

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Presiding Circuit Court Judge

Docket No. 2010-CP-46-0436

2014-000281

Berry Bolin, ... Appellant.

v.

State of South Carolina, ... Respondent,

APPENDIX VOLUME 4 OF 4

The Appellant, Berry Bolin, appeals the final order in this Post Conviction Relief Application case. The Final Order was issued and served on January 21, 2014. Appellant's motion to reconsider and/of for rehearing was denied on February 10, 2014.

September 9, 2014

T. Micah Leddy
The Leddy Law Firm, LLC.
2008 Lincoln Street
Columbia, SC 29201
micah@leddylaw.com
(803) 779-9966
(803) 753-0837 (fax)
Attorney for Petitioner

Salley W. Elliott, Esquire
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

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1 YOUR HONOR.

2 MR. THOMPSON: NOTHING FURTHER, YOUR
3 HONOR.

4 THE COURT: YOU CAN STEP DOWN AND BE
5 EXCUSED. MEMBERS OF THE JURY PANEL, WE'LL TAKE OUR
6 AFTERNOON BREAK. IF ANYONE WANTS TO SMOKE, THIS WILL
7 BE THE TIME TO DO IT, AND WE'LL TAKE ABOUT 10 TO 12
8 MINUTES.

9 (THE JURY EXITS THE COURTROOM AT 03:41
10 PM.)

11 THE COURT: I'M GOING TO ASK, WE'RE GLAD
12 TO HAVE SPECTATORS SEATED HERE, BUT I'M GOING TO ASK
13 YOU TO RESTRICT YOUR MOVEMENT. IF YOU GOT TO FIDGET
14 AND GO IN AND OUT, STAY OUT BECAUSE EVERY TIME
15 SOMEBODY GETS UP, IT'S ALL THE WAY IN FRONT OF
16 EVERYBODY ELSE THAT GOES OUT THAT DOOR, THE JURY
17 HEARS IT AND LOOKS. THE JURY NEEDS TO BE FOCUSED UP
18 HERE. SO YOU ARE EITHER IN OR YOU ARE OUT. YOU ARE
19 WELCOME TO BE IN AND I KNOW IF YOU HAVE AN EMERGENCY
20 YOU CAN GO OUT, BUT IF YOU GO OUT, STAY OUT. YOU GOT
21 TO STOP THIS COMING IN AND OUT. AND I'LL ASK THE
22 BAILIFFS TO HELP ME MONITOR THAT. ALL RIGHT.

23 AND CAN I SEE COUNSEL AFTER YOU HAVE HAD A
24 CHANCE TO REFRESH YOURSELVES.

25 (COURT'S IN RECESS.)

1 (COURT RESUMES AT 04:08 PM.)

2 THE COURT: BRING IN THE JURY.

3 (THE JURY RETURNS TO THE COURTROOM AT
4 04:08 PM.)

5 THE COURT: CALL YOUR NEXT WITNESS.

6 THE SOLICITOR: THE STATE WOULD CALL LORI
7 MOSS.

8 LORI MOSS, BEING FIRST DULY SWORN,
9 TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. THOMPSON:

11 Q LORI, COULD YOU GIVE YOUR FULL NAME FOR THE
12 COURT PLEASE?

13 A LORI ROBINS MOSS.

14 Q I'M SORRY, WHAT?

15 A LORI ROBINS MOSS.

16 Q LORI ROBINS MOSS?

17 A YES.

18 Q LORI, HOW OLD ARE YOU?

19 A I'M 17.

20 Q HOW OLD WERE YOU BACK ON FEBRUARY 18 OF THIS
21 YEAR?

22 A 17.

23 Q ALL RIGHT. LORI, DO YOU KNOW BERRY BOLIN?

24 A YES, SIR.

25 Q HOW DO YOU KNOW HIM?

- 1 A HE'S MY EX-BOYFRIEND.
- 2 THE COURT: YOU NEED TO TALK INTO THAT
- 3 LITTLE MICROPHONE THERE PLEASE.
- 4 Q HOW LONG AGO HAD THE TWO OF YOU DATED?
- 5 A TWO YEARS AGO FROM OCTOBER WE BROKE UP.
- 6 Q OKAY. SO IT'S BEEN AWHILE SINCE Y'ALL BEEN
- 7 BOYFRIEND/GIRLFRIEND?
- 8 A YES, SIR.
- 9 Q CAN YOU TELL ME, DO YOU KNOW LEE OWENS?
- 10 A YES, SIR.
- 11 Q HOW DO YOU KNOW LEE OWENS?
- 12 A HE'S A FRIEND WITH MY OLDER SISTER.
- 13 Q ALL RIGHT. AND HAVE YOU SPENT TIME WITH LEE
- 14 OWENS TOO?
- 15 A YES, SIR.
- 16 Q DO Y'ALL HANG OUT TOGETHER SOMETIMES?
- 17 A NOT ANYMORE.
- 18 Q DID YOU USED TO?
- 19 A YES, SIR.
- 20 Q CAN YOU TELL ME, DO YOU KNOW BRADLEY DEAL?
- 21 A YES, SIR.
- 22 Q HOW DO YOU KNOW BRADLEY?
- 23 A A FRIEND OF THE FAMILY. WE WENT TO HIGH SCHOOL
- 24 TOGETHER.
- 25 Q DID YOU KNOW HIS BROTHER RICKY?

1 A YES, SIR.

2 Q AND THE SAME WAY FROM BRADLEY BASICALLY?

3 A YES, SIR.

4 Q CAN YOU TELL ME, DID YOU KNOW TRAVIS FALLS?

5 A NO, SIR.

6 Q ALL RIGHT. HOW ABOUT BOBBY HOVIS, DID YOU KNOW

7 HIM?

8 A YES, SIR.

9 Q HOW DID YOU KNOW BOBBY?

10 A HE DATED A FRIEND OF MINE A WHILE BACK.

11 Q ALL RIGHT. DID YOU KNOW HOLLY MCCARTER?

12 A NO, SIR.

13 Q ALL RIGHT. DO YOU KNOW WHO SHE WAS OR JUST?

14 A I HADN'T. NO, I DIDN'T KNOW WHO SHE WAS.

15 Q OKAY. CAN YOU TELL ME, DID YOU END UP AT THE

16 PARTY AT BRADLEY'S HOUSE ON FEBRUARY 18 OF THIS YEAR?

17 A YES, SIR.

18 Q HOW DID YOU END UP THERE?

19 A MY SISTER.

20 Q WHICH SISTER?

21 A CAROLINE.

22 Q ALL RIGHT. AND THAT'S CAROLINE KILLIAN?

23 A YES, SIR.

24 Q DID YOU HAVE ANY OTHER SISTERS?

25 A KRISTIN MOSS.

1 Q KRISTEN MOSS. DID BOTH OF THEM END UP IN THE
2 PARTY THAT NIGHT?
3 A YES, SIR.
4 Q DO YOU REMEMBER ABOUT WHEN IT WAS YOU WENT
5 THERE?
6 A NO, SIR.
7 Q OKAY. HOW DID YOU END UP GOING WITH CAROLINE?
8 A WE WERE JUST, WE JUST GOT TOGETHER AND WE
9 DECIDED TO GO OVER THERE. RICKY AND CAROLINE'S
10 BOYFRIEND CALLED US AND TOLD US TO COME OVER THERE.
11 Q WHO IS CAROLINE'S BOYFRIEND THEN?
12 A LEE WALDEN.
13 Q LEE WALDEN. SO DID Y'ALL GO OVER IN HER CAR OR
14 YOUR CAR OR HOW DID YOU GET THERE?
15 A HER CAR.
16 Q WHOSE?
17 A CAROLINE'S CAR.
18 Q CAROLINE'S CAR. WHAT KIND OF CAR WAS THAT?
19 A A WHITE HONDA ACCORD.
20 Q DO YOU REMEMBER WHERE Y'ALL PARKED WHEN YOU GOT
21 THERE?
22 A IN THE DRIVEWAY.
23 Q ALL RIGHT. WERE THERE A LOT OF OTHER PEOPLE
24 THERE WHEN YOU GOT THERE?
25 A NOT WHEN WE GOT THERE.

1 Q ALL RIGHT. DID A LOT OF OTHER PEOPLE END UP
2 COMING IN WHEN YOU GOT THERE?
3 A IN AND OUT PEOPLE WERE COMING.
4 Q ALL RIGHT. WHAT WAS GOING ON AT THE PARTY?
5 A PEOPLE WERE JUST DRINKING.
6 Q WHAT WERE THEY DRINKING?
7 A IT WAS A MIXED DRINK AND THEY WERE DRINKING
8 BEER.
9 Q OKAY. WERE YOU DRINKING?
10 A NO. I DRANK BEER. I WASN'T DRINKING LIQUOR.
11 Q OKAY. WERE YOU DOING ANY DRUGS AT THE PARTY?
12 A NO, SIR.
13 Q ALL RIGHT. DID YOU SEE ANYONE ELSE DOING DRUGS
14 AT THE PARTY?
15 A THAT PEOPLE, YEAH, EVERYBODY WAS DOING DIFFERENT
16 STUFF. I DON'T KNOW.
17 Q OKAY. CAN YOU TELL ME DID YOU SEE ANYONE WITH A
18 GUN AT THE PARTY?
19 A NO, SIR.
20 Q ARE YOU FAMILIAR WITH BRADLEY DEAL'S THROWING
21 KNIVES?
22 A NO, SIR.
23 Q NO. DID YOU SEE ANY KNIVES OUT IN THE KITCHEN
24 WHEN YOU WERE IN THE KITCHEN AREA AT THE HOUSE?
25 A NO, SIR.

1 Q NOW IS THIS HOUSE ALL FIXED UP OR IS IT BEING,
2 WHAT'S HAPPENING INSIDE THAT HOUSE?

3 A I THINK THEY WERE REMODELING IT.

4 Q OKAY. SO WERE A LOT OF THINGS KIND OF PUSHED
5 AROUND THROUGHOUT THE HOUSE?

6 A NOT WHERE WE WERE, NOT IN THE HOUSE. I MEAN,
7 NOT IN THE PART OF THE HOUSE THAT WE WERE IN.

8 Q ALL RIGHT. WERE YOU INVOLVED IN IT OR DID YOU
9 WITNESS ANY PHONE CALLS GOING BACK AND FORTH WHILE
10 YOU WERE IN THE HOUSE?

11 A THE ONLY PHONE CALL I HEARD WAS WHEN BUCK CAME
12 IN SAYING THAT TRAVIS AND BOBBY AND SOME OTHER PEOPLE
13 WERE ON THEIR WAY TO JUMP ON BRADLEY AND EVERYBODY.
14 I DON'T KNOW.

15 Q WHAT DID EVERYBODY DO THEN?

16 A JUST, I DON'T KNOW, JUST STARTED, THEY JUST
17 PRETTY MUCH AT FIRST JUST SAID WHATEVER AND THEN I
18 WALKED OUT OF THE ROOM BECAUSE THEY WERE ALL TALKING
19 ABOUT IT. I DON'T KNOW.

20 Q OKAY. DID Y'ALL DECIDE TO CALL THE POLICE OR
21 ANYTHING AT THAT TIME?

22 A NO.

23 Q ALL RIGHT. LORI, IF YOU WOULD, TELL ME HOW IT
24 IS OR HOW IT IS THAT YOU END UP OUTSIDE WHEN THIS CAR
25 COMES?

1 A EVERYBODY WAS IN THE YARD SAYING THAT THEY WERE
2 HERE AND I HEARD ONE OF MY SISTERS YELL OR SOMETHING
3 AND I WENT DOWN THERE AND SEE WHERE SHE WAS AT.
4 Q WHERE WERE YOU WHEN YOU HEARD THAT?
5 A UPSTAIRS.
6 Q OKAY. DID IT TAKE YOU LONG TO GET DOWNSTAIRS?
7 A NO.
8 Q DID YOU RUN OUT?
9 A YEAH, I RAN OUT.
10 Q OKAY. WHERE DID YOU GO WHEN YOU RAN OUT?
11 A I RAN AND WAS STANDING AROUND ALL THE PEOPLE
12 THAT WAS COMING OUT THE DOOR AND THEN I RAN INTO THE
13 DRIVEWAY.
14 Q WHO WAS STANDING AROUND THE PEOPLE AT THE DOOR?
15 A JUST PEOPLE AT THE PARTY WERE JUST STANDING
16 AROUND, COMING OUT THE DOOR.
17 Q OKAY. AND YOU RAN OUT THE DOOR TOO?
18 A YES, SIR.
19 Q OKAY. WHERE DID YOU GO WHEN YOU CAME OUT THE
20 DOOR?
21 A DOWN THE STEPS TO THE DRIVEWAY.
22 Q ALL RIGHT. WHERE WAS THE CAR THAT HAD PULLED
23 UP?
24 A IT WAS IN FRONT OF THE DRIVEWAY.
25 Q ALL RIGHT. WAS IT IN THE ROAD OR IN THE

1 DRIVEWAY?

2 A I GUESS IN THE ROAD OR IT WAS KIND OF JUST
3 PULLED OVER.

4 Q OKAY. WHICH WAY WAS IT FACING?

5 A TOWARDS 321.

6 Q TOWARDS CLOVER?

7 A (NODS HEAD.)

8 Q ALL RIGHT. AND COULD YOU SEE WHO WAS IN THE
9 CAR?

10 A NO.

11 Q ALL RIGHT. DID YOU FIND OUT ABOUT WHO WAS IN
12 THE CAR AS YOU GOT CLOSER?

13 A NO. I MEAN I WASN'T THERE WHEN THEY PULLED UP.
14 I WAS THERE WHEN THEY HAD ALREADY STOPPED.

15 Q BUT I MEAN WHEN YOU GOT DOWN THERE, DID YOU SEE
16 WHO WAS IN THE CAR?

17 A THE ONLY PEOPLE I SAW WAS HOLLY AT FIRST.

18 Q OKAY. AND WHAT HAPPENED WITH HOLLY?

19 A ME AND HER GOT IN A FIGHT.

20 Q ALL RIGHT. AND HOW DID THAT, TELL ME HOW THAT
21 HAPPENED?

22 A SHE SLAPPED ME AND THEN I JUST HIT HER LIKE FOUR
23 TIMES AND KNOCKED HER DOWN.

24 Q OKAY. WHO WAS WINNING THAT FIGHT?

25 A ME.

1 Q ALL RIGHT. WHAT HAPPENED WHILE YOU WERE
2 FIGHTING HOLLY?

3 A SHE FELL DOWN ON, I THINK SHE FELL OR SOMETHING
4 AND WHEN I TURNED AROUND TRAVIS HIT ME.

5 Q YOU TURNED AROUND AND WHAT?

6 A TRAVIS HIT ME.

7 Q WHERE WERE YOU WHEN THAT HAPPENED?

8 A SOMEWHERE IN FRONT OF THE CAR, LIKE NEAR IN
9 FRONT OF THE CAR.

10 Q WAS THAT IN THE ROAD OR WAS THAT IN THE GRASS OR
11 DO YOU RECALL?

12 A I DON'T KNOW.

13 Q YOU DON'T KNOW. OKAY. WHY IS IT THAT YOU ENDED
14 UP DOWN THERE WHERE HOLLY WAS?

15 A BECAUSE ME AND HER WAS FIGHTING.

16 Q OKAY. DID YOU GO DOWN TO FIGHT WITH HER?

17 A WE BOTH WANTED TO FIGHT. WE WEREN'T INTENDING
18 TO BUT WHEN WE SEEN EACH OTHER WE WERE FIGHTING.

19 Q OKAY. WHEN YOU SAW HER YOU INTENDED ON FIGHTING
20 HER AT THAT TIME?

21 A YES, SIR.

22 Q OKAY. DID YOU EVER HEAR ANY GUNSHOTS THAT
23 NIGHT?

24 A YES, SIR.

25 Q WHEN DID YOU HEAR THE FIRST GUNSHOT?

1 A WHEN LEE SHOT UP IN THE AIR.

2 Q OKAY. DID YOU SEE THAT HAPPEN?

3 A YEAH.

4 Q AND WHERE WAS LEE WHEN THAT HAPPENED?

5 A SOMEWHERE OVER IN, LIKE ON THE RIGHT SIDE OF THE

6 HOUSE.

7 Q ON, I'M SORRY, WHERE?

8 A ON THE RIGHT SIDE OF THE HOUSE.

9 Q NOW WHEN YOU SAY THE RIGHT SIDE OF THE HOUSE, IS

10 THAT FACING THAT HOUSE OR FROM THE HOUSE FACING OUT?

11 A FROM THE HOUSE FACING TO THE ROAD.

12 Q OKAY. SO WAS IT, HE WAS ON THE RIGHT SIDE OF

13 THE HOUSE AWAY FROM THE DOOR. I'M CONFUSED?

14 A HE WAS JUST OUT IN THAT GRASS. I DON'T KNOW

15 EXACTLY WHERE HE WAS.

16 Q OUT IN THE GRASS?

17 A YES.

18 Q WAS HE ANYWHERE CLOSE TO THE DRIVEWAY?

19 A NO.

20 Q OKAY. WAS HE CLOSE TO THE FRONT OF THE HOUSE?

21 A NOT REALLY. I DON'T KNOW, NOT REALLY.

22 Q WAS HE CLOSER TO THE ROAD?

23 A HE WAS JUST IN BETWEEN. I DON'T REALLY

24 REMEMBER.

25 Q JUST KIND OF IN THE MIDDLE OUT THERE IN THE

1 GRASS?

2 A (NODS HEAD.)

3 Q OKAY. AND WHEN YOU SAW HIM SHOOT WHAT EXACTLY
4 DID YOU SEE, WHAT WAS HE DOING?

5 A I JUST HEARD SOMEBODY SAY SOMETHING ABOUT LEE
6 AND WHEN I KIND OF GLANCED OVER, I JUST SEEN
7 SOMETHING IN HIS HAND AND THEN I HEARD GUNSHOTS AND
8 THAT'S, I JUST SHUT MY EYES.

9 Q ALL RIGHT. SO DID YOU ACTUALLY SEE LEE SHOOT AT
10 THAT TIME OR YOU HEARD GUNSHOTS?

11 A I HEARD GUNSHOTS AND HE HAD SOMETHING IN HIS
12 HAND.

13 Q OKAY. DID YOU SEE WHAT HE WAS DOING WITH IT IN
14 HIS HAND AT THAT POINT?

15 A I DIDN'T, I SHUT MY EYES. I WAS KNOCKED DOWN. I
16 COULD HARDLY EVEN SEE.

17 Q SO THAT SHOT CAME AFTER YOU HAD BEEN KNOCKED
18 DOWN?

19 A YEAH.

20 Q WERE YOU ACTUALLY UNCONSCIOUS WHEN YOU GOT
21 KNOCKED DOWN?

22 A KIND OF.

23 Q I'M SORRY?

24 A NOT REALLY. I MEAN I WAS CONSCIOUS.

25 Q COULD YOU STILL TELL WHAT WAS HAPPENING?

1 A NOT REALLY, NO.

2 Q NO. COULD YOU TELL WHO CAME DOWN TO YOU AT THAT

3 POINT?

4 A DEMI PICKED ME UP.

5 Q WHO IS DEMI, DEMI POWELL?

6 A YES, SIR.

7 Q ALL RIGHT. DID LEE WALDEN COME TO YOU?

8 A YEAH, I THINK HE COME UP AFTER DEMI HAD ALREADY

9 PICKED ME UP.

10 Q OKAY. WHERE DID DEMI TAKE YOU?

11 A TO CAROLINE'S CAR.

12 Q ALL RIGHT. SO HE TOOK YOU TO CAROLINE'S CAR AT

13 THAT POINT?

14 A YES, SIR.

15 Q AND CAN YOU TELL ME NOW, LEE WALDEN, HE'S A

16 YOUNG WHITE MAN, RIGHT?

17 Q AND DEMI POWELL, IS HE WHITE ALSO?

18 A NO, SIR, HE'S BLACK.

19 Q OKAY. AND YOU ARE SURE IT WAS DEMI THAT PICKED

20 YOU UP?

21 A (NODS HEAD.)

22 Q OKAY. NOW WHEN THEY TOOK YOU BACK TO THE CAR

23 DID YOU HEAR ANY OTHER SHOTS DURING THAT TIME AFTER

24 YOU HEARD THE FIRST SHOTS?

25 A WELL, WHENEVER THEY WERE CARRYING ME TO THE CAR

1 I HEARD A BUNCH OF SHOTS.

2 Q OKAY. COULD YOU TELL HOW MANY?

3 A NO.

4 Q DID YOU SEE WHERE THOSE WERE COMING FROM?

5 A NO.

6 Q ALL RIGHT. AFTER THE SHOTS FINISHED COULD YOU
7 SEE ANYTHING ABOUT OR DID YOU HEAR MORE OR AFTER YOU
8 GOT TO THE CAR, DID YOU HEAR ANYMORE SHOTS?

9 A NO, SIR.

10 Q OKAY. WHAT HAPPENED AT THAT POINT WHEN YOU WERE
11 AT THE CAR THEN?

12 A EVERYBODY WAS JUST YELLING.

13 Q ALL RIGHT. COULD YOU TELL WHERE THE CAR WAS
14 THAT HAD PULLED UP?

15 A I THINK IT HAD ALREADY LEFT.

16 Q IT HAD ALREADY LEFT?

17 A I THINK SO.

18 Q OKAY.

19 THE COURT: YOU NEED TO SPEAK UP AND SPEAK
20 IN THAT MICROPHONE.

21 Q WHAT HAPPENED WITH YOU AT THAT POINT?

22 A I WAS TRYING TO, THEY WERE HOLDING ME UP LOOKING
23 IN MY MOUTH, AND WE LEFT. WE WAS GOING, I WAS GOING
24 TO GO TO THE HOSPITAL.

25 Q OKAY. WHO TOOK YOU?

1 A ERIC BROWN, DEMI, CAROLINE, AND ME.
2 Q SO ERIC BROWN, DEMI POWELL, CAROLINE YOUR
3 SISTER?
4 A YES.
5 Q AND WHO ELSE?
6 A AND ME AND I THINK BRAD MOORE.
7 Q AND BRAD MOORE?
8 A (NODS HEAD.)
9 Q Y'ALL WENT IN ONE CAR AT THAT POINT?
10 A UH-HUH.
11 Q DO YOU REMEMBER WHAT CAR YOU WENT IN?
12 A MY SISTER'S.
13 Q WHICH SISTER?
14 A CAROLINE.
15 Q CAROLINE, OKAY. DID YOU ACTUALLY END UP GOING
16 TO THE HOSPITAL THEN?
17 A NO, SIR.
18 Q DID YOU EVER GET MEDICAL TREATMENT AFTER THAT?
19 A NO, SIR.
20 Q ALL RIGHT. WHERE DID YOU END UP GOING?
21 A BACK HOME.
22 Q AND HOW FAR IS THAT AWAY FROM WHERE YOU WERE AT
23 LAWRENCE ROAD?
24 A PROBABLY 20 MINUTES.
25 Q OKAY. AND WHAT DID YOU DO WHEN YOU GOT BACK

1 HOME?

2 A I WOKE MY MOM UP AND TOLD HER WHAT HAPPENED.

3 Q ALL RIGHT. AND AFTER THAT WHAT DID YOU DO?

4 A THE POLICE COME AND GOT ME TO WRITE A STATEMENT.

5 Q ALL RIGHT. AND WHERE DID YOU GO TO WRITE THE

6 STATEMENT?

7 A CLOVER POLICE DEPARTMENT.

8 Q DID THEY GIVE YOU INSTRUCTIONS WHEN THEY ASKED

9 YOU TO WRITE THAT STATEMENT?

10 A NOT REALLY, NOT THAT I REMEMBER.

11 Q OKAY. WAS IT JUST A BLANK FORM THAT YOU FILL

12 IN?

13 A YES, SIR.

14 Q LORI, IS THIS A COPY OF YOUR STATEMENT?

15 A YEAH. YES, SIR.

16 Q WHAT TIME DOES IT SAY ON THE BOTTOM OF THAT THAT

17 THAT STATEMENT WAS GIVEN?

18 A 4:18.

19 Q ALL RIGHT. SO THAT WAS 4:18 IN THE MORNING?

20 A YES, SIR.

21 Q WHAT HAPPENED IN BETWEEN, IN THAT FOUR HOURS

22 BETWEEN THIS HAPPENING, AND YOU GOT THERE?

23 A WE RODE, WE WERE GOING TO GASTONIA HOSPITAL, THE

24 ONE IN GASTONIA AND THEN WE RODE AROUND FOR A MINUTE

25 AND THEN WE ENDED UP GOING TO BRAD'S HOUSE OR

1 SOMETHING.

2 Q BRAD WHO?

3 A MOORE.

4 Q MOORE, OKAY.

5 A AND THEN I TOLD THEM TO TAKE ME HOME AND ME AND

6 DEMI STAYED AT MY---I WENT AND GOT MY MOM UP.

7 Q WERE YOU FEELING BETTER BY THEN?

8 A NOT REALLY. I WAS REALLY UPSET ABOUT

9 EVERYTHING.

10 Q OKAY.

11 A I JUST WANTED TO GO HOME.

12 Q OKAY. AND DID THE POLICE ACTUALLY COME BY YOUR

13 PLACE TO TALK TO YOU, IS THAT WHAT ENDED UP HAPPENING

14 ULTIMATELY?

15 A YES, SIR.

16 Q DID YOU CALL THE POLICE AT ALL BEFORE THAT?

17 A NO, SIR.

18 Q NOW DID YOU TRY TO WRITE DOWN EVERYTHING YOU

19 REMEMBER ABOUT WHAT HAPPENED IN THE STATEMENT YOU

20 GAVE TO THE POLICE?

21 A I DIDN'T -- DO WHAT?

22 Q DID YOU TRY TO WRITE DOWN EVERYTHING THAT

23 HAPPENED IN THE STATEMENT THAT YOU GAVE TO THE

24 POLICE?

25 A I REALLY DON'T EVEN REMEMBER WRITING TOO MUCH.

1 I DON'T KNOW.

2 Q OKAY. YOU DON'T REALLY REMEMBER WRITING THE
3 STATEMENT THAT NIGHT?

4 A NO, I WAS REALLY UPSET.

5 Q DID YOU EVER, AFTER IT WAS ALL OVER, DID YOU
6 EVER SEE BERRY BOLIN WITH THE GUN?

7 A SEEN BERRY WITH A GUN?

8 Q DID YOU SEE BERRY WITH A GUN AT THIS PARTY?

9 A WHEN HE WAS TURNED AROUND FACING THE HOUSE.

10 Q I'M SORRY?

11 A IT WAS DOWN BY HIS SIDE.

12 Q DOWN BY BERRY'S SIDE?

13 A YEAH, AFTER EVERYTHING HAD HAPPENED.

14 Q OKAY. SO WERE YOU IN THE CAR AT THAT POINT WHEN
15 YOU SAW HIM WITH IT?

16 A NO, I WAS BEING CARRIED TO THE CAR.

17 Q OKAY. AND YOU SAW BERRY WITH THE GUN DOWN BY
18 HIS SIDE?

19 A YES. AND HE WENT AND GOT HIS GIRLFRIEND.

20 Q WOULD THAT HAVE BEEN ON THE DRIVEWAY AREA THAT
21 YOU SAW HIM?

22 A NO, HE WAS IN FRONT OF THE HOUSE LIKE WHERE THE
23 DOOR IS.

24 Q OKAY. YOU SAW HIM IN FRONT OF THE HOUSE?

25 A NEAR THE DOOR.

1 Q NEAR THE DOOR, OKAY. AND YOU ARE SURE THAT WAS
2 BERRY THAT YOU SAW?

3 A YES, SIR.

4 Q ALL RIGHT. HOW ABOUT LEE OWENS; DID YOU SEE HIM
5 AFTER THAT?

6 A NO, SIR. I DON'T EVEN KNOW WHICH WAY HE WENT.

7 Q OKAY. AS FAR AS THE PEOPLE FROM THE CAR, DID
8 YOU ACTUALLY HAVE ANY, DID YOU SEE ANYONE OTHER THAN
9 HOLLY AND TRAVIS?

10 A I SEEN BOBBY BUT I DIDN'T, I SEEN ANOTHER GUY
11 BUT I DIDN'T KNOW WHO HE WAS.

12 Q ALL RIGHT. DID THEY ACTUALLY, DID THEY ASSAULT
13 YOU OR HIT YOU IN ANY WAY?

14 A TRAVIS HIT ME.

15 Q I UNDERSTAND TRAVIS. THE OTHER GUYS, BOBBY AND
16 THE OTHER GUY?

17 A I DON'T KNOW. I KNOW I GOT KICKED.

18 Q YOU GOT KICKED TOO?

19 A I GOT KICKED WHEN I GOT KNOCKED DOWN.

20 Q ALL RIGHT. AFTER YOU GOT KNOCKED DOWN. DO YOU
21 KNOW WHO KICKED YOU?

22 A NO.

23 MR. THOMPSON: COURT'S INDULGENCE ONE
24 MOMENT.

25 Q SO, LORI, WHEN IT COMES DOWN TO IT, WHO DID YOU

1 SEE WITH GUNS THAT NIGHT?

2 A BERRY.

3 Q BERRY?

4 A (NODS HEAD.)

5 Q WHO ELSE?

6 A I THINK LEE.

7 Q ALL RIGHT.

8 A OWENS.

9 Q DID YOU SEE ANYONE ELSE WITH A GUN?

10 A NO, SIR.

11 Q DID YOU EVER SEE SHOTS BEING FIRED OUT OF THAT

12 CAR?

13 A NO, SIR.

14 Q THANK YOU. NO FURTHER QUESTIONS. PLEASE ANSWER

15 ANY QUESTIONS MR. GREELEY HAS FOR YOU.

16 MR. GREELEY: MAY IT PLEASE THE COURT.

17 CROSS EXAMINATION BY MR. GREELEY:

18 Q GOOD AFTERNOON, LORI. TRAVIS FALLS HIT YOU THAT

19 NIGHT, DIDN'T HE?

20 A YES, SIR.

21 Q WHERE DID HE HIT YOU?

22 A IN MY JAW.

23 Q IN YOUR JAW

24 A YES, SIR.

25 Q WHICH SIDE?

1 A (POINTS.)

2 Q WHEN HE HIT YOU IN YOUR JAW, WHAT DID IT FEEL
3 LIKE?

4 A LIKE I HAD BEEN HIT BY A TWO BY FOUR.

5 Q IT FELT LIKE YOU'D BEEN HIT WITH A TWO BY FOUR?

6 A (NODS HEAD.)

7 Q AND YOU WENT DOWN WHEN HE HIT YOU?

8 A YES, SIR.

9 Q NOW YOU DID GO LATER THAT MORNING TO THE CLOVER
10 POLICE DEPARTMENT, RIGHT?

11 A YES, SIR.

12 Q AND YOU TOLD THAT DEPUTY IN YOUR STATEMENT THAT
13 HE HAD COMMITTED, HE HAD HIT YOU, RIGHT?

14 A YES, SIR.

15 Q AN ASSAULT AND BATTERY ON YOU?

16 A (NODS HEAD.)

17 THE COURT: YOU GOT TO ANSWER WITH WORDS.

18 A YES, SIR.

19 Q AND THAT HAD HAPPENED, HADN'T IT?

20 A YES, SIR.

21 Q IS THAT THE TRUTH?

22 A YES, SIR.

23 Q AND YOU ARE HOW OLD?

24 A I'M 17.

25 Q NOW THAT NIGHT AT THE DEAL'S BERRY WAS WITH

1 MICHELLE, IS THAT CORRECT?

2 A YES, SIR.

3 Q AND HE HAD BEEN DATING HER FOR SOMETIME?

4 A YES, SIR.

5 Q IS THAT CORRECT?

6 A YES, SIR.

7 Q AND DID HE HANG OUT WITH YOU AND THE DEAL'S THAT
8 NIGHT?

9 A I MEAN WE TALKED. I MEAN I TALKED TO MICHELLE
10 TOO.

11 Q BUT Y'ALL WEREN'T BOYFRIEND/GIRLFRIEND THEN
12 ANYMORE, WERE YOU?

13 A NO, SIR.

14 Q NOW AT SOME POINT IN TIME YOU TOLD LAW
15 ENFORCEMENT THAT YOU SAW AN SUV OF SOME SORT?

16 A YES, SIR.

17 Q PULL UP OR COME BY, A SECOND CAR, IS THAT
18 CORRECT?

19 A YES, SIR.

20 Q AND YOU SAW SHOTS FIRED FROM THAT CAR, DIDN'T
21 YOU?

22 A YES, SIR.

23 Q AND IN FACT, YOU TOLD LAW ENFORCEMENT THAT TEN
24 DAYS PRIOR TO THE START OF THIS TRIAL ON AUGUST 18,
25 DIDN'T YOU?

- 1 A YES, SIR.
- 2 Q INITIALLY?
- 3 A YES, SIR.
- 4 Q AND YOU TOLD THAT TO DETECTIVE MIKE BAKER, ISN'T
- 5 THAT CORRECT?
- 6 A I GUESS.
- 7 Q AT THE SHERIFF'S DEPARTMENT?
- 8 A YES.
- 9 Q HE'S A SPECIAL DETECTIVE THERE?
- 10 A YES, SIR.
- 11 Q AND IT WAS JUST THE TWO OF Y'ALL IN THE ROOM, IS
- 12 THAT CORRECT?
- 13 A YES, SIR.
- 14 Q AND HE TALKED TO YOU, DIDN'T HE?
- 15 A YES, SIR.
- 16 Q AND HE QUESTIONED YOU?
- 17 A YES, SIR.
- 18 Q OKAY. AND AFTER HE TALKED WITH YOU AND HE
- 19 QUESTIONED YOU, YOU CHANGED YOUR STORY, DIDN'T YOU?
- 20 A YES, SIR.
- 21 Q AND IT WAS AFTER YOU CHANGED YOUR STORY THAT HE
- 22 THEN CALLED IN DETECTIVE PARRISH AND ONE OF THE
- 23 SOLICITOR'S TO CONTINUE YOUR INTERVIEW, IS THAT
- 24 RIGHT?
- 25 A YES, SIR.

1 Q AND THAT WAS ON AUGUST 18, IS THAT CORRECT?

2 A YES, SIR.

3 MR. GREELEY: I DON'T HAVE ANYTHING
4 FURTHER AT THIS TIME.

5 REDIRECT EXAMINATION BY MR. THOMPSON:

6 Q LORI, YOU HAVE THAT STATEMENT THAT YOU WROTE AT
7 CLOVER, CORRECT, IN YOUR HAND RIGHT THERE?

8 A YES, SIR.

9 Q DID YOU EVER MENTION IN THAT STATEMENT ANYTHING
10 ABOUT THE CAR SHOOTING?

11 A NO, SIR.

12 Q WAS THERE ANY TIME RIGHT AFTER THIS THAT YOU DID
13 TELL THE POLICE ABOUT A CAR SHOOTING?

14 A YES, SIR.

15 Q RIGHT AFTER THIS?

16 A I'M NOT SURE.

17 Q I MEAN LIKE DID YOU TELL THEM WITHIN A FEW DAYS
18 AFTER THIS STATEMENT THAT THERE WAS A CAR SHOOTING?

19 A I'M NOT SURE. I DON'T REMEMBER.

20 Q OKAY. LORI, WHAT IS THE TRUTH? WAS THERE A CAR
21 SHOOTING?

22 A I'M NOT SURE. I CAN SEE IT, BUT I CAN'T TELL
23 YOU A HUNDRED PERCENT SURE THAT THERE WAS.

24 Q I'M SORRY. WHAT DID YOU SAY?

25 A I CAN'T TELL YOU A HUNDRED PERCENT THAT THERE

1 WAS ANOTHER CAR, BUT I THOUGHT THERE WERE.

2 Q OKAY. DO YOU RECALL SEEING ONE OR NOT?

3 A NO, SIR.

4 Q OKAY. THANK YOU. NO FURTHER QUESTIONS.

5 MR. GREELEY: I HAVE NOTHING FURTHER.

6 THE COURT: YOU CAN STEP DOWN AND BE
7 EXCUSED. THANK YOU. WE APPRECIATE YOUR TIME. CALL
8 YOUR NEXT WITNESS.

9 MR. THOMPSON: THE STATE WOULD CALL
10 BRADLEY DEAL.

11 BRADLEY DEAL, BEING FIRST DULY
12 SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION BY MR. THOMPSON:

14 Q MR. DEAL, COULD YOU GIVE YOUR FULL NAME FOR THE
15 COURT PLEASE?

16 A JONATHAN BRADLEY DEAL.

17 Q AND HOW OLD ARE YOU, JONATHAN?

18 A 20.

19 Q I'M SORRY.

20 A 20.

21 Q IF YOU COULD SPEAK UP SO I CAN HEAR YOU.

22 A OKAY. 20.

23 Q AND YOU GO BY BRAD?

24 A YES, SIR.

25 Q ALL RIGHT. BRAD, CAN YOU TELL ME WHERE DO YOU

1 LIVE?

2 A WITH MY MOM AND DAD IN CRAMERTON, NORTH
3 CAROLINA, GASTONIA.

4 Q ALL RIGHT. BACK ON THE 28 OR BACK ON THE 18 OF
5 FEBRUARY OF THIS YEAR, WHERE DID YOU LIVE THEN?

6 A WITH MY PARENTS.

7 Q WHERE YOU ARE LIVING NOW?

8 A YES, SIR.

9 Q IN GASTONIA?

10 A YES, SIR.

11 Q OKAY. YOUR PARENTS OWN THE HOUSE ON 1123
12 LAWRENCE ROAD?

13 A YES, SIR.

14 Q LAWRENCE ROAD IN CLOVER?

15 A YES, SIR.

16 Q OKAY. WHAT'S THE CONDITION OF THAT HOUSE BACK
17 THEN IN FEBRUARY OF THIS YEAR?

18 A DIDN'T HAVE MUCH FURNITURE IN THE HOUSE AT THAT
19 TIME ALL. THE LIVING ROOM, WHICH IS LIKE THE BIGGEST
20 ROOM DOWNSTAIRS WAS COMPLETELY EMPTY BECAUSE THEY
21 JUST PUT HARDWOOD FLOORING DOWN. THERE PRETTY MUCH
22 WASN'T ANYTHING IN THERE. STILL HAD THE PIANO IN
23 THE, IN ONE OF THE ROOMS. THAT'S ABOUT IT.

24 Q ALL RIGHT. SO WAS ANYONE ACTUALLY LIVING AT
25 THAT HOUSE AT THAT TIME?

1 A NO, SIR.

2 Q WHERE WAS YOUR BROTHER RICKY LIVING AT THAT
3 TIME?

4 A ROCK HILL, SOUTH CAROLINA.

5 Q DID HE HAVE HIS OWN PLACE IN ROCK HILL?

6 A YES, SIR.

7 Q AND ONCE AGAIN I'M GOING TO ASK YOU TO SPEAK UP
8 A LITTLE BIT. I'M STILL HAVING A HARD TIME HEARING
9 YOU. I'M GOING TO ASK YOU TO LOOK AT A FEW PICTURES
10 JUST SO WE CAN CONFIRM WHAT THE HOUSE LOOKS LIKE.

11 STATE'S EXHIBIT 38. IS THIS INSIDE YOUR HOUSE?

12 A YES, THAT'S THE HALLWAY TO THE KITCHEN.

13 Q THE HALLWAY TO THE KITCHEN, ALL RIGHT. AND
14 STATE'S EXHIBIT 39, IS THAT THE SAME HALLWAY?

15 A YES, SIR.

16 Q THE OTHER DIRECTION?

17 A YEAH.

18 Q IS THAT, WHAT DOOR IS THAT?

19 A THAT'S THE FRONT DOOR.

20 Q OKAY. STATE'S EXHIBIT 40, IF YOU CAN TELL ME
21 WHERE THAT IS?

22 A DINING ROOM.

23 Q ALL RIGHT. AND DOES THAT WINDOW, IS THAT ONE OF
24 THE WINDOWS THAT FACES TO THE FRONT OF THE HOUSE?

25 A YES, SIR.

1 Q WERE THOSE BLINDS ALL CLOSED THAT NIGHT LIKE
2 THAT ?
3 A I DON'T KNOW.
4 Q STATE'S EXHIBITS 41, WHICH ROOM IS THAT?
5 A THAT SAME ROOM, DINING ROOM.
6 Q JUST A DIFFERENT VIEW IN THAT ROOM, IS THAT
7 CORRECT?
8 A YES, SIR.
9 Q OKAY. STATE'S EXHIBIT 42.
10 A UPSTAIRS LOOKING DOWN THE STAIRS.
11 Q ALL RIGHT. IS THE FRONT DOOR JUST DOWN THERE AT
12 THE BOTTOM OF THE STEPS?
13 A YEAH. YOU SEE WHERE THE MOLDING IS RIGHT THERE,
14 RIGHT THERE TO THE RIGHT, THAT'S WHERE THE DOOR IS.
15 Q IT'S A LITTLE OFF TO THE RIGHT WHEN YOU COME
16 DOWN THE STEPS?
17 A YES.
18 Q SLIDE 43. WHERE IS THAT?
19 A UPSTAIRS. IT GOES TOWARDS THE BALCONY.
20 Q SO --
21 A LIKE IF YOU WERE STANDING AT THE TOP OF THE
22 STAIRS LOOKING DOWN, IT'S RIGHT THERE.
23 Q OKAY. SO THAT'S JUST LOOKING UP RATHER THAN
24 LOOKING DOWN?
25 A YEAH.

1 Q WHEN YOU WERE STANDING UPSTAIRS. STATE'S
2 EXHIBITS 44.
3 A THAT'S THE ROOM WHERE THE PIANO IS. IT'S RIGHT
4 THERE BESIDE THE GARAGE.
5 Q OKAY.
6 A IT FACES THE ROAD.
7 Q THOSE WINDOWS RIGHT THERE, DO THEY FACE OUT TO
8 THE ROAD?
9 A YES, SIR.
10 Q IS THAT THE FRONT OF THE HOUSE THAT KIND OF
11 THERE IS A LITTLE --
12 A YEAH, IT'S A LITTLE THREE WINDOW THING THERE
13 RIGHT BESIDE THE GARAGE.
14 Q OKAY. STATE'S EXHIBIT NUMBER 45.
15 A HALLWAY.
16 Q THE HALLWAY. NOW IS THAT---
17 A LIKE IF YOU ---
18 Q WHERE THE FRONT DOOR IS OR ---
19 A IS THE FRONT DOOR, LIKE THIS WAY IS THE FRONT
20 DOOR.
21 Q OKAY. SO THE FRONT DOOR IS JUST TO YOUR RIGHT,
22 JUST BEHIND LOOKING?
23 A IF YOU ARE LOOKING THAT WAY, IT'S RIGHT BEHIND
24 YOU.
25 Q STATE'S EXHIBIT 46. WHERE IS THIS?

1 A THAT'S THE KITCHEN.

2 Q ALL RIGHT. AND WERE Y'ALL PLAYING THAT STEREO

3 DURING THE PARTY THAT NIGHT?

4 A YES, SIR.

5 Q OKAY. AND STATE'S EXHIBIT NUMBER 47?

6 A THE KITCHEN.

7 Q ANOTHER VIEW OF THE KITCHEN?

8 A YES, SIR.

9 Q NOW BRADLEY, DO YOU HAVE SOME THROWING KNIVES?

10 A YES, SIR.

11 Q ALL RIGHT. WHAT DO YOU USE, HOW DO YOU USE

12 THOSE?

13 A IT'S A HOBBY EVER SINCE I WAS A LITTLE KID. MY

14 DAD GOT ME STARTED ON IT WHEN WE LIVED IN GASTONIA.

15 Q OKAY.

16 A IT'S JUST A HOBBY. IF YOU TOOK PICTURES OF THE

17 TREES OUTSIDE, THEY ARE ALL CUT UP. IT'S JUST

18 SOMETHING I DO IN MY SPARE TIME. IT'S THE ONLY

19 TALENT I GOT.

20 Q YOU GO IN THE BACKYARD WITH THAT?

21 A YES, SIR.

22 Q OKAY. AND DID YOU HAVE ANY THROWING KNIVES OUT

23 THERE THAT NIGHT?

24 A YES, SIR. I DON'T REMEMBER WHO IT WAS BUT THEY

25 WERE SITTING ON THE TABLE IN THE KITCHEN AND THEY

1 ASKED ME HOW DO YOU USE THEM, AND THEY ARE LIKE, SHOW
2 ME HOW TO THROW THEM. SO I TOOK THEM ON THE BACK
3 PORCH THROUGH THE KITCHEN, THERE IS A BACK PORCH IN
4 THE KITCHEN.

5 Q RIGHT.

6 A AND JUST THROW THEM AT THE WOOD AND THEY SAT
7 THERE PLAYING WITH THEM FOR AWHILE.

8 Q OKAY. DID YOU PUT THEM BACK OUT ON THE ---

9 A YES, ON THE COUNTER.

10 Q WHICH COUNTER WAS IT THAT THEY WERE ON?

11 A CAN YOU GO BACK TO THE OTHER PICTURE. RIGHT
12 THERE, UNDERNEATH THOSE CABINETS IS THE LAST TIME I
13 SAW THEM.

14 Q WAS IT UNDER THE CABINETS OR ON TOP OF THEM?

15 A UNDER, LIKE SITTING ON THE COUNTER.

16 Q ON THE COUNTER UNDER WHERE THE CABINETS ARE ON
17 THE FAR LEFT OF THE PICTURE?

18 A YES, SIR.

19 Q OKAY. UNDER THOSE CABINETS THERE?

20 A YES, SIR.

21 Q STATE'S EXHIBIT 48. IS THAT ALSO IN THE KITCHEN
22 THERE?

23 A YES, SIR. THAT'S THE WINDOW THAT FACES THE
24 ROAD.

25 Q OKAY. STATE'S EXHIBITS 49, STILL WITHIN THE

1 KITCHEN, WHERE IS THAT?

2 A LOOKING DOWN THE HALLWAY.

3 Q THAT'S DOWN THE HALLWAY TO THE FRONT DOOR?

4 A YES, SIR.

5 Q WHAT'S THE OTHER ROOM?

6 A WELL, YOU TAKE A RIGHT ONCE YOU, RIGHT THERE AT

7 THE PANTRY, YOU TAKE A RIGHT, THAT'S THE HALLWAY TO

8 THE FRONT DOOR.

9 Q OKAY. THE NEXT SLIDE PLEASE. STATE'S EXHIBIT

10 50, JUST A VIEW BACK IN THE KITCHEN I BELIEVE.

11 A (NODS HEAD.)

12 Q GO TO STATE'S EXHIBIT 59. WHAT IS THAT,

13 BRADLEY?

14 A THAT'S THE COOLER THAT LEE WALDEN AND MY BROTHER

15 AND I THINK DEMI POWELL HAD MADE ALABAMA SLAMMERS.

16 Q ALL RIGHT. WERE A LOT OF PEOPLE DRINKING OUT OF

17 THAT?

18 A NO. LEE WALDEN AND DEMI AND MY BROTHER WOULDN'T

19 LET ANYBODY GO NEAR IT.

20 Q OKAY. DID YOU DRINK OUT OF IT AT ALL?

21 A NO, SIR.

22 Q WERE YOU DRINKING ANYTHING THAT NIGHT?

23 A YES, SIR .

24 Q WHAT WERE YOU DRINKING?

25 A I HAD A BEER. SOMEBODY ASKED ME IF I WANTED A

1 BEER. LIKE THE PEOPLE THAT HAD COME OVER HAD BROUGHT
2 BEER LIKE I THINK IT WAS BUD LITE IN A CAN AND I TOOK
3 ONE.

4 Q ALL RIGHT. AND YOU ONLY DRINK ONE BEER DURING
5 THAT NIGHT?

6 A YEAH.

7 Q DID YOU HAVE ANYTHING ELSE, ANY DRUGS OR
8 ANYTHING LIKE THAT?

9 A NO, SIR.

10 MR. THOMPSON: MADAM CLERK, IF YOU WILL
11 TURN ON THE LIGHTS PLEASE.

12 Q CAN YOU TELL ME HOW LONG DID THE PARTY GO ON?
13 HOW LONG WERE YOU THERE?

14 A I THINK I WAS THERE FROM LIKE 9:30, MAYBE 8:30,
15 TO SIX IN THE MORNING.

16 Q OKAY. AND WHEN YOU GOT THERE HOW MANY PEOPLE
17 WERE THERE THEN?

18 A LEE WALDEN, MY BROTHER, I THINK CAROLINA
19 KILLIAN.

20 Q HAD YOUR BROTHER KIND OF GOTTEN PEOPLE TO COME,
21 IS THAT CORRECT?

22 A HE WAS JUST TRYING TO HAVE LIKE LEE WALDEN AND
23 JUST, HIS CLOSE FRIENDS HE HADN'T SEEN IN AWHILE THAT
24 HANG OUT IN CLOVER, IT WASN'T SUPPOSED TO BE A BIG
25 PARTY BUT PEOPLE STARTING SHOWING UP THAT WE DIDN'T

1 REALLY HANG OUT WITH OR NOTHING.

2 Q ALL RIGHT. A LOT OF PEOPLE STARTED SHOWING UP
3 THEN?

4 A WELL, THERE WAS ONLY LIKE 15-20 PEOPLE THERE,
5 BUT THEY STARTED SHOWING UP OVER THE PERIOD OF TIME.

6 Q OKAY. DO YOU RECALL, DID JEFF BUCK COME TO THE
7 PARTY?

8 A I DO NOT REMEMBER SEEING HIM THERE. I HEARD
9 THAT HE WAS THERE, BUT I NEVER SAW HIM.

10 Q OKAY. CAN YOU TELL ME DURING THAT PARTY, DID
11 YOU RECEIVE ANY PHONE CALLS DURING THAT PARTY?

12 A JEFF BUCK CALLED AT I THINK IT WAS BETWEEN 11
13 AND 11:30 AND SAID THAT TRAVIS FALLS AND BOBBY HOVIS
14 HEARD I WAS HAVING A PARTY AND THAT THEY WERE GOING
15 TO COME OVER AND KILL EVERYBODY IN THE HOUSE AND PUT
16 US IN THE HOSPITAL.

17 Q THEY WERE GOING TO KILL EVERYBODY IN THE HOUSE
18 AND PUT YOU IN THE HOSPITAL?

19 A THAT'S WHAT JEFF SAID.

20 Q ALL RIGHT. WERE YOU SCARED OF THAT AT THAT
21 TIME?

22 A WELL, I DIDN'T THINK THAT THEY WERE GOING TO
23 COME OVER BECAUSE TRAVIS HAD A RESTRAINING ORDER
24 AGAINST HIM. OR I HAD ONE AGAINST HIM SO.

25 Q IS THAT THE ONLY CALL YOU ARE AWARE OF?

1 A YES, SIR.

2 Q DO YOU REMEMBER EARLIER IN THE DAY BEFORE YOU

3 EVER CAME TO THIS PARTY, EVER BEING ON THE PHONE WITH

4 SOMEBODY OR BEING AROUND SOMEONE WHO WAS ON THE

5 PHONE?

6 A JEFF BUCK, YEAH.

7 Q YOU WERE AROUND JEFF BUCK EARLIER IN THE DAY?

8 A I THINK BETWEEN FOUR AND SIX BEFORE I WENT TO MY

9 BROTHER'S MOUSE.

10 Q DID YOU HOLLER ANYTHING INTO THAT PHONE?

11 A YES.

12 Q DO YOU KNOW WHO WAS ON THE OTHER END?

13 A NO. WELL, IT WAS A VOICE MAIL. YEAH, IT WAS

14 BOBBY HOVIS'S VOICE MAIL.

15 Q OKAY. WHAT DID HE YELL?

16 A HE PUT THE PHONE UP TO MY FACE, I DON'T KNOW WHO

17 THE OTHER TWO GUYS WERE, BUT THEY STARTED YELLING

18 STUFF AND JEFF BUCK HELD THE PHONE UP TO MY FACE LIKE

19 THIS, AND I JUST LEANED OVER SAID F-YOU.

20 Q OKAY.

21 A THAT'S ALL I SAID.

22 Q THE WHOLE WORD INSTEAD OF JUST F?

23 A WELL, I DIDN'T KNOW IF I COULD, I WON'T CUSS IN

24 HERE BUT I DIDN'T KNOW.

25 Q ALL RIGHT. BUT YOU SAID BASICALLY YOU YELLED

1 THE F-WORD BACK OUT OVER THE PHONE?

2 A JUST LIKE THIS, JUST F-YOU, JUST LEANED OVER
3 WHEN HE PUT IT UP TO MY FACE.

4 Q AND YOU THOUGHT THAT WAS BOBBY HOVIS ON THE
5 LINE?

6 A YEAH. HE HAD SAID IT WAS HIS VOICE MAIL HE
7 SAID, YEAH.

8 Q OKAY. AND YOU HAD HAD SOME PROBLEM WITH BOBBY
9 HOVIS?

10 A IN HIGH SCHOOL. I HAD A GIRLFRIEND AND HE WAS
11 LIKE, I GUESS THEY WERE MESSING AROUND, AND YOU KNOW,
12 I GUESS WE DIDN'T LIKE EACH OTHER BECAUSE OF THAT AND
13 HE KEPT, YOU KNOW, EGGING IT ON, WANTING TO FIGHT AND
14 EVERYTHING, SO WE HAD A FIGHT I THINK OFF PARHAM ROAD
15 AND YOU KNOW THAT WAS THE LAST TIME I TALKED TO HIM.
16 AFTER THE FIGHT THAT'S THE LAST TIME I TALKED TO HIM.

17 Q ALL RIGHT. AND HOW LONG WAS THAT BEFORE THIS
18 HAPPENED THAT Y'ALL HAD THE FIGHT ON PARHAM ROAD?

19 A IT WAS THE END OF MY JUNIOR YEAR OR THE
20 BEGINNING OF MY SENIOR. IT WAS EITHER MY JUNIOR OR
21 MY SENIOR YEAR AT THE END IT.

22 Q OKAY. HAVE YOU HAD ANOTHER FIGHT WITH BOBBY
23 SINCE THEN?

24 A NOT WITH BOBBY. I HAD BEEN JUMPED BY TRAVIS
25 FALLS AND BRANDON CHILDERS. BOBBY WAS THERE AND

1 HOLLY MCCARTER WERE THERE.

2 Q SO THOSE THREE WERE THERE OR THOSE FOUR I GUESS:

3 BOBBY HOVIS, BRANDON CHILDERS --

4 A TRAVIS FALLS.

5 Q TRAVIS FALLS?

6 A AND HOLLY.

7 Q AND HOLLY.

8 A YES.

9 Q AND WHO WAS WITH YOU THEN?

10 A JONATHAN ENGLISH, LEE LOWDER, AND A GIRL NAMED

11 KAREN KIERCE.

12 Q SO JONATHAN ENGLISH, LEE LOWDER, AND KAREN

13 KIERCE AND YOU WERE TOGETHER AT THAT POINT?

14 A YES.

15 Q WHAT TIME OF DAY WAS IT WHEN Y'ALL DID THAT?

16 A IT WAS AT NIGHT. JONATHAN ENGLISH HAD ASKED TO

17 USE MY PHONE. I THINK IT WAS LIKE 12 OR 1.

18 Q 12 OR 1. WHERE DID IT HAPPEN?

19 A WHERE DID THEY, I GET JUMPED AT?

20 Q YEAH.

21 A MORNING STAR ROAD OFF LAKE WYLIE ROAD.

22 Q ALL RIGHT. IS THAT IN A CULDESAC?

23 A IT WAS DIRT BUT I MEAN IT WAS A LITTLE CIRCLE.

24 Q A LITTLE DIRT CIRCLE?

25 A I GUESS IT WAS A LONG DRIVEWAY AND JUST LIKE A

1 LITTLE PATCH UP ON WHERE YOU CAN TURN AROUND I GUESS.

2 Q DID YOU LIVE THERE OR SOMEONE YOU WERE WITH LIVE
3 THERE?

4 A NO. BOBBY HAD ASKED ME TO COME PICK HIM UP,
5 COME HANG OUT.

6 Q THAT LATE AT NIGHT YOU WENT?

7 A (NODS HEAD.) I WAS TRYING TO MAKE UP WITH HIM,
8 YOU KNOW. HE SAID HE WANTED TO BE MY FRIEND AND WE
9 WERE COOL AND EVERYTHING, SO I FIGURED I'D GIVE HIM A
10 CHANCE AND I WENT OVER THERE.

11 Q WAS THAT WHERE ANYONE LIVED AS FAR AS YOU KNOW?

12 A I DON'T KNOW WHO LIVED--- I DON'T KNOW IF
13 ANYBODY LIVED DOWN THERE. I THINK BOBBY DID.

14 Q DO THEY CALL THAT PLACE THE SPOT?

15 A I DON'T KNOW WHAT THEY CALLED IT.

16 Q OKAY. TELL ME WHEN DID YOU FIRST REALIZE
17 SOMETHING WAS HAPPENING OUTSIDE WHEN THE PEOPLE HAD
18 COME?

19 A ARE YOU TALKING ABOUT THE NIGHT AT THE HOUSE OF
20 THE PARTY?

21 Q YEAH, ON FEBRUARY 18?

22 A I WAS STANDING IN THE KITCHEN TALKING TO SOME
23 FRIENDS AND SOMEBODY SAID SOMETHING ABOUT A CAR
24 OUTSIDE. I JUST FIGURED IT WAS ANOTHER ONE OF OUR
25 FRIENDS COMING OVER TO HANG OUT. AND THEN I STARTED,

1 SO I SAT THERE FOR A MINUTE AND THEN I START HEARING
2 YELLING OUTSIDE, SO I WALKED DOWN THE HALLWAY TO THE
3 FRONT PORCH TO SEE WHAT WAS GOING ON.

4 Q OKAY. WHERE WERE YOU WHEN IT STARTED?

5 A IN THE KITCHEN.

6 Q AND YOU WALKED DOWN THE HALLWAY TO THE FRONT
7 PORCH. WERE YOU IN A HURRY WHEN YOU WENT?

8 A (NODS HEAD.)

9 Q NO?

10 THE COURT: ANSWER WITH WORDS.

11 A OH, I'M SORRY. NO.

12 Q WHEN YOU GOT TO THE DOOR, DID YOU ACTUALLY GO
13 OUTSIDE THEN?

14 A YES.

15 Q WAS THE DOOR OPEN OR SHUT WHEN YOU GOT THERE?

16 A ALL THE WAY OPEN.

17 Q DID YOU SEE ANYTHING OUT THAT DOOR AT THAT TIME?

18 A YES, I SAW A CAR BLOCKING OFF THE DRIVEWAY AND
19 THERE WERE TWO GUYS OUTSIDE THE CAR. ONE OF THE GUYS
20 HAD LONG HAIR, HAD HIS ARMS UP IN THE AIR, AND I
21 COULD HEAR HIM SAYING SOMETHING LIKE LET'S GO, LET'S
22 DO THIS.

23 Q WAS HE DOWN NEAR THE CAR?

24 A YEAH.

25 Q WHAT ABOUT THE OTHER GUY?

1 A I STARTED LOOKING BEHIND THE CAR. AFTER THAT
2 THERE WAS A GIRL STANDING IN THE MIDDLE OF THE ROAD
3 AND A GUY KIND OF OFF TO THE SIDE OF THE ROAD, SO I
4 DON'T KNOW WHAT HE WAS DOING, BUT EVENTUALLY I SAW
5 THE OTHER GUY THAT HAD GOTTEN OUT OF THE CAR WALKED
6 OVER AND HIT THE GIRL, SHE FELL DOWN, AND THE GUY ON
7 THE SIDE OF THE ROAD PICKED HER UP AND STARTED
8 DRAGGING HER THROUGH THE YARD AND I COULD HEAR PEOPLE
9 SAYING TAKE HER TO THE HOSPITAL, SO THEY DRUG HER
10 OVER TO HER CAR.

11 Q OKAY. DID YOU KNOW WHO THAT PERSON WAS AT THAT
12 TIME?

13 A NO, SIR.

14 Q ALL RIGHT. WHEN YOU LOOKED DOWN AND WHEN YOU
15 SAW THE GUY CAME OUT AND THREW HIS HANDS UP, DID HE
16 HAVE ANYTHING IN HIS HANDS?

17 A NO.

18 Q CAN YOU TELL ME AT YOUR HOUSE WHAT KIND OF
19 LIGHTING IS THERE OUT THERE THAT WOULD LIGHT UP THE
20 FRONT?

21 A THE FRONT PORCH LIGHT. THAT'S IT.

22 Q THE FRONT PORCH LIGHT LIGHT JUST THE ONE BESIDE
23 THE FRONT DOOR, OKAY. AND COULD YOU TELL THAT THE
24 CAR DOWN AT THE END DRIVEWAY, DID IT HAVE ITS LIGHTS
25 ON?

1 A YES, SIR.

2 Q WHICH WAY WAS IT FACING?

3 A TOWARDS 321.

4 Q I'M SORRY. TOWARDS?

5 A 321.

6 Q OKAY. AND WAS THERE ANY OTHER CARS THAT CAME

7 AROUND THE ROAD DURING THAT TIME?

8 A I DIDN'T SEE ANY.

9 Q OKAY. NOW DID YOU GO OUT DOWN TO WHERE YOU WERE

10 WHEN YOU SAW THE GIRL GET KNOCKED DOWN?

11 A NO, SIR. I WAS ON THE FRONT PORCH SMOKING A

12 CIGARETTE.

13 Q OKAY. SO YOU STARTED SMOKING A CIGARETTE ON THE

14 FRONT PORCH THEN?

15 A (NODS HEAD.)

16 Q WERE YOU ALREADY SMOKING THAT ----

17 THE COURT: YOU'VE GOT TO ANSWER.

18 A YES, SIR, I DID. I LIT THE CIGARETTE WHEN I SAW

19 THE GUY, RIGHT BEFORE THE GUY WENT AND HIT THE GIRL,

20 I HAD LIT THE CIGARETTE.

21 Q OKAY. SO YOU LIT IT RIGHT BEFORE THE GUY HIT

22 THE GIRL, BUT WHEN YOU CAME OUTSIDE OR RIGHT WHILE

23 YOU WERE WALKING OUT?

24 A I HAD THE CIGARETTE IN MY HAND WHEN I WAS

25 WALKING TOWARDS THE FRONT PORCH, AND I SAT THERE AND

1 I WATCHED THE GUYS GET OUT OF THE CAR AND WHEN I SAW
2 THE GUY GO TOWARDS THE GIRL, THAT'S WHEN I WAS
3 LIGHTING UP THE CIGARETTE, OR RIGHT BEFORE HE WENT
4 TOWARDS THE GIRL I HAD LIT UP THE CIGARETTE.

5 Q ALL RIGHT. DID YOU EVER GET OFF THE FRONT
6 PORCH?

7 A NOT MUCH, THE BRICK PART, THE STEP GOING DOWN,
8 THAT WAS AS FAR AS I WENT.

9 Q OKAY. ON TO THE SIDEWALK AREA?

10 A NO, I DIDN'T GO INTO THE SIDEWALK.

11 Q JUST THE BRICK PART, SO YOU NEVER REALLY STEPPED
12 OFF TO WHERE THE --

13 A ---PAVEMENT.

14 Q THE PAVEMENT STARTED TO COME OFF THE FRONT
15 PORCH?

16 A NO, SIR.

17 Q NOW FROM THAT SPOT CAN YOU SEE THE WHOLE YARD?

18 A YES.

19 Q WHAT DID YOU SEE NEXT AFTER YOU SAW THE GIRL GET
20 KNOCKED DOWN AND SOMEONE DRAGGING HER?

21 A THE GUY THAT HAD HIT THE GIRL HAD GOTTEN BACK
22 INTO THE CAR AND THE CAR PULLED OFF, MOVED UP INTO
23 THE GRASS, SAT THERE FOR A SECOND, AND I SAW AN ARM
24 STICK OUT OF THE WINDOW AND I SAW THREE MUZZLE
25 FLASHES, SO I TURNED AROUND AND WENT INSIDE.

1 Q YOU SAW AN ARM STICK OUT THE WINDOW OF THAT CAR?
2 A YES, SIR.
3 Q AFTER IT PULLED FORWARD?
4 A YES, SIR.
5 Q AND DO YOU RECALL WHICH DOOR OR WHICH WINDOW
6 THAT ARM CAME OUT OF?
7 A THE PASSENGER SIDE.
8 Q THE PASSENGER SIDE. WAS IT THE FRONT OR BACK
9 DOOR?
10 A THE FRONT.
11 Q THE FRONT WINDOW?
12 A YES.
13 Q I'M SORRY.
14 A YES.
15 Q YES?
16 A YES, IT WAS.
17 Q IT WAS THE FRONT WINDOW?
18 A YES.
19 Q OKAY. ON THE PASSENGER SIDE?
20 A YES, SIR.
21 Q HOW MUCH OF THAT HAND DID YOU SEE COME OUT?
22 A WELL, FROM HERE UP.
23 Q OKAY. YOU SAW A HAND FROM HERE UP COME OUT OF
24 THE WINDOW?
25 A RIGHT, ABOUT RIGHT THERE.

1 Q OKAY. COULD YOU TELL ANYTHING ABOUT THAT HAND
2 AS FAR AS COULD YOU TELL WHOSE IT WAS?

3 A NOTHING OTHER THAN THAT IT WAS AN ARM STICKING
4 OUT OF THE WINDOW.

5 Q WAS IT CLOTHED? I MEAN WAS THERE LONG SLEEVES
6 ON IT?

7 A I DON'T REMEMBER.

8 Q YOU DON'T REMEMBER. DID YOU SEE A GUN IN THE
9 HAND?

10 A NO.

11 Q OKAY. NOW YOU SAID YOU SAW MUZZLE FLASHES,
12 DESCRIBE EXACTLY WHAT YOU MEAN BY THAT?

13 A I SAW THE THREE MUZZLE FLASHES AFTER THE GUN WAS
14 SHOT, THE LIGHT.

15 Q ALL RIGHT.

16 A THE MUZZLE FLASHES.

17 Q DID YOU SEE WHAT DIRECTION THEY SEEMED TO BE
18 POINTING?

19 A UP IN THE AIR. APPEARED TO BE UP IN THE AIR.
20 I'M NOT QUITE SURE.

21 Q OKAY. THEY SEEMED TO GO, THE FLASH WENT UP
22 OR --

23 A AT AN ANGLE UP, YES.

24 Q ---THAT WAY? SO WHEN THIS HAND WAS OUT, WAS IT
25 POINTED OR WAS IT BENT, THAT ARM?

1 A BENT.

2 Q OKAY. AND SHOW ME, BY SHOWING ME WITH YOUR ARM,
3 SHOW ME HOW IT WAS BENT; LIKE THAT, WITH THE HAND
4 KIND OF FACING UPWARD?

5 A YEAH, AT AN ANGLE.

6 Q COULD YOU TELL IF THE PERSON WAS WHITE OR BLACK?

7 A WHITE. THAT'S THE ONLY WAY I COULD TELL THE
8 ARM.

9 Q OKAY. AND YOU SAID YOU SAW THREE FLASHES AT
10 THAT TIME?

11 A YES, SIR.

12 Q DID YOU SEE ANY OTHER GUNSHOTS?

13 A NO, SIR.

14 Q DID YOU HEAR ANY OTHER GUNSHOTS?

15 A YES.

16 Q WHERE WERE THOSE GUNSHOTS?

17 A WHERE WERE THEY?

18 Q YES.

19 A I DON'T KNOW. I HAD TURNED AROUND AND RAN
20 INSIDE TO GET MY CELL PHONE.

21 Q OKAY. AND WHAT WERE YOU GOING TO DO WITH YOUR
22 CELL PHONE AT THAT TIME?

23 A DIAL 911 AND REPORT GUNSHOTS COMING FROM A CAR.

24 Q ALL RIGHT. HOW MANY SHOTS DID YOU HEAR ALL
25 TOGETHER?

1 A SEE, THE FIRST THREE, I MEAN IT ALL SOUNDED LIKE
2 ONE GUN, SO IT'S LIKE POP-POP-POP-POP-POP-POP-POP, SO
3 ABOUT 7 OR 8.
4 Q SO DID YOU---
5 A 6-7.
6 Q DID SEE ANYONE AT THE PARTY AT ANY POINT WITH A
7 GUN?
8 A YES, LEE OWENS.
9 Q YOU SAW LEE OWENS WITH ONE?
10 A HE WAS IN THE KITCHEN SHOWING IT TO EVERYBODY,
11 LOOK AT THE NEW GUN I GOT.
12 Q DID HE SHOW IT TO YOU?
13 A YES, SIR.
14 Q AND HOW DID HE SHOW IT TO YOU?
15 A HE JUST HAD IT IN HANDS LIKE THIS.
16 Q ALL RIGHT. DID YOU PICK IT UP?
17 A NO, SIR.
18 Q COULD YOU TELL WHAT TYPE OF GUN IT WAS?
19 A HE SAYS IT WAS A NINE MILLIMETER. I COULDN'T
20 TELL. I MEAN, IT WAS A PISTOL THAT YOU PUT A CLIP
21 IN. IT WASN'T A REVOLVER.
22 Q OKAY. AND WHERE DID HE KEEP THAT GUN AFTER HE
23 SHOWED IT TO PEOPLE?
24 A I DON'T KNOW. HE MIGHT, I DIDN'T SEE IT AFTER
25 THAT.

1 Q ALL RIGHT. DID YOU SEE BERRY BOLIN AT THE
2 PARTY?
3 A YES, I SAW HIM WHEN THEY FIRST ARRIVED, HIM AND
4 HIS GIRLFRIEND MICHELLE BARFIELD.
5 Q DID YOU EVER SEE WHETHER BERRY BOLIN HAD A GUN
6 OR NOT?
7 A NO, SIR.
8 Q DID YOU SEE HIM OUTSIDE AT ALL?
9 A NO, SIR.
10 Q HOW ABOUT LEE OWENS. DID YOU SEE HIM OUTSIDE AT
11 ALL?
12 A NO, SIR.
13 Q DID YOU SEE ERIC BROWN OUTSIDE?
14 A YES.
15 Q WHERE DID YOU SEE HIM?
16 A HE WAS ON THE FRONT PORCH WITH ME.
17 Q HE WAS ON THE FRONT PORCH WITH YOU?
18 A YES.
19 Q OKAY. WHO ELSE WAS ON THE FRONT PORCH WITH YOU?
20 A THE ONLY ONE I REMEMBER IS HIM. ERIC BROWN IS
21 THE ONLY ONE REMEMBER.
22 Q ALL RIGHT. DID YOUR BROTHER COME OUT DURING
23 THAT TIME?
24 A NO, I THOUGHT IN MY STATEMENT I WROTE THAT IT
25 WAS MY BROTHER AND LEE AND I COULDN'T REMEMBER WHO IT

1 WAS THAT WAS STANDING WITH ME.

2 Q ALL RIGHT. WELL, WHICH LEE WAS -- WAS THERE A

3 LEE OUT WITH YOU?

4 A LEE LOWDER.

5 Q LEE LOWDER.

6 A IS WHAT I THOUGHT.

7 Q WAS HE ALSO ON THE PORCH?

8 A NO.

9 Q OKAY.

10 A I JUST THOUGHT HE WAS.

11 Q OKAY. HOW ABOUT LEE WALDEN, WHERE WAS HE?

12 A I DON'T KNOW. I DIDN'T SEE HIM EITHER. I HEARD

13 HE WAS OUT IN THE YARD. AFTER EVERYTHING HAPPENED HE

14 SAID HE WAS THE ONE THAT WAS DRAGGING THE GIRL.

15 Q WHEN YOU CAME TO THE FRONT DOOR WAS THERE

16 ANYONE -- WHO WAS LEFT IN THE KITCHEN AS FAR AS YOU

17 KNOW?

18 A MY BROTHER AND LEE LOWDER AND THAT'S ALL I KNOW.

19 Q OKAY. AND THEN WHEN YOU CAME TO THE FRONT DOOR,

20 DID YOU SEE ANYONE ELSE IN THE HOUSE OR WAS EVERYBODY

21 PRETTY MUCH OUT OF THE HOUSE.

22 A EVERYBODY WAS PRETTY MUCH OUT OF THE HOUSE. I

23 DIDN'T SEE ANYBODY THERE. THERE COULD HAVE BEEN

24 PEOPLE STILL IN THE HOUSE THOUGH.

25 Q OKAY. SO AFTER YOU SEE THESE THREE MUZZLE

1 FLASHES YOU TURNED AROUND AND RAN BACK INSIDE, IS
2 CORRECT?

3 A YES, SIR.

4 Q OKAY. AND HOW LONG AFTER THOSE THREE MUZZLE
5 FLASHES DID YOU HEAR MORE SHOTS?

6 A IT WAS CONTINUOUS. LIKE IT SOUNDED LIKE ONE
7 GUN, JUST POP-POP-POP TO POP-POP-POP-POP.

8 Q OKAY. AND HOW MANY SHOTS ALL TOGETHER DO YOU
9 THINK WERE FIRED?

10 A 7, MAYBE 8, MAYBE MORE. I DON'T KNOW.

11 Q ALL RIGHT. NOW WHAT DID EVERYONE DO AFTER THOSE
12 SHOTS WERE FIRED?

13 A THERE WERE PEOPLE RUNNING AROUND EVERYWHERE
14 SAYING WE GOT TO GET THE HELL OUT OF HERE. EXCUSE MY
15 LANGUAGE. SOME PEOPLE WERE SAYING STAY. IF YOU
16 DIDN'T DO ANYTHING STAY, TELL THE COPS WHAT YOU SAW
17 BECAUSE I WAS ON THE, I WAS GETTING READY TRYING TO
18 CALL THE COPS.

19 Q OKAY. AND DID, WHAT DID THE PEOPLE DO THAT WERE
20 THERE; I MEAN, DID THEY --

21 A MOST OF THEM LEFT.

22 Q ALL RIGHT. WHO STAYED?

23 A ME, MY BROTHER, LEE WALDEN, AND LEE LOWDER.

24 Q THOSE ARE THE ONLY FOUR THAT STAYED?

25 A (NODS HEAD.)

1 THE COURT: MAKE SURE YOU ELICIT AN ANSWER
2 FROM HIM BEFORE YOU ASK YOUR NEXT QUESTION.
3 A YES, SIR.
4 Q GO AHEAD.
5 A YES.
6 Q ARE THOSE THE ONLY FOUR THAT STAYED?
7 A YES, SIR.
8 Q ALL RIGHT. WHEN YOU CAME OUTSIDE AND LOOKED
9 DOWN AT THE ROAD, WERE THERE A LOT OF CARS IN YOUR
10 DRIVEWAY?
11 A ABOUT SEVEN CARS.
12 Q ALL RIGHT. WOULD THEY ALL FIT WITHIN THE
13 DRIVEWAY?
14 A NO. I THINK THERE WERE LIKE FOUR IN THE
15 DRIVEWAY. NO, FIVE OR SIX IN THE DRIVEWAY AND THERE
16 WAS LIKE TWO OR THREE IN THE YARD.
17 Q OKAY. WHERE WERE THEY IN THE YARD?
18 A ONE OF THEM, LIKE THE FRONT PORCH IS RIGHT HERE,
19 THERE WAS A WHITE HONDA OVER HERE.
20 Q OKAY.
21 A AND LIKE MY CAR WAS PARKED IN LIKE, MY DRIVEWAY
22 GOES UP LIKE THIS AND THERE IS A LITTLE THING RIGHT
23 HERE BESIDE THE BASKETBALL GOAL, THAT'S WHERE MY CAR
24 WAS.
25 Q LIKE A LITTLE TURN AROUND?

1 A YEAH. MY BROTHER'S CAR WAS PARKED IN FRONT OF
2 THE GARAGE AND THERE WERE OTHER CARS GOING DOWN
3 BEHIND IT AND TO THE LEFT OVER THERE THERE WAS
4 ANOTHER CAR. I THINK IT WAS A BUICK.

5 Q WAS IT IN THE GRASS?

6 A YES, SIR.

7 Q OKAY. AND YOU MEAN TO THE LEFT AS YOU FACE THE
8 HOUSE?

9 A LIKE IF I'M STANDING ON THE FRONT PORCH IT'S
10 OVER TO THE LEFT.

11 Q SO IT'S OVER TO YOUR LEFT. IS IT BEFORE THE
12 DRIVEWAY OR ON THE OTHER SIDE OF THE DRIVEWAY TO YOUR
13 LEFT?

14 A IT WASN'T IN THE DRIVEWAY. IT'S OVER TOWARDS
15 THE LEFT IN THE GRASS.

16 Q OKAY. NOW YOU WERE, EVENTUALLY CALLED 911,
17 CORRECT?

18 A YES, SIR.

19 Q AND I BELIEVE ON THAT 911 TAPE YOU START OFF BY
20 TELLING KIND OF A BACKGROUND OF WHAT HAD HAPPENED?

21 A YEAH. I HAD DROPPED MY PHONE IN THE TOILET
22 EARLIER, LIKE AT A NEW EVE'S PARTY AND EVER SINCE MY
23 PHONE CUT ON AND OFF, SO I WAS TRYING TO GET MY PHONE
24 TO WORK, DIAL 911, AND PEOPLE WERE JUST AND I WAS
25 ASKING PEOPLE, WHAT HAPPENED, WHAT HAPPENED, WHO WAS

1 THAT, AND SOMEBODY SAID TRAVIS FALLS AND THEM WERE
2 HERE. SO WHEN I CALLED 911 I JUST MENTIONED THAT IT
3 WAS THESE PEOPLE THAT JUMPED ME IS WHAT I SAID ON THE
4 PHONE.

5 Q OKAY. AND THAT'S THE FIRST THING YOU TOLD THEM
6 AND THEN YOU TOLD THEM I BELIEVE COMING BY TO KILL
7 YOU, IS THAT RIGHT?

8 A NOT ON THE 911 CALL.

9 Q OKAY. DID YOU TELL THEM THAT THEY WERE SHOOTING
10 AT YOU?

11 A I SAID THAT THERE WERE GUNSHOTS COMING FROM THE
12 CAR THAT -- I THINK WHAT I SAID WAS THAT THESE PEOPLE
13 HAD JUMPED ME BEFORE, HAD COME OVER HERE, AND THEY
14 WERE, THEY SHOT GUNS FROM THE CAR. I THINK THAT'S
15 WHAT I SAID.

16 Q OKAY. AND YOU WERE TELLING US ABOUT YOUR PHONE.
17 WHY ARE YOU TELLING US THAT?

18 A THAT'S WHY IT TOOK SO LONG TO CALL.

19 Q ALL RIGHT. DID OTHER PEOPLE HAVE PHONES THERE?

20 A YEAH, THEY DO.

21 Q AND YOU DIDN'T USE THEIR PHONES?

22 A I WAS IN SHOCK. I DIDN'T THINK TO DO ANY OF
23 THAT. I HAVE NEVER BEEN IN A POSITION WHERE PEOPLE
24 WERE SHOOTING GUNS.

25 Q HAVE YOU USED YOUR PHONE EARLIER IN THE DAY?

1 A YEAH.

2 Q OKAY. AND IT WORKED THEN?

3 A YEAH. IT CUTS OFF, ON AND OFF RANDOMLY AND YOU
4 GOT TO TAKE THE BATTERY BACK OUT, BLOW IN THE PHONE,
5 PUT THE BATTERY BACK IN, TURN IT ON, WAIT FOR IT TO
6 TURN ON. IF YOU HAVE A NEXTEL YOU KNOW IT TAKES A
7 MINUTE FOR IT TO GET SERVICE AND IT BEEPS AND YOU
8 KNOW YOU GOT SERVICE. IT WOULDN'T, SOMETIMES IT
9 WOULDN'T CUT ALL THE WAY ON. IT START TO CUT ON AND
10 THEN BLEEP BACK OFF AND THEN YOU GOT TO START BACK
11 ALL OVER.

12 Q DO YOU REMEMBER WHO LEFT IN THE MIDDLE OF THE
13 911 CALL?

14 A NO. EVERYBODY IS PRETTY MUCH RUNNING AROUND.

15 Q OKAY. WERE YOU STILL ON THE PHONE WITH POLICE
16 OR WITH 911 WHEN THE POLICE CAME?

17 A NO. I DON'T THINK SO.

18 Q OKAY.

19 A I THINK THEY HAD, THEY WERE PULLING UP RIGHT
20 WHEN I WAS HANGING UP OFF THE PHONE.

21 Q OKAY. NOW WHAT HAPPENED WHEN THE POLICE
22 ARRIVED?

23 A THEY TOLD US WE COULDN'T LEAVE AND THEY PUT US
24 IN THE KITCHEN TOGETHER AND THEY SEARCHED THE HOUSE,
25 SEARCHED OUTSIDE, GAVE US THE GUN POWDER RESIDUE

1 TEST.

2 Q DID Y'ALL DO ANYTHING IN BETWEEN THE TIME THE
3 POLICE GOT THERE AND THE SHOOTING HAD HAPPENED?

4 A BY THE TIME THE POLICE HAD GOT THERE, I WAS
5 WALKING INTO THE KITCHEN, LIKE IT WAS JUST RIGHT
6 AFTER I GOT OFF THE PHONE WITH THE POLICE, THEY WERE
7 PULLING IN THE DRIVEWAY, SO I JUST WALKED TO THE
8 KITCHEN.

9 Q HAD YOU GUYS TRIED TO CLEAN ANYTHING UP OR
10 ANYTHING LIKE THAT?

11 A I DIDN'T. I DON'T KNOW ABOUT ANYBODY ELSE DOING
12 IT EITHER. THEY COULD HAVE THOUGH.

13 Q DID YOU SEE WHAT YOUR BROTHER WAS DOING?

14 A HE WAS STANDING IN THE KITCHEN.

15 Q ALL RIGHT. HOW ABOUT LEE LOWDER?

16 A STANDING IN THE KITCHEN.

17 Q LEE WALDEN?

18 A I DON'T KNOW WHAT LEE WALDEN WAS DOING.

19 Q ALL RIGHT. NOW AFTER THEY GOT THERE, DID YOU
20 ULTIMATELY GIVE A STATEMENT TO THEM AT THAT TIME?

21 A YEAH, THEY GAVE US A PIECE OF PAPER THAT AND
22 SAID VOLUNTARY STATEMENT WRITE, IF YOU WANT TO, WRITE
23 DOWN WHAT YOU SAW, WHAT HAPPENED.

24 Q AND DID YOU WRITE DOWN A VOLUNTARY STATEMENT AT
25 THAT TIME?

1 A YES, SIR.

2 Q AND DID THEY ASK YOU TO WRITE WHAT YOU HAD SEEN
3 AT THAT TIME?

4 A YES, SIR.

5 Q I SHOW YOU THIS. IS THIS THE STATEMENT THAT YOU
6 GAVE TO THE OFFICER THAT CAME?

7 A YES, SIR.

8 Q AND HAVE YOU HAD A CHANCE TO LOOK OVER THAT
9 STATEMENT?

10 A YES, SIR.

11 Q CAN YOU TELL ME IN THIS STATEMENT WHERE DID YOU
12 SAY YOU WERE WHEN THE PEOPLE CAME?

13 A THE FRONT PORCH.

14 Q YOU SAID IN THIS STATEMENT YOU WERE ALREADY ON
15 THE FRONT PORCH?

16 THE COURT: I HADN'T HEARD THE ANSWER.

17 Q I'M SORRY. I'M WAITING.

18 A YEAH.

19 Q I'M SORRY.

20 A YES.

21 Q YES. OKAY. AND HOW MANY SHOTS DID YOU SAY WERE
22 FIRED WHEN YOU TALKED TO THE POLICE THAT NIGHT?

23 A FOUR TO SIX.

24 Q DID YOU TELL HIM THAT YOU SAW THE SHOTS FIRED?

25 A NOT ON THIS ONE.

1 Q OKAY. AND THIS IS THE ONE YOU WROTE YOURSELF?

2 A YES.

3 Q WHAT DID YOU SAY ABOUT THE SHOTS IN THIS ONE?

4 A FOUR TO SIX. I HEARD FOUR TO SIX SHOTS FIRED.

5 Q AND THEN WHAT DID YOU SAY RIGHT AFTER THAT?

6 A THE CAR CONTINUES TO DRIVE AWAY.

7 Q SO IN THIS STATEMENT YOU SAID THE CAR WAS
8 DRIVING AWAY WHEN YOU HEARD THE FOUR TO SIX SHOTS
9 FIRED?

10 A NO. IT HAS A COMMA AND IT SAYS THE CAR
11 CONTINUES TO DRIVE AWAY.

12 Q WELL --

13 A IT HAS A LITTLE COMMA THERE SO THAT HAPPENED
14 AFTERWARDS.

15 Q WELL, GO BEFORE THEN, GO BEFORE I HEARD FOUR TO
16 SIX SHOTS, WHAT ARE YOU SAYING IN THIS STATEMENT
17 THEN?

18 A A GUY HIT A GIRL. SHE FALLS DOWN. LEE WALDEN
19 GRABS HER, PUTS HER IN A CAR WITH ERIC TO GO TO THE
20 HOSPITAL.

21 Q ALL RIGHT. THEN THE NEXT LINE?

22 A AS THE CAR DRIVES AWAY I HEAR FOUR TO SIX SHOTS
23 FIRED. OH, I GUESS I DID SAY THAT.

24 Q AND THEN YOU SAID THE CAR CONTINUES TO DRIVE
25 AWAY AFTER THAT?

1 A YES, SIR.

2 Q OKAY. IN HERE DO YOU MENTION ANYWHERE THAT
3 SOMEONE HAD THEIR ARM OUT OF THAT CAR FIRING?

4 A NO, SIR, THE LAST THING I -- I WAS IN COMPLETE
5 SHOCK, SIR. THE LAST THING I WANTED TO DO IS TO BE
6 WRITING A STATEMENT. I WAS SHAKING SO BAD, SO I JUST
7 RUSHED THROUGH IT.

8 Q WHAT TIME WAS THE STATEMENT WRITTEN; DO YOU SEE
9 DOWN AT THE BOTTOM RIGHT?

10 A 11:20--- IS IT ABOVE THE DATE?

11 Q I BELIEVE SO.

12 A YEAH, 11:25.

13 Q IS THAT 11:25 OR 1:25?

14 A WELL, IT HAS TWO ONES OR OH THAT MIGHT BE THE
15 DOTS. YEAH, IT'S 1:25.

16 Q OKAY. SO THAT'S SOME, WHAT, OVER AN HOUR AFTER
17 IT'S HAPPENED?

18 A YES.

19 Q IS SOMEONE RUSHING YOU TO WRITE THIS STATEMENT?

20 A NO.

21 Q NO.

22 A I JUST WANTED TO GET IT OVER WITH.

23 Q NOW DID YOU HAVE AN OPPORTUNITY TO INTERVIEW
24 WITH ANOTHER OFFICER AFTER THAT?

25 A YES, SIR, HE TOOK US OUT ONE BY ONE.

1 Q ALL RIGHT. DO YOU REMEMBER IN YOUR INTERVIEW
2 WITH HIM?

3 A EXCUSE ME?

4 Q DO YOU REMEMBER IN YOUR INTERVIEW WITH HIM?

5 A YEAH.

6 Q DO YOU RECALL MENTIONING SEEING THE HAND OUT THE
7 WINDOW THEN?

8 A NO, I DON'T THINK SO.

9 Q OKAY. AS A MATTER OF FACT, DO YOU RECALL
10 MENTIONING AT ALL WHERE THE SHOTS CAME FROM?

11 A I'M NOT SURE.

12 Q IS THAT BECAUSE YOU DIDN'T TELL HIM AT THAT
13 POINT?

14 A I PROBABLY DIDN'T. I DON'T KNOW. I CAN'T
15 REMEMBER WHAT I WROTE IN MY STATEMENT.

16 Q ARE YOU KIN TO LEE OWENS?

17 A YES, SIR.

18 Q AND HOW IS THAT?

19 A MY GRANDFATHER'S, I'M REALLY NOT SURE. I KNOW
20 IT HAS MY GRANDFATHER BROTHER'S SON OR NEPHEW,
21 SOMETHING LIKE THAT. I'M NOT SURE.

22 Q ALL RIGHT. ARE Y'ALL, DO YOU CONSIDER
23 YOURSELVES COUSINS? I MEAN IF SOMEONE ASKED YOU --

24 A YEAH. WE'RE BLOOD.

25 Q OKAY. THANK YOU, BRADLEY. NO FURTHER

1 QUESTIONS.

2 MR. GREELEY: MAY IT PLEASE THE COURT,
3 YOUR HONOR.

4 CROSS EXAMINATION BY MR. GREELEY:

5 Q GOOD AFTERNOON, BRADLEY.

6 A HOW YOU DOING.

7 Q BERRY WAS AT YOUR HOUSE THAT EVENING, WASN'T HE?

8 A YES, SIR.

9 Q HE HAD PERMISSION TO BE THERE FROM YOU, DIDN'T
10 HE?

11 A I DIDN'T TALK TO HIM. I TALKED TO HIS
12 GIRLFRIEND. I DIDN'T KNOW HE WAS WITH HER. SHE
13 DIDN'T SAY ANYTHING ABOUT IT, BUT I TOLD HER SHE
14 COULD COME OVER, YES.

15 Q AND SHE BROUGHT HIM?

16 A YES, SIR.

17 Q OKAY. AND YOU DIDN'T ASK HIM TO LEAVE?

18 A NO, SIR.

19 Q SO IMPLIED HE WAS THERE WITH YOUR PERMISSION, OF
20 COURSE?

21 A YES.

22 Q AND YOUR FAMILY OWNS THAT PROPERTY, IS THAT
23 CORRECT?

24 A YES, SIR.

25 Q NOW THAT'S Y'ALL'S PROPERTY?

1 A YES, SIR.

2 Q THE SOLICITOR HAS ASKED YOU ABOUT WHY YOU DIDN'T
3 SAY THIS OR YOU DIDN'T SAY THAT IN YOUR STATEMENT.
4 APPROXIMATELY THREE OR FOUR MINUTES AFTER THIS
5 INCIDENT HAPPENED YOU MADE A 911 CALL?

6 A YES, SIR.

7 Q AND YOU TOLD 911 THAT THEY HAD COME BY AND YOU
8 GAVE THE HISTORY OF MR. FALLS?

9 A YES, SIR.

10 Q AND YOU SAID AT THAT TIME, MERELY THREE OR FOUR
11 MINUTES AFTER THIS WHOLE THING HAD HAPPENED, THAT YOU
12 SAW MUZZLE FIRE, YOU SAID THEY WERE SHOOTING AT US?

13 A YES, SIR.

14 Q IS THAT TRUE?

15 A YES, SIR.

16 MR. GREELEY: THAT'S ALL I HAVE.

17 THE COURT: ALL RIGHT. REDIRECT.

18 REDIRECT EXAMINATION BY MR. THOMPSON:

19 Q DID YOU EVER GIVE ANY WRITTEN DOCUMENT THAT THEY
20 WERE SHOOTING AT YOU?

21 A I'M NOT SURE WHAT I WROTE IN THAT STATEMENT.

22 Q ALL RIGHT.

23 A I KNOW I DIDN'T IN THIS ONE.

24 Q BRADLEY, IF YOU'LL LOOK AT STATE'S EXHIBITS 26,
25 IS THAT YOUR SHOES THERE?

1 A YES, SIR.

2 Q ARE THOSE YOUR THROWING KNIVES RIGHT THERE?

3 A YES, SIR.

4 MR. GREELEY: OBJECTION, YOUR HONOR.

5 THE COURT: YEAH, I SUSTAIN THE OBJECTION.
6 DISREGARD THE TESTIMONY.

7 Q THANK YOU. NO FURTHER QUESTIONS.

8 THE COURT: YOU CAN STEP DOWN AND BE
9 EXCUSED. WE APPRECIATE YOUR TIME.

10 A YES, SIR.

11 THE COURT: CALL YOUR NEXT WITNESS.

12 MR. THOMPSON: THE STATE CALLS KRISTEN
13 MOSS.

14 KRISTIN MOSS, BEING FIRST DULY
15 SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. THOMPSON:

17 Q KRISTIN, COULD YOU TELL YOUR WHOLE NAME FOR THE
18 COURT PLEASE?

19 A KRISTIN ELIZABETH MOSS.

20 Q HOW OLD ARE YOU, KRISTIN?

21 A 19.

22 Q YOU NEED TO SPEAK UP A LITTLE BIT.

23 A 19.

24 Q ALL RIGHT. KRISTIN, YOU LIVE HERE IN YORK
25 COUNTY?

1 A YES, SIR.

2 Q HOW LONG HAVE YOU LIVED HERE?

3 A ALL MY LIFE.

4 Q ALL RIGHT. DO YOU HAVE ANY SISTERS, KRISTIN?

5 A SIR?

6 Q DO YOU HAVE ANY SISTERS?

7 A I HAVE TWO.

8 Q AND WHAT ARE THEIR NAMES?

9 A CAROLINE AND LAUREN.

10 Q ALL RIGHT. IS THAT CAROLINE KILLIAN?

11 A YES, SIR.

12 Q AND LORI MOSS?

13 Q CAN YOU TELL ME, DO YOU KNOW BERRY BOLIN?

14 A YES, SIR, I DO.

15 Q HOW DO YOU KNOW HIM?

16 A I WENT TO SCHOOL WITH BERRY.

17 Q OKAY. CAN YOU TELL ME, HAVE YOU KNOWN HIM FOR A

18 LONG TIME?

19 A I'VE KNOWN HIM FOR ABOUT TWO OR THREE YEARS.

20 Q ALL RIGHT. YOU USED TO HANG OUT WITH BERRY?

21 A UH-HUH.

22 Q HOW ABOUT BRADLEY DEAL, DID YOU KNOW HIM?

23 A YES, SIR.

24 Q HOW DID YOU KNOW HIM?

25 A I WENT TO SCHOOL WITH HIM ALSO.

1 Q AND HOW LONG HAVE YOU?

2 A I'VE KNOWN BRADLEY ABOUT FOUR YEARS.

3 Q DID YOU HANG OUT WITH BRADLEY TOO?

4 A YES.

5 Q HOW ABOUT BRADLEY'S BROTHER RICKY?

6 A YES, I KNOW HIM TOO.

7 Q ALL RIGHT. AND YOU USED TO HANG OUT WITH RICKY
8 TOO?

9 A YES, SIR.

10 Q OKAY. DID YOU KNOW BOBBY HOVIS?

11 A YES, I DID.

12 Q HOW DID YOU KNOW BOBBY?

13 A I WENT TO SCHOOL WITH HIM AND HE WAS, DATED ONE
14 OF MY FRIENDS ONE TIME.

15 Q OKAY. HOW ABOUT TRAVIS FALLS, DID YOU KNOW HIM?

16 A I KNOW OF HIM.

17 Q ALL RIGHT. HOW ABOUT HOLLY MCCARTER, DO YOU
18 KNOW?

19 A I KNOW OF HER.

20 Q OKAY. DO YOU KNOW HER IF YOU SAW HER BUT NOT
21 REALLY HANG OUT WITH HER?

22 A HUH-UH.

23 Q IF YOU WOULD ANSWER OUT LOUD.

24 A I WOULD KNOW HER IF I SEE HER. I DIDN'T HANG
25 OUT WITH HER.

1 Q ALL RIGHT. NOW DID YOU KNOW LEE OWENS?
2 A YEAH.
3 Q HOW DID YOU KNOW LEE?
4 A HE WAS FRIENDS WITH MY SISTER CAROLINE.
5 Q ALL RIGHT. AND HOW LONG HAVE YOU KNOWN LEE?
6 A PROBABLY ABOUT FOUR YEARS.
7 Q HAVE YOU HUNG OUT WITH LEE BEFORE?
8 A YEAH, BUT JUST, I HUNG WITH HIM, YEAH.
9 Q CAN YOU TELL ME HOW IS IT YOU ENDED UP AT THE
10 RESIDENCE ON LAWRENCE ROAD IN CLOVER ON FEBRUARY 18
11 OF THIS YEAR?
12 A MY SISTERS WERE THERE AND I JUST WENT OVER THERE
13 TO HANG OUT WITH THEM FOR A LITTLE WHILE.
14 Q ALL RIGHT. DID YOU RIDE WITH THEM OR RIDE ON
15 YOUR OWN?
16 A NO, I DROVE SEPARATE.
17 Q WHAT DID YOU DRIVE?
18 A MY JEEP.
19 Q AND YOUR JEEP, WHAT KIND OF JEEP IS IT?
20 A IT'S A WHITE JEEP CHEROKEE.
21 Q OKAY. AND WHERE DID YOU PARK WHEN YOU GOT
22 THERE?
23 A IN THE DRIVEWAY.
24 Q HOW FAR UP IN THE DRIVEWAY WERE YOU?
25 A TOWARDS THE BACK.

1 Q TOWARDS THE BACK AS IN TOWARDS THE HOUSE OR
2 TOWARDS THE ROAD?

3 A TOWARDS THE ROAD.

4 Q OKAY. WAS THERE A NUMBER OF OTHER CARS IN THE
5 DRIVEWAY AT THAT TIME?

6 A YES, SIR.

7 Q DO YOU RECALL ANY CARS IN THE GRASS?

8 A YES.

9 Q ALL RIGHT. DO YOU REMEMBER HOW MANY?

10 A AT LEAST TWO.

11 Q ALL RIGHT. DO YOU REMEMBER ---

12 A TWO THAT I REMEMBER.

13 Q DO YOU REMEMBER WHAT THOSE TWO WERE?

14 A A WHITE FORD TRUCK AND A RED MUSTANG.

15 Q WAS IT KIND OF AN EXTENDED CAB TRUCK?

16 A I DON'T REMEMBER.

17 Q OKAY. DO YOU KNOW WHO THE MUSTANG BELONGED TO?

18 A YES, SIR.

19 Q WHO WAS THAT?

20 A LEE OWENS.

21 Q DID YOU KNOW WHO THE TRUCK BELONGED TO?

22 A I THINK IT WAS BERRY'S.

23 Q BERRY?

24 A UH-HUH.

25 Q OKAY. WHEN YOU GOT TO THE PARTY DO YOU REMEMBER

1 ABOUT WHAT TIME IT WAS?

2 A THE FIRST TIME I CAME OVER IT WAS ABOUT NINE AND
3 I LEFT AND THEN I CAME BACK SEVERAL HOURS LATER.

4 Q OKAY.

5 A PROBABLY ABOUT 11 OR 12 AND I LEFT AGAIN AND
6 THEN I CAME BACK AROUND 12.

7 Q OKAY. AND DID PEOPLE LEAVE WITH YOU WHEN YOU
8 LEFT?

9 A NO. I LEFT ALONE.

10 Q WHERE WERE YOU GOING?

11 A I LEFT AND WENT HOME AND I WENT TO MY MOM'S
12 HOUSE AND THE LAST TIME I LEFT, I LEFT WITH, ACTUALLY
13 THE LAST TIME I LEFT I LEFT WITH TONYA HUMPHRIES.

14 Q OKAY, WITH TONYA. WERE YOU GUYS GOING TO GO
15 SOMEWHERE?

16 A WE WENT TO THE STORE.

17 Q ALL RIGHT. WHAT WERE YOU SUPPOSED TO GET AT THE
18 STORE?

19 A CIGARETTES.

20 Q WHO WERE THOSE FOR?

21 A I DON'T KNOW. WE WERE JUST GOING TO GET
22 CIGARETTES AND I RODE WITH HER.

23 Q OKAY. DID YOU RIDE IN YOUR CAR OR IN HERS?

24 A TONYA'S.

25 Q ALL RIGHT. WHEN YOU CAME BACK WITH HER OR DID

1 YOU SPEND ANY TIME INSIDE AT ALL WHILE YOU WERE
2 THERE?

3 A WHEN I CAME BACK?

4 Q ANY TIME WHILE YOU WERE THERE?

5 A YEAH, NOT LONG.

6 Q NOT LONG?

7 A HUH-UH.

8 Q DID YOU SEE ANYONE WITH GUNS INSIDE?

9 A I DON'T RECALL -- I DIDN'T SEE ANY GUNS WHEN I
10 WAS IN THE HOUSE.

11 Q ALL RIGHT. DID YOU ACTUALLY GO INTO LIKE THE
12 KITCHEN AREA AND THOSE AREAS OF THE HOUSE?

13 A YEAH, I WAS IN THE KITCHEN.

14 Q ALL RIGHT. DID YOU SEE ANY KNIVES SITTING OUT
15 IN THE KITCHEN OR ANYTHING?

16 A NO.

17 Q CAN YOU TELL ME, DID YOU HAVE ANYTHING TO DRINK
18 WHILE YOU WERE THERE AT THE PARTY?

19 A NO, SIR.

20 Q AND WERE OTHER PEOPLE DRINKING?

21 A YEAH.

22 Q DO YOU REMEMBER WHAT THEY WERE DRINKING?

23 A I DON'T REMEMBER WHAT THEY WERE DRINKING.

24 Q OKAY. DO YOU REMEMBER SEEING ANY DRUGS?

25 A NO.

1 Q ALL RIGHT. WHEN YOU CAME BACK THE LAST TIME OR
2 BEFORE I GO THERE, IN THE TIMES THAT YOU WERE IN
3 HOUSE DID YOU HEAR ANYONE TALKING ABOUT PHONE
4 CONVERSATIONS?

5 A YES, I DID.

6 Q AND WHAT WAS YOUR UNDERSTANDING WAS SUPPOSED TO
7 HAPPEN?

8 A THE ONLY THING THAT I REMEMBER WAS --

9 MR. GREELEY: OBJECTION, YOUR HONOR.

10 THE COURT: I SUSTAIN THE OBJECTION.
11 HE'LL ASK YOU ANOTHER QUESTION.

12 Q WERE YOU ANTICIPATING ANYBODY COMING TO THE
13 HOUSE?

14 A YES, I WAS.

15 Q AND WHY IS THAT?

16 A JUST FROM THE CONVERSATIONS I HAD HEARD.

17 Q OKAY. DID YOU ANTICIPATE A REASON PEOPLE COMING
18 TO THE HOUSE?

19 A TO FIGHT I'M ASSUMING.

20 Q OKAY. WHEN YOU CAME IN THE LAST TIME, YOU WERE
21 WITH TONYA, RIGHT?

22 A UH-HUH.

23 Q DID YOU ALL GET TO GO BACK INSIDE WHEN YOU
24 PULLED IN ---

25 A NO, SHE NEVER EVEN GOT OUT OF THE CAR.

1 Q OKAY. AND WHAT HAPPENED WHEN YOU PULLED IN?

2 A WHEN I PULLED IN SHE WANTED ME TO GO GET HER
3 BOYFRIEND BRAD BECAUSE THEY HAD GOT INTO AN ARGUMENT
4 BECAUSE HE SAID THAT SHE TURNED HER PHONE OFF WHILE
5 WE WERE GONE AND SO SHE SENT ME TO GET HIM, AND AS I
6 WALKED TO THE FRONT PORCH, LEE WALDEN WAS ON THE
7 PHONE WITH SOMEBODY AND I WAS ASSUMING IT WAS
8 SOMEBODY THAT WAS PULLING UP BECAUSE HE WAS POINTING
9 TOWARDS THE ROAD AND SAID HERE THEY COME AND
10 EVERYBODY JUST RAN OUT OF THE HOUSE.

11 Q ALL RIGHT. AND THAT WAS LEE WALDEN THAT DID
12 THAT?

13 A I THINK SO, YEAH.

14 Q AND THEN EVERYBODY RAN OUT OF THE HOUSE AT THAT
15 TIME?

16 A YEAH, EVERYBODY WAS COMING OUT OF THE HOUSE.

17 Q WHAT DID YOU DO?

18 A I WAS STANDING ON THE PORCH.

19 Q DID YOU LOOK TO SEE WHAT WAS HAPPENING?

20 A WELL, I WAS LOOKING OUT TO SEE WHAT WAS GOING ON
21 AND THEN I WAS, THAT'S IT, I SAT UP THERE AND WATCHED
22 WHAT WAS GOING ON.

23 Q OKAY. AND DID YOU, WHAT TELL ME WHAT YOU SAW
24 GOING ON?

25 A A CAR PULL UP AND EVERYBODY JUMPED OUT OF THE

1 CAR, FOUR I THINK, FOUR OR FIVE PEOPLE JUMPED OUT THE
2 CAR; THEY RAN TO THE ROAD AND THEN EVERYBODY WAS JUST
3 FIGHTING.

4 Q THEY WERE FIGHTING WHERE?

5 A AT THE ROAD.

6 Q AT THE ROAD?

7 A UH-HUH.

8 Q DID THEY COME UP TO THE HOUSE?

9 A HUH-UH.

10 Q OKAY. WHERE DID YOU GO?

11 A IN THE DRIVEWAY LIKE UP TOWARDS THE HOUSE.

12 Q OKAY. SO, BUT YOU WERE AT THE PORCH, RIGHT?

13 A (NO RESPONSE.)

14 Q WHERE DID YOU GO FROM THE PORCH?

15 THE COURT: MAKE SURE SHE ANSWERS.

16 MR. THOMPSON: I'M SORRY.

17 Q YOU WERE AT THE PORCH?

18 A YES.

19 Q OKAY. WHERE DID YOU GO FROM THERE?

20 A THE FURTHEST I EVER WENT WAS TO MY CAR AND THEY
21 HAD SAID THAT MY SISTER HAD BEEN KNOCKED OUT. I
22 COULD SEE, I SAW TRAVIS HAD HIT MY SISTER AND SHE
23 FELL OUT IN THE ROAD AND I HOLLERED FOR BRANDON AND
24 JACOB MARTIN TO GO GET HER AND NEITHER ONE OF THEM
25 WOULD GO GET HER AND THEN ERIC BROWN TOLD ME AT THE

1 SAME TIME I WAS GOING ON GUNSHOTS STARTED GOING OFF
2 AND IT SOUNDED LIKE FIREWORKS AND HE SAID GET DOWN
3 AND I GOT UNDERNEATH MY VEHICLE.

4 Q ALL RIGHT. WHAT DID HE DO?

5 A HE GOT DOWN ON THE GROUND WITH ME.

6 Q ALL RIGHT. DID HE GET UNDER THE JEEP WITH YOU?

7 A NO, I WAS LAYING AT THE EDGE OF MY JEEP, LIKE
8 HALFWAY UNDERNEATH IT, AND HE WAS LAYING RIGHT BESIDE
9 ME.

10 Q ALL RIGHT. WERE YOU ALL FACING UP TOWARDS UNDER
11 THE JEEP OR?

12 A I WAS FACING DOWN ON THE GROUND.

13 Q ALL RIGHT. DID YOU KNOW HOW HE WAS FACING?

14 A I'M ASSUMING DOWN ON THE GROUND.

15 Q OKAY. AND WHEN WAS THE FIRST TIME THAT YOU
16 HEARD SHOTS?

17 A I DON'T RECALL. WHEN I, I DON'T REMEMBER. I
18 JUST REMEMBER ALL THE GUNSHOTS GOING OFF.

19 Q WAS IT BEFORE OR AFTER YOU SAW LORI GET HIT?

20 A IT WAS AFTER THAT.

21 Q OKAY.

22 A THEY WERE FIGHTING FOR AWHILE FIRST.

23 Q ALL RIGHT. WHO IS THEY?

24 A EVERYBODY.

25 Q OKAY. EVERYBODY WAS THROWING PUNCHES?

1 A I JUST KNOW EVERYBODY WAS DOWN AT THE ROAD AND
2 YOU COULD JUST SEE ALL THESE PEOPLE JUST PUSHING EACH
3 OTHER AND STUFF AND I DON'T REMEMBER. I REMEMBER
4 SEEING LEE OWENS PUSHING WITH A BLONDE HAIR GUY, HE
5 HAD HAIR DOWN TO HERE, AND I SAW LORI AND HOLLY AND
6 THEN LORI AND TRAVIS AND I DON'T REMEMBER.

7 Q OKAY.

8 A AS FAR AS ANYTHING ELSE, I DON'T REMEMBER.

9 Q DID YOU SEE LORI AND HOLLY FIGHTING?

10 A YES, I DID.

11 Q ALL RIGHT. WERE THEY FIGHTING BEFORE TRAVIS HIT
12 HER?

13 A YES.

14 Q DESCRIBE THAT FIGHT TO ME?

15 A THEY JUMPED OUT OF THE CAR AND HOLLY APPROACHED
16 HER AND THEY BEGAN FIGHTING AND I THINK TRAVIS WAS
17 OFF SOMEWHERE. HE WAS OFF TO THE LEFT. I REMEMBER
18 HE HAD COME FROM THE LEFT AND COME OVER TO HER AND I
19 GUESS HE WAS TRYING TO PROTECT HOLLY AND HE HIT HER
20 AND SHE FELL DOWN AND DEMI, WILLIAM POWELL PICKED HER
21 UP, AND PULLED HER OFF THE ROAD.

22 Q WHY WOULD YOU SAY HE WAS TRYING TO PROTECT
23 HOLLY?

24 A I'M JUST ASSUMING BECAUSE SHE WAS BEATING HER
25 UP.

1 Q OKAY. SO LORI WAS BEATING HOLLY UP?

2 A YES, SIR.

3 Q WHERE WERE HOLLY AND LORI FIGHTING, WHERE WERE
4 THEY?

5 A IN THE ROAD BY THE CAR.

6 Q ALL RIGHT. SO THEY WERE BY THE CAR. WERE THEY
7 ON ONE SIDE OF THE CAR OR THE OTHER?

8 A I DON'T KNOW. I JUST KNOW THEY WERE IN FRONT OF
9 THE CAR.

10 Q OKAY. DO YOU REMEMBER WHERE THE CAR HAD STOPPED
11 EXACTLY?

12 A NO. IT WAS IN THE ROAD IN FRONT OF THE HOUSE.

13 Q OKAY.

14 A IT WAS NEAR THE DRIVEWAY.

15 Q ALL RIGHT. SO ONCE AGAIN YOU DON'T HEAR SHOTS
16 UNTIL AFTER LORI GOES DOWN?

17 A IT WAS AFTER THAT BECAUSE THEY FOUGHT FOR
18 SEVERAL MINUTES AND EVERYBODY WAS DOWN THERE AND YOU
19 COULD JUST HEAR THEM HOLLERING AND YELLING AND STUFF
20 AND THEN IT WAS AFTER THAT. THEY FOUGHT FOR SOMETIME
21 BEFORE I HEARD ANY SHOTS.

22 Q OKAY. AND WHAT DID THE SHOTS SOUND LIKE TO YOU
23 WHEN YOU HEARD THEM?

24 A FIREWORKS ON THE FOURTH OF JULY.

25 Q COULD YOU TELL WHERE THEY WERE COMING FROM?

1 A I HAVE NO IDEA.

2 Q COULD YOU TELL WHICH DIRECTION THEY WERE COMING
3 FROM?

4 A I HAVE NO IDEA.

5 Q DID YOU ACTUALLY SEE ANYONE WITH A GUN OUT
6 THERE?

7 A I DID.

8 Q WHO DID YOU SEE WITH A GUN?

9 A LEE OWENS AND BERRY.

10 Q ALL RIGHT. AND CAN YOU TELL ME HOW IS IT, UNDER
11 WHAT CIRCUMSTANCES DID SEE LEE OWENS WITH A GUN?

12 A I SAW LEE OWENS FIRE A GUN. I REMEMBER SEEING
13 HIM HOLD UP LIKE THIS. AFTER I SAW HIM PUSHING WITH
14 THAT GUY, THE LONG HAIR GUY, HE HELD THE GUN UP AND
15 SHOT IT THREE TIMES. AND THEN I SAW BERRY AS HE WAS
16 WALKING AWAY FROM THE ROAD, I SAW HIM, HE HAD A GUN
17 IN HIS HAND.

18 Q OKAY. AND GOING BACK TO LEE, WHERE WAS LEE
19 STANDING?

20 A AT THE ROAD.

21 Q AT THE ROAD?

22 A UH-HUH.

23 Q OKAY. DID YOU SEE HOW MANY SHOTS HE FIRED?

24 A HE, I THINK IT WAS THREE SHOTS THAT HE FIRED
25 THEN. WHEN I SAW HIM FIRE HIS GUN, I THINK IT WAS

1 THREE.

2 Q DID YOU SEE WHAT DIRECTION HE WAS POINTING HIS
3 GUN?

4 A HE HAD HIS GUN UP LIKE THIS.

5 Q ALL RIGHT. WHAT DID YOU DO AT THAT POINT?

6 A I WAS STILL UP IN THE DRIVEWAY AND I GOT DOWN ON
7 THE GROUND.

8 Q OKAY. IS THAT WHY YOU DIDN'T SEE ANY OTHER
9 SHOTS AFTER THAT?

10 A THAT'S WHY I DIDN'T SEE ANYTHING ELSE.

11 Q OKAY. BUT DID SHOTS CONTINUE AFTER THAT?

12 A YES.

13 Q WAS THERE ANY LULL BETWEEN THE TIME YOU HEARD
14 THOSE SHOTS FROM LEE?

15 A NO, YOU JUST HEARD GUNSHOTS, PEOPLE SCREAMING,
16 AND DOORS SHUTTING, LIKE CAR DOORS SHUTTING, AND
17 TIRES SQUEALING, AND THAT'S ALL I HEARD.

18 Q OKAY. AND CAN YOU TELL ME, YOU MENTION YOU ALSO
19 SAW BERRY WITH A GUN, TELL ME THE CIRCUMSTANCES
20 AROUND THAT?

21 A AFTER EVERYBODY COME UP TO THE HOUSE HE WAS
22 STANDING BY HIS TRUCK AND I TOLD HIM TO LEAVE.

23 Q ALL RIGHT. NOW DID YOU SEE A GUN IN HIS HAND AT
24 THAT POINT?

25 A YEAH.

1 Q HOW WAS HE HOLDING IT?

2 A HE JUST HAD IT IN HIS HAND.

3 Q ALL RIGHT. WAS HIS HAND DOWN BY HIS SIDE OR
4 WHAT HE WAS DOING?

5 A HE WAS JUST STANDING BY HIS TRUCK WITH HIS GUN
6 IN HIS HAND.

7 Q OKAY. AND WHERE WAS HIS TRUCK LOCATED?

8 A IF YOU ARE FACING THE HOUSE, IT WAS TO THE LEFT
9 OF THE DRIVEWAY BESIDE MY VEHICLE.

10 Q WAS IT IN THE GRASS OR IN THE DRIVE?

11 A IN THE GRASS.

12 Q IN THE GRASS. AND DID YOU SEE WHERE HE HAD COME
13 FROM --

14 A NO.

15 Q ---TO GO TO THE TRUCK?

16 A HUH-UH.

17 Q ALL RIGHT. AND YOU TOLD HIM TO LEAVE AT THAT
18 POINT?

19 A UH-HUH.

20 Q ANSWER OUT LOUD?

21 A YES, SIR, I DID.

22 Q ALL RIGHT. WHY DID YOU TELL HIM THAT?

23 A BECAUSE I HEARD ALL THE GUNSHOTS AND I KNEW THE
24 POLICE WERE COMING. I JUST TOLD HIM TO GET OUT OF
25 THERE. I TOLD EVERYBODY TO GET OUT OF THERE.

1 Q ALL RIGHT. DID YOU SEE ANYTHING ELSE REGARDING
2 GUNS AFTER THAT

3 A NO.

4 Q WHAT DID YOU DO?

5 A I LEFT.

6 Q DID YOU LEAVE IN YOUR CAR?

7 A YES.

8 Q DID ANYONE GO WITH YOU?

9 A NO.

10 Q WAS THERE ANY CAR BLOCKING YOU IN THE DRIVEWAY?

11 A THE ONLY CAR BEHIND ME I THINK WAS TONYA AND SHE
12 HAD ALREADY LEFT AND I THINK LEE OWENS HAD LEFT AND
13 THEN I HAD LEFT.

14 Q ALL RIGHT. NOW LEE OWENS, HE WAS IN THE MUSTANG
15 UP IN THE YARD?

16 A HE WAS IN THE YARD.

17 Q HOW DID HE GET OUT?

18 A I GUESS HE JUST BACKED OUT. I DON'T THINK
19 ANYBODY WAS BEHIND HIM.

20 Q OKAY. NOW KRISTEN, WHEN YOU LEFT WHERE DID YOU
21 GO?

22 A I WENT TO TONYA'S HOUSE.

23 Q AND DID YOU STAY AT TONYA'S HOUSE THAT NIGHT?

24 A NO, I WENT HOME.

25 Q SO YOU WENT HOME AFTER THAT?

1 A UH-HUH.

2 Q DID YOU GO TO THE POLICE DEPARTMENT AT ALL AFTER
3 THIS?

4 A NO, SIR.

5 Q DID YOU KNOW THAT YOUR SISTERS HAD?

6 A YEAH, I HAD TALKED TO THEM. WELL, ACTUALLY,
7 THEY SAID THEY WERE TAKING LORI TO THE HOSPITAL AND
8 THEN THEY DECIDED NOT TO I THINK.

9 Q OKAY. WHY DIDN'T YOU GO TO THE POLICE
10 DEPARTMENT?

11 A I DIDN'T WANT TO BE IN THE MIDDLE OF IT.

12 Q ALL RIGHT. AS YOU WERE LEAVING DID YOU SEE THE
13 GUY WITH THE LONG HAIR IN THE ROAD AGAIN?

14 A YEAH, HE WAS -- I WASN'T SURE WHO HE WAS. I SAW
15 HIM HE WAS IN THE GRASS AND I'M WANTING TO SAY
16 SOMEBODY WAS CHASING HIM. I DON'T KNOW. AND HE RAN
17 OFF IN THE ROAD AND THEN HE WAS IN THE MIDDLE OF THE
18 ROAD AND I STOPPED AND I STILL DIDN'T KNOW WHO HE
19 WAS.

20 Q DID YOU ALMOST HIT HIM IS THAT WHY YOU STOPPED?

21 A NO. LIKE, YEAH, HE WAS RIGHT IN THE MIDDLE OF
22 THE ROAD AND I SLAMMED ON BRAKES AND I WAS LIKE
23 FREAKING OUT BECAUSE I DIDN'T KNOW WHO HE WAS AND HE
24 WAS RUNNING AT ME. I KNEW PEOPLE HAD BEEN SHOOTING
25 AND I DIDN'T WANT TO GET SHOT AT BUT HE MOVED OUT OF

1 THE WAY.

2 Q DID YOU SEE ANYTHING IN HIS HANDS AT THAT TIME?

3 A I DON'T REMEMBER SEEING HIM WITH ANYTHING.

4 Q OKAY. THANK YOU, KRISTIN. NO FURTHER
5 QUESTIONS.

6 MR. GREELEY: YOUR HONOR, I HAVE NO
7 QUESTIONS.

8 THE COURT: YOU CAN STEP DOWN. THANK YOU.
9 WE APPRECIATE YOUR TIME. CALL YOUR NEXT WITNESS.

10 MR. POPE: YOUR HONOR, I THINK THAT'S ALL
11 THE WITNESSES WE HAVE FOR THIS AFTERNOON, YOUR HONOR.

12 THE COURT: ALL RIGHT. WE'LL STOP FOR THE
13 AFTERNOON AND START BACK AT 9:30 IN THE MORNING, HAVE
14 A PLEASANT EVENING, AND KEEP IN MIND NOT TO LET
15 YOURSELF BE EXPOSED TO ANYTHING ABOUT THE CASE, NOT
16 TO TRY TO MAKE UP YOUR MIND, AND WE'LL SEE YOU AT
17 9:30.

18 (THE JURY EXITS THE COURTROOM AT 5:16.)

19 THE COURT: ANYTHING FROM THE STATE BEFORE
20 WE STOP FOR THE DAY?

21 MR. POPE: NO, SIR, YOUR HONOR.

22 THE COURT: ANYTHING FROM THE DEFENSE?

23 MR. GREELEY: NO, YOUR HONOR.

24 THE COURT: THANK YOU. SEE YOU AT 9:30 IN
25 THE MORNING.

1 (COURT'S IN RECESS AT 05:20 PM.)

2 (COURT RESUMES ON SEPTEMBER 01, 2006,
3 AT 9:57 AM.)

4 THE COURT: THE STATE READY.

5 MR. POPE: THE STATE IS READY. WE'VE HAD
6 AGENT DEFREESE, WITH THE DEFENSE'S CONSENT, HE'S
7 GOING TO TAKE THE EVIDENCE OUTSIDE AND SPEED THE
8 PROCESS ALONG OUT IN THE HALL, SO WE ARE READY TO
9 MOVE FORWARD WITH DR. MAYNARD.

10 MR. GREELEY: WE ARE READY, YOUR HONOR.

11 THE COURT: ALL RIGHT. BRING IN THE JURY.

12 (THE JURY RETURNS TO THE COURTROOM AT
13 09:57 AM.)

14 THE COURT: GOOD MORNING.

15 (THE JURY: GOOD MORNING.)

16 THE COURT: CALL YOUR NEXT WITNESS.

17 MR. POPE: THE STATE WOULD CALL DR. JAMES
18 MAYNARD TO THE STAND.

19 JAMES MAYNARD, BEING FIRST DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. POPE:

22 Q DR. MAYNARD, IF YOU WOULD STATE YOUR NAME AND
23 SPELL YOUR LAST FOR THE COURT REPORTER PLEASE?

24 A YES, SIR. JAMES LEWIS MAYNARD. M-A-Y-N-A-R-D.

25 Q COULD YOU TELL THE JURY WHERE YOU ARE EMPLOYED?

1 A I'M EMPLOYED IN ROCK HILL WITH YORK PATHOLOGY
2 ASSOCIATES.

3 Q OKAY. AND YORK PATHOLOGY ASSOCIATES, WHAT ARE
4 YOUR DUTIES, WHAT DO YOU ACTUALLY DO DAY TO DAY?

5 A I'M A PHYSICIAN, A PATHOLOGIST, WITH YORK
6 PATHOLOGY ASSOCIATES WHERE WE PERFORM AUTOPSIES, WE
7 EXAMINE TISSUE REMOVED DURING SURGERY, BIOPSIES
8 TAKEN; WE OVERSEE THE LABORATORY OPERATIONS AT
9 PIEDMONT MEDICAL CENTER.

10 Q OKAY. AND YOU SAID YORK PATHOLOGY ASSOCIATES?

11 A YES, SIR, THAT'S CORRECT.

12 Q WHAT IS PATHOLOGY?

13 A PATHOLOGY IS A BRANCH OF MEDICINE THAT STUDIES
14 DISEASE, INJURY, AND DEATH. THIS IS DONE PRIMARILY
15 AT THE TISSUE LEVEL, SERIAL LEVEL WITH BLOOD, FLUID,
16 URINES, AND THEN THE ACTUAL PIECES OF TISSUE AND THEN
17 OF COURSE AUTOPSIES.

18 Q AND COULD YOU TELL THE JURY AS KIND OF A SUBSET
19 OF PATHOLOGY, WHAT IS FORENSIC PATHOLOGY?

20 A FORENSIC PATHOLOGY IS A SUBSET OR SUBSPECIALTY
21 IN PATHOLOGY WHERE YOU ARE DEALING WITH THE CAUSE AND
22 MANNER OF DEATH, UNUSUAL VIOLENT DEATHS, OR DEATHS
23 THAT OCCUR NOT IN ATTENDANCE BY A PHYSICIAN.

24 Q COULD YOU TELL THE JURY WHAT BACKGROUND AND
25 EDUCATION AND TRAINING YOU HAVE THAT ALLOWS YOU TO

1 PERFORM THESE AUTOPSIES AND MAKE THE DETERMINATIONS
2 YOU MAKE IN YOUR FIELD OF WORK?

3 A CERTAINLY. A PATHOLOGIST IS A PHYSICIAN. A
4 PERSON WHO HAS GONE TO COLLEGE, THEN GOES ON TO
5 MEDICAL SCHOOL, FOUR YEARS OF MEDICAL SCHOOL, AND
6 THEN DOES A RESIDENCY OR ADDITIONAL TRAINING IN A
7 SPECIALTY CALLED PATHOLOGY. THIS IS USUALLY A FOUR
8 TO FIVE YEAR ADDITIONAL BEYOND MEDICAL SCHOOL
9 TRAINING. THEN THERE IS A SUBSPECIALTY THAT YOU CAN
10 THEN GO INTO CALLED FORENSIC PATHOLOGY WHICH DEALS
11 WITH UNUSUAL AND VIOLENT DEATHS. THIS IS ADDITIONAL
12 TIME SPENT WHERE YOU ARE REVIEWING, INTERVIEWING, AND
13 LOOKING AT CAUSE AND MANNER OF DEATH, AGAIN RESULTING
14 IN THE DEATH OF A PATIENT USUALLY DUE TO A VIOLENT
15 NATURE. WE LEARN A LOT ABOUT EVIDENCE, EVIDENCE
16 COLLECTION, THE LEGAL SYSTEM, AND PUTTING EVERYTHING
17 TOGETHER TO DETERMINE THE CAUSE AND MANNER OF DEATH
18 OF SOMEONE.

19 Q DO YOU HAVE AN ESTIMATION FOR THE JURY OF HOW
20 MANY AUTOPSIES YOU'VE CONDUCTED IN YOUR CAREER?

21 A CLOSE TO 2000.

22 Q AND HOW LONG HAVE YOU BEEN DOING THIS NOW?

23 A 30 YEARS IN YORK COUNTY.

24 Q HERE IN YORK COUNTY, AND NORTH CAROLINA BEFORE
25 THEN?

1 A YES, SIR.

2 Q OKAY. AND HAVE YOU BEEN QUALIFIED AS AN EXPERT
3 IN THIS AREA IN COURTS IN THE PAST HERE IN SOUTH
4 CAROLINA?

5 A YES, SIR, MANY TIMES.

6 Q OKAY.

7 MR. POPE: YOUR HONOR, AT THIS TIME I
8 WOULD TENDER DR. MAYNARD AN EXPERT IN FORENSIC
9 PATHOLOGY.

10 MR. GREELEY: NO OBJECTION, I CONCUR.

11 THE COURT: I FIND HE'S QUALIFIED.

12 Q DR. MAYNARD, BEFORE WE BEGIN WITH THE SPECIFICS
13 OF MR. HOVIS'S DEATH I WANT TO CALL YOUR ATTENTION,
14 DID YORK PATHOLOGY ASSOCIATES HAVE THE OPPORTUNITY TO
15 CONDUCT EXAMINATION CONCERNING MR. JEFFREY LEO BUCK?

16 A YES, SIR, WE DID.

17 Q OKAY. AND COULD YOU TELL ME BASED ON YOUR
18 RECORDS FROM YORK PATHOLOGY WHAT WAS MR. JEFF BUCK'S
19 DATE OF DEATH?

20 A MR. BUCK DIED ON MAY 15, 2006, THE EARLY MORNING
21 HOURS.

22 Q MAY 15 OF THIS YEAR?

23 A YES, SIR, THAT'S CORRECT.

24 Q THANK YOU, SIR. I CALL YOUR ATTENTION NOW TO
25 THIS PARTICULAR CASE. DID YOU HAVE AN OPPORTUNITY TO

1 CONDUCT AN AUTOPSY OF MR. BOBBY HOVIS THE THIRD?

2 A YES, SIR, I DID.

3 Q OKAY. CAN YOU TELL THE JURY WHERE THAT TOOK
4 PLACE?

5 A THIS TOOK PLACE IN THE MORGUE AT PIEDMONT
6 MEDICAL CENTER IN ROCK HILL, SOUTH CAROLINA.

7 Q OKAY. AND CAN YOU TELL THEM WHEN THAT TOOK
8 PLACE?

9 A THIS TOOK PLACE ON FEBRUARY 20 OF THIS YEAR 2006
10 AT APPROXIMATELY 2:30 IN THE AFTERNOON.

11 Q AND SO IF SUNDAY MORNING IS THE 19, SO YOU DID
12 IT MONDAY AFTERNOON, IS THAT CORRECT?

13 A YES, SIR, THAT'S CORRECT.

14 Q OKAY. AND AS PART OF YOUR JOB AS A FORENSIC
15 PATHOLOGIST DO YOU ALSO REVIEW IN MAKING YOUR
16 DETERMINATIONS ALL THE PROCEEDING MEDICAL RECORDS; IN
17 OTHER WORDS, THE TREATMENT RECORDS FROM THE TIME HE
18 WAS TAKEN FROM THE CAR IN CLOVER UNTIL THE TIME YOU
19 RECEIVED HIM?

20 A YES, SIR, WE DO.

21 Q CAN YOU TELL THE JURY WHAT THE COURSE OF HIS
22 SITUATION WAS FROM THE TIME HE WAS SHOT UP THROUGH
23 THE TIME YOU RECEIVED HIM BASED ON YOUR REVIEW OF
24 THOSE RECORDS?

25 A YES, SIR. HE WAS SHOT EARLY THAT MORNING OR

1 LATE THE PREVIOUS EVENING. I'M NOT SURE EXACTLY
2 WHEN. HE WAS SEEN AT THE SCENE OF THE SHOOTING AND
3 FOUND TO BE IN SEVERE OR CRITICAL CONDITION AND HE
4 WAS FLOWN BY CAROLINAS MEDICAL CENTER HELICOPTER TO
5 CAROLINAS MEDICAL CENTER AND ARRIVED THERE AT 1:05 ON
6 THE MORNING OF 2-19 OR FEBRUARY 19 AND WAS SEEN IN
7 THE ER WHERE HE WAS FOUND TO BE UNRESPONSIVE, NO
8 RESPIRATORY ACTIVITY, NO RESPONSE, PUPILS WERE FIXED
9 AND DILATED, WHICH IS ALL INDICATING A BRAIN DEATH.
10 HE WAS INTUBATED OR A TUBE PUT DOWN INTO HIS THROAT
11 WHERE THE MACHINE, A VENTILATOR, WAS HOOKED UP SO IT
12 COULD BREATHE FOR HIM AND X-RAYS WERE OBTAINED WHICH
13 DID SHOW A FATAL WOUND TO THE BRAIN. HE THEN HAD
14 SUPPORTIVE CARE AND SUBSEQUENTLY DIED I BELIEVE.

15 Q OKAY. NOW FROM YOUR OBSERVATION OF THE RECORDS
16 AND YOUR OBSERVATION OF MR. HOVIS, WERE ANY MEDICAL
17 PROCEDURES PERFORMED ON HIM SUBSEQUENT TO, I KNOW
18 YOU'VE TALKED ABOUT INTUBATION AND STUFF, WAS ANY
19 FURTHER MEDICAL PROCEDURES THAT WERE PERFORMED ON HIM
20 AS FAR AS ANY OF HIS ORGANS PRIOR TO YOU RECEIVING
21 HIM?

22 A HE HAD, OF COURSE, A NUMBER OF TESTS PERFORMED
23 AND THEN AFTER THE BRAIN DEATH HE WAS AN ORGAN DONOR.

24 Q AND WHAT DOES THAT REALLY ENTAIL?

25 A THIS WAS IN OCCURRENCE WITH THE FAMILY, MEDICAL

1 EXAMINER, THAT HE'S A HEALTHY YOUNG MAN WHO HAS
2 ORGANS THAT POTENTIALLY COULD SAVE A NUMBER OF LIVES
3 AND HIS HEART, LUNGS, LIVER, PANCREAS AND KIDNEYS
4 WERE DONATED TO OTHER PEOPLE SO THEY MAY HAVE A
5 CHANCE OF LIVING.

6 Q OKAY. AND DO WE CALL THAT HARVESTING?

7 A YES, SIR, IT IS. IT'S HARVESTING THE ORGANS.

8 Q OKAY. AND SO AT THE POINT YOU RECEIVED HIM FROM
9 PMC THOSE HAD BEEN REMOVED AT THAT TIME?

10 A YES, SIR.

11 Q OKAY. WHEN YOU FIRST RECEIVED HIM WHAT ARE THE
12 FIRST STEPS YOU TAKE WHEN YOU RECEIVE HIM IN; WHAT DO
13 YOU DO FIRST?

14 A THE FIRST THING OF COURSE IS OBTAIN THE HISTORY
15 AND MEDICAL RECORDS THAT WE MAY GET AND THEN WE DO AN
16 EXTERNAL EXAMINATION OF HIM.

17 Q DID YOU DETERMINE A HEIGHT AND WEIGHT OF MR.
18 HOVIS?

19 A YES, SIR, I DID.

20 Q WHAT WAS HIS HEIGHT AND WEIGHT?

21 A HIS HEIGHT WAS 71 INCHES OR 5'11" AND HIS WEIGHT
22 WHEN WE RECEIVED HIM WAS 132.

23 Q OKAY. AND YOU SAY WHEN YOU RECEIVED HIM, YOU
24 INDICATED TO THE JURY THAT A NUMBER OF ORGANS HAD
25 BEEN HARVESTED, WOULD THAT MAKE A DIFFERENCE?

1 A YES, SIR.

2 Q IN THE WEIGHT?

3 A YES, SIR, IT CERTAINLY WOULD.

4 Q I KNOW THIS IS AN ESTIMATION, BUT DO YOU HAVE A

5 ROUGH ESTIMATION OF HOW THAT WOULD AFFECT HIM?

6 A EASILY 20 POUNDS.

7 Q SO PERHAPS 150-152?

8 A YES, SIR, THAT'S CORRECT.

9 Q OKAY. THE PROCEDURE FOR ACTUALLY RECOVERING THE

10 ORGANS IS THAT A SURGICAL PROCEDURE AND A STERILE

11 ENVIRONMENT JUST LIKE ANY OTHER SURGERY?

12 A YES, IT IS. IT'S DONE IN THE OPERATING ROOM.

13 Q ALL RIGHT. DID YOU SEE ANY INDICATION THAT HIS

14 HANDS HAD BEEN BAGGED, SOMETIMES LIKE YOU HAVE WHEN

15 YOU HAVE PEOPLE THAT ARE DECEASED ON THE SCENE, DID

16 YOU SEE ANY INDICATION HIS HANDS HAD BEEN BAGGED TO

17 PRESERVE ANY GUNSHOT RESIDUE TESTS?

18 A NO, SIR, THEY HAD NOT.

19 Q BASED ON YOUR OPINION IN THE MEDICAL TREATMENT

20 HE WAS FACING OR GOING THROUGH THOSE ENSUING HOURS,

21 WOULD THAT HAVE BEEN APPROPRIATE TO HAVE HANDS BAGGED

22 IF YOU STILL GOT SOMEBODY'S THAT'S LIVING?

23 A IT WOULD NOT BE APPROPRIATE SINCE HE'S BEEN

24 WASHED, STERILIZED, CLEAN, THERE WAS IVS PUT IN BOTH

25 ARMS, THERE WAS WHAT WE CALL A RADIAL ARTERIAL LINE

1 WHICH IS A LINE THAT'S PUT INTO AN ARTERY IN YOUR
2 WRIST WHICH MEANS THE WHOLE AREA IS PREPARED IN
3 BETADINE OR AN ANTISEPTIC AND CLEANED.

4 Q NOW THERE ARE TIMES WHEN AT AUTOPSIES YOU DO
5 PERFORM GSR KITS OR YOU ALLOW LAW ENFORCEMENT PERFORM
6 A GSR KIT, IS THAT CORRECT?

7 A YES, SIR.

8 Q BUT IF THEY'VE BEEN TREATED IN THE INTERVENING
9 AS THIS SITUATION, THAT WOULD NOT BE THE CASE?

10 A IT WOULD MAKE THE DETERMINATION VERY SUSPECT
11 WITH THE WASHING AND SUCH.

12 Q NOW ACTUALLY AT THE SCENE OF THE AUTOPSY WITH
13 THE EXTERNAL EXAM, AT SOME POINT LAW ENFORCEMENT WAS
14 PRESENT TO TAKE FINGERPRINTS OF THE DECEASED, IS THAT
15 CORRECT?

16 A YES, SIR, THAT'S CORRECT.

17 Q OKAY. COULD YOU TELL THE JURY WHAT YOU OBSERVED
18 AS FAR AS YOUR EXTERNAL EXAM, YOU WERE TELLING US
19 THAT THE FIRST THING YOU DID, WHAT YOU DID OBSERVE AS
20 FAR AS ANY INJURIES?

21 A YES, SIR. THE FIRST THING, OF COURSE, IS THE
22 IDENTIFICATION, MAKE SURE HE IS IDENTIFIED
23 APPROPRIATELY. AND THEN WE START LOOKING FOR ANY
24 EXTRANEIOUS MATERIAL, TRACE EVIDENCE, THAT SORT OF
25 THING THAT MAY BE ON THE BODY. WE LOOK FOR IVS, ANY

1 NEEDLE PUNCTURE WOUNDS THAT MAY BE THERE. THEN WE
2 START AT ONE PART OF THE BODY AND MOVE TO THE OTHER
3 PART OF THE BODY. WE GO THROUGH THE HEAD, THE EYES,
4 THE EARS, THE MOUTH, THE CHEST, THE ABDOMEN, THE
5 PERITONEUM, THE LEGS, AND HANDS WE LOOK AT VERY
6 CAREFULLY.

7 Q DO YOU ALSO LOOK AT THE HANDS FOR LIKE ANY
8 BURNING OR STIPPLING OR I SAY THE HANDS, THE BODY
9 INCLUDING THE HANDS, FOR ANY WHERE GUN POWDER MAY
10 HAVE BURNED THE HANDS, DO YOU LOOK FOR THOSE KINDS OF
11 THINGS?

12 A YES, SIR, WE DO.

13 Q DID YOU FIND ANY INDICATION OF THAT ON
14 MR. HOVIS?

15 A NO, SIR, THERE WAS NO BURNING OR STIPPLING.

16 Q OKAY. WHAT WOUNDS DID YOU NOTE AS FAR AS
17 MR. HOVIS?

18 A MR. HOVIS HAD A SINGLE GUNSHOT WOUND TO THE BACK
19 OF THE RIGHT HEAD.

20 Q AND WHAT DID YOU DO, HOW DO YOU FIRST OBSERVE
21 THAT? HOW DO YOU NOTE THAT INITIALLY?

22 A THE WOUND THAT MR. HOVIS HAD WAS IN THE HAIR IN
23 THE BACK OF HIS HEAD AND OUR EXAMINATION WE DID SEE
24 WHERE A WOUND WAS, IN HIS INSTANCE THIS WAS ALREADY
25 STAPLED SHUT, THAT WHEN HE WENT TO CAROLINAS MEDICAL

1 CENTER INSTEAD OF LEAVING A HOLE, AN OPEN HOLE, THEY
2 PUT SOME STAPLES THERE, THEY WERE NOT TAKING IT OUT,
3 SIMPLY PUT SOME STAPLES OVER IT. WE REMOVED THE
4 STAPLES AND FOUND EXACTLY WHERE THE WOUND WAS IN THE
5 SCALP AND THEN MEASURED THE SIZE AND THEN OF COURSE
6 FURTHER EXAMINATION OF THE AUTOPSY OF THE WOUND.

7 Q OKAY. AND YOU SAY YOU MEASURE THE SIZE, THE
8 SIZE OF THE ENTRANCE?

9 A YES, SIR.

10 Q OKAY. DID YOU ALSO DO OR REQUEST X-RAYS BE DONE
11 TO HELP YOU DETERMINE WHAT MAY BE INSIDE?

12 A YES, SIR, WE DID.

13 Q THE WOUND. OKAY. DO YOU ALSO PREPARE A DIAGRAM
14 OF YOUR OBSERVATION AS FAR AS WHAT YOU OBSERVED IN
15 THE WOUND AREA?

16 A YES, SIR, WE DO.

17 Q OKAY. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S
18 EXHIBIT 61 AND 62, TAKE A LOOK AT THOSE; DID YOU
19 BRING THOSE HERE WITH YOU TODAY?

20 A YES, SIR, I DID.

21 Q AND ALSO STATE'S EXHIBITS 124, WOULD THOSE ITEMS
22 ASSIST YOU IN EXPLAINING THE NATURE OF MR. HOVIS'S
23 WOUNDS TO THE JURY?

24 A YES, SIR, THEY WOULD.

25 Q THANK YOU.

1 MR. POPE: YOUR HONOR, I MOVE STATE'S
2 EXHIBITS 61, 63, AND 124 INTO EVIDENCE.

3 MR. GREELEY: NO OBJECTION, YOUR HONOR.

4 THE COURT: BE RECEIVED INTO EVIDENCE.

5 (STATE'S EXHIBITS NUMBER 61 AND 62
6 X-RAYS AND 124 DIAGRAM RECEIVED INTO EVIDENCE.)

7 Q DOCTOR, I'M GOING TO CALL YOUR ATTENTION FIRST
8 TO STATE'S EXHIBITS 124. I'LL HAND IT BACK UP TO
9 YOU. IF YOU COULD TELL US WHAT THIS ITEM DEPICTS,
10 SIR?

11 A THIS IS A DIAGRAM OF MR. HOVIS'S HEAD. YOU CAN
12 SEE THE FRONT AND THEN THE BACK OF THE HEAD. THIS IS
13 THE ENTRANCE WOUND IN THE BACK OF MR. HOVIS'S HEAD.
14 THIS IS THE RIGHT SIDE. THIS IS THE LEFT SIDE. OF
15 COURSE, YOU CAN SEE THE EARS BEING HERE. THE
16 MEASUREMENTS UP HERE, WE MEASURE FROM THE TOP OF THE
17 HEAD AND FROM THE MID-LINE AND THEN FROM ANY
18 STRUCTURES THAT MAY BE AROUND. THIS IS 2 AND A HALF
19 INCHES BELOW THE TOP OF THE HEAD AND TWO INCHES TO
20 THE RIGHT OF THE MID-LINE. SO IF YOU COME DOWN FROM
21 THE TOP OF THE HEAD TWO AND A HALF INCHES AND COME
22 FROM THE CENTER OF THE BACK OF THE HEAD OVER TWO
23 INCHES, IT'S WHERE THE CENTER OF THE BULLET WOUND IS.
24 IT WAS ALSO 3 AND A HALF INCHES BEHIND THE TOP OF THE
25 RIGHT EAR.

1 Q I SHOW YOU NOW WHAT'S BEEN MARKED STATE'S
2 EXHIBITS 61. IF YOU CAN TELL US WHAT THIS ITEM
3 DEPICTS?

4 A YES, SIR. THIS IS A VIEW OF MR. HOVIS'S SKULL.
5 AND THIS "L" IS GOING TO BE THE LEFT SIDE. THIS IS
6 THE TOP OF THE HEAD. THESE ARE THE EYES HERE. THIS
7 IS THE EYE BROW. THIS IS THE MANDIBLE OR JAW AND YOU
8 CAN SEE THE TEETH. THERE IS A LITTLE FAINT SHADOW
9 WHICH IS THE ENDOTRACHEAL TUBE WHICH IS STILL IN HIM.
10 THE HEAD IS TWISTED JUST A LITTLE BIT. IT'S NOT A
11 FRONT ON X-RAY, BUT THERE IS A HOLE THAT YOU CAN SEE
12 HERE, A DEFECT IN THE SKULL, IT SHOULD BE A LITTLE
13 WHITISH, LOOKING SORT OF LIKE THIS, THERE IS A DEFECT
14 THERE WHICH IS THE ENTRANCE WOUND. THERE IS A LITTLE
15 FRAGMENT OF MATERIAL THAT YOU CAN SEE THERE AND THERE
16 ARE, THERE IS A LARGE FRAGMENT OF METALLIC MATERIAL
17 WHICH OF COURSE IS THE BULLET SITTING IN HERE. ON
18 THE FRONT TO BACK PROJECTION YOU CAN'T TELL WHERE THE
19 BULLET IS LOCATED OTHER THAN THE FACT THAT IT'S IN
20 THE BRAIN.

21 Q OKAY. AND THE WAY THAT THIS PICTURE IS ORIENTED
22 THIS ACTUALLY REVERSED; YOU SAY THIS SIDE IS HIS
23 LEFT?

24 A YES, SIR.

25 Q IN OTHER WORDS, SO IF HE WAS FACING FORWARD,

1 WITH THE COURT'S PERMISSION IF HE CAN STEP DOWN.

2 THE COURT: OF COURSE.

3 Q DOCTOR, I'LL MOVE BACK OUT OF WAY. IF THIS WILL
4 ASSIST YOU IN TELLING THE JURY WHAT THIS DEPICTS.
5 LET'S DO IT THE OLD FASHION WAY. WILL YOU TURN ON
6 THE LIGHTS PLEASE, MA'AM. IF YOU CAN HOLD IT UP AS
7 IF THE VICTIM WAS FACING TOWARD THE JURY IF YOU CAN
8 INDICATE THAT?

9 A THIS WOULD BE HIS FRONT LOOKING TOWARDS YOU.
10 THIS IS A LEFT SIDE. THIS IS A MARKING THAT WE PUT
11 ON THE X-RAY FILM ITSELF. HERE IS THE TUBE THAT'S
12 COMING INTO HIS MOUTH AND THEN DOWN TO HIS THROAT.
13 OUTSIDE THE SKULL. RIGHT HERE YOU CAN SEE SOME
14 STAPLES BEING PRESENT. THERE IS A SMALL FRAGMENT OF
15 METAL HERE AND A LARGE FRAGMENT HERE. THIS IS
16 SITTING JUST ABOVE HIS EYE AREA WHICH IS EYE BONE OR
17 ORGAN SITTING THERE AND OF COURSE THE TEETH HERE.
18 THIS IS THE NOSE AND INCISORS ARE BACK UP IN HERE.

19 Q SO ACTUALLY THE EXHIBIT WE HAVE ON THE SCREEN,
20 IT'S HANGING ON YOUR HANGING CHART, IT'S HANGING
21 BACKWARD?

22 A THIS IS THE WAY IT'S UP ON THE SCREEN AND IF WE
23 FLIP IT OVER SO WHERE, THE X-RAY IS TAKEN FROM THE
24 FRONT TO THE BACK.

25 Q I GOT YOU. AND THE ITEMS THAT ARE THE CLEAR

1 SPACE, I NOTICE THERE IS A SMALL ITEM KIND OF TO THE
2 LEFT HERE AND A LARGER ITEM TO THE RIGHT, WHAT ARE
3 THOSE ITEMS?

4 A THE LARGE ITEM ON THE RIGHT SIDE, AS WE CAN SEE
5 ON THE SCREEN HERE, IS THE MAJOR PORTION OF THE
6 SKULL. THERE IS A LITTLE FRAGMENT OF METALLIC
7 MATERIAL SITTING MORE TOWARD THE ENTRANCE WOUND.

8 Q LIKewise IF YOU COULD SHOW THEM ALSO ON STATE'S
9 EXHIBITS 62?

10 A THAT'S LOOKS PRETTY GOOD THERE. YOU CAN SEE,
11 THIS IS THE FRONT OF THE SKULL, THIS IS THE BACK OF
12 THE SKULL. THIS IS THE EYE BROW AREA, THE ORBITAL
13 RIDGE, YOU CAN SEE THE TEETH, AND AGAIN YOU CAN SEE
14 THE ENDOTRACHEAL TUBE GOING BACK DOWN INTO THE
15 TRACHEA. THESE ARE THE NECK BONES BUT THIS IS THE
16 LARGE FRAGMENT OF THE BULLET THERE. THERE IS A
17 SMALLER FRAGMENT SITTING HERE. THIS IS OUTSIDE THE
18 X-RAY ITSELF. THIS IS THE BACK OF THE HEAD. YOU CAN
19 SEE, IF YOU LOOK AT THE OUTER TABLE OF THE SKULL
20 SHOULD BE SMOOTH, YOU CAN SEE A DEFECT RIGHT THERE
21 WHERE IT'S FRAGMENTED, AND THAT'S THE ENTRANCE WOUND.

22 Q OKAY. AND IF YOU NEED TO REFER BACK TO YOUR
23 NOTES, BUT HOW DOES THAT, IF YOU COULD INDICATE TO
24 THE JURY THE PATH OF TRAVEL. WHERE YOU HAVE AN
25 ENTRANCE AND HOW IT WOULD HAVE TRAVELLED WHEN IT

1 WOULD HAVE ENTERED THE SKULL?

2 A THE BULLET ENTERED IN THE BACK OF THE SKULL
3 HERE, HERE AGAIN TWO AND A HALF INCHES DOWN, TWO
4 INCHES TO THE RIGHT OF THE MID-LINE. HERE IT'S GOING
5 TO BE APPROXIMATELY HERE, SO THIS IS 3 AND A HALF
6 INCHES BEHIND THE EAR. THE BULLET ENTERED THE SKULL,
7 CROSSED THE BRAIN, AND STRUCK THE FRONT OF THE SKULL.
8 THE BULLET WAS TRAVELLING SLOW AT THIS TIME. THE
9 BULLET DID A SMALL AMOUNT DAMAGE TO THE FRONT OF THE
10 SKULL BUT DID NOT EXIT. THE BULLET THEN HIT AND
11 RICOCHETED. IT HITS A SOLID OBJECT, THE FRONT OF THE
12 SKULL, AND IT RICOCHETS BACK BUT YOU STILL GOT FORCE
13 VELOCITY BEHIND IT, AND THEN THIS BULLET THEN COMES
14 BACK DESTROYING THE OTHER SIDE OF THE BRAIN. SO YOU
15 HAVE INITIAL BULLET GOING THROUGH THE BRAIN CAUSING
16 DESTRUCTION OF THE RIGHT SIDE OF THE BRAIN. THE
17 BULLET THEN HITS THE FRONT OF THE SKULL, DOES NOT GO
18 THROUGH THE SKULL, BUT ACTUALLY RICOCHETS AND BOUNCES
19 BACK AND DESTROYS THE OTHER SIDE OF THE BRAIN.

20 Q IF IT ENTERS IN THE BACK LEFT AREA COULD YOU
21 INDICATE TO THE JURY WHICH WAY IT WOULD BE TRAVELLING
22 BEFORE IT RICOCHETED?

23 A YES, SIR. THE BULLET ENTERED, WE MEASURED TWO
24 INCHES DOWN FROM THE TOP OF THE HEAD, TWO INCHES TO
25 THE RIGHT OF THE MID-LINE, AND THREE AND A HALF

1 INCHES BACK BEHIND THE EAR, SO APPROXIMATELY THIS
2 LEVEL ON MR. POPE. THE BULLET THEN TRAVELLED
3 FORWARD, TRAVELLED FROM HIS RIGHT SIDE TOWARD HIS
4 LEFT SIDE BECAUSE IT STRUCK ESSENTIALLY THE MID-LINE
5 OF THE SKULL. THE BULLET THEN RICOCHETED BACKWARDS
6 GOING THROUGH THE BRAIN CAUSING MORE DESTRUCTION
7 BECAUSE THE BULLET IS NOW FLATTENED OUT, SO THE
8 BULLET IS BIGGER CAUSING DESTRUCTION TO THE BRAIN
9 GOING BACK.

10 Q ANGLES TO THE RIGHT SIDE AND THEN COMES BACK?

11 A COMES BACK.

12 Q OKAY. NOW DID YOU TAKE MEASUREMENTS, YOU CAN
13 HAVE A SEAT, DOCTOR. THANK YOU. DID YOU TAKE
14 MEASUREMENTS OF THE ENTRANCE WOUND WHERE IT HAD BEEN
15 STAPLED, DO YOU TAKE MEASUREMENTS THERE OR DO YOU?

16 A WE MEASURE THE SIZE OF THE WOUND.

17 Q SIZE OF THE WOUND?

18 A YES, SIR, WHEN WE TOOK THE STAPLES OUT.

19 Q WHAT SIZE WAS THAT WOUND?

20 A IT WAS A ONE-INCH OVAL DIAMETER HOLE THERE.

21 Q AND THEN ULTIMATELY DID YOU GO IN AND ACTUALLY
22 RECOVER THE PROJECTILE THAT WE SEE?

23 A YES, SIR, WE DID.

24 Q OKAY. I SHOW YOU WHAT'S BEEN MARKED STATE'S
25 EXHIBIT 157 WITH THIS PICTURE 94.

1 A YES, SIR.

2 Q IS THAT THE ITEM THAT YOU RECOVERED?

3 A YES, SIR, THAT IS.

4 Q AND YOU TURNED THAT OVER TO LAW ENFORCEMENT TO
5 BE SENT TO SLED FOR TESTING?

6 A YES, SIR, I DID.

7 Q DOCTOR, IF WOULD YOU TELL THE JURY FROM A
8 PHYSIOLOGICAL STANDPOINT WHAT OCCURRED TO THIS VICTIM
9 WITH THAT BULLET IMPACT? WHAT OCCURRED, WHAT DAMAGE
10 OCCURRED AND WHAT ULTIMATELY CAUSED, YOU SAID BRAIN
11 DEATH, WHAT CAUSED HIS DEATH IN THAT REGARD?

12 A THE BULLET WENT THROUGH THE BRAIN NOT ONCE BUT
13 TWICE. THE BULLET HAS TWO FUNCTIONS OF DESTRUCTION.
14 ONE IS THE ACTUAL TEARING ALONG THE PATH, JUST SIMPLY
15 THE BULLET GOING THROUGH, BUT THE VELOCITY OF THE
16 BULLET WILL CREATE A FALSE CAVITY THAT THE TISSUE
17 EXPAND AS GASSES AROUND THE BULLET AND PRESSURE AND
18 YOU GET MORE DAMAGE THAN SIMPLY THE TRACK. A .45
19 CALIBER BULLET IS ABOUT A HALF AN INCH IN DIAMETER.
20 SO INSTEAD OF A HALF INCH DIAMETER TRACK OF DAMAGE
21 YOU END UP WITH SEVERAL INCH DIAMETER OF TRACK AND IN
22 THIS CASE UP TO THREE AND A HALF TO FOUR INCHES OF
23 CAVITY IN THE BRAIN. SO IT'S GOING THROUGH CAUSING
24 THAT MUCH DESTRUCTION. YOUR BRAIN IS AROUND 1500
25 GRAMS, ABOUT TWO POUNDS, AND IT'S, I MEAN, IT'S

1 SOMETHING YOU CAN HOLD IN YOUR HAND LIKE THIS, SO IF
2 YOU PUT A THREE INCH TRACK HERE AND A THREE INCH
3 TRACK THERE, JUST ABOUT ALL THE BRAIN IS GOING TO BE
4 DESTROYED. THE CENTER PART OF THE BRAIN WHERE THIS
5 BULLET WENT THROUGH IS ALL THE CONNECTIONS FROM THE
6 ENTIRE SIDE OF THE BRAIN. THE BRAIN IS BASICALLY TWO
7 LOAVES, THE RIGHT LOBE AND THE LEFT LOBE, AND ALL
8 THOSE CONNECTIONS COME INTO THE CENTER AND THEN OF
9 COURSE ALL THE CONNECTIONS GO DOWN THE SPINAL CORD.
10 WHERE YOU GOING THROUGH THE CENTER CAUSING ALL THIS
11 DESTRUCTION, ALL THOSE CONNECTIONS ARE BEING SEVERED,
12 SO YOUR BRAIN IS NOT ABLE TO FUNCTION, NOT ABLE TO
13 COMMUNICATE. THE BRAIN, WHEN IT'S INJURED, JUST LIKE
14 ANYTHING ELSE LIKE A SPRAIN OF AN ANKLE OR THE SPRAIN
15 OF A FOOT, YOU START HAVING SWELLING. THERE IS
16 MARKED SWELLING THAT OCCURS IN THERE WHICH FURTHER
17 DAMAGES THE BRAIN THEN THERE IS HEMORRHAGE OF COURSE
18 BECAUSE ALL THESE BLOOD VESSELS ARE TORN OR CUT. SO
19 YOU HAVE ALL THIS SECONDARY INJURY IN ADDITION TO THE
20 BULLET INJURY THAT STARTS COMPRESSION OF THE BRAIN.
21 THE BRAIN IS IN THE SKULL WHICH IS FIXED, IT CAN'T
22 EXPAND LIKE YOUR SKIN CAN, WITH A POP UP YOU CAN SEE
23 A BRUISE OR A SWELLING OCCUR, SO THE BRAIN JUST DIES,
24 YOU KNOW, SIMPLY FROM THAT.

25 THE BASE OF THE BRAIN HAS CONTROL OF HEART

1 RATE, RESPIRATORY ACTIVITY, AND SOMETIMES YOU CAN
2 HAVE DAMAGE TO THE UPPER PART OF THE BRAIN BUT YET
3 YOUR BODY CAN STILL BREATHE OR YOU HAVE HEART RATE
4 BECAUSE IT'S ONLY THE BASE OF THE BRAIN THAT'S SAVED
5 ON THIS. IN MR. HOVIS'S CASE, WHEN HE WAS SEEN, HE
6 HAD NO RESPIRATORY ACTIVITY, HENCE THE TUBE WAS PUT
7 IN AND THE VENTILATOR TO HELP HIM BREATHE. HE STILL
8 HAD A HEART RATE BUT IT HAD TO BE SUPPORTED WITH
9 DRUGS. HE HAD NO REACTION TO PUPILS, THEY WERE
10 FIXED, WHICH IS INDICATING THAT THE BRAIN IS NOT ABLE
11 TO FUNCTION ANYMORE. IT'S BASICALLY DEAD. HE HAD NO
12 COUGH REFLEX, GAG REFLEX; THERE IS NO RESPONSE TO ANY
13 STIMULANTS AND THIS WE USE PIN PRICKS, THAT SORT OF
14 THING, TO TEST SOMEBODY'S STIMULATION, SO FOR ALL
15 ESSENTIAL PURPOSES EVERYTHING IN HIS BRAIN IS DEAD
16 EXCEPT HIS HEART ACTIVITY AND SLOWLY THAT WILL GO.
17 BUT WE CAN MEDICALLY SUPPORT HEART RATE TO A CERTAIN
18 EXTENT BECAUSE OUR HEART IS PARTLY AUTONOMOUS, IT CAN
19 BEAT ON ITS OWN WITHOUT ANY STIMULATION FROM THE
20 BRAIN IF NEED BE, SO THIS IS BASICALLY BRAIN DEATH;
21 BUT WHEN YOU HAVE SO MUCH DESTRUCTION BY THE BULLET
22 ESPECIALLY GOING FORWARD, BOUNCING BACK, THE
23 SWELLING, THE BLEEDING IN THERE, IT'S VERY QUICKLY
24 THAT YOU GET BRAIN DEATH.

25 Q SO BASICALLY FROM THE HARVESTING PROCEDURE THAT

1 WAS KEEPING THE HEART ALIVE LONG ENOUGH TO KEEP THOSE
2 ORGANS VIABLE TO TAKE THEM TO DONATE?

3 A YES, SIR. YOU HAVE TO HAVE A VIABLE ORGAN TO BE
4 ABLE TO DONATE AND YOU KNOW WITHOUT BLOOD FLOW THE
5 ORGANS DIE VERY QUICKLY.

6 Q OKAY. DID YOU SEE AND AGAIN UNDERSTANDING THERE
7 WAS AN ORGAN DONATION, BUT DID YOU SEE ANY
8 INTERVENING CAUSE, ANY OTHER PRE-EXISTING CONDITION
9 HE HAD OR ANYTHING THAT WOULD CAUSED HIS DEATH
10 INDEPENDENT OF THIS GUNSHOT WOUND?

11 A NO, SIR, HE APPEARED TO BE A VERY HEALTHY YOUNG
12 MAN.

13 Q OKAY. SO BASED ON YOUR EXAMINATION THE PIECE OF
14 LEAD THAT YOU RECOVERED BASED ON YOUR EXPERIENCE WERE
15 YOU ABLE TO DETERMINE WHAT YOU BELIEVED IT WAS
16 CONSISTENT WITH A SIZE-WISE CALIBER-WISE?

17 A YES, SIR, IT APPEARED TO BE A .45 CALIBER
18 BULLET.

19 Q AND AGAIN YOU RECOVERED THAT AND SENT THAT TO
20 SLED. ULTIMATELY WERE YOU ABLE TO DETERMINE WITHIN A
21 REASONABLE DEGREE OF MEDICAL CERTAINTY THE CAUSE OF
22 DEATH OF MR. HOVIS?

23 A CAUSE OF DEATH WAS A GUNSHOT WOUND TO THE HEAD.

24 Q OKAY. AND WHAT IS THE MANNER OF DEATH?

25 A MANNER OF DEATH IS HOMICIDE.

1 Q THANK YOU, SIR. ANSWER ANY QUESTIONS
2 MR. GREELEY MAY HAVE.

3 MR. GREELEY: I HAVE NO QUESTIONS.

4 THE COURT: YOU CAN STEP DOWN AND BE
5 EXCUSED. WE APPRECIATE YOUR TIME.

6 A THANK YOU, SIR.

7 THE COURT: CALL YOUR NEXT WITNESS.

8 MR. POPE: THE STATE WOULD CALL JOHN
9 ROBERTS.

10 JOHN ROBERTS, BEING FIRST DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. POPE:

13 Q MR. ROBERTS, STATE YOUR NAME FOR THE JURY AND
14 THE COURT REPORTER AND SPELL YOUR LAST NAME PLEASE?

15 A JOHN GRAY DODD ROBERTS. R-O-B-E-R-T-S.

16 Q TELL THE JURY WHERE YOU ARE EMPLOYED?

17 A I'M EMPLOYED AT THE SOUTH CAROLINA LAW
18 ENFORCEMENT DIVISION COMMONLY KNOWN AS SLED IN THE
19 TRACE EVIDENCE DEPARTMENT.

20 Q OKAY. AND COULD YOU TELL THE JURY WHAT IS TRACE
21 EVIDENCE?

22 A TRACE EVIDENCE IS THE STUDY OF THINGS THAT ARE
23 BASICALLY SMALLER THAN YOU CAN SEE. AT SLED WE DO
24 FIBERS, EXPLOSIVES, GUNSHOT RESIDUE, BULLET HOLE
25 ANALYSIS, FLAMMABLES, AND PAINT. BASICALLY THINGS

1 THAT THEY COLLECT OFF BODIES OR OFF CRIME SCENES THAT
2 YOU CAN'T SEE AND NEED ANALYSIS BY SOMETHING OTHER
3 THAN VISION.

4 Q OKAY. AND WHAT KIND OF BACKGROUND, EDUCATION,
5 AND TRAINING THAT ALLOWS YOU TO PERFORM THOSE TESTS?

6 A I HAVE A BACHELOR'S DEGREE IN SCIENCE, BACHELOR
7 OF SCIENCE DEGREE IN CHEMISTRY FROM TEXAS A & M
8 CORPUS CHRISTI. I HAVE BEEN RECEIVING IN-HOUSE AND
9 CONTINUE TO RECEIVE IN-HOUSE TRAINING AT SLED IN THE
10 VARIOUS SUBDISCIPLINES OF TRACE EVIDENCE. CURRENTLY
11 DOING GUNSHOT RESIDUE AND BULLET HOLE ANALYSIS.

12 Q AND HOW LONG HAVE YOU BEEN TESTING AND DOING
13 TRACE TESTING WITH SLED?

14 A I'VE BEEN DOING GUNSHOT RESIDUE FOR JUST OVER A
15 YEAR. IN THAT YEAR I'VE ANALYZED APPROXIMATELY 2000
16 GUNSHOT RESIDUE KITS.

17 MR. POPE: YOUR HONOR, AT THIS POINT I
18 WOULD TENDER MR. ROBERTS AS AN EXPERT IN FORENSICS
19 TRACE ANALYSIS.

20 THE COURT: ANY VOIR DIRE?

21 MR. GREELEY: IT'S MY UNDERSTANDING THAT
22 HIS TESTIMONY WOULD BE PRIMARILY GEARED TOWARD THE
23 GUNSHOT RESIDUE.

24 MR. POPE: THAT'S CORRECT.

25 MR. GREELEY: IN REGARDS TO GUNSHOT

1 RESIDUE, I HAVE NO OBJECTION.

2 THE COURT: I FIND HE'S QUALIFIED.

3 Q MR. ROBERTS, IF YOU WOULD TELL THE JURY WHAT GSR
4 IS OR WHAT ATOMIC ABSORPTION OR WHATEVER YOU CALL IT,
5 WHAT IS GUNSHOT RESIDUE TESTING?

6 A GUNSHOT RESIDUE OR GSR IS THE COLLECTION OF
7 PARTICLES THAT EXIT A WEAPON WHEN IT IS FIRED. WHEN
8 A WEAPON IS FIRED, WHEN YOU PULL THE TRIGGER, THE
9 FIRING PIN STRIKES THE PRIMER ON THE BACK OF THE
10 CARTRIDGE CASE. IT'S THE LITTLE ROUND SILVER PART ON
11 THE BACK OF THE BRASS. THIS PRIMER CONTAINS SEVERAL
12 CHEMICALS, THREE OF WHICH WE'RE VERY INTERESTED IN
13 WHEN IT COMES TO GSR ANALYSIS, IT CONTAINS LEAD
14 STYPHNATE, BARIUM NITRITE, AND ANTIMONY SULFATE.
15 THESE THREE CHEMICALS, WHEN THEY COMBINE, THEY EXIT
16 OUT ANY AVAILABLE HOLE OR CREVICE IN THE WEAPON; FOR
17 EXAMPLE THE CYLINDER GAP OF A REVOLVER OR THE EJECT
18 PORT OF A SEMI-AUTOMATIC, THEY HIT THE AIR, THEY
19 COMBINE AND THEY COOL. THEY COOL TO VERY FINE
20 SUBMICROSCOPIC PARTICLES AND THEN THEY SETTLE ON
21 ANYTHING IN THE VICINITY. SO IF YOU ARE FIRING A
22 HANDGUN, CHANCES ARE YOU ARE GOING TO GET GUNSHOT
23 RESIDUE ON YOUR HANDS.

24 Q OKAY. IF YOU ARE FIRING ONE. WHAT ABOUT IF YOU
25 ARE IN PROXIMITY TO A GUN THAT'S BEING FIRED?

1 A IF YOU ARE CLOSE TO A GUN BEING FIRED, YOU COULD
2 ALSO GET GUNSHOT RESIDUE ON YOUR HANDS. SAY WITHIN
3 ABOUT SIX FEET IN FRONT OF THE GUN AND PROBABLY TWO
4 AND A HALF TO THREE FEET TO EITHER SIDE.

5 Q THESE ITEMS THAT YOU ARE LOOKING FOR, WHAT IS
6 THE NATURE OF THOSE ITEMS? IF I SHOT A GUN, DOES IT
7 STAY WITH ME OR WHAT IS THE NATURE OF THOSE ITEMS?

8 A WHEN YOU SHOOT A GUN THESE PARTICLES ARE FAIRLY
9 FRAGILE. IF YOU DIP YOUR HANDS IN A BUCKET OF FLOUR
10 AND YOU WALK AROUND FOR THREE OR FOUR HOURS, YOU'LL
11 NOTICE THE FLOUR DISAPPEARS PRETTY QUICK. THAT'S
12 WHAT GSR IS. THE MORE YOU WALK AROUND WITH IT ON
13 YOUR HANDS THE MORE LIKELY YOU ARE TO RUB YOUR HANDS
14 ON SOMETHING, WASH YOUR HANDS OFF, STICK YOUR HANDS
15 IN YOUR POCKETS, AND IT'S GONE. IT'S FAIRLY FRAGILE
16 STUFF.

17 Q DO LIQUIDS, I.E., LIKE YOU JUST SAID WASHING OR
18 BLOOD OR ANYTHING OF THAT NATURE, WOULD THAT HAVE ANY
19 EFFECT ON REMOVING GSR?

20 A WASHING YOUR HANDS WILL DEFINITELY REMOVE IT
21 FROM YOUR HANDS. USING HAND SANITIZER REMOVES IT
22 FROM YOUR HANDS OR DAMAGES TO IT A DEGREE THAT I
23 CAN'T DETECT IT. BLOOD IN LARGE AMOUNTS WILL REMOVE
24 IT. ANYTHING WITH A HIGH FLOW RATE WILL REMOVE IT.
25 IT'S JUST LIKE WASHING DIRT OFF YOUR HANDS.

1 Q YOU DO A TEST ON, IS THERE A CERTAIN WINDOW THAT
2 SLED PRESCRIBES OR SUGGESTS AS FAR AS LAW ENFORCEMENT
3 IN COLLECTION OF GUNSHOT RESIDUE TEST?

4 A YES, SIR. OUR WINDOW OF ANALYSIS IS SIX HOURS.
5 FROM THE TIME YOU SHOOT TO THE TIME THAT SOMEONE
6 TAKES A KIT OFF YOUR HANDS IT'S SIX HOURS.

7 Q OKAY. AND DO YOU CONSIDER INTERVENING FACTORS
8 AS YOU INDICATED OF WHETHER IT WOULD BE APPROPRIATE
9 TO RETRIEVE THE TEST OR NOT?

10 A YES, SIR.

11 Q OKAY. WHAT TYPE OF FACTORS AGAIN WOULD YOU WANT
12 TO KNOW?

13 A I'D WANT TO KNOW IF HE HAD BEEN TO THE HOSPITAL
14 AND RECEIVED CARE. WHEN THEY TAKE YOU TO THE
15 HOSPITAL THEY WASH YOUR HANDS TO PUT THOSE LINES IN,
16 TO PUT THE IV LINES IN, THAT GETS RID OF THE EVIDENCE
17 THAT I WOULD NEED.

18 Q OKAY. WHAT ABOUT OTHER INTERVENING FACTORS. IF
19 I LEAVE AND I GO AND DO OTHER THINGS?

20 A IF YOU LEAVE AND YOU GO, CHANCES ARE YOU ARE NOT
21 GOING TO KEEP YOUR HANDS OUT OF YOUR POCKETS. YOU
22 ARE GOING TO WALK AROUND AND RETRIEVE KEYS OUT OF
23 YOUR POCKETS WHEN YOU STICK YOUR HAND IN YOUR
24 POCKETS; YOU ARE GOING TO OPEN DOORS, YOU ARE GOING
25 TO SHUT DOORS, YOU ARE GOING TO HANG YOUR ARM OUT THE

1 WINDOW, STUFF LIKE THAT REMOVES THE PARTICLES. LIKE
2 I SAID, THEY ARE FAIRLY FRAGILE.

3 Q OKAY. NOW AS PART OF TESTING IN THIS PARTICULAR
4 CASE DID YOU HAVE AN OPPORTUNITY TO RECEIVE A NUMBER
5 OF GSR KITS INCLUDING ONE FROM MR. BOLIN THE
6 DEFENDANT?

7 A YES, SIR.

8 Q OKAY. AND ON ANY OF THE GSR KITS THAT YOU
9 RECEIVED, I THINK PERHAPS YOU RECEIVED FIVE TOTAL, IS
10 THAT CORRECT?

11 A LET ME LOOK AT MY CASE FILE HERE. YES, SIR, I
12 RECEIVED FIVE GSR KITS.

13 Q ON ANY OF THE GSR KITS DID YOU HAVE A POSITIVE
14 FOR GUNSHOT RESIDUE WHETHER IT BE MR. BOLIN OR ANY OF
15 THE GSR KITS YOU RECEIVED?

16 A I DIDN'T HAVE A POSITIVE FOR GUNSHOT RESIDUE. I
17 HAD A POSITIVE FOR LEAD ON ONE OF THE GSR KITS AND I
18 TOOK IT TO OUR NEXT SET OF ANALYSIS WHICH IS A
19 SCANNING ELECTRON MICROSCOPE TO ACTUALLY PHYSICALLY
20 SEARCH FOR THE PARTICLES. THESE PARTICLES ARE ROUND,
21 THEY SHINE REALLY BRIGHT IN THIS MICROSCOPE. THEY
22 ARE EASY TO SEE. I DID NOT FIND ANYTHING THAT WOULD
23 BE CONSIDERED GUNSHOT RESIDUE LOOKING THROUGH THE
24 MICROSCOPE; THEREFORE, THAT ANALYSIS WAS INCONCLUSIVE
25 FOR THAT.

1 Q OKAY. AND DO YOU HAVE A DESIGNATION OF WHICH
2 INDIVIDUAL THAT WAS THAT YOU RECEIVED THAT ON?

3 A RICKY DEAL.

4 Q AND AGAIN YOU JUST SAID THERE IS LEAD, YOU CAN'T
5 SAY THAT HE HAD GUN POWDER RESIDUE?

6 A NO, SIR, I CANNOT SAY THAT IT WAS GUN POWDER
7 RESIDUE.

8 Q BUT CLEARLY NONE OF THE OTHERS TESTED INCLUDING
9 MR. BOLIN HAD ANY INDICATION OF GUN POWDER?

10 A THEY WERE ALL NEGATIVE, YES, SIR.

11 Q BASED ON YOUR EXPERT OPINION DOES THAT PRECLUDE
12 THE POSSIBILITY THAT HE HAS FIRED A WEAPON?

13 A NO, SIR.

14 Q ALL RIGHT.

15 MR. POPE: BEG THE COURT'S INDULGENCE.

16 Q AGAIN JUST FOR CONFIRMATION, ALL THE ONES YOU
17 RECEIVED WITH THE EXCEPTION OF THE LEAD ON MR. DEAL
18 WERE NEGATIVE, IS THAT CORRECT?

19 A THAT'S CORRECT, SIR.

20 Q ALSO PURSUANT TO MY REQUEST DID YOU REVIEW THE
21 INTAKE SHEETS FROM THE DNA LAB AT SLED?

22 A YES, SIR.

23 Q OKAY. AND DID THEY RECEIVE A VIAL OF BLOOD THAT
24 WAS REQUESTING TOXICOLOGY ON THE VICTIM IN THIS CASE?

25 A THAT'S WHAT THE REPORT INDICATES, YES, SIR.

1 Q OKAY. AND ARE YOU AWARE FROM THE INDICATION OF
2 THAT REPORT WHAT WAS DONE WITH THAT VIAL OF BLOOD?

3 A ACCORDING TO THE REPORT IT SAYS A KNOWN BLOOD
4 STANDARD FROM EACH INDIVIDUAL SUBMITTED IN THIS CASE
5 HAS BEEN PRESERVED AS A DRIED SPECIMEN. THE VIAL
6 LABEL HAS BEEN REMOVED AND WILL BE RETAINED WITH THE
7 DRIED SPECIMEN AND THE BLOOD STANDARD WAS FROM BOBBY
8 R. HOVIS.

9 Q OKAY. AND SO A BLOOD STANDARD RETAINED AS THE
10 DRY SPECIMEN FOR DNA, YOU CAN TEST DNA WITH A DRIED
11 SPECIMEN, CORRECT?

12 A YES, SIR.

13 Q CAN YOU TEST TOX ONCE YOU DRY THE BLOOD?

14 A NO, SIR, I DON'T THINK SO.

15 Q SO THAT SPECIMEN WAS DRIED TOX COULD NOT BE DONE
16 ON IT?

17 A THAT'S CORRECT.

18 Q ANSWER ANY QUESTIONS MR. GREELEY MAY HAVE.

19 MR. GREELEY: MAY IT PLEASE THE COURT.

20 THE COURT: CERTAINLY.

21 CROSS EXAMINATION BY MR. GREELEY:

22 Q SO AGENT ROBERTS, IT APPEARS THAT SLED SENT IT
23 TO THE WRONG ROOM, THE TOXICOLOGY?

24 A FROM WHAT I UNDERSTAND, IT WAS SENT TO DNA.

25 Q AND IS DNA THE SAME ROOM AS TOXICOLOGY?

1 A NO, SIR.

2 Q IT'S NOT?

3 A NO, SIR.

4 Q BUT ON THE REPORT IT WAS SENT FOR TOXICOLOGY, IS
5 THAT CORRECT?

6 A ACCORDING MY LOG-IN SHEET IT WAS DESTINED FOR
7 TOXICOLOGY.

8 Q OKAY. AND WHEN IT GOT TO SLED RATHER THAN GOING
9 TO TOXICOLOGY IT WAS SENT TO DNA, CORRECT?

10 A ACCORDING TO THIS REPORT, YES.

11 Q OKAY. AND THEY TOOK A LITTLE BIT OF THE BLOOD
12 FOR DRIED TO DO A DNA ON IT WHICH WASN'T REQUESTED,
13 IS THAT CORRECT?

14 A ACCORDING TO THE LOG-IN SHEET, NO, IT WAS NOT
15 REQUESTED.

16 Q AND THEN THROUGH THE REST OF IT PROBABLY
17 DISPOSED OF IT SOMEHOW?

18 A I HAVE NO IDEA WHAT THEY DID WITH THE REST OF
19 IT.

20 Q BUT THEY NEVER DID DO A TOXICOLOGY REPORT ON
21 THAT BLOOD FROM MR. HOVIS?

22 A ACCORDING TO WHAT I HAVE, NO, THEY DID NOT.

23 Q NOW YOU SAY THERE IS A SIX HOUR WINDOW?

24 A YES, SIR.

25 Q AND SO IF THIS INCIDENT OCCURRED CLOSE TO

1 MIDNIGHT, YOU ARE LOOKING AT ABOUT SIX IN THE
2 MORNING?

3 A YES, SIR.

4 Q CAN GUNSHOT RESIDUE BE DETERMINED OR TESTED ON
5 THINGS OTHER THAN HUMAN HANDS?

6 A YES, SIR.

7 Q THEY CAN?

8 A YES.

9 Q WHAT TYPES OF THINGS?

10 A BASICALLY ANYTHING YOU CAN APPLY A PARTICLE LIFT
11 ON. A PARTICLE LIFT IS SIMPLY ALUMINUM, A FLAT
12 ALUMINUM DISC WITH DOUBLE-SIDED CARBON TAPE ON IT.

13 Q OKAY. SO IT CAN BE DONE ON PLASTIC?

14 A YES.

15 Q IT CAN BE DONE ON GLASS?

16 A YES.

17 Q OKAY. YOU SAID THAT YOU ALSO DO BULLET HOLE
18 ANALYSIS?

19 A YES, SIR.

20 Q YOU WEREN'T ASKED TO DO THAT IN THIS CASE,
21 THOUGH, WERE YOU?

22 A NO, SIR.

23 MR. GREELEY: I DON'T HAVE ANYTHING
24 FURTHER.

25 REDIRECT EXAMINATION BY MR. POPE:

1 Q BULLET HOLE ANALYSIS, FOR EXAMPLE, GOING THROUGH
2 A GARMENT, SEEING IF YOU HAVE WHITE, IF YOU HAVE A
3 BULLET?

4 A YES. WE GET CLOTHES SUBMITTED TO US AND THE
5 SUBMITTING AGENCY ASKS US TO CHECK AND SEE IF A
6 BULLET HAS PASSED THROUGH IT AND IF WE CAN DETERMINE
7 A DISTANCE GIVEN THE PATTERNS THAT WOULD REACT WITH
8 CHEMICALS THAT WE USE TO ANALYZE THE CLOTHES.

9 Q SO IF THE BULLET WOUND WAS IN THE BACK OF THE
10 HEAD YOU WOULDN'T EXPECT TO RECEIVE A SHIRT TO MAKE
11 THAT DETERMINATION?

12 A NO, SIR.

13 Q THANK YOU, SIR.

14 RE CROSS EXAMINATION BY MR. GREELEY:

15 Q YOU SAY YOU CAN EXAMINE BULLET HOLES TO
16 DETERMINE A DISTANCE?

17 A WITHIN A REASONABLE DISTANCE, YES, SIR. ABOUT
18 SIX FEET.

19 Q OKAY. AND THEY'D BE THROUGH CLOTH?

20 A YES, SIR.

21 Q WOULD IT BE THROUGH ANYTHING ELSE?

22 A (NO RESPONSE.)

23 Q COULD IT BE THROUGH METAL OR PLASTIC?

24 A I WON'T SAY THAT IT CAN'T BE DONE. I HAVE NOT
25 DONE ANYTHING THROUGH METAL OR PLASTIC.

1 Q THANK YOU.

2 THE COURT: THANK YOU. YOU CAN STEP DOWN
3 AND BE EXCUSED. WE APPRECIATE YOUR TIME. THANK YOU.
4 CALL YOUR NEXT WITNESS.

5 MR. POPE: BEG THE COURT'S INDULGENCE.
6 YOUR HONOR, THE NEXT WITNESS WOULD BE DAN DEFREESE
7 FROM THE STATE LAW ENFORCEMENT DIVISION. AND IN THE
8 INTEREST OF THE TIME, HE'S BEEN REVIEWING THE
9 EVIDENCE OUTSIDE THE COURTROOM. I'M GOING TO GO AND
10 RETRIEVE THE EVIDENCE AND I WILL BRING HIM BACK IN.

11 THE COURT: ALL RIGHT.

12 MR. POPE: HE BEAT ME TO IT, YOUR HONOR.

13 DAN DEFREESE, BEING FIRST DULY
14 SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. POPE:

16 Q IS IT LIEUTENANT DEFREESE?

17 A NO, IT'S JUST AGENT.

18 Q JUST AGENT DEFREESE. AGENT DEFREESE, IF YOU
19 WOULD STATE YOUR NAME AND SPELL YOUR LAST NAME
20 PLEASE, SIR?

21 A MY NAME IS FRANK DAN DEFREESE. D-E-F-R-E-E-S-E.

22 Q COULD YOU TELL THE JURY WHERE YOU ARE EMPLOYED?

23 A I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT
24 DIVISION AND I'M ASSIGNED TO THE FORENSIC LABORATORY
25 IN COLUMBIA.

1 Q AND HOW LONG HAVE YOU BEEN WITH THE SOUTH
2 CAROLINA LAW ENFORCEMENT DIVISION?

3 A FOR 39 YEARS.

4 Q SOUNDS LIKE YOU ARE TIRED?

5 A I AM, BUT STILL LOVE IT.

6 Q IN PARTICULAR NOW YOU SAID YOU WERE ASSIGNED TO
7 THE FORENSIC LAB?

8 A YES, SIR.

9 Q OKAY. AND SPECIFICALLY IS THE AREA WITHIN THE
10 FORENSIC LAB THAT YOU WORK THERE AT SLED?

11 A YES, I'M ASSIGNED TO THE PART OF THE LABORATORY
12 WHERE WE DO THE ANALYSIS OF FIREARM AND TOOL MARK
13 EVIDENCE.

14 Q OKAY. AND WHAT DOES THAT REALLY ENTAIL? WHAT
15 DO YOU DO AS FAR AS ANALYSIS AND THOSE FOLKS
16 PARTICULARLY ON FIREARMS, WHAT IS IT THAT YOU DO?

17 A MOST OFTEN IN THE FIELD OF FIREARMS
18 IDENTIFICATION WE'RE ASKED TO IDENTIFY A PARTICULAR
19 BULLET THAT'S BEING FIRED BY A PARTICULAR GUN OR
20 IDENTIFY A PARTICULAR CARTRIDGE CASE BACK TO THE GUN
21 THAT FIRED IT. THOSE ARE THE TWO MOST COMMON
22 REQUESTS WE GET. WE ALSO DO THE SAFETY AND FUNCTION
23 TESTING OF FIREARMS, WE DO SOME DISTANCE
24 DETERMINATION WHERE SHOTGUNS ARE INVOLVED, AND OF
25 COURSE WE DO THE ANALYSIS OF TOOL MARKS AND PHYSICAL

1 SECURITY DEVICES.

2 Q CAN YOU TELL THE JURY YOUR BACKGROUND,
3 EDUCATION, AND TRAINING, MAYBE NOT THE WHOLE 39
4 YEARS, BUT WHAT YOU GOT THAT ALLOWS YOU TO PERFORM
5 THIS TESTING?

6 A WELL, I'VE GOT A BACHELOR OF SCIENCE DEGREE FROM
7 THE UNIVERSITY OF SOUTH CAROLINA, BUT MY PRINCIPLE
8 TRAINING IN THE FIELD OF FIREARMS IDENTIFICATION
9 OCCURRED AT SLED. BUT AFTER MY EMPLOYMENT WHICH
10 BEGAN IN 1967 I WAS ASSIGNED TO THE FIREARMS
11 LABORATORY AND I UNDERTOOK A PERIOD OF INSTRUCTION
12 THAT LASTED ABOUT TWO AND A HALF YEARS. I STUDIED
13 THE TECHNIQUES OF FIREARM AND TOOL MARK ANALYSIS
14 UNDER LIEUTENANT MILLER KATE. LIEUTENANT KATE
15 ESTABLISHED THE SLED LABORATORY WHEN SLED ITSELF WAS
16 ESTABLISHED IN 1947. LIEUTENANT CARL STOAKS WAS ALSO
17 ONE OF MY TRAINERS AT THAT TIME. AND AFTER I
18 COMPLETED ABOUT TWO AND A HALF YEARS OF TRAINING AND
19 INSTRUCTION UNDER THEIR DIRECT SUPERVISION, I BEGAN
20 ACCEPTING CASES ON MY OWN AND TESTIFYING AS TO MY
21 RESULTS WHICH I'VE BEEN DOING SINCE 1969.

22 Q YOU EVER KEEP UP WITH HOW MANY TESTS YOU
23 PERFORMED?

24 A ACTUALLY, NO. IN THE EARLY YEARS WE WEREN'T
25 REQUIRED TO DO IT AND I'M SORRY THAT I DIDN'T, BUT I

1 ESTIMATE I'VE PROBABLY TESTIFIED BETWEEN 6 AND 700
2 TIMES AND YOU KNOW I'VE EXAMINED THOUSANDS UPON
3 THOUSANDS OF CASES.

4 MR. POPE: YOUR HONOR, AT THIS POINT I
5 WOULD TENDER MR. DEFREESE AN EXPERT IN FORENSIC
6 FIREARMS IDENTIFICATION.

7 THE COURT: ANY VOIR DIRE?

8 MR. GREELEY: NO VOIR DIRE.

9 THE COURT: I FIND HE IS QUALIFIED.

10 Q MR. DEFREESE, FOR STARTERS I'D LIKE YOU, IF YOU
11 WOULD, DESCRIBE A LITTLE BIT TO THE JURY ABOUT THE,
12 KIND OF SOME OF THE NOMENCLATURE ABOUT GUNS IN
13 GENERAL. CAN YOU TELL THEM THE DIFFERENCE IN, FOR
14 EXAMPLE, A REVOLVER VERSUS A SEMI-AUTOMATIC?

15 A WELL, A REVOLVER IS GENERALLY SPEAKING A TYPE OF
16 HANDGUN THAT HAS ONE BARREL AND IT HAS NUMEROUS
17 CHAMBERS THAT ARE ALL LOCATED IN A CYLINDER. IT CAN
18 HAVE GENERALLY ANYTHING FROM FIVE TO ABOUT NINE OR
19 TEN DEPENDING UPON THE CALIBER. NOW THE CYLINDER
20 ROTATES TO BRING A CHAMBER INTO ALIGNMENT WITH THE
21 BARREL AT THE INSTANT OF FIRING. REVOLVERS CAN HAVE
22 MECHANISMS THAT PERMIT THEM TO BE COCKED BY SIMPLY
23 PULLING THE TRIGGER OR TO BE COCKED MANUALLY PRIOR TO
24 THE TRIGGER BEING PULLED. IN FIRING A REVOLVER ONE
25 WOULD TYPICALLY LOAD THE CYLINDER WITH HOWEVER MANY

1 CARTRIDGES YOU CARRY TO SHOOT UP TO ITS MAXIMUM
2 CAPACITY AND THEN YOU'D SHOOT THEM AND THEN IT WOULD
3 BE NECESSARY FOR YOU TO MANUALLY OPEN THE CYLINDER
4 ORB TO MANUALLY REMOVE THE FIRED CARTRIDGE CASES.
5 THAT IS, WHEN A REVOLVER FIRES IT DOES NOT
6 AUTOMATICALLY EJECT A FIRED CARTRIDGE CASE EVERY TIME
7 YOU PULL THE TRIGGER.

8 A SEMI-AUTOMATIC PISTOL OR SEMI-AUTOMATIC
9 RIFLE FOR THAT MATTER OR SHOTGUN HAS A MECHANISM
10 WHICH AUTOMATICALLY RELOADS THE FIREARM AFTER A SHOT
11 IS FIRED. THIS REQUIRES THE PREVIOUS SHOT, THE
12 PREVIOUSLY FIRED CARTRIDGE CASE TO BE REMOVED FROM
13 THE CHAMBER WHICH IS THE ENLARGED AREA AT THE BACK OF
14 THE BARREL THAT IS CUT OUT TO ACCOMMODATE THE
15 CARTRIDGE. SO IN A SEMI-AUTOMATIC FIREARM FOR EVERY
16 PULL OF A TRIGGER, A SHOT IS FIRED, AND A CARTRIDGE
17 CASE IS AUTOMATICALLY EXTRACTED AND EJECTED FROM THE
18 FIREARM AND THEN IF THERE IS AMMUNITION PRESENT IN
19 THE FIREARM IT'S RELOADED TO PREPARE IT FOR THE NEXT
20 SHOT.

21 Q I SHOW YOU WHAT'S BEEN MARKED AS I BELIEVE AS
22 STATE'S EXHIBIT 137. TAKE A LOOK AT THIS ITEM.

23 A YES, SIR.

24 Q DID YOU RECEIVE THAT ITEM AS PART OF THE TESTING
25 IN THIS CASE?

1 A I DID.

2 Q I'M GOING TO ASK YOU IF YOU COULD TO REMOVE THE
3 GUN LOCK. HERE'S THE KEY RIGHT HERE. AND HAVE YOU
4 DETERMINED IS THAT GUN EMPTY?

5 A IT IS.

6 Q IS THE MAGAZINE ALSO EMPTY?

7 A IT'S NOT LOADED NOR IS ITS MAGAZINE.

8 Q OKAY. AND IS THAT THE CONDITION YOU RECEIVED IT
9 IN AS FAR AS BEING EMPTY WHEN YOU RECEIVED IT
10 INITIALLY?

11 A YES.

12 Q OKAY.

13 MR. POPE: YOUR HONOR, WITH THE COURT'S
14 PERMISSION I ASK HE BE ALLOWED TO STEP DOWN.

15 THE COURT: CERTAINLY.

16 Q YOU WERE DESCRIBING TO THE JURY THE
17 SEMI-AUTOMATIC WEAPON. IS THIS PARTICULAR WEAPON IS
18 THIS A REVOLVER OR A SEMI-AUTOMATIC WEAPON.

19 A THIS IS A SEMI-AUTOMATIC PISTOL.

20 Q CAN YOU DESCRIBE TO THE JURY, KIND OF ITS
21 NOMENCLATURE, WE'RE TALKING ABOUT EJECTION, PARTS OF
22 THE BULLET, WHAT DOES THAT ENTAIL WITH THIS? HOW IS
23 THIS WEAPON USED?

24 A PERHAPS I CAN DESCRIBE HOW THE WEAPON FUNCTIONS.
25 IF WE WERE TO PREPARE THIS FIREARM FOR FIRING WE

1 COULD EITHER PUT AN UNFIRED CARTRIDGE IN THE CHAMBER
2 AT THE REAR OF THE BARREL MANUALLY, WHICH IS SIMPLE,
3 A LITTLE DIFFICULT TO DO, OR MORE COMMONLY WE WOULD
4 PLACE A NUMBER OF CARTRIDGES IN THE MAGAZINE
5 ASSEMBLY. AND THIS IS A DETACHABLE BOX MAGAZINE THAT
6 GOES WITHIN THE GRIP OF THE PISTOL. THIS MAGAZINE
7 WILL HOLD, IT'S INTENDED TO HOLD SEVEN CARTRIDGES AT
8 A MAXIMUM. YOU CAN ACTUALLY CRAM OR FORCE EIGHT INTO
9 IT, BUT IT'S ONLY INTENDED TO HOLD SEVEN. AFTER YOU
10 PLACE UP TO SEVEN CARTRIDGES IN THE MAGAZINE THE
11 MAGAZINE ASSEMBLY IS INSERTED IN THE GRIP OF THE
12 PISTOL AND IT'S HELD THERE BY A LATCH. THE SLIDE IS
13 UNDER SPRING TENSION AND AS SOON AS IT'S RELEASED IT
14 WILL GO FORWARD. IN DOING SO, IT WILL GRAB THE TOP
15 OF THE FIRST CARTRIDGE IN THE MAGAZINE AND PUSH THAT
16 CARTRIDGE INTO THE CHAMBER LOCATED AT THE REAR OF THE
17 BARREL. THE PISTOL IS NOW PREPARED FOR FIRING AND IF
18 I GRIP THE PISTOL AND DEPRESS THIS MECHANISM WHICH IS
19 CALLED THE GRIP SAFETY AND IF THE MANUAL SAFETY IS IN
20 THE FIRE POSITION, WHICH IT IS, IF I NOW PULL THE
21 TRIGGER, THE HAMMER WILL FALL, THIS CAUSING THE
22 FIRING PIN GO FORWARD STRIKE THE CARTRIDGE, CAUSE THE
23 CARTRIDGE TO FIRE, CAUSE THE BULLET TO EXIT OUT OF
24 THE BARREL AND SO QUICKLY THAT YOU CAN'T EVEN SEE IT
25 HAPPEN. THE SLIDE WILL COME TO THE REAR, THE FIRED

1 CARTRIDGE CASE THAT WAS IN THE CHAMBER WILL BE
2 EXTRACTED AND EJECTED FROM THE WEAPON, AND THEN THE
3 SLID WILL GO BACK FORWARD AND WILL GRAB THE NEXT
4 CARTRIDGE AND PREPARE IT FOR THE NEXT SHOT TO BE
5 FIRED.

6 Q OKAY. PRIOR TO THE FIRING OF THE FIRST SHOT, IF
7 I'M CARRYING THE PISTOL IN A HOLSTER IS OUT IN MY
8 VEHICLE OR SOMETHING, HOW DO I PREPARE IT FOR
9 ACTUALLY; IN OTHER WORDS, LIKE A REVOLVER DO YOU HAVE
10 TO DO ANYTHING TO ACTIVATE A REVOLVER?

11 A WELL, YOU MAY DEPENDING ON THE DESIGN OF THE
12 REVOLVER. IF IT'S A DOUBLE ACTION REVOLVER NORMALLY
13 IT'S CARRIED WITH THE CYLINDER FULLY LOADED AND IT'S
14 NECESSARY EITHER TO COCK THE REVOLVER AND PROVIDE A
15 LIGHT PULL OF THE TRIGGER TO FIRE IT OR WITH A DOUBLE
16 ACTION REVOLVER A SINGLE LONG PULL OF THE TRIGGER
17 WILL COCK THE HAMMER AND THEN FIRE IT AT SOME POINT
18 IN TIME.

19 Q HOW ABOUT ON THIS SEMI-AUTOMATIC?

20 A ON THIS ONE THIS BEING A SEMI-AUTOMATIC PISTOL
21 IT CAN BE CARRIED IN A NUMBER OF WAYS. IT CAN BE
22 CARRIED IN WHAT THEY CALL COCKED AND LOCKED. THAT IS
23 THAT YOU CAN PUT THE SAFETY ON, HAVE THE CARTRIDGE IN
24 THE CHAMBER, THE HAMMER COCKED, AND PLACE IT IN YOUR
25 HOLSTER OR CARRY IT IN THIS POSITION. THIS BOTHERS A

1 LOT OF PEOPLE. A LOT OF PEOPLE DON'T LIKE TO CARRY,
2 THEY DON'T LIKE TO SEE THAT HAMMER COCKED, SO SOME OF
3 THEM WILL TAKE AND MANUALLY LOWER THE HAMMER AND
4 CARRY IT WITH A LOADED CARTRIDGE IN THE CHAMBER AND
5 THE HAMMER LOWERED. SOME PEOPLE WILL NOT CARRY IT
6 EVEN WITH ONE IN THE CHAMBER. THEY MIGHT LOAD THE
7 MAGAZINE AND KEEP IT SO THEY CAN PULL THE SLIDE
8 QUICKLY AND PREPARE IT FOR FIRING THAT WAY.

9 IT CAN ALSO BE CARRIED IN WHAT AMOUNTS TO
10 A HALF-COCKED POSITION. THIS IS NOT PROVIDED FOR THE
11 PURPOSE OF BEING A TRUE HALF-COCK, IT'S REALLY A
12 SAFETY NOTCH IN CASE THE PRINCIPLE NOTCH FAILS, BUT
13 YOU CAN ALSO CARRY IT IN THIS POSITION AND WHEN THE
14 GUN IS SORT OF PROPERLY, IF YOU PULL THE TRIGGER,
15 NOTHING WILL HAPPEN THEN IT'S NECESSARY TO MANUALLY
16 COCK IT. SO YOU CAN CARRY IT IN A HALF-COCKED OR
17 UNCOCKED POSITION WITH ONE IN THE CHAMBER. IN
18 SOMEWAY YOU HAVE TO BRING THE HAMMER FULLY COCKED
19 POSITION TO PREPARE IT FOR FIRING.

20 Q AND IF YOU DON'T HAVE ONE IN THE CHAMBER YOU
21 HAVE TO --

22 A YOU HAVE TO PULL THE SLIDE TO THE REAR AND THE
23 THE MECHANISM IN THIS GUN IS SUFFICIENT THAT WHEN THE
24 MAGAZINE IS EMPTY IT LOCKS THE SLIDE TO THE REAR, BUT
25 IF THE MAGAZINE WERE FULL, YOU SIMPLY DO THAT AND IT

1 WOULD PREPARE IT FOR FIRING.

2 Q AND THEN ONCE THE PROJECTILE IS EXPELLED ON THIS
3 WEAPON WHAT HAPPENS WITH THE CASING? YOU HAD
4 INDICATED FROM THE STAND IF YOU COULD SHOW THE JURY.

5 A THE CARTILAGE CASE WILL BE EXTRACTED AND EJECTED
6 FROM THIS EJECTION PORT AND IT'S DIRECTION AS, TRAVEL
7 OF DIRECTION IS DEPENDENT ON HOW THE GUN IS HELD;
8 THAT IS WHETHER IT'S HELD STRAIGHT UP OR IT'S HELD ON
9 ITS SIDE, OR IT'S HELD IN SOME OTHER ATTITUDE. IT
10 DEPENDS ON HOW FIRMLY YOU HOLD THE PISTOL. WHEN THE
11 PISTOL IS FIRMLY GRIPPED IT TENDS TO EJECT IN ONE
12 DIRECTION. IF IT IS WEAKLY HELD IT MAY EJECT IN
13 ANOTHER, WHETHER IT'S POINTED DOWN OR POINTED UP, A
14 LOT OF FACTORS CAN AFFECT WHETHER THE CARTRIDGE CASE
15 GOES DIRECTLY OUT TO THE RIGHT OR WHETHER IT GOES UP.
16 IN A FEW CASES IT'S JUST DIFFICULT TO PREDICT WHERE
17 IT WILL GO.

18 Q THE EMPTY CASING ACTUALLY DOES EXPEL FROM THE
19 WEAPON AND THE NEXT BULLET, IF THERE IS ANOTHER
20 AVAILABLE BULLET, ENTERS THE CHAMBER?

21 A RIGHT, THE NEXT UNFIRED CARTRIDGE FROM THE
22 MAGAZINE WILL BE PLACED IN THE CHAMBER AND PREPARED
23 FOR FIRING.

24 Q AND AGAIN YOU THEN, TO COMPEL THAT CARTILAGE,
25 YOU AGAIN HAVE TO PULL THE TRIGGER?

1 A CORRECT, TO MAKE THE GUN FIRE YOU WOULD PULL THE
2 TRIGGER. IT IS OF COURSE POSSIBLE TO REMOVE A
3 CARTRIDGE WITHOUT FIRING IT, BUT IF YOU, FOR THE GUN
4 TO AUTOMATICALLY EXTRACT AND EJECT A FIRED CARTRIDGE
5 CASE YOU NEED TO FIRE IT.

6 Q OKAY. AND YOU HAVE THIS PARTICULAR ITEM FOR
7 TESTING, DID IT APPEAR THAT THIS GUN IS IN WORKING
8 ORDER?

9 A YES, SIR.

10 Q AND WHAT TYPE OF GUN IS THIS?

11 A IT'S A LLAMA.

12 Q THAT'S A BRAND NAME?

13 A THE BRAND NAME IS LLAMA. IT'S A SPANISH MADE
14 PISTOL.

15 Q AND WHAT IS THE CALIBER OF THAT WEAPON?

16 A IT'S A .45 AUTOMATIC CALIBER.

17 Q IF YOU'LL SET THAT DOWN ON THE TABLE PLEASE,
18 SIR. I WANT TO ASK YOU WHILE YOU ARE STILL UP.

19 A YES, SIR.

20 Q IF YOU COULD TELL THE JURY KIND OF THE
21 NOMENCLATURE OF A BULLET. I THINK, DO YOU HAVE A .9
22 AND A .45 WITH YOU THAT YOU CAN SHOW THE JURY?

23 A I DO. THIS IS AN ENTIRE CARTILAGE. THE
24 CARTILAGE CONSISTS OF BULLET AT THE FRONT, A
25 CARTILAGE CASE, AND IN THE BACK OF THAT CARTRIDGE

1 CASE, IN THE MIDDLE, WHAT YOU SEE IS THE LITTLE
2 SILVER DOT IS THE PRIMER. INSIDE THIS CARTRIDGE IS
3 PROPELLANT POWDER. WHEN THE CARTRIDGE IS PLACED IN
4 THE GUN, THE CARTRIDGE CASE IS SURROUNDED AND THE
5 SLIDE, WHAT WE CALL THE BREACH FACE IN THIS CASE,
6 COVERS THE END OF THE CARTRIDGE. THERE IS A HOLE IN
7 THE BREACH FACE THROUGH WHICH THE FIRING PIN WILL
8 PROTRUDE WHEN THE HAMMER FALLS UPON IT. WHEN IT DOES
9 AND IT STRIKES THE PRIMER, THE PRIMER CONTAINS A
10 PERCUSSION SENSITIVE CHEMICAL MIXTURE, THAT'S WHAT
11 MR. ROBERTS WAS TALKING ABOUT, THAT CONTAINS LEAD.
12 IT DETONATES, IT FIRES INSTANTANEOUSLY WHEN IT
13 RECEIVES A SHARP RAP FROM THE FIRING PIN AND THERE IS
14 A SMALL HOLE THAT CONNECTS THE PRIMER'S POCKET WITH
15 THE CENTER PART OF THE CARTRIDGE CASE WHERE THE
16 PROPELLANT POWDER IS. THAT FLASH FROM THE PRIMER IS
17 COMMUNICATED TO THE POWDER AND THE POWDER STARTS TO
18 BURN. POWDER BURNS VERY, VERY QUICKLY TO OUR SENSE.
19 WHEN IT DOES IT BUILDS UP A PRESSURE INSIDE THE
20 CARTRIDGE CASE AND BECAUSE THE CARTRIDGE IS SUPPORTED
21 BY THE BARREL AND THE BREACH, THE PRESSURE HAS ONLY
22 ONE WAY TO GO WHICH IS TO DRIVE THE BULLET DOWN AND
23 OUT OF THE BARREL. THAT PRESSURE IS SEEKING TO FIND
24 THE PATH OF LEAST RESISTANCE AND IN THIS CASE IT IS
25 TO MAKE THE BULLET FLY.

1 THE BULLET OF COURSE IS GRIPPED BY THE
2 INSIDE OF THE BARREL WHERE THE RIFLING IS LOCATED
3 WHICH CAUSES THE BULLET TO SPIN AND BE ACCURATE IN
4 FLIGHT.

5 SHORTLY THEREAFTER IN A SEMI-AUTOMATIC
6 PISTOL SUCH AS THE LLAMA SEMI-AUTOMATIC PISTOL IN
7 THIS CASE, THE ACTION OF THE RECOIL, THE OPPOSITE
8 DIRECTION ACTION OF THE BULLET GOING FORWARD AS THE
9 CARTRIDGE CASE GOING TO THE REAR, THE CARTRIDGE CASE
10 GOES TO THE REAR A SHORT DISTANCE WITHIN THE BARREL
11 AND THE SLIDE ASSEMBLY TOGETHER WHERE THE BARREL IS
12 LOCKED TO THE SLIDE. AFTER THAT POINT IN TIME, THE
13 SLIDE IS UNLOCKED FROM THE BARREL AND THE SLIDE
14 CONTINUES TO THE REAR WHERE THE FIRED CARTRIDGE CASE
15 IS FLIPPED OUT OF THE GUN BY THE EJECTOR AND THEN THE
16 NEXT CARTRIDGE IS BROUGHT INTO THE CHAMBER.

17 Q CAN YOU SHOW THE JURY THE DIFFERENCE IN THE SIZE
18 OF A NINE MILLIMETER AND A .45?

19 A YES, SIR. I USED THE .45 BECAUSE IT'S BIGGER.
20 THIS CARTRIDGE WITH THE NICKLE PLATED CARTRIDGE CASE
21 IS A NINE MILLIMETER LUGER CALIBER CHART. THE ONE
22 WITH THE BRASS CARTRIDGE CASE IS A .45 AUTO CALIBER.
23 THE .45 AUTO CALIBER SHOOTS A BULLET THAT'S JUST A
24 LITTLE OVER 45 ONE-HUNDREDTHS OF AN INCH IN DIAMETER
25 AND A NINE MILLIMETER LUGER SHOOTS A BULLET THAT IS

1 ABOUT 35 AND A HALF CALIBER OR 3550 OR 35 AND A HALF
2 HUNDREDTHS OF AN INCH.

3 Q THANK YOU, SIR. YOU CAN RETURN TO YOUR SEAT IF
4 YOU WOULD. NOW IN THIS PARTICULAR CASE DID YOU
5 RECEIVE A NUMBER OF ITEMS THAT YOU WERE REQUESTED TO
6 DO TESTING ON?

7 A YES, SIR, I DID.

8 Q AND TELL THE JURY, YOU'VE TALKED ABOUT, YOU CAN
9 LOOK AT GUNS, YOU CAN LOOK AT, YOU CALL THEM
10 PROJECTILES THAT COME OUT?

11 A YES, SIR.

12 Q BULLETS OR PROJECTILES THAT COME OUT AND YOU CAN
13 ALSO LOOK CARTRIDGE CASINGS OR THE EMPTIES THAT YOU
14 TALKED ABOUT THAT'S EJECTED, IS THAT CORRECT?

15 A CORRECT. WHEN I WAS GOING THROUGH THE FIRING
16 SEQUENCE THAT I MENTIONED, THE POWDER BURNING AND
17 CREATING PRESSURE INSIDE THE CARTRIDGE CASE, THAT
18 PRESSURE IS EXPANDING THE CARTRIDGE CASE IN ALL
19 DIRECTIONS AGAINST THE INSIDE SURFACES OF THE BARREL
20 AND AGAINST THE BREACH FACE. WHEN IT DOES THAT, IT
21 EMBOSSES ANY IMPERFECTIONS THAT ARE PRESENT ON THE
22 BREACH FACE AND IN SOME CASES IMPERFECTIONS THAT ARE
23 PRESENT IN THE CHAMBER ON TO THE CARTRIDGE CASE. IT
24 DOES THIS IN A PREDICTABLE AND REPEATABLE MANNER.
25 THE CARTRIDGES CASE ALSO, THE PRIMER IS CONTACTED BY

1 THE FIRING PIN WHICH LITERALLY DRIVES ITSELF INTO THE
2 BACK OF THE PRIMER, SO IT LEAVES ITS OWN IMPRESSION.
3 IT'S POSSIBLE IN SOME INSTANCES TO IDENTIFY THE
4 EXTRACTOR WHICH IS A HOOK LIKE PART OF THE GUN'S
5 MECHANISM THAT GRABS ONTO THE RIM OR THE EXTRACTION
6 GROOVE AND IN SOME CASES WE CAN IDENTIFY EXTRACTOR
7 MARKS AND IN SOME CASES WE CAN IDENTIFY EJECTOR
8 MARKS. THE EJECTOR IS THAT PART OF THE GUN THAT THE
9 CARTRIDGE CASE COMES INTO THAT TIPS IT AND MAKES IT
10 FLY OUT OF THE MECHANISM.

11 SO OUR PRINCIPLE THING THAT WE'D BE
12 LOOKING FOR IN THE IDENTIFICATION OF CARTRIDGE CASES
13 ARE BREACH FACE IMPRESSIONS, FIRING PIN IMPRESSIONS,
14 EXTRACTOR MARKS, EJECTOR MARKS, AND CHAMBER MARKS.

15 Q AND THAT IS ON THE CARTRIDGE?

16 A YES.

17 Q NOW WHAT ABOUT THE ACTUAL BULLET?

18 A ON THE BULLET, THE SURFACE, THE EXTERIOR SURFACE
19 OF THE BULLET WHICH MAKES UP THE CYLINDRICAL SECTION
20 OF A CONICAL BULLET IS WHAT COMES INTO CONTACT WITH
21 THE BOAR, THE INSIDE OF THE BARREL, THAT COMES INTO
22 CONTACT WHAT'S KNOWN AS RIFLING. IN A RIFLE FIREARM,
23 SUCH AS A PISTOL, A REVOLVER OR A RIFLE BUT NOT
24 USUALLY A SHOTGUN, THERE ARE A SERIES OF SPIRALLING
25 GROOVES ON THE INSIDE SURFACE OF THE BARREL. THEY

1 GRIP THE BULLET FOR THE PURPOSE OF IMPARTING A SPIN ON
2 THE BULLET. THEY PUT A SPIN ON THE BULLET FOR THE
3 SAME REASON A QUARTERBACK PUTS A SPIN ON A FOOTBALL
4 BECAUSE IF IT DID NOT SPIN, IT WOULD TUMBLE END OVER
5 END AND NOT BE VERY ACCURATE IN ITS FLIGHT. THAT'S
6 WHY THE RIFLING IS THERE. BUT WE FOUND BY
7 MICROSCOPICALLY EXAMINING BULLETS IT'S POSSIBLE TO
8 DETECT THE INDIVIDUAL SIGNATURE MARKS OF THE RIFLING
9 OF A PARTICULAR GUN ON A BULLET. AND WHEN A BULLET
10 SURVIVES IN SUFFICIENTLY GOOD CONDITION WHERE THESE
11 MARKS ARE AVAILABLE, WE CAN IDENTIFY A PARTICULAR
12 BULLET BACK TO THE GUN BARREL WHICH IT WAS FIRED.
13 THE SAME WAY WE CAN IDENTIFY A PARTICULAR CARTRIDGE
14 CASE BACK TO THE FIREARM IN WHICH IT WAS FIRED BASED
15 ON THE MARKINGS I HAVE PREVIOUSLY DESCRIBED.

16 Q AND WHEN YOU HAVE SUFFICIENT MARKINGS PRESENT
17 DUE TO LACK OF DAMAGE OR WHATEVER, YOU CAN IDENTIFY
18 IT TO THAT GUN TO THE EXCLUSION OF ANY OTHER WEAPON?

19 A CORRECT.

20 Q OKAY. NOW PREVIOUSLY OUTSIDE THE PRESENCE OF
21 THE JURY, DID YOU HAVE AN OPPORTUNITY TO GO BACK
22 THROUGH A NUMBER OF ITEMS WHICH ARE ALREADY ADMITTED
23 INTO EVIDENCE TO DETERMINE WHETHER YOU HAD RECEIVED
24 THESE FOR TESTING?

25 A YES, SIR, I DID.

1 Q OKAY. I'M GOING TO CALL YOUR ATTENTION FIRST TO
2 STATE'S EXHIBITS 155 AND 156 AND ASK YOU IF YOU CAN
3 TAKE A LOOK AT THOSE ITEMS AND TELL ME IF YOU
4 RECEIVED THOSE?

5 A YES, I DID.

6 Q OKAY. AND COULD YOU TELL FIRST, I THINK IT'S
7 STATE'S EXHIBITS 155 THAT WOULD HAVE BEEN YOUR ITEM 8
8 FROM SLED'S STANDPOINT, WHAT THAT ITEM IS?

9 A THAT'S 156 IS MY ITEM 8. AND ITEM 156 AT THE
10 TIME THAT I RECEIVED IT CONSISTED OF ONE FIRED BULLET
11 JACKET FRAGMENT. IT NOW CONSISTS OF TWO BECAUSE IT
12 WAS BENT IN SUCH A FASHION THAT I REALLY COULDN'T SEE
13 THE MARKINGS THAT WANTED TO SEE, SO DURING THE
14 PROCESS OF BENDING IT BACK SO THAT I COULD LOOK AT IT
15 UNDER THE MICROSCOPE I ACTUALLY SPLIT THE SINGLE
16 FRAGMENT INTO TWO FRAGMENTS, SO NOW THERE ARE TWO
17 COPPER ALLOY BULLET JACKET FRAGMENTS AND THERE IS ONE
18 LEAD ALLOY FRAGMENT WHICH IS CONSISTENT WITH BEING A
19 CORE OF A JACKETED BULLET.

20 Q OKAY.

21 A AS WE LOOK AT THESE BULLETS, FOR INSTANCE THE
22 .45 BULLET I SHOWED YOU BEFORE. WHAT YOU SEE ON THE
23 OUTSIDE OF IT IS COPPER COLORED BECAUSE THERE IS A
24 COPPER CUP INTO WHICH A SLUG OF LEAD IS LOADED. IF
25 WE WERE ABLE TO LOOK AT THE BASE OF THIS BULLET, WE'D

1 SEE LEAD EXPOSED AND THE TWO OF THEM ARE CRIMPED
2 TOGETHER. WE GOT THE LEAD CORE WHICH GIVES THE
3 BULLET WEIGHT AND THE COPPER JACKET WHICH MAKES THE
4 OUTSIDE OF IT HARDER SO THAT IT DOESN'T LEAD THE
5 BARREL OF THE FIREARM. SO NOW THERE ARE THREE, BUT
6 THERE WERE TWO PIECES WHEN I GOT IT.

7 Q AND AGAIN YOU SAID THAT WAS YOUR ITEM 8 IS 156?

8 A IT'S STATE'S 156.

9 Q OKAY. AND 156, WHAT WAS THE DESIGNATION OF THAT
10 ITEM AS THE PLACE FOUND?

11 A PLACE EVIDENCE FOUND INSIDE PASSENGER DOOR OF
12 PONTIAC AND IT'S SOMETHING ABOUT REARVIEW WINDOW OR
13 SOMETHING THAT I'M NOT SURE I CAN READ, BUT IT'S GOT
14 WINDOW ON IT.

15 Q STATE'S EXHIBIT 156. I ASK FOR PICTURE 77. AND
16 WHAT WERE THE RESULTS OR WHAT WERE YOU ABLE TO
17 DETERMINE FROM THAT PARTICULAR ITEM THAT WAS
18 RECOVERED?

19 A WELL, IT WAS ACTUALLY SO BADLY DAMAGED THAT I
20 COULDN'T DETERMINE WITH CONFIDENCE WHAT ITS ORIGINAL
21 CALIBER WAS. IT WAS CONSISTENT GENERALLY SPEAKING
22 WITH A NINE MILLIMETER LUGER OR A, POSSIBLY A
23 SLIGHTLY LARGER BULLET, BUT THERE WAS JUST NOT ENOUGH
24 OF IT AND WHAT THERE WAS OF IT WAS SO BADLY DAMAGED I
25 REALLY JUST COULDN'T TELL.

1 BUT I OBSERVED THAT THERE WERE PARTS OF
2 THREE LAND IMPRESSIONS AND FOUR GROOVE IMPRESSIONS
3 THAT REMAINED ON THE JACKET FRAGMENT AND THE CORE.
4 SEE BECAUSE IT'S INSIDE THE BULLET WAS NEVER ACTUALLY
5 DIRECTLY MARKED BY THE BARREL, SO WE'VE GOT A
6 JACKETED BULLET WE'RE NOT EVER GOING TO HAVE ANY
7 MARKS THAT WE CAN IDENTIFY BACK TO THE GUN BARREL
8 LEFT ON THE CORE.

9 Q NOW DID YOU RECEIVE A NINE MILLIMETER WEAPON
10 SIMILAR TO THE .45 TO DO ANY TESTING OR COMPARISON
11 WITH?

12 A NOT IN THIS CASE.

13 Q OKAY. I NOW REFER YOU TO THE SECOND ITEM THAT I
14 HANDED UP. WE CAN PACKAGE THIS ONE BACK UP.

15 A OKAY.

16 Q I NOW REFER YOU TO STATE'S EXHIBIT 155.

17 A STATE'S EXHIBIT 155 IS MY ITEM TEN AND IT IS
18 EITHER A BULLET OR A BULLET FRAGMENT. IT'S MASHED
19 RATHER COMPLETELY FLAT. I CAN'T TELL FOR CERTAIN
20 WHETHER THERE IS ANY PORTION OF THIS THAT'S MISSING
21 OR NOT. IT COULD SIMPLY BE ONE BULLET THAT'S RATHER
22 BADLY DISTORTED OR IT COULD BE A PORTION OF A BULLET
23 WHERE THERE MIGHT HAVE BEEN SOME MORE TO IT. IT'S
24 CONSISTENT IN ITS WEIGHT AND ITS DIMENSIONS WITH A
25 NINE MILLIMETER LUGER OR PERHAPS IF SOMETHING IS

1 MISSING A LARGER CALIBER.

2 Q AND SO THOSE TWO WERE YOU ABLE TO DO ANY, AGAIN
3 YOU DIDN'T HAVE A NINE MILLIMETER LUGER TURNED IN IN
4 THIS CASE TO BE ABLE TO IDENTIFY OR DETERMINE IF IT
5 WAS A MATCH, AND EVEN SO THESE WERE TOO DAMAGED OR
6 THAT ONE WAS TOO DAMAGED?

7 A WELL, ACTUALLY I'M NOT SURE THIS ONE WOULD HAVE
8 BEEN TOO DAMAGED TO BE IDENTIFIED WITH THE GUN THAT
9 FIRED IT EVEN GIVEN HOW BADLY DISTORTED IT IS.
10 BECAUSE THIS ONE ACTUALLY, ACTUALLY THE JACKET
11 FRAGMENT IN STATE'S EXHIBIT 156 AND STATE'S EXHIBIT
12 155 COULD BE IDENTIFIED WITH EACH OTHER. THAT THEY
13 BORE SUFFICIENT UNIQUE IDENTIFIABLE MARKS THAT I WAS
14 ABLE TO TELL THAT THE JACKET FRAGMENT IN STATE'S
15 EXHIBITS 156 AND STATE'S 155 WERE BOTH FIRED BY THE
16 SAME GUN BARREL.

17 Q SO THOSE BOTH CAME FROM THE SAME GUN BARREL?

18 A RIGHT, AND THEY WERE NOT FIRED BY THE LLAMA
19 PISTOL.

20 Q THAT WAS MY QUESTION. THEY WERE NOT FIRED BY
21 THIS .45?

22 A THEY WERE NOT.

23 Q OKAY.

24 A THAT'S STATE'S EXHIBITS 137.

25 Q NOW I CALL YOUR ATTENTION TO A NUMBER OF

1 CASINGS, NINE MILLIMETER CASINGS THAT YOU RECEIVED,
2 DO YOU CALL THEM CASINGS OR CARTILAGES, SPENT
3 CASINGS?

4 A I CALL THEM CARTILAGE CASES.

5 Q AND THAT WOULD BE STATE'S EXHIBITS 148, 149,
6 150, 151 AND 152, ASK IF YOU CAN TAKE A LOOK AT THOSE
7 PLEASE. AND ALSO REFERENCE PICTURE 29, STATE'S
8 EXHIBITS 29.

9 A YES, SIR. AS I PREVIOUSLY LOOKED AT ALL OF
10 THESE OUTSIDE OF THE COURTROOM AND STATE'S EXHIBITS
11 148 THROUGH 152 CONTAIN ONE EACH OF THESE FIRED NINE
12 MILLIMETER LUGER CALIBER CARTRIDGE CASES WHICH ARE
13 STEEL CARTRIDGE CASES WITH A GREY POLYMER FINISH.
14 THEY BORE A WOLF NINE MILLIMETER LUGER CARTRIDGE HEAD
15 STAMP AND THEY HAVE A BRASS WHAT'S KNOWN AS A BRASS
16 BURDAN PRIMER. I COMPARED ALL OF THESE CARTRIDGE
17 CASES WITH EACH OTHER AND FOUND SUFFICIENT UNIQUE
18 MARKINGS ON THEIR BRIDGE FACE IMPRESSIONS AND I WAS
19 ABLE TO CONCLUDE THAT ALL OF FIVE OF THESE WERE FIRED
20 BY THE SAME GUN.

21 Q WITHOUT THE GUN IS THERE A WAY TO DETERMINE
22 WHETHER THOSE THAT ARE FIRED, ALL THOSE CARTRIDGES
23 CAME OUT OF ONE GUN, IS THERE A WAY TO COMPARE IT
24 BACK TO THE POTENTIAL NINE MILLIMETER BULLETS WITHOUT
25 THE GUN TO COMPARE IT?

1 A NO.

2 Q OKAY.

3 A THERE IS NOT A WAY FOR ME TO TELL IN THIS CASE
4 THAT THOSE TWO BULLETS OR BULLET FRAGMENTS IN STATE'S
5 EXHIBIT 155 AND 156 WERE EVER PART OF THESE CARTILAGE
6 CASES BUT THEY COULD HAVE BEEN.

7 Q OKAY. AND YOU WOULD NEED THE GUN ULTIMATELY TO
8 MAKE THAT FINAL DETERMINATION?

9 A IF I HAD THE CORRECT GUN I COULD TELL THAT THE
10 GUN FIRED THESE FIVE CARTRIDGE CASES AND I COULD TELL
11 PERHAPS THE GUN FIRED THE TWO BULLET FRAGMENTS. I
12 STILL COULDN'T TELL EVEN IF I HAD THE GUN IF THOSE
13 BULLETS OR BULLET FRAGMENTS CAME OUT OF THESE
14 CARTRIDGE CASES.

15 Q NOW I WANT TO CALL YOUR ATTENTION TO STATE'S
16 EXHIBITS 154, IT SHOULD BE YOUR ITEM NINE, AND I
17 WOULD REFERENCE PICTURE 71, AND ASK IF YOU CAN TAKE A
18 LOOK AT THAT PLEASE, SIR.

19 A STATE'S EXHIBITS 154, MY ITEM NINE, HAS A
20 DISTORTED LEAD FRAGMENT THAT IS CONSISTENT WITH BEING
21 PART OF A BULLET CORE AND IT ALSO HAS A DAMAGED
22 COPPER ALLOY BULLET JACKET FRAGMENT WHICH IS MOST OF
23 THE NOSE END. IT HAS A SOME STRIATED MARKINGS LEFT
24 ON IT BY THE BARREL, BUT IT'S MOSTLY THE NOSE CAP END
25 OF THE BULLET.

1 Q AND WHAT IF ANY DETERMINATION WERE YOU ABLE TO
2 MAKE ON THAT PARTICULAR BULLET?

3 A COLLECTIVELY BOTH OF THESE WERE TOO BADLY
4 DISTORTED TO ACTUALLY MEASURE THEIR DIAMETER, BUT
5 THEY WERE CONSISTENT IN THEIR APPROXIMATE SIZE AND
6 WEIGHT WITH BEING PARTS OF .45 CALIBER BULLET. THEY
7 POSSESS A WEIGHT, A COMBINED WEIGHT, OF 182 GRAINS OR
8 SLIGHTLY MORE THAN 182 GRAINS. THE NOMINAL WEIGHT
9 FOR INSTANCE IN THIS BULLET IN THIS .45 CALIBER
10 CARTRIDGE IS 230 GRAINS. THAT'S WHAT THE NORMAL
11 ROUND NOSE BALL CARTRIDGE IN A .45 WEIGHS.

12 NINE MILLIMETER CARTRILAGES ARE TYPICALLY
13 LOADED WITH BULLETS THAT GO UP TO ABOUT 147 GRAINS IN
14 THE STANDARD FACTORY LOADINGS. THEY GO GENERALLY
15 BETWEEN ABOUT 115 AND 147 GRAINS WITH SOME BEING
16 SLIGHTLY HEAVIER AND SOME BE SLIGHTLY LIGHTER, BUT
17 THAT'S THE STANDARD RANGE OF IT. SO THAT THE, ONCE
18 AGAIN THE CORE PORTION OF THIS THING WAS JUST
19 UNSUITABLE FOR IDENTIFICATION WITH ANYTHING BECAUSE
20 IT NEVER CAME INTO CONTACT DIRECTLY WITH THE BARREL
21 AND THE BULLET JACKET AND THE CORE OF COURSE COULD
22 HAVE BEEN PARTS OF THE SAME, BUT THEY WERE
23 INCONCLUSIVE WITH THE FIREARM THAT'S STATE'S EXHIBIT
24 137. THAT IS, THESE TWO ITEMS COULD HAVE BEEN FIRED
25 BY THAT PISTOL, BUT THEY WERE SIMPLY TOO BADLY

1 DAMAGED OR NOT MARKED SO THAT I COULDN'T TELL FOR
2 CERTAIN.

3 Q ON THOSE PARTICULAR ONES REALIZING THEY ARE
4 DAMAGED, ARE THERE ANY KIND OF CLASS CHARACTERISTICS
5 YOU WERE ABLE TO SEE ON THAT PARTICULAR ITEM?

6 A WELL, YES. THEY HAVE THE SAME LAND AND GROOVE
7 CLASS CHARACTERISTICS AS THAT PISTOL. THE LAND AND
8 GROOVE CLASS CHARACTERISTICS PRESENT ON THIS ARE
9 DIFFERENT FROM THOSE OF STATE'S EXHIBITS 155 AND 156.
10 SO THAT THESE, AS I SAY, THESE COULD HAVE BEEN FIRED
11 BY THAT .45 OR ANOTHER GUN THAT HAS EXACTLY THE SAME
12 LAND AND GROOVE RIFLING CHARACTERISTICS.

13 Q BASED ON THE DAMAGE ARE YOU IN A POSITION TO SAY
14 THAT BULLET CAME OUT OF THAT GUN AND YOU CANNOT SAY
15 THAT?

16 A NOT OUT OF THAT PARTICULAR GUN.

17 Q OKAY. I NOW CALL YOUR ATTENTION TO STATE'S
18 EXHIBITS 157. ASK IF YOU CAN TAKE A LOOK AT THAT ONE
19 PLEASE, SIR. I REFERENCE PICTURE 62. I BELIEVE THIS
20 WOULD BE YOUR ITEM 12, IS THAT CORRECT?

21 A IT IS. IT'S MY ITEM 12. STATE'S EXHIBITS 157
22 IS A FRAGMENT OF LEAD WHICH IS CONSISTENT IN ITS SIZE
23 AND WEIGHT WITH BEING THE CORE OF A .45 AUTOMATIC
24 FULL METAL JACKETED BULLET. IT WEIGHS 187 GRAINS BY
25 ITSELF WITH NO JACKET ATTACHED. I COULD SEE A

1 PORTION OF THE BASE OF THE BULLET THAT THAT'S THE
2 PORTION OF LEAD THAT WOULD HAVE BEEN EXPOSED TO THE
3 COMBUSTION GASSES IN THE CARTRIDGE CASE. IT HAS, OF
4 COURSE, NO DIRECT CONTACT WITH THE BARREL BECAUSE THE
5 JACKET WAS OVER IT AT THE TIME OF FIRING. I DID SEE
6 PARTS OF FOUR WHAT WE REFER TO AS TRANSFER
7 IMPRESSIONS BECAUSE SEE WHEN THE LANDS IN THE BARREL
8 COME INTO CONTACT WITH THE BULLET THERE IS SORT OF AN
9 INFERENCE FIT BETWEEN, THE BULLET WON'T JUST DROP
10 RIGHT THROUGH THE BARREL, IT TAKES CONSIDERABLE
11 PRESSURE TO FORCE THE BULLET INTO THE BARREL RIFLE OF
12 A FIREARM BECAUSE THE LAND IMPRESSIONS HAVE TO BE
13 ENGRAVED, THEY HAVE TO BE PRESSED INTO THE BULLET.
14 WHEN THEY ARE PRESSED INTO THE BULLET'S JACKET ON
15 THE OUTSIDE SURFACE, SOME OF THAT FORCE GOES THROUGH
16 THE BULLET JACKET INTO THE CORE SO THE CORE HAS AN
17 IMPRESSION BUT IT DOESN'T HAVE ANY STRIATED MARKS,
18 ANY SCRATCHES CAUSED BY CONTACT WITH THE BARREL. SO
19 IN THIS CASE I COULD SEE THE TRANSFER IMPRESSIONS OF
20 RIFLING ON THE CORE WHICH ARE CONSISTENT IN THEIR
21 WIDTH AND PLACEMENT WITH THE CLASS CHARACTERISTICS OF
22 THE RIFLING IN STATE'S EXHIBITS 137, BUT SINCE THIS
23 NEVER ACTUALLY CAME INTO CONTACT WITH THAT PISTOL I
24 CAN'T SAY THIS WAS FIRED THAT BY THAT PISTOL TO THE
25 EXCLUSION OF ANOTHER SIMILAR GUN.

1 Q AS FAR AS THE TWO THAT WE'RE TALKING ABOUT, THIS
2 ONE THAT YOU HAVE IN YOUR HAND FROM THE AUTOPSY AND
3 THE ONE THAT WAS RECOVERED FROM THE WINDSHIELD ARE
4 CONSISTENT WITH WEIGHT AND SIZE OF A .45?

5 A THEY WERE.

6 Q OKAY. EVEN ONE OF THOSE DID YOU SEE ANYTHING
7 THAT WOULD PRECLUDE THEM FROM BEING FIRED FROM THAT
8 WEAPON?

9 A NO.

10 Q AND AGAIN WHAT IS IT ABOUT THE CONDITION OF
11 THOSE TWO, THE ONES THAT I'M REFERRING TO AS .45,
12 THAT WOULD PREVENT YOU FROM MAKING AN IDENTIFICATION
13 IN THIS MATTER?

14 A WELL, IN THE CASE OF STATE'S EXHIBIT 157 IT
15 NEVER CAME INTO CONTACT WITH THE GUN. THERE ARE NO
16 MARKINGS THAT COULD HAVE BEEN PLACED ON THE BULLET
17 CORE OF A FULL METAL JACKET BULLET FIRED IN THAT GUN
18 THAT I COULD USE TO IDENTIFY IT BACK TO THAT
19 PARTICULAR PISTOL AND WE'VE GOT NEARLY THE SAME THING
20 ON THE OTHER. I DO HAVE SOME LIMITED AMOUNT OF
21 STRIATED MARKINGS ON THE BULLET JACKET PORTION, BUT
22 THEY JUST WEREN'T ENOUGH TO IDENTIFY WITH THAT
23 PARTICULAR PISTOL.

24 Q SO THAT PUTS YOU IN THE CLASS OF THAT TYPE
25 RIFLING OR A SIMILAR ONE?

1 A RIGHT. FOR INSTANCE, I COULDN'T SAY THAT
2 ANOTHER LLAMA PISTOL JUST LIKE THAT DIDN'T FIRE IT.

3 Q I GOT YOU. I WANT TO FINALLY CALL YOUR
4 ATTENTION TO STATE'S EXHIBITS 142, 143, 144, AND 145,
5 AND 146 AND ASK IF YOU HAD AN OPPORTUNITY TO LOOK AT
6 THOSE ITEMS. I REFERENCE STATE'S 16.

7 A I DID. I PREVIOUSLY EXAMINED EVERY ONE OF THEM.
8 STATE'S EXHIBITS 142 THROUGH 146 CONTAINED ONE EACH
9 FIRED .45 AUTO CALIBER CARTRIDGE CASES. THESE ARE
10 BRASS CASED WINCHESTER BRAND CARTRIDGE CASES LOADS
11 WITH BOX OF PRIMERS AND I COMPARED THESE WITH EACH
12 OTHER AND WITH TEST CARTRIDGE CASES FIRED BY THAT
13 PISTOL BY STATE'S EXHIBITS 137 AND I FOUND MATCHING
14 BREACH FACE IMPRESSIONS ON ALL OF THEM FROM WHICH I
15 WAS ABLE TO CONCLUDE THAT ALL FIVE OF THESE FIRED .45
16 AUTO CARTRIDGE CASES WERE FIRED BY THAT PISTOL, BY
17 STATE'S EXHIBITS 137.

18 Q IS THAT THIS PISTOL TO THE EXCLUSION OF ANY
19 OTHER PISTOL?

20 A CORRECT. AND IF I DIDN'T MENTION IT, THE NINE
21 MILLIMETER CARTRIDGE CASES WE PREVIOUSLY IDENTIFIED
22 WITH EACH OTHER, THEY COULD NOT HAVE BEEN FIRED BY
23 THAT PISTOL.

24 Q OKAY. SO THE NINE MILLIMETER EMPTIES WERE ALL
25 FIRED BY THE SAME GUN?

1 A THE SAME GUN BUT NOT THAT PISTOL AND THE .45
2 CALIBER FIRED CARTRIDGE CASES WERE ALL FIRED BY THAT
3 PISTOL.

4 Q OKAY.

5 MR. POPE: BEG THE COURT'S INDULGENCE.

6 Q THANK YOU, SIR. ANSWER ANY QUESTIONS THE
7 DEFENSE MAY HAVE.

8 MR. GREELEY: MAY IT PLEASE THE COURT

9 THE COURT: YES, SIR.

10 CROSS EXAMINATION BY MR. GREELEY:

11 Q GOOD MORNING, AGENT DEFREESE.

12 A GOOD MORNING.

13 Q WHEN YOU WERE TALKING ABOUT THE BULLETS, AND LET
14 ME GET MY NOTES, I THINK STATE'S EXHIBIT 157 WHICH
15 WAS YOUR ITEM 12 AND ALSO 154 WHICH IS YOUR ITEM
16 NINE?

17 A YES, SIR.

18 Q YOU HAD TALKED ABOUT HOW YOU WERE NOT ABLE TO
19 SAY WHAT GUN THOSE BULLETS HAD COME FROM ACTUALLY?

20 A YES, SIR, THAT'S CORRECT.

21 Q RIGHT. NOW YOU MENTION GENERAL RIFLING
22 CHARACTERISTICS AND YOU SAID IN YOUR TESTIMONY THAT
23 MAYBE ANOTHER LLAMA, IS THAT RIGHT?

24 A WELL, ANOTHER LLAMA OR ANOTHER GUN WITH THE SAME
25 RIFLING CHARACTERISTICS. LLAMA MAY NOT BE THE ONLY

- 1 MANUFACTURER TO USE THAT SAME RIFLING.
- 2 Q RIGHT. SMITH AND WESSON MAY USE THAT ON A .45?
- 3 A THEY MIGHT.
- 4 Q OKAY. HOW ABOUT GRUEGER, THEY COULD POSSIBLY?
- 5 A YES, SIR, THEY MIGHT OR IT MIGHT BE CLOSE
- 6 ENOUGH.
- 7 Q OKAY. SHOOTERS ARMS MANUFACTURING?
- 8 A YES, SIR.
- 9 Q TANFOGLIO?
- 10 A TANFOGLIO.
- 11 Q TANFOGLIO, OKAY.
- 12 A YEAH.
- 13 Q AUTO-ORDNANCE, IS THAT A GUN?
- 14 A YES, SIR.
- 15 Q OKAY. HASKELL IS THAT A GUN MANUFACTURER?
- 16 A THEY ARE.
- 17 Q AND THOSE WOULD ALSO FIT INTO THE SAME GENERAL?
- 18 A THEY WOULD FIT INTO THE .45 AUTO SIX LAND AND
- 19 GROOVE RIGHT HAND TWIST CATEGORY WITH LAND AND GROOVE
- 20 IMPRESSIONS THAT WOULD FALL WITHIN A RANGE THAT ARE
- 21 SIMILAR TO THE LLAMA.
- 22 Q OKAY. AND SO IT'S JUST NOT A LLAMA?
- 23 A NO, IT'S NOT JUST THAT ONE.
- 24 Q THERE ARE SEVERAL MANUFACTURERS OUT THERE?
- 25 A COULD BE OTHER PISTOLS OTHER THAN JUST THAT.

1 ELEVATED POSITION, IF YOU WERE LIKE ON A CAT WALK IN
2 A MANUFACTURING PLANT AND YOU FIRED A PISTOL UP
3 THERE, THE CARTRIDGE CASE COULD GO 30-40-50-100 FEET
4 JUST BECAUSE OF GRAVITY. BUT IF WE'RE TALKING ABOUT
5 WE'RE ON THE SAME PLANE OR WE'RE IN THE FRONT YARD OR
6 WE'RE ON A CARPETED AREA, THE GUN HAS A CERTAIN
7 LIMITED AMOUNT OF ENERGY IT'S GOING TO IMPART TO THE
8 CARTRIDGE CASE SO IT'S NOT GOING THROW IT A 100 FEET
9 STRAIGHT OUT, BUT IT CAN, IT CAN THROW IT SOME
10 DISTANCE. THE EXACT DISTANCE BEING UNKNOWN. THE
11 CARTRIDGE CASE CAN BOUNCE DEPENDING ON WHAT THE
12 TERRAIN IS OR THE CARTRIDGE CASE COULD BE CAPTURED.
13 FOR INSTANCE, IF IT FELL INTO TALL GRASS SO THAT IT
14 REALLY COULDN'T GO ANY FURTHER THAN THE GUN IS
15 CAPABLE OF THROWING IT, BUT IT'S NOT A TREMENDOUS
16 GREAT DISTANCE, BUT I DON'T KNOW WHAT THE DISTANCE
17 WOULD BE IN THIS CASE.

18 MR. POPE: THANK YOU, SIR.

19 RE CROSS EXAMINATION BY MR. GREELEY:

20 Q BUT YOU WOULD STILL STAND BY YOUR TESTIMONY
21 PREVIOUSLY THAT IT WOULD BE HARD TO DETERMINE THE
22 EXACT LOCATION OF SOMEBODY BASED ON THAT?

23 A YES, JUST BASED ON WHERE THE CARTRIDGE CASES ARE
24 YOU COULDN'T SAY, FOR INSTANCE, THAT I KNOW THIS GUN
25 EJECTS ONLY EXACTLY TO THE RIGHT SO IF I FOUND THEM

1 HERE THE GUY HAD TO BE TO THE LEFT OF WHERE THEY WERE
2 FOUND. IT TAKES A NUMBER OF CIRCUMSTANCES INCLUDING
3 THE FLIGHT PATH OF THE BULLET, EYE WITNESS TESTIMONY,
4 LIMITING FACTORS SUCH AS WALLS OR DOORS OR WHATEVER
5 ELSE WAS IN THE PARTICULAR CRIME SCENE. THAT THE
6 LOCATION OF THE CARTRIDGE CASES ARE JUST ONE FACTOR
7 AMONG MANY IN DETERMINING WHERE THE SHOOTER MIGHT
8 HAVE BEEN AT THE TIME OF FIRING.

9 MR. GREELEY: THANK YOU.

10 THE COURT: YOU CAN STEP DOWN.

11 MR. POPE: HE CAN BE EXCUSED.

12 THE COURT: MEMBERS OF THE JURY PANEL,
13 WE'LL TAKE A BREAK. IF YOU'LL FOLLOW THE BAILIFF TO
14 THE JURY ROOM.

15 (THE JURY EXITS THE COURTROOM AT 11:27
16 AM.)

17 THE COURT: WE'LL TAKE ABOUT A TEN MINUTE
18 BREAK. IF I CAN SEE COUNSEL AFTER YOU'VE HAD A
19 CHANCE TO GET REFRESHED.

20 (COURT'S IN RECESS AT 11:27 AM.)

21 (COURT RESUMES AT 11:54 AM.)

22 THE COURT: IT'S MY UNDERSTANDING THAT
23 THIS IS A GOOD PLACE, EVEN THOUGH WE'VE GOT TO COME
24 BACK TUESDAY, IT LOOKS LIKE WE'RE GOING INTO
25 WEDNESDAY REGARDLESS, THAT THIS IS A GOOD PLACE TO

1 STOP. THE STATE IS NOT GOING TO OFFICIALLY REST BUT
2 IT APPEARS THAT THAT'S THE NEXT STEP.

3 MR. POPE: THAT WOULD BE CORRECT, YOUR
4 HONOR.

5 THE COURT: SO WHY DON'T I GO AHEAD AT
6 THIS TIME, I WILL NOT ENTERTAIN MOTIONS, BUT LET ME
7 SPEAK TO MR. BOLIN, IF YOU'LL JUST STAND ONE MINUTE.
8 WE HAVEN'T QUITE BUT WE'RE ALMOST AT THE POINT WHERE
9 YOU WILL HAVE A RIGHT IF YOU WISH TO PRESENT A
10 DEFENSE, MR. BOLIN. YOU DON'T HAVE TO PRESENT ANY
11 DEFENSE. MAY HAVE ALREADY HEARD ME TELL THE JURY YOU
12 ARE PRESUMED INNOCENT OF THESE CHARGES AND YOU DO NOT
13 HAVE TO PROVE YOUR INNOCENCE. THE STATE MUST PROVE
14 YOUR GUILT BEYOND A REASONABLE DOUBT. BUT YOU HAVE
15 AN ABSOLUTE RIGHT TO CALL WITNESSES IF YOU WISH.

16 NOW YOU ALSO HAVE THE RIGHT TO TESTIFY.
17 NOW IF YOU DO NOT PRESENT ANY EVIDENCE, YOU WILL HAVE
18 THE RIGHT TO MAKE, YOUR ATTORNEY WOULD, CLOSING
19 ARGUMENTS, FOR THE LAST ARGUMENT. IF YOU PRESENT ANY
20 EVIDENCE THEN THE STATE WOULD HAVE THE RIGHT TO
21 PRESENT THE LAST ARGUMENT BEFORE THE JURY.

22 YOU HAVE A RIGHT TO TESTIFY OR YOU HAVE A
23 RIGHT TO REMAIN SILENT. IF YOU EXERCISE YOUR
24 CONSTITUTIONAL RIGHT TO REMAIN SILENT, I WILL
25 INSTRUCT THE JURY THAT THEY CANNOT USE THAT AGAINST

1 YOU. I WILL REMIND THEM THAT YOU ARE PRESUMED
2 INNOCENT AND NEED NOT PROVE YOUR INNOCENCE AND REMIND
3 THEM THAT THE STATE MUST PROVE YOUR GUILT BEYOND A
4 REASONABLE DOUBT BEFORE THEY CAN CONVICT YOU ON ANY
5 OF THESE CHARGES. I'LL TELL THEM THEY CANNOT DISCUSS
6 YOUR EXERCISE OF THAT RIGHT, THEY CANNOT FACTOR IT
7 INTO THEIR OWN DELIBERATION AND CONSIDERATION
8 REGARDING WHAT THEIR VERDICT SHOULD BE.

9 IF YOU DO CHOSE TO TESTIFY, AND YOU HAVE A
10 RIGHT TO TESTIFY, THE STATE WILL BE ABLE TO EXAMINE
11 YOU AND YOU'LL BE UNDER OATH AND YOU'LL BE REQUIRED
12 TO ANSWER TRUTHFULLY. I UNDERSTAND THERE ARE NO
13 IMPEACHABLE OFFENSES, IS THAT CORRECT?

14 MR. POPE: THAT IS CORRECT, YOUR HONOR.

15 THE COURT: YOU UNDERSTAND ALL THAT,
16 MR. BOLIN?

17 MR. BOLIN: YES, SIR.

18 THE COURT: DO YOU HAVE ANY QUESTIONS
19 ABOUT IT?

20 MR. BOLIN: NO, SIR.

21 THE COURT: HAVE YOU ADVISED HIM ABOUT ALL
22 OF THAT, MR. GREELEY?

23 MR. GREELEY: I HAVE.

24 THE COURT: YOU BELIEVE HE UNDERSTANDS?

25 MR. GREELEY: I DO.

1 THE COURT: MR. BOLIN, THIS IS YOUR
2 DECISION. IT'S NOT YOUR ATTORNEY'S; IT'S NOT YOUR
3 FAMILY'S; IT'S CERTAINLY NOT MINE OR THE SOLICITOR.
4 WHETHER TO TESTIFY OR NOT IS YOUR DECISION, BUT YOU
5 HAVE A RIGHT, OF COURSE, THE ONLY REASON I'M GOING
6 OVER THIS NOW IS BECAUSE THERE IS A COUPLE DAYS
7 BETWEEN NOW AND WHEN WE START BACK, YOU HAVE A RIGHT
8 TO DISCUSS THIS WITH YOUR ATTORNEY, YOUR FAMILY, AND
9 ANYBODY YOU WISH TO TO MAKE THAT DETERMINATION, BUT
10 ULTIMATELY IT'S MR. BOLIN'S DECISION AND YOUR
11 DECISION TO DETERMINE WHETHER YOU WISH TO EXERCISE
12 YOUR RIGHT TO REMAIN SILENT OR TESTIFY. DO YOU
13 UNDERSTAND THAT?

14 MR. BOLIN: YES, SIR.

15 THE COURT: DO YOU HAVE ANY QUESTIONS
16 ABOUT ANY OF THAT?

17 MR. BOLIN: NO, SIR.

18 THE COURT: ALL RIGHT. BRING IN THE JURY.

19 (THE JURY RETURNS TO THE COURTROOM AT
20 11:56 AM.).

21 THE COURT: MEMBERS OF THE JURY PANEL,
22 WHILE YOU WERE OUT I DISCUSSED SCHEDULING WITH THE
23 ATTORNEYS AND WHERE WE ARE AND IT'S ALMOST LUNCH TIME
24 ON FRIDAY, WE'RE GOING TO HAVE TO COME BACK ON
25 TUESDAY, THERE IS NO QUESTION ABOUT THAT AS YOU CAN

1 TELL, AND IT LOOKS LIKE, HAVING DISCUSSED WITH THEM,
2 THAT WE'LL BE ABLE TO FINISH UP ON WEDNESDAY. BUT
3 THIS IS A POINT WHERE IT REALLY MAKES, WE'RE NOT IN
4 THE POSITION TO THINK WE ARE SIMPLY WASTING TIME THIS
5 AFTERNOON AND I APOLOGIZE, WE'RE NOT REALLY; BUT
6 WE'RE AT A POINT IN THE TRIAL, A TRIAL IS LIKE A
7 SPORTS EVENT, YOU'VE GOT CERTAIN THINGS THAT CANNOT
8 HAPPEN UNTIL OTHER THINGS HAPPEN AND WE ARE AT A
9 POINT WHERE WE HAVE TO TAKE SOME TIME WITH JUST THE
10 ATTORNEYS AND MYSELF AND WE BELIEVE THAT THE BEST WAY
11 TO GO FORWARD AT THIS POINT IS TO GO AHEAD AND STOP
12 FOR THE DAY AND START BACK AT 9:30 ON TUESDAY.

13 NOW I GUESS MAYBE THE GOOD SIDE OF THAT IS
14 THAT YOU WERE GIVEN YOUR CHECK FOR THIS WEEK THIS
15 MORNING, SO YOU CAN BUY SOME BIRD SHOT IF YOU ARE
16 GOING DOVE SHOOTING, YOU CAN BUY SOME BBQ, OR SPEND
17 IT AT A LABOR DAY SALE IF YOU WISH, BUT I DON'T THINK
18 IT WILL BUY A LOT OF ANY OF THOSE THINGS I KNOW. BUT
19 WE APPRECIATE YOUR HELP.

20 YOU ARE STILL NOT IN A POSITION TO DISCUSS
21 THE CASE, STILL DON'T LET YOURSELF BE EXPOSED TO
22 ANYTHING THAT MAY BE PUBLISHED OR IN ANY NEWS MEDIA
23 OR DISCUSSED ON THE RADIO OR TV AND WE'LL SEE YOU
24 BACK AT 9:30 AND I FEEL FAIRLY CONFIDENT, I ALWAYS
25 HESITATE TO SAY ANYTHING WITH CERTAINTY BECAUSE I

1 USUALLY PROVED WRONG IF I DO, BUT I FEEL CONFIDENT
2 THAT WE WILL GET THIS CASE TO YOU FOR YOUR
3 CONSIDERATION PROBABLY WEDNESDAY. AGAIN I APOLOGIZE
4 FOR TAKING YOU INTO THE NEXT WEEK, BUT THESE CASES
5 OBVIOUSLY ARE VERY IMPORTANT AND WE WANT TO GO
6 THROUGH AND OBVIOUSLY HAVE IT DONE RIGHT AND HAVE ALL
7 PARTICIPANTS HAVE IT RIGHT TO FULLY PRESENT WHAT THEY
8 NEED TO PRESENT AND GIVE YOU ADEQUATE TIME TO DIGEST
9 IT AND RETURN A FAIR VERDICT, SO WE'LL SEE YOU
10 TUESDAY MORNING AT 9:30.

11 (THE JURY EXITS THE COURTROOM AT 12:00
12 PM.)

13 THE COURT: ANYTHING FROM THE STATE BEFORE
14 WE DISMISS?

15 MR. POPE: NO, SIR, YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 MR. GREELEY: NOTHING FROM THE DEFENSE.

18 THE COURT: I HAVE RECEIVED THE REQUEST OF
19 CHARGES AND WE'RE LOOKING AT THOSE AND OF COURSE THAT
20 DOESN'T PRECLUDE YOU FROM PRESENTING OTHER ONES IF
21 YOU WISH, BUT WE'LL BE AT EASE UNTIL 9:30 ON TUESDAY.

22 (COURT IS IN RECESS.)

23 (COURT RESUMES ON SEPTEMBER 05, 2006 AT
24 09:44 AM.)

25 THE COURT: WE HAD A BRIEF CONFERENCE. I

1 UNDERSTAND THE STATE IS RESTING WITH THE EXCEPTION OF
2 A STIPULATION INVOLVING THE AGE OF THE VICTIM WHICH
3 IS 19. I WILL PUT THAT ON THE RECORD SO THEY ARE
4 RESTING SO I'LL BE GLAD TO HEAR ANY MOTIONS.

5 MR. GREELEY: MAY IT PLEASE THE COURT.
6 YOUR HONOR, I'M GOING TO MAKE A FEW MOTIONS HERE IN
7 REGARDS TO REQUESTING THE COURT TO GRANT A DIRECTED
8 VERDICT. THIS IS IN REGARDS TO ALL OF THE
9 INDICTMENTS THAT ARE IN THIS CASE WITH THE EXCEPTION
10 OF THE UNLAWFUL POSSESSION OF A FIREARM DUE TO AGE
11 AND I DON'T RECALL THAT NUMBER.

12 THE COURT: WELL, THAT ONE IS ALREADY
13 GONE.

14 MR. GREELEY: I UNDERSTAND BUT I'M GOING
15 OFF OF THE SHEET THAT I HAD PRIOR TO THAT ONE. SO
16 LET'S SEE. IT WILL WOULD BE, I HAVE THE INDICTMENTS
17 HERE SO I'LL GO OFF OF THAT. THESE MOTIONS ARE GOING
18 TO BE FOR EACH CHARGE 2006-GS-46-1600, 1595, 1596,
19 1597, 1598, AND 1599 OF THIS CASE. 1601 BEING THE
20 INDICTMENT THAT WAS PREVIOUSLY QUASHED BY THE COURT
21 PRE-TRIAL IN THIS MATTER.

22 YOUR HONOR, I MAKE A MOTION FOR A DIRECTED
23 VERDICT. I WILL SUBMIT TO THE COURT IN VIEWING THE
24 EVIDENCE MOST FAVORABLE TO THE NON-MOVING PARTY IN
25 THIS CASE WHICH IS THE STATE ON EACH OF THESE

1 INDICTMENTS I WILL SUBMIT THAT I DO NOT BELIEVE THAT
2 THE STATE HAS PRODUCED AT LEAST ANY EVIDENCE IN AT
3 LEAST ONE ELEMENT OF EACH OF THOSE OFFENSES AND THEY
4 WOULD HAVE TO PRODUCE SOME EVIDENCE OF CREDIBILITY IN
5 WHICH NOT TO BE DETERMINED AT THIS TIME AS TO EACH
6 ELEMENT OF ALL THOSE OFFENSES AND SO I WOULD MAKE
7 THAT MOTION AT THIS TIME.

8 THE COURT: I THINK THE EVIDENCE
9 SUFFICIENTLY, HAS DIRECT EVIDENCE, I DON'T KNOW THAT
10 THIS CASE EMBODIES MUCH CIRCUMSTANTIAL EVIDENCE, BUT
11 DIRECT EVIDENCE OF SOMEONE SHOOTING AT THE CAR WHICH
12 HE CLAIMS SELF-DEFENSE AND KILLING SOMEBODY. I DON'T
13 SEE WHERE, I THINK THERE IS ENOUGH EVIDENCE FROM
14 WHICH THEY CAN FIND THAT, FROM WHICH A JURY COULD
15 FIND, THAT THE KILLING OF MR. HOVIS CONSTITUTED
16 MURDER, THAT HE FIRED INTO A OCCUPIED VEHICLE, THAT
17 THE THREE OTHER OCCUPANTS, TWO WERE ASSAULTED, AND
18 THE INTENT TO KILL IS PRESENT. THAT THE THIRD
19 OCCUPANT, THE FIFTH, THAT HE WAS NOT ASSAULTED BUT
20 SHOT IN THE ARM AND THAT HE DID IN FACT POSSESS A
21 FIREARM DURING THE COMMISSION OF THESE VIOLENT ACTS
22 SO I DENY IT.

23 MR. GREELEY: I WOULD MOVE ON A SECOND
24 GROUND FOR DIRECTED VERDICT ON EACH OF THESE CHARGES
25 STATED PREVIOUSLY AND THE BASIS OF THIS MOTION FOR

1 DIRECTED VERDICT ON EACH OF THOSE CHARGES DERIVES
2 FROM THE PROTECTION OF PERSONS AND PROPERTY ACT AND
3 IS RELYING UPON SECTION 16-11-440 (C) WHICH READS:

4 A PERSON WHO IS NOT ENGAGED IN AN UNLAWFUL
5 ACTIVITY AND WHO IS ATTACKED IN A PLACE WHERE HE HAS
6 A RIGHT TO BE INCLUDING BUT NOT LIMITED TO HIS PLACE
7 OF BUSINESS HAS NO DUTY TO RETREAT AND HAS A RIGHT TO
8 STAND HIS GROUND AND MEET FORCE WITH FORCE INCLUDING
9 DEADLY FORCE IF HE REASONABLY BELIEVES IT IS
10 NECESSARY TO PREVENT DEATH OR GREAT BODILY INJURY TO
11 HIMSELF OR ANOTHER PERSON OR TO PREVENT THE
12 COMMISSION OF A VIOLENT CRIME AS DEFINED IN SECTION
13 16-1-160.

14 I WOULD SUBMIT TO THE COURT IN LOOKING AT
15 THE STATE'S CASE THAT THEY HAVE PRESENTED, THERE IS
16 EVIDENCE IN THIS CASE THAT TO SATISFY THAT SECTION OF
17 (C) I DO NOT BELIEVE THAT THERE HAS BEEN ANY EVIDENCE
18 SUBMITTED BY THE STATE THAT MY CLIENT WAS CONDUCTING
19 ANY UNLAWFUL ACTIVITY AT THE TIME. I BELIEVE THAT HE
20 HAD, THERE HAS BEEN EVIDENCE THAT HE HAD A RIGHT TO
21 BE WHERE HE WAS AND THAT WAS THROUGH MR. DEAL WHO
22 OWNED THE LAND, AND (C) ALSO NOT ONLY GOES TO HIM BUT
23 ALSO IN REGARDS TO DEFENSE OF ANOTHER BECAUSE OF THE
24 LANGUAGE BEING USED THE GREAT BODILY INJURY TO
25 HIMSELF OR ANOTHER PERSON AND I WOULD SUBMIT TO THE

1 COURT THAT THERE IS SUFFICIENT EVIDENCE FOR THE COURT
2 TO GRANT DIRECTED VERDICT UNDER THAT STATUTE IN THIS
3 CASE.

4 THE COURT: THAT MOTION IS DENIED. FIRST
5 I DON'T NOTE, I DON'T BELIEVE THAT THE STATUTE
6 APPLIES BECAUSE IT DOES NOT INDICATE THAT THE ACT'S
7 RETROACTIVELY BUT PROSPECTIVELY. IT DOES INDICATE IN
8 THE ACT THAT IT IS CODIFYING AN EXISTING LAW, BUT
9 THAT THAT HAS TO DO WITH HABITATION PROTECTION. IT
10 WAS NOT HIS HABITATION, HE WAS NOT IN THE HOUSE, AND
11 IT SPECIFICALLY SAYS TO EXTEND IT I THINK TO BUSINESS
12 AND VEHICLES. SO, OF COURSE, HE WASN'T IN A VEHICLE,
13 HE WASN'T IN A BUSINESS, BUT THERE IS NO QUESTION
14 THAT THE ACT ITSELF INDICATES IT'S AN EXTENSION OF
15 THE PROTECTION OF HOME, MAN'S HOME IS HIS CASTLE,
16 THIS WASN'T HIS CASTLE, SO I FIND THAT IT DOES NOT
17 ACT PROSPECTIVELY AND WOULD NOT APPLY IN ANY EVENT;
18 AND ALSO UNDER THE FACTS, I DON'T FIND THAT HE
19 PRESENTS HIMSELF IN THE ACT. AND I SAY, OF COURSE,
20 WE DON'T KNOW WHO HAS THE BURDEN OF PROOF, SO I'M
21 VERY HESITANT WHEN I SAY THAT, BUT BASED ON -- WELL,
22 LET ME PUT IT LIKE THIS, THE FACTS AS PRESENTED
23 INCLUDING THE STATEMENT, OF COURSE HE DOESN'T HAVE TO
24 PROVE ANYTHING, DOES NOT PLACE HIM, I SHOULD NOT SAY
25 BRING HIM INTO THE ACT, THE FACTS DO NOT PLACE HIM

1 UNDER THE PROTECTION OF THE ACT.

2 MR. GREELEY: THOSE ARE ALL THE MOTIONS I
3 WILL HAVE AT THIS TIME.

4 THE COURT: ALL RIGHT. MR. BOLIN, HAVE
5 YOU DECIDED WHETHER YOU ARE GOING TO TESTIFY OR NOT?

6 MR. BOLIN: YES, YOUR HONOR.

7 THE COURT: ARE YOU GOING TO TESTIFY?

8 MR. BOLIN: YES, SIR.

9 MR. GREELEY: WHAT? HOLD ON ONE SECOND.
10 ARE YOU GOING TO TESTIFY?

11 MR. BOLIN: NO, SIR.

12 THE COURT: OH, ALL RIGHT. YOU READY FOR
13 THE JURY?

14 MR. POPE: YES, SIR, YOUR HONOR. THE
15 STIPULATION, AND MR. GREELEY, I'M READING JUST FROM
16 THE TOP OF THE AUTOPSY REPORT, DATE OF BIRTH 7-22-86
17 WHICH WOULD MAKE HIS AGE AT THE TIME 19 AND THEN THE
18 STATE WOULD REST.

19 MR. GREELEY: NO OBJECTION TO THAT
20 STIPULATION.

21 THE COURT: I DO UNDERSTAND THAT EVEN
22 THOUGH MR. BOLIN IS NOT TESTIFYING, THAT YOU DO HAVE
23 SOME TESTIMONY TO PRESENT?

24 MR. GREELEY: YES, WE DO.

25 THE COURT: BRING IN THE JURY.

1 (THE JURY RETURNS TO THE COURTROOM AT
2 09:51 AM.)

3 THE COURT: GOOD MORNING.

4 (THE JURY: GOOD MORNING.)

5 THE COURT: THE STATE IS BASICALLY
6 RESTING. THEY HAVE ONE STIPULATION WHICH THE
7 SOLICITOR WILL PRESENT TO YOU AND THAT WILL BE THE
8 END OF THE STATE'S CASE. AT THAT TIME MR. BOLIN
9 WOULD HAVE THE RIGHT, IF HE WISHES, TO PRESENT ANY
10 EVIDENCE.

11 MR. POPE: MAY IT PLEASE THE COURT, YOUR
12 HONOR. THE STATE AND THE DEFENSE HAVE ENTERED INTO A
13 STIPULATION THAT BOBBY HOVIS THE THIRD, THE VICTIM IN
14 THIS CASE, THE VICTIM OF THE MURDER IN THIS CASE, HIS
15 DATE OF BIRTH IS JULY 22, 1986, WHICH WOULD MAKE HIM
16 19 YEARS OF AGE AT THE TIME OF HIS DEATH. WITH THAT
17 STIPULATION, YOUR HONOR, THIS WOULD BE THE STATE'S
18 CASE.

19 THE COURT: ALL RIGHT. READY TO PROCEED.

20 MR. GREELEY: MAY IT PLEASE THE COURT,
21 YOUR HONOR.

22 THE COURT: CERTAINLY.

23 MR. GREELEY: YOUR HONOR, AT THIS TIME WE
24 CALL MERRY COLLINS.

25 MERRY COLLINS, BEING FIRST DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MR. GREELEY:

3 Q MRS. COLLINS, WOULD YOU PLEASE STATE YOUR FULL
4 NAME?

5 A MERRY ALICE COLLINS.

6 Q AND YOU WORK FOR THE SOLICITOR'S OFFICE, ISN'T
7 THAT CORRECT?

8 A YES, SIR, IT IS.

9 Q AND YOU HAVE WORKED QUITE AWHILE FOR THE
10 SOLICITOR'S OFFICE, HAVEN'T YOU?

11 A YES, SIR, APPROXIMATELY 12 YEARS.

12 Q AND ONE OF THE MULTITUDE OF DUTIES AND
13 RESPONSIBILITIES THAT YOU HAVE AT THE SOLICITOR'S
14 OFFICE IN CASES SUCH AS THIS ONE IS COLLECTING
15 DISCOVERY AND PROVIDING THOSE TO THE OPPOSING SIDE,
16 IS THAT CORRECT?

17 A YES, SIR, IT IS.

18 Q AND DID YOU DO THAT IN THIS CASE?

19 A YES, SIR, I DID.

20 Q OKAY. AND IN DOING THAT YOU WORKED WITH MY
21 OFFICE, IS THAT CORRECT?

22 A YES, SIR.

23 (DEFENSE EXHIBITS 1 AND 2 REPORT MARKED FOR
24 IDENTIFICATION.)

25 Q MRS. COLLINS, I'M GOING TO SHOW YOU WHAT'S BEEN

1 MARKED AS DEFENSE EXHIBIT ONE FOR IDENTIFICATION, CAN
2 YOU LOOK AT THAT FOR A FEW MINUTES, FAMILIARIZE
3 YOURSELF WITH IT. DO YOU RECOGNIZE THAT?

4 A YES, SIR, I DO.

5 Q OKAY. AND IS THAT AN ACCURATE COPY OF WHAT YOU
6 PROVIDED TO OUR OFFICE THROUGH THE DISCOVERY PROCESS
7 HERE IN GENERAL SESSIONS COURT?

8 A YES, SIR.

9 Q OKAY. AND THE NUMBER THAT'S UP IN THE RIGHT
10 HAND CONER OF THAT PAGE?

11 A UH-HUH.

12 Q WHAT NUMBER IS THAT?

13 A PAGE 89.

14 Q AND IS THAT YOUR HANDWRITING?

15 A YES, SIR, IT IS.

16 Q AND WHAT DO YOU DO WITH DISCOVERY? WHY DOES IT
17 HAVE THAT PAGE NUMBER?

18 A WHEN I GET DISCOVERY I NUMBER ALL THE PAGES I
19 HAVE AND TRY TO KEEP THEM IN SEQUENTIAL ORDER, THAT
20 WAY I CAN KEEP TRACK OF WHAT PAGES I HAVE AND HAVE
21 NOT GIVEN TO THE DEFENSE.

22 Q OKAY. AND THESE WOULD BE PAGES AS THEY COME IN
23 TO YOU?

24 A YES, SIR.

25 Q OKAY. AND YOU PUT THEM IN NUMERICAL ORDER, IS

1 THAT CORRECT?

2 A YES, SIR.

3 Q NOW YOU PROVIDED THAT TO MY OFFICE WITH A
4 PACKAGE OF DISCOVERY?

5 A YES, SIR.

6 Q ON OR ABOUT APRIL 6 OF 2006, IS THAT CORRECT?

7 A YES, SIR.

8 Q I BELIEVE THAT YOUR ACCEPTANCE OF SERVICE WOULD
9 SHOW THAT THAT WAS THE DATE?

10 A YES, SIR.

11 Q IS THAT CORRECT?

12 A YES, SIR.

13 MR. GREELEY: YOUR HONOR, WE WOULD MOVE TO
14 HAVE THIS ENTERED INTO EVIDENCE AT THIS TIME.

15 MR. POPE: NO OBJECTION, YOUR HONOR.

16 THE COURT: BE RECEIVED.

17 (DEFENDANT'S EXHIBIT ONE REPORT IN
18 EVIDENCE.)

19 Q HANG ON TO THAT ONE. I'M GOING TO SHOW YOU NOW
20 WHAT'S BEEN MARKED AS DEFENSE EXHIBIT NUMBER TWO. IF
21 YOU WOULD LOOK AT THAT PLEASE AND FAMILIARIZE
22 YOURSELF WITH IT? DO YOU RECOGNIZE THAT?

23 A YES, SIR, I DO.

24 Q OKAY. AND ARE YOU COMPARING THAT WITH YOUR
25 RECORDS?

1 A YES, SIR, I WAS TRYING TO FIND THE RECORD OF THE
2 DATE I GAVE THAT ONE.

3 Q I'M GOING TO ASK YOU ABOUT THAT IN A MINUTE AND
4 I'VE GOT SOMETHING TO REFRESH YOUR MEMORY.

5 A THANK YOU.

6 Q ALL RIGHT.

7 A ALL RIGHT.

8 Q AND IS THAT YOUR HANDWRITING UP IN THE LEFT HAND
9 CORNER?

10 A IN THE TOP RIGHT CORNER.

11 Q TOP RIGHT CORNER?

12 A YES, SIR.

13 Q OKAY. AND WHAT IS THAT NUMBER?

14 A 244.

15 Q 244. AND WHAT WAS THE NUMBER THAT YOU HAD PUT
16 ON THE FIRST ONE?

17 A 89.

18 Q 89?

19 A UH-HUH.

20 Q OKAY. AS TO THE DATE THAT YOU PROVIDED THAT I'M
21 GOING TO SHOW YOU SOMETHING, IS THIS A COPY OF THE
22 E-MAIL, THE TRANSMITAL SENDING THAT INFORMATION TO MY
23 OFFICE?

24 A YES, SIR, IT IS.

25 Q AND WHAT WAS THE DATE THAT YOU SENT THAT?

1 A SAYS JUNE 8, 2006.

2 Q OKAY. THANK YOU.

3 MR. GREELEY: YOUR HONOR, AT THIS TIME I
4 WOULD MOVE TO HAVE DEFENSE EXHIBIT NUMBER TWO PLACED
5 IN EVIDENCE.

6 MR. POPE: NO OBJECTION.

7 THE COURT: BE RECEIVED.

8 (DEFENSE EXHIBIT NUMBER 2 IN
9 EVIDENCE.)

10 Q MRS. COLLINS, THANK YOU. ANSWER ANY QUESTIONS
11 THE STATE MAY HAVE.

12 A YES, SIR.

13 CROSS EXAMINATION BY MR. POPE:

14 Q MRS. COLLINS, I'M TOMMY POPE. EXPLAIN TO THE
15 JURY WHAT DISCOVERY IS. WHAT IT IS YOU ACTUALLY DO
16 WITH THIS STUFF, WHERE IT COMES FROM?

17 A I GET SHEETS OF PAPER, SOMETIMES PICTURES,
18 SOMETIMES AUDIO CASSETTES OR TAPES AND THINGS LIKE
19 THAT, AND I TRY TO PUT THEM IN A DIGITAL FORMAT ON
20 OUR COMPUTER SO THAT EVERYONE CAN REFER TO THEM ON
21 THE COMPUTER RATHER THAN HAVING TO GO HUNT FOR THE
22 TAPE OR GO LOOK FOR THAT PIECE OF PAPER AND THAT WAY
23 THEY CAN LOOK AT THEM AND ALSO KEEP THEM IN A DIGITAL
24 FORM IN THE COMPUTER.

25 Q AND WHERE DO THESE ITEMS COME FROM?

1 A SOME COME FROM THE SOLICITOR ON THE CASE AND
2 SOME COME FROM OUR INVESTIGATOR IN THE CASE OR FROM
3 LAW ENFORCEMENT.

4 Q OKAY. DO YOU ALSO GET MEDICAL RECORDS?

5 A YES, SIR.

6 Q DO YOU ALSO GET VARIOUS RECORDS AND YOU PULL
7 THEM TOGETHER?

8 A YES, SIR, I DO.

9 Q NOW AS FAR AS THE DEFENSE, WHAT DO YOU GIVE THEM
10 A COPY OF?

11 A EVERYTHING I HAVE. OUR OFFICE HAS AN OPEN FILE
12 POLICY AND AS SOON AS I GET THINGS, I GIVE THEM OUT
13 AS QUICK AS I CAN TO THE DEFENSE.

14 Q OKAY. AND YOU SAID AS SOON AS YOU GET THINGS,
15 DO YOU GET EVERYTHING IN A CASE ALL AT ONE TIME ON
16 ONE DATE?

17 A NO, SIR. IT COMES TO ME IN BATCHES OF
18 INFORMATION AS THE INFORMATION IS GATHERED FROM OUR
19 INVESTIGATOR.

20 Q OKAY.

21 A OR FROM LAW ENFORCEMENT.

22 Q BASED ON YOUR EXPERIENCE HAVE THERE BEEN TIMES
23 ON CASES WHERE YOU'VE ACTUALLY HAD TO GO AND LIKE
24 TRACK DOWN DOCUMENTS OR ASK FOR THINGS FROM THE
25 HOSPITAL OR THINGS FROM LAW ENFORCEMENT TO TRY TO

1 COMPLETE THE FILE?

2 A OH, YES, SIR. EVEN IN THE CASE, ESPECIALLY WITH
3 GETTING A CLEANER COPY OR A BETTER COPY OF SOMETHING.

4 Q OKAY. AND IN THIS PARTICULAR CASE WAS THE FIRST
5 TIME YOU SENT MR. GREELEY DISCOVERY, WAS THAT THE
6 ONLY TIME YOU SENT HIM DISCOVERY?

7 A OH, NO, SIR. I, AT LEAST, MAYBE LESS THAN A
8 DOZEN, MAYBE NOT A DOZEN, BUT AT LEAST THAT MANY
9 TIMES WHERE I'LL GET IT AND I'LL EITHER PUT IT ON A
10 DISC FORMAT; LIKE THE FIRST BATCH IS USUALLY SO LARGE
11 IN SIZE DIGITAL-WISE THAT IT WON'T FIT IN AN E-MAIL
12 TO SOMEONE, SO I HAVE TO PUT IT ON A CD-ROM OR A DISC
13 AND SO THEN I'LL CONTACT THE DEFENSE TO COME AND SIGN
14 A RECEIPT FOR THAT DISC. AND THEN OTHER TIMES I WILL
15 E-MAIL IT IF IT'S A SMALL ENOUGH FILE SO THEY
16 WOULDN'T HAVE TO COME ALL THE WAY FROM ROCK HILL TO
17 YORK TO PICK IT UP.

18 Q OKAY. IN THIS PARTICULAR CASE DID YOU EVEN HAVE
19 THE OPPORTUNITY TO SAY LAST WEEK OR THE WEEK BEFORE
20 TO SEND A NUMBER OF DOCUMENTS IN DISCOVERY THAT YOU
21 MAY HAVE RECEIVED JUST ON THE EVE TRIAL?

22 A YES, SIR. ACTUALLY I THINK EVEN ON FRIDAY,
23 AUGUST 25, I SENT SOMETHING.

24 Q OKAY. DO YOU KNOW, DO YOU HAVE ANY KIND OF
25 ESTIMATION OF HOW MANY CASES YOU DEALT WITH

1 DISCOVERY, HOW MANY PAGES OF DISCOVERY YOU SENT OUT?

2 A IN THIS CASE?

3 Q NO, OVER THE YEARS, ALL THE CASES?

4 A THOUSANDS.

5 Q OKAY. AND DO YOU SEND EACH, TO THE BEST OF YOUR
6 ABILITY, DO YOU SEND EACH WHEN YOU RECEIVE IT?

7 A YES, SIR.

8 Q IN YOUR EXPERIENCE HAVE YOU RECEIVED THEM
9 SOMETIMES OUT OF ORDER OR BROKEN UP SO TO SPEAK?

10 A OH, YES, SIR.

11 Q OKAY. AND EVERYTHING YOU'VE RECEIVED HAVE YOU
12 GIVEN TO MR. GREELEY IN A TIMELY FASHION?

13 A YES, SIR.

14 Q THANK YOU.

15 THE COURT: REDIRECT?

16 MR. GREELEY: NO, YOUR HONOR.

17 THE COURT: YOU CAN STEP DOWN. THANK YOU.
18 CALL YOUR NEXT WITNESS.

19 MR. GREELEY: THE DEFENSE RESTS.

20 THE COURT: ANYTHING IN REPLY?

21 MR. POPE: BEG THE COURT'S INDULGENCE.

22 THAT WOULD BE THE STATE'S CASE, YOUR HONOR.

23 THE COURT: ALL RIGHT. MEMBERS OF THE
24 JURY PANEL, THAT'S ALL OF THE EVIDENCE YOU ARE GOING
25 TO HAVE. NOW WE WILL HAVE TO GO OVER CERTAIN MATTERS

1 OF LAW WITH THE ATTORNEYS AND WHEN YOU RETURN TO THE
2 COURTROOM YOU WILL HEAR THE CLOSING ARGUMENTS OF THE
3 ATTORNEYS AND THEN MY CHARGE ON THE LAW AND IN SHORT
4 ORDER WE WILL HAVE THIS CASE IN YOUR HANDS FOR A
5 DISPOSITION, SO I WILL ASK YOU TO GO TO THE JURY ROOM
6 FOR A FEW MINUTES WHILE WE TAKE UP SOME LEGAL
7 MATTERS.

8 (THE JURY EXITS THE COURTROOM AT 10:02
9 AM.)

10 THE COURT: ANYTHING FROM THE STATE?

11 MR. POPE: YOUR HONOR, I THINK WE HAVE
12 SOME ISSUES ON CHARGE MATTERS.

13 THE COURT: WE'LL HAVE A CHARGE
14 CONFERENCE. ANYTHING FROM THE DEFENSE?

15 MR. GREELEY: NOTHING.

16 THE COURT: ALL RIGHT. WE'LL TAKE A BREAK
17 AND, COUNSEL, MEET WITH ME IN CHAMBERS AND WE'LL GO
18 OVER THE CHARGE AND OF COURSE PUT ON THE RECORD
19 ANYTHING WE DO, BUT WE'LL MEET IN MY OFFICE IN A
20 COUPLE OF MINUTES.

21 MR. POPE: THANK YOU.

22 (COURT'S IN RECESS AT 10:03 AM.)

23 (COURT RESUMES AT 10:52.)

24 THE COURT: THE STATE READY.

25 MR. POPE: YES, SIR, YOUR HONOR.

1 THE COURT: THE DEFENSE IS READY.

2 MR. GREELEY: READY, YOUR HONOR.

3 THE COURT: THE STATE HAVE ANYTHING YOU
4 WANT TO PUT ON THE RECORD ABOUT THE CHARGE?

5 MR. THOMPSON: YOUR HONOR, ONLY AS TO
6 CHARGE NUMBER THREE IN THE STATE'S REQUEST THAT I
7 NEGLECTED TO PUT IN THAT THE SPECIFIC INTENT OR THE
8 SPECIFIC INTENT TO KILL IS NOT REQUIRED FOR MURDER, I
9 PUT THAT IN; BUT I DID NOT PUT IN ALSO NOT REQUIRED
10 FOR ASSAULT AND BATTERY WITH INTENT TO KILL OR
11 ASSAULT WITH INTENT TO KILL. I MEANT TO HAVE ALL
12 THREE OF THOSE INCLUDED.

13 THE COURT: ALL RIGHT. ANYTHING ELSE?

14 MR. THOMPSON: THAT'S ALL, YOUR HONOR.

15 THE COURT: MR. GREELEY.

16 MR. GREELEY: YOUR HONOR, I BELIEVE IT IS
17 DEFENDANT'S REQUEST OF CHARGE NUMBER 12 THE COURT HAS
18 DECIDED NOT TO CHARGE THAT CHARGE; WE MAKE AN
19 OBJECTION ON THE RECORD IN REGARDS TO THAT CHARGE.
20 AND I WOULD RESERVE ANY OTHER OBJECTIONS AFTER
21 HEARING THE ACTUAL CHARGE TO THE JURY.

22 THE COURT: ALL RIGHT. THE STATE WILL
23 OPEN.

24 MR. POPE: THE STATE WILL WAIVE OPENING,
25 YOUR HONOR.

1 MR. GREELEY: THE DEFENSE IS READY TO GO
2 FORWARD.

3 THE COURT: ALL RIGHT. BRING IN THE JURY.
4 (THE JURY RETURNS TO THE COURTROOM AT
5 10:52 AM.)

6 THE COURT: ALL RIGHT. MR. GREELEY.

7 MR. GREELEY: MAY IT PLEASE THE COURT.
8 CLOSING STATEMENT BY MR. GREELEY:

9 MR. FOREMAN, LADIES AND GENTLEMEN OF THE
10 JURY, GOOD MORNING.

11 (THE JURY: GOOD MORNING.)

12 MR. GREELEY: FIRST OF ALL I WOULD
13 LIKE TO SAY A PHRASE THAT I'M GOING TO GET BACK TO IN
14 JUST A LITTLE BIT AND THIS IS NOT AN ORIGINAL AND I'M
15 AFRAID I'M HAVING TO TAKE IT FROM SOMEBODY ELSE, I'M
16 TAKING IT FROM MR. THOMPSON IN HIS OPENING AND THE
17 PHRASE WAS PICKING AND CHOOSING. I'M GOING TO GET
18 BACK TO THAT IN JUST A LITTLE BIT.

19 WHAT YOU ARE ABOUT TO EXPERIENCE NOW IS
20 KNOWN AS CLOSING STATEMENTS, CLOSING ARGUMENTS,
21 SOMETIME IT'S CALLED DIFFERENT THINGS IN THE LAW, AND
22 THIS IS THE POINT OF THE TRIAL TO WHERE THE
23 REPRESENTATIVES OF EACH SIDE, NORMALLY THOSE ARE
24 ATTORNEYS IN COURT, GET UP AND TALK WITH YOU. AND
25 THAT'S WHAT I'M GOING TO BE DOING HERE FOR A LITTLE

1 WHILE IS I'M GOING TO BE TALKING WITH YOU AND WHAT I
2 HAVE TO TALK WITH YOU ABOUT IS WHAT EVERYBODY HAS
3 BEEN EXPERIENCING AND GOING THROUGH OVER THE LAST
4 WEEK AND THE MATERIAL, THE WORDS, THE ITEMS, THE
5 IDEAS THAT YOU HAVE HEARD AND SEEN THAT HAVE COME
6 INTO EVIDENCE; AND SO I'M GOING TO ASK FOR YOUR
7 PATIENCE BECAUSE THERE WAS ABOUT THREE AND A HALF TO
8 FOUR DAYS OF MATERIAL THAT YOU HAVE LISTENED TO VERY
9 PATIENTLY AND YOU HAVE SEEN AND ALL OF THAT, ALL OF
10 THAT EXCEPT FOR TWO ITEMS, WAS THE STATE'S CASE, WAS
11 WHAT THEY SAID THEY WERE GOING TO BRING TO YOU TO
12 PROVE TO YOU BEYOND A REASONABLE DOUBT THAT BERRY
13 BOLIN IS GUILTY OF ALL OF THESE CHARGES, SO I'M GOING
14 TO BE A LITTLE WHILE WITH YOU THIS MORNING. I ASK
15 THAT YOU LISTEN CAREFULLY AND CLOSELY.

16 AFTER I TALK, A REPRESENTATIVE OF THE
17 GOVERNMENT IS GOING TO HAVE THE OPPORTUNITY TO GET UP
18 AND TO DO THE SAME AS I AM DOING NOW, AND SO THEY ARE
19 GOING TO TALK ABOUT THEIR POSITION IN THE CASE AND
20 WHAT THEIR, IF YOU WILL, SPIN IS ON IT BECAUSE SO
21 MANY THINGS CAN BE SPUN AND I'M NOT SAYING THAT THEY
22 SPIN AND I DON'T; NO, THIS IS MY SPIN AS WELL THAT
23 YOU ARE GETTING READY TO HEAR. AND THESE ARE TO AID
24 YOU IF YOU WILL ALLOW IT AND IF YOU ARE RECEPTIVE TO
25 IT, SO THAT WHEN YOU GET TO THE POINT AND THE JUDGE

1 SAYS, OKAY, LADIES AND GENTLEMEN OF THE JURY, I'VE
2 TOLD YOU FOR A WEEK THAT YOU CAN'T MAKE ANY
3 DETERMINATIONS ABOUT THIS CASE, SO THAT WHEN YOU GET
4 TO THE POINT TO WHERE IT'S TIME FOR YOU TO DISCUSS IT
5 AND TO MAKE A DETERMINATION YOU MAY BE ABLE TO DRAW
6 UPON SOME OF THE THINGS THAT HAVE BEEN SAID.

7 AFTER THE STATE PRESENTS THEIR STATEMENT,
8 THEIR ARGUMENTS, THE JUDGE IS GOING TO TAKE SOME TIME
9 WITH YOU AND THE JUDGE IS GOING TO READ YOU THE LAW
10 AND THAT'S THE LAW THAT THE JUDGE HAS SAID APPLIES IN
11 THIS CASE BECAUSE JUDGE HAYES IN THIS CASE IS THE
12 JUDGE OF THE LAW, HE'S JUDGE OF THE LAW, AND YOU'LL
13 HEAR IN HIS INSTRUCTION ABOUT HOW YOU ARE THE JUDGE
14 OF THE FACTS, AND SO WHETHER YOU UNDERSTOOD IT OR NOT

15 (ONE OF THE JURORS IS COUGHING AND IS GIVEN
16 WATER BY THE BAILIFF.)

17 MR. GREELEY: IF I CAN JUST PAUSE.

18 THE COURT: HOW ABOUT A MINT OR TWO.

19 MR. GREELEY: OKAY. AND SO WHETHER YOU
20 UNDERSTOOD IT OR NOT, WHEN YOU BEGAN THIS CASE AND
21 WHEN YOU TOOK YOUR OATH, ALL OF A SUDDEN IN THIS
22 COURTROOM WE HAD, WE HAVE ONE ALTERNATE, SO WE ENDED
23 UP HAVING, DO THE MATH, 14 JUDGES, 13 OF THOSE WHICH
24 WERE ULTIMATELY GOING TO BE JUDGES OF THE FACTS WHICH
25 IS WHAT YOUR ROLE IS IN THIS CASE, AND JUDGE HAYES,

1 BEING THE JUDGE OF THE LAW, WHICH IS HIS ROLE IN THIS
2 CASE.

3 NOW BERRY BOLIN IS ACCUSED IN THIS CASE OF
4 FIVE CHARGES. THERE ARE GOING TO BE FIVE CHARGES
5 BEFORE YOU FOR YOU TO CONSIDER. YOU ARE TO CONSIDER
6 EACH ONE OF THOSE CHARGES SEPARATELY, SEPARATELY, AND
7 APART. ALL OF THE ALLEGATIONS OF THE GOVERNMENT
8 ARISE OUT OF A VERY SHORT PERIOD OF TIME IN HIS
9 ALLEGED ACTIONS THAT EVENING. AND WHAT THE CHARGES
10 ARE, AND THEY ARE NOT IN NUMERICAL ORDERS OF THE
11 INDICTMENT AND I'M GOING TO GO IN A PARTICULAR ORDER
12 FOR A PARTICULAR PURPOSE; ONE OF THE CHARGES THAT
13 HE'S CHARGED WITH IS DISCHARGING A FIREARM INTO AN
14 OCCUPIED VEHICLE UNDER SOUTH CAROLINA LAW. THAT'S
15 ONE OF THE CHARGES. AND ON ALL OF THESE CHARGES YOU
16 ARE GOING TO HEAR THE JUDGE INSTRUCT YOU THAT THERE
17 ARE ELEMENTS OF EACH CHARGE, ELEMENTS WHICH ARE
18 PARTS, PARTS OF A CHARGE. AND WHAT THE STATE IS
19 REQUIRED TO DO IS ON EACH INDIVIDUAL OF THESE FIVE
20 CHARGES IS TO PROVE TO YOU BEYOND A REASONABLE DOUBT
21 EACH ELEMENT OF THOSE CHARGES, SO THE JUDGE IS GOING
22 TO GO THROUGH AND YOU ARE GOING TO HEAR INSTRUCTIONS
23 ABOUT THESE CHARGES AND WHAT THE ELEMENTS ARE, SO
24 WHEN YOU HEAR THOSE IT'S IMPORTANT TO TRY AND PICK UP
25 ON WHAT THEY ARE. SO THAT'S ONE OF THE CHARGES.

1 HE IS ALSO CHARGED ON TWO COUNTS OF WHAT
2 WE CALL IN SOUTH CAROLINA ASSAULT WITH INTENT TO
3 KILL. ASSAULT WITH INTENT TO KILL. THEY CALL IT
4 OTHER THINGS IN OTHER STATES. NOTICE IT'S NOT
5 ASSAULT AND BATTERY AND THE REASON FOR THAT IS THAT A
6 BATTERY IS A TOUCHING. IF A PERSON COMES IN CONTACT
7 WITH OR IF THERE IS A TOUCHING OF SOME SORT, THEN YOU
8 HAVE A BATTERY. IN THIS CASE HE IS CHARGED WITH
9 ASSAULT WITH INTENT TO KILL AND THE PARTICULAR
10 INDIVIDUALS WITH WHICH HE IS CHARGED THIS ARE
11 MR. HUBBARD WHO WAS IN THE CAR AND MS. MCCARTER WHO
12 WAS IN THE CAR, SO THOSE TWO CHARGES APPLY TO THOSE
13 INDIVIDUALS, MR. HUBBARD AND MS. MCCARTER.

14 HE IS ALSO CHARGED WITH ASSAULT AND
15 BATTERY WITH INTENT TO KILL AND THE REASON THAT THE
16 BATTERY IS INSERTED IN THAT INDICTMENT IS BECAUSE
17 IT'S ALLEGED THAT HE COMMITTED A BATTERY AGAINST
18 MR. FALLS, OKAY. BECAUSE OUT OF THIS INCIDENT IT
19 APPEARS THAT MR. FALLS SUFFERED A WOUND TO HIS RIGHT
20 WRIST, AND SO THE STATE'S ALLEGATION IS THAT, OH, HE
21 WAS BATTERED BECAUSE THERE IS A WOUND TO HIS RIGHT
22 WRIST SO ON THAT INDICTMENT IT IS ASSAULT AND BATTERY
23 WITH INTENT TO KILL. AND ONCE AGAIN THE JUDGE IS
24 GOING TO GIVE YOU ALL OF THE ELEMENTS OF THOSE THREE
25 CHARGES THERE. SO I HAVE SPOKEN TO YOU ABOUT FOUR

1 CHARGES AND THERE ARE FIVE. OKAY.

2 THE FIFTH CHARGE THAT MR. BOLIN IS CHARGED
3 WITH IS MURDER, OKAY, AND THE JUDGE IS GOING TO TELL
4 YOU WHAT THE LAW AND THE DEFINITIONS OF MURDER IS AND
5 THIS IS IN REGARDS TO THE INDICTMENT OF MR. HOVIS WHO
6 DIED THAT NIGHT. NOW, SO THERE ARE FIVE INDICTMENTS
7 SO THERE ARE FIVE CHARGES.

8 THERE IS ONE OTHER CHARGE THAT I NEED TO
9 SPEAK WITH YOU ABOUT AND TO FAMILIARIZE YOURSELF WITH
10 BECAUSE YOU HAVEN'T HEARD THIS ONE YET. SOMETIMES IN
11 TRIALS THE JUDGE WILL END UP GIVING A CHARGE IN
12 WHAT'S KNOWN AS A LESSER INCLUDED OFFENSE, A LESSER
13 INCLUDED OFFENSE, AND THAT'S WHEN A JUDGE CAN GIVE
14 THE COURT, I MEAN THE COURT WILL GIVE THE JURY AN
15 OPTION TO REVIEW A CHARGE THAT IS SOMEHOW RELATED TO
16 AS A LESSER OFFENSE OF ANOTHER CHARGE, OKAY. AND IN
17 THIS PARTICULAR SITUATION YOU ARE GOING TO ALSO HEAR
18 A JURY INSTRUCTION, WHEN THE JUDGE GIVES YOU THE
19 INSTRUCTIONS, ON WHAT'S KNOWN AS VOLUNTARY
20 MANSLAUGHTER. VOLUNTARY MANSLAUGHTER IS A LESSER
21 INCLUDED OFFENSE OF MURDER AND HE IS GOING TO SHOW
22 YOU THROUGH HIS DEFINITIONS THE DISTINGUISHING
23 BETWEEN THE TWO OF THOSE.

24 HE IS ALSO CHARGED WITH POSSESSION OF A
25 FIREARM OR A KNIFE DURING THE COMMISSION OF A VIOLENT

1 OFFENSE. UNDER SOUTH CAROLINA LAW IF A PERSON IS
2 FOUND GUILTY OF A VIOLENT OFFENSE AS IT IS DEFINED IN
3 OUR STATUTES THEN THE STATE MAY CHARGE AND THE JURY
4 MAY CONSIDER AN ADDITIONAL CHARGE IF IT IS ALLEGED
5 THAT A GUN OR A KNIFE OR SOME DEADLY WEAPON WAS USED
6 IN THE COMMISSION OF THAT VIOLENT OFFENSE; AND SO
7 WHAT I LIKE TO REFER THAT TO IS THAT IS A DEPENDENT
8 CHARGE, A DEPENDENT CHARGE, AND WHAT A DEPENDENT
9 CHARGE MEANS IS THAT THERE HAS GOT TO BE ANOTHER
10 CHARGE FOR WHICH A PERSON IS FOUND GUILTY BEFORE THE
11 JURY CAN EVEN CONSIDER THAT CHARGE. AND IN THIS
12 PARTICULAR CASE IT WOULD BE DEPENDENT UPON WHETHER OR
13 NOT THE JURY FOUND MR. BOLIN GUILTY OF EITHER MURDER
14 OR VOLUNTARY MANSLAUGHTER BEFORE THE JURY COULD GET
15 TO THE DELIBERATIONS AS TO WHETHER OR NOT HE WAS
16 GUILTY OF THE DEPENDENT CHARGE WHICH IS POSSESSION OF
17 A FIREARM OR KNIFE DURING THE COMMISSION OF A VIOLENT
18 CRIME.

19 SO YOU SEE, YOU HAVE THIS WHOLE HOST OF
20 CHARGES BEFORE YOU THAT YOU ARE GOING TO HAVE TO
21 ADDRESS AND YOU SHOULD ADDRESS THEM INDIVIDUALLY AND
22 AT THE SAME TIME I'M GOING TO START GOING THROUGH THE
23 LAW A LITTLE BIT HERE AND LET ME TELL YOU HOW I AM
24 GOING TO BREAK THIS PRESENTATION UP SO YOU'LL HAVE AT
25 LEAST A LITTLE ROAD MAP AS TO WHERE IN THE WORLD

1 MR. GREELEY IS GOING WITH THIS, OKAY.

2 THE FIRST THING I'M GOING TO TALK TO YOU
3 ABOUT IS MORE SPECIFICALLY NOT THE SPECIFIC LAW AND
4 THE CHARGES, BUT THE LAW OF THE CASE. AND AFTER I
5 TALK WITH YOU ABOUT THE LAW OF THE CASE AND WE GET
6 ALL OF THAT DONE, I'M THEN GOING TO TALK WITH YOU
7 ABOUT WHAT YOU'VE HEARD OVER THE LAST THREE TO FOUR
8 DAYS AND THAT'S MORE DEALING WITH THE ALLEGED FACTS,
9 THE ALLEGED EVIDENCE THAT'S IN THE CASE, SO THAT'S
10 WHERE I'M GOING TO BE GOING.

11 NOW WHEN YOU TOOK YOUR OATH LAST TUESDAY,
12 IT'S A VERY IMPORTANT OATH, IT'S ONE OF THE MOST
13 IMPORTANT OATHS ANYBODY CAN TAKE ANYWHERE, AND THERE
14 ARE A LOT OF DIFFERENT THINGS THAT YOU HAVE THAT ARE
15 DEPENDENT ON THAT OATH AND THAT ARE COMPRISED IN THAT
16 OATH. ONE OF THE THINGS THAT I WOULD LIKE OR THAT I
17 HAVE ALWAYS HEARD AND I BELIEVE IT'S GOOD IS THAT A
18 JURY SHOULD APPROACH THEIR DUTY IN DETERMINING
19 MATTERS IN A CASE AS THEY APPROACH ANY MAJOR LIFE
20 DECISION IN THEIR OWN LIVES SUCH AS A JOB, SUCH AS
21 GETTING MARRIED, SUCH AS HAVING CHILDREN, ALL OF
22 THOSE MAJOR DECISIONS THAT A JURY OR A JUROR WOULD
23 ENCOUNTER IN THEIR LIFE, THEY SHOULD APPROACH THEIR
24 DUTY AND THEIR OATH WITH THE SAME RESOLVE, WITH THE
25 SAME IMPORTANCE BECAUSE OF THE NATURE OF WHAT THEY

1 ARE DOING. IT'S VERY IMPORTANT.

2 THE JUDGE IS GOING TO GIVE YOU AN
3 INSTRUCTION ON REASONABLE DOUBT. NOW YOU HEARD IN MY
4 OPENING STATEMENT, PROOF BEYOND A REASONABLE DOUBT,
5 PROOF BEYOND A REASONABLE DOUBT, YOU PROBABLY HEARD
6 IT MORE THAN YOU WANTED TO HEAR IT, AND NOW I'M
7 TELLING IT TO YOU AGAIN, PROOF BEYOND A REASONABLE
8 DOUBT. WHAT DOES THAT MEAN? WELL, I SUBMIT TO YOU
9 YOU ALWAYS TAKE THE JUDGE AS HE CHARGES IT TO YOU
10 BECAUSE HE'S THE JUDGE OF THE LAW, BUT I SUBMIT TO
11 YOU YOU MAY HEAR SOMETHING IN THE CHARGE THAT IS
12 SIMILAR TO THIS: WHAT IS PROOF BEYOND A REASONABLE
13 DOUBT? WHAT'S A REASONABLE DOUBT? BECAUSE TO GET
14 PROOF YOU HAVE TO UNDERSTAND WHAT A REASONABLE DOUBT
15 IS. IT'S LOGICAL, RIGHT. OKAY.

16 IN THE LAW IT HAS BEEN DEFINED AT TIMES AS
17 REASONABLE DOUBT IS A DOUBT FOR WHICH A REASONABLE
18 PERSON WILL HESITATE TO ACT. YOU HAVE TO GO BEYOND
19 THAT. THE PROOF HAS TO GO BEYOND THAT. IT HAS TO GO
20 BEYOND THAT HESITATION TO ACT. NOTICE THAT IT
21 DOESN'T SAY THAT A REASONABLE PERSON WILL NOT ACT.
22 IT SAYS THAT WHICH CAUSES A PERSON TO HESITATE TO ACT
23 CAN BE A REASONABLE DOUBT. AND SO IN THIS PARTICULAR
24 CASE, OVER THE LAST THREE OR FOUR DAYS, IF THERE IS
25 ANYTHING IN THIS CASE WHICH YOU AS A REASONABLE

1 PERSON AND A REASONABLE JURY CAUSES YOU TO HESITATE
2 TO CONVICT BERRY BOLIN OF ONE OR ANY OF THESE CHARGES
3 THEN BY TAKING YOUR OATH LAST TUESDAY YOU ARE UNDER A
4 DUTY TO RESOLVE THAT IN HIS FAVOR AND FIND HIM NOT
5 GUILTY OF THE CHARGE. SO THAT IS SOME OF THE LAW
6 THAT YOU ARE GOING TO HEAR ABOUT, A REASONABLE DOUBT.

7 HOW DOES REASONABLE DOUBT WORK WITH
8 SELF-DEFENSE, DEFENSE OF ANOTHER? NOW YOU ARE GOING
9 TO HEAR AND YOU'VE HEARD LANGUAGE ABOUT SELF-DEFENSE,
10 DEFENSE OF ANOTHER, WHAT DOES THAT MEAN? IN OUR
11 STATE A PERSON HAS A RIGHT TO DEFEND NOT ONLY
12 THEMSELVES, BUT A PERSON HAS A RIGHT TO DEFEND
13 OTHERS. AND THAT RIGHT TO DEFEND OTHERS AND TO
14 DEFEND SELF IS A COMPLETE AND ABSOLUTE DEFENSE TO ANY
15 CHARGE, ANY CHARGE; WHETHER IT BE SIMPLE ASSAULT AND
16 BATTERY OR WHETHER IT BE MURDER. IT'S A COMPLETE AND
17 ABSOLUTE DEFENSE. AND YOU ARE GOING TO HEAR FROM
18 JUDGE HAYES INSTRUCTIONS ABOUT DEFENSE OF OTHERS IN
19 THIS CASE. BUT HOW DOES THAT WORK WITH REASONABLE
20 DOUBT? I SUBMIT TO YOU THE WAY THAT WORKS WITH
21 REASONABLE DOUBT IS THAT THE STATE NOT ONLY HAS TO
22 PROVE ALL OF THE ELEMENTS OF EACH OFFENSE BEYOND A
23 REASONABLE DOUBT, IT ALSO HAS TO BRIDGE OVER THAT
24 DEFENSE OF OTHERS THAT IS COMBINED IN THERE. THEY
25 HAVE TO WITH THEIR PROOF BRIDGE OVER THAT BEYOND A

1 REASONABLE DOUBT. AND IF THEY DON'T, IF THEY DON'T,
2 THEN AS A JUROR YOUR DUTY IS TO FIND THE DEFENDANT
3 MR. BERRY BOLIN NOT GUILTY IN THIS CASE, NOT GUILTY
4 ON ANY AND ALL OF THE CHARGES.

5 NOW YOU ARE ALSO GOING TO HEAR ELEMENTS OF
6 THE DEFENSE OF OTHERS AND THEY ARE THE SAME AS THE
7 DEFENSE OF SELF-DEFENSE ELEMENTS, OKAY. JUST LIKE
8 WITH THE CHARGES, THERE ARE ELEMENTS OF SELF-DEFENSE.
9 YOU ARE GOING TO HEAR ELEMENTS SUCH AS THE PERSON WHO
10 IS CLAIMING THE DEFENSE OF OTHERS DIDN'T HAVE ANY
11 FAULT IN BRINGING ON THE CONFRONTATION, OKAY. YOU
12 ARE ALSO GOING TO HEAR AND YOU MAY HEAR, YOU MAY HEAR
13 SOME LAW ABOUT DUTY TO RETREAT IN THERE, OKAY. IF
14 ANOTHER PERSON IS LAWFULLY UPON PROPERTY THAT IS
15 OWNED BY ANOTHER IN THE LAW THERE IS NO DUTY TO
16 RETREAT. THERE IS NO DUTY TO RETREAT. IF THEY ARE
17 NOT ON THE PROPERTY THERE IS A DUTY TO RETREAT IF IT
18 CAN REASONABLY AND SAFELY BE DONE, ONLY IF IT CAN
19 REASONABLY AND SAFELY BE DONE. SO THAT'S THE ASPECT
20 OF THE RETREAT ELEMENT OF SELF-DEFENSE DEFENSE OF
21 OTHERS.

22 ALSO ONE OF THE ELEMENTS YOU MAY HEAR
23 TALKED ABOUT IS THAT THERE HAD TO BE A SITUATION TO
24 WHERE A PERSON WOULD REASONABLY OR IT WAS FROM THE
25 SITUATION TO WHERE THE PERSON WAS IN DANGER OF SEVERE

1 BODILY INJURY OR DEATH, SEVERE BODILY INJURY OR
2 DEATH. SO YOU REVIEW THAT AND IN THIS CASE YOU'LL
3 HAVE TO LOOK AT THAT AND SEE IF IT'S THERE. I SUBMIT
4 TO YOU IT IS. IT IS. I'M GOING TO TALK TO YOU MORE
5 ABOUT THAT IN A MINUTE.

6 ANOTHER ELEMENT THAT YOU'LL BE CHARGED
7 ON IS THAT ONCE A PERSON BEGINS THE DEFENSE OF
8 ANOTHER THEY HAVE THE RIGHT TO CONTINUE THAT UNTIL
9 IT'S REASONABLE THAT THE THREAT IS NO MORE AND THE
10 FORCE BY WHICH THEY CAN MEET A THREAT OF SEVERE
11 BODILY INJURY OR DEATH IS THE FORCE OF DEATH. IN
12 THIS PARTICULAR CASE THIS IS WHAT YOU HAVE. THIS IS
13 WHAT YOU HAVE.

14 NOW THE ASPECT OF VOLUNTARY
15 MANSLAUGHTER, THE ASPECT OF VOLUNTARY MANSLAUGHTER,
16 IS GOING TO BE VERY IMPORTANT HERE BECAUSE I SUBMIT
17 TO YOU ONE OF THE THINGS THE STATE IS GOING TO ARGUE
18 TO YOU IS THAT IF YOU DON'T FIND BERRY BOLIN GUILTY
19 OF MURDER, HE IS CERTAINLY GUILTY OF VOLUNTARY
20 MANSLAUGHTER. OKAY. ONE OF THE THINGS THAT THEY ARE
21 GOING TO POINT TO AND I'LL GET TO THIS IN JUST A
22 MINUTE MORE, BUT ONE OF THE THINGS THAT I PREDICT THE
23 STATE IS GOING TO POINT TO IS THAT IN THE SECOND PAGE
24 OF THE LAST STATEMENT THAT MY CLIENT ALLEGEDLY GAVE,
25 BUT SHOWED UP A FEW MONTHS LATER, THAT IS IN THE

1 QUESTION AND ANSWER FORM, THERE IS WRITTEN ON THAT
2 PAPER BY THE DETECTIVE THAT ALLEGEDLY MY CLIENT SAID
3 THAT WHEN HE SAW LORI MOSS GET HIT, HE WENT BERSERK,
4 AND HE STARTED SHOOTING. OKAY.

5 NOW THE STATE IS GOING TO TRY AND PROBABLY
6 USE THAT TO MAKE AN ARGUMENT TO YOU THAT THEREFORE HE
7 IS GUILTY OF VOLUNTARY MANSLAUGHTER. LET ME EXPLAIN
8 TO YOU WHAT YOU ARE GOING TO HEAR ABOUT VOLUNTARY
9 MANSLAUGHTER AS A DEFINITION. VOLUNTARY MANSLAUGHTER
10 AS A DEFINITION IS A KILLING WITH MALICE
11 AFORETHOUGHT, SEE IT'S JUST LIKE MURDER BECAUSE
12 THAT'S WHAT YOU ARE GOING TO HEAR ABOUT MURDER, THAT
13 IT'S A KILLING WITH MALICE AFORETHOUGHT, BUT WITH
14 LEGAL EXCUSE. AND SO THE STATE MAY ARGUE TO YOU THAT
15 IF YOU DON'T FIND HIM GUILTY OF MURDER, THEN YOU
16 SHOULD FIND HIM GUILTY OF VOLUNTARY MANSLAUGHTER
17 BECAUSE OF A LEGAL EXCUSE. OKAY. I SUBMIT TO YOU
18 THAT'S NOT THE TYPE OF EXCUSE THAT IS INVOLVED IN
19 VOLUNTARY MANSLAUGHTER. THIS IS NOT A VOLUNTARY
20 MANSLAUGHTER CASE.

21 HISTORICALLY THE CASES HAVE TALKED ABOUT
22 VOLUNTARY MANSLAUGHTER AS A LEGAL EXCUSE IN MOST
23 CIRCUMSTANCES TO WHERE SOMEBODY GETS SO SHOCKED WITH
24 SOMETHING THAT THEY REACT TO IT. OKAY. I'LL GIVE
25 YOU SOME EXAMPLES. ONE OF THE OLD EXAMPLES GOES BACK

1 TO WHERE, AND YOU CAN IMAGINE THIS IN THE OLD DAYS OF
2 SOUTH CAROLINA, TO WHERE A MAN IS SPAT UPON BY
3 ANOTHER MAN. OKAY. SO AN OLD FELLOW IS WALKING DOWN
4 THE STREET, ONE OF HIS ENEMIES COMES UP, AND SPITS ON
5 HIM OR SAYS SOMETHING FOUL ABOUT HIS BRIDE, OKAY.
6 WELL, HE BECOMES SO ENRAGED AT THIS OUTRAGEOUS
7 CONDUCT THAT HE TAKES OUT HIS PISTOL AND SHOOTS AND
8 KILLS THE PERSON. DID HE HAVE MALICE IN HIS HEART?
9 SURE HE DID. OKAY. BUT HE WASN'T TRYING TO DEFEND
10 ANYBODY. NOBODY WAS BEING HURT. HE WAS JUST
11 OFFENDED, OKAY, AND SO HE SHOT AND SO WHAT IT DOES IS
12 IT ALLOWS THE JURY TO SAY, WELL, THAT WASN'T MURDER
13 AND THE GUY SHOULDN'T HAVE SPAT IN HIS FACE SO WE'RE
14 GOING TO FIND HIM GUILTY OF VOLUNTARY MANSLAUGHTER.
15 THE LEGAL EXCUSE BEING HE GOT SPIT UPON WHICH RAISED
16 HIS EMOTIONS SO BADLY BUT NOBODY WAS GETTING HURT IN
17 THAT.

18 LET ME GIVE YOU ANOTHER EXAMPLE THAT
19 INVOLVES A THIRD PARTY AND YOU'LL SEE THESE CASES.
20 HUSBAND COMES HOME, WALKS IN HIS HOUSE, AND HIS WIFE
21 IS WITH ANOTHER MAN, CATCHES THEM IN THE ACT, OKAY.
22 HUSBAND PULLS OUT A GUN FROM THE BED DRAWER AND
23 SHOOTS. OKAY. KILLS HIM. OKAY. VOLUNTARY
24 MANSLAUGHTER. NOW HE WASN'T DEFENDING HIS WIFE, SHE
25 WASN'T BEING HURT, IT WAS A CONSENSUAL THING ON HER

1 PART, BUT HE WAS SO ENRAGED OF THE OFFENSIVE CONDUCT
2 THAT HE COULDN'T RESTRAIN HIMSELF SO THE LAW GIVES
3 HIM A LEGAL EXCUSE FOR WHAT HE DID TO THE EXTENT THAT
4 IT REDUCES IT FROM MURDER TO VOLUNTARY MANSLAUGHTER
5 WHICH I SUBMIT TO YOU, LADIES AND GENTLEMEN OF THE
6 JURY, THAT'S MOVING IT DOWN ABOUT THAT MUCH.

7 SO THIS IS NOT A VOLUNTARY MANSLAUGHTER
8 CASE EVEN THOUGH THE STATE IS GOING TO TRY TO ARGUE
9 TO YOU THAT IT IS. IT'S NOT. IT'S NOT. THEY ARE
10 GOING TO SAY, OH, BERRY BOLIN GOT OUT SO OUTRAGED AND
11 SO UPSET WHEN HE SAW LORI MOSS GET PUNCHED OUT BY
12 MR. FALLS THAT HE WENT INTO A RAGE AND HE SHOT AND
13 THAT'S HOW PEOPLE GET KILLED. THAT'S NOT THE SAME.
14 THAT'S NOT THE SAME. THIS CASE IS SELF-DEFENSE.
15 SOMEBODY ELSE IS BEING ATTACKED, SOMEBODY ELSE IS
16 BEING HURT, IT'S NOT SOMETHING THAT OFFENDS HIS
17 GENTLEMANLY WAYS, OKAY. THIS IS NOT A VOLUNTARY
18 MANSLAUGHTER CASE.

19 FINALLY ONE OF THE LAWS THAT THE JUDGE
20 IS GOING TO TALK TO YOU ABOUT IS AS THE TRIER OF FACT
21 IN THIS CASE YOU ARE THE CREDIBILITY OF THE
22 WITNESSES, YOU JUDGE THE CREDIBILITY OF THE EVIDENCE,
23 YOU JUDGE WHETHER IT'S BELIEVABLE. YOU JUDGE WHETHER
24 IT CAN BE RELIED UPON IN SUCH AN IMPORTANT SITUATION.
25 THAT'S ALL WITHIN YOUR PROVINCE. YOU CAN LOOK AT IT

1 AND YOU GET TO MAKE THAT DECISION AND THERE IS NOBODY
2 LOOKING OVER YOUR SHOULDER BECAUSE THAT'S YOUR POWER.
3 THAT'S YOUR AUTHORITY. YOU ARE THE JUDGES OF THE
4 CREDIBILITY OF THIS CASE, OF EACH WITNESS, OF EACH
5 PIECE OF EVIDENCE. IN YOUR DETERMINATION AS TO
6 WHETHER OR NOT THE GOVERNMENT HAS DONE WHAT THE LAW
7 TELLS THEM IT HAS TO DO WHICH IS PROOF BEYOND A
8 REASONABLE DOUBT THAT BERRY'S GUILTY. SO YOU ARE THE
9 DETERMINATION. YOU DETERMINE THAT.

10 AND HAVING SAID THAT I'M GOING TO TALK TO
11 YOU NOW ABOUT WHAT WE'VE BEEN GOING THROUGH AND WHAT
12 YOU'VE HEARD, WHAT YOU'VE SEEN OVER THE LAST THREE OR
13 FOUR DAYS IN REGARDS TO THE STATE'S CASE. THERE IS A
14 LOT OF INFORMATION HERE. THERE IS A LOT OF EVIDENCE
15 THAT'S HERE. A LOT OF EVIDENCE THAT'S PUT IN. YOU
16 CAN LOOK AT THAT. THERE IS A LOT OF TESTIMONY THAT
17 YOU'VE HEARD. WHAT I'M GOING TO POINT OUT FIRST,
18 WHAT I CALL LOOKING AT THE STATE'S CASE, LET'S LOOK
19 AT WHAT'S IN THE STATE'S CASE. LET'S LOOK WHAT THEY
20 PRESENTED TO YOU TELLING YOU WE WANT YOU TO FIND HIM
21 GUILTY.

22 I GO BACK TO DEPUTY DAY. YOU REMEMBER
23 DEPUTY DAY? DEPUTY DAY WAS A GOOD DEPUTY. SHE DOES
24 HER JOB. SHE DOES HER JOB. WHAT DID DEPUTY DAY FIND
25 OUT THERE? ONE OF THE FIRST THINGS SHE FOUND, DEPUTY

1 DAY FOUND A BROKEN BEER BOTTLE ON THE SIDE OF THE
2 DRIVEWAY. REMEMBER WHEN THIS WAS? THIS WAS ALMOST
3 WITHIN AN HOUR OF THIS INCIDENT OCCURRING SHE FINDS A
4 BROKEN BEER BOTTLE AND NOT ONLY DID SHE DO THAT BUT
5 SHE FOUND BEER ON THE DRIVEWAY, OKAY. SHE THOUGHT IT
6 WAS IMPORTANT ENOUGH TO MARK IT, SAY, Y'ALL MAY WANT
7 TO LOOK AT THIS, OKAY. BUT AS YOU SAID AND I'M NOT
8 GOING TO BEAT THAT HORSE TOO MUCH ON THE BEER BOTTLE,
9 THERE WAS NO FOLLOW UP. NOW DOES THE BEER BOTTLE
10 MAKE OR BREAK THE CASE? NO. BUT YOU SAW HOW IT DID
11 BECOME IMPORTANT. YOU SAW HOW IT DID BECOME
12 IMPORTANT.

13 DEPUTY JAMISON, REMEMBER HE WAS SAYING HOW
14 HE WAS GOING OVER TO, HE FIRST WENT TO LAWRENCE ROAD,
15 THEN HE CAME BACK OVER TO CLOVER TO SECURE THE SCENE
16 OR HE WAS ON THE WAY TO THE CLOVER POLICE DEPARTMENT
17 TO SECURE THE SCENE AND HE WAS THE FIRST WITNESS I
18 ASKED ABOUT YOUR COMMUNICATION WAS OKAY; YOU WERE
19 ABLE TO RADIO, YOU WERE ABLE TO TELEPHONE. HE SAID
20 YEAH. THAT'S IMPORTANT BECAUSE OF THE LACK OF
21 COMMUNICATION IN THIS CASE AMONGST PEOPLE.

22 HE ALSO TESTIFIED ABOUT HIS, WHAT HIS JOB
23 WAS ONCE HE RELEASED THE SCENE TO THE CLOVER POLICE
24 OFFICER AND WENT IN AND STARTED GETTING STATEMENTS.
25 THINK ABOUT THIS: HE'S GETTING WRITTEN STATEMENTS OF

1 AN INCIDENT THAT HAD JUST OCCURRED FROM PEOPLE WHO
2 WERE THERE AND HE'S JUST COLLECTING, HE'S COLLECTING.
3 IS HE'S DOING HIS JOB? BUT HE'S A NICE ENOUGH GUY,
4 I'M SURE HE'S A GOOD DEPUTY, BUT HE'S JUST
5 COLLECTING. NOBODY IS READING. YOU'LL NOTICE FROM
6 THE TESTIMONY NOBODY READ THEM UNTIL THEY GOT BACK TO
7 THE JUSTICE MOSS CENTER THE NEXT MORNING AT ABOUT 8
8 O'CLOCK OR 9 O'CLOCK. THAT'S WHEN THEY FIRST STARTED
9 LOOKING AT THE STATEMENTS.

10 DETECTIVE PATTERSON, YOU SAW HIM. NOBODY
11 WAS IN CHARGE, NOBODY WAS MAKING DECISIONS, AND THUS
12 YOU HAD PEOPLE WHO WERE NOT READING STATEMENTS, YOU
13 HAVE PEOPLE WHO WERE NOT TALKING TO EACH OTHER ON THE
14 RADIO, ON THE TELEPHONES, ABOUT IMPORTANT THINGS SUCH
15 AS THERE MAY HAVE BEEN A GUN IN THAT CAR. THEY HAD
16 EVIDENCE THAT MORNING, WHETHER YOU WANT TO BELIEVE IT
17 OR DISBELIEVE IT, THEY HAD EVIDENCE THAT MORNING THAT
18 THERE WAS POSSIBLY A GUN IN THIS CAR. NOBODY TALKED
19 ABOUT IT. NOBODY SEEMS TO CARE ABOUT IT. THEY WERE
20 CONTACTING THE HOSPITAL BY PHONE TO CHECK ON THE
21 ALLEGED VICTIMS. OKAY. PMC IS NOT A REAL LONG DRIVE
22 FROM CLOVER AND YOU PROBABLY DON'T EVEN NEED TO DRIVE
23 BECAUSE THE SHERIFF HAS GOT JURISDICTION OVER THE
24 WHOLE COUNTY, YOU HAVE GOT SHERIFF OFFICERS
25 EVERYWHERE, OKAY. BUT BETWEEN THE TIME THAT TRAVIS

1 FALLS ARRIVED AT PMC AND THE TIME THAT HE WAS THEN
2 TAKEN LATER THAT MORNING UP TO CAROLINAS MEDICAL, NOT
3 ONE PERSON FROM THE SHERIFF'S OFFICE WENT TO THE
4 HOSPITAL. THIS WAS A SHOOTING. THEY CALLED HIM ON
5 THE PHONE AT NINE OR TEN THE NEXT MORNING JUST TO SEE
6 HOW THEY WERE DOING. NOBODY WENT TO THE HOSPITAL AND
7 THE FIRST 24 HOURS OF ANY INVESTIGATION IS CRITICAL.
8 NOBODY WENT TO THE HOSPITAL. AND OUT OF ALL OF THIS
9 LACK OF COMMUNICATION AND ALL OF THIS NOT GOING TO
10 HOSPITAL, WHAT ARE THEY DOING? THEY ARE DOING
11 GUNSHOT RESIDUE KITS ON BERRY AND THAT'S FINE.
12 THAT'S FINE. THAT'S WHAT THEY ARE SUPPOSED TO BE
13 DOING. THEY ARE DOING GUNSHOT RESIDUE KITS ON THE
14 THREE OR FOUR GUYS AT THE HOUSE AND THAT'S FINE.
15 THAT'S WHAT THEY ARE SUPPOSED TO BE DOING. BUT THEY
16 ARE DOING NOTHING, NOTHING, IN REGARDS TO ANYBODY WHO
17 WAS IN THE CAR. NOTHING. AND THEY HAD INFORMATION
18 THAT THERE MIGHT HAVE BEEN A GUN IN THE CAR AND I
19 SUBMIT TO YOU THERE WAS A GUN IN THAT CAR AND I'M
20 GOING TO TIE THAT UP IN JUST A FEW MINUTES BECAUSE IT
21 JUST GLARES, IT JUST GLARES IN THIS CASE, AND I THINK
22 THAT YOU ARE GOING TO THINK THAT THERE PROBABLY WAS
23 TOO WHEN IT'S OVER.

24 AMERICAN AUTO SALES, AMERICAN AUTO SALES,
25 THEY KNEW AT LEAST BY ONE O'CLOCK THE NEXT AFTERNOON

1 THAT THIS BLACK PONTIAC THAT HAD PEOPLE IN IT THAT
2 HAD BEEN SHOT, ON A 1.7 TRIP, 1.7 MILE TRIP, BETWEEN
3 THE INCIDENT SITE AND THE CLOVER POLICE DEPARTMENT,
4 PULLED OVER TO THE SIDE OF THE ROAD AT THE AMERICAN
5 AUTO SALES PARKING LOT AND STOPPED. YOU HAVE AN
6 OCCUPANT WHO HAS A HEAD WOUND. YOU HAVE AN OCCUPANT
7 WHO HAS A WRIST WOUND. AND THEY STOP. AS A JUROR
8 YOU CAN LOOK AT THESE THINGS AND USE YOUR COMMON
9 SENSE BECAUSE THAT'S A COLLECTIVE COMMON SENSE.

10 I SUBMIT TO YOU ANYBODY OUT THERE WHO HAS
11 SOMEONE WITH A HEAD WOUND IN THEIR CAR IS GOING TO
12 STOP. WHY DID THEY STOP? WELL, YOU HEARD THEM. MS.
13 MCCARTER WAS UPSET. SHE COULDN'T DRIVE ANY FURTHER.
14 SHE COULDN'T DRIVE ANY FURTHER. WE'LL GET BACK TO
15 THAT IN A MINUTE. BUT WHAT DID THE POLICE DO? WHEN
16 THEY FOUND THAT OUT, WHAT DID THEY DO? THEY DID WHAT
17 THEY CONTINUE TO DO WITH THE PEOPLE IN THIS CAR, THEY
18 DID NOTHING, ABSOLUTELY NOTHING. THEY DIDN'T ACT ON
19 THAT. THAT'S STRANGE. THAT'S ODD. THAT'S JUST
20 WRONG. THEY DIDN'T ACT ON IT. THEY DID GO BACK TWO
21 WEEKS LATER AND YOU HEAR THE TESTIMONY AND AN
22 INVESTIGATOR FROM MY OFFICE WAS OUT THERE, THEY
23 DIDN'T FIND ANYTHING. WELL, I'M NOT SURPRISED. I'M
24 NOT SURPRISED. NOBODY IS GOING TO LEAVE A GUN LYING
25 AROUND THAT LONG ONCE IT'S DITCHED.

1 THE ANGLE RODS. THIS WAS INTERESTING.
2 ANGLE RODS ARE NEAT. THEY ARE KIND OF FUN. OKAY.
3 IF IT WASN'T SUCH A HORRIBLE THING AND IF IT DIDN'T
4 DEAL WITH VIOLENCE MATHEMATICALLY ANGLE RODS ARE KIND
5 OF INTERESTING. AND DEPUTY SMITH DID THE ANGLE RODS
6 IN THIS SITUATION AND YOU GOT ALL THE PICTURES, THEY
7 SHOWED YOU THE PICTURES, AND YOU GOT THE ANGLE RODS
8 COMING OUT AND THEY ARE EYE BALLING. THEY ARE EYE
9 BALLING THEM. THAT'S NOT WHAT ANGLE RODS ARE FOR TO
10 EYE BALL THEM, TO TAKE A TWO DIMENSIONAL PICTURE AND
11 HAND IT TO YOU AND SAY SEE. IF YOU ARE GOING TO USE
12 ANGLE RODS USE ANGLE RODS FOR WHAT THEY ARE FOR,
13 TRIANGULATION, REMEMBER. REMEMBER OFFICER WILLIAMS
14 FROM THE CITY OF ROCK HILL TRIANGULATION. THAT'S
15 WHAT ANGLE RODS ARE USED FOR. THEY ARE USED FOR A
16 PURPOSE, NOT JUST TO LOOK AT AND SAY, YEAH, THAT WAS
17 THE ANGLE. THAT WAS A LITTLE BIT DIFFERENT FROM THE
18 OTHER ONE. THEY PUT IT IN THERE FOR A PURPOSE SO
19 THAT THEY CAN DETERMINE SOMETHING. BUT THEY STOPPED
20 IN THIS CASE. IT DETERMINES NOTHING. THE ANGLE RODS
21 DON'T DETERMINE ANYTHING. THEY DIDN'T USE THEM FOR
22 THE WAY THEY WERE SUPPOSED TO BE USED.

23 HELP PLACEMENT OF THE CAR BECAUSE YOU'VE
24 GOT THESE DISPUTED TESTIMONY, ALL OF THIS TESTIMONY
25 CAME FROM THE STATE, IT'S THE STATE CASE, THAT'S WHY

1 PICK AND CHOOSE. MR. THOMPSON ASKED TO YOU PICK AND
2 CHOOSE. NO, YOU DON'T PICK AND CHOOSE WHEN YOU GOT
3 TO PROVE BEYOND A REASONABLE DOUBT. THAT'S NOT THEIR
4 JOB TO THROW IT UP ON THE WALL AND ASK THE JURY TO
5 PICK AND CHOOSE. IT'S THEIR JOB TO PROVE THE CASE.
6 SHIRKING THAT RESPONSIBILITY. PICK AND CHOOSE.

7 WHAT WAS IN THE CAR? WELL, THERE HAS BEEN
8 A QUESTION ABOUT WHAT'S IN THE CAR, OKAY. DID YOU
9 EVER SEE WHAT WAS ACTUALLY IN THE CAR? DID ANYBODY
10 EVER TELL YOU ACTUALLY WHAT WAS IN THE CAR? ALL THE
11 ITEMS THAT WERE IN THE CAR? WERE THERE MORE ITEMS
12 THAT MAY HAVE BEEN IN THE CAR? DON'T KNOW. TOW
13 TRUCK GUY TOOK AN INVENTORY. TOW TRUCK GUY. THEY
14 PUT UP THIS DIAGRAM AT THE CITY OF CLOVER SHOWING YOU
15 WITH TRIANGULATION, NOTICE HOW THE TRIANGULATION ON
16 THAT WORKS, HE SAID WE CAN PUT THAT CAR BACK RIGHT
17 WHERE IT WAS AND YOU KNOW, HE'S EXACTLY RIGHT. THERE
18 YOU HAD TRIANGULATION THAT SERVED A PURPOSE. SO IT'S
19 IN POLICE CUSTODY, THEY'VE KEPT EVERYBODY AWAY FROM
20 IT BECAUSE THIS IS A SCENE, WHAT'S IN THE CAR IS
21 IMPORTANT, GOING TO BE IMPORTANT, WE GOT TO TAKE A
22 CAR IN TO JUSTICE MOSS CENTER SO WE CAN DO OUR ANGLE
23 RODS AND DO OUR FORENSICS. OKAY. CALL THE TOW
24 TRUCK. WHAT ABOUT CUSTODY OF THE EVIDENCE? WHAT
25 ABOUT CUSTODY OF WHAT MAY HAVE BEEN IN THE CAR? WHAT

1 DID THE TOW TRUCK DRIVER FIND? WE DON'T KNOW. WE
2 DON'T KNOW. IT WENT OUT OF THE POSSESSION OF THE
3 SHERIFF'S DEPARTMENT FOR A PERIOD OF TIME, WE DON'T
4 KNOW, TO SOME TOW TRUCK DRIVER WHO IS ON ROTATION,
5 THAT MEANS THERE ARE DIFFERENT COMPANIES AND THEY
6 CALL THEM ON ROTATION, SO THAT NOBODY GETS PREFERRED.
7 WE DON'T EVEN KNOW, I THINK THEY DID TESTIFY MAYBE
8 IT'S THE TOW TRUCK COMPANY, I'M NOT SURE, BUT WHAT
9 HAPPENED DURING THAT PERIOD OF TIME? HE DID AN
10 INVENTORY. REMEMBER THE OFFICER. TOW TRUCK DRIVER
11 DID AN INVENTORY. YOU THINK YOU ARE GOING TO SEE
12 THAT ON CSI? MR. POPE IS THE ONE THAT BROUGHT UP
13 CSI. OH, GET THE TOW TRUCK GUY IN AND GET HIM TO
14 TAKE AN INVENTORY OF EVERYTHING THAT'S IN THE CAR.
15 THIS IS NEEDED. THIS IS NOT. PICK AND CHOOSE.

16 TOXICOLOGY. WE DON'T HAVE ANY. WE DON'T
17 HAVE ANY. SO WE DON'T HAVE ANY SCIENTIFIC EVIDENCE
18 AS TO WHAT THE POSSIBLE STATE OF MIND ABILITY TO
19 PERCEIVE ALL OF THOSE THINGS MAY HAVE BEEN BY ANYBODY
20 IN THE CAR. THE CAR IS BEING NEGLECTED. WAS
21 NEGLECTED.

22 PLASTIC PIECE IN EVIDENCE, OKAY. I'M NOT
23 SURE WHAT, IT'S IN ONE OF THESE BAGS, IT'S A LITTLE
24 TRIANGULAR PIECE. LOOK AT THE PHOTOS THEY PUT IN
25 YOU'LL SEE IT. IT'S NUMBER ONE ON THE YELLOW CONES

1 AT CLOVER ON THE DRIVEWAY. NUMBER ONE. THAT'S THE
2 BLACK PIECE OF PLASTIC. WELL, IT DIDN'T SEEM TO BE
3 IMPORTANT FOR QUITE AWHILE BUT THEY TOOK IT IN. GLAD
4 THEY DID. GLAD THEY DECIDED TO TAKE THAT IN. THEY
5 DIDN'T TAKE IN THE BEER CANS; THEY DIDN'T TAKE IN THE
6 KNIVES; I'M GLAD THEY TOOK THAT IN. WELL, WHAT DOES
7 IT END UP BEING AS OF LAST WEEK? IT'S TO THE CAR.
8 IT FITS THE CAR. IT CAME FROM THE CAR. THEY
9 TESTIFIED LAST WEEK IT CAME FROM THE CAR. THEY TOOK
10 SOME NICE, NICE PHOTOS, GOOD PHOTOS, OF SHOWING HOW
11 IT FIT ON THE CAR. LAST WEEK. IN THE MIDDLE OF
12 TRIAL. GAVE THEM TO US LAST WEEK. SO THEY ARE STILL
13 WORKING THE CASE.

14 WHAT DOES IT SAY ABOUT THE POSITION OF THE
15 CAR? THERE IS SO MUCH IN HERE WHERE THE CAR WAS,
16 WHEN THE CAR WAS STOPPING, WHEN THE WAS CAR BACKING
17 UP, WHEN THE CAR WAS GOING FORWARD, WHERE THE CAR WAS
18 PARKED; DID IT BLOCK THE DRIVEWAY? DID IT NOT BLOCK
19 THE DRIVEWAY? WELL, YOU GOT A PIECE OF THE CAR
20 THAT'S SITTING THERE UNDER CONE NUMBER ONE. AT SOME
21 POINT IN TIME THAT CAR WAS AT CONE NUMBER ONE PERHAPS
22 OR MAYBE NOT. MAYBE BEFORE THEY COLLECTED IT AND
23 AFTER THE CAR DROVE OFF SOMEBODY KICKED IT DURING THE
24 FIGHT. DON'T KNOW. HADN'T HAD A CHANCE TO LOOK AT
25 ALL OF THOSE THINGS. WE DID IT LAST WEEK. LOOK IN

1 THE STATE'S PHOTOS OF THE BACK SEAT OF THE CAR AND IF
2 YOU REMEMBER THE TESTIMONY DIFFERENTLY THAN I DO,
3 THEN YOU TAKE IT AS YOU REMEMBER IT, MR. FALLS
4 TALKING ABOUT HIS HAND WAS UP ON THE HEAD REST IN THE
5 BACK WHEN HE GOT SHOT. MUST HAVE BEEN DIFFICULT
6 BECAUSE IT'S NOT IN THAT CAR BECAUSE THERE IS NO
7 HEADREST IN THAT CAR. REMEMBER ABOUT MR. FALLS
8 WOUND. HE GOT DOWN HERE AND HE SHOWED YOU WHERE IT
9 WAS. YOU KNOW WHERE HE WAS SITTING IN THE CAR. YOU
10 KNOW WHERE MR. HOVIS WAS HIT. LOOK AT THE DRAWING.
11 LOOK AT THE DRAWING FROM THE AUTOPSY. IF YOU CAN
12 FIGURE OUT THE X-RAYS THEN YOU CAN LOOK AT THOSE TOO
13 BUT THEY CAN BE CONFUSING. BUT THE DRAWING WAS DONE
14 BY DR. MAYNARD. LOOK AT THE DRAWING. THINK OF A
15 SINGLE BULLET THAT CAME THROUGH AND HIT BOTH OF THEM
16 AT THE SAME TIME. IF A SINGLE BULLET CAME THROUGH
17 AND HIT BOTH OF THEM AT THE SAME TIME THEN FIGURE OUT
18 WHERE MR. FALL'S HAND AND ARM, WRIST ACTUALLY WERE IN
19 THE CAR. NOW, SEE, THAT'S FORENSICS. THAT'S PUTTING
20 THINGS TOGETHER. FIGURE OUT WHERE IT WAS. YOU THINK
21 FROM THIS FIGHT AND EVERYTHING HE JUMPS IN THE BACK
22 SEAT OF THE CAR AND PUTS HIS ARM AROUND HIS BUDDY?
23 NEXT STOP. NO. MR. FALLS WAS SHOOTING A GUN. HE
24 WAS SHOOTING A GUN AND I'M GOING TO TIE THAT UP MORE.
25 THERE WAS A GUN IN THAT CAR. I SUBMIT TO YOU THAT'S

1 ONE THING THAT YOU'LL FIND IN THIS CASE BEYOND A
2 REASONABLE DOUBT IS THAT THERE WAS A GUN IN THAT CAR.

3 BRIEFLY I WANT TO TALK TO YOU ABOUT
4 THE PIECE OF EVIDENCE WHICH YOU WILL HAVE BACK IN THE
5 JURY ROOM, AND I'M GOING TO USE MY TWO, THE
6 DIFFERENCE BETWEEN THIS AND THEIR COPY OF THIS
7 ALLEGED FULL STATEMENT THAT MY CLIENT GAVE IS THAT
8 THEIRS HAS A STAPLE IN IT, PAGE ONE, PAGE TWO. I
9 SUBMIT TO YOU THE CREDIBILITY OF THE SECOND PAGE
10 CAN'T BE RELIED UPON, CAN'T BE RELIED UPON. WHEN YOU
11 GO BACK THERE AND YOU WANT TO RELY ON THIS SECOND
12 PAGE AND ALL THAT'S SUPPOSEDLY CONTAINED IN THAT,
13 THEN YOU CAN AS A JUROR, BUT YOU'VE SEEN THIS CASE
14 AND YOU'VE SEEN THE WAY THIS THING WORKED AND YOU'VE
15 SEEN THE INVESTIGATION THAT THEY HAVE DONE. AND YOU
16 HEARD THE TESTIMONY, UNDISPUTED, UNDISPUTED
17 TESTIMONY, OF MRS. COLLINS ABOUT THE WAY DISCOVERY
18 WAS DONE. YOU NOTICE ONE QUESTION THAT WAS NOT ASKED
19 WHICH WAS THIS PARTICULAR DOCUMENT WAS IT LEFT ON
20 YOUR DESK, DO YOU KNOW WHY IT WAS SENT LATER, THAT
21 WAS NEVER ASKED, THAT WAS NEVER ASKED, AND IT COULD
22 HAVE BEEN. IT WAS NEVER ASKED AND IT COULD HAVE
23 BEEN. BUT IT WASN'T.

24 THE STATE SAYS THAT THIS WAS ONE SINGLE
25 DOCUMENT THAT WAS CREATED AND PRODUCED SHORTLY AFTER

1 FEBRUARY 19 AT 6:02. THEY SENT US THE FIRST PAGE ON
2 APRIL 6, THEY SENT US THE SECOND PAGE ON JUNE 22, AND
3 THEY SAY IT'S ONE DOCUMENT. ALL HAPPENING AT THE
4 SAME TIME. THE FORM IS NOT EVEN THE SAME AND IF YOU
5 WILL LOOK AT THE CONTENT OF THE SECOND PAGE WHICH IS
6 244 YOU WILL FIND THAT IF IT HAD OCCURRED, IT WOULD
7 HAVE BEEN INCLUDED WITH THE FIRST PAGE IN THIS
8 NARRATIVE. BECAUSE REMEMBER HE DIDN'T TYPE THIS UP
9 ON A COMPUTER WHILE HE WAS DOWN THERE TALKING WITH MY
10 CLIENT. HE GOES BACK AND HE DOES IT LATER. THERE IS
11 NO REASON TO HAVE TWO SEPARATE SHEETS FOR THIS.
12 THERE IS NO REASON NOT TO INCORPORATE IT INTO A
13 NARRATIVE BECAUSE HIS FIRST ONE WAS A NARRATIVE TO
14 BEGIN WITH. AND YOU ARE ALSO GOING TO FIND OUT WHEN
15 YOU LOOK AT IT IS THAT THE SUBJECT MATTER ON THE
16 SECOND SHEET PERTAINS TO POSSIBLE DEFENSES AND LESSER
17 INCLUDED OFFENSES SUCH AS VOLUNTARY MANSLAUGHTER.
18 THAT'S ALL I'M GOING TO SAY ABOUT THAT.

19 ANOTHER ASPECT OF THIS CASE THAT'S
20 INTERESTING. YOU ARE GOING TO HEAR IN THE LAW OF
21 SELF-DEFENSE WHETHER A REASONABLE PERSON WOULD EXPECT
22 THAT GREAT BODILY INJURY OR DEATH WAS GOING TO BE
23 OCCUR DUE TO THE SITUATION. OKAY. BERRY BOLIN
24 RESPONDED WITH GUN FIRING. ANOTHER PERSON WAS THERE
25 THAT NIGHT TOO AND YOU HEARD SO MUCH TESTIMONY ABOUT

1 IT AND MR. OWENS WAS SHOOTING A GUN AND WHATEVER.
2 WAS THERE ANY EVIDENCE WHATSOEVER THAT CAME OUT
3 DURING THIS THAT THEY WERE IN ANY WAY IN COLLUSION
4 WITH EACH OTHER? THAT THEY WERE IN ANYWAY TIED WITH
5 EACH OTHER? THAT THEY IN ANY WAY ENCOURAGED EACH
6 OTHER? OR WAS IT TWO PEOPLE, TWO SEPARATE,
7 INDEPENDENT PEOPLE WHO JUST SO HAPPEN RESPONDED
8 INDEPENDENTLY OF EACH OTHER IN THE SAME FASHION TO
9 THE SAME THREAT AND MADE THE DECISION.

10 IN REGARDS TO THE FORENSICS. WHAT DO THE
11 FORENSICS TELL YOU IN THIS CASE? THIS IS THEIR CASE.
12 THEY'VE GOT TO PROVE BERRY BOLIN GUILTY BEYOND A
13 REASONABLE DOUBT. WHAT DO THE FORENSICS TELL YOU
14 ABOUT BERRY BOLIN? THE FORENSICS TELL YOU THE
15 FOLLOWING ABOUT BERRY BOLIN:

16 BERRY BOLIN SHOT A GUN THAT NIGHT. HERE
17 IT IS. REMEMBER, HE COOPERATED. THEY DIDN'T EVEN
18 HAVE TO GET IN THE CAR AND GO LOOK FOR THIS. I THINK
19 IT CAME FROM THE STAND, HIS DADDY TOLD HIM TO
20 COOPERATE. THEY DIDN'T EVEN HAVE TO GET IN THE CAR
21 AND GO LOOK FOR THIS. IT WAS BROUGHT TO THEM THAT
22 NIGHT THROUGH HIS COOPERATION. DID HE FUDGE AT
23 FIRST? OF COURSE, HE DID. HE'S 19 YEARS OLD. HE'S
24 19 YEARS OLD. HE WASN'T SURE WHAT TO DO SO HE
25 FUDGED, BUT EVENTUALLY HE COOPERATED AND HE

1 COOPERATED FULLY WITH THE AUTHORITIES. AND YOU
2 HAVEN'T HEARD OTHERWISE FROM THEM.

3 SO THE FORENSICS TELL US THAT BERRY BOLIN
4 SHOT A GUN THAT NIGHT AND THEY DON'T TELL US ANYTHING
5 ELSE. SAYS HE SHOT A .45. SAYS THAT THEY FOUND TWO
6 CORES, ONE CAME FROM MR. HOVIS AND ONE CAME FROM THE
7 CAR, THAT APPEARED TO HAVE BEEN .45. THEY WERE
8 CONSISTENT WITH WHAT WOULD BE THE .45 CORE. THEY DID
9 NOT SAY THIS WAS CONCLUSIVELY, PRESENTABLY, AND
10 SCIENTIFICALLY A .45 CORE.

11 ALL OF THE OTHER SLUGS OR WHATEVER THEY
12 CALL THEM FOUND IN THE CAR WERE, THESE THREE THAT
13 WERE IDENTIFIED, THAT THE FORENSIC SPECIALIST SAID
14 DID NOT COME FROM BERRY BOLIN'S GUN. SO THERE IS AT
15 LEAST ONE MORE PERSON, MAYBE MORE, ONE MORE PERSON
16 WHO SHOT INTO THE CAR. MAYBE MORE. YOU HEARD THE
17 TESTIMONY.

18 HOW MANY GUNS WERE OUT THERE THAT NIGHT?
19 I DON'T THINK ANYBODY REALLY DETERMINED. THE STATE
20 IS GOING TO TELL YOU THERE IS JUST TWO, JUST TWO. I
21 SUBMIT TO YOU THAT'S INACCURATE. THAT'S WRONG.
22 REVOLVERS DO NOT EJECT SHELLS, THE SHELLS GO WITH THE
23 GUNS, AND SO MR. FALLS, IF HE WAS USING A REVOLVER
24 THAT NIGHT, THE SHELLS WOULD HAVE GONE WITH HIM. HE
25 WOULDN'T HAVE HAD TO SCRAMBLE AROUND AND BE LONGER AT

1 THE AMERICAN AUTO SALES PLACE LOOKING FOR SHELLS.
2 BUT THE BOTTOM LINE IS THIS: THERE IS NO EVIDENCE IN
3 HERE, DIRECT CONCLUSIVE EVIDENCE, THAT ANYTHING THAT
4 BERRY BOLIN SHOT THAT NIGHT HIT ANYTHING OR ANYBODY.
5 BUT IT REALLY DOESN'T MATTER BECAUSE THIS IS A CASE
6 OF SELF-DEFENSE, DEFENSE OF OTHERS. IT'S ALL ABOUT
7 PICKING AND CHOOSING. NORMALLY PICKING AND CHOOSING,
8 A JURY MAYBE ASKED TO DO THAT IF THEY ARE PICKING
9 BETWEEN THE STATE'S CASE AND BETWEEN THE DEFENDANT'S
10 CASE. THE ONLY THING YOU GOT IN THIS CASE IS THE
11 STATE'S EVIDENCE EXCEPT FOR THE TWO PIECES OF PAPER
12 WE PUT IN THERE AND THE STATE ITSELF IS ASKING YOU TO
13 PICK AND CHOOSE FROM THEIR CASE. THAT'S ABNORMAL.
14 THAT'S NOT NORMAL PICKING AND CHOOSING IN COURT.
15 THAT'S ABNORMAL TO ASK A JURY TO PICK AND CHOOSE.
16 I'M GOING TO PUT UP MY CASE AND JURY, YOU PICK AND
17 CHOOSE WHAT YOU WANT, JUST PICK WHATEVER YOU CAN PICK
18 SO THAT YOU CAN CONVICT HIM. THAT'S WHAT THEY ARE
19 ASKING YOU TO DO.

20 YOU KNOW WHAT? THE STATE DID PICK. THE
21 STATE DID CHOOSE AND THEY ARE LOCKED INTO IT AND IN
22 THIS CASE WHO DID THEY PICK? WHO DID THEY PICK?
23 IT'S OBVIOUS. THE STATE PICKED MR. FALLS, MR. HOVIS,
24 MS. MCCARTER, MR. HUBBARD, AND YOU REMEMBER KENNY
25 NORRIS, BLESS HIS HEART, THAT'S WHO THE STATE WENT

1 WITH IN THIS CASE. FROM THE BEGINNING THEY WENT WITH
2 THEM, THEY WENT WITH THEM, SO IF THEY ARE GOING TO
3 PICK THEM AND THEY ARE GOING TO CHOOSE THEM, THEY GOT
4 TO LIVE WITH THEM. AND THEY WANT YOU TO CONVICT
5 BERRY BOLIN AND THEY WANT YOU TO GET ON THE BUS WITH
6 THEM, WITH THOSE PEOPLE.

7 A FEW THINGS I'M GOING TO POINT OUT,
8 AND I'M ALMOST DONE, I'VE BEEN TALKING FOR A LITTLE
9 OVER HOUR AND FOR THAT I APOLOGIZE, THIS WAS A LONG
10 CASE. BUT I'M GOING TO POINT OUT WHAT I LIKE TO CALL
11 LITTLE NUGGETS, LITTLE NUGGETS. A LOT OF TIMES IN A
12 CASE TO WHERE YOU GOT THREE OR FOUR DAYS, YOU GOING
13 TO FIND A LITTLE NUGGETS IN THE ROUGH AND THOSE
14 LITTLE NUGGETS, IF YOU CAN FIND THEM, WHEN THE LIGHT
15 HITS THEM, THEY WILL GLIMMER AND YOU CAN FOLLOW THEM,
16 YOU CAN FOLLOW THEM, AND THEY WILL LEAD YOU OUT OF
17 THE DARK THAT THIS WHOLE CASE HAS BEEN IN BECAUSE IT
18 WAS REAL DARK THAT NIGHT.

19 HERE'S THE FIRST ONE. THE FIRST THING YOU
20 HEARD THE 911 TAPE. BRADLEY DEAL CALLS THE SHERIFF'S
21 OFFICE. YOU SAW HIM TESTIFY. YOU SAW THE YOUNG MAN
22 COME IN HERE AND YOU SAW HIM TESTIFY AND HE SAT HERE
23 AND HE WAS SUBJECT TO CROSS EXAMINATION AND IT'S THE
24 FIRST THING YOU HEARD IN THEIR CASE AGAINST BERRY
25 BOLIN. BRADLEY DEAL MADE A 911 CALL AND THEY

1 PROBABLY SAY THAT HE CALLED TOO LATE. HE CALLED TOO
2 LATE. WHY DID HE CALL AT ALL? HE MADE A 911 CALL.
3 HE TOLD YOU WHY HE WAS A LITTLE BIT LATE AND HE TOLD
4 THE SHERIFF'S DEPARTMENT. HE DIDN'T TELL THE 911
5 OPERATOR, THEY TRANSFERRED HIM, HE TOLD THE SHERIFF'S
6 DISPATCHER, TOLD THEM THE WHOLE STORY ABOUT
7 MR. FALLS, ABOUT MR. FALLS HAVING A BOND RESTRICTION
8 AGAINST HIM FROM COMING OVER THERE, AND HE CAME OVER
9 HERE TONIGHT AND HE WAS SHOOTING AT US. THE FIRST
10 THING. NUGGET. TWO BIG ONES.

11 Y'ALL REMEMBER OFFICER TRABUE, HE WAS
12 THEIR SECOND WITNESS, CLOVER POLICE DEPARTMENT, OKAY,
13 SECOND WITNESS. HE WAS STANDING OUTSIDE WHEN THE
14 PONTIAC PULLS UP. TRAVIS FALLS WAS UNCOOPERATIVE AND
15 DIDN'T WANT TO TALK. WELL, THAT'S TRUE. YOU CAN
16 WRITE IT OFF AND SAY, OH, POOR MR. FALLS WAS HURTING,
17 HE PROBABLY WAS AT THAT TIME, BUT IS IT UNUSUAL FOR
18 SOMEBODY WHO HAS BEEN SHOT TO CAST OFF A POLICE
19 OFFICER? ABSOLUTELY. AND THIS WAS AS GOOD A NUGGET
20 THAT'S COME UP IN THE TRIAL THAT THEY COULD HAVE
21 BECAUSE LIKE I SAID THE STATE HERE CHOSE THE FALLS
22 GANG TO RUN WITH AND THEY CHOSE THE STORY THAT
23 MS. MCCARTER GAVE AND THAT EVERYBODY IN THE CAR GAVE,
24 THAT SHE WAS SO HYSTERICAL, THAT BLESS HER HEART SHE
25 COULDN'T DRIVE, AND THEY HAD TO CHANGE AND

1 MR. HUBBARD HAD TO DRIVE TO CLOVER. DID YOU CATCH
2 THE NUGGET? THE FIRST DAY, SECOND WITNESS, LOCKS
3 THEM IN. OFFICER TRABUE, FEMALE WAS DRIVING WHEN
4 THEY PULLED UP. FEMALE WAS DRIVING. HE'S A POLICE
5 OFFICER, SO YOU CAN EITHER BELIEVE HIM OR YOU CAN
6 BELIEVE MR. FALLS AND HIS BUNCH.

7 IT WAS COLD THAT EVENING. THAT'S
8 IMPORTANT. IT WAS COLD THAT MORNING. MOST OF THE
9 TIME WHEN IT IS THAT COLD, BITTERLY COLD, AND THAT
10 COMES FROM DEPUTY DAY, REMEMBER SHE WAS TALKING ABOUT
11 HOW BITTERLY COLD IT WAS THAT MORNING. YOU KEEP
12 WINDOWS UP AND I KNOW THE STATE PRESENTED EVIDENCE
13 ABOUT THE WINDOW BEING UP, BEING CRACKED ON THE REAR
14 PASSENGER DOOR JUST A LITTLE BIT, OKAY. NOW BUT
15 THAT'S GOING TO BE IMPORTANT IN A MINUTE.

16 DEPUTY SMITH, YOU REMEMBER THE TESTIMONY.
17 THERE WAS NO STICK IN THE CAR. HE SAID HE SEARCHED
18 THE CAR. AND THEY CERTAINLY DIDN'T BRING IN THE TOW
19 GUY TO SAY THAT HE FOUND A STICK AND INVENTORIED A
20 STICK. REMEMBER MR. HUBBARD, SAT UP HERE AND SAID,
21 NO, WE DIDN'T HAVE A WEAPON BUT WE DID HAVE A STICK.
22 WE HAD A TWO BY FOUR OR TWO AND A HALF BY TWO AND A
23 HALF STICK THAT WAS IN THE CAR THAT COULD BE USED AS
24 A WEAPON. WELL, WHEN THEY LEFT LAWRENCE ROAD,
25 ACCORDING TO MR. HUBBARD, THE STICK WAS IN THE CAR.

1 WHEN THEY GOT TO CLOVER THE STICK ISN'T IN THE CAR.
2 THEY NEVER FOUND THE STICK. WHERE IS THE STICK? THE
3 STICK IS WITH THE GUN BACK AT AMERICAN AUTO SALES.
4 THEY HAD TO DUMP THE WEAPONS. THEY WERE GOING TO THE
5 POLICE DEPARTMENT.

6 REMEMBER, ALSO MR. HUBBARD SAID, HE SAID,
7 THE REAR WINDOW WAS DOWN. WHY WOULD MR. HUBBARD MAKE
8 THAT UP? THAT'S A NUGGET. HE DIDN'T KNOW THAT WAS
9 IMPORTANT. THEY DIDN'T GET THAT PART OF THE STORY
10 STRAIGHT. HE SAID THE REAR WINDOW WAS DOWN. HOW DID
11 HE KNOW IT WAS DOWN? BECAUSE IT WAS SO COLD THAT
12 NIGHT, AS DEPUTY DAY SAID, AND WHAT WAS GOING ON OUT
13 OF THAT WINDOW? TRAVIS FALLS WAS SHOOTING HIS PISTOL
14 THAT BRADLEY DEAL SAW HIM SHOOT AND THAT OTHER PEOPLE
15 SAW SHOTS COMING FROM OR AROUND THE CAR. I BELIEVE
16 THAT IN BERRY'S STATEMENT YOU ARE GOING TO SEE HOW
17 PEOPLE RAN TO THE CAR AND ALL OF A SUDDEN THEY BACKED
18 UP AND HE HEARD OR SAW SHOTS AROUND THE CAR, OKAY.
19 WE HAVE TESTIMONY FROM THEIR OWN WITNESSES, AT LEAST
20 TWO OF THEM, THAT THERE WAS ANOTHER CAR, AND THEY
21 THOUGHT THEY SAW SHOTS COMING FROM THAT CAR. WHERE
22 DID JEFF BUCK GO IN THIS CASE? BUT LET'S CONVICT
23 HIM.

24 SOME OF THE WITNESSES HAD THOUGHT LORI
25 MOSS HAD BEEN SHOT. WHY WOULD THEY THINK SHE HAD

1 BEEN SHOT? THE WAY SHE WAS HIT. MS. KILLIAN SAID
2 THERE WERE MANY GUNSHOTS. MR. WALDEN SAYS HE TRIED
3 TO DRAG LORI MOSS TO THE DITCH, TRIED TO DRAG HER TO
4 THE DITCH. WHY DO PEOPLE GET IN DITCHES? THEY GET
5 IN DITCHES FOR SAFETY. SHE WAS OUT, BUT THAT REALLY
6 DOESN'T MATTER. NOBODY HAS EVER BEEN CHARGED WITH
7 ANYTHING ARISING OUT OF HITTING A 17-YEAR-OLD GIRL.

8 MORE THAN ONE WITNESS, TWO OR THREE, SAW
9 TRAVIS FALLS UNLOAD ON LORI MOSS. A 26-YEAR-OLD MAN
10 AND HE UNLOADS ON A 17-YEAR-OLD GIRL. HE SHOULD HAVE
11 JUST GRABBED HIS GIRLFRIEND, BROKEN HER AWAY FROM THE
12 FIGHT, PUT HER IN THE CAR, SO THEY CAN FINISH THEIR
13 PARENTS NIGHT OUT.

14 AND BRADLEY DEAL SAID THAT HE SAW THREE
15 SHOTS FROM THE CAR. YOU CAN'T GET AROUND THE FACT
16 THAT THEY TESTIFIED THEY WERE UP TO NO GOOD, THEY
17 WERE, COME THERE TO FIGHT. THEY EVEN TOLD YOU HOW
18 THEY WERE GOING AROUND AND RECRUITING MEMBERS TO GO
19 AND FIGHT. THE STATE CHOSE, CHOSE, PICK AND CHOOSE,
20 THE STATE CHOSE IN THIS CASE OR AT LEAST SOMEBODY
21 DIDN'T EVEN MAKE A DECISION TO DO ANYTHING IN REGARDS
22 TO MR. FALLS IN REGARDS TO A POSSIBLE BOND VIOLATION
23 OR RESTRICTION OR TO A POSSIBLE ASSAULT ON LORI MOSS
24 WHEN AT LEAST TWO OR THREE PEOPLE SAW HIM UNLOAD ON
25 HER. NOTHING. NOTHING. MR. HUBBARD SAID BOBBY WAS

1 A FIGHTER. IT'S UNFORTUNATE, ALL OF THESE CASES ARE
2 HARD, THEY ARE ALL UNFORTUNATE. IT SHOULDN'T END
3 LIKE THIS BUT SOMETIMES THEY DO. BUT EVEN
4 MR. HUBBARD SAID BOBBY HOVIS WAS A FIGHTER. REMEMBER
5 THAT PHRASE YOUR ASS. REMEMBER THE CAR GOES DOWN,
6 TURNS AROUND, AND COMES BACK. THE STATE IS GOING
7 ARGUE, OH, THEY WERE LEAVING AND THEY SHOULD HAVE NOT
8 SHOT INTO THE CAR BECAUSE THEY WERE LEAVING, THE CAR
9 WAS PULLING AWAY. WHEN IS A THREAT CONTINUING? WHEN
10 IS A THREAT CONTINUING? THIS CAR HAD ALREADY TURNED
11 AROUND ONCE THAT NIGHT AND COME FOR TROUBLE. IF
12 THERE IS A GUN IN THAT CAR, IS THAT A CONTINUING
13 THREAT WHEN ALL THEY GOT TO DO IS TURN AROUND AND
14 COME BACK? AND THERE WAS A GUN IN THAT CAR.

15 MR. HUBBARD CORROBORATES WHAT BERRY SAYS
16 IN HIS STATEMENT ABOUT PEOPLE GOING AROUND THE CAR,
17 HE SAID PEOPLE CAME UP IN THE CAR, SOMETHING MADE HIM
18 JUMP BACK, THEY SAY IT WAS BECAUSE THEY PULLED OFF.
19 I SUBMIT TO YOU IT WASN'T BECAUSE OF THAT. IT WAS
20 BECAUSE OF WHAT MR. FALLS GRABBED WHEN HE GOT BACK IN
21 THE CAR AND WHAT WAS IN THE CAR. THEY KNEW THEY WERE
22 GOING TO BRADLEY DEAL'S HOUSE. AND MS. MCCARTER EVEN
23 TOLD YOU THAT WHEN SHE GAVE HER STATEMENT SHE LIED.
24 OKAY.

25 I'M GOING TO WRAP UP NOW. I'M GOING TO

1 ASK YOU IN THIS CASE, I SUBMIT TO YOU, THAT BERRY
2 BOLIN IS NOT GUILTY IN THIS CASE. HE'S NOT GUILTY OF
3 ANY OF THE CHARGES FOR WHICH HE IS BEING ACCUSED OF.
4 THE REASON IS IS BECAUSE YOU SEE IN THE BEGINNING THE
5 STATE CHOSE, THE STATE PICKED, AND THEY PICKED
6 MR. FALLS AND THE BUNCH IN THE CAR AND GIVEN THE
7 STATE OF THE SCIENCE AND THE FORENSICS IN THIS CASE.
8 AND WHAT IT DOESN'T TELL US, YOU GOT TO RELY ON
9 SOMETHING AND THE STATE WANTS YOU TO RELY UPON THE
10 STORY OF MR. FALLS AND HIS GANG, AND I SUBMIT TO YOU
11 THAT TO EVEN GET CLOSE TO CONVICTING MR. BOLIN YOU
12 ARE GOING TO HAVE TO GET IN THE CAR WITH THEM. YOU
13 ARE GOING TO GET IN THE CAR WITH MR. FALLS,
14 MS. MCCARTER, MR. HUBBARD, YOU ARE GOING TO HAVE TO
15 GET IN THE CAR WITH, BLESS HIS HEART, KENNY NORRIS
16 WHO HAD BEEN HIT IN THE HEAD WITH A BEER BOTTLE, AND
17 NO ONE IS SURPRISED, OKAY.

18 THE LAST BIG NUGGET OF THIS CASE, THE LAST
19 ONE, THAT ENCAPSULES THE WHOLE CASE, AND I'M SO GLAD
20 HE GAVE IT TO US, WAS MR. FALLS WAS SEATED RIGHT HERE
21 AND YOU SAW HIM AND I ASKED HIM, I SAID, MR. FALLS,
22 YOU HAD A BOND RESTRICTION YOU KNEW ABOUT. HE SAID
23 YEAH. I SAID THE JUDGE EVEN TALKED TO YOU PERSONALLY
24 FOUR DAYS BEFORE THIS THAT YOU WEREN'T SUPPOSED TO GO
25 AROUND BRADLEY DEAL, DIDN'T HE? YEAH. AND I SAID

1 BUT YOU DID. YUP. THEN I SAID MR. FALLS, WHAT'S IT
2 GOING TO TAKE TO STOP YOU, TO MAKE YOU STOP? WHAT
3 DOES IT TAKE TO MAKE YOU STOP? AND HE SAID I DON'T
4 KNOW.

5 WHEN I STARTED THIS I TOLD YOU ABOUT ONE
6 OF THE WAYS JURORS CAN APPROACH THEIR WORK. THEY CAN
7 TREAT IT AS IMPORTANT, AS WHEN THEY MAKE DECISIONS,
8 LIFE DECISIONS, IN THEIR LIFE SUCH AS MARRIAGE,
9 EDUCATION, HAVING A CHILD, AND APPROACH IT WITH THE
10 SAME RESOLVE, THE SAME URGENCY, AND THE SAME
11 IMPORTANCE, AND SO I SUBMIT TO YOU THAT IF YOU WANT
12 TO TRY AND GET TO THE POINT OF CONVICTING BERRY BOLIN
13 YOU GOT TO RELY UPON THE STORY OF MR. FALLS. AND SO
14 THE NEXT TIME THERE IS A WEDDING OR AN EDUCATION
15 DECISION OR A CHILD TO BE BORN AND SOMEBODY IS NOT
16 SURE WHAT TO DO, THEY NEED TO CALL MR. FALLS AND ASK
17 HIM AND THEN DO WHAT HE WOULD SAY.

18 THE COURT: WE'LL TAKE A BREAK BEFORE WE
19 GO THROUGH TO THE NEXT STAGE. WE'LL BE AT EASE FOR
20 ABOUT TEN MINUTES.

21 (THE JURY EXITS THE COURTROOM AT 12:07
22 PM AND COURT'S IN RECESS.)

23 (COURT RESUMES AT 12:20 PM.)

24 THE COURT: IS THE STATE READY.

25 MR. POPE: YES, SIR, YOUR HONOR.

1 THE COURT: ALL RIGHT. LET'S GET

2 MR. BOLIN IN.

3 (THE DEFENDANT ENTERS THE COURTROOM.)

4 THE COURT: BRING IN THE JURY.

5 (THE JURY RETURNS TO THE COURTROOM AT
6 12:20 PM.)

7 THE COURT: MR. SOLICITOR.

8 MR. POPE: MAY IT PLEASE THE COURT, YOUR
9 HONOR.

10 CLOSING STATEMENT BY MR. POPE:

11 THEY'RE HERE. THEY'RE HERE. YOU KNOW, I CAN
12 REMEMBER EVEN WHEN I WAS LITTLE, WE GREW UP DOWN IN
13 LESLIE, AND IF I KNEW SOMEBODY WAS COMING OVER, IF MY
14 GRANDMOTHER WAS COMING OVER OR A FRIEND WAS COMING
15 OVER OR EVEN LIKE CHRISTMAS WHEN PEOPLE WERE COMING,
16 I SOMEHOW THOUGHT, WE LIVED OUT IN THE MIDDLE OF THE
17 COUNTRY, IF I COULD SIT ON THE FRONT PORCH AND WATCH
18 THE HILL UP THERE WHERE THEY WERE COMING FROM, IT
19 WOULD MAKE THEM GET THERE SOONER. THEY'RE HERE.
20 THEY'RE HERE.

21 Y'ALL REMEMBER TIMES IN YOUR OWN LIVES AND
22 THE EXCITEMENT THAT COMES FROM THEY'RE HERE, THEY'RE
23 HERE, AND WHAT DOES IT MEAN. I SUBMIT THAT'S WHAT
24 WAS HAPPENING ON LAWRENCE ROAD THAT NIGHT. YOU HEARD
25 ABOUT THE CONVERSATION, YOU HEARD ABOUT THE GOING

1 BACK AND FORTH, AND THEY WERE COMING.

2 NOW WAS IT ANTICIPATION, LIKE TREPIDATION,
3 THAT -- OH, LORD, THEY ARE HERE. OR IS IT, TAKE IT
4 TO THEM, LET'S TAKE IT OUT THERE, LET'S TAKE IT TO
5 THE STREETS.

6 THE FIRST WE REALLY KNOW ANYTHING ABOUT A
7 FIGHT, ABOUT A PLANNED FIGHT, ABOUT ANYTHING
8 OCCURRING ON LAWRENCE ROAD ACTUALLY DOES NOT COME
9 FROM ANY OF THE PLAYERS IN THIS CASE. IT COMES FROM
10 THE NEIGHBOR AND YOU'LL HAVE THE EVIDENCE. YOU KNOW,
11 IT'S BEEN ALMOST TEDIOUS THIS LAST WEEK OF US PUTTING
12 THINGS IN AND PLAYING THINGS FOR YOU. YOU HAVE THE
13 OPPORTUNITY TO TAKE BACK WITH YOU IN THE JURY ROOM
14 THE 911 TAPES, THE EVIDENCE, THE PICTURES, AND GET TO
15 LISTEN TO EACH THING. IF THERE IS A PIECE OF IT YOU
16 WANT TO HEAR, IF THERE IS A PIECE OF TESTIMONY, THE
17 COURT REPORTER ALWAYS SHUDDERS WHEN I SAY THAT, YOU
18 HAVE THE RIGHT THOUGH, IF YOU THINK YOU HEARD
19 SOMETHING DIFFERENT THAN SOMEBODY ELSE HEARD IT, YOU
20 HAVE THE RIGHT TO COME BACK AND ASK TO HEAR THAT TOO.
21 IF I MISSTATE SOMETHING, EVEN FACTUALLY, AS WE'RE
22 TALKING ABOUT WHAT YOU HEARD, THEN IT IS YOUR
23 OBLIGATION TO EITHER COME BACK AND CORRECT IT OR GO
24 WITH WHAT YOU HEARD.

25 MORE IMPORTANTLY AS MR. GREELEY TOLD YOU,

1 AND I DO HAVE SOME DIFFERENCES CONCERNING THE LAW I
2 WANT TO POINT OUT, THE JUDGE WILL TELL YOU THE LAW.
3 IF MR. GREELEY SAYS ONE THING AND MR. POPE SAYS
4 ANOTHER, ULTIMATELY YOU GUYS HAVE TO TAKE IT FROM THE
5 JUDGE AS TO WHAT THE LAW IS. IF YOU HAVE A QUESTION
6 ABOUT THE LAW, LIKEWISE YOU CAN ASK ABOUT THAT. BUT
7 THE FIRST CALL YOU GET IS FROM THE NEIGHBOR AT 1135
8 LAWRENCE ROAD. IT IS AT 11:57 AND 11 SECONDS;
9 REMEMBER THESE ARE ALL COMING IN RIGHT BEFORE
10 MIDNIGHT, ABOUT THREE MINUTES TO MIDNIGHT.

11 NOW YOU HEARD WHERE LAWRENCE ROAD IS UP
12 TOWARDS CLOVER OFF FILBERT HIGHWAY AND PARTICULAR
13 THIS IS THE NEIGHBOR HOUSE THAT'S MAKING THIS PHONE
14 CALL AND THIS IS THE AREA WHERE HE'S HEARING FROM.
15 SO THE FIRST THING WE HEAR IS ABOUT SHOTS FIRED OVER
16 THERE AND THE POLICE SEND THE POLICE OUT. SO THE
17 POLICE ARE EN ROUTE AND IF YOU LISTEN HE SAYS SHOTS
18 FIRED AND THE GUY, THE DISPATCHER SAID SOMETHING
19 ABOUT I THOUGHT YOU SAID FIRE, YOU LISTEN TO IT,
20 YOU'LL HEAR IT. HE TELLS THEM ABOUT SHOTS BEING
21 FIRED.

22 THE NEXT CALL WE GET IS ACTUALLY FROM
23 LAWRENCE ROAD. NOW YOU'VE SEEN THIS AND YOU FIGURED
24 IT OUT. I WANT TO POINT IT OUT TO YOU AGAIN. THAT'S
25 FROM MR. DEAL. FIVE MINUTES AND THREE SECONDS LATER.

1 AFTER THIS GRAVE THREAT, AFTER THESE INDIVIDUALS ARE
2 SHOOTING AT THEM HE CALLS. WHAT'S HE SAY? AGAIN YOU
3 LISTEN TO IT. DOES HE SAY HELP, HELP, THEY'VE COME
4 HERE, THEY SHOT US, HELP, COME HERE, SEND THE POLICE,
5 WE'RE AFRAID. OR DOES HE START LAYING THE GROUND
6 WORK. LET ME TELL WHO THIS IS. LET ME TELL YOU WHAT
7 HAPPENED A COUPLE WEEKS AGO. LET ME TELL YOU, THERE
8 IS A REASON I THINK YOU CAN SEE BOTH FROM THE
9 TESTIMONY AND FROM THE PHYSICAL EVIDENCE WHY THIS IS
10 SOME FIVE MINUTES LATER AND THAT CAME FROM THAT
11 HOUSE.

12 THE NEXT CALL IS FROM CLOVER PD, SIX
13 SECONDS; IN OTHER WORDS, THE SAME TIME MR. DEAL IS
14 CALLING, SO THIS HORRIBLE SHOOT OUT HAS HAPPENED IN
15 WHICH THEY ALL FEARED FOR THEIR LIVES, THIS HORRIBLE
16 SHOOT OUT HAPPENED AT HIS RESIDENCE, AND THIS OTHER
17 CROWD CAN DRIVE ALL THE WAY TO CLOVER POLICE
18 DEPARTMENT BEFORE HE CAN GET TO THE PHONE. YOU KNOW,
19 HE EXPLAINED TO YOU WHY THAT WAS.

20 SO THE CAR COMES TO CLOVER POLICE
21 DEPARTMENT AND THEY ARE SECURED, THE VICTIMS ARE
22 TAKEN OUT; MR. FALLS IS TAKEN. MR. HOVIS IS TAKEN TO
23 THE HOSPITAL. THEY TALK TO OTHER VICTIMS. YOU'LL
24 HAVE THE PICTURE. EVERYONE IS COVERED WITH BLOOD.

25 LET'S TALK ABOUT THESE VICTIMS A SECOND.

1 OKAY. THEY'VE TOLD US THEY WERE GOING TO A FIGHT.
2 THEY'VE TOLD US THERE IS ACTUALLY RULES TO THE FIGHT.
3 AND I SUBMIT THAT THESE AREN'T THE ONLY FIGHTERS, YOU
4 HEARD THE WITNESS FROM THE STAND, I'M NOT SURE IT
5 WASN'T MANY, MAYBE MRS. COLLINS, OF COURSE, SHE MIGHT
6 BE A FIGHTER TOO; BUT THERE IS NOT MANY IN THIS CROWD
7 THAT AREN'T WILLING TO FIGHT. IF YOU'VE HEARD FROM
8 THE DIFFERENT WITNESSES, YOU'VE HEARD FROM LORI, YOU
9 HEARD FROM, WAS IT LEE THAT SAID, OH, I'LL FIGHT.
10 THERE AREN'T MANY PEOPLE THAT WON'T FIGHT IN THIS
11 CROWD, BUT THESE VICTIMS THEY TELL YOU THEY ARE GOING
12 TO A FIGHT..

13 OKAY. THEY WENT TO LAWRENCE ROAD, SHOT UP
14 A HOUSE, THEY DRIVE STRAIGHT TO THE POLICE DEPARTMENT
15 FROM THE HOUSE. IF THEY ARE COMMITTING A CRIME, AND
16 I'M NOT SAYING THE WHOLE FIGHTING THING IS NOT WRONG,
17 BUT YOU SAW THE TESTIMONY, YOU JUDGE THE CREDIBILITY,
18 YOU JUDGE THE BELIEVABILITY, IF THEY THOUGHT THEY
19 WERE IN THE WRONG LIKE SAY SOMEBODY THAT GOES AND
20 HIDES THEIR GUNS, WHY WOULD THEY GO TO THE POLICE
21 STATION? WHY NOT GO TO PIEDMONT WEST OVER HERE? WHY
22 NOT GO SOMEWHERE TO SEEK MEDICAL TREATMENT? WHY TELL
23 YOU THE TRUTH ABOUT IT? WHY TELL THE POLICE THE
24 TRUTH? WHY SAY WE STOPPED? WHY SAY THAT THERE WAS A
25 STICK IN THE CAR? WHY NOT SAY WE WERE JUST RIDING

1 DOWN LAWRENCE ROAD MINDING OUR OWN BUSINESS AND
2 SOMEBODY SHOT US UP AS WE RODE BY THIS HOUSE. WHY
3 NOT SAY THAT? BECAUSE IT'S NOT THE TRUTH.

4 WHY WOULD THEY TELL YOU THAT THEY WENT TO
5 A FIGHT? THINK ABOUT IT. DOES IT HELP? YOU KNOW,
6 MR. GREELEY IS QUICK TO POINT OUT, WELL, WE'RE IN
7 WITH MR. FALLS. IF I HAD TAILORED MR. FALLS'S
8 TESTIMONY, IF LAW ENFORCEMENT TAILORED IT, THEY WOULD
9 HAVE BEEN ON THE WAY TO CHURCH. THEY WOULD HAVE, NO
10 ONE WOULD HAVE BEEN DRINKING ANYTHING; THEY DARN SURE
11 WOULDN'T BE GOING BY THEIR BUDDY'S HOUSE TRYING TO
12 GET HELP. I MEAN IT ALMOST GOT COMICAL. WHAT DID
13 MR. GREELEY CALL IT, PARENTS NIGHT OUT, AND THEY SAT
14 RIGHT THERE AND TOLD YOU, YEAH, WE TRIED TO GET HELP
15 AND ALL THE SMART WIVES WERE SAYING DON'T GO. WHY
16 WOULD THEY TELL YOU THAT IF IT DIDN'T HAPPEN? DOES
17 THAT HELP MAKE THEM SEEM MORE LIKE VICTIMS OR DID
18 THEY TELL YOU BECAUSE IT ACTUALLY OCCURRED. THEY
19 TELL YOU THAT THEY ARE GOING TO GET PEOPLE. THEY
20 TELL YOU WHY THEY STOPPED. WHY DO THEY TELL YOU ALL
21 OF THESE THINGS? BECAUSE IT HAPPENED.

22 AGAIN WHY WOULD LAW ENFORCEMENT CHOOSE
23 THEM? IT'S ALL ABOUT PICKING AND CHOOSING AND LAW
24 ENFORCEMENT CHOSE THESE GUYS AND TO THE EXCLUSION OF
25 ANY OTHER; WELL, LAW ENFORCEMENT HAS TO LOOK AT THE

1 TOTALITY. LAW ENFORCEMENT TAKES THE FIRST STATEMENT,
2 YOU REMEMBER CAPTAIN HOFFMAN WHO DID READ THE REPORTS
3 AND TALKS ABOUT WHAT THEY LOOKED AT AND WHERE THEY
4 FOLLOWED AND WHAT LEADS THEY WENT AFTER AND WHAT THEY
5 KNEW AND WHAT THEY DIDN'T, WHAT THEY HEARD AT THE
6 HOUSE; LAW ENFORCEMENT HAS TO LOOK AT THE TOTALITY.
7 IF IT WAS A MATTER OF JUST PICKING A CLEAN SIDE,
8 THERE IS NO CLEAN SIDE IN THIS.

9 NOW WHEN YOU LOOK AT THE VICTIMS YOU HAVE
10 TO JUDGE. DID THEY MAKE SOME MISTAKES? CERTAINLY
11 THEY DID. SHOULD HE BE OUT ANYWHERE AROUND THIS GUY
12 IN VIOLATION OF A COURT ORDER OR A BOND REQUIREMENT?
13 ABSOLUTELY NOT. SHOULD HE HAVE BEEN FIGHTING HIM
14 WEEKS BEFORE WHEN THEY MET ON THAT CULDESAC? SHOULD
15 THEY HAVE BEEN DOING ALL OF THAT? ABSOLUTELY NOT.
16 BUT THAT DOES NOT CHANGE THE ULTIMATE FACTS IN THIS
17 CASE AND ULTIMATELY AND THAT'S THE BEAUTY OF THE JURY
18 SYSTEM, YOU FOLKS USING YOUR COMMON SENSE, FROM YOUR
19 VARIOUS WALKS OF LIFE, DECIDE WHO TO BELIEVE. IT'S
20 CALLED CREDIBILITY. DECIDE WHO TO BELIEVE, WHAT TO
21 BELIEVE, PART OF IT, NONE OF IT, ALL OF IT, WHATEVER
22 VARIATION YOU DETERMINE; AND LIKE MR. GREELEY SAID,
23 YOU CAN USE IT TO MAKE DECISIONS JUST LIKE YOU WOULD
24 IN EVERYDAY LIFE. YOU GO TO BUY A CAR, EVERYTHING HE
25 TOLD YOU YOU CAN BELIEVE ABSOLUTELY THAT'S WHAT THE

1 DEALER PAID FOR IT, THAT'S WHAT THIS, THAT'S WHAT
2 THAT, YOU DECIDE, BUT IT DOESN'T MEAN YOU DON'T MAKE
3 THE DECISION DO I BUY THE CAR. YOU HAVE TO MAKE THAT
4 DETERMINATION.

5 AGAIN THEY ARE HERE AND WHAT HAPPENS WHEN
6 THEY GET THERE? WELL, THE FIRST THING WE KNOW IS OUR
7 BOY KENNY, WHO IS SELF-ADMITTEDLY HAS BEEN FIGHTING
8 BEFORE, HE'S BEEN ON, I HEARD THE WRONG END OF A GUN,
9 HE'S BEEN ON THE WRONG END OF A BEER BOTTLE ACCORDING
10 TO WHAT HE SAID. SOMEBODY FORGOT TO TELL KENNY THE
11 RULES. I GUESS HE WOULD HAVE BEEN THROWN A FLAG FOR
12 ALL SIDES BECAUSE WHEN THEY PULL UP AND THEY YELL
13 THAT'S YOUR ASS AND THEY COME BACK AROUND, THIS CROWD
14 IS SUPPOSED TO GET BEHIND THEM AND THEY WERE SUPPOSED
15 TO GO TO THE SPOT; SO THEY PULL UP TO THE HOUSE WHERE
16 THAT CROWD CAN LOAD UP SO THEY CAN START CUSSING AND
17 ARGUING AND SHOUTING AT EACH OTHER AND WHERE IS
18 KENNY? KENNY IS OUT OF THE CAR. HE ENDS UP IN THE
19 DRIVEWAY. AGAIN, DON'T TAKE THIS FROM WHAT I SAID.
20 TAKE IT FROM WHAT YOU HEARD, APPLYING YOUR COMMON
21 SENSE, THINKING ABOUT EVERYBODY'S MOTIVE AND
22 EVERYBODY'S REASON. NOW APPARENTLY IN HIS YOUNGER
23 DAY KENNY MIGHT HAVE BE TOUGH OR EVEN ON THE
24 RECEIVING END OF A LOT OF BEER BOTTLES, BUT BY HIS
25 OWN ADMISSION HE WAS DRUNK THAT NIGHT. KENNY COMES

1 OUT, YOU GUYS READY TO FIGHT, ACCORDING TO THE
2 STATEMENT, IF YOU BELIEVE MR. BOLIN'S STATEMENT HE
3 SAID SOMETHING ABOUT YOU GUYS CARRY GUNS, THAT'S WHAT
4 TOLD MR. BOLIN TO GO GET THE GUN, BUT HE COMES OUT
5 FULL OF BRAVADO, BUSTS THAT BEER BOTTLE, RUNS UP TO
6 THEM, AND HEY, LADIES, I KNOW Y'ALL. HOW YOU DOING.
7 OH, HERE'S THE GUY. WE'LL JABBER BACK AND FORTH WITH
8 HIM. KENNY REALLY BROUGHT THE FIGHT TO THEM, DIDN'T
9 HE? HE TOOK IT TO THEM. SO MUCH IN FACT WHERE DID
10 KENNY END UP? BEING CHASED DOWN THE ROAD BY BRAD
11 MOORE. THAT'S HOW TOUGH THIS CROWD WAS, BEING
12 CHASED. IF KENNY KNEW WE HAD A GUN WOULD KENNY HAVE
13 RUN OR WOULD HE NOT STICK AROUND.

14 I TELL YOU WHO THE FIGHTERS ARE, WHO THE
15 TOUGHEST ONE IN THIS WHOLE CROWD, IS IT LAUREN OR
16 LORI. WHERE DID SHE GO? THEY'RE HERE. THEY'RE
17 HERE. SHE GOES, WELL, I'M GOING TO LOOK AND SEE
18 WHOSE OUT THERE. DID SHE DO THAT? BY HER OWN
19 ADMISSION SHE TOOK IT TO THE STREET. SHE KNEW WHAT
20 THE GANG WAS ABOUT. WHEN THE BALL WAS KICKED, SHE
21 DIDN'T CARE IF THEY WERE ALL OFF SIDE, SHE WENT DOWN
22 AND SHE STARTED DELIVERING. IT IS UNDISPUTED THAT
23 SHE WAS BEATING THE FOOL OUT OF MS. MCCARTER. I'M
24 NOT SAYING MS. MCCARTER DIDN'T, PARENTS NIGHT OUT,
25 I'M NOT SAYING SHE DIDN'T COME, SHE DIDN'T DESERVE

1 IT, BUT THAT 17-YEAR-OLD GIRL WAS KICKING THAT
2 WOMAN'S BUTT. TRAVIS GOT OUT TO GET KENNY OFF SIDE,
3 IT'S ALL GOING TO CRAP, HE TRIES TO GET HIM AND THIS
4 WOMAN IS NOW WHIPPING YOUR GIRL. IS TRAVIS ENTITLED
5 TO DEFENSE OF OTHERS? I SUBMIT NOT BECAUSE HOLLY WAS
6 BRINGING ABOUT THE DIFFICULTY TOO. BECAUSE THERE WAS
7 MUTUAL COMBAT AND WE'LL GET TO THAT AS FAR AS LORI.

8 SO KENNY BUSTED THE BEER BOTTLE, IT'S
9 UNDISPUTED, YOU HEARD AND I APOLOGIZE, I CAN'T THINK
10 OF HER, IT'S LORI'S OLDER SISTER, SAID, YEAH, THE
11 BOTTLE HIT THERE. HE DIDN'T TRY TO HIT US REALLY.
12 HE DIDN'T HIT US AND THEN HE REALIZED IT WAS US AND
13 HE DIDN'T MESS WITH US. HE GETS CHASED DOWN.

14 THE FIGHT TOOK PLACE, THERE WAS A CAR
15 PARKED, THERE IS THE HAIR SCRUNCHIE. HOLLY SAID THAT
16 SHE DIDN'T BEAT SO BAD, THE GIRL IS PUMMELING HER.
17 YOU KNOW WAS IT LORI'S SISTER KRISTEN, KRISTIN WASN'T
18 WORRIED ABOUT LORI, YOU REMEMBER KRISTIN IS STANDING
19 UP THERE, BECAUSE LORI IS WINNING. THEY FOUND A CAR
20 CELL PHONE ANTENNA, PERHAPS IT'S BROKEN OFF, PERHAPS
21 IT'S UNRELATED TO THIS, BUT IT WAS IN EVIDENCE AND I
22 WANT TO CALL THAT TO YOUR ATTENTION.

23 AS I TOLD YOU BEFORE, CREDIBILITY AND
24 BELIEVABILITY IS NO MAGIC FORMULA. THE JUDGE IS
25 GOING TO TELL YOU, LIKE I SAID A MINUTE AGO, YOU CAN

1 BELIEVE PARTS, YOU CAN BELIEVE ALL, YOU JUST USE YOUR
2 COMMON SENSE BECAUSE WHEN IT FINALLY COMES DOWN TO IT
3 YOU TAKE EVERYTHING YOU HEARD AND BRING TO BEAR WHAT
4 HAPPENED THAT NIGHT. WHO IS TELLING WHAT? WHAT'S
5 THEIR MOTIVATION? LOOK AT EVERY PERSON. LOOK AT
6 EVERY SINGLE PERSON AND WHAT THEIR MOTIVATION IS FOR
7 WHY THEY TELL IT. BUT WHAT I WANT TO TELL YOU IS
8 THIS WHOLE CROWD IS TELLING YOU ABOUT SOMETHING THAT
9 HAPPENED IN THE DARKNESS DOWN HERE THAT NIGHT BECAUSE
10 IF YOU FINALLY LOOK AT IT, REFLECTIVE TAPE,
11 REFLECTIVE TAPE, REFLECTIVE TAPE, CAMERA ON THE PORCH
12 WITH THE FLASH, TO GIVE YOU SOME KIND OF FEEL FOR
13 WHAT THEY ARE OBSERVING.

14 NOW IT'S AMAZING HOW IT RUNS A GAMUT.
15 SOME PEOPLE SEE EXACTLY WHO IS SHOOTING, SOME PEOPLE
16 DON'T KNOW WHO IS SHOOTING, SOME PEOPLE COME TO TELL
17 YOU A LOT OF SPECIFICS. LET'S LOOK AT THE
18 PARTY-GOERS, THE FOLKS THAT WERE THERE AT THE HOUSE
19 THAT WERE READY AND WAITING WHEN THEY ARE HERE
20 OCCURRED. YOU TAKE THE TOTALITY OF THE TESTIMONY
21 THAT YOU HEARD FROM RIGHT HERE AND WHO DID THEY SAY
22 THEY SAW WITH GUNS? BERRY BOLIN AND LEE OWENS.

23 NOW MR. DEAL CAME AND YOU HEARD THE OTHER
24 DAY THIS THING ABOUT, OH, FIRING FROM THE FRONT
25 PASSENGER WINDOW AS THEY WERE LEAVING OFF, BUT WHO

1 HAVE YOU HEARD THAT SAID THEY SAW ANY GUNS IN ANY
2 HANDS BY ANYBODY BUT THOSE TWO? AS A MATTER OF FACT,
3 ONE MAN TELLS YOU HE BURNED HIS HAND ON BERRY BOLIN'S
4 GUN TRYING TO GET HIM TO PUT IT DOWN. WHY DO YOU
5 BURN YOUR HAND? IT WAS FRESH, BECAUSE IT'S HOT,
6 BECAUSE HE HAD JUST RAN ALL FIVE SHELLS THROUGH THAT
7 PARTICULAR GUN. YOU HEARD KRISTIN TOLD BOLIN, WELL,
8 YEAH, I THINK YOU BETTER LEAVE. AND IT'S FUNNY, SHE
9 TOLD HIM HE'D BETTER LEAVE AFTER IT WAS OVER,
10 APPARENTLY THAT WAS THE PLAN FOR THE LARGE MAJORITY
11 OF PEOPLE. IN THAT FIVE MINUTES FROM THAT 911 CALL
12 AND THIS WHOLE CROWD OF PEOPLE THAT THERE WERE AT THE
13 PARTY, WHO ENDS UP LEFT AT THE HOUSE? WAS IT THE TWO
14 DEALS AND THE TWO GUYS NAMED LEE, OTHER THAN LEE
15 OWENS, HE CLEARED OUT TOO. APPARENTLY HE WENT OUT TO
16 THE LAKE SOMEWHERE. AND AS I SAID A MINUTE AGO, LORI
17 BRINGS THE FIGHTING DOWN IN THE STREET BY HER OWN
18 ADMISSION.

19 YOU ALSO HEARD SOME OF THE PARTY-GOERS
20 SAID THERE WERE 20 TO 30 SHOTS. I DON'T DISPUTE THAT
21 WHEN THESE BULLETS WERE FIRED IT MAY HAVE SOUNDED
22 LIKE 20 OR 30 SHOTS, BUT AGAIN YOU JUDGE CREDIBILITY.
23 OF COURSE, I THINK THAT WAS THE YOUNG LADY THINKING
24 THAT, I THINK THAT WAS LORI'S OLDER SISTER WHO SAID
25 THAT SHE DID HAVE MAYBE ABOUT SIX OF THE ALABAMA

1 SLAMMERS. OF COURSE, IF YOU LISTEN TO MR. DEAL
2 NOBODY COULD HAVE THE ALABAMA SLAMMERS BUT THOSE
3 GUYS.

4 AND THEN SOME PARTY-GOERS SAY THERE WAS A
5 SECOND VEHICLE. NOW WHEN YOU COLOR EVERYTHING THAT
6 YOU GOT, AGAIN IT IS IMPERATIVE THAT YOU GUYS
7 REMEMBER IT THE WAY YOU REMEMBER IT, NOT THE WAY I'M
8 SAYING IT, IF YOU REMEMBER IT DIFFERENT OR COME BACK
9 AND CONFIRM, OF ALL THE PEOPLE THAT SAY SOMETHING
10 OCCURRED WITH THE SECOND VEHICLE I THINK THE ONE GIRL
11 WHO WAS WITH BRAD MOORE, AND HER NAME ESCAPES ME, IT
12 WAS BRAD MOORE'S GIRLFRIEND, YOU KNOW THE ONE THAT
13 WENT TO GET CIGARETTES WITH KRISTIN AND THEN DIDN'T,
14 HE ACCUSED HER OF TURNING OFF HER CELL PHONE, SO THEY
15 WERE ARGUING DOWN AT THE END OF THE STREET; SHE SAYS
16 SHE THOUGHT SHE SAW LIGHTS COMING FROM THIS OTHER
17 VEHICLE OR FIRES, I'M SORRY, FIRES FROM THE OTHER
18 VEHICLE. NOBODY ELSE PUTS ANY WEAPONS OR FIRE COMING
19 OUT OF A SECOND VEHICLE. THE VICTIM'S VEHICLE, AND
20 AGAIN IF YOU REMEMBER IT DIFFERENT, IF THERE IS OTHER
21 TESTIMONY, YOU REMEMBER IT THE WAY YOU DO, THE
22 VICTIM'S VEHICLE, THE ONLY PERSON YOU HEARD FROM THAT
23 GIVES YOU ANY ASPECT, AND THAT INCLUDES HIS
24 STATEMENTS, BECAUSE YOU CAN CONSIDER HIS STATEMENTS
25 IN MAKING A DETERMINATION ON THIS CASE TOO. THE ONLY

1 PERSON YOU HEAR ANYTHING ABOUT IT IS BRAD DEAL WHO
2 LIVES AT THE HOUSE WHO CALLED FIVE MINUTES LATER. HE
3 SAYS FIRING IN THE AIR. YOU KNOW IT'S FUNNY, START
4 FIRING IN THE AIR. WHAT HAPPENED TO FIRING OUT.
5 WELL, TELL ONE, TELL A GOOD ONE. WHY NOT FIRING OUT?
6 YOU KNOW WHY? BECAUSE THERE IS NO INDICATION FROM A
7 FORENSIC STANDPOINT: THERE WAS NO CAR SHOT UP, THERE
8 IS NO HOUSES SHOT UP, THERE IS NO ANYTHING, SO I
9 KNOW, THEY WERE FIRING IN THE AIR FROM THE FRONT OF
10 THE PASSENGER DOOR. AND LIKE I SAID, ONE LADY SAID
11 MAYBE THERE WERE FIRE.

12 ALL RIGHT. LORI, SHE WAS FIGHTING IN THE
13 ROAD, AND THIS IS IMPORTANT WHEN YOU GET TO
14 SELF-DEFENSE, YOU LISTEN TO THE JUDGE CHARGE YOU,
15 WE'LL TALK ABOUT IT A LITTLE MORE, YOU CANNOT BE PART
16 OF BRINGING ON THE DIFFICULTY. IN OTHER WORDS, IF
17 YOU AND I ENGAGE IN A MUTUAL FIGHT AND I'M GIVING AS
18 GOOD AS I CAN GET, IT DOESN'T MATTER IF I'M WINNING.
19 I CAN ENGAGE IN A MUTUAL FIGHT WITH ONE OF YOU AND
20 LOSE BUT THE FACT THAT I'M PART OF BRINGING ON THE
21 DIFFICULTY YOU CAN'T DO SELF-DEFENSE. BUT IF YOU
22 CAN'T DO THAT THEN YOU CERTAINLY CAN'T, I CAN'T
23 DEFEND YOU. I CAN'T GO PICK A FIGHT WITH MR. YEAGER
24 AND THEN YOU DEFEND ME AFTER I'VE PICKED THE FIGHT.
25 AGAIN I'LL TOUCH ON THAT LATER.

1 THEY WANT TO SAY THAT A 17-YEAR-OLD GIRL
2 WHO IS WHOOPING THE FOOL OUT OF THAT OTHER GIRL WAS
3 UNCONSCIOUS. SHE DIDN'T EVEN TELL THAT YOU. SHE
4 COULDN'T TELL YOU THAT. SHE WAS, SHE NEEDED TO GO TO
5 THE HOSPITAL BUT SHE NEVER WENT. AM I MAKING LIGHT
6 OF THE FACT THAT THIS GIRL GOT HIT? ABSOLUTELY NOT.
7 QUITE CANDIDLY, I FIND IT INTERESTING THAT SHE WAS
8 PROBABLY THE TOUGHEST ONE OUT OF THIS WHOLE CROWD AT
9 THE HOUSE BECAUSE AGAIN SHE WENT RIGHT DOWN AND GOT
10 TO BUSINESS. I'M NOT MAKING LIGHT, MR. FALLS HITTING
11 HER IS NOT JUSTIFIED UNLESS YOU SAY SOMEHOW IT'S
12 DEFENDING HER, I MEAN DEFENDING HOLLY, BUT AGAIN YOU
13 SEE THE SLIPPERY SLOPE WE HAVE. MY POINT BEING THE
14 GREAT DRAMA THEY WANT YOU TO BELIEVE, IF YOU DON'T
15 PEEL BACK THE VEIL, IS THEY WENT OUT THERE AND THEY
16 JUMPED ON THIS 17-YEAR-OLD GIRL AND ALL THEY COULD DO
17 IS DEFEND HER. THAT'S NOT THE FACT. NO, SIR. NO,
18 MA'AM. THAT'S NOT THE FACT IN THIS PARTICULAR CASE.
19 SHE DIDN'T GO TO THE HOSPITAL.

20 NOW MR. DEAL IS PROBABLY MY FAVORITE
21 WITNESS. YOU KNOW, IT'S KIND OF A TRAP FOR US, WHO
22 COULD BE OUR WITNESSES? CITIZEN-WIZE, WHO COULD BE
23 OUR WITNESSES? PEOPLE IN THE HOUSE AT THE PARTY?
24 PEOPLE IN THE CAR? HOW DO WE TELL WHAT HAPPENED?
25 WHO NORMALLY COMES TO A PARTY AT YOUR HOUSE? WHO ARE

1 NORMALLY AT THE HOUSE? FRIENDS, RELATIONS, THEY HAVE
2 A BUILT-IN BIAS. IF I ONLY PUT THE PEOPLE UP THAT
3 WERE IN THE CAR, WOULD YOU WONDER WHERE THE PEOPLE
4 WERE FROM THE HOUSE? AND AGAIN THE DEFENSE NEVER HAS
5 TO PROVE ANYTHING, BUT ONCE THEY CHOOSE TO CALL
6 WITNESSES, THEY HAVE AN EQUAL OPPORTUNITY TO CHOOSE
7 ANYBODY ELSE AT THE HOUSE OR ANYBODY ELSE AT THE
8 PARTY IF THEY WOULD DEEM TO CHOOSE TO DO SO. WE HAVE
9 TO PROVE THE CASE. WE HAVE TO PROVE IT BEYOND A
10 REASONABLE DOUBT. BUT WE CAN ONLY BRING YOU
11 WITNESSES THAT ARE AVAILABLE. I AM NOT GOING TO ASK
12 FOR A SHOW OF HANDS, DO YOU THINK THE PEOPLE AT THE
13 PARTY HAVE ANY BIAS FOR OR AGAINST THIS CASE? THAT'S
14 COMMON SENSE. YOU CAN APPLY THAT IN MAKING YOUR
15 DETERMINATION OF WHO YOU BELIEVE AND NOT TO BELIEVE.

16 THIS PARTY WENT ON FOR HOURS. THERE WAS
17 ALABAMA SLAMMERS, BEER, XANAX, A NUMBER OF THINGS,
18 AND WE DON'T GET INTO THE WHOLE ISSUE OF WHO IS WHAT
19 AGE AND WHETHER THAT MATTERS; I'M NOT SAYING, YOU
20 DON'T HAVE A RIGHT TO GO BEAT PEOPLE UP BECAUSE THEY
21 GOT AN OLDER BROTHER THAT GOES TO THE LIQUOR STORE OR
22 WHATEVER AND MAKES ALABAMA SLAMMER. A LOT OF PEOPLE
23 PROBABLY GET BEAT UP IF THAT IS THE CASE. THEY ARE
24 PARTYING, THERE ISN'T ANYTHING INHERENTLY WRONG WITH
25 THAT, BUT IN THE COURSE OF THE PARTY THEY START

1 MAKING THESE PHONE CALLS BECAUSE YOU KNOW WHAT
2 HAPPENS AFTER YOU GET A FEW DRINKS IN YOU, I MIGHT
3 THINK I WANT TO FIGHT AND I MIGHT KNOW JUST THE GUYS
4 TO DO IT, AND APPARENTLY ONCE BABYSITTING IS SECURE,
5 THEY ARE MORE THAN WILLING TO COME OVER AND DO IT AND
6 WE CAN FIGHT AND GO TO THE SPOT. SO THEY PARTY AT
7 THE HOUSE FOR HOURS, WHEN IT FINALLY COMES DOWN, IT
8 FINALLY GOES OUT, LORI IS GOING TO THE ROAD, ALL THIS
9 IS GOING ON, BRAD DEAL, THE MAN THAT KNOWS WHAT'S
10 GOING ON, WHAT DOES HE DO? I MEAN IT'S GOING, TO
11 HEAR THEM, IT IS GOING WILD; SHE'S GETTING KNOCKED
12 OUT, AND TRAVIS IS DOING ALL THIS STUFF, AND WHAT'S
13 GOING ON? HE WAS IN SUCH A HURRY, GET A CHANCE TO
14 FIRE HIM UP A CIGARETTE ON THE PORCH. WHILE HE'S
15 LOOKING DOWN THERE, HAD A CHANCE TO FIRE UP THAT
16 CIGARETTE, AND WHAT DID HE SEE? HE SAW A WHITE MALE
17 OR I SAY MALE, A WHITE ARM, FRONT SEAT PASSENGER SIDE
18 WINDOW FIRE, I THINK IT'S THREE SHOTS HE SAID. HE
19 NEVER SAW BOLIN OR OWENS SHOOT AT ALL. THIS, YOU CAN
20 JUDGE CREDIBILITY, I WONDER WHY HE WOULD NOT WANT TO
21 SAY HE SAW BOLIN AND OWENS SHOOT WHEN JUST ABOUT
22 EVERYBODY ELSE AT THE PARTY DID, ABOUT EVERYBODY ELSE
23 AT THE PARTY. I SUBMIT THAT YOU CAN PICK UP PRETTY
24 WELL HIS BIAS WHEN MR. THOMPSON WAS TALKING TO HIM.
25 AND YOU KNOW THEY ASK, BECAUSE THE WHOLE ISSUE IS:

1 THIS IS THE GUY THAT CALLED 911. THIS IS THE GUY
2 THAT SAID THEY WERE SHOOTING AT HIM. BUT AS SOON AS
3 THE POLICE GET THERE BECAUSE IT'S ALL ABOUT THE
4 POLICE PICKING AND CHOOSING. AS SOON AS THE POLICE
5 GET THERE WHAT IS TELLING THEM THEN AS FAR AS
6 SHOOTING? AND MR. THOMPSON CROSS EXAMINED, OH, WELL,
7 THERE WERE SOME SHOTS. YOU KNOW, I DON'T KNOW IF IT
8 WAS WHEN THEY WERE LEAVING OR NOT. AND YOU REMEMBER
9 HE HAD HIS STATEMENT, MR. THOMPSON CALLED HIM BACK TO
10 IT AND MADE HIM GO THROUGH IT, AND WHAT DID HE SAY?
11 AS THE CAR DRIVES AWAY I HEAR FOUR TO SIX SHOTS.
12 THIS IS WHAT HE WROTE HIMSELF. I HEAR FOUR TO SIX
13 SHOTS FIRED, THE CAR CONTINUES TO DRIVE AWAY. NOW
14 THAT'S WHAT HE TOLD US. SO WHEN THE POLICE AREN'T
15 RUNNING DOWN ALL THESE SECOND CARS OR RUNNING DOWN
16 GETTING GUNS OUT OF THIS CAR AND ALL THIS STUFF
17 BECAUSE THE VERY MAN THAT CALLED THEM ABOUT OH, THEY
18 ARE SHOOTING AT US, NOW SAYS I HEARD SOME SHOTS WHEN
19 THEY WERE DRIVING AWAY. HE CALLS 911 AND FIVE
20 MINUTES LATER WHAT DID HE EXPLAIN TO YOU? THIS IS,
21 I'D LIKE TO HAVE THE REVENUE JUST ON THE PHONE,
22 MOBILE PHONES THESE KIDS HAVE, BUT HE COULDN'T USE
23 HIS BECAUSE HE HAD DROPPED IT IN THE TOILET. AND YOU
24 KNOW YOU HAVE TO BLOW IT AND REBOOTS AND ALL THIS
25 STUFF, SO THERE IS NOBODY ELSE OUT OF THIS WHOLE GANG

1 THAT HAS A PHONE THAT HE COULD USE RIGHT THEN WHEN
2 THEY'VE BEEN SHOT AT. WELL, MR. THOMPSON EVEN ASKED
3 HIM THAT BUT OF COURSE HE WAS TOO UPSET TO USE
4 SOMEONE'S ELSE PHONE. YOU JUDGE CREDIBILITY. YOU
5 JUDGE BELIEVABILITY.

6 SO HE'S IN HIS HOUSE. I WANT YOU TO TAKE
7 A GOOD LOOK AT THIS HOUSE. THE PICTURES THAT THE
8 POLICE TOOK. THE PARTY HAS BEEN GOING ON ALL
9 AFTERNOON. WHAT YOU NOTICE AT THE HOUSE? WHAT'S
10 GOING ON AT THE HOUSE? THIS HOUSE HAD A PARTY
11 PREDOMINANTLY IN THE KITCHEN. WELL, WE KNOW SOME
12 PEOPLE SMOKE BECAUSE THEY SURE WENT TO GET
13 CIGARETTES. YOU SEE CIGARETTES ON THE COUNTER.
14 WHERE IS THE BEER CANS? WHERE ARE THE EMPTY CUPS?
15 WHERE ARE THE SPILLED ITEMS? THE TRASH BAG. WHAT
16 WAS HE DOING DURING THAT FIVE MINUTES? EVERYBODY
17 THAT NEEDED TO GET OUT OF DODGE WAS GETTING OUT OF
18 DODGE. THEN HE CLEANS UP THE HOUSE AND THEN HE MAKES
19 THIS PHONE CALL THAT LAYS THE GROUND WORK ABOUT THIS
20 PRIOR FIGHT.

21 YOU REMEMBER, THAT, YOU KNOW, MR. THOMPSON
22 ASKED SOMEBODY, WELL, THE ALABAMA SLAMMERS, THEY WERE
23 IN THE KITCHEN, WEREN'T THEY? THIS IS SUCH A
24 SHOCKING EVENT. HE IS TOO SHOCKED TO USE THE PHONE,
25 NOT TOO SHOCKED TO ROLL THOSE ALABAMA SLAMMERS OUT

1 THE BACK DOOR. OF COURSE, HE ALSO WASN'T TOO SHOCKED
2 TO DUMP THEM OUT EITHER, WAS HE? THIS IS ANOTHER
3 PICTURE, AND AGAIN YOU'LL HAVE THE PICTURES. I KNOW
4 THERE IS SOME DIFFICULTY WITH THAT LIGHT SHINING
5 DOWN, LOOK AND JUDGE USING YOUR OWN COMMON SENSE.
6 YOU COME OUT OF A LIT HOUSE, YOU COME OUT, WHAT CAN
7 YOU SEE OR NOT SEE IN THE DARKNESS? AND THIS IS
8 USING A FLASH, AND WHAT CAN YOU SEE GOING ON DOWN
9 THERE AT THE ROAD? I PUT THIS IN THERE TO SHOW YOU
10 THE DISTANCE WE'RE TALKING ABOUT. IF ALL THE THINGS
11 THAT ARE TRANSPIRING HERE AND MR. DEAL IS UP HERE, HE
12 DOESN'T SEE MR. BOLIN, HE DOESN'T SEE MR. OWENS, BUT
13 HE SEES WHAT'S GOING ON ALL THE WAY DOWN HERE AND
14 EVEN RIGHT HERE AS THE CAR IS PULLING AWAY AND THERE
15 ARE SHOTS THAT ARE FIRED IN THE AIR.

16 THE KNIVES IN THE FRONT YARD OFF THE
17 STEPS. MR. DEAL SAYS THAT'S THE ONE THING HE'S
18 REALLY GOOD AT. I REMEMBER AS A KID WAS THROWING
19 KNIVES. WHY ARE THE THROWING KNIVES OUT IN THE YARD?
20 WERE THEY JUST PRACTICING WITH THEM IN THE FRONT
21 YARD? OR WHEN THE FIST FIGHT COMES IS THE KNIFE
22 GOING TO THEM? OF COURSE, THAT NEVER MADE IT PAST
23 THE FRONT YARD.

24 SHOTS FROM THE CAR. THE FIRST THING I
25 WANT TO TALK ABOUT AND AGAIN YOU'LL HAVE THIS PICTURE

1 BACK THERE, BUT THIS IS THE INSIDE OF THE VICTIM'S
2 CAR. YOU KNOW, THERE WAS SOME TESTIMONY WHEN WE'RE
3 TALKING ABOUT THAT DOOR BEING SHUT AND HOW THIS IS A
4 STATIONARY GLASS AND THIS IS HERE, YOU CAN'T SEE IT
5 VERY WELL IN THIS PICTURE. I PUT THE SECOND PICTURE,
6 THIS IS BASICALLY ALONG THE HEAD REST TO THE BACK OF
7 THE CAR GOING TO THIS SIDE. THIS SHOWS THE SAME
8 THING. YOU'LL HAVE THE PICTURES BACK THERE. THAT
9 WOULD BE ACROSS THIS AREA, YOU SEE THE TOP OF THE
10 SEAT, SO THIS IS THE STATIONARY WINDOW, AND THIS IS
11 THE HARD PART.

12 OKAY. MR. GREELEY YOU REMEMBER EVEN HAD
13 TRAVIS STAND UP AND TALK ABOUT SHOOTING AND LET'S
14 THINK ABOUT ALL THE SCENARIOS. OKAY. WE KNOW FOR
15 SURE THAT BOBBY HOVIS IS RIGHT HERE AS THEY ARE
16 DRIVING AWAY BECAUSE BOBBY GETS SHOT IN THE BACK OF
17 THE HEAD SITTING RIGHT THERE. TRAVIS HAS GOT HIS
18 ARMS BEHIND AND IF I RECALL AND AGAIN YOU RECALL THE
19 TESTIMONY THE WAY YOU DO, IF RECALL FROM THE
20 TESTIMONY WAS HE PUT HIS ARM UP TO LOOK ACROSS THE
21 BACK THROUGH THE BACK WINDOW TO SEE WHAT WAS
22 OCCURRING THERE. IF I RECALL FROM HIS TESTIMONY, IT
23 WENT THROUGH HIS WRIST AND CAME OUT THE OTHER SIDE
24 AND OF COURSE WENT UP TO MR. HOVIS'S HEAD, OKAY. I
25 DON'T THINK HE'S HUGGED UP WITH MR. HOVIS. HE'S TOLD

1 YOU HE'S GOT HIS ARM ON THE BACK OF THE SEAT, JUST
2 LIKE WHEN YOU BACK UP YOUR CAR YOU PUT YOUR ARM
3 ACROSS AND YOU TURN. HE GETS SHOT THROUGH HERE AND
4 GOES THROUGH THERE AND HE GOES TO MR. HOVIS. SO
5 NUMBER ONE WE KNOW HIS HAND IS BEHIND MR. HOVIS.
6 TWO, IF HE'S GOT THIS PISTOL, HE'S GOT IT UPSIDE DOWN
7 SO HE'S SHOOTING UPSIDE DOWN LIKE THIS. IF HE'S
8 BEHIND THE MAN'S HEAD THEN HE'S SHOOTING INTO THAT
9 METAL PART OR INTO THE STATIONARY GLASS. IN OTHER
10 WORDS, IF HE'S BEHIND HIS HEAD, HE'S SHOOTING HERE OR
11 HE'S SHOOTING THROUGH HERE.

12 NEXT WE LOOK AND TALK ABOUT THE GLASS
13 BEING DOWN AND THAT THE WITNESSES SAID THE GLASS WAS
14 DOWN. OF COURSE, AGAIN YOU'LL SEE IN THE PICTURES
15 THAT IT WAS CRACKED HERE. ALSO CALL YOUR ATTENTION,
16 YOU'LL HAVE THAT PICTURE BACK THERE TOO, LOOK AT THE
17 LITTLE BLOOD SMEARS ON THE INSIDE OF THE CAR, HE WAS
18 TALKING ABOUT IN A LINEAR FASHION, AND YOU'LL HAVE
19 THE PICTURE BACK IN THERE, HE TALKED ABOUT HOW THEY
20 MATCHED UP THAT WOULD SHOW THIS WINDOW WAS NOT DOWN.
21 BUT LET'S SAY IT WAS. LET'S SAY THE WINDOW WAS DOWN.
22 OKAY. AND SO HE'S SHOOTING SO EITHER MR. HOVIS, HE'S
23 SHOOTING IN FRONT, LET'S SEE, HE'S SHOOTING IN FRONT
24 OF MR. HOVIS IN MR. HOVIS'S FACE AND HE'S SHOOTING
25 THE GUN RIGHT THERE IN FRONT OF HIM; OF COURSE, YOU

1 KNOW YOU REMEMBER, ACCORDING MR. DEAL HE SAW A WHOLE
2 ARM OUT THE WINDOW. OF COURSE, MR. DEAL KNOWS THAT
3 DOESN'T WORK, SO WHERE DID MR. DEAL PUT THEM? IN THE
4 FRONT SEAT. BUT EITHER WAY HE'S GOT TO BE, IF HE'S
5 IN THE BACK, HE'S GOT TO BE CLIMBED OVER HERE, HE'S
6 GOING TO BE PUSHING UP THAT WINDOW. I SUBMIT THERE
7 IS A REASON THIS DIDN'T FIT BECAUSE IT DIDN'T HAPPEN.
8 OR MR. HOVIS HAS GOT TO BE DOWN SO HE CAN SHOOT
9 BEHIND HIM. IF MR. HOVIS IS DOWN, YOU GOT TO CATCH
10 THIS MAN'S .45 IN THE BACK OF HIS HEAD.

11 WHY IS IT SO IMPORTANT FOR SOMEBODY
12 SHOOTING FROM THE CAR? BECAUSE IF SOMEBODY IS NOT
13 SHOOTING FROM THE CAR THEN THE TRUTH IS THEY ARE
14 SHOOTING AT A CAR THAT'S DRIVING AWAY, WHO CAME TO A
15 FIGHT, MADE THEM MAD, OR WHATEVER THE CASE MAY BE,
16 THEY ARE SHOOTING AT A CAR THAT'S DRIVING AWAY.

17 SO HERE'S THE INSIDE OF THE CAR, AGAIN
18 YOU'LL HAVE THIS PICTURE BACK THERE, AND I UNDERSTAND
19 WHAT MR. GREELEY SAYS, MAY BE THEY CAN LOWER THE
20 WINDOW FROM THE OTHER SIDE. I CAN TELL YOU WHO
21 DIDN'T LOWER THE WINDOW OR RAISE THE WINDOW; ONE FROM
22 THE SMEARS WE TALKED ABOUT; AND TWO WASN'T ANY OF
23 THIS CROWD THAT WAS BLEEDING BECAUSE YOU NOTICE RIGHT
24 HERE, YOU CAN SEE ALL THE BLOOD, IT'S NOT RIGHT
25 THERE.

1 THIS ONE IS PROBABLY TO ME THE MOST
2 INTERESTING AND I GUESS TO USE MR. GREELEY'S TERM
3 NUGGETS, BUT YOU WANT TO USE SOMETHING THAT JUST KIND
4 OF THROWS THE SWITCH ON AND TELLS YOU WHO IS TELLING
5 THE TRUTH AND WHO IS NOT. SO LET'S PAINT THE SCENE
6 NOW. THIS CAR IS LEAVING. BEGRUDGINGLY MR. DEAL
7 ADMITTED IT WAS LEAVING. IT'S NOW DRIVING AWAY.
8 THEY ARE GOING TO BE LOADING IT FULL OF NINE
9 MILLIMETERS AND .45'S, BUT YOU NEED SOME REASON AND A
10 GOOD REASON IS THE GUY IN THE FRONT SEAT HAS GOT A
11 GUN, SHOOTING UP, NOT OUT, BUT SHOOTING UP. THAT
12 WILL BE ENOUGH. SO THAT'S KIND OF DEFENSE. SO HERE
13 HE GOES. YOU REMEMBER THAT BULLET HOLE IN THE DOOR?
14 THEY ARE DRIVING AWAY, LEE OWENS IS SHOOTING THAT
15 NINE, BUT THEY FEAR FOR THEIR LIFE. BERRY BOLIN IS
16 SHOOTING THAT .45 BECAUSE HE FEARS FOR HIS LIFE.
17 THERE IS A WINDOW OUT THE ARM AND IT'S SHOOTING UP IN
18 THE AIR. I MEAN NOT A WINDOW OUT THE ARM, AN ARM OUT
19 THE WINDOW, IT'S SHOOTING UP IN THE AIR; WHERE IS
20 THAT WINDOW WHILE MY ARM IS HANGING OUT SHOOTING UP
21 IN THAT AIR? WHERE IS IT AT? IT'S INSIDE THE DOOR.
22 IT'S INSIDE THE DOOR. WHERE'S THAT NINE MILLIMETER
23 GO? SO WE SUBMIT TO YOU IF THAT WINDOW IS OPEN AND
24 THAT GLASS THAT'S CLEARLY EXIST IN THAT PICTURE IS
25 SHATTERED OR AT A MINIMUM HAS THAT NINE MILLIMETER

1 THROUGH IT. SO WHY ISN'T IT? BECAUSE THAT DIDN'T
2 HAPPEN.

3 SO WHAT DO WE HAVE AT THE SCENE? WE HAVE
4 THE PIECE THAT WAS RECOVERED. HERE IS MY INTEREST IN
5 THE PIECE THAT WAS RECOVERED AND THERE WAS A REQUEST
6 TO GO SEE IF THAT PIECE FITS THE MIRROR. THAT
7 HAPPENED LAST WEEK. AND AS YOU CAN SEE, IT FITS.
8 THE FIGHT, KENNY JUMPS OUT, WE TRY TO GET KENNY BACK
9 IN. THE GIRLS START FIGHTING. HOLLY IS GETTING THE
10 WORST OF IT. TRAVIS HITS LORI. THEY ARE TRYING TO
11 GET BACK IN THE CAR AND THE CROWD SWARMS ON THEM AND
12 STARTS TEARING UP THE CAR AND THEY START BREAKING THE
13 MIRRORS OFF THE CAR. IF THERE IS A GUN IN THE CAR,
14 ARE THEY GOING TO ALLOW THEM TO TEAR UP THE CAR WHILE
15 THEY ARE SITTING IN IT? IF THERE IS A GUN IN THE
16 CAR, ARE THEY GOING TO DRIVE OFF? WHAT YOU GOING TO
17 DO WHEN THEY ARE KICK YOUR CAR AND BANGING YOUR CAR
18 AND SNATCHING THE MIRRORS OFF OF IT? YOU ARE GOING
19 TO FEED THEM SOME LEAD BACK. NOW THE REASON THAT
20 DIDN'T HAPPEN IS THERE ISN'T A GUN IN THE CAR.

21 THERE IS A LITTLE PIECE OF TESTIMONY ABOUT
22 ANOTHER VEHICLE, THAT EITHER (A) HAD SOME FIRES OR
23 (B) WAS THERE AND YOU NOTICE THEY SAID THEY HEADED
24 DOWN THE OTHER DIRECTION. I GUESS THAT'S 161. AND
25 THAT THAT WAS KIND OF LOST BECAUSE WHAT IT FINALLY

1 CAME DOWN TO THEY NOW LANDED ON THE SHOOTING IS
2 COMING OUT THE PASSENGER WINDOW OF THE VICTIM'S CAR
3 OR OUT THE BACK OF THE VICTIM'S CAR. IF THERE WAS
4 ANOTHER VEHICLE AND IT DID, WAS SHOOTING, WHY DIDN'T
5 LEE OR BERRY SHOOT UP THAT VEHICLE TOO? WHY DIDN'T
6 WE HAVE SOME BULLETS FLYING THE OTHER WAY TOWARD THE
7 CROWD THAT WAS HEADING THAT WAY? I SUBMIT THERE IS
8 VERY GOOD REASON BECAUSE THAT DIDN'T EXIST.

9 AS YOU LOOK BACK AT THESE STORIES WHAT
10 HAPPENED IS THEY SHOOT A CAR WHEN IT WAS LEAVING
11 AFTER THE BIG FIGHT HAD GONE AWRY AND ONE SHOT IN THE
12 AIR AND THEN THE OTHER SAID WELL, HECK, IF HE'S GOING
13 TO SHOOT HIS GUN, I'M GOING TO SHOOT MINE TOO. THE
14 TRUTH IS IT GOT GOOD TO THEM. THEY ARE AT A PARTY,
15 THEY ARE SHOWING OFF, THEY GOT THE GUNS; I HATE FOR
16 THE CAR TO LEAVE AND ME NOT BE ABLE TO SAY, WHY, MAN
17 YOU DIDN'T SHOOT? YOU GO, HUH? WHY DIDN'T YOU SHOOT
18 YOUR GUN? YOU GOING TO SHOOT YOURS, I'LL SHOOT MINE,
19 SO THEY ARE GOING TO LOAD THAT CAR UP AS IT DRIVES
20 AWAY.

21 NOW TAKING A LOOK AT THE FORENSICS AND
22 WHAT WE CAN SAY AND NOT SAY. TALK ABOUT THE ANGLE
23 RODS. MR. GREELEY WANTS TO CLOUD YOU A LITTLE BIT
24 ABOUT TRIANGULATION. IF WE KNEW EXACTLY WHERE THE
25 VEHICLE WAS, IF WE KNEW EXACTLY WHERE THE SHOOTER

1 WAS, AND WE KNEW THE ANGLE, AND YOU TAKE THE THREE
2 POINTS AND YOU KNEW THAT IT WAS A FLAT PLANE AS HE
3 ASKED, THEN YOU COULD SAY THIS IS HOW FAR AWAY THEY
4 WERE. THIS IS HOW FAR AWAY. WELL, YOU COULD EVEN
5 DETERMINE VELOCITY AND THINGS OF THAT NATURE. WHAT
6 THIS ALLOWS WAS BECAUSE WE DON'T KNOW OTHER THAN WHAT
7 YOU HEARD OF CLEARLY WHERE EACH PERSON WAS STANDING,
8 WE KNOW THE CAR WAS LEAVING, BUT WE DON'T KNOW TEN
9 FEET LEAVING, 20 FEET, 30 FEET, MOVING, SO WHAT THEY
10 THESE DO GIVE YOU AND IT IS VALUABLE FORENSICS IS THE
11 ANGLES OF THE VARIOUS SHOTS AS THE INDIVIDUALS ARE
12 STANDING IN THE YARD AS THIS CAR IS DRIVING AWAY
13 WHERE THEY ARE LOADING IT AGAIN AND AGAIN AND AGAIN.
14 SO I WANTED TO HIT THE GLASS. SOME OF THE ANGLES
15 COMING HERE. AGAIN YOU'LL HAVE THESE PICTURES IN THE
16 JURY ROOM.

17 SIMPLE PHYSICS FOR YOU GUYS I KNOW BUT
18 THIS IS ALMOST TOO OBVIOUS, NOBODY EVER SAID THE CAR
19 WAS COMING TOWARDS THEM, RIGHT? IF THE CAR WAS
20 COMING TOWARD THEM OF COURSE THE STICKS WOULD BE
21 POINTING THIS WAY COMING BACK FROM THE CAR.
22 EVERYTHING HAS THAT CAR TAKING AWAY.

23 ALL RIGHT. YOU ALSO KNOW THEY MADE
24 RECOVERY FROM THE CAR AND YOU ULTIMATELY KNOW THAT
25 ALTHOUGH THEY DIDN'T GET MR. OWENS'S WEAPON THEY DID

1 GET MR. BOLIN'S WEAPON. SO WHAT DO WE KNOW FROM THE
2 FORENSICS IN THE CASE? WE KNOW THAT FIRST ONE THAT
3 SKIMMED THE HOOD, WE KNOW THE ANGLE OF IT BECAUSE IT
4 DIDN'T EMBED, BECAUSE IT DIDN'T PUSH A HOLE, THAT
5 COULD BE A NINE MILLIMETER, THAT COULD BE A .45 THAT
6 SKID ACROSS THE TOP, SO WE DON'T KNOW WHAT THAT ONE
7 WAS.

8 THE SECOND ONE THAT COMES UNDER THAT REAR
9 VIEW MIRROR, IT WAS RECOVERED. WE KNOW THAT IT'S A
10 NINE MILLIMETER. WE ALSO KNOW IS THAT THE SLED AGENT
11 SAID THAT HE THOUGHT HE HAD SOME CHARACTERISTICS HE
12 COULD IDENTIFY WITH IT, BUT OF COURSE YOU REMEMBER
13 MR. HOPKIN TESTIFIED THAT HE WENT, MR. BOLIN TO LOOK
14 FOR HIS GUN DOWN AT, AT THE BOAT LANDING AND SO NOT
15 MR. BOLIN, I'M SORRY, MR. OWENS, SO WE WERE UNABLE TO
16 RECOVER THAT PARTICULAR WEAPON. THIS WENT THROUGH
17 THE PASSENGER DOOR. THIS IS THE ONE THAT SHATTERED
18 THE GLASS IF IT WAS DOWN. THIS ALSO WAS A NINE
19 MILLIMETER. THIS ONE AT THE BOTTOM, AND AGAIN WE
20 DON'T KNOW ABOUT THE FIRST ONE, WE KNOW THAT THESE
21 THREE COMING DOWN THE SIDE OF THE CAR, TWO ARE NINE
22 MILLIMETERS FOR SURE THAT THEY RECOVERED, AND I
23 SUBMIT WHEN YOU GO BACK AND LOOK CLOSELY AT THIS
24 PICTURE, IF YOU LOOK AT THE SIZE OF THE HOLE AND YOU
25 LOOK AT THE MEASUREMENTS AND THERE IS YOUR

1 MILLIMETER, THIS ALSO IS MOST CONSISTENT AND YOU MAKE
2 YOUR OWN DETERMINATION WITH THE PICTURES, THIS IS
3 MOST CONSISTENT WITH A NINE MILLIMETER HOLE. YOU
4 NOTICE HE SAID 45, .45 OF AN INCH WOULD BE LARGER AND
5 AGAIN YOU WILL HAVE, HERE IS A HALF-INCH, JUST A
6 LITTLE LESS, YOU SEE HOW BIG THE .45 WILL BE ON THAT,
7 BUT AGAIN YOU WILL HAVE THAT BACK THERE WITH YOU. SO
8 I SUBMIT THESE THREE ARE LEE OWENS'S. HE SHOT TWO IN
9 THE AIR. REMEMBER EVERYBODY KEPT SAYING HE SHOT TWO
10 IN THE AIR BECAUSE HERE'S WHAT HAPPENED, LEE'S BEEN
11 SHOWING THAT GUN ALL NIGHT, BE COOL TO GET TO USE IT,
12 BUT INITIALLY HE JUST WANTS TO BIG SHOT IT, SO HE
13 LIGHTS THAT FUSE, HE FIRES THOSE TWO, AND THAT'S WHAT
14 SET IT OFF.

15 GOT THE .45 THAT WAS RECOVERED FROM THE
16 WINDSHIELD VENT IN THE FRONT OF THE CAR, YOU GOT THE
17 ANGLE THERE. THEN YOU GOT THE .45 THAT WAS RECOVERED
18 AT AUTOPSY IN MR. HOVIS'S HEAD. THIS .45 IS
19 CONSISTENT WEIGHT-WISE, SIZE-WISE WITH THE CORE AND
20 THE CALIBER OF THE AMMUNITION THAT WE'RE TALKING
21 ABOUT IN THIS CASE, BUT THE SLED AGENT, HE SAID IT
22 EVEN HAD CONSISTENT MARKINGS SIMILAR TO THIS WEAPON,
23 BUT HE COULD NOT SAY FOR SURE AND THAT WAS BASED ON
24 THE DAMAGE. HE CAN SAY IT'S A .45, BUT HE CAN'T SAY
25 IT CAME FROM THIS GUN AND WHAT'S THAT BASED ON? THE

1 DAMAGE TO THIS CORE. THE DAMAGE THAT CAME FROM
2 RICOCHETING INSIDE THIS MAN'S SKULL AND TEARING BACK
3 THROUGH HIS BRAIN.

4 THE JUDGE WILL TELL YOU YOU ARE ALLOWED TO
5 MAKE DETERMINATIONS FROM THE EVIDENCE. I SUBMIT THAT
6 IT IS UNDISPUTED THAT IS MR. BOLIN'S .45 CALIBER THAT
7 ENDED UP IN MR. HOVIS'S BRAIN. YOU CAN MAKE THAT
8 DETERMINATION. HE SHOULD NOT BE REWARDED BECAUSE THE
9 SHEER BLUNT FORCE OF THE BULLET HE SHOT DISFIGURES IT
10 TO THE POINT THAT THEY CAN'T MAKE A TOTALLY POSITIVE
11 IDENTIFICATION. OF COURSE, WE HAVE THE GUN IN WHICH
12 TO COMPARE IT TO.

13 NOW WHEN THEY RETRIEVE THE SHELLS AT THE
14 HOUSE, I'M GOING TO GO THROUGH THIS FAIRLY QUICKLY,
15 YOU'LL HAVE EACH ONE IN THE PICTURE. THEY GET THE
16 NINE MILLIMETER SHELLS, THE FIVE NINE MILLIMETER
17 CARTRIDGES, OUT OF THE FRONT OF THE YARD. OKAY. TWO
18 IN A GROUP CONSISTENT WITH TWO SHOTS FIRED IN THE
19 AIR, THREE MORE AFTER THAT CONSISTENT WITH SHOOTING
20 AT AN ANGLE; THAT WAS SOMETHING I WAS THINKING TOO,
21 WHEN YOU GET BACK TAKE THE PICTURE, TALKING ABOUT THE
22 ANGLE RODS, THINK WHERE THESE ARE AT, PUT THAT CAR
23 WHERE YOU THINK THESE ANGLES WOULD WORK. YOU KNOW,
24 IN YOUR OWN MIND YOU LOOK, LOOK AT THE ANGLES, THE
25 ANGLE ARE FLATTER, FLATTER, MAKE YOUR OWN

1 DETERMINATION BASED ON THE EVIDENCE YOU HAVE. SEE
2 WHERE MR. OWENS IS AT. HE'S UP IN THE YARD. THE
3 ANGLE IS OVER HERE. THAT CAR ENDS UP SOMEWHERE OVER
4 IN THIS DIRECTION AND THOSE ARE ALL NINE MILLIMETERS.
5 WE DON'T HAVE HIS GUN. AND THE .45 ARE RECOVERED.
6 AGAIN YOU'LL HAVE THIS BACK IN THE JURY ROOM. AND
7 AGAIN MR. BOLIN'S SHELLS ARE RIGHT HERE, THINK ABOUT
8 WHERE THE CAR WOULD BE BASED ON WHAT HE WAS SAYING.

9 EACH AND EVERY .45 CASING THAT WAS
10 FOUND AT THAT SCENE IN ANYWAY CONNECTED WITH THIS
11 CASE WAS FIRED BY THIS GUN. EACH AND EVERY .45 SLUG
12 THAT CAME OUT OF THE END OF THIS BARREL, EACH CASING
13 THAT WAS KICKED OUT, WAS FIRED BY THIS GUN.

14 LET'S LOOK AT THE DEFENDANT'S STATEMENTS.
15 I SUBMIT, YOU JURORS, THE JUDGE WILL INSTRUCT YOU,
16 YOU DECIDE HOW TO WEIGH THE EVIDENCE, HOW TO WEIGH
17 THE CREDIBILITY, HOW YOU CAN TAKE A PIECE OF THE
18 EVIDENCE AND NOT SOME OF THE OTHERS, YOU CAN DECIDE
19 WHAT YOU WANT TO USE, WHAT YOU DON'T, WHAT IT MEANS;
20 YOU CAN BASE IT JUST ON HIS STATEMENTS IN EVIDENCE,
21 AND DISCOUNT EVERYBODY'S STATEMENTS OR YOU CAN BASE
22 IT ON WHAT YOU'VE HEARD FROM UP HERE AND DISCOUNT HIS
23 STATEMENTS TOTALLY, BUT THESE ARE EVIDENCE, THESE ARE
24 EVIDENCE FOR YOU TO CONSIDER JUST THE SAME AS
25 EVERYTHING YOU'VE HEARD FROM THE STAND. THE JUDGE

1 WILL INSTRUCT YOU YOU DECIDED WHAT'S IMPORTANT AND
2 HOW TO BRING IT BEAR.

3 YOU HEARD THAT HE HAD HIS RIGHTS READ TO
4 HIM EARLY THAT EVENING. YOU HEARD HE GAVE PERMISSION
5 TO SEARCH, SEARCH THE VEHICLE. MY PISTOL IS IN THE
6 GLOVEBOX. OH, WAIT, SOMEBODY STOLE IT. IF IT'S NOT
7 IN THERE, SOMEBODY STOLE IT. THIS IS THE GUY WHO WAS
8 DEFENDING SOMEBODY ELSE, THIS IS THE GUY WHO IS ONLY
9 TRYING TO PROTECT HIS FRIENDS, BUT YET MAYBE SOMEBODY
10 STOLE MY GUN. SO THEN WE'RE HERE, SIR, THIS IS YOUR
11 CHANCE. IT'S TIME IS HERE, TELL ABOUT A SHOOTING,
12 TELL ABOUT WHAT HAPPENED, TELL ABOUT A DRIVING UP,
13 PUT WHATEVER YOU WANT TO PUT. WOKE UP AT 11:30 P.M.
14 AT MY HOUSE, WATCHED MOVIES UNTIL TWO OR THREE WITH
15 GIRLFRIEND, TOOK SHOWER AND WENT TO AUNT HOUSE.
16 GIRLFRIEND WENT HOME TO TAKE A SHOWER. I HUNG OUT IN
17 MY BACK YARD AND BUILDING AND SHOT AT A BIRD 4:30 TO
18 FIVE O'CLOCK. THEN HUNG OUT A LITTLE LONGER, DRANK
19 ALCOHOL UNTIL 8:30 OR 9 O'CLOCK AND THEN QUIT AND
20 LIKE 9:30 WENT TO BRADLEY DEAL'S HOUSE. LARGE
21 COMMOTION, WENT OUTSIDE TO SEE IF IT WAS SERIOUS OR
22 NOT, SAW IT WAS SERIOUS, DID NOT WANT TO GET MINOR IN
23 POSSESSION OR ANYTHING LIKE THAT, DROVE TO MY
24 GIRLFRIEND'S HOUSE AND THEN TO MY HOUSE. SOUNDS LIKE
25 MR. DEAL, WHEN THE POLICE FINALLY GET THERE AFTER THE

1 911 TAPE THIS MAN COULD HAVE TOLD HIM ANYTHING ABOUT
2 TRAVIS COMING, SHOOTING, SHOTS OUT THE WINDOW, SHOTS
3 FLYING AT THEM, SAFETY, LORI, ANY OF THAT STUFF.
4 IT'S NOT THERE. WHY IS IT NOT THERE? USE YOUR OWN
5 COMMON SENSE.

6 THEN HE GAVE ANOTHER STATEMENT. SAID I
7 WAS INSIDE BRAD'S HOUSE, HEARD SOME YELLING GOING ON
8 OUTSIDE. I WAS GOING OUTSIDE AND I HEARD SOMEONE
9 YELL TO GIVE ME A GUN. I WENT TO MY TRUCK AND GOT MY
10 GUN. SOMEONE RAN UP TO ME AND SAID GIVE ME YOUR
11 FUCKING GUN. ALL OF A SUDDEN SOMEONE SHOT A GUN TWO
12 TIMES VERY NEAR ME. I DON'T KNOW WHO FIRED THESE
13 SHOTS. I LOOKED TOWARD THE CAR THAT WAS AT THE END
14 OF THE DRIVEWAY, I SAW A GIRL FALL, AND SOMEONE SAID
15 SHE HAD BEEN SHOT. THEN SOMEONE SAID NO, THEY HIT
16 HER; I THEN SAW SIX OR SEVEN PEOPLE RUN TOWARD THE
17 CAR. I THINK IT WAS ALL THE PEOPLE THAT HAD BEEN IN
18 THE HOUSE. I THEN HEARD TWO OR THREE SHOTS BEING
19 FIRED NEAR THE CAR. AT THAT TIME THERE WERE PEOPLE
20 FIGHTING AND HANGING ON TO THE CAR. AFTER THE SHOTS
21 WERE FIRED THE CAR STARTED PULLING AWAY. THAT IS
22 WHEN I STARTED SHOOTING AT THE CAR. I THINK THAT I
23 SHOT ABOUT FOUR TIMES. ALL I KNOW IS I SHOT ALL MY
24 BULLETS AT THE SAME TIME I WAS SHOOTING. THERE WAS
25 SOMEONE, AT THE SAME TIME I WAS SHOOTING THERE WAS

1 SOMEONE BESIDE ME SHOOTING TOO. I'M NOT SURE IF IT
2 WAS THE SAME PERSON WHO SHOOT NEAR ME RIGHT AFTER I
3 GET MY GUN. AFTER IT WAS OVER I WAS RUNNING AROUND
4 AND UPSET. I GOT RID OF MY GUN BUT I DON'T REMEMBER
5 WHAT I DID WITH IT. I THINK THAT I GAVE IT TO
6 SOMEONE.

7 AND HE COMES BACK LATER AND SAYS I LIED
8 ABOUT WHO I GAVE MY GUN TO SO THAT HE WOULD NOT GET
9 IN TROUBLE. I WENT TO A PARTY AND GAVE IT TO MY
10 COUSIN MICHAEL WALLACE. I TOLD HIM WHAT HAPPENED AND
11 TOLD HIM TO GET RID OF THE GUN. I TOLD HIM WHAT
12 HAPPENED, TOLD HIM TO GET RID OF THE GUN. I TOLD HIM
13 ABOUT THESE GUYS SHOOTING AT US AND ME DEFENDING LORI
14 AND TOLD HIM TO GET RID OF THE GUN. DOES IT APPEAL
15 TO YOUR COMMON SENSE.

16 NOW FINALLY WE HAVE THE LAST TWO
17 STATEMENTS FROM MR. YEAGER. I TELL YOU WHAT I'M
18 GOING TO DO WITH THOSE. YOU SEE WHERE HE'S WAIVED
19 HIS RIGHTS. YOU SEE THE TWO STATEMENTS THAT WERE
20 ATTACHED. IF YOU THINK SOMEHOW MR. YEAGER IS TRYING
21 TO COOK A PUDDING ON MR. BOLIN, THAT THIS IS WHAT IS
22 GOING TO SURE IT UP, THAT THIS LAST PAGE IS WHAT
23 MAKES IT. GET RID OF IT. GET RID OF IT. I SUBMIT
24 YOU COME TO THE SAME DECISION. IF YOU THINK, WELL,
25 YOU KNOW, THAT SECOND TIME AFTER HIS READ HIS RIGHTS

1 AND HE TOLD HIM ALL THIS STUFF, GET RID OF THAT ONE
2 TOO. I SUBMIT YOU CAN DECIDE THIS CASE, EVERYTHING
3 YOU NEED TO KNOW, ON HIS FIRST STATEMENT WHEN WHAT HE
4 TELLS YOU IS THERE WAS A COMMOTION, IT WAS SERIOUS,
5 AND I LEFT. TOLD YOU EVERYTHING YOU NEED TO KNOW.

6 NOW THE CHARGE IN THIS CASE, THE JUDGE
7 WILL READ THEM TO YOU AGAIN, TELL YOU JUST BRIEFLY,
8 YOU HEARD ME START WAY BACK A WEEK AGO A CHARGE OF
9 MURDER. THAT SAYS BERRY SCOTT BOLIN DID WILLFULLY
10 AND UNLAWFULLY IN YORK COUNTY ON OR ABOUT FEBRUARY
11 18, 2006, WITH MALICE AFORETHOUGHT KILL ONE BOBBY
12 HOVIS BY MEANS OF SHOOTING THE VICTIM AND HE DIED AS
13 A RESULT THEREOF.

14 ASSAULT AND BATTERY WITH INTENT TO KILL.
15 BERRY SCOTT BOLIN DID WILLFULLY AND UNLAWFULLY WITH
16 MALICE AFORETHOUGHT COMMIT ASSAULT AND BATTERY UPON
17 TRAVIS FALLS BY SHOOTING HIM WITH A HANDGUN.

18 POSSESSION OF A FIREARM DURING THE
19 COMMISSION OF A VIOLENT CRIME. BERRY SCOTT BOLIN DID
20 WILLFULLY AND UNLAWFULLY IN YORK COUNTY POSSESS A
21 FIREARM WHILE COMMITTING A VIOLENT CRIME OF MURDER
22 AGAINST BOBBY HOVIS AND WHILE COMMITTING THE VIOLENT
23 CRIME OF ASSAULT AND BATTERY WITH INTENT TO KILL
24 AGAINST TRAVIS FALLS. THE JUDGE WILL TELL YOU IF YOU
25 FIND ONE OF THESE, THEN YOU CAN CONSIDER THIS.

1 ASSAULT, NOT ASSAULT AND BATTERY, ASSAULT WITH INTENT
2 TO KILL. THAT'S FOR FIRING AT THE CAR WITH THE
3 VICTIM HOLLY MCCARTER, FOR FIRING AT THE CAR AND UPON
4 THE PERSON VICTIM OF MICHAEL HUBBARD, AND THEN
5 FINALLY YOU HAVE DISCHARGING A FIREARM. THIS IS
6 INTERESTING, I WANT YOU TO LISTEN CLOSELY WHEN THE
7 JUDGE SAYS IT. IT SAYS WILLFULLY AND UNLAWFULLY
8 DISCHARGE DISCHARGE A FIREARM AT OR INTO AN OCCUPIED
9 VEHICLE. I SUBMIT THE EVIDENCE IS CLEAR ON THAT.

10 THE JUDGE IS GOING INSTRUCT YOU THE LAW SO
11 AGAIN ANYTHING I MISSTATE, YOU RELY ON WHAT HE TELLS
12 YOU. MURDER, KILLING OF ANOTHER WITH MALICE
13 AFORETHOUGHT. KILLING OF ANOTHER WITH MALICE
14 AFORETHOUGHT.

15 MALICE, THIS IS PROBABLY GOING TO BE THE
16 MOST IMPORTANT PART. YOU LISTEN TO AS FAR AS THE
17 JUDGE INSTRUCTION BECAUSE AS MR. THOMPSON TOLD YOU AT
18 THE BEGINNING, YOU CAN'T ULTIMATELY LOOK INTO A
19 PERSON'S HEAD UNLESS THEY SAY I'M GOING TO KILL YOU.
20 I'M GOING TO DO THIS. I'M GOING TO DO THAT. THAT
21 WOULD BE DIRECT EVIDENCE OF MALICE. YOU HAVE TO LOOK
22 AT THEIR ACTIONS. YOU HAVE TO LOOK AT THEIR
23 INTENTIONS. A GENERAL MALIGNANT RECKLESSNESS OF THE
24 LIVES AND SAFETY OF OTHERS. MR. THOMPSON CALLED IT
25 MEANNESS. THE CAR'S DRIVING OFF AND I WANT TO FIRE

1 MY .45 OR I WANT TO FIRE MY NINE INTO THAT CAR, THAT
2 IS A GENERAL RECKLESS DISREGARD FOR THE SAFETY OF
3 OTHERS. IT CAN BE EXPRESS OR IMPLIED. EXPRESS MEANS
4 YOU SAY IT. IMPLIED, THE JUDGE WILL TELL YOU, THAT
5 YOU CAN TAKE THE IMPLICATION OR THE INFERENCE OF
6 MALICE JUST BY THE FACT THAT MR. BOLIN USED THIS
7 DEADLY WEAPON. THAT'S FOR YOU TO ACCEPT OR REJECT AS
8 A JURY, YOU GUYS HAVE TO DECIDE, BUT HE WILL TELL YOU
9 YOU CAN USE IT JUST FROM A DEADLY WEAPON, YOU CAN
10 LOOK AT THE NATURE OF THE INJURIES, THE DAMAGE TO
11 DETERMINE MALICE.

12 DISCHARGING A FIREARM INTO AN OCCUPIED
13 DWELLING IS, AN OCCUPIED VEHICLE, I WROTE DWELLING,
14 OCCUPIED VEHICLE IS A FELONY. UNDER OUR LAW OF
15 FELONY MURDER DOCTRINE, IF I'M COMMITTING A FELONY
16 AND I SHOULD REASONABLY BELIEVE THAT A LIFE COULD BE
17 TAKEN, SAY I WAS SHOOTING A .45 INTO A CAR THAT'S
18 DRIVING AWAY, THEN YOU CAN GET MALICE FROM THE FACT
19 THAT I AM DOING THAT CRIME KNOWINGLY, KNOWING THERE
20 IS A POSSIBILITY THAT A LIFE COULD BE TAKEN.

21 VOLUNTARILY MANSLAUGHTER. FELONIOUS
22 KILLING OF ANOTHER WITHOUT MALICE. AND AGAIN THE
23 JUDGE IS GOING TO TELL YOU ON THE LAW, MR. GREELEY
24 SAID THAT VOLUNTARY ALSO HAS MALICE, VOLUNTARY IS
25 KIND OF LIKE OUR MURDER SECOND HERE IN SOUTH CAROLINA

1 FOR SOME OF YOU FROM OTHER STATES. IT DOES NOT
2 REQUIRE MALICE. IN OTHER WORDS, IF YOU FIND THAT HE
3 DID IT AND IT WASN'T SELF-DEFENSE AND YOU FOUND THAT
4 THERE WAS NOT MALICE, THEN YOU WOULD IN FACT LOOK AT
5 VOLUNTARY MANSLAUGHTER. IN THE SUDDEN HEAT OF
6 PASSION UPON SUFFICIENT LEGAL PROVOCATION. IF YOU
7 BELIEVE THAT TRAVIS HITTING LORI IS SUFFICIENT LEGAL
8 PROVOCATION TO JUSTIFY HIM SHOOTING THAT CAR WHEN
9 THEY DRIVE AWAY, I SUBMIT THAT IT IS NOT, BUT THAT
10 WOULD BE WHEN YOU CONSIDER REDUCING THE MURDER
11 CHARGE. I'M HERE TO TELL YOU THIS IS MURDER. THE
12 STATE SUBMITS THIS IS MURDER, BUT IF YOU WERE TO
13 CONSIDER THAT SOMEHOW SEEING HER GET HIT REDUCES THAT
14 OR GIVES HIM A HEAT OF PASSION, THEN THAT'S WHAT YOU
15 WOULD CONSIDER IN THAT REGARD.

16 ASSAULT AND BATTERY WITH INTENT TO KILL,
17 ASSAULT WITH INTENT TO KILL, MAYBE SOME DAY AFTER YOU
18 ARE ON JURY SERVICE I CAN HAVE THE JUDGE EXPLAIN THIS
19 ALL TO US. IN SOUTH CAROLINA ASSAULT AND BATTERY
20 WITH INTENT TO KILL, ASSAULT WITH INTENT TO KILL,
21 DOES NOT REQUIRE AN INTENT TO KILL. IT JUST REQUIRES
22 MALICE. YOU KNOW, YOU CAN SAY, WELL, I DIDN'T MEAN
23 TO HIT THEM OR I MEANT TO HIT HIM. IT DOES NOT
24 REQUIRE A SPECIFIC INTENT TO KILL A SPECIFIC
25 INDIVIDUAL AND THE JUDGE WILL INSTRUCT YOU ON THAT.

1 SIMPLEST WAY ASSAULT AND BATTERY IS THE MOTION OR
2 ABILITY TO BRING IT TO PASS. THE BATTERY IS THE
3 ACTUALLY DOING IT, SO THE TWO PEOPLE THAT DIDN'T GET
4 HIT THAT'S WHY THAT'S AN ASSAULT. THE ASSAULT AND
5 BATTERY IS ON TRAVIS WITH HIS ARM. OF COURSE, IF ANY
6 OF THE OTHERS HAD DIED BECAUSE OF THESE INJURIES OR
7 IF THEY HAD BEEN INJURED THAT WOULD BE MURDER ALSO.
8 THAT'S A GOOD WAY TO KNOW TO DO IT. EACH TIME
9 MALICE, THE SAME MALICE, THE SAME HEART FATALLY BENT
10 ON MISCHIEF, THE WICKED DEPRAVED SPIRIT, JUST LACK OF
11 CARE AS YOU ARE FIRING AT THAT VEHICLE THAT'S
12 LEAVING, THAT'S WHAT YOU ARE LOOKING FOR IN MAKING A
13 DETERMINATION IN THE CASE.

14 REASONABLE DOUBT. REASONABLE DOUBT CAUSES
15 A PERSON TO HESITATE TO ACT. WE'VE BEEN HERE OVER A
16 WEEK. THERE ARE CHAIRS IN THE JURY ROOM. THE
17 FOREPERSON WILL LEAD YOU THROUGH DELIBERATIONS. THE
18 FACT THAT YOU DELIBERATE ON THE CASE IS NOT
19 REASONABLE DOUBT. THE FACT THAT YOU MIGHT WANT TO
20 LOOK THROUGH THE EVIDENCE AGAIN INSTEAD OF RUNNING
21 BACK THERE, STANDING UP, AND MAKING A DECISION, THAT
22 IS NOT REASONABLE DOUBT. THE JUDGE WILL EXPLAIN TO
23 YOU REASONABLE DOUBT IS SUCH A DOUBT THAT YOU, CAN
24 CAUSE YOU TO HESITATE TO ACT, BUT ALSO TELL YOU THAT
25 YOU CAN HAVE A DOUBT ABOUT ANYTHING. I CAN DOUBT MY

1 CAR IS STILL OUT THERE IN THE PARKING LOT. I'M KIND
2 OF HOPING IT IS, BUT I COULD DOUBT THAT. I COULD
3 DOUBT THE SUN IS GOING TO COME UP TOMORROW, MOST
4 LIKELY IT IS, BUT I COULD DOUBT THAT. REASONABLE
5 DOUBT IS JUST WHAT IT SOUNDS LIKE: A REASON, A
6 REASON THAT YOU CAN ASSIGN, A DOUBT THAT WOULD MAKE
7 ENOUGH NOT TO CONVICT WHICH TO ME ALWAYS COMES BACK
8 TO COMMON SENSE. IF THE MAN DIDN'T DO IT, YOU OUGHT
9 TO ACQUIT HIM. IF WE DIDN'T PROVE IT, YOU OUGHT TO A
10 ACQUIT HIM. BUT IF WE PROVED IT TO YOU BEYOND A
11 REASONABLE DOUBT AND YOU KNOW BASED ON THE EVIDENCE
12 YOU FEEL FIRMLY CONVINCED THAT THIS IS WHAT HAPPENED
13 IN THIS MATTER, THEN YOU HAVE JUST AS MUCH OBLIGATION
14 TO CONVICT HIM. YOU STILL DELIBERATE. IT'S NOT
15 BEYOND ALL DOUBT. YOU GO BACK AND YOU USE YOUR
16 COMMON SENSE.

17 I WANT TO TOUCH JUST BRIEFLY, THE JUDGE
18 WILL INSTRUCT YOU, AND I'M ABOUT TO WRAP THIS UP, ON
19 DEFENSE OF OTHERS, AND BASICALLY IT'S KIND OF A
20 TRANSFER THING. WE'RE GOING TO TALK ABOUT
21 SELF-DEFENSE AND WHAT IT SAYS IS, I'M NOT IN A
22 POSITION TO NEED TO DEFEND MYSELF, BUT I'M IN THE
23 POSITION AND NEED TO DEFEND SOMEBODY ELSE, SO THE
24 POINT IS THAT EVERYTHING ELSE THAT APPLIES TO
25 SELF-DEFENSE FOR THAT OTHER PERSON, AGAIN I TOUCHED

1 ON THIS EARLIER. I CAN'T RUN, PICK A FIGHT, AND THEN
2 HAVE YOU DEFEND ME BECAUSE I VIOLATED ONE OF TENANTS
3 OF SELF-DEFENSE. I SUBMIT ON THIS NIGHT WHEN LORI
4 GOES OUT THERE TO FIGHT, SHE IS INVOLVED IN BRINGING
5 ON THE DIFFICULTY. WHAT YOU HAVE TO ASK YOURSELF
6 COULD LORI CLAIM SELF-DEFENSE AND I WILL TELL YOU,
7 SELF-DEFENSE IS LIKE A FOUR LEGGED STOOL AND IF ONE
8 LEG IS MISSING, SELF-DEFENSE DOESN'T STAND, SO IF YOU
9 COME TO THE DETERMINATION AND THIS IS REALLY
10 SOMETHING YOU OUGHT TO LOOK EARLY ON WHEN YOU START
11 DELIBERATING, IF YOU COME TO THE DETERMINATION THAT
12 ONE OF THESE DOES NOT EXIST OR ONE OF THESE IS NOT
13 THERE, THEN SELF-DEFENSE IS OUT THE WINDOW. PUT
14 SELF-DEFENSE ASIDE I SUBMIT THERE IS NO DEFENSE AND
15 YOU HAVE TO MAKE A DETERMINATION OF THE CHARGES.

16 THE DEFENDANT IS NOT AT FAULT IN BRINGING
17 ON THE DIFFICULTY. THIS IS KIND OF SUBTLE BECAUSE
18 YOU KNOW IF MR. BOLIN WAS JUST DEFENDING HIMSELF,
19 THERE DOESN'T APPEAR TO BE A GREAT DEAL OF TESTIMONY
20 THAT HE WAS DOWN AT THE ROAD DUKING IT OUT WITH
21 PEOPLE. YOU KNOW WHAT I MEAN? IF HE WAS DEFENDING
22 HIMSELF, THAT'S FINE, BUT WHAT HE'S WANTING TO COME
23 TO YOU THROUGH MR. GREELEY AND SAY IS THAT I WAS
24 DEFENDING LORI. WELL, LORI IS PART OF THE DIFFICULTY
25 WHEN SHE GOES TO FIGHT. SHOULD SHE FIGHT, SHOULD SHE

1 NOT, SHOULD SHE FIGHT HOLLY, SHOULD SHE NOT, SHOULD
2 TRAVIS HIT HER, SHOULD HE NOT, IT DOESN'T MATTER.
3 WHAT THIS RECOGNIZES IS YOU CAN'T BE THE GUY GETTING,
4 MIXING IT UP, AND THEN GO OH, SELF-DEFENSE OR BETTER
5 YET ME GO MIX IT UP WITH YOU AND THEN LET HIM SHOOT
6 YOU BECAUSE THEY WERE DEFENDING ME. SO I SUBMIT THAT
7 LEG OF THIS FOURTH LEGGED STOOL DOES NOT STAND.

8 THE DEFENDANT ACTUALLY BELIEVED THAT HE
9 WAS IN DANGER OF SERIOUSLY BODILY INJURY OR LOSING
10 HIS LIFE. AGAIN I DON'T THINK MR. BOLIN EVER FELT
11 THAT, THAT HE WAS. WHEN YOU READ FROM HIS STATEMENTS
12 SO WAS LORI IN SERIOUS BODILY INJURY. WELL, IF YOU
13 LISTEN TO THE TESTIMONY WHEN THE SHOOTING GOES ON
14 SHE'S EITHER IN THE DITCH OR IN THE CAR OR UP THERE
15 WITH HER SISTER KRISTIN OR WHATEVER VARIATION OF IT,
16 SHE HAS BEEN PULLED FROM THE FIGHT, SHE'S BEEN PULLED
17 FROM THE DANGER, AND THE CAR IS HEADED THIS WAY, SO I
18 SUBMIT THAT LEG IS NOT THERE. IT'S NOT, SHE'S NOT IN
19 DANGER ANYMORE, IF YOU ARE USING HER, AND HE CLEARLY
20 WAS NOT IN DANGER.

21 A REASONABLE PERSON WOULD HAVE THE SAME
22 BELIEF. I SUBMIT TO YOU THAT'S JUST A REASONABLE
23 PERSON STANDARD AS YOU APPLY IT AND GIVEN THE SAME
24 SITUATION THE CAR IS GOING, NOT ARE YOU MAD, NOT ARE
25 YOU PISSED OFF, BUT IS IT REASONABLE. IS IT

1 REASONABLE THAT I THOUGHT SHE WAS ABOUT TO LOSE HER
2 LIFE? I'M NOT TALKING ABOUT DURING THE FIGHT EVEN
3 NOW. I'M TALKING ABOUT IT'S OVER, THEY ARE GONE, IS
4 THAT REASONABLE.

5 AND MOST IMPORTANTLY AND THERE IS A
6 SUBTLETY HERE, THERE IS NO OTHER PROBABLE MEANS OF
7 AVOIDING THE DIFFICULTY. YOU ARE IN YOUR HOUSE, YOU
8 DON'T HAVE TO, IT'S SOMETIMES CALLED DUTY TO RETREAT,
9 IF YOU ARE IN YOUR HOUSE YOU DON'T HAVE TO RETREAT.
10 IF I'M IN YOUR HOUSE, I DON'T THINK I HAVE TO RETREAT
11 IF I'M AN INVITED GUEST. WHEN YOU ARE DUKING IT OUT,
12 WHEN YOU ARE BATTLING IT OUT DOWN IN THE ROAD OR EVEN
13 IN THE YARD OF A RESIDENCE, IF THERE IS SOME OTHER
14 ALTERNATIVE -- ALL RIGHT, LET'S SAY THAT LORI WASN'T
15 AT FAULT. LET'S SAY THAT YOU DID THINK SHE WAS
16 SERIOUS BODILY INJURY AND LOSING HER LIFE AND A
17 REASONABLE PERSON WOULD THINK THE SAME, IS THERE
18 ANYTHING ELSE YOU CAN DO OTHER THAN PUT A BUNCH OF
19 BULLETS IN THIS CAR AS IT'S DRIVING OFF? I DON'T
20 KNOW. COULD YOU GO IN THE HOUSE? COULD YOU RUN?
21 COULD YOU GET IN YOUR TRUCK? I SUBMIT TO YOU BECAUSE
22 IT'S EASY TO SAY, OH, IT'S SELF-DEFENSE. WELL, THAT
23 WAS A BAD SITUATION AND IT FINALLY COMES DOWN TO IT
24 THERE WERE A MILLION THINGS, THERE WERE TONS OF
25 THINGS YOU COULD DO OTHER THAN THIS. IT COMES BACK

1 TO CHOICE. IT COMES BACK TO INTENT. NOT AS MANY
2 COOL THINGS COULD YOU DO. THERE'S NOT AS MANY TOUGH
3 THINGS YOU COULD DO. BUT SHOOTING THAT CAR UP WHEN
4 IT'S DRIVING AWAY, I SUBMIT TO YOU SELF-DEFENSE DOES
5 NOT LIE FOR MR. BOLIN BECAUSE IT WOULD NOT LIE FOR
6 LORI, IT DOESN'T LIE FOR MR. BOLIN INDEPENDENTLY, AND
7 IT DOESN'T LIE IN DEFENDING HER. THIS ISN'T ABOUT
8 WHETHER YOU SLAP A 17-YEAR-OLD GIRL OR WHETHER A
9 17-YEAR-OLD GIRL BEATS UP YOUR GIRLFRIEND, IT'S
10 SELF-DEFENSE. THE JUDGE WILL INSTRUCT YOU ON THAT,
11 YOU ARE HONOR-BOUND TO FOLLOW THE LAW TOO AND
12 SELF-DEFENSE DOES NOT APPLY.

13 WHEN IT FINALLY COMES DOWN TO IT
14 SELF-DEFENSE RESTS IN NECESSITY. THAT'S THE SIMPLEST
15 WAY TO PUT IT. WOULD THIS CONDUCT, WAS SHOOTING THIS
16 VEHICLE THIS NUMBER OF TIMES, IS THIS THE ONLY
17 OPTION? IF YOU DEEM THAT'S THE ONLY THING HE COULD
18 HAVE DONE THEN IT'S SELF-DEFENSE. IF HE'S DEFENDING
19 SOMEBODY ELSE AND YOU FEEL ALL THOSE ARE THERE. BUT
20 THIS SELF-DEFENSE, WHY WE GETTING RID OF THE GUN?
21 OH, WE'RE YOUNG. WE'RE YOUNG. WE DON'T KNOW ANY
22 BETTER. SEEMS LIKE THEY DO A LOT OF THINKING AND
23 KNOWING AND DOING. REMEMBER THE COUSIN THAT SAYS HE
24 WAS GOING TO GET RID OF THE GUN SAID HE WAS TELLING
25 HIM YOU GOT TO GET RID OF THE GUN. HE TOOK A TRIP UP

1 TO, DOWN TO ROCK HILL AND UP TO GASTONIA. THE VICTIM
2 WAS 19 YEARS OLD TOO. IF SELF-DEFENSE WHY NOT SAY
3 SO? YOU GOT IT IN THAT ONE, YOU GOT IT IN THAT ONE,
4 YOU GOT IT IN THAT ONE, YOU GOT IT IN THAT ONE, NOT
5 ONCE. MR. GREELEY SAYS THIS ONE IS ABOUT ALL THESE
6 WENT THROUGH AND TRY TO GET RID OF ALL HIS DEFENSES.
7 IF YOU ARE TELLING US THE TRUTH, GIVE US SOMETHING.
8 HE CAN'T BECAUSE HE WAS TELLING THE TRUTH FROM THE
9 STANDPOINT THAT IT'S NOT THERE.

10 THAT NIGHT, TAKING THE EVIDENCE, LEE OWENS
11 GOT HIS GUN, BERRY GOT HIS IN THE TRUCK, THE GUYS ARE
12 COMING OVER FOR THE BIG FIGHT. THEY SHOW UP. YOU
13 REMEMBER THE ONE WHEN BERRY CAME, I GUESS IT WAS WITH
14 HIS COUSIN OR SOMETHING, AND THEY PULL UP, THE WHOLE
15 CROWD RUNS OUT TO THEM. OH, MAN, IT'S Y'ALL. WE'RE
16 WAITING ON A BIG FIGHT, BIG FIGHT, BIG FIGHT, SO WHEN
17 THEY FINALLY GET OUT THERE, THE FIGHT GOT GOING,
18 THINGS GOT GOING GOOD AND LEE OWENS DECIDED HE WANTED
19 TO SHOOT HIS PISTOL, SO HE SHOOTS THOSE TWO SHOTS,
20 AND THEN NOT TO BE OUT DONE, BERRY DECIDES TO SHOOT
21 HIS TOO. SO YOU GOT THE TWO SHOTS, YOU GOT THESE,
22 YOU GOT THESE, AND WHEN ARE THEY SHOOTING THEM ALL?
23 IF SOMEBODY'S LIFE WAS IN DANGER I'M NOT CONDONING
24 THE USE OF GUNS BUT IF THEY GOT WEAPONS, ALL THIS IS
25 GOING ON, SHOOT THEM NOW, SHOT THEM THERE, SHOOT THEM

1 WHEN THEY WERE OUT OF THE CAR, SHOOT THEM WHEN THEY
2 WERE IN THE PARKING LOT, IF THAT'S WHAT IT'S REALLY
3 ABOUT, IF IT'S ABOUT NECESSITY AND YOU NEED TO DO IT,
4 SHOOT THEM THERE. BUT NO. THEY ARE SHOOTING UP THE
5 CAR WAS IT'S LEAVING. IF YOU LOOK AT THE ANGLES,
6 WHY? BECAUSE ON ANY OTHER NIGHT, ANY OTHER
7 TRAJECTORY, ANY OTHER SHOOTING, THIS WOULD HAVE BEEN
8 THE COOLEST THING THESE GUYS HAD EVER BEEN INVOLVED
9 IN. THOSE S.O.B. COME OVER WANTING TO FIGHT, WE GAVE
10 THEM A FIGHT, DIDN'T WE. WE'D BE BACK IN THERE
11 DRINKING ALABAMA SLAMMERS, TALKING, MAN YOU SHOT,
12 MAN, THAT WAS COOL. THAT WAS COOL. IT'S NOT COOL.
13 IT'S NOT A TOY. IT'S ABOUT INTENT. THEY DECIDED TO
14 PLAY LIKE YOU SEE ON TELEVISION. THEY LIKE TO PLAY
15 LIKE THEY WANT TO BE BIG BOYS AND GIRLS AND THERE ARE
16 CONSEQUENCES. THIS PARTICULAR CASE THE ULTIMATE
17 VICTIM OF THE CONSEQUENCES WAS BOBBY HOVIS.
18 MR. HOVIS WAS THE UNFORTUNATE RECIPIENT OF
19 MR. BOLIN'S BULLET AND YOU LOOK AT THAT AND YOU LOOK
20 AT THE ACTIONS AND YOU LOOK AT THE LACK OF
21 JUSTIFICATION AND YOU LOOK AT THE WHOLE BIG FIGHTING
22 GAME THAT WAS GOING ON AND THAT MAKES MALICE. AND
23 MALICE MAKES MURDER.

24 MR. GREELEY SAYS THAT TO TAKE WHAT THE
25 STATE'S PRESENTING YOU GOT TO GET IN THE CAR WITH

1 THOSE VICTIMS. I SUBMIT IF YOU'RE NOT IN THE CAR
2 WITH THE VICTIMS, YOU ARE STANDING IN THE YARD WITH
3 THIS YOUNG MAN SHOOTING AND RIDING AWAY. RETURN A
4 VERDICT SPEAKS THE TRUTH. THANK YOU FOR YOUR TIME.
5 JURY CHARGE BY THE COURT:

6 ANYBODY NEED A BREAK BEFORE I START MY
7 CHARGE? ALL RIGHT.

8 I WILL NOW CHARGE YOU THE LAW IN THIS CASE
9 WHICH YOU ARE TO ACCEPT AND APPLY IT AS I CHARGE IT.
10 YOU MUST ACCEPT IT AND APPLY IT AS I CHARGE IT EVEN
11 IF YOU THINK I CHARGE THE LAW IN ERROR OR EVEN IF YOU
12 THINK THE LAW SHOULD BE DIFFERENT. YOUR OATH
13 REQUIRES YOU TO TAKE, ACCEPT, AND APPLY THE LAW AS I
14 CHARGE IT.

15 IN A FEW MOMENTS I WILL GO OVER THE
16 PARTICULAR CHARGES AGAINST MR. BOLIN. I WILL OUTLINE
17 AND GIVE THE ELEMENTS OF THOSE. TO THESE CHARGES
18 MR. BOLIN HAS ENTERED PLEAS OF NOT GUILTY. AS TO
19 EACH OF THESE OFFENSES HE HAS ENTERED A PLEA OF NOT
20 GUILTY. HIS PLEA OF NOT GUILTY PLACES ON THE STATE
21 THE BURDEN OF PROVING HIS GUILT BEYOND A REASONABLE
22 DOUBT.

23 MR. BOLIN, LIKE ANYONE CHARGED WITH ANY
24 OFFENSE IN OUR SYSTEM, IS PRESUMED INNOCENT OF EACH
25 OF THESE CHARGES. ANYONE CHARGED IN OUR SYSTEM WITH

1 ANY OFFENSE IS PRESUMED INNOCENT AND DOESN'T HAVE TO
2 PROVE THEIR INNOCENCE. THE STATE, ON THE OTHER HAND,
3 MUST PROVE THAT PERSON'S GUILT BEYOND A REASONABLE
4 DOUBT.

5 THE PRESUMPTION OF INNOCENCE IS NOT A MERE
6 LEGAL THEORY OR A MERE LEGAL PHRASE. IT IS A
7 SUBSTANTIAL RIGHT. IT ATTACHES TO AN INDIVIDUAL AT
8 THE TIME THEY ARE ARRESTED, IT REMAINS WITH THEM AS
9 THEIR CASE IS PROCESSED THROUGH OUR COURT SYSTEM, AND
10 THE PRESUMPTION OF INNOCENCE IN MR. BOLIN'S FAVOR
11 EXISTS IN HIS FAVOR AT THIS MOMENT. IN FACT, IT
12 EXISTS EVEN AS YOU DELIBERATE. THE PRESUMPTION OF
13 INNOCENCE IN MR. BOLIN'S FAVOR IS REMOVED IF AND WHEN
14 AND ONLY IF AND WHEN YOU AS THE TRIAL JURY IN THIS
15 CASE DETERMINE THAT THE STATE HAS PROVEN HIS GUILT
16 BEYOND A REASONABLE DOUBT.

17 NOW THE STATE IS NOT REQUIRED TO PROVE HIS
18 GUILT BEYOND ALL OR BEYOND EVERY DOUBT BUT BEYOND A
19 REASONABLE DOUBT. PROOF BEYOND A REASONABLE DOUBT IS
20 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF ONE'S
21 GUILT. THERE ARE VERY FEW THINGS IN OUR WORLD THAT
22 WE CAN KNOW WITH ABSOLUTE CERTAINTY AND OUR LAW DOES
23 NOT REQUIRE THAT IN CASES SUCH AS THIS.

24 IF BASED ON YOUR CONSIDERATION OF THE
25 EVIDENCE YOU ARE FIRMLY CONVINCED OF MR. BOLIN'S

1 GUILT OF ONE OR MORE OF THE OFFENSES WITH WHICH HE IS
2 CHARGED, YOU MUST FIND HIM GUILTY.

3 IF ON THE OTHER HAND YOU THINK THERE IS A
4 REAL POSSIBILITY THAT HE IS NOT GUILTY OF ONE OR MORE
5 OF THE OFFENSES, YOU MUST GIVE HIM THE BENEFIT OF
6 THAT DOUBT AND FIND HIM NOT GUILTY.

7 MR. BOLIN IS ENTITLED TO THE BENEFIT OF
8 ALL REASONABLE DOUBTS THAT YOU HAVE AS TO ANY ISSUE
9 IN THIS CASE. IF YOU HAVE A DOUBT AS TO HOW TO
10 RESOLVE AN ISSUE OR HOW IT SHOULD BE RESOLVED, YOU
11 MUST GIVE MR. BOLIN THE BENEFIT OF THAT DOUBT AND
12 RESOLVE IT IN HIS FAVOR.

13 A REASONABLE DOUBT HAS BEEN DESCRIBED BY
14 OUR COURTS ALSO AS THE KIND OF DOUBT WHICH WOULD
15 CAUSE A REASONABLE PERSON TO HESITATE TO ACT.
16 REASONABLE DOUBT MAY ARISE FROM THE EVIDENCE IN THE
17 CASE OR FROM THE LACK OF EVIDENCE IN THE CASE.

18 NOW IN THIS CASE A STATEMENT HAS BEEN
19 ADMITTED, SEVERAL, THAT HAVE ALLEGEDLY BEEN MADE BY
20 MR. BOLIN. WHILE I HAD TO MAKE A DETERMINATION AS TO
21 WHETHER OR NOT THESE WERE ADMISSIBLE, I INSTRUCT YOU
22 THAT IT IS UP TO YOU AS THE JURY IN THIS CASE TO
23 DETERMINE WHETHER OR NOT MR. BOLIN MADE THE
24 STATEMENT; AND IF HE DID MAKE THE STATEMENT, YOU MUST
25 DETERMINE WHETHER OR NOT HE MADE IT VOLUNTARILY AND

1 OF HIS OWN FREEWILL. THIS MEANS THAT ANY STATEMENT
2 HE MADE, BEFORE YOU COULD USE IT AGAINST HIM, MUST
3 NOT HAVE BEEN MADE BASED ON PRESSURE, FORCE, FEAR,
4 THREATS, COERCION, OR INTIMIDATION. IT COULD NOT BE
5 BASED ON HOPE OR PROMISE OF LENIENCY OR REWARD OF ANY
6 KIND.

7 IN DETERMINING WHETHER ANY STATEMENT WAS
8 VOLUNTARY YOU SHOULD CONSIDER BOTH THE
9 CHARACTERISTICS OF MR. BOLIN AND THE DETAILS OF THE
10 QUESTIONS. SOME OF THE FACTORS THAT YOU MAY CONSIDER
11 ARE HIS AGE, HIS EDUCATION OR LACK OF EDUCATION, HIS
12 MENTAL ABILITY OR CAPACITY; YOU CAN CONSIDER THE
13 PLACE AND LENGTH OF ANY DETENTION. YOU CAN CONSIDER
14 THE NATURE OF THE QUESTIONING, AND YOU CAN CONSIDER
15 THE ADVICE OR LACK THEREOF THAT WAS GIVEN TO HIM OF
16 HIS CONSTITUTIONAL RIGHTS INCLUDING BUT NOT LIMITED
17 TO THE RIGHT TO REMAIN SILENT; THAT ANY STATEMENT
18 COULD BE USED AGAINST HIM IN A COURT OF LAW. THE
19 RIGHT TO HAVE A LAWYER PRESENT. THAT IF HE COULD NOT
20 AFFORD AN ATTORNEY THE RIGHT TO HAVE AN ATTORNEY
21 APPOINTED FOR HIM TO REPRESENT HIM WITHOUT COST. AND
22 WHETHER HE WAS ADVISED THAT HE COULD STOP MAKING A
23 STATEMENT AT ANY TIME. YOU MUST CAREFULLY CONSIDER
24 ALL OF THE SURROUNDING CIRCUMSTANCES BEFORE YOU CAN
25 GIVE ANY WEIGHT TO AN ALLEGED STATEMENT. THE BURDEN

1 OF PROOF IS ON THE STATE TO PROVE BEYOND A REASONABLE
2 DOUBT THAT IF ANY ALLEGED STATEMENT WAS VOLUNTARILY
3 MADE.

4 IF YOU DETERMINE THAT IT WAS, YOU MAY GIVE
5 THE STATEMENT ANY FURTHER CONSIDERATION THAT YOU DEEM
6 PROPER. YOU MUST DECIDE WHAT WEIGHT IF ANY SHOULD BE
7 GIVEN TO ANY ALLEGED STATEMENT. IF YOU DETERMINE THE
8 ALLEGED STATEMENT WAS NOT THE FREE AND VOLUNTARY
9 STATEMENT OF MR. BOLIN YOU SHOULD NOT CONSIDER IT AT
10 ALL.

11 AS I TOLD YOU EARLIER I'M THE SOLE JUDGE
12 OF THE LAW AND YOU MUST TAKE, ACCEPT, AND APPLY THE
13 LAW AS I CHARGE IT. YOU MUST DO THIS EVEN IF YOU
14 THINK I CHARGE YOU THE LAW IN ERROR OR EVEN IF YOU
15 THINK THE LAW SHOULD BE DIFFERENT. YOU ARE NOT TO
16 INFER FROM ANYTHING I HAVE SAID OR DONE OR ANYTHING I
17 NOW SAY OR DO AS INDICATING AN OPINION OF MINE ON THE
18 FACTS. OUR LAW DOES NOT ALLOW A TRIAL JUDGE TO
19 FORMULATE OR EXPRESS TO A JURY ANY OPINION ON THE
20 FACTS. THAT IS SOLELY YOUR PREROGATIVE.

21 IT IS SOLELY UP TO YOU AS THE TRIAL JURY
22 IN THIS CASE TO EXAMINE THE EVIDENCE AND TO GIVE TO
23 THE EVIDENCE THE EFFECT, THE VALUE, THE WEIGHT, AND
24 THE TRUTH YOU BELIEVE THE EVIDENCE SHOULD HAVE. IN
25 DOING THIS YOU MAY BELIEVE ONE WITNESS AS OPPOSED TO

1 SEVERAL, SEVERAL WITNESSES AS OPPOSED TO ONE; YOU MAY
2 BELIEVE ALL, PART, OR NONE OF A WITNESS'S TESTIMONY.
3 IN ANALYZING THE EVIDENCE YOU USE YOUR COMMON SENSE,
4 YOUR SENSE OF LOGIC, YOUR SENSE OF REASON, USE YOUR
5 EXPERIENCES IN LIFE. AS JUDGES OF THE FACTS YOU OF
6 NECESSITY MUST JUDGE THE CREDIBILITY, THAT IS, THE
7 BELIEVABILITY OF THE WITNESSES WHO HAVE TESTIFIED.
8 IN ASSESSING CREDIBILITY YOU USE THOSE THINGS I JUST
9 TALKED ABOUT, USE THOSE THINGS THAT YOU IN YOUR DAY
10 TO DAY LIFE FIND AS INDICATING TRUTHFULNESS AND YOU
11 CAN USE CERTAIN EVALUATORS. A WITNESS'S DEemeanor,
12 HOW THEY ACTED ON THE STAND; WERE THEY HESITANT OR
13 STRAIGHT FORWARD. WAS THEIR TESTIMONY CONSISTENT OR
14 INCONSISTENT. YOU CAN LOOK TO SEE IF A WITNESS HAD
15 ANY BIAS OR PREJUDICE; THAT IS, WHETHER THEY WOULD
16 WISH TO HELP OR HURT ONE SIDE OR THE OTHER. AND YOU
17 CAN CONSIDER THE OPPORTUNITY A WITNESS HAD TO KNOW
18 THE THINGS ABOUT WHICH THAT WITNESS TESTIFIED. ALL
19 OF THESE THINGS YOU CONSIDER, DETERMINE THE TRUE
20 FACTS, APPLY THE LAW, AND YOU'LL BE IN A POSITION TO
21 RETURN A VERDICT THAT SPEAKS THE TRUTH.

22 I INSTRUCT YOU NOW AND EMPHASIZE TO YOU
23 THAT THE FACT THAT MR. BOLIN DID NOT TESTIFY IS NOT
24 TO BE CONSIDERED BY YOU IN YOUR DELIBERATION IN
25 ANYWAY WHATSOEVER. IT MUST NOT BE CONSIDERED BY YOU,

1 IT MUST NOT BE DISCUSSED BY YOU, AND IT MUST NOT BE
2 FACTORED INTO YOUR OWN CONSIDERATION. MR. BOLIN, AS
3 ANY DEFENDANT IN OUR SYSTEM, HAS A CONSTITUTIONAL
4 RIGHT TO REMAIN SILENT AND THE ASSERTION OR EXERCISE
5 OF THIS RIGHT MAY NOT BE CONSIDERED BY YOU IN ANY
6 FASHION. YOU ARE TO DRAW NO CONCLUSION WHATSOEVER
7 FROM THE FACT THAT MR. BOLIN CHOSE NOT TO TESTIFY.
8 IT SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM OR
9 AS I SAID FACTORED IN YOUR OWN CONSIDERATION.
10 MR. BOLIN IS NOT REQUIRED TO PROVE HIS INNOCENCE. AS
11 I TOLD YOU HE IS PRESUMED INNOCENT AND THE STATE MUST
12 PROVE HIS GUILT BEYOND A REASONABLE DOUBT.

13 NOW THE INDICTMENTS IN THIS CASE ALLEGE
14 SEVERAL DIFFERENT OFFENSES AGAINST MR. BOLIN.
15 MURDER, ASSAULT AND BATTERY WITH INTENT TO KILL,
16 ASSAULT WITH INTENT TO KILL TWO COUNTS, AND
17 DISCHARGING A FIREARM INTO AN OCCUPIED VEHICLE, AND
18 FINALLY POSSESSION OF A FIREARM DURING THE COMMISSION
19 OF A VIOLENT CRIME. THESE, THE LAST ONE, THE
20 POSSESSION OF A FIREARM DURING THE COMMISSION OF A
21 VIOLENT CRIME WOULD APPLY TO ONLY THOSE OFFENSES
22 WHICH ARE VIOLENT CRIMES AND I WILL TELL YOU HOW TO
23 ANALYZE THAT AT A LATER POINT.

24 EACH OF THESE INDICTMENTS CHARGE A
25 SEPARATE AND DISTINCT OFFENSE. YOU MUST DECIDE EACH

1 SEPARATELY ON THE EVIDENCE AND THE LAW APPLICABLE TO
2 IT UNINFLUENCED BY WHATEVER YOUR VERDICT MAY BE ON
3 THE OTHERS. YOU'LL BE ASKED TO WRITE A SEPARATE
4 VERDICT, GUILTY OR NOT, AS TO EACH INDICTMENT. THE
5 ONLY EXCEPTION TO THIS IS THAT YOU CANNOT FIND THE
6 DEFENDANT GUILTY OF POSSESSION OF A FIREARM DURING
7 THE COMMISSION OF A VIOLENT CRIME UNLESS YOU FIND HIM
8 GUILTY OF MURDER OR THE LESSER INCLUDED OFFENSE OF
9 VOLUNTARY MANSLAUGHTER WHICH I'LL DISCUSS WITH YOU IN
10 A MOMENT OR ASSAULT AND BATTERY WITH INTENT TO KILL.

11 MR. BOLIN IS CHARGED WITH MURDER. THE
12 STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT HE
13 KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT. I'M
14 GOING TO DEFINE MALICE FOR YOU NOW, I WILL USE IT A
15 COUPLE MORE TIMES DURING MY CHARGE, BUT THE
16 DEFINITION OF MALICE IS THE SAME ANY TIME I USE IT.
17 MALICE IS HATRED, ILL WILL, A HOSTILITY TOWARD
18 ANOTHER PERSON. MALICE IS THE INTENTIONAL DOING OF A
19 WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN
20 INTENT TO INFLECT AN INJURY OR UNDER CIRCUMSTANCES
21 THAT THE LAW WILL INFER AN EVIL INTENT. MALICE
22 AFORETHOUGHT DOES NOT REQUIRE THE MALICE EXIST FOR
23 ANY PARTICULAR TIME BEFORE AN ACT IS COMMITTED.
24 HOWEVER, MALICE MUST EXIST IN THE MIND OF A DEFENDANT
25 JUST BEFORE AND AT THE TIME THE ACT WITH WHICH HE IS

1 CHARGED IS COMMITTED; THEREFORE, THERE MUST BE A
2 COMBINATION OF PREVIOUS EVIL INTENT AND THE ACT
3 ITSELF.

4 MALICE AFORETHOUGHT MAY BE EXPRESSED OR
5 INFERRED. THESE TERMS EXPRESS OR INFERRED DO NOT
6 MEAN DIFFERENT KINDS OF MALICE, BUT MERELY THE MANNER
7 IN WHICH MALICE MAY BE SHOWN TO EXIST; THAT IS,
8 EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE
9 FACTS AND CIRCUMSTANCES WHICH ARE PROVEN.

10 EXPRESS MALICE IS SHOWN WHEN AN INDIVIDUAL
11 SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL TOWARD
12 ANOTHER OR WHEN A PERSON PREPARES BEFOREHAND TO DO AN
13 ACT WHICH IS LATER ACCOMPLISHED. MALICE MAY BE
14 INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR
15 HUMAN LIFE. INFERRED MALICE MAY ARISE WHEN THE DEED
16 IS DONE WITH A DEADLY WEAPON. EXAMPLES OF DEADLY
17 WEAPONS WOULD INCLUDE A PISTOL. A SPECIFIC INTENT TO
18 KILL IS NOT REQUIRED FOR ONE TO BE FOUND GUILTY OF
19 MURDER. MOTIVE IS NOT AN ELEMENT OF MURDER AND THE
20 STATE IS NOT REQUIRED TO PROVE MURDER. MALICE AS AN
21 ESSENTIAL INGREDIENT TO MURDER DOES NOT NECESSARILY
22 IMPORT ILL WILL TOWARD THE INDIVIDUAL INJURED. IT
23 RATHER SIGNIFIES A GENERAL MALIGNANT RECKLESSNESS OF
24 THE LIVES AND SAFETY OF OTHERS OR A CONDITION OF THE
25 MIND WHICH SHOWS A HEART REGARDLESS OF SOCIAL DUTY

1 AND FATALLY BENT ON MISCHIEF.

2 WHILE MALICE AND RECKLESSNESS OBVIOUSLY
3 ARE NOT EQUIVALENT, EXTREME RECKLESSNESS CAN LEAD TO
4 AN INFERENCE OF MALICE. MALICE MAY BE INFERRED BY
5 ACTS SO RECKLESS AS TO MANIFEST DEPRAVITY OF MIND AND
6 DISREGARD OF HUMAN LIFE.

7 IF A PERSON KILLS ANOTHER DURING THE
8 COMMISSION OF A FELONY AND YOU DETERMINE THAT THE
9 KILLING WAS A PROBABLE OR NATURAL CONSEQUENCE OF THE
10 FELONIOUS ACT, YOU MAY INFER MALICE. DISCHARGING A
11 FIREARM INTO AN OCCUPIED VEHICLE IS A FELONY.

12 COUPLED WITH MURDER IS A LESSER INCLUDED
13 OFFENSE THAT'S NOT SET OUT IN THE INDICTMENT, BUT BY
14 LAW IS INFERRED AND MAY UNDER THE FACTS FROM YOUR
15 DETERMINATION OF THE FACTS BE CONSIDERED AND THAT IS
16 THE LESSER INCLUDED OFFENSE OF VOLUNTARY
17 MANSLAUGHTER. IF YOU FIND THE STATE HAS FAILED TO
18 PROVE BEYOND A REASONABLE DOUBT THAT MR. BOLIN
19 COMMITTED MURDER, YOU MAY CONSIDER WHETHER HE,
20 WHETHER THE STATE HAS PROVEN BEYOND A REASONABLE
21 DOUBT THAT HE COMMITTED VOLUNTARY MANSLAUGHTER.

22 TO PROVE VOLUNTARY MANSLAUGHTER THE STATE
23 MUST PROVE BEYOND A REASONABLE DOUBT THAT MR. BOLIN
24 TOOK THE LIFE OF ANOTHER IN THE SUDDEN HEAT OF
25 PASSION BASED ON SUFFICIENT LEGAL PROVOCATION. BOTH

1 HEAT OF PASSION AND SUFFICIENT LEGAL PROVOCATION MUST
2 BE PRESENT AT THE TIME OF THE KILLING TO CONSTITUTE
3 VOLUNTARY MANSLAUGHTER.

4 SUDDEN HEAT OF PASSION MAY FOR A TIME
5 AFFECT A PERSON'S SELF CONTROL AND TEMPORARILY
6 DISTURB A PERSON'S REASON. THE SUDDEN HEAT OF
7 PASSION MUST BE THE TYPE THAT WOULD MAKE AN ORDINARY
8 PERSON UNABLE TO COOLLY REFLECT ON THEIR ACTIONS AND
9 WOULD BE SUCH THAT WOULD PRODUCE AN UNCONTROLLABLE
10 IMPULSE TO ACT IN A VIOLENT MANNER.

11 SUFFICIENT LEGAL PROVOCATION MUST BE THE
12 TYPE THAT WOULD MAKE A PERSON OF ORDINARY REASON AND
13 CAUTION BECOME ENRAGED AND TO LOSE CONTROL
14 TEMPORARILY. THE PROVOCATION NEEDED FOR VOLUNTARY
15 MANSLAUGHTER MUST COME FROM SOME ACT OF OR RELATED TO
16 THE VICTIM. WORDS ALONE, HOWEVER VULGAR OR INSULTING
17 ARE NOT ENOUGH TO BE LEGAL PROVOCATION. WHERE DEATH
18 IS CAUSED BY THE USE OF A DEADLY WEAPON, WORDS MUST
19 BE ACCOMPANIED BY SOME OVERT THREATENING ACT WHICH
20 WOULD HAVE PRODUCED THE HEAT OF PASSION. THE
21 EXERCISE OF A LEGAL RIGHT, NO MATTER HOW OFFENSIVE IT
22 IS TO ANOTHER, IS NEVER SUFFICIENT LEGAL PROVOCATION
23 OF VOLUNTARY MANSLAUGHTER.

24 IF THE HEAT OF PASSION HAD COOLED, OR IF
25 THERE WAS ENOUGH TIME BETWEEN THE PROVOCATION IF ANY

1 FOR THE KILLING AND THE KILLING FOR THE PASSION OF A
2 REASONABLE PERSON COOLED, THE KILLING WOULD NOT BE
3 VOLUNTARY MANSLAUGHTER.

4 IN DECIDING WHETHER A REASONABLE PERSON
5 WOULD HAVE HAD ENOUGH TIME TO COOL OFF BEFORE
6 COMMITTING THE OFFENSE YOU SHOULD CONSIDER ALL THE
7 CIRCUMSTANCES SURROUNDING THE KILLING. YOU MAY
8 CONSIDER THE NATURE OF THE PROVOCATION IF ANY, THE
9 DEFENDANT'S MENTAL AND PHYSICAL STATE, AND THE
10 CIRCUMSTANCES AND RELATIONSHIP BETWEEN THE PARTIES.

11 NOW MR. BOLIN, BEFORE YOU COULD FIND
12 MR. BOLIN GUILTY OF EITHER MURDER OR VOLUNTARY
13 MANSLAUGHTER YOU MUST FIND THE STATE HAS PROVEN HIM
14 GUILTY OF EITHER MURDER OR VOLUNTARY MANSLAUGHTER
15 BEYOND A REASONABLE DOUBT.

16 MR. BOLIN IS CHARGED WITH TWO COUNTS OF
17 ASSAULT WITH INTENT TO KILL. IN ORDER TO PROVE
18 ASSAULT WITH INTENT TO KILL THE STATE MUST PROVE
19 BEYOND A REASONABLE DOUBT THAT MR. BOLIN WITH MALICE
20 AFORETHOUGHT UNLAWFULLY ATTEMPTED OR OFFERED TO
21 COMMIT A VIOLENT INJURY UPON ANOTHER PERSON AND THAT
22 HE HAD THE PRESENT ABILITY TO COMPLETE THE ATTEMPTED
23 INJURY.

24 AN ASSAULT IS THE INTENTIONAL CREATION OF
25 A REASONABLE FEAR OF IMMEDIATE BODILY HARM. IT IS

1 NOT NECESSARY THAT THE ATTEMPTED INJURY OR HARM
2 ACTUALLY TAKE PLACE. MALICE HAS ALREADY BEEN DEFINED
3 FOR YOU.

4 A SPECIFIC INTENT TO KILL IS NOT AN
5 ELEMENT OF ASSAULT WITH INTENT TO KILL, BUT THERE
6 MUST BE A GENERAL INTENT TO COMMIT SERIOUS BODILY
7 INJURY. INTENT MEANS INTENDING RESULTS WHICH
8 ACTUALLY OCCURS, NOT ACCIDENTALLY OR INVOLUNTARY.
9 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF A
10 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
11 NATURALLY AND REASONABLY INFER INTENT. EVIDENCE OF
12 THE CHARACTER OF THE ASSAULT, THE CHARACTER OF THE
13 INSTRUMENT USED, THE MANNER IN WHICH IT WAS USED, THE
14 PURPOSE TO BE ACCOMPLISHED, AND THE RESULTING WOUNDS
15 OR INJURIES IF ANY MAY BE CONSIDERED IN DETERMINING
16 THE EXTENT WITH WHICH AN ASSAULT WAS COMMITTED.

17 INTENT MAY ALSO BE INFERRED WHEN IT IS
18 DEMONSTRATED THAT THE DEFENDANT VOLUNTARILY AND
19 WILLFULLY COMMITS AN ACT WITH NATURAL TENDENCY OF
20 WHICH IS TO DESTROY ANOTHER PERSON'S LIFE. MR. BOLIN
21 IS CHARGED WITH TWO COUNTS OF THAT AS YOU RECALL.

22 HE IS CHARGED ALSO WITH ASSAULT AND
23 BATTERY WITH INTENT TO KILL AND THE VICTIM HERE. LET
24 ME GO BACK. THE VICTIM OF COURSE IN THE MURDER WAS
25 MR. HOVIS, BOBBY R. HOVIS. ON THE TWO ASSAULTS WITH

1 INTENT TO KILL THE VICTIMS WERE MICHAEL HUBBARD AND
2 HOLLY MCCARTER. THE VICTIM ON THE ASSAULT AND
3 BATTERY WITH INTENT TO KILL WAS TRAVIS FALLS.

4 AS TO ASSAULT AND BATTERY WITH INTENT TO
5 KILL, IN ORDER TO PROVE THIS CRIME, THE STATE MUST
6 PROVE BEYOND A REASONABLE DOUBT THAT MR. BOLIN
7 COMMITTED AN UNLAWFUL ACT OF VIOLENT INJURY TO A
8 PERSON OF ANOTHER WITH MALICE AFORETHOUGHT. MALICE
9 AGAIN AND I'VE DEFINED THAT FOR YOU.

10 A BATTERY IS AN UNLAWFUL TOUCHING OF
11 ANOTHER BY A PERSON WHO IS COMMITTING AN ASSAULT. AN
12 UNLAWFUL TOUCHING CAN BE CAUSED BY A PART OF AN
13 ACCUSED BODY OR BY ANY OBJECT THE ACCUSED HAS PUT IN
14 MOTION. A BATTERY IS THE COMPLETION OF THE ASSAULT
15 BY USING OR APPLYING FORCE TO ANOTHER PERSON HOWEVER
16 SLIGHT IN A RUDE, ANGRY, OR RESENTFUL MANNER WITHOUT
17 LEGAL JUSTIFICATION FOR DOING SO. AGAIN I HAVE
18 DEFINED MALICE FOR YOU.

19 IF FACTS ARE PROVEN BEYOND A REASONABLE
20 DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO
21 YOUR SATISFACTION, THIS INFERENCE WOULD SIMPLY BE AN
22 EVIDENTIARY FACT TO BE CONSIDERED BY YOU ALONG WITH
23 THE OTHER EVIDENCE IN THE CASE AND YOU MAY GIVE IT
24 THE WEIGHT YOU DECIDE IT SHOULD RECEIVE AND THAT IS
25 TRUE FOR ANY OF THE INFERRED MALICE CHARGES I GAVE

1 YOU AT ANY TIME. ANY INFERENCE IS SIMPLY AN
2 EVIDENTIARY FACT AND YOU MAY CONSIDER IT WITH OTHER
3 EVIDENCE IN THE CASE AND YOU CAN GIVE ANY INFERENCE
4 THAT I HAVE TALKED ABOUT OR WILL TALK ABOUT SUCH
5 WEIGHT YOU DECIDE IT SHOULD RECEIVE IF ANY.

6 AS TO ASSAULT AND BATTERY WITH INTENT TO
7 KILL A SPECIFIC INTENT TO KILL IS NOT AN ELEMENT.
8 HOWEVER, THERE MUST BE A GENERAL INTENT TO COMMIT
9 SERIOUS BODILY INJURY. INTENT MEANS INTENDING THE
10 RESULTS WHICH ACTUALLY OCCURS. INTENT MEANS NOT
11 ACCIDENTALLY OR INVOLUNTARY. INTENT MAY BE SHOWN BY
12 ACTS AND CONDUCTS OF THE DEFENDANT AND FROM OTHER
13 CIRCUMSTANCES WHICH YOU MAY NATURALLY AND REASONABLY
14 INFER INTENT.

15 EVIDENCE OF THE CHARACTER OF THE ASSAULT,
16 THE CHARACTER OF THE INSTRUMENT USED, THE MANNER IN
17 WHICH IT WAS USED, THE PURPOSE FOR WHICH THE ASSAULT
18 TO BE ACCOMPLISHED, AND THE RESULTING WOUNDS AND
19 INJURIES MAY BE CONSIDERED IN DETERMINING THE INTENT
20 WITH WHICH AN ASSAULT HAS BEEN COMMITTED.

21 INTENT MAY BE INFERRED WHEN IT'S
22 DEMONSTRATED THAT A DEFENDANT VOLUNTARILY AND
23 WILLFULLY COMMITTED AN ACT NATURAL TENDENCY OF WHICH
24 WAS TO DESTROY ANOTHER'S LIFE.

25 ANOTHER INDICTMENT MR. BOLIN IS CHARGED

1 WITH POSSESSION OF A WEAPON DURING THE COMMISSION
2 WITH INTENT TO COMMIT A VIOLENT CRIME. THE STATE
3 MUST PROVE BEYOND A REASONABLE DOUBT THAT MR. BOLIN
4 WAS IN POSSESSION OF A FIREARM OR VISIBLY DISPLAYED
5 WHAT APPEARED TO BE A FIREARM DURING THE COMMISSION
6 OF A VIOLENT CRIME. A FIREARM WOULD INCLUDE A
7 PISTOL. VIOLENT CRIMES INCLUDE MURDER AND ASSAULT
8 AND BATTERY WITH INTENT TO KILL, AND VOLUNTARY
9 MANSLAUGHTER.

10 IN ORDER TO FIND THE DEFENDANT GUILTY OF
11 POSSESSION OF A WEAPON DURING THE COMMISSION OF A
12 VIOLENT CRIME YOU MUST FIRST FIND HIM EITHER GUILTY
13 OF THE CRIME ITSELF MURDER, VOLUNTARY MANSLAUGHTER,
14 OR ASSAULT AND BATTERY WITH INTENT TO KILL. IF HE'S
15 NOT FOUND GUILTY AS TO THOSE, OF COURSE HE COULD NOT
16 BE FOUND GUILTY OF HAVING IN HIS POSSESSION A FIREARM
17 DURING THE COMMISSION OF A VIOLENT CRIME BECAUSE YOU
18 WOULD HAVE FOUND HE HAD NOT COMMITTED THE CRIME.

19 THE LAST THAT I'M GOING TO GO OVER WITH
20 YOU CHARGES MR. BOLIN WITH THE OFFENSE THAT'S BEEN
21 ESTABLISHED BY OUR LEGISLATURE OF DISCHARGING A
22 FIREARM INTO A VEHICLE. THAT LAW SIMPLY SAYS AND
23 THIS IS ENACTED BY OUR LEGISLATURE IN COLUMBIA, IT IS
24 UNLAWFUL FOR A PERSON TO DISCHARGE OR CAUSE TO BE
25 DISCHARGED UNLAWFULLY FIREARMS AT OR INTO ANY VEHICLE

1 WHILE IT IS OCCUPIED. AS TO THAT OFFENSE THE STATE
2 MUST PROVE MR. BOLIN GUILTY BY PROVING THOSE ELEMENTS
3 THAT HE FIRED INTO AN OCCUPIED VEHICLE BEYOND A
4 REASONABLE DOUBT.

5 NOW MR. BOLIN HAS RAISED THE DEFENSE OF
6 SELF-DEFENSE. SELF-DEFENSE IS A COMPLETE DEFENSE AND
7 IF ESTABLISHED YOU MUST FIND MR. BOLIN NOT GUILTY.
8 THE STATE HAS THE BURDEN OF DISPROVING SELF-DEFENSE
9 BY PROOF BEYOND A REASONABLE DOUBT. IF YOU HAVE A
10 REASONABLE DOUBT AS TO MR. BOLIN'S GUILT AFTER
11 CONSIDERING ALL THE EVIDENCE INCLUDING THE EVIDENCE
12 OF SELF-DEFENSE, YOU MUST FIND HIM NOT GUILTY.

13 ON THE OTHER HAND, IF YOU HAVE NO
14 REASONABLE DOUBT OF HIS GUILT AFTER CONSIDERING ALL
15 THE EVIDENCE INCLUDING THE EVIDENCE OF SELF-DEFENSE
16 YOU WOULD FIND HIM GUILTY.

17 THE FOLLOWING ELEMENTS ARE REQUIRED TO
18 ESTABLISH SELF-DEFENSE:

19 FIRST, THE DEFENDANT MUST BE WITHOUT FAULT
20 IN BRINGING ON THE DIFFICULTY. IF THE DEFENDANT'S
21 CONDUCT WAS THE TYPE WHICH WOULD REASONABLY
22 CALCULATED TO AND DID PROVOKE A DEADLY ASSAULT, THE
23 DEFENDANT WOULD BE AT FAULT IN BRINGING ON THE
24 DIFFICULTY AND WOULD NOT BE ENTITLED TO AN ACQUITTAL
25 BASED ON SELF-DEFENSE.

1 THE SECOND ELEMENT OF SELF-DEFENSE IS THAT
2 THE DEFENDANT WAS ACTUALLY IN IMMINENT DANGER OF
3 DEATH OR SERIOUSLY BODILY INJURY OR THAT HE ACTUALLY
4 BELIEVED THAT HE WAS IN IMMINENT DANGER OR SERIOUS
5 BODILY INJURY.

6 THIRD, IF HE BELIEVED HE WAS ACTUALLY, I'M
7 SORRY. IF HE WAS ACTUALLY IN IMMINENT DANGER IT MUST
8 BE SHOWN THAT CIRCUMSTANCES WOULD HAVE WARRANTED A
9 PERSON OF ORDINARY FIRMNESS AND COURAGE TO STRIKE A
10 FATAL BLOW TO PREVENT THEIR OWN DEATH OR SERIOUS
11 BODILY INJURY. IF MR. BOLIN BELIEVED HE WAS IN
12 IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, IT
13 MUST BE SHOWN THAT IF A REASONABLY PRUDENT PERSON OF
14 ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME
15 BELIEF.

16 IN DECIDING WHETHER MR. BOLIN ACTUALLY WAS
17 OR BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR
18 SERIOUS BODILY INJURY, YOU SHOULD CONSIDER ALL THE
19 FACTS AND CIRCUMSTANCES SURROUNDING THE CRIME
20 INCLUDING THE PHYSICAL CONDITION AND CHARACTERISTICS
21 OF MR. BOLIN AND THE VICTIMS.

22 A DEFENDANT DOES NOT HAVE TO SHOW THAT HE
23 WAS ACTUALLY IN DANGER. IT IS ENOUGH IF HE BELIEVED
24 HE WAS IN IMMINENT DANGER AND A REASONABLE PRUDENT
25 PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE

1 ALSO BELIEVED THEY WERE IN IMMINENT DANGER.

2 A DEFENDANT HAS A RIGHT TO ACT ON
3 APPEARANCES EVEN THOUGH THOSE BELIEFS MAY HAVE BEEN
4 MISTAKEN.

5 IT IS FOR YOU TO DECIDE WHETHER
6 MR. BOLIN'S FEAR OF IMMINENT DANGER OF DEATH OR
7 SERIOUS BODILY INJURY WAS REASONABLE AND WOULD HAVE
8 BEEN FELT BY AN ORDINARY PERSON OF THE SAME
9 SITUATION.

10 WORDS ACCOMPANIED BY HOSTILE ACTS MAY
11 DEPENDING ON THE CIRCUMSTANCES ESTABLISH
12 SELF-DEFENSE.

13 THE FINAL ELEMENT OF SEVERAL-DEFENSE IS
14 THAT THE DEFENDANT HAD NO OTHER PROBABLE WAY TO AVOID
15 THE DANGER OF DEATH OR SERIOUS BODILY INJURY OTHER
16 THAN TO ACT AS HE DID IN THIS PARTICULAR INCIDENT.
17 THAT IS, A DEFENDANT HAS A DUTY TO RETREAT IF HE CAN
18 IF RETREATING WOULD NOT INCREASE THE DANGER OF HIS
19 BEING HARMED.

20 I CHARGE YOU THAT THE DEFENDANT IS WITHOUT
21 FAULT HAS A RIGHT TO USE SUCH NECESSARY FORCE AS
22 REQUIRED FOR HIM FOR COMPLETE PROTECTION FROM LOSS OF
23 LIFE OR SERIOUS BODILY HARM AND CANNOT BE LIMITED TO
24 THE DEGREE OR QUANTITY OF THE ATTACKING OPPOSING
25 FORCE; THUS, THE DEFENDANT IF ACTING IN SELF-DEFENSE

1 IS NOT LIMITED TO USE THE SAME FORCE AND NO MORE THAN
2 THAT WITH WHICH HE WAS THREATENED.

3 IF A DEFENDANT IS JUSTIFIED IN USING FORCE
4 AND FIRING A SHOT, HE IS JUSTIFIED IN CONTINUING TO
5 DO SO UNTIL IT APPEARS THAT ANY DANGER TO HIS LIFE
6 AND BODY OR OTHERS HAS CEASED.

7 IN DETERMINING WHETHER A DEFENDANT, HERE
8 MR. BOLIN, HAD A RIGHT TO USE FORCE IN SELF-DEFENSE
9 AGAINST OTHERS, THE CONTINUING NATURE OF THE THREAT
10 BY THE ASSAILANTS WHO ARE STILL A THREAT DESPITE
11 ACTION BY THE DEFENDANT TO WOUND OR THREATEN THEM MAY
12 BE RELEVANT TO THE ACTUAL OR APPARENT NEED FOR FORCE
13 IN SELF-DEFENSE AND THE AMOUNT OF FORCE NEEDED.

14 UNDER THE LAW OF SELF-DEFENSE A DEFENDANT
15 MAY TAKE ANOTHER'S LIFE IN DEFENSE OF OTHERS. THE
16 RIGHT TO INTERVENE TO PROTECT ANOTHER PERSON IS
17 SUBJECT TO THE SAME RIGHTS AND LIMITATIONS AS THE
18 RIGHT OF SELF-DEFENSE. A DEFENDANT MAY TAKE THE LIFE
19 OF A PERSON WHO ASSAULTS A FRIEND, RELATIVE, OR
20 BYSTANDER IF THAT FRIEND, RELATIVE, OR BYSTANDER
21 WOULD HAVE HAD THE RIGHT OF SELF-DEFENSE. TO SHOW
22 THAT THE PERSON BEING DEFENDED HAD THE RIGHT OF
23 SELF-DEFENSE IT MUST FIRST BE SHOWN THAT THE PERSON
24 BEING DEFENDED AND THE DEFENDANT THEMSELVES WERE BOTH
25 WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. IF THE

1 CONDUCT OF THE PERSON DEFENDED OR THE DEFENDANT
2 HIMSELF WAS THE TYPE WHICH WAS REASONABLY CALCULATED
3 TO AND DID PROVOKE A DEADLY ASSAULT, THE PERSON WOULD
4 BE AT FAULT IN BRINGING ON THE DIFFICULTY AND WOULD
5 NOT HAVE THE RIGHT OF SELF-DEFENSE. THEREFORE, THE
6 DEFENDANT WOULD NOT HAVE THE RIGHT TO USE DEADLY
7 FORCE IN DEFENDING THAT PERSON BECAUSE THEY COULD NOT
8 HAVE APPLIED SELF-DEFENSE IN THEIR OWN DEFENSE.

9 THE DEFENSE OF ANOTHER PERSON IS EXCUSABLE
10 IF THE DEFENDANT HAD REASONABLE GROUNDS TO BELIEVE
11 AND IN GOOD FAITH DID BELIEVE THAT THE PERSON BEING
12 DEFENDED WAS IN IMMINENT DANGER OF DEATH OR SERIOUS
13 BODILY HARM FROM THE VICTIM. IN DECIDING WHETHER A
14 PERSON DEFENDED ACTUALLY WAS OR THAT THE DEFENDANT
15 THEMSELVES ACTUALLY BELIEVED THE PERSON WAS IN
16 IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY YOU
17 SHOULD CONSIDER ALL THE FACTS AND CIRCUMSTANCES
18 SURROUNDING THE CRIME AND INCLUDING THE PHYSICAL
19 CONDITION AND CHARACTERISTICS OF THE PARTIES.

20 NOW A DEFENDANT DOES NOT HAVE TO SHOW THAT
21 THE PERSON WAS ACTUALLY IN DANGER. IT IS ENOUGH IF
22 THE DEFENDANT BELIEVED THAT THE PERSON WAS IN
23 IMMINENT DANGER. THE DEFENDANT HAD THE RIGHT TO ACT
24 ON APPEARANCES EVEN THOUGH THOSE APPEARANCES OR
25 BELIEFS IN THOSE APPEARANCES MAY HAVE BEEN MISTAKEN.

1 A DEFENDANT MUST SHOW THAT UNDER THE CIRCUMSTANCES AS
2 THEY APPEAR TO HIM HE BELIEVED THE PERSON DEFENDED
3 WAS IN DANGER AND THAT A REASONABLE PRUDENT PERSON OF
4 ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME
5 BELIEF UNDER THE SAME CIRCUMSTANCES.

6 IT IS FOR YOU AS THE TRIAL JURY IN THIS
7 CASE TO DECIDE WHETHER THE DEFENDANT'S FEAR OF
8 IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY FOR
9 THE PERSON DEFENDED WAS REASONABLE AND WOULD HAVE
10 BEEN FELT BY AN ORDINARY PERSON IN THE SAME
11 SITUATION.

12 ONE DOES NOT HAVE TO WAIT UNTIL ANOTHER
13 GETS THE DROP ON THEM OR ON THE PERSON DEFENDED. THE
14 DEFENDANT HAS A RIGHT TO ACT UNDER THE LAW OF SELF
15 PRESERVATION TO PREVENT THE VICTIM FROM GETTING THE
16 DROP OR DOING HARM ON THE PERSON DEFENDED.

17 NOW IN ORDER TO BE ENTITLED TO DEFEND
18 ANOTHER THE PERSON DEFENDED MUST HAVE HAD NO OTHER
19 PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS
20 BODILY INJURY TO THAN TO ACT AS THE DEFENDANT DID IN
21 THIS PARTICULAR INSTANCE.

22 WHERE THE PERSON BEING DEFENDED HAD NO
23 DUTY TO RETREAT, THE DEFENDANT LIKEWISE WOULD HAVE NO
24 DUTY TO RETREAT.

25 NOW AS I TOLD YOU, THE INDICTMENTS HAVE

1 ALLEGED THAT ALL OF THESE OCCURRED, WELL, I HAVEN'T
2 TOLD YOU, BUT AS YOU'VE HEARD, ALL OF THESE ARE
3 ALLEGED TO HAVE OCCURRED ON FEBRUARY 18, 2006, AT
4 1123 LAWRENCE ROAD IN CLOVER.

5 YOU WILL HAVE, MR. FOREMAN AND MEMBERS OF
6 THE JURY, WITH YOU IN THE JURY ROOM THESE
7 INDICTMENTS. THESE INDICTMENTS ARE NOT EVIDENCE.
8 THEY CONTAIN THE CHARGES AGAINST MR. BOLIN. THEY ARE
9 THE PAPERWORK BY WAY OF WHICH THIS SET OF CASES HAS
10 BEEN PROCESSED THROUGH OUR COURT SYSTEM, BUT THEY ARE
11 NOT EVIDENCE AND CANNOT BE CONSIDERED BY YOU AS
12 EVIDENCE. THEY ALSO, WITH ONE EXCEPTION, ARE THE
13 PLACE WHERE, MR. FOREMAN, YOU WILL ENROLL THE
14 VERDICT. ON THE BACK YOU WILL SEE THE WORD VERDICT,
15 THERE ARE FOUR LINES BENEATH IT, THE BOTTOM LINE IS
16 FOR YOU TO SIGN, AND PLACE FOR YOU TO DATE, TODAY'S,
17 OF COURSE, SEPTEMBER FIVE. ON ONE OF THE OTHER
18 LINES, AS TO ALL OF THE INDICTMENTS OTHER THAN THE
19 MURDER INDICTMENT, I'LL GO OVER THAT IN JUST A
20 MOMENT, USE UNDER THE, ON ALL THE OTHER INDICTMENTS
21 UNDER THE WORD VERDICT ON ONE OF THE LINES BETWEEN
22 THE WORD VERDICT AND ABOVE YOUR SIGNATURE YOU WILL
23 WRITE THE UNANIMOUS VERDICT OF THE JURY. AND ALL 12
24 MUST AGREE ON EACH VERDICT BEFORE YOU COULD ENROLL
25 IT. THAT IS, EACH VERDICT MUST BE UNANIMOUS.

1 IF THE STATE HAS FAILED AS TO A PARTICULAR
2 CHARGE TO PROVE MR. BOLIN'S GUILT AS TO A PARTICULAR
3 CHARGE BEYOND A REASONABLE DOUBT, YOUR VERDICT WOULD
4 BE THE TWO WORDS NOT GUILTY AND YOU WOULD SIMPLY
5 WRITE THOSE TWO WORDS ON ONE OF THOSE LINES OVER YOUR
6 SIGNATURE. IF ON THE OTHER HAND THE STATE HAS PROVEN
7 TO THE JURY'S UNANIMOUS SATISFACTION MR. BOLIN GUILTY
8 OF ONE OR MORE OF THE OFFENSES FOR WHICH HE IS
9 CHARGED, YOU WILL AS TO THAT INDICTMENT WRITE THE ONE
10 WORD GUILTY.

11 NOW AS TO MURDER I HAVE ATTACHED THE
12 VERDICT FORM BECAUSE AS I TOLD YOU THERE ARE, THERE
13 IS POSSIBLY FOR YOUR CONSIDERATION A LESSER INCLUDED
14 OFFENSE OF VOLUNTARY MANSLAUGHTER. THIS VERDICT FORM
15 HAS THREE TYPES, THREE FORMS OF VERDICT ON IT. THE
16 ORDER THEY ARE IN IS OF NO SIGNIFICANCE. I HAVE TO
17 PUT THEM IN SOME ORDER AND I ALWAYS USE THIS AND THE
18 FACT THAT THEY ARE IN THIS ORDER IS OF NO
19 SIGNIFICANCE.

20 THE LAST LINE SAYS THAT WE FIND THE
21 DEFENDANT NOT GUILTY AND YOU WOULD USE THAT LINE OF
22 COURSE PUTTING A CHECK IN FRONT OF IT IF THE STATE
23 HAS FAILED TO PROVE MR. BOLIN'S GUILT AS TO EITHER OF
24 THE OFFENSES OF MURDER OR VOLUNTARY MANSLAUGHTER
25 BEYOND A REASONABLE DOUBT. AGAIN THERE IS A PLACE

1 FOR YOU TO SIGN.

2 IF YOU FIND THE STATE HAS PROVEN MR. BOLIN
3 GUILTY OF MURDER BEYOND A REASONABLE DOUBT, YOU WOULD
4 PUT A CHECK WHERE IT SAYS WE FIND THE DEFENDANT
5 GUILTY OF MURDER AS CHARGED.

6 IF YOU FIND THE STATE HAS FAILED TO PROVE
7 THAT OFFENSE BEYOND A REASONABLE DOUBT, BUT IT HAS
8 PROVEN BEYOND A REASONABLE DOUBT MR. BOLIN GUILTY OF
9 A LESSER INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER
10 YOU WOULD USE THE SECOND LINE THAT SAYS THAT. WE
11 FIND THE DEFENDANT GUILTY OF A LESSER INCLUDED
12 OFFENSE OF VOLUNTARY MANSLAUGHTER.

13 YOUR VERDICTS MAY NOT BE BASED ON PASSION,
14 PREJUDICE, PUBLIC OPINION, SYMPATHY, OR MATTERS
15 OUTSIDE OF THE RECORD.

16 IF YOU HAVE QUESTIONS PLEASE WRITE THEM
17 DOWN AND SEND THEM OUT AND I WILL CONFER WITH COUNSEL
18 AND I WILL RESPOND TO THE QUESTIONS. IT MAY BE THAT
19 I CAN WRITE AN ANSWER ON THE NOTE. IT MAY BE THAT I
20 CAN BRING YOU BACK IN AND ANSWER IT HERE IN THE
21 COURTROOM. ANY NOTES THAT YOU SEND OUT AND I SEND
22 BACK, MR. FOREMAN, MAKE SURE YOU KEEP THEM WITH THE
23 EVIDENCE BECAUSE THEY ARE PART OF THE RECORD.

24 IF YOU WISH ME TO GO OVER ANY PART OR ALL
25 OF THE LAW, LET ME KNOW. WE DO NOT IN THIS STATE

1 SEND IN A WRITTEN CHARGE TO THE JURY. HOWEVER, IF
2 YOU WISH ME TO GO OVER ANY PART OR ALL OF THE CHARGE
3 ON THE LAW, LET ME KNOW AND I'LL BRING YOU BACK OUT
4 HERE IN THE COURTROOM AND RECHARGE YOU THE LAW.

5 AS TO ANY NOTES, AFTER CONFERRING WITH
6 COUNSEL IT MAY BE THAT I CAN WRITE THE ANSWER ON THE
7 NOTE OR IT MAY BE THAT I HAVE TO BRING YOU BACK IN
8 HERE AND ANSWER THE QUESTIONS HERE IN OPEN COURT.

9 IF YOU WISH TO HAVE TESTIMONY REPLAYED OR
10 READ TO YOU, WE CAN DO THAT. LET US KNOW AND WE'LL
11 BRING YOU BACK IN AND HAVE THE TESTIMONY REPLAYED.

12 WHEN YOU REACH A UNANIMOUS VERDICT AS TO
13 ALL OF THE CHARGES, KNOCK ON THE DOOR AND TELL THE
14 BAILIFF AND THE BAILIFF WILL COME AND GET US. WE'RE
15 NOT STARTING ANOTHER TRIAL TODAY, SO WE SHOULD BE
16 ABLE TO SEND FOR YOU PROMPTLY, BUT WHEN YOU REACHED A
17 VERDICT KNOCK ON THE DOOR AND TELL THE BAILIFF.

18 NOW MR. PIERCE, YOU WILL NOT GO IN WITH
19 THE JURY AT THIS TIME. SINCE YOU ARE THE ALTERNATE
20 YOU WILL REMAIN HERE. WHEN YOU GO TO THE JURY ROOM,
21 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, DO NOT
22 START DELIBERATING YET. I HAVE TO GO OVER MY CHARGE
23 WITH THE ATTORNEYS. IF I HAVE MADE AN ERROR, I'LL
24 BRING YOU BACK IN AND CORRECT IT. IF NOT WE WILL
25 SEND IN TO YOU THE VERDICT FORMS, THE INDICTMENTS,

1 AND THE EXHIBITS. DON'T GET TOO COMFORTABLE YET
2 BECAUSE IF I HAVE TO SEND FOR YOU IT WILL BE IN JUST
3 A COUPLE SECONDS.

4 NOW WE HAVE LUNCH ORDERED, WHEN IT COMES
5 YOU CAN STOP AND EAT OR YOU CAN DELIBERATE AND EAT.
6 THAT'S YOUR CALL. IT'S ON YOUR CLOCK SO TO SPEAK NOW
7 AND SO IF YOU'D LIKE TO STOP AND EAT OR IF YOU'D LIKE
8 TO DELIBERATE WHILE YOU EAT THAT IS UP TO YOU. YOU
9 CAN TAKE BREAKS BUT IF YOU DO, ALL 12 TAKE A BREAK.
10 YOUR VERDICT MUST BE UNANIMOUS SO ALL 12 JURORS MUST
11 BE WORKING OR ALL 12 MUST BE ON BREAK. SO I'LL ALLOW
12 EVERYBODY BUT MR. PIERCE GO TO THE JURY ROOM AT THIS
13 TIME AND AS I SAID, DON'T GET TOO COMFORTABLE BECAUSE
14 I MAY HAVE TO SEND FOR YOU SHORTLY.

15 (THE JURY EXITS THE COURTROOM AT 02:02
16 PM.)

17 THE COURT: ANYTHING FROM THE STATE?

18 MR. THOMPSON: YOUR HONOR, THERE IS ONE
19 MATTER. I BELIEVE WE AGREED WITH ALL THE CHARGES;
20 HOWEVER, IT BROUGHT UP SOMETHING IN MY MIND AS WE
21 WERE GOING THROUGH IT. IT WOULD BE INCONSISTENT TO
22 HAVE CHARGED VOLUNTARY MANSLAUGHTER AS A LESSER
23 INCLUDED TO MURDER AND NOT TO HAVE CHARGED ASSAULT
24 AND BATTERY OF A HIGH AND AGGRAVATED NATURE, AN
25 ASSAULT OF A HIGH AND AGGRAVATED NATURE AS LESSER

1 INCLUDED TO ASSAULT AND BATTERY WITH INTENT TO 1
2 AND ASSAULT WITH INTENT TO KILL, SO THE STATE WOULD
3 ASK THAT THOSE BE CHARGED AS A LESSER INCLUDED
4 OFFENSE.

5 MR. GREELEY: I WOULD OBJECT AT THIS TIME
6 OF THE PROCEEDING.

7 THE COURT: HAD THAT BEEN BROUGHT TO MY
8 ATTENTION I MOST PROBABLY WOULD HAVE CHARGED IT, BUT
9 I'M NOT GOING TO CALL THEM BACK IN.

10 MR. THOMPSON: ALL RIGHT.

11 THE COURT: ANYTHING FROM THE DEFENDANT?

12 MR. GREELEY: YOUR HONOR, I WOULD JUST
13 RENEW MY REQUEST OF THE REQUEST TO CHARGE THAT I MADE
14 UNDER THE PROTECTION OF PERSONS AND PROPERTY STATUTE
15 THAT PREVIOUSLY HAD BEEN DENIED. FOR THE RECORD I
16 JUST PUT THAT BACK IN SINCE IT WAS NOT GIVEN.

17 THE COURT: ALL RIGHT.

18 MR. THOMPSON: I WOULD ASK IF THE DEFENSE
19 IS THEN WAIVING THE FACT THAT HE'S NOT BEEN CHARGED.
20 I WOULD HATE FOR THE APPEAL TO BE BASED SOLELY ON
21 THAT AND BE SUCCESSFUL.

22 THE COURT: ARE YOU WAIVING THE RIGHT OF
23 ANY, ARE YOU WAIVING ANY CHARGE ON LESSER INCLUDED ON
24 THE ASSAULT, ASSAULT AND BATTERY CHARGES?

25 MR. GREELEY: YES.

1 MR. THOMPSON: THANK YOU.

2 THE COURT: ALL RIGHT. LET'S SEND IN
3 THE -- LET ME THINK ABOUT THAT A MINUTE. I BELIEVE I
4 HAD BETTER CHARGE ASSAULT AND BATTERY OF A HIGH AND
5 AGGRAVATED. IT WILL TAKE ME A MINUTE TO GET IT.
6 TELL THE JURY NOT TO START DELIBERATING AND NOT TO
7 START THEIR LUNCH YET BUT GO AHEAD IF THEY NEED TO
8 USE THE RESTROOM OR ANYTHING AND I'LL HAVE THEM BACK
9 IN HERE IN JUST A COUPLE OF MINUTES. IF YOU'LL JUST
10 KEEP YOUR SEATS.

11 (COURT'S IS IN RECESS AT 02:05 PM.)

12 (COURT RESUMES AT 02:07 PM.)

13 THE COURT: LET'S BRING THE JURY BACK IN.

14 (THE JURY RETURNS TO THE COURTROOM AT
15 02:07 PM.)

16 THE COURT: MEMBERS OF THE JURY PANEL, AND
17 I APOLOGIZE THAT NEITHER COUNSEL NOR MYSELF PICKED UP
18 ON THIS BEFORE WE SENT YOU OUT AFTER HAVING DISCUSSED
19 THE CHARGES EARLIER, BUT AS TO THE TWO ASSAULT WITH
20 INTENT TO KILL AND TO THE ASSAULT AND BATTERY WITH
21 INTENT TO KILL LIKE THE VOLUNTARY MANSLAUGHTER LESSER
22 INCLUDED WITH MURDER, THERE ARE LESSER INCLUDED WITH
23 EACH OF THOSE. I'M GOING TO PREPARE A VERDICT FORM
24 AND SEND THEM IN TO YOU JUST, NOT JUST LIKE BUT
25 SIMILAR TO THE ONE FOR MURDER THAT HAS THE LESSER

1 INCLUDED VOLUNTARY MANSLAUGHTER.

2 THE LESSER INCLUDED ON ASSAULT WITH
3 INTENT TO KILL AND ASSAULT AND BATTERY WITH INTENT TO
4 KILL, ARE ASSAULT OR ASSAULT AND BATTERY OF A HIGH
5 AND AGGRAVATED NATURE.

6 I HAVE DEFINED ASSAULT FOR YOU AS AN
7 ATTEMPT TO, I HAVE DEFINED ASSAULT FOR YOU AND THEN I
8 DEFINED BATTERY FOR YOU EARLIER. ASSAULT AND BATTERY
9 OF A HIGH AND AGGRAVATED NATURE AND ASSAULT OF A HIGH
10 AND AGGRAVATED NATURE ARE DEFINED AS FOLLOWS:

11 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE
12 IS DEFINED AS THE UNLAWFUL AND INTENTIONAL INFLECTION
13 OF A VIOLENT INJURY ON THE PERSON OF ANOTHER
14 ACCOMPANIED BY CIRCUMSTANCES OF AGGRAVATION.

15 ASSAULT OF A HIGH AND AGGRAVATED NATURE IS
16 THE INFLECTION OF AN ASSAULT AND IT'S DEFINED AS THE
17 UNLAWFUL AND INTENTIONAL ATTEMPT TO INFLECT A VIOLENT
18 INJURY ON A PERSON OF ANOTHER ACCOMPANIED BY
19 CIRCUMSTANCES OF AGGRAVATION.

20 AS TO BOTH, THE CIRCUMSTANCES OF
21 AGGRAVATION COULD BE SUCH THINGS AS THE USE OF A
22 DEADLY WEAPON, THE INFLECTION OF SERIOUS BODILY
23 INJURY, AN INTENT TO COMMIT A FELONY, INTENT TO
24 COMMIT A FELONY, OR THE USE OF A DEADLY WEAPON
25 WITHOUT MALICE BUT IN A SPIRIT OF WANTONNESS AND WITH

1 RECKLESS DISREGARD FOR THE SAFETY OF OTHERS. NEITHER
2 SERIOUS BODILY HARM NOR THE USE OF A DEADLY WEAPON
3 ARE AN ESSENTIAL ELEMENT OF ASSAULT AND BATTERY OF A
4 HIGH AND AGGRAVATED NATURE OR OF ASSAULT OF A HIGH
5 AND AGGRAVATED NATURE, BUT THEY COULD BE
6 CIRCUMSTANCES OF AN ASSAULT AND BATTERY OR AN ASSAULT
7 OF A HIGH AND AGGRAVATED NATURE.

8 I APOLOGIZE THAT I OVERLOOKED THAT, BUT
9 THOSE ARE LESSER INCLUDED THAT YOU COULD AS TO THOSE
10 THREE CHARGES, THE TWO ASSAULT WITH INTENT TO KILL
11 AND ASSAULT AND BATTERY WITH INTENT TO KILL CONSIDER
12 UNDER THE SAME CIRCUMSTANCES AS I DISCUSSED WITH
13 MURDER AND VOLUNTARY MANSLAUGHTER, SO IF YOU'LL
14 RETURN TO THE JURY ROOM. AND AGAIN I TOLD YOU ON
15 THOSE INDICTMENTS YOU WOULD WRITE GUILTY/NOT GUILTY,
16 WELL, NOW YOU WILL HAVE VERDICT FORMS, MR. FOREMAN,
17 LIKE THE ONE WITH MURDER AND AGAIN THE ORDER THE
18 VERDICTS ARE SET FORTH ARE OF NO IMPORTANCE. I SET
19 THEM OUT THAT WAY ALL THE TIME AND YOU WOULD SIMPLY
20 PUT A CHECK IN FRONT OF THE ONE THAT YOU DETERMINE
21 THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT AND
22 YOU WOULD HAVE AS TO EVEN THE LESSER INCLUDED OF
23 ASSAULT WITH INTENT TO KILL, OF ASSAULT OF A HIGH AND
24 AGGRAVATED NATURE AND ASSAULT AND BATTERY OF A HIGH
25 AND AGGRAVATED NATURE, YOU WOULD HAVE TO FIND BEFORE

1 YOU COULD CONVICT MR. BOLIN OF ANY OF THOSE CHARGES
2 THAT HE, THAT THE STATE HAS PROVEN HIM GUILTY OF THAT
3 CHARGE BEYOND A REASONABLE DOUBT. SO LET ME LET YOU
4 GO BACK TO THE JURY ROOM NOW BUT DON'T START
5 DELIBERATING UNTIL THE BAILIFF TELLS YOU.

6 (THE JURY EXITS THE COURTROOM AT 02:12
7 PM.)

8 THE COURT: ANYTHING FURTHER FROM THE
9 STATE?

10 MR. THOMPSON: NO, YOUR HONOR.

11 MR. GREELEY: NOTHING FROM THE DEFENSE,
12 YOUR HONOR.

13 THE COURT: Y'ALL CHECK THE EXHIBITS AND
14 MAKE SURE THEY ARE RIGHT, WE'LL SEND THEM IN, AND
15 TELL THEM TO START DELIBERATELY.

16 (THE ALTERNATE JUROR IS EXCUSED.)

17 (THE JURY BEGINS DELIBERATING AT
18 2:20.)

19 (COURT RESUMES AT 06:35 PM.)

20 THE COURT: ALL RIGHT. THE JURY, BASED ON
21 MY QUESTIONS, SENT IN A QUESTION. THE THREE OPTIONS:
22 WOULD YOU LIKE US TO ORDER DINNER OR WOULD YOU LIKE
23 TO CONTINUE WITH DELIBERATION OR WOULD YOU LIKE TO
24 RECESS AND CONTINUE TOMORROW. PLEASE CHECK ONE AND
25 RETURN IT TO THE BAILIFF. THIS IS MY STANDARD ABOUT

1 6:30 IN THE EVENING MESSAGE TO THE JURY. THE
2 RESPONSE WAS WE WOULD LIKE TO RECESS. HOWEVER,
3 BEFORE WE GO, WE WOULD LIKE THE DIFFERENCE BETWEEN
4 MURDER AND VOLUNTARY MANSLAUGHTER AND MALICE.

5 RULE 23 RULES OF CRIMINAL PROCEDURE SAYS
6 IF IT APPEARS THAT THE JURY DELIBERATION MAY EXTEND
7 INTO THE NIGHT THE COURT IN ITS DISCRETION MAY ORDER
8 THAT THE JURY BE TAKEN TO SUITABLE SLEEPING QUARTERS
9 AND THEN GOES ON AND RESUME IN THEIR DELIBERATIONS.
10 IT'S BEEN MY PRACTICE AND I THINK OF OTHER JUDGES TOO
11 NOT FIND THAT THAT'S A PROHIBITION AGAINST ALLOWING
12 THE JURY TO GO HOME AND RETURN IN THE MORNING AND I
13 HAVE DONE IT QUITE FREQUENTLY, BUT THE RULE IS WHAT
14 THE RULE SAYS. WHEN I DO THIS I ALWAYS ASK AND OF
15 COURSE OBVIOUSLY COMPLY WITH THE WISHES OR I SEEK TO
16 SEE IF ANY PARTY OBJECTS. SO WITH THAT RULE IN MIND
17 AND THE JURY'S REQUEST WHAT'S THE STATE'S POSITION AS
18 FAR AS ALLOWING THE JURY AFTER MY RECHARGING THEM ON
19 THOSE ISSUES THAT THEY WISH?

20 MR. POPE: YOUR HONOR, FROM THE STATE'S
21 STANDPOINT AGAIN READING THE RULE 23, I DON'T OBJECT
22 AND WE'VE GONE THIS FAR AND WE PRESENTED THAT, I
23 DON'T OBJECT TO IT. I GUESS MY CONCERN IS AND I'VE
24 SPOKE TO MR. GREELEY JUST BRIEFLY, IF HE DOES NOT
25 OBJECT AND HIS CLIENT DOES NOT OBJECT TO IT, THEN I

1 GUESS THERE IS NO, YOU KNOW, I'M THINKING FROM A PCR
2 STANDPOINT OR AN APPEAL STANDPOINT, THEN IF THE
3 COURT, IF THAT'S THE WAY YOU INTERPRET IT BECAUSE IT
4 CONCERNED ME ABOUT WHEN I READ BAILIFFS AND KEEPING
5 THEM IN SIGHT OF BAILIFFS AND ALL THOSE THINGS, BUT
6 IF THERE IS NO OBJECTION I GUESS MY GREATEST CONCERN
7 WOULD BE, I'M NOT HERE TO MAKE THEM STAY, IF THE
8 DEFENSE IS WILLING TO WAIVE THAT, IF THE DEFENDANT IS
9 WILLING TO WAIVE THAT, IF THEY ARE NOT WILLING TO
10 WAIVE THAT, THEN I AM CONCERNED THAT IT FLIES IN THE
11 FACE OF PERHAPS RULE 23 AND THE DEFENDANT MIGHT HAVE
12 SOME RIGHT AND MR. GREELEY GIVES IT UP AND THEN HE
13 ASSERTS LATER THAT HE WISHED HE HAD NOT LET THEM GO
14 HOME.

15 THE COURT: MR. GREELEY, HAVE YOU
16 DISCUSSED THAT WITH MR. BOLIN?

17 MR. GREELEY: I HAVE, YOUR HONOR.

18 THE COURT: WHAT'S --

19 MR. GREELEY: I DO NOT OBJECT AND IN
20 DISCUSSING IT WITH MR. BOLIN HE DOES NOT OBJECT
21 EITHER.

22 THE COURT: IS THAT CORRECT, MR. BOLIN?

23 MR. BOLIN: YES, SIR.

24 THE COURT: OKAY. THAT'S WHAT I'M GOING
25 TO DO. I'M GOING TO LET THEM GO HOME. I'LL GIVE

1 THEM THE ADDITIONAL INSTRUCTIONS THAT THEY WANTED
2 MANSLAUGHTER, MURDER, AND I DIDN'T SEE DOWN AT THE
3 BOTTOM THEY HAVE MALICE BUT THAT'S OF COURSE INCLUDED
4 IN MY CHARGE ON MURDER. I DO HAVE SOME ADMONITIONS A
5 LITTLE BIT ALONG THE LINES OF WHAT I USUALLY ADMONISH
6 THE JURY WHEN WE STOP FOR THE DAY. ALTHOUGH AT THIS
7 POINT I DO TELL THEM OBVIOUSLY THEY CAN TRY TO MAKE
8 UP THEIR OWN MIND BECAUSE THEY IN FACT HAVE BEEN
9 WORKING ON THE CASE AND I'VE INSTRUCTED THEM TO
10 JOINTLY DELIBERATE. IN ANY EVENT BRING THE JURY IN.

11 MR. POPE: WILL YOUR MALICE CHARGE INCLUDE
12 YOUR INFERENCES AGAIN, THE MALICE INFERENCE?

13 THE COURT: I THINK I'M GOING TO CHARGE
14 THEM THE WHOLE THING WITH THE MURDER ALL THE WAY
15 THROUGH WITH MALICE AND INVOLUNTARY MANSLAUGHTER.

16 MR. POPE: THANK YOU.

17 (THE JURY RETURNS TO THE COURTROOM AT 6:40
18 PM.)

19 THE COURT: ALL RIGHT. THE JURY IS
20 PRESENT. THE DEFENDANT IS PRESENT. I GOT YOUR
21 RESPONSE TO MY NOTE AND WHAT WE WILL DO IS RECESS IN
22 JUST A FEW MINUTES AFTER I RECHARGE THOSE THINGS YOU
23 ASKED. I'LL GO AHEAD AND GIVE YOU MY ADMONITIONS
24 NOW. OF COURSE, THE ADMONITION CONTINUES THAT YOU
25 ARE NOT TO DISCUSS THE CASE WITH ANYONE OUTSIDE THE

1 COURTROOM. IF ANYONE TRIES TO DISCUSS THIS CASE WITH
2 YOU, YOU ARE TO REPORT THAT BACK TO ME. OF COURSE,
3 YOU ARE TO TELL THEM THAT YOU CANNOT DISCUSS THE CASE
4 BECAUSE YOU ARE BOUND BY MAKING YOUR DECISION ON WHAT
5 YOU KNOW ABOUT THIS CASE FROM THE RECORD AND FROM
6 WHAT HAPPENS HERE IN THE COURTROOM. YOU ARE NOT TO
7 DISCUSS IT WITH YOUR FAMILY AND LIKE I TOLD YOU
8 EARLIER, IT IS TO BE A JOINT UNANIMOUS DECISION SO
9 ONE OR TWO OF YOU ARE NOT TO DISCUSS THE CASE OR CALL
10 EACH OTHER ON THE PHONE. I'M NOT SAYING YOU WOULD,
11 BUT I JUST WANT TO MAKE SURE I PUT THAT ON THE RECORD
12 AND MAKE SURE THAT YOU UNDERSTAND THAT YOU ARE NOT TO
13 TALK ABOUT THE CASE TO ANYONE NOR ARE YOU TO LET
14 YOURSELF BE EXPOSED TO ANY NEWS COVERAGE IF THERE IS
15 ANY. DON'T LET YOURSELF BE EXPOSED TO ANYTHING FROM
16 ANY SOURCE THAT WOULD REMOTELY DEAL WITH THIS TRIAL
17 FROM INDIVIDUALS, ANOTHER JUROR, NEWS MEDIA, EITHER
18 IN PRINT, TELEVISION, OR RADIO OR NOW WE HAVE E-MAIL,
19 AND NOW WITH THAT -- AND DON'T DO ANY INDEPENDENT
20 RESEARCH NOW THAT I THINK ABOUT THE COMPUTERS, JUST
21 TAKE A BREATHER FROM ALL OF THOSE THINGS BUT DON'T BE
22 LOOKING UP ANY DEFINITIONS OF MURDER OR ANY
23 DEFINITIONS OF ANY OF THE THINGS THAT WE'VE
24 DISCUSSED. ANY OF THAT, ANY SUCH CONDUCT WOULD BE
25 INAPPROPRIATE AND NOT FAIR, JUST SIMPLY WOULD BE

1 UNFAIR TO THE PARTIES BECAUSE AND WOULD BE SUBJECT TO
2 BEING HELD IN CONTEMPT IF YOU DID THAT AND WERE
3 CAUGHT. AND AGAIN I DON'T THINK ANYBODY WOULD DO IT,
4 BUT YOU'VE GOT TO BASE YOUR VERDICT ON THE RECORD, ON
5 THE FACTS PRESENTED IN THE TRIAL, AND THE EVIDENCE
6 PRESENTED IN THE TRIAL AND THE EXHIBITS PRESENTED IN
7 THE TRIAL AND ON MY CHARGE ON THE LAW. THE LAW IS
8 DIFFERENT IN DIFFERENT STATES, AND IF YOU WERE TO DO
9 ANY INDEPENDENT SEARCHING ON FACTS OR ON THE LAW NOT
10 ONLY WOULD IT BE IMPROPER BUT IT WOULD NOT, IT MAY
11 LEAD YOU DOWN A PATH WHICH ARE IMPROPER SO I'M GOING
12 TO INSTRUCT YOU NOT TO DO ANYTHING LIKE THAT. AND
13 KEEP IN MIND THAT I TOLD YOU HAVE TO BASE YOUR
14 VERDICT SOLELY ON WHAT YOU LEARN ABOUT THIS CASE
15 FACTUALLY AND LEGALLY HERE IN THE COURTROOM.

16 YOU DID ASK ME TO RECHARGE YOU MURDER,
17 VOLUNTARY MANSLAUGHTER, AND MALICE AND MALICE IS
18 INCORPORATED IN MY CHARGE ON THE MURDER.

19 MR. BOLIN IS AS I TOLD YOU AND AS YOU ARE
20 WELL AWARE CHARGED WITH MURDER. THE VICTIM WAS
21 MR. HOVIS. THE STATE MUST PROVE BEYOND A REASONABLE
22 DOUBT THAT MR. BOLIN KILLED ANOTHER PERSON,
23 MR. HOVIS, WITH MALICE AFORETHOUGHT BEFORE YOU AS THE
24 TRIAL JURY IN THIS CASE COULD RETURN A VERDICT OF
25 GUILTY AS TO MURDER.

1 MALICE IS HATRED, ILL WILL, OR HOSTILITY
2 TOWARDS ANOTHER PERSON. MALICE IS THE INTENTIONAL
3 DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE
4 AND WITHOUT AN INTENT -- I'M SORRY, AND WITH AN
5 INTENT TO INFLICT AN INJURY OR AN ACT DONE UNDER
6 CIRCUMSTANCES THAT THE LAW INFERS, LET ME START BACK
7 OVER. I'M GETTING TONGUE-TIED. I'M SORRY. IT'S
8 LATE IN THE DAY. LET ME RECHARGE IT. MALICE IS
9 HATRED, ILL WILL, OR HOSTILITY TOWARD ANOTHER PERSON.
10 IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT
11 JUST CAUSE OR EXCUSE AND WITH INTENT TO INFLICT AN
12 INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER
13 AN EVIL INTENT.

14 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT
15 MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT
16 IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF
17 THE DEFENDANT JUST BEFORE AND AT THE TIME THE ACT IS
18 COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF
19 THE PREVIOUS EVIL INTENT AND THE ACT. MALICE
20 AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS
21 EXPRESS AND INFERRED DO NOT MEAN DIFFERENT KINDS OF
22 MALICE, BUT MERELY THE MANNER IN WHICH MALICE MAY BE
23 SHOWN TO EXIST. THAT IS, EITHER BY DIRECT EVIDENCE
24 OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES
25 WHICH ARE PROVEN.

1 EXPRESS MALICE IS SHOWN WHEN A PERSON
2 SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR
3 ANOTHER OR WHEN A PERSON PREPARED BEFOREHAND TO DO
4 THE ACT WHICH WAS LATER ACCOMPLISHED. MALICE MAY BE
5 INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR
6 HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE WHEN THE
7 DEED IS DONE WITH A DEADLY WEAPON. A PISTOL IS A
8 DEADLY WEAPON.

9 A SPECIFIC INTENT TO KILL IS NOT REQUIRED
10 TO COMMIT MURDER. MOTIVE IS NOT AN ELEMENT OF MURDER
11 AND THE STATE IS NOT REQUIRED TO PROVE MOTIVE.
12 MALICE AS AN ESSENTIAL INGREDIENT OF MURDER DOES NOT
13 NECESSARILY IMPORT ILL WILL TOWARD THE INDIVIDUAL
14 INJURED BUT SIGNIFIES RATHER A GENERAL MALIGNANT
15 RECKLESSNESS OF THE LIVES AND SAFETY OF OTHERS OR A
16 CONDITION OF THE MIND WHICH SHOWS A HEART REGARDLESS
17 OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF.

18 WHILE MALICE AND RECKLESSNESS OBVIOUSLY
19 ARE NOT EQUIVALENT, EXTREME RECKLESSNESS CAN LEAD TO
20 AN INFERENCE OF MALICE. MALICE MAY BE INFERRED FROM
21 AN ACT SO RECKLESS AS TO MANIFEST DEPRAVITY OF MIND
22 AND DISREGARD OF HUMAN LIFE.

23 IF A PERSON KILLS ANOTHER DURING THE
24 COMMISSION OF A FELONY AND YOU DETERMINE THE KILLING
25 WAS A PROBABLE OR NATURAL CONSEQUENCE OF THE

1 FELONIOUS ACT, YOU MAY INFER MALICE. DISCHARGING A
2 FIREARM INTO AN OCCUPIED VEHICLE IS A FELONY.

3 NOW IF YOU FIND THE STATE HAS FAILED TO
4 PROVE BEYOND A REASONABLE DOUBT THAT MR. BOLIN
5 COMMITTED MURDER AS I CHARGE IT TO YOU, YOU MAY
6 CONSIDER WHETHER THE STATE HAS PROVEN BEYOND A
7 REASONABLE DOUBT THAT THE DEFENDANT COMMITTED
8 VOLUNTARY MANSLAUGHTER. INCLUDED WITHIN THE OFFENSE
9 OF MURDER IS A LESSER OFFENSE OF VOLUNTARY
10 MANSLAUGHTER.

11 TO PROVE VOLUNTARY MANSLAUGHTER THE STATE
12 MUST PROVE BEYOND A REASONABLE DOUBT THAT A DEFENDANT
13 TOOK THE LIFE OF ANOTHER IN A SUDDEN HEAT AND PASSION
14 BASED ON SUFFICIENT LEGAL PROVOCATION. MANSLAUGHTER
15 IS THE KILLING OF ANOTHER IN THE SUDDEN HEAT OF
16 PASSION BASED ON SUFFICIENT LEGAL PROVOCATION.

17 BOTH HEAT OF PASSION AND SUFFICIENT LEGAL
18 PROVOCATION MUST BE PRESENT AT THE TIME OF THE
19 KILLING TO CONSTITUTE VOLUNTARY MANSLAUGHTER. SUDDEN
20 HEAT OF PASSION MAY FOR A TIME AFFECT A PERSON'S
21 SELF-CONTROL AND MAY TEMPORARILY DISTURB A PERSON'S
22 REASON. THE SUDDEN HEAT OF PASSION MUST BE THE TYPE
23 THAT WOULD MAKE AN ORDINARY PERSON UNABLE TO COOLLY
24 REFLECT ON THEIR ACTIONS AND WOULD PRODUCE AN
25 UNCONTROLLABLE IMPULSE TO DO VIOLENCE.

1 SUFFICIENT LEGAL PROVOCATION MUST BE THE
2 TYPE THAT WOULD MAKE A PERSON OF ORDINARY REASON AND
3 CAUTION TO BECOME ENRAGED AND TO LOSE CONTROL
4 TEMPORARILY. THE PROVOCATION NEEDED FOR VOLUNTARY
5 MANSLAUGHTER MUST COME FROM SOME ACT OF OR RELATED TO
6 THE VICTIM. WORDS ALONE HOWEVER VULGAR OR INSULTING
7 ARE NOT ENOUGH TO BE LEGAL PROVOCATION WHERE DEATH IS
8 CAUSED -- WORDS ALONE HOWEVER VULGAR OR INSULTING ARE
9 NOT ENOUGH TO BE LEGAL PROVOCATION. WHERE DEATH IS
10 CAUSED BY THE USE OF A DEADLY WEAPON THE WORDS MUST
11 BE ACCOMPANIED BY SOME OVERT THREATENING ACT WHICH
12 COULD HAVE PRODUCED THE HEAT OF PASSION.

13 THE EXERCISE OF A LEGAL RIGHT NO MATTER
14 HOW OFFENSIVE IT IS TO ANOTHER IS NEVER SUFFICIENT
15 LEGAL PROVOCATION FOR VOLUNTARY MANSLAUGHTER. IF THE
16 HEAT OF PASSION HAS COOLED OR IF THERE WAS ENOUGH
17 TIME BETWEEN THE PROVOCATION IF ANY AND THE
18 KILLING -- LET ME REPEAT THAT. IF THE HEAT OF
19 PASSION HAD COOLED OR IF THERE WAS ENOUGH TIME
20 BETWEEN THE PROVOCATION IF ANY AND THE KILLING FOR
21 THE PASSION OF A REASONABLE PERSON TO COOL THE
22 KILLING WOULD NOT BE VOLUNTARY MANSLAUGHTER.

23 IN DECIDING WHETHER A REASONABLE PERSON
24 WOULD HAVE HAD ENOUGH TIME TO COOL OFF YOU SHOULD
25 CONSIDER ALL THE CIRCUMSTANCES SURROUNDING THE

1 KILLING. YOU MAY CONSIDER THE NATURE OF THE
2 PROVOCATION IF ANY, THE DEFENDANT'S MENTAL AND
3 PHYSICAL STATE, AND THE CIRCUMSTANCES AND
4 RELATIONSHIPS BETWEEN THE PARTIES. OF COURSE, THE
5 STATE MUST PROVE VOLUNTARY MANSLAUGHTER BEYOND A
6 REASONABLE DOUBT BEFORE YOU COULD CONVICT AND FIND
7 MR. BOLIN GUILTY OF THAT.

8 IN A NUTSHELL MURDER IS THE KILLING OF
9 ANOTHER PERSON WITH MALICE AFORETHOUGHT. VOLUNTARY
10 MANSLAUGHTER IS TAKING THE LIFE OF ANOTHER IN A
11 SUDDEN HEAT OF PASSION BASED ON SUFFICIENT LEGAL
12 PROVOCATION.

13 NOW I'M GOING TO LET YOU GO BACK TO THE
14 JURY ROOM BEFORE I DISMISS YOU FOR THE EVENING AND
15 LET ME CHECK WITH THE ATTORNEYS AND SEE IF I NEED TO
16 MAKE ANY CORRECTIONS WITH THAT ADDITIONAL CHARGE.

17 (THE JURY EXITS THE COURTROOM AT 06:51
18 PM.)

19 THE COURT: ALL RIGHT. ANYTHING FROM THE
20 STATE INVOLVING MY CHARGE OR RECHARGE ON MURDER AND
21 VOLUNTARY MANSLAUGHTER OR ON ANYTHING INVOLVING ANY
22 INSTRUCTIONS I GAVE TO THE JURY?

23 MR. THOMPSON: NO, YOUR HONOR, NOTHING
24 FROM THE STATE.

25 THE COURT: ALL RIGHT.

1 MR. GREELEY: NOTHING FROM THE DEFENSE.

2 THE COURT: ALL RIGHT.

3 (THE JURY RETURNS TO THE COURTROOM AT
4 06:52 PM.)

5 THE COURT: ALL RIGHT. WE ARE GOING TO
6 STOP FOR THE EVENING AND WE'LL START BACK AT 9:30 AND
7 I KNOW I'VE BEEN SENDING YOU BACK AND FORTH AND BACK
8 AND FORTH AND I'M GOING TO ASK YOU GO BACK TO THE
9 JURY ROOM IN JUST A FEW MINUTES, THE SHERIFF'S DEPUTY
10 AND THE BAILIFFS WILL COME AND ESCORT YOU TO YOUR
11 CARS, NOT THAT THERE IS ANY DANGER OR ANYTHING LIKE
12 THAT, BUT I JUST THINK THAT'S THE BEST WAY TO DO THIS
13 PARTICULARLY SINCE IT'S INTO THE EVENING, BUT BE BACK
14 AT 9:30. ONCE ALL 12 ARE BACK YOU CAN START
15 DELIBERATING. I DON'T KNOW WHEN Y'ALL ARE BACK AND
16 I'LL BE HERE BUT YOU DON'T HAVE TO WAIT ON ANY WORD
17 FROM ME. ONCE ALL 12 OF YOU HAVE RECONVENED THEN YOU
18 CAN START DELIBERATING AND I'LL BE HERE AND COUNSEL
19 WILL BE HERE AND WE'LL KNOW YOU ARE WORKING AND JUST
20 WAIT UNTIL WE HEAR FROM YOU AT YOUR CONVENIENCE. IF
21 YOU'LL GO BACK TO THE JURY ROOM UNTIL THE BAILIFFS
22 COME FOR YOU.

23 (THE JURY EXITS THE COURTROOM AT 06:54
24 PM.)

25 THE COURT: I MAY BE MAKING STATEMENTS OF

1 THE OBVIOUS, BUT THOSE OF YOU WHO ARE HERE AS
2 SPECTATORS, CERTAINLY DON'T WANT TO SPEND THE NIGHT
3 HERE, I'M GOING TO ASK YOU TO MAKE SURE THAT YOU STAY
4 AWAY FROM THE JURORS. ANY INADVERTENT CONTACT CAN
5 CAUSE PROBLEMS FOR THE JURY AND FOR YOU BECAUSE ANY
6 CONTACT WILL BE MADE AND I'M NOT SAYING YOU'RE GOING
7 TO GO HOME AND CALL THEM, I'M TALKING ABOUT WHEN YOU
8 ARE COMING IN AND GOING, MAKE SURE IF YOU SEE ANYONE
9 YOU KNOW TO BE A JUROR, HAS A JURY BADGE, THAT YOU
10 WALK AWAY AND MAKE SURE YOU HAVE NO CONTACT WITH
11 THEM. MAKE SURE THAT YOU ARE NOT ENGAGING IN ANY
12 KIND OF CONVERSATIONS THAT A JUROR COMING IN MAY
13 OVERHEAR. AGAIN THAT WOULD, I'M GIVING YOU THOSE
14 PRECAUTIONARY INSTRUCTIONS SIMPLY SO THEY WON'T
15 HAPPEN. BUT YOU CAN COME ON IN AND BE SEATED, YOU
16 ARE CERTAINLY WELCOME TO BE HERE, IT'S A PUBLIC
17 TRIAL, BUT MAKE SURE YOU KEEP YOUR CONVERSATIONS TO
18 YOURSELF WHEN YOU ARE ON THE MOSS JUSTICE CENTER
19 PREMISES AND YOU DO NOT LET ANYTHING YOU SAY BE
20 OVERHEARD BY JURORS, SAY OR DO; SO WITH THAT SAID,
21 ANYTHING ELSE FROM THE STATE.

22 MR. POPE: THE ONLY THING, I'M SURE, I
23 DON'T KNOW IF THEY'VE BEEN HAVING THEM TO COME TO
24 THIS DOOR WHEN THEY COME IN THE MORNING OR WHERE DO
25 THEY NORMALLY COME IN, OVER HERE. I WAS JUST

1 CONCERNED WITH EVERYBODY THAT COMES TO THE COURTROOM
2 THAT THEY --

3 THE COURT: WOULD IT BE TOO MUCH TROUBLE
4 TO ASK THEM, TO HAVE THEM PARK IN BACK TONIGHT AND IN
5 THE MORNING AND HAVE SOMEBODY THERE TO LET THEM IN IN
6 THE MORNING.

7 MR. POPE: THAT WAY THEY NEVER HAVE TO
8 COME UP THE FRONT HALL.

9 THE COURT: WE'LL GET THEM TO THEIR CARS
10 TONIGHT AND JUST TELL THEM TO PARK IN THE BACK, WE
11 CAN SHOW THEM WHERE TO PARK IN THE MORNING AND TELL
12 THEM THAT SOMEBODY WILL BE THERE TO LET THEM IN AND
13 OUT. ALL RIGHT. WE'LL BE AT EASE THEN ONCE YOU GET
14 BACK, MR. BOLIN BACK IN THE HOLDING CELL THE BAILIFFS
15 WILL ESCORT JURY OUT.

16 MR. POPE: AS FAR AS THE CITIZENS, YOU
17 WANT TO HAVE THEM LEAVE?

18 THE COURT: THAT WILL PROBABLY BE A GOOD
19 IDEA TO HAVE THEM GO AHEAD AND EXIT.

20 (COURT'S IN RECESS AT 06:57 PM.)

21 (COURT RESUMES ON SEPTEMBER 06, 2006 AT
22 11:54 AM.)

23 THE COURT: I UNDERSTAND WE HAVE VERDICTS
24 IN MR. BOLIN'S CASE. I OF COURSE DO NOT KNOW WHAT
25 THE VERDICT IS OR VERDICTS ARE, BUT I ADMONISH ANYONE

1 THAT IF THEY CANNOT CONTROL THEIR EMOTIONS WHEN THE
2 VERDICT IS READ, THEY GO AHEAD AND LEAVE THE
3 COURTROOM NOW BECAUSE NO OUTBURSTS WILL BE TOLERATED.
4 IF THERE ARE ANY OUTBURSTS, WHOEVER DOES SUCH
5 OUTBURSTS WILL BE HELD IN CONTEMPT OF COURT AND SPEND
6 SOME TIME IN JAIL BECAUSE WE CAN'T HAVE THAT. SO IF
7 YOU DON'T THINK YOU CAN CONTROL YOUR EMOTIONS, YOU
8 BETTER LEAVE NOW. ALL RIGHT. BRING IN THE JURY.

9 (THE JURY RETURNS TO THE COURTROOM AT
10 11:55 AM.)

11 THE COURT: I UNDERSTAND THE JURY HAS
12 REACHED VERDICTS.

13 MR. FOREMAN: YES, SIR, WE DO.

14 THE COURT: IF YOU'LL HAND THEM UP TO THE
15 BAILIFF SHE WILL HAND THEM UP TO ME. THANK YOU.

16 THE CLERK: INDICTMENT 2006-GS-46-1595
17 THE STATE VERSUS BERRY SCOTT BOLIN, WE FIND THE
18 DEFENDANT GUILTY OF THE LESSER INCLUDED OFFENSE OF
19 VOLUNTARY MANSLAUGHTER SIGNED BY THE FOREMAN DATED
20 TODAY'S DATE.

21 INDICTMENT 2006-GS-46-1595 THE STATE
22 VERSUS BERRY SCOTT BOLIN, WE FIND THE DEFENDANT
23 GUILTY OF THE LESSER INCLUDED OFFENSE OF ASSAULT AND
24 BATTERY OF A HIGH AND AGGRAVATED NATURE.

25 THE STATE OF SOUTH CAROLINA VERSUS BERRY

1 SCOTT BOLIN, WE FIND THE DEFENDANT GUILTY OF THE
2 LESSER INCLUDED OFFENSE OF ASSAULT OF A HIGH AND
3 AGGRAVATED NATURE SIGNED BY THE FOREMAN DATED TODAY'S
4 DATE.

5 THE STATE OF SOUTH CAROLINA VERSUS BERRY
6 SCOTT BOLIN WE FIND THE DEFENDANT GUILTY OF THE
7 LESSER INCLUDED OFFENSE OF ASSAULT OF A HIGH AND
8 AGGRAVATED NATURE SIGNED BY THE FOREMAN DATED TODAY'S
9 DATE.

10 INDICTMENT 2006-1600 THE STATE VERSUS
11 BERRY SCOTT BOLIN VERDICT IS GUILTY SIGNED BY THE
12 FOREMAN DATED TODAY'S DATE.

13 INDICTMENT 2006-1597 THE STATE VERSUS
14 BERRY SCOTT BOLIN VERDICT NOT GUILTY SIGNED BY THE
15 FOREMAN DATED TODAY'S DATE.

16 LADIES AND GENTLEMEN OF THE JURY, IF THIS
17 BE YOUR VERDICT SO SAY Y'ALL BY RAISING YOUR RIGHT.
18 LET THE RECORD REFLECT ALL JURORS AFFIRM THIS
19 VERDICT.

20 THE COURT: ANYTHING FROM THE STATE BEFORE
21 THE JURY IS DISMISSED? SHE DIDN'T READ OUT THE
22 CHARGES BUT THE NOT GUILTY WAS ON THE POSSESSION OF A
23 PISTOL.

24 MR. THOMPSON: NOTHING BY THE STATE, YOUR
25 HONOR.

1 THE COURT: ANYTHING FROM --

2 MR. GREELEY: NOTHING BY THE DEFENSE AT
3 THIS TIME.

4 THE COURT: ALL RIGHT. MEMBERS OF THE
5 JURY, PANEL WE APPRECIATE YOUR HELP. THIS WAS A
6 TOUGH CASE AND YOU SPENT A LOT OF TIME ON IT. WE
7 APPRECIATE ALL THE TIME YOU PUT IN. I'M GOING TO
8 ALLOW YOU TO LEAVE NOW. I DO NOT REQUIRE THE JURY TO
9 STAY FOR SENTENCING. I WILL BE IMPOSING SENTENCE,
10 BUT IF YOU WISH TO, I'M GOING TO ASK THE BAILIFFS TO
11 ASK ALL SPECTATORS ON THIS SIDE TO MOVE FORWARD, JUST
12 HAVE THEM MOVE UP, AND LEAVE A COUPLE OF ROWS IN THE
13 BACK. IF ANY OF YOU WANT TO COME IN AND SIT IN FOR
14 THE SENTENCING YOU CAN GO OUT AND COME BACK AROUND
15 AND COME IN THE COURTROOM IF YOU WISH. I DON'T
16 REQUIRE IT AND SOME JURORS WANT TO AND SOME JURORS
17 ARE READY TO GO HOME, SO THAT'S UP TO YOU. BUT WE
18 APPRECIATE YOUR ASSISTANCE, YOU'LL BE GIVEN ANOTHER
19 CHECK FOR THESE TWO DAYS, AND THAT'S ALL I CAN REALLY
20 SAY. THE STATE, MYSELF, ALL THE PARTICIPANTS,
21 APPRECIATE YOUR CONSCIENTIOUS CONSIDERATION. SO YOU
22 ARE DISMISSED AND IF YOU'D LIKE TO COME BACK IN AND
23 OBSERVE THE SENTENCING FEEL FREE TO DO SO.

24 (THE JURY EXITS THE COURTROOM AT 12:00
25 PM.)

1 THE COURT: MR. PRATT, I KEEP ASKING YOU,
2 BUT THERE IS A CROWD OF PEOPLE STANDING OUT THERE. I
3 DON'T KNOW WHY THEY ARE STANDING OUT THERE. THEY
4 EITHER NEED TO BE IN OR OUT, NOT JUST HOVERING.

5 MR. POPE: MAY IT PLEASE THE COURT, YOUR
6 HONOR. I'M GOING TO HAND UP THE VICTIM IMPACT
7 STATEMENT WHILE YOU ARE WAITING.

8 THE COURT: ALL RIGHT. AT THIS POINT IF
9 YOU'LL HAND UP THE SENTENCING SHEET AND BRING
10 MR. BOLIN AROUND FOR SENTENCING. AT THIS TIME I'LL
11 BE GLAD TO HEAR FROM ANY OF THE VICTIMS. WELL, LET
12 ME HEAR FROM THE STATE, THEN THE VICTIMS, AND THEN
13 MR. GREELEY AND MR. BOLIN AND THEN ANYONE ON
14 MR. BOLIN'S BEHALF BEFORE SENTENCING.

15 MR. POPE: YES, SIR.

16 THE COURT: LET ME ASK YOU FIRST, ANY
17 RESTITUTION?

18 MR. POPE: YES, SIR. THAT'S WHAT I WAS
19 TRYING TO ASCERTAIN, YOUR HONOR. THERE WAS 4000 THAT
20 SOVA PAID FOR FUNERAL EXPENSES AND ALSO THE FAMILY
21 HAS PAID ADDITIONAL EXPENSES AND I BEG THE COURT'S
22 INDULGENCE AND I'LL TELL YOU THAT AMOUNT.

23 YOUR HONOR, THERE IS ALSO 27000 IN MEDICAL
24 BILLS AND THE REST OF THE FUNERAL THAT WAS PAID BY
25 THE FAMILY AND WE WILL PROVIDE THE APPROPRIATE

1 DOCUMENTATION AS TO THAT.

2 THE COURT: ALL RIGHT. DO ANY OF THE
3 VICTIMS WANT TO SPEAK?

4 MR. POPE: YES, SIR. I WAS GOING TO SAY I
5 WOULD HAVE YOU HEAR FROM THE VICTIMS AND THEN I WOULD
6 BE HEARD ON SENTENCING AT THE APPROPRIATE TIME.

7 THE COURT: ALL RIGHT.

8 MR. POPE: WE HAVE MR. HOVIS, MS. FAUBER,
9 AND MS. GENTRY. MS. GENTRY, IF YOU WOULD STATE YOUR
10 NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER
11 AND THEN YOU CAN ADDRESS THE COURT.

12 MS. GENTRY: DEETTA GENTRY. D-E-E-T-T-A
13 G-E-N-T-R-Y.

14 THE COURT: YES, MA'AM.

15 MS. GENTRY: IT WAS A TRAGIC PHONE CALL, A
16 TRAGIC LOSS OF MY SON ON FEBRUARY 19, 2006. I JUST
17 WANT TO LET YOU KNOW WHAT A WONDERFUL, LOVING, CARING
18 SON HE WAS. HE'S ALSO LEFT BEHIND TWO YOUNG
19 CHILDREN, AGE 21 MONTHS AND FOUR WEEKS OLD, AND I
20 JUST WANT TO SEE IF THERE IS ANYWAY THAT YOU CAN JUST
21 GIVE MR. BOLIN THE MAXIMUM SENTENCE THAT THE LAW
22 ALLOWS. AND I WILL NEVER UNDERSTAND BECAUSE THERE IS
23 A SPECIAL BOND BETWEEN A MOTHER AND A SON AND I CAN
24 NO LONGER HAVE HIM EVER AGAIN, FLUFFING UP MY HAIR,
25 TELLING ME I LOOK NICE, MAKE THE MOTHER FEEL GOOD,

1 LIKE A SON DOES FOR A MOTHER. IF YOU CAN JUST SEE IN
2 YOUR HEART THAT HE GETS THE MAXIMUM SENTENCE AND FOR
3 HIS CHILDREN BECAUSE THEIR DAD WILL ALWAYS BE
4 REMEMBERED AS FUN, LOVING, CARING FAMILY WAY. HE
5 LOVED EVERYONE.

6 THE COURT: THANK YOU, MA'AM.

7 MR. POPE: IF YOU'LL STATE YOUR NAME AND
8 SPELL YOUR NAME FOR COURT REPORTER AND TELL THE COURT
9 YOUR RELATION.

10 MS. FAUBER: MY NAME IS ELIZABETH
11 E-L-I-Z-A-B-E-T-H FAUBER. MY LAST NAME IS
12 F-A-U-B-E-R. AND I'M MY BROTHER'S SISTER. YOUR
13 HONOR, I JUST WANTED TO SHOW YOU A PICTURE OF MY
14 BROTHER AND HERE IS THE NEW BABY BOY THAT HE DIDN'T
15 REALLY KNOW THAT HE WAS HAVING AND THAT'S HIS FAMILY
16 THAT HE HAD JUST STARTED BEFORE HE PASSED AWAY.

17 THE COURT: THANK YOU, MA'AM.

18 MS. FAUBER: I ALSO WANT TO LET YOU KNOW
19 THAT MY BROTHER DIDN'T DIE INSTANTLY, THAT IT WASN'T
20 AN HOUR AFTER MY BROTHER HAD BEEN SHOT, IT WAS
21 SEVERAL HOURS AFTER MY BROTHER HAD BEEN SHOT, AND IT
22 WAS ME AND MY DAD THAT WERE STANDING IN THE HOSPITAL
23 AS I WAS HOLDING HIS HAND AND SAW MY BROTHER'S HEART
24 RATE JUMP UP TO 191 AND THAT'S WHEN MY BROTHER'S
25 BRAIN STARTED TO SWELL AND IT'S NOT A SIGHT THAT

1 ANYBODY SHOULD EVER HAVE TO SEE AND MY BROTHER NEVER
2 DESERVED TO HAVE TO SUFFER LIKE THIS I NEVER HAD TO,
3 IT SHOULD NEVER HAVE TO BE ME TO SEE THIS MY IN
4 DREAMS EVERY NIGHT OF WHAT MY BROTHER LOOKED LIKE
5 BEFORE HE HAD TO PASS AWAY. I DON'T KNOW WHAT ELSE
6 TO SAY RIGHT NOW.

7 THE COURT: THANK YOU.

8 MR. POPE: MR. HOVIS. THIS WILL BE
9 MR. BOBBY HOVIS, THE FATHER.

10 MR. HOVIS: MY NAME IS BOBBY HOVIS.
11 H-O-V-I-S, JR. I'M THE FATHER OF THE DECEASED AND I
12 WANT THE COURTS TO KNOW THAT BOBBY WAS NOT THE TYPE
13 OF YOUNG MAN THAT THE DEFENSE AND EVERYBODY ELSE AND
14 THE WITNESSES HAVE PUT BOBBY OUT TO BE. BOBBY WAS A
15 LOVING, YOUNG MAN. HE LOVED HIS FAMILY. HE WAS
16 TAUGHT TO BE RESPECTFUL AND HE WAS TAUGHT TO BE LOYAL
17 TO HIS FAMILY AS WELL AS TO HIS FRIENDS AND AS A
18 MATTER OF FACT HE HAD THAT TATTOOED ON HIM, RESPECT
19 AND LOYALTY. BOBBY WAS NOT THE TYPE OF FIGHTER THAT
20 EVERYBODY SAYS THAT HE WAS. BOBBY WAS A FIGHTER.
21 BOBBY FOUGHT FOR 13 HOURS, OVER 13 HOURS, WITH A
22 BULLET IN HIS BRAIN FROM THIS YOUNG MAN.

23 HE LEFT BEHIND A DAUGHTER AND HE LEFT
24 BEHIND A FOUR-WEEK SON. MY SON WENT TO WORK
25 EVERYDAY. MY SON TOOK CARE OF HIS FAMILY. HOW MANY

1 19 YEAR OLD, JUDGE, THAT YOU KNOW WILL GO BEFORE
2 COURT AND FIGHT FOR HIS DAUGHTER AND THEN GET CUSTODY
3 OF HIS DAUGHTER, THAT'S WHAT BOBBY DID, AND BOBBY WAS
4 RAISING HIS DAUGHTER. BOBBY WENT TO WORK, BOBBY
5 SAVED HIS MONEY, AND BOBBY WAS SO PROUD WHEN HE WAS
6 ABLE TO MOVE OUT ON TO HIS OWN AND GET A PLACE FOR
7 HIM AND HIS DAUGHTER TO LIVE. HE LOVED HIS FAMILY
8 AND HE LOVED, HIS PRIDE AND JOY WAS HIS DAUGHTER,
9 JUST LIKE BOBBY WAS MY PRIDE AND JOY. I'VE GOT FIVE
10 CHILDREN, HE WAS THE BABY, BUT IT WAS SOMETHING
11 SPECIAL ABOUT THAT BOY.

12 YOUR HONOR, I FEEL FOR THE BOLINS FOR WHAT
13 THEY ARE GOING THROUGH. I REALLY DO. I DO NOT HAVE
14 VENGEANCE IN MY HEART, NEITHER DOES ANYBODY IN MY
15 FAMILY ANYMORE HAVE VENGEANCE. ALL WE'RE ASKING,
16 YOUR HONOR, IS FOR JUSTICE AND WE'RE ASKING, YOUR
17 HONOR, THAT YOU GIVE HIM THE MAXIMUM THAT YOU CAN
18 BECAUSE THE TAKING OF MY SON'S LIFE, HE WAS LEAVING,
19 HE NEVER GOT OUT OF THE CAR, HE WAS LEAVING AND THEN
20 WAS SHOT IN THE HEAD. AND THEN AT NIGHT, YOUR HONOR,
21 EVERY NIGHT THERE HASN'T BEEN A NIGHT THAT HASN'T
22 GONE BY THAT I HAVEN'T SEEN MY SON LAYING IN THE
23 PARKING LOT OF THE POLICE STATION. THEN THE NEXT
24 SIGHT I HAVE OF HIM IS HIM LAYING AT THE HOSPITAL
25 WITH THE TUBES IN HIM FIGHTING FOR HIS LIFE, AND YOUR

1 HONOR, HE DID NOT GIVE UP, HE FOUGHT FOR HIS LIFE,
2 AND HE JUST GOT TIRED AND HE PASSED AWAY. AND THEN
3 THE NEXT SIGHT I HAVE OF HIM, YOUR HONOR, IS HIM
4 LAYING THERE AT THE FUNERAL HOME. AND, YOUR HONOR,
5 NO MATTER WHAT KIND OF SENTENCE YOU GIVE TO THE
6 BOLIN, TO BERRY BOLIN, ONE DAY HE WILL COME HOME, AND
7 ONE DAY THEY CAN HUG HIM AND KISS HIM. YOUR HONOR,
8 BUT ALL I EVER GET TO DO IS HUG AND KISS A PIECE OF
9 COLD GRAVE. THAT'S IT. THAT'S THE MOST I HAVE TO
10 LOOK FORWARD TO. I JUST APPRECIATE ANYTHING THAT
11 YOUR HONOR CAN DO AND THE LAW CAN DO.

12 THE COURT: THANK YOU, MR. HOVIS.

13 MR. HOVIS: THANK YOU.

14 MR. POPE: MAY IT PLEASE THE COURT, YOUR
15 HONOR. YOU'VE HEARD THE CASE AND I GUESS --

16 THE COURT: NONE OF THE OTHER VICTIMS WANT
17 TO SPEAK?

18 MR. POPE: I BELIEVE THAT'S ALL THE FAMILY
19 REPRESENTATIVES THAT WANT TO SPEAK, YOUR HONOR. YOUR
20 HONOR, YOU'VE HEARD THE CASE AND KIND OF GOT A SENSE
21 OF THE ISSUE WE'RE DEALING WITH, WITH THE FIGHTING
22 AND THE COMING TO THE FIGHT AND THE GROUP. AND I'LL
23 HAVE TO TELL YOU, THERE WAS A COMMON THREAD THAT
24 WE'VE SEEN WHEN MR. THOMPSON WAS PREPARING THE
25 VARIOUS WITNESSES, IS THAT A LARGE NUMBER OF PEOPLE

1 AND PARTICULARLY IN PREPARING PEOPLE THAT WERE THERE
2 AT THE SCENE AT THE PARTY, APPARENTLY FOR WHATEVER
3 REASON HAVE NO LITTLE TO NO RESPECT FOR THE LAW. I
4 MEAN IF IT'S SOMETHING AS SIMPLE AS SUBPOENAING A
5 WITNESS TO COME IN AND WHEN YOU COME IN OR I THINK TO
6 A CERTAIN EXTENT THE WHOLE FIGHT AND THE GUNS AND THE
7 AFTER MATH AND THE TRIAL HAS BEEN SOMEWHAT OF A GAME.
8 NOW I'M NOT SAYING JUST PARTICULARLY FROM MR. BOLIN,
9 BUT OVER ALL IT'S JUST SOMETHING AND YOU CAN TELL A
10 DIFFERENT TALE AND OF COURSE YOU HEARD THE WITNESSES
11 AND THE JURY DETERMINED WHAT THEY BELIEVED AND WHAT
12 THEY DIDN'T. I THINK IT'S UNFORTUNATE AND YOU KNOW
13 I'M NOT GOING TO GET ON MY SOAP BOX: IS IT A
14 REFLECTION OF SOCIETY; IS IT A REFLECTION OF THE
15 MEDIA, IS IT A REFLECTION, BUT THERE IS A GAME OF
16 VIOLENCE AND DISREGARD FOR LAW THAT'S GOING ON AND
17 UNFORTUNATELY IT'S GOING ON RIGHT HERE IN CLOVER.

18 WHEN I WAS LOOKING AS FAR AS MR. BOLIN, HE
19 DOES NOT HAVE A RECORD. HE HAD AN ISSUE AS A
20 JUVENILE THAT WAS ADDRESSED, IT'S GONE. WITH CLOVER
21 POLICE DEPARTMENT THOUGH, THIS IS A CITY CHARGE, BUT
22 I THINK IT IS SOMEWHAT TELLING; CHIEF GUERRY STOPPED
23 HIM IN 2005, HE WAS CHARGED WITH SOME TYPE OF TRAFFIC
24 OFFENSE, AND HE ALSO HAD SOME BRASS KNUCKLES,
25 MR. BOLIN. HE HAD IN HIS VEHICLE BRASS KNUCKLES, A

1 HELMET, PRESUMABLY LIKE A MOTORCYCLE HELMET OR
2 SOMETHING OF THAT NATURE, AND A BASEBALL BAT AND
3 CHIEF GUERRY TELLS US THAT HE TOLD THAT THE REASON HE
4 HAD THOSE THINGS IN THAT CAR WERE FOR FIGHTING.
5 THAT'S THE WHOLE PURPOSE. I MEAN THIS GOING TO THE
6 SPOT THING AND GETTING ANOTHER GROUP AND GOING TO THE
7 SPOT, HAS ESCALATED AND UNFORTUNATELY FOR BOTH
8 FAMILIES INVOLVED, IT'S ULTIMATELY GOTTEN TO THIS IS
9 THE WORST OF THE POSSIBLE SCENARIOS.

10 I THINK BASICALLY THAT NIGHT THEY MADE A
11 DECISION, AS I SAID IN CLOSING ARGUMENT, THAT IT
12 WOULD BE COOL TO SHOOT THESE FOLKS UP. WELL, NOW AS
13 THE COURT IS AWARE, THERE HAS GOT TO BE CONSEQUENCES
14 BOTH FOR MR. BOLIN AND I THINK IT'S IMPORTANT -- IT'S
15 UNFORTUNATE THAT THE MEDIA STARTED COVERING THIS
16 FIRST DAY, WE'VE LONG SINCE LOST THEM AND I'M NOT BIG
17 ON WHETHER THE CASE NEEDS TO BE IN THE MEDIA, BUT
18 THIS MESSAGE NEEDS TO BE SENT THAT THERE ARE
19 CONSEQUENCES FOR THESE ACTIONS. THE OPPORTUNITY THAT
20 YOUR SENTENCE IS GOING TO CHANGE ALL THAT
21 AUTOMATICALLY IN CLOVER OR IN YORK OR WHATEVER,
22 PERHAPS NOT, BUT MAYBE SOME OF THE PEOPLE THAT WERE
23 INVOLVED IN THIS CASE, SOME OF THE PEOPLE THAT HAVE
24 SEEN OR OBSERVED THIS CASE, WILL SEE THAT IT DOES
25 MATTER AND IT DOES MAKE A DIFFERENCE. YOU CAN'T HAVE

1 GUNS JUST TO BE COOL AND YOU CAN'T SHOOT GUNS JUST
2 BECAUSE IT WILL BE COOL AND I THINK YOUR SENTENCE
3 NEEDS TO REFLECT THAT, YOUR HONOR, AND THAT'S WHAT
4 WE'RE ASKING YOU TO DO. THANK YOU, SIR.

5 THE COURT: ALL RIGHT. MR. GREELEY.

6 MR. GREELEY: YOUR HONOR, MAY IT PLEASE
7 THE COURT.

8 THE COURT: BEFORE YOU START. I STILL
9 DON'T HAVE THE SENTENCE SHEETS. YOU ARE STILL
10 WORKING ON THEM, OKAY. GO AHEAD.

11 MR. GREELEY: MAY IT PLEASE THE COURT. I
12 DON'T HAVE A BIG PRESENTATION. BERRY IS 19. BEFORE
13 THIS, HE LIVED WITH HIS PARENTS. HE GRADUATED FROM
14 CLOVER HIGH SCHOOL. HE WAS WORKING WITH HIS FATHER
15 SOME AND THAT'S PRETTY MUCH WHAT HE WAS DOING. HE
16 WAS A REGULAR KID AT THE AGE OF 19. THIS INCIDENT,
17 AND I AGREE WITH THE SOLICITOR, THIS INCIDENT DOES GO
18 TO SHOW WHAT CAN OCCUR WHEN FOLKS DO WHAT THEY ARE
19 NOT SUPPOSED TO DO AND HAVE HAD VERY BAD JUDGMENTS.
20 IN ALL MY WORKINGS HE'S BEEN VERY NICE AND POLITE TO
21 ME. I WOULD ASK FOR THE COURT IN ITS SENTENCING OF
22 BERRY TO CONSIDER WHAT THE COURT HAS HEARD IN THE
23 CASE. AND THAT'S ABOUT ALL I KNOW TO SAY. I'M NOT
24 GOING TO ASK THE COURT FOR THIS SENTENCE OR THAT
25 SENTENCE. YOUR HONOR HAS SAT IN THAT, BEHIND THE

1 BENCH FOR QUITE AWHILE AND HAS A WORLD OF EXPERIENCE
2 AND I WOULD ASK FOR THE COURT TO CONSIDER CONCURRENT
3 SENTENCES.

4 THE COURT: ALL RIGHT. ANYONE WANT TO
5 SPEAK ON HIS BEHALF?

6 MR. GREELEY: I BELIEVE THAT HE WANTS TO
7 SPEAK AND I DON'T KNOW THAT HIS PARENTS -- HIS FATHER
8 DOES WANT TO SPEAK.

9 THE COURT: ALL RIGHT. COME FORWARD NOW.

10 MR. GREELEY: COME FORWARD NOW. THIS IS
11 MITCH BOLIN HIS FATHER.

12 THE COURT: YES, SIR, MR. BOLIN.

13 MR. BOLIN: YOUR HONOR, I'D JUST LIKE TO
14 SAY THAT YOU'VE HEARD THE EVIDENCE THAT WAS BROUGHT
15 FORTH ALSO AND WE KNOW THAT THINGS HAPPENED THAT
16 NIGHT THAT SHOULDN'T HAVE, BUT WE ALSO KNOW THE
17 CIRCUMSTANCES THAT LEAD UP TO THEM, YOUR HONOR, AND I
18 JUST ASK YOU TO PLEASE TAKE ALL THAT INTO
19 CONSIDERATION BEFORE YOU TAKE MY SON AWAY FROM ME.
20 PLEASE. PLEASE LOOK AT ALL THE EVIDENCE AND TAKE IT
21 TO YOUR HEART. THIS IS MY ONLY SON. AND JUST AS
22 MR. HOVIS SAID, HE WORKED EVERYDAY, HE PAID FOR HIS
23 OWN TRUCK, HE PAID HIS OWN WAY SINCE THE DAY HE GOT
24 OUT OF HIGH SCHOOL, AND, YOUR HONOR, HE'S NOT A BAD
25 KID. HE WAS PUT IN THIS SITUATION. IT WAS A

1 SITUATION THAT WAS BROUGHT FORTH OVER HOURS AND HE
2 HAD SECONDS TO MAKE HIS MIND UP WHAT TO DO AND I JUST
3 ASK YOU TO LOOK AT THAT.

4 MR. GREELEY: ANYONE ELSE? OKAY. I
5 BELIEVE BERRY HAS SOMETHING.

6 MR. BERRY BOLIN: I JUST WANT TO SAY THAT
7 I'M SORRY TO BOTH SIDES OF MY FAMILY AND THE VICTIM'S
8 FAMILY. IF THERE WAS EVER SOMETHING I COULD DO TO
9 CHANGE IT, I CAN'T.

10 MR. GREELEY: THAT'S ALL WE WOULD HAVE,
11 YOUR HONOR.

12 THE COURT: ALL OF THESE ARE TO RUN
13 CONCURRENT. ON THE VOLUNTARY MANSLAUGHTER THE
14 SENTENCE IS 30 YEARS.

15 ON THE OTHER FOUR, THE TWO ASSAULTS OF A
16 HIGH AND AGGRAVATED NATURE AND THE ASSAULT AND
17 BATTERY OF A HIGH AND AGGRAVATED NATURE AND THE
18 DISCHARGING OF A FIREARM, EACH OF THOSE ARE FOR TEN
19 YEARS, SO THEY ARE TO RUN CONCURRENT. VOLUNTARY
20 MANSLAUGHTER 30 YEARS. AND MAKE RESTITUTION OF
21 \$31,000. THANK YOU.

22 MR. GREELEY: THANK YOU, JUDGE.

23 THE COURT: COURT WILL BE ADJOURNED.

24 (COURT'S IN RECESS AT 12:19 PM.)

25

1 I, JANET RICH, OFFICIAL COURT REPORTER FOR
2 THE SIXTEENTH CIRCUIT OF THE STATE OF SOUTH CAROLINA,
3 DO HEREBY CERTIFY THAT THE FORGOING IS A TRUE,
4 ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
5 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
6 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN
7 THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON
8 THE MONDAY AUGUST 28 THROUGH WEDNESDAY SEPTEMBER 6,
9 2006.

10 I DO FURTHER CERTIFY THAT I AM NEITHER KIN,
11 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

12
13
14 JANET M. RICH
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Applicant's
9B
10-11-12

39

YUNTY SHERIFF'S OFFICE

Incident Report No: 2006-557

Voluntary Statement

VOLUNTARY STATEMENT

I, Samantha Eason, know and understand my rights. Having decided to answer questions at this time, I now make the following statement.

- 1) I was at the party, when a car pulled up
- 2) outside. When I walked outside ~~to~~ Lee Owens
- 3) started shooting a gun. He shot the gun in
- 4) the back window of the car. Then the people
- 5) in the car started firing shots back toward us,
- 6) So Barry had no choice but to fire back.

7) _____

8) _____

9) _____

10) _____

11) _____

12) _____

13) _____

14) _____

15) _____

16) _____

The statement above, consisting of 10 page(s), is made of my own free will. No one has threatened me in any way or promised me special treatment to cause me to make this statement. I am signing my name in the space below to show that it is my statement and it is the truth.

Signed: Samantha Eason

Date: 2/19/05 Time: 5:30

Witness: [Signature]

Page 1 of 1

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Reproducible
#2
10-21-12
AQ

STATE OF SOUTH CAROLINA
OFFICE OF THE SOLICITOR
SIXTEENTH JUDICIAL CIRCUIT

INTERNAL PROSECUTION DOCUMENT

Page 1 of 1

PERSONALLY appears before me: Samantha Eason, who after

Being duly sworn and deposes says. "My name is: Samantha Eason

Date of Birth: 02/24/1988 Social Security Number: 243-59-9256

My address is: _____

Place of Employment: Fuel Land Clover, SC

Home Phone Number: 704-913-8815 Work Phone Number: _____

I have completed: 10 years in school and I can (x) cannot () read and write.

I and Robert Beverly rode in my car and we followed Berry Bolin and he had Michelle Barfield, Rocky Brakefield and Erick Brown in his truck. We were going to the party on Lawrence Rd. in Clover, SC. When we got there we went in and everything was fine. We were there for about an hour and a half and then a car pulled up outside. The car had Holly McCarter, Travis Falls and Bobby Hovis in it. A second car pulled up that had Jeff Buck in it. Jeff Buck started to shoot at us in the yard. Then Lee Owens fired two shots in the air to try and scare them away thinking they would leave. Lee must have had the gun on him because he just started to shoot after Jeff Buck did. After Lee shot in the air Jeff Buck continued to shoot at us in the yard. That's when Barry Bolin Shot back at them in self defense Barry must have had the gun on him because he just started to shoot back at Jeff Buck. My ex-boyfriend Robert Beverly stated that Lee Owens shot at him and I only saw Lee shoot the two shots in the air to scare the car away and Lee was standing beside me the whole time and I would have seen him shoot at Robert if he had. The person who shot into the back of the car That Bobby Hovis was in was not Lee Owens it was a short guy with dark hair and I don't know who he was. I haven't heard who he was and I don't remember seeing him at the party before he shot into the car and I haven't seen him since. I haven't spoken to anyone associated with the party about what happened since the night I gave my first statement except for Robert who was my boyfriend at the time. The car that Jeff Buck was in was a dark four door car. It was a older four door car gray in color maybe a Pontiac that Hovis was in. After the shooting both cars pulled off and everybody started to leave the party.

C. E. Eason 08/11/06
Witness

Samantha Eason 8/11/06
Signed

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STATE OF SOUTH CAROLINA
OFFICE OF THE SOLICITOR
SIXTEENTH JUDICIAL CIRCUIT

"INTERNAL PROSECUTION DOCUMENT"

Page 1 of 1

PERSONALLY appears before me Samantha Eason

Who deposes and says: I make this statement of my own free will and accord, without reward or hope of reward. I have not been mistreated or threatened in any way. All of the above is the truth, the whole truth and nothing but the truth so help me god. I have read or had read to me the above statement consisting of 1 page(s) and have received a copy of the same.

Samantha Eason
(Signature)

C.F. Deibel
(Witness)

SWORN AND SUBSCRIBED BEFORE ME
THIS 11th DAY OF August, 2006

Charles Edward Deibel
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES ON April 10, 2007

STATEMENT TAKEN ON 08/11/06 AT 10:15 ~~AM~~ PM

STATEMENT SIGNED ON 08/11/06 AT 10:55 ~~AM~~ PM

STATEMENT FROM: TAPED ☐; WRITTEN NOTES ☐; DICTATED ☐; INTERVIEW ☒

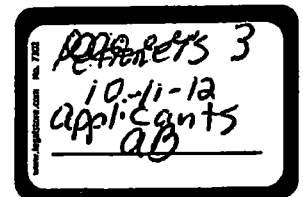
STATEMENT PREPARED BY: C.F. Deibel

1
2 AMENDED--NOT PRINTED IN THE HOUSE
3 Amt. No. 2A (Amt. No. council\ms\7498ahb06)
4 June 1, 2006
5

H. 4301

6
7
8 Introduced by Reps. G.M. Smith, Bailey, Harrison, Altman,
9 Vaughn, G.R. Smith, Battle, Kirsh, M.A. Pitts, Coates,
10 Moody-Lawrence, Toole, Vick, Littlejohn, Sandifer, Owens,
11 Ceips, Funderburk, Weeks, Rice, Simrill, Chellis, Viers and
12 Duncan
13

14 S. Printed 5/31/06--S.
15 Read the first time February 9, 2006.
16 _____
17



[4301-1]

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A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 6, CHAPTER 11, TITLE 16 SO AS TO ENACT THE "PROTECTION OF PERSONS AND PROPERTY ACT", TO DEFINE THE TERMS "DWELLING", "GREAT BODILY INJURY", "RESIDENCE", AND "VEHICLE", TO AUTHORIZE THE LAWFUL USE OF DEADLY FORCE AGAINST AN INTRUDER OR ATTACKER IN A PERSON'S DWELLING, RESIDENCE, OR OCCUPIED VEHICLE UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE EXCEPTIONS, TO PROVIDE THAT THERE IS NO DUTY TO RETREAT IF THE PERSON IS IN A PLACE WHERE HE HAS A RIGHT TO BE, INCLUDING THE PERSON'S PLACE OF BUSINESS, AND THE USE OF DEADLY FORCE IS NECESSARY TO PREVENT DEATH, GREAT BODILY INJURY, OR THE COMMISSION OF A VIOLENT CRIME, AND TO PROVIDE THAT A PERSON WHO LAWFULLY USES DEADLY FORCE IS IMMUNE FROM CRIMINAL PROSECUTION AND CIVIL ACTION AND MAY NOT BE ARRESTED UNLESS PROBABLE CAUSE EXISTS THAT THE DEADLY FORCE USED WAS UNLAWFUL.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 11, Title 16 of the 1976 Code is amended by adding:

"Article 6

Protection of Persons and Property

[4301]

1 Lawful Use of Deadly Force
2

3 Section 16-11-410. This article may be cited as the 'Protection
4 of Persons and Property Act'.
5

6 Section 16-11-420. (A) It is the intent of the General Assembly
7 to codify the common law Castle Doctrine which recognizes that a
8 person's home is his castle and to extend the doctrine to include an
9 occupied vehicle and the person's place of business.

10 (B) The General Assembly finds that it is proper for
11 law-abiding citizens to protect themselves, their families, and
12 others from intruders and attackers without fear of prosecution or
13 civil action for acting in defense of themselves and others.

14 (C) The General Assembly finds that Section 20, Article I of
15 the South Carolina Constitution guarantees the right of the people
16 to bear arms, and this right shall not be infringed.

17 (D) The General Assembly finds that persons residing in or
18 visiting this State have a right to expect to remain unmolested and
19 safe within their homes, businesses, and vehicles.

20 (E) The General Assembly finds that no person or victim of
21 crime should be required to surrender his personal safety to a
22 criminal, nor should a person or victim be required to needlessly
23 retreat in the face of intrusion or attack.
24

25 Section 16-11-430. As used in this article, the term:

26 (1) 'Dwelling' means a building or conveyance of any kind,
27 including an attached porch, whether the building or conveyance is
28 temporary or permanent, mobile or immobile, which has a roof
29 over it, including a tent, and is designed to be occupied by people
30 lodging there at night.

31 (2) 'Great bodily injury' means bodily injury which creates a
32 substantial risk of death or which causes serious, permanent
33 disfigurement, or protracted loss or impairment of the function of a
34 bodily member or organ.

35 (3) 'Residence' means a dwelling in which a person resides
36 either temporarily or permanently or is visiting as an invited guest.

37 (4) 'Vehicle' means a conveyance of any kind, whether or not
38 motorized, which is designed to transport people or property.
39

40 Section 16-11-440. (A) A person is presumed to have a
41 reasonable fear of imminent peril of death or great bodily injury to
42 himself or another person when using deadly force that is intended

1 or likely to cause death or great bodily injury to another person if
2 the person:

3 (1) against whom the deadly force is used is in the process of
4 unlawfully and forcefully entering, or has unlawfully and forcibly
5 entered a dwelling, residence, or occupied vehicle, or if he
6 removes or is attempting to remove another person against his will
7 from the dwelling, residence, or occupied vehicle; and

8 (2) who uses deadly force knows or has reason to believe
9 that an unlawful and forcible entry or unlawful and forcible act is
10 occurring or has occurred.

11 (B) The presumption provided in subsection (A) does not apply
12 if the person:

13 (1) against whom the deadly force is used has the right to be
14 in or is a lawful resident of the dwelling, residence, or occupied
15 vehicle including, but not limited to, an owner, lessee, or
16 titleholder; or

17 (2) sought to be removed is a child or grandchild, or is
18 otherwise in the lawful custody or under the lawful guardianship,
19 of the person against whom the deadly force is used; or

20 (3) who uses deadly force is engaged in an unlawful activity
21 or is using the dwelling, residence, or occupied vehicle to further
22 an unlawful activity; or

23 (4) against whom the deadly force is used is a law
24 enforcement officer who enters or attempts to enter a dwelling,
25 residence, or occupied vehicle in the performance of his official
26 duties, and he identifies himself in accordance with applicable law
27 or the person using force knows or reasonably should have known
28 that the person entering or attempting to enter is a law enforcement
29 officer.

30 (C) A person who is not engaged in an unlawful activity and
31 who is attacked in another place where he has a right to be,
32 including, but not limited to, his place of business, has no duty to
33 retreat and has the right to stand his ground and meet force with
34 force, including deadly force, if he reasonably believes it is
35 necessary to prevent death or great bodily injury to himself or
36 another person or to prevent the commission of a violent crime as
37 defined in Section 16-1-60.

38 (D) A person who unlawfully and by force enters or attempts to
39 enter a person's dwelling, residence, or occupied vehicle is
40 presumed to be doing so with the intent to commit an unlawful act
41 involving force or a violent crime as defined in Section 16-1-60.

42 (E) A person who by force enters or attempts to enter a
43 dwelling, residence, or occupied vehicle in violation of an order of

1 protection, restraining order, or condition of bond is presumed to
2 be doing so with the intent to commit an unlawful act regardless of
3 whether the person is a resident of the dwelling, residence, or
4 occupied vehicle including, but not limited to, an owner, lessee, or
5 titleholder.

6
7 Section 16-11-450. (A) A person who uses deadly force as
8 permitted by the provisions of this article or another applicable
9 provision of law is justified in using deadly force and is immune
10 from criminal prosecution and civil action for the use of deadly
11 force, unless the person against whom deadly force was used is a
12 law enforcement officer acting in the performance of his official
13 duties and he identifies himself in accordance with applicable law
14 or the person using deadly force knows or reasonably should have
15 known that the person is a law enforcement officer.

16 (B) A law enforcement agency may use standard procedures for
17 investigating the use of deadly force as described in subsection
18 (A), but the agency may not arrest the person for using deadly
19 force unless probable cause exists that the deadly force used was
20 unlawful.

21 (C) The court shall award reasonable attorneys' fees, court
22 costs, compensation for loss of income, and all expenses incurred
23 by the defendant in defense of a civil action brought by a plaintiff
24 if the court finds that the defendant is immune from prosecution as
25 provided in subsection (A)."

26
27 SECTION 2. Section 16-1-60 of the 1976 Code is amended to
28 read:

29
30 "Section 16-1-60. For purposes of definition under South
31 Carolina law, a violent crime includes the offenses of: murder
32 (Section 16-3-10); criminal sexual conduct in the first and second
33 degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct
34 with minors, first and second degree (Section 16-3-655); assault
35 with intent to commit criminal sexual conduct, first and second
36 degree (Section 16-3-656); assault and battery with intent to kill
37 (Section 16-3-620); kidnapping (Section 16-3-910); voluntary
38 manslaughter (Section 16-3-50); armed robbery (Section
39 16-11-330(A)); attempted armed robbery (Section 16-11-330(B));
40 carjacking (Section 16-3-1075); drug trafficking as defined in
41 Section 44-53-370(e) or trafficking cocaine base as defined in
42 Section 44-53-375(C); manufacturing or trafficking
43 methamphetamine as defined in Section 44-53-375; arson in the

1 first degree (Section 16-11-110(A)); arson in the second degree
2 (Section 16-11-110(B)); burglary in the first degree (Section
3 16-11-311); burglary in the second degree (Section 16-11-312(B));
4 engaging a child for a sexual performance (Section 16-3-810);
5 homicide by child abuse (Section 16-3-85(A)(1)); aiding and
6 abetting homicide by child abuse (Section 16-3-85(A)(2));
7 inflicting great bodily injury upon a child (Section 16-3-95(A));
8 allowing great bodily injury to be inflicted upon a child (Section
9 16-3-95(B)); criminal domestic violence of a high and aggravated
10 nature (Section 16-25-65); abuse or neglect of a vulnerable adult
11 resulting in death (Section 43-35-85(F)); abuse or neglect of a
12 vulnerable adult resulting in great bodily injury (Section
13 43-35-85(E)); accessory before the fact to commit any of the above
14 offenses (Section 16-1-40); attempt to commit any of the above
15 offenses (Section 16-1-80); and taking of a hostage by an inmate
16 (Section 24-13-450). Only those offenses specifically enumerated
17 in this section are considered violent offenses.”

18
19 SECTION 3. Article 5, Chapter 23, Title 16 of the 1976 Code is
20 amended by adding:

21
22 “Section 16-23-415. An individual who takes a firearm, stun
23 gun, or taser device from the person of a law enforcement officer
24 or a corrections officer is guilty of a felony and, upon conviction,
25 must be imprisoned for not more than five years, or fined not more
26 than five thousand dollars, or both, if all of the following
27 circumstances exist at the time the firearm is taken:

28 (1) the individual knows or has reason to believe the person
29 from whom the weapon is taken is a law enforcement officer or a
30 corrections officer;

31 (2) the law enforcement officer or corrections officer is
32 performing his duties as a law enforcement officer or a corrections
33 officer, or the individual’s taking of the weapon is directly related
34 to the law enforcement officer’s or corrections officer’s
35 professional responsibilities;

36 (3) the individual takes the weapon without consent of the law
37 enforcement officer or corrections officer;

38 (4) the law enforcement officer is authorized by his employer
39 to carry the weapon in the line of duty; and

40 (5) the law enforcement officer or corrections officer is
41 authorized by his employer to carry the weapon while off duty and
42 has identified himself as a law enforcement officer.”

43

[4301]

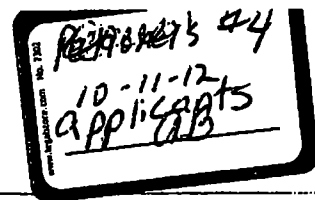
1 SECTION 4. The repeal or amendment by this act of any law,
2 whether temporary or permanent or civil or criminal, does not
3 affect pending actions, rights, duties, or liabilities founded thereon,
4 or alter, discharge, release or extinguish any penalty, forfeiture, or
5 liability incurred under the repealed or amended law, unless the
6 repealed or amended provision shall so expressly provide. After
7 the effective date of this act, all laws repealed or amended by this
8 act must be taken and treated as remaining in full force and effect
9 for the purpose of sustaining any pending or vested right, civil
10 action, special proceeding, criminal prosecution, or appeal existing
11 as of the effective date of this act, and for the enforcement of
12 rights, duties, penalties, forfeitures, and liabilities as they stood
13 under the repealed or amended laws.

14
15 SECTION 5. If any section, subsection, paragraph, subparagraph,
16 sentence, clause, phrase, or word of this act is for any reason held
17 to be unconstitutional or invalid, such holding shall not affect the
18 constitutionality or validity of the remaining portions of this act,
19 the General Assembly hereby declaring that it would have passed
20 this act, and each and every section, subsection, paragraph,
21 subparagraph, sentence, clause, phrase, and word thereof,
22 irrespective of the fact that any one or more other sections,
23 subsections, paragraphs, subparagraphs, sentences, clauses,
24 phrases, or words hereof may be declared to be unconstitutional,
25 invalid, or otherwise ineffective.

26
27 SECTION 6. This act takes effect upon approval by the Governor.

28 ----XX----

29



381 S.C. 557
Court of Appeals of South Carolina.

STATE of South Carolina, Respondent,
v.
Berry Scott BOLIN, Appellant.

No. 4497. | Heard Jan. 21, 2009. | Decided Feb. 5,
2009.

Synopsis

Background: Defendant was convicted by jury in the Circuit Court, York County, John C. Hayes, III, J., of voluntary manslaughter, assault and battery of a high and aggravated nature, and discharging a weapon into an occupied vehicle. Defendant appealed.

[Holding:] The Court of Appeals, Pieper, J., held that the Protection of Persons and Property Act did not apply retroactively to require jury instructions on self-defense presumptions.

Affirmed.

West Headnotes (3)

[1] Statutes
Presumptions

Where the legislative intent is not clear, courts adhere to the presumption that statutory enactments are to be given prospective rather than retroactive application.

1 Cases that cite this headnote

[2] Statutes
Remedial, Ameliorative, and Curative
Statutes
Statutes
Statutes Relating to Remedies and Procedures

The exception to the presumption of prospective

operation of a statute arises when the statute is remedial or procedural in nature.

[3] Homicide
Constitutional and Statutory Provisions

The Protection of Persons and Property Act could not be applied retroactively, and therefore, defendant, whose charged criminal acts including voluntary manslaughter occurred four months prior to the Act's effective date, was not entitled to jury instruction on presumptions set forth in the Act, specifically, for purposes of self-defense, that one is presumed to have reasonable fear of imminent peril when using deadly force against another unlawfully entering his or her residence, occupied vehicle, or place of business; statutory language indicated that the Act was to have no effect on pending actions, criminal prosecutions, rights, duties, or liabilities, and that all laws repealed or amended by the Act must be treated as remaining in full force and effect. Code 1976, § 16-11-440.

Attorneys and Law Firms

**885 Leland B. Greeley, of Rock Hill, for Appellant.

Attorney General Henry D. McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General S. Creighton Waters, all of Columbia; and Solicitor Kevin S. Brackett, of York, for Respondent.

Opinion

PIEPER, J.

*559 In this criminal matter, Berry Scott Bolin (Bolin) asserts the trial court erred in (1) denying a requested jury charge on certain provisions of the "Castle Doctrine" contained in Section 16-11-440 of the South Carolina

Code, and (2) denying his motion for a directed verdict. We affirm.

FACTS/PROCEDURAL HISTORY

On the night of February 18, 2006, Bolin and several other individuals were guests in the home of Bradley Deal (Deal). Travis Falls (Falls), Holly McCarter (McCarter), Bobby Hovis (Hovis), and two others decided to drive to Deal's home to attack Deal, his brother, and various other people at the home.

Falls, having been released on bond only a few days earlier for charges of assault and battery on Deal, was under a bond provision forbidding any contact with Deal or his home. Despite the bond provision, Falls and the others drove to Deal's home, pulling up on the roadside just past the front of the driveway. Upon Falls' arrival, people began to rush outside of Deal's home, including Bolin. Falls and the others exited the car and proceeded up the driveway. One of the men yelled to start a fight and threw a beer bottle onto the driveway, shattering the bottle. As this was occurring, a fight ensued near the car between McCarter and Lori Moss (Moss), who was also a guest at Deal's **886 home. Falls joined the fight and hit Moss, knocking her to the ground.

As Bolin exited the home, he heard someone yell to get a gun. Bolin went to his truck parked in the yard in front of Deal's home and retrieved a pistol stored in the glove compartment of the truck. Bolin heard gunfire near the car and to his side. Falls and several others ran to their car and got inside. As they entered the vehicle, Bolin heard more shots being fired near the car.¹ McCarter got in the driver's seat with Falls directly behind her while Hovis sat in the rear passenger seat next to Falls.

*560 As the car began to pull away, Bolin and another individual who was standing beside Bolin fired several shots at the vehicle. A bullet of the same caliber as Bolin's pistol shattered the rear window, passed through Falls' wrist and hit Hovis in the head. The car proceeded away from the scene and headed to the Clover Police Department. An ambulance was dispatched and Falls and Hovis were taken to the hospital. Hovis was pronounced dead at the hospital; Falls received treatment and was released.

On May 18, 2006, Bolin was indicted by the York County Grand Jury on charges of murder, assault and battery with intent to kill, discharging a weapon into an occupied vehicle, unlawful possession of a pistol, and possession of a weapon during the commission of a violent offense. The

case was tried before a jury on August 28, 2006. Prior to trial, the court quashed the indictment of unlawful possession of a pistol and the case proceeded on the remaining indictments.

At the close of the State's case, Bolin moved for a directed verdict on all indictments asserting Section 16-11-440(C) of the South Carolina Code. The motion was denied and the case proceeded. Following closing arguments, the court instructed the jury on the law of the case. Although requested by Bolin, the court refused to charge the jury on the presumptions contained in § 16-11-440(A) and (E). The jury returned a verdict finding Bolin guilty of voluntary manslaughter, assault and battery of a high and aggravated nature, and discharging a weapon into an occupied vehicle. Bolin received concurrent sentences of thirty years. This appeal followed.

LAW/ANALYSIS

Bolin asserts the circuit court erred in refusing to instruct the jury on the legal presumptions contained in Section 16-11-440 of the South Carolina Code (Supp.2008), also referred to as the Protection of Persons and Property Act (the Act). Specifically, Bolin asserts that the Act, which codified the common law Castle Doctrine and substantively expanded the law of self defense in this State, should have been applied in the instant case.² We disagree.

*561 The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). Thus, in interpreting statutes, we look to the plain meaning of the statute and the intent of the legislature. *State v. Gaines*, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). A statute's language must be construed in light of the intended purpose of the statute. *Id.* at 33, 667 S.E.2d at 733. Whenever possible, legislative intent should be found in the plain language of the statute itself. *Id.* "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Pittman*, 373 S.C. at 561, 647 S.E.2d at 161 (citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

[1] [2] Where the legislative intent is not clear, we adhere to the presumption that statutory enactments are to be given prospective **887 rather than retroactive application. See *State v. Varner*, 310 S.C. 264, 266, 423

S.E.2d 133, 134 (1992). The exception to the presumption of prospective operation arises when the statute is remedial or procedural in nature. *State v. Davis*, 309 S.C. 326, 334, 422 S.E.2d 133, 139 (1992), overruled on other grounds by *Brightman v. State*, 336 S.C. 348, 352 n. 2, 520 S.E.2d 614, 616 n. 2 (1999). However, as indicated, legislative intent is paramount in determining whether a statute will have prospective or retroactive application. *Jenkins v. Meares*, 302 S.C. 142, 146, 394 S.E.2d 317, 319 (1990).

[3] Turning to the case at bar, the Act went into effect on June 9, 2006, four months after the events leading to the instant matter. Thus, in order for the Act to apply, the legislature must have either intended the Act to be retroactive or, in the absence of such legislative intent, the Act must fall under the exception to the presumption of prospective application by being remedial or procedural. Here, as indicated in this court's recent holding in *State v. Dickey*, 380 S.C. 384, 669 S.E.2d 917 (Ct.App.2008), there is no evidence of legislative *562 intent that the Act be applied retroactively. *Id.* at 405, 669 S.E.2d at 928. In fact, the plain language of the Act specifically indicates the legislature's intent that the Act be applied prospectively. *Id.* Section 4 of the Act expressly provides:

The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the

effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

2006 S.C. Act No. 379 § 4. By stating that the Act is to have no effect on pending actions, criminal prosecutions, rights, duties, or liabilities, and that all laws repealed or amended by the Act must be treated as remaining in full force and effect, the clear language of the Act indicates that it is prospective. *Dickey*, 380 S.C. at 405, 669 S.E.2d at 928. Thus, because the legislature clearly and unambiguously specified the Act be applied prospectively, the Act cannot be applied retroactively to Bolin's case.³ See *id.* (holding retroactive application of the Act to prosecution that was pending before the effective date of the Act was precluded because the Act is prospective). Therefore, the trial court committed no error in refusing the requested charge.

Because we find the Act does not retroactively apply to Bolin's case, we need not address Bolin's remaining argument concerning the court's refusal to direct a verdict based upon § 16-11-450 of the Act. Additionally, counsel withdrew this *563 ground of appeal at oral argument and proceeded only with the jury charge issue.

CONCLUSION

Accordingly, for the foregoing reasons, the order of the circuit court is **AFFIRMED**.

WILLIAMS and GEATHERS, JJ., concur.

Parallel Citations

673 S.E.2d 885

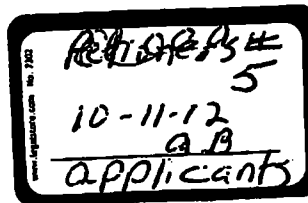
Footnotes

- 1 At oral argument, Bolin's counsel acknowledged that the record contained no evidence Bolin saw gunfire or gun smoke coming from the car; the record only suggests Bolin heard gunfire.
- 2 Bolin requested the jury to be charged on § 16-11-440(A) and (E) based on the assumption that pursuant to § 16-11-440(E), the aggressor intended to commit an unlawful act and that pursuant to § 16-11-440(A), Bolin was, therefore, acting within reasonable fear of imminent peril of death or great bodily injury to himself or another. See S.C.Code Ann. § 16-11-440(A), (E) (Supp.2008).

- 3 Given that the legislature clearly specified the Act to apply prospectively, we need not determine whether the Act is remedial or procedural in nature. Notwithstanding, *Dickey* resolved this issue by holding the Act is neither remedial nor procedural. *Dickey*, 380 S.C. at 405, 669 S.E.2d at 928.

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

) IN THE COURT OF GENERAL SESSIONS

State of South Carolina,)

vs.)

Berry Scott Bolin,)

Defendant.)

**MOTION TO QUASH INDICTMENTS
AND CEASE PROSECUTION PURSUANT
TO THE "PROTECTION OF PERSONS
AND PROPERTY ACT"**

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COUNTY, SC

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NOW COMES the Defendant, Berry Scott Bolin, by and through undersigned counsel of record, and moves the Court for an Order quashing indictments 2006-GS-46-1595 (Murder), 2006-GS-46-1596 (Assault and Battery with Intent to Kill), 2006-GS-46-1597 (Possession of a Firearm During the Commission of a Violent Offense), 2006-GS-46-1598 (Assault with Intent to Kill), 2006-GS-46-1599 (Assault with Intent to Kill), 2006-GS-46-1600 (Discharging a Firearm into an Occupied Vehicle), and 2006-GS-46-1601 (Possession of Pistol by Person Under 21 Years of Age) and requiring the State to cease and desist in its criminal prosecution of the Defendant.

Pertinent Facts

On February 18, 2006, Berry Scott Bolin, age 19, was an invited guest at the residence of Jonathan and Ricky Deal, located at 1123 Lawrence Road, Clover, South Carolina. A party was occurring at the residence attended by many people from the age of 16

and older.

At or about midnight, one or more cars came to the site of the party. In one of the cars were Travis Falls, Michael Hubbard, Bobby R. Hovis, III, Kenneth Norris, and Holly McCarter. Four days prior to this incident, Travis Falls had been released on bond from the York County Detention Center after being arrested for Assault and Battery of a High and Aggravated Nature arising from his, and others, beating of Jonathan Deal. The purpose of their arrival at the property was to fight. After initially performing a drive by, they turned around and returned to the property, and exited the vehicle, making threats, and moved onto the property. Confrontations and assaults occurred during this time. Gunfire erupted. The passengers from the car, returned to the car, and muzzled flashes from the car were seen.

The car was struck by two different types of bullets: 45 caliber; and 9mm. Travis Falls was struck in the wrist and Bobby R. Hovis, III was struck in the back of the head. Mr. Hovis subsequently died from the wound. The State believes the same bullet, a 45 caliber, struck Falls first, and then Hovis.

It is alleged that Mr. Bolin was in possession of a 45 caliber pistol and fired the gun.

On May 18, 2006, the York County Grand Jury returned an indictment (2006-GS-46-1600) against Mr. Bolin for a violation of 16-23-30(e), alleging that "Berry Scott Bolin did in York County, South Carolina, on or about February 18, 2006, unlawfully and knowingly have in his possession a pistol while being under Twenty-one (21) years of age, all in violation of Section 16-23-30, Code of Laws of South Carolina, (1976), as amended."

Discussion

Section 16-11-410, et seq., Code of Laws of South Carolina, was recently passed into

law by the South Carolina General Assembly in June of this year. The law is entitled the Protection of Persons and Property Act. The intent of the act is to provide to citizens of this State assurance that they will be allowed to protect both property and/or persons through the use of force, up to and including deadly force, without having to suffer either criminal prosecution by the State nor a civil lawsuit arising from the facts of the case.

This purpose is first emphasized in subsections (B) and (C) of Section 16-11-420 wherein each state:

The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others. See Section 16-11-420 (B) and,

The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed. See Section 16-11-420.

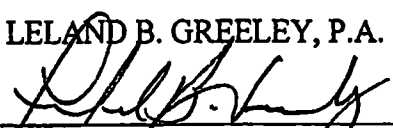
Section 16-11-450 (A) provides, "A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution..."

In the current case, Berry Scott Bolin has been suffering criminal prosecution from February 18, 2006 until the present. This act was effective June 9, 2006, during the pendency of this prosecution. Given the facts of this case, the Defendant is entitled to protection under this act.

Therefore, Defendant requests the Court quash the above-referenced indictments and order the State to cease and desist in the prosecution of criminal charges arising from this incident, or in the alternative, have a full evidentiary hearing before the Court for such determination to be made.

Respectfully submitted,

LELAND B. GREELEY, P.A.

By: 

Leland B. Greeley, Esquire

128 East Main Street, Suite 102

Post Office Box 2981 CRS

Rock Hill, South Carolina 29732

(803) 329-0088

Attorney for the Defendant

Rock Hill, South Carolina

August 17, 2006

Section 16-11-410. This article may be cited as the 'Protection of Persons and Property Act'.

Section 16-11-420. (A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.

(B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.

(C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

Section 16-11-430. As used in this article, the term:

(1) 'Dwelling' means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.

(2) 'Great bodily injury' means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(3) 'Residence' means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(4) 'Vehicle' means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

Section 16-11-440. (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or

(2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or

great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

(D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

(E) A person who by force enters or attempts to enter a dwelling, residence, or occupied vehicle in violation of an order of protection, restraining order, or condition of bond is presumed to be doing so with the intent to commit an unlawful act regardless of whether the person is a resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder.

Section 16-11-450. (A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

(B) A law enforcement agency may use standard procedures for investigating the use of deadly force as described in subsection (A), but the agency may not arrest the person for using deadly force unless probable cause exists that the deadly force used was unlawful.

(C) The court shall award reasonable attorneys' fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of a civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (A).

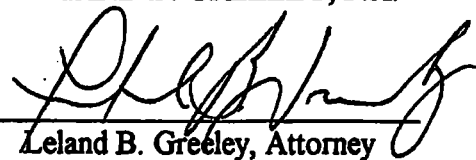
CERTIFICATE OF MAILING

The undersigned hereby certifies that he is the attorney for Berry Scott Bolin in the within matter and that the within MOTION TO SEQUESTER WITNESSES, MOTION FOR LYLE DISCLOSURE, MOTION TO SUPPRESS AND REQUEST FOR HEARING, MOTION TO QUASH INDICTMENT DUE TO UNCONSTITUTIONALITY OF STATUTE, and MOTION TO QUASH INDICTMENT AND CEASE PROSECUTION PURSUANT TO THE "PROTECTION OF PERSONS AND PROPERTY ACT" were served upon the Attorney for South Carolina by **HAND DELIVERY** to the below office:

The Honorable Thomas E. Pope, Solicitor
Sixteenth Judicial Circuit
1675-1A York Highway
York, South Carolina 29745-9463

August 17, 2006

LELAND B. GREELEY, P.A.

By: 

Leland B. Greeley, Attorney
Post Office Box 2981 CRS
Rock Hill, South Carolina 29732
(803) 329-0088

RECEIVED
2006 AUG 17 PM 12:46
CLYDE HILTON
AUG 17
COUNTY, SC

Thompson, Willy

From: Wilkerson, Jennifer
Sent: Wednesday, March 08, 2006 10:37 AM
To: Collins, Merry
Subject: Call Leland Greeley

Leland needs to get an ok from Willy for Scott Bernard to take photos of the car involved in the Bolin shooting. Leland's # 329-0088



Thompson, Willy

From: Thompson, Willy

Sent: Thursday, April 27, 2006 11:38 AM

To: tamckinney@rhtc.net; lgreeley@lbgreeleylaw.com

Cc: Pope, Tommy; Collins, Merry; Neil, Chuck; Parrish, Martha

Subject: Bolin/Owens shooting

Leland and Tom,

I scheduled the trial for Berry Bolin and Ronald Owens for the June 5, 2006 term of court. I have checked with SLED and the ballistics should be done mid-May. I would like to discuss plea options with both of you by the end of next week. I look forward to working with you.

Sincerely,

Willy Thompson

4/27/2006

Thompson, Willy

From: Thompson, Willy
Sent: Thursday, May 04, 2006 11:50 AM
To: lgreeley@lbgreeleylaw.com; tamckinney@rhtc.net
Cc: Collins, Merry; Pope, Tommy; Parrish, Martha; Neil, Chuck
Subject: Bolin/Owens

Leland and Tom,

I am sending the indictments on Mr. Bolin and Mr. Owens to Grand Jury on the 18th of this month. As you know, Mr. Owens used to be a member of the Grand Jury until his arrest on these charges. In order to be sure that the remaining members of the Grand Jury have no bias for or against either of your clients, Judge Alford will be addressing the Grand Jury before they begin on May 18, 2006. Judge Alford plans to put each Grand Juror under oath and ask if their relationship with Mr. Owens will affect them in carrying out their duties as a Grand Juror. I am notifying both of you in order to afford you the opportunity to attend. Judge Alford plans to begin this process at 8:30 AM on May 18, 2006.

After discussing trial dates with Leland, I would like to set the trial date for these defendants for August 28, 2006. Tom, please check your calendar to be sure that this date will work for you, also. I hope to have plea offers very soon for each of your clients.

I look forward to dealing closely with both of you on this case.

Sincerely,

Willy Thompson

Thompson, Willy

From: Thompson, Willy
Sent: Thursday, June 01, 2006 5:15 PM
To: 'Leland B. Greeley'
Cc: Collins, Merry
Subject: Berry Bolin

Leland,

I received the SLED ballistics report and it confirms my point of view. When you read it, you may have a different opinion.

The bullet recovered from the victim's head was unsuitable for identification with a particular firearm. However, I spoke with the forensic scientist at SLED who examined it and he tells me that the "bullet core" is in every respect consistent with your client's .45. Conversely, the bullet core is in every respect inconsistent with a 9 mm.

There is more about the report I would like to discuss with you, but I will wait until you have had a chance to review it. It is not scanned into our computer system yet so I have not attached it. Merry should have it to you by the end of the day tomorrow.

I will take this opportunity to give you the following offer: I am willing to reduce the murder charge to voluntary manslaughter if Mr. Bolin will plead straight up to it and the other charges he currently faces. If he accepts, he would plead (guilty, no contest, or Alford) to voluntary manslaughter, assault and battery with intent to kill, two counts of assault with intent to kill, discharging a firearm into an occupied vehicle, possession of a pistol by a person under 21 years of age, and possession of a firearm during the commission of a violent crime. This would allow you to argue for a lower sentence with only a small mandatory minimum while we argue for more.

Let me know your thoughts on the matter. I look forward to hearing from you.

Sincerely,

Willy Thompson

6/1/2006

Thompson, Willy

From: Thompson, Willy
Sent: Friday, June 02, 2006 3:24 PM
To: tamckinney@rhtc.net
Cc: Collins, Merry
Subject: St. v. Owens

Tom,

I received the SLED ballistics report. There are no surprises. Merry Collins will email the report to you within the next couple of days. I have spoken to the forensic scientist at SLED who examined the evidence and I will be happy to tell you his comments. When I received the report, I realized the five 9 mm shell casings that were recovered at the scene were not sent with everything else. I have corrected that and SLED should have some results regarding them in the next couple weeks.

In the SLED report, item # 8 (a lead fragment and bullet jacket fragment recovered from the inside of the front passenger door at the rearview mirror) and item # 10 (a fired bullet or bullet fragment recovered from the right front passenger door inside the frame) were determined to be fired from the same gun and are consistent with being a 9 mm Luger bullet. They were not fired by Mr. Bolin's .45.

I would also like to take this time to relay the following offer: If Mr. Owens would plead guilty (including no contest and Alford) as charged to four counts of assault with intent to kill and one count of discharging a firearm into an occupied vehicle, the State would recommend a cap of 20 years. It is important to remember that his charges are non-violent and he would be eligible for parole.

I hope to have more discovery to you from the YCSD by the end of next week. As soon as I receive it, I will pass it on.

I look forward to discussing the case with you. Have a good weekend.

Sincerely,

Willy Thompson

6/2/2006

Collins, Merry

From: Thompson, Willy
Sent: Monday, August 21, 2006 10:29 AM
To: 'Leland B. Greeley'; tamckinney@rhtc.net
Cc: Pope, Tommy; Collins, Merry; Parrish, Martha; Thompson, Willy
Subject: Witness Statements

Leland and Tom:

In the last couple of weeks as I interviewed potential witnesses in the Bolin/Owens case a number of them have deviated from their original statements to law enforcement. A summary of the key changes are as follows:

Michelle Barfield—Lee Owens was bragging about being in a fight earlier that night, she heard about 20 gunshots, she did not see what happened and Berry did not tell her that night what had happened. She said Berry Bolin has since told her that all his shots went up in the air because of the recoil from his gun and that Owens was shooting on his right and some unknown person was shooting on his left. Michelle is Berry's fiancée.

Eric Brown—He now identifies the shooter from the second car as Jeff Buck, but he says he did not see his gun, he only saw fire coming from his fingers. Lee Owens chased the 1st car (with Travis Falls) while shooting at it and Berry Bolin shot from in the yard. Thinks first car fired as well. At end of interview he said he never saw Jeff Buck.

Brad Deal—He is positive that only one car drove up to the house, but he thinks shots came from that car.

Samantha Eason—She asked to give a new statement which she did and we included it in the last batch of discovery. Please be aware that her story constantly changes each time she is asked to tell it.

Tonya Humphries—She now says there was a second car but it faced toward 161 (not 321) and it left toward 161. She thinks she may have seen fires coming out of one of the cars, but she thought it all sounded like fireworks.

Laurie Moss—She now says there was a second car and someone fired shots from the back passenger window. She said no one fired shots from the 1st car (the one with Bobby). Second car was an SUV and fired 15 to 20 shots. Lee has been to her house and asked her to say she did not see him shoot. She came to YCSO to take a polygraph test, but she did not take the test. Instead, she told us she really did not know if there was a second car but the other witnesses were trying to get her to say there was. She said the only shots she saw fired were from Berry Bolin and Lee Owens.

~~William "Demi" Powell—He came outside before the shooting started but after the fighting stopped. He saw two cars. He picked up Laurie and carried her up the driveway. At that point he heard shots but he does not know where they came from. He heard more than three shots but less than 10.~~

Please note that some of these witnesses have been scheduled for polygraph test and have not shown up. Also, few of them came in for interviews. We had to track many of them down. I will keep you updated with any other witness statement changes.

Willy Thompson

8/21/2006

Thompson, Willy

From: Thompson, Willy
Sent: Thursday, August 24, 2006 5:30 PM
To: tamckinney@rhtc.net; lgreeley@lbgreeleylaw.com
Cc: Collins, Merry; Thompson, Willy; Parrish, Martha
Subject: Bolin statement

This is to make sure we continue to comply with discovery.

Officer White was waiting near Mr. Bolin's residence when Bolin came home. He asked Berry Bolin if he was at the party on Lawrence Road and Berry said, "No." Officer White then asked Berry if he would come to CPD and he said sure and got back into his truck and went to CPD.

Thanks, Willy Thompson

8/27/2006

Thompson, Willy

From: Le'and B. Greeley [lgreeley@lbgreeleylaw.com]
Sent: Thursday, August 24, 2006 10:01 PM
To: Thompson, Willy; tamckinney@rhtc.net
Cc: Collins, Merry; Parrish, Martha
Subject: RE: Bolin statement

Thanks Willy. I know of that one.

From: Thompson, Willy [mailto:Willy.Thompson@yorkcountygov.com]
Sent: Thursday, August 24, 2006 5:30 PM
To: tamckinney@rhtc.net; lgreeley@lbgreeleylaw.com
Cc: Collins, Merry; Thompson, Willy; Parrish, Martha
Subject: Bolin statement

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Thanks, Willy Thompson

Thompson, Willy

From: Thompson, Willy
Sent: Friday, August 25, 2006 9:22 AM
To: lgreeley@lbgreeleylaw.com; tamckinney@rhtc.net
Cc: Collins, Merry; Pope, Tommy; Parrish, Martha; Thompson, Willy
Subject: Bolin Statement

Wayne Smith with FSU will testify that when he was at CPD he spoke with Berry Bolin. Berry told the detective interviewing him and Wayne Smith that he had a .45 pistol and that it was in the glove box of his truck. They asked if they could retrieve it and Bolin said yes. When they found no pistol in his truck Bolin said someone must have taken it.

I found out Phillip Jamison (YCSD) has not left for Iraq, yet. He is in Mississippi and his Commanding Officer has been kind enough to let him fly back here to testify. He will be here on Monday for the Deno hearing.

If you need to contact me this weekend, I will be staying close by my cell phone 803-984-1203.

Thanks, Willy Thompson

8/27/2006

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Presiding Circuit Court Judge

Docket No. 2010-CP-46-0436

Berry Bolin, ... Appellant.

v.

State of South Carolina, ... Respondent,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 4, 2014

T. Micah Leddy
The Leddy Law Firm, LLC.
2008 Lincoln Street
Columbia, SC 29201
micah@leddylaw.com
(803) 779-9966
(803) 753-0837 (fax)
Attorney for Appellant

Other Counsel of Record:
Salley W. Elliott, Esquire
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Berry Bolin,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-46-0436

PRIVILEGE LOG

SIXTEENTH CIRCUIT SOLICITOR'S OFFICE



Applicant, Berry Bolin, requests the files of the Sixteenth Circuit Solicitor's Office related to Travis Falls and Berry Bolin in a motion for leave to conduct limited discovery in Applicant's Post Conviction Relief action. The Sixteenth Circuit Solicitor's Office fully complied with the discovery requests from Berry Bolin during the original trial of his case. Any further discovery is unnecessary, irrelevant and improper. Any items not provided in the original discovery are not subject to discovery for various reasons including the work product exception. The following files/documents are in the possession of the Sixteenth Circuit Solicitor's Office:

BOX LABELLED "Hovis-Falls Discovery Box"

1. A folder containing discovery pages 1 to 512 and signed paperwork acknowledging receipt of the discovery by representatives of the defendants Barry Scott Bolin and Ronald Lee Owens.
2. A smaller box containing numerous photo, audio and video disks, two audio cassette tapes and various photographs. All of these items were handed over in discovery to Barry Scott Bolin and Ronald Lee Owens.
3. Handwritten note by Investigator Merry Collins indicating Attorney Michah Leddy viewed the contents of this discovery box on September 22, 2011.

BOX LABELLED "Box 1 of 3, Hovis-Falls, St v Bolin & Owens, Murder"

4. The contents of Solicitor Tommy Pope's trial notebook. This contains documents handed out in discovery and the handwritten and typed notes of Solicitor Pope.

5. A folder containing the notes taken during trial for the State by Solicitor's Office Investigator Merry Collins. This folder contains various email correspondences and miscellaneous work product information.
6. A transcript of the arraignment of Berry Scott Bolin dated May 22, 2006.
7. A file containing various papers regarding Berry Scott Bolin's representation, discovery motions, warrants and tracking sheets.
8. An expanding folder containing many handwritten notes by Solicitor's Office Investigator Martha Parrish. These notes were taken at the request of Deputy Solicitor Willy Thompson during interviews of potential witnesses by both Martha Parrish and Willy Thompson in preparation for trial. This folder also contains subpoenas, witness rap sheets and other miscellaneous paperwork.
9. An expanding folder containing the following: legal motions, handwritten and typed notes regarding potential witness information made by the Solicitor's Office in preparation for trial, subpoenas, and jury lists with Solicitor's Office notes and comments.

BOX LABELLED "Hovis-Falls, Box 2 of 3"

8

10. A notebook containing the York County Detention Center records of Berry Bolin and Lee Owens.
11. A folder containing legal motions and correspondences.
12. A folder containing witness rap sheets.
13. A folder containing victim notification information, copies of mugshots of potential witnesses, copies of DMV photographs/driving records of potential witnesses, and various other miscellaneous papers/notes.
14. Several extra copies of various computer disks containing photographs, video and audio related to the case. (These disks are extra copies of some of the disks in the discovery box).

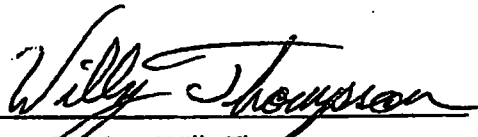
BOX LABELLED "Hovis-Falls, Berry Bolin, Box 3 of 3"

9

15. The contents of Deputy Solicitor Willy Thompson's trial notebook. This contains documents handed out in discovery and the handwritten and typed notes of Deputy Solicitor Thompson.
16. An expandable folder containing legal research and legal motions.
17. An expandable folder containing summaries and statements of various witnesses taken by law enforcement and previously turned over in discovery. This folder also contains the rap sheets of the witnesses.

18. A folder containing legal correspondences between the State and the Defense (Bolin and Owens).
19. A folder containing a copy of the paperwork on warrant J-160582 for ABHAN against Travis Falls including copies of the letters conflicting this charge to the Attorney General's Office.
20. A folder containing a copy of the paperwork on warrant J-210472 for Common Law Robbery against Travis Falls. This charge occurred after the trial of the defendant Berry Bolin.
21. A folder containing the handwritten notes of Deputy Solicitor Willy Thompson and some handwritten notes of Solicitor's Office Investigator Martha Parrish.
22. A folder containing miscellaneous court paperwork regarding Ronald Lee Owens.
23. A folder containing the polygraph report on Eric Brown.
24. A folder containing various charge requests by the State and the Defense.
25. A folder containing various potential witness lists.
26. A folder containing various witness rap sheets.
27. Several extra copies of various computer disks containing photographs, video and audio related to the case. It also contains two extra copies of audio cassettes related to the case. (These disks and cassettes are extra copies of some of the disks and cassettes in the discovery box).
28. Several audio disks of some of Berry Bolin's "jail" telephone calls.
29. The prosecution file on Travis Falls for Possession of Codeine with the arrest date of November 23, 2002. This case was prosecuted in 2003 some 3 years prior to Berry Bolin's arrest and is not related to Bolin's case.

The Sixteenth Circuit Solicitor's Office reserves the right to add other items to this list and the absence of a document from this list does not constitute a waiver of any privilege applicable to that document.

By: 
Deputy Solicitor Willy Thompson
Sixteenth Circuit Solicitor's Office

July 13, 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Presiding Circuit Court Judge

Docket No. 2010-CP-46-0436

Berry Bolin, ... Appellant.

v.

State of South Carolina, ... Respondent,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 9, 2014



T. Micah Leddy
The Leddy Law Firm, LLC.
2008 Lincoln Street
Columbia, SC 29201
micah@leddyllaw.com
(803) 779-9966
(803) 753-0837 (fax)
Attorney for Appellant

Other Counsel of Record:
Salley W. Elliott, Esquire
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
Attorney for Respondent