

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Charleston County, S.C. Supreme Court

J. C. Buddy Nicholson, Jr., Circuit Court Judge

BERNARD O. GILLIARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000193

APPENDIX

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1 Q: You chose.

2 A. Before I went over there. I told you the man
3 threatened me, man. The man threatened me. I was not
4 going to go around him without a gun. You feel me?

5 Q. Exactly.

6 A. Yeah.

7 Q. You did all those. You put the gun on yourself.
8 You willingly went to talk to Vincent about this drug
9 debt. You knew it was unlawful to put --

10 THE COURT: Ask one question at a time. Let
11 him answer before you go on to your next question. Which
12 one of those do you want him to answer?

13 BY MR. DuRANT:

14 Q. I think you've already answered it, actually.

15 A. Yeah. I been answering it, man.

16 Q. So let's talk about once you get there, okay?

17 A. Yeah.

18 Q. You said you're on the street, on Clovewood, for
19 about five minutes. That is a question.

20 A. I never said how long I was on there, man.

21 Q. How long were you there?

22 A. I couldn't really tell. I don't remember.

23 Q. I thought you said you were there for five
24 minutes, but --

25 A. When I said that?

1 Q. I thought you said on direct examination.

2 A. Oh, I ain't remember saying how long I been on
3 that street.

4 Q. And I thought you said you made sure that you were
5 right there by the cut so you could kind of get this over
6 with and go down the cut and leave?

7 A. Yeah, I did. I did say that.

8 Q. So you were there for at least a little bit of
9 time before Vincent came down the street?

10 A. Yeah. I was there before him. Now, I don't know
11 how long, but I was there before him.

12 Q. And then he came down the street.

13 A. Yes, sir, he did.

14 Q. And he stopped and talked to you.

15 A. He stopped, yeah. He stopped and he talked to me.

16 Q. And the only people who were there at that car
17 were you and Vincent?

18 A. Yes, sir.

19 Q. At that time?

20 A. Yes, sir.

21 Q. And it's your testimony that he had a gun on the
22 front passenger seat?

23 A. Yes, sir, he did.

24 Q. And it's your testimony that he made a movement?

25 A. He reached for the pistol, sir.

1 Q. He reached for the pistol?

2 A. Yeah. I know what I said in the statement, and I
3 reiterated why some -- the statement might have -- not
4 direct --

5 Q. Right?

6 A. Same facts being that I was under fatigue, running
7 from the police, tired, ready to get it over with.
8 Everything might not be directly on point, so yeah.

9 Q. Well, it is a little different, isn't it?

10 A. I mean, yeah. Because I said slight movement, but
11 I never really went into the detail what a slight
12 movement was. The slight movement was body shifting
13 changes to grab that pistol. I don't know whether it was
14 right or left hand, but he reached for the pistol, sir.

15 Q. You said, I think, in your second page -- you have
16 got your statement in front of you? Second page, I
17 think, it's eight lines up from the bottom, that is where
18 you describe this so-called movement. Right?

19 A. Oh, yeah, yeah, yeah, yeah.

20 Q. I noticed a slight change in his body movement,
21 and I reacted by shooting him before he shot me?

22 A. That's what I said.

23 Q. Slight change in body movement?

24 A. That is the wrong wording right there. Slight,
25 that is the wrong word because you're probably thinking

1 slight, like you know what I mean --

2 Q. There was a big movement, he went to reach for the
3 gun?

4 A. He reached for the gun. If you want to call that
5 a big movement, left or right hand, he reached for the
6 gun.

7 Q. So you don't know?

8 A. I mean, I know he reached for the gun. I don't
9 know if he reached with his left or his right hand.
10 That's what I don't know. I don't remember, but I know
11 he reached. I've explained that up and down. Your
12 forensic lady was telling you. I don't know a person get
13 up under you or shoot down, but change in the body
14 movement, you remember that? Remember the shots on the
15 shoulder?

16 Q. I do.

17 A. Yeah, yeah, yeah, yeah. That's -- that is where
18 that came from.

19 Q. So you don't know if he reached with the right or
20 left hand?

21 A. No, I don't know if he reached with the right or
22 the left hand.

23 Q. Because I think on direct examination Mr. Bosnak
24 was sitting in a chair, and he went like this to show how
25 he reacted to take your money (indicating).

1 A. Yeah.

2 Q. And then he went like this to reach for how you
3 described his reaching for the gun; is that right?

4 A. Yes, sir.

5 Q. So with this left hand.

6 A. I mean, I tell you, I don't remember. I don't
7 remember the right or the left. I don't remember. It
8 could have been the left.

9 Q. You just reacted by shooting him.

10 A. When he reached for that pistol, when his hand
11 touched that pistol, I shot him.

12 Q. What hand touched the pistol?

13 A. Man, I just told you. I don't remember. I know I
14 just told you.

15 Q. That's important, though. You don't know if it
16 was the left or the right?

17 A. I told you I don't know. I told you that.

18 Q. Well -- this is a picture from the autopsy.

19 A. Yes, sir.

20 Q. And, obviously, you were the one who made those
21 bullet wounds in Mr. Wittrell.

22 A. Oh, I did.

23 Q. And those are on his left-hand side.

24 A. Yes, sir.

25 Q. Pretty much right on him, right?

1 A. Yes, sir.

2 Q. Right on his chest; is that right?

3 A. Right on his chest -- what you mean?

4 Q. I mean, it's right on him, right?

5 A. It's on --

6 Q. It's not on his side --

7 A. It's on his body, man. What other three holes at?

8 There is three other holes.

9 Q. There is some other holes on his back?

10 A. Yeah, yeah, right here?

11 Q. Yeah.

12 A. Right, right, right, right.

13 Q. All right. So was your gun inside or outside the
14 car when you fired?

15 A. I couldn't even tell you that, sir. All I know is
16 I whipped it out and I shot.

17 Q. And you kept shooting.

18 A. Yeah. My main objective was to stop him from
19 shooting me, you know, and I couldn't tell you.

20 Q. And so you unloaded your pistol.

21 A. Yes, sir.

22 Q. Right?

23 A. Yes, sir.

24 Q. And you didn't take the gun off of Vincent?

25 A. No. I ain't take no gun from no scene. From the

1 gun he had? I didn't take it.

2 Q. And then you ran off a little bit?

3 A. Yes, sir, I did.

4 Q. And then you ran back to the car?

5 A. Well, yes, sir, I did.

6 Q. And you took money.

7 A. The money I just gave him.

8 Q. Which wasn't yours anymore according to you
9 because you just gave it to him.

10 A. I mean -- you could say that. You could say that.

11 Q. Well, I don't know. Maybe the difference between
12 robbing and stealing, according to you.

13 A. You could say that.

14 Q. So you ran back to the car that Vincent still had
15 a gun in.

16 A. Yes, sir.

17 Q. But you've already unloaded your weapon, according
18 to you.

19 A. Yes, sir.

20 Q. And you grabbed the money?

21 A. Yes, sir, my money.

22 Q. And you took off?

23 A. I ran.

24 Q. Gone. There were other people out there, right?

25 You saw people come?

1 A. Listen, that is what I told you in the statement
2 earlier. I ain't seen nobody else out there. I saw one
3 white dude. I lied. I saw one white dude standing up at
4 the street like this here toward the basketball goal.
5 That's who I saw. That lady, she lied. Ain't nobody
6 been running, coming at me, the short time I been out
7 there. I ain't see nobody else.

8 Q. So you say you left the gun in the car?

9 A. Yeah, I ain't touch that gun.

10 Q. And then you ran. Right?

11 A. Yes, sir.

12 Q. Got away from the scene. You even went back to
13 the car, the gun still in, and you ran.

14 A. Yes, sir.

15 Q. And you are a smart guy?

16 A. Yeah, I'm smart. I ain't going to tell you I'm
17 dumb.

18 Q. And when they caught you at the Days Inn, you knew
19 you were going to jail.

20 A. Oh, yeah. I knew I was going to jail.

21 Q. You knew your goose was cooked?

22 A. No. I ain't going to say I knew my goose been
23 cooked because I ain't done nothing wrong. I did what I
24 had to do.

25 Q. If you did nothing wrong, why did you run?

1 A. Because -- I would have had to prove that where
2 I'm at right now, you know what I mean? Whether I did
3 wrong or not, and I was going to run. That is my
4 natural -- you know, police coming after you. You run.
5 I wasn't going to sit there until they came, and I didn't
6 know who was around, who would have come and tried to
7 retaliate. I didn't know who was around, so I
8 immediately fled the area.

9 Q. So you caught a ride with a sale?

10 A. Yes, sir.

11 Q. Who was on the next street?

12 A. Yes, sir.

13 Q. Recent sale?

14 A. I mean, he was just driving down the street, man.
15 He was just there when I needed him.

16 Q. And he took you out of there?

17 A. He got me on out of there.

18 Q. What was his name?

19 A. I want to say Jeff. You know, we can look at the
20 paper and see what I wrote. I think that boy named Jeff,
21 man, with the little white Corolla, you know? Yeah, that
22 been Jeff.

23 MR. DuRANT: Your Honor, if we could now have
24 the defendant step down for a demonstration.

25 THE COURT: All right. Step down, please.

1 BY MR. DuRANT:

2 Q. Sit down please. Okay. I would like for you to
3 be Vincent Wittrell, okay?

4 A. That's cool.

5 Q. And I'm you.

6 A. Yeah.

7 Q. How is Vincent when you approach him?

8 A. I think a little closer than that.

9 Q. A little closer like this?

10 A. Something along that lines right there, yeah.

11 Q. Now, you're bending down?

12 A. No, I ain't bending down.

13 Q. You weren't bending down.

14 A. No.

15 Q. How tall are you?

16 A. Six four and a half.

17 Q. So you came up to the passenger seat about, like
18 right -- I mean, to the driver's seat, like right here?

19 A. About right there.

20 Q. About right there?

21 A. Yeah.

22 Q. And Vincent is leaning out towards the window?

23 A. He leaning up on the window like this, pointing at
24 me. That is when we first started talking. When he
25 reached, he went like this, or he went over there like

1 that.

2 Q. And you say you saw a gun on the passenger seat?

3 A. That's right.

4 Q. Being six four, leaning in the car?

5 A. Yes, sir. We don't know how high the car is now,
6 this chair now, you feel me.

7 Q. Yeah.

8 A. But that I see what you're getting at. I probably
9 ain't been the exact mark where I been at, but I'm tall
10 enough to see in the car, you know what I mean? I could
11 have saw the pistol when I first walked up on the car. I
12 saw the pistol on the seat.

13 Q. Because you're a smart guy, right?

14 A. Come on man, come on. Yeah, I'm smart.

15 Q. So you're up at the car, and Vincent is leaning
16 in?

17 A. He leaning in? He in the car.

18 Q. He's leaning in -- he's leaning in toward you?

19 A. Yeah. When we first start talking he did.

20 Q. How long does this conversation last?

21 A. Man, probably about 15 seconds or something
22 because they just like, what's up?

23 Q. Very quickly, isn't it?

24 A. Not no (snaps).

25 Q. No?

- 1 A. No.
- 2 Q. So you say you gave him the money?
- 3 A. I gave him the money.
- 4 Q. And you didn't just leave?
- 5 A. No, I ain't just leave him.
- 6 Q. Why not?
- 7 A. Because he still was talking to me.
- 8 Q. And I mean, what happens? What happens next?
- 9 A. When he still talking to me?
- 10 Q. When he's still talking to you.
- 11 A. That is when he made the threat and reached for
- 12 the gun.
- 13 Q. Show us how he reach for the gun?
- 14 A. I'm telling you, man, he either went like this or
- 15 he went like that.
- 16 Q. So you don't know, but you reacted because he
- 17 moved this way?
- 18 A. Verbally, he said, listen, I should make you pay
- 19 me double. As a matter of fact, I should shoot you,
- 20 matter of fact, went like that, so I --
- 21 Q. Where was your gun?
- 22 A. My pocket.
- 23 Q. In your pocket, right pocket?
- 24 A. Right pocket.
- 25 Q. Are you right handed?

1 A. Right hand.

2 Q. You pull the gun out?

3 A. Yes, sir.

4 Q. Did you start shooting?

5 A. Yes, sir.

6 Q. He just turned like that?

7 A. He had his hand physically on the gun. I don't
8 know which hand touched the gun, but he had his hand on
9 the gun.

10 Q. So he went all the way toward the gun. When he
11 touched the gun, you shot him?

12 A. He touched the gun.

13 Q. You just unloaded all of them right there at him?

14 A. I had to. I was scared.

15 Q. Then you ran off?

16 A. Ran off.

17 Q. But then you're thinking there, You know what?
18 There's money over there.

19 A. My money, that I just give him.

20 Q. But you needed money, didn't you?

21 A. Listen, look at me, look at me.

22 Q. I'm just asking you questions. You can answer
23 them.

24 A. I'm talking to you. If I wanted to rob that man
25 and go through all that trouble, I would have got every

1 dollar in that man pocket.

2 Q. You were standing around with all the witnesses
3 coming out?

4 A. It wasn't nobody -- I just shot this man.

5 Q. You didn't have time to stay, did you? You wanted
6 to run because you did run, didn't you? You didn't have
7 time to stick around. You could be caught. There are
8 ten shots out there. Police were on the way.

9 MR. BOSNAK: Your Honor, let him answer --

10 THE COURT: Mr. DuRant, do you need him in
11 that chair anymore?

12 MR. DuRANT: No, Your Honor.

13 THE COURT: All right. Go back to the
14 witness stand.

15 BY MR. DuRANT:

16 Q. You wanted to get out of there, didn't you?

17 A. I mean, yeah.

18 Q. Yeah.

19 A. But that wouldn't have stopped me from getting
20 that money, bro. If that was my intention, get that
21 money, that wouldn't have stopped me from getting that
22 money because I outrun the police in a foot pursuit.

23 That would have been no problem. Ain't nobody out
24 there going to mess with me. They just saw what
25 happened. You can't sit there and tell me them people

1 coming out there trying to play Superman. We all know
2 that ain't true. We know them people ain't come out
3 playing Superman. I ain't seen nobody out there, you
4 know.

5 Q. So you want this jury to believe that nobody out
6 there is going to be messing with you, but you want them
7 to believe that they were going to take this gun out of
8 this car?

9 A. Sir, I don't know what them people had going on.
10 I just know I was on -- I was away. I don't know what
11 they did with that gun, but I know somebody moved that
12 gun.

13 Q. And you knew the police were coming quickly.

14 A. I mean, that is normally what happens when a
15 shooting happens.

16 Q. When a shooting happens, the police start coming,
17 don't they?

18 A. Yeah.

19 Q. Especially when it happens in broad daylight?

20 A. I mean, it don't really matter the time. When the
21 shooting happens, they come.

22 Q. You weren't going to stick around for them, were
23 you?

24 A. No.

25 Q. There wasn't a whole lot of time after you

1 unloaded your gun to stick around, was there?

2 A. I was here, so according to the witness, they say
3 the police took about 15 minutes to get there, so I don't
4 know -- I mean, I ain't got nothing to do with what
5 happened at the crime scene. I already told you what I
6 did. I don't know what happened at the scene. I just
7 know I fled the scene.

8 Q. That's right. I'm just asking you what you were
9 thinking. You knew you had limited time.

10 A. I mean, that wasn't -- I see what you getting at,
11 but if that was my intention on robbing him, sir, it
12 wouldn't have took long to go in that man pocket, man.

13 I went back and ran and got my money off the top
14 of his pocket. It wouldn't have took me long to go in
15 that man pocket.

16 Q. It would have taken time, wouldn't it?

17 A. Sir, it would have take -- about five second.
18 Ain't nobody out there on foot could have catch me, you
19 know what I mean, so I ain't even worry about time
20 consuming.

21 Q. So you can run fast?

22 A. Yeah, fast.

23 Q. And you're just going to take off running in the
24 neighborhood, try to get away?

25 A. That's the only option I had. I didn't come there

1 planned, with no car, no get away car or none of that.

2 Q. Where did your ride pick you up?

3 A. My ride picked me up from gas station.

4 Q. From the gas station?

5 A. No, I'm talking before the incident. Now my ride
6 pick me up from a gas station to take me over there, but
7 the ride pick me up fleeing the scene on the second
8 street.

9 Q. It's conveniently right on the other side of the
10 cut?

11 A. Riding down, yeah.

12 Q. And you got in the car and got out of there?

13 A. Yeah, I had to go, had to go.

14 Q. Had to go. And he just happened to be right there
15 in his car.

16 A. No, he was riding down the street. I had to kind
17 of like run down there and flag him.

18 Q. And say, Let's go, let's go?

19 A. And he stopped and I got in the car. He said,
20 What's up, man?

21 And I said, Let's go. I got this for you. As
22 long as they see that crack, ain't too much talking going
23 on. Where you need me to go, bro?

24 Q. So you can't remember what hand he's reaching for
25 this gun with. We've gone over that a lot of times?

1 A. Yeah, I said that. I can't remember.

2 Q. And you know that Vincent Wittrell was shot
3 through the back of his hand, of his right hand?

4 A. I mean, I noticed that on the thing, but at that
5 time, I didn't know where he got shot at.

6 Q. You know that he was shot through the back of his
7 right hand?

8 A. I mean, I saw --

9 Q. You heard the medical doctor?

10 A. I saw it on the little autopsy thing.

11 Q. You saw it up there?

12 A. Yeah. I saw it up there.

13 Q. And you saw there was no trajectory through the
14 passenger seat?

15 A. Passenger seat, yeah, I saw that.

16 Q. So very unlikely that he was reaching with his
17 right hand.

18 A. I mean, I don't know, sir. I just emptied the
19 gun. I'm not an expert. I ain't certified in, you know,
20 the qualifications you got going on with them people. I
21 don't know. All I know is I -- that's what I did.
22 Because he reached for the gun, whatever hand he chose, I
23 don't remember. You know?

24 Q. And you just unloaded?

25 A. Sir, I left everything go, you know? My intention

1 was to stop him from trying to shoot me. I emptied the
2 clip.

3 MR. BOSNAK: Your Honor, they don't need to
4 be bringing solicitors from out of the crowd, asking them
5 to ask questions here.

6 THE COURT: You work with Mr. Simpson.

7 MR. DuRANT: Thank you. I don't have any
8 other questions.

9 THE COURT: Redirect?

10 MR. BOSNAK: Just a few, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. BOSNAK:

13 Q. Bernie, this beef, this bad blood between you and
14 the victim, started over your mama?

15 A. Yeah, something like that.

16 Q. And then Ramara Straman, and Tina, her sister,
17 helped keep it stirred up?

18 A. Yeah. They were playing both sides of the field.

19 Q. And somewhere along the line he thought that you
20 stole some dope from him.

21 A. Yes, sir.

22 Q. And he blamed you for that.

23 A. Yes, sir.

24 Q. And even Ramara got on the stand and said you had
25 nothing to do with it?

1 A. That's what she said.

2 Q. And then you were banned from that neighborhood
3 over there.

4 A. That's what he had going on in his mind.

5 Q. And when Ramara called you and set you up, tried
6 to set you up, or did set you up, she said the family
7 members were going to get you.

8 A. Yes. She made a comment about her boy brother
9 coming to get me.

10 Q. Now, that sale that you caught, that was Vincent's
11 client that you sold him the drugs, that was kind --
12 would you consider that the straw that broke the camel's
13 back between you two?

14 A. Yeah.

15 Q. He was mad at you for being friends with Tammy
16 Lee's daughter.

17 MR. DuRANT: Objection. Leading.

18 BY MR. BOSNAK:

19 Q. I said was he mad at you for being friends with
20 Tammy Lee's daughter, which is his baby's mama?

21 A. Yeah. Of course he thought we had something going
22 on, but that girl didn't look at me like that.

23 Q. He was sleeping with Ramara?

24 A. Yeah, he was.

25 Q. Were you sleeping with Ramara?

1 A. Yes.

2 Q. Y'all sleeping with the same woman. You didn't
3 owe him any money for making that dope sale. Did you owe
4 him any money from making that drug sale?

5 A. No, me personally, I didn't owe him nothing.

6 Q. So you didn't owe him for any dope?

7 A. No, no, no.

8 Q. And the money -- were you giving him the money
9 just to get him off your back?

10 A. Because I didn't want no problem. Yes, I was. I
11 didn't want no problem. I didn't want no problem. I
12 just wanted him to leave me alone, so I let him have his
13 way, you know what I mean? That is what my whole
14 intention going over there was.

15 Q. You liked Woodside Manor, didn't you?

16 A. Yeah, I liked Woodside.

17 Q. And Tammy Lee and her family had treated you like
18 you were family members?

19 A. Yeah, they did, they did.

20 Q. All right.

21 MR. BOSNAK: No further questions.

22 THE COURT: Recross?

23 RECROSS-EXAMINATION

24 BY MR. DuRANT:

25 Q. You remember talking with Ramara Straman that

1 night?

2 A. Yes, sir. She called me.

3 Q. Do you remember telling her that he had it coming?

4 A. No, I don't remember that.

5 MR. DuRANT: No further questions.

6 THE COURT: All right. You can step back
7 down. Anything further from the defense?

8 MR. BOSNAK: Nothing further, Your Honor. At
9 this time we would rest.

10 THE COURT: All right. Any rebuttal from the
11 State?

12 MR. DuRANT: I think there is, Your Honor.
13 Can we have a moment to consult?

14 THE COURT: All right. You want to call
15 anybody?

16 MR. DuRANT: State calls Kristina Lee.

17 MR. BOSNAK: Judge, may we approach?

18 THE COURT: All right.

19 (Discussion held at sidebar.)

20 THE COURT: Ms. Lee? Where you at? Come on
21 up.

22 KRISTINA LEE,

23 having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. DuRANT:

2 Q. Would you tell the jury how old you are.

3 A. Twenty years old.

4 Q. Where did you live in April 2009?

5 A. [REDACTED] Garwood.

6 Q. Is that in Woodside Manor?

7 A. Yes, sir.

8 Q. Who did you live with?

9 A. My mama and my daughter and Vincent used to stay
10 there.

11 Q. Vincent --

12 A. Wittrell. He used to stay there, sleep there all
13 the time.

14 Q. What about April 21, 2009? Did Vincent stay
15 there?

16 A. That night, yeah. Well, April 20th he did, the
17 night before.

18 Q. So he was living there with you?

19 A. Basically, but his stuff was at his mama's but he
20 used to spend the night at our house all the time.

21 Q. So was he around there a lot?

22 A. Yes, sir.

23 Q. And do you know Bernie Gilliard?

24 A. Yes, sir.

25 Q. How do you know him?

1 A. From my brothers and from coming to the house with
2 my brothers and seeing them around with him.

3 Q. Did he come there often?

4 A. Yes, sir.

5 Q. What was your relationship with Vincent like?

6 A. How was it?

7 Q. Yes.

8 A. It was a relationship, a good relationship.

9 Q. I mean, were y'all romantically involved?

10 A. Yes, sir.

11 Q. In fact, y'all have a child?

12 A. Yeah. Yes, sir.

13 Q. And what about Bernard Gilliard and Vincent
14 Wittrell around the day of the murder, before the murder?
15 Do you know whether they were at your house that day?

16 A. Yes, sir.

17 Q. About when?

18 A. Earlier that day, maybe, like, around 12:00 or
19 11:00, I think, I'm not --

20 Q. At the same time?

21 A. Bernie was there -- well, Vincent slept there, so
22 he left and he went to the barbershop but that before
23 Bernie got there, and then Bernie came over there with --

24 Q. Yeah?

25 A. Bernie came over there with my brother and

1 Queenie, and then he was there for a little while, and
2 then Vincent came and Vincent left. He was there for
3 probably about five or ten minutes and then he left.

4 Q. Did they ever see each other or interact in any
5 way?

6 A. I think they -- I was in the living room, so I
7 don't know what they was doing back there, but all of
8 them, I think, was in the kitchen or the back room at the
9 same time.

10 Q. Did you notice any disturbance or anybody being
11 upset about anything?

12 A. No, sir.

13 Q. What about the day before that?

14 A. The day before -- I'm not sure if Bernie was there
15 the day before, but I know for a fact he was there Sunday
16 and Vincent was there too.

17 Q. Where was Bernie living?

18 A. He was staying at our house at first. Then he
19 didn't want to pay my mom for staying there, so he went
20 to stay at Queenie house.

21 Q. So when was Bernie staying with y'all?

22 A. Maybe, like --

23 Q. You got to answer the question.

24 A. He was staying maybe -- I think he came home in
25 February, so like in February -- like, when he first came

1 home in February or March, and sometime in March.

2 Q. And after he moved out of the house, did he
3 continue to come on a regular basis?

4 A. Yes, sir, but I wouldn't let him come past our den
5 first because he had steal Vincent charger out of my room
6 when we wasn't home.

7 Q. Did he continue to come there on a regular basis?

8 A. Yeah, but I told him he couldn't come past our
9 den.

10 Q. So he was there frequently, is what I'm asking?

11 A. Yes, sir.

12 Q. Were you ever aware that Vincent, the father of
13 your child, had told Bernie that he can't come back in
14 Woodside Manor?

15 A. I didn't know that until yesterday. I hear the
16 girl say that.

17 Q. When Vincent and Bernie were at your house at the
18 same time, would that occur often, regularly?

19 A. Uh-huh, yes, sir.

20 Q. For days before this murder?

21 A. Yes, sir.

22 Q. At any time during those interactions, did Vincent
23 punch him, hurt him in any way?

24 A. Not that I seen, no, sir.

25 Q. Physically, who's bigger?

1 A. Bernie taller but Vincent got more weight on him.

2 Q. But to your knowledge, did they ever get into a
3 physical fight?

4 A. Not that I know of.

5 MR. DuRANT: Thank you.

6 THE COURT: Cross?

7 CROSS-EXAMINATION

8 BY MR. BOSNAK:

9 Q. Kristina, how long were you with Vincent?

10 A. Well, me and Vincent first start going together in
11 2002, but then we broke up because he went to jail, but
12 when we started going together, this time it was like the
13 end of 2007, like December 2007.

14 Q. Eight -- really, eight years?

15 A. Yeah.

16 Q. And then you went -- he went to jail for a little
17 while, and then you got back, started seeing each other
18 again?

19 A. Yeah, December 2007.

20 Q. How old is your child?

21 A. My child that I have from Vincent?

22 Q. Yeah.

23 A. He just turned one yesterday.

24 Q. Okay. So you had him last year sometime?

25 A. Yeah, May 25th.

1 Q. And Vincent always helped support you, didn't he?

2 A. Yes,--sir.

3 Q. Supported you well, didn't he?

4 A. Yes, sir.

5 Q. Because you don't work, do you?

6 A. No, sir.

7 Q. And helped take care of his child too, didn't he?

8 A. Well, he never got to saw him because it
9 happened -- the murder carry him out before I had the
10 baby.

11 Q. Okay. But he took care of you.

12 A. Yes, sir.

13 Q. Paid your bills, did all that?

14 A. I live with my mom.

15 Q. I understand. But he gave you money and helped
16 you, didn't he?

17 A. He usually give me stuff, yeah.

18 Q. He would help you, give you money, things like
19 that?

20 A. Yeah.

21 Q. And you cared a lot about him?

22 A. Yes, sir.

23 Q. And he's not here anymore.

24 A. No, sir.

25 Q. And you loved him?

1 A. Yes, sir.

2 Q. And you're angry, certainly, at Bernard for doing
3 what he did, aren't you?

4 A. Of course.

5 Q. And -- 'cause your baby doesn't have a father now.

6 A. Of course.

7 Q. And you don't have any means of support?

8 A. My mama help take care of me.

9 Q. I understand, because you live with her.

10 A. I got family, yeah.

11 Q. But, you know, it helps when there are more
12 people, doesn't it?

13 A. Yes.

14 Q. Okay. And at one time Bernie was allowed to live
15 in your house, wasn't he?

16 A. Yeah, my mama --

17 Q. -- let him live there. He was friends of yours?

18 A. Yeah, you could say that, associates, you could
19 say that.

20 Q. I mean friends.

21 A. Yeah. He was my brother's friend, but he was a
22 associate from me seeing him and stuff there, yeah.

23 Q. But nothing romantically involved, just friends?

24 A. Yes, sir.

25 Q. That is what I mean.

1 A. Okay.

2 Q. And it must be tough to have to raise your child,
3 you know, without a father.

4 A. Yes, sir.

5 Q. And with all that, and I can tell, like you said,
6 you are very angry.

7 A. Yes, sir.

8 Q. And you don't know all the different things that
9 went on between Vincent and Bernie, do you?

10 A. I know most of it, but I don't know what happened
11 out there that day because I wasn't there.

12 Q. And you're mad at Bernie?

13 A. Of course I be mad at him.

14 Q. We understand. We understand. Thank you.

15 A. Okay.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. DuRANT:

19 Q. Did you and your mom care about Bernie before this
20 happened?

21 A. As friends, yeah, yeah.

22 Q. Did y'all -- did you and your mom bail him out of
23 jail after he caught his gun charge on April 17th?

24 A. My mom did, and not me.

25 Q. And you live with your mom?

1 A. Yes, sir.

2 Q. So y'all friends with him, y'all helped him out?

3 A. Yes, sir.

4 MR. DuRANT: Thank you. No further
5 questions.

6 RECROSS-EXAMINATION

7 BY MR. BOSNAK:

8 Q. You wouldn't help him out now, though, would you?

9 A. No, sir.

10 MR. BOSNAK: Thank you.

11 THE COURT: All right. You can step down.
12 Any other witnesses?

13 MR. DuRANT: State is not going to call any
14 further witnesses.

15 THE COURT: Okay. Folks, that will now
16 conclude the presentation of the evidence in the trial.
17 We're going to break for lunch right now so that we can
18 get ready for the closing arguments.

19 We have to take up some legal matters, go
20 over the jury charges, and it takes us a little bit of
21 time to do that, so we'll work some during lunch and be
22 ready for y'all when you come back.

23 It's a quarter to 1:00 right now. Let me go
24 ahead and say be back in the jury room at 3:00, and at
25 that time we will start the closing arguments, and then I

1 will charge you on the law and then you will begin your
2 deliberations.

3 Now, you have heard all of the evidence, but
4 it is improper for you to begin your deliberations or
5 discussions about the case. So I'm going to send you
6 back. You can go to lunch now. Be back in the jury room
7 at 3:00, but do not discuss the case or any of the
8 witnesses or anything about it. Talk about whatever you
9 want to on the planet but not that.

10 You'll have plenty of time for that a little
11 bit later this afternoon. So we will see you back at
12 3:00. Thank you.

13 (In open court, jury not present.)

14 THE COURT: All right. Motions? Do you have
15 any?

16 MR. BOSNAK: Just renew all motions made
17 during trial, Your Honor.

18 THE COURT: All right. Well, they are all
19 denied again. Same basic reasons I gave yesterday.

20 Now, I'm going to give you copies of my
21 proposed jury instructions and have you look at them
22 while you're at lunch, and what I would like to do --
23 it's quarter to 1:00 right now. Be back at -- I'll give
24 you an hour. Be back at quarter to -- I'll tell you
25 what. Be back at 2:00, and we will go over this. Now, I

1 will tell you, I know you're asking for involuntary. I
2 have not got it in there, but I'll let you argue for it.

3 I'll tell you what. Let's go ahead and
4 argue. I'll let you put your arguments on the record
5 right now, so go ahead and tell me why you think you're
6 entitled to involuntary.

7 MR. BOSNAK: Your Honor, there was some bad
8 blood between these two people. I think there has been
9 evidence shown that he went over there to try to give
10 this guy some money to make peace with him, to diffuse
11 the situation, and the argument and the words between
12 both of them could be -- we feel like, the defense feels
13 like, could be -- they were words of anger. He had
14 called him a pussy a couple times before and I should
15 make you pay me more money and things like that, and I
16 certainly think it was a heated argument.

17 Certainly wasn't any kind of nice, kind
18 argument at all, and that is the only thing we have to go
19 by, is Bernie's testimony because nobody else heard
20 anything, but calling people pussies and you give me more
21 money, you made me wait too long, those kinds of things,
22 those were heated words.

23 THE COURT: Which would give rise to a
24 self-defense charge, but how would that rise to
25 involuntary? The law is pretty clear you can have both,

1 but the evidence has to support involuntary in order to
2 get involuntary and self-defense. I'm inclined to give
3 you self-defense based on what I have heard and let the
4 jury decide whether or not to give it any weight.

5 You can make that argument, but involuntary
6 is what I want you to focus on right now. It is
7 unintentional killing, and all the evidence that I've
8 heard is from the defendant -- we had -- first of all, we
9 had witnesses that said they saw him drive up and within
10 ten seconds the shooting broke out. All right?

11 Mr. Gilliard, when he testified, said that --
12 you know, Bernie had used -- or I'm sorry, Vincent had
13 used the words that he used and had put him on edge,
14 wondered why he was there, but that when he actually
15 drove up and spoke to him and made the movement towards
16 his gun, when the victim made the move towards the gun,
17 he said, My main objective was to stop him from shooting
18 me. I whipped it out and I shot. I had to. I was
19 scared. My main intention was to stop him from trying to
20 shoot me. I emptied the clip.

21 I don't get involuntary out of that. He has
22 to be doing something that was unlawful with the -- that
23 had the unintended consequence of resulting in a death or
24 he was doing something lawful but that doesn't normally
25 end up in death. I don't see how involuntary fits that

1 at all, especially when he empties a clip into the guy.

2 It would be one thing if they wrestled over
3 the gun or there was some kind of argument over the gun,
4 but he says, I took the gun out and I emptied it into
5 him. There was no hesitation on that.

6 From what I -- viewing the facts in the light
7 most favorable to your client, I don't see where there
8 was even any hesitation. The victim never saw his gun
9 prior to there being a shooting, so help me out on the
10 facts there a little bit. I'm struggling to give you
11 what you're asking me for, and I know the law says I'm
12 supposed to, if there is any evidence to support, but how
13 do you accidentally shoot somebody seven times?

14 MR. BOSNAK: Yes, sir. Just the same
15 argument.

16 THE COURT: Unintentionally shoot somebody
17 seven times, it's technically an accident, would be a
18 defense, but unintentionally shoot somebody once, maybe
19 even twice, but he unloaded a clip of ten, and I think
20 that precludes you --

21 MR. BOSNAK: I'll stand by my original
22 arguments, Your Honor.

23 THE COURT: All right. Does the State want
24 to say anything for the record on that?

25 MR. SIMPSON: I think you addressed it

1 sufficiently, Your Honor. I don't think involuntary
2 manslaughter is conceivable in any possible way under the
3 evidence we've heard, including the defendant's own
4 statement and the defendant's own testimony, but I don't
5 think any further argument is necessary.

6 THE COURT: All right. I did have the
7 Supreme Court overrule me one time on a PCR case in which
8 there was a struggle over the gun, and the physical
9 evidence was that the victim had been shot in the back of
10 the head twice, and the question was whether or not the
11 lawyer was ineffective for not asking for an accident
12 charge.

13 And the Supreme Court, I believe, wanted to
14 make the point that if there is any evidence of a
15 struggle, they're entitled to an accident charge and to
16 give it to him. My point in not giving it to him, or
17 saying that he wasn't entitled to it, was I could see if
18 there was a struggle over the gun, you shoot yourself
19 accidentally somehow one time in the back of head, but I
20 don't know how you accidentally shoot yourself in the
21 back of the head twice.

22 So they reversed me on that, so I'm really
23 trying to bend over backwards, but he emptied a ten
24 bullet clip into this guy, so I'm having a hard time
25 seeing how that is an unintentional killing in the light

1 most favorable to your client, so I'm going to have to
2 decline the involuntary charge.

3 I'm giving you self-defense, so you got
4 murder, armed robbery, possession of a weapon, and
5 self-defense. So take those, study it, and let's -- how
6 about 2:30. That is plenty of time. I don't think
7 you'll have my problem with these, but pretty much I gave
8 everybody what they asked for.

9 You had requested an extra line that I didn't
10 already have in my self-defense charge. I added your
11 extra line, and, of course, we did have the -- I think it
12 was the Belcher case, where they said don't instruct
13 inference of malice from the use of a deadly weapon in
14 cases where there is evidence of self-defense so I took
15 that out of my charge and your proposed charge as well.
16 So inference of malice from the use of a deadly weapon is
17 not in the murder charge.

18 MR. DURANT: For the charge, but I can still
19 argue it.

20 THE COURT: You can still argue it from what
21 I understand, but I'm not supposed to charge it.

22 MR. SIMPSON: Your Honor, the sentence you
23 added from Mr. Bosnak's charge to the self-defense, which
24 sentence was added?

25 THE COURT: Oh, the last sentence, beginning

1 with, Evidence of prior difficulties may be considered by
2 you as showing animus or attitudes of the party, going on
3 to the next page, to assist you in determining who was
4 the aggressor, however, this evidence may be considered
5 by you for that purpose only.

6 That was not part of my charge, but it was --
7 he asked for it, so I did that.

8 MR. SIMPSON: Okay. Thank you, sir.

9 THE COURT: Okay. See y'all at 2:30.

10 (Recess taken.)

11 A F T E R N O O N S E S S I O N .

12 (In open court, jury not present.)

13 THE COURT: Do you have anything?

14 MR. BOSNAK: Nothing from the defense, Your
15 Honor.

16 THE COURT: And nothing from the State?
17 You're the first.

18 All right. You get to open and close. How
19 long are you going to need?

20 MR. SIMPSON: How long do we need for
21 opening?

22 THE COURT: Open on the law.

23 MR. DuRANT: Are we going to open on the law?
24 I think we're going to waive opening on the law.

25 THE COURT: Is that all right with you,

1 Mr. Bosnak? You have the right to require them to open
2 on the law, but you can waive it.

3 MR. BOSNAK: No, sir. They can do whatever
4 they want.

5 THE COURT: You can go first, and they'll
6 close entirely. How long do y'all need, 30 minutes each?

7 MR. BOSNAK: Don't need any more than that.

8 MR. SIMPSON: I might be a little longer,
9 possibly.

10 THE COURT: I'll start making noises at 30
11 minutes. I think that is enough time for everybody.
12 All right. Well, as soon as they get here we'll get
13 started.

14 Okay. Let's bring the jury in.

15 (In open court, jury present.)

16 THE COURT: All right, folks. Well, welcome
17 back. We are now into the last phase of the trial before
18 we turn it over to you to retire and consider your
19 verdict.

20 You've heard all of the evidence and so now
21 you will hear the closing arguments from the lawyers. As
22 I reminded you at the first of the trial, I'll remind you
23 again. When the lawyers are up here talking, they are
24 not giving evidence. They are only talking about the
25 evidence that you have heard, so what they say now is not

1 to be considered by you as evidence. It is simply
2 argument.

3 They are going to review the evidence, give
4 you have a preview of the law as I instruct you on it in
5 an attempt to persuade you to return a verdict on their
6 client's behalf. Now, the State has the burden of proof,
7 and so they do actually have the right to open and close.
8 The parties have agreed that they will just close, and so
9 you will hear from the defense, Mr. Bosnak, first. He
10 will make his closing argument, and then the State has
11 the right to go last, and so they will present their
12 closing in full after he is finished.

13 After that, I will then go over the law with
14 you and go over the verdict with you and then you will
15 retire to consider your verdict.

16 So if the State is ready, Mr. Solicitor, you
17 may begin.

18 MR. DuRANT: I believe it's the defense, Your
19 Honor.

20 THE COURT: I'm sorry. I'm so used to doing
21 it the other way. Mr. Bosnak?

22 MR. BOSNAK: May it please the Court, Your
23 Honor, ladies and gentlemen of the jury: When we first
24 started this case, before we even began, Bernie
25 Gilliard's story was the same the day after the murder.

1 He talked to Detective Perkins and the other detective.
2 His story was the same as what he told you on the stand.

3 He's a little bit more animated, he's a
4 little bit longer than the statement, but that is
5 basically the same story that he told. The important
6 parts are there, and I told you when we started this case
7 that this would be a trial that the decision to be made
8 was, was this murder or was it self-defense? And that
9 would be the decision that you would have to make, and
10 that is the majority decision because those are the two
11 greatest crimes or the most important crimes that were
12 committed here, and that is what your decision is going
13 to be made on.

14 As I said, if there is a little discrepancy
15 in the statement and what Bernie testified to, I kind of
16 liken that to if you've ever written a paper and you go
17 back and read it the next day and you realize, well, I
18 misspelled some words, and isn't it exact, this and that,
19 you make minor changes to that, and that is all we have
20 in that.

21 If it was so close, exactly the same, you
22 would wonder about if it was true or if it was some kind
23 of planned story. What we have is Bernard Gilliard, and
24 I hope you believe what he said because I told him to
25 tell the truth, and he basically told you the truth about

1 himself. He's a drug dealer and he sells drugs, and he's
2 been convicted of drugs and he's gone to jail because of
3 drugs, and he's not a very good drug dealer because he's
4 a young man. He's been caught four our five times.

5 That, other than failure to stop for a blue
6 light, meaning running from the police, is the only
7 trouble he's been in -- excuse me, other than getting
8 caught with a gun three or four days before this murder,
9 and he said he had the gun for self-defense. I will
10 apologize. I said we were going to bring Jonathan Burns,
11 the police officer that stopped him, to testify. I want
12 to apologize. That is my fault. I didn't get the
13 subpoena to him in time. I promised that to y'all and
14 that is my fault. Don't hold that against Bernie, hold
15 that against me, okay, why that officer wasn't here, but
16 I think everybody agrees he was arrested for a gun. He
17 was arrested for a gun and he told you why he had the
18 gun.

19 Two young men that didn't like each other,
20 that had a beef with each other, and it's so sad that
21 these two young men, somebody couldn't grab them by the
22 collars of their shirts, shake them a little bit, and
23 say, Y'all got to work this thing out and not let this
24 escalate, because that is what happened.

25 This thing escalated from Bernie's mama being

1 a crack addict late in life and the defendant hitting
2 her, beating her up or hitting her. Then you heard that
3 little girl, the one with the -- Ramara, whatever her
4 name was, Straman, covering her face the whole time and
5 all the stuff she was saying. Little girl like that,
6 likes a lot of drama, thinks she's cute, wants to put on
7 a show, and you observed her.

8 That is why I like trials. We got live
9 testimony. If you could read her statement and compare
10 it to her live testimony, there is a big difference.
11 When you're live, you're seeing what the person is doing,
12 and she's sleeping with the victim and sleeping with
13 Bernie. I've never known two men to get along when
14 they're sleeping with the same woman. I've never known
15 that, and I know there is conflict, and she's playing
16 both of them off, she and her sister are playing both of
17 them off, and here he was Bernie's girlfriend, and having
18 been Bernie's girlfriend for years, and she was setting
19 him up.

20 That is what all that was about. She was
21 setting him up: Come over to the house. When are you
22 coming to pick me up? Kept calling him. When are you
23 coming to pick me up? I guarantee you if Bernie would
24 have went over to pick her up, those detectives would
25 have been waiting on him because she would have called

1 them right away. That is what that whole thing was
2 about. They were setting Bernie up.

3 Been with her three years, and she's setting
4 you up, her and her sister, and you heard the testimony
5 about how they back and forth and back and forth. It was
6 one's fault; no, it was the other one's fault, that type
7 of thing. What is true, though, is the beef between the
8 victim and Bernie.

9 They thought Bernie had stolen things from
10 the victim. If I thought somebody stole something from
11 me, I would be mad, we all would be, and I can understand
12 the victim being mad at Bernie like that. That little
13 girl that took the stand knew that Bernie didn't have
14 anything to do with it, but you never heard her testify
15 that she went to him, and I'm not laying blame on
16 anybody, and she never went to the victim and said Bernie
17 didn't have nothing to do with that, so that was one
18 thing.

19 Then this last little young lady, Ms. Lee,
20 that testified, that popped up here at the end of the
21 trial, that has a baby by the victim -- and I truly,
22 truly, truly, feel sorry for her, having to raise a child
23 with no father, a father that was tragically killed, no
24 money. She doesn't work. Even if she does, it takes a
25 lot of money to raise a child. People who have children

1 know that.

2 It's very difficult for a single parent to
3 raise a child, no matter how great of a parent she is,
4 and she's got to hurt. She doesn't like Bernie because
5 of that, probably hates Bernie because of that, but she
6 knew, they knew, Bernie had been banned from that
7 subdivision. He was told, Don't you come back over here.
8 You come back over here, I'm going to hurt you. I'm
9 going to kill you.

10 They even admitted that. That is even in one
11 of their statements. The other little girl even came
12 back and says one of the family members, his brothers,
13 going to get you for this. So we know there is a lot of
14 animosity. And then with the little Lee girl, she's
15 playing both of them off.

16 She's mad at her boyfriend. She got Bernie
17 riding around with her. So it's just -- it's like, I
18 guess, poking a cat in a cage, just constantly, with both
19 of them, and there are people involved in this that keep
20 it stirred: Oh, he said this, he did this, he did that.

21 Well, the straw that broke the camel's
22 back -- and you've heard this -- the straw that broke the
23 camel's back is when Bernie made this drug sale, pretty
24 large drug sale, \$800 to \$1,500 drug sale. It's a lot of
25 money, 800 or 1,500 in his pocket. I wish I had it in my

1 pocket today, that much, excuse me.

2 Now, that is what broke the camel's back, and
3 he told Bernie, I want my money. I want my money. Well,
4 Bernie didn't have money. He was homeless. Only way he
5 could make any money was living hand to mouth every time
6 he would go out and make a little sale. Finally got the
7 money, finally got tired of worrying about this young man
8 and he called him, and I'm going to stop right there.

9 And I want you to think about this. This is
10 really important. We bring you in, ordinary people, and
11 we ask you to use your common sense. If you're going to
12 rob somebody, or you're going to kill somebody, would you
13 do it in a neighborhood on a bright, sunny day, at 4:00
14 to 5:00 in the afternoon? That is one of the busiest
15 times in any neighborhood. Maybe 5:30 to 6:00 is busier,
16 but that is a busy time from 4:00 to 5:00. A lot of
17 people are getting off work. All the kids are out of
18 school. And the kids are out playing, kids are running
19 around. There is a lot of stuff going on in the
20 neighborhood. So it's in the neighborhood, bright, sunny
21 day, 4:00 to 5:00 and Bernie is walking.

22 Bernie is walking. He got no car. No
23 testimony about anybody waiting on him or helping him or
24 anything like that. He's walking. So he's going to rob
25 somebody and shoot somebody in the neighborhood that has

1 a car. They have a car now, and a car can be used as a
2 weapon. A car is probably one of the most dangerous
3 weapons we have. You can kill more people in a car than
4 you can with a pistol.

5 This young man has a car, and Bernie's on
6 foot. He pulls up to him, one of the worst times of the
7 day. He says he sees a gun. They have words. Bernie
8 gives him some money, says, Here is your money, man.

9 He said he got then, once he gets his money
10 and insults him, calls him a bad name. He reaches for
11 his pistol. Now, I want to stop right here. This is
12 what is important. I brought this up with the
13 pathologist, you'll remember.

14 When you look at those crime scene pictures
15 and you see the autopsy photos -- and I made a point.
16 You could have taken a magic marker and went right down
17 the middle of his body, and there are no shell casings
18 over on the right side of his body, none. They're all on
19 the left side. I made a point of that. I even asked her
20 there were some shots right here into the rib area? She
21 said yeah.

22 If you're sitting in a car with the steering
23 wheel, there is something called a B post. It runs right
24 up the middle where the door closes. That is a very
25 strong point of the car. You got that? How did he get

1 shot all in the side like that if he's sitting this way
2 in the car, like you can see? How did he get shot all on
3 this side of the car, especially when he's up, turned
4 this way, talking to him, turned this way? Seemed like
5 the bullets would be all in here. Certainly seemed like
6 it would be almost impossible.

7 But if you was reaching over to grab a gun,
8 this whole side of your body would have been exposed. I
9 want you to pay close to attention to that because I
10 don't know any other way that young man could have got
11 shot. There are three rounds right through there. If
12 he's sitting straight up in his seat, those things go in
13 his arm, and plus, Bernie's -- he would have to point the
14 gun in this way and shoot that way, to hit him. I want
15 you to look very carefully at that.

16 Now, let's talk about that gun, because there
17 is -- the police said there is no gun, and I probably was
18 a little too angry, and if I was, I want to apologize to
19 the detective. I want to apologize to you. We live with
20 these cases. We work with these people. We like these
21 people. We like their family, and we become advocates
22 for them, and I know sometimes I have to calm my emotions
23 down. I'm an emotional person, and sometimes I get a
24 little excited, and, you know, that voice goes up and
25 that aggression comes out, and I hope I wasn't too rude

1 to that officer on cross-examination, but what I was
2 upset about is that the police officers have to find the
3 truth, the whole truth, no matter where it leads you, and
4 they had done nothing.

5 They knew that crime scene had been
6 contaminated, and what I mean by contaminated, there had
7 been people in and out of that crime scene. We know for
8 sure five people were in the crime scene. They testified
9 and testified that they went over to the car.

10 Now, when I say a crime scene is
11 contaminated, I mean there are people in it, inside it,
12 and that kind of stuff. You had the first -- you had the
13 gentleman, the first one that came out, said it happened
14 right in front of his house, and he went and stood by and
15 he went to check the car, and he went and stood by the
16 hat. If you really look at his statement, he is not 100
17 percent accurate because he said the shooter was about
18 six feet, to six one, and you've seen Bernie. He's six
19 four. He didn't have that right, so -- and let me
20 explain a little something about that to you.

21 That one lady, I think, Ms. McCollum, Abigail
22 McCollum, she's talking to her mother on the phone. It's
23 a beautiful day, and she's outside, and she hears
24 something she think thinks is firecrackers, and she's
25 going to get on the kids for popping those fireworks,

1 disturbing the people in the neighborhood. That's what
2 she thinks, and that is what most of us would have done,
3 and to be having a nice, enjoyable day in April, one of
4 the first days in spring and it's warm and it's sunny and
5 it's nice, and, man, you know, spring and summer is
6 coming, the last thing you think you're going to see is a
7 dead person that is shot to death in your neighborhood
8 right down from your street.

9 So that has got to catch you off by surprise.
10 It would catch us all off by surprise, and they were
11 worried about the young man in the car. They were
12 looking at him. They were trying to determine if he was
13 alive or dead or what they could do to help him. They
14 weren't paying attention to all of that other stuff. If
15 you listened to them, none of them saw a gun. None of
16 them were looking for a gun. They were trying to see
17 what he could do for this young man and looking at him in
18 horror.

19 He's not a detective or a sniffing dog or
20 something that is like -- they're not doing that. We
21 know they came in. We know the woman that sat there and
22 prayed. There was another person, and they all say in
23 their statements there were other people gathered around.
24 The most telling two people were that young man, Rusch,
25 and Booker. Booker was the one that said that pockets

1 had been tampered with.

2 If you remember, I said, What do you mean,
3 tampered with? Well, ransacked, I think he used,
4 ransacked, and I said what does ransacked mean? And he
5 said the pockets were all pulled out.

6 I said, You mean pulled out like that?

7 And he said yeah. And I said, There was
8 nothing in the pockets, and if they were ransacked, and
9 he kind of didn't want to answer that.

10 He said there wasn't nothing in the pockets
11 and they was pulled out. Well, we know there was
12 1,607.02 in the young man's pockets. We know that.

13 You heard the Detective Milz, one of the
14 technicians. I asked him, did the pockets look like
15 somebody had gone through them? He said no, didn't look
16 like anybody had bothered them. That is the detective
17 saying that.

18 But Mr. Booker, he said that somebody went
19 through the pockets, and Mr. Booker and Mr. Rusch, they
20 are down there shooting basketball, supposedly, and when
21 they hear the shots, Mr. Rusch's first inclination, what
22 he says, is to run in the house and to get a gun, a
23 pistol, because he's going down there with a pistol.

24 Now, he's not law enforcement. He's not
25 security. He's nothing like that. I want you to use

1 your common sense. How many people that see a shooting
2 down the street and they're away from it, they going to
3 run in the house and go get a pistol and run down there
4 and go get into it? Does that make sense? Does that
5 make sense to anybody? Is that logical? And then Booker
6 waits on him and they both run down there together.

7 And then Booker says he gets in the car and
8 he's trying to find a young man's pulse. He's not a
9 doctor. He's not anybody. How many of us, if we saw
10 something like that, are going to jump in the car and
11 start trying to find -- somebody that been shot, start
12 trying to find a pulse?

13 Mr. Rusch was standing right behind the door.
14 Sounds like to me, if I had to put my money on it, they
15 were doing more than trying to find somebody's pulse.
16 And did they really have a gun? Did they really go in
17 the house and get a gun and come down there with a gun or
18 did the gun they ended up with was a gun in the car?

19 And that is the story. Well, I went inside
20 and got my gun and run down there with my gun. Where if
21 somebody said, I saw Rusch with a gun, he could say,
22 Yeah, I already run in my house and got a gun, other
23 than, Yeah, that was the gun in the car that I took.

24 Their whole story doesn't make any sense, but
25 now you're going to judge the facts on that, but I want

1 you to think about that. Guns are taken all the time.
2 As Bernie told you, he bought two guns with the crack
3 cocaine, so those guns are out there, and guns, street
4 guns, are like money, are better because you can always
5 sell them, you can always get rid of them, and any time
6 anybody sees a gun, most people, when they see a gun,
7 they want to pick it up.

8 That is why I'm saying there is no gun. The
9 police didn't even look into that. They didn't even try
10 to determine how many people had been in that crime
11 scene.

12 If we found a gun in this young man's car
13 more than likely this trial wouldn't be going on, okay?
14 Also, the police officers never bagged -- they bagged the
15 defendant's hands, but they never tested them for gunshot
16 residue to see if he even fired a shot. And I asked, I
17 guess it was one of the technicians, or the person from
18 SLED, one of them, Tell me something about gunshot
19 residue.

20 It's like anything. If you get something on
21 your hands, they can take a swab of it and they can go
22 analyze it and they can tell what's on your hands, and it
23 could be minute powder, anything, DNA, skin, anything,
24 and they can tell what it is. I asked them and they
25 agreed with me: Gunpowder is not made exactly the same.

1 Each company that makes bullets use a different formula
2 for the gunpowder. So a Winchester shell and a Federal
3 bullet, if you shot them, there is a difference in the
4 gunpowder and you could tell the difference in the
5 gunpowder. You could tell they're two separate
6 cartridges. Well, they never did that test, so we don't
7 know anything about that.

8 Again, Bernie tells you, tells the tale
9 because he was scared. He was fearful for his life and
10 he went for the gun. When he went for the gun, that is
11 when he shot him.

12 Now, you're going to have these back here
13 with you, and these are the jury instructions. And these
14 are some important things that I certainly think that you
15 need -- and one thing I want to talk to you about is
16 reasonable doubt. Reasonable doubt is something that we
17 hear about. Every time you turn on the TV, they got
18 somebody talking about the law. I don't know how many
19 Law and Order shows, one went off the air, all kind of
20 other shows, detective shows, you're going to have in
21 here what they say a reasonable doubt is, and it's the
22 legal reasonable doubt.

23 And -- hold on. Let me see. What reasonable
24 doubt -- here it is: Proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced of the defendant's

1 guilt. Proof beyond a reasonable doubt. In other words,
2 the State must prove everything beyond a reasonable
3 doubt.

4 On the other hand, if you think there is a
5 real possibility that the defendant is not guilty, you
6 must give the defendant the benefit of the doubt and find
7 the defendant not guilty.

8 Now, let me talk with you a little bit about
9 reasonable doubt, put in common terms what I think
10 reasonable doubt is. Let's say, for example, you've
11 worked at a company for 20 years and you've had a 401K
12 and when you leave they say you've got to take your
13 retirement program with you. We're not going to continue
14 giving you any money or investing your money or handling
15 your 401K, and that is common today.

16 So you go and get another job and you have
17 now got -- put your 401K money somewhere. Let's say the
18 business we're working for doesn't have that anymore and
19 you got to put your money somewhere. This is your life
20 savings. This is your retirement, and you go to a place
21 and you start asking questions.

22 Let's say you got \$50,000, 100,000 money, and
23 that is all the retirement money you got, and that is
24 what you have to live on when you retire. You're going
25 to listen to anything those people tell you, and if those

1 people tell you something, and you come to find out that
2 is not true, that is reasonable doubt.

3 Do I believe that? If they tell you
4 something and you come to find out that what they told
5 you wasn't correct, are you going to believe what they
6 say or are you going to have some doubts about putting
7 your money with them, your life savings?

8 If you got doubt, then you got to find my
9 client not guilty. If you believe that he was threatened
10 and he felt that he had nothing -- he had nothing else to
11 do, you got to find him not guilty.

12 Now, there is a big difference between this
13 and murder. Murder is you have to have malice
14 aforethought. That means you have to want to do the
15 person some harm before you kill him; in other words, I
16 want to kill him. I've got to have that in my mind.
17 Now, you can generate that right before you shoot him or
18 whatever. That is malice aforethought. In other words,
19 you thought about it, and you don't have to think about
20 it long. It can be quick.

21 In a self-defense case, there are certain
22 elements you need to look at here. I'll try to be brief,
23 and this is self-defense. First of all, defense, we have
24 raised self-defense. The State has the burden of proving
25 self-defense by proof beyond a reasonable doubt. If you

1 have a reasonable doubt of the defendant's guilt after
2 considering all the evidence, including evidence of
3 self-defense, you must find the defendant not guilty.

4 Here are the following elements to establish
5 self-defense: The first thing you got to find is he's
6 without fault. Now, what we mean by that is, he's
7 without fault in causing this.

8 Bernard has told you that he called Vincent
9 to give him some money, to get him off his back. Now,
10 let me give you this money, and let me and you quit all
11 this. Let's stop this. I'm going to give you some money
12 and let me, and let me and you quit all this. Let's quit
13 this, and he tells you that he gave him \$300, that he
14 gave it to him, he put on his leg. Okay? He said that.
15 Why would you make up something like that?

16 So he gave him the \$300, so he's without
17 fault. He's saying, Here, I want to give you \$300, and
18 let's quit this arguing about all this stuff. Let's put
19 bygones behind us. That is the first one.

20 So I'm saying he's without fault. He's not
21 calling him, telling him, Hey, come on down. I'm going
22 to shoot you, or, Come over here, I'm going to jump on
23 you, or I'm going to beat you. He's not doing that, so
24 he's without fault in this.

25 Imminent danger is the second thing you must

1 find, and what imminent danger is the defendant was
2 actually in imminent danger of death or serious bodily
3 injury or that the defendant actually believed he was in
4 imminent danger of death or serious bodily harm.

5 Now, what we would call this is a subjective
6 factor. Subjective means what I think. Vincent told you
7 in his statement to the police officers, this last
8 statement, that he was in fear for his life. He's told
9 you that on the stand. That's been his story the whole
10 time along, that he thought that Vincent was going to
11 kill him because he went for a gun. So that proves that
12 prong of it. He thought he was in danger, and if you had
13 words with somebody and he goes for a gun, certainly that
14 is imminent danger.

15 Second part of this -- third part of this is
16 now you could do this by rights, act on appearances, that
17 was his gun, words accomplished by a hostile act, that
18 would mean by calling him a name, I should beat your
19 butt, I should shoot you, that would be words accompanied
20 by the hostile act. The hostile act would be going for
21 the gun. Prior difficulties, you know, they had prior
22 difficulties. Threats by the victim. We've talked about
23 those threats by the victim, and those two young ladies
24 even talked about it.

25 Now, we get in here about duty to retreat,

1 and what is a duty to retreat? Duty to retreat, there
2 are certain situations that you get into with the law
3 that says that if you get into a confrontation,
4 especially if it's deadly, if you can retreat, you can
5 retreat. In other words, you have to back out of it.
6 It's kind of an old law that came when we used to fight
7 with knives and swords and sticks. Somebody has got a
8 gun, it's kind of hard to retreat in safety.

9 A lot of times you certainly don't want to
10 turn your back. Somebody has got a gun, get ready to
11 pull a gun on you, you don't have any duty to retreat.
12 You can't retreat.

13 There is another thing that says that also a
14 reasonable person would have had to have determined if
15 they were in danger or not. You're that reasonable
16 person. The jury is the reasonable person. Reasonable
17 person means that in the same situation, if you place
18 yourself in Bernie's situation or you're in a situation
19 like that that you would feel threatened for your life
20 under the same circumstances.

21 And also the degree of force. Now, I know
22 the solicitor's office has made a big deal out of how
23 many times he got shot, ten times, but in self-defense,
24 under the degree of force, it says the force used in
25 self-defense does not have to be limited to the degree of

1 force used by the victim. The defendant has a right to
2 use so much force as to appear to be necessary for
3 complete protection.

4 So it means you can use whatever force you
5 need, and if you find that, you have to find him not
6 guilty. Now, that is murder versus self-defense.

7 The next thing I want to get to, because he's
8 charged with another serious crime, and that happens to
9 be armed robbery. Now, ladies and gentlemen, I think
10 that is a stretch. I mean, that is a stretch. You had
11 Detective Milz say that the pockets were not disturbed.
12 We've had Bernie tell you all along the only money he
13 took was the money that he had given Vincent to get
14 Vincent off of him, to leave him alone. This man has
15 \$1,607.02. I don't mean he's got it in one pocket or two
16 pockets, he's got so much money in this pocket, this
17 pocket, back pocket, other back pocket, and there is a
18 little chart. Rutledge brought it into evidence, so
19 you'll have that back there, but there is a chart.

20 How could you rob somebody and leave \$1,607
21 and how could you leave money in each pocket? I mean,
22 what are you going to do, reach in there and grab a wad
23 of money, grab half of it and put other half in the
24 pocket? And if he went there to rob, and he is correct,
25 if I went there to rob, I would have took what he had,

1 and there was some marijuana there too. I didn't take
2 the marijuana either.

3 The reason I don't think anybody got to the
4 money -- they got the gun but they didn't get to the
5 money is because you have heard from Ms. McCollum. You
6 heard from another lady, Ms. Lincoln. Ms. Lincoln was
7 the woman that was very upset with what she had seen, and
8 she had prayed with him, and I think those people started
9 coming up, and I don't think it gave people a chance to
10 start going all through his pockets. That is what you
11 got what you look right there.

12 Now, ladies and gentlemen, one thing that I
13 want to say in closing and I'm going to sit down, and I
14 know I speak for the solicitor's office also, is that we
15 all have a lot of sympathy for the victim's family
16 sitting here. We certainly do.

17 And it's a horrible thing that happened to
18 the family, any time you lose a child, and I also want to
19 thank you because it's horrible to look at pictures of
20 people with gunshots in them. And it's -- and I saw some
21 of you crying when they were talking about this, and, you
22 know, this is not something we look at. The only type of
23 people that see that kind of stuff is doctors or people
24 that are in combat, soldiers that are in combat, and that
25 is not something the average person looks at, and I want

1 to thank you so much for helping with everything.

2 I'm sorry you had to look at it. It's
3 difficult stuff to look at. It doesn't get too much
4 worse than that. I want to thank you. I want you to
5 think about all the evidence, and when you look at all
6 this evidence and put it together, then nobody heard --
7 as I told you first, nobody heard what Bernie and Vincent
8 were talking about. There is nobody.

9 Nobody talked about what was there with the
10 shell casing. Nobody talked about shell casing and what
11 was found down there by the shell casing. The car was
12 found in the ditch, and some things to remember about
13 that too that I want to point out too is everybody was
14 around there fooling with the car. The back door was
15 opened on it, and I asked Milz, Did y'all tamper with the
16 car or is that the way you found it?

17 So it might have been in the back door,
18 somebody bent in the passenger door, the driver's side
19 door was open, and out of all that and all those people,
20 what got me more than anything else, and maybe y'all can
21 figure it out because I can't, is the car was still
22 running and still in gear, so it's still a danger when a
23 car is running in gear. I don't care if it's in a ditch
24 or not, it's still a dangerous vehicle.

25 I am just amazed that all these people and

1 all this concern that somebody just didn't switch off the
2 car, but there is a lot of unanswered questions in this.
3 Please go over everything carefully, and when you look at
4 everything, really analyze and really look at what the
5 State has, you're going to find that Bernard Gilliard
6 acted in self-defense.

7 He didn't want to do that. You heard him.
8 He doesn't look like a young man to do that. He's told
9 you some story. You'll find him not guilty of that
10 charge, and I don't know how you would have a robbery
11 when the only thing you took is money that you were
12 paying somebody to leave you alone, and except for that,
13 they can't prove anything else was done.

14 Thank you.

15 THE COURT: All right. Mr. Solicitor?

16 MR. DuRANT: Thank you, Your Honor, may it
17 please the Court, ladies and gentlemen: This is Woodside
18 Manor. We've seen it the whole trial. Nice place, good
19 people live here, people like Abigail McCollum, Debbie
20 Lincoln, Dennis White, Johnny Booker, Robert Rusch, Jason
21 King was there was that day. People have good jobs.
22 They have families, do good things. They live in a nice
23 neighborhood.

24 It's 4:00, April 21, 2009, and something very
25 horrible happens. That is why we're here. Sure, it was

1 a horrible murder. There's ten shots. This is a very
2 bad way to die. There is a lot of emotion in the case,
3 but we're not going to talk about that. We don't even
4 need to consider that. We're here to talk about the
5 facts, and only what we know.

6 My job is to present you with the facts.
7 Your job is to tell us what happened, and at the end,
8 when you go to consider what happened, all the facts, and
9 when you think about it, deliberate amongst yourselves,
10 you're going to find Bernard Gilliard is guilty of
11 murder, he's guilty of armed robbery, and he's guilty of
12 possession of a pistol, possession of a pistol during a
13 violent crime.

14 All criminal cases present these two
15 questions. From the very beginning, and this is how I
16 have to present my case, how I have to understand my case
17 and present it to you: Who did it and what was it? The
18 who did it is Bernard Gilliard, and what it was was
19 murder. There is overwhelming evidence here. The whole
20 did it part is conceded by the defense and for good
21 reason: The evidence is simply overwhelming.

22 Abigail McCollum knows Bernard Gilliard. She
23 is the only one who actually knew him, who saw him
24 running, who saw him drop the red hat. The other
25 witnesses at the scene didn't know him, weren't close

1 enough to him to see his face, couldn't identify him, but
2 did know he dropped his red hat and his DNA is on the red
3 hat.

4 So everybody is calling his name out there at
5 the scene when he's brought in on the 22nd, and he's
6 confronted with that when he's talked to on the statement
7 when he gives his story, the only story that he can give
8 because he's a smart guy. There is no I think. He's a
9 very smart guy. If he didn't live the life that he was
10 living, he could probably be somebody.

11 But the evidence comes down simply to three
12 things: The ballistics, the witnesses in this case, and
13 the defendant himself, and we start with the ballistics.

14 What do we know? We know ten shell casings
15 were recovered from the crime scene, from both the scene
16 at the end of the driveway and in the car. There are
17 eight outside and two inside the car. Those are the
18 placards where they were outside the car. That is where
19 the shooting started. The car rolled down the driveway.
20 There was one in the driver's side seat, one on the
21 driver's side floorboard.

22 What do we know about the projectiles? We
23 know there were ten projectiles. They were also
24 recovered. Seven bullets from the victim's vehicle,
25 three bullets from the victim's body at the autopsy. We

1 heard from the SLED ballistics expert, James Green. He
2 came in and told you there was only one gun. All the
3 shell casings, all the projectiles, were fired from one
4 gun, and he couldn't tell you the projectiles matched up
5 to the cases. That is not a test they do. That is not
6 scientifically proven, so he doesn't have a opinion on
7 that, but he'll tell you all the shell casings came from
8 one gun, all the projectiles came from one gun, and it's
9 not too giant of a leap to say, guess what? Shell
10 casings and projectiles were from one gun. There is only
11 evidence of one gun being fired out there.

12 And so we got to Investigator McManigal, and
13 we're talking about trajectory because trajectory can
14 tell us something. What do we know? Sergeant McManigal
15 placed these rods inside the car. There were only six,
16 only six trajectory rods placed because there were six
17 trajectory. Three bullets stayed inside the victim, and
18 one of these bullets was sitting right here on the
19 driver's side seat, so it didn't go through the car.
20 There is only six trajectories but what do we know about
21 them?

22 There are two different trajectory angles in
23 groups of three. In the first group, we know that the
24 gun was inside that vehicle. If you look at this --
25 these two right here and this white one, if traced to

1 their logical conclusion, they would have been coming
2 from outside and through the windshield. But there is no
3 breach in the windshield. There is no breach in the car,
4 and therefore you conclude that the gun was actually
5 inside the car. That is part of the evidence. The
6 defendant concedes that, I think, essentially.

7 Second group, angle shows shooter at the car
8 driver side extremely close. As you can see, we're
9 talking about this pink trajectory rod right here, this
10 pink one right here, and this, I believe, black or dark
11 green one. He was close because, if you trace that to
12 its logical conclusion, if you're too much further away
13 from the car, you're not going to get that angle. The
14 autopsy, ten entrance wounds, seven exit wounds. Six
15 entrance wounds through the front left torso, and I want
16 to talk about this.

17 I'm not sure if this matches up with my Power
18 Point. I try to create a Power Point. Sometimes I think
19 it's very helpful, and sometimes it just locks me down.

20 I want to talk about the defendant's
21 testimony. We're talking to the defendant, and we're
22 wanting to know, which hand did he reach for the gun
23 with? He says there was a gun on the passenger side
24 seat. Which hand do you reach for the gun with? He
25 said, I can't remember. He goes, It was either right or

1 left.

2 We tried to ask him this numerous times. It
3 was either the right or the left, but it's always this
4 motion. It's always this. He went this way to reach for
5 the gun. Well, there are shots right here on the torso.
6 They're all right here. So if he's leaning, if you go
7 like this, just with your right hand or go with your left
8 hand, I think it makes more sense if the gun is to your
9 right. If the gun is to your right, you probably reach
10 with your right hand.

11 Well, nonetheless, the motion is this, and,
12 rather, whether it's right or left, we don't know, but
13 his back goes away from the defendant when he says he's
14 shot. But all the shots are right here, and the
15 trajectory from Dr. Presnell is from the front left down
16 to the bottom right. It goes from the top inside here
17 and comes out here, so it is impossible, I would think,
18 that if you're reaching for a gun this way, with either
19 your right or your left, that you're going to get shot
20 right here and have the trajectory come out your back
21 right here. That just doesn't make any sense.

22 What also doesn't make any sense is that
23 there was a through and through on his right hand. It
24 entered the back of his right hand and it comes out the
25 palm. Now, if he's reaching over there into the

1 passenger side seat with his right hand to what he says
2 is a gun, there is no gun, but if that should happen and
3 he shot through the right hand and it's a through and
4 through, where is the trajectory on the passenger seat?
5 There isn't one, because that didn't happen.

6 This is where he was shot. If that is where
7 he was shot, he was not going like this. He was also
8 shot in the back. What if he was shot right here,
9 slumped over, defensive wound? That probably makes more
10 sense. That right hadn't wasn't over there when it got
11 shot. That right hand was probably right here in some
12 kind of a defensive mechanism and takes the shot. That
13 is just what the ballistics tell us, and that is what we
14 can go on as concrete evidence.

15 This is just an indication of how close the
16 shooter was, but we've established that pretty
17 conclusively, but this is a good photo of stippling.
18 Stippling suggests a very close proximity, almost right
19 on that. The right hand, this was overkill. It was
20 nothing but overkill.

21 The witnesses, what do we know about these
22 witnesses? What do we know about Debbie Lincoln? We
23 know she's got a family. She appears to be a good
24 person. You're the judge of character, of truth. You
25 can accept what somebody tells you, you can accept part

1 of it, disregard part of it, reject all of it, and you'll
2 do that with all these witnesses, but I think there is a
3 very good reason to believe all of these witnesses who
4 have absolutely no dog in this fight, who are just
5 absolutely minding their own business on a nice day in
6 April 2009 and happened to hear a lot of gunshots coming
7 outside and wanting to know what in the world is going on
8 on our street.

9 So Debbie Lincoln comes outside. She tells
10 you she sees this guy wearing all black, red hat, drops
11 his red hat, runs down the cut, and she sees the
12 passenger side door all the way open. That is the first
13 thing she sees.

14 Well, we know from Johnny Booker that he and
15 Robert Rusch have come down the street, and they observe
16 that passenger side door. They're the first ones there.
17 She didn't say she saw that. If she would have seen it,
18 she would have told him, but she can only tell you what
19 she saw.

20 Johnny Booker and Robert Rusch were the first
21 ones at the scene. You got a college kid and a kid who
22 has got a good job, none of them with records, good
23 people, just playing basketball on a good day, and
24 they're the first ones to see the car, and do you think
25 honestly that if they would have gotten to that car and

1 seen a gun anywhere in that car that they would have
2 taken the gun from him?

3 Here is a guy who is dying of multiple,
4 multiple gunshot wounds, gasping for air, blood coming
5 out, all over, it is a terrible situation. They're the
6 first ones to the car. They open the passenger's side
7 and see a gun. Who knows what a gun would have been used
8 for if it's on the passenger side of the street? It
9 could have been a murder weapon, and for God sakes,
10 they're going to take it? They'll have you believe
11 they're going to take it away from the scene and then
12 stay there on the scene and give a statement and come and
13 testify in court? Does that really make sense?

14 He would have you believe that. But that
15 makes no sense at all. So the first two people to that
16 car, Johnny Booker and Robert Rusch, they open that car
17 door, that passenger side door. They do check a pulse,
18 and no, I don't think it's that outrageous to check a
19 pulse. I don't know what you would do. I'm not sure
20 what I would do. I've never been in that situation. I
21 don't know, but I don't think it's that outrageous. But
22 that is what they do, and then Debbie Lincoln shows up,
23 and you saw how this has affected her.

24 She, obviously, has a very tough time with
25 it. It's a very difficult thing for her to talk about,

1 but she was a witness in this case. Like all the
2 witnesses, I didn't choose them. They are just the
3 witnesses from the case. If I could have picked the
4 witnesses, I might have actually picked them, but if I
5 had my pick, I would have picked the people who were
6 steady, you know, just preachers, people like you, the
7 judge, but these are good people. Let's face it.

8 So that just don't make a whole lot of sense,
9 and another thing that just doesn't make a whole lot of
10 sense is the defendant, what he says.

11 He says, okay, so I unloaded my gun and then
12 I ran off, and without knowing the victim is dead or
13 alive, still comes back to a car that he says a gun is
14 in, knowing his gun no longer has any bullets in it.
15 Does that make any sense? Nada, none whatsoever.

16 According to him, there is still a gun in a
17 car with a guy he just shot, and he's going to come back.
18 He came back. There wasn't a gun in that car. He came
19 back to do what he was going to do all along, and he
20 robbed him and he admitted it and he says that even in a
21 statement, you've got a statement. He didn't admit it on
22 the stand, but you're going to have it up there. And
23 it's somewhere around there, but I have a copy of it
24 right there, but on page two, he says, I then turned
25 around to take his money out his pockets and then I left.

1 That is a misstatement. It wasn't on his
2 lap. He had an opportunity to review the statement. He
3 is saying what he can. He's saying everything he should
4 and everything he can try to say to couch this in the
5 best light possible, but when you look at it closely, it
6 just doesn't stand up. It holds no water. It is not
7 true.

8 He took the stand and lied to you. This
9 victim had no gun on him. He went there and robbed him.
10 Yes, the victim had a lot of money on him. Is he the
11 greater guy? He'll stand here and tell you that. He's
12 not. He's not an angel. He's less than that. He was a
13 person. He was somebody's child. He was somebody's
14 father, and he didn't deserve that. And we have laws
15 against it, and that is why we're here.

16 Now, let's talk about some more of that. How
17 do we know a little bit more about the robbery? Ramara
18 Straman and her sister, Tiara Jones, what kind of people
19 were they? You heard Ramara when she got up here, and,
20 yes, she's hiding. She doesn't want to see Bernie.

21 Did she seem that smart? No. She seemed
22 very young and immature, probably so. Did she seem like
23 the kind of person that wants to frame this guy? You
24 decide.

25 Did she do the right thing that night? Let's

1 couch it in a hypothetical. If she had talked to her
2 boyfriend, her former boyfriend, that night and then
3 heard from him, yes, he had it coming, knew that he
4 wanted to rob him, knew that he hated him, did she do the
5 right thing by calling the police, or would we rather
6 have her just sit on it?

7 I think we call for any and all to give us
8 everything, no matter who it comes from, no matter if
9 it's Ramara Straman, who seems immature and who seems
10 like not the smartest person. You decide on her
11 character. Was she telling you the truth or not? Did
12 she know he had motive? Did she know he wanted to rob
13 him? And her sister backed her up. And another thing,
14 was he being truthful when he said that he wasn't -- that
15 he took all precautions to get away from Vincent Wittrell
16 and he still goes to Kristina Lee's house with Tammy Lee
17 who is there that very day, and according to Kristina
18 they're there at the same time.

19 There wasn't a beef at that time. There
20 wasn't beef the day before, but there is something going
21 on with him. There is no gun. This is robbery. This is
22 murder, and even if it weren't, it's still not
23 self-defense.

24 This defendant may be a smart guy. He may
25 have taken a different path in life and things could have

1 been a lot different and we could be in a better place
2 because of that, but that is not what happened. The law
3 doesn't apply to him, and it hasn't for a long time, not
4 in regard to drugs, not in regard to guns, and not in
5 regard to murder, and he doesn't even show any remorse
6 for what happened here. There was none, and the longer
7 he talked, the longer he showed them in his mind he did
8 nothing wrong, but he is a drug dealer who preys on
9 society because that is what drug dealers do.

10 He is a machine. He has an operation. \$800
11 to \$1,500 in one sale, that's just one sale, that is an
12 operation. That is an ongoing enterprise. That is who
13 he is, and he has a gun in the course and scope of this
14 drug deal. And he can say all day long, as much as he
15 wants, that there is no such thing as a turf war or
16 problems with other drug dealers, but that is exactly
17 what this is.

18 There was a problem with he and Vincent
19 Wittrell, and we do not accept that you can go out and
20 deal drugs and have problems and live in your own little
21 world and do your own illegal stuff and the law does not
22 apply to you, even when you murder somebody.

23 Murder, the unlawful killing of another with
24 malice aforethought. What is malice? Hatred, ill will,
25 or hostility towards another person. The intentional

1 doing of a wrongful act without just cause or excuse and
2 with an evil intent to inflict an injury or under
3 circumstances that the law will infer an evil intent.

4 Malice, continuing, this is very important.
5 Does not need to exist for any particular amount of time
6 before the act is committed, but malice must exist in the
7 mind of the defendant just before and at the time it is
8 committed.

9 There are two types of malice: You can have
10 express malice or inferred malice. Express malice, when
11 a person speaks words which express hatred or ill will
12 for another, or when the person prepared beforehand to do
13 the act which was later accomplished. This is expressed.
14 Maybe it was expressed when he told Ramara that he wanted
15 to rob him.

16 It may be inferred from conduct showing a
17 total disregard for human life. It may be inferred from
18 the use of a gun. Conduct showing a total disregard for
19 human life. What do we mean by that? How would we apply
20 it here? Was it a total disregard for human life that
21 when he called Vincent Wittrell and he said he wanted to
22 go pay him his money, and he said it in his own statement
23 and up here, he said something that made me think he had
24 some bad intentions, so I made sure I had my weapon to go
25 and meet him.

1 Did he voluntarily go to a dangerous
2 situation in the course and scope of drug dealing? That
3 is what this was about. They aren't meeting for any
4 other reason. At the center of it all was a drug
5 problem. He didn't have to go meet him. He had options.
6 He could have gone to meet him without a gun. That might
7 have been not smart as well. He could have just not --
8 he could have stayed away, and none of this would have
9 ever happened but it's about decisions. It's about
10 choices, and it's about accountability.

11 And it's his decision, his decision to go
12 meet this guy with the gun, go talk about this drug deal.
13 There is no specific intent to kill. You do not have to
14 specifically intend to kill somebody in order for this to
15 be murder, but malice may be formed in an instant, just
16 like that.

17 Self-defense, what the defense would have you
18 believe is self-defense, requires these elements. I'm
19 going to go over them in just a second here but I want
20 you to know this: It's like getting a driver's license
21 you got to do several things in order to learn earn
22 the right to drive, right? Everybody knows you got to be
23 of age.

24 That's the first thing you got to do. You
25 have to have insurance, you have to pass a written test,

1 and got to pass a road test, you got to be able to see
2 because they're not going to let you on the road if you
3 can't see. Five things, right here. If you fail any one
4 of them you do not get a driver's license, and it's the
5 same way with self-defense.

6 Self-defense requires these elements.
7 Defendant must be without fault bringing on the
8 difficulty. He has fault, but you decide. Is there
9 fault to be attributed here, to bring a gun to a
10 situation that you understand because is dangerous
11 because you arm yourself with that gun in the course and
12 scope of drug dealing. Is that fault? Do we as society
13 think there was some fault attributed there or is that
14 just okay?

15 He's in unlawful possession of a pistol.
16 He's acting unlawfully. He's going to settle a drug
17 debt. These are unlawful actions. Is there some fault?
18 I argued yes, there is, but you decide.

19 Imminent danger of life or serious bodily
20 injury. He says there was a gun in the car. There was
21 no evidence that there was gun in the car, no ballistics
22 confirm there was a gun in the car, none of the witnesses
23 confirm there was a gun in the car that is only what he
24 says, and Vincent Wittrell is not here to tell you his
25 side of the story, but the ballistics and the witnesses

1 are. You decide. No other way to avoid the danger than
2 to act as the defendant did. You decide.

3 It is unlawful to carry a pistol about the
4 person, or handgun, whether concealed or not. He has no
5 permit for it, and he was acting unlawfully. There was a
6 murder, through and through. There is overwhelming
7 evidence of who it was. It's not contested. The defense
8 has to, has to, come in here and tell you something about
9 self-defense, but you decide. Were they taking about the
10 evidence or were they trying to distract you from it?
11 You deliberate. You decide that.

12 Ten shots is overkill. That is tremendous.
13 That did not have to happen. None of this, nothing about
14 it was lawful in the very least, and it was murder.

15 At the beginning of the, case y'all raised
16 your right hand and you took an oath to find the truth,
17 and the truth is that Bernard Gilliard is guilty of
18 murder, armed robbery, and possession of a pistol during
19 a violent crime, and I ask you to fulfill your oath, and
20 I ask you to find the truth and I ask you to return
21 verdicts of guilty for murder, armed robbery, and
22 possession of a pistol during a violent crime.

23 Thank you.

24 THE COURT: All right. Folks, you've now
25 heard the arguments of both sides, and so it's my duty to

1 charge you as to the law that applies to the facts of
2 this case.

3 Under the constitution and the laws of our
4 state, only the jury can make findings of fact in this
5 case, and I am not permitted to indicate to you how I
6 might feel about the facts of this case, and if I have
7 said or done anything in this case which would lead you
8 to indicate that I have an opinion about the facts of
9 this case, then you should disregard that. This jury
10 must independently weigh the evidence presented in this
11 crime and render a verdict based solely on the facts.

12 Now, the same constitution and laws which
13 designate and make you the finders of the fact also make
14 me the instructors of the law, and if you have some idea
15 as to what the law is or what the law ought to be and it
16 does not agree with what I now tell you the law is, you
17 are obligated under the oath that you took at the
18 beginning of the trial to abandon this preconception on
19 your part and to apply and accept the law precisely as I
20 now state it to you.

21 Now, I told you at the beginning of the trial
22 there are three separate charges against the defendant.
23 Indictment 2010-CP-10-2061 charges him with murder,
24 indictment -- excuse me, GS-10, 2010-GS-10-2061 is for
25 murder, 2010-GS-10-2060 is for armed robbery, and

1 2010-GS-10-2059 is for possession of a firearm during the
2 commission of a violent crime.

3 Each of these indictments charges a separate
4 and a distinct offense. You must decide each indictment
5 separately on the evidence and the law applicable to it
6 uninfluenced by your decision as to any other indictment.

7 The defendant may be convicted or acquitted
8 on any or all of these charges. You will be asked to
9 write a separate verdict of guilty or not guilty for each
10 indictment. Now, I want to remind you, the fact that the
11 defendant was arrested, charged, and indicted in this
12 case is not evidence in this case, and it cannot be
13 considered by you as evidence of guilt in this case, nor
14 does it create any presumption or inference of guilt.

15 This document is simply the formal written
16 instrument by which the charges are made against the
17 defendant. It the formal document by which this case is
18 brought before this court.

19 Now, the defendant has pled not guilty to
20 each of these indictments, and that plea therefore casts
21 the burden on the State to prove the defendant guilty
22 beyond a reasonable doubt. A person charged with
23 committing a criminal offense in South Carolina is never
24 required to prove himself innocent. It is an important
25 rule of law in this country that the defendant in a

1 criminal trial will always be presumed to be innocent of
2 the crime for which he is indicted, unless and until his
3 guilt has been proven by evidence satisfying you of that
4 guilt beyond a reasonable doubt.

5 Now, this presumption of innocence is not a
6 mere legal theory. It's not just a legal phrase. This
7 is a substantial, constitutional right to which every
8 defendant is entitled. This presumption of innocence
9 accompanies the defendant from the time he is charged
10 throughout the trial and until you reach a verdict of
11 guilt based on evidence satisfying you of that guilt
12 beyond a reasonable doubt.

13 Now, the State has the burden of proving the
14 defendant guilty beyond a reasonable doubt, and as I told
15 you at the beginning of the trial, some of you may have
16 served as jurors in civil cases where were you told it's
17 only necessary to prove that a fact is more likely true
18 than not true, such as by a greater weight or a
19 preponderance of the evidence. In criminal cases, the
20 State's proof is more powerful, must be more powerful
21 than that. It must be beyond a reasonable doubt.

22 Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the defendant's guilt.
24 There are very few things in this world that we know with
25 absolute certainty, and in criminal cases, the law does

1 not require proof that overcomes every possible doubt.
2 If based on your consideration of the evidence you are
3 firmly convinced that the defendant is guilty of the
4 crime charged, you must find the defendant guilty.

5 In other words, if you think there is a real
6 possibility that the defendant is not guilty, you must
7 give the defendant the benefit of the doubt and find the
8 defendant not guilty.

9 I also explained to you that ordinarily
10 people can't testify about their opinion in something in
11 court. The law does make an exception for expert
12 witnesses, and experts are people who because of
13 education or experience or specialized training in some
14 area they rise to the level of expertise, and they are
15 allowed to give their opinion and state the reasons for
16 their opinion. You can give an expert's opinion as much
17 or as little weight as you think it deserves, and if you
18 don't think it's based on sufficient education or
19 experience or you conclude that the expert's opinion is
20 not sound or it is outweighed by other evidence, you can
21 disregard that opinion entirely.

22 You are not compelled to blindly accept an
23 expert's opinion, and even if it's uncontradicted, expert
24 medical testimony may be rejected if you find it is
25 inconsistent with the facts or is otherwise unreasonable.

1 You have the right to consider testimony in light of all
2 the circumstances and give it such weight, if any, that
3 you think it is entitled.

4 As part of your job as jurors, you must
5 necessarily determine the credibility of the witnesses
6 who have testified in this case. Credibility simply
7 means believability, and it is your duty as jurors to
8 analyze and evaluate the evidence and to determine which
9 evidence convinces you it's true. In determining
10 believability of witnesses who testified in this case,
11 you may believe one witness over several witnesses or
12 several witnesses over one witness. You may believe a
13 part of the testimony of a witness and reject the
14 remaining part of the testimony of that same witness.
15 You may believe the testimony of a witness in its
16 entirety or you can reject the testimony of a witness in
17 its entirety.

18 You may consider whether any witness has
19 exhibited to you any interest, bias, prejudice, or other
20 motive in this case, and you may also consider such
21 things as their appearance and their manner while the
22 witness is on the witness stand. There has also been
23 evidence presented that a witness may have made prior
24 statements which are not consistent with the witness's
25 present testimony. You may use this evidence to decide

1 whether to believe a witness.

2 You may also use evidence of the earlier
3 contradictory statements to determine the truth of those
4 statements, and it's up to you to decide whether to
5 believe the earlier statements or the testimony given at
6 trial.

7 If a witness is shown to have knowingly
8 testified untruthfully concerning any material matter,
9 you may consider this in determining whether to trust the
10 witness's testimony as to other matters. You may reject
11 all of the testimony of a witness and give all or part of
12 the testimony the weight that you think it deserves.

13 Now, a statement alleged to have been made by
14 the defendant was admitted into evidence in this case,
15 and while the Court made a determination that the
16 statement is inadmissible, I instruct you that the
17 ultimate decision of whether or not the defendant made
18 that statement is up to you.

19 If the defendant did make the statement, you
20 must determine whether the statement was made by the
21 defendant voluntarily and of his own free will and that
22 means that the statement was not caused pressure, force,
23 fear, threats, coercion or intimidation or by hope or
24 promise of leniency or reward of any kind. In
25 determining whether the statement was voluntary, you

1 should consider both the characteristics of the defendant
2 and the details of the question.

3 Some of the factors you may consider are age
4 of the defendant, defendant's education or lack of
5 education, the defendant's mental ability or capacity,
6 the defendant's IQ or intelligence, the defendant's
7 background and environment, place and length of the
8 detention, the nature of the questioning, the advice or
9 lack thereof to the defendant of his constitutional
10 rights, including but not limited to the right to remain
11 silent, that any statement could be used against him in a
12 court of law, the right to have a lawyer present, and if
13 he could not afford a lawyer, then a lawyer would be
14 appointed to represent him without any cost, and he could
15 stop making a statement at any time.

16 You must carefully consider all the
17 circumstances before you give any weight to the alleged
18 statement. The State has the burden of proving beyond a
19 reasonable doubt that the alleged statement was
20 voluntarily. If you determine that it was, you may give
21 the statement any further consideration that you deem
22 proper. You may decide what weight, if any, should be
23 given to the alleged statement. If you determine the
24 alleged statement was not a freely and voluntary
25 statement of the defendant, you should not consider the

1 statement at all.

2 Now, I'm going to go over the elements of the
3 substance of charges against the defendant, and the first
4 indictment is for murder. Defendant is charged with
5 murder in violation of South Carolina code 16-3-10. The
6 State must prove beyond a reasonable doubt that the
7 defendant killed another person with malice aforethought.
8 Malice is hatred, ill will, or hostility towards another
9 person. It is the intentional doing of a wrongful act
10 without just cause or excuse and with an intent to
11 inflict an injury or under such circumstances that law
12 will infer evil intent.

13 Malice aforethought does not require that
14 malice exist for any particular time before the act is
15 committed, but malice must exist in the mind of the
16 defendant just before and at the time the act is
17 committed. Therefore, there must be a combination of the
18 previous evil intent and the act.

19 Malice aforethought may be expressed or
20 inferred. These terms expressed and inferred do not mean
21 different types of malice, but merely the manner in which
22 malice may be shown to exist. That is either by direct
23 evidence or by inference from the facts and circumstances
24 which are proven.

25 Express malice is shown when a person speaks

1 words which express hatred or ill will toward another or
2 when the person prepared beforehand to do the act which
3 is later accomplished, for example, lying in wait for a
4 person or other acts or preparation going to show the
5 deed was in the defendant's mind would be express malice.
6 Malice may also be inferred from conduct showing a total
7 disregard for human life.

8 Now, the second charge is for armed robbery
9 in violation of section 16-11-330 of the South Carolina
10 code of laws. In order to prove the offense of armed
11 robbery, the State must first prove beyond a reasonable
12 doubt that the defendant took personal property from the
13 person or presence of another person. Property is in the
14 presence of a person if it is within the person's reach,
15 inspection, observation, or control so that the person
16 could, if not overcome with violence or prevented by
17 fear, keep possession of the property.

18 The State must also prove beyond a reasonable
19 doubt that the defendant carried away the property
20 intending to permanently deprive the owner of the proper
21 and to keep the property for the defendant's own use.
22 The slightest removal of the property or the complete
23 possession of the property, even if for an instance by
24 the defendant, is sufficient to show a taking and
25 carrying away of the property. The taking and carrying

1 away of property must have been done with violence or
2 putting the owner of the property in fear of violence.

3 Finally, the State must prove beyond a
4 reasonable doubt that the defendant was armed with a
5 deadly weapon during the robbery. A deadly weapon is any
6 article, instrument, or substance which is likely to
7 cause death or great bodily harm. Whether an instrument
8 has been used as a deadly weapon depends on the facts and
9 circumstances of each case.

10 Following are examples of instruments which
11 may be deadly weapons: A pistol, a shotgun, a rifle, a
12 dirk, a dagger, a knife, a slingshot, metal knuckles, a
13 razor, gasoline, a firebomb or Molotov cocktail, and
14 lighter fluid. A gun may be a deadly weapon even if it
15 is not operating.

16 The final charge is possession of weapon
17 during the commission or attempt to commit a violent
18 crime in violation of South Carolina code section
19 16-23-490. The State, in order to prove this indictment,
20 must prove beyond a reasonable doubt that the defendant
21 was in possession of a firearm or that was visibly
22 displayed or -- excuse me. The State must prove beyond a
23 reasonable doubt that the defendant was in possession of
24 a firearm or firearm was visibly displayed by what
25 appeared to be a firearm during the commission of a

1 violent crime.

2 A firearm means any machine gun, automatic
3 rifle, revolver, pistol, or any weapon which will or is
4 designed to or may be readily converted to expel a
5 projectile. A knife means an instrument or tool with a
6 sharp cutting blade, whether or not fastened to a handle,
7 which can be used to inflict a cut, slash, or wound.

8 In order to find the defendant guilty of
9 possession of a weapon during the commission of a violent
10 crime, you must first find the defendant guilty of either
11 committing a violent crime or attempting to commit a
12 violent crime. I charge you that murder and armed
13 robbery are violent crimes.

14 Finally, the defendant has raised the defense
15 of self-defense to the charge of murder. Self-defense is
16 a complete defense, and if it is established, you must
17 find the defendant not guilty. The State has the burden
18 of disproving the self-defense by proof beyond a
19 reasonable doubt. If you have a reasonable doubt of the
20 defendant's guilt after considering all of the evidence,
21 including the evidence of self-defense, then you must
22 find the defendant not guilty.

23 On the other hand, if you have no reasonable
24 doubt of defendant's guilt after considering all of the
25 evidence, including the evidence of self-defense, then

1 you must find the defendant guilty.

2 The following elements are required to
3 establish self-defense: First, the defendant must be
4 without fault in bringing on the difficulty. If the
5 defendant's conduct was the type which was reasonably
6 calculated to and did provoke a deadly assault, the
7 defendant would be at fault in bringing on the difficulty
8 and would not be entitled to acquittal based on
9 self-defense.

10 The second element of self-defense is that
11 the defendant was actually in imminent danger of death or
12 serious bodily injury, or the defendant actually believed
13 he was in danger of imminent death or serious bodily
14 injury. If the defendant was actually in imminent
15 danger, it must be shown that the circumstances would
16 have warranted a person of ordinary firmness and courage
17 to strike the fatal blow to prevent death or serious
18 bodily injury.

19 If the defendant believed that he was in
20 imminent danger of death or serious bodily injury, it
21 must be shown that a reasonably prudent person of
22 ordinary firmness and courage would have had the same
23 belief. In deciding whether the defendant actually was
24 or believed he was in danger of imminent bodily injury,
25 you should consider all the facts and circumstances

1 surrounding the crime, including the physical
2 characteristics of the defendant and the victim.

3 The defendant does not have to show he was
4 actually in danger. It is enough for the defendant to
5 believe he was in imminent danger if a reasonably prudent
6 person of ordinary firmness and courage would have had
7 the same belief.

8 The defendant has the right to act on
9 appearances even though the defendant's beliefs may have
10 been mistaken. It is for you to decide whether the
11 defendant's fear of an immediate danger of death or
12 serious bodily injury was reasonable and would have been
13 felt by an ordinary person in the same situation.

14 Words accompanied by hostile acts may,
15 depending on the circumstances, establish self-defense.
16 Evidence of prior difficulty between the defendant and
17 the victim may be considered in deciding whether a threat
18 existed, whether the defendant had a reason to believe a
19 threat existed, and how serious that threat was.

20 Evidence of prior difficulties may be
21 considered by you as showing the animus or attitude of
22 the parties to each other to assist you in determining
23 who was the aggressor; however, this evidence may be
24 considered by you for that purpose only. The relative
25 size, ages, and weights of the defendant and the victim

1 may be considered in deciding the apparent or actual need
2 for force in self-defense and the amount of force needed.

3 The reputation of the victim as a violent
4 person may be considered in deciding whether there was a
5 need for force. Whether defendant had a reason to
6 believe there was a reason for force and whether deadly
7 force was reasonably necessary.

8 Prior instances of violence by the victim may
9 be decided in whether the defendant actually believed he
10 was in imminent danger of death or serious bodily injury
11 or was actually in imminent danger.

12 Threats made by the victim may be considered
13 in determining whether the defendant was, actually was,
14 or believed he was in imminent danger, and the final
15 element of self-defense is the defendant had no other
16 probable way to avoid the danger of death or serious
17 bodily injury and to act as the defendant did in this
18 particular instance. The defendant had no duty to
19 retreat if by doing so the danger of being killed or
20 suffering serious bodily injury would increase.

21 A person cannot be required to make an exact
22 calculation as to the degree or amount of force which may
23 be needed to avoid death or serious bodily injury.

24 Therefore, in self-defense, the defendant had the right
25 to use force needed to avoid death or serious bodily

1 injury. Force used in self-defense does not have to be
2 limited to that degree or amount of force used by the
3 victim.

4 The defendant has the right to use so much
5 force as appeared to be necessary for complete
6 self-protection in which a person of ordinary reason and
7 firmness would have believed to be needed to prevent
8 death or serious bodily harm. And if the defendant is
9 justified in defending himself or others and in firing
10 the first shot, then the defendant is also justified in
11 continuing to shoot until it's apparent that the danger
12 of death or serious bodily injury has completely ended.

13 Now, folks I want you to remember that in
14 determining the guilt or innocence of the defendant you
15 cannot consider any possible penalty for the particular
16 crime. The punishment for the crime is a matter for me
17 to determine and should not be considered by you in any
18 way whatsoever in arriving at a fair and impartial
19 verdict as to guilt or not of the defendant.

20 Now, Madame Foreman, there are six possible
21 verdicts in this case, and I'm going to send these
22 indictments back to the jury room with you, and, again,
23 let me remind you these are not evidence. These are the
24 charging documents, all right?

25 They're not to be considered as evidence, but

1 you will see, Madame Foreman, on the front page of these
2 indictments, there is a little red stamp on there that
3 says true billed up above the foreman and the grand
4 jury's signature. Right below that is a little word that
5 says verdict, and there's a space for you to write the
6 verdict on each charge.

7 As to each of these three charges, there are
8 two possible verdicts: Murder, the possible verdicts are
9 guilty or not guilty. You write the verdict on there.
10 Armed robbery, same thing. Down in that little area, two
11 possible verdicts, guilty or not guilty. Jury
12 unanimously decides what the verdict is. You write it
13 down there.

14 Finally, the same thing on the indictment for
15 possession of a firearm during a commission of a violent
16 crime. Two possible verdicts in the same spot. You
17 would write either guilty or not guilty, depending on the
18 jury's unanimous decision on that.

19 There is no significance whatsoever in the
20 order that I have stated these possible verdicts. One
21 simply has to be first.

22 Let me remind you, ladies and gentlemen, that
23 your verdict must be a unanimous one. Madame Foreman,
24 when the jury agrees on a verdict, you write the verdict
25 on the back of the indictment, sign your name as the

1 foreperson of the jury, and I want you to knock on the
2 door and inform the bailiff you've reached a verdict. At
3 that time we'll receive you back in the courtroom to
4 receive your verdict.

5 Now, I want you to return back to the jury
6 room right now. Do not begin your deliberations just
7 yet. I have to give the lawyers the opportunity to say,
8 Judge, you misspoke, or you said something, you surprised
9 us, that you didn't tell us you were going to say
10 beforehand, something along those lines, a formality we
11 have to go through. We also have to get the evidence
12 together for you.

13 When I send the evidence back with the
14 verdict forms, and I'm also going to send back a copy of
15 the jury charges that I just gave you, when I send those
16 back with the bailiff, he says he will tell you, The
17 judge says can begin your deliberations, that is when you
18 begin your deliberations.

19 Now, the two alternates, I'm going to have
20 you separated into a separate room. Now, when they begin
21 their deliberations, you're not allowed to participate,
22 but I just need y'all to set back in the other room until
23 they have reached their verdict, just in case something
24 happens to somebody and we have to substitute somebody
25 in. Okay? All right.

1 Thank you so much for your patience, and
2 we'll send back word in a few minutes.

3 (In open court, jury not present.)

4 Okay. I stumbled on that one part on
5 possession of a weapon. That's because firearm had the
6 word arm written after that, so I scratched through that.
7 I think I got through that fine on the second run, and
8 then on self-defense, I added on that the defendant has
9 raised a defense of self-defense to the charge of murder.
10 I said that, so I wrote that in on there. Anything else
11 from the State?

12 MR. DuRANT: Nothing from the State?

13 THE COURT: From the defendant?

14 MR. BOSNAK: Nothing, Your Honor.

15 THE COURT: Y'all want to double-check and
16 make sure we got the evidence together before we send
17 them back? And, again, for the record nobody has an
18 objection to the jury charge, to this going back?

19 MR. BOSNAK: Nothing from the defense, Your
20 Honor.

21 THE COURT: Any objection to from the State
22 to the charge going back?

23 MR. DuRANT: No, Your Honor.

24 (At 4:35 p.m., the jury retires to
25 deliberate.)

1 THE COURT: All right. Bring the jury in,
2 and the alternates.

3 (6:10 p.m., in open court, jury present.)

4 THE COURT: All right. Be seated. Folks,
5 you've indicated that you want to break for the evening,
6 and that is fine. What we'll do is we will cease
7 deliberations for the evening. I'll send you home.

8 I would like you to report back tomorrow
9 morning at 9:30 and just go straight back to the jury
10 room. Do not begin deliberations until all the jurors
11 are here, and then once all the jurors are here, then the
12 bailiffs will let me know. They'll bring the evidence
13 and everything back in to you, and then once I send the
14 word back, it's okay to begin deliberations again, you
15 can resume, but don't begin discussions until all of that
16 takes place in the morning.

17 Now, again, for the evening, you have heard
18 all the evidence. You have heard the law, but you cannot
19 talk to each other any longer about the case. You can't
20 talk to anybody else about it. Obviously, I can't stop
21 you from thinking about it, but you just are prohibited
22 from talking to anybody, including another member of the
23 jury, about the case, so go home, enjoy your evening.

24 If you would report back at 9:30 tomorrow,
25 we'll get started promptly then. Thank you for your

1 patience with us today for your work.

2 (In open court, jury not present.)

3 Okay, folks. We see y'all at 9:30 tomorrow
4 morning.

5 (Recess taken.)

6 (May 27, 2013.)

7 THE COURT: All right. Bring everybody in.

8 (In open court, jury present.)

9 THE COURT: Okay, folks. Welcome back. We
10 are now all assembled, and so I'm going to send you back
11 into the jury room. You can begin your deliberations
12 once the bailiff brings back in the evidence. Deliberate
13 for as long as you need.

14 At about -- around 11:30, if y'all have not
15 come back with a verdict, then I will ask the bailiff to
16 come in and see if you want him to order lunch. It will
17 take roughly an hour, hour and a half, to get it over
18 here, but we'll have lunch, if you're still here that
19 long.

20 So you take your time, and we'll take the two
21 alternates again and segregate y'all, and so you can go
22 on back and begin deliberations as soon as they bring the
23 evidence box in. Okay? Thank you.

24 (Jury resumes deliberations 9:52 a.m.)

25 (11:22 a.m., note from the jury.)

1 THE COURT: Okay. So the note from the jury,
2 can lesser charges than murder be considered?

3 So that is answer I proposed. I just want to
4 run that by you. All right? Okay. Take that back to
5 the jury.

6 (2:46 p.m., note from the jury.)

7 THE COURT: Okay. I got a note from the
8 jury, saying the jurors agree on only one charge but not
9 on all. Will the accused be convicted of the one charge?

10 So I was going to bring them in and tell
11 them, of course, there's only -- he is convicted of
12 whatever charge he is convicted on, but go ahead and give
13 them an Allen charge and talk to them. It sounds like
14 they are -- I ask, sounds like they're deadlocked on at
15 least one, if not two of the three charges, and so I'll
16 just explain to them how they have a duty to go back and,
17 you know, with an open mind consider each other's
18 opinions and that if he's not convicted on all the
19 charges or -- if they don't reach a resolution on all the
20 charges, then I'll declare a mistrial, and they'll stand
21 on the charges they're hung up on.

22 All right? Anybody want to give me any input
23 before we do that?

24 MR. DuRANT: The only issue I see with that
25 is apparently it looks like they've convicted on one

1 charge, and with regard to the possession of a pistol
2 during a violent crime, my concern is -- it centers
3 around they can't convict just on that, if they don't
4 have any of the other two, at least one of the other two.

5 THE COURT: I don't know that I agree with
6 you on the law that saying that you have to convict on
7 one or the other. It just says it is possession during
8 the commission of a violent crime. I don't know that it
9 actually has to be a conviction of the other crime, but
10 we can deal with that on another day.

11 Other than that, do you have anything you
12 want to add, Mr. Bosnak?

13 MR. BOSNAK: Nothing, Your Honor.

14 THE COURT: Okay. Well, let's bring the jury
15 in. Leave the alternates out.

16 (In open court, jury present.) All right.
17 Be seated. All right. Madame Foreman, I got your
18 message, which says if the jurors agree on only one
19 charge but not on all, will the accused be convicted of
20 the one charge? That is your question, correct?

21 THE FOREPERSON: Yes, sir.

22 THE COURT: Okay. I'm going to answer that
23 question in a second, but I want to preface my
24 statements -- because I'm going to ask you a question
25 probably down the road, and I want to make sure you don't

1 tell me specifically. I'm not asking you what charge you
2 have agreed on and what charges you haven't agreed on and
3 I don't want you to tell me any indication of how you are
4 leaning on the charges you haven't agreed on, okay? That
5 is within your province and y'all keep that information
6 to yourselves.

7 But as I understand this, you all have either
8 agreed on one charge or have come close to agreeing on
9 one charge; is that correct?

10 THE FOREPERSON: Yes, sir.

11 THE COURT: And y'all are basically having
12 trouble coming to a unanimous decision on two of the
13 other charges?

14 THE FOREPERSON: Yes, sir.

15 THE COURT: All right. Well, to answer your
16 question directly, the state of it is that if you
17 unanimously agree on one of the charges, then, of course,
18 the defendant would stand convicted of whatever charge
19 you convict him of unanimously. All right?

20 Now, on the other two charges, if you do not
21 unanimously agree on the outcome, either guilty or not
22 guilty, then it will be my duty to declare a mistrial,
23 and he will stand convicted of the charge that you agree
24 on, and there will be a mistrial as to the two charges
25 that you do not agree on.

1 And in that case, then, we will have to come
2 back another day, with another jury, and retry the case,
3 and another jury will decide what the outcome of those
4 two remaining charges are going to be.

5 Now, having said that, I want to just talk
6 with you about a couple of things, because when you don't
7 agree on a case like this, as I said, we bring them back
8 and we declare a mistrial. We bring them back and we try
9 again on the charges that you have not agreed on.

10 It's not always easy for 12 people
11 unanimously to agree on something. I understand that,
12 and y'all have been deliberating now -- oh, started
13 about, what, 4:00, 4:30 yesterday, deliberated for an
14 hour and a half, two hours, and you've been back at it
15 since 9:30 this morning, so there is no question that
16 y'all are thoroughly discussing this case back there, and
17 that is very much appreciated by the Court, and you are
18 doing exactly what we asked you to do.

19 You listened. This is a very attentive jury.
20 I watch not only what's going on, I watch y'all, I watch
21 people out in the courtroom. It's kind of my job to make
22 sure to keep an eye on what's going on, but y'all were
23 very attentive. This was a fast trial. We heard a lot
24 in a short period of time, but y'all were not people that
25 were falling asleep and looking around, bored and that

1 sort of thing. I've watched. Everybody was paying
2 attention, and you're doing what we asked you to do.

3 But to ask 12 people to agree on something is
4 a difficult thing, and I understand that. However, y'all
5 have a duty to make a reasonable effort to try to come to
6 a unanimous decision on each and every one of the
7 charges.

8 Now, y'all listened to the evidence and y'all
9 have been back there talking, and so you had a chance to
10 express your views and listen to the opinions of others
11 and to discuss with the other jurors why you feel the way
12 you do and why they feel the way they do, and these are
13 just things that you discuss with an open mind, and it
14 sounds like y'all are doing that.

15 Every person on this jury has a right to
16 their own opinion, and I appreciate that and I respect
17 that, and I want the verdict to reflect what your
18 honestly heartfelt beliefs are. But I'm going to ask you
19 to go back and continue your deliberations with this in
20 mind: I want you to not necessarily abandon what your
21 beliefs are, but I want you to go back in, and those that
22 are in the majority on a particular case that is
23 unresolved, listen to the minority's opinion, and those
24 of you that are in the minority, listen to the majority
25 opinion, and see if you can't carefully consider and

1 respect the others and, perhaps, consider and reevaluate
2 your opinion in light of the arguments that they've made.
3 I want you to lay aside all the outside matters that you
4 bring into a case and reexamine the questions that you
5 might have and base this decision on the law and the
6 evidence that you've heard in this case.

7 You guys were selected in the same manner and
8 from the exact same source that any future jury would be
9 selected from, and I don't have any reason in this world
10 to believe there are 12 better people out there in this
11 community that is going to do a better job than you are.
12 So I'm not going to hold you forever, but I am going to
13 ask that you go back and consider what I just told you,
14 continue to discuss the case with an open mind, listen to
15 what the other people are saying, and see if there's some
16 way that you can come to a unanimous decision, whatever
17 it may be, on all three of the charges, and after you've
18 had the opportunity to do that, if you still can't come
19 to a decision after a while, well, then, you let me know
20 and we'll respect that, but I would sincerely appreciate
21 it if you could give it one more effort.

22 State will appreciate it, the defense will
23 appreciate it, and the Court will appreciate it because
24 we will all have to come back here with another jury one
25 day, and I just don't think there is another better jury

1 out there. You folks are going to be able to do just as
2 fine a job as anybody else, so I want to thank you for
3 your hard work, and if you would, just go on back and
4 continue your deliberations and let me know if there is
5 anything that you need, and when you come to a decision,
6 you just let the bailiffs know. Thank you.

7 (Jury retires to deliberate at 2:57 p.m.)

8 (Court's Exhibit Nos. 1-4 were marked for
9 identification.)

10 (In open court, jury not present.)

11 THE COURT: Did y'all worked out a plea?

12 MR. BOSNAK: We had a plea, but we don't have
13 a number. I would like some kind of range.

14 THE COURT: All right. Let's talk about it
15 on the record before we go. You want to turn that thing
16 on for me? All right. Okay.

17 The jury -- they've indicated the jury has
18 reached a verdict, but I'm also told that almost
19 simultaneously the State has extended an offer to
20 Mr. Gilliard, so I want to put that on the record, that
21 that has been made and what your decision is, because
22 once the jury comes in and gives me your verdict, that is
23 what we live with. You don't get to change your mind.

24 So what, in fact, was the offer that was
25 extended?

1 MR. BOSNAK: Armed robbery, 10 to 30, and
2 manslaughter, zero to 30.

3 MR. DURANT: Two to 30.

4 MR. BOSNAK: Two to 30, I apologize.

5 THE COURT: All right. Mr. Gilliard, stand
6 up.

7 Now, I want to go over something with you
8 here. Again, I told you at the beginning of the trial --
9 if I didn't, I'll tell you now, and you know what the
10 deal is now on what you're charged with. You're charged
11 with murder, armed robbery, and possession of a handgun
12 or a gun during the commission of a violent crime.

13 The two big ones, of course, are murder,
14 which is 30 years, to life without parole. Thirty years
15 is the absolute minimum, and there is no parole. There
16 is no good time credits. You serve a minimum of 30 years
17 up to life and anywhere in between if I sentence you to
18 somewhere in between if you are convicted, but it's a
19 minimum of 30 years if you get convicted, and whatever
20 sentence I give you, it's day to day, up to life without
21 the possibility of parole.

22 Armed robbery is 10 to 30 years, so clearly a
23 conviction of both of those, armed robbery, would be
24 subsumed because the max you could get for armed robbery
25 is 30 and the minimum you could get for murder is 30. So

1 if the jury comes back in with a conviction of murder and
2 armed robbery, you would get at least 30 years on the
3 murder, so I would go ahead and give you a 30-year
4 sentence on the armed robbery.

5 Now, I'm told the State has extended an offer
6 to you, let you plead guilty to armed robbery and
7 voluntary manslaughter. Again, armed robbery is a
8 minimum of 10, maximum of 30; voluntary manslaughter is
9 minimum of 10, up to 30, the difference being, one, you
10 could get less than 30, and, also, whatever you serve is
11 no parole, but a no parole means different in non-murder
12 cases, or noncapital cases. In other words, you would
13 actually be able to accrue credit for good time up to 15
14 percent of your sentence.

15 So if I gave you 30 years on voluntary
16 manslaughter, you would have to serve, what, roughly 26;
17 is that right? Is my math right on that?

18 MR. BOSNAK: Somewhere close, Your Honor.

19 THE COURT: No, I'm sorry. For all practical
20 purposes, if you were to plead to voluntary manslaughter,
21 you would probably get a lot closer to 30 than you would
22 to two, so I don't want to give you any misconceptions
23 that you might be not serving a good, long period of time
24 if you plead guilty to voluntary manslaughter, but there
25 are no deals being offered as to what the sentence would

1 be. It would simply be a straight-up plea to armed
2 robbery and a straight-up plea to voluntary manslaughter
3 with me being the sole decider as to how much time you
4 served.

5 Do you understand that offer has been
6 extended to you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. You've talked about
9 this with Mr. Bosnak?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. I understand that
12 this just came in, but we also just at about the same
13 time got word the jury has reached a verdict, so it's up
14 to you. What do you want to do?

15 THE DEFENDANT: I want to see what the jury
16 is talking about.

17 THE COURT: You want to see what the jury
18 has?

19 THE DEFENDANT: Yeah.

20 THE COURT: I am not going to talk you out of
21 it. Once the jury comes in, this offer is off the table.

22 THE DEFENDANT: I already know.

23 THE COURT: You got that? Okay. Let's bring
24 the jury in. Yeah, you can bring the alternates in.

25 I do want to let you know, folks, that

1 whatever the outcome of the verdict is, I don't want to
2 hear any outbursts from the people in attendance. Do you
3 understand? Bring them in. All right.

4 (5:50 p.m., in open court, jury present.)

5 Madame Foreman, I understand the jury has
6 reached a verdict; is that correct?

7 THE DEFENDANT: Yes, sir, we have.

8 THE COURT: All right. Is it a unanimous
9 verdict as to each of the three charges?

10 THE FOREPERSON: Yes, sir.

11 THE COURT: All right. So you have reached a
12 verdict on each charge?

13 THE FOREPERSON: Yes, sir, a decision.

14 THE COURT: And it's unanimous as to each
15 charge?

16 THE FOREPERSON: A decision, yes, sir.

17 THE COURT: All right. Will you hand that to
18 the bailiff, please. The verdicts are in there? Madame
19 Foreman, you only wrote a verdict on the armed robbery
20 indictment. I don't see where you wrote a verdict on the
21 murder or on the possession of a firearm. All right?

22 Let me hand you those back, and write the
23 verdict in for me. Let me send you back. You put it in
24 the same spot there as you did -- right under the words
25 true bill. Y'all go back, let her write that down, and

1 then y'all can come back in. All right?

2 (Recess taken.)

3 Bring the jury in.

4 (5:59 p.m., in open court, jury present.)

5 THE COURT: Okay. All the jurors are back in
6 and seated. Ms. Foreman?

7 THE FOREPERSON: Yes, sir.

8 THE COURT: Looks like we had a little
9 confusion there.

10 THE FOREPERSON: Yes, sir.

11 THE COURT: So let me see if I understand
12 this. You all were not able to reach a unanimous verdict
13 on the charges of murder and on possession of a firearm;
14 is that correct?

15 THE FOREPERSON: Yes, sir.

16 THE COURT: In other words, you're hung on
17 both those.

18 THE FOREPERSON: Yes, sir.

19 THE COURT: You did reach a unanimous verdict
20 on the charge of armed robbery; is that correct?

21 THE FOREPERSON: Yes.

22 THE COURT: All right. And that verdict is
23 guilty of armed robbery; is that correct?

24 THE FOREPERSON: Yes, sir.

25 THE COURT: All right. I'm not going to

1 belabor and ask y'all to go back and deliberate any more.
2 Y'all have done more than your fair share, and I gave you
3 a charge earlier on asking you to go back and reconsider,
4 and so that is all we can ask you to do, and you have
5 done your service. I want to thank you for it.

6 I do need to poll the jury on the charge of
7 armed robbery, and so what I will have you to do is the
8 clerk is going to poll you by calling out your number and
9 asking you if, in fact, that was your verdict, and if it
10 still is your verdict as to the charge of guilty of armed
11 robbery.

12 That is formality we go through called
13 polling the jury, so, Mr. Clerk, if you would, poll the
14 jury on the charge of armed robbery.

15 THE CLERK: Yes, Your Honor.

16 (Whereupon, the jury was polled and all
17 jurors indicated their agreement with the verdict.)

18 Is there anyone's juror number I missed? The
19 verdict stands.

20 THE COURT: All right. What I will do is
21 declare a mistrial on the charges of murder and
22 possession of a firearm during the commission of a
23 violent crime.

24 Now, folks, let me talk with you just a
25 second because I know this has been a long week for you,

1 all right, and, you know, this is about as serious a case
2 as we can get. The only time we get more serious than
3 this is when the State is seeking the death penalty in a
4 murder case, and they're not seeking the death penalty,
5 so those are more stressful, but I can tell you that
6 doesn't mean it's a whole lot less stressful than what
7 y'all have gone through.

8 This is a series of charges we get, and
9 y'all, as I told you earlier, were diligent in service,
10 very attentive throughout this, and the fact that y'all
11 started yesterday, you know, 4:00 in the afternoon, went
12 till 6:00 and then started again at 9:30 in the morning,
13 you're back at 6:00 tonight, you've done all that you can
14 do, and I'm convinced of that.

15 Y'all went back and listened and talked two
16 or three hours after I gave you the charge I gave you
17 earlier, we call that an Allen charge and ask you to go
18 back and reconsider and all that, that was a couple hours
19 ago, so y'all have done all that we ask you to do. I
20 know y'all are probably disappointed that you could not
21 come to a unanimous verdict on that, but you know what,
22 those things happen, and we'll work it out. We'll do our
23 jobs and move forward.

24 I want to thank you for your service. Y'all
25 did exactly what we asked you to do. First and foremost,

1 you showed up for jury service this week and not
2 everybody does that, and we have to take care of that,
3 but, you know, I recognize it's an inconvenience for you
4 to be here this week, and hopefully we have minimized the
5 amount of time in which you were not actually sitting in
6 the courtroom listening to testimony because I know is
7 nothing more frustrating to be sitting around waiting,
8 going, What are they doing?

9 The couple of times when we didn't have you
10 in here during the trial, we were doing something to
11 streamline it, to get it to you as quickly as possible,
12 you know, and some of these states -- California, this
13 would have been a two-week, three-week-long trial. I
14 still -- I have a hard time imagining how they can take
15 so long to do it, but we have a good system, I think.

16 The prosecutors presented a good case; the
17 defense presented a good case. It was a tough decision
18 you folks had. I don't blame you one bit. It was a hard
19 decision to have to come up with, and so you got nothing
20 to be ashamed of. You came to a verdict on one of them,
21 and we'll take care of the other two charges another day.
22 I do want to thank you for this service, though, because,
23 you know, people in other countries who are charged with
24 crimes do not have the rights that were afforded to
25 Mr. Gilliard.

1 People around the world would love to have
2 the rights that are afforded to Mr. Gilliard, and that is
3 12 jurors who have come from this community who are just
4 people, normal people. You don't know anything about
5 this case, you don't know him, you don't know the
6 witnesses, and you listen to the evidence and you, who
7 are not members of the government, decide.

8 You know, we take it for granted because we
9 do this week in and week out. This is a one time --
10 probably once in a lifetime thing for most of you, and so
11 it's something that you don't take for granted. You'll
12 probably remember this the rest of your life, but those
13 of us that work in the building, we do it every week,
14 and, shamefully, from time to time we take it for
15 granted, but what you do is so important. There are less
16 than ten, probably closer to six, countries in the entire
17 world that would give the defendant a right to a jury
18 trial like you in a case like this, so that is special.

19 In fact, it's so special that our founding
20 fathers put it in the United States constitution three
21 separate times. You have the right to a jury trial.
22 It's in the State constitution as well, so it is very,
23 very, very important and special, the role that you
24 played this week. It's often said that jury service is a
25 responsibility. It's also a privilege to serve on a

1 jury, because you actually participated in your
2 government this week.

3 We have three branches, legislative,
4 executive, and judicial. This is the judicial branch at
5 work, folks. I wear the robe because that is a full-time
6 job on this and that robe is designed to show neutrality.
7 We don't give y'all a robe, but you were judges this
8 week. You determined what the outcome of this was. My
9 role is to tell you what the law is and make sure the
10 trial moved forward, but y'all decided what the outcome
11 of this case was and we live with it, and that is a great
12 thing, and I want to thank you for that service.

13 What we're going to do now -- I'm going to
14 actually not sentence him tonight. I'm going to give the
15 party a couple of days to talk things over with and see
16 what our next step is, but you are free to go for tonight
17 and, of course, the rest of the week. We're not going to
18 start another trial this week.

19 I know earlier in the week there was a note
20 passed to me about asking could you ask me some questions
21 about the trial. I'll be glad to go back. I need to
22 talk with them for just about two, three minutes. If
23 anybody wants to go back in the jury room and wait for me
24 for two minutes, I'll be glad to go back and answer any
25 questions you have, but you don't have to and you're free

1 to go, and folks will escort you out, if you want to go
2 right now.

3 But if anybody wants to stay around for a
4 minute, it would just be about two or three minutes, and
5 I'll answer any questions you have, so thank you for your
6 service and we'll see you next time.

7 (Jury dismissed.)

8 THE COURT: All right. Well, Mr. Gilliard,
9 you were found guilty of armed robbery. The sentence on
10 that, of course, is 10 to 30 years, and I will defer
11 sentencing today. This will give you and your lawyer and
12 the State an opportunity to discuss whether or not y'all
13 want to pursue the plea offer any further or whether or
14 not they want to retry you, but no need for me to
15 sentence you today at this late hour.

16 We will -- if, in fact, I would, I would let
17 everybody talk, and we'll just do that another day, and
18 we'll see how the rest of this gets disposed of, but,
19 obviously, you're just going to be remanded to the county
20 jail at this time because you have been convicted of
21 armed robbery, and we'll see what the State wants to do
22 because I have declared a mistrial on the indictment for
23 murder and possession of a firearm. Okay?

24 Thank y'all for your hard work.

25 MR. DuRANT: Thank you, Your Honor.

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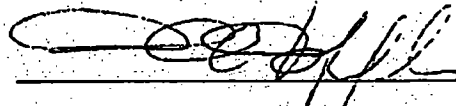
(Whereupon, the proceedings were concluded.)

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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the May 24-27, 2010.

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

November 9, 2013



Circuit Court Reporter

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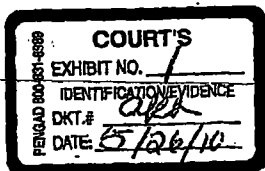
AFTER THE TRIAL OR WHEN
APPROPRIATE, IS IT POSSIBLE
TO EXPLAIN WHY THE FIRST
WITNESS WAS EXCUSED?

IS IT NORMAL PROTOCOL FOR
THE ACCUSED TO SPEAK
FREELY WITHOUT REFERRING
RESPONDING TO QUESTIONS
FROM THE ATTORNEY?

Telexia Williamson
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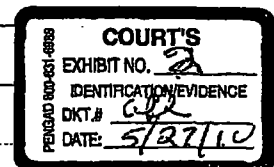
I will be able to answer
these questions after the trial.
Please do not factor these
issues into your deliberations.

For You



IF THE JURORS AGREE
ON ONLY ONE CHARGE, BUT
NOT ON ALL, WILL THE
ACCUSED BE CONVICTED
OF THE ONE CHARGE?

Telicia Williamson
239



May 28, 2010

This jury panel formed in General Sessions Court - Docket No 2010GS1002059

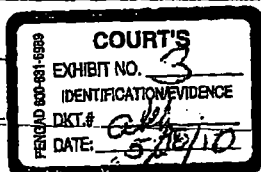
Docket No 2010GS1002060

Docket No 2010GS1002061

was not able to reach a unanimous decision on the charge against the defendant, Bernard Othello Billiard, of murder.

This jury has found the defendant, Bernard Othello Billiard, guilty on the charge of armed robbery.

This jury was not able to reach a unanimous decision on the charge against the defendant, Bernard Othello Billiard, of possession of a firearm during the commission of a violent crime.

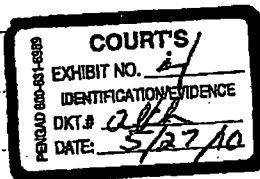


Lelecia Williamson
239

Can lesser charges
than murder be
considered?

Felicia Williams
239

No. Roger Young



Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (February 25, 2011.)

2 THE COURT: Mr. Gilliard, I'm going to go
3 ahead and sentence you on the armed robbery.

4 You were convicted on May 27, 2010, and you
5 were not sentenced at that time pending this case coming
6 to trial, so I'm going to go ahead and dispose of that
7 issue now.

8 I'll be glad to hear the State on sentencing.
9 I would be glad to hear anything anyone wants to say
10 about sentencing. I would like to hear anything you
11 would like to say, Mr. Bosnak or Mr. Gilliard, before
12 sentencing.

13 I've heard this case. We didn't go into the
14 armed robbery, per se, but the facts were basically the
15 same, so I've heard the testimony. I've observed him
16 testifying. I'll be glad to hear from either person
17 regarding sentence. I understand it's a minimum of ten,
18 maximum of 30; is that correct?

19 MR. SIMPSON: That's correct.

20 MR. DuRANT: That's correct.

21 THE COURT: I'll be glad to hear from both
22 parties, from any of the victim's family. I'll be glad
23 to hear from anybody on the defendant's behalf.

24 MR. DuRANT: Thank you, Your Honor. Yes, you
25 have essentially heard all the facts that were heard in

1 the first trial of this case concerning an armed robbery,
2 as we also tried this case for murder.

3 The jury in the first case did return a
4 unanimous verdict for armed robbery, and based on the
5 facts that were presented to that jury, the facts that
6 are before Your Honor, this is one of most horrific armed
7 robberies imaginable. Ten shots were used to subdue the
8 victim in this case and make it so that this defendant
9 could steal money from him. On that basis, the State is
10 asking for the maximum, 30 years, on the armed robbery
11 charge, and we have several members of the victim's
12 family that would wish to address the Court at the
13 appropriate time.

14 They are also represented by an attorney,
15 Mr. Mark Peper, who would like to speak to Your Honor on
16 behalf of the family, and I've been given some pictures
17 that the victim's family wishes me to pass up to you,
18 Your Honor.

19 THE COURT: Okay. I'll be glad to look at
20 them.

21 Thank you, sir. I have reviewed the
22 pictures.

23 MR. DuRANT: Thank you. And just to clarify,
24 the first picture is actually the victim, and the two
25 other pictures are his children.

1 THE COURT: Two younger children are the
2 children in this picture?

3 MR. DuRANT: And that is the picture of the
4 victim.

5 THE COURT: How old was he when that picture
6 was taken, about one?

7 MR. PEPER: Mark Peper on behalf of the
8 Wittrell family. I'm joined in the courtroom by a host
9 of family member, which you can see a majority of which
10 have been here throughout the trial. Most importantly,
11 the head of the family, the matriarch, Ms. Laverne
12 Robinson, who is seated front row to my left, your right,
13 along with the mother of his two children. His two
14 children are ages one and four and will forever be
15 without their father.

16 Their mother is Ms. Kristina Lee, Fernandez
17 Lee, who is a friend, and the children's uncle,
18 Ms. Rosalie Wittrell -- excuse me, her nephew, Louise
19 Sheen also is the aunt of the victim; Ms. Tammy Lee, who
20 is the grandmother of the two minor children left behind,
21 Michelle Mitchell, who is a cousin; Ricky Hagood, cousin;
22 Joseph Wittrell, cousin; and Allen Rogers, along with
23 other various family members.

24 Judge, as you're aware, this is the second
25 time we've tried this case, and as primarily a defense

1 counsel myself, I always welcome the opportunity to have
2 as many bites at the apple as the State is willing to
3 give the defendant. He deserves that right, and we would
4 not do anything to stand in the way of that right.

5 However, when you have multiple trials, the
6 family has to sit through multiple recounts of the events
7 of that night. We cannot bring him back. We can't do to
8 this defendant what he's done to the victim. What we can
9 do is implore upon you to remove the defendant from
10 society for as long as practically possible.

11 With it being a ten to 30 crime, Judge, we
12 join in the prosecutor's remarks in knowing that at least
13 we have some sort of sense of security that he can't come
14 back for at least 30 years and cause any more harm to
15 this family than he's done already.

16 We want to take this opportunity to thank
17 everyone involved, Detective Wagner, Detective Perkins; I
18 believe Detective Osborne is still in the case,
19 Mr. Simpson, Mr. Grant, Ms. Procel on behalf of the
20 victims. We could not have sat through this now second
21 recount of events without their help.

22 Your Honor, in closing, again, there is
23 nothing I can say on behalf of the family that is going
24 to comfort them. What may bring a sense of comfort to
25 them is knowing that they could go home tonight and rest

1 in bed and for the next 10, 15, 20, 25, 30 years, knowing
2 that this defendant cannot harm any more family members.
3 Again, we join in the State's remarks and ask, from the
4 family's perspective, that you consider the maximum
5 sentence of 30 years.

6 Thank you very much.

7 THE COURT: Would any of your clients like to
8 speak to the Court, Mr. Peper?

9 MR. PEPER: Mr. Wittrell, Your Honor.

10 THE COURT: Okay.

11 THE WITNESS: My name is Lawrence Tumelo,
12 Judge. I'm the victim's father, and just to reiterate
13 what Mr. Rutledge said, very, very violent, very, very,
14 violent, and I'm sure you've been a judge for quite some
15 time. This type of violence has to rank at the top of
16 your list of what you've seen through criminal court, but
17 this young man was sprayed out there, Judge, ten shots at
18 point blank range. Judge, seven of the shots went
19 completely through him.

20 This man has devastated this family. He has
21 bring us to our knees, Judge, and I just beg you, as
22 you're sitting and authority to sentence him to the
23 maximum possible that you can give this young man for the
24 crime that he is convicted of, and I beg you as a father
25 that I think the charge -- I happened to sit here and had

1 to listen to witnesses describe how my son reacted to
2 these bullets going through him, with his tongue hanging
3 out of his mouth, with his eyes rolled back in his head.
4 Judge, very, very, violent, no remorse.

5 I would just ask that you sentence him on
6 your discretion to as many years so we can go home and I
7 ask stop on my son's grave when I leave here and I can
8 say goodbye to him, and I just pray you will fulfill that
9 for me. Thank you, Judge.

10 THE COURT: Okay. Thank you very much.
11 Anybody else, Mr. Peper?

12 MR. PEPER: No, sir.

13 THE COURT: There is somebody standing up
14 behind you.

15 MR. PEPER: Ms. Tammy Lee, Your Honor.

16 THE WITNESS: I'm Tammy Lee. I'm the mother
17 of Vincent's girlfriend. I'm the grandmother of
18 Vincent's son that my grandson is never going to get a
19 chance to see his father. My grandson was born a month
20 from the day his father was buried.

21 I was nice enough to give Bernard a place to
22 stay when he was homeless. I fed him when he got in
23 trouble, I helped get him out of trouble, and I want you
24 to take all this into consideration, that this is not the
25 way that he should repay me for what me and my family

1 have done to him.

2 When he did what he did, he took a big part
3 away from my daughter. My daughter suffers every day. I
4 look at my grandson, who looks just like his father. My
5 grandson will never, ever, get to know his father, or see
6 him in his life but in pictures, and I just want you to
7 try to take all this in consideration in your sentencing.

8 THE COURT: Okay. Thank you very much. I
9 appreciate your words. Solicitor, anything else -- Mr.
10 Peper, anything from you?

11 MR. PEPER: No, sir.

12 THE COURT: Anything from the State?

13 MR. DuRANT: No, sir.

14 THE COURT: I'll be glad to hear from you,
15 Mr. Bosnak.

16 MR. BOSNAK: Thank you, Your Honor, may it
17 please the Court: These courtrooms and Lady Justice are
18 scales, and I think in cases like that, you have one type
19 of justice that can borderline on very harsh sentences,
20 but the other side of the scale is mercy, and so there is
21 a harsh justice and there is mercy on these two scales.

22 I don't think -- if Bernard got life, I don't
23 think it would ever fill the hole, and I don't presume to
24 speak for the family, but I don't think it will ever fill
25 the hole that is inside them and their heart for their

1 son, and I don't think there is anything you could ever
2 do for a child that has to grow up without a father. And
3 I have said it at the first of this, that this was a
4 tragedy. There is not going to be a winner in this at
5 all.

6 This young man, Vincent Wittrell, he'll never
7 come back. He'll never get to spend time with his child.
8 He'll never get to hug his father. He'll never get to do
9 any of that, but Bernard has a family and a father, and I
10 think if there is redemption -- and we know he's got to
11 go to jail, and we know he's got to go to jail for a
12 while, but I would hope somewhere there is redemption
13 that this young man could one day get out and maybe make
14 something of his life.

15 He is a very talented young man, well-spoken,
16 very smart, for not having much formal education, and I
17 don't know if he can, and what I am so afraid of, if he
18 gets 25, 30 years in a prison, I don't know if any good
19 will come from that, Your Honor. I think that is kind of
20 a death sentence.

21 If he does 30 years, when he comes out, he'll
22 be in his 40's. If he doesn't get killed in prison,
23 he'll be institutionalized. I don't know who would want
24 to hire him. I don't know if he would know another home
25 other than the penitentiary.

1 As you well know, this is a complicated case.
2 This is not an easy case, and you can see that. We've
3 tried this in front of two juries, and one juror couldn't
4 make a decision, and even though they found him guilty of
5 the armed robbery, they didn't find him guilty of the gun
6 charge, and I think they were kind of trying to split the
7 baby on this. And now we've gone in front of another
8 jury in less than a year, and they're wrestling with the
9 same issues.

10 I know you have to give him some time, Your
11 Honor, but I would ask, based on his record -- there is
12 nothing in his record that shows violence, and I know
13 somebody is dead as a result of this, and I would just
14 ask you to please be merciful, Your Honor.

15 That's all I can do.

16 THE COURT: Mr. Gilliard, anything you would
17 like to add?

18 THE DEFENDANT: Yes, sir. I just want to
19 say, you know, I've been listening to the family
20 throughout the whole trial. I know that they're hurting,
21 you know. I know this. And, like I said during the
22 trial, I don't enjoy all that negative energy coming at
23 me with the crime. I don't like being at the center of
24 that. I don't even like being the cause of that, you
25 know, and I appreciate everything Ms. Tammy did for me.

1 I want to let her hear that, you know.

2 I don't know if the victim mother remember me
3 or anything, but I known him since, like, 2004, and she
4 always been real hands on with him. I seen this, and I
5 admire that. I'm not going to -- you know, I'm not the
6 Jackson boys, Michael Meyers, Freddy Kruger, all the
7 predators. My name is Bernard Othello Gilliard, Junior.

8 This is not something I do every day. I did
9 not plan to get into this situation. I tried, Your
10 Honor. I tried so many times, I tried to avoid the
11 situation with the deceased, and certain people may not
12 come out and say what it is, you know, because, say you
13 got two basketball teams. What opponent do you know is
14 going to help the other opponent? You with that family.
15 I understand they're sticking together, but if you know
16 something, how many people you know within that family
17 sitting going to come out and say something to benefit?

18 If I'm on your basketball team, you're going
19 to help me put the ball in the goal, I just say that --
20 there is people who know more than was really coming out
21 there, and I can understand why they may not come out and
22 say that because you got the victim's immediate -- mother
23 and father and immediate family.

24 ~~How do they come out and say okay? But it~~
25 could have been a possibility that something happened

1 without them looking at them like a traitor or whatever,
2 but I want to let them hear this again. I said this up
3 here. I apologize me and him couldn't handle this
4 different, but I had a choice.

5 THE COURT: You did what? You apologize for
6 what?

7 THE DEFENDANT: That me and him couldn't
8 handle things differently throughout the whole situation.
9 But I had a choice: Life or death. Me or him? I love
10 myself. You know, I'm going to choose life, as many
11 times as it takes. I'm not ready to die, and I just want
12 to let them know, you know, I apologize me and him
13 couldn't handle things different, but I am trying to
14 live.

15 And, you know, the armed robbery or whatever,
16 I take my responsibility. They found me guilty of that,
17 you know, and I know I got to do a little bit of time for
18 armed robbery. I know that. That's all I want to say.

19 THE COURT: Okay. Thank you very much.
20 Anything else?

21 THE WITNESS: Judge, I'm Bernard Gilliard,
22 Senior. This is my only son, and I thought it was clear
23 that he did not go there -- he didn't go there with the
24 intentions to rob Vincent or to kill him, and the fact
25 that he still had all that money in his pockets, how

1 could they say he went there with intentions to do that?
2 I don't believe that that is why he went there.

3 He didn't go there with that intention.
4 Things went the wrong way, they went out of hand. It
5 happened, and I just wanted to say that.

6 THE COURT: Okay. Thank you so very much.
7 Appreciate you being here.

8 Anything else from the State?

9 MR. DuRANT: No, Your Honor.

10 THE COURT: All right. Mr. Gilliard,
11 indictment 2010-GS-10-02060 for armed robbery, the
12 sentence is you be committed to the state department of
13 corrections for a period of 25 years.

14 Thank you very much.

15 - - -

16 (Whereupon, the proceedings were concluded.)

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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 25th of February 2011.

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

April 10, 2014

A handwritten signature in dark ink, appearing to read 'A. Haffenden', is written over a horizontal line.

Circuit Court Reporter

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STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
THE STATE)	TRANSCRIPT OF RECORD
-VS-)	2010-GS-10-2059
BERNARD O. GILLIARD,)	2010-GS-10-2061
<u>DEFENDANT.)</u>	

APRIL 21, 2011

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE THOMAS L. HUGHSTON, JUDGE

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

RUTLEDGE DURANT, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

JOHN MICHAEL BOSNAK, ESQUIRE
ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER-HANKS
CIRCUIT COURT REPORTER

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NO EXHIBITS WERE INTRODUCED

1 Thursday, April 21, 2011

2 THE COURT: Let's see. Bernard Othello Gilliard,
3 G-i-l-l-i-a-r-d. Is that your name?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. I have here in my hands
6 three indictments. All of these, I believe, relate to --
7 no, actually -- well, two of these say April 21, the
8 other one says April 17.

9 Is that right?

10 MR. DURANT: That's correct, Your Honor.

11 THE COURT: Okay. Well, April 17, 2009, the State
12 says that you were unlawfully carrying a pistol about
13 your person on that date. Do you understand that charge
14 and the possible penalty of one year in the penitentiary?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Then we go to April 21, for
17 the other two charges here, started out as a charge of
18 murder. The State is willing to accept a plea of guilty
19 to the charge of voluntary manslaughter involving you and
20 events on April 21, 2008, and the death of Vincent
21 Wittrell, W-i-t-t-r-e-l-l. They say you shot him.
22 Voluntary manslaughter, less than murder but still a very
23 serious charge and conviction.

24 If you plead guilty or you are found guilty after a
25 trial voluntary manslaughter carries what?

1 MR. DURANT: Two to 30 years, Your Honor.

2 THE COURT: Up to 30 years in the penitentiary.

3 Minimum of two, maximum of 30. Do you understand that,
4 Mr. Gilliard?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Also same date as I said, the other
7 charge, possession of a pistol, firearm, handgun during
8 the commission of that crime, other crime.

9 Voluntary manslaughter, what does that carry?

10 MR. DURANT: Five years, Your Honor.

11 THE COURT: Five years in the penitentiary on that.
12 Of course, you don't have to plead guilty to any of these
13 charges, Mr. Gilliard. You have an absolute right to a
14 jury trial. Do you have a question?

15 THE DEFENDANT: I can't talk to him right quick?

16 THE COURT: You can talk with him. Sure.

17 (WHEREUPON, a private conversation took place
18 between the defendant and Mr. Bosnak.)

19 MR. BOSNAK: Your Honor, he was just confused on
20 the maximum.

21 THE COURT: Okay.

22 MR. BOSNAK: He understands that he's pleading to
23 20 years.

24 THE COURT: All right. Twenty years. Well, two to
25 30 years is what the law provides for. I haven't made a

1 decision about anything as far as what I'm going to
2 sentence you to, Mr. Gilliard.

3 I'm going to listen to what you have to say, what
4 your lawyer has to say, what the State has to say and
5 then I'm going to make a decision about what I think the
6 appropriate sentence is.

7 But on the last one, as I said, I could sentence
8 you up to five years for the pistol during the commission
9 of the crime. I could sentence you up to 30 years on the
10 manslaughter, voluntary manslaughter, and I could
11 sentence you to one year on the pistol. Do you
12 understand that?

13 THE DEFENDANT: Yeah.

14 THE COURT: Okay. I hadn't decided. Do you
15 understand that?

16 THE DEFENDANT: Yeah, I hear you.

17 THE COURT: Okay. Well, do you understand it?

18 MR. BOSNAK: Your Honor, I think that was supposed
19 to have been a negotiated sentence.

20 THE COURT: It's not negotiated because I haven't
21 agreed to anything.

22 MR. BOSNAK: Okay. All right. Yes, sir.

23 THE COURT: It's not negotiated. I haven't agreed
24 to anything. I'm going to listen to what you have to say
25 then I'll make a decision.

1 But you don't have to plead guilty to anything,
2 Mr. Gilliard. You have an absolute right to a jury
3 trial, put the State to the test. I understand and just
4 from a brief conversation I had with your lawyer and the
5 State's lawyer just a minute ago that you've actually
6 had, what, two jury trials on this?

7 THE DEFENDANT: Yeah.

8 THE COURT: That resulted in a hung jury each time.

9 THE DEFENDANT: Right.

10 THE COURT: So you know what a jury trial is?

11 THE DEFENDANT: Yeah.

12 THE COURT: Do you want a jury trial now?

13 THE DEFENDANT: If I can't get that 20 we can go
14 ahead back to trial.

15 THE COURT: All right. Well, other than that has
16 anybody promised you anything or threatened you in any
17 way to get you to plead guilty?

18 THE DEFENDANT: No, nobody promised me nothing.

19 THE COURT: Are you pleading guilty then on your
20 own free will?

21 THE DEFENDANT: Yeah.

22 THE COURT: All right. I'll accept your plea then.

23 Solicitor, what else would you like to tell me
24 about this situation?

25 MR. DURANT: Thank you, Your Honor. As you've

1 heard, there have been two trials for a charge of murder,
2 both of which have resulted in a mistrial, hung jury.

3 The first trial, which took place, I believe in
4 April of 2010, actually Mr. Gilliard was convicted of
5 armed robbery during that trial. We went to trial on
6 three charges, murder, armed robbery and possession of a
7 pistol during a violent crime. We had a second trial
8 just earlier this year where the jury again deadlocked.

9 Let me tell you about the essential facts of this
10 case.

11 THE COURT: All right.

12 MR. DURANT: It occurred two years ago today, April
13 21st. It was at [REDACTED] Clovewood Street. Vincent
14 Wittrell, the victim in this case, was in a car on
15 Clovewood Street. He met up with this defendant, and
16 essentially this defendant shot him 10 times in the car.

17 At trial, the defense contended that there were
18 self defense issues, and that largely resulted in the
19 jury deadlocking; however, he was convicted of armed
20 robbery. He was sentenced to 25 years.

21 Mr. Wittrell's family has endured two trials now.
22 It's been very tough on them. It's been very tough on
23 everybody. To go through another trial the victim's
24 family, at this point, would rather not do that, if there
25 is any way to do that. So they are on board for this

1 plea for --

2 THE COURT: So you've offered the plea of voluntary
3 manslaughter and are recommending a sentence of 20 years?

4 MR. DURANT: That's correct, Your Honor.

5 THE COURT: Concurrent?

6 MR. DURANT: Concurrent.

7 THE COURT: With what he's already been sentenced
8 to?

9 MR. DURANT: Concurrent with what he's already been
10 sentenced to.

11 THE COURT: All right. I think that's a fair way
12 of handling the case.

13 MR. DURANT: Thank you, Your Honor.

14 THE COURT: All right.

15 MR. DURANT: He does have a record. I want you to
16 know about that; 2004 possession of cocaine two times,
17 2006 possession of crack, 2007 possession of cocaine.

18 The facts from the unlawful carrying of a pistol
19 charge from the April 17th, 2009, occurred here in
20 Charleston County at the intersection of King Street and
21 Morris Street. The defendant was a passenger in a
22 vehicle. He was brought out of the car. He was found

23 carrying a pistol on his person. That occurred four days
24 before this shooting death of Vincent Wittrell.

25 Those are the essential facts. That's what has

1 happened in this case, and we ask that Your Honor go
2 along with it.

3 THE COURT: All right. Let's switch now to the
4 other side. What would you like to tell me on behalf of
5 your client at this time?

6 MR. BOSNAK: Your Honor, just real briefly. He's
7 23 years old. He's a very talented young man, very
8 likable young man. Anybody, even including the police
9 officers that -- detectives that arrested him, they like
10 him, the deputies here like him. Even I think the judges
11 he went before found him a very likable young man.

12 This was an argument over drug territory between
13 two drug dealers. The first charge, the unlawful
14 carrying charge, was about three days, four days
15 beforehand. He told the police officer that somebody was
16 trying to kill him, and that's what he was doing carrying
17 a gun. And the police officer from the City of
18 Charleston came and testified to that, because he asked
19 Bernie, What are you doing carrying this gun?

20 He said, I got some people trying to kill me and I
21 need to protect myself.

22 And we used that testimony at trial. Bernie was
23 walking, the other young man was on foot. Just a lot of
24 things got to the prosecutor's problems they had with the
25 case, I believe, and the ballistics, and some of the

1 other things, Your Honor, and we deadlocked twice.

2 I feel like the more the defense tries these cases
3 the odds we have less and less of a chance of winning.
4 And to keep him from possibly getting life in prison,
5 Your Honor, we feel like this is a good plea to resolve
6 this matter, Your Honor.

7 THE COURT: Anything else you want to say,
8 Mr. Gilliard? You don't have to. I just give you an
9 opportunity. Anything else you want to say? I'm
10 prepared to give you the 20 years with the recommendation
11 and what you have agreed to. Anything else?

12 THE DEFENDANT: Yeah. I just want to say something
13 right here. Mr. Durant said something, but I would have
14 never shot him if he wouldn't have pulled that gun out on
15 me, you know.

16 THE COURT: Well, I want to make sure you
17 understand by pleading guilty to this today you're giving
18 up any right to claim self defense to the charge; do you
19 understand that?

20 THE DEFENDANT: Yeah, I got you.

21 THE COURT: All right. Anything else?

22 THE DEFENDANT: Nope.

23 MR. BOSNAK: Nothing, Your Honor.

24 THE COURT: All right. Sentence on the pistol is
25 one year. Sentence on the possession of a weapon during

1 the commission of the crime is five years. Sentence on
2 the other one, the voluntary manslaughter, is 20 years.
3 All of those sentences are concurrent, and you get credit
4 for any jail time toward that. Good luck to you.

5 MR. DURANT: Thank you, Your Honor.

6 (WHEREUPON, the hearing was concluded.)

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C E R T I F I C A T E

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2

3 I, Sharon L. Vizer-Hanks, Official Court Reporter for
4 the Ninth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a true,
6 accurate and complete transcript of record of all the
7 proceedings had and the evidence introduced in the
8 hearing of the captioned case in Circuit Court on the
9 21st day of April 2011.

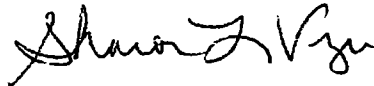
10 I do further certify that I am neither of kin, counsel
11 nor have an interest to any party hereto.

12

13

February 17, 2013

14



15

SHARON L. VIZER-HANKS

16

CIRCUIT COURT REPORTER

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25

FORM 5

STATE OF SOUTH CAROLINA

County of Charleston

IN THE COURT OF COMMON PLEAS

C/A. 12-CP-10-7484Bernard O. Gilliard # 314249

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2012 NOV 15 AM 10:06
JULIE J. ADAMS, CLERK
BY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Charleston County Detention Center
2. Name and location of Court which imposed sentence Charleston County -
Charleston, South Carolina
3. Name(s) of co-defendant(s) (if any) Lavonzelle Felder, Albert Grant
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010GS1002060 Armed Robbery

- (b) 2010GS1002059 Poss of Weapon During Crime
- (c) 2010GS1002061 Voluntary Manslaughter
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Armed Robbery Convicted of on 5-27-10
- (b) Poss of Weapon During Crime on 2-22-11 Plead
- (c) Voluntary Manslaughter on 2-22-11 Plead
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓ Poss of Weapon and Voluntary Manslaughter
- (b) after a plea of not guilty ✓ Armed Robbery
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I informed counsel that I wish to appeal, counsel failed to file the appeal.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached Page 'A'
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Counsel Failed to file the direct appeal.
 (b) _____
 (c) _____

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

(a) your arraignment and plea? ☒
 (b) your trial, if any? ☒
 (c) your sentencing? ☒
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. _____

 ii. _____

 iii. _____

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

i. _____

 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

1.) All Criminal Charges vacated with prejudice, 2.) P.R. Counsel directed to file an direct appeal, or 3.) Remand for new trial

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

No.

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Charleston)

I, Benard O. Gilliard, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

x. Benard O. Gilliard

Benard O. Gilliard

SWORN to and subscribed before me this 26th
day of September, 2018.

Permyll M. Monte
Notary Public

(L.S.)

My Commission Expires: Feb 28, 2018

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bernard O. Gilliard, Applicant,

v.

State of South Carolina,
Respondent.

COURT OF COMMON PLEAS
C/A. 12-CP-10-7484

MEMORANDUM OF LAW IN
SUPPORT OF POST-CONVICTION
RELIEF APPLICATION

FILED
2020 NOV 15 AM 10:06
CLERK OF COURT

The pro se Applicant, Bernard O. Gilliard, hereby submits this Memorandum of law [& Fact] in support of his Post-Conviction Relief Application & states:

FACTS

1. On the day of sentencing, 3/27/13, the Applicant requested for Counsel to file a direct appeal. Applicant's sister was present when Applicant told Counsel this. See attached 'Affidavit of Jane Doe'. Counsel assured the Applicant that he would file the direct appeal. Applicant believed that Counsel would.
2. After not hearing anything from Counsel demonstrating that the direct appeal was filed, Applicant had his sister to contact Counsel. Counsel did not respond.

LAW

3. In Bostick v. Stevenson, 589 F.3d 100 (4th Cir. 2009) the U.S. Court of Appeals found that the perfor performance of Bostick's trial Counsel was constitutional deficient because Counsel did not consult with Bostick about an appeal following his conviction.

4. To establish that he is entitled to relief, Bostick must first show that his attorney's performance was objectively unreasonable. Strickland v. Washington, 466 U.S. 668, 682-90 (1985). In the appellate context, a petitioner may demonstrate both deficient performance & prejudice by showing that counsel failed to file an appeal after the petitioner explicitly requested that counsel do so. Roe v. Flores-Ortega, 528 U.S. 470, 477 (2000). Where a petitioner never explicitly requests an appeal, that petitioner can still establish deficient performance by showing that counsel failed to consult with petitioner, & that a reasonable attorney would have done so under the circumstances. *Id.* at 480. For an attorney to "consult" that attorney must advise the client about the advantages & disadvantage of an appeal & ~~must~~ make reasonable efforts to ascertain the client's wishes. *Id.* at 478; United States v. Witherspoon, 231 F.3d 923, 928 (4th Cir. 2000).

5. Counsel's Failure to consult with Bostick about an appeal was therefore objectively unreasonable & constitutionally deficient. To show prejudice from Counsel's Failure to consult regarding an appeal, Bostick must show that but for the Failure, he would have timely appealed.

ARGUMENT

6. In the present case the Applicant requested Counsel to file. Counsel told the Applicant he would. The record speaks for itself, had Counsel Applicant not requested Counsel to do so, Counsel still had a duty to consult. The record shows no appeal was filed. **THEREFORE**, Counsel is clearly ineffective.

CONCLUSION

7. This Court should grant relief & instruct PCR counsel to File a direct appeal For Applicant.

14/7/12, SC
dated

Respectfully,
X. Bernard O. Gilliard
Bernard O. Gilliard
#314249, SNU-B19, MCC I
386 Redemption Way
McCOMICK, SC 29899

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this & Affidavit of ~~Bernard O. Gilliard~~ on: Attorney General; P.O. Box 11549, Columbia, SC 29211-1549.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Bernard D. Giliard, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Bernard D. Giliard
Bernard D. Giliard Applicant

SWORN or affirmed to and subscribed before me this

26th day of September, 2012.

Duane C. Monte
Notary Public

My Commission Expires: Feb 28, 2018

PAGE 'A'

On the day of Sentencing, 5/27/95, the Applicant requested for Counsel to file ~~a direct~~ a direct appeal. Applicant's ~~brother~~^{sister} was present when Applicant told Counsel this. Counsel ensured the Applicant that he would file the direct appeal. The Applicant, as would any reasonable client of an attorney, believed that Counsel would file the direct appeal.

After not hearing nothing from Counsel demonstrating that the direct appeal was filed, the Applicant exercised due diligence of his insistence to file a direct appeal & had his sister to contact Counsel. Counsel did not respond.

Counsel did not file a direct appeal as he ensured his client/Applicant that he would. **THEREFORE**, Counsel is clearly, **INEFFECTIVE**.

MOREOVER, if Counsel would or tried to consult with Applicant to talk him out of pursuing a direct appeal it would of been useful, Applicant was determined to file a direct appeal. **THEREFORE**, in light of **PREJUDICE** is undisputable.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bernard O. Gilliard,
Applicant,

v.

State of South Carolina,
Respondent.

COURT OF COMMON PLEAS
C/A. 12-CP-10-7484

AFFIDAVIT OF

~~BERNARD O. GILLIARD~~

Bernard O. Gilliard

FILED
2012 NOV 15 AM 10:06
JULIE CLARK OF COURT

I, ~~Bernard O. Gilliard~~ ^{Bernard O. Gilliard}, hereby being duly sworn, affirms under penalty of perjury, 28 U.S.C. § 1746 & 18 U.S.C. § 1621, that the following is true & correct:

1. I am over the age of 18 & of sound mind. I am currently incarcerated at the below stated address.
2. I am the applicant's sister. On the day of sentencing, 5/17/10, when he was sentenced to 25 years my brother ^{my brother} asked Counsel John Doe to file a direct appeal. Mr. Doe told ^{my brother} ~~Counsel~~ he would.
3. On or about 7/10/10 I called ^{Bernard} Mr. ~~Doe~~ at his office, he was not in & I left a message with his secretary that my brother was trying to find out about the status of the direct appeal. Counsel never return my call.

~~MAF~~

Sworn to before me, this

26th day of September, 2012

Permy G. Mink, (L.S.)

My Commission Expires: Feb 24, 2011

x. John Doe
John Doe
By Hill Rd
Charleston, SC 29404

10/11/12
dated

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2012-CP-10-7484
Bernard O. Gilliard, # 314249,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 15, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the March 2010 term of the Charleston County Grand Jury for possession of a firearm during commission of a violent crime (2010-GS-10-2059), armed robbery (2010-GS-10-2060), murder (2010-GS-10-2061), and unlawful carrying of a pistol (2010-GS-10-2173). Applicant was represented by John Michael Bosnak, Esquire.

On May 27, 2010, the Applicant proceeded to trial on all charges. He was found guilty of armed robbery. On February 25, 2011, the Applicant proceeded to trial for the second time on the remaining charges. The result of the second trial was a hung jury. After the second trial, the Applicant was sentenced by the Honorable J. C. Nicholson, Jr. to twenty-five years for armed robbery. On April 21, 2011, the Applicant pled guilty to voluntary manslaughter as a lesser included offense of murder, possession of a weapon during the commission of a violent crime,

and unlawful carrying of a pistol. The Honorable Thomas L. Hughston sentenced the Applicant to five years for possession of a weapon, one year for unlawful carrying of a pistol, and twenty years for voluntary manslaughter. The Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel¹
 - a. Failure to file a direct appeal.

III.

The Respondent submits the allegation that counsel was ineffective for failing to file a direct appeal is without merit. As an initial matter, this application for post-conviction relief was filed outside of the one-year statute of limitation outlined in the Uniform Post-Conviction Procedure Act. S.C. Code §17-27-45(A) (1976). However, the one-year limitations period in which to file a petition for post-conviction relief does not apply where the defendant alleges he was denied a direct appeal due to ineffective assistance of counsel. Wilson v. State, 348 S.C. 215, 559 S.E.2d581 (2002). Since the Applicant's claims he did not voluntarily waive his right to a direct appeal, an evidentiary hearing is warranted solely on this issue.

¹ Applicant is only asserting ineffective assistance of counsel for Counsel's failure to file a direct appeal after he was convicted of armed robbery on May 27, 2010. Applicant has not identified any allegations in his PCR application relating to the pleas conducted on April 21, 2011.

Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (internal citations omitted). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967). Id. However, the standard for a guilty plea differs. Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id.

This allegation regarding a belated direct appeal may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing solely on this allegation. Sharper v. State, 305 S.E.2d 247.

VI.

The Respondent also submits that any other allegation raised by the Applicant should be summarily dismissed for failing to file this Application for post-conviction relief within the statute of limitations outlined in S.C. Code § 17-27-45(A).

VII.

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

VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely to resolve whether the Applicant voluntarily waived his right to a direct appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: Ash R. Wilson
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 26, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2012-CP-10-7484

BERNARD O. GILLIARD, #314249)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

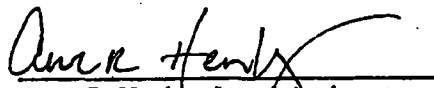
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the abovecaptioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

T. Dyllan Rankin, Esquire
55 Broad St. Suite 100
Charleston, SC 29401

DATED this 26th day of June , 2013


Anne R. Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bernard O. Gilliard, #314249,
Applicant,

VS.

State of South Carolina,
Respondent.IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-7484**AMENDED APPLICATION FOR
POST-CONVICTION RELIEF**2013 NOV -8 PM 4:11
FILED
CLERK OF COURT

FILED

The Applicant, amending its Application for Post-Conviction Relief (PCR), filed November 15, 2012, would respectfully show this Court:

1. The Applicant incorporates herein by reference, in its entirety, the original Application for Post-Conviction Relief, filed November 15, 2012, including all associated documents filed therewith, except as specifically amended herein.

2. In its Application for Post-Conviction Relief, the Applicant ambiguously refers to May 27, 2010 as the date of sentencing, when in fact, May 27, 2010 was the date of conviction, and February 25, 2011 was the date of sentencing on Applicant's armed robbery charge. The Honorable J. C. Nicholson, Jr. sentenced the Applicant to twenty-five years for armed robbery conviction.

3. On April 21, 2011, the Applicant pled guilty to the remaining charges of voluntary manslaughter as a lesser included offense of murder, possession of a weapon during the commission of a violent crime, and unlawful carrying of a pistol. On the same day, the Honorable Thomas L. Hughston sentenced the Applicant to five years for possession of a weapon, one year for unlawful carrying of a pistol, and twenty years for voluntary manslaughter.

4. The Applicant is informed and believes that he reasonably demonstrated an interest in appealing the May 27, 2010 conviction for armed robbery, the February 25, 2011 sentencing for armed robbery, and the April 21, 2011 sentencing for the charges of voluntary manslaughter, possession of a weapon during the commission of a violent crime, and unlawful carrying of a pistol.

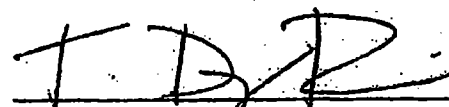
5. However, despite the Applicant's demonstrated interest in appealing his conviction and sentences, Applicant's trial counsel failed to consult with Applicant to make certain that the Applicant was made fully aware of his right to appeal.

6. The Applicant did not voluntarily waive his right to a direct appeal at any time.

WHEREFORE, the Applicant prays for an order of this court granting Applicant the right to file a belated appeal on his conviction and sentencing on all charges.

Respectfully submitted,

THE LAW OFFICE OF
T. DYLLAN RANKIN



T. Dyllan Rankin
55 Broad Street, Suite 100
Charleston, SC 29401
(843) 628-3158 (p)
(877) 804-6016 (f)

ATTORNEY FOR APPLICANT

This 5th day of NOVEMBER, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

BERNARD GILLIARD,) TRANSCRIPT OF RECORD
APPLICANT,) 2012-CP-10-7484
V.)
STATE OF SOUTH CAROLINA,)
RESPONDENT.)

NOVEMBER 20, 2013

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE STEPHANIE P. MCDONALD, JUDGE

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

T. DYLAN RANKIN, ESQUIRE
ATTORNEY FOR THE APPLICANT

ASHLEIGH R. WILSON, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE STATE

SHARON L. VIZER
CIRCUIT COURT REPORTER

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19	**NO EXHIBITS WERE INTRODUCED**	
20		
21		
22		
23		
24		
25		

1 Wednesday, November 20, 2013

2 THE COURT: The note I had from my review of the
3 transcript, it appears there was a failure to file a
4 direct appeal.

5 MR. RANKIN: That's correct, Your Honor.

6 THE COURT: But I'll let you all put on the record.
7 All right. Is this Mr. Gilliard?

8 THE APPLICANT: Yes, ma'am.

9 THE COURT: All right. Good morning, sir.

10 THE APPLICANT: How you doing?

11 THE COURT: Oh, I'm fine. Thank you.

12 All right. I'm ready whenever you all are.

13 MS. WILSON: Thank you, Your Honor. May it please
14 the Court. Ashleigh Wilson for the State of South
15 Carolina. This is Bernard Gilliard vs. The State of
16 South Carolina, docket number 2012-CP-10-7484.

17 Mr. Gilliard was indicted in March 2010 for armed
18 robbery, possession of a weapon during the commission of
19 a violent crime, voluntary manslaughter, and unlawful
20 carrying of a pistol. He was represented by Mr. John
21 Michael Bosnak.

22 He proceeded to trial in May of 2010 and he was
23 found guilty of the armed robbery charge, and the Court
24 declared a mistrial on the remaining charges. He
25 proceeded to trial a second time in February of 2011

1 before Judge Nicholson. Judge -- well, on the two
2 remaining charges, the possession of a weapon during the
3 commission of a violent crime and murder, and it resulted
4 in a hung jury. And at the conclusion of that second
5 trial he was sentenced to 25 years for the armed robbery
6 from the prior trial.

7 In April, on April 21, 2011, he pled guilty before
8 Judge Hughston to possession of a weapon during the
9 commission of a violent crime. He received five years,
10 voluntary manslaughter he received 20 years, and unlawful
11 carrying he received one year.

12 Today he's represented by Mr. Dyllan Rankin. He
13 filed this application for post-conviction relief on
14 November 15, 2012, and the only issue before the Court
15 today is whether or not -- or is Mr. Bosnak's failure to
16 file an appeal.

17 And the State would just also like to note for the
18 record that any other allegation that comes up to today
19 the State opposes because it's outside the statute of
20 limitations. So we are here solely on that issue.
21 Thank you.

22 THE COURT: All right. Counsel, I'm happy to hear
23 from you, and if you all would go into a little bit of
24 information for me about exactly what the direct appeal
25 would have been from had it been pursued, and I want to

1 make sure your client understands what happens if this
2 all starts over, okay?

3 MR. RANKIN: Okay.

4 THE COURT: Thank you.

5 MR. RANKIN: Okay. Your Honor, our first witness
6 is going to be Mr. Bosnak.

7 THE COURT: All right.

8 MR. RANKIN: And if he wants to go ahead I'll go
9 ahead and introduce the case and what exactly he's
10 seeking.

11 THE COURT: All right.

12 MR. RANKIN: As counsel said, Your Honor --

13 THE COURT: Come on up, if you would, Mr. Bosnak.
14 We'll swear you in.

15 MR. RANKIN: Mr. Gilliard was tried two times for
16 all the charges. On the first trial, which was in May of
17 2010, he was convicted of armed robbery. He wasn't
18 sentenced on that date. He was tried again on the
19 remaining charges in February of 2011, and at that time
20 he was sentenced on the armed robbery charges by Judge
21 Hughston, and then he pled guilty to the remaining
22 charges in April of 2011.

23 THE COURT: But he pled guilty to some lesser
24 charges than he was originally charged with previously,
25 right?

1 MR. RANKIN: On the murder and other -- two charges
2 he pled guilty to.

3 THE COURT: Right. Pled down from murder to
4 voluntary, right?

5 MR. RANKIN: That's correct, Your Honor.

6 THE COURT: Okay. So what is he looking for today?

7 MR. RANKIN: And so he wants to present to the
8 Court that he had talked to his attorney about filing an
9 appeal and that he didn't receive the correct guidance on
10 how to file an appeal if he had wanted to.

11 THE COURT: Okay. An appeal from what? The armed
12 robbery, the issues with the plea, what?

13 MR. RANKIN: Well, I believe he would like to
14 appeal the conviction of the armed robbery and the
15 sentencing, and then also the sentencing on the remaining
16 charges.

17 THE COURT: And you've explained to him --

18 MR. RANKIN: I've explained all that to him.

19 THE COURT: -- what could happen?

20 MR. RANKIN: And I tried to encompass all that in
21 his amended petition.

22 THE COURT: Okay.

23 JOHN M. BOSNAK, after having been duly
24 sworn, testified as follows:

25 THE CLERK: Please have a seat and state your name,

JOHN M. BOSNAK - DIRECT BY MR. RANKIN

7

1 spelling your last name for the record.

2 THE WITNESS: My name is Mike Bosnak, B-o-s-n-a-k.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. RANKIN:

6 Q. Good morning, Mr. Bosnak.

7 A. Good morning.

8 Q. Thank you for being here today.

9 A. Yes, sir.

10 Q. Have you had an opportunity to review all the
11 pleadings that were filed in this case?

12 A. Yes, sir.

13 Q. And you've had an opportunity to review the amended
14 application that was filed on November the 8th in this
15 case?

16 A. I did. You sent me a copy.

17 Q. And have you had an opportunity to review your file
18 in preparation for this hearing?

19 A. Yes.

20 Q. Okay. So you understand the relief that
21 Mr. Gilliard is seeking today?

22 A. I'm a little confused. I guess what he wants to do
23 is start all over again. Would that be correct? Or does
24 he -- I know he wants an appeal on the armed robbery but
25 I'm a little confused on the other charges.

1 THE COURT: As am I.

2 MR. RANKIN: Your Honor, it's my understanding the
3 only thing before the Court, based on the pleadings, is
4 the opportunity to file a direct appeal.

5 THE COURT: From what, is what we are trying to
6 find out?

7 MR. RANKIN: Well, Your Honor, can we get some
8 clarification from the Court on that because I'm actually
9 not certain either.

10 Your Honor, beg the Court's indulgence for just a
11 minute --

12 THE COURT: Certainly.

13 MR. RANKIN: I'm going to clarify that real quick.

14 THE COURT: I would appreciate that. Thank you.

15 (WHEREUPON, a private conversation took place
16 between Mr. Rankin and the Applicant.)

17 MR. RANKIN: Okay. Your Honor, I've clarified
18 that. He just wants to appeal the sentencing of the
19 armed robbery.

20 THE COURT: Okay.

21 MR. RANKIN: So that will be from the second trial,
22 February 25th, 2011 when he was sentenced by Judge
23 Hughston.

24 A. No, that's not correct. He was sentenced by Judge
25 Nicholson.

JOHN M. BOSNAK - DIRECT BY MR. RANKIN

9

1 MR. RANKIN: Judge Nicholson. That's correct.

2 THE COURT: And what kind of time is he doing on
3 the voluntary and the other charges? Do we know?

4 MR. RANKIN: Twenty years. That's running
5 concurrently with five years and one year on the other
6 charges.

7 THE COURT: And he got 25 on the armed robbery?

8 MR. RANKIN: Twenty-five on the armed robbery.

9 THE COURT: And could have gotten 30?

10 MR. RANKIN: The issue, Your Honor, was that he was
11 offered 15 after his first conviction on everything.

12 THE COURT: Right.

13 MR. RANKIN: And I think --

14 THE COURT: Well, that's gone. I mean, I know he
15 would love to go back and have a do-over but --

16 THE APPLICANT: No, listen. I -- oh --

17 THE COURT: That's okay.

18 THE APPLICANT: I didn't mean to interrupt you.

19 THE COURT: That's okay.

20 THE APPLICANT: Listen, I wanted to take that. You
21 know what I'm saying? But the solicitor at the time,
22 DuRant, he spoke up, Oh, no, the family, we recommend

23 life or life 30 years or whatever. So the dude, Judge
24 Young, he be like, Well, I don't want to make nobody
25 feel, you know what I'm saying, angry at me, both sides,

1 so I'm not going to sentence him on this armed robbery.

2 That's why it carried over to the second trial in
3 the first place. I been all for that. I never told -- I
4 never denied that I'm ready to go. You know what I mean?
5 So I'm just saying, they came back, the dude give me 25
6 when I could have taken that 15. I ain't never denied
7 nothing.

8 THE COURT: Okay, and I appreciate that. Thank
9 you, sir. Here's what we are trying to figure out. If
10 you are only asking that the Court look at whether or not
11 you were improperly denied a direct appeal, okay, if you
12 win today what you'll get is a chance for an appeal to be
13 filed. It may leave everything the same or it may start
14 things over, but it will only be on the armed robbery,
15 and then you'll be looking at, what, 10 to 30 on the
16 armed robbery?

17 THE APPLICANT: Miss, you know how much I got now?

18 THE COURT: How much you got now?

19 THE APPLICANT: I got 25 years on that.

20 THE COURT: Right.

21 THE APPLICANT: So if I lose the most they could
22 give me is 30.

23 THE COURT: I understand, and I appreciate you
24 understanding that but --

25 THE APPLICANT: I'm all in it.

JOHN M. BOSNAK - DIRECT BY MR. RANKIN

11

1 THE COURT: I just want to make sure you
2 understand.

3 THE APPLICANT: Yeah --

4 THE COURT: Okay. Ask Mr. Bosnak some questions
5 about the appeal and what they talked about and we'll go
6 from there.

7 MR. RANKIN: Okay.

8 BY MR. RANKIN:

9 Q. And, Mr. Bosnak, just by way of review, you
10 represented Mr. Gilliard at the initial trial where he
11 was convicted of the armed robbery; is that correct?

12 A. Correct.

13 Q. And then you represented him again at the second
14 trial where he was sentenced to 25 years?

15 A. Correct.

16 Q. Any time during the first trial did Mr. Gilliard
17 talk to you about an intent that he wanted to appeal
18 anything related to the trial?

19 A. No. Let me clarify a little bit what happened.

20 The first trial, which was Judge Roger Young, we hung the
21 jury on the murder and the gun charges and unlawful
22 carrying. It wasn't really close. I think it was nine

23 to three; nine to acquit, three to convict. So it wasn't
24 close at all.

25 They did find him guilty on the armed robbery.

1 Judge Young called me to the bench and along with
2 Rutledge DuRant, and I can't think of the other solicitor
3 right now. His name will come to me.

4 Q. Simpson.

5 A. Yeah, Chad Simpson. He said, I will -- if he will
6 plead to everything I'll give him 15 years.

7 I said, We'll take that. We'll do that.

8 The solicitor and the family got together and they
9 did not want that. They did not want that. Their theory
10 of the case was that Bernie got Vincent Wittrell, the
11 deceased, to meet him and Bernie assassinated him. That
12 was the State's theory of the case and also the family
13 believed that.

14 And when the father came to hire me I never got an
15 offer on anything. I think they wanted to get life in
16 prison and I was told anything you can do better than 30
17 years, that's all we're looking for. That was what was
18 said to me by Bernie's father.

19 So we went in and so the State didn't want him to
20 get 15 years, the family didn't want him to get 15 years.
21 Judge Young said, Okay. Well, I'm not going to be the
22 bad guy in this. You all can just try this over again or
23 maybe you all can work it out on down the line.

24 And I think that's why Judge Young did not sentence
25 him at the time is because thinking that maybe we could

JOHN M. BOSNAK - DIRECT BY MR. RANKIN

13

1 keep from having another trial and maybe we could get
2 together and could work out some type of sentence on this
3 particular case, which the solicitor's office was not
4 interested in doing at all.

5 Q. Okay --

6 A. Go ahead. I'm sorry.

7 Q. So moving forward, there was no assumption going
8 into the second trial that that was still on the table,
9 and that being the 15 years?

10 A. The 15 years was never on the table.

11 Q. Were there any numbers that were discussed between
12 you and the solicitor ahead of the sentencing and second
13 trial?

14 A. I just really don't recall but I'm not sure they
15 offered anything. I mean, they wanted him to get life if
16 he could get life, and they didn't offer anything. I
17 mean, this was -- Chad Simpson and Rutledge DuRant are
18 friends of mine, and I like them but it was a very
19 contentious trial. I mean, they wanted Bernie's hide
20 pinned to the wall, is what they wanted. So we just
21 didn't have any other choice but to try the case.

22 Q. And so following the sentencing of the 25 years on
23 the armed robbery in February of 2011 did Bernie talk to
24 you at all about filing an appeal of that sentence?

25 A. Well, what we were trying to determine -- well, it

1 wasn't a sentence. He had not been sentenced. He wasn't
2 sentenced until the second trial.

3 Q. Right. Right.

4 A. So there wasn't -- what Bernie was concerned about
5 and I was somewhat concerned about it, too, they found --
6 they hung the jury on the gun charge. And just I think
7 like any attorney how can you find somebody guilty of
8 armed robbery if you don't find him guilty of the gun
9 charge because there was absolutely no testimony, no
10 facts whatsoever that another weapon was used. Of
11 course, this was a murder, there was no weapon used in
12 this case. And what's strange about the armed robbery --
13 And, Judge, I don't meant to go on. I'm just
14 trying to clarify it.

15 THE COURT: No. I appreciate it.

16 A. This was an argument over drug money. Bernie was
17 selling drugs and supposedly Vincent Wittrell was selling
18 drugs, and this was Vincent's territory. He had
19 threatened Bernie because Bernie had sold drugs to some
20 of his clients. So Bernie told him if you'll leave me
21 alone I'll never come back in your area again. This was
22 what was said, whether all this is true or not.

23 He said, I'll be willing to pay you something if
24 you'll just leave me alone. He said, Well, meet me over
25 here at -- it's a street in the neighborhood over in

JOHN M. BOSNAK - DIRECT BY MR. RANKIN

15

1 Ladson. Meet me over here and give me my money and then
2 we're done.

3 Well, Bernie's testimony was I think he gave him
4 \$300 then he ended up shooting Vincent because he said
5 Vincent had a gun and was getting ready to shoot him. He
6 ended up shooting Vincent.

7 He ran then thought about the \$300 that he had
8 given Vincent, turned around, came back to the car where
9 Vincent was dead and took the \$300. According to the
10 sheriff's department, Vincent had \$2100 on him not
11 including, not including the 300 that Bernie had given --

12 Q. So if he would have robbed him he could have
13 gotten it?

14 A. Right --

15 Q. We don't need to go too much into detail.

16 THE COURT: Let's go back. So at the point there
17 was no sentence to appeal because Judge Young did not
18 sentence him?

19 THE WITNESS: That's correct.

20 THE COURT: So then we go to the proceeding with
21 Judge Nicholson, correct?

22 THE WITNESS: That's correct.

23 THE COURT: All right. Talk about any appeal from
24 that.

25 BY MR. RANKIN:

1 Q. Okay. So we are in February of 2011, you hang the
2 jury again?

3 A. Correct.

4 Q. In front of Judge Nicholson?

5 A. Correct.

6 Q. Judge Nicholson sentences Bernie to 25 years on the
7 armed robbery charge?

8 A. Correct. He told me -- he called me -- said, I'm
9 going to sentence him on the armed robbery. Even though
10 we've hung the jury again I'm going to sentence him on
11 this. And he told me before the trial -- let me say
12 this, that if Bernie was willing to plead to everything
13 he would have given him, I want to say 21 or 23 years,
14 and Bernie didn't want to do that.

15 And I said, He doesn't want to do that, so we'll
16 try it. So then afterwards -- I didn't have any idea
17 what Judge Nicholson would do, Judge Nicholson gave him
18 25 years.

19 Q. So after he got the 25 years was there a sense of
20 sticker shock or was there a lot of surprise on your
21 side?

22 A. I don't think there was any surprise. I mean, here
23 we have an armed robbery where a person ends up dead
24 because of what went on by the defendant. I mean, I
25 don't think that's out of line with Judge Nicholson at

JOHN M. BOSNAK - DIRECT BY MR. RANKIN

17

1 all to sentence. He didn't give him the maximum.

2 Q. Did Bernie talk to you at all about the possibility
3 of an appeal or did he ask any questions that sort of
4 expressed an intent --

5 A. No --

6 Q. -- to appeal?

7 A. Everybody was kind of relieved now that we weren't
8 looking at life in prison. I mean, you have to go back.
9 He's looking at life without parole and we felt like
10 hanging the jury twice and him not getting but 25 years
11 was a victory, a big victory, and we were -- you know, I
12 mean, I guess you'd not be happy about getting 25 years
13 but we were certainly happy that he didn't get life, so
14 our discussions were more or less along those lines.

15 Q. Right. Okay. Do you recall if he voluntarily
16 waived a right to an appeal or do you recall discussing
17 that with him?

18 A. We talked about it. He never waived. He never
19 told me, Well, I don't want an appeal. He never said
20 that. We really just didn't get into that.

21 Q. Is it typical with your clients that you go ahead
22 and perfect an appeal after a conviction and sentencing
23 of this sort?

24 A. You should always do that. You should always do
25 it. You should always do a motion to reconsider. If you

1 don't like the sentence then you should also file an
2 appeal for them and then determine if they have money or
3 not. If they don't you need to contact Indigent Defense
4 and let Indigent Defense know that they are going to have
5 a new client. That's what you do.

6 Q. Okay. And that didn't happen in this case?

7 A. No.

8 Q. Which is with regard to the armed robbery charge?

9 A. That's correct.

10 Q. Okay. I don't have anything else, Mr. Bosnak.

11 Thank you.

12 A. You're welcome.

13 THE COURT: Okay. Cross-examination.

14 MS. WILSON: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. WILSON:

17 Q. Mr. Bosnak, so you represented Mr. Gilliard on the
18 murder, the armed robbery, possession of a weapon during
19 the commission of a crime and unlawful carrying, on all
20 those charges, correct?

21 A. That's correct.

22 Q. Okay. And so he went to trial the first time in
23 May 2010 for the first time and then he was found guilty
24 of the armed robbery?

25 A. Correct.

JOHN M. BOSNAK - CROSS BY MS. WILSON

19

- 1 Q. But he hadn't been sentenced?
- 2 A. That's correct.
- 3 Q. And did you all have any discussions about any type
- 4 of an appeal at that point even though he hadn't been
- 5 sentenced yet?
- 6 A. Again, we were concerned about him doing life and
- 7 being convicted of murders. The armed robbery wasn't
- 8 anything we were concerned. We didn't have an idea about
- 9 the sentence.
- 10 As a matter of fact, the solicitor wanted to try
- 11 him a third time. We were told that we would be trying
- 12 this case one more time. They were going to keep -- and
- 13 what they told me was, We are going to continue trying
- 14 this until we run out of tries or until we convict him.
- 15 I mean, that was what Rutledge told me.
- 16 Q. So when he ultimately was sentenced to the 25 years
- 17 by Judge Nicholson you had a conversation with him about
- 18 his right to appeal?
- 19 A. We did talk about that but at that time I was
- 20 anticipating having to try the thing a third time.
- 21 That's why I agreed to plead to the 20, let him come in
- 22 and plead to these other things where we could take this
- 23 life without parole off the table. That's the main thing
- 24 I'm trying to do in this case.
- 25 Q. Okay. And after your discussions with him about an

1 appeal after the sentencing, even though you were
2 anticipating going to trial a third time, did he ever
3 indicate he wanted to appeal?

4 A. No. He never told me, I want you to appeal this
5 for me or I want you to give notice of appeal. He never
6 did that. Nobody in the family ever did that. No
7 correspondence was ever sent to me or written to me
8 saying, Please give notice of appeal on my behalf, none
9 of that was done.

10 Q. And ultimately you all thought it was a success?

11 A. I certainly thought it was a success. I think by
12 anybody's standards you would but when you claim self
13 defense that somebody is going to try to kill you and
14 there's no gun, there's no gun in the car, no evidence
15 that he had a gun and you shoot somebody point blank
16 seven or eight times, you know, I certainly think that's
17 a success.

18 Q. Did you think that there were any issues with his
19 armed robbery conviction that warranted having an appeal,
20 or any meritorious issues you could think of maybe.

21 A. Well, the only thing that was strange to me is they
22 didn't find him guilty of the gun charge. I think they
23 kind of, what we call, split the baby type of thing in
24 this case. I thought we had a victory. Very easily
25 could have got 30 years.

JOHN M. BOSNAK - CROSS BY MS. WILSON

21

1 I don't think on any type of legal appeal, it's
2 just my opinion and I'm not an expert, but when a jury
3 hears all the facts and they determine that there was an
4 armed robbery committed and they find him guilty of that
5 but they don't find him guilty of other things I
6 certainly think they are fair and impartial and I don't
7 -- I mean, he can get leave to appeal. I don't think
8 it's going to go anywhere.

9 Q. Thank you.

10 A. Yes, ma'am.

11 THE COURT: Anything further?

12 MR. RANKIN: No, Your Honor.

13 THE COURT: All right. Thank you, counsel. You
14 may step down.

15 MR. RANKIN: Your Honor, our next witness is the
16 applicant, Mr. Gilliard.

17 THE COURT: All right. Mr. Gilliard, come on up
18 and we'll swear you in.

19 BERNARD GILLIARD, after having been duly
20 sworn, testified as follows:

21 THE CLERK: If you could please have a seat and
22 state your full name, spelling you last name for the
23 record.

24 THE APPLICANT: Bernard Gilliard, G-i-l-l-i-a-r-d.

25 THE COURT: All right. Yes, sir.

1 DIRECT EXAMINATION

2 BY MR. RANKIN:

3 Q. Good morning, Mr. Gilliard. I just want to make
4 sure and clarify that you understand what's before the
5 Court today. If you are successful and the Court grants
6 the relief that you've requested you'll be allowed to
7 file a belated appeal specifically on the armed robbery
8 charge; do you understand that?

9 A. Yes, sir.

10 Q. Okay. And if you are successful with that appeal
11 the armed robbery charge, if you are convicted, it's a
12 range from 10 to 30 years?

13 A. Yes, sir.

14 Q. And all your other sentencing will stand. So you
15 have 20 years on the voluntary manslaughter; do you
16 understand that?

17 A. Yes, sir.

18 Q. Okay. And so the best you can do is that your 25
19 years could be reduced to --

20 A. 20.

21 Q. -- 20.

22 A. Yes, sir.

23 Q. Okay. And you wish to move forward on that?

24 A. Yes, sir.

25 Q. Okay. Now, on February the 25th of 2011 you were

BERNARD GILLIARD - DIRECT BY MR. RANKIN

23

1 sentenced to armed robbery based on the conviction that
2 happened nine months prior to May of 2010; is that
3 correct?

4 A. Yes, sir.

5 Q. Okay. And at that time did you talk to your
6 attorney, Mr. Bosnak, about any desire to appeal that
7 sentencing?

8 A. I don't want to drag this out but I got some things
9 I want to say. All right. Listen now. Before my first
10 trial I never knew Mr. Bosnak. All right. But I'm going
11 say this for the record. I got a lot of love and respect
12 for that man, how that man fought for me in that
13 courtroom. You know what saying?

14 I ain't going to say a lie to that man. I got a
15 lot of love for that dude right there, but listen. I
16 talked to him after the trial and we talked about appeal
17 because he felt like, you know what I'm saying, I had got
18 too much time for the armed robbery. You know what I
19 mean? We got that type of relationship where he let me
20 know what's up. You know, and I asked him if he could do
21 that for me. You feel me? And it was my understanding
22 he was going to handle up everything for me. You know

23 what I mean?

24 And me and him, we know this lady named Ms. Asney
25 (phonetic) Robinson. She's the mother of one his clients

1 or whatnot or whatever, and she wrote me, told me --
2 telling me that Mr. Bosnak was saying you got too much
3 time for the armed robbery. You need to try to put in
4 for an appeal, but I have no clue how to put in for these
5 things. You feel me?

6 They got some jailhouse lawyers up the road that be
7 but I don't really want everybody up in my mess and my
8 business. You feel me? So I been looking for him to do
9 it, you know, but he ain't -- I don't know.

10 Q. Do you recall if you wrote him a letter or --

11 A. No. I never wrote the man -- I never wrote him no
12 letter.

13 Q. Did you personally talk to him at all about an
14 appeal?

15 A. Yes. That same day I asked the man about appeal
16 when we get the sentence. You feel me? I don't know if
17 it slip his mind or whatnot, you know what I mean, but it
18 had been my understanding that, you know, he try to get
19 this thing done for me now. You feel me? So . . .

20 Q. Are you aware if anyone in your family went and
21 talked to him about an appeal or whether you asked anyone
22 in your family to --

23 A. No, I ain't. I never asked nobody. I know nobody
24 ever really -- I know ain't nobody going at him like
25 that. You know what I mean? If they did they ain't tell

BERNARD GILLIARD - DIRECT BY MR. RANKIN 25

1 me about it. You know what I mean?

2 Q. Okay. And is it your desire that the Court grant
3 you the ability to file a belated appeal --

4 A. Yes.

5 Q. -- for the armed robbery sentencing?

6 A. Yes, sir. I could get five off or whatever. Hey,
7 I need that because I ain't never been doing nothing
8 wrong.

9 Q. Okay. Is there anything else you want to tell the
10 Court today while you're here?

11 A. I mean, you all heard the situation. You all might
12 not know the details but it was me or him. You feel me?
13 I gave the man the money so the man would leave me alone.
14 You know what I mean?

15 It was no one-time incident. Plenty of incidents
16 me and this dude done had. I tried my hardest to avoid
17 the situation with this dude, man. I tried. You know
18 what I'm saying? He planned on beating my mom up. You
19 feel me? I tried though. You know what I'm saying?

20 When he reached for that gun to try to shoot me I'm
21 not going to let nobody kill me. Nobody. Ain't nobody
22 going to kill me, dog. You feel me? So when he tried to

23 shoot me it was me or him who do you think I'm going to
24 pick? I'm going to pick me. You know what I'm saying?
25 And I gave him my money so I ran back and got my money.

1 That jury, as far as the murder charge, I had two
2 mistrials. I would have went back. I would have went
3 back. You know what I am saying? They was going to feel
4 me because just like I'm talking to you all they would
5 have felt me. You feel me? But it is what it is, man,
6 you know.

7 I got a lot for you, Mr. Bosnak. You feel me? I
8 don't know if you forgot or whatever but you a dude. I
9 love you, man.

10 Q. Thank you, Mr. Gilliard.

11 THE COURT: All right. Thank you, sir.

12 MR. RANKIN: Nothing further, Your Honor.

13 THE COURT: Any cross-examination?

14 MS. WILSON: Briefly, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. WILSON:

17 Q. Mr. Morning, Mr. Gilliard.

18 A. How you doing?

19 Q. Good. So your testimony today is that you spoke to
20 Mr. Bosnak about having an appeal; is that correct?

21 A. Yes, ma'am.

22 Q. And that you told him that you wanted to have an
23 appeal?

24 A. Yes. Yes, ma'am.

25 Q. Did he give you any advice? Did he say you should

BERNARD GILLIARD - CROSS BY MS. WILSON

27

1 appeal or say you shouldn't appeal?

2 A. It was so much a blur, the moment now. He ain't --
3 he definitely was with it. You know what I mean? There
4 was so much going on at the time. You now what I mean?
5 You know.

6 Q. Okay. Thank you.

7 A. Yes, ma'am.

8 THE COURT: Okay. Anything further?

9 MR. RANKIN: Nothing, Your Honor.

10 THE COURT: Sir, you may step back to the table.

11 Okay. Anything further?

12 MR. RANKIN: Nothing, Your Honor.

13 THE COURT: Anything from the State?

14 MS. WILSON: Nothing from the State.

15 THE COURT: Okay. Based on the information that's
16 been presented here both from Mr. Bosnak and from the
17 applicant I do find that Mr. Gilliard did not knowingly
18 and intelligently waive his right to a direct appeal.

19 That doesn't completely answer the question, as I
20 understand it, if a higher court agrees that, with my
21 finding, he may be allowed to petition for certiorari to
22 the Supreme Court to see if there are any direct appeal

23 issues. You know, an issue on sentencing in the
24 discretion of the judge, Judge Nicholson, and the
25 sentence, there might not be anything to appeal.

1 And I think that even Mr. Gilliard has acknowledged
2 that Mr. Bosnak fought as hard as anybody could have and
3 hung two juries, and quite frankly was rightfully
4 concerned about the murder charge around the corner and
5 his client being on trial for his life but I just -- I do
6 want to address that appellate issue. I think that
7 Mr. Gilliard has the right to do that. We procedurally
8 need to get the order set up to enable him to do that.

9 And, Counsel, either get you appointed or go
10 through indigent defense to get that appointed.

11 Ms. Wilson, if you all want to work together to
12 craft an order or if the State objects that's certainly
13 fine.

14 MS. WILSON: Your Honor, it's a pretty simple
15 procedure. If you just sign the order saying he's
16 granted a belated appeal he has to file notice of his
17 appeal and attach the order and then it will proceed just
18 like a normal appeal.

19 THE COURT: That's fine. I mean, that's the order
20 of the Court but I don't know if you have any relief that
21 you want to take from my finding that he did not
22 knowingly and intelligently waive his right to direct
23 appeal, and I want to make sure that anything that I do
24 sign reflects how hard Mr. Bosnak was fighting for him
25 and everything that he did for him and even

1 Mr. Gilliard's acknowledgement of that. So if you all
2 will draft something up and send it to me in Word I'll go
3 from there. Okay?

4 MS. WILSON: Thank you, Your Honor.

5 THE COURT: All right. And thank you. Thank you
6 all.

7 Good luck to you, sir. And, again, there might not
8 be anything to appeal. You know, that's not for me to
9 determine.

10 (WHEREUPON, the hearing was concluded.)

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1 C E R T I F I C A T E

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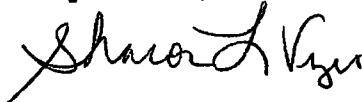
3 I, Sharon L. Vizer, Official Court Reporter for the
4 Ninth Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the hearing of the
8 captioned case in Circuit Court on the 20th day of
9 November 2013.

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

12

13 April 18, 2014

14



15

SHARON L. VIZER

16

CIRCUIT COURT REPORTER

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

769

County of ☒ Charleston ☐ Berkeley

Case # 2012 -CP- 10 - 7484

Bernard Gilliard

Applicant / Petitioner

vs.

ORDER

State of South Carolina,
Respondent.

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

☒ 1. The application for post-conviction relief is hereby: ☐ denied ☒ granted ☐ under advisement; a formal order will be filed (see below - No.6)

☐ 2. Motion(s) was/were heard in this case and the court orders:

☐ The motion to dismiss and/or for summary judgment is hereby ☐ granted ☐ denied ☐ under advisement based upon the ☐ statute of limitations and/or ☐ the successive nature of the application or ☐ other reason as follows:

☐ 3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

☐ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

☐ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or ☐ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

☐ 4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed ☐ with prejudice ☐ without prejudice.

☐ 5. Other: _____

☒ 6. The court further orders:

☒ The ☒ Attorney General and Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within 30 days.

☐ Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.

☐ The court does not request proposed orders.

IT IS SO ORDERED.

Date: 11/20/2013
Charleston, S.C.

[Signature]
Presiding Judge

2103

Court Reporter Sharon Vizer

Attorney for Applicant T. Dyllan Rankin

Attorney for Respondent Ashleigh Wilson

Rev. 08/12/02

3
AG
AT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bernard O. Gilliard, #314249,
Applicant,

VS.

State of South Carolina,
Respondent.IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-7484ORDER OF DISMISSAL AND
GRANTING BELATED APPEAL

FILED
2014 JAN 13 AM 9:44
CLERK OF COURT

Presiding Judge:	The Honorable Stephanie P. McDonald
Applicant's Attorney:	T. Dyllan Rankin, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Trial Counsel:	John Michael Bosnak, Esquire
Date of Hearing:	November 20, 2013
Court Reporter:	Sharon Vizer

This matter came before the Court by way of an Application for post-conviction relief (PCR) filed November 15, 2012, and amended on November 8, 2013. The Respondent made its Return on or about June 26, 2013.

An evidentiary hearing was held on November 20, 2013, at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by T. Dyllan Rankin, Esquire. Ashleigh Wilson of the South Carolina Attorney General's Office represented the Respondent.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the March 2010 term of the Charleston County Grand Jury for possession of a firearm during commission of a violent crime (2010-GS-10-2059), armed robbery (2010-GS-10-2060), murder (2010-GS-10-2061), and unlawful carrying of a pistol (2010-GS-10-2173). Applicant was represented by John Michael Bosnak, Esquire.

APM
-1-

On May 27, 2010, the Applicant proceeded to trial on all charges. He was found guilty of armed robbery. On February 25, 2011, the Applicant proceeded to trial for the second time on the remaining charges – the result was a hung jury. After the second trial, the Applicant was sentenced by the Honorable J. C. Nicholson, Jr. to twenty-five (25) years for armed robbery. On April 21, 2011, the Applicant pled guilty to voluntary manslaughter as a lesser included offense of murder, possession of a weapon during the commission of a violent crime, and unlawful carrying of a pistol. The Honorable Thomas L. Hughston sentenced the Applicant to five (5) years for possession of a weapon, one (1) year for unlawful carrying of a pistol, and twenty years (20) for voluntary manslaughter. The applicant did not appeal his convictions or sentences.

ALLEGATIONS

At the November 20, 2013 hearing, the Applicant alleged that he was denied effective assistance of counsel when trial counsel failed to file a direct appeal and failed to inform him of his right to appeal his Armed Robbery conviction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court agrees that Applicant's allegation that he was denied his right to appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. See White. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White, Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his or her appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct

appeal issues pursuant to White v. State. See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).¹

This Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his Armed Robbery conviction. Pursuant to White v. State, a petition for belated review can remedy the Applicant's lack of a direct appeal.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant has abandoned such allegations. Therefore they are hereby denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that granting the belated direct appeal is proper. This Court further finds that based upon Applicant's testimony, the dismissal of this application for post-conviction relief (with the exception for the belated appeal request) is voluntary and that Applicant has knowingly and intelligently elected to have his application dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal this Court's ruling within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

[Signature on the following page.]

¹ Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

IT IS THEREFORE ORDERED:

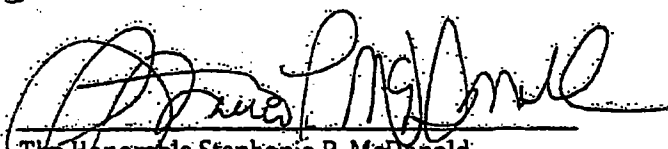
1. That this current Application for post-conviction relief be dismissed with prejudice; *except that* DPM

2. That the Applicant is granted a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's conviction. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.

and

3. The Applicant shall be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 8th day of January, 20 .


The Honorable Stephanie P. McDonald
Presiding Circuit Court Judge, 9th Judicial Circuit

Charleston, South Carolina

WITNESSES

JAMES PERKINS
Charleston County Sheriff

AGENCY CASE NUMBER

2009007908B

ARREST WARRANT NUMBER

K380319

DATE OF ARREST

April 23, 2009

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAR 01 2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2010GS1002001

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2010

09 2463 (01)
THE STATE

vs.

BERNARD OTHELLO GILLIARD

DOB:

B/M

Indictment for

Murder

ATTEST: A TRUE COPY
JULIE ARMSTRONG (SEAL)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

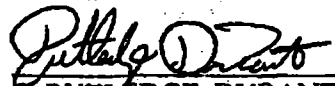
INDICTMENT

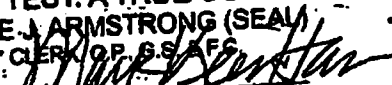
At a Court of General Sessions, convened on March 1, 2010 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about April 21, 2009, with malice aforethought, BERNARD OTHELLO GILLIARD did kill and murder Vincent Wittrell by means of shooting the victim, and that Vincent Wittrell did die in Charleston County as a proximate result thereof on April 21, 2009; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


G. RUTLEDGE DURANT
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF SUPERIOR COURT
By: 
JULIE J. ARMSTRONG

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Charleston

VS.

BERNARD OTHELLO GILLIARD

AKA:

Race: B

Sex: M

Age: 23

DOB: [REDACTED]

SS#: [REDACTED]

City, State, Zip: LADSON, SC 294560000

DL#:

SID#: SC01556945

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Voluntary Manslaughter

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS1002061

A/W#: K380319

Date of Offense: 4/21/2009

S.C. Code §: 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0050

of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: DuRan, G. Rutledge

739 44 x Bond [Signature]
SC Bar#

Defendant

Attorney for Defendant

6 P 666
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to: South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered: PRUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

§ 44-53-450(C) (Conditional Discharge)

3% to County (if paid in installments)

TOTAL

§ 14-1-206 (Assessments 107.5 %)	\$	\$ 100.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§ 56-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ 50.00
§ 56-5-2942(J) (Vehicle Assessment)	\$40	\$ 40.00
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$ 350.00
3% to County (if paid in installments)	\$ 3.90	\$ 3.90
TOTAL	\$	\$ 133.90

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly payments of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
☒ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

Presiding Judge: A TRUE COPY

Judge: J. ARMSTRONG

Sentence Entered: C.P. GS & F.G.

By

FIDELITY CLERK

GRD20090402459

WITNESSES

JAMES PERKINS
Charleston County Sheriff

AGENCY CASE NUMBER

2009007908B

ARREST WARRANT NUMBER

K304492

DATE OF ARREST

April 23, 2009

ACTION OF GRAND JURY

TRUE BILL

Da. Linea
Foreperson of Grand Jury
Date: MAR 01 2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2010GS1002060

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2010

THE STATE

VS.

BERNARD OTHELLO CHITTARD

DOB:

B/M

Indictment for

Armed Robbery

FILED

3/12/2010 11:53:40 AM

JULIE J. ARMSTRONG

CLERK OF COURT

09 2463 (03)

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF CHARLESTON)

At a Court of General Sessions, convened on March 1, 2010 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about April 21, 2009, in Charleston County, South Carolina, at [REDACTED] Clovewood Street, Ladson, South Carolina by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a .9mm Ruger handgun, the Defendant, BERNARD OTHELLO GILLIARD, did take and carry away goods and/or monies from the person or immediate presence of Vincent Witrell with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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


G. RUTLEDGE DURANT
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.
BERNARD OTHELLO GILLIARD

AKA: _____
Race: B Sex: M Age: 23
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL#: _____ SID#: SC01556943

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery

INDICTMENT/CASE#: 2010GS1002060A/W#: K304492Date of Offense: 4/21/2009S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

ON 5/27/10
☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lowd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: 73941 SC Bar SC Bar SC Bar
DuRack, G. Rutledge SC Bar Defendant Attorney for Defendant SC Bar

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-63 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharges)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharges)	\$100	\$
§ 36-5-2993 (DUI Assessment)	\$12	\$
§ 36-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforcement Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharges)	\$150	\$
§ 30-21-114 (BUI Breath Test Fee)	\$30	\$
§ 36-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharges)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk Don Paul

Court Reporter: Amyndy H. Fowles

SCCA217 (05/2010) Defendant was tried, on May 27, 2010 for Murder 1st Degree & Armed Robbery
AND convicted of Armed Robbery but sentencing was not completed.

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/B beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

payments of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: THE DEFENDANT WAS TRIED

THE 2ND TIME FOR MURDER 1ST DEGREE

2/25/11 & SENTENCED FOR ARMED ROBBERY

☐ Condition Discharge, § 44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition 000 2/25/11

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge GC Nicholas

Judge Code: 2154

Sentence Date: 2/25/11