOW THAT ARTIE CHASED AFTER RICO
17 WITH A STICK. NO, I DON'T.

18 Q. YOU'VE HEARD ABOUT IT THOUGH, HAVEN'T YOU?

19 A. YES, I HAVE.

20 Q. AND YOU HEARD THAT YOUR BROTHER, RICO, WAS WITH A
21 GUY NAMED DEEDEE, RIGHT?

22 A. YES.

23 Q. AND YOU HEARD THAT WHEN ARTIE WAS CHASING AFTER
24 YOUR BROTHER, THAT DEEDEE'S CAR GOT DENTED WITH
25 THE BAT, HAVEN'T YOU?

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2009 AUG 10 AM 11:15
EMILY MCMAHAN
CLERK OF COURT

2025 RELEASE UNDER E.O. 14176

DEFENDANT'S
EXHIBIT

NO. 22

114

A. YES, I'VE HEARD THAT. YES, I HAVE.

A. NO, I HAVEN'T HEARD THAT ARTIE CARRIES BATS AROUND. NO, I HAVEN'T.

Q A. YES.

11 A. YES.

14 A. YES.

17 A. YES. WE BOTH WAS.

20 A. YES.

23 A. YES.

24 Q. OKAY. AND SO YOUR BACK WOULD HAVE BEEN -- AT
25 SOME TIMES YOUR BACK WOULD HAVE BEEN TOWARDS

STATE OF SOUTH CAROLINA
ABBEVILLE COUNTY

IN THE COURT OF COMMON PLEAS
8TH JUDICIAL CIRCUIT
C/A# 09-CP-01-189

Robert Hill, #265223
Applicant,

vs.

The State,
Respondent.

AFFIDAVIT AND AMENDMENT

I, Robert Hill hereinafter "Affiant", do hereby sworn under oath assert the following statements in support of my Post Conviction Relief Application filed "August 10, 2009," served upon the Solicitor's Office PO Box 516, Greenwood, SC 29648 and Attorney General's Office, ATTN: PCR Dept. PO Box 11549, Columbia, SC 29211, also August 10, 2009.

Affiant incorporates the below Exhibits including a general description thereof with the original PCR Application therewith specific issues.

EXHIBIT A: June 1, 2006, E-Mail correspondence from appointed Defense Attorney, Charles Grose to Joseph Savitiz requesting the Inference of malice deadly weapon issue.

In addition, at bottom of Exhibit A is further information to Attorney Rutch Wise specifically dealing with the inference of malice from deadly weapon issue.

EXHIBIT B: Warrant on decedent, Artell Hill for Criminal Sexual Conduct With a Minor.

EXHIBIT B.1: 2 Page Order signed by Judge of no contact respecting Hill's bail for CSC 1st°.

EXHIBIT B.2: Voluntary Statement by Terrance Artie Hill.

EXHIBIT B.3: Voluntary Statement by Bryant O'Neal Bryant accusing decedent of "fingering Applicant's cousin".

EXHIBIT C: Incident Report about Artell Hill's behavior filed by the Police Department for Disorderly Conduct & Malicious Injury to Property which Applicant justly reported.

EXHIBIT D: Incident Report for Malicious Injury to Property against Artie Terrance Hill.

EXHIBIT E: March 14, 2000, letter from Mr. Grose concerning a plea negotiation for fifteen (15) years to Voluntary Manslaughter to Deputy Solicitor, Michael Coulter.

EXHIBIT F: March 5, 2004, letter from Mr. Grose to Mr. Savitz.

EXHIBIT G: Trial Strategy Notes by Mr. Grose

EXHIBIT H: Additional Notes by Mr. Grose.

EXHIBIT I: Diagram Drawing by Mr. Grose.

EXHIBIT J: Square layout by Mr. Grose.

EXHIBIT K: Handwritten Notes by Mr. Grose.

EXHIBIT L: 1 through 20 Potential Witness List

EXHIBIT L.1: Typed Witness List.

EXHIBIT M: Notes, confirming facts in Applicant's favor.

EXHIBIT N: 2 Page "Index-Trial Notebook".

EXHIBIT O: State's Witness List which Defense had right to & should have called particular witnesses. Applicant will clarify which ones and a summary of their testimony ten (10) days prior to Evidentiary Hearing.

EXHIBIT P: May 30, 2005, 3 page letter from Mr. Grose to Applicant. Applicant has always been involved researching and seeking understanding how and why this all happened. Applicant has grown significantly in [o]ver the past decade of incarceration.

EXHIBIT Q: 2 Page Formal March 14, 2000, Correspondence by Mr. Grose.

EXHIBIT R: March 3, 2000, interview by ONeal Byyant stating Artie Hill is violent and threatened Applicant with a bat.

EXHIBIT S: March 3, 2000, interview of Chris Mack further supporting decedent was indeed violent.

EXHIBIT T: Incident Report implicating decedent shoots at people to handle matters.

EXHIBIT U: Unidentified Handwritten Notes, 5 pages, different handwriting.

EXHIBIT V: February 15, 2000, Index letter from prosecutor Michael Coulter.

EXHIBIT W: Partial Index by SLED, 2 pages.

EXHIBIT X: *** SLED Laboratory Forensic Sheet.

EXHIBIT Y: * SLED Laboratory Inventory Sheet.

EXHIBIT Z: July 19, 2005, letter by Mr. Grose filing Motion to Reconsider based on the unjust sentence involved in this particular case in light of the circumstances and in further truth.

Lastly, a copy of said 6 page Motion to Reconsider Sentence.

Applicant further reverses the right to Amend, Supplement & otherwise incorporate this Action has information becomes available including when the fact Applicant has an Attorney who sincerely seeks his best legal interest for ultimate Justice, Mercy & Closure.

Applicant further sayest not.

Respectfully submitted,

Brent Hill

Sworn to before me this

14th day of January 2009¹⁰

Susan D. Johnson

Notary Public for South Carolina

My Commission Expires:

My Commission Expires
March 5, 2018

Charles Grose

From: Charles Grose [cgrose@pdgreenwood.com]
Sent: Thursday, June 01, 2006 9:07 PM
To: Joseph L. Savitz III (Savitzj@infoave.net)
Subject: FW: Inference of malice deadly weapon
Attachments: Brief on malice issue.pdf; Request to Charge 2 appearances.pdf

In Lanny Hill, I think I objected to the inference of malice from the use of a deadly weapon. Please take a look at this brief and let me know what you think.

Best,
Charles

E. Charles Grose, Jr.
cgrose@pdgreenwood.com

Public Defender
Greenwood and Abbeville Counties
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: (864) 229-9505
Fax: (864) 227-1104

X2

From: scacdl-request@scbar.org [mailto:scacdl-request@scbar.org] **On Behalf Of** Rauch Wise
Sent: Thursday, June 01, 2006 7:52 PM
To: scacdl@scbar.org
Subject: Inference of malice deadly weapon

Attached is a copy of a brief I prepared on the question of whether the judge should charge an inference of malice from the use of a deadly weapon. I would like to say the trial judge did not give an inference charge but he did. He did, however, water down the charge. Also attached is a copy of a request to charge that the judge did give in a self defense case. He didn't charge the underlined portion, but he did charge the last sentence. That sentence enabled Townes Jones to successfully argue to the jury that they were not to engage in Monday morning quarterbacking in the case. As Charles noted, we had a good result.

This brief is not the end of your research but the beginning. I believe that if we start objecting to the inference of malice charge, we can get the court change that rule.

Rauch

Exhibit B

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
Calhoun Falls

THE STATE
against

Terrence Artell Hill
Address: Pendleton St.
Calhoun Falls, SC

Phone: SSN: Height: 600 Weight: 160
Sex: M Race: B
DL State: DL #:

Prosecuting Agency: Calhoun Falls P. D.
Prosecuting Officer: J. H. Bell

Offense: Criminal Sexual Conduct
with a Minor

Code/Ordinance Sec. 16-3-655 Offense Code:

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Terrence Artell Hill
on June 17, 1999

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Calhoun Falls

Personally appeared before me the affiant J. H. Bell

being duly sworn deposes and says that defendant Terrence Artell Hill
did within this county and state on 6-9-99 violate the criminal laws o

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Calhoun Falls
in the following particulars:

DESCRIPTION OF OFFENSE: Criminal Sexual Conduct With a Minor

I further state that there is probable cause to believe that the defendant named above did cor
the crime set forth and that probable cause is based on the following facts:

That on 6-9-99 in the town of Calhoun Falls, the county and state
aforesaid, one Terrence Artell Hill did commit the offense of viol
tion of the S. C. Code of Laws 1976 section (16-3-655) in that he
willfully and unlawfully commit a sexual act upon a 10 year old fe
(Glennetta Norman) while swimming at the Calhoun Falls Pool.

Sworn to and subscribed before me
on 6-17-99

Signature of Issuing Judge (L.S.)

Signature of Affiant P. O. Box 246
Affiant's Address Calhoun Falls, SC
Affiant's Telephone 447-8502

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Calhoun Falls

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 6-9-99 defendant Terrence Artell Hill
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Calhoun Falls) as set forth below:

DESCRIPTION OF OFFENSE: Criminal Sexual Conduct With a Minor

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge Code:

Judge's Address P. O. Box 414
Calhoun Falls, SC

Judge's Telephone 447-8035
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE
COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
Original Copy For The Trial Court - Copy For The Defendant

Form Approved By
S. C. Attorney General
Section 17-15-40
March 7, 1990

Ticket or Warrant No. F-156549

BAIL PROCEEDING
FORM I

STATE OF SOUTH CAROLINA
COUNTY OF Abbeville
State of South Carolina

IN THE ☒ COURT OF GENERAL SESSIONS
() MAGISTRATE COURT
() MUNICIPAL COURT OF _____

TERRANCE ARTELL H:11
Name of Defendant

ORDER SPECIFYING METHODS
AND CONDITIONS OF RELEASE

Offense Charged: Criminal Sexual Conduct with Minor

IT IS HEREBY ORDERED

I

That the above named defendant be released from custody on his own recognizance without surety on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court, and not depart the State without permission of the court and be of good behavior.

II

That the above named defendant be released from custody upon a recognizance without surety executed by him.

On the 18th day of June, 1999 Appearance Recognizance Without Surety
personally appeared before the undersigned judge the defendant named above who acknowledged himself indebted to the State of South Carolina, in the sum of \$15000.00 dollars, to be levied on his real and personal property for the use of the State, if the defendant shall fail in performing the conditions of this Order.

III

That the defendant will notify the court promptly if he changes his address from the one contained in this Order and will comply with the following other conditions of release _____

Stay away from victim and her family
Must be home by 9:00pm each night or he will
be in violation of his bond

IV

That the defendant shall appear at (check one):

- ☒ the term of the court of general sessions beginning on [Date:] 07-26-99 at [Time:] 9:00 o'clock, A. M., at [Place:] Abbeville Courthouse Abbeville SC and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- ☐ the session of magistrate/municipal (circle one) court beginning on [Date:] _____ at [Time:] _____ o'clock, _____ M., at [Place:] _____ If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

ACKNOWLEDGMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

Attorney Representing Accused
(If Known)

Terrance A Hill (L.S.)
Signature of Defendant

Address

Street P.O. Box 691
Calhoun Falls S.C. 29628
City/State/Zip

Telephone

Social Security Number _____

NONE

Driver's License or ID Number

H C Davis
Signature of Judge
6-18-99
Date

VOLUNTARY STATEMENT

DATE June 17, 1999 TIME 21:43 P.M. PLACE Calhoun Falls Police Dept
 I, Terrance A Hill, am 22 years old and I live at St P.O. Box 691

I am giving this statement to Sgt T. Hecavack, I.D. 303, who has identified himself as a Police officer with Calhoun Falls Police Dept and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

I Terrance A Hill was not at the swimming pool on the 6-9-99. The only day I was at the swimming pool was the first day it open at that was on 6-7-99. Then I was there about 20 min then I went home. The day I went swimming me a my sister-in-law and some of her friends. I have not been back ~~can~~ ^{TAH} cause they didn't have a Diver board. That be the only thing I go up there for. Then the ~~th~~ next thing I now a friend of my said that the swimming was ~~cast~~ ^{TAH} cast. I didn't know the little girl that they say that I didn't it to. I can get me some people that ~~can~~ ^{TAH} can tell where I was.

TAH

TAH

End of Statement

TAH

TAH

I have read this statement consisting of 1 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Terrance A Hill

Signature of person making voluntary statement

The above warnings were given by and this voluntary statement was taken by

Terrance Hill

(This must be one and the same person or named above)

Witness

x1

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

Exhibit B.3

PAGE NO. 1 OF 1 PAGES

I, Bryant ONica' Bryant, am not under arrest for, nor am I being detained for any criminal

offenses concerning the events I am about to make known to Sgt T. Henderson.
Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 19 years of age, and I live at 0000 Seneca Cir and Abell Hill ^a ~~full~~ ask me
who were she and I said full then I ask him why then he said
he had fingered her in the pool.

END

Jul

OE

Statement

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Witnessed at Calhoun Falls Police Dept Calhoun Falls SC, this 21st day of June 19 44.

WITNESS: Jessence Henderson

Bryant O'Neal Bryant
Signature of person giving voluntary statement

WITNESS: _____

AGE: .0.

INCIDENT REPORT

CASE NUMBER

NCC

SC 00 0200

99-05-0045

INC. EXT.

INCIDENT TYPE <i>Disorderly Conduct</i>	COMPLETED ☒ YES ☐ NO	FORCED ENTRY ☐ YES ☒ NO	PREMISE TYPE <i>Yard</i>	UNITS ENTERED	TYPE VICTIM: ☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Org. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Dept.
<i>Officious Trespass to property</i>	☒ YES ☐ NO	☒ YES ☐ NO	<i>Resid.</i>		
	☐ YES ☐ NO	☐ YES ☐ NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)

ST.

ZIP CODE

29628

WEAPON TYPE

None

DATE 05-13-99	IN HR. CLOCK 2319	DATE/TIME CLOCK 05-13-99 2345	TOTAL 2315	DATE/TIME CLOCK 05-13-99 2323	TOTAL 2330	LOCATION NO.

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) <i>Samuel AS Belan</i>	RELATIONSHIP TO SUBJECT #1 <i>Ag</i>	RESIDENT ☒ YES ☐ NO	RACE <i>B</i>	SEX <i>U</i>	AGE <i>23</i>	ETH. <i>N</i>	DAYTIME PHONE <i>N/A</i>	EVENING PHONE <i>N/A</i>
ADDRESS <i>Calhoun Falls</i>	CITY <i>Calhoun Falls</i>	STATE <i>SC</i>	ZIP CODE <i>29628</i>	LOCATION NO.				

VICTIM'S NAME (LAST, FIRST, MIDDLE) <i>Leates Glenaresa</i>	RELATIONSHIP TO SUBJECT #1 <i>Ag</i>	RESIDENT ☒ YES ☐ NO	RACE <i>B</i>	SEX <i>F</i>	AGE <i>20</i>	ETH. <i>N</i>	DAYTIME PHONE <i>N/A</i>	EVENING PHONE <i>N/A</i>
ADDRESS <i>Calhoun Falls</i>	CITY <i>Calhoun Falls</i>	STATE <i>SC</i>	ZIP CODE <i>29628</i>	LOCATION NO.				

VEHICLE INJURY (VICT 1) ☐ YES ☒ NO *EXPLAIN --*COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NOVICTIM (NO. 1) USING ALCOHOL ☐ YES ☒ NO *UNK.* DRUGS: ☐ YES ☒ NO *UNK.* TYPE:ONE-MAN VEH ☐ DETECTIVE/PLAINT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ J - This Jurisdiction S - State O - Out of State U - Unknown

SUSPECT <i>Bill Tencance Artell</i>	NAME (LAST, FIRST, MIDDLE)	RACE <i>B</i>	SEX <i>M</i>	AGE <i>22</i>	ETH. <i>N</i>	DATE OF BIRTH <i>60063</i>	HEIGHT <i>5'11"</i>	WEIGHT <i>180</i>	HAIR <i>BLK</i>	EYES <i>BLU</i>
WANTED										
WARRANT										
ARREST										

SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☒ NO <i>UNK.</i>	ARRESTED NEAR OFFENSE SCENE ☒ YES ☐ NO	DATE/TIME OF OFFENSE <i>05-13-99 2330</i>	DATE/TIME OF ARREST
DRUGS: ☐ YES ☒ NO <i>UNK.</i> TYPE:	TOTAL # ARRESTED <i>1</i>		

On date and time listed officers was dispatched to the above listed location as a disturbance. Once officer arrived on the scene the victim stated she want the suspect to leave the residence. Officers attempted to speak with the suspect which he became loud, and started cursing, telling officers he not going anywhere. Victim then exit the residence and began to making threats toward anyone who was present. Victim then re-entered the residence and threw the victim over a ring and knock the bedroom door open, causing damage. Suspect was arrested and transported to the County Jail for bond hearing.

JURISDICTION OF THE LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

VE (GROUP)	Value					TOTAL VALUE
MAN						
AGED	40					40
WED						
COVERED						
ED						

SUBJECT IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☒ YES ☐ NO	☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ AVOIDABLE - NO CUSTODY

ORIGIN OFFICER(S)

DATE
05-13-99UNIT NUMBER
1320

APPROVING OFFICER

DATE

UNIT NUMBER

H. P. L.

770 AGENCY I.D.

INCIDENT REPORT

CASE NUMBER

Exhibit D

NCIC

NO. ENTD.

C 0610200

9.9-07-0049

INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
Vehicle Entry to property				☒ YES ☐ NO	☐ YES ☒ NO	Roadway		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Cntr. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.	
				☐ YES ☐ NO	☐ YES ☐ NO				
				☐ YES ☐ NO	☐ YES ☐ NO				
INCIDENT LOCATION (HOMEDOWN, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE		WEAPON TYPE	
Shirlington - N - Lafayette St.						2608		BOT	
INCIDENT DATE	TIME	TO	DATE	TIME	DATE/TIME	TOTAL	DATE/TIME	TOTAL	LOCATION NO.
9-9-99	1955		06-13-99	2010	2010	2010	2010	2010	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT #1	RESIDENT	RACE	SEX	AGE	ETH.
AS Below					J S O U				
ADDRESS				CITY	STATE		ZIP CODE	LOCATION NO.	
VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT #1	RESIDENT	RACE	SEX	AGE	ETH.
German, Deitrich				AP	J S O U	B M	19	N	
ADDRESS				CITY	STATE		ZIP CODE	LOCATION NO.	
St.				Calhoun Falls	SC		29628		
VISIBLE INJURY (VICT 1) ☐ YES ☒ NO ☐ EXPLAIN									
COMPLAINANT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NO									
VICTIM (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☒ DRUGS: ☐ YES ☐ NO ☐ UNK ☒ TYPE:									
TWO-MAN VEHICLE ☒ ONE-MAN VEHICLE ☐ DETECTIVE/PLAINT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ J - This Jurisdiction S - State O - Out of State U - Unknown									
CS, SUSPECT	NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR
☐ RUNAWAY	Hill, Arthur	B M		22	N		5'11"	160	Bk Br
☐ WANTED	ADDRESS	CITY		STATE		ZIP CODE	LOCATION NO.		
☐ WARRANT	Lafayette St.	Calhoun Falls		SC		29628			
☐ ARREST	SUBJECT (NO. 1) USING ALCOHOL: ☐ YES ☐ NO ☐ UNK ☒				ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
☐ JAIL	DRUGS: ☐ YES ☐ NO ☐ UNK ☒ TYPE:				TOTAL # ARRESTED		06-13-99 1955		
☐ SUMMONS	On the date and time listed the victim states that he was driving his 83 model Dodge brown in color onto Washington St. from Lafayette where the listed suspect did take a bat which he had and knocked it down into the back of panel. The victim was advised to speak with the SAs on 07-14 about a warrant.								
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY									
JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY									
TYPE (GROUP)	Vehicle	TOTAL VALUE							
STOLEN									
DAMAGED	800	800							
ARMED									
RECOVERED									
SEIZED									
SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE ☒ ADM. CLOSED ☐		ARRESTED UNDER 18 ☐		EX-CLEAR UNDER 18 ☐	
☐ YES ☐ NO		☐ YES ☒ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY									
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER		
T. L. C.		06-13-99	309						
B. F. W.		06-13-99							

POL 001159

EXHIBIT E**OFFICE OF THE PUBLIC DEFENDER**

**Greenwood/Abbeville Counties
Suite 208, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Telephone: (864) 229-9505
Facsimile: (864) 227-1104**

**E. Charles Grose, Jr.
Public Defender**

**W. Alexander Buergey
Assistant Public Defender**

March 14, 2000

VIA HAND DELIVERY

Michael Coulter, Esquire
Deputy Solicitor Eighth Judicial Circuit
Suite 203, Park Plaza
Greenwood, South Carolina 29648

Re: State v. Robert Hill

Dear Mike:

This letter is to inform the State that Robert Hill offers to plead guilty to voluntary manslaughter for a negotiated sentence of 15 years. As you know, the current law would require him to serve 85% of this sentence before he is eligible for supervised release. Of course, he may not be released on supervised release.

Please share this letter with the victim's family. I look forward to hearing from you.

Thank you for your attention to this matter.

With kindest regards, I am

Very truly yours,



E. Charles Grose, Jr.

Exhibit F**OFFICE OF THE PUBLIC DEFENDER**

Greenwood and Abbeville Counties
Suite 208, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646

PUBLIC DEFENDER
E. Charles Grose, Jr.

(864) 229-9505
Fax (864) 227-1104

ASSISTANT PUBLIC DEFENDERS
W. Alexander Buergey
Tammy L. Beshers

March 5, 2004

Joseph L. Savitz, III, Esquire
Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, South Carolina 29201

Re: State v. Robert Orlando Hill

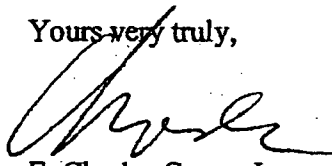
Dear Joey:

Enclosed please find two certified copies of court's exhibit number two which is Mr. Hill's Miranda warnings and assertion of his right to remain silent. As we discussed, please note that Officer Harvard witnessed Mr. Hill asserting his rights contrary to what the State has argued in their brief on appeal.

Please let me know if you need additional information.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

Trial Strategy Exhibit G

- ① Limit State u. Free b/c of Lack of perspective
- ② Show Lefty's Credibility, motive, Bias, prejudice b/c of Gender ~~by~~ Article
- ③ Explicit Stick
- ④ A talking about Stick from and Self A.
- ⑤ Trial Jurg - They will decide b/t M/S and Self Def.
- ⑥ Try to suppress all evd of prior threats by A - If come on, try to explain or warning b/c L/F P/D did not CARE

- ① Toxicology Report - Crack Addition
Adict would smoke -
After - no cocaine in system
= Drug Dealer
- ② Pathologist = most likely that
After Dr. aggressive store
getting out of car
- ③ Crime scene - pathologist called how
 happened over way
- ④ Pathologist = overkill - ~~gutter~~
overwhelmed force in highly emotional situation
- ⑤ All been exposed - lost
time of been
- ⑥ Terry = 1 day stay there
6/4 off Bike
- ⑦ Shannon Hill - knew of 5/21
Incident
- ⑧ Terry Howard - some conversations
knowing about problems

Exhibit I

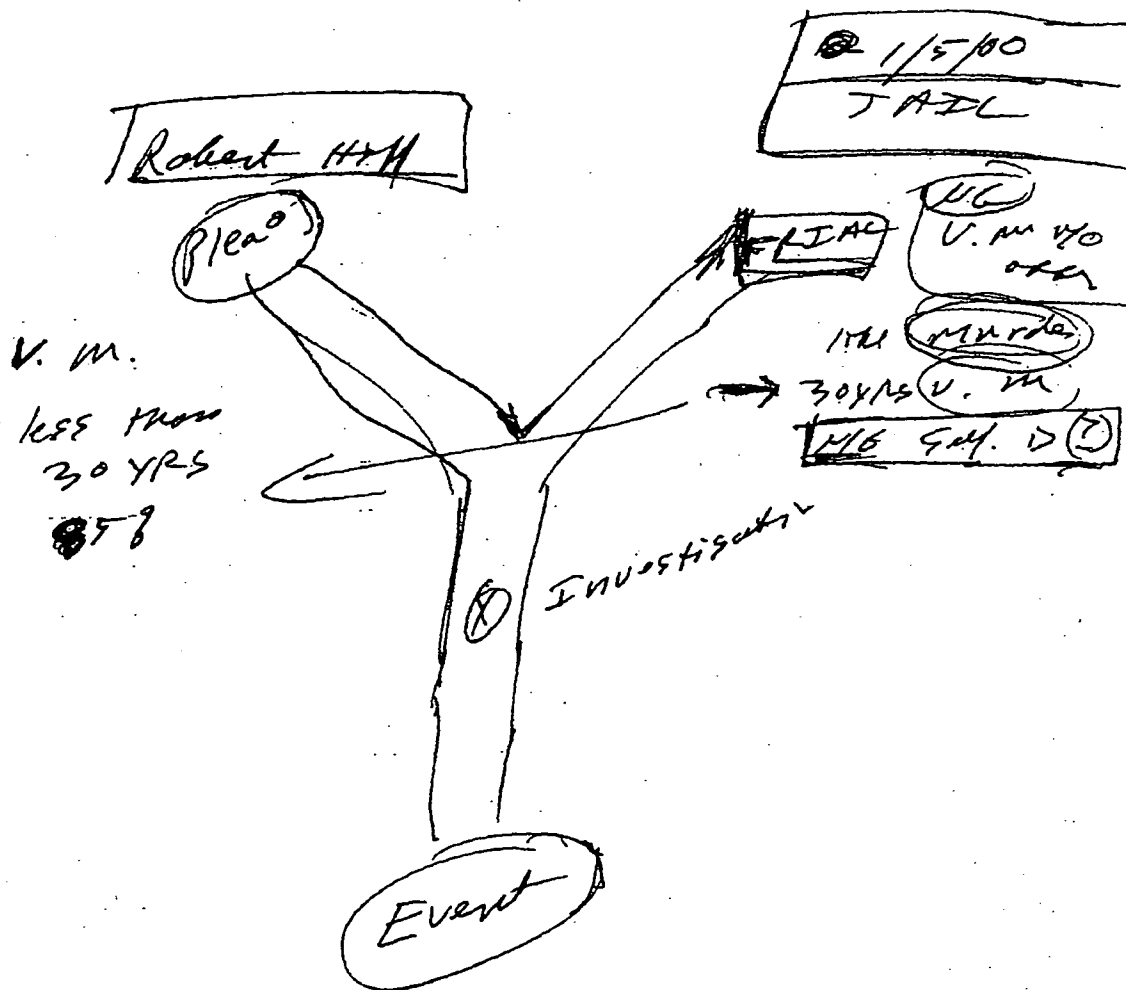


Exhibit J

3/13/00 Self Defense not guilty	Vol. MANSlaughter 0-30 yrs 85%	30 to life Murder 30 - life
<u>Intentional</u> ① w/o fault in difficulty ② see danger or Barr. ind. (stick) Response must be Reasonable Duty to Retreat Bike opportunity	<u>Intention</u> w/o malice <u>But</u> Heat of passion Legal provocation can consider ① prior difficulties ② Intoxication	<u>Intentional</u> w/ malice Absent Flight @ Plan ⑤ Use of Weapon

Exhibit

8/16/04

Accepted ans from AS
father

A Court PMS Vitz

father said I have to
Best

will talk to court

Exhibit LPOTENTIAL WITNESSES :

1. SGT. TERRY HARVARD - CALHOUN FALLS P.D.
2. SGT. MIKE ALENINE - CALHOUN FALLS P.D.
3. AGENT JEFF CROOKS - SLED
- ✓ 4. IDA GREEN *shooter*
- ✓ 5. SHANNON HILL *shooter*
6. ODELL TULLMAN *shooter*
7. JEFFREY TATUM *shooter*
8. GENEVA CLINKSCALES *shooter*
- ~~9. SANDRA TATUM~~
- 9* SANDRA TATUM *Aug 6/4*
10. OFFICER BARRY NEW - AVILLE P.D.
11. DEP. ROBERT TURMAN - AVILLE SHER
12. AGENT KEN WHITLER - SLED
13. AGENT KIM BLACK - SLED
14. NEKIA TATE ?
15. DREW CLARK
16. CHIEF MARTY THOMAS - DNETEAM
- 17* FRANK TUTT *gun*
18. DR. BRETT WOODARD - FORENSIC PATHOLOGIST
- ✓ 19. MICHELLE CLINKSCALES
20. ELIZABETH TATE

I when we started

① Puts Attention to

- victim harmed
- u.f. Con to ^{victim} people - post. self
- location of witness
- is opportunity to see

② Ask your self - what during of ~~State~~ ^{State}

③ Choice b/t Manslaughter +
M/C b/c of Self Defense

~~II Good Case~~

State v. Robert Orlando Hill, 1999-GS-01-494

Charge: Murder, Possession of a Weapon during the Commission of a Violent Crime

Offense date: August 6, 1999

Offense location: Eastgate Apartments, Calhoun Falls, SC

State's Potential Witnesses:

Shannon Hill

Ira Green

Geneva B. Clinkscales

Geneva Michelle Clinkscales

Jeff Tatum

Nekia Tate Maren

Raymond Lee Dykes (formerly of Calhoun Falls PD)

Officer Terry Harvard (formerly of Calhoun Falls PD)

Chief Mike Alewine-CFPD

Agent Jeff Crooks-SLED

Agent Ken Whitler-SLED

John Ezekiel (formerly of SLED)

Dr. Brett Woodard

- 23) Bonnie Martin
- 24) John D. Clark
- 25) Frank Tutt
- 26) Autopsy report
- 27) Dr. Woodard's file
- 28) SLED Agent Crooks File
- 29) SLED request/inventory forms (produced in 1999/2000)
- 30) Latent Print department
- 31) Trace Department
- 32) Firearms Department
- 33) Toxicology Department

OFFICE OF THE PUBLIC DEFENDER

*Greenwood/Abbeville Counties
Suite 208, Park Plaza
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Telephone: (864) 229-9505
Facsimile: (864) 227-1104*

*E. Charles Grose, Jr.
Public Defender*

*W. Alexander Buergey
Assistant Public Defender*

March 14, 2000

VIA HAND DELIVERY

Michael Coulter, Esquire
Deputy Solicitor Eighth Judicial Circuit
Suite 203, Park Plaza
Greenwood, South Carolina 29648

Re: State v. Robert Hill

Dear Mike:

In order to complete my file I will need the following:

- 1) Indictment;
- 2) Toxicology Report;
- 3) SLED Test Results on razor blade found in Terrence Hill's pocket;
- 4) Chain of Custody and test results for crack cocaine found in Terrence Hill's pocket; and
- 5) GSR Report on Terrence A. Hill.

In addition, I will need the criminal histories on the following:

- 1) Terrance Artel Hill,
- 2) Robert Hill,
- 3) Ira Eugene Green,

- 4) Ode (NMN) Tillman,
- 5) Sharon Demetria Hill,
- 6) Robert A. (Last name illegible) (see statement 8-6-99)
- 7) William Dunn,
- 8) Jeffery Tatum,
- 9) Thelma Edwards,
- 10) Sandra E. Tatum,
- 11) Glenda Shemetta Gates,
- 12) Geneva Clinkscales,
- 13) Bonnie Martin,
- 14) John Drew Clark,
- 15) Frank Tutt, and
- 16) Any other non-law-enforcement witnesses the State intends to call at trial.

Please consider this request pursuant to Rule 5 and Brady without need of formal written motion.

Thank you for your attention to this matter.

With kindest regards, I am

Very truly yours,

A handwritten signature in cursive script, appearing to read "E. Charles Grose, Jr.", written in dark ink.

E. Charles Grose, Jr.

ECGjr:cdw

**OFFICE OF THE
PUBLIC DEFENDER**

Memo

To: CHARLES GROSE
From: JOSEPH BEST
CC: FILE
Date: 3-16-2000
Re: STATE V.S. ROBERT HILL

WITNESS INTERVIEWED: ONEAL BRYANT

Oneal stated that one-week before the shooting, he was involved in an altercation---fistfight---with Artie Hill, the victim. During the fight, Artie ran into the house and came out with a baseball bat. Artie told Robert that he was going to hit him with the bat. Robert told Artie he was going to kill him.

The fight took place over Reesie Gates house. Sammy Reed also had a baseball bat.

**OFFICE OF THE
PUBLIC DEFENDER**

Memo

To: CHARLES GROSE
From: JOSEPH BEST
CC: FILE
Date: 3-16-2000
Re: STATE V.S. ROBERT HILL

WITNESS INTERVIEWED: CHRIS MACK

Chris stated that he was there when Artie and Oneal were fighting. He says that Artie ran into the house and came out with a baseball bat. He says Artie saw Chick ---Robert Hill--- and threaten him with the bat. He stated that Robert wanted to fight Artie but he had twisted his knee earlier that week wrestling on a porch. Artie swung the bat and hit DeDe Normans' car. He says that Sammy Reed had a bat in his hands.

786

AGENCY I.D.

INCIDENT REPORT

CASE NUMBER

Exhibit T

NCJ

MO. ETD.

SC 0010200

99-07-0067

INCIDENT TYPE BHAN Painting Presenting Circum				COMPLETED ☒ YES ☐ NO	FORCED ENTRY ☐ YES ☒ NO	PREMISE TYPE Street	UNITS ENTERED	TYPE VICTIM ☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Org. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Of
INCIDENT LOCATION (BUSINESS, APARTMENT AND NUMBER, STREET NAME AND NUMBER) Washington Street Calhoun Falls S.C.						ZIP CODE 29628	WEAPON TYPE	
INCIDENT DATE 7-16-99	TIME CLOCK 11:55pm	TO	DATE	TIME CLOCK	NIGHT/24 HR. CLOCK DATE/TIME 7-16-99 11:55pm	TOTAL DATE/TIME 7-16-99 11:55pm	LOCATION NO.	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) Roseal G. Hume				RELATIONSHIP TO SUBJECT #1 Agon	RESIDENT ☐ YES ☒ NO	RACE B	SEX M	AGE 20
ADDRESS Street				CITY Calhoun Falls	STATE S.C.	ZIP CODE 29628	LOCATION NO.	
VICTIM'S NAME (LAST, FIRST, MIDDLE) Roseal G. Hume				RELATIONSHIP TO SUBJECT #1 Agon	RESIDENT ☐ YES ☒ NO	RACE B	SEX M	AGE 20
ADDRESS Street				CITY Calhoun Falls	STATE S.C.	ZIP CODE 29628	LOCATION NO.	
VISIBLE INJURY (VICT #) ☐ YES ☒ NO EXPLAIN				COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NO				
VICTIM #1 USING ALCOHOL ☐ YES ☐ NO ☒ UNK. ☒ TYPE				DRUGS: ☐ YES ☐ NO ☒ UNK. ☒ TYPE				
TWO-MAN VER ☒ ONE-MAN VER ☐ DETECTIVE/PLASMT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐				JURISDICTION ☒ This Jurisdiction ☐ State ☐ Out of State ☐ Unknown				
SUSPECT ☒ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS				NAME (LAST, FIRST, MIDDLE) Norman Deitrick				
ADDRESS Kennedy Street				CITY Calhoun Falls				
SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☒ UNK. ☐				DATE/TIME OF OFFENSE				
DRUGS: ☐ YES ☐ NO ☒ UNK. ☐ TYPE				DATE/TIME OF ARREST				

The above date and time the comp stated that he was walking home on Washington Street and the subject road by him and starting shooting at him out of the car. The subject started running and the subject were chasing him. The comp was real nervous and sweaty when officers arrived.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
TYPE (GROUP)							TOTAL VALUE
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 16 ☐ ARRESTED 16 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ AVOIDABLE - NO CUSTODY		REPORTING OFFICER(S) Officer M. Alcauni		DATE 07-16-99		UNIT NUMBER 309	
FOLLOW-UP OFFICER Officer M. Alcauni		DATE 07-16-99		UNIT NUMBER 309			

Day 2: 11:15 AM
Charles: wounded / 2 fatal wounds on torso.

3 shots - stayed in body
3 shots - left body.

NO
20 ft. from body
20 ft. from body
20 ft. from body
20 ft. from body

too difficult for
shooter to discuss to
be squared up if
title was sitting.
Suggests APRE was standing.

position of
bullet 10 ft. away
pistol 10 ft. away
more order for physical
to make sense w/
angle of photos.

position of
bullet 10 ft. away
pistol 10 ft. away
more order for physical
to make sense w/
angle of photos.

Closest to
the body

Day 3: 7:13 PM: Anthony: Dr. Woodard

Pathologist - Med. Specialist
Dr. J. S. L. GA - Dr. (3-States)

Exhibit 4

external injury -
6 separated shots.
4-head 1-pr shoulder
1-12-Shoulder.

Body would
have had to have
been turned.

Pistol barrel was
1 ft. or more away
from APRE. Suggesting

NO POINT BLANK!

Right Shoulder
Shot that to have
come from
getting for.

left shoulder when shot in
right shoulder when shot in
right shoulder when shot in
right shoulder when shot in

movement of
movement of
movement of
movement of

Charles: Jeffrey Allen Crooks
Day 2 7/12/85

- got to crime scene at about 10:00 p.m.
- reviewed phone call to 103 and at exactly 1:30 p.m.
- found that crime scene tape and partial car covering had been put up prior to arrival.
- talked to Clarence Howard of Lakewood P.D.
- Document what is seen 1st before detailing things.
- Comment all changes to crime scene.
- Based on pilot car toll what the blood on the shoulder pavement is.

7/12/85 Anthony: Jeffrey Allen Crooks

WORKS OR STOP ABOUT 8 YRS.

Aug. 1979 → SLED Crime Scene Invest.
WORKED FOR SLED ~~FOR~~ 2 YRS. PRIOR TO 8/1/79

WENT TO INVESTIGATE
EUGENE, OR. TO INVESTIGATE
EUG. 6/19/79 ~~TO INVESTIGATE~~ MET W/
EUG. 6/19/79 ~~TO INVESTIGATE~~ OFFICERS ON THE
FERRY ~~SCENE UPON ARRIVAL.~~

TOOK PICS PERSONALLY
UPON ARRIVAL & MADE
OBSERVATIONS.

HAD TO DECIDE IF THEY COULD
HAVE DONE FINGERPRINT
CHECK ON IT. NO
DID CHECK ON PISTOL.

DAY 8
⑦

ANTHONY (35)
 IN ATTRESS
 new apt. complex
 21 AC 14 AM!
 2 FIDGETS ALG!

① Tenance Harrow (w/du)
 Pub. SATEY Clinton Parades
 (199 Calheim f. POICE)

Call 4 East Gate Apt. 7:18 P.M.
 RE: CODE 4 SHOOT / he 3 off. SUTHER BARNER

② Left upon arrival. Once over to vehicle
 after in front pass. Sear of blue car 4 wheels
 from pistol. sitting slumped. observed afire
 gasping before dead. Big stick. After left hand -

straight pos. v. end in floor board. instructed
 Sarge to get him some tape. notified dispatch (both
 EMS & Police). NO body pass. After from EMS
 SLED to EMS, callous in tens. T. Johnson
 chief blend me, sell. Marked skulls w/ caps.

Geny suspect that report. Clanged w/ murder
 1 hour night - # 2, 3, 6, 4, 7 (PRS view only)
 Tenance) New Jany girl. Programmed PRS 2 Jany
 suggests are applied at Harrow and spot.
 60 SPOTS ← ANY



Must keep evidence in
 - new found (Anthony Terance)
 elements (and other) as
 exact new found.

Found 4 different shell cases (6-12 shot).
 (Shoot over car to prevent spectators?)
 much later that night before fire's body
 was taken out of car.
 went to Murphy Aug. 7 '99. given evidence.
 looked @ evidence items (probes). Took
 to sled for impization. Continued to
 investigate after Aug. 7th.

③ Conf
Call

late Aug. Talk to Post.
 went to Lake Reservoir w/ Hbr. Res. team. Diver
 took Mark with w. Picked up lake threw
 in water. Demonsfacing how he threw (from)
 into lake. Cartridges jammed when found.

④ Perid left when found.
 Show Jany pos of pistol, after being found in lake. Fused.
 Shows. magazine, P3 to spit cartridge

Supine accident
 wounds all state
 4th came skate
 6th skate skate
 7th skate skate
 8th skate skate
 9th skate skate
 10th skate skate
 11th skate skate
 12th skate skate
 13th skate skate
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 98th skate skate
 99th skate skate
 100th skate skate

LARRY HILL

7/11/05

TURNS IN COURT ROOM

A Brought in in orange
and in chains to back of
of house.

Larry in Judge's

① HAM sandwich machine

② VOA PIRE

③ Larry possibly being
seen being brought into of the
in orange / chains

TURNS,

Intro
V.O.A.
PIRE
One of you, one of your loved
ones, one of your friends
could be at this pt.
What is expected is to appear

#95

THE STATE OF SOUTH CAROLINA



OFFICE OF THE SOLICITOR

EIGHTH JUDICIAL CIRCUIT
SUITE 203, PARK PLAZA
POST OFFICE BOX 516
GREENWOOD, SOUTH CAROLINA 29648-0516

W. TOWNES JONES, IV
SOLICITOR

TELEPHONE
(864) 942-8800
FAX (864) 942-8830

February 15, 2000

Charles Grose, Esquire
Public Defender
Greenwood, South Carolina

HAND DELIVERED

In Re: The State v. Robert Hill

Charge(s): Murder
(Abbeville County)

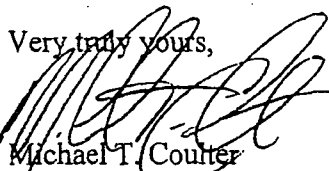
Dear Mr. Grose:

In continuing response to Rule 5/Brady request, enclosed please find a copy of the State's entire file in the above referenced case. Enclosed documentation is as follows:

1. SLED Trace Analysis Report (1 page);
2. Waiver of Rights of Frank Tutt (1 page);
3. Polygraph Examination Report of Frank Tutt (1 page);
4. SLED Evidence Inventory Sheet (1 page);
5. SLED Laboratory Request Sheet (1 page);
6. SLED Firearms Report (2 pages);
7. Statement of John Drew Clark (2 pages).

If you have any questions, or need additional information, please feel free to call me at (864) 942-0991, at your convenience. Thank you for your kind assistance in this matter.

Very truly yours,


Michael T. Coulter
Chief Deputy Solicitor

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SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

Exhibit W

JIM H. HODGES
GOVERNOR



ROBERT M. STEWART
CHIEF

TOXICOLOGY DEPARTMENT

Sgt. Terrence Harvard
Calhoun Falls Police Department
P.O. Box 246
Calhoun Falls, SC 29128

March 13, 2000
SLED Lab No: L9911464
Your Case No: 99-08-0023
Incident Date: 08/06/99
(S) Robert Hill
(V) Terrance Hill

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: Blood labeled "0A94-103"

RESULTS:

0.011% w/v blood alcohol found.

Negative screen for Barbiturates.

(Secobarbital et al.)

Urine threshold 0.2 mg/L; blood threshold 2.0 mg/L.

Negative screen for Benzodiazepines.

(Oxazepam, nordiazepam, et al.)

Urine threshold 0.2 mg/L; blood threshold 0.05 mg/L.

Negative screen for Cocaine and/or Cocaine metabolite.

(Cocaine, benzoylecgonine, et al.)

Urine threshold 0.3 mg/L; blood threshold 0.3 mg/L.

Negative screen for Opiates.

(Morphine, codeine, et al.)

Urine threshold 0.2 mg/L; blood threshold 0.2 mg/L.



Item: Urine

RESULTS:

0.020% w/v ethanol found in urine.

Item: Ocular fluid

RESULTS:

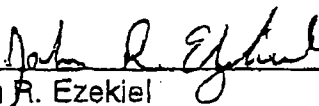
0.017% w/v ethanol found in ocular fluid.

Item: Gastric

RESULTS:

No analysis performed.

Forensic Toxicologist


John R. Ezekiel

JRE/dws

Cc: Coroner Richard Simpson, Abbeville County Coroner

Biological specimens processed for testing which are not consumed during analysis will be maintained for 180 days from the completion date of analyses and then destroyed unless otherwise notified.





SLED LABORATORY FORENSIC SERVICES REQUEST

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

Exhibit X

FORM: LAB-003
NOVEMBER 1993
Previous Editions
May Be Used

Name of Investigating Officer TERRANCE HARVARD Rank SGT.
Department CALHOUN FALLS Police Dept. Telephone Number _____
Street Address or Post Office Box P.O. Box 246
City CALHOUN FALLS State SC. Zip Code 29628
CC: TERRANCE HARVARD Sled Lab No. _____
Contributing Agency ORI No. 001-0200
Contributing Agency Case No. 99-08-0023
County ABBEVILLE
Incident Date 8-6-99
Related Lab No. _____

Subject # ✓ Victim # _____ Sex: M ✓ F _____ SID/FBI _____
Last Name Hill First Name ROBERT Middle Name ORLANDO DOSS NO: _____
Race: Cau _____ Blk ✓ Other _____
DOB: _____

Subject # _____ Victim # ✓ Sex: M ✓ F _____ SID/FBI _____
Last Name Hill First Name TERRANCE Middle Name ARTEL DOSS NO: _____
Race: Cau _____ Blk ✓ Other _____
DOB: _____

Subject # _____ Victim # _____ Sex: M _____ F _____ SID/FBI _____
Last Name _____ First Name _____ Middle Name _____ DOSS NO: _____
Race: Cau _____ Blk _____ Other _____
DOB: _____

Subject # _____ Victim # _____ Sex: M _____ F _____ SID/FBI _____
Last Name _____ First Name _____ Middle Name _____ DOSS NO: _____
Race: Cau _____ Blk _____ Other _____
DOB: _____

* Could any subjects or victims have the following: (circle) AIDS VD Hepatitis Tetanus TB Lice

Comments: _____

COMPLETE THIS SECTION ON ALL CASES: (Circle Appropriately)

Homicide ✓ Suicide _____ Accidental Death _____ Natural Death _____ Child Fatality _____ Autopsy Performed ✓ No
(A) Gunshot (B) Stabbing (C) Beating (D) Strangulation (E) Drug/Poison (F) Alcohol (G) Carbon Monoxide (H) Fire (I) Hanging (J) Electrocution
(K) Heart Related (L) Disease (M) Other _____

Accident Fatality Victim: (A) Driver (B) Pedestrian (C) Motorcyclist (D) Bicyclist (E) Passenger ✓ (F) Swimming/Boating

TYPE OF CASE: (IF NOT DEATH) (A) Drugs (B) CSC (C) Burglary (D) Larceny (E) Other _____

FOR TOXICOLOGY CASES: (Circle Appropriately)

DUI _____ Felony DUI _____ Was a Breath Test given? Yes _____ No ✓ If Yes, Reading _____
Number of Specimens Enclosed: Blood 3 Urine 1 Ocular Fluid 1 Other (1) HUMAN (1) GUTTIC

Examination Requested: Blood Alcohol Urine Screen Cocaine Blood type Other _____

Drugs Suspected: Yes ✓ No _____ List Drugs _____

FOR SEROLOGY/ DNA/HAIR/FIBER CASES: (Circle Appropriately)

Was the subject(s) bleeding? Yes _____ No _____ Unknown _____ Have any of the victims / subjects been transfused in the last 120 days? Yes _____ No _____ Unknown _____

Crime occurred: Suspect's residence _____ Victim's residence _____ Suspect's vehicle _____ Victim's vehicle _____ Other _____

Was a weapon involved? Yes _____ No _____ Unknown _____ Type of weapon? _____

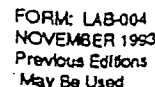
Have standards from all possible bleeders or body fluid donors been submitted? Yes _____ No _____ Unknown _____ Comments: _____

Submission of victim and suspect standards is necessary before complete analysis can be performed.

THE ITEMS SUBMITTED WILL BE EXAMINED WITH YOUR ASSURANCE THAT THE SUBMITTED SPECIMENS HAVE NOT NOR WILL BE SUBMITTED TO ANY OTHER LABORATORY FOR TECHNICAL OR SCIENTIFIC EXAMINATION. THIS STATEMENT WAS READ BY OFFICER.

Raymond Lee Dykes
Print Name of Delivering Officer

Raymond Lee Dykes
Signature of Delivering Officer



Lab Number L _____ Sheet Number _____ of _____
(Use more than one sheet if necessary.)

OFFICE OF THE PUBLIC DEFENDER

Greenwood and Abbeville Counties

Suite 208, Park Plaza

600 Monument Street, Box P-133

Greenwood, South Carolina 29646

PUBLIC DEFENDER
E. Charles Grose, Jr.(864) 229-9505
Fax (864) 227-1104ASSISTANT PUBLIC DEFENDERS
W. Alexander Buergey
Tara M. Schultz

July 19, 2005

Mr. Robert Orlando Hill, #265223
C/o Kirkland Reception and Evaluation
4344 Broad River Road
Columbia, SC 29210

Re: State v. Robert Orlando Hill

Dear Mr. Hill:

Enclosed please find a copy of the motion to reconsider your sentence that I am filing tomorrow. I expect that we will be able to correct the time served matter. I have found recently that SCDC often enters the wrong dates but corrects them later. A court order will help this situation. I do not expect that you will get any relief on the other two issues either in the trial court or on appeal.

Also, I discussed your trial with Mr. Savitz, and we agree that there are some issues to present on appeal.

Please note that filing the motion to reconsider the sentence will delay the deadlines for filing an appeal. I expect that we will get a ruling on this motion in the next few weeks, and I will then file your appeal.

If you have additional questions or concerns, then please write me.

With kindest regards, I am

Yours very truly,


E. Charles Grose, Jr.

Cc: Joey Savitz, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF ABBEVILLE	)	Case No.: 2009-CP-01-0189.
	)	
Robert O. Hill, #265223,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed August 10, 2009 and amended January 19, 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 Clerk of Court for Abbeville County. The Applicant was indicted at the November 1999 term of the Abbeville County Grand Jury for Murder and Possession of a Firearm During Commission of a Violent Crime (1999-GS-01-0494). Ernest Charles Grose, Jr., Esquire, represented him. On March 21, 2000, the Applicant proceeded to trial and was found guilty. The Honorable J. Derham Cole sentenced the Applicant to confinement for the balance of his natural life for Murder and to five (5) years for Possession of a Firearm During Commission of a Violent Crime.

A timely Notice of Appeal was filed and an appeal was perfected on Applicant's behalf. The South Carolina Court of Appeals reversed and remanded Applicant's case by written opinion filed June 21, 2004. State v. Hill, 360 S.C. 13, 598 S.E.2d 732 (Ct. App. 2004).

The Applicant was then granted a new trial. Ernest Charles Grose, Jr., Esquire, represented the Applicant again. The Applicant proceeded to trial on July 11, 2005, after which he was found guilty of Voluntary Manslaughter as a lesser-included offense of Murder, and of Possession of a Firearm During Commission of a Violent Crime. The Honorable Wyatt T. Saunders sentenced Applicant to confinement for a period of thirty (30) years for Voluntary Manslaughter and to five (5) years for Possession of a Firearm During Commission of a Violent Crime (1999-GS-01-0494), sentences running consecutively.

A timely Notice of Appeal was filed and an appeal was perfected on the Applicant's behalf. This time the South Carolina Court of Appeals affirmed the conviction by written order filed February 6, 2008. State v. Hill, Op. No. 2008-UP-081 (Ct. App. Filed February 6, 2008).

The Applicant then submitted a Petition for Writ of Certiorari to the Supreme Court of South Carolina. The Petition was denied by written order dated February 19, 2009. The Remittitur was issued February 24, 2009.

Attached herewith and incorporated herein by reference are the records of the Abbeville County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the 2005 trial transcript, and the Appellate Court records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel, and
2. Ineffective Assistance of Appellate Counsel.

The Applicant also included an attachment alleging several specific allegations in support of his ineffective assistance of trial counsel claim.

III.

The Applicant's first allegation raises an ineffective assistance of trial counsel claim. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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.

In his second allegation, the Applicant claims he received ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

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.

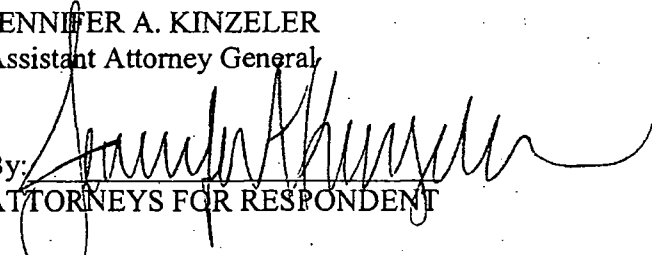
Respectfully submitted,

HENRY D. McMASTER
Attorney General

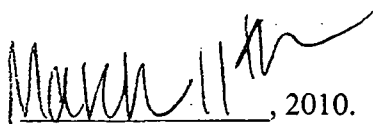
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Chief Deputy Attorney General

SALLEY W. ELLIOTT
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JENNIFER A. KINZELER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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Columbia, SC 29211
Telephone: (803) 734-3737

, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

2009-CP-01-0189

ROBERT O. HILL,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

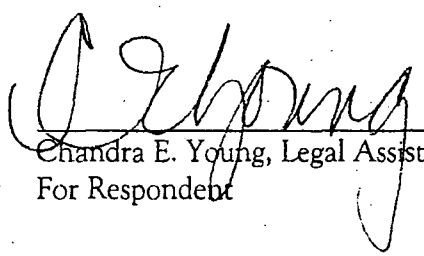
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tommy L. Stanford
 Post Office Box 3321
 Greenwood, SC 29648

DATED this 16TH day of March, 2010.


 Chandra E. Young, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ABBEVILLE) COURT OF COMMON PLEAS NONJURY

3
4 ROBERT LANNY HILL,)
5 APPLICANT,) TRANSCRIPT
6 VS.) OF
7 THE STATE OF SOUTH CAROLINA) RECORD
8 RESPONDENT) 2009-CP-01-0189

9
10 March 13th, 2012
11 Greenwood, South Carolina
12

13 B E F O R E:

14 THE HONORABLE FRANK R. ADDY, JR., Judge.

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

16 TOMMY STANFORD
17 ESQ.
18 Attorney for the Plaintiff

19 J. RUTLEDGE JOHNSON
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the Defendant

22
23 MARYANN S. NEVERS
24 Circuit Court Reporter

25 Transcribed by Pamela E. Green, Circuit Court Reporter

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P R O C E E D I N G S

1
2
3 THE COURT: All right. Attorney General.

4 MR. JOHNSON: Yeah.

5 May it please the Court, Your Honor?

6 THE COURT: Yes, sir.

7 MR. JOHNSON: This is the case of Robert Lanny Hill for
8 State of South Carolina, 2009-CP-01-0189. Mr. Hill was
9 originally indicted in November 1999 for murder and
10 possession of a firearm during the commission of a violent
11 crime.

12 During the first trial, I think that the trial date was
13 March the 21st, 2000, was tried in front of the Honorable
14 Derham Cole and was guilty as indicted. He received a life
15 sentence for murder and five years for the weapon possession
16 charge. There was an, an appeal filed directly on his
17 behalf. The case was reversed and remanded for a new trial.

18 The second trial began July 11th, 2005, before the
19 Honorable Wyatt B. Saunders. A jury convicted him of, of
20 the lesser included offense of voluntary manslaughter
21 pursuant to which he was sentenced to 30 years and guilty of
22 the possession of the, of the firearm during commission of a
23 violent crime. That was consecutive to the voluntary
24 manslaughter.

25 There was a, an appeal filed -- perfected on his

Robert Hill - Direct examination
by Mr. Stanford

1 behalf, and the Court of Appeals affirmed his conviction and
2 sentence. Petition -- rehearing was denied and Petition for
3 Writ of Certiorari was denied by the Supreme Court.
4 Remittitur was issued on February 24th, 2009. Mr. Hill
5 filed his PCR August 10th, 2009, and amended it on
6 January 19th, 2010. The State filed its return on
7 March 18th, 2010. He is represented here today by Mr.,
8 Mr. Tommy Stanford.

9 THE COURT: All right. Mr. Stanford, are you ready to
10 proceed, sir?

11 MR. STANFORD: I am, Your Honor.

12 THE COURT: All right. What grounds does Mr. Hill
13 specifically want to pursue in his PCR if I might ask?

14 MR. STANFORD: Yes, sir, Your Honor.

15 Please the Court.

16 He want (sic) to pursue the issues of ineffective
17 assistance of trial counsel as relates to two or three
18 issues that he feels that trial counsel did not address, and
19 he also want (sic) to deal with some issues as it relates to
20 his appellate counsels, both appellate counsels, as it
21 relates to issues he felt should have been brought by them
22 and was not brought on his behalf.

23 THE COURT: All right. Very good.

24 Call your first witness please.

25 MR. STANFORD: We call Mr. Hill, Your Honor.

Robert Hill - Direct examination
by Mr. Stanford

1 THE COURT: Mr. Hill, if you'll come forward please,
2 sir.

3 ROBERT HILL, being first duly sworn,
4 testified as follows:

5 THE COURT: Have a seat please.

6 (Witness complies.)

7 THE COURT: You are Robert L. Hill, is that correct,
8 sir?

9 WITNESS: Yes, sir.

10 THE COURT: Mr. Stanford.

11 MR. STANFORD: Thank you.

12 Please the Court.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. STANFORD:

16 Q Mr. Hill, now you go by -- what name do you go by?

17 A Well, my nickname -- they call me Lanny.

18 Q They call you Lanny?

19 A Uh-huh. (Affirmative).

20 Q Okay. And I believe that, during both trials you had,
21 often times you were called Lanny versus Robert O. Hill, is
22 that correct?

23 A Uh-huh. (Affirmative).

24 Q So, if we speak of Robert O. Hill or Robert or if we
25 speak of Lanny we're talking about one in the same, is that

Robert Hill - Direct examination
by Mr. Stanford

1 correct?

2 A Uh-huh. (Affirmative).

3 Yes, sir.

4 Q And I believe, for the record, the, the alleged victim,
5 the person that died, you were not related to that person,
6 is that correct?

7 A No, sir.

8 Q Okay. Now, Mr. Hill, what's your age?

9 A I'm 32 years old.

10 Q All right. And you're housed with the Department of
11 Corrections?

12 A Yes.

13 Q Where are you housed at?

14 A Trenton.

15 Q Trenton?

16 A Yes, sir.

17 Q Okay. Now, tell the Court what are you serving time
18 for.

19 A I'm serving time for manslaughter.

20 Q Okay. And what else?

21 A And first degree murder.

22 Q Were you -- well, actually you were not convicted of
23 the first degree murder, is that right?

24 A Yes, I was.

25 Q You was?

Robert Hill - Direct examination
by Mr. Stanford

- 1 A On my first trial.
- 2 Q On your first trial you were convicted of first degree
3 murder?
- 4 A Yes, sir.
- 5 Q That trial you had them appeal, is that correct?
- 6 A Yes, sir.
- 7 Q And that case was actually reversed, is that correct?
- 8 A Yes, sir.
- 9 Q All right. And then you had a second trial?
- 10 A Yes, sir.
- 11 Q And on the second trial you was convicted for
12 manslaughter, is that correct?
- 13 A Yes, sir.
- 14 Q And also having a weapon, a weapon in the commission of
15 a violent crime?
- 16 A Yes, sir.
- 17 Q Okay. And what was the Sentence of the Court?
- 18 A Give me 35 years.
- 19 Q Okay. Was it 30 years on the manslaughter?
- 20 A Yes, sir.
- 21 Q And five years on the commission to run consecutive?
- 22 A With the gun, yes, sir.
- 23 Q All right. So, that's how you come up with the 35
24 years?
- 25 A Yes, sir.

Robert Hill - Direct examination
by Mr. Stanford

1 Q All right. Now, you did have a trial and not a plea,
2 is that correct?

3 A Yes, sir.

4 Q All right. And that was a jury verdict as a result of
5 that trial, is that correct?

6 A Yes, sir.

7 Q All right. Now, who represented you in the first
8 trial, Mr. Hill?

9 A Charles Grose.

10 Q All right. And Mr. Grose is with the Public Defender's
11 office?

12 A Yes, sir.

13 Q All right. And your first trial was in 1999?

14 A Yes, sir.

15 Q All right. And who represented you in your second
16 trial?

17 A Charles Grose.

18 Q All right. And what year was that second trial?

19 A 2005.

20 Q 2005?

21 A Uh-huh. (Affirmative).

22 Q Now, I believe you filed an appeal as relates to both
23 trials, is that right?

24 A Yes, sir.

25 Q All right. Now, Mr. Hill, you have alleged -- you have

Robert Hill - Direct examination
by Mr. Stanford

1 filed a PCR application, is that correct?

2 A Yes, sir.

3 Q And in your application you're alleging ineffective
4 assistance of trial counsel?

5 A Yes, sir.

6 Q So, you're saying to the Court that Mr. Grose was
7 ineffective?

8 A Yes, sir.

9 Q All right. And are you also alleging ineffective
10 assistance of your appellate counsel?

11 A Yes, sir.

12 Q Now, your appellate counsel, were they Mr. Savitz and
13 Ms. Cleary?

14 A Savitz was my first, my first trial. The second trial
15 he didn't, he didn't do my appeal.

16 Q well, in, in the second trial, Ms. Cleary actually
17 wrote the brief --

18 A Yes, sir.

19 Q -- along with the assistance of Mr. Savitz, is that
20 right?

21 A Yes, sir.

22 Q That's correct?

23 A Yes, sir.

24 Q All right. Now, let's, let's deal with your -- the
25 trial itself, your second trial when you met with Mr. Grose.

Robert Hill - Direct examination
by Mr. Stanford

1 When you met with Mr. Grose, did y'all, did y'all have
2 any lengthy discussions of your case, your second, your
3 second trial?

4 A Well, we had a short, a short, a short moment, you
5 know. Like we took short sessions or whatever and we talked
6 about it, but we ain't, we ain't spend no quality time on
7 it.

8 Q Did y'all talk about strategy of how you were gonna
9 approach the second trial versus the first trial?

10 A Yes, sir.

11 Q Okay. And could you share with the Court that
12 strategy, what y'all talked about?

13 A Well, he's -- he's trying more to prove self-defense
14 that was dealing with my case on the point that I was the
15 victim, and that, that I did go to the police and I did go
16 to the police on more than one occasion with other people as
17 witnesses that, to stay away from the person that was, that
18 was attacking us, and I -- when I went to the police station
19 they kicked me out, and I was on crutches at the time all
20 this was going on, and he left off some key witnesses, key
21 witnesses that had been on my list that could of testified
22 that they also having problems with the person that I'm in
23 here for right now.

24 Q All right. So, you have a problem as relates to some
25 witnesses that were not called, is that right?

Robert Hill - Direct examination
by Mr. Stanford

1 A Yes, sir.

2 Q All right. And then did you have some concerns -- and
3 we'll go back and talk about each one.

4 Did you have concerns about forensic evidence?

5 A Of the things that happened that didn't get addressed?

6 Q Did you have any -- let me ask you this.

7 Did you have any concerns about him calling experts on
8 your behalf?

9 A Yes, sir.

10 Q All right. And did you want him to call an expert to
11 deal with blood stains?

12 A Yes, sir.

13 Q All right. And did you also want him to call an expert
14 to deal with the, the projectile or the gunshots and the
15 bullets?

16 A Yes, sir.

17 Q And did you have a concern about the jury not being
18 properly charged?

19 A Yes, sir.

20 Q All right. Let's talk about the witnesses.

21 What witnesses did you want Mr. Grose to call that he
22 did not call?

23 A Melissa Tate was one of them.

24 Q Okay. Tell the Court who is Melissa Tate.

25 A That's the -- the person that I ran from, that's her

Robert Hill - Direct examination
by Mr. Stanford

1 cousin. That's his cousin.

2 Q Okay. And did Melissa Tate testify at your first
3 hearing?

4 A Yes, sir.

5 Q And, in essence, what did she testify at the first
6 hearing?

7 A Well, she testified that her cousin told her that when
8 he see me he gonna have his business.

9 Q So, Melissa Tate is the cousin of the deceased,
10 Mr. Hill?

11 A Yes, sir.

12 Q Now, his name is Artie Hill?

13 A Artie Hill.

14 Q Okay. And she testified about threats that was made as
15 relates to you from Artie Hill?

16 A Yes, sir.

17 Q And that was at the first trial?

18 A Yes, sir.

19 Q Did she testify at the second trial?

20 A No, sir.

21 Q Did you talk to Mr. Grose about her testifying at the
22 second trial?

23 A No, sir, it never was brung up and I always wanted to
24 ask why, but I guess for the best of my defense or whatever
25 he had prepared, what we had prepared for me ain't gonna

Robert Hill - Direct examination
by Mr. Stanford

1 help in my issues. So, I didn't address it right then and
2 there and I always wondered why we didn't address it then.

3 Q Now, Mr. Grose did call a, another witness to testify
4 on your behalf, a Shannon Hill, is that right?

5 A Yes, sir.

6 Q And I believe that the Court excluded some of her
7 testimony and said it was hearsay?

8 A Yes, sir.

9 Q Now, did you also want a Sammy Reid to testify at your
10 hearing?

11 A Yes, sir.

12 Q Did you talk to Mr. Grose about these witnesses?

13 A No, sir.

14 Q Okay. Why didn't you talk to him about these
15 witnesses?

16 A Well, I wanted, I wanted to address it or whatever, but
17 at the certain time when I said about -- when they wouldn't
18 address with Sammy Hill, I mean Shannon Hill so I just, I
19 just aint say nothing about it cause he want -- when he
20 ain't say nothing about Melissa Tate, and I wasn't no
21 there -- it wouldn't help my trial. I said maybe, you know,
22 my best interest.

23 Q Okay. Let me ask you this. As relates -- let's go
24 back to your first trial.

25 A All right.

Robert Hill - Direct examination
by Mr. Stanford

1 Q As you were discussing strategy and how you were gonna
2 approach your first trial, you had a conversation with Mr.
3 Grose as relates to quite a few witnesses, is that right?

4 A Yes, sir.

5 Q And were those witnesses a Sandra Reid?

6 A Yes, sir.

7 Q A Warren Tate?

8 A Yes, sir.

9 Q A Glenrissa Gates?

10 A Yes, sir.

11 Q A Chris McIntosh?

12 A Yes, sir.

13 Q A, a Detrick Norman?

14 A Detrick Norman, yes, sir.

15 Q Detrick Norman.

16 A Rico Hill?

17 A Yes, sir.

18 Q And a Ricky Holland?

19 A Yes, sir.

20 Q All right. And y'all -- you and Mr. Grose had
21 discussions about those various witnesses, is that right?

22 A Yeah, we had discussions, yes, sir.

23 Q All right. Now, all of those witnesses did not testify
24 at your first trial, is that correct?

25 A Yes, sir.

Robert Hill - Direct examination
by Mr. Stanford

1 Q But at least Melissa Tate testified along with one or
2 two other witnesses?

3 A Yes, sir.

4 Q All right. Now, were any of those witnesses called at
5 your second trial to testify other than Shannon Hill?

6 A No, sir.

7 Q All right. And do you think that those witnesses could
8 have offered some credible testimony at your second trial?

9 A Yes, sir.

10 Q And do you think that Mr. Grose was ineffective for not
11 calling those witnesses to testify on your behalf?

12 A Yes, sir.

13 Q Now, I believe, as it relates to experts, you wanted
14 him to call an expert to deal with pathology?

15 A Yes, sir.

16 Q To deal with some blood issues?

17 A Yes, sir.

18 Q Explain to the Court why you needed him to call an
19 expert to deal with that.

20 A Well, but it can determine who blood, who blood it was
21 and that would explain where the -- how the blood got out
22 there in the first place, where the blood was, and the
23 location of it, and who blood it was.

24 Q Now, initially -- let me ask you this, Mr. Hill.
25 When Artie Hill was shot and killed, there were

Robert Hill - Direct examination
by Mr. Stanford

1 pictures, is that right?

2 A Yes, sir.

3 Q And those pictures appear to show him sitting in the
4 car, is that right?

5 A Yes, sir.

6 Q And does it appear to show him sitting in the car with
7 some type of stick or bat in his hand?

8 A Yes, sir.

9 Q And did he have his head down as it was drooping down?

10 A Yes, sir.

11 Q But now there was issues as to whether or not he was
12 actually in the car the entire time, is that correct?

13 A Yes, sir.

14 Q And that was one of your theories or your lawyer's
15 theories that, in fact, he was not in the car the entire
16 time?

17 A Yes, sir.

18 Q And that he was making some type advance towards you so
19 you were in fear of your life?

20 A Yes, sir.

21 Q And based on your history with Mr. Hill, you were in
22 fear and jeopardy of your life, is that right?

23 A Yes, sir.

24 Q And I believe, in looking at the pictures and the
25 evidence, the pictures that were submitted as exhibits---

Robert Hill - Direct examination
by Mr. Stanford

1 A Yes, sir.

2 Q ---there was a bloodstain or what appeared to be a
3 bloodstain on the outside of the car?

4 A Yes, sir.

5 Q Okay. Was that bloodstain, to your knowledge, examined
6 by any expert?

7 A No, sir.

8 Q So, you don't know whether that bloodstain -- well,
9 number one, you wasn't quite sure whether it was blood or
10 not blood, but it appeared to be blood, is that right?

11 A Yes, sir.

12 Q And from all the indication that was told to you it was
13 blood?

14 A Yes, sir.

15 Q And you're not sure whether that blood was Mr. Hill's
16 blood or blood from some other source, is that right?

17 A Yes, sir.

18 Q And do you believe that if an expert was called on your
19 behalf, the expert could have clarified that issue?

20 A Yes, sir.

21 Q Could have cleared up that particular issue?

22 A Yes, sir.

23 Q And that was not done?

24 A No, sir.

25 Q Now, there was testimony that, in fact, Artie Hill

Robert Hill - Direct examination
by Mr. Stanford

1 tried to get out of the car and was out of the car, is that
2 right?

3 A Yes, sir.

4 Q And I believe Mr. Grose dealt with that, is that
5 correct?

6 A Yes, sir.

7 Q But you, you believe he should have called an expert on
8 your behalf, is that correct?

9 A Yes, sir.

10 Q Now, I believe you had a discussion with Mr. Grose
11 after your conviction as it relates to some jury charges, is
12 that correct?

13 A Yes, sir.

14 Q Tell the Court, did you have a concern about malice?

15 A Yes, sir.

16 Q Explain that to the Court as best as you can.

17 A On the malice -- well, on the malice charge, without
18 malice, but when he explained it to the jury or whatever, it
19 was first degree murder. So, he compared both of the, the
20 two together, which they, they pre-justice to my case. It
21 shouldn't of never been compared because murder is with
22 malice and malice -- I mean manslaughter is without malice.
23 So, it might of confused the jury that them the only two
24 options that they could of picked from. But if, if that
25 right there would of been addressed appropriately,

Robert Hill - Direct examination
by Mr. Stanford

1 appropriately, I could of make a big impact on my case that
2 I could of got self-defense or something else that's lower
3 than what I got right now.

4 Q So, you think that the jury was confused?

5 A Yes, sir.

6 Q And that was because of what Mr. Grose did?

7 A Yes, sir.

8 Q And I believe the jury did come back with a guilty
9 verdict?

10 That is correct, right?

11 A Yes, sir.

12 MR. STANFORD: Beg the Court's indulgence, Your Honor.

13 THE COURT: Yes, sir.

14 (Pause.)

15 Q Okay. Now, Mr. Hill, let me, let me back-up and ask
16 you something.

17 Prior to the actual second trial, were there any
18 discussions about you pleading guilty in some type of offer
19 of 15 years or was that just a letter sent to the, sent to
20 the solicitor's Office on your behalf by Mr. Grose?

21 A I ain't had no knowledge of it.

22 Q Okay. Was a letter sent to the Solicitor's Office on
23 your behalf as far as you know?

24 A As far as I know than what I---

25 Q But that was not an issue that was actually before the

Robert Hill - Direct examination
by Mr. Stanford

1 Court?

2 That was just some discussions that Mr. Grose did on
3 your behalf to try to get you 15 years?

4 A Yes, sir.

5 Q So, that's not a problem then?

6 A No, sir.

7 Q That's not a problem?

8 A Huh?

9 Q You don't have any complaints as it relates to that?

10 A Yes, because -- yes, because at that, at that appointed
11 time I never had no knowledge of it cause if I had the
12 knowledge of it I could of -- I would of know what approach
13 to go with my case differently or should I take it to trial
14 or should I ask for the 15 years or whatever or should I
15 take it to trial. So, I didn't, I didn't have no knowledge
16 of what, what was going on.

17 But it also some paperwork that is showing that Mr.
18 Grose was offered me that they'll give me a plea of 30
19 years. So, I didn't have no knowledge of him putting in no
20 offer of asking for 15 years. I didn't have no knowledge of
21 this until the time, until I found out through my paperwork.

22 Q So, you thought you were just looking at 30 years all
23 the time?

24 A Well, at that point in time, yes, and I told him I'd
25 rather take it to trial because the evidence that, that put

Robert Hill - Direct examination
by Mr. Stanford

1 forth that work -- that I thought that it work in my favor.

2 Q All right. Now, what else do you think that Mr. Grose
3 didn't do that he should have done that you feel was
4 ineffective?

5 A Well, I think if he, if he would of explained it a
6 little bit to the juries or whatever. I don't believe the
7 jury would of gave me no -- or 35 years on my second trial.

8 Q All right. So, now you feel like there should of been
9 an independent expert to deal with the blood stain analysis,
10 is that correct?

11 A Yes, sir.

12 Q And you felt like the self-defense should of been
13 pursued more vigorously, is that right?

14 A Yes, sir.

15 Q And you didn't think that was done?

16 A No, sir.

17 Q And you feel like there was some witnesses that could
18 of had a substantial impact on your case that were not
19 called?

20 A Yes, sir.

21 Q And you feel like Mr. Grose didn't do a good job as it
22 relates to that, is that right?

23 A Yes, sir.

24 Q And I believe you explained to the Court your concerns
25 as it relates to the malice, is that correct?

Robert Hill - Direct examination
by Mr. Stanford

1 A Yes, sir.

2 Q Now, Mr. Grose did file a notice of intent to appeal in
3 your behalf, is that right?

4 A Yes, sir.

5 Q And I believe that was sent to the Appellate Defense
6 people, is that right?

7 A Yes, sir.

8 Q And that would be Ms. Cleary as well as Mr. Savitz, is
9 that correct?

10 A Yes, sir.

11 Q All right. And they filed an appeal on your behalf?

12 A Yes, sir.

13 Q All right. Now, to your knowledge, the appeal that
14 they filed on your behalf, did it deal at all with malice?
15 Was the issue of malice briefed?

16 A Well, yes, sir, but I, I believe it could of been
17 addressed more and also in my brief.

18 Q Okay. So, on the appeal level, the issue of malice was
19 not addressed properly.

20 Is that your complaint?

21 A Yes, sir.

22 Q And you think it should have been addressed?

23 You think that -- you think it should of been briefed
24 better, is that right?

25 A Yes, sir.

Robert Hill - Direct examination
by Mr. Stanford

1 Q And you believe that the appellate defense was
2 ineffective?

3 A Yes, sir.

4 Q And the issue of self-defense, do you feel like, like
5 it was ineffective as it relates to the issue of
6 self-defense?

7 A Yes, sir.

8 Q That was not briefed correctly?

9 A Yes, sir.

10 Q Now, I believe, based on the record, the Appellate
11 Court did not do oral arguments, is that right?

12 A Yes, sir.

13 Q Everything was just based on what was submitted by way
14 of brief, is that correct?

15 A Yes, sir.

16 Q So, therefore, if these issues had been briefed, then
17 the Appellate Court could of had something to really review
18 and hang their hat on, is that right?

19 A Yes, sir.

20 Q And you think that that was ineffective by your
21 appellate counsel?

22 A Yes, sir.

23 Q And that would be both Mr. Savitz and Ms. Cleary?

24 A Yes, sir.

25 Q Did you and Mr. Grose talk about whether or not you

Robert Hill - Direct examination
by Mr. Stanford

1 should testify?

2 A Yes, sir.

3 Q And you did decide to testify, is that right?

4 A Yes, sir.

5 Q All right. Do you have any other complaints about
6 either Mr. Grose, Ms. Cleary, or Mr. Savitz that we have not
7 touched on?

8 A No, sir.

9 Q Anything else you need to tell the Court before the
10 attorney general talk (sic) to you?

11 A Yes, sir, well, at the time that all this going on,
12 the, the person that I'm in here for also had more charges
13 on him and also it was not addressed that he was saying that
14 he had a charge of molesting a little ten year old girl, and
15 also that I had already said in Court and tried to put an
16 incident report to -- put out a warrant to let him stay a
17 hundred feet away from me when I come on crutches when he
18 bent up the car -- well, on the witnesses and they wouldn't,
19 they wouldn't let me do a warrant. So, they kicked me out.

20 So, I did all I can do to stay away from it and I just,
21 I just want the evidence itself just the truth of what, what
22 really happened. That's all.

23 Q And I believe all that goes towards what -- you viewed
24 Mr. Hill as being violent towards you, is that right?

25 A Yes, sir.

Robert Hill - Direct examination
by Mr. Stanford

1 Q And that, in fact, affected some of your actions in
2 your mind, is that right?

3 A Yes, sir.

4 Q Because of his propensity, his propensity for
5 diaster -- for dangerousness and violence?

6 A Yes, sir, I had other witnesses that, that Melissa Tate
7 would of made a big difference because she already addressed
8 on that issue that it was not, not brought up in my trial
9 with other witnesses that would of already wrote statements,
10 statements to the police, but they was not present on my, on
11 the stand where they can speak out on what, what all this
12 been going for months before all this happened, and I tried
13 to stay away from it and avoid it and do all I can. So,
14 that would of helped benefit me in my case a lot and I feel
15 it would of worked in my favor.

16 Q But now I do believe that Mr. Grose did call the
17 witness, but the sheriff -- but the, but the judge sustained
18 an objection for hearsay, is that right?

19 A Yes, sir.

20 Q And I believe that you wanted to testify, but the Court
21 would not allow you to testify --

22 A Yes, sir.

23 Q -- before the jury?

24 A Yes, sir.

25 MR. STANFORD: That's all I have, Your Honor.

Robert Hill - Direct examination
by Mr. Stanford

1 THE COURT: Mr. Johnson.

2 MR. JOHNSON: Thank you, Your Honor.

3 May it please the Court?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. JOHNSON:

7 Q Mr. Hill, I just want to go over a little bit of
8 testimony that was presented at your trial if that's all
9 right with you.

10 A Yes, sir.

11 Q I think your testimony said that there's a previous
12 incident between you and Artie Hill where I guess you were
13 riding your bike and he's driving past or he's riding in the
14 car and he raises a stick up at you, and that's, that's
15 where you went and armed yourself with the gun, isn't that
16 correct?

17 A No, sir.

18 Q Did you already have the gun on you?

19 A The whole time.

20 Q Okay. You had it up the whole time?

21 A Uh-huh. (Affirmative).

22 Q All right. But then your version is he came up on the
23 bike, you see him raise up, say something to you, open the
24 car, and then that's when you started shooting, isn't that
25 correct?

Robert Hill - Cross-examination
By Mr. Johnson

1 A No, sir.

2 Q I think you testified on Page 485 that when you saw the
3 door crack is when you started shooting and then---

4 A That's right, but the time before that it was, it was
5 some people that was standing in the front of the car. So,
6 he was laying down, he was laying down all the way in the
7 car where I couldn't see him and I was fixing to get off the
8 bike, and then the other -- then the person -- the witness
9 that testified in the Court in my trial, in my second trial
10 said what's up and he had a little girl in his hand. He was
11 talking to her which is his sister.

12 So, I never did just, just get off the bike to come
13 bother him because at the point of that time right there,
14 that when the residence that I always hang out with, and I
15 had a reason to be at that residence because I was keeping
16 the little girl, baby girl that a person that live at the
17 house, and I ain't had no knowledge that, that he was in the
18 car laying all the way down where nobody could see him, but
19 he was talking to the individual that was standing in front
20 of the car when all this right here took place.

21 Q I understand.

22 But will you agree with me that there were two people
23 at trial, that testified at your trial, Ms. Shannon Hill and
24 I guess Jeffery Tatum that said they heard the -- Mr. Hill
25 or Artie Hill, excuse me, say I heard you were looking for

Robert Hill - Cross-examination
By Mr. Johnson

1 me and to which you replied stay right there.

2 Isn't that true that people testified to that?

3 A well, I don't -- after the car or nothing -- I ain't
4 never said nothing stay right there. So, I don't remember
5 that part there. I ain't never said nothing like that.

6 Q well, you agree with me that, at your trial, there were
7 witnesses that said that?

8 A Yes, sir.

9 Q Okay. And then there's also a witness, Ms. Shannon
10 Hill, who testified that, that you said you were tired of
11 people not taking you seriously and that you were gonna get
12 your respect one way or another even if it meant taking
13 somebody out?

14 We agree that she testified in trial to that?

15 A I don't remember that part. I ain't never said nothing
16 like that.

17 Q Would it surprise you if I showed you?

18 A Yeah. Yes, sir.

19 MR. JOHNSON: Your Honor, Court's indulgence please.

20 THE COURT: All right, sir.

21 (Pause.)

22 MR. JOHNSON: Permission to approach, Your Honor?

23 THE COURT: By all means.

24 Q So, right here, Line 16. Page 239, Line 16.

25 So, you'll agree that somebody testified to that?

Robert Hill - Cross-examination
By Mr. Johnson

1 A Yes, sir, I see it right now, yes, sir.

2 Q All right. And just to go to, to the other, there were
3 five people that testified at your trial that Mr. Artie Hill
4 never tried to get out of that car, isn't that correct?

5 A No, sir, that I don't recall.

6 MR. JOHNSON: Your Honor, would you take judicial
7 notice that five people testified as to that?

8 THE COURT: Very good.

9 Q But then you'll agree with me that your trial counsel
10 did a great job in arguing that Mr. Artie Hill got out of
11 the car, presented the stick to you, and that's when you
12 fired because you were in fear of your life, isn't that
13 correct?

14 A Yes, sir.

15 Q Okay. But even your own testimony doesn't say that
16 Artie Hill got out of the car. It just says that when the
17 door started to crack, that's when you started shooting.
18 Isn't that correct?

19 A Yes, sir.

20 Q And then in the -- Mr. Hill, Artie Hill, shut the door
21 back and you continued to fire?

22 A No, I didn't hear nothing about no shutting no door
23 back.

24 Q You didn't say that?

25 A No, I ain't say nothing about shutting the door back.

Robert Hill - Cross-examination
By Mr. Johnson

1 MR. JOHNSON: It's on Page 485, Mr. Stanford.

2 May I approach, Your Honor?

3 THE COURT: Please. Go ahead.

4 Q It's right here. All I seen, yes, sir, I seen them
5 when the door cracked. I started shooting whenever I seen
6 him, and that's when he shut the door back.

7 A Yes, sir.

8 Q Okay. And you had been smoking weed and drinking that
9 day, hadn't you?

10 A No, sir.

11 Q No, sir.

12 So, it's your testimony here today that you haven't,
13 you weren't smoking or drinking that day?

14 A No, sir.

15 MR. JOHNSON: May I approach, Your Honor?

16 THE COURT: Yes.

17 Q Same page, 485.

18 Had you been smoking and drinking that day?

19 Yes, sir.

20 What had you been smoking---

21 MR. STANFORD. What page are you referring to?

22 THE COURT: Hold on. Hold on. Give me the page number
23 again.

24 THE WITNESS: 485.

25 MR. JOHNSON: Oh, Page 485, yes, sir, the same page.

Robert Hill - Cross-examination
By Mr. Johnson

1 THE COURT: 485.

2 Q I was smoking weed and drinking beer.

3 A I don't remember that.

4 Q But you said that, right?

5 A What I see, yes, sir.

6 Q Okay. So, there's testimony from multiple witnesses
7 that Mr. Artie Hill never tried to get out of the car,
8 right?

9 A No, sir.

10 MR. JOHNSON: Your Honor, do I need to -- will you take
11 judicial notice that there were five witnesses---

12 MR. STANFORD: Asked and answered, Your Honor. He's
13 already---

14 MR. JOHNSON: Okay.

15 THE COURT: Fair enough.

16 Q And there were people that said I heard you, that said
17 Mr. Hill said I was -- I heard you were looking for me and
18 you said stay right there.

19 There's witnesses in the trial that said that, isn't
20 that correct?

21 A No, sir.

22 Q All right. Let me get to the other page.

23 Sorry, Your Honor. It's in six different volumes.
24 Permission to approach?

25 THE COURT: Please.

Robert Hill - Cross-examination
By Mr. Johnson

1 MR. JOHNSON: It's on Page 220.

2 MR. STANFORD: 220?

3 MR. JOHNSON: Yes, sir.

4 Q This is Jeffery Tatum's direct testimony, and you said
5 I heard -- speaking of Mr. Artie Hill, I heard you were
6 looking for me, and then he, he got off his bike and he
7 dropped his bike and he said all right you stay right there.

8 A No, sir.

9 Q That -- you did not say that, but there's testimony
10 that said then Artie said what did Lanny Hill do.

11 And that's you, right?

12 A It ain't---

13 Q And it -- all right. He got off his bike, dropped the
14 bike, and said all right stay right there.

15 There's testimony that you did that, right?

16 A Well, that, that right there couldn't be true cause he
17 got a -- if, if Jeffery Tatum standing there with a little
18 girl, with that little sister in his hand and he talking to
19 me, how in the world can I drop my bike and start shooting?

20 If that was the case, they would of got hit by some
21 bullets too, right?

22 Q That's not my question, Mr. Hill.

23 I said is there testimony that you said that?

24 A Well, that's what -- but I didn't say it.

25 Q Okay. All right. We'll get on another subject.

Robert Hill - Cross-examination
By Mr. Johnson

1 Mr. Grose has been your attorney for both trials, isn't
2 that correct?

3 A Yes, sir.

4 Q Okay. And, so, you had multiple meetings with him, at
5 least in prep for the first trial, isn't that right?

6 A Yes, sir.

7 Q Okay. And then you had other meetings with him for the
8 second trial?

9 A Not too many.

10 Q But you had meetings with him?

11 A Yes, sir.

12 Q Okay. So, you, you were prepared to -- for your, for
13 your case, weren't you?

14 A No, sir.

15 Q All right. Well, you testified at trial, isn't that
16 right?

17 A Yes, sir.

18 Q And there is testimony that is in direct contradiction
19 to your testimony, isn't that right?

20 A You got to show me. I can't recall all that.

21 MR. JOHNSON: I withdraw that question, Your Honor.

22 THE COURT: Okay.

23 Q Mr. Grose tried to put in the fact of what Glenrissa
24 said to your state of mind, isn't that right?

25 He tried to offer testimony that showed that Artie

Robert Hill - Cross-examination
By Mr. Johnson

1 Hill, you know, had been violent towards you in the past,
2 isn't that right?

3 A Yes, sir.

4 Q Okay. But the Court didn't let that in?

5 A Yes, sir.

6 Q Okay. And I guess I'll get to that with Mr. Grose,
7 but -- sorry, Your Honor. Just one moment.

8 (Pause.)

9 Q And you also got to proffer your testimony that I guess
10 that Sammy sent word through Ms. Gate that there was, he was
11 gonna handle the business right?

12 A That was, that was Artie. That's his cousin, Artie
13 Hill.

14 Q Okay. But y'all had bad blood in the past, right, you
15 and Artie Hill?

16 A Yes, sir.

17 MR. JOHNSON: Okay. Court's indulgence, Your Honor.

18 THE COURT: Yes, sir.

19 (Pause.)

20 MR. JOHNSON: All right. No further questions at this
21 time. Thank you.

22 THE COURT: Anything on redirect?

23 REDIRECT EXAMINATION

24 BY MR. STANFORD:

25 Q Now, Mr. Hill, this testimony that was proffered, that

Robert Hill - Redirect examination
by Mr. Stanford

1 was proffered outside the presence of the jury, is that
2 right?

3 A Yes, sir.

4 Q And, so, the jury never heard you testify about your
5 state of the mind and the problems that you knew you was
6 having with Mr. Artie Hill, is that right?

7 A Yes, sir.

8 Q All right. And, and there was also testimony and
9 concerns that you had as to whether or not Mr. Hill was on
10 some type of crack cocaine, is that right?

11 A Yes, sir.

12 Q And I believe that there was a substance that was found
13 on his body on his person that was believed to be crack
14 cocaine?

15 A Yes, sir.

16 Q Do you know whether or not that was field tested?

17 A It never was.

18 Q And I believe, in the past, there was an incident as
19 relates to Artie Hill using some type of bat or stick to hit
20 cars, is that right?

21 A Yes, sir, and we, we went to the police station exact
22 the time that that happened, when I went on crutches. Exact
23 day with other witnesses he chased with the bag and they had
24 to protect me when he come up in the car with dents, with
25 evidence, and everything. We went straight to the police

Robert Hill - Redirect examination
by Mr. Stanford

1 station to issue a warrant out on that day with more
2 witnesses.

3 Q And at the time of this incident he had some type of
4 large stick or club or bat in his hand, is that right?

5 A Yes, sir.

6 MR. STANFORD: That's all, Your Honor.

7 THE COURT: Thank you, sir. You can step down.

8 MR. STANFORD: Charles Grose.

9 THE COURT: I'll swear you.

10 CHARLES GROSE, being first duly
11 sworn, testified as follows:

12 MR. STANFORD: Please the Court?

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. STANFORD:

16 Q Mr. Grose, state your full name for the record please,
17 sir, and tell us where you work at

18 A Earnest Charles Grose, Junior, and I'm the circuit
19 defender for the Eighth Circuit. My primary office is here
20 in Greenwood.

21 Q All right. And I believe that you were the lawyer that
22 represented Lanny Hill, Robert Hill, is that right?

23 A That's correct.

24 Q I believe you call him Lanny Hill?

25 A I do.

Charles Grose - Direct examination
by Mr. Stanford

1 Q Okay. And, Mr. Grose, you represented him at his first
2 trial?

3 A That's correct.

4 Q And the first trial, I believe that was a conviction,
5 but that was overturned?

6 A That is correct.

7 Q Explain that to the Court briefly if you would.

8 A Yeah, the -- Mr. Hill was -- original charges arose,
9 arose not long after I became circuit defender here I think
10 within the first month, and his first trial was in 2000 in
11 Abbeville in front of Judge Derham Cole, and the -- and then
12 there was a couple issues that were briefed on appeal. But
13 the issue that was determinative, Solicitor Jones, when he
14 was cross-examining Mr. Hill, alleged that the first time
15 that anybody was hearing his self-defense story account of
16 the events was during his testimony, and that was because
17 Mr. Hill had, when he was advised of his Miranda warnings,
18 he had affirmatively asserted his right to a lawyer in
19 questioning him. So, it was a violating of Doyle versus
20 Ohio and the other South Carolina Supreme Court decisions
21 that related to that.

22 Q And you subsequently represented him in the second
23 trial, is that right?

24 A That's right. I actually also represented him on that
25 appeal. Mr. Savitz and I -- and Mr. Savitz wrote the brief

Charles Grose - Direct examination
by Mr. Stanford

1 and I did the oral argument in the first appeal, and then I
2 did continue to represent him with the, the second trial.

3 Q So, you have -- let me ask you this.

4 So, you have practice and experience from the appellate
5 level as well as trial level?

6 A That's, that's correct. More appellate more recently,
7 but, you know, some at that point, yes.

8 Q All right. And as a result of the oral argument work
9 that was done at the appellate level, he was given another
10 trial?

11 A That's, that's correct.

12 Q All right. And the second trial, did you meet with
13 Mr. Hill?

14 A I did.

15 Q Did you especially meet with him or not as much as you
16 did the first time?

17 A You know, that's, that's, that's hard to say, you know,
18 because -- and the reason I say that is I don't remember how
19 much time there was between the time that the case was
20 reversed and he got a new trial. I remember he came back to
21 Abbeville Jail. The first trial happened within less than a
22 year, significantly less than a year. So, we had a lot of
23 meetings in a short period of time, and my recollection of
24 the meetings before the second trial were a little bit more
25 spread out.

Charles Grose - Direct examination
by Mr. Stanford

1 Q How many witnesses did you call at the second trial?

2 A I don't remember. That would be reflected in the
3 transcript.

4 Q All right. Do you recall whether or not a Shannon Hill
5 testified?

6 A I believe that Shannon Hill did testify and that was
7 one of the issues on appeal because we had been able to, in
8 the first trial, get testimony from her about things that
9 Lanny would of known about that caused him to, you know, in
10 his mind, think he needed to defend himself.

11 Q And that was not allowed at the second trial?

12 A Right. That was not allowed in the second trial. If I
13 remember right, we proffered the testimony from the first
14 trial from the transcript as to what we had wanted to ask
15 her about.

16 Q All right. So -- now let's talk about experts.

17 Did you call any experts?

18 A Yes, the -- we, we retained Don Girndt with regard to
19 both trials actually, and when the second trial, and, again,
20 the record will reflect that, and I believe that Mr. Girndt
21 was on, on our witness list and was actually present in the
22 courtroom during, you know, some of the forensic testimony
23 from the State.

24 Q Did he testify?

25 A He did not.

Charles Grose - Direct examination
by Mr. Stanford

1 THE COURT: How do you spell his last name?

2 WITNESS: G-I-R-N-D-T I believe.

3 THE COURT: Thank you.

4 Q And the reason he did not testify?

5 A Yes, I mean because, you know, he -- you use experts in
6 multiple ways including to consult, and Mr. Girndt and I had
7 consulted before the trial and had determined the, the types
8 of things that we wanted to elicit on cross-examination from
9 the, I forget his name right now, but the, the forensic
10 expert who testified from SLED, and we were able to elicit
11 those things on cross-examination to the point that I didn't
12 think it was necessary to call Mr. Girndt.

13 Q Would that be SLED Agent Crook?

14 A Yes, that's his name. Thank you.

15 Q Now, I believe there were some testimony as it relates
16 to whether or not Artie Hill was in the car completely, out
17 of the car, and I believe pursued a theory along those
18 lines, is that correct?

19 A That is correct.

20 Q Explain that to the Court.

21 A All right. Well, Your Honor, the way this trial
22 essentially set up was that there was a choice between two
23 versions of the facts and one version of the facts that the
24 State was proposing, and I hear proposing here today, was --
25 is that Mr. Hill, Artie Hill, was sitting in the car minding

Charles Grose - Direct examination
by Mr. Stanford

1 his own business, did nothing to provoke Lanny, and, and was
2 shot sitting in the car with the car door shut.

3 Our theory of the facts, which was confirmed by the,
4 the forensic evidence, was -- is that the Artie Hill had
5 gotten out of the car, some substantial distance out of the
6 car, with a -- the club that you would see, the long stick
7 that was put into evidence probably about the length of a
8 baseball bat, and had threatened Mr. Hill, that Artie had
9 threatened Lanny before any shots were fired, and it, it's
10 my opinion that the jury accepted our version of the facts
11 because they could of not found sufficient legal provocation
12 for manslaughter beyond a reasonable doubt had they not
13 believed that Artie Hill had gotten out of the car, and we
14 pursued that theory in a couple of ways through the, the
15 testimony of the forensic experts.

16 One, for example, and some of this would come out
17 during the cross-examination of Agent Crooks from SLED,
18 number one, there was what appears to be, in fact, I can
19 show you, in what was Defendant's Exhibit No. 19 at trial
20 shows where they found some shell casings and I believe this
21 was No. 14, which is hard to see, but it is number -- shell
22 casing number one, and there's what appears to be a blood
23 shot next to the shell casing, and, as you can see, that's
24 a, a good ways outside of the car, and the only, only person
25 that was bleeding was the, the decedent, Artie Hill.

Charles Grose - Direct examination
by Mr. Stanford

1 The -- in addition to that, in what was Defendant's
2 Exhibit No. 12, and this may or may not be the best picture
3 of it, but there was what appeared to be blood splatter in
4 the frame of the door. That could not have gotten there had
5 the door been shut the entire time.

6 So, those were -- that, that -- the, the, the bleeding
7 was evidenced not only that the door was opened, but that he
8 was also out of it, outside of the car. We could also go
9 through the, the photographs regarding the, the -- some of
10 the, the gunshot wounds. I believe Agent Crooks was
11 actually confused about the number of gunshot wounds
12 initially. But what we learned from the pathologist was --
13 is that the first two gunshots most likely occurred with
14 Artie standing up and squared with the shooter, and one of
15 the things that we, we learned, for example, was there was a
16 shot that went through this shoulder, and, and it went
17 straight through and passed out. There was no bullet in the
18 seat, no bullet recovered in the car.. In fact, that shot
19 had come, to go in that line, it could not have come through
20 the window of the car because the window of the car was not
21 broken, and also the angle was just very slightly down,
22 which was consistent with Lanny being approximately one inch
23 higher than what Artie was, and the, the way it was
24 straight, it was, it was consistent with them, you know,
25 being squared up with each other.

Charles Grose - Direct examination
by Mr. Stanford

1 There was also a gunshot wound to the right shoulder.
2 what I've been talking about was to the left shoulder.
3 There was a gunshot wound that went into the, the arm and
4 traveled through the arm into the shoulder, and, again, that
5 was with the arm facing directly towards the shooter and it
6 would had to have been elevated otherwise that -- the path
7 would not have gone through the, the arm.

8 And Doctor Woodard opined that these two shots were
9 first because he was most likely standing and they would of
10 had to have the ability to, to have raised his arm, and that
11 was significant -- there was six shots, and Doctor Woodard
12 couldn't tell you if the two shoulder shots, which order
13 that they came in, but that they were in the first group of
14 two shots.

15 The second two shots had to have come when Mr. Artie
16 Hill had the ability to raise his head and have it turned
17 towards the direction of the shooter, and that was
18 significant because both of those shots would of been fatal
19 and would have been instantly incapacitating and the final
20 two shots would of happened when his head, Artie's head was
21 down after he had been incapacitated. And, again, he
22 couldn't say, within each group, which one occurred first,
23 but he could say that there was three distinct groups.

24 And, so, what our theory was, was that Artie had gotten
25 out of the car and had squared up with Lanny in a

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by Mr. Stanford

1 threatening position. There was the first two shots causing
2 Artie to begin to retreat back to the car and begin to shut
3 the door, and the second two shots occurred followed by the
4 final two shots, and that, you know, in order for the, the
5 forensic evidence to be, to be consistent -- well, the
6 forensic evidence was consistent with it happening that way,
7 and was inconsistent with it happening while Artie Hill was
8 sitting in the car for the entire time.

9 THE COURT: I understand.

10 Q All right. Thank you, Mr. Grose.

11 Now, I believe that Mr. Hill was found guilty of
12 manslaughter, is that correct?

13 A That, that is, that is correct.

14 Q And also having a firearm, commission of -- having a
15 firearm?

16 A That's correct.

17 Q And I believe he was sentenced to 30 years plus five
18 years consecutive?

19 A Right.

20 Q Now, you filed a notice of intent to appeal?

21 A I did, yes.

22 Q Okay. And did you send information to the appellate
23 counsel?

24 A I did, yes.

25 Q And what, what would be your practice once you filed a

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by Mr. Stanford

1 notice of intent to appeal?

2 what do you do after that?

3 Do you just leave it up to them or are you, are you in
4 contact with Appellate Defense?

5 A Oh, a lot, lot of times I'm still in contact with them.

6 Q Okay. Now, as it relates to this specific matter with
7 this case, were you in contact with either Mr. Savitz or Ms.
8 Cleary?

9 A I know I had had contact with Mr. Savitz.

10 Q All right. And I believe -- did you raise to him some
11 concerns about issues you thought should be raised by way of
12 brief to the appellate -- to the appeals counsel?

13 A I had sent him an email. I mean I'm sure that we had,
14 had talked about it, but I think what you're getting at is
15 that I had sent him an email on June 1st, 2006, regarding
16 the inference of malice jury instruction that Judge Saunders
17 gave to the jury.

18 Q And explain -- what, what concerns did you have as it
19 relates to the inference of malice to the jury, the jury
20 instruction as given by Judge Saunders?

21 A The instruction that was given was the instruction that
22 has now been expressly prohibited in this type of case by
23 the State versus Belcher decision.

24 Q And did State versus Belcher come out around about the
25 same time as you sent this information that this trial was

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by Mr. Stanford

1 going on?

2 A Well, State versus Belcher -- well, let me back-up.

3 State versus Belcher didn't come out until October of 2009,
4 but to, to back-up, this was, you know, Rauch Wise was the
5 lawyer for Mr. Belcher.

6 Q All right. Who is Rauch Wise?

7 A He's a lawyer local here in, in Greenwood that handles
8 a number of criminal cases including criminal appeals here,
9 and this was an issue that Mr. Wise and I had, had talked
10 about over the years. And, in 2006, Mr. Wise, and
11 ironically Townes Jones, who was the one who prosecuted
12 Lanny the first time, had had a trial in Laurens County that
13 resulted in a, an acquittal, and one of the issues that they
14 were gonna raise in that trial and did raise was the
15 inference of malice.

16 And, so, what I sent to Mr. Savitz was an email that
17 was on our criminal defense law list served after the
18 acquittal in that trial where Mr. Wise had circulated the
19 memorandum of law that he had used in the case that was an
20 acquittal. I think Mr. Belcher's case was tried, you know,
21 sometime along in that same timeframe, but I don't know the
22 date of that trial.

23 Q And did you suggest that Mr. Savitz use his
24 information, that that would be an important issue to take
25 up on appeal?

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1 A That, that was -- that was what I was trying to suggest
2 in this email, yes, and this was well before the brief was
3 filed in, in Mr. Hill's case.

4 Q It's well before the brief was filed?

5 A Right, I don't think the -- I don't know the exact date
6 that the brief was filed, but it was around the end of
7 February in 2007.

8 Q All right. And your email is dated June 1st, 2006?

9 A June 1st, 2006, at 9:07 in the evening it looks like.

10 Q All right. Was this issue, to your knowledge, briefed?

11 A It was not briefed.

12 Q What issues were briefed that you recall?

13 A There was two issues. One was regarding the testimony
14 that was excluded regarding Shannon Hill, and the second
15 issue that was briefed regarded the threats that were
16 communicated to Mr. Hill through Glenrissa Gates.

17 Q And as it relates to this inference of malice issue,
18 based on you trying the case and, and you sending this
19 information, was it your belief that this was a significant
20 issue that could make a major impact and difference in Lanny
21 Hill's case?

22 A I did, yes.

23 Q Was the issue of self-defense briefed?

24 A Well, it was in the context of the, the -- those two
25 issues that we just talked about.

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by Mr. Stanford

1 Q Right.

2 A The -- I think the, the statement of facts contained at
3 least one error that was important to our prospective as far
4 as, you know, forensic evidence. It didn't come out in the
5 brief that the forensic evidence confirmed that Artie Hill
6 had gotten out of the car, and the brief, I think, tended to
7 focus more on what the attorney general wants to focus on
8 here today, which there was witnesses who had testified that
9 Mr. Hill was sitting in the car with the car door shut when
10 that happened. And, quite frankly, that was the version of
11 the facts that the State presented at trial that was
12 rejected by the jury.

13 And, so, the, the -- I didn't think that the, the focus
14 was right to educate the Court that it was a self-defense
15 case. Not only legally that he was entitled to it, but that
16 factually that that's what it was.

17 Q So, legally nor factually it wasn't briefed?

18 A Well, I mean they, they briefed those issues about
19 that, that, you know, should we have been able to, you know,
20 elicit this other testimony as it related to self-defense.

21 MR. STANFORD: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (Pause.)

24 MR. STANFORD: That's all I have, Your Honor.

25 THE COURT: Mr. Johnson.

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by Mr. Stanford

1 MR. JOHNSON: Judge, would it be okay to have a
2 bathroom break?

3 THE COURT: Certainly. We'll take---

4 MR. JOHNSON: Thank you.

5 THE COURT: ---a brief break and we'll be back in a few
6 minutes.

7 MR. JOHNSON: Thank you, Your Honor.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: We're back on the record.

10 Mr. Johnson.

11 MR. JOHNSON: Thank you, Your Honor.

12 May it please the Court.

13 CROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q Mr. Grose, I just have a few questions for you today.

16 Just regarding the trial itself, now you made many
17 motions there pretrial, didn't you?

18 A The record will reflect what I made. I recall making
19 motions.

20 Q Okay. But a motion to quash indictments?

21 A Right.

22 Q Motion to argue -- yeah, the record will reflect that.

23 And I guess the State made a motion to exclude evidence
24 of the crack cocaine found on the decedent?

25 A Right, I don't think it came in in either trial.

Charles Grose - Cross-examination
by Mr. Johnson

1 Q No, but you argued and it didn't come in in the first
2 one?

3 A I don't think it did. I wasn't -- no, actually it
4 might of come in in the first, and -- but we were not
5 allowed to, to argue the, the inference that might of gone
6 with it, that, you know, Mr. Artie Hill might of been
7 dealing drugs.

8 Q Okay. And did you offer Shannon Hill's testimony
9 about, you know, prior dealings with the decedent?

10 A I don't think we did pretrial, but I think we did
11 during her testimony by putting into the record the
12 transcript of what had been admissible in the first trial or
13 what had been admitted in the first trial.

14 Q Okay. And you also tried to offer Mr. Hill's testimony
15 about the prior dealings with the decedent?

16 A Right.

17 Q And that the Court, the Court didn't let that in.

18 You testified earlier about consulting with an expert
19 on, I guess, is the blood splatter.

20 A Well, it would be more of -- it would include the blood
21 splatter, but it, it was a larger, you know, crime scene
22 investigator consultation, and Mr., Mr. Girndt was the, when
23 he was working for SLED, he's a retired SLED agent, when he
24 was working for SLED, that's what he did was respond to, you
25 know, crime -- one of the things he did was respond to crime

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1 scenes and do the same type of, you know, work that, that
2 Agent Crooks had done in this case.

3 Q And, so, I guess you made the decision that you didn't
4 need him to testify because you brought that out on
5 cross-examination of Mr. Crooks I believe?

6 A Right. Yeah, I mean and the decision wasn't made until
7 after Mr. Crooks cross-examination.

8 Q You made motions for directed verdict and preserved
9 that for an issue, and then you argued your set of facts in
10 the closing arguments that, you know, that Mr. Hill, the
11 decedent, got out of the car, was shot, and then got back
12 in, right?

13 A That's correct.

14 Q Okay.

15 A Like I said before, I think that's, that's the set of
16 facts that the jury accepted because otherwise they could
17 not have found sufficient legal provocation beyond a
18 reasonable doubt as an element of the offense.

19 Q Okay. Just to clarify, the, the brief from Rauch
20 Wise---

21 A Uh-huh. (Affirmative).

22 Q ---when was that?

23 I don't think I have a copy of that.

24 A The -- well, I don't know when those, the, the brief
25 was. We can put a copy in the record if you'd like, but it

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by Mr. Johnson

1 was sent on -- I sent it to Mr. Savitz on June 1st of 2006.

2 Q Okay. And, at that time, had Belcher come along?

3 I mean that's what you were arguing.

4 Had it come along?

5 A No, Belcher hadn't. Belcher wasn't decided until
6 later, but this was the argument that led to the Belcher
7 decision.

8 Q Okay.

9 A And this was the argument that pertained to my
10 objection that I had made, which was the same objection that
11 was in Belcher.

12 MR. JOHNSON: Okay. Court's indulgence, Your Honor.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. JOHNSON: Apologize, Your Honor.

16 THE COURT: That's quite all right.

17 (Pause.)

18 MR. JOHNSON: Okay. No further questions.

19 MR. STANFORD: No questions.

20 THE COURT: Thank you, sir.

21 THE WITNESS: Do ya'll want -- does anybody want to
22 move this in since there were so many questions about it?

23 THE COURT: Did anybody want the email from June of
24 '06 admitted into evidence?

25 MR. STANFORD: We would admit it, Your Honor.

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by Mr. Johnson

1 THE COURT: All right. Without objection from the
2 State, that would be Applicant's 1 I guess.

3 (WHEREUPON, the email was marked as Applicant's Exhibit
4 No. 1 and received into evidence at this time.)

5 MR. STANFORD: Call Mr. Savitz.

6 JOSEPH SAVITZ, being first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. STANFORD:

10 Q State your name for the record please, sir, and tell us
11 where you're presently working at.

12 A Well, my name is Joseph L. Savitz, S-A-V-I-T-Z, III,
13 and I am presently not doing anything. I'm taking a break
14 from the law.

15 Q Good for you.

16 A It's a very, it's a very good thing. It's good to be
17 here today though.

18 Q I believe that you were with the South Carolina
19 Indigent Defense --

20 A Yes.

21 Q -- back when you represented Mr. Hill, is that correct?

22 A Yeah, I was the chief attorney of the Office of
23 Appellate Defense --

24 Q All right.

25 A -- which is a -- or I guess the Division of Appellate

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by Mr. Stanford

1 Defense, which is a division of the Indigent Defense, but I
2 was the, the lead attorney at Appellate Defense at the time.

3 Q You were the lead attorney?

4 A Right.

5 Q Okay. Now, I believe that you represented Mr. Hill as
6 far as his first appeal from the first trial, is that
7 correct?

8 A That's correct.

9 Q Explain that to me please.

10 A What happens is, like I say, I was the chief attorney
11 and Charles, I'm from Abbeville, and I know Charles and
12 Charles is different than a lot of public defenders, better
13 than a lot of the public defenders cause Charles keeps
14 active, actively involved in the case even after the trial.
15 A lot of public defenders, you know, once they're done with
16 the case, they send it to Appellate Defense, and they want
17 Appellate Defense just to take it over. You never hear from
18 them again. A lot of public defenders, if you hear from
19 them, they want you to raise stuff like the solicitor was
20 glaring at them during their closing argument or something
21 like that.

22 Charles was always staying along with the cases. I
23 liked working with Charles on cases. He would come up and
24 argue stuff. He always had good ideas about his cases, and
25 he always -- and he was not only a trial lawyer, but an

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by Mr. Stanford

1 appellate lawyer too. He was always kind of looked to see
2 what the appeal would be like if he happened to lose the
3 case, and then -- and in Mr. Hill's first appellate appeal
4 I -- Charles called me up, told me he just filed a notice of
5 intent in a case I might want to take a look at, work with
6 him on. It was the first appeal.

7 I believe -- I guess I wrote the brief and he argued
8 this case and, and we won, and I think that was the Doyle
9 that commented on his not, you know, telling his story
10 sooner than trial. And, so, it was remanded for a new
11 trial.

12 Charles represented him again, and he was convicted
13 of -- the first time it was murder. That was reversed. The
14 second time, voluntary manslaughter, and Charles called me
15 up and said Lanny's been convicted again, you want to do the
16 appeal and I said yes, I do. And so, the -- once a notice
17 of intent to appeal was filed, we ordered the transcript
18 from the court reporter. Well, there's, there's a gap
19 between the notice of intent to appeal, the case getting in
20 our office---

21 Q Right.

22 A ---and us actually getting the record on appeal, and
23 the transcript of the trial basically. And, so, I kind of
24 lost track of the case between the -- between talking to
25 Charles and getting the memorandum of law and malice and

Joseph Savitz - Direct examination
by Mr. Stanford

1 talking about some other things of the case. I lost track
2 of the case, and the next thing I heard about it was Charles
3 calling me up or emailing me or something and that he was
4 upset about the brief, and basically upset about two things
5 about the brief, and one was that, if you look at the
6 physical evidence in the case, it appears to indicate that
7 the victim was shot outside of the car. Matter of fact, the
8 bullet wounds and the lack of bullets inside the car and
9 blood and things like that suggested he was shot outside of
10 the car, which makes it more likely that it was
11 self-defense.

12 The pictures and stuff that show him sitting in the car
13 make it look like he's sitting in the car where he's shot to
14 death which suggests that it was a homicide, murder, or
15 voluntary manslaughter. If you read the brief, that was
16 filed in the case, which I didn't do, it suggests that, that
17 the only evidence was that the victim was shot while he was
18 seated in the car. If you look at the photographs and the
19 forensic evidence in the case, it, it indicates, to me
20 anyway, quite clearly that the victim was shot outside the
21 car.

22 MR. JOHNSON: Your Honor, I object. This is just
23 opinion testimony at this point.

24 THE COURT: I'll allow it.

25 MR. JOHNSON: He did not file the brief.

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by Mr. Stanford

1 THE COURT: He's read it. I haven't. Let me get him
2 to summarize it.

3 Keep going.

4 THE WITNESS: Okay. Thank you.

5 Anyway, the two, the two things Charles was, was upset
6 about -- well, he wanted to know why, why I hadn't done the
7 brief. I didn't realize the brief had been filed. I took a
8 look at the brief, and, like I say, there were two things
9 Charles was upset about.

10 One was the apparent concession that the victim was
11 seated in the automobile when he was shot to death, and the
12 second thing was the failure to raise the, the inference of
13 malice from the use of a deadly weapon, which had not been
14 raised at all, and I, you know, had to agree with him on
15 the -- that if you read the brief, it does look as though
16 we're saying the victim was seated in the car when he was
17 shot and that there was no other possible construction of
18 the evidence when, in fact, the physical evidence indicates
19 that he was outside the car.

20 Charles and I had some discussions. Ellen and I had
21 some discussions. I don't remember -- mostly by email. I
22 don't remember the exact content of them, but I've been away
23 from Appellate Defense for a year now. So, I haven't had
24 access to the emails. I haven't reviewed them.

25 But what happened was Charles ended up writing the

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1 reply brief after the state filed their brief. Charles
2 wrote the reply brief and the, the voluntary manslaughter
3 conviction was affirmed and we tried to get certiorari from
4 the Supreme Court. We were in the Court of Appeals. When
5 we lost the appeal, we sought cert in the Supreme Court and
6 I believe I wrote the cert petition.

7 Q You wrote the cert petition?

8 A I wrote the cert petition. That was like literally the
9 extent of my involvement in this appeal and cert was denied
10 in February of 2009, and the Belcher opinion, which the
11 malice instruction was based on, the Belcher opinion --
12 Belcher was argued three months later and the opinion came
13 out maybe six, seven, eight months later.

14 Q And those are the same identical issues in Belcher
15 though?

16 A Well, I mean Belcher was a murder case. This was a
17 voluntary manslaughter conviction.

18 Q Right.

19 A But if you read the Belcher opinion, it doesn't talk
20 about murder. It talks about homicide, which, you know,
21 murder and voluntary manslaughter are both homicides, and it
22 says don't charge the inference of malice when it could be
23 something like self-defense.

24 Q And this same information was sent to -- by Mr. Grose
25 to Appellate Defense?

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by Mr. Stanford

1 A Yes, I mean I'm not saying that Ms. Cleary was
2 ineffective or that, you know, that, that I was ineffective.
3 Somebody -- or Appellate Defense was ineffective. I mean
4 I'll take the blame. I mean I was, I was the chief
5 attorney. We -- Charles made the right objection, and he
6 got us the information, and this was an issue that I knew
7 about and that a lot of other people knew about and that we
8 should of raised in the appeal, and, again, you know, I'm
9 willing to accept the blame for that.

10 Q So---

11 A It was Appellate Defense failure.

12 Q So, it was a failure on, on Appellate Defense?

13 A Yes, sir, most definitely.

14 Q That would make you ineffective---

15 A Yes, sir.

16 Q ---from a---

17 A We should have raised this issue. I mean I can not
18 predict the outcome in the, in the Supreme Court, but we
19 should have -- we should of stressed that there was evidence
20 that the victim was outside the car, and we should have
21 raised the issue of the, the inference of malice. Those two
22 things should of been done. Our failure to do, failure to
23 raise the malice instruction, I, I'm not aware that Ms.
24 Cleary was aware of it. I don't know. I know I was aware
25 of it and that it wasn't raised. So, that's an appellate

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by Mr. Stanford

1 failure.

2 Q And there was no oral argument?

3 So, everything in the brief had to be really important,
4 is that right?

5 A Once the brief was filed that was it. It was, it was
6 basically engraved in stone once the initial brief was
7 filed. So, we were stuck with what was initially filed.

8 MR. STANFORD: Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 (Pause.)

11 MR. STANFORD: That's all I have, Mr. Savitz.

12 THE COURT: Mr. Johnson.

13 CROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q The only question I have is when the -- when this brief
16 was done, was Belcher decided?

17 A Well, Belcher hadn't been decided.

18 Q Okay.

19 A It was decided afterwards, but the, the underlying law
20 that Rauch Wise had done would, had been given to us by
21 Charles. So, we had it. We had the same stuff that was
22 argued in Belcher. We just didn't argue it.

23 Q Okay. But Belcher wasn't in place at the time?

24 A It hadn't been decided.

25 MR. JOHNSON: Okay. That's all, Your Honor.

Joseph Savitz - Cross-examination
by Mr. Johnson

1 THE COURT: Did your office handle Belcher too?

2 THE WITNESS: No, Rauch Wise handled it.

3 THE COURT: That's right. I'm sorry. I knew that.

4 Thank you. Step down.

5 THE WITNESS: Thank you.

6 THE COURT: Step down.

7 MR. STANFORD: That's all we have, Your Honor.

8 THE COURT: Anything from the state?

9 MR. JOHNSON: Yes, Your Honor.

10 We call Ms. Cleary to the stand.

11 THE COURT: Ma'am, if you'll come forward, please.

12 MR. JOHNSON: Your Honor, permission for Mr. Savitz to
13 be excused?

14 THE COURT: Without objection.

15 Mr. Savitz, thank you for coming, sir.

16 MR. JOHNSON: And Mr. Grose, if he -- I don't have any
17 objection to him being excused either.

18 THE COURT: Very well. If you want to stay you can.
19 You can leave if you want.

20 ELEANOR CLEARY, being first duly
21 sworn, testified as follows:

22 THE COURT: Have a seat please.

23 DIRECT EXAMINATION

24 BY MR. JOHNSON:

25 Q Afternoon, Ms. Cleary. I know it's been a long day for

Eleanor Cleary - Direct examination
by Mr. Johnson

1 you.

2 Just to, to preface for the Court, can you explain your
3 involvement in this case?

4 A Yes, I was working as an assistant appellate defender
5 and I was assigned this case, and most of my recollection
6 comes from the appendix and documents that the Attorney
7 General's Office provided me.

8 Q And---

9 A Specifically I'm not sure what you're looking for.

10 Q And when you get a case on appeal, what steps do you
11 normally take?

12 A Okay. Well, when I was working for the Office of
13 Appellate Defense, and I left there in the Summer of 2008
14 and have been in private practice since then, but I had
15 worked there for -- since 2000, and as Mr. Savitz trained me
16 to do, what I would do is scan the transcript, you know,
17 basically to make sure that all the parts are included
18 because sometime you might have a different court reporter
19 for a different section of trial. Then go through it with a
20 notebook and write down and read it page-by-page
21 word-by-word and write down what page number each of the
22 pertinent issues are, are -- on which page they're raised,
23 and, and at least make a note to go back and look at the
24 issues that are being strongly argued by the trial counsel
25 knowing that those are obvious clues of the issues that need

Eleanor Cleary - Direct examination
by Mr. Johnson

1 to be raised -- considered to be raised on appeal.

2 Q Then how do you come up with the pertinent issues?

3 A Well, we go through and look at all -- I would go
4 through and look at all of the raised issues disregarding,
5 you know, maybe something that's sort of just a throw away
6 objection or harmless leading objection that's not relevant.
7 But go through and look at the substantive issues, then do
8 research on each of those issues, and any issue that I
9 thought would be meritorious I would raise, but I wouldn't
10 raise every issue that had been raised by the Trial Court --
11 I mean by the trial attorney.

12 Q And are you under any obligation to raise
13 non-meritorious issues?

14 A No.

15 Q And at the time this appeal came up, what was the, the
16 black letter law on the malice inference?

17 A It was my understanding that malice -- the jury could
18 be instructed that malice could be inferred from the use of
19 a deadly weapon. I knew that it had gone through some
20 evolution where it -- the Court had said it couldn't be
21 presumed, but at the time the law was that it could be --
22 the jury was free to infer that.

23 Q Now, there's been a discussion about an email I guess
24 from Mr. Grose to Mr. Savitz.

25 Did you ever receive that email?

Eleanor Cleary - Direct examination
by Mr. Johnson

1 A I don't have a specific recollection of receiving it.

2 Q Did you ever receive the, the brief from Mr. Wise?

3 A No, that -- today was the first time I'd heard of that.

4 Q So, what did you base your appellate brief on?

5 A The law as it existed at the time.

6 Q Did you have any reason to believe that the Supreme
7 Court would come out with Belcher?

8 A No, I certainly didn't. I was surprised when they did
9 come out with that.

10 MR. JOHNSON: Court's indulgence, Your Honor.

11 THE COURT: Yes.

12 (Pause.)

13 THE COURT: Spell your name again while we're at it.

14 THE WITNESS: Oh, Cleary. C-L-E-A-R-Y.

15 THE COURT: Thank you.

16 THE WITNESS: And it's Cleary. Everybody wants to call
17 me Clary.

18 THE COURT: Cleary?

19 THE WITNESS: Cleary.

20 THE COURT: All right. Ms. Cleary.

21 (Pause.)

22 Q Just a few more questions, Ms. Cleary.

23 A Uh-huh. (Affirmative).

24 Q I guess prior to coming to Appellate Defense, where
25 were you employed and what did you do?

Eleanor Cleary - Direct examination
by Mr. Johnson

1 A I worked in the State Senate for five years for the
2 office of Senate Research.

3 Q As an attorney?

4 A Yes, prior to law school I worked for the Department of
5 Social Services as an investigator in the Office of Child
6 Support Enforcement.

7 Q And how long did you say you were at Appellate Defense?

8 A From 2000 to 2008. I was admitted to the bar in 1994.

9 Q And prior -- I guess prior to the Belcher case, what is
10 your take on the law in South Carolina I guess as far as the
11 malice charge is concerned?

12 I've asked that question, Your Honor. Let me withdraw
13 that.

14 THE COURT: Quite all right.

15 Q Was there a long enough precedent that malice could be
16 used as an inference in the State of South Carolina prior to
17 Belcher?

18 A Yes, I mean at least a hundred years of precedent.

19 Q And the Belcher case would of been a major shift from
20 that precedent?

21 A Yes, and I, and I think the Court indicates that in its
22 decision when it, when it notes that the trial judge had no
23 way of knowing how they were gonna rule.

24 MR. JOHNSON: Okay. No further questions at this time,
25 Your Honor.

Eleanor Cleary - Direct examination
by Mr. Johnson

1 THE COURT: Okay. Mr. Stanford.

2 MR. STANFORD: Thank you, Your Honor.

3 Please the Court.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. STANFORD:

7 Q Ms. Cleary, as it, as it relates to the Belcher
8 decision, you were aware that the issues of malice was
9 rapidly evolving and changing, is that right?

10 A I don't, I don't have a specific memory of that.

11 Q And how long had you worked in the Appellate Defense
12 office when this case was assigned to you?

13 A Six years.

14 Q Okay. Now, you were aware that Mr. Savitz had actually
15 did the appeal on the first case for Mr. Hill?

16 A Yes.

17 Q Okay. And that they had been successful on that
18 appeal?

19 A Yes.

20 Q On his second appeal, the second case, did you consult
21 with him?

22 A No.

23 Q Did you review his files?

24 A Review the file from the first --?

25 Q Yes, ma'am.

Eleanor Cleary - Cross-examination
by Mr. Stanford

1 A I would of only reviewed the parts that Mr. Grose had,
2 you know, introduced at, at the second trial or proffered at
3 the second trial. I wouldn't have -- I wouldn't of had a
4 reason, I don't think, to go through and read the entire
5 appellate file.

6 Q All right. And you read the transcript from the second
7 trial, is that right?

8 A Yes.

9 Q And in the transcript from the second trial, you did
10 read where Mr. Grose preserved the issue of malice and he
11 raised that concern before Judge Saunders, is that right?

12 A Yes.

13 Q But you didn't put that in your argument?

14 You didn't consider that in your argument?

15 A No, no, I definitely considered it. I, I would
16 consider anything that Mr. Grose would, would raise to be a
17 serious appellate issue. But just from my research, all I
18 could find was that the inference of malice could be
19 inferred from the use of a deadly weapon, and I was not
20 aware of any kind of growing movement to check -- to change
21 that precedent.

22 Q So, you just was aware of it?

23 A I mean there was -- I can only go by what are the
24 published decisions, you know, and what's in the material
25 available to me.

Eleanor Cleary - Cross-examination
by Mr. Stanford

1 Q And how did you decide to put the facts in as they were
2 as it relates to Lanny Hill being in the car versus the
3 theory that he's out of the car?

4 Was it just based on the pictures you saw?

5 A I, I don't have any specific recollection. This is the
6 first time today that I've heard that there was -- that
7 Mr. Grose was not -- that he disputed the facts as I, as I
8 wrote them. I thought I was writing them -- I certainly was
9 not trying to write them from the Attorney General's
10 prospective because anybody who knows me knows that I'm a
11 true believer and I'm not on their side.

12 But that's -- today is the very first day that I have
13 heard that he felt like that the facts were written from an
14 improper prospective. I thought I was going through and,
15 with candor to the Court, writing what the facts were with
16 references to the record on appeal, and I didn't -- I can't
17 address whether, you know, what I was thinking cause I
18 have -- just have no memory of that.

19 Q So, you don't dispute the fact that if you read the
20 brief, based on the testimony that you heard today, that
21 there were some shortcomings and concerns, shortcomings and
22 concerns that was outlined in the brief or left out of the
23 brief?

24 You don't dispute that, do you?

25 A I know that that was a concern, but I mean I haven't

Eleanor Cleary - Cross-examination
by Mr. Stanford

1 had a chance to compare the brief to the record since I've
2 just learned that that was a concern within the last half an
3 hour or so.

4 Q And that would be significant wouldn't you say?
5 wouldn't you agree?

6 A Well, no, I mean I don't know whether it would be
7 significant. I'm not gonna say it's not significant, but
8 I'm gonna say that the Court of Appeals is gonna look at the
9 facts and determine what the facts are, but I can try to
10 write the facts in the way that are persuasive. But if I
11 twist them too much, then I'm gonna lose credibility.

12 So, I, I don't -- I think that, you know, the law is
13 more important than the facts because the Courts -- the
14 Appellate Court is gonna read the record. They're gonna
15 know what the facts are no matter how I characterize it in
16 my statement of facts.

17 Q But your, your characterization of the facts were more
18 leaning towards the theory of the Attorney General versus
19 the theory of the defendant, is that right?

20 A I don't agree with that. I mean I would have to go
21 back and look. I would certainly say by no means would that
22 be my intention.

23 Q Okay. That's all I have.

24 MR. JOHNSON: One quick question, Your Honor.

25 THE COURT: Yes, sir.

Eleanor Cleary - Redirect examination
by Mr. Johnson

1 REDIRECT EXAMINATION

2 BY MR. JOHNSON:

3 Q Ms. Cleary, do you feel that you would have thoroughly
4 reviewed the records to decide what issues to raise in this
5 case?

6 A Yes, I do.

7 Q All right. And to write the statement of facts?

8 A Yes.

9 MR. JOHNSON: No other questions, Your Honor.

10 THE COURT: Thank you. You can step down.

11 MR. JOHNSON: The State has no further witnesses.

12 THE COURT: All right. Anything in reply?

13 MR. STANFORD: Nothing in reply.

14 THE COURT: All right. Very good.

15 THE WITNESS: Thank you.

16 MR. JOHNSON: Thank you, ma'am.

17 MR. JOHNSON: And, Your Honor, may I be heard on one
18 case?

19 THE COURT: Yes please.

20 MR. JOHNSON: Your Honor, we have State -- the case of
21 Gilmore v. State and I'll pass these up.

22 THE COURT: Thank you.

23 MR. JOHNSON: The Court may be quite aware of this
24 case, but this case holds that attorneys are not required to
25 be clairvoyant---

1 THE COURT: Right.

2 MR. JOHNSON: ---of issues or law that do not exist at
3 the time of their actions, and it says we have never
4 required an attorney to be clairvoyant and anticipate
5 changes in the law which were not in existence at the time
6 of trial, and I believe that would be dispositive of
7 ineffective assistance of appellate counsel in this case,
8 Your Honor.

9 THE COURT: I imagine that Mr. Stanford is going to now
10 stand and argue that the fact that Belcher came out three
11 months after the fact and the fact that the record was
12 certainly protected on the malice issue in this case, and by
13 Mr. Savitz's own admission, they dropped the ball in failing
14 to brief that issue, that the applicant has shown
15 ineffective assistance of appellate counsel. I agree that
16 they shouldn't be -- you know, it's one thing to, to predict
17 the time that a train that's out of sight and might be
18 coming down the tracks. It's quite another when that train
19 is out of sight. Obviously though Mr. Wise was the one that
20 handled the brief in Mr. Belcher's case -- you want to speak
21 to me on that?

22 MR. JOHNSON: Thank you, Your Honor, I would.

23 THE COURT: I mean I agree with Gilmore. I understand
24 the premise in Gilmore.

25 MR. JOHNSON: Right.

1 THE COURT: This is a little different maybe.

2 MR. JOHNSON: There's -- and I understand what you're
3 saying, Your Honor, you know, but the, the issue here is
4 whether Mr. Cleary, Ms. Cleary, and not an entire agency,
5 was ineffective, and Ms. Cleary testified she reviewed the
6 entire record. She looked at that Belcher issue or that
7 issue, and she looked at it and said that's a hundred years
8 of precedent, and---

9 THE COURT: I don't blame her one bit. I understand.

10 MS. JOHNSON: And -- exactly. You know, she's not
11 required to be clairvoyant, and in terms of ineffective
12 assistance of appellate counsel, the standard is you don't
13 have to raise every meritorious issue. You can choose the
14 one that you think are best tailored, and she testified as
15 to why she, she looked at that, she considered it, and she
16 rejected it in favor of what she thought were stronger
17 issues and, and Belcher is -- I mean it is the biggest shift
18 that I've seen in South Carolina law, and in my somewhat
19 short time of 11 years.

20 Certainly would of never predicted it before, and I
21 think the first time I read it I still didn't believe it
22 happened. It is a major shift in law, and I think she made
23 an intelligent choice not to raise it. The fact that
24 there's somebody else out there that disagrees with that, I
25 mean more power to Mr. Wise, more power to Mr. Grose. My --

1 I would of never thought that would of gone anywhere, but---

2 THE COURT: I remember when Mr. Wise sent that email
3 out because I think it was about the time that there was a
4 social function, and I remember getting that email cause I'm
5 on that list and I also talked to Mr. Wise about it that
6 night commenting that's a really interesting argument, and
7 good luck with that cause I didn't -- I thought it made
8 sense, but like you're saying, it's, it's overturning a
9 hundred years of precedent.

10 MR. JOHNSON: And, and I also would add Belcher's very
11 specific that it's not to be applied retroactive.

12 THE COURT: Agreed.

13 MR. JOHNSON: I think what we have here is just the
14 plain lack of sufficiency. It's questionable whether they
15 would of done with Belcher what they would of done with this
16 case. It's a different set of facts, you know, because
17 we've heard how they're five witnesses that said the witness
18 stayed in the car and, and that would only really go to
19 self-defense, and the guy had a stick and he got, you know,
20 shot full of holes. So---

21 THE COURT: But there's that footnote in Belcher that,
22 that explains that Belcher is to be applied in any case
23 except those cases where there's no evidence which might
24 mitigate or lessen the homicide so that there is still --
25 there's still arguably situations where the holding in

1 Belcher would not apply and that you could charge malice
2 from the inference or you could charge the inference of
3 malice from the use of a deadly weapon.

4 Let me, let me ask you this. If I were to find that
5 appellate counsel -- because I do not think that a finding
6 has been made that Mr. Grose was ineffective.

7 If I were to find that appellate counsel were
8 ineffective, the result would be a new appeal?

9 MR. JOHNSON: It actually would be a new trial in this
10 circumstance, and---

11 THE COURT: A new trial -- it would be a new trial de
12 novo?

13 MR. JOHNSON: Huh?

14 THE COURT: A new trial?

15 MR. JOHNSON: It would be a new trial, start over. You
16 know, obviously I think in this situation, let's assume the
17 state would appeal, you know, so we would be able to address
18 that with the Supreme Court anyway. But, but the proper
19 remedy for ineffective assistance of appellate counsel -- I
20 actually sat, sat and watched an argument on that case and
21 it came out before that it would be a new trial, and I don't
22 remember the name of the case anymore.

23 THE COURT: This is the first one I've had where there
24 was the allegation of ineffective assistance of appellate
25 counsel which is why I asked that question---

1 MR. JOHNSON: Sure.

2 THE COURT: ---and I was actually searching for that
3 answer in the book.

4 MR. JOHNSON: And it has -- it doesn't get raised too
5 often. I mean I'm not surprised it would be the first time,
6 and it -- just going back to -- well, I had a thought and I
7 lost, I lost my train of thought.

8 THE COURT: I'll give you a chance to think about it.

9 MR. JOHNSON: Thank you.

10 THE COURT: Mr. Stanford.

11 MR. STANFORD: Thank you, Your Honor.

12 Please the Court.

13 THE COURT: Yes, sir.

14 MR. STANFORD: Your Honor, I believe that the
15 information was sent out not only to Mr. Savitz, but it was
16 sent out by way of this list. So, I think it's obvious that
17 everybody in the office received it. But I think that when
18 you read the Belcher and, and the footnote that Your Honor
19 referred to, as well as if you look at the significant
20 impact of the Belcher case and this same information was
21 basically put in the hands of appellate counsel for
22 Mr. Hill, then I think that is significant from the
23 standpoint that that issue should not have just been looked
24 at and just summarily dismissed.

25 THE COURT: All right. To their credit though, I mean

1 this was a substantial change in South Carolina law, and
2 even though I agree with the legal proposition that
3 Appellate Defense does not have to brief every single
4 possible issue in order to constitute effective assistance
5 of appellate counsel, but I'm not without sympathy to your
6 argument that look, we were shoving this information at
7 them. They really should of taken a shot at briefing it
8 especially after Mr. Savitz said that he would.

9 MR. STANFORD: Yes, sir.

10 THE COURT: So, keep talking.

11 MR. STANFORD: And I believe, and I believe, Your
12 Honor, based on the fact that my client was under the
13 impression and relied on the fact that those issues would be
14 briefed, and that if, in fact, they had briefed those
15 issues, it could be presumed not only as a holding in the
16 Belcher case, we would be quoting the Hill case because of
17 this significant impact of it. So, I don't think it could
18 be just summarily dismissed the way it was by the -- Ms.
19 Cleary and Mr. Savitz. He thought it was important enough
20 to, to review the brief and to talk to Mr. Grose about it
21 and she did not deny the fact that there was emails. So,
22 apparently there was a lot of email communication going on
23 between the three of them.

24 It's just a, it's just a question of how much knowledge
25 she had or did she just grab the ball and run with it, which

1 she did not. She just did not look at that issue, and it
2 was important enough, Your Honor, for Mr., Mr. Grose to
3 preserve that even at the trial level, and, so, that, that
4 issue should have stood out like a really sore thumb. So,
5 that should of been something, if you're looking for issues,
6 that really should of been the issue that she grabbed a holt
7 to and say how can I develop this, how can I run with this,
8 how can I -- how would this affect my client, what impact
9 would it have not only on Mr. Hill, but on case law.

10 THE COURT: You remembered what you were gonna say.

11 MR. JOHNSON: I do. Well, I mean he, he kept
12 something -- I think Mr. Savitz's own testimony is, is lots
13 of times defense attorneys want me to raise these issues,
14 you know, and he gave some examples that were kind of out
15 there, and, you know, I don't raise them, and he gives a lot
16 of stock -- Mr., Mr. Savitz gives a lot of stock to what Mr.
17 Grose presents and Mr. Grose certainly is a seasoned
18 attorney with an interesting issue.

19 But by the same token, I think Ms. Cleary was under no
20 obligation to raise what was suggested by the P.D.'s Office,
21 but make her own independent evaluation of the strength of
22 each issue, and go with -- I like the stronger issue, which
23 she and I would of thought were the strong, the stronger
24 issues, and she actually -- and opposing counsel made an
25 interesting point about certainly this, this issue's

1 preserved, and so should be glaring out there.

2 She had testified she had looked at the issue, and she
3 testified actually, we were very careful about developing
4 this testimony, that her process that she goes through this
5 record. I think she said she goes through it twice, and
6 makes notes on each thing that's preserved giving, you know,
7 some sort of insignificant leading objection or something,
8 and goes back and reviews them as needed, and she -- she
9 even testified about, again, she looked at it and thought a
10 hundred years precedent was too hard to beat and went to
11 something else.

12 THE COURT: All right. Y'all provided me with a
13 lengthy record. I want to compare the brief that the
14 Appellate Court, sorry, the Office of Appellate Defense
15 prepared on Mr. Hill's behalf. I want to compare that
16 against the trial transcript and probably more specifically
17 Mr. Grose's closing arguments cause I imagine that's where
18 he's gonna be making his argument as to what the facts
19 demonstrated.

20 So, let me think about this. If y'all have any other
21 law aside from the -- I think it was the Gilmore opinion
22 that you gave me. If you have anything else that could help
23 or anyone has anything else that can help guide me in this
24 particular area I would appreciate that.

25 MR. STANFORD: Yes, sir.

1 THE COURT: On the plus side, of course, if I rule
2 against your client, you're at liberty to appeal. So,
3 perhaps you could seek remedy, remedy through that avenue.
4 But I mean -- Mr. Grose needed to -- Mr. Stanford, you need
5 to tell me anything else?

6 MR. STANFORD: He was just passing up to me the
7 Powerpoint from his closing arguments, Your Honor.

8 THE COURT: Oh, okay. Are those in the record or are
9 those not?

10 MR. GROSE: It's not.

11 MR. STANFORD: It's not.

12 MR. GROSE: Well, it -- there's not a copy of it in the
13 record.

14 THE COURT: Do I, do I really need those or does your
15 argument cover it?

16 MR. GROSE: Well, my arguments cover it, but we're
17 talking about the photographs in the closing argument.

18 THE COURT: Okay. The same ones you showed some of
19 them to---

20 MR. GROSE: Well, more, more of them. There's a part
21 that, that summarizes the law and then there's the, the
22 discussion of the, the photographs.

23 THE COURT: Right.

24 Is there any objection to me having those just in the
25 event that I need to refer to the record and he may be doing

1 a Powerpoint and saying this slide refers to -- you know,
2 see what's in this slide and -- y'all okay with me looking
3 at that?

4 I assume it's still in the record, but---

5 MR. JOHNSON: I think that's fair game. I think that's
6 fine.

7 THE COURT: Fair enough.

8 I'll be sure to get those back to you, Mr. Grose.

9 MR. GROSE: Or I can print it out again so you can have
10 them or whatever you---

11 THE COURT: Thank you very much.

12 MR. GROSE: Yes, sir.

13 THE COURT: All right. This matter is under
14 advisement. Feel free to give me anything that y'all have
15 in the way of additional law or authority in the next couple
16 of days. I imagine that you've probably provided me with
17 everything you've been able to dig up.

18 So, we'll be at ease.

19

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

22

23

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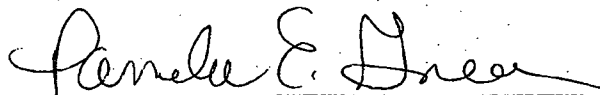
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh 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 trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Abbeville County, South Carolina, on the 13th day of March, 2011, as reported by Maryann Nevers and transcribed by myself to the best of my ability.

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

March 18th, 2014

A handwritten signature in cursive script that reads "Pamela E. Green". The signature is written in dark ink and is positioned above a horizontal line.

PAMELA E. GREEN, Court Reporter

Charles Grose

From: Charles Grose [cgrose@pdgreenwood.com]
Sent: Thursday, June 01, 2006 9:07 PM
To: Joseph L. Savitz III (Savitzj@infoave.net)
Subject: FW: Inference of malice deadly weapon
Attachments: Brief on malice issue.pdf; Request to Charge 2 appearances.pdf

In Lanny Hill, I think I objected to the inference of malice from the use of a deadly weapon. Please take a look at this brief and let me know what you think.

Best,
Charles

E. Charles Grose, Jr.
cgrose@pdgreenwood.com

Public Defender
Greenwood and Abbeville Counties
600 Monument Street, Box P-133
Greenwood, South Carolina 29646
Phone: (864) 229-9505
Fax: (864) 227-1104

X2

From: scacd1-request@scbar.org [mailto:scacd1-request@scbar.org] **On Behalf Of** Rauch, Wise
Sent: Thursday, June 01, 2006 7:52 PM
To: scacd1@scbar.org
Subject: Inference of malice deadly weapon

Attached is a copy of a brief I prepared on the question of whether the judge should charge an inference of malice from the use of a deadly weapon. I would like to say the trial judge did not give an inference charge but he did. He did, however, water down the charge. Also attached is a copy of a request to charge that the judge did give in a self defense case. He didn't charge the underlined portion, but he did charge the last sentence. That sentence enabled Townes Jones to successfully argue to the jury that they were not to engage in Monday morning quarterbacking in the case. As Charles noted, we had a good result.

This brief is not the end of your research but the beginning. I believe that if we start objecting to the inference of malice charge, we can get the court change that rule.

Rauch

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	EIGHTH JUDICIAL CIRCUIT
	)	
Robert Orlando Hill, #265223,	)	2009-CP-01-0189
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2012 APR 25 AM 3 09
EMILY Y MCMAHAN
CLERK OF COURT
TRUE COPY
Emily Y. McMahon
ABBEVILLE COUNTY CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 10, 2009 and amended on January 19, 2010. The Respondent made its Return on March 16, 2010. An evidentiary hearing into the matter was convened on March 13, 2012, at the Greenwood County Courthouse. Tommy Stanford, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. E. Charles Grose, Esquire, Joseph Savitz, Esquire and Eleanor Cleary, Esquire also testified. This Court had before it a copy of the records of the Abbeville County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Abbeville County. The Applicant was indicted at the November 1999 term of the Abbeville County Grand Jury for Murder and Possession of a Firearm during Commission of a Violent Crime (1999-GS-01-0494). E. Charles Grose, Jr.,

MS

Esquire, represented him. On March 21, 2000, the Applicant proceeded to trial and was found guilty. The Honorable J. Derham Cole sentenced the Applicant to confinement for the balance of his natural life for Murder and to five (5) years for Possession of a Firearm during Commission of a Violent Crime.

A timely Notice of Appeal was filed and an appeal was perfected on Applicant's behalf. The South Carolina Court of Appeals reversed and remanded Applicant's case by written opinion filed June 21, 2004. State v. Hill, 360 S.C. 13, 598 S.E.2d 732 (Ct. App. 2004).

The Applicant was then granted a new trial. E. Charles Grose, Jr., Esquire, represented the Applicant again. The Applicant proceeded to trial on July 11, 2005, after which he was found guilty of Voluntary Manslaughter as a lesser-included offense of Murder, and of Possession of a Firearm during Commission of a Violent Crime. The Honorable Wyatt T. Saunders sentenced Applicant to confinement for a period of thirty (30) years for Voluntary Manslaughter and to five (5) years for Possession of a Firearm during Commission of a Violent Crime (1999-GS-01-0494), sentences running consecutively.

A timely Notice of Appeal was filed and an appeal was perfected on the Applicant's behalf. This time the South Carolina Court of Appeals affirmed the conviction by written order filed February 6, 2008. State v. Hill, Op. No. 2008-UP-081 (Ct. App. Filed February 6, 2008).

The Applicant then submitted a Petition for Writ of Certiorari to the Supreme Court of South Carolina. The Petition was denied by written order dated February 19, 2009. The Remittitur was issued February 24, 2009.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel, and
2. Ineffective Assistance of Appellate Counsel.

At the hearing, the Applicant proceeded on his claims of ineffective assistance of trial counsel and ineffective assistance of appellate counsel.

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 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). 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 v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300

S.C. 115, 386 S.E.2d 624 (1989).

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.

Failure to call witnesses

The Applicant alleges Counsel failed to call certain witnesses at trial. The Applicant testified there were a few witnesses, who testified at his first trial but not at his second trial. He also claimed these witnesses would have testified that he was entitled to use self-defense in this case. The Applicant further testified Counsel failed to call an expert to testify concerning the blood stain found outside of the vehicle on the ground. *with these*

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), *cert. denied*, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

This Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. This Court also has read the trial transcript, all of which assists the Court in judging the witnesses' credibility. This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony credible.

The Applicant claims Counsel failed to call witnesses that would have testified on his behalf. However, the Applicant presented none of these witnesses at the PCR hearing, and therefore, no prejudice can be shown pursuant to Underwood.

Additionally, where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Counsel testified he consulted with an expert in this case concerning the blood stain located outside of the car on the ground. Counsel then testified he did not call this witness because he was able to obtain the same information through the cross-examination of the State's expert witness. Counsel articulated valid reasons for not calling his expert witness in rebuttal of the State's expert, and the Applicant has not shown that Counsel was deficient in that choice of tactics. I, therefore, find the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

I further find that Counsel was effective in all respects concerning his representation of the Applicant at trial.

Ineffective Assistance of Appellate Counsel

The Applicant claims he also received ineffective assistance of appellate counsel. A

defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983).

The Applicant claims he received ineffective assistance of appellate counsel because Ms. Cleary did not brief the issue of self-defense correctly. He also claims he was prejudiced because neither Mr. Savitz nor Ms. Cleary argued malice should not be inferred from the use of a deadly weapon where evidence exists which would reduce or mitigate the homicide in the appellate brief.¹

Mr. Grose testified he contacted Mr. Savitz, who was Chief of the Office of Appellate Defense at the time, and expressed his concerns about the malice instruction given to the jury by the trial judge. Mr. Grose, in an email, advised Mr. Savitz to brief the malice issue on direct appeal.

Mr. Savitz testified he remembered the communication from Mr. Grose and agreed to pursue the issue. However, Mr. Savitz testified he must have lost track of the case between the filing of the notice of appeal and the filing of the appellate brief.

¹ See State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). This Court also notes the Applicant's direct appeal was denied and concluded on February 24, 2009, while Belcher was not decided until October 12, 2009. Therefore,

Ms. Cleary testified she worked for the Office of Appellate Defense for eight years and was assigned to write the appellate brief in this case. She testified that she was unaware of the communication between Mr. Grose and Mr. Savitz. She also stated when she is assigned a case, she reads the entire transcript, writes down the meritorious issues, researches those issues, and briefs those issues based on the transcript and her research. Ms. Cleary further testified she did not consider arguing against the one hundred years of legal precedent in South Carolina, which held that malice could be inferred by the use of a deadly weapon. She also stated she could not have predicted the shift the South Carolina Supreme Court made in Belcher.

In Gilmore, the South Carolina Supreme Court stated, "[w]e have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial." Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999).

This Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. This Court also has read the trial transcript, all of which assists the Court in judging the witnesses' credibility. This Court finds the Applicant's testimony regarding Appellate Counsel's ineffectiveness is not credible while also finding Ms. Cleary's testimony credible. I find Ms. Cleary was not ineffective for not pursuing this theory pursuant to Gilmore in that she is not required to be clairvoyant of changes in the law, especially in the light of over one hundred years of legal precedent in this state. While Mr. Grose and Mr. Savitz communicated about briefing the malice charge, Ms. Cleary was not made aware of such communications. Additionally, I find Ms. Cleary, in her professional judgment, decided to brief the issues according to their potential merit. Furthermore, the Applicant has failed to demonstrate that any alleged errors in the factual recitation on appeal by

Belcher was not effective during the pendency of the Applicant's direct appeal and hence, not applicable to this case.

the applicant's

2/18

appellate counsel prejudiced the Applicant. Accordingly, this allegation is denied.

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.

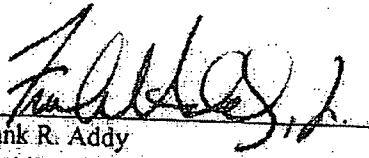
Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!


Frank R. Addy
Presiding Circuit Court Judge
Eighth Judicial Circuit

April 17, 2012
Greenwood, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Robert Orlando Hill, #265223	)	CASE NO.: 2009-CP-01-0189
Applicant,	)	
	)	NOTICE OF MOTION AND MOTION
v.	)	TO ALTER OR AMEND A JUDGMENT
State of South Carolina,	)	
Respondent,	)	CASE#: 2009-CP-01-0189

TO: J. RUTHLEDGE JOHNSON, ESQUIRE, Attorney for Respondent

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Applicant, Ronald O. Hill will, ten (10) days from the service of this Notice of Motion and Motion, or soon thereafter as counsel may be heard, moves before The Honorable Frank R. Addy, Jr., to Alter or Amend a Judgment Pursuant to Rule 52 & 59 (e) the South Carolina Rules of Civil Procedure.

This Motion is made on the grounds of furtherance of justice and that the presiding judge would re-consider the applicant's appellate counsel briefing the issue of malice in applicant's direct appeal and the issue of self defense. Further the court's ruling, relevant to applicant's trial counsel failure to call an expert to testify.

July 15, 2012

Greenwood, SC

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

[Signature]
TOMMY L. STANFORD

Attorney for Applicant
307 Main Street
Greenwood, SC 29646
Mailing: P. O. Box 3321
Greenwood, SC 29648
Phone: (864)-229-3987
Fax: (864)-229-6304

EMILY Y. HIGGINS
CLERK OF COURT

2009 JUL 15 PM 4:06

FILED
STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Robert Orlando Hill, #265223	)	CASE NO.: 2009-CP-01-0189
Applicant,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
State of South Carolina,	)	
Respondent,	)	

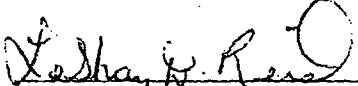
The undersigned hereby certifies that she is a secretary for Tommy L. Stanford Law Firm, PC and that a true copy of the following documents has been served upon the Assistant Attorney General by mail and hand delivered to Judge Addy on this 18th day of July 2012 at the addresses herein below written:

DOCUMENTS: Notice of Motion and Motion to Alter or Amend a Judgement Rule 52 & 59 (e)

ADDRESS: Office of the Attorney General
J. Rutledge Johnson
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549

The Honorable Frank R. Addy, Jr.
528 Monument Street, Suite 210
Greenwood, SC 29646

TOMMY L. STANFORD LAW FIRM, PC


LESHAY D. REID
307 Main Street
Greenwood, SC 29646
Mailing: Post Office Box 3321
Greenwood, SC 29648
Phone: (864) 229-3987
Fax: (864)-229-6304

TRUE COPY
BY 
EMILY Y. DUGAN
CLERK OF COURT
ABBEVILLE COUNTY

FILED
STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
2012 JUL 18 PM 3:06

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
)
)
)
Robert Orlando Hill, #265223,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2009-CP-01-0189

RETURN TO MOTION TO ALTER OR
AMEND THE ORDER OF DISMISSAL

TRUE COPY
BY [Signature]
ABBEVILLE COUNTY CLERK OF COURT

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 52 & Rule 59(e), SCRCP, in which the Applicant, through counsel, asks the Court to direct the entry of a new judgment and/or to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

This PCR matter came before the Court for an evidentiary hearing on March 13, 2012. Thereafter, this Court issued an Order of Dismissal with Prejudice dated April 19, 2012 and filed with the clerk on April 25, 2012. The Applicant was represented in this matter by Tommy Stanford, Esquire.

The Applicant submitted Motion to Alter or Amend Pursuant to Rule 52 & 59(e), SCRCP filed with the clerk on July 18, 2012 ("Motion").

II.

The State submits the Motion should be denied.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2012 SEP -4 PM 3:51
EMILY Y MCMAHAN
CLERK OF COURT

The Applicant is requesting this Court to alter or amend its decision concerning Applicant's appellate counsel's briefing the issue of malice in Applicant's direct appeal as it related to self-defense and this Court's finding that trial counsel's failure to call an expert to testify. The State submits this Court has properly addressed the issues about which the Applicant complains:

1. In the Order of Dismissal, the Court properly found Mr. Hill's testimony was not credible, while finding Ms. Cleary's testimony credible. The Court correctly concluded Ms. Cleary, in her professional judgment, briefed the appellate issues according to their merit. The Court further properly found Ms. Cleary was not required to be clairvoyant. Thus, this allegation should be dismissed.
2. The Court further properly found that prejudice cannot be found where the Applicant fails to produce the testimony of the expert at the hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992). Since no testimony from an expert was presented at the hearing, this allegation should be dismissed.

III.

The State submits the Applicant is merely asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

IV.

The State therefore requests that the relief requested by the Applicant be denied and asserts a hearing on this matter would be unnecessary.

Respectfully submitted,

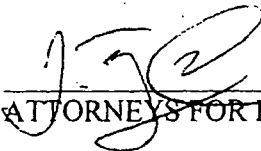
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

August 28, 20 12
Columbia, South Carolina

TRUE COPY
 BY *[Signature]*
 ABBEVILLE COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

ROBERT ORLANDO HILL, #265223)
Applicant,)

-vs)

STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

2009-CP-01-0189

DISMISSAL OF ORDER OF
RECONSIDERATIONEMILY Y MCMAHAN
CLERK OF COURT

2017 SEP 18 AM 10:51

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

This matter comes before the Court by way of an application for post-conviction relief filed August 10, 2009, and amended on January 19, 2010. The Respondent made its return on March 16, 2010. An evidentiary hearing was held on this matter and this matter was dismissed by way of Order of Dismissal. The Applicant has duly filed a Motion for Reconsideration, requesting the Court reconsider its Order of Dismissal relevant to the applicant's claims of:

1. Ineffective Assistance of Trial Counsel and
2. Ineffective Assistance of Appellate Counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety, and has reconsidered the testimony presented at the hearing, and have considered applicant's Motion of Reconsideration and the Court conclude as it relates to:

INEFFECTIVE ASSISTANCE OF COUNSEL

The Court, in reconsidering this matter and the applicant's claims relevant to trial counsel, determine and find that counsel was effective in all respects concerning his representation of the applicant at trial. The Court reiterates and adopts its findings of facts and

conclusions of law, as previously stated in its Order of Dismissal.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

The Court, in reconsidering this matter and the applicant's claims relevant to appellate counsel determines that counsel was effective in all respects concerning representation of the applicant at the appellate level. The applicant's Motion for Reconsideration is again based on the claim that appellant counsel did not brief the issue of self-defense correctly, and that appellant counsel did not argue malice should not be inferred from the use of a deadly weapon where evidence exist which would reduce or mitigate the homicide in the appellate brief. The Court has again, carefully reviewed and reconsidered the applicant's arguments and points made at the hearing, and the Court has again reconsidered the applicable case law at the relevant time. The Court also has looked at State V. Belcher 385 S.C. 597, 685 S.E. 2d 802 (2009), and as previously stated, Belcher was not effective during the pendency of the applicant direct appeal and hence, not applicable to this case.

CONCLUSION

Based on the foregoing, a careful and through review of the file, case law, the evidence and testimony presented at the applicant's hearing, the Court cannot reverse its ruling and the Motion for Reconsideration must be denied.

This Court notifies the applicant that he must file and serve a Notice of Appeal within the applicable time period, after applicant's post conviction relief attorney, has received this denial of Order of Reconsideration and Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR.

IT IS THEREFORE ORDERED:

1. The applicant's Motion for Reconsideration is hereby denied.

2. The applicant shall remain in the custody of the Respondent.

AND IT IS SO ORDERED,

Sept 16, 2013

Greenwood, South Carolina

8/ 
FRANK R. ADDY
Circuit Court Judge
Eighth Judicial Circuit

ARREST WARRANT

F- 156587

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 Calhoun Falls

 THE STATE
 against

Robert Orlando Hill

Address: 1433 Seneca St. Ext.

Calhoun Falls, SC

Phone: _____

SSN: _____

M. Race: B Height: 511 Weight: 176

Date: _____

Agency ORI#: _____

Prosecuting Agency: Calhoun Falls P. D.

Prosecuting Officer: Terrence Hayward

Offense: Murder

Code/Ordinance Sec: 16-3-10

Offense Code: _____

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of _____

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge _____ (L.S.)

RETURN

A copy of this arrest warrant was delivered to

defendant Robert Orlando Hillon 8-6-99

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO: 09/23/99

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 Calhoun Falls

AFFIDAVIT

Personally appeared before me the affiant Will E. Poteatbeing duly sworn deposes and says that defendant Robert Orlando Hilldid within this county and state on 8-6-99 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Calhoun Falls)

in the following particulars:

DESCRIPTION OF OFFENSE: Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 8-6-99 in the town of Calhoun Falls, the county and state aforesaid, one Robert Orlando Hill did commit the offense of violation of the S. C. Code of Law 1976 section (16-3-10) in that he did willfully and unlawfully shoot and kill with Malice and aforesought one Terrence Artell Hill.

Sworn to and subscribed before me on 8-6-99

Signature of Affiant _____

Affiant's Address P. O. Box 246

Signature of Issuing Judge _____

Affiant's Telephone Calhoun Falls, SCAffiant's Telephone 447-8503

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 Calhoun Falls

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 8-6-99 defendant Robert Orlando Hilldid violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Calhoun Falls) as set forth below:

DESCRIPTION OF OFFENSE: Murder

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of the execution, or as soon thereafter as is practicable.

Judge's Address P. O. Box 414Judge's Telephone Calhoun Falls, SC

Signature of Issuing Judge _____ (L.S.)

Judge's Telephone 447-8035Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

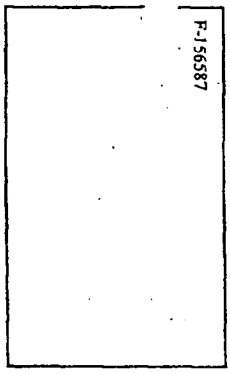
copy

WITNESSES

Mike Alewine

WARRANT NUMBERS

F-156587



THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

November Term, 1999

Indictment # 99CS01-494

THE STATE

vs.

ROBERT ORLANDO HILL

INDICTMENT FOR

- 1) MURDER
- 2) POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

Date:

11-15-99

Henry Chase H. Jr.
Foreman of the Grand Jury

VERDICT

True B.I.

W.C.T.
Foreman

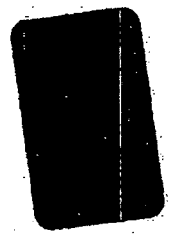
I, ROBERT ORLANDO HILL, THE DEFENDANT, IN MY OWN PROPER PERSON, COME TO THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION, AND FREELY AND VOLUNTARILY PLEAD _____ GUILTY TO THE CHARGE(S) OF:

THIS _____ DAY OF _____ A.D. _____

ATTEST:

DEFENDANT'S SIGNATURE

CLERK OF COURT, ABBEVILLE, S.C.

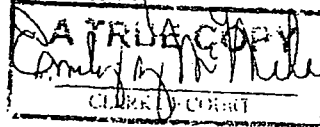


STATE OF SOUTH CAROLINA
ABBEVILLE

INDICTMENT FOR

1. MURDER
2. POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on the 15th day of November, 1999, the Grand Jurors of Abbeville County present upon their oath:



COUNT ONE

That ROBERT ORLANDO HILL, did in Abbeville County, state aforesaid, on or about the 6th day of August, 1999, with malice aforethought kill one Terrence Artell Hill by means of shooting, and that the said Terrence Artell Hill did die in Abbeville County as a proximate result thereof on or about the 6th day of August, 1999, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended

COUNT TWO

That ROBERT ORLANDO HILL did in Abbeville County, state aforesaid, on or about the 6th day of August, 1999, possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Murder, or any lesser included violent offense, said offense being defined as a violent offense in Section 16-1-60 of the 1976 Code of Laws of South Carolina, as amended, and the said defendant(s) was/were convicted of committing or attempting to commit the said violent crime, Murder, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended

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

W. Thomas Jones
Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Abbeville
 STATE vs.
Robert O. Hill
 AKA:
 Race: B Sex: M Age: 26
 DOB: SS#:
 Address:
 City, State, Zip
 DL# SID#

INDICTMENT/CASE#: 994 (et. 1)
 AWW#: F156587
 Date of Offense: 8/6/99
 S.C. Code #: 16-3-50
 CDR Code #: 0121117
☐ CASE RESTORED
☒ SENTENCE
☒ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☒ PLEADS
 TO: Voluntary Manslaughter
 in violation of §16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0121117
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-3-40 to be calculated and applied by the State
 Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$
 \$14-1-206 (Assessments 107.5%) \$
 \$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 \$14-1-211(A)(2) (DUI Surcharge) \$100 \$
 \$56-5-2995 (DUI Assessment) \$12 \$
 \$ 35.13 (Public Def/Prob) \$500 \$
 \$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
 \$33.7, 1B TP (Drug Court Surcharge) \$100 \$
 \$50-21-114(BUI Breath Test Fee) \$50 \$
 \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 3% to County (if paid in installments) \$
 TOTAL \$ 125.00

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel, \$35.13 TP.
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]Judge Code: 211115Sentence Date: 14 July 2005Court Reporter [Signature]Clerk of Court/Deputy Clerk [Signature]

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEAbleville

VS

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

1999

-GS-

01

- 494 (ct 2)

A/W#:

On Indictment

Date of Offense:

9/16/99

S.C. Code §:

16-23-990

CDR Code #:

0151419

☐ CASE RESTORED

SENTENCE

☐ PLEA☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Possession of a Firearm During the Commission of a Violent Crime
in violation of § 16-23-990 of the S.C. Code of Laws, bearing CDR Code # 0151419
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 05 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Count 1, Possession of a Firearm
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$125.00

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]

20111115

14 July 2005

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)